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BEFORE THE
SURFACE TRANSPORTATION BOARD

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Docket No. EP 757

POLICY STATEMENT ON DEMURRAGE AND ACCESORIAL RULES AND CHARGES

COMMENTS

submitted by

NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS (NACD)

Dated: November 6, 2019

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the Surface Transportation Board's Statement of Board Policy on Demurrage and Accessorial Rules and Charges, Docket No. EP 757. NACD is pleased that the Board clearly heard the concerns about excessive demurrage fees and billing procedures raised during the May 22-23 Oversight Hearing on Demurrage & Accessorial Charges and commends the Board for taking steps to address these concerns through this policy statement.

Identity and Interest of the National Association of Chemical Distributors

The National Association of Chemical Distributors (NACD) is the premier trade association for the U.S. chemical distribution industry, representing nearly 430 chemical distributors and their supply chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross

revenue. NACD members blend, re-package, warehouse, transport, and market chemical products made by large-quantity manufacturers to 750,000 end-users in nearly every industry sector, from cosmetics to automotive and from paints and coatings to food and water treatment. NACD members operate in nearly every U.S. state through more than 3,000 facilities and are responsible for more than 75,000 direct and indirect jobs in the nation. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Transportation is an integral part of the chemical distribution business. In 2018, NACD members made 4.6 million shipments, were responsible for 30.6 million tons of product, and drove more than 404 million miles while safely making deliveries to customers every 6.9 seconds. Over the past eight years, NACD members averaged just one incident for every 9,091 shipments. A substantial percentage of NACD members receive products via rail cars and greatly depend on reliable and affordable rail service to meet the needs of their customers and remain competitive in the global market.

NACD Position on Proposed Policy Statement

NACD strongly supports the Board's Policy Statement on Demurrage and Accessorial Rules and Charges. As the Board heard from numerous rail customers during the May 22-23

Oversight Hearing on Demurrage & Accessorial Charges, recent Class I rail operational changes such as the reduction in free time have made demurrage charges unavoidable for rail customers.

The term “demurrage” in railway law is the charge on detention of rail cars, either to the shipper for holding the car, the receiver for not accepting the car, or to the connecting railroad(s) while the car is empty and returning to the home base. Demurrage is intended to serve the public interest by facilitating the flow of commerce through the prompt loading and unloading of cargo. In general, the person liable for demurrage is the one who assumed the duty to unload the cargo but failed to fulfill the responsibility – the purpose being to encourage the timely unloading and return of empty cars to improve utilization. However, demurrage fees have turned into a cash cow for Class I operators as servicing railroads frequently fail to pick up or deliver cars in a timely and predictable manner.

In addition to the reduction in free time, the Class I railroads have failed to provide adequate notice of operational changes and tariff increases and have substantially reduced customer service staff, making it extremely difficult for rail customers, including chemical distributors, to receive answers and resolve disputes. In many cases, this has resulted in operational and business challenges for NACD members, who have been forced to shift staff schedules, assign staff to rail service issue dispute resolution, and explain to customers why their product shipments are delayed. If implemented, the principles outlined in the Board’s Policy Statement would begin to address these concerns.

NACD agrees with the Board’s statements on free time, bunching, overlapping charges, invoicing and dispute resolution, credits, and notice of major tariff changes. These issues are interconnected. For example, the reduction in free time has led to additional extra charges caused by bunching as rail car receivers sometimes do not have space to place all of the cars delivered

by a railroad at one time, nor adequate time to make adjustments. The increase in demurrage charges has resulted in extra time staff must spend trying to figure out and dispute the fees. In a recent survey of NACD members, nearly 40 percent of respondents reported that they had received wrongful demurrage and/or accessorial charges. In 60 percent of these cases, the rail carrier failed to provide on-time delivery before the charge was imposed. Of these companies, 70 percent were ultimately successful in disputing the charges, while 30 percent were not. All of these companies had to spend valuable staff time disputing charges that should not have been imposed by the railroads in the first place. None of this contributes in a positive way to the free flow of goods and commerce.

Conclusion

Rail customers, including NACD members, need reliable, efficient, and affordable rail service in order to run their businesses successfully and serve their customers. NACD commends the Board for addressing the issue of unreasonable demurrage fees and for issuing this important Policy Statement. We look forward to working with the Board on demurrage reforms and other proposals to create a more favorable rail service environment for the thousands of customers who depend on the critical rail transportation mode to move products and the economy forward. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer C. Gibson".

Jennifer C. Gibson
Vice President, Regulatory Affairs