

BEFORE THE SURFACE TRANSPORTATION BOARD

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OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

**ADDITIONAL COMMENTS ON BEHALF OF
ARIZONA ELECTRIC POWER COOPERATIVE, INC.
AND THE FREIGHT RAIL CUSTOMER ALLIANCE**

The Freight Rail Customer Alliance (FRCA) and the Arizona Electric Power Cooperative, Inc. (AEPCO) thank the Surface Transportation Board (Board) for holding its Oversight Hearing on Demurrage and Accessorial Charges on May 22 and 23, 2019.

The opportunity to have testified is greatly appreciated. The hearing illustrated the severity of the problems that shippers and receivers are experiencing with demurrage and accessorial charges, as exacerbated by poor service, regardless of commodity, movement type, or geographical location.

We welcomed the Members' sincere commitment and dedication to better understand how railroads view and utilize demurrage and accessorial charges, how the railroads' actions harm shippers, and what measures the Board should consider in addressing those problems. The questions that the Members directed to each panel facilitated the much-needed discussions of important facts and considerations.

Hopefully, all decision makers and stakeholders are gaining a better understanding of the many issues at hand that need addressing, including, but not limited, to:

1. Even if it performs "perfectly," a shipper or its receiver can still be assessed substantial demurrage and accessorial charges due to factors beyond its control or factors that are entirely within the control of the carriers.
2. The lack of transparency and clarity on the part of the railroads as to how much of a demurrage or accessorial charge represents a penalty as opposed to cost-based compensation.
3. The lack of notice of changes in pick-up and delivery times that might allow shippers to avoid, or at least mitigate, demurrage and accessorial charges.
4. The burdens placed on shippers to show that charges are unreasonable, when the pertinent data is almost entirely under the control of railroads.
5. The flimsiness of the railroads' justifications for imposing and increasing their fees, especially when the railroads are unable or unwilling to identify their underlying costs, accept reciprocal

liability or responsibility for their own contributions to delay and service unreliability, or demonstrate how their punitive charges will change shipper conduct.

6. The lack of reciprocity between shippers and railroads in that railroads impose additional charges on shippers for failure to receive or turn-around equipment on a specified ability or schedule, while railroads reduce their capacity in pursuit of ever-lower operating ratios without any obligation to compensate shippers for the resulting deterioration in reliability and quality of service.

In helping to address these demonstrated problems, FRCA and AEPCO again ask the Board to consider:

1. Carriers should not be allowed to establish new charges for services that were previously provided as part of the regular line-haul rate services, at least not without a showing of a commensurate reduction in line-haul rates or improvement in service quality.
2. Carriers should not be allowed to use demurrage and accessorial charges as a profit center.
3. The Board should consider adopting the approach that the Federal Energy Regulatory Commission (FERC) requires of jurisdictional public utilities and natural gas pipelines in that penalty proceeds are returned to compliant customers and not retained by the carriers.
4. The principle of reciprocity should apply.

In addition, FRCA and AEPCO commend the Board for the recent release of the long-awaited *Rate Reform Task Force* report and look forward to the opportunity to comment upon it. The demurrage and accessorial problems reflect the same abuse of railroad market power and market dysfunction that give rise to the high rates and poor service experienced by many shippers. Even very large companies and very large shippers experience these problems, which are typically far worse for smaller shippers.

Effective oversight – which includes the availability and use of viable, cost-effective remedies – is required to realize the statutory requirements for railroads to provide service upon reasonable request, at reasonable rates for shippers that lack effective competition, and with reasonable charges and practices for all shippers. We are hopeful that the recommendations made in this report, combined with further public review and comment, will lead to much needed rate reform decisions as soon as possible.

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