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November 6, 2019

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

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Re: STB Docket No. EP 757, Policy Statement on Demurrage and Accessorial Rules and Charges and STB Docket No. EP 759, Demurrage Billing Requirements

Dear Ms. Brown:

Peabody Energy Corporation (“Peabody”) hereby submits these comments in response to the Notice of Proposed Statement of Board Policy (“Notice”) and Notice of Proposed Rulemaking (“NPRM”) which were issued on October 7, 2019 in the above-captioned dockets. Peabody previously submitted comments on May 8, 2019, in STB Docket No. EP 754, Oversight Hearing on Demurrage and Accessorial Charges. Given the importance of efficient, cost-effective and reliable rail service to transport coal to electric generating stations throughout the United States, Peabody is extremely interested in and concerned by the demurrage and related issues addressed in this proceeding.

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 currently act as the “shipper” because they contract for rail service to transport coal from our mines to their respective power plant(s). To facilitate these shipments, Peabody has invested a substantial amount of capital in our rail loading infrastructure in recent 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 in the U.S., so despite not technically being a “shipper” we have a deep understanding of rail networks and the related interdependency with coal producers and utilities. Actions of the Board and the railroads themselves will materially impact the delivered cost of coal, our customers’ experience and ultimately the demand for coal in the U.S.

Rail transportation is just one aspect of a carefully calibrated supply chain covering the mining and movement of coal from the mine to the end user facility. To maximize efficient and timely rail service, coal mine operators must undertake a series of sequential steps before any unit train can be loaded, and, in some coal-producing basins, environmental restrictions necessitate coal being 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 supply chain.

As indicated in the Board's proposed Policy Statement and the many comments filed in Ex Parte No. 754 earlier this year, any use of demurrage, storage and other accessorial charges must be equitable and reasonable in order to create and maintain an efficient, cost-effective and value-driven rail transportation system.¹ As stated by the Board, the ultimate purpose of demurrage is to "incentivize the efficient use of rail assets," but rail users should only be responsible for issues "within their reasonable control." See Notice at 6 and 13-15. In order to fulfill these goals, demurrage must be properly assessed.

Peabody will not comment on every aspect of the proposed Policy Statement and NPRM, but, instead, will tailor these comments to a few key issues raised in the Notice and NPRM. The ultimate goal of the Board's demurrage regulation should be the creation of a fair system – one akin to a partnership. Peabody urges the Board to keep this goal in mind because a constructive partnership among 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 subsidized renewable fuels.

Double-Billing Should Not Occur/Invoicing Should Be To Shippers.

Peabody agrees that invoicing should be to the shipper, and thus, Peabody does not support the STB's NPRM requiring parties to provide notice to the railroad to bill the shipper. See NPRM at 11. As the Board notes, the shipper is the party on the bill of lading and can make arrangements with the railroad in their contract, so Peabody respectfully suggests that is the most efficient way to handle demurrage. Peabody also respectfully requests that the Board unequivocally state there should be no "double-billing" of two parties for the same alleged delay and Peabody's suggestion that the shipper be the party to be billed would alleviate this potential.

As mentioned above, Peabody is neither the shipper nor the receiver for substantially all of the rail shipments from its mines. Given this unique role, Peabody does not believe that coal producers should be susceptible to demurrage and similar charges that flow directly from the railroads who have no contractual privity. Coal producers would be liable for their performance to the utilities under the terms of their coal sales agreements with the utilities, who are the shippers, and, as a result, utilities would pass through demurrage charges that were appropriate for that particular mine. However, if the Board believes that demurrage is still appropriate in these situations, there must be safeguards in place to ensure that both Peabody and the shipper are not being charged for the same delay. If Peabody were to receive a demurrage bill from a railroad, there is no way for Peabody to know if the shipper or some other party has also been charged for that same or related delay. Transparency is required and, at a minimum, the Board should state that it is, *per se*, an unreasonable practice for railroads to assess fees against two entities for the same delay event.²

¹ See, e.g., Notice at 12 (Board notes that "the nation's rail transportation policy" may be "jeopardize[d]" by reductions in free time.).

² See 49 USC § 10702(2).

Credits Must Be Available.

Peabody believes that a fair and equitable demurrage system can be fostered through appropriate use of debits and credits to calculate demurrage charges. If shippers and receivers are to be charged fees for use of rail assets that is deemed excessive, then such shippers and receivers should also receive benefits (or credits) for those situations in which their actions reflect an efficient use of rail assets. See, e.g., Notice at 13 as the Board stated “[r]ail carriers and users have a shared responsibility” and Notice at 18 (Board states it is “troubled” by a “lack of reciprocity” in reports of how railroads’ debit and credit systems are implemented).

Peabody consistently loads unit trains well within the allotted loading time as a result of its significant investments in coal loading infrastructure at its mines. In other words, Peabody’s actions have enabled more efficient use of the nation’s rail network, much more efficient, in fact, than that permitted or expected. This has significant benefits to the railroads by increasing their asset utilization while improving overall service levels to our customers which should lead to a lower cost of delivered coal. Further, shippers have a right to know when they are “on the clock” for demurrage or lay down charges so they can address the issue in real time, helping all parties involved. In a truly balanced and reciprocal system, the benefits created by this expeditious train loading would be earned as “credits” and, crucially, be able to offset any applicable “debits” for failures to load within 24 hours. These credits should not expire but should be carried in a “credit bank” until offset by applicable debits. Railroads should be required to keep track of credits on an annual basis through a transparent and easily understood method, one that is accessible 24/7 to the applicable rail user holding the credits.³ Peabody believes the parties should then settle any outstanding credit or debt balance at the end of the year. Currently, rail users are expected to pay railroads for debits on a regular basis.⁴ These steps would go a long way toward creation of a fair, equitable and reciprocal demurrage system.

Invoicing and Dispute Resolution Should Be Straightforward and Transparent.

Any dispute resolution mechanism should be simple and available without payment of an extra “dispute fee.” Parties that are charged demurrage should be given clear invoices, records and supporting documents by the relevant railroads so that they can easily determine the alleged sequence of events that led to the disputed charge.⁵ Invoicing clarity could be fostered by the proposed invoice requirements specified by the Board in Ex Parte No. 759, which Peabody

³ “Transparency and mutual accountability are important factors in the establishment and administration of reasonable demurrage and accessorial rules and charges.” See Notice at 16.

⁴ See, e.g., Notice at 18 (Board states that its concern about expiration of credits “would be allayed if shippers and receivers were compensated for the value of unused credits at the end of each month.”).

⁵ Notice at 16 (Board states it is “deeply troubled” by railroads’ invoicing errors and the dispute resolution hurdles shippers must surmount to challenge demurrage charges.).

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supports.⁶ Parties should be able to initiate the dispute of a charge without being forced to pay an additional fee. Peabody agrees that billing requirements set out in the NPRM will assist in transparency and would assist shippers in determining what happened so as to be in a position to take action to avoid future charges. See NPRM at 8.

Conclusion.

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 looks forward to continue to partner with the railroads to develop a cooperative, transparent and equitable rail transportation system that allows for the delivery of coal at attractive delivered prices verse competing fuels. This is especially important in today's climate of abundant low-cost electricity that is produced by natural gas and subsidized renewables in addition to coal.

Peabody appreciates the Board's effort to craft a Policy Statement and NPRM that would provide direction to railroads and affected parties regarding the permissible use of demurrage, storage and accessorial charges. Peabody respectfully requests that the Board carefully consider the recommendations proposed herein as it finalizes the Policy Statement and Proposed Rules, and otherwise recognize that unique circumstances accompany rail operations at unit coal train loading sites.

Very truly yours,



Bryan Galli
Group Executive and Chief Marketing Officer
Peabody Energy Corporation

⁶ See Ex Parte No. 759, Demurrage Billing Requirements (served Oct. 7, 2019).