Public

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42144

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; AND CARGILL INCORPORATED v. UNION PACIFIC RAILROAD COMPANY

247170
247172
247174
247176

Docket No. NOR 42150

VALERO MARKETING AND SUPPLY COMPANY AND VALERO RAIL PARTNERS, LLC v. UNION PACIFIC RAILROAD COMPANY

ENTERED
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Docket No. NOR 42152

TESORO REFINING & MARKETING COMPANY LLC; TESORO GREAT PLAINS GATHERING & MARKETING, LLC; AND DAKOTA PRAIRIE REFINING, LLC v. UNION PACIFIC RAILROAD COMPANY

Docket No. NOR 42153

ARKEMA INC. v. UNION PACIFIC RAILROAD COMPANY

COMPLAINANTS' JOINT OPENING EVIDENCE AND ARGUMENT

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10	RIC 6007-O (excerpts), effective Sept. 1, 2015
11	RIC 6007-O (excerpts), effective Sept. 1, 2016
12	Stipulation Agreement between Complainants and UP
13	UPRR 0000674-90 (COLOR)
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15	UPRR 0025230-37 (COLOR)
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25	Complainants' First Discovery Requests
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I. INTRODUCTION

Complainants in these consolidated proceedings (collectively "Complainants")[1] hereby submit their Joint Opening Evidence and Argument. In Counts I and II of the First Amended Complaint in Docket No. 42144, Complainants challenge, respectively, the lawfulness of (1) Item 55-C, Subpart D, in UP Tariff 6004-C ("Item 55-C") implemented by defendant, Union Pacific Railroad Company ("UP"), effective January 1, 2015,[2] and (2) UP's failure to compensate tank car providers in compliance with 49 U.S.C. §§ 11121 and 11122. Although the Complainants in Docket Nos. 42150, 42152 and 42153 assert only Count I, the evidence and arguments in support of Count II also support Count I. This joint evidence is supported by the attached Verified Statement of Thomas D. Crowley ("Crowley V.S.") and exhibits referenced throughout this pleading. In addition to this Joint Opening Evidence and Argument, the Individual Complainants each are submitting supplemental evidence and argument as to their individual circumstances (e.g., fact background, damages, communications with UP).[3]

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[1] The Complainants in Docket NOR 42144 are the North America Freight Car Association ("NAFCA"); the American Fuel & Petrochemical Manufacturers ("AFPM"); The Chlorine Institute, Inc. ("TCI"); The Fertilizer Institute ("TFI"); the American Chemistry Council ("ACC"); Ethanol Products, LLC d/b/a POET Ethanol Products ("POET Ethanol); POET Nutrition, Inc. ("POET Nutrition"); and Cargill Incorporated ("Cargill") (collectively, "NOR 42144 Complainants"). The Complainants in Docket NOR 42150 are Valero Marketing and Supply Company and Valero Rail Partners, LLC (collectively "Valero"). The Complainants in Docket NOR 42152 are Tesoro Refining & Marketing Company, LLC; Tesoro Great Plains Gathering & Marketing LLC; and Dakota Prairie Refining, LLC (collectively "Tesoro"). The Complainant in Docket NOR 42153 is Arkema, Inc. ("Arkema"). NAFCA, AFPM, TCI, TFI and ACC are hereafter collectively referred to as "Association Complainants" and the other Complainants as "Individual Complainants."

[2] *See* Ex. 1. All references to "Item 55-C" hereafter refer solely to subpart D.

[3] Throughout this joint evidence and accompanying verified statement, information that has been designated "Highly Confidential" pursuant to the Protective Order entered in Docket NOR 42144 by decision served on February 11, 2016, is contained within double brackets, e.g., {{...}}, and such information has been redacted from the public version of this pleading.

A. Summary of the Argument

This case is about UP's scheme to profit from empty tank car movements to and from repair facilities in violation of 49 U.S.C. §§ 10702, 11121 and 11122. Rail common carriers must supply all rail equipment, including, as is relevant here, tank cars, necessary to provide the transportation that they hold themselves out to perform. Railroads may satisfy this statutory mandate either by providing transportation in a railroad-supplied car or by compensating a third party for its costs associated with supplying the car, which includes the cost of transportation to and from repair facilities. In the case of tank car movements, railroads rely entirely upon tank cars owned or leased by their customers. Compensation for providing those tank cars historically has occurred through the payment of mileage allowances to rail customers on their loaded movements. Item 55-C is unlawful because UP does not compensate tank car providers for that, or any other, cost of tank car ownership through mileage allowances or any other form of compensation. Moreover, in adopting Item 55-C, UP engaged in unreasonable practices in violation of § 10702 both by deceiving its customers about its true motives for Item 55-C and attempting to "exit" unilaterally the mileage equalization program prescribed in Ex Parte No. 328, *Investigation of Tank Car Allowance System*.[4] For these reasons, UP's actions are manifestly unreasonable and a violation of federal law.

Even though §§ 11121 and 11122 require UP, and other railroads, to bear the cost of transporting tank cars to repair facilities, UP implemented Item 55-C for no reason but to profit from such movements by forcing tank car providers to bear the costs of these repair moves without compensation. In the wake of anticipated increases in tank car movements to repair facilities to satisfy new Pipeline and Hazardous Materials Safety Administration ("PHMSA")

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[4] 3 I.C.C. 2d 196 (1986) ("*Ex Parte 328*").

regulations, UP developed plans to impose substantial charges, for the first time ever, on movements related to tank car repairs. UP purposefully designed and implemented Item 55-C {{[redacted]}}, not on the PHMSA-required retrofit movements, but on practically all empty tank car movements to "Repair Facilities," which Item 55-C broadly defines as "any facility that cleans, relines, maintains, modifies, repairs, or retrofits tank cars."

The Interstate Commerce Commission ("ICC") historically prohibited railroads from charging for tank car repair moves because § 11122 places that responsibility upon them. In reversing that blanket prohibition in *General American Transportation Corporation v. Indiana Harbor Belt Railroad Company*,[5] the ICC held that, under the circumstances of that case, it was permissible for rail carriers to charge separately for transporting tank cars to repair facilities when those "charges are … considered a cost of repair to be included in the computation of mileage allowances that the railroads pay the shippers." In such circumstances, although tank car providers initially would pay for repair moves, § 11122 would not be violated because ultimate responsibility would remain with the railroads through their payment of mileage allowances. The ICC recommended this approach to address an unintended consequence of its blanket prohibition on tank car repair move charges. Specifically, some terminal and switching railroads with little or no opportunity to earn revenue from loaded tank car movements were saddled with large numbers of free repair moves due to the presence of one or more repair facilities on their lines. This resulted in a "misallocation and cross-subsidy" of repair move costs among railroads. But when railroads pay mileage allowances on loaded movements, the ICC

[5] 3 I.C.C. 2d 599, 599 (1987) ("*IHB-II*"); *on reconsideration*, 1988 ICC LEXIS 55 (Feb. 22, 1988) ("*IHB-II Reconsideration*"); *aff'd sub nom. Gen. Am. Transp. Corp. v. I.C.C.*, 872 F.2d 1048 (D.C. Cir. 1989) ("*IHB-II Appeal*").

recognized that those railroads that benefit most from using private tank cars also would bear the most responsibility for tank car movements to repair facilities, thereby eliminating this misallocation and cross-subsidy among railroads.

UP, however, has improperly invoked *IHB-II* as legal justification for Item 55-C. In the intervening 30 years since that decision, UP, along with all Class I railroads, has ceased to pay mileage allowances on nearly all loaded tank car movements, the payment of which was a critical predicate to the *IHB-II* decision. Indeed, UP's{{ }} motives underlying adoption of Item 55-C are flatly inconsistent with both its statutory duty to compensate tank car providers for repair move charges under § 11122 and the ICC's rationale in *IHB-II* for permitting repair move charges in the first instance. Specifically, UP, which received over {{ }} in annual revenue from loaded tank car traffic in 2014 (the year before Item 55-C became effective), did not adopt Item 55-C to address any problem with "misallocation or cross-subsidization" of repair move responsibility between it and other railroads, which was the ICC's rationale for permitting the repair move charges in *IHB-II*. Indeed, substantial consolidation of the rail industry since *IHB-II* has virtually eliminated that problem as to any Class I railroad because they all receive significant revenue from loaded tank car movements.

Despite the foregoing facts, UP nevertheless asserts that the ICC's decision in *LO Shippers Action Committee v. Aberdeen and Rockfish Railway Company*,[6] permits it to compensate tank car providers through the payment of "zero-mileage" rates[7] in lieu of mileage allowances because, "all other things being equal, the rates it charges for transportation under zero-mileage rates are lower than it would charge for the same transportation that provided for

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[6] 4 I.C.C. 2d 1 (1987) ("*LOSAC*").

[7] Within the rail industry, "zero-mileage rates" refer to rates for transportation in private cars for which the railroad does not pay a mileage allowance. The term "zero-allowance," which appears frequently in ICC and STB precedent, is synonymous with "zero-mileage."

payment of mileage allowances."[8] In *LOSAC*, which was decided later the same year as *IHB-II*, the ICC held that compensation for private hopper cars could be provided in the form of discounts on otherwise applicable rail transportation rates, in lieu of paying mileage allowances, but only when a rail carrier offers both a rate for transportation in railroad-supplied cars and a lower "zero-mileage rate" for the same transportation in private cars, because "the adequacy of the differential is subject to the same tests as the adequacy of an allowance."[9] But UP does not offer a transportation service in UP-supplied tank cars and thus does not offer the dual rate scales that *LOSAC* required as a predicate to permitting compensation through reduced zero-mileage rates. Consequently, UP's reliance upon *LOSAC* is misplaced because the Board has no means by which to verify UP's claim that its zero-mileage rates compensate tank car providers.

Moreover, Complainants show beyond any doubt that UP intended Item 55-C {{[redacted]}}. This would not have been possible if UP actually compensated tank car providers for this new tank car ownership cost through zero-mileage rates.

Complainants thus have established a *prima facie* case that UP has violated §§ 11121 and 11122 with evidence that (1) shippers have provided tank cars for which they have not received mileage allowance payments; (2) there is no dual rate scale by which to validate UP's zero-mileage rate discounting claims; and (3) {{[redacted]}}. UP cannot rebut Complainants' evidence by

[8] *See,* Docket NOR 42144, First Amended Answer ¶¶ 33–35; Docket NOR 42144, "Motion to Dismiss Complaint or to Make Complaint More Definite," at 2, 13 (filed April 20, 2015) ("Motion to Dismiss").

[9] *LOSAC* at 17–18.

baldly asserting that its zero-mileage rates for tank car transportation are less than the **hypothetical** rates UP claims would apply for transportation in UP-supplied tank cars. But UP has not produced any evidence through discovery to inform this issue. In the absence of evidence that UP is compensating tank car providers for their repair move costs, UP may not impose charges for tank car repair moves under Item 55-C.

In addition to violating §§ 11121 and 11122, Item 55-C constitutes an unreasonable practice under § 10702 because UP sought to increase revenues through the device of misleading its customers. Railroad practices must have a reasonable business or policy purpose and they must not be predicated upon "misrepresentations or misleading conduct by the carriers."[10] {{[redacted]}} But when UP publicly announced Item 55-C, it never once revealed that motive to its customers, instead concocting multiple *post hoc* justifications designed to conceal UP's true objective. In *Rail Fuel Surcharges*, the Board held such conduct to be an unreasonable practice under § 10702, and it should do the same in this case.

Furthermore, UP's attempt to "exit" the mileage equalization program prescribed in *Ex Parte 328*, for the purpose of receiving substantially **more** revenue from empty tank car miles than the mileage equalization rule otherwise permits, also constitutes an unreasonable practice. In *Ex Parte 328*, the ICC prescribed a negotiated agreement among key stakeholders, including railroads, shippers and tank car lessors, on both mileage allowances and mileage equalization (hereinafter the "Ex Parte 328 Agreement" or the "Agreement"). The Agreement provides for the payment of mileage allowances, calculated according to prescribed formulas, as a safe-harbor

[10] Ex Parte No. 661, *Rail Fuel Surcharges* (served Jan. 26, 2007).

method of compensating tank car providers in compliance with the statute. But an equally important part of the Agreement also sought to incentivize the efficient movement of empty tank cars by discouraging the accumulation of excessive empty miles by tank car providers through the prescription of a mileage equalization rate that applies when and to the extent a tank car fleet's empty miles exceed loaded miles by more than 106% annually. All empty miles below that threshold were deemed to be the railroads' responsibility under § 11122 and thus to be provided without charge. Item 55-C contravenes the Ex Parte 328 Agreement because UP unilaterally replaced the ICC-prescribed mileage equalization rate for compensating railroads for excessive empty tank car miles with substantially higher charges upon tank car repair move miles and assesses such charges regardless of whether the 106% threshold has been exceeded. This undermines the balance struck in *Ex Parte 328* between railroad responsibility for repair moves and incentivizing efficient repair moves by tank car providers. The ICC previously held that railroads may not unilaterally revise or fail to comply with the terms of *Ex Parte 328* without agency authorization, which UP has neither sought nor obtained.

Complainants, therefore, request that the Board (1) declare that UP's adoption of Item 55-C, Subpart D, and its related assessment of charges is unlawful under 49 U.S.C. §§ 10702, 11121 and 11122; (2) order UP to immediately rescind Item 55-C, Subpart D, and the associated charges as they apply to tank car movements to and from repair facilities; and (3) as to the Individual Complainants, order UP to refund all monies that they have paid to UP pursuant to Item 55-C, Subpart D, from January 1, 2015 through the date of the Board's order. The Board also should find that UP is not compensating tank car providers for its use of their tank cars and, as to POET Ethanol, POET Nutrition, and Cargill, direct UP to pay reparations in the form of the mileage allowances they otherwise were entitled to receive for their tank cars, in accordance with

applicable law and their car lease agreements, from March 31, 2013 through the date of the Board's order.

B. Procedural History

The NOR 42144 Complainants filed their original complaint on March 31, 2015, three months after the effective date of Item 55-C. Their complaint challenged (1) UP's implementation of Item 55-C, and (2) UP's failure to compensate tank car providers whether through the payment of mileage allowances pursuant to *Ex Parte 328* or through discounted zero-mileage rates. On April 20, 2015, UP filed both its Answer and a Motion to Dismiss. The NOR 42144 Complainants filed a First Amended Complaint on June 2, 2015, to which UP filed its Answer on June 22, 2015. In a decision served on December 21, 2015, the Board denied the Motion to Dismiss.

Subsequently, three additional complaints were filed against UP challenging the lawfulness of Item 55-C: *Valero Marketing and Supply Co. v. Union Pacific*, NOR 42150 (filed December 19, 2016); *Tesoro Refining & Marketing Co. v. Union Pacific,* NOR 42152 (filed December 30, 2016); and *Arkema, Inc. v. Union Pacific*, NOR 42153 (filed August 1, 2017). In each case, UP asked the Board to consolidate these new proceedings with Docket NOR 42144, which the Board granted over Complainants' objections in separate decisions served in each proceeding on March 31, 2017 (as to Valero and Tesoro) and Oct. 5, 2017 (as to Arkema).[11] UP then pursued extensive discovery of the Complainants and non-party tank car lessors. After the parties filed a Joint Status Report and Motion for Modification of Procedural Schedule on

[11] Arkema took no position on UP's motion to consolidate NOR 42153 with the other proceedings, while the other Complainants opposed any consolidation of their cases with NOR 42153.

January 23, 2019, the Board granted the parties' proposed modifications to the procedural briefing schedule set forth in the Board's March 31, 2017 decision.

II. STATEMENT OF FACTS

A. UP Developed and Implemented Item 55-C to Exploit New Tank Car Safety Regulations as a Means to Profit From Empty Tank Car Moves To and From Repair Facilities.

In the year preceding UP's publication of Item 55-C, regulators signaled that new safety rules would require a significant increase in tank car movements to and from repair facilities for retrofits. In September 2013, in the aftermath of train derailments (the root cause of most being track integrity), PHMSA[12] issued an Advance Notice of Proposed Rulemaking ("ANPR") seeking comments on proposals to improve tank car safety.[13] Among these proposals were requirements to retrofit approximately 77,000 DOT-111 tank cars used to transport crude oil, ethanol and other highly flammable commodities.[14]

PHMSA issued a Notice of Proposed Rulemaking ("NPRM") on August 1, 2014.[15] Specifically, PHMSA proposed new rules that would require existing DOT-111 tank cars to be phased out or retrofitted to meet new performance requirements.[16] PHMSA estimated that 272,119 of the 334,869 existing tank cars, or approximately 81% of the then-current fleet, were

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[12] PHSMA is the agency within the Department of Transportation ("DOT") responsible for establishing standards for tank cars that transport hazardous materials.

[13] Docket No. PHMSA-2012-0082 (HM-251), *Hazardous Materials: Rail Petitions and Recommendations to Improve the Safety of Railroad Tank Car Transportation (RRR)*, 78 Fed. Reg 54,849 (Sept. 6, 2013).

[14] *Id.* at 54,855–59.

[15] Docket No. PHMSA-2012-0082 (HM-251), *Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains*, 79 Fed. Reg. 45016 (Aug. 1, 2014).

[16] *Id.* at 45,018.

DOT-111 cars.[17] Accordingly, all industry stakeholders understood that the new tank car rules would require a significant number of empty tank car moves to repair facilities for the purpose of retrofitting existing tank cars to comply with the more stringent standards. PHMSA eventually finalized new regulations addressing tank car safety in May 2015.[18]

UP does not furnish tank cars to its customers.[19] Instead, UP's customers provide the tank cars that UP uses in revenue service. Thus, unlike the Individual Complainants and the members of the Association Complainants, UP did not have any retrofit obligations under the new PHMSA rules. Consequently, where tank car providers, comprised of lessors and shipper owners and/or lessees of tank cars, anticipated significant additional costs to retrofit their tank car fleets to comply with the new PHMSA rules, UP's marketing department saw opportunity:

{{[redacted]}}

Moreover, this provided UP with cover to also begin charging for all other types of repair facility movements (e.g., repairs, inspections, cleaning) for which UP had not previously charged.

{{[redacted]}}

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[17] 79 Fed. Reg. 45,025, tbl. 8.

[18] Docket No. PHMSA-2012-0082 (HM-251), *Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains; Final Rule*, 80 Fed. Reg. 26,644 (May 8, 2015). Congress amended PHMSA's Final Rule by passing the "Fixing America's Surface Transportation Act" (the "FAST" Act), Pub. L. 114-94, which was signed into law on December 4, 2015. *See also* PHMSA-2016-0011 (HM-251C), *Hazardous Materials: FAST Act Requirements for Flammable Liquids and Rail Tank Cars*, 81 Fed. Reg., 53,935 (Aug. 15, 2016) (codifying changes to the Hazardous Materials Regulations as mandated by the FAST Act).

[19] Docket NOR 42144, First Amended Answer ¶ 13.

Prior to January 1, 2015, UP had assessed the freight charges published in its Tariff UPRR 4703 only on movements of empty tank cars made for the benefit of a private tank car owner. Specifically, UP charged tank car providers for moving new or re-stenciled tank cars in commercial service for the first time and for tank cars moving for dismantling, sale, or scrap.[20] Charging for such transportation was consistent with industry practice and law, whereby railroads were permitted to charge for empty tank car moves when tank cars are transported as "property" of the tank car owner, but not when they are "instrumentalities of transportation" necessary for railroads to fulfill their common carrier obligation.[21] That changed after PHMSA proposed the new tank car safety rules.

{{ [redacted]

[20] Ex 1, Item 55-C, Subparts A through C. *See also,* Ex. 7, Tariff RIC 6007, Item 190 (this item from an industry tariff published by Railinc, which is an AAR subsidiary, defines which empty tank car moves are, or are not, chargeable). As detailed in Part III.B.2 below, UP adhered to Item 190 prior to 2015, but "flagged out" of this restriction, in Item 170, simultaneous with its adoption of Item 55-C, Subpart D, so that it could charge for repair moves.

[21] *See generally, Consol. Rail Corp. v. ACF Indus., Inc.*, 750 F. Supp. 935, 939 (N.D. Ill. 1990).

[22] Ex. 13 at UPRR0000674–90 (COLOR). "OTE," which is short for "Other Transportation Equipment," is UP's terminology for empty rail car revenue movements. *See id.* at UPRR0000675.

[23] Ex. 13 at UPRR0000688.

[redacted]}}[25]

{{[redacted]

[redacted]}}[27]

{{[redacted]

[24] *Id.*

[25] Ex. 14 at UPRR0018361–364 (COLOR).

[26] Ex. 14 at UPRR0018361.

[27] *See id.* at UPRR0018362 ("{{[redacted]}}")

[redacted]

[redacted]}}

B. UP's Plan to Exit the Mileage Equalization Program to Effectuate Item 55-C.

UP also was keenly aware that the amount of revenue that it could realize on empty tank car moves was constrained by the mileage equalization program negotiated by industry stakeholder groups as part of the Ex Parte 328 Agreement which the ICC adopted first in 1979 and subsequently revised in 1986.[28] Under the mileage equalization program in the Ex Parte 328 Agreement, UP was entitled to receive revenue from empty tank car moves to and from repair facilities only to the extent that a tank car fleet's empty miles exceeded its loaded miles by more than 6% annually and only at the mileage equalization rate in Tariff RIC-6007.[29] In 2015, the mileage equalization rate was 91 cents per mile.[30] However, UP wanted more. Specifically, UP wanted to charge **at least** $2.96 per mile, **plus a fuel surcharge**, for the tank car repair moves covered by Item 55-C and **an even higher rate per mile at distances below 500 miles**.[31] Prior to 2015, even at the much lower mileage equalization rate, UP had received in excess of {{[redacted]}} annually from tank car providers under the mileage equalization program nearly every year as far back as 2000.[32] {{[redacted]

[redacted]

[redacted]

[28] *See* Ex Parte No. 328, *Investigation of Tank Car Allowance System*, slip op. (served June 19, 1979) and 3 I.C.C. 2d 196 (1986).

[29] *See, e.g.*, *IHB-II* at 601, n. 5 (describing how the mileage equalization rule functions).

[30] Ex. 9, Item 187, Part A.1.

[31] Ex. 2, Item 1100. Although UP assessed a two-tiered per-car charge at distances from 0–250 and 251–500 miles, the effective per-mile rate for nearly every distance within those tiers exceeded $2.96.

[32] *See* Ex. 15 at UPRR 0025231 (color chart on right side of page).

[redacted]}}

Shortly after PHMSA announced its rulemaking, UP began in earnest the process that culminated in publishing Item 55-C.[33] Mr. Kenny Rocker, UP's Assistant Vice President Chemicals at the time, supervised a team of individuals led by Douglas Craven, then UP's Senior Director Industrial Chemicals, which performed analyses, developed internal presentations, and ultimately prepared internal and external marketing materials to roll out Item 55-C.[34] {{[redacted]

[redacted]}}

This singular objective had two related components: {{[redacted]}}[36] These two components together constituted a single objective because UP could not achieve the former without first completing the latter. {{[redacted]

[redacted]

[33] Deposition Transcript of Douglass Craven ("Craven Tr.") at 67:5–68:12 (attached as Ex. 31); Deposition Transcript of Kenny Rocker ("Rocker Tr.") at 10:17–19 (attached as Ex. 30), 18:21-19:17; *see also* Ex. 16 at UPRR 0003937.

[34] *See* Rocker Tr. (Ex. 30) at 7:7–8:6, 11:23–12:19, 13:6–16:19, 47:17–49:15 ; Craven Tr. (Ex. 31) at 7:22–8:13, 12:7–18, 67:24–68:12, 89:17–91:3.

[35] Ex. 16 at UPRR0003937.

[36] *See* Ex. 17 at UPRR0000809; Ex. 18 at UPRR0000836; Craven Tr. (Ex. 31) at 60:14–61:3, 64:20–65:7, 69:5–25; Rocker Tr. (Ex. 30) at 23:1–16, 20:24–21:9, 42:7–15.

[redacted]}}[38]

The decision-making process within UP culminated in a November 10, 2014 presentation by Mr. Rocker to the Operating Committee, whose members are the highest officers within UP, followed by the Committee's official authorization to charge for tank car repair moves.[39] {{[redacted]}}[40]

[37] Ex. 17 at UPRR0000809. *See also* Ex. 18 at UPRR0000836 ("{{[redacted]}}").

[38] Ex. 19 at UPRR0000808.

[39] Ex. 15 at UPRR0025230–37 (COLOR). *See also,* Rocker Tr. (Ex. 30) at 46:11–47:16, 51:13–24.

[40] Rocker Tr. (Ex. 30) at 65:14–66:11.

C. UP Misled Its Customers About Its Reasons for Implementing Item 55-C.

UP did not divulge the rationale it presented for the Operating Committee's approval of Item 55-C when it publicly announced the new tariff and its transition away from the mileage equalization program. Instead, UP fabricated new justifications for overhauling its tank car revenue practices. Upon receiving the Operating Committee's approval, the same UP team that developed the mileage equalization exit strategy began developing UP's strategy for rolling out the charge to UP's customers. In a December 5, 2014 e-mail to the UP Marketing & Sales Team, Mr. Craven distributed two presentations to UP marketing personnel, one for internal and the other for external use, to roll out the new Item 55-C charges to UP's customers.[41]

{{ }} In the materials to be distributed to UP's customers, UP benignly characterized its decision to begin charging for empty repair movements that it previously had transported at no charge as merely an effort to "align tank cars more closely with treatment of empties of all other car types."[42] {{ }}[43]

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[41] Ex. 20 at UPRR 0000061–74. *See also* Rocker Tr. (Ex. 30) at 39:14–40:23.

[42] Ex. 20 at UPRR0000070.

[43] {{ }}

{{[redacted]}} Furthermore, despite UP's attempt to find authority for Item 55-C in *IHB-II,* at no time in {{[redacted]}} any documents prepared for UP customers did UP state or imply that the reason it was charging for tank car movements to repair facilities was to recover costs associated with tank car repair movements that UP was not recovering through line-haul revenues, that is, because UP believed it was cross-subsidizing other railroads. {{[redacted]}}

UP distributed its external presentation in early December 2014, to inform tank car providers that it would begin charging for most movements to and from "Repair Facilities," effective January 1, 2015. Needless to say, the reaction from UP's customers to its announcement of these substantial new charges was swift and negative. On December 22, 2014, NAFCA, TCI, and the Railway Supply Institute submitted a letter to Mr. Butler, requesting that UP immediately withdraw the proposed publication of Item 55-C in part because of their respective members' belief that "the change contemplated by UP will result in a huge, unwarranted financial burden on tank car owners and lessees."[44] The next day, Mr. Butler, {{[redacted]}} responded that UP would not withdraw the proposal and disingenuously denied

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[redacted]}} The initial inclusion of this rationale in marketing materials and its subsequent removal are further evidence that UP's external materials were drafted to conceal from shippers and tank car providers UP's true objectives in imposing the new charges. In this instance, UP thought better of including a false justification for which it later could be held accountable by a clearly objective measure.

[44] Ex. 22 at ACC000006.

that Item 55-C would have a large financial impact on UP's customers.[45] Mr. Butler also parroted the talking points from the December 2014 roll-out document.[46]

D. Item 55-C Was More Lucrative Than UP Had Initially Projected.

Item 55-C provides that the line-haul charges published in Tariff UPRR 4703-series shall apply to empty tank cars moving to and from "Repair Facilities" except: (i) empty movements that are immediately preceded by a loaded line-haul revenue movement on UP; (ii) empty tank cars taken out of service by UP inspection and way billed by UP's Mechanical Department under Rule 1 of the AAR Interchange Rules; and (iii) empty tank cars damaged by UP.[47] UPRR 4703 establishes three tiers of charges for tank car repair moves, which UP has increased annually since 2015. The applicable rates on January 1, 2015, and as of 2019, are set forth below:

	2015 Rates[48]	2019 Rates[49]
1-250 miles	$1,317 per car	$1,555 per car
251-500 miles	$1,477 per car	$1,744 per car
Above 500 miles	$2.96 per mile	$3.49 per mile

UP also applied its standard fuel surcharge to repair moves, which has generated additional revenue above and beyond these rates. At the same time it published Item 55-C, UP simultaneously "flagged out" of Item 190 in Supplement 31 to Tariff RIC 6007-N, effective January 1, 2015, which prohibited railroads from charging for tank car repair moves.[50]

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[45] Ex. 23 at ACC000003.

[46] The Individual Complainants discuss their interactions with UP surrounding the implementation of Item 55-C in their individual filings.

[47] Ex. 1, Item 55-C.

[48] Ex. 2, Item 1100.

[49] Ex. 6, Item 1200-C.

[50] *See* Ex.9, Item 170 (the UP flag-out provision) and Item 190(2) (identifying which type of empty tank car moves are subject to charges).

{{[redacted]}}[52] It turns out that UP understated even those amounts. The most current data, which UP produced to Complainants in discovery, show that UP actually received over {{[redacted]}} in 2015 and {{[redacted]}} in 2016.[53] As of December 31, 2017, UP had reaped over {{[redacted]}} from Item 55-C.[54] All of that revenue was profit because it was additional money that UP received for the **same** repair movement transportation services it had provided prior to Item 55-C. This windfall is even more striking because it occurred *without* the dramatic increase in DOT-111 retrofit movements {{[redacted]}} In other words, **these increased profits came mostly from the same types of routine repair moves that UP historically handled without a separate charge.**

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[51] Ex. 15 at UPRR0025232. It is not clear whether this analysis included fuel surcharge revenue from repair moves.

[52] Ex. 24 at UPRR0002991. {{[redacted]}}

[53] Crowley V.S. at 11. Even these numbers are understated because the 2015 revenue from Item 55-C omits nearly {{[redacted]}} of revenue that UP received under contracts and private quotes that UP had with select tank car providers in lieu of Item 55-C. *Id.* at 12 n. 17.

[54] *Id.* at 11 (2017 is the most current data that UP has produced in this case).

Despite the fact that UP has been able to rake in revenue far in excess of what it originally anticipated, it has made no change to Item 55-C and the related charges other than to increase the latter each year since 2015. The enormous revenue windfall that UP obtained from repair move charges in just the first year of implementation exemplifies the financial burden that Item 55-C imposes upon tank car providers for a tank car ownership cost that by statute should be UP's responsibility. Indeed, it appears that the UP personnel who devised the scheme to profit from the new PHMSA requirements had little or no knowledge of the fact that UP has a statutory duty to compensate the providers of tank cars that UP uses in revenue service.[55] {{[redacted]}}

III. ARGUMENT

A. Item 55-C is Unlawful Because UP Does Not Compensate Tank Car Providers for This Cost Through Mileage Allowances, or Any Alternative, in Violation of 49 U.S.C. § 11121, 11122 and Board Precedent.

Item 55-C violates the compensation requirement of 49 U.S.C. §§ 11121 and 11122 because UP does not pay mileage allowances, or any alternative form of compensation, to ensure that railroads rather than tank car providers ultimately bear this cost of transporting tank cars to and from repair facilities. As discussed in subpart 1 below, UP does not pay the mileage allowance compensation that the ICC required in *IHB-II* as a prerequisite to permit tank car repair move charges, and UP's objective {{[redacted]}} is misaligned with the ICC's objective in *IHB-II* to address the misallocation and cross-

[55] Craven Tr. (Ex. 31) at 15:13–18; 106:5–107:22.

subsidization of repair move costs between terminal and Class I railroads. As discussed in subpart 2, UP's claim that it nevertheless fulfills its statutory duty to compensate tank car providers by charging reduced zero-mileage rates in lieu of paying mileage allowances also does not constitute compensation in light of the Board's *LOSAC* decision and the distinct realities of tank car shipping relative to other car types. Finally, as discussed in subpart 3, UP has not produced any evidence through discovery that it is compensating the vast majority of tank car providers for **any** of their ownership and maintenance costs, not just repair move charges, through mileage allowances, discounted zero-mileage rates, or any other means. {{[redacted]}} In the absence of compensation paid to tank car providers that includes recoupment of UP's repair move charges under Item 55-C, UP's imposition and collection of such charges violates 49 U.S.C. § 11122.

1. Item 55-C satisfies neither the ICC's essential compensation predicate nor its rationale for permitting tank car repair move charges in *IHB-II*.

UP has invoked the ICC's 1987 decision in *IHB-II* as authority for imposing tank car repair move charges under Item 55-C.[56] But UP's adoption and implementation of Item 55-C do not satisfy the central predicate in that decision that tank car providers ultimately recoup such charges through mileage allowances. Nor was UP's underlying motivation consistent with the ICC's rationale for permitting tank car repair move charges in *IHB-II* despite the ICC's long-standing blanket prohibition against such charges.

[56] Docket NOR 42144, Answer to First Amended Complaint ¶ 18; Motion to Dismiss at 7, 9–10.

a. UP does not pay mileage allowances on loaded tank car movements, as the ICC assumed would occur in *IHB-II*, to compensate tank car providers for repair move charges.

Pursuant to their common carrier obligations, railroads must provide an adequate supply of rail cars suitable to transport a wide range of goods.[57] In actual practice, however, railroads often rely upon their customers to provide the rail cars, which the customers either own or lease, to transport their goods. Accordingly, railroads must pay those rail car providers the costs of owning and maintaining the cars, since those costs would be the responsibility of the railroads had they supplied the cars used to provide transportation services.[58] This includes the cost of transporting rail cars to and from repair facilities for cleaning, inspection, maintenance and repair.[59] Thus, as a general rule, the ICC historically prohibited railroads from charging tank car providers for repair facility movements.[60]

In *IHB-II*, the ICC reversed this long-standing precedent, but in doing so, it made the critical assumption that, even though tank car providers would incur these charges **initially**, railroads would be responsible for those charges **ultimately** through their payment of mileage allowances determined by *Ex Parte 328* as the compensation that railroads must pay tank car providers for using private tank cars under 49 U.S.C. § 11122.[61] The D.C. Circuit's affirmance

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[57] 49 U.S.C. §§ 11101, 11121.

[58] 49 U.S.C. § 11122. *See also Charges for Movement of Empty Cars, Buffalo & Pittsburgh R.R., Inc.* 7 I.C.C. 2d 18, 19–20 (1990) ("*B&P*").

[59] *E.g.*, *Union Tank Car Co.*, 264 I.C.C. 479, 485–86 (1946).

[60] *E.g.*, *Union Tank Car Co. Terminal Service*, 268 I.C.C. 338 (1947); *General American Transp. Corp. et al. v. Indiana Harbor Belt R.R. Co.*, 357 I.C.C. 102 (1977) ("*IHB-I*").

[61] *IHB-II*, 3 I.C.C. 2d at 608 ("No statutory requirement would be violated if private car owners initially pay repair move costs and then are reimbursed for those expenses through the allowance system."). *See also id.* at 610 ("Under a method that would let the railroads charge for repair moves, the car owners may recover those expenses through the mileage allowance system in the same way that they recover other car repair costs."); 613–16 (explaining how repair move costs

of *IHB-II* also was contingent upon that critical predicate.[62] Payment of the applicable allowances under *Ex Parte 328* was a key assumption because such payment constitutes a safe harbor for compliance with the statutory car compensation requirement.[63] Since the ICC decided *IHB-II* in 1987, however, UP and all other Class I railroads have ceased to pay mileage allowances on nearly all tank car movements.

UP concedes that it seldom pays mileage allowances.[64] This is validated in data provided by UP in this case showing that it paid mileage allowances on just {{ }} of its loaded tank car moves from 2014 through 2017.[65] Because it does not pay mileage allowances, UP satisfies neither the safe harbor conditions for establishing tank car compensation in *Ex Parte 328* nor the *IHB-II* predicate for permitting repair move charges.

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could be recovered through the mileage allowance system in the same manner other private car costs are recovered).

[62] *IHB-II Appeal*, 872 F.2d at 1055 ("Permitting carriers to charge for empty-repair moves…would resolve the intercarrier-allocation problem without doing violence to the principle of carrier responsibility for the costs of owning railroad cars, for car providers could simply combine the costs of empty-repair moves with other costs of ownership in charging the railroads mileage allowances"); *id.* at 1057 ("Petitioners' argument …runs aground on section 11122 of the Act, which plainly contemplates initial railroad charges for freight movements with a 'pass-back' of ownership costs to carriers through allowances.").

[63] *See Ex Parte No. 328*, slip op. at 19 (served June 15, 1979) ("[W]e find that private tank car allowances determined under this agreement will be reasonable and otherwise in accordance with 49 U.S.C. §§ 11122 and 10747, and that our adoption of this agreement is warranted."). *Cf. Cargill, Inc. v. BNSF Ry. Co.*, NOR 42120, slip op. at 3, 7–10, 14 (served Aug. 12, 2013) (a prior STB decision finding that the HDF Index was reasonable for measuring fuel surcharges provided a "safe harbor" for rail carriers that employ that index in their fuel surcharge programs despite evidence that the defendant over-recovered its actual fuel costs).

[64] Docket NOR 42144, First Amended Answer ¶¶ 17–18, 32. *See also,* "Stipulation Agreement," Stipulation No. 10 (Ex. 12). The parties have entered into a "Stipulation Agreement" pursuant to which they have agreed to litigate the claims in this proceeding based upon certain stipulations of fact which shall be taken as true without the need for production of evidence, shall not be rebutted or contradicted by the parties, and shall be binding on the Board in its management of this proceeding and in any final decision.

[65] Crowley V.S. at 10.

{{ }}[67] Therefore, in the absence of mileage allowance compensation or any intent by UP to compensate tank car providers for repair move charges at all, *IHB-II* provides no authority for Item 55-C.

b. UP's motivation for adopting Item 55-C contravenes the ICC's rationale for permitting repair move charges in *IHB-II*.

In *IHB-II*, the ICC's reason for reversing its long-standing blanket prohibition against tank car repair move charges was to address an unintended consequence of that prohibition: a "cross-subsidization and misallocation" of repair move responsibility among railroads which resulted in certain railroads bearing a disproportionate responsibility for free repair moves relative to their participation in loaded revenue moves.[68] At no point in the development of Item 55-C, during its public rollout, or over the course of this case, has UP ever alleged that Item 55-C is necessary to remedy UP's cross-subsidization of any other railroad's repair move responsibility. Indeed, that problem is much less prevalent today and is non-existent with respect to UP. Consequently, UP's adoption of Item 55-C is inconsistent with the remedial objective of *IHB-II* due to the absence of any cross-subsidy or misallocation problem to justify UP charging

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[66] Rocker Tr. (Ex. 30) at 60:18–25, 61:11–15; Craven Tr. (Ex. 31) at 111:13–21.

[67] *See also* Ex. 13 at UPRR0000686 {{ }} Ex. 14 at UPRR0018361. Six months later, UP began assessing that same charge on tank car repair moves. UP also assesses its standard fuel surcharge on top of this highly lucrative repair move charge even though UP consumes less fuel to transport an empty tank car.

[68] *IHB-II* at 603-06; *IHB-II Reconsideration*, 1988 ICC LEXIS 55, at *2–3.

for repair movements that by statute ultimately are its legal responsibility.

As discussed in the preceding section, the ICC historically prohibited railroads from charging tank car providers for repair facility movements because the responsibility for providing tank cars belongs to rail carriers as part of their common carrier obligation in the first instance. If rail carriers fulfilled their obligation by providing their own tank cars, they would transport their tank cars to and from repair facilities without separately charging their customers for that transportation. In the absence of repair move charges, railroads also could not separately profit from repair moves. But as discussed in Part II.A above, {{[redacted]}}

Although this historical prohibition against repair move charges ensured that railroads would be responsible for the cost of transporting tank cars to and from repair facilities consistent with the statute, the ICC subsequently realized that it had unintended consequences for certain railroads as the rail industry was structured in 1987. Over time, the ICC identified circumstances where some terminal and switching rail carriers bore a disproportionate responsibility for the cost of tank car repair movements relative to their participation in tank car line-haul revenue movements from which such costs ordinarily are recouped.[69] The small geographic footprint of these terminating railroads meant that they had few, if any, opportunities to recover their repair move costs from loaded tank car line-haul revenues. But the presence of one or more repair facilities on their lines meant that they incurred costs to handle large numbers of repair movements. Consequently, their cost of handling tank car repair movements without charge significantly exceeded their benefit from loaded tank car revenue movements.

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[69] *IHB-II* at 604. *See also B&P*, 7 I.C.C.2d at 22–23.

In *IHB-II*, the ICC identified what it perceived to be a ready-made solution to this cross-subsidization and misallocation of repair move responsibility among railroads in the form of the tank car mileage allowance system, which had been updated just one year earlier in *Ex Parte 328*. Noting that repair move charges are a maintenance cost, the ICC agreed with rail industry claims that, so long as the charge assessed by the railroad providing the repair move is included in the calculation of the mileage allowance rate, tank car providers will be compensated for that cost in the same manner as they are compensated for all other tank car ownership and maintenance costs in accordance with the statute.[70] This way, the ICC reasoned, the railroad providing the repair move will be adequately compensated **initially** by the tank car provider, but the tank car provider **ultimately** would recoup that charge through the mileage allowances it receives from the line-haul railroads on loaded tank car moves.[71] As a result, the line-haul railroads that received most of the loaded tank car revenue also would bear most of the responsibility for repair move costs through their mileage allowance payments to tank car providers, resulting in a more equitable allocation of repair move responsibility among all railroads and eliminating the cross-subsidy problem.[72]

UP, however, cannot credibly claim to be in the same situation as the terminal and switching railroads in *IHB-II* or otherwise genuinely assert that it bears a disproportionate responsibility for repair move costs. {{[redacted]

[redacted]

[70] *IHB-II* at 613–16.

[71] *Id.* at 616.

[72] *Cf. IHB-II* at 606 (criticizing mileage equalization as a means to address the cross-subsidization problem because "there is no necessary relationship between each carrier's share of repair move responsibility in terms of loaded revenue miles and its participation in repair move operations.").

[redacted]}}[73] Indeed, as the largest Class I railroad in the country with **over {{[redacted]}} in annual revenue from loaded tank car traffic** in 2014 (the year before Item 55-C became effective) and upwards of {{[redacted]}} each year since then, any claim that UP is over-burdened by tank car repair moves relative to its participation in loaded tank car revenue moves would be laughable.[74] In addition to that line-haul revenue, prior to implementing Item 55-C, UP received {{[redacted]}} **mileage equalization revenue** {{[redacted]}} in 11 of the 13 years from 2000 through 2012 as compensation for excessive empty tank car miles.[75] Therefore, UP was not even close to being in the same position as the terminal and switching carriers that sought to assess repair movement charges in *IHB-II* because they transported empty tank cars to repair facilities on their lines without receiving much, if any, revenue from either loaded moves or mileage equalization charges to recover their cost of performing those repair moves.

The potential for misallocation and cross-subsidization of repair move costs also is far smaller today than it was when the ICC decided *IHB-II* in 1987. The number of Class I railroads has decreased substantially through mergers.[76] Accordingly, there is far less potential for misallocation and cross-subsidization of repair move costs among those rail carriers because they

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[73] *See, e.g.*, Ex. 13 UPRR0000674–90; Ex. 15 UPRR0025230–37; Ex. 16 UPRR0003937; Rocker Tr. (Ex. 30) at 65:14–66:11.

[74] Crowley V.S. at 7. This revenue data, which UP provided through discovery, is understated because UP also receives switching and haulage revenue for tank car movements that are not reflected in UP's data production. *See* Ex. 12, Stipulation #12.

[75] Ex. 15 at UPRR0025231 (color chart on right side of page).

[76] *See* Timeline of Class I Railroads (1977-present), *https://en.wikipedia.org/wiki/Timeline_of_Class_I_railroads_(1977%E2%80%93present)* (identifying by year each railroad consolidation involving a Class I carrier).

all have tank car repair facilities on their lines **and** participate extensively in loaded tank car revenue moves. Thus, the concerns upon which *IHB-II* was predicated have little or no relevance to a Class I railroad in today's rail industry.

In today's rail industry, where mileage allowances are no longer routinely paid and industry consolidation has all but eliminated the misallocation and cross-subsidization concerns in *IHB-II*, allowing railroads to charge for repair moves poses a far greater risk that tank car providers will not be compensated for that cost. Among all tank car ownership costs, repair move charges are unique because they are the only ownership cost that a tank car provider pays directly to a railroad; all other costs (e.g., purchase, lease, cleaning, maintenance) are paid to a third party. If UP supplied its own tank cars for transportation, it would incur all the same third-party costs, but UP would not pay itself to move tank cars to and from repair facilities. Rather, UP would recover its repair move costs through its line-haul rates on loaded tank car movements the same way that UP recovers most, if not all, of its other costs.[77] Indeed, this is how UP recovered its repair move costs for private tank cars prior to Item 55-C. **By charging separately for repair moves through Item 55-C, however, UP has created a new revenue stream without incurring any additional costs.** Because UP does not pay mileage allowances and otherwise has not reduced its line-haul rates on tank car movements to offset this new revenue stream from Item 55-C, all of that revenue falls directly to UP's bottom line as profit.[78]

As detailed in Part III.A.2 below, it is extremely difficult, if not impossible, for the Board to verify that a railroad is complying with its statutory duty to compensate tank car providers for their ownership costs in the absence of mileage allowance payments. This difficulty enables railroads to exploit repair move charges as a tool to **shift** their repair move responsibility to tank

[77] Rocker Tr. (Ex. 30) at 67:11–18.

[78] Rocker Tr. (Ex. 30) at 60:18–25, 61:11–15; Craven Tr. (Ex. 31) at 111:13–21.

car providers, contrary to the statute and the ICC's intent in *IHB-II* that such charges would be passed-back to tank car providers through mileage allowance payments as a means of more fairly allocating repair move responsibility **among** railroads. Repair move charges thus are distinct from all other tank car ownership costs in a way that merits a narrow application of *IHB-II* to prevent railroads from exploiting repair moves merely to enhance their profitability when there is no evidence of a misallocation and cross-subsidization of repair move responsibility among railroads, which is precisely what UP has done.

The Board should permit repair move charges only by rail carriers that can demonstrate a clear misallocation of responsibility for repair move costs to them if they are not allowed to assess such charges. Those carriers are most likely to be terminal and switching railroads that serve repair facilities on their lines and otherwise do not participate in significant loaded revenue tank car movements, just like the defendants in *IHB-II*. For nearly 30 years following *IHB-II*, the entire rail industry, including UP, took this approach. UP's departure from this practice was an unreasonable and opportunistic attempt {{ }} that had nothing to do with the objectives of *IHB-II*. {{ }} UP's objectives are so misaligned with those in *IHB-II* that the Board should outright reject UP's reliance upon that precedent.

2. Board precedent precludes UP's resort to zero-mileage rates to compensate tank car providers in lieu of paying mileage allowances.

{{ }}[79] This evidence belies UP's claim that, even though it seldom pays mileage allowances, it nevertheless compensates tank car

[79] Rocker Tr. (Ex. 30) at 60:18–25, 61:11–15; Craven Tr. (Ex. 31) at 111:13–21.

providers for their tank car ownership costs (which include repair move costs), in compliance with 49 U.S.C. § 11122, through discounted zero-mileage rates. But even if the Board were to disregard that evidence, agency precedent precludes UP's resort to zero-mileage rates as a substitute for mileage allowance payments with respect to tank cars.

In *LOSAC*, the ICC permitted railroads to compensate providers of hopper cars by establishing zero-mileage line-haul rates that were less than the rates established for transportation in hopper cars supplied by the railroad.[80] Indeed, whenever the ICC has found zero-mileage rates to be a lawful form of compensation for providing rail cars, it has done so in the context of dual rate scales that included **both** a full service rate (i.e. for service in railroad-supplied cars) and a reduced service rate (i.e. for service in private cars).[81] In *LOSAC*, the ICC explained the rationale underlying this dual rate scale requirement:

> **When a carrier offers a lesser service for a lower rate than the rate for a complete service**, and the offer at the lower rate is accepted by the shipper, the carrier is not obligated to do more than it has offered to do for the lower rate, and no allowance can be made to a shipper for performing a service the avoidance of which is the consideration for the lower rate.[82]

A zero-mileage rate is for a "lesser" service because the railroad is not providing the rail car which otherwise is part of its common carrier obligation. The zero-mileage rates at issue in *LOSAC* were an acceptable means of compensating hopper car providers because "[a] railroad escapes no legal obligation concerning car compensation **by publishing zero allowance rates in dual rate scales**. The adequacy of the differential is subject to the same tests as the adequacy of

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[80] 4 I.C.C. 2d at 17–18.

[81] *E.g.*, *Nat. Gas Pipeline*, 323 I.C.C. 75, 99 (1964); *E. Cent. M. Carriers Assn. v. Baltimore & O. R.R. Co.*, 314 I.C.C. 5, 46 (1961), *aff'd sub nom Cooper-Jarrett, Inc., v. U.S.*, 226 F. Supp. 318 (W.D. Mo.), *aff'd per curium*, 379 U.S. 6 (1964).

[82] *LOSAC* at 17 (emphasis added) (quoting *Nat. Gas Pipeline*, 323 I.C.C. at 99).

the allowance."[83] In the absence of a dual rate scale, the Board cannot determine whether a railroad is employing the fiction of discounted zero-mileage rates to avoid its statutory car compensation obligation.

UP nevertheless claims that discounting its zero-mileage rates to compensate tank car providers is lawful because its zero-mileage rates "are lower than the [hypothetical] rates that it would charge for the **same** transportation under rates that provided for mileage allowances."[84] But this claim misses the mark of the *LOSAC* test, which permits discounting only when there is a full service rate for actual transportation in a railroad-supplied car to compare with a zero-mileage rate for actual transportation in a private rail car. The two rates required by *LOSAC* are for two **different** services that a railroad actually provides: one in railroad-supplied cars and the other in private cars. As described by UP, however, a full-allowance rate for tank cars, in addition to being hypothetical, would be for the **same** transportation service in private cars as a zero-mileage rate. Because UP does not supply tank cars to its customers, it does not offer the full-service rates that *LOSAC* requires.

The ICC allowed discounted zero-mileage rates as an alternative to mileage allowances only in circumstances that are inapplicable to tank car shipping. Unlike all other types of rail cars, railroads historically have not owned fleets of tank cars and thus have not offered transportation service in railroad-supplied tank cars as an alternative to transportation in privately-owned cars.[85] That choice of service options for other rail car types has enabled the

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[83] *LOSAC* at 18 (emphasis added).

[84] Docket NOR 42144, Answer to First Amended Complaint ¶ 33 (emphasis added); *see also id.* ¶¶ 34–35. The referenced full-allowance rates are "hypothetical" because UP has not in fact published full-allowance rate alternatives to its zero-mileage rates either in tariffs or contracts.

[85] *See In the Matter of Private Cars*, 50 I.C.C. 652, 673–74 (1918). *See also* Docket NOR 42144, First Amended Answer ¶ 13.

agency to perform its statutory duty to ensure that those rail car providers are adequately compensated through zero-mileage rates by measuring the differential between the rates for those two service options. Correspondingly, the lack of a service option in railroad-supplied tank cars denies the agency that same ability to ensure that tank car providers are compensated through zero-mileage rates.

Accordingly, UP's claim that it may compensate tank car providers by establishing discounted zero-mileage rates is contrary to statutory authority and Board precedent. The Board thus should find that UP's failure to pay mileage allowances is a violation of UP's statutory duty to compensate tank car providers for use of their tank cars. Furthermore, because UP cannot employ zero-mileage rates to fulfill its statutory compensation duty to tank car providers, neither can UP invoke its zero-mileage rates as evidence that it is compensating tank car providers for repair move charges made applicable by Item 55-C.

3. Even if discounted zero-mileage rates are a permissible means of compensating tank car providers in lieu of paying mileage allowances, UP cannot demonstrate that such discounting exists.

A rail carrier may not fulfill its statutory car compensation obligation for tank cars by merely asserting without any support, as UP does in this case, that it offers discounted zero-mileage rates in lieu of paying mileage allowances.[86] Rather, a rail carrier claiming to meet its statutory obligations through a discounted line-haul rate must demonstrate that its rate has been discounted, and by how much. Absent such proof, the Board has no means by which to verify

[86] *See, e.g.*, Motion to Dismiss at 6 ("Union Pacific uses zero-mileage rates in order to compensate shippers for furnishing tank cars in most cases."); and *id.* at 13 ("In today's commercial environment, Union Pacific has offered lower freight rates rather than mileage allowances to compensate shippers for furnishing cars."). Both of these statements, and other similar statements in UP's Motion and Answer, were offered without any evidentiary support.

the existence of any discount at all, much less evaluate whether any discounted rate sufficiently compensates the tank car provider in accordance with the statute.

As discussed in the preceding section, to verify and evaluate such discounting, the ICC required railroads to establish a dual rate scale allowing for comparison of a full-service rate for actual transportation **in a railroad-supplied car** and a zero-mileage rate for actual transportation **in a private car**.[87] UP, however, does not offer rates for transportation in UP-supplied tank cars because UP does not supply the tank cars in which it provides rail service. If the Board nevertheless permits UP to fulfill its statutory tank car compensation duty through discounted zero-mileage rates despite the lack of a dual rate scale, UP must present evidence that its zero-mileage rates in fact are discounted, and that they adequately compensate tank car providers in compliance with § 11122 in lieu of paying mileage allowances.

UP has defended itself in this case with the assertion that, "all other things being equal, the rates it charges for transportation under zero-mileage rates are lower than the rates it would charge for the same transportation under rates that provided for payment of mileage allowances."[88] Moreover, UP advances this defense despite stipulating that, since at least 2010, it has "seldom, if ever, expressly informed shippers that the rates it established for movements in tank cars were reduced in lieu of paying mileage allowances."[89] Therefore, whatever rate discounts UP claims to be granting shippers to compensate them for providing tank cars in accordance with § 11122, in lieu of paying mileage allowances, are known only to UP.

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[87] *LOSAC* at 17–18.

[88] Docket NOR 42144 Answer to First Amended Complaint ¶ 33; *see also* Motion to Dismiss at 13.

[89] Ex. 12, Stipulation #11.

Complainants propounded multiple discovery requests to UP to obtain information and documents describing and/or quantifying the discounts to line-haul rates that UP claims it is currently providing to its customers in lieu of paying mileage allowances.[90] {{ }}[91] Putting aside the fact that *LOSAC* requires a comparison with a rate for transportation in a UP-supplied tank car, and even if the Board were to accept a full-mileage rate as an equivalent comparison, the transition from full-mileage to zero-mileage rates was a one-time event for each movement.[92] UP has not produced a single document that indicates any form of full-mileage rate adjustment to create a discounted zero-mileage rate for any old or new movements subsequent to those initial conversions. Today's zero-mileage rates are so far removed in time from the last full-mileage rates that actually applied to any movements that there is no basis for concluding that any such

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[90] *See* Ex. 25, Complainant's First Discovery Requests, dated April 15, 2015, Document Requests Nos. 2, 5, 9, 12, 14 and 15; and Ex. 26, Complainants Second Discovery Requests, dated February 4, 2016, Interrogatories 14 and 16. As one example, Interrogatory 16 asked UP to "Identify all facts, documents, and analyses upon which You intend to rely to support Your claim that the Zero-Mileage Rates charged by You for tank car shipments are or were less than the rates You otherwise would have charged."

[91] *See, e.g.*, Ex. 27 (UPRR0019049, UPRR0019078, UPRR0019228, and UPRR0020071, which identify some tank car zero-mileage conversions from 2002 through 2006). {{ }} *See* Ex. 28 (UPRR0018656) ({{ }}).

[92] {{ }}

discounts currently exist even if they once did. Nor has UP produced any other evidence that it currently compensates tank car providers through zero-mileage rate discounts.

{{ }}[94] But some adjustment clearly would be warranted if UP was discounting its zero-mileage rates to compensate tank car providers for car ownership costs, which include the cost of transportation to and from repair facilities pursuant to Item 55-C.[95] UP's objective {{ }} contravenes that premise, however, along with any claim that UP genuinely expected to pass that revenue back to tank car providers through rate discounts. UP's discounting claims also are inconsistent with Mr. Rocker's testimony that UP prices its transportation services at whatever rates the market will bear.[96] In summary, to the extent UP provided any information in the discovery phase of this case on its alleged discounting of line-haul rates, the information demonstrates that UP currently does **not** discount its zero-mileage rates to tank car providers for the purpose of fulfilling its obligations under §11122.

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[93] Rocker Tr. (Ex. 30) at 60:18–25.

[94] Craven Tr. (Ex. 31) at 111:13–21.

[95] *Cf. IHB-II* at 614 ("if charges for repair moves are made, the car owners may pass them back to the railroads as repair expense elements in mileage allowance computations"), 616 ("allowing carriers initially to charge for repair movement services and permitting carriers and private car owners to treat those expenses just like other repair expenses recoverable through the mileage allowance system appears the most appropriate solution suggested in this proceeding.").

[96] Rocker Tr. (Ex. 30) at 35:9–11.

In addition, each of the Individual Complainants testify through verified statements that UP has not represented to them that its line-haul transportation rates have been discounted to compensate them for providing the tank cars in which UP provides freight service to them, which confirms what UP already has stipulated.[97] These Complainants also testify that, instead of reducing their line-haul rates after the implementation of Item 55-C to offset this new tank car maintenance cost, UP actually has increased their line-haul rates in every year since Item 55-C became effective in 2015.[98] Contemporaneously, UP also has increased the Item 55-C charges for transporting tank cars to repair facilities annually.[99] These facts further indicate that UP is not fulfilling its statutory obligations under § 11122 by discounting its line-haul rates in lieu of paying mileage allowances.

Nevertheless, UP seeks to convince the Board that it has complied with the statute by charging zero-mileage line-haul rates that are lower than **hypothetical** rates that UP says it otherwise might charge, even though UP stipulates that it has not attempted to quantify those hypothetical rates or even inform shippers that their zero-mileage rates have been reduced below

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[97] *See* Supplemental Opening Evidence and Argument of Arkema, Inc., Verified Statement of J. Brent Grow and Stephen Trombetta ¶ 11 ("Grow/Trombetta V.S."); Supplemental Opening Evidence and Argument of Ethanol Products, LLC, d/b/a POET Ethanol Products, Verified Statement of Phil Spieckermann at 9 ("Spieckermann V.S."); Supplemental Opening Evidence and Argument of POET Nutrition, Inc., Verified Statement of Jeff Siebrecht at 8 ("Siebrecht V.S."); Supplemental Opening Evidence and Argument of Valero Marketing and Supply Company and Valero Rail Partners, LLC, Verified Statement of Robert Buchek ("Buchek V.S.") ¶ 12; Supplemental Opening Evidence and Argument of Tesoro Refining & Marketing Company LLC, Tesoro Great Plains Gathering & Marketing, LLC, and Dakota Prairie Refining, LLC, Verified Statement of John Hack ("Hack V.S.") ¶ 13; Supplemental Opening Evidence and Argument of Cargill Incorporated, Verified Statement of Kevin Zimski ¶ 33 ("Zimski V.S."). *See also*, Ex. 12, Stipulation #11.

[98] *See* Grow/Trombetta V.S. ¶ 10; Spieckermann V.S. at 11; Siebrecht V.S. at 9;Bucheck V.S. ¶ 13; Hack V.S. ¶ 14; Zimski V.S. ¶ 36 .

[99] *See* Exhibits. 2–6.

such hypothetical rates in lieu of receiving mileage allowances.[100] In *Ex Parte 328,* the ICC established mileage allowances as a safe harbor for complying with § 11122. In *LOSAC*, the ICC set the standard by which it would determine whether discounted zero-mileage rates constitute an acceptable alternative means of compliance. But UP has forsaken the safe harbor protections afforded by *Ex Parte 328* and opted to rely solely upon allegedly discounted zero-mileage rates without complying with *LOSAC*.[101] Thus, to the extent such discounts do exist, they are within the exclusive knowledge and purview of UP.[102] Accordingly, UP must present evidence to demonstrate that it is in fact compensating tank car providers in compliance with §11122 through its zero-mileage rates.

Where critical information is entirely within the purview of the party making the claim, it is reasonable to require that party to come forth with evidence to prove that claim. In an analogous situation within the context of the Fair Labor Standards Act ("FLSA"), for example, the Supreme Court recently held:

> [W]hen employers violate their statutory duty to keep proper records, and employees thereby have no way to establish the time spent doing uncompensated work, the "remedial nature of [the FLSA] and the great public policy which it embodies…militate against making" the burden of proving uncompensated work "an impossible hurdle for the employee." [*Andersen v. Mt. Clemens Pottery Co.*, 328 U.S. 680], at 687, 66 S. Ct. 1187, 90 L. Ed. 155; see also *Hoffman-La Roche Inc. v. Sperling*, 493 U.S. 165, 173, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989) ("The broad remedial goal of the statute should be enforced to the full extent of its terms"). Instead of punishing "the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work," the Court held "an employee has carried

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[100] Ex. 12, Stipulation Nos. 1 & 11.

[101] Ex. 12, Stipulation No. 10; Rocker Tr. (Ex. 30) at 75:14–22, 76:12–18;

[102] Complainants reserve all of their rights to ask the Board to strike from UP's reply evidence any supporting documentation or information that was responsive to their discovery requests but was not produced by UP during the discovery phase of the case.

> out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." 328 U.S., at 687, 66 S. Ct. 1187, 90 L. Ed. 1515. Under these circumstances, "[t]he burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence." *Id.*, at 687-688, 66 S. Ct. 1187, 90 L. Ed. 1515.[103]

Here, Complainants have produced evidence and testimony demonstrating that UP has not engaged in the discounting it asserts. UP also has not established the dual rate scale that *LOSAC* requires. Complainants therefore are left with no objective way to address—or the Board to evaluate—UP's claim of tank car compensation through discounting. The remedial nature of §11122, and the long-established public policy of compensation which it embodies, militates against such a result.

The Board thus should find that Complainants have carried their burden by proving that: (1) shippers have provided tank cars for which they have not received mileage allowance payments; (2) there is no dual rate scale by which to validate UP's discounting claims in accordance with *LOSAC*; (3) {{[redacted]}}; and (4) UP has not produced any evidence in discovery to support its zero-mileage rate discounting claims. Having made these *prima facie* showings, the burden must shift to UP to demonstrate the existence and sufficiency of its alleged

[103] *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. __, 136 S. Ct. 1036, 1047 (2016). *See also, United States v. New York, New Haven & Hartford R. Co.*, 355 U.S. 253, 256 n. 5 (1957) ("The ordinary rule, based on considerations of fairness, does not place the burden upon a litigant of establishing facts peculiarly within the knowledge of his adversary."); *ITSI T.V. Productions, Inc. v. Agricultural Associations*, 3 F.3d 1289 (9th Cir. 1993) (When true facts relating to a disputed issue lie peculiarly within the knowledge of one party, the burden of proof may properly be assigned to that party in the interest of fairness.).

discounting.[104] Accordingly, in the absence of proof that UP is discounting its zero-mileage rates, the Board should find that UP fails to compensate tank car providers through zero-mileage rates in lieu of paying mileage allowances and, hence, UP also is not compensating tank car providers for tank car repair move charges made applicable by Item 55-C. In the absence of such compensation, UP's repair move charges impermissibly shift the responsibility for repair move costs from UP to tank car providers in violation of 49 U.S.C. § 11122.

B. UP's Adoption of Item 55-C is an Unreasonable Practice in Violation of Federal Law.

Rail carriers must establish reasonable practices on matters relating to transportation or services they provide.[105] In implementing Item 55-C, UP did precisely the opposite. First, UP abruptly departed from longstanding industry practice and precedent when it began to charge tank car providers to move empty tank cars to and from repair facilities and it did so for no purpose other than {{[redacted]}}. Moreover, UP misrepresented the true purpose of Item 55-C to its customers, attempting to cloak its action with legitimacy only after UP already had made its decision for an entirely different reason. Second, to remove a significant legal barrier to achieving its true {{[redacted]}} objective through Item 55-C, UP also sought to

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[104] This does not shift the overall burden of proof which encompasses two distinct burdens: "the 'burden of persuasion,' *i.e.*, which party loses if the evidence is closely balanced, and the 'burden of production," *i.e.*, which party bears the obligation to come forward with the evidence at different points in the proceeding." *Schaffer v. Weast*, 546 U.S. 49, 56 (2005). These two concepts are distinguished by the fact that, unlike the burden of persuasion, the burden of production shifts back and forth between parties throughout the proceeding. *Moore v. Kulicke & Soffa Indus.*, 318 F.3d 561 (3rd Cir. 2003). UP may bear the burden of producing evidence to support its discounting claim without shifting the overall burden of persuasion. *See, e.g.*, *In re G-I Holdings, Inc.*, 385 F.3d 313, 318 (3rd Cir. 2004); *Keeler Brass Co. v. Continental Brass Co.*, 862 F.2d 1063, 1066 (4th Cir. 1988); Fed. R. Evid. 301. *See generally,* Wright & Graham, Federal Practice and Procedure: Evidence 2d § 5122.1.

[105] 49 U.S.C. § 10702(2).

circumvent the constraints of the *Ex Parte 328* mileage equalization program, which was part of a comprehensive integrated agreement to establish the compensation that railroads would pay to tank car providers for supplying the tank cars that railroads employ to fulfill their statutory car service obligations. For each of the foregoing reasons as discussed in more detail below, UP's implementation of Item 55-C is manifestly unreasonable in violation of § 10702(2).

1. UP had no reasonable business or policy purpose underlying Item 55-C, and UP intentionally misled it customers as to its true motivation.

The United States Government's policy is "to encourage honest and efficient management of railroads."[106] To that end, rail practices must have a reasonable business or policy purpose. Practices are reasonable, for example, where they encourage efficient management of railroads and foster sound economic transportation conditions.[107] But practices that include "misrepresentations or misleading conduct by the carriers" are unreasonable, and it is well within the scope of this Board's authority to proscribe them.[108] UP expressed no reasonable business or policy purpose when deciding to adopt Item 55-C and, moreover, it subsequently misrepresented its true objectives to its customers.

In deciding to adopt Item 55-C, UP did not express any reasonable business or policy purpose. {{[redacted]}}

[106] 49 U.S.C. § 10101(9).

[107] NOR 42060 (Sub-No. 1), *N. Am. Freight Car Ass'n v. BNSF Railway Co.*, slip op. at 7 (served Jan. 26, 2007).

[108] *Rail Fuel Surcharges*, slip op. at 7 (served Jan. 26, 2007).

[109] Ex. 13 UPRR0000674–90. *See also supra* Part II.A.

[redacted]}}[111]

{{[redacted]

[redacted]}}

{{[redacted]}} UP publicly claimed that its empty repair move tariff was necessary to encourage efficient fleet management, reduce empty miles, and align tank car repair moves with repair moves for other types of

[110] Ex. 16 UPRR0003937. *See also supra* Part II.B.

[111] Ex. 15 at UPRR0025231; Rocker Tr. (Ex. 30) at 65:14–66:11. *See also supra* Part II.B.

[112] *See supra* Part II.A.

railcars.[113] {{[redacted]}}[114] Only when UP began to communicate its empty repair move charge to customers did it attempt to formulate reasonable-sounding justifications for the new tariff.[115]

This Board has recognized that railroad practices undertaken to mislead customers are not reasonable. In *Rail Fuel Surcharges*, the Board held that railroads' implementation of a surcharge ostensibly to recover fuel costs was an unreasonable practice. The Board noted that the surcharge at issue was imposed as a percentage of the base rate without any link to fuel consumption.[116] The Board reasoned that "the term 'fuel surcharge' most naturally suggests a charge to recover increased fuel costs associated with the movement to which it is applied. If it is used instead as a broader revenue enhancement measure, it is mislabeled."[117] The Board further noted that the railroads' mislabeling appeared designed to avoid the responses railroads

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[113] *See supra* Part II.C.

[114] *See* Ex. 13 UPRR0000674–90; Ex. 15 UPRR0025230–37; Ex. 16 UPRR0003937.

[115] Ex. 20 at UPRR0000068–74.

[116] *Rail Fuel Surcharges*, slip op at 1.

[117] *Id.* at 7.

likely would receive if they honestly informed shippers of the purpose of the surcharge.[118] Accordingly, "imposing rate increases in this manner, when there is no real correlation between the rate increase and the increase in fuel costs for that particular movement to which the surcharge is applied, is a misleading and ultimately unreasonable practice."[119]

Like in *Rail Fuel Surcharges*, UP intentionally misled its customers about its true purpose underlying Item 55-C.[120] {{[redacted]}}[121] Instead, they cited goals of more efficient fleet management, aligning charges for tank cars more closely with charges for other railcars, and reducing the number of empty miles.[122] {{[redacted]}} Just as the Board noted in *Rail Fuel Surcharges*, UP's deception about its true {{[redacted]}} motivation was designed to avoid divulging that motivation to UP's customers.

In addition, UP's efficiency justification rings hollow because the mileage equalization program in *Ex Parte 328* already encourages tank car providers to be efficient by requiring them to pay railroads for excessive empty tank car miles.[123] {{[redacted]}}

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[118] *Id.*

[119] *Id.*

[120] *See supra* Part II.C.

[121] Ex. 20 at UPRR0000068–74.

[122] Ex. 20 at UPRR0000070.

[123] *IHB-II* at 601 n. 5 (The equalization rule "is used to encourage private tank car owners to handle their fleets more efficiently and reduce empty mileage.").

[redacted]

}} Where, as here, there is no clear correlation between UP's publicly stated purpose for Item 55-C and its primary internal motivation, the tariff is misleading and an unreasonable practice.[124]

UP's scheme {{[redacted]}} while deceiving its customers with claims of a reasonable business practice does not reflect "honest" railroad management; it is pure misrepresentation.[125] Accordingly, UP's implementation of Item 55-C is an unreasonable practice in violation of federal law.

2. UP's mileage equalization "exit" strategy is an unreasonable practice intended to subvert the empty mileage revenue constraints in the Ex Parte 328 Agreement.

UP's attempt to "exit" the mileage equalization program in the Ex Parte 328 Agreement {{[redacted]}} is an unreasonable practice.[126] As addressed in Part II.B above, Item 55-C replaces the ICC-prescribed mileage

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[124] *See Rail Fuel Surcharges* at 7.

[125] *See* 49 U.S.C. § 10101(9); *Rail Fuel Surcharges* at 7.

[126] Although UP repeatedly expressed its intent to "exit" mileage equalization, UP did not actually take this legally indefensible step directly, but instead sought to achieve the same result indirectly by "flagging out" of Item 190 in Supplement 31 to Tariff RIC 6007-N (which excepts cars moving as "property" from mileage equalization), as it applied to repair movements, effective January 1, 2015. *See* Ex.9, Item 170. *See also* Docket NOR 42144, First Amended Answer ¶ 28. {{[redacted]}} Craven Tr. (Ex. 31) at 81:16–82:3. UP has designated no fewer than 269 documents (excluding attachments) as non-discoverable in this proceeding due to a claim of attorney-client privilege for the time period between November 10, 2014 and December 9, 2014, when Item 55-C was first announced to the public. {{[redacted]}}

equalization charge for excessive empty tank car miles with substantially higher mileage-based charges for tank car repair moves and applies such charges regardless of whether the mileage threshold for applying mileage equalization charges has been exceeded. This undermines the balance struck in *Ex Parte 328*, which has the force of law,[127] between railroad responsibility for tank car repair moves and incentivizing efficient repair moves by tank car providers.

In *Ex Parte 328*, industry stakeholders carefully negotiated a nationwide agreement on both mileage allowances **and** mileage equalization. The resulting Ex Parte 328 Agreement devised a nation-wide formula for calculating mileage allowance rates that railroads would pay on loaded tank car movements to compensate tank car providers as required by 49 U.S.C. § 11122. In addition, because railroads were responsible at that time for providing most empty tank car moves without charge, the Agreement also devised a formula for calculating a mileage equalization charge that tank car providers must pay railroads for excessive empty miles to discourage inefficient or unnecessary empty tank car movements.[128] The mileage equalization program is published in Tariff RIC 6007-Series, Item 187, along with the mileage allowance program in Item 195.[129] These two core components of the Agreement reflected a carefully negotiated balancing of the compensation requirements in § 11122 and the efficiency objectives of the national rail transportation policy at 49 U.S.C. § 10101(9).

The mileage equalization program prohibits railroads from charging for certain types of empty tank car movements up to 106% of loaded tank car miles annually. The stakeholders based the 106% threshold upon their determination that (1) empty tank car miles for returning an

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[127] *Engelhard Corp.—Pet. for Declaratory Order—Springfield Term. Ry. Co. et al.*, STB Docket No. 42075, slip op. at 6 (served Sept. 27, 2004).

[128] *IHB-II* at 601, n. 5. *See also, B&P*, 7 I.C.C. 2d at 22.

[129] *See* Exhibits 7 through 11 for pertinent excerpts of RIC-6007 from 2009–2016.

empty tank car to the point of origin after a loaded movement should equate to 100% of loaded miles; (2) a reasonable number of empty miles associated with (i.e., to and from) tank car repair and inspection movements was 6% of the loaded miles; and (3) empty miles above 106% typically were for the benefit of the private car owner.[130] Because the first two categories constituted movements of tank cars as "instrumentalities of transportation," which are the responsibility of the railroads under 49 U.S.C. § 11121, no charge was warranted. In contrast, the third category constituted movements of cars as "property" solely for the benefit of the private car owner and thus were chargeable. Any chargeable empty movement would be excluded from calculation of the 106% threshold to avoid double-dipping through the mileage equalization program.[131] The assessment of a mileage equalization charge on empty miles above the 106% threshold balanced the concept of free transportation for empty tank cars moving as "instrumentalities of transportation" with a per-mile charge to discourage excessive empty miles.

Consistent with the foregoing history, Item 190 of Tariff RIC 6007 dictates the handling of empty tank cars without charge, except when moving as "property" for the benefit of the owner (e.g., a new car, a car that is restenciled with private reporting marks, a newly acquired car moving prior to its first loaded move in commercial service, a car moving for sale or scrap).[132] But in Item 170 of Tariff RIC-6007-N, UP unilaterally flagged out of Item 190 as it applies to repair movements so that it could apply Item 55-C to such movements.[133] UP did so even though it may not directly exit the mileage equalization program published in Item 187. But as noted

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[130] *See IHB-II Appeal*, 872 F.2d at 1054 n. 12.

[131] Ex. 7, Item 187, Part A.2. Item 187 also appears in Exhibits 8–11 if it was modified in any form.

[132] *See* Ex. 7, Item 190(2). Item 190 also appears in Exhibits 8–11 if it was modified in any form.

[133] *See* Ex. 9, Item 170. Item 170 also appears in Exhibits 10 and 11. *See also*, Docket NOR 42144, First Amended Answer ¶ 28.

above, Item 190 is integral to Item 187 by defining which empty miles shall, or shall not, be included in calculating the 106% threshold for mileage equalization charges. When repair move empty miles are excluded from the mileage equalization calculation, it is highly improbable for a tank car provider to exceed the 106% threshold because, as noted above, repair moves were intended to account for the 6% of empty miles above 100% of loaded miles. UP's action, therefore, effectively negates the mileage equalization program.

UP intended this result so that it could receive significantly more revenue from empty tank car miles than otherwise permitted under the carefully negotiated mileage equalization rule. UP had to "exit" mileage equalization because it could not simultaneously charge for tank car repair moves and also receive mileage equalization payments based upon those same movements.[134] Whereas, previously, a tank car provider that efficiently managed its tank car fleet to keep excess empty miles below the 106% threshold incurred no additional costs, Item 55-C initially increased that cost to upwards of $2.96 per repair move mile regardless of whether those miles exceeded the 106% threshold. {{[redacted]}}[135]

[134] *See* Ex. 17 at UPRR0000809 ({{[redacted]}}); Ex. 18 at UPRR0000836 (same). *See also*, Craven Tr. (Ex. 31) at 60:14–61:3; Docket NOR 42144 First Amended Answer ¶ 28.

[135] Ex. 13 at UPRR0000686 {{[redacted]}} Ex. 14 at UPRR0018361. Six months later, UP began assessing that same charge on tank car repair moves under Item 55-C. UP also assesses its standard fuel surcharge on top of this highly lucrative repair move charge even though UP consumes less fuel to transport an empty tank car.

UP has attempted to justify its decision to "exit" mileage equalization as a means to "align tank cars more closely with treatment of empties of all other car types."[136] Instead of mileage equalization, other car types receive one free empty move following a loaded move (which typically is the return move to the next loading origin), but are subject to charges for any empty move that immediately follows another empty move (i.e. a back-to-back empty move).[137] Because the inbound movement to, and the outbound movement from, a repair facility constitute back-to-back empty moves, at least one of those moves (and sometimes both) is chargeable. By applying this same program to tank cars through Item 55-C, UP sought to cloak its {{[redacted]}} motivation with a seemingly reasonable justification.

But there are sound reasons that tank cars should **not** be treated the same as other car types. Unlike other car types, railroads do not offer transportation in railroad-supplied tank cars (i.e., all tank cars are privately owned).[138] Thus, shippers cannot opt for transportation in railroad-supplied tank cars if they do not like the terms for transportation in private tank cars. In *Ex Parte 328*, the stakeholders who negotiated the Ex Parte 328 Agreement clearly were aware of the "back-to-back" option but rejected it in favor of mileage equalization as a **different** program to discourage inefficient empty tank car moves.[139] It is unreasonable to change that Agreement unilaterally.

The ICC found the Ex Parte 328 Agreement to be "reasonable and otherwise in accordance with [the statute]," adopted the Agreement, and retained continuing jurisdiction for

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[136] Ex. 20 at UPRR0000070.

[137] *See IHB-II* at 601 n.5 (describing the "back-to-back" rule for other car types in the last paragraph of the footnote).

[138] *See supra* Part III.A.2.

[139] *See* note 137 above.

the purpose of securing compliance with its terms and updating allowances.[140] When the AAR subsequently sought to renegotiate the original Agreement a few years later, it recognized that railroads were bound by the Agreement and could not unilaterally revise or fail to comply with its terms without the express authorization of the ICC. The ICC validated that stance when it refused such authorization, holding: "Based on the evidence presented we cannot conclude that petitioners have justified the extraordinary relief sought. . . ."[141] The ICC provided the following rationale for its denial of AAR's request:

> While there may be deficiencies in the agreed formula, we are most reluctant to intervene at all, or to delay operation of the formula that has been so carefully negotiated. It is more appropriate that the formula be operational while the parties be given an opportunity to renegotiate. Moreover, **we are concerned that premature intervention on our part may create an erroneous impression that negotiated settlements are neither lasting nor binding, and may be overturned by one party's unilateral recourse to this Commission**. Such regulatory fallback is at odds with Congress' and the Commission's efforts to promote negotiated settlements and would significantly reduce the incentives for diligent pursuit of the negotiation process.[142]

Here, UP has not even recognized the Board's role, but has assumed a unilateral right to disregard the terms of the Ex Parte 328 Agreement. If the Board allows Item 55-C to stand, it will condone the very result it condemned in the excerpt above by allowing UP to unilaterally abrogate the compromises reflected in that carefully negotiated Agreement.

UP's back-door attempt to "exit" mileage equalization by flagging out of Tariff RIC-6007, Item 190, for the purpose of converting repair moves into a profit center and thereby

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[140] *Ex Parte No. 328*, slip op. at 19 (served June 15, 1979).

[141] *Ex Parte No. 328,* 367 I.C.C. 48, 50 (1982).

[142] *Id.* (emphasis added).

destroying the balance struck in the ICC-prescribed Ex Parte 328 Agreement, is an unreasonable practice.

IV. CONCLUSION

Complainants' arguments are straightforward and their evidence is compelling. UP violated federal law when it imposed Item 55-C upon tank car providers with the intent to profit from tank car repair moves, even though the cost of such transportation is UP's responsibility under the law. In addition, UP engaged in unreasonable practices when it misrepresented the purpose of Item 55-C to its customers and attempted to recover rates in excess of the mileage equalization charges made applicable by *Ex Parte 328*. Accordingly, for the foregoing reasons, Complainants request that the Board (1) find UP's adoption of Item 55-C, Subpart D, and its related charges to be unlawful, and (2) order UP to rescind its tariff and pay reparations to Individual Complainants for the tariff charges incurred. In addition, the NOR 42144 Complainants request that the Board (1) find that UP does not compensate for use of tank cars, and (2) direct UP to pay POET Ethanol, POET Nutrition, and Cargill reparations for compensation owed to them since March 31, 2013.

Respectfully submitted,

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February 22, 2019

CERTIFICATE OF SERVICE

I do hereby certify that on this 22nd day of February, 2019, I have served a copy of "Complainants' Joint Opening Evidence and Argument" by both hand and electronic delivery upon:

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Crowley Verified Statement

Public

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. NOR 42144

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; AND CARGILL INCORPORATED v. UNION PACIFIC RAILROAD COMPANY

Docket No. NOR 42150

VALERO MARKETING AND SUPPLY COMPANY
AND VALERO RAIL PARTNERS, LLC v. UNION PACIFIC RAILROAD COMPANY

Docket No. NOR 42152

TESORO REFINING & MARKETING COMPANY LLC;
TESORO GREAT PLAINS GATHERING & MARKETING, LLC;
AND DAKOTA PRAIRIE REFINING, LLC v. UNION PACIFIC RAILROAD COMPANY

Docket No. NOR 42153

ARKEMA INC. v. UNION PACIFIC RAILROAD COMPANY

VERIFIED STATEMENT OF THOMAS D. CROWLEY

President

L. E. Peabody & Associates, Inc.

On Behalf Of

Complainants

Due Date: February 22, 2019

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TABLE OF EXHIBITS

Exhibit No.	Exhibit Description
(1)	(2)
1	Thomas D. Crowley Statement of Qualifications

I. INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc., a Firm specializing in solving economic, financial, transportation, marketing financial, accounting, and fuel supply problems. The Firm's main office is located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314.

I have spent most of my consulting career of over forty-eight (48) years evaluating fuel supply issues and railroad operations, including railroads costs, accounting, prices, financing, cost of capital, capacity, and equipment planning issues. During this time period, my assignments were commissioned by railroads, trucking companies, intermodal logistics providers, shippers of various commodities, federal and state governments and trade associations. Exhibit No. 1 to this verified statement ("VS") provides a detailed statement of my qualifications and experience.

I have been asked by the Complainants[1] in these consolidated proceedings to review and analyze car traffic and revenue data submitted by the Union Pacific Railroad Company ("UP") in these proceedings associated with UP's transportation of loaded and empty tank cars.[2] Specifically, I have been asked to analyze the amount of revenue UP generated from tank car movements, the level of mileage allowance payments UP made to tank car owners for UP's use of the tank cars, and the revenues UP received from transporting empty tank cars to repair

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[1] The Complainants in Docket NOR 42144 are the North America Freight Car Association; the American Fuel & Petrochemicals Manufacturers; The Chlorine Institute, Inc.; The Fertilizer Institute; the American Chemistry Council; Ethanol Products, LLC d/b/a POET Ethanol Products; POET Nutrition, Inc.; and Cargill Incorporated. The Complainants in Docket NOR 42150 are Valero Marketing and Supply Company and Valero Rail Partners, LLC. The Complainants in Docket NOR 42152 are Tesoro Refining & Marketing Company, LLC; Tesoro Great Plains Gathering & Marketing LLC; and Dakota Prairie Refining, LLC. The Complainant in Docket NOR 42153 is Arkema, Inc.

[2] Pursuant to the Protective Order entered by the Board in these dockets, I have delineated Highly Confidential information contained in my Verified Statement between double brackets, "{{...}}" and redacted that information from the Public version.

facilities under Item 55-C of UP Tariff 6004-C ("Item 55-C") movements over the 2014 through 2017 time period.[3]

[3] In addition to covering charges for transporting empty tank car to repair facilities, Item 55-C also addresses charges for the movement of new tanks moving prior to their first loaded move in commercial service, the movement of re-stenciled tank cars moving prior to their first loaded move in commercial service and tank cars moving for dismantling, sale or scrap. For purposes of this VS, I am using the term "Item 55-C" to represent only the empty movement of tank cars to repair facilities, and not the other three (3) empty movement categories included in the tariff.

II. SUMMARY AND FINDINGS

After a thorough review of traffic and revenue data produced by UP in these proceedings, I conclude that tank car traffic is a significant generator of revenues for UP. My specific conclusions, as discussed in more detail in the remaining sections of this VS, are as follows:

1. A significant portion of UP carload revenues comes from tank car movements. In 2017, UP generated over {{[redacted]}} in tank car revenues. This reflects over {{[redacted]}} of UP's carload revenues for the year;

2. UP's actions and policies led to a significant increase in revenues associated with empty tank car movements beginning in 2015. UP empty tank car revenues increased by {{[redacted]}} between 2014 and 2015 with Item 55-C revenues accounting for {{[redacted]}} of that increase; and

3. The use of zero-mileage rates by railroads has led to a significant drop in the number of loaded railcar movements in which the UP pays a mileage allowance to the tank car owner. Over the 2014 through 2017 time period, {{[redacted]}} of all UP tank car movements received a mileage allowance payment.

The details supporting my conclusions are discussed in the remainder of this VS.

III. ANALYSIS OF UP TANK CAR DATA

A. TRAFFIC DATA RECEIVED FROM UP

UP provided seven (7) traffic and revenue data tables in response to Complainants' document requests that included loaded and empty tank car shipment information.[4] The data included loaded tank car data for the June 2001 through December 2017 time period, and empty tank car data for the January 2010 through December 2017 time period.[5] In response to a request regarding UP's original data, UP also provided one additional data table, which included the miles UP used to calculate charges for 55-C tariff movements.[6] The eight (8) traffic and revenue data tables provided by UP are summarized below:

1. TANKCYLC ("Tank Cycle") – The Tank Cycle table contains tank car shipment information, including, but not limited to, waybill date, waybill number, tank car initial, tank car number, waybill origin, waybill destination, movement miles, tank car net tons, load/empty designation, shipper name and consignee.

2. TANKF990 ("Tank Revenue") – The Tank Revenue table contains UP net revenue information, including, but not limited to, UP revenues after rebates and allowances plus surcharges, including fuel surcharges.

3. TANKRATE ("Tank Rate") – The Tank Rate table describes the pricing documents under which UP billed a shipment, including, but not limited to, tariff item numbers, EDI document reference numbers and reference number qualifier. The reference number qualifier indicated whether the shipment moved under a contract, master contract, private quote or tariff.

4. TANKSURC ("Tank Surcharge") – The Tank Surcharge table identifies the fuel surcharge associated with a waybill.

5. TANKHIRE ("Tank Hire") – The Tank Hire table contains mileage allowance payments, if any, for each movement.

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[4] See, June 23, 2016 letter from Michael L. Rosenthal, Esquire to Thomas W. Wilcox, Esquire included in my workpapers as "6-23-16 Rosenthal Letter.pdf."

[5] UP's June 23, 2016 production only included waybill data through December 2015. UP updated its June 23, 2016 production on March 10, 2017 with waybill information for the January to December 2016 time period. The March 10, 2017 UP production also updated certain information from the June 23, 2016 production due to accounting adjustments made by UP. UP again produced tank car data on February 1, 2018, which provided tank car waybill information for the January through December 2017 time period, and again updated prior information for accounting changes made by UP.

[6] See, "UP responses to questions regarding tank car data 10 1 18.pdf" included in my workpapers.

6. TANKCIRC ("Tank CIRC") – The Tank CIRC table contains the city and state location for each UP CIRC7 station code.

7. TANKDOCID ("Tank Doc ID") – The Tank Doc ID is a linking table that provides a document ID and links the pricing documents in the Tank Rate table with revenues in the Tank Revenue table.

8. PC_Miler_Data ("PC Miles") – The PC Miles table contains the miles UP used to calculate the tariff charges on 55-C movements.

After reviewing and verifying that the traffic and revenue data provided by UP was readable and accessible, I imported the eight (8) data tables into a database using Microsoft SQL Server ("SQL"). SQL is a relational database management system that allows for the linking of different data tables and the production of customized queries and reports. I include a copy of the SQL database in my workpapers.

Using SQL to query and link the tables in the database allowed me to develop different summaries of the UP tank car data. For example, SQL allowed me to link data from the Tank Cycle, Tank Revenue and Tank Rate tables to identify UP revenues associated with empty tank car movements to repair facilities. Similarly, SQL allowed me to develop the number of loaded tank car movements for which UP paid and did not pay mileage allowances by linking data from the Tank Cycle, Tank Revenue and Tank Hire tables.

Even though UP provided information in discovery on how to link its data tables in a relational database, I found that there was not a perfect link between all of the data tables. Stated differently, there was not always a 100 percent link between the various UP data tables. For example, UP's data diagram indicates the Tank Cycle and Tank Rate tables can be linked based on a unique combination of Waybill Number, Waybill Date, Equipment Initial and Equipment Number ("Unique Shipment Combination").[7] An analysis of the UP Tank Rate table identified 11,297,868 Unique Shipment Combinations, however, 54,911 of these Unique Shipment

[7] I include a copy of UP's data diagram in my workpapers. See, "Database NAFCA.xlsx."

Combinations are not present in the Tank Cycle table. This means that I was unable to link 54,911 revenue records in the Tank Rate table with movement information contained in the Tank Cycle table. I include an analysis of the unique links between the UP data tables in my workpapers.[8]

Because of the inability to link all of the UP data tables, it is not possible to classify certain revenues as either being associated with a loaded or an empty movement. In those instances, I included those revenues in the Section III.B summaries below in a category called "Indeterminate."

B. SUMMARY OF UP TANK CAR MOVEMENTS AND REVENUE -- 2014 THROUGH 2017

As discussed in Section III.A above, I utilized the traffic and revenue data tables provided by UP in discovery to develop revenue and operating statistics for UP's tank car movements. I discuss these revenue and operating statistics below.

1. Revenue UP Received from Loaded and Empty Tank Car Movements

UP received significant revenues from transporting loaded railcars and in certain instances empty tank cars ("revenue-empties"). Revenue-empty movements can occur for several reasons, including but not limited to, a new car, a car that is restenciled with private reporting marks, a newly acquired car moving prior to its first loaded move in commercial service, a car moving for sale or scrap, and movements to repair facilities. UP indicated in the discovery documentation produced that in instances where UP has marked a movement as a load, but the net tons associated with the movement are zero (0), the movement can be classified as an

[8] See, Opening electronic workpaper "NAFCA - UP Discovery Data Linkage Analysis.xlsx."

revenue-empty movement. I, therefore, included those designated loaded movements with zero (0) tons in the empty revenue category.[9]

Table 1 below lists the net revenues, including fuel surcharges, UP received for transporting loaded, empty and indeterminate movements during each year from 2014 through 2017.

Table 1
UP Net Revenues (Including Fuel Surcharges)

Year	Loaded	Empty	Indeterminate	Total
(1)	(2)	(3)	(4)	(5)
1. 2014	{{			
2. 2015				
3. 2016				
4. 2017				
5. Total				}}

Source: "NAFCA-UP Tariff And Total Amounts 2014-2017 (Final).xlsx" tab "Total."

As shown in Table 1 above, annual revenues from loaded tank car movements on UP ranged between {{ }} over the 2014 through 2017 time period or averaged {{ }} per year over the four (4) year study period. Annual revenues from empty tank car movements on UP ranged from {{ }} over the 2014 through 2017 time period or averaged {{ }} per year over the four (4) year study period. In addition, UP gathered between {{ }} in revenues per year that cannot be directly linked to either a loaded or empty tank car movement.

The revenues UP generates from its tank car movements reflect a significant portion of UP's non-intermodal and automotive freight revenues. UP information presented to the investor community indicated that UP generated $14.0 billion in revenues in agricultural, energy and

[9] See, electronic workpaper "6-23-16 Rosenthal Letter.pdf."

industrial freight revenues in 2017.[10] The {{[redacted]}} UP generated in tank car revenues in 2017 reflect over {{[redacted]}} of this three (3) product group's freight revenues.[11] It is clear that revenue from tank car movements is a significant portion of UP's business.

2. Number of Revenue and Non-Revenue Empty Tank Car Movements

As indicated in Section III.A above, UP transported empty tank cars in both revenue and non-revenue services. Table 2 below shows the number of empty non-revenue and empty-revenue movements by year for the years 2014 through 2017.

Table 2
Number of UP Empty Tank Car Movements

Year	Revenue	Non-Revenue	Total
(1)	(2)	(3)	(4)
1. 2014	{{[redacted]	[redacted]	[redacted]
2. 2015			
3. 2016			
4. 2017			
5. Total			}}

Source: "NAFCA-UP Tariff And Total Amounts 2014-2017 (Final).xlsx" tab "Empty-Revenue."

As shown in Table 2 above, the number of annual non-revenue empty tank car movements on UP ranged from {{[redacted]}} from 2014 through 2017. The annual number of revenue empty tank car movements ranged from {{[redacted]}} over the same time period.

The increase in revenue-empty tank car movements led to a significant increase in tank car revenues in 2015. Table 3 below shows the revenues generated by empty-revenue movements from 2014 through 2017.

[10] See, UP 2017 Investor Handbook at page 10. These reflect the UP business groups that utilize tank car movements.
[11] {{[redacted]}}

Table 3
Revenues from Empty-Revenue Movements

Year	Revenue	Fuel Surcharge	Total
(1)	(2)	(3)	(4)
1. 2014	{{		
2. 2015			
3. 2016			
4. 2017			
5. Total			}}

Source: "NAFCA-UP Tariff And Total Amounts 2014-2017 (Final).xlsx" tab "Empty"

As shown in Table 3 above, UP generated almost {{ }} in revenues from revenue-empty tank car movements from 2014 through 2017. What is significant is the increase in empty-revenue movements between 2014 and 2015. UP realized an increase in empty-revenues from tank car movements of over {{ }} between 2014 and 2015.[12] As I discuss below, much of this increase is directly attributable to UP's implementation of Item 55-C charges.

3. Number of UP Loaded Tank Car Movements With and Without Mileage Allowance Payments

Railroads are required by statute to either supply the tank cars necessary for their provision of transportation services or compensate tank car owners for the tank cars that owners supply.[13] Historically, the rate of compensation was determined by the expense of owning and maintaining the tank cars, and was paid in the form of mileage allowances to the tank car owners.[14] Since the 1990's, the railroads have moved away from paying mileage allowances to

[12] {{ }}
[13] See, 49 U.S.C. §§ 11121 and 11122.
[14] See, ICC Ex Parte No. 328, Investigation of Tank Car Allowance System, 3 I.C.C.2d 196, (1986).

tank car owners and instead, moved tank cars under so-called "zero-mileage" rates, in which a railroad does not pay a mileage allowance.

The use of zero-mileage rates by railroads has led to a significant drop in the number of loaded railcar movements in which UP pays a mileage allowance to the tank car owner.

Table 4 below compares the number of loaded tank car movements from 2014 through 2017 in which UP paid and did not pay mileage allowances.

Table 4
Mileage Allowance Payments on UP Loaded Tank Car Movements

Year	Payment		No Payment		Total
	Moves	% of Total	Moves	% of Total	
(1)	(2)	(3)	(4)	(5)	(6)
1. 2014	{{				
2. 2015					
3. 2016					
4. 2017					
5. Total					}}

Source: "NAFCA-UP Tariff And Total Amounts 2014-2017 (Final)" tab "PaymentsVsLoads Summary."

As shown in Table 4 above, UP paid mileage allowances on between {{ }} loaded tank car movements per year from 2014 through 2017. In contrast, UP did not pay mileage allowances on between {{ }} loaded car movements over the same time period. This means over the four (4) year study time period, UP paid mileage allowances on {{ }} of its loaded tank car movements.

4. Summary of Revenue UP Received From Item 55-C Charges

UP adopted Item 55-C on January 1, 2015. Under the terms of Item 55-C, UP receives compensation from tank car owners for transporting empty tank cars to and from repair

facilities.[15] Information provided in discovery indicates that Item 55-C movements may be identified in the UP data tables as empty railcar movements moving under tariff with a standard transportation commodity code ("STCC") of 3742217.[16]

Table 5 below, summarizes the Item 55-C revenues UP received from tank car owners, including fuel surcharges, for the 2015 through 2017 time period.

Table 5
Item 55-C Revenue Received by UP

Year	Net Revenue	Fuel Surcharge	Total
(1)	(2)	(3)	(4)
1. 2015	{{		
2. 2016			
3. 2017			
4. Total			}}

Source: "NAFCA-UP Tariff And Total Amounts 2014-2017 (Final).xlsx" tab "Total"

As shown in Table 5 above, UP received between {{ }} in annual revenues from Item 55-C movements during the 2015 through 2017 time period, which totals {{ }} in aggregate revenue over that three (3) year study period.

The revenue UP received from implementing Item 55-C is a large reason why UP's revenues from empty tank car movements increased so significantly in 2015. As indicated in Table 3 above, revenue from empty tank car movements jumped by {{ }} between

[15] See, electronic workpaper "55-C.pdf."
[16] See, August 15, 2016 letter from Michael L. Rosenthal, Esquire to Thomas W. Wilcox, Esquire included in my workpapers as "8-15-16 Rosenthal Letter.pdf," and workpaper "UP responses to questions regarding tank car data 10 1 18.pdf."

2014 and 2015.[17] UP's implementation of Item 55-C accounts for {{[redacted]}} of the increase in UP's revenue from empty tank car movements.[18]

[17] {{[redacted]}}

[18] {{[redacted]}} The remaining {{[redacted]}} of the increase, or {{[redacted]}}, came from several different sources, including {{[redacted]}} from empty movements under a contract or private rate quote, {{[redacted]}} from non-Item 55-C tariff movements, and {{[redacted]}} from unidentified empty tank car movements.

[redacted]

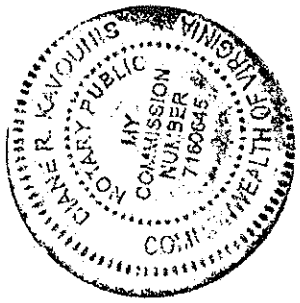
VERIFICATION

I, Thomas D. Crowley, verify under penalty of perjury that I have read this Verified Statement on behalf of the Complainants, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

Thomas D. Crowley

Subscribed and Sworn to before me
this 19th day of February, 2019.

Notary Public



My Commission expires: November 30, 2020

Executed on February 19, 2019

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 7 Horicon Avenue, Glens Falls, New York 12801.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of all commodities. As a result of my extensive economic consulting practice since 1971 and my participation in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers and the traffic they move over the major rail routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, cost of capital, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of traffic by rail.

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with single car and multiple car movements, unit train operations for coal, grain, oil and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of numerous commodities handled by rail.

I have frequently been called upon to develop and coordinate economic and operational studies relative to the rail transportation of various commodities. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Railroad Administration, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Chemistry Council, American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, the Chlorine Institute, Coal Exporters Association, Edison Electric Institute, the Fertilizer Institute, Mail Order Association of America, National Coal Association, National Grain and Feed Association, National Industrial Transportation League, North America Freight Car Association and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company.*

EXHIBIT NO. 1

TARIFF UP 6004-C

Cancels UP 6004-B

(Revision 1)

Applying On

ACCESSORIAL SERVICES - RULES AND CHARGES

Governed, except as otherwise provided herein, by UFC 6000-series and OPSL 6000-series.

Issued By:
B. A. ROMMEL - MANAGER PRICING SERVICES

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

MOVEMENT OF EMPTY TANK CARS

[i]
Empty tank car movements provided below are subject to Union Pacific line-haul charges, as provided in UPRR 4703-series, for the portion of the empty movement that occurs on Union Pacific:

A. New tank cars moving prior to their first loaded move in commercial service (STCC 3742213);

B. Restenciled tank cars moving prior to their first loaded move in commercial service (STCC 3742213);

C. Tank cars moving for dismantling, sale, or scrap (STCC 3742293); and

D. Empty tank cars moving to and from Repair Facilities (STCC 3742217) except that (i) empty movements that are immediately preceded by a loaded line-haul revenue movement on Union Pacific will move free of charge to Repair Facilities, (ii) empty tank cars taken out of service by Union Pacific inspection and waybilled by Union Pacific's Mechanical Department under Rule 1 of the Association of American Railroads Interchange Rules will move free of charge to and from Repair Facilities, and (iii) empty tank cars damaged by Union Pacific will move free of charge to and from Repair Facilities.

For purposes of this Item, the capitalized term "Repair Facilities" means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.

EXHIBIT NO. 2

UPRR 4703	Item: 1100-J FREIGHT CARS MILEAGE SCALE RATES

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UPRR 4703-1100-J

STCC/GROUP	STCC	DESCRIPTION
FREIGHT CARS		
	Except 37421	Passenger Train Cars
	Except 3742216	Revenue Movement Of Double Stack Container Cars, Or Double Stack Containers With Containers Empty.
	Except 3742218	Non-Revenue Movement, Cars, Railway Freight, Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec
	Except 3742219	Cars, Railway Freight, Nec, Not Moved On Own Wheels
	Except 3742237	Cars, Railway Caboose, Not Moved On Own Wheels
	Except 3742251	Railway Cars, Radioactive Material Shipping, Moved On Own Wheels, Viz. Specially Designed And Equipped Flat Cars With Permanently Or Semi- Permanently Affixed Container Or Containers, And Framework As A Shield Against Radioactive Materials
	Except 3742295	Cars, Railway Freight, Moving For Dismantling Or Scrapping, Not Moved On Own Wheels
	37422	Freight Train Cars

Prices are subject to Fuel surcharges.

GENERAL APPLICATION RULES FOR ITEM 1100-J

1. Does not apply in mechanical refrigerator (AAR Car Types R-5, R-6, R-7 and R-8) cars.
2. Price is subject to Exempt Circular UP 16 (series), item 695 (series).
3. Price applies in United States funds.
4. Subject to maximum liability of $10,000.00 per Car.
5. Switching charges at both origin and destination will not be absorbed.
6. Price does not apply if special train movement service is provided.
7. Price does not apply if heavy duty flat car service is provided.
8. Price does not apply if diversion service is provided.
9. Price does not apply if stopping to partially unload service is provided.
10. Mileage allowance payment on private equipment will not apply.
11. Idler car(s) may be used and the charge will be $2,275.00 per Car.

Continued on next page

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Mile.

STCC Group: FREIGHT CARS GROUP

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
501 - 3000	I 2.96

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Car.

STCC Group: FREIGHT CARS GROUP

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
0 - 250	I 1317.00
251 - 500	I 1477.00

APPENDIX A
ORIGIN AND DESTINATION GROUPS

GROUP NAME
LOCATIONS

ALL UP OTE GROUP
- ARKANSAS
- ARIZONA
- CALIFORNIA
- COLORADO
- IOWA
- IDAHO
- ILLINOIS
- INDIANA
- KANSAS
- LOUISIANA
- MICHIGAN
- MINNESOTA
- MISSOURI
- MONTANA
- NEBRASKA
- NEW MEXICO
- NEVADA
- OKLAHOMA
- OREGON
- SOUTH DAKOTA
- TENNESSEE
- TEXAS
- UTAH
- WASHINGTON
- WISCONSIN
- WYOMING

EXHIBIT NO. 3

UPRR 4703

(Revision 1 - Changing Title Page Only)

Applying on Linehaul Movements of

Railway Freight Cars, Locomotives and Railway Passenger Cars

Governed, except as otherwise provided herein, by UFC 6000-series;
OPSL 6000-series; UP 6004 series and UP 16-series

Issued By:
K. A. Seetin, Manager Pricing Services

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

UPRR 4703	Item: 1200 EMPTY TANK CAR, REVENUE MOVEMENT

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UPRR 4703-1200

STCC/GROUP	STCC	DESCRIPTION
3742217		Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

Prices are subject to Fuel surcharges.

General Application Rules for Item 1200

1. Applies in AAR Car Type T, tank cars.
2. Price is subject to Exempt Circular UP 16 (series) , item 695 (series).
3. Price applies in United States funds.
4. Subject to maximum liability of $10,000.00 per Car.
5. Switching charges at both origin and destination will not be absorbed.
6. Price does not apply if special train movement service is provided.
7. Price does not apply if heavy duty flat car service is provided.
8. Price does not apply if diversion service is provided.
9. Price does not apply if stopping to partially unload service is provided.
10. Mileage allowance payment on private equipment will not apply.
11. Idler car(s) may be used and the charge will be $2,275.00 per Car.

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Car.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
0 - 250	1363.00
251 - 500	1529.00

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Mile.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
501 - 3000	3.06

ORIGIN AND DESTINATION GROUPS

GROUP NAME
LOCATIONS

ALL UP OTE GROUP
- ARKANSAS
- ARIZONA
- CALIFORNIA
- COLORADO
- IOWA
- IDAHO
- ILLINOIS
- INDIANA
- KANSAS
- LOUISIANA
- MICHIGAN
- MINNESOTA
- MISSOURI
- MONTANA
- NEBRASKA
- NEW MEXICO
- NEVADA
- OKLAHOMA
- OREGON
- SOUTH DAKOTA
- TENNESSEE
- TEXAS
- UTAH
- WASHINGTON
- WISCONSIN
- WYOMING

EXHIBIT NO. 4

UPRR 4703

(Revision 1 - Changing Title Page Only)

Applying on Linehaul Movements of

Railway Freight Cars, Locomotives and Railway Passenger Cars

Governed, except as otherwise provided herein, by UFC 6000-series; OPSL 6000-series; UP 6004 series and UP 16-series

Issued By:
K. A. Seetin, Manager Pricing Services

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

UPRR 4703	Item: 1200-A EMPTY TANK CAR, REVENUE MOVEMENT

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UPRR 4703-1200-A

STCC/GROUP	STCC	DESCRIPTION
3742217		Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

Prices are subject to Fuel surcharges.

General Application Rules for Item 1200-A

1. Applies in AAR Car Type T, tank cars.
2. Price is subject to Exempt Circular UP 16 (series) , item 695 (series).
3. Price applies in United States funds.
4. Subject to maximum liability of $10,000.00 per Car.
5. Switching charges at both origin and destination will not be absorbed.
6. Price does not apply if special train movement service is provided.
7. Price does not apply if heavy duty flat car service is provided.
8. Price does not apply if diversion service is provided.
9. Price does not apply if stopping to partially unload service is provided.
10. Mileage allowance payment on private equipment will not apply.
11. Idler car(s) may be used and the charge will be $2,275.00 per Car.

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Car.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
0 - 250	I 1411.00
251 - 500	I 1583.00

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Mile.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
501 - 3000	I 3.17

ORIGIN AND DESTINATION GROUPS

GROUP NAME LOCATIONS
ALL UP OTE GROUP
ARKANSAS
ARIZONA
CALIFORNIA
COLORADO
IOWA
IDAHO
ILLINOIS
INDIANA
KANSAS
LOUISIANA
MICHIGAN
MINNESOTA
MISSOURI
MONTANA
NEBRASKA
NEW MEXICO
NEVADA
OKLAHOMA
OREGON
SOUTH DAKOTA
TENNESSEE
TEXAS
UTAH
WASHINGTON
WISCONSIN
WYOMING

EXHIBIT NO. 5

UPRR 4703	Item: 1200-B EMPTY TANK CAR, REVENUE MOVEMENT

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UPRR 4703-1200-B

STCC/GROUP	STCC	DESCRIPTION
3742217		Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

Prices are subject to Fuel surcharges.

General Application Rules for Item 1200-B

1. Applies in AAR Car Type T, tank cars.
2. Price is subject to Exempt Circular UP 16 (series) , item 695 (series).
3. Price applies in United States funds.
4. Subject to maximum liability of $10,000.00 per Car.
5. Switching charges at both origin and destination will not be absorbed.
6. Price does not apply if special train movement service is provided.
7. Price does not apply if heavy duty flat car service is provided.
8. Price does not apply if diversion service is provided.
9. Price does not apply if stopping to partially unload service is provided.
10. Mileage allowance payment on private equipment will not apply.
11. Idler car(s) may be used and the charge will be $2,275.00 per Car.

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES
1.	Rates are in U.S. dollars Per Car.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
0 - 250	I 1460.00
251 - 500	I 1638.00

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES
1.	Rates are in U.S. dollars Per Mile.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
501 - 3000	I 3.28

ORIGIN AND DESTINATION GROUPS

GROUP NAME
LOCATIONS

ALLUPOTE GROUP
- ARKANSAS
- ARIZONA
- CALIFORNIA
- COLORADO
- IOWA
- IDAHO
- ILLINOIS
- INDIANA
- KANSAS
- LOUISIANA
- MICHIGAN
- MINNESOTA
- MISSOURI
- MONTANA
- NEBRASKA
- NEW MEXICO
- NEVADA
- OKLAHOMA
- OREGON
- SOUTH DAKOTA
- TENNESSEE
- TEXAS
- UTAH
- WASHINGTON
- WISCONSIN
- WYOMING

EXHIBIT NO. 6

UPRR 4703

(Revision 1 - Changing Title Page Only)

Applying on Linehaul Movements of

Railway Freight Cars, Locomotives and Railway Passenger Cars

Governed, except as otherwise provided herein, by UFC 6000-series;
OPSL 6000-series; UP 6004 series and UP 16-series

Issued By:
K. A. Seetin, Manager Pricing Services

Union Pacific Railroad Company
1400 Douglas Street Omaha, NE 68179

UPRR 4703	Item: 1200-C EMPTY TANK CAR, REVENUE MOVEMENT

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UPRR 4703-1200-C

STCC/GROUP	STCC	DESCRIPTION
3742217		Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

Prices are subject to Fuel surcharges.

General Application Rules for Item 1200-C

1. Applies in AAR Car Type T, tank cars.
2. Price is subject to Exempt Circular UP 16 (series) , item 695 (series).
3. Price applies in United States funds.
4. Subject to maximum liability of $10,000.00 per Car.
5. Switching charges at both origin and destination will not be absorbed.
6. Price does not apply if special train movement service is provided.
7. Price does not apply if heavy duty flat car service is provided.
8. Price does not apply if diversion service is provided.
9. Price does not apply if stopping to partially unload service is provided.

General Application Rules for Item 1200-C	
10.	Mileage allowance payment on private equipment will not apply.
11.	Idler car(s) may be used and the charge will be $2,275.00 per Car.

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Car.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
0 - 250	I 1555.00
251 - 500	I 1744.00

APPLICATION AND RATES	
COLUMN	**RATE APPLICATION RULES**
1.	Rates are in U.S. dollars Per Mile.

STCC: 3742217 Revenue Movement, Cars, Railway Freight , Not Railway Owned, Not New, Not Newly Acquired, Not Restenciled, Or Not For Sale, Moved On Own Wheels, (Private Marked Cars,) Nec

From: ALL UP OTE **To:** ALL UP OTE **Route:** UP

Rail mileage as stated in ALK Technologies' PC*Miler/Rail (Fuel Surcharge Algorithm)

Mileage Ranges	Col 1 Rate
501 - 3000	I 3.49

EXHIBIT NO. 7

FREIGHT TARIFF RIC 6007-N

(For cancellations, see Item 1, this tariff)

MILEAGE ALLOWANCES AND RULES GOVERNING

THE HANDLING OF AND THE PAYMENT OF MILEAGE

ALSO CHARGES

ON
CARS OF PRIVATE OWNERSHIP
AS DEFINED IN ITEMS 25 AND 400

BY
RAILROADS PARTIES TO THIS TARIFF

For List of Participating Carriers, see Item 2.10

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

ISSUED: February 6, 2009 **EFFECTIVE: March 1, 2009**

ISSUED BY

RAILINC, AGENT
7001 WESTON PARKWAY, SUITE 200
CARY, NC 27513

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(Continued in next column)

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

ITEM 1

CANCELLATION NOTICE

Freight Tariff RIC 6007-N cancels Freight Tariff RIC 6007-M and Freight Tariff ASLG 6007, and all supplements issued thereto.

Provisions formerly published in Freight Tariff RIC 6007-M and Freight Tariff ASLG 6007, as supplemented, and not brought forward in Freight Tariff RIC 6007-N are hereby canceled.

ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

AA - Ann Arbor Railroad.....413
AKDN - Acadiana Railway Company.....40, 412
ANR - Angelina & Neches River Railroad Company.....35
APA - Apache Railway Company.....35
AR - Aberdeen and Rockfish Railroad Company....36, 411
ASRY - Ashland Railway, Inc.

BLOL - BloomerLine, The
BNSF - BNSF Railway Company.....50,70,73, 410, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 441, 442, 444, 445, 446, 448, 620, 630
BOCT - Baltimore and Ohio Chicago Terminal Railroad Company, The.....22
BPRR - Buffalo & Pittsburgh Railroad, Inc.....75, 449
BS - Birmingham Southern Railroad Company.....64, 418
BXN - Bauxite & Northern Railway Company.....55, 416

CAGY - Columbus and Greenville Railway.....102, 453
CBRY - Copper Basin Railway, Inc.
CCKY - Chattanooga & Chickamauga Railway Co.
CIC - Cedar Rapids and Iowa City Railway Company.....80, 450
CLC - Columbia & Cowlitz Railway Company.....35
CM - Central Montana Rail, Inc.
CN - Canadian National Railway.....90, 185, 454, 457.50
CPRS - Canadian Pacific Railway.....99, 458, 459, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 630
CSS - Chicago SouthShore & South Bend Railroad.....451, 452
CSXT - CSX Transportation, Inc., comprised of the following carriers:
Carrollton Railroad, The.
CSX Transportation, Inc.
Gainesville Midland Railroad Company.
Richmond, Fredericksburg and Potomac Railway Company.
Three Rivers Railway Company.
Western Railway of Alabama, The...106, 484, 486
CW - Colorado & Wyoming Railway Company, The
CWA - Central Washington Railroad Company

(Continued in next column)

ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

DKS - Doniphan, Kensett & Searcy Railway
DME - Dakota, Minnesota & Eastern Railroad.....487, 622
DQE - DeQueen and Eastern Railroad Company

ECBR - East Cooper & Berkeley Railroad Company
EJE - Elgin, Joliet and Eastern Railway Company.....112, 488, 490
ELS - Escanaba and Lake Superior Railroad Company.....35
EV - Everett Railroad Company
ETRY - East Tennessee Railway, L.P.

FWCR - Florida West Coast Railroad Company

GLC - Great Lakes Central Railroad
GNBC - Grainbelt Corporation.....620, 630
GNRR - Georgia Northeastern Railroad Company, Inc.
GRR - Georgetown Railroad Company
GRW - Gary Railway Company
GTRA - Golden Triangle Railroad
GWWE - Gateway Eastern Railway Company

HE - Hollis & Eastern Railroad Company
HPTD - High Point, Thomasville & Denton Railroad Company.....492

IAIS - Iowa Interstate Railroad, Ltd.....35, 120,121
IANR - Iowa Northern Railway.....495

ICE - Iowa, Chicago & Eastern Railroad Corporation.....499
IORY - Indiana & Ohio Railway Company

KCS - Kansas City Southern Railway Company.....35, 124, 185, 504, 524, 526, 527, 630

LC - Lancaster and Chester Railway Company
LNW - Louisiana and North West Railroad Company
LSI - Lake Superior & Ishpeming Railroad Company
LSRC - Lake State Railway Company

ME - Morristown & Erie Railway, Inc.
MCR - McCloud Railway Company
MRL - Montana Rail Link, Inc.....620, 630
MSE - Mississippi Export Railroad Company.....35

(Continued on next page)

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

NHN - New Hampshire Northcoast Corporation
NS - Norfolk Southern Railway Company, comprised of the following carriers:
Norfolk and Western Railway Company
Norfolk Southern Railway Company.
Alabama Great Southern Railroad Company.
Atlantic and East Carolina Railway Company.
Camp Lejeune Railroad Company.
Central of Georgia Railroad Company.
Chesapeake Western Railway.
Cincinnati, New Orleans and Texas Pacific Railway Company.
Georgia Southern and Florida Railway Company.
Tennessee Railway Company.....131,135, 540,544,545,546,547, 548

NYSW - New York, Susquehanna and Western Railway Corp.

PBVR - Port Bienville Railroad
PCN - Point Comfort & Northern Railway Company.....35, 45, 427
PDRR - Pee Dee River Railroad.....140, 552
PNR - Panhandle Northern Railroad Co.
PW - Providence and Worcester Railroad Company.....35

RSR - Rochester & Southern Railroad, Inc.
RSS - Rockdale, Sandow & Southern Railroad Company.....55, 416

SAN - Sandersville Railroad Company.....145, 550
SBVR - South Branch Valley Rail Road
SLC - San Luis Central Railroad Company, The
SM - St. Marys Railroad Company.....148, 554
SMA - San Manuel Arizona Railroad Company
SRN - Sabine River & Northern Railroad Company
ST - ST Rail System.....150, 555, 560, 565
SUN - Sunset Railway Company

TR - Tomahawk Railway, Limited Partnership.....35
TRC - Trona Railway Company.....35
TSRR - Tennessee Southern Railroad Company, Inc.
TSU - Tulsa-Sapulpa Union Railway Company.....35

UP - Union Pacific Railroad Company..... 50, 185, 410, 575, 576, 577, 579, 585, 591, 592, 630

VR - Valdosta Railway, L.P
WSS - Winston-Salem Southbound Railway Company.....595
WTNN - West Tennessee Railroad Corp.....35

EXPLANATION OF NOTES

1. Items of general application affecting the participation of all or large groups or numbers of carriers are not listed in this column.

RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS

ITEM 5

REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC

1. Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

2. Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic or traffic to or from Canada.

ITEM 10

CONSECUTIVE NUMBERS

1. Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" of a hyphen they will be understood to include both of the numbers shown.

2. If the first number only bears a reference mark such reference mark also applies to the last number shown and to all numbers between the first and last numbers.

ITEM 15

METHOD OF CANCELLING ITEMS

As this Tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff, or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A, Example: Item 100-A cancels Item 100, Item 100-AA cancels Item 100-Z, Item 100-AB cancels Item 100-AA, Item 100-BA cancels Item 100-AZ, or Item 105-B cancels Item 105-A, in a prior supplement which in turn cancelled Item 105

ITEM 20

METHOD OF DENOTING REISSUED MATTER IN SUPPLEMENTS

Matter brought forward without change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number, the number being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date, consult the supplement in which the reissued matter first became effective

ITEM 22

BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY (SEE EXCEPTION 1)

Provisions of this tariff for the movement of empty cars without charge to or from shop facilities for cleaning, lining, relining, maintenance or repair, will not apply to such cars moving from or to shop facilities served by BOCT, to the extent charges are published in Tariff BOCT 8100-Series.

EXCEPTION

1. These provisions do not apply to tank cars.

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
APPLIES ONLY ON TANK CARS

ITEM 25

APPLICATION OF SECTION 1

1. The term "Cars of Private Ownership", when used in this tariff, is defined as cars bearing other than Railroad Reporting marks that are owned by individuals, firms, corporations, or car companies, including cars owned and/or operated by railroad controlled car lines.

2. Except as otherwise provided herein, these rules govern the handling of tank cars including the payment of mileage allowances, when used by railroads parties to this tariff individually or jointly, where specifically provided herein, for transportation over their lines as follows:

   A. Between points in the United States (interstate and intrastate) including movements where part of the through route is through Canada.

   B. Internationally, i.e., between points in the United States and points in Canada. (Applicable only on that portion of the haul within the United States).

   C. For that portion of the haul in the United States in connection with movements between points in Canada where part of the through route is through the United States.

SECTION 1
EXCEPTION TO APPLICATION OF RATES
APPLIES ONLY ON TANK CARS

ITEM 30

GENERAL EXCEPTION

The rules and mileage allowances published herein will not apply to:

A. Cars that are not properly registered in the Official Railway Equipment Register, RER 6414-Series, showing capacities and assigned reporting marks.

B. Mileage allowances named in Item 195-Series of this tariff will not apply to cars handled under the provisions of Item 190.

ITEM 35

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

The provisions of Item 187-Series "Equalization of Mileage on Tank Cars of Private Ownership", will not apply in connection with carriers named below:

Angelina and Neches River Railroad Company
Apache Railway Company, The
Columbia and Cowlitz Railway Company
Escanaba and Lake Superior Railroad Company
Iowa Interstate Railroad, Ltd.
Kansas City Southern Railway Company (Stations 31011 to 31315 only)
Mississippi Export Railroad
Point Comfort and Northern Railway Company
Providence and Worcester Railroad Company
Tomahawk Railway, Limited Partnership
Trona Railway Company
Tulsa Sapulpa Union Railway Company
West Tennessee Railroad Corp.

ITEM 36

ABERDEEN AND ROCKFISH RAILROAD COMPANY (AR)

Mileage allowance will not be paid by the AR on movments of five (5) miles or less.

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 40

ACADIANA RAILWAY COMPANY (AKDN)

The provisions of Item 190-Series, or other provisions for the movement of empty cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving to or from facilities served by AKDN unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the AKDN. In all other circumstances, the published tariff charges for movement of empty cars on their own wheels shall apply.

ITEM 50

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

Empty privately-owned or leased tank cars used or to be used in Intra-Mexican service will be subject to the following provisions:

A. Owner or lessee shall secure an entry permit from the involved Mexican carrier prior to empty movement to the border crossing and permit number must be shown in the writing instructions accompanying such car.

B. Subsequent to Intra-Mexican service, written instructions for each car entering the U.S. must clearly indicate the exact consignee or facility for disposition of the car prior to movement beyond the border gateways.

C. Upon failure to comply with paragraphs A or B, a holding charge of $10.00 per day will be assessed for each 24 hours or fraction thereof beginning at 7:00 AM of the day following arrival of such empty privately owned or leased car at the border crossing, (excluding Saturdays, Sundays and holidays), until provisions of paragraphs A and B as applicable are fulfilled.

BNSF Railway Company
Union Pacific Railroad Company

ITEM 55

BAUXITE & NORTHERN RAILWAY COMPANY (BXN)
POINT COMFORT & NORTHERN RAILWAY COMPANY (PCN)
ROCKDALE, SANDOW & SOUTHERN RAILROAD COMPANY (RSS)

The provisions of Item 190-Series or other provisions for the movement of empty tank cars without charge will not apply to such cars moving on the BXN, PCN or RSS, unless the empty movement is immediately preceded by or followed by a revenue movement on the same road (BXN, PCN, RSS). The published charges in Tariff BXN 4700, PCN 4700 or RSS 4700 will apply.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 64

BIRMINGHAM SOUTHERN RAILROAD COMPANY (BS)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving to or from facilities served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the BS. In all other circumstances, the published tariff charges in Tariffs BS 8020 or BS 3023-Series for movement of empty cars on their own wheels to and from repair or storage facilities shall apply.

ITEM 70

BNSF RAILWAY COMPANY (LINES IN CANADA)

This tariff also applies on all traffic moving over the lines of the BNSF in Canada.

ITEM 73

BNSF RAILWAY COMPANY
(EXCEPTION TO ITEM 190)

When a tank car is released from load on BNSF, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be given to:

BNSF Railway Co.
Carload Billing
920 S.E. Quincy
Topeka, KS 66612
Telephone: (800) 786-2873
FAX: (800) 786-2455

prior to release of the empty car. If the owner or lessee of the car requests movement via a different route, or to a station other than the origin of the last movement, after release of the empty car, diversion provisions and charges, as named in BNSF Diversion Tariff 6200 Series, are applicable.

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 75

BUFFALO & PITTSBURGH RAILROAD, INC. (BPRR)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving to or from facilities served by the BPRR unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the BPRR. In all other circumstances, the published tariff charges in Tariff BPRR 4004-Series for movement of empty cars on their own wheels to and from repair or storage facilities shall apply.

ITEM 80

CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY (CIC)

The provisions of Item 190-Series or other provisions provided in this tariff for the movement of empty tank cars without charge to and from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, etc., will not apply for account of the CIC. For Rules and charges to apply, see Freight Tariff CIC 4006-Series.

ITEM 90

CANADIAN NATIONAL RAILWAY COMPANY

The tariff rules contained herein regarding tank car movements will not apply to the movements described in Item 25.2.C. For those movements, the rules and charges contained in Tariff CN 6544 shall apply.

ITEM 99

CANADIAN PACIFIC RAILWAY
(EXCEPTION TO ITEM 190)

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via CPRS from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via CPRS. In all other circumstances, the published tariff charges in Tariff CP 4000 Series for movement of empty cars on their own wheels shall apply

SECTION 1
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ITEM 102

COLUMBUS AND GREENVILLE RAILWAY (CAGY)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge will not apply to such cars moving, to, from, or via the CAGY unless the empty movement is immediately preceded by or followed by a revenue movement via Columbus and Greenville Railway. In all other circumstances, charges published in the Uniform Freight Classification for movement of empty cars on their own wheels observing the single line minimum charge shall apply.

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
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ITEM 106

CSX TRANSPORTATION INC.

The participation of this carrier is restricted to movements over its lines, as follows:

A. Between points in the United States, including movements where part of the through route is through the Dominion of Canada.

B. For that portion of the haul in the United States on international movements, i.e., between points in the United States and points in the Dominion of Canada.

ITEM 112

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

The provisions of Item 190 Series or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving to or from facilities acting as agent for the cars' owners and located at stations served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the EJE. In all other circumstances, the published tariff charges in Tariff EJE 4193 or 6024 Series for movement of empty cars on their own wheels to and from repair or storage facilities acting as agent for the car owner shall apply.

ITEM 120

IOWA INTERSTATE RAILROAD, LTD (IAIS)
(Exception to Item 190-Series)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars routed via IAIS to and from facilities served by Cedar Rapids and Iowa City Railway unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the IAIS. In all other circumstances, the published tariff charges in Tariff IAIS 3000-D Series for movement of empty cars on their own wheels shall apply.

ITEM 121

IOWA INTERSTATE RAILROAD, LTD. (IAIS)
(Station Nos. 122 to 5006)

The maximum allowance under the provisions of Item 195-Series to be paid by IAIS on shipments of Alcoholic Spirits and/or Alcoholic Liqueurs, when originating at points in Indiana and destined to points in California, shall be seventy-five cents per mile.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 124

KANSAS CITY SOUTHERN RAILWAY COMPANY, THE

Provisions of Item 190 Series, or any other provision allowing for free switching service of an empty freight car (or cars) to or from shop facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to and from shop facilities served by KCS. Matter of switch charge will be handled by the applicable KCS Tariff.

ITEM 131

NORFOLK SOUTHERN RAILWAY COMPANY

When it is necessary to move a loaded private car to/from shop or repair facilities located on NS, NS will pay mileage payments not to exceed the amount that would have been earned had the car not required additional rail movements to/ from shop or repair facilities, provided that the mileage allowances for the loaded movement are not elsewhere restricted.

ITEM 135

NORFOLK SOUTHERN RAILWAY COMPANY
(EXCEPTION TO ITEM 190) (See NOTE 1)

When a car is released from load on NS, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be sent prior to release of the empty car via FAX, or NS internet application. If by fax send to:

FAX: 800-580-6092
Norfolk Southern Railway Company
Agency Operation Center
125 Spring Street South West
Atlanta, GA 30303

If the owner or lessee requests movement via a different route, or to a station other than the origin of the last loaded movement, after release of the empty car, diversion provisions and charges, as named in Norfolk Southern Tariff 8002 Series, are applicable.

EXPLANATION OF NOTE

1. If subject tank car has last contained Hazardous Materials, shipping paper must be furnished at the point of origin of the empty car for all moves whether they are reverse or not.

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 140

PEE DEE RIVER RAILROAD (PDRR)

Mileage allowance will not be paid by the PDRR on movments of five (5) miles or less.

ITEM 145

SANDERSVILLE RAILROAD COMPANY (SAN)

Inbound tank car mileage will be used as an offset to outbound loaded mileage (or vice versa) and the SAN will pay no mileage based on freight mileage table from or to station on its line.

ITEM 148

ST MARYS RAILROAD COMPANY (SM)

Inbound tank car mileage will be used as an offset to outbound loaded mileage and the SM will pay no mileage based on freight mileage table:

From Kingsland, GA to St Marys, GA and from St Marys, GA to Kingsland, GA.

From Kingsland, GA to Kings Bay, GA and from Kings Bay, GA to Kingsland, GA.

ITEM 150

ST RAIL SYSTEM

1. The provisions of Item 190 Series or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via ST Rail System from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the ST Rail System. In all other circumstances, the published tariff charges in Tariff ST 4020 Series for movement of empty cars on their own wheels shall apply.

2. The provisions of Item 180 Series concerning the payment of mileage will not apply to cars which are moving via ST Rail System under rates published in tariffs, quotes or contracts that are identified as "zero mileage rates". In the event that the party responsible for the payment of freight charges associated with zero mileage rates is different than the party to whom the reporting marks for said cars are assigned, the car owner must secure mileage payments from the freight paying party.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 180

PAYMENT OF MILEAGE

1. Upon written application reporting marks will be assigned to car owner or lessee by the Secretary, Business Services, Association of American Railroads, provided applicants are subscribers to the AAR Mechanical Interchange Agreement. Applications for reporting marks shall state the name and address of the owner and lessee for cars under lease.

2. Mileage allowance must be reported to the car owner (person or company at a single address, to whom the reporting marks are assigned) within one (1) month and ten (10) days from the last day of the month in which it is earned including payment for cars on hand at the end of that month.

3. Mileage allowance for the use of tank cars will be paid only to the person or company at a single address, to whom the reporting marks are assigned provided cars are properly equipped and marked with the assigned reporting marks and car number, and providing further that:

   A. The capacities and assigned reporting marks are properly submitted, not later than the date of the installations of cars in service, to The Official Railway Equipment Register for publication in the next succeeding issue.

   B. A description of each car is furnished to the Secretary, Customer Service Division, AAR, as required in the Universal Machine Language Equipment Register for the assignment of applicable mileage allowances. Such information received by the Secretary by the last working day of the month except, data transfers requiring data entry by AAR staff must be received by the 25th day of the month, will be effective the first day of the subsequent month. Cars registered with transportation code S, X, or Y are not eligible for mileage allowances and will be assigned a zero rate.

4. Reporting marks assigned to private car owners shall consist of four letters including the final letter "X".

5. Assigned reporting marks must be painted or stenciled on the body of the car. When reporting mileage allowances, the carding, placarding, or boarding of cars will not be recognized.

ITEM 182

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

1. Deductions By Railroads To Private Car Owners

   A. Mileage allowed in error, by a railroad, including, but not limited to mileage allowed at incorrect rates for any reason, may be deducted from the car owner's account within twenty-four (24) months from the last day of the month for which the mileage was reported as earned, but not later. A railroad may tender an invoice for mileage allowed in error at any time within twenty-four (24) months from the last day of the month for which the mileage was reported as earned. Except as provided in paragraph 3, an owner-lessor of a private car must remit within eight (8) months after the invoice is presented the entire amount of any invoice issued to it.

(Continued on next page)

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 182

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

B. Deductions for amounts of $25.00 or less shall not be taken after the expiration of two (2) months and ten (10) days from the last day of the month the mileage was earned.

2. Claims Issued By Private Car Owners To Railroads.

A. A private car owner must, within twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier in the prescribed AAR format, as published in AAR Circular No. OT-3 Series in The Official Railway Equipment Register. Claims not presented in the required format will not be processed. The railroad receiving the claim must within the four (4) months from the date on which the claim was presented allow it in whole or in part, or decline it. The private car owner may reissue its claim, if applicable within four (4) months from the last day of the four (4) months' period allowed the railroad which handled the claim prior to reissuance. The railroad receiving the reissue claim must within four (4) months from the date of which the reissued claim was presented allow it in whole or in part or decline it. If the railroad fails to handle the original or reissued claim within the prescribed time limits, it will constitute a valid claim as last presented and must be honored by the railroad to which presented. Claim for amounts of $25.00 per car per cycle or less shall not be issued. The $25.00 limit is not applicable where no miles were reported for the railroad cycle.

3. Claims by Owners-Lessors

A. If a railroad takes a deduction against or issues an invoice to an owner-lessor for mileage allowed in error, including, but not limited to, mileage allowed at incorrect rates for any reason, but the erroneous allowance payment is not recoverable by the owner-lessor as defined below, the owner-lessor may present a claim for the recovery of the amounts deducted by the railroad or the cancellation of an unpaid invoice within two (2) years of receiving notice of the railroad's deduction or invoice. For application of this tariff provision, an owner-lessor may claim that an erroneous mileage payment is "not recoverable" only when (a) the erroneous mileage payment was actually paid or credited by the owner-lessor to a lessee (except those lessees whose primary business is the leasing of cars to entities other than those within a lessee's corporate family and who ship only incidentally) irrespective of whether the lessee subsequently paid or credited the mileage allowance payment to a sublessee; (b) the erroneous allowance payment cannot be recovered from the lessee because the lessee has declared bankruptcy or sought reorganization or is no longer a lessee of the owner-lessor; (c) the owner-lessor exercised timely efforts to recover the erroneous allowance payment beginning within ninety (90) days of receiving notice of the railroad's deduction or invoice; and (d) the owner-lessor undertook diligent collection efforts to recover the erroneous allowance payments until eight (8) months from the date of such notice or invoice (or until the earlier date of initiation of bankruptcy/reorganization proceedings), including making demands for payment and taking deductions against lessees' accounts.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 182

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

3. Claims by Owners-Lessors

A. (Cont'd) Such a claim must be accompanied by a certificate asigned by an officer or other person specifically authorized to sign the certificate of the owner-lessor stating how the claim satisfied each of the requirements set forth above, together with documents reflecting the owner-lessor's collection efforts. If, using reasonable efforts, the railroad is unable to determine whether the lessee's primary business is the leasing of cars to entities other than those in the lessee's corporate family, it shall consult with the owner-lessor, which shall provide the railroad with any evidence of the lessee's shipping activities which may be available to the owner-lessor using reasonable efforts. The owner-lessor shall provide the railroad with an assignment of the owner-lessor's claims and rights to collect the amount not recovered upon payment of the claim of cancellation of the invoice by the railroad.

B. If the railroad had deducted the amount of an erroneous allowance payment from an owner-lessor, the railroad must remit to the owner-lessor the amount deducted within four (4) months of its receipt of a properly presented, valid claim from the owner-lessor.

ITEM 185

COMPUTATION OF MILEAGE
(See Exceptions 1 through 6)

1. Mileage will be computed on the basis of actual distance based on freight mileage tables of the individual lines parties to this tariff, lawfully on file, via the route of movement from station of origin or station at which received from connecting line to destination station or to stations at which delivered to connecting line without deduction of mileage through switching districts (see Note 1).

2. When the transportation begins and ends, i.e., when a car is both loaded and unloaded, within a switching district, no mileage will be allowed. Mileage between an industry or public track and freight station at station of origin or destination will not be allowed.

EXPLANATION OF NOTES

1. The intent of the clause "without deduction of mileage through switching districts" is to insure mileage being allowed for the full distance the car moves, via route of movement from freight station of origin to freight station to which destined. When there are two or more freight stations on a road within a switching district, mileage will be paid to or from the station within such district at which the car is actually loaded or unloaded or at which it is received from or delivered to connecting line.

(Continued on next page)

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 185 (Cont'd)

COMPUTATION OF MILEAGE
(See Exceptions 1 through 6)

EXCEPTIONS

1. In computing distances between stations on the UP on the one hand and stations on the KCS on the other hand, via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans via the UP and 5.4 miles from the actual distance to and from New Orleans via the KCS.

2. Mileage will be allowed on movements having origin and destinations at stations or districts within the Chicago Switching District, provided the movements originate at or are destined to industries having private sidings.

3. In computing distances between stations on the UP on the one hand and stations on the IC on the other hand via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans, LA via the UP and 5.1 miles from the actual distance to and from New Orleans via the IC.

4. In computing distances from, to or via KCS on traffic routed via New Orleans, LA, interchanged at Shrewsbury, LA, deduct 5.4 miles from the actual distance to and from New Orleans, LA on the KCS.

5. When for account of the KCS, mileages will be computed on basis of the shortest distance over the route of these lines determined by freight mileage tables lawfully on file , in lieu of actual distance as provided in Paragraph 1 of this item.

6. All traffic between West Lake, LA on KCS and interchange with UP will be made at De Quincy, LA, in lieu of Lake Charles, LA for carriers convenience and to facilitate industries located at West Lake, LA. KCS will not pay mileage allowance between West Lake, LA and De Quincy, LA, when cars are moving under provisions of UP reroute orders.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

1. Should the aggregate empty mileage accumulated by tank cars carrying any of the reported marks assigned to any one person or company during a calendar year exceed the aggregate loaded mileage during the same calendar year by more than six (6) percent, such excess mileage must be paid for by the person or company to whom the reporting marks are assigned at the rate of fifty-seven (57) cents per mile, without minimum, subject to the procedures outlined in Part D (See Note 2, this item).

2. Mileage on empty cars moving on revenue billing will not be included in the equalization account.

3. Empty mileage accumulated on cars moving to and from repair facilities for modification under DOT mandated retrofit programs or for inspection and/or repair under FRA Emergency Order Nos. 16 and 17, O & M Circular No. 4, or AAR Circular Letter 7697 will not be included in the equalization account. Empty mileage accumulated on cars moving under AAR Early Warning letters to and from repair facilities associated with the removal of certain truck bolsters that were manufactured by the National Castings of Mexico facility in Sahagun, Mexico, will not be included in the equalization account.

4. Except as outlined in Item 190 Series, paragraph 2 (c), no adjustments to loaded or empty mileage will be made in the equalization account for mileage caused by error in handling of the reporting railroad or of another railroad, or for mileage accumulated on cars moving on their own wheels to and from repair facilities due to railroad damage or for mileage accumulated due to longer routes for railroad convenience, detours and Surface Transportation Board Service Orders. Rail carriers will make equalization adjustments to the owners of excess reported on-line empty mileage on cars, they lease and operate under private marks, or cars of other lessees and/ or owners operating on their line for company material, weed killer and similar service.

5. Adjustments to loaded or empty mileage will be made in the AAR equalization account for apparent accounting errors in the total mileage reported for participating rail carriers under the following procedures. In the absence of appropriate adjustments being made by the AAR or a participating carrier for such accounting errors, a private car company or owner may request an appropriate adjustment for mileage summaries reported in error, from the involved rail carrier in the format prescribed by the AAR, provided such request is made within thirty (30) days of the forwarding of the monthly AAR "Year to Date Equalization Register", containing the alleged error, furnishing a duplicate of such request to the Secretary, Business Services, AAR. The rail carriers will have thirty (30) days from the date of such request in which to decline or make all or a portion of the requested adjustment, advising the Secretary of the handling accorded.

(Continued in next column)

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

5. (Cont'd) If the rail carrier fails to act upon a request for adjustments in the AAR summary totals within the specified time frame, the AAR is authorized to make the adjustment to the equalization account of the private car company or owner for the amount of mileage originally requested. Exceptions to the annual national equalization statement will be handled in accordance with the provisions of Part D (2).

   ALL requests for adjustments to the equalization account must be presented by the private car company or owner to the involved rail carrier(s) or presented by the rail carrier(s) to the private car company or owner within three (3) years from the last day of the reporting month in question. However, such request for adjustments will not be accepted by the AAR if the involved rail carrier or car owner is no longer an operating entity, except as provided for in Part C.

6. Aggregate loaded and empty mileage will be computed on the basis of actual distance, as defined in Item 185-Series. Adjustments made subsequent to the deadline specified in Part D will be computed in the subsequent equalization account year.

PART B
REPORTING OF ACTUAL LOADED AND EMPTY MILEAGE

Each participating carrier will submit a monthly mileage report in the format prescribed by the AAR to the assignee of each reporting mark forty (40) days after the close of the movement month reporting by individual car number the actual loaded and empty miles moved as computed in accordance with Item 185-Series. In addition, total actual monthly loaded and empty mileage accumulated by all cars bearing each reporting mark will be reported to the assignee of such mark in the format prescribed by the AAR, furnishing a duplicate of this summary report to the Secretary, Business Services, AAR. Adjustments for prior months will be indicated on this monthly summary report.

PART C
CHANGE OF OWNERSHIP

When a private tank car company or owner discontinues business or disposes of all tank car equipment, any excess empty mileage balance which has accrued to the date of such action, on the tank cars bearing the reporting marks of such company or owner, shall be subject to bill as of that date, in accordance with the provisions of Parts A and D of Item 187-Series, subject to any applicable adjustments.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

1. After May 20 of each year, the Secretary, Business Services, AAR will summarize all empty and loaded mileage by reporting mark assigned to any person or company, reporting for the proceeding calendar year, by all participating carriers to this tariff. Should the aggregate empty mileage exceed the aggregate loaded mileage of all participating carriers by more than (6) percent for any such group of reporting marks, the person or company to whom the reporting marks are assigned will be billed at the rate of fifty-seven (57) cents per mile without minimum and must pay the AAR on behalf of each participating carrier for such excess for such empty mileage. The charges collected for this excess empty mileage will be distributed to the participating carriers by the AAR in direct proportion to such carriers portion of excess empty mileage to the total accumulated excess empty mileage. Only that mileage and any related adjustments reported to the Secretary prior to May 20 will be considered in determining and excess empty mileage, as outlined herein (See Notes 1, 2 and 3).

2. An annual national equalization statement detailing the excess empty mileage accumulated and any applicable charges will be tendered by the Secretary to the person or company assigned the reporting mark(s) for such cars for verification no later than July 1 of the year succeeding the equalization accounting year. Exceptions to this statement must be received by the Secretary within 30 days of the date tendered, and payment for all excess empty mileage is due immediately thereafter. Any adjustments made by the participating carriers up to and including the March account applicable to the prior year(s) will be incorporated in the equalization accounts for the prior equalization accounting year. Any railroad or AAR adjustments made subsequent to the March account will be carried over to the following equalization accounting year (see Note 3).

3. A private car company or owner failing to render complete payment for all excess empty mileage within thirty (30) days of the date its equalization statement is tendered by the AAR will be subject to a penalty of one and a half percent (1.5%) interest per month (i.e., annual rate of 18%) for each calendar month or fraction thereof on any outstanding balance due from the date of the AAR's invoice statement. If any portion of a private car company's or owner's equalization statement remains unpaid in excess of 3 months from the date initially tendered, all mileage allowances accrued by the tank cars registered in the UMLER file bearing its reporting marks will be withheld by the carriers participating in this item until such time as complete payment including applicable penalty interest is made. Once complete payment is made, the participating carriers will be notified by the AAR and claims for any applicable mileage allowances withheld will be honored, less a 15% penalty charge for the carriers' administrative expense.

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For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

EXPLANATION OF NOTES

1. The fifty-seven (57) cents per mile charges for excess empty mileage under the provisions of this item is subject to revision September 1 of each year under Ex Parte No. 328 agreed annual update procedures, and will be retroactively applied to cover the entire calendar year involved.

2. Close out dates specified in Part D may be extended by the AAR for a maximum of 60 days for special national accounting problem conditions, affecting substantially all carriers and all owners.

3. Invoices that have been issued which, after investigation, are determined to have been erroneous due to rail carriers or AAR accounting and/or system errors may be cancelled by the Secretary.

ITEM 190

HANDLING OF EMPTY TANK CARS
(SEE NOTE 2)

1. When a tank car is released from load, the owner or lessee must issue instructions for the disposition of the empty car to the agent at point of unloading either direct or through consignee or via EDI. Empty instructions may also be included with the original loaded shipping instructions if transmitted via EDI. If the owner or lessee fails to have instructions in the hands of the railroad agent having jurisdiction at point of unloading prior to the time the car is released from load to forward the car or written instructions to hold it, the agent is authorized to forward the empty car to the origin point of the last load via reverse of the loaded route. No tank car which last contained hazardous material may be moved without having shipping instructions furnished as per Title 49 Code of Federal Regulations.

2. Empty tank cars will be handled as follows:

   A. Except as otherwise provided in this tariff, cars covered by this section will be moved empty without charge between stations or junction points upon receipt of instructions from the car owner or lessee confirmed in writing. Such instructions must include the specific facility to which such empty car is consigned or the name and address of the person or company which controls the car. No allowance will be made for mileage of such cars during empty movement.

   B. A new car, a car that is restenciled with private reporting marks or a newly acquired car moving prior to its first loaded move in commercial service and a newly acquired car moving prior to its first loaded move in commercial service and a car moving for sale or scrap will be moved upon surrender of a bill of lading and will be subject to applicable rates.(see Note 1).

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 190

HANDLING OF EMPTY TANK CARS
(SEE NOTE 2)

2. Empty tank cars will be handled as follows: (Cont'd)

   C. If the owner or lessee or party issued instructions to forward the empty tank car to the origin point of the last load by specific routing different than the reverse routing of the loaded movement, the total miles of such return movement will be billed at the excess empty mileage rate specified in Item 187-Series without minimum and such empty mileage so billed will be excluded from the equalization account of the owner. This billing will be made to, and collectable from, the person so requesting such variance in the return routing. If the carriers depart from the destinations, junctions or carriers of the reverse route of the load, any resulting excess empty miles will be excluded from the car owner's equalization account by erring carrier.

EXPLANATION OF NOTES

1. A car loaded with railroad company material moving on non-revenue billing will be considered as having been loaded in commercial service on which the railroads derived line-haul revenue.

2. The provisions of this item apply except as otherwise provided in Item 192-Series of this tariff.

ITEM 192

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS
(SEE NOTE 1)

1. The rules and charges in this item apply only to empty private tank cars consigned to non-railroad repair facilities; i.e., facilities for cleaning, lining, relining, maintenance, modification or repair.

2. The rules and charges do not apply to:

   A. Empty private tank cars moving as revenue freight under the provisions of Item 190-Series, Paragraph B 2.

   B. Empty private tank cars handled or held for carrier operating convenience.

   C. Empty private tank cars en route to facilities for cleaning, lining, relining or repair for heavy repairs following railroad damage.

   D. Empty private tank cars en route to repair facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.

3. No allowance will be made by carriers for mileage accrued during supplemental empty movement of tank cars that are assessed charges as provided in Paragraph 5.

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 192

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS (SEE NOTE 1)

4. Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to his cleaning, lining, relining, maintenance, modification or repair facility (or his owned or leased tracks in the vicinity thereof) before the expiration of 48 hours free time (not counting Saturdays, Sundays or holidays) after placement. The time calculation will start the first 7 A.M. subsequent to carrier notification to the consignee that the empty private car is ready for placement and the time calculation will stop when the carrier places or forwards the car pursuant to instructions or should have placed or forwarded the car pursuant to instructions.

5. After expiration of free time as provided in Paragraph 4, charges will be as follows: (See Note 2)

   A. Supplementary handling charge of $63.00 per car.

   B. Holding charge of $1 per car per calendar day or fraction thereof including Saturdays, Sundays and holidays while held by carrier on non-leased tracks awaiting disposition.

6. In the event the consignee orders the car to tracks owned or leased by the consignee in the vicinity of the facility for cleaning, lining, relining, maintenance, modification or repair within the forty-eight hour period described under Paragraph 4, this item, there will be no supplementary handling charge for the movement; however, such cars will be subject to the supplementary handling charge of $63.00 per car (See Note 2) at such time that the empty tank car is subsequently ordered and moved onto the facility for cleaning, lining, relining, maintenance, modification or repair or ordered moved from that facility to the tracks or leased by the consignee in the vicinity of the facility.

7. Applicable billing will be monthly to the facility involved.

EXPLANATION OF NOTES

1. The rules and charges in this item do not in any way supersede or duplicate existing, or new written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.

2. Per ExParte No. 328, the supplemental handling charge will be revised annually at the same time as the tank car mileage allowance update, utilizing the same method as that prescribed for updating the excess mileage equalization charge.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT" (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS) (SEE NOTE 1)

Mileage rate allowance for cars of foregoing mechanical designations shall be in cents per loaded mile (See Notes 2 and 7) as follows:

COLUMN 1 - Original cost or fair market value in dollars (see Notes 3, 4, 5 and 6, this item).
COLUMN 2 - Cars in service years 1 through 30.
COLUMN 3 - Cars in service years 31 and over.

COLUMN 1	♦ COLUMN 2	▲♦ COLUMN 3
$ 0 – 1000	28.8	28.3
1001 – 2000	29.7	28.4
2001 – 3000	30.6	28.5
3001 – 4000	31.5	28.6
4001 – 5000	32.4	28.7
5001 - 6000	33.3	28.7
6001 - 7000	34.2	28.8
7001 - 8000	35.2	28.9
8001 - 9000	36.1	29.0
9001 - 10000	37.0	29.1
10001 - 11000	37.9	29.1
11001 - 12000	38.8	29.2
12001 - 13000	39.7	29.3
13001 - 14000	40.7	29.4
14001 - 15000	41.6	29.4
15001 - 16000	42.5	29.5
16001 - 17000	43.4	29.6
17001 - 18000	44.3	29.7
18001 - 19000	45.2	29.8
19001 - 20000	46.1	29.8
20001 - 21000	47.1	29.9
21001 - 22000	48.0	30.0
22001 - 23000	48.9	30.1
23001 - 24000	49.8	30.2
24001 - 25000	50.7	30.2
25001 - 26000	51.6	30.3
26001 - 27000	52.5	30.4
27001 - 28000	53.5	30.5
28001 - 29000	54.4	30.6
29001 - 30000	55.3	30.6
30001 - 31000	56.2	30.7
31001 - 32000	57.1	30.8
32001 - 33000	58.0	30.9
33001 - 34000	58.9	30.9
34001 - 35000	59.9	31.0
35001 - 36000	60.8	31.1
36001 - 37000	61.7	31.2
37001 - 38000	62.6	31.3
38001 - 39000	63.5	31.3
39001 - 40000	64.4	31.4

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
40001 - 41000	65.4	31.5
41001 - 42000	66.3	31.6
42001 - 43000	67.2	31.7
43001 - 44000	68.1	31.7
44001 - 45000	69.0	31.8
45001 - 46000	69.9	31.9
46001 - 47000	70.8	32.0
47001 - 48000	71.8	32.0
48001 - 49000	72.7	32.1
49001 - 50000	73.3	32.1
50001 - 51000	74.0	32.1
51001 - 52000	74.7	32.1
52001 - 53000	75.4	32.0
53001 - 54000	76.0	32.0
54001 - 55000	76.7	32.0
55001 - 56000	77.3	32.0
56001 - 57000	78.0	31.9
57001 - 58000	78.6	31.9
58001 - 59000	79.3	31.9
59001 - 60000	79.9	31.9
60001 - 61000	80.5	31.9
61001 - 62000	81.2	31.8
62001 - 63000	81.8	31.8
63001 - 64000	82.4	31.8
64001 - 65000	83.1	31.8
65001 - 66000	83.7	31.7
66001 - 67000	84.3	31.7
67001 - 68000	84.9	31.7
68001 - 69000	85.5	31.7
69001 - 70000	86.1	31.7
70001 - 71000	86.7	31.6
71001 - 72000	87.3	31.6
72001 - 73000	87.9	31.6
73001 - 74000	88.5	31.6
74001 - 75000	89.0	31.6
75001 - 76000	89.6	31.5
76001 - 77000	90.2	31.5
77001 - 78000	90.8	31.5
78001 - 79000	91.3	31.5
79001 - 80000	91.9	31.5

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
80001 - 81000	92.5	31.4
81001 - 82000	93.0	31.4
82001 - 83000	93.6	31.4
83001 - 84000	94.1	31.4
84001 - 85000	94.7	31.4
85001 - 86000	95.2	31.3
86001 - 87000	95.8	31.3
87001 - 88000	96.3	31.3
88001 - 89000	96.9	31.3
89001 - 90000	97.4	31.3
90001 - 91000	97.9	31.2
91001 - 92000	98.5	31.2
92001 - 93000	99.0	31.2
93001 - 94000	99.5	31.2
94001 - 95000	100.0	31.2
95001 - 96000	100.5	31.2
96001 - 97000	101.1	31.1
97001 - 98000	101.6	31.1
98001 - 99000	102.1	31.1
99001 - 100000	102.6	31.1
100001 - 101000	103.1	31.1
101001 - 102000	103.6	31.0
102001 - 103000	104.1	31.0
103001 - 104000	104.6	31.0
104001 - 105000	105.1	31.0
105001 - 106000	105.6	31.0
106001 - 107000	106.0	31.0
107001 - 108000	106.5	30.9
108001 - 109000	107.0	30.9
109001 - 111000	107.5	30.9
110001 - 111000	108.0	30.9
111001 - 112000	108.4	30.9
OVER - 112000	108.9	30.9

EXPLANATION OF NOTES

1. Designating symbols (mechanical designation) will be assigned to car owner or lessee by the Secretary, Technical Services, Association of American Railroads, upon written application.

(Continued on next page)

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)
(SEE NOTE 1)

EXPLANATION OF NOTES

2. For mileage allowance purposes, the service year of a car is calculated based upon year of construction of underframe. A car's first service year is the year built. Its second service year begins on January 1 of the year following the year built, with succeeding service years starting on January 1 of each following year. If the tank's service year exceeds 30, the car's service year is considered to be in excess of 30 regardless of year of construction of underframe. For those cars constructed without an underframe, the car's service year is calculated based upon year of construction of tank. Service year is determined by subtracting the year of construction (built/rebuilt) from the current calendar year, plus 1, e.g., (2000 - 1970) + 1 = 31, or Service Years 31 and over allowance bracket.

3. For cars built prior to January 1, 1968 assignment of owned or leased cars to value groups will be determined by the undepreciated base classification value. In addition, capitalized additions and betterments shall be added to the value if not already included in the BCV system.

4. Applies as follows:

   A. For cars built between January 1, 1968 and July 1, 1991, assignment of owned or leased cars to value groups will be determined by the original cost as represented to the original buyer by the manufacturer's invoice price at the time of original installation into service. In the case of a manufacturer-lessor, the fair market value or the value which was certified, or would have been certified, for investment tax credit purposes shall be substituted therefore.

   B. Assignment to value groups of cars placed into service after July 1, 1991 will be determined by the original cost of the car to the original buyer as stated in the manufacturer's invoice. In only two circumstances, owners may certify as alternative "true value" in lieu of invoice price: (a) manufacturers who retain cars for their own leasing service and (b) purchasers who can demonstrate that they contributed physical assets of significant value that were used by the manufacturer in fabricating a car, resulting in a reduction of the invoice price by more than $1,000 per car below the price that otherwise would have been charged. For manufacturers "true value" is the price for which a car or group of cars manufactured as a group would have been sold in an arm's length transaction. For purchasers who have made a qualifying contribution to fabrication, "true value" is the invoice price plus the depreciated value of the contributed assets distributed over the cars for which the assets were used, subject to the same limitations on "true value" which would apply to a manufacturer.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)
(SEE NOTE 1)

EXPLANATION OF NOTES

4. Applies as follows: (Cont'd)

   B. (Cont'd) "True value" shall not exceed the average price of similar cars registered in UMLER at invoice price within the most recent 12 months for which registration information is available in UMLER, adjusted for changes in the market values of new tank cars as reflected in average car prices. If the AAR determines by audit that a certified "true value" exceeds this value limit by an amount that causes a car to be placed in a higher allowance value bracket, the value of the car will be reduced to the appropriate value bracket. In addition, if the AAR determines by audit that a certified, "true value" exceeds this value limit by an amount that causes a car to be placed in allowance value bracket more than one bracket above the otherwise applicable bracket, excess allowances paid as a result of the over valuation shall be reimbursed to the paying railroads.

   Those owners who certify a "true value" in lieu of invoice price during the calendar year must provide to the AAR an officer's certificate at the end of the year stating that, based on all information available to the owner, the owner has complied with the terms of this item. Car owners must supply for entry into UMLER all information required for tank cars in the UMLER Specification Manual. Notwithstanding any other provision of this tariff item, "true value" will be subject to audit directly by the AAR.

   C. If applicable, initial into service transportation costs, capitalized original lining costs, capitalized additions and capitalized betterments shall be added to car values determined pursuant to paragraphs 4 (A) and 4 (B), above, if not already included in the value of the car. For cars built after January 1, 1988, capitalized inspection costs shall be added to the value, if applicable and if not already included in the value, if applicable and if not already included in the value of the car. Values other than invoice price shall be identified in accordance with the current AAR UMLER format at the time cars are submitted to the Secretary, Business Services, AAR, for registration in the UMLER file (see Note 6, this item).

   D. The rebuilt year and rebuilt valuation of a private car will be utilized for the purpose of computing applicable mileage allowances subject to the following conditions:

      1. The car must be rebuilt in accordance with the current requirements of Rule 88, Section C of the Office Manual and Sections A & B of the Field Manual, AAR Interchange Rules, Application for official rebuilt status must be filed with the AAR Technical Services and written formal approval received prior to registering such car in the UMLER file with rebuilt age and valuation data.

(Continued on next page)

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)
(SEE NOTE 1)

EXPLANATION OF NOTES

D. (Cont'd)

2. Assignment of owned or leased rebuilt cars to value groups will be determined as outlined in Notes 4. (A), 4. (B) and 4. (C) herein, except that the maximum valuation of a rebuilt private car shall not exceed the lesser of:
   a. 75 percent of the original cost of a comparable new car.
   b. 75 percent of the calculated replacement cost of the rebuilt car prior to rebuilding, as computed per AAR Interchange Rule 107.

E. All car ages and values submitted are subject to verification by the AAR, and audit by the AAR or the owners independent public accountant upon reasonable request by the AAR. If the car owner elects to have the audit performed by its independent public accountant, such audit must be performed in a timely fashion in the manner prescribed by the AAR, will be performed at the car owner's expense and must be duly certified by the car owner's auditor as representing the true value of all cars included in such audit. Failure of the car owner to furnish the required car valuation data to the AAR UMLER file, to arrange for the requested audit, or to correct errors determined as a result of such audit, will result in such car(s) being assigned to the lowest applicable mileage allowance rate group.

F. Maximum original cost of fair market value will be as follows:

1. For cars built in 1981 and prior	$ 64,001
2. For cars built in 1982	$ 58,001
3. For cars built in 1983	$ 56,001
4. For cars built in 1984	$ 51,001
5. For cars built in 1985	$ 54,001
6. For cars built in 1986	$ 66,001
7. For cars built in 1987	$ 62,001
8. For cars built in 1988	$ 63,001
9. For cars built in 1989	$ 64,001
10. For cars built in 1990	$ 67,001
11. For cars built in 1991	$ 71,001
12. For cars built in 1992	$ 70,001
13. For cars built in 1993	$ 76,001
14. For cars built in 1994	$ 74,001
15. For cars built in 1995	$ 80,001
16. For cars built in 1996	$ 83,001
17. For cars built in 1997	$ 84,001
18. For cars built in 1998	$ 89,001
19. For cars built in 1999	$ 94,001
20. For cars built in 2000	$ 92,001
21. For cars built in 2001	$106,001
22. For cars built in 2002	$109,001
23. For cars built in 2003	$ 85,001
24. For cars built in 2004	$ 93,001
25. For cars built in 2005	$101,001
26. For cars built in 2006	$ 97,001
27. For cars built in 2007	$ 112,001
28. For cars built in 2008 and subsequent	$ 112,001

NOTE: Age is determined by subtracting the year of construction (built/rebuilt) from the calendar year plus 1. e.g. (2000-1988) + 1 = 13.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)
(SEE NOTE 1)

EXPLANATION OF NOTES

5. For cars built or rebuilt subsequent to December 31, 1977, all values reported to the AAR UMLER file must be stated in equivalent US dollars based on the applicable exchange rate at the time such cars were built or rebuilt. Subsequent capitalized additions and betterments reported to UMLER must also be stated in equivalent US dollars at the time such improvements were made.

6. Applies as follows:

   A. Into service transportation costs are those freight charges associated with the movement of a car that is ready for its first load to the locations of the car's original installation into service. Other transportation charges incurred during construction (e.g., to a facility which installs the original lining, etc) may be included in ledger value provided that the cost is capitalized.

   B. A capital expenditure is an expenditure intended to benefit future periods in contrast to revenue expenditure/current expense which benefits a current period. It is an addition to a capital asset and is initially reflected on the balance sheet. A capital expenditure normally is subject to depreciation in future years.

   C. Applies as follows:

      1. An addition or betterment has the effect of:

         a. Extending the useful life of a car beyond the life projected when the car was entered into service; or
         b. Increasing a car's normal use beyond that which was in effect when the car was entered into service; or
         c. Lowering the operating costs beyond that which was in effect at the time the car was entered into service; or
         d. Otherwise adding to the worth of the benefits a car can yield beyond that in effect when the car was entered into service (e.g., enhance safety, etc).
         e. Any repair that maintains a car in its customary state of operating efficiency is NOT an addition or betterment.

      2. An addition is the installation of a new component of a car (not a replacement) which meets the above tests. The value registered in UMLER shall be the cost of the component added, including labor.

      3. A betterment is the replacement of a component of the car with a superior component. The value registered in UMLER for a betterment should not exceed the cost of the superior component, including labor minus (1) the original value of the component that was replaced (i.e., retired) and (2) the cost (i.e., expense) incurred in removing the old component.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)
(SEE NOTE 1)

EXPLANATION OF NOTES

C. Applies as follows: (Cont'd)

4. When a unit of property is removed from a car (i.e., partial retirement), the ledger value registered in UMLER shall be reduced by the original value of the unit removed.

5. Any cost recovered under AAR Defect Car Billing, if applicable, must be deducted from the cost of an addition or betterment.

7. Applies as follows:

A. When an owner: (1) makes a valuation correction to the UMLER file; or (2) changes the mechanical designation of cars registered in the UMLER file; and such changes result in an increase or decrease in the mileage allowance rates, the Secretary, Business Services, AAR, will be so notified and the increase or decrease will be applied retroactively. Once cars have been reported to the UMLER file, any of the foregoing corrections or changes that result in a retroactive increase or decrease in the mileage allowance rates will be identified by the Secretary. The car owner is required to furnish the Secretary documented proof of the basis of the correction or change and advise as to any applicable mileage allowance adjustments which are required.

B. Retroactive Mileage Allowance Decrease: Within five (5) months from the date of a change to the UMLER file resulting in a retroactive mileage allowance rate decrease, the owner will notify all using carriers of such decrease with either supporting details or a summary of the over-collections, with a copy to the Secretary. After receiving such notification, the using carrier shall deduct such amount(s), in the next open mileage reports to the car owner, plus fifteen (15) percent to reimburse the handling road for audit and associated administrative expenses. If the owner fails to send notification to the users within five (5) months, the Secretary shall notify carriers of the car initial(s) and number(s) involved and the user(s) shall make an adjustment, as described above.

C. Retroactive Mileage Allowance Increase: Within five (5) months from the date of a change to the UMLER file resulting in a retroactive mileage allowance rate increase, the owner will notify all using carriers of such increase with either supporting details or a summary of the under-collections, with a copy to the Secretary. After receiving such notification, the using carriers shall add such amount(s) in their next open mileage reports to the car owner, less fifteen (15) percent to reimburse the handling roads for audit and associated administrative expense. No retroactive mileage allowance rate increase will be applicable if the owner fails to notify the using carriers of such increase within five (5) months from the date of a change to the UMLER file.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 196

EXPLANATION OF SYMBOLS USED IN ITEM 195

SYMBOL		EXPLANATION
"T"	-	Tank Car. Tank car means any car which is used only for the transportation of liquids, liquefied gases, compressed gases, or solids that are liquefied prior to unloading. Car may be without underframe if container serving as superstructure is designed to serve as underframe. If car has underframe, it must be designed only for the carriage of one or more enclosed containers (with or without compartments) that form the superstructure and are integral parts of the car. All such containers must be securely attached to underframe when offered for transportation but may have demountable features.
"XT"	-	A house car with or without doors either metal lined or enclosing one or more tanks.

For explanation of terms and explanation of abbreviations and reference marks, see Item 99999, this tariff.

EXHIBIT NO. 8

SUPPLEMENT
TO
FT RIC 6007-N

SUPPLEMENT 30
TO
FREIGHT TARIFF RIC 6007-N

(Supplement 30 cancels Supplement 29)
(Supplement 30 contains all changes)

MILEAGE ALLOWANCES AND RULES GOVERNING

THE HANDLING OF AND THE PAYMENT OF MILEAGE

ALSO CHARGES

ON
CARS OF PRIVATE OWNERSHIP
AS DEFINED IN ITEMS 25 AND 400

BY
RAILROADS PARTIES TO THIS TARIFF

For List of Participating Carriers, see Item 2.10

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

ISSUED: August 5, 2014 **EFFECTIVE: September 1, 2014**

ISSUED BY

RAILINC, AGENT
7001 WESTON PARKWAY, SUITE 200
CARY, NC 27513

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ITEM 2.10 [PA]

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD CARRIER ABBREVIATION
(See Note 1, this item)

BS - Birmingham Southern Railroad Company [D]
BXN - Bauxite & Northern Railway Company [D]
CLC - Columbia & Cowlitz Railway Company [D]
CSS - Chicago SouthShore & South Bend Railroad.....104, 451, 452-A
DQE - DeQueen and Eastern Railroad Company [D]
ECBR - East Cooper & Berkeley Railroad Company [D-1]
EJE - Elgin, Joliet and Eastern Railway Company.....112-A, 488-A, 490-A
EV - Everett Railroad Company [D]
FWCR - Florida West Coast Railroad Company [D]
GRW - Gary Railway Company [D]
GTRA - Golden Triangle Railroad [D]
IAIS - Iowa Interstate Railroad, Ltd.....35-A, 120-A,121-A
ICE - Iowa, Chicago & Eastern Railroad Corporation [D]
IORY - Indiana & Ohio Railway Company [D]
LNW - Louisiana and North West Railroad Company [D]
MCR - McCloud Railway Company [D]
ME - Morristown & Erie Railway, Inc.
PCN - Point Comfort & Northern Railway Company [D]
PNR - Panhandle Northern Railroad Co. [D]
PR - Palmetto Railways [A-1]
RSS - Rockdale, Sandow & Southern Railroad Company [D]
SMA - San Manuel Arizona Railroad Company [D]
ST - ST Rail System
TSRR - Tennessee Southern Railroad Company, Inc. [D]
WTNN - West Tennessee Railroad Corp. [D]

EXPLANATION OF NOTES

1. Items of general application in Sections 1 and 2 affecting the participation of all or large groups or numbers of carriers are not listed in this column.

ITEM 2.20-AB

CUMULATIVE INDEX OF NEW OR CHANGED ITEMS

New Items added in supplements and items in the original tariff which have been amended in supplements are listed below with reference to the supplement in which such items may be found. (See Item 15 for Method of Cancellation).

ITEM	SUPPLEMENT
2.10 [PA]	30
2.20-AB	30
35-B	30
55-A	30
64-A	30
99-A	30
104	30
112-A	30
120-A	30

(Continued in next column)

ITEM 2.20-AB (Cont'd)

CUMULATIVE INDEX OF NEW OR CHANGED ITEMS

New Items added in supplements and items in the original tariff which have been amended in supplements are listed below with reference to the supplement in which such items may be found. (See Item 15 for Method of Cancellation).

ITEM	SUPPLEMENT
121-A	30
150-D	30
180-A	30
182-A	30
187-H	30
192-G	30
195-M	30
196-A	30
400-A	30
405-A	30
410-A	30
416-A	30
418-A	30
436-A	30
442-A	30
444-B	30
452-A	30
459-A	30
484-A	30
488-A	30
490-A	30
499-A	30
546-A	30
555-E	30
560-D	30
565-D	30
591-A	30
592-A	30
605-D	30
606-A	30
620-A	30

(Continued on next page)

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

ITEM 2.20-AB (Cont'd)

CUMULATIVE INDEX OF NEW OR CHANGED ITEMS

New items added in supplements and items in the original tariff which have been amended in supplements are listed below with reference to the supplement in which such items may be found. (See Item 15 for Method of Cancellation).

ITEM	SUPPLEMENT
621-A	30
625-A	30
630-A	30
635-A	30
640-A	30
645-A	30
650-A	30
1200-A	30
1205-A	30
1220-A	30
1245-A	30
1250-A	30
1610-A	30

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

[28] **ITEM 35-B**

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

The provisions of Item 187-Series "Equalization of Mileage on Tank Cars of Private Ownership", will not apply in connection with carriers named below:

Angelina and Neches River Railroad Company
Apache Railway Company, The
Escanaba and Lake Superior Railroad Company
Iowa Interstate Railroad, Ltd.
Kansas City Southern Railway Company (Stations 31011 to 31315 only)
Mississippi Export Railroad
Providence and Worcester Railroad Company
Tomahawk Railway, Limited Partnership
Trona Railway Company
Tulsa Sapulpa Union Railway Company

(Carriers formerly listed herein and not brought forward are hereby canceled.)

[9] **ITEM 55-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

[7] **ITEM 64-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

[17] **ITEM 99-A**

CANADIAN PACIFIC RAILWAY
(EXCEPTION TO ITEM 190)

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via CPRS from or to said facilities unless the empty movement is immediately preceded by a loaded revenue movement via CPRS. In all other circumstances, the published tariff charges in Tariff CP 4000 Series for movement of empty cars on their own wheels shall apply and will be assessed to the car owner.

On shipments moving within Canada, CP's Mileage Equalization program in Tariff CP 6 applies, except on miles in Canada for "bridge traffic" which only passes through the Canada for routing purposes that are under the terms of this tariff.

[1] **ITEM 104**

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD (CSS)

The provisions of Item 190 Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving via Chicago South Shore and South Bend Railroad from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via Chicago South Shore and South Bend Railroad. In all other circumstances, the applicable CSS publication for the movement of empty cars on their own wheels shall apply.

[2] **ITEM 112-A**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY (EJE)

For rules to apply, see Item 90 of FT RIC 6007-N.

[26] **ITEM 120-A**

IOWA INTERSTATE RAILROAD, LTD (IAIS)
(Exception to Item 190-Series)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving to or from facilities served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the IAIS. In all other circumstances, the published tariff charges in Tariff IAIS 3000-Series for movement of empty cars on their own wheels shall apply.

[18] **ITEM 121-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

16 **ITEM 150-D**

ST RAIL SYSTEM

1. The provisions of Item 190 Series or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via ST Rail System from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the ST Rail System. In all other circumstances, the published tariff charges in Tariff ST 4020 Series for movement of empty cars on their own wheels shall apply.

2. The provisions of Item 180 Series concerning the payment of mileage will not apply to cars which are moving via ST Rail System under rates published in tariffs, quotes or contracts that are identified as "zero mileage rates". In the event that the party responsible for the payment of freight charges associated with zero mileage rates is different than the party to whom the reporting marks for said cars are assigned, the car owner must secure mileage payments from the freight paying party.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

25 **ITEM 180-A**

PAYMENT OF MILEAGE

1. Upon written application reporting marks will be assigned to car owner or lessee by the Assistant Vice President, Business Services, Association of American Railroads, provided applicants are subscribers to the AAR Mechanical Interchange Agreement. Applications for reporting marks shall state the owner and lessee for cars under lease. Contact information is required in FindUs.Rail (www.RailInc.com).

2. Mileage allowance must be reported to the car owner (person or company at a single address, to whom the reporting marks are assigned) within one (1) month and ten (10) days from the last day of the month in which it is earned including payment for cars on hand at the end of that month.

3. Mileage allowance for the use of tank cars will be paid only to the person or company at a single address, to whom the reporting marks are assigned provided cars are properly equipped and marked with the assigned reporting marks and car number, and providing further that:

   A. A description of each car is furnished to the Assistant Vice President, Business Services, AAR, as required in the Umler file for the assignment of applicable mileage allowances. Such information received by the Assistant Vice President by the last working day of the month except, data transfers requiring data entry by AAR/RailInc staff must be received by the 25th day of the month, will be effective the first day of the subsequent month. Cars registered with transportation code "S_", "SX", "XA", "XZ" or "YA" are not eligible for mileage allowances and will be assigned a zero rate.

4. Reporting marks assigned to private car owners shall consist of four letters including the final letter "X".

5. Assigned reporting marks must be painted or stenciled on the body of the car. When reporting mileage allowances, the carding, placarding, or boarding of cars will not be recognized.

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

25 ITEM 182-A

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

1. Deductions By Railroads To Private Car Owners

A. Mileage allowed in error, by a railroad, including, but not limited to mileage allowed at incorrect rates for any reason, may be deducted from the car owner's account within twenty-four (24) months from the last day of the month for which the mileage was reported as earned, but not later. A railroad may tender an invoice for mileage allowed in error at any time within twenty-four (24) months from the last day of the month for which the mileage was reported as earned. Except as provided in paragraph 3, an owner-lessor of a private car must remit within eight (8) months after the invoice is presented the entire amount of any invoice issued to it.

B. Deductions for amounts of $25.00 or less shall not be taken after the expiration of two (2) months and ten (10) days from the last day of the month the mileage was earned.

2. Claims Issued By Private Car Owners To Railroads

A. A private car owner must, within twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier in the prescribed AAR format, as published in AAR Circular No. OT-3 Series at www.Railinc.com, Reference Files. Claims not presented in the required format will not be processed. The railroad receiving the claim must within the four (4) months from the date on which the claim was presented allow it in whole or in part, or decline it. The private car owner may reissue its claim, if applicable within four (4) months from the last day of the four (4) months' period allowed the railroad which handled the claim prior to reissuance. The railroad receiving the reissue claim must within four (4) months from the date of which the reissued claim was presented allow it in whole or in part or decline it. If the railroad fails to handle the original or reissued claim within the prescribed time limits, it will constitute a valid claim as last presented and must be honored by the railroad to which presented. Claim for amounts of $25.00 per car per cycle or less shall not be issued. The $25.00 limit is not applicable where no miles were reported for the railroad cycle.

3. Claims by Owners-Lessors

A. If a railroad takes a deduction against or issues an invoice to an owner-lessor for mileage allowed in error, including, but not limited to, mileage allowed at incorrect rates for any reason, but the erroneous allowance payment is not recoverable by the owner-lessor as defined below, the owner-lessor may present a claim for the recovery of the amounts deducted by the railroad or the cancellation of an unpaid invoice within two (2) years of receiving notice of the railroad's deduction or invoice.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

25 ITEM 182-A

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

3. Claims by Owners-Lessors (Cont'd)

A. (Cont'd) For application of this tariff provision, an owner-lessor may claim that an erroneous mileage payment is "not recoverable" only when (a) the erroneous mileage payment was actually paid or credited by the owner-lessor to a lessee (except those lessees whose primary business is the leasing of cars to entities other than those within a lessee's corporate family and who ship only incidentally) irrespective of whether the lessee subsequently paid or credited the mileage allowance payment to a sublessee; (b) the erroneous allowance payment cannot be recovered from the lessee because the lessee has declared bankruptcy or sought reorganization or is no longer a lessee of the owner-lessor; (c) the owner-lessor exercised timely efforts to recover the erroneous allowance payment beginning within ninety (90) days of receiving notice of the railroad's deduction or invoice; and (d) the owner-lessor undertook diligent collection efforts to recover the erroneous allowance payments until eight (8) months from the date of such notice or invoice (or until the earlier date of initiation of bankruptcy/reorganization proceedings), including making demands for payment and taking deductions against lessees' accounts. Such a claim must be accompanied by a certificate assigned by an officer or other person specifically authorized to sign the certificate of the owner-lessor stating how the claim satisfied each of the requirements set forth above, together with documents reflecting the owner-lessor's collection efforts. If, using reasonable efforts, the railroad is unable to determine whether the lessee's primary business is the leasing of cars to entities other than those in the lessee's corporate family, it shall consult with the owner-lessor, which shall provide the railroad with any evidence of the lessee's shipping activities which may be available to the owner-lessor using reasonable efforts. The owner-lessor shall provide the railroad with an assignment of the owner-lessor's claims and rights to collect the amount not recovered upon payment of the claim of cancellation of the invoice by the railroad.

B. If the railroad had deducted the amount of an erroneous allowance payment from an owner-lessor, the railroad must remit to the owner-lessor the amount deducted within four (4) months of its receipt of a properly presented, valid claim from the owner-lessor.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦ ITEM 187-H

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

1. Should the aggregate empty mileage accumulated by tank cars carrying any of the reported marks assigned to any one person or company during a calendar year exceed the aggregate loaded mileage during the same calendar year by more than six (6) percent, such excess mileage must be paid for by the person or company to whom the reporting marks are assigned at the rate of ninety-one (91) cents per mile, without minimum, subject to the procedures outlined in Part D (See Note 2, this item).

2. Mileage on empty cars moving on revenue billing will not be included in the equalization account.

3. Empty mileage accumulated on cars moving to and from repair facilities for modification under AAR Early Warning/Maintenance Advisory letters to and from repair facilities associated with the removal of certain truck bolsters that were manufactured by the National Castings of Mexico facility in Sahagun, Mexico, will not be included in the equalization account.

4. Except as outlined in Item 190 Series, Paragraph 2 (C), no adjustments to loaded or empty mileage will be made in the equalization account for mileage caused by error in handling of the reporting railroad or of another railroad, or for mileage accumulated on cars moving on their own wheels to and from repair facilities due to railroad damage or for mileage accumulated due to longer routes for railroad convenience, detours and Surface Transportation Board Service Orders. Rail carriers will make equalization adjustments to the owners of excess reported on-line empty mileage on cars, they lease and operate under private marks, or cars of other lessees and/or owners operating on their line for company material, weed killer and similar service.

5. Adjustments to loaded or empty mileage will be made in the AAR equalization account for apparent accounting errors in the total mileage reported for participating rail carriers under the following procedures. In the absence of appropriate adjustments being made by the AAR or a participating carrier for such accounting errors, a private car company or owner may request an appropriate adjustment for mileage summaries reported in error, from the involved rail carrier in the format prescribed by the AAR, provided such request is made within thirty (30) days of the forwarding of the monthly AAR "Year to Date Equalization Register", containing the alleged error, furnishing a duplicate of such request to the Assistant Vice President, Business Services, AAR. The rail carriers will have thirty (30) days from the date of such request in which to decline or make all or a portion of the requested adjustment, advising the Assistant Vice President of the handling accorded.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦ ITEM 187-H (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

5. (Cont'd) If the rail carrier fails to act upon a request for adjustments in the AAR summary totals within the specified time frame, the AAR is authorized to make the adjustment to the equalization account of the private car company or owner for the amount of mileage originally requested. Exceptions to the annual national equalization statement will be handled in accordance with the provisions of Part D (2).

   ALL requests for adjustments to the equalization account must be presented by the private car company or owner to the involved rail carrier(s) or presented by the rail carrier(s) to the private car company or owner within three (3) years from the last day of the reporting month in question. However, such request for adjustments will not be accepted by the AAR if the involved rail carrier or car owner is no longer an operating entity, except as provided for in Part C.

6. Aggregate loaded and empty mileage will be computed on the basis of actual distance, as defined in Item 185-Series. Adjustments made subsequent to the deadline specified in Part D will be computed in the subsequent equalization account year.

PART B
REPORTING OF ACTUAL LOADED AND EMPTY MILEAGE

Each participating carrier will submit a monthly mileage report in the format prescribed by the AAR to the assignee of each reporting mark forty (40) days after the close of the movement month reporting by individual car number the actual loaded and empty miles moved as computed in accordance with Item 185-Series. In addition, total actual monthly loaded and empty mileage accumulated by all cars bearing each reporting mark will be reported to the assignee of such mark in the format prescribed by the AAR, furnishing a duplicate of this summary report to the Assistant Vice President, Business Services, AAR. Adjustments for prior months will be indicated on this monthly summary report.

PART C
CHANGE OF OWNERSHIP

When a private tank car company or owner discontinues business or disposes of all tank car equipment, any excess empty mileage balance which has accrued to the date of such action, on the tank cars bearing the reporting marks of such company or owner, shall be subject to bill as of that date, in accordance with the provisions of Parts A and D of Item 187-Series, subject to any applicable adjustments.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦ **ITEM 187-H** (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

1. After May 20 of each year, the Assistant Vice President, Business Services, AAR will summarize all empty and loaded mileage by reporting mark assigned to any person or company, reporting for the proceeding calendar year, by all participating carriers to this tariff. Should the aggregate empty mileage exceed the aggregate loaded mileage of all participating carriers by more than (6) percent for any such group of reporting marks, the person or company to whom the reporting marks are assigned will be billed at the rate of ninety-one (91) cents per mile without minimum and must pay the AAR on behalf of each participating carrier for such excess for such empty mileage. The charges collected for this excess empty mileage will be distributed to the participating carriers by the AAR in direct proportion to such carriers portion of excess empty mileage to the total accumulated excess empty mileage. Only that mileage and any related adjustments reported to the Assistant Vice President prior to May 20 will be considered in determining and excess empty mileage, as outlined herein (See Notes 1, 2 and 3).

2. An annual national equalization statement detailing the excess empty mileage accumulated and any applicable charges will be tendered by the Assistant Vice President to the person or company assigned the reporting mark(s) for such cars for verification no later than July 1 of the year succeeding the equalization accounting year. Exceptions to this statement must be received by the Assistant Vice President within 30 days of the date tendered, and payment for all excess empty mileage is due immediately thereafter. Any adjustments made by the participating carriers up to and including the March account applicable to the prior year(s) will be incorporated in the equalization accounts for the prior equalization accounting year. Any railroad or AAR adjustments made subsequent to the March account will be carried over to the following equalization accounting year (see Note 3).

3. A private car company or owner failing to render complete payment for all excess empty mileage within thirty (30) days of the date its equalization statement is tendered by the AAR will be subject to a penalty of one and a half percent (1.5%) interest per month (i.e., annual rate of 18%) for each calendar month or fraction thereof on any outstanding balance due from the date of the AAR's invoice statement. If any portion of a private car company's or owner's equalization statement remains unpaid in excess of 3 months from the date initially tendered, all mileage allowances accrued by the tank cars registered in the Umler file bearing its reporting marks will be withheld by the carriers participating in this item until such time as complete payment including applicable penalty interest is made. Once complete payment is made, the participating carriers will be notified by the AAR and claims for any applicable mileage allowances withheld will be honored, less a 15% penalty charge for the carriers' administrative expense.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦ **ITEM 187-H** (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

EXPLANATION OF NOTES

1. The ninety-one (91) cents per mile charges for excess empty mileage under the provisions of this item is subject to revision September 1 of each year under Ex Parte No. 328 agreed annual update procedures, and will be retroactively applied to cover the entire calendar year involved.

2. Close out dates specified in Part D may be extended by the AAR for a maximum of 60 days for special national accounting problem conditions, affecting substantially all carriers and all owners.

3. Invoices that have been issued which, after investigation, are determined to have been erroneous due to rail carriers or AAR accounting and/or system errors may be cancelled by the Assistant Vice President.

♦ **ITEM 192-G**
HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS (SEE NOTE 1)

1. The rules and charges in this item apply only to empty private tank cars consigned to non-railroad repair facilities; i.e., facilities for cleaning, lining, relining, maintenance, modification or repair.

2. The rules and charges do not apply to:

   A. Empty private tank cars moving as revenue freight under the provisions of Item 190-Series, Paragraph B 2.

   B. Empty private tank cars handled or held for carrier operating convenience.

   C. Empty private tank cars en route to facilities for cleaning, lining, relining or repair for heavy repairs following railroad damage.

   D. Empty private tank cars en route to repair facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.

3. No allowance will be made by carriers for mileage accrued during supplemental empty movement of tank cars that are assessed charges as provided in Paragraph 5.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦ ITEM 192-G (Cont'd)

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS (SEE NOTE 1)

4. Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to their cleaning, lining, relining, maintenance, modification or repair facility (or their owned or leased tracks in the vicinity thereof) before the expiration of 48 hours free time (not counting Saturdays, Sundays or holidays) after placement. The time calculation will start the first 7 A.M. subsequent to carrier notification to the consignee that the empty private car is ready for placement and the time calculation will stop when the carrier places or forwards the car pursuant to instructions or should have placed or forwarded the car pursuant to instructions.

5. After expiration of free time as provided in Paragraph 4, charges will be as follows: (See Note 2)

   A. Supplementary handling charge of $101.00 per car.

   B. Holding charge of $1 per car per calendar day or fraction thereof including Saturdays, Sundays and holidays while held by carrier on non-leased tracks awaiting disposition.

6. In the event the consignee orders the car to tracks owned or leased by the consignee in the vicinity of the facility for cleaning, lining, relining, maintenance, modification or repair within the forty-eight hour period described under Paragraph 4, this item, there will be no supplementary handling charge for the movement; however, such cars will be subject to the supplementary handling charge of $101.00 per car (See Note 2) at such time that the empty tank car is subsequently ordered and moved onto the facility for cleaning, lining, relining, maintenance, modification or repair or ordered moved from that facility to the tracks or leased by the consignee in the vicinity of the facility.

7. Applicable billing will be monthly to the facility involved.

EXPLANATION OF NOTES

1. The rules and charges in this item do not in any way supersede or duplicate existing, or new written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.

2. Per ExParte No. 328, the supplemental handling charge will be revised annually at the same time as the tank car mileage allowance update, utilizing the same method as that prescribed for updating the excess mileage equalization charge.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

Mileage rate allowance for cars of foregoing mechanical designations shall be in cents per loaded mile (See Notes 2 and 7) as follows:

COLUMN 1 - Original cost or fair market value in dollars (see Notes 3, 4, 5 and 6, this item).
COLUMN 2 - Cars in service years 1 through 30.
COLUMN 3 - Cars in service years 31 and over.

COLUMN 1	COLUMN 2	COLUMN 3
$ 0 – 1000	30.4	30.1
1001 – 2000	31.1	30.2
2001 – 3000	31.8	30.2
3001 – 4000	32.4	30.3
4001 – 5000	33.1	30.3
5001 - 6000	33.7	30.3
6001 - 7000	34.4	30.4
7001 - 8000	35.1	30.4
8001 - 9000	35.7	30.5
9001 - 10000	36.4	30.5
10001 - 11000	37.1	30.6
11001 - 12000	37.7	30.6
12001 - 13000	38.4	30.7
13001 - 14000	39.1	30.7
14001 - 15000	39.7	30.8
15001 - 16000	40.4	30.8
16001 - 17000	41.0	30.9
17001 - 18000	41.7	30.9
18001 - 19000	42.4	30.9
19001 - 20000	43.0	31.0
20001 - 21000	43.7	31.0
21001 - 22000	44.4	31.1
22001 - 23000	45.0	31.1
23001 - 24000	45.7	31.2
24001 - 25000	46.4	31.2
25001 - 26000	47.0	31.3
26001 - 27000	47.7	31.3
27001 - 28000	48.3	31.4
28001 - 29000	49.0	31.4
29001 - 30000	49.7	31.4
30001 - 31000	50.3	31.5
31001 - 32000	51.0	31.5
32001 - 33000	51.7	31.6
33001 - 34000	52.3	31.6
34001 - 35000	53.0	31.7
35001 - 36000	53.7	31.7
36001 - 37000	54.3	31.8
37001 - 38000	55.0	31.8
38001 - 39000	55.7	31.9
39001 - 40000	56.3	31.9

(Continued on next page)

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
40001 - 41000	57.0	31.9
41001 - 42000	57.6	32.0
42001 - 43000	58.3	32.0
43001 - 44000	59.0	32.1
44001 - 45000	59.6	32.1
45001 - 46000	60.3	32.2
46001 - 47000	61.0	32.2
47001 - 48000	61.6	32.3
48001 - 49000	62.3	32.3
49001 - 50000	63.0	32.4
50001 - 51000	63.6	32.4
51001 - 52000	64.3	32.5
52001 - 53000	64.9	32.5
53001 - 54000	65.6	32.5
54001 - 55000	66.3	32.6
55001 - 56000	66.9	32.6
56001 - 57000	67.6	32.7
57001 - 58000	68.3	32.7
58001 - 59000	68.9	32.8
59001 - 60000	69.6	32.8
60001 - 61000	70.3	32.9
61001 - 62000	70.9	32.9
62001 - 63000	71.6	33.0
63001 - 64000	72.2	33.0
64001 - 65000	72.9	33.0
65001 - 66000	73.6	33.1
66001 - 67000	74.2	33.1
67001 - 68000	74.9	33.2
68001 - 69000	75.6	33.2
69001 - 70000	76.2	33.3
70001 - 71000	76.9	33.3
71001 - 72000	77.6	33.4
72001 - 73000	78.2	33.4
73001 - 74000	78.9	33.5
74001 - 75000	79.5	33.5
75001 - 76000	80.2	33.6
76001 - 77000	80.9	33.6
77001 - 78000	81.5	33.6
78001 - 79000	82.2	33.7
79001 - 80000	82.9	33.7

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
80001 - 81000	83.5	33.8
81001 - 82000	83.9	33.7
82001 - 83000	84.3	33.7
83001 - 84000	84.7	33.6
84001 - 85000	85.1	33.5
85001 - 86000	85.5	33.5
86001 - 87000	85.9	33.4
87001 - 88000	86.2	33.4
88001 - 89000	86.6	33.3
89001 - 90000	87.0	33.2
90001 - 91000	87.4	33.2
91001 - 92000	87.7	33.1
92001 - 93000	88.1	33.1
93001 - 94000	88.5	33.0
94001 - 95000	88.8	32.9
95001 - 96000	89.2	32.9
96001 - 97000	89.6	32.8
97001 - 98000	89.9	32.8
98001 - 99000	90.3	32.7
99001 - 100000	90.6	32.7
100001 - 101000	91.0	32.6
101001 - 102000	91.3	32.6
102001 - 103000	91.7	32.5
103001 - 104000	92.0	32.4
104001 - 105000	92.4	32.4
105001 - 106000	92.7	32.3
106001 - 107000	93.1	32.3
107001 - 108000	93.4	32.2
108001 - 109000	93.7	32.2
109001 - 110000	94.0	32.1
110001 - 111000	94.4	32.1
111001 - 112000	94.7	32.0
112001 - 113000	95.0	32.0
113001 - 114000	95.4	31.9
114001 - 115000	95.7	31.9
115001 - 116000	96.0	31.8
116001 - 117000	96.3	31.8
117001 - 118000	96.7	31.7
118001 - 119000	97.0	31.7
119001 - 120000	97.3	31.6

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
120001 - 121000	97.6	31.6
121001 - 122000	97.9	31.5
122001 - 123000	98.2	31.5
123001 - 124000	98.5	31.4
124001 - 125000	98.8	31.4
125001 - 126000	99.1	31.3
126001 - 127000	99.4	31.3
127001 - 128000	99.7	31.2
128001 - 129000	100.0	31.2
129001 - 130000	100.3	31.1
130001 - 131000	100.6	31.1
131001 - 132000	100.9	31.0
132001 - 133000	101.2	31.0
133001 - 134000	101.5	31.0
134001 - 135000	101.8	30.9
135001 - 136000	102.1	30.9
136001 - 137000	102.4	30.8
137001 - 138000	102.6	30.8
138001 - 139000	102.9	30.7
139001 - 140000	103.2	30.7
140001 - 141000	103.5	30.6
141001 - 142000	103.8	30.6
142001 - 143000	104.0	30.6
143001 - 144000	104.3	30.5
OVER - 144000	104.6	30.5

EXPLANATION OF NOTES

1. Designating symbols (mechanical designation) will be assigned to car owner or lessee by the Executive Director, Rules and Standards, Technical Services, Association of American Railroads, upon written application.

2. For mileage allowance purposes, the service year of a car is calculated based upon year of construction of underframe. A car's first service year is the year built. Its second service year begins on January 1 of the year following the year built, with succeeding service years starting on January 1 of each following year. If the tank's service year exceeds 30, the car's service year is considered to be in excess of 30 regardless of year of construction of underframe. For those cars constructed without an underframe, the car's service year is calculated based upon year of construction of tank. Service year is determined by subtracting the year of construction (built/rebuilt) from the current calendar year, plus 1, e.g., (2000 - 1970) + 1 = 31, or Service Years 31 and over allowance bracket.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows:

   A. For cars built between January 1, 1968 and July 1, 1991, assignment of owned or leased cars to value groups will be determined by the original cost as represented to the original buyer by the manufacturer's invoice price at the time of original installation into service. In the case of a manufacturer-lessor, the fair market value or the value which was certified, or would have been certified, for investment tax credit purposes shall be substituted therefore.

   B. Assignment to value groups of cars placed into service after July 1, 1991 will be determined by the original cost of the car to the original buyer as stated in the manufacturer's invoice. In only two circumstances, owners may certify as alternative "true value" in lieu of invoice price: (a) manufacturers who retain cars for their own leasing service and (b) purchasers who can demonstrate that they contributed physical assets of significant value that were used by the manufacturer in fabricating a car, resulting in a reduction of the invoice price by more than $1,000 per car below the price that otherwise would have been charged. For manufacturers "true value" is the price for which a car or group of cars manufactured as a group would have been sold in an arm's length transaction. For purchasers who have made a qualifying contribution to fabrication, "true value" is the invoice price plus the depreciated value of the contributed assets distributed over the cars for which the assets were used, subject to the same limitations on "true value" which would apply to a manufacturer. "True value" shall not exceed the average price of similar cars registered in Umler at invoice price within the most recent 12 months for which registration information is available in Umler, adjusted for changes in the market values of new tank cars as reflected in average car prices. If the AAR determines by audit that a certified "true value" exceeds this value limit by an amount that causes a car to be placed in a higher allowance value bracket, the value of the car will be reduced to the appropriate value bracket. In addition, if the AAR determines by audit that a certified, "true value" exceeds this value limit by an amount that causes a car to be placed in allowance value bracket more than one bracket above the otherwise applicable bracket, excess allowances paid as a result of the over valuation shall be reimbursed to the paying railroads.

   Those owners who certify a "true value" in lieu of invoice price during the calendar year must provide to the AAR an officer's certificate at the end of the year stating that, based on all information available to the owner, the owner has complied with the terms of this item. Car owners must supply for entry into Umler all information required for tank cars in the Umler Data Specification Manual. Notwithstanding any other provision of this tariff item, "true value" will be subject to audit directly by the AAR.

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

C. If applicable, initial into service transportation costs, capitalized original lining costs, capitalized additions and capitalized betterments shall be added to car values determined pursuant to Paragraphs 3 (A) and 3 (B), above, if not already included in the value of the car. For cars built after January 1, 1988, capitalized inspection costs shall be added to the value, if applicable and if not already included in the value, if applicable and if not already included in the value of the car. Values other than invoice price shall be identified in accordance with the current AAR Umler Data Specification Manual at the time cars are submitted to the Assistant Vice President, Business Services, AAR, for registration in the Umler file (see Note 6, this item).

D. The rebuilt year and rebuilt valuation of a private car will be utilized for the purpose of computing applicable mileage allowances subject to the following conditions:

1. The car must be rebuilt in accordance with the current requirements of Rule 88, Section C of the Office Manual and Sections A & B of the Field Manual, AAR Interchange Rules, Application for official rebuilt status must be filed with the Executive Director, Rules and Standards, AAR Technical Services and written formal approval received prior to registering such car in the Umler file with rebuilt age and valuation data.

2. Assignment of owned or leased rebuilt cars to value groups will be determined as outlined in Notes 3. (A), 3. (B) and 3. (C) herein, except that the maximum valuation of a rebuilt private car shall not exceed the lesser of:

a. 75 percent of the original cost of a comparable new car.
b. 75 percent of the calculated replacement cost of the rebuilt car prior to rebuilding, as computed per AAR Interchange Rule 107.

E. All car ages and values submitted are subject to verification by the AAR, and audit by the AAR or the owners independent public accountant upon reasonable request by the AAR. If the car owner elects to have the audit performed by its independent public accountant, such audit must be performed in a timely fashion in the manner prescribed by the AAR, will be performed at the car owner's expense and must be duly certified by the car owner's auditor as representing the true value of all cars included in such audit. Failure of the car owner to furnish the required car valuation data to the AAR Umler file, to arrange for the requested audit, or to correct errors determined as a result of such audit, will result in such car(s) being assigned to the lowest applicable mileage allowance rate group.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

F. Maximum original cost of fair market value will be as follows:

1. For cars built in 1981 and prior	$ 64,001
2. For cars built in 1982	$ 58,001
3. For cars built in 1983	$ 56,001
4. For cars built in 1984	$ 51,001
5. For cars built in 1985	$ 54,001
6. For cars built in 1986	$ 66,001
7. For cars built in 1987	$ 62,001
8. For cars built in 1988	$ 63,001
9. For cars built in 1989	$ 64,001
10. For cars built in 1990	$ 67,001
11. For cars built in 1991	$ 71,001
12. For cars built in 1992	$ 70,001
13. For cars built in 1993	$ 76,001
14. For cars built in 1994	$ 74,001
15. For cars built in 1995	$ 80,001
16. For cars built in 1996	$ 83,001
17. For cars built in 1997	$ 84,001
18. For cars built in 1998	$ 89,001
19. For cars built in 1999	$ 94,001
20. For cars built in 2000	$ 92,001
21. For cars built in 2001	$ 106,001
22. For cars built in 2002	$ 109,001
23. For cars built in 2003	$ 85,001
24. For cars built in 2004	$ 93,001
25. For cars built in 2005	$ 101,001
26. For cars built in 2006	$ 97,001
27. For cars built in 2007	$ 112,001
28. For cars built in 2008	$ 112,001
29. For cars built in 2009	$ 117,001
30. For cars built in 2010	$ 102,001
31. For cars built in 2011	$ 107,001
32. For cars built in 2012	$ 129,001
33. For cars built in 2013 and subsequent	$ 144,001

NOTE: Age is determined by subtracting the year of construction (built/rebuilt) from the current calendar year plus 1. e.g. (2014-2010) + 1 = 5

4. For cars built or rebuilt subsequent to December 31, 1977, all values reported to the AAR Umler file must be stated in equivalent U.S. dollars based on the applicable exchange rate at the time such cars were built or rebuilt. Subsequent capitalized additions and betterments reported to Umler must also be stated in equivalent U.S. dollars at the time such improvements were made.

(Continued on next page)

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

5. Applies as follows:

   A. Into service transportation costs are those freight charges associated with the movement of a car that is ready for its first load to the locations of the car's original installation into service. Other transportation charges incurred during construction (e.g., to a facility which installs the original lining, etc) may be included in ledger value provided that the cost is capitalized.

   B. A capital expenditure is an expenditure intended to benefit future periods in contrast to revenue expenditure/current expense which benefits a current period. It is an addition to a capital asset and is initially reflected on the balance sheet. A capital expenditure normally is subject to depreciation in future years.

   C. Applies as follows:

      1. An addition or betterment has the effect of:

         a. Extending the useful life of a car beyond the life projected when the car was entered into service; or
         b. Increasing a car's normal use beyond that which was in effect when the car was entered into service; or
         c. Lowering the operating costs beyond that which was in effect at the time the car was entered into service; or
         d. Otherwise adding to the worth of the benefits a car can yield beyond that in effect when the car was entered into service (e.g., enhance safety, etc).
         e. Any repair that maintains a car in its customary state of operating efficiency is NOT an addition or betterment.

      2. An addition is the installation of a new component of a car (not a replacement) which meets the above tests. The value registered in Umler shall be the cost of the component added, including labor.

      3. A betterment is the replacement of a component of the car with a superior component. The value registered in Umler for a betterment should not exceed the cost of the superior component, including labor minus (1) the original value of the component that was replaced (i.e., retired) and (2) the cost (i.e., expense) incurred in removing the old component.

      4. When a unit of property is removed from a car (i.e., partial retirement), the ledger value registered in Umler shall be reduced by the original value of the unit removed.

      5. Any cost recovered under AAR Defect Car Billing, if applicable, must be deducted from the cost of an addition or betterment.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

6. Applies as follows:

   A. When an owner: (1) makes a valuation correction to the Umler file; or (2) changes the mechanical designation of cars registered in the Umler file; and such changes result in an increase or decrease in the mileage allowance rates, the Assistant Vice President, Business Services, AAR, will be so notified and the increase or decrease will be applied retroactively. Once cars have been reported to the Umler file, any of the foregoing corrections or changes that result in a retroactive increase or decrease in the mileage allowance rates will be identified by the Assistant Vice President. The car owner is required to furnish the Assistant Vice President documented proof of the basis of the correction or change and advise as to any applicable mileage allowance adjustments which are required.

   B. Retroactive Mileage Allowance Decrease: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate decrease, the owner will notify all using carriers of such decrease with either supporting details or a summary of the over-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carrier shall deduct such amount(s), in the next open mileage reports to the car owner, plus fifteen (15) percent to reimburse the handling road for audit and associated administrative expenses. If the owner fails to send notification to the users within five (5) months, the Assistant Vice President shall notify carriers of the car initial (s) and number(s) involved and the user(s) shall make an adjustment, as described above.

   C. Retroactive Mileage Allowance Increase: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate increase, the owner will notify all using carriers of such increase with either supporting details or a summary of the under-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carriers shall add such amount(s) in their next open mileage reports to the car owner, less fifteen (15) percent to reimburse the handling roads for audit and associated administrative expense. No retroactive mileage allowance rate increase will be applicable if the owner fails to notify the using carriers of such increase within five (5) months from the date of a change to the Umler file.

EXHIBIT NO. 9

SUPPLEMENT
TO
FT RIC 6007-N

SUPPLEMENT 31
TO
FREIGHT TARIFF RIC 6007-N

(Supplement 31 cancels Supplement 30)
(Supplement 31 contains all changes)

MILEAGE ALLOWANCES AND RULES GOVERNING

THE HANDLING OF AND THE PAYMENT OF MILEAGE

ALSO CHARGES

ON
CARS OF PRIVATE OWNERSHIP
AS DEFINED IN ITEMS 25 AND 400

BY
RAILROADS PARTIES TO THIS TARIFF

For List of Participating Carriers, see Item 2.10

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

ISSUED: December 11, 2014 **EFFECTIVE: January 1, 2015**

ISSUED BY

RAILINC, AGENT
7001 WESTON PARKWAY, SUITE 200
CARY, NC 27513

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ITEM 2.10 [PA]

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD CARRIER ABBREVIATION
(See Note 1, this item)

BS - Birmingham Southern Railroad Company [D]
BXN - Bauxite & Northern Railway Company [D]
CLC - Columbia & Cowlitz Railway Company [D]
CSS - Chicago SouthShore & South Bend Railroad.....104, 451, 452-A
DQE - DeQueen and Eastern Railroad Company [D]
ECBR - East Cooper & Berkeley Railroad Company [D-1]
EJE - Elgin, Joliet and Eastern Railway Company.....112-A, 488-A, 490-A
EV - Everett Railroad Company [D]
FWCR - Florida West Coast Railroad Company [D]
GRW - Gary Railway Company [D]
GTRA - Golden Triangle Railroad [D]
IAIS - Iowa Interstate Railroad, Ltd.....35-A, 120-A,121-A
ICE - Iowa, Chicago & Eastern Railroad Corporation [D]
IORY - Indiana & Ohio Railway Company [D]
LNW - Louisiana and North West Railroad Company [D]
MCR - McCloud Railway Company [D]
ME - Morristown & Erie Railway, Inc.
PCN - Point Comfort & Northern Railway Company [D]
PNR - Panhandle Northern Railroad Co. [D]
PR - Palmetto Railways [A-1]
RSS - Rockdale, Sandow & Southern Railroad Company [D]
SMA - San Manuel Arizona Railroad Company [D]
ST - ST Rail System
TSRR - Tennessee Southern Railroad Company, Inc. [D]
UP - Union Pacific Railroad Company..... 50, 170,185, 410, 575, 576, 577, 579, 585, 591, 592, 630
WTNN - West Tennessee Railroad Corp. [D]

EXPLANATION OF NOTES

1. Items of general application in Sections 1 and 2 affecting the participation of all or large groups or numbers of carriers are not listed in this column.

ITEM 2.20-AC

CUMULATIVE INDEX OF NEW OR CHANGED ITEMS

New Items added in supplements and items in the original tariff which have been amended in supplements are listed below with reference to the supplement in which such items may be found. (See Item 15 for Method of Cancellation).

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ITEM 2.20-AC (Cont'd)

CUMULATIVE INDEX OF NEW OR CHANGED ITEMS

New Items added in supplements and items in the original tariff which have been amended in supplements are listed below with reference to the supplement in which such items may be found. (See Item 15 for Method of Cancellation).

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488-A	31
490-A	31
499-A	31
546-A	31
555-E	31
560-D	31
565-D	31
591-A	31
592-A	31
605-D	31
606-A	31

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

ITEM 2.20-AC (Cont'd)

CUMULATIVE INDEX OF NEW OR CHANGED ITEMS

New Items added in supplements and items in the original tariff which have been amended in supplements are listed below with reference to the supplement in which such items may be found. (See Item 15 for Method of Cancellation).

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635-A	31
640-A	31
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650-A	31
1200-A	31
1205-A	31
1220-A	31
1245-A	31
1250-A	31
1610-A	31

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

28 **ITEM 35-B**

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

The provisions of Item 187-Series "Equalization of Mileage on Tank Cars of Private Ownership", will not apply in connection with carriers named below:

Angelina and Neches River Railroad Company
Apache Railway Company, The
Escanaba and Lake Superior Railroad Company
Iowa Interstate Railroad, Ltd.
Kansas City Southern Railway Company (Stations 31011 to 31315 only)
Mississippi Export Railroad
Providence and Worcester Railroad Company
Tomahawk Railway, Limited Partnership
Trona Railway Company
Tulsa Sapulpa Union Railway Company

(Carriers formerly listed herein and not brought forward are hereby canceled.)

9 **ITEM 55-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

7 **ITEM 64-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

17 **ITEM 99-A**

CANADIAN PACIFIC RAILWAY
(EXCEPTION TO ITEM 190)

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via CPRS from or to said facilities unless the empty movement is immediately preceded by a loaded revenue movement via CPRS. In all other circumstances, the published tariff charges in Tariff CP 4000 Series for movement of empty cars on their own wheels shall apply and will be assessed to the car owner.

On shipments moving within Canada, CP's Mileage Equalization program in Tariff CP 6 applies, except on miles in Canada for "bridge traffic" which only passes through the Canada for routing purposes that are under the terms of this tariff.

1 **ITEM 104**

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD (CSS)

The provisions of Item 190 Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving via Chicago South Shore and South Bend Railroad from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via Chicago South Shore and South Bend Railroad. In all other circumstances, the applicable CSS publication for the movement of empty cars on their own wheels shall apply.

2 **ITEM 112-A**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY (EJE)

For rules to apply, see Item 90 of FT RIC 6007-N.

26 **ITEM 120-A**

IOWA INTERSTATE RAILROAD, LTD (IAIS)
(Exception to Item 190-Series)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving to or from facilities served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the IAIS. In all other circumstances, the published tariff charges in Tariff IAIS 3000-Series for movement of empty cars on their own wheels shall apply.

18 **ITEM 121-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

[16] ITEM 150-D

ST RAIL SYSTEM

1. The provisions of Item 190 Series or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via ST Rail System from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the ST Rail System. In all other circumstances, the published tariff charges in Tariff ST 4020 Series for movement of empty cars on their own wheels shall apply.

2. The provisions of Item 180 Series concerning the payment of mileage will not apply to cars which are moving via ST Rail System under rates published in tariffs, quotes or contracts that are identified as "zero mileage rates". In the event that the party responsible for the payment of freight charges associated with zero mileage rates is different than the party to whom the reporting marks for said cars are assigned, the car owner must secure mileage payments from the freight paying party.

♦ ITEM 170

[A]

UNION PACIFIC RAILROAD COMPANY
(EXCEPTION TO ITEM 190)

Provisions of Item 190-series, or any other provision provided in this tariff, regarding the movement of empty tank cars without charge to or from Repair Facilities will not apply for the account of UP. Movements of empty tank cars to or from Repair Facilities will be subject to the rules and charges provided in the applicable UP tariff(s). For purposes of this Item, the capitalized term "Repair Facilities" means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

[25] ITEM 180-A

PAYMENT OF MILEAGE

1. Upon written application reporting marks will be assigned to car owner or lessee by the Assistant Vice President, Business Services, Association of American Railroads, provided applicants are subscribers to the AAR Mechanical Interchange Agreement. Applications for reporting marks shall state the owner and lessee for cars under lease. Contact information is required in FindUs.Rail (www.Railinc.com).

2. Mileage allowance must be reported to the car owner (person or company at a single address, to whom the reporting marks are assigned) within one (1) month and ten (10) days from the last day of the month in which it is earned including payment for cars on hand at the end of that month.

3. Mileage allowance for the use of tank cars will be paid only to the person or company at a single address, to whom the reporting marks are assigned provided cars are properly equipped and marked with the assigned reporting marks and car number, and providing further that:

   A. A description of each car is furnished to the Assistant Vice President, Business Services, AAR, as required in the Umler file for the assignment of applicable mileage allowances. Such information received by the Assistant Vice President by the last working day of the month except, data transfers requiring data entry by AAR/Railinc staff must be received by the 25th day of the month, will be effective the first day of the subsequent month. Cars registered with transportation code "S_", "SX", "XA", "XZ" or "YA" are not eligible for mileage allowances and will be assigned a zero rate.

4. Reporting marks assigned to private car owners shall consist of four letters including the final letter "X".

5. Assigned reporting marks must be painted or stenciled on the body of the car. When reporting mileage allowances, the carding, placarding, or boarding of cars will not be recognized.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

25 ITEM 182-A

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

1. Deductions By Railroads To Private Car Owners

A. Mileage allowed in error, by a railroad, including, but not limited to mileage allowed at incorrect rates for any reason, may be deducted from the car owner's account within twenty-four (24) months from the last day of the month for which the mileage was reported as earned, but not later. A railroad may tender an invoice for mileage allowed in error at any time within twenty-four (24) months from the last day of the month for which the mileage was reported as earned. Except as provided in paragraph 3, an owner-lessor of a private car must remit within eight (8) months after the invoice is presented the entire amount of any invoice issued to it.

B. Deductions for amounts of $25.00 or less shall not be taken after the expiration of two (2) months and ten (10) days from the last day of the month the mileage was earned.

2. Claims Issued By Private Car Owners To Railroads

A. A private car owner must, within twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier in the prescribed AAR format, as published in AAR Circular No. OT-3 Series at www.Railinc.com, Reference Files. Claims not presented in the required format will not be processed. The railroad receiving the claim must within the four (4) months from the date on which the claim was presented allow it in whole or in part, or decline it. The private car owner may reissue its claim, if applicable within four (4) months from the last day of the four (4) months' period allowed the railroad which handled the claim prior to reissuance. The railroad receiving the reissue claim must within four (4) months from the date of which the reissued claim was presented allow it in whole or in part or decline it. If the railroad fails to handle the original or reissued claim within the prescribed time limits, it will constitute a valid claim as last presented and must be honored by the railroad to which presented. Claim for amounts of $25.00 per car per cycle or less shall not be issued. The $25.00 limit is not applicable where no miles were reported for the railroad cycle.

3. Claims by Owners-Lessors

A. If a railroad takes a deduction against or issues an invoice to an owner-lessor for mileage allowed in error, including, but not limited to, mileage allowed at incorrect rates for any reason, but the erroneous allowance payment is not recoverable by the owner-lessor as defined below, the owner-lessor may present a claim for the recovery of the amounts deducted by the railroad or the cancellation of an unpaid invoice within two (2) years of receiving notice of the railroad's deduction or invoice.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

25 ITEM 182-A

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

3. Claims by Owners-Lessors (Cont'd)

A. (Cont'd) For application of this tariff provision, an owner-lessor may claim that an erroneous mileage payment is "not recoverable" only when (a) the erroneous mileage payment was actually paid or credited by the owner-lessor to a lessee (except those lessees whose primary business is the leasing of cars to entities other than those within a lessee's corporate family and who ship only incidentally) irrespective of whether the lessee subsequently paid or credited the mileage allowance payment to a sublessee; (b) the erroneous allowance payment cannot be recovered from the lessee because the lessee has declared bankruptcy or sought reorganization or is no longer a lessee of the owner-lessor; (c) the owner-lessor exercised timely efforts to recover the erroneous allowance payment beginning within ninety (90) days of receiving notice of the railroad's deduction or invoice; and (d) the owner-lessor undertook diligent collection efforts to recover the erroneous allowance payments until eight (8) months from the date of such notice or invoice (or until the earlier date of initiation of bankruptcy/reorganization proceedings), including making demands for payment and taking deductions against lessees' accounts. Such a claim must be accompanied by a certificate assigned by an officer or other person specifically authorized to sign the certificate of the owner-lessor stating how the claim satisfied each of the requirements set forth above, together with documents reflecting the owner-lessor's collection efforts. If, using reasonable efforts, the railroad is unable to determine whether the lessee's primary business is the leasing of cars to entities other than those in the lessee's corporate family, it shall consult with the owner-lessor, which shall provide the railroad with any evidence of the lessee's shipping activities which may be available to the owner-lessor using reasonable efforts. The owner-lessor shall provide the railroad with an assignment of the owner-lessor's claims and rights to collect the amount not recovered upon payment of the claim of cancellation of the invoice by the railroad.

B. If the railroad had deducted the amount of an erroneous allowance payment from an owner-lessor, the railroad must remit to the owner-lessor the amount deducted within four (4) months of its receipt of a properly presented, valid claim from the owner-lessor.

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187-I

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

1. Should the aggregate empty mileage accumulated by tank cars carrying any of the reported marks assigned to any one person or company during a calendar year exceed the aggregate loaded mileage during the same calendar year by more than six (6) percent, such excess mileage must be paid for by the person or company to whom the reporting marks are assigned at the rate of ninety-one (91) cents per mile, without minimum, subject to the procedures outlined in Part D (See Note 2, this item).

2. Mileage on empty cars moving on revenue billing will not be included in the equalization account.

3. Empty mileage accumulated on cars moving to and from repair facilities for modification under DOT mandated retrofit programs or for inspection and/or repair under FRA Emergency Orders will not be included in the equalization account. Empty mileage accumulated on cars moving under AAR Early Warning/Maintenance Advisory letters to and from repair facilities associated with the removal of certain truck bolsters that were manufactured by the National Castings of Mexico facility in Sahagun, Mexico, will not be included in the equalization account.▲

4. Except as outlined in Item 190 Series, Paragraph 2 (C), no adjustments to loaded or empty mileage will be made in the equalization account for mileage caused by error in handling of the reporting railroad or of another railroad, or for mileage accumulated on cars moving on their own wheels to and from repair facilities due to railroad damage or for mileage accumulated due to longer routes for railroad convenience, detours and Surface Transportation Board Service Orders. Rail carriers will make equalization adjustments to the owners of excess reported on-line empty mileage on cars, they lease and operate under private marks, or cars of other lessees and/ or owners operating on their line for company material, weed killer and similar service.

5. Adjustments to loaded or empty mileage will be made in the AAR equalization account for apparent accounting errors in the total mileage reported for participating rail carriers under the following procedures. In the absence of appropriate adjustments being made by the AAR or a participating carrier for such accounting errors, a private car company or owner may request an appropriate adjustment for mileage summaries reported in error, from the involved rail carrier in the format prescribed by the AAR, provided such request is made within thirty (30) days of the forwarding of the monthly AAR "Year to Date Equalization Register", containing the alleged error, furnishing a duplicate of such request to the Assistant Vice President, Business Services, AAR. The rail carriers will have thirty (30) days from the date of such request in which to decline or make all or a portion of the requested adjustment, advising the Assistant Vice President of the handling accorded.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187-I (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

5. (Cont'd) If the rail carrier fails to act upon a request for adjustments in the AAR summary totals within the specified time frame, the AAR is authorized to make the adjustment to the equalization account of the private car company or owner for the amount of mileage originally requested. Exceptions to the annual national equalization statement will be handled in accordance with the provisions of Part D (2).

   ALL requests for adjustments to the equalization account must be presented by the private car company or owner to the involved rail carrier(s) or presented by the rail carrier(s) to the private car company or owner within three (3) years from the last day of the reporting month in question. However, such request for adjustments will not be accepted by the AAR if the involved rail carrier or car owner is no longer an operating entity, except as provided for in Part C.

6. Aggregate loaded and empty mileage will be computed on the basis of actual distance, as defined in Item 185-Series. Adjustments made subsequent to the deadline specified in Part D will be computed in the subsequent equalization account year.

PART B
REPORTING OF ACTUAL LOADED AND EMPTY MILEAGE

Each participating carrier will submit a monthly mileage report in the format prescribed by the AAR to the assignee of each reporting mark forty (40) days after the close of the movement month reporting by individual car number the actual loaded and empty miles moved as computed in accordance with Item 185-Series. In addition, total actual monthly loaded and empty mileage accumulated by all cars bearing each reporting mark will be reported to the assignee of such mark in the format prescribed by the AAR, furnishing a duplicate of this summary report to the Assistant Vice President, Business Services, AAR. Adjustments for prior months will be indicated on this monthly summary report.

PART C
CHANGE OF OWNERSHIP

When a private tank car company or owner discontinues business or disposes of all tank car equipment, any excess empty mileage balance which has accrued to the date of such action, on the tank cars bearing the reporting marks of such company or owner, shall be subject to bill as of that date, in accordance with the provisions of Parts A and D of Item 187-Series, subject to any applicable adjustments.

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187-I (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

1. After May 20 of each year, the Assistant Vice President, Business Services, AAR will summarize all empty and loaded mileage by reporting mark assigned to any person or company, reporting for the proceeding calendar year, by all participating carriers to this tariff. Should the aggregate empty mileage exceed the aggregate loaded mileage of all participating carriers by more than (6) percent for any such group of reporting marks, the person or company to whom the reporting marks are assigned will be billed at the rate of ninety-one (91) cents per mile without minimum and must pay the AAR on behalf of each participating carrier for such excess for such empty mileage. The charges collected for this excess empty mileage will be distributed to the participating carriers by the AAR in direct proportion to such carriers portion of excess empty mileage to the total accumulated excess empty mileage. Only that mileage and any related adjustments reported to the Assistant Vice President prior to May 20 will be considered in determining and excess empty mileage, as outlined herein (See Notes 1, 2 and 3).

2. An annual national equalization statement detailing the excess empty mileage accumulated and any applicable charges will be tendered by the Assistant Vice President to the person or company assigned the reporting mark(s) for such cars for verification no later than July 1 of the year succeeding the equalization accounting year. Exceptions to this statement must be received by the Assistant Vice President within 30 days of the date tendered, and payment for all excess empty mileage is due immediately thereafter. Any adjustments made by the participating carriers up to and including the March account applicable to the prior year(s) will be incorporated in the equalization accounts for the prior equalization accounting year. Any railroad or AAR adjustments made subsequent to the March account will be carried over to the following equalization accounting year (see Note 3).

3. A private car company or owner failing to render complete payment for all excess empty mileage within thirty (30) days of the date its equalization statement is tendered by the AAR will be subject to a penalty of one and a half percent (1.5%) interest per month (i.e., annual rate of 18%) for each calendar month or fraction thereof on any outstanding balance due from the date of the AAR's invoice statement. If any portion of a private car company's or owner's equalization statement remains unpaid in excess of 3 months from the date initially tendered, all mileage allowances accrued by the tank cars registered in the Umler file bearing its reporting marks will be withheld by the carriers participating in this item until such time as complete payment including applicable penalty interest is made. Once complete payment is made, the participating carriers will be notified by the AAR and claims for any applicable mileage allowances withheld will be honored, less a 15% penalty charge for the carriers' administrative expense.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187-I (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

EXPLANATION OF NOTES

1. The ninety-one (91) cents per mile charges for excess empty mileage under the provisions of this item is subject to revision September 1 of each year under Ex Parte No. 328 agreed annual update procedures, and will be retroactively applied to cover the entire calendar year involved.

2. Close out dates specified in Part D may be extended by the AAR for a maximum of 60 days for special national accounting problem conditions, affecting substantially all carriers and all owners.

3. Invoices that have been issued which, after investigation, are determined to have been erroneous due to rail carriers or AAR accounting and/or system errors may be cancelled by the Assistant Vice President.

30 ITEM 192-G
HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS
(SEE NOTE 1)

1. The rules and charges in this item apply only to empty private tank cars consigned to non-railroad repair facilities; i.e., facilities for cleaning, lining, relining, maintenance, modification or repair.

2. The rules and charges do not apply to:

   A. Empty private tank cars moving as revenue freight under the provisions of Item 190-Series, Paragraph B 2.

   B. Empty private tank cars handled or held for carrier operating convenience.

   C. Empty private tank cars en route to facilities for cleaning, lining, relining or repair for heavy repairs following railroad damage.

   D. Empty private tank cars en route to repair facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.

3. No allowance will be made by carriers for mileage accrued during supplemental empty movement of tank cars that are assessed charges as provided in Paragraph 5.

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 192-G** (Cont'd)

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS (SEE NOTE 1)

4. Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to their cleaning, lining, relining, maintenance, modification or repair facility (or their owned or leased tracks in the vicinity thereof) before the expiration of 48 hours free time (not counting Saturdays, Sundays or holidays) after placement. The time calculation will start the first 7 A.M. subsequent to carrier notification to the consignee that the empty private car is ready for placement and the time calculation will stop when the carrier places or forwards the car pursuant to instructions or should have placed or forwarded the car pursuant to instructions.

5. After expiration of free time as provided in Paragraph 4, charges will be as follows: (See Note 2)

   A. Supplementary handling charge of $101.00 per car.

   B. Holding charge of $1 per car per calendar day or fraction thereof including Saturdays, Sundays and holidays while held by carrier on non-leased tracks awaiting disposition.

6. In the event the consignee orders the car to tracks owned or leased by the consignee in the vicinity of the facility for cleaning, lining, relining, maintenance, modification or repair within the forty-eight hour period described under Paragraph 4, this item, there will be no supplementary handling charge for the movement; however, such cars will be subject to the supplementary handling charge of $101.00 per car (See Note 2) at such time that the empty tank car is subsequently ordered and moved onto the facility for cleaning, lining, relining, maintenance, modification or repair or ordered moved from that facility to the tracks or leased by the consignee in the vicinity of the facility.

7. Applicable billing will be monthly to the facility involved.

EXPLANATION OF NOTES

1. The rules and charges in this item do not in any way supersede or duplicate existing, or new written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.

2. Per ExParte No. 328, the supplemental handling charge will be revised annually at the same time as the tank car mileage allowance update, utilizing the same method as that prescribed for updating the excess mileage equalization charge.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 195-M**

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

Mileage rate allowance for cars of foregoing mechanical designations shall be in cents per loaded mile (See Notes 2 and 7) as follows:

COLUMN 1 - Original cost or fair market value in dollars (see Notes 3, 4, 5 and 6, this item).
COLUMN 2 - Cars in service years 1 through 30.
COLUMN 3 - Cars in service years 31 and over.

COLUMN 1	COLUMN 2	COLUMN 3
$ 0 – 1000	30.4	30.1
1001 – 2000	31.1	30.2
2001 – 3000	31.8	30.2
3001 – 4000	32.4	30.3
4001 – 5000	33.1	30.3
5001 - 6000	33.7	30.3
6001 - 7000	34.4	30.4
7001 - 8000	35.1	30.4
8001 - 9000	35.7	30.5
9001 - 10000	36.4	30.5
10001 - 11000	37.1	30.6
11001 - 12000	37.7	30.6
12001 - 13000	38.4	30.7
13001 - 14000	39.1	30.7
14001 - 15000	39.7	30.8
15001 - 16000	40.4	30.8
16001 - 17000	41.0	30.9
17001 - 18000	41.7	30.9
18001 - 19000	42.4	30.9
19001 - 20000	43.0	31.0
20001 - 21000	43.7	31.0
21001 - 22000	44.4	31.1
22001 - 23000	45.0	31.1
23001 - 24000	45.7	31.2
24001 - 25000	46.4	31.2
25001 - 26000	47.0	31.3
26001 - 27000	47.7	31.3
27001 - 28000	48.3	31.4
28001 - 29000	49.0	31.4
29001 - 30000	49.7	31.4
30001 - 31000	50.3	31.5
31001 - 32000	51.0	31.5
32001 - 33000	51.7	31.6
33001 - 34000	52.3	31.6
34001 - 35000	53.0	31.7
35001 - 36000	53.7	31.7
36001 - 37000	54.3	31.8
37001 - 38000	55.0	31.8
38001 - 39000	55.7	31.9
39001 - 40000	56.3	31.9

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
40001 - 41000	57.0	31.9
41001 - 42000	57.6	32.0
42001 - 43000	58.3	32.0
43001 - 44000	59.0	32.1
44001 - 45000	59.6	32.1
45001 - 46000	60.3	32.2
46001 - 47000	61.0	32.2
47001 - 48000	61.6	32.3
48001 - 49000	62.3	32.3
49001 - 50000	63.0	32.4
50001 - 51000	63.6	32.4
51001 - 52000	64.3	32.5
52001 - 53000	64.9	32.5
53001 - 54000	65.6	32.5
54001 - 55000	66.3	32.6
55001 - 56000	66.9	32.6
56001 - 57000	67.6	32.7
57001 - 58000	68.3	32.7
58001 - 59000	68.9	32.8
59001 - 60000	69.6	32.8
60001 - 61000	70.3	32.9
61001 - 62000	70.9	32.9
62001 - 63000	71.6	33.0
63001 - 64000	72.2	33.0
64001 - 65000	72.9	33.0
65001 - 66000	73.6	33.1
66001 - 67000	74.2	33.1
67001 - 68000	74.9	33.2
68001 - 69000	75.6	33.2
69001 - 70000	76.2	33.3
70001 - 71000	76.9	33.3
71001 - 72000	77.6	33.4
72001 - 73000	78.2	33.4
73001 - 74000	78.9	33.5
74001 - 75000	79.5	33.5
75001 - 76000	80.2	33.6
76001 - 77000	80.9	33.6
77001 - 78000	81.5	33.6
78001 - 79000	82.2	33.7
79001 - 80000	82.9	33.7

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SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 ITEM 195-M (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
80001 - 81000	83.5	33.8
81001 - 82000	83.9	33.7
82001 - 83000	84.3	33.7
83001 - 84000	84.7	33.6
84001 - 85000	85.1	33.5
85001 - 86000	85.5	33.5
86001 - 87000	85.9	33.4
87001 - 88000	86.2	33.4
88001 - 89000	86.6	33.3
89001 - 90000	87.0	33.2
90001 - 91000	87.4	33.2
91001 - 92000	87.7	33.1
92001 - 93000	88.1	33.1
93001 - 94000	88.5	33.0
94001 - 95000	88.8	32.9
95001 - 96000	89.2	32.9
96001 - 97000	89.6	32.8
97001 - 98000	89.9	32.8
98001 - 99000	90.3	32.7
99001 - 100000	90.6	32.7
100001 - 101000	91.0	32.6
101001 - 102000	91.3	32.6
102001 - 103000	91.7	32.5
103001 - 104000	92.0	32.4
104001 - 105000	92.4	32.4
105001 - 106000	92.7	32.3
106001 - 107000	93.1	32.3
107001 - 108000	93.4	32.2
108001 - 109000	93.7	32.2
109001 - 110000	94.0	32.1
110001 - 111000	94.4	32.1
111001 - 112000	94.7	32.0
112001 - 113000	95.0	32.0
113001 - 114000	95.4	31.9
114001 - 115000	95.7	31.9
115001 - 116000	96.0	31.8
116001 - 117000	96.3	31.8
117001 - 118000	96.7	31.7
118001 - 119000	97.0	31.7
119001 - 120000	97.3	31.6

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 195-M** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
120001 - 121000	97.6	31.6
121001 - 122000	97.9	31.5
122001 - 123000	98.2	31.5
123001 - 124000	98.5	31.4
124001 - 125000	98.8	31.4
125001 - 126000	99.1	31.3
126001 - 127000	99.4	31.3
127001 - 128000	99.7	31.2
128001 - 129000	100.0	31.2
129001 - 130000	100.3	31.1
130001 - 131000	100.6	31.1
131001 - 132000	100.9	31.0
132001 - 133000	101.2	31.0
133001 - 134000	101.5	31.0
134001 - 135000	101.8	30.9
135001 - 136000	102.1	30.9
136001 - 137000	102.4	30.8
137001 - 138000	102.6	30.8
138001 - 139000	102.9	30.7
139001 - 140000	103.2	30.7
140001 - 141000	103.5	30.6
141001 - 142000	103.8	30.6
142001 - 143000	104.0	30.6
143001 - 144000	104.3	30.5
OVER - 144000	104.6	30.5

EXPLANATION OF NOTES

1. Designating symbols (mechanical designation) will be assigned to car owner or lessee by the Executive Director, Rules and Standards, Technical Services, Association of American Railroads, upon written application.

2. For mileage allowance purposes, the service year of a car is calculated based upon year of construction of underframe. A car's first service year is the year built. Its second service year begins on January 1 of the year following the year built, with succeeding service years starting on January 1 of each following year. If the tank's service year exceeds 30, the car's service year is considered to be in excess of 30 regardless of year of construction of underframe. For those cars constructed without an underframe, the car's service year is calculated based upon year of construction of tank. Service year is determined by subtracting the year of construction (built/rebuilt) from the current calendar year, plus 1, e.g., (2000 - 1970) + 1 = 31, or Service Years 31 and over allowance bracket.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 195-M** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows:

   A. For cars built between January 1, 1968 and July 1, 1991, assignment of owned or leased cars to value groups will be determined by the original cost as represented to the original buyer by the manufacturer's invoice price at the time of original installation into service. In the case of a manufacturer-lessor, the fair market value or the value which was certified, or would have been certified, for investment tax credit purposes shall be substituted therefore.

   B. Assignment to value groups of cars placed into service after July 1, 1991 will be determined by the original cost of the car to the original buyer as stated in the manufacturer's invoice. In only two circumstances, owners may certify as alternative "true value" in lieu of invoice price: (a) manufacturers who retain cars for their own leasing service and (b) purchasers who can demonstrate that they contributed physical assets of significant value that were used by the manufacturer in fabricating a car, resulting in a reduction of the invoice price by more than $1,000 per car below the price that otherwise would have been charged. For manufacturers "true value" is the price for which a car or group of cars manufactured as a group would have been sold in an arm's length transaction. For purchasers who have made a qualifying contribution to fabrication, "true value" is the invoice price plus the depreciated value of the contributed assets distributed over the cars for which the assets were used, subject to the same limitations on "true value" which would apply to a manufacturer. "True value" shall not exceed the average price of similar cars registered in Umler at invoice price within the most recent 12 months for which registration information is available in Umler, adjusted for changes in the market values of new tank cars as reflected in average car prices. If the AAR determines by audit that a certified "true value" exceeds this value limit by an amount that causes a car to be placed in a higher allowance value bracket, the value of the car will be reduced to the appropriate value bracket. In addition, if the AAR determines by audit that a certified, "true value" exceeds this value limit by an amount that causes a car to be placed in allowance value bracket more than one bracket above the otherwise applicable bracket, excess allowances paid as a result of the over valuation shall be reimbursed to the paying railroads.

   Those owners who certify a "true value" in lieu of invoice price during the calendar year must provide to the AAR an officer's certificate at the end of the year stating that, based on all information available to the owner, the owner has complied with the terms of this item. Car owners must supply for entry into Umler all information required for tank cars in the Umler Data Specification Manual. Notwithstanding any other provision of this tariff item, "true value" will be subject to audit directly by the AAR.

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 195-M** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

C. If applicable, initial into service transportation costs, capitalized original lining costs, capitalized additions and capitalized betterments shall be added to car values determined pursuant to Paragraphs 3 (A) and 3 (B), above, if not already included in the value of the car. For cars built after January 1, 1988, capitalized inspection costs shall be added to the value, if applicable and if not already included in the value, if applicable and if not already included in the value of the car. Values other than invoice price shall be identified in accordance with the current AAR Umler Data Specification Manual at the time cars are submitted to the Assistant Vice President, Business Services, AAR, for registration in the Umler file (see Note 6, this item).

D. The rebuilt year and rebuilt valuation of a private car will be utilized for the purpose of computing applicable mileage allowances subject to the following conditions:

1. The car must be rebuilt in accordance with the current requirements of Rule 88, Section C of the Office Manual and Sections A & B of the Field Manual, AAR Interchange Rules, Application for official rebuilt status must be filed with the Executive Director, Rules and Standards, AAR Technical Services and written formal approval received prior to registering such car in the Umler file with rebuilt age and valuation data.

2. Assignment of owned or leased rebuilt cars to value groups will be determined as outlined in Notes 3. (A), 3. (B) and 3. (C) herein, except that the maximum valuation of a rebuilt private car shall not exceed the lesser of:

a. 75 percent of the original cost of a comparable new car.
b. 75 percent of the calculated replacement cost of the rebuilt car prior to rebuilding, as computed per AAR Interchange Rule 107.

E. All car ages and values submitted are subject to verification by the AAR, and audit by the AAR or the owners independent public accountant upon reasonable request by the AAR. If the car owner elects to have the audit performed by its independent public accountant, such audit must be performed in a timely fashion in the manner prescribed by the AAR, will be performed at the car owner's expense and must be duly certified by the car owner's auditor as representing the true value of all cars included in such audit. Failure of the car owner to furnish the required car valuation data to the AAR Umler file, to arrange for the requested audit, or to correct errors determined as a result of such audit, will result in such car(s) being assigned to the lowest applicable mileage allowance rate group.

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SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 195-M** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

F. Maximum original cost of fair market value will be as follows:

1. For cars built in 1981 and prior	$ 64,001
2. For cars built in 1982	$ 58,001
3. For cars built in 1983	$ 56,001
4. For cars built in 1984	$ 51,001
5. For cars built in 1985	$ 54,001
6. For cars built in 1986	$ 66,001
7. For cars built in 1987	$ 62,001
8. For cars built in 1988	$ 63,001
9. For cars built in 1989	$ 64,001
10. For cars built in 1990	$ 67,001
11. For cars built in 1991	$ 71,001
12. For cars built in 1992	$ 70,001
13. For cars built in 1993	$ 76,001
14. For cars built in 1994	$ 74,001
15. For cars built in 1995	$ 80,001
16. For cars built in 1996	$ 83,001
17. For cars built in 1997	$ 84,001
18. For cars built in 1998	$ 89,001
19. For cars built in 1999	$ 94,001
20. For cars built in 2000	$ 92,001
21. For cars built in 2001	$ 106,001
22. For cars built in 2002	$ 109,001
23. For cars built in 2003	$ 85,001
24. For cars built in 2004	$ 93,001
25. For cars built in 2005	$ 101,001
26. For cars built in 2006	$ 97,001
27. For cars built in 2007	$ 112,001
28. For cars built in 2008	$ 112,001
29. For cars built in 2009	$ 117,001
30. For cars built in 2010	$ 102,001
31. For cars built in 2011	$ 107,001
32. For cars built in 2012	$ 129,001
33. For cars built in 2013 and subsequent	$ 144,001

NOTE: Age is determined by subtracting the year of construction (built/rebuilt) from the current calendar year plus 1. e.g. (2014-2010) + 1 = 5

4. For cars built or rebuilt subsequent to December 31, 1977, all values reported to the AAR Umler file must be stated in equivalent U.S. dollars based on the applicable exchange rate at the time such cars were built or rebuilt. Subsequent capitalized additions and betterments reported to Umler must also be stated in equivalent U.S. dollars at the time such improvements were made.

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For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 195-M** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

5. Applies as follows:

   A. Into service transportation costs are those freight charges associated with the movement of a car that is ready for its first load to the locations of the car's original installation into service. Other transportation charges incurred during construction (e.g., to a facility which installs the original lining, etc) may be included in ledger value provided that the cost is capitalized.

   B. A capital expenditure is an expenditure intended to benefit future periods in contrast to revenue expenditure/current expense which benefits a current period. It is an addition to a capital asset and is initially reflected on the balance sheet. A capital expenditure normally is subject to depreciation in future years.

   C. Applies as follows:

      1. An addition or betterment has the effect of:

         a. Extending the useful life of a car beyond the life projected when the car was entered into service; or
         b. Increasing a car's normal use beyond that which was in effect when the car was entered into service; or
         c. Lowering the operating costs beyond that which was in effect at the time the car was entered into service; or
         d. Otherwise adding to the worth of the benefits a car can yield beyond that in effect when the car was entered into service (e.g., enhance safety, etc).
         e. Any repair that maintains a car in its customary state of operating efficiency is NOT an addition or betterment.

      2. An addition is the installation of a new component of a car (not a replacement) which meets the above tests. The value registered in Umler shall be the cost of the component added, including labor.

      3. A betterment is the replacement of a component of the car with a superior component. The value registered in Umler for a betterment should not exceed the cost of the superior component, including labor minus (1) the original value of the component that was replaced (i.e., retired) and (2) the cost (i.e., expense) incurred in removing the old component.

      4. When a unit of property is removed from a car (i.e., partial retirement), the ledger value registered in Umler shall be reduced by the original value of the unit removed.

      5. Any cost recovered under AAR Defect Car Billing, if applicable, must be deducted from the cost of an addition or betterment.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

30 **ITEM 195-M** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

6. Applies as follows:

   A. When an owner: (1) makes a valuation correction to the Umler file; or (2) changes the mechanical designation of cars registered in the Umler file; and such changes result in an increase or decrease in the mileage allowance rates, the Assistant Vice President, Business Services, AAR, will be so notified and the increase or decrease will be applied retroactively. Once cars have been reported to the Umler file, any of the foregoing corrections or changes that result in a retroactive increase or decrease in the mileage allowance rates will be identified by the Assistant Vice President. The car owner is required to furnish the Assistant Vice President documented proof of the basis of the correction or change and advise as to any applicable mileage allowance adjustments which are required.

   B. Retroactive Mileage Allowance Decrease: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate decrease, the owner will notify all using carriers of such decrease with either supporting details or a summary of the over-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carrier shall deduct such amount(s), in the next open mileage reports to the car owner, plus fifteen (15) percent to reimburse the handling road for audit and associated administrative expenses. If the owner fails to send notification to the users within five (5) months, the Assistant Vice President shall notify carriers of the car initial (s) and number(s) involved and the user(s) shall make an adjustment, as described above.

   C. Retroactive Mileage Allowance Increase: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate increase, the owner will notify all using carriers of such increase with either supporting details or a summary of the under-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carriers shall add such amount(s) in their next open mileage reports to the car owner, less fifteen (15) percent to reimburse the handling roads for audit and associated administrative expense. No retroactive mileage allowance rate increase will be applicable if the owner fails to notify the using carriers of such increase within five (5) months from the date of a change to the Umler file.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

[25] **ITEM 196-A**

EXPLANATION OF SYMBOL USED IN ITEM 195

SYMBOL	EXPLANATION
"T"	Tank Car. Tank car means any car which is used only for the transportation of liquids, liquefied gases, compressed gases, or solids that are liquefied prior to unloading. Car may be without underframe if container serving as superstructure is designed to serve as underframe. If car has underframe, it must be designed only for the carriage of one or more enclosed containers (with or without compartments) that form the superstructure and are integral parts of the car. All such containers must be securely attached to underframe when offered for transportation but may have demountable features.

SECTION 2
EXCEPTION TO APPLICATION AND RULES
APPLIES ON CARS OTHER TANK CARS

[25] **ITEM 400-A**

APPLICATION - APPLIES ON CARS OTHER THAN TANK CARS

1. The term "Cars of Private Ownership", when used in this tariff, is defined as cars bearing other than Railroad Reporting marks that are owned by individuals, firms, corporations, or car companies, including cars owned and/or operated by railroads controlled car lines.

2. Except as otherwise provided herein, these rules govern the handling of cars other than tank cars, including the payment of mileage allowances when used by railroads party to this tariff individually or jointly where specifically provided herein, for transportation over their lines, as follows:

   A. Between points in the United States (interstate and intrastate) including movements where part of the through route is through Canada.

   B. Internationally, i.e., between points in the United States and points in Canada.

   C. Between points in Canada in connection with the Norfolk Southern Railway Company.

   D. For that portion of the haul in the United States in connection with movements between points in Canada where part of the through route is through the United States.

SECTION 2
EXCEPTION TO APPLICATION AND RULES
APPLIES ON CARS OTHER TANK CARS

[25] **ITEM 405-A**

GENERAL EXCEPTION

1. The rules and mileage allowances published herein will not apply to:

   A. Cars that are not properly registered in the AAR's Umler file with assigned reporting marks and mechanical designations.

   B. Railroad controlled cars bearing private reporting marks equipped with bi- or tri-level racks moving under direction or authority of the rack owner en route to or from non-railroad facilities for the repair or modification of such racks.

2. Mileage allowances will not apply to cars handled under the provisions of Item 615, Parts A. 2. B. 2. B. and C. 2. D. and E.

[9] **ITEM 410-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

[9] **ITEM 416-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

[22] **ITEM 418-A**

(Provisions formerly shown herein and not brought forward are hereby canceled.)

For explanation of terms, abbreviations and reference marks not explained herein, see last page, this tariff.

EXHIBIT NO. 10

FREIGHT TARIFF RIC 6007-O

(For cancellations, see Item 1, this tariff)

MILEAGE ALLOWANCES AND RULES GOVERNING

THE HANDLING OF AND THE PAYMENT OF MILEAGE

ALSO CHARGES

ON
CARS OF PRIVATE OWNERSHIP
AS DEFINED IN ITEMS 25 AND 400

BY
RAILROADS PARTIES TO THIS TARIFF

For List of Participating Carriers, see Item 2.10

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

ISSUED: February 19, 2015 **EFFECTIVE: March 1, 2015**

ISSUED BY

RAILINC, AGENT
7001 WESTON PARKWAY, SUITE 200
CARY, NC 27513

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CHECK SHEET FOR PAGE REVISIONS

Except as otherwise provided, Title Page and pages 1 through 57, inclusive, are effective as of the date shown. Original and revised pages as named below contain all the changes. (New or revised Pages containing changes effective as of the Effective date shown below are highlighted in yellow.)

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27	Original						

- Effective March 1, 2015

ISSUED: November 5, 2015

EFFECTIVE: December 1, 2015
(Except as otherwise noted)

ISSUED BY: Railinc, Agent, 7001 Weston Parkway, Suite 200, Cary, NC 27513

For explanation of abbreviations and reference marks not explained herein, see Item 9999, this tariff.

LIST OF PAGE REVISIONS

Below is a list of new or revised pages issued to date. Except as noted, new or revised pages containing changes effective as of the Effective date shown below are highlighted in yellow.

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16	1						
17	1						
18	1						
19	1						
20	1						
29	1						

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For explanation of abbreviations and reference marks not explained herein, see Item 9999, this tariff.

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ITEM 1

CANCELLATION NOTICE

Freight Tariff RIC 6007-O cancels Freight Tariff RIC 6007-N and all supplements issued thereto.

Except as otherwise provided, provisions formerly shown in Freight Tariff RIC 6007-N, as supplemented, are hereby brought forward in Freight Tariff RIC 6007-O, in their entirety.

ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

AA - Ann Arbor Railroad.....412
AKDN - Acadiana Railway Company [D]
ANR - Angelina & Neches River Railroad Company [D]
APA - Apache Railway Company.....35
ASRY - Ashland Railway, Inc.

BLOL - BloomerLine, The
BNSF - BNSF Railway Company.....50,70,71, 73, 410, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 441, 442, 444, 445, 446, 448, 620, 630
BOCT - Baltimore and Ohio Chicago Terminal Railroad Company, The.....412
BPRR - Buffalo & Pittsburgh Railroad, Inc.....75, 449

CAGY - Columbus and Greenville Railway.....102, 453
CBRY - Copper Basin Railway, Inc.
CCKY - Chattanooga & Chickamauga Railway Co.
CIC - Cedar Rapids and Iowa City Railway Company.....80, 450
CM - Central Montana Rail, Inc.
CN - Canadian National Railway.....90, 185, 454, 457.50
CPRS - Canadian Pacific Railway.....99, 458, 459, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 630
CSS - Chicago SouthShore & South Bend Railroad.....104, 451, 452
CSXT - CSX Transportation, Inc., comprised of the following carriers:
Carrollton Railroad, The.
CSX Transportation, Inc.
Gainesville Midland Railroad Company.
Richmond, Fredericksburg and Potomac Railway Company.
Three Rivers Railway Company.
Western Railway of Alabama, The...106, 484, 486
CW - Colorado & Wyoming Railway Company, The
CWA - Central Washington Railroad Company

DKS - Doniphan, Kensett & Searcy Railway
DME - Dakota, Minnesota & Eastern Railroad.....487, 622
EJE - Elgin, Joliet and Eastern Railway Company [D]
ELS - Escanaba and Lake Superior Railroad Company.....35
ETRY - East Tennessee Railway, L.P.

(Continued in next column)

ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

GLC - Great Lakes Central Railroad
GNBC - Grainbelt Corporation.....620, 630
GNRR - Georgia Northeastern Railroad Company, Inc.
GRR - Georgetown Railroad Company
GWWE - Gateway Eastern Railway Company

HE - Hollis & Eastern Railroad Company
HPTD - High Point, Thomasville & Denton Railroad Company.....492

IAIS - Iowa Interstate Railroad, Ltd.....35, 120,121
IANR - Iowa Northern Railway.....495

KCS - Kansas City Southern Railway Company.....35, 124, 185, 504, 524, 526, 527, 630

LC - Lancaster and Chester Railway Company
LSI - Lake Superior & Ishpeming Railroad Company
LSRC - Lake State Railway Company

ME - Morristown & Erie Railway, Inc.
MRL - Montana Rail Link, Inc.....620, 630
MSE - Mississippi Export Railroad Company.....35

NHN - New Hampshire Northcoast Corporation
NS - Norfolk Southern Railway Company, comprised of the following carriers:
Norfolk and Western Railway Company
Norfolk Southern Railway Company.
Alabama Great Southern Railroad Company.
Atlantic and East Carolina Railway Company.
Camp Lejeune Railroad Company.
Central of Georgia Railroad Company.
Chesapeake Western Railway.
Cincinnati, New Orleans and Texas Pacific Railway Company.
Georgia Southern and Florida Railway Company.
Tennessee Railway Company.....131,135, 540,544,545,546,547, 548

NYSW - New York, Susquehanna and Western Railway Corp.

PR - Palmetto Railways
PW - Providence and Worcester Railroad Company.....35

RSR - Rochester & Southern Railroad, Inc.

SAN - Sandersville Railroad Company.....145, 550
SBVR - South Branch Valley Rail Road
SLC - San Luis Central Railroad Company, The
SM - St. Marys Railroad Company.....148, 554
SRN - Sabine River & Northern Railroad Company
ST - ST Rail System.....150, 555, 560, 565
SUN - Sunset Railway Company

(Continued on next page)

ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

TR - Tomahawk Railway, Limited Partnership.....35
TRC - Trona Railway Company.....35
TSU - Tulsa-Sapulpa Union Railway Company.....35

UP - Union Pacific Railroad Company..... 50, 170, 185, 410, 575, 576, 577, 579, 585, 591, 592, 630

VR - Valdosta Railway, L.P
WSS - Winston-Salem Southbound Railway Company.....595

EXPLANATION OF NOTES

1. Items of general application in Sections 1 and 2 affecting the participation of all or large groups or numbers of carriers are not listed in this column.

RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS

ITEM 5

REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC

1. Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

2. Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic or traffic to or from Canada.

ITEM 10

CONSECUTIVE NUMBERS

1. Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" of a hyphen they will be understood to include both of the numbers shown.

2. If the first number only bears a reference mark such reference mark also applies to the last number shown and to all numbers between the first and last numbers.

ITEM 15

CANCELLATION OF ORIGINAL AND REVISED PAGES

When this tariff is amended by revised pages, the cancellation of prior pages, will be affected by means of this rule. A revised page will not show a cancellation notice except when a cancellation notice is necessary because of suspension, rejection, or other reasons. Revisions of each page will be published and filed in numerical sequence. (Items containing changes will be highlighted in yellow.)

For Example: "1st Revised Page 6" will have the effect of canceling Original Page 6; "3rd Revised Page 72.1" will have the effect of canceling 2nd Revised page 72.1; and, 2nd Revised page 72.1 will have the effect of canceling 1st Revised page 72.1.

SECTION 1
APPLIES ONLY ON TANK CARS

ITEM 25

APPLICATION OF SECTION 1

1. The term "Cars of Private Ownership", when used in this tariff, is defined as cars bearing other than Railroad Reporting marks that are owned by individuals, firms, corporations, or car companies, including cars owned and/ or operated by railroad controlled car lines.

2. Except as otherwise provided herein, these rules govern the handling of tank cars including the payment of mileage allowances, when used by railroads parties to this tariff individually or jointly, where specifically provided herein, for transportation over their lines as follows:

   A. Between points in the United States (interstate and intrastate) including movements where part of the through route is through Canada.

   B. Internationally, i.e., between points in the United States and points in Canada. (Applicable only on that portion of the haul within the United States).

   C. For that portion of the haul in the United States in connection with movements between points in Canada where part of the through route is through the United States.

SECTION 1
EXCEPTION TO APPLICATION OF RATES
APPLIES ONLY ON TANK CARS

ITEM 30

GENERAL EXCEPTION

The rules and mileage allowances published herein will not apply to:

A. Cars that are not properly registered in the Official Railway Equipment Register, RER 6414-Series, showing capacities and assigned reporting marks.

B. Mileage allowances named in Item 195-Series of this tariff will not apply to cars handled under the provisions of Item 190.

ITEM 35

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

The provisions of Item 187-Series "Equalization of Mileage on Tank Cars of Private Ownership", will not apply in connection with carriers named below:

Angelina and Neches River Railroad Company [D]
Apache Railway Company, The
Escanaba and Lake Superior Railroad Company
Iowa Interstate Railroad, Ltd.
Kansas City Southern Railway Company (Stations 31011 to 31315 only)
Mississippi Export Railroad
Providence and Worcester Railroad Company
Tomahawk Railway, Limited Partnership
Trona Railway Company
Tulsa Sapulpa Union Railway Company

ITEM 40

(Provisions formerly shown herein and not brought forward are hereby canceled.)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 50

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

Empty privately-owned or leased tank cars used or to be used in Intra-Mexican service will be subject to the following provisions:

A. Owner or lessee shall secure an entry permit from the involved Mexican carrier prior to empty movement to the border crossing and permit number must be shown in the writing instructions accompanying such car.

B. Subsequent to Intra-Mexican service, written instructions for each car entering the U.S. must clearly indicate the exact consignee or facility for disposition of the car prior to movement beyond the border gateways.

C. Upon failure to comply with paragraphs A or B, a holding charge of $10.00 per day will be assessed for each 24 hours or fraction thereof beginning at 7:00 AM of the day following arrival of such empty privately owned or leased car at the border crossing, (excluding Saturdays, Sundays and holidays), until provisions of paragraphs A and B as applicable are fulfilled.

BNSF Railway Company
Union Pacific Railroad Company

ITEM 70

BNSF RAILWAY COMPANY (LINES IN CANADA)

This tariff also applies on all traffic moving over the lines of the BNSF in Canada.

ITEM 71

BNSF RAILWAY COMPANY
(EXCEPTION TO ITEM 190)

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, retrofit or repair, will not apply to such cars moving via BNSF to/from such facilities unless the empty movement is immediately preceded by a loaded line haul revenue movement via BNSF. In all other circumstances, the published tariff charges in BNSF 90020B, and other applicable BNSF price authorities, for the movement of empty cars on their own wheels shall apply and will be assessed to the car owner.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 73

BNSF RAILWAY COMPANY
(EXCEPTION TO ITEM 190)

When a tank car is released from load on BNSF, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be given to:

BNSF Railway Co.
Carload Billing
920 S.E. Quincy
Topeka, KS 66612
Telephone: (800) 786-2873
FAX: (800) 786-2455

prior to release of the empty car. If the owner or lessee of the car requests movement via a different route, or to a station other than the origin of the last movement, after release of the empty car, diversion provisions and charges, as named in BNSF Diversion Tariff 6200 Series, are applicable.

ITEM 75

BUFFALO & PITTSBURGH RAILROAD, INC. (BPRR)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving to or from facilities served by the BPRR unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the BPRR. In all other circumstances, the published tariff charges in Tariff BPRR 4004-Series for movement of empty cars on their own wheels to and from repair or storage facilities shall apply.

ITEM 80

CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY
(CIC)

The provisions of Item 190-Series or other provisions provided in this tariff for the movement of empty tank cars without charge to and from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, etc., will not apply for account of the CIC. For Rules and charges to apply, see Freight Tariff CIC 4006-Series.

ITEM 90

(For provisions formerly shown herein, see Item 90, Page 7.1)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

♦**ITEM 90**

CANADIAN NATIONAL RAILWAY COMPANY

The tariff rules contained herein regarding tank car movements will not apply to the movements described in Item 25.2.C. For those movements, the rules and charges contained in Tariff CN 6544 shall apply.

(Provisions formerly shown herein and not brought forward are hereby canceled.)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 99

CANADIAN PACIFIC RAILWAY
(EXCEPTION TO ITEM 190)

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via CPRS from or to said facilities unless the empty movement is immediately preceded by a loaded revenue movement via CPRS. In all other circumstances, the published tariff charges in Tariff CP 4000 Series for movement of empty cars on their own wheels shall apply and will be assessed to the car owner.

On shipments moving within Canada, CP's Mileage Equalization program in Tariff CP 6 applies, except on miles in Canada for "bridge traffic" which only passes through the Canada for routing purposes that are under the terms of this tariff.

ITEM 102

COLUMBUS AND GREENVILLE RAILWAY (CAGY)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge will not apply to such cars moving, to, from, or via the CAGY unless the empty movement is immediately preceded by or followed by a revenue movement via Columbus and Greenville Railway. In all other circumstances, charges published in the Uniform Freight Classification for movement of empty cars on their own wheels observing the single line minimum charge shall apply.

ITEM 104

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD (CSS)

The provisions of Item 190 Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving via Chicago South Shore and South Bend Railroad from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via Chicago South Shore and South Bend Railroad. In all other circumstances, the applicable CSS publication for the movement of empty cars on their own wheels shall apply.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 106

CSX TRANSPORTATION INC.

The participation of this carrier is restricted to movements over its lines, as follows:

A. Between points in the United States, including movements where part of the through route is through the Dominion of Canada.

B. For that portion of the haul in the United States on international movements, i.e., between points in the United States and points in the Dominion of Canada.

ITEM 112

(Provisions formerly shown herein and not brought forward are hereby canceled.)

ITEM 120

IOWA INTERSTATE RAILROAD, LTD (IAIS)
(Exception to Item 190-Series)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving to or from facilities served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the IAIS. In all other circumstances, the published tariff charges in Tariff IAIS 3000-Series for movement of empty cars on their own wheels shall apply.

ITEM 124

KANSAS CITY SOUTHERN RAILWAY COMPANY, THE

Provisions of Item 190 Series, or any other provision allowing for free switching service of an empty freight car (or cars) to or from shop facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to and from shop facilities served by KCS. Matter of switch charge will be handled by the applicable KCS Tariff.

ITEM 131

NORFOLK SOUTHERN RAILWAY COMPANY

When it is necessary to move a loaded private car to/from shop or repair facilities located on NS, NS will pay mileage payments not to exceed the amount that would have been earned had the car not required additional rail movements to/ from shop or repair facilities, provided that the mileage allowances for the loaded movement are not elsewhere restricted.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 135

NORFOLK SOUTHERN RAILWAY COMPANY
(EXCEPTION TO ITEM 190) (See NOTE 1)

When a car is released from load on NS, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be sent prior to release of the empty car via FAX, or NS internet application. If by fax send to:

FAX: 800-580-6092
Norfolk Southern Railway Company
Agency Operation Center
125 Spring Street South West
Atlanta, GA 30303

If the owner or lessee requests movement via a different route, or to a station other than the origin of the last loaded movement, after release of the empty car, diversion provisions and charges, as named in Norfolk Southern Tariff 8002 Series, are applicable.

EXPLANATION OF NOTE

1. If subject tank car has last contained Hazardous Materials, shipping paper must be furnished at the point of origin of the empty car for all moves whether they are reverse or not.

ITEM 145

SANDERSVILLE RAILROAD COMPANY (SAN)

Inbound tank car mileage will be used as an offset to outbound loaded mileage (or vice versa) and the SAN will pay no mileage based on freight mileage table from or to station on its line.

ITEM 148

ST MARYS RAILROAD COMPANY (SM)

Inbound tank car mileage will be used as an offset to outbound loaded mileage and the SM will pay no mileage based on freight mileage table:

From Kingsland, GA to St Marys, GA and from St Marys, GA to Kingsland, GA.

From Kingsland, GA to Kings Bay, GA and from Kings Bay, GA to Kingsland, GA.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 150

ST RAIL SYSTEM

1. The provisions of Item 190 Series or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via ST Rail System from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the ST Rail System. In all other circumstances, the published tariff charges in Tariff ST 4020 Series for movement of empty cars on their own wheels shall apply.

2. The provisions of Item 180 Series concerning the payment of mileage will not apply to cars which are moving via ST Rail System under rates published in tariffs, quotes or contracts that are identified as "zero mileage rates". In the event that the party responsible for the payment of freight charges associated with zero mileage rates is different than the party to whom the reporting marks for said cars are assigned, the car owner must secure mileage payments from the freight paying party.

ITEM 170

UNION PACIFIC RAILROAD COMPANY
(EXCEPTION TO ITEM 190)

Provisions of Item 190-series, or any other provision provided in this tariff, regarding the movement of empty tank cars without charge to or from Repair Facilities will not apply for the account of UP. Movements of empty tank cars to or from Repair Facilities will be subject to the rules and charges provided in the applicable UP tariff(s). For purposes of this Item, the capitalized term "Repair Facilities" means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 180

PAYMENT OF MILEAGE

1. Upon written application reporting marks will be assigned to car owner or lessee by the Assistant Vice President, Business Services, Association of American Railroads, provided applicants are subscribers to the AAR Mechanical Interchange Agreement. Applications for reporting marks shall state the owner and lessee for cars under lease. Contact information is required in FindUs.Rail (www.Railinc.com).

2. Mileage allowance must be reported to the car owner (person or company at a single address, to whom the reporting marks are assigned) within one (1) month and ten (10) days from the last day of the month in which it is earned including payment for cars on hand at the end of that month.

3. Mileage allowance for the use of tank cars will be paid only to the person or company at a single address, to whom the reporting marks are assigned provided cars are properly equipped and marked with the assigned reporting marks and car number, and providing further that:

   A. A description of each car is furnished to the Assistant Vice President, Business Services, AAR, as required in the Umler Data Specification Manual at www.Railinc.com, Products & Services for the assignment of applicable mileage allowances. Such information received by the Assistant Vice President by the last working day of the month except, data transfers requiring data entry by AAR/Railinc staff must be received by the 25th day of the month, will be effective the first day of the subsequent month. Cars registered with transportation code "S_", "SX", "XA", "XZ" or "YA" are not eligible for mileage allowances and will be assigned a zero rate.

4. Reporting marks assigned to private car owners shall consist of four letters including the final letter "X".

5. Assigned reporting marks must be painted or stenciled on the body of the car. When reporting mileage allowances, the carding, placarding, or boarding of cars will not be recognized.

ITEM 182

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

1. Deductions By Railroads To Private Car Owners

   A. Mileage allowed in error, by a railroad, including, but not limited to mileage allowed at incorrect rates for any reason, may be deducted from the car owner's account within twenty-four (24) months from the last day of the month for which the mileage was reported as earned, but not later. A railroad may tender an invoice for mileage allowed in error at any time within twenty-four (24) months from the last day of the month for which the mileage was reported as earned. Except as provided in paragraph 3, an owner-lessor of a private car must remit within eight (8) months after the invoice is presented the entire amount of any invoice issued to it.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 182 (Cont'd)

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

   B. Deductions for amounts of $25.00 or less shall not be taken after the expiration of two (2) months and ten (10) days from the last day of the month the mileage was earned.

2. Claims Issued By Private Car Owners To Railroads

   A. A private car owner must, within twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier in the prescribed AAR format, as published in AAR Circular No. OT-3 Series at www.Railinc.com, Reference Files. Claims not presented in the required format will not be processed. The railroad receiving the claim must within the four (4) months from the date on which the claim was presented allow it in whole or in part, or decline it. The private car owner may reissue its claim, if applicable within four (4) months from the last day of the four (4) months' period allowed the railroad which handled the claim prior to reissuance. The railroad receiving the reissue claim must within four (4) months from the date of which the reissued claim was presented allow it in whole or in part or decline it. If the railroad fails to handle the original or reissued claim within the prescribed time limits, it will constitute a valid claim as last presented and must be honored by the railroad to which presented. Claim for amounts of $25.00 per car per cycle or less shall not be issued. The $25.00 limit is not applicable where no miles were reported for the railroad cycle.

3. Claims by Owners-Lessors

   A. If a railroad takes a deduction against or issues an invoice to an owner-lessor for mileage allowed in error, including, but not limited to, mileage allowed at incorrect rates for any reason, but the erroneous allowance payment is not recoverable by the owner-lessor as defined below, the owner-lessor may present a claim for the recovery of the amounts deducted by the railroad or the cancellation of an unpaid invoice within two (2) years of receiving notice of the railroad's deduction or invoice. For application of this tariff provision, an owner-lessor may claim that an erroneous mileage payment is "not recoverable" only when (a) the erroneous mileage payment was actually paid or credited by the owner-lessor to a lessee (except those lessees whose primary business is the leasing of cars to entities other than those within a lessee's corporate family and who ship only incidentally) irrespective of whether the lessee subsequently paid or credited the mileage allowance payment to a sublessee; (b) the erroneous allowance payment cannot be recovered from the lessee because the lessee has declared bankruptcy or sought reorganization or is no longer a lessee of the owner-lessor; (c) the owner-lessor exercised timely efforts to recover the erroneous allowance payment beginning within ninety (90) days of receiving notice of the railroad's deduction or invoice;

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 182 (Cont'd)

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

3. Claims by Owners-Lessors

A. (Cont'd) and (d) the owner-lessor undertook diligent collection efforts to recover the erroneous allowance payments until eight (8) months from the date of such notice or invoice (or until the earlier date of initiation of bankruptcy/reorganization proceedings), including making demands for payment and taking deductions against lessees' accounts. Such a claim must be accompanied by a certificate assigned by an officer or other person specifically authorized to sign the certificate of the owner-lessor stating how the claim satisfied each of the requirements set forth above, together with documents reflecting the owner-lessor's collection efforts. If, using reasonable efforts, the railroad is unable to determine whether the lessee's primary business is the leasing of cars to entities other than those in the lessee's corporate family, it shall consult with the owner-lessor, which shall provide the railroad with any evidence of the lessee's shipping activities which may be available to the owner-lessor using reasonable efforts. The owner-lessor shall provide the railroad with an assignment of the owner-lessor's claims and rights to collect the amount not recovered upon payment of the claim of cancellation of the invoice by the railroad.

B. If the railroad had deducted the amount of an erroneous allowance payment from an owner-lessor, the railroad must remit to the owner-lessor the amount deducted within four (4) months of its receipt of a properly presented, valid claim from the owner-lessor.

ITEM 185

COMPUTATION OF MILEAGE
(See Exceptions 1 through 6)

1. Mileage will be computed on the basis of actual distance based on freight mileage tables of the individual lines parties to this tariff, lawfully on file, via the route of movement from station of origin or station at which received from connecting line to destination station or to stations at which delivered to connecting line without deduction of mileage through switching districts (see Note 1).

2. When the transportation begins and ends, i.e., when a car is both loaded and unloaded, within a switching district, no mileage will be allowed. Mileage between an industry or public track and freight station at station of origin or destination will not be allowed.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 185 (Cont'd)

COMPUTATION OF MILEAGE
(See Exceptions 1 through 6)

EXPLANATION OF NOTES

1. The intent of the clause "without deduction of mileage through switching districts" is to insure mileage being allowed for the full distance the car moves, via route of movement from freight station of origin to freight station to which destined. When there are two or more freight stations on a road within a switching district, mileage will be paid to or from the station within such district at which the car is actually loaded or unloaded or at which it is received from or delivered to connecting line.

EXCEPTIONS

1. In computing distances between stations on the UP on the one hand and stations on the KCS on the other hand, via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans via the UP and 5.4 miles from the actual distance to and from New Orleans via the KCS.

2. Mileage will be allowed on movements having origin and destinations at stations or districts within the Chicago Switching District, provided the movements originate at or are destined to industries having private sidings.

3. In computing distances between stations on the UP on the one hand and stations on the IC on the other hand via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans, LA via the UP and 5.1 miles from the actual distance to and from New Orleans via the IC.

4. In computing distances from, to or via KCS on traffic routed via New Orleans, LA, interchanged at Shrewsbury, LA, deduct 5.4 miles from the actual distance to and from New Orleans, LA on the KCS.

5. When for account of the KCS, mileages will be computed on basis of the shortest distance over the route of these lines determined by freight mileage tables lawfully on file , in lieu of actual distance as provided in Paragraph 1 of this item.

6. All traffic between West Lake, LA on KCS and interchange with UP will be made at De Quincy, LA, in lieu of Lake Charles, LA for carriers convenience and to facilitate industries located at West Lake, LA. KCS will not pay mileage allowance between West Lake, LA and De Quincy, LA, when cars are moving under provisions of UP reroute orders.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

1. Should the aggregate empty mileage accumulated by tank cars carrying any of the reported marks assigned to any one person or company during a calendar year exceed the aggregate loaded mileage during the same calendar year by more than six (6) percent, such excess mileage must be paid for by the person or company to whom the reporting marks are assigned at the rate of ninety-six (96) cents per mile, without minimum, subject to the procedures outlined in Part D (See Note 2, this item).

2. Mileage on empty cars moving on revenue billing will not be included in the equalization account.

3. Empty mileage accumulated on cars moving to and from repair facilities for modification under DOT mandated retrofit programs or for inspection and/or repair under FRA Emergency Orders will not be included in the equalization account. Empty mileage accumulated on cars moving under AAR Early Warning/ Maintenance Advisory letters to and from repair facilities associated with the removal of certain truck bolsters that were manufactured by the National Castings of Mexico facility in Sahagun, Mexico, will not be included in the equalization account.

4. Except as outlined in Item 190 Series, Paragraph 2 (C), no adjustments to loaded or empty mileage will be made in the equalization account for mileage caused by error in handling of the reporting railroad or of another railroad, or for mileage accumulated on cars moving on their own wheels to and from repair facilities due to railroad damage or for mileage accumulated due to longer routes for railroad convenience, detours and Surface Transportation Board Service Orders. Rail carriers will make equalization adjustments to the owners of excess reported on-line empty mileage on cars, they lease and operate under private marks, or cars of other lessees and/or owners operating on their line for company material, weed killer and similar service.

5. Adjustments to loaded or empty mileage will be made in the equalization account for apparent accounting errors in the total mileage reported for participating rail carriers under the following procedures. In the absence of appropriate adjustments being made by the AAR or a participating carrier for such accounting errors, a private car company or owner may request an appropriate adjustment for mileage summaries reported in error, from the involved rail carrier in the format prescribed by the AAR, provided such request is made within thirty (30) days of the forwarding of the monthly AAR "Year to Date Equalization Register", containing the alleged error, furnishing a duplicate of such request to the Assistant Vice President, Business Services, AAR. The rail carriers will have thirty (30) days from the date of such request in which to decline or make all or a portion of the requested adjustment, advising the Assistant Vice President of the handling accorded.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE
(SEE NOTE 1)

5. (Cont'd) If the rail carrier fails to act upon a request for adjustments in the AAR summary totals within the specified time frame, the AAR is authorized to make the adjustment to the equalization account of the private car company or owner for the amount of mileage originally requested. Exceptions to the annual national equalization statement will be handled in accordance with the provisions of Part D (2).

   ALL requests for adjustments to the equalization account must be presented by the private car company or owner to the involved rail carrier(s) or presented by the rail carrier(s) to the private car company or owner within three (3) years from the last day of the reporting month in question. However, such request for adjustments will not be accepted by the AAR if the involved rail carrier or car owner is no longer an operating entity, except as provided for in Part C.

6. Aggregate loaded and empty mileage will be computed on the basis of actual distance, as defined in Item 185-Series. Adjustments made subsequent to the deadline specified in Part D will be computed in the subsequent equalization account year.

PART B
REPORTING OF ACTUAL LOADED AND EMPTY MILEAGE

Each participating carrier will submit a monthly mileage report in the format prescribed by the AAR to the assignee of each reporting mark forty (40) days after the close of the movement month reporting by individual car number the actual loaded and empty miles moved as computed in accordance with Item 185-Series. In addition, total actual monthly loaded and empty mileage accumulated by all cars bearing each reporting mark will be reported to the assignee of such mark in the format prescribed by the AAR, furnishing a duplicate of this summary report to the Assistant Vice President, Business Services, AAR. Adjustments for prior months will be indicated on this monthly summary report.

PART C
CHANGE OF OWNERSHIP

When a private tank car company or owner discontinues business or disposes of all tank car equipment, any excess empty mileage balance which has accrued to the date of such action, on the tank cars bearing the reporting marks of such company or owner, shall be subject to bill as of that date, in accordance with the provisions of Parts A and D of Item 187-Series, subject to any applicable adjustments.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

1. After May 20 of each year, the Assistant Vice President, Business Services, AAR will summarize all empty and loaded mileage by reporting mark assigned to any person or company, reporting for the proceeding calendar year, by all participating carriers to this tariff. Should the aggregate empty mileage exceed the aggregate loaded mileage of all participating carriers by more than (6) percent for any such group of reporting marks, the person or company to whom the reporting marks are assigned will be billed at the rate of ♦ninety-six (96) cents per mile without minimum and must pay the AAR on behalf of each participating carrier for such excess for such empty mileage. The charges collected for this excess empty mileage will be distributed to the participating carriers by the AAR in direct proportion to such carriers portion of excess empty mileage to the total accumulated excess empty mileage. Only that mileage and any related adjustments reported to the Assistant Vice President prior to May 20 will be considered in determining and excess empty mileage, as outlined herein (See Notes 1, 2 and 3).

2. An annual national equalization statement detailing the excess empty mileage accumulated and any applicable charges will be tendered by the Assistant Vice President to the person or company assigned the reporting mark(s) for such cars for verification no later than July 1 of the year succeeding the equalization accounting year. Exceptions to this statement must be received by the Assistant Vice President within 30 days of the date tendered, and payment for all excess empty mileage is due immediately thereafter. Any adjustments made by the participating carriers up to and including the March account applicable to the prior year(s) will be incorporated in the equalization accounts for the prior equalization accounting year. Any railroad or AAR adjustments made subsequent to the March account will be carried over to the following equalization accounting year (see Note 3).

3. A private car company or owner failing to render complete payment for all excess empty mileage within thirty (30) days of the date its equalization statement is tendered by the AAR will be subject to a penalty of one and a half percent (1.5%) interest per month (i.e., annual rate of 18%) for each calendar month or fraction thereof on any outstanding balance due from the date of the AAR's invoice statement. If any portion of a private car company's or owner's equalization statement remains unpaid in excess of 3 months from the date initially tendered, all mileage allowances accrued by the tank cars registered in the Umler file bearing its reporting marks will be withheld by the carriers participating in this item until such time as complete payment including applicable penalty interest is made. Once complete payment is made, the participating carriers will be notified by the AAR and claims for any applicable mileage allowances withheld will be honored, less a 15% penalty charge for the carriers' administrative expense.

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SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

EXPLANATION OF NOTES

1. The ♦ninety-six (96) cents per mile charges for excess empty mileage under the provisions of this item is subject to revision September 1 of each year under Ex Parte No. 328 agreed annual update procedures, and will be retroactively applied to cover the entire calendar year involved.

2. Close out dates specified in Part D may be extended by the AAR for a maximum of 60 days for special national accounting problem conditions, affecting substantially all carriers and all owners.

3. Invoices that have been issued which, after investigation, are determined to have been erroneous due to rail carriers or AAR accounting and/or system errors may be cancelled by the Assistant Vice President.

ITEM 190

HANDLING OF EMPTY TANK CARS
(SEE NOTE 2)

1. When a tank car is released from load, the owner or lessee must issue instructions for the disposition of the empty car to the agent at point of unloading either direct or through consignee or via EDI. Empty instructions may also be included with the original loaded shipping instructions if transmitted via EDI. If the owner or lessee fails to have instructions in the hands of the railroad agent having jurisdiction at point of unloading prior to the time the car is released from load to forward the car or written instructions to hold it, the agent is authorized to forward the empty car to the origin point of the last load via reverse of the loaded route. No tank car which last contained hazardous material may be moved without having shipping instructions furnished as per Title 49 Code of Federal Regulations.

2. Empty tank cars will be handled as follows:

   A. Except as otherwise provided in this tariff, cars covered by this section will be moved empty without charge between stations or junction points upon receipt of instructions from the car owner or lessee confirmed in writing. Such instructions must include the specific facility to which such empty car is consigned or the name and address of the person or company which controls the car. No allowance will be made for mileage of such cars during empty movement.

   B. A new car, a car that is restenciled with private reporting marks or a newly acquired car moving prior to its first loaded move in commercial service and a newly acquired car moving prior to its first loaded move in commercial service and a car moving for sale or scrap will be moved upon surrender of a bill of lading and will be subject to applicable rates.(see Note 1).

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 190 (Cont'd)

HANDLING OF EMPTY TANK CARS
(SEE NOTE 2)

2. Empty tank cars will be handled as follows: (Cont'd)

   C. If the owner or lessee or party issued instructions to forward the empty tank car to the origin point of the last load by specific routing different than the reverse routing of the loaded movement, the total miles of such return movement will be billed at the excess empty mileage rate specified in Item 187-Series without minimum and such empty mileage so billed will be excluded from the equalization account of the owner. This billing will be made to, and collectable from, the person so requesting such variance in the return routing. If the carriers depart from the destinations, junctions or carriers of the reverse route of the load, any resulting excess empty miles will be excluded from the car owner's equalization account by erring carrier.

EXPLANATION OF NOTES

1. A car loaded with railroad company material moving on non-revenue billing will be considered as having been loaded in commercial service on which the railroads derived line-haul revenue.

2. The provisions of this item apply except as otherwise provided in Item 192-Series of this tariff.

ITEM 192

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS
(SEE NOTE 1)

1. The rules and charges in this item apply only to empty private tank cars consigned to non-railroad repair facilities; i.e., facilities for cleaning, lining, relining, maintenance, modification or repair.

2. The rules and charges do not apply to:

   A. Empty private tank cars moving as revenue freight under the provisions of Item 190-Series, Paragraph B 2.

   B. Empty private tank cars handled or held for carrier operating convenience.

   C. Empty private tank cars en route to facilities for cleaning, lining, relining or repair for heavy repairs following railroad damage.

   D. Empty private tank cars en route to repair facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.

3. No allowance will be made by carriers for mileage accrued during supplemental empty movement of tank cars that are assessed charges as provided in Paragraph 5.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 192 (Cont'd)

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS
(SEE NOTE 1)

4. Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to their cleaning, lining, relining, maintenance, modification or repair facility (or their owned or leased tracks in the vicinity thereof) before the expiration of 48 hours free time (not counting Saturdays, Sundays or holidays) after placement. The time calculation will start the first 7 A.M. subsequent to carrier notification to the consignee that the empty private car is ready for placement and the time calculation will stop when the carrier places or forwards the car pursuant to instructions or should have placed or forwarded the car pursuant to instructions.

5. After expiration of free time as provided in Paragraph 4, charges will be as follows: (See Note 2)

   A. Supplementary handling charge of ♦$106.00 per car.

   B. Holding charge of $1 per car per calendar day or fraction thereof including Saturdays, Sundays and holidays while held by carrier on non-leased tracks awaiting disposition.

6. In the event the consignee orders the car to tracks owned or leased by the consignee in the vicinity of the facility for cleaning, lining, relining, maintenance, modification or repair within the forty-eight hour period described under Paragraph 4, this item, there will be no supplementary handling charge for the movement; however, such cars will be subject to the supplementary handling charge of ♦$106.00 per car (See Note 2) at such time that the empty tank car is subsequently ordered and moved onto the facility for cleaning, lining, relining, maintenance, modification or repair or ordered moved from that facility to the tracks or leased by the consignee in the vicinity of the facility.

7. Applicable billing will be monthly to the facility involved.

EXPLANATION OF NOTES

1. The rules and charges in this item do not in any way supersede or duplicate existing, or new written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.

2. Per ExParte No. 328, the supplemental handling charge will be revised annually at the same time as the tank car mileage allowance update, utilizing the same method as that prescribed for updating the excess mileage equalization charge.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♠▲ ITEM 195

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

Mileage rate allowance for cars of foregoing mechanical designations shall be in cents per loaded mile (See Notes 2 and 7) as follows:

COLUMN 1 - Original cost or fair market value in dollars (see Notes 3, 4, 5 and 6, this item).
COLUMN 2 - Cars in service years 1 through 30.
COLUMN 3 - Cars in service years 31 and over.

COLUMN 1	COLUMN 2	COLUMN 3
$ 0 – 1000	29.5	29.1
1001 – 2000	30.2	29.2
2001 – 3000	30.9	29.2
3001 – 4000	31.6	29.3
4001 – 5000	32.2	29.3
5001 - 6000	32.9	29.4
6001 - 7000	33.6	29.4
7001 - 8000	34.3	29.5
8001 - 9000	35.0	29.5
9001 - 10000	35.7	29.6
10001 - 11000	36.4	29.6
11001 - 12000	37.1	29.7
12001 - 13000	37.8	29.7
13001 - 14000	38.5	29.8
14001 - 15000	39.2	29.8
15001 - 16000	39.9	29.9
16001 - 17000	40.6	29.9
17001 - 18000	41.3	30.0
18001 - 19000	42.0	30.0
19001 - 20000	42.7	30.1
20001 - 21000	43.4	30.1
21001 - 22000	44.1	30.2
22001 - 23000	44.7	30.2
23001 - 24000	45.4	30.3
24001 - 25000	46.1	30.3
25001 - 26000	46.8	30.4
26001 - 27000	47.5	30.4
27001 - 28000	48.2	30.5
28001 - 29000	48.9	30.5
29001 - 30000	49.6	30.6
30001 - 31000	50.3	30.6
31001 - 32000	51.0	30.7
32001 - 33000	51.7	30.7
33001 - 34000	52.4	30.8
34001 - 35000	53.1	30.8
35001 - 36000	53.8	30.9
36001 - 37000	54.5	30.9
37001 - 38000	55.2	31.0
38001 - 39000	55.9	31.0
39001 - 40000	56.5	31.1

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♠▲ ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
40001 - 41000	57.2	31.1
41001 - 42000	57.9	31.2
42001 - 43000	58.6	31.2
43001 - 44000	59.3	31.2
44001 - 45000	60.0	31.3
45001 - 46000	60.7	31.3
46001 - 47000	61.4	31.4
47001 - 48000	62.1	31.4
48001 - 49000	62.8	31.5
49001 - 50000	63.5	31.5
50001 - 51000	64.2	31.6
51001 - 52000	64.9	31.6
52001 - 53000	65.6	31.7
53001 - 54000	66.3	31.7
54001 - 55000	67.0	31.8
55001 - 56000	67.7	31.8
56001 - 57000	68.4	31.9
57001 - 58000	69.0	31.9
58001 - 59000	69.7	32.0
59001 - 60000	70.4	32.0
60001 - 61000	71.1	32.1
61001 - 62000	71.8	32.1
62001 - 63000	72.5	32.2
63001 - 64000	73.2	32.2
64001 - 65000	73.9	32.3
65001 - 66000	74.6	32.3
66001 - 67000	75.3	32.4
67001 - 68000	76.0	32.4
68001 - 69000	76.7	32.5
69001 - 70000	77.4	32.5
70001 - 71000	78.1	32.6
71001 - 72000	78.8	32.6
72001 - 73000	79.5	32.7
73001 - 74000	80.2	32.7
74001 - 75000	80.8	32.8
75001 - 76000	81.5	32.8
76001 - 77000	82.2	32.9
77001 - 78000	82.9	32.9
78001 - 79000	83.6	33.0
79001 - 80000	84.3	33.0

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
80001 - 81000	85.0	33.1
81001 - 82000	85.4	33.0
82001 - 83000	85.9	32.9
83001 - 84000	86.3	32.9
84001 - 85000	86.7	32.8
85001 - 86000	87.1	32.8
86001 - 87000	87.5	32.7
87001 - 88000	87.9	32.7
88001 - 89000	88.3	32.6
89001 - 90000	88.7	32.6
90001 - 91000	89.1	32.5
91001 - 92000	89.5	32.5
92001 - 93000	89.9	32.4
93001 - 94000	90.3	32.3
94001 - 95000	90.7	32.3
95001 - 96000	91.1	32.2
96001 - 97000	91.4	32.2
97001 - 98000	91.8	32.1
98001 - 99000	92.2	32.1
99001 - 100000	92.6	32.0
100001 - 101000	92.9	32.0
101001 - 102000	93.3	31.9
102001 - 103000	93.7	31.9
103001 - 104000	94.1	31.8
104001 - 105000	94.4	31.8
105001 - 106000	94.8	31.7
106001 - 107000	95.1	31.7
107001 - 108000	95.5	31.6
108001 - 109000	95.9	31.6
109001 - 110000	96.2	31.5
110001 - 111000	96.6	31.5
111001 - 112000	96.9	31.5
112001 - 113000	97.3	31.4
113001 - 114000	97.6	31.4
114001 - 115000	98.0	31.3
115001 - 116000	98.3	31.3
116001 - 117000	98.6	31.2
117001 - 118000	99.0	31.2
118001 - 119000	99.3	31.1
119001 - 120000	99.7	31.1

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
120001 - 121000	100.0	31.0
121001 - 122000	100.3	31.0
122001 - 123000	100.6	30.9
123001 - 124000	101.0	30.9
124001 - 125000	101.3	30.9
125001 - 126000	101.6	30.8
126001 - 127000	101.9	30.8
127001 - 128000	102.3	30.7
128001 - 129000	102.6	30.7
129001 - 130000	102.9	30.6
130001 - 131000	103.2	30.6
131001 - 132000	103.5	30.6
132001 - 133000	103.8	30.5
133001 - 134000	104.1	30.5
134001 - 135000	104.5	30.4
135001 - 136000	104.8	30.4
136001 - 137000	105.1	30.4
137001 - 138000	105.4	30.3
138001 - 139000	105.7	30.3
139001 - 140000	106.0	30.2
140001 - 141000	106.3	30.2
141001 - 142000	106.6	30.2
142001 - 143000	106.8	30.1
143001 - 144000	107.2	30.1
144001 - 145000	107.4	30.0

EXPLANATION OF NOTES

1. Designating symbols (mechanical designation) will be assigned to car owner or lessee by the Executive Director, Rules and Standards, Technical Services, Association of American Railroads, upon written application.

2. For mileage allowance purposes, the service year of a car is calculated based upon year of construction of underframe. A car's first service year is the year built. Its second service year begins on January 1 of the year following the year built, with succeeding service years starting on January 1 of each following year. If the tank's service year exceeds 30, the car's service year is considered to be in excess of 30 regardless of year of construction of underframe. For those cars constructed without an underframe, the car's service year is calculated based upon year of construction of tank. Service year is determined by subtracting the year of construction (built/rebuilt) from the current calendar year, plus 1, e.g., (2000 - 1970) + 1 = 31, or Service Years 31 and over allowance bracket.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows:

A. For cars built between January 1, 1968 and July 1, 1991, assignment of owned or leased cars to value groups will be determined by the original cost as represented to the original buyer by the manufacturer's invoice price at the time of original installation into service. In the case of a manufacturer-lessor, the fair market value or the value which was certified, or would have been certified, for investment tax credit purposes shall be substituted therefore.

B. Assignment to value groups of cars placed into service after July 1, 1991 will be determined by the original cost of the car to the original buyer as stated in the manufacturer's invoice. In only two circumstances, owners may certify as alternative "true value" in lieu of invoice price: (a) manufacturers who retain cars for their own leasing service and (b) purchasers who can demonstrate that they contributed physical assets of significant value that were used by the manufacturer in fabricating a car, resulting in a reduction of the invoice price by more than $1,000 per car below the price that otherwise would have been charged. For manufacturers "true value" is the price for which a car or group of cars manufactured as a group would have been sold in an arm's length transaction. For purchasers who have made a qualifying contribution to fabrication, "true value" is the invoice price plus the depreciated value of the contributed assets distributed over the cars for which the assets were used, subject to the same limitations on "true value" which would apply to a manufacturer. "True value" shall not exceed the average price of similar cars registered in Umler at invoice price within the most recent 12 months for which registration information is available in Umler, adjusted for changes in the market values of new tank cars as reflected in average car prices. If the AAR determines by audit that a certified "true value" exceeds this value limit by an amount that causes a car to be placed in a higher allowance value bracket, the value of the car will be reduced to the appropriate value bracket. In addition, if the AAR determines by audit that a certified, "true value" exceeds this value limit by an amount that causes a car to be placed in allowance value bracket more than one bracket above the otherwise applicable bracket, excess allowances paid as a result of the over valuation shall be reimbursed to the paying railroads.

Those owners who certify a "true value" in lieu of invoice price during the calendar year must provide to the AAR an officer's certificate at the end of the year stating that, based on all information available to the owner, the owner has complied with the terms of this item. Car owners must supply for entry into Umler all information required for tank cars in the Umler Data Specification Manual. Notwithstanding any other provision of this tariff item, "true value" will be subject to audit directly by the AAR.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

C. If applicable, initial into service transportation costs, capitalized original lining costs, capitalized additions and capitalized betterments shall be added to car values determined pursuant to Paragraphs 3 (A) and 3 (B), above, if not already included in the value of the car. For cars built after January 1, 1988, capitalized inspection costs shall be added to the value, if applicable and if not already included in the value, if applicable and if not already included in the value of the car. Values other than invoice price shall be identified in accordance with the current AAR Umler Data Specification Manual at the time cars are submitted to the Assistant Vice President, Business Services, AAR, for registration in the Umler file (see Note 6, this item).

D. The rebuilt year and rebuilt valuation of a private car will be utilized for the purpose of computing applicable mileage allowances subject to the following conditions:

1. The car must be rebuilt in accordance with the current requirements of Rule 88, Section C of the Office Manual and Sections A & B of the Field Manual, AAR Interchange Rules, Application for official rebuilt status must be filed with the Executive Director, Rules and Standards, AAR Technical Services and written formal approval received prior to registering such car in the Umler file with rebuilt age and valuation data.

2. Assignment of owned or leased rebuilt cars to value groups will be determined as outlined in Notes 3. (A), 3. (B) and 3. (C) herein, except that the maximum valuation of a rebuilt private car shall not exceed the lesser of:

a. 75 percent of the original cost of a comparable new car.
b. 75 percent of the calculated replacement cost of the rebuilt car prior to rebuilding, as computed per AAR Interchange Rule 107.

E. All car ages and values submitted are subject to verification by the AAR, and audit by the AAR or the owners independent public accountant upon reasonable request by the AAR. If the car owner elects to have the audit performed by its independent public accountant, such audit must be performed in a timely fashion in the manner prescribed by the AAR, will be performed at the car owner's expense and must be duly certified by the car owner's auditor as representing the true value of all cars included in such audit. Failure of the car owner to furnish the required car valuation data to the AAR Umler file, to arrange for the requested audit, or to correct errors determined as a result of such audit, will result in such car(s) being assigned to the lowest applicable mileage allowance rate group.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

F. Maximum original cost of fair market value will be as follows:

1. For cars built in 1981 and prior	$ 64,001
2. For cars built in 1982	$ 58,001
3. For cars built in 1983	$ 56,001
4. For cars built in 1984	$ 51,001
5. For cars built in 1985	$ 54,001
6. For cars built in 1986	$ 66,001
7. For cars built in 1987	$ 62,001
8. For cars built in 1988	$ 63,001
9. For cars built in 1989	$ 64,001
10. For cars built in 1990	$ 67,001
11. For cars built in 1991	$ 71,001
12. For cars built in 1992	$ 70,001
13. For cars built in 1993	$ 76,001
14. For cars built in 1994	$ 74,001
15. For cars built in 1995	$ 80,001
16. For cars built in 1996	$ 83,001
17. For cars built in 1997	$ 84,001
18. For cars built in 1998	$ 89,001
19. For cars built in 1999	$ 94,001
20. For cars built in 2000	$ 92,001
21. For cars built in 2001	$ 106,001
22. For cars built in 2002	$ 109,001
23. For cars built in 2003	$ 85,001
24. For cars built in 2004	$ 93,001
25. For cars built in 2005	$ 101,001
26. For cars built in 2006	$ 97,001
27. For cars built in 2007	$ 112,001
28. For cars built in 2008	$ 112,001
29. For cars built in 2009	$ 117,001
30. For cars built in 2010	$ 102,001
31. For cars built in 2011	$ 107,001
32. For cars built in 2012	$ 129,001
33. For cars built in 2013	$ 144,001
34. For cars built in 2014 and subsequent	$ 136,001

NOTE: Age is determined by subtracting the year of construction (built/rebuilt) from the current calendar year plus 1. e.g. (2014-2010) + 1 = 5

4. For cars built or rebuilt subsequent to December 31, 1977, all values reported to the AAR Umler file must be stated in equivalent U.S. dollars based on the applicable exchange rate at the time such cars were built or rebuilt. Subsequent capitalized additions and betterments reported to Umler must also be stated in equivalent U.S. dollars at the time such improvements were made.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

5. Applies as follows:

A. Into service transportation costs are those freight charges associated with the movement of a car that is ready for its first load to the locations of the car's original installation into service. Other transportation charges incurred during construction (e.g., to a facility which installs the original lining, etc) may be included in ledger value provided that the cost is capitalized.

B. A capital expenditure is an expenditure intended to benefit future periods in contrast to revenue expenditure/current expense which benefits a current period. It is an addition to a capital asset and is initially reflected on the balance sheet. A capital expenditure normally is subject to depreciation in future years.

C. Applies as follows:

1. An addition or betterment has the effect of:
   a. Extending the useful life of a car beyond the life projected when the car was entered into service; or
   b. Increasing a car's normal use beyond that which was in effect when the car was entered into service; or
   c. Lowering the operating costs beyond that which was in effect at the time the car was entered into service; or
   d. Otherwise adding to the worth of the benefits a car can yield beyond that in effect when the car was entered into service (e.g., enhance safety, etc).
   e. Any repair that maintains a car in its customary state of operating efficiency is NOT an addition or betterment.
2. An addition is the installation of a new component of a car (not a replacement) which meets the above tests. The value registered in Umler shall be the cost of the component added, including labor.
3. A betterment is the replacement of a component of the car with a superior component. The value registered in Umler for a betterment should not exceed the cost of the superior component, including labor minus (1) the original value of the component that was replaced (i.e., retired) and (2) the cost (i.e., expense) incurred in removing the old component.
4. When a unit of property is removed from a car (i.e., partial retirement), the ledger value registered in Umler shall be reduced by the original value of the unit removed.
5. Any cost recovered under AAR Defect Car Billing, if applicable, must be deducted from the cost of an addition or betterment.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦♦▲ ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

6. Applies as follows:

   A. When an owner: (1) makes a valuation correction to the Umler file; or (2) changes the mechanical designation of cars registered in the Umler file; and such changes result in an increase or decrease in the mileage allowance rates, the Assistant Vice President, Business Services, AAR, will be so notified and the increase or decrease will be applied retroactively. Once cars have been reported to the Umler file, any of the foregoing corrections or changes that result in a retroactive increase or decrease in the mileage allowance rates will be identified by the Assistant Vice President. The car owner is required to furnish the Assistant Vice President documented proof of the basis of the correction or change and advise as to any applicable mileage allowance adjustments which are required.

   B. Retroactive Mileage Allowance Decrease: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate decrease, the owner will notify all using carriers of such decrease with either supporting details or a summary of the over-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carrier shall deduct such amount(s), in the next open mileage reports to the car owner, plus fifteen (15) percent to reimburse the handling road for audit and associated administrative expenses. If the owner fails to send notification to the users within five (5) months, the Assistant Vice President shall notify carriers of the car initial (s) and number(s) involved and the user(s) shall make an adjustment, as described above.

   C. Retroactive Mileage Allowance Increase: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate increase, the owner will notify all using carriers of such increase with either supporting details or a summary of the under-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carriers shall add such amount(s) in their next open mileage reports to the car owner, less fifteen (15) percent to reimburse the handling roads for audit and associated administrative expense. No retroactive mileage allowance rate increase will be applicable if the owner fails to notify the using carriers of such increase within five (5) months from the date of a change to the Umler file.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 196

EXPLANATION OF SYMBOL USED IN ITEM 195

SYMBOL	EXPLANATION
"T"	Tank Car. Tank car means any car which is used only for the transportation of liquids, liquefied gases, compressed gases, or solids that are liquefied prior to unloading. Car may be without underframe if container serving as superstructure is designed to serve as underframe. If car has underframe, it must be designed only for the carriage of one or more enclosed containers (with or without compartments) that form the superstructure and are integral parts of the car. All such containers must be securely attached to underframe when offered for transportation but may have demountable features.

EXHIBIT NO. 11

RAILINC

FREIGHT TARIFF RIC 6007-O

(For cancellations, see Item 1, this tariff)

MILEAGE ALLOWANCES AND RULES
GOVERNING

THE HANDLING OF AND THE PAYMENT OF MILEAGE

ALSO CHARGES

ON
CARS OF PRIVATE OWNERSHIP
AS DEFINED IN ITEMS 25 AND 400

BY
RAILROADS PARTIES TO THIS TARIFF

For List of Participating Carriers, see Item 2.10

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

ISSUED: February 19, 2015 **EFFECTIVE: March 1, 2015**

ISSUED BY

RAILINC, AGENT
7001 WESTON PARKWAY, SUITE 200
CARY, NC 27513

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CHECK SHEET FOR PAGE REVISIONS

Except as otherwise provided, Title Page and pages 1 through 57, inclusive, are effective as of the date shown. Original and revised pages as named below contain all the changes. (New or revised Pages containing changes effective as of the Effective date shown below are highlighted in yellow.)

PAGE	REVISION	PAGE	REVISION	PAGE	REVISION	PAGE	REVISION
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Revised Pages	9	30	Original				
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9	1	38	Original				
10	Original	39	Original				
11	Original	40	Original				
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14	2	43	Original				
15	4	44	1				
16	4	45	Original				
16.1	Original	46	Original				
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25	Original	55	Original				
26	Original						
27	Original						

ISSUED: February 8, 2017

EFFECTIVE: March 1, 2017

ISSUED BY: Railinc, Agent, 7001 Weston Parkway, Suite 200, Cary, NC 27513

For explanation of abbreviations and reference marks not explained herein, see Item 9999, this tariff.

LIST OF PAGE REVISIONS

Below is a list of new or revised pages issued to date. Except as noted, new or revised pages containing changes effective as of the Effective date shown below are highlighted in yellow.

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44	1						
47	1						

ISSUED: February 8, 2016

EFFECTIVE: March 1, 2017

ISSUED BY: Railinc, Agent, 7001 Weston Parkway, Suite 200, Cary, NC 27513

For explanation of abbreviations and reference marks not explained herein, see Item 9999, this tariff.

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ITEM 1

CANCELLATION NOTICE

Freight Tariff RIC 6007-O cancels Freight Tariff RIC 6007-N and all supplements issued thereto.

Except as otherwise provided, provisions formerly shown in Freight Tariff RIC 6007-N, as supplemented, are hereby brought forward in Freight Tariff RIC 6007-O, in their entirety.

ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

AA - Ann Arbor Railroad.....412
AKDN - Acadiana Railway Company [D]
ANR - Angelina & Neches River Railroad Company [D]
APA - Apache Railway Company.....35
ASRY - Ashland Railway, Inc.

BLOL - BloomerLine, The
BNSF - BNSF Railway Company.....50,70,71, 73, 410, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 441, 442, 444, 445, 446, 448, 620, 630
BOCT - Baltimore and Ohio Chicago Terminal Railroad Company, The.....412
BPRR - Buffalo & Pittsburgh Railroad, Inc.....75, 449

CAGY - Columbus and Greenville Railway.....102, 453
CBRY - Copper Basin Railway, Inc.
CCKY - Chattanooga & Chickamauga Railway Co.
CIC - Cedar Rapids and Iowa City Railway Company.....80, 450
CM - Central Montana Rail, Inc.
CN - Canadian National Railway.....90, 185, 454, 457.50
CPRS - Canadian Pacific Railway.....99, 458, 459, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 630
CSS - Chicago SouthShore & South Bend Railroad.....104, 451, 452
CSXT - CSX Transportation, Inc., comprised of the following carriers:
Carrollton Railroad, The.
CSX Transportation, Inc.
Gainesville Midland Railroad Company.
Richmond, Fredericksburg and Potomac Railway Company.
Three Rivers Railway Company.
Western Railway of Alabama, The...106, 484, 486
CW - Colorado & Wyoming Railway Company, The
CWA - Central Washington Railroad Company

DKS - Doniphan, Kensett & Searcy Railway
DME - Dakota, Minnesota & Eastern Railroad.....487, 622
EJE - Elgin, Joliet and Eastern Railway Company [D]
ELS - Escanaba and Lake Superior Railroad Company.....35
ETRY - East Tennessee Railway, L.P.

(Continued in next column)

ITEM 2.10 (Cont'd)

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

GLC - Great Lakes Central Railroad
GNBC - Grainbelt Corporation.....620, 630
GNRR - Georgia Northeastern Railroad Company, Inc.
GRR - Georgetown Railroad Company
GWWE - Gateway Eastern Railway Company

HE - Hollis & Eastern Railroad Company
HPTD - High Point, Thomasville & Denton Railroad Company.....492

IAIS - Iowa Interstate Railroad, Ltd.....35, 120,121
IANR - Iowa Northern Railway.....495

KCS - Kansas City Southern Railway Company.....35, 124, 185, 504, 524, 526, 527, 630

LC - Lancaster and Chester Railway Company
LSI - Lake Superior & Ishpeming Railroad Company
LSRC - Lake State Railway Company

ME - Morristown & Erie Railway, Inc.
MRL - Montana Rail Link, Inc... [D]
MSE - Mississippi Export Railroad Company.....35

NHN - New Hampshire Northcoast Corporation
NS - Norfolk Southern Railway Company, comprised of the following carriers:
Norfolk and Western Railway Company
Norfolk Southern Railway Company.
Alabama Great Southern Railroad Company.
Atlantic and East Carolina Railway Company.
Camp Lejeune Railroad Company.
Central of Georgia Railroad Company.
Chesapeake Western Railway.
Cincinnati, New Orleans and Texas Pacific Railway Company.
Georgia Southern and Florida Railway Company.
Tennessee Railway Company.....131,135, 540,544,545,546,547, 548

NYSW - New York, Susquehanna and Western Railway Corp.

PR - Palmetto Railways
PW - Providence and Worcester Railroad Company.....35

RSR - Rochester & Southern Railroad, Inc.

SAN - Sandersville Railroad Company.....145, 550
SBVR - South Branch Valley Rail Road
SLC - San Luis Central Railroad Company, The [D]
SM - St. Marys Railroad Company [D]
SRN - Sabine River & Northern Railroad Company
ST - ST Rail System.....150, 555, 560, 565
SUN - Sunset Railway Company

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ITEM 2.10

LIST OF PARTICIPATING CARRIERS
ALPHABETIZED BY STANDARD
CARRIER ABBREVIATION
(See Note 1)

TR - Tomahawk Railway, Limited Partnership.....35
TRC - Trona Railway Company.....35
TSU - Tulsa-Sapulpa Union Railway Company.....35

UP - Union Pacific Railroad Company..... 50, 170, 185, 410, 575, 576, 577, 579, 585, 591, 592, 630

VR - Valdosta Railway, L.P
WSS - Winston-Salem Southbound Railway Company.....595

EXPLANATION OF NOTES

1. Items of general application in Sections 1 and 2 affecting the participation of all or large groups or numbers of carriers are not listed in this column.

RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS

ITEM 5

REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC

1. Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

2. Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic or traffic to or from Canada.

ITEM 10

CONSECUTIVE NUMBERS

1. Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" of a hyphen they will be understood to include both of the numbers shown.

2. If the first number only bears a reference mark such reference mark also applies to the last number shown and to all numbers between the first and last numbers.

ITEM 15

CANCELLATION OF ORIGINAL AND REVISED PAGES

When this tariff is amended by revised pages, the cancellation of prior pages, will be affected by means of this rule. A revised page will not show a cancellation notice except when a cancellation notice is necessary because of suspension, rejection, or other reasons. Revisions of each page will be published and filed in numerical sequence. (Items containing changes will be highlighted in yellow.)

For Example: "1st Revised Page 6" will have the effect of canceling Original Page 6; "3rd Revised Page 72.1" will have the effect of canceling 2nd Revised page 72.1; and, 2nd Revised page 72.1 will have the effect of canceling 1st Revised page 72.1.

SECTION 1
APPLIES ONLY ON TANK CARS

ITEM 25

APPLICATION OF SECTION 1

1. The term "Cars of Private Ownership", when used in this tariff, is defined as cars bearing other than Railroad Reporting marks that are owned by individuals, firms, corporations, or car companies, including cars owned and/ or operated by railroad controlled car lines.

2. Except as otherwise provided herein, these rules govern the handling of tank cars including the payment of mileage allowances, when used by railroads parties to this tariff individually or jointly, where specifically provided herein, for transportation over their lines as follows:

   A. Between points in the United States (interstate and intrastate) including movements where part of the through route is through Canada.

   B. Internationally, i.e., between points in the United States and points in Canada. (Applicable only on that portion of the haul within the United States).

   C. For that portion of the haul in the United States in connection with movements between points in Canada where part of the through route is through the United States.

SECTION 1
EXCEPTION TO APPLICATION OF RATES
APPLIES ONLY ON TANK CARS

ITEM 30

GENERAL EXCEPTION

The rules and mileage allowances published herein will not apply to:

A. Cars that are not properly registered in the Official Railway Equipment Register, RER 6414-Series, showing capacities and assigned reporting marks.

B. Mileage allowances named in Item 195-Series of this tariff will not apply to cars handled under the provisions of Item 190.

ITEM 35

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

The provisions of Item 187-Series "Equalization of Mileage on Tank Cars of Private Ownership", will not apply in connection with carriers named below:

Angelina and Neches River Railroad Company [D]
Apache Railway Company, The
Escanaba and Lake Superior Railroad Company
Iowa Interstate Railroad, Ltd.
Kansas City Southern Railway Company (Stations 31011 to 31315 only)
Mississippi Export Railroad
Providence and Worcester Railroad Company
Tomahawk Railway, Limited Partnership
Trona Railway Company
Tulsa Sapulpa Union Railway Company

ITEM 40

(Provisions formerly shown herein and not brought forward are hereby canceled.)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 50

APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

Empty privately-owned or leased tank cars used or to be used in Intra-Mexican service will be subject to the following provisions:

A. Owner or lessee shall secure an entry permit from the involved Mexican carrier prior to empty movement to the border crossing and permit number must be shown in the writing instructions accompanying such car.

B. Subsequent to Intra-Mexican service, written instructions for each car entering the U.S. must clearly indicate the exact consignee or facility for disposition of the car prior to movement beyond the border gateways.

C. Upon failure to comply with paragraphs A or B, a holding charge of $10.00 per day will be assessed for each 24 hours or fraction thereof beginning at 7:00 AM of the day following arrival of such empty privately owned or leased car at the border crossing, (excluding Saturdays, Sundays and holidays), until provisions of paragraphs A and B as applicable are fulfilled.

BNSF Railway Company
Union Pacific Railroad Company

ITEM 70

BNSF RAILWAY COMPANY (LINES IN CANADA)

This tariff also applies on all traffic moving over the lines of the BNSF in Canada.

ITEM 71

BNSF RAILWAY COMPANY
(EXCEPTION TO ITEM 190)

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, retrofit or repair, will not apply to such cars moving via BNSF to/from such facilities unless the empty movement is immediately preceded by a loaded line haul revenue movement via BNSF. In all other circumstances, the published tariff charges in BNSF 90020B, and other applicable BNSF price authorities, for the movement of empty cars on their own wheels shall apply and will be assessed to the car owner.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 73

BNSF RAILWAY COMPANY
(EXCEPTION TO ITEM 190)

When a tank car is released from load on BNSF, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be given to:

BNSF Railway Co.
Carload Billing
920 S.E. Quincy
Topeka, KS 66612
Telephone: (800) 786-2873
FAX: (800) 786-2455

prior to release of the empty car. If the owner or lessee of the car requests movement via a different route, or to a station other than the origin of the last movement, after release of the empty car, diversion provisions and charges, as named in BNSF Diversion Tariff 6200 Series, are applicable.

ITEM 75

BUFFALO & PITTSBURGH RAILROAD, INC. (BPRR)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving to or from facilities served by the BPRR unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the BPRR. In all other circumstances, the published tariff charges in Tariff BPRR 4004-Series for movement of empty cars on their own wheels to and from repair or storage facilities shall apply.

ITEM 80

CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY
(CIC)

The provisions of Item 190-Series or other provisions provided in this tariff for the movement of empty tank cars without charge to and from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, etc., will not apply for account of the CIC. For Rules and charges to apply, see Freight Tariff CIC 4006-Series.

ITEM 90

(For provisions formerly shown herein, see Item 90, Page 7.1)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 90

CANADIAN NATIONAL RAILWAY COMPANY

The tariff rules contained herein regarding tank car movements will not apply to the movements described in Item 25.2.C. For those movements, the rules and charges contained in Tariff CN 6544 shall apply.

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, retrofit, repair, storage or dismantling, will not apply to such cars moving via CN to/from such facilities unless the empty movement is immediately preceded by a loaded line haul revenue movement via CN. In all other circumstances, the published tariff charges in CN 890000, and other applicable CN price authorities, for the movement of empty cars on their own wheels shall apply and shall be assessed to the responsibility of the car owner. [A]

Note: In the event that the shipper's Bill of Lading fails to identify the car owner as "Payer of Freight", the shipper may be held responsible for all applicable charges

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 99

CANADIAN PACIFIC RAILWAY
(EXCEPTION TO ITEM 190)

The provisions of Item 190 Series for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via CPRS from or to said facilities unless the empty movement is immediately preceded by a loaded revenue movement via CPRS. In all other circumstances, the published tariff charges in Tariff CP 4000 Series for movement of empty cars on their own wheels shall apply and will be assessed to the car owner.

On shipments moving within Canada, CP's Mileage Equalization program in Tariff CP 6 applies, except on miles in Canada for "bridge traffic" which only passes through the Canada for routing purposes that are under the terms of this tariff.

ITEM 102

COLUMBUS AND GREENVILLE RAILWAY (CAGY)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge will not apply to such cars moving, to, from, or via the CAGY unless the empty movement is immediately preceded by or followed by a revenue movement via Columbus and Greenville Railway. In all other circumstances, charges published in the Uniform Freight Classification for movement of empty cars on their own wheels observing the single line minimum charge shall apply.

ITEM 104

CHICAGO SOUTH SHORE AND SOUTH BEND
RAILROAD (CSS)

The provisions of Item 190 Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving via Chicago South Shore and South Bend Railroad from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via Chicago South Shore and South Bend Railroad. In all other circumstances, the applicable CSS publication for the movement of empty cars on their own wheels shall apply.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 106

CSX TRANSPORTATION INC.

The participation of this carrier is restricted to movements over its lines, as follows:

A. Between points in the United States, including movements where part of the through route is through the Dominion of Canada.

B. For that portion of the haul in the United States on international movements, i.e., between points in the United States and points in the Dominion of Canada.

ITEM 112

(Provisions formerly shown herein and not brought forward are hereby canceled.)

ITEM 120

IOWA INTERSTATE RAILROAD, LTD (IAIS)
(Exception to Item 190-Series)

The provisions of Item 190-Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving to or from facilities served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the IAIS. In all other circumstances, the published tariff charges in Tariff IAIS 3000-Series for movement of empty cars on their own wheels shall apply.

ITEM 124

KANSAS CITY SOUTHERN RAILWAY COMPANY, THE

Provisions of Item 190 Series, or any other provision allowing for free switching service of an empty freight car (or cars) to or from shop facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to and from shop facilities served by KCS. Matter of switch charge will be handled by the applicable KCS Tariff.

ITEM 131

NORFOLK SOUTHERN RAILWAY COMPANY

When it is necessary to move a loaded private car to/from shop or repair facilities located on NS, NS will pay mileage payments not to exceed the amount that would have been earned had the car not required additional rail movements to/ from shop or repair facilities, provided that the mileage allowances for the loaded movement are not elsewhere restricted.

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 135

NORFOLK SOUTHERN RAILWAY COMPANY
(EXCEPTION TO ITEM 190) (See NOTE 1)

When a car is released from load on NS, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be sent prior to release of the empty car via FAX, or NS internet application. If by fax send to:

FAX: 800-580-6092
Norfolk Southern Railway Company
Agency Operation Center
125 Spring Street South West
Atlanta, GA 30303

If the owner or lessee requests movement via a different route, or to a station other than the origin of the last loaded movement, after release of the empty car, diversion provisions and charges, as named in Norfolk Southern Tariff 8002 Series, are applicable.

EXPLANATION OF NOTE

1. If subject tank car has last contained Hazardous Materials, shipping paper must be furnished at the point of origin of the empty car for all moves whether they are reverse or not.

ITEM 145

SANDERSVILLE RAILROAD COMPANY (SAN)

Inbound tank car mileage will be used as an offset to outbound loaded mileage (or vice versa) and the SAN will pay no mileage based on freight mileage table from or to station on its line.

ITEM 148

(Provisions formerly shown herein and not brought forward are hereby canceled.)

SECTION 1
EXCEPTION TO APPLICATION AND RULES
APPLIES ONLY ON TANK CARS

ITEM 150

ST RAIL SYSTEM

1. The provisions of Item 190 Series or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving via ST Rail System from or to said facilities unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the ST Rail System. In all other circumstances, the published tariff charges in Tariff ST 4020 Series for movement of empty cars on their own wheels shall apply.

2. The provisions of Item 180 Series concerning the payment of mileage will not apply to cars which are moving via ST Rail System under rates published in tariffs, quotes or contracts that are identified as "zero mileage rates". In the event that the party responsible for the payment of freight charges associated with zero mileage rates is different than the party to whom the reporting marks for said cars are assigned, the car owner must secure mileage payments from the freight paying party.

ITEM 170

UNION PACIFIC RAILROAD COMPANY
(EXCEPTION TO ITEM 190)

Provisions of Item 190-series, or any other provision provided in this tariff, regarding the movement of empty tank cars without charge to or from Repair Facilities will not apply for the account of UP. Movements of empty tank cars to or from Repair Facilities will be subject to the rules and charges provided in the applicable UP tariff(s). For purposes of this Item, the capitalized term "Repair Facilities" means any facility that cleans, lines, relines, maintains, modifies, repairs, or retrofits tank cars.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 180

PAYMENT OF MILEAGE

1. Upon written application reporting marks will be assigned to car owner or lessee by the Assistant Vice President, Business Services, Association of American Railroads, provided applicants are subscribers to the AAR Mechanical Interchange Agreement. Applications for reporting marks shall state the owner and lessee for cars under lease. Contact information is required in FindUs.Rail (www.Railinc.com).

2. Mileage allowance must be reported to the car owner (person or company at a single address, to whom the reporting marks are assigned) within one (1) month and ten (10) days from the last day of the month in which it is earned including payment for cars on hand at the end of that month.

3. Mileage allowance for the use of tank cars will be paid only to the person or company at a single address, to whom the reporting marks are assigned provided cars are properly equipped and marked with the assigned reporting marks and car number, and providing further that:

   A. A description of each car is furnished to the Assistant Vice President, Business Services, AAR, as required in the Umler Data Specification Manual at www.Railinc.com, Products & Services for the assignment of applicable mileage allowances. Such information received by the Assistant Vice President by the last working day of the month except, data transfers requiring data entry by AAR/Railinc staff must be received by the 25th day of the month, will be effective the first day of the subsequent month. Cars registered with transportation code "S_", "SX", "XA", "XZ" or "YA" are not eligible for mileage allowances and will be assigned a zero rate.

4. Reporting marks assigned to private car owners shall consist of four letters including the final letter "X".

5. Assigned reporting marks must be painted or stenciled on the body of the car. When reporting mileage allowances, the carding, placarding, or boarding of cars will not be recognized.

ITEM 182

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

1. Deductions By Railroads To Private Car Owners

   A. Mileage allowed in error, by a railroad, including, but not limited to mileage allowed at incorrect rates for any reason, may be deducted from the car owner's account within twenty-four (24) months from the last day of the month for which the mileage was reported as earned, but not later. A railroad may tender an invoice for mileage allowed in error at any time within twenty-four (24) months from the last day of the month for which the mileage was reported as earned. Except as provided in paragraph 3, an owner-lessor of a private car must remit within eight (8) months after the invoice is presented the entire amount of any invoice issued to it.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 182 (Cont'd)

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

   B. Deductions for amounts of $25.00 or less shall not be taken after the expiration of two (2) months and ten (10) days from the last day of the month the mileage was earned.

2. Claims Issued By Private Car Owners To Railroads

   A. A private car owner must, within twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier in the prescribed AAR format, as published in AAR Circular No. OT-3 Series at www.Railinc.com, Reference Files. Claims not presented in the required format will not be processed. The railroad receiving the claim must within the four (4) months from the date on which the claim was presented allow it in whole or in part, or decline it. The private car owner may reissue its claim, if applicable within four (4) months from the last day of the four (4) months' period allowed the railroad which handled the claim prior to reissuance. The railroad receiving the reissue claim must within four (4) months from the date of which the reissued claim was presented allow it in whole or in part or decline it. If the railroad fails to handle the original or reissued claim within the prescribed time limits, it will constitute a valid claim as last presented and must be honored by the railroad to which presented. Claim for amounts of $25.00 per car per cycle or less shall not be issued. The $25.00 limit is not applicable where no miles were reported for the railroad cycle.

3. Claims by Owners-Lessors

   A. If a railroad takes a deduction against or issues an invoice to an owner-lessor for mileage allowed in error, including, but not limited to, mileage allowed at incorrect rates for any reason, but the erroneous allowance payment is not recoverable by the owner-lessor as defined below, the owner-lessor may present a claim for the recovery of the amounts deducted by the railroad or the cancellation of an unpaid invoice within two (2) years of receiving notice of the railroad's deduction or invoice. For application of this tariff provision, an owner-lessor may claim that an erroneous mileage payment is "not recoverable" only when (a) the erroneous mileage payment was actually paid or credited by the owner-lessor to a lessee (except those lessees whose primary business is the leasing of cars to entities other than those within a lessee's corporate family and who ship only incidentally) irrespective of whether the lessee subsequently paid or credited the mileage allowance payment to a sublessee; (b) the erroneous allowance payment cannot be recovered from the lessee because the lessee has declared bankruptcy or sought reorganization or is no longer a lessee of the owner-lessor; (c) the owner-lessor exercised timely efforts to recover the erroneous allowance payment beginning within ninety (90) days of receiving notice of the railroad's deduction or invoice;

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 182 (Cont'd)

DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

3. Claims by Owners-Lessors

A. (Cont'd) and (d) the owner-lessor undertook diligent collection efforts to recover the erroneous allowance payments until eight (8) months from the date of such notice or invoice (or until the earlier date of initiation of bankruptcy/reorganization proceedings), including making demands for payment and taking deductions against lessees' accounts. Such a claim must be accompanied by a certificate assigned by an officer or other person specifically authorized to sign the certificate of the owner-lessor stating how the claim satisfied each of the requirements set forth above, together with documents reflecting the owner-lessor's collection efforts. If, using reasonable efforts, the railroad is unable to determine whether the lessee's primary business is the leasing of cars to entities other than those in the lessee's corporate family, it shall consult with the owner-lessor, which shall provide the railroad with any evidence of the lessee's shipping activities which may be available to the owner-lessor using reasonable efforts. The owner-lessor shall provide the railroad with an assignment of the owner-lessor's claims and rights to collect the amount not recovered upon payment of the claim of cancellation of the invoice by the railroad.

B. If the railroad had deducted the amount of an erroneous allowance payment from an owner-lessor, the railroad must remit to the owner-lessor the amount deducted within four (4) months of its receipt of a properly presented, valid claim from the owner-lessor.

ITEM 185

COMPUTATION OF MILEAGE
(See Exceptions 1 through 6)

1. Mileage will be computed on the basis of actual distance based on freight mileage tables of the individual lines parties to this tariff, lawfully on file, via the route of movement from station of origin or station at which received from connecting line to destination station or to stations at which delivered to connecting line without deduction of mileage through switching districts (see Note 1).

2. When the transportation begins and ends, i.e., when a car is both loaded and unloaded, within a switching district, no mileage will be allowed. Mileage between an industry or public track and freight station at station of origin or destination will not be allowed.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 185 (Cont'd)

COMPUTATION OF MILEAGE
(See Exceptions 1 through 6)

EXPLANATION OF NOTES

1. The intent of the clause "without deduction of mileage through switching districts" is to insure mileage being allowed for the full distance the car moves, via route of movement from freight station of origin to freight station to which destined. When there are two or more freight stations on a road within a switching district, mileage will be paid to or from the station within such district at which the car is actually loaded or unloaded or at which it is received from or delivered to connecting line.

EXCEPTIONS

1. In computing distances between stations on the UP on the one hand and stations on the KCS on the other hand, via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans via the UP and 5.4 miles from the actual distance to and from New Orleans via the KCS.

2. Mileage will be allowed on movements having origin and destinations at stations or districts within the Chicago Switching District, provided the movements originate at or are destined to industries having private sidings.

3. In computing distances between stations on the UP on the one hand and stations on the IC on the other hand via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans, LA via the UP and 5.1 miles from the actual distance to and from New Orleans via the IC.

4. In computing distances from, to or via KCS on traffic routed via New Orleans, LA, interchanged at Shrewsbury, LA, deduct 5.4 miles from the actual distance to and from New Orleans, LA on the KCS.

5. When for account of the KCS, mileages will be computed on basis of the shortest distance over the route of these lines determined by freight mileage tables lawfully on file , in lieu of actual distance as provided in Paragraph 1 of this item.

6. All traffic between West Lake, LA on KCS and interchange with UP will be made at De Quincy, LA, in lieu of Lake Charles, LA for carriers convenience and to facilitate industries located at West Lake, LA. KCS will not pay mileage allowance between West Lake, LA and De Quincy, LA, when cars are moving under provisions of UP reroute orders.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE (SEE NOTE 1)

1. Should the aggregate empty mileage accumulated by tank cars carrying any of the reported marks assigned to any one person or company during a calendar year exceed the aggregate loaded mileage during the same calendar year by more than six (6) percent, such excess mileage must be paid for by the person or company to whom the reporting marks are assigned at the rate of ninety-two (92) cents per mile, without minimum, subject to the procedures outlined in Part D (See Note 2, this item).

2. Mileage on empty cars moving on revenue billing will not be included in the equalization account.

3. Empty mileage accumulated on cars moving to and from repair facilities for modification under DOT mandated retrofit programs or for inspection and/or repair under FRA Emergency Orders will not be included in the equalization account. Empty mileage accumulated on cars moving under AAR Early Warning/ Maintenance Advisory letters to and from repair facilities associated with the removal of certain truck bolsters that were manufactured by the National Castings of Mexico facility in Sahagun, Mexico, will not be included in the equalization account.

4. Except as outlined in Item 190 Series, Paragraph 2 (C), no adjustments to loaded or empty mileage will be made in the equalization account for mileage caused by error in handling of the reporting railroad or of another railroad, or for mileage accumulated on cars moving on their own wheels to and from repair facilities due to railroad damage or for mileage accumulated due to longer routes for railroad convenience, detours and Surface Transportation Board Service Orders. Rail carriers will make equalization adjustments to the owners of excess reported on-line empty mileage on cars, they lease and operate under private marks, or cars of other lessees and/or owners operating on their line for company material, weed killer and similar service.

5. Adjustments to loaded or empty mileage will be made in the equalization account for apparent accounting errors in the total mileage reported for participating rail carriers under the following procedures. In the absence of appropriate adjustments being made by the AAR or a participating carrier for such accounting errors, a private car company or owner may request an appropriate adjustment for mileage summaries reported in error, from the involved rail carrier in the format prescribed by the AAR, provided such request is made within thirty (30) days of the forwarding of the monthly AAR "Year to Date Equalization Register", containing the alleged error, furnishing a duplicate of such request to the Assistant Vice President, Business Services, AAR. The rail carriers will have thirty (30) days from the date of such request in which to decline or make all or a portion of the requested adjustment, advising the Assistant Vice President of the handling accorded.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART A
AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE (SEE NOTE 1)

5. (Cont'd) If the rail carrier fails to act upon a request for adjustments in the AAR summary totals within the specified time frame, the AAR is authorized to make the adjustment to the equalization account of the private car company or owner for the amount of mileage originally requested. Exceptions to the annual national equalization statement will be handled in accordance with the provisions of Part D (2).

   ALL requests for adjustments to the equalization account must be presented by the private car company or owner to the involved rail carrier(s) or presented by the rail carrier(s) to the private car company or owner within three (3) years from the last day of the reporting month in question. However, such request for adjustments will not be accepted by the AAR if the involved rail carrier or car owner is no longer an operating entity, except as provided for in Part C.

6. Aggregate loaded and empty mileage will be computed on the basis of actual distance, as defined in Item 185-Series. Adjustments made subsequent to the deadline specified in Part D will be computed in the subsequent equalization account year.

PART B
REPORTING OF ACTUAL LOADED AND EMPTY MILEAGE

Each participating carrier will submit a monthly mileage report in the format prescribed by the AAR to the assignee of each reporting mark forty (40) days after the close of the movement month reporting by individual car number the actual loaded and empty miles moved as computed in accordance with Item 185-Series. In addition, total actual monthly loaded and empty mileage accumulated by all cars bearing each reporting mark will be reported to the assignee of such mark in the format prescribed by the AAR, furnishing a duplicate of this summary report to the Assistant Vice President, Business Services, AAR. Adjustments for prior months will be indicated on this monthly summary report.

PART C
CHANGE OF OWNERSHIP

When a private tank car company or owner discontinues business or disposes of all tank car equipment, any excess empty mileage balance which has accrued to the date of such action, on the tank cars bearing the reporting marks of such company or owner, shall be subject to bill as of that date, in accordance with the provisions of Parts A and D of Item 187-Series, subject to any applicable adjustments.

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

1. After May 20 of each year, the Assistant Vice President, Business Services, AAR will summarize all empty and loaded mileage by reporting mark assigned to any person or company, reporting for the proceeding calendar year, by all participating carriers to this tariff. Should the aggregate empty mileage exceed the aggregate loaded mileage of all participating carriers by more than (6) percent for any such group of reporting marks, the person or company to whom the reporting marks are assigned will be billed at the rate of ninety-two (92) cents per mile without minimum and must pay the AAR on behalf of each participating carrier for such excess for such empty mileage. The charges collected for this excess empty mileage will be distributed to the participating carriers by the AAR in direct proportion to such carriers portion of excess empty mileage to the total accumulated excess empty mileage. Only that mileage and any related adjustments reported to the Assistant Vice President prior to May 20 will be considered in determining and excess empty mileage, as outlined herein (See Notes 1, 2 and 3).

2. An annual national equalization statement detailing the excess empty mileage accumulated and any applicable charges will be tendered by the Assistant Vice President to the person or company assigned the reporting mark(s) for such cars for verification no later than July 1 of the year succeeding the equalization accounting year. Exceptions to this statement must be received by the Assistant Vice President within 30 days of the date tendered, and payment for all excess empty mileage is due immediately thereafter. Any adjustments made by the participating carriers up to and including the March account applicable to the prior year(s) will be incorporated in the equalization accounts for the prior equalization accounting year. Any railroad or AAR adjustments made subsequent to the March account will be carried over to the following equalization accounting year (see Note 3).

3. A private car company or owner failing to render complete payment for all excess empty mileage within thirty (30) days of the date its equalization statement is tendered by the AAR will be subject to a penalty of one and a half percent (1.5%) interest per month (i.e., annual rate of 18%) for each calendar month or fraction thereof on any outstanding balance due from the date of the AAR's invoice statement. If any portion of a private car company's or owner's equalization statement remains unpaid in excess of 3 months from the date initially tendered, all mileage allowances accrued by the tank cars registered in the Umler file bearing its reporting marks will be withheld by the carriers participating in this item until such time as complete payment including applicable penalty interest is made. Once complete payment is made, the participating carriers will be notified by the AAR and claims for any applicable mileage allowances withheld will be honored, less a 15% penalty charge for the carriers' administrative expense.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 187 (Cont'd)

EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

PART D
ANNUAL NATIONAL EQUALIZATION ACCOUNTING

EXPLANATION OF NOTES

1. The ninety-two (92) cents per mile charges for excess empty mileage under the provisions of this item is subject to revision September 1 of each year under Ex Parte No. 328 agreed annual update procedures, and will be retroactively applied to cover the entire calendar year involved.

2. Close out dates specified in Part D may be extended by the AAR for a maximum of 60 days for special national accounting problem conditions, affecting substantially all carriers and all owners.

3. Invoices that have been issued which, after investigation, are determined to have been erroneous due to rail carriers or AAR accounting and/or system errors may be cancelled by the Assistant Vice President.

ITEM 190

HANDLING OF EMPTY TANK CARS
(SEE NOTE 2)

1. When a tank car is released from load, the owner or lessee must issue instructions for the disposition of the empty car to the agent at point of unloading either direct or through consignee or via EDI. Empty instructions may also be included with the original loaded shipping instructions if transmitted via EDI. If the owner or lessee fails to have instructions in the hands of the railroad agent having jurisdiction at point of unloading prior to the time the car is released from load to forward the car or written instructions to hold it, the agent is authorized to forward the empty car to the origin point of the last load via reverse of the loaded route. No tank car which last contained hazardous material may be moved without having shipping instructions furnished as per Title 49 Code of Federal Regulations.

2. Empty tank cars will be handled as follows:

   A. Except as otherwise provided in this tariff, cars covered by this section will be moved empty without charge between stations or junction points upon receipt of instructions from the car owner or lessee confirmed in writing. Such instructions must include the specific facility to which such empty car is consigned or the name and address of the person or company which controls the car. No allowance will be made for mileage of such cars during empty movement.

   B. A new car, a car that is restenciled with private reporting marks or a newly acquired car moving prior to its first loaded move in commercial service and a newly acquired car moving prior to its first loaded move in commercial service and a car moving for sale or scrap will be moved upon surrender of a bill of lading and will be subject to applicable rates.(see Note 1).

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 190 (Cont'd)

HANDLING OF EMPTY TANK CARS
(SEE NOTE 2)

2. Empty tank cars will be handled as follows: (Cont'd)

   C. If the owner or lessee or party issued instructions to forward the empty tank car to the origin point of the last load by specific routing different than the reverse routing of the loaded movement, the total miles of such return movement will be billed at the excess empty mileage rate specified in Item 187-Series without minimum and such empty mileage so billed will be excluded from the equalization account of the owner. This billing will be made to, and collectable from, the person so requesting such variance in the return routing. If the carriers depart from the destinations, junctions or carriers of the reverse route of the load, any resulting excess empty miles will be excluded from the car owner's equalization account by erring carrier.

EXPLANATION OF NOTES

1. A car loaded with railroad company material moving on non-revenue billing will be considered as having been loaded in commercial service on which the railroads derived line-haul revenue.

2. The provisions of this item apply except as otherwise provided in Item 192-Series of this tariff.

ITEM 192

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS
(SEE NOTE 1)

1. The rules and charges in this item apply only to empty private tank cars consigned to non-railroad repair facilities; i.e., facilities for cleaning, lining, relining, maintenance, modification or repair.

2. The rules and charges do not apply to:

   A. Empty private tank cars moving as revenue freight under the provisions of Item 190-Series, Paragraph B 2.

   B. Empty private tank cars handled or held for carrier operating convenience.

   C. Empty private tank cars en route to facilities for cleaning, lining, relining or repair for heavy repairs following railroad damage.

   D. Empty private tank cars en route to repair facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.

3. No allowance will be made by carriers for mileage accrued during supplemental empty movement of tank cars that are assessed charges as provided in Paragraph 5.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 192 (Cont'd)

HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS
(SEE NOTE 1)

4. Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to their cleaning, lining, relining, maintenance, modification or repair facility (or their owned or leased tracks in the vicinity thereof) before the expiration of 48 hours free time (not counting Saturdays, Sundays or holidays) after placement. The time calculation will start the first 7 A.M. subsequent to carrier notification to the consignee that the empty private car is ready for placement and the time calculation will stop when the carrier places or forwards the car pursuant to instructions or should have placed or forwarded the car pursuant to instructions.

5. After expiration of free time as provided in Paragraph 4, charges will be as follows: (See Note 2)

   A. Supplementary handling charge of ♦$102.00 per car.

   B. Holding charge of $1 per car per calendar day or fraction thereof including Saturdays, Sundays and holidays while held by carrier on non-leased tracks awaiting disposition.

6. In the event the consignee orders the car to tracks owned or leased by the consignee in the vicinity of the facility for cleaning, lining, relining, maintenance, modification or repair within the forty-eight hour period described under Paragraph 4, this item, there will be no supplementary handling charge for the movement; however, such cars will be subject to the supplementary handling charge of ♦$102.00 per car (See Note 2) at such time that the empty tank car is subsequently ordered and moved onto the facility for cleaning, lining, relining, maintenance, modification or repair or ordered moved from that facility to the tracks or leased by the consignee in the vicinity of the facility.

7. Applicable billing will be monthly to the facility involved.

EXPLANATION OF NOTES

1. The rules and charges in this item do not in any way supersede or duplicate existing, or new written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.

2. Per ExParte No. 328, the supplemental handling charge will be revised annually at the same time as the tank car mileage allowance update, utilizing the same method as that prescribed for updating the excess mileage equalization charge.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

▲♦ ITEM 195

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

Mileage rate allowance for cars of foregoing mechanical designations shall be in cents per loaded mile (See Notes 2 and 7) as follows:

COLUMN 1 - Original cost or fair market value in dollars (see Notes 3, 4, 5 and 6, this item).
COLUMN 2 - Cars in service years 1 through 30.
COLUMN 3 - Cars in service years 31 and over.

COLUMN 1	COLUMN 2	COLUMN 3
$ 0 – 1000	36.8	36.5
1001 – 2000	37.4	36.5
2001 – 3000	38.0	36.6
3001 – 4000	38.7	36.6
4001 – 5000	39.3	36.6
5001 - 6000	39.9	36.7
6001 - 7000	40.5	36.7
7001 - 8000	41.2	36.8
8001 - 9000	41.8	36.8
9001 - 10000	42.4	36.8
10001 - 11000	43.1	36.9
11001 - 12000	43.7	36.9
12001 - 13000	44.3	37.0
13001 - 14000	44.9	37.0
14001 - 15000	45.6	37.0
15001 - 16000	46.2	37.1
16001 - 17000	46.8	37.1
17001 - 18000	47.5	37.2
18001 - 19000	48.1	37.2
19001 - 20000	48.7	37.3
20001 - 21000	49.3	37.3
21001 - 22000	50.0	37.3
22001 - 23000	50.6	37.4
23001 - 24000	51.2	37.4
24001 - 25000	51.9	37.5
25001 - 26000	52.5	37.5
26001 - 27000	53.1	37.5
27001 - 28000	53.7	37.6
28001 - 29000	54.4	37.6
29001 - 30000	55.0	37.7
30001 - 31000	55.6	37.7
31001 - 32000	56.3	37.7
32001 - 33000	56.9	37.8
33001 - 34000	57.5	37.8
34001 - 35000	58.1	37.9
35001 - 36000	58.8	37.9
36001 - 37000	59.4	37.9
37001 - 38000	60.0	38.0
38001 - 39000	60.7	38.0
39001 - 40000	61.3	38.1

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

▲♦ ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
40001 - 41000	61.9	38.1
41001 - 42000	62.5	38.1
42001 - 43000	63.2	38.2
43001 - 44000	63.8	38.2
44001 - 45000	64.4	38.3
45001 - 46000	65.0	38.3
46001 - 47000	65.7	38.3
47001 - 48000	66.3	38.4
48001 - 49000	66.9	38.4
49001 - 50000	67.6	38.5
50001 - 51000	68.2	38.5
51001 - 52000	68.8	38.5
52001 - 53000	69.4	38.6
53001 - 54000	70.1	38.6
54001 - 55000	70.7	38.7
55001 - 56000	71.3	38.7
56001 - 57000	72.0	38.7
57001 - 58000	72.6	38.8
58001 - 59000	73.2	38.8
59001 - 60000	73.8	38.9
60001 - 61000	74.5	38.9
61001 - 62000	75.1	39.0
62001 - 63000	75.7	39.0
63001 - 64000	76.4	39.0
64001 - 65000	77.0	39.1
65001 - 66000	77.6	39.1
66001 - 67000	78.2	39.2
67001 - 68000	78.9	39.2
68001 - 69000	79.5	39.2
69001 - 70000	80.1	39.3
70001 - 71000	80.8	39.3
71001 - 72000	81.4	39.4
72001 - 73000	82.0	39.4
73001 - 74000	82.6	39.4
74001 - 75000	83.3	39.5
75001 - 76000	83.9	39.5
76001 - 77000	84.5	39.6
77001 - 78000	85.2	39.6
78001 - 79000	85.8	39.6
79001 - 80000	86.4	39.7

(Continued on next page)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

▲♦ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
80001 - 81000	87.0	39.7
81001 - 82000	87.7	39.8
82001 - 83000	88.3	39.8
83001 - 84000	88.9	39.8
84001 - 85000	89.6	39.9
85001 - 86000	90.2	39.9
86001 - 87000	90.8	40.0
87001 - 88000	91.4	40.0
88001 - 89000	92.1	40.0
89001 - 90000	92.7	40.1
90001 - 91000	93.3	40.1
91001 - 92000	94.0	40.2
92001 - 93000	94.6	40.2
93001 - 94000	95.2	40.2
94001 - 95000	95.8	40.3
95001 - 96000	96.2	40.2
96001 - 97000	96.5	40.1
97001 - 98000	96.8	40.0
98001 - 99000	97.1	39.9
99001 - 100000	97.4	39.9
100001 - 101000	97.7	39.8
101001 - 102000	98.0	39.7
102001 - 103000	98.3	39.6
103001 - 104000	98.7	39.5
104001 - 105000	99.0	39.4
105001 - 106000	99.3	39.4
106001 - 107000	99.6	39.3
107001 - 108000	99.9	39.2
108001 - 109000	100.1	39.1
109001 - 110000	100.4	39.0
110001 - 111000	100.7	38.9
111001 - 112000	101.0	38.9
112001 - 113000	101.3	38.8
113001 - 114000	101.6	38.7
114001 - 115000	101.9	38.6
115001 - 116000	102.2	38.5
116001 - 117000	102.4	38.5
117001 - 118000	102.7	38.4
118001 - 119000	103.0	38.3
119001 - 120000	103.3	38.2

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

▲♦ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

COLUMN 1	COLUMN 2	COLUMN 3
120001 - 121000	103.6	38.2
121001 - 122000	103.8	38.1
122001 - 123000	104.1	38.0
123001 - 124000	104.4	37.9
124001 - 125000	104.6	37.9
125001 - 126000	104.9	37.8
126001 - 127000	105.2	37.7
127001 - 128000	105.4	37.6
128001 - 129000	105.7	37.6
129001 - 130000	106.0	37.5
130001 - 131000	106.2	37.4
131001 - 132000	106.5	37.4
132001 - 133000	106.7	37.3
133001 - 134000	107.0	37.2
134001 - 135000	107.2	37.1
135001 - 136000	107.5	37.1
136001 - 137000	107.7	37.0
137001 - 138000	108.0	36.9
138001 - 139000	108.2	36.9
139001 - 140000	108.5	36.8
140001 - 141000	108.7	36.7
141001 - 142000	109.0	36.7
142001 - 143000	109.2	36.6
143001 - 144000	109.5	36.5
144001 - 145000	109.7	36.5
145001 - 146000	109.9	36.4
146001 - 147000	110.2	36.3
147001 - 148000	110.4	36.3
148001 - 149000	110.6	36.2
149001 - 150000	110.9	36.1
150001 - 151000	111.1	36.1
151001 - 152000	111.3	36.0
152001 - 153000	111.6	36.0
153001 - 154000	111.8	35.9
154001 - 155000	112.0	35.8
155001 - 156000	112.2	35.8
156001 - 157000	112.5	35.7
157001 - 158000	112.7	35.7
158001 - 159000	112.9	35.6

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SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)
(Cont'd)

EXPLANATION OF NOTES

1. Designating symbols (mechanical designation) will be assigned to car owner or lessee by the Executive Director, Rules and Standards, Technical Services, Association of American Railroads, upon written application.

2. For mileage allowance purposes, the service year of a car is calculated based upon year of construction of underframe. A car's first service year is the year built. Its second service year begins on January 1 of the year following the year built, with succeeding service years starting on January 1 of each following year. If the tank's service year exceeds 30, the car's service year is considered to be in excess of 30 regardless of year of construction of underframe. For those cars constructed without an underframe, the car's service year is calculated based upon year of construction of tank. Service year is determined by subtracting the year of construction (built/rebuilt) from the current calendar year, plus 1, e.g., (2000 - 1970) + 1 = 31, or Service Years 31 and over allowance bracket.

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SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows:

   A. For cars built between January 1, 1968 and July 1, 1991, assignment of owned or leased cars to value groups will be determined by the original cost as represented to the original buyer by the manufacturer's invoice price at the time of original installation into service. In the case of a manufacturer-lessor, the fair market value or the value which was certified, or would have been certified, for investment tax credit purposes shall be substituted therefore.

   B. Assignment to value groups of cars placed into service after July 1, 1991 will be determined by the original cost of the car to the original buyer as stated in the manufacturer's invoice. In only two circumstances, owners may certify as alternative "true value" in lieu of invoice price: (a) manufacturers who retain cars for their own leasing service and (b) purchasers who can demonstrate that they contributed physical assets of significant value that were used by the manufacturer in fabricating a car, resulting in a reduction of the invoice price by more than $1,000 per car below the price that otherwise would have been charged. For manufacturers "true value" is the price for which a car or group of cars manufactured as a group would have been sold in an arm's length transaction. For purchasers who have made a qualifying contribution to fabrication, "true value" is the invoice price plus the depreciated value of the contributed assets distributed over the cars for which the assets were used, subject to the same limitations on "true value" which would apply to a manufacturer. "True value" shall not exceed the average price of similar cars registered in Umler at invoice price within the most recent 12 months for which registration information is available in Umler, adjusted for changes in the market values of new tank cars as reflected in average car prices. If the AAR determines by audit that a certified "true value" exceeds this value limit by an amount that causes a car to be placed in a higher allowance value bracket, the value of the car will be reduced to the appropriate value bracket. In addition, if the AAR determines by audit that a certified, "true value" exceeds this value limit by an amount that causes a car to be placed in allowance value bracket more than one bracket above the otherwise applicable bracket, excess allowances paid as a result of the over valuation shall be reimbursed to the paying railroads.

      Those owners who certify a "true value" in lieu of invoice price during the calendar year must provide to the AAR an officer's certificate at the end of the year stating that, based on all information available to the owner, the owner has complied with the terms of this item. Car owners must supply for entry into Umler all information required for tank cars in the Umler Data Specification Manual. Notwithstanding any other provision of this tariff item, "true value" will be subject to audit directly by the AAR.

(Continued in next column)

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

   C. If applicable, initial into service transportation costs, capitalized original lining costs, capitalized additions and capitalized betterments shall be added to car values determined pursuant to Paragraphs 3 (A) and 3 (B), above, if not already included in the value of the car. For cars built after January 1, 1988, capitalized inspection costs shall be added to the value, if applicable and if not already included in the value, if applicable and if not already included in the value of the car. Values other than invoice price shall be identified in accordance with the current AAR Umler Data Specification Manual at the time cars are submitted to the Assistant Vice President, Business Services, AAR, for registration in the Umler file (see Note 6, this item).

   D. The rebuilt year and rebuilt valuation of a private car will be utilized for the purpose of computing applicable mileage allowances subject to the following conditions:

      1. The car must be rebuilt in accordance with the current requirements of Rule 88, Section C of the Office Manual and Sections A & B of the Field Manual, AAR Interchange Rules, Application for official rebuilt status must be filed with the Executive Director, Rules and Standards, AAR Technical Services and written formal approval received prior to registering such car in the Umler file with rebuilt age and valuation data.

      2. Assignment of owned or leased rebuilt cars to value groups will be determined as outlined in Notes 3. (A), 3. (B) and 3. (C) herein, except that the maximum valuation of a rebuilt private car shall not exceed the lesser of:
         a. 75 percent of the original cost of a comparable new car.
         b. 75 percent of the calculated replacement cost of the rebuilt car prior to rebuilding, as computed per AAR Interchange Rule 107.

   E. All car ages and values submitted are subject to verification by the AAR, and audit by the AAR or the owners independent public accountant upon reasonable request by the AAR. If the car owner elects to have the audit performed by its independent public accountant, such audit must be performed in a timely fashion in the manner prescribed by the AAR, will be performed at the car owner's expense and must be duly certified by the car owner's auditor as representing the true value of all cars included in such audit. Failure of the car owner to furnish the required car valuation data to the AAR Umler file, to arrange for the requested audit, or to correct errors determined as a result of such audit, will result in such car(s) being assigned to the lowest applicable mileage allowance rate group.

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SECTION 1
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APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

3. Applies as follows: (Cont'd)

F. Maximum original cost of fair market value will be as follows:

1. For cars built in 1981 and prior	$ 64,001
2. For cars built in 1982	$ 58,001
3. For cars built in 1983	$ 56,001
4. For cars built in 1984	$ 51,001
5. For cars built in 1985	$ 54,001
6. For cars built in 1986	$ 66,001
7. For cars built in 1987	$ 62,001
8. For cars built in 1988	$ 63,001
9. For cars built in 1989	$ 64,001
10. For cars built in 1990	$ 67,001
11. For cars built in 1991	$ 71,001
12. For cars built in 1992	$ 70,001
13. For cars built in 1993	$ 76,001
14. For cars built in 1994	$ 74,001
15. For cars built in 1995	$ 80,001
16. For cars built in 1996	$ 83,001
17. For cars built in 1997	$ 84,001
18. For cars built in 1998	$ 89,001
19. For cars built in 1999	$ 94,001
20. For cars built in 2000	$ 92,001
21. For cars built in 2001	$ 106,001
22. For cars built in 2002	$ 109,001
23. For cars built in 2003	$ 85,001
24. For cars built in 2004	$ 93,001
25. For cars built in 2005	$ 101,001
26. For cars built in 2006	$ 97,001
27. For cars built in 2007	$ 112,001
28. For cars built in 2008	$ 112,001
29. For cars built in 2009	$ 117,001
30. For cars built in 2010	$ 102,001
31. For cars built in 2011	$ 107,001
32. For cars built in 2012	$ 129,001
33. For cars built in 2013	$ 144,001
34. For cars built in 2014	$ 136,001
35. For cars built in 2015	$ 158,001
36. For cars built in 2016 and subsequent	$ 141,001 [A]

NOTE: Age is determined by subtracting the year of construction (built/rebuilt) from the current calendar year plus 1. e.g. (2016-2000) + 1 = 17

4. For cars built or rebuilt subsequent to December 31, 1977, all values reported to the AAR Umler file must be stated in equivalent U.S. dollars based on the applicable exchange rate at the time such cars were built or rebuilt. Subsequent capitalized additions and betterments reported to Umler must also be stated in equivalent U.S. dollars at the time such improvements were made.

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SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 195 (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

5. Applies as follows:

A. Into service transportation costs are those freight charges associated with the movement of a car that is ready for its first load to the locations of the car's original installation into service. Other transportation charges incurred during construction (e.g., to a facility which installs the original lining, etc) may be included in ledger value provided that the cost is capitalized.

B. A capital expenditure is an expenditure intended to benefit future periods in contrast to revenue expenditure/current expense which benefits a current period. It is an addition to a capital asset and is initially reflected on the balance sheet. A capital expenditure normally is subject to depreciation in future years.

C. Applies as follows:

1. An addition or betterment has the effect of:
   a. Extending the useful life of a car beyond the life projected when the car was entered into service; or
   b. Increasing a car's normal use beyond that which was in effect when the car was entered into service; or
   c. Lowering the operating costs beyond that which was in effect at the time the car was entered into service; or
   d. Otherwise adding to the worth of the benefits a car can yield beyond that in effect when the car was entered into service (e.g., enhance safety, etc).
   e. Any repair that maintains a car in its customary state of operating efficiency is NOT an addition or betterment.
2. An addition is the installation of a new component of a car (not a replacement) which meets the above tests. The value registered in Umler shall be the cost of the component added, including labor.
3. A betterment is the replacement of a component of the car with a superior component. The value registered in Umler for a betterment should not exceed the cost of the superior component, including labor minus (1) the original value of the component that was replaced (i.e., retired) and (2) the cost (i.e., expense) incurred in removing the old component.
4. When a unit of property is removed from a car (i.e., partial retirement), the ledger value registered in Umler shall be reduced by the original value of the unit removed.
5. Any cost recovered under AAR Defect Car Billing, if applicable, must be deducted from the cost of an addition or betterment.

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SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

♦▲ **ITEM 195** (Cont'd)

MILEAGE RATE ALLOWANCE ON TANK "T" CAR (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOL) (SEE NOTE 1)

EXPLANATION OF NOTES

6. Applies as follows:

   A. When an owner: (1) makes a valuation correction to the Umler file; or (2) changes the mechanical designation of cars registered in the Umler file; and such changes result in an increase or decrease in the mileage allowance rates, the Assistant Vice President, Business Services, AAR, will be so notified and the increase or decrease will be applied retroactively. Once cars have been reported to the Umler file, any of the foregoing corrections or changes that result in a retroactive increase or decrease in the mileage allowance rates will be identified by the Assistant Vice President. The car owner is required to furnish the Assistant Vice President documented proof of the basis of the correction or change and advise as to any applicable mileage allowance adjustments which are required.

   B. Retroactive Mileage Allowance Decrease: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate decrease, the owner will notify all using carriers of such decrease with either supporting details or a summary of the over-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carrier shall deduct such amount(s), in the next open mileage reports to the car owner, plus fifteen (15) percent to reimburse the handling road for audit and associated administrative expenses. If the owner fails to send notification to the users within five (5) months, the Assistant Vice President shall notify carriers of the car initial (s) and number(s) involved and the user(s) shall make an adjustment, as described above.

   C. Retroactive Mileage Allowance Increase: Within five (5) months from the date of a change to the Umler file resulting in a retroactive mileage allowance rate increase, the owner will notify all using carriers of such increase with either supporting details or a summary of the under-collections, with a copy to the Assistant Vice President. After receiving such notification, the using carriers shall add such amount(s) in their next open mileage reports to the car owner, less fifteen (15) percent to reimburse the handling roads for audit and associated administrative expense. No retroactive mileage allowance rate increase will be applicable if the owner fails to notify the using carriers of such increase within five (5) months from the date of a change to the Umler file.

SECTION 1
RULES AND REGULATIONS
APPLIES ONLY ON TANK CARS

ITEM 196

EXPLANATION OF SYMBOL USED IN ITEM 195

SYMBOL	EXPLANATION
"T"	Tank Car. Tank car means any car which is used only for the transportation of liquids, liquefied gases, compressed gases, or solids that are liquefied prior to unloading. Car may be without underframe if container serving as superstructure is designed to serve as underframe. If car has underframe, it must be designed only for the carriage of one or more enclosed containers (with or without compartments) that form the superstructure and are integral parts of the car. All such containers must be securely attached to underframe when offered for transportation but may have demountable features.

EXHIBIT NO. 12

BEFORE THE
SURFACE TRANSPORTATION BOARD

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICAL; MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET, NUTRITION, INC.; and CARGILL INCORPORATED,	)	STB Docket Nos. 42144, 42150 and 42152 (Consolidated)
and	)	
VALERO MARKETING AND SUPPLY COMPANY; and VALERO RAIL PARTNERS, LLC	)	
and	)	
TESORO REFINING & MARKETING COMPANY, LLC; TESORO GREAT PLAINS GATHERING & MARKETING LLC; and DAKOTA PRAIRIE REFINING, LLC	)	
Complainants,	)	
vs.	)	
UNION PACIFIC RAILROAD COMPANY	)	
Defendant.	)	

STIPULATION AGREEMENT

Complainants[1] and Defendant[2] in the above-captioned proceeding hereby enter into this "Stipulation Agreement" pursuant to which they have agreed to litigate the claims in this

[1] For the purposes of this Stipulation Agreement, "Complainants" refers to the Complainants in Docket No. 42144, which are The North America Freight Car Association; the American Fuel & Petrochemicals Manufacturers; The Chlorine Institute, Inc.; The Fertilizer Institute; the American Chemistry Council; Ethanol Products, LLC d/b/a Poet Ethanol Products; Poet Nutrition, Inc.; and Cargill Incorporated.

[2] The Defendant is Union Pacific Railroad Company ("UP").

proceeding based upon certain stipulations of facts, that those stipulations shall be accepted by the parties as establishing complete, or in some instances partial, responses to discovery requests, and that the stipulated facts shall be taken as true without the need for production of evidence, shall not be rebutted or contradicted by the parties in this proceeding, and shall be binding on the Board in its subsequent management of this proceeding and in any final decision, all as set forth herein. A party may move to strike the evidence of any other party that contravenes this Stipulation Agreement. The parties of course remain free to litigate the legal significance of the stipulated facts.

***Stipulation #1*: In the ordinary course of business, from at least 2010 to the present, Defendant seldom, if ever, has quantified the rates it would have charged individual shippers for transportation under rates that provided for payment of a mileage allowance.**

Complainants accept the foregoing Stipulation #1 as a complete response to Complainants' Document Request No. 9, with the understanding that Defendant also will search for and produce responsive "studies and analyses" not involving individual customers, and will produce responsive documents pertaining to individual customers that Defendant identifies during its search for documents Defendant has otherwise agreed to produce.

***Stipulation #2*: In the ordinary course of business from at least 2010 to the present, Defendant seldom, if ever, has established tariff rates or proposed contract rates that offered a choice between a line-haul rate with full mileage allowance payments or zero-mileage[3] rates.**

Complainants accept the foregoing Stipulation #2 as a complete response to Complainants' Interrogatory No. 1. It also is intended to constitute a partial response to Complainants' Document Request No. 2, with the understanding that Defendant also will search for and produce responsive "studies and analyses" not involving individual customers, and will produce responsive documents pertaining to individual customers that Defendant identifies during its search for documents Defendant has otherwise agreed to produce.

***Stipulation #3:* From at least 2010 to the present, most, if not all, Association Complainant members seldom, if ever, have requested that Defendant establish rates for movement in tank cars that provided for payment of a mileage allowance.**

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[3] Throughout this proceeding, the parties have used the terms "zero-mileage" and "zero-allowance" interchangeably to mean the same thing. The use of one term over the other in this Agreement is not intended to be a substantive distinction.

Stipulation #4: **There is no evidence that Defendant has refused a request to establish rates for movements in tank cars that provide for payment of a mileage allowance.**

Stipulation #5: **From at least 2010 to the present, most, if not all, Association Complainant members seldom, if ever, have requested that railroads other than Defendant establish rates for movement in tank cars that provide for payment of a mileage allowance.**

Stipulation #6: **From at least 2010 to the present, most, if not all, Association Complainant members seldom, if ever, expressly have requested that Defendant establish reduced line-haul rates for movements in tank cars to reflect the members' furnishing of the cars to Defendant.**

Stipulation #7: **From at least 2010 to the present, most, if not all, Association Complainant members seldom, if ever, expressly have requested that railroads other than Defendant establish reduced line-haul rates for movements in tank cars to reflect the members' furnishing of the cars to those railroads.**

Stipulation #8: **From at least 2010 to the present, most, if not all, transportation in tank cars provided to Association Complainant members by railroads other than Defendant have moved pursuant to line-haul rates that did not provide for payment of a mileage allowance.**

Stipulation #9: **In the experience of most, if not all, Association Complainant members, there essentially is no difference between Defendant and other railroads regarding the proportion of movements for which the members receive mileage allowances.**

Defendant accepts the foregoing Stipulation Nos. 3 through 9 as providing complete responses to Defendant's Interrogatory Nos. 24-27, and 34, and Document Request Nos. 3, 6, and 10-13, with the understanding that Complainants will not submit any Opening argument or evidence in this case, including testimony by expert or by fact witnesses, that relies on or refers to information that is responsive to these Interrogatories or Document Requests, but that is not produced in discovery. Furthermore, if Complainants identify a need to submit Rebuttal argument or evidence that includes such information, they agree to permit appropriate discovery at that time, and to allow UP to file appropriate surrebuttal argument and evidence. Complainants also confirm that Union Pacific would also have the right to file a motion to strike the Rebuttal argument or evidence (which Complainants may oppose).

Stipulation #10: **From at least 2010 to the present, Defendant seldom has established rates for movement in tank cars that provide for payment of a mileage allowance.**

Stipulation #11: **From at least 2010 to the present, Defendant seldom, if ever, expressly has informed shippers that the rates it established for movements in tank cars were reduced in lieu of paying mileage allowances.**

Defendant is willing to enter into the foregoing Stipulation Nos. 10-11 with the understanding that it may produce documents responsive to Complainants' discovery requests addressing circumstances in which it has established rates for movements in tank cars that provide for

payment of a mileage allowances or expressly informed shippers that the rates it established for movements in tank cars were reduced in lieu of paying mileage allowances.

***Stipulation #12*: In addition to handling line-haul movements of tank cars, for which it receives freight revenue, Union Pacific also provides switching or haulage for other tank car movements, for which it receives switching or haulage revenue that is not reflected in UP's production of revenue data in this case.**

Complainants and Defendant disagree whether Complainants' Document Request No. 6(m) encompasses switching and haulage revenue. The parties are entering into Stipulation No. 12 as an alternative to Complainants filing a motion to compel or serving additional discovery requests.

The foregoing stipulations constitute all stipulations entered into by the Complainants and Defendant in Docket No. 42144 as of the date of this Stipulation Agreement.

DATED: August 9, 2017

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Counsel for Union Pacific Railroad Company

"EXHIBIT NO. 13

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 14

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 15

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 16

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 17

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 18

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 19

HIGHLY CONFIDENTIAL MATERIAL REDACTED"

"EXHIBIT NO. 20

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 21

HIGHLY CONFIDENTIAL MATERIAL REDACTED"

EXHIBIT NO. 22

NORTH AMERICA FREIGHT CAR ASSOCIATION

THE CHLORINE INSTITUTE

RAILWAY SUPPLY INSTITUTE

Support, Connection, Advocacy

425 Third Street, SW | Suite 920 | Washington, DC 20024
phone (202) 347-4664 | fax (202) 347-0047 | www.rsiweb.org

By Email and Regular Mail

December 22, 2014

Mr. Eric L. Butler
Executive Vice President - Marketing and Sales
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Re: Request for Withdrawal of UPRR 6004-C, Item 55-C Modification

Dear Mr. Butler:

This letter is written on behalf of the North America Freight Car Association ("NAFCA"), the Railway Supply Institute, Committee on Tank Cars ("RSI-CTC"), and the Chlorine Institute ("CI"). NAFCA is an unincorporated association made up of 33 members who are owners, manufacturers, lessors or lessees of private railcars. NAFCA also is made up of associate members who supply administrative services to NAFCA member companies. NAFCA's members collectively represent the owners or lessees of over 680,000 private railcars operating in North America, a significant percentage of which are tank cars. The RSI is the international trade association of the railway supply industry. Its members provide all types of goods and services to freight and passenger railroads, rail shippers and freight car manufacturers and lessors. The members of the RSI-CTC collectively build more than ninety-five percent (95%) of all new railroad tank cars and own and provide for lease over seventy percent (70%) of railroad tank cars operating in North America. CI is a 195 member, not-for-profit trade association of chlor-alkali producers worldwide, as well as packagers, distributors, users, and suppliers. CI's members account for more than 93 percent of the total chlorine production capacity of the U.S.,

Canada, and Mexico, which is mostly transported in rail tank cars owned or leased by the members.

Earlier this month, UP announced that, effective January 1, 2015, it will apply mileage-based line haul charges to certain movements of empty private tank cars to and from "repair facilities" located on UP. This change to existing practices is to be implemented by an amendment to UP's UPRR 6004-C, Item 55-C Movement of Empty Tank Cars with private Markings.

NAFCA, the RSI-CTC, and CI believe that the change contemplated by UP will result in the imposition of a huge, unwarranted financial burden on tank car owners and lessees. This change to existing UP practices appears to be contrary to the legal precedent and policies that govern the ability of railroads to establish separate charges for the transportation of empty rail tank cars to repair shops. We also believe that the establishment of such charges in today's commercial environment, in which many line haul tank car movements are pursuant to contracts which currently do not contain separate charges for the movement of empty tank cars to repair shops, would be unreasonable and contrary to applicable law.

NAFCA, the RSI-CTC, and CI are exploring the options available to us to protect the rights of our members, should UP go forward with the proposed change. This being said, we believe the most appropriate course of action is for UP to immediately withdraw the proposed change to UPRR 6004-C, Item 55-C.

Sincerely,

Peter Cleary,
President, NAFCA

Thomas D. Simpson
President, RSI

Frank Reiner
President, Chlorine Institute

Cc: Lance M. Fritz

EXHIBIT NO. 23

UNION PACIFIC RAILROAD
1400 Douglas Street Omaha, Nebraska 68179

ERIC L BUTLER
Executive Vice President-Marketing & Sales

December 23, 2014

Mr. Peter Cleary
President, NA Freight Car Assoc.
Cargill, Inc.
15407 McGinty Road West
Wayzata, MN 55391

Mr. Frank Reiner
President
Chlorine Institute
1300 Wilson Blvd., Suite 525
Arlington, VA 22209

Mr. Thomas D. Simpson
President
Railway Supply Institute
425 Third Street SW, Suite 920
Washington, DC 20024

Re: Request for Withdrawal of UPRR 6004-C, Item 55-C Modification

Dear Peter, Tom, and Frank:

I am writing in response to your letter dated December 22, 1014, requesting that Union Pacific withdraw its plans to apply mileage-based charges to certain movements of empty private tank cars to and from repair facilities by amending UPRR 6004-C, Item 55-C.

Union Pacific has been proactive in explaining the change to our existing practice and the reasons for the change to our customers. As we have explained, the change is designed to align our treatment of empty movements of private tank cars more closely with our treatment of empty movements of other private cars. We also believe it will help provide more timely feedback to customers about the efficient management of their fleet, which may in turn help reduce empty miles on our busy network. In addition, the change will provide more timely recovery of our costs associated with empty movements.

Union Pacific takes seriously the concerns expressed in your letter. However, I cannot agree with your claim that the change will impose a "huge, unwarranted financial burden on tank car owners and lessees." The charges at issue are the same as those Union Pacific has long applied to empty movements to and from shops of many other types of private cars.

I also cannot agree with your statement that the change appears to be contrary to the "legal precedent and policies" governing charges for movements of empty tank cars, or is in any other way "contrary to applicable law." Union Pacific wants to ensure that our actions comply with the law, and we would welcome any clarification you can provide regarding your legal concerns, but I am not aware of any law or precedent prohibiting railroads from charging for movements of empty tank cars to and from repair facilities, especially when the movements are not immediately preceded by a loaded revenue movement.

Union Pacific will continue to engage with our customers to ensure they understand the change we are making and to address concerns that apply to their individual situations. However, we have no plan to withdraw the change to Item 55-C.

Sincerely,

cc: Lance M. Fritz, President & COO

"EXHIBIT NO. 24

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

EXHIBIT NO. 25

BEFORE THE
SURFACE TRANSPORTATION BOARD

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; and CARGILL INCORPORATED	)	**DOCKET NO. NOR 42144**
vs.	)	
UNION PACIFIC RAILROAD COMPANY	)	

COMPLAINANTS' FIRST DISCOVERY REQUESTS

Complainants the North America Freight Car Association ("NAFCA"), the American Fuel & Petrochemicals Manufacturers ("AFPM"), The Chlorine Institute, Inc. ("CI"), The Fertilizer Institute ("TFI"), the American Chemistry Council ("ACC"), Ethanol Products, LLC d/b/a POET Ethanol Products ("Poet Ethanol Products"), POET Nutrition, Inc., ("Poet Nutrition"), and Cargill Incorporated ("Cargill"), (together "Complainants") hereby serve their First Discovery Requests upon Defendant Union Pacific Railroad ("UP") pursuant to 49 C.F.R. Part 1114. Responses and responsive documents, as well as any objections, must be delivered by May 15, 2015, or another date or dates mutually agreed to by the parties, to counsel for the Complainants NAFCA, Cargill, Poet Ethanol Products and Poet Nutrition, Thomas W. Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street, NW, Suite 500, Washington, DC 20007, and if reasonably

possible, copies of all production are to be also delivered to counsel of record for the other complainants.

INSTRUCTIONS

1. These discovery requests ("Requests") call for all non-privileged information which is in the possession, custody, or control of Defendant and its consultants, outside experts and counsel.

2. Where a Request has a number of separate subdivisions, or related parts or portions, a complete response is required to each part or portion. Any objection to a Request should clearly indicate the subdivision, part, or portion of the Request to which it is directed.

3. Each Request shall operate and be construed independently, and, unless otherwise indicated, no Request limits the scope of any other Request.

4. Words used in the singular shall include the plural and words used in the plural shall include the singular, whenever the context permits. Terms such as "and," "or," or "including" shall be construed in the broadest and most inclusive manner, in the disjunctive or conjunctive as necessary, in order to call for all responsive information without limitation.

5. References to the present tense shall be construed to include the past tense, and references to the past tense shall be construed to include the present tense, as necessary to bring within the scope of each Request all documents that might otherwise be construed to be outside the scope of the Request.

6. If Defendant believes that any request or definition or instruction applicable thereto is ambiguous, it should set forth the language that it believes is ambiguous and the interpretation that it is using in responding to the Request.

7. If any document covered by a Request is withheld for whatever reason, including any privilege, Defendant shall furnish a written privilege log identifying all withheld documents in the following manner:

a. the specific Request to which the document is responsive;

b. the date of the document;

c. the name of each author or preparer;

d. the name of each person who received the document and the name of such person's employer at the time the person received the document;

e. a brief description of the subject matter of the document and any withheld attachments or appendices;

f. the specific factual and legal basis for withholding; and

g. the number of pages withheld.

8. Each document produced shall be an authentic original document or a true duplicate of an authentic original document.

9. These Requests cover the period from January 1, 1987 to the date you serve your response, unless otherwise indicated.

10. All Requests are continuing and amended or supplemental responses shall be provided if and when responsive new information and documents are discovered by Defendant, its consultants, outside experts and/or counsel.

11. Identify all persons who provided information for each response, and state which response(s) the person provided information for.

12. Where the Request seeks data in a computer-readable format, machine-readable format, or in its native format, this data is defined as an electronic file which contains structured, relational data, and is managed within a commercially available and relational database system

(for example Microsoft, Oracle, IBM) and is readable via commercially available and standard Microsoft Windows software API (Application Programming Interfaces) methods to include Open Database Connectivity (ODBC) implementations, thereby making the data accessible independent of the host system.

13. If the source table is stored within a non-relational system, such as a 'flat file', or a custom system (not commercially available), provide the data in standard sequential or delimited text files. The text files will be MS-DOS or MS-Windows compatible text formats.

14. For each computer file supplied provide:

a. The name and description of the source database or other file from which the records in the computer file were selected (stating whether the file is an original extract from a line of business transactional or data warehouse computer system, or if the provided file is an extract, or report, created specifically for this request) including a graphic or textural representation of the database relational model for each system to include all named tables of data within the system's relational model, and for every table provide a list of fields, primary keys, foreign keys, list relational links to other tables and fields, and filters, if any, associated to the relational links. Include all related tables, and all fields within each included table. List the fields which define a unique record (row) for each table, or state if the table does not require unique row differentiators or primary keys. For code tables, provide the code, and associated data elements in a discreet list (no duplicates);

b. A description of how the records in the file produced were selected;

c. The original table names (no aliases), original field names, to match the provided systems' data structures within each computer program (in native software and text file) and intermediate file used in deriving the files produced if the files produced are flat files. If the files produced are commercially available relational database files, provide the method used and code (if code was created) used to export the data to this relational format, including the operating system and version under which the final text files or relational tables were produced; and

d. A relational diagram defining relationships between tables, with all fields, listing primary keys, foreign keys, with each table or file provided as listed in the relational diagram. Also provide all table indexes, and index files, which define the index to be clustered or non-clustered.

15. For each field in each computer database file provide a complete, standard data structure, including:

a. The name of the field including its source table name, and if different from the LOB (line of business) or off-line analytical system field name, provide all field name incarnations so that there is a linkage between the provided fieldname and the original source fieldname and source table, and source application/system. Also provide the "Synonymous Name," that being a single word or multiple words that differ from the fieldname, but represents the same data element using alternative or more descriptive terminology. Also provide the "Context", that being a designation or description of the application environment in which the data item (or field) is applied or from which it is originally derived (its origin);

b. The starting and ending positions of the field if the file is a non-delimited flat file, or if the file is delimited, verify that the delimiter is inserted at the end of each field and the delimiter is not contained, as data, within any data cell (provide row terminators and line feed codes), otherwise, if the provided data set is a relational database "table", export the table structure into a separate ANSI SQL 92 code or text file;

c. A detailed definition of the field and whether this field is the record's (or row's) unique identifier, or it is one of many fields which create a unique row (list them);

d. A detailed description of the data in the field, including an explanation of what they are used for and also provide all related index files in SQL code format or text files, if any;

e. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed) and whether this field is Unicode, or contains any constraints, or requirements to be Non-Null, or non-blank;

f. If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each and provide the approved domain (range of values if indeterminate) or list of values permitted if determinate. Also provide minimum and maximum values, including whether the values are Null, hidden, or specific ASCII or ISO codes. Include the character encoding or software vendor's code page, for each table if any;

g. An indication of whether the data in the field are packed or compressed;

h. If the data in the field are packed or compressed, the type of packing or compression:

1) Zoned with low-order sign;

2) Binary with LSB first;

3) Binary with MSB first;

4) Packed with high-order sign;

5) Packed with low-order sign;

6) Packed with no sign; and

7) Other (specify and provide detailed instructions for unpacking);

i. If the data files and tables originate on a non-Microsoft Windows operating system, state the original operating system and convert to Microsoft Windows format; and

j. For data or other electronic information submissions where the source system does not have a 32-bit operating system, verify that all data and files are computer-readable on a 32-bit operating system.

DEFINITIONS

"Allowance Agreement" means the national agreement between railroads and tank car shippers, approved on September 23, 1986 by the Interstate Commerce Commission in Ex Parte No. 328, *Investigation of Tank Car Allowance System*, 3 I.C.C.2d 196 (1986).

"Document" means all writings in any form whatsoever, including but not limited to letters, electronic mail, memoranda, reports, agendas, hand-written materials and meeting notes. The term "documents" also includes all drafts of all writings in any form whatsoever.

"Identity" or "Identify" means:

a. when used with respect to a natural person, to state the person's full name, present or last known business address, the person's present or last known business telephone number, the person's present or last known place of employment, position or business affiliation, and the person's present and former relationship to UP.

b. when used with respect to a person other than a natural person, to state the entity's full business or organizational name, the address of entity's prin-

cipal place of business, the entity's State of incorporation or formation, and the identity of person(s) who acted on behalf of the entity with respect to the subject matter of the requested document, information or thing.

c. when used with respect to a document, either to produce the document itself or to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc., or other means of identifying it), the date of the document, the person(s) who authored and/or signed the document, the person(s) to whom the document was addressed, sent, and/or received, the general subject matter of the document, and the present location and present custodian of the document (if any such document was but is no longer in the possession, custody or control of UP, state what disposition was made of it and explain the circumstances surrounding, and the authorization for, such disposition, and state the date or approximate date of such disposition).

d. when used with respect to a non-written communication, to state the identity of every natural person making or receiving the communication, such person's respective principal(s) or employer(s) at the time of the communication, the date, manner and place of the communication, and the topic or subject matter of the communication.

e. when used with respect to an act, occurrence, decision, statement, review, inspection, negotiation, communication or other conduct (collectively, "act"), to state what transpired at or the events constituting the act, the subject matter of the act, the outcome, and the place and date thereof, and to identify the person(s) present and the person(s) involved.

"Mileage Allowance Payment" means compensation paid to shippers or car owners by UP pursuant to the Allowance Agreement.

"Mileage Equalization Payment" means compensation received by UP from a shipper or car owner pursuant to Freight Tariff RIC 6007-Series and in accordance with the mileage equalization provisions of the Allowance Agreement.

"Possession, custody or control" means any document or other information that is within the possession or control of a defendant or any of its employees, agents, or affiliates or subsidiaries and their employees.

"Refer or relate" means to have any direct or implied reference or relationship to any subject matters to which such phrase is applied.

"Repair Facility" or "Repair Facilities" means any facility that cleans, lines, relines, maintains, modifies, repairs or retrofits tank cars, as the term is defined in Tariff UP 6004, Item 55-C.

"Tariff UP 6004, Item 55-C" means UP's recently adopted Tariff UP 6004, Item 55-C, effective January 1, 2015.

"You or your" means Defendant or any of its outside consultants, experts and counsel. The terms "you," "your," and any other nouns or pronouns shall be gender inclusive.

"Zero-mileage rate" means a rail transportation rate that purportedly compensates a rail shipper or car owner for the use of its private railroad tank car in lieu of compensating the rail shipper or car owner by directly making a Mileage Allowance Payment.

"Zero-mileage allowance clause" means a provision in UP's contracts and/or tariffs pursuant to which UP states it is not required to make Mileage Allowance Payments to rail shippers or car owners who supply UP with private railroad tank cars to transport their commodities.

INTERROGATORIES

1. Identify all tank car movements beginning in 2010 for which UP has established tariff rates, or proposed a contract rate, that offered a choice between a line-haul rate with full mileage allowance payments or zero mileage allowance. Identify the customer, the commodity transported, the origins and destinations of the movements, and the choice of rates that UP offered.

2. Identify all tank car Repair Facilities served by UP or a Class III railroad that connects with UP. For each facility, identify all movements of tank cars supplied to UP by its customers to and from the shop from 2010 to the present.

3. Identify all persons who participated in UP's decision to charge for empty tank car movements to Repair Facilities and describe the title and the role of each person identified.

4. Identify any and all transportation arrangements for tank car railroad transportation by UP where the shipper paid or pays a rate for the transportation, and UP compensated, or currently compensates, the shipper for the use of the cars it supplies to UP through a Mileage Allowance Payment.

DOCUMENT REQUESTS

1. Produce all documents that were referred to or relied upon to provide the answers to Interrogatories 1-4.

2. Produce all documents relating to, discussing, referring to, mentioning or commenting on UP's internal deliberations on whether to compensate shippers and/or private tank car owners for the use of their tank cars through Mileage Allowance Payments or through Zero-mileage rates.

3. Produce all documents that Identify, calculate, refer or relate to the total amount of Mileage Equalization Payments UP has received from the transportation of tank cars, by year, for each year from 1987 to the present.

4. Produce all documents that Identify, compile, calculate, refer to, or relate to, any Mileage Allowance Payments UP has made to car owners, or to rail shippers, by year, by car type and/commodity, for each year from 1987 to the present.

5. Produce all documents that discuss, refer to, or relate to any calculation by UP of the extent to which it has reimbursed its customers for the costs of owning and maintaining the tank cars they have supplied to UP for the transportation of their commodities.

6. For each tank car shipment record, please provide the information described below for UP's entire system for each year or partial year 1987 to the present in a computer readable database or electronic spreadsheet, including all field descriptions, data definitions and data dictionaries required to utilize the data. The database should include, at a minimum, the following data:

a. The name of the consignee, shipper, payee, and customer;

b. Commodity (seven-digit Standard Transportation Commodity Code "STCC");

c. Origin station and State;

d. Destination station and State;

e. For shipments that originated on UP's system(s), the date the shipment was originated;

f. For shipments UP received in interchange, the on-junction location station and state;

g. For shipments UP received in interchange, the date the shipment was interchanged;

h. For shipments given in interchange, off-junction location station and state;

i. For shipments given in interchange, the date the shipment was interchanged;

j. For shipments terminated on UP's system, the date the shipment was terminated;

k. Number of rail cars;

l. Tons (Net);

m. Total freight revenues from origin to destination, or UP's share of the total freight revenues in the event that UP was not the sole carrier for a particular movement.

n. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues;

o. Total mileage allowance payments paid by UP to the tank car owner;

p. Total mileage allowance payments received by UP from the tank car owner;

q. The contract, agreement, tariff, or other pricing authority that the shipment is billed under including the amendment and item numbers;

r. Unique Waybill number and date;

s. Total loaded miles on UP's system;

t. Total empty miles on UP's system;

u. AAR car-type code;

v. Tank car initial and number; and

w. Annual tank car allowance rate from UMLER.

7. For each empty tank car shipment record, please provide the information described below for UP's entire system for each year or partial year 2010 to the present in a computer readable database or electronic spreadsheet, including all field descriptions, data definitions and data dictionaries required to utilize the data. The database should include, at a minimum, the following data:

a. The name of the consignee, shipper, payee, and customer;

b. Commodity (seven-digit Standard Transportation Commodity Code "STCC");

c. Origin station and State;

d. Destination station and State;

e. For shipments that originated on UP's system(s), the date the shipment was originated;

f. For shipments UP received in interchange, the on-junction location station and state;

g. For shipments UP received in interchange, the date the shipment was interchanged;

h. For shipments given in interchange, off-junction location station and state;

i. For shipments given in interchange, the date the shipment was interchanged;

j. For shipments terminated on UP's system, the date the shipment was terminated;

k. Number of rail cars included on the waybill to/from Repair Facility;

l. Tons per car (Net);

m. Total empty mileage payments under Tariff 6004-C (if moved after January 1, 2015);

n. Unique Waybill number and date;

o. Total empty miles on UP's system to/from Repair Facility; and

p. AAR car-type code.

8. Produce all documents relating to, discussing, referring to, mentioning or commenting on costs associated with owning and maintaining railroad tank cars, whether the cars are owned by UP or by its customers or car owners.

9. Produce all documents that refer or relate to, and/or quantify, discounts or reductions to line-haul rates that UP contends that it has provided to any shipper in exchange for an agreement to waive Mileage Allowance Payments on tank cars.

10. Produce all documents that refer or relate to UP's decision to begin charging for empty tank car movements to/from Repair Facilities as set forth in Tariff 6004, Item 55.

11. Produce all studies or analyses that were performed by or for UP as part of the process of deciding to charge for empty tank car movements to and from Repair Facilities.

12. Provide all documents that Identify, calculate, refer or relate to the level of rate reductions UP has offered shippers in lieu of compensating them by making Mileage Allowance Payments on tank cars.

13. Produce all documents that Identify, refer or relate to the factors and methods that UP uses to establish line-haul rates for movements in tank cars, including but not limited to all cost factors that UP considers.

14. Produce all documents, including but not limited to studies, memos, analyses, and reports addressing the degree to which Zero-mileage rates charged by UP compensate private car owners for the use of their tank cars.

15. Produce all documents, including but not limited to studies, memos, analyses, and reports in which UP has quantified the costs of private car ownership for which UP maintains it is reimbursing its customers through Zero-mileage rates.

16. Produce all documents, including but not limited to studies, memos, analyses, and reports, where UP has estimated the revenues it will receive from the charges for empty tank car movements established in UPRR Tariff 4703.

Respectfully submitted,

Thomas W. Wilcox, Esq.
David K. Monroe, Esq.
Svetlana Lyubchenko, Esq.
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street NW
Suite 500
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Counsel for North America Freight Car Association; Ethanol Products, LLC d/b/a POET Ethanol Products; POET Nutrition, Inc., and Cargill Incorporated

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EXHIBIT NO. 26

BEFORE THE
SURFACE TRANSPORTATION BOARD

NORTH AMERICA FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; and CARGILL INCORPORATED	)	**DOCKET NO. NOR 42144**
vs.	)	
UNION PACIFIC RAILROAD COMPANY	)	

COMPLAINANTS' SECOND DISCOVERY REQUESTS

Complainants the North America Freight Car Association ("NAFCA"), the American Fuel & Petrochemicals Manufacturers ("AFPM"), The Chlorine Institute, Inc. ("CI"), The Fertilizer Institute ("TFI"), the American Chemistry Council ("ACC"), Ethanol Products, LLC d/b/a POET Ethanol Products ("Poet Ethanol Products"), POET Nutrition, Inc., ("Poet Nutrition"), and Cargill Incorporated ("Cargill"), (together "Complainants") hereby serve these Second Discovery Requests on Defendant Union Pacific Railroad Company. Responses and responsive documents, as well as any objections, must be delivered by February 23, 2016, or

another date or dates mutually agreed to by the parties, to counsel for the Complainants NAFCA, Cargill, Poet Ethanol Products and Poet Nutrition, Thomas W. Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street, NW, Suite 500, Washington, DC 20007, and if reasonably possible, copies of all production are to be also delivered to counsel of record for the other complainants.

INSTRUCTIONS AND DEFINITIONS

Complainants hereby incorporate by reference into these Second Discovery Requests the Definitions and Instructions included in Complainants' First Discovery Requests, served on April 30, 2015, except that the definition of "You or your" is amended to mean Defendant and predecessors to Defendant also known as "Union Pacific Railroad Company" from 1987 to the present, or any of Defendant's outside consultants, experts and counsel. The terms "you," "your," and any other nouns or pronouns shall be gender inclusive.

INTERROGATORIES

5. For each of the years 1987 and 2015, identify by name and location (including the serving rail carrier(s)) all tank car Repair Facilities served by a Class III railroad that interchanged with You.

7. For each of the years 1987 and 2015, identify by name and location all Repair Facilities served directly by You.

8. For the year 1987, identify the number of empty tank car movements by You (a) for interchange with a Class III railroad for transportation to a Repair Facility located on a railroad other than You; and (b) to Repair Facilities located on Your system and served directly by You,

where the movement to the Repair Facility would have been subject to charges pursuant to Tariff 6004, Item 55-C.

9. Identify all persons who participated in: (a) Your decision to charge for certain empty tank car movements to or from Repair Facilities, (b) the drafting of Tariff 6004, Item 55-C and Tariff 4703, Items 1100-1200, (c) determining the rates applicable to empty tank car movements to/from Repair Facilities under Tariff 6004, Item 55-C and Tariff 4703, Items 1100-1200 (both for 2015 and 2016). For each person identified, describe their title and their role in the relevant activity.

10. Identify all persons who participated in any analysis or projections of the revenues You will receive from the charges assessed pursuant to Tariff 6004, Item 55-C and Tariff 4703 Items 1100-1200 (both at 2015 and 2016 rate levels). For each person identified, describe their title and their role in the relevant activity.

11 Please explain how You determined each of the rates set forth in Tariff 4703, Items 1100-1200 (for 2015 and 2016) and what calculations and analysis, if any, You undertook to determine whether and how much of the revenues received by You pursuant to this Tariff would be paid to car owners through Mileage Allowance Payments and/or Zero Mileage Rates.

12. Provide an accounting of the revenues received from tank car providers through mileage equalization charges by You in 1987 and from 2001 to the present.

13. From 2010 to the present, identify (a) any and all arrangements (e.g., tariff or contract) for railroad transportation by You of commodities in tank cars in which You compensated, or currently compensate, the tank car provider for the use of private tank cars through a Mileage Allowance Payment; and for each arrangement, (b) the customer; (c) the commodity and (d) the applicable line-haul rate.

14. From 2010 to the present, identify (a) any and all arrangements (e.g. tariff or contract) for railroad transportation by You of commodities in tank cars in which You compensated, or currently compensates, the tank car provider for the use of private tank cars through a Zero-Mileage Rate; (b) the applicable Zero-Mileage Rate; (c) the rate that UP otherwise would have charged if You paid an allowance, including the source (e.g., tariff, contract offer); and for each arrangement, (d) the customer; and (e) the commodity.

15. Provide the following information for movements by You for calendar year 1987 and each calendar year from 2001 through 2015:

(a) Total number of empty tank car shipments to and from Repair Facilities.

(b) Total number of empty tank car miles to and from Repair Facilities.

16. Identify all facts, documents, and analyses upon which You intend to rely to support Your claim that the Zero-Mileage Rates charged by You for tank car shipments are or were less than the rates You otherwise would have charged.

17. State whether You have assessed or will assess the charges for empty tank car movements made applicable by Tariff 6004, Item 55-C against the tank car owner or lessee in those circumstances where they are different entities and explain why. If Your response depends on any factual determination, identify the facts upon which it depends and explain how those facts influence Your response.

18. Please explain if and how Your charges for the movement of empty cars subject to Repair Facilities subject to Item 55-C are or will be reflected in the level of the mileage allowance charges determined pursuant to Ex Parte No. 328.

DOCUMENT REQUESTS

17. Please provide all documents that were referred to or relied upon to provide the answers to Interrogatories 5-19.

18. Please provide a map of Your system in 1987 and any other documents necessary to depict visually, describe and/or set forth the total miles of track comprising Your rail system in 1987, by track segments.

19. Please provide all documents dated from January 1, 2010 to the present that contain, refer, or relate to the projected revenues You anticipated receiving from implementing Tariff 6004, Item 55-C and Tariff 4703 Items 1100-1200, including but not limited to projected revenues for the movement of empty tank cars for retrofit as a result of final regulations adopted in Docket No. PHMSA-2012-0082 (HM-251), *Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains- Notice of Proposed Rulemaking.*

19. Produce all documents, regardless of date, that pertain to meetings, deliberations, reports, or analyses of the Joint Negotiating Committee which negotiated the national mileage allowance and equalization agreements adopted by the Interstate Commerce Commission in Ex Parte No. 328.

20. Produce all documents and data pertaining to Your decision to increase the charges for empty tank car movements to and from Repair Facilities, effective January 1, 2016.

Respectfully submitted,

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"EXHIBIT NO. 27

HIGHLY CONFIDENTIAL MATERIAL
REDACTED"

"EXHIBIT NO. 28

HIGHLY CONFIDENTIAL MATERIAL REDACTED"

"EXHIBIT NO. 29

HIGHLY CONFIDENTIAL MATERIAL REDACTED"

EXHIBIT NO. 30

BEFORE THE

SURFACE TRANSPORTATION BOARD

NORTH AMERICAN FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; AND CARGILL INCORPORATION,	)	NOR 42144
VS.	)	
UNION PACIFIC RAILROAD COMPANY,	)	

HIGHLY CONFIDENTIAL

DEPOSITION OF: KENNY ROCKER

DATE: December 14, 2016

TIME: 1:20 p.m.

PLACE: Lamson Dugan & Murray, 10306 Regency Parkway Drive, Omaha, Nebraska

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KENNY ROCKER,
Of lawful age, being first duly cautioned and solemnly sworn as hereinafter certified, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MORENO:

Q. Good afternoon, Mr. Rocker.

A. Good afternoon.

Q. My name is Jeff Moreno and I'm one of the co-counsel for the complainants. And for the record, I'm going to go down, each person can enter their own appearance.

MR. DONOVAN: Paul Donovan with LaRoe, Winn, Moerman & Donovan.

MR. WILCOX: Tom Wilcox, GKG law.

MR. SHANER: Houston Shaner representing American Fuel and Petrochemicals Manufacturers.

MR. LILLIE: Andrew Lillie representing the same.

MR. ROSENTHAL: Mike Rosenthal representing Union Pacific.

MS. BODE: Danielle Bode representing Union Pacific.

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MR. RICHARDSON: Craig Richardson representing Union Pacific.
Q. (BY MR. MORENO) And I neglected to mention that I represent the American Chemistry Counsel and the Fertilizer Institute.
Mr. Rocker, would you state your full name and business address for the record, please.
A. Kenny Rocker, 1600 Douglas Street, Omaha, Nebraska 68179.
Q. And Mr. Rocker, have you been deposed before?
A. No.
Q. Okay, has your counsel explained the process of a deposition and how this works?
A. Yes.
Q. If at any time you need a break, just say so. If you don't understand a questions that I'm asking, just say so and I'll be glad to restate it.
Would you state your current position with the Union Pacific Railroad.
A. Vice president and general manager industrial products.
Q. And what are your responsibilities in that position?
A. I am responsible for marketing, sales and promotional strategy for industrial products.

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Q. And how long have you been in that position?
A. I've been in the position since September 1st, 2016.
Q. And prior to September 1, 2016, what was your position?
A. Assistant vice president chemicals.
Q. And were you also assistant vice president chemicals in 2014 when the decision was made to begin charging for empty tank car repair moves?
A. Yes.
Q. And what was your responsibility in that position?
A. To review and provide input and recommendations on that program.
Q. When did you first join Union Pacific?
A. August, 1994.
Q. Okay. And what was your first position with the company?
A. Account representative.
Q. In 2014 when you were the assistant vice president of chemicals, to whom did you report?
A. Beth Whited.
Q. And who reported to you?
A. Doug Craven, Laura Heisterkamp, Chanel Brown and Marty Russell.

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Q. And what were their responsibilities?
A. Doug was director of industrial chemicals for a portion of that time. Laura Heisterkamp was director of industrial chemicals for a portion of that time. Marty Russell was sales director and Chanel Brown was sales director.
Q. In any of your past or present positions, have you been responsible for the pricing of tank car movements?
A. No.
Q. When did you become aware of this particular STB legal challenge, the UP's tank car repair move charge?
A. Earlier this year.
Q. Approximately what -- can you give a month, approximately?
A. I don't recall the particular month, so spring of 2016.
MR. MORENO: I'm going to introduce in the record Exhibit No. 1.
(Exhibit No. 1, marked for identification.)
MR. ROSENTHAL: I'm sorry, I should have said this at the outset. I assume this is going to be marked -- this deposition is going to be marked as highly confidential too,

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so only the parties can review?
MR. MORENO: I think that's appropriate, yes.
Q. (BY MR. MORENO) Have you seen this letter before today?
A. I don't recall seeing this letter.
Q. Okay. You can put that exhibit to the side.
What was your role in UP's 2014 decision to begin charging for tank car repair moves?
A. My role was to review, discuss and make a recommendation on the program.
Q. To your knowledge, did UP charge for tank car repair moves prior to 2015?
A. Can you rephrase and clarify your question?
Q. In 2014, UP made a decision to begin charging for empty tank cars moving to repair facility; is that correct?
A. Yes.
Q. In 2014, was UP charging for such movements?
A. No.
Q. To your knowledge, has UP ever charged for such movements?
A. Not to my knowledge.
Q. Okay. Where did the idea of charging for tank car repair moves originate?

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A. We noticed that we were not being compensated for empty -- extra empty tank car moves on our network. Nor was it consistent with how other tank cars were in our program.
Q. Other tank cars or other rail cars in your program?
A. Correction, other equipment types.
Q. You say you noticed, this isn't something -- was this something the company -- but you've just, a moment ago you said you'd never charged, so is this something the company just became aware of or, or why was the company focused on these repair movements at this time?
A. We were aware that more tank cars would move to shop repair locations based on pending DOT regulations.
Q. When did you begin exploring the possibility of charging for tank car movements?
A. Fall, 2014.
Q. So you were not considering this in the summer of 2014?
A. To my knowledge, the fall 2014.
Q. What was the progression of the fence from the inception of this plan to the actual implementation of a tank car movement charge in 2015?

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MR. ROSENTHAL: Objection, vague.
Q. (BY MR. MORENO) What -- was there a team or a group of individuals within UP who were tasked with the responsibility of developing or proposing a transition plan to begin charging for repair moves?
A. Yes.
Q. Who was a part of this team?
A. Doug Cravan, Nicole Ostertag, our finance team.
Q. Are there --
A. And our legal team.
Q. Are there particular individuals on the finance team that you can name?
A. Not any in particular that I recall.
Q. What about the legal team?
A. Yes.
Q. And who were those individuals who participated?
A. Lou Anne Rinn, R-I-N-N.
Q. Was that it?
A. To my recollection, yes.
Q. Did this team have any particular name or was it known by a particular name within the company?
A. No.
Q. What was the assignment of this team?
A. To explore the idea of aligning private tank cars with the other equipment types.

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Q. And was there a leader of this team?
A. Doug Cravan.
Q. Did the assignment of this team change at all during the time that they -- that the team existed?
MR. ROSENTHAL: Objection, vague.
Q. When was this team created?
A. Fall of 2014.
Q. Was this team disbanded at some point?
A. No.
Q. So it still exists and has some responsibilities related to the assessment of repair move charges on tank cars?
A. The individuals are still in their respective jobs, the word "team" is loosely defined. The individuals who had a goal to explore the program are still in their individual jobs.
Q. Are they in the same jobs that they held in 2014?
A. No.
MR. MORENO: I would like to introduce Exhibit 2, which is Bates No. UPRR 0017845.
(Exhibit No. 2, marked for identification.)
Q. Take a moment to look this document over and then let me know if you have seen this document

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before.
(Witness complies.)
A. Yes.
Q. Did you create this document?
A. Yes.
Q. At the -- if you look on Page 17846, which is the second page of the exhibit, see at the top there's a group -- there's the term nominee and then there are one, two, three, four, five, six names there. Were all of these people part of the -- involved in the decision or the evaluation of UP's transition to -- away from mileage equalization?
A. They were involved in the evaluation.
Q. A moment ago when I asked you for the names of the team members, you gave me some of the people on this list, Nicole Ostertag, Doug Cravan and Louise Rinn. There are three additional names, Danielle Bode, MaKayla Snyder and Tom Noser, were they also members of this team?
A. Yes.
Q. Were any of those the part of the finance team that -- whose names you could not remember earlier?
A. Tom Noser is part of the revenue and information management team, which is in the marketing and sales department.

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Q. And who is MaKayla Snyder?
A. I am not certain that she is in the finance team, I believe she is in revenue accounting.
Q. Okay. And Danielle Bode is the same Ms. Bode sitting in this room?
A. Yes.
Q. Under name of the project, there's the name, "Empty tank car rules team," was this a name that was created just for this document or was this a name by which this team was known in the company?
A. It was created just for this document only.
Q. What role did each of these individuals play with respect to this team?
A. I will review to the best of my memory.
Q. And let me just start with the list, Nicole Ostertag, what was her responsibility within the team?
A. Nicole Ostertag's role was to evaluate the potential scale of the program changes along with the impact.
Q. What do you mean when you say the scale of the program changes, can you elaborate on that?
A. The scale for being compensated for the movement of empties that did not occur for shop moves.
Q. So you saying she was responsible for

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determining the -- or estimating the number of empty tank car shop moves?
A. The potential number of moves, yes.
Q. And Mr. Craven you've already identified as the team leader, did he have any other specific respons bilities within this team?
A. No.
Q. And MaKayla Snyder, what was her respons bility on this team?
A. Nicole Ostertag would have worked with her to scale the impact.
Q. Was Nicole Ostertag MaKayla Snyder's superior?
A. No.
Q. Was it the other way around?
A. No.
Q. Okay. So they were just colleagues?
A. Yes.
Q. And what was Mr. Noser's role?
A. He has implementation roles associated with our tariffs.
Q. All right. And what implementation role did he play with respect to charging for tank car repair moves?
A. In a literal sense, if there's a tariff created, Tom Noser would implement that tariff.

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Q. Did this group of individuals meet in person?
MR. ROSENTHAL: Is there a time frame for that question?
Q. (BY MR. MORENO) Did they hold meetings in person?
A. I do not recollect them meeting together as a team in person.
Q. Did Mr. Craven coordinate their individual activities?
A. Yes.
Q. Did you ever meet with this group of individuals?
A. We did not meet as a group.
Q. Did this -- did these individuals develop any analyses or presentations as part of this team?
A. Could you repeat the question, please?
Q. Did these individuals develop any analyses or presentations as part of this team?
A. Yes.
Q. Put this aside for now. We'll come back to this exhibit later.
MR. MORENO: I would like to introduce Exhibit 3, which is UPRR 0003937.
(Exhibit No. 3, marked for identification.)
Q. (BY MR. MORENO) Mr. Rocker, have you seen this

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e-mail before?
A. Yes.
Q. This e-mail is dated August 8th, 2014 and it, if you look at the bottom, there's a heading titled, [redacted]
Does OTE stand for other transportation equipment?
A. Yes.
Q. And is that a term that is -- UP uses for empty car movements?
A. Not exclusively.
Q. Would it include empty tank car movements?
A. It could.
Q. In the very first paragraph, there's a reference to two OTE initiatives currently underway. And Mr. Craven is saying, "I want to provide some background to our prevailing strategy." Is the prevailing strategy referenced there the strategy to capture additional revenue from tank car repair movements?
A. Prevailing strategy means a process.
Q. And what was the objective of this process?
A. [redacted]

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Q. What -- in your own words, what was the mileage equalization program?
A. A program over 30 years old which was very complex to understand.
Q. And did you understand how it worked?
A. I did not understand the intricacies of the mileage equalization program.
Q. Can you explain to me at least what you did understand about it?
A. That the lessor or owner of the tank car could be charged if the tank car moved empty over a certain percentage.
Q. Was that percentage 106 percent?
A. Yes.
Q. Okay. You said tank car, do you know if the 106 percent was measured on a individual car basis or was it measured for all cars holding the same car mark?
A. It was pretty complex and I did not know the difference.
Q. [redacted]
[redacted]
A. [redacted]
Q. [redacted]

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[redacted]
A. [redacted]
Q. And this is August of 2014, so would you agree that this is -- was this team -- str ke that.
You earlier said that the process began in the fall, had the -- now you say the process had begun in August of 2014. Does this recollect -- does this refresh your memory as to more specifically when the -- a team was created to begin evaluating charging for repair moves?
A. Yes.
Q. Is this August 8th date the earliest date or was this team in process even before this e-mail was received?
A. I don't remember.
Q. The e-mail says an update on two OTE initiatives, do you know -- that implies the initiative was ongoing, do you know how far back it may have -- str ke that.
In the last paragraph, [redacted] is that your assumption

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as well?
A. Yes.
Q. Was this the amount of additional money customers would have paid in 2013 in lieu of mileage equalization payments for repair moves?
MR. ROSENTHAL: Objection, vague.
Q. (BY MR. MORENO) Do you understand the question?
A. I do not.
Q. Do you understand or did you understand that UP either can receive revenue through the mileage equalization payments or it might charge for those movements, but it could not do both?
A. Yes.
Q. [redacted]
A. [redacted]
Q. [redacted]
A. It is for the movement to shop repair facilities.
Q. In the sentence immediately following the reference to [redacted]

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[redacted] Do you understand what that sentence refers to?
A. Yes.
Q. [redacted]
A. [redacted]
Q. Was the charge for those retrofits included in the [redacted]
MR. ROSENTHAL: The charge for the movement for retrofit, not the charge --
MR. MORENO: Correct.
A. Yes.
Q. (BY MR. MORENO) That yes, it is included in the [redacted]
A. Yes.
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]

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Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. What e-mail are you referring to, are you referring to Exhibit 4 (sic) in your hand?
A. Exhibit 3.
Q. Sorry, I said four and I meant three.

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In this e-mail Mr. Craven states [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. I would I ke to go to 1835 the -- UPRR 0018359 have marked as Exh bit No. 4.
(Exhibit No. 4, marked for identification.)
MR. ROSENTHAL: Jeff, are you done with that just so we don't get a log jamb up here.
MR. MORENO: Yes, I am done with Exhibit 3.
Q. (BY MR. MORENO) Mr. Rocker, my focus on this

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lengthy e-mail chain, it begins on Page 18361. You have that as the last point which you appear in any of the e-mail recipients in this chain.
On that page, there's an e-mail near the top from Eric Butler to Ryan Georgoff titled -- or subject matter, OTE information IP and chem. And in that Mr. Butler refers to [redacted]
MR. ROSENTHAL: Take your time and make sure you've read the document if you need to.
A. Okay, after reading through the sheets, can you repeat your question?
Q. (BY MR. MORENO) Yeah. Is it fair to say that [redacted]
A. [redacted]

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Q. Increases would mean higher than the current rates, wouldn't it?
A. Yes.
Q. And were those the same rates that UP applied to shop moves beginning in January of 2015?
A. I don't remember the exact increases --
Q. Putting aside whether it's the exact --
A. -- in January.
Q. -- same rate amount, is it the same tariff, the 4703 tariff?
A. Yes.
Q. And was the source of [redacted]
MR. ROSENTHAL: Objection, lack of foundation.
Q. (BY MR. MORENO) If you know the answer -- if you know the answer, you can respond.
A. Would you like to rephrase the question?
Q. Mr. Butler refers to [redacted]
A. [redacted]

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Q. Even though that you were copied on this, you weren't aware of what he was referring to?
A. [redacted]
Q. I would like you to turn to Page 18363 of this document. In the chart, there's a reference to contribution and PI results. What is meant by contribution in this chart?
A. If you'll allow me a minute to read over the chart.
Q. Take your time.
(Witness complies.)
A. Could you repeat the question, please?
Q. What is meant by contribution on this page?
A. Contribution is profit after cost.
Q. And does PI stand for profitability index?
A. Yes.
Q. And what is the profitability index?
A. Are you asking for a definition?
Q. Yes.
A. Revenue over cost.
Q. What's the difference between contribution and PI?
A. One is a measurement and one is actual dollars.
Q. Is contribution the actual dollars and PI the

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measurement?
A. Yes.
Q. Looking at the 2015 estimated bar in the far right-hand side of the chart. [redacted], how should I interpret that? How do you interpret that, I should say? [redacted]
MR. ROSENTHAL: Do you want to ask that last question?
Q. (BY MR. MORENO) What -- what does -- what is meant on this chart by [redacted], how would I interpret that? How do you interpret that again?
MR. ROSENTHAL: I guess we'll go with the last one.
A. The revenue over cost.
Q. (BY MR. MORENO) What does [redacted] tell you?
A. The profitability for the OTE business.
Q. Is a higher number more profitable than a lower number?
A. Yes.
Q. Flipping back to the front of this document, actually the second page. At the very bottom and at the e-mail at the very bottom, there's a statement says "All of the commodity group OTE gate keepers

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will be meeting this Thursday." What are OTE gate keepers?
A. Marketing planners for each business team.
Q. Are they marketing planners dedicated to just OTE marketing?
A. No.
Q. What's the role of an OTE gate keeper?
A. That gate keeper has several responsibilities, not OTE commodities exclusively.
Q. But why were they called OTE gate keepers?
A. They are responsible for the pricing of OTE business.
Q. You implied in your last answer there was more than one -- there was at least one for each commodity group. Did I understand you correctly or is that what you meant?
A. Yes.
Q. Are OTE movements priced differently by commodity group or is there a single OTE price that applies to all commodity groups?
A. Each gate keeper has responsibility for the OTE shipments and how they are priced.
Q. Where would these prices be published, what tariff?
A. They're published in the tariff we discussed

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earlier.
Q. 4703?
A. Yes.
Q. Are all tank car OTE movements priced the same?
A. No.
Q. What is the -- how many different prices for OTE tank car movements are there?
A. I do not know.
Q. Are they all published in tariff 4703?
A. Yes.
MR. MORENO: I would like to introduce Exhibit No. 5, which is Bates number UPRR 0000673.
(Exhibit No. 5, marked for identification.)
Q. This exhibit is comprised of an e-mail from Nicole Ostertag and an attachment titled, "OTE Analysis" and dated June 2014. I want to focus on the attachment.
Have you -- are you familiar with this document?
A. I would like some time to look it over.
Q. Sure.
(Witness reading document.)
Q. Have you seen this document before?
A. I think I may have seen this document before.
Q. Did you have any role in creating the document?

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A. No.
Q. Do you know who created it? If you don't know, that's fine, I just want to understand if you do.
A. I'm not a hundred percent certain.
Q. On Page 675, OTE is defined in the first bullet including all revenue movements for empty rail cars. So since this document was in June of 2014, would I be correct in assuming that this document, that OTE used in this document does not refer to repair shop movements?
A. Yes.
Q. Now that UP does charge for repair moves, does UP include those movements in current analysis of OTE, of the OTE market?
A. I'm not sure how they still calculate it.
Q. In the fourth bullet on Page 675 states, [redacted]
MR. ROSENTHAL [redacted]

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[redacted]
Q. (BY MR. MORENO) [redacted]
A. Crude oil was not under my responsibility, nor the drilling energy market.
Q. [redacted]
A. [redacted]
Q. Flipping back to Page 684. There are two bar charts at the top and two pie charts at the bottom. In the pie charts, how is -- is the OTE market defined in these pie charts?
MR. ROSENTHAL: Objection, vague.
Q. (BY MR. MORENO) Well, looking at the pie chart on the left, the title is, [redacted]
A. Shipments.
Q. OTE shipments?
A. Yes, I believe so. There are two graphs here, one is volume and one is revenue. I'm not certain which one is categorized as volume or revenue.
Q. On the pie chart on the left -- strike that. Does the -- do you know if the [redacted] is

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referring to shipments in terms of number of shipments or revenue of shipments, or something else?
A. I don't -- as stated earlier, I don't know which one it is referring to.
Q. If you would turn to the next page, 685, do you know what these charts are attempting to show?
A. Volumes moving on our network.
Q. Do you know what the column heading, [redacted] represents?
A. Yes.
Q. So for example, I see in the first line below that heading Northeast Texas/Louisiana, what is that referring to?
MR. ROSENTHAL: Objection, I'm not sure I know what NE stands for but...
Q. (BY MR. MORENO) Well, okay, I am assuming that the abbreviations here are Northeast Texas/Louisiana; do you share that assumption?
A. Yes.
Q. In the chart below that system O-R-I-G, which I'm assuming means origin or origination; is that your understanding?
A. Yes.
Q. Marmaduke, Arkansas appears below that. Do you know why it appears there and what that represents?

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A. A UP system origin.
Q. Okay. Let's go to the next page. The title on this slide is [redacted] what does that mean?
A. It's a line with the legend that shows red, yellow, green, gold.
Q. And what is the significance of each of those color designations?
A. Associated with the profitability.
Q. And is red the least profitable?
A. Yes.
Q. And are yellow, green and gold the next most profitable in that order?
A. Yes.
Q. What are the thresholds for red, yellow, green and gold?
A. I don't remember the exact thresholds.
Q. Do those designations have a particular significance within UP? Specifically, do they -- do they influence decision making?
A. Could you clarify?
Q. [redacted]
MR. ROSENTHAL: [redacted]

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MR. MORENO:
A.
Q. (BY MR. MORENO)
A.
Q.
A.
Q.
A.
Q.
A.
Q.
A.
Q.
A.
Q.
A.
Q.

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A.
Q. Okay. What does yellow mean when it comes to reinvest-ability?
A.
Q. Does UP have PI targets for individual movements?
A. Union Pacific prices to the market.
Q. Turn to Page 687.
A. There's a set of bullets on the bottom half of this slide, titled,
MR. ROSENTHAL: Objection, vague.
Q. (BY MR. MORENO) Do you know what I mean?
A. I do not.
Q.
A.
Q.

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A.
Q. You can put aside that exhibit.
MR. ROSENTHAL: We've been going for been hour and 15 minutes, is this a good time to take break?
MR. MORENO: Yeah, this is as good a time as any. Off the record.
(Whereupon, at 2:35 p.m., a recess was taken and the deposition reconvened at 2:43 p.m.)
MR. MORENO: I would like to introduce Exhibit No. 6.
(Exhibit No. 6, marked for identification.)
Q. (BY MR. MORENO) Mr. Rocker you've just been handed Exhibit No. 6, which is -- which begins at UPRR 0000052. Would you take a look at this document and particularly the attachment behind the first page and let me know if you have seen this before?
A. Can I have an opportunity to review it?
Q. Yes, you may.
A. Okay.
Q. Have you seen this document before?
A. Yes.
Q. Did you have any role in preparing this document?
A. I reviewed the document.

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Q. Who prepared it?
A. I'm not certain but based on your attachment, it looks like Nicole Ostertag.
Q. On Page 55, there are five bullets under the heading,
A.
Q.
MR. ROSENTHAL: Is there a question?
Q. (BY MR. MORENO)
A.
Q.

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[redacted]
A. [redacted].
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]

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[redacted]
A. [redacted]
Q. How was the mileage equalization less timely and less straightforward?
A. We send out bills monthly.
MR. MORENO: I would l ke to introduce Exh bit 7, which is UPRR 0000061.
(Exhibit No. 7, marked for identification.)
Q. (BY MR. MORENO) This is an e-mail from Doug Cravan to a whole host of individuals dated December 5th, 2014. And it has two attachments, one that's labeled an internal Q and A and the other which appears to be for distr bution to customers.
Was the purpose of this e-mail and attachments to roll out the new repair charge for shop moves to the sales and marketing groups within UP?
MR. ROSENTHAL: Objection, foundation.

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Q. Have you seen these documents?
A. Can I have a minute to look over the documents?
Q. Yes, you may.
A. Could you repeat your question?
Q. Have you seen this document before?
MR. ROSENTHAL: The e-mail or the attachments? The entire exhibit?
A. Yes.
Q. (BY MR. MORENO) And was the purpose of this e-mail and the attachments to roll out the new charge for shop moves to the sales and marketing groups?
A. Yes.
Q. The first of the attachments beginning on Page 63 has the designation entitled "Internal Q and A," does that mean this document was circulated only internally within UP?
A. Yes.
Q. The second attachment which begins on Page 68, just says, "Union Pacific empty tank car rules charges for certain empty tank car movements." Was this document distributed to UP customers?
A. It was entitled for the customers.
Q. I'm sorry, I didn't hear. Would you say that again?

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A. It was entitled for the customers.
Q. On the cover e-mail on Page 61, at the very bottom there's a heading that says, [redacted]
MR. ROSENTHAL: I'll object to the testimony and the characterization of the document, but you can ask your question.
MR. KUTILEK: I think he did.
Q. (BY MR. MORENO) Yes, the question is -- you can answer the question.
A. Could you repeat the question?
MR. MORENO: Could you read the question back?
(The record was read by the reporter as requested.)

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MR. ROSENTHAL: Same objection but you can certainly do your best to answer.

A. I cannot interpret Doug Cravan's comments. [redacted]

Q. (BY MR. MORENO) [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

MR. ROSENTHAL: Are you asking about his knowledge about UP in general or?

MR. MORENO: Yes.

A. There could be some, yes.

Q. (BY MR. MORENO) At Page 65, there's a Q and A at the very bottom, [redacted]

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[redacted]

A. Could you clarify what you mean by, "could not do much"?

Q. Could they do anything to avoid those charges, to -- for movement to the cleaning facilities?

A. [redacted]

Q. [redacted]

A. [redacted]

Q. So would that be almost any UP customer that would be upset. Any UP tank car customer would be upset because all their tank cars have to go to shops?

MR. ROSENTHAL: Objection, vague, lack of foundation.

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Q. (BY MR. MORENO) [redacted]

MR. ROSENTHAL: Mischaracterizing his testimony.

MR. MORENO: I'm asking him if that's correct.

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. [redacted]

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[redacted]

MR. ROSENTHAL: Objection, lack of foundation. But if you know, you can tell him.

MR. MORENO: There's foundation. I mean, there's a statement in here. He's familiar with the document, he reviewed the document. This question is clearly in here as, what type of customers do we expect to be most upset. And what I want to know is, if your -- why is this question here?

MR. ROSENTHAL: If he knows, he can answer.

A. [redacted]

Q. (BY MR. MORENO) [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

Q. Would you please turn to Page 70 of Exhibit 7. This is slide No. 3 of the customer presentation.

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And under the heading of the slide [redacted] -- actually, we're going to move on to another line of questioning.

When did the operating committee meet to --

MR. ROSENTHAL: I'm sorry, Jeff, are we done with this?

MR. MORENO: Yes.

MR. ROSENTHAL: Okay.

Q. (BY MR. MORENO) When did the operating committee meet to -- well, let me rephrase the question.

[redacted]

A. [redacted]

Q. And did that occur at the operating committee's November 10th, 2014 meeting?

A. Yes.

Q. Who are the members of the operating committee?

A. Would you like name or titles or both?

Q. Let's -- both, please.

A. Lance Fritz, chairman, president, CEO. Rob Knight, chief financial officer. Cameron Scott, our chief operating officer. Gaila Thal, T-H-A-L, Thal, chief legal officer. Diane Duren, executive vice president. Eric Butler our chief marketing officer and Joe O'Connor, vice president of labor relations.

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And Lynden Tennison, our chief information officer. I believe that is all the members.

Q. Thank you.

Were you in attendance at the November 10, 2014 operating committee meeting?

A. Yes.

Q. Who presented the mileage equalization exit plan to the operating committee at that meeting?

A. I did.

Q. Just you or was anyone else also presenting?

A. There was Beth Whited who attended and Doug Cravan who also attended.

Q. Did either of them present alongside of you or were they just in attendance?

A. I presented the data and they added comments where needed.

Q. Earlier in this deposition, we talked about, using the term loosely, "team," that was created and you identified various names of people who worked on the evaluation and proposal to transition to charging for repair moves of tank cars.

Did that team exist -- was that team created before the operating committee meeting on November 10th, or afterwards?

A. There were a group of members who worked to provide information and data at various points before the operating committee.

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Q. So would it be fair to say that the work of the various individuals you previously identified as part of this team occurred both before and after the operating committee meeting?

A. Yes.

Q. What types of activities did they engage in before the operating committee meeting?

MR. ROSENTHAL: I thought this was asked and answered, but...

MR. MORENO: Not in turn for the timing.

MR. ROSENTHAL: I'm sorry, so was your timing now -- you're asking --

MR. MORENO: Before the operating committee.

MR. ROSENTHAL: Okay.

A. Tom Noser looked at the tariffs and the potential tariff numbers that might be utilized for the new program.

Q. (BY MR. MORENO) And he did that before the operating committee meeting?

A. Yes.

Q. What about anyone else in activities that may have been performed before the operating committee meeting?

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A. Nicole Ostertag worked on the internal documents we've reviewed along with the customer documents we reviewed earlier.

Q. These are the two presentations, one that was labeled internal Q and A and the other one which was shared with customers that you're referring to?

A. Yes. I'm not certain on the specific items that MaKayla worked on.

Q. What about the estimates of the revenue effects, were those analyses done prior to the operating committee meeting on November?

A. Yes.

Q. Okay. Does the operating committee typically take minutes?

A. In the operating committee meetings I have been in, yes.

Q. And were there minutes taken at the November 14th (sic) meeting?

MR. KUTILEK: 10th.

A. The -- when you say "minutes," you mean notes?

Q. (BY MR. MORENO) An official record.

MR. ROSENTHAL: Objection, what was the date of the meeting?

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MR. MORENO: November 14th -- or November 10th, 2014, sorry.
A. The official notes are the presentations that are utilized.
Q. (BY MR. MORENO) Was there a minute taker at this meeting?
A. There are no minutes, the minutes are the actual presentation themselves.
Q. And nothing else?
A. That is correct. There are no other minutes other than the presentation themselves.
Q. Do they record the votes of the operating committee?
A. There are no votes recorded and the only minutes are the presentations themselves.
Q. You indicated previously that you presented the mileage equalization exit plan to the operating committee. And as part of that, you presented data. What types of data were you presenting?
A. I presented the data included in the presentation that was shared.
Q. Who is John Caruso?
A. John Caruso is our finance, at the time, our finance liaison.
Q. What role, if any, did he play in the analysis

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of plan to exit mileage equalization?
A. A very small role. And he did not do any of the analysis.
Q. What did he do?
A. He reviewed our presentation.
Q. Presentation you gave to the operating committee?
A. Yes.
Q. Did he review the underlying data as well?
A. Yes.
Q. Did he provide any feedback to you?
A. No, I don't recall him providing any feedback.
MR. MORENO: I would like to introduce Exhibit 8, which is UPRR 0025230.
(Exhibit No. 8, marked for identification.)
Q. (BY MR. MORENO) Mr. Rocker, is this the presentation you gave to the operating committee on November 10th, 2014?
A. I would like a minute to just look at it.
Q. Sure, take your time.
(Witness complies.)
Q. Okay. Is this the presentation you gave to the operating committee?
A. Yes.
Q. On Page 25231, the first bullet is titled,

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[redacted]
A. [redacted]
Q. Is it your understanding that mileage equalization is intended to provide that compensation?
A. The mileage equalization program is very complex and I am not certain that it does what you're saying.
Q. Under mileage equalization, would UP receive any compensation if the total empty miles on the UP system were less than 106 percent loaded miles?
A. Yes, that is the way the tariff reads.
Q. And conversely, if the total empty miles were greater than 106 percent of loaded miles, would UP receive some compensation for the excess miles?
A. That is how the tariff reads.
Q. And is the -- do you know what the mileage pay

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out rate is under mileage equalization for the excess empty miles?
A. It's based on the slide, yes.
Q. And what do the slides say?
A. 91 cents.
Q. And if you turn to the next page, in the second bullet, you state, [redacted]
A. I don't feel confident knowing either way based on the mileage equalization program.
Q. Is 2.96 greater than 91 cents?
A. Yes.
Q. Then can you -- if it's greater than 91 cents, then UP would receive and UP was billing $2.96 a mile for shop moves, UP would receive more revenue, wouldn't it?
MR. ROSENTHAL: Argumentative, you're talking about different things, but...
Q. (BY MR. MORENO) Would UP receive more revenue at 2.96 a mile than it would at 91 cents a mile?
MR. ROSENTHAL: Objection, vague.

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Are you talking about on a particular one movement?
Q. (BY MR. MORENO) Any movement, does it matter whether it's -- does it matter -- it doesn't really matter when it's going 100 miles or a thousand miles, when the charge is per mile.
Is UP going to receive more money at 2.96 per mile than it will at 91 cents per mile?
MR. ROSENTHAL: I mean, yeah, if you're just asking about a particular move, that's a different question than your broader question about mileage equalization versus exiting mileage equalization. So I just wanted to -- I just wanted you and the witness to be clear on what you were talking about.
MR. MORENO: I'm not sure I see the difference that you're alluding to.
A. I'm not certain what the customer would pay if you compare the two based on the customer supply chain, the mileage equalization or our program as we exit the mileage equalization program.
(Discussion off the record.)
Q. Does your previous answer depend upon whether UP is charging the car owner versus the shipper for the repair move?

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A. I'm not differentiating either of the two.
Q. Turning back to Page 25231. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
(Discussion off the record.)
Q. On this same page as the graph on the right-hand side, a bar chart, what does this chart depict?
A. The revenue history under mileage equalization.
Q. And what was the purpose of including this chart

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on this slide?
A. To provide the reader a context.
Q. What kinds of context were you trying to provide?
A. Simply revenue history.
Q. [redacted]
A. I cannot see what the other years that are shaded out show.
Q. So another one of those, I think, charts that I think were in color but we'll...
Turn to the next page, please, 25232. First bullet at the top of this slide, [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. Well, you said you presented this slide, do you have any recollection of what you presented?
[redacted]

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[redacted]
A. [redacted]
Q. [redacted]
MR. ROSENTHAL: Objection, lack of foundation.
MR. MORENO: It's his slide, he presented it, I'm asking what he meant.
MR. ROSENTHAL: May not have been the right question. It's actually a misleading question. It's the wrong objection, I apologize.
Q. (BY MR. MORENO) [redacted]
A. [redacted]
Q. [redacted]

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A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. How -- where is it on the slide, can you wa k me through it, please?
A. I can't see the color codes.
Q. There's slight variances in shading here, 'cause those --
A. I can see the slight shading in the legend, I cannot see it in the bar chart.
Q. Based on your prior presentation of this chart, do you have -- can you recall what, what the various shades in this bar chart represent, where they --
A. I cannot tell the different colors in the bar

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chart.
Q. The legend to the bar chart refers to mileage equalization forecast -- well, let me start.
[redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]

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[redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]

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Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted] r?
A. [redacted]
Q. [redacted]
A. [redacted]
Q. Has UP reduced its zero mileage tariff rates for tank car movements since January, 2015?
MR. ROSENTHAL: Objection, lack of foundation.
MR. MORENO: I'm asking if he knows.
MR. ROSENTHAL: Making an assumption about rates that UP may or may not have.
Q. (BY MR. MORENO) Does UP publish zero mileage

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tariff rates -- let me ask you: Do you know what I mean when I say zero mile tariff rates?
A. I do not know if UP publishes zero tariff mileage rates.
Q. [redacted]
A. [redacted]
Q. Do you know what a zero mileage rate is?
A. Yes.
Q. What do you -- in your mind, what is a zero minder tariff rate?
A. A rate that we provide the car owner for moving product on our line based on the ownership.
Q. Is a zero mileage tariff rate one in which UP does not pay a mileage allowance to the car owner?
A. [redacted]
Q. Are you familiar with mileage allowances?
A. I'm familiar with a zero mileage rate as you mentioned earlier.
Q. Are you familiar with mileage allowances?
A. I know what a full mileage rate and a zero mileage rate is.
Q. Okay, what is a full mileage rate?

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A. As previously stated, full mileage rate would add additional benefits to the car owner, based on the ownership of moving that car on the rail line.
Q. And is that additional benefit you refer to the payment of a mileage allowance, a charge, a rate per mile?
A. As our understanding, yes.
Q. Does UP have full mileage tariff rates?
MR. ROSENTHAL: Any rates for anything or we just...
Q. (BY MR. MORENO) Full mileage tariff rates for tank cars. Good correction.
A. [redacted]
Q. Well, UP either does or it does not pay mileage allowances on tank car movements, so does UP publish a tariff rate for tank car movements in which it pays full mileage allowance?
A. [redacted]
Q. Does UP publish tariff rates that do not pay any mileage allowance for tank car movements?
A. [redacted]
(Discussion off the record.)
MR. MORENO: It's probably a good breaking point at the moment.

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MR. ROSENTHAL: Yeah, sure.
(Whereupon, at 3:50 p.m., a recess was taken and the deposition reconvened at 4:03 p.m.)
Q. (BY MR. MORENO) Mr. Rocker, coming back to No. 8 Page 25232. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
MR. ROSENTHAL: Are you asking about him personally?
MR. MORENO: Yes.
A. [redacted]
Q. (BY MR. MORENO) [redacted]
A. [redacted]

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Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
MR. ROSENTHAL: Asked and answered.
Q. (BY MR. MORENO) You can answer again.
A. I've already answered that question.
Q. Off the record a second.
(Discussion off the record.)
Q. Did any operating committee members ask any questions during your presentation?
A. Yes.
Q. What were -- do you recall any of those questions?
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]

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[redacted]
A. [redacted]
Q. [redacted]
[redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
[redacted]
[redacted]
A. [redacted]
Q. Does UP provide transportation service in tank cars that UP owns or leases?
A. I don't know. And I don't know if UP owns tank cars.
Q. Okay. Does UP provide transportation service in other car types that UP owns or leases?
A. I don't know that UP owns any other car types where we transport for ourselves, I'm not certain.
Q. Maybe I wasn't quite clear.
My question is: Does UP provide transportation for its customers in rail cars that UP owns?
A. Yes.
Q. What about tank cars that -- does it provide transportation for customers in tank cars that UP

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owns?
A. I'm not aware of any transportation for customers in tank cars that UP owns.
Q. When UP sends its own cars to repair shops, does it receive any compensation for that cost, from its customers?
MR. ROSENTHAL: I'm sorry, could you -- I'm sorry, could you repeat the question, I'm...
MR. MORENO: I'll restate it.
Q. (BY MR. MORENO) When UP sends its own rail cars to repair shops, does it receive any compensation for that cost from its customers?
A. [redacted]
Q. [redacted]
[redacted]
A. [redacted]
[redacted]
Q. Do you know how often tank cars must be inspected according to DOT regulations?
A. No, I am not an expert in the safety of the tank cars.
Q. Are you aware of the need to clean tank cars before major repairs and inspections?
A. I am not aware that a car must be cleaned before

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a repair or an inspection.
Q. Are you aware that most repair shops cannot clean hazardous materials from tank cars?
A. No.
Q. I want to jump back just briefly to one of the very -- Exh bit No. 2. There are several redactions, in this exhibit on Pages 17846, 848 and 849.
Did any UP lawyer have any input into this document?
MR. ROSENTHAL: Are you asking about whether any UP lawyer had any input into making redactions in this document.
MR. MORENO: No, into drafting the text of this document.
A. Our legal team weighed in on the drafting.
Q. (BY MR. MORENO) What is this document? It's a -- it appears to be a nomination of some people for an award; is that accurate?
A. Yes.
Q. Is it usual for your legal team to comment on the drafting of this type of document?
MR. ROSENTHAL: I'm going to instruct you not to answer. I don't want him discussing his consultation with counsel, or his practices about consulting with counsel.

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MR. MORENO: I'm not asking about any specific legal advice. I'm just asking: Is it typical to have counsel comment on a document l ke this?
MR. ROSENTHAL: Yeah, and again, I think we told you this morning when you asked about redactions that redactions were made to redact privileged information and that's what these redactions reflect.
MR. MORENO: Well, we talked about it in context of one specific document, and I'm trying to understand there's -- the author of this document is not an attorney, the recipient of this document is not an attorney so I'm trying to understand why it's redacted. But more specifically with respect to this question, I just want to know is it common for a lawyers to have input into this?
I don't see why that's privileged.
MR. ROSENTHAL: You can answer that question, but really I don't want you revealing communications with counsel or advise you received from counsel or what counsel told you. So answer his narrow question.
Q. (BY MR. MORENO) Is -- without telling me what

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your counsel told you are -- is it common for counsel to comment on this type of document where your nominating a group of UP employees for an award?
A. When we utilize our legal team as heavily as we did or throughout this process, that is -- seems relevant to ask for their feedback.
Q. And did your legal team provide feedback on this document?
MR. ROSENTHAL: That's a yes or no question.
A. Yes.
Q. (BY MR. MORENO) [redacted]
A. [redacted]
Q. Who does UP invoice for transporting tank cars to repair facilities? Is it the lessor who owns the car or the shipper who leases the car?
MR. ROSENTHAL: Objection, misleading.
MR. MORENO: What, if -- the only two possibilities, I'm asking him which one of the two.
MR. ROSENTHAL: You're saying there are only two possibilities, I don't know.

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Q. (BY MR. MORENO) Okay. I'll leave it open.
Does UP invoice for transporting tank cars to repair facilities?
A. It was shown on the bill of lading.
Q. If a tank car is a leased car, if the shipper leases the car but does not own the car, do you invoice the car owner or do you invoice the shipper?
MR. ROSENTHAL: Objection, misleading.
Q. (BY MR. MORENO) Who do you invoice in that situation?
MR. ROSENTHAL: Asked and answered.
A. As previously stated, pointed towards the bill of lading.
Q. (BY MR. MORENO) So you could invoice the shipper, if they're listed on the, as the consignor on the little bill of lading; is that right?
MR. ROSENTHAL: Objection, misleading. The consignor, he didn't say that.
MR. MORENO: We'll move on from that one.
I would I ke to introduce Exhibit No. 9, which is document UPRR 0003910.
(Exhibit No. 9, marked for identification.)

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Q. (BY MR. MORENO) I'm really only focused on Page 1 of this exhibit, which is e-mail from Bess Jones to Laura Heisterkamp, dated December 30th, 2015. It does have an attachment to it which I think we've reviewed in a different enervation or different version of it but my questions are not about the attachment. And different Bates number.
MR. DONOVAN: Give the reporter those Bates number of this exhibit.
MR. MORENO: Oh, the exhibit numbers is Bates numbers 3911 through 16.
MR. ROSENTHAL: I'm sorry, can you repeat -- that was the attachment Bates number?
MR. MORENO: That's he attachment.
MR. ROSENTHAL: The exhibit is.
MR. DONOVAN: 3910.
MR. ROSENTHAL: Through?
MR. DONOVAN: 3916.
Q. (BY MR. MORENO) Since you're not an addressee on this document, I'm assuming you haven't seen it before, I'm just referring to the e-mail; is that correct?
MR. ROSENTHAL: That, he hasn't seen it before?

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MR. MORENO: That he's not seen it, yes.
A. I don't recall seeing this particular e-mail.
Q. (BY MR. MORENO) You'll notice in the second paragraph there's a reference to a Kenny, which I'm assuming is you, but I'll get to that question in just a moment. It says, [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]

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MR. ROSENTHAL: I'm sorry, I was distracted by he computer beeping and chirping.
MR. DONOVAN: I'm sorry, it was just singing to you.
MR. MORENO: Come back. I'll restate the question.
Q. (BY MR. MORENO) [redacted]
[redacted]
A. [redacted]
[redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
[redacted]
Q. [redacted]
[redacted]
A. [redacted]
Q. [redacted]
[redacted]
MR. ROSENTHAL: That he knows of?
MR. DONOVAN: Obviously, if he knows.
A. [redacted]
Q. (BY MR. MORENO) [redacted]

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[redacted]
A. [redacted]
[redacted]
(Discussion off the record.)
Q. [redacted]
[redacted]
A. [redacted]
[redacted]
[redacted]
Q. [redacted]
[redacted]
A. [redacted]
[redacted]
Q. [redacted]
[redacted]
A. [redacted]
Q. [redacted]
[redacted]
[redacted]
MR. ROSENTHAL: To the extent you know.
A. [redacted]
Q. (BY MR. MORENO) [redacted]
[redacted]
MR. ROSENTHAL: [redacted]

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[redacted]
[redacted]
[redacted]
Q. (BY MR. MORENO) [redacted]
[redacted]
[redacted]
A. [redacted]
[redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
[redacted]
[redacted]
A. [redacted]
[redacted]
Q. [redacted]
A. [redacted]
MR. MORENO: I would l ke to introduce Exhibit 10, which is UPRR 0024322.
(Exhibit No. 10, marked for identification.)
Q. (BY MR. MORENO) This is a January 14th, 2005 e-mail from you to a gentleman by the name of Paul Richter. In January of 2005, what was your position with UP?

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A. Senior director fertilizer.
Q. And what was your responsibility in that position?
A. Marketing, sales and commercial strategy for fertilizer.
Q. In -- at the very top of Page 24322, there's a very short e-mail from you that says, [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
A. [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
Q. [redacted]
[redacted]
[redacted]
[redacted]
[redacted]

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A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
MR. ROSENTHAL: [redacted]
MR. MORENO: [redacted]
MR. ROSENTHAL: [redacted]
A. [redacted]
Q. (BY MR. MORENO) [redacted]
A. [redacted]
Q. [redacted]
MR. ROSENTHAL: [redacted]

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A. [redacted]
Q. (BY MR. MORENO) [redacted]
A. [redacted]
Q. [redacted]
MR. ROSENTHAL: Objection, that's not what he said.
MR. DONOVAN: You can answer.
A. Could you rephrase the question?
Q. (BY MR. MORENO) [redacted]
MR. ROSENTHAL: [redacted]
MR. MORENO: [redacted]

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[redacted]
A. [redacted]
Q. (BY MR. MORENO) [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
MR. ROSENTHAL: Objection, asked and answered.
MR. MORENO: He didn't seem to know in his last response so I'm trying to get clarification whether he's changing his response.
MR. ROSENTHAL: That's asked and answered. If you're trying to get a different response --

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MR. MORENO: Well, he's given two conflicting responses and that's what I'm trying to understand.
MR. ROSENTHAL: You should have stopped after the first time.
A. [redacted]
MR. MORENO: Off the record for a second.
(Discussion off the record.)
MR. MORENO: I have good news for you Mr. Rocker, I have no further questions for you and thank you very much.
MR. DONOVAN: You know what, we're gonna kind of --
MR. ROSENTHAL: Still on the record?
MR. DONOVAN: On the record, yes. Couple of issues just to clean things up. There were a few documents, particularly charts and so on Mr. Rocker dealt with and even some Mr. Craven dealt with this morning, that I don't have readily in mind as to exactly which documents and so on, that were obviously originally in color that were not produced in color. And under the protocol, you didn't have

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to produce them in color, so no harm, no foul there.

But there's also provision in there that we can request them in color. And since there was some questions of Mr. Rocker couldn't answer because he couldn't read the table or the chart because it wasn't in color, the bar charts and so on.

I suggest that when we get the transcript, we'll wait until then, we're going to give you a list and it won't be a very long list of the documents that fit in that category that we would like you to produce in color.

MR. ROSENTHAL: Okay, well, if the issue is just producing the documents in color --

MR. DONOVAN: Right.

MR. ROSENTHAL: And that's what our protocol calls for, I think we can produce the documents in color. If that's the only issue.

MR. DONOVAN: I don't want you to do everything in color.

MR. RICHARDSON: No, no --

MR. DONOVAN: Let me give you a

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list, it's going to be a relatively short list.

MR. RICHARDSON: Glad to do it.

MR. DONOVAN: Okay. The other thing, there are some backup data that may exist. [redacted]

You indicated that you thought that all that data had been produced, and I take it you learned that that's what you think.

MR. RICHARDSON: Yes.

MR. DONOVAN: Would you go back and check to make sure that that data has been properly produced and there's nothing out there in the way of an old e-mail hanging around somebody's computer. [redacted]

MR. ROSENTHAL: I think we can

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commit to double checking whether --

MR. DONOVAN: Thank you.

MR. ROSENTHAL: -- either there is this -- I think we're talking about the same thing, the 50 document that came up a number of times. We'll double check whether it's -- if it's exists. And if -- and whether it's been produced and we'll make sure it's been produced.

MR. DONOVAN: And one final item, there may be I think Mr. Rocker was a little unclear on this, not through any fault of his own, [redacted]

MR. ROSENTHAL: Okay, we'll look at that as well.

MR. DONOVAN: And if -- while you're at it, you might as well check 2016, because that obviously is going to be an issue in this case.

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MR. ROSENTHAL: If that's covered by the discovery, I'm just sitting here --

MR. DONOVAN: It may not be but if we need to amend the discovery because when we filed this discovery, this case was a lot younger than it is now, okay.

MR. ROSENTHAL: I'll take that all under advisement.

MR. DONOVAN: Okay, that is fair enough. Okay that's all I can ask for. We'll get back to you when we get the transcript on these issues and we'll be in touch.

MR. ROSENTHAL: Okay.

MR. DONOVAN: Thank you for your time and for presenting Mr. Rocker and Mr. Craven today, we very much appreciate the courtesy and we hate to interrupt your schedule but this has got to be done. So thank you very much.

MR. ROSENTHAL: Read and sign.

(The deposition concluded at 4:50 p.m.)

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Deposition of KENNY ROCKER

_____
Signature of witness

STATE OF _____)
: SS.
COUNTY OF _____)

Subscribed and sworn to before me this
____ day of _____, 20____

_____
GENERAL NOTARY PUBLIC

DATE: December 14, 2016

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CERTIFICATE

STATE OF NEBRASKA)
: ss.
COUNTY OF LANCASTER)

I, Christine M. Salerno, RPR, General Notary Public in and for the State of Nebraska, do hereby certify that, KENNY ROCKER was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by said witness was reduced to writing by me.

That the within and foregoing deposition was taken by me at the time and place herein specified and in accordance with the within stipulations; the reading and signing of the witness to said deposition having not been waived.

That the foregoing deposition is a true and accurate reflection of the proceedings taken in the above case.

That I am not counsel, attorney, or rela ive of either party or otherwise interested in the event of this suit.

IN TESTIMONY WHEREOF, I have placed my hand and notarial seal this day of , 2016.

_____
Christine M. Salerno, RPR

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EXHIBIT NO. 31

BEFORE THE

SURFACE TRANSPORTATION BOARD

NORTH AMERICAN FREIGHT CAR ASSOCIATION; AMERICAN FUEL & PETROCHEMICALS MANUFACTURERS; THE CHLORINE INSTITUTE; THE FERTILIZER INSTITUTE; AMERICAN CHEMISTRY COUNCIL; ETHANOL PRODUCTS, LLC D/B/A POET ETHANOL PRODUCTS; POET NUTRITION, INC.; AND CARGILL INCORPORATION,	)	NOR 42144
VS.	)	
UNION PACIFIC RAILROAD COMPANY,	)	

HIGHLY CONFIDENTIAL

DEPOSITION OF: DOUGLAS CRAVEN

DATE: December 14, 2016

TIME: 8:55 a.m.

PLACE: Lamson Dugan & Murray, 10306 Regency Parkway Drive, Omaha, Nebraska

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DOUGLAS CRAVEN,
Of lawful age, being first duly cautioned and solemnly sworn as hereinafter certified, was examined and testified as follows:

DIRECT EXAMINATION
MR. DONOVAN:
Q. Mr. Craven, Paul Donovan. I'm representing Chlorine Institute in this proceeding. Other counsel, you've met. I have no reason to go through that at this point, unless you want to make appearances?
Why don't we go ahead and make appearances for the record.
MR. MORENO: Jeff Moreno for the American Chemistry Council and The Fertilizer Institute.
MR. WILCOX: Thomas Wilcox for North American Freight Car Association, Poet Ethanol, Poet Nutrition and Cargill.
MR. SHANER: Houston Shaner from American Fuel and Petrochemicals Manufacturers.
MR. LILLIE: Andrew Lillie also for AFPM.
MR. ROSENTHAL: Michael Rosenthal

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for the Union Pacific Railroad Company.
MS. BODE: Danielle Bode from the Union Pacific Railroad Company.
MR. RICHARDSON: Craig Richardson for Union Pacific Railroad Company.
Q. (BY MR. DONOVAN) Mr. Craven, did you have a chance to chat with counsel, I'm sure you did, about the process and deposition and the rules and so on and so forth?
A. I did.
Q. Okay. Good. So have you ever been deposed before?
A. I have.
Q. Okay. Then we're on solid ground here.
Would you state your name and the employer for the record.
A. My name is Douglas Craven and my employer is Union Pacific Railroad.
Q. And what is your position with Union Pacific?
A. My position is assistant vice president on industrial products.
Q. Okay. During the time frame of this case, and I'm going to use the phrase "time frame of this case" as period generally from June of 2014, which is the earliest document I have, through the present time,

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fair enough?
A. That's fair.
Q. Okay. During the time frame of this case, did you have any other positions that at Union Pacific?
A. I did.
Q. Would you tell me what they were and when they were?
A. July, 2014, I was a senior business director on our industrial chemicals group, on the chemicals team, title was industrial chemicals.
Shortly after that I still stayed on the chemicals team and I was a senior business director on plastics. That covers that time frame.
Q. Okay. And more recently you've been moved to -- is it still plastics?
A. No. No, as of December 1, I moved to our industrial products team.
Q. Okay. In all these -- in all these employment capacities, have you had exposure to tank cars, rail tank cars; is that part of your general book of business, so to speak?
A. I would say some of the roles would be more involved with tank cars than the others.
Q. With industrial pro -- industrial chemicals being tank cars?

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A. That's correct.
Q. Plastics being hopper cars, perhaps?
A. The predominant mode or car of choice for plastics is hopper cars.
Q. Okay. Any tank cars in the plastics business?
A. Not that I'm aware of.
Q. Okay. I don't ask you about your current because that's a 15 days old, who cares, right?
A. Okay, thank you.
Q. Would you give me just very briefly, I don't want to take a lot of time here, very briefly your educational background prior to joining UP?
A. Sure. I attended the University of Nebraska at Omaha, Nebraska for four and a half years. I majored in bank and finance, had a secondary specialization in management information systems.
Q. All right, and you graduated in?
A. 1994, I believe.
Q. Okay. And did you go to work for the UP immediately?
A. No, I did not.
Q. And who did you work for before the UP?
A. My first job was for -- with ConAgra Grocery Products Company.
Q. And how long were you with them?

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A. Little less than a year.
Q. Okay. And I assume you did not deal with tank cars with ConAgra, or did you?
A. I did not.
Q. Okay. After ConAgra, did you have another employment before UP?
A. I did not.
Q. You went to UP?
A. (Witness nods.)
Q. And what was your entry job at UP?
A. My entry job was with our subsidiary company called the Union Pacific Distribution Services.
Q. Okay. Given your background in finance and economics and management, have you generally been involved in the financial side of the business? Or is that --
A. Which business?
Q. The UP's business.
A. The UP's business, I would say no. Ever since I've been with Union Pacific, I've been with our marketing and sales department.
Q. Okay. So accounting is not what you do, it's marketing and sales?
A. That is correct.
Q. Okay. And you said you've been with the UP

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since '96?
A. 1995, actually.
Q. 1995, okay, thank you.
Would you tell me from the period July of 2014 until you went to the plastics division, that means when you were sales and marketing with tanks cars and industrial chemicals, what were your responsibilities?
A. My responsibilities were marketing efforts for what we call industrial chemicals, that dealt with, we just would -- I would call it marketing activities.
Q. And what would you consider industrial chemicals, what products?
A. The definition for most -- are familiar with would be intermediate chemicals.
Q. Including by name, do you have anything in mind?
A. Some chlorocholine plot products, caustic soda for example, methanol, different commodities like that.
Q. Would you have any responsibility for chlorine itself?
A. Yes, I did.
Q. Okay. How about fertilizer products?
A. I did not.

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Q. How about crude oil and ethanol?
A. I did not.
Q. Okay. So when you say "industrial chemicals," you mean industrial chemicals, not industrial chemicals and crudes and ethanol and so on?
A. That's our -- yes, intermediate chemicals, yes.
Q. Now, at that time in July of 2014 -- and I won't go before that, it's not necessary -- to whom did you report directly?
A. Can you repeat the question, please?
Q. In July of 2014 up through your leaving the chemicals --
A. Okay.
Q. Industrial chemicals position, to whom did you report?
A. In that time frame, I had two different supervisors; one was Jon Panzer, the second was Kenny Rocker.
Q. Okay. And Jon Panzer's position was?
A. Assistant vice president of -- assistant vice president chemicals.
Q. And Mr. Rocker?
A. Assistant vice president chemicals.
Q. So they had the same title?
A. They did.

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Q. Okay. And do you know who -- let's take Mr. Rocker since he's going to be deposed as well today as you know, to whom did he report, do you know?
A. Yes, I do.
Q. And who was that?
A. Beth Whited.
Q. Okay. Do you know to whom she reported?
A. Yes, I do.
Q. And that was?
A. Eric Butler.
Q. Okay. And to whom did Eric Butler report?
A. I'm trying to think at the time, at that time, it was Lance Fritz.
Q. Okay. That's pretty adapt, Mr -- the witness nodded yes, I think he did?
MR. ROSENTHAL: Was there a question?
MR. DONOVAN: Well, I guess it wasn't a question, was it? Yeah, that's a comment -- str ke the comment.
Q. (BY MR. DONOVAN) Mr. Butler, what was his title at the time?
A. Executive vice president marketing and sales.
Q. Okay. Did he have jurisdiction over all

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marketing and sales, all chemicals, all products?
A. Can you define jurisdiction?
Q. Okay. Good point.
Did he have respons bility over all sales and marketing for all products?
A. Yes, he did.
Q. Okay. Are you -- we've seen -- well, no, I won't go to that now, let's go past that.
Are you familiar with a -- an STB proceeding that comes up from time to time either inferential or directly in the various correspondence in this case called Ex. Parte 328, have you ever heard that phrase?
A. I have heard of Ex. Parte 328.
Q. And do you have an understanding of what it provides, your understanding?
A. I cannot say I know what Ex. Parte 328 is.
Q. Okay. But you have heard of it?
A. I have heard of it.
Q. Have you heard of mileage equalization?
A. Yes.
Q. Okay. And you do have an understanding of what mileage equalization is?
A. I believe I have an understanding of mile equalization.

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Q. Okay. And we'll get to that later with some of your correspondence and some...
Do you have an understanding of what mileage allowances are?
A. I do.
Q. And what is your understanding of mileage allowances?
A. My understanding of mileage allowances is for certain private rail cars where the railroad does not own the rail car, there -- in certain cases the railroad may pay a fee, so to speak, for moving that car on our line.
Q. Do you understand that that is the result of some legal obligation, to pay the car provider for the use of the car?
A. I'm familiar that there -- it can be required. I'm not -- I would not say I'm familiar with the legal obligation.
Q. Okay. So you have not -- strike that.
Are you familiar, and I believe you are. Are you familiar with what in the mileage equalization world is called the 106 rule?
A. I think I know what you're referring to but can you give me a little bit more information?
Q. Sure. Sure.

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In the mileage equalization world, I suggest to you that the railroads are entitled to recover charges for empty car movements when the empty car movements to a particular car owner exceed 106 percent of the revenue moves for that same car owner in a certain year.
Is that your understanding of the 106 rule?
A. I believe that's a basic description of the rule. It's an aggregation by car mark, by railroads, that in certain circumstances charges could be applied by the railroad to the car owner in the event that the -- whatever the car mark is, is greater than 106 percent of the revenue.
Q. Okay. Thank you.
But that is an aggregate of that car owner's total marks, not just one car; is that correct?
A. That is correct.
Q. Do you in your capacity or in your capacity during the time frame when you were involved with tank cars with industrial chemicals, for example, did you have any contact or any -- str ke that.
Any contact with an organization called Railinc?
A. I do not recall.
Q. Do you know who Railinc is?
A. Yes, I do.

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Q. And what is that in your understanding?
A. In my understanding, it's an entity that the railroads all communicate information to and does some administration activities for the railroads.
Q. Okay. And is Railinc a subsidiary of the AAR?
A. I'm not sure.
Q. Okay. Do you know if the Union Pacific sits on the board of Railinc?
A. I do not know that.
Q. Okay. Do you know that Railinc publishes a tariff that deals with the subjects of mileage equalization and mileage allowance that we just talked about?
A. I was -- or I am aware that they did it, publish -- had a tariff regarding mileage equalization. I did not know there was a tariff on mileage allowance.
Q. Okay. On the -- do you know if Union Pacific subscribes to that -- str ke that.
Do you know if Union Pacific subscribes to that Railinc tariff?
A. I don't know what the definition of "subscribes to that Railinc tariff" means.
Q. Do they list themselves as being covered by the provisions of that tariff in the tariff?

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A. Yes, the answer would be yes.
Q. Okay.
(Exhibit No. 1, marked for identification.)
Q. Mr. Craven, I hand you or the reporter has handed you what's been marked for identification as Exh bit No. 1 for this deposition. It purports to be a freight tariff RIC 6007-N, and it is issued, according to the cover page, on February 6, 2009 with effective date of March 1, 2009; do you see that?
A. Yes, I do.
MR. DONOVAN: Okay. I'm going to ask that the reporter mark as Exhibit No. 2 and give to you a Supplement No. 31 to that tariff --
(Exhibit No. 2, marked for identification.)
Q. Issued December 11, 2014 with an effective date of January 1, 2015; do you see that?
A. I do.
Q. Okay. Before we go too much farther, have you ever seen either of these tariffs before?
MR. ROSENTHAL: Take your time and look at them.
Q. (BY MR. DONOVAN) Yeah, sure.
A. I cannot say whether I have seen these exact ones, nor have I -- can I say I've seen the entire,

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them in entirety. I have seen for example, the cover page, I know I've seen that and maybe a page or two within the middle.
Q. Okay. Fair enough.
If I might invite your attention to Exhibit 1, I'm going to ask you to note that the first 18 pages of that relate to tank cars. Would you take your time and convince yourself that that's accurate.
MR. ROSENTHAL: I see you're excluding the table of contents that refers to that later on material?
MR. DONOVAN: Yes, I'm just ta king about the items.
A. So can I ask a question?
Q. (BY MR. DONOVAN) Surely.
A. Again, since I haven't seen all this before, you're starting with Page 3 on Exhibit 1, Item 1 that says "Cancellation notice." You're asking me to say hey or say, does that starting with Item 1 going through the first, I believe you said eight -- Page 18?
Q. 18. That would be Item 196, would be the last.
A. You're asking me to read this and determine if it deals in its entirety with tank cars; is that correct?

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Q. I don't want you to read it, I want you to -- know if you understand that that's what it applies to, it applies to tank cars?
MR. ROSENTHAL: Well, I think if that's how you want to spend your time today, I just want to make sure you're comfortable when you answer the question.
THE WITNESS: Okay.
MR. ROSENTHAL: So take your time and read it.
A. I'm going to candidly, or, I mean, I don't even know what Item 1 is referring to, so I can't -- I can't -- I can't say whether that's related to tank cars or not.
Q. (BY MR. DONOVAN) Okay. Then let me invite your attention to Page 19. On Page 19, the upper left-hand side says, "Section 2 applies on cars other than tank cars"?
A. I see that.
Q. Okay. Let's go back to Page 5. See Section 1 applies only on tank cars?
A. I do see that.
Q. Okay. You can put Exhibit 1 aside for a while.
MR. DONOVAN: I would like to have marked as Exhibit 3 a Supplement 32 of the same

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tariff.
(Exh bit No. 3, marked for identification.)
Q. (BY MR. DONOVAN) This bears the issue date of February 2nd, 2015 and an effective date of March 1, 2015. Have you seen that before?
A. I have not.
Q. Okay. Could I have Exh bit 4, please.
MR. DONOVAN: I'm going to have marked as Exhibit 4 --
(Exh bit No. 4, marked for identification.)
Q. (BY MR. DONOVAN) A similar tariff, which is issued February 19, 2005 -- or 2015, I'm sorry. And it's effective March 1, 2015. Do you have that in front of you?
A. I do.
Q. Okay, have you seen that before?
A. I don't believe so.
Q. Okay. Could I have Exh bit 5, please.
MR. ROSENTHAL: I'm sorry, can we go off the record for a minute.
(Discussion off the record.)
(Exh bit No. 5, marked for identification.)
Q. (BY MR. DONOVAN) Exh bit 5 is similar tariff published by Railinc with an effective date of February 19, 2015. But turn to the next page, lower

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right-hand corner, you will see that this is effective on September the 1st, 2015. So the title page and Page 2 don't exactly talk to each other.

It's the same tariff without a different supplement number but it's been updated.

A. Well, the tariff speaks for itself, that's what it is.

MR. DONOVAN: Exhibit 6. I'm going to hand you to be marked as Exhibit 6 --

(Exhibit No. 6, marked for identification.)

Q. (BY MR. DONOVAN) Another tariff bearing the date of February the 19th, with an effective date of March 1st. But if you'll go to Page 2, you'll see that the effective date is March 1st of 2016. Are we in agreement?

A. I do see the -- are we in agreement, are you asking me about the -- Exhibit 6?

Q. Yes.

A. And I do see on Exhibit 6 it says issued February 19, 2015, effective March 1st, 2015.

MR. ROSENTHAL: On the title page?

A. On the title page.

And then on Page 2, well, it doesn't have a page number.

Q. (BY MR. DONOVAN) It's Page 1.

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A. Oh, Page 1. On Page 1, it says effective on the bottom right-hand corner March 1st, 2016.

Q. Okay. Fair enough.

And we only have one more, you'll be happy to hear. That's Exhibit 7.

(Exhibit No. 7, marked for identification.)

Q. Yet another with the same effective date on the cover page, but now when you look at the effective date on Page 2 (sic), do you see it says September 1st, 2016?

MR. ROSENTHAL: Did you mean to refer him to Page 2?

Q. (BY MR. DONOVAN) Page 1, I'm sorry.

A. Can you repeat that again, please?

Q. Okay. It has the same effective date on the cover page as the previous two exhibits -- previous three exhibits, actually, that's February 19th and effective March, 2015?

A. I see.

Q. But when you go to Page 1, you see the effective date there, it's September 1st, 2016?

A. I see that, yes.

Q. Now, since you haven't seen these tariffs, I assume that you can't tell me why Railinc would issue tariffs supplementing this every few months, while

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it's all the same tariff but they must have changed something in there or they wouldn't have changed the effective date?

MR. ROSENTHAL: Objection to form.

Q. (BY MR. DONOVAN) You don't know the answer to that?

A. I don't know.

Q. Of course not. Of course not.

Okay.

Let's go back to Exhibit 1 and ask you to look at Item 187. I think you'll find that on Page 11 it begins?

A. I see that.

Q. And would you read the first paragraph to yourself. You don't have to read it into the record.

(Witness complies.)

A. Okay, I've read it.

Q. Okay. Is that a fair representation of what you referred to earlier as mileage equalization and the 106 rule?

A. Yes, that's a fair statement.

Q. Okay. Let me now ask you to turn to item 190 -- strike that, I'm sorry -- no, 195, I meant to say. I'm sorry, I apologize.

And I want to turn for purposes of this, I

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want -- strike that question. Put Exh bit 1 aside, please.

Let's go to Exhibit 2. This is the exh bit -- first (sic) exh bit that we looked at, it's supplement 31 and it's effective January 1st, 2015.

MR. ROSENTHAL: It's the second exhibit we looked at, right?

MR. DONOVAN: This is Exhibit No. 2 that we looked at, yes.

Q. (BY MR. DONOVAN) Do you have that?

A. I have that.

Q. Okay.

A. I have what the court reporter marked as Exhibit 2.

Q. Thank you.

I'm going to ask you now to go to Item 190 in that tariff -- 195 in that tariff and turn to Page 9. You can go back to Page 8, if you would I ke to get an indication of what this is about. And you'll see that these are the mileage allowances that appear in this tariff to be paid to car owners for the use of their cars that we discussed earlier.

MR. ROSENTHAL: Was there a question or?

MR. DONOVAN: No. I just want him

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to understand that that's what this is. If he agrees with me, fine.

MR. ROSENTHAL: If he understands what this is, yes.

MR. DONOVAN: Yes. If he doesn't, he doesn't.

A. I see that this refers to the mileage rate allowance, yes --

MR. ROSENTHAL: I don't know if he's asked a question yet.

THE WITNESS: I thought he did.

Q. (BY MR. DONOVAN) Okay. Well, do you agree it refers to the mileage rate allowance on tank cars?

A. Yes.

Q. Okay. The exhibits will speak for themselves, thank you.

MR. DONOVAN: I would like you now to examine what I will have marked for identification as Exh bit 8. This is an e-mail.

(Exh bit No. 8, marked for identification.)

(Discussion off the record.)

Q. (BY MR. DONOVAN) I suggest to you the lower right-hand corner, you'll see that this is a document bearing the Union Pacific Bates stamp of 0000749 and consecutively numbered through 0000762. Do you

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remember seeing this e-mail before?

A. I can't say that I recall this exact e-mail, no.

Q. Okay. You are copied on this e-mail, it was -- in fact, you're not copied, it was addressed to you.

A. I see that.

Q. Okay. Do you understand what it is?

A. I do.

Q. Okay. And what is it?

A. It is a historical listing of mileage equalization payments to the different railroads.

Q. Okay. And do you recall receiving this e-mail? I think you said you don't?

A. I do not recall receiving this e-mail.

Q. All right. According to numbers at the top of what we will call -- I'll leave out the four zeros and just say 750. Those are mileage equalization payments for the year 2012?

A. That appears that that's what this says, yes.

Q. Okay. And if I go down to the bottom, and this I'm using as an example for all of them, I think they're all the same. The numbers are different.

I see that the number of mileage equalization payments of the Union Pacific for that year was [redacted] you see that?

A. I do see that number on the bottom right under

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the column that says total distribution to roads. I don't know if I necessarily know what that specifically means on the prior, 'cause there's two other columns.

That -- somehow that appears to match up that those would add up to that number, but I don't know specifically what total distributions to roads where you said the [redacted] if that means that's for that calendar year or -- there's not enough information on this for me --

Q. Fair enough. If you go to the top of the first column it says, "Prior disbursement to roads"?

A. I see that.

Q. And then up above in the second column it says current distribution to roads --

MR. ROSENTHAL: I believe it says disbursements.

Q. (BY MR. DONOVAN) I'm sorry, disbursements, you're right.

A. Disbursements? Mine says current disbursement to roads.

Q. Right. If you add column 1 and column 2, you get to column 3, is that -- you can eyeball that and see it?

A. That looks like that's what that is to me.

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Q. Okay. If you go to the next page, 2011, you see the same kind of numbers.

A. I see the same structure and format where it has those three columns and there's -- the math appears to add up.

Q. Okay, perfect. Have you ever had occasion -- when you got this e-mail, did you have occasion to look at how much money Union Pacific made over this 13-year period on mileage equalization payments?

A. Can you re -- can you repeat the question, please?

Q. Sure. When you received this e-mail which says, "Attached are reports from Railinc on the equalization amounts distr buted to roads for the years 2000 to 2012." And it also says, [redacted] you probably remember that later part?

MR. ROSENTHAL: Is there a question?

Q. (BY MR. DONOVAN) Do you recall that?

A. Do I recall this e-mail?

Q. Yes.

MR. ROSENTHAL: Yeah, it's been asked and answered, but...

A. Yeah, I don't exact -- remember this exact

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e-mail, no.
Q. (BY MR. DONOVAN) Okay. Did you ever total these numbers up to see how much Union Pacific made in mile equalization disbursements during that period?
A. I can't say, since I don't recall this e-mail, if this was information used to answer that question.
Q. Okay. Of other sources other than this material, did you ever make a calculation as to how much in the way of mileage equalization disbursements Union Pacific received from 2000 through 2013?
A. I don't recall the specific years. But yes, I did do some sort of calculation that I recall on the mileage equalization payments Union Pacific received over some time frame.
Q. Okay. Do you recall that number to be something like [redacted]
A. I don't recall the exact number.
MR. DONOVAN: Okay. Could we go now to Exhibit 9.
(Exhibit No. 9, marked for identification.)
Q. (BY MR. DONOVAN) Which is a Bates stamp document from Union Pacific bearing the Bates stamp 0003932. It's a two-page document with the second page being 3933.
May 9, 2016, from the Association American

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Railroads and says, "To all carriers participating in the national tank car mileage equalization program"; do you see that?
A. I do see that.
Q. And it gives some numbers on the front as to what those total mileage equalization payments were; does it not? The end of the first paragraph.
(Witness reading.)
A. Okay, can you repeat the questions, please?
Q. Does that paragraph refresh your recollection as to what the total payments were? Did you ever see this document before?
A. I do not believe I've ever seen this before.
Q. Okay. And then let's turn to Page 2 of the document, which is 3933. It appears to be the same format as the prior documents we looked at as Exh bit 8, do you agree?
A. I do agree.
Q. Okay. And would you say that Union Pacific in this year, which I assume -- well, I want you to know, this is dated May 9, 2016. Do you understand these distr bution to be for the year 2015?
A. I see that May 9, 2016. I don't know for sure if that would have been for the year 2015.
Q. All right. You can put Exh bit 9 aside.

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MR. DONOVAN: I want to ask you to take a look at, we're going to mark for identification as Exhibit 10. It's another UP document bearing the Bates stamp number of 0000747 and 748. Do you recall seeing this e-mail chain before?
(Exhibit No. 10, marked for identification.)
A. I do not.
MR. DONOVAN: I would like to have marked for identification now as Exh bit 11 a document marked UP Bates mark -- Bates stamp numbers 0000673 to and including, 0000690.
(Exhibit No. 11, marked for identification.)
Q. Do you recall seeing this?
MR. ROSENTHAL: I'm sorry, can you give me a chance to look at the document.
MR. DONOVAN: Absolutely.
MR. ROSENTHAL: Go ahead, you can ask your question.
MR. DONOVAN: No, no, go ahead, take your time.
Q. (BY MR. DONOVAN) Have you ever seen that document before?
A. I can't say for sure. My opinion is I've never seen the e-mail.

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Q. That could be, uh-huh.
A. I'm not listed. I have seen presentations similar to this, potentially, I don't know if this is the one I've seen.
Q. Okay. This one is dated June, 2014, that doesn't refresh your recollection?
A. It would not change the message that I don't know if this is the one I've seen before or not.
Q. Okay. Could I ask you to turn to Page 675, which is the next page in front of you. There's a caption that says, "OTE overview." And below that OTE, paren, other transportation equipment, paren. Okay? Is that --
A. Yes, it says that.
Q. Okay. Is that your normal nomenclature for OTE, other transportation equipment?
A. Yes.
Q. Okay. And does this include *Railincs hopper cars, tank cars, what does this include?
A. I don't have everything it includes, but yes, it includes rail cars.
Q. Does it include tank cars?
A. Yes.
Q. Okay.
A. It includes, let me clarify, it includes empty

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movements of tank cars.
Q. Okay. Does it include anything else?
A. Not that I'm aware of.
Q. Okay.
MR. ROSENTHAL: I'm sorry, just to clarify --
A. Yes, let me clarify. Yes, it includes other things. I know it includes the empty tank car, what we would call as empty tank car shipments as well.
Q. (BY MR. DONOVAN) Okay. And right under that, the first bullet says approximately 335,000 tank cars are registered in North America; is that -- you agree with that?
A. I do.
Q. Okay.
MR. ROSENTHAL: Do you agree that it says that?
Q. (BY MR. DONOVAN) It says that, right.
A. (Witness nods.)
Q. Is that consistent with your understanding?
A. Understanding?
Q. Of how many tanks cars that are in North America?
A. I'll take this bullet for what it's worth. I don't know how many tank cars there are in North

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America.
Q. Well, are you disagreeing with the Union Pacific OTE analysis of June, 2014?
A. I didn't say whether I was agreeing or disagreeing. I believe the question you asked me was, do I know that there's 335,000 tanks cars registered in North America and my answer is, I do not know that. This presentation has a bullet that says that.
Q. Okay. But you can't vouch for this presentation?
A. I cannot vouch for -- I haven't read the whole presentation yet, I cannot vouch that I know for a fact there's 335,000 tank cars registered in North America.
Q. Okay. Now, it also says, the next bullet beyond tanks, "Tanks currently make up 20 percent of all rail cars."
A. I see that it says that.
Q. Okay. Do you have any knowledge of that?
A. I do not.
Q. Okay. The next major bullet, "Tank car revenue movements are included in industrial chemical's responsibilities and financials." Do you see that?
A. I do see that.

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Q. Isn't industrial chemicals your job description as of that time?
A. I was lead in our industrial chemicals group at that time, from 2014 through 2015.
Q. Okay. So at the time this was prepared, you were responsible for tank car revenue movements for tanks cars in North America, handling industrial chemicals.
MR. ROSENTHAL: All of them?
Q. (BY MR. DONOVAN) On UP, obviously.
A. Can you say that again, please?
Q. Yes. At the time this was prepared and I assume presented to someone, you as industrial chemicals were responsible for tank cars moving on UP and the revenue on those tank cars?
A. No, that's not a correct statement.
Q. Okay. Why isn't it a correct statement?
A. Tank car shipments fall under different groups within Union Pacific. I happen to handle a portion of them and be responsible for a portion of those shipments.
Q. What portion are you responsible for?
A. I would be responsible for shipments of loaded commodities that fell under, in this case, industrial chemicals at that time. And empty movements of tank

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cars. Yeah, empty movements of tank cars.
Q. And would you be respons ble for the revenues accruing to Union Pacific on movement of those empty tank cars?
A. Yes, I would.
Q. Okay. Now this, if you'll turn to the next page, 676, I'm sorry, Bates stamp. You'll see there's a breakout there in a graph form of the tank car national fleet from 1997 to and including 2013; do you see that?
A. I do see that.
Q. And do you see that the number of tank cars has increased?
A. According to this data, I see that it says it increases.
Q. Okay. And do you notice the distinction between general purpose fleet cars, which is the dark line, and pressure car fleet which is the lighter color line; do you notice the distinction?
A. I do see that the bars represent the different types of cars.
Q. Do you have any reason to agree or disagree? Do you have any knowledge with respect to the bullet points under that, that the overall growth of the tank car fleet is up 3.4 percent over 2012?

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A. What was that question again, please?
Q. Do you have any reason to agree or disagree with the bullet point under that bar chart overall growth of tank cars fleet up 3.4 over 2012?
A. I could not say either way.
Q. Okay. Do you know anything about the bullet points other than that, the general purpose fleet increased 2 percent?
A. I'm – that's a broad statement. Can you help me understand --
Q. Do you understand what that means?
A. Do I understand what these bullets mean –
Q. Yeah.
A. – below?
Q. Yes.
A. One second.
I do believe I understand what those bullets say.
Q. Okay. Then tell me what the second bullet means.
A. Out of the fleet of – this second bullet says, out of the fleet of cars that are represented here, on this, somewhere between looks like 2010 and 2013, 261,000 cars are general purpose cars. And they increased that, the general purpose fleet increased

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2 percent.
Q. Okay. And do you notice the next bullet point, that the average tank fleet is 16 years old?
A. I do see that it says that, yeah.
Q. Do you have any reason to agree or disagree with that?
A. I do not.
Q. Okay. So you simply don't know what the average age is?
A. I do not know what the average age is.
Q. Fair enough.
Do you have any reason to agree or disagree with the statement, 2013 tank car demand equals 5 percent replacement and 65 percent new demand?
A. I do not have any reason to agree or disagree with that.
Q. So you don't know?
A. I do not know.
Q. All right, let's go to the next page, 667 -- or 677. It gives some specifics about Trinity Industries, their leasing, their rail car leasing fleet and so on. Do you know anything about this or is this something that you have no knowledge of?
A. Can you help me under -- do I have knowledge of Trinity Industries; is that the question?

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Q. Well, I'm asking you -- if you want to get detail and go down through this, if you know something about Trinity Industries, I'll get into detail. But do you know anything about Trinity Industries other than lease tank cars?
A. I would – I know they lease tank cars.
Q. Do you know they lease 80,000 tank cars according to this?
A. I did not know. I can't say either way but it does say that on this.
Q. Okay, but you don't know that?
A. I don't know that.
Q. That's what I'm trying to get to, what you know?
A. Okay.
Q. I know what it says. We know what it says. I know what the UP thinks, I want to know what you think?
A. Okay.
Q. Okay. Next page, which is 678, talks about union tank cars?
A. I see that.
Q. Okay. Would you make the same comment about union tank cars lease fleet as you just made about Trinity? That is, you really don't know what their lease fleet looks like in terms of numbers?

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A. That is a correct statement.
Q. Okay. Let's go to the next page, 679. Greenbriar Companies?
A. I see that it says that.
Q. Okay. Do we have the same general lack of information about that particular company that we talked about with the previous two companies?
MR. ROSENTHAL: Are you asking just about the size of their fleet?
Q. (BY MR. DONOVAN) Yeah. Yeah.
A. Yep, I do not know -- have any details about the size of Greenbriar's fleet of cars.
Q. And the next page, 680, American Rail Car Industries, would that be the same -- same answer?
A. If the question is do I know about American Rail Car Industries' fleet of rail cars, the answer is I do not.
Q. Since you don't know about that; am I correct in assuming that on 681, you wouldn't know if these relative capacity numbers of tank cars capacity and these fleet numbers are in fact accurate?
A. I could not say either way.
Q. Let's turn to the next page, 682. We have here, U.S. tank car producers, the origins and stars; have you ever seen this before?

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A. I can't say for certain if I have or not.
Q. Does this chart or map or whatever you choose to call it, comply with your general understanding as to the location of U.S. tank car producers?
A. I -- I don't know exactly where the tank car producers are. This, I have no reason to say whether this map is saying they're in the right locations or not, but I can't say either way.
Q. Now, they have stars and one of the first stars is UP origin; do you know what that means?
A. I do.
Q. What is that?
A. That states whether that tank car producer's facility is on Union Pacific rail line.
Q. Okay. The next one says [redacted]; do you know what that means?
A. I do not.
Q. Another one says [redacted], what do you think that means?
A. That would mean [redacted]
Q. [redacted]
A. [redacted]

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[redacted]
Q [redacted]
A. I see that.
Q. And what does that mean to you?
A. [redacted]
Q. Does it also mean it's not on UP line?
A. That's what that would mean to me, yes.
Q. Okay. So what is the distinction between [redacted]
A. [redacted]
Q. Okay. Let's turn to Page 683. This is a general market analysis -- well, strike that.
This is captioned, "Expected tank car production in North America"; do you see that?
A. I do see that.
Q. And the bullet under that says, "Tank cars production can be expected to stabilize after 2015"; do you see that?

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A. I do.
Q. Do you have any reason to agree or disagree with that?
A. I do not.
Q. So you didn't have any idea whether tank cars production was going to increase, decrease or stabilize?
A. I did not say that.
Q. I'm sorry, you did not what?
A. I did not say that.
Q. Okay. Tell me what you did mean with your answer, you don't know if that's right?
A. You asked me if I read that, I believe, or else --
Q. Okay.
A. -- I think that's what you're asking. And I said yes, I can see that.
Q. Okay. Now, did you understand that to mean that this is accurate, that you agree with this statement?
A. I believe -- yes, I had an understanding that tank car production was expected to stabilize somewhere after 2015.
Q. Okay. So you do agree with that statement?
A. I do agree with that statement, yes.
Q. Okay. And as I go down the next bullet point,

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YOU, what does that mean -- YOY, I'm sorry, what does that mean?
A. Year over year.
Q. Okay. So growth for all rail cars?
A. That is what that bullet says.
Q. Now, do you assume that means tank cars or all rail cars?
A. I don't know for sure what that refers to.
Q. Okay. Let's flip to the next page, which is 684. This says, "OTE tank cars growth and market share," you see that?
A. I do see that.
Q. Okay. And looking at tank cars, would you agree with me that that appears to represent the number of tank cars being produced, I assume, I don't know? What do you think that means?
A. Yeah, I don't know for sure either.
Q. And what do you think that the other chart means, [redacted]
A. First of all, this is historical, so if I remember correctly, the date was June of 2014.
Q. Correct.
A. So this is some historical reference of

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something that occurred. During that time frame, [redacted].
Q. Okay. Now, the bar charts down below say [redacted]
Did I say pie chart, that's what I meant to say.
A. I think you said charts in 2002, I think?
Q. 2012.
A. 2012.
Q. Can't read anything, sorry, apologize.
A. So what is the question, please?
Q. That says [redacted]
A. I don't know what that refers to because [redacted]
Q. Okay. And, [redacted]
A. I'll have the same answer.
Q. Okay. Now let's go to 685. Do you have any understanding what this means?
A. I've never seen this document before.
Q. Would you care to speculate what it might be?
A. Let me read this.

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(Witness reading document.)
A. It appears to be data that represents [redacted]
Q. Okay. And again, these are OTE movements?
A. I can't say that it says that or not.
Q. Well, this whole thing is an OTE market analysis. I would assume that this is OTE, wouldn't you? Or wouldn't you?
A. I don't know for a fact but I would agree with, that's a safe assumption.
Q. Okay. Let's go to the next page, which is 686. RYGG; do you know what that means?
A. I do.
Q. What is that?
A. It's a Union Pacific's measure of profitability levels for shipments.
Q. Okay. And then it says reinvestability, what's that mean in this context?
A. We -- Union Pacific analyzes our business to make sure we get a return on our investment that we would deem is reinvest-able.
Q. Okay. And this chart I'm going to ask you to

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agree with me on what this chart shows because it's not in color.
MR. ROSENTHAL: I was going to ask whether --
MR. DONOVAN: Well, I don't have it in color.
MR. ROSENTHAL: -- the color version.
MR. DONOVAN: I think we can decode this if the witness will bear with me.
Q. (BY MR. DONOVAN) If I look at the shades and compare the shades red, yellow, green and gold with the red, yellow, green and gold numbers down below, it seems to me pretty clear that the red is the [redacted] band at 12 o'clock on this pie chart. The yellow is the narrower band next to it representing [redacted] units as opposed to the [redacted] units of the red. The green is about the size of the combined red and yellow, which is [redacted] units and the gold is [redacted]
Is that a fair analysis of this chart?
MR. ROSENTHAL: I was just going to ask if it's in color 'cause I was looking at some of this stuff and wondered if it was something imposed on the map of the world or

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something but you don't have that.
MR. DONOVAN: This is the way it came to me. If you have any question about that, you can go back in your records and see if you have it in color. But I think if you look at the numbers and the units you'll see that that, that has to be the result. If it's not, who cares, the units are what they are.
MR. ROSENTHAL: That's fine, I just was asking if you had it 'cause I was trying to figure out what this was too and it looked like a map of the world but --
MR. DONOVAN: This is what I got.
MR. KUTILEK: Mike, are you saying you produced these this color?
MR. ROSENTHAL: I don't know.
MR. MORENO: They were not produced in color. They were not received in color, I should say.
Q. (BY MR. DONOVAN) Okay. Well, let's move on. We can deal with that off line.
Next page, pricing strategy. Says UP pricing. First dash, [redacted]; you see that?

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A. I do see that.
Q. Okay. And what does that mean to you?
A. In the instance where a tank car, empty tank car move would be subject to 4703, [redacted]
Q. Okay. And in the context of this analysis, would you assume the 4703 -- the prices in 4703, 'cause this is a pricing strategy, are consistent with your RYGG reinvestability criteria set forth in the previous page?
MR. ROSENTHAL: Objection, vague and compound.
A. Can you help me -- can you repeat the question, please?
Q. (BY MR. DONOVAN) Sure. We just went through on Page 686 your reinvestability analysis saying that when you make expenditures and do things, you do it on the basis of your profitability analysis, correct?
A. I'm sorry, one more time, please?
Q. Okay. When you make investments or do things at Union Pacific in price, do you do it on the basis of their profitability?
A. That is one of the measurements we use.
Q. Okay. What other measurement do you use?
A. From a marketing perspective, there's a lot of

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different components that we deal with our customers to determine what prices to charge in the mar -- there's market analysis, there's -- that is just one measurement of an overall strategy that would be in place.
Q. Okay. So are you telling me that you attempt to price at the highest level you can get and still retain the business?
A. I did not say that.
Q. Or -- well, what are you trying to tell me?
A. I think I tried to do the best I could to say we look at a lot of different factors when we are negotiating and working with the customers to come up with a price for them.
Q. And that price is the market price?
A. We, it could -- it could be the market price. Certain circumstances it may not be.
Q. And what circumstances would it not be?
A. Each individual rate, price, customer, contract would drive that answer.
Q. So are you telling me you pay no attention to the market?
A. I did not say that.
Q. 'Cause I understand your variabilities, customer uniqueness, what we would call variables and

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economics. You're basically telling me that you're trying to achieve the market price and it's affected by various variables; isn't that what you're telling me?
A. I'm saying that any price takes in a bunch of variables in consideration to determine what that price will be. If that's what your question just was, I -- yes, that's what I'm saying.
Q. Okay. And do you determine that to be the market price?
A. In certain circumstances, it could be a market price.
Q. A market price or the market price?
A. It depends on if you're talking about one lane, it's not quite that simple, in my opinion.
Q. Well, I have read for many years that Union Pacific prices to market. Your CEO has said that, your CFO has said that, everybody I've ever seen at the Union Pacific always says that.
And that makes total sense to me. You would price the market. You wouldn't price below market and if you priced above market, you wouldn't get it. So you price to market; isn't that fair?
MR. ROSENTHAL: Objection, argumentative.

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A. We may have a goal of pricing to market. I'm just saying that certain circumstances, we could deviate from that.
Q. (BY MR. DONOVAN) Okay. And that's because the market won't let you do it?
A. There's a lot of circumstances that will drive that.
Q. Okay. Let's go back to -- I'm sorry, 687, that's the next one. Correct, thank you.
Under your second one after the [redacted] statement, we've got [redacted]
A. I see that.
Q. Yeah, that might be one of the exceptions, wouldn't it, that you wouldn't get the market price on the empty move because [redacted]
A. So what's the question again?
Q. Is that what that means, that you might not get the full tiered mileage scale from the tariff because [redacted]
A. That is what that means.
Q. Okay. Let's go to the next page, which is 688.

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[redacted]
Seems fairly axiomatic, you're just recognizing [redacted] isn't that what that means?
A. It means, yes, that's pretty self explanatory.
[redacted]
Q. And then the next bullet or the next heading, "DOT 111 rail cars."
A. I see that.
Q. Would you explain what a -- what you mean by a 111 rail car, for the benefit of the record?
A. My understanding of 111 rail car is, it's a type of car that was a tank car that were manufactured over a certain time frame that has certain equipment characteristics specific to that model, I'll call it.
Q. It's -- is it uniformly -- well, not uniformly, is it routinely referred to as the general purpose car?
A. I did not know the answer to that.
Q. Okay. Do you know that it made up -- or do you agree or disagree that it makes up 65 percent of the

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general tank car fleet?
A. I do not know the answer to that.
Q. Okay. Do you know that 111 cars can be used for transportation of hazardous materials, nonhazardous materials?
A. I do not know the specifics as relates to that.
Q. Okay. So 111 car -- do you know if a 111 car would normally used to transport crude oil, for example?
A. I do know that historically 111 rail cars did transport crude. At least some, they were used to transport some crude.
Q. Okay. And do you know if they're used to transport ethanol?
A. I do not know the answer to that.
Q. Okay. Let's go down to the second dash, "DOT 111 cars" and you define them as cars -- well, this document defines them as cars built before October, 2011?
A. I see that.
Q. Okay. "Make up approximately 68 percent of all tank cars in the current market."
A. I see that.
Q. Okay. So you have no reason to agree or disagree with that?

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A. I do not.
Q. Okay. Do you see the final line there [redacted] do you see that?
A. I do see that.
Q. Did you have any input into that or do you agree or disagree with that statement?
A. I do not agree or -- I agree with that statement.
Q. Okay. And that is a result of the PHMSA rule making that's required some of these cars to be retrofitted?
A. I believe it did have -- yes, it was related to the PHMSA ruling.
Q. Okay. Let's turn to the next page, 689. Is there anything on that page with which you wildly agree or wildly disagree or is this effectively just another market analysis?
MR. ROSENTHAL: Objection, vague.
A. Can you repeat the question?
Q. (BY MR. DONOVAN) No. I'll withdraw it.
MR. DONOVAN: Off the record.
(Whereupon, at 10:15 a.m., a recess was taken and the deposition reconvened at 10:23 a.m.)
Q. (BY MR. DONOVAN) Mr. Craven, I'm going to ask

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the court reporter to --
(Exhibit No. 12, marked for identification.)
Q. Exh bit 12 is a one-page document dated August 8th, 2014 bearing the UP Bates stamp of 0003937. You have that in front of you?
A. I do.
Q. Do you recognize that e-mail?
A. I do.
Q. And what's that?
A. It was an e-mail from me to Beth Whited.
Q. With copies to?
A. Kenny Rocker.
Q. Okay. First question I have is: Why is this document redacted?
MR. ROSENTHAL: That was a redaction to reflect attorney/client material, it's privileged material.
Q. (BY MR. DONOVAN) Okay. So was this -- since I don't have a priveledged log, and that's okay, is this somebody like Mr -- I assume Mr. Craven is telling Ms. Whited what some lawyer told him. I don't know what else it could be?
MR. ROSENTHAL: He's either revealing intent to ask for attorney advice or relaying the advice provided by counsel, I

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assume.
MR. DONOVAN: Would his intent to ask for attorney advice on something be privileged?
MR. ROSENTHAL: If something reflecting a request for attorney advice would be privileged.
MR. DONOVAN: Okay. All right. So your answer is this is an attorney/client communication in both places?
MR. ROSENTHAL: That's -- I'm not being deposed so I'm not answering the question in deposition. But I'm telling you that the redactions of this type were done, whether it was material that was determined to be protected by a privilege, attorney/client work product are the two most likely ones.
Q. (BY MR. DONOVAN) Okay. We have an on -- nevermind, strike that.
All right. You make a point here that -- in this document that [redacted]
[redacted] And by customers you mean who, shippers?
MR. ROSENTHAL: Are you referring to --
MR. DONOVAN: I'm referring to

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what he says about impact on customers.
Q. (BY MR. DONOVAN) Right after the second redaction [redacted]
A. Okay, I see that part. What was your question again?
Q. Who were your customers that you're talking about here?
A. Customers would be anybody responsible for paying OTE charges.
Q. Okay, let's go back for a moment to our definition of OTE. When you did -- when the OTE analysis we just looked at was done, [redacted]
A. I don't know the answer to that.
Q. Okay. When you -- strike that.
When you wrote this, did you have in mind that the OTE initiatives you are talking about were [redacted]
MR. ROSENTHAL: Are you ta king

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about the whole document or the phrase that you brought to his attention?
MR. DONOVAN: Well, I'm trying to figure out what he meant here.
MR. ROSENTHAL: By the whole document?
MR. DONOVAN: By the whole document.
A. So this whole document relates to OTE shipments.
[redacted]
Q. (BY MR. DONOVAN) Well, let's get nomenclature squared between us. When you say, [redacted]
A. [redacted]
Q. [redacted]

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A. [redacted]
Q. Okay.
A. If that's what you said, that's what I'm saying.
Q. Okay. That's fair. I just want it make sure I know what you're ta king about, what I'm ta king about.
A. Okay.
Q. Now, you go on to say, again the next sentence below the sentence I just referred you to analyzing impact [redacted]
A. I see that.
Q. Okay. How did you calculate that?
A. I don't have -- recall the exact specifics but we looked at the previous year's movement and tried to do an estimate of what we thought the change [redacted]
Q. When you did that, what movements did you look at in previous year?
A. The em -- we looked at the [redacted]

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[redacted]
Q. All --
A. [redacted]
Q. Okay. Were you, when you did that, netting out the mileage equalization payments that you were already receiving?
A. Can you explain to me what you mean by that, netting out?
Q. Yeah, when we went through Exhibits No. 8 and 9 and we determined that you were over the last 15 or so years receiving, my calculation, you don't have to agree with it, [redacted] whatever the number is or was, okay. Do you remember us going through that?
A. I remember seeing those documents, yes.
Q. Yeah. Yes. When you did this calculation, were you netting out that [redacted]
A. Definition of netting means?
Q. You're not going to collect that anymore. So, you're collecting 5 million here so your total increase in revenue is going to be [redacted]
A. [redacted]
Q. When you did the analysis, you say you looked at the previous year movement. And the previous year, you didn't have the anticipated retrofit movements

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that you were beginning to anticipate in 2014, did you?
A. So that was two questions, I think. [redacted] **Can you give me a little bit more information what you mean by that?**
Q. Well, I'm not -- I mean what you were meaning by it when you said it on your documents here that we'll get to, that you hoped to collect additional revenue from the retrofit movements. It was the purpose of this whole game, wasn't it?
MR. ROSENTHAL: Objection, that's a --
MR. DONOVAN: Strike -- strike game, strike game.
MR. ROSENTHAL: Compound --
A. Can you repeat the question, please?
Q. (BY MR. DONOVAN) Yes. Documents that we're going to come to indicate beyond question [redacted]

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[redacted]
MR. ROSENTHAL: Objection to form, you're testifying --
Q. (BY MR. DONOVAN) Isn't that true?
MR. ROSENTHAL: Objection to form, you're testifying.
A. Can you repeat that again?
Q. (BY MR. DONOVAN) Yes, let's go down to below where you were just reading. It says [redacted]
MR. ROSENTHAL: Compound, objection.
A. Yeah, can you -- can you tell me exactly what the question is? You read it and then what's your question that you're asking me?
Q. (BY MR. DONOVAN) Mr. Craven, this statement that you wrote says, [redacted]
A. It says that, that's correct.

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Q. Okay. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. Thank you. And the next question is when you did that and you came up with this [redacted] impact on your customers, was that including those retrofit moves or excluding those retrofit moves?
MR. ROSENTHAL: Objection, vague. When you did what?
A. Can you repeat the question, please?
Q. (BY MR. DONOVAN) When you wrote [redacted] Then the next sentence is you go on to say, [redacted]
A. I see that.
Q. Okay. Now, I'm asking you, does that [redacted] include the retrofit moves or not?
MR. ROSENTHAL: Asked and answered.

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A. [redacted]

Q. (BY MR. DONOVAN) Okay. But at the time you wrote this, [redacted]

A. [redacted]

Q. Okay. And this was as August the 8th?
A. It was as of August 8th, 2014, yes.
Q. Yes, okay.
MR. DONOVAN: Exh bit 13 -- could I have marked for identification as Exhibit 13 an e-mail chain bearing the Bates number, 0000, four zeros, 765.
(Exhibit No. 13, marked for identification.)
Q. (BY MR. DONOVAN) And 766. Have you reviewed that?
A. Yes, sir.
Q. Have you ever seen that before?

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A. I don't know if I've seen anything above where I'm referred to. So from Nicole Ostertag's e-mail to me, I don't know if I've seen anything about that for sure.
Q. Okay. Is it correct as it would indicate there, that at this time at least, which was August 25, 2014, that UP [redacted]
MR. ROSENTHAL: Objection.
Q. (BY MR. DONOVAN) Was that two separate initiatives?
A. Okay, that was kind of – let me make sure I get this right. I think the first question was were we looking at [redacted]
Q. Okay.
A. If that's what – the answer is yes, that's what we were looking at.
What was the second question?
Q. [redacted]

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[redacted]

A. [redacted]

Q. Okay. And when you did that analysis, did you anticipate that the new empty mile charge [redacted]

A. [redacted]

Q. Fair enough.
MR. DONOVAN: Could I have Exhibit 14.
(Exhibit No. 14, marked for identification.)
Q. (BY MR. DONOVAN) Bates No. 0000808 marked as Exhibit 14.
This appears to be an update of the status of the empty mile initiative as of November the 4th, 2014; is that what this is?
A. I'm sorry, I was reading it. Can you repeat that again?
Q. Yeah. This appears to be an update, just a simple update on the status of the empty mile

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initiative exiting mileage equalization as of this date of November the 4th, 2014?
A. Correct.
Q. Okay.
MR. DONOVAN: Could I have Exhibit 15, please. Another one-page e-mail which bears the date -- or the Bates No. 0000809 will be Exh bit 15.
(Exhibit No. 15, marked for identification.)
Q. (BY MR. DONOVAN) You recall this e-mail?
A. Yes, I do.
Q. Okay. You did author this?
A. Yes, I did.
Q. And you did this on November the 5th, 2014?
A. That's the date, yes.
Q. Okay. And you state in this, [redacted] is that correct?
A. What I say here is [redacted]

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Q. Okay. And in the third paragraph below [redacted] you see that?
A. I do see that.
Q. And you authored that?
A. I did author that.
Q. Okay. A question: Who is the recipient of this, Barry Kanuch?
A. I don't recall. Somebody within Union Pacific railroad.
Q. Well, obviously?
A. What department, I don't --
Q. Fine.
A. -- I don't recall.
Q. I don't --
A. I don't know Barry personally.
Q. Okay. Now, we're going to have, I think, a couple of exhibits which are going to look painfully similar. And this first one is Exhibit No. 16 and bears the Bates stamp number 0000810.
(Exhibit No. 16, marked for identification.)
Q. Would you take a look at that. Is that in fact what it purports to be and that is, the empty tank

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car regular strategy document that you presented to the operating committee for operating committee review on November 10, 2014?
A. It does appear -- I can't say for certain if this is the actual final document that we used but it appears that's what it was, that was possibly some several drafts as you said.
Q. I understand. Do you remember, just so we cut through it, do you remember if the final presentation you made was effectively four -- four sheets I ke this or was it more than that?
A. I believe it was four, but I don't recall.
Q. Again, turning to the first page of substance, which is 811, you've go [redacted]
A. That is what it says.
Q. Okay. Down in -- under the next bullet, [redacted]
A. [redacted]
Q. Okay. You've got as a second dash there, [redacted]

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A. I see that.
Q. Okay. What did you mean by that?
A. [redacted]
Q. Okay. It was your understanding?
A. That is my understanding.
Q. Okay. Was that given to you by counsel or how did you get that understanding?
MR. ROSENTHAL: I'm going to object to the question requesting information from counsel and instruct you not to reveal any information you may have received from counsel.
A. Yes, I mean, I -- I received it from legal counsel or worked with legal counsel.
Q. (BY MR. DONOVAN) That's fine. I just wanted to make sure you had legal counsel, that's all. I didn't say what they said, I don't care what they said.
Over to 812. Again you have, [redacted]
A. That is what it says.
Q. Okay. And do you agree with that? That was your analysis at the time?

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A. Yes, that was my analysis at the time.
Q. Okay. And down below you have that you estimated some [redacted] Was that cumulative retrofit movements you're talking about?
A. What this bullet meant was I estimated a [redacted]
Q. Okay, so it's not really movements then, it would be [redacted]
A. Yeah, I don't know how many movements it would be.
Q. Well -- have to be to and from?
A. I don't agree with that statement.
Q. Okay. So it could just be one way?
A. Yes, it could just be one way.
Q. Okay. Now, the numbers that you have here [redacted] again I'm going to ask you now: Is that discounting or eliminating or netting out, however you want to put it, the mileage equalization which you'll be foregoing by opting out, your words, of the milage equalization program?
A. [redacted]
Q. [redacted]

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[redacted]
A. [redacted]
[redacted]
Q. [redacted]
[redacted]
[redacted]
MR. ROSENTHAL: Objection, argumentative.
A. I'm going to say what I said before, I don't know if I included it or not.
Q. (BY MR. DONOVAN) Let's go over to the next page, which is 813. Here you have the risks involved in this change; you see that?
A. Yes, I do.
Q. Okay. [redacted]
[redacted]
A. I see that.
Q. Customers don't like to get charged more, correct?
A. There's a possibility the customer would not want to get charged more.
Q. Yeah. I think the fact we're sitting here reflects that, doesn't it?
[redacted]
[redacted] That would indicate to

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me that you were thinking that [redacted]
[redacted]
[redacted]
MR. ROSENTHAL: Is there --
Q. (BY MR. DONOVAN) Is that what you mean -- is that what you meant here?
A. [redacted]
[redacted]
Q. Okay. The third dash there, [redacted]
[redacted]
A. I see that.
Q. You thought that this charge, [redacted]
[redacted]
[redacted]
A. That is what that means. That there's a chance that with this change, [redacted]
[redacted]
MR. DONOVAN: I'm going to ask you to take a look at what we're going to mark for identification as Exh bit 17.
(Exhibit No. 17, marked for identification.)
Q. (BY MR. DONOVAN) This bears the Bates stamp

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numbers of 80000820 (sic) and 821.
MR. ROSENTHAL: Sorry, I think that starts with a zero.
MR. DONOVAN: What did I say?
MR. ROSENTHAL: You said 80.
MR. DONOVAN: I'm sorry. Told 'ya I can't read.
MR. ROSENTHAL: A lot of zeros.
A. Okay. I see that.
Q. (BY MR. DONOVAN) Do you recall seeing this before?
A. No, I do not.
Q. This shows operating committee review 11/10/14 PDF as an attachment to this, which I would represent to you it was. But this was not -- you were not copied on this directly or indirectly; is that correct?
A. That's correct.
Q. Okay. Put that aside.
MR. DONOVAN: Can I have marked for identification as Exhibit No. 18 document bearing Bates stamp number of, four zeros 836.
(Exh bit No. 18, marked for identification.)
A. For Page 1, yes. Page 1, yes.
Q. Yes, and Page 2 is 837. And Page 3 is 838?

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A. Correct.
Q. Okay. Now, the top of this, the last in the chain is in fact an e-mail from Kenny Rocker, who you said was your, one of your bosses, to -- that's where the copy he sent to you -- no, it was to you, I'm sorry it's not a copy to you, it's to you.
And in that Mr. Rocker says, [redacted]
[redacted]
[redacted]
[redacted] You see that as the first line of that the top message?
A. Yes, I see that.
Q. And then under [redacted]
[redacted]
A. That is one of the bullets that is under the [redacted] **along with the second bullet, yes.**
Q. And do you see the other additional language, [redacted]
[redacted]
[redacted]
[redacted]
A. I do see that.
Q. Okay. That looks suspiciously like your e-mail previously -- in previous exh bit, like he just cut and pasted that in?

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A. Can't say whether it's suspicious or not, but it is similar to the other one.
Q. Okay. In fact it's identical.
A. (Witness nods.)
Q. Fair enough.
A. If you say so.
Q. Sure, fair enough. Your boss believes you.
MR. DONOVAN: Okay, we have Exhibit 19 but having said that, it is identical to what we marked, previous document. I'm going to mark it simply because I want to make sure it's identical, but I got it from two different sources from you, so what am I going to do?
MR. ROSENTHAL: I suspect given a lot of what you're seeing or showing him are e-mails with attachments, without the attachments that if we looked at it we would see documents with attach --
MR. DONOVAN: Could have been. That wouldn't surprise me. I never complain about too much production.
(Exhibit No. 19, marked for identification.)
Q. (BY MR. DONOVAN) Would you review that, Mr. Craven, and confirm that it's the same presentation that we discussed earlier?

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MR. ROSENTHAL: Pull the other one up and --
A. Well, I can try to see if it's word for word, if that's what you --
Q. (BY MR. DONOVAN) If it is, it is. If it's not, it's not. But this doesn't appear to be anything different?
A. It's very similar to that one.
Q. Let's leave it at that for now.
Now I'm going to ask that we mark for identification as Exh bit 20, something that appears to be somewhat different.
(Exhibit No. 20, marked for identification.)
MR. ROSENTHAL: Do you want him to hold onto 19 or are we done with 19?
MR. DONOVAN: 19 is fine, you can put that aside.
Q. (BY MR. DONOVAN) This exh bit bears the same title as the earlier one and appears to be substantially similar, but it contains a Page 25 -- I'm sorry 0025234.
A. I do see --
Q. Back up slots.
A. I do see that page, yes.
Q. Okay. Do you see the pages following that that go through 25237?
A. I do.
Q. Okay. Were those slides actually presented to the operating committee; do you remember?
A. I do not believe so.
Q. Okay. So these were -- why were they prepared and what did you use them for?
MR. ROSENTHAL: Objection, compound.
A. The first part of your question was what --
Q. (BY MR. DONOVAN) Why did you prepare them?
A. As a possible different information should any questions be asked.
Q. Fair enough. Okay, you can put that aside, thank you.
MR. DONOVAN: Okay, I would like to mark for identification as Exhibit 21 an e-mail chain beginning with five zeros this time, 0000026.
(Exhibit No. 21, marked for identification.)
Q. (BY MR. DONOVAN) And second Page 27. I want to invite your attention to Page 27.
A. I see it.
Q. Which is an e-mail from you to Mr. Rocker and others --

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A. I see that.
Q. -- dated November 19th, 2014.
A. Yes.
Q. That's after the presentation to the operating committee of November the 10th?
A. I can't recall for sure if the date was the 10th, but all -- for the operating committee, but the dates appear to be the 10th. So if it was the 10th, yes, this was after that.
Q. Do you recall if your proposal was approved on the 10th, when it was submitted, whatever that date was?
A. Yes, the proposal was approved.
Q. So this is after approval of the proposal you wrote this e-mail?
A. That's correct, after the approval, I received from the operating committee to move forward this was -- this was after that.
Q. Okay. In here, you say and please I'm curious about this, I really am, you say, [redacted]
What was -- what did that comment mean to you, why did you say that?
A. [redacted]

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[redacted]
Q. [redacted]
A. [redacted]
MR. ROSENTHAL: Yeah, just want to just caution you not to --
Q. (BY MR. DONOVAN) No, no, I don't want to know what your lawyers told you, okay?
Okay, the last paragraph there, [redacted]
A. I see that.
Q. Okay. When you wrote that, did you think [redacted]
MR. ROSENTHAL: Can -- I'm sorry, just to be clear, which set of empty mileage charges are we talking about?
MR. DONOVAN: The only one we're ta king about in this case.
MR. ROSENTHAL: The movements to the shops?
MR. DONOVAN: The movements to shops.

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A. Okay, can you repeat the question, please?
Q. Sure. When you wrote that --
A. When I wrote this second phase?
Q. That last, second phase [redacted]
A. Okay.
Q. Did you have in your mind that [redacted]
MR. ROSENTHAL: Objection, that's just misstating the testimony. I'm not trying to stop you from getting there, [redacted]
MR. DONOVAN: Okay.
MR. ROSENTHAL: So I just want that to be...
MR. DONOVAN: Okay. Okay.
Q. (BY MR. DONOVAN) When you wrote this, did you think [redacted]
A. I'm sorry, one more time, please?

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Q. Did you think when you wrote this --
A. Okay.
Q. -- in your mind, that [redacted]
A. No.
Q. Okay. [redacted]
MR. ROSENTHAL: What is that?
MR. DONOVAN: Hum?
MR. ROSENTHAL: You said that is separate.
MR. DONOVAN: Well, whatever else he's talking about. [redacted]
A. I'm sorry, so one more time and what was the question?
Q. (BY MR. DONOVAN) When you wrote this, in your mind --
A. Uh-huh.
Q. -- did you think, [redacted]

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[redacted]
A. Through talking with --
MR. ROSENTHAL: Objection, I just don't want you to reveal your discussions.
Q. (BY MR. DONOVAN) I just want to know what you thought.
MR. ROSENTHAL: Really just a question of separating out -- just, we keep crossing over [redacted] I just want to make sure your question is clear, I don't have a problem --
MR. DONOVAN: I'm trying to separate that because up until this point, every time we talked about [redacted] I think. And I'm trying to understand what that is?
MR. ROSENTHAL: I'll let you work -- figure out with the witness.
MR. DONOVAN: Okay.
MR. ROSENTHAL: I'm not, I'm just --
MR. DONOVAN: Fair enough.

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MR. ROSENTHAL: I think he can get you there.
Q. (BY MR. DONOVAN) Okay. What other elements --
MR. ROSENTHAL: I have say -- wait. I just want to caution that I don't want you revealing discussions with the lawyers. If you want to say something was in your mind, that's okay. If you want to explain the difference, that's okay.
I just don't want you revealing communications with counsel.
THE WITNESS: Understood. Understood.
Q. (BY MR. DONOVAN) Okay. Now, when you wrote this, you just testified, I believe, that [redacted]
A. Correct.
Q. Okay. [redacted]
A. [redacted]
MR. ROSENTHAL: Don't, don't -- just tell him what you thought. Don't go through your discussions with --

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THE WITNESS: Okay, okay.
MR. DONOVAN: Fair enough.
A. [redacted]
Q. (BY MR. DONOVAN) Okay. [redacted] You said [redacted] What kind of moves were you talking about?
A. [redacted]
Q. Okay. [redacted]
A. No, I would not say that that's accurate.
Q. I'm trying to help you here. I'm trying to see what other kind of moves there are.
A. You mentioned three -- there was three parts to your question to me, I did not agree with all three parts.
Q. What part did you not agree with?
A. I don't -- I think it was referred to as 106.

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Q. Right.
A. I don't know what 106 is.
Q. That's mileage equalization.
A. Okay, so can you repeat the question, please?
Q. Yeah. Okay, let's break it down for just a minute.
Without regard to empty moves or anything else, new cars, old cars, retrofit cars. When you quote a rate to a shipper in a tank car, it's to the consignee and back to the consignor, that's your rate, 'cause you're rate is the loaded movement and the return to the consignor, right?
A. For, are you talking specifically about certain car types?
Q. I'm talking tank cars, that's the only one I'm talking about here.
A. Okay.
Q. Okay.
A. Most of the time shipments in tank cars, since they're private equipment, does include a plan expectation for some percentage of the shipments to go from shipper to consignor and back. The customer, though, can choose where that car goes.
Q. No, no, I understand that. I understand that.
But when you quote the rate, the normal rate,

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it's to the consignee and back. And if the -- and let me ask the question: Assuming that the shipper decides to do something else with the car, route it around Robin Hood's barn to get it back to the consignor or whatever, that's an empty mileage move and when the empty miles goes above 106 of the loaded move, equalization kicks in.
Is that your understanding of the 106 rule or is it something different?
MR. ROSENTHAL: Objection, it's compound.
A. I don't think it's that easy. There is the rules of the 106 percent by car mark. There's a lot of variables that would answer that question.
Q. (BY MR. DONOVAN) Okay.
A. Aggregation.
MR. DONOVAN: Let's move on. I want to mark for identification as Exhibit 22 --
(Exhibit No. 22, marked for identification.)
Q. (BY MR. DONOVAN) This carries the Bates stamp of 0000052 and following to 60.
This appears to be an e-mail from Ms. Ostertag, Ostertag?
A. Ostertag, that's correct.
Q. To you, as of November 26, 2014. And there's an

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attachment, which are a set of slides, [redacted] Internal, I assume marketing and sales?
A. M and S stands for marketing and sales.
Q. Q and A, question and answer?
A. I see that.
Q. Yeah, okay.
Now, is this set of slides designed to be what in other documents you referred to as education for your customers as to why you're making a change?
A. I'm sorry, I was looking at it again. Can you repeat that one more time, please?
Q. Sure, was this set of slides designed to be education for your customers -- strike the word education if you want to. But information to your customers as to why you were making the change?
A. No. This was for our sales team.
Q. What is your sales team going to do with it?
A. This document was to better inform them about the changes.
Q. For what purpose?
A. To communicate with customers.
Q. Okay. Well, that's what I'm trying to say: This is to allow your sales people to communicate

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with customers, right?
A. This document was to educate our sales team to allow them to communicate with customers.
Q. Okay. Fair enough.
If I turn to Page 55, beginning with zeros, I see several reasons why change. The fourth bullet down, [redacted]
A. I see that.
Q. Okay. [redacted]
A. [redacted]
MR. DONOVAN: Okay. I would like to have marked for identification as Exhibit No. 23 an e-mail from you to the marketing and sales team.
(Exhibit No. 23, marked for identification)
Q. (BY MR. DONOVAN) Bearing the Bates stamp number of five zeros, 61 and 62.
Do you recall that e-mail?
A. I do.
Q. Okay. And you prepared this, you authored this?

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A. I did.
Q. Okay. And you, as you review it now, agree that this is a fair description of the mileage equalization program and the 106 rule?
A. Can you say that one more time, please?
Q. Would you agree as you read this now, that you were informing your marketing and sales team as to your understanding of the mileage equalization and 106 rule as it applied prior to implementation of the retrofit or the moves to and from the repair shops?
MR. ROSENTHAL: Just to -- you're asking him whether this reflected his understanding at the time of the mileage equalization rule?
MR. DONOVAN: Yeah. Yes. Yeah.
A. A portion of this e-mail did explain a high level interpretation of the mileage equalization program.
Q. Okay. Thank you.
MR. DONOVAN: I'm going to ask to have marked for identification as Exh bit 24, two pages an e-mail and an attachment. The e-mail is addressed to you from Keith Picker.
(Exhibit No. 24, marked for identification.)
Q. (BY MR. DONOVAN) And this appears to be [redacted]

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[redacted] Is that a fair interpretation of this, I'm a little confused by it, but --
MR. ROSENTHAL: Yeah, objection, vague on the new charges, but.
Q. (BY MR. MORENO) Well, the moves to and from shop. To repair shops, yeah.
MR. ROSENTHAL: It's just we were talking about a bunch of different changes, so...
MR. DONOVAN: Fair enough.
A. I don't know if this [redacted]
Q. (BY MR. MORENO) Okay.
(Whereupon, at 11:20 a.m., a recess was taken and the deposition reconvened at 11:27 a.m.)
(Exhibit No. 25, marked for identification.)
Q. Mr. Craven, I'm handing you what's been marked for identification as Exhibit 25, a one-page document bearing a Bates stamp number 0000954. This is to you and it's a no reply e-mail so I assume it's from a automatic kind of thing, it's not a person, somebody wrote it?
A. That's correct.
Q. But if says updated by Thomas Gehl, do you know

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what Thomas Gehl is, G-E-H-L?
A. I know who Thomas Gehl is, uh-huh, yes.
Q. Okay. And this appears to be [redacted] is that accurate, am I reading this right?
A. I can't say that for a fact. This says that the actual -- this is an automated system that is generated and this might just be [redacted]
Q. Ah, okay. But is it your recollection that it was approved that day?
A. Yes.
Q. Okay. That's fine. And Mr. Gehl was just, he's in charge of the operating system?
A. Mr. Gehl was this charge of the system to track this.
Q. Okay. Thank you.
There seems to have been, I'm not going to hit you with a document right at the moment. [redacted]

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[redacted]
A. Can you go through the example again?
Q. Yeah, let's assume -- let's assume that I sent a tank car to the a consignee and it comes back to me and I'm the shipper.
A. Okay.
Q. Okay. And I decide this car needs to go to a repair shop, a retrofit, leave the cleaning and that you stuff out, it just needs to go to the repair shop for retrofit or whatever. And I send it to the repair shop. Under your tariff 4703, you take the position, and I think it's accurate, that that move is chargeable?
A. In that example you just gave me, the movement to the shop would be charged.
Q. Okay. Now the movement back, you also take the position is chargeable?

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A. When you say back, from the repair facility?
Q. From the repair facility back to the consignor, the original shipper.
A. Under that whole string of car movements, the movement from the shop would be chargeable.
Q. Okay. And hat's because the movement to the shop, although it's a revenue move, is not a loaded revenue move, is that the reason?
A. The reason that there would be a charge is we were -- the program would say if it wasn't a prior revenue loaded movement, that the first movement on Union Pacific railroad -- getting a little complicated.
If it wasn't a prior revenue loaded movement, then any additional empty movements would be chargeable to and from a repair facility.
Q. Right, okay.
So the operative word -- the key word here is loaded. It's not only a revenue move, it's got to be a loaded revenue move to meet the definition of 4703?
A. For the tank car provisions that we put in place, the prior movement would have to be a revenue loaded movement for the next empty movement to repair facility to not be charged.
Q. Okay. [redacted]

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[redacted]
A. [redacted]
Q. Okay. When we were discussing the revenue projections that you made in 2014, whenever in 2014, but before 2015, you were coming up with numbers like [redacted]
Now, when that was going on in your mind, were [redacted]
MR. ROSENTHAL: Objection, vague.
A. When you say "inspection movements," can you be a little bit more detailed for me?
Q. (BY MR. DONOVAN) Sure. Do you know that under HM201, the Department of Transportation in 1995, '96, determined that all tank cars, whether carrying hazardous materials or not, had to be inspected a minimum of every 10 years?

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A. I'm not aware of that.
Q. Okay. Are you aware of it now?
A. I'm -- if what you're saying is true, that's -- I'm not aware of it 'till you just said that.
Q. Okay. If that is in fact true --
A. If what is?
Q. If that is in fact true, that they have to be inspected every 10 years and I would suggest to you the pressurized cars, many of them have to be inspected every five years. The number of movements to and from repair facilities that you were projected was grossly understated.
MR. ROSENTHAL: Objection.
Q. (BY MR. DONOVAN) Are you aware of that now?
A. Is there a question?
Q. Are you aware of that now?
A. No.
Q. Okay. Are you aware that your projection of [redacted]
MR. ROSENTHAL: Objection, the question kind of shifted in the middle there, I think.
Q. (BY MR. DONOVAN) Well, let's try and go back again.

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You are aware that this initiative, the movement to and from repair shops has [redacted]
A. I'm not aware of exact amount, but I do believe it's within that range.
Q. Okay. And do you believe that 2016 is going to look about the same?
A. I don't know.
Q. You haven't been tracking that?
A. I'm no longer responsible for --
Q. Ah.
A. -- OTE issues.
Q. Who would be responsible for that now?
A. My successor -- actually, it's is a vacant position right now, through transition.
Q. Would Mr. Butler and Ms. Whited, who we discussed that you reported to at one time, would they be aware of this?
A. I can't say for sure, but it is reasonable to say that they would be aware of it.
Q. Okay.
(Discussion off the record.)
MR. DONOVAN: I want to give you and have marked for identification as Exhibit

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26, a four-page document with the Bates stamp 0002885.
(Exhibit No. 26, marked for identification.)
Q. I would ask you to look at the --
(Discussion off the record.)
A. I'm sorry, just let me read this, please.
Q. Oh, all I need you to read is the first one, the first e-mail. You can read the rest if you want. Talking about the e-mail from Beth Whited to Eric Butler.
A. Okay, I read that e-mail.
Q. Okay. Does that refresh your recollection as to the amount of moneys that were collected in 2015?
A. It does not.
Q. Okay. Because you never were part of this?
A. Yeah, that's a broad question. I was no longer responsible for it so I don't know the dollar amounts of the revenue.
Q. Ah, okay.
If that is in fact correct, and I assume since they're your bosses it is correct. Does that reflect the fact that somehow or another, [redacted]
A. [redacted]

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[redacted]
Q. Okay. When you did your projections, did you anticipate any increased shipments?
A. Can you say that again, please?
Q. When you did your projections that arrived at [redacted] or whatever it was, did you make any projections about increased shipments or did you assume the shipments were going to be the same they were previous years?
A. [redacted]
Q. Okay. But that was a small number of cars, [redacted]
A. It listed it as [redacted]
Q. Okay. If we -- now, I understand this is a systemwide, this is Nationwide, it's not UP, when I ask this question: We saw before that according to your OTE analysis, there were 335,000 tank cars out there. And if the DOT requires that they be inspected every 10 years, that means that 35,000 cars are going to move to and from shop every year, at a

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minimum?
A. Is that -- is there a question?
Q. Is that correct?
A. If that's what your -- you say.
Q. Okay. Would that explain why you were so
[redacted]
A. [redacted]
Q. [redacted]
A. I don't believe I said that. I said that there's other factors that could go into that that I'm not aware of.
Q. Okay. But are you, are you agreeing that the numbers that you gave us originally, [redacted] that turned out to be the case?
A. I would have to look at that document again to see exactly what it said.
Q. Which document are you ta king about?
A. The document -- the operating committee document, I believe that you're referring to, that showed the estimate. There was that bullet --
Q. Please, go ahead.
A. Okay, what was your question again?
MR. DONOVAN: Can you read it

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back, I forgot what it was.
MR. ROSENTHAL: You've asked several and they kind of shift suddenly every time, so --
MR. DONOVAN: Thank you for commentary, Mike, I'll do my best.
MR. ROSENTHAL: We all try to do our best.
(The record was read by the reporter as requested.)
A. I don't agree with that statement.
Q. (BY MR. DONOVAN) [redacted]
A. [redacted]
Q. Okay. So your projections of the net increase in revenues or the increase in revenues to the Union Pacific [redacted]
A. [redacted]
Q. The empty moves to repair shop charges that you

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imposed under tariff 4703, Item 1200, [redacted]
A. No, no, what I'm saying is you're referring to my estimate.
Q. Yes, that's what I'm levering --
A. You mentioned a [redacted]
Q. Right.
A. That was from, I believe where you're heading at, is from an e-mail here earlier, which was evaluating a previous year.
Q. Okay. There was that.
A. Then there was the operating committee presentation --
Q. Right.
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. Okay.

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A. If you look at the --
Q. Okay.
A. So you --
Q. Okay, that's fair?
A. So you're saying two different things.
Q. Okay. So when you did that --
A. When I did what?
Q. [redacted]
A. [redacted]
Q. Okay. Now, when you did that, when you did that [redacted]
MR. ROSENTHAL: Objection, there's no foundation for the point that he didn't have --

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MR. DONOVAN: Fair enough.
MR. ROSENTHAL: In mind --
MR. DONOVAN: Fair enough. I'll withdraw the question.
Q. (BY MR. MORENO) Do you know that under Ex. Parte 328, the mileage allowance provisions, the railroad has to compensate people who provide cars to it for its use?
MR. ROSENTHAL: Objection, you're asking for a legal opinion.
Q. (BY MR. DONOVAN) Do you know that? Is that part of your routine to know that, part of your job?
A. Can you say that again, please?
Q. Sure. In conducting your job as marketing and sales, setting prices and so on, do you understand or have you been made to understand that the railroad, i.e. the Union Pacific, has an obligation to provide transportation equipment?
A. I have a vague understanding of certain circumstances where the railroad will -- is obligated to supply equipment. I don't have the details on that, though.
Q. Okay. Did anybody ever tell you that if you don't supply the equipment, you have to pay the person who does for supplying the equipment that you

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use?
A. Are you referring to mileage allowance?
Q. Well, mileage allowance system, yeah. Yes?
A. I am familiar that in certain circumstances for customers using their own equipment on Union Pacific railroad, that if they want to follow a mileage allowance program, we would pay them.
Q. Okay. Now, when you -- and what's the allowance based on, do you know? What's the allowance number based on?
A. Allowance number, can you be a little bit more detailed when you say --
Q. Sure. Sure. We looked at the tariff, tariff 1 through 7 -- Exhibits 1 through 7, those are the RailInc tariffs. And we looked at Item 195, that's the mileage allowance provision.
Now, I didn't take you through all those 195 changes in the tariffs that we looked at, to show you that the mileage allowance varies year to year, okay. Would you be surprised if it did?
A. I would be surprised either way because I'm not -- I don't know.
Q. Okay. Fair enough.
Now would you have any understanding as to why it would vary?

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A. I do not.
Q. Okay. Would you be surprised to know that it varies based upon the cost to the car owner of supplying the car?
A. I can't say either way.
Q. Okay. Would you be surprised to know that the cost of moving cars to a repair facility are viewed as maintenance costs chargeable to the car owner?
A. I'm not aware of that.
Q. Okay. Would you be aware of the fact that when it's charged to the car owner as a cost, it goes into the mileage allowance calculation and the mileage allowance from the railroad to the car owner is affected thereby?
A. Okay, that I -- can you help me out with that, please say that again.
Q. Sure, okay. As the costs of providing the car go up --
A. The cost of providing a car go up.
Q. Right, including the mileage to and from repair facility, which is considered a maintenance cost, that that cost is included in the mileage allowance calculation that causes the mileage allowance to vary?
MR. ROSENTHAL: Mr -- are you just

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representing that these are all true and asking him to agree or?
MR. DONOVAN: I'm asking if he understands that. The tariff says that, 328 says it. I'm asking him if he has any calculation about that, does he know that. If he answer is no, he doesn't know that, then I could be wrong.
MR. ROSENTHAL: But you're representing that that's what the tariff says. We're not sitting here -- if you would like him to go back and look at the tariff, that's fine. But I think he said that he doesn't know these things --
MR. DONOVAN: That's fine.
MR. ROSENTHAL: So I just want to make it clear that he's not saying he knows -- he's not representing anything that you're saying is true --
MR. DONOVAN: I fully understand, he doesn't know. Okay.
MR. ROSENTHAL: I mean, then maybe we can...
Q. (BY MR. DONOVAN) Well, and that brings us to another point. And that is: If you don't know that,

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then you obviously couldn't make any adjustment for those increased costs when you increased the cost of the empty mileage charges, could you?

MR. ROSENTHAL: Objection, that is vague, ambiguous and argumentative.

A. I don't even know what costs you just said.

Q. (BY MR. DONOVAN) That's fine.

A. So can you --

Q. We're talking about the costs of maintenance of the car and those costs, according to the Ex. Parte 328. According to what I'm telling you now, which you don't know, but if I'm right, those costs are included in maintenance costs which go in turn into the calculation for the mileage allowance?

A. Okay.

Q. Okay. So if you didn't know that, then it would be absurd for you to sit back and think wait a minute, I just increased their cost, therefore I have to increase the mileage allowance. You wouldn't consider that, would you?

A. That's your opinion.

Q. Did you consider it?

MR. ROSENTHAL: Objection, vague. Consider what?

A. I don't have the details of what you're saying.

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I don't -- I don't -- I'm not knowledgeable with that aspect of what you're saying --

Q. (BY MR. DONOVAN) Okay.

A. -- so I can't say either way.

Q. Fair enough.

Now, in your experience during the period from June 2014 through when you left industrial chemicals, is that the right word?

A. Can you start the time -- dates again.

Q. June, whenever, we talked about the time frame here.

A. Okay.

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

MR. DONOVAN: Okay. Could I have marked for identification as Exhibit No. 27 a one-page e-mail 0001310 (sic).

(Exhibit No. 27, marked for identification.)

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MR. MORENO: 1301.

MR. DONOVAN: 1301, thank you.

Q. (BY MR. DONOVAN) Have you ever seen this before, Mr. Craven?

A. I do believe so, yes.

Q. Okay. I just have a couple simple questions.

[redacted]

A. This e-mail is in regards to the new shop charges, yes.

Q. Right. And there are what, [redacted]

A. [redacted]

Q. Right.

A. -- may ask us what one -- what somebody else may not.

Q. Fair enough.

A. I forgot the first question again.

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Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

MR. DONOVAN: Could I have just a moment here.

Q. (BY MR. DONOVAN) Oh, I know one thing I wanted to talk about. In making the change out of mileage equalization, your e-mail, which I lotted you on a bit ago about being so perceptive as to what mileage equalization is really about, i.e. Exhibit 23. You noted that the mileage charges go to the car owner, because the car owner's got the reporting marks and that's the way the system works; do you recall that?

A. I do recall that.

Q. Okay. Now -- in our situation now, the empty mileage charges that were imposed on January the 1st, the bill was set [redacted]

A. [redacted]

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Q. [redacted]
A. [redacted]
Q. Should it have gone to the shipper?
A. In certain circumstances, it should have gone to the shipper.
Q. In other circumstances, to the car owner?
A. My understanding is certain circumstances, the car owner.
Q. And why would there be a difference?
A. [redacted]
Q. Okay. So if in fact the car owner had given instructions to send the car to a particular facility for inspections or retrofit or whatever, then the bill would go to that car owner?
A. [redacted]
Q. Okay. Now, the car owner has the reporting marks, right. The reporting marks on the car, there's the car owner. Except in those circumstances where there's a long term lease or something like

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that, which is effectively car ownership; is that a fair statement?
A. One more time, please?
Q. Well, if somebody leases a car for 30 years, the use of the life of the car.
A. Okay.
Q. They might lease it for finance purposes but they're effectively the owner and they get the car rights? If you know, if you don't know, don't worry about it. It's obscure.
A. Okay.
Q. Okay. But normally the car owner is the one who gets the reporting marks?
A. Okay.
Q. The car says GATX or the car says ULTX, whatever.
A. I'm familiar with the car marks, generally speaking, go to a car owner.
Q. Okay. Fair enough. Okay.
MR. DONOVAN: Could we have three minutes?
MR. ROSENTHAL: Sure.
(Whereupon, at 12:00 p.m., a recess was taken and the deposition reconvened at 12:08 p.m.)
Q. (BY MR. DONOVAN) We're almost there. We're

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almost there.
(Discussion off the record.)
Q. (BY MR. DONOVAN) Mr. Craven, I want to invite your attention back to Exhibit 15 for a moment. And I want to invite your attention to the paragraph under [redacted]
A. I see this.
Q. You see that paragraph?
When you made that statement, [redacted]
A. That's a lot of questions. When I said that, it was my interpretation.
Q. [redacted]
A. [redacted]
Q. [redacted]

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[redacted]
MR. ROSENTHAL: [redacted]
MR. DONOVAN: [redacted]
A. [redacted]
Q. [redacted]
A. I did not say that.
Q. Well, that's what this says. I'm just asking if you did a study to support that?
A. No, that's not what this says. [redacted]
Q. Okay. Well, I'm asking you --
A. I did not say [redacted]
Q. Okay. Well, [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]
Q. [redacted]
A. [redacted]

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[redacted]
Q.
A.
Q.
A.
Q.
A.
Q. Okay.

MR. DONOVAN: That's all I have. Mr. Craven, I thank you very much for your time.

MR. ROSENTHAL: Yes, read and sign.

(The deposition concluded at 12:15 p.m.)

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Deposition of DOUGLAS CRAVEN

_____
Signature of witness

STATE OF _____)
: SS.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20____

_____
GENERAL NOTARY PUBLIC

DATE: December 14, 2016

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CERTIFICATE

STATE OF NEBRASKA)
: ss.
COUNTY OF LANCASTER)

I, Christine M. Salerno, RPR, General Notary Public in and for the State of Nebraska, do hereby certify that, DOUGLAS CRAVEN was by me duly sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by said witness was reduced to writing by me.

That the wi hin and foregoing deposition was taken by me at the time and place herein specified and in accordance with the wi hin stipulations; the reading and signing of he witness to said deposition having not been waived.

That the foregoing deposition is a true and accurate reflection of the proceedings taken In the above case.

That I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

IN TESTIMONY WHEREOF, I have placed my hand and notarial seal this day of 2016.

_____
Christine M. Salerno, RPR

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