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Re: STB Docket No. EP 754, *Oversight Hearing on Demurrage and Accessorial Charges*

Archer Daniels Midland Company (ADM) respectfully submits this letter for inclusion in the record in the Surface Transportation Board's (STB's or Board's) May 22, 2019 oversight hearing on railroad demurrage and accessorial charges. ADM is a leading U.S.-based global agricultural processor and food ingredient provider, with more than 40,000 employees serving customers in nearly 200 countries. We source, transport, and process crops—producing much needed supplies of food, feed and renewable fuels for consumers throughout North America and in hundreds of export markets. Transportation services and infrastructure are an essential component of our overall operations and cost-effective and fair rail transportation is vital to our future.

Through this hearing, the Board is examining recent changes in Class I railroad accessorial and demurrage programs, many of them related to railroad operating changes brought about by the recent implementation of “precision scheduled railroading” (PSR) by Class I railroads. The Board has requested comments from the public on their recent experiences with demurrage and accessorial charges, impacts of recent tariff changes, and whether demurrage and accessorial tariff provisions “have created balanced and appropriate incentives for both customers and railroads, including views on the extent to which reciprocity should be incorporated into demurrage and accessorial charges.”

ADM appreciates the opportunity to present these written views. The STB will likely receive many examples of unfair and non-reciprocal demurrage and accessorial events. Instead of recounting many similar examples, these comments focus on broad points of asset utilization, demurrage, reciprocity, commercial fairness, and implications of PSR. While examples are appropriate to illustrate these points, ADM seeks to maintain focus on the broader problems and reasonable solutions.

Identity and Interest

ADM is one of the world's largest processors of agricultural commodities and a leading manufacturer of value-added food and feed ingredients. At hundreds of plants and sourcing facilities, ADM trades, transports, stores and processes corn, oilseeds, wheat and many other agricultural crops into products for food, animal feed, industrial, and energy uses. ADM requires efficient and cost-effective rail transportation service to meet its essential business needs in transporting a large portion of the bulk commodities that it ships to and from its plants and facilities.

ADM is one of the largest railroad customers in North America. It ships more than 750,000 railcars annually in rail freight transportation. ADM also has one of the largest private railcar fleets in North America, comprised of more than 28,000 railcars that it provides to the railroads to help facilitate efficient and cost effective service. It is important to note that ADM maintains this extensive fleet of railcars because the railroads are unwilling to provide shippers with railcars for service in many instances or have insufficient fleets themselves. Railroads would rather have shippers be responsible for the cost of acquiring, providing and maintaining the railcars.

To further facilitate efficient transportation, ADM invests heavily in rail infrastructure at our plants. This includes the construction of unit train facilities that have enabled the railroads to provide more efficient service at lower cost, and, in return, enabled ADM to obtain appropriate rate incentives. These substantial investments and the efficient use of *shipper* assets are put at risk through unbalanced and unreciprocal railroad accessorial and demurrage programs and related new PSR service changes that are not carefully implemented.

ADM has a significant interest in this hearing, as it is a major rail transportation shipper of agricultural and related commodities that has considerable investments in railroad equipment and facilities, is subject to railroad accessorial and demurrage charges and wants to ensure that all such programs are fair, balanced and reasonably applied, with appropriate incentives and penalties for all parties to the transportation chain to ensure the efficient use of equipment and the protection of investments.

Discussion

Overview

ADM relies on an efficient railroad network to run our global business. We generally have a strong and productive relationship with the Class I railroads, and view the railroads as our partners. We want to help the railroads become more efficient, and help them help us make our operations more efficient. We expect the railroads to share the efficiencies that we help them achieve.

In recent years, most of the Class I railroads have implemented a form of PSR. ADM is not opposed to the reasonable operating principals of PSR in terms of offering improved and more efficient service at lower cost. However, we have serious concerns that in practice, a

significant component of PSR has been increased freight rates and new and increased accessorial and demurrage charges that lack reciprocity. Additionally, some of the operating changes brought about by PSR, if not carefully implemented, could potentially devalue substantial investments in railroad equipment and facilities made by shippers such as ADM.

With respect to demurrage and accessorial policy, ADM seeks balance and fairness in railroad tariff terms and application, and reasonable reciprocity. ADM is willing to pay for demurrage and accessorial charges that are reasonably established and enforced. Poor asset management has a trickle-down effect, potentially disrupting the entire rail network. Reasonable and reciprocal demurrage and accessorial policy should help correct inefficient behavior of shippers, receivers *and* railroads. ADM has serious concerns that accessorial and demurrage tariffs are generally one-sided and lack balance, and fail to include appropriate reciprocal provisions addressing carriers' failure to efficiently use shipper-provided assets.

In examining this issue, it is important for the Board to recognize that demurrage policy was developed decades ago during the time when railroads owned or controlled the vast majority of railcars. Today, most railcars are owned or controlled by railroad customers, as demonstrated by ADM's own 28,000+ private railcar fleet. In order to address this dramatic rail asset ownership change, a paradigm shift is needed to transition from a system that solely incentivizes shippers/receivers to efficiently utilize railroad assets toward a system that also incentivizes railroads to efficiently utilize shippers'/receivers' assets.

The Need for Balanced and Reciprocal Accessorial and Demurrage Programs that Adequately Protect Shipper Investments

ADM supports strong Board policies and oversight of the railroads' accessorial and demurrage programs to ensure balance and fairness in implementation and application, reciprocity, and protection of shipper investments in infrastructure and equipment.

(1) The Need for Reasonable, Balanced Standards

A primary concern of ADM is a series of new, unreasonable and sometimes unavoidable demurrage and accessorial programs with unattainable constraints placed on customers. Again, while ADM is willing to pay reasonably implemented and applied demurrage and accessorial assessments when it is at fault, it opposes unfair, non-reciprocal accessorial programs.

Also, railroads typically do not seek to establish fault prior to sending invoices, and thus treat customers as "guilty until proven innocent." Railroads send demurrage and accessorial invoices regardless of root cause. It is the shipper/receiver's job to prove innocence. For, example, demurrage charges are generally still assessed even if railroad operating cause is obvious (e.g., bunching or missed switches). Railroads rarely admit service problems, yet place the burden of proof solely on shippers knowing that shippers often have little access to complex train movement records or other appropriate information outside of litigation necessary to "prove" railroad fault. The problem is exacerbated because there is no penalty for inaccurate railroad invoicing and demands for payment continue even in the event of bona fide disputes and

challenges to charges. In addition, ADM often receives invoices containing multiple assessment errors and generally must challenge invoices on an expedited basis.

In this respect, ADM respectfully submits that the Board should declare through a policy statement or otherwise, that railroad accessorial and demurrage tariffs must be reasonable. Specifically, the Board should declare that it will be presumed that tariffs are unreasonable that (i) have deficient credit and debit systems for railcars tailored to the service requirements of a particular location where the charges are sought to be applied, (ii) establish terms that cannot be reasonably met or are otherwise unreasonably applied at the location where the charges are sought to be applied; and (iii) fail to reasonably address railroad, third party or other fault, or fail to provide for a fair dispute resolution process.

(2) The Need for Reciprocal Standards

Another cause of concern for ADM is a lack of reciprocity in demurrage and accessorial tariffs. ADM works hard to increase the utilization of our rail related assets (track, railcars, etc.). The vast majority of ADM's fleet of railcars are types and sizes that railroads do not offer, including tank cars, large cubic foot capacity covered hopper cars and specialty discharge cars. The purpose of demurrage is to improve the utilization of *all* equipment, including shipper-provided assets. If a shipper or receiver mismanages railroad assets, they pay demurrage. However, if a railroad mismanages a shipper's assets, there are no negative consequences. The railroads will not guarantee their service, and under existing railroad demurrage programs, there is no incentive for railroads to improve their service.

ADM supports reasonable accessorial demurrage programs that promote efficiency for both railroad and shipper-supplied assets. For example, if a railroad expects us to process (load, unload, order in, release) a railroad controlled railcar (their asset) in less than 24 hours we are willing to pay a reasonable penalty if we don't comply, and the delays are our fault. However, the standard should be reciprocal. If a railroad fails to process (allow a car to sit idle without movement) one of ADM's cars in the same 24-hour standard, they should pay the same penalty to us. A railroad demurrage credit is not reasonable compensation for a railroad neglecting an ADM asset and credits do not create balanced incentives. For example, if a shipper demonstrated perfect, demurrage free behavior, a credit resulting from inefficient management of a shipper's assets would be meaningless. Only a reciprocal monetary payment can appropriately incentivize the efficient utilization of shipper assets by railroads, and (1) compensate ADM for the utilization loss of its asset and (2) incentivize railroads to provide better service in the future.

Accordingly, the Board should declare that railroad accessorial and demurrage tariffs must be reciprocal. Specifically, it should provide that tariffs and associated assessment of charges will be presumed to be unreasonable if they fail to include reasonable reciprocal provisions affording customers with relief from assessments, and reasonable remuneration from railroads in instances of their failures.

(3) The Need to Protect Shipper Investments

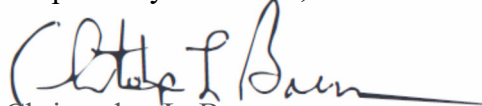
Finally, as explained, the new Class I accessorial and demurrage programs have been brought about by PSR. With PSR, the railroads are unilaterally changing their operations and service offerings. For example, the railroads have long favored unit train service and incited shippers to spend considerable sums to construct in-plant loop tracks and make other plant and equipment investments, typically totaling multiple millions of dollars. However, as part of its PSR initiative, UP has recently announced discontinuance of unit train service for certain animal feed commodities, even for customers that made significant investments in unit train facilities as incited by the railroad.

Shippers need long-term partners and need to ensure that their investments are reasonably protected through appropriate railroad incentives, rate spreads and service standards. While not directly related to accessorial charges that are the subject of this hearing, the Board has been actively considering service and operating issues relating to PSR. The Board should further review this issue and implement appropriate policy changes and standards to ensure that shipper investments in equipment and plant are adequately protected.

Conclusion

ADM appreciates the opportunity to submit these comments. For the reasons set forth above, ADM respectfully submits that, with respect to the Class I railroads' demurrage and accessorial programs, the Board should take appropriate actions to ensure: (1) the establishment of reasonable, balanced standards; (2) the standards are reciprocal; and (3) the standards will adequately protect shipper investments. ADM is willing to adhere to reasonable demurrage and/or accessorial policies that a railroad develops as long as they are reciprocal and a railroad is willing to compensate ADM in the same manner in the event the railroad does not live up to that same standard.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Christopher L. Boerm", with a long horizontal stroke extending to the right.

Christopher L. Boerm
President, NA Grain & Transportation