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July 8, 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(b)(4) Security Deposit for
Demurrage Charges, Missouri & Northern Arkansas Railroad Company,
Inc*

Dear Acting Secretary Quinlan:

Enclosed for e-filing is a Motion to Dismiss by the Missouri & Northern Arkansas
Railroad Company, Inc

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

MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC
MOTION TO DISMISS

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Attorneys for MISSOURI & NORTHERN
ARKANSAS RAILROAD
COMPANY, INC.

Dated: July 8, 2008

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

MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.
MOTION TO DISMISS

The Missouri & Northern Arkansas Railroad Company, Inc. ("MNA") moves the Surface Transportation Board (the "Board") to dismiss the Petition for Investigation 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 Board ordered that "MNA is enjoined from applying to petitioners the security deposit provisions of its new demurrage tariff until further order of the Board."¹ In light of the *Decision*, MNA has issued a revised Tariff RA-1000, Item 1010 (the "Revised Tariff"), which deletes the requirement that a consignor, consignee, or agent thereof, who has been denied credit must establish a security deposit with the MNA in the amount of existing past due accessorial charges accrued. MNA has substantially reduced any potential security deposit from the amount

¹ *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.*, STB Docket No. 42107 (STB served June 30, 2008) at 5 (the "*Decision*").

of past due accessorial charges to the lesser of the amount of the past accessorial charges or \$25,000 in the Revised Tariff. The Revised Tariff is contained in Exhibit 1

In the *Decision* at __, the Board stated that: "The fundamental question underlying this petition is whether MNA can impose a security deposit provision that, in the aggregate, would require these two related small shippers to post a nearly \$400,000 security deposit with MNA as a precondition for continued rail service." MNA has resolved this issue by issuing the Revised Tariff. The maximum security deposit required under the Revised Tariff is \$25,000 per Consignor, Consignee or agent thereof, less than the \$50,000 per company that has been found reasonable.²

MNA has revised the tariff that could cause potential harm to the Petitioners to eliminate the harm in compliance with the Board's guidance. MNA contends that there is no longer a case or controversy for the Board to resolve. The tariff has been revised to comport with the *Decision*. The Revised Tariff does not require a Consignor, Consignee or agent thereof to post a bond equivalent to the amount of accessorial charges owed. Instead, the Revised Tariff has capped the amount of a security deposit at \$25,000, regardless of the amount owed, and permitted a lower security deposit if the amount owed is below \$25,000. Petitioners claim that the uncapped security deposit is an unreasonable practice is moot.³

CONCLUSION

The Revised Tariff has eliminated the requirement that Petitioners claim is an unreasonable practice. The tariff Petitioners requested the Board to investigate to see if it

² *Rail General Exemption Authority – Miscellaneous Agricultural Commodities – Petition of G&T Terminal Packaging Co., Inc., et al., to Revoke Conrail Exemption*, ICC Ex Parte No. 346 (Sub-No. 14A) (ICC served June 13, 1989), and the *Decision* at 4

³ *National Solid Wastes Management Association, et al. – Petition for Declaratory Order*, STB Finance Docket No. 34776 (STB served March 10, 2006) at 4

involved an unreasonable practice has been revised to eliminate the practice. Therefore the relief requested by Petitioners is moot and MNA respectfully requests the Board to dismiss the Petition as moot.

Respectfully submitted,



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ARKANSAS RAILROAD
COMPANY, INC.

Dated July 8, 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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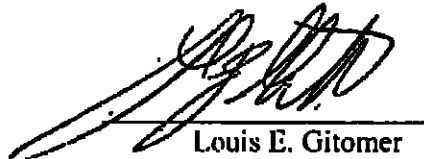

Louis E. Gitomer
July 8, 2008

EXHIBIT 1—REVISED TARIFF RA-1000, ITEM 1010



**RailAmerica
General Tariff**

**RA 1000
1st REVISED 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 lesser of the amount of existing past accessorial charges accrued by the Consignor, Consignee, or agent thereof due or \$25,000.

Once the Consignor, Consignee, or agent thereof is placed on Subscribing Carriers' authorized credit list, or 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, 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.