

EXPEDITED CONSIDERATION REQUESTED

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November 3 , 2016
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RICHARD BEST TRANSFER INC.)

1630 East Manning, #312A)

Reedley, CA 93654)

Complainant,)

v.)

Docket No. NOR 42149

UNION PACIFIC RAILROAD)

COMPANY)

1400 Douglas Street)

Omaha, NE 68179)

Defendant.)

PETITION FOR PRELIMINARY INJUNCTION

RICHARD BEST
TRANSFER, INC.

Peter A. Pfohl
Robert D. Rosenberg
Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
Telephone: (202) 347-7170
Facsimile: (202) 347-3619

DATED: November 3, 2016

Attorneys for Plaintiff

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I. INTRODUCTION

Pursuant to 49 U.S.C. § 721(b)(4) and 49 C.F.R. § 1117.1, Richard Best Transfer, Inc. (“Richard Best” or “RBT”), hereby petitions the Surface Transportation Board (“Board” or “STB”) for an emergency order to enjoin Defendant Union Pacific Railroad Company (“UP” or “Union Pacific”) from implementing the rate increases in UP Tariff 4053-C that took effect starting November 1, 2016, as they are unreasonable, unlawful, and discriminatory.

RBT’s request should be granted because the legal criteria for a preliminary injunction are fully satisfied: (1) RBT is likely to prevail on the merits because the tariff revisions are clearly unreasonable, unlawful, and discriminatory; (2) RBT will suffer irreparable harm for which there is no adequate legal remedy

because it will be put out of business and its workforce will lose their jobs unless the status quo is maintained during the pendency of this proceeding as the tariff revisions have their intended effect to drive away essential rail service to RBT and destroy the use of RBT's substantial facility investments; (3) UP will not suffer any material harm if its tariff revisions are delayed; and (4) a stay will benefit the public interest by allowing essential feed ingredients transload facilities to continue to compete for business on a level playing field and provide adequate storage to serve the needs of the dairy farmers in California's Central Valley.¹

As demonstrated below, the tariff revisions announced in UP 4503 – Feed Ingredients Adjustment (Announcement No. AG2016-50) (“Tariff UP 4053 Revisions”) specifically target RBT's transloading facility in Ivory, CA for a rate increase of \$250 per car, which equates to a \$25,000 penalty for a 100-car train, and the tariff targets other locations with similar penalties.² UP's penalty applies only to those locations where the San Joaquin Valley Railroad (“SJVR”) serves as UP's delivering agent, and not those competing locations that UP serves directly. UP's penalty places RBT at a grave competitive disadvantage.

¹ The Board uses the four-factor test for granting injunctive relief. *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977) (citing *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)), cited in, e.g., *Norfolk S. Ry. Co. – Acq. & Op. – Certain Rail Lines of the Delaware & H. Ry.*, FD 35793 (STB served June 12, 2015).

² The other locations to which UP's rate discrimination extends include RBT's facility in Hollis, CA, also served by the SJVR, that faces rates approximately \$125 more per car than its nearby competitor in Famoso, CA, which UP serves directly.

These rate increases at RBT-Ivory are massive, unexpected, and pose a significant and immediate threat to RBT's continued existence as well as competition for delivery of agricultural feed products in the Central Valley generally. RBT requests that the Board issue an order enjoining UP from implementing the Tariff UP 4053 Revisions until the Board is able to rule on the full merits of RBT's Complaint.

A. Factual Background

Plaintiff RBT is a full service transloading company headquartered in Reedley, California and has been in existence since 1994.³ RBT receives approximately 4,600 railcars per year consisting primarily of bulk agricultural feed ingredients for Central Valley agricultural users and producers, virtually all in unit train service.⁴ The principal feed ingredients by volume received by RBT include distiller's dried grains with solubles ("DDGS") (STCC 20859 and 20823), canola meal (STCC 20939), and gluten feed (STCC 2042175).⁵ RBT primarily serves the dairy industry as there are over 80,000 producing dairy cattle within a 20-mile radius of RBT's facilities in Ivory, CA ("RBT-Ivory").⁶ RBT also has a smaller transloading facility in Hollis, CA ("RBT-Hollis").⁷

³ Verified Statement of Charles L. Littlefield ("Littlefield V.S.") ¶¶ 1-2.

⁴ *Id.*, ¶¶ 5, 10.

⁵ *Id.*, ¶ 10.

⁶ *Id.*, ¶ 8.

⁷ *Id.*, ¶¶ 2, 7.

RBT's direct competitor at RBT-Ivory and RBT-Hollis is Western Milling.⁸ RBT's transloading facility at RBT-Ivory directly competes with Western Milling's transloading facility in Goshen Junction, CA ("WM-Goshen Jct").⁹ Likewise, RBT's transloading facility at RBT-Hollis competes with Western Milling's transloading facility in Famoso, CA ("WM-Famoso").¹⁰

RBT is actively working with Gavilon, a major nationwide feed ingredients supplier, to further develop and increase its operations at Hollis, CA.¹¹ Gavilon has been in direct talks with UP regarding the potential traffic increase and facility upgrades,¹² and Western Milling is also likely aware of RBT's interest in expanding its operations at Hollis, CA, as WM-Famoso is within a few miles of RBT-Hollis.¹³

UP announced its recent Tariff UP 4053 revisions without any discussion or input from RBT.¹⁴ The rate increases will only apply to RBT's and other SJVR-served locations, and not to Western Milling or other locations that UP serves directly. At RBT-Ivory, all traffic will be subject to a \$250 per car rate increase, which equates to a penalty of \$25,000 per 100-car train. Additionally,

⁸ *Id.*, ¶ 17.

⁹ *Id.*

¹⁰ *Id.* ¶¶ 17, 35-37.

¹¹ *Id.*, ¶ 7.

¹² *Id.*

¹³ *Id.*, ¶ 17, 35.

¹⁴ *Id.*, ¶ 24.

UP subsequently revised UP 4053 on October 19, 2016, with RBT-Hollis included in a separate group and it is being discriminated against in the form of UP tariff rates that are generally \$125 per car higher than those to WM-Famoso.¹⁵

UP has a history of discriminating against RBT. The previous discrimination was on a smaller scale, similar to what now exists at RBT-Hollis, and not as pervasive or pernicious as the harm now being inflicted at RBT-Ivory. In 2010, UP targeted a rate increase of \$125 per car for RBT's transloading facility at Conner, CA, which competed with Western Milling's transloading facility in Famoso, CA.¹⁶ Shortly thereafter, RBT sold its facility in Conner.¹⁷ RBT is now seeking to expand its Hollis facility to handle more traffic and compete with WM-Famoso as a dairy feed receiver, but UP has targeted RBT-Hollis for higher rates.¹⁸

¹⁵ For example, Item 4015-BB, DDG West Item, provides that rates for the CA Group, which includes WM-Goshen Jct and WM-Famoso, will have a rate from NE, Wood River of \$6,269 per car. In comparison, the rate for the CA Central Group, which includes RBT-Ivory, is \$6,519, \$250 more than competitor WM-Goshen Jct. Similarly, the rate for the CA South Group, which includes RBT-Hollis is \$6,394, \$125 more than competitor WM-Famoso.

¹⁶ *Id.*, ¶¶ 35-37.

¹⁷ *Id.*, ¶¶ 37-38.

¹⁸ Item 4015 was revised on October 19, 2016 and for the first time it lists WM-Famoso and WM-Goshen Jct as part of the CA Group, which for the most part receives a rate that is \$125 lower than the rate to the CA South Group, which includes RBT-Hollis.

The norm in the rail industry is to provide non-discriminatory rates to customers in the same geographic area.¹⁹ As a longstanding practice, and for at least the past five years, UP has followed this standard practice with respect to RBT-Ivory, making it part of the same traffic group and subject to the same rates as its local competitors that serve the California's Central Valley dairy industry.²⁰ This includes RBT's primary competitor, Western Milling that established a milling site off the UP at Goshen Junction, California in 2000.²¹ Western Milling's other California feed ingredients transload locations include Hanford and Famoso. While RBT is smaller than Western Milling, it has invested heavily to establish comparable unit train facilities that can accept unit trains at RBT-Ivory, completed in 2011,²² after it was encouraged to do so by UP and it was assured by UP that the upgrades would result in fair and equal treatment from the UP in the form of non-discriminatory unit-train rates versus RBT's competitors on UP's main line.²³

While RBT, as opposed to some of its competitors, is not directly served by UP, UP exclusively controls the rates to its facilities through a handling

¹⁹ Littlefield V.S. ¶ 23.

²⁰ *Id.*, ¶¶ 16, 22.

²¹ Western Milling,
<http://www.westernmilling.com/index.cfm?show=10&mid=44>.

²² Littlefield V.S. ¶¶ 11-12.

²³ *Id.*, ¶ 12-13.

carrier arrangement with the SJVR.²⁴ The SJVR that serves RBT has no pricing authority for through shipments, and instead receives a handling line fee for the service it provides from UP, with no independent SJVR-established switching fees that are absorbed by UP for any of the involved through service.²⁵

UP has provided no justification for the new tariff rate penalties, and RBT is unaware of any changes in practice or additional costs that would justify the rate increases.²⁶ UP has not cited any increased handling line charges as a potential justification for its tariff penalties. In fact, due to the crew change that UP performs in the Fresno Yard, UP likely saves costs when unit trains are interchanged with the SJVR to RBT-Ivory, instead of moving over UP track to WM-Goshen Jct. UP saves money by avoiding local crew and locomotive usage costs.²⁷ Use of the SJVR also takes traffic off the UP, which along the mainline is heavily trafficked and congested.²⁸ Therefore, any SJVR handling fee costs incurred by UP is offset by savings in personnel and equipment costs, and by gains in operational efficiency.²⁹

²⁴ *Id.*, ¶ 6, 17.

²⁵ *Id.*, ¶ 6.

²⁶ *Id.*, ¶¶ 32-33.

²⁷ *Id.*, ¶ 32.

²⁸ *Id.*, ¶¶ 30, 32-34.

²⁹ *Id.*, ¶ 32.

Despite the cost savings and operational efficiencies that the SJVR provides to UP, UP has communicated to RBT that it will provide the lower rate it is providing to Western Milling only if RBT relocates its plant on the UP line.³⁰ However, RBT does not have the option of relocating along the UP line as within the past five years it has \$6.85 million of completed and planned investment at its facility in Ivory, California that would be stranded if it attempted to move.³¹ Additionally, there are no suitable nearby locations on the UP's congested mainline that are practicable or feasible for any such possible RBT relocation.³² As noted *supra*, RBT initiated its improvements RBT-Ivory in 2011, when UP informed RBT that the upgrades were required in order to continue to receive non-discriminatory rates.³³ To date, RBT has invested \$4.85 million, and it has plans pending before Tulare County to construct a commodity barn at a cost of \$2 million.³⁴ As such, RBT made these investments with the understanding that UP would not apply discriminatory rates, and that it would be able to successfully compete with the other transloading facilities in the Central Valley now and in the future.³⁵

³⁰ *Id.*, ¶ 30.

³¹ *Id.*, ¶¶ 13-14, 30.

³² *Id.*, ¶ 30.

³³ *Id.*, ¶¶ 13-14.

³⁴ *Id.*

³⁵ *Id.*, ¶ 12-15.

When UP announced the rate increase, RBT immediately contacted UP to see if there was a remedy.³⁶ However, as discussed, unlike in 2011, RBT was not told to upgrade its facilities, but instead was told that in order to receive non-discriminatory rates it would need to relocate directly off the UP, which, again, is not economically or practically feasible.³⁷ UP also informed RBT that the UP 4053 revisions were designed to protect other receivers' investments in unit train facilities, even though RBT, has made numerous recent comparable upgrades and its RBT-Ivory facility qualifies as a Class I railroad approved unit train unloading facility.³⁸

UP is aware and does not deny that the rate increase is discriminatory and that this will destroy RBT's business and harm RBT's customers.³⁹ If the Board does not enjoin the rate increase, shipments by UP to RBT-Ivory for the three primary products targeted by the UP 4053 revisions will cease.⁴⁰ Without these shipments, and no rail alternative, RBT will lose 90 percent of its business at RBT-Ivory.⁴¹ Further, UP has informed RBT that if it is somehow able to generate new unit train traffic for different commodities, that UP

³⁶ *Id.*, ¶ 26.

³⁷ *Id.*, ¶ 30.

³⁸ *Id.*, ¶¶ 12-13.

³⁹ *Id.*, ¶ 28.

⁴⁰ *Id.*, ¶¶ 38-41.

⁴¹ *Id.*, ¶ 39.

will implement similar tariff penalties.⁴² UP's discriminatory actions place RBT's operations in immediate peril and without immediate relief from the Board in the form of a preliminary injunction, it will destroy RBT's business, force it to forfeit the substantial capital investments it has made, and harm important competition.⁴³

B. Tariff UP 4053 Revisions and the Present Dispute

As discussed *supra*, the Tariff UP 4053 Revisions will result in a \$250 per railcar penalty being assessed for all feed ingredients traffic received by RBT-Ivory. UP's subsequent revisions to UP 4053 on October 19, 2016 that will go into effect November 7, 2016, also clearly discriminate against RBT-Hollis. These rate penalties are unique to RBT, and other similarly situated locations on the SJVR, and are specifically designed by UP to target RBT. Western Milling, RBT's direct competitor, will be the immediate beneficiary of the Tariff UP 4053 Revisions, by continuing to receive traffic under the lower rates.

For example, Tariff UP 4053, Item 4431 for Corn Gluten Meal, has been revised to separate out the Ivory/Dinuba locations from the "Central Cal" group. The tariff now places RBT in its own separate group, with RBT being only entity receiving unit trains feed ingredients commodities in Ivory/Dinuba, making this a group of one.

⁴² *Id.*, ¶ 41.

⁴³ *Id.*

UP Item	Commodity	Origin/Destination	Train Group	Price 100-110 cars	Increase from Previous Rate
4431-Z	Corn Gluten Meal - Unit Train Rates	IA, Cedar Rapids/CA, Modesto	Central Cal	\$5,464.00	----
4431-AA		IA, Cedar Rapids/CA, Modesto	Central Cal	\$5,464.00	\$0.00
		IA, Cedar Rapids/CA, Ivory	Ivory/Dinuba	\$5,714.00	\$250.00
4431-Z		IL, East St Louis/CA, Modesto	Central Cal	\$5,452.00	----
4431-AA		IL, East St Louis/CA, Modesto	Central Cal	\$5,452.00	\$0.00
		IL, East St Louis/CA, Ivory	Ivory/Dinuba	\$5,702.00	\$250.00
4431-Z		MO, Kansas City/CA, Modesto	Central Cal	\$5,281.00	----
4431-AA		MO, Kansas City/CA, Modesto	Central Cal	\$5,281.00	\$0.00
		MO, Kansas City/CA, Ivory	Ivory/Dinuba	\$5,531.00	\$250.00

There is no geographical change or difference between the Goshen Junction, which remains in the Central Cal group, and Ivory, which is now in the Ivory/Dinuba group. In fact, the route miles for shipping to Ivory, CA are shorter than for shipping to Goshen Junction, CA. Ivory is located less than 20 miles from Goshen Junction by roadway,⁴⁴ and they have long been strong feed ingredients competitors for local dairy farms, and that competition is kept alive only if the two are on the same playing field, with UP applying non-discriminatory unit train rates. UP's new \$25,000/train penalty purposely and dramatically changes the competitive dynamics. There is no reason why a customer would contract with RBT if it can literally choose a

⁴⁴ *Id.* at ¶ 17.

different destination a few miles down the road and save \$25,000 in shipping costs. It also compromises current business relationships and contracts with customers who will now be forced to pay higher rates. UP's targeted tariff penalties inflict immediate and irreversible harm on RBT's business and its substantial facility investments, compromise its current business relationships, and impair RBT's ability to enter into any additional contracts for service.

II. ARGUMENT

Under 49 U.S.C. § 721(b)(4), the Board has the authority to issue an injunction enjoining UP from implementing the punitive rate increases in UP Tariff 4053-C.⁴⁵ The Board exercises this authority where a party meets the four criteria under *Holiday Tours*⁴⁶ criteria and shows: (1) it is likely to prevail on the merits; (2) it will be irreparably harmed absent an injunction; (3) issuance of the injunction will not substantially harm other parties, and (4) granting the injunction is in the public interest.⁴⁷ Here, RBT independently satisfies each element of the *Holiday Tours* criteria.⁴⁸

⁴⁵ *Public Views on Major Rail Consolidations*, 4 S.T.B. 586, 595 (2000) (“the injunction power [under § 721(b)(4)] . . . was designed not only to replace the rate suspension power, but also ‘to grant administrative injunctive relief to address threats of irreparable harm *** in the exemption context,’ as well as ‘in other areas of the Board’s jurisdiction.’”) (quoting and citing H.R. Conf. Rep. No. 422, 104th Cong., 1st Sess. 124 (1995)).

⁴⁶ *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977) (citing *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

⁴⁷ E.g., *Stagecoach Group PLC & Coach USA, Inc. et al. – Acquisition of Control, Twin America, LLC*, STB Docket No. MC-F-21035 (STB served Mar. 9, 2011) at 2 (“*Stagecoach Group*”); *R.R. Salvage & Restoration, Inc. & G.F. Weideman Int’l – Pet.*

A. RBT is Likely to Succeed on the Merits of this Dispute

The first element of the preliminary injunction test is to demonstrate a “substantial” likelihood of success on the merits.⁴⁹ Here, there is a “substantial (perhaps overwhelming) likelihood”⁵⁰ that RBT will prevail on its unreasonable practice and discrimination claims because: (a) UP has plainly imposed a targeted, substantial penalty that applies only to RBT and other SJVR-served destinations, but not to those locations that UP serves directly, such as Western Milling a Goshen Junction, that is in the same geographic region and receives the same traffic, in the same service, along the same route; (b) UP has cited no cost justification and there is no cost justification for the penalty since it is cheaper, or at least comparable, for UP to use SJVR to make deliveries to RBT-Ivory than it is for UP itself to deliver freight to Western Milling, especially as Goshen Junction is a further distance away from UP’s Fresno Yard than is RBT-Ivory; and (c) RBT-Ivory’s facilities are not inferior to those of Western Milling, they are both qualified Class I railroad unit train facilities, and it is no less deserving of protection.

for Investigation & for Emergency Relief Under 49 U.S.C. 721(b)(4) – Sec. Deposit for Demurrage Charges, Mo. & N. Ark. R.R., NOR 42107 (STB served June 30, 2008) (“R.R. Salvage & Restoration”).

⁴⁸ *League of Women Voters of U.S. v. Newby*, No. 16-5196, 2016 WL 5349779, at *3 (D.C. Cir. Sept. 26, 2016) (“*League of Women Voters*”).

⁴⁹ *League of Women Voters* at *5.

⁵⁰ *Id.*

Count I – Unreasonable Practice

Pursuant to 49 U.S.C. § 10702, a railroad common carrier must establish reasonable classifications and reasonable practices on matters related to its common carrier transportation or service. Here, UP has engaged in an unreasonable classification and unreasonable practice by singling out RBT-Ivory and other SJVR-delivered traffic for a substantial penalty when that traffic is otherwise identical in terms of the type of freight, type of service, route, receiving facilities, and profitability, except that UP realizes additional savings on the SJVR deliveries. Insofar as UP's purpose is to protect the facilities at the locations it serves directly,⁵¹ RBT's facilities at Ivory are at least as deserving of protection.

RBT and Western Milling both have nearby transloading facilities in the California Central Valley that receive unit trains of feed ingredients from UP and both serve the local dairy industry. Western Milling's facility at Goshen Junction is located 33.9 miles south from UP's Fresno Yard (PC Miler-Rail), and RBT-Ivory is located 26.6 miles south from UP's Fresno Yard (PC Miler-Rail), and thus distance is not a reason for imposing a penalty on RBT. Moreover, UP has retained UP-served facilities that are located substantially further south from RBT-Ivory in its preferred Central Cal Grain group. For example, UP revised Tariff UP 4053 Item 4431, Corn Gluten Meal – Unit Train Rates, to exclude RBT-Ivory from the Central Cal Train Group, but retained Western Milling's locations at Goshen Junction, CA and Famoso, CA. In particular,

⁵¹ Littlefield V.S. ¶¶ 17-30.

Western Milling's location in Famoso, CA remains in the same group and continues to receive a rate that is \$250/car less than the rate to Ivory/Dinuba, CA, even though Famoso is located 87.4 miles from the Fresno Yard (PC Miler-Rail), over 50 miles further from Fresno than RBT-Ivory (PC Miler-Rail). It is unreasonable for UP to blatantly discriminate in this fashion.

UP's tariff penalty and associated classification is not made reasonable in any respect because the SJVR serves as UP's delivering agent at RBT-Ivory and RBT-Hollis. As discussed, having the SJVR make deliveries at RBT-Ivory and RBT-Hollis in all likelihood saves UP money compared to making deliveries to WM-Goshen Jct and WM-Famoso. As Mr. Littlefield, who has extensive railroad management experience in the region confirms:

32. Finally, UP personnel have not provided any cost justification for its new tariff action, and I am aware of none. It is true that UP pays SJVR a handling line fee to reach RBT-Ivory. However, based on my understanding and experience, using the SJVR to effect ultimate delivery of freight transported by UP actually provides UP with cost savings and operating efficiencies, including crew savings, locomotive use savings, and congestion cost savings, as the SJVR can perform the operations using its own locomotives and crew, and on its own lines, at much lower costs than can UP.

33. In fact, it is my understanding that trains shipped to our competitor Western Milling-Goshen Jct. create significant added UP costs. For example, Goshen Jct is located a further distance from train origins than RBT-Ivory. Additionally, UP trains to Goshen Jct. must stop at Fresno, due to a change in UP crew districts, and obtain a new unit train crew for service to destination. Trains are then sent to Goshen Jct, and the crew and locomotives return to the Fresno Yard after delivery. Several days later, UP sends a

second crew and locomotive consist to connect to and retrieve the empty train and bring it back to the Fresno Yard, to await pickup by the crew arriving from next crew district. The requirement for separate trips to drop off and retrieve the unit train creates additional congestion along this busy UP main line, generally. Such actions significantly increase UP's costs and equipment and personnel resources expenditures, particularly compared to those experienced by SJVR in its RBT-Ivory service, making the SJVR and service to RBT-Ivory the more practical and lowest cost option for UP.

34. Therefore, a lower-cost short line railroad actually provides UP with a value added service and likely cost savings.⁵²

Short-lines such as SJVR typically have lower cost structures than the Class I railroads. UP is in a position to appropriate those savings because the SJVR likely has no ability to set its own division or alter that division independently. UP has not cited, and RBT is unaware of any efforts by the SJVR to increase its handling line fee or division, and certainly not anything in the magnitude of \$25,000 for a 100-car train.

UP has indicated that the purpose of the penalty is to help preserve the value of the investment that RBT's competitors have made in their facilities.⁵³ UP has invoked this concern before, in threatening rate increases at RBT-Ivory in 2011 (prompting RBT to enhance its facilities at the time) at Conner in 2010, ultimately causing RBT to sell those facilities.⁵⁴ However, benefiting competitors is not a reasonable justification, as RBT has made investments totaling near \$7 million at RBT-

⁵² *Id.* at ¶¶ 30-34.

⁵³ *Id.* at ¶ 29.

⁵⁴ *Id.* at ¶¶ 12, 37-38.

Ivory in the last five years alone, and is preparing or prepared to make additional investments at RBT-Ivory and at other facilities to enhance their competitiveness and ability to serve the local dairy cattle industry.⁵⁵ Favoring one competitor that is directly served over another competitor that is partly served by a captive short-line at the same or lower cost is inherently unreasonable, anti-competitive, and economically inefficient. Such actions violate the requirement that railroad classifications and practices be reasonable.

Count II – Unreasonable Discrimination

Common carriers such as UP cannot engage in unreasonable discrimination. “Unreasonable discrimination occurs when a railroad exacts different rates for (1) performing a like and contemporaneous service, (2) in the transportation of a like kind of traffic, (3) under substantially similar circumstances.”⁵⁶ In addition, “[a] rail carrier ... may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part.”⁵⁷

Here, UP’s unreasonable discrimination consists of the penalty that it has imposed on traffic moving only to RBT’s and other SJVR-served destinations, but not to Goshen Junction and other Central Valley that UP serves directly, when the traffic

⁵⁵ *Id.* at ¶ 14.

⁵⁶ *See Mr. Sprout, Inc. v. United States*, 8 F.3d 118, 125 (2d Cir. 1993) (internal quotes omitted) (citing 49 U.S.C. § 10741(a); *Dresser Indus. v. ICC*, 714 F.2d 588, 598 (5th Cir. 1983); *Nueces Cnty Navigation Dist. No. 1 v. ICC*, 674 F.2d 1055, 1060 (5th Cir.); *Harborlite Corp. v. ICC*, 613 F.2d 1088, 1091–92 (D.C.Cir.1979)).

⁵⁷ 49 U.S.C. § 10701(b).

involves the same freight, service, equipment, and routes; when RBT's transloading facility at Ivory, CA is comparable to Western Milling's transloading facility at Goshen Junction, CA; and the traffic moving to SJVR-served destinations is at least as profitable to UP as the traffic to destinations that UP serves directly.

The discrimination is particularly pernicious because UP has indicated that it is being done at the request and for the benefit of a competitor, and UP has acted to benefit this competitor and to penalize RBT previously.⁵⁸ Common carriers are prohibited from engaging in unreasonable discrimination, particularly when the purpose is to reduce competition. The fact that UP has utilized these tactics previously is an additional reason for the Board to grant injunctive relief.

UP has targeted RBT operations beyond those at Ivory. In particular, UP's latest revision of UP 4053 Item 4015, DDG West Item, clearly indicates that discriminatory rates also apply at Hollis, CA, where RBT is making improvements and plans to open a plant to compete with Western Milling's plant at Famoso, CA.⁵⁹ As with RBT-Ivory and Western Milling at Goshen Junction, these rates are for the same freight in the same service along primarily the same route, and differ only in the means of final delivery, where UP's direct service to RBT ends at its yard, and the service to Western Milling continues to the plant.

⁵⁸ Littlefield V.S. ¶¶ 28-32.

⁵⁹ *Id.* at ¶¶ 7, 35.

UP's has engaged in unreasonable discrimination against RBT and SJVR-served destinations in violation of 49 U.S.C. §§ 10701(b) and 10741(a) by imposing per train penalties of up to \$25,000 for otherwise identical transportation, for the purpose of favoring RBT's competitor.

B. RBT will be Irreparably Harmed Without an Injunction

To show irreparable harm, a party must demonstrate that (1) the harm will be “certain and great, actual and not theoretical, and so imminent that there is a clear and present need for equitable relief to prevent irreparable harm,” and (2) “the harm must be beyond remediation.”⁶⁰ Those requirements are easily met here. The Tariff UP 4053 Revisions will result in the decimation of RBT's feed ingredients transload business, and a preliminary injunction will preserve the status quo, and RBT's survival, until the Board is able to issue a decision on the full merits.

In *R.R. Savage & Restoration, Inc.*,⁶¹ the Board enjoined a railroad from implementing a tariff provision that threatened a business until the agency had time to evaluate the underlying dispute. RBT will be similarly immediately harmed as its

⁶⁰ *League of Women Voters, supra*, at *4 (internal quotations and citations omitted).

⁶¹ *R.R. Salvage & Restoration, Inc.—Pet. for Investigation & for Emergency Relief Under 49 U.S.C. 721(b)(4)—Sec. Deposit for Demurrage Charges, Mo. & N. Ark. R.R.*, NOR 42107 (STB served June 30, 2008) (Board enjoined the Missouri & Northern Arkansas Railroad Company, Inc. from instituting provisions of its tariff relating to credit and payment of security deposits, until the Board was able to rule on whether these provisions represented an unreasonable practice.).

existing customers will be forced to pay a higher rate and may not return, and its ability to attract business will be severely compromised.

RBT's competitiveness is linked directly to the transportation rates its customers pay to utilize its facilities. RBT's customers will be eager to avoid a penalty that amounts to \$25,000 for a 100-car train by taking their business elsewhere. RBT will quickly enter a death spiral if the penalty stays in effect because RBT will no longer receive the feed ingredients targeted by the UP 4053 tariff revisions and will lose 90 percent of its existing business at RBT-Ivory.⁶² Further, the UP has indicated that it will implement tariff penalties for any additional unit train traffic that RBT can generate, so RBT has no path forward for recovering or mitigating this loss, and will be unable to remain in business.⁶³

Waiting for a full decision on the merits is not a viable option. A review of recent unreasonable practice cases indicates that the merits decision could take up to three to four years.⁶⁴ RBT will be out of business long before that time. UP's penalty

⁶² Littlefield V.S. ¶¶ 27-28, 39-41.

⁶³ *Id.*

⁶⁴ *E.g., N. Am. Freight Car Assoc. v. Union Pac. R.R.*, NOR 42144 (complaint filed Mar. 31, 2015, and discovery has not been completed); *Reasonableness of BNSF Ry. Co. Coal Dust Mitigation Tariff Provisions*, FD 35557 (taking over 4 years from final complaint to decision on the merits); *State of Montana v. BNSF Ry. Co.*, NOR 42124 (over 2 years and 9 months from filing of complaint to merits decision); *N. Am. Freight Car Assoc. v. Union Pac. R.R.*, NOR 42119 (over 4 years and 10 months, 26 days from filing of complaint to merits decision).

thus represents a “certain and great” “irreparable harm,” and one that will otherwise “be beyond remediation.”⁶⁵

C. Issuance of an Injunction Will Not Injure UP and Advances the Public Interest

A preliminary injunction maintaining the status quo not “substantially harm” UP.⁶⁶ The relief will promote the public interest by preserving competition among transloading facilities in the Central Valley, and also further the STB policy of “act[ing] in a manner that will not unfairly favor one shipper or group of shippers over another.”⁶⁷

The balance of hardships between UP and RBT favors injunctive relief. As in *R.R. Savage & Restoration, Inc.*,⁶⁸ UP’s “survival” does not require implementing the tariff revisions, whereas UP’s penalties threaten RBT’s basic survival. UP’s \$25,000 per 100-car unit train penalty will incent RBT’s customers to take their business to competitors that are not served by the SJVR, such as Western Milling that is just down the road. The penalty represents a death-knell to RBT and its operations. In contrast, UP’s foregone penalty revenues, amounting to \$1.15 million for RBT’s annual traffic⁶⁹

⁶⁵ *League of Women Voters, supra*, at *4 (internal quotations and citations omitted).

⁶⁶ *Stagecoach Group, supra*, at 2

⁶⁷ *DeBruce Grain, Inc. v. Union Pac. R.R.*, 2 S.T.B. 776-77 (1997).

⁶⁸ *R.R. Salvage & Restoration, Inc., supra*, at 4.

⁶⁹ \$250/car times 4,600 cars/year equals \$1.15 million.

represents a mere pittance to UP, which reported net income in the third quarter of 2016 alone a net income of \$1.1 billion.⁷⁰

Furthermore, suspension of the penalty will not cause UP any actual harm, but will instead benefit UP. Without the penalty, UP will continue to receive the same revenues on traffic moving to RBT-Ivory as it receives on traffic moving to destinations it serves directly, such as Western Milling at Goshen Junction. However, UP benefits from the cost savings that SJVR provides by delivering traffic to RBT-Ivory, as opposed to UP's greater costs in effecting delivery itself to Goshen Junction. The injunctive relief will thus not cause UP any material harm at all.

In contrast, preserving RBT's operations furthers the public interest. RBT's elimination would diminish competition among the transloading companies in the Central Valley, to the detriment of the Central California dairy industry. Elimination of RBT as a competitor will contribute to higher prices that would harm the local dairy industry.⁷¹

Accordingly, the third and four elements of the *Holiday Tours* criteria favor issuance of the requested relief.

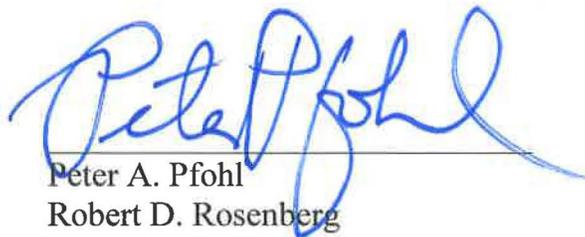
⁷⁰ Rob Knight, Union Pacific Third Quarter 2016 Financial Review (Oct. 20, 2016), http://www.up.com/cs/groups/public/@uprr/@investor/documents/investordocuments/pdf_up_3q2016_earnings_slides.pdf (slide 19).

⁷¹ Littlefield V.S. at ¶ 40.

III. CONCLUSION

For the reasons stated above, the Board should issue an emergency order to enjoin Defendant Union Pacific Railroad Company from implementing the rate increases in UP Tariff 4053-C that began taking effect on November 1, 2016.

Respectfully submitted,



Peter A. Pfohl
Robert D. Rosenberg
Katherine F. Waring
SLOVER & LOFTUS LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
Telephone: (202) 347-7170
Facsimile: (202) 347-3619

DATED: November 3, 2016

Attorneys for Richard Best Transfer Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of November, 2016, caused a copy of the foregoing Petition for Preliminary Injunction to be served by email upon counsel for Union Pacific Railroad Company, as follows:

Rhonda S. Ferguson
Executive Vice President and Chief Legal Officer
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

With a courtesy copy by email to:

Louise A. Rinn, Esq.
Regulatory Counsel
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179



Katherine F. Waring
An Attorney for Complainant

**Verified Statement of
Charles L. Littlefield**

Introduction and Purpose

1. My name is Charles Littlefield. I am Vice President of Operations of Richard Best Transfer, Inc. (“RBT”). My business address is 6801 Avenue 430, Reedley, CA 93654.
2. RBT is a full-service transloading company, and one of the larger rail receivers and transloaders in California. RBT has been in existence since 1994, and has its principal operations occurring at the rail station Ivory, sometimes referred to as the Ivory/Dinuba station (“RBT-Ivory”). An additional RBT transloading facility is at the rail station Hollis (“RBT-Hollis”).
3. I have 31 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. I also serve on Tulare County’s Rail Commission and on the board of directors of the Tulare County Economic Development Corporation. Furthermore, I have served as the President of the Central California Rail Shippers & Receivers Association.
4. I am submitting this Verified Statement in support of the Motion for a Preliminary Injunction filed in this proceeding by RBT. The purpose of this statement is to provide the Surface Transportation Board (“Board” or “STB”) with background on

RBT and the markets in which it participates; the significant investments and improvements it has made and is undertaking in its rail and unloading facilities to make its operations more efficient and competitive; its reliance on efficient, non-discriminatory rail service for its business success and livelihood; and recent tariff actions undertaken by the Union Pacific Railroad Company (“UP”) that have an immediate, substantial, and irreversible adverse impact upon RBT’s business, its employees and large associated workforce, and its continued existence unless enjoined by the Board.

RBT and its Operations

5. RBT receives, stores, and transloads agricultural commodities that it receives exclusively by railroad. We receive approximately 4,600 railroad carloads of agricultural commodities at RBT-Ivory annually, most of which is received in unit-train service, and the facility is equipped to handle significantly greater traffic volumes.

6. UP has exclusive control over the rates and service terms for through unit-train shipments to RBT-Ivory. RBT-Ivory is served by the San Joaquin Valley Railroad (“SJVR”), which is the agent and handling carrier for UP in shipping products to RBT-Ivory. UP controls the rail rates and service terms for traffic that it interchanges for delivery by SJVR to RBT-Ivory. SJVR has no pricing authority for through shipments that originate or terminate on its lines. SJVR receives a handling line fee, but there are no associated separate switching fees published by SJVR absorbed by UP.

7. RBT has also been working with Gavilon, a major, nationwide feed ingredients supplier, to develop and expand operations at RBT-Hollis, including significant upgrades to the track and infrastructure to receive unit-trains of feed

ingredients. Gavilon has had extensive discussions with UP regarding this potential development and increase in traffic at this SJVR-served location.

8. RBT exists as a business to help serve the needs of the Central California dairy cattle industry, which comprises one of the largest milk producing regions in the world. The vast majority of the commodities received by RBT-Ivory are bulk agricultural feed ingredients. These commodities are unloaded and stored by RBT, and are ultimately transloaded for delivery by truck to nearby dairy farms. Within a 20-mile radius of the RBT-Ivory off-loading facility are over 80,000 producing dairy cattle.

9. RBT contracts with various third-party shippers to receive, store, and transload agricultural commodities at RBT-Ivory, many of whom are large national or regional businesses. Our major customer is Archer Daniels Midland Company (“ADM”). RBT’s other grain shipper and handler customers include Gavilon, JD Heiskell, US Commodities, and Quality Grain. A workforce of 60 at RBT-Ivory helps sustain RBT as a going business enterprise.

RBT’s Track and Facility Investments

10. Given the very large feed requirements of the Central California dairy industry, almost all of the commodities received at RBT-Ivory move in unit train service, over long distances. The principal dairy feed ingredients consist of distiller’s dried grains with solubles (“DDGS”), a co-product of ethanol production, canola meal, and gluten feed – most all of which commodities are originated from the Midwest, such as from ADM’s large scale ethanol production facility at Columbus, NE (“ADM-Columbus”).

11. While RBT is a very small business compared to some of our competitors, the enormous track and facility investments and upgrades make our RBT-Ivory unit train unloading facilities comparable with those of other regional feed ingredients receivers. RBT-Ivory's facilities meet and exceed the railroads' specifications for unit train unloading facility service.

12. Prior to 2011, RBT-Ivory was capable of receiving unit train rail service, and did receive unit train service via UP, although the SJVR had to divide the train at destination into several "cuts" to fit into our receiving tracks. RBT was able to meet the needs of its customers under such arrangements, and we understood our customers/shippers received non-discriminatory, unit train rates comparable with our competitors located on UP's main line. However, we were eventually informed by UP that our competitors had complained about substantial rail investments made at their facilities, and that unless we upgraded our RBT-Ivory facilities to become a railroad approved unit train unloading facility, the station would no longer be eligible to receive non-discriminatory unit train rates. Without such comparable rates and service, RBT could not hope to continue to successfully compete as a regional feed ingredients receiver.

13. RBT has completed substantial upgrades in RBT-Ivory in order to make it a Class I approved unit train unloading facility and to further expand its capabilities. In 2011, RBT invested over \$3 million in track expansion and improvements to become a railroad qualified unit train facility. In 2015 and 2016, we invested an additional \$900,000 to install 3,000 feet of new rail trackage and switches.

As a result of these significant track infrastructure investments, we can now receive and hold 200 railcars on RBT-Ivory's tracks.

14. In addition to our significant track improvements, RBT-Ivory is making other substantial facility upgrades to improve our efficiencies and capabilities. During this year, RBT purchased and is installing a new hard car unloader system and structures at a cost of \$600,000, and constructing a large receiving pit at a cost of \$350,000. We have also completed plans to construct a large 175' x 500' commodity barn, which is now before Tulare County awaiting approval. In total, within an approximately five-year period, RBT will be investing \$6.85 million in track and facility improvements at RBT-Ivory.

15. RBT's substantial track and infrastructure investments at RBT-Ivory have enabled the railroads to serve our facilities more efficiently in unit-train service and accrue substantial operating cost savings over conventional manifest train service. Additionally, these investments have helped RBT-Ivory grow its business appreciably and improve its efficiencies to meet the growing needs of the nearby dairy farm industry. The resulting increase in our railcar volumes has benefited us, our customers, the SJVR, and UP.

16. In response to RBT's commitment, completion, and continued plans to invest heavily in its unit-train facilities at RBT-Ivory since 2011, UP has always been willing to provide its feed ingredients shippers (our customers) with non-discriminatory rates and service terms, and thereby help RBT attract new business and successfully compete against other area feed ingredients receivers. RBT has done everything right

from the vantage-point of the railroads and our customers to remain competitive and grow as a business. However, without non-discriminatory rail rates and service terms, RBT cannot hope to effectively compete or survive as a business.

RBT's Railroad Rates and Service

17. RBT's principal, direct feed ingredients competitor is Western Milling, Inc. located in Goshen, CA, less than 20 miles away by roadway, at Goshen Jct. on UP's mainline ("Western Milling-Goshen Jct"). A rail map reflecting the two locations, and the other competitive locations is set forth below.



18. Based on my long-railroad experience in the area, including as General Manager of SJVR, I have first-hand knowledge of railroad interchanges and operations in the area. RBT-Ivory is proud to have access to both UP and BNSF via SJVR. However, the access to BNSF access is extremely limited and restricted.

19. BNSF's Bakersfield Subdivision line between its Fresno Yard (Calwa) and Bakersfield (BNSF's line is depicted in green in the above map) intersects with the SJVR's lines at Fresno, CA and Hanford, CA. However, neither of those intersections provides SJVR with full access to BNSF. BNSF has no working interchange with SJVR at Hanford because UP has rejected any and all attempts to establish such an interchange citing its control of the underlying property. While BNSF has a working interchange with SJVR at Fresno, SJVR can only provide single car interline service in connection with BNSF because of physical track interchange limitations. UP has similarly used its claimed control of the underlying property at Fresno to thwart the possibility of BNSF-SJVR interline unit train service.

20. Thus, despite the existence of two possible BNSF interchanges with SJVR, to date UP has blocked BNSF competitive unit train access for RBT-Ivory, or any other customer on the SJVR.

RBT'S Dependence on Non-Discriminatory UP Rates

21. UP has long priced its dairy feed ingredients transportation service by public pricing tariff, structured to apply to defined groups within general geographic regions at origin and destination. UP Tariff 4053 is the pricing authority that has long been used by UP to apply to all Central California feed ingredients shippers and

receivers. Under UP Tariff 4053, all locations within a group normally receive the same rates to any given destination. Additionally, unit train shippers within the same geographic group receive the same unit train rates.

22. From at least 2011 until very recently, RBT-Ivory, as an established and certified UP unit-train facility, has always received the same tariff rates as nearby Western Milling-Goshen Jct under UP Tariff 4053. UP has designated both locations under the same broader geographic groups, depending on the specific commodity/STCC code. UP's standard longstanding practice under Tariff 4053 has been to group together regional receivers, usually under the "Central California Train Group," consisting of all of the stations of like receivers located anywhere throughout the San Joaquin Valley, regardless of whether they are served directly by UP or by the SJVR.

23. Based on my long-experience in and around the railroad industry, the presence of non-discriminatory rates and service terms in the shipment of agricultural commodities offered to like-destinations within the same geographic region is the norm. UP, and others, including BNSF Railway, normally treat all of their agricultural customers this way, regardless of whether they are served in single line-service, have access to multiple railroads, or are served by a handling line carrier, such as SJVR. It is extremely rare for a railroad such as UP to apply disparate agricultural commodity rates within the same group of stations in the same region, to vary rates within a given year, or to vary geographic groupings. To do so may create major instability in pricing and market unrest, customer disharmony, and business disruption, which UP has by all

appearances attempted to avoid through its long-standing practices of non-discriminatory pricing.

UP's Recent Tariff Revision Actions and RBT Impacts

24. Recently, without prior notice or consultation with RBT, UP announced the establishment of Tariff UP 4053 revisions, effective November 1, 2016, as follows:



BUILDING AMERICA®

UP 4053 - Feed Ingredients Adjustment

Announcement Number: AG2016-50
Categories: Livestock and Feed, Meals and Oils
Posted Date: September 22, 2016

Dear Union Pacific Customers,

Effective **November 1, 2016**, Union Pacific will be adjusting tariff **UP 4053** by **\$250/car** to the destinations listed below. Commodities impacted will be DDGS (STCC 20859 and 20823), Canola Meal (STCC 20939), and Gluten Feed (2042175).

Ivory, CA
Dinuba, CA
Conner, CA
Bakersfield, CA
Hanford, CA

If you have any questions please contact your Union Pacific representative.

25. Through its Tariff UP 4053 revisions, UP has imposed a substantial new \$250/car rate penalty on dairy feed commodities received by RBT. These penalties are unprecedented and punitive, amounting to a \$25,000 penalty on RBT-Ivory 100-car unit-train shipments.

26. After receiving UP's announcement, I immediately contacted UP and followed up with them on several occasions, all the way up to the assistant vice

president level in an attempt to get UP to reverse its new tariff announcement. I informed UP that its tariff was focused and targeted specifically at RBT, and the three principal feed ingredients products that it ships, canola, DDGS, and corn gluten, both in unit train service and in single-car manifest service.

27. I informed UP that its Tariff UP 4053 revisions appeared specifically designed to price RBT out of the market, and that they would destroy the use of RBT's substantial facility investments. I explained that the revisions also target all other locations on the SJVR where RBT or any other feed ingredients competitors could potentially be located, including RBT-Hollis.

28. UP has not disputed any of the above. In fact, UP has readily acknowledged that its Tariff UP 4053 revisions were designed to discriminate against RBT, in favor of customers on UP's own mainlines. UP has also not disputed that its tariff action will likely destroy RBT, putting it out of business and forcing it to forfeit the substantial capital investments it has made. Unfortunately, UP has expressed no concern about the impact of its actions on RBT, its customers, or the SJVR.

29. UP explained that its Tariff UP 4053 revisions were designed to protect other receivers' investments in their unit train facilities, even though, as discussed, RBT's unit train facility investments are fully comparable to those of any competitor, and I reminded UP of this fact. As discussed, RBT made its initial 2011 unit train facility investments only after UP approached it and suspended it from receiving non-discriminatory unit train rates during the pendency of the construction of the RBT-Ivory track upgrades.

30. UP's only other response to RBT to date was a gratuitous suggestion that RBT consider relocating its facilities on UP's main line. However, UP is fully aware, and I specifically reminded them, that such an option is completely impracticable and economically infeasible. UP has not even identified a suitable alternative location on its own congested nearby lines that could potentially be used by RBT, or that would be economically feasible. Additionally, UP has not disputed the fact that, even if such an economically feasible relocation site actually existed, RBT could not relocate given the massive investments that would be stranded at RBT-Ivory.

31. Besides RBT, I have been informed that some of our major customers, including ADM and Gaviion have contacted UP to strongly object to its new tariff, as has the SJVR. Unfortunately, UP has refused to consider reversing or suspending its initiative to date.

32. Finally, UP personnel have not provided any cost justification for its new tariff action, and I am aware of none. It is true that UP pays SJVR a handling line fee to reach RBT-Ivory. However, based on my understanding and experience, using the SJVR to effect ultimate delivery of freight transported by UP actually provides UP with cost savings and operating efficiencies, including crew savings, locomotive use savings, and congestion cost savings, as the SJVR can perform the operations using its own locomotives and crew, and on its own lines, at much lower costs than can UP.

33. In fact, it is my understanding that trains shipped to our competitor Western Milling-Goshen Jct. create significant added UP costs. For example, Goshen Jct is located a further distance from train origins than RBT-Ivory. Additionally, UP trains

to Goshen Jct. must stop at Fresno, due to a change in UP crew districts, and obtain a new unit train crew for service to destination. Trains are then sent to Goshen Jct, and the crew and locomotives return to the Fresno Yard after delivery. Several days later, UP sends a second crew and locomotive consist to connect to and retrieve the empty train and bring it back to the Fresno Yard, to await pickup by the crew arriving from next crew district. The requirement for separate trips to drop off and retrieve the unit train creates additional congestion along this busy UP main line, generally. Such actions significantly increase UP's costs and equipment and personnel resources expenditures, particularly compared to those experienced by SJVR in its RBT-Ivory service, making the SJVR and service to RBT-Ivory the more practical and lowest cost option for UP.

34. Therefore, a lower-cost short line railroad actually provides UP with a value added service and likely cost savings.

35. Additionally, as discussed above, UP and Western Milling are fully aware of RBT and Gavilon's plans to make substantial private investments to further develop and expand RBT-Hollis as a major unit train feed ingredients transloading facility. RBT-Hollis has the possibility to provide UP with appreciable additional business to meet the needs of the growing needs of the Central California dairy cattle industry, again at no added costs to UP. However, RBT-Hollis is located only a few miles from Western Milling's competing feed ingredients facility at Famoso, CA, as reflected on the above railroad map. Unfortunately, the UP has continued to issue rates that discriminate against RBT-Hollis, with the most recent revisions clearly separating Western Milling's Famoso location out for favorable treatment.

36. This is not the first time RBT has been unfairly targeted by UP in such a manner. RBT previously owned a feed ingredients transloading facility at the rail station Conner (“RBT-Conner”), located just south of Bakersfield, CA. The Conner facility is strategically located as it has three major dairy farms within its sightlines. It competes directly with Western Milling-Famoso, and in fact it is more favorably situated geographically, as it is located closer to the Bakersfield dairy farm market.

37. With no prior notice, in the summer of 2010, the UP created by tariff the separate “Conner Group,” and implemented \$125 per car penalties on shipments to RBT-Conner versus the rates charged to its competitor Western Milling-Famoso. In early August, 2010, Richard Best and I met with UP’s local and national Feed Ingredients managers after we had called UP to protest its new tariff penalty initiative. At our meeting, the two participating UP managers (one a senior business manager from Omaha) fully admitted that Western Milling had requested UP to implement the Conner rate penalty, and that UP responded “in order to protect their mainline investments.” In fact, we were further told by UP’s managers that Western Milling was upset that the Conner penalty was only \$125 per car, and that was not enough seeing as we were still in business.

38. RBT sold RBT-Conner to Quality Grain shortly thereafter. UP has maintained in effect this penalty, and as a consequence, Conner has not received any dairy feed ingredients since that time via UP to my knowledge (Conner is still BNSF served), except perhaps in extraordinary circumstances. Any regular UP service to Conner has ceased because of UP’s tariff actions, and the same will occur at RBT-Ivory

as a result of UP's new higher tariff penalty initiatives. Except unlike at Conner, RBT-Ivory does not have alternative BNSF unit-train competition to attempt to protect itself because of UP's initiatives to block BNSF access as discussed above.

Summary of RBT Impacts

39. The canola, DDGS, and corn gluten commodities targeted by UP's new tariff are the "big three" products received by RBT. Without them, RBT would lose 90 percent of its business. As explained, RBT can only use UP-interchanged traffic for unit trains at RBT-Ivory, since UP has blocked any BNSF unit train service option.

40. The UP tariff revisions negate the economic benefits for any our customers to send their freight to RBT in the normal course of business. To do so will cost them an additional \$25,000 per train, and they lose all competitive advantages of using RBT, even with our substantial facility investments and capabilities. RBT's major investment and expansion plans at RBT-Hollis to meet the needs of the California dairy industry will also be blocked. UP's action will ultimately put us out-of-business, harm our customers, and destroy competition.

41. Simply by the stroke of a UP pen, UP has put RBT in significant and immediate business peril. Furthermore, UP informed RBT that no matter what unit train revenue stream we try to develop other than canola, DDGS, and corn gluten, they will implement similar tariff penalties on those commodities as well, and block our development of other possible competitive product options. Unfortunately, the UP's motive and objective have been made clear to us: to price RBT out of the market in order

to favor a preferred competitor, or alternatively, and less plausibly, to move traffic from the SJVR to the UP.

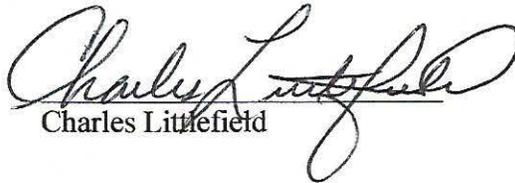
42. Further, we have been informed by SJVR that we constitute their largest single customer. UP's new tariff actions seemingly put SJVR in economic jeopardy, not just from the threatened loss of RBT-Ivory business, but also because UP's actions will place a dramatic chill on any similarly situated shippers or receivers, or potential shippers or receivers, on the SJVR from considering any new, private investments to initiate or grow rail service.

43. Meanwhile, SJVR has received significant federal, state, and local public funding, including \$14.5 million for the 2002-03 "Cross Valley Rail" project that restored and replaced almost 50 miles of SJVR track, and additional public funding for rail line improvements on the Fresno-to-Exeter line that serves RBT-Ivory. UP's tariff actions put these significant prior public investments in jeopardy and discourage future public partnerships with the short lines.

44. As mentioned above, I serve on the Tulare County Rail Commission and on the board of directors of the Tulare County Economic Development Corporation. Over 40 percent of business inquiries to the Tulare Economic Development Corporation request rail service. UP's new tariff initiatives harm the economic base of the County and come at a time when area shippers and receivers of railroad freight need these important investments and the railroads to reasonably serve them to meet their basic business needs, invest, and grow.

VERIFICATION

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


Charles Littlefield

Executed on November 2, 2016