

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Docket No. EP 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

WRITTEN SUBMISSION OF COVIA CORPORATION

Covia Holdings Corporation (“Covia”) hereby submits these written comments in response to the Board’s Notice served in this proceeding on April 8, 2019.

1. Identity and Interest of Covia

Covia, formed through the combination of Unimin Corporation and Fairmount Santrol Holdings Inc. (“Fairmount Santrol”) in 2018, is a major supplier of minerals and material solutions to a variety of markets including glass, foundry, recreation, as well as energy exploration and production.¹ The company operates over 50 plants and 90 terminals and controls over 15,000 private freight cars. Annually, Covia makes well over 100,000 rail shipments that originate on six of the seven Class 1 railroads. These shipments of Covia’s cars travel over the respective systems of all seven Class I railroads and a multiplicity of short lines. Covia is also the owner of the Winchester and Western Railroad (a short line operating mainly in NJ, VA and WV).

¹ <https://www.coviacorp.com/>

Covia participates in a competitive marketplace of the production and sale of silica-based minerals such as sand and clay as well as other basic minerals. Product transport costs, particularly those that are rail-related, typically represent a majority of the costs Covia seeks to recoup through the prices it charges its customers. Remaining competitive on a national and international level is therefore impacted greatly by what Covia pays railroads, including ancillary fees and charges – most commonly demurrage - but also other charges such as those related to AAR OT-5² compliance. Over the course of the past several years, Covia and its predecessors have experienced an increase in such charges and fees, thereby impacting our profits, our ability to grow, and the efficiency by which the company operates. As the owner of a short line railroad, Covia understands the costs associated with operating a railroad while also grasping the impact those costs have on the railroad's customers.

2. Comments Regarding Demurrage

Covia has dedicated resources surrounding the audit and payment of invoices for demurrage and accessorial charges it receives from railroads. Our observation, backed by data and analysis, is that the majority of the Class 1 railroads default to simply charging demurrage based on the tariff language and basic car movement data regardless of actual circumstances. That is, if there is a service failure by the railroad which impacts the number of cars that get switched into one of our facilities (e.g., after a prolonged absence the railroad arrives with far more cars than the facility tracks can hold) that does not necessarily impact the demurrage amount for which we are billed. There are certainly exceptions, but it has been our experience

² AAR Circular OT-5 (<https://www.railinc.com/rportal/documents/18/260773/OT-5.pdf>) is the means by which private cars supplied by Covia and other rail shippers are accepted into interstate service by the Class I railroads. The Class I railroads also individually publish common carrier terms and conditions related to OT-5 approval.

that, in the main, the charges are levied using just the car movement dates and that the burden of disputing those charges as invalid is entirely on the shipper/receiver. The tariff itself does not set out the circumstances when we should not be charged. Specifically, during 2017, Fairmount Santrol, received demurrage bills totaling \$1.6M. Disputes were approved by railroads for \$686,250 and ultimately \$940,800 was paid out of the billed amount. Note that even though the \$686,250 was found to be wrongly billed because the railroad was at fault for the delay, it was billed as a valid amount until such time that the invoice was analyzed and disputed. Similarly, in 2018, just over \$1M in disputes were approved and over \$500,000 in disputes have been approved so far in 2019.

The outcome of having bills reduced based on the information submitted is an outcome we sought and were glad to get, but it serves to accentuate several key points:

- 1) We have people dedicated to cataloging service issues that occur throughout our network of rail-served plants and terminals.
- 2) We have people who then audit each demurrage bill on a line-by-line, car-by-car basis. Because of the number of cars under our control, some demurrage bills have several hundred lines.
- 3) This time and resource-dedication obviously comes at an added cost to Covia. That cost has brought the benefit of vigilance around disputing errant charges, but it highlights the key issue of where the burden of billing accuracy should lie. We see it as too heavily weighted in the direction of the customer based on the number of valid disputes we file and resolve annually.
- 4) The submission and resolution of disputes is controlled entirely by the railroad issuing the invoice, and it is entirely within the discretion of the railroad to grant or deny a request for demurrage relief.

Given these facts, our request regarding demurrage fees is that railroads should be directed to implement ways to more accurately bill demurrage. Further, that railroads should be directed to pursue an accurate and transparent way through adding language in their tariffs that proactively adds credits to the standard demurrage debit/credit construct used by most railroads. For

example, it would be beneficial to customers if railroads proactively account for service failures (not showing up on a scheduled service day), track work, bunching of cars, and weather impacts. In other words, anticipate where a customer has a legitimate dispute and apply credits to preemptively account for the various impacts as opposed to imposing a burden on customers to try to account for railroad service failures and other non-shipper causes of the delays triggering demurrage charges.

3. Impact of a Specific Tariff Change

The above describes the administrative burden that current demurrage charge system creates and the unfairness regarding submitting and resolving disputed charges. Further to this, Covia can advise of the specific impact that a demurrage tariff change can have on costs and shipping volumes. Effective April 1, 2019, Norfolk Southern announced that Tariff NS 6004-D would be changing and that private cars would receive zero credit days for an empty car under constructive placement.³ Previously, under this same tariff, each private empty car received two credit days (credit days typically have been days allowed to unload a car, or “free time”). However, Norfolk Southern’s demurrage rates under the change remain static at \$60 per debit day (days beyond the credit days). The significance of this change to Covia has to do with an origination point in the Midwest which is a loading terminal controlled by Norfolk Southern. To meet rising demand at this location, we have increased our pool of private cars from approximately 325 to over 500 early in 2019. Though demand is rising, it is not necessarily steady every day of the week. The availability of credit days allowed us to pursue this increased

³ “Constructive placement” typically refers to the situation where a car or train arrives at the shipper’s facility but it cannot be delivered onto the shipper’s tracks by the railroad (actually placed) due to circumstances that include the tracks being full or a car or train onsite being unloaded or unloaded. In that case, the car or train is delivered to a temporary hold point outside the “gate” of the facility but it is deemed to have been delivered by the railroad or constructively placed.

volume (which provides additional business and revenues to Norfolk Southern) while having a reasonable expectation that demurrage costs could be managed and mitigated despite the larger pool of empty cars required and despite variations in weekly demand. With the enactment of the new tariff, however, we can expect a significant increase in our costs. Specifically, we are on pace to ship over 4,000 carloads from this site. In the past, our cars were in constructive placement, on average, at least 2 days prior to getting into the loading point. Using a conservative estimate of having 3,000 empty car movements subject to 2 debits from April 1, 2019 forward, this would be an increase in cost of \$360,000 in 2019 as compared to the past whereby we had enough credit days such that our demurrage was at or near zero. To illustrate that this is a conservative estimate and to provide an example of what was described above, we recently received an erroneous bill related to this location for \$73,620 whereby Norfolk Southern applied the new tariff prior to its start date and which resulted in debit days for 339 cars during a one-month period. We have disputed this invoice. Further, the carloads of sand originating at this location are related to the natural gas market and the competitive nature of this market does not afford us the opportunity to pass on extra fees of this nature. The result of the tariff is a direct impact on the bottom line of Covia.

4. Comments Regarding Accessorial Charges

Recent application of the OT5 Circular rules have resulted in charges not described or contemplated in the Circular itself. A Class 1 with whom we originate a significant number of shipments began sending us bills in 2018 for fees resulting from issues with a shipment's STCC code mismatching the STCC code on the car's OT-5 application – specifically the last 2 digits of the code. That is, we originate materials that mainly fall into the STCC class of 14413xx which denotes “sand.” Until recently, the sand we shipped had moved under the general STCC of

1441310. Recently, additional STCCs were added whereby the last 2 digits were mainly used to denote the size of the grains of sand, with no other differentiation. We explained that it is universally understood that 14413xx is sand of various sizes and that for the purposes of OT-5, there is no material difference between 1441310 and 1441311 (for example). Additionally, this railroad insisted that the origin SPLC was another source of noncompliance with OT-5. That is, one of our plants resides in a particular town, but the SPLC recognized by the railroad is different than the SPLC that denotes the town in which the plant resides. Despite this minor and understandable discrepancy that was easily rectified, the railroad generated a raft of fees surrounding this. All told, we were billed more than \$200,000 for OT-5 infractions from this railroad and for which we settled at a cost of \$75,000 along with an agreement that we remain in the range of 90% noncompliant regarding the above parameters. We are sent reports monthly that judge whether we have remained in compliance and that call out any deficiencies. This signifies that we are still being measured against these parameters and are subject to fees if we do not remain at current compliance levels.

When communicating with railroads about OT-5, we have been consistent in our message – which is that we would work diligently to comply, but that it would take time. In our case, due to the sheer number of cars under our control coupled with the fact that we run a lot of customer-controlled cars that are shifted among multiple loading points, multiple Class 1s, we knew it would take time and effort to work through all of the issues (many of which were described above) and to find a reasonable way to make sure all cars comply. Despite explaining this, more than one railroad simply gave a date for compliance and began charging fees without being mindful of the complications faced. Because of this, we spent hundreds of man hours using the

Railinc OT-5 functionality and also spent tens of thousands of dollars to comply - all of which was in addition to receiving scores of bills for noncompliance.

Like demurrage, these kinds of fees negatively impact our bottom line as it is not feasible for us to pass OT-5 fees on to customers. Even if we could do that, most of the markets we serve will not bear such an additional cost. We are seeking a much more user-friendly system for administering car OT-5 compliance. That system should be integrated with the railroad's billing system so that shippers can get real-time information about a car's noncompliance issue well before it leaves industry property.

5. Conclusion

Covia is heavily dependent on rail service for the delivery of products to customers. When railroad rules change and when compliance with those rules is cumbersome and expensive, we are impacted greatly at our bottom line. Covia's carload volumes have grown significantly over the last many years as has our investment in plants and in our private car fleet. It is essential that we find ways to equitably and fairly balance railroad needs with the needs of industries like ours that are so intricately tied to railroad cost and performance.



THE CHIEF COMMERCIAL OFFICER
For Covia Holdings Corporation

May 8, 2019