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Allison C. Davis  
Director  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re: Ex Parte 759, Demurrage Billing Requirements

Dear Ms. Davis:

The U.S. rail operating subsidiaries of Canadian National Railway Company (hereafter “CN”) respectfully request leave to submit this letter in the above-referenced docket. CN submits this letter to respond to certain assertions about CN’s demurrage billing practices that were made for the first time by certain shipper organizations in July 6, 2020 Reply Comments on the Board’s April 30, 2020 Supplemental Notice of Proposed Rulemaking. These claims about CN were not made in any of the three prior rounds of comments in Ex Parte 759, nor were they made in any of the written or oral testimony submitted in the Ex Parte 754 demurrage proceeding in 2019. And CN is concerned that, if unanswered, these claims could give a misleading impression to CN customers about the circumstances in which they could incur demurrage. For these reasons, there is good cause for the Board to accept this brief response into the record.

Specifically, the Joint Reply Comments filed by the American Chemistry Council, Corn Refiners Association, The Chlorine Institute, and The Fertilizer Institute (“Joint Commenters”) allege that CN “reports cars as being constructively placed at a complex serving yard even though the cars have not been cut out of the arriving train and positioned at the yard for the switching crew to deliver” and implies that CN could bill customers for demurrage during periods when cars are not poised for delivery. Joint Reply Comments of American Chemistry Council et al. at 9, Ex Parte 759 (filed July 6, 2020). It is difficult to evaluate this claim because no specifics are provided. Questions involving demurrage are fact-specific, and the application of demurrage policies often depends on facts like whether cars are private or railroad-owned; whether the cars are loaded or empty; whether the facility has spot on arrival or constructive placement; whether a customer unloads

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the cars on its tracks or CN's tracks; and whether a customer has ordered cars that exceed the track capacity of its facility.

Nevertheless, the Joint Commenters' assertion appears mistaken for at least two reasons. First, there is nothing unusual about the fact that constructive placement times do not always correspond to "ready to deliver" times. The fact that a car has been constructively placed in a CN serving yard and has begun occupying space in that yard does not mean that it is immediately able to be loaded onto a train for final delivery, particularly in a congested yard with a backlog of a customer's traffic. The Joint Commenters' suggestion that constructive placement does not occur until cars are "positioned at the yard for the switching crew to deliver" has no basis in industry custom or practical realities, and their suggested redefinition of constructive placement has not been previously raised at any point in this proceeding or in Ex Parte 754.

Second, the Joint Commenters' implication that customers might be unable to avoid demurrage charges during any time gap between when a car is constructively placed and the time when it is ready to deliver reflects a misunderstanding of how CN bills for demurrage. As CN has explained, "[a]ll [customers] have to do to avoid demurrage is to ask for delivery before the cutoff time for their next scheduled service." See CN Supp. Comments, Ex Parte No. 754, Supp. Test. of Keith Courtoreille at 4 (filed June 6, 2019))<sup>1</sup> CN has explained in its public testimony that customers are able to order in railcars for delivery if the railcars are within 48 hours of their ETA, even before the cars are constructively placed. See *id.*, Supp. Test. at 10. ("customers can also view cars still in transit, within the next 48 hours, and order them in while they are still on the train.").

CN encourages individual customers with questions about its demurrage practices or individual demurrage bills to contact CN directly to discuss any questions that they may have. As CN has explained to the Board, CN carefully reviews disputes to invoices that are issued.

Sincerely,

/s/ Matthew J. Warren

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<sup>1</sup> *Id.* ("At CN, a customer does not begin to be charged demurrage for a constructively placed car until the customer fails to order the car in the next available service delivery window— delivery windows that are based on each customer's individualized service schedule.").