

Before the Surface Transportation Board

STB Docket No. EP 757**Policy Statement on Demurrage and Accessorial Rules and Charges**

Opening Comments of Dow, Inc.

Dow, Inc., submits these Opening Comments in response to the Notice of Proposed Statement of Board Policy the Surface Transportation Board served in the above-captioned proceeding on October 7, 2019 (the “Notice”). The Notice 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 demurrage¹ and accessorial tariffs that had prompted widespread concern. The Notice addresses concerns raised in *Oversight Hearing* by providing information on principles the Board would consider when evaluating the reasonableness of demurrage and accessorial rules and charges.

I. Interest

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 sites throughout the United States.

Dow strongly supports the actions the Board is taking in this proceeding and in *Demurrage Billing Requirements*, Docket No. EP 759, to ensure railroad demurrage and accessorial rules and practices are consistent with their purpose of incentivizing the efficient use of rail assets. Unreliable rail service often forces Dow to incur additional costs, including

¹ References to demurrage also include private car storage. See Notice at 2 n.2.

demurrage and accessorial charges. This not only subverts the purpose of demurrage, but also it rewards railroads for their inefficiency.

II. The Board should specify that less than two days of free time is unreasonable.

Free time must account for rail service variability. This helps ensure that demurrage is fulfilling its purpose of encourage efficient transportation and that railroads have some accountability for inefficiencies that their service variability causes. Based on Dow's experience with service variability, the Board should specify that demurrage rules and practices that do not provide at least two days of free time are unreasonable.

Through their service variability, railroads impair rail users' ability to receive, load, and unload railcars. The flow of railcars to and from a rail user's facility is a delicate balance that must account for the facility's available track space. If a railcar arrives early, the facility may not have enough track space to accept it. It also likely would not be able to increase production to accommodate the car because it would only have enough loaded or empty railcars on hand to support normal production rates. If a railcar arrives late, the facility may need to reduce production, which impairs its ability to either receive loaded cars for unloading or empty cars for loading. The late arrival may also occupy space needed to accept a subsequent railcar delivery that is on-time.

While rail users can and do try to mitigate the impact of service variability, demurrage and other costs are unavoidable. One of the few options that rail users have to reduce the adverse impact of service variability on their facilities is to maintain extra cars at their facilities to fill loading and unloading gaps left by the railroad's service issues. This requires rail users to incur additional costs for the extra cars. It also has the side effect of making it more difficult for a facility to accept cars when the railroad delivers them in bunches, which occurs frequently. If a rail user has enough space at its facility, it can build additional track to accommodate the extra

cars and have enough capacity to absorb bunching. Rail users that do not have enough space can lease storage track, but this exposes them to railroad switch charges on top of track lease costs. Fixed storage may help mitigate service variability, but it too is not free.

In many situations, the railroad who is responsible for the service variability benefits from the costs associated with these mitigating endeavors. For example, if the rail user must maintain an excess number of cars at a facility, the facility may not be able to accommodate a delivery of bunched cars and, thus, will incur demurrage. Also, if a rail user must lease track, the delivering carrier has available storage track for lease in many situations and, regardless of whether it leases the storage track to the rail user, often will charge a fee to switch a car from the storage track to the rail user's facility. In these situations, the delivering carrier will earn both a lease fee and a separate car switch fee just for being unreliable.

Free time is necessary to prevent railroads from using demurrage to profit from being unreliable. Demurrage must fulfill its purpose to encourage efficient use of rail assets.² When a railroad's unreliability prevents a rail user from accepting a car or loading and unloading a car, the railroad prevents the user from being efficient and, thus, demurrage cannot fulfill its purpose. Thus, railroads should be required to provide enough free time to account for their service variability.

Additionally, free time is necessary to help make railroads accountable for their service variability. When a rail user must acquire additional cars or more track to protect against unreliable railroad service, there is no consequence for the railroad. Minimum free time pegged to service variability provides a necessary incentive for railroads to be more reliable and, thus, contribute to the efficient use of all assets necessary for rail transportation, not just those that

² Notice at 6-7.

belong to railroads. Moreover, if railroads require rail users to efficiently use rail assets, it is only fair that railroads provide enough free time to reflect their own inefficiencies that result in costs for rail users.

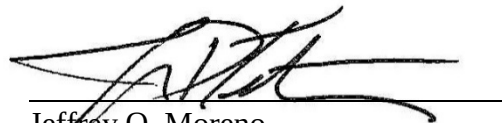
III. Dow adopts the comments of the American Chemistry Council.

Dow is a member of the American Chemistry Council (ACC) and supports and adopts the ACC's Opening Comments in this proceeding. Dow is providing these comments separately and in addition to those of ACC.

IV. Conclusion

Dow commends the Board's efforts to provide guidance on the scope of acceptable demurrage and accessorial rules and practices and urges the Board to modify its proposed policy consistent with Dow's proposals in these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Moreno', is written over a horizontal line.

Jeffrey O. Moreno
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, N.W., Suite 700
Washington, D.C. 20036
(202) 331-8800

Counsel for Dow, Inc.

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