

ELKHART & WESTERN RAILROAD CO.

FREIGHT TARIFF EWR 8998-K (Replaces EWR 8998-J in its entirety)

NAMING

STORAGE RULES AND CHARGES

APPLYING AT STATIONS

ON THE

ELKHART & WESTERN RAILROAD CO.

RAILCAR STORAGE TARIFF

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular rates and provisions contained herein.

ISSUED: September 10, 2012

EFFECTIVE: October 1, 2012

ISSUED BY:
Pioneer Railcorp Commercial Department
Acting as Agent for Subscribing Carrier
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111

FREIGHT TARIFF EWR 8998-K (continued)

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 10

REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC.

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

Where reference is made in this tariff to another tariff by ICC number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic.

ITEM 20

METHOD OF CANCELLING ITEMS

As this tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels Item 445, and Item 365-B cancels 365-A in a prior supplement, which in turn cancelled 365?

ITEM 30

SUPPLEMENTS AND REISSUES

When reference is made in this tariff, or supplements, to other publications for rates or other information, it includes "Supplements thereto or successive issues thereof".

Where reference is made in this tariff to items, it includes "reissues of such items".

**SECTION 1
FREIGHT SERVICE RAIL CARS**

ITEM 100

EMPTY RAILCARS

The rate for EMPTY "Freight Service Railcars" (in interchange condition) stored on the ELKHART & WESTERN RAILROAD CO. (EWR) applies only to (1) railcars with outside length (OSL) not exceeding 70'; or to (2) railcars with outside length (OSL) >70 ft. but n/e 90 ft. Charges are as follows:

NON-HAZARDOUS (ONLY) EMPTY RAIL CARS

- (1) \$4.00/car per day, with a thirty (30)-day minimum (unless otherwise agreed) – OSL n/e 70 ft.
- (2) \$6.00/car per day, with a thirty (30)-day minimum (unless otherwise agreed) – OSL >70 ft. but n/e 90 ft.

An inbound switch charge of \$250.00 per car, as well as an outbound switch charge of \$250.00 per car will apply on the movement of empty non-hazardous railcars. Switch charges must be pre-paid prior to cars being received, or EWR reserves the right to refuse the cars. This rate(s) does not include any charges of any connecting carrier (e.g. intermediate switching, bridge fees, trackage rights fees, maintenance fees, etc.), and these charges will be in addition to above switch charges.

If the inbound Switch charge has not been collected prior to the cars being billed off of the railroad, the outbound switch fee will be \$750.00 per non-hazardous empty rail car, and must be prepaid by electronic fund transfer prior to the car(s) being interchanged. Additionally, cars will not be interchanged until all accrued storage fees are collected via electronic fund transfer. Storage fees will continue to accrue on the railcars up to the date electronic fund transfer is made.

If cars change ownership while in storage on the EWR and/or when moved/billed offline by a party other than the original party with whom storage agreement was made, the outbound switch charge for moving the cars offline will be due and payable by the new owner/party billing the cars offline. Additionally, any/all storage charges continuing to accrue on such cars after change of ownership will be billed to and due and payable by the new owner/party. All such charges for the offline switch and storage will be paid to the EWR with payment due prior to the cars moving to interchange.

The above charges apply to both short-term and long-term storage.
All monies are due and payable to the EWR prior to EWR moving the empty storage car (s) to interchange.

NOTE: All railcars being stored shall be considered fungible, and if Owner requests that less than the total number of cars in storage be removed from storage and delivered to interchanging carrier, EWR may move such individual Railcars as may be convenient. If Owner requires particular Railcars, EWR may, but is under no obligation to, provide such individual Railcars, but shall have the right to assess additional switch charges for such service.

FREIGHT TARIFF EWR 8998-K (continued)

ITEM 100 (cont'd)

EMPTY RAIL CARS

HAZARDOUS EMPTY RAILCARS

- (1) \$15.00/car per day, with a thirty (30)-day minimum (unless otherwise agreed) – OSL n/e 70 ft.
- (2) \$20.00/car per day, with a thirty (30)-day minimum (unless otherwise agreed) – OSL >70 ft. but n/e 90 ft

An inbound switch charge of \$500.00 per car, as well as an outbound switch charge of \$500.00 per car will apply on the movement of empty hazardous railcars. Switch charges must be pre-paid prior to cars being received, or EWR reserves the right to refuse the cars. This rate(s) does not include any charges of any connecting carrier (e.g. intermediate switching, bridge fees, trackage rights fees, maintenance fees, etc.), and these charges will be in addition to above switch charges

If the inbound Switch charge has not been collected prior to the cars being billed off of the railroad, the outbound switch fee will be \$1500.00 per hazardous empty rail car, and must be prepaid by electronic fund transfer prior to the car(s) being interchanged. Additionally, cars will not be interchanged until all accrued storage fees are collected via electronic fund transfer. Storage fees will continue to accrue on the railcars up to the date electronic fund transfer is made.

If cars change ownership while in storage on the EWR and/or when moved/billed offline by a party other than the original party with whom storage agreement was made, the outbound switch charge for moving the cars offline will be due and payable by the new owner/party billing the cars offline. Additionally, any/all storage charges continuing to accrue on such cars after change of ownership will be billed to and due and payable by the new owner/party, with all charges for both switching and storage to be paid to the EWR with payment due/received prior to the cars moving to interchange.

The above charges apply to both short-term and long-term storage.
All monies are due and payable to the EWR prior to EWR moving the empty storage car(s) to interchange

NOTE: All railcars being stored shall be considered fungible, and if Owner requests that less than the total number of cars in storage be removed from storage and delivered to interchanging carrier, EWR may move such individual Railcars as may be convenient. If Owner requires particular Railcars, EWR may, but is under no obligation to, provide such individual Railcars, but shall have the right to assess additional switch charges for such service.

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ALL EMPTY RAILCARS will be accepted and held in storage, BY PRIOR AGREEMENT ONLY. Any empty cars received by EWR without EWR's prior knowledge and consent will be REJECTED, REFUSED IN INTERCHANGE, OR RETURNED TO SHIPPER ORIGIN.

***** **ALL CAR STORAGE IS SUBJECT TO TRACK SPACE AVAILABILITY.**

Consent & agreement to take cars into storage must first be given, prior to shipping rail cars. Please contact:

**Manager – Railcar Storage
ELKHART & WESTERN RAILROAD CO.
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111
Email: railcarstorage@pioneer-railcorp.com**

Railroad's liability shall be limited to damage or destruction of any railcar due solely to the negligence or fault of RAILROAD. RAILROAD shall not be liable for any loss, damage or destruction of any railcar due to vandalism, or other third party action, or any natural disaster or act of nature, nor shall RAILROAD be liable for the loss of or damage to the contents or lading of any railcar, regardless of negligence. RAILROAD is handling these railcars for the purpose of providing track for storage, at the request of OWNER and/or SHIPPER, and OWNER and/or SHIPPER agrees therefore, that it is not entitled to the lading damage protection, which would ordinarily be available if these cars were being hauled as revenue loads.

EWR will have the right to place empty railcars on any track it deems necessary and does not have to notify the owner and/or shipper each time a railcar is moved on the Railroad.

RAILROAD shall have NO liability for the contents of any loaded/partially loaded car, or any residue remaining in or on Railcars stored as "empty". By interchanging such railcars as "empty", OWNER and/or SHIPPER agrees to indemnify and hold harmless RAILROAD and its officers, directors, employees, agents, insurers, parents, subsidiaries, other affiliated entities, and the officers, directors, employees, agents and insurers of all such affiliated entities, of and from any loss, liability, damages, fines, expenses, (including court costs and attorney fees), or other costs caused by or resulting from any leak, spill seepage, escape, or other release of any residue, load or partial load of any substance in or on any such railcar delivered to RAILROAD. OWNER and/or SHIPPER hereby agrees that upon notification by RAILROAD it will at OWNER'S and/or SHIPPER'S sole expense, promptly clean up any residue, commodity or other material, which has leaked, spilled, seeped or escaped from the railcar onto the track or right of way of RAILROAD, or any adjacent property. In the event OWNER and/or SHIPPER does not clean up the leak, spill, seepage, or escape to the Satisfaction of RAILROAD, then RAILROAD shall have the right to clean up the leak, spill, seepage, or escape and bill OWNER and/or SHIPPER.

FREIGHT TARIFF EWR 8998-K (continued)

ITEM 100 (cont'd) EMPTY RAIL CARS

This storage tariff **DOES NOT** give the OWNER and/or SHIPPER THE RIGHT OF ENTRY. Right of entry must be applied for and obtained by contacting:

ELKHART & WESTERN RAILROAD CO.
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111
Email: apps@pioneer-railcorp.com

EWR will not assume nor be responsible for any car hire charges for railcars while stored on the EWR.

If any railcar is required to be switched to a track on EWR at customer's request, for any reason – e.g. inspection, repairs, etc., - prior to car moving to interchange (track designation will be at EWR's discretion) there will be an additional switch charge of \$150.00/car which will apply in each direction. (Does not include passenger cars or other rolling stock – See Item 120).

EWR provides storage space and is not a bailee. EWR assumes no liability for vandalism or other damage caused by third parties while cars are in storage. EWR assumes no liability for loss of or damage to lading of loaded/partially loaded cars in storage. Shipper assumes all risk of loss or damage or such lading and should arrange for such risks to be covered by their insurance.

ITEM 110 LOADED OR PARTIALLY LOADED STORAGE CARS

The storage rate for LOADED OR PARTIALLY LOADED "Freight Service Railcars" (in interchange condition) stored on the ELKHART & WESTERN RAILROAD CO. (EWR), applies only to (1) railcars with outside length (OSL) not exceeding 70', and to (2) railcars with outside length (OSL) > 70 ft. but n/e 90 ft. Charges are as follows, when containing commodities classified as:

NON-HAZARDOUS (ONLY) LOADED OR PARTIALLY LOADED RAILCARS

- (1) \$20.00 per car per day storage fee, with a thirty (30)-day minimum unless otherwise agreed – OSL n/e 70 ft.
- (2) \$25.00 per car per day storage fee, with a thirty (30)-day minimum, unless otherwise agreed – OSL >70 ft. but n/e 90 ft.

The above charges apply to both short-term and long-term storage.

All monies are due and payable to the EWR prior to EWR moving the empty storage car(s) to interchange.

Cars will not be interchanged until all accrued storage fees are collected via electronic fund transfer. Storage fees will continue to accrue on the railcars up to the date electronic fund transfer is made.

ALL LOADED/PARTIALLY LOADED RAILCARS will be accepted and held in storage, BY PRIOR AGREEMENT ONLY. Any such car received by EWR without EWR's prior knowledge and consent will be REJECTED. REFUSED IN INTERCHANGE, OR RETURNED TO SHIPPER ORIGIN.

For EWR transportation/shipping rates of loaded/partially loaded cars, please contact the Railcar Storage Commercial team via: apps@pioneer-railcorp.com.

***** **ALL CAR STORAGE IS SUBJECT TO TRACK SPACE AVAILABILITY.**

Prior to shipping railcars to be held in storage, please contact:

Manager - Railcar Storage
ELKHART & WESTERN RAILROAD CO.
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111
Email: railcarstorage@pioneer-railcorp.com

All railcars being stored shall be considered fungible, and if Owner requests that less than the total number of cars in storage be removed from storage and delivered to interchanging carrier, EWR may move such individual Railcars as may be convenient. If Owner requires particular Railcars, EWR may, but is under no obligation to, provide such individual Railcars, but shall have the right to assess additional switch charges for such Service.

Railroad's liability shall be limited to damage or destruction of any railcar due solely to the negligence or fault of RAILROAD. RAILROAD shall not be liable for any loss, damage or destruction of any railcar due to vandalism, or other third party action, or any natural disaster or act of nature, nor shall RAILROAD be liable for the loss of or damage to the contents or lading of any railcar, regardless of negligence. RAILROAD is handling these railcars for the purpose of providing track for storage, at the request of OWNER and/or SHIPPER, and OWNER and/or SHIPPER agrees therefore, that it is not entitled to the lading damage protection, which would ordinarily be available if these cars were being hauled as revenue loads.

EWR will have the right to place empty railcars on any track it deems necessary and does not have to notify the owner and/or shipper each time a railcar is moved on the Railroad.

FREIGHT TARIFF EWR 8998-K (continued)

ITEM 110 LOADED OR PARTIALLY LOADED STORAGE CARS
(continued)

RAILROAD shall have NO liability for the contents of any loaded/partially loaded car, or any residue remaining in or on Railcars stored as "empty". By interchanging such railcars as "empty", OWNER and/or SHIPPER agrees to indemnify and hold harmless RAILROAD and its officers, directors, employees, agents, insurers, parents, subsidiaries, other affiliated entities, and the officers, directors, employees, agents and insurers of all such affiliated entities, of and from any loss, liability, damages, fines, expenses, (including court costs and attorney fees), or other costs caused by or resulting from any leak, spill seepage, escape, or other release of any residue, load, or partial load of any substance in or on any such railcar delivered to RAILROAD. OWNER and/or SHIPPER hereby agrees that upon notification by RAILROAD it will at Owner's and/or Shipper's sole expense, promptly clean up any residue, commodity or other material, which has leaked, spilled, seeped or escaped from the railcar onto the track or right of way of RAILROAD, or any adjacent property. In the event OWNER and/or SHIPPER does not clean up the leak, spill, seepage, or escape to the Satisfaction of RAILROAD, then RAILROAD shall have the right to clean up the leak, spill, seepage, or escape and bill OWNER and/or SHIPPER.

This storage tariff **DOES NOT** give the OWNER and/or SHIPPER THE RIGHT OF ENTRY. Right of entry must be applied for and obtained by contacting:

ELKHART & WESTERN RAILROAD CO.
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111
Email: apps@pioneer-railcorp.com

EWR will not assume nor be responsible for any car hire charges for railcars while stored on the EWR. If any railcar is required to be switched to a track on EWR at customer's request, for any reason, eg. inspection, repairs, etc., - prior to car moving to interchange (track designation will be at EWR's discretion) there will be an additional switch charge of \$150.00/car which will apply in each direction. (Does not include passenger cars or other rolling stock – See Item 120).

EWR provides storage space and is not a bailee. EWR assumes no liability for vandalism or other damage caused by third parties while cars are in storage. EWR assumes no liability for loss of or damage to lading of loaded/partially loaded cars in storage. Shipper assumes all risk of loss or damage or such lading and should arrange for such risks to be covered by their insurance.

NOTE: HAZARDOUS – LOADED OR PARTIALLY LOADED RAILCARS
WILL NOT BE HELD IN STORAGE

SECTION 2

PASSENGER CARS AND ALL OTHER ROLLING STOCK - RULES AND CHARGES
(Excluding Locomotives)

ITEM 120

STORAGE RATES FOR PASSENGER CARS, ETC.
(excludes locomotives)

The rate for storage of passenger cars or other rolling stock, excluding locomotives, is \$20.00 per car per day, with a thirty-(30) day minimum, unless otherwise agreed. A switch charge of \$2,500.00 will apply and will include both the inbound and outbound move and will be billed on the inbound switch.

All monies are due and payable to EWR, prior to EWR moving the car off line.

If car(s) change ownership while in storage on the EWR and/or when moved/billed offline by a party other than the original party with whom storage agreement was made, an outbound switch charge of \$1500.00 for moving the cars offline will be due and payable by the new owner/party billing the cars offline. Additionally, any/all storage charges continuing to accrue on such cars after change of ownership will be billed to and due and payable by the new owner/party. All such charges for the offline switch and storage will be paid to the EWR with payment due prior to the cars moving to interchange.

Railroad's liability shall be limited to damage or destruction of any railcar due solely to the negligence or fault of RAILROAD. RAILROAD shall not be liable for any loss, damage or destruction of any railcar due to vandalism, or other third party action, or any natural disaster or act of nature, nor shall RAILROAD be liable for the loss of or damage to the contents or lading of any railcar, regardless of negligence. RAILROAD is handling these railcars for the purpose of providing track for storage, at the request of OWNER and/or SHIPPER, and OWNER and/or SHIPPER agrees, therefore, that it is not entitled to the lading damage protection, which would ordinarily be available if these cars were being hauled as revenue loads.

Railroad has the right to place these cars on any track it deems necessary and does not have to notify OWNER and/or SHIPPER any/each time a railcar is moved on the RAILROAD.

FREIGHT TARIFF EWR-8998 K (continued)

ITEM 120 STORAGE RATES FOR PASSENGER CARS, ETC.
(continued) (excludes locomotives)

By interchanging such railcars, OWNER and/or SHIPPER agrees to indemnify and hold harmless RAILROAD and its officers, directors, employees, agents, insurers, parents, subsidiaries, other affiliated entities, and the officers, directors, employees, agents and insurers of all such affiliated entities, of and from any loss, liability, damages, fines, expenses (including court costs and attorney fees), or other costs caused by or resulting from any leak, spill, seepage, escape, or other release of any residue, load, or partial load of any substance in or on any such railcar delivered to RAILROAD.

OWNER and/or SHIPPER hereby agrees that upon notification by RAILROAD it will, at OWNER'S and/or SHIPPER's sole expense, promptly clean up any residue, commodity or other material, which has leaked, spilled, seeped or escaped from the railcar onto the track or right of way of RAILROAD, or any adjacent property. In the event OWNER and/or SHIPPER does not clean up the leak, spill, seepage, or escape to the satisfaction of RAILROAD, then RAILROAD shall have the right to clean up the leak, spill, seepage, or escape, and bill OWNER and/or SHIPPER.

EWR will not assume nor be responsible for any car hire charges for ANY railcars while stored on the EWR.

If any railcar as noted in this item is required to be switched to a track on EWR at customer's request, for any reason - e.g. inspection, repairs, etc., - prior to car moving to interchange, there will be an additional switch charge of \$450.00. Should equipment then need to be returned to storage, the \$450.00 switch charge will apply in each direction.

This storage tariff **DOES NOT** give the OWNER and/or SHIPPER the right of entry. Right of entry must be applied for and obtained by contacting:
ELKHART & WESTERN RAILROAD CO.
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111
Email: apps@pioneer-railcorp.com

ITEM 130

REMOVAL RATES

If the passenger car or other rolling stock, excluding locomotives, must be removed from the rails and shipped out by truck or any other means, the following rates and rules apply:

PROPERTY ACCESS RATE: \$1,000 - AFTER satisfying all legal and insurance requirements, which are as follows: All contractors must have a "Railroad Protective" Policy Endorsement OR the "Railroad Exclusion" waived from their liability policy. Either case must be approved, in advance, by the EWR Legal Department.

This storage tariff **DOES NOT** give the owner the right of entry. Right of entry must be applied for and obtained in advance by contacting:

ELKHART & WESTERN RAILROAD CO.
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111
Email: apps@pioneer-railcorp.com

SECTION 3
ADDITIONAL TERMS AND CONDITIONS

Switch and storage charges will be billed to and payable by OWNER/SHIPPER. The RAILROAD WILL NOT BE LIABLE FOR ANY CAR HIRE OR MILEAGE ACCRUALS.

When cars held in storage are sold and/or consigned to new car owner (other than who originally brought the cars into storage), the new car owner billing the car offline will be responsible to pay an outbound switch charge on the car(s) at the then current rate in place at the time the cars move offline. Any cars billed offline to an interchange point other than that which received will accrue additional switching/transportation charges in the amount of \$350 per car if less than 100 miles; and if 100 miles or >, charge will be \$450 per car. These charges are due and payable to EWR and will be collected by EWR prior to the cars being moved offline.

RAILROAD shall use its best efforts to interchange any outbound cars within thirty days after notification by e-mail or facsimile transmission, and receipt of billing by OWNER/SHIPPER, but all such movements are subject to the scheduling of RAILROAD, and RAILROAD makes no guarantees of delivery. In no event shall RAILROAD be liable for any delay occasioned by any cause beyond the reasonable control of RAILROAD, including, but not limited to, inclement weather, natural disasters, crossing accidents or derailments, labor disputes, governmental mandates, or other instances of force majeure. In the event RAILROAD is notified by OWNER/SHIPPER of an emergency situation and OWNER/SHIPPER requests that RAILROAD perform switching and/or interchange service of cars on days/hours outside of the normal work week, RAILROAD may, but is not required to, perform such service(s) and if it deems feasible and performs such service, will bill OWNER/SHIPPER for these services as follows:

FREIGHT TARIFF EWR 8998-K (continued)

SECTION 3
ADDITIONAL TERMS AND CONDITIONS (continued)

SPECIAL SWITCH SERVICE (outside days/hours of normal work week) will be at the rate of \$1,300.00 per occurrence, with a maximum time on duty of four (4) hours and will include the use of one (1) locomotive. Each hour or portion thereof, exceeding four hours on duty, will be billed at the rate of \$250.00/hour - total time on duty not to exceed twelve (12) hours. Use of each additional locomotive required will be at the rate of \$250.00 per hour with a (4) hour minimum.

EWR provides storage space and is not a bailee. EWR assumes no liability for vandalism or other damage caused by third parties while cars are in storage. EWR assumes no liability for loss of or damage to lading of loaded/partially loaded cars in storage. Shipper assumes all risk of loss or damage to such lading and should arrange for such risks to be covered by their insurance.

The EWR reserves the right to institute lien proceedings on any stored railcar if any money owed EWR falls more than thirty (30) days in arrears. The EWR will also charge interest in the amount of 1% per day, or a \$1.00 per day minimum on all uncollected balances as well as ALL COSTS OF COLLECTION or the maximum allowed under Indiana law.

Note: No switching charges of any kind of any connecting carrier are included in these rates in any ITEM and if applicable, will be in addition to the charges noted. Additionally, any fees or charges billable to the EWR in order for it to complete the move(s) to or from interchange will be in addition to these rates, if applicable. (e.g. - bridge fees, haulage charges, trackage rights fees, etc.)

- E N D -