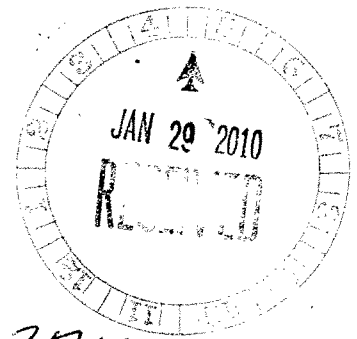


January 29, 2010

FEE RECEIVED

JAN 29 2010

**SURFACE
TRANSPORTATION BOARD**



226374

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

RE: Finance Docket No. *NOR 42117* *Cargill, Inc., Exxon Mobile Corporation, Jones-Hamilton Co., PPG Industries, Inc., and Reagent Chemical and Research, Inc. v. Aberdeen and Rockfish Railroad Company, Baltimore and Ohio Chicago Terminal Railroad Company, and BNSF Railway Company et. al*

Dear Ms. Brown:

Enclosed for filing please find the original and ten (10) copies of the of the Complaint and Petition for Mediation of Cargill, Inc., Exxon Mobile Corporation, Jones-Hamilton Co., PPG Industries, Inc., and Reagent Chemical and Research Inc. A check for \$21,100 is also attached to cover the filing fee required by 49 C.F.R. § 1002.2. An additional copy of the Complaint is included for date-stamping and return to the undersigned via messenger.

Sincerely,

Jeffrey O. Moreno
Nicholas J. DiMichael
Counsel for
Cargill Inc.
Exxon Mobile Corporation
Jones-Hamilton Co.
PPG Industries, Inc.
Reagent Chemical and Research, Inc.

FILED

JAN 29 2010

**SURFACE
TRANSPORTATION BOARD**

Enclosures

**ENTERED
Office of Proceedings**

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**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

CARGILL, INC.
EXXON MOBIL CORPORATION
JONES-HAMILTON CO.
PPG INDUSTRIES, INC.
REAGENT CHEMICAL AND RESEARCH, INC.

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY
BALTIMORE AND OHIO CHICAGO TERMINAL
RAILROAD COMPANY
BNSF RAILWAY COMPANY
BOSTON AND MAINE CORPORATION
BUFFALO AND PITTSBURGH RAILROAD, INC.
CANADIAN NATIONAL RAILWAY
CANADIAN PACIFIC RAILWAY
CEDAR RAPIDS AND IOWA CITY RAILWAY COMPANY
CENTRAL WASHINGTON RAILROAD COMPANY
CSX TRANSPORTATION INC.
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
GARY RAILWAY COMPANY
INDIANA & OHIO RAILWAY COMPANY
IOWA, CHICAGO & EASTERN RAILROAD CORPORATION
IOWA NORTHERN RAILWAY COMPANY
KANSAS CITY SOUTHERN RAILWAY COMPANY
MAINE CENTRAL RAILROAD COMPANY
MONTANA RAIL LINK, INC.
NEW YORK, SUSQUEHANNA AND WESTERN
RAILWAY CORP.
NORFOLK SOUTHERN RAILWAY COMPANY
PAN AM RAILWAYS INC.
PORTLAND TERMINAL COMPANY
ROCHESTER AND SOUTHERN RAILROAD, INC.
SANDERSVILLE RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY CO.
UNION PACIFIC RAILROAD COMPANY
ASSOCIATION OF AMERICAN RAILROADS
RAILINC

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Docket No. NOR 42117

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COMPLAINT

Come now Cargill, Inc., Exxon Mobil Corporation, Jones-Hamilton Co., PPG Industries, Inc., and Reagent Chemical and Research, Inc. (hereinafter each a "Complainant" and collectively "Complainants"), and file this Complaint against Defendants, Aberdeen and Rockfish Railroad Company; Baltimore and Ohio Chicago Terminal Railroad Company; BNSF Railway Company; Boston and Maine Corporation; Buffalo and Pittsburgh Railroad, Inc.; Canadian National Railway; Canadian Pacific Railway; Cedar Rapids and Iowa City Railway Company; Central Washington Railroad Company; CSX Transportation Inc.; Elgin, Joliet and Eastern Railway Company; Gary Railway Company; Indiana & Ohio Railway Company; Iowa, Chicago & Eastern Railroad Corporation; Iowa Northern Railway Company; Kansas City Southern Railway Company; Maine Central Railroad Company; Montana Rail Link, Inc.; New York, Susquehanna and Western Railway Corp.; Norfolk Southern Railway Company; Pan Am Railways Inc.; Portland Terminal Company; Rochester and Southern Railroad, Inc.; Sandersville Railroad Company; Springfield Terminal Railway Co.; Union Pacific Railroad Company; the Association of American Railroads; and Railinc. The Complainants bring this Complaint pursuant to 49 U.S.C. 10702, 10704, 11121, 11122, 11701 and 11704, and 49 C.F.R. Part 1111. The Complainants request that the Surface Transportation Board ("STB" or "Board") determine the reasonableness of certain rail practices as set forth in this Complaint; and prescribe reasonable rail practices for the future. The Complainants also ask the Board to award damages, plus interest, to the extent that the Complainants have suffered or paid charges for unreasonable practices as described in this Complaint.

In support of this Complaint, the Complainants state as follows:

The Parties

1. Cargill, Inc. ("Cargill") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 15615 McGinty Road West, Wayzata, Minnesota 55391. Cargill is an international provider of food, agricultural and risk management products and services.

2. Exxon Mobil Corporation is organized under the laws of the State of New Jersey, with its principal place of business located at 5959 Las Colinas Boulevard, Irving, TX 75039. Exxon Mobil manufactures a wide variety of finished products including fuels, lubricants, waxes, greases, industrial oils, and asphalt, as well as chemicals used to manufacture products such as automotive components, tires, packaging materials, plastic containers, films, fabrics, consumer products, appliances, insulation, and adhesives.

3. Jones-Hamilton Co. ("Jones-Hamilton") is a corporation organized under the laws of the State of Ohio, with its principal place of business located at 30354 Tracy Road, Walbridge, Ohio, 43465. Jones-Hamilton manufactures and markets chemicals that are used in metal surface cleaning, food processing, natural gas and oil production, animal agriculture, animal feed, and water treatment.

4. PPG Industries, Inc. ("PPG") is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business located at One PPG Place, Pittsburgh, Pennsylvania 15272. PPG is a global supplier of paints, coatings, optical products, specialty materials, chemicals, glass, and fiber glass.

5. Reagent Chemical and Research, Inc. ("Reagent") is a corporation organized under the laws of the State of Delaware, with its principal place of business located at 115 US Highway 202, Ringoes, New Jersey 08551. Reagent is an international provider of chemicals to

the food, steel processing, energy recovery and industrial sectors of the United States, Canada, and Mexico.

6. Each of the Complainants owns, leases, operates, supplies, or otherwise provides or controls tank cars subject to mileage equalization requirements set forth in Freight Tariff RIC 6007-Series (the "Tariff"), Item 187 and Item 190.

7. Defendant Aberdeen and Rockfish Railroad Company has a principal mailing address, which is P.O. Box 917, Aberdeen, North Carolina 28315.

8. Defendant Baltimore and Ohio Chicago Terminal Railroad Company is owned by CSX Transportation Inc., which has a principal place of business that is located at 500 Water Street, Jacksonville, Florida 32202.

9. Defendant BNSF Railway Company has a principal place of business that is located at 2650 Lou Menk Drive, P.O. Box 961057, Fort Worth, Texas 76161.

10. Defendant Buffalo and Pittsburgh Railroad, Inc. is owned by Genesee & Wyoming Company, which has a principal place of business that is located at Suite 200 1200-C Scottsville Road, Rochester, New York 14624.

11. Defendant Boston and Maine Corporation has a principal mailing address, which is: 1700 Iron Horse Park No. Billerica, Massachusetts 01862-1692.

12. Defendant Canadian National Railway has a principal place of business that is located at 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9.

13. Defendant Canadian Pacific Railway has a principal place of business that is located at Suite 500 Gulf Canada Square, 401 9th Avenue, SW, Calgary, AB T2P 4Z4.

14. Defendant Rapids and Iowa City Railway Company has a principal place of business that is located at 2330 12th Street SW Cedar Rapids, IA 52404.

15. Defendant Central Washington Railroad Company has a principal place of business that is located at 111 University Parkway, Ste. 200, Yakema, WA 98901.

16. Defendant CSX Transportation Inc. has a principal place of business that is located at 500 Water Street Jacksonville, FL 32202.

17. Defendant Elgin, Joliet and Eastern Railway Company is owned by Canadian National Railway Company, which has a principal place of business that is located at 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9.

18. Defendant Gary Railway Company is located at One North Buchanan Street, Gary, Indiana 46402. Gary Railway Company is owned by Transtar Inc., which has a principal place of business located at 1200 Pennsylvania Avenue, Suite 300 Pittsburgh, Pennsylvania 15222.

19. Defendant Indiana and Ohio Railway Company has a principal place of business that is located at 2856 Cypress Way, Cincinnati, Ohio 45212. Indiana and Ohio Railway Company is owned by Rail America Inc., which has a principal place of business that is located at 7411 Fullerton St, Suite 300, Jacksonville, Florida 32256.

20. Defendant Iowa, Chicago & Eastern Railroad Corporation is owned by Dakota, Minnesota & Eastern Railroad Corporation, which has a principal place of business that is located at 140 N. Philips Ave., Sioux Falls, DC 57104.

21. Defendant Iowa Northern Railway Company has a principal mailing address that is located at 122 North 2nd Street, P.O. Box 640, Greene, IA 50636.

22. Defendant Kansas City Southern Railway Company has a principal place of business that is located at 427 West 12th Street, Kansas City, MO 64121.

23. Defendant Maine Central Railroad Company, which has a principal mailing address, which is: 1700 Iron Horse Park No. Billerica, Massachusetts, 01862.

24. Defendant Montana Rail Link, Inc. has a principal mailing address, which is: PO Box 16390, 101 International Way, Missoula, Montana 59808.

25. Defendant New York, Susquehanna and Western Railway Corp. has a principal place of business that is located at One Railroad Avenue, Cooperstown, New York 13326.

26. Defendant Norfolk Southern Railway Company has a principal place of business that is located at Three Commercial Place, Norfolk, Virginia 23510.

27. Defendant Pan Am Railways Inc. has a principal mailing address, which is: 1700 Iron Horse Park No. Billerica, Massachusetts 01862.

28. Defendant Portland Terminal Company has a principal mailing address, which is: 1700 Iron Horse Park No. Billerica, Massachusetts 01862.

29. Defendant Rochester and Southern Railroad, Inc. is owned by Genesee & Wyoming Company, which has a principal place of business that is located at Suite 200, 1200-C Scottsville Road, Rochester, New York.

30. Defendant Sandersville Railroad Company has a principal mailing address, which is: P.O. Box 269, Sandersville, Georgia 31082.

31. Defendant Springfield Terminal Railway Co. has a principal mailing address, which is: 1700 Iron Horse Park No. Billerica, Massachusetts 01862.

32. Defendant Union Pacific Railroad Company has principal place of business that is located at stop 1580, 1400 Douglas Street, Omaha, Nebraska 68179.

33. The Defendant parties listed in paragraphs 7 through 32 are hereinafter collectively referred to as the "Defendant Railroads". The Defendant Railroads are common

carriers by rail that engage in the transportation of property in interstate and intrastate commerce. Each of these Defendant Railroads is a "Participating Carrier" named in the Tariff, including Items 187 and/or 190 (see Items 2.10 and Item 35 of the Tariff); transports products in tank cars subject to equalization of mileage on tank cars of private ownership under Item 187; and/or handles empty tank cars under Item 190 of the Tariff for one or more of the Complainants.

34. Defendant Association of American Railroads ("AAR") is located at 50 F Street, N.W., Washington, D.C. 20001. AAR is named in the Tariff as the entity billing and collecting, on behalf of the Participating Carriers, certain charges at issue in this Complaint. See Tariff Item 187.

35. Defendant Railinc is located at the Highwoods Centre at Weston, 7001 Weston Parkway, Suite 200, Cary, North Carolina 27513. Railinc is the listed Agent of the Defendant Railroads in connection with Freight Tariff RIC 6007-Series. In addition, on information and belief, Railinc performs the duties assigned in the Tariff to the AAR.

Description of Tariff Provisions at Issue

36. Railroads must compensate the owners and/or lessees of private tank cars for the use of such cars by paying a per-mile charge, or "mileage allowance." In its decision in Ex Parte No. 328, *Investigation of Tank Car Allowance System*, 3 I.C.C.2d 196 (1986) and in prior related decisions, including the decision served June 15, 1979 ("*Tank Car Decisions*") , the Interstate Commerce Commission approved an agreement between carriers and private tank car owners that defines the calculation, payment, and other terms of the mileage allowance system. The *Tank Car Decisions* provide a guiding framework for the 6007 Tariff series that governs payment calculation and procedures, including a formula used to determine the mileage allowance. Under this system, after calculating mileage for loaded and empty car movements, a

comparison is made between loaded and empty mileage using a ratio of 106%. If in a calendar year the aggregate empty mileage accumulated by all tank cars bearing the same reporting mark exceeds the aggregate loaded mileage by more than 6%, a penalty to the owner of the reporting mark may accrue. This system is referred to in the Tariff as "equalization of mileage on tank cars of private ownership" or colloquially as "mileage equalization." See Tariff, Item 187.

37. Pursuant to the Tariff, carriers must return empty cars to the preceding origin by the reverse route of the preceding loaded movement, or exclude excess empty miles accrued by departing from the reverse route of the loaded movement, other than for carrier convenience. Specifically, under the *Tank Car Decisions* and the Tariff, if the rail carrier takes a longer route back to the origin for "railroad convenience," then the excess empty miles may be included in the calculation. See, Tariff, Items 187 and 190. Thus, the amount of mileage equalization charges will depend in part upon the interpretation and lawfulness of the term "railroad convenience" in the *Tank Car Decisions* and the Tariff.

38. Also according to the Tariff, carriers must exclude from the mileage equalization calculation empty miles accumulated on cars moving to or from repair facilities for modification under DOT mandated retrofit programs or for inspection and repair under certain FRA orders or AAR circulars. Thus, the amount of mileage equalization charges will depend in part upon the interpretation and lawfulness of the Tariff provisions relating to movements to repair facilities.

Recent Mileage Charges and Discussions With AAR

39. In calendar years 2008 and 2009, Complainants received billings for mileage equalization charges in 2007 and 2008 that were substantially higher than billings received in previous years. Complainants believe that these billings increased significantly due to

interpretations and applications of the Tariff by the Defendants that were not justified either by the Tariff or the *Tank Car Decisions*, and that are unlawful.

40. Specifically, Complainants believe that historically Defendants properly interpreted "railroad convenience" to encompass only empty miles accrued due to *temporary* deviations (*e.g.* deviations required to avoid washouts, track maintenance, etc.) from the default rule that empty cars should be returned to the origin via the reverse route of the preceding loaded movement. These were exceptions to the fundamental principle of reverse routing of empty movements required by both the Tariff and the *Tank Car Decisions*. On information and belief, beginning in about 2007, Defendants began to interpret "railroad convenience" far more broadly, resulting in substantially higher billings to Complainants when the 2007 mileage equalization invoices were presented to the Complainants in 2008. Specifically, Defendants began to interpret "railroad convenience" to include routing protocols that *routinely* directed empty movements back to the preceding origin over routes that were different and longer than reverse routing of the preceding loaded movement, thereby resulting in higher mileage equalization charges.

41. In addition, Complainants believe that Defendants have increased their use of routing protocols that route empty cars via longer routes than the preceding loaded movement. This practice has substantially supplanted the default rule in the Tariff and *Tank Car Decisions* that empty cars should be returned to the origin via the reverse route of the preceding loaded movement. By invoking "carrier convenience" as justification for including the resulting excess empty miles in the mileage equalization calculation, the Defendants have created an exception that swallows the rule, thereby resulting in higher mileage equalization charges.

42. The Tariff also recognized that cars moving to and from repair facilities for modification under certain DOT programs or for inspection or repair under certain FRA or AAR requirements would result in empty miles that should be excluded from the equalization calculations, under the principle that tank car interests should not pay for movements mandated by the government or the AAR and beyond their control. Since the *Tank Car Decisions*, additional inspection and repair requirements have been mandated, including tank car testing. Defendants have in the past recognized these requirements and have granted exceptions that excluded from the equalization calculations empty miles accrued to comply with those programs, even when not explicitly identified in the Tariff. However, upon information and belief, since 2007 Defendants have refused to grant exceptions for such additional requirements or to amend the Tariff to explicitly reference those requirements, thereby resulting in excess mileage equalization charges because Defendants have refused to exclude from the mileage equalization calculations the empty miles accrued to comply with these AAR and DOT requirements.

43. On April 2, 2009, the Complainants, along with other persons, sent a detailed letter to the Defendant Association of American Railroads asking for a review of the application and interpretation of the relevant tariff language, and Tariff, to conform the carriers' interpretation and application of the Tariff to the words and intent of both the Tariff and the *Tank Car Decisions*. Shortly thereafter, Complainants and other persons, at the request of the Defendant AAR, sent information supporting their letter. In a letter dated July 17, 2009, the Defendant AAR denied the April 2, 2009 request. In a letter dated August 19, 2009, the Complainants, along with other persons, sent a second letter, renewing their request. In a letter dated September 8, 2009, the Defendant AAR again denied that request. This correspondence is attached to this Complaint as Appendices A , B, C and D.

Complaint –Count I
Railroad Convenience – Unreasonable Practice

44. The Defendants' interpretation of "railroad convenience" under the Tariff is unreasonable and unlawful and is inconsistent with and not supported by the agency's *Tank Car Decisions*, and constitutes an unreasonable practice in violation of 49 U.S.C. 10702, 11121 and 11122.

45. The Defendants' reliance upon "railroad convenience" under the Tariff to justify including in the mileage equalization calculation excess empty miles based upon routing protocols that by default routinely return empty cars to the origin via a longer route than the preceding loaded movement is unreasonable and unlawful, is inconsistent with and not supported by the Tariff and the agency's *Tank Car Decisions*, and constitutes an unreasonable practice in violation of 49 U.S.C. 10702, 11121 and 11122.

Complaint –Count II
Movements to Required Repair Facilities – Unreasonable Practice

46. The Defendants' failure, either by refusing to grant exceptions from the Tariff or to amend the Tariff, to exclude from the mileage equalization calculation empty miles due to DOT, FRA or AAR repair, inspection or retrofit programs is unreasonable and unlawful and is inconsistent with and not supported by the agency's *Tank Car Decisions*, and constitutes an unreasonable practice in violation of 49 U.S.C. 10702, 11121 and 11122.

Requested Relief

47. The Board should order the Defendants to cease the violations set forth in paragraphs 44 through 46 of this Complaint and should prescribe reasonable practices by Defendants pursuant to 49 U.S.C. 10704(a)(1).

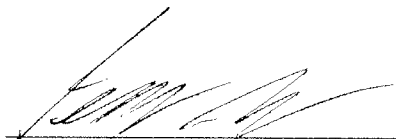
48. The Board should award reparations to Complainants, as provided under 49 U.S.C. 11704(b), for mileage equalization overpayments in 2007 and 2008 that were billed by

Defendants and paid by Complainants in 2008 and 2009, as well as any amounts paid in excess of reasonable practices *pendente lite*. The reparations should compensate Complainants for any and all amounts charged in excess of the amounts charged for reasonable practices prescribed by the Board in this proceeding, plus interest.

WHEREFORE, Complainants pray that the Board:

- (1) Require Defendants to answer the charges alleged herein;
- (2) after due hearing and investigation, find that the practices described herein are unreasonable;
- (3) prescribe reasonable practices for the future applicable to the movements of the Complainants;
- (4) award Complainants reparations, plus applicable interest, in accordance with 49 U.S.C. 11704, for all mileage equalization charges based on unreasonable practices paid from January 1, 2008 to the effective date of a decision by the Board prescribing reasonable practices for the future; and
- (5) grant such other and further relief as the Board may deem just and proper under the circumstances.

Respectfully submitted,



Jeffrey O. Moreno
Nicholas J. DiMichael
Thompson Hine LLP
1920 N St. N.W.
Suite 800
Washington, D.C. 20036
(202) 331-8800

APPENDIX A

April 2, 2009

Mr. Jeff Usher
Assistant Vice President
Business Services Safety and Operations
Association of American Railroads
50F Street, NW
Washington, D.C. 20001

Re: Supplement to Tariff RIC 6007-L, Equalization of Mileage on Tank Cars of Private Ownership

Dear Mr. Usher:

This letter is to formally request a review of the interpretation and application of language in the private tank car mileage equalization Tariff RIC 6007-M. This request is being submitted by private tank car owners and other interested parties who have serious concerns with recent changes in the interpretation and application of several provisions of this tariff.

Background

In the early 1980's, Ex. Parte 328 resulted in the establishment of new sections in Tariff RIC 6007-M (Item 187 and Item 190) to address equalization of mileage related to privately owned tank cars. Two key issues addressed in the tariff are currently matters of serious concern for private car owners. These two issues involve: (a) recent changes in the interpretation and application of tariff provisions regarding "railroad convenience"; and, (b) recent changes in the interpretation and application of tariff provisions related to DOT-mandated railcar repairs.

Paragraph 4 in Item 187(A) of the tariff states that "no adjustments to loaded or empty mileage will be made in the equalization account for mileage caused by error in handling of the reporting railroad or of another railroad, or for mileage accumulated on cars moving on their own wheels to and from repair facilities due to railroad damage or *for mileage accumulated due to longer routes for railroad convenience*, detours and Surface Transportation Board Service Orders. Rail carriers will make equalization adjustments to the owners of excess reported on-line empty mileage on cars they lease and operate under private marks, or cars of other lessees and/or owners operating on their line for company material, weed killer and similar service."

However, Tariff Item 190(2)(C) limits the language of Item 187(A)(4). While it indicates that a tank owner who requests a diverting route will be charged for the movement, it also excludes excess empty miles that accrue when the carrier departs from using the reverse route. Item 190(2)(C) states that "[i]f the carriers depart from the destinations, junctions or carriers of the reverse route of the load, any resulting excess empty miles will be excluded from the car owner's equalization account by erring carrier." Moreover, Section 1(b) of the Agreement appended to the agency's decision in Ex Parte 328 specifies that tariff language will be retained in the mileage allowance tariff to provide for "an equalization adjustment by the erring carrier to the car owner when, because reverse empty routing is not followed by the carriers, excess empty mileage due to the use of different interchange points, or carriers, is incurred."

April 2, 2009

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From the time this tariff was created until the 2008 mileage equalization invoices were generated for 2007 charges, Class I railroads interpreted "railroad convenience" to include mileage related to re-routing required to avoid track maintenance events and extreme acts of nature that resulted in flooding, line washouts, etc. They would grant exceptions to mileage equalization charges caused by routing protocols within a railroad or between railroads that resulted in empty return miles that exceeded loaded transit miles. In recent years when the implementation of routing protocols were expanded within and between Class I railroads, it became very common for empty return miles to significantly exceed loaded transit miles, often by several hundred miles.

However, in 2007, all Class I railroads began interpreting and applying "railroad convenience" differently, and would no longer grant exceptions for excess miles resulting from routing protocols that had been established by a carrier or between carriers.

The tariff also excludes mileage equalization charges for "DOT mandated retrofit programs" and "inspection and/or repair under FRA Emergency Order Nos. 16 and 17, O & M Circular No. 4, or AAR Circular Letter 7697". Once again, this section in the tariff was applied by the Class I railroads to all DOT mandated repairs and programs, including mandatory tank car testing requirements that went into effect in the 1990's. Mileage charges for movement of cars to repair shops for these types of mandatory repair programs were also excluded from mileage equalization calculations until 2008.

Requested Interpretation and Application

The Private Tank Car Owners listed in this letter request that Tariff RIC 6007-M be interpreted to insure that exceptions to mileage equalization charges will be applied for the following:

1. Excess miles that occur when a routing protocol within a carrier or between carriers results in empty return miles that exceed loaded shipment mileage between the same origin/destination locations. For example, if the loaded trip between the origin and destination is 1,000 miles, the empty return miles would also be charged as 1,000 miles, regardless of the actual empty return route used by the railroad or between railroads to the loaded origin when a routing protocol is followed. In such situations, the exception for "railroad convenience" would not apply.

Rationale: For private tank car owners, we believe that a routing protocol by a carrier or between Class I railroads that results in empty return miles that exceed loaded shipment mileage between the same origin and destination are not and should not be included in the definition of "railroad convenience". We believe that a correct reading of the tariff language does not support that interpretation. Tariff provision 187(A)(4) provides railroads flexibility in the case of railroad convenience, and Tariff provision 190(C) ensures that car owners are not held responsible for carrier decisions to take extensive alternate routes. An interpretation that would permit carrier routing protocols to qualify as "railroad convenience" would result in the railroad convenience provision swallowing the fundamental principle of reverse routing and the wording of the reverse routing provision.

Moreover, we believe that doing so was not the original intent of the tariff, since routing protocols by a carrier or between Class I railroads that resulted in substantial departures from the reverse routing principle did not typically exist when this tariff was created. At the time the tariff was created, "railroad convenience" was understood to include only the unusual or extreme circumstances outlined above.

April 2, 2009

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Finally, freight charges for loaded shipments typically include the empty return trip to origin. Routinely charging excess empty return miles that accrue to the mileage equalization account as a result of railroad routing protocols is in effect causing "double dipping" of applicable tariffs or negotiated freight rates.

We believe that the established threshold of 106% of loaded miles is a reasonable requirement for determining the point at which mileage equalization charges would be assessed. This allowance accounts for true "railroad convenience" circumstances, including movements to repair shops due to railroad damage, "one-off" railroad routing changes, errors in handling by the reporting railroad, car owner diversions, etc.

The net result in this change by the Class I railroads in the interpretation of "railroad convenience" has been significant charges that had previously not been incurred by private tank car owners. Some shippers who previously incurred no charges at all are now experiencing charges in the "seven figure" range. Our position is that such excess charges that include mileage for empty return routes in excess of loaded shipment mileage are inconsistent with the wording and original intent of this tariff, and are not justified.

2. Excess miles that occur due to DOT, FRA, or AAR mandated retrofit programs, inspections, and/or repairs. For example, additional miles from shipment origin or diversion point to a maintenance shop that are incurred as a result of compliance with mandatory tank testing requirements would not be included in the mileage equalization calculation.

Rationale: The original tariff recognized that mandated tank car inspections and repairs would result in excess miles, and should be exempted from equalization calculations. As additional requirements have been placed on tank car owners since this tariff was implemented, it has created an even greater burden and expense to maintain private tank car fleets. Based on recent history and the expectation that such requirements may increase in the future, we believe that the tariff must be applied to give the car owners credit for the additional miles that will be incurred to ensure compliance.

Car owners have limited opportunities to affect decisions made on such mandatory inspections/repairs, resulting in additional costs that are beyond their control. Private tank car owners believe that adding to the cost and administrative burdens by charging excess miles in order to comply with DOT, FRA, and AAR mandated programs is not justified, and is inconsistent with the wording and original intent of this tariff.

Conclusion

Based on recent history and our analysis of the issues raised in this letter, it is anticipated that mileage equalization invoices in 2009 will be significantly higher than 2008. We believe this will place an additional burden on car owners that is not justified by the wording and intent of the tariff and the agency decisions relating to them.

We request that the interpretation of the tariff provisions as outlined above be applied to 2008 charges that will be assessed in 2009. Due to the normal timing for adjustments (May 20th) and issuance of invoices (July), we further request that the appropriate notifications be made to delay sending out

April 2, 2009

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invoices for 2008 equalization while this request is being considered. Your serious consideration of this request is greatly appreciated.

Respectfully submitted by certain Private Tank Car Interests,

Nicholas J. DiMichael

On behalf of the following Private Tank Car Interests:

AG PROCESSING, INC.

BASF CORPORATION

CARGILL, INC.

CEMEX

CHEVRON PHILLIPS CHEMICAL COMPANY LP

THE DOW CHEMICAL COMPANY

EASTMAN CHEMICAL COMPANY

E.I. DUPONT DE NEMOURS & COMPANY

ED&F MAN LIQUID PRODUCTS CORP.

EKA CHEMICALS INC.

EXXONMOBIL CHEMICAL COMPANY

GLNX CORPORATION

JONES-HAMILTON COMPANY

OMYA INC.

PPG INDUSTRIES, INC.

PVS CHEMICALS, INC.

REAGENT CHEMICAL AND RESEARCH, INC.

SHELL CHEMICAL LP

TATE AND LYLE INGREDIENTS AMERICAS, INC.

TRINITY CHEMICAL LEASING, LLC

TRINITY INDUSTRIES LEASING COMPANY

APPENDIX B



ASSOCIATION OF AMERICAN RAILROADS

Safety and Operations

Jeffrey J. Usher

Assistant Vice President - Business Services

July 17, 2009

Mr. Nicholas J. DiMichael, Esquire
Thompson Hine, L.L.C.
1920 N Street, N.W.
Suite 800
Washington, DC
20036-1600

Dear Mr. DiMichael,

This letter is in further reference to your letter of April 2, 2009 regarding your request for review of the interpretation and application of Tariff RIC 6007-N (Tariff), and my letter to you dated April 16, 2009, requesting examples of the empty return routing practices described in your letter. On behalf of the AAR and its member railroads I want to express appreciation to you and the car owners you represent for identifying this matter and for the cooperation shown by all parties involved.

As stated in your April 2, 2009 letter regarding the 2008 Tank Car Mileage Equalization (TME) accounts, the contention is that railroad decisions to return empty cars to their origin by other than an exact reverse route is the cause of empty mileage exceeding the 106 percent threshold as specified in the Tariff. In response, AAR/Railinc and two carriers with significant involvement in the TME process has done substantial investigations and analyses of the mileage reported. These analyses show that carrier reverse routing practices were not the primary cause of the increase in the percentage of empty miles during 2008. In fact, taking all dedicated, "load-empty-load", traffic lanes where the origin and destination did not deviate, the contribution to excess miles is negligible. Instead, alternative dispositions requested by the shipper/car owners, i.e., requests that empty cars be sent to a location other than their origin loading point, is responsible for the bulk of the excess miles.

Railinc, in consultation with AAR, analyzed the Car Hire Data Exchange (CHDX) records submitted by all of the carriers. The loaded and empty mileage for each reported origin/destination was totaled and then averaged. The ratio of loaded to empty miles is calculated based on the average loaded and average empty miles for each segment. Railinc used origin and destination segments that are included in the CHDX process marked for TME to compare loaded to empty records.

The analysis showed that for all round trip segments the empty to loaded mileage ratio was 100.28%, with the further finding that over 76% of the round trip segments fell below the 106% ratio specified in the Tariff. Based on the Railinc review of the mileage reported across the industry, there is no evidence of systematic actions by the carriers that inflate the empty miles in the equalization account.

The research clearly indicates that carrier reverse routing is not responsible for the increase in the 2008 Tank Car Mileage Equalization Account and definitively points to shipper/car owner initiated location directives (alternative dispositions) as the primary contributor to the empty mileage increases. The data shows that the alternative disposition segments produce an empty to loaded mileage ratio of 139%. This percentage validates that the empty to loaded reverse route ratio for round trip segments is not the primary factor in the overall increase in empty car miles associated with the application of the Tariff. In view of these findings there is no reason to further delay the issuance of the 2008 bills. Accordingly, I am authorizing Railinc, on behalf of AAR, to issue the 2008 Tank Car Mileage Equalization bills on July 21, 2009. Moreover, under the circumstances there is no need to issue an interpretation of the Tariff, which appears to be working as intended.

In addition to the analysis performed by Railinc, individual carriers performed extensive analyses of the mileage reported. One carrier analyzed the 311 private car marks that represent 224 owner groups comprising the vast majority of tank car traffic on its lines. The carrier further indicated in its analysis that while it is the customers' perception that the empty miles related to round trip moves far exceeds the loaded miles, pushing the total empty miles above the 106% threshold, the findings show that this is not accurate for the majority of the owner markings. Most marks, especially the larger mileage marks, have a smaller percentage and enjoy an overall lower empty to loaded mileage ratio because the round trip segments are included in the calculation. Without the round trip segments these shippers/car owners would see much higher ratios. If round trip segments were removed the total miles would drop considerably and the percentage of remaining empty to loaded miles would increase, resulting in the mark owner owing the carriers. Two hundred and three (203) owner groupings with round trip moves revealed that 73% of a marks' total mileage was attributed to Round Trip Mileage and of those groupings the average excess empty mileage ratio for round trips was only 102%

A second carrier analyzed all of its loaded and empty mileage for 2008. For round trip movements, empty miles only exceeded loaded miles by 1% - well under the 6% tolerance proscribed in the Tariff. For the shipments that involved shipper and/or car owner empty forwarding instructions to locations other than the immediately preceding loading location (non-round trip segments), the empty miles exceeded loaded the miles by 25%. This carrier also found that round trip movements had decreased 3% in 2008 compared to 2007. Conversely, trips involving non round trip segments increased 3% in 2008 compared to 2007. These analyses support the other carriers' and Railinc's analysis.

During their internal analyses, the carriers were able to identify and correct some erroneous reportings and processed shipper/car owner adjustment requests into the equalization

account. After the appropriate adjustments have been made to the equalization account it is anticipated that these adjustments will reduce the overall amount billed by approximately 15.8%.

We attempted to glean as much empirical data from the example traffic lanes you forwarded on behalf of your clients. Unfortunately, the 143 examples you furnished provided limited assistance in the investigation of the 2008 tank car mileage equalization process for the following reasons:

- 1) Despite our request no sample car numbers or shipment dates were provided. Sample car numbers and shipment dates would have allowed us to validate that the correct set of cars was being reviewed.
- 2) Twenty two of the examples contain "various" or masked data as either the origin or destination. The data required for this type of analysis is impossible to access when the actual origin or destination is not known.
- 3) Fifty six examples omitted the car count. The car count was intended confirmation that the correct sub-set of cars was identified for further analysis.
- 4) Forty of the examples involved fewer than ten cars (many identified as applicable to a single shipment). It is highly unlikely that single car shipments contributed significantly to any overstatement of empty miles in the equalization accounts.

I suspect the overwhelming need to protect sensitive shipment information contributed to an overall inability to supply normalized data that would have allowed for increased analysis of shipper/owner submitted data.

Despite the limited number of examples those traffic lanes that were identifiable were considered and in cases where obvious anomalies (i.e., empty miles greatly exceeding loaded miles) existed and where we were able to identify the carrier involved, we forwarded the information to that carrier for adjustment consideration. The analyses by Railinc and the carriers was executed at a macro level (attached is a summary of the Railinc analytic methodology). There may be shippers/car owners who still believe that, with respect to some specific circumstances, adjustments should be made. Those shippers/car owners should certainly feel free to contact their railroad trading partners to discuss the specifics of any perceived anomalies. In the future, it would be most helpful if these concerns were addressed by the shipper/car owner to the carrier at the time the mileage is reported. This approach will allow investigation to be based on the current information related to the specific concerns. As outlined in the Tariff, AAR/Railinc should be advised of these claims.

I hope you will feel free to contact me if you have any questions about AAR actions or conclusions or would like a further explanation of the information contained in this letter.

Sincerely,

January 29, 2010
Page 4

A handwritten signature in black ink, appearing to read 'Jeffrey J. Usher', with a long horizontal flourish extending to the right.

Jeffrey J. Usher

Cc: John Lanigan
Edward Hamberger
Louis Warchot
Daniel Saphire
Robert VanderClute

July 17, 2009

Data Source for Railinc 2008 TME Study:

Railinc was directed by the Association of American Railroads on behalf of the AAR Equipment Assets Management Working Committee (EAMWC) to perform a study on 2008 Tank Car Mile Equalization.

Railinc retrieved data using the 2008 CHDX data sent to Railinc by Car Hire Data Exchange railroads. The CHDX records were restricted to those records that were marked for TME and were sent with a car type that began with T for Tank Car. Further restrictions only allowed Type 31 Records that were not sent in as adjustments. This extraction created the base data set used in the study.

Methodology Summary for Railinc TME Study:

1. Data pulled from CHDX is marked as TME. This insured that the miles reported are marked as TME and the miles used for calculation were marked for TME.
2. Origin Destination (OD) pair is referring to the origin and destination Standard Point Location Code (SPLC) sent in the CHDX record. Railinc is looked at all OD pairs sent to CHDX and compared the loaded to the empty miles reported for each OD pair. Railinc did not compare entire shipments to entire shipments since CHDX records do not contain associated waybills, but used the segments reported for the shipments reported to the CHDX. If the OD pair for the load equals the reverse of the empty OD pair Railinc considered this a round trip segment match.
3. The study used the universal population of cycle data for the industry and not specific carriers.
4. Average mile calculation was used to calculate the OD pairs that fell inside or outside the 106% tolerance.

Methodology Specifics:

The complete data file was condensed into only needed fields. This created a data set that contained the carrier, the origin and destination that was sent in the CHDX record, the loaded empty status and the miles reported for that record. This data set was then used to derive the following statistics for miles: Sum, Min, Max, Mean, and Median. For all calculations of percentages, the Mean of Miles was used. The Median was not used due to Six Sigma guidelines.

The loaded OD pairs were compared to the reversed empty OD pairs to make a match of OD reverse moves. Example, loaded record move would be reported as 112345 to 154321 the empty record would be reported as 154321 to 112345. In this case the empty move OD pair would be reversed and then compared to the loaded move to make a match. Loaded OD pair = reversed empty OD pair.

Railinc then compared the average loaded miles and average empty miles from the matched file to summarize its findings. Railinc also compared the records that are within the 106% tolerance and those records that fell outside the 106% tolerance.

APPENDIX C

August 19, 2009

Mr. Jeff Usher
Assistant Vice President
Business Services Safety and Operations
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001

RE: Supplement to Tariff RIC 6007-M, Equalization of Mileage on Tank Cars of Private Ownership – Your Letter of July 17, 2009

Dear Mr. Usher:

This letter is in response to your letter of July 17, 2009, which was in reference to my letter of April 2, 2009. The purpose of this letter is to renew our April 2 request for an interpretation and application of language in the referenced tariff. Respectfully, and as detailed further below, the Private Tank Car Interests that signed the April 2, 2009 letter believe that your letter of July 17 did not in fact answer the question that was asked, and believe that an answer to that question is required.

Requests in Letter of April 2, 2009 by Private Tank Car Interests

In our letter of April 2, a number of large companies with significant tank car fleets formally requested "a review of the interpretation and application of language in the private tank car mileage equalization Tariff RIC 6007-M." That request was submitted because these Private Tank Car Interests had "serious concerns with recent changes in the interpretation and application of several provisions of this tariff." Our letter of April 2 then detailed the language in the tariff dealing with "railroad convenience" and language dealing with "DOT mandated retrofit programs."

With respect to the issue of "railroad convenience," our April 2 letter noted that, from the time that this tariff was created until 2008, carriers generally interpreted "railroad convenience" to include only mileage related to re-routing required to avoid track maintenance and unusual events such as flooding, washouts, etc. April 2 letter, p. 2. However, the April 2 letter noted that, in recent years, carriers have been expanding the concept of "railroad convenience" to include reverse routing under routing protocols established by carriers that would cause empty return miles to significantly exceed loaded miles. Our April 2 letter argued that a routing protocol by a carrier or between Class I railroads that results in excess empty return miles should *not* be included in the definition of "railroad convenience," since "a correct reading of the tariff language does not support that interpretation" and that such an interpretation was inconsistent with the original intent of the tariff and longstanding practice. *Id.*, p. 2. Finally, the April 2 letter argued that such an interpretation was effectively "double dipping" that was not permitted by the tariff. *Id.*, p. 3.

Similarly, with respect to the issue of DOT-mandated retrofit programs, the interpretation adopted by railroads "is not justified, and is inconsistent with the wording and original intent of this tariff." *Id.*, p. 3.

The letter concluded with a request that the interpretation of the tariff provisions as set forth in the April 2 letter be applied to 2008 charges that would be assessed in 2009. *Id.*, p. 3.

August 19, 2009

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Substance of July 17 AAR Response

In its response of July 17, the AAR did not even attempt to answer the question that was asked, namely, for a "review of the interpretation and application of language" in the referenced private tank car mileage equalization tariff. Instead, AAR analyzed data from the universe of charges, and concluded that "carrier reverse routing practices were *not the primary cause of the increase in the percentage of empty miles during 2008.*" AAR July 17 letter, p. 1 [emphasis added]. The AAR's analysis indicated that for all round trip segments the empty to loaded mileage ratio was 100.28, with the "further finding that over 76% of the round trip segments fell below the 106% ratio specified in the tariff." *Id.*, p. 2. The AAR's letter concluded that "alternative disposition" was the primary contributor to empty mileage increases. *Id.*, p. 2.

The AAR's response does not answer whether an interpretation of Tariff 6007-N that includes carrier routing protocols that generate empty return mileage exceeding loaded miles would properly be encompassed by the term "railroad convenience" in the tariff; or whether the carrier's interpretation of the provision for "DOT-mandated retrofit programs" was proper. Both questions comprise the basic concerns underlying our April 2 letter.

Request for a Response

These Private Tank Car Interests strongly believe that they are entitled to an answer to the questions that were asked in our letter of April 2, 2009, namely, whether the carriers' current interpretation of the tariff with respect to "carrier convenience" and "DOT-mandated retrofit programs" are in fact correct. As discussed in our letter of April 2, we do not believe that they are.

Moreover, it is very clear that the issue is not trivial. Whether or not carrier reverse routing practices were the "primary cause" of the total increase in the percentage of empty miles during 2008 as your July 17 letter states, it is very clear that carriers are in fact charging many shippers for empty miles that result from routing protocols imposed by carriers that require empty routes that are different from, and longer than, loaded routes, and that this practice does in fact result in substantial excess empty mileage charges. AAR in fact concedes that approximately 24% of round trip segments are *above* the 106% ratio specified in the tariff. This group of shipments represents a huge pool of potential overcharges. But the correctness of any such overcharges directly depends on the carriers' interpretation of the Tariff, including whether or not carrier reverse routing practices qualify as "carrier convenience".

For example, Attachment A to this letter details examples of carrier reverse routings that appeared to result from carrier routing protocols that resulted in substantial excess mileage charges to the shipper.¹ In addition, whether or not carrier reverse routing protocols were the "primary cause" of the total increase in the percentage of empty miles, it is very clear that empty return mile charges billed in 2008 were much higher than charges billed in 2007, and that at least some of this significant increase is due to the carriers' recent incorrect interpretation of "railroad convenience" and "DOT-mandated retrofit programs." For example, one shipper has seen its excess mileage charges increase from about \$350,000 for 2006 mileage billed in 2007 to approximately \$960,000 for 2007 mileage billed in 2008. Another has experienced an increase in excess mileage charges over the same period from approximately \$125,000 to over \$675,000. A third has seen such charges increase from just over \$3,000 to nearly \$200,000 in the same one-year

¹ Attachment A is being provided under the confidentiality agreement that AAR has agreed to in this matter, and therefore should not be shared with persons who have not signed that agreement.

August 19, 2009

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period. A fourth shipper's charges increased from \$15,600 in 2007 to \$128,000 in 2008. Still another's changes have increased more than ten times, from about \$12,000 to approximately \$140,000 in the same period. In none of these cases has there been significant changes to the shipper's operations.

Accordingly, the undersigned Private Tank Car Interests respectfully request that the AAR provide an interpretation of the tariff provisions outlined in our letter of April 2 as requested.

Sincerely,



Nicholas J. DiMichael

Jeffrey O. Moreno

On behalf of the following Private Tank Car Interests

BASF CORPORATION

CARGILL, INC.

CEMEX

CHEVRON PHILLIPS CHEMICAL COMPANY LP

THE DOW CHEMICAL COMPANY

EASTMAN CHEMICAL COMPANY

E.I. DUPONT DE NEMOURS AND COMPANY

ED&F MAN LIQUID PRODUCTS CORP.

EKA CHEMICALS INC.

EXXONMOBIL CHEMICAL COMPANY

GLNX CORPORATION

JONES-HAMILTON COMPANY

OMYA INC.

PPG INDUSTRIES, INC.

PVS CHEMICALS, INC.

REAGENT CHEMICAL AND RESEARCH, INC.

SHELL CHEMICAL LP

TATE AND LYLE INGREDIENTS AMERICAS, INC.

TRINITY CHEMICAL LEASING, LLC

Attachment A
Origin Destination Pair Examples

Origin	Destination	Loaded Miles	Empty Miles	Percent Increase
New Orleans, LA	Tilsdale, GA	686	1142	66.4%
Gibbstown, NJ	Atlanta, GA	1014	1193	17.6%
Alexandria, LA	Houston, TX	241	363	50.6%
Baton Rouge, LA	Council Bluffs, IA	1307	1445	10.5%
Louisville, KY	Lafayette, IN	543	832	53.2%
Laredo, TX	Tex Harvey, TX	730	859	17.6%
Memphis, TN	Martin, SC	738	1154	56.3%
Baton Rouge, LA	Greeley, CO	1714	2988	74.3%
Eldon, TX	Dolton Jct. IL	1181	1521	28.7%
Breckenridge, MN	Modesto, CA	2219	2868	29.2%
Rock Island, IL	San Diego, CA	2187	2510	14.7%
Chancellor, SD	Chicago, IL	717	1042	45.3%
Fargo, ND	Nettleton, AK	1274	1556	22.1%
Memphis, TN	Houston, TX	587	1118	90.4%
Bridgeport, IA	Grand Prairie, TX	908	1395	53.6%
Blair, NE	Mira Loma, CA	1812	2741	51.2%

APPENDIX D



ASSOCIATION OF AMERICAN RAILROADS

Safety and Operations

Jeffrey J. Usher

Assistant Vice President - Business Services

September 8, 2009

Mr. Nicholas J. DiMichael, Esquire
Thompson Hine, L.L.C.
1920 N Street, N.W.
Suite 800
Washington, DC
20036-1600

Dear Mr. DiMichael:

By this letter, I will attempt to address the matters you raised in your letter to me of August 19, 2009, in which you requested that AAR provide an interpretation and application of Tariff RIC-6007-M.

Your letter states that railroads have recently changed the way they have interpreted language in the Tariff, specifically, the term "railroad convenience" in Item 187(A)(4), related to adjustments to the equalization account, as well as Item 187(A)(3), related to certain moves to and from repair facilities. You have advised AAR that some car owners have experienced a greater percentage of empty miles, as compared to loaded miles, in 2008 than they had previously experienced. You also have provided examples of specific moves between origin and destination pairs (reverse routes) in which the empty miles exceeded the loaded miles by more than six percent.

The AAR has no way to confirm whether any railroads are now interpreting the Tariff differently from how that had previously interpreted the Tariff. No railroad has advised AAR that it has done so. However, after an investigation AAR has determined, and advised you, that the increase in empty miles in 2008 appears to be largely due to alternate disposition instructions that car owners have provided for their empty cars. Moreover, the fact that some reverse routes have resulted in excess empty miles of greater than six percent is not necessarily of particular relevance since whether a car owner is charged for excess empty miles is determined by its aggregate empty miles for the year and not on a specific lane by specific lane basis. Additionally, AAR does not have any information on whether, in a case where the empty miles exceeded the 106 percent threshold, the railroad(s) involved included or excluded the empty miles in the car owner's account, and would therefore not be in a position to apply the Tariff to individual moves. Thus, AAR has no evidence that railroads have taken any actions inconsistent with the Tariff that have resulted in improper charges to car owners. Certainly, if a car owner believes that a railroad has improperly failed to exclude or erroneously included empty miles

September 8, 2009
Page 2

from/to the car owner's account it should contact that railroad and review the situation. (To the extent some railroads have acknowledged certain anomalies which may have resulted in excessive miles being attributed to a car owner, as I advised you in my letter of July 17, 2009, it is AAR's understanding that those railroads worked with the car owners to make adjustments as appropriate prior to the closing of the 2008 Tank Car Mileage Equalization account on July 20, 2009.)

Because AAR's investigation, undertaken in response to your letter of April 1, 2009, provided no reason to believe that railroads have abruptly changes the way they are interpreting the Tariff, AAR saw no reason to issue an interpretation of the Tariff. Nor is it clear that AAR has authority to do so, or that any such interpretation would be binding on the parties covered by the Tariff.

In any event, I would point out that the interpretation of Item 187(A)(4), proffered in your letter of April 1, does not appear to be consistent with the language of the Tariff. Your position seems to be that, based on the language of Item 190(2)(C), whenever an empty car returns to its origin on a route other than the route in which it moved loaded, any excess empty miles must be excluded from a car owner's account. However, based on its plain language, Item 190(2)(C), would exclude only excess empty miles caused by "carriers depart[ing] from the destinations, junctions or carriers of the reverse route of the load." Because the plural term *carriers* and the term *junctions* is used, this applies to an interline return movement where the railroads interchanged the car at a junction that differed from the point where the car was interchanged when loaded, when a railroad not involved in the loaded move participated in the empty move, or where a car was delivered to a destination that differed from the car's origin point due to carrier error. Thus, AAR cannot endorse the interpretation on page 2 of the April 1 letter, which goes well beyond these circumstances.

Your letter of August 19, 2009 also asserts that the railroads' interpretation of the Tariff with respect to DOT-mandated retrofits is "inconsistent with the wording and original intent of th[e] tariff." Again, AAR is unaware of how railroads are interpreting Item 187(A)(3). Thus, it is difficult to offer a judgment on your statement. Moreover, the interpretation proffered on page 3 of your April 1 letter does not appear to be consistent with the wording of the Tariff. Item 187(A)(3) would exempt empty miles accumulated on account of DOT-mandated retrofits or inspections/repairs resulting from several specific, enumerated FRA or AAR requirements. Your proposed interpretation would seem to exclude empty miles that result from *all* FRA and AAR mandated inspections and repairs.

I understand that your clients are not entirely satisfied with the response provided by AAR in my letter of July 17, 2009. However, based on the information AAR has received, I see no basis for taking any other action. Nonetheless, to the extent it has authority to do so, AAR would be happy to continue to work with tank car owners to facilitate the resolution of any outstanding issues related to tank car mileage equalization.

Sincerely,

September 8, 2009
Page 3

A handwritten signature in black ink, appearing to read 'Jeffrey J. Usher', with a long horizontal flourish extending to the right.

Jeffrey J. Usher

Cc: John Lanigan
Edward Hamberger
Louis Warchot
Daniel Saphire
Robert VanderClute

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Complaint to be served by facsimile, first class mail, postage prepaid and/or express overnight courier, this 29th day of January 2010, on:

1. The following parties have been served by facsimile and first class mail:

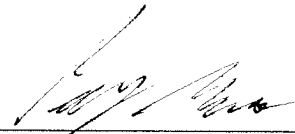
Garland Horton President Aberdeen and Rockfish Railroad Co. P.O. Box 917, Aberdeen, NC 28315	R.B. Culliford Senior Vice President and General Counsel Boston and Maine Corporation Maine Central Railroad Co. Pan Am Railways Portland Terminal Co. Springfield Terminal Railway Company 1700 Iron Horse Park No. Billerica, MA 01862-1692
David Collins Suite 200, 1200-C Scottsville Road Rochester, NY 14624 <i>For Buffalo and Pittsburg Railroad Inc. Rochester and Southern Railroad, Inc.</i>	Allison M. Fergus General Counsel and Secretary Buffalo and Pittsburgh Railroad Inc. c/o Genesee & Wyoming Inc. 66 Field Point Road Greenwich, CT 06830
Sean Finn Executive Vice President Corporate Services, and Chief Legal Officer Canadian National Railway 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9	Joe McGovern Chief Operating Officer Cedar Rapids and Iowa City Railway Company 2330 12th Street SW Cedar Rapids, IA 52404
Kevin Burke Vice President and General Manager Cedar Rapids and Iowa City Railway Company 2330 12th Street SW Cedar Rapids, IA 52404 (319) 786-3686 (phone) (319) 786-3671 (fax)	Nicholas B. Temple President Central Washington Railroad Company 111 University Parkway, Ste 200 Yakema, WA 98901 (509) 453-9166 (phone) (509) 452-9346 (fax)
Elgin, Joliet and Eastern Railway Company c/o Sean Finn Executive Vice President Corporate Services, and Chief Legal Officer Canadian National Railway 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9	Gary Railway Company c/o Thomas Kelly President Transtar Inc. 1200 Pennsylvania Avenue Suite 300 Pittsburgh, PA 15222
James H. Danzl General Manager Marketing Gary Railway Company One North Buchanan Street Gary, Indiana 46402	Indiana & Ohio Railway Company c/o Scott Williams, Senior Vice President and General Counsel Rail America Inc. 7411 Fullerton St. Suite 300 Jacksonville, FL 32256

Ryan Ratledge General Manager Indiana Ohio & Railway Company 2856 Cypress Way Cincinnati, OH 45212	Iowa, Chicago & Eastern Railroad Corporation c/o Vern G. Graham President Dakota, Minnesota, and Eastern Railroad Corporation 140 N. Phillips Ave. Sioux Falls, SD 57104
Daniel R. Sabin President Iowa Northern Railway 122 North 2nd Street P.O. Box 640 Greene, IA 50636	William Wochner Senior Vice President and Chief Legal Officer Kansas City Southern Railway Company 427 West 12th Street, Kansas City MO 64121-9335
Thomas Walsh President Montana Rail Link, Inc. PO Box 16390 101 International Way Missoula, Montana 59808-6390	Nathan Fenno President New York, Susquehanna and Western Railway Corp. One Railroad Avenue Cooperstown, NY 13326
Hugh M. Tarbutton President Sandersville Railroad Company P.O. Box 269 Sandersville, GA 31082	Louis P. Warchot Senior Vice President Law & General Counsel Association of American Railroads 50 F Street, N.W. Washington, D.C. 20001
E. Allen West President and Chief Executive Officer Railinc Highwoods Centre at Weston 7001 Weston Parkway, Suite 200 Cary, NC 27513	

2. The following parties have been served by overnight courier:

Cindy Sanborn President Baltimore and Ohio Chicago Terminal Railroad Company c/o CSX Transportation Inc. 500 Water Street Jacksonville, FL 32202	Roger Nober Executive Vice President Law & Secretary BNSF Railway Company 2650 Lou Menk Drive P.O. Box 961057 Fort Worth, TX 76161-0057
James H. Gallegos Vice President and General Counsel BNSF Railway Company 2650 Lou Menk Drive, P.O. Box 961057 Fort Worth, TX 76161-0057	Paul Guthrie Vice President Law Canadian Pacific Railway Suite 500 Gulf Canada Square 401 9th Avenue SW Calgary, AB T2P 4Z4
E.M. Fitzsimmons, Sr. Vice President Law, General Counsel & Corporate Secretary CSX Transportation Inc. 500 Water Street	James A Hixon Executive Vice President- Law and Corporate Relations Norfolk Southern Railway Company Three Commercial Place

Jacksonville, FL 32202 <i>For CSX Transportation Inc. and Baltimore and Ohio Chicago Terminal Railroad Company</i>	Norfolk, VA 23510-2191
Mike Hemmer Senior Vice President- Law and General Counsel Union Pacific Railroad Company Stop 1580 1400 Douglas Street Omaha, NE 68179	



Jeffrey O. Moreno