

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

OVERSIGHT HEARING ON DEMURRAGE
AND ACCESSORIAL CHARGES

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Docket No. EP 754

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**WRITTEN SUBMISSION OF
LOUIS DREYFUS COMPANY LLC**

Dated: May 8, 2019

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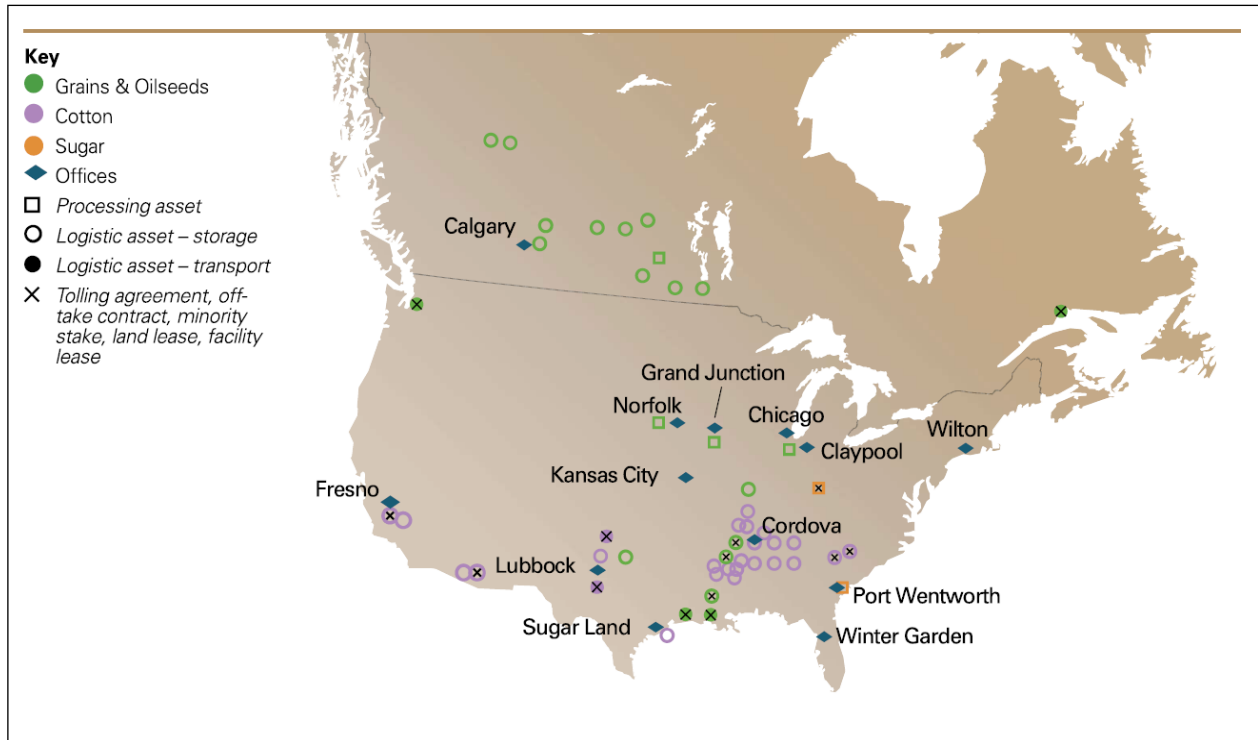
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Louis Dreyfus Company LLC (“LDC”) appreciates the opportunity to provide this written submission for the record in response to the notice issued by the Surface Transportation Board (“STB” or “Board”) on April 8, 2019 instituting a hearing on railroad demurrage and accessorial charges, and related issues. As discussed below, significant adverse and unbalanced demurrage, storage, and accessorial program changes have been implemented recently by railroads, many as part of the implementation of “precision scheduled railroading” (“PSR”), that are causing considerable harm to LDC and its subsidiaries, and other consumers. LDC respectfully submits that balance needs to be restored through appropriate STB and railroad remedial actions, as specifically outlined below in Section II.

A. LDC and Its Railroad Infrastructure Investments

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range of businesses segments. Our North American group includes operations at over three dozen facilities, including oilseeds crushing, corn ethanol, biodiesel, cotton warehousing and trading, and sugar processing. LDC's principal offices and facilities in North American are reflected below.



LDC relies on the railroads to meet a significant portion of its transportation service requirements. It has made significant investments to help ensure that its commodities can be brought to market as efficiently and cost effectively as possible. We have invested tens of millions of dollars in state-of-the art operating, loading, and rail infrastructure improvements at the request of the railroads and to improve operating efficiencies. In addition, we have over 2,700 private railcars in our North American fleet used to help meet our transportation service requirements and assist the railroads

providing low-cost, efficient service.

For example, our subsidiary Louis Dreyfus Company Grand Junction LLC owns a large-scale ethanol processing plant in Grand Junction, Iowa (“Grand Junction Facility”) that was designed and built to meet and exceed all railroad requirements for unit train service. The Grand Junction Facility produces ethanol and the animal feed co-product distillers dried grains (“DDG”). DDGs are an important low-cost, high nutritional animal feed commodity used by large feed processors and farmers both domestically and internationally.

The Grand Junction Facility is served by the Union Pacific Railroad Company (“UP”). In order to obtain competitive rates and efficient service, UP required LDC to make substantial investments to enable the Grand Junction Facility to be a fully equipped unit train facility. The facility’s transportation infrastructure was designed and built to meet and exceed UP’s unit-train engineering requirements. The Grand Junction Facility has four large unit train loop tracks, each exceeding 7,200 feet, enabling it to stage up to four ethanol and/or DDG unit trains at a time. The facility also satisfied UP’s requirement that all of the railcars used in the plant’s service be able to be stored on-site. As a result, the Grand Junction Facility has in-plant storage capacity that exceeds its reasonable business needs and far exceeds standard industry practice.

In total, UP induced approximately \$10 million in unit-train related plant investments at the Grand Junction Facility, which facility was constructed over an 18-month period and completed in 2009. Those substantial investments have assisted UP in

lowering its operating costs and improving service and cycle times, as well as system fluidity. UP vowed to pass on its unit train cost savings through lower rates. As explained below, until very recently, UP has fulfilled its unit train service and preferential rates promises.

B. Railroad Pronouncements on Unit Train Service and Rate Incentives

The rail industry for years has declared the substantial improvements brought about by unit train service, versus manifest service, in railcar utilization, system efficiencies, and lower railroad costs, and with promises of unit train rate savings to customers who invest in unit train facilities:

[T]he trend toward unit trains and efficient long-hauls is a response to market forces that call for grain transportation to be as efficient as possible. The market is generally finding that the traditional system of single car and small volume rail operations over numerous branch lines is too costly for railroads and shippers. By offering incentives (lower rates) that reflect their cost savings for more efficient shipments, the railroads allow the market to decide whether to invest in facilities designed to handle them. This approach reduces the overall cost of getting grain to market. To ignore the economics of grain transportation by requiring less efficient shipments to be priced the same as more efficient shipments would reduce domestic transport efficiency and harm the competitiveness of U.S. grain on the global market.

Comments of the Association of American Railroads, *Rail Transportation of Grain*, EP 665 (filed Oct. 30, 2006) at 18.

Like other railroads, UP has proclaimed the benefits of unit train service, noting that “unit train service allows us to move far more [product] than we possibly could move any other way” and that a shift to manifest service “by

picking up small cuts of cars from multiple on-line facilities,” “would consume scarce mainline track capacity, . . . prevent us from moving other trains, including trains carrying grain, each time a train stopped to pick up or deliver cars . . . [and] significantly reduce our effective car supply.” Statement of Douglas V. Martin, Senior Director – Wheat & Flour Union Pacific Railroad Company, *Rail Transportation of Grain*, EP No. 665 (filed Oct. 30, 2006) at 4.

As referenced, in exchange for shippers making long-term unit train facility investments to support improved railroad service, individual railroads, including UP, have established appropriate rate incentive programs: “UP has supported this evolution by providing rate incentives for shippers and receivers who make the capital investments in track infrastructure, storage capacity, and faster loading/unloading systems needed to handle unit trains efficiently.” *Id.*

C. Recent Adverse and Unbalanced Service and Accessorial Program Changes Brought About by “Precision Scheduled Railroading”

In recent years, most of the Class I railroads have moved toward a form of PSR, designed to “right size” assets, lower costs, and improve returns demanded by Wall Street. Even though LDC and its subsidiaries are large railroad customers, the railroads have had only limited communications with us in formulating and implementing their PSR programs. Instead, the railroads have chosen to unilaterally roll-out systemwide operating and service changes, and new, “simplified” accessorial program changes, with little or no notice to customers. Many of the changes do not address or reflect the service

needs and requirements of individual customers. As part of their establishment of PSR, the railroads have adopted a number of unbalanced accessorial and storage tariff changes. LDC highlights several unbalanced and unfair changes below causing it significant business harm.

First, in late December, with only limited conversation and consultation with LDC and other customers of which LDC is aware, UP announced (Announcement Number AG2018-56) a massive change for the shipment of animal feed commodities, including DDG, corn gluten meal, and soybean meal. UP stated that it was terminating virtually all unit train rates for these commodities in 24 days, as of January 14, 2019. What was not included in the UP's notice, but was later conveyed in individual discussions, was that UP planned to permanently terminate its unit train program for these commodities. UP said it was doing this as part of its PSR plan, which apparently favored this traffic moving in single-car manifest service, while maintaining unit train service for grain and other commodities. In response to significant customer opposition, and market uproar, UP later announced that it would provide "unit train-equivalent rates" for "transitioned" locations for a short transitional period, first through March 31, 2019, and then extended until September 30, 2019. However, UP did not relent on its animal feed unit train service termination plan.

Recently, the trade associations of agricultural producers have written to UP on the serious and significant adverse consumer impacts of these changes. These include decreased asset utilization, diminished system fluidity, substantially devalued property,

and significant business uncertainty and market unrest, both domestically and internationally, for essential animal feed commodities that feed processors and farmers rely upon. In its recent dated April 29, 2019, UP has flatly refused to reverse its decision claiming that “manifest service operated in a precision schedule railroad model provides the best opportunity for us to deliver” what UP claims will be “a more consistent and reliable service product . . . than we have delivered historically.” However, what is “more consistent and reliable,” a unit train cycled in ten days or single railcars shipped in manifest service to the same destination cycled in thirty days?

UP also refused to extend “unit train-equivalent rates” which it said would expire at the end of the crop year (September 30, 2019). With respect to future rates, UP simply noted that “we are taking a very thoughtful approach to our pricing.”

Second, for its remaining unit train service (e.g., ethanol, grain) UP has implemented tariff changes (UP-6004) extending its unit train accessorial program requiring customers to provide monthly forecasts, “pre-release” trains within 72 hours of forecasted date of release, and imposing substantial penalties should trains be cancelled or departure dates changed. If a customer cancels within 48 hours of a forecasted date of release, UP imposes a \$10,000 penalty, and even if the departure date is merely changed (but not cancelled) within that same time period, UP imposes a \$2,000 per train penalty. (Tariff Item 9613).

Also, UP has placed new, significant hourly fees of \$200/hour for locomotive asset utilization beyond 24 hours at destination and locomotive “deadhead” fees of \$3,200 when locomotives are removed from empty trains returned to origin facilities upon delivery, and then again for return of the locomotive for pick-up of the loaded train. UP generally refrains from imposing these deadhead charges where LDC has scheduled a loaded unit train to be picked up within 24 hours of an empty train return.

However, UP’s accessorial tariff does not address how UP will handle situations where UP is unable to timely pick-up or deliver a train, through any type of credit, shipper remuneration, or other accommodation. UP’s practice has been to still charge deadhead fees on LDC where UP is late in picking up scheduled railcars. For example UP recently invoiced LDC for deadhead charges on a train where pick-up was seven days late, and the same charges on another train where pick-up was nine days late.

Third, the railroads are uniformly reducing the free time and credits provided for railcar storage calculation purposes. For example, Norfolk Southern Railway Company (“NS”) in recent years has gone from five days of customer storage credits, to two days of credits, and now to zero days of credits before collection of storage charges. (NS-6004). These changes are unfair and unbalanced because they result in charges being assessed on LDC even where it is timely ordering-in railcars.

Our subsidiary Louis Dreyfus Company Agricultural Industries LLC owns a soymeal and biodiesel processing plant in Claypool, Indiana (“Claypool Facility”) that is served by NS and processes up to 1,000 railcars a month of soymeal and biodiesel. The

Claypool Facility is required by NS to order-in railcars from NS's local yard by 1:00 p.m. each day, and if it misses that window, it is assessed a storage debit, even for cars constructively placed at the local yard just a few minutes before 1:00 p.m., and where LDC personnel have not yet seen the notice or had a timely opportunity to order-in the railcar. In total, NS's slashing from five days to zero days of credits places LDC at potential risk for over \$1 million in new accessorial charge liabilities at the Claypool Facility alone.

Similarly, LDC subsidiary Imperial-Savannah LP owns a sugar refinery plant in Port Wentworth, Georgia ("Imperial-Savannah") that ships large volumes of bulk sugar and molasses, with approximately 250 railcars in its fleet, and it is likewise served by NS. The reduction to zero days of storage credits is particularly problematic for Imperial-Savannah because it has limited on-site storage capacity. Imperial-Savannah is also subject to other supplemental NS tariff charges on the same railcars under NS's accessorial tariff (NS-8002). Under this tariff, at the "sole judgment" of NS, if railcars exceed two times the average number of cars that LDC has received at origin for each day within the previous two weeks, NS may assess a supplemental charge of \$100 per car per day. (Item 6265).

Adding these "congestion" fees to the regular NS storage charges (\$60 per car per day) results in Imperial-Savannah railcars being assessed up to \$160 per car per day in total for storage, again, with no free time. NS's reduction to less than two days of storage credits, along with its supplemental "congestion" charges, effectively constitute unfair

penalties on LDC that do not improve railcar or railroad system efficiencies and produce unfair economic windfalls for the involved railroad.

LDC REQUEST FOR RELIEF

As discussed above and confirmed by the railroads' May 1, 2019 tariff summary filings, significant changes brought about by PSR are unfair, one-sided, and unreasonable. Inadequate protections are afforded customers, and there are no reciprocal provisions requiring or incenting carriers to promptly deliver and return railcars, to compensate shippers, or otherwise reasonably address carrier caused service problems. Accordingly, to remedy the business harm caused by the unfair operational changes and unbalanced tariffs, LDC respectfully requests that the Board take the following specific remedial actions:

First, UP's elimination of unit train service for animal feed shippers such as LDC is devaluing substantial facility improvements made by LDC at the behest of UP, and has decreased asset utilization for LDC's private car fleet. It has also diminished system fluidity, threatens to have significant adverse cost impacts on producers and end users, and has created significant business uncertainty and market unrest both domestically and internationally. The unrest is created in major part because of the fundamental change in which the trains are now being delivered as UP has moved from unit train service to manifest service for these commodities.

Specifically, our Grand Junction Facility has regularly shipped animal feed to St. Louis in unit train service, where the train of 100 cars is then transloaded to five to six

barges that move together as one unit. This has enabled LDC to ship efficiently with relatively stable cycle times, and allowing us to meet customer demands. However, with UP's change to manifest service for animal feed commodities, LDC must ship 100 single railcars in much smaller service blocks. Once the railcars reach St. Louis, the product must be transloaded and shipped by 5-6 separate barges moving at separate times rather than as a single unit, adding several additional weeks of total delivery time, as multiple more pick-up, switching, delivery, and transloading events must occur to move the same volume of product. The extra time, expense, and uncertainty of product delivery resulting from UP's change to less efficient manifest service creates considerable extra business uncertainty and risk for LDC and our customers.

The Board should immediately conduct appropriate follow-up and investigation of the matter, and at least for those shippers that have constructed unit train facilities with the reasonable expectation that UP would continue to perform unit train service, require UP on request to resume its unit train program and maintain favorable unit train rates that reflect the efficiencies provided by this class of service.

Second, the Board should declare that railroad accessorial charges and penalties for cancellation or departure date changes, charges for locomotive "deadheading" and locomotive use, and related charges are unbalanced and unfair and will be deemed presumptively unreasonable. The Board should further declare that if any such charges are to be included in a common carrier tariff, then there must be reciprocal, pro-shipper provisions. This should include items requiring timely pick-up and drop-off of railcars on

reasonable schedules, in both directions for loaded trains and empty return trains, with railroad failure to meet the schedule and trip-plan resulting in appropriate credits, removal of charges, and comparable charges and penalties assessed against the railroad.

In particular, a customer should receive demurrage/storage credits for each day a carrier misses its trip-plan and appropriate “bunching” credits each time a trip-plan is not met, for both loaded and empty-return trains. For example, for the Claypool Facility and Imperial-Savannah, if NS’s trip plan is not met on the returning empty manifest cars, then the shipper should be afforded one credit for each day the trip plan is missed. This would put the shipper on the same credit/debit plan that is afforded the receiver by NS today. This is a fair and balanced trade-off NS should be willing to make.

Also, where a railroad fails to deliver cars ordered-in, the storage clock should restart for each such affected car, and appropriate additional “ripple effect” credits should be provided to further remedy the impacts of the delivery failure. LDC recommends a minimum of two credit days be extended to the shipper for each event. Additionally, appropriate penalties should be paid to the shipper caused by the carriers’ unfair detention of its railcars, and the harm caused to the shippers’ efficient business operations.

Third, the Board should declare that balanced and reciprocal free time and credits, on both the loading side and receiving side, must be provided for and incorporated into storage tariffs. Anything fewer than two days in credits for each railcar, private or railroad-controlled, should be deemed presumptively unreasonable. Also, if carriers such as NS are going to require that cars be ordered-in by a certain time, or face a storage

debit, the customer should have at least one hour after the notice of railcar constructive placement for the storage “clock” to start. For example, if 1:00 p.m. is the railcar order-in cut-off time for a particular facility, then the storage clock for that day should only apply to and start for those railcars constructively placed by noon, with the storage clock for the remainder of the cars constructively placed after noon carrying over until the next day.

CONCLUSION

Significant adverse and unbalanced rail service and accessorial program changes have been brought about by PSR that needs to be addressed immediately. LDC believes that the above actions by the Board will restore efficient unit train service promised by the railroads and long relied on by shippers to meet the needs of domestic and international customers. Such actions will also begin to restore fairness, balance, and reciprocity to the tilted accessorial service and demurrage/storage playing field. LDC respectfully requests that the Board adopt these changes as soon as possible.

Respectfully submitted,



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Louis Dreyfus Company LLC