

BEFORE THE SURFACE TRANSPORTATION BOARD

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**EX PARTE NO. 759
DEMURRAGE BILLING REQUIREMENTS
SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING**

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**COMMENTS ON BEHALF OF
NATIONAL COAL TRANSPORTATION ASSOCIATION**

National Coal Transportation Association (NCTA) respectfully submits the following as its written comments in response to the Demurrage Billing Requirements Supplemental Notice of Proposed Rulemaking served by the Surface Transportation Board (“STB” or “Board”) in its decision on April 30, 2020.

1. NCTA is a national organization consisting of electric utilities, coal producers, and entities that have an interest in the production and transportation of coal for the purposes of generating electricity or for industrial facility uses. This group includes entities that produce, repair, and manage all facets of railcar components parts and systems, and also those entities that move coal-related commodities or provide services and products for various operations and environmental compliance requirements at the power plant site. NCTA members have a continuing interest in the direct and ancillary costs of operating and maintaining a modern fleet of railcars and the total cost of service of transporting coal and coal related products. NCTA members are also interested in the fair treatment of shippers in regards to fair and balanced policies of the Board regarding demurrage billing requirements.

2. NCTA Executive Director John N. Ward provided testimony in the Board's Oversight Hearing on Demurrage and Accessorial Charges conducted in May 2019 along with many other concerned representatives of shipper groups and carriers. Since this public hearing took place, the Board has received many comments and supporting information from both the carriers and shippers regarding guidance for policy and concerns about what constitutes fair and reasonable freight rail service and fee practices. NCTA appreciates the Board's attention to these important issues and its willingness to provide fair and workable policies.

3. The STB's final Statement of Board Policy in Docket No. EP 757, *Policy Statement on Demurrage and Accessorial Rules and Charges*, and its accompanying Final Rule in Docket No. EP 759, *Demurrage Billing Requirements*, are the result of the nearly year-long effort to provide clear and enforceable resolution to the freight rail service and charge issues for all parties involved. NCTA appreciates the attention given to shippers in these Decisions, but is concerned that they do not provide enough of an enforcement mechanism to resolve potential disputes without the intervention of the Board. NCTA hopes that with the increased public attention on these issues along with the Board's policy guidance, that further action or intervention from the Board on any potential disputes will not be necessary. However, NCTA remains concerned that if the burden of proof continues to be the responsibility of the shipper, as NCTA understands from the Board's determination to resolve disputes on a case-by-case basis, there will continue to be great uncertainty, delay and risk for the shipper seeking to dispute demurrage and accessorial charge claims.

4. NCTA is grateful for the opportunity to participate in the Board's Supplemental Notice of Proposed Rulemaking (SNPR) in Docket No. EP 759, *Demurrage Billing Requirements*. The proposals in this SNPR are expected to provide additional help for shippers wishing to dispute claimed demurrage and accessorial service charges. NCTA supports the Board's proposed demurrage regulations which would require Class I carriers to take "appropriate action" to ensure that demurrage charges are accurate and warranted prior to sending demurrage invoices. NCTA also supports the Board's proposal for including certain additional information on or with demurrage invoices from Class I carriers to assist rail users in determining if the claimed charges may have been attributed to carrier-caused problems that would impact the timing of a car or unit train's placement.

5. The additional requirements proposed by the Board for the Class I carriers to take greater care as they research and determine any claimed charges for the rail user will be a welcome addition to the Board's guidance policy in the process. Specifically, these additions would include: (1) the date range or "billing cycle" covered by the invoice; (2) the original estimated date and time of arrival (ETA) of each car and the date and time each car was received at interchange, either on or with each invoice, or available upon reasonable request; and (3) the date and time of each car ordered in. NCTA also supports the Board's proposal to require the Class I carriers to provide access to demurrage invoicing data in (4) machine-readable format for those parties with that capability and as optional for those without this capability. These proposed requirements should have the result of providing greater transparency of the data needed to help both

shippers and carriers expedite review of any claimed charges. NCTA also recommends that if these new rules and practices are adopted, the Board should implement an enforcement mechanism to require that the carriers are compliant with the Board's policies.

6. NCTA wishes to thank Chairman Ann Begeman, Vice Chairman Martin Oberman and Member Patrick Fuchs for their attention and consideration to these important issues. We look forward to the Board's further recommendations and decision in this process.

Respectfully submitted,

A handwritten signature in cursive script, reading "John N. Ward".

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