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July 21, 2008

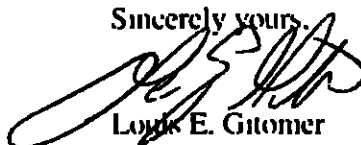
Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
Washington, D C 20423

Re Docket No. 42109, *Railroad Salvage & Restoration, Inc. and G F. Wiedeman International, Inc. - Petition for Investigation and for Emergency Relief Under 49 U.S.C. 721(B)(4) - Security Deposit for Demurrage Charges, Missouri & Northern Arkansas Railroad Company, Inc.*

Dear Acting Secretary Quinlan:

Enclosed for e-filing is the Response of the Missouri & Northern Arkansas Railroad Company, Inc. to the Petition for Emergency Relief. Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. 42109

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

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

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ARKANSAS RAILROAD COMPANY,
INC.**

Dated July 21, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42107

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

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

The Missouri & Northern Arkansas Railroad Company, Inc. ("MNA") opposes the Petition for Emergency Relief filed on July 15, 2008 (the "Petition") by Railroad Salvage & Restoration, Inc. ("RS&R") and G F Wiedeman International, Inc. ("GFW"), collectively referred to as the "Petitioners."

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

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

Petitioners² were granted a stay of the effectiveness of Tariff RA-1000, Item 1010 with regard to the payment of a security deposit.³ As a result of the June 30 Stay, M&NA amended Tariff RA-1000, Item 1010 to eliminate the “undue financial burden” that the Board relied upon in imposing the stay. M&NA acted to correct its tariff to comply with the concerns of the Board. In addition to amending the tariff, M&NA moved the Board to terminate the investigation of the no longer effective tariff. Despite a significant reduction in the potential security deposit that Petitioners might have to pay, Petitioners have sought a stay of the amended tariff. See Exhibit A. M&NA respectfully requests the Board to deny the stay.

BACKGROUND

RS&R and GFW consistently refuse to pay demurrage to M&NA. As a result of the refusal of RS&R and GFW to pay demurrage, M&NA was forced to file suit against RS&R⁴ and GFW.⁵ The suits seek to collect demurrage assessed against RS&R beginning in January 2005 and GFW beginning in September 2006. Both of these proceedings have been referred to the Board for a determination of the applicability of the demurrage charges that M&NA is seeking to collect.⁶

² *Railroad Salvage & Restoration, Inc., and G.F. Wiedeman International, Inc. – Petition for Investigation and for Emergency Relief Under 49 U.S.C. 721(B)(4) – Security Deposit for Demurrage Charges, Missouri & Northern Arkansas Railroad Company, Inc.*, STB Docket No. 42107 (STB served June 30, 2008) (the “June 30 Stay”).

³ No. 07-5017-CV-SW-Rel, *Missouri & Northern Arkansas Railroad Company, Inc. v. Railroad Salvage & Restoration, Inc.* in the United States District Court for the Western District of Missouri Southwestern Division.

⁴ Case No. 07AO-CC00112, *Missouri & Northern Arkansas Railroad Company, Inc. v. G.F. Wiedeman International, Inc.* in the Circuit Court of Jasper County, Missouri at Joplin.

⁵ See *Railroad Salvage & Restoration, Inc. – Petition for Declaratory Order—Reasonableness of Demurrage Charges*, STB Docket No. 42102, *G.F. Wiedeman International, Inc. – Petition for Declaratory Order—Reasonableness of Demurrage Charges*, STB Docket No. 42103 (STB served December 20, 2007) (the “Demurrage Proceeding”).

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

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

With regard to Item 90, the following discovery requests and responses occurred between M&NA and RS&R ⁹

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

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

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

Response: See Response to Interrogatory No. 13

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

⁹ See Exhibit A to the M&NA response in Docket No. 42107 for the full discovery responses of RS&R and GFW

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

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

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

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

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

Response: See Response to Interrogatory No. 13.

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

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

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

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

M&NA values its customers. M&NA does not want situations where its customers do not pay tariff charges and M&NA is required to resort to costly litigation to collect fees that are legitimately owed. M&NA has decided to adopt amended Tariff RA-1000, Item 1010 (Exhibit A) to replace Tariff RA-1000, Item 1010 to comply with the *June 30 Stay*. Instead of requiring a security deposit in the amount of the greater of past due demurrage or \$10,000, which the Board found objectionable, M&NA now requires the lesser of the amount of past due demurrage or \$25,000. Contrary to Petitioners blatantly misleading argument (1) if RS&R is denied credit by M&NA and fails to bring its demurrage account current by July 27, 2008, then under Tariff RA-1000, Item 1010, RS&R must provide a security deposit to M&NA of either \$25,000 or the past accrued demurrage charges, and (2) if GFW is denied credit by M&NA and fails to bring its demurrage account current by July 27, 2008, then under Tariff RA-1000, Item 1010, GFW must provide a security deposit to M&NA of either \$25,000 or the past accrued demurrage charges. Petitioners are not being required to provide a \$50,000 security deposit, although M&NA has developed the \$25,000 maximum payment per shipper in accord with the Board's discussion in the *June 30 Stay*. In the June 30, Stay, the Board was concerned "whether MNA can impose a security deposit provision that, in the aggregate, would require these two related small shippers

to post a nearly \$400,000 security deposit with MNA as a precondition for continued rail service ...⁷

Petitioners admit that RS&R and GFW are separate corporations. RS&R is owned by Mrs. Byrtha Lee Jackson and Mr. Ryan Jackson. GFW is owned by Mr. Gaylon W. Jackson. Petitioners do not claim that RS&R and GFW are alter egos or that they are commonly controlled. Nor is there any indication that one entity guarantees or is liable for the debts of the other. In the Petition, Petitioners claim to be small entities, but there is no evidence in the Petition. M&NA believe that Petitioners are not small business entities, that Petitioners, as the party bearing the burden have not proven that they are small entities, and that Petitioners are easily able to afford a maximum security deposit of \$25,000 in cash each, well below the cash settlement offered by Petitioners to resolve the demurrage claims.

ARGUMENT

Petitioners seek an order from the Board effectively staying the requirements of amended Tariff RA-1000, Item 1010 for each of Petitioners to individually submit a security deposit to M&NA in the lesser amount of \$25,000 or the outstanding accessorial charges, if Petitioners request for credit were denied and if Petitioners fail to pay accessorial charges after specific written demand referring to Tariff RA-1000. As is shown in the Petition, M&NA has acted according to the provisions of Tariff RA-1000, Item 1010. M&NA has demanded payment by RS&R and GFW. M&NA has given the Petitioners until July 27, 2008 to make that payment or face being required to submit a security deposit if their credit application is denied. The security deposit will be the lesser of \$25,000 or the accrued accessorial charges.

⁷ *June 30 Stay*, at 4

Having realized that the June 30 Stay was granted because the potential security deposit might have exceeded \$400,000 and that M&NA has substantially reduced the potential security deposit in accordance with the Board's guidance, Petitioners have crafted a new set of arguments that do not warrant the relief they seek.

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

1. Petitioners will not prevail on the merits.

Petitioners argue that the amended tariff should be included in the investigation instituted by the Board. Petitioners are wrong. The Board has never instituted an investigation in Docket No. 42107 for the amended tariff to impinge upon. Indeed, M&NA has amended the tariff that the Board thought might be offensive in the *June 30 Stay*, and has replaced it with a tariff that M&NA believes complies with the guidance the Board provided in the *June 30 Stay*. Therefore, M&NA has moved to dismiss the petition filed by Petitioners in Docket No. 42107 because the potentially offensive tariff has been amended in accordance with Board guidance, there is no longer a case or controversy before the Board, and for reasons of administrative efficiency.

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

Indeed, the proceeding is not "déjà vu" as Petitioners glibly contend, because the amended tariff follows Board guidance. The Board may terminate an investigation at any time, and certainly the lack of a case or controversy because a tariff has been amended and administrative efficiency are valid grounds not to commence an investigation.

Petitioners claim that M&NA was "making up tariff rules 'on the fly'" Petition at 5. Petitioners are wrong. Petitioners have created a challenging situation for M&NA. M&NA is required to collect lawful tariff charges. The Petitioners refuse to pay those charges. In addition, M&NA is required to become revenue adequate. However, in 2006 and 2007, M&NA lost money, substantial amounts for a short line railroad.⁹ To meet all of these goals, M&NA sought to require the Petitioners to pay cash in advance for demurrage through the security deposit process that the Board has approved. M&NA may have overreached by requiring a security deposit equal to the amount owed. Therefore, in accord with the Board's guidance, M&NA amended Tariff RA-1000, Item 1010 to follow the Board's guidance. M&NA is not "making up tariff rules 'on the fly.'" Instead, it is Petitioners who continue to refuse to comply with specific tariff rules, when it suits their purpose of evading the payment of demurrage. See the letters to M&NA from Petitioners' counsel advising Petitioners not to comply with the amended tariff Exhibit B.

M&NA followed the Board's guidance in developing the amended tariff. In recognition of the loss of their successful argument in the *June 30 Stay*, Petitioners now contend that the Board was concerned with the timing of the security deposits. The Board's decision reached no such conclusion and the partial quotation of the Board's decision amply demonstrates the weakness of Petitioners argument. The Board was concerned with the cost of the security

⁹ See the Highly Confidential filing by Entergy in Docket No. 42104, Counsel's Exhibits 19

deposit to two alleged small family businesses. M&NA followed the Board's guidance to resolve that issue. Indeed, reducing the maximum security deposit to \$25,000 also eliminated the claim that M&NA was trying to coerce the payment of the past due demurrage charges by threatening to cut off service if the full amount of the past due demurrage charges was either not paid or placed in a security deposit.

Petitioners also claim that they are entitled to options in providing a security deposit. They cite to *Rail General Exemption Authority – Miscellaneous Agricultural Commodities – Petition of G&T Terminal Packaging Co., Inc., et al., to Revoke Conrail Exemption*, Ex Parte No. 346 (Sub-No. 14A) (ICC served June 13, 1989) (*G&T Terminal*) for the proposition that they are entitled to alternatives to a cash payment, such as a letter of credit, as the basis for the security deposit. Petitioners overreach in their argument. G&T Terminal only addressed a letter of credit; it did not require railroads to provide shippers with a menu of choices for providing a security deposit. The cash security deposit is not directed solely at Petitioners, but at all shippers who are required to provide a security deposit as provided for in the amended tariff. M&NA is requiring a cash security deposit because the cash security deposit would guarantee payment to M&NA, while almost any other form could be altered before M&NA could collect or could require additional litigation.

Petitioners refer to the amended tariff as being retroactive. Petitioners more fully articulated this erroneous argument in the Docket No. 42107 proceeding.

Petitioners claim that it is an unreasonable practice for a railroad to increase its rates retroactively and therefore relying on a shipper's past actions under a different tariff to require the advance payment of a security deposit is also retroactive application of a tariff. Petitioners

are wrong because there is no retroactivity involved and because the Interstate Commerce Commission (the "ICC") explicitly or implicitly approved such action¹⁰

M&NA is not changing the rates paid for demurrage prior to July 1, 2008. Nor is M&NA revoking the credit that it extended to Petitioners prior to July 1, 2008. M&NA fully addressed this argument in its reply in Docket No. 42107, and adopts that argument here.

Petitioners have failed to carry their burden that they would prevail on the merits of this proceeding.

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

Petitioners contend that they cannot afford to pay a combined \$50,000 security deposit and continue to litigate the Declaratory Order Proceeding, and that as a result, M&NA will terminate their rail service resulting in a loss of business, which according to Petitioners is an irreparable injury.

Petitioners' carry the burden of proof here. M&NA challenges the claim that Petitioners are small business that would be burdened with a cash deposit of no more than \$25,000 each. The web site of RS&S (railroadrestoration.com) claims the following: (1) it has "well-trained construction crews can provide quality new track construction at the Industries most competitive prices. All construction and materials meet, or exceed Union Pacific or Burlington Northern Santa Fe specifications. All construction is guaranteed with a warranty period including labor and materials." (2) it "is a leading provider of Shortline and Industrial track maintenance. Servicing numerous industries with maintenance contracts including Short Line Railroads, Power Plants, Refineries, Fertilizer Plants, Grain Companies, Ports, and general industry. **EMERGENCY RESPONSE** is one of our best areas. We can provide emergency response to

¹⁰ See *Illinois Central*

our maintenance customers for derailments, and track conditions in two hours or less at most locations ” (3) it “specializes in Pre-Cast Concrete grade crossings. A 10-Year Warranty is what separates us from the competition. We install 10-FT wide panels and ties (AREA), steel framed, lagged down, shunted or non-shunted, on a specially designed base and sub-base assuring that your crossing will stay smooth and in place for many years. Produced by a major manufacture who supplies Class One Railroads ” and (4) it “maintains large inventories of relay rail and OTM. Also new spikes, bolts, washers, etc . . . We can fill orders for most sizes and types of rail, plates, angle bars, comp-bars, gage rods, other OTM, and turnouts (complete or parts). . .

SALVAGE - Do you have abandoned trackage, or surplus rail materials? Contact us and we will make you an offer to purchase and remove your abandoned track and or surplus relay or scrap rail and OTM. **SCRAP** - Are you a steel mill looking for scrap or reroll rail? We sell hundreds of ton's each month to steel mills. Call us with a price quote FOB our yard ” With regard to GFW, Mr. Jackson states “My work experience primarily consists of domestic and international scrap metals sales and logistics management. I handle scrap pick up from two Class One Railroads, covering territory in half the United States and Mexico. After our company has obtained and classified the material, I find markets to either sale the used rail products in, or find markets to sell the railroad scrap to. My clients are primarily west of the Mississippi River and in Mexico, but I can sell to just about anywhere material is needed ” See [linkedin.com/pub/3/947/A43](https://www.linkedin.com/pub/3/947/A43). Unless Petitioners web sites are mere puffery or are intended to mislead unwary visitors to those sites, they are not the small shippers they claim to be. The services they claim to provide and the materials they claim to buy and sell require significant capital. As the Board is well aware, the purchase and sale of hundreds of tons of scrap material requires substantial financial resources. The price of scrap steel is around \$1,000 per ton. The

purchase of 100 tons per month requires \$100,000. The purchase of hundreds of tons per month requires hundreds of thousands or millions of dollars in readily available cash, much more than the maximum of \$25,000 that M&NA might seek as a security deposit from each.

Not only have Petitioners failed to demonstrate that they are small shippers who would face a difficult time paying the security deposit that might be demanded by M&NA, their web sites paint a picture of very healthy businesses involved in transactions involving hundreds of thousands of dollars each month. Such a small relative deposit as required by the amended tariff would not harm Petitioners, and they have not provided any evidence to the contrary.

Petitioners have not demonstrated that they cannot pay the security deposits and continue the litigation. Petitioners have not submitted any financial information to substantiate their argument. In fact, their web sites create a completely different financial picture of Petitioners, than the one they have tried to create for the Board. As the party that must "carry the burden of persuasion on all of the elements," Petitioners have failed to show that they will suffer any harm, much less irreparable harm. Payment of a proper demurrage charge is not irreparable harm, indeed it is a cost of doing business in the manner that Petitioners chose.

3. M&NA will be substantially harmed.

M&NA has lost money in 2006 and 2007. Petitioners' failure to pay demurrage to M&NA contributed to M&NA's losses. M&NA has incurred extraordinary costs as a result of the flooding in Missouri this year. It is taking all appropriate steps to collect legitimate debts and avoid non-payment of those charges in the future. By Petitioners' calculation, M&NA has forgone approximately \$399,350 since January 2005.

M&NA is putting amended Tariff RA-1000 into effect to avoid this situation in the future. Petitioners have given M&NA no indication that they intend to pay demurrage in the

future M&NA is not in the business of financing Petitioners' demurrage charges. Instead, M&NA is a railroad that has a statutory obligation to collect demurrage and not to unreasonably discriminate. The amended Tariff RA-1000 is an attempt to prevent shippers from not paying demurrage, to reduce the cost of litigation to M&NA, and to stop shippers from treating M&NA as an entity that finances demurrage charges.

Petitioners again fail to carry their "burden of persuasion on all of the elements." M&NA will continue to suffer harm if it cannot implement a program to prevent Petitioners from evading their obligation to pay demurrage charges and force other shippers to subsidize their operations. Payment of demurrage by Petitioners will reduce M&NA's future losses and provide revenue to fund capital needed to recover from the Missouri floods.

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

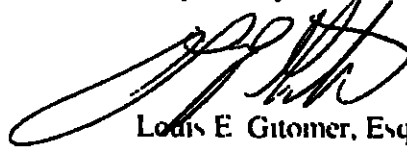
The interests of Petitioners are contrary to the public interest. They seek to enlist the Board in their effort to continue to evade the payment of demurrage charges. The public interest requires railroads to collect demurrage charges and not to unreasonably discriminate against shippers. Petitioners seek a stay for the purpose of continuing not to pay demurrage charges, forcing M&NA to incur litigation costs to recover those demurrage charges, and to be treated differently than those shippers who timely pay their demurrage charges. Petitioners have not met their heavy burden of demonstrating that a stay of the effectiveness of amended Item 1010 of Tariff RA-1000 is in the public interest.

CONCLUSION

Petitioners have not met the criteria for the Board to issue an emergency order effectively staying the effectiveness of amended Item 1010 of Tariff RA-1000, which will take effect as to Petitioners on July 28, 2008.

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

Respectfully submitted,



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Attorneys for MISSOURI & NORTHERN
ARKANSAS RAILROAD COMPANY,
INC.

Dated: July 21, 2008

EXHIBIT A – AMENDED TARIFF RA-1000, ITEM 1010



**RailAmerica
General Tariff**

**RA 1000
1st REVISED PAGE II-3**

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

(ITEM - 1010) SECURITY DEPOSITS FOR PAYMENT ACCESSORIAL CHARGES

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

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

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

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

In the case of a Consignor, Consignee or agent thereof receiving multiple carloads for Loading or Unloading, the total amount required to be deposited shall not exceed the lesser of the amount of existing past accessorial charges accrued by the Consignor, Consignee, or agent thereof due or \$25,000.

Once the Consignor, Consignee, or agent thereof is placed on Subscribing Carriers' authorized credit list, or has paid all outstanding accessorial charges and has given assurance to the satisfaction of the Carrier's credit office that future accessorial charges will be paid within the credit period prescribed in applicable tariffs, the Subscribing Carrier will refund the balance of the deposit to the Consignor, Consignee, or agent thereof by the 5th day of the month following that in which the equipment is released to the Subscribing Carrier after deducting any and all unpaid accessorial charges.

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

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

EXHIBIT B – RESPONSE TO DEMAND FOR PAYMENT FROM PETITIONERS

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TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

July 9, 2008

*By fax to 561-994-0396
w/confirmation by mail*

Mr James M. Tilley
Director-Revenue Protection & Collections
Rail America Operations Support Group, Inc.
5300 Broken Sound Blvd , N.W.
Boca Raton, FL 33487

Dear Mr Tilley

Please refer to your letter to Mr. G W Jackson of Railroad Salvage & Restoration, Inc (RSR), dated July 7, demanding payment of demurrage charges and threatening to require posting of a security deposit if such charges are not paid by July 23. Mr Jackson has referred your letter to me for response.

For the same reasons explained in my letter to you of today's date in behalf of G.F. Wiedeman International, Inc, I have recommended that RSR not pay the involved charges in response to your threat. The injunction referred to in that letter also precludes application of the security deposit provisions to RSR until further Surface Transportation Board order. The action threatened in your letter would violate the injunction and subject your company to sanctions for contempt.

Very truly yours,

Tom McFarland

Thomas F McFarland
*Attorney for Railroad Salvage
& Restoration, Inc*

TMcf kl wp8 011322MLJMT2

cc Louis Gitomer, Esq., by e-mail to *lou_gitomer@verizon.net*
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mcfarland@aol.com

THOMAS F. MCFARLAND

July 9, 2008

*By fax to 561-994-0396
w/confirmation by mail*

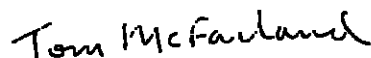
Mr. James M. Tilley
Director-Revenue Protection & Collections
Rail America Operations Support Group, Inc.
5300 Broken Sound Blvd., N.W.
Boca Raton, FL 33487

Dear Mr. Tilley.

This refers to your letter of July 7 to Mr. Ryan Jackson of G F Wiedeman International, Inc. (Wiedeman), demanding payment of \$74,395.18 in demurrage charges, and stating an intent to require Wiedeman to post a security deposit of \$25,000 on July 23 if those demurrage charges have not been paid by that date. Mr. Jackson has referred your letter to me for reply.

In a decision in its Docket No. 42107, issued on June 30, 2008, copy attached, the Surface Transportation Board enjoined Missouri & Northern Arkansas Railroad from applying the security deposit provisions of its tariff to Wiedeman until further order. Accordingly, I have recommended that Wiedeman not pay the involved demurrage charges in response to your threat. Please be advised that the action threatened in your letter would constitute a violation of the effective injunction that would expose your company to sanctions for contempt.

Very truly yours,



Thomas F. McFarland
Attorney for G F Wiedeman
International, Inc.

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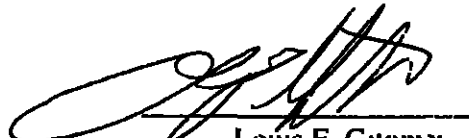
cc Louis Gitomer, Esq., by e-mail to *lou_gitomer@verizon.net*
Mr. Ryan Jackson, *ryan1308jackson@yahoo.com*

CERTIFICATE OF SERVICE

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

Daniel D. Whitworth
Whitworth, McPherson & Longnecker, L L C
626 Byers Avenue
Joplin, MO 64801

Thomas F. McFarland
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Louis E. Gitomer
July 21, 2008