

July 12, 2019

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Patrick J. Fuchs
Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

EP 754
248193

The Honorable Martin J. Oberman
Member
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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Public Record

Re: Changes to NS Demurrage Tariffs

Dear Chairman Begeman, Vice-Chairman Fuchs and Commissioner Oberman:

The Institute of Scrap Recycling Industries (“ISRI”) is submitting this letter to advise the Board of its views concerning the recent announcement by Norfolk Southern Railway (NS) of revisions to its tariffs governing demurrage and storage and accessorial charges. This development follows the Board’s hearings in May 2019 on railroad demurrage practices and accessorial charges and directly relates to the important issues under consideration by the Board in its EP 754 proceeding.

On July 1, 2019, Norfolk Southern Railway (NS) announced that it is revising its tariffs governing Demurrage and Storage (NS 6004-D) and Accessorials (NS 8002-A), among other tariffs. At the Board’s recent hearings, ISRI and its members (and many other rail customers) expressed serious concerns over the reasonableness of the Class I railroads’ demurrage-related rules and practices and increasing accessorial charges. While several of the changes to the NS tariffs would incrementally improve or eliminate certain egregious practices or charges, on the whole, they fall far short in addressing the most serious concerns identified by ISRI members (and others), including the reasonableness of extremely limited credit days (i.e. zero days for private cars and 24 hours for railroad-owned cars), charges resulting from the bunching of cars, and invoicing and claims practices that create unfair obstacles to the efficient auditing and resolution of demurrage-related invoices and disputes.

Specifically, effective September 1, 2019, NS is changing its service credit rules to provide one (1) credit for empty private railcars where the NS Original ETA¹ is not met within 24 hours due to either early or late arrivals.² Currently, no credits are offered for private empty cars and this is a positive change for rail customers. These credits will be limited to five (5) per railcar and cannot be carried over to subsequent months. Despite this expansion of service credits for private empty cars, NS is simultaneously reducing the service credits provided for loaded cars from two (2) to one (1) for each day an ETA is missed by more than 24 hours and the limits on such credits will be reduced from ten (10) to five (5) per car. Thus, while NS intends to improve the fairness of its service credits rules vis-à-vis private empty cars, it concurrently proposes to *reduce* the availability of service credits for loaded cars.

There are important questions that underlie these changes: If the current service credit rule for loaded cars, creates the proper efficiency incentives, why wouldn't NS simply provide the same service credits for missed ETAs involving private empty cars based on its current service credit rule for loaded cars?; Are the reductions in service credits for loaded cars designed to improve efficiencies or simply offset any loss of storage revenue resulting from the offering of new service credits for private empties? Why did NS reduce the combined total service credits per car from ten (10) to five (5) for loaded cars? Is it reasonable for service credits to expire at the end of the month in which they were earned, which would substantially limit the benefits of any service credits earned near the end of a given month?

As of July 1, 2019, NS has eliminated its controversial and problematic congestion charge³ and the \$500 handling charge that applied to demurrage disputes not received by NS by the fifth calendar day of the month following accrual of the charge.⁴ ISRI appreciates the elimination of these charges, as their reasonableness were seriously questioned at the hearings and in written testimony.

ISRI and its members have advised the Board of its fairness concerns regarding the extremely limited availability of credit days before storage or demurrage charges accrue.⁵ The zero and 24-hour

¹ The Original ETA is defined as the original estimated time of availability generated “[upon] the first reported movement on Norfolk Southern Railway Company (NSR),” “[f]ollowing interchange or release of shipment and complete billing to final destination.” . NS 6004-D, Item 200.

² NS 6004-D, Item 950.

³ NS 8002, Item 6265.

⁴ NS 6004-D, Item 950.

⁵ NS 6004-D, Items 650, 700 and 1010.

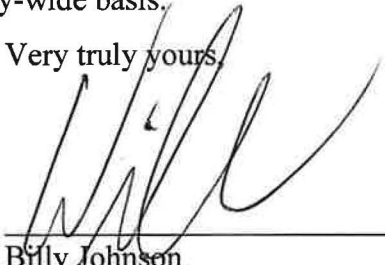
credit limits prevent some rail customers from ever being able to avoid the charges, based on the configuration of their facilities, their operations which often do not include evening or red eye work shifts when railcars may be delivered, or bunching of cars which results in deliveries in excess of available track capacity. However, the NS tariff changes do not address these concerns at all.

Additionally, ISRI and many other rail customers have challenged the reasonableness of railroad invoicing and dispute resolution practices, including the unreasonable burdens placed on rail customers to audit meritless storage/demurrage bills and dispute resolution practices which are cumbersome and time-consuming. The NS tariff changes would not adequately address those concerns either and, thus, action by the Board to ensure fair billing and dispute processes is still warranted.

ISRI appreciates the incremental efforts by NS to improve its tariffs governing demurrage and accessorial charges. However, as explained in ISRI's oral testimony and written submissions, the NS tariff changes do not adequately address the most serious concerns expressed by ISRI members and many other rail customers. Further, as the hearings clearly demonstrated, the concerns with demurrage practices are widespread, impacting rail customers of all sizes and across multiple industries. Thus, the incremental changes proposed by a single Class I railroad are not sufficient to address this systemic issue.

Accordingly, ISRI reaffirms its appreciation for the Board's efforts and serious attention regarding the reasonableness of railroad demurrage practices and accessorial charges, and we urge the Board to adopt the recommendations previously submitted by ISRI and to address this issue on an industry-wide basis.

Very truly yours,



Billy Johnson
Chief Lobbyist
The Institute of Scrap Recycling Industries, Inc.
1250 H Street, NW
Suite 400
Washington, DC 20005
(202) 662-8548