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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DEMURRAGE BILLING REQUIREMENTS

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Docket No. EP 759

**REPLY COMMENTS OF
ARCELORMITTAL USA LLC**

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Dated: December 6, 2019

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ArcelorMittal USA LLC (“AM”) submits these Reply Comments in response to the Surface Transportation Board’s (“Board”) Notice of Proposed Rulemaking served on October 7, 2019 (“NPRM”). In these Reply Comments, AM continues to support the Board’s proposed demurrage billing requirement rules.

A. Intermediaries’ Responsibility for Detention

1. AM filed comments in this proceeding on November 6, 2019 (“AM Comments”). In its Comments, AM supported the Board’s proposed new amendment to 49 C.F.R. § 1333.3 governing third-party intermediary agreements so long as nothing in the proposal is construed as requiring shippers to pay detention charges incurred at third-party intermediary facilities absent an agreement between the shipper and the carrier, or the shipper and the third-party intermediary, that calls for the shipper to pay these charges.

2. Carriers and shippers generally agree with AM that, as a general proposition, “the person who actually receives the car should be responsible for demurrage.” Comments of the Association of American Railroads (“AAR Comments”)

at 4. Thus, if a third-party intermediary obtains the car, it is responsible for any applicable demurrage charges. This general proposition is incorporated into the Board's current demurrage liability regulations. *See* 49 C.F.R. § 1333.3 (third-party intermediary responsible for detention charges if provided with actual notice of the demurrage tariff).

3. Under the Board's current rules, a shipper and a carrier can enter into a contract pursuant to which the shipper can undertake responsibility for detention charges incurred by its intermediaries. *Id.* § 1333.2. In its NPRM, the Board proposed to permit shippers and intermediaries to enter into contracts, whereby the shipper would agree to undertake demurrage liability for delays that occur at the intermediaries' facilities and, following carrier notification of the agreement, a Class I carrier would be required to invoice the shipper for this demurrage. *See* NPRM at 14.

4. Shippers generally join AM in supporting the Board's proposal allowing (but not requiring) shippers and intermediaries to allocate third-party demurrage responsibilities by contract. *See, e.g.,* Comments of the National Industrial Transportation League ("NITL Comments") at 11. The railroads, however, oppose the Board's proposal. *See, e.g.,* AAR Comments at 1-2.

5. The railroads argue that "[t]he Board's proposal would appease the complaints of warehousemen that want to escape liability." *Id.* at 6. In fact, the Board's proposal would simply allow shippers and intermediaries to engage in voluntary commercial discussions concerning intermediary demurrage liability, just as railroads and shippers are permitted to do under the Board's current regulations.

6. AM continues to support the Board’s proposal so long as nothing in the proposal is construed as requiring shippers to pay detention charges incurred at third-party intermediary facilities absent an agreement between the shipper and the carrier, or between the shipper and the third-party intermediary, that calls for the shipper to pay these charges.

B. Demurrage Invoices

7. In its Comments, AM supported the Board’s adoption of the new rules setting forth specific information Class I carriers need to include in their demurrage invoices. *See* AM Comments at 5. AM also requested that the Board add an additional provision to its proposed new invoice rule that requires Class I carriers to provide, upon request from the party to whom the invoice is sent, “sufficient supporting information to ensure the demurrage charges are accurate and warranted.” *Id.* at 6.

8. Commenting shippers have joined AM in supporting the Board’s proposed demurrage invoice rules. *See, e.g.,* Comments of the American Iron and Steel Institute (“AISI Comments”) at 10-11; Written Testimony on Behalf of National Coal Transportation Association at 2-3; NITL Comments at 9; Comments of the American Chemistry Council (“ACC Comments”) at 1; Comments of the Portland Cement Association at 5; Comments of The Fertilizer Institute at 3-4; Comments of American Fuel & Petrochemical Manufacturers (“AFPM Comments”) at 5. The shippers support the Board’s proposal for one simple reason – they need the information in order to determine the validity of the invoicing carrier’s charges.

9. Many commenting shippers have also joined AM in supporting Board action to ensure that additional information not contained in the Board's proposed invoicing rule is also made available to shippers in cases where that additional information is necessary to properly review the accuracy of the carrier's proposed charges. *See, e.g.*, AISI Comments at 9-11; Joint Comments of the Western Coal Traffic League and Seminole Electric Cooperative, Inc. at 10-12; ACC Comments at 1-2; AFPM Comments at 6-8.

10. One Class I carrier does not object to the Board's proposal concerning the contents of demurrage invoices. *See* Comments of Norfolk Southern Railway Company at 1. Other Class I carriers oppose it. *See, e.g.*, Comments of CSX Transportation, Inc. at 1-2; Opening Comments on Behalf of CN at 2-4; Opening Comments of Canadian Pacific at 2-3; Comments of the Kansas City Southern Railway Company at 6; Comments of Union Pacific Railroad Company at 2. The carriers that oppose the Board's proposal do so on the grounds that shippers do not need the proposed invoicing information and/or because the proposal is impermissibly re-regulatory in nature.

11. AM submits that shippers, rather than carriers, are in the best position to know what information they need to audit carrier detention invoices. Therefore, the Board should adopt its proposed invoicing rules, along with AM's proposed additional information rule. Taking this action would not be "re-regulatory." It would simply allow a shipper access to the information it needs to enforce the

longstanding regulatory requirement that demurrage invoices be both reasonable and accurate. *See* 49 U.S.C. §§ 10702, 10746.

C. Application

12. In its Comments, AM recommended that the Board's proposed new invoicing rules apply to all classes of regulated common carriers that seek to collect detention charges, not just Class I carriers. As AM explained, all regulated common carriers, including Class II and Class III carriers, that seek to collect detention charges can, and should, be subject to reasonable detention rules, including those proposed by the Board in this proceeding. *See* AM Comments at 6-7.

13. Shipper commenters also urged the Board to apply its proposed invoicing rules to Class II and Class III carriers. *See, e.g.*, NITL Comments at 10; Comments of the American Forest and Paper Association at 10. For its part, the American Shortline and Regional Railroad Association ("ASLRRRA") contends that application of the proposed detention invoicing rules "could adversely affect" some small carriers because these carriers do not have the information or technology to comply with the proposed billing requirements. *See* ASLRRRA Comments at 2-3.

14. AM suggests that the Board not excuse Class II or Class III carrier compliance based on generic assertions that some smaller carriers may not be able to comply with the basic invoicing requirements set forth in the Board's proposals. To address any legitimate concerns, the Board should apply its proposed new invoicing rules to all carriers, and permit any Class III carrier to obtain a compliance waiver if it can

present specific evidence demonstrating its near-term inability to comply with the Board's proposed invoicing rules.

15. AM also continues to request that the Board specifically clarify that its proposed detention invoicing rules also apply to accessorial charge invoicing. *See* AM Comments at 7 n.2.

CONCLUSION

AM respectfully requests that the Board take actions in this proceeding consistent with its Comments and Reply Comments.

Respectfully submitted,

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