

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 759

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DEMURRAGE BILLING REQUIREMENTS

COMMENTS OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) appreciates the opportunity to submit comments on the supplemental notice of proposed rulemaking in the above-captioned proceeding.¹ As CSXT explained in both its Opening² and Reply³ Comments on the original notice,⁴ CSXT shares the Board’s goal of ensuring that all customers have adequate information to understand and dispute demurrage charges. To that end, CSXT already provides customers with ample information to help them mitigate or eliminate demurrage charges, as well as unprecedented transparency into CSXT’s delivery performance on every container, trailer, and carload shipped by CSXT at the system, location, and lane level, via state-of-the-art software interfaces such as the ShipCSX Trip Plan Performance tool (TPP).⁵

CSXT reiterates that the Board should not adopt an inflexible, anachronistic standard regarding demurrage invoices. A requirement that the detailed information contemplated by the Notice literally be provided “on or with” each actual invoice, rather than making it available via an electronic

¹ *Demurrage Billing Requirements*, Ex Parte No. 759 (served Apr. 30, 2020) (“Supplemental Notice”).

² Comments of CSX Transportation, Inc., *Demurrage Billing Requirements*, Ex Parte No. 759 (filed Nov. 6, 2019) (“CSXT Opening Comments”), at 1.

³ Reply Comments of CSX Transportation, Inc., *Demurrage Billing Requirements*, Ex Parte No. 759 (filed Dec. 6, 2019) (“CSXT Reply Comments”), at 1.

⁴ *Demurrage Billing Requirements*, Ex Parte No. 759 (served Oct. 4, 2019) (“Notice”).

⁵ See CSXT Opening Comments at 5-10; CSXT Reply Comments at 2-6.

platform, is akin to requiring transmission by facsimile in 2020. Placing such limitations on the transmission of demurrage information would discourage innovative electronic customer service offerings like ShipCSX, and instead would result in cumbersome and cluttered paperwork.

As CSXT stated in its Reply, if the Board believes that regulations are needed to ensure that persons receiving demurrage invoices are given adequate information, then it should adopt a standard like that proposed by CN, which would require railroads to give recipients access to sufficient information to understand the basis for the charges and to dispute charges believed to be unwarranted. *See* CN Opening Comments at 9-10. Such a standard would achieve the Board's stated purpose for the proposed regulations⁶, without regulating the line items of a demurrage bill or causing undue burden to carriers. CSX would also not be opposed to making demurrage information available via ShipCSX in a machine-readable format, provided that the Board gives carriers discretion in the manner in which they do so. *See* Supplemental Notice at 10 ("It would be at each rail carrier's discretion to select how to provide rail users access to the machine-readable data.").

I. The Board Should Propose a Flexible Standard for Demurrage Billing, And Should Not Micromanage the Contents of Demurrage Invoices.

As CSXT explained on Opening and Reply, the Board should promote flexible market solutions for providing rail customers with information about the basis for demurrage charges. Prescribing specific paperwork requirements for demurrage invoices is not wise policy, and the record does not justify such a re-regulatory step.

There is no evidence of any systemic problem with demurrage invoicing that would warrant the creation of a new set of top-down regulations. Further, neither the Notice nor the Supplemental Notice identifies any specific example of a deficient invoice, and no shipper has provided such

⁶ *See* Notice at 10; Supplemental Notice at 4.

evidence before, during, or after the May 2019 Hearing in this proceeding. To the contrary, the shippers' anecdotal and unsupported claims of deficiency have been countered directly by specific evidence from railroads like CSXT that the information contemplated by the Notice is already readily available to customers.⁷ At most, there are one-off issues with invoices—an unremarkable proposition, as all businesses, including rail customers, surely generate the occasional inaccurate invoice. But the record throughout this proceeding falls far short of establishing a systemic problem in the industry that might justify the proposed regulation.

Likewise, there is simply no basis in the record for the Board to regulate the Supplemental Notice's proposed additions to railroad demurrage invoices, especially where sophisticated, innovative platforms for dissemination of this data already exist. CSXT already makes available (1) the date range (billing cycle) covered by the invoice; (2) the original date/time ETA and date and time of interchange;⁸ and (3) the date/time of cars ordered in.⁹ There is virtually no data requested in this proceeding that CSXT does not provide to customers either on the demurrage invoices themselves or via CSXT's user-friendly electronic

⁷ See CSXT Comments at 5-10; CSXT Reply Comments at 2-6.

⁸ With respect to the Board's request for comment on providing ETA/interchange information only upon reasonable request, CSXT notes that its ShipCSX system already provides customers access to this information. ShipCSX shows real time data by default, since its primary purpose is to help customers monitor their supply chain and shipments on a real-time basis. Customers can also access historical ShipCSX data reports, which they can download and save for use when reviewing information on prior service. CSXT submits that the Board should consider this method of disseminating the information sufficient, and that carriers should not be required to provide this information "on or with" every demurrage invoice.

⁹ CSXT notes that the Supplemental Notice contemplates the provision of ordered-in date and time information for closed-gate facilities only. Supplemental Notice at 8. CSXT currently provides this information for closed-gate facilities. As noted in its Reply, CSXT is unable to provide such information in the unique context of system car orders at open gate facilities, when customers order more system cars than their facility can accept. For example, a customer that ordered 19 system cars when its facility only had space for 11 cars would be assessed charges for the 9 system cars that could not be delivered. In these circumstances, charges are tied to the customer's specific car order number rather than to a specific system car, and thus it would be technically impossible to provide data regarding car arrival date and time. CSXT Reply Comments at 4, n.8.

interface, ShipCSX. When a potentially unwarranted invoice arises, customers can easily access the information they need to dispute that invoice on ShipCSX. Any rule adopted by the Board should permit the continued use of such flexible formats to provide sufficient information to customers.

The Board has explained that the proposed requirements in the Notice and Supplemental Notice are

intended to ensure that the recipients of demurrage invoices will be provided sufficient information to readily assess the validity of those charges without having to undertake an unreasonable effort to gather information that can be provided by the railroad in the first instance, to properly allocate demurrage responsibility, and to modify their behavior if their own actions led to the demurrage charges.¹⁰

CSXT and its customers have worked together for years to develop innovative web-based solutions to these problems without any need for a regulatory mandate. CSXT developed ShipCSX to empower its customers (including warehouses/receivers) to manage their supply chains, understand the basis for charges, and challenge charges they believe to be unwarranted. To the extent a customer is unfamiliar with ShipCSX or the information it houses, CSXT offers training on all of its ShipCSX tools. CSXT's E-Solutions team provides customer-specific web-based sessions tailored to individual needs, including in-depth instruction on ShipCSX's demurrage and pipeline management features (including TPP), to ensure that customers understand the resources available, can find them easily (i.e., without unreasonable effort), and can utilize them effectively.

The Board's policies should encourage railroads to develop innovative tools like ShipCSX in furtherance of its regulatory goals. Instead of encouraging such innovation, however, the Board's proposed rules could require railroads to expend significant resources to ensure compliance with a mandated line-by-line invoice information protocol. Moreover, the Board's proposal would almost certainly lead to more litigation and railroad-customer disputes over purely technical issues. If

¹⁰ Notice at 10; Supplemental Notice at 4.

information is required to be provided on or with an invoice, shippers could challenge invoices on the basis of missing or incorrect information whether due to carrier fault or otherwise.¹¹ By being unnecessarily prescriptive in its requirements, the Board might unintentionally generate more—and less genuine—demurrage disputes.

If the Board wishes to impose some minimum requirements for demurrage invoices, it should adopt a flexible standard rather than prescribing particular categories of information that need to be included. A standard like that proposed by CN in its Opening Comments would be a workable, flexible standard:

Class I carriers shall ensure that recipients of demurrage invoices have access to sufficient information to be able to understand the basis for the charges and to dispute charges believed to be unwarranted. This information can be provided either on or with the demurrage invoice or through another electronic means, including through a software platform or portal.¹²

This standard accomplishes the laudable goal of ensuring railroads provide sufficient information to customers, but stops short of prescribing the exact elements of each and every demurrage invoice.

II. If the Board Requires the Provision of Certain Demurrage Information, it Should Allow Discretion Regarding the Manner in Which Carriers Do So.

As CSXT has argued in both its Comments and Reply, one essential element of any rule that the Board adopts would be to make clear that railroads can use software platforms like ShipCSX to provide required information to shippers. Almost as important is that the Board not place form above substance and mandate the manner in which railroads use those platforms to disseminate information. In other words, CSXT should not be penalized for having already developed informative and user-

¹¹ As an example, an originating shipper might indicate the wrong commodity for a car, causing the demurrage invoice to reflect that error. It would be nonsensical for the demurrage invoice to be invalid because the commodity is incorrect, but a customer may argue—and a court might agree—that it is.

¹² CN Comments at 10.

friendly customer service tools by being required to redesign them unnecessarily.

For example, as CSXT has noted, some of the proposed information is currently available to customers within the ShipCSX demurrage module, while other information is readily available in other ShipCSX fields, such as TPP. CSXT Opening Comments at 5-10; *infra* at 3. Regardless, all of the information is easily accessible. The burden on CSXT of a requirement that all demurrage information be relocated to a central location within ShipCSX would drastically outweigh the benefit to customers.¹³ Likewise, CSXT would not be opposed to making demurrage information available via ShipCSX in a machine-readable format, provided that the Board does not mandate any particular format or require that the information be provided in one place only or in a singular data file.¹⁴

If the Board were to hold that providing information through software platforms was insufficient and that railroads instead must attach all information to the invoice itself, or that software platforms are acceptable only if all information is made available or downloadable in one central location, CSXT would have to undertake a substantial, costly software redesign to consolidate information it already provides to customers in a slightly different—but still user-friendly—format. CSXT previously estimated that it would need nine months to implement such a redesign. In the Supplemental Notice, the Board questioned that estimate, calling it “overstated” in light of software programming requirements in other recent proceedings.¹⁵ Nonetheless, based in part on CSXT’s

¹³ This is especially the case because CSXT’s E-Solutions team provides customer-specific training on ShipCSX’s features and available information, thus eliminating any perceived burden on customers to locate specific data fields themselves.

¹⁴ CSXT is amenable to making demurrage information downloadable within the ShipCSX field in which such information is currently located, but would be concerned about a requirement that the information be centralized for download in one location or file. Likewise, CSXT is amenable to providing information in a Comma Separated Value (CSV) or similar format, but would be concerned if the Board were to mandate a more technically burdensome requirement.

¹⁵ Supplemental Notice at 13.

concern, the Board ultimately revised its estimated burden on each Class I from 40 to 80 hours.

The Board's response to CSXT's burden estimate fails to recognize both the uncertainty inherent in the Board's proposals and the required reprioritization of other planned CSXT technology projects that could result from the outcome of this rulemaking. First, an accurate burden estimate depends greatly on the Board's ultimate resolution of this proceeding. If the Board were to adopt the CN standard outlined above, CSXT's burden would be nonexistent because CSXT already complies with this requirement. Likewise, if the Board felt the need to mandate that carriers provide certain categories of demurrage information—and in a machine-readable format—but allowed carriers discretion in how to meet these requirements as described *infra*, CSXT's burden would be in line with the Board's estimate.¹⁶ Because in both instances customers would have access to sufficient demurrage information without unreasonable effort, CSXT respectfully urges the Board to strongly consider these more measured approaches to achieving the Board's stated regulatory purpose.

If, however, the Board were to require that all demurrage information be downloadable to a single machine-readable file, or be housed in a central location within ShipCSX, CSXT's time and cost burden would be substantial. CSXT estimates that it would take roughly 3 months (955 hours) to allow customers to view the information from the applicable ShipCSX modules, but download and consolidate the information into a single Excel file. To include all of the proposed data fields in the existing ShipCSX demurrage module would take 1,680 hours, over a period of 4 to 5 months, due to the multiple data programmers, sources, and systems involved. Some of the work is sequential in nature, which necessarily results in a longer timeframe. In addition, should the Board require all of the

¹⁶ CSXT estimates it would take 2-3 days (80 hours or less) of programming to allow customers to view and download information, to separate machine-readable files, within the ShipCSX modules in which the applicable information is currently located.

proposed information to be printed or compiled in one invoice document,¹⁷ CSXT would be required to engage an outside vendor, adding even further cost and time. In sum, the Board's ultimate rule could require CSXT to undertake months and months' worth of programming work to provide no more information than it already does today, but simply to provide it in a different place or on one piece of paper. While customers would surely appreciate that convenience, the burden is simply unjustified, especially where CSXT's current platform indisputably does not require customers "to undertake an unreasonable effort to gather information."

Second, CSXT's nine month estimate is not limited to actual programming time. Rather, the estimate reflects the need to schedule a potential demurrage invoice project among CSXT's current priority list of software development projects, nearly all of which are aimed at either improving operations or the customer experience. Such projects include planned ShipCSX enhancements that customers have specifically requested, and which will improve the already unprecedented transparency into CSXT's delivery performance. These projects, which are already in CSXT's technology pipeline, will need to be delayed or reprioritized to accommodate a demurrage invoice redesign if one were to be required sooner than nine months from the Board's decision. The Board should therefore be mindful of the impact that any unnecessarily short implementation period could have on other software development resources.

III. The Board Should Not Mandate What Constitutes "Appropriate Action."

The Notice also proposes to add a provision to the Part 1333 regulations requiring that "[p]rior to sending a demurrage invoice, Class I carriers shall take appropriate action to ensure that charges are accurate and warranted." While CSXT does not disagree with the sentiment behind this requirement, CSXT remains

¹⁷ CSXT strongly objects to this potential outcome. CSXT's physical invoice, which already contains a good deal of the proposed information, is already challenged in terms of available physical space. It would be difficult to add additional categories without rendering the invoice unreadable.

concerned that this language will result in litigation over what constitutes “appropriate action” and whether charges are “accurate” or “warranted,” even if those terms are defined with any level of specificity.

CSXT wholeheartedly agrees with the Board’s statement in the Supplemental Notice that “whether a carrier has taken appropriate action to ensure that demurrage charges are accurate and warranted depends on the particular facts and circumstances of a situation. Since Class I carriers utilize different invoicing systems, one carrier may be able to ensure accuracy in its invoicing system by different methods than another.”

Supplemental Notice at 11. There can be no better explanation for why the Board should not seek to mandate what constitutes appropriate action—as it may vary based on the circumstances—or accuracy—as every carrier utilizes different systems and methods to ensure accuracy that may not be compatible with a particular mandated solution. The proposed regulation thus places carriers in an untenable situation, as they may either fall short of a vague standard of “appropriateness” or be unable to utilize the prescribed solutions that the Board mandates to ensure accuracy.

IV. Conclusion

For the foregoing reasons, the Board should withdraw the demurrage invoice requirements contemplated in the Notice and Supplemental Notice or, in the alternative, consider the rationales and alternative actions set forth herein.

Respectfully submitted,

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