

Minnesota Commercial Railway

COMMERCIAL TRANSLOAD OF MINNESOTA

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To: Members and Staff of the US Surface Transportation Board

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July 10, 2012
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RE: Proposed Notice of Rulemaking, Docket EP 707, Demurrage

Dear Members and Staff

Minnesota Commercial is a Class III, independent switching and terminal carrier serving about 150 customers in the Metro Twin Cities area on 150 miles of track..We were not aware of the proposed rulemaking until recently, and would have commented before had we known this proceeding was in process. We appreciate the opportunity to contribute and comment, and we appreciate the Board's interest in this matter. It is very important.

As background, in 2011, MCR handled some 49,200 revenue cars.. Of these, approximately 36000 were originated or terminated cars loaded or unloaded by customers..Our overall profit margins on all cars is just over \$13.00 per car very slim. We and our customers compete with three major Class I carriers in the Twin Cities and their customer so it is important that we maintain charges at reasonable levels to insure that our customers are on a level playing field with those of our competitors and there are no additional charges assessed by the Class I carriers for our switching services - stated another way, we need to keep all our customers on a level playing field with those on our Class I competitors.. We have grown our business, since our 1987 beginnings, from just over 6000 cars a year to the 49, 200 level last year by maintaining this policy, and have located over 100 new customers on our line during this time and developed almost all available real estate along the lines we operate. Along with this growth has come massive investments in our infrastructure, our track upgrading and maintenance, new track and yard track and siding construction, locomotives and equipment. We provide 24 hour per day, 7 day per week service. For example, over the past three years, we have gone in debt six million dollars in pursuing these efforts.. We also offer superlative service- we will provide our customers with multiple switches per day and weekend service consistent with their own capacity and ability to unload or load cars. We also offer reloading and transloading services on our line, either through our own wholly owned sister company, Commercial Transload of Minnesota - CTM Trucklines, or, by allowing customers to do their own transloading.. CTM's business is largely not subject to STB rail jurisdiction as its done under Part B (or title II of the ICC Termination Act, (the Motor Carrier Act), and covered by those statutes, rules and regulations, and CTM holds a Motor Carrier license pursuant to those statutes, rules and regulations and is a separate company from MCR, and it too pays demurrage. If a customer choses to use CTM as a transloader, the charges for any services, whether transloading, warehousing or trucking (if even associated with a railroad movement) and

and separate and apart from any rail transportation charges and must be arranged entirely with that company. CTM is thus a customer of the MCR, like any other customer..

In attempting to remain competitive, MCR's demurrage charges are less than most of our class I competitors and are hourly assessed, and on a 24 hour basis, approximate \$59 per 24 hours..Customers are given two to three free days and free time on holidays and weekends..Most others assess demurrage on a daily basis.. So, after the "free time", while a customer on many other carriers would pay a 24 hour charge if a car was say, released at 0700, an MCR customer would pay just 7 hours for that day. MCR does not make demurrage a profit center - only a cost recovery, as the cost of many newer freight cars on a per diem basis can be \$30 to \$40 per car per day, and, coupled with our huge capital investments to add track capacity to hold cars (about six miles of new capacity in the past three years in yard and sidings built and rebuilt), To provide the level of service necessary to meet this 24/7 service, we maintain a fleet of 35 locomotives and operate 9 to 11 crew assignments daily during weekdays with lesser on weekends to serve our customers needing weekend service and maintain seven day a week interchange with all our connecting carriers, which with our four Class I connections, CN, CP, BNSF and UP, averages about 50 cars a day delivered and 50 cars received.

Also, it is important to note that while we are able to reclaim against the class I carriers with whom we connect anywhere from 48 to in some cases 120 hours on the cost of these per diem charges, the car hire charges we owe the connecting carriers is automatically drafted each month from our bank accounts - a condition of doing business with all the larger carriers. We pay the car hire regardless of whether our customers pay their demurrage bills - and at an overall margin of just around \$13.00 per car left for profit, this does not leave room for any non payment of demurrage.

We are much like the IHB.. (We also believe many more Class III carriers and switching and terminal carriers may have responded to your request for comments had they known about this proceeding. In our discussions with others, we just don't think they knew about it.) Like the IHB, we have many public warehouses, lumber reloads, grain elevators and other industries.. We are NOT a party to any Class I contracts or arrangements and we rarely receive any line haul waybills or bills of lading (except for hazardous materials, which must be provided under FRA regulations for proper and safe handling of such commodities). We do know from our experience that cars are shipped to or received from thousands of origins.. They can be hundreds of different lumber mills or dealers in the US or Canada, hundreds of different grain companies or terminals in the US or Canada, and hundreds of different manufacturers, etc, in the US and Canada and occasionally, even Mexico. Historically, about 75% of MCR's switching business are terminated cars. We have NO idea of who is paying the line haul freight bills! We are compensated only through the submission of electronic switching settlement statements once per month rendered to our four Class I connections, the CP, CN, BNSF and UP..

MCR publishes our demurrage charges to all our customers and through our marketing representatives, they are explained to them if they have any questions they are answered by our

marketing and operating people, and our operations are geared to keeping their charges down by switching the oldest cars for placement at all times unless the customer requests otherwise.. However, oftentimes, due to needs for certain cars with certain products, all of these customers can and do request the placement of newer cars as the products are needed to fill the needs of their various customers - and MCR has NO knowledge of who these multitude of various customers may be..

While MCR respectfully submits to the STB that a release of customer liability for demurrage through some notification by a third party shipper advising that party is liable demurrage charges, in real life this does NOT work.. Let us tell you a story.

A few years ago, MCR entered into a track lease agreement with a party advising he was the distributor for a certain salt company who had been referred to us by a marketing representative of one of our Class I connections, who represented their customer as long standing and viable. The salt company confirmed this and advised they were the shipper and would be responsible for demurrage. However, within about 45 days, several dozen cars of this product were shipped and arrived on the customer's leased track, (leased to their so called "local distributors) demurrage charges were billed but not paid by both the salt supplier and the customer, and cars kept coming in.. Within sixty days, around 45 to 50 cars accumulated and the so called local distributor, we were later to learn, had his contract terminated by the salt company who then advised they would not be paying the demurrage bills.. In addition to the financial exposure for the car hire to the BNSF Railway, this accumulation of cars also took up two entire Yard tracks in MCR's main classification yard until MCR was able to require the parties to unload each car..The so called distributor then declared bankruptcy.. MCR was NOT able to embargo the traffic under STB rules which do not allow embargoes for non payment of demurrage. A long year and one half lawsuit was commenced by MCR against both parties.. The legal bills up to the time of discovery and including discovery which MCR incurred were about \$35,000 - an amount close to the total of the demurrage bills.. A settlement was finally reached in discovery of \$25,000... so the end result was a long and time-money consuming law suit where MCR lost upwards of \$30,000on demurrage and paid another \$35,000 in legal fees, for a total loss of around \$70000.00.

This experience plus how reloaders, warehouses, and others handle their business to respond to the needs of their own customers teaches valuable lessons which we respectfully suggest the STB incorporate into the rulemaking.

1. Customers unload and load cars based on the needs of their customers and not always To minimize demurrage charges and arrangements with the warehouseman/reloader/grain dealer or processor can change without the carrier knowing.
2. The inability of carriers to embargo traffic due to non payment of demurrage should be rescinded and rail carriers allowed to embargo traffic for non payment,
3. A simple letter from a shipper that they are responsible for demurrage and not the

Consignee receiving or shipping the car on their behalf is not ample for protection to the rail carrier, particularly a switching carrier who is NEVER a party to line haul rates Contracts or quotes and not known by the switching carrier.

4 Any carrier should be allowed to require any customer to post a performance bond sufficient to cover the anticipated costs of demurrage – by the shipper or the consignee third party handler where there is a new customer or a customer who has a history of non payment of demurrage and also embargo the traffic until resolved and paid..

We have other similar examples.. About ten years ago, a warehouse on our line developed financial difficulties and over 50 carloads of paper accumulated – all shipped from various eastern sources by several different paper companies.. Tens of thousands of dollars of demurrage became payable as the warehouse was unable to unload the cars.. Eventually, we learned who the various shippers were as they would call us to get their cars released and rebilled.. We then negotiated release and switch and other ancillary charges sufficient to cover most of our losses with various paper companies, but, like the salt cars, in addition to the costs of the car hire we had to pay, we also incurred congestion in our yard space due to having to hold these cars for several months on two separate tracks until the diversion and rebilling took place.

And, we have several steel companies/processors who will order dozens and even over a hundred cars at one time due to the timing of and to avoid price increases in the steel business which can occur quarterly or semi annually.. The only way we know this is happening is by requesting our connecting carriers to give us daily advance reports of cars on their line destined to us.. Again, we have no waybill information or who the shipper may be.. Once we learn this, we contact the receiver and try to work out a plan.. In almost all of those cases, these established MCR customers work with us and agree to multiple daily switches and weekend service to offload these cars and do pay their demurrage, although in some cases, the payments take two or three months to receive – while in the meantime, we accumulate car hire costs on them..

In summary, it is clearly not a perfect world and simply allowing a shipper to notify the railroad that they will pay the demurrage is grossly insufficient for reasons that are detailed herein. Rather, we submit that even with established rail customers with good credit and a good record of payment, that in addition to the above suggestions, the relationships between warehouses/reloaders and other receivers and shippers with respect to payment of demurrage are best worked out in relationships in charges for handling as agreed to between those parties. The handling party more than likely has dozens of such relationships with dozens of shippers, and that party, in particular, knows if the shippers requirements will require priority handling that will require other cars consigned to them to sit for several days as other cars for other parties may take priority..

As we understand the STB's proposal, the receiving or handling party is responsible for demurrage unless there is a third party who claims they will be responsible – which as we noted by examples above, sometimes proves to be invalid. Even in such cases, the shipping party can claim they are

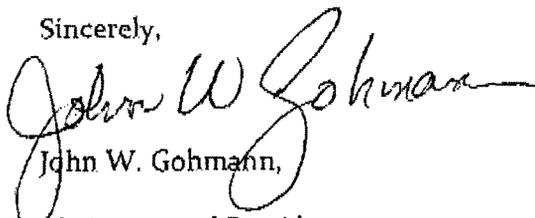
not responsible because the third party handler may have other priority cars to load or unload, and then dispute and not pay the charges, sever the relationship without knowledge of the carrier, etc. We do not believe it wise to allow this, but, if you do, then each receiver would be required to provide us information prior to the time each car is shipped from the potentially thousands of different origins or shipped to the same of who that shipper is IF they intend to make the line haul shipper paying the freight responsible for the demurrage and allow the negotiation of a performance bond by the handling carrier.. That has a potential of creating an administrative nightmare for not only the railroad, but our over 100 customers! It is not practical. Such a policy may be appropriate for large class I carriers who originate or terminate such traffic on their own lines, but, only where in such contracts or arrangements, demurrage payments are a part of such contracts or quotes and negotiated at the time of drafting between those parties.. But, while we cannot speak for the Class I carriers, this should be an option at the discretion of the carrier(s) involved and not broadly permitted in STB regulations..

These incidents, when they occur, not only impact the efficient utilization and availability of the national railroad car fleet, but, also jeopardize the financial viability of railroads - especially those of Class III carriers who perform in essence switching services for their Class I partners.

In comparable general business situations, allowing a simple letter to be produced to allow a shipper or receiver to escape the demurrage obligation is equivalent to a practice where someone could walk into a retail store, fill their shopping basket full of thousands of dollars of items, and at the check out counter, produce the letter telling the seller to bill someone else. Obviously, that does not happen - as seller the (in comparable terms, the railroad), has no knowledge of what the practices are of the buyer, their buying habits, etc,) and is obviously not practiced. In the rail industry, who has as noted is not party to relationships between the shipper and receiver and has no control over the scheduling of loading or unloading of railcars, the relationships between these parties are the only practical and fair way - and quotes for warehousing, transloading, and handling as between the two the only practical way for this to be conducted.

We appreciate the opportunity and your concern for a fair and proper final resolution of this matter and gladly will answer any questions..

Sincerely,


John W. Gohmann,
Chairman and President.