

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
December 6, 2019
Part of
Public Record

STB Docket No. EP 757
Policy Statement on Demurrage and Accessorial Rules and Charges

STB Docket No. EP 759
Demurrage Billing Requirements

STB Docket No. EP 760
Exclusion of Demurrage Regulation from Certain Class Exemptions

**REPLY COMMENTS OF
THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

Karyn A. Booth
THOMPSON HINE LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 263-4108

*Counsel for
The Institute of Scrap Recycling Industries, Inc.*

Dated: December 6, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. EP 757
Policy Statement on Demurrage and Accessorial Rules and Charges

STB Docket No. EP 759
Demurrage Billing Requirements

STB Docket No. EP 760
Exclusion of Demurrage Regulation from Certain Class Exemptions

REPLY COMMENTS OF THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES

The Institute of Scrap Recycling Industries (“ISRI”) hereby submits its reply comments on the proposed Policy Statement on Demurrage and Accessorial Rules and Charges,¹ proposed rules on Demurrage Billing Requirements,² and proposed rules on Exclusion of Demurrage Regulation from Certain Class Exemptions³ issued by the Surface Transportation Board (“STB” or “Board”) on October 7, 2019. The Board’s proposed policy statement and rules stem from the discussions and concerns raised by a broad cross-section of rail customers during the oversight

¹ *Policy Statement on Demurrage and Accessorial Rules and Charges*, STB Docket No. EP 757 (served October 7, 2019) (“Policy Statement”).

² *Demurrage Billing Requirements*, STB Docket No. EP 759 (served October 7, 2019) (“Billing Requirements NPRM”).

³ *Exclusion of Demurrage Regulation from Certain Class Exemptions*, STB Docket No. EP 760 (served October 7, 2019) (“Class Exemption NPRM”).

hearing on demurrage and accessorial charges.⁴ ISRI and several of its members provided oral and written testimony⁵ and post-hearing comments⁶ to the Board. ISRI also filed its opening comments in the above-captioned dockets on November 6, 2019.⁷

ISRI strongly commends the Board for addressing some of the major concerns of its members, as well as other industry stakeholders, regarding recent changes in demurrage and accessorial charges and practices as implemented by Class-I railroads as part of Precision Scheduled Railroading (“PSR”). The Association of American Railroads (“AAR”) and various Class-I railroads (“Railroad Parties”) have asserted various points and arguments against these proposals in their opening comments. ISRI respectfully submits its reply comments on various issues raised by the Railroad Parties.

EP 757 – POLICY STATEMENT ON DEMURRAGE AND ACCESSORIAL RULES AND CHARGES

In their opening comments, several Railroad Parties argue that the Board’s Policy Statement improperly focuses only on the incentive objective and ignores the compensation objective of demurrage charges.⁸ Specifically, the Railroad Parties argue that the Board’s contention that demurrage charges “assessed for circumstances beyond the shipper’s or

⁴ *Oversight Hearing on Demurrage and Accessorial Charges*, STB Docket No. EP 754 (served April 8, 2019).

⁵ Submission of the Institute of Scrap Recycling Industries, Inc., STB Docket No EP 754 (May 8, 2019) (“ISRI Testimony”).

⁶ Post-hearing letter of ISRI, STB Docket No EP 754 (June 6, 2019) (“ISRI Post-Hearing Comments”). *See also*, ISRI Letter on Changes to NS Demurrage Tariffs, STB Docket No EP 754 (July 12, 2019) (“ISRI Letter”).

⁷ Comments of the Institute of Scrap Recycling Industries, STB Docket Nos. EP 757, 759 and 760 (November 6, 2019) (“ISRI Opening Comments”).

⁸ *See e.g.*, Comments of the Association of American Railroads, STB Docket No. EP 757 at 1-5 (November 6, 2019) (“AAR EP-757 Opening Comments”); Comments of CSX Transportation, Inc., STB Docket No. 757 at 1-3 (November 6, 2019) (“CSX EP-757 Opening Comments”).

receiver's reasonable control would, as a general matter, not fulfill the purpose of demurrage"⁹ is based on an incorrect premise that the overarching purpose of demurrage is "to incentivize the efficient use of rail assets," and fails to account for the compensatory purpose of these charges.¹⁰ The Railroad Parties further state that the Board's conclusion is "inconsistent with the Board's regulatory definition of demurrage [and] contrary to the decades of precedent," and that the shipper or receiver "should bear the risk of a delay in accepting or returning a car" even if neither the shipper or receiver is at fault "in order to fulfill the compensatory aspect of demurrage."¹¹ In other words, the Railroad Parties contend that shippers or receivers should be liable for demurrage unless the delay is caused by the serving railroad.

The Railroad Parties paint an inaccurate picture of the law and favor a demurrage regime that would allow railroads to over-recover penal demurrage charges from their customers. First, long-standing precedent is clear that shippers are absolved from liability in cases where neither the shipper nor the carrier is at fault, such as when rail car delays result from force majeure events like Acts of God.¹² Second, although the railroads' comments focus on the compensatory objective of demurrage charges, they fail to acknowledge cases which conclude that where neither the carrier or the shipper is at fault, it is not reasonable for shippers to pay "the element in the demurrage charge which represents penalty."¹³

⁹ Policy Statement at 7.

¹⁰ AAR EP-757 Opening Comments at 4.

¹¹ *Id.*

¹² See, *Chrysler Corp. v. N.Y.C. R.R. Co.*, 234 I.C.C. 755, 758-59 (1939); *Foreston Coal Int'l v. The B & O R.R. Co.*, 349 I.C.C. 495, 500 (1975). See also, *The Penn. R.R. Co. v. Moore-McCormack Lines, Inc.*, 370 F. 2d 431, 432 (2d Cir. 1966).

¹³ *Chrysler Corp. v. N.Y.C. R.R. Co.*, 234 I.C.C. 755, 762 (1939). See also, *Balfour, Guthrie & Co., Ltd. V. C., M., St. Paul & Pac. R.R. Co.*, 235 I.C.C. 437, 440 (1939) ("There is no sound reason why defendants should be permitted to collect charges, designed to force the release of such equipment, that are substantially in excess of the cost of furnishing the cars.").

In other words, contrary to the Railroad Parties' claims, the precedent reflects the highly fact-specific nature of demurrage disputes and shows that shippers are not conclusively liable for demurrage charges in all cases, except when the delay is caused by the serving railroad. In fact, the correct depiction of the case precedent is that shippers have not been liable for demurrage charges if they are caused by the railroad or an Act of God, and if neither the carrier or the shipper is at fault, the shipper should be exonerated from paying the penal component of the demurrage charges.

Moreover, the Board has broad discretion to interpret the "reasonableness" standard which applies to demurrage¹⁴ and retains the authority to develop enforcement principles and guidance that account for present-day circumstances in the rail industry, including the fact that railroad tariffs currently do not separate compensatory and penal demurrage charges. Based on the structure of railroad tariffs that contain single and wholistic demurrage charges, it is reasonable to presume that such charges include *both* compensatory and penal components. Indeed, at the Board's hearing on demurrage, the Railroad Parties were unable to respond to questions from the Board that directly inquired as to how railroads account for the compensatory versus penal components of demurrage charges, and they have yet to clarify this point despite specific requests for such information to be provided post-hearing. Further, the railroads have strongly asserted in this proceeding that their primary objectives in assessing demurrage is to improve network efficiency, which directly correlates to the assessment of penal demurrage.¹⁵

¹⁴ 49 U.S.C. § 10702.

¹⁵ See e.g., Opening Comments of Canadian Pacific, STB Docket No. EP 759 at 5 (November 6, 2019) ("Thus, demurrage continues to be a critical tool to influence customer behavior and ensure an efficient and sound transportation system."); Opening Comments of Union Pacific Railroad Company, STB Docket No. EP 759 at 1 (November 6, 2019) ("The objective of our accessorial and demurrage program is to align customer behavior in a way that promotes network fluidity for the entire supply chain.")

Accordingly, it is entirely proper for the Board to establish in its Policy Statement a principle that challenges the assessment of penal demurrage charges when delays are not caused by the shipper or receiver and the charges cannot enhance network efficiencies. Indeed, as shown above, such principle is entirely consistent with the agency's demurrage precedent. Moreover, the railroads' own failure to establish reduced "compensatory" demurrage charges does not justify their over-collection of penal demurrage when delays are not caused by the shipper or receiver.

The Railroad Parties' position that shippers should be liable for demurrage unless the delivering carrier is at fault is also at odds with the Board's findings regarding bunching of rail cars. Specifically, the Board's Policy Statement states that, "[w]here rail carriers' operating decisions or actions result in bunched deliveries and demurrage charges that are not within the reasonable control of the shipper or receiver to avoid, the purpose of demurrage is not fulfilled," and this principle applies to "both when cars originate with the serving carrier and when cars originate on an upstream carrier."¹⁶ ISRI strongly supports the Board's bunching principles, including that demurrage charges should not be assessed when they result from bunching by either the delivering or upstream carriers, and not from the actions of the shipper or receiver. The Board properly determined that it is unreasonable to assess demurrage charges when they are caused by the operating decisions of the railroads, including both the serving carrier and any upstream carrier, since the receiver cannot control the carriers' operations and avoid the charges.

Furthermore, upstream bunching is an issue that may be best resolved among the railroads participating in the movement. Railroads can easily create a set-off system that would allow the serving carrier to be compensated for its costs caused by upstream bunching, when

¹⁶ Policy Statement at 14.

appropriate. ISRI is aware that the Board held in a recent decision that railroad customers may seek recourse against the upstream carriers for wrongfully assessed demurrage.¹⁷ However, ISRI strongly believes that it is not reasonable to allow serving carriers to collect demurrage charges which cannot be avoided by the receiver and expect the receiver to seek recourse before the Board, which can be time-consuming and costly. Instead, a more reasonable, efficient and cost-effective solution is for the railroads participating in a movement to resolve this issue among themselves.

Additionally, within the context of private cars, demurrage (i.e. storage) charges aim to address the cost and efficiencies of occupying the track owned by a railroad while awaiting instructions from a shipper or a receiver. Naturally, with respect to the compensation component of demurrage, the use of private cars eliminates the cost of rail car ownership by the railroads. Instead, the cost would relate to short-term occupancy of the track which would likely be far lower than the car cost, especially when the track infrastructure costs are already paid for. However, because railroad tariffs tend to establish a single demurrage or storage charge, it remains a challenge for rail customers (and presumably the Board) to understand the basis for the compensatory versus penal components of the charges.¹⁸

¹⁷ *Utah Central Railway Company – Petition for Declaratory Order – Kenco Logistics Services, LLC, Kenco Group, and Specialized Rail Service, Inc.*, STB Docket No. FD 36131 slip op. 12 (STB Served March 20, 2019).

¹⁸ Other questions underlying the establishment of demurrage versus storage charges exist. For example, Norfolk Southern (“NS”) recently announced a new tiered approach for assessing demurrage and storage that increases the charges after the sixth day. Although NS sets a lower initial storage charge for private cars as compared to the demurrage charge for system cars, the percentage increase in the penal component starting on day 7 is about 33% for system cars and 100% for private cars. See Norfolk Southern announcement of changes to its Demurrage and Storage Tariff (NS 6004-D) on December 1, 2019. There is no stated or clear rationale for the vast difference in the percentage increases of penal demurrage/storage beginning on day 7, if one assumes that the initial demurrage and storage charges assessed on days 1-6 properly allocate the compensatory and penal elements.

Furthermore, demurrage charges in the context of private rail cars present a unique opportunity for the Board to implement true reciprocal measures. The incentives of the railroads and their customers align when it comes to private rail cars, and that is to use the assets as efficiently as possible. However, a major impediment to the efficient use of private cars is inconsistent rail service. Although the railroads are being compensated for the detention of their assets, there is no comparable means for private car owners to be compensated when the railroads unreasonably detain their assets. One way to achieve this reciprocity is for rail customers to be compensated for the unreasonable detention of private cars by the railroads which charges can offset any reasonable storage charges that relate to track occupancy. It will not only create a more balanced regulatory environment where the asset owner (*i.e.*, the railroad and the private car owner) is treated similarly, but it will also recognize the changed conditions of the modern rail industry, where a substantial number of shippers' own rail cars.

Furthermore, several Class-I railroads argue that the Board's suggestion that shippers should be provided a reasonable opportunity to make use of credits issued for carrier-caused delays and service failures contradicts the purpose and function of credits.¹⁹ Specifically, CSX argues that "it would be unusual for ... credits to build up over time," because "credits for service failures are targeted to cancel the demurrage that otherwise would have been incurred due to [a] service failure."²⁰ In a similar vein, UP cites several Board cases to show that "the monthly expiration of credits was a well-settled approach."²¹ These railroad arguments are misplaced. First, if it is true that it would be unusual for credits designed to offset demurrage

¹⁹ Policy Statement at 18. *See also*, CSX EP-757 Opening Comments at 3-4; Union Pacific Comments, STB Docket No. EP-757 at 4-5 (November 6, 2019) ("UP EP-757 Opening Comments").

²⁰ CSX EP-757 Opening Comments at 4.

²¹ UP EP-757 Opening Comments at 5.

caused by a service failure to build up over time, then there is no reason for the railroads to be concerned about the Board's proposal, and these concerns appear to be moot. Second, ISRI does not object to the monthly expiration of credits, so long as shippers are compensated with a monthly payment for unused credits. The crux of the issue is that shippers should be granted the opportunity, whether in the form of time or money, to utilize or benefit from the credits issued as a result of service failures. Otherwise, as the Board recognized, the limits on the expiration of credits imposed by railroads "[undermine] the value of a credit or credits that were allocated for a problem or delay that was not within the reasonable control of a shipper or receiver."²²

With respect to the issue of free time, ISRI reiterates its strong view that it is prime facie unreasonable for railroads to provide zero free days for private car demurrage and that the Board should presume that zero days of free time are "an unreasonable practice unless the railroads can rebut that presumption based on the existing facts and circumstances."²³ Existing precedent is clear that railroads must provide a reasonable free period prior to assessing demurrage²⁴ and, based on widely variable and inconsistent rail service, it simply is not reasonable to reduce free time to zero days.

Finally, ISRI respectfully notes that it has concerns about whether and how the principles in the proposed Policy Statement will be implemented. The Board contends that the Policy Statement will function as guidance "[w]hen adjudicating specific cases," and that it is not

²² Policy Statement at 18.

²³ ISRI Opening Comments at 5.

²⁴ See, e.g., *Pa. R.R. v. Kittanning Iron & Steel Mfg. Co.*, 253 U.S. 319, 323 (1920) (stating a shipper is "entitled to detain the car a reasonable time"); *R.R. Salvage & Restoration, Inc.—Pet. for Declaratory Order—Reasonableness of Demurrage Charges*, STB Docket No. NOR 42102, slip op. at 4 (STB served July 20, 2010) ("A railroad has a right to set a reasonable time—free time—for a shipper to finish using rail assets and return them to the railroad.")

“making any binding determinations by this proposed policy statement.”²⁵ However, as one of the participants in this proceeding recognized in its opening comments, “very few such cases are brought to the Board for resolution, and, respectfully, it is unreasonable to allow railroads to continue to collect detention charges where such collections violate the Policy Statement, unless and until a shipper files and succeeds in a lengthy unreasonable practice complaint before the Board.”²⁶ ISRI agrees with this statement, and believes that the Board should require railroads to incorporate the Board’s Policy Statement into their demurrage and accessorial tariffs. This will allow the railroads flexibility to implement independent changes conforming with the general principles in the Policy Statement and also allow shippers to utilize the Board’s guidance to the fullest extent possible.

EP 759 – DEMURRAGE BILLING REQUIREMENTS

In EP 759, the Board proposed, among other things, to impose certain minimum information requirements pertaining to demurrage invoices, and to require Class-I railroads to ensure that the demurrage charges are accurate and warranted before sending the invoices to their customers.²⁷ ISRI expressed its support for the Board’s proposals, but also suggested certain additional elements that it believes the Board should consider requiring the railroads to include in their demurrage bills.²⁸ ISRI also urged the Board to consider imposing the same requirements on Class-II and Class-III carriers.²⁹ ISRI continues to support these modifications.

²⁵ Policy Statement at 3-4.

²⁶ Comments of Kinder Morgan Terminals, STB Docket Nos. 757 and 759, at 11 (November 6, 2019) (“Kinder Morgan Opening Comments”).

²⁷ Billing Requirements NPRM at 8.

²⁸ Opening Comments at 9-10.

²⁹ *Id.* at 10.

In response to the Board's proposed requirements for demurrage invoices, several Class-I railroads contend that they already provide the information specified in the Board's proposal.³⁰ However, the record in this proceeding clearly shows that it is not the case,³¹ and it is also not consistent with ISRI members' experiences. ISRI members have experienced significant problems related to demurrage invoices, due to a lack of sufficient information or data which impedes their "ability to audit and challenge the charges, as it is difficult to determine if they were actually responsible for the car detention that resulted in the charges."³² Thus, contrary to the railroads' view, ISRI continues to believe that there is a need for the Board to impose minimum information standards for demurrage invoices to ensure that the purpose of demurrage is fulfilled by affording shippers the ability to more efficiently review and audit the charges, and if warranted, to adjust their behavior in the future to avoid recurrent charges.

Furthermore, at least one Class-I railroad argues that the proposal "will impose additional costs on Union Pacific and its customers without providing customers any realizable benefit."³³ UP explains the additional steps it needs to take "to ensure its printed invoices meet the mandate." While UP may incur an initial additional burden to comply with the Board's proposal, such burden would be short-lived and appears to be an exception and not the rule in the industry. Also, based on the robust record indicating major challenges involved with validating demurrage invoices, this limited burden is justified to ensure that railroads take appropriate steps to provide accurate invoices with adequate supporting information. Currently, when railroad customers receive demurrage invoices with inadequate information, they bear the costs and

³⁰ See, Comments of Union Pacific Railroad Company, STB Docket No. 759 at 2 (November 6, 2019) ("UP EP-759 Opening Comments"); Opening Comments on behalf of CN, STB Docket No. 759 at 4 (November 6, 2019) ("CN EP-759 Opening Comments").

³¹ Billing Requirements NPRM at 5-6.

³² Opening Comments at 9.

³³ UP EP-759 Opening Comments at 6.

burdens associated with overtime and additional staffing needed to verify the accuracy of the invoices. Yet, the railroads often maintain the information required to validate the charges. The Board's proposal properly shifts the burden of determining accuracy of the charges to the railroads, as they are the parties issuing the invoices. In fact, another Class-I railroad, while acknowledging that the minimum information requirements would impose certain additional costs, does not oppose to the Board's proposal.³⁴ This shows that the burden is not too great for the railroad industry to bear.

Another argument asserted by several railroads is that the proposal is contrary to "Congress's deregulatory purpose."³⁵ In support of this argument, CSX cites an ICC order where it held that "Congress's instruction to eliminate unnecessary federal regulation meant that the Board should move away from demurrage rules that 'generate needless paperwork and negate the efficiencies provided by the use of computers. The kind of recordkeeping required by these rules is clearly expensive, cumbersome, and unnecessary, and no longer serves to protect the public interest.'"³⁶ CSX's argument is flawed in several aspects.

In EP 285, the ICC decided to remove rules "pertaining to the maintenance of demurrage and detention records."³⁷ As the Commission explained:

The demurrage rules at 49 CFR 1254.01-1254.06 set out explicit reporting requirements concerning a number of activities including the movement of cars on the track, track checks, notification of unloading, arrival, and actual and constructive placement of cars, and car orders. The rules state the manner and timing of recordation as well as the subjects to be recorded. These regulations were initially adopted to ensure that carriers would

³⁴ Comments of Norfolk Southern Railway Company, STB Docket No. EP 759 at 1 (November 6, 2019).

³⁵ CSX EP-759 Opening Comments at 3-4.

³⁶ *Maintenance of Records Pertaining to Demurrage, Detention, and Other Related Accessorial Charges by Rail, Carriers of Property*, 367 I.C.C. 145, 147.

³⁷ *Id.* at 145.

keep records enabling them to collect demurrage and detention charges applicable to rail freight cars and freight trailers. The rules were considered necessary because the carriers' substantiating records were incomplete. We stated in our prior notice, however, that the increased competition brought about by legislative changes in the regulatory structure, had become increasingly intense, and suggested that carriers' financial self-interest might suffice to ensure accurate recordkeeping and collection of charges, even in the absence of regulation. We also suggested that recent computer technology may make these rules unnecessary. The comments unanimously support this view.³⁸

In other words, the Commission proposed to remove these rules because it believed that (1) the increased competition would promote accurate recordkeeping and collection of charges, and (2) technological advancements would make these rules unnecessary.

The rail industry has undergone significant changes since 1982, including substantial consolidation of many railroads that drastically reduced competitive forces in the market. Thus, the Commission's contention that increased competition would deem these rules unnecessary does not prove to be accurate in the modern rail industry. Further, the requirements removed in the Commission's 1982 decision were far more stringent than what the Board is proposing today. The rules in question were reporting requirements that intended for the railroads to keep certain records that would enable them to substantiate the collection of demurrage charges. The information the railroads were required to make available included "separate records for each open station, that they prepare daily car reports, and that they forward the reports daily to recordkeeping offices."³⁹ These requirements are clearly more stringent and impose significant additional costs compared with today's proposal. There also has been significant advancements in computer technology since 1982. As NS recognized, the information required by today's proposal would simply be a matter of IT programming, as opposed to significant manual

³⁸ *Id.* at 146.

³⁹ *Id.* at 146.

processes with 1982's technology.⁴⁰ Thus, as opposed to the Commission's conclusion, the Board's proposal would not be "expensive, cumbersome, and unnecessary"⁴¹ for the railroads.

Finally, at least one railroad expressed its concerns about the lack of clarity on what constitutes "appropriate action" that the Board proposes to require from Class-I railroads "to ensure that charges are accurate and warranted."⁴² While ISRI does not disagree with the contention that "appropriate action" warrants some description, ISRI believes that the Board should ask the railroads to clarify what specific actions they are currently taking to ensure that the invoices are accurate and warranted. The railroads' responses could assist the Board in determining and clarifying steps the railroads may need to take to achieve this important objective. Alternatively, ISRI concurs with Kinder Morgan's comments 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."⁴³

ISRI also believes that the Board should require the railroads to provide the information supporting their demurrage invoices in a format that would enable their customers to process and manipulate the data provided. Currently, some railroads provide the data only in PDF format. However, this impedes the customers' ability to review and analyze the data and adds additional costs to railroad customers in the form of overtime payments or additional staffing to transfer the

⁴⁰ Comments of Norfolk Southern Railway Company, STB Docket No. EP 759 at 1 (November 6, 2019).

⁴¹ *Maintenance of Records Pertaining to Demurrage, Detention, and Other Related Accessorial Charges by Rail, Carriers of Property*, 367 I.C.C. 145, 147.

⁴² CSX EP-759 Opening Comments at 11.

⁴³ Kinder Morgan Opening Comments at 14.

data into Excel or another workable format. ISRI believes that the Board should consider requiring the railroads to send their invoices in a format that allows the customers to manipulate and process the data without bearing significant costs. A PDF could also be provided to confirm the data transmitted.

EP 760 – EXCLUSION OF DEMURRAGE REGULATION FROM CERTAIN CLASS EXEMPTIONS

Finally, ISRI provides its reply comments in connection with the Board’s proposal regarding regulations governing exemptions for certain commodities, including ferrous scrap, and boxcar transportation. ISRI supported the Board’s proposal to clarify the application of demurrage regulation to most exempt commodities as “iron and steel scrap materials are among the commodities that have been exempted from STB regulation under 49 C.F.R. § 1039.11.”⁴⁴ The railroads do not oppose this clarification. AAR stated in its opening comments that it “does not object to the proposed clarifying edits to 49 C.F.R. § 1039.11 and § 1039.14.”⁴⁵ ISRI continues to support the Board’s proposal and adds that it remains critically important for the Board to revoke the iron and steel scrap commodities exemption in its entirety. As the record in STB Docket No. 704 shows, providing access to STB regulatory oversight and allowing for direct recourse against the railroads is essential for the iron or steel scrap industry.⁴⁶ The regulatory remedies sought by the iron and steel scrap industry extend beyond the regulation of demurrage, and include rail service, reasonable rates and practices, and competitive access. Thus, ISRI strongly believes that the Board should not only proceed to promulgate the clarifying

⁴⁴ ISRI Opening Comments at 11.

⁴⁵ AAR Comments at 1.

⁴⁶ Reply Comments of the Institute of Scrap Recycling Industries, Inc. to Memoranda Summarizing Ex Parte Communications, STB Docket No. EP 704 (July 2, 2019) at 9.

rule set forth herein, but also to promptly adopt its proposed revocation of the iron and steel scrap exemption set forth in STB Docket No. EP 704.⁴⁷

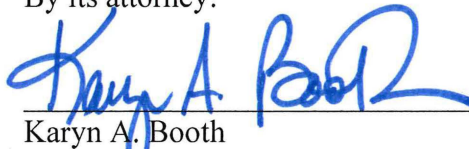
CONCLUSION

ISRI reiterates its strong support for the Board's Policy Statement and proposals to address critical issues related to demurrage and accessorial charges. ISRI respectfully urges the Board to consider the comments and suggestions set forth herein and proceed with finalizing and promulgating the proposed Policy statement and rules. ISRI thanks the Board for taking a strong stance on many of the issues raised in STB Docket No. 754.

Respectfully submitted,

THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES,
INC.

By its attorney:



Karyn A. Booth
THOMPSON HINE LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 263-4108

Dated: December 6, 2019

⁴⁷ *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*, STB Docket No. EP 704 (Sub-No. 1) (STB served Mar. 23, 2016).