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Comments of the International Liquid Terminals Association
on
Surface Transportation Board
Supplemental Notice of Proposed Rulemaking; Demurrage Billing Requirements
Docket No. EP 759

June 4, 2020

Founded in 1974, the International Liquid Terminals Association (ILTA) represents more than 85 companies operating liquid terminals in all 50 states and in over 40 countries. Our members' facilities provide critical links between all modes of surface transportation for liquid commodities, such as crude oil, petroleum products, chemicals, renewable fuels, fertilizer, vegetable oils and other food-grade materials that are central to the U.S. economy. Terminals provide essential logistics services that spur trade both within the United States and connect the U.S. economy with overseas markets. ILTA's membership also includes about 400 companies that supply equipment and services to the terminal industry. There are approximately 464 terminals in the United States and its territories with connections to rail transportation.

ILTA is writing in response to the Surface Transportation Board's (STB's) supplemental notice of proposed rulemaking (SNPRM) of April 30, 2020 on Demurrage Billing Requirements regarding the minimum information that Class I carriers must include with demurrage invoices. ILTA has been a party to the STB's proceedings on rail demurrage and supports the previously proposed minimum information requirements, the additional requirements that the STB has included in the supplemental notice and suggests some additional information in support of more accurate demurrage invoices.

1. ILTA supports requiring the following additional information proposed by STB:

- The date range (i.e., billing cycle) covered by the invoice,
- The original estimated date and time of arrival (ETA) of each car (established by the invoicing carrier),
- The date and time each car was received at an interchange, if applicable,
- The date and time each car was ordered in, if applicable, and
- That Class I carriers provide access to demurrage invoicing data in machine-readable format.

2. ILTA also supports the proposal requiring Class I carriers to ensure demurrage charges are accurate and warranted.

3. Additional data is needed to assess the appropriateness of railroad demurrage charges:

- The date and time the waybill was created,
- The status of each car as loaded or empty,
- The origin station and state of the shipment,
- The description of the commodity from the bill of lading (if the car is loaded) and not just the Standard Transportation Commodity Code (STCC),
- Railcar origin railroad pick up-date/time,
- The identity of the shipper, consignee and in-care-of party,
- Original estimated transit time of each railcar, and
- The date/time that the railcar was released.

Our members generally receive the following:

- Railcar CP date/time
- Railcar Order In date/time, and
- Railcar Actual Placed date/time.

These items are often inaccurate in either the date or time provided.

Comments on Proposed Additional Required Information

The additional proposed information that the STB included in the SNPRM is justified and potentially only available from rail carriers.

Billing Cycle: ILTA agrees with the STB that providing the date range for the invoice is basic information that must be provided on any invoice. It is common commercial practice for bills and invoices to note the period over which services being charged for are delivered. This allows those being invoiced to understand what period the charges are for, thus reducing the necessity to search for confirming records over potentially overlapping periods.

Original ETA and Date and Time Cars are Received at Interchange: This information should be provided for each car and verifies the carrier's claims that a delay has occurred or to show that there was a carrier-caused delay (e.g., bunching). This would allow shippers to know when to dispute unsupported demurrage charges and verify credits that may be due. The complexity of collecting all the necessary data points goes up when there are one or more interchanges. Some short line railroads do not communicate railcar activity with other railroads.

ILTA agrees with Dow's assessment that having the interchange information would allow rail users to calculate transit time on an upstream carrier's line and allow impacted users to credibly approach the upstream carrier to take responsibility for delays it may have caused. ILTA submits that this information would not be available from sources other than the invoicing carrier.

Date and Time Each Car is Ordered In: Providing this information to rail users allows them to validate delays resulting in demurrage charges or to challenge carriers for unfounded charges. While carriers may not place cars at closed-gate facilities until cars are ordered in, without some transparency around

what the carrier believes to be the date and time a car is called in and date and time of placement, there would be no way for a rail user to validate or dispute a demurrage claim.

Machine Readable Data: It is reasonable for STB to require that Class I carriers provide information about demurrage claims and resulting invoices to rail users. Many of the carriers claim to offer on-line portals to the data. However, that data is often only viewable on-line or the process to produce downloadable, machine-readable reports is cumbersome. If they already have the information available in electronic form it would be a minimal burden to require that they provide that information in an open source, structured data file format for use by rail users. Our members have reported receiving invoices via paper and pdf file format from some carriers, which are not machine readable.

Arguments by carriers that creating machine readable data is too time consuming are spurious, as the net result of not doing so is to place those requirements on customers to manually input information. ILTA agrees with the STB that providing this information in machine readable format also makes demurrage invoice information more accessible and transparent. ILTA does not object to the notion that not all rail users may want machine readable data and would support the STB allowing for information to be made available in a different format on an as-requested basis.

Comments on Ensuring Demurrage Charges Are Accurate and Warranted

Requiring carriers to take appropriate action to ensure that demurrage charges are accurate and warranted is the most basic requirement for commercially acceptable practice. For any carrier to say it should not have to verify charges made to a customer is unreasonable. ILTA agrees that supporting documentation must be producible to back up any charges made, but we also agree with CN that every single invoice need not be manually double-checked. Rather, an acceptable auditing process must be put in place to verify automated processes and proper document availability and retention.

Comments on Additional Required Information

The following additional data are needed beyond what STB has proposed to assess appropriateness of railroad charges:

The date and time the waybill was created: this is an indication of when orders are first placed and would be helpful in identifying origin delays.

The status of each car as loaded or empty: this will be an indicator or whether a commodity is loaded at origin and/or at destination.

The origin station and state of the shipment: this would provide an indicator of transit time, potential carrier(s) and potential interchange events.

The Description of the Commodity From the Bill of Lading: providing the description of the commodity from the bill of lading (if the car is loaded) and not just the Standard Transportation Commodity Code

(STCC) would facilitate a terminal or shipper's differentiation of demurrage responsibility between parties. STCCs are often too broad to differentiate among commodities.

Railcar Origin Railroad Pick-up Date/Time: to identify railroad caused delays and bunching; and customer caused congestion.

Identity of Parties for Demurrage at Origin and Destination: This differs from the language in the SNPRM which requires a carrier to identify only a single party by using the language "...the shipper, consignee and/or care-of party...". Technically, the addressee of the demurrage bill would satisfy the single party requirement. We contend that identifying the shipper, consignee and in-care-of party provide more information to all parties to aid in prompt assignment of responsibility.

Original estimated transit time of each railcar: this is the elapsed time between railcar release at origin and CP at destination. This would allow rail users to identify railroad delays in delivery.

The Date and Time That the Railcar Was Released: as this is a clear milestone when demurrage would stop.

Demurrage Billing Requirements Should Apply to All Rail Carriers

Finally, we reiterate what we wrote in our comments on the proposed rule -- ILTA supports applying the minimum information requirements to all rail carriers. While we understand the argument that Class I carriers have the most resources to meet these needs, demurrage charges are levied by smaller carriers on our members and their shippers, many of which are also smaller businesses. If a carrier is to be allowed to invoice rail users for demurrage charges it must be able to produce sufficient information to support those charges.

Conclusion

ILTA fully supports all the additional information discussed in the supplemental notice of proposed rulemaking be required of rail carriers when invoicing for demurrage. STB must also require carriers to provide the additional information we have detailed in our comments. This information will allow rail users to verify legitimate demurrage charges and contest unfounded charges.

ILTA appreciates the opportunity to comment on this supplemental notice and thanks the STB for its sensible approach to addressing demurrage invoicing. Please contact me at plidiak@ilta.org or 571-444-0282 if we may answer any questions about these comments.

Sincerely,



Peter Lidiak

Vice President, Regulatory Affairs