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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Docket No. EP 759

DEMURRAGE BILLING REQUIREMENTS

**COMMENTS OF UNION PACIFIC RAILROAD COMPANY
TO SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING**

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In its Supplemental Notice of Proposed Rulemaking (“SNPRM”) served April 30, 2020 in the above proceeding, the Surface Transportation Board (“Board”) requested comment on proposed modifications to the Board’s October 7, 2019 Notice of Proposed Rulemaking. Union Pacific Railroad Company (“Union Pacific”) submits these comments in response to the Board’s SNPRM.¹ As established in its prior comments, Union Pacific customers already have access to the information needed to understand, verify, and dispute demurrage charges. Union Pacific respectfully submits that Board action is simply not required in this proceeding.

I. Introduction

This proceeding arose from the informal complaints of a *handful* of industry customers. The Board is now considering invoice changes that may affect *every* customer in the country including Union Pacific’s more than 10,000 customers. This action is neither warranted nor proportionate.²

The case for Board action is further undermined by the fact that Union Pacific already provides its customers with the information needed to review or challenge their demurrage bills.

¹ Union Pacific hereby incorporates by reference all comments submitted by the Association of American Railroads in this docket.

² The small number of Union Pacific-related complaints reflects our high billing accuracy rate. Comments of Union Pacific, EP 759, filed on November 6, 2019 (“UP Comments”), p. 3.

As previously explained, Union Pacific's web-based system provides access to real time and historic data behind every demurrage charge.³ This system allows each customer to access the information it values. This online, customizable, machine-readable data is superior to a paper or PDF invoice, regardless of how much additional information any final Board rule mandates. Indeed, this online system has been embraced by a significant number of Union Pacific's customers⁴ in part because it is more flexible and responsive than the one-size-fits-all approach the Board is proposing.

II. The Board Will Not Assist Customers By Mandating Additional Fields Be Included in Union Pacific's Invoices

The Board's salutary goal is to provide customers with information necessary to both understand and verify the accuracy of demurrage bills. Union Pacific shares this goal, as evidenced by the commitments Union Pacific made in its Customer Bill of Rights for Accessorial and Demurrage Charges. Union Pacific has already made significant headway in meeting this goal by directly providing our customers with the information they want and need. The Board's proposal to include additional information on invoices not only fails to meet this goal but may actually prevent our customers from effectively reviewing their invoices.

Of the additional fields suggested in the Board's SNPRM⁵, only the billing cycle and "order-in" date fields⁶ would relate to the invoice total.⁷ The other proposed fields would give our customers the false impression that the fields are relevant and important to calculating

³ UP Comments, Verified Statement of Bradley Stock ("Stock VS"), pp. 1-2.

⁴ Stock VS, pp. 2-3.

⁵ As Union Pacific understands the SNPRM, the proposed additional fields are: (1) billing cycle, (2) original ETA, (3) date and time cars received at interchange, and (4) ordered-in date and time.

⁶ In order to preserve the positive customer experience by the vast majority of our customers, Union Pacific includes the "order-in" date on just the invoices of the customers that have "order-in" locations.

⁷ Verified Statement of Diana Prauner, attached hereto, ("Prauner VS") at p. 2.

demurrage. A car's original estimated time of arrival (ETA) and the car interchange date and time are not utilized in calculating demurrage.⁸ The original ETA is an initial estimate automatically generated when the customer creates a waybill. This estimate is not a guaranty of arrival time. The ETA is updated throughout transit to provide the customer the most up-to-date information for its planning.⁹ Including this estimated information on the invoice suggests a level of precision and relevance the ETA simply does not have. Including this field on the invoice could mislead customers into thinking that demurrage is only reasonable when delivery is made at the original ETA or that the ETA is utilized in calculating the invoice. If customers want access to information that is not included on an invoice, they can access that information.

Nor is the Board's proposed rule an effective response to the phenomenon of bunching. The proposed fields will not identify when bunching has occurred or why it occurred as the customers argue. There are many causes of bunching. The only way to identify whether and why bunching occurred is through the railroad and customer working cooperatively. Data fields on an invoice cannot serve as a substitute for that case-by-case, determining root cause process because every circumstance is unique. For example, a car could miss its original ETA because a surplus of cars ordered by the customer caused congestion in a yard or multiple shippers sent cars to the same receiver facility and that facility's capacity was exceeded. These examples may appear to be railroad-caused bunching to the customer when it was actually caused by the customer's actions. When it comes to bunching claims, the specific facts matter and careful analysis is needed for an informed evaluation and reasonable outcome.

⁸ Prauner VS at p. 2.

⁹ Even assuming, for the sake of argument, that ETA gave any information related to demurrage, the customer receives ETA information in real time and receives regular ETA updates when the information can be most appropriately and effectively used by the customer.

Adding the proposed fields to the invoices of every single customer will actually inhibit and obscure our customers' review efforts. A combination of too many fields and fields that are irrelevant to most customers will make invoices cluttered and unreadable. The answer, instead, is to provide customers with the tools needed to quickly and easily access the customized information most relevant and useful to them. This is what Union Pacific has already accomplished.

The Board suggestion that information may be provided only upon request from an individual customer is unlikely to advance the Board's goals. After years of working closely with our customers, Union Pacific has determined the right answer is for the information to be available in an on-demand system that the customer can access at its need and convenience. Allowing customers access to the system to create their own, customized reports decreases the amount of time spent by customers evaluating bills and saves customers the effort of making individual requests for information. With Union Pacific's system, customers can evaluate their status in real time, not just once they receive their invoices. This allows customers to adjust their shipments to manage their flow and to submit disputes in real time, not just at the end of the month.

III. Union Pacific Already Makes Customer Data Available in a Machine-Readable Format

Invoices accessed on Union Pacific's online system can be downloaded as a Comma Separated Values ("CSV") file and additional supporting information from our online system, CES, can be downloaded as an Excel file.¹⁰ These flexible file formats allow the data to be imported into virtually any spreadsheet program. If the Board creates a requirement that railroads make data available in machine-readable format, then Union Pacific respectfully requests the

¹⁰ Prauner VS at p. 3.

Board specify that CSV and Excel files meet the definition of machine-readable and that railroads can meet this requirement by making data available to customers through an online system.

IV. Union Pacific Already Takes Appropriate Action to Ensure Charges are Accurate and Reasonable

As described in the attached verified statement from Diana Prauner, General Director Revenue Accounting for Union Pacific, our finance team works hard to ensure Union Pacific bills are and customers are not billed for known Union Pacific-caused issues. In addition to our ongoing internal discussions during the business cycle to adjust accounts for reported incidents, Union Pacific uses a three-step process at the end of the billing cycle to verify billing accuracy.¹¹ This three-step process includes:

- Maintaining a list of facilities that have had billing issues in the past, have a unique contractual arrangement, or have special circumstances requiring manual adjustment to ensure these bills are closely monitored.
- Reviewing bills for anomalies and ensuring that disputes have been taken into account. If an anomaly is detected, a team member will analyze the account in greater detail to confirm its accuracy and understand the anomaly's cause.
- All monthly incurred charges are sent to customer account managers in the Marketing & Sales Department. The account managers use their in-depth knowledge of customer operations and facility conditions to review the charges.

¹¹ Prauner VS at pp. 3-4.

Union Pacific does its best to ensure every bill issued is accurate. While we may fall short of that goal at times, Union Pacific has achieved a 95% accuracy rate¹² and we are continuously working to improve our accuracy. Further Board action is unnecessary.

V. The Board Should Allow Waivers From Any New Invoice Requirements

The Board should provide a waiver process for Class I railroads to comply with the Board's rule in a way that is most effective for its customers. A railroad could attest that it provides the proposed data via means other than the invoice. A railroad could submit a verified statement attesting that either all the required information is provided to customers or explain why a particular data set is not provided or unavailable. The waiver process would necessarily take place prior to the effective date of the rule so that railroads know in advance if extensive system reprogramming efforts must be undertaken. This waiver process would allow the Board's intent and goal to be realized while not forcing all railroads and their customers into one-size-fits-all approaches.

VI. Conclusion

The Board's goal of ensuring customers have the information that they need to validate demurrage bills is a worthy goal that is shared and supported by Union Pacific. Creating a long invoice with extraneous information not directly included in the calculations of the invoice totals will neither assist the customer in analyzing its invoice nor enable the customer to change work processes to keep the rail network fluid. Union Pacific's customers have access to superior information and Board action is not required. If the Board determines otherwise, Union Pacific

¹² UP Comments, p. 3.

respectfully requests any final rule provide for a process for the Board to waive any new invoice requirements upon proper showing by an applicant railroad.

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

By:

A handwritten signature in cursive script, appearing to read "Rhonda S. Ferguson", written over a horizontal line.

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June 5, 2020

VERIFIED STATEMENT

OF

DIANA PRAUNER

My name is Diana Prauner. I am General Director Revenue Accounting for Union Pacific Railroad Company. I have held this position since January 1, 2020. I lead the team responsible for assessing and collecting demurrage and accessorial charges, which includes issuing invoices under the Chargeable Events System (“CES”). Before my current role, I served as a Senior Director and Controller for Loup Logistics Company, Union Pacific’s largest subsidiary. In that role, I supervised Loup’s finance team in revenue cycle, payables processing, and financial reporting and analysis. During my sixteen year career at Union Pacific, I also served as Senior Manager Revenue Accounting and Senior Manager Revenue Analysis which included managing teams to ensure the accuracy of invoices and the appropriate resolution of customer disputes.

I am submitting this statement to provide information on three main points with respect to the Surface Transportation Board’s Supplemental Notice of Proposed Rulemaking on demurrage billing: (1) requiring additional fields; (2) mandating that data is made available in a machine-readable format; and (3) a description of the methods by which we ensure accuracy in our invoices.

I. Adding More Data Will Make Our Invoices Less Useful to the Customers

Union Pacific’s online system already provides the information our customers need to understand and verify their invoices. Union Pacific has always been very focused on the experience of our customers and includes on the invoice only information customers need to review the invoiced amounts. This targeted approach allows our customers to avoid the confusion that would arise from the inclusion of extra information. Union Pacific took this

approach after receiving customer complaints regarding the complexity of our invoices.

Customers requiring more than that carefully calibrated amount of information may find it (in a searchable, machine-readable format) in Union Pacific's CES system. Of the additional fields the Board has proposed adding to the invoice, only the billing cycle and "order-in" date¹ directly pertain to the invoice total. Union Pacific already includes that particular information in its invoices.

Car estimated time of arrival (ETA) and the car interchange receipt date and time are not used to calculate demurrage and would be extra information in a Union Pacific invoice. The original ETA is automatically generated when the customer creates the waybill and before the car is moved. Union Pacific does not include ETA information on the invoice because ETA is a planning tool that changes throughout the shipment process due to the variable nature of rail operations. A car ETA becomes most accurate when the car is close to its destination. The original ETA and car interchange receipt date and time will not identify when or why bunching occurred.

Bunching is a complex occurrence and can be due to many customer-caused or railroad-caused factors. For example, a car could miss its original ETA because a surplus of cars ordered by the customer caused congestion in a yard. A car could make its original ETA and still play a role in a bunching scenario if multiple shippers sent cars to the same receiver facility and that facility's capacity was exceeded. In summary, each bunching claim is unique and needs to be investigated on a case by case basis. Original ETA and interchange receipt date and time are not a substitute for gathering and understanding all of the relevant facts.

¹ As part of Union Pacific's focus on excellent customer experience, Union Pacific already includes the "order-in" field on invoices of customers with order in locations.

II. Union Pacific Already Makes Data Available to Our Customers in a Machine-Readable Format

One of the benefits of Union Pacific's online system is that customers can download their invoices as Comma Separated Values (“CSV”) files. CSV is a flexible file format that allows the data to be imported into virtually any spreadsheet program. Customers can download additional supporting information from CES in an Excel file format, which can be imported for use in other programs. This CSV-Excel combination allows our customers to select additional information and download it all in a machine-readable format for whatever system they use. Union Pacific’s customers are therefore already able to use the file formatting to reduce the time they spend manually reviewing invoices.

III. Union Pacific Devotes Significant Resources to Ensuring its Charges are Both Accurate and Reasonable

Union Pacific's finance team works diligently to ensure our customers’ invoices are accurate and customers are not charged for known Union Pacific caused issues. The billing quality control process has several steps. Each of my finance team members is responsible for a specific set of customers. Before the invoices are even generated, there is regular communication between my finance team, the Marketing & Sales Department, and the Operating Department to discuss service issues and interruptions or to resolve any errors related to event reporting or yard capacity. If the team learns of an issue caused by Union Pacific that will impact the accuracy of a customer’s bill, they address the issue immediately.

At the end of a billing cycle, the finance team reviews calculated customer charges and cross-reference to a list we maintain of facilities with past billing issues, unique contractual arrangements, or special circumstances requiring close monitoring or manual adjustments. As a matter of course, the finance team references service interruption notices related to embargos, weather, or natural disasters to confirm whether or not the interruptions had an impact on a

customer's facility. The finance team takes into consideration service issues submitted by customers to determine if adjustments need to be made. Additionally, the finance team reviews significant changes from the previous invoices to make sure issues are properly accounted for and verify that disputes have been properly anticipated and resolved.

Once our finance team has completed its review, the invoiced charges are sent to the account managers in Marketing & Sales. The account managers review the invoiced charges for accuracy based on specific knowledge of the particular customer's operations. We include this step because Marketing & Sales has in-depth knowledge of the customers, the facilities, and issues that may have occurred during the month. If the account manager discovers any issues, the finance team is notified and we work together to determine any proper adjustments. Once the appropriate adjustments are made, the invoices are sent out.

Through Union Pacific's online system, customers already have access to the information needed to understand demurrage billing in a machine-readable format. The addition of unnecessary fields would only make our invoices more difficult to read and would lead to an increase in the time Union Pacific's customers would need to review their invoices. Union Pacific already takes steps to ensure our invoices are accurate and reasonable and this is reflected in the low number of disputed invoices. Since January 1, 2016, an average of 9% of accessorial invoices and 2% of demurrage invoices were contested using Union Pacific's processes. Approximately 5% of the total invoiced amount of the contested accessorial and demurrage invoices were adjusted in agreement with the customers' disputes.

I personally attest to the fact that our finance team consists of motivated professionals. We take pride in our work. We aim for a quality work product and a positive customer experience.

VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

Executed on June 5, 2020.


Diana Prauner