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May 8, 2019

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Oversight Hearing on Demurrage and Accessorial Charges, EP 754

Dear Ms. Brown:

In accordance with the decision served in the above-captioned matter on April 8, 2019, enclosed is The Kansas City Southern Railway Company's Written Testimony. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Adam J. Godderz
David C. Reeves

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EP 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY'S
WRITTEN TESTIMONY, PURSUANT TO THE BOARD'S ORDER OF APRIL 8, 2019**

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**Attorneys for The Kansas City Southern
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Dated: May 8, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Pursuant to the decision issued by the Surface Transportation Board ("STB" or "Board") in this proceeding on April 8, 2019 ("Decision"), The Kansas City Southern Railway Company ("KCS") hereby submits its written testimony on subjects outlined in the Board's Decision.

Witness Identification

KCS's testimony at the May 22 hearing in this proceeding will be presented by Michael J. Naatz, Executive Vice President and Chief Marketing Officer of KCS. Mr. Naatz joined KCS in May 2012 as Senior Vice President and Chief Information Officer. Mr. Naatz was promoted to Senior Vice President Operations Support and Chief Information Officer in August 2014 and was promoted to his current position in October 2018. Prior to joining KCS, Mr. Naatz served in a number of positions in the YRC Worldwide, Inc. ("YRCW") organization and its predecessors for about 18 years, including as President of USF Holland and as President and Chief Customer Officer - Customer Care Division at YRCW. In his positions in the YRCW organization, Mr. Naatz was responsible both for working with customers to meet their needs and for working with railroads as a rail customer.

Background

In the Decision, the Board set forth the following three topic areas that participants in this proceeding were invited to address:

- Recent experience with demurrage and accessorial charges, including (i) the largest drivers of demurrage and accessorial charges; (ii) supply chain visibility; (iii) the availability, effectiveness, and usability of online customer service tools that manage car orders, car supply, and demurrage and accessorial charges, including whether these tools make available adequate data to evaluate whether demurrage is being assessed properly and to dispute the charges when necessary; (iv) bunching, including bunching that occurs upstream; and (v) the ability to address demurrage through commercial arrangements.
- Impacts on shippers, receivers, third-party logistics providers, and shortline railroads flowing from recent (i) changes in Class I carrier demurrage and accessorial tariffs; (ii) changes in Class I carriers' enforcement policies for these tariffs; and (iii) operational changes implemented by Class I carriers including, in particular, changes in the frequency and timing of local service and/or shortline interchanges.
- Perspectives on whether demurrage and accessorial tariffs in effect during the past three years have created balanced and appropriate incentives for both customers and railroads, including views on the extent to which reciprocity should be incorporated into demurrage and accessorial charges.

KCS addresses these topics below.¹

Recent Experience with Demurrage and Accessorial Charges

Based on review of our demurrage invoices for March, the most recent month available,² about 62% of the customers we served did not incur demurrage charges. About one-fifth of

¹ Rates and services provided to a customer always depend on unique combinations of circumstances applicable to that customer. At KCS, we work hard to tailor solutions to the customer's individual circumstances. Accordingly, unless specifically stated otherwise, examples included in this testimony generally illustrate pragmatic responses a customer's situation. These examples are not policies or uniform practices of KCS, and cannot be regarded as projections of what KCS might do in the future with respect to any customer or customers. As in the past, KCS will establish future rates and service offerings based on then-existing circumstances with respect to each individual customer.

² Our demurrage invoices are issued monthly on the 10th of each month, so April invoices will not be issued until after this statement is due.

those customers that did incur demurrage were invoiced less than \$1,000.00 for the month; approximately 62% of the customers that were invoiced for demurrage had less than \$10,000 in demurrage charges for the month. Eight customers accounted for over half of the total demurrage billing for the month.

Largest Driver of Demurrage Charges and Potential Solutions: Customer Circumstances.

In KCS's experience, the largest driver of demurrage charges is large fleets of customer owned or leased cars ("non-system cars") and a shortage of customer-owned space to store them. Seven KCS customers had six-figure demurrage bills in March. Each of those is a large company, the name of which would be recognized by anyone familiar with their industries. These customers each has a large fleet of railcars to serve their shipping needs, and almost all of them have inadequate track space to store their fleet cars on their own property. In a number of instances, the customers' facilities are somewhat 'landlocked', which keeps them from being able to build storage capacity immediately on their plantsite. Therefore, large parts of these customers' fleets are held on KCS property.

KCS has several avenues for responding to individual customers' unique needs to store excess non-system cars. One available avenue is through transportation contracts. The majority of KCS's service is provided pursuant to contracts that are exempt from the Board's jurisdiction. Demurrage and accessorial charges are among the issues that customers may choose to negotiate, and are among the issues balanced by the customers with their other contracting objectives in striking a final agreement with KCS.

In addition, we occasionally lease track to customers to hold cars. Our ability to offer this service depends mainly on available track capacity in reasonable proximity to the customer's plant. Availability of track space is determined based on what trackage must remain available to

KCS in order for our operations to remain fluid and to have surge capacity when needed. When customers have needs for longer term or large volume storage, they often work with track owners such as shortlines, some of which have track space available for these larger storage needs.

In the past, KCS has also worked with customers to support building their own car storage capacity. For example, in at least one instance we forgave significant demurrage bills because the customer agreed to spend at least an equal amount on building capacity to store its own cars.

Supply Chain Visibility/Online Tools/Bunching. KCS makes demurrage information continuously available to its customers, and provides them demurrage management tools on the MyKCS customer access portal. The MyKCS login is available in a drop down menu on the main KCS webpage, as are links to KCS's demurrage and accessorial tariffs.

As explained on KCS's website,³ demurrage for loaded cars has four basic steps - constructive placement ("CP"); order in; actual placement ("AP") and release. Each of these steps is trackable by and disputable by the customer through MyKCS, as well as by other means.

Generally, customers can choose either AP service or order-in service. If a customer is an AP customer, we will place cars at the customer's facility with the next available switch service after the car arrives in the serving yard, provided the customer's facility then has capacity to receive the car. Alternatively, if a customer is an order-in customer, cars will be CP'd upon arrival at the serving yard, the customer will be promptly notified by e-mail, and the customer can choose which cars on CP status to order in. Order-in customers can order cars in ahead of the cars' arrival in the serving yard, in which case the car will not be placed on CP but will be delivered to the customer at the next available switch.

³ <http://www.kcsouthern.com/pdf/demurrage/us-demurrage-railcar-cycle.pdf>.

For railroad-owned or leased cars (“system cars”), if a customer is an order-in customer or if the customer’s facility lacks capacity to receive the car, the car will be CP’d on arrival at the serving yard. The customer is sent an e-mail, notifying them that the car is on CP and available to order in when they have the capacity and desire to receive it. Demurrage debits will start to accrue at the next 7:01 a.m. following the CP of the car, unless the car is ordered in before that time. Because most cars arrive in the serving yard after 8:00 a.m., customers generally have much of the day to decide whether to order the car in, preventing demurrage debits from starting to accrue while the car is CP’d. Alternatively, if a customer is an AP customer and has the capacity to receive the car, demurrage on a system car will begin with placement of the car at the customer’s facility. Once the customer releases the car, demurrage debits cease to accrue and the customer is accorded a credit for the release.

For non-system cars, demurrage debits for an order-in customer will start to accrue at the next 7:01 a.m. following the CP of the car, unless the car is ordered in before that time. If the car is ordered in before the first 7:01 a.m. following its arrival in the serving yard, or if the customer is an AP customer, demurrage will not accrue on non-system cars that the customer has capacity to receive. Otherwise, demurrage debits will accrue until the car is ordered in. Demurrage does not accrue on non-system cars while they are AP’d.

Resolving Customer Questions and Disputes Concerning Demurrage. The customer has the ability to dispute the occurrence of each of these car cycle events through MyKCS, and by other means. When a customer logs in with its password to MyKCS, they can see an inventory of their cars and the CP, AP or ordered-in status of each, and when that status commenced. If the customer questions the information shown, the customer can simply click on the individual car and fill out a dispute notice to KCS.

KCS has three people who respond to these notices and who will resolve any disputes raised. Considering the large numbers of CP, AP and order-in car cycle events that occur systemwide with KCS's average daily inventory of over 30,000 cars, the annual average of about 2034 car cycle event disputes over the past three calendar years is relatively small.

Each dispute is considered on its individual facts. As shown in KCS's May 1 filing, in recent years the facts have predominantly led to resolving disputes in the customer's favor.

A few customers choose to handle their demurrage matters outside of MyKCS. For those customers, we provide a General Inquiry of their inventory of cars by e-mail or EDI. These customers could dispute the status of a car in their inventory using MyKCS, or can do so by e-mail up until the invoice is issued on the 10th day of the following month. These customers, like customers disputing demurrage events through MyKCS, may also dispute demurrage charges after the invoice is issued and prior to paying it. Post-invoice disputes, along with customers going out of business and other matters have, since 2016, led to writing off approximately four to five percent of demurrage charges billed annually.

Demurrage disputes offer KCS the opportunity to interact with the customer about possible causes and solutions for their incurring demurrage charges. A number of our customers - particularly those with large private fleets and inadequate customer-owned storage capacity - use the ability to hold cars on KCS and pay demurrage as a preferred alternative to incurring the costs of building their own storage or other costs. But for other customers who wish to avoid demurrage, we try to work with them to help them understand what actions they can take to avoid demurrage costs. While demurrage charges are legitimate and necessary in light of the resources - cars and track space, primarily - consumed by customers holding cars, overall KCS would prefer that the events that lead to demurrage charges not occur.

Accessorial Charges. Accessorial charges are, for the most part, specific services specifically requested by customers. These charges include charges for switching, weighing, various irregularities in car usage, failure to provide correct documents for moving the shipment, charges for overloaded cars, failure to have a chassis available to receive an intermodal container from the train, failure to completely unload a car, and a variety of other miscellaneous matters. Because these charges are incurred for customers' individualized service needs, they have been less often incurred, less often disputed and less often written off than demurrage charges. In KCS's experience, there is no largest driver of accessorial charges, other than specific customer service needs.

Impacts of Recent Changes on Supply Chain Partners

As shown in its May 1 filing, KCS changed some portions of its demurrage and accessorial tariffs effective April 1, 2019. At this stage it is too early to tell what effect those changes will have on customers' bills or customer disputes about charges. Resolution of individual disputes will continue to be based on a multitude of factors, as in the past. KCS has not changed any policy with respect to handling customer disputes of these charges.

KCS's initiatives to implement its approach to PSR principles in the U.S. supports volume and revenue growth, capital efficiency and an improved cost profile. They equally support improved customer service, capacity and network resiliency. To date that has been in the form of consolidation of trains to make better use of available train slots. For example, we consolidated handling of twice-weekly manifest traffic on one route with daily trains handling intermodal traffic on the same route, leading to more frequent and quicker manifest service on that route. While we will look for additional efficiencies as we move forward in implementation of our PSR initiatives, our goal is to improve service and customer satisfaction, not disrupt it. As

an example, for customers who own or lease cars (the “non-system cars”), the increased network velocity and reduced car cycle times that PSR brings to operations can help those customers maximize their car assets to handle more work with the same fleet or even take out of service older surplus cars and their associated maintenance costs.

KCS expects to keep our customers closely advised of our planned service changes, particularly through Service Status Updates which are posted on our website⁴ and which are e-mailed to thousands of interested parties when issued. We also hope to be able to work with our connecting carriers as they modify their service designs, to avoid disruptions in traffic that KCS interchanges to and from other carriers, which is over 80% of our traffic.

Perspectives on 2016-2019 Incentives

KCS recognizes that demurrage in the rail industry, like detention in the trucking industry, often is a point of friction between carriers and their customers. That may simply be because demurrage is a charge added on top of linehaul charges. While dissatisfaction may sometimes stem from customers feeling surprised by demurrage charges, our MyKCS system makes essentially real-time information available to customers about their car inventories to enable them to manage their car inventories and avoid demurrage surprises. As noted before, however, some customers clearly choose to make use of demurrage as a storage tool for their own fleets, rather than building their own storage capacity.

KCS believes that historically the demurrage and accessorial charges that KCS has levied have been a balanced, workable means of meeting customers’ demands for services beyond linehaul transportation. For example, for 2018, demurrage and accessorial charges collected by

⁴ <http://www.kcsouthern.com/customer-resources/service-status-updates/index>.

KCS totaled \$39.493 million, compared to freight revenues of \$1.328 billion. As KCS's recent tariff changes continue to take effect, we will continue to monitor that effect.

CONCLUSION

KCS's goal is to consistently be the fastest-growing, best-performing, most customer-focused transportation provider in North America. We realize that a railroad is in the business of serving customers, and that providing excellent service is what will enable us to continue to grow. Service begets growth.

KCS's implementation of PSR principles applicable to our network has that goal as well. The objective of our PSR implementation is to create a more efficient railroad that can consistently exceed our customers' service expectations. We are confident that our approach to implementation of PSR principles will benefit all KCS stakeholders, including our customers. KCS will continue its focus on working with customers to meet their individual needs in all phases of our business, including with respect to demurrage and accessorial charges.

Respectfully submitted,



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Dated: May 8, 2019

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