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August 11, 2021

The Honorable Martin J. Oberman
Chairman
Surface Transportation Board

The Honorable Patrick J. Fuchs
Board Member
Surface Transportation Board

The Honorable Ann D. Begeman
Board Member
Surface Transportation Board

The Honorable Robert E. Primus
Vice Chairman
Surface Transportation Board

The Honorable Michelle A. Schultz
Board Member
Surface Transportation Board

Re: Docket No. EP 768: Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads.

Dear Chairman Oberman, Vice Chairman Primus, and Board Members Begeman, Fuchs, and Schultz:

Thank you for your continued attention to rail service issues, including your efforts to address the abuse and exponential growth of demurrage and accessorial fees levied by rail carriers. AFPM is the leading trade association representing the makers of the fuels that keep us moving, the petrochemicals that are the essential building blocks for modern life, and the midstream companies that get our feedstocks and products where they need to go. We make the products that make life better, safer and more sustainable — we make progress. Rail transportation is vital to our members, as well as to manufacturers and customers downstream who depend on our products.

Most refiners and petrochemical manufacturers are “captive” to a single rail carrier, and are at the mercy of those rail carriers regarding service, rates, and demurrage fees. Over the past several years, major rail carriers have levied more aggressive demurrage fees. In 2019 Class I revenue for demurrage and accessorial charges for U.S. operations totaled \$1.49 billion.¹ AFPM applauds STB’s work to date on the important issue of demurrage, including the finalization of STB’s Demurrage Policy Statement,² the issuance of the Demurrage Billing Requirements Final Rule,³ and letters from the STB to Class I rail carriers requesting those carriers provide data on demurrage charges levied.⁴

The principle underlying demurrage is straightforward - when a person or entity holds someone else’s assets (*i.e.*, a rail car) beyond a reasonable time, it is using that asset for which the owner of that

¹ See Surface Transportation Board > Reports & Data > Demurrage & Accessorial Charges, accessed and calculated on August 2, 2021, <https://prod.stb.gov/reports-data/demurrage-accessorial-charges/#:~:text=Demurrage%20is%20a%20charge%20that,cars%20in%20the%20rail%20network>.

² See 85 Fed. Reg. 26866, “Policy Statement on Demurrage and Accessorial Rules and Charges” Statement of Board Policy, Docket No. FD EP 757 published May 6, 2020, <https://www.federalregister.gov/documents/2020/05/06/2020-09682/policy-statement-on-demurrage-and-accessorial-rules-and-charges>

³ See 86 FR 17735, “Demurrage Billing Requirements” Docket No. FD EP 759 published April 6, 2021, <https://www.federalregister.gov/documents/2021/04/06/2021-07000/demurrage-billing-requirements>

⁴ See Chairman Oberman Letter to UP Regarding Intermodal Supply Chain Issues, July 22, 2021, Non-Docketed Public Correspondence, <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/>.



asset should be compensated. Unfortunately, in the context of rail shipments, this basic economic principle has been corrupted, with demurrage flowing not to the asset owner, but rather only in the direction of compensating the market dominate railroad. An efficient rail network is in the best interests of both carriers and shippers; therefore, a reasonable and workable demurrage system has the potential to benefit all parties.

To this end AFPM supports, in principle, the North America Freight Car Association (“NAFCA”), The National Grain and Feed Association (“NGFA”), The Chlorine Institute (“CI”), and The National Oilseed Processors Association (“NOPA”) petition for rulemaking to adopt rules governing private railcar use by railroads.⁵ Demurrage charges were developed at a time when the railroads owned the majority of rail cars in North American interchange service. Since then, the railroad industry has evolved to the point that approximately 73% of the railcars in service today – approximately 1.2 million railcars – are no longer owned by railroads, but are private railcars which are purchased or leased, and maintained, by non-railroad entities, including AFPM members.⁶ This paradigm shift in rail car ownership necessitates a corresponding regulatory change. An update to the rules governing the railroads’ use of private railcars is long overdue to incentivize the efficient utilization of the working capital deployed in them, similar to those standards railroads have long enforced on shippers and other carriers for their own assets.

AFPM members have collectively invested tens of billions of dollars to acquire the railcars through lease or purchase and they incur significant ongoing costs to maintain them, in large part for their use by the Class I railroads to provide railroad freight service. While there are rules and policies in place by which suppliers of certain types of private railcars receive some compensation from railroads for their use of private railcars, current regulations and policies do not adequately protect this enormous investment by creating sufficient incentives for the Class I railroads to use private railcars efficiently.

AFPM supports, in principle, the joint petition by NAFCA, NGFA, CI and NOPA and urges the STB open a rulemaking docket where both rail shippers and carriers can provide meaningful comments to develop a workable solution that improves efficiency of the rail network. AFPM shares STB’s goal of ensuring the efficient flow of commerce on our nation’s rail system and reasonable demurrage charges and practices are essential to achieve this. Please contact me at (202) 457-0480 or rbenedict@afpm.org if you wish to discuss these issues further.

Thank you for your consideration,

Rob Benedict
Vice President, Petrochemicals & Midstream
American Fuel & Petrochemical Manufacturers

⁵ See “Petition for rulemaking to adopt rules governing private railcar use by railroads” submitted by NAFCA et al on July 26, 2021, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1627328946706/302777.pdf

⁶ See “Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads” Docket No. FD EP 768 published July 26, 2021, https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1627328946706/302777.pdf