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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 757

**POLICY STATEMENT ON DEMURRAGE AND ACCESSORIAL RULES AND
CHARGES**

REPLY COMMENTS OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) respectfully files these reply comments in response to the proposed policy statement served in the above-captioned docket on October 7, 2019 (“Proposed Policy Statement”). CSXT joins the reply comments of the Association of American Railroads (“AAR”) in full. CSXT submits this reply to reiterate the basic but essential point that policy statements cannot be used to change the law. Proposals by some commenters that the Proposed Policy Statement should fundamentally change the legal landscape of demurrage are plainly beyond the lawful scope of a policy statement. For example, some commenters proposed that railroads be required to incorporate all or portions of the policy statement in their tariffs. *See, e.g.*, Comments of Western Coal Traffic League at 8, Ex Parte 757 (filed Nov. 6, 2019). Such an action would plainly be the sort of “binding determination[.]” that the Board indicated it would not be making in the Proposed Policy Statement. Proposed Policy Statement at 3. It would also be an encroachment on carriers’ fundamental statutory rights to “establish rules” for demurrage in the first instance. 49 U.S.C. § 10746. A bedrock feature of the statutory scheme is that railroads should be given the flexibility to design different policies to respond to the market. The Board’s role is not to dictate a single approach for all carriers to follow, but rather to adjudicate individual claims that particular railroad practices are not reasonable.

Indeed, the Proposed Policy Statement already strays beyond lawful boundaries by suggesting that the STB might significantly break from past precedent by holding that demurrage should not be assessed for a delay unless a railroad can prove that a receiver was at fault for causing that delay. As CSXT explained on Opening, such a change in the law would subvert the purpose of demurrage and would be inconsistent with multiple decisions by this agency and the federal courts. CSXT Opening at 2-3.

For these reasons, CSXT respectfully requests the Board to revise the Proposed Policy Statement to more accurately reflect the settled law that railroads do not need to demonstrate receiver fault to collect demurrage and its historical practice of considering fact-specific questions about the reasonableness of demurrage charges and policies on a case-by-case basis.

Respectfully submitted,

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