

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 759

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DEMURRAGE BILLING REQUIREMENTS

REPLY COMMENTS OF CANADIAN PACIFIC ON SUPPLEMENTAL NPRM

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Canadian Pacific¹ (“CP”) submits these Reply Comments pursuant to the Board’s Supplemental Notice of Proposed Rulemaking (“SNPRM”) served April 30, 2020, in the above-captioned proceeding. These Reply comments address issues raised by the American Chemistry Council, Corn Refiners Association, the Chlorine Institute, and the Fertilizer Institute (“Joint Commenters”) in their comments filed in this proceeding on June 5, 2020 (“Joint Comments”) addressed specifically to CP’s demurrage program.

The Joint Commenters raise two concerns regarding CP’s demurrage program. First, Joint Commenters assert that “Canadian Pacific appears to purposefully record a different ordered-in date and time in its system ... [and] this has resulted in unwarranted demurrage charges that Canadian Pacific has been slow to resolve.” Joint Comments at 7. Based on this allegation, Joint Commenters “stress that the ordered-in date and time must be the actual date and time the carrier receives the order to place the cars at the receiving facility.” *Id.* Second, Joint Commenters suggest

¹ Canadian Pacific is a trade name under which Canadian Pacific Railway Company and its United States subsidiaries Soo Line Railroad Company; Dakota, Minnesota & Eastern Railroad Corporation; Delaware and Hudson Railway Company, Inc.; and the Central Maine & Quebec Railway US Inc. operate.

that CP's Customer Station "website may not provide the option to order in a car until the day after constructive placement, when demurrage already has begun to accrue, or until late in the day after the rail customer's personnel have left work." *Id.* at 10.

CP has been unable to connect these concerns to specific customers or incidents and therefore is unclear as to the actual circumstances and unable to follow up specifically. CP would welcome the opportunity to address these concerns directly with the customer(s) raising the concerns. As demonstrated by CP's actions and approach to demurrage, CP takes such concerns seriously.

As CP's Assistant Vice President, Customer & Corporate Services, Pam Arpin explained in her May 23, 2019 testimony to the Board in the *Oversight Hearing on Demurrage and Accessorial Charges* (EP 754), CP is committed to working with customers, providing them with the tools to manage demurrage effectively, and ensuring that customers are familiar with those tools. These efforts include an onboarding process to familiarize customers with how CP's tariffs are applied and the tools available through the CP Portal to manage their supply chain. Moreover, CP continues to work to refine and improve these tools, seeking out and incorporating feedback from customers. Among other things, CP established a Customer Advisory Council, conducts Annual Customer Surveys, and engages with customers at industry events in an effort to continually improve the customer experience. Ms. Arpin also explained that CP employs several tools to address customer issues regarding demurrage and ensure that demurrage invoices are accurate. These include validating charges and engaging with customers regarding potential issues proactively before invoicing. Additionally, customers can use the "Log an Issue" function on CP's Customer Station to record concerns in real time. Such concerns are addressed by CP's Customer Service team and reviewed in compiling demurrage invoices.

Above and beyond these pro-forma/pre-invoice measures taken to reconcile demurrage directly with customers, CP is committed to providing timely dispute responses. As Ms. Arpin explained, customers may log disputes on Customer Station using the Manage Invoice tool. As provided for in CP Tariff 2, CP guarantees a response time within fifteen business days and should no response be provided, CP accepts the dispute as written.

As to Joint Commenters' concern that CP sometimes records an "Order for Placement" date ("Order date") that may be different from the date the customer physically entered the order into Customer Station, CP is aware of two scenarios in which this might occur. Both scenarios involve the customer ordering in a car for a future date and in both scenarios, the use of a date other than the date that the customer logged the order into the system is appropriate and reasonable.

As a courtesy to its customers and to help them avoid demurrage, CP allows closed gate customers to order in specific railcars that are en route. Through CP's Customer Station, which is accessible 24/7 (including via mobile devices), a customer can view its incoming pipeline and order in a specific railcar before the car has arrived at CP's serving yard. When this happens, CP records the Order date based on the car's arrival at the CP serving yard, *i.e.*, when the car actually becomes available for placement. The reason for this is that the Order date has operational consequences. When a car is ordered for placement, it is added to a crew's work order. If the car has not yet arrived in the serving yard, however, adding the car to the work order would, at a minimum, create confusion, waste crew time, and interfere with operational planning.

Importantly, CP's recordation of arrival in the serving yard as the Order date has no impact on the risk of demurrage. Ordinarily, when a car arrives at a CP serving yard for a closed gate facility, it will subsequently become "constructively placed," initiating the demurrage clock at 00:01 the following day. However, when a car is ordered in to a closed gate facility while en route,

the application of the Order for Placement upon arrival at the serving yard suppresses the application of “Constructive Placement” and the demurrage clock does not begin to run.

At “Order by Quantity” facilities (facilities at which the customer enters a generic car order by quantity and equipment/commodity type by service day), CP’s system enables a customer to place orders for the current day and up to three days into the future. If a customer places an order for a future date, the Order that CP records is the date on which the car is to be placed according to the customer’s order and not the date the customer enters the order. As explained above, this makes sense as the Order date is the date that the car will be added to the train crew’s work order for delivery to the customer and reflects the service day the customer has actually requested the railcar to be delivered. Under that scenario, the date the customer physically entered the order into Customer Station is not the relevant date for demurrage purposes, as the customer elected a specific date in the future for delivery. Thus, because the customer has elected to let the car sit in the serving yard until the specified future date it wants to receive the car, the car may be subject to demurrage.

CP opposes Joint Commenters request that the Board require railroads to record and provide the date and time that the customer logged the order into CP’s system in all circumstances. In the scenarios described above, such information has no operational significance and does not impact the risk of demurrage. Not only would such a requirement serve no useful purpose, it would sow confusion and potentially cause harm. The gap between the time the customer logged the order into the system and the actual placement of the car would wrongly suggest that the carrier was responsible for delaying delivery, even where the car is placed at the customer facility on the date that the customer designated for placement. Moreover, not only is the date the customer logged the order into the system not significant for demurrage purposes, CP’s system is not set up

to capture that information. CP would need to reprogram its system in order to capture this information at substantial cost and diversion of resources, with no discernible benefit.

As to Joint Commenters' apparent concern that some customers have been unable to place an order prior to constructive placement, again without more detail, it is difficult for CP to identify and address the specific concerns to which Joint Commenters allude. As a general matter, as explained above, CP provides customers with the ability to order in cars 24/7 both while in the serving yard or approaching. If a customer requests delivery of a railcar for the service day following serving yard arrival, demurrage will not accrue.

If, for some reason, a customer is unable to place its order on Customer Station, there are several back up options available to the customer. These include e-mailing or faxing in the car order, or contacting CP's customer service center, among other options. Customers can also record the issue in real time using the "Log an Issue" functionality on Customer Station so that CP can review and determine if demurrage relief is appropriate prior to invoicing.

CONCLUSION

As a courtesy, CP provides closed gate and order by quantity customers with the ability to order in cars for future placement in addition to submitting orders for its next scheduled service day. When submitting an order for a scheduled service day in the future, the Order date should reflect the date that corresponds with the railcar's availability in the serving yard and the customer's ability to accept the car. This practice does not result in improper demurrage charges. Requiring that, in all instances the "ordered-in date and time must be the actual date and time the carrier receives the order to place the cars at the receiving facility" (Joint Comments at 7) would serve no practical purpose. It would, however, generate confusion and be costly. Accordingly, the Board should reject Joint Commenters' request to include such a requirement.

Respectfully submitted,

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