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SURFACE TRANSPORTATION BOARD

STB Docket No. EP 759

DEMURRAGE BILLING REQUIREMENTS

**JOINT REPLY COMMENTS OF THE
AMERICAN CHEMISTRY COUNCIL, CORN REFINERS ASSOCIATION,
THE FERTILIZER INSTITUTE, AND THE NATIONAL INDUSTRIAL
TRANSPORTATION LEAGUE**

The American Chemistry Council, Corn Refiners Association, The Fertilizer Institute, and The National Industrial Transportation League (“Joint Association Commenters”) hereby submit these Joint Reply Comments concerning the Notice of Proposed Rulemaking the Surface Transportation Board served in the above-captioned proceeding on October 7, 2019 (the “NPRM”). Each of the foregoing associations separately filed opening comments on November 6, 2019.

The main assertion among railroad commenters is that the proposed billing requirements are unwarranted because billing problems do not exist, and customers have access to extensive demurrage¹ information via railroad web portals. Some railroads also warn that the requirements would constitute a return to the demurrage regulations that the Interstate Commerce Commission found unnecessary.

As explained in Part I, below, billing issues do exist and demurrage information is not readily accessible via railroad web portals. Requiring railroads to place certain minimum

¹ References to demurrage also include private car storage. *See* NPRM at 3 n.4.

demurrage information in machine-readable² invoices is a reasonable and worthwhile approach to reducing the significant burdens rail users face when attempting to verify and understand the basis for demurrage charges.

As explained in Part II, below, railroad concerns about re-regulation are misplaced. The demurrage regulations that the ICC repealed prescribed not only the content of demurrage records, but also the methods of maintaining them. In contrast, the Board's proposed rules, with the modifications proposed by ACC and Dow, Inc., in their Opening Comments, represent a performance-based invoicing standard that gives railroads substantial discretion in how they invoice demurrage charges.

I. Minimum demurrage billing requirements are necessary to enable rail users to readily audit demurrage invoices for errors and opportunities to efficiently use rail assets.

Railroad commenters overlook the enormous burden of auditing demurrage invoices. Although railroads assert they provide extensive information about demurrage events via their web portals, obtaining this information is so tedious that it is impractical for auditing purposes. Further, most railroads present invoices in a form that requires manual review instead of in a machine-readable form, which can support audits using electronic tools. Thus, auditing demurrage invoices is a laborious manual process that rail users find challenging to perform on more than a spot basis. Making available certain minimum demurrage information in a useable

² As used in these comments, "machine readable" means in a structured data file format that is open and capable of being easily processed by a computer. A format is open if it is not limited to a specific software platform and not subject to restrictions on re-use. Examples of machine-readable formats are Comma Separated Values (CSV), Office Open XML (XLXS), and OpenDocument Spreadsheet (ODS). The Board and railroads currently use XLSX files to convey and report certain data, such as railroad performance data, commodity revenue data, and freight commodity statistics.

electronic format would substantially reduce these burdens and more than offset the railroads' cost of providing this information.

A. Railroad web portals do not make demurrage information readily accessible for understanding demurrage assessments.

Although many railroad commenters claim that extensive demurrage-related information is available on their web portals, obtaining this information for auditing invoices is onerous.

Also, some web portals do not provide this information for download in a useable format.

As Dow, Inc., describes in its Reply Comments, locating information on railroad web portals is a multistep process. A customer cannot simply enter a demurrage invoice number and download a report of all the car-event data for each car on the invoice. Rather, the portals often require customers to access information for each car separately. Even where portals enable users to generate a billing month report with information for multiple cars, users often must search multiple reports for the car data they seek since the billing months frequently do not match invoice dates.

Also, some web portals do not enable users to download data in a useable machine-readable format, like an Excel spreadsheet. Rather, the information is often displayed as web page data which is difficult to copy and process for use. Users effectively can only cross-check or integrate this information with demurrage invoices manually. They also would not be able to aggregate this data over time to conduct higher-level analytics that could identify behavioral adjustments that will result in more efficient use of rail assets.

Rail users derive little benefit from information that is available on a web portal, but not readily accessible. Under these circumstances, web portals unnecessarily increase the cost of auditing demurrage invoices, making it more challenging for rail users to identify erroneous charges and opportunities to increase efficient use of rail assets.

B. Most railroads provide demurrage invoices in a format that is not machine readable and, thus, onerous to audit.

Based on information from Dow, Inc., only Norfolk Southern currently provides demurrage invoices in machine-readable format. Other Class I railroads provide their invoices in paper or PDF format, which are not machine readable.³ To the extent these railroads make their invoice available in machine-readable format on their web portals, those machine-readable invoices are not readily accessible or of limited availability.

Auditing demurrage invoices that are not machine-readable is resource-intensive. Rail users must manually cross-check and integrate the data in these invoices with their own data and other data on carrier web portals. They also must manually check calculations of demurrage days, credits, and charges. The manual nature of these audits increases the chance of auditing errors, which lengthen the audit task.

In contrast, machine-readable invoices enable efficient and effective auditing. Data in these invoices can be cross-checked and integrated with other data electronically. For example, data in an XLSX spreadsheet can be instantly matched with data in another spreadsheet using a lookup function and a discrepancy can produce an error message in an instant.⁴ Similarly, calculations can be performed instantly. These electronic functions also are likely to be performed with a high degree of accuracy, which reduces the time needed to audit an invoice. In

³ While data in PDF invoices may be digitally accessible, they are not machine-readable because the data is generally unstructured and must be organized for processing by a computer. For example, PDF users frequently experience this distinction when pasting text from a PDF file to a Word document to find that individual lines in a paragraph are treated as separate paragraphs separated by hard returns.

⁴ Matching assumes that a unique linking factor is present. Often, the linking factor is a car mark, which can result in linking errors where a car travels frequently and may arise multiple times in an invoice.

addition, machine-readable invoices enable data to be readily aggregated for high-level analysis that is useful for identifying behaviors that result in inefficient use of rail assets.

While there are up-front costs associated with the coding necessary to enable electronic auditing, these costs are eclipsed by the efficiencies associated with machine-readable invoices. Once coding is established, the incremental cost of auditing a machine-readable invoice is very low compared to the cost of auditing an invoice that is not machine readable. Accordingly, rail users should be able to quickly recover the up-front costs associated with machine-readable invoice audits. They also should be able to audit many more machine-readable invoices, as opposed to non-machine-readable invoices, with the same resources. This will not only better position users to take advantage of opportunities to increase the efficiency of their rail-asset use, but it will also enable users to catch erroneous charges that otherwise go undetected.

C. The high burdens associated with auditing demurrage bills results in payment of costly errors and undermines the purpose of demurrage.

Despite railroad claims that billing problems are isolated, rail users appear to be paying large amounts in erroneous charges that are burdensome to detect. For example, Dow, Inc., indicates in its Reply Comments that, while it caught hundreds of thousands of dollars in demurrage billing errors this year, many more likely went unidentified because railroads provided demurrage information and invoices in a manner that effectively limited Dow, Inc., to spot audits. If a large rail user like Dow, Inc., is experiencing significant challenges identifying erroneous charges, it is likely that rail users are generally experiencing these challenges and potentially paying large sums of erroneous charges.

Similarly, the absence of readily accessible demurrage information makes understanding the basis for demurrage charges burdensome. Carriers use certain basic information to calculate demurrage charges and credits. If this information is not readily accessible and useable, rail users

have little opportunity to determine why they were charged and make behavioral changes necessary to avoid charges in the future.

Demurrage cannot achieve its purpose if certain basic information necessary to verify and understand demurrage charges is not readily accessible and useable. The dual purposes of demurrage are to compensate for the use of rail assets beyond a free period and incentivize the efficient use of rail assets.⁵ Demurrage charges cannot achieve their compensation function if they are assessed for asset use that did not occur. Similarly, they are incapable of incentivizing efficient use when assessed in circumstances where the carrier caused inefficient asset use, where inefficient use did not occur, or the billed party was incorrectly billed for inefficient use of another user. Assessing demurrage against the wrong party or failing to award appropriate credits may even incentivize inefficiency because the responsible party will not bear any associated costs. Additionally, demurrage charges are not capable of incentivizing efficient use when the billpayer does not have readily available certain basic demurrage-event information upon which it can identify behavioral adjustments to avoid similar inefficient use in the future. Thus, it is appropriate for the Board to impose billing requirements that ensure that certain information critical to verifying and understanding demurrage charges is readily available and useable.

II. Railroad concerns about re-regulation are misplaced.

Some railroad commenters claim that the proposed rules are no different than the ICC's demurrage recordkeeping rules, which the ICC had repealed in the 1980s. But adoption of the proposed rules would not be a return to the long-repealed ICC demurrage rules.

⁵ *Policy Statement on Demurrage and Accessorial Rules and Charges*, EP 757, slip op. at 2 (STB served Oct. 4, 2019).

The old ICC demurrage rules prescribed extensive requirements for demurrage records, notices, and bills. For example, they required various demurrage records to be separately maintained for each carrier base station and satellite or nonagency station assigned to it.⁶ They required daily car reports and specified that they must be forwarded “at the end of each day to the employee or office maintaining demurrage records.”⁷ They also required track checks to be made “as near to 7:00 a.m. as possible, but not before, and which shall be completed by 11:59 a.m. . . . on a regular basis but not in the same routine manner so that consignees and consignors can anticipate when they will be made.”⁸ Additionally, the rules required minimum information in certain notices when made by telephone instead of writing⁹ and required presentation of certain demurrage bills within specific periods.¹⁰

The ICC repealed these rules because they were unnecessarily limiting. It observed that the rules “generate needless paperwork and negate the efficiencies provided by the use of computers.”¹¹ Thus, it determined that “[i]nstead of the Commission prescribing [recordation] methods, the carriers should use any type of record compatible with their particular systems of recordation, and retain the records at whatever location and in whatever manner they desire.”¹² According to the Commission, this flexible approach that allowed carriers to determine how best

⁶ 49 C.F.R. § 1253.02 (1981).

⁷ 49 C.F.R. § 1254.03(a) (1981).

⁸ 49 C.F.R. § 1254.03(b) (1981).

⁹ 49 C.F.R. § 1254.03(d) (1981).

¹⁰ 49 C.F.R. § 1254.03(j) (1981).

¹¹ Maintenance of Records, 47 Fed. Reg. 58273 (Dec. 30, 1982).

¹² *Id.*

to maintain demurrage records “is consistent with the Federal policy of less government interference in the day-to-day operations of the rail industry.”¹³

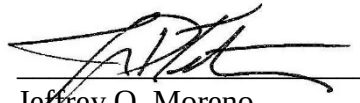
The Board’s proposed rules, with the modifications suggested by ACC and Dow, Inc., in their Opening Comments, avoid the ICC’s concerns with its repealed rules. Specifically, they do not micromanage how railroads provide demurrage information in their invoices. Instead, they identify minimum information that must be provided in the invoice. They also would require invoices to be machine-readable, which is a flexible standard that railroads can satisfy through various means and a standard that at least three railroads comply with when providing invoice information when invoicing customers or through their web portal. Moreover, the proposed rules would have little, if any, impact on day-to-day operations of railroads because they would not impose any timing requirements, content-organization requirements, or recordkeeping or notification methods.

III. Conclusion

Despite the availability of demurrage information through railroad web portals, demurrage invoices are onerous to audit. The Board’s proposed demurrage billing rules, with the modifications proposed by ACC and Dow, Inc., would significantly reduce this burden by making critical information for auditing invoices readily accessible and useable. It would also better enable rail users to identify opportunities for more efficient use of rail assets and to spot erroneous charges, which are challenging to detect today. Thus, the Joint Association Commenters urge the Board to adopt its proposed rules, with the modifications proposed by ACC and Dow, Inc.

¹³ *Id.*

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Moreno', written over a horizontal line.

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