

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 36311**

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**NORFOLK SOUTHERN RAILWAY COMPANY**  
**REPLY TO PETITION FOR DECLARATORY ORDER**

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Norfolk Southern Railway Company (“NS”) requests that the Board deny ARI Railcar Services LLC’s (“ARI”) Petition for Declaratory Order (“Petition”). This dispute is straightforward – in late 2018 and early 2019, ARI experienced an irregular surge in demand, which resulted in a large number of cars congesting NS’s serving yard and higher-than-normal storage charges, and now ARI wants the Board to declare that ARI may enjoy 100% free storage of cars on NS’s property. There is no basis for ARI’s requested relief.

There is no mystery surrounding what caused the sudden, temporary increase in storage charges. The rise in storage charges that ARI experienced was due to unusual traffic volumes from ARI’s customers, especially one particular customer. While ARI has ample capacity to handle the ordinary demand for rail car repair services, this surge in demand overwhelmed ARI’s capacity, forcing NS to store hundreds of railcars in its yard while awaiting placement into the repair facility. NS billed ARI for that service.

ARI is plainly liable for these storage charges under the applicable tariffs. NS-8002 states that storage charges “will be assessed against the repair facility” (Ex. 1, NS-8002-A, Item 3000, Part D), and NS-6004 explains that the charge will be \$60 per car per day (Ex. 2, NS-6004-D, Item 1010). This \$60 rate is a longstanding rate that has not

increased since at least February 2009. Indeed, ARI has paid storage charges at this facility in the past, thus confirming by its course of conduct that NS's tariffs apply to it.

ARI's preoccupation with its alleged lack of fault is irrelevant to whether it must pay for the storage services provided by NS. In the first place, ARI has not proven that it is free from fault; it presents no evidence that it was effectively managing its pipeline or that it was taking meaningful steps with its customers to reduce incoming volume in light of the backlog at its facility. Regardless, it has been well recognized for decades that demurrage (including storage of private railcars)<sup>1</sup> is not a fault-based system:

"Demurrage may properly be assessed where the detention occurs through no fault of the shipper, even though the cause of the detention is beyond the shipper's control."

*Chrysler Corp. v. N.Y. Cent. R.R. Co.*, 234 I.C.C. 755, 758 (1939); *id.* at 763 (explaining that the Commission "has uniformly held" that even labor strikes "are no defense to the payment of demurrage," as well as "any other plant disability that prevent[s] the normal unloading of in-bound cars, such as fire, breakdown of machinery, and the like. To hold otherwise would ... open the door to laxity on the part of the shipper in exercising due diligence in the handling and disposition of the affected cars and might lead to most undesirable results."). This remains the law today. *See, e.g., Norfolk S. Ry. v. Groves*, 586 F.3d 1273, 1276 (11th Cir. 2009) ("[D]emurrage charges are properly assessed even if the cause for the delay is beyond the party's control, unless the carrier itself is responsible for the delay."); *Foreston Coal Int'l, Inc. v. Baltimore & Ohio R.R. Co.*, 349 I.C.C. 495, 500 (1975) ("The law is well settled that assessment of demurrage charges in

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<sup>1</sup> The term "demurrage" is used herein to encompass charges for storage of private railcars on railroad property. *See Demurrage Liability*, STB Docket No. EP 707, at 15 (served April 11, 2014) ("EP 707") (Board precedent has "previously stated that demurrage charges may be applied to privately owned cars when held on railroad property because such charges 'compensate the railroad for use of its assets (i.e., the space on its track or at its yards), and they encourage more efficient use of freight cars on its system.'"). As such, at times herein, NS uses the terms "demurrage" and "storage" interchangeably.

no way depends upon a finding of shipper or consignee fault.”), *aff’d Island Creek Coal Sales Co. v. ICC*, 561 F.2d 1219 (6th Cir. 1977).

While it is true that a railroad cannot collect demurrage or storage charges caused by railroad fault, ARI failed to meet its burden to prove NS somehow contributed to the longer-than-usual storage. ARI’s only claim of NS fault is that in the midst of this surge in shipments to ARI, NS should have provided first-in-first-out (FIFO) service or moved the facility to “closed-gate” status. Neither would have helped. NS prefers to provide FIFO service during ordinary circumstances, and NS often voluntarily places the longest-waiting railcars into the repair facility. But FIFO service was impractical with over 100 railcars packed in the NS yard awaiting placement and NS forced to store railcars on mainline siding to avoid gridlocking the yard. The solution in that circumstance was not to force NS to switch around dozens of railcars to find and place the “first in” railcars; the solution was to place railcars into the repair facility as quickly as possible. That is exactly what NS did. Similarly, moving to closed gate status at the peak of the congestion period would not have helped, as open gate status provides the best flow for fluidity and service.

No railroad can be forced to provide free storage of private equipment, as urged by ARI. A bedrock principle of regulatory law is that the STB cannot require a railroad to allow others to use its property without just compensation under pretense of regulating the common carrier obligation. *Stone v. Farmers’ Loan & Trust Co.*, 116 U.S. 307, 331 (1886) (“Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law.”). Accordingly, in *Snyder & Swanson, Inc. v. Pennsylvania Railroad Co.*, 281 I.C.C. 355 (1951), the ICC ruled that in computing the compensatory portion of the demurrage charge, “every day must be counted *without free time* for loading and unloading, and without any allowance for Sundays and

holidays.” *Id.* at 357 (emphasis added). This long-standing principle flows logically from the Supreme Court’s pronouncement that even common carriers are not required to provide free services, whether in the form of detained railroad-owned equipment or temporary storage of private equipment on the carrier’s facilities. *Stone*, 116 U.S. at 331.

Finally, NS’s reasonable storage charges ultimately had the desired result of abating the congestion. The accepted dual purpose of these charges is to compensate NS for the use of its facilities as storage and to encourage ARI to take steps to quickly alleviate the congestion at its facility to the benefit of NS and the entire shipping public. That is precisely what happened here. NS has no clear insights into what steps ARI took, but within months of the issue arising, the backlog of railcars was addressed, and operations at the yard and repair facility returned to normal fluidity, with no additional storage charges assessed.

In sum, the congestion was caused by an unusual surge in demand at the ARI facility, and ARI was on notice that it was liable as a repair facility for the same kind of storage charges it had incurred and paid in the past. There is no support for the allegation that NS was at fault for this surge in demand, nor must NS provide free time for the storage of private equipment on its facilities. The Board should therefore deny the Petition.

**Section I** sets forth the background to this dispute. **Section II** responds to the Petition by showing that (1) ARI is liable for the charges under the clear language of the applicable tariffs and the Board’s EP 707 ruling; (2) ARI is liable even if the storage of private equipment was not caused by ARI; (3) ARI’s claims of NS fault lack support and merit; and (4) NS cannot be compelled to provide free storage time. In support, attached is a Verified Statement by Steve Ewers, describing the surge in traffic to the ARI facility; detailing NS efforts to work with ARI; explaining why shifting to closed gate or FIFO in early 2019 would only have worsened congestion problems; and demonstrating that

ARI had notice of its responsibility to pay the storage charges and had in fact paid prior storage charges without objection in the past.

## **I. BACKGROUND**

The background to this dispute is described more fully in the attached Verified Statement of Steve Ewers.

Demurrage, including storage for private railcars, is specifically authorized by Congress, and demurrage and storage charges have long been recognized by the Board and its predecessor as essential tools to incentivize efficient freight car utilization and network fluidity. When cars are held at serving yards because a railcar receiver is unable to receive them, that congestion can create real problems for many customers that depend on efficient rail service. Reasonable demurrage and storage charges help to provide the proper incentives to keep rail cars moving and keep the network fluid and resilient. *See Demurrage Liability*, STB Docket No. Ex Parte 707, at 2 (served Apr. 11, 2014) (“EP 707”); *N. Am. Freight Car Ass’n v. BNSF Ry. Co.*, STB Docket No. 42060 (Sub-No. 1), at 1-2, 8 (served Jan. 26, 2007).

From a network fluidity perspective, it does not matter whether a railcar sitting in a serving yard is waiting for a customer to receive it for loading or unloading, or whether it is waiting to be delivered to a railcar repair facility. Verified Statement of Steve Ewers at 2-3 (“V.S. Ewers”). Each car takes up the same space and uses the same network assets. *Id.* For that reason, NS’s demurrage and storage tariffs explicitly apply to railcar repair facilities like the ARI facility here. *Id.* Specifically, NS-8002-A has a dedicated Section 3 titled, “RULES AND CHARGES FOR HANDLING RAIL CARS FROM AND TO REPAIR, STORAGE, DISMANTLING, OR CLEAN OUT FACILITIES.” Ex. 1, NS-8002-A, Section 3. That provision clearly provides that the repair facility is responsible for storage charges: “Holding/Storage charges will be assessed *against the repair facility* as stipulated in Freight Tariff NS 6004-Series.” *Id.* at Section 3, Item 3000,

Part D (emphasis added). Tariff 6004 sets forth the applicable storage charge (here, \$60 per day). Ex. 2. NS-6004-D, Item 1010.

Under normal circumstances, ARI does not experience significant storage charges because it has ample space to handle expected demand. V.S. Ewers at 5. But during the end of 2018, ARI experienced an irregular surge that overwhelmed its facility. *Id.* In particular, an unusual increase in shipments from one particular customer created local congestion. *Id.* at 6. ARI acknowledged that the surge was unusual and told NS, “as previously stated this is not our norm, but has been the exception.” Ex. 4 at 7 (Jan. 11, 2019 e-mail from BJ Thompson (ARI) to Daniel Juhasz (NS) et al.).

The only immediate recourse to address this surge in demand was for ARI to repair its inventory of private equipment as quickly as possible and for NS to quickly remove repaired railcars to make room for the growing number of railcars in storage awaiting placement. V.S. Ewers at 7. There is no indication that NS missed any switches during this period of congestion or that ARI delayed the repair and release of railcars. *Id.* As will happen from time to time, there was simply more demand for repair services at this facility than ARI could accommodate immediately. *See id.* at 5-7.

ARI and NS did explore two options to minimize the storage charges, but neither would have been helpful. In the midst of the congestion, ARI asked NS to move to a first-in-first out (FIFO) approach to the placement of railcars. *Id.* at 7-8. NS’s preference is to deliver the oldest dwelling cars first, so NS and ARI’s interests were aligned. *Id.* at 8. However, by January 2019, NS was holding over 100 cars on its property for ARI, with some of those cars spilling onto main-line sidings. *Id.* In a period of such severe congestion, NS concluded that trying to deliver the oldest railcar first was impractical. *Id.* The time and expense it would have taken to pull unwanted railcars out of the NS yard—in order to reach the “first in” railcar that would be buried within the railyard—would have exacerbated the situation. *Id.* In NS’s judgment at the time, ARI’s request would have added little but delay and inefficiency. *Id.*

Alternatively, ARI asked if moving to “closed gate” would be appropriate. But again, by the time ARI asked for closed-gate service, there were already over 100 cars sitting in NS’s yard, waiting to be moved to ARI. *Id.* NS concluded it would be impractical to implement closed-gate service in the midst of the backlog—a multitude of cars had already been constructively placed in the yard, so allowing ARI to pick and choose which car it wanted and when was not realistic. *Id.* As NS explained to ARI, moving to closed gate at that point would not improve the congestion, but, rather, “open gate status provides the best flow for fluidity and service.” Ex. 4 at 1 (Apr. 7, 2019 e-mail from Adrienne Grant (NS) to Vic Bowers (ARI)).

NS took action to help as much as it could with the congestion, V.S. Ewers at 8-9, explaining to ARI that it was “increasing service ... as a part of a greater effort to increase our network velocity, fluidity and service” and “re-aligning our crew schedules and yard operation in order to maintain flow of traffic and provide consistent service.” *Id.* NS further explained to ARI that “[s]torage charges with ARI are in line with everyone else on [the] tariff. The change to closed gate has been posed but this isn’t optimal because it prevents cars from moving quickly from yard to Customer. The goal is for cars to arrive and depart serving yard within 24 hours.” *Id.* at 3 (Jan. 23, 2019 e-mail from Daniel Juhasz (NS) to Vic Bowers (ARI)).

Thankfully, the period of severe congestion resolved itself through the combined efforts of both parties. While NS does not have complete visibility into the steps taken by ARI, it appears that the backlog of equipment awaiting repair was addressed by ARI’s efforts to quickly repair and release existing inventory and NS’s efforts to pull repaired railcars and replace them with stored inventory as quickly as possible. V.S. Ewers at 9. Once the surge in demand passed, normal fluidity was restored. No storage charges have been billed to ARI at this facility for the months of May and June. *Id.*

## II. THE PETITION FOR DECLARATORY ORDER SHOULD BE DENIED.

ARI asks the Board to declare that it is entitled to completely free railcar storage on NS's property. Specifically, ARI asserts that it is not responsible for the storage charges under the applicable tariffs or, alternatively, that the application of those charges to ARI would be unreasonable under the circumstances. Both positions lack merit and should be rejected by the Board.

### A. ARI Is Responsible for the Storage Charges Under NS's Tariffs.

Under Board and federal court precedent, the plain language of the tariff controls when assessing tariff applicability. *See Ideal Forging Corp. & G.V. Eads & Co.*, STB Docket No. 40900, at 7 (served Jan. 25, 1999) ("It is clear from the plain reading of the tariff..."); *Cent. Tel. Co. of Va. v. Sprint Cmmc's Co. of Va.*, 715 F.3d 501, 517 (4th Cir. 2013) ("We interpret a contract as written and, when its terms are clear and unambiguous, we construe the contract 'according to its plain meaning.'"). The parties' course of dealings can also "explain or supplement contractual terms." *Gray v. Hearst Cmmc's, Inc.*, 444 F. App'x 698, 701 (4th Cir. 2011). In this case, the plain language and the course of dealings confirms that storage charges can be assessed against ARI.

#### 1. The plain language of the tariffs establishes ARI's liability for the storage charges.

Here, two NS tariffs establish ARI's liability by the plain meaning of their terms. First, NS-8002-A ("8002") has a dedicated Section 3 called, "RULES AND CHARGES FOR HANDLING RAIL CARS FROM AND TO REPAIR, STORAGE, DISMANTLING, OR CLEAN OUT FACILITIES." Ex. 1, NS-8002-A, Section 3. The tariff allocates responsibilities between owners and repair facilities. And it is clear that the repair facility is responsible for storage charges. Part D of Section 3, Item 3000 specifically states that "**Holding/Storage charges will be assessed against the repair facility as stipulated in Freight Tariff NS 6004-Series.**" *Id.* at Item 3000, Part D (emphasis added).

## SECTION 3 - RULES AND CHARGES FOR HANDLING RAIL CARS FROM AND TO REPAIR, STORAGE, DISMANTLING, OR CLEAN OUT FACILITIES

### ITEM 3000 - HANDLING PRIVATE EQUIPMENT FROM AND TO REPAIR, STORAGE, OR CLEAN-OUT FACILITIES

(See Exception)

- A. NS will assess a round trip handling charge of \$350.00 when private equipment, including tank cars are moved between an NS classification yard, or interchange track and repair, storage or clean out facilities within the same switching district. This charge will be billed when the car is delivered to the repair or storage facility. This charge will always apply on empty tank cars; unless NS receives line haul revenue to or from the repair or storage location.
- B. Empty cars moving on own wheels will be subject to charges published in NSRQ 4900-Series when:
  - 1. Cars are new or have been restenciled with new initials and initials and/or numbers
  - 2. Cars are not listed in UMLER
  - 3. Cars are moving for scrapping or sale
  - 4. Private equipment, other than tank cars, moving from an NS origin, classification yard, or interchange track to (i) a repair, storage or clean out facility located outside of the switching limits of the car's then-current location or (ii) a repair, storage or cleanout facility on another carrier will be transported at mileage rates published in NSRQ 4900-Series. Once ready for revenue service, the car will move free out of the repair, storage or clean out facility located on NS' system to a location on NS' system, or an interline interchange track. Except as provided in the preceding sentence, a subsequent move or moves from the initial movement into the repair, storage or clean out facility to another repair, storage or clean out facility will be subject to mileage rates published in NSRQ 4900-Series.
- C. Private equipment, other than tank cars, moving from an NS origin, classification yard, or interchange track to a repair, storage or clean out facility located outside of the switching limits of the origin station, NS classification yard, or interchange track, will be transported at mileage rates published in NSRQ 4900-Series. Once ready for revenue service, the car will move free out of the repair, storage or clean out facility to a location on NS' system, or an interline interchange track. Except as provided in the preceding sentence, a subsequent move or moves from the initial movement into the repair, storage or clean out facility to another repair, storage or clean out facility will be subject to mileage rates published in NSRQ 4900-Series.
- D. In absence of advance written instructions requesting otherwise, handling charge and mileage rates subject to the rules in tariff NSRQ 4900-Series will be assessed against the car owner. Holding/Storage charges will be assessed against the repair facility as stipulated in Freight Tariff NS 6004-Series.
- E. Refer to RIC 6007-Series for additional guidance applicable to this section.

Exception:

Handling charge will not be assessed on cars of TTX Company ownership, or on multi-level cars.

It is difficult to imagine a clearer tariff. Owners are responsible for transport charges to get the rail cars to the facilities, and repair facilities are responsible for holding/storage charges. *Id.*<sup>2</sup> Under NS-8002-A, ARI is not required to be a consignee, nor is its liability dependent on the terms of the NS 6004-Series tariff. Rather, ARI is already liable for the charges under NS-8002-A.

By incorporating NS-6004-D by reference, ARI was placed on notice of the storage charge amount, and any other applicable rules. NS-6004-D Item 1010,

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<sup>2</sup> There has been no change to this allocation of responsibilities for years. *See, e.g.,* Ex. 3, NS 8002-A, Item 3000 (eff. April 15, 2010).

Demurrage / Storage Application, says that the storage charge for private cars is \$60 per car, per day, with zero loading or unloading credits. Ex. 2, NS-6004-D, Item 1010.

ARI seeks to avoid the plain meaning of NS-8002-A by trying to manufacture ambiguity where none exists. ARI first tries to dismiss NS-8002-A's language that "Holding/Storage charges will be assessed against the repair facility as stipulated in Freight Tariff NS 6004-Series," by objecting that "there are no such repair facility charges 'stipulated' in NS-6004-D." ARI Petition at 10. This is an absurd reading of the tariff. NS-8002-A states that the repair facility will be liable for holding/storage charges – as stipulated (i.e., as specified or set forth) in Tariff NS 6004-Series. That is precisely how the tariffs interact. NS-8002-A places the responsibility on the repair facility, and NS-6004-D specifies the details of the private car storage charges – particularly that the charges will be \$60 per car, per day.

ARI argues further that there is no "definition in the NS demurrage tariff (NS-6004-D) that could include rail car repair facilities." ARI Petition at 10. This is both wrong and irrelevant. NS-8002-A does say that a repair facility will be liable for holding/storage charges and then references NS-6004, which sets forth the rate for private car storage of \$60 per car, per day. NS-6004 does not need to include a "definition ... that could include rail car repair facilities" because that definition is already in NS-8002-A (which then refers to the more general NS-6004 tariff for the rates for private car storage). The "as stipulated" plainly modifies the "Holding/Storage charges" language, not the "repair facility" language. Only in ARI's upside-down view can the phrase "Holding/Storage charges will be assessed against the repair facility" mean storage charges will be assessed against someone else.

Alternatively, ARI argues that "NS-8002-A is not the tariff that NS asserted to support its charges." ARI Petition at 10. Again, this is irrelevant. NS-6004-D is the tariff that actually sets forth the charge for private car storage, so it makes sense that NS in its invoices would refer to NS-6004 in relation to the charge of \$60 per car, per day to ARI.

ARI urges the Board to disregard the plain language in NS-8002-A and permit NS to collect the storage charges only if independently justified by the language of NS-6004-D. *See* ARI Petition at 10-12. This gambit fails for two reasons. First, the premise is flawed; the plain language of NS-8002-A provides that storage charges “will be assessed against the repair facility,” and there is no principle of contract law that requires the referenced tariff (NS-6004) to also specify that storage charges will be assessed against the repair facility, which would render that same language in NS-8002-A superfluous.

Second, NS-6004-D does in fact provide an independent basis for assessing storage charges on ARI in these circumstances. “Consignee” is defined in NS-6004-D as: “The party to whom a shipment is consigned *or the party entitled to receive the shipment.*” Ex. 2, NS-6004-D at Item 200 (emphasis added). ARI is the party entitled to receive the shipment of railcars in need of repair at its facility. ARI is, therefore, a “Consignee” for purpose of NS-6004-D. As such, pursuant to Item 550 (and Item 700), ARI is subject to storage charges for empty private cars held on NS tracks under constructive placement. *Id.* at Items 550, 700.

ARI ignores this plain reading of the definition of “Consignee” in favor of focusing on the second sentence of the definition, which states: “For purposes of this tariff, Consignee *includes* any person who receives railcars from a rail carrier *for unloading*, as more specifically described in 49 CFR Part 1333.” *Id.* at Item 200 (emphasis added). By virtue of the word “includes,” this second sentence serves to clarify the definition of “Consignee,” as opposed to limit that definition to only persons who receive railcars “for unloading,” as ARI suggests. *See* ARI Petition at 11. Indeed, a standard rule of construction is that “‘including’ means ‘for example.’” *Epsilon Elecs., Inc. v. U.S. Dep’t of the Treasury*, 857 F.3d 913, 923 (D.C. Cir. 2017).<sup>3</sup> As such, ARI is a

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<sup>3</sup> *See also, e.g., Az. State Bd. for Charter Schs. v. U.S. Dep’t of Educ.*, 464 F.3d 1003, 1007 (9th Cir. 2006) (“In both legal and common usage, the word ‘including’ is ordinarily defined as a term of illustration, signifying that what follows is an example of the preceding

“party entitled to receive the shipment,” and the second sentence of the definition does nothing to affect ARI’s status as a “Consignee” under the tariff.<sup>4</sup>

In sum, ARI is liable for the storage charges under the plain terms of NS-8002-A. In addition, NS-6004 provides an independent basis for imposing the storage charges, as ARI is a “Consignee” as defined therein.

**2. The parties’ course of dealings confirms ARI’s liability for the storage charges.**

The Board’s tariff inquiry is resolved within the four corners of NS-8002-A and its declaration that storage fees charged “will be assessed against the repair facility.” Furthermore, the parties’ course of dealings, which can “explain or supplement terms” of a contract, confirm that ARI is liable for the storage charges. *Brunswick Box Co. v. Coutinho, Caro & Co.*, 617 F.2d 355, 359-60 (4th Cir. 1980).

ARI has paid these very same storage charges in the past. *See* Ex. 5, ARI Storage Charges Since 2010; V.S. Ewers at 4. ARI asserts that “the Tennille Facility did not experience demurrage or storage charges in the past.” ARI Petition at 7. This is incorrect – ARI has paid storage charges on multiple occasions. V.S. Ewers at 4. The fact that ARI previously paid storage charges is “ample to sustain [ARI’s] liability without regard to whether [it] was technically a party to the bill of lading.” *EIMSKIP v. Atl. Fish Mkt., Inc.*, 417 F.3d 72, 75-76 (1st Cir. 2005) (in maritime context, Court of Appeals concluded that parties’ course of conduct established party’s liability for freight charges when party had been issued invoices for the charges and “did in fact pay” the charges

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principle.”); *Graves v. N. E. Servs., Inc.*, 345 P.3d 619, 630 (Utah 2015) (explaining that the term “including” “is an established term of art with an established meaning. . . . In statutory cases far and wide, this term is routinely construed as introducing a non-exclusive, exemplary list. . . . So the only way to read the list of examples . . . is as a non-exhaustive list.”).

<sup>4</sup> Indeed, for the overwhelming majority of the cars at issue, ARI is in fact listed as the consignee on the bills of lading. V.S. Ewers at XX.

and “failed to dispute the invoices”); see *Mediterranean Shipping Co. v. Best Tire Recycling, Inc.*, 848 F.3d 50, 53-54 (1st Cir. 2017) (referring to *EIMSKIP* for same point in railroad context).

ARI also incorrectly asserts that the storage charges are “generally not assessed by serving railroads.” ARI Petition at 16. While NS cannot speak to other railroads’ billing practices, NS assesses and collects demurrage and storage charges on other repair facilities under the same tariff provisions that it charged ARI. V.S. Ewers at 4. And ARI historically has received and paid invoices for storage charges, despite its incorrect claim to the contrary. V.S. Ewers at 4; Ex. 5, ARI Storage Charges Since 2010. The parties’ course of dealings unambiguously establish that ARI is liable for the storage charges. See *EIMSKIP*, 417 F.3d at 75-76; *Brunswick Box Co.*, 617 F.2d at 359-60.

### **3. The Board’s rules permit NS to collect the charges from ARI.**

The Board’s rules permit NS to collect these charges from ARI. See *Demurrage Liability*, STB Docket No. EP 707 (served April 11, 2014) (“EP 707”). In EP 707, the Board simplified demurrage liability so that liability is no longer dependent on consignee status but rather applies to any person receiving rail cars from a rail carrier who detains the cars beyond the free time, if the carrier has provided actual notice of the applicable demurrage tariff. *Id.* at 5, 17-22.

First, EP 707 applies to this situation. The Board explained that the scope of the final rule is broad and applies to “any person receiving rail cars,” so long as the carrier provided actual notice of the tariff. *Id.* at 5, 14, 17-18; see *id.* at 26 (“In general, the rule will apply to any rail carrier providing rail cars to a shipper at origin or delivering them to a receiver at end-point or intermediate destination who wishes to charge demurrage for the detention of rail cars beyond the free time.”). ARI fits into that category, as it receives rail cars from NS. The Board also specified that EP 707 applied to the storage of

private rail cars. *Id.* at 15 (clarifying that the rule includes storage of “privately owned cars when such privately owned cars are held on railroad property”).

ARI tries to distance itself from EP 707’s applicability, arguing it is “fundamentally different than warehousemen or other third parties involved in the movement of shipments from origin to destination,” ARI Petition at 14, but that ignores the fact that the Board explained that EP 707 is broadly applicable to *any person* receiving railcars from a rail carrier. EP 707 at 13-14 (“The rationales behind these new demurrage rules ... are generally applicable to all receivers.”).

ARI also attempts to distance itself from EP 707 by claiming that the new rules do not apply to ARI because it is not “‘in the best position’ to expedite the process or reduce the need for storage” because it “has no ability to control if and when cars are sent to Tennille.” ARI Petition at 14; *see id.* at 13-14, 19-20 & n.43. This is wrong for several reasons. First, ARI does not explain why its relationships with its customers do not allow it to contract with them (or at the very least, communicate with them) in a way that could control the flow of cars to its facility. Moreover, among all the parties involved – the car owner, NS, and ARI – ARI is the party in the best position to move the cars off of NS’s property. *Id.* Furthermore, ARI’s position is at odds with the intent of EP 707 – to simplify demurrage liability. *See* EP 707 at 21 (“[W]e are adopting these final rules in an effort to simplify the demurrage process and to provide uniformity in the area.”). It would defeat the purpose of EP 707, as well as the general principles of demurrage liability, if ARI were permitted to receive free storage on NS’s property merely because it asserts that it does not control the cars coming to its facility. It is much simpler to require ARI, as the receiver of cars from a rail carrier, to pay the storage charges. *See id.* at 13-14. Indeed, the Board in EP 707 explained in the context of private railcar storage that “such charges ‘compensate the railroad for use of its assets (*i.e.*, the space on its track or at its yards), and they encourage more efficient use of freight cars on its system.’” *Id.* at 15.

ARI may also argue that the Board's rule is limited to only persons who receive rail cars from a rail carrier "for loading or unloading," which does not apply to a repair facility. *See id.* at 2. On the contrary, there is no indication in EP 707 that the Board intentionally limited the rule to situations that involve loading or unloading. Rather, that is merely "the simplest case" of demurrage liability. *Id.* The Board's own language about charges for storage of private railcars in EP 707 establishes that the rule is not limited to loading/unloading situations: "when privately owned cars are held beyond the free time on railroad property, demurrage will apply both to 'compensate[] rail carriers for the expenses incurred [for the use of railroad assets]' and 'to encourage the efficient use of rail cars' on the railroad system." *Id.* at 15. The Board's rationale for private railcar storage charges thus does not require loading or unloading. *Id.* And, again, the Board emphasized that the new rules applied to "all receivers," not just those involved with loading or unloading. *Id.* at 14.

In sum, under EP 707 and the new demurrage liability rules, NS is permitted to collect demurrage and storage charges from the party who accepts the railcar at the destination, if provided notice. Because ARI accepts the railcars from NS and was provided notice of the charges, NS is permitted under governing agency regulations to collect the storage charges from ARI.

**B. ARI Is Liable for the Storage Charges Regardless of Its Control Over the Incoming Traffic to its Facility.**

ARI argues that the storage charges are unreasonable because "Railcar Services has no control over the transportation of cars to its facility, no ability to select which cars come into its shop and, thus, no ability to avoid the charges." ARI Petition at 3; *see id.* at 19-20. This is both factually and legally wrong.

First, this argument is factually incorrect. ARI *does* control its own pipeline into its repair facility. *See V.S. Ewers* at 5-7, 9, 11. While it may not exercise control over the

amount of incoming traffic to its facility, it is the receiver of the railcars and is thus the party best able to get the stored cars off of NS's property (and therefore best suited to pay the storage charges). Indeed, ARI has an array of choices it could make to minimize its storage charges. For example, it could pass the costs to its own customers to incentivize them to reduce demand. It could also monitor and control the pipeline of cars inbound to its facilities. Indeed, ARI was able to avoid these very storage charges prior to and after the traffic surge.<sup>5</sup> V.S. Ewers at 9-11.

More importantly, ARI fault is irrelevant. The agency has held for more than a century that a shipper is required to pay demurrage charges unless the railroad is at fault (*i.e.*, the cause of the delay or detention), even if the shipper itself is not at fault.<sup>6</sup> As the ICC explained: "Under the demurrage tariffs shippers are chargeable with demurrage for any detention of equipment which is not due to the fault of the carrier, except as otherwise expressly provided. *This is true even if the detention is beyond the*

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<sup>5</sup> See, e.g., *Foreston Coal Int'l*, 349 I.C.C. at 501 (concluding demurrage charges were reasonable even though some charges were the result of forces outside complainant's control, and noting that some of the charges "can be traced to complainants' inability to precisely coordinate the many segments of its business activities," and "it should be noted that on certain of complainants' ... traffic, they were able to totally avoid assessment of demurrage").

<sup>6</sup> See, e.g., *Drummond & S.W. Ry. v. Chi., St. P. M. & O. Ry. Co.*, 21 I.C.C. 567, 568 (1911) (requiring shipper to pay demurrage charges even when heavy rains rendered tracks unsafe, making it impossible for the complainant, a logging railroad, to haul cars to interchange with line-haul carriers); *Chrysler Corp.*, 234 I.C.C. at 758 (ICC stating that "[d]emurrage may properly be assessed where the detention occurs through no fault of the shipper, even though the cause of the detention is beyond the shipper's control."); *Foreston Coal Int'l*, 349 I.C.C. at 500-01 (rejecting complainants' argument that "because delays in loading resulting in demurrage were incurred without fault on their part and they could not, therefore, improve car utilization in conformance with the purpose of the Car Service Order, application of the increased demurrage to complainants' traffic is unjust and unreasonable"); *Intercontinental Mfg. Co. – Pet. for Declaratory Order – Demurrage Charges on Bomb Casings*, 357 I.C.C. 300, 303 (1978) (customer responsible for "ordinary economic vagaries and risks of doing business").

*shippers' control*. We have frequently found that demurrage was properly assessed against the shipper where detention occurred through no fault of the carrier, even though the shipper was not at fault, as in the case of nonarrival of an expected vessel." *Am. Smelting & Refining Co. v. Director Gen., As Agent, Baltimore & Ohio R.R. Co.*, 69 I.C.C. 229, 232 (1922) (emphasis added). Even where congestion is caused by third parties forwarding larger shipments (or too many railcars) than could be loaded (or received) by the customer, the customer is still liable for demurrage. *See Apex Tire & Rubber Co. v. N.Y., New Haven & Hartford R.R. Co.*, 277 I.C.C. 1, 2-4 (1950).

Federal courts have similarly held that, unless the delay in returning the cars was the fault of the railroad, shippers must pay the demurrage charges, even if the shipper was not at fault. *See N. Am. Freight Car Ass'n v. STB*, 529 F.3d 1166, 1173 (D.C. Cir. 2008) ("both this court and the Board have indicated the burden is on a complaining shipper to show that demurrage fees are excessive in a particular instance because of some fault on the railroad's part"). As the Eleventh Circuit has stated, "[D]emurrage charges are properly assessed even if the cause for the delay is beyond the party's control, unless the carrier itself is responsible for the delay." *Norfolk S. Ry.*, 586 F.3d at 1276; *see CSX Transp.*, 618 F. Supp. 2d at 771 ("A railcarrier's ability to collect demurrage from a shipper does not depend on a finding that the shipper was at fault.").

In sum, "[t]he law is well settled that assessment of demurrage charges in no way depends upon a finding of shipper or consignee fault." *Foreston Coal Int'l*, 349 I.C.C. at 500; *see Norfolk S. Ry.*, 586 F.3d at 1276.<sup>7</sup>

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<sup>7</sup> There was an exception for the "penalty" component in pre-Staggers cases. *See, e.g., Louis Dreyfus Corp. v. W. Md. Ry. Co.*, 356 I.C.C. 1, 7 (1977) ("When the shipper or consignee is totally without fault, the penalty portion of the charge is futile as a deterrent against excessive demurrage."); *Prince Mfg. Co. v. Norfolk & W. Ry. Co.*, 352 I.C.C. 876, 879 (1975). Subsequently, the pre-Staggers concept of customer fault/due diligence has disappeared from the Board's demurrage precedent, having been mentioned in only one ICC or STB decision in the past thirty-eight years. *See R. Franklin Unger – Pet. for Decl. Order – Assessment and Collection of Demurrage and Switching*

**C. ARI Has Not Shown That the Storage Charges Were NS's Fault.**

ARI argues NS was at fault by declining to shift immediately to FIFO service or closed-gate service in the midst of this congestion, and thus asks the Board to excuse ARI from all the storage charges. ARI Petition at 17-19. This claim lacks merit.

First, ARI has failed to meet its burden of proof. The law requires ARI to bear the burden of *proving* what it merely asserts — that NS “caused” the storage charges it disputes. “[T]he burden is on a complaining [party] to show that demurrage fees are excessive in a particular instance because of some fault on the railroad’s part.” *N. Am. Freight Car Ass’n*, 529 F.3d at 1173. ARI offers nothing more than bare accusations. It has not established how the lack of FIFO or closed-gate service, in the midst of the surge, caused any of the storage charges, much less quantified how these actions allegedly increased storage charges. *See id.* at 1172-73. For this reason alone, the Board should reject ARI’s argument.

Second, FIFO, as requested by ARI, was impractical to implement during the peak of the congestion at this facility. NS was holding over 100 cars on its property for ARI, making it infeasible to pull particular railcars from the congested yard; indeed, NS was holding many railcars on main line sidings. ARI argues that the storage charges before February 21, 2019 are “barred because NS said it operated on a first-in, first-out basis before that date.” ARI Petition at 16. This assertion is meritless. ARI cites to no authority that supports this contention, and does not explain how FIFO would have made any difference to its aggregate storage charges. *See id.* Further, NS never guaranteed ARI FIFO service. FIFO is only practical in certain circumstances, and the surge was not one of those circumstances. V.S. Ewers at 7-8.

Third, the claim that ARI should not pay any storage charges because NS would not immediately allow it to operate under closed-gate status is a red herring. ARI has

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*Charges*, STB Docket No. 42030, at 9-10 (served June 14, 2000). In any event, NS’s storage charge has no penalty component. *See* V.S. Ewers at 10.

not shown how open-gate status (as opposed to closed-gate) caused the storage charges, much less what percentage of those charges (if any) could have been avoided by changing to closed-gate status. Moreover, ARI's closed-gate argument is factually irrelevant. Whether ARI was closed-gate or open-gate, there still would have been many cars sitting on NS's property incurring storage charges. But, more importantly, the timing of ARI's request for closed-gate status made closed-gate impractical. ARI did not ask to move to closed-gate before the surge, but rather in the midst of the surge. At that point, a multitude of cars had already been constructively placed in NS's yard, and NS could not then provide closed-gate service by which ARI could pick and choose which cars it wanted and when. *V.S. Ewers* at 8. It was not unreasonable for NS to decline closed-gate status under these circumstances.

In short, ARI's assertion that NS was unwilling to work with ARI to improve the flow of cars through the repair facility is not accurate. ARI Petition at 17-19. During the surge, NS stayed in close communication with ARI and diligently made efforts, as possible, to improve traffic flow. *V.S. Ewers* at 7-9. The truth is that the congestion and storage charges were not caused by any action of NS, but rather by an irregular surge of traffic from ARI's customers, and one customer in particular. *See Ewers V.S.* at 5-7, 10; *infra* Table 1. And ARI is responsible for storage charges due to congestion caused by third parties forwarding shipments in larger volumes than could be handled by ARI. *See Apex Tire & Rubber, 277 I.C.C.* at 3.

**Table 1: ARI Storage Car Days By Month, December 2018-June 2019**

| <b>Empty Private Car Storage Car Days<br/>Accrued Monthly Since 2018 for<br/>ARI</b> |                  |
|--------------------------------------------------------------------------------------|------------------|
| <b>Month:</b>                                                                        | <b>Car Days:</b> |
| December 2018                                                                        | 322              |
| January 2019                                                                         | 2568             |
| February 2019                                                                        | 2633             |
| March 2019                                                                           | 189              |
| April 2019                                                                           | 0                |
| May 2019                                                                             | 0                |
| June 2019                                                                            | 0                |

In sum, ARI cannot show that NS was at fault for its incurrence of storage charges.

**D. NS Is Not Required to Provide Free Storage.**

ARI argues that the storage charges are unreasonable because “there is zero credit time” and makes the unfounded assertion that “[t]he complete absence of free time is an unreasonable practice.” ARI Petition at 16. The law and industry practice are entirely the opposite.

**1. Requiring NS to provide free storage would be an unconstitutional taking.**

More than 125 years ago, the Supreme Court made clear that a railroad cannot be required to allow others to use its property without just compensation. In *Stone v.*

*Farmers’ Loan & Trust Co.*, 116 U.S. 307 (1886), the Court stated:

*Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to*

a taking of private property for public use without just compensation, or without due process of law.

*Id.* at 331 (emphasis added).<sup>8</sup>

*Stone* thus recognized that the Takings Clause protects a party's right to exclude another party from possession and use of its property – a “fundamental element of the property right,” which “falls within [the] category of interests that the Government cannot take without compensation.” *Kaiser Aetna v. United States*, 444 U.S. 164, 179-180 (1979); *see also Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 82 (1980) (“one of the essential sticks in the bundle of property rights is the right to exclude others”). Thus, requiring a landowner to grant public access to what was once a private pond, without compensation, violates the takings clause. *Kaiser Aetna*, 444 U.S. at 178-180. Similarly, requiring a landlord to permit a cable television company to install its cable facilities upon his roof and on the side of his building is an unconstitutional taking. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435-440 (1982).

Requiring NS to allow other parties to store their cars on its tracks for free would result in an unlawful taking. The fact that ARI stores its cars on NS's tracks only in certain situations makes no difference from a constitutional perspective. The Supreme Court has “rejected the argument that government action must be permanent to qualify as a taking. Once the government's actions have worked a taking of property, ‘no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective.’” *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 33 (2012).

As an illustration, in *Chicago, St. P., M. & O. Ry. Co. v. Holmberg*, 282 U.S. 162 (1930), the Court ruled that an order of the state commission requiring a railroad to

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<sup>8</sup>*See also, e.g., The Minnesota Rate Cases*, 230 U.S. 352, 415 (1913); *Cotting v. Godard*, 183 U.S. 79, 86 (1901); *Covington & L. Turnpike Road Co. v. Sandford*, 164 U.S. 578, 592-593 (1896); *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362, 398 (1894); *Chicago, M. & St. P. Ry. Co. v. Minnesota*, 134 U.S. 418, 455-456 (1890).

install an “underground cattle pass” under its tracks, so as to connect the farmlands lying on either side of and adjacent to the railroad’s right-of-way, constituted a taking of property without due process of law, forbidden by the 14th Amendment. *Id.* at 163, 167. The Court found that such an order would deprive the railroad of its property for the private use and benefit of the farm owner. *Id.* at 167. Similarly, requiring NS to allow others to store their cars on its property would deny NS the full enjoyment of, and benefits from, its property. *See id.*

In gauging the scope of its authority, the Board should apply “the well-established principle that statutes will be interpreted to avoid constitutional difficulties.” *Frisby v. Schultz*, 487 U.S. 474, 483 (1988).<sup>9</sup> Far from “ignor[ing] the legislative will” behind the statute, *Miller v. French*, 530 U.S. 327, 341 (2000), this approach will effectuate Congress’s intent while saving the statute from unconstitutionality. Accepting ARI’s bold claim that offering zero free time is an “unreasonable practice” would render that application of the Interstate Commerce Act unconstitutional.

## **2. No free storage is supported by industry practice, agency and court precedent.**

While ARI asserts that that NS’s policy of not giving additional free time for private car storage is inherently unreasonable, ARI Petition at 16, that argument ignores the fact that zero free time for private railcar storage is a standard industry practice that

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<sup>9</sup> *See also, e.g., Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (Court will interpret statute “to avoid a serious constitutional threat”); *Va. Soc’y For Human Life, Inc. v. Caldwell*, 152 F.3d 268, 273 (4th Cir. 1998) (because legislature’s actions are assumed to be constitutional, court will construe statute in such a manner as to avoid constitutional question wherever possible); *United States v. Navarro*, 145 F.3d 580, 586-587 (3d Cir. 1998) (where text and legislative history of statute offer little or no guidance on Congress’s intent, court should construe statute to avoid constitutional questions); *Texas v. E. Tex. R. R Co.*, 258 U.S. 204, 217 (1922) (describing rule of constitutional avoidance); *United States v. Delaware & Hudson Co.*, 213 U.S. 336, 407-408 (1909) (same).

has been adopted by multiple railroads. There is nothing unusual about railroads incentivizing efficient car use by telling receivers that they will be charged if they force railroads to store cars and that those charges will begin accruing if the receiver cannot accept cars when they arrive for delivery. This common practice is supported by agency and federal court precedent, which recognizes the fundamental right of a carrier to be compensated for the use of its track space.

For example, in *North America Freight Car Association*, the D.C. Circuit confirmed the reasonableness of private car storage charges for the purpose of compensating the carrier for the use of its property. Specifically, the Court noted that in the challenged STB decision, “[t]he Board upheld BNSF’s storage and demurrage charges, finding that they ‘meet both purposes for which such charges are applied to loaded cars: they compensate the railroad for use of its assets (i.e., the space on its track or at its yards), and they encourage more efficient use of freight cars on its system.’” 529 F.3d at 1170. The Board concluded that such “[p]romotion of cost recovery and efficient equipment utilization are *not unreasonable purposes*.” *Id.* (emphasis added). The D.C. Circuit agreed with the Board’s rationale that “[s]toring empty private cars imposes costs on the railroad, including the loss of system fluidity and the opportunity cost associated with using track for long-term car storage that instead could be used to facilitate the efficient movement of freight. The 2001 Charges recover costs from those that generate them.” *Id.* at 1176.

In the underlying affirmed decision, the Board explained: “Complainants generally assume that BNSF is obligated to hold complaining car owners’ empty private cars without charge, and that assumption underlies many of Complainants’ claims. Yet neither the law nor the record supports this assumption ....” *N. Am. Freight Car Ass’n*, STB Docket No. 42060 (Sub-No. 1), at 6. The Board also concluded that the carrier’s objectives for its new charges for storing empty private cars, namely to compensate the carrier for the use of its track and to encourage the receiver to utilize their private cars

more efficiently and discourage the holding of empty cars on the carrier's system, were "reasonable." *Id.*

Moreover, prior ICC precedent provided no free time when calculating the compensatory component of demurrage. "[E]very day is to be counted without free time for loading or unloading, and without allowance for Saturdays, Sundays, or holidays." *Ormet Corp. v. Ill. Cent. R.R. Co.*, 341 I.C.C. 647, 651 (1971); see *Prince Mfg. Co. v. Norfolk & W. Ry. Co.*, 356 I.C.C. 702, 708 (1978) (describing the compensatory component of demurrage as "the per diem basis plus 20 percent for incidental expenses, without free time for loading or unloading, and without allowance for Saturdays, Sundays, or holidays" (emphasis added)). "[I]n computing the compensatory charge..., every day must be counted without free time and without any allowance for Sundays and holidays." *Guyan Eagle Coal Co. v. Chesapeake & Ohio Ry. Co.*, 296 I.C.C. 71, 74 (1955). This formula that provided for no free time in the calculation of compensation was applied frequently by the ICC in earlier cases.<sup>10</sup>

### III. CONCLUSION

There is no basis for ARI to receive free storage on NS's property. Under EP 707 and by the plain terms of the applicable tariffs—confirmed by the course of conduct between the parties—ARI is liable for the storage charges. Moreover, the Board would do irreparable harm if it excused ARI from its contractual and legal responsibility to pay these storage charges. Giving ARI a free pass would influence its future conduct. But far more damaging, the Board would send a signal throughout the entire logistics chain that it does not intend to hold receivers responsible for storage and demurrage

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<sup>10</sup> See, e.g., *Snyder & Swanson, Inc.*, 281 I.C.C. at 357 ("[I]n computing the compensatory charge for a given period, every day must be counted without free time for loading and unloading, and without any allowance for Sundays and holidays."); *Commerce & Indus. Ass'n of N.Y, Inc. v. Balt. & Ohio R.R. Co.*, 272 I.C.C. 7, 12-13 (1948) (same); *Chronicle Publ'g Co. v. Great N. Ry. Co.*, 243 I.C.C. 279, 281-82 (1941); *Balfour, Guthrie & Co. v. Chi., M., St. P. & Pac. R.R. Co.*, 235 I.C.C. 437, 441 (1939) (same).

charges. Such a result is not supported by longstanding demurrage law, the recent rules adopted by the Board through notice-and-comment rulemaking, by the particulars of this case, or by the important public policies behind demurrage and storage programs. The Board should therefore deny ARI's petition.

Respectfully submitted,

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Dated July 19, 2019

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of July, 2019, I served a copy of Norfolk Southern Railway Company's Reply to Petition for Declaratory Order on the following counsel for ARI Railcar Services, LLC by first class mail and email.

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/s/ Morgan B. Lindsay  
Morgan B. Lindsay

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 36311**

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**NORFOLK SOUTHERN RAILWAY COMPANY**

**REPLY TO PETITION FOR DECLARATORY ORDER**

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**VERIFIED STATEMENT OF STEVE EWERS**

My name is Steve Ewers, and I am Assistant Vice President of Service Management at Norfolk Southern (“NS”). My responsibilities in that role include customer operations for our General Merchandise and Coal traffic, Fleet Planning and Car Distribution, and oversight for our bulk transfer facilities. I have been with NS for almost 24 years and have been in my current role 4½ years. Previously, I held various positions in Transportation (10 years) and Marketing (just under 10 years).

I am submitting this Verified Statement in support of NS’s Reply to ARI Railcar Services’ (“ARI”) Petition for Declaratory Order. I explain below that NS’s demurrage and storage program is an important tool that NS uses to incentivize network fluidity. Second, I discuss the fact that NS’s demurrage and storage tariffs include cars inbound to repair facilities like ARI’s Tennille facility and that ARI has paid such charges in the past. Third, I provide an overview of ARI’s Tennille facility, including its capacity and NS service to the facility. Fourth, I explain that the storage charges at issue here were caused by an unusual spike in car traffic inbound to ARI, caused by ARI’s customers (not NS), which resulted in NS storing the resulting backup of cars in NS’s yard and main line sidings. Finally, I note why NS’s storage charges

were reasonable under these circumstances, including the facts that (i) ARI was on notice of these tariffs and has paid for storage under those tariffs when it was billed; (ii) ARI does not claim that NS's storage charge is unreasonably high; (iii) the spike in traffic (and resulting storage charges) are not a continuing problem; and (iv) the storage charges in fact created the type of incentives envisioned by Congress.

**I. NS's Demurrage and Storage Tariffs Are Designed to Incentivize Efficiency.**

NS is committed to delivering a high-quality service product that helps our customers compete in an evolving market and provides them with a platform for growth. One of the important drivers of efficiencies and service improvements is right-sizing the number of cars on our network to match the respective capacities of the industries we serve. When we have more cars on our network than can be processed by a customer, those excess cars consume valuable and finite track capacity, make switching more complex and time-consuming, and negatively affect network fluidity, service to other customers in the area, and resilience.

Storage charges constitute an essential tool to incentivize efficient freight car utilization and network fluidity. When cars are held at serving yards because a railcar receiver is unable to receive them, that causes congestion that can create problems for many customers that depend on efficient rail service. Reasonable storage charges provide the proper incentives to encourage efficient rail car utilization and keep the network fluid and resilient.

Storage charges create the proper incentives both for cars that the railroad must hold pending loading and unloading and for cars that the railroad must hold pending repair or other services. From a network fluidity perspective, it does not matter whether a railcar sitting in a serving yard is waiting for a customer to receive it for loading or unloading, or whether it is

waiting to be delivered to a railcar repair facility. Each car takes up the same space and uses the same network assets.

In compliance with Congress's instruction in 49 U.S.C. § 10746 that rail carriers establish demurrage rules, NS has published demurrage and storage tariffs and provided notice of those tariffs to its customers, including ARI. Two tariffs are relevant. NS's primary demurrage and storage tariff is NS-6004-D, "Demurrage and Storage Rules and Charges." See Ex. 2 of ARI Petition, NS-6004-D. NS-6004-D sets forth generally applicable rules governing demurrage and storage charges, including rules for various types of cars (e.g., cars held for loading, unloading, or other purposes); rules governing how charges are calculated; and the current rates for demurrage and storage. See *id.* Particularly relevant here is NS-6004-D Item 1010, Demurrage / Storage Application, which sets the storage charge for private cars at \$60 per car, per day, with zero loading or unloading credits. *Id.* at Item 1010.

The other relevant tariff is NS-8002-A, NS's tariff on Accessorial Charges. See Ex. 1, NS-8002-A. Section 3 of NS-8002-A details rules for handling railcars "from and to repair, storage, dismantling, or clean out facilities." *Id.* at Item 3000. Part D of that provision allocates responsibilities for various accessorial charges between railcar owners and repair facilities: "In absence of advance written instructions requesting otherwise, handling charge and mileage rates subject to the rules in tariff NSRQ 4900-Series will be assessed against the car owner. Holding/Storage charges will be assessed *against the repair facility* as stipulated in Freight Tariff NS 6004-Series." *Id.* The tariff thus provides that, while car owners are responsible for transport charges to get the rail cars to the facilities, repair facilities are responsible for holding/storage charges. *Id.*

## II. NS Appropriately Charges Storage to Repair Facilities, Including ARI's Tennille Facility.

NS serves several railcar repair facilities, and pursuant to NS-8002-A and NS-6004-D, NS charges these facilities with storage when appropriate. These charges are typically paid, and subject to the same invoice dispute process as storage charges for other railcar receivers (which sometimes result in reductions to charges). Indeed, ARI has been billed storage in the past, and it typically has paid those invoices. Table 1 below shows that ARI has paid over \$27,800 in storage invoices between 2010 and 2017.

**Table 1: ARI Storage Charges: 2010 – 2017**

| ARI Storage Charges 2010 - 2017 |        |    |            |      |                    |                      |                     |                     |               |
|---------------------------------|--------|----|------------|------|--------------------|----------------------|---------------------|---------------------|---------------|
| Customer                        | Origin | St | WB Date    | STCC | Billed             | Paid                 | Corrected           | Written-off         | Net           |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 1/12/2010  | 106* | \$720.00           | \$0.00               | (\$420.00)          | (\$300.00)          | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 2/10/2010  | 106* | \$360.00           | \$0.00               | \$0.00              | (\$360.00)          | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 3/10/2010  | 106* | \$4,710.00         | (\$2,940.00)         | (\$1,020.00)        | (\$750.00)          | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 4/13/2010  | 106* | \$5,850.00         | (\$5,850.00)         | \$0.00              | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 3/9/2011   | 106* | \$1,440.00         | (\$1,440.00)         | \$0.00              | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 4/11/2011  | 106* | \$1,620.00         | (\$1,620.00)         | \$0.00              | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 5/9/2011   | 106* | \$7,320.00         | (\$7,320.00)         | \$0.00              | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 8/9/2011   | 106* | \$540.00           | (\$540.00)           | \$0.00              | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 11/9/2011  | 106* | \$120.00           | (\$120.00)           | \$0.00              | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 3/11/2012  | 106* | \$8,000.00         | (\$8,000.00)         | \$0.00              | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 11/9/2012  | 106* | \$300.00           | \$0.00               | \$0.00              | (\$300.00)          | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 12/11/2012 | 106* | \$780.00           | \$0.00               | (\$780.00)          | \$0.00              | \$0.00        |
| AMERICAN RAILCAR INDUSTRIES     | GORDON | GA | 3/11/2013  | 106* | \$1,140.00         | \$0.00               | (\$1,140.00)        | \$0.00              | \$0.00        |
|                                 |        |    |            |      | <b>\$32,900.00</b> | <b>(\$27,830.00)</b> | <b>(\$3,360.00)</b> | <b>(\$1,710.00)</b> | <b>\$0.00</b> |

## III. ARI's Tennille Facility.

The ARI facility at issue here is a major rail car repair facility in Tennille, GA. The Tennille facility is served by NS's Tennille rail yard, which performs key roles in the network, including as a yard we use for block swaps between certain road trains.

ARI has the capacity for 200 cars at its Tennille facility, Pet. Ex. 1, and typically receives about 25 cars per week via NS. Tennille is an "open gate" facility, which means that NS places

cars at Tennille on scheduled service days without first securing permission from Tennille. (At a “closed gate” facility, NS constructively places cars in its local serving yard, and then notifies the customer that cars are ready for delivery. Cars are not delivered until NS receives delivery instructions from the customer.)

Historically NS has served Tennille once a week, delivering 25 cars at a time. In December 2018, NS changed its service schedule to be more frequent; NS began to provide service five days a week, with the goal of delivering approximately five cars each time. NS has delivered more than five cars per day when such deliveries are consistent with ARI’s needs, such as during the volume spike discussed below.

NS’s service to ARI therefore is designed to accommodate the exact same volume as it did previously, but on a more frequent schedule. This schedule change was therefore the reverse of the occasional complaint about “bunching”; rather than delivering all of ARI’s cars in one “bunch” once a week, NS is now providing more frequent service so that cars can be delivered when they arrive at the serving yard.

Under normal circumstances, ARI does not experience significant storage charges because it has ample space to handle expected volumes. For example, between March 2013 and November 2017, ARI was not billed for any demurrage or storage charges. But in the fall of 2018, the company experienced an irregular surge in demand that overwhelmed its facility and NS’s serving yard, and led to the storage charges at issue in this proceeding.

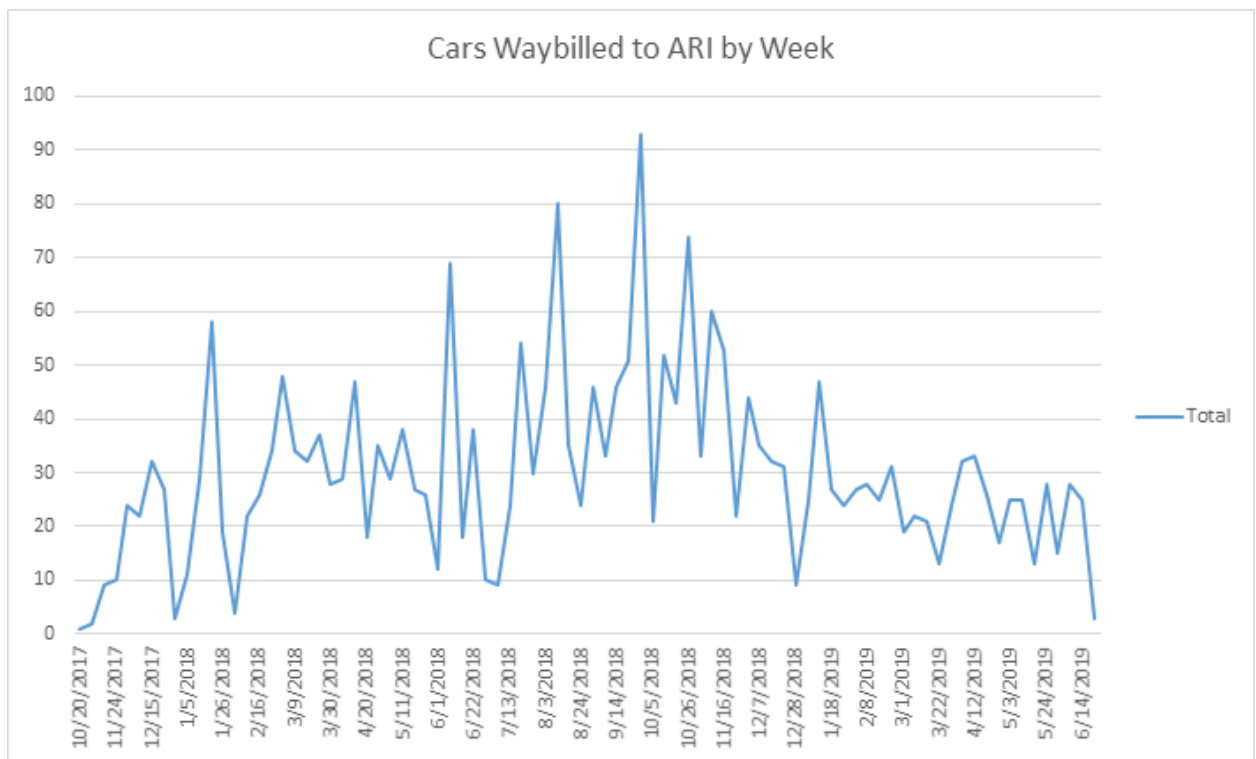
**IV. The Storage Charges at Issue Here Were Caused by a Spike in Car Volume Inbound to ARI and a Resulting Backup of Cars That Had to Be Stored in NS’s Yard and Main Line Sidings.**

NS does not have visibility into ARI’s customer relationships or information on precisely why ARI experienced such a high increase in inbound shipments. But NS’s shipment data does

illustrate what happened: a steady increase in inbound shipments during the fall (largely due to unusually high volume from one particular ARI customer) eventually exceeded ARI's storage capacity. By November, cars had to be stored in NS's serving yard awaiting space in Tennille. By December and January, the glut of cars overwhelmed NS's yard storage capacity and forced NS to hold cars on main line sidings as well, which was a further impediment to fluidity.

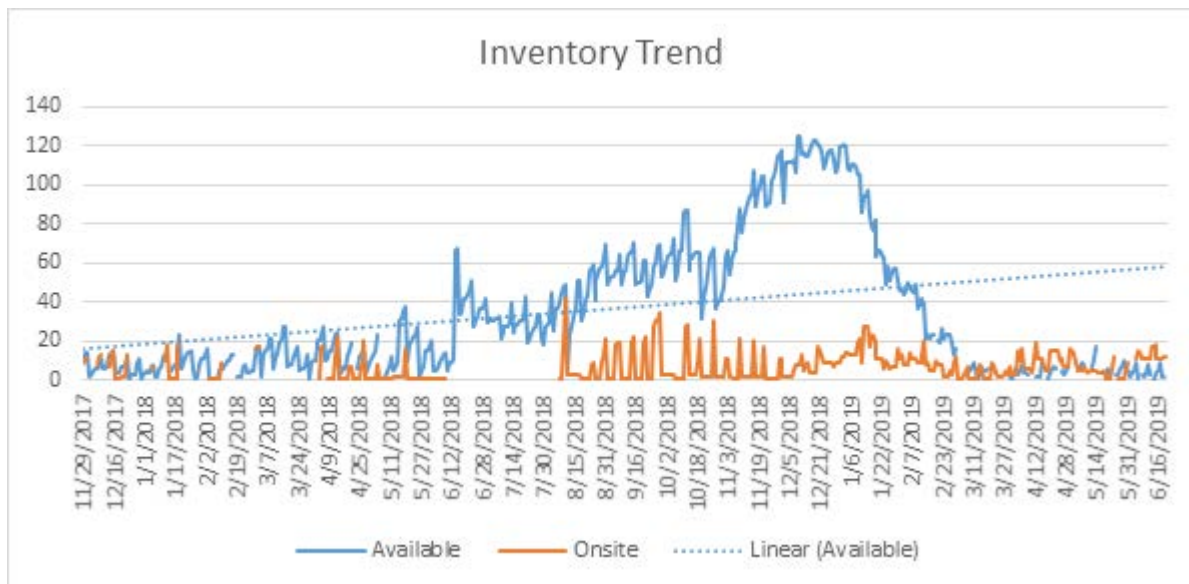
Table 2 below shows cars waybilled to ARI per week from October 2017 through June 2019 and illustrates the steady increase in inbound shipments during the latter part of 2018. These numbers were driven in particular by an unusual increase in shipments from one particular customer. That single customer was responsible for 446 cars waybilled to Tennille between August and December 2018, including 46 cars the week of August 10, 55 cars the week of September 28, and 40 cars the week of October 26.

**Figure 2: Cars Waybilled to ARI by Week: October 2017-April 2019**



In the wake of this increase in inbound traffic, ARI eventually became unable to take cars as they arrived. By November, ARI's cars began to require storage in NS's yard, and by December, NS was storing over a hundred cars for ARI. The volume of cars NS stored for ARI reached as many as 121 cars and required many cars to be held outside the yard on main line sidings.

**Figure 3: ARI Inventory on NS By Week: November 2017-June 2019**



NS regularly communicated with ARI about the backlog of cars awaiting delivery to Tennille and strategies for reducing inventory volumes. But once the facility was overwhelmed with cars, the only effective recourse was for ARI to repair its inventory of private equipment as quickly as possible and for NS to quickly remove repaired railcars to make room for the growing number of railcars in storage awaiting placement. NS did not miss any switches during this period of congestion, nor did any NS service issues contribute to the backlog.

ARI and NS discussed two service changes during this period, but it was not practical to implement either of those options in the middle of the demand surge, and neither option would have reduced ARI's backlog of cars. In the midst of the congestion, ARI urged NS to move to a

first-in-first out (FIFO) approach to the placement of railcars. NS ordinarily prefers to deliver the oldest dwelling cars first, so NS and ARI's interests were aligned. But by January 2019, NS was holding 121 cars on its property for ARI, with some of those cars spilling onto main-line sidings. In a period of such severe congestion, trying to deliver the oldest railcar first was impractical. The time and expense it would have taken to switch unwanted railcars around the highly congested NS yard—in order to reach a “first in” railcar buried within the railyard—would have exacerbated the congestion problem.

Alternatively, ARI asked if moving to “closed gate” status would be appropriate. But again, by the time ARI inquired about closed-gate service, there already were over a hundred cars sitting in NS's yard and main line sidings, waiting to be moved to ARI. NS concluded it would be impractical to implement closed-gate service at that point—a multitude of cars had already been constructively placed in the yard, so allowing ARI to pick and choose which car it wanted and when was not realistic. As NS explained to ARI, moving to closed gate at that point would not improve the congestion, but, rather, “open gate status provides the best flow for fluidity and service.” Ex. 4 at 1 (Apr. 7, 2019 e-mail from Adrienne Grant (NS) to Vic Bowers (ARI)). NS earlier explained to ARI that “[t]he change to closed gate has been posed but this isn't optimal because it prevents cars from moving quickly from yard to Customer. The goal is for cars to arrive and depart serving yard within 24 hours.” Ex. 4 at 3 (Jan. 23, 2019 e-mail from Daniel Juhasz (NS) to Vic Bowers (ARI)).

NS took all appropriate action to alleviate the congestion, explaining to ARI that it was “increasing service ... as a part of a greater effort to increase our network velocity, fluidity and service” and “re-aligning our crew schedules and yard operation in order to maintain flow of

traffic and provide consistent service.” Ex. 4 at 1 (Apr. 7, 2019 e-mail from Adrienne Grant (NS) to Vic Bowers (ARI)).

Through the combined efforts of both parties, the period of congestion was resolved quickly. While NS does not have complete visibility into the steps taken by ARI, it appears that the backlog of equipment awaiting repair was addressed by ARI’s efforts to quickly repair and release existing inventory, and NS’s efforts to pull repaired railcars and replace them with stored inventory as quickly as possible. In the ensuing months, normal fluidity has been restored. No storage charges have been billed to ARI at this facility for the months of May and June.

**V. Under the Circumstances, the Storage Charges to ARI Were Appropriate and Reasonable.**

The enormous and unusual backlog of cars at ARI’s facility caused significant congestion problems for NS and its other customers. The lack of fluidity at NS’s yard and congestion on its main line sidings affected its ability to provide efficient and effective service to other customers in the early months of 2019. This is the precise situation for which storage charges are intended, and the charges at issue were well-calibrated to disincentivize this behavior.

First, there is no question that ARI was on notice of its potential storage charge liability. ARI has received written notice of the car holding/storage charges in Tariff NS-6004 and of the accessorial tariff NS-8002. Notices were sent in June 2014, August 2017, October 2018, January 2019, and March 2019. And ARI’s actual payment of past storage charges is compelling evidence that it knew of its potential liability. In fact, ARI is the consignee under the bills of lading for the overwhelming majority of the cars at issue, and is thus independently responsible for storage charges under the referenced demurrage and storage tariff. (ARI was the consignee for all but 12 of the cars associated with its current storage charges.).

Second, ARI has not suggested that NS's charge is unreasonably high. And it plainly is not. NS's current \$60/day charge in NS-6004-D has not increased since at least February 2009. Indeed, NS's \$60/day charge does not fully compensate it for the cost of the congestion caused by storing private cars. Those costs include the costs to the fluidity of NS's rail network that is caused by having valuable serving yard tracks and main line sidings occupied by parked rail cars, the cost to NS of having to maintain more tracks than necessary in order to store the private cars, as well as the opportunity cost of not being able to use these network assets for their intended purpose of switching cars, building trains, and (in the case of main line sidings) line haul movement.

Finally, while it is true that the total amount of the storage charges ARI is contesting here is large, that amount is commensurate with the extraordinarily high amount of congestion that ARI caused. Table 4 shows ARI's storage car days per month since December 2018 and illustrates the sharp spike in cars that NS was forced to store for ARI in January and February 2019.

**Table 4: ARI Storage Car Days By Month, December 2018-June 2019**

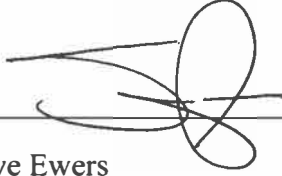
| <b>Empty Private Car Storage Car Days<br/>Accrued Monthly Since 2018 for ARI</b> |           |
|----------------------------------------------------------------------------------|-----------|
| Month:                                                                           | Car Days: |
| December 2018                                                                    | 322       |
| January 2019                                                                     | 2568      |
| February 2019                                                                    | 2633      |
| March 2019                                                                       | 189       |
| April 2019                                                                       | 0         |
| May 2019                                                                         | 0         |
| June 2019                                                                        | 0         |

Fortunately, this is not a continuing problem, as ARI has effectively managed its pipeline in recent months to eliminate unnecessary storage charges. But this chart illustrates the important incentive effect that storage charges play. If ARI were exempt from storage charges, as it claims, then the storage at serving yards and mainline sidings of over 2500 railcar-days per month would come with zero cost to ARI, and NS would have no ability to encourage different behavior. Requiring ARI to pay the charges it has incurred provides the appropriate incentives to ARI and helps to ensure a more efficient network for all stakeholders.

### VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

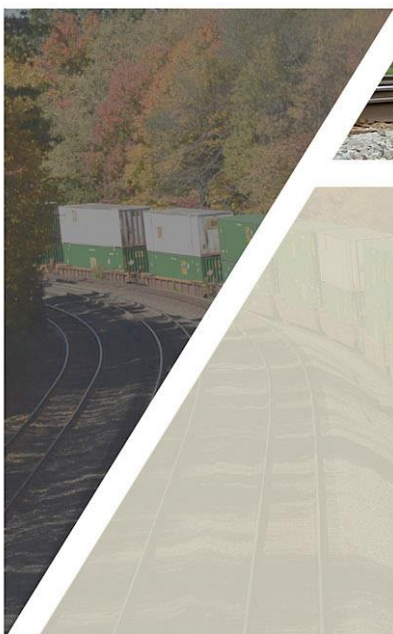
Executed this 19 day of July, 2019.



Steve Ewers

# **Exhibit 1**

**(Excerpt)**



## NS 8002-A

*LOCAL AND JOINT FREIGHT TARIFF  
PUBLISHING RULES AND CHARGES ON  
ACCESSORIAL SERVICES AT STATIONS ON  
NORFOLK SOUTHERN RAILWAY COMPANY*

**ISSUED: MARCH 1, 2019**  
**EFFECTIVE: APRIL 1, 2019**



Three Commercial Place  
Norfolk, VA 23510  
[www.nscorp.com](http://www.nscorp.com)

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- (B) If a single diversion order, given at one time contains a request for more than one change in the billing/shipping document, only one charge will be assessed, which will be for the change bearing the highest charge.

## SECTION 3 - RULES AND CHARGES FOR HANDLING RAIL CARS FROM AND TO REPAIR, STORAGE, DISMANTLING, OR CLEAN OUT FACILITIES

### ITEM 3000 - HANDLING PRIVATE EQUIPMENT FROM AND TO REPAIR, STORAGE, OR CLEAN-OUT FACILITIES

(See Exception)

- A. NS will assess a round trip handling charge of **\$350.00** when private equipment, including tank cars are moved between an NS classification yard, or interchange track and repair, storage or clean out facilities within the same switching district. This charge will be billed when the car is delivered to the repair or storage facility. This charge will always apply on empty tank cars; unless NS receives line haul revenue to or from the repair or storage location.
- B. Empty cars moving on own wheels will be subject to charges published in NSRQ 4900-Series when:
  1. Cars are new or have been restenciled with new initials and initials and/or numbers
  2. Cars are not listed in UMLER
  3. Cars are moving for scrapping or sale
  4. Private equipment, other than tank cars, moving from an NS origin, classification yard, or interchange track to (i) a repair, storage or clean out facility located outside of the switching limits of the car's then-current location or (ii) a repair, storage or cleanout facility on another carrier will be transported at mileage rates published in NSRQ 4900-Series. Once ready for revenue service, the car will move free out of the repair, storage or clean out facility located on NS' system to a location on NS' system, or an interline interchange track. Except as provided in the preceding sentence, a subsequent move or moves from the initial movement into the repair, storage or clean out facility to another repair, storage or clean out facility will be subject to mileage rates published in NSRQ 4900-Series.
- C. Private equipment, other than tank cars, moving from an NS origin, classification yard, or interchange track to a repair, storage or clean out facility located outside of the switching limits of the origin station, NS classification yard, or interchange track, will be transported at mileage rates published in NSRQ 4900-Series. Once ready for revenue service, the car will move free out of the repair, storage or clean out facility to a location on NS' system, or an interline interchange track. Except as provided in the preceding sentence, a subsequent move or moves from the initial movement into the repair, storage or clean out facility to another repair, storage or clean out facility will be subject to mileage rates published in NSRQ 4900-Series.
- D. In absence of advance written instructions requesting otherwise, handling charge and mileage rates subject to the rules in tariff NSRQ 4900-Series will be assessed against the car owner. Holding/Storage charges will be assessed against the repair facility as stipulated in Freight Tariff NS 6004-Series.
- E. Refer to RIC 6007-Series for additional guidance applicable to this section.

Exception:

Handling charge will not be assessed on cars of TTX Company ownership, or on multi-level cars.

### ITEM 3010 - LINE-HAUL MOVEMENT OF EMPTY RAILROAD MARKED CARS OF OTHER THAN NS OWNERSHIP

The following line-haul movements of empty railroad marked cars of other than NS ownership on NS are chargeable subject to the rates and provisions of NSRQ 4900-Series:

- A. New cars prior to first loaded move
- B. Restenciled cars prior to first loaded move
- C. Cars shipped for dismantling
- D. Cars moving to shop, except:
  - a. When obligated by the provisions outlined in OT 16
- E. Cars moving out of shop, except:
  - a. When obligated by the provisions outlined in OT 16

# Exhibit 2

THE NS VISION:

BE THE SAFEST, MOST  
CUSTOMER-FOCUSED, AND  
SUCCESSFUL  
TRANSPORTATION  
COMPANY IN THE WORLD.

Demurrage and Storage  
Rules and Charges

Issued: March 1, 2019  
Effective: April 1, 2019



Norfolk Southern Railway Company  
and Consolidated Subsidiaries



*One line, infinite possibilities*

## Freight Tariff NS 6004-D

Cancels NS 6004-C and Supplements 1 through 5

Applying at all NS points in the United States and other  
points as specifically provided herein.

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Also at points on other roads  
(See Item 40)

ISSUED BY:  
Pricing Services  
Norfolk Southern Railway Company  
and Consolidated Subsidiaries  
Three Commercial Place  
Norfolk, VA 23510

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**ITEM 20 - CANCELLATION NOTICE**

This tariff cancels Rates, Rules, Regulations and Charges published in Demurrage Rules and Charges and Storage Provisions in the following Tariffs:

**NS Tariff 6004-C and Supplements 1 through 5**

**ITEM 40 - LIST OF PARTICIPATING CARRIERS**

| ABBREVIATION | NAME OF CARRIER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NS           | <p>Norfolk Southern Railway Company and Consolidated Subsidiaries<br/>Includes the following subsidiaries and affiliated carriers:</p> <p>Norfolk Southern Railway Company<br/>Alabama Great Southern Railroad Company, The<br/>Camp Lejeune Railroad Company<br/>Chesapeake Western Railway<br/>Cincinnati, New Orleans and Texas Pacific Railway Company, The<br/>Central of Georgia Railroad Company<br/>Georgia Southern and Florida Railway Company<br/>State University Railroad Company<br/>Tennessee, Alabama &amp; Georgia Railway Company<br/>Tennessee Railway Company</p> |
|              | All NS Handling Line Stations on carriers named in note 3700 of The Official Railroad Station List OPSL 6000-series. (See Item 60 (See Note 1 this item))                                                                                                                                                                                                                                                                                                                                                                                                                             |

Note 1 - The provisions of this tariff will also apply on traffic to or from Norfolk Southern Handling Lines as defined in Note 3700 of OPSL 6000-Series when traffic is billed from or to the NS station numbers assigned to the handling line station. The carriers shown in Column 1 of Note 3700 are a party to this tariff except where pricing authorities provide for specific demurrage provisions.

**ITEM 60 - APPLICATION OF REFERENCED PUBLICATIONS**

The following publications contain rules, regulations, charges and allowances specifically referred to herein or that may apply directly or indirectly along with the terms of demurrage, storage and other matters that are covered in this publication.

NS Conditions of Carriage #1-Series  
 NS Conditions of Carriage #2-Series (Coal)  
 NS 6306 series - Rules and Regulations for Handling Municipal Solid Waste, Contaminated Soil, Hazardous Materials, and Related Articles  
 NS 8001 series - Switching  
 NS 8002 series - Accessorial Services  
 AAR 2 series - Hazardous Materials Shipping Descriptions (49-series STCC numbers)  
 BOE 6000 series - Bureau of Explosives Rules  
 RER 6411 series - Official Railway Equipment Register  
 RPS 6007 series - Mileage Allowances and Rules  
 RPS 6740 series - Heavy Duty Flat Car Charges  
 OPSL 6000 series - Official Railroad Station List  
 STCC 6001 series - Standard Transportation Commodity Code  
 UFC 6000 series - Uniform Freight Classification



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## ITEM 80 - REFERENCE TO TARIFFS, ITEMS, NOTES, AND RULES

Where reference is made in this tariff to tariffs, items, notes, the glossary, rules, etc. such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, the glossary, and rules.

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## ITEM 100 - CONSECUTIVE NUMBERS

Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word “to” or a hyphen they will be understood to include both of the numbers shown. If the first number only bears a reference mark, such reference mark also applies to the last number shown and to all numbers between the first and last numbers.

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## ITEM 200 - GLOSSARY OF TERMS

1. **Actual Placement:** When a car is placed in an accessible position for loading or unloading or at a point designated by Consignor or Consignee.
2. **Assignee:** A shipper who has requested and has been assigned cars to a specific pool of cars for their use.
3. **Assigned Car:** A car of any ownership specifically requested and assigned to a shipper from a pool of assignment service cars.
4. **Car Days:** A twenty four (24) hour period or fraction thereof commencing 0000 hours (Local Time) after actual or constructive placement until the car is released and available to NS.
5. **Closed Gate:** When a car cannot be placed on Consignee's siding at time of arrival due to siding having a locked gate, door and/or standing instructions not to place any cars unless the Consignee first contacts NS for placement instructions. All cars are constructively placed at time of arrival.
6. **Consignee:** The party to whom a shipment is consigned or the party entitled to receive the shipment. For purposes of this tariff, Consignee includes any person who receives railcars from a rail carrier for unloading, as more specifically described in 49 CFR Part 1333.
7. **Consignor:** The party in whose name cars are ordered. For purposes of this tariff, Consignor includes any person who receives railcars from a rail carrier for loading, as more specifically described in 49 CFR Part 1333.
8. **Constructive Placement:** When a car cannot be actually placed because of any condition attributable to the Consignor or Consignee, such car will be held at an available hold point and notice will be given the Consignor or Consignee that the car is held awaiting instructions. However, cars actually placed on customer siding will be considered constructively placed and no notification provided. Car Days will begin if instructions to NS are not received before 0000 hours (see Car Days) of day following notification.
9. **Credit Day:** Non-chargeable day. Credits can only be earned on those cars released to carrier for further disposition, and can only offset Car Days for cars with the same Per Car Daily Charge.
10. **Cutoff Time:** The designated time prior to a service window in which a switch request must be submitted in order to be fulfilled for the Consignor/Consignee to receive a switch during that service window.
11. **Electronic Means:** Any approved electronic device (i.e. **AccessNS**, email, telephone (facsimile) used to communicate to Operations & Service Support (OSS) the disposition of a car.
12. **Forwarding Instructions:** A bill of lading or other suitable order containing all the necessary information to transport the shipment to final destination. Bill of lading or other suitable order must be given to NS via electronic data interchange or facsimile to the Agency Operations Center at 1-800-580-6092.
13. **Holidays:** The following days will be considered NS Holidays: New Year's Eve Day, New Year's Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, The Day After Thanksgiving, Christmas Eve Day, Christmas Day.
14. **Hold Point:** The rail station where Assigned Cars are made available to the shipper.
15. **Lease Track:** Track (s) assigned to a user by written agreement. Lease Track will be treated the same as private track.
16. **Loading:** The complete or partial loading of a car in conformity with NS loading and clearance rules, and the furnishing of forwarding instructions.
17. **LOPA:** Local Operating Plan Adherence (LOPA) measures the compliance to the instructions in the customer work order. In the event of non-compliance in the form of a car specific service interference attributed to issues for which the customer is responsible, the customer will receive a LOPA failure notification.



18. **Merchandise Unit Train:** A railway train with a minimum of 50 cars that is permitted and approved by NS to move in Merchandise Unit Train service and where all of the customer's railcars are moving from a single origin to a single destination.
19. **NOPA:** A courtesy notification that a consignee's rail car has arrived to the serving yard and is either available for ordering in (closed gate) or will be placed on the following service day (open gate).
20. **NS Track:** All tracks which NS provides for its own uses and purposes and other tracks located inside of its right-of-way or yards and terminals.
21. **Open Gate:** When a Consignee does not place any restrictions (physical or otherwise) on NS to place cars on their siding upon arrival.
22. **Origin Turnover:** Origin Turnover occurs when a car is loaded, and Consignor authorizes the carrier to accept shipping instructions from another party, while the car is still at origin.
23. **Ordered Placed:** The date and time that a car is to be placed on a private track.
24. **NS Original ETA:** Following interchange or release of shipment and complete billing to final destination, the first reported movement on Norfolk Southern Railway Company (NSR) will generate the NSR Original Estimated Time of Availability (ETA). Though the time of availability may change during transit due to delays or advances en route, it is the original NSR ETA against which an early or late shipment will be measured. NSR Original ETAs are accessible to the customer via **AccessNS**.
25. **Originating Storage:** Originating storage occurs when a private car has been pulled loaded and is held on railroad owned tracks awaiting forwarding instructions.
26. **Per Car Daily Charge:** The daily demurrage/storage charge applicable to a car.
27. **Private Car:** A car bearing other than railroad reporting marks and which is not a Railroad Controlled Car.
28. **Private Track:** Trackage assigned for individual use including privately owned or leased tracks.
29. **Public Delivery Track:** Any accessible track open to the general public for loading or unloading.
30. **Railroad-Controlled Cars:** A car with railroad reporting marks.
31. **Reload:** When the same car is completely unloaded and then replaced with a revenue load. Reloading will be expressed (with cars unloading demurrage) from the date of tender to the date forwarding instructions are received.
32. **Service Window:** The designated block of time within a service day that NS anticipates it will physically pull and place a customer's cars. These times are not guaranteed and delivery outside of these projected times will not impact the obligation to pay demurrage and storage charges.
33. **Stopped in Transit:** When cars are held en route because of any condition attributable to the Consignor or Consignee, or owner of the lading.
34. **Storage Day:** A 24 hour period, or part thereof.
35. **Tender:** When NS gives notification that a car is available for unloading or loading by either actual or constructive placement to Consignor or Consignee.
36. **Time:** Local time is applicable. Time is expressed on the basis of the 24-hour clock. (EXAMPLE: 12:01 AM is expressed as 0001 hours.)
37. **Unloading:** The complete unloading of a car and notice from the Consignee that the car is empty and available to NS.

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## ITEM 300 - NOTIFICATION TO CUSTOMERS BY NS

1. The following notifications (including by Electronic Means) will be furnished as indicated:

### Cars to be Delivered to Private Tracks

- (a) Notification of constructive placement on all cars held on NS tracks due to any condition attributable to Consignee or Consignor.
- (b) Delivery of car upon Consignee tracks will constitute notification.
- (c) Delivery upon industrial interchange tracks of Consignee or party entitled to receive same will constitute notification.

### Cars to be Delivered to Public Tracks

Notice of arrival will be given to party entitled to receive notification when car is actually placed.

### Refused Carload Freight

When advised of refusal of car at destination, notice will be sent or given to Consignor or owner of the lading.

2. Notification information provided:

- (a) Car Initial and Number
- (b) If contents transferred en route, NS will furnish car initial and number of the original car and replacement car.



### 3. Methods and procedures for notification:

Notification may be sent or given by telephone communication or Electronic Means, (see Electronic Means, Item 200). When Consignor or Consignee utilizes an electronic or mechanical device (either in written, oral or keyed data form) notification left on such device will be considered as having been given to Consignor or Consignee, as of the date and time transmitted.

The Consignor/Consignee is responsible for providing NS with the correct contact or contacts for notification purposes.

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## ITEM 350 - NOTIFICATION TO NS

- (a) After Constructive placement Consignor/Consignee will have until 0000 hours (see Car Days, Item 200) of the next day to furnish required instructions or information.
- (b) If the Consignor/Consignee receives a local operating plan adherence (LOPA) failure notification, the Consignor/Consignee then must resubmit order/release instruction.
- (c) Notification by Electronic Means (see Electronic Means, Item 200) will be considered as having been received by NS at date and time Consignee or Consignor furnishes forwarding instructions or notification that car is available for movement.
- (d) Any notice sent by any Consignor/Consignee indicating an intention to not pay otherwise applicable demurrage or storage charges hereunder, or instructing NS not to deliver railcars if NS intends to impose otherwise applicable demurrage or storage charges hereunder, shall be void and shall have no force or effect regardless of whether NS responds to such notice.

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## ITEM 400 - SITUATIONS WHEN RELIEF IS PERMISSIBLE

Relief may be requested online through **AccessNS** if the accrued car days are disputed by the fifth (5<sup>th</sup>) calendar day of the month following the date the cars are released.

- 1. **Weather Interference:** When because of earthquakes, tornadoes, hurricanes, floods or heavy snow, the operations of the Consignor or Consignee are disrupted, the demurrage/storage calculations will be adjusted to account for the disruption, provided the disruption exceeds (2) days in duration. Any cars under Constructive Placement (PCON) on the day of a disruption will also have car days adjusted to account for the disruption, if the disruption is affecting the ability to actually place the car that is under PCON.
- 2. **Frozen or Congealed Lading:** When at the time of placement, lading is frozen or congealed so as to require heating, thawing, or loosening to unload, Railroad will grant 1 credit for each day a car under actual placement that has its lading heated, thawed or loosened, with a maximum of 2 credits. All cars under Constructive Placement (PCON) at the time the lading contained in a car that has been actually placed is heated, thawed or loosened will receive an adjustment to car days to correspond with the cars that are actually placed, to the extent that the car(s) under PCON are in that status due to insufficient space at customer's facility.  
  
A Consignee desiring additional credits for unloading shall, prior to the expiration of (10) car days, after the date on which the car was released, send or give NS a written statement certifying the car initial and number, that the lading required heating, thawing or loosening. NS will not provide relief for the day on which a car was actually unloaded as certified.
- 3. **Strike Interference:** When it is impossible to load or unload or receive cars from or make cars available to NS because of strike interference at the point where the loading, or unloading or receipt of cars is to be accomplished, demurrage days will be charged at the rate of \$30.00 per day during the period of strike interference, provided:
  - (a) The disruption exceeds five (5) days in duration during one calendar month; and
  - (b) No Management personnel or reduced work force is available to perform work.

The provisions of this item will not apply to Cars for unloading when waybills are dated four (4) days after the beginning of strike interference, and Cars for loading when ordered after the beginning and prior to the ending of strike interference.

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## ITEM 450 - CARS AWAITING CUSTOMS INSTRUCTIONS, PAYMENT OF DUTIES

Cars delayed on carriers' tracks longer than forty-eight (48) hours, awaiting completion of customs documentation or payment of duties will begin to accrue normal demurrage and/or storage charges.

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## ITEM 500 - CARS SUBJECT TO DEMURRAGE

### GENERAL APPLICATION (See Exception)

All Railroad Controlled Cars held for or by Consignors or Consignees for any purpose are subject to demurrage rules and charges described in this tariff, except as follows:

1. Demurrage provisions in this tariff will not apply when demurrage rules are provided in contracts or other private agreements.
2. Private cars are not subject to demurrage rules except when placed on Public Delivery Tracks for loading or unloading.
3. Assigned cars returned empty (auto parts racks allowed) to point of assignment while subject to storage rules.
4. If a car is rejected within 24 hours of actual placement, empty cars found to be unsuitable for loading.

Exception: Empty Multi-Level Cars will not be subject to demurrage rules and charges

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## ITEM 550 - CARS SUBJECT TO STORAGE

**APPLICATION:** This item applies to:

1. Loaded Private Cars and empty Private Cars held on NS tracks under constructive placement after notice of arrival is given to the Consignee or Consignor. Time accrues until the car is "ordered placed" (see Item 200) on private tracks.
2. Loaded Private Cars held on NS tracks waiting forwarding instructions from the Consignor. (see note)

Note: Private Cars loaded and turned over to a third party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This form is available at the Norfolk Southern web site [www.nscorp.com](http://www.nscorp.com) or by calling the Norfolk Southern Agency Operations at 800-854-2780. If such third party declines responsibility for storage payments, this note does not apply and Shipper retains responsibility for payment of storage charges.

**NON-APPLICATION:** Private Car storage provisions do not apply to Private Cars located on private or leased tracks.

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## ITEM 600 - RULES GOVERNING CARS HELD FOR LOADING

**Release:** (See Notes 1 and 2 below)

- (a) A car is released as of the date and time NS receives advice that the car is available and forwarding instructions are provided.
- (b) When Consignor does its own switching, the time a car is held for loading will commence once empty car(s) are placed on interchange tracks, and will continue until ( i ) car(s) are returned to an industrial interchange track, and ( ii ) NS receives forwarding instructions.
- (c) Cars found to be overloaded or improperly loaded while at origin will not be considered released until the load has been adjusted.

Note 1: Railroad Controlled Cars loaded and turned over to a third party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This form is available at



the Norfolk Southern web site [www.nscorp.com](http://www.nscorp.com) or by calling the Norfolk Southern Agency Operations Center at 800-854-2780.

Note 2: The Consignor/Consignee shall adhere to the established cutoff times and have all switch requests submitted accordingly.

**Computation:**

- (a) Car Days will be computed from the first 0000 hours (see Car Days, Item 200) after Tender ( i ) until released with forwarding instructions for Railroad Controlled Cars, or ( ii ) until placement is made for Private Cars. In the case of Private Cars, the separate calculation for originating storage charges will be computed from the time that the loaded car is pulled and held on railroad controlled tracks by NS without forwarding instructions to time of receipt of required forwarding instructions.
- (b) On cars placed prior to date for which ordered, Car Days will be computed from the first 0000 hours of the day for which the car was ordered until the car is released.
- (c) Empty cars placed without being ordered, will be considered as having been ordered and actually placed on that day.

**Credits:**

- (a) One (1) Credit Day will be earned for each Railroad controlled car released for which forwarding instructions have been received.
- (b) Zero (0) Credit Days will be earned for each empty private car under constructive placement.
- (c) Zero (0) Credit Days will be earned for each loaded private car pulled for which forwarding instructions have not been received.

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## ITEM 650 - RULES GOVERNING CARS HELD FOR UNLOADING

**Release: (See Note below)**

- (a) A car is released as of the date and time NS receives advice that the car is empty, and is available.
- (b) Cars placed on interchange tracks of a Consignee that performs its own switching must also be returned to the same industrial interchange track for release.
- (c) A car is released when the same car is unloaded and reloaded, when forwarding instructions are received.
- (d) If a customer advises NS that an empty car is available to be pulled, but when NS arrives to pull the car and a release order has not been provided by customer, the empty pull timestamp represents release.

Note 1: The Consignor/Consignee shall adhere to the established cutoff times and have all switch requests submitted accordingly.

**Computation:** Car Days will be computed from the first 0000 hours (see Car Days, Item 200) after tender until release.

**Credits:**

- (a) One (1) Credit Day will be earned for each Railroad controlled car released from unloading.
- (b) One (1) additional Credit Day will be provided when the same car is reloaded with a revenue load. (Ex: When car is held for revenue loading after being emptied, in one continuous transaction, a total of two (2) Credit Days will be earned.

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## ITEM 700 - RULES GOVERNING CARS HELD FOR PURPOSES OTHER THAN LOADING OR UNLOADING

This Item applies to cars held:

- (a) On orders of the Consignor or Consignee.
- (b) While awaiting Disposition from the Consignor or Consignee.
- (c) As a result of conditions attributable to the Consignor or Consignee.

Note: Does not apply to origin turnovers.

**Disposition:** That information, which allows NS to either tender or release the car from the Consignor's or Consignee's account.



**Release:** Date and time that NS receives advice that the car is released and forwarding instructions are given on cars.

**Computation:** Car Days will be computed from the first 0000 hours: (see Car Days, Item 200).

- (a) After Tender until Release, on cars: (1) Partially unloaded. (2) Reconsigned.
- (b) After Tender until date of refusal on refused loaded cars (Consignee).
- (c) After arrival at final online destination until date of credit approval/received payment on non-credit cars.

**Credits:** No Credit Days will be earned for a car that is released.

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## ITEM 750 - RULES GOVERNING MERCHANDISE UNIT TRAIN DETENTION

Merchandise Unit Trains as defined in Item 200, shall be subject to the following provisions:

1. Merchandise Unit Train service will be performed at the convenience of railway and only for those facilities located on NS, or a short line that interchanges with NS.
2. NS will provide an electronic notice as outlined in Item 300.

### Cars Held for Unloading Computation:

Hours will be computed from actual notice of arrival (i) until the last railcar of the unit is empty, released and available for Railroad-Controlled Cars; or (ii) until Actual Placement is made for Private Cars.

### Cars Held for Loading Computation:

Hours will be computed from the actual notice of arrival (i) until NS receives advice that the last railcar of the unit is available and forwarding instructions are provided for Railroad-Controlled Cars; or (ii) until Actual Placement is made for Private Cars.

### Free Time:

- For purposes of this Item, "Free Time" is defined as the period of time allowed to load or unload cars before Merchandise Unit Train Detention Charges begin to accrue.
- Merchandise Unit Trains consisting entirely or partially of Railroad-Controlled Cars will have 24 hours Free Time.
- Merchandise Unit Trains consisting entirely of Private Cars will have zero (0) Free Time after notice of arrival and while held on railway owned tracks.

### Merchandise Unit Train Detention Charges:

A charge per Merchandise Unit Train of \$800.00 for each hour, or fraction thereof, that a railcar or railcars contained in a Merchandise Unit Train are detained beyond the Free Time, or the extended Free Time (as outlined in Detention Rule 6 below) will be assessed, as applicable.

### Detention Rules:

1. The charges stated above are in addition to any applicable locomotive charges.
2. Charges are per Merchandise Unit Train and are in lieu of demurrage and storage charges which might otherwise be payable under NS Demurrage and Storage Tariff 6004-D series, Items 1010 and 1012, or successor items.
3. Merchandise Unit Train charges will be accrued and billed separately from any charges for single cars. Cars in Merchandise Unit Trains will not earn Credit Days.
4. Remaining Free Time from one Merchandise Unit Train cannot be used for a different Merchandise Unit Train.
5. All days count including Saturday, Sunday and holidays.
6. In the event that a shipment cannot be unloaded because of frozen commodity and Consignees so notify NS, then the unloading Free Time for that shipment will be extended by an additional twenty-four (24) hours. A shipment that is held in excess of the extended Free Time will be subject to the Merchandise Unit Train Detention Charges referenced above, or a one-time frozen commodity charge of \$12,000.00, whichever is less.

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## ITEM 760 - RULES GOVERNING MERCHANDISE UNIT TRAINS STOPPED IN TRANSIT

Merchandise Unit Trains stopped in transit due to the customer being unable to receive the train shall be subject to stoppage charges as follows:

- (a) Merchandise Unit Trains shall be subject to a stoppage charge of \$5,000.00.



- (b) In addition to the stoppage charge, if disposition or release on the stopped train has not been received by NS after 24 hours following the time the train was stopped, then Merchandise Unit Train Detention Charges and terms shall apply. Such charges shall accrue until the stop is lifted by the customer and NS is cleared to move the train towards destination.

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## ITEM 800 - RULES GOVERNING STORAGE OF ASSIGNED CARS

1. **NOTICE OF ARRIVAL:** Notice will be given assignee within 24 hours after arrival of car at Hold Point. (see Hold Point, Item 200)
2. **STORAGE DAYS:** Chargeable storage days will commence from the first 0000 hour (see Time, Item 200) following notice of arrival and continue until the car is placed on demurrage status or is released from the assignment.
3. **STORAGE RULES:**
  - (a) Storage charges will be assessed against assignee.
  - (b) Storage arrangements will be maintained individually by pool assignment number.
  - (c) Settlement of charges will be made on a monthly basis on all cars released from storage during each calendar month.
  - (d) One (1) Credit Day is given on each car placed in storage. Thereafter, storage charges accrue until the car is placed into service.
  - (e) Chargeable storage rate is \$20.00 per day.

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## ITEM 850 - RULES GOVERNING ORIGIN TURNOVERS

### Origin Turnover:

An origin turnover occurs when a notification, submitted at origin by the party responsible for loading a railcar, informs NS that the party responsible for loading has completed the loading and is 'turning over' the railcar and its lading to another party. The party designated on the Origin Turnover becomes the Consignor and will be responsible for submitting final destination forwarding instructions to Norfolk Southern before the railcar is pulled. (See publication NS 8002-A, Item 6030). The party responsible for loading may submit an Origin Turnover using Norfolk Southern's internet based Diversion and Reconsignment application. Origin Turnovers will also be accepted via facsimile or in writing at the address shown below:

Norfolk Southern OSS Administration - Origin Turnovers  
1200 Peachtree Street, NE  
Box 118  
Atlanta, Georgia 30309  
Phone: (404) 589-6108  
FAX: (404) 589-6682

There is no charge for origin turnovers submitted through Norfolk Southern's internet based Diversion and Reconsignment application. When submitted via facsimile or in writing, the charge will be \$198.00 per car which will be due from the party executing the origin turnover.

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## ITEM 900 - STORAGE OF RAILWAY EQUIPMENT MOVING ON OWN WHEELS

### 1. APPLICATION:

This item applies to railway equipment held on NS tracks that will or has moved on its own wheels, as freight, subject to transportation charges.

### 2. STORAGE DAYS WILL COMMENCE:

- (a) At origin or en route: From the first 0000 hours (see Time, Item 200) following receipt of the equipment and continuing until a document is given to NS containing all necessary information to forward the equipment.



- (b) At destination: From the first 0000 hours (see Time, Item 200) after notice of arrival is given to Consignee and continuing until equipment is released from hold tracks. (Notice of arrival will be given Consignee within 24 hours after arrival of equipment at hold point).

### 3. STORAGE RULES:

- (a) Unless otherwise advised, charges will be assessed to Consignor, if delays occurred at origin or en route, or Consignee if storage delays occurred at destination.
- (b) Settlement of charges will be made on an individual basis for equipment released from storage during each calendar month.
- (c) Zero (0) Credit Days will be allowed on each car released from storage.
- (d) Chargeable storage rate is \$60.00 per day.

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## ITEM 950 - DEMURRAGE / STORAGE RULES

Billing will be rendered on a monthly basis for all cars released during a calendar month. Billing will be made per customer per station.

1. Billing cannot be combined for customers having facilities at separate stations.
2. Credit Days and Car Days for Railroad Controlled cars held for unloading or other purposes will be kept separately from cars held for loading. Except as otherwise provided in Item 1000, Credit Days and Car Days for Private Cars for loading or unloading will be combined. Credits on Private Cars cannot be combined with credits on Railroad Controlled cars.
3. Customer having two or more facilities at the same station with NS may combine the accounts into one if requested in writing.
4. Credit Days earned in one calendar month cannot be carried over to another month.
5. Demurrage/Storage charges will be assessed to Consignor at origin or to Consignee at destination as applicable.
6. All days count including Saturday and Sundays. Eleven (11) holidays will not be subject to demurrage (see Holidays, Item 200)
7. Demurrage/storage will be suspended while Cars are in bad order, pull turn, or pull weigh status.
8. Except for shipments of 45 or more cars moving under one Bill of Lading or Waybill, two (2) credits will be applied for each day for loaded railcars where NSR Original ETA is not met. Credits may be applied for early or late loaded arrivals. Combined total credits pursuant to Item 1010 and Item 950 will be limited to ten (10) per car per shipment. Credits will not be carried over to subsequent months.
9. Disputes concerning demurrage or storage charges or computations (a "Demurrage Dispute") must be submitted online through **AccessNS** by the fifth (5th) calendar day of the month following the accrual closing event in order to avoid the charge described in the next sentence. If a Demurrage Dispute is not received within the time frame described above or is received by a method other than online through **AccessNS**, a non-refundable handling charge of \$500.00 will be assessed to the party submitting the Demurrage Dispute. The time limit for submitting a Demurrage Dispute is 30 days from the demurrage/storage invoice date (the "Time Limit"). Any Demurrage Disputes received after the Time Limit will be rejected.
10. If NS offers scheduled local service less than five (5) days per week, then NS will apply demurrage/storage credits for the difference between five (5) days and the Offered Service Days. These credits are in addition to the standard demurrage credits. When Offered Service Days is equal to or greater than five (5) days per week, then standard demurrage/storage credits apply.  
Example: If the Offered Service Days=3 and standard demurrage credits=1, then every railcar will get 3 credits (5-3=2+1=3).

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## ITEM 1000 - DEMURRAGE / STORAGE CALCULATION

Credit Days and Car Days will be kept separately, and the following calculations will be made separately, for cars with different Per Car Daily Charges in Item 1010:

1. Total Car Days with the same Per Car Daily Charge per customer per location will be added. (Car/days are net of holidays (see Holidays, Item 200)).
2. Total Credit Days for all cars with the same Per Car Daily Charge will be added.
3. If total Credit Days equal or exceed total net Car Days with the same Per Car Daily Charge, demurrage/storage charges will not be assessed. Any excess Credit Days cannot be applied to cars with different Per Car Daily Charges.



4. If total net Car Days exceed the total Credit Days with the same Per Car Daily Charge, calculation of charges will be made as follows:
- Subtract total Credit Days from total Car Days to determine chargeable days.
  - The number of chargeable days will be assessed as shown in Item 1010 (or Item 1012 for hazardous commodities).

## ITEM 1010 - DEMURRAGE / STORAGE APPLICATION

| Demurrage Application                                                          | Loading Credits | Unloading Credits | Per Car Daily Charge |
|--------------------------------------------------------------------------------|-----------------|-------------------|----------------------|
| Railroad Controlled Cars, Except Below                                         | 1               | 1                 | \$ 150.00            |
| Covered Coil Cars, Centerbeam Flatcars, Refrigerated Cars, Heavy-Duty Flatcars | 1               | 1                 | \$ 250.00            |

| Cars Held                                    | Origin/Destination Credits | Per Car Daily Charge |
|----------------------------------------------|----------------------------|----------------------|
| For Purposes Other than Loading or Unloading | 0                          | \$ 100.00            |

| Storage Application | Loading Credits | Unloading Credits | Per Car Daily Charge |
|---------------------|-----------------|-------------------|----------------------|
| Private Cars        | 0               | 0                 | \$ 60.00             |
| Assigned Cars       | 1               | 0                 | \$ 20.00             |

## ITEM 1012 - HAZARDOUS COMMODITIES

With respect to unloading credits, this provision applies in lieu of item 1010 for commodities listed below.

|                                   | Unloading Credits | Per Car Daily Charge           |
|-----------------------------------|-------------------|--------------------------------|
| Hazardous Material other than TIH | 0                 | \$ 100.00<br>(see Item 1015)   |
| TIH Material identified in Note 1 | 0                 | \$ 2,000.00<br>(see Item 1015) |

### Note 1:

TIH STCC codes: 4821019, 4821261, 4821722, 4830030, 4904209 - 4904211, 4904879, 4907409, 4907434, 4909306 - 4909307, 4910370, 4916138, 4918180, 4918505, 4918507, 4920101 - 4920113, 4920115 - 4920116, 4920122, 4920135, 4920160, 4920164 - 4920165, 4920167, 4920173 - 4920175, 4920178, 4920180 - 4920181, 4920183 - 4920184, 4920187 - 4920189, 4920195 - 4920196, 4920300 - 4920325, 4920331, 4920337, 4920342 - 4920344, 4920346 - 4920349, 4920351 - 4920360, 4920368 - 4920369, 4920371,



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## ITEM 1015 - STORAGE OF EXPLOSIVES, HAZARDOUS MATERIALS, SUBSTANCES OR WASTE

(Subject to publication BOE 6000 - hazardous materials regulations of the Department of Transportation)

The hazardous material charge shown in Item 1012 will be in addition to demurrage and storage charges provided in Items 1010 and 1100.

In addition, in the event that customer causes cars to be held on NS property in violation of 49 CFR 174.14, customer shall indemnify NS against (1) any governmental fines incurred as a result of such violation and (2) any costs or losses arising from any release from such cars caused by (i) defects in the cars, (ii) commodities being stored in rail cars beyond car-tolerance limits, or (iii) acts of God, such as hurricanes, tornados, earthquakes, fires, floods, etc., that occur while such cars are being held in violation of 49 CFR 174.14.

**Application:** This item applies to all cars held on NS tracks (excluding leased tracks) containing: (see note)

- (a) Class A, B or C Explosives, named in Part 172 Commodity List, Publication BOE 6000.
- (b) Hazardous materials, substances, or wastes requiring the use of 4-digit identification number on shipping document, placards or panels, as named in Part 11 Section 172.101, Publication BOE 6000.
- (c) In all cases, tariff NS 6306 applies.

**Note:** Private Cars loaded and turned over to a third party at the same origin will be governed by this rule. Shippers may invoke this rule by tendering an ORIGIN TURNOVER FORM to Norfolk Southern. This form is available at the Norfolk Southern web site [www.nscorp.com](http://www.nscorp.com) or by calling the Norfolk Southern Agency Operations at 800-854-2780.

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## ITEM 1100 - LEASE TRACK OVERAGE

In the event a customer makes arrangements with Norfolk Southern to have a lease track agreement at a certain location, and the number of private cars described in the lease track agreement at that location exceeds the capacity of the track space allotted pursuant to the applicable, lease track agreement, an overage charge of \$50.00 per car will be assessed on all cars exceeding the lease limit. The overage charge will be applied on all overage cars commencing at 00:00 the day following the day the lease limit was exceeded. A car is considered in lease track status if after notification of arrival, the car is not ordered before the beginning of the next Service Window. No Free Time or credits will be allowed. Lease track excess is not provided relief against NS holidays. Also an intra-terminal switch charge will be assessed when the cars are requested to be spotted, or moved from the plant to the lease track for forwarding.

**SUMMARY OF REVISIONS**

Issued: March 1, 2019

Effective: April 1, 2019

| PAGE(S) | ITEM | ITEM DESCRIPTION                                 | DESCRIPTION (CHANGES IN RED)                                                                                                                                                                                                                                                                                                                                                                                                  |
|---------|------|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4       | 200  | GLOSSARY OF TERMS                                | <p>Addition to definition Credit Day:</p> <p>9. <b>Credit Day:</b> Non-chargeable day. Credits can only be earned on those cars released to carrier for further disposition, <b>and can only offset Car Days for cars with the same Per Car Daily Charge.</b></p>                                                                                                                                                             |
| 5       | 200  | GLOSSARY OF TERMS                                | <p>New definition Per Car Daily Charge:</p> <p>26. <b>Per Car Daily Charge:</b> The daily demurrage/storage charge applicable to a car.</p>                                                                                                                                                                                                                                                                                   |
| 5       | 200  | GLOSSARY OF TERMS                                | <p>Addition to definition Service Window:</p> <p>32. <b>Service Window:</b> The designated block of time within a service day that NS <b>anticipates it will</b> physically pull and place a customer's cars. <b>These times are not guaranteed and delivery outside of these projected times will not impact the obligation to pay demurrage and storage charges.</b></p>                                                    |
| 6       | 350  | NOTIFICATION TO NS                               | <p>New paragraph (d):</p> <p>(d) <b>Any notice sent by any Consignor/Consignee indicating an intention to not pay otherwise applicable demurrage or storage charges hereunder, or instructing NS not to deliver railcars if NS intends to impose otherwise applicable demurrage or storage charges hereunder, shall be void and shall have no force or effect regardless of whether NS responds to such notice.</b></p>       |
| 9       | 750  | RULES GOVERNING MERCHANDISE UNIT TRAIN DETENTION | <p>Update Detention Rules:</p> <p>2. Charges are per Merchandise Unit Train and <b>are in lieu of demurrage and storage charges which might otherwise be payable under NS Demurrage and Storage Tariff 6004-D series, Items 1010 and 1012, or successor items.</b></p>                                                                                                                                                        |
| 11      | 950  | DEMURRAGE / STORAGE RULES                        | <p>Update Demurrage / Storage Rules:</p> <p>2. Credit Days and Car Days for Railroad Controlled cars held for unloading or other purposes will be kept separately from cars held for loading. <b>Except as otherwise provided in Item 1000,</b> Credit Days and Car Days for Private Cars for loading or unloading will be combined. Credits on Private Cars cannot be combined with credits on Railroad Controlled cars.</p> |



|       |      |                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------|------|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11-12 | 1000 | DEMURRAGE / STORAGE CALCULATION | <p>Credit Days and Car Days will be kept separately, and the following calculations will be made separately, for cars with different Per Car Daily Charges in Item 1010:</p> <ol style="list-style-type: none"><li>1. Total Car Days with the same Per Car Daily Charge per customer per location will be added. (Car/days are net of holidays (see Holidays, Item 200)).</li><li>2. Total Credit Days for all cars with the same Per Car Daily Charge will be added.</li><li>3. If total Credit Days equal or exceed total net Car Days with the same Per Car Daily Charge, demurrage/storage charges will not be assessed. Any excess Credit Days cannot be applied to cars with different Per Car Daily Charges.</li><li>4. If total net Car Days exceed the total Credit Days with the same Per Car Daily Charge, calculation of charges will be made as follows:<ol style="list-style-type: none"><li>(a) Subtract total Credit Days from total Car Days to determine chargeable days.</li><li>(b) The number of chargeable days will be assessed as shown in Item 1010 (or Item 1012 for hazardous commodities).</li></ol></li></ol> |
|-------|------|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# **Exhibit 3**

## **(Excerpt)**

**NORFOLK SOUTHERN RAILWAY COMPANY**

VISION: BE THE SAFEST, MOST CUSTOMER-FOCUSED AND SUCCESSFUL TRANSPORTATION COMPANY IN  
THE WORLD

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**FREIGHT TARIFF**

**NS 8002 - A**

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(For Cancellation, See Page 13)

**LOCAL AND JOINT FREIGHT TARIFF**

**PUBLISHING**

**RULES AND CHARGES ON**

**ACCESSORIAL SERVICES**

**AT STATIONS ON**

**NORFOLK SOUTHERN RAILWAY COMPANY**

---

ISSUED FEBRUARY 1, 2000

EFFECTIVE MARCH 1, 2000

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ISSUED BY  
J. H. Huddleston, Manager-Pricing Services  
NORFOLK SOUTHERN RAILWAY COMPANY  
110 Franklin Road, S. E.  
Roanoke, VA 24042-0047

**CHECK SHEET – NS 8002-A TARIFF**

ORIGINAL AND REVISED PAGES NAMED BELOW CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF.

| PAGE | REVISION | PAGE | REVISION | PAGE | REVISION | PAGE | REVISION |
|------|----------|------|----------|------|----------|------|----------|
| 1    | 47TH     | 43   | 1ST      | 80   | 1ST      | 122  | ORIGINAL |
| 2    | ORIGINAL | 44   | ORIGINAL | 81   | ORIGINAL | 123  | ORIGINAL |
| 3    | 2ND      | 45   | 3RD      | 82   | ORIGINAL | 124  | ORIGINAL |
| 4    | 2ND      | 46   | 3RD      | 83   | 2ND      | 125  | ORIGINAL |
| 5    | 3RD      | 47   | 4TH      | 84   | ORIGINAL | 126  | ORIGINAL |
| 6    | 6TH      | 48   | 3RD      | 85   | ORIGINAL | 127  | ORIGINAL |
| 7    | 1ST      | 49   | ORIGINAL | 86   | ORIGINAL | 128  | ORIGINAL |
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| 9    | ORIGINAL | 51   | ORIGINAL | 88   | ORIGINAL |      |          |
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| 11   | ORIGINAL | 53   | 4TH      | 90   | ORIGINAL |      |          |
| 12   | 1ST      | 54   | 6TH      | 91   | ORIGINAL |      |          |
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| # 19 | 3RD      | 60.1 | 1ST      | 98   | ORIGINAL |      |          |
| 20   | 2ND      | 61   | 3RD      | 99   | ORIGINAL |      |          |
| 21   | 3RD      | 62   | ORIGINAL | 100  | ORIGINAL |      |          |
| 22   | 1ST      | 63   | ORIGINAL | 101  | ORIGINAL |      |          |
| 23   | 1ST      | 64   | ORIGINAL | 102  | ORIGINAL |      |          |
| 24   | 1ST      | 65   | ORIGINAL | 103  | ORIGINAL |      |          |
| 25   | 1ST      | 66   | ORIGINAL | 104  | ORIGINAL |      |          |
| 26   | ORIGINAL | 67   | 1ST      | 105  | ORIGINAL |      |          |
| 27   | 6TH      | 67.1 | ORIGINAL | 106  | ORIGINAL |      |          |
| 28   | 2ND      | 67.2 | ORIGINAL | 107  | ORIGINAL |      |          |
| 29   | 1ST      | 68   | ORIGINAL | 108  | ORIGINAL |      |          |
| 30   | 2ND      | 69   | ORIGINAL | 109  | ORIGINAL |      |          |
| 31   | 4TH      | 70   | 2ND      | 110  | ORIGINAL |      |          |
| 32   | 2ND      | 70.2 | 5TH      | 111  | ORIGINAL |      |          |
| 33   | 1ST      | 70.4 | ORIGINAL | 112  | ORIGINAL |      |          |
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| 42   | ORIGINAL | 79   | ORIGINAL | 121  | ORIGINAL |      |          |

ISSUED MARCH 24, 2010

EFFECTIVE APRIL 15, 2010

# - Changed

ISSUED BY

C. J. Orndorff, Director-Marketing Services

NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E, Roanoke, VA 24042-0047

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**PLAN OF TARIFF**

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THE APPLICATION OF THIS TARIFF WILL BE GOVERNED BY THE PRECISE TERMS AND CONDITIONS  
STATED ELSEWHERE HEREIN AND NOT BY THIS "PLAN OF TARIFF"

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ISSUED FEBRUARY 1, 2000

EFFECTIVE MARCH 1, 2000

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**ISSUED BY**

C. J. Orndorff, Director-Marketing Services  
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E, Roanoke, VA 24042-0047

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▲ - Change in wording which results in neither increase nor reduction in charges.

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ISSUED OCTOBER 3, 2003

EFFECTIVE NOVEMBER 1, 2003

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ISSUED BY  
C. J. Orndorff, Director-Marketing Services  
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E, Roanoke, VA 24042-0047

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% - Addition

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ISSUED MAY 25, 2007

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EFFECTIVE JUNE 15, 2007

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ISSUED BY  
C. J. Orndorff, Director-Marketing Services  
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E, Roanoke, VA 24042-0047

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**SECTION 3**  
**RULES AND CHARGES FOR HANDLING PRIVATELY OWNED RAIL CARS**  
**FROM AND TO REPAIR, STORAGE OR CLEAN OUT FACILITIES**

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# ITEM 3000

**HANDLING PRIVATELY OWNED CARS FROM AND TO REPAIR, STORAGE OR CLEAN OUT FACILITIES**

**(See Exception)**

- A. NS will assess a round trip handling charge of \$350.00 when privately owned cars, including tank cars are moved between an NS classification yard, or interchange track and repair, storage or clean out facilities within the same switching district. This charge will be billed when the car is delivered to the repair or storage facility. This charge will always apply on empty tank cars; unless NS receives line haul revenue to or from the repair or storage location.
- B. Empty cars moving on own wheels will be subject to charges published in NSRQ 4900 Series item 101030 Series when:
1. Cars are new or have been restenciled with new initials and initials and/or numbers
  2. Cars are not listed in UMLER
  3. Cars are moving for scrapping or sale
  4. Privately owned cars, other than tank cars moving from an NS origin, classification yard, or interchange track to a repair, storage or clean out facility located outside of the switching limits of the origin station, NS classification yard, or interchange track, will be transported at mileage rates published in NSRQ 4900-Series. The car will move free back to the station originating the move, or to another location on NS's system, or an interline interchange track.
- C. ▲ In absence of advance written instructions requesting otherwise, handling charge and mileage rates subject to the rules in tariff NSRQ 4900 series will be assessed against the car owner. Holding/Storage charges will be assessed against the repair facility as stipulated in Freight Tariff NS 6004-series.

**Exception:**

Handling charge will not be assessed on cars of TTX Company ownership, or on multi-level cars.

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# - Matter formerly shown and not brought forward is hereby eliminated, account obsolete.

▲ - Change in wording which results in neither increase nor reduction in charges.

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ISSUED MARCH 24, 2010

EFFECTIVE APRIL 15, 2010

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ISSUED BY  
C. J. Orndorff, Director-Marketing Services  
NORFOLK SOUTHERN RAILWAY COMPANY, 110 Franklin Road, S. E., Roanoke, VA 24042-0047

# Exhibit 4

**From:** [Friedman, Christie I](#)  
**To:** [Friedman, Christie I](#)  
**Subject:** FW: [EXTERNAL] RE: Re: WAGX 3066 (Case Number: CS0000148999)  
**Date:** Thursday, June 13, 2019 4:14:59 PM

---

**From:** OSS South  
**Sent:** Sunday, April 7, 2019 10:20 AM  
**To:** vbowers@americanrailcar.com  
**Cc:** Juhasz, Daniel N <daniel.juhasz@nscorp.com>; awilds@americanrailcar.com; mlewis@americanrailcar.com; Ware, Marvin <Marvin.Ware@nscorp.com>; Odom, Edwina M. <Edwina.Odom@nscorp.com>; TN OSS South Managers <tnosssouthmanagers@nscorp.com>  
**Subject:** [EXTERNAL] RE: Re: WAGX 3066 (Case Number: CS0000148999)

Hi Vic-

Norfolk Southern is increasing service to our customers as a part of a greater effort to increase our network velocity, fluidity and service. We are re-aligning our crew schedules and yard operation in order to maintain flow of traffic and provide consistent service. As such, open gate status provides the best flow for fluidity and service.

It is our goal to deliver our Customers' railcars on time in the safest manner possible as we continue our partnership for rail deliveries to your facility.

**Adrienne Grant**

Operations and Service Support  
Customer Service South  
800-898-4296  
1200 Peachtree Street NE  
Atlanta, GA 30308

----- Case CS0000148999. For us to receive your message, please reply above this line and do not alter text below this line. -----

----- Original Message -----

**From:** [vbowers@americanrailcar.com]  
**Sent:** 4/6/2019 10:30 PM  
**To:** oss\_srw@nscorp.com  
**Cc:** daniel.juhasz@nscorp.com; ppowers@americanrailcar.com; bthompson@americanrailcar.com  
**Subject:** Re: RE: RE: RE: RE: RE: building inventory

Thanks for your response. Please let us know why you turned down our request?

Sent from my iPhone

On Apr 6, 2019, at 12:23 PM, OSS South  
<[oss\\_south@nscorp.com](mailto:oss_south@nscorp.com)<mailto:[oss\\_south@nscorp.com](mailto:oss_south@nscorp.com)>> wrote:

Hi Vic-

Transportation has advised unfortunately, your gate status will remain "open gate." Please contact OSS at 800.898.4296 if there are any additional questions.

Thank You

----- Original Message -----

From: [[vbowers@americanrailcar.com](mailto:vbowers@americanrailcar.com)<mailto:[vbowers@americanrailcar.com](mailto:vbowers@americanrailcar.com)>]

Sent: 3/29/2019 3:34 PM

To: [oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>;

[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>

Cc: [ppowers@americanrailcar.com](mailto:ppowers@americanrailcar.com)<mailto:[ppowers@americanrailcar.com](mailto:ppowers@americanrailcar.com)>;

[bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)<mailto:[bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)>

Subject: RE: RE: Re: RE: RE: building inventory

Transportation,

In the below discussion Daniel Juhasz requested we contact you regarding the movement of our facility from an open gate to a closed gate. We would like to formally request our facility be moved to a closed gate facility. If there is any documentation we need to submit please provide it to us and we'll reply promptly.

Thanks for your help with this issue.

Vic Bowers

100 Clark Street

St. Charles, MO 63301

Vice President – Repair Services

Phone: 636-288-6673

Office: 636-940-6065

[www.americanrailcar.com](https://www.americanrailcar.com)<<https://www.americanrailcar.com>>

<<http://www.americanrailcar.com>>

[cid:[image001.jpg@01D4E63C.8BCFE1B0](mailto:image001.jpg@01D4E63C.8BCFE1B0)<mailto:[image001.jpg@01D4E63C.8BCFE1B0](mailto:image001.jpg@01D4E63C.8BCFE1B0)>]

From: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>

Sent: Friday, March 29, 2019 1:34 PM

To: Bowers, Vic <[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>

Cc: Powers, Patrice <[PPowers@americanrailcar.com](mailto:PPowers@americanrailcar.com)<mailto:[PPowers@americanrailcar.com](mailto:PPowers@americanrailcar.com)>>;

Thompson, BJ

<[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>

Subject: [EXTERNAL] RE: Re: RE: RE: building inventory

I don't think transportation will agree, but you can inquire with OSS directly. It's worth a shot.

Daniel Juhasz  
757-408-1299

From: Bowers, Vic  
[mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>]  
Sent: Friday, March 29, 2019 2:14 PM  
To: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>  
<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>  
Cc: Powers, Patrice <[PPowers@americanrailcar.com](mailto:PPowers@americanrailcar.com)<mailto:[PPowers@americanrailcar.com](mailto:PPowers@americanrailcar.com)>>  
<mailto:[PPowers@americanrailcar.com](mailto:PPowers@americanrailcar.com)<mailto:[PPowers@americanrailcar.com](mailto:PPowers@americanrailcar.com)>>>; CU  
THOMPSON, BJ (AMERICAN RAILCAR)  
<[bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)<mailto:[bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)>>  
<mailto:[bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)<mailto:[bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)>>>  
Subject: [EXTERNAL] RE: [EXTERNAL] Re: RE: RE: building inventory

Daniel,

I had this on my follow up list. On Wednesday, January 23rd I provided a formal request to move our Tennille location to a closed gate facility. It you're return email to me on the same date you mention, "The change to closed gate has been posed but this isn't optimal" but doesn't mentioned the shop moving to closed gate couldn't be performed.

Again, can we please move our Tennille location to a closed gate facility?

Vic Bowers  
100 Clark Street  
St. Charles, MO 63301  
Vice President – Repair Services  
Phone: 636-288-6673  
Office: 636-940-6065  
[www.americanrailcar.com](https://www.americanrailcar.com)<<https://www.americanrailcar.com>>  
<<http://www.americanrailcar.com>>  
[cid:image004.jpg@01D4E63C.8BAF6160<mailto:image004.jpg@01D4E63C.8BAF6160>]

From: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>  
<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>  
Sent: Wednesday, January 23, 2019 11:50 AM  
To: Bowers, Vic <[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>  
<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
Subject: [EXTERNAL] Re: RE: RE: building inventory

Hey Vic. Oss has reviewed the bills and no further changes are expected. The current month closed end of month but you/BJ can review this anytime through accessNS. Storage charges with ARI are in line with everyone else on tariff. The change to closed gate has been posed but this isn't optimal bc it prevents cars from moving quickly from yard to Customer. The goal is for cars to arrive and depart serving yard within 24 hours.

Daniel  
Sent from iPhone

On Jan 23, 2019, at 11:04 AM, Bowers, Vic  
<[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>

<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>> wrote:  
Daniel,

We discussed several things;

- \* Review the storage bills and determine if there needs to be corrections
- \* Review with your team if there is current storage bills can be reduced
- \* Review other repair shops and determine if they are set up the same.
- \* Review if we can change to a closed gate facility

Also, during our conference call we discussed reducing the car count to manageable number of 30 cars by February 14th. I provide my word this would happen. Yesterday, I received an email from Deltre Saunders demanding the car count be down to 15 by February 4th. I have no idea how she came up with this math or why she doesn't want to work together. I spoke with her boss (can't remember her name) and she agreed the 14th was a good date but kept referencing 10 cars. Again, I don't know where she is getting this number and can't believe it was changed after everyone on the call agreed.

Can you please let me know the name of Deltre's supervisor and the contact information of the supervisor of each of them?

Vic Bowers  
100 Clark Street  
St. Charles, MO 63301  
Vice President – Repair Services  
Phone: 636-288-6673  
Office: 636-940-6065  
[www.americanrailcar.com](http://www.americanrailcar.com)<<https://www.americanrailcar.com>>  
<<http://www.americanrailcar.com>>

From: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>  
<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>  
Sent: Tuesday, January 22, 2019 8:18 AM  
To: Bowers, Vic <[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
Subject: [EXTERNAL] RE: building inventory

Hey Vic. We talked about storage terms elsewhere but can you remind me what else I was looking at? My memory isn't what it used to be.

Daniel Juhasz  
757-408-1299

From: Bowers, Vic  
[mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>]  
Sent: Tuesday, January 22, 2019 9:16 AM  
To: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>  
<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>  
Subject: [EXTERNAL] FW: building inventory

Daniel,

During our last conversation we discussed a few options and you were going to check on them. I was just wondering if you had any updates?

Vic Bowers  
100 Clark Street  
St. Charles, MO 63301  
Vice President – Repair Services  
Phone: 636-288-6673  
Office: 636-940-6065  
[www.americanrailcar.com](https://www.americanrailcar.com)<<https://www.americanrailcar.com>>  
<<http://www.americanrailcar.com>>

From: Thompson, BJ  
Sent: Tuesday, January 22, 2019 8:13 AM  
To: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<<mailto:daniel.juhasz@nscorp.com>>>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>>>  
Cc: Horgan, Patrick <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<<mailto:Patrick.Horgan@nscorp.com>>>>  
<<mailto:Patrick.Horgan@nscorp.com><<mailto:Patrick.Horgan@nscorp.com>>>>; Collier, Andrea  
<[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<<mailto:Andrea.Collier@nscorp.com>>>>  
<<mailto:Andrea.Collier@nscorp.com><<mailto:Andrea.Collier@nscorp.com>>>>; Saunders, Deltre  
<[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<<mailto:Deltre.Saunders@nscorp.com>>>>  
<<mailto:Deltre.Saunders@nscorp.com><<mailto:Deltre.Saunders@nscorp.com>>>>; Lewis,  
Marshal <[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<<mailto:MLewis@americanrailcar.com>>>>  
<<mailto:MLewis@americanrailcar.com><<mailto:MLewis@americanrailcar.com>>>>; Bowers,  
Vic <[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<<mailto:VBowers@americanrailcar.com>>>>  
<<mailto:VBowers@americanrailcar.com><<mailto:VBowers@americanrailcar.com>>>>  
Subject: RE: building inventory

Daniel,  
As of this morning we had 64 cars waiting outside our gate. We expect to ship and receive another 14-15 cars this week.

Thanks

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

From: Thompson, BJ  
Sent: Friday, January 18, 2019 9:22 AM  
To: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<<mailto:daniel.juhasz@nscorp.com>>>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>>>  
Cc: Horgan, Patrick <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<<mailto:Patrick.Horgan@nscorp.com>>>>

<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>>>; Collier, Andrea  
<[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>; Saunders, Deltre  
<[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>; Lewis,  
Marshal <[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)>>>; Bowers,  
Vic <[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
Subject: Re: building inventory

Daniel ,  
If we are serviced today as scheduled our car count outside of our gate will be at 65.

Thanks

BJ Thompson

Sent from my iPhone

On Jan 15, 2019, at 7:56 AM, Thompson, BJ  
<[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>  
wrote:  
All,  
We requested 17 cars last night and only received 13.

Thanks

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

From: Thompson, BJ  
Sent: Monday, January 14, 2019 7:13 AM  
To: 'Juhasz, Daniel N' <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>; Bowers, Vic  
<[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
Cc: 'Horgan, Patrick' <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>>>; 'Collier,  
Andrea' <[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>  
<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>; 'Saunders,

Deltre' <[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>  
<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>  
Subject: RE: RE: re: building inventory

All,

Just an update we were not switched Friday as scheduled. That was the second time last week we were not switched as scheduled.

Thanks

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

From: Thompson, BJ  
Sent: Friday, January 11, 2019 7:11 AM  
To: 'Juhasz, Daniel N' <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>; Bowers, Vic  
<[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>  
Cc: 'Horgan, Patrick' <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>>>; 'Collier,  
Andrea' <[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>; 'Saunders,  
Deltre' <[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>  
<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>  
Subject: RE: RE: re: building inventory

All,

Just an update, we are now at 86 cars in the yard waiting to come in. I still would like to request relief from any charges due to the fact that we didn't go to daily switches until the end of December. That with a combined effort of both parties seems to be working and as previously stated this is not our norm, but has been the exception.

Thanks

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

From: Thompson, BJ

Sent: Monday, January 7, 2019 3:41 PM

To: 'Juhasz, Daniel N' <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>; Bowers, Vic <[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>>  
Cc: Horgan, Patrick <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>>>; Collier, Andrea <[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>; Saunders, Deltre <[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>>  
Subject: RE: RE: re: building inventory

Daniel,

As of today I am showing 111 in the yard and 6 enroute for a total of 117. We expect to accept 40-50 cars over the next two weeks. There should be no new enroutes unless they were previously approved on unannounced.

Thanks

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

From: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>>  
Sent: Monday, January 7, 2019 3:31 PM  
To: Bowers, Vic <[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>>  
Cc: Thompson, BJ <[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>>; Horgan, Patrick <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>>>>; Collier, Andrea <[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>>; Saunders, Deltre <[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>>  
Subject: Re: RE: re: building inventory

Vic- I am tied up after 9 but we can touch base with you after. OSS- please provide Vic with the latest numbers of cars in the yard, and in transit. BJ you Can also provide this to him if you're at a computer.

Daniel

Sent from iPhone

On Jan 7, 2019, at 3:22 PM, Bowers, Vic

<[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>

<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>> wrote:  
BJ,

I asked if Daniel could back it up an hour due to a prior commitment. Also, if there is an agenda or any documents we need to review I requested to have each included in the meeting invitation.

Vic Bowers

100 Clark Street

St. Charles, MO 63301

Vice President – Repair Services

Phone: 636-288-6673

Office: 636-940-6065

[www.americanrailcar.com](http://www.americanrailcar.com)<<https://www.americanrailcar.com>>

<<http://www.americanrailcar.com>>

From: Thompson, BJ

Sent: Monday, January 7, 2019 11:43 AM

To: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>

<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>

Cc: Horgan, Patrick <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>

<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>>>; Collier, Andrea

<[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>

<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>; Saunders, Deltre

<[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>

<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>; Bowers, Vic

<[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>

<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)<mailto:[VBowers@americanrailcar.com](mailto:VBowers@americanrailcar.com)>>>

Subject: RE: [EXTERNAL] re: building inventory

Daniel,

I will be available.

Thanks

BJ Thompson

Plant Manager

ARI Railcar Services Tennille

Office (478)552-0370 ext 2201

Mobile (478)232-5467

From: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>

<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>

Sent: Monday, January 7, 2019 12:37 PM

To: Thompson, BJ  
<[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>  
Cc: Horgan, Patrick <[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>  
<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)<mailto:[Patrick.Horgan@nscorp.com](mailto:Patrick.Horgan@nscorp.com)>>>; Collier, Andrea  
<[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>  
<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)<mailto:[Andrea.Collier@nscorp.com](mailto:Andrea.Collier@nscorp.com)>>>; Saunders, Deltre  
<[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>  
<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)<mailto:[Deltre.Saunders@nscorp.com](mailto:Deltre.Saunders@nscorp.com)>>>  
Subject: [EXTERNAL] re: building inventory

Hey BJ- are you available tomorrow morning 9am for a call to discuss the number of cars in the yard? The number of cars remains high and need to know there is a plan to reduce the number significantly in order to prevent additional charges from being applied. If I don't hear from you by mid afternoon today I'll send out a meeting invite. Thanks, Daniel.

Daniel Juhasz  
757-408-1299

From: Thompson, BJ  
[mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>]  
Sent: Monday, December 31, 2018 7:03 AM  
To: OSS-SRW <[OSS\\_SRW@nscorp.com](mailto:OSS_SRW@nscorp.com)<mailto:[OSS\\_SRW@nscorp.com](mailto:OSS_SRW@nscorp.com)>  
<mailto:[OSS\\_SRW@nscorp.com](mailto:OSS_SRW@nscorp.com)<mailto:[OSS\\_SRW@nscorp.com](mailto:OSS_SRW@nscorp.com)>>>  
Cc: Juhasz, Daniel N <[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>  
<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>; Wilds, Ashley  
<[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)<mailto:[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)>  
<mailto:[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)<mailto:[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)>>>; Lewis, Marshal  
<[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)>  
<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)>>>; Ware, Marvin  
<[Marvin.Ware@nscorp.com](mailto:Marvin.Ware@nscorp.com)<mailto:[Marvin.Ware@nscorp.com](mailto:Marvin.Ware@nscorp.com)>  
<mailto:[Marvin.Ware@nscorp.com](mailto:Marvin.Ware@nscorp.com)<mailto:[Marvin.Ware@nscorp.com](mailto:Marvin.Ware@nscorp.com)>>>; Odom, Edwina M.  
<[Edwina.Odom@nscorp.com](mailto:Edwina.Odom@nscorp.com)<mailto:[Edwina.Odom@nscorp.com](mailto:Edwina.Odom@nscorp.com)>  
<mailto:[Edwina.Odom@nscorp.com](mailto:Edwina.Odom@nscorp.com)<mailto:[Edwina.Odom@nscorp.com](mailto:Edwina.Odom@nscorp.com)>>>  
Subject: [EXTERNAL] RE: [EXTERNAL] RE: Re: WAGX 3066 (Case Number: CS0000148999)

This car was not delivered again.

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

From: Thompson, BJ  
Sent: Friday, December 28, 2018 7:30 AM  
To: 'Southern Region West' <[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>  
<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>>>

Cc: [daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>; Wilds, Ashley  
<[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)<mailto:[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)>>>; Lewis,  
Marshal <[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)>>>;  
<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)>>>;  
[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)<mailto:[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)>>;  
<mailto:[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)<mailto:[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)>>>;  
'[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)<mailto:[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)>>>  
<mailto:[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)<mailto:[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)>>>'>  
<[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)<mailto:[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)>>>  
<mailto:[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)<mailto:[edwina.odom@nscorp.com](mailto:edwina.odom@nscorp.com)>>>>  
Subject: RE: [EXTERNAL] RE: Re: WAGX 3066 (Case Number: CS0000148999)

This car was not delivered again.

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

From: Southern Region West <[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>>>  
<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>>>>  
Sent: Thursday, December 27, 2018 3:59 PM  
To: Thompson, BJ  
<[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>>  
Cc: [daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<mailto:[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)>>>; Wilds, Ashley  
<[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)<mailto:[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)>>>; Lewis,  
Marshal <[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)>>>;  
<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<mailto:[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)>>>;  
[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)<mailto:[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)>>>  
<mailto:[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)<mailto:[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)>>>>  
Subject: [EXTERNAL] RE: Re: WAGX 3066 (Case Number: CS0000148999)

----- Case Number: CS0000148999. For us to receive your message, please reply above this line  
and not alter text below this line. -----

Transportation was contacted to have WAGX 3066 spotted back to the plant.

----- Case Number: CS0000148999 -----

----- Case CS0000148999. For us to receive your message, please reply above this line and do not alter text below this line. -----

Thank you,  
Ferdarian Lewis  
Georgia Division  
Customer Service Specialist  
1-800-898-4296

----- Original Message -----

From: No Reply [[noreply@nscorp.com](mailto:noreply@nscorp.com)<<mailto:noreply@nscorp.com>>  
<<mailto:noreply@nscorp.com><<mailto:noreply@nscorp.com>>>]  
Sent: 12/27/2018 3:48 PM  
To: [bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)<<mailto:bthompson@americanrailcar.com>>  
<<mailto:bthompson@americanrailcar.com><<mailto:bthompson@americanrailcar.com>>>  
Cc: [daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<<mailto:daniel.juhasz@nscorp.com>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>>;  
[awilds@americanrailcar.com](mailto:awilds@americanrailcar.com)<<mailto:awilds@americanrailcar.com>>  
<<mailto:awilds@americanrailcar.com><<mailto:awilds@americanrailcar.com>>>;  
[mlewis@americanrailcar.com](mailto:mlewis@americanrailcar.com)<<mailto:mlewis@americanrailcar.com>>  
<<mailto:mlewis@americanrailcar.com><<mailto:mlewis@americanrailcar.com>>>  
Subject: Norfolk Southern Has Resolved Your Case – Case CS0000148999

----- Replies to this email address mailbox are not monitored. -----

DANIEL JUHASZ,  
We would like to inform you that we have closed the Case listed below:

Case Number: CS0000148999

Description of Resolution: Our records show WAGX 3066 delivered to the plant 3pm 5/18/18 and nothing since. Also WAGX 3066 is coming up as an invalid number in our system now so please recheck the car number/initials.

If you have further questions, please call 1-800-898-4296 for immediate support.  
Thank you,

----- Case CS0000148999. For us to receive your message, please reply above this line and do not alter text below this line. -----

Thank you,

Ferdarian Lewis  
Georgia Division  
Customer Service Specialist  
1-800-898-4296

----- Original Message -----

From: [[bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)<<mailto:bthompson@americanrailcar.com>>  
<<mailto:bthompson@americanrailcar.com><<mailto:bthompson@americanrailcar.com>>>]  
Sent: 12/27/2018 3:47 PM  
To: [oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>  
<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>>;  
[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<<mailto:daniel.juhasz@nscorp.com>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>>  
Cc: [awilds@americanrailcar.com](mailto:awilds@americanrailcar.com)<<mailto:awilds@americanrailcar.com>>  
<<mailto:awilds@americanrailcar.com><<mailto:awilds@americanrailcar.com>>>;  
[mlewis@americanrailcar.com](mailto:mlewis@americanrailcar.com)<<mailto:mlewis@americanrailcar.com>>  
<<mailto:mlewis@americanrailcar.com><<mailto:mlewis@americanrailcar.com>>>;  
[marvin.ware@nscorp.com](mailto:marvin.ware@nscorp.com)<<mailto:marvin.ware@nscorp.com>>  
<<mailto:marvin.ware@nscorp.com><<mailto:marvin.ware@nscorp.com>>>  
Subject: RE: RE: Re: WAGX 3066 (Case Number: CS0000148999)

Please check with Edwina Odom. She was the NS rep that contacted us regarding this issue last week.

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

[cid:[image002.jpg@01D4467E.F3D73D20](mailto:image002.jpg@01D4467E.F3D73D20)<<mailto:image002.jpg@01D4467E.F3D73D20>>  
<<mailto:image002.jpg@01D4467E.F3D73D20><<mailto:image002.jpg@01D4467E.F3D73D20>>>]

From: Southern Region West <[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>  
<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>>>  
Sent: Thursday, December 27, 2018 3:44 PM  
To: [daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<<mailto:daniel.juhasz@nscorp.com>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>>  
Cc: Thompson, BJ  
<[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<<mailto:BThompson@americanrailcar.com>>  
<<mailto:BThompson@americanrailcar.com><<mailto:BThompson@americanrailcar.com>>>>;  
Wilds, Ashley <[AWilds@americanrailcar.com](mailto:AWilds@americanrailcar.com)<<mailto:AWilds@americanrailcar.com>>  
<<mailto:AWilds@americanrailcar.com><<mailto:AWilds@americanrailcar.com>>>>; Lewis,  
Marshal <[MLewis@americanrailcar.com](mailto:MLewis@americanrailcar.com)<<mailto:MLewis@americanrailcar.com>>  
<<mailto:MLewis@americanrailcar.com><<mailto:MLewis@americanrailcar.com>>>>  
Subject: [EXTERNAL] RE: Re: WAGX 3066 (Case Number: CS0000148999)

[<https://connectns.my.salesforce.com/servlet/servlet.ImageServer?id=0151I000000jMv8&oid=00D1I0000003nwsE>]

----- Case Number: CS0000148999. For us to receive your message, please reply above this line and not alter text below this line. -----

Our records show WAGX 3066 delivered to the plant 3pm 5/18/18 and nothing since. Also WAGX 3066 is coming up as an invalid number in our system now so please recheck the car number/initials.

----- Case Number: CS0000148999 -----

----- Case CS0000148999. For us to receive your message, please reply above this line and do not alter text below this line. -----

Thank you,  
Ferdarian Lewis  
Georgia Division  
Customer Service Specialist  
1-800-898-4296

----- Original Message -----

From: [[daniel.juhasz@nscorp.com](mailto:daniel.juhasz@nscorp.com)<<mailto:daniel.juhasz@nscorp.com>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>  
<<mailto:daniel.juhasz@nscorp.com><<mailto:daniel.juhasz@nscorp.com>>>>]  
Sent: 12/27/2018 10:36 AM  
To: [bthompson@americanrailcar.com](mailto:bthompson@americanrailcar.com)<<mailto:bthompson@americanrailcar.com>>  
<<mailto:bthompson@americanrailcar.com><<mailto:bthompson@americanrailcar.com>>>  
<<mailto:bthompson@americanrailcar.com><<mailto:bthompson@americanrailcar.com>>  
<<mailto:bthompson@americanrailcar.com><<mailto:bthompson@americanrailcar.com>>>>  
Cc: [awilds@americanrailcar.com](mailto:awilds@americanrailcar.com)<<mailto:awilds@americanrailcar.com>>  
<<mailto:awilds@americanrailcar.com><<mailto:awilds@americanrailcar.com>>>  
<<mailto:awilds@americanrailcar.com><<mailto:awilds@americanrailcar.com>>  
<<mailto:awilds@americanrailcar.com><<mailto:awilds@americanrailcar.com>>>>;  
[mlewis@americanrailcar.com](mailto:mlewis@americanrailcar.com)<<mailto:mlewis@americanrailcar.com>>  
<<mailto:mlewis@americanrailcar.com><<mailto:mlewis@americanrailcar.com>>>  
<<mailto:mlewis@americanrailcar.com><<mailto:mlewis@americanrailcar.com>>  
<<mailto:mlewis@americanrailcar.com><<mailto:mlewis@americanrailcar.com>>>>;  
[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>  
<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>>  
<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<[mailto:oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>

<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)<mailto:[oss\\_srw@nscorp.com](mailto:oss_srw@nscorp.com)>>>  
Subject: Re: WAGX 3066 - Case Number : CS0000148999

Copying in oss SRW.

Daniel  
Sent from iPhone

On Dec 27, 2018, at 9:46 AM, Thompson, BJ  
<[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>  
<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)<mailto:[BThompson@americanrailcar.com](mailto:BThompson@americanrailcar.com)>>>>>  
wrote:

This car was pulled from our industry on 12/19/18 by mistake. This car needs to be delivered back to our industry ASAP.

Thanks

BJ Thompson  
Plant Manager  
ARI Railcar Services Tennille  
Office (478)552-0370 ext 2201  
Mobile (478)232-5467

# Exhibit 5

| ARI Storage Charges Since 2010     |            |                                |          |    |            |      |                     |                      |                     |                     |                     |
|------------------------------------|------------|--------------------------------|----------|----|------------|------|---------------------|----------------------|---------------------|---------------------|---------------------|
| FB Number                          | Ten-level  | Customer                       | Origin   | St | WB Date    | STCC | Billed              | Paid                 | Corrected           | Written-off         | Net                 |
| 7013153333                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 1/12/2010  | 106* | \$720.00            | \$0.00               | (\$420.00)          | (\$300.00)          | \$0.00              |
| 7042134633                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 2/10/2010  | 106* | \$360.00            | \$0.00               | \$0.00              | (\$360.00)          | \$0.00              |
| 7070145935                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 3/10/2010  | 106* | \$4,710.00          | (\$2,940.00)         | (\$1,020.00)        | (\$750.00)          | \$0.00              |
| 7104141003                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 4/13/2010  | 106* | \$5,850.00          | (\$5,850.00)         | \$0.00              | \$0.00              | \$0.00              |
| 8069152424                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 3/9/2011   | 106* | \$1,440.00          | (\$1,440.00)         | \$0.00              | \$0.00              | \$0.00              |
| 8102155878                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 4/11/2011  | 106* | \$1,620.00          | (\$1,620.00)         | \$0.00              | \$0.00              | \$0.00              |
| 8130153606                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 5/9/2011   | 106* | \$7,320.00          | (\$7,320.00)         | \$0.00              | \$0.00              | \$0.00              |
| 8222153619                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 8/9/2011   | 106* | \$540.00            | (\$540.00)           | \$0.00              | \$0.00              | \$0.00              |
| 8314151662                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 11/9/2011  | 106* | \$120.00            | (\$120.00)           | \$0.00              | \$0.00              | \$0.00              |
| 9072441670                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 3/11/2012  | 106* | \$8,000.00          | (\$8,000.00)         | \$0.00              | \$0.00              | \$0.00              |
| 9317465939                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 11/9/2012  | 106* | \$300.00            | \$0.00               | \$0.00              | (\$300.00)          | \$0.00              |
| 9347158423                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 12/11/2012 | 106* | \$780.00            | \$0.00               | (\$780.00)          | \$0.00              | \$0.00              |
| 1071167964                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 3/11/2013  | 106* | \$1,140.00          | \$0.00               | (\$1,140.00)        | \$0.00              | \$0.00              |
| 6345180644                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | GORDON   | GA | 12/10/2018 | 106* | \$9,240.00          | \$0.00               | \$0.00              | \$0.00              | \$9,240.00          |
| 7010166858                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | GORDON   | GA | 1/9/2019   | 106* | \$19,440.00         | \$0.00               | \$0.00              | \$0.00              | \$19,440.00         |
| 7051194129                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | GORDON   | GA | 2/19/2019  | 106* | \$154,080.00        | \$0.00               | \$0.00              | \$0.00              | \$154,080.00        |
| 7071213147                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | GORDON   | GA | 3/11/2019  | 106* | \$157,980.00        | \$0.00               | \$0.00              | \$0.00              | \$157,980.00        |
| 7100176006                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | GORDON   | GA | 4/9/2019   | 106* | \$11,340.00         | \$0.00               | \$0.00              | \$0.00              | \$11,340.00         |
|                                    |            |                                |          |    |            |      | <b>\$384,980.00</b> | <b>(\$27,830.00)</b> | <b>(\$3,360.00)</b> | <b>(\$1,710.00)</b> | <b>\$352,080.00</b> |
| ARI Accessorial Charges Since 2010 |            |                                |          |    |            |      |                     |                      |                     |                     |                     |
| FB Number                          | Ten-level  | Customer                       | Origin   | St | WB Date    | STCC | Billed              | Paid                 | Corrected           | Written-off         | Net                 |
| 1081159002                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 3/21/2013  | 123* | \$660.00            | \$0.00               | (\$660.00)          | \$0.00              | \$0.00              |
| 1086143412                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES    | GORDON   | GA | 3/26/2013  | 123* | \$10.00             | \$0.00               | \$0.00              | (\$10.00)           | \$0.00              |
| 2094011792                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | GORDON   | GA | 4/3/2014   | 123* | \$20.00             | \$0.00               | \$0.00              | (\$20.00)           | \$0.00              |
| 7028165159                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165167                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165094                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165183                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165078                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165133                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165141                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165191                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165109                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165214                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165206                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165222                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165175                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165125                         | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019  | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |

### ARI Accessorial Charges Since 2010

| FB Number  | Ten-level  | Customer                       | Origin   | St | WB Date   | STCC | Billed              | Paid                 | Corrected           | Writen-off          | Net                 |
|------------|------------|--------------------------------|----------|----|-----------|------|---------------------|----------------------|---------------------|---------------------|---------------------|
| 7028165086 | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019 | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
| 7028165117 | 1253840118 | AMERICAN RAILCAR INDUSTRIES IN | TENNILLE | GA | 1/26/2019 | 181* | \$69.00             | (\$69.00)            | \$0.00              | \$0.00              | \$0.00              |
|            |            |                                |          |    |           |      | <b>\$1,794.00</b>   | <b>(\$1,104.00)</b>  | <b>(\$660.00)</b>   | <b>(\$30.00)</b>    | <b>\$0.00</b>       |
|            |            |                                |          |    |           |      | <b>\$386,774.00</b> | <b>(\$28,934.00)</b> | <b>(\$4,020.00)</b> | <b>(\$1,740.00)</b> | <b>\$352,080.00</b> |