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May 8, 2019
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Testimony of:

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Before the

Surface Transportation Board

Oversight Hearing on

Demurrage and Accessorial Charges

Washington, D.C

May 22, 2019

Introduction

Thank you for this opportunity today to provide testimony today on behalf of Olin Corporation.

My name is Frank Chirumbole, and I am the Vice President of Integrated Supply Chain for Olin Corporation's Chemical Division. I joined Olin in 2001 and I have been involved in transportation policy ever since. I also served on the Board of the Chlorine Institute for 9 years and was its Chairman from 2006 to 2008.

Olin is judicious when it comes to public statements, but we concluded long ago that our rail transportation problems were significant enough that we needed to be a leading voice for rail shippers. We will continue to make every effort to provide respectful and constructive input to this Board, and we appreciate your willingness to engage directly with Olin.

Before I begin, I also want to offer my sincere appreciation to Chairman Begeman and the rest of the Board for the recent STB staff report examining the need for rate case reforms. Meaningful rate review reforms are our top advocacy priority as a company. We, at Olin, will do everything possible to support you as this important work moves forward, and we look forward to continued progress towards a more equitable commercial playing field.

Let me provide a brief introduction to Olin. We are the world's largest chlorine company, the world's largest epoxy manufacturer, and we have 6,400 employees at 70 locations worldwide. Olin recently celebrated 100 years on the New York Stock exchange. We ship over 47,000 rail cars annually with the highest of safety records as exemplified by our receiving AAR's Grand Slam safety award 3 years in a row.

You encounter our products, most notably chlorine and its co-product sodium hydroxide or caustic soda, on a daily basis as they are used in thousands of applications including water treatment, surface disinfection, pharmaceuticals, paper and aluminum manufacturing, coatings for electronics and wind energy applications, refrigerants, and many others. It is important to understand that, as I noted above, chlorine and caustic soda are co-products, meaning one cannot be produced without producing the other. Thus, while it is essential to load chlorine and caustic soda into Olin's rail tank cars as they are produced, that is not possible if the railroads do not deliver both chlorine and caustic soda tank cars in balance. At Olin we schedule those balanced deliveries so that production is not curtailed awaiting tank car deliveries, but we cannot control rail service.

Olin has access to only a single railroad at each of our locations, so we are captive across our manufacturing sites. We only ship chlorine by rail because it is the safest mode of transportation, but being captive gives railroads total market power to increase our rates, whether or not service is satisfactory. We have seen rail rates continually escalate at levels far above inflation while our service levels have remained a constant challenge.

Olin is an active participant in the American Chemistry Council, the Chlorine Institute, and the Rail Customer Coalition. While the specific issues vary across the diverse memberships of these groups, the underlying issues around rates, service and the related demurrage charge practices are common to all rail shippers.

Let me also say—we need a robust and highly functioning rail network in order to do business in this country, and we genuinely want the rail industry to be successful. We work hard to foster a constructive dialogue and good relationships with our rail partners, and there are many people in the rail industry we work well with and respect. We also recognize these issues are challenging for regulators that want to avoid intervention that can do more harm than good.

Unfortunately, the incentives created by the current state of rail regulation encourage behavior that is anticompetitive and prohibits a free market. We firmly

believe that significant regulatory change will benefit the long-term health of the rail industry, as well as all rail-reliant US manufacturing. The railroads need to understand that, in order to grow, they also need their customers to be successful, and many of their practices are limiting growth of their business.

Precision Scheduled Railroading

Recently, we have observed the move in the rail industry towards the so-called Precision Scheduled Railroading (PSR) model. The railroads have touted this model

as one of higher efficiency and lower cost, doing more with less, resulting in fewer, longer trains and less staffing.

While this model has led to historically low operating ratios (Cost/Revenue) and record profits for the Railroads, Olin has seen no benefit and only added costs.

During the implementation of PSR, Olin has experienced a host of service-related issues. This has manifested itself in missed or late shipments, rail cars “ping pong-ing” across the country, and service disruptions that have caused us to undertake dramatic and expensive efforts to service customers in danger of shutting down.

The early adopters of PSR have worked through most of these issues and service is just now returning to levels seen before implementation, but no better. And I emphasize no better. As other railroads move forward with PSR, we are bracing for the same cycle of disruptions and a return to the same marginal service levels as before. We are concerned that PSR, while making the railroads more profitable, will leave the rail system less resilient, and less able to deal with weather or other unanticipated disruptions. Without rail service, we shut down, so this is a major concern for Olin.

Demurrage and Customer-Caused Congestion Charges

So now, as an apparent alteration to PSR, the railroads are changing tariffs to increase demurrage and customer-caused congestion charges. This move, according to the railroads, is designed to “change customer behavior”.

We need to start discussion on this issue by pointing out that Olin, like all chemical shippers, provides our own railcars for transport of our products. Demurrage charges shouldn't even apply to customer-supplied railcars since these charges are traditionally associated with fees for tying up someone else's equipment. In the case of chemical shippers, it is our equipment.

But, the railroads have applied demurrage charges to all railcars regardless of ownership. Now, demurrage and congestion tariff rates have been altered to be even more restrictive, including removal of all free days for the placement of returning empty railcars. Similarly, congestion tariffs have been strengthened to penalize shippers sooner and with higher penalties if cars bunch up near our facilities. This is true even though the railroads do not guarantee an arrival time for inbound empties. If a railroad is unwilling or unable to schedule empty railcars to our site in the same manner that they schedule loads, then shippers should not be penalized for delays in working through the subsequent congestion. Bunching is the fault of the railroads, not shippers such as Olin.

What Causes Congestion

Before we continue, let's discuss what causes railcars to be backed up.

- Inconsistent empty railcar releases from our customers:
 - Customers place railcar orders based on anticipated operating rates at their facilities, but each customer consumes product at different rates, and certainly do not release railcars in a linear, predictive fashion. The rail network needs to be resilient enough to absorb this reality.

- Inconsistent railroad service:
 - Likewise, railroads do not always move and place railcars in a consistent or reliable fashion, resulting in the need to have more empty railcars available in proximity to our production sites to sustain operating rates. Bunching of railcars is common, particularly on returning empty railcars. We have no control over when the railcars come back, nor can we control the product mix of the railcars. For facilities that manage multiple product fleets like Olin, the mix of the inbound empty railcars is as important as the total being placed.
 - For example, we were forced to slow and then suspend production on several occasions at one of our largest and most rail-dependent sites in 2018 due to rail car availability problems for a specific commodity, resulting in a cumulative loss of production equal to 6 days at maximum rates. This occurred during a period of high demand resulting in lost sales.

Since production facilities cannot physically take in all the railcars that show up at a site when bunched, we often send railcars to private storage yards

to help the railroads run a more efficient, decluttered network. However, doing this for the railroads results in yet another shipper charge for switching these railcars in and out of a private storage facility.

Olin maintains a fleet size designed to provide sufficient railcars to deal with inconsistent service and disruptions. But these extra cars add to the overall congestion issue.

In effect, we pay twice: the cost of the extra cars and now the additional demurrage and congestion charges.

Olin's Current Recourses

We are faced with the following recourses:

1. Ship railcars to private storage facilities at significant added cost;
2. Build more track inside our fence lines to store additional railcars; or
3. Accept the Charges.

Olin estimates it will spend at least **\$1 million** annually as a result of this new rail policy in demurrage fees, congestion fees, off-site private rail storage facilities, and additional freight costs to ship railcars to private storage facilities. We were already considering track projects that total \$10 million to

accommodate our oversized fleet that is required to deal with unreliable service. This modified demurrage tariff adds more pressure to implement these projects.

Now, it may seem reasonable to accept the charges in lieu of spending money on track projects. However, given our experience and the notion of the railroads to change shipper behavior, we are confident that the railroads will continue to increase demurrage and customer-caused congestion charges unless this Board steps in and limits charges to what is reasonable.

Recommendations

1. Free days – Demurrage.

For inbound railcars, the equitable solution is to provide a minimum of 48 hours of free time or schedule empty railcars and provide credit days to account for network variations. This will incentivize shippers to minimize dwell on railroad lines as well as provide shippers with some relief from demurrage penalties associated with inconsistent transit times, variable service schedules, and the bunching of cars.

2. Congestion charges.

For customer-caused congestion charges, the reasonable and fair solution is to provide customers 14 days' notice prior to implementing

charges. This will help shippers bridge the gap of two weekends, which generally contain reduced service. This 14-day notification will offer enough time to overcome any network variability as well as provide shippers the opportunity to work through acute issues. The process needs to be managed whereby once the shipper gets their railcar count below the desired number, the clock resets on the 14-day notice. Currently, one railroad is viewing its 5-day notice as a one-time notice that allows it to continue to charge shippers “until further notice”. This is true even if the shipper is below the desired car number for an extended period.

3. Storage switching fees.

Additionally, there should be no charges or fees collected for moving empty railcars in and out of storage facilities. Storing railcars to decongest the rail network benefits the railroad. They should not collect additional revenue for these movements.

4. Credit-day modification.

Railroads need to consider providing credit-days for delays associated with inbound empty railcars as an offset to shipper demurrage. This would provide a more balanced framework for encouraging rail network fluidity.

If railroads are unwilling to step back from a zero-credit day stance for empty railcars, shippers deserve a concession to be made when railcars deviate from original schedules. Some railroads provide empty railcar information to allow shippers to actively manage their supply, however only shippers are penalized when this information is incorrect. Thus, a shipper loses production and sales due to rail inventory constraints as a result of railcars showing up later than expected. Consequentially, in an effort to maintain production rates, the shipper incurs severe demurrage penalties to rotate an adequate stock of empty railcars in the area to account for variations in empty railcar transits.

5. Careful review by this Board of the reasonableness of demurrage fees and other accessorial charges. It is not reasonable to allow railroads to increase such fees and charges without regulatory review, especially when it is clear that the railroads are responsible for system congestion and “bunching” of rail cars, and when railroads are increasingly viewing such fees and charges as profit-centers, rather than for the limited purpose of encouraging prompt loading and unloading of railroad-supplied cars, or for reasonable charges when shippers choose to park

excess railcars on the railroads' tracks for temporary storage (but not when railcars are moved to the railroads' tracks so that railroads can alleviate congestion on their systems).

Conclusion

Some of the nuances of the demurrage and congestion charges and the potential solutions we propose are complex. Olin is happy to provide additional support to the Board from our logistics experts to explain these issues in further detail.

Thank you again for the opportunity to appear before the Board today. We encourage further oversight and intervention from the STB related to the commercial fairness of demurrage and congestion charges and practices. Olin looks forward to working with you to support your effort to create a more competitive rail network for the 21st century.