

BEFORE THE
SURFACE TRANSPORTATION BOARD

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December 19, 2016
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Public Record

RICHARD BEST TRANSFER, INC.,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

NOR 42149

UNION PACIFIC RAILROAD COMPANY'S REPLY TO
RICHARD BEST TRANSFER INC.'S MOTION FOR LEAVE AND SURREPLY

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December 19, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RICHARD BEST TRANSFER, INC.,	)	
	)	
Complainant,	)	
	)	
v.	)	NOR 42149
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

**UNION PACIFIC RAILROAD COMPANY’S REPLY TO
RICHARD BEST TRANSFER INC.’S MOTION FOR LEAVE AND SURREPLY**

RBT’s motion for leave and surreply filed on November 29, 2016, confirm that RBT is not entitled to the extraordinary relief it seeks. The surreply highlights RBT’s lack of a viable legal claim, undercuts its irreparable harm claims, fails to show that an injunction would not harm Union Pacific, and fails to show that an injunction would be in the public interest.¹

RBT also failed to apprise the Board of developments that further undermine its irreparable harm claims. In our November 16 reply, Union Pacific informed the Board that we would move {} ² See Reply at 8. Since then,
Union Pacific has moved {

{³

¹ RBT’s surreply is an impermissible reply to a reply. *See* 49 C.F.R. § 1104.13(c). If the Board accepts RBT’s surreply, Union Pacific respectfully requests that it also consider this response.

² Material within brackets is Highly Confidential or Confidential. Such material is redacted from the public version of this filing.

³ The facts set forth in this reply are verified by Daniel C. McLaughlin, Assistant Vice President – Grain and Grain Products for Union Pacific.

RBT likely knew about these additional trains when it filed its surreply. RBT initially claimed that Union Pacific “put RBT in significant and immediate business peril.” Littlefield VS ¶ 41. But in its surreply, RBT no longer claims imminent harm. Instead, RBT acknowledges that traffic “diversions may be limited initially,” and it claims only that shipments “are unlikely to persist for the duration of an unreasonable practice case before the Board.” Surreply at 3.

RBT’s abandonment of its imminent harm claim is fatal to its injunction request. Even if RBT’s new claim were true, the possibility that shipments may cease at some future point would not establish an injury is “of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). We discuss this issue in more detail below.

I. RBT IS NOT ENTITLED TO INJUNCTIVE RELIEF

In its surreply, RBT largely repeats the flawed arguments contained in its petition, but it tries to salvage some of those arguments by adding misleading and erroneous factual claims. RBT’s efforts only emphasize the weakness of its petition.

A. RBT Fails To Show That It Is Likely To Succeed On The Merits..

1. RBT’s “unreasonable practice” claim has no likelihood of success.

RBT cites no authority that would allow it to maintain an unreasonable practice claim, much less any authority establishing a likelihood of success. *See* Surreply at 8-9. RBT does not even try to defend its primary claim—that Union Pacific engaged in an “unreasonable classification” (Pet. at 14)—nor could it (Reply at 11). As for RBT’s more generic unreasonable practice claim, whether the claim is characterized as a challenge to rate levels, or to the existence of an allegedly discriminatory rate differential, RBT must bring its claim under the statutory provision that more specifically governs the challenged conduct. *See* Reply at 11-12. Nor does RBT try to explain why its claim is not foreclosed by *Union Pacific Railroad Co. v. ICC*, 867

F.2d 646 (D.C. Cir. 1989) (establishing that an “unreasonable practice” challenge will not lie where the so-called “practice” is manifested exclusively in the level of rates), and *Entergy Arkansas, Inc. v. Union Pacific Railroad Co.*, NOR 42104 (STB served June 26, 2009) (reaffirming that an “unreasonable practice” challenge will not lie where a more specific statutory provision addresses the conduct at issue).⁴

In its surreply, RBT offers a new claim—that Union Pacific engaged in an unreasonable practice by establishing rates to RBT-Ivory that allegedly violate “prior promises and reasonably relied upon representations.” Surreply at 7. This belated effort to justify an unreasonable practice claim is also unavailing. To the extent the new claim is not just a reformulated challenge to rate levels or differentials, it is a claim that Union Pacific breached an agreement regarding rates. However, disputes over such agreements fall outside the Board’s jurisdiction. *See* 49 U.S.C. § 10709(c)(2) (“The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.”).

Moreover, even if RBT could pursue a contract claim here, it has no likelihood of success. Contrary to RBT’s claim (Surreply at 3, 8), Union Pacific never promised RBT “rate parity.” As discussed on reply, {

} *See* Reply at 5-6. With regard to RBT, we

⁴ As RBT observes (Surreply at 7), the Board has held that it would be an unreasonable practice to “apply what the railroads label as a fuel surcharge in a manner that is not limited to recouping increased fuel costs.” *Rail Fuel Surcharges*, EP 661, slip op. at 4 (STB served Aug. 3, 2006); *accord Dairyland Power Coop. v. Union Pac. R.R.*, NOR 43105, slip op. at 2 (served July 29, 2008). But RBT does not raise a mislabeling claim here. Moreover, even in fuel surcharge-related cases, the Board dismisses claims that effectively challenge rate levels, rather than mislabeling. *See Cargill, Inc. v. BNSF Ry.*, NOR 42120, slip op. 5-6 (STB served Jan. 4, 2011) (dismissing Cargill’s double recovery claim); *see also id.* at 2 (“The Board’s new fuel surcharge rules were designed to conform to the holding in *Union Pacific Railroad v. ICC* . . .”).

simply promised to reestablish “market-based” or “competitive” unit train rates—that is, rates reflecting a discount from single-car rates—once RBT-Ivory could receive and unload an entire train. RBT’s claim that we promised something more to RBT is belied by contemporaneous documents:

- *First*, contrary to RBT’s claim (Surreply at 3-4), Union Pacific’s unit train rates to RBT-Ivory initially included a differential. Before June 2010, Union Pacific had no unit train rate to RBT-Ivory. *See* Exhibit 1 (UP 4053-B, Item 4011-AQ). In June, Union Pacific established for the first time a unit train rate to RBT-Ivory, with a \$125 differential as compared to facilities on our main line. *See* Exhibit 2(UP 4053-C, Item 4011-A).
- *Second*, Union Pacific removed the unit train rates from our tariff after determining that it was operationally impractical to continue providing unit-train service to RBT-Ivory, even at a \$125 differential. *See* Exhibit 3 (UP 4053-C, Item 4011-E).
- *Third*, Union Pacific made different types of promises to RBT and to { } In June 2011, we promised { } *See* Exhibit 4. By contrast, in August 2010, we told RBT that we would “provide ADM and [RBT] market based unit train (80 and/or 100) rates” to RBT-Ivory once the facility could “receive and unload the entire train.” *See* Surreply, Ex. C. { }

RBT’s claim that Union Pacific breached an agreement with RBT out of a supposed “long-standing desire to favor Western Milling over RBT and other competitors” (Surreply at 8), erroneously assumes that an agreement existed and wrongly impugns Union Pacific’s motives for adjusting rates to RBT-Ivory. RBT falsely asserts that Union Pacific made “admissions” that “confirm” a long-running plot against RBT.⁶ The only evidence RBT cites is a self-serving email

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⁶ Union Pacific has expressly denied these allegations. *See* Compl. ¶¶ 30-32, 36 (claiming that Union Pacific “discrimine[d] against,” “unfairly targeted,” and “demarket[ed]” RBT to favor its (continued...)

from 2010 from its own vice president (and current witness) making similar unsubstantiated allegations to an employee at ADM. *See* Surreply, Ex. A.⁷ Moreover, a separate chain of emails, which RBT includes in the same exhibit, shows that Union Pacific met with RBT to discuss rates at RBT's request (*see id.*)—hardly the approach of a railroad bent on harming RBT.

In sum, RBT cannot pursue a breach of contract claim before the Board, but even if it could, RBT has no likelihood of showing that Union Pacific breached any promise to RBT.

2. RBT's "unreasonable discrimination" claim has no likelihood of success.

RBT cites no authority that would allow it to maintain an unreasonable discrimination claim, much less any authority establishing a likelihood of success. *See* Surreply at 9. RBT does not try to defend its § 10701(b) claim of discrimination "against a connecting line of another rail carrier" (Pet. at 17)—nor could it (Reply at 15). As for RBT's claim under § 10741, RBT fails to explain why its claim is not foreclosed by the statute itself, which provides that the prohibition against discrimination shall not apply to "rail rates applicable to different routes," 49 U.S.C. § 10741(b)(2), and by the case law, which establishes that "[r]ail movements . . . to different destinations" are "movements over 'different routes.'" *Rail Exemption Misc. Agricultural Commodities*, 8 I.C.C.2d 674, 686 (1992).

RBT says that the facts are different here than in *Rail Exemption* (Surreply at 9), but the differences make this an even easier case. In *Rail Exemption*, the ICC found that the shipments involved different destinations, and thus different routes, even though they involved customers served by the same carrier (Conrail) in the same city (New York City). *See* 8 I.C.C.2d at 685-86.

competitors); Answer ¶¶ 30-32, 36 (expressly denying these allegations).

⁷ Exhibit C to RBT's surreply identifies the email's recipient, Shawn Sawa, as a manager at ADM.

Here, Ivory and Goshen Junction are separate stations some 14 straight-line miles (and 57 rail miles) apart, the two stations are on different rail lines, and different rail carriers actually handle the shipments south of Irrigosa Siding.

RBT's claim finds no support in *Seaboard Coast Line Railroad v. United States*, 724 F.2d 1482 (11th Cir. 1984), which RBT cited for the first time in its surreply. *See* Surreply at 9. *Seaboard* says that if a terminating carrier has a proportional or local rate from an interchange point to a destination, the carrier may not charge different rates to different originating carriers. *See* 724 F.2d at 1489-90. *Seaboard* also quotes some legislative history suggesting that the same rule applies whether the tariff identifies the destination as a single station or a geographically-defined destination group (in that case, "Atlanta"). *See id.* at 1490 n.8. However, nothing in *Seaboard* remotely supports RBT's claim that § 10741 requires carriers to include all nearby destinations in geographically-defined destination groups or risk discrimination claims.

RBT's assertion that "the costs of transportation to Ivory are not so different from those to Goshen that they cannot be compared" (Surreply at 9), and its dismissal of Union Pacific's cost analysis (*id.* at 5-6), are equally unavailing.

First, the actual size of the cost difference is irrelevant. Section 10741(b)(2) embodies Congress's intent in the Staggers Act "to sharply limit rate equalization" requirements. *Ariz. Pub. Serv. Co. v. Burlington N. & Santa Fe Ry.*, 7 S.T.B. 76, 81 (2003). By limiting "the scope of actionable discrimination," *Consol. Rail Corp. v. United States*, 896 F.2d 574, 576 (D.C. Cir. 1990), Congress expressed a clear intent that the Board not order railroads to equalize rates to different destinations merely because the costs and other market conditions are "close enough."

Second, the evidence that Union Pacific presented in our reply shows that there is in fact a { } cost difference. As the Board can confirm for itself, Union Pacific's variable

cost for a 2065-mile movement of a 100-car unit train of corn gluten meal from Cedar Rapids to Irrigosa Siding is \$2,749.33 per car, which combined with the { } per car payment to SJVR to reach RBT-Ivory, yields a total variable cost of { } per car. Union Pacific's variable cost for a 2108-mile movement of a 100-car unit train of corn gluten meal from Cedar Rapids to WM-Goshen, is \$2,816.65 per car. *See* Exhibit 5.⁸

Third, RBT's challenge to the use of the Uniform Rail Costing System ("URCS") to compare the variable costs of service on different routes (Surreply at 5), is misplaced. The Board has used URCS in similar circumstances. *See, e.g., Entergy Ark., Inc. v. Union Pac. R.R.*, NOR 42104, slip op. at 12-13 & n.37 (STB served March 15, 2011).⁹

Finally, RBT's claim that Union Pacific's payment to SJVR "represents a total cost, not a variable cost" (Surreply at 6), is incorrect. Union Pacific pays SJVR a fee for each movement, and it does not pay if it does not make a movement—a classic example of a variable cost. *See Rail Exemption*, 8 I.C.C.2d at 684 n.23 ("Variable costs, . . . are costs that vary with output"); *Rate Regulation Reforms*, EP 715, slip op. at 3 (STB served July 25, 2012) ("Variable costs vary with the level of traffic . . ."); *FMC Wyo. Corp. v. Union Pac. R.R.*, 4 S.T.B. 699, 760-61 (2000) (treating Union Pacific's payment of terminal switching charges as a variable cost).¹⁰

⁸ Exhibit 5 is Union Pacific's Reply Exhibit 4, with two typographical errors corrected (*i.e.*, the "shipment type" and the miles from Cedar Rapids to Goshen Junction). The costs presented in the original Exhibit 4 were not affected by those typographical errors.

⁹ The Railroad Industry Agreement ("RIA"), referenced by RBT (Surreply at 5), is irrelevant to this case. The RIA is a private agreement between large railroads and small railroads. It provides for resolution of some types of disputes by arbitration under the Board's auspices, but it has no application to other disputes at the Board, and it provides no rights to shippers, transloaders, or other third parties.

¹⁰ In its surreply, RBT contends that Union Pacific has not offered sufficient proof of the costs or operating conditions for shipments to RBT-Ivory as compared with WM-Goshen. The specific cost and operational differences are ultimately irrelevant in light of § 10741(b)(2), and we have no burden to prove any particular facts in opposing a petition for a preliminary injunction. But (continued...)

In sum, RBT's unreasonable discrimination claim is barred as a matter of law. Even if RBT could bring such a claim, it has failed to adduce facts sufficient to show a likelihood of success on the merits.

B. RBT Fails to Show That It Will Be Irreparably Harmed In the Absence of An Injunction

Faced with Union Pacific's evidence that unit trains continue to move to RBT-Ivory, RBT drops its initial, unsupported claim to be under an "immediate threat to [its] continued existence." Pet. at 3. RBT now claims only that traffic to RBT-Ivory is "unlikely" to "persist for the duration of an unreasonable practice case before the Board." Surreply at 3.

RBT's new, scaled-down claim should not be accepted as true, any more than its original claim. RBT still offers only "[b]are allegations" that have "no value." *Wis. Gas*, 758 F.2d at 674. But even if RBT's claim were true, it would be insufficient to show irreparable harm. To prove irreparable harm, the party seeking the injunction must show that the injury complained of is "of such imminence that there is a clear and *present* need for equitable relief to prevent irreparable harm." *Id.* (emphasis added). RBT has previously estimated that "the merits decision could take up to three to four years." Pet. at 20. Thus, RBT is now claiming only that shipments to Ivory "are unlikely to persist" for three to four years. This fails the "imminence" test. *See, e.g., Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 816 (4th Cir. 1991) (holding that "[t]he plaintiff failed to establish that the denial [of a preliminary injunction] would result in present irreparable harm" where any harms to the movant would be "'at least a year down the road, maybe two or three years down the road'"); *Wisc. Gas*, 758 F.2d at 764 (harm "merely feared as

our reply *does* include verifications from witnesses addressing all the facts that we submitted. RBT's complaints serve more to highlight RBT's own failure, as the party with the burden of proof, to justify injunctive relief.

liable to occur at some indefinite time” in the future is insufficient).¹¹ Indeed, such vague claims of future harm are exactly the sort of claims that this Board has held insufficient to justify the grant of extraordinary relief. *See BP Amoco Chem. Co. v. Norfolk S. Ry.*, NOR 42093 slip op. at 4 (STB served June 6, 2005) (“Although BP states that it cannot absorb the subject rate increase indefinitely, such a statement is inadequate by itself to persuade the Board that BP will suffer irreparable injury.”).

RBT’s new claim that the rate adjustment “thwarted [its] business initiatives to develop and expand its operations at RBT-Hollis” (Surreply at 2), lacks support, but in any event is not a claim of irreparable harm. “‘Mere injuries, however substantial, in terms of money . . . are not enough.’” *Wis. Gas*, 758 F.2d at 674. (quoting *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)). In particular, “loss of business opportunities and profits,” such as from a potential expansion, does not suffice “to establish irreparable harm” to RBT because it does not constitute a threat to the company’s very survival. *United States v. W. Elec. Co.*, 777 F.2d 23, 30-31 (D.C. Cir. 1985).

RBT also finds no support in its mischaracterization of old emails relating to Union Pacific’s rates to a former RBT facility in Conner, California.

- First, RBT falsely claims that Union Pacific “does not dispute” that it imposed a “penalty” on shipments to RBT-Conner in 2009 “in favor of RBT’s immediate competitor.” Surreply at 2. In fact, Union Pacific denied these spurious claims in answering RBT’s Complaint. *See* Comp. ¶¶ 31, 32; Answer ¶¶ 31, 32.
- Second, RBT’s “proof” of its Conner-related allegations, apart from the self-serving claims of its witness in a statement supporting RBT’s petition (Surreply at 2, citing Littlefield VS ¶¶ 36-38), is a similar self-serving claim by the same witness in an old email sent to an ADM employee, but, tellingly, never sent to the Union Pacific

¹¹ On December 12, Union Pacific and RBT submitted an agreed-upon procedural schedule that would allow the Board to resolve this matter within a year, which would mean that unit trains would continue to move to RBT-Ivory for the duration of this case.

employees it was purporting to quote (*see id.*, Ex. A). Other emails in RBT’s Exhibit A show that Union Pacific was willing to meet to discuss RBT’s concerns—hardly the behavior of a company bent on harming RBT. *See id.*, Ex. A.

- Third, the indisputable facts show that Union Pacific’s rates did not have a “business killing” impact on RBT’s Conner facility. As we noted in our reply, RBT sold that facility to another company, Quality Grain, which continues to operate the facility. *See Reply* at 18 n.14. Other similarly situated facilities have also remained in business despite similar rate differentials, particularly Central Valley Ag Group in Modesto, which is also served directly by a short line railroad. *See id.* at 18.

If RBT’s Conner-related claims show anything, it is that RBT has been making “Chicken Little” claims that Union Pacific’s rates were forcing it out of business since at least 2010.

Finally, RBT invokes statements by Union Pacific in a case dealing with hazardous-materials fees in California, *BNSF Railway Co. v. California State Board of Equalization*, No. 16-cv-04311-RS, 2016 WL 6393507 (N.D. Cal. Oct. 28, 2016). *See Surreply* at 3 & Ex. B. That case serves only to highlight the contrast between the detailed proof offered in other cases where a party successfully obtains a preliminary injunction and the vague generalities offered by RBT here. RBT also misstates the facts by asserting that Union Pacific’s affidavits claimed the likely loss of tank car traffic as a result of a \$45-per-car “hazmat charge.” The affidavits say no such thing. One Union Pacific witness simply calculated how much the charge would have yielded had it been applied to tank car traffic in 2015 and the first two quarters of 2016. *See Surreply*, Ex. B (Decl. of Aaron Meyerle). A second Union Pacific witness explained that the hazmat charge had a “high potential” to divert certain movements of *intermodal* containers from rail to truck or ship, and detailed how such intermodal movements are highly susceptible to diversion within the context of the global shipping market. *See Surreply*, Ex. B. (Decl. of Mark T. Simon). That affidavit was supported by an additional, detailed affidavit from an economist, which RBT chose to omit from its submission to the Board. And Union Pacific never claimed that the diversions would put it out of business. Our potential irreparable harm involved different

consequences than RBT invokes to support its claim here. In sum, RBT's different legal claims about the effects of diversion of movements of entirely different products in entirely different markets are unsupported by *any* comparable projections, data, or other evidence. RBT's speculation and supposition are insufficient to justify extraordinary relief, particularly in this complex, fact-specific area.

C. RBT Fails To Show That The Issuance Of An Injunction Will Not Harm Union Pacific.

RBT has also failed to show that issuance of an injunction will not harm Union Pacific. RBT argues that the Board should not credit Union Pacific's cost evidence (Surreply at 7), but it provides no contrary evidence of its own. Moreover, RBT cannot dispute that Union Pacific would not be made whole if the Board erroneously enjoins us from increasing rates to RBT-Ivory.

Notably, RBT has not offered to put up security so that Union Pacific will be made whole if RBT prevails. *See, e.g., Roche Diagnostics Corp. v. Med. Automation Sys., Inc.*, 646 F.3d 424, 428 (7th Cir. 2011) ("Normally an injunction bond or equivalent security is essential. Injunctions can injure litigants And preliminary injunctions, which may be issued in haste, are more likely to be erroneous than injunctions issued at the close of the litigation. A party injured by an erroneous preliminary injunction is entitled to be made whole." (internal citations omitted)).

D. RBT Fails To Show That Issuance Of An Injunction Would Be In The Public Interest.

Union Pacific explained in detail in our initial filing how issuance of an injunction presents serious risks to the public interest by interfering with railroad pricing decisions. Reply at 19-21. RBT ignores the issue altogether in its surreply. This is unsurprising, because RBT cannot deny that it is asking the Board to put its thumb on the scales in favor of RBT and to the detriment of RBT's competitors in the marketplace.

II. CONCLUSION

RBT's surreply is unauthorized under the Board's rules of practice, and the Board should reject it. Even if the Board accepts the filing, however, it does not aid RBT. RBT's desperate, eleventh-hour submission only confirms that RBT is not entitled to the relief it seeks. A preliminary injunction is an extraordinary remedy requiring a strong showing as to each of the four legal elements. As explained above, RBT fails to satisfy *any* of the four factors necessary to grant provisional injunctive relief. The Board should therefore deny RBT's petition for a preliminary injunction.

Respectfully submitted,

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Attorneys for Union Pacific Railroad Company

December 19, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2016, I caused a copy of the foregoing document to be served by email and first-class mail, postage prepaid, on all parties of record in Docket No. 42149.

/s/ Michael L. Rosenthal

VERIFICATION

I, Daniel C. McLaughlin, Assistant Vice President – Grain and Grain Products for Union Pacific Railroad Company, declare under penalty of perjury that I have reviewed the foregoing Reply to Richard Best Transfer Inc.’s Motion for Leave and Surreply and that the factual information presented therein is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on December 19, 2016.

/s/ Daniel C. McLaughlin

	UP 4053-B	Item: 4011-AQ DDG - 1 TO 1 UNIT TRAIN RATES
DDG - 1 TO 1 UNIT TRAIN RATES		
For billing purposes use the following rate authority: UP 4053-B-4011-AQ		
STCC/GROUP	STCC	DESCRIPTION
DDG	20823 20859	Malt Extracts Or Brewers Spent Grains By-Products Of Liquor Distilling
Prices are subject to Fuel surcharges. GENERAL RULE ITEM 11 UNIT TRAIN Unit trains must be loaded by one consignor, at one location, at one facility. The origin facility must have sufficient privately held track to receive, and load the entire unit train, not to exceed one switch/trip for placement. Shipments must be billed to one destination. Destination facility must have privately held trackage of sufficient capacity on which to receive and unload the entire train. Billing instructions must be furnished to the Union Pacific through Electronic Data Interchange ("EDI") or through Union Pacific's web site. A complete tariff authority, including item number, is also required. Failure to issue billing in accordance with the provisions of this item will result in the assessment of the single car rate.		
General Application Rules for Item 4011-AQ		
1. Mileage allowance payment on private equipment will not apply. 2. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks. 3. Switching charges at both origin and destination will be absorbed up to \$160.00. 4. Price is subject to Tariff UP 6007 (series) , item 695 (series).		
Issued: February 10, 2010 Effective: February 10, 2010 Expiration: December 31, 2100 UP 4053-B Page: 1 of 3 Item: 4011-AQ Continued on next page		

APPLICATION AND RATES				
COLUMN	RATE APPLICATION RULES			
1.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 80 Car(s) and maximum not greater than 84 Car(s).			
2.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 96 Car(s) and maximum not greater than 105 Car(s).			
		86-99 CARS	100-110 CARS	Route Code / Group
STCC Group:	DDG GROUP			
From:	IA, ALBERT CITY			
To:	CA, FAMOSO	4696.00		UP
	CA, MODESTO	4827.00	4577.00	UP
	CA, PIXLEY	4696.00		UP
	ID, BLISS	4437.00		UP
	TX, LAREDO GROUP	4444.00	4194.00	UP
From:	IA, COUNCIL BLUFFS			
To:	CA, FAMOSO	4522.00		UP
	CA, MODESTO	4609.00	4359.00	UP
	CA, PIXLEY	4522.00		UP
	ID, BLISS	4263.00		UP
	TX, LAREDO GROUP	4268.00	4018.00	UP
From:	IA, DES MOINES			
To:	TX, LAREDO GROUP	4272.00	4022.00	UP
From:	IA, FT DODGE GROUP			
To:	CA, FAMOSO	4609.00		UP
	CA, MODESTO	4740.00	4490.00	UP
	CA, PIXLEY	4609.00		UP
	ID, BLISS	4350.00		UP
	WA, LONGVIEW	^A 4887.00	^A 4637.00	UP
From:	IA, GRAND JCT			
To:	CA, FAMOSO	4410.00		UP
	CA, GOSHEN GROUP	4410.00		UP
	CA, MODESTO	4541.00	4291.00	UP
	CA, PIXLEY	4410.00		UP
	ID, BLISS	4154.00		UP
	IL, EAST ST LOUIS	2401.00		UP
	TX, LAREDO GROUP	4146.00	3896.00	UP
From:	IA, IOWA FALLS			
To:	CA, FAMOSO	4609.00		UP
	CA, MODESTO	4740.00		UP
	CA, PIXLEY	4609.00		UP
From:	IA, MANLY GROUP			
To:	CA, CONNER	4799.00		UP
	CA, FAMOSO	4674.00		UP
	CA, GOSHEN GROUP	4674.00		UP
	CA, MODESTO	4805.00	4555.00	UP
	CA, PIXLEY	4674.00		UP
	ID, BLISS	4415.00		UP
	IL, EAST ST LOUIS	2472.00		UP
	TX, LAREDO GROUP	4422.00	4172.00	UP
From:	IA, NEVADA			
To:	CA, PIXLEY	4565.00		UP
From:	MN, MANKATO			
To:	CA, FAMOSO	4871.00		UP
	CA, MODESTO	5002.00	4752.00	UP
	CA, PIXLEY	4871.00		UP
Issued:	February 10, 2010	UP 4053-B		Page: 2 of 3
Effective:	February 10, 2010			Item: 4011-AQ
Expiration:	December 31, 2100			Continued on next page

		86-99 CARS	100-110 CARS	Route Code / Group
	ID, BLISS	4612.00		UP
From:	MN, WINTHROP			
To:	CA, FAMOSO	5198.00		UP
	CA, MODESTO	5329.00	5079.00	UP
	CA, PIXLEY	5198.00		UP
	ID, BLISS	4939.00		UP

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES
1.	Rates are in U.S. dollars Per Car. Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies if minimum tender per shipment is 80 Car(s) and maximum not greater than 84 Car(s).
2.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 96 Car(s) and maximum not greater than 105 Car(s).

		86-99 CARS	100-110 CARS	Route Code / Group
STCC Group:	DDG GROUP			
From:	MO, KANSAS CITY			
To:	TX, LAREDO GROUP	4260.00	4010.00	UP

ORIGIN AND DESTINATION GROUPS

**GROUP NAME
LOCATIONS**

CA, GOSHEN GROUP
CA, GOSHEN
CA, GOSHEN JCT

IA, FT DODGE GROUP
IA, FT DODGE
IA, TARA

IA, MANLY GROUP
IA, MANLY
IA, MASON CITY

TX, LAREDO GROUP
TX, BROWNSVILLE
TX, EAGLE PASS
TX, LAREDO



UP 4053-C

Item: 4011-A
DDG - 1 TO 1 UNIT TRAIN RATES

DDG - 1 TO 1 UNIT TRAIN RATES

For billing purposes use the following rate authority: UP 4053-C-4011-A

STCC/GROUP	STCC	DESCRIPTION
DDG	20823 20859	Malt Extracts Or Brewers Spent Grains By-Products Of Liquor Distilling

Prices are subject to Fuel surcharges.

**GENERAL RULE ITEM 11
UNIT TRAIN**

Unit trains must be loaded by one consignor, at one location, at one facility. The origin facility must have sufficient privately held track to receive, and load the entire unit train, not to exceed one switch/trip for placement.

Shipments must be billed to one destination. Destination facility must have privately held trackage of sufficient capacity on which to receive and unload the entire train.

Billing instructions must be furnished to the Union Pacific through Electronic Data Interchange ("EDI") or through Union Pacific's web site. A complete tariff authority, including item number, is also required.

Failure to issue billing in accordance with the provisions of this item will result in the assessment of the single car rate.

General Application Rules for Item 4011-A

1. Mileage allowance payment on private equipment will not apply.
2. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.
3. Switching charges at both origin and destination will be absorbed up to \$160.00.
4. Price is subject to Tariff UP 6007 (series) , item 695 (series).

Issued: June 7, 2010
Effective: June 7, 2010
Expiration: December 31, 2100

UP 4053-C

Page: 1 of 3
Item: 4011-A
Continued on next page

APPLICATION AND RATES				
COLUMN	RATE APPLICATION RULES			
1.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 80 Car(s) and maximum not greater than 84 Car(s).			
2.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 96 Car(s) and maximum not greater than 105 Car(s).			
		86-99 CARS	100-110 CARS	Route Code / Group
STCC Group:	DDG GROUP			
From:	IA, ALBERT CITY			
To:	CA, FAMOSO	4696.00		UP
	CA, MODESTO	4827.00	4577.00	UP
	CA, PIXLEY	4696.00		UP
	ID, BLISS	4437.00		UP
	TX, LAREDO GROUP	4444.00	4194.00	UP
From:	IA, COUNCIL BLUFFS			
To:	CA, FAMOSO	4522.00		UP
	CA, MODESTO	4609.00	4359.00	UP
	CA, PIXLEY	4522.00		UP
	ID, BLISS	4263.00		UP
	TX, LAREDO GROUP	4268.00	4018.00	UP
From:	IA, DES MOINES			
To:	TX, LAREDO GROUP	4272.00	4022.00	UP
From:	IA, FT DODGE GROUP			
To:	CA, FAMOSO	4609.00		UP
	CA, MODESTO	4740.00	4490.00	UP
	CA, PIXLEY	4609.00		UP
	ID, BLISS	4350.00		UP
	WA, LONGVIEW	4887.00	4637.00	UP
From:	IA, GRAND JCT			
To:	CA, FAMOSO	4410.00		UP
	CA, GOSHEN GROUP	4410.00		UP
	CA, IVORY	^A 4535.00		UP
	CA, MODESTO	4541.00	4291.00	UP
	CA, PIXLEY	4410.00		UP
	ID, BLISS	4154.00		UP
	IL, EAST ST LOUIS	2401.00		UP
	TX, LAREDO GROUP	4146.00	3896.00	UP
From:	IA, IOWA FALLS			
To:	CA, FAMOSO	4609.00		UP
	CA, MODESTO	4740.00		UP
	CA, PIXLEY	4609.00		UP
From:	IA, MANLY GROUP			
To:	CA, CONNER	4799.00		UP
	CA, FAMOSO	4674.00		UP
	CA, GOSHEN GROUP	4674.00		UP
	CA, MODESTO	4805.00	4555.00	UP
	CA, PIXLEY	4674.00		UP
	ID, BLISS	4415.00		UP
	IL, EAST ST LOUIS	2472.00		UP
	TX, LAREDO GROUP	4422.00	4172.00	UP
From:	IA, NEVADA			
To:	CA, PIXLEY	4565.00		UP
From:	MN, MANKATO			
To:	CA, FAMOSO	4871.00		UP
	CA, MODESTO	5002.00	4752.00	UP
Issued: June 7, 2010 Effective: June 7, 2010 Expiration: December 31, 2100				
UP 4053-C			Page: 2 of 3 Item: 4011-A Continued on next page	

		86-99 CARS	100-110 CARS	Route Code / Group
	CA, PIXLEY	4871.00		UP
	ID, BLISS	4612.00		UP
From:	MN, WINTHROP			
To:	CA, FAMOSO	5198.00		UP
	CA, MODESTO	5329.00	5079.00	UP
	CA, PIXLEY	5198.00		UP
	ID, BLISS	4939.00		UP

APPLICATION AND RATES

COLUMN	RATE APPLICATION RULES
1.	Rates are in U.S. dollars Per Car. Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11, AND Applies if minimum tender per shipment is 80 Car(s) and maximum not greater than 84 Car(s).
2.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 96 Car(s) and maximum not greater than 105 Car(s).

		86-99 CARS	100-110 CARS	Route Code / Group
STCC Group:	DDG GROUP			
From:	MO, KANSAS CITY			
To:	TX, LAREDO GROUP	4260.00	4010.00	UP

ORIGIN AND DESTINATION GROUPS

**GROUP NAME
LOCATIONS**

CA, GOSHEN GROUP
CA, GOSHEN
CA, GOSHEN JCT

IA, FT DODGE GROUP
IA, FT DODGE
IA, TARA

IA, MANLY GROUP
IA, MANLY
IA, MASON CITY

TX, LAREDO GROUP
TX, BROWNSVILLE
TX, EAGLE PASS
TX, LAREDO

	UP 4053-C	Item: 4011-E DDG - 1 TO 1 UNIT TRAIN RATES
DDG - 1 TO 1 UNIT TRAIN RATES		
For billing purposes use the following rate authority: UP 4053-C-4011-E		
STCC/GROUP	STCC	DESCRIPTION
DDG		
	20823	Malt Extracts Or Brewers Spent Grains
	20859	By-Products Of Liquor Distilling
Prices are subject to Fuel surcharges.		
GENERAL RULE ITEM 11 (Effective Date: 03/26/2010 Original Issue Date: 03/25/2010)		
UNIT TRAIN		
Unit trains must be loaded by one consignor, at one location, at one facility. The origin facility must have sufficient privately held track to receive, and load the entire unit train, not to exceed one switch/trip for placement.		
Shipments must be billed to one destination. Destination facility must have privately held trackage of sufficient capacity on which to receive and unload the entire train.		
Billing instructions must be furnished to the Union Pacific through Electronic Data Interchange ("EDI") or through Union Pacific's web site. A complete tariff authority, including item number, is also required.		
Failure to issue billing in accordance with the provisions of this item will result in the assessment of the single car rate.		
GENERAL APPLICATION RULES FOR ITEM 4011-E		
1. Mileage allowance payment on private equipment will not apply.		
2. Applies in Customer/Shipper-owned or -leased equipment bearing private (non-railcarrier) reporting marks.		
3. Switching charges at both origin and destination will be absorbed up to \$160.00.		
4. Price is subject to Tariff UP 6007 (series), item 695 (series).		
Issued:	September 10, 2010	UP 4053-C
Effective:	October 1, 2010	
		Page: 1 of 3 Item: 4011-E Continued on next page

APPLICATION AND RATES			
COLUMN	RATE APPLICATION RULES		
1.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 80 Car(s) and maximum not greater than 84 Car(s).		
2.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 96 Car(s) and maximum not greater than 105 Car(s).		
	Col 1 Rate	Col 2 Rate	Route Code/Group
STCC Group: DDG GROUP			
From: IA, ALBERT CITY			
To: CA, FAMOSO	I 4846.00		UP
CA, MODESTO	I 4977.00	I 4727.00	UP
CA, PIXLEY	I 4846.00		UP
ID, BLISS	I 4587.00		UP
TX, LAREDO GROUP	I 4569.00	I 4319.00	UP
From: IA, COUNCIL BLUFFS			
To: CA, FAMOSO	I 4672.00		UP
CA, GOSHEN JCT	I 4672.00		UP
CA, MODESTO	I 4759.00	I 4509.00	UP
CA, PIXLEY	I 4672.00		UP
ID, BLISS	I 4413.00		UP
TX, LAREDO GROUP	I 4393.00	I 4143.00	UP
From: IA, DES MOINES			
To: TX, LAREDO GROUP	I 4397.00	I 4147.00	UP
From: IA, FT DODGE GROUP			
To: CA, FAMOSO	I 4759.00		UP
CA, MODESTO	I 4890.00	I 4640.00	UP
CA, PIXLEY	I 4759.00		UP
ID, BLISS	I 4500.00		UP
WA, LONGVIEW	I 5037.00	I 4787.00	UP
From: IA, GRAND JCT			
To: CA, FAMOSO	I 4560.00		UP
CA, GOSHEN GROUP	I 4560.00		UP
CA, MODESTO	I 4691.00	I 4441.00	UP
CA, PIXLEY	I 4560.00		UP
ID, BLISS	I 4304.00		UP
IL, EAST ST LOUIS	I 2501.00		UP
TX, LAREDO GROUP	I 4271.00	I 4021.00	UP
From: IA, IOWA FALLS			
To: CA, FAMOSO	I 4759.00		UP
CA, MODESTO	I 4890.00		UP
CA, PIXLEY	I 4759.00		UP
From: IA, MANLY GROUP			
To: CA, CONNER	I 4949.00		UP
CA, FAMOSO	I 4824.00		UP
CA, GOSHEN GROUP	I 4824.00		UP
CA, MODESTO	I 4955.00	I 4705.00	UP
CA, PIXLEY	I 4824.00		UP
ID, BLISS	I 4565.00		UP
IL, EAST ST LOUIS	I 2572.00		UP
TX, LAREDO GROUP	I 4547.00	I 4297.00	UP
From: IA, NEVADA			
To: CA, PIXLEY	I 4715.00		UP
From: MN, MANKATO			
To: CA, FAMOSO	I 5021.00		UP
CA, MODESTO	I 5152.00	I 4902.00	UP
CA, PIXLEY	I 5021.00		UP
ID, BLISS	I 4762.00		UP
From: MN, WINTHROP			
To: CA, FAMOSO	I 5348.00		UP
CA, MODESTO	I 5479.00	I 5229.00	UP
CA, PIXLEY	I 5348.00		UP
ID, BLISS	I 5089.00		UP

APPLICATION AND RATES				
COLUMN	RATE APPLICATION RULES			
1.	Rates are in U.S. dollars Per Car. Price must be used in combination with other prices for the portion of the shipment prior to specified origin. Separate freight bills will be issued for each price used according to the provisions of Railway Accounting Rule 11. Applies if minimum tender per shipment is 80 Car(s) and maximum not greater than 84 Car(s).			
2.	Rates are in U.S. dollars Per Car. Applies if minimum tender per shipment is 96 Car(s) and maximum not greater than 105 Car(s).			
		Col 1 Rate	Col 2 Rate	Route Code/Group
STCC Group: DDG GROUP				
From: MO, KANSAS CITY				
To: TX, LAREDO GROUP		1 4385.00	1 4135.00	UP
NOTES DESCRIPTION				

APPENDIX A
ORIGIN AND DESTINATION GROUPS

GROUP NAME
LOCATIONS

CA, GOSHEN GROUP
CA, GOSHEN
CA, GOSHEN JCT

IA, FT DODGE GROUP
IA, FT DODGE
IA, TARA

IA, MANLY GROUP
IA, MANLY
IA, MASON CITY

TX, LAREDO GROUP
TX, BROWNSVILLE
TX, EAGLE PASS
TX, LAREDO

[REDACTED
FROM PUBLIC FILING]

Costs to Serve WM-Goshen Versus RBT-Ivory

Line	Description	Source	Cedar Rapids to WM-Goshen	Cedar Rapids to RBT-Ivory (SJVR Interchange + SJVR Payment)
1	Railroad		UP	UP
2	Distance in Miles		2108	2065
3	Shipment Type		O/T	O/D
4	Freight Car Number		100	100
5	Freight Car Type		Covered Hopper	Covered Hopper
6	Freight Car Ownership		Private	Private
7	Tons Per Car		103	103
8	Commodity		2041928	2041928
9	Type of Train		Unit	Unit
10	Phase III Variable Cost @ 2014 Cost Level	Phase III Costing Program	\$312,297.46	\$304,833.62
11	Freight Car Number	Line 4	100	100
12	Variable Cost Per Car @ 2014 Cost Level	Line 10/Line 11	\$3,122.97	\$3,048.34
13	Composite Index 2014 to 3Q16	Composite Index	0.90191130	0.90191130
14	Variable Cost Per Car @ 3Q16 Cost Level	Line 12 * Line 13	\$2816.65	\$2,749.33
15	Per Car Payment to SJVR		-	{ }
16	Total Variable Cost Per Car @ 3Q16 Cost Level	Line 14 + Line 15	\$2816.65	{ }