

Before the Surface Transportation Board

STB Docket No. EP 759**Demurrage Billing Requirements**

Reply Comments of Dow, Inc.

Dow, Inc., submits these reply comments concerning the Notice of Proposed Rulemaking the Surface Transportation Board served in the above-captioned proceeding on October 7, 2019 (the “NPRM”). Dow filed opening comments in this proceeding on November 6, 2019. These reply comments address the opening comments that Class I railroads filed in this proceeding.

Railroad opening comments generally assert that the Board’s proposed demurrage¹ billing rules are unnecessary because billing issues are minor, and railroads make extensive demurrage information available through their web platforms. But, in Dow’s experience, demurrage invoices have contained costly errors, obtaining data from railroad web platforms is too cumbersome to enable efficient and effective validation of demurrage invoices, and railroads generally present their invoices in a format that effectively prevents comprehensive audits. Thus, many billing errors are essentially undetectable unless a shipper is willing and able to invest significant time and resources on invoice audits.

Transparent, auditable demurrage billing is necessary to address these issues. The rules that the Board has proposed, with the modifications Dow suggested in its opening comments, will provide rail customers many of the tools necessary to identify and challenge improper demurrage assessments. Accordingly, the Board should adopt the rules, as modified by Dow.

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

I. Erroneous demurrage billing is costly and inconsistent with the purposes of demurrage.

Although railroads claim that billing problems are few and far between,² billing errors are costly and difficult to detect. They also are inconsistent with the purposes of demurrage. Thus, billing errors are a large unseen burden that has no corresponding benefits.

Dow's own experience shows that billing errors are significant. Since the beginning of this year, Dow has disputed approximately \$1 million in demurrage and accessorial charges. Over \$400,000 of this amount is attributable to demurrage billing issues, including the use of incorrect demurrage rates or assessments for cars that Dow did not ship or receive.

Moreover, the errors that Dow has discovered are likely a *fraction* of the erroneous charges that railroads have assessed Dow. Dow has only been able to discover demurrage billing errors through spot audits because railroad billing practices make frequent audits costly and time consuming. As explained in more detail in the following sections, the online information tools that railroads provide are not designed to make demurrage information readily available for comprehensive audits. Also, many railroads use invoices that are not machine readable,³ which essentially forces billpayers to manually audit invoices and cross-check data. Thus, Dow suspects that it and many other rail customers have potentially unknowingly paid erroneous

² Canadian National Opening Comments 4-5; CSX Transportation Opening Comments 4; Union Pacific Opening Comments 2-3.

³ Within these comments, "machine readable" means in a structured data file format that a computer can easily process using readily available software. A format is open if its use is not limited to a specific software platform and there are no restrictions on its re-use. Examples of common machine-readable formats are comma-separated values (CSV), Office Open XML SpreadsheetML (XLSX), and OpenDocument Spreadsheet (ODS). A portable document format file would not qualify because its data often requires organization before it can be readily used by a computer.

demurrage charges that could be readily detected with more transparent billing and data-sharing practices.

Erroneous demurrage charges are alarming not only because of their potential magnitude but also because they are inconsistent with the purposes of demurrage. Demurrage is intended to compensate for the use of rail assets beyond a free period and incentivize the efficient use of rail assets.⁴ But erroneous charges are incapable of providing compensation for asset use because they have no relation to actual use. Similarly, they are not capable of providing an incentive for efficient use because they do not arise from inefficiency. If anything, erroneous charges may incentivize inefficiency by failing to place costs on the party who is responsible for the demurrage event or when a railroad collects demurrage for a demurrage event caused by its service failure.

II. Information for validating demurrage charges is not readily accessible on carrier websites.

Many railroad commenters suggest that they make extensive shipment and demurrage information available through web platforms. But these platforms often do not make this information readily accessible for auditing demurrage charges.⁵ Accordingly, the Board has correctly proposed to require railroads to include in demurrage invoices certain minimum information necessary to calculate demurrage charges and credits.

For example, finding the Original Estimated Time of Arrival (Original ETA) for a car on Norfolk Southern's web platform is cumbersome. NS awards credits for each day that a car is late based on its Original ETA, but the Original ETA is only available through NS's web

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

⁵ Because Dow does not incur demurrage in the U.S. on Canadian National Railway or Canadian Pacific Railway, it has not evaluated their web platforms for this proceeding.

platform. To obtain it and be able to audit an NS demurrage invoice, users must perform the following:

- First, the user must navigate to the portion of the site that has the billing history for the location where the car was delivered. This involves: opening a menu to select the demurrage site; navigating to the “Bill” function; navigating to the “Demurrage/Storage Billing History;” and navigating to Private Car Storage.
- Second, the user must select the billing month under which the Original ETA is reported for the car. This can be complicated because the billing month may not match the month of the demurrage invoice. To find the appropriate billing month, a user must conduct a search for the car’s car mark in each month until it finds the month where the car was reported. For cars that make short trips, the car may appear in consecutive billing months, requiring further investigation to determine which bill is applicable.
- Third, the user must find the Original ETA in the billing month data and then cross-reference it to the NS invoice. Since NS is the only railroad that provides invoices in Excel format and allows customers to download car data from its web platform, cross-referencing can be automated once the car data are downloaded. If the invoices are not machine-readable, which is the case for most other railroads, the car information on the web platform would need to be cross-referenced manually to the invoice information and manual calculations would need to be performed.

Dow must repeat this entire process for each demurrage location. It also must repeat the second and third step of the process (i.e., finding the applicable bill and Original ETA) for every car.

Similarly, obtaining demurrage information from BNSF’s web platform is burdensome. First, Dow must search for each car mark for which it needs data. Although it can search up to

300 car marks (e.g., DOWX 76109) at once, it must manually type each mark. Second, once the system pulls all the car marks, Dow must select the unit history for each mark, individually, to see the events associated with the mark. The unit history cannot be downloaded and, thus, must be cross-referenced manually with the demurrage invoice.

Union Pacific's web platform also is challenging to use for regular audits. While it allows users to download demurrage data by invoice period in machine-readable format, navigating to the download is cumbersome. First, Dow must select the demurrage billing location from a list of dozens of Dow locations. Second, Dow must navigate to a "View Prior Activity" page, which includes a list of prior invoices. Third, it must find the appropriate invoice by manually cross-referencing the invoice number from the PDF bill. Clicking on the invoice takes Dow to the main status screen for the corresponding invoice month, and Dow must then follow a link to download the machine-readable file with demurrage data. Dow must repeat this process for every invoice it receives, and it can receive multiple invoices for a single month.

CSX Transportation's web platform is similar to UP's regarding the steps needed to access demurrage data but has limited data available. CSXT's platform enables users to access all demurrage data for all the cars on an invoice by entering the invoice location and the billing month. It also allows users to download all demurrage data related to an invoice in machine-readable format. But the platform makes data available only for the present billing month and the previous three months. This limitation requires audits to be conducted quickly, usually within three months after receiving an invoice. It also prevents users from accessing data within the entire three-year limitations period for carrier undercharge claims.⁶

⁶ See 49 U.S.C. § 11705(a).

Accordingly, without modifications, many railroad web platforms currently are insufficient for conveying the demurrage information that the Board proposes to require in demurrage invoices. At a minimum, web platforms must enable users to quickly download demurrage information in machine-readable form. Unless they have this functionality, the Board should not permit railroads to use web platforms in lieu of issuing machine-readable invoices containing the proposed minimum demurrage information.

III. Many carriers use invoice formats that inhibit auditing.

Most carriers provide demurrage invoices in PDF or other formats that are not machine readable. This prevents efficient auditing of invoices even where a railroad provides all relevant demurrage information in the invoice or makes such information readily available through its web platform.

A common billing error is the assessment of storage charges on cars that Dow did not receive. Dow can identify these errors only by comparing the car marks on a demurrage invoice to a list of car marks for all Dow-owned or -leased cars and any other private car it received. With a machine-readable invoice, similar to those that NS provides, Dow can automate this function and identify discrepancies almost instantly. Without machine-readable invoices, which only NS currently provides,⁷ Dow must manually cross-check invoices to its car inventory. This manual process is time-consuming because Dow's demurrage invoices can contain over a hundred cars and Dow has thousands of private cars.

Similarly, spotting and resolving date and other errors in demurrage invoices is impractical unless the invoices are machine-readable. Invoices that are not machine-readable

⁷ CSXT and UP have web platforms that enable downloads of machine-readable invoice information, but they do not invoice Dow using a machine-readable invoice. As explained in Part II, above, obtaining machine-readable invoice information from CSXT and UP is challenging.

cannot be readily incorporated into an automated audit function. Rather, Dow and other rail customers must manually cross-check all data in these invoices and double-check that demurrage and storage charges were correctly calculated. In contrast, machine-readable invoices can be cross-checked electronically with other data maintained by Dow or pulled electronically from a carrier's web platform. But not all carrier web platforms currently support this, and where they do, available invoices are limited or tedious to download. Calculations of underlying charges and credits can also be performed instantaneously with machine-readable invoices, rather than line by line with a calculator.

Machine-readable invoices also may help resolve invoicing quirks that substantially complicate audits. For example, BNSF does not invoice for demurrage on an event basis. Rather, if a demurrage event starts and ends in different months, BNSF invoices demurrage charges arising in each month separately. Thus, auditing these events requires reviewing multiple invoices. Machine-readable invoices may make it possible for a rail customer to automatically link and audit the invoices covering these events.

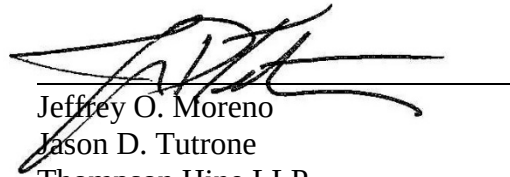
Providing machine-readable invoices is unlikely to be burdensome. NS already provides them and they are available through CSXT's and UP's web platforms. Also, railroads have extensive experience using machine-readable files to convey information. For example, they use XLSX files to report performance data and revenue information.

IV. Conclusion

Although demurrage billing errors are common, railroads do not make information necessary to audit demurrage bills readily available through their online tools. Further, most railroads present their demurrage invoices in formats that are not machine-readable and, thus, make catching these errors costly and time-consuming. The Board should address these issues by

adopting its proposed demurrage billing rules with the modifications that Dow proposed in its opening comments.

Respectfully submitted,

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

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