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OXBOW ENERGY SOLUTIONS LLC

May 8, 2019

Via E-Filing

Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Surface Transportation Board Notice – Docket No. EP 754

Dear Chairman Begeman:

Oxbow Carbon LLC ("Oxbow") is one of the world's largest recyclers of refinery and natural gas byproducts, with headquarters in Florida. Oxbow upgrades, handles, transports and sells coal, petroleum coke and sulfur into markets where they can be used to produce aluminum, steel, electric power, fertilizer, cement and other critical products for the world economy. Oxbow Energy Solutions LLC ("OES") is one of Oxbow's key U.S. subsidiaries and operates as a global industrial commodities company. As part of this business, we typically move over 1,000,000 metric tons per year of product from Colorado to California in unit trains on the Union Pacific Railroad (UP).

We appreciate the Board's attention to tariff rules, demurrage and accessorial charges implemented by Class I carriers. Although we are but one of the many rail customers affected by these actions, we are grateful for the opportunity to provide you with specific information related to how UP's actions adversely impact commercial fairness, how these actions lack reciprocity and to provide an example of how these actions reduce capacity and have an adverse effect on network fluidity.

Accessorial Charges are Commercially Unfair

Accessorial charges ("ACs") are fundamentally unfair and act only to add revenue for the carrier above the negotiated line-haul freight rate with no meaningful opportunity for the shipper to affect the process or recoup its costs.

- **Change Made with No Notice Given:** Only after we negotiated rates for 2019/2020 with the UP – and in reliance on those negotiated rates -- priced our sales contracts with our customers based on these agreed upon and understood rates, did the UP inform us of its intent to invoice ACs. Had we known of the potential cost for ACs on our move, we would not have concluded the business we are now committed to perform. This action will have an adverse financial impact on our operations and is commercially unfair because the additional cost was added without adequate notice.

- Penalties Inflicted on Party Who Does Not Control Delay: The UP's actions have shifted all risk of equipment delay to OES even though OES has no ability to control the cause of the delays. Specifically, The UP's change in enforcement of ACs will require OES to pay penalties when equipment is delayed in route to our terminal. The primary reason for equipment delays is blockage of access to our terminal when the UP pulls its other customers' trains in our way. While we bring only a single product into the terminal, the UP delivers a variety of products for their other customers to the same terminal. We have no control over the schedule of the UP's other customers' product movements. Multiple products into a common terminal create bottlenecks. The UP has told us it is our problem to solve these bottlenecks and conflicts even while it is clear we have no control over them.
- The Risk of ACs Can Only Be Mitigated With Scheduling Information Solely in Possession of the UP: We would prefer to actively mitigate the risk of incurring ACs; however the only way we can do so is to schedule equipment based on predictions about actions that UP may take with respect to its other customers and how long it will take for the UP to ultimately deliver equipment to us. Specifically, we are forced to schedule equipment based on our prediction of: A) when the UP will pull its other customers' trains in our way; B) how long it will take for the UP to re-place the equipment; and C) how long it will take the UP to deliver that loaded equipment to our terminal. In addition to being forced to work with imperfect information, we bear all of the risk because the UP will provide no service guarantees on these, yet intends to bill ACs for delays caused by our failure to predict their service level.

No Reciprocity

In addition to being commercially unfair, the ACs imposed by the UP are a one-way street that act to enrich the UP while it refuses to pay compensation for vessel demurrage caused by delays in its operations.

- UP Service Failures Cause OES to Incur Demurrage: In the last full year of data availability – 2018 – UP's service failures caused OES to incur approximately \$3,000,000 in vessel demurrage while our ships waited for railcars to arrive. The UP refused to take responsibility for any of the costs we incurred due to their poor service.
- ACs Require OES to Guarantee Things Beyond its Control, But UP Offers No Guarantees: This is a fundamentally unfair situation where the UP makes no guarantees, takes no responsibility for the millions of dollars of vessel demurrage they cause, but now insists on charging OES additional fees for equipment delays outside our control.
- No Credit for Efficiency: Further evidence of the market failure these processes cause is that while the UP charges ACs, it does not provide credits or off-sets to these charges in return for more efficient operations.

Reduced Capacity and Adverse Impact on Network Fluidity

UP's actions also have a far-reaching adverse effect on our economy by building in substantial shipping inefficiencies that reduce capacity in the rail system, reduce marine terminal throughput in terminals serviced by rail and slow U.S. companies' ability to move goods into the export market.

- Capacity Loss and Negative Effect on Network Fluidity Caused by Release and Re-Order: In order to minimize the bottlenecks associated with the multi-commodity terminal and to maximize volume and efficiency, the rail yard at Yermo, CA has historically been the staging area for our loaded trains when UP has pulled other customers' products into the terminal. Now that UP will apply ACs when trains are staged at Yermo, to minimize the risk of AC charges we have to release and then re-order equipment rather than maintain an efficient circular rotation. The ACs actually cause inefficiency in the system as equipment spends time cycling in and out, rather than encouraging the more efficient use of the Yermo rail yard on occasions when the terminal is congested with equipment carrying UP's other customers' products.
- Release and Re-Order Reduces Capacity and Slows Economy: The delays that will be caused by having to wait for UP's placement of equipment after we release it (to minimize the risk of AC charges) will directly cause loss of capacity in the system and through our terminal.
- Release and Re-Order Creates Uncertainty and Reduces Reliability in the System: In addition to delays that create a drag on our business and the overall shipping economy, being compelled to release and re-order equipment to avoid ACs further reduces UP's reliability because the railroad refuses to provide guarantees related to service, equipment timing and availability. In addition, the UP will not provide a reliable framework around a range of time when we can expect a replacement train nor will it provide a reasonable time frame for the duration of transit of a train from time of order to delivery at the port. The UP controls all of these things and the reduction in reliability leads to uncertainty within the market – a cascading problem that affects not only rail shippers, but also downstream terminal operations, ocean-going shipping, and production schedules for manufacturers relying on rail shipped products.

In addition to the overwhelming drag these actions have on the broader U.S. economy, these issues are of critical importance to individual rail customers like us and those who operate in multi-commodity terminals served by the railroads. We hope that these carrier-specific examples of the commercially unfair, non-reciprocal and capacity restricting actions taken by the UP against our company are useful as you consider how to reform railroad demurrage and accessorial charges.

Thank you for the opportunity to provide this information and we appreciate the attention you have brought to this important matter.

Sincerely,
OXBOW ENERGY SOLUTIONS LLC



David W. Clark
Secretary and General Counsel