

EDWARD J. KRUG*
MARSHA M. BECKELMAN
PATRICK J. O'CONNELL
JEANNINE L. ROBERTS

ALSO ADMITTED IN:
*MASSACHUSETTS

KRUG & BECKELMAN, P.L.C.

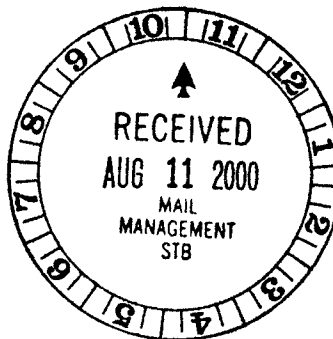
A T T O R N E Y S A T L A W

TELEPHONE: (319) 297-7515
FACSIMILE: (319) 297-7518
E-MAIL: kruglaw@ia.net
E-MAIL: becklaw@ia.net

THE HACH BUILDING, SUITE 330
401 FIRST STREET S.E.
P.O. BOX 186
CEDAR RAPIDS, IOWA 52406-0186

199478

August 10, 2000



By Federal Express

Secretary, Surface Transportation Board
1925 K Street N.W.
Room 715
Washington, D.C. 20423-0001

Re: Docket #NOR42052
 Union Pacific Railroad Company v. Iowa Interstate Railroad, Ltd.

Dear Sir or Madam:

Enclosed please find one original and ten (10) copies of the Comments for Declaratory Order Proceeding in the above-referenced case. Please file accordingly and return the additional extra copy in the enclosed self-addressed stamped envelope.

Thank you for your attention to this matter.

Very truly yours,

Krug & Beckelman, P.L.C.

By:

Edward J. Krug

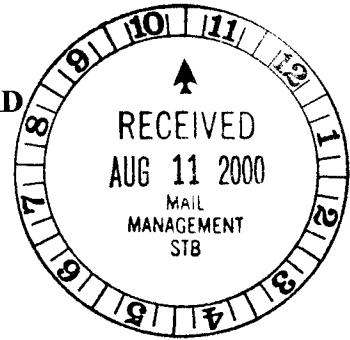
EJK/kj

Enclosures

cc: John Roy (w/encl.)

199478

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



DOCKET NOR 42052

IOWA INTERSTATE RAILROAD, LTD.

**COMMENTS FOR DECLARATORY
ORDER PROCEEDING**

IOWA INTERSTATE RAILROAD, LTD.

Edward J. Krug
Krug & Beckelman, P.L.C.
401 First Street S.E., Suite 330
P.O. Box 186
Cedar Rapids, IA 52406-0186
Telephone: (319)297-7515
Facsimile: (319)297-7518

Dated: August 11, 2000

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**COMMENTS FOR DECLARATORY
ORDER PROCEEDING**

TABLE OF CONTENTS

I.	Procedural Background.....	1
II.	Factual Background	1
	A. The Iowa Interstate Physical Plant.....	1
	B. Iowa Interstate Interchange Delay Tariff	2
	C. UP's Interchange Delays.....	4
III.	Argument	5
	A. The Interchange Delay Tariff is a Marketplace Necessity	5
	B. Industry Precedent Exists for the Interchange Delay Tariff.....	7
	C. What the Future Holds	8
IV	Conclusion	9

I. Procedural Background

This matter arises from a Petition for Declaratory Order which the petitioner, Union Pacific Railroad Company (UP or petitioner), filed on February 14, 2000. The UP's petition seeks a declaratory order voiding various tariffs and other unilateral charges by the respondents, short line railroads, of which the Iowa Interstate Railroad, Ltd. (Iowa Interstate) is one. Iowa Interstate replied to UP's petition and agreed that a declaratory proceeding should commence, but asserted that any final order should favor the respondents and uphold the validity of the charges in question. The other respondents to UP's petition, Indiana Harbor Belt Railroad Company (Indiana Harbor Belt) and City of Tacoma Belt Railroad (Tacoma Beltline) also favored the opening of a proceeding with the ultimate goal of obtaining an order in their favor.

On June 13, 2000 the Surface Transportation Board issued an order instituting a declaratory order proceeding. In its order, the Board directed the parties to file their comments by July 12, 2000. Upon the request of the Iowa Interstate, the Board extended this deadline to August 11, 2000.

II. Factual Background¹

A. The Iowa Interstate Physical Plant

Iowa Interstate is a Regional Railroad with trackage extending from Chicago eastward to its primary terminal in Iowa City, Iowa, and westward from there to Council Bluffs, Iowa. In total, the Iowa Interstate has approximately 550 miles of tracks. The

¹ Unless otherwise indicated, all of the factual statements set forth in this brief are based on the Verified Statement of Dennis H. Miller [Miller Verified Statement], which is attached to this comment. For the sake of cohesion, Iowa Interstate has not referenced each fact to the Miller Verified Statement.

railroad employs approximately 180 personnel. Iowa Interstate owns 33 locomotives and owns or leases 1100 railcars, the majority of which are covered hoppers for hauling grain. Grain traffic constitutes approximately thirty percent (30%) of Iowa Interstate's traffic base.

At Council Bluffs, Iowa Interstate interchanges with the UP. The interchange process usually is accomplished by the Iowa Interstate taking cars to the UP's yard and then pulling cars from there in return.

Iowa Interstate's yard in Council Bluffs consists of one main line with 7 yard tracks. The capacity of the yard tracks varies with the largest track capable of handling 46 cars. In other words, this is not a very large yard and its capacity is extremely limited. However, the Council Bluffs yard serves as the western terminus for Iowa Interstate. Obviously, the Iowa Interstate's operations are highly dependent on orderly and efficient interchanges with the UP.

B. Iowa Interstate Interchange Delay Tariff

In early 1997, the Iowa Interstate began to experience problems with tracking and locating railcars attributable to UP's operations, which created additional work for its clerical forces. This also resulted in delays in UP taking and delivering certain cars. Because communications with UP did not seem to resolve the problem, Iowa Interstate made the decision to implement a tariff for interchange-related delays. This decision in part was based on knowledge that the Peoria & Pekin Union Railway (PPU) had previously instituted such a tariff without complaint from other carriers. The UP has an

ownership interest in the PPU, and hence, could be expected to abide by this kind of tariff/pay the charges that it represents

Iowa Interstate's tariff, Item 2450 to Tariff 8000-E, was issued on February 17, 1997 and made effective March 15, 1997. The tariff imposed a \$50 per day charge for each car that a receiving carrier refused to accept in interchange from the Iowa Interstate.

Iowa Interstate's interchange delay tariff was based on economic necessity and accepted industry practices. The economic necessity is tied to the reality that as a Shortline carrier, Iowa Interstate can ill afford delays in the interchange of trains. The Iowa Interstate yard in Council Bluffs has very limited space. Occupying that space with a train refused in interchange requires extra switching, resulting in increased manpower and equipment costs. More importantly, the delay in interchange affects Iowa Interstate's relationship with its customers. This, of course, could have long term adverse consequences for the carrier, since shippers could elect to move their products by other means that are made more timely by the interchange delays.

That Item 2450 to Tariff 8000-E is grounded in industry practice is reflected by the fact that various railroads, including Class I carriers, have instituted tariffs implementing a variety of charges. (See Exhibits 3-7, attached to the Miller Verified Statement.) This includes the UP itself, which has issued a tariff for cars delivered in error in interchange. Other Class I carriers, such as the Norfolk Southern, have implemented similar tariffs. These tariffs reflect the reality that there is a cost associated with railcars interchanged by mistake. As such, some economic incentive must exist so as to force the delivering line carriers to take action to ensure that they interchange only those cars that are intended for the subject interchange.

C. UP's Interchange Delays

The dispute giving rise to UP's Petition centers on UP's delay in accepting in interchange a 75 car unit grain train for 10 days from October 16 to October 26, 1998. The Iowa Interstate assembled this train in parts at its Council Bluffs yard over the course of three days. It then offered the train for interchange on October 16, 1998, only to be advised by the UP that it was unable to accept the train due to congestion in UP's yard. UP's refusal to accept Iowa Interstate's train *persisted for ten (10) days*.

As a result of UP's refusal to accept the unit grain train, Iowa Interstate was forced to break the train into two parts and hold the train in its Council Bluffs yard. The practical effect of this is that the Iowa Interstate lost the use of two of its yard tracks. This left the Iowa Interstate with only one track in Council Bluffs for conducting regular operations.

The UP's action in refusing to accept the Iowa Interstate's unit grain train resulted in increased labor and equipment costs to break the train apart and then store it in the yard for 10 days. Additionally, during the course of those ten days, Iowa Interstate was forced to switch around the cars now occupying two of the three available tracks in the Council Bluffs yard. The resulting delays caused by the Council Bluffs yard congestion were felt throughout the Iowa Interstate system.

As a result of UP's refusal to accept the 75 cars unit grain train on October 16, 1998, Iowa Interstate billed UP in accordance with Item 2450 of Tariff 8000-E. The amount of the bill was \$37,500.00 (75 cars x \$50 each per day x 10 days.) UP refused to pay this bill. This resulted in the Iowa Interstate threatening litigation to collect on the debt. UP's filing of the Petition at bar intervened to preclude that litigation.

This incident was not the first time that Iowa Interstate had invoked its interchange delay tariff. In April, 1997, shortly after Item 2450 of tariff 8000-E became effective, UP refused a 55 car train that Iowa Interstate offered in interchange. That delay lasted one day. Iowa Interstate billed UP \$2,750.00 for this delay, but the UP refused to pay that bill as well.

III. Argument

A. The Interchange Delay Tariff is a Marketplace Necessity

The first and foremost point in this dispute is that economic necessity dictated the development and implementation of each of the Respondents' tariffs and charges at issue. As the Iowa Interstate's circumstances reflect, as a Regional Railroad, it lacks the economic "muscle" to insist that a Class I such as the UP behave according to industry standards (e.g. those standards being the prompt and orderly acceptance of trains in interchange). In fact, the record demonstrates that the UP has seen fit to dictate to the Iowa Interstate the circumstances of *when* and *how* it will receive trains on interchange. Similarly, this appears to be the case with the other Respondents, the Indiana Harbor Belt and Tacoma Beltline. The reality is that the economic fortunes of each of the Respondents are largely tied to the efficient movement of commerce for a relatively few customers. If that commerce does not move on a timely basis, the carrier will be affected by a loss of customers. This is an economic truth for Regional and Shortline railroads.

This dispute also demonstrates that the UP is willing to use interchanging Shortline rail yards as "parking lots" for overflow traffic while the UP moves its own railcars or those of high priority customers. This, after all, is exactly what the UP did with the Iowa Interstate: it "parked" a 75 car unit grain train in the Iowa Interstate's yard

while it resolved congestion issues created as a result of its merger activity and/or its own inefficiencies. It did this without regard to the economic consequences its actions would have on the Iowa Interstate.

In turn, the Iowa Interstate did what the “marketplace” of the railroad industry allowed: it imposed a cost upon UP for its inefficiency and poor planning. This cost came in the form of Item 2450 to Tariff 8000-E. This represented Iowa Interstate’s attempt to level the economic playing field by at least giving UP incentive to resolve its congestion issues. In the event UP did not act efficiently, at the very least, Item 2450 ensured that Iowa Interstate would be compensated fairly - compensation that very well helps protect Iowa Interstate from at least some of the revenue loss created by the interchange delay.

Iowa Interstate submits that the Board should strongly consider how the rule of a free market can work to influence corporate behavior, even in the railroad industry. UP seeks to avoid application of those marketplace rules by resorting to old methodologies grounded in the days of protected routes and non-competition. In contrast, Iowa Interstate and the other Respondents represent the “new economy,” where efficiencies and forward strategies are rewarded and inefficiencies are penalized. The failure to accept a train on interchange for ten (10) days is the epitome of inefficiency and a phenomenon never visited upon the industry prior to the mega mergers of the 1990’s. Iowa Interstate and the other respondents should not be expected to bear the price of Class I carriers failing to properly plan and carry out post-merger strategies. Yet, this is precisely what UP and other Class I carriers *demand* that the Regionals and Shortlines do. This is contrary to good business and it is wholly inconsistent with marketplace

economics. The Board should not tolerate this attempt at protectionism and self-serving rationalization by UP.

In summary, Iowa Interstate's interchange delay tariff is an excellent example of the marketplace at work. This should be allowed to continue so that Class I carriers like UP have *economic incentive to conduct business appropriately*. Without this incentive, UP has no reason to conduct its operations in an efficient manner vis-à-vis connecting Regionals or Shortlines like the Iowa Interstate.

B. Industry Precedent Exists for the Interchange Delay Tariff

One of the ironies in this dispute is that UP argues vigorously against the tariff Iowa Interstate seeks to impose while, at the same time, UP published an "interchange error movements" tariff which is little different in concept from Iowa Interstate's tariff.² Both tariffs concern the industry practice of interchanging railcars and the costs associated with interchanges that do not go as planned. Moreover, both tariffs reflect marketplace solutions to railroad inefficiencies. Iowa Interstate does not suggest that UP's interchange error movements tariff is inappropriate or unenforceable. On the other hand, UP similarly should not dispute Iowa Interstate's interchange delay tariff. UP simply should not be allowed to turn on and turn off marketplace forces at its whim.

The record reflects that the railroad industry has long permitted marketplace forces to play a significant role in how carriers relate to each other, particularly in the area of car interchanges. The case of Cincinnati, N.O. & T.P. Ry. Co v. Chesapeake & O. Ry Co., 441 F.2d 483 (4th Cir. 1971), firmly established almost 30 years ago that the

² It is interesting to note how Iowa Interstate's charge of \$50.00 per interchange-delayed car compares with UP's charge of \$250.00 per car for interchange errors. Obviously, UP believes that the value of dealing with another railroad's mistakes is significantly greater. This, perhaps, is another indication of the difference between Class I carriers and smaller railroads.

marketplace forces could dictate the costs of cars switched in error. These forces were allowed to exist despite the AAR Rules. As the Fifth Circuit Court of Appeals ruled, the AAR rules do not preclude a carrier from acting individually.

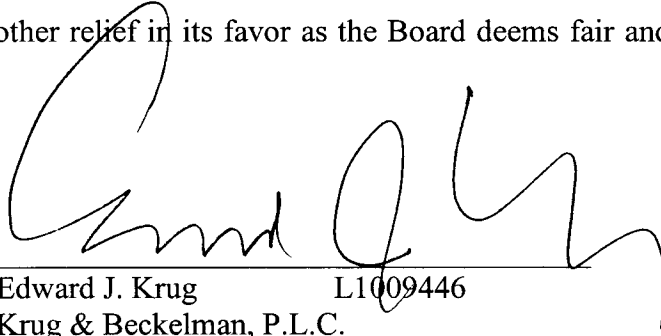
C. What the Future Holds

This dispute is a symptom of a much larger national problem. Transportation power has been centralized in the hands of a few Class I railroads that are aware of their power. Class I carriers can afford to be inefficient and sometimes “make money in spite of themselves.” The emergence of a viable Shortline and Regional railroad industry over the last 20 years has meant that customer/shipper needs have been addressed as never before by smaller, super-efficient railroads. Yet, there is an inevitable conflict between the efficient and non-efficient carriers. The irony, of course, is that the non-efficient Class I carriers can dictate to the efficient carriers.

The future for the industry is not bright if marketplace and competitive forces are not permitted to reign. The tariffs and other charges here are an attempt to let the marketplace control. They represent what *should* be the future. It is up to the Board to decide if this is to occur.

IV. Conclusion

For the foregoing reasons, Iowa Interstate requests that the Board rule that Iowa Interstate's Item 4250 of its Tariff 8000-E is proper and enforceable. It further requests an order requiring the UP to pay Iowa Interstate \$37,500.00, plus interest from October 27, 1998. Iowa Interstate requests such other relief in its favor as the Board deems fair and proper.



Edward J. Krug L1009446
Krug & Beckelman, P.L.C.
401 First Street S.E., Suite 330
P.O. Box 186
Cedar Rapids, IA 52406-0186
Telephone: (319)297-7515
Facsimile: (319)297-7518

Attorney for Iowa Interstate Railroad, Ltd.

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing Response to Petition for Declaratory Order on each of the persons listed below by First Class Mail with postage prepaid, on the 10th day of August, 2000:

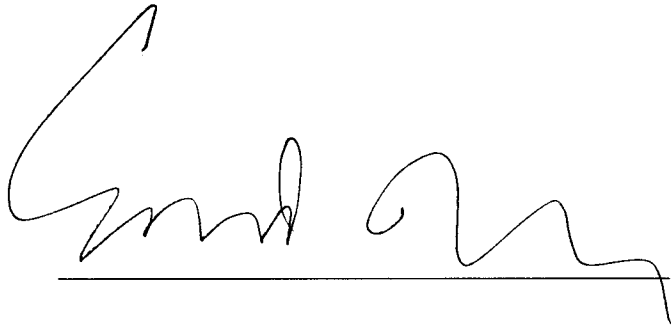
Robert T. Opal, Esq.
General Commerce Counsel
Union Pacific Railroad Company
1416 Dodge Street, Room 830
Omaha, NE 68179

Mark Bubernik, Esq.
Chief Assistant City Attorney
Paul A. Brachvogel
Assistant City Attorney
PO Box 11007
Tacoma, WA 98411-0007

William C. Sippel, Esq.
Thomas J. Litwiler, Esq.
Fletcher & Sippel, L.L.C.
Two Prudential Plaza, Suite 3125
180 North Stetson Avenue
Chicago, IL 60601-6721

Richard A. Allen, Esq.
Zuckert Scoutt & Rasenberger, LLP
888 Seventeenth Street NW
Washington, DC 20006-3309

Richard R. Wilson, Esq.
1126 Eighth Avenue
Suite 403
Altoona, PA 16602

A handwritten signature in black ink, appearing to read 'Richard R. Wilson', is written over a horizontal line.

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NOR 42052

VERIFIED STATEMENT OF

DENNIS H. MILLER

COMES NOW the following witness, Dennis H. Miller, and after being duly sworn, testifies as follows.

I am Dennis H. Miller and I am employed by Iowa Interstate Railroad, Ltd. ("IAIS") as Vice President and Chief Information Officer, a position I have held since 1998. My employment with IAIS began in 1985 and since then have held numerous positions of increasing responsibility. I was previously employed by Chicago, Rock Island and Pacific Railroad and the Peoria and Pekin Union Railway. In my current position, I am responsible for equipment purchases and leasing, car accounting, and data systems. I am familiar with train dispatching and train operations and held positions of locomotive engineer, trainmaster, and road foreman of engines during my career. I developed computerized software for dispatching trains which is used by IAIS and other Regional and Shortline railroads in the U.S. as well as many foreign countries. I am President of Rail Traffic Control, Inc., a subsidiary of IAIS, which markets this software worldwide.

IAIS is a Regional Railroad headquartered at 800 Webster Street, Iowa City, Iowa. The company employs approximately 180 employees and operates 33 locomotives. It owns and leases approximately 1100 railcars, the majority of which are covered hoppers for hauling grain. IAIS tracks extend from Chicago and Peoria, Illinois to Council Bluffs, Iowa. There are about 550 miles of tracks over which the company either

owns or operates on trackage rights. Grain traffic constitutes about 30 percent of IAIS the IAIS traffic base.

IAIS operates under the same rules and regulations as its connecting carrier Union Pacific Railroad ("UP"). The similarity, however, ends there as UP's size and market power is vastly larger. For example, the IAIS yard in Council Bluffs is smaller than the smallest of the seven yards owned and operated by UP in the Omaha- Council Bluffs terminal. UP operates approximately twenty (20) switch crews compared to one (1) switch crew on IAIS. UP requires IAIS to interchange traffic in its yard, which is an additional cost for my company. The IAIS only has seven (7) tracks in its Council Bluffs yard, the longest of which is capable of holding approximately forty-six (46) rail cars. Congestion on a Regional Railroad or Shortline Railroad has the same effect as it does on a larger company. When a carrier is congested, there is not enough track room to spread out rail cars resulting in rehandling the same cars many times to place the cars in the proper order. Employee safety becomes a concern. Our manpower and equipment costs increase for additional switching movements.

On October 16, 1998, the UP refused to accept a seventy-five (75) car grain train in interchange at Council Bluffs, Iowa from IAIS. The train was to have been delivered to an interchange track in the UP Council Bluffs yard. I do not know why UP refused our train but continued to accept trains from other carriers or from shippers with traffic originating on their line. For some reason, which could best be described in a verified statement from UP management, the Kansas City Southern ("KCS") grain train which was loaded at the Hancock elevator on IAIS and offered in interchange, was refused by the UP and sat for the next ten (10) days in the IAIS yard at Council Bluffs. I am sure that

UP received and dispatched trains from its seven (7) Council Bluffs-Omaha yards during this ten (10) day period. It could be that UP was not as concerned about the IAIS shipper and KCS receiving line being given treatment equal to its own shippers and other connecting partners. During this ten-day period, IAIS handled and rehandled equipment in its Council Bluffs yard incurring additional costs over and above the basic switch revenue it expected and did receive. In fact, during the ten (10) day delay, the unit grain train was broken apart and placed on two of the three available tracks in the Council Bluffs yard.

The train was allowed to be interchanged by UP on October 26, 1998 and IAIS, in accordance with its published tariff, invoiced UP \$37,500.00 to cover the additional costs of holding this train for UP. Our authority to do so is published in IAIS tariff 8000-E, Item 2450, marked as Exhibit 1 and attached hereto. This tariff was first issued February 17, 1997 and made effective March 15, 1997. Therein, at Supplement 1, Item 2450, states, "Charge for Delay of Cars"

"A receiving carrier refusing to accept cars when offered by IAIS shall pay a delay charge of \$50.00 per day for each refused car. Such charges will be in addition to all other applicable charges."

This long-standing tariff item was drafted and published in order to protect IAIS from situations as described above. In fact, in early 1997, communication problems with the UP were becoming more frequent. UP began to delay taking and delivering cars. This created additional work for our clerical forces in locating cars. Because communication with UP did not seem to resolve the problem, IAIS made the decision to implement Supplement 1, Item 2450, as described above.

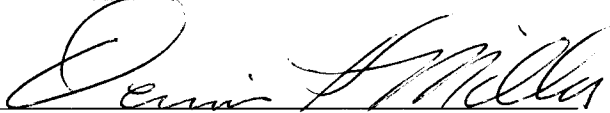
On one prior occasion in April, 1997, IAIS invoiced UP \$2,750.00 for a one day delay of a 55 car train. (See Exhibit 2 attached hereto.) UP did not pay this invoice.

In the situation involving the 75 car unit train refused for 10 days, IAIS cannot go back to Hancock elevator to demand additional freight charges in order to cover its costs. It cannot retroactively publish a tariff to collect additional freight charges from a shipper. On the other hand, UP surely contemplated that it would be paying for an additional service it needed from IAIS as it never complained, objected, or petitioned for suspension this item in IAIS tariff 8000. In fact, its only notice of concern was its refusal to pay IAIS its legal charge and to ask the STB to declare in this proceeding that such charges are not lawful. In fact, such tariffs containing charges against other carriers to protect them from error delivery or other incidental services outside of common carriage is very common in the railroad industry. I have attached several tariff pages to my verified statement to support this and refer you specifically to NS 8002-A Item 6070 (Exhibit 3), CNIC 9000 G Item 1170 (Exhibit 4), BNSF 8005 Item 309 (Exhibit 5), PPU Tariff 8041-F (Exhibit 6), a carrier with several such charges and which is partly owned by UP, and even UP itself in its tariff 8005 E, Item 255 (Exhibit 7).

The Agency should consider all these circumstances and find IAIS tariff 8000 lawful and to order UP to promptly pay for service it demanded and received from IAIS.

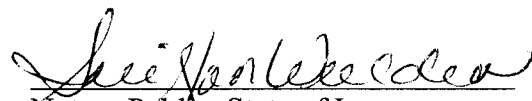
The above is true and correct to the best of my knowledge.

Signed under the pain and penalty of perjury
on this 10th day of August, 2000.


Dennis H. Miller

STATE OF IOWA)
)
COUNTY OF JOHNSON)

Subscribed and sworn to before me this 10th day of August, 2000.


Notary Public, State of Iowa
Commission expires 3/2002.

756

STB IAIS 8000-E
Supplement No. 1

IOWA INTERSTATE RAILROAD, LTD.

Supplement No. 1
to
FREIGHT TARIFF IAIS 8000-E
(Tariff 8000-E and Supplement No. 1 contain all changes)

SWITCHING TARIFF

Applicable AT and BETWEEN Stations on the Iowa Interstate Railroad, Ltd.

Governed, except as otherwise provided herein, by the Uniform Freight Classification (UFC),
as provided in Item 5

NOTICE

The provisions published herein will, if effective, not result in an effect on the quality of the
human environment

Issued: 17 February 1997

Effective: 15 March 1997

ISSUED BY

Mr. John J. McGinnis, Assistant Vice President - Marketing
Iowa Interstate Railroad, Ltd.
2920 Industrial Park Road
Iowa City, IA 52240

EXHIBIT

tabbies

1

Supplement No. 1 to Tariff IAIS 8000-E

NEW ITEM

2450

◆ CHARGE FOR DELAY OF CARS

A receiving carrier refusing to accept cars when offered by IAIS shall pay a delay charge of \$50.00 per day for each refused car. Such charges will be in addition to all other applicable charges.

Explanation of symbol:

◆

Increase

The End

IOWA INTERSTATE RAILROAD CO., LTD

BILL NUMBER: 0497800081

BILL DATE: 4/25/1997

BILL TYPE: MISC. OTHER BILLING

TO: UNION PACIFIC RR - NCSC
210 NORTH 13TH STREET
ST. LOUIS
MO 63103
ROOM 300 FRAN WHITLEY

** BILL DESCRIPTION **

CHARGES ON 55 CARS HELD FOR INTERCHANGE BUT UNABLE TO
DELIVER ACCOUNT UP YARDMASTER WOULD NOT LET US COME OVER
SOUTH OMAHA YARD
SEE ATTACHED SHEETS FOR A LISTING OF CARS IAIS HELD IN OUR
YARD. CARS WERE OFFERED IN INTERCHANGE ON 4/23/97 0030HRS
1 DAY X 55 CARS X \$50.00 = \$2750.00
CHARGES PER IAIS TARIFF 8000-E ITEM 2450 SYUPPLEMENT #1

TOTAL AMOUNT DUE

2750.⁰⁰
.00

TERMS : THIS BILL IS DUE 30 DAYS FROM ORIGINAL BILL DATE ABOVE
TO RECEIVE PROPER CREDIT, PLEASE MAIL YOUR CHECK TO:

IOWA INTERSTATE RAILROAD CO., LTD.
P.O. BOX 5114
DES MOINES, IA 50306-5114

** R E P R I N T **

LKM wrote off
7-31-2000
BAD Debt.

EXHIBIT

tabbles
2

NS 8002-A

5TH REVISED PAGE 50

SECTION 6

RULES AND CHARGES FOR MISCELLANEOUS SERVICES

ITEM 6070

INTERCHANGE ERROR MOVEMENTS

1. Cars received by NS, in error or without necessary forwarding directions, will be handled in accordance with AAR Car Service Rule 7.
2. If cars are returned to the delivering carrier, forwarded to the proper carrier, or require holding, NS will assess the delivering carrier a charge of:

◆	AGR	\$ 75.00 per car.
	ALS	\$ 83.00 per car.
	BNSF	\$225.00 per car.
	BRC	\$ 93.00 per car.
	CIND	\$390.00 per car.
	CN	\$435.00 per car.
	CPRS	\$ 83.00 per car.
	CRL	\$155.00 per car.
	CSS	\$200.00 per car.
	CUVA	\$150.00 per car.
	EJE	\$450.00 per car.
	FEC	\$ 75.00 per car.
	GWWR	\$250.00 per car.
	IAIS	\$250.00 per car.
	IC	\$435.00 per car.
	IHB	\$120.00 per car.
	IMRL	\$250.00 per car.
	ISW	\$ 75.00 per car.
	KCS	\$241.00 per car.
	LA	\$230.00 per car.

◆	LIRC	\$115.00 per car.
	LMIC	\$205.00 per car.
	MNBR	\$200.00 per car.
	MPA	\$150.00 per car.
	MRS	\$ 83.00 per car.
	NOPB	\$ 90.00 per car.
	NTRY	\$150.00 per car.
	OHCR	\$400.00 per car.
	PAL	\$115.00 per car.
◆	PBNE	\$151.00 per car.
	SAPT	\$155.00 per car.
	SB	\$153.00 per car.
	SH	\$ 90.00 per car.
	TTR	\$100.00 per car.
	UMP	\$150.00 per car.
	UP	\$250.00 per car.
	URR	\$303.00 per car.
	WC	\$287.00 per car.
◆	WSOR	\$225.00 per car.

3. Cars held, awaiting disposition or for necessary data for forwarding, will be subject to an additional charge (assessed against the delivering carrier), following the first 12:01 AM after which written notice is given the delivering carrier:

All Carriers shown in paragraph 2...\$ 19.00 per car per day or fraction thereof.

◆ - Increase

ISSUED JUNE 23, 2000

EFFECTIVE JULY 14, 2000

ISSUED BY
R. C. Scharpf, Director-Marketing Services
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E, Roanoke, VA 24042-0047

EXHIBIT

3

TARIFF IC 9000-G

SECTION 1 - RULES AND REGULATIONS						
ITEM	SUBJECT	APPLICATION				
1150	SHIPMENTS HELD AT DESTINATION FOR INSPECTION OF CONTENTS BEFORE PLACEMENT FOR UNLOADING	On cars covered by bills of lading authorizing inspection of contents at destination before delivery, or on cars which are withheld from placement at destination on instructions from consignor, consignee, or owner for the purpose of inspection of contents, the following will apply: (a) Charge of \$100 per car will be made if, after placement for inspection, the order releasing the car is received in time to permit instructions to be given yard employees between the time of arrival of car at destination and the expiration of 24 hours after the first 12:00 midnight after the day on which notice of arrival is sent, or given, to the consignee or party entitled to receive same (See EXCEPTIONS 1 and 2 and NOTES 1 and 2). (b) Charge of \$240 will be made if, after placement for inspection, such order is not received in time to permit instructions to be given to yard employees prior to the expiration of 24 hours after the first 12:00 midnight after the day on which notice of arrival is sent, or given, to the consignee or party entitled to receive same (See EXCEPTIONS 1 and 2 and NOTES 1 and 2). EXCEPTION 1. Cars billed direct to public team tracks or other industries within the switching limits of the billed destination, and there inspected and delivery taken, will not be subject to the charge provided in Paragraphs (a) or (b). EXCEPTION 2. When a single change in the name of consignor and/or consignee at destination and/or a single addition to the designation of place of delivery at destination is made after arrival at destination on orders given after such arrival, the provisions of this rule will not apply. (For provisions to apply, see Item 5140). NOTE 1. In computing time Saturdays, Sundays and legal holidays (National, State or Municipal) will be excluded. When a legal holiday falls on a Sunday, the following Monday will be excluded. NOTE 2. If a car is billed to allow inspection and inspection of the property is made before the car is unloaded and bill of lading or written order surrendered, the time during which such car is considered as being held for surrender of the bill of lading or written order will be computed from the time of arrival at destination with no additional time being allowed for inspection.				
1160	RETURNED, RE-REFUSED OR REJECTED SHIPMENTS (See EXCEPTION 1)	When a given shipment has reached destination but is refused or rejected and not unloaded and is returned to the original shipping point (for reasons other than carrier's error), the return movement will be subject to the rate and minimum weight in the reverse direction in effect on date shipment is tendered for return, or to the rate normally applicable for such return movement if lower. In no case, however shall charges for the return shipment exceed charges which would be applicable on the return movement without reference to this rule. Routing for the return movement will be via the reverse of the route over which the original shipment moved. EXCEPTION 1. In connection with shipments of corn moving in IC direct local road haul service, rejected because of aflatoxin contamination and ordered returned to original shipping point, said return move will be made at no charge subject to the following conditions: 1. IC will not absorb any switching charges at origin or destination. 2. No mileage allowance will be paid on private cars. 3. No liability for loss or damage. 4. In connection with railroad owned equipment, will only apply in connection with cars of IC ownership or cars furnished by the IC. 5. Bill of lading covering movements under the provisions of this exception must be noted "subject to the provisions of Item 1160 Exception 1 of Tariff IC 9000-series." 6. If after arrival at original shipping point, car is not unloaded, but reshipped to another IC destination and again rejected account of aflatoxin contamination, any subsequent move will be subject to full applicable freight charges.				
1170	INTERCHANGE ERROR MOVEMENTS	(a) Cars, loaded or empty, received by IC in error or without forwarding instructions from the delivering carrier, will be returned to the delivering carrier or forwarded to the proper carrier within the same switching district at charge per car in Column A below. Charge will be assessed against the delivering carrier. (b) If cars are held by IC awaiting disposition or necessary data from the delivering carrier, an additional charge per car in Column B below will be assessed against the delivering carrier for each 24 hour period, or fraction thereof, commencing with a period of two hours following notification that car is being held for disposition until disposition is received. (c) The provisions of paragraph (b) will not apply when forwarding instructions are to be furnished by shipper and cars are subject to demurrage charges. <table><tr><td style="text-align: center;">Column A</td><td style="text-align: center;">Column B</td></tr><tr><td>Applicable Intra-Terminal switch charge, subject to a maximum of \$435</td><td style="text-align: center;">\$25</td></tr></table> (d) Cars delivered to IC by a switching carrier, for subsequent movement in IC revenue service, which are not supported with information as to shipper in connection with a reciprocal switch movement or delivering carrier, in connection with an intermediate service, and upon request from IC for said information, such information is not furnished to IC within a period of two hours, following request for same, IC will assess a charge of \$100 plus a charge of \$20 for each 24 hour period or fraction thereof against said switch line commencing with time of initial request, until receipt of said information. NOTE: In situations where cars are received from an intermediate switch carrier, delivering carrier means the road haul carrier or line acting in the capacity of a reciprocal switching carrier, who delivered car to said intermediate switch carrier.	Column A	Column B	Applicable Intra-Terminal switch charge, subject to a maximum of \$435	\$25
Column A	Column B					
Applicable Intra-Terminal switch charge, subject to a maximum of \$435	\$25					

BNSF 8005		THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY		1st Revised Page 27	
RULES AND OTHER GOVERNING PROVISIONS					
SPECIAL RULES AND REGULATIONS UNLIMITED					
APPLICATION			SUBJECT	ITEM	
Car(s) loaded or empty, received by BNSF in error or without forwarding instructions from the delivering carrier, will be returned to the delivering carrier or forwarded to the proper carrier within the same switching district at a charge as shown below. Charge for this service will be assessed against the carrier interchanging the car(s) to the BNSF.			CAR(S) RECEIVED IN INTERCHANGE IN ERROR OR WITHOUT FORWARDING INSTRUC- TIONS	(A) 309	
STATION OF INTERCHANGE	RAILROAD	CHARGE PER CAR			
Kansas City, MO/KS	KCS	\$241.00			
Superior/Superior East End, WI	WC	\$287.00			
Twin Cities, MN	CPRS	\$218.00			
Twin Cities, MN	MNNR	\$ 55.00			
Twin Cities, MN	WC	\$287.00			
Except as otherwise specifically provided in this switching book, when BNSF received the line-haul, the carload rates applicable to (or from) points on BNSF's line as published in BNSF's switching book or in tariffs in which BNSF is shown as a participating carrier, apply to (or from) the depots of the BNSF, to (or from) all industry tracks or wharves served by its rails and within its switching limits, also to or from interchange tracks with connecting lines at points of interchange, including interchange tracks with SP and UP at Long Beach, California on traffic originating at or destined industry tracks, private sidings or wharves within switching limits of these lines at Long Beach, California.			APPLICTION OF CARLOAD RATES AT POINTS OF ORIGIN AND DESTINATION WHEN BNSF RECEIVED THE LINE-HAUL; AND AT POINTS OF INTERCHANGE WITH CONNECTING LINES	310	
Switching charges shown in Section 1 of this tariff are for services performed by the BNSF, in intra-plant, intra-terminal or inter-terminal switching, or any other switching not incidental to and necessary in connection with the BNSF line-haul movement. Unless a specific tariff item(s) herein provides to the contrary, switching charges shall not be assessed on switching at the beginning or ending of line-haul transportation when necessary in connection with a BNSF line-haul movement.					
For explanation of abbreviations and reference marks, see last page of book.					
ISSUED October 14, 1999			EFFECTIVE November 4, 1999		
Issued by Paul M. Anderson, PO Box 961069, Ft. Worth, TX 76161-0069					

EXHIBIT

5

FREIGHT TARIFF PPU 8041-F

MISCELLANEOUS SWITCHING RATES, RULES AND CHARGES	MISCELLANEOUS SWITCHING RATES, RULES AND CHARGES
ITEM 600 [1] SPECIAL TERMINAL SWITCHING CHARGES When upon specific request of the shipper or consignee, switching service is performed by the PPU in special (not regular) service (Note 1), a charge of \$2,187.00 for this service will be assessed the shipper or consignee. The charge for this special service will be made for each continuous switching service provided to each industry in the Peoria Switching District as defined in Item 140. This special switching charge will be in addition to all other applicable charges and will not be absorbed. Note 1: Special service is defined as switching services provided on the following day or days designated as legal holidays in lieu thereof: New Year's Day - January 1 of each year Memorial Day - as designated by U.S. Federal Government each year Independence Day - July 4 of each year Labor Day - as designated by U.S. Federal Government each year Thanksgiving Day - 4th Thursday of each November Christmas Day - December 25 of each year	ITEM 650 [1] FINAL TERMINAL HAULAGE FEE A landing fee will be assessed against the carrier requesting the haulage services of the PPU for the yarding of inbound road trains. Such charge will be \$274.00 per occurrence and will be in addition to all other applicable charges.
ITEM 610 [1] CHARGE FOR SPECIAL HANDLING OF CARS In addition to rates which apply in this tariff, a charge of \$1127.00 will be applied to cars requiring special handling.	ITEM 660 [1] CHARGE FOR CARS HELD FOR INSTRUCTIONS In the absence of specific provisions to the contrary, the following will apply: A. Except as provided in paragraphs B, C, and D below, when on shipper's order, loaded cars are removed from industry or team tracks and held by carrier awaiting instructions, the intra-terminal or inter-terminal switching charge, as the case may be, will be assessed for the movement; such charge will be in addition to all other charges applicable in accordance with tariffs or other instruments, and will not be absorbed. B. A switching charge of \$165.00 per car for the account of the PPU will be assessed on each car ordered from industry or team track and held awaiting final disposition. Such charge will be assessed against the industry ordering the car out, will be in addition to all other applicable charges and will not be absorbed. C. A switching charge of \$165.00 per car for the account of the PPU will be assessed on each car received in interchange and held by PPU awaiting final disposition. Such charge will be against the inbound carrier and will be in addition to all other applicable charges. D. Cars ordered off the hold track for furtherance to outbound carrier or industry will be subject to applicable switching or industry charge as defined in Item 200.
ITEM 620 [1] CHARGES FOR CARS SWITCHED TO LEASE TRACK A. A rate of \$165.00 per car will be assessed the industry for the movement of loaded cars from industries located on the PPU to tracks leased by the industry located on the PPU. Such charge will be in addition to all other applicable charges and will not be absorbed. B. A rate of \$165.00 per car will be assessed the industry for loaded cars or empty cars for dismantling, received by PPU destined industry leased tracks located on the PPU. Such charge will be in addition to all other applicable charges and will not be absorbed.	ITEM 670 [1] HANDLING OF CARS DELIVERED IN BAD ORDER CONDITION A charge of \$110.00 per car will be assessed against the carrier which delivers cars to the PPU that contain AAR/FRA defects to cover the cost of extra handling.
ITEM 630 [1] CHARGE FOR TURNING CARS For the service of turning cars/locomotives, a charge of \$165.00 per car and \$244.00 per locomotive applies.	ITEM 680 [1] CARS LOADED IN VIOLATION OF CAR DISTRIBUTION ORDERS A charge of \$547.00 per car will be assessed against the industry and/or carrier who violates the car distribution orders on file with UMLER placed on PPU owned or leased cars. This charge will be assessed for each occurrence and will be in addition to all other applicable charges.
ITEM 640 [1] CHARGES FOR CARS SWITCHED FOR WEIGHING For the service of cars switched for weighing on industry scales (applicable only on cars switched between tracks at industry where private scales are located), a charge of \$88.00 per car will be assessed to the industry.	

TARIFF UP 8005-E

ITEM	SUBJECT	RULES AND REGULATIONS
235	CHARGES FOR ARTICULATED CARS	Unless otherwise provided, movements of articulated cars (two or more units permanently or temporarily joined together), the switching charges published in this tariff will apply separately to each unit of the articulated equipment.
238	CARS RETURNED TO INDUSTRIES AND RETURNED FROM CONNECTIONS PRIOR TO LEAVING SWITCHING LIMITS	Cars ordered returned by shipper or owner, loaded at industries on UP and returned from connections, or cars returned to connections prior to leaving switching limits of the loading station, will be assessed a charge of \$177.00 per car.
240	EMPTY CARS ORDERED BUT NOT LOADED	On empty cars that are ordered for loading and the service of switching or placing has been performed and the car is not loaded but returned to the railroad empty; a switching charge of \$136.00 per car will be assessed for this service and collected from the person, firm or corporation ordering such cars.
245	EMPTY CARS, MOVING ON OWN WHEELS, WHEN NOT ENTITLED TO MOVE FREE OF CHARGE.	Except as otherwise specifically provided, per car charges for each movement of empty cars, moving on own wheels, will be as follows: Intra-plant \$100.00 Intra-terminal \$140.00 Inter-terminal \$140.00 Intermediate, when not absorbed by line haul carriers \$140.00 Reciprocal and Intermediate (when absorbed by line haul carriers) See reciprocal and Intermediate provisions published herein.
250	GENERAL APPLICATION OF CHARGES	Reciprocal switching will only be performed to or from corporations, firms or individuals listed herein, subject to restrictive provisions published in connection therewith. Inter-terminal and Intra-terminal switching will not be performed as the beginning or ending of a line-haul transportation service.
255	INTERCHANGE ERROR MOVEMENTS	The provisions of this item are applicable only in connection with connecting carriers that publish interchange error movement provisions in connection with UP. When car(s), empty or loaded, are received from a connecting carrier in error or without necessary data for forwarding, the car(s) will be returned to the delivering carrier or forwarded to the proper carrier, within the same switching district, at a charge of \$250.00 per car. Charge for this service will be assessed against the carrier interchanging the car(s) to UP.
260	DATE TO DETERMINE ABSORBED SWITCHING CHARGES	The absorbed switching charge applicable, whether absorbed in whole or in part, will be the charge in effect on the date of the actual physical interchange of the loaded car. (See Note) NOTE. Provisions of this item apply to absorbed switching charges on either transit or non-transit shipments.
265	ORDERING OF CARS	When upon request of the consignor, UP furnishes a carrier owned, controlled, or leased covered coil car, flat car, gondola car or box car for the loading of a line haul shipment of iron or steel articles beginning with STCC numbers 33, 34, or 40-2, and such shipment is routed via a carrier other than UP System (CHTT, CNW, CTRN, DRGW, GVSF, LRWN, MP, SP, SSW, SSWN, UP) a charge of \$1,000.00 per car will be assessed to the person, firm or corporation ordering the car. (See EXCEPTION). EXCEPTION: This charge will not be assessed when consignor has received prior concurrence of UP car management department to use such equipment for an outbound shipment via a carrier other than UP from origin station.
275	ORDERING OF CARS	When upon request of the consignor, UP furnishes a carrier owned, controlled, or leased covered hopper car for the loading of a line haul shipment of roofing granules (STCC 32-959-80) and such shipment is routed from origin station via a carrier other than UP a charge of \$1500.00 per car will be assessed to the person, firm or corporation ordering the car.
280	SHIFTING CARS	Shifting or switching empty, partly loaded or loaded cars from one location to another at the same industry shed or loading platform, when such shifting or switching service is incidental to and necessary in connection with removal or placement of other loaded or empty cars, such incidental cars shifted will be free of charge.