

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP 754

ENTERED
Office of Proceedings
May 8, 2019
Part of
Public Record

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

TESTIMONY OF DAVID BURCHETT

MillerCoors LLC (“MillerCoors”) respectfully submits its written testimony as directed by the Surface Transportation Board (“STB” or “Board”) in its April 8, 2019 Notice of Public Hearing to be held on May 22, 2019 in the above-captioned proceeding. The STB asked shipper participants to provide input on recent experiences with demurrage and accessorial charges and the impacts on shippers from operational changes implemented by Class I carriers, among other things.

MillerCoors is an iconic U.S. company that has been in business for over a hundred years and has had numerous business relationships during its history. However, it has perhaps never been treated with such indifference and discourtesy as it was recently by one of its Class I railroad transportation providers, Norfolk Southern Railway (“NS”). My testimony regarding these issues is as follows:

I am David Burchett, Category Lead – Transportation and Logistics, MillerCoors, 3939 W. Highland Blvd., Milwaukee, Wisconsin, 53208. I have, among other things, rail procurement responsibilities for MillerCoors.

1. MillerCoors

MillerCoors is a wholly owned subsidiary and the United States business operation of its parent, Molson Coors Brewing Company (MCBC). MillerCoors is the second largest beer brewer in the United States and its iconic beer brands include Coors Light, Miller Lite, Coors Banquet, the Blue Moon Brewing Company brands, the Jacob Leinenkugel Brewing Company brands, Keystone, Icehouse, Mickey's, Miller 64, Miller Genuine Draft, Miller High Life, Milwaukee's Best, Hamm's, Olde English 800, and Steel Reserve. Craft and import brands such as Hop Valley, Revolver, Saint Archer and Terrapin brands, as well as the Grolsch, Peroni Nastro Azzurro, and Pilsner Urquell brands.

2. Beer's Three-Tier System

In the United States, beer is sold through a three-tier system. Brewers (like MillerCoors) sell their products to independent distributors, who in turn sell the products to retailers – both on-premise (restaurants and bars) and off-premise (liquor stores or grocery stores). Retailers sell the products to consumers. This three-tier system is mandated by state and federal law, and with very limited exceptions, brewers can *only* sell to distributors and distributors can only sell to retailers.

Further, because MillerCoors generally cannot sell its products to retailers, its distributors are the face of the brewery in the marketplace and the brewer's sole route to market. Importantly, MillerCoors distributors have exclusive territories and, therefore, MillerCoors is completely dependent on *one* distributor to represent the assigned brands in that territory.

3. MillerCoors Use of Rail

MillerCoors operates seven major breweries, five craft breweries, two container operations, and a cidery in the United States. Our breweries depend on transportation for both

receiving raw materials as well as for getting our products to our distributors for sale to retailers. Rail transportation is an integral part of MillerCoors logistics plan, which it relies on to move items to thousands of destinations across the country. Because MillerCoors products are sold in every part of this country, rail is absolutely necessary for the company to move product as far as thousands of miles in some instances. By rail, MillerCoors generally receives agriculture products and ships out heavy finished beverage products.

MillerCoors is captive to single rail carriers at several of these plants and at numerous destinations. As a result, it does not have any bargaining leverage with its serving rail carrier in these situations regarding rates and service. One of our rail providers has recently taken advantage of its market power by imposing an embargo, refusing to provide service, and threatening rate increases if MillerCoors sought rail services from other providers. NS also has made drastic changes to its demurrage rules over the last couple of years, including issuing Freight Tariff NS 6004-D (effective 1/1/2019) (“Tariff”) which relates to demurrage and storage rules. The new tariff made unreasonable changes, which include: a reduction to zero-credit days on private cars from two-credit days for loading and unloading; and reducing credit days for unloading a railroad-controlled car from two days to one day. As a result, MillerCoors feels compelled to testify before the Board today in the hope that the Board will take the actions necessary to restore some balance to its relationship with NS and, to some degree, the rest of the class 1 railroads.

My testimony today focuses on the unreasonable changes NS has made to its fees, and I will begin by recounting a specific instance in which the current, imbalanced regulatory scheme has allowed the rail carrier to abuse its power in its dealings with MillerCoors.

4. NS's Unreasonable Behavior by Refusing to Provide Service

In early 2018, NS imposed an embargo at its New York Suffern Yard and refused to deliver MillerCoors products to MillerCoors' distributor, Manhattan Beer Distributors ("Manhattan"). As described above, Manhattan is MillerCoors' sole and exclusive route to market to service the critical New York City ("NYC") market. As you would expect, the greater NYC market is one of the most important sales regions for MillerCoors' success.

As MillerCoors understood the situation, NS was in a dispute with Manhattan over demurrage. As a result, it imposed an embargo on and was not delivering MillerCoors cars to Manhattan. MillerCoors, not Manhattan, was NS's customer in this situation. MillerCoors advised NS that the cars NS was holding hostage contained a perishable product, beer. MillerCoors also advised NS that these cars had left its brewery before the rail carrier imposed its embargo on Manhattan. MillerCoors was given no warning of the embargo and was only told about the situation when its railcars filled with beer arrived at Suffern Yard outside of NYC. MillerCoors also explained to NS that Manhattan was the only beer distributor it could use for distribution purposes in NYC. MillerCoors needed to have NS deliver this product to Manhattan, so it could be on the shelves in NYC as quickly as possible. Otherwise, the product could spoil, and there would be no MillerCoors products in NYC. The bottom line was NS had no dispute with MillerCoors; the NS dispute was with Manhattan, and there was no rational reason for NS not to move the railcars.

But even after being advised of these unacceptable and financially damaging circumstances, NS employees refused to move these railcars to Manhattan. MillerCoors then made a plea to a higher-level executive at NS who heard about the situation and reasonably had the first set of cars delivered to Manhattan. However, NS inexplicably refused to move the

second set of cars filled with beer to Manhattan even though they were already in route before the embargo was set and contained perishable product, and even though Manhattan was the only distributor in NYC that could accept them. MillerCoors begged NS to move this set of cars to no avail. As a result, some of its product spoiled and some of it had to be transloaded to truck at a very expensive rate to get the beer to Manhattan.

MillerCoors was astounded by its treatment by NS. This treatment caused MillerCoors to focus more on its rail service in the interest of protecting itself from this type of unfair treatment. At the beginning of 2019, NS increased its rates with MillerCoors to the New York destinations by an average of 21% in what MillerCoors believes was retaliation for the demurrage issues between NS and Manhattan. In another example of unreasonable behavior by NS, MillerCoors has one brewery that is dual served and requested rates from both the NS and CSX to introduce market competition. NS was the incumbent carrier on the lane but responded with a much higher rate than the CSX. When told it was in jeopardy of losing the lane, instead of negotiating in good faith with MillerCoors, NS threatened to raise rates on captive lanes to other breweries by a comparative amount if it was to lose this lane. Then, to add insult to injury, MillerCoors learned that NS was changing its demurrage tariffs and increasing its charges to customers like MillerCoors. Consequently, MillerCoors decided it could not sit idly by while this unreasonable behavior went unchecked.

5. The Unreasonable Demurrage Tariff Changes Made by NS

Railroads may assess storage and demurrage charges to encourage efficient utilization of their rail cars, free up track space, and compensate them for the cost of holding cars. Railroads have been doing so for over a hundred years. Historically, these charges were imposed on loaded freight cars – whether railroad supplied or private cars, and whether held on railroad or

private track – and on empty railroad-supplied cars held on railroad track. Until about 2001, these charges had not been applied to empty private cars. Then railroads began to apply these charges to empty private cars, normally with two days free time or two credit days.

NS was in line with the industry standard of handling empty private cars by providing two credit days until recently. Now, it has changed this rule: NS provides zero credit days. Equally disturbing, NS did so without seeking input from its customers or offering an explanation for the change. Tariff at Item 600. In fact, as recently as November 2017, NS provided five credit days for empty private cars. Tariff NS 6004-C (effective 10/1/2017). It also changed the credit days to zero for loaded private cars. *Id.* at Item 1010. Moreover, NS changed its demurrage tariff for unloading railroad-owned cars from two credit days to one credit day despite the two-day industry standard and past practice. *Id.* at Item 650. This change to railroad-owned cars was accompanied by a 50% increase in the demurrage charge from \$100 to \$150 per day. *Id.* at Item 1010. Shippers like MillerCoors reasonably relied on these historic industry norms for demurrage tariffs and sufficient credit days in building their plant infrastructure for the use of rail transportation. These demurrage changes by NS were not made to increase operational efficiency but were used to increase revenues.

To understand how these new rule changes apply, it is important to carefully consider the rail vocabulary in this Tariff. Most railroads use the term demurrage when describing the charges for privately owned railcars sitting on railroad property too long and the charges for using railroad-owned railcars too long (during loading or unloading). A few railroads use the term private car storage for charges related to privately owned railcars and demurrage for the rest. NS uses the term “storage” for private cars instead of demurrage. *Id.* at Item 550. A Private Car is “[a] car bearing other than railroad reporting marks and which is not a Railroad

Controlled Car.” *Id.* at Item 200(27). MillerCoors has a significant fleet of Private Cars to move its product by rail and is continuing to invest in more private cars because of the railroads’ direction to invest less in specialty cars. Cars subject to storage include “[l]oaded Private Cars and empty Private Cars on NS tracks under constructive placement after notice of arrival is given to the Consignor or Consignee. Time accrues until the car is ‘ordered placed’ ... on private tracks.” *Id.* at Item 550(1).

A Consignor is “[t]he party in whose name cars are ordered. For purposes of this Tariff, Consignor includes any person who receives railcars from a rail carrier for loading.” *Id.* at Item 200(7). A Consignee is “[t]he party to whom a shipment is consigned or the party entitled to receive shipment. For purposes of this Tariff, Consignee includes any person who receives railcars from a rail carrier for unloading.” *Id.* at (6).

Constructive placement is defined as follows: “[w]hen a car cannot be actually placed because of any condition attributable to the Consignor or Consignee, such car will be held at an available hold point and notice will be given the Consignor or Consignee that the car is held awaiting instructions. However, cars actually placed on customer siding will be considered constructively placed and no notification provided. Car Days will begin if instructions to NS are not received before 0000 hour of day following notification.” Tariff at Item 200(8). Actual placement is “[w]hen a car is placed in an accessible position for loading or unloading or at a point designated by Consignor or Consignee.” *Id.* at (1).

Car Days are “[a] twenty four hour period or fraction thereof commencing 0000 hours (Local Time) after actual placement until the car is released and available to NS.” *Id.* at (4). However, for private cars, the “[t]ime accrues until it is ordered... placed on private tracks.” *Id.* at 550(1). A Credit Day is a “non-chargeable day.” *Id.* at (9).

Most Class I railroads start the demurrage/storage clock at 12:01 am of the day following placement. If a rail customer returns a railroad-owned railcar or orders in its privately owned railcar at 12:02 am, one day of demurrage/storage has accrued. Therefore, if it is after 12:01 am, you have until 11:59 pm before another day is accrued. This is the way NS calculates demurrage/storage charges.

A free day is a day of grace, a particular day of the week or holiday where a shipper is not charged demurrage/storage. A customer given two free days to get its private load off the railroad's tracks after it has been constructively placed, which orders it in after just one day, will not be assessed any charges. Credit days work differently. Using the same example, a shipper would get 1-day credit to apply to other demurrage/storage charges. The credits can only be applied to charges at the same location, but credits for loading or unloading can be combined. *Id.* at Item 950(2). NS uses credit days to determine storage and demurrage charges.

6. The MillerCoors Demurrage Case Regarding These NS Tariff Changes

On October 1, 2018, NS issued Freight Tariff NS 6004-D (as noted, Tariff) which relates to demurrage and storage rules and charges. The Tariff changed the previous Freight Tariff NS 6004-D, effective January 1, 2019. The Tariff provided various changes to this existing tariff, including to the number of credit days available to shippers in order to use the rail cars whether they were privately or rail owned.

The first revision at issue is to Item 600 - Rules Governing Cars Held for Loading, which reduces the number of credit days from two to zero credit days that will be earned for each empty private car under constructive placement. This item provides in pertinent part:

Release: []

- (a) A car is released as of the date and time NS receives advice that the car is available and forwarding instructions are provided.
- (b) When consignor does its own switching, the time a car is held for loading will commence once empty car(s) are placed on interchange tracks, and will continue until (i) car(s) are returned to an industrial interchange track, and (ii) NS receives forwarding instructions.
- (c) Cars found to be overloaded or improperly loaded while at origin will not be considered released until the load has been adjusted.

...

Computation:

- (a) Car days will be computed from the first 0000 hours (see Car Days, item 200) after Tender (i) until released with forwarding instructions for Railroad Controlled Cars, or (ii) until placement is made for Private Cars. In the case of Private Cars, the separate calculation for originating storage charges will be computed from the time that the loaded car is pulled and held on railroad controlled tracks by NS without forwarding instructions to time of receipt of required forwarding instructions.
- (b) On cars placed prior to date for which ordered, Car Days will be considered as having been ordered and actually placed on that day.
- (c) Empty cars placed without being ordered, will be considered as having been ordered and actually placed that day.

Credits:

- (a) One (1) Credit Day will be earned for each Railroad controlled car released for which forwarding instructions have been received.
- (b) **Zero (0) Credit Days will be earned for each empty private car under constructive placement.**
- (c) Zero (0) Credit Days will be earned for each loaded private car pulled for which forwarding instructions have not been received.

(emphasis added to provisions changed by Tariff).

This change by NS is also reflected in the Tariff in Item 1010, which reduces Private Car Storage from two loading and unloading credits to zero loading and unloading credits. This item provides a table with these reductions in credits for private cars all to zero. Also, railroad-controlled cars are only given one credit day for unloading in the table which had been two credit days. Item 1010.

These changes will result in storage charges being assessed regardless of whether the shipper is diligent in its loading and unloading operations. Under this new tariff scheme, the storage charge for a private car begins to accrue at the first 12:01 a.m. after constructive placement of the car – that is, after NS notifies the shipper the empty or loaded car is ready to deliver to the shipper – and continues until the shipper directs NS to deliver the car to the facility and it is placed. NS's storage charge for private cars is an average assessment: upon constructive placement, each empty car will receive zero credits and for each day thereafter that the car remains on the track, one car day is assessed until the shipper orders the car delivered and it is placed. Total credit days for private cars are subtracted from total car days for the month, and the shipper is charged \$60 for each net car day. Here, there can be no credit days because of the

zero credit days in the Tariff. If a private car is constructively placed, that means a demurrage charge will almost certainly be applied. For example, if a car is brought to the shipper at 11:59 pm that means it would have one minute to accept the car and have it placed, which gives it no time to remedy a situation. In other words, this change to private cars could result in situations where a customer could not possibly avoid storage charges being assessed no matter how efficient it is.

The third pertinent change NS made to the Tariff was reducing credit days for unloading a railroad-controlled car from two days to one day. This change like the others was made with little notice to or input from NS's shippers who configured their rail infrastructure to be able to have two days to unload a car. Now, suddenly, NS has made this rail configuration ineffective because it was constructed with two credit days in mind instead of one day for unloading.

These changes to demurrage/storage credit days warrant careful review. While NS claims these changes were made to improve car use and service, it is evident that they were only put in place to increase revenue.

DISCUSSION

1. Introduction

There are two claims that can be brought here for violations of the Interstate Commerce Commission Termination Act of 1995 ("ICCTA") based on NS's changes to the Tariff: 49 U.S.C. § 10702(2), which requires that a railroad "establish reasonable...practices" related to transportation and service; and (2) 49 U.S.C. § 10746, which requires that demurrage charges fulfill two enumerated "national needs" objectives.. In addition, with respect to NS's actions by not allowing MillerCoors's railcars to be placed at Manhattan, this refusal to serve a shipper was

an inherently unreasonable practice and violated the common carrier obligation provided in 49 U.S.C. § 11101(a).

2. Unreasonable Practice Claim

The primary claim under the Interstate Commerce Commission Termination Act (“ICCTA”) at issue here is pursuant to 49 U.S.C. § 10702(2), which requires that a railroad’s practices and rules be “reasonable.” “[I]n section 10702, Congress did not limit the Board to a single test or standard for determining whether a rule or a practice is reasonable; instead, it gave the Board ‘broad discretion to conduct case-by-case fact-specific inquiries to give meaning to those terms, which are not self-defining, in the wide variety of factual circumstances encountered.’” *North America Freight Car Ass’n, et al. v. BNSF Railway Co.* (“NAFCA”), STB Docket No. NOR 42060 (Sub-No. 1), slip op. at 8 (STB served January 26, 2007) (quoting *Granite State Concrete Co. v. STB*, 417 F.3d 85, 92 (1st Cir. 2005)). “This broad discretion is necessary to permit the Board to tailor its analysis to the evidence proffered and arguments asserted under a particular set of facts.” *Id.* Moreover, the Board “may adopt rules of general applicability for future conduct to address an unreasonable practice, even though [the Board’s] authority to award shipper-specific remedies is limited to a formal complaint proceeding” where the specific facts are examined. *Rail Fuel Surcharges*, STB Docket No. EP 661, slip op. at 8, (STB served January 26, 2007). Applying that broad discretion and ability to adopt rules of general applicability to the facts at hand, MillerCoors respectfully asks the Board (a) to examine these demurrage charges addressed herein and (b) to consider adopting rules to prohibit these unreasonable practices.

Moreover, MilllerCoors respectfully asks the STB to look into NS’s unreasonable practice of refusing to place cars at Manhattan in the manner described herein. This action is

also a violation of NS's common carrier obligation which also applies a reasonableness standard. 49 U.S.C. § 11101(a) ("A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request.") Simply put, it is hard to imagine a stronger set of facts for an unreasonable practice case under Section 10702(2). NS refused to move cars to their destination for MillerCoors because of a dispute with a third party who was not the customer. As a result, these actions should be found to be unreasonable.

Further, with respect to the demurrage charges, the Board has historically looked at the policy behind these tariffs to see if a railroad is being "reasonable" in their application. "The principle underlying demurrage is straightforward: when a shipper holds a rail car beyond a **reasonable time**, it is taking up a railroad asset for which the railroad should be compensated. Demurrage charges therefore serve two purposes: (1) to compensate the railroad for added costs (e.g., for the car-hire charges it pays to the carrier owning the equipment being held) or loss of the use of assets; and (2) to encourage shippers to return freight cars to the system, thereby making the entire system more efficient." *NAFCA*, slip op. at 8 (emphasis added). Moreover, with respect to private rail cars, "when a shipper's privately owned rail cars are idled on the railroad's tracks, it is depriving the railroad of the use of that track." *R.R. Salvage & Restoration, Inc. – Pet. for Decl. Order – Reasonableness of Demurrage Charges*, STB Docket No., 42102, slip op. at 4 (STB served July 20, 2010).

The STB has issued regulations regarding demurrage which address the matter of time for a customer to handle a car. The STB defined demurrage as follows: "Demurrage is a charge that both compensates rail carriers for the expenses incurred when rail cars are detained beyond a **specified period of time (i.e., free time)** for loading or unloading, and serves as a penalty for

undue car detention to encourage the efficient use of rail cars in the rail network.” 49 C.F.R. § 1333.1 (emphasis added). It also defined who is subject to demurrage: “Any person receiving rail cars from a rail carrier for loading or unloading who detains the cars beyond **the period of free time** set forth in the governing demurrage tariff may be held liable for demurrage if the carrier has provided that person with actual notice of the demurrage tariff providing for such liability prior to the placement of the rail cars. The notice required by this section shall be in written or electronic form.” 49 C.F.R. § 1333.3 (emphasis added). Notably, both definitions require some period of free time for a shipper to use the rail car or use railroad track, and pursuant to Section 10702(2), that amount of time must be “reasonable”.

Undoubtedly, the zero credit days applied by NS for private cars is not a “reasonable” amount of time. Zero is, of course, not any amount of time at all.¹ Moreover, the case law consistently notes that “free time” is a specific period which implies that there must be some time in order to satisfy the reasonableness test. *See Illinois Cent. Gulf R. Co. v. I.C.C.*, 702 F.2d 111, 113 n. 1 (7th Cir. 1983) (“Railroads assess demurrage charges when shippers hold railway cars for loading and unloading longer than a specific period, called ‘free time.’”); *Portland & Western R.R., Inc. – Pet. for Dec. Order – RK Storage & Warehousing, Inc.*, STB Docket No. 35406, slip op. at 4 (STB served July 27, 2011) (“A railroad has a right to set a reasonable time – free time – for a shipper/receiver to finish using a car and return it to the railroad.”) In fact, the STB has stated that “[p]roviding 48 hours free time for unloading is standard practice in the railroad industry.” *Id.* at 5. *See, e.g., R.R. Salvage & Restoration*, slip op. at 3; *Capitol*

¹ This zero credit days is even more unreasonable considering the nature of the rail industry, which has many variables outside a railroad’s control that may affect delivery. A railroad is not always able to meet a predictable delivery timetable, making it difficult for a shipper to be always ready to accept a railcar that unexpectedly arrives at its facility at a particular moment in time. Moreover, railroads do not assess penalties on themselves for poor service, but they do assess demurrage charges on shippers even when the cause is the railroads’ fault, like in the instance of car bunching.

Materials, Inc. – Pet. for Decl. Order – Certain Rules and Practices of Norfolk So. Ry Co., STB Docket No. NOR 42068, slip op. at 3 (STB served April 12, 2004); *Unger, Trustee of Ind. Hi-Rail Corp., Debtor – Pet. for Decl. Order – Assessment & Collection of Demurrage and Switching Charges*, STB Docket No. 42030, slip op. at 7 n. 15 (STB served June 14, 2000). Moreover, “‘free time’ generally allows a shipper up to 24 hours for loading.” *Capitol Materials*, slip op. at 3.

Based on the STB’s consistent description of a need for a reasonable amount of time for acceptance of a car for loading and unloading, the zero time proposed by NS simply cannot fit within this definition. What’s more, it certainly cannot encourage a shipper to be more efficient because the period of time for assessing storage charges here begins immediately. Moreover, the use of zero credit days appears to be more of a revenue producer for the NS than a deterrent for the use of its tracks by private cars. *See Iversen v. U.S.*, 63 F.Supp. 1001 (D.D.C. 1946), *aff’d* 327 U.S. 767 (where demurrage charge could not accomplish objective of unloading cars and only result was to cause payments to railroads by shippers, charge was found to be arbitrary).

Based on similar reasoning, the change to the demurrage tariff from two credit days to one credit day for unloading railroad-owned cars is counter to the industry standard of two days as just discussed herein. The industry standard provides two days to give shippers adequate time to unload railcars. This industry standard should not now be uprooted simply because NS wants to earn greater revenues. This desire to earn more revenues is clear because NS simultaneously increased a one-day demurrage charge by 50% from \$100 to \$150 without any basis. Consequently, this change to the demurrage tariff is unreasonable.

3. NS Cannot Meet the National Needs Exception

49 U.S.C. § 10746, provides:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs related to –

- (1) Freight car use and distribution; and
- (2) Maintenance of an adequate supply of freight cars to be available for transportation of property.

The zero-credit day rule for private cars fails to meet either of these national needs. As the Board well knows, private cars are important because they allow service when there are periods of greater need during peak season. Also, the railroads are not reinvesting in specialty cars which has forced shippers into purchasing or leasing cars to continue to utilize rail as a mode of transportation. *See NAFCA*, 529 F.3d at 1174. This new NS policy will deter private car owners from using these cars because storage costs will skyrocket where a shipper has absolutely no control over these charges and there is no room for any error or congestion at a shipper facility. Without a “reasonable” period to accept the cars when delivered, the ability to avert storage fees is lost. As the number of times that fees are assessed escalates, shippers will begin to abandon the concept of private cars in favor of railroad-controlled cars where at least some free time is given. Moreover, as noted, this new storage policy only appears to be a revenue maker for NS and not a way to improve these two national needs for freight cars.

Similarly, as discussed above, the tariff change from two days to one day for unloading railroad-owned cars does not promote these national needs and instead violates the long-standing industry practice of two days. The two-day period for the more complex task of unloading

should be maintained as the industry standard. Most shippers have built their rail infrastructure to accommodate two days for unloading of which NS is clearly aware. NS knows most shippers do not have the facilities to turn all their cars in one day. This is simply a way for NS to make more money by exploiting the shipper's existing rail setup with this shorter period that was unilaterally imposed on MillerCoors with little or no warning.

4. NS Is Only Using These Tariff Changes to Generate More Revenue

NS claimed in its December 4, 2018 letter to the STB that it is only “making these changes to properly align stakeholder incentives with improving our asset utilization, because using assets more efficiently will lead to network fluidity and better service.” However, these demurrage/storage changes have not had that type of impact. The only impact has been a substantial increase in NS's revenues for demurrage/storage charges. For example, NS also increased a one-day demurrage charge by 50% from \$100 to \$150 in the Tariff without any basis.

Based on the reports NS has submitted to the Board this year, NS's quarterly revenue for demurrage has skyrocketed from approximately \$55,000,000 in the first quarter of 2018 to \$79,000,000 in the first quarter of 2019. In other words, in one year, the amount of revenue earned per quarter from demurrage has increased by nearly 44%. This increase has not gone unnoticed by its shareholders.

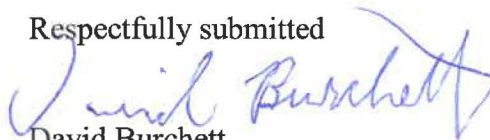
In an April 24, 2019 stock note regarding NS issued by Wolfe Research, the analyst noted that NS yields were higher than expected for the first quarter of 2019. “Higher accessorial charges boosted yields by 90bp, and we expect this tailwind to accelerate in 2Q as NSC benefits from a full quarter of charges.” While NS says one thing to its regulator, it says another thing to

its shareholders. The numbers do not lie. NS is only making these changes to increase its revenue at the expense of its customers like MillerCoors.

5. Conclusion

Based on the foregoing discussion, NS has acted unreasonably by refusing to deliver MillerCoors cars to Manhattan and by making these one-sided changes to its Tariff. NS's actions as the numbers demonstrate are only taken to increase revenue. MillerCoors respectfully asks the Board to admonish NS for its behavior and to adopt new demurrage rules that provide a reasonable time period for credit days as discussed herein. MillerCoors also respectfully requests that the Board continue to investigate other unreasonable practices that were mentioned earlier in this testimony. MillerCoors is hopeful that the STB will bring order and equity to an industry that has improperly taken advantage of its market power at the expense of its customers

Respectfully submitted



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Dated: May 8, 2019