

MODESTO & EMPIRE TRACTION COMPANY



Freight Tariff M&ET 9500

DEMURRAGE RULES AND CHARGES APPLYING AT POINTS ON THE MODESTO AND EMPIRE TRACTION COMPANY

THIS TARIFF IS ALSO APPLICABLE ON INTRASTATE TRAFFIC, EXCEPT WHERE EXPRESSLY PROVIDED TO THE CONTRARY IN CONNECTION WITH PARTICULAR ITEMS.

ISSUED BY:
MODESTO & EMPIRE TRACTION COMPANY
PO Box 3106
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METHOD OF ADDING, CHANGING OR DELETING ITEMS IN THIS TARIFF

Changes to this tariff will be made by issuing supplements. These supplements will show the action taken on each item, namely:

- A** Increase
- C** Change resulting in neither an increase nor a decrease
- R** Decrease

There will be only one supplement to this tariff in effect at any time. Any item contained in a prior supplement will be brought forward to subsequent supplements

TEM	GENERAL RULES AND REGULATIONS
APPLICATION	
5	<p>Explanation of Abbreviations and Reference Marks</p> <p>For explanation of abbreviations and reference marks not explained in individual items of this tariff, as amended, see Item 50000.</p>
10	<p>Supplements and Reissues</p> <p>When reference is made in this tariff, or supplements, to other publications for rates or other information, it includes "Supplements thereto or successive issues thereof".</p> <p>When reference is made in this tariff to items, it includes "reissues" of such items.</p>
15	<p>Method of Canceling Items</p> <p>As this tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff, or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 100-A cancels Item 100 and Item 300-B cancels Item 300-A in a prior supplement which, in turn, cancelled Item 300.</p>

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SECTION 1 – CAR DEMURRAGE RULES AND CHARGES

ITEM	APPLICATION
100	<p>General Application</p> <p>The rules and charges published in this tariff are the separately established rules and charges of the Modesto and Empire Traction Co. (M&ET) and apply at all points on the M&ET, except where otherwise provided.</p> <p>The disposition of a car at its point of detention determines the purpose for which the car is held and the rules applicable thereto, except where there are specific provisions to the contrary.</p> <p>Demurrage charges will be assessed against the loader at origin and Consignee or Care-of-Party at destination who will be responsible for payment of such charges.</p>

110	<p>Glossary of Terms</p> <p>For the purpose of applying provisions of this tariff, the following terms are defined and will govern:</p> <p>ACTUAL PLACEMENT – When a car is placed in an accessible position for loading or unloading at a point designated by the consignor, loader, consignee, care-of-party or unloader.</p> <p>APPROPRIATE - To commence the loading or use of a car whether or not it is used in transportation service.</p> <p>ASSIGNED CAR – A car of any ownership specifically requested and assigned to a shipper by a railroad.</p> <p>ASSIGNEE – A shipper who has requested and has been assigned specific cars.</p> <p>CARE-OF-PARTY – The party to whom car placement is to be made pursuant to the bill of lading, if other than the consignee at destination. When the bill of lading indicates a Care-of-Party, said party will be responsible for demurrage and storage charges.</p> <p>CARS HELD FOR LOADING – Cars held for the complete or partial loading of a car in conformity with M&ET loading and clearance rules, and prior to the receipt of forwarding instructions.</p>
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CARS HELD FOR UNLOADING – Cars held for complete or partial unloading of a car prior to receipt of advice from the consignee, care-of-party or unloader that the car is empty and available for the railroad or is ready to forward to final destination.

CONSIGNEE – The party designated on the bill of lading as the entity entitled to receive delivery of car from carrier. Consignee would be responsible for any demurrage that accrues at point of unloading except when bill of lading also designates a Care-of-Party, in which case the Care-of-Party will be responsible for demurrage and storage charges.

CONSIGNOR – The party designated on the bill of lading as the entity shipping the car to consignee.

CONSTRUCTIVE PLACEMENT – When car consigned or ordered to a private track, an industrial interchange track, or an other-than public delivery track cannot be actually placed because of a condition not attributable to railroad as described in rules and provisions of this tariff.

CREDIT (DEMURRAGE) – An incentive unit of value for each car held for loading or unloading when car is released prior to the expiration of the first twenty four (24) hours of free time.

DEBIT (DEMURRAGE) – A unit of liability against a car held by or for unloading for each day or fraction of a day beyond free time.

DEMURRAGE – A charge made on freight cars held by or for consignor, loader, consignee, unloader or Care-of-Party for loading or unloading, prior to issuance of forwarding instructions or for any other purpose.

DISPOSITION – Instructions furnished or given to the M&ET which provides for the release or tender of the car from Consignor's, loader's, consignee's, unloader's or Care-of-Party's account.

ELECTRONIC OR MECHANICAL DEVICE – Communication device such as telegram, telephone, facsimile transmission, telex, mailgram, computer, etc.

EMPTY RELEASE INFORMATION – Advice by consignor, loader, consignee, or unloader given to authorized M&ET personnel that the car is unloaded and available to this railroad. Information given must include the identity of the customer, individual furnishing data, and car initial and number.

FORWARDING INSTRUCTIONS – Shipping instructions given to M&ET at the time of release containing all of the necessary information to properly transport the shipment to destination.

FREE TIME (DEMURRAGE) – A period of time following actual placement or constructive placement during which demurrage is not chargeable.

HOLD POINT – For constructive placement notification when cars are held short of billed destination because of a condition not attributable to the railroad.

LAWFUL RATE or LAWFUL CHARGE – The rate or charge as may be published in tariffs or other instruments whatsoever.

LEASED TRACKS – Any trackage assigned to a user through a written signed agreement. A leased track will be treated the same as a private track.

LINEHAUL TRAFFIC – As used in this tariff, Linehaul Traffic is defined as traffic moving to or from a point beyond switching limits except when originating at or destined to a point on a switch settlement carrier.

LOADER – Party physically loading a car at origin. Demurrage charge will be assessed against the Loader who will be responsible for payment of charges accrued at origin.

OTHER THAN PUBLIC DELIVERY TRACK – Any railroad track or portion of a track assigned for individual use or for joint use, including privately owned or leased tracks.

ORDER-IN CUSTOMER – A Customer who, by prior arrangement, has notified M&ET that cars shall not be placed for loading or unloading, or considered to be placed, until M&ET has received an order for placement from said customer, subject to rules and provisions of this tariff.

PARTIAL UNLOADING – Partial unloading of a car and the furnishing of forwarding instructions.

PRIVATE CAR - A car not owned or leased by a railroad.

PRIVATE TRACK – Any track or tracks which are not owned or leased by a railroad.

PUBLIC DELIVERY TRACK – Any track open to the general public for loading or unloading.

RAILROAD CONTROLLED CAR – A car owned or leased by a railroad.

RAILROAD PREMISES – All tracks which M&ET provides for its own uses and purposes or for general public use, and all other tracks located inside of its right-of-way or yards and terminals, except tracks located on or within the confines of property owned or leased by a customer.

REFUSED CARLOAD FREIGHT – When original loaded car is refused at destination without being unloaded.

RELOADING – When car is held for loading after being released as an empty.

RESHIPMENT – The subsequent movement of previously delivered shipment under additional rate authority, by which the entire original lading, without being unloaded, is forwarded in the same car to another destination, or another place of delivery at the same destination, which requires movement beyond the confines of the industry or the public delivery yard where the car has been originally delivered.

SPOT-ON-ARRIVAL CUSTOMERS – Any customer who is not an order-in-customer. For spot-on-arrival customers, M&ET will place cars for loading or unloading immediately upon their availability for placement, without notification.

STOPPED IN TRANSIT – When car is held enroute because of any condition attributable to the consignor, consignee or owner.

TENDER – The actual or constructive placement of an empty or loaded car.

TIME – Time to be observed is in effect in the community where the car is held.

UNLOADER – Party physically unloading car at destination.

120

Cars Subject to Demurrage Rules and Charges

Except as otherwise provided, all Railroad and Privately owned cars held for or by consignors, loaders, consignee, or unloaders are subject to demurrage rules and charges contained herein.

130

U.S. Holidays Observed by M&ET

U.S. Holidays shall mean only the days listed below:

New Year's Day -	January 1, (see Note)
President's Day -	Third Monday of February
Good Friday -	Friday before Easter
Memorial Day -	Last Monday of May
Independence Day -	July 4 (see Note)
Labor Day	First Monday of September
Thanksgiving Day -	Fourth Thursday of November
Day after Thanksgiving -	Friday after Thanksgiving
Christmas Eve Day -	December 24
Christmas Day -	December 25 (see Note)

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New Year's Eve Day - December 31
 Note – When this date occurs on a Sunday, the following Monday will be observed as the holiday.

140

Demurrage – General Free Time Rules and Provisions

Free time as designated will be allowed for each car (Note):

A. Forty Eight (48) Hours

1. Cars held for unloading as defined in Items 110 and 240.

B. Twenty Four (24) Hours

1. Cars held for loading as defined in Items 110 and 220.
2. Cars held for purposes other than loading or unloading as defined in Item 250.

Note – Free time will be computed from the first 12:01 AM following actual or constructive placement. For the purpose of computing free time, Sundays and holidays will be excluded.

150

Demurrage – Charges

After expiration of free time or without free time allowance, when none is provided, the following charges per car per day, or fraction of a day will be made until car is released:

\$35.00 per each chargeable day

The applicable charges will accrue on all Sundays and holidays subsequent to the expiration of free time.

160

Demurrage – Computation of Charges

- A. All demurrage charges will be billed on a monthly basis.
- B. Credit(s) will be applied to offset debit(s) accruing during the same month. Credits earned on cars held for loading shall not be used to offset debits accruing on cars for unloading, nor shall credits earned on cars held for unloading be used to offset debits accruing on cars held for loading.
- C. Credits earned and debits accrued can only be applied to one consignee or consignor at one station during one month. A maximum of one (1) credit may be earned on any one (1) car when applied to cars held for loading or unloading.
- D. The applicable charges will accrue on all Sundays and holidays subsequent to the expiration of free time.
- E. At the end of each calendar month, the total number of credits will be deducted from the total number of debits. If the credits equal or exceed the

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	<p>debits, no charge will be assessed. If the debits exceed the credits, a charge as prescribed in Item 150 will be assessed for each excess debit. No payment will be made by M&ET for excess credits. Credits earned during a given month cannot be applied to another month.</p> <p>F.</p>
<p>170</p>	<p>Demurrage – Non-Application of Provisions</p> <p>The following cars are not subject to Demurrage:</p> <ul style="list-style-type: none"> A. Cars for loading or unloading of M&ET company material held on M&ET tracks or private tracks connecting therewith. B. Cars of railroad ownership, leased for storage of commodities while held on lessee’s track and not used in transportation service. C. Loaded private cars held on private tracks, except as provided in Item 180, Provision for Constructive Placement. D. Empty private cars held on railroad or private tracks. E. Empty cars ordered and rejected as unsuitable for loading within 24 hours following actual placement.
<p>180</p>	<p>Demurrage – Provisions For Constructive Placement</p> <p>Car or cars consigned or ordered to a private track, an industrial or an other-than-public delivery track that cannot be actually placed because of a condition attributable to the consignor, loader, consignee, Care-of-Party, or unloader, including order notify and in-bond shipments will be considered constructively placed.</p> <p>Such cars will be held at destination, or if it cannot reasonably be accommodated there, at an available hold point and notice shall be sent or given to the consignor, loader, consignee, Care-of-Party or unloader that the car is held (naming the hold point if not held at destination) and that railroad is unable to effect placement.</p> <p>If, however, car is placed on the private loading or unloading track, industrial interchange track or other-than-public delivery track serving the consignor, loader, consignee, Care-of-Party or unloader the car shall be considered constructively placed without notice.</p> <p>If for railroad’s convenience, the car is held on constructive placement on a privately leased track or other private track, the car will be subject to demurrage and storage rules of this tariff.</p>
<p>190</p>	<p>Demurrage – Allowance Permissible For Relief of Charges</p> <p>In order to be allowed relief as indicated below, M&ET must receive a claim in</p>

writing within ninety (90) calendar days after the bill is issued. The claim must fully state the conditions and car number and initials of cars involved in the disputed billing.

RAILROAD ERROR

- A. If, through railroad error, incorrect demurrage charges are assessed, demurrage charges will be adjusted to the amount that would have accrued but for such error.
- B. Bunching and run arounds of cars will not be considered as railroad error, and will not be adjusted as such.
- C. The following formula will be used by M&ET in determining the extent of, and providing relief from, charges for railroad delays caused by M&ET:

No allowance will be made unless all cars are unloaded before the next switch is made. If a switch is missed when a siding is full of empty cars, one day extra free time is to be allowed on each car under constructive placement at the time the switch was missed. If a switch is missed when only a part of the cars on the siding are empty, one day extra free time will be allowed on a proper portion of the cars under constructive placement. This proportion corresponds to the proportion of empty cars to the total number of cars on the siding when the switch is missed. When switches are regularly made twice a day, half of the above allowance will be made, and so on.

- D. When cars are inaccessible for loading or unloading, an allowance will be made for delay directly attributable thereto, subject to the following:
 - 1. On other-than-public delivery tracks when there is disability on this railroad.
 - 2. On public delivery tracks only when an obstruction is on the premises of this railroad.
- E. Allowance will be made for delay in placing or for interruption in loading or unloading cars consigned or ordered to a track other than a public delivery track, if such is used by two or more shippers or consignees and the delay or interruption is attributable to the joint use of the track. Allowance will be made if a car displaced in switching is not replaced when the switching is completed.

STRIKE INTERFERENCE

When it is impossible to load or unload or receive cars from, or make cars available to M&ET because of strike interference at the point where the loading or unloading is to be accomplished, demurrage days will be charged at the rate of \$20.00 per day during the period of strike interference, provided:

- A. The disruption exceeds ten (10) consecutive days.
- B. A claim, in writing, is presented to M&ET within thirty (30) days, exclusive of Sundays and holidays, after the date on which the strike interference ceases, or the date on which demurrage bill is rendered, whichever is latest, stating the date and time strike interference began and ended.
- C. The provisions of this item will not apply to:
 - 1. Inbound cars when waybills are dated four (4) or more days after the beginning of strike interference.
 - 2. Cars for loading when ordered after the beginning and prior to the ending of strike interference.

WEATHER INTERFERENCE

On cars placed for loading and unloading, when because of earthquakes, floods, hurricanes or tornadoes and conditions in the devastated area resulting therefrom, and the operations of the consignor or consignee are disrupted, the detention directly chargeable thereto shall be eliminated from demurrage charges assessed and billed provided the disruption exceeds forty-eight (48) hours in duration, and claim is presented in writing to M&ET within 90 calendar days after the date on which demurrage bill is rendered, stating fully the circumstances which prevented the loading or unloading.

On cars placed for loading or unloading on public delivery tracks, when the condition to the weather during any part of the prescribed free time or the adjusted free time as provided, is such as to make it impossible to place freight in cars or remove it from cars without serious injury to the freight, the free time will be extended until a total of forty-eight (48) hours for loading or unloading, free of such weather interference shall have been allowed, provided the consignor, loader, consignee or unloader request such additional time advising the nature and duration of the weather interference at or prior to the time the car is released.

200

Demurrage – Notification/Rules and Provisions

NOTIFICATION TO CONSIGNOR, LOADER, CONSIGNEE, CARE-OF-PARTY OR UNLOADER

- A. When the consignor, loader, consignee, care-of-party or unloader is entitled to receive notification, such notification shall be given within twenty-four (24) hours of arrival of car at destination or hold point.
- B. When required, notification will be furnished in writing, verbally, electronically or via mechanical device. Such information shall include:
 - 1. Car initials and number – if contents are transferred enroute, must include original car initial and number.
 - 2. Contents.
 - 3. Point of shipment.

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4. Hold point.

- C. A record of notification shall be maintained by M&ET.
- D. When consignor, loader, consignee, care-of-party or unloader utilizes an electronic or mechanical device to accept messages, notification left on device will be considered as having been received.
- E. Where any part of the contents of the car has been inspected or removed by the consignee, care-of-party or unloader prior to notification by M&ET, such inspection or removal shall constitute the required notification.

NOTIFICATION TO M&ET

When electronic or mechanical devices are used to furnish notification to the M&ET the recorded date and time that instructions are received will govern.

NOTIFICATION TO CONSIGNOR OR CONSIGNEE

The following notification will be furnished or made applicable as indicated:

CARS FOR OTHER THAN PUBLIC DELIVERY TRACKS

- A. Delivery of cars upon other than public delivery tracks, including lead tracks of the consignee or party entitled to receive same, will constitute notification to consignee.
- B. Notice of constructive placements shall be sent or given if cars are held on tracks of M&ET at available hold point or at billed destination due to any conditions attributable to the consignor, loader, consignee or unloader which prevents the M&ET from making actual placement.

CARS FOR PUBLIC DELIVERY TRACKS

On cars for loading or unloading on Public Delivery Tracks, notification shall be sent or given within the first twenty-four (24) hours following arrival or after actual placement. Time will be computed from first 12:01 A.M. after actual placement (see Note) and after required notice has been sent or given.

Note – When placement of cars on public delivery tracks cannot be made on account of more cars on hand than such tracks will accommodate, such cars will be constructively placed following notification of same, provided one or more of such consignor’s , loader’s, consignee’s or unloaders’s cars are placed or offered for placement each time the facility is switched.

CARS STOPPED IN TRANSIT

When cars are held in transit because of any condition attributable to the consignor, consignee or owner, notice shall be given to party ordering cars held

upon arrival of cars at the hold point. This will not apply to cars stopped in transit for milling or other in-transit privileges, but notice will be given as otherwise required.

REFUSED CARLOAD FREIGHT

When carload freight is refused at destination, M&ET shall give notice of such refusal to the consignor or owner when known, or when not known, to the agent at point of shipping.

UNCLAIMED CARLOAD FREIGHT

When carload freight cannot be delivered and remains on hand undelivered and unclaimed after the expiration of five days, computed from the first 12:01 A.M. after notification has been given, a notice to that effect shall be given to the consignor or owner when known, and when not known, to the agent at point of shipment.

Notification of unclaimed freight shall not be sent under the following circumstances:

- A. When actually placed, or constructively placed, for delivery on other-than-public delivery tracks or industrial interchange tracks serving the consignee or unloader.
- B. When the Consignee has paid the freight charges at the destination, or has ordered in writing that the car be placed for unloading.
- C. When consignor has advised either the destination or originating railroad in writing that such notice is not required.
- D. When the consignor and consignee are the same and a notice of arrival has previously been sent or given.
- E. When the bill of lading has been surrendered or an indemnity bond furnished for shipment covered by "to order" bill of lading.
- F. When consignor or owner has been previously sent or given a notice by wire that the car is being held for disposition instructions.

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Demurrage – Cars Held for Partial or Complete Loading

LOADING

Loading is the complete or partial loading of a car in conformity with M&ET loading and clearance rules, and the furnishing of forwarding instructions.

TENDER

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The notification, actual or constructive placement of an empty car placed on orders of the consignor or loader.

RELEASE

- A. Date and time forwarding instructions are received.
- B. Cars placed on the interchange track(s) of customers who perform their own switching, must be returned back to the interchange track(s) to complete release.
- C. Cars found to be improperly loaded or overloaded at origin will not be considered released until the load has been adjusted properly and clearance obtained.

COMPUTATION

- A. Time will be computed from the first 12:01 A.M. after tender until the M&ET receives forwarding instructions for each car released.
- B. If the car is placed prior to date for which it was ordered, time will be computed from 12:01 A.M. of the date ordered, until M&ET receives forwarding instructions for each car released.
- C. When the same car is unloaded and reloaded, empty release information must be furnished. If information is not furnished, demurrage will continue until forwarding instructions are received by M&ET.
- D. On cars used for reloading, time will be computed from the first 12:01 A.M. after advice is received that the car is empty, until its release. If no advice is received when the car is made empty, demurrage will continue until forwarding instructions are received by M&ET.
- E. ON appropriated cars, time will be computed from the actual commencement of loading or use of the car and continue until either the car is released or M&ET has evidence that the car has been unloaded and is no longer in use.

APPROPRIATED CARS

When an empty car is appropriated, without being ordered, it shall be considered as having been ordered and actually placed at the time so appropriated. When an empty car placed on an order of one party is appropriated by another party without permission of this railroad, it shall be considered as having been initially ordered and placed on the order of the party appropriating the car.

240

Demurrage – Cars Held For Partial or Complete Unloading

Unloading is the complete or partial unloading of a car and advice from consignee, care-of-party or unloader to the M&ET that the car is available.

TENDER

The notification, actual or constructive placement of a loaded car.

RELEASE

- A. Date and time that M&ET receives advice that the car is empty.
- B. Cars placed on the interchange track(s) of customers who perform their own switching, must be returned back to the interchange track(s) to complete release.
- C. When the same is unloaded and reloaded, empty release information must be furnished. If information is not furnished, demurrage will continue until forwarding instructions are received.
- D. On private cars, demurrage will continue until car is actually placed or ordered for unloading on private tracks.

COMPUTATION

Time will be computed from the first 12:01 A.M. after tender until the car is released.

250

Demurrage – Cars Held – Other Than Loading /Unloading

APPLICABLE TO CARS HELD

- A. On orders of the consignor or consignee.
- B. Cars received under load from another railroad and held by M&ET for forwarding directions or other disposition.
- C. Loaded private cars received from private tracks and held by M&ET for forwarding directions or other disposition.
- D. Cars held for diversion, reconsignment or reshipment.
- E. Loaded cars refused by consignee, care-of-party or unloader at destination.
- F. Cars held in transit which also include:
 - 1. Cars Found to be overloaded or improperly loaded;
 - 2. Cars held for surrender of order-notify bills of lading.
 - 3. Cars held waiting for payment of lawful charges;
 - 4. Cars destined for delivery to a connecting carrier;
 - 5. Cars held for any other purpose which is not attributable to M&ET lines.
 - 6. Cars held as a result of conditions attributable to the consignor or consignee.

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G. Empty cars, either appropriated or ordered for loading and not used in transportation service.

DISPOSITION

Information, including forwarding instructions or empty release, which allows M&ET to either tender the car or release the car from the consignor's or consignee's account.

TENDER

The notification, actual or constructive placement of a loaded car.

RELEASE

Date and time that the M&ET receives disposition of the car, including forwarding instructions.

COMPUTATION (See Note 1)

Time will be computed from the first 12:01 A.M. after the tender until release, on cars that are:

- A. Diverted, reconsigned or reshipped.
- B. Stopped in Transit.
- C. Ordered for loading and not used in transportation service (Will not apply on cars rejected as unsuitable for loading) (Note 2).
- D. After cars are received by M&ET until date of disposition on:
 - 1. Cars received from connecting carriers;
 - 2. Loaded private cars returned to railroad tracks.
- E. After tender until date of refusal on loaded cars refused by the consignee or unloader.
- F. After tender until the date disposition is received from consignor of load refused by consignee. (Note 3)

Note 1 – For free time and charges for rules contained in this item, refer to Items 140 and 150.

Note 2 – No free time will be allowed for empty cars either appropriated or ordered and not used in transportation service.

Note 3 – Upon refusal of load at destination, M&ET will notify the consignor or owner within twenty-four (24) hours following such refusal.

50000

Explanation of Abbreviations and Reference Marks

(I) - Increase

(R) - Reduction.

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