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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Ex Parte No. 759**

***DEMURRAGE BILLING REQUIREMENTS***

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**REPLY COMMENTS OF  
NORFOLK SOUTHERN RAILWAY COMPANY**

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Norfolk Southern Railway Company (“Norfolk Southern”) joins the reply comments of the Association of American Railroads in this proceeding related to the portion of the Notice of Proposed Rulemaking (“NPRM”) under subheading B (Issuing Demurrage Invoices Directly to Shippers Instead of Warehousemen). Norfolk Southern also files these separate reply comments related to that portion of the NPRM under subheading A (Requirements for Demurrage Invoices).

Shipper comments regarding the Requirements for Demurrage Invoices portion of the NPRM reveal a significant disconnect between what was proposed by the Board in its NPRM and what is actually desired by shippers. The Board’s proposal requires that certain information be set forth on the face of demurrage invoices sent by railroads to shippers. But shipper comments reveal that shippers are not really concerned with what information is set forth on the demurrage invoice itself, but rather with what supporting data the shipper has access to in a machine-readable format.

Norfolk Southern’s AccessNS program provides shippers with machine-readable access to virtually all of the data shippers requested access to in their comments, the lone exceptions being the identification of bunching events (which is a subjective evaluation that Norfolk Southern’s systems do not capture as events) and real-time notice of coal trains being laid down (which Norfolk Southern provides via email and is currently working on programming to make available within AccessNS). But providing all of this data on physical demurrage invoices would create

unnecessary and unhelpful clutter on the invoices, as evidenced by the fact that shipper comments reflect that they desire this information in machine-readable format. Norfolk Southern respectfully requests that the Board clarify that the information specified in the NPRM need not appear on physical demurrage invoices and instead need only be readily accessible via web-based applications in machine-readable format.

Norfolk Southern takes exception to the comment leveled by several different shippers and shipper groups to the effect that railroad web-based applications require shippers to search through various screens on the railroad's web-based applications to evaluate whether the shipper agrees with the railroad's demurrage calculations. The vast majority of the data requested by shippers is in fact available within AccessNS in a readily-accessible, machine-readable format. It is unreasonable to expect the railroad to anticipate each item of data that each shipper may want to review in connection with assessing demurrage charges and make all of that data available in one tightly organized package, especially when much of the data requested by shippers in their comments are not even relevant to the demurrage calculation itself.

Finally, Norfolk Southern notes that some shippers have requested the ability to compel the railroads to produce any and all data requested by a shipper that the shipper deems necessary to contest a demurrage charge. For example, Kinder Morgan states as follows in its comments:

In particular, Kinder Morgan submits that the Board should further amend its proposed rules to provide that, upon request from the invoiced party, the invoicing railroad shall promptly provide all pertinent supporting information establishing that the charges are accurate, valid, and warranted and are not attributable, in whole or in part, to the carrier, other third-party participants in the supply chain, or other factors outside the control of the receiver. This would include train and car records and information showing the detention to be the fault of the invoiced party, and not caused by the railroad, upstream carriers, missed switches, bunching, untimely or variable service, failure to meet individual trip plans or daily service

windows, or other events or circumstances outside the invoiced party's reasonable control.

Comments of Kinder Morgan Terminals, at 14.

As a threshold matter, it is important to note that a party contesting a demurrage invoice can refuse to pay that invoice and force the railroad to institute litigation to attempt to collect the amount owed. Kinder Morgan wishes to tilt this balance of power even further toward the party owing the demurrage debt, by allowing that party to demand endless reams of data from the railroad, including voluminous "train and car records" of the type generally produced in rate cases. In essence, Kinder Morgan expects the railroad to prove its case to Kinder Morgan, allow Kinder Morgan to still refuse to pay the railroad, and then require the railroad to sue Kinder Morgan and prove its case all over again in court. This is patently unreasonable and should be rejected by the Board.<sup>1</sup>

Respectfully Submitted,



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<sup>1</sup> It is not clear to Norfolk Southern that the Board has the authority to compel railroads to include particular information on demurrage invoices, and it is even less clear that the Board has the authority to compel railroads to turn over particular railroad records to its customers upon request by those customers. Norfolk Southern does not intend to formally raise such an objection at this point in this process, but reserves its right to do so depending on what the Board ultimately attempts to require in this docket.