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June 23, 2008

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

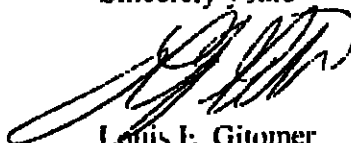
RE: Docket No. 42107, *Railroad Salvage & Restoration, Inc. and G F Wiedeman International, Inc. -Petition for Investigation and for Emergency Relief under 49 U.S.C. §721(h)(4)-Security Deposit for Demurrage Charges, Missouri & Northern Arkansas Railroad Company, Inc.*

Dear Acting Secretary Quinlan:

Enclosed for e-filing is the response of the Missouri & Northern Arkansas Railroad Company, Inc. to the Petition for Emergency Relief filed by Railroad Salvage & Restoration, Inc. and G F Wiedeman International, Inc. A response to the Petition for Investigation will be filed on or before July 8, 2008.

I thank you for your assistance. If you have any questions please call or email me.

Sincerely yours



Louis E. Gitomer
Attorney for Missouri & Northern Arkansas
Railroad Company, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42107

RAILROAD SALVAGE & RESTORATION, INC.
AND G F WIEDEMAN INTERNATIONAL, INC. –
PETITION FOR INVESTIGATION AND FOR EMERGENCY RELIEF UNDER
49 U.S.C. §721(b)(4)—SECURITY DEPOSIT FOR DEMURRAGE CHARGES, MISSOURI &
NORTHERN ARKANSAS RAILROAD COMPANY, INC.

REPLY OF MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC. TO
PETITION FOR EMERGENCY RELIEF

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Attorneys for MISSOURI & NORTHERN
ARKANSAS RAILROAD
COMPANY, INC.

Dated: June 23, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42107

RAILROAD SALVAGE & RESTORATION, INC.
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PETITION FOR INVESTIGATION AND FOR EMERGENCY RELIEF UNDER
49 U.S.C. §721(b)(4)—SECURITY DEPOSIT FOR DEMURRAGE CHARGES, MISSOURI &
NORTHERN ARKANSAS RAILROAD COMPANY, INC

REPLY OF MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC. TO
PETITION FOR EMERGENCY RELIEF

The Missouri & Northern Arkansas Railroad Company, Inc. (“MNA”) opposes the Petition for Emergency Relief filed on June 18, 2008 (the “Petition”) by Railroad Salvage & Restoration, Inc. (“RS&R”) and G F Wiedeman International, Inc. (“GFW”), collectively referred to as the “Petitioners.”

The Petitioners are unlikely to prevail on the merits of their Petition for Investigation¹ and will not be irreparably harmed if the tariff goes into effect, while M&NA will continue to be harmed by the Petitioners’ unreasonable refusal to pay demurrage, and the public interest will be harmed by preventing railroads from assuring that they are paid in a timely manner.

¹ M&NA contends that the Petitioners are not seeking an investigation, but are actually asking the Surface Transportation Board (the “Board”) to find the security deposit requirement in the proposed tariff to be an unreasonable practice. See Petition at 3 and 7. The Board requires a filing fee of \$17,600 under 49 C.F.R. §1002.2(f) Part V(56)(iii) when a Complaint alleging an unreasonable practice is filed, not the \$200 filing fee paid by the Petitioners under 49 C.F.R. §1002.2(f) Part VI(88).

BACKGROUND

RS&R and GFW have never paid demurrage to M&NA. RS&R and GFW have never complied with the existing tariff provisions to challenge the validity of the demurrage charges imposed under the tariff MNA Tariff 6001, Item 90 until they filed several challenges within the last month.

As a result of the refusal of RS&R and GFW to pay demurrage, M&NA was forced to file suit against RS&R² and GFW.³ The suits seek to collect demurrage assessed against RS&R beginning in January 2005 and GFW beginning in September 2006. Both of these proceedings have been referred to the Board for a determination of the applicability of the demurrage charges that M&NA is seeking to collect.⁴

The demurrage charges arise from Freight Tariff MNA 6001 and succeeding tariffs (the "MNA 6001 Tariff"). The MNA 6001 Tariff provides a specific mechanism for the challenge of demurrage charges. Item 90 states "Demurrage charges assessed must be paid in full and disputes for adjustment together with supporting documentation *must be presented in writing to MNA within fifteen (15) days after the date on which the bill for demurrage is rendered*" (emphasis added).

During discovery in the *Demurrage Proceeding* M&NA sought information concerning the use of the adjustment process of Item 90 by RS&R and GFW.

² No. 07-5017-CV-SW-Rel, *Missouri & Northern Arkansas Railroad Company, Inc. v. Railroad Salvage & Restoration, Inc.* in the United States District Court for the Western District of Missouri Southwestern Division.

³ Case No. 07AO-CC00112, *Missouri & Northern Arkansas Railroad Company, Inc. v. G.F. Wiedeman International, Inc.* in the Circuit Court of Jasper County, Missouri at Joplin.

⁴ See *Railroad Salvage & Restoration, Inc. —Petition for Declaratory Order—Reasonableness of Demurrage Charges*, STB Docket No. 42102, *G.F. Wiedeman International, Inc. —Petition for Declaratory Order—Reasonableness of Demurrage Charges*, STB Docket No. 42103 (STB served December 20, 2007) (the "*Demurrage Proceeding*").

With regard to Item 90, the following discovery requests and responses occurred between M&NA and RS&R ⁶

Interrogatory No. 13. Identify, with reference to the applicable MNA tariff(s), for each rail car described in the Complaint and all other rail cars ordered from MNA by RS&R within the Relevant Period the written claim made by RS&R to MNA seeking relief from any demurrage charge including the date the claim was made in accordance with the requirements of the tariff and describe how the claim was transmitted to MNA

Response: There were no such written claims. Further responding, RSR states that it made numerous verbal claims that assessment of demurrage charges against it are excessive and unreasonable.

Request for Production No. 2: Produce each written claim presented by RS&R to MNA seeking relief from any demurrage charge with respect to any rail car delivered to the Joplin Facility during the relevant period, along with the demurrage bill to which each such written claim pertains.

Response: See Response to Interrogatory No. 13.

Admission No. 3: Admit or deny for each of the rail cars described in the Complaint and all other rail cars ordered from MNA by RS&R within the Relevant Period that RS&R failed to make claims to MNA in accordance with the appropriate tariff seeking relief from any demurrage charge within the relevant period.

Response: RSR object to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to, and without waiving that objection, the request is admitted with the qualification set forth in the response to Interrogatory No. 13.

With regard to Item 90, the following discovery requests and responses occurred between M&NA and GFW

Interrogatory No. 13. Identify, with reference to the applicable MNA tariff(s), for each rail car described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period the written claim made by GFW to MNA seeking relief from any demurrage charge including the date the claim was

⁶ See Exhibit A for the full discovery responses of RS&R and GFW.

made in accordance with the requirements of the tariff and describe how the claim was transmitted to MNA

Response: There were no such written claims. Further responding, GFW states that it made numerous verbal claims that assessment of demurrage charges against it are excessive and unreasonable.

Request for Production No. 2: Produce each written claim presented by GFWI to MNA seeking relief from any demurrage charge with respect to any rail car delivered to the Joplin Facility during the relevant period, along with the demurrage bill to which each such written claim pertains.

Response: See Response to Interrogatory No. 13.

Admission No. 3: Admit or deny for each of the rail cars described in the Complaint and all other rail cars ordered from MNA by GFWI within the Relevant Period that GFWI failed to make claims to MNA in accordance with the appropriate tariff seeking relief from any demurrage charge within the relevant period.

Response: GFW object to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to, and without waiving that objection, the request is admitted with the qualification set forth in the response to Interrogatory No. 13.

By their own admission, RS&R and GFW failed to comply with the requirements of Item 90 in the MNA 6001 Tariff.

Since M&NA filed suit against RS&R and GFW to collect the demurrage it is owed, RS&R and GFW have failed to pay demurrage, and have failed to comply with the requirements of Item 90 of the MNA 6001 Tariff in seeking adjustments to the demurrage charges, except for the last month. The Petitioners are solely responsible for the amount of demurrage they owe. By failing to pay demurrage or even properly seek adjustment to the demurrage charges, the Petitioners have had use of about \$400,000 and at the same time have deprived M&NA of the use of those funds.

M&NA values its customers. M&NA does not want situations where its customers do not pay tariff charges and M&NA is required to resort to costly litigation to collect fees that are legitimately owed. M&NA has decided to adopt Tariff RA-1000 (Exhibit B) to replace the MNA 6001 Tariff to simplify demurrage. M&NA believes that the new tariff will prevent future problems with regard to the collection of demurrage charges.

Tariff RA-1000 requires all "Consignors, Consignees or agents thereof" to apply for credit" which shall be granted solely at the discretion of M&NA. Tariff RA-1000, Item 1000. If a Consignor, Consignee, or agent thereof is not on M&NA's credit list and "fails to pay accessorial charges after specific written demand referring to this tariff provision"⁶ the party is required to make a deposit with M&NA before any freight car is delivered. The deposit must be either \$10,000.00, or the amount of existing past due accessorial charges accrued by the Consignor, Consignee, or agent thereof.

Petitioners admit that RS&R and GFW are separate corporations. RS&R is owned by Mrs. Byrtha Lee Jackson and Mr. Ryan Jackson. Petition at 3-4. GFW is owned by Mr. Gaylon W. Jackson. Id. at 3. Petitioners do not claim that RS&R and GFW are alter egos or that they are commonly controlled. Nor is there any indication that one entity guarantees or is liable for the debts of the other. Petitioners claim that RS&R has been invoiced and not paid \$340,055 and that GFW has been invoiced and not paid \$59,475 in demurrage charges.

ARGUMENT

Petitioners seek an order from the Board effectively staying the requirements of Tariff RA-1000, Item 1090 for Petitioners to submit a security deposit to M&NA in the greater of \$10,000 or the outstanding accessorial charges, if Petitioners request for credit were denied and

⁶ Tariff RA-1000, Item 1010 B.

if Petitioners fail to pay accessorial charges after specific written demand referring to Tariff RA-1000. Petitioners are effectively seeking the stay of a provision of Tariff RA-1000 that is solely within their power to avoid.

Petitioners refer to a discussion between Petitioners and M&NA which was for the purpose of describing the implementation and provisions of Tariff RA-1000. Petition at 5. M&NA believes that the best indicator of the proper use of credit in the future is the past payment history of a debtor. If a party has not paid its debts or properly challenged them, then it is legitimate to review past payment history in determining whether to extend credit. M&NA intends to consider the creditworthiness of all applicants.⁷ RS&R and GFW only have themselves to blame for not paying their bills or properly challenging them under the MNA 6001 Tariff.

Under 49 U.S.C. 721(h), the Board may issue an appropriate order to prevent irreparable harm. In determining whether to grant injunctive relief, the agency applies the traditional stay criteria, by determining whether: (1) there is a strong likelihood that the movant will prevail on the merits, (2) movant will suffer irreparable harm in the absence of a stay, (3) other interested parties will not be substantially harmed, and (4) the public interest supports the granting of the stay. *Hilton v. Braunsell*, 481 U.S. 770, 776 (1987); *Washington Metro Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958). On a motion for stay, "it is the movant's obligation to justify the exercise of such an extraordinary remedy." *Chomo v. United States Nuclear Regulatory Comm'n*, 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay normally carry the burden of persuasion on all of the elements required for such extraordinary relief. *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974).⁸

⁷ See *Illinois Central Gulf R. Co. Security Deposits*, 358 I.C.C. 312 (1978) ("Illinois Central").

⁸ *Canadian National Railway Company Grand Trunk Corporation, and W.C. Merger Sub, Inc. - Control Wisconsin Central Transportation Corporation Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.* STB Finance Docket No. 34000 (STB served June 6, 2008), at 3.

1. Petitioners will not prevail on the merits.

Petitioners claim that it is an unreasonable practice for a railroad to increase its rates retroactively and therefore relying on a shipper's past actions under a different tariff to require the advance payment of a security deposit is also retroactive application of a tariff. Petitioners are wrong because there is no retroactivity involved and because the Interstate Commerce Commission (the "ICC") explicitly or implicitly approved such action.⁹

M&NA is not changing the rates paid for demurrage prior to July 1, 2008. Nor is M&NA revoking the credit that it extended to Petitioners prior to July 1, 2008. Indeed, under Tariff RA-1000, if Petitioners owe a balance for accessorial charges on July 1, 2008, M&NA must first make a demand for payment pursuant to Item 1010 before requiring a security deposit.¹⁰ Once the demand is made, then Petitioners will decide whether to pay the demurrage owed or not to and subject themselves to the security deposit requirement. M&NA is not imposing the security deposit requirement to ensure collection of the demurrage charges that Petitioners owe to M&NA. M&NA is imposing the security deposit requirement to assure collection of future demurrage charges. M&NA is confident that the Board and Courts will find that Petitioners owe

⁹ See *Illinois Central*.

¹⁰ M&NA does not intend to mislead the Board by insinuating that it will not make such a demand on RS&R and GFW if there continues to be a balance outstanding. In order to comply with the provisions of Tariff RA-1000, M&NA will make a demand on RS&R and GFW for all outstanding accessorial charges on July 1, 2008. Failure by RS&R and GFW to pay their individual accessorial charges will result in implementation of the security deposit provisions of Tariff RA-1000. Although this process may sound harsh, Petitioners have demurrage balances that have been outstanding for over three years. M&NA is complying with the dual statutory requirements that it (1) "shall compute demurrage charges" under 49 U.S.C. §10746, and (2) not subject a person, place, port, or type of traffic to unreasonable discrimination" under 49 U.S.C. §10741(a)(1). Petitioners should not be given a competitive advantage over competitors through M&NA failing to collect demurrage.

M&NA the demurrage sought by M&NA in the *Demurrage Proceeding*. Petitioners have not stated any basis to believe that they will prevail with their retroactivity argument.

In *Illinois Central*, the ICC was faced with three issues: (1) whether use of a security deposit provision was proper, (2) whether a tariff were required to be published to implement a security deposit requirement, and (3) how to determine when a security deposit would be required. The ICC found that it is permissible to impose a security deposit requirement and that it should be published in a tariff. The ICC also concluded that “a security deposit requirement should be determined exclusively by past performance in paying demurrage charges.”¹¹

Petitioners also claim that M&NA is going to use the provisions of Tariff RA-1000, Item 1010 to coerce the payment of disputed demurrage charges. M&NA is not using the new tariff to coerce past demurrage payments, only to ensure that it is paid demurrage in the future. Petitioners are wrong that the demurrage charges are properly disputed or erroneous. Petitioners waived their right to challenge the accuracy of the demurrage charges when they failed to file written claims as required by Item 90 of MNA 6001 Tariff, which states “Demurrage charges assessed must be paid in full and disputes for adjustment together with supporting documentation must be presented in writing to MNA within fifteen (15) days after the dates on which the bill for demurrage is rendered.” In their discovery response Petitioners stated that “there were no such written claims” (Response of RS&R and GFW to Interrogatory No. 13 and Request for Production No. 2) and admitted that they “failed to make claims to MNA in accordance with the appropriate tariff” (Admission No. 3). The Board has recently reiterated that a carrier’s tariff can limit shipper defenses by requiring “shippers to submit a timely, written claim for any disputed

¹¹ *Illinois Central*, at 320.

demurrage, stating the conditions for which relief is sought “¹² As Petitioners admit in the *Demurrage Proceeding*, they did not comply with the tariff requirements for disputing demurrage. Therefore, although Petitioners continue to litigate the demurrage due to M&NA in the *Demurrage Proceeding*, they have little likelihood of success under the Board’s most recent precedent. Moreover, Petitioners have not even addressed the issue in the Petition, much less met their “burden of persuasion” or met their “obligation to justify the exercise of such an extraordinary remedy.”

Although the Board has discretion to grant a shipper relief where it failed to comply with the tariff provisions, the Board will not exercise its discretion where demurrage is imposed “as a penalty for undue car detention, encouraging the efficient use of rail cars in the rail network” or to compensate “rail carriers for the expenses incurred when rail cars are detained by shippers beyond a period of “free time.”¹³ Again, Petitioners did not address this issue in the Petition, much less carry their burden.

Petitioners have not properly challenged the demurrage charges they owe to M&NA. They did not make written claims under the tariff, much less pay the demurrage charges. Nor have Petitioners addressed these issues or carried their burden in the Petition.

Petitioners cite to *Illinois Central* for the proposition that “we are in agreement with the concept of a security deposit and do not feel that it is *per se* unreasonable or otherwise unlawful.”¹⁴ The ICC found the practice required tariff publication.¹⁵

¹² *Savannah Port Terminal Railroad, Inc –Petition for Declaratory Order –Certain Rates and Practices as Applied to Capital Cargo, Inc.*, STB Finance Docket No. 34920 (STB served May 30, 2008) at 10.

¹³ *Id.* at 10-11.

¹⁴ *Illinois Central*, at 317.

¹⁵ *Id.* at 321.

Petitioners cite to two partial sentences from *Illinois Central* for the proposition that a security deposit program cannot be used to coerce payment of demurrage charges. However, a review of the ICC's full thought and the context of the statements reveals that these cautionary statements do not apply to Petitioners.

Furthermore, there should be no obligation to pay erroneous demurrage bills or those which fail to identify demurrage charges on a per car basis. If there is no obligation to pay demurrage charges, it would be unreasonable to implement the security deposit requirement for failure to pay those charges. Carriers should check to ascertain that demurrage computations are accurate prior to imposition of a security deposit. The threat of a cash guarantee should not be used as a means to coerce payment of erroneous bills or charges.¹⁶

M&NA's demurrage bills are not erroneous. Petitioners waived their rights to challenge these bills by failing to comply with the requirements of the MNA 6001 Tariff for adjusting demurrage. Moreover, M&NA verified the accuracy of its bills before it filed suit against RS&R and GFW. M&NA has again verified the accuracy of the demurrage bills in the *Demurrage Proceeding*. Petitioners do not carry their heavy burden of showing that the demurrage bills are erroneous in the Petition. There is not one iota of evidence as to any inaccuracy within the demurrage bills produced by Petitioners. Implementation of Tariff RA-1000 is not a means to coerce the payment of erroneous bills or charges.

Furthermore, we are concerned with the criteria for determining which shippers would be subject to the [security deposit] program. Unlike extension of credit which involves a judgment of the financial ability of a shipper, a security deposit requirement should be determined exclusively by past performance in paying demurrage charges. Any security deposit regulation implemented must apply to all shippers which fail to pay demurrage charges. Also of concern to the Commission is the danger that the threat of a security deposit could be used to cause a shipper to pay disputed demurrage charges.¹⁷

¹⁶ Id. at 318

¹⁷ Id. at 320

The shading placed by Petitioners on the out of context citation in the Petition becomes apparent when it is read within the entirety of the ICC's concerns. The ICC was concerned that the criteria for placing a shipper in a security deposit program be that it had failed to pay past demurrage bills, as Petitioners have done. Tariff RA-1000 applies to all of the shippers on M&NA and will be enforced against all of them, in accord with the ICC's second concern. Finally, the ICC was concerned that a security deposit program might coerce a shipper to pay a disputed demurrage charge. Petitioners did not properly dispute their demurrage bills, as demonstrated above; they just refused to pay them. Therefore, the new security deposit program in RA-1000 will not coerce Petitioners to pay disputed demurrage charges because they failed to properly dispute those charges. Indeed, the ICC's discussion supports the implementation of Tariff RA-1000 by M&NA because the security deposit requirement is based on any shipper's past performance in not paying demurrage.¹⁸ The ICC anticipated, addressed, and rejected the retroactivity argument put forth by Petitioners.

Petitioners did not properly dispute the demurrage charges and have not carried their burden to show that they have done so. Petitioners have failed to address their admitted failure to file timely written challenges to the demurrage charges with M&NA, have not shown that any of the past demurrage charges are erroneous, and have not demonstrated that M&NA is implementing Tariff RA-1000 for any purpose other than to ensure that it collects future demurrage charges from shippers who have not paid those charges in the past. Petitioners have failed to carry their burden that they would prevail on the merits of this proceeding.

¹⁸ Under the ICC's rationale, Petitioners are the type of shippers who would be expected to be placed in a security deposit program because of their complete failure to pay or properly challenge their demurrage charges.

2. Petitioners will not suffer irreparable harm in the absence of a stay.

Petitioners contend that they cannot afford to pay a \$400,000 security deposit and continue to litigate the Declaratory Order Proceeding and that as a result, M&NA will terminate their rail service resulting in a loss of business, which according to Petitioners is an irreparable injury

Petitioners' attempt to portray themselves as innocent parties is contradicted by the facts. Petitioners, for reasons known only to them, failed to pay demurrage charges to M&NA for at least three years. During that same time period Petitioners admittedly failed to use the provisions of the MNA 6001 Tariff to challenge M&NA's demurrage charges. Instead, they just refused to pay the charges. Any harm to Petitioners is self-inflicted.

Moreover, although Petitioners are separate entities, they improperly seek to combine the demurrage charges. As directed by the ICC, M&NA intends to treat all shippers alike and if RS&R and GFW are required to participate in the security deposit program, their deposits will be judged separately.

Petitioners have placed themselves in a position where they may be required to submit a security deposit to M&NA. Petitioners failed to pay demurrage and failed to challenge the demurrage charges in accord with the MNA 6001 Tariff. Any harm that might befall Petitioners is self-inflicted.

Petitioners have not demonstrated that they cannot pay the security deposits and continue the litigation. Petitioners have not submitted any financial information to substantiate their argument. As the party that must "carry the burden of persuasion on all of the elements," Petitioners have failed to show that they will suffer any harm, much less irreparable harm.

Payment of a proper demurrage charge is not irreparable harm, indeed it is a cost of doing business in the manner that Petitioners chose

3. M&NA will be substantially harmed.

Petitioners have never paid demurrage to M&NA. The *Demurrage Proceeding* involves the failure of Petitioners to pay demurrage to M&NA since January 2005. By Petitioners' calculation, M&NA has forgone approximately \$399,350 since January 2005.

M&NA is putting Tariff RA-1000 into effect to avoid this situation in the future. Petitioners have given M&NA no indication that they intend to pay demurrage in the future. M&NA is not in the business of financing Petitioners' demurrage charges. Instead, M&NA is a railroad that has a statutory obligation to collect demurrage and not to unreasonably discriminate. The Tariff RA-1000 is an attempt to prevent shippers from not paying demurrage, to reduce the cost of litigation to M&NA, and to stop shippers from treating M&NA as an entity that finances demurrage charges.

Petitioners again fail to carry their "burden of persuasion on all of the elements." M&NA will continue to suffer harm if it cannot implement a program to prevent shippers from evading their obligation to pay demurrage charges and force other shippers to subsidize their operations.

4. The public interest does not support the granting of the stay.

The interests of Petitioners are contrary to the public interest. They seek to enlist the Board in their effort to continue to evade the payment of demurrage charges. The public interest requires railroads to collect demurrage charges and not to unreasonably discriminate against shippers. Petitioners seek a stay for the purpose of continuing not to pay demurrage charges, forcing M&NA to incur litigation costs to recover those demurrage charges, and to be treated differently than those shippers who timely pay their demurrage charges. Petitioners have not met

then heavy burden of demonstrating that a stay of the effectiveness of Item 1010 of Tariff RA-1000 is in the public interest

CONCLUSION

Petitioners have not met the criteria for the Board to issue an emergency order effectively staying the effectiveness of Item 1010 of Tariff RA-1000, which is scheduled to take effect on July 1, 2008, while the Board determines whether the use of past due demurrage incurred prior to the effectiveness of Tariff RA-1000 is an unreasonable practice. Indeed, the ICC indicated that a new tariff considering past due demurrage charges in requiring a shipper to post a security deposit was proper

M&NA respectfully requests the Board to conclude that Petitioners are unlikely to prevail on the merits of their Petition for Investigation and will not incur irreparable harm if the tariff goes into effect, while M&NA will continue to be harmed by the Petitioners unreasonable refusal to pay demurrage, and the public interest will be harmed by preventing railroads from assuring that they are paid in a timely manner.

Respectfully submitted,



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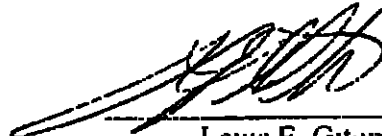
Dated June 23, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by first class mail postage pre-paid on

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208 S. LaSalle Street, #1890
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Louis E. Gitomer
June 23, 2008

EXHIBIT A—DISCOVERY RESPONSES

BEFORE THE
SURFACE TRANSPORTATION BOARD

RAILROAD SALVAGE &	)	
RESTORATION, INC. -- PETITION	)	
FOR DECLARATORY ORDER --	)	DOCKET NO.
REASONABLENESS OF	)	NOR-47102
DEFURFACCT CHARGES	)	
	)	

**RESPONSES AND OBJECTIONS OF
RAILROAD SALVAGE & RESTORATION, INC
TO FIRST DISCOVERY REQUESTS**

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Pursuant to 49 C.F.R. Part 1114, Subpart B, RAILROAD SALVAGE & RESTORATION, INC. (RSR) hereby responds to First Discovery Requests submitted by Missouri & Northern Arkansas Railroad Company, Inc. (MNA) on March 31, 2008.

GENERAL OBJECTIONS

RSR's General Objections, set forth herein, apply to each and every one of the specific interrogatories and document requests from MNA. RSR's objections shall not waive, limit, or preclude any objection it may later assert.

1. RSR objects to any and all definitions and/or instructions to the extent that they either evade or conflict with 49 C.F.R. Part 1114, Subpart B. RSR further objects to Applicants' Discovery Requests to the extent that they seek to impose obligations on RSR greater than or inconsistent with those imposed under 49 C.F.R. Part 1114, Subpart B.

2. The responses and objections to interrogatories and document requests contained herein are based on information currently known or in the possession of RSR as of the date of

In its response, RSR reserves the right to amend its responses and objections as this proceeding continues.

3 RSR reserves the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information set forth herein in connection herewith, in any subsequent proceeding, or in further proceedings in the above-referenced docket. To the extent that RSR produces responsive information or documents, RSR does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of RSR's objections to any of the MNA's Discovery Requests.

4 RSR objects to Applicants' Discovery Requests to the extent that they seek information relating to documents prepared, generated, or received in anticipation of or after the commencement of litigation, or to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. In the event that any such privileged, protected, or exempt information is inadvertently produced or provided, such disclosure or production is not intended, and should not be construed as a waiver of any applicable privilege, protection, or exemption.

5 RSR objects to Applicants' discovery requests to the extent those requests seek information and/or documents that are neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

6 RSR's response contained herein waives not shall be deemed to waive any claim of privilege as to any information or document not produced.

7 RSR objects to Applicants' instructions, interrogatories, and document requests to the extent that they seek information which would require RSR to undertake a special study. RSR will produce responsive information that it possesses, but will not conduct any further studies.

8 RSR objects to Applicants' discovery requests to the extent those requests seek information in/or documents in RSR's possession that are publicly available and/or are otherwise in MNA's possession.

9 RSR objects to each and every one of MNA's Requests for Production to the extent that it is (a) overly broad, (b) vague and/or ambiguous, (c) fails to describe with reasonable particularity the information sought, or (d) would impose an undue burden or expense on RSR that outweighs any relevance or probative value the information sought may have in this proceeding.

10 RSR objects to the definition of "Document" to the extent that it seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. RSR also objects to the definition of "Document" to the extent that it seeks information or data that is privileged, protected by the attorney-client/work product doctrine, or otherwise protected, exempted or excluded from discovery or disclosure by an applicable privilege, protection rule, or doctrine. In its responses, RSR will interpret the term "Document" as excluding any data or other information that is protected from discovery or disclosure by such privilege, protection doctrine, or rule.

11 RSR objects to the use of the terms "related to," "relates to," "relating to," and "or relate to" wherever any such term or terms appear in MNA's Interrogatories and Production Requests as overly broad and unduly burdensome.

Responses to Interrogatories

1. Please provide a complete description of the Toplin Facility including, but not limited to, the railroad tracks used by RS&R and all transportation related activities.

Response. RSR objects to the term "Toplin Facility," as defined at page 3 of the Discovery Requests, on the ground that it is vague and imprecise. RSR objects to the term "all transportation related activities" on the ground that it is imprecise and unintelligible. Subject to, and without waiving its objections, RSR has attached, as Appendix 1, a depiction of its materials yard including its railroad tracks in that yard used by RSR. Appendix 1 shows that there are a total of 3,817.2 feet of private trackage in RSR's materials yard, or roughly 7/4 of a mile of track. That private track is adequate for loading and storage of approximately 63 railcars of 60-foot length.

2. Identify the tariffs issued by MNA that require RS&R to pay demurrage and storage charges to MNA.

Response. RSR objects to the form of this interrogatory on the ground that MNA's tariff provides a basis for assessment of demurrage and storage charges in certain circumstances, but requires RSR to pay demurrage and storage charges to MNA only if those circumstances are proven to have existed. Subject to, and without waiving that objection, RSR has acknowledged, in its answer to MNA's complaint, that the tariffs named in that complaint provide a basis for assessment of demurrage and storage charges in certain circumstances.

3. Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by RS&R within the Relevant Period that RS&R claims were constructively placed on the notice of placement given to RS&R by MNA.

Response. RSR objects to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request

such information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, RSR states that it does not believe that MNA provided timely constructive placement notices as to any railcars involved in the Complaint for which demurrage charges allegedly accrued while the railcars were under constructive placement. RSR is seeking confirmation that that belief in essence is submitted to MNA.

4. Identify the private rail cars described in the Complaint and all other rail cars ordered from MNA by RSR within the Relevant Period that RSR claims were held on private tracks.

Response. RSR objects to the request for information regarding all other rail cars ordered from MNA (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to and without waiving that objection, RSR states that all private cars listed in MNA's invoices to RSR (initials ending in "A") for which demurrage charges were assessed between the placement dates and the release dates shown on such invoices were private cars held on private tracks.

Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by RSR within the Relevant Period that were held in MNA's yard or in preparation for car order, not set marks by RSR.

Response. RSR objects to the request for information regarding all other rail cars ordered from MNA (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, RSR states that it is informed and believes that demurrage charges on numerous

railcars accrued while the railcars were being held in MNA's yard in anticipation of car orders not yet made by RSR. RSR is seeking confirmation of that belief, and the exact extent thereof in discovery submitted to MNA.

6. Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by RS&R within the Relevant Period that RS&R claims it was able to receive but which were not delivered because of MNA's disability.

Response. RSR objects to the request for information regarding all other rail cars ordered from MNA (i.e. cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, RSR states that it is informed and believes that demurrage charges on numerous railcars accrued during periods in which RSR had ordered such cars, but such cars were not delivered because of MNA's disability. RSR is seeking confirmation of that belief and the extent thereof in discovery submitted to MNA.

7. Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by RS&R within the Relevant Period that RS&R claims MNA does not have adequate proof of actual or constructive placement or release.

Response. RSR objects to the request for information regarding all other rail cars ordered from MNA (i.e. cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, RSR states that it is informed and believes that MNA does not have adequate proof of actual or constructive placement or release of many of the railcars involved in the Complaint.

RSR seeking confirmation of that belief, and the extent thereof, is discovery sought to MNA.

8. Please identify every rail car described in the Complaint and all other rail cars ordered from MNA by RS&R delivered to the Joplin Facility during the Relevant Period as to which RS&R contends the demurrage charges assessed by MNA are unreasonable. For purposes of this interrogatory, "identify" means to provide for each rail car its (1) initial date of receipt arrival date and time, (2) constructive placement date and time of application of actual placement date and time, (3) release date and time, and (4) pull date and time.

Response: RSR object to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, RSR states that its contention as to the demurrage charges on specific cars whose collection would be an increase of the practice is dependent on information that will be elicited in a pending discovery request directed to MNA. See, also, response to Interrogatory No. 3.

9. For each of the individual rail cars identified in response to Interrogatory No. 8 identify, with specificity, the basis or bases for RS&R's claim that the demurrage charges assessed with respect to such rail car are unreasonable, including, but not limited to, the extent of delay taken or not taken by MNA with respect to such rail car that renders the assessed demurrage unreasonable.

Response: See Response to Interrogatory No. 8.

10. Identify, with respect to the applicable MNA tariff(s), the specific demurrage rate assessed, and RS&R contends are unreasonable.

Response: See Response to Interrogatory No. 8.

11. For each rate identified in response to Interrogatory No. 10 set forth with specificity all the facts RS&R contends demonstrate the unreasonableness of such rate or the unreasonableness of the application of such rate.

Response: See Response to Interrogatory No. 8.

12. Identify, with reference to the applicable MNA tariffs, the specific method or methods by which MNA calculates its demurrage charges that RS&R contends are unreasonable and describe with specificity the basis or bases for such contention.

Response See Response to Interrogatory No. 8.

13. Identify, with reference to the applicable MNA tariffs, the verbal claim(s) described in the Complaint and all other rail cars ordered from MNA by RS&R within the Relevant Period, a written claim made by RS&R to MNA seeking relief from any demurrage charges included in, where the claim was made in accordance with the requirements of the tariff and describe how the claim was transmitted to MNA.

Response There were no such written claims. Further responding, RS&R states that it made numerous verbal claims that assessment of demurrage charges against it are excessive and unreasonable.

Response to Document Requests

14. Produce all documents that discuss, refer to or relate to the demurrage charges assessed by MNA with respect to the Joplin Facility that occurred during the Relevant Period.

Response There are no such documents with the exception of correspondence submitted by counsel for RS&R that are protected from discovery under the attorney-client privilege.

15. Produce each written claim presented by RS&R to MNA seeking relief from any demurrage charges with respect to any rail car delivered to the Joplin Facility during the relevant period along with the demurrage bill to which such such written claim pertains.

Response See Response to Interrogatory No. 14.

16. Produce all requests from RS&R to MNA for the delivery of rail cars during the Relevant Period.

Response All such requests were verbal.

17. Please produce all documents identified in RS&R's Answers to MNA's Interrogatories.

Response: There are no such documents with the exception of the deposition of P's 1, 2, and 3, all of which are attached as Appendix 1.

Response to Request for Admissions

1. Admit or deny that RS&R ordered rail cars from MNA during the Relevant Period.

Response: Admitted.

2. Admit or deny that there are times when RS&R does not have sufficient capacity at the Lopham facility to receive the rail cars that it orders.

Response: RS&R objects to this request on the ground that the term "times" is vague and imprecise. Subject to, and without waiving that objection, the request for admission is denied.

3. Admit or deny for each of the rail cars described in the Complaint and all other rail cars ordered from MNA by RS&R within the Relevant Period that RS&R failed to make claim to MNA for accordance with the appropriate tariff seeking relief from any demurrage charge within the relevant period.

Response: RS&R objects to the request for information regarding "all rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request is unduly burdensome in that it is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, the request is admitted with the qualifications set forth in the response to Interrogatory No. 13.

Respectfully submitted,

Thomas F. McFarland Jr.

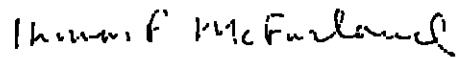
Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street #1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com
*Attorney for Railroad Salvage &
Restoration Inc*

DAVID April 30 2008

APPENDIX 1

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document, Responses and Objections of
Railroad Salvage & Restoration, Inc. to First Discovery Requests, by e-mail and UPS overnigh
mail on Louis F. Gitorner, Esq., Law Offices of Louis E. Gitorner, 600 Baltimore Avenue, Suite
301 Towson, MD 21204 Lou_Gitorner@verizon.net



Thomas F. McFarland

BEFORE THE
SURFACE TRANSPORTATION BOARD

G F WEIDEMAN INTERNATIONAL, INC. - PETITIONER	)	
DECLARATORY ORDER --	)	DOCKET NO.
REASONABLENESS OF	)	NOR-42103
DEMURRAGE CHARGES	)	
	)	

**RESPONSES AND OBJECTIONS OF
G F WEIDEMAN INTERNATIONAL, INC.
TO FIRST DISCOVERY REQUESTS**

Pursuant to 49 C.F.R. Part 1114, Subpart B, G F WEIDEMAN INTERNATIONAL, INC. (GFW) hereby responds to First Discovery Request submitted by Missouri & Northern Arkansas Railroad Company, Inc. (MNA) on March 31, 2008.

GENERAL OBJECTIONS

GFW's General Objections, set forth herein, apply to each and every one of the specific interrogatories and document requests from MNA. GFW's objections shall not waive, limit or prejudice any objection it may later assert.

1. GFW objects to any and all definitions and/or instructions to the extent that they either expand upon or conflict with 49 C.F.R. Part 1114, Subpart B. GFW further objects to Applicants' Discovery Requests to the extent that they seek to impose obligations on GFW greater than, or inconsistent with, those imposed under 49 C.F.R. Part 1114, Subpart B.

2. The responses and objections to interrogatories and document requests contained herein are based on information currently known or in the possession of GFW as of the date of

this response. GFW reserves the right to amend its responses and objections as this proceeding continues.

3. GFW reserves the right to challenge the competency, relevance, materiality, or admissibility of, or to object on any ground to, the use of information set forth herein in connection herewith, in any subsequent proceeding, or in further proceedings in the above-referenced docket. To the extent that GFW produces responsive information or documents, GFW does not concede that such information is relevant, material, or admissible into evidence, and any such production is not intended to waive any of GFW's objections to any of the MNVA's Discovery Requests.

4. GFW objects to Applicants' Discovery Requests to the extent that they seek information relating to documents prepared, generated, or received in anticipation of or after the commencement of litigation, or to the extent that they seek information protected from disclosure by the attorney-client privilege, attorney work product doctrine, or other applicable privilege. In the event that any such privileged, protected, or exempt information is inadvertently produced or provided, such disclosure or production is not intended, and should not be construed as a waiver of any applicable privilege, protection, or exemption.

5. GFW objects to Applicants' discovery requests to the extent those requests seek information and/or documents that are neither relevant to the subject matter of this proceeding nor are not reasonably calculated to lead to the discovery of admissible evidence.

6. No response contained herein waives nor shall be deemed to waive any claim or privilege as to any information or document not produced.

7 GFW objects to Applicants' instructions, interrogatories and document requests to the extent that they seek information which would require GFW to undertake a special study. GFW will produce responsive information that it possesses, but will not conduct any further studies.

8 GFW objects to Applicants' discovery requests to the extent those requests seek information and/or documents in GFW's possession that are publicly available and/or are already in MNA's possession.

9 GFW objects to each and every one of MNA's Requests for Production to the extent that it is (a) overly broad, (b) vague and/or ambiguous, (c) fails to describe with reasonable particularity the information sought, or (d) would impose an undue burden or expense on GFW that outweighs any relevance or probative value the information sought may have in this proceeding.

10 GFW objects to the definition of "Document" to the extent that it seeks to impose obligations broader than those imposed by 49 C.F.R. Part 1114. GFW also objects to the definition of "Document" to the extent that it seeks information or data that is privileged, protected by the attorney-client work product doctrine, or otherwise protected, exempted, or excluded from discovery or disclosure by an applicable privilege, protection, rule, or doctrine. In its responses, GFW will interpret the term "Document" as excluding any data or other information that is protected from discovery or disclosure by such privilege, protection, doctrine, or rule.

11. GFW objects to the use of the terms “related to,” “relates to,” “claiming to,” and “relate to” wherever any such term or terms appear in MNA’s Interrogatories and Production Requests as overly broad and unduly burdensome.

Responses to Interrogatories

1. Please provide a complete description of the Joplin Facility, including, but not limited to, the railroad tracks used by GFW and all transportation related activities.

Response. GFW objects to the term “Joplin Facility,” as defined at page 3 of the Discovery Requests, on the ground that it is vague and imprecise. GFW objects to the term “all transportation related activities,” on the ground that it is imprecise and unintelligible. Subject to and without waiving its objections, a depiction of its materials yard, including the railroad tracks in that yard used by GFW is attached as Appendix 1 to RSR’s Responses and Objections To First Discovery Requests. Appendix 1 shows that there are a total of 3,517.2 feet of private track, i.e. in GFW’s materials yard, or roughly 3/4 of a mile of track. That private track is adequate for loading and storage of approximately 63 railcars of 60-foot length.

2. Admit the tariffs issued by MNA that require GFW to pay demurrage and storage charges to MNA.

Response. GFW objects to the form of this interrogatory on the ground that MNA’s tariff provides a basis for assessment of demurrage and storage charges in certain circumstances but requires GFW to pay demurrage and storage charges to MNA only if those circumstances are proven to have existed. Subject to and without waiving that objection, GFW has acknowledged in its answer to MNA’s complaint that the tariffs named in that complaint provide a basis for assessment of demurrage and storage charges in certain circumstances.

3 Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period that GFW claims were constructively placed and the notice of placement given to GFW by MNA.

Response: GFW objects to the request for information regarding “all other rail cars ordered from MNA” (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to, and without waiving that objection, GFW states that it does not believe that MNA provided timely constructive placement notices as to any railcars involved in the Complaint for which demurrage charges allegedly accrued while the railcars were under constructive placement. GFW is seeking confirmation of that belief in a discovery submitted to MNA.

4 Identify the private rail cars described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period that GFW claims were held on private tracks.

Response: GFW objects to the request for information regarding “all other rail cars ordered from MNA” (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding, any issue in this proceeding. Subject to and without waiving that objection, GFW states that all private cars listed in MNA’s invoices to GFW (initially ending in “X”) for which demurrage charges were assessed between the placement dates and the release dates shown on such invoices were private cars held on private tracks.

5 Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period that were held in MNA’s yard in anticipation of an order not to be placed by GFW.

Response GFW objects to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, GFW states that it is informed and believes that damage charges on numerous railcars accrued while the railcars were being held in MNA's yard in anticipation of car orders not yet made by GFW. GFW is seeking confirmation of that belief, and the exact extent thereof in discovery submitted to MNA.

6 *Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period that GFW claims it was able to receive, but which were not delivered because of MNA's disability.*

Response GFW objects to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, GFW states that it is informed and believes that damage charges on numerous railcars accrued during periods in which GFW had ordered such cars, but such cars were not delivered because of MNA's disability. GFW is seeking confirmation of that belief, and the extent thereof, in discovery submitted to MNA.

7 *Identify the rail cars described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period that GFW claims MNA does not have adequate proof of actual or constructive placement or release.*

Response GFW objects to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request

such information that is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, CfW states that it is informed and believes that MNA does not have adequate proof of whether construction placement or release of many or all tanks involved in the Complaint. CfW is seeking confirmation of that belief and the extent thereof and discovery submitted by MNA.

8. *Please identify every tank car described in the Complaint and all other tank cars ordered from MNA by CfW delivered to the Joplin Facility during the Relevant Period, is or which CfW contends the damage charges assessed by MNA are unreasonable. For purposes of this interrogatory, "identify" means to provide for each tank car its (1) number, (2) number, (3) arrival date and time, (4) construction placement date and time, (5) applicable date of actual placement and time, (6) release date and time, and (7) all other matter.*

Response: CfW objects to the request for information regarding "all other tank cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such information is neither relevant to, nor reasonably calculated to lead to the discovery of admissible evidence regarding any issue in this proceeding. Subject to, and without waiving that objection, CfW states that its contention as to the damage charges on specific cars or non-collection would be an unreasonable practice is dependent on information that will be elicited in a pending discovery request directed to MNA. See also, response to Interrogatory No. 5.

9. *I request that the individual tank cars that led to CfW's response to Interrogatory No. 8 be identified and specified by the basis of CfW's claim that the damage charges assessed with respect to such tank cars are unreasonable, including, but not limited to, the proper amount of charges assessed by MNA with respect to such tank cars that reflect the cost of maintaining such tank cars.*

Response: See Response to Interrogatory No. 8.

10. *Identify, with respect to the applicable MNA contracts, the specific information that CfW contends is material and relevant.*

Response See Response to Interrogatory No. 8

11. For each rate identified in response to Interrogatory No. 10 set forth with specificity all the facts GFW contends demonstrating the unreasonableness of such rate or the unreasonableness of the application of such rate.

Response See Response to Interrogatory No. 8

12. Identify, with reference to the applicable MNA tariff(s), the specific method or methods by which MNA calculates its demurrage charges that GFW contends are unreasonable and describe with specificity the basis or bases for such contention.

Response See Response to Interrogatory No. 8

13. Identify, with reference to the applicable MNA tariff(s), for each rail car described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period the written claim made by GFW to MNA seeking relief from any demurrage charge including the date the claim was made in accordance with the requirements of the tariff and describe how the claim was transmitted to MNA.

Response There were no such written claims. Further responding, GFW states that it made numerous verbal claims that assessment of demurrage charges against it are excessive and unreasonable.

Response to Document Requests

1. Produce all documents that discuss, refer to, or relate to the demurrage charges assessed by MNA with respect to the Toplin Facility that occurred during the Relevant Period.

Response There are no such documents with the exception of correspondence submitted by counsel to GFW that are protected from discovery under the attorney-client privilege.

2. Produce each written claim presented by GFW to MNA seeking relief from any demurrage charge with respect to any rail car delivered to the Toplin Facility during the Relevant Period along with the demurrage bill to which each such written claim pertains.

Response See Response to Interrogatory No. 13

3. Produce all requests from GFW to MNA for the delivery of rail cars during the Relevant Period

Response: All such requests were verbal

4. Please produce all documents identified in GFW's answers to MNA's Interrogatories

Response: There are no such documents with the exception of the depiction of GFW's materials yard that is attached as Appendix 1

Response to Request for Admissions

1. Admit or deny that GFW ordered rail cars from MNA during the Relevant Period

Response: Admitted

2. Admit or deny that there are times when GFW does not have sufficient capacity at the Joplin Facility to receive the rail cars that it orders

Response: GFW objects to this request on the ground that the term "times" is vague and imprecise. Subject to, and without waiving that objection, the request for admission is denied

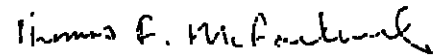
3. Admit or deny for each of the rail cars described in the Complaint and all other rail cars ordered from MNA by GFW within the Relevant Period that GFW failed to make claims to MNA in accordance with the appropriate tariff seeking relief from any demurrage charge within the relevant period

Response: GFW object to the request for information regarding "all other rail cars ordered from MNA" (i.e., cars not involved in the complaint) on the ground that such request seeks information that is neither relevant to, nor reasonably calculated to lead to the discovery of, any possible evidence regarding, any issue in this proceeding. Subject to, and without waiving th

objection, the request is admitted with the qualification set forth in the response to Interrogatory

No. 13.

Respectfully submitted,



Thomas F. McFarland
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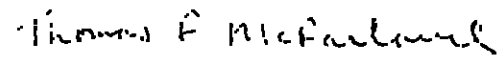
D. F. D. Assoc. 30-2002

APPENDIX 1

(*see* Appendix 1 attached to RSR's
Responses and Objections to
First Discovery Requests)

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document, Responses and Objections of G. I. Winkelman International, Inc. to First Discovery Requests, by e-mail and UPS overnight mail to Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 660 Baltimore Avenue, Suite 301 Towson, MD 21204 Lou_Gitomer@verizon.net



Thomas F. McFarland

EXHIBIT B-TARIFF RA-1000

Missouri & Northern Arkansas Railroad
514 N Omer
Carthage, MO 64836

June 1, 2008

Address Line 1
Address Line 2
Address Line 3
City, St Zip

Dear

Missouri & Northern Arkansas Railroad has a proud tradition of providing customers with the best transportation solutions in the market place. This means giving top quality service including pick-up and delivery, supplying the railcars, and providing a service package that reacts quickly to our customer's dynamic transportation requirements.

To simplify and standardize our product offering, MNA is creating a Catalog of Optional Transportation Services. Eventually, that catalog will contain a comprehensive suite of *user pay* services that include all *on request* transportation services offered by MNA.

Today, MNA is announcing the release of the first component of the new catalog that is designed to manage extended asset use. From time to time, our customers may need to use railcars for a longer period of time than allowed by a traditional demurrage tariff. Our customers, at their option, can extend the use of equipment for a small daily fee.

The new fee structure will be effective on July 1, 2008. On the same day, MNA will cancel its demurrage tariff, MNA 6001, in its entirety. Much of the "traditional" railroad tariff language and structure will be moved to a new tariff – RA 1000. The *Extended Asset Use* section of the new catalog, and all forthcoming user pay services, will be published separately.

These changes will help us succeed in our ongoing mission to improve service to you and achieve greater efficiency in our operations. The new *Extended Asset Use* program integrates some very powerful processes to simplify billing and increase efficiencies –

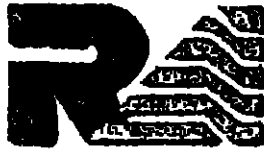
- Extended Asset Use invoices will be sent weekly
- MNA is implementing a 30/30/30-day billing guarantee
- Customers will no longer have to manage a burdensome credit/debit account

We are convinced that the new Catalog of Optional Transportation Services will be of mutual benefit to you and MNA. Within the next few days, our sales and marketing team will be contacting you to arrange a time to personally discuss the details of the new program.

We highly value your continued business with MNA and trust that these changes will ultimately make it easier to do business with us.

Sincerely,

Anita Horton



**RailAmerica
General Tariff**

**RA 1000
ORIGINAL PAGE I-1**

PLAN OF TARIFF

SECTION	CONTENTS	PAGE
I	List of Publishing Carriers	1-2
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II	Credit and Security Deposit	II-1 thru II-6
III	Demurrage and Storage Provisions	III-1 thru III-17
IV	Rate Publication Information	IV-1 thru IV-6
V	Intentionally Left Blank	
VI	Intentionally Left Blank	
VII	Intentionally Left Blank	
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RailAmerica General Tariff

RA 1000
ORIGINAL PAGE 1-2

SUBSCRIBING CARRIERS

This tariff is issued by RailAmerica, Inc., for the accounts of –

RAILROAD		RAILROAD	
Alabama & Gulf Coast Railway	AGR	Klamath Railroad	KRR
Arizona & California Railroad	ARZC	Kyle Railroad Company	KYLE
Bauxite & Northern Railway	BXNR	Massena Terminal Railroad	MSTR
California Northern Railroad	CFNR	Michigan Shore Railroad	MSR
Cape Breton & Central Nova Scotia	CBNS	Mid-Michigan Railroad	MMRR
Carolina Piedmont	CPDR	Missouri & Northern Arkansas Railroad	MNA
Cascade & Columbia River Railroad	CSCD	New England Central Railroad	NECR
Central Oregon & Pacific	CORP	North Carolina & Virginia Railroad	NCVA
Central Railroad of Indiana	CIND	Ottawa Valley Railway	OVR
Central Railroad of Indianapolis	CERA	Otter Tail Valley Railroad	OTVR
Chesapeake & Albemarle Railroad	CARR	Point Comfort & Northern Railway	PCNR
Chicago, Ft. Wayne & Eastern Railroad	CFER	Puget Sound & Pacific Railroad	PSAP
Connecticut Southern	CSO	Rockdale, Sandow & Southern Railroad	RSSR
Dallas, Garland & Northeastern	DGNO	San Diego & Imperial Valley Railroad	SDIY
Eastern Alabama Railway	EARY	San Joaquin Valley Railroad	SJVR
Florida East Coast Railway	FEC	South Carolina Central Railroad	SCRF
Goderich-Exeter Railway	GEXR	Southern Ontario Railway	SOR
Grand Rapids Eastern Railroad	GR	Texas Northeastern Railroad	TNER
Huron & Eastern Railway	HESR	Toledo, Peoria & Western Railway	TPW
Indiana & Ohio Railway	IORY	Ventura County Railroad	VCRR
Indiana Southern Railroad	ISRR	Virginia Southern Railroad	VSRR

GOVERNING TARIFFS

This tariff is governed, except as otherwise provided, by OPSL 6000-Series, STCC 6001-Series, UFC 6000-Series and BOE 6000-Series.



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GENERAL RULES

(ITEM - 10) CLASSIFICATION GOVERNING

The term "Uniform Freight Classification" when used herein means
-- Freight Tariff Uniform Freight Classification 6000-Series

(ITEM - 20) STATION LISTS AND CONDITIONS

This tariff is governed by Tariff ICC OPSL 6000-Series, as follows

- A For additions or changes in Name, Location or Abandonment's of Stations
- B Prepay Requirements
- C Restrictions as to acceptance or delivery of freight
- D Changes in station facilities
- E. When a station is abandoned, all provisions applicable thereto are cancelled, effective on the date of abandonment

(ITEM - 30) REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC

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.

(ITEM - 40) CONSECUTIVE NUMBERS - (ITEM 40)

Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" or a hyphen, they will be understood to include both of the numbers shown. 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 - 50) METHOD OF CANCELLING ITEMS

This tariff will be amended by reprinting the page and showing a revised page number. The revised page number will be used in consecutive numerical order beginning with "1st revised page". A revised page cancels any revised or original pages (not cancelled) which bear the same page number.



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(ITEM - 60) 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 - 70) TERM SUBSCRIBING CARRIER

The term "Subscribing Carrier" means carriers that are party to this tariff.

(ITEM - 80) CAR DEMURRAGE RULES AND REGULATIONS

All cars handled under this tariff will be subject to demurrage rules and charges.

(ITEM - 90) PAYMENT OF CHARGES IN CANADA

- A When the service associated with switching, other accessorial services (except special train service) and unabsorbed amounts of foreign line reciprocal switching charges published in this tariff is performed at a station in Canada, the charge associated therewith is stated in Canadian funds.
- B Charges for special train service will be tendered in the same funds as the associated line-haul freight billing.



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**CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)**

CREDIT TERMS AND SECURITY DEPOSIT



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**CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)**

**(ITEM - 1000) SECURITY DEPOSITS FOR PAYMENT OF DEMURRAGE AND STORAGE
CHARGES**

All Consignors, Consignees or agents thereof conducting business with a subscribing carrier, or on a subscribing carrier's property, will be required to apply for credit with the subscribing carrier

Credit will be granted solely at the discretion of the subscribing carrier



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ORIGINAL PAGE II-3**

**CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)**

(ITEM - 1010) SECURITY DEPOSITS FOR PAYMENT ACCESSORIAL CHARGES

A security deposit to insure payment of any accessorial charges that may accrue will be required from every Consignor, Consignee, or agent thereof who

- A Is not on the Subscribing Carrier's credit list, and
- B Fails to pay accessorial charges after specific written demand referring to this tariff provision

A deposit must be paid, by wire transfer, before any freight car is delivered to such Consignor, Consignee, or agent thereof for Loading or Unloading. A deposit on one unit of equipment is not transferable to another.

A deposit for each car shall be in the minimum amount of two hundred dollars (200.00) or up to the maximum amount of accessorial charges that accrued on any one car during the preceding twelve (12) months.

In the case of a Consignor, Consignee or agent thereof receiving multiple carloads for Loading or Unloading, the total amount required to be deposited shall not exceed the higher of the following:

- A \$10,000.00 (Ten thousand dollars), or
- B The amount of existing past due accessorial charges accrued by the Consignor, Consignee, or agent thereof.

The Subscribing Carrier will refund the balance of the deposit to the Consignor, Consignee, or agent thereof by the 5th day of the month following that in which the equipment is released to the Subscribing Carrier after deducting any and all unpaid accessorial charges.

Security deposits will no longer be required after the Consignor, Consignee or agent thereof either

- A is placed on Subscribing Carriers' authorized credit list, or
- B Has paid all outstanding accessorial charges and has given assurance to the satisfaction of the Carrier's credit office that future accessorial charges will be paid within the credit period prescribed in applicable tariffs.



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**CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)**

(ITEM - 1020) APPLICATION FOR CREDIT

Date ____/____/____

Company Name _____ Phone _____
(Area code & number)

D/B/A _____ For Past ____ Years

Address _____
(Street) (City) (State) (Zip)

Former Business Address (If Applicable)

Federal Tax ID Number _____

OWNERSHIP: ☐ Sole Owner ☐ Partnership ☐ Corporation

Date Started/Incorporation Date _____ Have you ever operated under a different name? Yes ___ No ___

If yes, give name and address _____

TRADE REFERENCES (Minimum of 3)

Name _____ Address _____ Phone _____ Acct
No. _____

Name _____ Address _____ Phone _____ Acct
No. _____

Name _____ Address _____ Phone _____ Acct
No. _____



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**CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)**

INDIVIDUAL PERSONAL GUARANTEE

Date _____
I, _____, residing at _____

I for and in consideration of your extending credit at my request to _____
(Name of Company)

(herein referred to as the "Company"), of which I am _____, hereby personally guarantee to you the
(Title)

payment at _____ in the State of _____ of any obligation of the Company and hereby agree to bind myself to pay you on demand any sum which may become due to you by the Company whenever the Company shall fail to pay the same. It is understood that this guaranty shall be a continuing and irrevocable guaranty and indemnity for such indebtedness of the Company. I do waive notice of default, non-payment and notice thereof and consent to any modification or renewal of the credit agreement hereby guaranteed.

WITNESS _____ GUARANTOR _____ DATE _____
(Signature) (Signature)
ADDRESS _____

JOINT PERSONAL GUARANTEE

Date _____
We, _____ and _____, husband and wife, residing at _____

_____ for and in consideration of your extending credit at my request to _____

_____ (therein after referred to as the "Company"), of which _____
(Name of Company) (Name)

is _____, hereby personally guarantee to you the payment at _____
(Title)

in the State of _____ of any obligation of the Company and we hereby agree to bind ourselves to pay you on demand any sum which may become due to you by the Company whenever the Company shall fail to pay the same. It is understood that this guaranty shall be a continuing and irrevocable guaranty and indemnity for such indebtedness of the Company. We do hereby waive notice of default, non-payment and notice thereof and consent to any modification or renewal of the credit agreement hereby guaranteed.

WITNESS _____ GUARANTOR _____ DATE _____
(Signature) (Signature)
WITNESS _____ GUARANTOR _____ DATE _____
(Signature) (Signature)



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

DEMURRAGE & STORAGE PROVISIONS



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1000) APPLICATION

This section applies to all customers served by the Subscribing Carrier's and covers all railroad and private marked freight car(s) held for or by the customer(s),
With the following exceptions

- A Private car(s), on private tracks, except as provided in Item 1060
- B Car(s) containing refused or unclaimed freight to be sold by Subscribing Carrier
- C Empty car(s) rejected as unsuitable for loading
- D Cars for loading or unloading of Subscribing Carrier's company material while held on tracks or private siding connecting therewith
- E Empty cars moving on own wheels under transportation charges as freight
- F Cars of railroad ownership, leased for storage of commodities while held on lessee's tracks
- G Cars specially equipped for handling welded railroad rail held for loading such rail
- H Cars covered by storage or hold charges
- I Cars assigned to shippers returned empty to point of assignment, to the extent storage rules apply



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1010) DEMURRAGE DEFINITIONS

Refer to the demurrage definitions at the end of this section



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ORIGINAL PAGE III-4**

**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1020) NOTIFICATION TO CONSIGNOR OR CONSIGNEE

- A** Subscribing Carrier will furnish the following notifications as indicated
 - 1** Cars for other than public delivery tracks
 - a** Notice of constructive placement if car(s) are held on Subscribing Carrier's tracks due to reasons attributable to the consignor or consignee
 - b** Delivery of car(s) upon tracks of consignee will constitute notice
 - c** When two or more parties, each performing their own switching, take delivery of cars from the same interchange track, notice will be given when cars are placed on the interchange track
 - 2** Cars for public delivery tracks
 - a** Notice will be given to the party entitled to receive notification when car(s) is actually placed
 - 3** Cars stopped in transit
 - a** Notice will be given to the consignor, consignee or owner responsible for the car being stopped upon arrival of the car at the point of stoppage
 - 4** Refused loaded car(s)
 - a** When a loaded car is refused at destination, Subscribing Carrier will give notice of such refusal to the consignor or owner
- B** Notification may be given in writing or electronically, and will contain the following
 - 1** Car initials and number
 - 2** If lading transferred en route, the initials and number of the original car
 - 3** Commodity
 - 4** Date and time



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ORIGINAL PAGE III-5**

**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1030) NOTIFICATION TO SUBSCRIBING CARRIER

- A. Subscribing Carrier must receive complete forwarding instructions by fax email or EDI before a car will be considered released**
- B. When electronic or mechanical devices are used to furnish notification to the Subscribing Carrier, the recorded date and time that the instructions are received will govern**



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1040) CAR(S) HELD FOR LOADING

TENDER:

Shipper Assigned Car(s)

- A The notification that an empty car is available**

Other than Shipper Assigned Car(s)

- A The notification, actual or constructive placement, of empty car(s) placed on orders of the consignor**
- B Cars held by Subscribing Carrier will be constructively placed on "order date" if the car order is not cancelled prior to the order date or, if placement instructions have not been received by Subscribing Carrier**

RELEASE

- A Date and time forwarding instructions are received**
- B Car(s) placed on the interchange tracks of a consignor, who performs its own switching, must be returned to the interchange track for release**
- C Improperly loaded or overloaded car(s) at origin will not be considered released until the load has been adjusted properly**
- D A car to be held for official grading or inspection at origin will not be considered released until such time as the grading and inspection is complete**

COMPUTATION

- A Time will be computed from the first 0001 hours after tender until the release**
- B If the car is placed earlier than the date of the order, time will be computed from the first 0001 hours after the order date until it is released**
- C When the same car is unloaded and reloaded time will be computed from the first 0001 hours after advice is received that the car(s) is empty until the car(s) is released**
- D When the same car is unloaded and reloaded, empty release information must be furnished. If not furnished, demurrage will continue on the car until the forwarding instructions are received**



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1050) CAR(S) HELD FOR COMPLETE UNLOADING

TENDER:

The notification, actual or constructive placement, of a loaded car(s)

RELEASE:

- A Date and time that the railroad receives advice that the car(s) is empty
- B Car(s) placed on the interchange tracks of a consignee who performs its own switching must be returned to the interchange track for release
- C When the same car is unloaded and reloaded, empty release information must be furnished at the time the car is made empty. If not furnished, demurrage will continue on the car until the forwarding instructions are received

COMPUTATION

Time will be computed from the first 0001 hours after tender until release



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

**(ITEM – 1060) PRIVATE CAR(S) AND RAILROAD CAR(S) HELD FOR OTHER THAN
LOADING OR UNLOADING**

Applies to car(s) held

- A On orders of consignor or consignee
- B Awaiting proper disposition from the consignor or consignee
- C As a result of conditions attributable to consignor or consignee

DISPOSITION

That information, including forwarding instructions or empty release information, that allows the railroad to either tender or release the car from the consignor's or consignee's account

TENDER

The notification, actual or constructive placement of a loaded car(s)

RELEASE

Date and time that the railroad receives advice that the car is empty, or that forwarding instructions are received



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

COMPUTATION

Time will be computed from the first 0001 hours

- A. After tender, until release, on car(s)
 - 1 Diverted
 - 2 Empty for loading – ordered and not used (other than a rejected car)
 - 3 Partially unloaded
 - 4 Reconsigned
 - 5 Reshipped
 - 6 Stopped in transit
- B After car(s) are received by SUBSCRIBING CARRIER until date of disposition on
 - 1 Car(s) received from connecting carriers
 - 2 Loaded private car(s) returned to railroad tracks
- C. After tender until date of refusal on
 - 1 Refused loaded car(s) (consignee)
- D After tender until date of disposition on
 - 1 Refused loaded car(s) (consignor)
- E After tender until release or placement on private tracks on
 - 1 Loaded private car(s) – while held on railroad tracks



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1070) HAZARDOUS MATERIALS

The shipper of any hazardous commodity shipped via the Subscribing Carrier shall indemnify the Subscribing Carrier and hold the Subscribing Carrier harmless for any and all loss, liability or cost whatsoever that the Subscribing Carrier may incur or be held responsible for, to the extent that such liability is due to, or arising from, defects in failure of shipper's cars and equipment due to shipper's failure to conduct proper or appropriate pre-shipment inspection of the cars as described in 49 CFR Sec 173.31 (b) or mis-identification of commodity shipped

Pursuant to 49 CFR § 174.16, Consignees are required to accept delivery of carload traffic of hazardous materials within 48 hours after notice of arrival has been sent or given to the Consignee. Consignees that anticipate that they will not routinely be able to accept delivery in a timely fashion should make alternative arrangements for storage of cars. Subscribing Carrier's do not hold themselves out to provide storage of cars containing hazardous materials.

Explosives are defined as Class A, B, and C Explosives as named in Part 172, Commodity List, Tariff Bureau of Explosives (BOE) 6000-Series

Hazardous Materials are defined as "Hazardous Wastes" and "Hazardous Substances" as named in Hazardous Materials Regulations of the U. S. Department of Transportation in 40 Code of Federal Regulations (CFR) 260 through 263 and 49 CFR 171.8 or successor thereof



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1080) CLAIMS

A claim must be submitted in writing to the name and number on the bottom of the freight bill within thirty (30) days from the date that the bill for demurrage is rendered. The conditions for submitting the claim should be fully stated. Any claim not filed within thirty (30) days from the date that the demurrage bill is rendered will be declined.

If the Subscribing Carrier fails to respond to a claim within thirty (30) days from the date that the claim was submitted, the Subscribing Carrier will accept the dispute as submitted and credit the account for the value of the disputed amount.

MISSED SWITCH ALLOWANCE

An allowance for missed switching will be made for cars held under Constructive Placement Notification when the Subscribing Carrier is unable to place the cars in response to the customer's orders.

STRIKE INTERFERENCE

When it is impossible to load, unload, receive car(s) from or make car(s) available to the Subscribing Carrier because of strike interference at the point where the loading or unloading is to occur, demurrage days will be charged at the rate of \$25.00 during the strike interference period, provided that:

- A. The disruption exceeds ten (10) days in duration during one calendar month.
- B. The provisions of this item will not apply to:
 - a. Inbound car(s) when waybills are dated four (4) days after the beginning of strike interference.
 - b. Car(s) for loading, when ordered after the beginning and prior to the ending of strike interference.

WEATHER INTERFERENCE

- A. If the operations of the consignor or consignee are disrupted due to earthquakes, tornadoes, hurricanes, floods or heavy snow, the demurrage directly chargeable thereto, will be eliminated, provided the disruption exceeds (2) days in duration.
- B. Frozen lading in open-top hopper car(s) (Tariff ICC RER 6411 car type code "H" or "K")



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

RAILROAD ERROR.

- A. If through railroad error, demurrage charges are assessed, demurrage will be adjusted to the amount that would have accrued if not for the error
- B Bunching and run-around of car(s) will not be considered as a railroad error



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1090) NON-CHARGEABLE DAY

All Sundays and holidays

Holidays shall include the following

In the United States

New Year's Day - January 1
Presidents Birthday - Third Monday of February
Good Friday - Friday before Easter Sunday
Memorial Day - Last Monday of May
Independence Day - July 4
Labor Day - First Monday of September
Thanksgiving Day - Fourth Thursday of November
Friday after Thanksgiving – Fourth or Fifth Friday of November
Christmas Eve - December 24
Christmas Day - December 25
New Year's Eve - December 31

In Canada

New Year's Day - January 1
Good Friday - Friday before Easter Sunday
Victoria Day – (Monday preceding May 25)
Canada Day - July 1
Civic Holiday - First Monday of August
Labour Day - First Monday of September
Thanksgiving Day - Second Monday of October
Remembrance Day - November 11
Christmas Day - December 25
Boxing Day - December 26

When these dates occur on a Sunday the following Monday will be observed as the holiday



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

(ITEM – 1100) PAYMENT AND CREDIT TERMS

Unless otherwise advised in writing, demurrage charges will be assessed against the online consignor at origin or consignee at destination

When for reasons other than Subscribing Carrier's error, consignor/consignee fails to pay assessed demurrage as provided in the Subscribing Carrier's demurrage tariff, the Subscribing Carrier may assess an additional charge equal to the greater of an amount not to exceed two (2) percent per month of the unpaid charge or the highest rate allowed by law



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

The following definitions define and govern the provisions outlined in this tariff

ACTUAL PLACEMENT – When a car(s) is placed in an accessible position for loading or unloading or, at a point designated by the consignor or consignee

CONSIGNEE – The party to whom a shipment is consigned, or the party entitled to receive the shipment

CONSIGNOR – The party in whose name a car(s) is ordered, or the party who furnishes forwarding directions

CONSTRUCTIVE PLACEMENT – When, due to some disability on the part of the consignor or consignee a car cannot be placed for loading or unloading and is placed elsewhere, it is considered as being under constructive placement and subject to demurrage rules and charges, the same as if it were actually placed at the designated point

DEMURRAGE DAY – A twenty-four (24) hour period (calendar day), or part thereof, commencing 0001 after tender

DISPOSITION – Information, including forwarding instructions or release, that allows the railroad to either tender or release the car(s) from the consignor's or consignee's account

DIVERSION – An order provided by the consignor instructing that a car(s) be delivered to a location other than the one indicated on the original forwarding instructions

EMPTY CAR(S) ORDERED AND NOT USED – Empty car(s) placed for loading as ordered, and subsequently released without being used in transportation service

EMPTY RELEASE INFORMATION – Advice provided by the consignee to authorized personnel, that the car(s) is unloaded and available. This information must include the identity of the consignee, party furnishing information, and the car(s) initial and number

FORWARDING INSTRUCTIONS – Shipping instructions provided at the point of loading that contain all of the necessary information to transport the shipment to its final destination

LEASE TRACK – Track(s) assigned to a user through a written agreement. Lease tracks will be treated the same as private tracks

LOADING – The complete or partial loading of a car(s) in conformity with loading and clearance rules and, the furnishing of forwarding instructions

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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

LOADED CAR(S) – A car(s) that is completely or partially loaded

NOTIFICATION – When required, written or verbal notification will be furnished to the parties entitled to receive notice that the car(s) is available for loading, unloading, or otherwise impacted by demurrage provisions

ORDER DATE – The date that the consignor requests empty car(s) to be furnished for loading

OTHER THAN PUBLIC DELIVERY TRACK – Any trackage assigned for individual use, including privately owned or leased tracks

PARTIAL UNLOADING – The partial unloading of a car(s) and furnishing of the proper forwarding or handling instructions

PRIVATE CAR(S) – A car(s) bearing other than railroad reporting marks that is not railroad-controlled

PRIVATE TRACK – Tracks that are not owned or leased by the railroad

PUBLIC DELIVERY TRACK – Track that is open to the general public for loading and unloading

RAILROAD-CONTROLLED CAR(S) – A car(s) bearing other than railroad reporting marks that is either leased or controlled by a railroad

RECONSIGNMENT – An order provided by consignor to bill a car(s) to other than the original consignee (An order to turn over the car(s) to another party that does not require any additional movement of the car(s), is not a reconsignment)

REFUSED LOADED CAR(S) – When the original loaded car(s) is refused at destination without being unloaded

RELOADING – When a car(s) is held for loading after being released as an empty

RESHIPMENT – A new document by which the entire original shipment is forwarded in the same car(s) to another destination

SERVING YARD – A classification yard where the local train serving the customer originates

SHIPPER ASSIGNED CAR(S) – Specific empty car(s) assigned to a particular shipper for their exclusive use



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**DEMURRAGE AND STORAGE PROVISIONS – SECTION III
(ORIGINAL)**

STOPPED IN TRANSIT – When a car(s) is held en route due to any condition attributable to the consignor, consignee, or owner

TENDER – The notification, actual or constructive placement, of an empty or loaded car(s)

TIME – Local time is applicable and is expressed on the basis of the 24-hour clock
Example: 12 01 AM is expressed as 0001 Hours

UNLOADING – The complete unloading of a car(s), and the advice received from the consignee that the car(s) is empty and available to the railroad



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ORIGINAL PAGE IV-1**

**RATE PUBLICATION INFORMATION – SECTION IV
(ORIGINAL)**

RATE PUBLICATION INFORMATION

Prices are subject to increase, change or expiration. Any change to the prices will be shown in supplements to or a reissue of Subscribing Carrier's public price documents.
Except as otherwise noted, ancillary charges contained in other documents will apply.



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**RATE PUBLICATION INFORMATION – SECTION IV
(ORIGINAL)**

(ITEM – 1000) CURRENCY

Prices are stated and payable in U S funds unless shipment is wholly within Canada, then price is stated in Canadian funds

(ITEM – 1001) ALTERNATION / NONALTERNATION OF PUBLICATION

Rail Transportation Contracts take precedence over prices published herein for the same commodities over the same routes

Prices published in this public Price List will alternate with prices, with similar price conditions, published in other public price documents

(ITEM – 1002) ALTERNATION OF PRICES

Prices in a Subscribing Carrier's public price publication will alternate with other prices, with similar price conditions, in that publication, unless otherwise specified in an alternation provision documented in the Subscribing Carrier's public price documents

(ITEM – 1003) CONFLICT OF RULES

The rules in this document will take precedence over rules contained in other separate publications when shipments move under the prices contained in a Subscribing Carrier's public price document

(ITEM – 1004) DESCRIPTION OF COMMODITIES AND INSPECTION

The description of commodity(s) on the Shipping Document will conform to the Standard Transportation Commodity Code (STCC) and show the STCC Number(s) When different prices are provided for the same commodity(s) according to the type of packing or package, the type of packing or package should be shown

The Carrier(s) reserve the right to inspect shipments to determine applicable prices When the commodity(s) are found to be incorrectly described, freight charges will be collected according to the proper description



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**RATE PUBLICATION INFORMATION ~ SECTION IV
(ORIGINAL)**

(ITEM – 1005) EMERGENCY ROUTING

When in the case of pronounced traffic congestion (not an embargo), washout, wreck or other similar emergency, or through Carriers' error Carriers forward shipments via other junction points of the same Carriers or via the lines of other Carriers party to the Price List, the price to apply will be that specified in this Price List, but not higher than the price applicable via the route of movement

(ITEM – 1006) FUEL SURCHARGE

Fuel surcharges as provided for in the Subscribing Carrier's Fuel Surcharge Publication as of the date of shipment tender shall apply

(ITEM – 1007) INTERNAL ROUTING

Prices or routes published herein, to, from or via stations on Subscribing Carrier while on the rails of the Subscribing Carrier, are applicable only over the shortest distance between the stations where transportation is performed by the Subscribing Carrier, except as otherwise specifically authorized by other agreement(s), or unless handled out of route for Carrier's convenience

(ITEM – 1008) INCORPORATION OF DOCUMENTS

Prices subject to rules and conditions of Railway Equipment Register, STCC 6001, OPSL 6000, UFC 6000

(ITEM – 1009) LOADING AND UNLOADING

Consignors and Consignees will load and unload cars

Consignors must load all cars in accordance with the Association of American Railroads' Circular 42 Series and appropriate AAR commodity loading publications and revisions thereof, or as approved by Rail Carriers involved. All unused securement devices must be returned to and stored in the same car from which removed, and devices must be secured. To inquire about loading and unloading requirements for a Subscribing Carrier, contact that Carrier's sales office



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Temporary blocking, flooring or lining, corrugated fibreboard or plywood separators or dividers, standards, strips, stakes or similar bracing or supports (hereafter referred to as dunnage), bulkheads, partitions, temporary doors or door protection, not constituting a part of the car, when required to protect and make freight secure for shipment, will be furnished and installed by Consignor at his expense

Transportation charges for dunnage, when made, shall be at the price applicable to the freight which it accompanies

Consignee is responsible for unloading all material from the rail car. This includes lading, dunnage, loading or unloading enhancement materials, or any other miscellaneous debris. Failure to comply with these rules will result in Consignee being charged for all associated removal costs (minimum of \$150 to a maximum of \$500 per car)

When equipment is found to be misloaded or overloaded, the Consignor will be given the opportunity to correct the situation at the Consignor's expense. Consignor is responsible for all damage to freight, rail equipment, or both caused by misloading or overloading.

Consignee is required to return and secure the same car, all railroad owned securement devices removed to complete unloading, securely lock all bulkhead doors, return wooden doors used in transportation of bulk commodities and close all exterior doors and hatches.

(ITEM - 1010) LOSS AND DAMAGE LIABILITY OF CARRIER

The subscribing carrier shall be liable for claims only if Carrier negligence is shown by the claimant to be the proximate cause of the loss or damage. Carrier liability for shortage of goods shall be conditioned upon evidence of unauthorized entry into the rail car while the same is in the possession of the Carriers.

Carrier shall not be liable for special or consequential damages, including market decline claims, products deterioration, or other such claims based on delay in transportation, nor shall Carrier be liable for punitive damages or attorney fees.

Carrier liability for damages or shortages is contingent upon Carrier or its agent receiving immediate notification of all noted visible damages and/or shortages discovered during the unloading of a rail car. Damage or shortages discovered other than between 8 00 A M and 5 00 P M, Monday through Friday, are subject to reporting no later than 24 hours following unloading from rail car, Saturdays, Sundays, and Holidays excluded. Concealed damage must be reported immediately upon discovery and made available for inspection at point of delivery.



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Failure of the shipper to comply with packaging requirements of the Uniform Freight Classification and AAR loading provisions shall be a defense to any claim for damage. Any claim for loss or damage shall be filed within nine (9) months of the date the shipment was delivered, or in the case of failure to make delivery, then within nine (9) months after a reasonable time for delivery. Any lawsuit or other action for the enforcement or liability for loss of damage shall be instituted within one year after the railroad first declines the claim.

(ITEM – 1011) ONE CONSIGNOR, CONSIGNEE, AND DESTINATION

The name of only one Consignor, one origin, one Consignee and one destination shall appear on a Shipping Document. The Shipping Document may also specify the name of a third party that will be billed for the freight charges or a party at the same destination to be notified of the arrival of the shipment.

(ITEM – 1012) OVERCHARGE CLAIMS

Claims for overpayment of charges must be in writing and received by Carriers no later than three years after delivery or tender of delivery of shipment. Any lawsuit for overpayment of charges must be filed within

- A three years after delivery or tender of delivery of shipment or
- B six months from the date of Carriers' disallowance of the last timely filed claim, whichever occurs later

(ITEM – 1013) PACKAGING
(applicable on regulated commodities)

Shipper must package all shipments governed by this Price List in accordance with Rules 5, 40, 41 and 51 of the Uniform Freight Classification, UFC 6000 Series.

(ITEM – 1014) PAYMENT OF CHARGES EXTENSION OF CREDIT

Customers not on credit must pay freight and other accrued transportation charges prior to transportation of a shipment if it is tendered "prepaid" and prior to placement of a shipment if it is tendered "collect".

Freight and other accrued transportation charges may not be offset by overcharge, freight damage or other claims.



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RailAmerica Inc reserves the right to cancel the credit of any party and place the responsible party (Consignee, Consignor, or other billed party) on a cash basis. If the party responsible for freight charges has not established credit with RailAmerica, or has their credit cancelled by RailAmerica, Inc, pursuant to 49 CFR, Section 1320.2, they will be subject to Liquidated damages interest, in addition to the Liquidated damages interest shall not apply in instance of clear clerical error on the part of the Subscribing Carrier.

*Liquidated damages interest' means 20% of the charges due

(ITEM – 1015) PRICE TERMS AND CONDITIONS

Subscribing Carrier agrees to provide rail transportation service at the rates and subject to the additional terms and conditions set forth in the public price documents of the Subscribing Carrier.

**(ITEM – 1016) PROPORTIONAL APPLICATION OF PRICES
(applicable only to Rule 11 rates)**

When Price List proportional prices are used to construct through charges beyond the geographic scope of this publication on a through Shipping Document, the Price List charges will be assessed and billed separately by the Subscribing Carrier or other participating Carriers, as appropriate. Shipping Documents on such rebilled shipments must indicate that the shipment is made under Railway Accounting Rule 11. Industry agrees to specify on each Bill of Lading and requests origin Carrier to place the following statement on the waybill:

"Charges to Carriers which are party to this Price List are separately collected pursuant to Railway Accounting Rule 11."

(ITEM – 1017) REJECTED, REFUSED, RETURNED SHIPMENTS

Unless restricted, shipments reaching destination but unloaded (for reasons other than the Subscribing Carriers' errors), may be returned to the original shipping point via the reverse route at the same price and conditions, unless a lower price exists for such return shipments.

(ITEM – 1018) SHIPPING DOCUMENT

Prior to tender of freight, Consignor shall execute a Shipping Document similar in content to the Uniform Bill of Lading. However, this Price List shall override any inconsistent terms in the Shipping Document.