BEFORE THE
SURFACE TRANSPORTATION BOARD

GENESEE & WYOMING INC. – CONTROL – RAILAMERICA, INC. ET AL.	)))))	Docket No. FD 35654

COMMENTS AND REQUEST FOR CONDITIONS
OF
CENTRAL CALIFORNIA RAIL SHIPPERS & RECEIVERS ASSOCIATION

OF COUNSEL:
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, DC 20036

By: Peter A. Pfohl
Stephanie M. Archuleta
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, DC 20036

Attorneys for Central California Rail Shippers & Receivers Association

Dated: October 5, 2012

TABLE OF CONTENTS

BEFORE THE
SURFACE TRANSPORTATION BOARD

GENESEE & WYOMING INC. – CONTROL – RAILAMERICA, INC. ET AL.	)))))	Docket No. FD 35654

COMMENTS AND REQUEST FOR CONDITIONS
OF
CENTRAL CALIFORNIA RAIL SHIPPERS & RECEIVERS ASSOCIATION

INTRODUCTION

Central California Rail Shippers & Receivers Association ("CCRSRA") hereby submits its Comments and Request for Conditions in response to the Application by Genesee & Wyoming Inc. ("G&W") for authority to acquire control of RailAmerica, Inc. ("RailAmerica") (collectively "Applicants").

SUMMARY OF POSITION

CCRSRA is an association of a variety of shippers and receivers of freight transportation by rail and governmental interests located in the Central Valley of California, one of the most diverse and robust areas in the United States for the movement of commodities and products. CCRSRA business members are all located on the lines of RailAmerica subsidiary San Joaquin Valley Railroad ("SJVR"), and they require efficient, reliable, and cost effective rail service to meet their essential business needs. CCRSRA has closely reviewed and analyzed the control Application in this proceeding, and as a result of its analysis, and its past experience with very similar transactions, it has concluded that the transaction, without the inclusion of adequate protections, will result in adverse impacts on CCRSRA members.

CCRSRA members want a railroad provider that is focused on customer service, system reinvestment, and traffic growth. While the members hope G&W is a company that is fully committed to these principals and in upholding the railroad common carrier obligation, their long and difficult experience with their existing holding company/local rail carrier makes them extremely skeptical. As explained below, the Applicants represent that the transaction will bring about improved service and efficiencies for all customers, but they have not explained in any meaningful way how this will come about or demonstrated that they have sufficient plans in place to ensure this result, especially with respect to the matters addressed in these comments.

CCRSRA members strongly agree with Vice Chairman Mulvey's statement in the Board's September 5, 2012 decision (at 8) that this transaction requires additional information from the Applicants and should be subject to close scrutiny, because, "if approved, more than 100 shortline railroads, operating in 37 states, would be consolidated under a single corporate umbrella," that the transaction "would consolidate nearly 20% of the shortlines in this country under a single owner," and that "the proposed transaction would greatly change the ownership structure of the shortline industry." The fact is, with combined revenues of $1.1 billion, and 1.6 million annual carloads, the new post-transaction holding company will be similar to or even significantly exceed the size of several Class I railroads' operations in these categories, with G&W having further reach as it will provide service in major regions in the East, West, and Midwest.

The competitive impact analysis contained in the Application is directed almost exclusively to whether rail customers will have fewer rail-to-rail competitive options, with the Applicants stressing that there is very little railroad "overlap," etc. However, this narrow focus on the possible elimination of individual competitors is largely not pertinent to this type of transaction, and therefore unfortunately misses the relevant critical market impacts. This is not a traditional merger of overlapping regional carriers, where the Board and participating parties are principally focused on any "3-to-2," "2-to-1," or similar anticompetitive rail line "access" impacts.[1] This is a different type of transaction requiring a different type of competitive analysis, as Vice Chairman Mulvey appears to be suggesting. Even the Applicants' expert witness, Dr. Neels, admits that the "concerns addressed in the context of mergers between Class I railroads do not arise and do not apply to the proposed acquisition," because "[i]n many respects this combination is neither an 'end to end' merger nor a 'parallel' merger." Neels V.S. at 2-3. Yet the Applicants still engage in a full, traditional "parallel" competitive analysis in their Application.

This transaction would combine the world's two largest short line railroad holding companies into a single mega-holding company. Applicants assert that, while

---

[1] In this respect, it appears that largely based on this analysis, Applicants have lined up a number of letters of support, including letters from a number of public officials.

large in size, there should be no resulting competitive harm because their operating plan simply keeps in place all of the existing operating plans at the local level by each individual railroad. However, this largely misses the point. As explained in detail in these comments, and the statements of a wide variety of affected customers with personal experiences of dealings with short line holding companies, the 100+ individual railroads involved in this transaction do not operate in a vacuum. To the contrary, all major strategic, operating, and non-operating decisions of these railroads are clearly made at the holding company level. All major rate decisions are made at the holding company level. All major accessorial decisions are made at the holding company level. All track lease decisions and policies are made at the holding company level.

G&W does not suggest in the Application that any of this centralized decision-making would change post-transaction – indeed, the transaction benefits professed by Applicants are based on doing things the "G&W way," with an "intense local focus" on service, customer and community dialogue, and heightened reinvestment. Again, CCRSRA members hope this is the case, but they remain very skeptical based on their often dismal experiences explained herein and given the lack of inclusion of any specific programs to accomplish these objectives as part of the Application.

Under the proposed transaction, G&W would incur over $2 billion of debt and related obligations and will issue up to $800 million of equity. This is an enormous financial burden that could significantly impact even the most well-meaning company's ability to operate its business and engage in reinvestment activities. Moreover, an examination of the Applicants' financial statements reveals that the existing programs that have been aggressively targeting customers and have been lauded to investors as new high-profit, "non-freight" revenues achieved at low- or no-cost, can be expected to continue and perhaps be expanded post-transaction. These programs may have produced rapid short-term revenue gains for holding companies and their investors, but they have also caused tremendous short- and long-term local business harm (sometimes irreparably), and overwhelming customer hostility and animosity, as is reflected again and again herein. Additionally, these programs have the pernicious effect of feeding upon themselves, as the holding company has aggressively and publicly sought more and more opportunities for quick and easy gain at the expense of traffic growth, and in a manner that appears to be unsustainable in the long-term.

Applicants' competitive impact witness claims that "short lines frequently have little or no pricing authority" and concludes that "[a]n inability to set prices to shippers necessarily limits the ability of short lines to exert competitive pressure." Neels V.S. at 7. However, this generalized assertion is demonstrably false as it pertains to the shortline holding companies and their subsidiaries that are a part of this transaction, as is fully demonstrated in these comments by railroad customers. The facts, as demonstrated herein, clearly show that shortline railroad holding companies have considerable monopoly power over their customers, and here, a holding company is fully using its origin/destination "bottleneck" monopoly powers at the local level.

The relevant facts that support CCRSRA's position and proposed conditions are set out in the accompanying verified statements of three California Central Valley railroad customers, including (1) Charles L. Littlefield, Chief Operating Officer of Richard Best Transfer, Inc. and President of CCRSRA, who also has over two decades of experience in managerial positions at Class I and regional railroads; (2) Mark Del Papa, Vice President Supply & Distribution of San Joaquin Refining Co., Inc.; and (3) Rick Dreo, President of Superior Soil Supplements. Additional supporting statements are provided in letters from other regional shippers, as well as from the Kern Council of Governments. The economic analysis supporting CCRSRA's position and proposed conditions is set forth in the accompanying verified statement of Dr. John Hoegemeier.

IDENTITY AND INTEREST

CCRSRA was formed in 2008 for the purpose of preserving, protecting, and promoting rail usage, and to be an informational tool for Central Valley rail users who were facing a number of service threats. Verified Statement of Charles L. Littlefield ("Littlefield V.S.") at 1-2. A copy of the current CCRSRA active membership list is included in Mr. Littlefield's Verified Statement, at Attachment 1. California's Central Valley is one of the busiest intersections of commerce in the world. *Id.* CCRSRA members are representative of the various regional industries, including petroleum, lumber, building, agricultural commodities, and fertilizers, and include governmental entities such as the Kern Council of Governments. *Id.* at 2.

CCRSRA members use SJVR service to ship or receive commodities and products in through service routed over the two connecting Class I railroad carriers, Union Pacific Railroad Company ("UP") and BNSF Railway Company ("BNSF"), and beyond. *Id.* CCRSRA is one of the only regional, customer-based groups of its kind in the nation. Its members rely on railroad service to succeed as a business and survive economically, and provide the railroad with profitable traffic and opportunity for significant growth. *Id.* at 2-4. However, even in this rich market environment, the members of the group still felt compelled to come together as an association in order to obtain a meaningful dialogue with their railroad holding company and local service provider:

> CCRSRA members were concerned about having little or no communication from the railroad regarding their service, and were experiencing sudden increases in their accessorial fees, as well as the implementation of whole new fees and practices never seen before from SJVR or from any other railroad. In some instances, members had serious concerns over whether they would have rail service or not due to increasing abandonments and threatened abandonments. Others were receiving line "surcharge" demands, or threatened demands.

Id. at 2.

CCRSRA members have worked very hard to engage in good faith discussions with their shortline railroad provider on service issues, including directly, through attempted outreach via the Board's Office of Consumer Assistance, through connecting Class I railroads, and through elected officials at all levels. *Id.* at 6-10. CCRSRA members have a significant interest in this proceeding and are particularly concerned that, post-transaction, the railroads will continue and expand their current "non-freight" revenue programs, line surcharge initiatives, and related practices and that the Application does not contain any concrete, verifiable integration plans that might seek to alleviate their concerns. Accordingly, unless properly conditioned, the control transaction could cause CCRSRA members significant service and competitive harm.

ARGUMENT

A. MERGERS MUST BE CONSISTENT WITH THE PUBLIC INTEREST

The essential consideration in evaluating the merits of railroad transactions, such as the one at issue here, is whether the proposed transaction is in the public interest.[2] An examination of the public interest considerations involves assessing the competitive impacts of the transaction.[3] While the STB often examines the direct loss of competitive service options in its merger analysis, because that has been the type of competitive harm directly involved in most transactions, the STB in recent decisions also has recognized that unconditioned mergers can cause other significant types of market, operational, and service harm requiring redress. *See UP/SP*, 1 S.T.B. at 430 n.191 ("merger–related competitive harm results when the merging parties gain sufficient market power

[2] "The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." 49 U.S.C. § 11324(c).

[3] *See, e.g., Union Pac. Corp. – Control & Merger – Southern Pac. Rail Corp.*, 1 S.T.B. 233, 363 (1996) ("*UP/SP*") ("[t]o determine the public interest, [the STB] balance[s] the benefits of the merger against any competitive harm that cannot be mitigated by conditions"); *CSX Corp. – Control & Operating Leases/Agreements – Conrail Inc.*, 3 S.T.B. 196, 245 (1998).

profitably to raise rates and/or reduce service (or both) and to do so profitably"); *accord Burlington N. Inc. & Burlington N. R.R. – Control & Merger – Santa Fe Pac. Corp. et al.*, 10 I.C.C.2d 661, 728 (1995).

Even if the Board determines that the overall effect of a proposed merger is in the public interest, the Board still has broad authority to condition the merger in order to maximize its public interest benefits and ameliorate any harmful effects. Under 49 U.S.C. § 11324(c), "[t]he Board may impose conditions governing the transaction," and the Board has clarified that this provision "gives us broad authority to impose conditions governing railroad consolidations." *Canadian Nat'l, et al. – Control – Ill. Cent. Corp., et al.*, 4 S.T.B. 122, 141 (1999) ("*CN/IC*"). The Board has clarified that such conditions may be imposed if there is a reasonable "nexus between the merger and the alleged harm for which the proposed condition would act as a remedy." *UP/SP*, 1 S.T.B. at 461.

A key factor in assessing merger transactions is whether the transaction "will affect the ability of these carriers to meet their common carrier obligations and provide essential services," and, in particular whether the transaction "will be better able to offer improved services to their existing shippers." *Dakota, Minn. & E. R.R. & Cedar Am. R. Holdings, Inc. – Control – Iowa, Chicago & E. R.R.*, STB Fin. Docket No. 34178, Decision No. 7 (STB served Feb. 3, 2003) at 15 (emphasis added); *CN/IC*, 4 S.T.B. at 140 ("[i]n assessing the probable impacts and determining whether to impose conditions, our concern is the preservation of competition and essential services").

This important service and customer protection theme is echoed in the

National Rail Transportation Policy ("NRTP"), which influences the Board's determination under § 11324. *Inter alia*, the NRTP directs the Board “to encourage honest and efficient management of railroads” (49 U.S.C. § 10101(9)); “to prohibit predatory pricing and practices, to avoid undue concentrations of market power” (*id.* at § 10101(12)); “to maintain reasonable rates where there is an absence of effective competition” (*id.* at § 10101(6)); and “to foster sound economic conditions in transportation” (*id.* at § 10101(5)).

The Board has provided guidance as to the importance of service performance assurances with respect to railroad merger transactions, emphasizing that “the quality of service is of vital importance,” and requiring applicants to demonstrate that post-transaction service levels are “reasonable and adequate.” 49 C.F.R. § 1180.1(h). Additionally, the Board has clarified in its rules that “[t]he Board will look with disfavor on consolidations under which the controlling entity does not assume full responsibility for carrying out the controlled carrier’s common carrier obligation to provide adequate service upon reasonable demand.” 49 C.F.R. § 1180.1(a).[4]

Application of these standards and guidance to the Applicants’ proposed control transaction requires that the Board give serious consideration to conditions that would protect CCRSRA from the adverse impacts that it may otherwise experience as consequence of the Applicants’ plans.

[4] While these merger rules specifically apply to the merger of two Class I carriers, they provide important guidance to the present transaction, especially given the large scope and size of this transaction.

B. THE CONTROL TRANSACTION COULD RESULT IN CONSIDERABLE HARM TO EXISTING AND FUTURE SHIPPERS AND RECEIVERS

In the Application, G&W's CEO Mr. Hellmann professes that the transaction will bring about widespread benefits for customers, including "improved customer service and satisfaction for GWI's and RailAmerica's combined customer base, closer cooperation with the Class I railroads with which the RailAmerica Railroads connect and increased likelihood of future industrial and commercial development in the communities served by GWI and RailAmerica, thereby spurring economic growth and creating jobs in those communities." Hellmann V.S. at 1. He further promises that the "the extended reach and broader network will create more business development opportunities and potentially open up new market opportunities with our smaller customers." *Id.* at 4.

CCRSRA members are pleased with these statements, and very much hope they are realized. *See, e.g.*, Littlefield V.S. at 16-17. However, they have heard the same positive statements before from holding companies, *e.g.*, when Fortress Investment Group acquired RailAmerica, with promises made that there were no plans for railroad abandonments and that "service to shippers can be improved in the long term through continued investment and improved managerial efficiency." *See Fortress Investment Group LLC, et al. – Control Exemption – RailAmerica, Inc., et al., Certified Notice of Exemption*, STB Fin. Docket No. 34972 (filed Dec. 1. 2006) at 4-5; Littlefield V.S. at 17-18; Verified Statement of John Hoegemeier ("Hoegemeier V.S.") at 3-8. As described in the accompanying verified statements of CCRSRA members, local rail customers in the past have largely not seen any of the promised improvements made by holding companies, and in fact have been adversely impacted economically by practices and programs that were implemented by the companies, at least in part, to service a highly leveraged acquisition burdened by high interest charges. This unfortunately led to reduced service and changes in day-to-day operations, abandoned rail lines, line surcharges, and new accessorial programs. *See* Littlefield V.S. at 4-19; Verified Statement of Rick Dreo ("Dreo V.S.") at 2-4; Verified Statement of Mark Del Papa ("Del Papa V.S.") at 3-10.

Applicants' competitive analysis does not address in any meaningful fashion the possible existence of market power today by RailAmerica and G&W, how that market power is being used, and whether or not the proposed transaction might exacerbate market power abuse issues. Instead, Mr. Neels simply asserts that that "short lines frequently have little or no pricing authority" and concludes that "[a]n inability to set prices to shippers necessarily limits the ability of short lines to exert competitive pressure." Neels V.S. at 7. Applicants' witness Rennicke further asserts that there are "various handling agreements with connecting railroads that limit or exclude the participation of RA and GWI in commercial interactions with the shipper and the pricing of traffic." Rennicke V.S. at 5. These assumptions, of course, even if true, miss the point, as they fail to address so-called "non-freight" revenues and programs (*e.g.*, accessorial fees) that are the principal matters being complained about by the involved rail shippers and receivers. In these areas, Applicants have considerable market power over their bottleneck facilities and are using that power, as shown in the accompanying CCRSRA Members' Verified Statements. *See also* Hoegemeier V.S. at 8-12.

While the Applicants do not address the important issue of "non-freight" revenues or programs, further financial analysis of the Application reveals there is a real threat that these programs will be expanded both in size and scope post-transaction across the G&W systems. *See* Hoegemeier V.S. at 12-15. CCRSRA respectfully submits that the possibility of continued and expanded "non-freight" policies across 100+ railroad systems consisting of punitive accessorial fees, line surcharges, track lease fees, "double-dipping," and related programs needs to be fully and meaningfully addressed by the Applicants and the Board in this proceeding.

1. Public Interest Impacts of "Non-Freight" Practices

As discussed by Dr. Hoegemeier, following Fortress' acquisition of RailAmerica, facing declining carloads, the company began to aggressively target "non-freight" revenues, in part as a low-cost, high-profit means of servicing its large debt obligations and to satisfy shareholders' business growth and profit demands. *See* Hoegemeier V.S. at 8. These revenues include fees and payments that are not related directly to the line-haul freight rates, such as demurrage and storage. *Id.* These programs have been wildly successful economically. Over five years, from 2006-2011, RailAmerica non-freight revenues increased by <u>**150%**</u> and the holding company has repeatedly touted to investors the revenues collected from these programs. *Id.* at 11.

CCRSRA members have seen first-hand the impacts of these aggressive "non-freight" policies and programs.

As Mr. Del Papa explains in his Verified Statement, his employer, San Joaquin Refining, is a major customer of the SJVR, utilizing 300-400 private tankcars in constant service to ship the company's refined products across North America. Del Papa V.S. at 2. Most of San Joaquin Refining's shipments are moved by BNSF tariff, which covers its shipments from origin to destination, with SJVR simply serving as BNSF's agent for its short line switching service, for which it is paid a switching fee by BNSF out of the through-rate San Joaquin pays to BNSF. *Id.* at 3-5. San Joaquin does not have adequate storage at its Bakersfield refining facilities due to limited plant trackage, and thus pays SJVR for storage of its empty tankcars awaiting return for loading. *Id.* at 5-6.

While no changes in San Joaquin's service have been made, commencing in 2010, SJVR imposed a new "order-in" fee of $75 per car, imposed under a newly instituted accessorial fee tariff, described as an "optional service." *Id.* at 6. On top of that, earlier this year SJVR imposed another new "optional service" tariff fee on San Joaquin Refining entitled "Switch from Constructive Placement Fee," which assesses another $95 per car fee for the same movement of its cars from storage. *Id.* at 7. (SJVR did agree that payments under this new program would not be sought until the spring of 2013. *Id.*) The result of SJVR's new "non-freight" fee practices is a <u>quadrupling</u> of San Joaquin Refining's per car costs in just six years, and that is before application of SJVR's new "Switch from Constructive Placement Fee." *Id.* at 8. This year, to date, San Joaquin Refining has incurred approximately $340,000 in such fees. *Id.*

These practices are particularly concerning to San Joaquin Refining, because, as Mr. Del Papa clarifies, SJVR is now seeking to <u>triple bill</u> them for the same service:

> **<u>San Joaquin Refining is now being asked to pay for the same service three times</u>**:
>
> 1) We pay for SJVR's switching service to Landco through our Tariff BNSF 90058 rates and our separate UP rates;
>
> 2) We pay for the <u>same SJVR switching service</u> through SJVR's Tariff 7006 "order in" fees; and
>
> 3) We may soon be subject to paying for the <u>same SJVR switching service</u> through SJVR's Tariff 7006 "Switch from Constructive Placement" fee.

Id. at 7-8.

In addition to being offensive from a commercial perspective, such double- and triple-dipping practices are improper as a matter of law. The law does not permit SJVR, or any other RailAmerica shortline, to force shippers or receivers to pay twice, or three times, for the same service. *See, e.g., Ind. Harbor Belt R.R. v. Gen. Am. Transp. Corp.*, 577 F.2d 394, 400 (7th Cir. 1978) (requiring shippers to pay twice for the same switching service is an unreasonable practice); *Rail Fuel Surcharges*, STB Ex Parte No. 661, at 10-11 (STB served Jan. 26, 2007) (requiring shippers to pay twice for the same fuel cost increase is an unreasonable practice). But that is exactly what the railroad is doing here with respect to San Joaquin Refining.[5] Also, because the railroad has implemented these programs across the board on all its customers as part of a general accessorial tariff, there is every reason to believe that SJVR is collecting these improper charges on multiple customers. *See* Del Papa V.S. at 10 ("[t]hese new and increased fees and programs are coordinated and implemented at the central, corporate level, with almost all of our communications on tariffs and charges coming from RailAmerica, and they appear to be applied across-the-board on all of the RailAmerica railroads.")

Included in Mr. Del Papa's statement are letters from other SJVR shippers, including from Mid-Cal Materials, Inc, an industrial sand transloader, and from Tricor Refining, LLC, a receiver of hydrocarbons, who share similar stories of non-freight charges and demands that are harming their businesses. *Id.* at 8-9. Mr. Del Papa also includes a detailed chart outlining some of the new charges and increased fees implemented by SJVR/RailAmerica. *Id.* at 9-10. Finally, other interests, including Kern Council of Governments have written a letter to the Board expressing the same concerns:

> [S]hippers in our region have commented that over the past few years, surcharges and accessorial fees have grown astronomically for unexplained reasons. Many shippers are now being forced to consider other shipping options, relocation, or closing their business completely.

[5] It bears noting that, until recently, storage charges were not permitted to be charged on empty private cars awaiting loading. The Board's 1997 decision in *North America Freight Car Ass'n v. BNSF Ry.*, STB Docket No. 42060 (Sub-No. 1) (STB served Jan. 26, 2007) did finally authorize such practices; however, that decision did not permit any add-ons to the storage charges, including any fees sought for switching from storage in addition to the switching fees received from line-haul rates.

See Littlefield V.S. at 10 (Kern Council of Governments' Letter included at Attachment 9 of statement).

Mr. Del Papa concludes by emphasizing the adverse impacts of these new fees and programs:

> At a very minimum, the impacts of this corporate strategy for shippers such as San Joaquin Refining and other customers in the Central Valley has been that we are burdened economically by these additional fees, and significant opportunities for growth have been missed.
>
> It is also clear that even shortlines have major pricing power, and in RailAmerica's case they having been using it, sometimes in very creative ways at the expense of shippers/receivers, and in a manner that has burned bridges with customers, and created animosity. We don't want an adversarial relationship with our essential service providers, we want to work with them in partnership, and grow our businesses together, collectively.

Id. at 11.

2. Public Interest Impacts of Line Surcharge Practices

In addition to accessorial fees and related "non-freight" revenues, another form of revenue demands that has been thrust on CCRSRA members are line surcharges. Currently, SJVR is imposing line surcharges under tariff applicable at 11 stations on its system, at levels of up to $3,675 per car. Dreo V.S. at 2. The surcharges are labeled as a switching and accessorial charge included in an "optional services catalog." *Id.* As described in Mr. Dreo's Verified Statement, his company, Superior Soil, which receives bulk bark products by rail on a delivered price basis (as a receiver), was approached by SJVR and actively encouraged to locate at his current site at Ivanhoe, CA. *Id.* at 1-2. In reliance of continuing rail service, Superior Soil has made substantial investments and improvements in its business and facilities totaling approximately $500,000. *Id.* at 9.

In 2011, SJVR/RailAmerica began applying a new tariff surcharge on Superior Soil of $875 per car, which Superior Soil has been protesting, with total invoices now totaling approximately $150,000 and growing. *Id.* at 10. As Mr. Dreo explains, SJVR's line surcharge practices are particularly egregious in the case of Superior Soil, for a number of reasons. First, as discussed above, SJVR encouraged Mr. Dreo to locate at his current location. Second, SJVR informed Mr. Dreo that the surcharge collections would be spent on discrete line repairs, but when questioned, the railroad would not verify that any collected monies would be actually spent on the cited line repairs, and it could not explain why it was seeking collections that greatly exceeded the amount the railroad stated was necessary for the applicable line repairs. *Id.* at 5-6.

Third, the railroad informed Mr. Dreo that Superior Soil was the only customer using the line and thus should alone be held responsible for surcharges. *Id.* at 8. However, Superior Soil's facilities at Ivanhoe are located in the middle of a line that is profitable. *Id.* For example, Mr. Littlefield's employer, Richard Best Inc., moves over 4,000 carloads on this line. Littlefield V.S. at 3. Also, an independent governmental study concluded the line supports over 4,700 cars annually, is profitable, and has the opportunity to double its current traffic levels with new business from existing and potential customers with appropriate marketing and customer reach-out. Dreo V.S. at 6.

Fourth, the line is BNSF's only access to critical customers on connecting lines. Dreo V.S. at 8-9. One of these customers is Univar, which ships between 400-500 cars annually from Fresno, CA to its facilities at Visalia, CA, located on the "Cross Valley" line. *Id.* at 8. The Cross Valley line received $14.5 million from public sources in recent years for a major line upgrade, yet SJVR also targeted Univar with line surcharges totaling approximately $600,000 per year. *Id.* at 9.

Finally, SJVR has strongly urged Superior Soil to move locations, but the principal location suggested by the railroad, Lindsay, CA is unsuitable for Mr. Dreo's business and is actually located near the end of a line segment that SJVR has been aggressively attempting to abandon.[6] To add insult to injury, even if Superior Soil had moved locations at considerable expense to an unsuitable location, SJVR is now imposing surcharges at that site (Lindsay, CA) that substantially exceed the amount SJVR is currently being asked to pay at Ivanhoe. *Id.* at 5.

Mr. Dreo discusses some of his concerns about SJVR's practices as follows:

> As stated above, Superior Soil purchases its bark products from distributors in Eugene Oregon, and does so on a delivered price basis. We are a rail "receiver," and our distributor, Lane Forest Products, is the shipper. To put the line surcharges SJVR is attempting to impose in perspective, we currently pay our supplier rail transportation pass-through costs of approximately $2,800 which cover the costs of moving the product from Eugene to Ivanhoe, a total distance of approximately 750 rail miles. Nevertheless, depending on

[6] *See San Joaquin Valley R.R. – Abandonment Exemption – in Tulare County, Cal.*, STB Docket No. AB 398 (Sub-No. 8x) (STB served June 6, 2008).

> its switch point, (Goshen Jct. or Fresno), SJVR only moves our cars between 26 miles (from Goshen Jct. coming from the south) or 44 miles (from Fresno coming from the north) – or a total of approximately 3%-6% of the total origin-to-destination movement miles. Yet the $875 per railcar fees amount to up to approximately one-third of the total amount of revenues already paid in full for the total 750 mile through haul.
>
> We strongly believe these surcharges are excessive, and given that SJVR already receives a switching fee as agent for UP on our traffic, we seriously question the legality of these fees, which we believe are a blatant form of "double-dipping." Also, SJVR has never explained to us why a reasonable portion of the revenues it is already receiving for our business and other line business is not being placed back into the line in the form of line maintenance or rehabilitation.

Id. at 4.

As Mr. Dreo states, RailAmerica/SJVR's practices with regard to line surcharges are a form of improper "double-dipping." *See, e.g., Ind. Harbor Belt R.R.*, 577 F.2d at 400 (requiring shippers to pay twice for the same switching service is an unreasonable practice); *Rail Fuel Surcharges*, STB Ex Parte No. 661, at 10-11 (STB served Jan. 26, 2007) (requiring shippers to pay twice for the same fuel cost increase is an unreasonable practice). SJVR is already receiving revenues for its transportation services pursuant to its agreements with its involved interchange carriers, UP and BNSF. As the Board has clarified, "surcharges, which by their nature apply to line-haul service, are effectively indistinguishable from line-haul rates." *Parish & Heimbecker, Inc. – Petition for Declaratory Order*, 4 S.T.B. 866, 876-68 (2000); *petition for reconsideration denied*, *id.*, 5 S.T.B. 534, 536 (2001). Yet SJVR is applying its surcharges on its customers on top of already existing line-haul rates.

SJVR professes authority to charge these fees calling them accessorial fees (and not line-haul rates), but as the STB has declared, "surcharges are not analogous to demurrage or other kinds of separately identifiable accessorial charges that carriers may impose on consignors and consignees for different costs or services apart from the line-haul transportation service that is provided." *Id.*, 5 S.T.B. at 536 n.4. SJVR is simply seeking to augment revenues for services by collecting line surcharges on top of transportation rate charges governed by separately applicable pricing arrangements.[7] As Mr. Dreo notes:

> Our supplier and shipper, Lane Forest Products, has provided us with a copy of the applicable UP Tariff, a bill of lading, and a freight charge that it receives for these movements, which I have included in Attachment 4. These pricing documents cover our transportation, from origin, all the way to destination at Ivanhoe, and none of them allow SJVR to interfere with and supplement the governing UP line-haul rates. Also, while SJVR's tariff describes its surcharges as "optional" "accessorial services," SJVR's line surcharges are not optional for us and are not an accessorial service; they are simply an attempted "add-on" to the rates already being paid for the freight movement to Ivanhoe. Again, we believe that this is unlawful double-dipping.

Id. at 4.

[7] These practices are also legally objectionable on a number of other grounds, not all stated here, including the fact that they are not reasonably apportioned and the monies are not being used for line rehabilitation.

The ultimate impact of these improper line surcharges is to cause significant economic dislocation to Central Valley businesses. *See id.* ("The $875 per railcar surcharge adds approximately 14% to the cost of the material Superior Soil ships into our Ivanhoe facility. This is in a business that operates on a profit margin of less than 10%. These fees quickly become uneconomic for us.")

In a connected matter, Mr. Littlefield also addresses the fact that, when Fortress acquired, RailAmerica, it informed the Board that it had no plans to abandon <u>any</u> of the company's rail lines. However, shortly afterwards, RailAmerica turned around and aggressively sought such abandonments in Central California. *See* Littlefield V.S. at 4-7; *See San Joaquin Valley R.R. – Abandonment Exemption – in Tulare County, Cal.*, STB Docket No. AB 398 (Sub-No. 7x) (STB served June 6, 2008) (abandonment of 31 miles of South Exeter Branch in Tulare County, CA). Fortunately, the Board did deny one such abandonment petition, in part because "traffic levels and the resulting revenues for the SJVR are increasing and . . . they may continue to increase in the future," and finding SJVR cost figures "either unsubstantiated or incorrect." *San Joaquin Valley R.R. – Abandonment Exemption – in Tulare County, Cal.*, STB Docket No. AB 398 (Sub-No. 8x) (STB served June 6, 2008) at 6.

Unfortunately, as Superior Soil's line surcharge experience shows, RailAmerica's surcharge program, by all appearances, amounts to a thinly-veiled initiative by the company to drive business off its lines, even profitable lines, in order to help perfect abandonment for short term profit gain (from line scrapping) at great expense to consumers and the public interest. Additionally, as the Board is already aware, where abandonments have been granted, the region is apparently still experiencing additional adverse impacts, with Central Valley citizens now involved in litigation with RailAmerica concerning significant ongoing property and flooding damages allegedly caused by line rip-up and salvage. *Buddy & Holley Hatcher – Petition for Declaratory Order*, STB Fin. Docket No. 35581 (STB served Sept. 21, 2012). Finally, as the Univar experience shows, even customers located on lines where the public has spent millions of dollars to upgrade and fully rehabilitate the facilities are being targeted with surcharges.

Only after working with local and state officials to enact new laws creating new local rail authorities and giving serious consideration to the filing of a STB feeder line application were CCRSRA members ultimately able to get RailAmerica's attention. Littlefield V.S. at 5-10. However, unfortunately as described above, these efforts have not slowed down RailAmerica/SJVR in their efforts to plow ahead and continue to insist on surcharge and related non-freight charges from their customers.

3. Public Interest Impacts of Other Related Practices

Other "non-freight" collection initiatives that have raised consumer concern include practices related to RailAmerica's newly instituted Industrial Track Agreement Program, which, among other things, requires customers to pay annually a $2,500 per switch, "switch maintenance fee," as well as RailAmerica's credit and security deposit programs. *See id.* 11-16. Under its "switch maintenance fee" program, RailAmerica is applying and collecting across-the-board substantial annual fees on customers for switch maintenance, regardless of the amount of cars shipped, and even on large volume unit train customers. *Id.* at 14-16. This is part of a concerted holding company strategy to "seek to grow our revenue from non-transportation uses of our land holdings such as land leases, crossing or access rights . . . among others." *See* Hoegemeier V.S. at 11 (citing RailAmerica 2010 SEC Form 10-K at 4). Applicable Board precedent has long prohibited such attempted collection of switch maintenance fees as an improper form of double-recovery:

> [W]e do not believe that [carrier's] attempt to transfer the switch connection maintenance obligation to [shipper] is consistent with the carrier's obligation to deliver petitioner's freight. The task of delivering freight is an integral [part] of the transportation obligation, and therefore, as a general rule, the delivery of freight is a service performed under a carrier's line-haul rate. Correspondingly, the expense attributable to delivering freight should generally be met from a carrier's line-haul revenues. *See Propriety of Operating Practices – Packing Sheds*, 246 I.C.C. 273, 283 (1941), and *Split Deliveries and Drayage Allowance at New York*, 245 I.C.C. 40, 41 (1941). In the case of the [carrier], the switch connection in question was a part of the railroad's general transportation facility, paid for and maintained from the line-haul revenues of the railroad.

Joint Petition for Declaratory Order – Private Sidetrack – Gen. Motors Corp. & the Long Island R.R., 351 I.C.C. 691, 696 (1976); *see also Ind. Harbor Belt R.R.*, 577 F.2d at 400 (requiring shippers to pay twice for the same switching service is an unreasonable practice); *Rail Fuel Surcharges*, STB Ex Parte No. 661, at 10-11 (STB served Jan. 26, 2007) (requiring shippers to pay twice for the same fuel cost increase is an unreasonable practice).

On the Industrial Track Agreement policy and switch maintenance fees, one of SJVR's largest customers, Richard Best Transfer Inc., Mr. Littlefield's employer, attempted to reason with regional, marketing representatives of RailAmerica about application of the fees on the company. Littlefield V.S. at 14-15. Mr. Littlefield asked for application forbearance on multiple grounds, including that Richard Best Transfer was a very large customer, the location had been receiving continuous rail service for over 45 years and was located on track installed by the Southern Pacific in 1963, and that based on Mr. Littlefield's long railroad experience, such practices were not "the industry norm." *Id.*

Finally, Mr. Littlefield provided information on a similar <u>G&W tariff</u>, which tariff did not assess such switch fees on active customers, and he reasonably asked RailAmerica to <u>take the G&W tariff approach</u>, with "the idea . . . to generate carloads and to reward those customers that do – not create more charges to them, especially the high performing ones." *Id.* at 15. The RailAmerica regional marketing representative with whom Mr. Littlefield communicated completely ignored his request. *Id.* Instead, another RailAmerica Vice President responded stating simply: "Obviously Chuck has more time than money!!" *Id.* For the past several years, RailAmerica has now been assessing and collecting such fees on Richard Best Transfer, on other CCRSRA members, and apparently across the board on all of its railroad companies as a holding company policy and practice.

In addition, Mr. Littlefield describes in his statement concerns with respect to credit terms and security deposits contained in RailAmerica's tariffs. These tariff terms have widespread legal problems. Among other things, the terms require business customers to have their personnel "personally guarantee" company obligations. Littlefield V.S. at 12. This is a clear violation of governing law. *See, e.g., W. Point Relocation , Inc. & Eli Cohen – Petition for Declaratory Order*, STB Docket No. 35290 (STB served Oct. 29, 2010) (tariff cannot hold an individual responsible for a corporation's debts).

Additionally, the tariff requires the payment of "all collection costs and expenses, including reasonable attorney's fees." Littlefield V.S. at 12. However, such an attempted transfer of costs stands against the universally recognized "American Rule" regularly invoked by courts in declining to award legal costs. As the Supreme Court has instructed, attorney fees generally are not a recoverable cost of litigation "absent explicit congressional authorization." *Runyon v. McCrary*, 427 U.S. 160, 185 (1976). The ICC Termination Act contains no attorney fee/litigation cost recovery provision, and neither the STB nor the Interstate Commerce Commission ("ICC" or "Commission") has sought to provide for the recoupment of such litigation costs. SJVR's tariff contravenes this precedent.

The tariff also contains novel requirements that shippers/receivers must sign the tariff, and must thereby "agree to pay according to your terms of sale." Littlefield V.S. at 12. However, a tariff cannot be changed unilaterally into an enforceable contract. *See, e.g., Interpretation of the Term "Contract" in 49 U.S.C. 10709*, STB Ex Parte No. 669 (STB served Mar. 12, 2008).

Furthermore, the tariff requires that one must "pay in full" even where there is a bona fide dispute over whether charges are illegal or erroneous, which also violates governing law. *See Ill. Cent. Gulf R.R. – Security Deposits – Payment of Demurrage Charges*, 358 I.C.C. 312 (1978). As the Commission has provided: "[i]f there is no obligation to pay . . . charges, it would be unreasonable to implement the security deposit requirement for failure to pay those charges. . . . The threat of a cash guarantee should not be used as a means to coerce payment of erroneous bills or charges." *Id.* at 318.

A principal problem with this credit and security deposit tariff, as clarified by Mr. Littlefield is that:

> RailAmerica regularly utilizes this Credit Terms/Security Deposit Tariff as a proactive means of collecting payments on accessorial fees and surcharges, even where there is a bona fide dispute. And even where customers have a legitimate dispute, faced with such onerous credit/security deposit demands and with the possible loss of essential rail service necessary to conduct business, many customers will simply accede to the railroad's payment demands.
>
> I am unaware of any other rail carrier that employs such credit/security deposit terms, including the requirement that customers must sign an agreement as part of a common carrier tariff requirement, customers must make an company official <u>personally</u> liable for a business' obligations; and, in order to continue service, customers must provide a deposit in the full amount of any accrued charges as determined by the railroad. In contrast, it appears that G&W utilizes security deposit terms on a railroad-by-railroad basis and does not have such a similar, across-the-board program.

Littlefield V.S. at 12-13.

C. IF THE TRANSACTION IS APPROVED, THE BOARD SHOULD ADOPT CONDITIONS TO PROTECT CCRSRA MEMBERS FROM ADVERSE EFFECTS

As indicated above, if the Board determines that, on balance, the overall effect of a proposed transaction is in the public interest, it still has broad authority to specify conditions to maximize the public interest benefits. CCRSRA respectfully submits that the Board's public interest analysis and review of conditions in this proceeding should be conducted recognizing that "merger-related competitive harm results when the merging parties gain sufficient market power profitably to raise rates and/or reduce service (or both) and to do so profitably." *UP/SP*, 1 S.T.B. at 430 n.191.[8] Employing this analysis, CCRSRA submits that appropriate conditions, as described below, should be imposed in this case to accomplish the intended result of preserving adequate rail service, and protecting customers from competitive harm that would be otherwise be brought about by the transaction.

1. CCRSRA's Basis for Conditions

As described in these comments, CCRSRA members unfortunately find themselves at the "front lines" of certain practices by monopoly corporate holding

[8] The analysis should also be conducted with full consideration of the goals of the National Rail Transportation Policy, directing the Board "to encourage honest and efficient management of railroads" (49 U.S.C. § 10101(9)); "to prohibit predatory pricing and practices, to avoid undue concentrations of market power" (*id.* at § 10101(12)); "to maintain reasonable rates where there is an absence of effective competition" (*id.* at § 10101(6)); and "to foster sound economic conditions in transportation" (*id.* at § 10101(5)).

companies that are causing serious competitive harm to businesses and local economies, and respectfully submit that this issue needs to be adequately addressed as part of this proceeding. *See*, *e.g.*, Del Papa V.S. at 11 ("It is . . . clear that even shortlines have major pricing power, and in RailAmerica's case they having been using it, sometimes in very creative ways at the expense of shippers/receivers, and in a manner that has burned bridges with customers, and created animosity. We don't want an adversarial relationship with our essential service providers, we want to work with them in partnership, and grow our businesses together, collectively.") This is a serious issue, and one on which Vice Chairman Mulvey has publicly addressed:

> I believe there are issues that will require our particular attention over the next few years. In addition to the "paper barriers" issue, more generally I am concerned about the state of competition in the railroad industry and the Board's merger review process. *I am concerned about what might happen if hedge fund investment in the railroad industry were to escalate and such a fund attempted to buy a carrier and divest the carrier's assets to the detriment of the shipping public*.

Testimony of Commissioner Francis P. Mulvey, Before the United States Senate, Committee on Commerce, Science, and Transportation, On Reappointment (Dec. 18, 2007) at 3 (emphasis added).[9] CCRSRA members recognize that G&W is not a "hedge"

[9] *See also* Testimony of Commissioner Francis P. Mulvey, Before the U.S. House of Representatives, Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous Materials (Mar. 5, 2008) at 9 ("I would like to note that while the Board generally does not have the power to order what investments are made or how much is spent on the rail plant, it does have the power under the existing statute to remedy severe service deterioration problems, which is the ultimate concern of shippers and communities. We as a nation need to find ways of encouraging, not

fund, but, given its members' experiences described in these comments with their existing holding company, and the large outside corporate financial interests that control G&W's large scale debt and financing for this transaction, they have similar concerns with this transaction, and they believe their concerns are more than adequately justified.

The basis for the conditions sought is fully outlined in the attached Verified Statements of the CCRSRA members. As set forth in Mr. Littlefield's statement:

> [D]espite . . . positive, customer-oriented assertions, CCRSRA members continue to have serious concerns as they have heard such positive statements before in the context of similar railroad mergers/acquisitions, ultimately with promised broad performance improvements far from achieved, and with post-acquisition service and investments actually declining. For example, as stated above, when Fortress acquired RailAmerica it told the STB it had no plans for abandonments, but such abandonment programs were then aggressively pursued in the Central Valley shortly after the transaction. Additionally, some of what G&W says in its Application is remarkably similar to what Fortress promised:
>
>> The proposed transaction is intended to promote the investment objectives of Fortress and to improve RailAmerica's efficiency, financial strength and ability to meet the needs of shippers. . . . This in turn will enhance RailAmerica's ability to make capital investments in response to future growth in demand for rail services, and enable the RailAmerica Railroads to compete more effectively in the marketplace. . . . RR Acquisition and Fortress believe that service to shippers can be improved in the long term through continued investment and improved managerial efficiency.

---

discouraging, investment in the rail plant to ensure our continued mobility.")

> 2006 Fortress Acquisition Application, p. 4. Again, the bottom line is that G&W's statements may sound appropriate, but unfortunately based on experience, CCRSRA members are very wary of whether such promises will be kept.

Id. at 17-18. Mr. Littlefield describes why in this case conditions are appropriate:

> At the same time, the operating plan provided by G&W/RailAmerica in their Application is based on <u>no</u> changes in local operations. The plan leaves it to existing local railroad officials/employees to implement and carry out policies addressing "efficiencies and railroad budgetary performance," to continue existing service programs, and to remain "responsible for all aspects of a particular railroad property." Application, Exh. 15, pp. 1, 3, 6. As explained above, this is far from reassuring to CCRSRA members, as the current policies and service programs of our local railroad service provider are what have caused CCRSRA members' heightened concerns. None of this is addressed in the Application, which again, instead leaves it to local managers to continue existing programs.
>
> Additionally, as our economist Dr. Hoegemeier explains in his accompanying verified statement, this is a very substantial transaction, with a new $2.3 Billion debt commitment being assumed by G&W. With this new debt, it appears that, even if G&W wanted to discontinue some of RailAmerica's "non-freight" revenue growth practices, etc., it may prove very difficult to do so in order for G&W to meet its considerable financial obligations. Additionally, as Mr. Hoegemeier confirms, continued revenues from these existing accessorial and related programs are already "built in" to the G&W's pro forma financial statements. Especially with this substantial new debt, customers have serious concerns that certain existing RailAmerica programs that have placed an undue burden on customers will continue and that shippers will once again be asked to "pay more." In other words, the proposed creation of the world's largest shortline holding company resulting from this transaction does very little to alleviate customer concerns.

Id. at 18-19.

As stated, this is not just a RailAmerica issue that should be presumed to go away with the purchase of RailAmerica by G&W. It is an issue fully entwined with this transaction that has the real possibility of adversely impacting both existing RailAmerica customers and G&W customers (existing and future). As further clarified by Mr. Del Papa:

> If this proposed acquisition is approved, an already massive holding company will double in size. G&W is now promising that it is different, that it wants to focus on customer service, traffic growth, and reinvestment. We hope this is true, but CCRSRA members have real concerns. We have heard such statements before, including from both RailAmerica and Fortress. The potential impacts are substantial. For example, in the area of accessorial fees, if G&W simply takes RailAmerica's accessorial fees, and applies them across-the-board to G&W's railroads, there will be significant adverse economic impacts on many customers and their businesses. And even if G&W comes in and simply retains all of RailAmerica's existing tariffs, for the reasons stated above, companies such as San Joaquin Refining will suffer economically, especially with the implementation of the scheduled Switch from Constructive Placement Fee. At a minimum, this appears to be a real, if not probable impact, because, as Dr. Hoegemeier states in his accompanying statement, G&W's pro forma financial statements already have these "non-freight" charges built-in to the holding company's revenues.
>
> G&W/RailAmerica have not stated in their Application whether RailAmerica accessorial fee tariff terms will be reevaluated, continued, or expanded. CCRSRA respectfully submits that this matter is very important, and needs to be addressed by the Applicants and the STB in a manner that protects consumers.

Del Papa V.S. at 11-12. These sentiments on the possible adverse impacts of the transaction without the incorporation of appropriate conditions are echoed by Mr. Dreo:

> It is our experience that the systematic surcharge program implemented by SJVR/RailAmerica on its customers, including Superior Soil, has caused considerable competitive harm and a substantial chilling effect for existing and future business growth opportunities on the SJVR. Superior Soil and CCRSRA members in the California Central Valley are very concerned about how G&W will handle the current surcharge situation going forward. Questions abound. How much money has been collected in surcharges? Where has the money gone? Has it been spent on line maintenance? Why aren't existing revenues and profits being used for annual maintenance and repair needs?
>
> Railroad customers are concerned that SJVR/ RailAmerica have used their monopoly position over customers on rail surcharges in a manner that has caused considerable harm and has produced customer hostility. Superior Soil and CCRSRA members don't want an antagonistic relationship with our railroad, we want to work with them, and we need them to work with us, to succeed as a business.
>
> If this proposed acquisition is approved, a large holding company will become much larger, and as Dr. Hoegemeier suggests in his accompanying statement, there will be a need to continue to ramp up revenues to pay for the substantial transaction costs and new debt. G&W has not stated whether it will take RailAmerica's existing tariffs and continue to apply them on existing customers and even seek to extend them on G&W's existing 100+ railroads. If it does, this would cause considerable economic harm to many businesses that rely on these railroads to succeed.

Dreo V.S. at 10-11.

2. The Nature and Scope of the Conditions Being Sought by CCRSRA

The specific conditions CCRSRA is seeking in this proceeding are narrowly tailored to address the potential competitive harms, while not impacting in any meaningful way the transaction or any of the potential benefits of the transaction that might be brought about. They are designed, first and foremost, to get the railroad "to the table" to reasonably address CCRSRA members' concerns, to agree to "fix" the problems that have arisen and that may continue if not properly addressed by G&W, and to ensure that G&W is fully committed to working with its customers with a focus on customer service, system reinvestment, and traffic growth. As reflected in the statement of Mr. Del Papa:

> San Joaquin Refining and other shippers and receivers in our area would like to see a more responsive railroad. We wish to view the Class 1 and shortline railroads as valid stakeholders in our businesses. The area of great importance to San Joaquin Refining and all CCRSRA members is an improvement in the relationship of the railroad sales and marketing teams with the customers. We would like to see greater notification time for tariff and other rate changes (this is important for product pricing), and a clear explanation of what these new fees and programs are, and their basis. We want the railroad to make a valid effort to understand our business and what they can do to help us as a business and to grow. We want quick follow-up on questions. We wish to see better follow-up on service related issues, and consistency in switching times. We want to see the railroad make capital improvements which will be a benefit to all shippers moving rail freight and to the ability to grow new business. What we do not want is to feel like a "cash cow" that just keeps giving out more. We don't think this is too much to ask of any railroad.

Del Papa V.S. at 11.

The specific nature of the conditions being sought is further described in the accompanying statements of the other CCRSRA members. First, as Mr. Littlefield conveys:

> CCRSRA respectfully submits that the Board condition any approval of the G&W/RailAmerica transaction on the railroads taking specific steps to mitigate the effects that are described in these comments. . . . They are designed to ensure that CCRSRA members do not suffer an unacceptable deterioration in service and investment as a consequence of the transaction, that representations will be upheld and firm commitments established on railroad practices, service improvements, and investment initiatives that can be verified and enforced if necessary, while avoiding the imposition of any undue burdens on G&W that would reduce any legitimate benefits of the proposed transaction. Without these conditions, CCRSRA and its members would be subject to a reduction of essential transportation services provided by their rail transportation provider, at a time when CCRSRA members are very much in need of improved service, increased investments, and a company that is committed to customer service and traffic growth.

Littlefield V.S. at 19. Additionally, as Mr. Del Papa has explained:

> G&W/RailAmerica have not stated in their Application whether RailAmerica accessorial fee tariff terms will be reevaluated, continued, or expanded. CCRSRA respectfully submits that this matter is very important, and needs to be addressed by the Applicants and the STB in a manner that protects consumers.
>
> On the specific conditions we are seeking on accessorial fees and related charges and practices, we believe that improper "double-dip" and "triple-dip" practices discussed above need to be stopped. Same with the switch maintenance fees that are being imposed as further described in Mr. Littlefield's Statement. Additionally, we believe that the credit terms and security deposit tariffs are far too onerous and one sided, including, among other things, the requirement of agreements from company officials making them <u>personally</u> liable for a business's obligations and the implementation of interest rate charges, which attempt to override state usury laws.

Del Papa V.S. at 12. Finally, as Mr. Dreo has further explained:

> Like CCRSRA's requests on accessorial fees and related charges and practices, we respectfully submit that the line surcharges matter needs to be addressed by the Applicants and the STB and that it needs to be done in a pro-consumer fashion. We believe that improper "double-dip" practices discussed above with regard to rail surcharges need to be stopped, and that any current outstanding fees that SJVR/RailAmerica are attempting to collect need to be dropped.

Dreo V.S. at 11.

3. The Specific Conditions Being Sought by CCRSRA

CCRSRA specifically requests that the Board impose the following conditions to its approval of this control transaction:

1. <u>Specific Practices Raised by Individual CCRSRA Members</u>. To address the specific concerns raised by CCRSRA in its comments, G&W shall, within 30 days, review each of the practices and programs addressed, and provide written guidance to the affected CCRSRA members individually on how it intends to address each such practice and program for that person, including, but not limited to whether or not it intends to continue the practice or program post-transaction on the customer and how it proposes that any existing disputes over such practices will be resolved. If requested, G&W also shall meet with the individual customer to discuss its plans and intentions with respect to the affected practice or program. Within 60 days, G&W shall report to the Board and confirm its compliance with this condition, and its progress on resolution.

2. <u>Application of Practices Generally Post-Transaction</u>. To address the concerns about the application of the practices and programs addressed in CCRSRA's comments generally on SJVR customers, on other existing RailAmerica railroad customers, and on existing and future G&W railroad customers, G&W shall, within 45 days, review these practices and programs, and provide written guidance to the Board on whether or not it intends to continue the practice or program post transaction. If G&W decides that it will be continuing a specific program raised in CCRSRA's comments, it shall provide additional guidance on the specific parameters under which it will be seeking to continue the program, and whether the program will be applied across all RailAmerica and G&W railroads.

3. Regular Meetings. G&W senior management shall agree to periodically meet with California Central Valley receivers and shippers, along with local and state governmental interests to, among other things, discuss customer service issues, service improvement initiatives, system reinvestment and maintenance initiatives, marketing initiatives, economic development initiatives, and any new tariff initiatives.

4. Periodic Reports. G&W shall be required to prepare and submit detailed semi-annual reports to the Board, to be made publicly available, concerning each of its "non-freight" programs, and revenues being received under those programs, including but not limited to line surcharges and how and where any of those surcharge collections are being spent; demurrage; storage; track lease; track and switching maintenance; car hire and rental; railcar switching, including all separate fees that are being assessed and received in addition to switching fees received under line-haul rates; private rail crossings; and any other individual accessorial programs in effect.

5. Oversight. Consistent with Board practice in recent merger proceedings, the Board shall establish an oversight condition for a three-year period. Under this condition, G&W shall be required to prepare, submit, and serve semi-annual reports concerning system integration; safety initiatives; customer service initiatives; detailed performance metrics with regard to interchanges with connecting Class I railroads; reinvestment initiatives; "non-freight" revenue initiatives; and economic development initiatives.

6. Representations. Consistent with Board practice in recent merger proceedings, the Board shall hold G&W to its representations made in the Application and in other representations that it may make on the record during the course of the proceeding, including that customers will receive better and more reliable service, that it will engage in a meaningful dialogue with stakeholders to foster local economic development, and that there will be no associated line abandonments.

The foregoing conditions fully satisfy the Board's enunciated standard for such remedial measures, and are consistent with prior merger conditions granted by the agency. They are narrowly tailored to address the transaction's effects, they are feasible and do not interfere with G&W's management and operation of its railroads, and they produce net public benefits by mitigating the merger's effects on CCRSRA members and their ability to engage in their businesses. In the absence of conditions such as these, for the detailed reasons set forth herein, rather than furthering the public interest, the proposed acquisition may accomplish just the opposite.

CONCLUSION

For the reasons set forth in these Comments, CCRSRA commends for the Board's consideration the conditions described above.

Respectfully submitted,

By: Peter A. Pfohl
Stephanie M. Archuleta
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, DC 20036

Attorneys for Central California Rail Shippers & Receivers Association

OF COUNSEL:
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, DC 20036

Dated: October 5, 2012

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served this 5th day of October, 2012, by first-class mail, postage pre-paid, or by more expeditious means, upon all Parties of Record in this Proceeding.

Stephanie M. Archuleta

Stephanie M. Archuleta

Verified Statement of

Charles L. Littlefield

My name is Charles Littlefield and I am Chief Operating Officer of Richard Best Transfer, Inc. (RBT). My current business address is 6801 Avenue 430, Reedley, CA 93654. I am also the President of the Central California Rail Shippers & Receivers Association (CCRSRA). I have 27 years of experience in all aspects of the railroad transportation supply chain, including experience as a train operations manager, trainmaster, corridor operations manager, terminal manager, and terminal superintendent for Class I railroads; as a general manager and regional vice president of operations for shortlines; and for shippers in my most recent position for RBT, a large volume railroad receiver. Furthermore, I serve on Tulare County's Rail Commission as an active member and on the board of directors of the Tulare County Economic Development Corporation.

The purpose of this statement is to provide the STB with background on CCRSRA, to discuss CCRSRA's concerns about the proposed acquisition of RailAmerica, Inc. (RailAmerica) by Genesee & Wyoming, Inc. (G&W), and to address the need for reasonable conditions to address the competitive harms that would otherwise occur as a result of the acquisition without the incorporation of such protections.

CCRSRA Background

CCRSRA is a regional association of shippers and receivers of rail freight located on the lines of the San Joaquin Valley Railroad Company (SJVR), owned by RailAmerica. CCRSRA was formed in 2008 in response to concerns of shippers and receivers of SJVR who rely on rail service to conduct their business and to survive economically, and who were concerned about various issues arising with their rail service provider. Among other things, CCRSRA members were concerned about having little or no communication from the railroad regarding their service, and were experiencing sudden increases in their accessorial fees, as well as the implementation of whole new fees and practices never before seen from SJVR or from any other railroad. In some instances, members had serious concerns over whether they would have rail service or not due to increasing abandonments and threatened abandonments. Others were receiving line "surcharge" demands, or threatened demands. The CCRSRA incorporated itself as a non-profit California corporation to preserve, protect, and promote rail usage as well as to be an informational tool for California Central Valley rail users.

CCRSRA members are representative of many different industries in California's Central Valley, including petroleum, lumber, building, agricultural commodities, and fertilizers, as well as public interests such as the Kern Council of Governments. Members use SJVR primarily for connecting through service with the Union Pacific Railroad Company (UP), BNSF Railway Company (BNSF), and other railroads throughout the United States and beyond in Mexico and Canada to meet their business needs. CCRSRA's current active members are included in Attachment 1 to this statement and are some of the largest users of the SJVR.

General Railroad Service Concerns

It is important to understand that, while California Central Valley businesses have faced challenges in the current economic climate, the region still remains one of the most robust areas in the United States for the movement of bulk freight commodities and products. For example, RBT is a full service transloading company that loads/unloads approximately 4,000 railcars of various agricultural commodities per year for Central Valley agricultural users and producers, often in unit train service. The primary use for most of these products is for California's Dairy Cattle Industry which is one of the largest in the world. In fact, within a 20-mile radius of RBT's Ivory off-loading facility there are over 80,000 producing dairy cattle. RBT's Ivory facility is served by the SJVR, which moves RBT's inbound products through connections with the UP and BNSF.

The G&W/RailAmerica Application states that SJVR handled over 36,000 cars in 2011, earning $20.3 million in gross revenues. And there is room for significantly more traffic growth and profits with existing and new rail customers. An independent expert study commissioned by the Fresno Council of Governments provided a market analysis of one of the most prominent SJVR main lines (the line on which RBT is located). The line extends from Fresno south to Strathmore, CA with a major connection to SJVR's Cross Valley line (extending from Exeter, CA west to Huron, CA) at Exeter, CA:

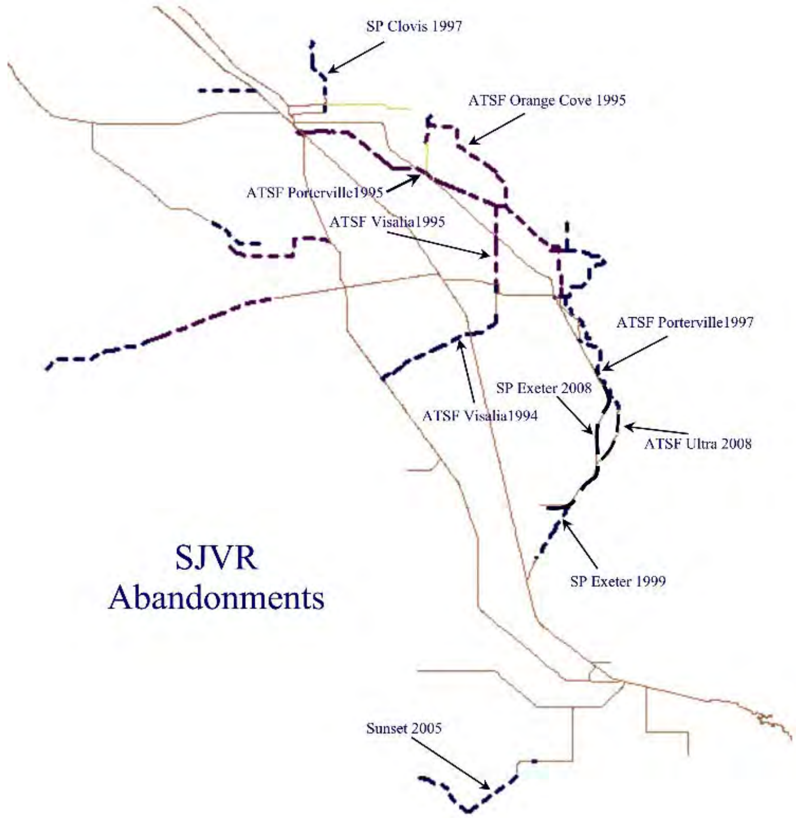
> The current traffic for the Fresno County portion of this line alone accounts for over 4,700 carloads per year. This is significant and sufficient to support an operation profitably. In addition, with a proper marketing plan and focus on customer service, existing customers' potential traffic could likely more than double that number. This does not even include numerous additional potential customers in the area that were noted as potential rail shippers who could add traffic to this line. The revenue – current and potential – appears to be substantial for this line.

Business Plan for Operations of the SJVR in Fresno County, Prepared for Fresno Council of Governments, by Railroad Industries Incorporated (Jan. 2011) (2011 Fresno Rail Business Plan), p. 4. A copy of the 2011 Fresno Rail Business Plan is included in Attachment 2.

As this study summarizes, this line clearly has significant traffic and revenues, is profitable, and with "a proper marketing plan and focus on customer service" it could be handling "more than double" its existing traffic. The same appears to be the case for other SJVR lines. This study also reviews in detail some of the railroad's service, marketing, and maintenance activities and practices that have caused significant concerns and frustration by many of the members of CCRSRA, as well as governmental interests and other local rail users, and I urge the Board to closely review it. Additionally, while this study confirms that there are tremendous traffic growth opportunities, as described in the accompanying Verified Statement by Mr. Rick Dreo, President of Superior Soil, the rail carrier has instead decided to implement substantial line surcharges on active customers on this line.

Rail Abandonment/Line Maintenance Strategy

The schematic below depicts the SJVR abandonments that have occurred in recent years:



While a number of the above abandonments took place prior to RailAmerica's involvement, several crucial recent abandonment activities have occurred under RailAmerica, and even after shippers and the STB were informed that no such actions were contemplated by the railroad. For example, when Fortress Investment Group acquired RailAmerica in 2007 it represented to the agency that it had "no current plans to make substantial changes in RailAmerica's day-to-day operations, to sell any of the RailAmerica Railroads or to abandon any rail lines in connection with the proposed transaction." Fortress Verified Notice of Exemption, STB Finance Docket No. 34972, (Dec. 1, 2006) p. 4 (2006 Fortress Acquisition Application). However, shortly afterwards, we saw significant new abandonment initiatives by SJVR in Tulare County, fortunately one of which the STB denied (STB Docket No. AB-398 (Sub.-No. 8x)). As the 2011 Fresno Rail Business Plan summarized:

> Over the last 3 years, SJVR has systematically sought to abandon several segments of its rail lines in these counties. The branch line running parallel to the UP main line from Jovista at its south point all the way to Fresno at its north point has been one of these segments. This branch line serves customers in the eastern parts of Tulare and Fresno counties, and has already been partially abandoned. Tulare County has been fighting the abandonments and attempted to negotiate a purchase of the segments at risk from SJVR, but has been thus far unsuccessful.

Ibid. p. 3.

In response to serious and growing concerns about additional SJVR abandonments, lack of maintenance, and SJVR's service actions and inactions in some areas, the CCRSRA worked closely with State Legislators and county officials (including California State Senator Michael Rubio and Tulare County Board of Supervisors Allen Ishida) to draft and enact into law S.B. 325, a law creating the Central Valley Rail Authority. A copy of S.B. 325 is included at Attachment 3. The new Rail Authority was established for the sole purpose of preserving rail service in the Central Valley of California.

In fact, very serious study was given, especially in the wake of the RailAmerica Coos Bay situation in neighboring Oregon, to filing with the STB a feeder line application to enable the Rail Authority, once formed, to gain control of service of the line south of Fresno extending to eastern Tulare County that was analyzed in the 2011 Fresno Rail Business Plan. In fact, it wasn't until that initiative arose that shippers in the affected areas began getting any meaningful response from the SJVR. I attach to this statement at Attachment 4 a feeder line application support letter from Univar USA Inc. submitted at the time of this initiative in 2010, which describes in detail the type of deep frustration experienced by local rail shippers seeking to maintain and grow their business, but with railroad actions significantly harming their ability to succeed.

Meanwhile, SJVR has received significant federal, state, and local public funding. For example, in 2002-03, the “Cross Valley Rail” project restored and replaced almost 50 miles of track from Visalia to Huron, in an initiative to move 100 heavy trucks per day off the highways and onto rail. The total project cost $14.5 million, with federal, state, and local government funds paying the vast majority of the project and SJVR contributing approximately 15%. Currently the Tulare County Association of Governments is actively working with other state agencies, and with SJVR to provide millions of dollars of additional public funding for rail line improvements of the profitable Fresno-to-Exeter line. We want to see such initiatives continue along with emphasis on consistent and cost effective service, but we want to see that such public monies are wisely spent and that the railroad in return commits to providing reasonable service and working closely with its customers and potential customers to meet their current and future growth needs. Furthermore, we would like to see the actual application of the 45G Tax Credit being applied first before more tax payer dollars are gleaned from already lean state and county budgets.

Response to CCRSRA's Concerns

As explained above, CCRSRA members are shippers and receivers of railroad freight that need the railroads to reasonably serve them to meet their basic business needs. In order to invest and grow, it is vital that members have a railroad service provider that they can rely on to meet their service needs. After CCRSRA members began experiencing significant new accessorial fees and practices, in May 2009 CCRSRA formally reached out to RailAmerica through a letter to RailAmerica's CEO explaining that the new fees were excessive, were made without notice, and exceeded those of other carriers. We asked RailAmerica to meet with us as soon as possible to discuss these charges. A copy of this letter is included in Attachment 5.

CCRSRA was pleased when RailAmerica replied by letter four days later. Unfortunately, in its reply, RailAmerica declined to meet with CCRSRA, asserting that it was too "early" for it to meet with us, and asking for more information on "specific claims" on which RailAmerica could respond. Also, even though these and virtually all SJVR fees and rates were and are established by common carrier tariff to be applied across-the-board on all customers, and not by private contract, RailAmerica still asked CCRSRA to provide RailAmerica attorneys with "legal documents that give you, and your organization, the ability to negotiate and commit on behalf of our customers," asserting that "SJVR has a number of contractual agreements with customers." As to the new accessorial fees, RailAmerica replied that its fees were always provided with at least 20 days notice and "most often not less than ninety days," the fees were based on marketplace factors, and that "[i]n almost all cases we ensure that our prices . . . are well below those of the nearest Class 1 railroad, so our customers realize the benefit of being located on a shortline." A copy of RailAmerica's reply letter is included in Attachment 6.

CCRSRA responded to RailAmerica by another detailed letter, dated June 8, 2009. First, we provided several specific examples showing SJVR's new tariff fees well in excess of nearby Class I railroads and other shortline carriers. Second, we provided documentation showing that the tariffs were being implemented without notice, and that, in fact, none of the involved tariff changes had been communicated directly with SJVR customers. Third, we refuted RailAmerica's assertions that its marketing and sales teams "are always willing" to meet to discuss business issues, explaining that phone calls from customers were not being returned, and even written requests from customers for meetings and follow-up requests were being ignored for as long as 80+ days. We implored RailAmerica to accept CCRSRA's offer to meet in good faith, stressing our common interests, and stating once again that time was of the essence. A copy of CCRSRA's June 8, 2009 response letter is included as Attachment 7. We sent copies of our letters to the STB's Office of Consumer Assistance, to the UP, to the BNSF, and to our elected officials.

Finally, only after enlisting the assistance of Thomas Brugman of the STB's Office of Customer Assistance (our letter to Mr. Brugman of August 20, 2009 is included at Attachment 8) was CCRSRA finally able to obtain a meeting with RailAmerica and SJVR officials. The outcome of the meeting, which was mediated by Mr. Brugman, was that RailAmerica/SJVR agreed to give customers at least 20-days direct notice of common carrier tariff changes (as it is required to do by law). We were unable to get RailAmerica to revisit any of its new fees and practices or to meaningfully discuss them.

Ongoing/Present Concerns

In my role as Chief Operating Officer of RBT, I have seen improvement in service, communication, and willingness to work with RBT on both the RailAmerica front as well as the local SJVR management over the last 18 months. SJVR did put in some substantial upgrades in their rail line to our Ivory facilities. This in large part was due to RBT's initiative to start moving large unit trains to Ivory, and after we invested significant capital improvements to our facilities, including our rail facilities. However, RBT is still greatly concerned about the possibility of future surcharges, our current switch maintenance fees because we have four main line switches, higher accessorial fees, and constant tariff increases. These new fees and programs really do matter, and they affect our ability to stay in business due to the fact that we are a receiver and therefore cannot pass any of these additional fees to our customers or we will lose our business. As CCRSRA member Kern Council of Governments (Kern COG) surmised in a letter of support for CCRSRA:

> [S]hippers in our region have commented that over the past few years, surcharges and accessorial fees have grown astronomically for unexplained reasons. Many shippers are now being forced to consider other shipping options, relocation, or closing their business completely.

A copy of Kern COG's letter of support is included as Attachment 9.

Present concerns of CCRSRA members are still a lack of marketing or investment initiatives by the railroad, constant tariff changes (8 so far in 2012), demurrage/storage fees and practices, line surcharges, switch maintenance fees, and credit/security terms. RailAmerica officials have told some CCRSRA members that if customers want to reduce their increased assessorial fees (demurrage/storage) that they need to "just put in more track." Several large customers have done that (including RBT) or are planning on doing just that; however, their fear is that, even after these substantial upgrades are made, RailAmerica/SJVR will just impose surcharges on them or other fees in order to recoup the loss of the past fee revenues, or that the lines may be put on the abandonment/salvage block.

As described above, Mr. Rick Dreo in the accompanying verified statement, discusses the practice of line surcharges, which is occurring not just on stub ended lines, but on major, connecting mainlines that are profitable and with very substantial traffic. Mr. Mark Del Papa, V.P. Supply & Distribution of San Joaquin Refining Company will discuss in the accompanying verified statement specific issues occurring with new and increased SJVR accessorial charges. I address here certain credit/security deposit and switching maintenance practices.

A. Credit/Security Deposits

RailAmerica applies across-the-board on almost all of its railroads (43 railroads in total) a General Tariff, RA 1000. Section II of that Tariff, Credit Terms and Security Deposit, addresses requirements for the payment of certain security deposits for collection of assessed charges. I have included a copy of that Tariff Section as

Attachment 10. Item 1010 of this Section includes a requirement that, on written demand by RailAmerica for the payment of any accessorial charges and/or surcharges, in order to receive continuing service, for each railcar a deposit is required of up to the "maximum amount of accessorial charges that accrued on any one car during the preceding twelve (12) months." Item 1020 of the Tariff contains an "Application for Credit," requiring customers to provide private financial/banking information, along with an "Individual Personal Guarantee." The tariff requires signed undertakings requiring businesses, along with individual representatives of businesses, among other things to:

- "AGREE TO PAY ACCORDING TO YOUR TERMS OF SALE."
- "AGREE TO PAY ALL COLLECTION COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY YOU IN COLLECTING OR ATTEMPTING TO COLLECT SUCH ACCOUNT"
- To personally guarantee "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."

Ibid. This Section also includes provisions implementing aggressive interest rate charges at 1.5% per month, or an annual rate of 18%.

RailAmerica regularly utilizes this Credit Terms/Security Deposit Tariff as a proactive means of collecting payments on accessorial fees and surcharges, even where there is a bona fide dispute. And even where customers have a legitimate dispute, faced with such onerous credit/security deposit demands and with the possible loss of essential rail service necessary to conduct business, many customers will simply accede to the railroad's payment demands.

I am unaware of any other rail carrier that employs such credit/security deposit terms, including the requirement that customers must sign an agreement as part of a common carrier tariff requirement, customers must make an company official personally liable for a business' obligations; and, in order to continue service, customers must provide a deposit in the full amount of any accrued charges as determined by the railroad. In contrast, it appears that G&W utilizes security deposit terms on a railroad-by-railroad basis and does not have such a similar, across-the-board program. Instead, where there are such tariff terms, G&W's tariffs do not require any signed customer agreements, do not require customers to make a company official personally liable for a business' obligations, and do not require immediate payments or deposits where there is a bona fide business dispute. The G&W tariffs that I am aware of generally enable shippers to orderly dispute invoices by paying only the amount of undisputed charges, and do not require payment where there is a bona fide dispute.

Also, in terms of interest payment requirements, unlike RailAmerica, I am aware that other carriers have provisions that ensure compliance with state usury laws designed to protect customers. For example, CSX Tariff CSXT 8200-J (Supplement 8), Item 13070, entitled Usury Law Compliance, specifically provides that, on applicable movements, CSX "shall comply with applicable usury laws," and that if any tariff finance requirements "exceed the maximum allowable rate, then the applicable rate(s) shall be automatically reduced to the maximum allowable rate." G&W/RailAmerica have not stated in their Application whether G&W's tariff practices will be implemented going forward post-transaction, including with regard to security deposit/credit, or whether these RailAmerica tariff terms will be continued/expanded. CCRSRA respectfully submits that this matter is very important, and needs to be addressed by the Applicants and the STB in a pro-consumer manner.

B. ITA/Switching Maintenance

RailAmerica has recently been implementing new across-the-board programs requiring customers to sign an Industrial Track Agreement (ITA). The ITAs are imposed even where railroad service is longstanding and ongoing, and where the railroad has no ownership interest in the spur, including spurs that are privately owned by the industry. These ITAs, among other things, require a non-refundable $1,000.00 "document preparation fee" and an additional $1,500 "Engineering review fee" where there is new track – along with provisions requiring minimum insurance coverage. Also included with the RailAmerica ITA is a newly instituted annual switch maintenance fee in the amount of $2,500.00 per customer switch, with the fee subject to change without any prior notice (the switch maintenance fee was originally $1,500, but has now been increased to $2,500 annually). A copy of the RailAmerica ITA is included as Attachment 11.

Under this program, some CCRSRA members are now being charged $2,500.00 annual switch maintenance fees on their mainline switches regardless of their car counts. I have had personal experience with this new program. In the spring of 2010, RailAmerica sent to me the new RailAmerica ITA which I was informed was being established across-the-board on rail customers. RailAmerica pursued its new ITA program aggressively with RBT and others.

However, I asked RailAmerica (through its Vice President of Marketing - West) for forbearance on assessing its stated $2,500 annual switch maintenance fees. In so doing, I provided RailAmerica confirmation that the RBT Ivory facility had been receiving continuous rail service for 47 years, was a track installed by the Southern Pacific in 1963, was SJVR's single largest customer at the time, and the facility received over 3,000 railcars annually. I informed them that it was not the industry norm for such charges for volume rail customers. Finally, I provided RailAmerica with information on a related G&W railroad tariff, that more reasonably only applied switch fees for customers that switched a total of 12 or less railcars annually. I asked RailAmerica to adopt the G&W practice for RBT, with "the idea . . . to generate carloads and to reward those customers that do – not create more charges to them, especially the high performing ones." RailAmerica did not respond to my request for collection forbearance on RBT, and the only response I did receive initially was a message from another RailAmerica Vice President stating simply: "Obviously Chuck has more time than money!!" Included in Attachment 12 is a copy of the above discussion conducted by email exchange.

Again, while ITA's are standard in the railroad industry where a shipper leases spur tracks from an owning railroad as necessary to conduct its business, I am unaware of other rail carriers requiring an agreement similar to that of RailAmerica, including, again, G&W. Also, even where there is an ITA, I am unaware of any other rail carrier that seeks to implement switch maintenance fees on rail customers with more than a very small minimum in annual railcar shipments – again, the goal is to incent more rail car service from sparsely used facilities, not to apply across-the-board, substantial new maintenance fees on regular, and even large volume customers. A number of CCRSRA members have informed me they are now being billed for $2,500.00 annual switch maintenance fees. As discussed, RBT is also being billed annual switch maintenance fees.

Again, G&W/RailAmerica have not stated in their Application whether G&W's practices with regard to ITA's/switch maintenance fees will be implemented going forward post-transaction, or whether RailAmerica ITA/switching maintenance practices will be continued/expanded. CCRSRA respectfully submits that this matter is also very important, and needs to be addressed by the Applicants and the STB in a pro-consumer manner.

Proposed Conditions

As indicated above, and in the accompanying verified statements, CCRSRA members have experienced considerable frustration with their rail service provider. The uncertainty of service, terms of service, and cost for service make it very hard for members to budget their transportation costs going forward. Times are tough for many CCRSRA members and not knowing what to expect from their rail provider can make it even tougher.

G&W has said a lot of good things in its application, including the following:

- That service will be improved after shortlines incorporate G&W's customer service methods with an "intense local focus" incorporating "key performance metrics" with regard to interchanges with Class I railroads;

- That “long-term stability” will be created by incorporating shortlines into the G&W “family of railroads”;
- That G&W “will maintain an open dialogue with government officials and all stakeholders to foster local economic development”;
- That G&W has a focus on reinvestment;
- That shippers will not lose any competitive routings; and
- That no abandonments are anticipated as a result of the transaction.

These types of service promises prompted RBT to sign a letter of support for the transaction, albeit with qualifications that our support was predicated on RBT “receiving a quality cost effective rail service that continues to meet and/or exceeds our expectations.” Additionally, despite these positive, customer-oriented assertions, CCRSRA members continue to have serious concerns as they have heard such positive statements before in the context of similar railroad mergers/acquisitions, ultimately with promised broad performance improvements far from achieved, and with post-acquisition service and investments actually declining. For example, as stated above, when Fortress acquired RailAmerica it told the STB it had no plans for abandonments, but such abandonment programs were then aggressively pursued in the Central Valley shortly after the transaction. Additionally, some of what G&W says in its Application is remarkably similar to what Fortress promised:

> The proposed transaction is intended to promote the investment objectives of Fortress and to improve RailAmerica's efficiency, financial strength and ability to meet the needs of shippers. . . . This in turn will enhance RailAmerica's ability to make capital investments in response to future growth in demand for rail services, and enable the RailAmerica Railroads to compete more effectively in the

> marketplace. . . . RR Acquisition and Fortress believe that service to shippers can be improved in the long term through continued investment and improved managerial efficiency.

2006 Fortress Acquisition Application, p. 4. Again, the bottom line is that G&W's statements may sound appropriate, but unfortunately based on experience, CCRSRA members are very wary of whether such promises will be kept.

At the same time, the operating plan provided by G&W/RailAmerica in their Application is based on <u>no</u> changes in local operations. The plan leaves it to existing local railroad officials/employees to implement and carry out policies addressing "efficiencies and railroad budgetary performance," to continue existing service programs, and to remain "responsible for all aspects of a particular railroad property." Application, Exh. 15, pp. 1, 3, 6. As explained above, this is far from reassuring to CCRSRA members, as the current policies and service programs of our local railroad service provider are what have caused CCRSRA members' heightened concerns. None of this is addressed in the Application, which again, instead leaves it to local managers to continue existing programs.

Additionally, as our economist Dr. Hoegemeier explains in his accompanying verified statement, this is a very substantial transaction, with a new $2.3 Billion debt commitment being assumed by G&W. With this new debt, it appears that, even if G&W wanted to discontinue some of RailAmerica's "non-freight" revenue growth practices, etc., it may prove very difficult to do so in order for G&W to meet its considerable financial obligations. Additionally, as Dr. Hoegemeier confirms, continued revenues from these existing accessorial and related programs are already "built in" to the

G&W's pro forma financial statements. Especially with this substantial new debt, customers have serious concerns that certain existing RailAmerica programs that have placed an undue burden on customers will continue and that shippers will once again be asked to "pay more." In other words, the proposed creation of the world's largest shortline holding company resulting from this transaction does very little to alleviate customer concerns.

CCRSRA respectfully submits that the Board condition any approval of the G&W/RailAmerica transaction on the railroads taking specific steps to mitigate the effects that are described in these comments. The suggested conditions are set forth more specifically in CCRSRA's accompanying Comments. They are designed to ensure that CCRSRA members do not suffer an unacceptable deterioration in service and investment as a consequence of the transaction, that representations will be upheld and firm commitments established on railroad practices, service improvements, and investment initiatives that can be verified and enforced if necessary, while avoiding the imposition of any undue burdens on G&W that would reduce any legitimate benefits of the proposed transaction. Without these conditions, CCRSRA and its members would be subject to a reduction of essential transportation services provided by their rail transportation provider, at a time when CCRSRA members are very much in need of improved service, increased investments, and a company that is committed to customer service and traffic growth.

I greatly appreciate this opportunity to provide this statement.

VERIFICATION

I, Charles L. Littlefield, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.

Charles L. Littlefield

Executed on September 28, 2012

Attachment 1

CCRSRA Members 2012

Kern Council of Governments
Amber Chemical
Richard Best Transfer
Kern Oil Refining
Enterprise Corp.
Mid-Cal Materials
GAF
JG Boswell Tomato Co.
Tricor Refining LLC
San Joaquin Refining Co., Inc.
Univar
Superior Soil
Delta Trading

Attachment 2

Report

Business Plan for Operations of the SJVR in Fresno County

Prepared For:

Fresno Council of Governments
Clark Thompson
2035 Tulare Street, Ste 201
Fresno, CA 93721

January 10, 2011

Prepared By:

Railroad Industries Incorporated
Full Service Transportation Consulting

1575 Delucchi Lane, Suite #210
Reno, NV 775-329-4855

www.railroadindustries.com

Table of Contents

Introduction

The San Joaquin Valley Railroad (SJVR) is a Class III railroad operating several disconnected segments throughout Kern, Tulare and Fresno counties in the state of California. These segments connect the local shippers to the greater rail system through interchanges with BNSF Railway (BNSF) and Union Pacific Railroad (UP), which run parallel for the most part between Fresno and Bakersfield, CA. SJVR has trackage rights over the UP main line in order to reach its many segments and interchange with UP. These trackage rights allow SJVR to move its own equipment to on the UP track to each of its segments, but not to move any freight traffic over UP's line. Any freight traffic from SJVR's branch lines must be interchanged to UP to move on that line.

Over the last 3 years, SJVR has systematically sought to abandon several segments of its rail lines in these counties. The branch line running parallel to the UP main line from Jovista at its south point all the way to Fresno at its north point has been one of these segments. This branch line serves customers in the eastern parts of Tulare and Fresno counties, and has already been partially abandoned. Tulare County has been fighting the abandonments and attempted to negotiate a purchase of the segments at risk from SJVR, but has been thus far unsuccessful.

Fresno County has a vested interest in the future of this branch line, which currently serves several of its own shippers. Fresno County has decided to be proactive in its efforts to prepare for threats to its rail service and examine traffic, track conditions and operational feasibility for this portion of the line before potential abandonment threats. The purpose of this report is to develop a potential business plan for the city and county of Fresno to acquire the line if necessary to preserve service. This includes an inspection of the rail track, a market analysis to determine the traffic and revenue for the line, development of an operating plan that could serve on the line including the associated costs, analysis of the operational feasibility/return on investment for the line, and developing the Net Liquidation Value for the line, which would be the basis for any purchase negotiations.

Summary of Findings

Inspection – The line was found to be 80% heavy rail in overall average to good condition. However, there is about 5.7 miles of light weight rail, 75 lb. and 90 lb. rail which is in condition ranging from fair to poor. RII recommends upgrading at least the 75 lb. rail to 112 lb., if not the entire 5.7 miles of lightweight rail. At very least, 10,000 ties should be replaced and added; this would be the least cost and operations could still run on the line, but speeds would be slower, maintenance higher and there could be restrictions on equipment types and loads for the line. The annual maintenance expenditures should be about $6,370 per mile, or about $165,000 per year under a good operating plan.

Market Analysis – The current traffic for the Fresno County portion of this line alone accounts for over 4,700 carloads per year. This is significant and sufficient to support an operation profitably. In addition, with a proper marketing plan and focus on customer service, existing customers' potential traffic could likely more than double that number. This does not even include numerous additional potential customers in the area that were noted as potential rail shippers who could add traffic to this line. The revenue – current and potential – appears to be substantial for this line.

Operating Plans and Economics – An operating plan was developed for handling traffic on just the Fresno County portion of the line from Ivory to Fresno, CA. A scenario was developed for handling the existing 4,700 cars, and a separate scenario was developed for handling the potential traffic (that traffic expected if rail service is improved and expansion plans move forward as expected and reported by the shippers). While both scenarios support a profitable operation, the existing traffic yielded a return of 6.9%, while the potential traffic yields a return of up to 27.5%, not counting any additional customers that may come on line with better service and a strong marketing plan.

Net Liquidation Value (NLV) – The NLV for the rail materials is **$2,416,840**. This is the market salvage value of the track assets minus the costs of salvage. The real estate in the right of way is owned by UP. Fresno County may have the option of leasing this land from UP as opposed to purchasing it. If Fresno moves to purchase this real estate as well, an "over the fence value" for the land can be developed (based on values of adjacent land parcels), which is the method used by the STB for determining value of right of way land. The $2,416,840 is the salvage value SJVR could realize from sale of the track materials it owns.

Conclusions – RII's main recommendation coming from this project is for Fresno County to take a proactive role in working with SJVR to prevent the situation as it has developed in Tulare County and develop more traffic on the line, improve relationships and service with the customers, and step in to acquire the line if SJVR is not interested in the same goal.

Physical Inspection

RII performed a physical track inspection by spot checking the line at various places and walking parts of the track. A hi-rail vehicle, which allows an inspection of the entire track by running over it, was not made available for this inspection. The track inspection of the SJVR was conducted from Ivory, CA at MP 232.3 to Fresno, CA at MP 205.5 on October 18th and 19th, 2010. Most of the rail line was accessible directly from the roadway for inspection. Unlike the expected assumption that the line was mostly 112 lb. rail, the line is actually a mix of many different rail weights. The chart to the right shows the estimated breakdown of the track weights as inspected. This inventory is an estimate based on the spot inspection since the entire line could not be hi-railed. Rail weight is its weight per rail length, usually a 33-39 foot segment of rail. Different rail weights have different values and contribute to different tonnage in steel for scrap; therefore, different rail weights will have a significant impact on the Net Liquidation Value (NLV). Although this line has several spur tracks, it could not be determined who owns these tracks, so they were not included in the inspection and NLV. If SJVR is determined to own these spurs, it will affect the NLV and they should be added.

Totals MP 232.3 to MP 205.5	
Weight	**Miles**
75 lbs.	2.0
90 lbs.	3.7
110 lbs.	7.6
112 lbs.	10.8
113 lbs.	2.2
115 lbs.	0.2
130 lbs.	0.1
136 lbs.	0.2

There did not appear to be a runaround track on the line between Fresno and Ivory as expected. This would allow the SJVR to run around cars for the purpose of switching various industries. The lack of a runaround track means that switching various industries is limited to handling either northbound or southbound depending on which way the switchgear operates. From an operating standpoint, this is less flexible and somewhat restricts the operating plan options. However, an economical operation is still possible and is illustrated in the Operating Plan section. When SJVR leaves Fresno, all cars need to be lined up for the southbound switches, and when SJVR leaves Ivory, all cars will need to be lined up for the northbound switches.

<u>Rail</u>

Almost 80% of the line is heavy rail: 110, 112, 113, 115, 130 and 136 lbs. About 20% of the line is lighter rail: 75 and 90 lbs. Most of the 75 lb. rail is at the end of the line at Ivory, and most of the 90 lb. rail is at the beginning of the railroad in Fresno.

For the most part, the heavy rail is in average to good condition. The 136 and 130 lb. rail is located in road crossings and is in good to very good shape. There are spots where the rail is welded at the joints for longer length of rail which helps lessen overall maintenance. Both the 90 lb. and 75 lb. rail are showing some wear, including chips and shelling on the top. This rail is in mostly fair condition, but there are areas of poor condition. Given the 90 lb. rail is at the beginning of the line, all traffic must go over this part of the line, thus, this part of the line handles the most tonnage and will take the most wear and tear for all operations on the line.

The rail steel track components include tie plates (which hold the rail to the wood cross ties), some anchors (which provide additional support for holding the rail to the ties), and spikes (holding the tie plate to the ties). The track is mostly single spiked plates with a few double spikes and even a third spike in some areas.

At MP 213, there is a Wye track that has 90 lb. rail. This is used for switching or turning cars within a train when and if ever needed, and is included in the NLV.

Ties

This rail line has an average of 20-24 ties per rail length. The ties are in mostly fair condition with some average ties and a few in poor condition. It is evident that SJVR has done very little tie work over the past several years and the ties are starting to show wear. One of the saving factors is that 80% of the line is heavy rail. Evidence of tie wear includes the tie plate cutting into the tie and the spikes, and the spikes working their way out of the tie. Most of the rail lengths have 5-8 good ties which will allow for speeds of 10-25 MPH. A good tie program will be needed in order to keep the rail line at present levels and speeds.

The poorest ties are located at the following:

MP 223.7	poor ties
MP 221.7	poor ties
MP 220	poor ties
MP 209	poor ties
MP 207	poor ties

The overall makeup of the tie condition is as follows:

40% Scrap
30% Industrial
30% Relay

Ballast

The ballast on the rail line ranges from average to poor condition to none at all. About 50% of the line has fair to average ballast, but ballast will be needed on the line to help with drainage and vegetation control.

Vegetation

For the most part, the vegetation control was average to good and seemed to be maintained well. A small vegetation problem was noted at the 90 lb. rail section at the beginning of the line in Fresno.

Line and Surface

The line and surface of the rail line is in average to good condition in most areas, but in the same places where there are poor ties, the line and surface condition degrades to fair to poor condition. Basically, the heavy rail and minimal traffic has allowed the surface and lining to hold. However, with the marginal ties in the line, with increased traffic, the line and surface will start to break down.

Bridges

After the initial inspection of the wooden trestles, they seemed to be in fair to average condition. The only issue is the large steel bridge north of Reedley, which seems to be in poor shape. It is advised that this bridge be inspected further by a bridge engineer to determine a detailed condition and develop costs to keep the bridge in service over the long-term.

Crossings

The crossings ranged from fair to very good condition. The newer ones and the ones located in the cities are generally in the best condition. Many country crossings and some private crossings are in fair to average condition. None of the crossings are in poor condition and seem to have no major issues or potential problems.

Right-Of-Way

The right-of-way, which is owned by Union Pacific, is mostly 50-100 feet. There are some areas in the cities where it is 200 feet. However, at the beginning of the line in Fresno the right-of-way is limited and is less than 50 feet. No right-of-way is included in the NLV since it is not owned by SJVR.

Annual Maintenance Budget

For the 26.8 miles, the average cost to maintain the track should be around $6,370 per mile. This amounts to roughly $165,000 annually. Based on this initial inspection, very little has been spent on maintenance, so over time the rail line will continue to decline. The track speeds will be continue to be reduced and service on the line most likely will become an issue if the current levels of maintenance on this line are not improved.

Rehabilitation Costing

Most of the line was in fairly good condition. However, 5.7 miles were found to have light weight rail. Although operations can be performed on this track with the expected traffic as is, RII recommends some replacement to keep longer term maintenance costs down, ensure optimum efficiency in the operating plans suggested and reduce the risk of restrictions on equipment and carload weights. The recommendations are presented in 3 scenarios, beginning with the lowest cost scenario.

Scenario 1: replace 10,000 ties on the entire line

At a very minimum, at least 10,000 ties should be replaced and added based on the track inspection results to efficiently handle the expected traffic. To replace the ties with brand new ties, the cost would be about $150 per tie including labor and installation. For complete replacement of 10,000 ties with brand new ties, the total cost is estimated at $1.5 million. In reality, it is acceptable to replace the poor condition ties with good grade relay ties, which would reduce this cost by about 50%. Relay ties are recycled ties from another rail segment that are still in useable condition, and are about half the price of new ties when available. A thorough explanation of tie condition and relay ties is included in the section on Net Liquidation Value at the top of page 37.

Scenario 2: replace 2miles of 75 lb. rail with 112 lb. rail

An even better option would be to replace at least the 75 lb. rail with 112 lb. rail in addition to adding/replacing 10,000 ties.

Ties: This scenario would replace the 2 mile section of 75 lb. rail with 112 lb. rail, which would require an additional 1,000 ties per mile in this section from that in place at the moment, resulting in a complete tie replacement of a total of 12,000 ties. Based on the estimated cost of $150 per tie replaced with brand new ties including labor and installation, the total cost of tie replacement for this scenario would be $1.8 million. Again, it should be noted that replacing bad condition ties with good grade relay ties would cost about 50% less.

Rail Replacement: It is estimated that at least 197.12 tons of 112 lb. rail would be needed to replace each mile of the rail. Assuming the 112 lb. rail is attainable at the current market price of about $650/net ton, the entire rail rehabilitation cost of replacing 2 miles of rail with 112 lb. rail including rail material components and labor is estimated to be from $460,000 to $540,000.

Surfacing: The 2 miles of new rail would need to be completely surfaced. The surfacing cost is estimated at about $15 per foot including 500 tons of ballast per mile needed. The total surfacing cost for the 2 mile segment is $158,400.

Total cost: The total estimated rail rehabilitation cost for this scenario is as follows:

Tie replacement cost:	$1,800,000
Rail Replacement cost:	$ 460,000 - $540,000
Surfacing cost:	$ 158,400
Total cost:	$2,418,400 - $2,498,400

Scenario 3: replace 2 miles of 75 lb. rail and 3.7 miles of 90 lb. rail with 112 lb. rail

This would be the most aggressive rehabilitation, replacing all of the light weight rail and investing in optimum rail operations for future traffic increases.

Tie: This scenario includes the original replacement of 10,000 ties plus adding 1,000 ties per mile for the 5.7miles of light weight rail to be replaced. This results in a complete tie replacement of a total of 15,700 ties. Based on the estimated cost of $150 per tie replaced with brand new ties including labor and installation, the total cost of tie replacement for this scenario would be at $2.355 million. Again, if good grade relay ties were utilized instead of new ties, the tie cost could be reduced by about 50%.

Rail Replacement: It is estimated that at least 197.12 tons of 112 lb. rail are needed to replace each mile of rail. Assuming the 112 lb. rail is attainable at the current market price of about $650/net ton, the entire rail rehabilitation cost of replacing 5.7 miles of light weight rail with 112 lb. rail including material track components and labor is estimated to be from $1,311,000 to $1,539,000.

Surfacing: The 5.7miles of new rail would need to be completely surfaced. The surfacing cost is estimated at about $15 per foot including 500 tons of ballast per mile. The total surfacing cost for the 5.7 mile segment is $451,440.

Total cost: The total estimated rail rehabilitation cost for this scenario is as follows:

Tie replacement cost:	$2,355,000
Rail Replacement cost:	$1,311,000 - $1,539,000
Surfacing cost:	$ 451,440
Total cost:	$4,117,440 - $4,345,440

These figures are broad estimates based on a spot inspection of the line, which was the extent of the scope in this project and is sufficient for further planning. Before actual rehabilitation should begin, a full hi-rail inspection of the line should be performed to fine tune the figures.

Conclusion and Recommendations

This track inspection was a simple spot inspection to serve the purposes of determining condition for the NLV, determining ball park rehabilitation costs if necessary and for identifying any problem issues. Since there was lightweight rail found in the line, future potential for moving unit trains on this line and a major bridge at Reedley, it is recommended that a thorough inspection with a Hi-Rail vehicle be performed over the entire line at a future date. It is clear that a sufficient maintenance budget has not been spent to keep this track in stable condition, and the condition has begun to decline.

Significant increases in traffic and possible unit train traffic will require immediate work on the line to maintain speeds and safety. RII has recommended replacing at least the 75 lb. rail, but the 90 lb. rail at MP 205.5 to MP 208.5 is also a concern because all SJVR traffic must go over this part of the line. This rail is showing wear already and if traffic levels increase or unit train traffic materializes, a replacement program will be mandatory. Since the SJVR does not seem to be spending on maintenance for these lines, the future of these lines is uncertain, even with significant traffic projections.

It is not certain what SJVR's strategy may be. Its plan could be to operate the lines until condition allows an embargo and then abandon the lines and sell them for scrap. Another possibility is that they will operate the lines until condition deteriorates to a point where they request funds from a public agency in order to continue service. If this were the case, SJVR should be made to commit to serving and maintaining the lines to a specific standard. The public agency would need a detailed inspection as recommended above and agreements from SJVR that it will spend a minimum annual maintenance budget on maintaining the line. If something is not done, the current lack of track maintenance will ultimately affect the customers, traffic levels, speeds and service on the line, as well as future economic development opportunities.

Market Analysis

A total of 11 current shippers were interviewed for this study. There were 8 reported shippers currently on the line, but RII was able to identify 3 additional shippers whose traffic contributes to the operations and revenue on the line. This chart shows the current traffic from these customers:

Fresno Study: Current Traffic		
	Inbound Current	Outbound Current
PDM Steel	60	
Wawona Frozen Foods		100
Lyons Magnus		*
Holt Lumber	18	
International Paper	650	
Taiga Building Products	132	
M. C. Truss	14	
Univar	160	22
Tony Guerriero Cold Storage		
O'Neill Vintners and Distillers	16	92
Richard Best Transfer	3,500	
Total	***4,550***	***214***

* Would like to move by rail in the future, but will need the SJVR to work with them.

A brief profile on each of these customers is included in this section highlighting their business in the area and commodities moved, as well as the results of our interview discussions.

Based on the interviews, it is evident that SJVR has had little communication with these customers and is doing very little marketing work. Service is declining and the SJVR wants to charge the customers excessive surcharges and fees, which is making the rail service non-competitive. Charges such as demurrage are rising, even when the railroad is not providing the needed service for the shippers. Demurrage is a penalty fee for not releasing a railroad car within a certain number of days back to the railroad.

The switch crews are a problem also and do not work with the customers. SJVR seems to have little interest in the customers; this is going to make it difficult for the customers in the future and for any economic development efforts.

There is a strong potential for additional traffic on this line if service were improved and customer service were made a priority. The following chart shows what the potential for traffic could be right now if service were adequate for existing customers:

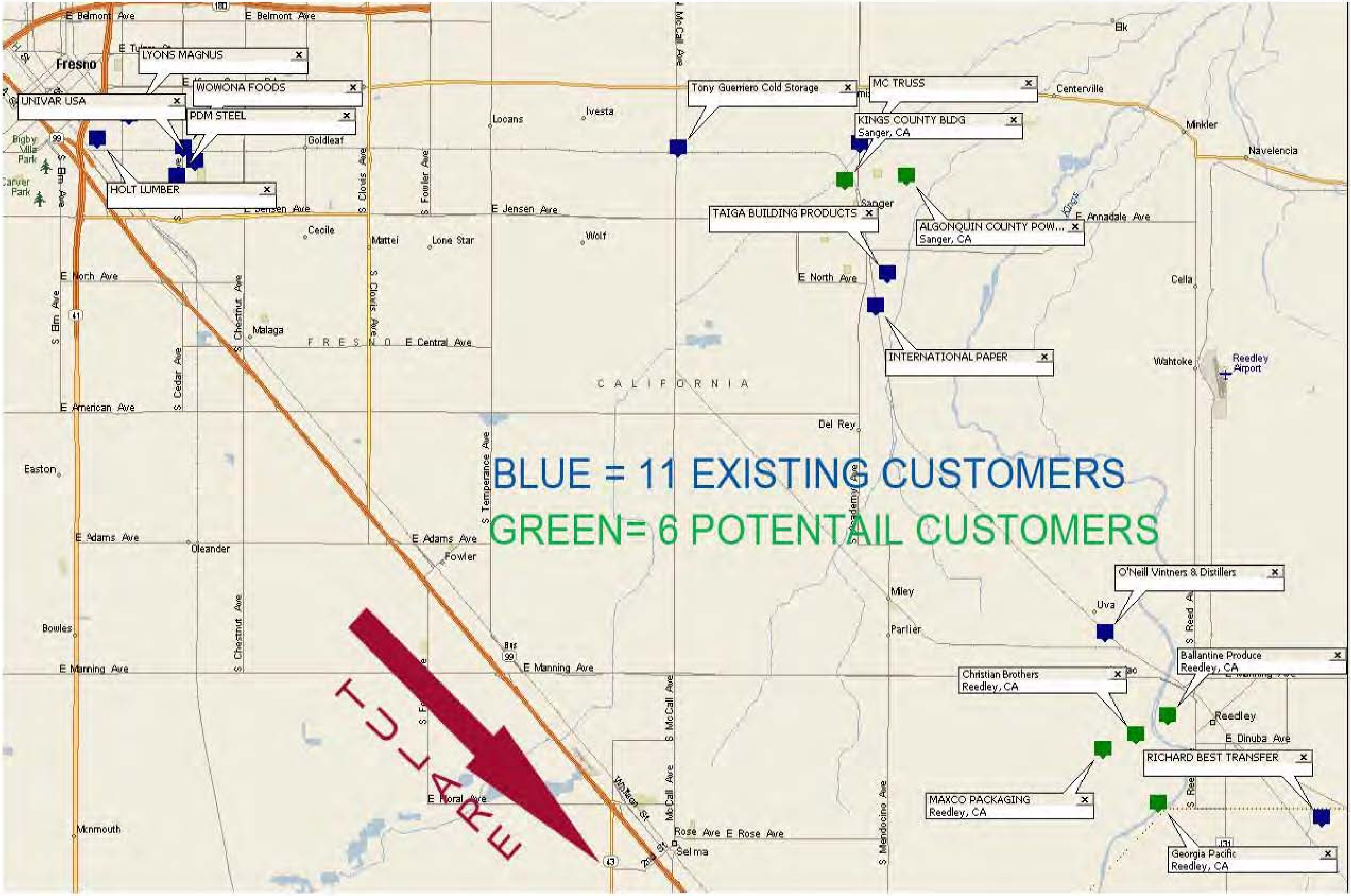
Fresno Study: Potential Total Traffic		
Customer	Inbound current plus potential	outbound current plus potential
PDM Steel	102	
Wawona Frozen Foods		120
Lyons Magnus		55
Holt Lumber	30	
International Paper	813	
Taiga Building Products	360	
M. C. Truss	18	
Univar	300	30
Tony Guerriero Cold Storage	10	10
O'Neill Vintners and Distillers	16	92
Richard Best Transfer	8000	
Total	***9649***	***307***

In addition, there are numerous potential customers in Reedley, Sanger, and Fresno that could possibly use rail service as well. Since no marketing has been done by SJVR to develop traffic, the potential traffic from these shippers could be substantial. Examples of companies that should be approached to develop a true potential traffic number would include:

1. Kings Conger Building – Sanger, CA
2. Algonquin County Power/Dry Fiber – Sanger, CA
3. Maxco Packaging – Reedley, CA
4. Christian Brothers – Reedley, CA
5. Georgia Pacific – Reedley, CA
6. Ballantine Produce – Reedley, CA

There is potential to increase rail service and volumes, but it will require a different level of effort and interest than previously shown.

The map on the following page shows the line within Fresno County, current customers on the line and locations or potential customers mentioned in this report. You can see the rail line coming up from the southeast at Reedley and then turning sharply at Sanger to head due west into Fresno.


BLUE = 11 EXISTING CUSTOMERS
GREEN= 6 POTENTAIL CUSTOMERS
TULARE
LYONS MAGNUS
WOWONA FOODS
UNIVAR USA
PDM STEEL
HOLT LUMBER
Tony Guerriero Cold Storage
MC TRUSS
KINGS COUNTY BLDG
Sanger, CA
TAIGA BUILDING PRODUCTS
ALGONQUIN COUNTY POW...
Sanger, CA
INTERNATIONAL PAPER
O'Neill Vintners & Distillers
Ballantine Produce
Reedley, CA
Christian Brothers
Reedley, CA
RICHARD BEST TRANSFER
MAXCO PACKAGING
Reedley, CA
Georgia Pacific
Reedley, CA
Fresno
E Belmont Ave
Locans
Ivesta
Goldleaf
Centerville
Minkler
Navelencia
Elk
Sanger
E Jensen Ave
Cecile
Mattei
Lone Star
Wolf
E Annadale Ave
E North Ave
Cella
Malaga
FRESNO
E Central Ave
CALIFORNIA
Wahtoke
Reedley Airport
E American Ave
Del Rey
Easton
E Adams Ave
Oleander
Fowler
Miley
Uva
Parlier
Bowles
E Manning Ave
Reedley
E Dinuba Ave
E Floral Ave
Rose Ave
E Rose Ave
Selma
Monmouth
S Elm Ave
S Chestnut Ave
S Cedar Ave
S Clovis Ave
S Fowler Ave
S Temperance Ave
S McCall Ave
S Academy Ave
S Mendocino Ave
S Reed Ave
Whitson St
Bigby Villa Park
Carver Park

Fresno Yard & Truss Plant

1916 S. Cherry
Fresno, CA 93721

Phone: (559) 233-3291
Fax: (559) 233-9049

Contact: Tom Powers

Holt Lumber is a family owned and operated business that has been serving Northern California since 1930. They provide lumber, pre-manufactured wood trusses, building materials and custom fabrication to their customers all over the Central Valley and surrounding areas. Their vast array of products includes foundation, framing, siding, insulation, roofing, fencing, drywall, hardware and tools.

Tom Powers at the plant noted that Holt Lumber owns the Truss plant across the street and they also have a plant at Hanford. Its market is Kings, Fresno, Madera and Tulare counties. He states that San Joaquin Valley Railroad (SJVR) is their service carrier, located in Fresno, CA. Mr. Powers has also noted that the shipper provides the equipment and the rates. At this time they require 1-2 switches a month, or as needed. Holt Lumber has the spur capacity of 2 cars, but could extend the siding up to 45 feet (to be 145 feet in total). Mr. Powers stated that due to the current economy, only local suppliers and small volumes, they are utilizing rail for only 20% of their volume. This is to bring in 1-2 loads a month of lumber, plywood, SOB and studs from Nola, OR. At this time, business is down 60% and factors that could affect volumes include the economy and local building. Rail service has been unreliable and communication has been poor. Mr. Powers could utilize trucks for their shipping needs, but would lose a substantial amount of profit. They have not seen anyone in over two years from SJVR about the rail situation. Due to the cost of trucking, rail would be the preferred mode of transport; however, rail rates will be key.

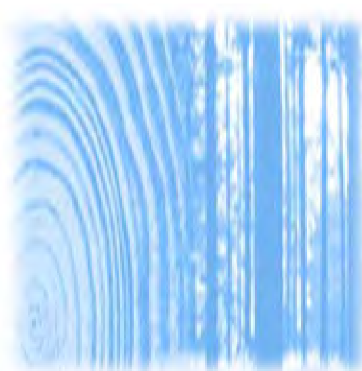
International Paper
1000 Muscat Ave.
Sanger, CA 93657-4001

Phone: (559) 876-6221
Fax: (559) 875-4673

Contact: Teodoro Villarreal- Operations
Doug Leader- Manufacturing Manager

International Paper Company is a leader in producing and distributing paper and packaging and forest products, including building materials. The Company operates 21 pulp, paper and packaging mills, 146 converting and packaging plants, 19 recycling plants and three bag facilities. They distribute printing, packaging, graphic arts, maintenance and industrial products through over 237 distribution branches in the United States. International Paper Company also owns or manages approximately 200,000 acres of forestlands in the United States.

Teodoro Villarreal of the Sanger plant notes that this particular plant has been in Sanger, CA since 1986. Its market extends from Los Angeles to Sacramento. Mr. Villarreal states that their current service provider is SJVR. International Paper has the spur capacity of 7 cars plus 4 storage spaces. They would like to receive service 5 days a week but are currently receiving fewer days. Inbound traffic includes rolled paper at an annual volume of 600-700 cars a year, with rail accounting for 80% of the moves, from Oregon, California and Oklahoma. They also bring in wax via trucks at an annual volume of 20-24 loads a year coming in from California. Traffic could grow 25% in the near future. Some factors that could affect the volumes include the agriculture business, economy and foreign competition. Mr. Villarreal notes that some rail has been lost from Oxnard due to the siding being pulled out. International Paper has not seen anyone from SJVR in months and they have accumulated extra rail charges, including demurrage; and have also missed switches, which has hurt business for them. Mr. Villarreal states that they could utilize trucks as an alternative shipping mode; however, profits would potentially be lost.



Lyons Magnus

3158 East Hamilton Ave.
Fresno, CA 93702

Phone: (559) 268-5966
Phone: (800) 344-7130
Fax: (559) 233-8249

Contact: Don Savino – Vice President of Purchasing

Lyons Magnus (LM) is family owned and operated and was founded 1852. LM is a supplier of foodservice and ingredient products all across the United States and internationally, providing 500 products and 1500 labels. LM employs 700 people and is directly involved at nearly every level of the industry, including growing and processing of key raw materials, process engineering, manufacturing, warehousing and transportation. LM is located in Fresno CA and has a rail spur with BNSF, although there is a rail spur in Fresno serviced by SJVR to the plant.

LM had two plants, #3 and #8, that previously had rail service, but the spur was pulled up without any notice and plant #4 has a spur that SJVR says cannot be utilized. Mr. Savino notes that they would like to use rail to ship their 50 containers per month to Walton, KY. He states that they also have the potential to move frozen product by rail to the Midwest and east coast if they had sufficient rail service. LM has received poor communication from SJVR and it seems that SJVR is not interested in their business.

M. C. Truss

1144 Commerce Way
Sanger, CA 93657

Phone: (559) 876-3630
Fax: (559) 867-3540

Contact: Nick Nisbett - Design Manager

M.C. Truss has been family owned and operated for 25 years. They specialize in both commercial and residential roof, floor and wall panel systems. M.C. Truss moved to Sanger, CA in 2002. Their market includes the entire state of California.

M.C. Truss receives rail service from SJVR, located in Sanger, CA. They receive 1-2 cars a month, or as needed, although they have the capacity to receive 3 per month. The shipper provides and pays for the equipment. M.C. Truss receives 12-15 cars per year of lumber, originating from Oregon, which accounts for 70% of their inbound product. Note: They can load 150,000-160,000 board feet on a center beam car. Mr. Nisbett notes that when the economy picks up, they have the potential to increase their carloads to 15-20 per year. M.C Truss also has the potential of reloading cars out to large job sites. The largest factor that could affect M.C. Truss's volumes would be the economy and rail rates. Mr. Nisbett states that due to 90% business decrease in this economy, service is not an issue at this time, although rail rates still need to be competitive. He also notes that they have not seen anyone from SJVR. M.C. Truss could utilize truck but using rail saves the company $15,000 annually in transportation costs.

O'Neill Vintners & Distillers

8418 South Lac Jac Avenue
Parlier, California 93648

Phone: (559) 638-3544

Contact: Matt Towers - COO Operations

O'Neill Vintners & Distillers was founded by Jeff O'Neill in 2004. They are the 8th largest U.S winery and are recognized as the preferred outsourcing partner for many of the world's leading beverage alcohol companies and brand owners. O'Neill Vintners & Distillers contracts over 15,000 acres of vineyards from vast areas in California, including their own Gravelly Ford vineyard on the San Joaquin River in Madera County. They produce 125,000 tons of crushed grape and over 5 million proof gallons of brandy and spirits a year.

Mr. Towers notes that the rail location for this distillery is in Parlier, CA. They are serviced by San Joaquin Valley Railroad (SJVR) and the shippers and receivers provide and pay for the equipment. O'Neill receives 6 cars per month and ships 15-20 car per month. Their outbound commodities include alcohol moving by rail at about 7,300,000 gallons per year, with a final destination of Kentucky. This amounts to approximately 92 rail cars per year. Inbound traffic includes alcohol originating from the east coast and Mexico by rail, which accounts for about 400,000 gallons or 16 rail cars, per year.
Mr. Towers states that traffic should remain steady in the future and has been steady even in the current economy situation. He also mentions that although service from SJVR has declined, his own business has not been affected. Every 30-40 days SJVR drops off 9-10 cars to work with. As of right now, they are having no issues with rates or service but seldom see a person from SJVR. Mr. Towers notes that they could utilize trucks but this would be a very expensive option. Rail is the most inexpensive option and is definitely needed.

PDM Steel Service Centers Inc.
4005 East Church Avenue
Fresno, CA 93725

Phone: (559) 442-1410
Fax: (559) 442-1409

Steel Service Centers, Inc.

Contact: Frank Rodriquez - Assistant Operations Manager

PDM Steel Service Centers, Inc. (PDM) is a distributor of heavy carbon steel products. Established in California in 1954 and headquartered in Stockton, CA, PDM currently has nine facilities located throughout California, Washington, Nevada, Colorado and Utah. PDM buys steel products in large quantities and holds the material until orders are placed by customers. Preprocessing of steel is often requested of PDM which consists of basic cutting services to meet finished specs that greatly reduces their customer's time to make the steel usable.

PDM's Fresno facility is served by SJVR and has a spur capacity of 6 cars for unloading and 20 car capacity for storage. The shippers provide the rail equipment and pay for freight charges, and service is required anywhere from 1 to 3 days per week. PDM does not use rail for outbound shipments but approximately 40% of inbound products is shipped by rail and equates to 5 cars per month. Tubing, beams and flat bar are shipped on flat cars from the Midwest, east coast, Colorado, Utah and Washington.

PDM expects rail traffic to grow to 7 – 10 cars per month when the economy and building industry improves and with better rail service. Inconsistent rail service, poor communication with an unpleasant disposition, increased rates, demurrage and other charges are issues that PDM has experienced with SJVR over the last year. PDM has not seen anyone from SJVR to discuss these issues. Although PDM could ship by truck, the costs to do so are higher.

Richard Best Transfer Inc.

6801 Avenue 430
Dinuba, CA 93618

Phone: (559) 591-4075

Contacts: Chuck Littlefield – Chief Operating Officer
Richard Best - President and Owner

Richard est Transfer Inc. (R T is a rail & truck offloading, commodity storage, transportation and tank cleaning company in Dinuba, CA. R T's rail site is in Ivory, CA with a spur capacity of 5 cars on the north track and 15 cars on the south track. The SJVR would keep the line from Fresno to Ivory where RBT is located. RBT is the largest customer on the line. Although outbound product is only trucked locally, they receive carloads by rail of DDG, Canola Oil, gypsum soil, sunflower oil and seed. Products come from ADM and ConAgra in the Midwest, Canada and Texas, and from US Gypsum in Gerlach, NV. They have local competition from Foster and Miller, located on the UP main line.

Mr. Littlefield notes that there has been a significant decline in service over the years and they have had issues with switching, rates, ancillary charges, demurrage and equipment. Negotiations with SJVR have been difficult and they do not seem to be making any progress except on possible unit train operations. Truck is not a viable alternative for the expected volumes. At this time BNSF handles 70% of their traffic and UP handles the other 30%. They are looking at expanding capacity to handle unit trains of DDG and canola oil, as many as 5 trains per month. They will still need a small portion of cars annually handled in single cars or small blocks despite the unit train moves. R T is not confident in SJVR's ability to handle these operations efficiently. They have an interest in providing their own switching and believe they could unload a car in 6 minutes with the planned expansions of the facility to handle unit trains. These expansions would have BNSF and UP handling their unit trains.

Taiga Building Products

1980 Industrial Way
Sanger, CA 93657

Phone: (559) 696-7277
Fax: (559) 876-3626

Contact: Jim Johnston - Yard Manager

Taiga Building Products (TBP) distributes building products through fourteen distribution centers across Canada and Northern California. Their primary customers include building supply dealers and industrial manufacturers. Their products include dimension lumber, panel products, treated wood, engineered wood, roofing materials, mouldings, composite decking, polyethylene sheeting, batting and foam insulation, siding and flooring. TBP has a sister plant in Roseville, CA and their market is a 200 mile radius from the plant site.

Taiga Building Products receives rail service in Sanger, CA, which is serviced by SJVR. They receive 6 cars 3 days a week, and the shipper provides and pays for the freight. Half of the railcars they receive are box cars and the other half are center beam cars. Currently, 75% of their inbound commodities come in by rail. TBP receives approximately 10-12 shipments of OSB, Plywood, siding, lumber and engineered wood products originating in Arkansas, Louisiana, Canada, Washington and Oregon.

Mr. Johnston notes that TBP has the potential to grow to 30 cars per month with a good economy and rail service. The biggest factors would be the economy and material cost. Mr. Johnston states that over the last year, cars have been getting held up in Fresno, CA, which results in extra rail charges and they have not seen anyone from SJVR. TBP could utilize trucks with the exception of OSB, but they will definitely need good rail service in the future.



Tony Guerriero Cold Storage

1061 S. Mccall Avenue
Sanger, CA 93657

Phone: (559) 251-8103

Contact: Tony Guerriero - Owner

Tony Guerriero Cold Storage provides climate controlled warehouse storage and supply chain services in central California and has a rail served location in Sanger with a one car spur capacity. They have not shipped or received by rail in a number of years; however, they have the potential to handle inbound fertilizer and outbound frozen fruit.

To date, SJVR has shown little interest in developing a relationship with Tony Guerriero Cold Storage for rail business and there has been no communication between the two, although Mr. Guerriero has tried on many occasions to work with rail. SJVR shows absolutely no interest and claims that it will cost a lot of extra money to service the facility. In fact, SJVR has even talked about tearing up the switch that services the facility's spur.

Univar USA

4465 East Florence Ave.
Fresno, CA 93725-1150

Phone: (562) 879-0362
Phone: (559) 488-4706
Fax: (866) 486-1624

Contact: Brian Beal/Brian Banerdt – Regional Quality Manager

Univar USA is a wholly owned subsidiary of Univar, a leading distributor of industrial chemicals with a network of over 179 distribution facilities globally. Univar is in the Industrial Chemical business and purchases chemicals from manufacturers in truck, railcar or tank car volumes and distributes them to customers who purchase in smaller quantities. The company is capable of bulk tank storage, tank truck deliveries, transloading, less than car load, storage and logistics, custom blending and packaging and just in time delivery among many other services.

Univar's market extends from Bakersfield south, from Woodland north and from Paso Robles west. The SJVR is the serving rail carrier and Univar's 1,000 feet of owned track and 2,400 feet of SJVR leased track is located in Fresno. Currently, Univar is being served one to two days per week, but they need service three days per week in order to satisfy their customers. Tank cars are owned by their customers and the customers also handle the rates.

Inbound commodities consist of acid, potash, soda, corn syrup and glycerine with 85% transported by rail from the Midwest, Gulf of Mexico and east coast. Outbound rail shipments to the Midwest, Iowa and Nebraska of magnesium and calcium are expected to reach 11 carloads annually through the end of year 2010. Due to the economy, competition, poor rail service and increases in rail charges, inbound rail volume will amount to 160 carloads through end of year 2010. Rail traffic is likely to grow if better and more consistent rail service is realized.

Univar's expectation is that rail volume will not grow under present rail service and conditions; however, annual volumes of talc from the Midwest are expected to reach 100 tank cars annually through year 2015 if rail service improves and rates are competitive. Projected inbound rail traffic will depend upon competition, rail service and rates.

Although Univar wishes to use rail, it is becoming more difficult to use. SJVR has increased rail charges and service is very inconsistent. Negotiating and communicating with SJVR about service and charges has proven difficult and has not gone well. SJVR has a “take it or leave it” attitude and calls upon Univar less than twice yearly unless there is a problem or issue. Based on present day conditions, Univar may have to move another 30-40 carloads annually to truck if the situation does not change, which would be carloads lost for the railroad revenue.

Univar said that SJVR has closed the local customer service office, making it more difficult to work with them and Univar expects service will be the key for the future of the rail line. SJVR has cut back on crews and service has suffered. Of note, Univar utilizes a track mobile to move their cars around in plant, which allows them the freedom to move the cars without relying on the railroad for switching and without needing certified rail engineers on staff.

Wawona Frozen Foods

100 W. Alluvial Ave
Clovis, CA 93611

Phone: (559) 299-2901
Phone: (800) 669-2966
Fax: (559) 299-1921

Contact: Larry Narbaitz – Director of Operations
William Smittcamp – Owner

Wawona Frozen Foods (WFF) grows and freezes fresh fruits and fruit products to be shipped across North America all year long. WFF is family owned and was established in California in 1953. WFF currently employs around 125 employees in the California area and distributes almost 65 million pounds of fruit products a year. Some customers of note include Sara Lee and Smuckers. The WFF facility is located in Clovis, CA with a rail site in Fresno, CA served by the SJVR.

WFF's rail site in Fresno has a spur capacity of 3 to 4 cars and requires service as it is needed. Refrigerator cars are provided by SJVR and currently the carriers provide the rates. WFF transports frozen fruits to the east coast, 10% by rail and 90% by truck due to customer requirements, rail service and the fact that most of their customers do not have rail spurs. Currently their volume by rail is 100 cars annually but this could increase by 10% if there were sufficient rail service. Factors that could affect their volumes include lack of truck capacity and a steady economy. Mr. Narbaitz notes that rail service has been inconsistent and they have had no contact with SJVR. Other problems with service include demurrage and other additional charges. He states that it also takes several days to get cars once they have been ordered. WFF could truck their product if they have no other option, even though this would result in higher transportation rates.

Traffic Observations and Conclusions

Interviews confirm that for the most part, SJVR has shown little interest in the customers on the line. Most customers are faced with declining service, extra charges and are being forced into looking for alternative shipping modes. SJVR personnel make few visits to see or even work with the customers. Marketing and traffic development does not exist; in fact, new business opportunities are turned away.

Based on this analysis, there are numerous opportunities with existing and potential customers on line to develop additional traffic and revenue. More emphasis needs to be put on traffic development and working with existing customers, and this line could be an attractive, profitable operation for alternative operators.

The line's potential for traffic and revenue should be determined through a targeted market analysis. In addition to developing the potential traffic that existing customers could provide with sufficient rail service, other customers in the area should be identified and interviewed. There appeared to be numerous rail conducive shippers on the line who might be able to ship by rail, but since SJVR has not marketed the line, no new traffic has been developed. There is phenomenal potential there. In addition, another revenue stream for the line could include transloading, which could open up access to rail to even more shippers in the area, and the resulting additional rail traffic for the line. These opportunities should be explored to determine the true revenue potential for the line. Since traffic development has been neglected so badly, there is no way to know now what that potential might be.

If the current situation continues over time, the existing business will be lost to other modes or disappear as local businesses and their profitability are hurt. Every car lost puts the remaining traffic and customers in jeopardy of additional service decreases – a downward spiral. Fresno County may need to play a more active role in working with the SJVR on customer and traffic development. For this line to be an economic development tool for the County, more emphasis will need to be made on customer development, communication and stronger relationships.

Operations Analysis

The objective of an operations analysis is to assess the economic viability of a rail operation on the referenced rail line based on the ongoing traffic. The operational analysis examined the operation plan and schedule based on traffic volumes, operational costs, and potential freight revenue generated from switching service for existing and potential customers. RII developed the current and potential traffic along the line by interviewing the shippers regarding their traffic volumes, commodities and service needs. The operations analysis was performed on two scenarios. One is based on current existing traffic now running on the line. The other scenario is the potential traffic including both the current traffic and potential traffic that current shippers expressed would move if rail service were reliable and able to handle the traffic.

Typically, a railroad operation receives freight revenue from the number of carloads it handles or interchanges. The operational expenses generally consist of four major elements:

- Maintenance of Way: routine and major track maintenance work to keep the track in a safe and operational condition that will allow the traffic volume to move.

- Maintenance of Equipment: routine and major locomotive maintenance work to ensure locomotives are available to move the traffic volume.

- Transportation: costs related to the movements, such as operations, train schedules, crew and fuel, etc.

- General & Administrative: General management of the entire operation, office clerical, marketing and administrative work.

Scenario of Current Traffic

According to RII's surveys with current shippers along the line, the current existing traffic is estimated to be about 4,764 cars primarily from the following shippers:

Fresno Study: Current Traffic		
	Inbound Current	**Outbound Current**
PDM Steel	60	
Wawona Frozen Foods		100
Lyons Magnus		*
Holt Lumber	18	
International Paper	650	
Taiga Building Products	132	
M. C. Truss	14	
Univar	160	22
Tony Guerriero Cold Storage		
O'Neill Vintners and Distillers	16	92
Richard Best Transfer	3,500	
Total	***4,550***	***214***

* Note that Lyons Magnus was listed as a current shipper and was interviewed, but is not currently moving traffic. They have potential traffic noted in the next scenario if rail service were improved.

In order to handle the switching operation for over 4,000 cars per year, the following staff structure would be the minimum required:

Staff: A total of 11 people

- One General Manager supervising operations, marketing, track maintenance, mechanical and all other clerical and administrative work
- One Operation Supervisor supervising the train operation
- Two train crew, working five days a week and eight to ten hours per day
- Three track people, including one track foreman and two labors performing routine track inspections and minor track maintenance work. (Any major track work will need to be contracted out). One of the track people would be cross-trained to fill in as train crew for the train operation as needed.
- Two mechanical people, including one mechanic and one helper conducting routine daily locomotive inspections and engine maintenance work, and managing major locomotive overhaul work whenever scheduled or needed
- Two administrative people for routine office clerical work

Freight Revenue

It was assumed that a switching charge of $350/car will be billed to shippers for switching service provided. Typically, the freight switching charge is adjusted annually to reflect the inflation factor. Since there has not been any inflation factor reported in the past two to three years according to the U.S. Commerce Department data, RII did not assume any inflation factor for the first three years of the projected period. For the second three years, RII applied an inflation rate of 1.5% on freight switching charges and for the last three years of the projection period, RII applied an annual inflation factor of 2% on freight charges. No other sources of revenue were assumed for this operational analysis.

Operation Expenses

- Maintenance of Way: It was estimated that at least 1,500 ties would need to be replaced annually. The total maintenance material expenses are projected at an average of $6,370 per mile.

- Maintenance of Equipment: Three GP-38 locomotives will be needed to handle the operation for switching over 4,000 cars. An average of about $32,500 per locomotive per year was projected for the locomotives' annual maintenance cost based on RII's experience with short line railroad operations.

- Transportation: There are two train crew people budgeted with each person working from 40-48 hours per week. No overtime labor cost was assumed since all the employees are salaried.

Operation Plan and Schedule

Train is scheduled to run from Fresno to Ivory and return each day Monday to Friday. Depending on the traffic, the train may or may not go all the way to Ivory. The traffic of Richard Best Transfer has been included in this analysis.

Ivory Turn

- On duty at Fresno Yard at 8:00am
- 8:00-9:00am switch cars from interchange
- 9:00am depart for Ivory, switch as necessary along the route
- 12:00pm arrive Ivory to switch Richard Best Transfer
- 1:00pm depart for Fresno and switching as necessary along the route
- 4:00pm return to Fresno, deliver cars and tie up locomotives

The Fuel expenses were calculated based on five-day ten-hour service on each day per week. It was assumed that an average of 18 gallons of fuel will be consumed per locomotive operation hour. The unit fuel cost is estimated at $3.0 per gallon.

- General & Administrative: One General Manager will supervise the entire switching operation and other clerical and administrative work. The General Manager will also be responsible for the marketing effort. The basic office expenses are purely an estimate here. It was assumed that brand new railroad operation liability insurance would need to be purchased at cost of $75,000 per year. In reality, if the potential operator already carries liability insurance before, it could cost less to add railroad switching operation coverage.

Capital required for initial operation set-up

It was assumed that the capital required for purchasing locomotives (three GP-38 locomotives), maintenance equipment, vehicles and other necessary equipment will be funded by a short term commercial loan. The initial minimum working capital requirement (which is equivalent to three months of operation expenses) will be fulfilled by a potential operator's cash contribution. The detail can be referenced on the Capital Expenditure Sheet in Appendix B.

Snapshot of Projected Operation Financials

	Year 1
PROJECTED CARLOADS:	4,764
AVERAGE REVENUE PER CARLOAD:	$ 350
OPERATING REVENUES	
Freight Revenue	$ 1,667,400
Other Revenues	$ -
TOTAL OPERATING REVENUES	$ 1,667,400
OPERATING EXPENSES	
MAINTENANCE OF WAY	$ 355,320
MAINTENANCE OF EQUIPMENT	$ 246,300
TRANSPORTATION	$ 454,743
GENERAL AND ADMINISTRATIVE	$ 353,469
OPERATING EXPENSES BEFORE DEPRE. & AMORTI.	$ 1,409,831
EBITDA	$ 257,569
OPERATING MARGIN	15.4%
DEPRECIATION	$ 70,000
AMORTIZATION	$ -
INCOME BEFORE INTEREST & TAX	$ 187,569
INTEREST EXPENSES	$ 72,250
TOTAL OPERATING EXPENSES	$ 1,552,081
NET INCOME BEFORE TAX	$ 115,319
PRE-TAX INCOME	$ 115,319
Income Tax 0% Tax Rate for Public Entity	$ -
NET INCOME AFTER TAXES	$ 115,319
NET PROFIT MARGIN	6.9%

This table is a glance of the first year projection of the operation on this line for the scenario of existing traffic. The detailed schedules are attached as Appendix B.

It should be noted that this operation analysis was projected assuming that Fresno County will acquire and operate the rail line itself or set up an affiliated entity to operate the rail line under the Fresno County, thus the tax rate is assumed at 0% for public entity on this projection.

Scenario of Potential Traffic

According to RII's surveys with shippers along the line, the potential traffic along the line could reach close to 10,000 cars annually if the economy recovers and shippers' expected capital expansions all fall into place. The potential traffic based on shippers' interviews is summarized as follows:

Fresno Studay: Potential Total Traffic		
	Inbound current plus potential	**outbound current plus potential**
DDM Steel	102	
WAWONA		120
Lyons		55
Holt Lumber	30	
International Paper	813	
Taiga	360	
M. C. Truss	18	
Univar	300	30
Tony Guerriero Cola Storage	10	10
O'Neill Vint	16	92
Richard Best Transfer	8000	
Total	***9649***	***307***

In order to handle the switching operation for potential traffic of almost 10,000 cars per year, the following minimum staff structure would be required:

Staff: A total of 13 people

- One General Manager supervising operations, marketing, track maintenance, mechanical and all other clerical and administrative work
- Three operating personnel, including one Operation Supervisor supervising the train operation and two train people, working five days a week and ten to twelve hours per day. In addition, the Operation Supervisor will also fill in for switching operations as needed.
- Four track people, including one track foreman and three laborers performing routine track inspections and minor track maintenance work. Any major track work will need to be contracted out. One person cross trained to fill in train service as needed
- Two mechanical people, including one mechanic and one helper conducting routine daily locomotive inspections and engine maintenance work, and managing major locomotive overhaul work whenever scheduled or needed.
- Three administrative people, including two clerical and one designated account manager for routine office work, accounting and customer service

Freight Revenue

It was assumed that a switching charge at $350/car will be billed to shippers for switching serviced provided. For the Potential Traffic scenario, a switching charge at $250 per car will be charged to unit train traffic of Richard Best Transfer. Among the total of 8,000 cars of total potential traffic, an estimated 7,000 cars will be handled through unit trains. Only 1,000 cars will be switched in regular train service. Since there has not been any inflation factor in past two to three years according to U.S. Commerce Department data, RII did not assume any inflation factor for the first three years of projected period. For the second three years RII applied 1.5% inflation rate on freight switching charge and for the last three years of the projection period, RII applied 2% annual inflation factor on freight charge. No other sources of revenue were assumed for this operation analysis.

Operation Expenses

- Maintenance of Way: due to the high volume handled, it is estimated that at least 3,000 ties would need to be replaced every year. The total track maintenance materials expenses was projected at an average of over $10,000 per mile due to the extra maintenance work required to ensure the safe operation of almost doubled traffic.

- Maintenance of Equipment: a total of four GP-38s were projected to handle the operation at potential traffic volume. Three of the GP-38s locomotives will be used to handle the daily operation for switching volume of almost 10,000 cars. One locomotive will be used as a backup engine. An average of about $32,500 per locomotive per year has been projected for the locomotive's annual maintenance cost based on RII's experience in short line operations. Three locomotives will be used on the unit train operation and two locomotives in normal operation.

- Transportation: there are two train crew people budgeted with each person working an average of 48 hours per week.

Operation Plan & Schedule

This plan sets up regular train service for 1,000 cars of Richard Best Transfer and the remaining traffic from all other shippers. The train is scheduled to run from Fresno to Ivory each day Monday through Friday. Depending on the traffic, the train may or may not go all the way to Ivory. The traffic of Richard Best Transfer has been included in this analysis.

Ivory Turn

- On duty at Fresno Yard at 8:00am
- 8:00-9:00 switch cars from interchange
- 9:00 am depart for Ivory, switch as necessary along the route
- 12:00 arrive Ivory to switch Richard Best Transfer
- 1:00pm depart for Fresno and switching as necessary along the route
- 4:00 pm return to Fresno, deliver cars and tie up locomotives

Operation Plan & Schedule – Unit Train

This schedule is for the Unit Train operation to move 7,000 cars for Richard Best Transfer.

- 8:00 am - Depart Fresno
- 10:00 am - Arrive Ivory
- 11:00 am - Set out Cars
- Crew to be picked up and the three locomotives will be parked on site
- Crew will come back and use the fourth locomotive to switch the other industries as necessary
- When the train is empty, the crew will be brought to Ivory at 9:00am after being on duty at 8:00am
- Switch and depart Ivory at 10:00am
- Arrive Fresno at 12:00pm to deliver train
- Crew will switch other industries as necessary

The Fuel expenses were calculated based on 18 gallons of fuel consumed per locomotive operation hour. The unit fuel cost is estimated at $3.0 per gallon.

It should be noted that although the potential traffic is more than double that of the current traffic, most of the traffic volume increase comes from Richard Best Transfer, which will be handled through unit trains. The switching operation itself does not deviate much from the current switching operation.

- General & Administrative: One General Manager will handle all supervisory work and oversee other clerical, marketing and administrative work. The basic office expenses are purely an estimate here. It was assumed that new railroad operation liability insurance would need to be purchased at a cost of $75,000 per year. In reality, if the potential operator already carries liability insurance, it could cost less to add railroad switching operation coverage.

Capital required for initial operation set-up

It was assumed that the capital required for purchasing locomotives (four GP-38 locomotives), vehicles (for Maintenance of Way) and other necessary equipment will be funded by a short term commercial loan. The initial minimum working capital requirement (which is equivalent to three months of operation expenses) will be fulfilled by the potential operator's cash contribution. The detail can be referenced on the Capital Expenditure Sheet on Appendix C.

Snapshot of Projected Operation Financials

The following table is a glance of the first year projection for the operation on this line for the potential traffic scenario. The detailed schedules are attached as Appendix C.

	Year 1
PROJECTED CARLOADS:	9,956
AVERAGE REVENUE PER CARLOAD:	$ 280
OPERATING REVENUES	
Freight Revenue	$ 2,784,600
Other Revenues	$ -
TOTAL OPERATING REVENUES	$ 2,784,600
OPERATING EXPENSES	
MAINTENANCE OF WAY	$ 537,120
MAINTENANCE OF EQUIPMENT	$ 292,800
TRANSPORTATION	$ 551,408
GENERAL AND ADMINISTRATIVE	$ 458,362
OPERATING EXPENSES BEFORE DEPRE. & AMORTI.	$ 1,839,689
EBITDA	$ 944,911
OPERATING MARGIN	33.9%
DEPRECIATION	$ 86,667
AMORTIZATION	$ -
INCOME BEFORE INTEREST & TAX	$ 858,244
INTEREST EXPENSES	$ 93,500
TOTAL OPERATING EXPENSES	$ 2,019,856
NET INCOME BEFORE TAX	$ 764,744
PRE-TAX INCOME	$ 764,744
Income Tax 0% Tax Rate for Public Entity	$ -
NET INCOME AFTER TAXES	$ 764,744
NET PROFIT MARGIN	27.5%

Net Liquidation Value (NLV)

Net Liquidation Value (NLV) refers to the market value of an asset minus the costs associated with its disposal. In essence, NLV is the realizable value of the assets - the track, land, equipment, vehicles and other structures - less the costs associated with their disposal to be used for any purpose, including but not limited to sales commissions, excavation, disposal, and environmental restoration. RII developed this NLV through its proprietary financial models and formulas to calculate the rail track, other track materials (OTM) and tie value. The right of way of the referenced railroad is owned by UP and thus the value of the right of way was not included in this valuation.

The unit salvage value of the railroad was obtained by inquiries to the American Metal Market for the most recent updated scrap steel pricing and by contacting some major rail salvaging companies for relay rail value. After all components are valued and calculated, the costs for salvage of the line are subtracted from the value to derive the NLV of the railroad assets.

The conditions used for valuation of materials track components were those developed through the track inspection performed by RII October 18th and 19th, 2010.

<u>Net Liquidation Value: Rail & OTM</u>

According to the inspection, the total track length involved with this valuation is 26.8 miles. ased on RII's inspection on the line, 5.7 miles of the rail are light rail (less than 100 lb.) and the rest of the rail is all heavy rail. The best use of the light weight rail is to sell the rail to mills for scrap since there is no current market for rail lighter than 100 lbs. The heavier rails are in #2 relay condition according to the inspection. According to the American Metal Market Scrap Steel Pricing as of December 8, 2010, the rail scrap steel value is at $383 per gross ton at the Chicago market, which is the market with the highest scrap steel value compared to other markets nationwide. It was estimated that at least $50 per ton in transportation costs would be needed to ship the salvaged materials to the Chicago market. The OTM was estimated at 25% of the total rail weight, and this includes other steel components such as tie plates, anchors, spikes, etc. The OTM of light rail will be scrapped and the OTM of the heavier relay rail can be salvaged as relay also at about $150 less per ton than the rail.

The total values of rail and OTM for the 26.8 miles of the rail is estimated at <u>$2,408,859.</u>

Net Liquidation Value: Railroad Ties

According to RII's inspection, it is estimated that there are about 2,978 ties per mile on this rail line. Based on the condition inspected, about 30% of the ties can be used as relay because they have at least 3 good sides remaining, 30% of the ties can be used for landscaping with at least 2 good sides remaining, and about 40% of the ties are in scrap or poor condition with fewer than 2 good sides remaining. According to RII's most recent inquires of major railroad salvage companies in December 2010, it was estimated that #2 relay ties and landscape ties have a market value of $10/each and $4/each respectively. Taking into account the tie removal cost of about $2/each and transportation costs (transportation cost only applies to landscape and scrap ties; typically, relay ties can be delivered locally) of about $3/each, the NLV of the ties are estimated at $7,981.

The complete NLV summary for all track, OTM and ties is as follows:

Fresno Railroad Assets NLV Estimate

Rail

Weight	Jnt/CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total $ NT	Total $ GT
75 lb.	jnt	2	132.00	264.00	235.71	Scrap		$ 383	$ -	$ 90,279
90 lb.	jnt	3.7	158.40	586.08	523.37	Scrap		$ 383	$ -	$ 200,450
110 lb.	jnt	7.6	193.60	1,471.36	1,313.92	#2 Relay	$ 550		$ 809,248	$ -
112 lb.	jnt	10.8	197.12	2,128.90	1,901.10	#2 Relay	$ 600		$ 1,277,338	$ -
113 lb.	jnt	2.2	198.88	437.54	390.72	#2 Relay	$ 550		$ 240,645	$ -
115 lb.	jnt	0.2	202.40	40.48	36.15	#2 Relay	$ 650		$ 26,312	$ -
130 lb.	jnt	0.1	228.80	22.88	20.43	#2 Relay	$ 700		$ 16,016	$ -
136 lb.	jnt	0.2	239.36	47.87	42.75	#2 Relay	$ 700		$ 33,510	$ -
		26.8		4,999.10	4,464.16		**Total Rail Value**		**$**	**2,693,798**

OTM

Weight	Jnt/CWR	Miles	NT/Mile	Total NT	Total GT	Class	Price NT	Price GT	Total $ NT	Total $ GT
75 lb.	jnt	2	33.00	66	58.93	Scrap		$ 383	$ -	$ 22,570
90 lb.	jnt	3.7	39.60	146.52	130.82	Scrap		$ 383	$ -	$ 50,105
110 lb.	jnt	7.6	48.40	367.84	328.43	Scrap		$ 383	$ -	$ 125,788
112 lb.	jnt	10.8	49.28	532.224	475.20	#2 Relay	$ 450		$ 239,500.80	$ -
113 lb.	jnt	2.2	49.72	109.384	97.66	#2 Relay	$ 400		$ 43,753.60	$ -
115 lb.	jnt	0.2	50.60	10.12	9.04	#2 Relay	$ 500		$ 5,060.00	$ -
130 lb.	jnt	0.1	57.20	5.72	5.11	#2 Relay	$ 550		$ 3,146.00	$ -
136 lb.	jnt	0.2	59.84	11.968	10.69	#2 Relay	$ 550		$ 6,582.40	$ -
Totals		**26.8**		**1249.776**	**1,115.87**		**Total Rail OTM Value**		**$**	**496,505**

Ties (Removal & Market)

Class	%	Miles	Total Ties	Price Ea.	Total
#2 Relay	30%	8.04	23,943	$ 10	$ 239,431
Landscape	30%	8.04	23,943	$ 4	$ 95,772
Scrap	40%	10.72	31,924	$ -	$ -
			Total Tie Value	**$**	**335,204**

Signal Appliance

Type	Quantity	Unit Price	Total
Lights	0	$ 2,500	$ -
Gates	0	$ 5,000	$ -
	Total all signals		**$ -**

Liquidation Cost

	Unit	Cost	Quantity	Total
Dismantle Rail (CWR)	Mile	$ 17,500	0	$ -
Dismantle Rail (Jnt)	Mile	$ 17,500	26.80	$ 469,000
Transport Rail &OTM	NT	$ 50	6,249	$ 312,444
Remove Ties	EA	$ 2	79,810	$ 159,621
Transport Ties	EA	$ 3	55,867	$ 167,602
Remove Relay Turnouts	EA	$ 400	0	$ -
Remove Crossing Signal	EA	$ 1,500	0	$ -
Restore Crossings	EA	$ 2,000	0	$ -

Gross Liquidation Value	**$**	**3,525,507**
Total Liquidation Cost	**$**	**1,108,667**
Net Liquidation Value	**$**	**2,416,840**

Conclusions and Recommendations

Based on all data gathered and analyzed for this project, there are some key points and concerns to note:

1. The rail service on this portion of the SJVR line is clearly declining.

2. There has been little marketing or customer development from the operator.

3. It is evident that the SJVR does not have a good relationship with the existing customers.

4. The existing customers are being charged additional fees that do not seem reasonable, pushing the traffic that does exist away.

5. SJVR has not been maintaining the line with the expectation of continuing operations at the traffic levels reported by the customers, so track condition is declining.

These service issues have created problems with the customers that have led to traffic being diverted from the railroad, moving to truck or losing market competitiveness. The best news is that all of these items can be easily remedied with a new focus on service and marketing to increase traffic and revenue on the line. Changes are needed if this line is going to have a future for economic development in this region. The following are positive steps that Fresno County may wish to take in order to ensure rail service is retained on this corridor.

A. The county will need to take a more active role in working with the SJVR. Working with the SJVR on a long term business and marketing plan could help prevent this line from the present and continued declines in service, condition and traffic. A joint marketing plan could allow the economic development interest to help develop traffic and revenue for the line while still providing the rail expertise needed from the railroad. This would require clear cooperation and commitment from the rail operator, as well as commitments to service levels.

B. Fresno will need to closely watch the activities in Tulare County since this line continues south into Tulare County and this is the only link into Fresno County from Tulare County for BNSF Railway. Preserving the entire corridor is the best way to preserve the viability of the line in the long term, especially for future economic development plans. Based on the SJVR's previous actions in Tulare County, Fresno County will need to be ready to step in if the SJVR decides to abandon all or other parts of this line.

C. If SJVR seeks public funds in order to rehabilitate portions of the line, the funds should be contingent upon certain service levels being maintained and that the condition of the rail be maintained to a specific level. Maintenance expenses should cover the costs of maintaining the track to a constant condition. Track only deteriorates to these conditions when maintenance is deferred or an operating plan is not designed well enough to allow enough maintenance budget to maintain the track (or the budget is not spent properly). Fresno should require periodic inspections of the asset if they choose to invest in it, and that customers continue to receive the service needed.

Appendices

Appendix A – Inspection Photo Index

Appendix B – Pro Forma Financial Statements – Current Traffic

Appendix C – Pro Forma Financial Statements – Potential Traffic

Attachment 3

SENATE BILL No. 325

Introduced by Senator Rubio

February 14, 2011

An act to add Title 12.5 (commencing with Section 93300) to the Government Code, relating to railroads.

LEGISLATIVE COUNSEL'S DIGEST

SB 325, as introduced, Rubio. Central California Railroad Authority.
Existing law authorizes the creation of railroad authorities in various parts of the state.
This bill would state the intent of the Legislature relative to the creation of the Central California Railroad Authority as an alternative for ensuring continuation of short-line railroad operations in the Counties of Kern, Kings, Tulare, and Fresno.
Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Title 12.5 (commencing with Section 93300) is added to the Government Code, to read:

TITLE 12.5. CENTRAL CALIFORNIA RAILROAD AUTHORITY

93300. This title shall be known, and may be cited, as the Central California Railroad Authority Act.

93301. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature, in enacting this title, to provide an alternative for ensuring continuation of railroad service if the Surface Transportation Board authorizes abandonment or discontinuance of service on, or in the event of bankruptcy of, or sale of, the existing short-line railroad operations in the Counties of Kern, Kings, Tulare, and Fresno.

(b) It is further the intent of the Legislature to provide a means to consider and, if justified, to pursue economic development opportunities and projects related to rail service on the affected short lines described in subdivision (a).

(c) It is further the intent of the Legislature that enactment of this title not provide a justification for the Surface Transportation Board to grant a petition for abandonment or discontinuance of service on the affected short lines.

(d) It is further the intent of the Legislature that the coverage of this title be expanded to include short-line railroad operations in the Counties of Madera, Merced, Stanislaus, and San Joaquin if that becomes feasible at a future date.

93302. The Legislature finds and declares that creation of the Central California Railroad Authority and the retention of railroad service will provide economic and other related benefits, as follows:

(a) Continuation of short-line railroad service in affected counties.

(b) The opportunity to explore expanded freight service operations between the Port of Oakland and the affected counties.

(c) The reduced reliance on motor vehicles and the benefits that result from use of alternative transportation means.

(d) Reduced traffic congestion on and deterioration of State Highway Routes 5 and 99.

(e) The provision of convenient and attractive alternative transportation options for shippers in central California and elsewhere.

93303. It is the intent of the Legislature to enact legislation that would create the Central California Railroad Authority. It is also the intent of the Legislature that the authority, when created, shall be a local agency for purposes of the Disaster Assistance Act (Chapter 7.5 (commencing with Section 8680) of Division 1 of Title 2).

O

Attachment 4

Univar USA Inc
4465 E Florence Ave
Fresno, CA 93725
(559) 488-4700

UNIVAR

October 6, 2010

Mr. Emerson Estrada
P.O. Box 487
Clovis, CA 93613

Subject: Letter of Support for San Joaquin Rail Project – Proposed Application to Preserve Rail Service

Univar USA Inc would like to express its support for the proposed "feeder line application" to promote, protect, and preserve economical rail service for Central Valley rail users. The application was prepared by a grass roots collaborative comprised of affected rail users, county entities, and economic development agencies whose objectives are to retain the rail line between Lindsay in Tulare County and the City of Fresno, bring a new short line rail operator, and improve service and business along the line. To date, the San Joaquin Valley Railroad ("SJVR") has indicated that it may want to abandon the rail line, discontinuing service to local users as it did on the Strathmore to JoVista portion of the line. This action would directly and negatively affect our company's operation and productivity, and have a significant impact on our community's economic development.

Univar USA Inc. ("Univar") currently receives and ships approximately 140 railcars per year of commodity chemicals, the majority of which are hazardous materials as defined by the US DOT. We have one location in Southeast Fresno, and our service days by the SJVR are Tues, Wed, and Fri each week. Our normal business hours are 5AM – 5PM Mon – Fri.

Univar was on schedule to grow its rail business, until the SJVR terminated its track lease agreement with Univar without cause in 2009 and replaced it with a new lease agreement that significantly increased its lease rates. Between the increased rates and unreliable service Univar currently receives from the SJVR, Univar's rail traffic has decreased. Univar had grown its rail traffic from 201 railcars in 2008 to 290 railcars in 2009 and it was forecast that rail traffic would be 340 railcars in 2010. However, due to SJVR's actions and unreliable service, Univar's rail traffic for 2010 is expected to only be 140 railcars.

One example of service issues Univar has experienced with the SJVR occurred on Wednesday, June 16, 2010. Univar received an e-mail from the Transportation Logistic's Center ("TLC") at 9:35AM informing us that, instead of receiving the scheduled service that day, Univar would be receiving its service the following day, which was acceptable as the TLC advised us in advance. However, on Thursday, June 17th, we received another e-mail advising that Univar would not after all be receiving service on that day, but instead Univar would be serviced "first thing in the morning", on Friday, June 18th. The e-mail also told us to have all of the equipment staged and ready to go, just in case SJVR came in before Univar began work in the morning. There were two issues with this communication: 1) The e-mail wasn't received until 5:15PM, (after normal business hours), and 2) the crew did not show up "first thing In the morning", in fact, they didn't show up at all that day. When Univar called the TLC at 12:30PM to find out when the crew would be coming in, they said they had no idea and Univar should call the local trainmaster. When Univar called the local trainmaster, he advised that he had no knowledge that Univar was to be serviced that day, and expressed his frustration that the TLC makes arrangements with customers but doesn't tell him about it. In the end, Univar received service sometime over the weekend. In addition to the frustration experienced by Univar, this caused Univar to have a service failure with one of its customers. To avoid our customer having to shut down their business, Univar had to arrange for a trucking company to bring product down from the Bay Area at an additional cost of $1,000.

Univar's customers have clearly chosen to find rail service in other areas to support their business. Unfortunately, with such a substantial plant investment, which includes $250,000 for a railcar mover, and lack of competition in the area, Univar does not have that choice and is forced to accept this poor level of service from the SJVR. The proposed Rail Project will allow Univar to once again grow its rail traffic, which in turn will assist the economic development of the surrounding community.

Please accept this letter as formal recognition of the value of this project. As a customer of the rail service and a resident of this community, I understand the importance of preserving this vital infrastructure for my company's future and for the regional economy, in terms of jobs. Having the necessary tools for logistics and distribution and an effective operator are essential to maintaining a favorable business environment. Please do not hesitate to contact me, if you should have any questions or need more information.

Sincerely,

Brian Banerdt
Branch Operations Manager
Univar USA Inc
Fresno, CA

Attachment 5

May 4, 2009

Dear Mr. Giles,

Rail shippers and receivers in the Central Valley of California have formed the Central California Rail Shippers and Receivers Association (CCRSRA). Our association includes rail shippers and receivers that receive rail service from the San Joaquin Valley Railroad (SJVR), the Union Pacific Railroad (UP) and the BNSF Railway Company (BNSF). The Association's primary purpose and/or mission is to promote, preserve and protect freight and passenger rail service in the Central Valley of California by ensuring that a viable and economical rail service is provided for all who choose to use it through proactive administration, legislation, management and maintenance.

In keeping with our charge, we are not only compelled but also obligated to inform you that our members have lodged serious complaints and concerns with our organization regarding recent and future RailAmerica Tariff changes. Theses changes have increased SJVR shippers' and receivers' transportation costs (in one instance by 15,000 %). As a result, many of these companies are facing severe financial crises. The State of California does not need more companies, (i.e. Big West Refinery) declaring bankruptcy and adding more individuals to the already swollen unemployment ranks. Kern County Officials recently announced in the newspaper that the county unemployment rate is now at 15%.

Various shippers and receivers have tried to negotiate with the SJVR in order to receive some type of relief from these unreasonable industry increases but to no avail. Therefore, these shippers and receivers, who make up over approximately 30% of all SJVR carloads, have asked the CCRSRA to intercede on their behalf.

In researching with other short line rail companies throughout the country, it is our finding that the recent tariff modifications contain some of the highest, if not the highest, accessorial charges lodged against any rail shippers and receivers in the nation. Normally, we find ourselves operating in a free market economy where competition reigns supreme and serves as a check and balance against predatory and arbitrary actions; however, SJVR shippers and receivers have no other real transportation alternatives and therefore are held captive by the SJVR thus enabling what appears to be a "true monopoly." We do not believe these unannounced changes are fair or lawful, especially since the shippers and receivers do not receive any notification of tariff changes from the SJVR. This tactic does not allow customers to sufficiently incorporate these costs in their budget models; adversely affecting their operational, financial and contractual obligations.

Central California Rail Shippers & Receivers Assoc., (CCRSRA), PO Box 71497, Bakersfield, CA 93387, www.ccrsra@gmail.com

While these are tough economic times for all, the shippers and receivers of the CCRSRA do not begrudge the SJVR from making a reasonable profit; however, not at such a heavy burden that places their businesses' financial health and well-being at risk as a direct result. The CCRSRA finds these increases to be unfair and excessive.

For example, one shipper's transportation costs will increase by approximately $1.5 million in 2009 simply by the stroke of a RailAmerica pen, while another's has increased some $40,000 per month above and beyond all of their other transportation costs. With unforeseen increases such as these creating harsh economic and financial challenges, it is easy to see why many of these shippers and receivers are gravely concerned about their future.

Many of these customers, are some of the largest shippers and receivers on the SJVR, generating close to $100 million of annual revenue for the UP and BNSF and over $4 million for the SJVR. Customers have no choice but to call for immediate action to be taken. At this point, the Association is not at liberty to discuss what some of these actions may be, other than to say they carry potentially negative consequences for all concerned. Some of the CCRSRA members have mentioned that they fear retaliatory actions against their businesses from RailAmerica and the SJVR for participating in this initiative for fair and equitable tariff rates. It is the Association's concern that such actions not be taken against any member and that a professional and positive relationship can be maintained.

The CCRSRA has established a committee comprised of shippers and receivers who are prepared to meet with you and your representatives as soon as possible in order to negotiate and develop a more workable and economical arrangement for all concerned. We further extend an invitation to our Class 1 partners (UP & BNSF) to assist us in this process. It is our goal to work through these critical issues together in order to insure that all succeed not only through these tough economic times and well into the future. We encourage you or your designated representative to contact the CCRSRA, www.ccrsra@gmail.com within 14 working days to set a meeting date, time and place in Bakersfield, CA. We look forward to meeting you soon.

Respectfully,

Signature	**Title**
Chuck Littlefield CCRSRA	President
CCRSRA	Vice President
Evelyn Pitney CCRSRA	Treasurer
Vickie Wood CCRSRA	Secretary

Attachment 6

RailAmerica Operations Support Group, Inc.

® A RailAmerica Company

Corporate Headquarters
7411 Fullerton Street
Jacksonville, FL 32256
Tel: 904.538.6101
Fax: 904.256.0560

May 8, 2009

Mr. Chuck Littlefield
President
Central California Rail Shippers & Receivers Association
P.O. Box 71497
Bakersfield, CA 93387

Dear Mr. Littlefield,

I want to personally reach out to you and acknowledge receipt of your letter of May 4, 2009. I am concerned that members of your organization have lodged complaints about changes in San Joaquin Valley Railroad's tariffs, and I am anxious to learn more about the complaints that some of your members may have been unduly burdened.

We at RailAmerica are very proud of the fact that our railroads are part of local economies and our goal is to help our customers grow their business by providing high-quality, competitively priced transportation services. We believe that our services, and the services that we offer in conjunction with our Class 1 partners, provide one of the most cost effective and environmentally friendly methods for your members to move their goods to market. It is with that mindset that we approach all of our pricing activity, and we strive to do nothing that will disadvantage any of our customers in our communities.

Obviously, current economic conditions have created a challenging business environment for many of your members. Just like your members, we in the rail industry are not immune to the changes in local and global economies, and we are doing everything that we can to maintain jobs for our employees and create work for all of the companies that support our operations across the country. That said, there are times that we have to look at the services that we provide, and the prices that we charge, and adjust them to reflect current market conditions.

Because your letter does not reference specific shippers, receivers or the transportation services that they purchase from SJVR, I cannot respond directly to your claims that our company has created financial hardship for any customer of SJVR. I can, however, share with you how we approach the marketplace and manage pricing for our services. First, you must understand that SJVR does not provide overall transportation rates for individual customers. Transportation rates are created and billed by our Class 1 partners. Your members pay them directly and the Class 1 carrier pays SJVR as their agent. SJVR, however, does bill local customers for services provided locally to your members. Those services include short-term car storage, long-term car storage and switching. When our marketing team prices those services they evaluate alternative transportation modes and the price of those services on neighboring Class 1 railroads. In almost all cases we ensure that our prices for accessorial services are well below those of the nearest Class 1 railroad, so our customers realize the benefit of being located on a shortline. Without fail, our marketing team communicates and coordinates any rate changes with customers. In the case of most significant tariff changes, we send personal letters, make onsite visits and post the announcements on our railroad's website. In some cases we even produce press releases for publication in local newspapers. Never, under any circumstances, do we give less than twenty days notice, and most often not less than ninety days. Given how we approach our local market, I am surprised that you use the words "predatory", "unreasonable" and "arbitrary", and I can say with certainty that any changes to SJVR tariffs were professionally communicated.

Like you, I wish to maintain a professional and positive relationship between your members and SJVR. Our marketing and sales teams are always willing to discuss business challenges and solutions. However, given that we have no specific claims to respond to, I would suggest that it is a bit early for our team to meet with your committee. Would your committee be able to provide specific examples of changes to SJVR tariffs, in writing, that we can address in a case-by-case approach? Our marketing team will respond in a timely manner, and should they find any unreasonable competitive challenges placed upon your customers, they will be able to address them promptly.

SJVR has a number of contractual agreements with customers. Should your committee wish to discuss a private contract, will you please provide our attorneys with legal documents that give you, and your organization, the ability to negotiate and commit on behalf of our customers?

RailAmerica Operations Support Group, Inc.

® A RailAmerica Company

Like your committee, it is our marketing team's goal to insure that our customers and SJVR work through crucial issues together and ensure that everyone succeeds in these challenging times and we lay the groundwork for a prosperous future.

I am anxious to hear if our proposal meets with your committee's needs, and I will await your response.

Regards,

Charles M. Patterson
SVP & Chief Commercial Officer

Enclosure

cc:	John Giles	RailAmerica
	Paul Lundberg	RailAmerica
	Bob Jones	RailAmerica
	Larry Gomez	RailAmerica
	Randy Perry	RailAmerica
	Josh Putterman	RailAmerica
	James Shefelbine	RailAmerica
	David Hallberg	BNSF
	Larry Ruple	BNSF
	Iram Rahmatullah	BNSF
	Mark Schmidt	BNSF
	Jack Koraleski	UPRR
	John Miller	UPRR
	Clifton Ellis	UPRR
	The Honorable Arnold Schwarzenegger	Governor of California
	The Honorable Kevin McCarthy	U.S. Congressman
	The Honorable Devin Nunes	U.S. Congressman
	The Honorable Jim Costa	U.S. Congressman
	The Honorable Dean Florez	California State Senator
	The Honorable Roy Ashburn	California State Senator
	The Honorable Mike Maggard	Kern County Board of Supervisors
	The Honorable Michael Rubio	Kern County Board of Supervisors
	The Honorable Edmund G. Brown	Attorney General
	The Honorable Barbara Boxer	U.S. Senator
	The Honorable Dianne Feinstein	U.S. Senator
	The Honorable Jean Fuller	California State Assemblywoman
	The Honorable Danny Gilmore	California State Assemblyman
	Rail (CURE)	Organization
	Tom Brugman	Surface Transportation Board
	Robert Ball	Kern County
	The Honorable Allen Ishida	County Of Tulare Board of Supervisors

Attachment 7

June 8, 2009
Mr. Charles M. Patterson
SVP & Chief Commercial Officer
RailAmerica
7411 Fullerton Street
Jacksonville, FL 32256

Dear Mr. Patterson,

We would first like to begin by thanking you for your expeditious response to our original letter drafted May 4, 2009. We are to understand that you are directly involved in creating RailAmerica tariffs, which is the foremost reason we were delighted that you were chosen to respond on behalf of your company. Your desire to learn more about our situation is commendable and, we feel, a great stride in the right direction toward rectifying any issues expressed in our last letter. That being said, there were a few misconceptions that we wanted to address so that we can all move forward building our working relationship while growing business opportunities for all concerned.

You had mentioned that our letter did not reference specific claims regarding individual shippers or receivers. The CCRSRA does not negotiate the terms of individual contractual agreements that any one customer may have with RailAmerica. Our mission is to serve the entire organization as a whole, and as such, we are working under the assumption that your tariffs are meant to apply to all RailAmerica patrons. As stated, our reason for requesting you meet with us evolves around each inception of the latest installment of your unpredictable tariffs, and the manner by which they are issued and executed.

We would like to comment on specific portions of your May 8, 2009 response letter, wherein you state, "*When our marketing team prices those services (switching, storage) they evaluate alternative transportation modes and the price of those services on neighboring Class 1 railroads. In almost all cases we ensure that our prices for accessorial charges are well below those of the nearest Class 1 railroad, so our customers realize the benefit of being located on a shortline*". Make no mistake Mr. Patterson, RailAmerica is not a Class 1 railroad, it is a shortline. Governed as such, a shortline must be gauged and compared to the pricing and value of services provided by that of other shortlines that fall under the American Short Line & Regional Railroad Association (ASLRRA), not with the likes of other Class 1's. Per your request, here are a few examples of how the members of CCRSRA are "realizing the benefit" of your shortline:

1. The nearest Class 1 railroad has a maximum charge of $150 (in some cases less than $70) for daily demurrage on cars containing Hazardous Materials. With the implementation of your newest tariff, SJVR customers will be forced to pay $250 for the same service provided.
2. The nearest Class 1 railroad charges $200 for an empty/loaded diversion or reconsignment. RailAmerica charges $350.
3. Several of our members have sought storage options on other shortlines, as well as Mainlines, rather than be subjected to a variance of $30 to $150 (now $250) per car, daily fees. Some cars are being stored for less than $4 per day, and even merely $8 per day for HazMat cars.

You also state, "*Without fail, our marketing team communicates and coordinates any rate changes with customers. In the case of most significant tariff changes, we send personal letters, make onsite visits and post the announcements on our railroad's website. In some cases we even produce press releases for publication in local newspapers. Never, under any circumstances, do we give less than twenty days notice and most often not less than ninety days*". The CCRSRA is comprised of several of the largest shippers and receivers on the SJVR line. According to our member survey, we have yet to come across even one patron who possesses any written documentation announcing the implementation of any new tariffs, let alone a letter that would announce changes made to existing tariffs. RailAmerica is mandated by the Surface Transportation Board to supply each and every customer with written documentation at least 20 days prior to altering any existing tariff, or implementing any new tariff. While the issuance of Tariff Announcement letters may be company practice in Jacksonville FL, this is not what is transpiring locally on the San Joaquin Valley Railroad.

Enclosed is the cover sheet to your RA 1000 tariff that was downloaded directly from your website. Please note that the tariff was issued on July 1, 2008 and more importantly, effective on the same day. We must point out that this is in fact proof that RailAmerica continues to implement new tariffs on an "as needed" basis, and without prior notice to it's patrons, regardless of the STB guidelines.

You also state, "*Given how we approach our local market, I am surprised that you use the words "predatory", "unreasonable" and "arbitrary", and I can say with certainty that any changes to SJVR tariffs were professionally communicated*", yet no one in your organization took offense to the words "true monopoly". Unless said announcements were personally sent to each of our entities by yourself, then you cannot claim certainty about the methods by which the SJVR is executing your tariffs. In an effort to justify the verbiage used in our original letter, please allow us to educate you on the exact definitions of each term, as they were used with correct intent the first time.

1. Predatory: Marked by a tendency to victimize or destroy for one's own benefit
2. Unreasonable: Going beyond reasonable limits, immoderate
3. Arbitrary: Determined by impulse or whim, despotic (to wield power oppressively)

You then state, "*Our marketing and sales teams are always willing to discuss business challenges and solutions*", however they refuse to meet onsite even to discuss the disintegration of contracts, and implementation of tariffs until well after the aforementioned clauses go into effect. Phone calls were not even returned.

1. One customer was promised in writing, a meeting "within 45 days" but was avoided by your team for 83 days, despite numerous requests for a meeting.
2. Another customer was handed a new drafted contract, told his existing contract was void as of that day, and was told to sign the new contract within ten days, without prior warning or discussion.
3. Another customer was mailed a letter stating their long-term contract was null and void within 30 days, and your team refused to meet with the patron until the day after the tariff went into effect, stating that if they refused payment, their service would be terminated.

Your local management team repetitiously and nonchalantly states to our members, "All you need to do is just put in more track and that will solve all of your problems." First, for many of our members, that is not an option due to land availability and business location. Secondly, why should our members spend millions of dollars in infrastructure upgrades when RailAmerica will not do the same to their own track, despite being government subsidized?

RailAmerica lobbied hard in Washington to obtain tax credits from the federal government in order to secure funding for track maintenance. Your argument was that you needed these tax credits to prevent more trucks from congesting our nation's highways, yet once the tax credits were granted, you immediately engaged in activities to do just the opposite, by increasing surcharges, thus forcing your customers to utilize trucks. (Note your own tariff increase to $2850 per railcar in order to discourage rail shipments).

We would normally refuse to comment on another corporation's financial status, or the way that such funds are acquired, but RailAmerica's article in Progressive Railroading dated April 9, 2009 claims, "*For now, RailAmerica is in better financial shape than it was two years ago. The company registered record earnings in 2008 and has quadrupled cash flow, says Giles*", and "*We plan to get the company poised and planted to take in acquisitions at some future date*". Also stated, "*I keep two kinds of stuffed animals in my office: a monkey and a fish," he (SVP Rohal) says. "The monkey represents what job there is to do and who will do it, and the fish means that as something swims by you, you have the right to look at it and question it. If there's something you don't think will work, throw the fish on the table*". The CCRSRA is throwing the fish on the table.
Noting the abrupt loss of two of your three trainmasters and the loss of three crews, we assume others have thrown this fish on the table as well. Considering the SJVR's May carload count is already some 700 below the monthly forecast, which equates to well over $225,000 (excluding the additional accessorial charges), we can't help but be amazed at how RailAmerica would choose to publicly gloat about it's financial status.

Shortlines acquire revenue off carloads Mr. Patterson, not accessorial charges. Given that the SJVR's projected 40,000 carloads for 2009 have already dropped some 30%, we can only assume your tariff gouging has forced many customers to either do business elsewhere, not do business at all, or add to the already existing 11.6 million heavy duty diesel truck miles *per day* that are accumulated in the San Joaquin Valley alone. The California Air Resources Board, as quoted in the Fresno Bee, states that this is well over the 9.6 million diesel truck miles acquired in the *entire* LA Basin. Rail transportation is at least ten times more energy efficient than trucking, not to mention dramatically cleaner for our environment with regard to CO2 emissions.

Our mutual industries cannot continue to grow if carloads are discouraged and truckloads are encouraged simply due to the cost of doing business with your organization. Your method of tariff gouging, especially without prior announcement, is discouraging both existing and prospective business for many of our members, as they cannot pass the additional costs to their clients. One association member actually likened these tactics to nothing short of "domestic terrorism".

What will the SJVR do once carloads are discouraged to the point where they can no longer sustain their own operating costs? More new tariffs are not the answer. Building revenue by creating more incentives to do more business with the shortline is a far better method of becoming and remaining successful in this industry. We feel that rail transit can be the most cost effective method of transporting goods, and the least disparaging to our environment. That being said, we ask that you accept our offer to meet and attend with an open mind, as we have common agendas.

The CCRSRA's utmost goal is to work in conjunction with RailAmerica to find a way that our members (your customers) and the SJVR can complement one another, rather than hinder or impede the other's growth and prosperity. As stated in our original letter, the CCRSRA does not begrudge the SJVR from making a reasonable profit, however we cannot allow RailAmerica to put the livelihood of our member's businesses at risk with the new tariff structure that they intend to enforce through this monopoly.

The Kern Council of Government has offered to host the meeting on any of these given dates at their office in downtown Bakersfield. We certainly hope that RailAmerica will accept our offer by selecting the most convenient date and time to meet with the CCRSRA. Time is of the essence for some of our members, therefore we strongly urge you to attend.

Friday	June 26, 2009 at 9 o'clock
Tuesday	June 30, 2009 at 9 o'clock
Wednesday	July 7, 2009 at 9 o'clock or
Friday	July 10, 2009 at 9 o'clock

Respectfully,

Central California Rail Shippers and Receivers Association

Board of Directors

Chuck Littlefield

Charles Littlefield

Bobbi Brister

Evelyn Pitney

Evelyn Pitney

Vickie Wood

Vickie Wood

cc: **Railroads**

David Hallberg, BNSF	EVP Industrial Products and Sales
Larry Ruple, BNSF	General Director Industrial Products
Iram Rahmatullah, BNSF	Manager Sales Industrial Products
Mark Schmidt, BNSF	VP Short Line Development
Jack Koraleski, UPRR	EVP Marketing & Sales
John Miller, UPRR	Manager Short line Development
Clifton Ellis, UPRR	Business Rep., Marketing & Sales
Charlie Patterson, RailAmerica	SVP &Chief Commercial Officer
David Rohal, RailAmerica	SVP & Chief Operating Officer
Paul Lundberg, RailAmerica	SVP Strategic Relations
Bob Jones, RailAmerica	Western Regional VP
Larry Gomez, RailAmerica	Asst. VP Sales West Region
Randall Perry, RailAmerica	General Manager SJVR
Patrick Kerr, RailAmerica	Asst. General Manager/Marketing & Sales

California State Officials

The Honorable Arnold Schwarzenegger	Governor of California
The Honorable Kevin McCarthy	U.S. Congressman
The Honorable Devin Nunes	U.S. Congressman
The Honorable Jim Costa	U.S. Congressman
The Honorable Dean Florez	California State Senator
The Honorable Roy Ashburn	California State Senator (CSSRC)
The Honorable Mike Maggard	Kern County Board of Supervisor
The Honorable Michael Rubio	Kern County Board of Supervisor
The Honorable Edmund G. Brown	Attorney General
The Honorable Barbara Boxer	U.S. Senator
The Honorable Dianne Feinstein	U.S. Senator
The Honorable Jean Fuller	California State Assemblywoman
The Honorable Danny Gilmore	California State Assemblyman

Rail(CURE)	Organization (Consumers United for Rail Equity)
Tom Brugman	Surface Transportation Board
Robert Ball	Kern County –Council of Governments
The Honorable Allen Ishida	County of Tulare Board of Supervisors

Attachment 8

Date: August 20, 2009

To: Thomas J. Brugman
Section Chief – Rail Customer and Public Assistance Program
STB/OPAGAC (Office of Public Assistance, Governmental Affairs, and Compliance)
395 E. Street, SW,
Washington D. C. 20423-0001

From: Chuck Littlefield, President
Central California Rail Shippers & Receivers Association (CCRSRA)
P.O. Box 71497
Bakersfield, CA 93387

Subject: RailAmerica/SJVR Improper Notification of Rail Tariffs

Mr. Brugman,

As mentioned in our previous conversations, the CCRSRA is comprised of over 20 active rail shippers and receivers served by the San Joaquin Valley Railroad, which is governed by RailAmerica. Our purpose is to stand united in acquiring the fair and reasonable rights of rail served customers both large and small. Over the past few months, we have been supplying you copies of our correspondence with RailAmerica, wherein we consistently request to meet with their policy makers to discuss the ethics of their tariff practices. All requests have been denied.

The SJVR has continuously offered no prior notification of newly implemented tariffs, or increases to existing tariff rates, resulting in exponentially large shifts in their customer's transportation costs. The tariffs have been geared directly at several of the largest shippers and receivers in our organization, namely Richard Best Transfer Inc, San Joaquin Refining Company, Kern Oil and Refining, and Tricor Refining LLC. As soon as RailAmerica's tariffs were in place, our contracts with the SJVR were cancelled, and tariff rates were repeatedly increased, *without prior notification*.

In our limited conversations with RailAmerica executives, we have been told that railroads are not *required* to notify customers regarding the inception of new or altered tariffs. "It is a courtesy, not a requirement".

In prior conversations with Victoria Wood, we were under the impression that you had indicated these notices were *required*, while RailAmerica maintains that the 20 day notifications are merely a *courtesy*. Could you please supply us with written documentation that will clarify the matter? We would like the STB to look into our accusations, and let us know if indeed our claims are valid.

When the CCRSRA first mentioned that the SJVR's tariff practices were going against the 20 day notification guidelines mandated by the STB, RailAmerica's Charlie Patterson insisted that their organization would never do such a thing, even embellishing that some of the more extreme tariff adjustments were even given media coverage and announced more than ninety days prior to the effective date.

We can only assume that after realizing RailAmerica's tariff practices were not necessarily being adopted by the SJVR, Mr. Patterson instructed Regional Manager Larry Gomez, SJVR General Manager Randy Perry, and SJVR Marketing Representative Patrick Kerr meet with 6 of our affiliates on July 7 and 8, 2009. Their team verbally acknowledged the egregious error and announced a plan to help correct the matter within 90 days. As of this date, we have not been formally updated as to whether this has transpired.

In an effort to seek a reasonable resolution that would benefit both the CCRSRA and RailAmerica alike, we would like to ask the STB to intercede on our behalf. It is our contention that RailAmerica's price gouging tactics and monopolistic hold over their rail customers could possibly conflict with their common carrier obligations. We are asking you and your agency to assess the legality of these issues and decipher whether RailAmerica's practices are reasonable and fair. We look forward to hearing from you.

Respectfully,

The California Rail Shippers and Receivers Association

Attachment 9

Kern Council of Governments

Chuck Littlefield, President and
Vickie Wood, Secretary
Central California Rail Shippers and Receivers Association

Re: Letter of Support for The Central California Rail Shippers and Receivers Association

Kern Council of Governments (Kern COG) is responsible for managing a continuous, cooperative and comprehensive transportation planning process and program. The Kern regional transportation program addresses all modes and unique needs of a vast and diverse region. The movement of goods on rail is an important and integral part of Kern's transportation system. Kern COG has been working with the railroads, the State Department of Transportation, San Joaquin Valley (SJV) Air District, and other agencies on rail projects in the Kern region to improve the efficiency of the transportation system. Kern COG has also worked with the Central California Rail Shippers and Receivers Association (CCRSRA) which has many members within the Kern region who strive to ship via rail at reasonable rates. Kern COG agrees with the mission of the CCRSRA to preserve and improve both freight and passenger rail service, now and well into the Central California's future.

The importance of rail to our region:

Economic Benefits-

-A recent study by Kern COG showed 3,350 jobs are dependent on rail service.

-As stated by Joseph C. Szabo, "No economy can grow faster than its transportation network can carry it." Rail supports the vast agriculture, oil refining, mineral extraction, and production industries in the Kern region, without these industries Kern would lose over 1/3 of its employment base.

Air Quality Benefits-

-Kern County suffers from having one of the poorest air quality ratings in the nation. Having rail work efficiently within the transportation system improves the overall network, and expanding rail use can further relieve truck traffic which outputs higher pollutants than rail per ton-mile.

Safety Benefits-

-Expanding rail service in Kern can help reduce the number of fatal vehicle accidents by removing trucks from the road; rail has fewer fatal accidents per ton-mile of cargo shipped versus truck.

Kern Council of Governments' Rail Concerns:

At-Grade Crossing Delay–

-- The Landco Subdivsion Line on the San Joaquin Valley Railroad crosses State Route 58 at-grade. If a train slows or stops on this crossing during peak hour traffic, it creates traffic congestion for thousands of cars, adding to the detrimental pollutants in our air, and slowing the commerce in our region. The current (2011) traffic counts for this section of State Route 58 have shown over 90,000 vehicles/day. It is very important that the railroads work to schedule train movements appropriately to lessen the impact to vehicle traffic during peak periods. Maintaining track to a condition which allows greater speeds will assist the railroad in meeting a more flexible and efficient schedule; the railroads should invest profits back into the local railroads where revenue is being generated.

Rail Abandonment –

– Our region has been losing rail to abandonment. The current economic conditions present an additional threat of rail abandonment, if rail is abandoned now it will be too costly to rebuild in the future when economic conditions are better and there is a higher demand for rail use. Through recent studies conducted by Kern COG, the analysis shows that generally the SJVR lines in our region are profitable, that profits will continue every year over 10 years, and will grow over time with increases in the traffic base. Nevertheless, in comments presented by shippers in our region, shippers have heightened concerns over new and increased railroad fees, and concerns that the San Joaquin Valley Railroad, a subsidiary of RailAmerica Inc., would rather eliminate lower revenue lines and grow through fees rather than through lower margin traffic growth.. The value of rail to our transportation system and to our region's economy and the businesses that rely on rail for the operation of their business should outweigh the importance of a corporate profit margin.

Rail Expansion-

-The railroads should seek to reasonably expand and continue growth of rail use, as the above mentioned benefits are very important to our region, our state, and the nation. Again, shippers in our region have commented that over the past few years, surcharges and accessorial fees have grown astronomically for unexplained reasons. Many shippers are now being forced to consider other shipping options, relocation, or closing their businesses completely.

Kern COG supports the Central California Railroad Shippers and Receivers Association as they continue to seek railroad service and infrastructure improvements, more attention paid to customer service, marketing, and growth opportunities, and reasonable rail shipping fees that will allow their members' businesses to succeed and grow through continued and expanded shipment via rail.

Sincerely,

Ahron Hakimi

Ahron Hakimi, Executive Director
Kern Council of Governments

Attachment 10

CREDIT TERMS AND SECURITY DEPOSIT

RailAmerica
Marketing Services
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256

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.

All railroads, except Class 1 rail carriers and rail carriers that conducted business with the Subscribing Carrier prior to January 1, 2009, will be required to apply for credit with the Subscribing Carrier.

Credit will be granted solely at the discretion of the Subscribing Carrier.

(ITEM - 1005) PAYMENT AND CREDIT TERMS

All charges under this tariff must be prepaid, unless satisfactory arrangements with Subscribing Carrier have been made prior to performance of service.

Charges for services rendered under terms of this tariff will accrue against the customer located on the Subscribing Carrier or against the responsible rail carrier involved, unless arrangements to the contrary have been made with Subscribing Carrier prior to performance of service.

All payment for services covered herein are due and payable within fifteen (15) days following the invoice date. Payments received after expiration of the credit period shall be subject to a service charge of one and one-half percent (1 ½%) per month (or fraction thereof) of the outstanding balance.

RailAmerica
Marketing Services
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256

CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)

(ITEM - 1010) SECURITY DEPOSITS FOR PAYMENT OF ACCESSORIAL CHARGES AND/OR SURCHARGES

A security deposit to ensure payment of any accessorial charges and/or **surcharges 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 and/or surcharges 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.

CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)

(ITEM - 1020) APPLICATION FOR CREDIT– E-Mail to Credit.Applications@RailAmerica.com

Date ______/ ______/_______

Company Name ___________________________________ Phone _________________________
(Area code & number)

D/B/A ____ For Past ___________Years

Address ____
(Street) (City) (State/Province) (Zip/Postal Code)

Former Business Address (If Applicable)

____

Federal Tax I D 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._________________

RailAmerica
Marketing Services
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256

CREDIT TERMS AND SECURITY DEPOSIT – SECTION II (ORIGINAL)

BANK REFERENCE: ☐ Checking ☐ Savings ☐ Loan

Name ______________________ Dept. ______________ Acct. No. ____________

Mailing Address ____________________________________ Phone No. ___________

City _______________ State/Province_________ Zip/Postal Code ___________

Type of Business: ____

Tax Exemption #/HST/GST#: _______________________ State/Province Issued: ______

Our terms are Net 15 from date of invoice. Applicant's signature attests financial responsibility, ability, and willingness to pay our invoices in accordance to terms. A service charge of 1 ½% per month, which is an annual rate if 18%, will accrue 30 days after invoice date.

I authorize you to contact references and to obtain information from outside resources that may be needed to obtain credit.

The application has been carefully prepared by the undersigned and is to my knowledge complete, accurate, and truthful. I also acknowledge that I understand and agree to the pricing and collection policies relating to RailAmerica and its affiliated railroads.

IF MY ACCOUNT IS ACCEPTED, I AGREE TO PAY ACCORDING TO YOUR TERMS OF SALE. I FURTHER AGREE TO PAY ALL COLLECTION COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY YOU IN COLLECTING OR ATTEMPTING TO COLLECT SUCH ACCOUNT.

-

____
Firm Name

________________ ______________________________
Date Signature Title

E-Mail to: Credit.Applications@RailAmerica.com

RailAmerica
Marketing Services
7411 Fullerton Street, Suite 300
Jacksonville, FL 32256

CREDIT TERMS AND SECURITY DEPOSIT – SECTION II
(ORIGINAL)

INDIVIDUAL PERSONAL GUARANTEE

Date ___________
I, ___________________________, residing at ____

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 of renewal of the credit agreement hereby guaranteed.

WITNESS _____________________________ GUARANTOR ___________________________ DATE _________
(Signature) (Signature)
ADDRESS ____

JOINT PERSONAL GUARANTEE

Date ___________
We, ___________________________ and _________________________ his/her _________________ residing at

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

____________________________ (herein 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)

E-Mail to Credit.Applications@RailAmerica.com

Attachment 11

INDUSTRIAL TRACK AGREEMENT INFORMATION SHEET

In all situations involving service to a shipper on a private track (Industry owned) either on or off Railroad property, an Industrial Track Agreement ("ITA") should be entered into between the parties prior to service. The Real Estate Department requires the following minimum information in order to prepare and process such a document. Please return completed form with schematic along with non-refundable $1,000.00 (U.S.) document preparation fee and $1,500.00 (U.S.) Engineering review fee (**for new track construction only**) : Processing time is approximately 6-8 weeks. There is a fee of $1,750 (U.S.) to expedite. ***Note: ALL new track to be constructed, as well as additions to existing trackage MUST be approved by the RA-Engineering prior to commencement of construction or request submittal for an ITA.***

1. Complete Legal Name of Shipper/Receiver: ______________________________

2. State of Incorporation: ______________________

3. Mailing Address: ______________________________

   Physical Address of Shipper for overnight service: ______________________________

   Physical Address of Industry Track: ______________________________

4. Contact Person: ______________________ Title: ______________

5. Phone No. (____) ___ _______ Fax No.: (_____) _________ Email: ______________________

6. Railroad Name: ______________________________

7. Total Length of Track from Point of Switch (P.S.) to end of track: ___________ ft. Mile Post ____________

8. Is Shipper exclusive user of track? ______________ Private Cars/RR Cars (Circle One)

9. No. of switches owned by RR: __________ Length of turnout (P.S. to boundary of RR property): __________

10. Ownership: P.S. to property line Railroad Property line to end of track ______________

11. Maintenance: P.S. to Clearance Point (C.P.) Railroad (If not, who?) ______________________

    C.P. to end of track ______________________

12. New Construction of Track? (Yes or No) Mile Post at P.S. (Point of Switch) ______________

13. Track construction: Who bears cost of construction? ( ) Industry ( ) Railroad
    Who bears cost construction of RR Switch/Turnout? ( ) Industry ( ) Railroad
    Railroad Switch-Turnout Constructed by: ( ) Railroad ( ) Industry ….at ( ) Railroad ( ) Industry expense.

14. Nearest City: __________ County: ______________ State: ____________ Subdivision: ____________

*15. All commodities to be handled on track (**Include STCC & Descriptions**): ______________________ (not all hazmat commodities are acceptable and hazmat commodities may require additional charges. Minimum $10M insurance coverage naming the railroad and RailAmerica, Inc. as additional insured on all hazmat. Non-hazmat minimum $3M.***MUST LIST ALL COMMODITIES AND THEIR STCC NUMBERS. IF COMMODITY IS HAZMAT, REGARDLESS OF LEVEL, MSDS PAPERS MUST ACCOMPANY APPLICATION FOR ENVIRONMENTAL APPROVAL.**

Please Note: ***There is a $2,500.00 per switch annual Switch Maintenance Fee on all ITA's.*** There also may be additional rental charge per linear foot for all Railroad-owned and maintained trackage.

Dated: ________________ Signature: ______________________________

Name Printed: ______________________________

Title: ______________________________

Please return completed form with schematic showing track or plans for new construction for approval and fees if applicable to: Paula Ake, RailAmerica, Inc., Real Estate Department, 7411 Fullerton Street, Suite 300, Jacksonville, FL 32256. For questions, please email Paula.Ake@RailAmerica.com or (904) 538-6344. Document preparation fee and track sketch must accompany application. Incomplete applications will be declined and returned and delay the process. For further information please visit http://www.railamerica.com/realestate.aspx

CONTRACT INSURANCE REQUIREMENTS FOR HAZMAT

Licensed or Leased Track

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain broad form contractual liability with a single limit of at least $10,000,000.00 each occurrence or claim and an aggregate limit of at least $10,000,000.00. Coverage must be purchased on a post 1998 ISO or equivalent form, including, but not limited to, coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations
- Contractual Liability RRs endorsement CG 24 17
- Designated Premises Pollution Coverage (CG00-39) endorsement.

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker's compensation related exclusions in the above policy apply to Lessee's employees
- The exclusions for railroads and explosion, collapse and underground hazard shall be removed.
- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence or claim, including, but not limited to, coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee worker's compensation elated exclusions in the above policy apply only to Lessee's employees
- Waiver of subrogation
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90)

C. **Umbrella or Excess Policies** in the event Lessee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

D. Pollution Legal Liability (PLL) Insurance. This insurance shall be in an amount of at least FIVE MILLION DOLLARS ($5,000,000) per occurrence and TEN MILLION DOLLARS ($10,000,000) in the aggregate including but not limited to coverage for the following:

- bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- defense costs including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in BODILY INJURY or PROPERTY DAMAGE.

E. Lessee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Lessee further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Lessee's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

F. All policy(ies) required above (excluding Workers' Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad and RailAmerica, Inc. as additional insured shall be indicated on the certificate of insurance.**

G. Lessee shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments, and reference the contract audit/folder number if available. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

H. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Track is located.

I. Lessee **WARRANTS** that this Agreement has been thoroughly reviewed by Lessee’s insurance agent(s)/broker(s), who have been instructed by Lessee to procure the insurance coverage required by this Agreement and acknowledges that Lessee's insurance coverage will be primary.

J. If Lessee fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Lessee plus a 25% administration fee.

K. The fact that insurance is obtained by Lessee or Railroad on behalf of Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnify provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

CONTRACT INSURANCE REQUIREMENTS FOR NON-HAZMAT

Licensed or Leased Track

Industry shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain broad form contractual liability with a single limit of at least $3,000,000.00 each occurrence or claim and an aggregate limit of at least $3,000,000.00 Coverage must be purchased on a post 1998 ISO or equivalent form, including, but not limited to, coverage for the following

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker’s compensation related exclusions in the above policy apply only to Industry’s employees
- The exclusions for railroads and explosion, collapse and underground hazard shall be removed
- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence or claim, including, but not limited to, coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- The employee and worker’s compensation related exclusions in the above policy apply only to Industry’s employees
- Waiver of subrogation
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90)

C. **Umbrella or Excess Policies** in the event Industry utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

D. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

E. Industry agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Industry further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control.

Industry's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

F. All policy(ies) required above shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**

G. Industry shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments, and reference the contract audit/folder number if available. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

H. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state in which the Track is located.

I. Industry **WARRANTS** that this Agreement has been thoroughly reviewed by Industry's insurance agent(s)/broker(s), who have been instructed by Industry to procure the insurance coverage required by this Agreement and acknowledges that Industry's insurance coverage will be primary.

J. If Industry fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Industry plus a 25% administration fee.

K. The fact that insurance is obtained by Industry or Railroad on behalf of Industry shall not be deemed to release or diminish the liability of Industry, including, without limitation, liability under the indemnify provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

Attachment 12

From: "Chuck Littlefield" <chuck@rbtincca.com>
To: clittlefield@csufresno.edu
Sent: Friday, September 21, 2012 3:27:51 PM
Subject: Fw: ITA application - RBT

----- Original Message -----
From: Jones, Bob (RA West)
To: Chuck Littlefield ; Gomez, Larry (RA West)
Cc: Ake, Paula (FECI.DWD) ; Siegel, David (SJVR) ; Perry, Randy (SJVR)
Sent: Thursday, June 03, 2010 9:30 AM
Subject: RE: ITA application - RBT

Obviously Chuck has more time than money!!

From: Chuck Littlefield [mailto:chuck@rbtincca.com]
Sent: Thursday, June 03, 2010 9:12 AM
To: Gomez, Larry (RA West)
Cc: Ake, Paula (FECI.DWD); Siegel, David (SJVR); Perry, Randy (SJVR); Jones, Bob (RA West)
Subject: Re: ITA application - RBT

Larry,

Gary Rogers, former facility manager of RY Timber and now RBT employee, has been working with RY Timber Inc., an Idaho Corporation which owned this property until 8/7/2009, looking for their ITA. What has been discovered is that this facility has been in operation since 1961 and the SP installed all of the trackage in 1963. This facility has been receiving rail service since 1963. Therefore, this is not new service nor new construction. This facility receives over 3000 railcars annually to this location. However, attached please find the form you requested.

Since we generate over $2 million of gross revenue for the SJVR annually and are the SJVR's single largest customer and have been since 2002, we would certainly like to be given due consideration regarding these charges. We do not believe these charges are fair especially since they are not the industry norm for volume rail customers like ourselves and since rail service has been established and a permanent part of this facility for well over 40-years now.

Also, attached you will find a tariff of a Genesee & Wyoming rail property, the Portland & Western Railroad, which is consistent with what many short line railroads throughout the country do in these situations. The idea is to generate carloads, as you see in their tariff......if the customer ships over 12 railcars a year --- switch maintenance is free. If the customer does not ship at least 12 railcars annually, then the customer pays for switch maintenance. Once again, the idea is to generate carloads and to reward those customers that do - not create more charges to them, especially the high performing ones. Could we look at an arrangement more like this?

Chuck
----- Original Message -----
From: Gomez, Larry (RA West)
To: Chuck Littlefield
Cc: Ake, Paula (FECI.DWD) ; Siegel, David (SJVR) ; Perry, Randy (SJVR) ; Jones, Bob (RA West)
Sent: Thursday, June 03, 2010 7:38 AM

Subject: FW: ITA application - RBT

Chuck – We have been checking with real estate on the ITA but they have yet to receive anything.

Is it on its way?

Let us know.

Thanks

Larry

From: Chuck Littlefield [mailto:chuck@rbtincca.com]
Sent: Monday, May 10, 2010 12:07 PM
To: Gomez, Larry (RA West)
Cc: Perry, Randy (SJVR); Siegel, David (SJVR); Jones, Bob (RA West); Ake, Paula (FECI.DWD)
Subject: Re: ITA application - RBT

Larry,

I spent this weekend going thru all of our records thinking that we already had an ITA in place. I just wanted to be sure and I did find the ITA for Conner and Millux but could not find the one for Ivory. I am sure it was with RY Timber but I will be filling the one out that you sent and going forward with it.

Chuck
----- Original Message -----
From: Gomez, Larry (RA West)
To: Chuck Littlefield
Cc: Perry, Randy (SJVR) ; Siegel, David (SJVR) ; Jones, Bob (RA West) ; Ake, Paula (FECI.DWD)
Sent: Monday, May 10, 2010 11:59 AM
Subject: FW: ITA application - RBT

Chuck –

Per our discussion week before last, I was curious if you've had a chance to fill out the ITA application as well as to take advantage of our reduced fees offer.

I need to update our management team this week in regards to those customers who have yet to submit their ITA information form.

Thanks for attention to this matter.

Larry

From: Ake, Paula (FECI.DWD)
Sent: Wednesday, April 21, 2010 7:00 AM
To: chuck@RBTincca.com
Cc: Perry, Randy (SJVR); Siegel, David (SJVR)
Subject: RE: ITA application

Hello Chuck! This is just a follow-up on the application that was forwarded to you on March 1 and April 8 of which I have yet to receive along with the $500 app fee. Once that is received, we can move forward with the agreement.

Best Regards and have a Great Day!

Paula B. Ake
Track Lease Transaction Manager
Real Estate Department
RailAmerica, Inc./Florida East Coast Railway, LLC
7411 Fullerton Street
Suite 110
Jacksonville, Florida 32256
(904) 538-6344
(904) 256-0562 Fax
Paula.Ake@RailAmerica.com
http://www.railamerica.com/realestate.aspx

From: Ake, Paula (FECI.DWD)
Sent: Thursday, April 08, 2010 1:49 PM
To: 'chuck@RBTincca.com'
Subject: ITA application

Please complete and return attached application directly to me along with the agreed $500 app fee in order to issue the ITA Agreement,

If you have any questions please do not hesitate contacting me.

Best Regards and have a Great Day!

Paula B. Ake
Track Lease Transaction Manager
Real Estate Department
RailAmerica, Inc./Florida East Coast Railway, LLC
7411 Fullerton Street
Suite 110
Jacksonville, Florida 32256
(904) 538-6344
(904) 256-0562 Fax
Paula.Ake@RailAmerica.com
http://www.railamerica.com/realestate.aspx

Verified Statement of

Mark Del Papa

I am Mark Del Papa, and I am Vice President Supply & Distribution for San Joaquin Refining Co., Inc. ("San Joaquin Refining"). My business address is 3129 Standard Street, Bakersfield, California 93308. The refinery is located at 3542 Shell Street, Bakersfield, California 93308. San Joaquin Refining has been in business, under current ownership, since 1969. The refinery has been in operation at the current location since 1938 with rail service since 1941. We are an independent refiner that specializes in supplying products for numerous applications including printing inks, lubricants, rubber and plastics, adhesives, paints and coatings, electrical insulating, fuels, road paving, asphalt recycling, and roofing. We are located on the "Landco Subdivision" of the San Joaquin Valley Railroad ("SJVR"), and as described further below, we utilize SJVR extensively to help ship our products.

The purpose of this statement is to (i) discuss new SJVR-initiated accessorial and switching fee policies and related programs that have been affecting our business, and those of other Central California Rail Shippers and Receivers Association ("CCRSRA") businesses; (ii) describe how those programs may be impacted by the proposed acquisition of RailAmerica ("RailAmerica") by Genesee & Wyoming Railroad, Inc. ("G&W"), and (iii) to request that the Surface Transportation Board ("STB") take actions to condition any approval of the transaction on G&W/RailAmerica addressing the competitive harms that would otherwise result without the imposition of such conditions.

I. Pertinent Background on San Joaquin Refining

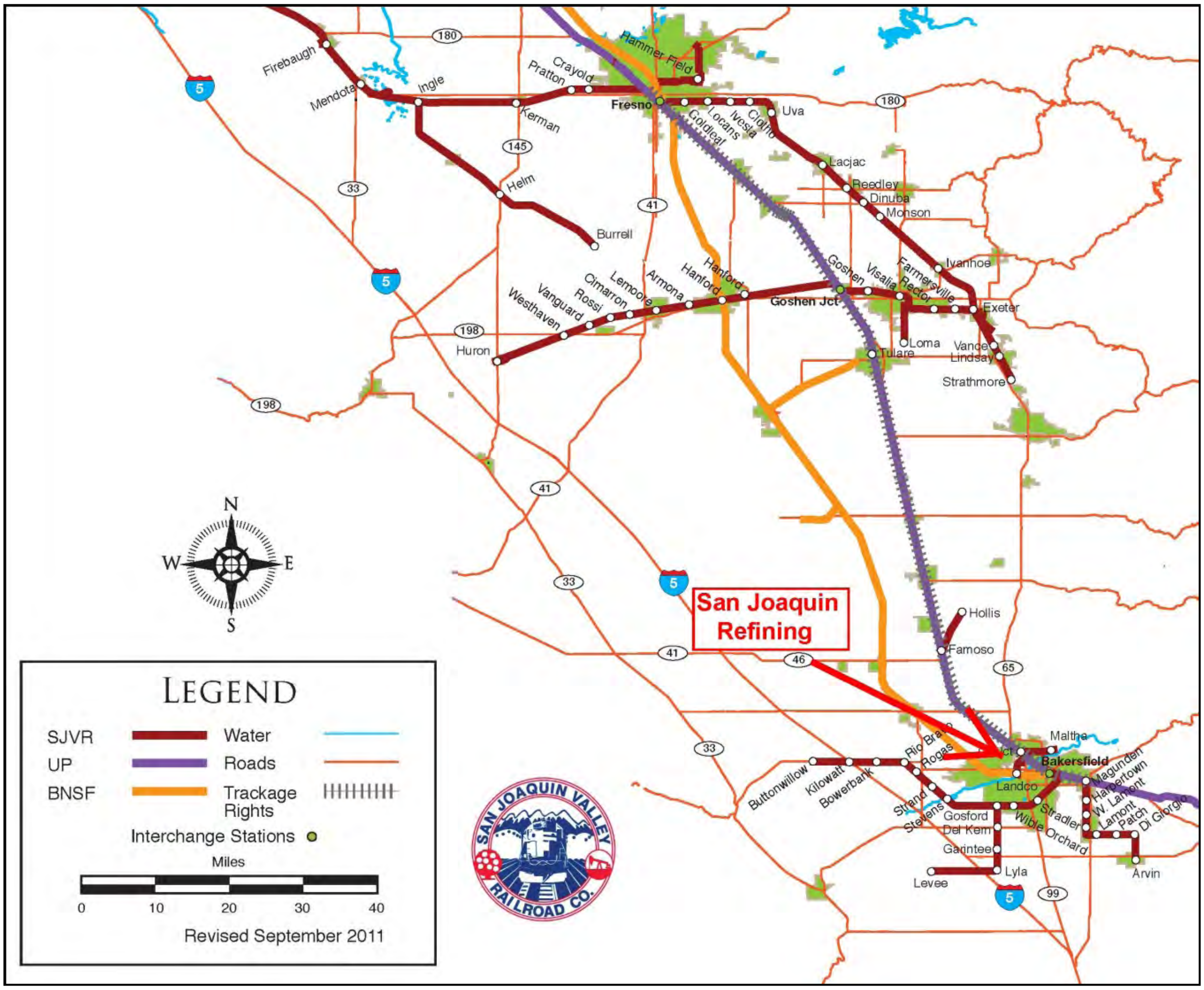
San Joaquin Refining is located in a very strategic region in San Joaquin Valley, and specifically, in Kern County. Kern County is the largest oil producing county in California, and in fact, it is one of the largest oil producing counties in the United States, producing approximately 400,000 barrels of crude oil per day, representing approximately 6% of the nation's oil production. We manufacture/refine our products through the use of Heavy Naphthenic crude oil, which is sourced locally and shipped to us primarily via pipeline. Since our founding, we have been at the same location and have grown to 130 employees, with our business generating over $400 million in annual sales. To support our refining business, San Joaquin Refining operates and maintains a tank farm of over 90 tanks with a total capacity of 800,000 barrels.

Our business relies on rail service to move our products throughout North America (including Canada and Mexico). We currently have approximately 90 active customer lanes on which we ship our products. Our market reach is far given the nature of our business, with a large focus on specialty oils. Our products move in private, shipper-provided tankcars which we lease. We typically have had approximately 300-400 railcars under lease at any given time.

II. Our Railroad Shipping Arrangements

As noted above, San Joaquin Refining is located on the SJVR, on a short BNSF Railway ("BNSF") spur track known as the Landco Spur, which SJVR operates under a lease from the BNSF. Under current arrangements, SJVR serves our plant, and takes our loaded tankcars approximately two miles to a nearby BNSF yard (also under lease to SJVR), where it interchanges our traffic with BNSF. While Union Pacific Railroad Company ("UP") is also an interchange option for our through service, the vast majority of our traffic is not interchanged with UP because UP is not an economically viable option. The reason for our inability to competitively access UP today is the presence of a cost-prohibitive, so-called "Going Business Concern" barrier for any traffic interchanged with UP, consisting of an estimated fee up to $1,700.00 per railcar charge. This is something akin to what the STB often refers to as a "paper barrier" or "interchange commitment" restriction. The railroads have not disclosed, and we are not privy to the underlying source of the Going Business Concern barrier, which is included in a private agreement between the rail carriers. However, the end result of the Going Business Concern barrier is that 95%+ of San Joaquin Refining traffic is interchanged with the BNSF. We are essentially a "captive shipper" to both BNSF, and as described further in this statement, to SJVR.

San Joaquin Refining's location, and nearby railroad interchange locations, are depicted on the below SJVR railroad map:



III. Rate Setting/Pricing Authorities

As explained above, San Joaquin's captivity to BNSF for our through service requires us to work with BNSF on almost all of our movements, except where our customers are located on other lines, which is often the case, and in that case, our service would be BNSF-Serving Carrier (destination). We move no local traffic on the SJVR. All of our traffic is in through service to the ultimate destination.

For example, our current largest volume on BNSF (consisting of transformer oil) is to Howard Industries in Laurel, MS. BNSF does not reach Laurel, MS so our routing is BNSF-New Orleans, LA-NS-Laurel, MS. For this service, our pricing arrangements today are made with

BNSF by common carrier tariff (although in the past we have also moved certain of our traffic via private contract). Included with this statement is our existing tariff from BNSF governing our BNSF traffic movements, designated as BNSF 90058. (Attachment 1). Under our governing BNSF tariff, our origin, Landco, CA, is included in BNSF's Bakersfield rate district, which district includes Landco. The NS portion of the haul is also included in this rate, with the route described in the Tariff "BNSF-(NEWOR)-NS."

The reason I reference all of this routing/pricing detail is because it is important for the STB to understand that SJVR plays no part in the pricing arrangements for our through service. This is further confirmed in our bill of lading, an example of which I have also included with this statement (Attachment 2). This bill of lading (also covering our Laurel movement) references the governing pricing authority: BNSF 90058, the route: BNSF-New Orleans-NS, and simply lists SJVR as the "Origin Switch Road."

Under our governing tariff for our service, BNSF is the originating carrier, and this is a BNSF rate, not a joint SJVR-BNSF rate. Again, SJVR plays no part at all in the pricing authority governing any of our traffic or the bills we receive for our through service. It is true that SJVR physically serves San Joaquin Refining by bringing in empty cars two miles from the Bakersfield Yard and returning loaded cars back to the Bakersfield Yard, but this service is performed on behalf of BNSF, with SJVR serving only as BNSF's agent on our traffic moves. The agency status of SJVR with respect to our moves and other through moves on the SJVR system was confirmed in a letter from RailAmerica to CCRSRA on May 8, 2009:

> [Y]ou must understand that SJVR does not provide overall transportation rates for individual customers. Transportation rates are created and billed by our Class 1 partners. Your members pay them directly and the Class 1 carrier pays SJVR as their agent. SJVR, however, does bill local customers for services provided locally to your members. Those services include short-term car storage, long-term car storage and switching.

Letter from Charles M. Patterson, SVP & Chief Commercial Officer, RailAmerica to CCRSRA (May 8, 2009) (A copy of this letter is included as Attachment 6 to the Verified Statement of Mr. Littlefield).

As is usual in pricing arrangements implemented by the railroads, the BNSF's governing Tariff 90058 incorporates a number of different tariffs, including BNSF Rules Book 6100-Series. In turn, Rules Book 6100-A, at Section 1, Item 1020, incorporates the Official Railroad Station List, OPSL 6000-Series governing the restrictions and rules of service for all of the nation's railroad stations. For San Joaquin Refining (at Landco, CA) the OPSL-6000 clarifies that "San Joaquin Valley Railroad Co. physically serves this station solely as a switch carrier, except that SJVR will assess transportation charges on traffic moving entirely on the lines of SJVR." OPSL-6000, Item 3151. The Item also provides that "[a]ll communications regarding collections and billing, including revenue waybills on non-local SJVR traffic should be addressed to the line-haul carrier inter-changing the traffic with the SJVR." The OPSL's notes further clarify that, as a switching carrier station, the station is serviced through a switching agreement with another carrier. As RailAmerica's Chief Commercial Officer confirms above, SJVR ultimately does get paid for any switching performed for BNSF (or UP) on through service: "[y]our members pay them directly and the Class 1 carrier pays SJVR as their agent," through whatever private agreement SJVR has negotiated with the connecting Class I railroad.

San Joaquin Refining is not privy to any of the pricing terms that SJVR has negotiated with BNSF or UP for our switch, which arrangements are private. However, again, obviously SJVR is being paid a commercially negotiated rate by its connecting Class I railroad every time a San Joaquin Refining railcar is switched to/from our facility with BNSF or UP.

IV. Storage/Demurrage Fees

Like many railroad customers, San Joaquin Refining has a limited amount of plant trackage. As a result, we do not have space to hold all of our empty tankcars awaiting loading on our private tracks. Instead, our empty/return cars arrive at Bakersfield (usually via BNSF) and are interchanged with SJVR at the BNSF Bakersfield rail yard (again, the yard is currently leased by SJVR). SJVR has established under RailAmerica General Tariff, RA 1000 – Section III, Demurrage & Storage Provisions. SJVR applies this tariff on San Joaquin for our cars that are held for loading, and through this tariff, and Tariff SJVR 6006-9, has established a $35 per railcar per day fee for our private tankcars. (Prior to 2011, the storage charge was $30/railcar). Until the mid-2000s, generally no storage charges were assessed by railroads for empty private railcars as any such expenses incurred by railroads for storage awaiting loading was considered part of the line-haul rate. We understand that the STB today does authorize storage/demurrage fees on empty, shipper-supplied railcars beyond a reasonable free period.

V. Car Switching/Accessorial Fees

A. "Order-In" Fees

In the Spring of 2010, SJVR/RailAmerica implemented a whole new fee on San Joaquin Refining. Through Tariff SJVR 7006-8, Effective April 15, 2010, Addendum 1, SJVR established a new program designated "Ordering Cars by Specific Car Number." Under this tariff, "[c]ustomers ordering cars in by specific car number, versus date order as they were received in carrier's yard, will be assessed a charge of $75.00 per car unless otherwise covered under a separate agreement." Included with this statement is a copy of this Tariff (Attachment 3). This new fee was described in the tariff as an "optional service" election for customers.

San Joaquin Refining had been ordering in its tankcars from the railroads by specific car number for over 40 years, approximately 12 cars at a time, and had never before seen such a charge. SJVR never discussed this new charge with us before implementation. This new program caused us immediate concerns as the fee was not "optional" to us. We need to receive our empty tankcars back, we are supposed to get them back under our governing pricing authorities, and we have no option but to request that our railcars always be returned to us safely for loading.

What was more troubling is that this new charge came about shortly after RailAmerica's Chief Commercial Officer provided assurances to CCRSRA members in the above-described letter that "[i]n almost all cases we ensure that our prices for accessorial serviced are well below those of the nearest Class 1 railroad, so our customers realize the benefit of being located on a shortline." However, neither UP nor BNSF, then or now, have in place such an "order-in" charge. Obviously, and as described further below, there is no "benefit" to us by having to pay new, add-on fees for services that are already covered and paid for in our rail rates. Unfortunately, SJVR informed us that this new tariff charge was non-negotiable, and we have been charged this "order-in" fee for each and every railcar since April 15, 2010. Last year, we paid over $130,000 in such "order-in" fees. The current version of the Tariff is designated SJVR 7006-18.

B. "Switch from Constructive Placement" Fee

Earlier this year, SJVR/RailAmerica implemented yet another net fee entitled "Car Switched from Constructive Placement Status." It was implemented in Tariff SJVR 7006-16 (effective March 15, 2012) which I have included with this statement (Attachment 4). There was no explanation of the fee, other than a listing of the name of the fee in the tariff, and a charge of $95.00 per railcar. We never received an explanation of this fee, and the tariff was never amended to describe the nature of this fee until August 28, 2012 in Rail America's General Tariff 1000 VI (Attachment 5, p.3). Like the "order-in" fee, this new fee was also described in the tariff as an "optional service" election for customers, although, again, we have no option but to ask that our railcars be returned to us by our rail service providers.

Also, once again, SJVR had never discussed this charge with us before implementation. After receipt, we immediately questioned SJVR officials about this new charge. Of immediate concern was that we were already paying for this SJVR service as part of our BNSF and UP rates, and again as part of the "order-in" fee for cars that are placed in constructive placement status as described above. SJR questioned and protested the fee and subsequently SJVR did inform us that the Switch from Constructive Placement fee would be waived for one year, but we were told that we may be subject to this new charge beginning in the Spring of 2013.

As described above, **San Joaquin Refining is now being asked to pay for the same service three times**:

1) We pay for SJVR's switching service to Landco through our Tariff BNSF 90058 rates and our separate UP rates;

2) We pay for the <u>same SJVR switching service</u> through SJVR's Tariff 7006 "order in" fees; and

3) We may soon be subject to paying for the <u>same SJVR switching service</u> through SJVR's Tariff 7006 "Switch from Constructive Placement" fee.

As discussed above, SJVR serves as an agent for BNSF and UP for our service, and that of other CCRSRA customers. SJVR has no authority to establish traffic rates for our service that moves in connection with our Class I railroad vendors. This is not SJVR local service. Yet, SJVR still imposes these substantial fees on us, and on other CCRSRA members in similar circumstances.

VI. Impacts from New Accessorial Programs/Charges

It doesn't take a mathematician to quickly understand that our two mile switch haul for SJVR has become quite profitable to the railroad. For example, in 2006, we paid approximately $33,000 in storage fees on a total of 1,882 delivered carloads. Year to date, we have paid over $340,000 in storage fees on a total of 1,301 delivered carloads. As described above, we paid no "order-in" fees in 2006, and this year we have paid approximately $97,000 in such fees to date. In six years our rail costs per car from the SJVR have almost <u>quadrupled</u>. And next year our fees will escalate further with the addition of the new "Switch from Constructive Placement Fee." SJR has not seen a corresponding increase in service quality from this increase in costs.

These types of fees and programs do not just affect San Joaquin Refining, they affect all Central Valley Rail shippers and receivers. For example, Mid-Cal Materials, Inc., a facility that provides trans-loading of industrial sand to the oil and water well industries and is also a distributor of abrasive products, has experienced significant similar practices that have caused it considerable business harm. In a letter from Mid-Cal President Evelyn Pitney, Mid-Cal describes how it has experienced service issues and increased accessorial charges that have resulted in lost business. Specifically, Mid-Cal describes how its largest customer recently moved away from Mid-Cal to a new facility that does not use SJVR as its spotting entity, where the customer's SJVR accessorial charge for spotting cars was approximately $15,000.00/month. This Mid-Cal experience shows that shippers are being hurt by SJVR's practices in various creative ways. Mid-Cal's letter is included as Attachment 6 to this Statement.

Tricor Refining, LLC, an entity that receives rail shipments of hydrocarbons and also stores, blends and processes hydrocarbon products in its facilities, has also experienced significant SJVR practices that have resulted in considerable business harm. In a letter from Joseph L. Frank, Tricor's General Manager, Tricor describes how in the late 2000's SJVR's temporary car storage fees more than doubled – from $110/car/day to $250/car/day – which compelled Tricor to make substantial investments in its facilities to increase the number of offloading spots to better accommodate incoming shipments and avoid SJVR's high storage fees. In a further effort to avoid SJVR's high storage fees, Tricor leased an adjacent track from SJVR. However, SJVR's lease fee, which in late 2001 was $2,550, increased to $18,990 in 2007 and is currently set at $55,250. Tricor is concerned, in part, that in order to finance the proposed RailAmerica acquisition, G&W will implement additional accessorial fees, which will erase the substantial investments Tricor has made in its facilities in order to avoid SJVR's assessment of its various new and existing accessorial charges. "A big concern is that this might occur if it turns-out the new buyer needs to generate money to pay the debt that will be undertaken." Tricor's letter is included as Attachment 7 to this Statement.

While I have addressed some of the new and increased fees above, there are others as well. Increased new charges and fees that have been implemented by SJVR/RailAmerica include the following:

Charge/Fee	SJVR 2006 Tariff	SJVR 2012 Tariff	% Increase
Intra-plant Switch	$123 /car	$200 /car	63%
Intra-terminal Switch	$123 /car	$275 /car	224%
Inter-terminal Switch	$123 /car	$425 /car	346%
Diversion	$350 /car	$350 /car	0%
Demurrage per day (RR)	$50 /car	$65 /car	30%
Demurrage per day (PVT)	N/A	$65 /car	New Fee
Storage Fee	N/A	$35/car	New Fee
Hazmat Handling Fee (day)	N/A	$150 /car	New Fee
Hazmat Storage Fee (day)	N/A	$250 /car	New Fee
Order in Fee	N/A	$75 /car	New Fee
Release from CP Fee	N/A	$95 /car	New Fee
Fax/E-Mail Fee	N/A	$35 /car	New Fee
Switch Maintenance Fee	N/A	$2,500 /switch	New Fee

These new and increased fees and programs are coordinated and implemented at the central, corporate level, with almost all of our communications on tariffs and charges coming from RailAmerica, and they appear to be applied across-the-board on all of the RailAmerica railroads. Of concern to San Joaquin refining and CCRSRA members is further depicted in the accompanying statement of CCRSRA's economic expert Dr. Hoegemeier. In his statement, Dr. Hoegemeier provides data showing that that the clear business approach taken by RailAmerica has been to pursue higher margin accessorial charge growth, described as "non-freight" revenue, through the types of fees listed above, rather than on expanding revenues through working with customers to expand carload growth. This is very disconcerting to shippers and receivers and we believe it should also be of great concern to the STB.

A principal concern we have is that while these short term growth policies may produce short term higher profits for existing shareholders, they ultimately have had the long term pernicious effect of driving away railroad business, in some instances permanently, in the California Central Valley. We also do not believe this strategy can be maintained, and that these types of programs are at general odds with each of the railroads' fundamental common carrier obligation. CCRSRA members have suffered through this approach first-hand, at a time when our businesses were and are already suffering from a historic recession.

VII. Request for Conditions

San Joaquin Refining and other shippers and receivers in our area would like to see a more responsive railroad. We wish to view the Class 1 and shortline railroads as valid stakeholders in our businesses. The area of great importance to San Joaquin Refining and all CCRSRA members is an improvement in the relationship of the railroad sales and marketing teams with the customers. We would like to see greater notification time for tariff and other rate changes (this is important for product pricing), and a clear explanation of what these new fees and programs are, and their basis. We want the railroad to make a valid effort to understand our business and what they can do to help us as a business and to grow. We want quick follow-up on questions. We wish to see better follow-up on service related issues, and consistency in switching times. We want to see the railroad make capital improvements which will be a benefit to all shippers moving rail freight and to the ability to grow new business. What we do not want is to feel like a “cash cow” that just keeps giving out more. We don’t think this is too much to ask of any railroad.

Again, it is clear that the initiation of new and increased accessorial fees and related programs described above has been initiated and implemented in a centralized, coordinated fashion at the holding company level and has caused competitive harm across the railroad systems. At a very minimum, the impacts of this corporate strategy for shippers such as San Joaquin Refining and other customers in the Central Valley has been that we are burdened economically by these additional fees, and significant opportunities for growth have been missed.

It is also clear that even shortlines have major pricing power, and in RailAmerica’s case they having been using it, sometimes in very creative ways at the expense of shippers/receivers, and in a manner that has burned bridges with customers, and created animosity. We don’t want an adversarial relationship with our essential service providers, we want to work with them in partnership, and grow our businesses together, collectively.

If this proposed acquisition is approved, an already massive holding company will double in size. G&W is now promising that it is different, that it wants to focus on customer service, traffic growth, and reinvestment. We hope this is true, but CCRSRA members have real concerns. We have heard such statements before, including from both RailAmerica and Fortress. The potential impacts are substantial. For example, in the area of accessorial fees, if G&W simply takes RailAmerica's accessorial fees, and applies them across-the-board to G&W's railroads, there will be significant adverse economic impacts on many customers and their businesses. And even if G&W comes in and simply retains all of RailAmerica's existing tariffs, for the reasons stated above, companies such as San Joaquin Refining will suffer economically, especially with the implementation of the scheduled Switch from Constructive Placement Fee. At a minimum, this appears to be a real, if not probable impact, because, as Dr. Hoegemeier states in his accompanying statement, G&W's pro forma financial statements already have these "non-freight" charges built-in to the holding company's revenues.

G&W/RailAmerica have not stated in their Application whether RailAmerica accessorial fee tariff terms will be reevaluated, continued, or expanded. CCRSRA respectfully submits that this matter is very important, and needs to be addressed by the Applicants and the STB in a manner that protects consumers.

On the specific conditions we are seeking on accessorial fees and related charges and practices, we believe that improper "double-dip" and "triple-dip" practices discussed above need to be stopped. Same with the switch maintenance fees that are being imposed as further described in Mr. Littlefield's Statement. Additionally, we believe that the credit terms and security deposit tariffs are far too onerous and one sided, including, among other things, the requirement of agreements from company officials making them <u>personally</u> liable for a business's obligations and the implementation of interest rate charges, which attempt to override state usury laws.

The specific suggested conditions CCRSRA is requesting with regard to these tariff-related matters and programs are included in the accompanying comments. We believe that, without these conditions, CCRSRA members will be competitively harmed by the transaction. Again, there is a real need for the STB under its statutory authority to ensure that adequate protections are put in place here to fully protect consumers and the public interest.

On behalf of CCRSRA and San Joaquin Refining, I thank the STB for the opportunity to make this statement.

VERIFICATION

I, Mark Del Papa, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.

Mark Del Papa

Mark Del Papa

Executed on October 1, 2012

Attachment 1

GENERAL RULES

-Freight charges must be prepaid, or freight charges must be collect.
-Price applies in United States funds.
-Price is subject to a Fuel Surcharge. A Mileage Based Fuel Surcharge will be applied to the rates or charges in this price authority for the shipment, as provided for in Item 3376-Series, Section B ($2.50 Strike Price), of BNSF Rules Book 6100-Series. This amount will be added to the freight bill.
-The Price document number, correct address and patron code must be shown on the bill of lading to insure accurate billing. Payments of freight charges on interline through rates within this price authority are as follows: Freight charges must be prepaid when BNSF is the originating carrier. Freight charges must be collect when BNSF is the terminating carrier.
-Rates in this price list take precedence in the following order: 1st - Point to Point, 2nd - Point to Group, Group to Point, or Group to Group, and 3rd - Mileage Scale.
-Transportation under this agreement is subject to BNSF Rules Book 6100-Series. A copy of this Rules Book may be obtained via the internet at: www.BNSF.com. If Customer does not have access to the internet, Customer should contact Price Management at (817) 593-1134 and a copy of BNSF Rules Book 6100 will be mailed to Customer.
-For per car rates displayed in this Price Authority: For shipments moving on per car based rates in this Price Authority, BNSF will not be required to weigh shipments. Requests for weighing a car will be subject to the rules, regulations and charges found in BNSF Weighing Book BNSF-9300-Series. For weight based rates displayed in this Price Authority: For shipments moving on weight based rates in this Price Authority, shipper must have a Weight Agreement and will be responsible for supplying BNSF origin weights at the time of billing. If you are unsure if you have a Weight Agreement with BNSF, please contact auxpricing@bnsf.com. A weighing charge will apply whenever BNSF is requested to weigh a car. Except as otherwise provided herein, the rules, regulations and charges of BNSF Weighing Book, BNSF-9300 Series will apply, except item 500, paragraph C., 1, will not apply.
-Prices in this Rate Item Price List do not alternate with other Rate Item Price Lists.

COMMODITY DEFINITIONS

STCC	DESCRIPTION
	COMMODITY GROUP - BNSF 90058-A SEC 1 (REN) (REN)
	2814125 COAL TAR CREOSOTE (CREOSOTE OR DEAD OIL) ORDISTILLATE OR SOLUTION, COAL TAR AND COAL TAR CREOSOTE (CREOSOTE OR DEAD OIL)
	2814128 POLYBUTENE OIL, PETRO- LEUM, NOT SUITABLE FOR MOLDING, EXTRUSION OR CONVERSION INTO PLASTIC MATERIALS OR ARTICLES
	2814134 COAL TAR NAPHTHA AND LIGHT OIL OF COAL TAR, CRUDE
	2814142 CRUDE LIGHT OIL OF COAL TAR
	2911410 LUBRICATING SYSTEM SIGHT FEED FLUID
	2911415 PETROLEUM LUBRICATING OIL
	2911416 PETROLEUM LUBRICATING OIL, DOD GUARANTEED TRAFFIC
	2911420 COMPOUNDS, LUBRICATING, HAVING A PETROLEUM BASE AND HAIR, FIBRE, OR YARN
	2911425 MINERAL OIL
	2911510 ASPHALT BASE LUBRICATING GREASE
	2911525 PETROLEUM AXLE GREASE
	2911530 PETROLEUM LUBRICATING GREASE, OTHER THAN AXLE GREASE
	2911535 PETROLEUM GREASE, NEC
	2911590 LUBRICATING GREASE, NEC
	2911791 OIL, PETROLEUM, NEC

STCC	DESCRIPTION
	2911901 TRANSFORMER OIL
	2911902 DECENE
	2911903 OCTENE
	2911937 PETROLATUM-ROSIN-PARAFFINWAX COMPOUNDS, CONSISTINGOF NOT LESS THAN 60% ROSIN
	2911940 PETROLEUM CHLORINATED PARAFFIN
	2911946 PETROLATUM OR PETROLATUM PREPARATIONS, INCLUDING PETROLEUM JELLY, NOT MEDICINAL
	2911950 PETROLEUM ROAD OIL OR CARBON BLACK OIL
	2911952 PETROLEUM WAX TAILINGS
	2911955 EMULSIFIED PETROLEUM SIZING
	2911957 RUBBER EXTENDER OR PROCESSING OIL, PETROLEUMBASE
	2911964 MONTAN WAX
	2911967 MINERS OIL STOCK (MINERS OIL), PETROLEUM
	2911972 OLEFINIC PETROLEUM OIL, UNFINISHED
	2911978 PETROLEUM INK OIL
	2911987 MIXED LOADS OF PETROLEUM OIL OR PRODUCTS
	2911990 PARAFFIN OR PETROLEUM WAX, NEC
	2991210 BRAKE OR SHOCK ABSORBER FLUID OR HYDRAULIC SYSTEMFLUID, OTHER THAN PETROLEUM
	2991215 COMPOUNDS, PETROLEUM TREATING, CRUDE, NEC
	2991220 FUEL OIL TREATING COMPOUNDS
	2991230 PETROLEUM OIL ADDITIVE, CONTAINING MORE THAN 50 PERCENT BY WEIGHT OF PETROLEUM
	2991265 GREASE BINDER LUBRICANT, OTHER THAN PETROLEUM
	2991290 LUBRICATING OIL, NEC
	2991906 COAL DERIVED LIQUID (CDL)
	2991915 PETROLEUM ABSORPTION OIL,BELT OIL, COMPRESSION OIL, CORDAGE OIL, FLOOR OIL, HARNESS OIL, LEATHEROIL, NEATSFOOT OIL, PUTTYOIL, TANNERS OIL, TOBACCOOIL, TRANSFORM
	2991926 COAL SPRAYING OIL, PETROLEUM
	2991970 PETROLEUM ADHESIVE OR COATING, DUST ARRESTING AIR FILTERING ELEMENT

COLUMN HEADING DEFINITIONS

COLUMN LABEL	DESCRIPTION
COM	COMMODITY
WGT	WEIGHT CONDITION
EQP	EQUIPMENT
DTE	PRICE EFFECTIVE/EXPIRATION DATE
SHP	SHIPPING CONDITION

COLUMN NOTATIONS

NOTATION	DESCRIPTION
+	DESIGNATES SWITCHING LIMITS
CU	PER CUBIC FOOT UNIT
GT	PER GROSS TON
LB	PER POUND
PA	PER CONTAINER
PC	PER CAR
PF	PER CUBIC FOOT
PH	PER HUNDRED POUNDS
PK	PER CORD
PM	PER MILE
PT	PER NET TON
PV	PER VEHICLE
PW	PERCENTAGE OF CHARGES
TN	PER TRAIN
TR	PER TRAILER

RATE LEVEL CONDITIONS

************************* THIS SECTION APPLIES TO INDIVIDUAL RATES *************************

Matrix7

COMMODITY DEFINITIONS

CODE	STCC	DESCRIPTION
C01		COMMODITY GROUP - BNSF 90058-A SEC 1 (REN)
		2814125 COAL TAR CREOSOTE (CREOSOTE OR DEAD OIL) ORDISTILLATE OR SOLUTION, COAL TAR AND COAL TAR CREOSOTE (CREOSOTE OR DEAD OIL)
		2814128 POLYBUTENE OIL, PETRO- LEUM, NOT SUITABLE FOR MOLDING, EXTRUSION OR CONVERSION INTO PLASTIC MATERIALS OR ARTICLES
		2814134 COAL TAR NAPHTHA AND LIGHT OIL OF COAL TAR, CRUDE
		2814142 CRUDE LIGHT OIL OF COAL TAR
		2911410 LUBRICATING SYSTEM SIGHT FEED FLUID
		2911415 PETROLEUM LUBRICATING OIL
		2911416 PETROLEUM LUBRICATING OIL, DOD GUARANTEED TRAFFIC
		2911420 COMPOUNDS, LUBRICATING, HAVING A PETROLEUM BASE AND HAIR, FIBRE, OR YARN
		2911425 MINERAL OIL
		2911510 ASPHALT BASE LUBRICATING GREASE
		2911525 PETROLEUM AXLE GREASE
		2911530 PETROLEUM LUBRICATING GREASE, OTHER THAN AXLE GREASE
		2911535 PETROLEUM GREASE, NEC
		2911590 LUBRICATING GREASE, NEC
		2911791 OIL, PETROLEUM, NEC
		2911901 TRANSFORMER OIL
		2911902 DECENE
		2911903 OCTENE
		2911937 PETROLATUM-ROSIN-PARAFFINWAX COMPOUNDS, CONSISTINGOF NOT LESS THAN 60% ROSIN
		2911940 PETROLEUM CHLORINATED PARAFFIN
		2911946 PETROLATUM OR PETROLATUM PREPARATIONS, INCLUDING PETROLEUM JELLY, NOT MEDICINAL

CODE	STCC	DESCRIPTION
		2911950 PETROLEUM ROAD OIL OR CARBON BLACK OIL
		2911952 PETROLEUM WAX TAILINGS
		2911955 EMULSIFIED PETROLEUM SIZING
		2911957 RUBBER EXTENDER OR PROCESSING OIL, PETROLEUMBASE
		2911964 MONTAN WAX
		2911967 MINERS OIL STOCK (MINERS OIL), PETROLEUM
		2911972 OLEFINIC PETROLEUM OIL, UNFINISHED
		2911978 PETROLEUM INK OIL
		2911987 MIXED LOADS OF PETROLEUM OIL OR PRODUCTS
		2911990 PARAFFIN OR PETROLEUM WAX, NEC
		2991210 BRAKE OR SHOCK ABSORBER FLUID OR HYDRAULIC SYSTEMFLUID, OTHER THAN PETROLEUM
		2991215 COMPOUNDS, PETROLEUM TREATING, CRUDE, NEC
		2991220 FUEL OIL TREATING COMPOUNDS
		2991230 PETROLEUM OIL ADDITIVE, CONTAINING MORE THAN 50 PERCENT BY WEIGHT OF PETROLEUM
		2991265 GREASE BINDER LUBRICANT, OTHER THAN PETROLEUM
		2991290 LUBRICATING OIL, NEC
		2991906 COAL DERIVED LIQUID (CDL)
		2991915 PETROLEUM ABSORPTION OIL,BELT OIL, COMPRESSION OIL, CORDAGE OIL, FLOOR OIL, HARNESS OIL, LEATHEROIL, NEATSFOOT OIL, PUTTYOIL, TANNERS OIL, TOBACCOOIL, TRANSFORM
		2991926 COAL SPRAYING OIL, PETROLEUM
		2991970 PETROLEUM ADHESIVE OR COATING, DUST ARRESTING AIR FILTERING ELEMENT

EQUIPMENT DESCRIPTIONS

CODE	DESCRIPTION
EQ+TANK,PR,ZR-1	Price applies in Shipper Owned or Leased Tank Cars. Mileage payments will not apply.

SHIPMENT CONDITIONS

CODE	DESCRIPTION
S001	Switching charges at destination will be absorbed. Switching charges at origin will be absorbed up to $300.
S002	Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11. Switching charges at destination will be absorbed. Switching charges at origin will be absorbed up to $300.

Matrix7
All prices in U.S. dollars

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ+TANK, PR,ZR-1							DTE	SHP
BAKERSFIELD/LAND CO, CA	ATHENS, GA	BNSF-(MEMPH)-NS	C01		12724 PC								S00 1
BAKERSFIELD/LAND CO, CA	DALTON, GA	BNSF-(NEWOR)-NS	C01		10265 PC								S00 1
BAKERSFIELD/LAND CO, CA	TALLAPOOSA, GA	BNSF-(MEMPH)-NS	C01		7376 PC								S00 1
BAKERSFIELD/LAND CO, CA	CORYDON, IN	BNSF-(CHGO)-NS	C01		10218 PC								S00 1
BAKERSFIELD/LAND CO, CA	DETROIT, MI +	BNSF-(STRTR)-NS	C01		11027 PC								S00 1
BAKERSFIELD/LAND CO, CA	MASON, MI	BNSF-(STRTR)-NS	C01		9574 PC								S00 1
BAKERSFIELD/LAND CO, CA	MELVINDALE, MI	BNSF-(STRTR)-NS	C01		9230 PC								S00 1
BAKERSFIELD/LAND CO, CA	HATTIESBURG, MS	BNSF-(NEWOR)-NS	C01		8810 PC								S00 1
BAKERSFIELD/LAND CO, CA	LAUREL, MS +	BNSF-(NEWOR)-NS	C01		7991 PC								S00 1
BAKERSFIELD/LAND CO, CA	OXFORD, NC	BNSF-(KCITY)-NS	C01		11067 PC								S00 1
BAKERSFIELD/LAND CO, CA	RUTHERFORD, NJ	BNSF-(STRTR)-NS	C01		11738 PC								S00 1
BAKERSFIELD/LAND CO, CA	BRYAN, OH	BNSF-(CHGO)-NS	C01		8885 PC								S00 1
BAKERSFIELD/LAND CO, CA	CANTON, OH +	BNSF-(STRTR)-NS-(BELVU)-WE	C01		10595 PC								S00 1
BAKERSFIELD/LAND CO, CA	MANSFIELD, OH +	BNSF-(STRTR)-NS	C01		10207 PC								S00 1
BAKERSFIELD/LAND CO, CA	JOHNSTOWN, PA	BNSF-(CHGO)-NS	C01		10463 PC								S00 1
BAKERSFIELD/LAND CO, CA	MONONGAHELA, PA	BNSF-(STRTR)-NS	C01		11863 PC								S00 1
BAKERSFIELD/LAND CO, CA	ANDERSON, SC +	BNSF-(MEMPH)-NS	C01		10500 PC								S00 1
BAKERSFIELD/LAND CO, CA	SANDY SPRINGS, SC	BNSF-(MEMPH)-NS	C01		11405 PC								S00 1
BAKERSFIELD/LAND CO, CA	CLINTON, TN	BNSF-(MEMPH)-NS	C01		10654 PC								S00 1
BAKERSFIELD/LAND CO, CA	SELMER, TN	BNSF-(MEMPH)-NS-(CRNTH)-WTNN	C01		10103 PC								S00 1
LAKE CHARLES GROUP	PAULSBORO, NJ	BNSF-(NEWOR)-NS	C01		5796 PC								S00 1

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ+TANK, PR,ZR-1							DTE	SHP
LAKE CHARLES GROUP	CHARLESTON, SC +	BNSF-(NEWOR)-NS	C01		4127 PC								S00 1
RICHMOND, CA +	ALBANY, GA +	BNSF-(MEMPH)-NS	C01		10989 PC								S00 1
RICHMOND, CA +	COLUMBUS, GA +	BNSF-(MEMPH)-NS	C01		10962 PC								S00 1
RICHMOND, CA +	SAVANNAH, GA +	BNSF-(MEMPH)-NS	C01		9736 PC								S00 1
RICHMOND, CA +	PLYMOUTH (EWR), IN	BNSF-(STRTR)-NS	C01		10357 PC								S00 1
RICHMOND, CA +	LEXINGTON, KY +	BNSF-(MEMPH)-NS	C01		9004 PC								S00 1
RICHMOND, CA +	COLUMBIA, MO	BNSF-(KCITY)-NS	C01		8708 PC								S00 1
RICHMOND, CA +	TITUSVILLE, PA	BNSF-(ESTL)-NS-(ROUSE)-OCTL	C01		11155 PC								S00 1
RICHMOND, CA +	PETERSBURG, VA	BNSF-(MEMPH)-NS	C01		13060 PC								S00 1
SEGURO, CA	MANSFIELD, OH +	BNSF-(STRTR)-NS	C01		10233 PC								S00 1
DODGE CITY, KS	LOUISVILLE, KY +	BNSF-(KCITY)-NS	C01		5310 PC								S00 1
LAKE CHARLES, LA +	MEREDOSIA, IL	BNSF-(ESTL)-NS	C01		6571 PC								S00 1
LAKE CHARLES, LA +	TITUSVILLE, PA	BNSF-(ESTL)-NS-(ROUSE)-OCTL	C01		8533 PC								S00 1
LAKE CHARLES, LA +	GREENVILLE, SC +	BNSF-(NEWOR)-NS	C01		5632 PC								S00 1
WEST LAKE, LA	COLUMBUS, GA +	BNSF-(NEWOR)-NS	C01		6227 PC								S00 1
WEST LAKE, LA	CORYDON, IN	BNSF-(NEWOR)-NS	C01		5447 PC								S00 1
WEST LAKE, LA	GREENSBORO, NC +	BNSF-(NEWOR)-NS	C01		5676 PC								S00 1
WEST LAKE, LA	SUFFOLK, VA +	BNSF-(NEWOR)-NS	C01		7681 PC								S00 1
KANSAS CITY, MO +	LOUISVILLE, KY +	BNSF-(KCITY)-NS	C01		5880 PC								S00 1
KANSAS CITY, MO +	BAYONNE, NJ +	BNSF-(STRTR)-NS	C01		6966 PC								S00 1
PONCA CITY, OK	KAOLIN, AL	BNSF-(BHAM)-NS	C01		5343 PC								S00 1
PONCA CITY, OK	PHENIX CITY, AL	BNSF-(BHAM)-NS	C01		5343 PC								S00 1
TULSA, OK +	LOUISVILLE, KY +	BNSF-(ESTL)-NS	C01		4164 PC								S00 1

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ+TANK, PR,ZR-1							DTE	SHP
PORTLAND, OR +	CANTON, OH +	BNSF-(CHGO)-NS-(BELVU)-WE	C01		8500 PC								S00 2
BAYTOWN, TX +	TITUSVILLE, PA	BNSF-(ESTL)-NS-(ROUSE)-OCTL	C01		8693 PC								S00 1
BROWNSVILLE, TX +	ALBANY, GA +	BNSF-(NEWOR)-NS	C01		6079 PC								S00 1
BROWNSVILLE, TX +	BAXLEY, GA	BNSF-(NEWOR)-NS	C01		7464 PC								S00 1
BROWNSVILLE, TX +	MEREDOSIA, IL	BNSF-(ESTL)-NS	C01		7107 PC								S00 1
BROWNSVILLE, TX +	CORYDON, IN	BNSF-(ESTL)-NS	C01		8272 PC								S00 1
BROWNSVILLE, TX +	PICAYUNE, MS	BNSF-(NEWOR)-NS	C01		4429 PC								S00 1
BROWNSVILLE, TX +	ELKIN, NC	BNSF-(NEWOR)-NS	C01		8628 PC								S00 1
DICKINSON, TX	SUFFOLK, VA +	BNSF-(NEWOR)-NS	C01		7581 PC								S00 1
ELDON, TX	TITUSVILLE, PA	BNSF-(ESTL)-NS-(ROUSE)-OCTL	C01		8693 PC								S00 1
ELDON JCT, TX	TITUSVILLE, PA	BNSF-(ESTL)-NS-(ROUSE)-OCTL	C01		8693 PC								S00 1
HOUSTON, TX +	COOSA PINES, AL	BNSF-(NEWOR)-NS	C01		3926 PC								S00 1
HOUSTON, TX +	HARTFORD, IL	BNSF-(ESTL)-NS	C01		5297 PC								S00 1
HOUSTON, TX +	CORYDON, IN	BNSF-(ESTL)-NS	C01		7575 PC								S00 1
HOUSTON, TX +	CORYDON JCT, IN	BNSF-(ESTL)-NS	C01		7575 PC								S00 1
HOUSTON, TX +	TROY, IN	BNSF-(CHGO)-NS	C01		8347 PC								S00 1
HOUSTON, TX +	COLUMBIA, MO	BNSF-(KCITY)-NS	C01		5566 PC								S00 1
HOUSTON, TX +	PICAYUNE, MS	BNSF-(NEWOR)-NS	C01		3581 PC								S00 1
HOUSTON, TX +	FAYETTEVILLE, NC	BNSF-(NEWOR)-NS	C01		6922 PC								S00 1
HOUSTON, TX +	BRADFORD, PA	BNSF-(CHGO)-NS-(BUFF)-BPRR	C01		7443 PC								S00 1
HOUSTON, TX +	NORTHAMPTON, PA +	BNSF-(NEWOR)-NS	C01		7471 PC								S00 1
HOUSTON, TX +	PHILADELPHIA, PA +	BNSF-(NEWOR)-NS	C01		6164 PC								S00 1
HOUSTON, TX +	TITUSVILLE, PA	BNSF-(CHGO)-NS-(ROUSE)-OCTL	C01		9401 PC								S00 1

BNSF RAILWAY COMPANY
CARLOAD

RATE ITEM PRICE LIST

PRICE AUTHORITY: BNSF 90058
IMPLEMENTING AGREEMENT: 6000
CUSTOMER COPY

EFFECTIVE: SEP 21, 2012
EXPIRATION: DEC 31, 2012

AMENDMENT: 107

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ+TANK, PR,ZR-1							DTE	SHP
HOUSTON, TX +	ANDERSON, SC +	BNSF-(NEWOR)-NS	C01		6631 PC								S00 1
HOUSTON, TX +	CHARLESTON, SC +	BNSF-(NEWOR)-NS	C01		4495 PC								S00 1
HOUSTON, TX +	SUFFOLK, VA +	BNSF-(NEWOR)-NS	C01		7568 PC								S00 1
SILSBEE, TX	PARRISH, AL +	BNSF-(NEWOR)-NS	C01		5463 PC								S00 1
SILSBEE, TX	GREENSBORO, NC +	BNSF-(NEWOR)-NS	C01		6701 PC								S00 1
SILSBEE, TX	REIDSVILLE, NC +	BNSF-(NEWOR)-NS	C01		7438 PC								S00 1
SILSBEE, TX	CLEVELAND, OH +	BNSF-(ESTL)-NS	C01		6831 PC								S00 1
SILSBEE, TX	PHILIPSBURG, PA	BNSF-(NEWOR)-NS	C01		7502 PC								S00 1
ABERDEEN, WA	COLUMBIA, MO	BNSF-(KCITY)-NS	C01		8764 PC								S00 1
ABERDEEN, WA	TITUSVILLE, PA	BNSF-(ESTL)-NS-(ROUSE)-OCTL	C01		11158 PC								S00 1

ORIGIN GEOGRAPHY GROUPS

GROUP - BAKERSFIELD/LANDCO, CA
BAKERSFIELD,CA +
LANDCO,CA

GROUP - LAKE CHARLES GROUP
LAKE CHARLES,LA +
WEST LAKE,LA
WEST LAKE CHARLES,LA

EXTERNAL NOTES

REVISION	NOTE DATE	DESCRIPTION
107	09-21-2012	Added rate for Houston, TX to Coosa Pines, AL eff 9/21/2012.
106	03-23-2012	Added rate from Houston, TX to Northampton, PA effective 3/23/12.
105	03-07-2012	Reduced various rates to Titusville, PA effective 3/7/2012.
104	12-08-2011	Rate adjustments effective 1-1-2012.
103	12-01-2011	Rate adjustments effective 01/01/2012.
102	11-09-2011	Added rate for Bakersfield, CA to Selmer, TN eff 11/9/11
101	10-14-2011	Added rate from Houston, TX to Charleston, SC effective 10/14/2011.
100	08-11-2011	Added rate for Brownsville, TX to Baxley, GA eff 8/15/11
10	06-07-2007	Increase NS division effective 7/1/2007.
1	01-02-2007	added various rates
0	11-27-2006	New item for NS rates.

Attachment 2

```
09/24/2012                SAN JOAQUIN REFINING CO                 B/L # 5917-LM
-------------------------------------------------------------------------------
Shipper            SAN JOAQUIN REFINING CO             LANDCO          CA
Consignee          HOWARD INDUSTRIES INC               LAUREL          MS
Care Of            AIRPORT INDUSTRIAL PARK             LAUREL          MS 39440
                   601-425-3151
Third Party Pay    SAN JOAQUIN REFINING CO             BAKERSFIELD     CA 93388
                   PO BOX 5576
Notify Party       SAN JOAQUIN REFINING CO             BAKERSFIELD     CA
                   ATTN: VICKIE WOOD
                   CELL NO: 661-333-1809
                   661-327-4257
-------------------------------------------------------------------------------
Origin:            LANDCO         CA   Prepared by:      LORI MONCUR
Destination:       LAUREL         MS   Phone Number:     661-852-2212
Sec 7 (Y/N):       No
Freight Charges:   "To Be Prepaid"     Patron Code:
-------------------------------------------------------------------------------
Route:  BNSF NEWOR NS
Origin Switch Road:  SJVR  Junction:  BKFLD   Delivery Switch Road:
Rule 11 (Y/N):       No
Contract(s) #:       -   -
TRANSFORMER OIL      2911901  Loaded  1      Tank Car  Agreement Weights
Purchase Order: 0061-001751-000-834-01
-------------------------------------------------------------------------------
BNSF 90058           6000                                Net Weights
                                                     186,348 Pounds
-------------------------------------------------------------------------------

-------------------------------------------------------------------------------

7.406 LBS PER NET GAL-6 INCH OUTAGE REQUEST ON SHELL CAP
SHELL  26479 GALS    LOADING TEMP  107 F.
OUTAGE   788 GALS    API GRAVITY  27.6
GROSS  25691 GALS    TEMP FACTOR .9794
NET 25161.77 GALS    NET BBLS   599.09
PRODUCT: HYTRANS 61
PURCHASE ORDER NBR:0061-001751-000-834-01
SJR TICKET NBR: 356445
SJR PRODUCT NBR: 2791
-------------------------------------------------------------------------------
INIT NUMBER WEIGHT  SEALS            DUNNAGE REFERENCE
GATX 90193  186348  0168046/47/48    0




-------------------------------------------------------------------------------
STATUS: Accepted-824          Date: 09/24/2012 Time: 14:45 CST WAYBILL #: 795268
```

Attachment 3

Optional Services Catalog

--Customer Switching and Accessorial Services

SJVR is a RailAmerica company

www.railamerica.com

Please contact your local marketing representative if you have any questions concerning this service.

Mr. David Siegel

221 N. "F" Street

PO Box 937

Exeter, CA 93221

Phone: (559) 592-1857

david.siegel@railamerica.com

This document is subject to the terms, conditions and guidelines provided in RailAmerica Tariff RA-1000.

The RA 1000 Section VI provides guidelines and provisions for switching and other accessorial charges. Please review these provisions as it applies to your business on the SJVR. Any charges not covered on this SJVR 7006 are subject to rules and provisions found in the RA 1000 Series Tariff.

SJVR 7006-8

(Cancels All Previous Issues)

San Joaquin Valley Railroad

Customer Switching

Billing Guarantee

Timely Invoicing

Our top priority is to provide safe, reliable transportation for our customers. Part of that commitment is to maintain a fluid and adequate supply of rail cars and to ensure that all railcar assets, both railroad and privately-owned, are utilized as optimally as possible.

CHARGE SCHEDULE

Intra-Plant Switch	$175	Item 1000
Intra-Terminal Switch	$200	Item 1010
Inter-Terminal Switch	$400	Item 1020
Diversion/ Reconsignment	$350	Item 1650
Error Moves	$450	Item 1040
Car Released Without Bill of Lading	$200	Item 1050
Special Switching Service	1-4 hrs $1,000	Item 1060
	4-8 hrs $2,225	
	8-12 hrs $290/hr	
Special Train Charges	$2,000	Item 1070
Closing Doors	$175	Item 1080
Overload Charges	$500	Item 1090
Weighing	$300 Industry Scales	

See Addendum 1 for Surcharge Matrix and Switching for Traffic moving on the SJVR

BILLING GUARANTEES

As part of our efforts to streamline the billing process, we are committing to an expedited and simple billing process.

BILLING – ON TIME ITEM 1100

We commit to bill you on time

We will issue Customer Switching and Accessorial Services invoices monthly.

BILLING DISPUTES ITEM 1110

We commit to addressing disputed bills quickly

If you believe that there has been a billing error, we want to make it right as quickly as possible. To be eligible for this guarantee, you must submit your claim, in writing, within 30 days of the invoice date to **TLC West P.O. Box 1083 Roseburg, OR 97470**. Along with a brief description, your claim must include the car initial and number and the related invoice number.

GUARANTEED ON-TIME RESPONSE ITEM 1120

If we don't respond within 30 days, your dispute will be accepted "as is."

We are committed to responding to your claim in a timely manner. If we do not respond to your dispute, in writing, within 30 days your dispute will be accepted as is.

Optional Services Catalog

--Customer Switching and Accessorial Services

ADDENDUM 1 SJVR

SURCHARGES: The surcharge payments shown below are payable by the shipper or consignor on outbound shipments and receiver or consignee on inbound shipments at San Joaquin Valley Railroad Co. stations on shipments originating or terminating at said stations. These surcharge payments are to be collected by and accrue solely to the San Joaquin Valley Railroad Co. The surcharges established in the following table are not freight or other lawful charges within the meaning of section 7 of the uniform bills of lading and the execution of section 7 shall not in any way relieve the shipper/consignor nor receiver/consignee from liability for the payment of the surcharges set forth in this table. When more than one surcharge applies each surcharge will be assessed. All surcharge fees must be paid in advance.

SJVR STATIONS	SURCHARGE	EFFECTIVE DATE
South of Lindsay including Porterville, Terra Bella, and Ultra	$2,850.00	10/7/2008
Lamont	$3,675.00	4/21/2009
Patch	$3,675.00	4/21/2009
Ribier	$3,675.00	4/21/2009
Di Giorgio	$3,675.00	4/21/2009
Arvin	$3,675.00	4/21/2009
Levee	$2,150.00	4/21/2009

Optional Services Catalog

--Customer Switching and Accessorial Services

ADDENDUM 1 SJVR

Burlington Northern Santa Fe Charges on Closed Union Pacific Stations on the SJVR

RR STATION	SWITCH RATE
Bowerbank	$476
Bakersfield	$475
Fresno	$417
Goshen	$474
Hammer Field	$481
Hanford	$474
Helm	$468
Huron	$469
Kerman	$481
Las Palmas	$459
Rogas	$481
Sanger	$481

Empty Cars Ordered and Not Used from the Union Pacific Railroad or BNSF Railroad

When an empty car is rejected by the shipper as being unfit for loading or if it is not the correct equipment ordered and the car was originally received from the BNSF or the Union Pacific Railroad, a charge of $445 will be assessed to Union Pacific or BNSF. This item supersedes any other published charge for this activity.

Call Outs/Car Repairs

When it is necessary for Carrier to close or open doors, hatches, gates or secure tie down devices on empty or loaded cars, a charge of $175 will be assessed against the customer releasing said car. In addition, when Carrier is required to repair damage to cars caused by customer, all costs of repairs will be charged to the customer. Outbound loaded cars or released empty cars will not be moved unless all doors, hatches, gates and tie down devices are secured.

Optional Services Catalog

--Customer Switching and Accessorial Services

ADDENDUM 1 SJVR

Handling of Empty Freight Cars

*This provision will not apply when the empty movement is immediately preceded by a loaded revenue movement on **SJVR** and empty is returned to original interchange or if the empty movement is immediately followed by a loaded revenue movement on **SJVR.***

This provision applies on all types of rail cars, including, but not limited to, cars provided by railroads, leased cars and cars bearing other than railroad reporting marks, but not including passenger train cars.

The charge for movement of empty cars is $2.00 per mile, subject to a minimum of 150 miles. **SJVR** will not be responsible for the payment of any per diem or mileage charges, nor will **SJVR** absorb any switch charges. This rate will apply only to movement of cars in regularly scheduled train service.

If special train service is required for movements other than those listed above, charges contained in the Charge Schedule on page 2 of this Catalog will apply.

SJVR's maximum liability for loss and damage is $100.00 per railcar.

Ordering Cars by Specific Car Number

@Customers ordering cars in by specific car number, versus date order as they were received in carrier's yard, will be assessed a charge of $75.00 per car unless otherwise covered under a separate agreement.

Attachment 4

Optional Services Catalog

--Customer Switching and Accessorial Services

SJVR is a RailAmerica company

www.railamerica.com

Please contact your local marketing representative if you have any questions concerning this service.

Mr. David Siegel

221 N. "F" Street

PO Box 937

Exeter, CA 93221

Phone: (559) 592-1857

david.siegel@railamerica.com

This document is subject to the terms, conditions and guidelines provided in RailAmerica Tariff RA-1000.

The RA 1000 Section VI provides guidelines and provisions for switching and other accessorial charges. Please review these provisions as it applies to your business on the SJVR. Any charges not covered on this SJVR 7006 are subject to rules and provisions found in the RA 1000 Series Tariff.

SJVR 7006-16

(Cancels All Previous Issues)

San Joaquin Valley Railroad

Customer Switching

Billing Guarantee

Timely Invoicing

Our top priority is to provide safe, reliable transportation for our customers. Part of that commitment is to maintain a fluid and adequate supply of rail cars and to ensure that all railcar assets, both railroad and privately-owned, are utilized as optimally as possible.

CHARGE SCHEDULE

Intra-Plant Switch	$200	Item 1000
Intra-Terminal Switch	$225	Item 1010
Inter-Terminal Switch	$425	Item 1020
Diversion/ Reconsignment	$350	Item 1650
Car Switched from Constructive Placement Status	**$95**	
Error Moves	$450	Item 1040
Car Released Without Bill of Lading	$200	Item 1050
Special Switching Service	1-4 hrs $1,000 4-8 hrs $2,225 8-12 hrs $290/hr	Item 1060
Special Train Charges	$2,225	Item 1070
Closing Doors	$175	Item 1080
Overload Charges	$500	Item 1090
Empty Cars Ordered but Not Loaded	$500	Item 1500
Cars Ordered and Cancelled While Enroute	$150	Item 1510
Cars Received and Refused Due to Improper Condition	$445	Item 1520
Empty/Loaded Cars Released but Not Available to Pull	$500	Item 1530
Empty/Loaded Cars Ordered In But Unable to Place	$500	Item 1540
Weighing	$300 Industry Scales	

BILLING GUARANTEES

As part of our efforts to streamline the billing process, we are committing to an expedited and simple billing process.

BILLING – ON TIME ITEM 1100

We commit to bill you on time

We will issue Customer Switching and Accessorial Services invoices monthly.

BILLING DISPUTES ITEM 1110

We commit to addressing disputed bills quickly

If you believe that there has been a billing error, we want to make it right as quickly as possible. To be eligible for this guarantee, you must submit your claim, in writing, within 30 days of the invoice date to: **Revenue Billing, 7411 Fullerton St. Ste 300, Jacksonville, FL 32256.** Along with a brief description, your claim must include the car initial and number and the related invoice number. You may also submit your dispute electronically to:

SJVR-billing@railamerica.com

GUARANTEED ON-TIME RESPONSE ITEM 1120

If we don't respond within 30 days, your dispute will be accepted "as is."

We are committed to responding to your claim in a timely manner. If we do not respond to your dispute, in writing, within 30 days your dispute will be accepted as is.

Optional Services Catalog

--Customer Switching and Accessorial Services

ADDENDUM 1 SJVR

SURCHARGES: The surcharge payments shown below are payable by the shipper or consignor on outbound shipments and receiver or consignee on inbound shipments at San Joaquin Valley Railroad Co. stations on shipments originating or terminating at said stations. These surcharge payments are to be collected by and accrue solely to the San Joaquin Valley Railroad Co. The surcharges established in the following table are not freight or other lawful charges within the meaning of section 7 of the uniform bills of lading and the execution of section 7 shall not in any way relieve the shipper/consignor nor receiver/consignee from liability for the payment of the surcharges set forth in this table. When more than one surcharge applies each surcharge will be assessed. All surcharge fees must be paid in advance.

SJVR STATIONS	SURCHARGE	EFFECTIVE DATE
South of Lindsay including Strathmore	$2,850.00	10/7/2008
Lamont	$3,675.00	4/21/2009
Patch	$3,675.00	4/21/2009
Ribier	$3,675.00	4/21/2009
Di Giorgio	$3,675.00	4/21/2009
Arvin	$3,675.00	4/21/2009
Hollis	$2,439.00	07/01/2011
Levee	$2,150.00	4/21/2009
Oxalis	$909.00	08/01/2010
Lindsay (Exeter Sub Only)	$956.00	05/15/2011
Ivanhoe	$875.00	07/01/2011

Optional Services Catalog--Customer Switching and Accessorial Services

ADDENDUM 1 SJVR

Empty Cars Ordered and Not Used from the Union Pacific Railroad or BNSF Railroad

When an empty car is rejected by the shipper as being unfit for loading or if it is not the correct equipment ordered and the car was originally received from the BNSF or the Union Pacific Railroad, a charge of $445 will be assessed to Union Pacific or BNSF. This item supersedes any other published charge for this activity.

Call Outs/Car Repairs

When it is necessary for Carrier to close or open doors, hatches, gates or secure tie down devices on empty or loaded cars, a charge of $175 will be assessed against the customer releasing said car. In addition, when Carrier is required to repair damage to cars caused by customer, all costs of repairs will be charged to the customer. Outbound loaded cars or released empty cars will not be moved unless all doors, hatches, gates and tie down devices are secured.

Handling of Empty Freight Cars

*This provision will not apply when the empty movement is immediately preceded by a loaded revenue movement on **SJVR** and empty is returned to original interchange or if the empty movement is immediately followed by a loaded revenue movement on **SJVR.***

This provision applies on all types of rail cars, including, but not limited to, cars provided by railroads, leased cars and cars bearing other than railroad reporting marks, but not including passenger train cars.

The charge for movement of empty cars is $2.00 per mile, subject to a minimum of 150 miles. **SJVR** will not be responsible for the payment of any per diem or mileage charges, nor will **SJVR** absorb any switch charges. This rate will apply only to movement of cars in regularly scheduled train service.

If special train service is required for movements other than those listed above, charges contained in the Charge Schedule on page 2 of this Catalog will apply.

SJVR's maximum liability for loss and damage is $100.00 per railcar.

Ordering Cars by Specific Car Number

Customers ordering cars in by specific car number, versus date order as they were received in carrier's yard, will be assessed a charge of $75.00 per car unless otherwise covered under a separate agreement.

Railcars Rejected by Customer as Unsuitable For Loading Customer-refused Loaded Cars

Empty railcars rejected as unsuitable for loading and loaded railcars refused at destination without being unloaded are allowed two days of free time for inspection and release. Customers choosing to keep railroad-owned cars, or private cars on railroad property, beyond that time will be billed the Extended Asset Use charge as listed in the current SJVR Tariff.

Attachment 5

SWITCHING AND ACCESSORIAL PROVISIONS

Charges for Switching and Accessorial Provisions are found in Carrier's 7006 Series Charge Catalogs posted on Carrier's Website. www.railamerica.com

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1000 - Intra-Plant Switching

INTRA-PLANT SWITCHING – A switching movement from one (1) location to another location within the confines of an industry.

Item 1010 - Intra-Terminal Switching

INTRA-TERMINAL SWITCHING – A switching movement (other than intra-plant) from one (1) location to another location within the switching limits of one (1) station or industrial district of the same railroad.

Item 1020 - Inter-Terminal Switching

INTER–TERMINAL SWITCHING – A switching movement between one railroad and another railroad when such movement is within the switching limits of the same station or switching district. Any switching charges from connecting roads will be in addition to those of the Carrier.

Item 1030 – Reciprocal Switching

Any reciprocal switching provided by carrier will be covered by addendum to the Optional Services Catalog – Customer Switching and Accessorial Services issued by the serving Carrier.

Item 1035 – Intermediate Switching

INTERMEDIATE SWITCHING – When carrier performs the service of moving shipments between two other carriers at an interchange point and charges are assessed as a switch movement not a line haul charge.

Item 1040 – Cars Received in Error by Carrier

When loaded or empty cars are received by Carrier from connecting roads that are not consigned to Carrier or its customers, these cars will be treated as mishandled cars received in error and charges will be assessed against the interchanging Carrier.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1045 – Switch from Constructive Placement

Constructive Placement occurs when actual placement at a customer's facility cannot be made due to a condition attributable to the customer. Constructive Placement constitutes first delivery of a car for loading or unloading. Cars subsequently switched out of Constructive Placement status are subject to a switch charge as defined in the 7006 Switching and Accessorial Charge Catalogs assigned to each carrier.

Item 1050– "Shipment to order", "Order notify" or "Straight bill of lading" requiring surrender of bill of lading or written order

When the original Bill of Lading or written order covering a shipment described above is not available, the property may be delivered in advance of the surrender of the Bill of Lading or written order, as the case may require, under provisions of Rule 7 of the UFC.

If a Bill of Lading is tendered after car is released loaded or empty, shipper releasing said car bill be assessed charges as covered under the Optional Services Catalog – Customer Switching and

Accessorial Services plus applicable demurrage as covered in the Extended Asset Use Tariff for every day Carrier awaits instructions for movement.

When Order Bills of Lading or written orders are received prior to arrival of the car on the Carrying Road there will be no charge.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1070 – Special Train Charges (Special Switching)

Upon request, special switching or train service may be provided with reasonable advance notice to Carrier and only when Carrier determines that sufficient locomotives and crews are available to provide such service during prescribed scheduled operating and switching times. Special Switching Requests must be submitted in writing via fax or email to Carrier. All applicable line-haul charges will be assessed in addition to charges specified at time of request to cover crew and locomotive usage. The time expended in switching service shall be the time the locomotive and crew arrive at their duty location until the time the crew returns to their off duty location. If such service is performed on days or at hours other than prescribed scheduled operating and switching times, additional charges may be assessed and must be determined by the Marketing and Sales Manager at the time request is made.

If special switching or train service is subsequently cancelled within 24 hours of the original requested time there will be a $1,000 cancellation fee.

Item 1080 – Closing or Opening Doors on Cars

Loaded cars will not be moved unless all doors, hatches, outlet gate doors on covered hoppers, gates and tie-down devices are secured. Additional Intra -Terminal Switch charges will apply if any subsequent trips to the customer are necessary due to doors, etc., not being secured.

On empty or loaded cars, when it becomes necessary for the Carrier or their contractor, to close or open doors, hatches, gates, outlet gate doors on covered hoppers, or secure tie-down devices, charges will be assessed against the customer releasing said car.

This service is provided at the convenience and discretion of the Carrier.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1090 – Improperly Loaded Cars – (Overloaded)

When a car is overloaded (car or rail limits), the shipper will be notified and given the opportunity to take corrective action. Charges assessed include the service of weighing when done at Carrier's facility, if applicable.

***If a car is more than 1,500 above car capacity or track capacity, the applicable overweight charge for Carrier will apply.**

Corrective action may include the following and charges will be at prevailing line-haul and accessorial rates.

> The excess lading/product may be removed, with the remaining lading forwarded to the original billed destination, at the price from the original billed origin, on the remaining weight.
>
> The excess lading/product may be placed in another car and both cars forwarded to the original billed destination at a price from the original billed origin to the original billed destination per car.
>
> The entire lading/product may be transferred to another car if such transferrable results in the car being accepted for further movement with freight charges being those on the weight of the reloaded car, from original billed origin, to the original billed destination.
>
> The excess lading/product may be placed in another car and returned to the original billed origin. The remaining lading in the original car may be forwarded to the original billed destination, at the price from the original billed origin, on the remaining weight. For that portion returned to the original billed origin, the charge will be negotiated with the participating Carriers at the time of return.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1200 – Dunnage and Shipping Devices or Containers

When shipments are made in shipper's racks, crates, trays, bins, etc., the return movement of the empty racks, crates, trays, bins, etc., shall be deemed as an empty movement and may be subject to a Rule 11 charge for return. See Carrier's Optional Service Catalog for application. If a car containing racks, crates, trays, bins, etc., is placed at a customer and all are removed and there is no loaded movement in connection with this car, the initial movement of this car into the customer shall be deemed as a loaded movement and line-haul charges assessed accordingly.

Item 1300 – Cars Released Empty, when Actually Loaded or Released Loaded when Actually Empty

If a car is released empty and found to be loaded and vice versa, the customer will be billed the freight rate plus any accessorial switching and demurrage as determined by the Marketing Manager to return car.

Item 1350 – Turning of Cars

At the request of the customer or when it is necessary to turn a car, in order that a car may be unloaded or loaded, a flat rate of $400 will be assessed to the appropriate party based on circumstances necessitating turning of car.

Such request should be made through our Transportation Logistics Center in writing.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1500 – EMPTY CARS ORDERED – NOT LOADED

If a car order is placed for empty cars for loading and the service of constructive or actual placement has been performed and the cars are subsequently released back to Carrier without being loaded and billed, a charge of $500 per car, in addition to applicable demurrage charges, will be assessed to the party ordering the equipment.

Item 1510 – CARS ORDERED ON BEHALF OF CUSTOMER – CANCELLED WHILE ENROUTE

If Carrier has placed a car order on behalf of the customer and instructions are received by Carrier to cancel the car order while cars are enroute but have not yet been constructively or actually placed, a charge of $150 per car will be assessed.

Item 1520 – CARS PROVIDED BY FOREIGN RAILROAD IN IMPROPER CONDITION

When an empty car furnished for loading is refused due to improper condition, the charge found in the 7006 Series, Switching and Accessorial Tariff Charge Catalog will be assessed to the foreign railroad supplying the car to the Carrier.

Item 1530 – EMPTY OR LOADED RAILCARS RELEASED – NOT AVAILABLE TO PULL

When a customer releases an empty or loaded car and it is determined upon arrival that the equipment cannot be pulled by railroad as a result of conditions attributable to consignor, loader, consignee, Care-of-Party or unloader, a charge of $500 per car will be assessed in addition to all other applicable charges.

Item 1540 – EMPTY OR LOADED RAILCARS ORDERED IN – UNABLE TO PLACE

When a customer orders in an empty or loaded car, but cannot receive the car as a result of conditions attributable to consignor, loader, consignee, Care-of-Party or unloader, a charge of $500 per car will be assessed in addition to all other applicable charges.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1550 – Mileage Charges on Privately Owned Cars

The Carrier will not pay mileage charges on privately owned cars when moving from, to or via stations on the Carrier Road.

Item 1600 – Movement of Locomotives

Privately owned, leased or foreign line locomotives will be moved over the Carrier Road subject to a line haul charge to be determined by the Marketing and Sales Manager and is contingent on locomotive moving in regular Carrier train service. Carrier will not absorb any switching charges applicable to shipments of locomotives. Prior to moving said locomotive, contact Carrier Marketing and Sales Manager for special arrangements for this movement.

All privately owned, leased or foreign locomotives are subject to a joint inspection at interchange by both the Carrier mechanical personnel and connecting carrier mechanical personnel. Any locomotives that fail inspection will be rejected at interchange.

Carrier Road will assume no liability while moving locomotives.

Item 1650 – Diversion or Re-consignment

When an order is placed with the Transportation Logistics Center for Carrier Road by the Consignee, Consignor, or Owner of shipment, that modifies any provision or terms described below, a diversion/re-consignment charge to the party requesting change is applicable.

- Change in the name of the Consignee
- Change in the name of the Consignor
- Change in the destination
- Change in the route
- Any other instruction given by the Consignor, Consignee or Owner affecting delivery and requiring addition to or change in billing (except orders received prior to arrival of the car on the Carrier Road or after departure from Carrier Road), and additional movement of the car, or both.

If this information is received before the arrival of the car on or after departure from Carrier Road, no charge will be assessed.

Cars stopped, diverted or re-consigned under the terms of this Item are subject to demurrage provisions as described in the RA 1000 General Tariff.

Diversion or re-consignment orders will not be accepted by Carrier for cars that have already left Carrier's control.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1700 – Leasing of Railroad Tracks for Storage

Carrier's tracks may be leased to customers, subject to availability and pursuant to terms and conditions of special agreements. Requests for lease of tracks must be received in writing through the Manager of Marketing and Sales stating the number of car spots requested and the estimated duration of the storage needed.

Cars placed in storage must be privately owned and free of car hire. Cars held on storage tracks will not be subject to demurrage charges.

When Carrier is requested to switch car in or out of storage by customer, a charge of $300 per switch per car will be assessed.

Item 1750 – Failure to Deliver Load to Supplying Carrier

When a foreign road delivers a car to the Carrier for a customer to load, and the customer fails to return the loaded car to the foreign road that supplied the car, but instead ships the loaded car via another railroad, the customer will pay a minimum of $500 per car to the Carrier plus any applicable charges that may be assessed by the foreign railroad originally supplying the car. This situation is not applicable to charges assessed in Item 1500.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Item 1800 – Special Car Restrictions

The handling of a car in excess of 89 feet in length, with a marked capacity greater than 210,000 pounds, in excess of Plate F dimensions or with six (6) or more axles shall be handled on a permit basis only, and special handling charges may be applied. Any requests for special clearances of high, wide or heavy equipment should be cleared through the General Manager's Office for Carrier before movement.

RailAmerica
Marketing Services
7411 Fullerton Street, Ste 300
Jacksonville, FL 32256

Attachment 6

Mid-Cal Materials, Inc.

October 2, 2012

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

RE: STB Docket Nno. FD 35654, Genesee & Wyoming Inc – Control – RailAmerica, Inc.

Dear Ms. Brown:

On behalf of Mid-Cal Materials, Inc., I am writing this letter to address the acquisition of RailAmerica by Genesee & Wyoming Inc. (G&W) and to support the efforts and conditions being sought in this proceeding by the Central California Rail Shippers and Receivers Association (CCRSRA).

MID- CAL MATERIALS, INC. is serviced by the San Joaquin Valley Railroad (SJVR) and we rely on the SJVR rail service to meet our business needs. Mid-Cal is a facility providing trans-loading of industrial sand to the oil and water well industries as well as a distributor of abrasive products. We have experienced service issues as well as increased assessorial charges. As an example; my largest customer has recently moved to a new facility that will not use the SJVR as their spotting entity. Their assessorial charges ran approximately $15,000.00 per month. Our facility is divided by a street. We are a "spot on arrival" facility but if we don't request cars, we get passed by. By requesting cars to be spotted, a $200.00/car assessorial charge is issued. Attached is a sample of charges just to spot my customer's cars from one side of the street to our loading site. We have had many meetings with the SJVR however our issues have not been resolved resulting in the establishment of the Central California Rail Shippers and Receivers Association. As I attempt to attract new customers to my facility I am concerned about the assessorial charges that will be imposed by the SJVR.

The issues experienced by Mid-Cal Materials are shared by other businesses throughout the Central Valley of California and are the result of programs initiated by a large holding company. It is understood that the pending transaction would double the size of that structure producing the Nation's largest short line holding company.

Another issue that troubles me about this merger is the demise of rail facilities through track removal in the Central Valley. I am a 3rd generation born in California and I know we have fed the nation during very troubled times in the past. Our valley has been called the "Bread Basket of America" and it is painful to see track removal for no real reason. Our nation is again in unsure times and may again need this area to efficiently supply the needs of our citizens.

We want and need a rail service provided that is committed to fulfilling its common carrier obligation and meeting the existing and future business growth needs of its customers. Based on our experiences, we have serious concerns that this transaction will actually produce the benefits that have been promised.

1541 E. Brundage Lane, Bakersfield, CA 93307 • Mailing: P O Box 70185, Bakersfield, CA 93387
Phone: 661-324-5799 • Fax: 661-324-1196

We urge the Surface Transpsortation Board to closely review the CCRSRA comments, adopt the CCRSRA's requests for conditions, and do all that it can to ensure that any approved transaction is done in a manner that insures that the reasonable business needs of rail consumers are fully addressed and protected.

On behalf of Mid-Cal Materials, Inc. I greatly appreciate the Boards attention to this important matter.

Sincerely,

Evelyn Pitney

Evelyn Pitney
President
Mid-Cal Materials, Inc.

Attachment 7

TRICOR
REFINING, LLC

1134 Manor Street, Oildale, California 93308
P.O. Box 5877, Bakersfield, California 93388
Phone: 661.393.7110
Fax: 661.393.2083

October 2, 2012

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

Re: STB Docket No. FD 35654, Genesee & Wyoming Inc. – Control – RailAmerica, Inc.

Dear Ms. Brown:

On behalf of Tricor Refining, LLC., we are writing this letter to address the acquisition of RailAmerica by Genesee & Wyoming Inc. (G&W) and to support the efforts and conditions being sought in this proceeding by the Central California Rail Shippers and Receivers Association (CCRSRA).

Tricor Refining, LLC is served by the San Joaquin Valley Railroad (SJVR), and we rely on the SJVR rail service to meet our business needs. Our principal operation involves unloading railcars of hydrocarbon products, primarily asphalts, into storage or blending tanks within our facility, and shipping those products, with or without further processing, from the facility by truck. We are very dependent on reasonably priced rail service since our products come primarily from long distances and arrive in a solid or semi-solid state, requiring that they be re-heated on site in the railcar for unloading into our tanks. It would not be feasible or cost effective to truck-in these products.

In the mid through late 2000's, as the fee charged by SJVR for temporarily storing incoming asphalt railcars became excessive, going to $110 per car per day and then to $250, Tricor was compelled to increase the number of offloading spots from 16 to 38 so as to better accommodate incoming shipments, which were often bunching-up enroute and hitting us all at once (hence generating the high railcar storage fees). After making this substantial investment, it is important to our financial survival that the savings in storage fees not be erased by other accessorial fees that might be instituted in the future to pay the large cost involved with financing the proposed acquisition of RailAmerica. A big concern is that this might occur if it turns-out the new buyer needs to generate money to pay the debt that will be undertaken. Unlike the basic fee for the short line railroad to interchange cars from the Class I Railroads to our location, the accessorial charges of the short line railroads can apparently be generated or increased in an un-checked fashion. The criteria relied upon for raising our railcar storage fee so high for railcars arriving in excess of our offloading capacity was the fact that the asphalt cars were and are classified and placarded as "hazardous" simply because they are over 212 F when initially shipped. No consideration was allowed for the fact that the short line railroad was in general dealing with a very benign solid or semi-solid material that had cooled well below the 212 F (now a product posing less potential exposure than most non-hazardous liquid products) . In addition to the significantly increased temporary railcar storage fees, the cost of leasing track adjacent to our facility (used by us to help avoid those high storage fees) was also increased significantly from \$2,550 in late 2001 to \$18,990 in 2007 to \$55,250 (approximately \$25/foot) currently. The above experiences were in large part brought about under the programs initiated by a large railroad holding company on all California Central Valley customers. We understand that the pending transaction would double that structure's size and produce the Nation's largest short line holding company. We support transactions that allow businesses to operate more competitively, and we understand that businesses must pass costs on to their customers as necessary and as the market will bear to generate a reasonable profit. However, there is a concern among existing RailAmerica customers that a business which, by nature, serves almost like a public utility with exclusive public rights-of-way and infrastructure not available to competitors and which controls those exclusive direct connections linking multiple Class One Railroads (BNSF and Union Pacific in our case) to a vast network of customers could undertake this very large acquisition and then be free to set prices (without any sort of direct regulation and possibly at will) to cover the cost of financing that acquisition. We therefore, feel an acquisition of this nature and magnitude requires additional scrutiny and conditions. This would include initial scrutiny to evaluate whether the captive shippers will likely need to be assessed fees beyond the industry norm to pay the cost of financing the acquisition. It would also include ongoing conditions and safeguards to assure the company acquiring control is kept "in-check" and accountable for the assurances given the STB and the rail shippers/receivers to win STB approval of this large acquisition.

We want and need a rail service provider that is committed to fulfilling its common carrier obligation and meeting the existing and future business growth needs of its customers. We are hopeful that G&W will be that carrier, but we have concerns, based on our experiences, whether this transaction will actually produce the benefits that have been promised.

Tricor Refining urges the Surface Transportation Board to closely review the CCRSRA comments, adopt the CCRSRA's requests for conditions, and do all that it can to ensure than any approved transaction is done in a manner that ensures the reasonable business needs of rail customers are fully addressed and protected.

On behalf of Tricor Refining, LLC, we greatly appreciate the Board's attention to this important matter.

Sincerely,

Joseph L. Frank
General Manager
Tricor Refining, LLC.

VERIFIED STATEMENT OF
RICK DREO

I am Rick Dreo and I am President of Superior Soil Supplements (Superior Soil). My business address is 10367 Houston Avenue, Hanford, CA 93230. Superior Soil is also a member of the Central California Rail Shippers and Receivers Association (CCRSRA).

I am writing this statement to address the practices of the San Joaquin Valley Railroad (SJVR) and its parent holding company, RailAmerica Inc. (RailAmerica) of assessing line surcharges on customers receiving rail freight on SJVR lines, including Superior Soil at its Ivanhoe facilities. As described in this statement, we were encouraged by SJVR to locate at our current location and have invested hundreds of thousands of dollars into our Ivanhoe site and infrastructure to make our business a success. However, our Ivanhoe facility's very existence is currently threatened because the location requires adequate and cost-effective rail service to be able to survive and grow, and SJVR, the railroad serving our facilities, citing track rehabilitation requirements, has demanded that we pay substantial surcharges that are unsustainable for us. Additionally, the surcharges the carrier is imposing on other California Central Valley locations, at rates up to $3,675 per carload for switches sometimes just a few miles in length, are cost prohibitive, and far exceed what most customers would pay to move freight 750 miles or more on a connecting Class I railroad.

These line surcharge practices are impacted by the proposed acquisition by Genesee & Wyoming, Inc. (G&W), and I strongly believe that this matter needs to be fully addressed and resolved as a part of the Surface Transportation Board's (STB's) consideration of the transaction by obtaining G&W's agreement as a condition of approval that these types of practices will be immediately discontinued, and any and all outstanding assessments will be dropped.

Superior Soil's Business and Ivanhoe Facility Background

Superior Soil is in the business of selling and shipping bulk soil amendments and landscape products, currently at our two locations at Hanford, CA and Ivanhoe, CA. We sell wholesale to farmers, landscapers and nurserymen throughout California, Oregon, and Nevada. While Superior Soil certainly is not one of the railroads' largest receivers, it is a reliable receiver of freight rail, with approximately 180 railcars per year of bark products moving from our shipper's facilities in Eugene, Oregon to us.

Superior Soil decided to locate in Tulare County on the SJVR line at Ivanhoe just a few years ago. In fact, we were specifically approached by SJVR representatives and encouraged by them to locate at Ivanhoe, based on our need for rail service to receive our products and on the promise of reliable, cost-effective rail service going forward. Based on these encouragements and assurances, we purchased our Ivanhoe property, and in late 2008 entered into a track lease agreement with RailAmerica/SJVR to cover our use of 677 feet of industry track on the property where the inbound railcars are positioned for unloading. (We pay $7,108.50 per year to lease this track).

I am pleased that, up until fairly recently, our Ivanhoe business has been a success. From the beginning of our business operations at Ivanhoe, during a historic national recession and in very trying times locally, Superior Soil has successfully established and operated its Ivanhoe location. When some other businesses failed due to tough economic times, Superior Soil created jobs, supported other businesses, and paid taxes to the local community. Additionally, we have made substantial investments and improvements at Ivanhoe, including removing old buildings and many tons of trash, installing plumbing and electrical utilities, installing fencing and a truck scale, establishing an office, adding base rock, decomposed granite and cement surfacing, and installing an expensive tipper. The total amount of these investments/ improvements to date is approximately $500,000, including the following specific items:

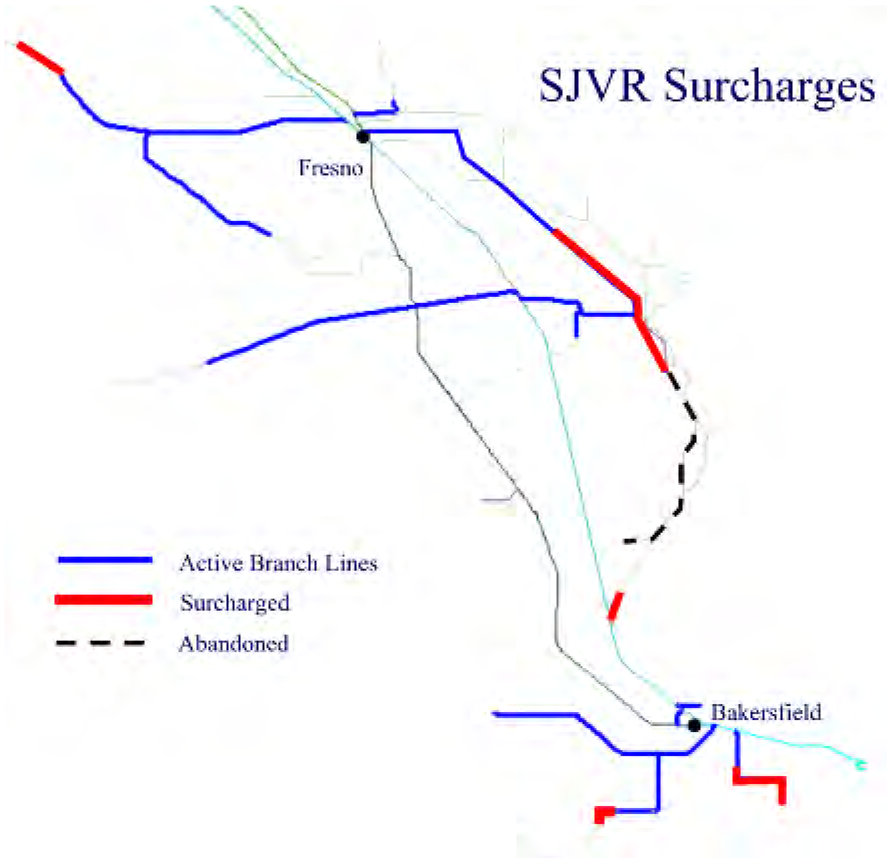
Property	$ 87,000
Removal of Trash/Abandoned Buildings	$ 80,000
Spur Track Renovation	$ 30,000
Perimeter Fence	$ 45,000
Cement	$ 20,000
Office	$ 15,000
Ramp, etc. for unloading rail cars	$ 10,000
Utilities	$ 10,000
Scale	$ 15,000
Tipper	$150,000

These investments may seem relatively small to huge companies like RailAmerica or G&W, but they are substantial for a small business in Tulare County, where Ivanhoe is located.

SJVR/RailAmerica Line Surcharges

One of SJVR's current tariffs, "Optional Services Catalog – Customer Switching and Accessorial Services, SJVR 7006-18," contains a provision at Addendum 1, p. 3 imposing a number of line surcharges. Under this tariff, SJVR is currently imposing line surcharges on traffic moving to 11 of its stations, at various locations on its system, with the oldest surcharge listed having an effective date of October 7, 2008. These surcharges go up to $3,675 per car, with the listed surcharge for Ivanhoe at $875. Under the tariff, surcharges fees are payable in advance "by the shipper or consignor on outbound shipments and receiver or consignee on inbound shipments." A copy of this tariff is included at Attachment 1.

Below is a map showing these line surcharge locations:



We were first informed about these line surcharges in the spring of 2010. We were frankly shocked. On July 23, 2010, I met with two representatives of SJVR (both marketing and sales managers), at their request. At the meeting I was informed that SJVR would be imposing a $725 per car surcharge on Ivanhoe railcar shipments. I was not told when repairs and renovation would begin, other than that SJVR was hoping to accumulate some $20 million in surcharges over 3 years in new customer surcharges for infrastructure improvements, and that there was no plans on when repairs near Ivanhoe would take place as it would take “months” of evaluation to determine if traffic on the line warranted performing any repair work on the line. Finally, I was told that, as shippers decreased car service on the line, Superior Soil’s “share” of the total surcharges would increase to $1,500 per car or more, to make up for the “loss” of surcharges on shippers who discontinued shipping by rail.

When we questioned SJVR about these charges, we were informed that they were necessary for line repairs on 5.5 miles of rail lines between Ivanhoe and Exeter, and specifically told that the line between Ivanhoe and Exeter (approximately 5.5 miles) required $320,500 over three years for the SJVR to be able to continue to operate. Attachment 2 contains SJVR’s original explanation of these surcharges.

As described further below, the ultimate surcharge rate level on our Ivanhoe traffic was later raised by the railroad to $875 per carload, and the charges were implemented on our service in August, 2011. We are continuing to dispute these charges. These surcharges are onerous and punitive on a small receiver like Superior Soil. Our bark products are shipped from our supplier who is located in Eugene, Oregon, and need to move by rail, and I have repeatedly told SJVR/RailAmerica that the effect of the surcharges are to effectively “price me out” of doing business in Ivanhoe, and possibly out of Tulare County. Further, SJVR/RailAmerica had never before provided us with any notice that our line was in economic jeopardy or faced any substantial repair issues. They also did not warn us that we should reconsider making investments in our property given the poor shape of the line and/or lack of any annual maintenance/repair that might be putting the line in jeopardy of embargo, discontinuance of service, or possibly abandonment.

Surcharges in Perspective/Double-Dipping

As stated above, Superior Soil purchases its bark products from distributors in Eugene Oregon, and does so on a delivered price basis. We are a rail “receiver,” and our distributor, Lane Forest Products, is the shipper. To put the line surcharges SJVR is attempting to impose in perspective, we currently pay our supplier rail transportation pass-through costs of approximately $2,800, which cover the costs of moving the product from Eugene to Ivanhoe, a total distance of approximately 750 rail miles. Nevertheless, depending on its switch point, (Goshen Jct. or Fresno), SJVR only moves our cars between 26 miles (from Goshen Jct. coming from the south) or 44 miles (from Fresno coming from the north) – or a total of approximately 3%-6% of the total origin-to-destination movement miles. Yet the $875 per railcar fees amount to up to approximately one-third of the total amount of revenues already paid in full for the total 750 mile through haul.

We strongly believe these surcharges are excessive, and given that SJVR already receives a switching fee as agent for UP on our traffic, we seriously question the legality of these fees, which we believe are a blatant form of “double-dipping.” Also, SJVR has never explained to us why a reasonable portion of the revenues it is already receiving for our business and other line business is not, being placed back into the line in the form of line maintenance or rehabilitation. At the same time, SJVR has received, and continues to receive major governmental subsidies (including federal tax credits), which are discussed further below and it recently received a major $7.1 million federal grant to completely refurbish/ upgrade its locomotive fleet on the SJVR (Attachment 3) – a major capital investment that no longer needs to be covered from revenues or charges from customers.

Our supplier and shipper, Lane Forest Products, has provided us with a copy of the applicable UP Tariff, a bill of lading, and a freight charge that it receives for these movements, which I have included in Attachment 4. These pricing documents cover our transportation, from origin, all the way to destination at Ivanhoe, and none of them allow SJVR to interfere with and supplement the governing UP line-haul rates. Also, while SJVR’s tariff describes its surcharges as “optional” “accessorial services,” SJVR’s line surcharges are not optional for us and are not an accessorial service; they are simply an attempted “add-on” to the rates already being paid for the freight movement to Ivanhoe. Again, we believe that this is unlawful double-dipping.

The $875 per railcar surcharge adds approximately 14% to the cost of the material Superior Soil ships into our Ivanhoe facility. This is in a business that operates on a profit margin of less than 10%. These fees quickly become uneconomic for us.

Superior Soil's Line Surcharge Objections

1. Negotiations Part 1

Superior Soil and SJVR's initial discussions about the surcharges occurred in the spring and summer of 2010. As part of those discussions, Superior Soil was repeatedly asked to relocate. I responded in August of 2010. First, I reiterated to SJVR my general objections to its request that we relocate, and specifically to SJVR's preferred location of Lindsay, California. (My August 5, 2010 email is included at Attachment 5). Among other objections, I noted that the Lindsay location was located on the line referred to in STB abandonment filings as "8x" which SJVR had slated for abandonment, and I told SJVR that "[y]ou are asking me to invest several hundred thousand dollars into a site that may not have rail service within a few years." I also informed SJVR that the Lindsay site was unsuitable for my business, including the fact that the location "is located in the center of town, amid single-family homes." While I did not mention at the time that the Lindsay site was also susceptible to the imposition of future line surcharges, I have since learned that, less than one year later, **effective May 15, 2012, SJVR decided to impose a surcharge at Lindsay of $956 per car** (Attachment 1, p. 3).

2. Negotiations Part 2

Superior Soil met in earnest with SJVR again in the spring of 2011. The arbitrary nature of these surcharges was immediately apparent as we further discussed them with SJVR and sought additional clarification.

I include at Attachment 6 a letter Superior Soil sent to SJVR dated May 5, 2011, where I strongly objected to the surcharges on several grounds, yet I still attempted to work with them on reasonable alternatives as necessary to save our Ivanhoe business. In my letter, first I noted that $320,500 sought for total line repairs did not have any correlation to the per car surcharges because, $875/railcar x 180 railcars a year shipped to Superior Soil x 3 years = $472,500 – an amount that far exceeded the line repair estimates ($152,000 MORE than the estimated cost of the rail repairs). Second, I noted that, even if I paid the surcharges, it was unclear to me where this money might go as SJVR was unable to tell me when any repair work might begin or whether SJVR really intended to use the surcharge proceeds to repair/rehabilitate the line in question.

Third, I explained that while SJVR offered Superior Soil $150,000 in the form of carload rebates over three years as an incentive to relocate, SJVR was unable to provide me with any location on its line where relocation would be feasible. I also informed them that, even if a location could be found, the costs of relocation would far exceed the proposed rebate, and on top of that, my substantial Ivanhoe investments would be lost. Finally, I offered two reasonable alternatives, including even paying **directly** for needed repairs and a new switch to our Ivanhoe facility, should SJVR provide appropriate assurances and assistance to Superior Soil in return.

SJVR responded to me on June 13, 2011 (Attachment 7). In its letter, SJVR said that "SJVR is not agreeable to reducing the surcharge amount of eight hundred and seventy five dollars ($875.00) per car for rail service at Ivanhoe." SJVR also stated that "SJVR will utilize these monies for our operating and maintenance costs," and that "[t]his surcharge amount is also subject to change." SJVR refused to meaningfully consider any of my proposals or to address the overcharges in payments demanded. It responded only that surcharges would go to cover generic "operating and maintenance costs," which heightened my suspicions that SJVR never had any intent to "ear tag" any Superior Soil surcharges to the line repair project it had first informed us about as the basis for its new surcharges.

SJVR ultimately implemented $875 in per car surcharges for Ivanhoe shipments, beginning in August 2011. I have included at Attachment 8 the surcharges SJVR has invoiced on Superior Soil from August 2011 to the present. In total, SJVR is seeking collections of $150,449 from SJVR, which we are protesting. We are attempting to resolve this matter through negotiations – especially with the county and State diligently working with SJVR at present to provide the railroad with substantial additional public support for rail rehabilitation and improvements on our line.

Additional Pertinent Information

1. Existing Traffic/New Traffic

What is very frustrating about the surcharges is that our line has plenty of opportunities for traffic growth from existing and new customers, and thus there is no legitimate need for SJVR to try to seek such surcharges. Mr. Littlefield in his accompanying statement includes a study conducted for the Fresno Council of Governments of the line on which Superior Soil's Ivanhoe facility is located. That study concludes that the 4,700 carloads that move on the line (from Fresno to Exeter) are "significant and sufficient to support an operation profitably," and with appropriate attention to marketing and customer service, "potential traffic could likely more than double that number." (Business Plan for Operations of the SJVR in Fresno County, Prepared for Fresno Council of Governments, by Railroad Industries Incorporated (Jan. 2011), p. 4).

This study describes the railroad's service and marketing initiatives with its existing customers as follows:

> Based on the interviews, it is evident that SJVR has had little communication with these customers and is doing very little marketing work. Service is declining and the SJVR wants to charge the customers excessive surcharges and fees, which is making the rail service non-competitive. Charges such as demurrage are rising, even when the railroad is not providing the needed service for the shippers . . . .
>
> The switch crews are a problem also and do not work with the customers. SJVR seems to have little interest in the customers; this is going to make it difficult for the customers in the future and for any economic development efforts.
>
> There is a strong potential for additional traffic on this line if service were improved and customer service were made a priority.

*   *   *

> Interviews confirm that for the most part, SJVR has shown little interest in the customers on the line. Most customers are faced with declining service, extra charges and are being forced into looking for alternative shipping modes. SJVR personnel make few visits to see or even work with the customers. Marketing and traffic development does not exist; in fact, new business opportunities are turned away.

(pp. 12, 27).

This same study further describes the railroad's service and marketing initiatives with new, potential customers as follows:

> In addition, there are numerous potential customers in Reedley, Sanger, and Fresno that could possibly use rail service as well. Since no marketing has been done by SJVR to develop traffic, the potential traffic from these shippers could be substantial.
>
> *   *   *
>
> There appeared to be numerous rail conducive shippers on the line who might be able to ship by rail, but since SJVR has not marketed the line, no new traffic has been developed. There is phenomenal potential there. In addition, another revenue stream for the line could include transloading, which could open up access to rail to even more shippers in the area, and the resulting additional rail traffic for the line. These opportunities should be explored to determine the true revenue potential for the line. Since traffic development has been neglected so badly, there is no way to know now what that potential might be.
>
> If the current situation continues over time, the existing business will be lost to other modes or disappear as local businesses and their profitability are hurt. Every car lost puts the remaining traffic and customers in jeopardy of additional service decreases – a downward spiral

(pp. 13; 27). One customer seeking to possibly use rail service was even told by SJVR that it would "cost a lot of extra money to service the facility" and was further told that the railroad might tear up the switch that services the facility's spur. (p. 23).

2. <u>Superior Soil Is Not the Only Customer Using the Line/BNSF Competitive Impacts</u>

The entire basis for SJVR's line surcharges on Superior Soil has been that "SSS is the only shipper located on this line, and one of only a few sources of revenue for SJVR to pay the cost of operations, maintenance and rehabilitation for the line." (Attachment 2). This assertion is simply without any basis, as we have become more aware of that fact. For example, the above Exeter line study totally refutes this assertion, showing that as of January 2011, the line supports 4,700 carloads. This is also confirmed by Chuck Littlefield in his accompanying statement, with Richard Best Incorporated, currently moving over 4,000 carloads on our line, a few miles to the north of Ivanhoe. Additionally, **while our UP railcars can and have frequently been moved from SJVR's Fresno yard to the north of Ivanhoe, and thus do not even use the 5.5 miles of track that SJVR says is a problem for our service**, it is not just traffic moving to the north of Superior Soil's Ivanhoe facilities that uses this line.

In fact, BNSF's only means of accessing any customers on the Exeter line (between Fresno and Strathmore), and on the "Cross Valley Line" (from Exeter to Huron) is from Fresno. (While BNSF interchanges the Cross Valley Line at Hanford, it is unable to interchange traffic at this location.) Therefore, any BNSF traffic originating or terminating on the SJVR lines must use the Fresno interchange. The point here is that Ivanhoe is not at the "end of the line," located at the end of any stub ended track, etc., as is shown on the above SJVR surcharge map, and further on the map below:

In this respect, traffic often moves past our Ivanhoe facilities, in both directions. We have recently come to learn that one of these customers is Univar, a major national customer of chemicals. Univar's Visalia, California facilities receive between 400-500 chemical tankcars per year, most all of which is BNSF traffic originated in Fresno. The traffic is shipped from Fresno past Superior Soil at Ivanhoe, to Exeter, and then west to

Visalia. Univar's service situation is further described in a letter that I have included with this statement (Attachment 9). SJVR has never divulged this critical through traffic information to us, instead it has continued to insist that we are the "only shipper located on this line."

Additionally, as Mr. Littlefield has stated in his accompanying statement (p. 7), major public funding has been expended on the Cross Valley line, with $14.5 million spent primarily from the public sector to pay for the project designed to move 100 heavy trucks per day off highways and onto rail. RailAmerica strongly supported this initiative. (Attachment 10). All appearances are that, if SJVR were successful in its efforts to close down business from Ivanhoe to Exeter, or elsewhere on this line, it would also be permanently removing BNSF's ability to connect with any businesses on the Cross Valley Line, including Univar, and leaving UP as the only connecting carrier for this line. We respectfully submit that removing the ability of one of the remaining two Class I carriers that serve California from accessing these important lines cannot be in the public interest.

Final Summary of Our Line Surcharges Experience

I provide the following summary for the STB of our unfortunate line surcharges experience:

- Superior Soil was encouraged to locate at Ivanhoe by SJVR, and based on SJVR assurances of existing and continued future rail line service, we purchased our property, engaged in expansive improvements and investments amounting to approximately $500,000, and have been a reliable railroad business partner. We have worked hard to provide local jobs, support fellow businesses, with our business contributing to the local economy and tax base.

- Superior Soil initially strongly questioned these new surcharges, arguing that:
    - The amount sought over three years exceeded by large amounts the amount SJVR stated was necessary for applicable line repairs;
    - Even if we made these payments, we were given no assurances that the collected monies would ever be spent on the project to which SJVR was basing the surcharges;
    - While SJVR offered Superior Soil a form of rebates as an incentive to relocate, SJVR was unable to provide a suitable location, and even if such a location could be found, the costs of relocation would far exceed the proposed rebate – with the sizable Ivanhoe investments we have made simply to be lost; and
    - Superior Soil attempted to negotiate with SJVR in good faith and we proposed reasonable alternatives to SJVR.

- SJVR responded, by:
    - Refusing to lower the proposed surcharges level, and informing us that the surcharges fee levels could also be changed unilaterally by SJVR; and
    - Refusing to confirm that surcharges would be actually directed to the line repair/rehabilitation for which SJVR said they were intended, and instead clarifying only that "SJVR will utilize these monies for our operating and maintenance costs."

- Our discussions were unproductive, and in fact confirmed our fears about the SJVR surcharges program, including that:
    - SJVR had no plans to ear tag our collected surcharges to any specific line project;
    - SJVR had no timetable when any repairs/rehabilitation on any of its lines might take place;
    - SJVR expected its surcharges to lead to a decrease in traffic, with our line surcharge assessments eventually being increased to $1,500 per railcar or more, to make up for the "loss" in surcharge collections experienced by the loss of line traffic.

- The SJVR service location that SJVR had asked Superior Soil to consider relocating to in order to avoid line surcharges (Lindsay, California) is infeasible for our business, and even if feasible would cost us hundreds of thousands of dollars to relocate to. That station is also on a portion of SJVR's lines that SJVR has been actively attempting to abandon, and it currently has a line surcharge of $956 per railcar placed on traffic moving to or from the station.

- SJVR has been imposing line surcharges on Superior Soil since August 2011, with invoices currently totaling $150,449.

- SJVR is already being paid for its switching service, and SJVR's attempted surcharges are what we believe to be a form of improper double-dipping.

- The amount of the surcharges being sought are excessive and are uneconomic for Superior Soil.

- The rail line on which Superior Soil is located has considerable traffic, is profitable to SJVR, and a recent independent study confirms that it has plenty of opportunities for traffic growth from existing and new customers. We do not believe there is a legitimate need for SJVR to try to seek such surcharges.

- SJVR's assertion that Superior Soil is the only customer using this portion of the line and thus needs to pay all track repair/rehabilitation costs is incorrect, as other substantial traffic moves over the line. Also, if SJVR were successful in eliminating service on the line, it would also end up permanently blocking one of the two connecting Class I carriers, BNSF, from serving major customers on SJVR's lines, and thus would potentially undermine a major public investment initiative.

<u>Superior Soil/CCRSRA Requests on Line Surcharges</u>

It is our experience that the systematic surcharge program implemented by SJVR/RailAmerica on its customers, including Superior Soil, has caused considerable competitive harm and a substantial chilling effect for existing and future business growth opportunities on the SJVR. Superior Soil and CCRSRA members in the California Central Valley are very concerned about how G&W will handle the current surcharge situation going forward. Questions abound. How much money has been collected in surcharges? Where has the money gone? Has it been spent on line maintenance? Why aren't existing revenues and profits being used for annual maintenance and repair needs?

Railroad customers are concerned that SJVR/RailAmerica have used their monopoly position over customers on rail surcharges in a manner that has caused considerable harm and has produced customer hostility. Superior Soil and CCRSRA members don't want an antagonistic relationship with our railroad, we want to work with them, and we need them to work with us, to succeed as a business.

If this proposed acquisition is approved, a large holding company will become much larger, and as Dr. Hoegemeier suggests in his accompanying statement, there will be a need to continue to ramp up revenues to pay for the substantial transaction costs and new debt. G&W has not stated whether it will take RailAmerica's existing tariffs and continue to apply them on existing customers and even seek to extend them on G&W's existing 100+ railroads. If it does, this would cause considerable economic harm to many businesses that rely on these railroads to succeed.

Like CCRSRA's requests on accessorial fees and related charges and practices, we respectfully submit that the line surcharges matter needs to be addressed by the Applicants and the STB and that it needs to be done in a pro-consumer fashion. We believe that improper "double-dip" practices discussed above with regard to rail surcharges need to be stopped, and that any current outstanding fees that SJVR/RailAmerica are attempting to collect need to be dropped.

The specific suggested conditions CCRSRA is requesting with regard to these tariff-related matters and programs are included in the accompanying comments. We believe that, without these conditions, significant competitive harm will be produced by the transaction.

I appreciate this opportunity to make this statement. This is a matter of utmost importance to Superior Soil, CCRSRA members, and to other California Central Valley businesses.

VERIFICATION

I, Rick Dreo, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.

Rick Dreo

Executed on October 2, 2012

Attachment 1

Optional Services Catalog

--Customer Switching and Accessorial Services

SJVR is a RailAmerica company

www.railamerica.com

Please contact your local marketing representative if you have any questions concerning this service.

Mr. David Siegel

221 N. "F" Street

PO Box 937

Exeter, CA 93221

Phone: (559) 592-1857

david.siegel@railamerica.com

This document is subject to the terms, conditions and guidelines provided in RailAmerica Tariff RA-1000.

The RA 1000 Section VI provides guidelines and provisions for switching and other accessorial charges. Please review these provisions as it applies to your business on the SJVR. Any charges not covered on this SJVR 7006 are subject to rules and provisions found in the RA 1000 Series Tariff.

SJVR 7006-18

(Cancels All Previous Issues)

San Joaquin Valley Railroad

Customer Switching

Billing Guarantee

Timely Invoicing

Our top priority is to provide safe, reliable transportation for our customers. Part of that commitment is to maintain a fluid and adequate supply of rail cars and to ensure that all railcar assets, both railroad and privately-owned, are utilized as optimally as possible.

CHARGE SCHEDULE

Intra-Plant Switch	$200	Item 1000
Intra-Terminal Switch	**$275**	Item 1010
Inter-Terminal Switch	$425	Item 1020
Diversion/ Reconsignment	$350	Item 1650
Car Switched from Constructive Placement Status	**$95**	
Error Moves	$450	Item 1040
Car Released Without Bill of Lading	$200	Item 1050
Special Switching Service	1-4 hrs $1,000 4-8 hrs $2,225 8-12 hrs $290/hr	Item 1060
Special Train Charges	$2,225	Item 1070
Closing Doors	$175	Item 1080
Overload Charges	$500	Item 1090
Empty Cars Ordered but Not Loaded	$500	Item 1500
Cars Ordered and Cancelled While Enroute	$150	Item 1510
Cars Received and Refused Due to Improper Condition	$445	Item 1520
Empty/Loaded Cars Released but Not Available to Pull	$500	Item 1530
Empty/Loaded Cars Ordered In But Unable to Place	$500	Item 1540
Weighing	$300 Industry Scales	

BILLING GUARANTEES

As part of our efforts to streamline the billing process, we are committing to an expedited and simple billing process.

BILLING – ON TIME ITEM 1100

We commit to bill you on time

We will issue Customer Switching and Accessorial Services invoices monthly.

BILLING DISPUTES ITEM 1110

We commit to addressing disputed bills quickly

If you believe that there has been a billing error, we want to make it right as quickly as possible. To be eligible for this guarantee, you must submit your claim, in writing, within 30 days of the invoice date to: **Revenue Billing, 7411 Fullerton St. Ste 300, Jacksonville, FL 32256.** Along with a brief description, your claim must include the car initial and number and the related invoice number. You may also submit your dispute electronically to:

SJVR-billing@railamerica.com

GUARANTEED ON-TIME RESPONSE ITEM 1120

If we don't respond within 30 days, your dispute will be accepted "as is."

We are committed to responding to your claim in a timely manner. If we do not respond to your dispute, in writing, within 30 days your dispute will be accepted as is.

Optional Services Catalog

--Customer Switching and Accessorial Services

ADDENDUM 1 SJVR

SURCHARGES: The surcharge payments shown below are payable by the shipper or consignor on outbound shipments and receiver or consignee on inbound shipments at San Joaquin Valley Railroad Co. stations on shipments originating or terminating at said stations. These surcharge payments are to be collected by and accrue solely to the San Joaquin Valley Railroad Co. The surcharges established in the following table are not freight or other lawful charges within the meaning of section 7 of the uniform bills of lading and the execution of section 7 shall not in any way relieve the shipper/consignor nor receiver/consignee from liability for the payment of the surcharges set forth in this table. When more than one surcharge applies each surcharge will be assessed. All surcharge fees must be paid in advance.

SJVR STATIONS	SURCHARGE	EFFECTIVE DATE
South of Lindsay including Strathmore	$2,850.00	10/7/2008
Lamont	$3,675.00	4/21/2009
Patch	$3,675.00	4/21/2009
Ribier	$3,675.00	4/21/2009
Di Giorgio	$3,675.00	4/21/2009
Arvin	$3,675.00	4/21/2009
Hollis	$2,439.00	07/01/2011
Levee	$2,150.00	4/21/2009
Oxalis	$909.00	08/01/2010
Lindsay (Exeter Sub Only)	$956.00	05/15/2011
Ivanhoe	$875.00	07/01/2011

Optional Services Catalog--Customer Switching and Accessorial Services

ADDENDUM 1 SJVR

Empty Cars Ordered and Not Used from the Union Pacific Railroad or BNSF Railroad

When an empty car is rejected by the shipper as being unfit for loading or if it is not the correct equipment ordered and the car was originally received from the BNSF or the Union Pacific Railroad, a charge of $445 will be assessed to Union Pacific or BNSF. This item supersedes any other published charge for this activity.

Call Outs/Car Repairs

When it is necessary for Carrier to close or open doors, hatches, gates or secure tie down devices on empty or loaded cars, a charge of $175 will be assessed against the customer releasing said car. In addition, when Carrier is required to repair damage to cars caused by customer, all costs of repairs will be charged to the customer. Outbound loaded cars or released empty cars will not be moved unless all doors, hatches, gates and tie down devices are secured.

Handling of Empty Freight Cars

This provision will not apply when the empty movement is immediately preceded by a loaded revenue movement on ***SJVR*** *and empty is returned to original interchange or if the empty movement is immediately followed by a loaded revenue movement on* ***SJVR.***

This provision applies on all types of rail cars, including, but not limited to, cars provided by railroads, leased cars and cars bearing other than railroad reporting marks, but not including passenger train cars.

The charge for movement of empty cars is $2.00 per mile, subject to a minimum of 150 miles. **SJVR** will not be responsible for the payment of any per diem or mileage charges, nor will **SJVR** absorb any switch charges. This rate will apply only to movement of cars in regularly scheduled train service.

If special train service is required for movements other than those listed above, charges contained in the Charge Schedule on page 2 of this Catalog will apply.

SJVR's maximum liability for loss and damage is $100.00 per railcar.

Ordering Cars by Specific Car Number

Customers ordering cars in by specific car number, versus date order as they were received in carrier's yard, will be assessed a charge of $75.00 per car unless otherwise covered under a separate agreement.

Railcars Rejected by Customer as Unsuitable For Loading Customer-refused Loaded Cars

Empty railcars rejected as unsuitable for loading and loaded railcars refused at destination without being unloaded are allowed two days of free time for inspection and release. Customers choosing to keep railroad-owned cars, or private cars on railroad property, beyond that time will be billed the Extended Asset Use charge as listed in the current SJVR Tariff.

METHOD FOR SUBMISSION OF FORWARDING INSTRUCTIONS

SJVR will accept forwarding instructions through one of three methods at no charge; ShipperConnect (e-BOL), a Class I web site, or by making arrangements directly with third party logistics services providers to submit forwarding instructions on their behalf via a Class I web site or via EDI. SJVR will accept forwarding instructions to its Transportation Logistics Center (TLC) via fax (989-797-5171) or via email (SJVR-cs@railamerica.com), subject to a $35.00 charge per faxed or emailed bill of lading. This charge will be assessed to the online Customer of record with the railroad.

The SJVR reserves the right to reject as an unreasonable request for service, any "fax" or "email" forwarding instructions that are illegible, whether due to poor transmission quality, poor or illegible handwriting, or otherwise. SJVR will not accept delivery of forwarding instructions by US Mail, express service, personal delivery, or otherwise.

METHOD TO RELEASE EMPTY RAILCARS

SJVR will accept empty release information using ShipperConnect™ at no charge. SJVR will accept empty release information to its Transportation Logistics Center (TLC) via fax (989-797-5171) or via email (SJVR-cs@railamerica.com), subject to a $35.00 charge per faxed or emailed release. This charge will be assessed to the online Customer of record with the railroad.

DATE AND TIME RECORD OF NOTIFICATIONS

When electronic or mechanical devices are used to furnish forwarding instructions and/or empty release information to SJVR, the recorded date and time at which the instructions are received by SJVR will govern.

Attachment 2

SAN JOAQUIN VALLEY RAILROAD

221 North F Street • P.O. Box 937 • Exeter, CA • 93221 • Phone: 559.592.1857 • Fax: 559.592.1859

Mr. Rick Dreo
Superior Soil Supplements
10367 Houston, Ave.
Hanford, CA 93930

April 21, 2010

Dear Rick:

This is in reference to numerous conversations and correspondence between the San Joaquin Valley Railroad ("SJVR") and Superior Soil pertaining to SJVR continuing to provide rail service to Superior Soil Supplements ("SSS") facilities located at Ivanhoe, CA. Based on prior communications and SJVR's analysis, I'd like to update you on the SJVR's next steps.

As you know, the SSS facility in Ivanhoe is located about 5.5 miles from our main line in Exeter. SSS is the only shipper located on this line, and one of only a few sources of revenue for SJVR to pay the cost of operations, maintenance and rehabilitation for the line. SJVR has deferred maintenance as long as possible to avoid increasing costs to SSS. As we have discussed, this line segment is in poor condition and is currently operated as FRA-excepted track. The line requires rehabilitation estimated to cost $320,500 over the next three years in order for SJVR to continue to operate safely and be of service to you. SSS has historically generated about 180 carloads per year, and the revenue that SJVR receives from all traffic that moves over the line is insufficient to fund the required rehabilitation.

SJVR has explored several avenues to continue to provide services to SSS at Ivanhoe.

The SJVR approached Union Pacific Railroad ("UP") for assistance in funding the required rehabilitation but was unsuccessful.

SJVR has also offered SSS a contract providing for a rebate from SJVR to SSS of $150,000 to assist in relocation of your facility to a portion of SJVR in better physical condition and with more traffic. Recently, SSS has proposed a site in Monson, CA. We have reviewed the economics of serving the site you proposed in Monson, CA. Unfortunately the site suffers from the same problems as the current location in Ivanhoe, lack of traffic and poor line condition, and as a result does not solve our problem. SJVR has several other sites in the Exeter, Lindsay, Visalia and Mendota areas where SJVR will be willing to provide the rebate agreement up to $150,000; please let us know if you would like me to show any of these sites to you. However, because of the condition of the track to Ivanhoe, this offer will expire 90 days after the date of this letter.

SAN JOAQUIN VALLEY RAILROAD

221 North F Street • P.O. Box 937 • Exeter, CA • 93221 • Phone: 559.592.1857 • Fax: 559.592.1859

SJVR will establish a surcharge in the amount of $875 per car to cover the capital requirement. The surcharge is based on existing volumes for all traffic over the line. Should the volume increase or diminish, the surcharge amount may be adjusted up or down on 20 days notice. The surcharge will be published effective May 15, 2011.

We would welcome a chance to continue to be of service to SSS in a manner that is financially viable for both companies. Please let me know if you have any questions.

Sincerely,

Dave Siegel
Manager, Marketing and Sales

File: Superior Soil Surcharge Letter Final 3-17-11(b)

MARCH CAR COST: $ 2,623.00 PER CAR
APRIL CAR COST: $ 2,652.00 PER CAR

Attachment 3

Cleaner locomotives to operate in Central Valley

Published on 04/26/2012 - 1:52 pm
Written by Business Journal staff

Cleaner-burning diesel locomotives will now be used by the San Joaquin Valley Railroad.

An Alabama-based supplier of remanufactured locomotive and railcar products has reached an agreement with the San Joaquin Valley Railroad to supply four repowered, low-emission locomotives. Progress Rail Services Corp. said in a statement that each engine is equipped with exhaust after treatment technology that reduces emissions and allows one of these clean-burning diesel locomotives to take as much as 20 days to produce the same emissions that one of the former locomotives would have generated in a single day.

“We are thrilled that the San Joaquin Valley Railroad and RailAmerica have chosen Progress Rail to upgrade its fleet with these locomotives,” said Billy Ainsworth, president and CEO of Progress Rail, in a statement. “The new locomotives reduce nitrogen oxide emissions by over 60 percent and particulate matter emissions by over 70 percent, making them the cleanest locomotives operating in the state.”

RailAmerica is the parent company of the SJVR, which provides service to Union Pacific and Burlington Northern Santa Fe railroads.

The San Joaquin Valley Air Pollution Control District provided 85 percent in funding incentives as part of the Carl Moyer program, which focuses on the replacement of older heavy-duty diesel engines with electric, alternative fuel, or cleaner diesel technology. The total grant award was $7.1 million.

“The San Joaquin Valley has some of the worst air quality in the nation, said Seyed Sadredin, executive director of the San Joaquin Valley Air Pollution Control District. “Incentivizing innovative technology, such as these locomotives, into the Valley is a key strategy in improving our air quality.”

Attachment 4

UNION PACIFIC UPRR 24	**Item:** 1502-P BARK FROM OR - EUGENE UPG

CHANGE KEY: A-Add; C-Change; D-Decrease; I-Increase; and X-Expire

For billing purposes use the following rate authority: UPRR 24-1502-P

STCC/GROUP	STCC	DESCRIPTION
BARK		
	08422	Barks Or Gums,Crude Exc.Latex Or Allied Gums (Crude Rubber) See 08423
	24119	Primary Forest Or Wood Raw Materials,Nec Exc.From Sawmills See 24211-24299,From Plywood Or Veneer Mills See 24321, From Pulp Mills See 26111 Or From Charcoal Or Wood Distillation Plants See 28612

Prices are subject to Fuel surcharges.

GENERAL APPLICATION RULES FOR ITEM 1502-P

1. Price applies in United States funds.
2. Mileage allowance payment on private equipment will not apply.
3. Price is subject to Exempt Circular UP 16 (series).
4. Price is subject to Exempt Circular UP 16 (series), item 695 (series).
5. Switching charges at origin will be absorbed up to $300.00, **OR** Switching charges at destination will be absorbed up to $300.00.

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES
1.	Rates are in U.S. dollars Per Car. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks. Mileage allowance payment on private equipment will not apply. Does not apply in equipment owned, controlled or leased by TTX. Applies in gondola (AAR Car Types E, G, J and L01) cars, **OR** Applies in AAR Car Type M, Maintenance of Way cars,
2.	Rates are in U.S. dollars Per Car. Applies in gondola (AAR Car Types E, G, J and L01) cars, **OR** Applies in AAR Car Type M, Maintenance of Way cars, AND Applies in railroad-owned or -leased equipment, **OR** Applies in equipment owned, controlled or leased by TTX,

Continued on next page

COLUMN	RATE APPLICATION RULES

	Col 1 Rate	Col 2 Rate	Route Code/Group
STCC Group: BARK GROUP			
From: OR - EUGENE UPG GROUP			
To:			
CA, IVANHOE	2434.00	3115.00	UP

Return to Main Data Entry Form

Union Pacific Railroad Bill of Lading

Your bill has been received by Union Pacific Railroad.
Check Acknowledgments to verify that the bill was processed, and to obtain the waybill number.

Sender ID: CONSTANCE WALSH **Submitted At:** 03/28/2012 12:36 PM

Equipment:		**Rail Origin:**	**Rail Destination:**
Type & ID:	Rail Car LFPX836	EUGENE,OR	IVANHOE,CA
		Bill of Lading:	**Route:**
		BOL #: N/A, BM	Type: Shipper's Route

Shipment Information
Shipment Type: B - Bill of Lading for Individual Shipment
Bill Type: S - Single Shipment Billing

Payment	**Reference Information:**	**Routing:**
Method: PP (Prepaid)		UP
Section 7: Not in Effect		

Pricing -1

Type:	Contract
Issuing Rail:	UP
Rate Authority Prefix:	UP
Contract #:	24
Tariff Item #:	6000

Party Type	**Name**	**Address**
Shipper	LANE FOREST PRODUCTS	2111 PRAIRIE RD, EUGENE, OR, 97402
Consignee	SUPERIOR SOIL SUPPLEMENTS	IVANHOE, CA
Party to Receive Freight Bill	LANE FOREST PRODUCTS	2111 PRAIRIE RD, EUGENE, OR, 97402

Load:
Weight: No Weight Required

Commodity Info

Code	Description	Quantity
2411923	BARK, SOFTWOOD, GROUND OR POWDERED, OTHER THAN MEDICINAL	

Note:
Any notation made on the shipping order or receipt which is in any way inconsistent with the terms of the underlying price document(s) or which purport to enlarge, modify or change the underlying price document(s) are void and of no effect.

UNION PACIFIC RAILROAD COMPANY

BUILDING AMERICA

ORIGINAL BILL
FREIGHT

LANE FOREST PRODUCTS
P O BOX 1431
EUGENE, OR 97440

Invoice Number
254327303

Account Number	Statement Date	Lead Equipment ID	Waybill Number	Shipment Date	Customer Reference Number
028376	03/28/2012	LFPX 836	382730	03/28/2012	N/A

Shipper	Consignee	Commodity Code/Description
LANE FOREST PRODUCTS EUGENE, OR 97402	SUPERIOR SOIL SUPPLEMENTS HANFORD, CA 93230	2411923 - BARK, SOFTWOOD, GROUND OR POWDERED, OTHER THAN MEDICINAL

Revenue Origin	Revenue Destination	Revenue Route
EUGENE, OR	IVANHOE, CA	UP

Units	Weight	Rate	Rate Unit	Amount	Price Authority/Additional charge description	
1	172900	243400	PC	$2,434.00		
727		35	PM	$254.00	UPRR 24 - Item 1502	FUEL SURCHARGE
TOTALS:	172900			$2,688.00		

Equipment Characteristics:	CAR TYPE E507, CU-FT 6500, LENGTH 059FT 07IN , CAP 192000
Prepaid/Collect Indicator:	PREPAID
Lading Description:	BARK, SOFTWOOD, GROUND OR POWDERED, OTHER THAN-MEDICINAL ID=XTPP953
References:	UP 24 6000 - UP
Movement Route:	UP -GOSJC-SJVR

For Assistance:
Call: (800) 925-6396
WWW.UP.COM

Remit Payment and Invoice Number To:
UNION PACIFIC RAILROAD
P.O. BOX 843465
DALLAS, TX 75284-3465
Invoices Remitted after the Due Date may be subject to a 1% Finance Charge

Original Billed Amount :	$2,688.00
Total Amount Paid to Date :	$0.00
Last Payment ID :	
Last Payment Date :	
Due Date :	04/12/2012
Invoice Number :	**254327303**
Amount To Pay :	**$2,688.00**

Attachment 5

Andria Fike

From: Andria Fike [sales@superiorsoil.com]
Sent: Thursday, August 05, 2010 3:27 PM
To: rick@superiorsoil.com
Subject: Lindsay Rail Site

Dear Mr. Gomez,

Since we met in Ivanhoe two weeks ago, I have carefully considered the offer we discussed regarding relocating my rail receiving to a spur in Lindsay. Here are my specific issues with relocating in general, and the site in Lindsay in particular.

1. The reason my rail facility is located in Ivanhoe is because the SJVR initially approached me about locating there. On the basis of what I was told by the SJVR, I purchased property in Ivanhoe, removed old buildings and many tons of trash, installed plumbing and electrical utilities, installed fencing and a truck scale, moved in an office, and added base rock, decomposed granite and cement surfacing. Now, the SJVR wants me to abandon this facility.

1. Your offer of $150,000 to relocate is in the form of carload rebates over several years, although my relocation costs would be up front. Looking at the Lindsay site, I would have to install fence, install utilities, move my office, install a truck scale and install surfacing to protect my products. These are substantial costs, and would be incurred up front, before I could even begin doing business.

2. If I relocate to Lindsay (or anywhere else), and rail service is discontinued to my Ivanhoe yard, the value of my Ivanhoe site will be dramatically decreased. I have installed fencing, a truck scale, and base rock, decomposed granite and cement to maintain and preserve the cleanliness and condition of my products. What would Rail America do to compensate me for this loss?

3. According to my information, the Lindsay spur lies within a portion of the line referred to as "8X" which I understand is slated for abandonment by the SJVR over the next several years. If I relocate to Lindsay, and the SJVR decides to discontinue service to that yard as well, then what? You are asking me to invest several hundred thousand dollars into a site that may not have rail service within a few years?

4. The Lindsay spur is located in the center of town, amid single-family homes. My operation would be incompatible with this area. The residents may complain about equipment noise, lights, etc. Further, the yard would be an "attractive nuisance", inviting vandalism, theft, and even potential liability, should local residents break into the yard and get injured.

In conclusion, the Lindsay site is not viable for my business. Should you wish to discuss this matter further, please call me at either my office (559) 584-7695, or on my cell (559) 280-6742.

Rick Dreo

Attachment 6

SUPERIOR SOIL SUPPLEMENTS

10367 Houston Avenue - Hanford, CA 93230

Phone 559/584-7695 www.superiorsoil.com Fax 559/584-9650

May 5, 2011

Mr. Dave Siegel
San Joaquin Valley Railroad
c/o RailAmerica Company
221 North F Street
Exeter, CA 93221

Re: Superior Soil Supplements Ivanhoe Facility

Dear Mr. Siegel:

During our meeting on April 21, you stated that the repairs to the rail line, which would be necessary in order to continue my Ivanhoe rail service, would cost $320,500 over the next three years. In order to fund the repairs and maintenance to the rail line, which most people would agree is a routine cost of doing business, you have initiated a surcharge for every rail car I ship into my Ivanhoe rail facility.

In order to fund these repairs, you have stated that a surcharge of $875 will be imposed n every rail car I ship into Ivanhoe. On average, I ship 180 railcars per year into Ivanhoe. This multiplies out as follows:

180 railcars x $875 surcharge per car = $157,500

$157,500 per year x 3 years = $472,500

The amount of surcharges you plan to obtain from me is $152,000 MORE than the estimated cost of the rail repairs. Further, when I asked when maintenance and repair work would begin on the rail line that serves my Ivanhoe facility, you and Liz Llerandi exchanged sideways glances, and did not answer my question. Does the SJVR really intend to use the proceeds of the surcharge to maintain and repair the rail line that serves my Ivanhoe rail facility?

This onerous surcharge will effectively "price me out" of doing business in Ivanhoe, and possibly out of Tulare County. You suggested that I relocate, and mentioned several alternate sites that MAY be available. Upon investigation of the sites you told me about in Visalia - at Shirk and Goshen Avenues, at K Road and at Ben Maddox Street - I found that all three sites are privately held and are priced too high for any realistic hope of relocation there. I have scheduled a meeting later this week with the City of Visalia to determine if there are any other sites they own that I might be able to purchase or lease.

While the SJVR offered me $150,000 in the form of carload rebates over the next three years as an incentive to relocate, it would cost me $350,000 to $500,000 to relocate to a new rail site, plus the cost of the land.

I find this painfully ironic when it was the SJVR representative, Richard McGowan, who approached me in early 2005 to encourage me to purchase a rail site in Ivanhoe. At no point during that discussion was mentioned the possibility of the site being unserviceable due to poor track conditions, not having a southbound switch, or the location being 5.5 miles from Exeter.

Superior Soil Supplements has made a significant investment into our Ivanhoe facility and in the City of Ivanhoe. I created jobs, supported other businesses, and paid taxes into the local community. Abandoning a community that has been supportive of my company is not a decision I take lightly, especially since your company sought me out and encouraged me to locate my business in Ivanhoe in the first place.

Without rail service, my Ivanhoe facility will be almost valueless, and I will have lost the use of over $300,000 that I invested in the infrastructure at that site. I do not want to move my business from Ivanhoe.

I am offering two plans in the hope that we can come to an agreeable solution:

The first option is that Superior Soil Supplements will bear the cost of the track repairs, up to a ceiling of $320,500 (the amount you stated the repairs would cost). The monies would be paid to the SJVR by means of a surcharge of $600 per car received into my Ivanhoe facility for the next three years.

$600 surcharge per car x 180 cars per year x 3 years = $324,000

These funds will be ear tagged for the necessary track repairs on the 5.5 miles of track between Exeter and Ivanhoe. In addition, in order to help the SJVR operate more efficiently, I would, at my own expense, install a southbound switch at my Ivanhoe facility. To offset the surcharge and the installation of the new switch, the $150,000 offered to me by the SJVR to facilitate relocation would be rebated back on a per-car basis of $278 per car over the next three years.

The second option is that I continue my search for a new rail site. The SJVR needs to double the offer of $150,000, as relocating will easily exceed $300,000. My Ivanhoe rail facility will lose an enormous amount of property value without rail service. Further, if I relocate to another rail site served by the SJVR, will you guarantee that there will be no additional rail surcharges for three years?

Superior Soil Supplements is proud of surviving in a time (2008-2011) when many companies, especially in Central California, have not. But we are still a small company; we want to cooperate with RailAmerica, as long as it is fair and equitable. Affordable rail delivery is a critical to our success.

I look forward to working with you to reach the "financially viable" solution referenced in your letter that would be mutually beneficial to both of our business concerns.

Regards,

Rick Dreo

Attachment 7

SAN JOAQUIN VALLEY RAILROAD

221 North F Street • P.O. Box 937 • Exeter, CA • 93221 • Phone: 559.592.1857 • Fax: 559.592.1859

June 13, 2011

Mr. Rick Dreo
Superior Soil Supplements
10367 Houston Avenue
Hanford, CA 93230

Dear Mr. Dreo:

This is in response to your letter dated May 5, 2011.

The San Joaquin Valley Railroad (SJVR) is willing to consider a contract under which Superior Soil pays only the actual costs to rehabilitate the line, if Superior Soil completes, at your expense, installation of a southbound facing switch at your Ivanhoe facility. The SJVR will maintain and operate the line from Exeter to Ivanhoe as long as we determine that it is economically viable and prudent to do so. SJVR would maintain the right to surcharge in future, should any factor arise that materially affects the cost of operating on the line.

The SJVR is not agreeable to reducing the surcharge amount of eight hundred and seventy five dollars ($875.00) per car for rail service at Ivanhoe. The SJVR will utilize these monies for our operating and maintenance costs. This surcharge amount is also subject to change.

Should Superior Soil choose to relocate, SJVR's offer of a $150,000.00 rebate remains valid. Please note that this offer expires on July 21, 2011, per our surcharge notification letter. Superior Soil must identify in writing, by this date, a new location agreed to by both parties. The rebate will be effective with commencement of rail service at the new location.

The SJVR will consider entering into a three-year "no surcharge" agreement if Superior Soil relocates to a site suitable to both parties.

We look forward to your choice of the option that best serves your interest, and to continuing to provide safe and efficient rail service to Superior Soil.

Regards,

Dave Siegel
Manager, Marketing & Sales

File: Superior Soil Response 5-18-11 final

A RailAmerica Company

Attachment 8

ENTERED 9/4/12

Invoice Number 7382500977 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 9/05/12 Invoice Due Date 9/20/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 9/05/12 AT: IVANHOE IVANHOE Page 1

Surcharge

LN	R C	Car	L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX 814	L	8/01/12	BARK,SOF	875.0000	PC	171700	875.00	43349-2	
2		LFPX 815	L	8/01/12	BARK,SOF	875.0000	PC	171700	875.00	43113-1	
3		LFPX 842	L	8/01/12	BARK,SOF	875.0000	PC	171900	875.00	43113-2	
4		LFPX 848	L	8/01/12	BARK,SOF	875.0000	PC	171900	875.00	43235-2	
5		LFPX 850	L	8/01/12	BARK,SOF	875.0000	PC	171500	875.00	43350	
6		LFPX 836	L	8/08/12	BARK,SOF	875.0000	PC	172900	875.00	43344-1	
7		LFPX 858	L	8/08/12	BARK,SOF	875.0000	PC	171900	875.00	43235-1	
8		LFPX 805	L	8/12/12	BARK,SOF	875.0000	PC	171900	875.00	43422-2	
9		LFPX 832	L	8/12/12	BARK,SOF	875.0000	PC	171400	875.00	43422-1	
10		LFPX 808	L	8/18/12	BARK,SOF	875.0000	PC	171800	875.00	43351	
11		LFPX 826	L	8/18/12	BARK,SOF	875.0000	PC	171700	875.00	43423-1	
12		LFPX 804	L	8/22/12	BARK,SOF	875.0000	PC	171900	875.00	43558	
13		LFPX 818	L	8/22/12	BARK,SOF	875.0000	PC	171600	875.00	43556-2	
14		LFPX 859	L	8/22/12	BARK,SOF	875.0000	PC	171800	875.00	43556-1	

Total: Surcharge 14 Charges 12250.00

Total: IVANHOE 14 Charges 12250.00

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 14 Charges 12250.00
TOTAL 12250.00

Invoice Number 7382500903 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 8/02/12 Invoice Due Date 8/17/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
ATTN:ACCOUNTS PAYABLE 559-584-9650 P. O. BOX 409590
10367 HOUSTON AVE. ATLANTA, GA

HANFORD CA 93230

Run Date: 8/02/12 AT: FRESNO FRESNO Page 1

Surcharge

LN	R C	Car	L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX 830	L	7/24/12	BARK,SOF	875.0000	PC	171800	875.00	43237	
2		LFPX 851	L	7/24/12	BARK,SOF	875.0000	PC	171500	875.00	43236	

Total: Surcharge 2 Charges 1750.00

Total: FRESNO 2 Charges 1750.00

Approved by: ______________________

Invoice Number 7382500903 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 8/02/12 Invoice Due Date 8/17/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 8/02/12 AT: EXETER EXETER Page 1

Surcharge

LN	R C	Car		L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	858	L	7/14/12	BARK,SOF	875.0000	PC	171900	875.00	43112	

Total: Surcharge 1 Charges 875.00

Total: EXETER 1 Charges 875.00

Approved by: ______________________

Invoice Number 7382500903 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 8/02/12 Invoice Due Date 8/17/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 8/02/12 AT: IVANHOE IVANHOE Page 1

LN	R C	Car		L E	Surcharge Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	824	L	7/11/12	BARK,SOF	875.0000	PC	171800	875.00	43018-2	
2		LFPX	848	L	7/11/12	BARK,SOF	875.0000	PC	171900	875.00	43018-1	

Total: Surcharge 2 Charges ~~1750.00~~

Total: IVANHOE 2 Charges ~~1750.00~~

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 5 Charges 4375.00
TOTAL 4375.00

Invoice Number 7382500807 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 7/03/12 Invoice Due Date 7/18/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
ATTN:ACCOUNTS PAYABLE 559-584-9650 P. O. BOX 409590
10367 HOUSTON AVE. ATLANTA, GA

HANFORD CA 93230

Run Date: 7/03/12 AT: EXETER EXETER Page 1

Surcharge

LN	R C	Car		L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	812	L	6/21/12	BARK,SOF	875.0000	PC	171300	875.00 #42737		
2		LFPX	830	L	6/21/12	BARK,SOF	875.0000	PC	171800	875.00 #42735-2		
3		LFPX	831	L	6/21/12	BARK,SOF	875.0000	PC	171000	875.00 #42738		
4		LFPX	832	L	6/21/12	BARK,SOF	875.0000	PC	171400	875.00 #42736-1		
5		LFPX	839	L	6/21/12	BARK,SOF	875.0000	PC	171800	875.00 #42735-1		
6		LFPX	841	L	6/21/12	BARK,SOF	875.0000	PC	169100	875.00 #42736-2		

Total: Surcharge 6 Charges 5250.00

Total: EXETER 6 Charges 5250.00

Approved by: ______________________

Invoice Number 7382500807 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 7/03/12 Invoice Due Date 7/18/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 7/03/12 AT: IVANHOE IVANHOE

Surcharge

LN	R C	Car	L E	Event Date	Commodty	--Rate/Qual--	Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX 813	L	6/01/12	BARK,SOF	875.0000 PC	171900	875.00 #42224-2		
2		LFPX 842	L	6/01/12	BARK,SOF	875.0000 PC	171900	875.00 #42226		
3		LFPX 851	L	6/01/12	BARK,SOF	875.0000 PC	171500	875.00 #42224-1		
4		LFPX 859	L	6/01/12	BARK,SOF	875.0000 PC	171800	875.00 #42104		
5		LFPX 801	L	6/08/12	BARK,SOF	875.0000 PC	172000	875.00 #42541-1		
6		LFPX 850	L	6/08/12	BARK,SOF	875.0000 PC	171500	875.00 #42542		
7		LFPX 857	L	6/08/12	BARK,SOF	875.0000 PC	172000	875.00 #42541-3		
8		LFPX 860	L	6/08/12	BARK,SOF	875.0000 PC	174500	875.00 #42227		
9		LFPX 838	L	6/13/12	BARK,SOF	875.0000 PC	171300	875.00 #42643-4		
10		LFPX 845	L	6/13/12	BARK,SOF	875.0000 PC	171800	875.00 #42644		
11		LFPX 849	L	6/13/12	BARK,SOF	875.0000 PC	172100	875.00 #42643-3		
12		LFPX 858	L	6/13/12	BARK,SOF	875.0000 PC	171900	875.00 #42643-1		
13		LFPX 856	L	6/15/12	BARK,SOF	875.0000 PC	171700	875.00 #42643-2		

Total: Surcharge 13 Charges 11375.00

Total: IVANHOE 13 Charges 11375.00

Approved by: ____________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 20 Charges 17500.00
TOTAL 17500.00

Invoice Number 7382500807 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 7/03/12 Invoice Due Date 7/18/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 7/03/12 AT: GOSJCT GOSHEN JCT Page 1

LN	RC	Car		LE	Event Date	Commodty	Surcharge --Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	818	L	6/07/12	BARK,SOF	875.0000	PC	171600	875.00 #42541-2		

Total: Surcharge 1 Charges 875.00

Total: GOSHEN JCT 1 Charges 875.00

Approved by: ______________________

Invoice Number 7382500728 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 6/04/12 Invoice Due Date 6/19/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
ATTN:ACCOUNTS PAYABLE 559-584-9650 P. O. BOX 409590
10367 HOUSTON AVE. ATLANTA, GA

HANFORD CA 93230

Run Date: 6/04/12 AT: EXETER EXETER Page 1

Surcharge

LN	R C	Car		L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	820	L	5/11/12	BARK,SOF	875.0000	PC	171900	875.00		
2		LFPX	837	L	5/11/12	BARK,SOF	875.0000	PC	170400	875.00		
3		LFPX	839	L	5/11/12	BARK,SOF	875.0000	PC	171800	875.00		
4		LFPX	840	L	5/11/12	BARK,SOF	875.0000	PC	171900	875.00		
5		LFPX	804	L	5/25/12	BARK,SOF	875.0000	PC	171900	875.00		

Total: Surcharge 5 Charges 4375.00

Total: EXETER 5 Charges 4375.00

Approved by: ______________________

Invoice Number 7382500728 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 6/04/12 Invoice Due Date 6/19/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 6/04/12 AT: IVANHOE IVANHOE Page 1

LN	R C	Car		L E	Event Date	Surcharge Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	824	L	5/04/12	BARK,SOF	875.0000	PC	171800	875.00	41132-3	
2		LFPX	826	L	5/04/12	BARK,SOF	875.0000	PC	171700	875.00	41546-4	
3		LFPX	828	L	5/04/12	BARK,SOF	875.0000	PC	171800	875.00	41646-1	
4		LFPX	831	L	5/04/12	BARK,SOF	875.0000	PC	171000	875.00	41846-2	
5		LFPX	834	L	5/04/12	BARK,SOF	875.0000	PC	171900	875.00	41246-3	
6		LFPX	860	L	5/04/12	BARK,SOF	875.0000	PC	174500	875.00	41846-1	
7		LFPX	813	L	5/09/12	BARK,SOF	875.0000	PC	171900	875.00	41646-2	
8		LFPX	811	L	5/16/12	BARK,SOF	875.0000	PC	171600	875.00	42058-1	
9		LFPX	814	L	5/16/12	BARK,SOF	875.0000	PC	171700	875.00	42041-3	
10		LFPX	808	L	5/18/12	BARK,SOF	875.0000	PC	171800	875.00	42104-2	
11		LFPX	833	L	5/18/12	BARK,SOF	875.0000	PC	171700	875.00	42058-4	
12		LFPX	836	L	5/18/12	BARK,SOF	875.0000	PC	172900	875.00	4210-1	
13		LFPX	829	L	5/23/12	BARK,SOF	875.0000	PC	172500	875.00	4210-2	
14		LFPX	856	L	5/23/12	BARK,SOF	875.0000	PC	171700	875.00	42101-2	
15		LFPX	858	L	5/23/12	BARK,SOF	875.0000	PC	171900	875.00	42191-1	
16		LFPX	809	L	5/25/12	BARK,SOF	8"5.0000	PC	171800	875.00	42295-1	
17		LFPX	830	L	5/25/12	BARK,SOF	875.0000	PC	171800	875.00	42295-2	

Total: Surcharge 17 Charges 14875.00

Total: IVANHOE 17 Charges 14875.00 ✓

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 22 Charges 19250.00
TOTAL 19250.00

ENTERED
6/4/12

Invoice Number 7382500665 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 5/02/12 Invoice Due Date 5/17/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 5/02/12 AT: IVORY IVORY Page 1

LN	R C	Car		L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
					Surcharge							
1		LFPX	808	L	4/27/12	BARK,SOF	875.0000	PC	171800	875.00 41950-3		
2		LFPX	835	L	4/27/12	BARK,SOF	875.0000	PC	171800	875.00 41950-2		
3		LFPX	843	L	4/27/12	BARK,SOF	875.0000	PC	171900	875.00 41950-1		

Total: Surcharge 3 Charges 2625.00

Total: IVORY 3 Charges 2625.00

Approved by: ____________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 10 Charges 8750.00
TOTAL 8750.00

✓

ENTERED
MAY 03

All page
2 →

Invoice Number 7382500665 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 5/02/12 Invoice Due Date 5/17/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 5/02/12 AT: IVANHOE IVANHOE Page 1

Surcharge

LN	R C	Car		L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	810	L	4/04/12	BARK,SOF	875.0000	PC	171800	875.00 41641-3		
2		LFPX	837	L	4/04/12	BARK,SOF	875.0000	PC	170400	875.00 41641-2		
3		LFPX	856	L	4/04/12	BARK,SOF	875.0000	PC	171700	875.00 41641-1		
4		LFPX	858	L	4/04/12	BARK,SOF	875.0000	PC	171900	875.00 41313-2		
5		LFPX	832	L	4/06/12	BARK,SOF	875.0000	PC	171400	875.00 41314-2		
6		LFPX	836	L	4/06/12	BARK,SOF	875.0000	PC	172900	875.00 41314-1		
7		LFPX	838	L	4/06/12	BARK,SOF	875.0000	PC	171300	875.00 41132-1		

Total: Surcharge 7 Charges 6125.00

Total: IVANHOE 7 Charges 6125.00

Approved by: ______________________

MAY 03

ENTERED

Invoice Number 7382500597 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 4/04/12 Invoice Due Date 4/19/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 4/04/12 AT: IVANHOE IVANHOE Page 1

LN	R C	Car	L E	Event Date	Commodty	Surcharge --Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1	LFPX	816	L	3/03/12	BARK,SOF	875.0000	PC	171700	875.00 #41096-3		
2	LFPX	822	L	3/03/12	BARK,SOF	875.0000	PC	171900	875.00 #41131-1		
3	LFPX	839	L	3/03/12	BARK,SOF	875.0000	PC	171800	875.00 #41096-2		
4	LFPX	803	L	3/08/12	BARK,SOF	875.0000	PC	171800	875.00 #41311-2		
5	LFPX	815	L	3/08/12	BARK,SOF	875.0000	PC	171700	875.00 #41311-1		
6	LFPX	840	L	3/08/12	BARK,SOF	875.0000	PC	171900	875.00 #41131-2		
7	LFPX	859	L	3/08/12	BARK,SOF	875.0000	PC	171800	875.00 #41346		
8	LFPX	836	L	3/16/12	BARK,SOF	875.0000	PC	172900	875.00 #41131-4		
9	LFPX	838	L	3/16/12	BARK,SOF	875.0000	PC	171300	875.00 #41311-3		
10	LFPX	805	L	3/27/12	BARK,SOF	875.0000	PC	171900	875.00 #41312-2		
11	LFPX	820	L	3/27/12	BARK,SOF	875.0000	PC	171900	875.00 #41312-1		
12	LFPX	852	L	3/30/12	BARK,SOF	875.0000	PC	171900	875.00 #41313-1		

Total: Surcharge 12 Charges 10500.00

Total: IVANHOE 12 Charges 10500.00

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 13 Charges 11375.00
TOTAL 11375.00

Invoice Number 7382500597 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 4/04/12 Invoice Due Date 4/19/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 4/04/12 AT: EXETER EXETER Page 1

LN	R C	Car	L E	Event Date	Commodty	Surcharge --Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX 812	L	3/20/12	BARK,SOF	875.0000	PC	171300	875.00	41131-3	

Total: Surcharge	1	Charges	875.00
Total: EXETER	1	Charges	875.00

Approved by: ____________________

Invoice Number 7382500518 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 3/02/12 Invoice Due Date 3/17/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 3/02/12 AT: IVANHOE IVANHOE Page 1

LN	R C	Car	L E	Event Date	Surcharge Commodty	--Rate/Qual--	Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX 837	L	2/10/12	BARK,SOF	875.0000 PC	170400	875.00	41005-1	
2		LFPX 857	L	2/10/12	BARK,SOF	875.0000 PC	172000	875.00	41005-2	
3		LFPX 853	L	2/16/12	BARK,SOF	875.0000 PC	171900	875.00	41005-4	
4		LFPX 819	L	2/24/12	BARK,SOF	875.0000 PC	171700	875.00	41133-2	
5		LFPX 854	L	2/24/12	BARK,SOF	875.0000 PC	171800	875.00	41133-1	
6		LFPX 817	L	2/28/12	BARK,SOF	875.0000 PC	171700	875.00	40446-4	
7		LFPX 825	L	2/28/12	BARK,SOF	875.0000 PC	172200	875.00	41005-3	
8		LFPX 860	L	2/28/12	BARK,SOF	875.0000 PC	174500	875.00	41096-1	

Total: Surcharge 8 Charges 7000.00

Total: IVANHOE 8 Charges 7000.00

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 8 Charges 7000.00
TOTAL 7000.00

Invoice Number 7382500440 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 2/02/12 Invoice Due Date 2/17/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
ATTN:ACCOUNTS PAYABLE 559-584-9650 P. O. BOX 409590
10367 HOUSTON AVE. ATLANTA, GA

HANFORD CA 93230

Run Date: 2/02/12 AT: IVANHOE IVANHOE Page 1

Surcharge

LN	R C	Car		L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	833	L	1/06/12	BARK,SOF	875.0000	PC	171700	875.00 #40802-3		
2		LFPX	836	L	1/06/12	BARK,SOF	875.0000	PC	172900	875.00 #40802-2		
3		LFPX	846	L	1/06/12	BARK,SOF	875.0000	PC	172000	875.00 #40802-1		
4		LFPX	808	L	1/13/12	BARK,SOF	875.0000	PC	171800	875.00 #40838-3		
5		LFPX	818	L	1/13/12	BARK,SOF	875.0000	PC	171600	875.00 #40838-2		
6		LFPX	835	L	1/13/12	BARK,SOF	875.0000	PC	171800	875.00 #40837-2		
7		LFPX	856	L	1/13/12	BARK,SOF	875.0000	PC	171700	875.00 #40838-1		
8		LFPX	858	L	1/13/12	BARK,SOF	875.0000	PC	171900	875.00 #40837-1		
9		LFPX	819	L	1/20/12	BARK,SOF	875.0000	PC	171700	875.00 #40495-3		
10		LFPX	841	L	1/24/12	BARK,SOF	875.0000	PC	169100	875.00 #40496-3		
11		LFPX	852	L	1/24/12	BARK,SOF	875.0000	PC	171900	875.00 #40495-4		
12		LFPX	810	L	1/28/12	BARK,SOF	875.0000	PC	171800	875.00 #40496-5		
13		LFPX	817	L	1/28/12	BARK,SOF	875.0000	PC	171700	875.00 #40496-4		
14		LFPX	834	L	1/28/12	BARK,SOF	875.0000	PC	171900	875.00 #40495-5		

Total: Surcharge 14 Charges 12250.00

Total: IVANHOE 14 Charges 12250.00

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 14 Charges 12250.00
TOTAL 12250.00

FEB

Invoice Number 7381500365 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 1/05/12 Invoice Due Date 1/20/12

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 1/05/12 AT: IVANHOE IVANHOE Page 1

Surcharge

LN	R C	Car	L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1	LFPX	805	L	12/01/11	BARK,SOF	875.0000	PC	171900	875.00		
2	LFPX	808	L	12/01/11	BARK,SOF	875.0000	PC	171800	875.00		
3	LFPX	818	L	12/01/11	BARK,SOF	875.0000	PC	171600	875.00		
4	LFPX	826	L	12/01/11	BARK,SOF	875.0000	PC	171700	875.00		
5	LFPX	835	L	12/01/11	BARK,SOF	875.0000	PC	171800	875.00		
6	LFPX	853	L	12/01/11	BARK,SOF	875.0000	PC	171900	875.00		
7	LFPX	820	L	12/06/11	BARK,SOF	875.0000	PC	171900	875.00		
8	LFPX	839	L	12/06/11	BARK,SOF	875.0000	PC	171800	875.00		
9	LFPX	843	L	12/06/11	BARK,SOF	875.0000	PC	171900	875.00		
10	LFPX	844	L	12/06/11	BARK,SOF	875.0000	PC	171900	875.00		
11	LFPX	833	L	12/09/11	BARK,SOF	875.0000	PC	171700	875.00		
12	LFPX	836	L	12/09/11	BARK,SOF	875.0000	PC	172900	875.00		
13	LFPX	840	L	12/09/11	BARK,SOF	875.0000	PC	171900	875.00		
14	LFPX	847	L	12/13/11	BARK,SOF	875.0000	PC	171900	875.00		

Total: Surcharge 14 Charges 12250.00

Total: IVANHOE 14 Charges 12250.00

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 14 Charges 12250.00
TOTAL 12250.00

Invoice Number 7301500318 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 12/02/11 Invoice Due Date 12/17/11

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 12/02/11 AT: IVANHOE IVANHOE Page 1

LN	R C	Car	L E	Event Date	Commodty	Surcharge --Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1	LFPX	844	L	11/01/11	BARK,SOF	875.0000	PC	171900	875.00	40215-1	
2	LFPX	860	L	11/15/11	BARK,SOF	875.0000	PC	174500	875.00	40215-2	

Total: Surcharge 2 Charges 1750.00

Total: IVANHOE 2 Charges 1750.00

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 2 Charges 1750.00
TOTAL 1750.00

1/5

Invoice Number 7381500268 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 11/02/11 Invoice Due Date 11/17/11

TO: SUPERIOR SOIL SUPPLEMENTS-IVA REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
ATTN:ACCOUNTS PAYABLE 559-584-9650 P. O. BOX 409590
10367 HOUSTON AVE. ATLANTA, GA

HANFORD CA 93230

NOV 07 2011

By

Run Date: 11/02/11 AT: IVANHOE IVANHOE Page 1

LN	R C	Car		L E	Event Date	Surcharge Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	804	L	10/14/11	BARK,SOF	875.0000	PC	171900	875.00 #40041-3		
2		LFPX	814	L	10/14/11	BARK,SOF	875.0000	PC	171700	875.00 #40041-2		
3		LFPX	821	L	10/14/11	BARK,SOF	875.0000	PC	171800	875.00 #40041-1		
4		LFPX	805	L	10/18/11	BARK,SOF	875.0000	PC	171900	875.00 #39690-5		
5		LFPX	811	L	10/18/11	BARK,SOF	875.0000	PC	171600	875.00 #40042		
6		LFPX	846	L	10/18/11	BARK,SOF	875.0000	PC	172000	875.00 #39690-4		
7		LFPX	851	L	10/18/11	BARK,SOF	875.0000	PC	171500	875.00 #40043		
8		LFPX	853	L	10/18/11	BARK,SOF	875.0000	PC	171900	875.00 #39690-2		
9		LFPX	859	L	10/18/11	BARK,SOF	875.0000	PC	171800	875.00 #39690-1		
10		LFPX	818	L	10/27/11	BARK,SOF	875.0000	PC	171600	875.00 #40214-1		
11		LFPX	845	L	10/27/11	BARK,SOF	875.0000	PC	171800	875.00 #40214-3		
12		LFPX	848	L	10/27/11	BARK,SOF	875.0000	PC	171900	875.00 #40214-2		

Total: Surcharge 12 Charges 10500.00

Total: IVANHOE 12 Charges 10500.00

Approved by: ______________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 12 Charges 10500.00
TOTAL 10500.00

Invoice Number 7331500215 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 10/04/11 Invoice Due Date 10/19/11

TO: SUPERIOR SOIL SUPPLEMENTS-IVA
ATTN:ACCOUNTS PAYABLE 559-584-9650
10367 HOUSTON AVE.

HANFORD CA 93230

REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
P. O. BOX 409590
ATLANTA, GA

Run Date: 10/04/11 AT: IVANHOE IVANHOE Page 1

LN	R C	Car	L E	Event Date	Surcharge Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX 820	L	9/13/11	BARK,SOF	875.0000	PC	171900	875.00	39689-1	
2		LFPX 831	L	9/13/11	BARK,SOF	875.0000	PC	171000	875.00	39642-2	
3		LFPX 843	L	9/13/11	BARK,SOF	875.0000	PC	171900	875.00	39642-1	
4		LFPX 816	L	9/20/11	BARK,SOF	875.0000	PC	171700	875.00	39642-4	
5		LFPX 823	L	9/20/11	BARK,SOF	875.0000	PC	172000	875.00	39642-3	
6		LFPX 828	L	9/20/11	BARK,SOF	875.0000	PC	171800	875.00	39690-1	
7		LFPX 860	L	9/20/11	BARK,SOF	875.0000	PC	174500	875.00	39689-2	

Total: Surcharge 7 Charges 6125.00

Total: IVANHOE 7 Charges 6125.00

Approved by: ____________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 7 Charges 6125.00
TOTAL 6125.00

RECEIVED
OCT 05 2011
By ________

Invoice Number 7381500173 - 1
Miscellaneous Charge Settlement Statement

Invoice Date 9/02/11 Invoice Due Date 9/17/11

TO: SUPERIOR SOIL SUPPLEMENTS-IVA REMIT TO: SAN JOAQUIN VALLEY R.R. CO.
ATTN:ACCOUNTS PAYABLE 559-584-9650 P. O. BOX 409590
10367 HOUSTON AVE. ATLANTA, GA

HANFORD CA 93230

Run Date: 9/02/11 AT: IVANHOE IVANHOE Page 1

Surcharge

LN	R C	Car		L E	Event Date	Commodty	--Rate/Qual--		Weight	Bill Amount	Adj Cd	Adj Pct
1		LFPX	805	L	8/23/11	BARK,SOF	875.0000	PC	171900	875.00 # 39687-5		
2		LFPX	812	L	8/23/11	BARK,SOF	875.0000	PC	171300	875.00 # 39687-3		
3		LFPX	830	L	8/23/11	BARK,SOF	875.0000	PC	171800	875.00 # 39687-2		
4		LFPX	803	L	8/27/11	BARK,SOF	875.0000	PC	171800	875.00 # 39687-6		
5		LFPX	806	L	8/27/11	BARK,SOF	875.0000	PC	171900	875.00 # 39687-4		
6		LFPX	818	L	8/27/11	BARK,SOF	875.0000	PC	171600	875.00 # 39691-2		
7		LFPX	848	L	8/27/11	BARK,SOF	875.0000	PC	171900	875.00 # 39691-1		
8		LFPX	854	L	8/27/11	BARK,SOF	875.0000	PC	171800	875.00 # 39687-1		

Total: Surcharge 8 Charges 7000.00

Total: IVANHOE 8 Charges 7000.00

Approved by: ____________________

Total: SUPERIOR SOIL SUPPLEMENTS-IVAN 8 Charges 7000.00
TOTAL 7000.00

ENTERED

Attachment 9

Univar
17425 NE Union Hill Rd.
Redmond, WA 98052
USA

T 425 889-3400
F 425 889-4100

www.univarusa.com

UNIVAR

October 1, 2012

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

Re: STB Docket No. FD 35654, *Genesee & Wyoming Inc. – Control – RailAmerica, Inc.*

Dear Ms. Brown:

On behalf of Univar USA, we are writing this letter to address the acquisition of RailAmerica by Genesee & Wyoming Inc. (G&W) and to support the efforts and conditions being sought in this proceeding by the Central California Rail Shippers and Receivers Association (CCRSRA).

Univar USA is served by the San Joaquin Valley Railroad (SJVR), and we rely on SJVR rail service to meet our business needs. We are a chemical distributor that rails in several different chemicals. Some of those chemicals are Sulfuric Acid, Hydrochloric Acid, Phosphoric Acid, Sodium Hydroxide and Potassium Hydroxide. These cars come in from all over the country. We unload the cars into large storage tanks. We then load our trucks for delivery to our customers.

Our customer base runs the gamut from wastewater treatment plants, drinking water plants, wells, major cheese and dairy plants, tomato processors to plating shops, rendering plants and oilfield customers. They all rely on our prompt, next day delivery service.

Univar has two locations served by the SJVR, our Fresno facility and our Visalia facility. Our Visalia facility was purchased from Basic Chemical Solutions, and is the facility where we now conduct a majority of the Univar rail business in the San Joaquin Valley. (Service to our Fresno facility is further described in the attached letter sent in support of a "feeder line" application initiative being considered in 2010).

We had great service from the San Joaquin Valley Railroad until they were purchased by RailAmerica. Before the purchase we were getting switches any day of the week we needed, Monday through Friday. RailAmerica seemed much more concerned with profit over service. They cut the number of crews and limited days worked to sometimes 2 days per week. We never knew when we were going to get service. This lack of service caused us to bring material by trucks from other plants, at a much higher cost, to meet our customer's expectations.

Our business, like most, is extremely competitive. Univar prides itself as having premier service, that's one of the attributes that sets us apart from our competitors. When we can't rely a critical part of our supply chain to get our product here in a timely manner that affects our ability to service our customers.

We were informed in 2010 about a new tariff for line charges that was being implemented by the SJVR under the guise of building up funds to repair tracks located between Sanger and Exeter. SJVR representatives told me that the tariff was going to be $1100-$1200 per car. This was going to be implemented without any real proof, no accounting for total dollars and almost no warning. It seemed arbitrary and not completely aboveboard.

Since Univar is a receiver of products, and we pay for those products on a delivered price basis, it was and is unclear how we could be held responsible for such charges when we are not a shipper. Nevertheless, we were led to believe that if we did not pay, our shippers or even the BNSF would have to pay. We were and are very concerned because ultimately, we would be paying indirectly through increased prices on our incoming products.

The Visalia facility brings in between 400 – 500 cars per year and we are planning to increase this amount. Almost all of these cars come through Fresno, after being interchanged with the BNSF, down through Sanger and Exeter before coming west to Visalia. The surcharges that the SJVR sought to be imposed on us, amount to an **additional $600,000 annually.**

We want and need a rail service provider that is committed to fulfilling its common carrier obligation and meeting the existing and future business growth needs of its customers. We are hopeful that G&W will be that carrier, but we have serious concerns, based on our experiences, whether this transaction will actually produce the benefits that have been promised.

We urge the Surface Transportation Board to closely review the CCRSRA comments, adopt the CCRSRA's requests for conditions, and do all that it can to ensure that any approved transaction is done in a manner that ensures that the reasonable business needs of rail consumers are fully addressed and protected.

On behalf of Univar USA, we greatly appreciate the Board's attention to this important matter.

Sincerely,

Scott Lewis

Scott Lewis
Operations Manager
Univar USA

Attachment 10

Business Editors

BOCA RATON, Fla.--(BUSINESS WIRE)--Oct. 9, 2003

On Friday, October 10th, employees of RailAmerica's San Joaquin Valley Railroad (SJVR) will attend a dedication ceremony to celebrate the completion of the Cross Valley Rail Corridor Project at 2:00 p.m. at The Depot in Visalia, CA.

The Cross Valley Rail Corridor freight train project was created to restore and upgrade 45 miles of track between Huron and Visalia. The concept was simple, but has potentially significant impact. As a result of the completion of this project, commercial and industrial customers along the corridor will experience improved freight service and an increased opportunity for industrial development. The upgraded rail will now accommodate 286,000-pound railcars along the entire corridor.

The Cross Valley Rail Corridor Project was led by the Joint Powers Authority (JPA), which was formed by the cities of Lemoore, Huron and Visalia, who in turn partnered with the San Joaquin Valley Railroad and 11 other funding agencies to raise a total of $14.2 million to complete the project.

"We are so proud of our involvement with the Cross Valley Rail Corridor Project, and would like to thank the JPA and our funding partners for their dedication and support of this project. By working together, we are bringing significant public and economic benefits to the communities along the corridor," said Thomas Schlosser, RailAmerica's Senior Vice President, Western Corridor. "In addition to the increased opportunities for industrial development and employment, we are improving the air quality and safety of the streets and highways of these communities by reducing truck traffic."

RailAmerica, Inc. (NYSE:RRA) is the world's largest short line and regional railroad operator with 50 railroads operating approximately 17,700 miles in the United States, Canada, Australia, Chile and Argentina, including track access arrangements. The Company is a member of the Russell 2000(R) Index. For more information about the company, please visit its website at http://www.railamerica.com.

BEFORE THE
SURFACE TRANSPORTATION BOARD

	)	
	)	
GENESEE & WYOMING INC. -	)	
CONTROL – RAILAMERICA INC.	)	**Finance Docket No. 35654**
	)	
	)	
	)	

Verified Statement

of

John J. Hoegemeier, PhD.
Principal

SD Freight Rail Consulting LLC
On Behalf Of
Central California Rail Shippers and Receivers Association

October 5, 2012

TABLE OF CONTENTS PAGE

I. INTRODUCTION

My name is John J. Hoegemeier and I am the Principal of SD Freight Rail Consulting LLC. I am an economist, and my firm specializes in economic studies, cost benefit analysis, feasibility studies and rail carload costing. My clients have included Class 1 and short line railroads, transloaders, shippers, and government agencies. My more recent work has specialized in petroleum transportation supply chain issues. A copy of my credentials is included as Appendix C to this Verified Statement.

I have been asked by the Board of the Central California Rail Shippers and Receivers Association (CCRSRA) to review and evaluate the possible impacts to their members by the Genesee & Wyoming (GWI) acquisition of RailAmerica (RA). I have conducted a review of publicly available data to determine whether the financial structure of the proposed GWI/RA transaction could negatively impact CCRSRA's members.

I begin my analysis, below, with a review the recent history of short line railroads in the California Central Valley, the birth of large short line railroad holding companies, and the impacts of holding companies' short line acquisitions. I next delve into some of the historical details of and trends relating to Fortress Investment Group's acquisition and subsequent initial public offering of RA, and discuss RA management's efforts to increase non-freight revenue. I subsequently discuss the GWI/RA transaction, compare it to the GWI/Fortress transaction, and offer my conclusions.

My analysis suggests that the GWI/RA transaction will result in a more heavily leveraged financial environment, which could lead to heightened pressure on GWI management to improve cash flow. Because, as Applicants' witnesses state, short lines have a limited ability to influence freight rates, revenue improvements will have to be achieved through increased non-freight revenue. Further increases in non-freight revenue – that is, increased accessorial fees, lease charges, demurrage and switching charges, among other fees – would even further exacerbate the negative situation that the CCRSA membership is experiencing today.

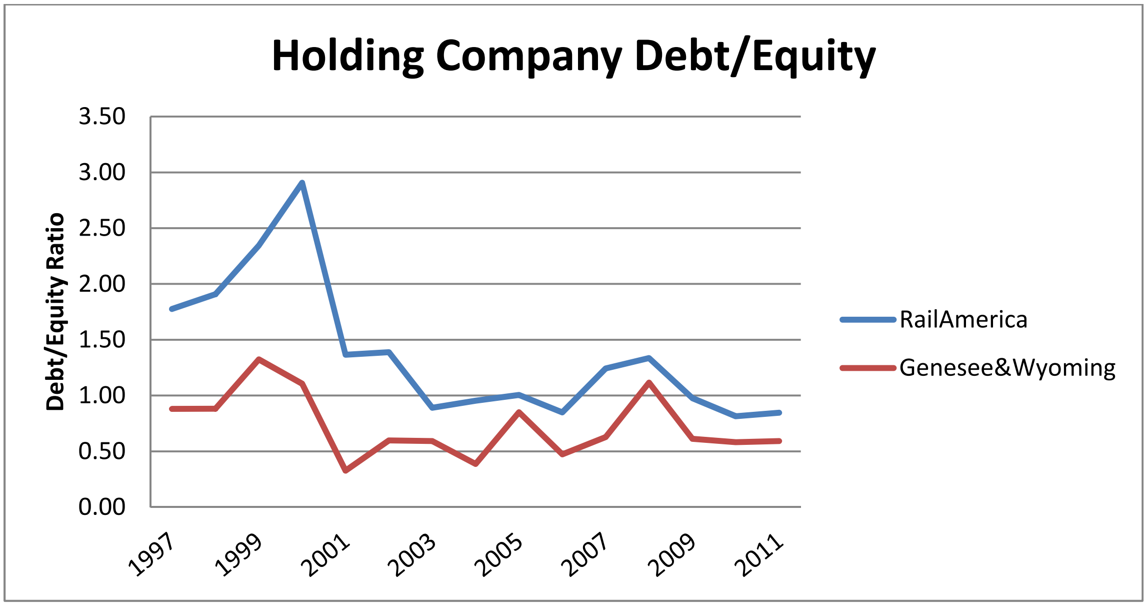
II. BACKGROUND ON SHIPPER ISSUES

The California Central Valley is a major hub of transportation activity within the State of California and the nation. Agricultural and petroleum based activities are a major component of the economy of the Valley. The Valley is equidistant from the LA Basin and Bay Area transportation centers. As such, the Valley's central location makes it a prime spot for national distribution centers. Many recent studies undertaken for government agencies have identified the importance of rail, especially short line rail, to the supply chain system of the Valley.

During the 1990s, Class 1 railroads determined that some of their light density branch lines were less economic to them, but could be operated more profitably by local management. Accordingly, many Class 1 railroads spun off of their Central Valley branch lines and, as a result, much of the region is now served by short line railroads. The San Joaquin Valley Railroad (SJVR) is one of these spun-off short lines. In the 1990s, the SJVR was consolidated into one of the short line holding companies that became a major player in the short line industry.

Short line holding companies have typically been highly leveraged. The two holding companies that are part of the transaction in this proceeding and one of their predecessors had initial public offerings during the 1990s. Going public was a means to reward initial private investors and to provide additional capital for growth. Short line holding companies tend to grow through acquisitions and stockholder equity and debt provided the resources for the holding companies to acquire new short lines when the Class 1 railroads rationalized their systems in the 1990s and early 2000s. When the Class 1 railroads scaled back their branch line reduction programs in the early 2000s, the short line holding companies maintained their growth strategy by acquiring other short line holding companies and small industry-owned railroads.

GWI's and RA's respective debt histories are shown on the chart below.[1]



The major spikes in debt in the chart above usually followed acquisitions. The major RA spike occurred after RA merged with RailTEX, which, at the time, was the largest ever short line transaction and it created the first of the truly large holding companies. A chart of major GWI and RA transactions is shown in Appendix A.

III. FORTRESS RAILAMERICA ACQUISITION

On December 1, 2006, Fortress Investment Group (Fortress) filed a verified notice of exemption before the Surface Transportation Board (STB), to acquire RA and its railroad subsidiaries.

According to the filing, the purpose of the transaction was as follow:

[1] The differences in financial structure and growth history make a direct comparison between short line holding companies and Class 1 railroads problematic. For the majority of this statement the comparisons are between GWI and RA, or trends and changes within individual holding companies

> The proposed transaction is intended to promote the investment objectives of Fortress and to improve RailAmerica's efficiency, financial strength and ability to meet the needs of shippers..... This, in turn, will enhance RailAmerica's ability to make capital investments in response to future growth in demand for rail services, and enable the RailAmerica Railroads to compete more effectively in the transportation marketplace.
>
> RR Acquisition has no current plans to make substantial changes in RailAmerica's day-to-day operations, to sell any of the RailAmerica Railroads or to abandon any rail lines in connection with the proposed transaction…. RR Acquisition and Fortress believe that service to shippers can be improved in the long term through continued investment and improved managerial efficiency.

Ibid. at p. 4.

The transaction was valued at approximately $1,069 million with $665 paid to the RA stockholders. Fortress agreed to provide $450 million in equity financing and secured $650 million in credit facilities. Prior to the transaction, RA had $401 million in long term debt. After the transaction its long term debt ballooned to $637 million. A substantial stock premium was paid to RA stockholders.

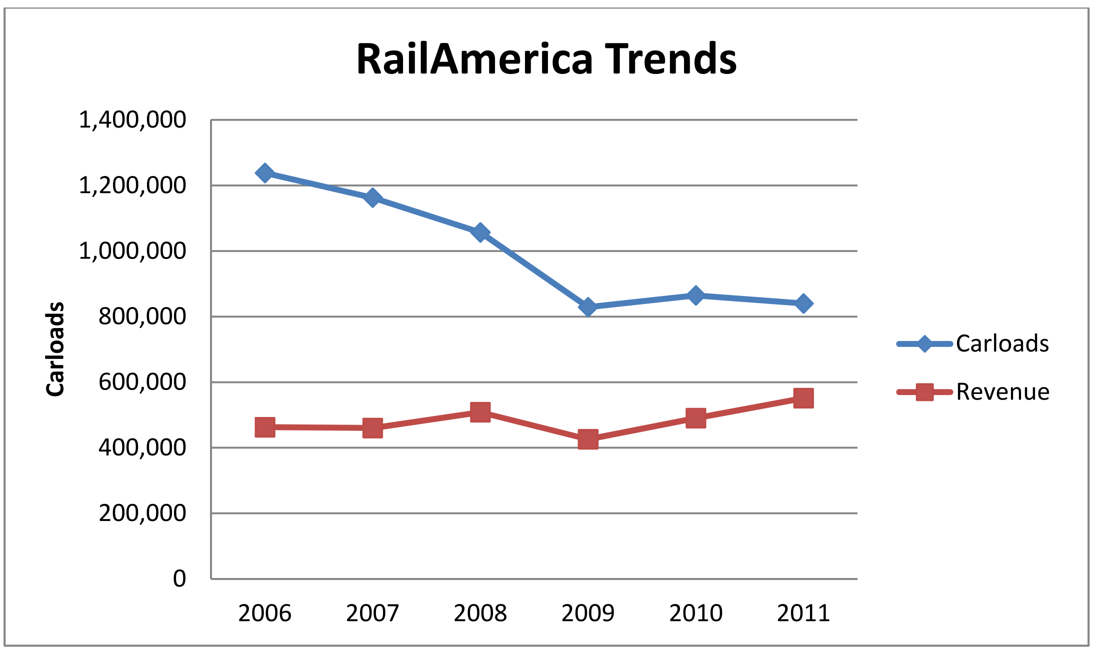
As a result of the higher debt burden, RA's interest expense grew from $27 million for 2006 to $62 million for 2008 – a 129% increase. This dramatic increase in interest expense was not met with a corresponding percent increase in operating income, which increased from $46 million for 2006 to $80 million for 2008 – a 74% increase. The higher interest expenses were just balanced out by the growth in operating revenue.

In 2009, Fortress went public with RA through an initial public offering. There were also changes to RA's debt financing. At the end of 2009, RA had $114 million in operating income and $87 million in interest expenses. The foregoing income and expense figures, together with declining carloads, likely caused RA management to shift its strategy and seek to expand non-freight revenue. Indeed, the contrast between Fortress' 2006 acquisition exemption filing to the STB, which promised service improvements, increased investments, etc., as described above, and Fortress' 2009 initial public offering Prospectus filed with the SEC, as set forth below, are very telling:

> ***We have a substantial amount of indebtedness, which may adversely affect our cash flow and our ability to operate our business, including our ability to incur additional indebtedness.***
>
> As of June 30, 2009, our total indebtedness was approximately $713.9 million, which represented approximately 59.6% of our total capitalization. Our substantial amount of indebtedness increases the possibility that we may be unable to generate sufficient cash to pay, when due, the principal of, interest on or other amounts due with respect to our indebtedness.
>
> Our substantial indebtedness could have important consequences for you, including:
>
> - increasing our vulnerability to adverse economic, industry or competitive developments;
> - requiring a substantial portion of cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing our ability to use our cash flow to fund our operations, capital expenditures and future business opportunities;
> - restricting us from making strategic acquisitions or causing us to make non-strategic divestitures;
> - limiting our ability to obtain additional financing for working capital, capital expenditures, product development, debt service requirements, acquisitions and general corporate or other purposes; and
> - limiting our flexibility in planning for, or reacting to, changes in our business or the industry in which we operate, placing us at a competitive disadvantage compared to our competitors who are less highly leveraged and who, therefore, may be able to take advantage of opportunities that our leverage prevents us from exploiting
>
> The Indenture governing the senior secured notes contains a number of restrictions and covenants that, among other things, limit our ability to incur additional indebtedness, make investments, pay dividends or make distributions to our stockholders, grant liens on our assets, sell assets, enter into a new or different line of business, enter into transactions with our affiliates, merge or consolidate with other entities or transfer all or substantially all of our assets, and enter into sale and leaseback transactions. The credit market turmoil could negatively impact our ability to obtain future financing or to refinance our outstanding indebtedness.
>
> Our ability to comply with these restrictions and covenants in the future is uncertain and will be affected by the levels of cash flow from our operations and events or circumstances beyond our control. Our failure to comply with any of the

restrictions and covenants under the Indenture governing our senior secured notes could result in a default under the Indenture, which could cause all of our existing indebtedness to be immediately due and payable. If our indebtedness is accelerated, we may not be able to repay our indebtedness or borrow sufficient funds to refinance it. In addition, in the event of an acceleration holders of our senior secured notes could proceed against the collateral securing the notes which includes nearly all of our assets. Even if we are able to obtain new financing, it may not be on commercially reasonable terms or on terms that are acceptable to us. If our indebtedness is in default for any reason, our business, financial condition and results of operations could be materially and adversely affected. In addition, complying with these restrictions and covenants may also cause us to take actions that are not favorable to our stockholders and may make it more difficult for us to successfully execute our business plan and compete against companies that are not subject to such restrictions and covenants.[2]

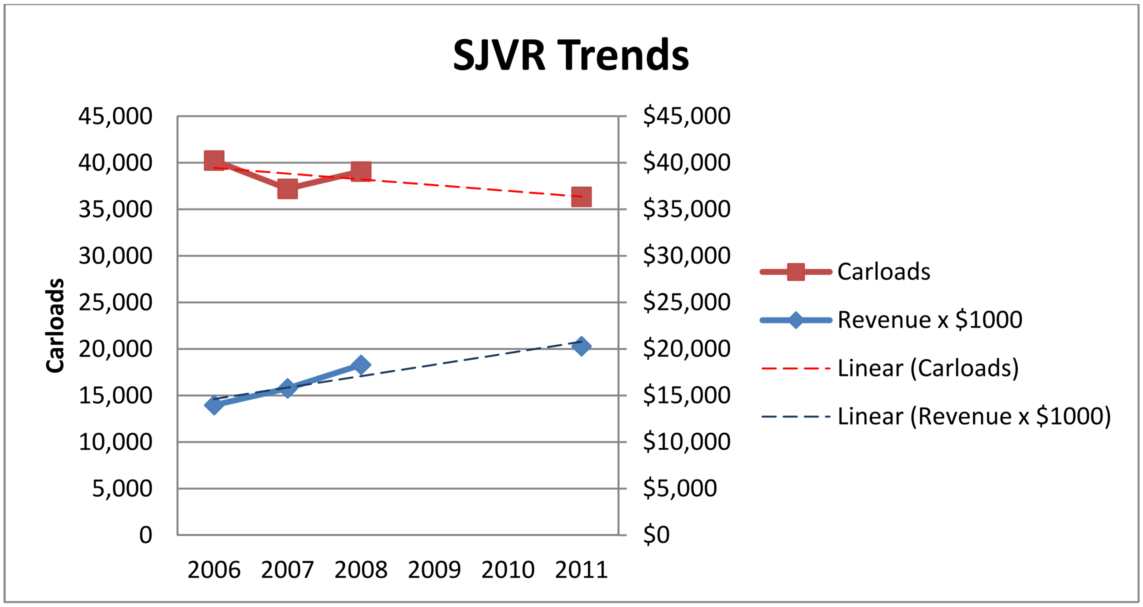
Although carloads declined significantly immediately following the Fortress acquisition, RA was still able to maintain revenues, as shown in the following chart:



By 2011, RA had grown operating income to $122 million while carloads remained flat over the 2009-2011 timeframe.

The chart below shows similar trends on the SJVR since the Fortress acquisition (publicly available information from 2009 and 2010 is not available).

[2] RA Prospectus (dated Nov. 2, 2009), http://www.sec.gov/Archives/edgar/data/877326/000095012309056343/y02378b3e424b3.htm, p. 17-18.



Applicants' witness Neels asserts that "short lines frequently have little or no pricing authority" due to "handling line agreement[s]" with connecting Class I railroads which "leaves rate setting in the hands of the Class I railroad"[3] Mr. Neels concludes that "[a]n inability to set prices to shippers necessarily limits the ability of short lines to exert competitive pressure."[4] Applicants' witness Rennicke asserts that "various handling agreements with connecting railroads [] limit or exclude the participation of RA and GWI in commercial interactions with the shipper and the pricing of traffic."[5] Mr. Rennicke further states that "[t]he majority of these handling agreements are based on a fixed payment made to RA or GWI, plus an annual escalator."[6]

If the Applicants' witnesses are correct[7] that the RA railroads have limited freight pricing authority, then the question to be considered is how can revenues be increasing for RA and SJVR as shown in the above charts when freight volumes are decreasing? The answer, as

[3] Verified Statement (VS) of Neels p. 7.
[4] Ibid.
[5] Rennicke V.S. p. 5.
[6] Ibid.
[7] The Applicants did not include with their application witness workpapers to allow me to verify their witnesses' calculations.

shown in the next Section, is that these revenues are coming from so-called "non-freight" sources (e.g., demurrage/storage), which are sources where the short lines have no pricing restrictions.

IV. RAILAMERICA'S NON-FREIGHT REVENUE

As shown in RA's own financial reports, non-freight revenue has been a major source of revenue growth resulting in their financial success. The strategy was clearly stated in the RA 2009 Annual Report:

> Non-freight services offered to our rail customers include switching (or managing and positioning railcars within a customer's facility), storing customers' excess or idle railcars on inactive portions of our rail lines, third party railcar repair, and car hire and demurrage. Each of these services leverages our existing business relationships and generates additional revenue at attractive margins with minimal capital investment. We also seek to grow our revenue from non-transportation uses of our land holdings such as land leases, crossing or access rights, subsurface rights, signboards and cellular communication towers, among others. These sources of revenue and value are an important area of focus by our management as such revenue has minimal associated operating costs or capital expenditures and represents a recurring, high margin cash flow stream.[8]

"Non-freight" revenue includes all the types of fees and payments that the railroad receives from customers that are not related directly to the line-haul freight rates and the switching fee that the carrier receives from those traffic movements. Below is a table showing the breakdown of non-freight revenue for RA for 2008 from RA's 2009 Prospectus, quoted above.

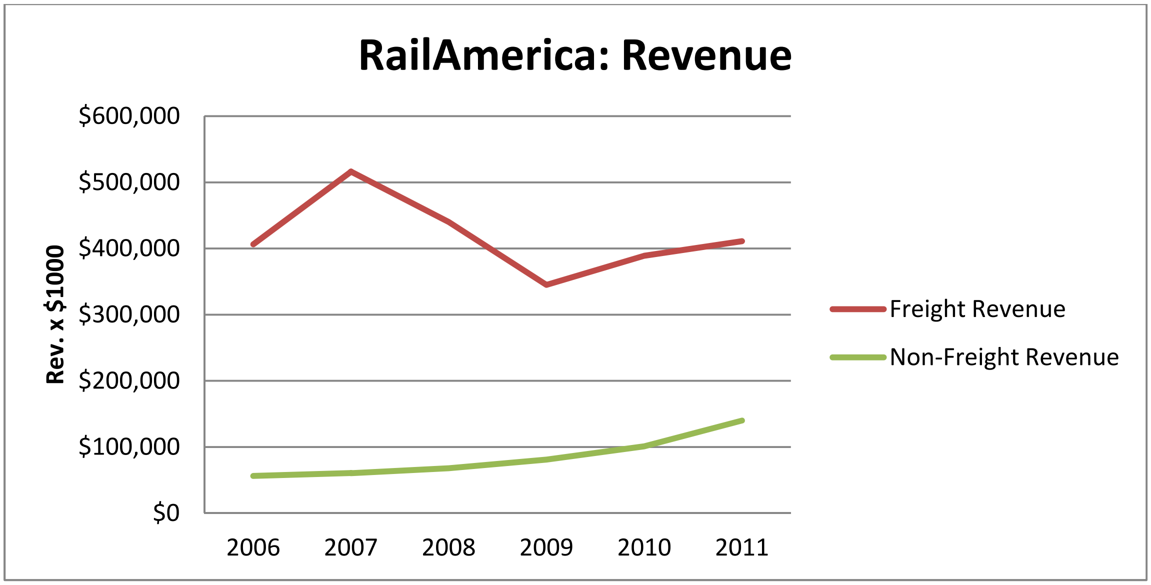
[8] RA 10-K filed Mar. 26, 2010, http://www.sec.gov/Archives/edgar/data/887637/000095012310028591/g22631e10vk.htm at 4.

	Revenue	%
Railcar Switching	$5,400,000	7.9%
Car Hire & Rental	$9,800,000	14.3%
Demurrage	$13,200,000	19.3%
Storage	$9,900,000	14.5%
Car Repair	$2,800,000	4.1%
Real Estate	$9,400,000	13.7%
Other	$17,900,000	26.2%
Total	$68,400,000	100.0%

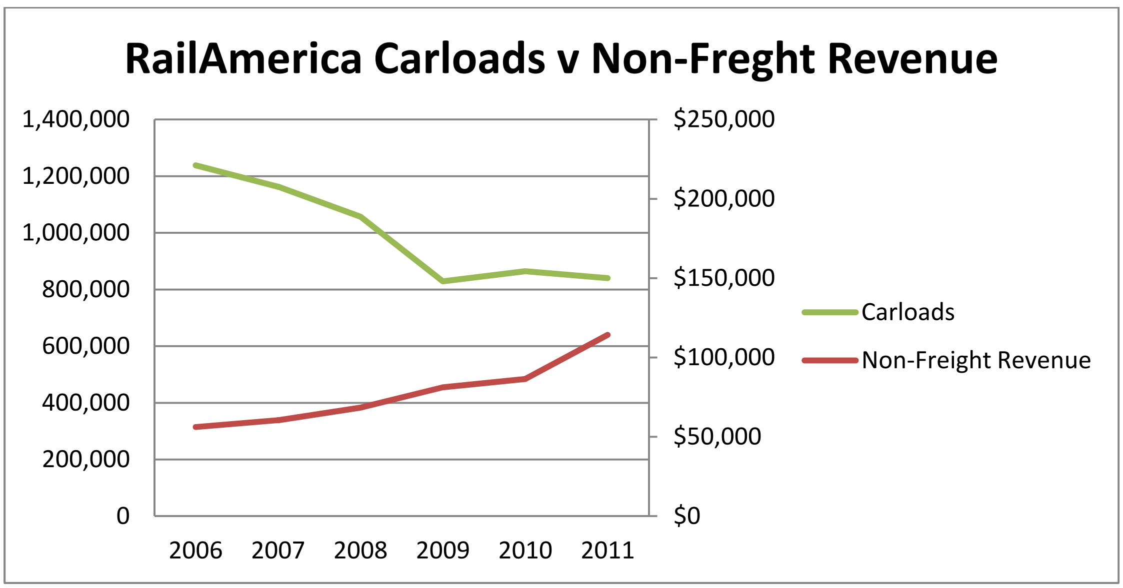
RA 2009 Prospectus, p. 74. Over one-third of the non-freight revenue in 2008 was for car storage and demurrage. These charges are borne by the rail customers. The Applicants' witnesses have not addressed these major revenue sources in their verified statements assessing the competitive impacts of the transaction.

Non-freight revenue provides a source of high margin, minimal expense cash flow. Unlike carloadings, which can have a high expense component as defined in the operating ratio, non-freight revenue received from customers through accessorial charges frequently has minimal additional associated expense.

As shown on the chart below, RA has been able to maintain an increasing non-freight revenue stream despite a somewhat stagnant freight revenue stream:



RA's non-freight revenue has also grown despite a declining number of carloads:



In the chart above, non-freight revenue reflects the impacts of the Atlas acquisition and subtracted engineering services from the non-freight revenue.

The Application states at page 18: "approximately 40% of the traffic of the railroads in these two families is handled under arrangements in which they have no pricing power." As the Applicants' witnesses (Neels and Rennicke) clarify, this statement applies to freight revenues, not non-freight revenues. It is important to understand that a short line holding company does indeed have pricing power on accessorial charges and surcharges because there are no "handling agreement" restrictions that apply to these charges. Indeed, according to the RA 2011 Annual Report, demurrage revenue increased by $5.6 million from 2010 to 2011.[9] Moreover, overall non-freight revenue increased 150% from 2006 through 2011 even though carloads decreased 32%.

It is clear that the direction taken by RA management has been to concentrate on the near term, higher margin accessorial charge growth rather than on longer term, lower margin carload growth. For example, in RA's 2010 Annual Report (on page 3 of the preamble), RA boasted that "RailAmerica has grown its non-freight revenue to $101 million, up more than 80 percent from 2006."[10] In that same report, at page 4 (emphasis added), RA succinctly described its strategy of growth of non-freight revenue:

> *Expanding our non-freight services and revenue:* **We intend to continue to expand and grow the non-freight services we offer to both our rail customers and other parties**. Non-freight services offered to our rail customers include switching (or managing and positioning railcars within a customer's facility), storing customers' excess or idle railcars on inactive portions of our rail lines, third party railcar repair, engineering infrastructure services and demurrage. **These services leverage our existing customer relationships and generate additional revenue at attractive margins with minimal capital investment**. We also seek to grow our revenue from non-transportation uses of our land holdings such as land leases, crossing or access rights, subsurface rights, signboards and cellular communication towers, among others. **These sources of revenue are an important area of focus by our management as such revenue has minimal associated operating costs or capital expenditures and represents a recurring, high margin cash flow stream**.

A similar statement from RA continues to be included in all of its quarterly and annual financial reports and the fact that RA continues to target non-freight is confirmed in its recent financial filings including its recent SEC 10Q (July 26, 2012) where RA stated (at p. 22) that it manages its business performance by "growing our . . . non-freight revenue."

---

[9] RA Form 10-K, filed Feb. 23, 2012, p. 29.
[10] RA 2010 Annual Report, http://investor.railamerica.com/phoenix.zhtml?c=66000&p=irol-reportsannual, p. 3.

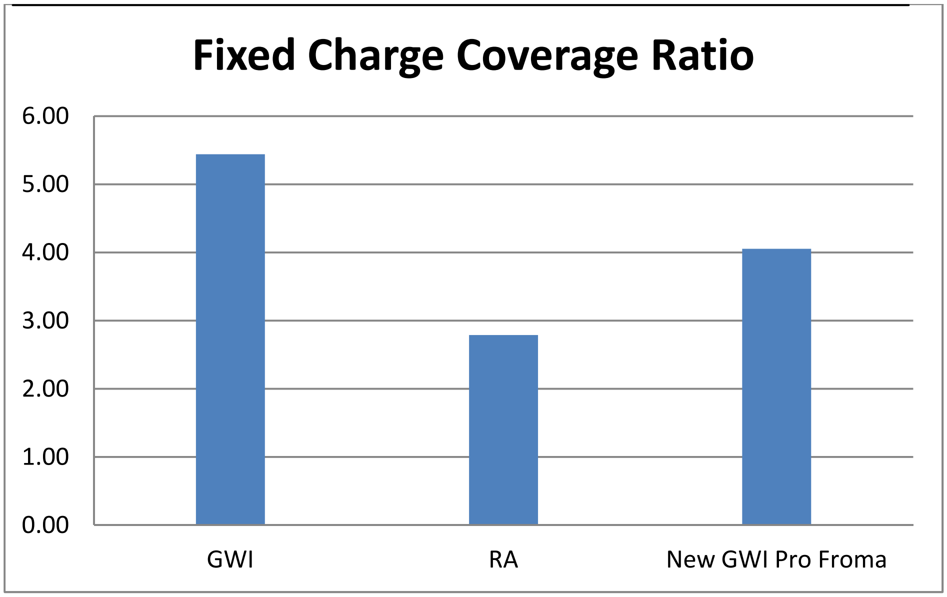
The end result of RA's targeted aggressive growth of non-freight revenues is that CCRSRA members have been burdened by additional fees that had to be absorbed in their operations.

V. GENESEE & WYOMING –RAILAMERICA ACQUISITION

In this proceeding GWI proposes to purchase RA in its entirety. GWI will purchase all of the outstanding RA shares and assume all remaining RA debts. In the Application, GWI draws some indirect comparisons of its management style with the management style of RA and other short line holding companies. As post-transaction management will work in a more leveraged financial environment, a concern is that there could be pressure to increase cash flow due to the lower coverage ratio resulting from the higher proportion of fixed charges to income. This could produce an outcome similar to that which resulted from Fortress' acquisition of RA, with heightened pressure to obtain increased non-freight revenue due to very limited opportunities to increase freight rates for the reasons explained by the Applicants' witnesses, as described above.

In addition to the long term debt service, the payment of dividends on the preferred stock that is part of Carlyle's financing will further drive the demand for additional cash flow. The coverage ratio calculations in the Application do not reflect the impacts of the required payment of the preferred stock dividends.

In this transaction, the risk of additional leverage could be borne by the rail shippers and customers as much as the financial investors. The following chart shows growth in the fixed charge coverage ratio produced by this transaction resulting from merger-related increases in fixed charges due to the issuance of additional debt and the assumption of liabilities, which is derived from GWI's recent 8-K SEC filing:

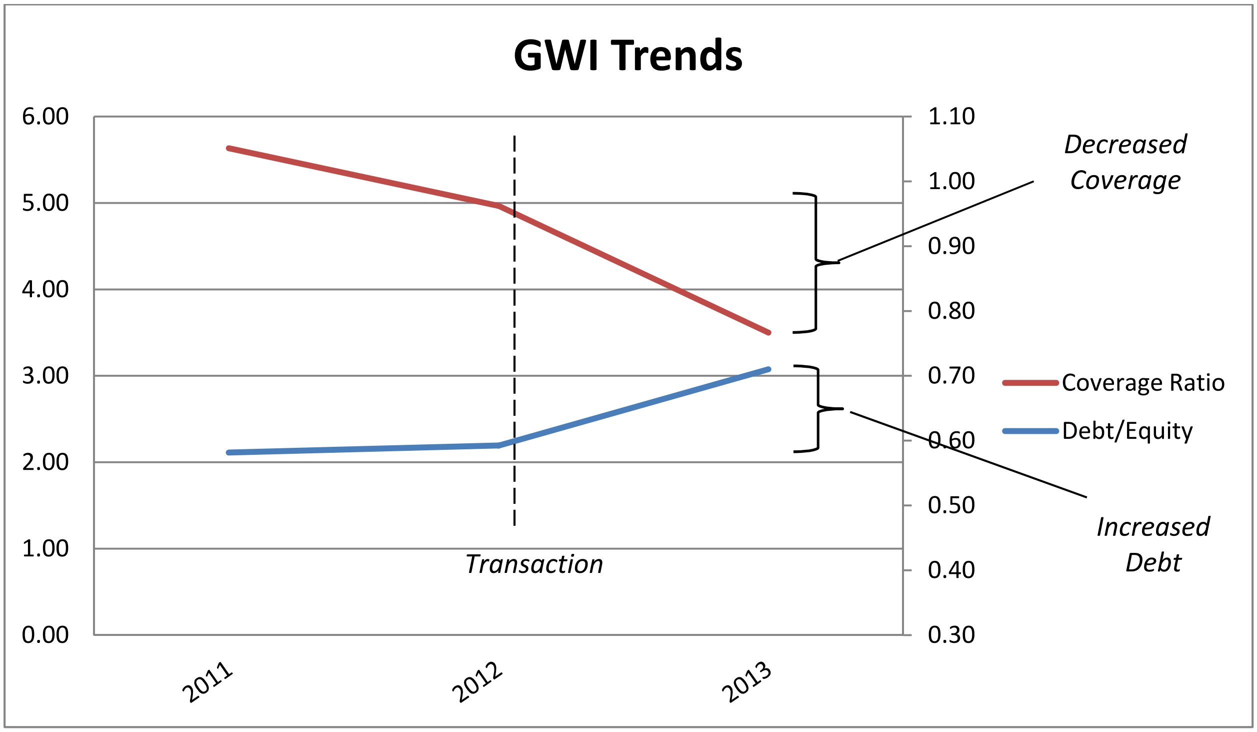


As this chart shows, as a result of the transaction, GWI's fixed charge coverage ratio will change by nearly 26%, forcing it to become much more leveraged as a result of the transaction.

As stated above, RA has now built into its financial statements non-freight charges as an important and growing component of its revenues, with such revenues being a "recurring, high margin cash flow stream." These charges are also built into the GWI pro-forma financial statements, and thus the existing level of RA cash flow from non-freight revenue can be expected to continue post-transaction. GWI has not stated whether it will incorporate these RA policies into its railroad systems. If RA's policies are incorporated, the current GWI railroad customers will face significant new financial burdens.

Additionally, if there is any subsequent downturn in the economy, GWI could ill afford to moderate non-freight revenue, as was the case in following the Fortress acquisition of RA. The pro-forma analysis done above assumes the same level of non-freight revenue charges that have had negative impacts on members of the CCRSRA membership. Financial stresses caused by this transaction could cause GWI management to look further at non-freight revenue as a high margin source of cash flow. This would even further exacerbate the negative situation that the CCRSA membership is experiencing today.

The next chart shows the change in GWI debt to equity vs. coverage ratio:



Although, GWI may have the ability to cover the fixed charges after this transaction, the debt level increases will alter the financing structure under which GWI has recently operated. Pressures to use and even increase non-freight revenue fees such as demurrage and storage will grow. Again, GWI has not explained what its plans are in terms of adopting RA's aggressive non-freight revenue programs, and this is an important issue that needs to be considered.

VI. <u>SUMMARY AND CONCLUSIONS</u>

Short line holding companies are typically highly leveraged and require substantial debt servicing. Transactions that result in a large stock or acquisition premium serve to increase the debt burden even further. When Fortress acquired RA, the resulting increase in debt servicing costs appear to have lead RA management to seek a relatively high margin source of revenue, i.e., non-freight revenue. The accessorial charges associated with non-freight revenue, specifically demurrage and storage charges, were dramatically increased for CCRSRA soon after the Fortress transaction was consummated and they have grown further since that time.

GWI's purchase of RA is another transaction that involves acquisition and stock premiums, along with substantial debt servicing. To maintain cash flow for the new entity, it is likely that GWI will have to maintain the same charges and practices that RA has imposed on CCRSRA members, and it may be in its financial interests to seek to expand those programs across its railroad systems as it integrates into GWI the RA railroad systems.

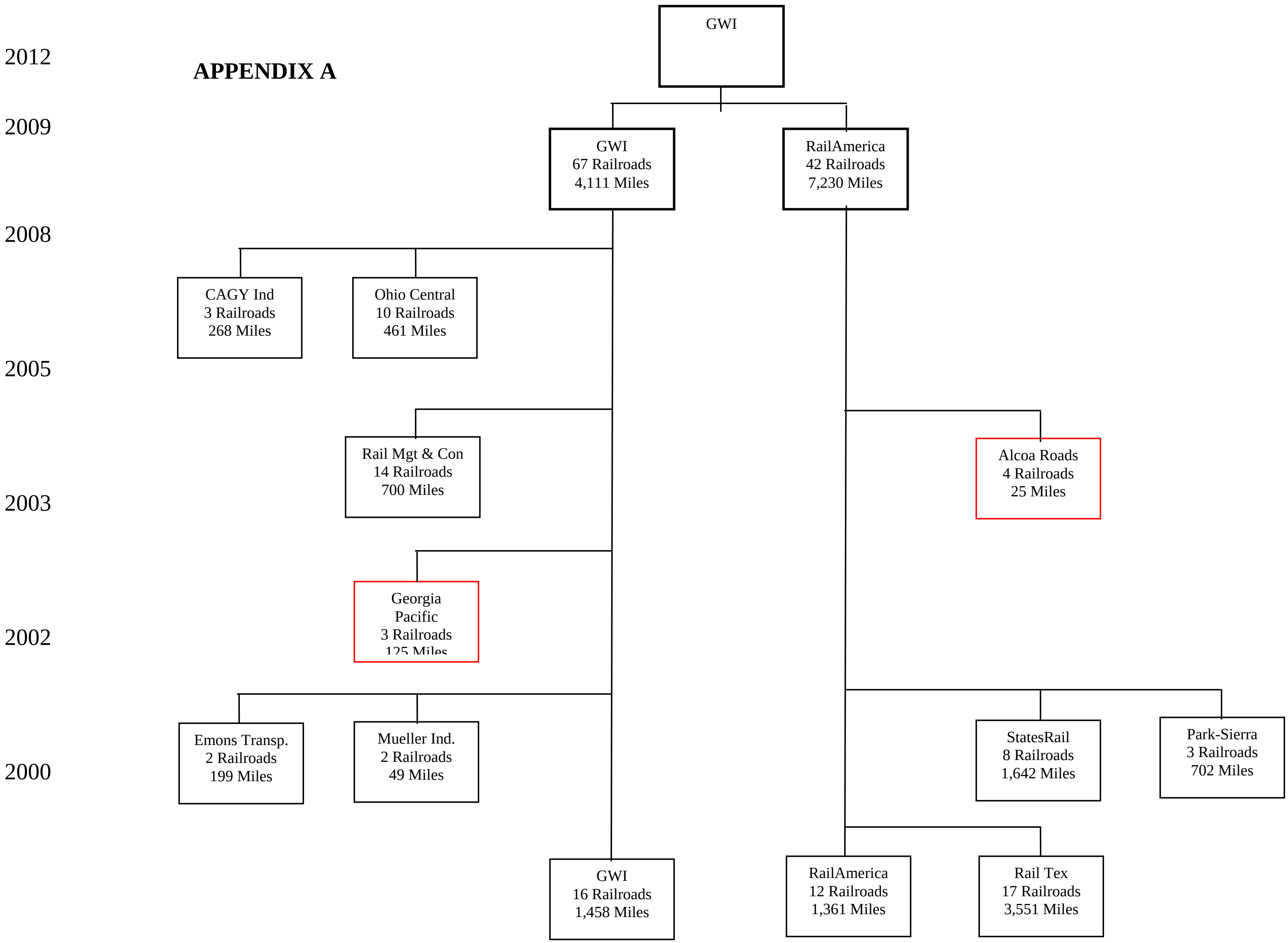
VERIFICATION

I, John Hoegemeier, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.

John Hoegemeier

Executed on October 2, 2012

APPENDIX A


2012
2009
2008
2005
2003
2002
2000
GWI
GWI
67 Railroads
4,111 Miles
RailAmerica
42 Railroads
7,230 Miles
CAGY Ind
3 Railroads
268 Miles
Ohio Central
10 Railroads
461 Miles
Rail Mgt & Con
14 Railroads
700 Miles
Alcoa Roads
4 Railroads
25 Miles
Georgia
Pacific
3 Railroads
125 Miles
Emons Transp.
2 Railroads
199 Miles
Mueller Ind.
2 Railroads
49 Miles
StatesRail
8 Railroads
1,642 Miles
Park-Sierra
3 Railroads
702 Miles
GWI
16 Railroads
1,458 Miles
RailAmerica
12 Railroads
1,361 Miles
Rail Tex
17 Railroads
3,551 Miles

APPENDIX B

BILBLIOGRAPHY

Fresno Council of Governments, *Business Plan for Operations of the SJVR in Fresno County,* Prepared by Railroad Industries Incorporated, Visalia CA; 2011

Genesee & Wyoming., *2009 Annual Report;* Greenwich, CT; 2010

Genesee & Wyoming., *2010 Annual Report;* Greenwich, CT; 2011

Genesee & Wyoming., *2011 Annual Report;* Greenwich, CT; 2012

Kern Council of Governments, *Kern County Rail Study Phase II,* Prepared by CDM Smith, Bakersfield, CA; 2012

RailAmerica; *2009 Annual Report;* Jacksonville, FL. 2010

RailAmerica., *2010 Annual Report;* Jacksonville, FL. 2011

RailAmerica., *2011 Annual Report;* Jacksonville, FL. 2012

San Joaquin Council of Governments, *California Inter-Regional Intermodal System (CIRIS),* Prepared by Tioga Group et al., Morgam, CA; 2012

San Joaquin Valley Regional Transportation Planning Agencies, *San Joaquin Valley Interregional Goods Movement Plan,* Prepared by Tioga Group et al., Fresno, CA; 2006

Surface Transportation Board., *Finance Docket No. 34972; FORTRESS INVESTMENT GORUP LLC, ET AL. –CONTROL EXEMPTION- RAILAMERICA, INC. ET AL. VERIFIED NOTICE OF EXEPMTION,* Fortress filing; Washington DC, December 2006

Surface Transportation Board., *Finance Docket No. 35123; FORTRESS INVESTMENT GORUP LLC, ET AL. –EXEMPTION FOR TRANSACTION WITHIN A CORPORATE FAMILY-. VERIFIED NOTICE OF EXEPMTION,* Fortress filing; Washington DC, March 2008

Surface Transportation Board., *Finance Docket No. 35654; GENESEE 7 WYOMING INC. – CONTROL – RAILAMERICA, INC, ET AL. RAILROAD CONTROL APPLICATION,* Genesee & Wyoming filing; Washington DC, August 2012

Tulare County Association of Governments, *East Side Business Plan,* Prepared by Railroad Industries Incorporated, Visalia CA; 2010

United States Security and Exchange Commission, *Form S-1 Registration Statement, July 27, 2009* RailAmerica filing; Washington DC, 2009

United States Security and Exchange Commission, *Form 424B4 Prospectus, October 13, 2009;* RailAmerica filing; Washington DC, 2009

United States Security and Exchange Commission, *Form 8-K Current Report Filing, September 12, 2012;* Genesee & Wyoming filing; Washington DC, 2012

United States Security and Exchange Commission, *Form 424B5 Prospectus, September 12, 2012;* Genesee & Wyoming filing; Washington DC, 2012

APPENDIX C

SD Freight Rail Consulting

John J. Hoegemeier, PhD.
Principal SD Freight Rail Consulting, LLC
San Diego, CA
www.sdfreightrail.com

Education

BS in Engineering; Illinois Institute of Technology, Chicago IL
MBA California State University Long Beach
PhD in Economics; University of California, Irvine

General Background

Areas of expertise and experience include economic assessment and cost-benefit analysis, rail costing analysis, grant and loan applications, engineering assessments and capacity studies, operating plans, risk analysis for freight rail operations, land use planning issues related to rail transportation, community impacts from transportation projects and environmental assessment, strategic rail planning, and local agency and government interaction.

Specific Areas of Expertise and Experience

- **Economic assessment and cost-benefit analysis.**
  - Wrote a detailed paper on the benefits of port and rail infrastructure in diverting truck traffic from San Diego area freeways. Designed an interactive spreadsheet with associated documentation to determine the impacts to regional highways of short line railroad abandonment, or the failure to upgrade short lines to support 286k rail cars.

- **Rail cost analysis.**
  - Rail costing experience using the Surface Transportation Board's Uniform Rail Costing System. Data and inputs for short lines were added to the program database for greater accuracy in determining relative costs. Analysis for specific moves using marginal and allocated costs has also been performed.

- **Grant and loan applications**.
  - Co-wrote application, analyzed public benefits, and assembled application package for a State grant of $7 million dollars for a rail yard project in Oregon.

- Assisted in the preparation of four applications for the California Proposition 1B Freight Improvement Bond. Those project applications totaled over $450 million.

- **Engineering assessments, operating plans, and capacity analysis.**
  - Provided preliminary evaluations of capability to handle 286,000 lb. rail cars using accepted research by the American Short Line and Regional Railroad Association, and using track software used by the US Army Corps of Engineers.
  - Conducted preliminary capacity analysis using parametric analysis of mainline capacity using interactive spreadsheets to determine incremental capacity from specific projects.
  - Assisted in developing operating plan to support daily 7 hour closure of LOSSAN Corridor during Del Mar Bluffs project, while maintaining full freight service.
  - Wrote a detailed capacity analysis for the San Diego Subdivision used by a Class 1 railroad and local agencies for future project planning.
  - Wrote feasibility study for unit vehicle train moves into the Port of Grays Harbor, WA.

- **Risk analysis**.
  - Performed grade crossing risk analysis for short line railroads using FRA data and software, designed interactive spreadsheets to determine relative benefit of track improvements in preventing derailments, and evaluated the relative risk of hazardous material movements using different truck and rail routings.

- **Land use planning, community impacts, and environmental assessment**.
  - Provided input to regional general plans and community plan updates. Conducted train noises assessments for projects in San Diego and National City.
  - Conducted a health risk assessment for a proposed project adjacent to a short line rail yard using accepted guidelines and software from the California Air Resources Board.

- **Strategic planning**
  - Conducted a detailed study on existing conditions for freight rail in San Diego and California. Recommended specific projects to expand capacity based upon existing markets and projected growth.
  - Provided inputs to the regional freight planning process in conjunction with other rail stakeholders to provide a list of prioritized projects for freight rail improvements on publicly owned track.
  - Analyzed regional rail lines and impacts of traffic growth using GIS software, and providing graphic outputs and data to regional transportation planners.
  - Performed a detailed analysis of freight rail grade crossing impacts in the region to assist in evaluating the most suitable candidates for grade separation projects.
  - Subcontractor in developing the SANDAG Freight Gateway Study in conjunction with HDR and Cambridge Systematics.
  - Subcontractor in designing and developing improvements on the San Diego Metropolitan Transit System SD&AE South Line

- **Local agency and government Interaction**
    - Appeared before the Port of San Diego Board of Port Commissioners, the San Diego City Council Land Use and Housing Committee, and the National City Planning Commission on freight rail issues.
    - Member of the SANDAG Regional Freight Working Group and the Transportation Priority Evaluation Committee for the regional Metropolitan Planning Organization.

- **Grant Applications**
    - Wrote cost benefit analysis for rail improvements for the Port of Corpus Christi as part of a TIGER IV application.
    - Wrote cost narrative and benefit analysis for rail terminal improvements for the Port of San Diego Tenth Avenue Marine Terminal as part of a TIGER IV application.

<u>Authored Papers and Studies:</u>

- Northern Baja California LPG Market - 2012
- Crude by Rail: Options for California – 2012
- Northern Baja Freight Rail Market - 2011
- A History of Short Line Holding Company Consolidation - 2010
- San Diego Auto Terminal Capacity Analysis – 2010
- San Joaquin Valley Railroad; History & Operations - 2009
- San Diego & Imperial Counties Freight Rail Information Book – 2009
- Grays Harbor Vehicle Unit Train Feasibility Study - 2008
- Allocation of Maintenance Costs On Joint Use Rail Corridors - 2007
- Freight Rail Capacity Outlook, San Diego Subdivision, 2020 - 2007
- Evaluating the Public Benefit of California Short Line Railroads (draft) – 2007
- Evaluating Public Benefit and Cost Effectiveness of Freight Rail Projects - 2007
- San Diego Rail Capacity Issues: 2006-2025 - 2006
- San Diego Freight Rail Market Report - 2006
- Field Observation and Preliminary Assessment: Tijuana & Tecate Line, Tijuana to Garcia – 2006.
- Health Risk Assessment San Diego & Imperial Valley Railroad San Diego Yard: Impact to Ballpark Village Project - 2005
- A Proposal for Allocating Track Maintenance Costs for Joint Operations of the San Diego Trolley Light Rail Transit and the San Diego & Imperial Valley Freight Railroad - 2005
- Prospects for the Freight Rail Market from the Port of San Diego - 2005
- Mexican Rail Market: Rail-to-Truck Modal Diversion Potential – 2004
- Rail Freight Carload Growth by Commodity, Export to Mexico, 1999-2003 - 2004
- Economic Benefit of Diverting Truck Traffic: San Diego Freight Facilities – 2004
- Methodology for Determining Marginal Costs of Additional Truck Traffic - 2004
- San Diego Freight Rail: Options for Sustained Growth – 2003

- Evaluating Short Line Railroad Traffic Growth Rates, and Applications for Carload Pricing (Dissertation) - 2003

Professional Affiliations

- American Society of Transportation & Logistics
- American Railway Engineering and Maintenance-of-Way Association
- Committee 16 – Economics of Railway Engineering and Operations

Organizational Affiliations

- Clients are represented at the following organizations:
    - Port of San Diego Marine Terminal Community Committee
    - National City Chamber of Commerce, Past Board Member
    - San Diego Working Waterfront Group