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Comments of the International Liquid Terminals Association
on
Demurrage Billing Requirements
Surface Transportation Board
Docket No. EP 759

The International Liquid Terminals Association (ILTA) appreciates the opportunity to provide comments on the Surface Transportation Board's (STB's) proposal to modify its regulations regarding demurrage billing requirements. The International Liquid Terminals Association (ILTA) represents more than 85 companies operating liquid terminals in all 50 U.S. states and in 37 countries. Our members' facilities form a critical link in the transportation of a wide range of liquid commodities, including crude oil, refined products, chemicals, renewable fuels, fertilizers, vegetable oils and other food grade materials.

Reaffirming our previous comments submitted on November 6, ILTA strongly supports the Board's proposal as a significant and positive step forward. ILTA thanks the Board for its willingness to address the unintended consequences brought about by the 2014 regulations concerning the assessment of demurrage charges. ILTA believes the proposed rule will bring greater fairness and clarity to the assessment and collection of demurrage charges.

EP 759 provides that the railroads would accept the shipper, and not the terminal, as the guarantor of payment for demurrage charges. The proposal further provides that the railroad would abide by any such agreement between a terminal or warehouse and a shipper to bill any applicable demurrage charges to the shipper, where the railroad has been made aware of this agreement. The proposal would recognize the applicability of a contract between the shipper and the terminal, warehouse, or other consignee. As indicated in our November 6 comments, ILTA strongly supports this provision as a necessary improvement to the efficient and fair functioning of railway transport involving ILTA members.

In reviewing the comments submitted to the Board by other stakeholders, ILTA notes that the preponderance of submitted comments support this aspect of the proposal. Some stakeholder submitting comments indicate that their support of the change would require that the STB allow for and recognize contractual agreements between a terminal and shipper. ILTA supports

this clarification and believes that these comments are in alignment with its own interpretation of the proposed rule. ILTA notes supporting comments from its member company, Kinder Morgan; the Fertilizer Institute; Plastics Express/PX Services; ArcelorMittal USA; Quad Inc.; the National Coal Transport Association; Valley Distributing and Storage Company; the International Association of Refrigerated Warehouses; Lansdale Warehouse Company; the Industrial Minerals Association of North America; the Freight Rail Customer Alliance; Barilla America; the Resource for Warehouse Logistics; America's Cement Manufacturers, and Peabody.

Comments opposing the proposed changes include those filed by CSX Transportation; Canadian National Railway Company; American Short Line and Regional Railway Association; and the Kansas City Southern Railway Company; and the American Association of Railroads. Some of the objections to the proposed rule, as described in the comments submitted by these stakeholders, are based on the railroads inability to bill demurrage charges to a shipper when the railroad has no contractual relationship with the shipper – for example, when the shipment originated with a different railroad.

The commenters suggest that the recourse would be to hold the terminal or warehouse as accountable for demurrage, with whom they also do not hold a contractual relationship. This argument confounds both legal obligations and common sense, since terminal operators are also not customers of the railroads and have no direct contract or service agreement with the them. Terminals and railroads share customers, who contract with the terminal to provide a fixed volume of storage and a rated capacity to load and/or unload railcars for their account. The recourse for railroads in cases where they lack a contractual relationship with the shipper rests properly in engaging the party that does share a contractual relationship with them – presumably, the railroad on which the shipment originated. If found responsible, the railroad that previously contracted the shipment may exercise the terms of its contract upon the shipper in due course.

As described in ILTA's November comments and May testimony, terminal operators serve only as agents for their customers in directing railcar activity at the terminal. These shared customers with the railroad– the shippers – specify the number of railcars in use based on

loading and unloading capacities specified in their contracts with the terminal. Terminal operators do not own the products, do not initiate shipments, and do not schedule receipts.

Railcar storage and demurrage (hereafter “demurrage”) are legitimate services and railroads are due proper compensation for delays and inefficiencies caused by other parties. Prior to 2014, railroads assessed demurrage charges directly to their customers. In the case of failure of service on the part of the terminal operator would cause a delay, it is proper that the charged customer (the shipper) would pay the demurrage charges assessed by the railroad, and then seek compensation from the terminal operator. This arrangement allows responsibility to be assessed for demurrage and other charges through appropriate contractual arrangements.

Some commenters representing the railroads have suggested that the 2014 rule was formed with the intention of making warehousemen and terminals responsible for demurrage charges. ILTA refers to the statements of Board members made during the May hearing, as well as the written statement submitted by former STB Chairman Daniel Elliott, to refute this position.

ILTA believes the interpretation of the 2014 rule as a requirement that terminals and warehousemen, in lieu of shippers, be charged demurrage as groundless. We thank the Board for taking this action to resolve current misconceptions and to restore fairness and efficiency to the process.

In closing, and in support of other comments received, ILTA further supports the proposal that Class II and Class III carriers should be similarly required to provide more detailed information with demurrage invoices as provided in the proposal for Class I railroads.