

Before the Surface Transportation Board

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STB Docket No. EP 759

Demurrage Billing Requirements

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Opening Comments of Dow, Inc.

Dow, Inc., submits these Opening Comments in response to the Notice of Proposed Rulemaking the Surface Transportation Board served in the above-captioned proceeding on October 7, 2019 (the “NPRM”). The NPRM follows the Board’s receipt of testimony and written comments in *Oversight Hearing on Demurrage & Accessorial Charges*, Docket No. EP 754, which it instituted to gather information about recent changes to railroad demurrage and accessorial tariffs that had prompted widespread concern. The NPRM addresses concerns raised in *Oversight Hearing* by proposing content requirements for demurrage invoices issued by Class I carriers. These requirements would enable invoice recipients to verify the validity of demurrage charges and assist them in determining how to modify their behavior to encourage the efficient use of rail assets.

I. Interest and summary of comments.

Dow is a leading multi-national manufacturer of chemical products that operates 113 manufacturing sites in 31 countries and employs approximately 37,000 people. It depends upon railroads to provide safe, secure, reliable, and economic transportation of raw materials and products to, from, and between sites throughout the United States.

Dow strongly supports the actions the Board is taking in this proceeding and in *Policy Statement on Demurrage and Accessorial Rules and Charges*, Docket No. EP 757, to ensure railroad demurrage rules and practices are consistent with their purpose of incentivizing the

efficient use of rail assets. It believes that this purpose cannot be fulfilled unless carriers provide shippers and receivers information necessary to identify what caused the charges to arise.

In these comments, Dow suggests modifications to the Board's proposed demurrage invoice requirements to ensure recipients can readily identify the circumstances that gave rise to invoiced charges; challenge the charges if they are not responsible for them; and if they are responsible for the charges, make adjustments to avoid the charges in the future. These modifications include requiring certain additional shipment information that is necessary to calculate demurrage debits and credits and to determine responsibility for demurrage. They also include a requirement that invoices be available in a machine-readable format, which will enhance the recipient's ability to validate charges and determine why they arose.

II. Demurrage billing requirements are necessary to ensure demurrage is assessed in circumstances where it will encourage efficient use of rail assets.

Railroads must assess demurrage¹ in a manner that furthers its purpose of encouraging the efficient use of rail equipment and track.² Their obligation under 49 U.S.C. § 10702 to establish reasonable rules and practices requires their demurrage practices to be consistent with their purpose. Additionally, 49 U.S.C. § 10746 requires railroads to use demurrage in a way that will fulfill national needs related to freight car use and distribution and maintenance of an adequate car supply.

Demurrage does not further its purpose when assessed upon rail users who cannot determine whether such charges are warranted and why. These users will be unable to adjust their practices to prevent similar demurrage events. They also will not be able to challenge a demurrage charge that they did not cause or the carrier incorrectly assessed and, thus, is

¹ References to demurrage also include private car storage. See NPRM at 3 n.4.

² NPRM at 8.

incapable of encouraging efficiency. Similarly, they will not be able to ascertain whether they received enough credits to account for any carrier-caused problems or delays that contributed to the demurrage event.

Information that is crucial to determining the cause of a demurrage event is mostly held by the carrier. A causal analysis of a demurrage event requires car-event data, dates of notices issued by carriers, and requested placement dates received by carriers. Carriers either generate or receive these items. They also likely have this information readily available because they use it regularly to conduct their operations and must possess it to determine when demurrage charges accrue.

A baseline invoicing standard is necessary to ensure that carriers make this information readily available to rail users so they can validate demurrage charges and, if they are proper, modify their behavior accordingly. While carriers possess this information, they often do not make it readily available to rail users. Their demurrage invoices often are incredibly cryptic or omit key information, like the date and time the carrier provided notification of constructive placement. Also, while demurrage-event information is often available via the carrier's website, it usually is scattered about the website in a manner that requires visiting various pages and conducting countless searches to gather and consolidate it for analysis.³ These issues make the validation of demurrage charges incredibly costly and time consuming and, thus, inhibit the ability of these charges to encourage efficient use of rail assets.

³ Dow Comments 12-13, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges*, EP 754.

III. The proposed billing requirements should include certain additional information necessary to challenge improper demurrage charges and address inefficiencies.

The billing rule requires railroads to include in their demurrage invoices most of the information that is important for validating demurrage charges and addressing underlying inefficiencies. But to ensure that rail users have the minimum information necessary for these purposes, the billing rule should also require railroads to provide the date and time: (1) each car was ordered in, (2) of the original estimated time of arrival for each car, and (3) of the carrier's receipt of the car in interchange.

A. Ordered-in date and time.

Dow proposes that the billing rule require carriers to provide the date and time specified to the carrier for placing each car on private track at a closed-gate facility.⁴ This “ordered-in” date and time is when demurrage stops accruing on a private car delivered to a closed-gate facility.⁵

This information is critical for rail users to validate demurrage charges, alter their practices to prevent similar demurrage events, and hold carriers accountable for carrier-caused delays. First, demurrage cannot be calculated without it. Second, even though many rail users should have the ordered-in date and time in their own records, it enables rail users to quickly ascertain whether the carrier has used the correct dates for calculating demurrage. This will make validating invoices significantly less costly and time consuming. Third, this information enables

⁴ A closed-gate facility is a facility where a railroad cannot place a car without first receiving approval from the facility. These facilities often have a locked gate that blocks railroad access.

⁵ See, e.g., CSXT Publication 8100 § 2.2 at 12 (effective March 22, 2019); NS Freight Tariff 6004-D Item 550 at 7 (effective Sept. 1, 2019), UP Tariff 6004-C Item 9890-U (effective Jan. 1, 2019).

rail users to identify how efficient the carrier is when switching cars into a facility and, thus, address those switching delays with the carrier.

Providing this information should not pose an unreasonable burden on carriers. Because carriers must use the ordered-in date and time to calculate their demurrage charges, it should be readily available to the carrier for inclusion in its demurrage invoices. One carrier already provides an ordered-in date on its demurrage invoices.

Moreover, requiring the ordered-in date and time would be consistent with the Board's proposal to require demurrage invoices to include the date and time notification of constructive placement is provided. Where the ordered-in date stops the accrual of demurrage debits, the date of notification of constructive placement generally starts it. Thus, it would make sense to provide both dates.

B. Date and time of the Original ETA.

Dow proposes that the billing rule require carriers to provide their original estimated date and time of arrival at the destination for each car ("Original ETA").

This information is important for enabling rail users to determine whether carrier-caused delays resulted in a demurrage event, in which case demurrage charges cannot fulfill their purpose. Specifically, the Original ETA is necessary to identify whether demurrage charges arose beyond the shipper's and receiver's reasonable control and whether they account for carrier-caused problems and delays. As Dow explained in its statement submitted in connection with the Oversight Hearing, carrier-caused problems and delays often result in the delivery of cars bunched (i.e., all at once rather than spaced as the shipper or receiver intended).⁶ By

⁶ Dow Comments 3-4, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges*, EP 754.

comparing a car's Original ETA with its placement information, which the proposed rule requires in all demurrage invoices, rail users will be able to determine whether a carrier-caused problem or delay impacted the car and whether the carrier has provided enough credits to account for the delay.

Providing this information should not be unreasonably burdensome to carriers. Not only is this information that they would generate in the normal course of business, but also it is information necessary for them to calculate and account for delay when assessing demurrage.

C. Date and time of actual receipt of each car in interchange.

Dow proposes that the billing rule require carriers to provide the date and time of actual receipt of each car in interchange, where applicable. Without this information, rail users will have significant difficulty demonstrating whether demurrage resulted from delay caused by an upstream carrier.

Requiring carriers to provide this information will help rail users avoid demurrage charges arising from delay caused by an upstream carrier. In the written comments Dow submitted in connection with the Oversight Hearing, it explained that delivering carriers will not award demurrage credits for delays caused by car bunching on upstream carriers.⁷ In these situations, Dow usually has no information to assert a claim against the upstream carrier for the demurrage charges or to prove to the delivering carrier that the upstream carrier caused the delay. The interchange date would enable calculation of the transit time on the upstream carrier's line so that Dow and other rail users can credibly approach the upstream carrier about assuming responsibility for demurrage it caused.

⁷ Dow Comments 13-14, May 8, 2019, *Oversight Hearing on Demurrage & Accessorial Charges*, EP 754.

Providing the interchange date and time should not be unreasonably burdensome to carriers. Not only is this information that they would generate in the normal course of business, but also it is information necessary for them to calculate and account for delay on joint-line shipments.

IV. The Board should require that invoice data be provided in machine-readable format.

Dow proposes that the billing rule require carriers to provide the required invoice data in machine-readable format, if requested. In *Policy Statement on Demurrage and Accessorial Rules and Charges*, Docket No. EP 757, the Board states rail users should be able to review charges without substantial burden. If a carrier presents charges and associated data in a manner that is burdensome to review, rail users will be discouraged from reviewing the charges and making the changes necessary to avoid them in the future.

Invoices that are not presented in machine-readable format are often costly and time-consuming to review. They are usually facility specific and involve a line of data for each demurrage event and a dozen or so columns of data per line. To validate the charges, Dow must manually perform multiple calculations for each event to make sure debits and credits were calculated correctly. Validation also requires manually cross-checking the invoice data with Dow's own data and filling in any gaps within the data. Accordingly, a single invoice with a dozen events could take hours to audit. Additionally, it is difficult to view the events alongside those reported in other invoices to identify trends that would suggest certain behavioral adjustments to avoid demurrage charges in the future.

In contrast, machine-readable invoices require little time to audit and would better enable rail users to identify appropriate actions to avoid future charges. Calculations can be performed on the invoice data instantly. Similarly, the rail user can electronically compare the invoice data

against its own data for accuracy. The data also can be exported to a database where it can be analyzed alongside data from other invoices to identify trends that should be addressed.

Providing invoice data in machine-readable format should not unreasonably burden carriers. One carrier already provides demurrage invoices to Dow in Microsoft Excel format. Additionally, carriers regularly provide various data in machine-readable format.

V. Conclusion

Dow commends the Board's efforts to ensure shippers and receivers have data necessary to validate and prevent demurrage charges. Dow also urges the Board to modify the proposed rule consistent with Dow's proposals in these comments.

Respectfully submitted,



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