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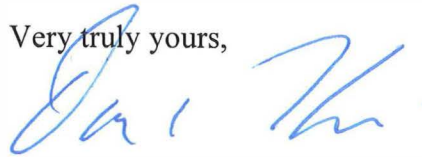
Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *CF Industries Sales, LLC v. Canadian National Railway Company* (Docket No. NOR 42151)

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find the Answer of Canadian National Railway Company, which is being submitted on behalf of Canadian National Railway Company and its United States rail carrier subsidiaries.

Very truly yours,



David A. Hirsh

Counsel for Canadian National Railway Company

cc: Peter A. Pfohl, Esq.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CF INDUSTRIES SALES, LLC,	)	
	)	
	)	
Complainant,	)	
	)	Docket No. NOR 42151
v.	)	
	)	
CANADIAN NATIONAL RAILWAY COMPANY,	)	
	)	
	)	
Defendant.	)	
	)	

ANSWER OF CANADIAN NATIONAL RAILWAY COMPANY

Canadian National Railway Company¹ (“CN”) hereby answers the Complaint filed by CF Industries Sales, LLC (“CF”) in this proceeding on January 4, 2017. CN denies all allegations in the Complaint except those expressly admitted herein and otherwise answers the Complaint as follows.

Response to Prefatory Statement

The prefatory statement of the Complaint (*i.e.*, the portion preceding the numbered paragraphs) (“Prefatory Statement”) largely recapitulates allegations that appear in the Complaint’s numbered paragraphs and the prayer for relief, to which CN responds in the numbered paragraphs, Affirmative Defenses, and prayer for relief set forth below. In brief, CN admits that Plaintiff has challenged certain provisions in CN’s Toxic Inhalation Hazards (TIH)

¹ Canadian National Railway Company answers the Complaint on behalf of itself and its United States rail carrier subsidiaries, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Chicago, Central & Pacific Railroad Company, Cedar River Railroad Company, Waterloo Railway Company, Wisconsin Central Ltd., Sault Ste. Marie Bridge Company, Wisconsin Chicago Link Ltd., Bessemer & Lake Erie Railroad Company, and The Pittsburgh and Conneaut Dock Company.

Tariff, CN 9007-B, as unreasonable and unlawful, but denies that Plaintiff's claims are warranted and denies that Plaintiff is entitled to any of the requested relief.

The Prefatory Statement also paints a selective and inaccurate picture of the issues before the Board.

In particular, it makes no reference to the fact that TIH commodities are among the most dangerous substances that can be carried by rail. A release of TIH could expose CN to substantial and even catastrophic liability risks. Although CN is required to provide rail transportation to TIH shippers under its common carrier obligation, CN does not control what products are shipped, the quantities of products shipped, where the products are shipped, or the equipment in which they are shipped. Rather, the shipper is responsible for each of these decisions. Although these shipper decisions have a substantial impact on the amount of risk to CN and to the public associated with TIH rail transportation, CN cannot sufficiently account for TIH-specific risks in the transportation rate under the existing regulatory framework and has limited ability otherwise to influence decisions. Item 6000 of CN Tariff 9007-B reasonably holds TIH shippers responsible for risks associated with their TIH shipping decisions. It thereby properly protects CN from potentially catastrophic liability that could arise from TIH harms that CN neither caused nor has the opportunity to prevent. And, by the same token, it ensures that the party who controls most aspects of TIH shipments – the shipper – internalizes their social cost, leading to socially optimal decisions that balance the benefits and risks of TIH shipments.

CN has not attempted to “force CF to accede” to the provisions contained in CN Tariff 9007-B, Item 6000, as the Prefatory Statement contends. In accordance with its regulatory obligations, CN has posted a tariff, leaving CF and other shippers with the choice to ship under that tariff, pursue contractual negotiations, or not ship over CN. This dispute arose when CF

withdrew its prior proposal, terminated negotiations without responding to CN's pending proposal that was subsequently incorporated into the tariff at issue, and proceeded to file the instant Complaint.

The Parties

1. CN admits that CF facilities located in Courtright, Ontario, Canada, and Yazoo City, Mississippi, are served directly by CN, and that CF is a manufacturer and distributor of anhydrous ammonia. CN lacks sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 1, and therefore denies them.

2. CN admits that it is a Canadian corporation headquartered in Montreal, Quebec; that CN has affiliates and subsidiaries; that CN conducts common carrier rail operations in Canada; and that CN conducts common carrier rail operations in the United States directly and through its U.S.-based rail operating subsidiaries.

The CN Liability/Indemnity Tariff

3. CN admits that it has established CN Tariff 9007-B, that this tariff applies to TIH shipments, and that it has been incorporated by reference into CN pricing authorities applicable to CF. The tariff and pricing authorities in question are written documents that speak for themselves.

4. CN admits that Exhibit A to the Complaint is an accurate copy of the current version of CN Tariff 9007-B and that Item 6000 is included in this tariff.

5. CN admits that the quotation from the current version of CN Tariff 9007-B that appears in Paragraph 5 is accurate.

6. CN admits it established Item 6000 of CN Tariff 9007-B, and that CF has filed the instant Complaint challenging the reasonableness of various provisions in Item 6000. The

remaining allegations are vague and ambiguous, and CN therefore denies them. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

7. Admitted.

8. CN denies the allegations in the first two sentences of Paragraph 8 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. CN denies the allegations in sentence three insofar as they purport to characterize terms in, and relationships between, CN Tariff 9007-B and material described as "CN's Tariff 9000-Series system rules" (which is not attached to the Complaint), when CN Tariff 9007-B and the material described by CF as "CN's Tariff 9000-Series system rules" are documents that speak for themselves.

9. CN denies the allegations in Paragraph 9 as vague and ambiguous and insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

10. CN denies the allegations in Paragraph 10 insofar as they selectively quote from and purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to Paragraph 6.

11. Admitted.

12. CN denies the allegations in Paragraph 12 insofar as they selectively quote from and purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to Paragraph 6.

13. CN denies the allegations in Paragraph 13 insofar as they selectively quote from and purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to Paragraph 6.

14. CN admits that the quoted text accurately states the indemnification requirement set forth in Part (e) of Item 6000 of the Tariff. By way of further response, CN incorporates by reference its response to Paragraph 6.

15. CN denies the allegations in Paragraph 15 insofar as they selectively quote from and purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to Paragraph 6.

16. CN denies the allegations in the first sentence of Paragraph 16 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to Paragraph 6. CN admits that the language quoted in sentence two is an accurate quotation from Part (c) of Item 6000 and that the language quoted in sentence three is an accurate quotation from Part (g) of Item 6000.

17. CN admits that Parts (c) and (g) of Item 6000 of CN Tariff 9007-B do not identify a specific forum or procedures under which liability would be determined and allocated, beyond those stated therein. CN denies the remaining allegations in Paragraph 17 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

18. CN admits that Part (h) of Item 6000 of CN Tariff 9007-B does not identify specific state laws. CN denies the remaining allegations in Paragraph 18 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to Paragraph 6.

19. CN denies the allegations in Paragraph 19 insofar as they selectively quote from and purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to Paragraph 6.

The CN Tariff as Applied to CF

20. CN denies that CF has expanded its business with CN since 2010. CN admits that CF facilities located in Courtright, Ontario, and Yazoo City, Mississippi, are directly served by CN. CN admits, upon information and belief, that CF has made investments since 2010 at its Yazoo City plant that include improvements to CF's rail yard but denies that CF's investments directly benefitted CN. By way of further response, in 2015 CN also invested several million dollars to construct a new siding along its mainline at Yazoo City in order to handle CF's traffic more efficiently. CN lacks sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 20, and therefore denies them.

21. CN admits the allegations in Paragraph 21 relating to CN Safe Handling Awards. CN lacks sufficient information to form a belief as to the truth of the allegations relating to other rail carriers, and therefore denies them.

22. CN denies the allegations in the first sentence of Paragraph 22. CN lacks sufficient information to form a belief as to the truth of the allegations in the second sentence, and therefore denies them.

23. CN admits that the parties have worked cooperatively on pricing and other terms for CF shipments of anhydrous ammonia and that CN attempted to negotiate and finalize a contractual arrangement with CF for the shipment of anhydrous ammonia. CN denies the remaining allegations in Paragraph 23.

24. CN denies that CF has remained open to discussing possible terms for reasonable liability and indemnity obligations that would be mutually acceptable to the parties; to the contrary, in September 2016, CF withdrew its proposed modifications to the liability and indemnity provisions in CN's then-existing Tariff, terminated negotiations without responding to CN's proposal, and proceeded to file the instant Complaint. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

25. CN admits that it has issued pricing authorities, established in accordance with applicable U.S. and Canadian laws, which apply to shipments of anhydrous ammonia from Courtright and Yazoo City to Decatur and other locations in shipper-supplied tank cars, including Confidential Transportation Contract CN 540766 and Confidential Transportation Contract CN 520747.

26. CN admits that CN Tariff 9007 is incorporated into CN pricing authorities applicable to CF's traffic.

27. The allegations in Paragraph 27 are vague, ambiguous, and contradicted by CF's own allegations in Paragraph 23 of the Complaint, and CN therefore denies them, except that CN admits that its pricing authorities incorporate tariffs applicable to CF's traffic.

COUNT I

(Unreasonable Practice – Customer Indemnity and Hold Harmless Requirements)

28. CN incorporates by reference its response to the allegations in Paragraphs 1 through 27.

29. The allegations in Paragraph 29 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations, states that CN Tariff 90007-B is a written document that speaks for itself, and incorporates by reference its response to the Complaint's Prefatory Statement.

30. The allegations in Paragraph 30 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint's Prefatory Statement.

31. Insofar as the allegations in Paragraph 31 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN denies the remaining allegations in Paragraph 31 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

32. The allegations in Paragraph 32 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint's Prefatory Statement.

COUNT II

(Unreasonable Practice – CN Indemnity and Hold Harmless Requirements; Customer Joint Liability and Binding Arbitration Requirements)

33. CN incorporates by reference its response to the allegations in Paragraphs 1 through 32.

34. The allegations in Paragraph 34 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint's Prefatory Statement.

35. Insofar as the allegations in Paragraph 35 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN denies the remaining allegations in Paragraph 35 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

36. Insofar as the allegations in Paragraph 36 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN admits that no governing forum or reviewing “trier of fact” is specified in Part (c) or Part (g) of Item 6000 of CN Tariff 9007-B; CN denies the remaining allegations in sentence two. The allegations in sentence three are speculation incapable of response.

37. Insofar as the allegations in Paragraph 37 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN denies the remaining allegations in Paragraph 37 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to the Complaint’s Prefatory Statement.

38. The allegations in Paragraph 38 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint’s Prefatory Statement.

39. The allegations in Paragraph 39 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint’s Prefatory Statement.

COUNT III
(Unreasonable Practice – CN “Express Negligence Test” Requirements)

40. CN incorporates by reference its response to the allegations in Paragraphs 1 through 39.

41. The allegations in Paragraph 41 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint’s Prefatory Statement.

42. Insofar as the allegations in Paragraph 42 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN denies the remaining allegations in Paragraph 42 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

43. The allegations in Paragraph 43 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint's Prefatory Statement.

44. The allegations in Paragraph 44 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint's Prefatory Statement.

COUNT IV
(Unreasonable Practice – CN's "Unknown Cause" and Third Party Liability and Indemnity Requirements)

45. CN incorporates by reference its response to the allegations in Paragraphs 1 through 44.

46. Insofar as the allegations in Paragraph 46 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN admits that Part (i) of Item 6000 of CN Tariff 9007-B does not specify a governing forum or rules pertaining to the adjudication of disputes subject to Part (i). CN denies the remaining allegations in Paragraph 46 and incorporates by reference its response to the Complaint's Prefatory Statement.

47. Insofar as the allegations in the first sentence of Paragraph 47 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN denies the remaining allegations in the first sentence insofar as they purport to characterize

terms in CN Tariff 9007-B, a document that speaks for itself, and by way of further response, incorporates by reference its response to Paragraph 6. CN admits the allegation in sentence two that, in the absence of agreement, no arbitral forum or process other than binding arbitration is specified in Part (i).

48. The allegations in Paragraph 48 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint's Prefatory Statement.

49. The allegations in Paragraph 49 are conclusions of law to which no response is required. To the extent a response is required, CN denies the allegations and incorporates by reference its response to the Complaint's Prefatory Statement.

COUNT V
(Unreasonable Practice – Application of the Tariff to Through Movements and Interline Partners Requirements)

50. CN incorporates by reference its response to the allegations in Paragraphs 1 through 49.

51. Insofar as the allegations in Paragraph 51 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN denies the remaining allegations in Paragraph 51 insofar as they purport to characterize terms in CN Tariff 9007-B, a document that speaks for itself. By way of further response, CN incorporates by reference its response to the Complaint's Prefatory Statement.

52. Insofar as the allegations in Paragraph 52 are conclusions of law, no response is required. To the extent a response is required, CN denies the allegations. CN denies the remaining allegations in Paragraph 52 insofar as they selectively quote from and purport to characterize terms in CN tariffs which are documents that speak for themselves. By way of

further response, CN incorporates by reference its response to Paragraph 8 and the Complaint's Prefatory Statement.

53. The allegations in Paragraph 53 are characterizations of the Complaint and/or conclusions of law as to which no response is required. To the extent a response is required, CN denies the allegations.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim because CN Tariff 9007-B is not unreasonable.

2. Insofar as the Complaint in the prayer for relief requests a finding that CN Tariff 9007-B is "otherwise against the public interest and in violation of public policy," and requests relief on the basis of such a finding, it fails to state a claim.

3. Insofar as the Complaint, in Paragraph 53 and the prayer for relief, seeks to encompass within the Complaint and obtain relief with respect to "amended or successor Tariffs" that do not yet exist, the Complaint is unripe, fails to give rise to a case or controversy, and fails to state a claim.

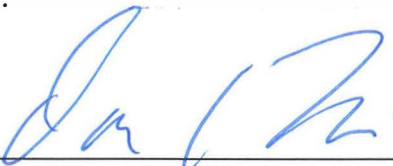
4. Insofar as the Complaint in the prayer for relief seeks relief against any tariff that "purports to unilaterally impose liability or indemnity terms and conditions on CF," without alleging that such a tariff would violate any law, it fails to state a claim.

5. The Complaint fails for lack of jurisdiction and fails to state a claim insofar as it requests the Board to issue declaratory or injunctive relief regarding the application of Tariff 9007-B to (i) rail transportation or events occurring outside the United States; (ii) loss, damage, injury, claims, or other liabilities related to such movements or otherwise arising outside the United States; or (iii) matters within the jurisdiction of Canadian federal or provincial authorities.

CN denies the allegations in the Complaint's prayer for relief and denies that Plaintiff is entitled to any relief on Plaintiff's claims.

WHEREFORE, CN requests that the Complaint be dismissed with prejudice; that the relief requested in the Complaint's prayer for relief be denied in its entirety; that no relief of any kind be awarded to Plaintiff; that CN be awarded its costs; and that the Board grant CN such other and further relief as may be appropriate.

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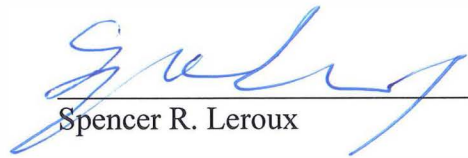
Counsel for Canadian National Railway Company

Date: January 24, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of January, 2017, caused a copy of Canadian National Railway Company's foregoing Answer to the Complaint of CF Industries Sales, LLC to be served by email on the following:

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