

SUPPLEMENT
TO
FT NYA 8000-A

NEW YORK & ATLANTIC RAILWAY COMPANY



SUPPLEMENT 2 TO FREIGHT TARIFF NYA 8000-A

(Supplement 2 Cancels Supplement 1)
(Supplement 2 contains all changes)

NAMING
RULES AND CHARGES GOVERNING
SWITCHING
ALSO
MISCELLANEOUS RULES AND CHARGES
APPLYING AT
STATIONS ON THE
NEW YORK & ATLANTIC RAILWAY COMPANY

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular items.

ISSUED: February 6, 2009

EFFECTIVE: March 1, 2009

ISSUED BY

New York & Atlantic Railway Co.
68-01 Otto Road
Glendale, NY 11385

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<p align="center">SECTION 1 MISCELLANEOUS RULES AND CHARGES</p>	<p align="center">SECTION 1 MISCELLANEOUS RULES AND CHARGES</p>
<p>ITEM 100 [A]</p> <p align="center">BANKRUPTCY OR INSOLVENCY</p> <p>A. In the event Shipper files or is the subject of a filed petition in bankruptcy and Shipper has a transportation contract or other agreement with NYA (collectively "Agreement"), Shipper will, as soon as practicable:</p> <ol style="list-style-type: none"> (1) Identify NYA as a "Critical Vendor" of essential services as that term is interpreted and understood within the context of a bankruptcy proceeding; (2) Identify any Agreement with NYA under which there remains continuing unperformed obligations; and, (3) Choose to elect to either assume or reject such Agreements identified pursuant to paragraph (2) above within (60) days of the date of the filing of the Shipper's petition in bankruptcy. <p>B. In the context of a bankruptcy proceeding, no Agreement identified under paragraph (2) may be assigned without NYA consent, unless NYA is given adequate assurance of future performance by the assignee. Such adequate assurance will include, but not necessarily be limited to, a deposit with NYA as security for the timely payment of switching and line-haul charges an amount equal to the average thirty (30) day accrual for such charges as or security guarantees in form and substance satisfactory to NYA from one or more persons who satisfy NYA's standard of creditworthiness.</p>	<p>ITEM 110 [A]</p> <p align="center">CREDIT TERMS</p> <p>If Credit is extended to Applicant for the payment of transportation charges, Applicant agrees to pay such transportation charges within the following time periods:</p> <ol style="list-style-type: none"> (a) Freight Charges - 15 Calendar days from the date of the freight bill. (b) Miscellaneous charges (e.g., demurrage, switching, weighing) - 30 calendar days from the date of the miscellaneous bill. (c) Additional charges for freight transportation and related services (e.g. balance due bills) - 30 calendar days from the date of bill for additional charges. <p>NOTE: Errors discovered in bills by customers should be corrected by customers and paid accordingly accompanied with an explanation of shortage or overage. Payment of all bills, including those corrected by customers, must be made within the credit period. Payment of bills alleged to be incorrect will not prejudice patron's claims, filed within the statutory period, for refund of overcharges. If customers receive bills that they feel they are not responsible for paying, they must notify the carrier within the credit terms that they are not responsible for paying the bills.</p> <p>Payment of an amount less than stated on a NYA invoice will be considered as payment on account and not as payment in full, notwithstanding any notation to the contrary as payment on the payer's remittance. Acceptance by NYA of the lesser amount will not constitute an accord and satisfaction. The payer will be advised of any remaining balance deemed due after application of the remitted funds.</p>
	<p>ITEM 120 [A]</p> <p align="center">FINANCE CHARGE</p> <p>NYA will assess a finance charge of 12% per year (0.0329% per day) against linehaul freight charges billed on or after March 1, 2009, that are not received by NYA within the credit term provided . The finance charge will not apply against disputed linehaul freight charges that are found by NYA to have been incorrectly billed. The finance charge will be assessed on the unpaid balance of any linehaul freight charge from the first day following the end of the credit term through the date of receipt of payment in full. The finance charge will be billed monthly for all linehaul freight charges that were paid late in the prior calendar month. This item shall be construed pursuant to the laws of the State of Delaware.</p>
<p>For explanation of terms and explanation of abbreviations and reference marks, see last page of tariff.</p>	

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<p>SECTION 3 CARS PLACED IN STORAGE</p>	
<p>ITEM 300</p> <p>CARS PLACED IN STORAGE</p> <p>All private rail cars that arrive at NYA that are placed in storage without a storage agreement in effect, will have a rate applied to each car held, waiting for placement, of \$150 per day.</p>	