

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

300841

ENTERED
Office of Proceedings
July 6, 2020
Part of
Public Record

Docket No. EP 759
Demurrage Billing Requirements

**REPLY COMMENTS OF
THE INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

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Dated: July 6, 2020

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The Institute of Scrap Recycling Industries (“ISRI”) hereby submits its reply comments to the opening comments filed by the railroads¹ in response to the supplemental notice of proposed rulemaking (“SNPRM”) regarding Demurrage Billing Requirements issued by the Surface Transportation Board (“STB” or “Board”) on April 30, 2020.² The Board’s SNPRM follows the Board’s notice of proposed rulemaking on Demurrage Billing Requirements issued on October 4, 2019.³ ISRI filed opening and reply comments in response to the NPRM, and

¹ Railroads that submitted comments in response to the SNPRM are as follows: BNSF Railway Company (“BNSF”), Norfolk Southern Railway Company (“NS”), Union Pacific Railroad Company (“UP”), Canadian Pacific (“CP”) Canadian National Railway Company (“CN”), CSX Transportation Inc. (“CSX”) (collectively referred to as “Railroad Parties”).

² *Demurrage Billing Requirements*, STB Docket No. EP 759 (served April 30, 2020) (“SNPRM”).

³ *Demurrage Billing Requirements*, STB Docket No. EP 759 (served October 4, 2019) (“NPRM”).

opening comments in response to the SNPRM in this docket on November 6, 2019,⁴ December 6, 2019⁵ and June 5, 2020,⁶ respectively.

I. REPLY COMMENTS

The Railroad Parties assert that the Board's proposals set forth in the NPRM and the SNPRM are unnecessary.⁷ This contention is based upon the premise that they already communicate the information proposed by the Board to be provided either in demurrage invoices or on their web platforms.⁸ ISRI is not opposed to the Board allowing railroads to provide all of the required billing information on a web platform as long as all information is readily accessible in a single centralized location and able to be easily downloaded. Today, the existing platforms require customers to track car histories by accessing multiple sources on the websites. This practice is time consuming and burdensome and improperly shifts the burden of ensuring invoice accuracy to the customer.

Furthermore, regardless of whether the information is provided via an invoice or on a web platform at a centralized location, railroads should also be required to respond promptly to customer requests for additional information needed to verify the charges.

⁴ Comments of The Institute of Scrap Recycling Industries, Inc., STB Docket No. EP 759 (November 6, 2019) ("ISRI Opening Comments").

⁵ Reply Comments of The Institute of Scrap Recycling Industries, Inc., STB Docket No. EP 759 (December 6, 2019) ("ISRI Reply Comments").

⁶ Comments of the Institute of Scrap Recycling Industries, Inc. STB Docket No. EP 759 (June 5, 2020) ("ISRI SNPRM Opening Comments").

⁷ See *e.g.*, Comments of Union Pacific Railroad Company to Supplemental Notice of Proposed Rulemaking, STB Docket No. EP 759 (June 5, 2020) at 2 ("UP Comments"), Comments of Canadian Pacific on Supplemental NPRM, STB Docket No. EP 759 (June 5, 2020) at 2 ("CP Comments").

⁸ See *e.g.*, Comments of BNSF Railway Company, STB Docket No. EP 759 (June 5, 2020) at 2 ("BNSF Comments"), UP Comments at 5.

Some Railroad Parties also argue that the Board's proposed requirements would inhibit innovation.⁹ For example, CP argues that the Board's proposed requirements would be "a regulatory burden [that] penalizes and discourages innovation."¹⁰ ISRI strongly disagrees with this assertion. The minimum information requirements set forth in the Board's proposal are, as acknowledged by many Railroad Parties, already provided by the railroads to their customers by various means. The Board's intent is to ensure that this information is provided by all railroads to their customers to enable them to efficiently audit and verify demurrage charges. Providing this information in a manner prescribed by the Board should not in any way inhibit innovation with shipment management tools. Instead, pursuing innovation and developing tools to assist railroads and their customers in tracking shipments should remain an important objective of the railroads. ISRI believes that innovation is vital to improving the efficiency of railroad systems and that the Board's proposals would not be detrimental to this important endeavor.

In response to the Board's proposal to require original estimated time of arrival ("ETA") and interchange information on demurrage bills, some Railroad Parties argue that such information is not relevant to calculating demurrage.¹¹ ISRI disagrees with this contention. As explained in its previous comments, ISRI's experience is that at least one railroad regularly replaces original ETA information on its movements if any delay occurs with respect to a given car.¹² Having the original ETA information, without being subject to any change along the way, is vital for the rail customers' ability to identify the causes of car delays. The same holds true for

⁹ See e.g., Norfolk Southern Railway Company Comments, STB Docket No. EP 759 (June 5, 2020) at 2 ("NS Comments") ("the Board should encourage carriers to continue to innovate and develop platforms that enable customers to receive real-time information about their shipments, thereby providing those customers with advanced tools to manage their rail pipelines"), CP Comments at 6.

¹⁰ CP Comments at 6.

¹¹ See e.g., UP Comments at 4.

¹² ISRI SNPRM Opening Comments at 3-4.

interchange information, which will be helpful in identifying any upstream bunching. Thus, it is essential for rail customers to have access to such information in order gain a full understanding of the actual causes of delays and to address those issues as appropriate. Having this information will also facilitate discussions among the railroads and their customers and promote mutual accountability, which is an important consideration in the establishment of demurrage rules and charges.¹³

Additionally, Railroad Parties erroneously contend that providing the original ETA information on demurrage invoices will be misconstrued as a transit time guarantee.¹⁴ ISRI strongly disagrees. ISRI acknowledges that original ETA information is simply an “estimate” that does not have any binding implication for the railroads to complete a movement at the time stated in the original ETA information. The same holds true for many other transportation modes, including the airline industry which estimates flight arrivals but is not held to guarantee arrival times. Contrary to NS’s assertions, providing ETAs on demurrage bills does not in any way contravene the reasonable dispatch principle applicable to common carriers, because it does not create any delivery guarantee in any shape or form.¹⁵

In any event, ISRI strongly believes that rail customers would greatly benefit from having access to original ETA and interchange information. As explained in its previous comments, this information is helpful to rail customers and can be a possible indicator of carrier-caused delays and potential bunching of railcars by the delivering or an upstream carrier.¹⁶

¹³ Policy Statement on Demurrage and Accessorial Rules and Charges, STB Docket No. 757 (served April 30, 2020) at 15 (“Policy Statement”).

¹⁴ See e.g., NS Comments at 8, UP Comments at 4.

¹⁵ NS Comments at 6-7 (“Any such effort would be in conflict with the principles of providing common carriage upon reasonable dispatch.”).

¹⁶ ISRI SNPRM Opening Comments at 4-6.

Some Railroad Parties also raised several points regarding the Board’s proposed requirement pertaining to machine-readable data. Specifically, some Railroad Parties urged the Board to provide more flexibility as to the methods that can be used to provide such data.¹⁷ At least one railroad opposed the proposed requirement, stating that the Board should not “mandate ‘machine-readable invoicing’ or to prescribe specific data or formatting requirements for invoices.”¹⁸ ISRI is not opposed to allowing railroads flexibility as to how they provide machine-readable data for demurrage invoices. It is important, however, that this information is provided in a centralized location on any web platform, that it is easily accessible, and that can be readily downloaded. This would allow rail customers to easily obtain, analyze and manipulate the data and compare it with their own records.

Finally, in their comments, many Railroad Parties explained their multi-layered approach to ensure that demurrage invoices are accurate and warranted.¹⁹ Some Railroad Parties opposed the Board’s proposal to define a minimum standard for “appropriate action” that railroads need to take before sending demurrage invoices to their customers.²⁰ As ISRI explained in its previous comments, many railroads fail to provide accurate demurrage invoices.²¹ These inaccuracies encompass all sorts of information, including miscalculations of demurrage charges and misapplication of credits.²² Reviewing railroads’ complicated demurrage data to audit and verify these charges is an onerous task for rail customers. Thus, ensuring that the railroads are accountable for the accuracy of demurrage invoices is essential. Indeed, the overarching purpose

¹⁷ See *e.g.*, NS Comments at 6, Comments of CSX Transportation, Inc., STB Docket No. EP 759 (June 5, 2020) at 2 (“CSX Comments”).

¹⁸ Opening Comments on behalf of CN on Supplemental Notice of Proposed Rulemaking, STB Docket No. EP 769 (June 5, 2020) at 11 (“CN Comments”).

¹⁹ See *e.g.*, UP Comments at 6 BNSF Comments at 14-15.

²⁰ See *e.g.*, CN Comments at 13, CSX Comments at 9.

²¹ ISRI SNPRM Opening Comments at 10.

²² *Id.*

of demurrage is to “incentivize the efficient use of rail assets ... by holding rail users accountable.”²³ It is virtually impossible for demurrage charges to serve its intended purpose if rail customers continue to pay incorrect demurrage invoices because of lack of adequate mechanisms to ensure the accuracy of those invoices.

Railroads, as the invoicing party, should bear the burden of ensuring the accuracy of the charges assessed to rail customers. Rail customers need to have a level of confidence on the accuracy of railroad demurrage invoices and should be allowed to focus on how to improve their own efficiencies. Currently, they are forced to undertake the burdensome task of verifying railroad data that is often complicated and located in cumbersome systems. ISRI strongly believes that having a standard for invoicing accuracy that railroads would be held to is vital to address these concerns.

II. CONCLUSION

ISRI reiterates its strong support for the Board’s proposals regarding demurrage billing requirements set forth in the NPRM and the SNPRM. ISRI respectfully urges the Board to promulgate the proposed requirements.

Respectfully submitted,

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²³ See Policy Statement at 4.