

**Testimony of PBF Energy & PBF Logistics
before the
U.S. SURFACE TRANSPORTATION BOARD**

395 E Street, S.W.
Washington, DC 20423-0001

“OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES”

Docket No. EP 754

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**Written Submission of PBF Energy and PBF Logistics
Presented by Kent Avery, Vice-President**

INTRODUCTION

Good morning, Chairman Begeman, Vice-chairman Fuchs and Member Oberman, and Surface Transportation Board staff. Thank you for providing this opportunity to testify before you today on Demurrage and Accessorial charges related to rail shipments.

I am Kent Avery, the Vice-President responsible for managing rail activities for both PBF Energy and its master limited partnership, PBF Logistics. PBF Energy Inc. (NYSE: PBF) is one of the largest independent refiners in North America, operating through subsidiaries oil refineries and related facilities in California, Delaware, Louisiana, New Jersey and Ohio. PBF Logistics LP (NYSE: PBFX) is a fee-based, growth-oriented master limited partnership formed by PBF Energy Inc. to own or lease, operate, develop and acquire crude oil and refined petroleum products terminals, pipelines, storage facilities and similar logistics assets.

During my 30-year career in the rail industry I have worked in every aspect of rail operations, including a class 1 railroad, shortline railroads, and now with rail-served customers. Having experienced both sides of the rail industry, I bring a unique perspective to this topic and again, appreciate being able to testify.

I respectfully submit these comments to the Surface Transportation Board (“STB”) on behalf of PBF Logistics. We sincerely appreciate STB’s willingness to start a constructive dialogue on critical rail competition issues such as demurrage and assessorial charges.

BACKGROUND

PBF's goal is to safely and reliably transport crude oil, intermediate feedstocks, and petroleum products and co-products on the combined fleet of 7,000 railcars we own and lease. Our Fleet plays a critical role in operating our refineries and supplying our customers with the products that help provide American citizens with the highest standards of living and mobility in history.

PBF operates 5 refineries and 2 terminals that are rail-served. Of these 7 operations, 4 or roughly 57% are captive to one serving carrier, which puts rail shipper's like PBF - the railroad's customer - in a difficult position because railroads use their market power over captive shippers to secure commercial contracts that are railroad-created and controlled, with minimal to zero flexibility in negotiating fair and balanced terms. Examples include demurrage, locomotive utilization fees, track leases, and freight contracts.

Like every business or agency, each railroad has its own culture. Some are more customer-focused and willing to listen, adjust costs, and work collaboratively with their customers than others. Unfortunately, there is no pathway to arbitrate these charges in a fair and balanced manner, so railroad companies that take a hard line based on their competitive advantage become more emboldened and willing to test the limits of fairness.

PBF applauds the Rate Reform Task Force's recent report, which was developed by STB staff as a set of recommendations for Board members to consider. We look forward to continuing engagement on finding administrative, legislative, and procedural fixes to this power imbalance that will lead to rail transport markets that are more open and competitive, that move the industry away from practices of certain railroads that are often perceived as being monopolistic.

Unlike most of the testimony the commissioners will hear, I should mention PBF has been able to resolve disputes with railroads, which takes a tremendous amount of energy, persistence, and organizational elevation that can span days, weeks, and even months. This process is completely controlled and assessed by the railroads, way too burdensome, and often acts as a deterrent.

As carriers have consolidated, competition has disintegrated, resulting in programs, tariffs, and rules that are simply one-sided, providing the rail carrier with total leverage when negotiating with its captive customers. In fact, PBF would support reasonable demurrage and associated fees, but only if improved on time performance can be achieved, and more importantly ... sustained to provide ratable deliveries.

Many railroads have periods of good performance, but I am unable to name a single railroad we use that has been able to operate in the past couple of years without great difficulties. To date, none of our carriers has been able to demonstrate a significant and sustainable improvement in on-time train performance.

Based on my experience, I estimate that most railroads operate in the low- to mid-70% range in on-time performance. This is a significant, easily measurable metric that deserves much more attention than it receives because planned or unplanned delays typically result in inefficient delivery schedules that allow the railroads to levy demurrage costs, despite being responsible for the delay.

As we see with airlines, whose on-time performance is widely available, customers value getting what they pay for, which at a minimum should include reliability and punctuality. One significant difference is that more than 50% of our facilities are captive to one railroad, leaving us with only one option while providing the railroad with a distinct, enviable negotiating advantage.

If the railroad causes a delivery delay, in addition to inconveniencing their customers in various ways they are able to charge those customers for late deliveries of what are often time-sensitive materials. Respectfully, this is a direct result of unexpected consequences going back to deregulation of railroads and subsequent consolidation that has resulted in a handful of American and Canadian companies dominating rails in the United States.

Transportation Variability is the key to lower cars on line, which will lead to lower demurrage costs

Transportation variability measures the percentage of on-time train performance. Poor on-time performance or said differently, “wide variability” in time management is typically due to 2 factors:

First and foremost, late deliveries are caused by the recovery process from a service interruption or planned maintenance, which can be defined by events like a crossing accident, washout, rockslide, derailment, personal injury, locked-up traction motor, DC evaluation cars in-track welders, track inspectors, tie and steel gangs, etc. etc.

These events typically shut down main tracks, frequently straining resources like locomotives and crews. Shutting down a railroad corridor for a planned or unplanned event stops the movement of crews and/or locomotives, and frequently puts resources out of place. .

Service interruptions and planned maintenance are significant contributors to transportation variability.

The second contributing factor to poor on-time performance or transportation variability is caused by a lack of resources, such as a crew or locomotive. When the railroad experiences a deficiency of assets such as crews and locomotives, on-time performance and train variability are negatively impacted. Sometimes locomotive and crew availability can be impeded by planned maintenance or a service interruption

Unfortunately, there are many instances when delays can be attributed to crew scheduling issues: A holiday, sporting event, or even hunting season frequently reduce the number of crewmembers available, rather than planned or unplanned events taking the main track out-of-service. So service interruptions and planned maintenance, combined with unreliable crew availability, often lead to rail service disruptions customers must deal with, even when there's a scheduling issue at fault.

Simply put, the variability in on-time train service is the primary cause for excessive demurrage, which is solely the railroad's responsibility, NOT the shipper's fault. How can a railroad that has demonstrated terrible over-the-road performance demand and justify demurrage and assessorial charges from a customer that has been disadvantaged by poor service?

The answer is ... simple ... when the railroad denies responsibility and accountability, and arbitration is unavailable. Which is the system in place today. Each and every railroad will state they do not guarantee service and carriers with captive customers boldly make all the rules, consequently the customer is left to foot the bill for the railroad's poor performance.

Rail carriers often cite lack of a crew or locomotive as a rationale for delayed service, and thus receive no penalties under its fee regime. To remedy that, rail carriers can hire additional crews, procure more locomotives or expand their main track to improve on time performance.

STB should recognize that the railroads economic decision to delay or not invest in assets and resources as an intervening cause for delay in service that is beyond the railroad's control. Furthermore, rail shippers have made considerable capital investments in onsite railyard expansion to improve efficiency. While lack of crews, locomotives or main track capacity may be a plausible reason for failure to serve, a similar explanation by a rail shipper would be met with a fee. Rail shippers simply want a level playing field on which they are treated reasonably by the railroads.

The wide variability in on-time performance mentioned above puts captive rail shippers such as PBF in the impossible and unenviable scenario of determining how efficient each railroad is operating, how well carriers are resourced, and then adjusting their fleet accordingly.

There is no benefit to a shipper to oversize its fleet. Railcars are expensive to lease, store, and maintain. Shippers only hold extra cars due to the wide variability in railroad service. If a carrier is running well, a shipper likely has too many cars, but just enough when a carrier is running poorly, putting the shipper in the unenviable position of having to weigh the cost of lost profit, or a plant shutdown, versus paying demurrage due to the railroad's poor performance, which customers should never have to subsidize.

Recently PBF was contacted by two carriers that wanted to terminate demurrage agreements or cancel track leases. Most of these track leases or demurrage agreements were put in place as a way to help the customer manage their car flow in times of inconsistent service.

This recent move by the railroads is likely the result of adopting new, Precision Scheduled Railroading, or PSR. While rail carriers and financial analysts have praised PSR, rail shippers have met this recent sea change in operating practices with considerable skepticism, given the problems with initial roll-outs, associated service degradation, and lack of flexibility.

Further, customer service is often touted by railroads as one of the pillars of PSR, yet rail shippers are still waiting to see the benefits. I sure hope with a word like "precision" in the name the railroads' on-time performance and service will be precise and sustainable for long periods of time, especially in times of growth.

Solutions

PBF respectfully requests that the STB consider the following recommendations as part of the Agency's review:

1. Assess demurrage only on cars with on-time performance, which gives railroads the incentive to improve on-time performance, which if achieved would provide customers with greater confidence to reduce their fleets.
2. Allow a cost-effective way to arbitrate basic fees like demurrage, assessorial charges, or eliminating a track lease. After a couple of precedents are set, we would expect much of the unnecessary and burdensome work and effort by the shippers would end.
3. Benchmark services to develop a "Railroad Customers Bill of Rights" program like the DOT did in 2009 for the airline industry when the federal government instituted a "Passengers Bill of Rights" as a direct result of the airline industry's poor, inconsistent, unreliable performance.
4. Ensure "On Time" performance of pre- and post-PSR receives the attention it deserves. A methodology to measure the railroads on time performance should be developed and communicated in a transparent way to the customer base at large.

That ends my testimony, which we also previously submitted to staff. Thank you very much for providing this opportunity to testify. I would be glad to answer any questions you might have at this time.

Very Truly Yours,

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