

ENTERED
Office of Proceedings
October 28, 2020
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36426

PORT OF BENTON, WA

REPLY TO PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF EDWARD GOTTSCHALK

1. My name is Edward Gottschalk. I am the General Manager of the Lineage Logistics facility in Richland, Washington (formerly Preferred Freezer Services of Richland, LLC). I have personal knowledge of the facts set forth in this Verified Statement, and am authorized to provide this Verified Statement on behalf of Preferred Freezer of Richland, LLC (“Preferred”) in support of its Response to Tri-City Railroad Company, LLC’s (“TCRY”) Motion to Dismiss the Port of Benton, WA’s (the “Port”) Petition for Declaratory Order (the “Petition”) in this proceeding.

2. Preferred’s facility in Richland, Washington is located at 2800 Polar Way, Richland, Washington 99354, on a service spur off a mainline track owned by the City of Richland, which is connected to the Port-owned rail line. This facility is a large commercial freezer warehouse used for the temporary storage of frozen food product owned by our customers, with a private railyard next to the warehouse. Preferred does not operate as a railroad carrier; it does not own any railcars nor rail equipment which operate outside of its railyard.

3. Preferred’s customers contract directly with either Union Pacific Railroad Company (“UP”) or Burlington Northern Santa Fe Railroad (“BNSF”) for refrigerated railcar rental and nationwide rail transportation. Preferred facilitates our customers’ rail shipments by ordering refrigerated railcars from UP and BNSF as necessary to fulfill customer orders, and loading those cars at our customers’ direction for pick-up and transport by either UP or BNSF. Preferred does not pay UP or BNSF to rent or transport railcars, and Preferred is not identified as

a shipper on any UP or BNSF bill of lading.

4. Since February 5, 2019, Preferred does not have a contractual or commercial relationship with TCRY, and TCRY provides no transportation or rail service, or service of any kind, to Preferred. Further, Preferred has not requested that TCRY transport goods to or on any point on the Port-owned railroad line or that TCRY provide any other service for Preferred.

5. On July 23, 2020, Preferred received a Supplement 1 invoice from TCRY. This invoice did not include a copy of Supplement 1. In response, Preferred complained to the Port and informed TCRY that it would not pay the invoice. Next, on August 12, 2020, TCRY sent Preferred a second Supplement 1 invoice, claiming that its first invoice to Preferred was appropriate legal notice of TCRY's tariff. Attached hereto as Exhibits 1 and 2, respectively, are copies of TCRY's July 23 and August 12 invoices as received in our office in the normal course of business and retained there. On October 26, 2020, Preferred received two more invoices from TCRY under Supplement 1, which cover August and September 2020. Attached hereto as Exhibits 3 and 4, respectively are copies of these August 2020 and September 2020 invoices as received in our office in the normal course of business and retained there.

VERIFICATION

I hereby verify, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on October 25, 2020.


Edward Gottschalk

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email on the following:

Eric M. Hocky
Justin J. Marks
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jmarks@clarkhill.com
Counsel for Port of Benton, WA

Rydel Peterson
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Lineage Logistics

s/ Lynn Van Eyck
Lynn Van Eyck, Legal Assistant
lvaneyck@grsm.com

Dated: October 28, 2020.

EXHIBIT 1



Tri-City Railroad Company, LLC
P.O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
7/23/2020	11469

Bill To		Terms	
Preferred Freezer Services 2800 Polar Way Richland, WA 99354		Due upon receipt	
Quantity	Description	Rate	Amount
999	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of January 16, 2020 - June 30, 2020 - manifest cars	95.00	94,905.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by Port of Benton January 16, 2020.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Payments/Credits	\$0.00
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Invoice Balance	\$94,905.00
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E-mail
lisaanderson@tcry.com

EXHIBIT 2



August 12, 2020

Mark Tuvim
Gordon & Rees
701 Fifth Avenue, Suite 2100
Seattle, WA
98104

Delivered via US Mail and electronically via mtuvim@grsm.com

Re: Past Due invoice from July 23, 2020

Mr. Tuvim,

I currently represent Tri-City Railroad ("TCRY") as its outside general legal counsel.

Preferred Freezers of Richland ("PFS") was issued and invoice from TCRY on July 23, 2020 in the amount of \$94,905.00. The invoice was based upon TCRY's Miscellaneous Charges Tariff Supplement 1 which became effective September 18, 2018 but was not approved by the Port of Benton ("Port") until January 16, 2020.

PFS is the responsible party owing the \$95 per car maintenance charge found in Supplement 1. Users of the railroad have been delineated, multiple times in the Port of Benton Rail Plan and Rail Master Plan.



On July 23, 2020, TCRY gave PFS proper notice of its tariff as required by law. Since then, PFS has been on notice of TCRY's Miscellaneous Charges Tariff Supplement 1 item number 5 titled "Railroad Maintenance Charge" and its application to PFS railcar shipments that traverse TCRY trackage.

If any question exists as to PFS's responsibility to pay the Railroad Maintenance Charge from July 23, 2020 forward, I would suggest you review the legal authority cited herein.

A properly published tariff schedule has the force and effect of law, is the legal rate for the stated purposes, and binds the shipper and carrier alike. Illinois Cent. Gulf R. Co. v. Golden Triangle Wholesale Gas Co., 586 F.2d 588 (5th Cir. 1978); Farley Terminal Co., Inc. v. Atchison, T. & S. F. Ry. Co., 522 F.2d 1095 (9th Cir. 1975). In re Couture Hotel Corporation, 554 B.R. 369 (Bankr. N.D. Tex. 2016).

Tariffs play a different role today than they did under the I.C.C., the STB's predecessor. Under the I.C.C. and filed-rate doctrine, carriers were required to file tariff rates at the agency and parties were deemed to have constructive knowledge of the terms and rates set out in that filed tariff. Davel Communications, Inc. v. Qwest Corp., 460 F.3d 1075 (9th Cir. 2006).

Today, carriers are no longer required to file tariffs with the Surface Transportation Board. Therefore, "*a shipper or receiver of rail cars to whom the rail carrier has given actual notice of its own[] tariff will be deemed to have accepted the rail carrier's[] terms whenever it accepts the cars.*" Demurrage Liability, EP 707 (STB Served April 14, 2014) (discussing notice of demurrage tariffs). Regarding what



notice is sufficient to constitute actual notice, the STB has stated that carriers are to use “*electronic responses and notices when both parties have the requisite capabilities. Otherwise the notice should be written.*” Disclosure, Pub. & Not. Of Change of Rates—Rail Carriage, 1 S.T.B. 153, 159 (1996) (carriers must make “*active, or positive, response or notification*” of rate information on request of shipper, rather than using “*electronic billboards or other ‘passive’ forms of notification*”).

As such, please find attached TCRY’s most recent invoice reflecting PFS’s accrued charges from July 23, 2020 thru today. No amounts are owed for the tariff charges prior to July 23, 2020. If any questions or issues remain, please contact me to discuss. Otherwise we look forward to PFS’s payment.

Thank you,

A handwritten signature in black ink, appearing to read 'Rydel Peterson'.

Rydel Peterson

Attorney

Montana Bar # 55790498

Washington Bar # 55705



Tri-City Railroad Company, LLC
P.O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
8/12/2020	11494

Bill To
Preferred Freezer Services 2800 Polar Way Richland, WA 99354

Terms
Due upon receipt

Quantity	Description	Rate	Amount
70	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of July 23, 2020 to July 31, 2020 Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by Port of Benton January 16, 2020.	95.00	6,650.00

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Payments/Credits	\$0.00
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Invoice Balance	\$6,650.00
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E-mail
lisaanderson@tcry.com

EXHIBIT 3



Tri-City Railroad Company, LLC
P.O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
10/21/2020	11539

Bill To
Preferred Freezer Services 2800 Polar Way Richland, WA 99354



Terms
Due upon receipt

Quantity	Description	Rate	Amount
265	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of September, 2020	95.00	25,175.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by Port of Benton January 16, 2020.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Payments/Credits	\$0.00
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Invoice Balance	\$25,175.00
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E-mail
lisaanderson@tcry.com

EXHIBIT 4



Tri-City Railroad Company, LLC
P.O. Box 6000
Kennewick, WA 99336

Invoice

Date	Invoice #
9/9/2020	11509

Bill To
Preferred Freezer Services 2800 Polar Way Richland, WA 99354



Terms
Due upon receipt

Quantity	Description	Rate	Amount
308	Track Maintenance charges assessed on cars that entered the TCRY at Richland Connection in Kennewick, WA for the period of August 1, 2020 to August 31, 2020 - manifest cars	95.00	29,260.00
	Charges assessed per Miscellaneous Charges Tariff Supplement 1 Effective September 18, 2018 and Approved by Port of Benton January 16, 2020.		

Amounts not paid within terms are subject to a 5% late fee and 1.5% interest per month .

Payments/Credits	\$0.00
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Invoice Balance	\$29,260.00
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E-mail
lisaanderson@tcry.com