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Attorneys for Plaintiff

COUNTY OF MORRIS,

Plaintiff

v.

MORRISTOWN and ERIE RAILWAY, INC.

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: MORRIS COUNTY

Docket No:

Civil Action

**VERIFIED COMPLAINT**

The Plaintiff, County of Morris ("Plaintiff") by and through its attorneys, as and for its verified complaint against the defendant, Morristown and Erie Railway, Inc. ("Defendant") states as follows:

**PARTIES**

1. Plaintiff, County of Morris (the "County"), is a body corporate and politic within the state of New Jersey with principal offices located at 10 Court Street, Morristown, New Jersey 07960.

2. Defendant, Morristown & Erie Railway, Inc., is a recognized common carrier by the federal Surface Transportation Board, with an address of 49 Abbett Avenue, Morristown, New Jersey.

3. Venue is proper in Morris County pursuant to R. 4:3-2 because at least one party is located in Morris County and is the venue agreed to by the parties in the "Agreement".

### **FACTUAL BACKGROUND**

4. On June 13, 2012 Plaintiff, the County of Morris entered into a Management Agreement for the County-Owned Railroads (the "Agreement"). (See Exhibit A attached hereto).

5. The term of this Agreement commenced on July 1, 2012 and is due to expire on June 30, 2017. (See Exhibit A at p. 1).

6. Pursuant to the Agreement, Defendant was to provide "railroad freight service on the County Railroads; all in accordance with and subject to the terms and conditions" of the Agreement. (See Exhibit A at p. 1).

7. In addition, pursuant to the Agreement, the Defendant is "fully responsible for a high quality personalized service, for all liability for the operation and the property, for routine maintenance to Federal Railroad Administration (hereinafter 'FRA') Class II, for vegetation spraying/control annually, for rental and lease administration, and for general upkeep of the railroad property." (See Exhibit A at p. 1).

8. The Defendant also agreed to work together with the County to provide "effective and efficient common carrier rail service at reasonable rates for the benefit of the shipping public." (See Exhibit A at p. 1).

9. Moreover, Article 4 of the Agreement requires the following:

**(A) Freight Rail Service**

During the term of this Agreement, the Operator [Defendant] will provide management and railroad freight service, as a common carrier, on the County Railroads.

**(B) Marketing**

The Operator [Defendant] agrees that it shall, during the term of this Agreement and without limitation promote, advertise, and market the availability of its services to any or all of the railroad freight service customers or potential customers. The Operator [Defendant] agrees that the COUNTY, through the MCDOT shall be notified in advance of meetings that the Operator [Defendant] may have with potential customers and the COUNTY shall be afforded the opportunity to participate in meetings with potential customers.

(See Exhibit A at ¶4(B)).

10. The Agreement also provides that "The Operator [Defendant] operation of the railroads is limited to rail operations only." (See Exhibit A at ¶5)

11. The Agreement states at Article 18:

**18. NON-OPERATING REVENUE SOURCES**

The Operator [Defendant] shall not place nor permit to be placed, any signs, structures, or other non-operating revenue sources of any kind whatsoever upon, on, or about the premises or any part thereto without the written consent of the MCDOT. The Operator [Defendant] shall not enter into any lease, license agreements, easement agreements, or any other form of agreement with any third party without the prior written consent of the MCDOT. All new lease or license agreements are subject to review by the COUNTY, must meet the County's insurance requirements, and name Morris County as an additional insured. Without the MCDOT's consent no new agreements between the Operator [Defendant] and any third party shall have a term or duration for a period of time longer than the term of the Operator's [Defendant's] Agreement with the COUNTY.

(See Exhibit A at ¶18).

12. Finally, the Agreement provides at Article 21:

**21. NON-ASSIGNABILITY**

The Operator [Defendant] shall not assign, mortgage, or hypothecate this Agreement, nor sublet or sublease all or part of the premises, nor permit the

premises to be occupied or used for any purpose other than those as contemplated herein, except as follows:

(a) May be agreed upon by the MCDOT in writing;

13. On April 18, 2016 the County received a phone call from Defendant stating that it may have a new customer that wishes to temporarily store propane cars on the High Bridge Branch of the Morris County Railroad. (See Exhibit B attached hereto, Affidavit of Gerald Rohsler, Director of Transportation for the Morris County Division of Engineering and Transportation).

14. On April 19, 2016 Charles C. Jensen, Defendant's Vice President and Chief Operating Officer wrote a letter to Gerry Rohsler, Executive Director of the Morris County Department of Transportation. (See Exhibit C attached hereto).

15. According to the April 19, 2016 letter, the Defendant was speaking with a potential customer, Gibson Gas Liquids ("Gibson"). Mr. Jensen admitted in said letter that Defendant was aware of Article 4 requirements that Defendant place the County on notice of any potential contracts it was negotiating with any third party. However, despite this knowledge, Defendant never afforded the County with the opportunity to be present at any meetings with Gibson or participate in any negotiations with them. As such, Defendant breached Article 4 of the Agreement. (See Exhibits A, B and Attached hereto).

16. Mr. Jensen stated in his April 19, 2016 letter that Gibson would be "shipping propane in tank cars for temporary storage while in transit before forwarding onto the final customer. We are discussing with them the storage of these cars which could be up to 100 car loads." (See Exhibit B attached hereto).

17. Mr. Jensen also stated that the location of the propane tank cars has industrial properties and farm land along this area. However, the proposed location for the storage of

propane tank cars is located within 3,100 feet of a school. (See Exhibits B and C attached hereto).

18. Finally, Mr. Jensen also stated that should the Defendant “capture this business our police chief who is also a New Jersey state certified fire chief will be in contact with the local police and fire agencies to notify them that these cars will be located in a specific area.” (See Exhibit B attached hereto).

19. On April 21, 2016 a map of the proposed storage area, stating residential areas, was sent to the Defendant by the County and the County requested more details regarding the storage cars. (See Exhibit B and D attached hereto).

20. On May 12, 2016 the County requested an update on the status of the contract between the Defendant and Gibson along with the rates for the storage of the tanker cars. Defendant responded that it had agreed in principal to rates and were waiting to sign a contract. (See Exhibit B and E attached hereto).

21. On May 13, 2016 the County requested that Defendant provide a copy of the contract between Defendant and Gibson. (See Exhibit B and E attached hereto).

22. On May 24, 2016 the Defendant informed the County that a contract had been signed and that same was expected to be delivered by the end of the week. (See Exhibit F attached hereto).

23. On May 25, 2016 the County sent correspondence to Defendant stating that no permission from the County was ever requested or given for the activity contemplated by the contract. In addition, said letter stated that “The storage of propane train cars, even on the rail tracks, was not a contemplated use of the County’s facilities and is a non-operating revenue which requires County approval.” (See Exhibit G attached hereto).

24. On May 31, 2016, Defendant sent correspondence to the County regarding the contract with Gibson. Defendant attempts to mischaracterize the nature of the contract by stating that the “product is not being transferred or unloaded from the rail cars on the M&E but will be rebilled by the owner of the product and then moved from M&E.” However, the document attached to said correspondence clearly indicates that the contract with Gibson is for “storage.” (See Exhibit H attached hereto).

25. On June 1, 2016 the County sent email correspondence to Defendant asking the answers to specific questions. On June 2, 2016 Defendant responded with incomplete answers. (See Exhibit I attached hereto).

26. Currently, there are eighteen (18) cars of butane consigned to the County train tracks and, according to Defendant, and an additional twenty-seven (27) cars (45 total including the 18) are expected to be delivered in June of 2016. Finally, according to Defendant there is the possibility of 100 cars being stored at the location before the end of the summer. (See Exhibit I attached hereto).

27. The Agreement between Defendant and Gibson is for one (1) year, and is set to expire on May 15, 2017, only one (1) month prior to the expiration of the Agreement between Plaintiff and Defendant. (See Exhibit A attached hereto).

28. Scott DiGiralomo, Director of Law and Public Safety and the Emergency Management Coordinator for the County of Morris, first became aware of a plan by the M&E Railroad to store Liquefied Petroleum Gas (LPG) rail cars within the County on June 1, 2016. At no point was I, nor any of my staff, contacted by anyone from M&E to discuss emergency response preparedness or contingency plans. In essence, the loaded rail cars were moved into the County before the emergency response community had the opportunity to plan a specific

response for an emergency involving a large number of LPG railcars. (See Exhibit J attached hereto).

29. As a result, there is no plan in place for a specific response for any emergency involving the LPG railcars. (See Exhibit J attached hereto).

30. In addition, the gas being stored on the tracks is non-odorized which makes it much more difficult to discover a gas leak or other type of emergency. (See Exhibit J attached hereto).

### **COUNT ONE**

(Injunctive and Equitable Relief)

31. Plaintiff incorporates all of the foregoing allegations as though set forth in full herein.

32. As set forth above, Defendant unlawfully entered into the Agreement with Gibson.

33. Injunctive relief in the form of a temporary and permanent injunction is essential to preserve the status quo and prevent irreparable harm to Plaintiff. Injunctive relief is appropriate because no adequate remedy at law exists.

### **COUNT TWO**

(Breach of Contract – Specific Performance)

34. Plaintiff incorporates all of the foregoing allegations as though set forth in full herein.

35. Plaintiff had a valid Agreement with Defendant.

36. Plaintiff has fully and faithfully performed under the Agreement.

37. Defendant failed to perform and abide by its obligations under the Agreement as aforesaid.

38. As a result, Plaintiff demands that the court order Defendant to perform its obligations under the contract, requiring defendant to acquire plaintiff's consent to accept any rail cars from Gibson Gas Liquids and any other future third-party contractors.

**COUNT THREE**

(Breach of Implied Covenant of Good Faith and Fair Dealing – Against Defendant)

39. The Plaintiff incorporates all of the foregoing allegations as though set forth in full herein.

40. Defendant's aforementioned conduct had the effect of destroying and/or injuring the right of Plaintiff to its contract rights thereby violating the covenant of good faith and fair dealing that is implied in contracts.

41. As a direct and proximate result of the breach by Defendant of the covenant of good faith and fair dealing, Plaintiff has been damaged and continues to sustain damage.

**PRAYER FOR RELIEF AS TO THE ABOVE COUNTS**

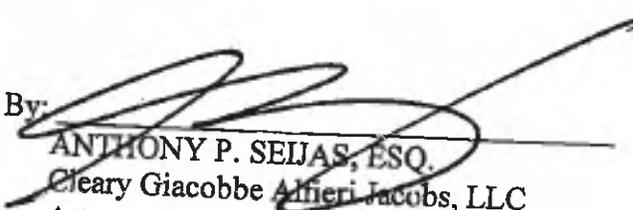
**WHEREFORE**, Plaintiff demands judgment against Defendants on all counts as follows:

- a) Temporarily, preliminarily and permanently restraining and enjoining Defendants from storing train cars with butane and/or propane and/or any other dangerous and hazardous substance on the Morris County Railroad and otherwise compelling Defendant, to specifically perform its obligations under the Agreement;
- b) Specific reference;
- c) Compensatory Punitive damages;
- d) Interest;
- e) Attorneys' fees, costs of suit; and
- f) Any other award the Court deems just and equitable.

**RULE 4:5-1(b)(2) CERTIFICATION**

The Plaintiff hereby certifies that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding. The Plaintiff further certifies that it has no knowledge of any contemplated action or arbitration proceeding which is contemplated regarding the subject matter of this action. The Plaintiff further certifies that it is not aware of any other parties who should be joined in this action.

JOHN A. NAPOLITANO, ESQ.  
MORRIS COUNTY COUNSEL

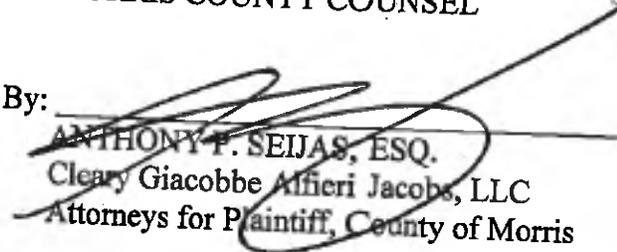
By:   
ANTHONY P. SEIJAS, ESQ.  
Cleary Giacobbe Alferi Jacobs, LLC  
Attorneys for Plaintiff, County of Morris

Dated: June 6, 2016

**DESIGNATION OF TRIAL COUNSEL**

In accordance with R. 4:25-4, Anthony P. Seijas, Esquire, is hereby designated as trial counsel for Plaintiff in the above mater.

JOHN A. NAPOLITANO, ESQ.  
MORRIS COUNTY COUNSEL

By:   
ANTHONY P. SEIJAS, ESQ.  
Cleary Giacobbe Alferi Jacobs, LLC  
Attorneys for Plaintiff, County of Morris

Dated: June 6, 2016

**RULE 4:5-1(b)(3) CERTIFICATION**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

JOHN A. NAPOLITANO, ESQ.  
MORRIS COUNTY COUNSEL

By:



ANTHONY P. SELJAS, ESQ.  
Cleary Giacobbe Alferi Jacobs, LLC  
Attorneys for Plaintiff, County of Morris

Dated: June 6, 2016

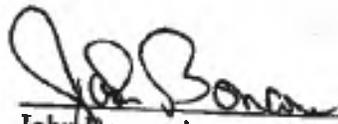
VERIFICATION OF PLEADING - BY CERTIFICATION

1. I am John Bonanni, the Morris County Administrator, and as such, an agent of Plaintiff in the above entitled matter.

2. I have read the foregoing Verified Complaint and accompanying Exhibits and on my own personal knowledge and of those from the Morris County employees Affidavit attached hereto. I know that the facts set forth herein are true and they are incorporated in this certification by reference.

3. I certify that the above statements made by me are true according to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 6, 2016

  
John Bonanni

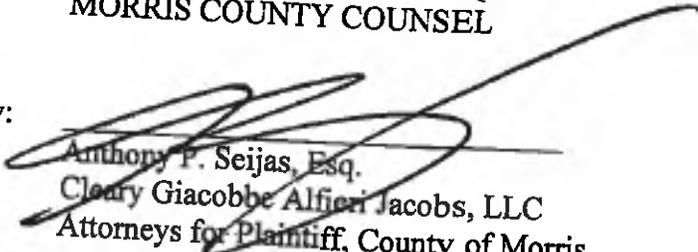
**FACSIMILE SIGNATURE CERTIFICATION PURSUANT TO R. 1:4-4(c)**

I hereby certify that I acknowledge that the affiant acknowledged the genuineness of the signature of the affiant of the certification to which this is attached and the original will be filed with the court upon request of either the court or a party.

Dated: June 6, 2016

JOHN A. NAPOLITANO, ESQ.  
MORRIS COUNTY COUNSEL

By:

  
Anthony P. Seijas, Esq.  
Cleary Jacobbe Alfieri Jacobs, LLC  
Attorneys for Plaintiff, County of Morris

# EXHIBIT A

**Management Agreement  
for the  
County-owned Railroads  
(July 1, 2012 - June 30, 2017)**

**THIS AGREEMENT**, made this 13<sup>th</sup> day of June, 2012, effective July 1, 2012, between the COUNTY OF MORRIS (hereinafter the "COUNTY") having its principal offices at the Administration and Records Building, Court Street, P.O. Box 900, Morristown, New Jersey 07963-0900 and Morristown & Erie Railway, Inc. (hereinafter the "Operator") having its principal offices at 49 Abbett Avenue, Morristown, New Jersey with a mailing address of P.O. Box 2206, Morristown, NJ 07962.

**WHEREAS**, the COUNTY is the fee simple owner of the property known as the Dover & Rockaway Railroad (hereinafter "D&R"), the High Bridge Branch Railroad (hereinafter "HBB") and the Chester Branch Railroad (hereinafter the Chester Branch"), (collectively the "County Railroads") since June 30, 1986; and

**WHEREAS**, the COUNTY wishes to provide for the continuance of railroad freight service on the County Railroads since there are industries requiring rail service on this railroad; and

**WHEREAS**, the COUNTY advertised for the receipt of competitive contract proposals for a private rail manager to operate over the County Railroads, which proposals were received on May 15, 2012, and

**WHEREAS**, the COUNTY wishes to provide for the continuance of railroad freight service on the County Railroads, which must be operated as a common carrier in accordance with federal Surface Transportation Board (hereinafter the "STB") regulations; and

**WHEREAS**, the Operator, a recognized common carrier by the STB, wishes to manage the premises described hereinafter to provide railroad freight service on the County Railroads; all in accordance with and subject to the terms and conditions herein set forth and set forth in the bid specifications on file in the office of the Morris County Division of Transportation (hereinafter the "MCDOT") are incorporated by reference herein and made a part hereof; and

**WHEREAS**, the Operator is a public utility common carrier and at the commencement of the agreement period, the Operator shall have all connecting trackage rights necessary to operate railroad freight service on the County Railroads; and

**WHEREAS**, the Operator was the most responsible successful bidder, cost and other considerations considered; and

**WHEREAS**, the Operator will be fully responsible for a high quality personalized service, for all liability for the operation and the property, for routine maintenance to Federal Railroad Administration (hereinafter "FRA") Class II, for vegetation spraying/control annually, for rental and lease administration, and for general upkeep of the railroad property; and

**WHEREAS**, the Operator and the County intend to work together to provide effective and efficient common carrier rail service at reasonable rates for the benefit of the shipping public; and

**WHEREAS**, the Operator is required to cooperate with the County, other funding agencies, and contractors for any and all rehabilitation and/or construction projects and the Operator will permit any contractors or subcontractors working on these projects access to the property in order to complete the project, subject to advance notification to assure safe train operation.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

**1. MANAGEMENT OF THE PREMISES**

The COUNTY agrees to allow the Operator to manage and operate the property (hereinafter referred to as the "premises").

**2. TERM**

The term of this Agreement shall commence on July 1, 2012 (the "commencement date") and shall terminate on June 30, 2017, unless terminated prior thereto or extended to a date thereafter in accordance with the terms of this Agreement.

**3. OPERATING FEE**

The Operator shall pay the COUNTY a fee for the use of the premises in the amount of one thousand five hundred twenty dollars (\$1,520.00) per year for five (5) years for a total of seven thousand six hundred dollar (\$7,600.00). Payment may be made annually or in one lump sum.

**4. OPERATION OF THE COUNTY RAILROADS**

**(A) Freight Rail Service**

During the term of this Agreement, the Operator will provide management and railroad freight service, as a common carrier, on the County Railroads. Operator shall be compensated for providing the regular service as set forth in subparagraph 4(G). Freight customers and the Operator shall communicate to establish the dates and times of service most convenient to both the customer and the Operator, except as limited herein.

**(B) Marketing**

The Operator agrees that it shall, during the term of this Agreement and without limitation, promote, advertise, and market the availability of its services to any or all of the railroad freight service customers or potential customers. The Operator agrees that the COUNTY, through the MCDOT shall be notified in advance of meetings that the Operator may have with potential customers and the COUNTY shall be afforded the opportunity to participate in meetings with potential customers.

The Operator shall identify in all marketing efforts, advertisements, and publications, the ownership of all County lines, and identify the MCDOT's address, telephone

number and contact person(s), as specified by MCDOT. This includes the Official Railway Guide Freight Edition and other publications.

(C) Maintenance of the Premises

The Operator agrees to maintain the premises in such state and condition as the premises exist as of July 1, 2012 or in a FRA Class II condition, whichever is greater. The premises shall be inspected by the COUNTY through the MCDOT with representatives of the Operator within fourteen (14) days of the commencement date of the Agreement. The condition of the premises shall be established at that time using FRA classifications. Any disagreement between the COUNTY and the Operator regarding the condition of the premises shall be resolved by the New Jersey Department of Transportation (hereinafter "NJDOT"), Division of Freight Services, Railroad Section, PO Box 600, Trenton, New Jersey 08625-0600. The Operator shall be responsible throughout the term of the Agreement to maintain all tracks and the premises to a minimum condition as is established at the commencement of the Agreement, which is Class II or better.

The Operator further agrees that in the event any portion of the railroad is upgraded to a higher standard during the term of the Agreement than it was at the commencement of the Agreement, the Operator shall be responsible to maintain the railroad at that higher standard throughout the remainder of the Agreement. Until such time as individual sections of the premises are rated by the FRA, or its designated inspector as an FRA Class II railroad, the Operator shall have no duty to pay for the cost of maintenance of these sections of the premises except to maintain them in the same condition as the premises were at the commencement of the Agreement. At such time as the FRA or its designated inspector has rated an individual section or the entirety of the premises as an FRA Class II railroad, the Operator shall assume responsibility for such normal maintenance including, but not limited to, maintaining track surface (rail, ties, OTM, ballast, etc), signals, and signage, of those sections of the premises as is routinely required in the operation of like railroads (the "normal maintenance"). This shall include the removal of all excess or discarded railroad ties immediately upon completion of work.

The normal maintenance shall not include the following:

- (a) replacements, repairs or reconstruction necessitated by such natural disasters or acts of God against which insurance is not normally available;
- (b) maintenance of the structural integrity of the railroad bridges;
- (c) other items in the nature of major capital improvements to the premises.

To the extent that emergency replacements, repairs, or improvements excluded from normal maintenance by operation of the foregoing are necessary for the safe operation of a freight railroad by the Operator on the premises, the Operator shall, and with the COUNTY's prior approval, undertake to perform such maintenance and make such replacements, repairs, and improvements within a reasonable time after the necessity to do so arises. The COUNTY shall reimburse the Operator all reasonable costs incurred by the Operator to perform this emergency work. The Operator shall as soon as reasonably possible notify the COUNTY of any such emergency and provide the COUNTY with a cost estimate for any emergency repairs. However, in no event shall the COUNTY be responsible to reimburse the Operator for any emergency

work required if such work is necessary or a result of or rising out of the Operator's negligent operations.

(D) Funding Rehabilitation

The Operator acknowledges that the COUNTY's funds for rehabilitation of the County Railroads and associated highway-rail grade crossings may be financed in whole or in part by a NJDOT grant and/or other funding sources that may require a local match. The Operator agrees regardless of funding sources to fully cooperate with the COUNTY in the application for and maintenance of eligibility standards for such funds and the observance of the required NJDOT and/or other applicable agencies procedures for disbursement, supervision, accountability, and reporting of such funds. The Operator may hire a contractor with the County's permission when they are unable to perform the rehabilitation themselves. The Operator will assist in preparing grant applications for the COUNTY's submission. All grant money obtained shall be received by and distributed to the Operator through the COUNTY at the COUNTY's discretion. The Operator is required to fulfill all grant requirements including, but not limited to, obtaining necessary bids or quotes, required reporting, and inspection of the work.

(E) Use of Surcharges

The Operator also acknowledges that the COUNTY's rehabilitation responsibilities and capital project funds for the COUNTY will derive from per car surcharges as described in 4 (G). The Operator acknowledges that said are not intended for the Operator responsible maintenance, as called for in this paragraph.

(F) Regulatory and Administrative Services

The Operator shall assemble, prepare, and file all reports, returns, and information required in connection with the Operator's operation of the premises by any and all federal, state, and local governmental, regulatory, and taxing authorities with jurisdiction over the premises. The Operator shall provide the COUNTY detailed written traffic information at least quarterly. The Operator shall provide to the COUNTY at least an annual report in writing on the Operator's efforts to increase freight traffic. The Operator shall provide the COUNTY within forty-eight (48) hours of the Operator's receipt or the Operator's transmittal, with any and all reports generated or issued which pertain to the premises. The Operator shall provide to the COUNTY within forty-eight (48) hours of the Operator's receipt of any and all reports pertaining to the physical condition of the premises issued by agencies having regulatory authority regarding track, bridge, crossing, and signal inspections conducted by the NJDOT, the FRA, the MCDOT, and any other appropriate agencies. The Operator shall submit to the COUNTY, the Operator's year end financial statement. The Operator shall indemnify and hold the COUNTY harmless against any penalties or damages resulting from the Operator's failure to file any such reports, returns, or information. The Operator shall give notice to the COUNTY of any filing requirement that the COUNTY may have by virtue of its ownership of the premises of which the Operator is or becomes aware.

(G) Compensation of the Operator

As compensation for all services rendered by the Operator hereunder for the benefit of the shippers, the Operator shall collect for its sole use and benefit, the revenues generated by its operation of the premises for the benefit of the shipper (the "rail revenues")

exclusive of any surcharges as contained herein. At the conclusion of each quarter-year after the commencement date, the Operator shall provide the COUNTY with an accounting of all rail revenues for the preceding quarter year including the number and type of rail cars handled. The Operator's compensation will also include any funds generated by any short term non-operating agreements and licenses.

In addition to rail revenues, the Operator agrees to charge a per car surcharge of two hundred dollars (\$200.00) per car on each car of commodities designated with the federal shipping code 28211, which includes, but not by way of limitation, plastic pellets or resins (See Appendix B for shipping code 28211 list) that are shipped via the County Railroads for the term of this Agreement. Proportional surcharges may be established for other high rated commodities that are routed via this railroad with concurrence of the COUNTY. Said surcharges will be billed by the Operator to the originator of the commodity or other such persons as may be designated by the shipper.

The Operator will be responsible for administering, billing, collecting, and forwarding to the COUNTY a per-car surcharge levied on certain commodities. The surcharge funds accrued to the COUNTY are placed in a COUNTY special dedicated account that may only be used by the COUNTY to fund railroad rehabilitation or other work approved by the COUNTY on the COUNTY-owned railroads, including grade crossing and railroad-related expenses, including, but not limited to, attorney fees and professional service agreements. Any work done with public funds must be awarded in accordance with the COUNTY's purchasing policies. Any party failing to adhere to these requirements will bear financial responsibility for the expenses incurred and punitive action.

All surcharge funds received by the Operator shall be forwarded at least monthly to the COUNTY including appropriate billing documents. This includes surcharge funds received through the monthly Switching Settlements. The County, through the MCDOT, and the Operator shall meet at least annually to review the status of all traffic to ensure that shippers have been billed the surcharge where applicable. Operator will make a good faith effort to collect all surcharges billed, but will not be responsible to the COUNTY for any uncollectible surcharge bills after a good faith effort has been made at collection. **The Operator agrees to provide to the COUNTY quarterly and annual accountings of revenues and expenses generated in the operation of the premises, as well as the number of carloads handled from each customer.** The Operator shall utilize generally accepted accounting procedures. No additional surcharge may be imposed by the Operator or terminated by the Operator on commodities with the 28211 shipping designation without the advance written consent of the COUNTY. The COUNTY reserves the right to audit the Operator's statements and the Operator agrees to disclose its records for auditing purposes. The Operator's failure to comply with the foregoing provisions may be considered a default by the Operator of its obligations under this Agreement.

Upon abandonment of the railroad, any funds remaining in the aforesaid account shall be the property of the COUNTY. Any funds disbursed from this account shall be deemed to be the COUNTY's funds in satisfaction of the COUNTY's obligations hereunder.

## 5. **LIMITATION OF OPERATIONS**

The Operator operation of the railroads is limited to rail operations only. The Operator

shall not construct or allow to be constructed on the COUNTY property any ancillary facilities, including but not limited to roadways, parking facilities, storage buildings, or transfer stations without express written approval of the Director of the MCDOT. Operator shall comply with all State, local building and environmental requirements in its operation and all applicable permits.

**6. SPECIFIC RESTRICTIONS FOR THE CHESTER BRANCH**

(A) The hours of operation of the Operator south of Route 10 will be restricted to Monday through Friday, 9:00AM to 3:00PM, except in the event of an emergency when the Operator may have use of the track at other times. The County shall provide to the Operator a communication plan for Operator to notify the County and Roxbury Township of any emergency requiring use of the line.

(B) There shall be no storage of materials or equipment allowed along or on the Chester Branch adjacent to Horseshoe Lake Park.

(C) Trains shall be limited to speeds not to exceed ten (10) miles per hour along the track adjacent to Horseshoe Lake Park.

**7. SPECIFIC RESTRICTIONS FOR KENVIL YARD**

(A) The hours of operation of the Operator will be restricted from Monday through Friday, 7:00AM to 8:00PM, and 10:00AM to 6:00PM on Saturday, except in the event of an emergency. Transloading will not be conducted on Sunday or on the following holidays:

New Years Day	Thanksgiving
Presidents Day	Day After Thanksgiving
Good Friday	Christmas Eve
Memorial Day	Christmas Day
Independence Day	New Years Eve
Labor Day	

Any use outside of these times must be requested to MCDOT in writing at least 24 hours in advance of such operation.

(B) All transload operations at Kenvil Yard will take place in the Team Track Area (between Berkshire Valley Road and Route 46). If it is necessary to conduct any transloading operations outside of that area, including but not limited to the Scale Track Area (on the east side of Berkshire Valley Road), the Operator shall notify MCDOT at least 24 hours in advance of such operation.

(C) Temporary storage of materials is restricted within the fenced area of the Team Track Area. Temporary storage is defined herein as a time period no longer than three business days. Permission for storage of materials in the designated area beyond the above time constraint must be granted in writing by MCDOT.

(D) Storage of material for any length of time is not permitted in the Scale Track Area.

(E) The Operator shall conduct transload operations with minimal noise disturbance to nearby properties.

(F) The Operator will notify MCDOT at least 48 hours in advance of any transfer of hazardous or dangerous materials and provide copies of the Material Safety Data Sheets (MSDS) at the time of notification.

#### **8. TRANSFER OF HAZARDOUS OR DANGEROUS MATERIAL**

The Operator shall transfer hazardous or dangerous material in designated areas only. Transfer shall not occur in residential zones areas. Transfers shall occur at customer's location, public transfer or at the Kenvil Yard at Berkshire Valley Road.

#### **9. INSURANCE**

During the term of this Agreement, the Operator shall obtain and maintain insurance on the premises, including, but not by way of limitation, all property, tracks, and side tracks within all property owned by the COUNTY. The insurance shall be in such manner and against such loss, damage, and liability, including liability to third parties, as the Operator maintains on the lines of the railroad operated by the Operator, which are not subject of this Agreement. The COUNTY shall provide all insurance at the levels required by the NJT Corporation for the use of NJT trackage in Morris COUNTY. The COUNTY, the County of Morris Board of Chosen Freeholders, officers, and employees shall be listed on all insurance as an additional insured. Coverage for the COUNTY shall include the COUNTY, its officers, agents, employees, servants, and assigns. Each insurance policy maintained pursuant to this Agreement shall contain a provision that such policy shall not be canceled or modified unless the COUNTY is notified at least thirty (30) days prior to such cancellation or modification. Railroad liability insurance provided by the Operator for the COUNTY shall be in an amount not less than ten million dollars (\$10,000,000.00) per occurrence. The Operator shall file with the Morris County Division of Risk Management and the MCDOT, all insurance certificates naming the COUNTY as an insured as stated herein prior to the Operator's commencement of operations of the COUNTY's rail lines.

#### **10. TAXES AND UTILITIES**

The Operator shall pay, as the same respectively becomes due, all taxes, assessments, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied with respect to all of that portion of the premises which is Class 1 or Class 2 railroad property, as defined by the state of New Jersey for tax purposes. In addition, the Operator shall pay, as the same become due, all charges for utilities arising out of the Operator's use of the premises. Nothing contained on this paragraph is intended or shall be construed to prohibit the Operator from lawfully contesting, in good faith, the validity of any tax, assessment, or governmental charge, assessed or levied, with respect to the premises.

#### **11. TERMINATION**

Subject to Paragraphs 13, 20, and 21 of this Agreement, this Agreement may be

terminated for a default of the terms and conditions hereof by either party hereto by giving the other party at least thirty (30) days written notice of such intent.

**12. CONDITION OF PREMISES**

On the termination of this Agreement, the premises shall be in such condition as to which the premises or part thereof have been improved during the term of this Agreement, normal wear and tear excepted. Notwithstanding the foregoing, however, if upon the termination of this Agreement the COUNTY has failed to finance such maintenance and such improvements to the premises as required to achieve and maintain FRA Class II status, pursuant to Paragraph 4 (c) hereof, the Operator shall be held financially responsible for restoration to that status of classification.

**13. CONDITIONS PRECEDENT**

Anything contained herein to the contrary notwithstanding, neither the COUNTY nor the Operator shall have any rights, duties, or obligations hereunder, nor shall either the COUNTY or the Operator incur any liability by operation of the orders, approvals, and/or licenses necessary by either the transactions contemplated by Conrail and its successor(s) documentation, NJT documentation, and/or this Agreement if they have not been obtained prior to the commencement date.

**14. COMPLIANCE WITH GOVERNING LAW**

The Operator shall comply with all laws, statutes, ordinances, rules, orders, regulations, and requirements of the federal, state, and local governments that are applicable to the premises and the Operator's operation of this railroad. The Operator shall not use or permit premises to be used for any illegal premises, nor shall the Operator conduct its operations for any illegal purposes.

**15. NOTICE OF CASUALTY**

The Operator shall give immediate notice to the COUNTY of any fire, damage, injury, or other casualty occurring with respect to the premises.

**16. INSPECTION AND REPAIRS**

In addition to the previous conditions in Paragraph 4 of this Agreement, the COUNTY, its agents, or representatives shall have the right to enter upon the premises at any time to inspect and examine the premises and notify the Operator of any necessary repairs or alterations. The COUNTY shall endeavor to give reasonable notice to the Operator prior to any inspection of the premises and the Operator shall reasonably accommodate the COUNTY's representative or agents; however, failure by the COUNTY to give such notice shall not be deemed a breach of the Agreement. If such repairs or alterations are the Operator's obligation pursuant to the provisions hereof and if the Operator fails to make such repairs and alterations, the COUNTY, within a reasonable time and after reasonable notice to the Operator, may make such repairs or alterations thereto as may be necessary to the use, safety, and preservation of the premises, and may charge reasonable expenses and costs incurred to the Operator.

If the financing of such repairs or alterations are the COUNTY's obligations pursuant to any other provisions of this Agreement, the COUNTY shall after reasonable notice from the Operator, make financial provision for such repairs or alterations. The COUNTY shall have the

option of refusing to make such provision. If the COUNTY does not make such financial provision, the Operator may, at its option, terminate this Agreement. The Operator shall not make any alterations to the premises that are inconsistent with the intended use of the premises in accordance with this Agreement. This paragraph, per se, shall not be deemed to be a covenant by the COUNTY, not to be construed to create an obligation of the part of the COUNTY to make any inspection or repairs. The COUNTY also has the right to conduct inspections by train at no cost to the COUNTY.

#### **17. IMPROVEMENTS TO THE PREMISES**

Except as otherwise provided in Paragraph 4 (C) hereof, the Operator shall not make any alterations, additions, obstructions, encumbrances or improvements to the premises without the written consent of the MCDOT, which consent shall not be unreasonably withheld. Additions and improvements made by the Operator to the premises shall become the property of the COUNTY at the termination of this Agreement, except for such additions and improvements which, as agreed upon by the COUNTY and the Operator, may be removed from the premises without damaging the premises.

#### **18. NON-OPERATING REVENUE SOURCES**

The Operator shall not place nor permit to be placed, any signs, structures, or other non-operating revenue sources of any kind whatsoever upon, on, or about the premises or any part thereto without the written consent of the MCDOT. Any non-operating revenue sources, including signs and structures permitted by the COUNTY, shall at all times conform to all applicable municipal ordinances or other laws and regulations applicable thereto. Notwithstanding the forgoing, however, the Operator may, without the consent of the COUNTY, place and maintain such signs as are necessary to the safety and operation of railroad freight services in accordance herewith and/or to the operation of grade crossings, bridge, and other facilities on the premises. Such signage will conform with the Manual on Uniform Traffic Control Devices (MUTCD), if applicable. The Operator shall not enter into any lease, license agreements, easement agreements, or any other form of agreement with any third party without the prior written consent of the MCDOT. All new lease or license agreements are subject to review by the COUNTY, must meet the County's insurance requirements, and name Morris County as an additional insured. Without the MCDOT's consent no new agreements between the Operator and any third party shall have a term or duration for a period of time longer than the term of the Operator's Agreement with the COUNTY. The COUNTY may recoup the costs to prepare and administer said agreements. Consent by the MCDOT shall not be unreasonably withheld. All agreements between the Operator and third parties shall provide for an assignment of the Operator interest in the third-party agreement to any successor to the Operator in the management of the COUNTY's railroad facilities. The Operator has the right to collect revenue as part of any third-party agreements with private entities.

All lease or license agreements with municipal/governmental entities ("public entities") shall be between the County and the public entities. The operator shall not receive any revenue from said agreements.

#### **19. HOLD HARMLESS AND INDEMNIFICATION**

The COUNTY shall not be liable for and the Operator shall indemnify and save harmless, the COUNTY, its officers, employees, agents, servants, and assigns, and each and every one of

them against and from all suits and costs of every kind and description, and from all damages to which the owner or any of its officers, agents, servants, and assigns may be subject to by reason of injury to the person or property of other resulting from the performance under this Agreement, or through the negligence of the Operator, or through any improper or defective machinery, implements, or appliances used by the Operator or its agents, officers, employees, servants, and assigns, and the Operator will further indemnify and save harmless the COUNTY, its officers, employees, agents, servants, and assign from all suits and actions of any kind or character whatsoever that may be brought or instituted by any subcontractor, material man, or laborer who has performed work or furnished materials in or about the premises or by or an account of any claim or amount recovered from any infringement of patent, trademark, or copyright.

**20. CONDITION OF THE PREMISES**

The Operator has inspected and examined the premises and has entered into this Agreement without any representation of the part of the COUNTY as to the present condition of the premises. The Operator shall, in accordance with this provision and other provisions of this Agreement, neither encumber nor obstruct the premises in any way not otherwise permitted or contemplated in this Agreement.

**21. NON-ASSIGNABILITY**

The Operator shall not assign, mortgage, or hypothecate this Agreement, nor sublet or sublease all or part of the premises, nor permit the premises to be occupied or used for any purpose other than those as contemplated herein, except as follows:

- (a) may be agreed upon by the MCDOT in writing;
- (b) may result from condemnation of all or part of the premises; or
- (c) may result from the legally enforceable rights of others to have easements in the premises.

**22. WAIVER**

The failure of the COUNTY or the Operator to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be conducted as a waiver or relinquishment in the future of such covenant or condition, but the same shall remain in full force and effect.

**23. DEFAULT BY THE OPERATOR**

In the event there should occur any default on the part of the Operator in the performance of any terms, conditions, or covenants herein contained, which default results in the disruption of the railroad services provided for herein, or if the Operator shall file a petition of bankruptcy, make an assignment for the benefit of creditors, or if this Agreement shall pass to another by virtue of any court proceedings or operation of law, or be placed in receivership, or take advantage of insolvency act, then the COUNTY may immediately terminate this Agreement and take possession of the premises and improvements thereon, and perform or obtain the services intended herein by itself or from any other party. Nothing contained herein shall be deemed to be in derogation of any right or remedy the COUNTY may have in law or equity.

**24. CONDEMNATION AND EASEMENTS**

If, during the term of this Agreement, the premises or any part thereof of any interest therein shall be taken under eminent domain or condemnation, or if a suit or other action shall be

instituted for the taking or condemnation thereof, or if in lieu of any formal condemnation proceedings or actions the COUNTY shall grant an option to purchase or shall sell or convey the premises or any part thereof or any interest therein to a governmental or other public authority, agency, body, or public utility, then this Agreement, at the option of the Operator, may terminate immediately. The proceeds of any such condemnation, sale, or conveyance and the proceeds of any easements granted or existing with respect to the premises shall inure solely to the benefit of the COUNTY and the Operator shall have no rights thereto.

**2. NOTICES**

Notices as to the COUNTY will be:

Gerald Rohsler, Director  
County of Morris  
Division of Transportation  
P.O. Box 900  
Morristown, New Jersey 07963-0900  
(973) 829-8101

With a copy to: Daniel W. O'Mullan, Esq., County Counsel  
County of Morris  
P.O. Box 900  
Morristown, New Jersey 07963-0900  
(973) 829-8060

Notices to the Operator will be:

Wesley Weis, President  
Morristown & Erie Railway, Inc.  
49 Abbett Avenue  
P.O. Box 2206  
Morristown, NJ 07962-2206

**26. SECTION AND PARAGRAPH HEADING**

Section and paragraph headings in this Agreement are for ease of reference only and shall have no bearing upon the construction or interpretation of this Agreement.

**27. ASSUMPTION OF THE OBLIGATIONS OF THE CONRAIL AND OTHER AGENCY DOCUMENTS**

The Operator hereby assumes and agrees to exercise and perform the rights, duties, and appropriate obligations and to be bound by the limitations and restrictions of the freight customers and the COUNTY, including but not limited to obligations and indemnity under:

- (a) Sale Agreement between the County of Morris and Consolidated Rail Corporation dated June 19, 1986 Sections IV (A, B, C, D, E, F, G and H),

- Sections V, VI, VII (A, B, C and D), XI (The Operator specifically agrees to provide the COUNTY as an additional insured on the Operator's policy, with sufficient insurance to satisfy Section VIII D of the Sale Agreement;
- (b) The County of Morris Rate Agreement; and
  - (c) A valid interchange agreement to be in writing between the Operator and Conrail or Conrail's successors.

**28. TRACKAGE RIGHTS AND INTERCHANGE RIGHTS**

The Operator shall obtain written trackage rights agreements, interchange agreements and all other permits and agreements necessary for the Operator to operate the County's railroad. These agencies include, but are not limited to, New Jersey Transit Rail Operations, Norfolk Southern, and CSX. These agreements must be provided to MCDOT at least ten (10) days prior to the commencement date of this Agreement.

In addition to all other provisions of this Agreement, the Operator shall obtain written trackage rights, agreements, interchange agreements, and all other permits and agreements necessary from all agencies including but not by limitation, NJT Rail Operations, Norfolk Southern Railroad, and others in order for the Operator to operate County's railroad and have access to the County's Railroads and designated Norfolk Southern Railroad on or before ten (10) days prior to the commencement date of this Agreement. Copies of all such agreements will be filed with the MCDOT.

**28. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the parties hereto, with respect to the subject matter hereof, and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto.

**29. LAW GOVERNING**

To the extent allowable by law, this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. Jurisdiction over any and all disputes, cases or actions, suits, or complaints of any nature shall be brought to the Superior Court of New Jersey in the County of Morris.

**30. BID SPECIFICATIONS**

The Bid Specifications are made part of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

COUNTY:

ATTEST:

COUNTY OF MORRIS

Diane M. Ketchum  
Diane Ketchum, Clerk of the  
Board of Chosen Freeholders

William J. Chegwooden  
William J. Chegwooden, Director  
Board of Chosen Freeholders

OPERATOR:

ATTEST:

MORRISTOWN & ERIE RAILWAY, INC.



Wesley Weis  
Wesley Weis, President

STATE OF NEW JERSEY, COUNTY OF MORRIS

SS:

I certify that on August 15, 2012 Diane M. Ketchum personally came before me, and this person acknowledges under oath, to my satisfaction that:

- (a) this person is the Clerk of the Board of Chosen Freeholders of the County of Morris, the Corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the Director of the Board of Chosen Freeholders of the County of Morris;
- (c) this document was signed and delivered by the corporation and its voluntary act duly authorized by a proper resolution of its Board of Chosen Freeholders;
- (d) this person knows the proper seal of corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

Diane M. Ketchum  
Diane Ketchum  
Clerk of the Board

Sworn and subscribed before me on  
this 15<sup>th</sup> day of August, 2012

Janet M. Donaldson  
Notary Public of New Jersey

My Commission Expires Aug. 29, 2014  
NOTARY PUBLIC OF NEW JERSEY  
JANET M. DONALDSON

# EXHIBIT B

JOHN A. NAPOLITANO, ESQ.  
MORRIS COUNTY COUNSEL  
**CLEARY GIACOBBE ALFIERI JACOBS LLC**  
Attorneys At Law  
169 Ramapo Valley Road  
Upper Level 105  
Oakland, New Jersey 07436  
Tel. 973-845-6700  
Fax. 201-644-7601  
Anthony P. Seijas, Esq. (Attorney ID: 029711996)  
Michael A. Augello, Jr., Esq. (Attorney ID: 030022007)  
*Attorneys for Plaintiff*

COUNTY OF MORRIS,

Plaintiffs

v.

MORRISTOWN and ERIE RAILWAY, INC.

Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: MORRIS COUNTY

Docket No: MON-

Civil Action

**AFFIDAVIT OF GERALD ROHSLER**

I, Gerald Rohsler, am the Director of Transportation for the Morris County Division of Engineering and Transportation ("MCDOT"). I am familiar with the facts underlying the Verified Complaint and make this affidavit in support of the County of Morris' Order to Show Cause to prohibit Defendant, Morristown and Erie Railway, Inc., ("M&E") from storing butane and propane on the County of Morris' railway tracks.

1. On April 18, 2016, Morris County received a phone call from the M&E stating that they may have a new customer that wishes to temporarily store propane cars on the High Bridge Branch (HBB). Morris County, concerned with the commodity proposed for storage, requested further information to be brought under proper review (as required under the contract between the M&E and the County) before an agreement was to be executed.
2. On April 20, 2016, an email was sent to the County by the M&E with a letter attached stating that the M&E was in negotiations with Gibson Gas Liquids for the temporary storage of propane cars. Morris County responded that the information received in the M&E's correspondence was inadequate and required further information. The County also expressed concern over the proximity of the cars to a residential area. The County did not believe that this location on the HBB could adequately store the number of proposed cars; therefore, an email was sent asking for details regarding the storage of these cars. Following the County's second request for details an ambiguous response was received from the M&E.
3. On April 21, 2016, concerned with the proximity of residences to the storage area and lack of detailed information from M&E, a map of the proposed storage area, indicating residential areas, was sent to the M&E by the County. The County expressed its concern, once again, for the lack of any details and further requested more details about the cars storage.
4. On April 25, 2016, a physical copy of the M&E April 20th letter was received. Morris County followed-up with M&E by phone requesting further information. M&E stated that it would call the County when it had new information, but none was forthcoming.
5. On May 12, 2016, the County requested an update on the status of the agreement between M&E and Gibson and the rates for the storage of the cars. M&E responded that they had agreed in principal to rates and were waiting to sign an agreement.

6. On May 13, 2016, the County requested M&E provide a copy of the contract for review by County Counsel, as required in the Management Agreement.
7. On May 24, 2016, M&E informed the County that an agreement had been signed and it expected delivery of the propane railway tank cars by the end of the week.
8. On May 26, 2016, a letter from County Counsel was transmitted to the M&E. The letter stated that the County had not given permission to M&E to engage in negotiations with Gibson and that Paragraph 5 of the Management Agreement only allowed for railroad activities. It further stated that storage of propane cars was not a contemplated use and is a non-operating revenue.
9. On May 27, 2016, Morris County inspected the HBB to ensure that M&E was complying with the County's request and found no evidence of cars being stored.
10. On May 31, 2016, the County received a letter from M&E's attorney stating that the storage of propane rail cars is not prohibited by the Management Agreement.
11. On June 1, 2016, Morris County sent M&E 12 questions regarding the storage, security, safety, emergency response, and communications between M&E, the County, and local towns.
12. On June 2, 2016, it was reported to the County by the M&E that ten (10) propane cars were delivered and stored at the Scale Track in Roxbury. County Counsel demanded that the cars be removed from the County lines. M&E's attorney stated that the cars will be moved to Mt. Olive at the southern terminus of the HBB.
13. The distance from the propane storage site to: Mountain View Elementary School is approximately 3,100 feet; Mt. Olive High School is approximately 9,600 feet; and, Mt. Olive

Middle School is approximately 11,300 feet. Additionally, West Morris High School, located in Washington Township, is approximately 4,600 feet from the site.

14. That pursuant to paragraph 4(B) of the subject Management Agreement the “COUNTY shall be afforded the opportunity to participate in meetings with potential customers.” Here, the COUNTY was not invited to participate in any meetings with potential customers.

15. Pursuant to paragraph 18 of the subject Management Agreement M&E “shall not enter into any lease...or any other form of agreement with any third party without the prior written consent of the MCDOT (Morris County Division of Transportation).” At no time did anyone contact me or anyone else from the Morris County Division of Transportation asking for written consent for M&E to enter into an agreement with Gibson Gas Liquids.

16. Pursuant to paragraph 21 of the subject Management Agreement the Morris County Division of Transportation neither agreed to in writing or permitted M&E to sublet or sublease any part of the premises or allow M&E to use the premises “for any purpose other than those as contemplated” by the subject Management Agreement.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false. I am subject to punishment.



Gerald Rohsler

Dated: June 6, 2016

# EXHIBIT C



# MORRISTOWN & ERIE RAILWAY INC.

OFFICE ADDRESS:  
49 ABBETT AVENUE  
MORRISTOWN, NJ 07960

MAILING ADDRESS:  
P.O. Box 2206  
MORRISTOWN, NJ 07962-2206

April 19, 2016

Mr. Gerry Rohsler  
Executive Director  
Morris County Department of Transportation  
10 Court Street, PO Box 900  
Morristown, NJ 07963-0900

RECEIVED

APR 25 2016

COUNTY OF MORRIS  
ENGINEERING DEPARTMENT

Dear Gerry,

Per your request and our conversation of yesterday, I am writing this letter to outline the details concerning a new customer that the Morristown & Erie is working with to bring new business to the lines that we operate under contract for Morris County. As per our contract we are required to notify you when we begin talking with a potential customer.

We believe that this customer, Gibson Gas Liquids, will begin to ship cars to us sometime in May of this year subject to freight rates being established for the movement of their product. Specifically, there are going to be shipping propane in tank cars for temporary storage while in transit before forwarding onto the final customer. We are discussing with them the storage of these cars which could be up to 100 car loads. Most of these cars would be stored on the far end of the High Bridge Branch at MP 15 which is the end of track. This location has industrial properties and farm land along this area. The existing customers on the branch will not be affected with this new customer.

As information the track on the High Bridge line is maintained to FRA Class 2 standards and is more than adequate and acceptable to handle this business. Should we be able to capture this business our police chief who is also a New Jersey state certified fire chief will be in contact with the local police and fire agencies to notify them that these cars will be located in a specific area.

We will advise you further if we get confirmation that this new business is actually going to materialize.

Sincerely,

Charles C. Jensen  
Vice President and Chief Operating Officer  
Morristown & Erie Railway

Cc: John Fiorilla

# EXHIBIT D

## Rohsler, Gerald

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**From:** Chuck Jensen <cjensen@merail.com>  
**Sent:** Thursday, April 21, 2016 11:58 AM  
**To:** Rohsler, Gerald  
**Cc:** Henry Butz; Chris Mazzei  
**Subject:** RE: Letter for new business

Gerry,

Thanks for producing the map. That's very helpful and that's the area that I was trying to explain to you.

We have had conversation with the customer this morning and expect to have rates in place tomorrow. I believe this is going to happen as the rates should be attractive. At present we are targeting mid to late May if they accept the rates for cars to start arriving.

Thanks  
Chuck

Charles C. Jensen  
Vice President &  
Chief Operating Officer  
Morristown & Erie Railway  
49 Abbett Ave.  
Morristown, NJ 07960

973-267-4300 office  
201-841-5438 cell

**From:** Rohsler, Gerald [mailto:GRohsler@co.morris.nj.us]  
**Sent:** Thursday, April 21, 2016 11:39 AM  
**To:** Chuck Jensen  
**Cc:** Henry Butz; Chris Mazzei; Vitz, Chris; Russo, Joseph  
**Subject:** RE: Letter for new business

Chuck

Attached please find a map depicting a proposed storage area. Your response to my email did not address the questions I posed adequately. County Counsel will be able to make a better informed decision with more specific information and less ambiguity.

Jerry

Gerald Rohsler, Director-Transportation  
Morris County Engineering and Transportation  
P.O. Box 900  
Morristown, NJ 07963-0900  
973-829-8101  
[www.MorrisDOT.org](http://www.MorrisDOT.org)

**From:** Chuck Jensen [<mailto:cjensen@merail.com>]  
**Sent:** Wednesday, April 20, 2016 4:49 PM  
**To:** Rohsler, Gerald <[GRohsler@co.morris.nj.us](mailto:GRohsler@co.morris.nj.us)>  
**Cc:** Henry Butz <[hbutz@merail.com](mailto:hbutz@merail.com)>; Chris Mazzei <[cmazzei@merail.com](mailto:cmazzei@merail.com)>  
**Subject:** RE: Letter for new business

Gerry,

I plan on putting as many cars as I can physical fit at the locations, ideally near the end of the line. Cars that need to overflow I will store on the Whippany line. The cars will be held until the product is sold at which time the cars will be forwarded to the customer. I don't have a specific length of time. As far as ongoing storage, I would sure hope that this continues as its good business and a good use of the line where no business currently exists. I hope this answers your questions.

Chuck

Charles C. Jensen  
Vice President &  
Chief Operating Officer  
Morristown & Erie Railway  
49 Abbett Ave.  
Morristown, NJ 07960

973-267-4300 office  
201-841-5438 cell

**From:** Rohsler, Gerald [<mailto:GRohsler@co.morris.nj.us>]  
**Sent:** Wednesday, April 20, 2016 3:55 PM  
**To:** Chuck Jensen  
**Cc:** Chris Mazzei; Henry Butz; Vitz, Chris; Russo, Joseph  
**Subject:** RE: Letter for new business

Chuck

Before I bring this request to County Counsel, I need some clarification regarding your proposal. There are houses at the very end of the track and it would not be appropriate to store propane cars near these homes. If you store the cars north of Bartley Chester Road and south of Triumph, it does not appear that there is enough room to store 100 cars. Please provide additional information on the number of cars and where on the track you plan to store them. It is my understanding that the cars will be stored from 3-6 months-is this a onetime contract or will this result in ongoing storage?

Jerry

Gerald Rohsler, Director-Transportation  
Morris County Engineering and Transportation  
P.O. Box 900  
Morristown, NJ 07963-0900  
973-829-8101  
[www.MorrisDOT.org](http://www.MorrisDOT.org)

**From:** Chuck Jensen [<mailto:cjensen@merail.com>]  
**Sent:** Wednesday, April 20, 2016 11:58 AM  
**To:** Rohsler, Gerald <[GRohsler@co.morris.nj.us](mailto:GRohsler@co.morris.nj.us)>  
**Cc:** Chris Mazzei <[cmazzei@merail.com](mailto:cmazzei@merail.com)>; Henry Butz <[hbutz@merail.com](mailto:hbutz@merail.com)>  
**Subject:** Letter for new business

Gerry,

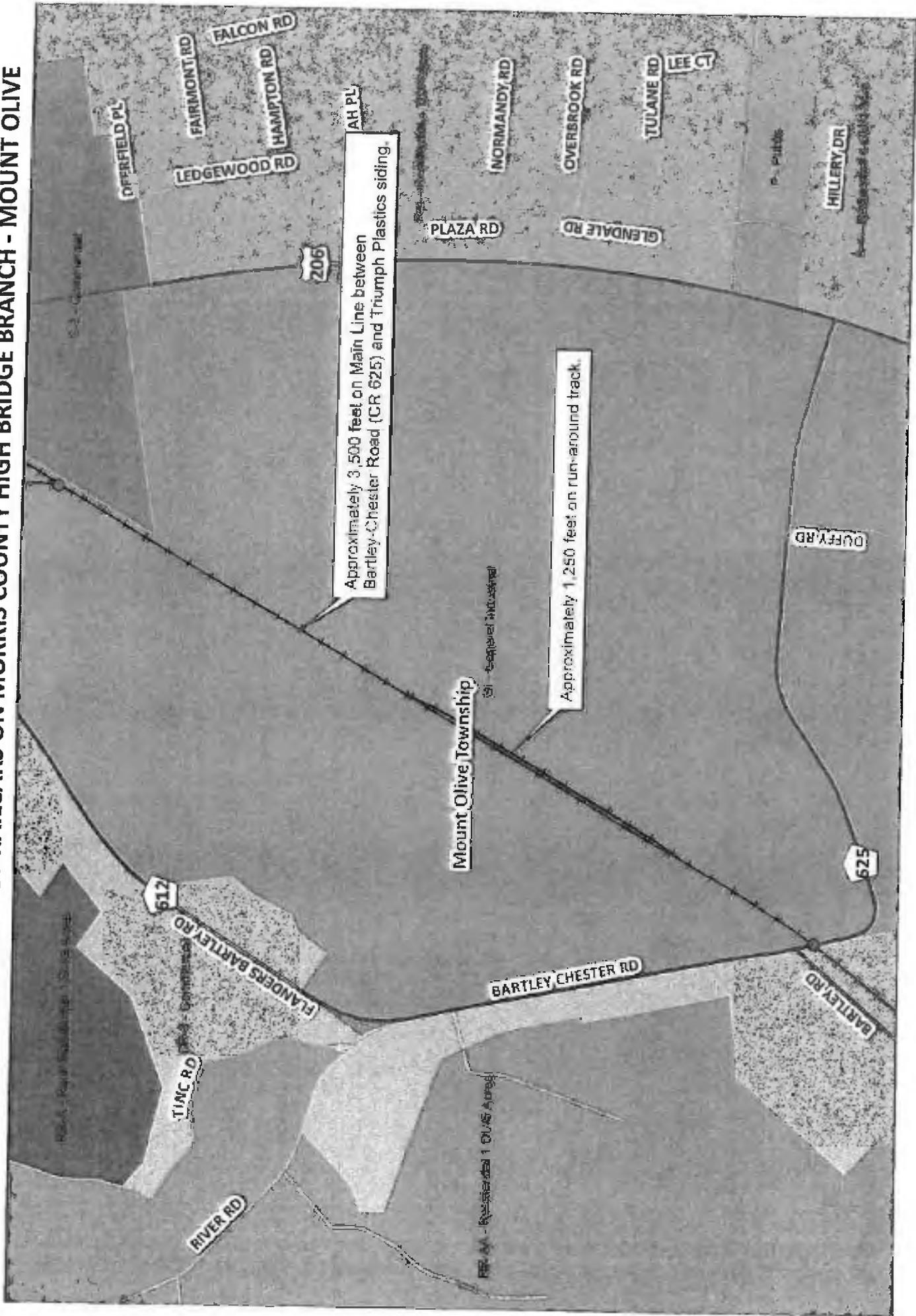
Please see the attached letter as per our discussion yesterday.

Thanks  
Chuck

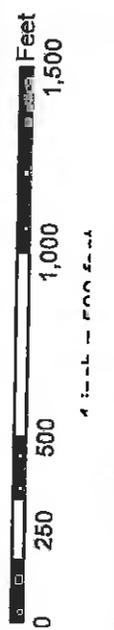
Charles C. Jensen  
Vice President &  
Chief Operating Officer  
Morristown & Erie Railway  
49 Abbett Ave.  
Morristown, NJ 07960

973-267-4300 office  
201-841-5438 cell

# POSSIBLE STORAGE LOCATION OF RAILCARS ON MORRIS COUNTY HIGH BRIDGE BRANCH - MOUNT OLIVE



Date: 4/21/2016



**KEY**  
 ● Approximate Location of Rail Car Storage

# EXHIBIT E

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**From:** Russo, Joseph [mailto:jrusso@co.morris.nj.us]  
**Sent:** Friday, May 13, 2016 10:52 AM  
**To:** Chuck Jensen  
**Cc:** Rohsler, Gerald; Henry Butz; Chris Mazzei  
**Subject:** RE: Status of Propane Rail Cars

Thank you, Chuck. Please let me know when an agreement is signed so I can bring this before County Counsel.

Joe

Joseph A. Russo, Senior Planner  
Morris County Division of Engineering and Transportation  
P.O. Box 900  
Morristown, NJ 07963-0900  
Phone: 973.829.8212 | Fax: 973.326.9025  
Email: [jrusso@co.morris.nj.us](mailto:jrusso@co.morris.nj.us)  
Website: [www.morrisdot.org](http://www.morrisdot.org)

---

**From:** Chuck Jensen [mailto:cjensen@merail.com]  
**Sent:** Thursday, May 12, 2016 2:08 PM  
**To:** Russo, Joseph <jrusso@co.morris.nj.us>  
**Cc:** Rohsler, Gerald <GRohsler@co.morris.nj.us>; Henry Butz <hbutz@merail.com>; Chris Mazzei <cmazzei@merail.com>  
**Subject:** RE: Status of Propane Rail Cars

Joe,

The status is that rates have been established and we are waiting on the customer to sign an agreement if they are inclined to do so. I am waiting to see if they are going to sign an agreement or not.

Thanks

Charles C. Jensen  
Vice President &  
Chief Operating Officer  
Morristown & Erie Railway  
49 Abbett Ave.  
Morristown, NJ 07960

973-267-4300 office  
201-841-5438 cell

---

**From:** Russo, Joseph [<mailto:jrusso@co.morris.nj.us>]  
**Sent:** Thursday, May 12, 2016 11:12 AM  
**To:** Chuck Jensen  
**Cc:** Rohsler, Gerald; Henry Butz; Chris Mazzei  
**Subject:** Status of Propane Rail Cars

Chuck,

What is the status on the propane rail car storage on the High Bridge Branch? Were the rates accepted and an agreement signed?

Thanks,  
Joe

Joseph A. Russo, Senior Planner  
Morris County Division of Engineering and Transportation  
P.O. Box 900  
Morristown, NJ 07963-0900  
Phone: 973.829.8212 | Fax: 973.326.9025  
Email: [jrusso@co.morris.nj.us](mailto:jrusso@co.morris.nj.us)  
Website: [www.morrisdot.org](http://www.morrisdot.org)

# EXHIBIT F

**Russo, Joseph**

---

**From:** Chuck Jensen <cjensen@merail.com>  
**Sent:** Tuesday, May 24, 2016 2:05 PM  
**To:** Russo, Joseph  
**Cc:** Henry Butz; Chris Mazzei; wweis@mikabcorp.com; Wes Weis; Rich Campana  
**Subject:** RE: Status of Propane Rail Cars

Joe,

We have executed the agreement for the storage of the propane cars. We expect some to arrive by the end of the week.

Thanks

Chuck

Charles C. Jensen  
Vice President &  
Chief Operating Officer  
Morristown & Erie Railway  
49 Abbett Ave.  
Morristown, NJ 07960

973-267-4300 office  
201-841-5438 cell

# EXHIBIT G

# COUNTY OF MORRIS COUNTY COUNSEL

Board of Chosen Freeholders  
Director  
Kathryn A. DeFillippo

Deputy Director  
Hank Lyon

Douglas R. Cabana  
John Cesaro  
Thomas J. Mastrangelo  
Christine Myers  
Deborah Smith

PO BOX 900

Morristown, New Jersey 07963-0900



John A. Napolitano  
County Counsel

W. Randall Bush  
First Assistant  
Morris County Counsel

(973) 829-8060  
FAX (973) 829-8046  
www.co.morris.nj.us

May 25, 2016

Charles C. Jensen, Vice President and  
Chief Operating Officer  
Morristown & Erie Railway, Inc.  
49 Abbett Avenue, P.O. Box 2206  
Morristown, New Jersey 07962-2206

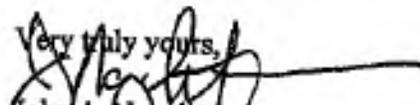
Dear Mr. Jensen:

The Morristown and Erie Railway notified Morris County through the Morris County Department of Transportation ("MCDOT") on April 18, 2016 that they were in negotiations to store loaded propane gas cars on the southern terminus of the High Bridge Branch. The MCDOT received a letter from the M&E on April 19, 2016 stating that they were discussing rates with Gibson Natural Gas for the storage of the cars. MCDOT prepared a map detailing residential properties at the southern end of the High Bridge Branch which was shared with the M&E, stating in an email sent on April 20, 2016 that this would be an inappropriate area to store propane cars. At that time, MCDOT requested further clarification on the number of cars, the location, and the amount of time they would be stored so that the details could be shared with County Counsel for review. The M&E responded with an ambiguous email on April 24, 2016.

MCDOT received an email on May 24, 2016 stating that an agreement was reached with Gibson Natural Gas and that propane deliveries would begin at the end of the week. No permission from the County was requested or given for this activity. According to paragraph 5 Limitations of Operations of our Management Agreement, M&E operation is limited to rail operations only. The storage of propane train cars, even on the rail tracks, was not a contemplated use of the County's facilities and is a non-operating revenue which requires County approval.

This operation must cease until a complete review is conducted by Morris County.

Please be guided accordingly.

Very truly yours,  
  
John A. Napolitano  
Morris County Counsel

JAN:lb

c: Wesley Weis, President, Morristown & Erie Railway, Inc.  
Deena Leary, Director, Department of Planning and Public Works  
Gerald Rohsler, Director, Department of Transportation  
Offices located in Administration & Records Building, Court Street, Morristown, New Jersey

# EXHIBIT H



John K. Fiorilla  
856.914.2054  
jfiorilla@capehart.com

May 31, 2016

*Via Email and Regular Mail*

John A. Napolitano, Esq.  
Morris County Counsel  
PO Box 900  
Morristown, NJ 07963-0900

Re: Morristown & Erie Railway – Morris County  
Our File No. 6453-50426

Dear John:

As you probably know, our firm serves as General Counsel for the Morristown & Erie Railway (M&E) in regards to its rail lines in New Jersey. I have your letter of May 25, 2016 addressed to Mr. Charles Jensen, VP and Chief Operation Officer of M&E.

In response to your letter, we feel the County should look more closely at its agreement with M&E. The receiving of butane and propane which is consigned to the M&E is not prohibited by the Agreement. In addition, the County should realize that the movement of this material to points on the M&E which are incidental to the destination on the bill of lading is not prohibited by federal regulation. In fact, 49 CFR § 171 (c) (4) (ii) specifically mentions this. There is no question but that this is a rail operation as the cars are being received on bills of lading consigned to the owner at the M&E.

Enclosed are copies of two of the bills of lading of cars destined for the M&E and they show the M&E as their destination. The product is not being transferred or unloaded from the rail cars on the M&E but will be rebilled by the owner of the product and then moved from the M&E.

M&E mentioned this to Mr. Rohsler in order assure the County that it was making sure the material would be stored in a place away from residences and the map that the County provided certainly confirmed this. At no time did the Railroad request permission from the County to receive these cars and clearly no permission is needed in order to receive them.

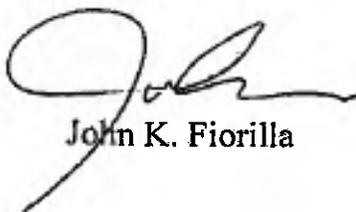
Glenn L. Redbord, Esq.  
Our File No. 6453-50426  
May 31, 2016  
Page 2

The Railroad would be glad to discuss these matters with the County and answer any questions they may have regarding the operation.

Please contact me regarding further reply and discussions regarding this matter.

Sincerely,

CAPEHART & SCATCHARD, P.A.



John K. Fiorilla

JKF/dp

Enc.

cc: Mr. Wesley Weis, President (w/enc.)- Via Email  
Mr. Charles Jensen, VP, Chief Operating Officer (w/enc.)- Via Email

\*\*\*\*\*

\* DANGEROUS \*

WAYBILL

\*\*\*\*\*

<p>HAZARDOUS INFORMATION</p> <p>1 TK / 31478 GA  UN1075  BUTANE  CLASS 2.1  (NON-ODORIZED BUTANE)  (NON-ODORIZED BUTANE)  EMERGENCY 24-H NUMBER US:  CHEMTREC MARKWEST HYDROCARBON - 18004249300  HAZMAT STCC: 4905424</p>	
<p>IN CARE OF PARTY NO. 1  GIBSON GAS LIQUID PARTNERSHIP  ME STORAGE TRACKS    MORRISTOWN, NJ 07960</p>	
<p>PARTY TO BE BILLED (AAR ACCOUNTING RULE 11)  MARKWEST HYDROCARBON INC  1515 ARAPAHOE ST  TOWER 1 STE 1600  DENVER, CO 80202</p>	
<p>PARTY TO BE BILLED (AAR ACCOUNTING RULE 11)  GIBSON GAS LIQUIDS PARTNERSHIP  440 2ND AVE SW  STE 1700  CALGARY, AB T2P5E9</p>	
<p>Reference Numbers  EM 12037960</p>	

Received 417

\*\*\*\*\*  
 \* DANGEROUS \*  
 \*\*\*\*\*

WAYBILL

Initial and Number PROX 220040		Kind T389	No. Cars 1	Waybill Date 05-20-2016	Waybill Number 420180 By: Batch 417	
STOP Road Station State For Consignee at Stop THIS CAR AT						
To No. Station 68017 WHIPPANY (ME)			State NJ	From No. Station 12005 WESTLAND		State PA
			Billed at No. Station		State	
Route WE PILAV NS			A/S R	Ref Number 12037949	B/L Number EM 12037949	B/L Date 05-20-2016 07:00
Consignee GIBSON GAS LIQUIDS PARTNERSHIP 440 2ND AVE SW STE 1700 CALGARY, AB T2P5E9				Shipper MARKWEST HYDROCARBON INC 1084 WESTERN AVE WASHINGTON, PA 15301		
Special Instructions				Weighed At SHIPPER'S WEIGHT		Tariff Authority Item: Sec.7: Yes
				Gross: 261982		Method of Payment: AAR ACCOUNTING R ULE 11 SHIPMENT
				Tare: 101900		
				Allowance:		
				Net: 160082		
				Length: 789		
STCC Number 49 054 24		Declared value not to exceed		Seals 1198658		
Pkgs	Qual	STCC	Description of Articles			Weight   Qual
1	CLD	4905424	BUTANE BUTANEBUTANE			160082   N

NEED RWC  
 + CHARGE CODE

\*\*\*\*\*

\* DANGEROUS \*

WAYBILL

\*\*\*\*\*

<p>HAZARDOUS INFORMATION</p> <p>1 TK / 31388 GA UN1075 BUTANE CLASS 2.1 (NON-ODORIZED BUTANE) (NON-ODORIZED BUTANE) EMERGENCY 24-H NUMBER US: CHEMTREC MARKWEST HYDROCARBON - 18004249300 HAZMAT STCC: 4905424</p>
<p>IN CARE OF PARTY NO. 1 GIBSON GAS LIQUID PARTNERSHIP ME STORAGE TRACKS  MORRISTOWN, NJ 07960</p>
<p>PARTY TO BE BILLED(AAR ACCOUNTING RULE 11) MARKWEST HYDROCARBON INC 1515 ARAPAHOE ST TOWER 1 STE 1600 DENVER, CO 80202</p>
<p>PARTY TO BE BILLED(AAR ACCOUNTING RULE 11) GIBSON GAS LIQUIDS PARTNERSHIP 440 2ND AVE SW STE 1700 CALGARY, AB T2P5E9</p>
<p>Reference Numbers EM 12037949</p>

Received 417

# EXHIBIT I

## Rome Murphy

---

**From:** Napolitano, John <jnapolitano@co.morris.nj.us>  
**Sent:** Friday, June 03, 2016 10:18 AM  
**To:** Michael A. Augello, Jr.  
**Subject:** FW: Propane Car Questions

**From:** Napolitano, John  
**Sent:** Wednesday, June 01, 2016 1:33 PM  
**To:** Leary, Deena <DLeary@co.morris.nj.us>; Rohsler, Gerald <GRohsler@co.morris.nj.us>; Russo, Joseph <jrusso@co.morris.nj.us>  
**Cc:** Bonanni, John <JBonanni@co.morris.nj.us>  
**Subject:** FW: Propane Car Questions

**From:** John K. Fiorilla [<mailto:jfiorilla@capehart.com>]  
**Sent:** Wednesday, June 01, 2016 1:31 PM  
**To:** Napolitano, John <jnapolitano@co.morris.nj.us>  
**Subject:** RE: Propane Car Questions

John, thanks for the questions, I am sending them on and hope to have answers for you shortly

John

John K. Fiorilla | *Shareholder* | *Chair, Transportation Dept.*

**CAPEHART || SCATCHARD**  
ATTORNEYS AT LAW  
New Jersey - Pennsylvania - New York

8000 Midlantic Dr, Ste 300S  
Post Office Box 5016  
Mount Laurel, NJ 08054

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856-914-2054 Phone  
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856-235-2786 Fax

[Web](#) | [Bio](#) | [LinkedIn](#) | [Blog](#)

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**From:** Napolitano, John [<mailto:jnapolitano@co.morris.nj.us>]  
**Sent:** Wednesday, June 01, 2016 1:30 PM

**To:** John K. Fiorilla <[jfiorilla@capehart.com](mailto:jfiorilla@capehart.com)>

**Cc:** Leary, Deena <[DLeary@co.morris.nj.us](mailto:DLeary@co.morris.nj.us)>; Rohsler, Gerald <[GRohsler@co.morris.nj.us](mailto:GRohsler@co.morris.nj.us)>; Bonanni, John <[JBonanni@co.morris.nj.us](mailto:JBonanni@co.morris.nj.us)>

**Subject:** FW: Propane Car Questions

John

Here are some preliminary questions for the M&E. Since the site where we believe M&E is proposing to store the tanker cars is isolated it will be very difficult for emergency vehicles to access the RR. We need to know how they will access the line in case of an emergency.

1. What is the commodity being stored propane or butane or both?
2. How many propane cars will be located on the High Bridge Branch?
3. What is the specific location of the cars on the HBB?
4. What type of cars are being used to store the propane?
5. How long will the propane cars be stored on the HBB?
6. What is the duration of the agreement with Gibson?
7. Has the Mt. Olive police and fire departments been advised of the location of the propane cars?
8. What safety measures have been put in place regarding the propane cars?
9. What measures have been put in place to assure the security of these cars?
10. What type of emergency response team has been put in place?
11. What if any protections are in the agreement with Gibson to protect the County and Mt. Olive.
12. Has M&E had any discussions with the Mt Olive representatives

Please give me a call if you have any questions.

John Napolitano  
Morris County Counsel

## Rome Murphy

---

**From:** Napolitano, John <jnapolitano@co.morris.nj.us>  
**Sent:** Friday, June 03, 2016 10:19 AM  
**To:** Michael A. Augello, Jr.  
**Subject:** FW: propane

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

**From:** John K. Fiorilla [mailto:jfiorilla@capehart.com]  
**Sent:** Friday, June 03, 2016 9:26 AM  
**To:** Napolitano, John <jnapolitano@co.morris.nj.us>  
**Subject:** Re: propane

John. Chuck tells me that he has only six more cars enroute which may reach the ME next week. He Wes WEIS and our police chief and security man Chip Griener are available next Friday to review everything in detail and see if we can come to a resolution without litigation. Let me know if this can be arranged. Thanks

John

John K. Fiorilla | Shareholder | Chair, Transportation Dept.

CAPEHART || SCATCHARD  
ATTORNEYS AT LAW  
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856-914-2054 Phone  
609-792-6851 Mobile  
856-235-2786 Fax

Web<<http://www.capehart.com/>> | Bio<<http://www.capehart.com/attorneys/john-k-fiorilla/>> |  
LinkedIn<<https://www.linkedin.com/in/john-fiorilla-784a4b28>> |  
Blog<<http://www.capehart.com/publications/featured-blogs/>>

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On Jun 2, 2016, at 4:51 PM, Napolitano, John <jnapolitano@co.morris.nj.us<mailto:jnapolitano@co.morris.nj.us>> wrote:

Mr. Fiorilla

Please be advised that your client is directed to remove the cars from the County's facility and not store them on the County's tracks in Mt. Olive.  
John

From: John K. Fiorilla [mailto:jfiorilla@capehart.com]  
Sent: Thursday, June 02, 2016 4:15 PM  
To: Napolitano, John <jnapolitano@co.morris.nj.us<mailto:jnapolitano@co.morris.nj.us>>  
Cc: Leary, Deena <DLeary@co.morris.nj.us<mailto:DLeary@co.morris.nj.us>>; Bonanni, John <JBonanni@co.morris.nj.us<mailto:JBonanni@co.morris.nj.us>>; Rohsler, Gerald <GRohsler@co.morris.nj.us<mailto:GRohsler@co.morris.nj.us>>; wweis@mikabcorp.com<mailto:wweis@mikabcorp.com>; CHARLES C JENSEN (CJensen@merail.com<mailto:CJensen@merail.com>) <CJensen@merail.com<mailto:CJensen@merail.com>>; Henry Butz <hbutz@merail.com<mailto:hbutz@merail.com>>; August (Chip) Greiner (AGreiner@merail.com<mailto:AGreiner@merail.com>) <AGreiner@merail.com<mailto:AGreiner@merail.com>>; Rich Campana <rcampana@merail.com<mailto:rcampana@merail.com>>  
Subject: RE: propane  
Importance: High

John- The cars in Roxbury are being moved on to Mt. Olive tomorrow. Please see the answers to all the questions you posed and lets discuss further. Thanks

John

1. What is the commodity being stored propane or butane or both?

Currently butane is being consigned to the M&E and will be placed on the tracks in Mt. Olive that Mr. Jensen has identified to Mr. Rohsler. Propane which has a similar chemical composition may also be moved to the M&E.

2 How many propane cars will be located on the High Bridge Branch?

Currently there are 18 cars of butane consigned to the tracks that Mr. Jensen has identified to Mr. Rohsler - 45 cars are expected in June, 2016 The maximum which could be shipped is 100 cars over time.

3.What is the specific location of the cars on the HBB?

The location where they are consigned to is on the attached map in Mt. Olive

1. What type of cars are being used to store the propane?

AAR Type T389, Steel Pressure non-Insulated, Plate C Tank Cars (see photo attached) These cars were constructed in 2014 and meet all the new standards.

2. How long will the propane cars be stored on the HBB?

It is expected that the cars will begin leaving the site during the fourth quarter of 2016

3. What is the duration of the agreement with Gibson?

One year through May 15, 2017

4. Has the Mt. Olive police and fire departments been advised of the location of the propane cars?

Not yet but ME will be directly going to the municipalities regarding the location just like it did to the County

5. What safety measures have been put in place regarding the propane cars?

FRA and TSA Inspection Rules are being strictly followed for the HM-232 commodities which are being handled

6. What measures have been put in place to assure the security of these cars?

Federally approved (FRA + TSA HM-232 Security Plan along with periodic patrols by Railroad Police

7. What type of emergency response team has been put in place?

Local Volunteer Fire and EMS response with Hazmat response from Picatinny Arsenal Team (an approved County Hazmat team) if required.

8. What if any protections are in the agreement with Gibson to protect the County and Mt. Olive.

The county and municipality is not mentioned in the agreement but Gibson must properly load the appropriate cars for the material they are shipping and meeting all federal regulations regarding same

9. Has M&E had any discussions with the Mt Olive representatives

Not Yet but ME has hazmat qualified personnel who will be calling Mt. Olive police and fire. ME has offered training regarding hazmats in the past and will offer it again for the fire, police and municipal and county personnel who want to be trained. Now that the cars are moving to Mt. Olive ME's trained personnel will be calling on local police and fire this week.

John K. Fiorilla | Shareholder | Chair, Transportation Dept.

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LinkedIn<<https://www.linkedin.com/in/john-fiorilla-784a4b28>> |

Blog<<http://www.capehart.com/publications/featured-blogs/>>

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John K. Fiorilla | Shareholder | Chair, Transportation Dept.

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LinkedIn<<https://www.linkedin.com/in/john-fiorilla-784a4b28>> |  
Blog<<http://www.capehart.com/publications/featured-blogs/>>

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From: Napolitano, John [mailto:jnapolitano@co.morris.nj.us]  
Sent: Thursday, June 02, 2016 1:53 PM  
To: John K. Fiorilla <jfiorilla@capehart.com<mailto:jfiorilla@capehart.com>>  
Cc: Leary, Deena <DLeary@co.morris.nj.us<mailto:DLeary@co.morris.nj.us>>; Bonanni, John <JBonanni@co.morris.nj.us<mailto:JBonanni@co.morris.nj.us>>; Rohsler, Gerald <GRohsler@co.morris.nj.us<mailto:GRohsler@co.morris.nj.us>>  
Subject: propane

John

It is my understanding 10 propane cars are in Roxbury waiting to be moved to your clients proposed storage area. Those cars must be removed and not stored on the County's tracks.

John

John Napolitano  
Morris County Counsel  
Office of the Morris County Counsel  
Administration & Records Building  
Court Street P.O. Box 900  
Morristown, New Jersey  
Tel. (973) 829-8060  
Fax (973) 829-8045

# EXHIBIT J

JOHN A. NAPOLITANO, ESQ.  
MORRIS COUNTY COUNSEL  
CLEARY GIACOBBE ALFIERI JACOBS LLC  
Attorneys At Law  
169 Ramapo Valley Road  
Upper Level 105  
Oakland, New Jersey 07436  
Tel. 973-845-6700  
Fax. 201-644-7601  
Anthony P. Seijas, Esq. (Attorney ID: 029711996)  
Michael A. Augello, Jr., Esq. (Attorney ID: 030022007)  
*Attorneys for Plaintiff*

COUNTY OF MORRIS,

Plaintiffs

v.

MORRISTOWN and ERIE RAILWAY, INC.

Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: MORRIS COUNTY

Docket No: MON-

Civil Action

**AFFIDAVIT OF SCOTT DIGIRALOMO**

I, Scott DiGiralomo, am the Director of Law and Public Safety and the Emergency Management Coordinator for the County of Morris. I am familiar with the facts underlying the Verified Complaint and make this affidavit in support of the County of Morris' Order to Show Cause to prohibit Defendant, Morristown and Erie Railway, Inc. ("M&E") from storing butane and propane on the County of Morris' railway tracks.

1. The Office of Emergency Management, County Fire Marshal, County Health,

and the County Hazardous Materials Response Team are all part of my Department.

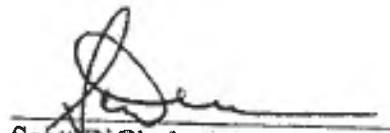
2. The County Office of Emergency Management is responsible for the development and updating of the County Emergency Operations Plan.

3. I first became aware of a plan by the M&E Railroad to store Liquefied Petroleum Gas (LPG) rail cars within the County on June 1, 2016. At no point was I, nor any my staff, contacted by anyone from M&E to discuss emergency response preparedness or contingency plans. In essence, the loaded rail cars were moved into the County before the emergency response community had the opportunity to plan a specific response for an emergency involving a large number of LPG railcars. In addition, I contacted the OEM coordinators for Mount Olive, Washington Township, Roxbury and was told they were made aware of the LPG railcars.

4. As a result, there is currently no plan in place for a specific response for any emergency involving the LPG railcars.

5. In addition, the gas being stored on the tracts is non-odorized which makes it much more difficult to discover a gas leak or other type of emergency.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false. I am subject to punishment.



Scott DiGiralomo

Dated: June 6, 2016

**FACSIMILE SIGNATURE CERTIFICATION PURSUANT TO R. 1:4-4(c)**

I hereby certify that I acknowledge that the affiant acknowledged the genuineness of the signature of the affiant of the certification to which this is attached and the original will be filed with the court upon request of either the court or a party.

Dated: June 6, 2016

JOHN A. NAPOLITANO, ESQ.  
MORRIS COUNTY COUNSEL

By:

  
Anthony P. Seijas, Esq.  
Cleary Giacobbe Alfieri Jacobs, LLC  
Attorneys for Plaintiff, County of Morris

# EXHIBIT K

**NON-ODORIZED**

**LIQUEFIED  
PETROLEUM GAS**

AB  
AB

PAINT  
SHOP  
SYSTEM