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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**POLICY STATEMENT ON DEMURRAGE AND
ACCESSORIAL RULES AND CHARGES**

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) **Docket No. EP 757**
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**COMMENTS OF
ARCELORMITTAL USA LLC**

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ArcelorMittal USA LLC (“AM”) submits these Comments in response to the Surface Transportation Board’s (“Board”) Notice of Proposed Policy Statement served on October 7, 2019 (“NPPS”).

AM is part of ArcelorMittal, the world's leading steel and mining company. Guided by a philosophy to produce safe, sustainable steel, AM is a leading supplier of quality steel products in major North American markets, including automotive, construction, pipe and tube, appliance, container, energy and machinery.

AM's operations are made up of facilities owned and operated by various predecessor companies, all joining together as AM following the merger of Arcelor and

Mittal in 2006, then the world's largest and second largest steel companies, respectively, by production volume. The map appended to these Comments details the locations and functions of each of these facilities and offices.

AM participated in the Board's EP 754 proceeding addressing demurrage and accessorial charges,¹ and AM appreciates the opportunity to present these Comments to the Board. In summary:

- **Reasonable Control.** AM appreciates the Board's proposal to adopt a non-binding policy that carriers cannot collect detention charges for train or car delays beyond a shipper's reasonable control. However, AM urges the Board to adopt a more proactive response to the current rail detention crisis by issuing a final decision finding that it is an unreasonable practice for carriers to collect detention charges for train or car delays beyond a shipper's reasonable control, and to order carriers to conform their detention practices to this finding.
- **Reciprocity.** AM also urges the Board to address an issue that AM raised in its EP 754 Comments but the Board did not address in the NPPS – requiring carriers to pay shippers for train and car delays caused by carriers.
- **Other Issues.** AM supports, and urges the Board to adopt, the Board's proposed policies governing overlapping charges, invoicing, credits, tariff changes and third-party billing.

¹ *Oversight Hearing on Demurrage & Accessorial Charges*, Docket No. EP 754 ("EP 754"). In EP 754, the Board received written comments and conducted a two-day public hearing on May 22-23, 2019. AM filed its Written Comments in EP 754 on May 8, 2019 ("AM EP 754 Comments").

I.
**NEW RAILROAD DETENTION PRACTICES ARE UNREASONABLE
WHEN THEY RESULT IN SHIPPER CHARGES FOR CIRCUMSTANCES
BEYOND THE SHIPPER’S REASONABLE CONTROL**

The Board instituted its EP 754 proceeding to address shipper concerns that new railroad detention charges and practices – many of which were being imposed to advance new “precision railroading” operations by the nation’s carriers – were grossly unfair to shippers.

The Board’s concerns were well-founded. In EP 754, the Board received over 90 pre-hearing submissions, heard testimony from 12 panels composed, collectively, of over 50 participants and received 36 post-hearing comments. *See* NPPS at 3. Rail shippers tendered the vast majority of these submissions, testimony and comments and presented a common message – new railroad detention charges and practices were unfair and unreasonable in many instances because the charges arose in the context of circumstances beyond the shipper’s reasonable control.

AM’s EP 754 Comments provided a representative example – carriers increasing train sizes beyond the physical capacity of AM’s plants to handle the longer trains within the allotted free times:

Rail carriers have increased the length of unit trains bringing raw materials into our plants, and shipping steel from the plants, from 75 cars per train to 90, 100, 120, and then 130 cars. The increased train lengths frequently lead to detention charges because the increasing train lengths exceed our plants’ capabilities to receive, build and ship unit trains within allocated free time periods. Our current facilities, including interchange tracks and other intra-plant track infrastructure, were not designed to handle these new, longer train lengths.

AM EP 754 Comments at 4.

AM also provided a second representative example – carrier train bunching over which AM has no control. This bunching leads to a variety of constructive placement-based detention charges:

Many of our plants are served over high traffic areas where the number of passing trains is between 50 to 80 per day. This congestion – which occurs outside our plants – slows down rail operations and, as railroad detention rules are currently structured, can result in our incurring detention charges over which we have no control.

Id. at 3.

II.

AM APPRECIATES THE BOARD’S STATEMENTS IN THE NPPS DISAPPROVING OF CARRIERS IMPOSING DETENTION CHARGES IN CIRCUMSTANCES BEYOND A SHIPPER’S REASONABLE CONTROL, BUT THE BOARD CAN, AND SHOULD, DO MORE TO BAN THIS OUTRAGEOUS PRACTICE

In its NPPS, the Board carefully reviewed shipper comments, including those submitted by AM, emphasizing that it is an unreasonable practice for carriers to collect detention charges for train or rail car delays beyond a shipper’s reasonable control. *See, e.g.*, NPPS at 7-13 (discussing free times beyond a shipper’s control to meet); *id.* at 13-14 (discussing carrier bunching rules beyond a shipper’s control to meet).

AM appreciates the Board’s statements in the NPPS that it is a “fundamental principle[]” that detention charges “should not be assessed in circumstances beyond the shipper’s or receiver’s reasonable control.” *Id.* at 21. *See also id.* at 12 (“Where, for example, carrier-caused circumstances give rise to a situation in which it is beyond the shipper’s or receiver’s reasonable control to avoid charges,

demurrage does not fulfill its purpose.”); *id.* at 14 (“Where rail carriers’ operating decisions or actions result in bunched deliveries and demurrage charges that are not within the reasonable control of the shipper or receiver to avoid, the purpose of demurrage is not fulfilled.”) (footnote omitted).

While AM appreciates the Board’s statements, AM is concerned that they appear in the context of a proposed policy statement, which, even if adopted by the Board, will not, in the Board’s own words, produce “any binding determinations.” *Id.* at 3. The Board appears to believe either that “binding determinations” will not be necessary because carriers will voluntarily discontinue collecting detention charges in circumstances beyond a shipper’s reasonable control or, alternatively, that a carrier can continue to collect detention charges in circumstances beyond a shipper’s reasonable control, unless and until a shipper files an unreasonable practice complaint and, after hearing the case, the Board issues a “binding determination” that the carrier has collected detention charges beyond the shipper’s reasonable control. *Id.*

AM believes that the current detention crisis demands a more proactive response from the Board. Specifically, the Board should issue an order in its final decision in this proceeding finding that it is an unlawful practice for carriers to collect detention charges for train or rail car delays beyond the shipper or receiver’s reasonable control, and to order carriers to conform their detention pricing documents and collection practices to the Board’s order within ninety days.

The relief AM is advocating here is similar to the relief the Board ordered in 2007 at the conclusion of its proceedings addressing percent-of-rate fuel surcharges.

See Rail Fuel Surcharges, Docket No. EP 661 (STB served Jan. 26, 2007) (finding carrier collection of percent-of-rate fuel surcharges was an unreasonable practice and directing carriers to conform their practices to this finding within ninety days). The additional relief AM requests is also fair.

Shippers should not have to file time consuming and costly unreasonable practice cases in order to avoid paying detention charges beyond their reasonable control. Nor should shippers be forced to wait and see whether carriers will voluntarily, and across-the-board, comply with a non-binding Board policy statement. The Board has the authority to issue a decision banning the clearly unreasonable practice of carrier collection of detention charges in circumstances beyond a shipper or receiver's unreasonable control, and AM respectfully submits that the Board should exercise that authority here.

III. THE BOARD SHOULD ADDRESS CARRIER-CAUSED SHIPPING DELAYS

The current detention crisis involves heavy-handed efforts by carriers to force shippers to speed up their handling of carrier cars and trains, even in cases where the delays are beyond the shipper's reasonable control. Not surprisingly, the carriers – who write their common carrier shipping documents – have not included any corresponding provisions where they pay shippers for train delays (in yards or in line-hauls) that are caused by the carriers.

AM pointed out this lack of reciprocity in its EP 754 Comments:

The new carrier detention charges also lack reciprocity. While carriers propose to use detention charges

to incent shippers to speed up shipper loading and unloading operations, they do not propose any reciprocal charges to incent themselves to provide more efficient line-haul service.

....

Carriers are increasing the penalties when shippers fail to meet tariff free time requirements for switching and the like during specified free times but will accept no corresponding financial responsibility for delays they cause, *e.g.*, no penalties for poor car delivery or service to their customers. Moving our products via rail is a partnership with both the shipper and carrier heavily invested. There should be reasonable reciprocal incentives on both sides to improve the overall efficiency of the network.

AM EP 754 Comments at 2-3, 9.

The Board did not address the reciprocity issue in its NPPS. That may be due to the fact that detention is typically viewed in the context of rail car delays caused by shippers. However, the overall purpose of detention rules is to “encourage the efficient use of rail assets.” NPPS at 21. This is a two-way street. AM recommends that the Board institute a proceeding to address whether the Board can further the “efficient use of rail assets” by adopting rules that require carriers to pay “detention” charges to shippers for train delays caused by the carriers.²

² The “reciprocity” AM is referring to here is different from the debit/credit “reciprocity” under average demurrage plans where shippers receive credits for early release of rail cars. *See* NPPS at 5, 17-18.

IV.
**AM SUPPORTS THE BOARD’S ADOPTION OF PROPOSED POLICIES
GOVERNING OVERLAPPING CHARGES, INVOICING, CREDITS, TARIFF
CHANGES AND THIRD-PARTY BILLING**

AM supports the following proposed Board policies and urges the Board to adopt them in its final decision in this proceeding:

- **Overlapping Charges.** AM supports the Board’s proposed policy that carriers not double charge for detention (NPPS at 15).
- **Invoicing.** AM supports the Board’s proposed policy that carrier detention invoices provide sufficient information to allow shippers to reasonably understand and audit carrier charges (*id.* at 16-17).
- **Credits.** AM supports the Board’s proposed policy that carrier detention credits be fairly administered (*id.* at 17-18).
- **Tariff Changes.** AM supports the Board’s proposed policy requiring carriers to provide “sufficient notice” of major changes to detention tariffs (*id.* at 18-19).
- **Third-Party Billing.** AM supports the Board’s proposal to adopt new rules in a separate proceeding addressing third-party intermediary billing (*id.* at 20-21).³

CONCLUSION

AM respectfully requests that the Board take actions in this proceeding consistent with these Comments.

³ AM is filing separate comments in *Demurrage Billing Requirements*, Docket No. EP 759 (STB served Oct. 7, 2019).

Respectfully submitted,

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