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June 17, 2019

By E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: EP 754, Oversight Hearing on Demurrage and Accessorial Charges

Dear Ms. Brown:

The undersigned, on behalf of The National Grain and Feed Association ("NGFA"), hereby requests that the Surface Transportation Board ("STB") accept into the captioned proceeding this brief letter addressing one aspect of the Comments of the Association of American Railroads ("AAR") submitted in this proceeding on June 6, 2019. NGFA believes acceptance of this letter is warranted (1) because the AAR waited until essentially the rebuttal phase of the proceeding to provide its purported "legal context" on the issues covered by this proceeding and (2) to ensure a more complete record for the Board to pursue future actions in this proceeding.

As to the specific aspect of AAR's filing NGFA wishes to address,¹ on page 3 the AAR asserts that there are allegedly four "economic underpinnings of demurrage and storage" established by ICC and STB precedent: "(1) charges directly related to freight car utilization; (2)

¹ The failure to address any other aspect of AAR's filing should not be interpreted as endorsement of any other aspect of the filing.

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other direct operating costs related to the demurrage process; (3) capital costs related to the demurrage process; and (4) opportunity costs associated with congestion caused by excessive freight car processing.” However, AAR cites only *one* STB decision in support of this statement and does not point to any place in that decision where such “underpinnings” are mentioned. *Id.* at 3, note 6. In fact, these “underpinnings” appear nowhere in that decision. In particular, the phrases “capital costs related to the demurrage process” and “opportunity costs associated with congestion” are not contained anywhere in STB Docket No. NOR 42102, *Railroad Salvage & Restoration, Inc. – Petition for Declaratory Order – Reasonableness of Demurrage Charges*, (served July 20, 2010)(“*Railroad Salvage*”).

As *Railroad Salvage* and other cases cited by AAR establish, demurrage charges “are primarily a penalty to deter undue detention, and to a lesser extent compensation to the railroad for expenses incurred.” AAR Comments at 4, citing *Railroads Per Diem, Mileage, Demurrage – Agreement*, 1 I.C.C. 2d 924, 933 (1985)(“emphasis added”); see *Railroad Salvage* at 8 (“... demurrage is intended to compensate railroads for the expenses they incur when rail cars are detained by shippers and to penalize shippers for undue car detention.”) AAR’s attempt apparently to complicate and expand the compensation component of demurrage to include such vague and open-ended concepts as “capital costs related to the demurrage process,” and “opportunity costs associated with congestion . . .” finds no support in the only case cited by AAR for this proposition or, as NGFA suspects, any other decision of the ICC or STB.

Further, as a general matter, NGFA, based upon the reasons set forth in its written submissions and testimony in this proceeding, disagrees strongly with the AAR’s other assertion – made after the public hearing when such a position could have been raised and discussed – that the Board is limited to addressing egregious railroad demurrage and accessorial practices solely through a patchwork of individual formal complaints filed by rail customers on a case-by-case basis. AAR Comments at 9-10.

NGFA appreciates the Board’s consideration of accepting this letter into the record of this proceeding.

Respectfully submitted,



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