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via electronic filing

May 8, 2019

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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Public Record

**Re: STB Docket No. EP 754,
Oversight Hearing on Demurrage and Accessorial Charges**

Dear Ms. Brown:

Peabody Energy Corporation ("Peabody") submits these comments in response to the Notice of Public Hearing issued by the Surface Transportation Board on April 8, 2019 in the above-captioned proceeding. Peabody (NYSE: BTU) is a leading global pure-play coal company, the largest coal producer in the United States and a leading seaborne metallurgical and thermal coal producer in Australia, serving power and steel customers in more than 25 countries on six continents.

In 2018, Peabody sold approximately 187 million short tons of coal worldwide, including 154 million short tons in the United States. For nearly all of our U.S. sales, Peabody's utility customers contract for rail service to transport coal from our mines to their respective power plant(s). As a result, Peabody has invested a substantial amount of capital in our rail loading infrastructure over the last couple of decades to promote prompt, efficient and reliable loading services for our customers and the railroads. In 2018, Peabody loaded – on average – approximately 27 unit trains of coal per day for our customers, so we have a deep understanding of rail networks and the intricacies involved. Because of the significant effect of rail networks and shipping on our customers and our business, Peabody has a laser focus on actions of the railroads and proposed rulings by the Surface Transportation Board. Peabody fully understands that actions by the Board and by the railroads materially impact the delivered cost of coal, our customers' experience, and ultimately the demand for coal in the U.S.

While Peabody is not requesting to speak at the hearing on May 22, we must stress that the appropriate use of demurrage, storage, and other accessorial charges by the railroads is crucial to the creation and maintenance of an efficient, cost-effective, and value-driven rail transportation system. However, Peabody does not believe that companies like ours – which sit in between the shipper and receiver – should be responsible for demurrage, storage or accessorial charges. Nevertheless, to the extent the Board continues to allow for such charges, the system managed by the Board should be fair and balanced. In our industry, we know that a constructive partnership between shippers, mines, and railroads is necessary to ensure (1) the continued viability of reliable coal-produced electricity, (2) the success of our customers and their employees, and (3) the continued competitiveness of coal with other fuel sources like natural gas and renewable fuels.

Additional charges by a railroad – often for actions that are difficult for coal producers like us to verify – are counter to these important goals. For example, about two-thirds of the cost utilities pay to purchase and transport coal from the Powder River Basin in Wyoming to power plants nationwide is attributable to the transportation rates charged by the railroads (e.g., a utility may pay \$20 per ton for rail service but just \$12 per ton, for example, for the coal). Additional charges incurred on coal shipments from the Powder River Basin will increase the risk of coal unit retirements and nudge customers to switch to other fuel sources like natural gas and renewables. While this outcome is obviously of concern to Peabody, it could also make the U.S. energy supply less reliable and needlessly imperil the employment of our customers' workforces. It is clear that the issue before the Board at the upcoming hearing will have far-reaching impact and we urge the Board to consider all sides carefully.

Charges to Third Parties

As noted above, nearly all of the coal mined by Peabody in the U.S. is transported by rail service to electric utilities, port locations, and other destinations according to arrangements between the railroads and third parties (usually, the coal buyer). Thus, for substantially all shipments, Peabody is not the shipper and does not arrange rail transportation or have a transportation contract with the serving railroad. Yet Peabody has been assessed demurrage charges by a western railroad even though the delay that supposedly justifies the charges was not due to any act (or lack thereof) by Peabody, but directly related to decisions made by the railroad itself. When unit trains are moving under contract, Peabody strongly believes it is fundamentally unfair for railroads to assess charges related to that movement to an entity outside of the contract. This is especially true because there is no way for a non-party to know why the railroad imposed the charge (and take any corrective measures, if appropriate), determine whether the charges are appropriate, or audit whether the railroad charged the fee twice or multiple times.

Proposed Path Forward

As the Board may be aware, unit train loading operations at coal mines require reliable, efficient, and timely rail service in order to maintain the orderly flow of train loadings and shipments. Coal mine operators must undertake a series of sequential steps before any unit train can be loaded, and, in some coal producing basins, coal must be produced just in time as trains arrive. Consequently, the sequence of trains and the timing of arrival are crucial to the efficient operation of the mine.

To prepare to load a train requires (1) inventory build-up of coal with the appropriate specifications to correlate with customer purchases, (2) coal processing and blending, (3) coal washing (if necessary), (4) applying chemical treatments to the coal (if necessary), and (5) staging of coal to be ready for loading at the loadout facility. Transparent and reliable rail operations are critical to the success of this effort.

We believe it is crucial for the Board to consider whether it is appropriate for the railroads to assess demurrage, storage and other charges on coal-mine operators like Peabody, which sit between shipper and receiver, and do not have a contract with the railroad. However, if the Board continues to support such charges and practices, Peabody offers the following specific comments and recommendations to the Board based on our many decades of experience loading unit trains at our mines.

A cooperative partnership will facilitate efficient and cost-effective rail operations. Peabody has proven over the past several decades that we are willing to engage and work with railroads and customers to improve the efficiency and cost-effectiveness of rail transportation. Peabody has a tremendous incentive to do so, as increases in the cost of delivered coal caused by railroad inefficiencies risk coal unit retirements and drive our customers to other fuel sources (e.g., natural gas and renewable fuels). Only when the entire coal supply chain, including rail transportation, runs in an efficient and cost-effective manner, can coal compete effectively. After all, the demand for coal depends on the ability of coal-powered electricity to compete economically against electricity produced from all fuel sources; when coal-powered electricity is too expensive, cheaper electricity dispatches in its place. The Board should promote policies that encourage and incentivize railroads to continue to cooperate with customers, mine operators, and other entities in the supply chain.

Transparency and communication are important and represent a common-sense solution. Shippers, consignors, consignees, and essentially every other entity touching the railroads benefits from transparency in railroad charges and practices. Rail customers and others must understand what railroad tariffs apply, when they apply, and when they are triggered. If a railroad imposes a

charge, basic fairness requires that the charged party receive a notification immediately from the railroad. This approach enables the charged party to determine what caused the delay and gives it the opportunity to resolve the delay in real time in order to mitigate properly and allow efficient operations to resume as soon as practicable. Immediate notification would also enable the party to collect information and documentation at the time of the incident in order to determine whether the charges were appropriate. When an invoice is received weeks or months after the fact, efficiency is not served, and administrative resolution of the matter is frustrated. Common sense suggests these problems are best addressed in real time and we believe that Board policies should encourage these solutions.

The push for better operations is a two-way street. Peabody understands and acknowledges that true delays caused by shippers and others can negatively impact railroads. The Board should understand that we share the railroads' desires here, especially since delays affect our customers' overall satisfaction with the purchase of coal. But the converse is also true. Whenever rail operations are delayed or interrupted, companies like Peabody incur real costs. The following examples represent actual situations that cause Peabody to incur real costs, some of which occur daily:

- Inbound empty trains arrive later than scheduled
- The inbound pipeline of scheduled empty trains suddenly changes, requiring Peabody to redirect resources to ensure we load the correct quality for our customers (in some cases, this results in Peabody incurring penalties from the customer if we are unable to load the correct quality of coal due to lack of timely notice from the railroad on scheduling changes)
- Loaded trains sit idle on Peabody's rail loops, waiting for the railroad to find crews to reboard and move the trains, and preventing the loading of another train while the loops are occupied

Under the current system, there is no consequence for these railroad failures, and the real costs that are suffered by rail customers and coal producers go unaddressed. Balance and fairness are needed, and charges for delays should be symmetrical. The double standard inherent in the current system serves the railroads alone, but operate at the expense of coal producers and our customers.

Credits are necessary and we know they work. Fair and reasonable application of demurrage and related charges mean that shippers, consignors, consignees, and others should be given positive reinforcement (or credits) when their operations exceed the baseline. For example, if a shipper has 24 hours free time to load rail cars, and consistently completes its loading in 12 hours, then it is unreasonable for that shipper to be charged a significant demurrage bill for the one day that loading took 36 hours instead of 24 hours. Credits should be given to the shipper where loading was completed in far less

than the maximum time allotted. This has worked with great success in similar contexts. For example, the ocean freight industry has perfected a demurrage and despatch program to allocate charges appropriately between the buyer and seller that account for opportunity costs. Peabody would be happy to provide the Board with examples of how this system could be applied to the rail industry. Again, transparency, balance, and fairness are necessary to make this partnership work.

Peabody looks forward to solutions-oriented policies and a continued dialogue. Peabody relies every day on the rail service provided to our coal mines and appreciates the cooperative relationship we have developed with our railroad partners over the past several decades. Peabody hopes that we can continue to work with our railroad partners toward a cooperative, transparent, and equitable rail transportation system that allows for the delivery of coal at attractive delivered prices versus competing fuels. This is especially important in today's climate of abundant low-cost electricity that is produced by natural gas and renewables in addition to coal. Unfair and unjustified charges by railroads frustrate our business and the businesses of numerous other industries that rely on rail transportation.

Peabody appreciates the Board's attention to the important issues surrounding the applicability of demurrage, storage, and accessorial charges. Peabody respectfully requests that the Board carefully consider the recommendations proposed herein and otherwise remain cognizant of the unique situations presented by rail operations at unit coal train loading sites.

Very truly yours,



Bryan Galli
Group Executive and Chief Marketing Officer
Peabody Energy Corporation