

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

SUPPLEMENTAL COMMENTS ON BEHALF OF CN

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The U.S. rail operating subsidiaries of Canadian National Railway Company (hereafter “CN”) thank the Board for the opportunity to supplement CN’s testimony regarding demurrage and optional services.

It is tempting to assess the efficacy of demurrage and accessorial charges by looking at the impact these may have on a specific customer (including terminals) in a specific service setting. But that narrow focus would ignore the greater good served by these charges. Demurrage policies are designed to increase capacity and improve service by creating the right incentives for customers to “turn the assets” as efficiently as possible. Railroads already have strong incentives to improve asset utilization, since assets that sit idle or occupy valuable track space directly impact a railroad’s ability to provide efficient and fluid service to its other customers on the network. But customers do not have those natural incentives, since a customer’s primary interest is in its own traffic—not the overall network. The solution cannot be to throw more assets at the problem, creating further inefficiencies and congestion, harming service, and increasing costs for all stakeholders. The solution

is to find a reasonable way to incentivize customers to move the assets efficiently. Demurrage is endorsed by Congress as an essential tool to create those incentives. While demurrage does not fully compensate railroads for the lost opportunity of a non-productive asset, it creates the necessary motivations to promote the public interest in a more efficient rail network.

While a casual observer of the May 22-23 hearing might conclude that the Board is being asked to decide a dispute between shippers and railroads over the proper role of demurrage and accessorial charges, the true divide is between the vast majority of customers who depend on reliable rail service and who manage their own operations efficiently and a minority of customers and their trade associations who seek to impose inefficiencies on others without consequence. Another divide is between the terminal operators who the Board has found are best positioned to reduce or eliminate delays for loading or unloading shipments they handle, and the terminal customers and other network users who the terminals prefer to bear the consequences of their inefficiencies.

If the Board were to impair railroads' statutory right to enforce reasonable demurrage policies, service to the entire rail network would suffer. Chairman Begeman is correct that "a continued focus on rail service is an overarching responsibility of the Board."¹ CN's witness Derek Taylor explained how important demurrage policies were to CN's overarching focus on moving traffic safely and

¹ *Oversight Hearing on Demurrage and Accessorial Charges*, STB Ex Parte No. 754, Day 1 Transcript at 9 (May 22, 2019) ("Day 1 Tr.").

efficiently and improving asset utilization so that we can provide the high level of service that our customers demand.

As the Board considers concepts like fairness and reciprocity, it should consider the overall interests of the supply chain in promoting network fluidity and maximizing asset utilization. Many stakeholders in the supply chain depend on the reliability and efficiency of CN's service. As CN testified, approximately 80% of CN's customers operate without receiving a single demurrage invoice.² For CN, this number confirms that its demurrage program is balanced and well-calibrated. It enables a substantial majority of customers to operate with no demurrage charges, while providing a continuing incentive for efficiency for the others.

Mindful of their role in the supply chain, most of CN's customers have structured their operations to make loading or unloading more efficient, have worked to better match railcar orders with the output of their facilities (*i.e.*, managing the pipeline from origin to destination for their moves), or have made staffing changes or capital investments at their facilities to build resilience in their own supply chain in the event of disruption. These efforts enhanced their ability to turn equipment efficiently, which benefits the whole interstate freight rail network. The Board should not disincentivize these efforts of the many or reward a minority

² *Oversight Hearing on Demurrage and Accessorial Charges*, STB Ex Parte No. 754, Day 2 Transcript at 835 (May 23, 2019) ("Day 2 Tr.") ("I would like to add the last 5 weeks, 80% of our customers did not receive a demurrage invoice."); *see also* attached Supplemental Testimony of Keith Courtoreille.

who, at times, fail to operate efficiently and, as a consequence, are externalizing their inefficiencies onto other participants in the supply chain.

The Board should also not forget that railroad demurrage practices are already regulated in two ways. First, railroads must comply with the detailed framework that the Board already has in place to ensure that demurrage policies are reasonable and fair. The regulatory background requires fair notice and protects against the collection of demurrage for delays caused by the railroad's conduct. Second, railroads are regulated and disciplined by the market, as Congress intended. CN's customers expect and demand that we deliver exceptional service with high velocity and efficient transit times. CN wants to help its customers compete in their markets. If we fail to meet those expectations, we risk losing business in the highly competitive transportation markets that govern the vast majority of our traffic.

CN's supplemental comments first address some of the basic statutory and regulatory principles governing demurrage. The Board's notice for the hearing asked parties to be prepared to address the application and effect of current demurrage policies.³ But some of the questions from members at the hearing—and some of the incorrect assertions from other parties about the law in this area—suggest that a review of the legal principles that Congress and the Board have established would be helpful. Congress has given the Board clear instructions

³ *Oversight Hearing on Demurrage and Accessorial Charges*, STB Ex Parte No. 754 (STB served April 8, 2019).

about the importance of demurrage and about the limitations of the Board's authority that the Board cannot ignore—as much as some commenters may wish it to. Moreover, the Board has established guidelines for addressing the reasonableness of demurrage charges in both its case-by-case adjudications and its recent Ex Parte No. 707 rulemaking. Suggestions that the Board ought to return to a pre-Staggers regime of regulation are inconsistent with current governing principles and should be rejected out of hand.

Second, CN responds to some discrete issues raised at the hearing where supplemental testimony might be useful. For example, CN is addressing some of the recurring questions at the hearing, such as the theoretical scenario of a shipper who is unable to comply with a railroad's demurrage policy; questions about how “zero free time” policies work; and the suitability of a cost-benefit analysis for individual demurrage adjudications. CN also responds to some of the incorrect accusations lodged at the hearing.

Third, CN describes some of its takeaways from the hearing and some of the commitments that it is making to respond to concerns raised by the Board and stakeholders. CN understands that some shippers believe that they may need an avenue for a cost effective forum to resolve demurrage disputes; CN therefore is committing to join the STB's arbitration program for demurrage disputes under \$200,000. CN also commits that it will develop mechanisms to collect broader feedback from its customers on its demurrage policies.

CN has also attached supplemental testimony from Keith Courtoreille, which provides some additional information to the Board about some of the topics discussed at the hearing.

I. THE BOARD SHOULD NOT ACCEPT THE INVITATION OF SOME SHIPPERS TO FAVOR THEIR OWN INTERESTS TO THE DETRIMENT OF OTHERS WHO DEPEND UPON THE INTERCONNECTED RAIL NETWORK.

Some witnesses seem to want to use the Board's oversight hearing to upend the structure of demurrage charges and have the Board impose sweeping legal and policy changes to serve narrow parochial interests. For example, multiple logistics providers asked the Board to discard the 49 C.F.R. Part 1333 rules adopted just five years ago and return to a regime where terminals could never be held accountable for the delays they cause.⁴ Other shippers asked the Board to make systematic changes like instituting nationwide demurrage rules, making rail carriers liable for demurrage, banning demurrage charges for private cars, or prohibiting demurrage charges for cars in constructive placement when dwelling in rail yards.⁵

These parties' requests fail to recognize the statutory and regulatory foundations governing demurrage and the regulatory structure that is already in place to ensure that receivers have the ability to seek relief from unreasonable demurrage charges. The Board is not writing on a blank slate, and it should not

⁴ See, e.g., Day 2 Tr. at 771-76 (asking STB to reverse rule allowing demurrage to be billed to terminals).

⁵ See, e.g., Day 1 Tr. at 91-92 (suggesting that railroads should be charged demurrage for private cars); Day 1 Tr. at 242-245 (advocating for nationwide demurrage rule proposals).

lose sight of Congress’s express guidance or lightly abandon the demurrage policies that the Board has carefully developed in recent rulemakings and adjudications. Nor should it ignore the changes that have occurred in the regulatory framework over the past four decades. The Board’s current precedent and governing rules have long since left behind concepts deployed in the pre-Staggers era, and this oversight hearing is no place to consider reviving them.

Four legal principles should guide the Board in any action it takes in relation to demurrage:

- 1) Congress explicitly authorized demurrage and recognized its important purpose in promoting efficient asset utilization and fluidity on the interconnected rail network.
- 2) The Board’s regulatory role is circumscribed, and the Board’s regulatory authority and mission are far different now than they were before the Staggers Act.
- 3) Railroads cannot collect demurrage for delays caused by the railroad’s conduct.
- 4) Railcar receivers are liable for demurrage if they are on notice of the demurrage tariff, because they are best positioned to reduce delays.

A. Principle 1: Congress explicitly authorized demurrage and recognized its important purpose.

The first source for any question about the Board’s legal authority on a subject is the statute. For demurrage, Congress provided clear instructions in 49 U.S.C. § 10746:

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.

Three points about the statute are of particular importance. First, Section 10746's very existence is noteworthy. Demurrage was specifically endorsed and encouraged in the Interstate Commerce Act—a clear signal that Congress has long recognized the importance of demurrage to the functioning and efficiency of the rail network. Second, the statute does not merely say that railroads “may” compute demurrage charges and establish rules for those charges—it rather says that railroads “shall” compute those charges. “Shall” is generally recognized to reflect the mandatory language of command.⁶ This mandatory language is again noteworthy; Congress did not say that railroads can establish demurrage programs—it said they must establish those programs.⁷ Third, Congress framed the purposes of demurrage not in terms of cost recovery or a penalty for poor performance, but rather in terms of incentives. In Congress's view, the purpose of demurrage is to incentivize behavior that serves the national needs for freight car use, distribution, and supply by encouraging loading and unloading to be done efficiently so railcars can be placed at the next origin.

⁶ See, e.g., *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947) (“The word ‘shall’ is ordinarily the ‘language of command’”) citing *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935).

⁷ The suggestion at the hearing that Congress's mandate to “compute” demurrage charges might not entail a mandate to “collect” these charges would frustrate Congress's plain legislative intent. The mere computation of charges without actual collection could hardly create a meaningful incentive to fulfill the national needs for freight car distribution and promote network fluidity.

Both the Board and courts have acknowledged Congress’s clear statutory endorsement of demurrage “as an important tool in ensuring the smooth functioning of the rail system.” *Demurrage Liability*, STB Ex Parte No. 707, at 2 (STB served April 11, 2014).

B. Principle 2: The Board’s Role Is Limited, In Accordance With Congress’s Deregulatory Purpose.

A second critical statutory principle is that Congress has sharply circumscribed the Board’s regulatory role to review railroads’ demurrage practices from what it once was. At the time that many older demurrage cases were decided, the ICC was a top-down regulator that imposed detailed, uniform rules on how demurrage had to be documented and collected and that regularly reviewed nationwide agreements setting demurrage rates for the industry.⁸

Now, however, Congress has made clear that railroads need to be given the freedom to set their own demurrage policies and that the Board’s primary role is to resolve individual complaints alleging that aspects of a carrier’s particular demurrage policy are unreasonable. The Board’s limited jurisdiction means that its role is not to define what demurrage policies are the “best”—it is rather to provide a forum for shippers to challenge aspects of a carrier’s demurrage policies or applications that shippers believe are unreasonable. Put differently, the Board is

⁸ See, e.g., *Car Demurrage Rules Nationwide*, 350 I.C.C. 777 (1975); see also *Railroads Per Diem, Mileage, Demurrage, and Storage Agreement*, 1 I.C.C.2d 924, 934 (1985) (rejecting prior policy of nationwide decisionmaking because “a free market approach to such charges will more effectively foster the goals of the national rail transportation policy”).

not charged with developing and imposing the most reasonable demurrage policy—it is instead charged with setting the boundaries of what is unreasonable. That charge is one that the Board is to carry out as a case-by-case adjudicator—not as a command-and-control regulator.

Nevertheless, the Board’s role is not insignificant. On the contrary, it is vitally important and consistent with its mandate that the Board continue to provide a forum for resolving disputes (in addition to individual disputes that are resolved in courts or in arbitration), and the Board’s case-by-case precedents provide important guidance on what policies are unreasonable. But except in limited circumstances,⁹ the Board is not a roving investigator charged with reviewing and redefining railroad demurrage policies or imposing nationwide uniform demurrage standards. It is rather an adjudicator available to resolve demurrage complaints that are brought before it.¹⁰

The Board has been rightly reluctant to use its rulemaking authority to set nationwide demurrage policy, given the unique circumstances that can affect whether a particular demurrage charge is unreasonable in an individual case. In the aftermath of *Staggers*, the ICC specifically abandoned a prior nationwide

⁹ The Board now has limited authority to initiate investigations into potential violations of the Interstate Commerce Act that are of national or regional significance.

¹⁰ *Cf. NAFCA v. BNSF Ry. Co.*, STB Docket No. 42060 (Sub-No. 1), at 13 n.46 (STB served Jan. 26, 2007) (“The fact that a shipper might suffer hardship from a service failure at a particular location or particular locations does not warrant overturning the railroad’s entire storage or demurrage program, as there are other remedies available for that situation.”).

demurrage regime in 1985, finding that “the need for uniform demurrage and storage charges has been overstated, that such charges clearly can be established on a unilateral basis, and that a free market approach to such charges will more effectively foster the goals of the national rail transportation policy.” *Railroad Per Diem, Mileage, Demurrage – Agreement*, 1 I.C.C.2d 924, 934 (1985).

The only recent exception has been Ex Parte 707, where the Board needed to resolve a significant legal controversy over what type of notice of a demurrage tariff is required for demurrage charges to be invoiced to railcar receivers like warehousemen and terminal operators. *See Demurrage Liability*, Ex Parte No. 707. In that rulemaking, the Board specifically declined to issue rules of general applicability about fact-specific issues like bunching and actual placement, holding that such issues were “best addressed in the context of individual disputes.” *Id.* at 23-24.

Finally, the Board’s authority is particularly circumscribed when addressing allegations about the level of a rate or how rates are calculated. The D.C. Circuit Court of Appeals has held that the Board’s governing statute requires challenges to the level of a rate to be brought under the Board’s rate jurisdiction, not under its practices jurisdiction. *Union Pacific R.R. Co. v. ICC*, 867 F.2d 646, 649 (D.C. Cir. 1989). In the same vein, the Board’s investigative authority does not permit it to initiate investigations concerning the level of a rate. *See Rules Relating to Board-Initiated Investigations*, STB Ex Parte No. 731, at 11 (Dec. 7, 2016) (“In addition, there is no need to expressly exclude rate disputes in these rules—such disputes are

not subject to Board-Initiated Investigation under the statute (whether or not they are of national or regional significance).”).

While several questions were asked about how railroads set demurrage rates or the components of rates, these are not appropriate topics for a public hearing. In the first place, asking railroads to publicly comment on considerations in setting rates or charges in a forum alongside other railroads could cause serious competitive harm. Moreover, questions suggesting that railroads are required to separately calculate specific “cost” and “penalty” components of demurrage charges stem from an antiquated line of cases that have long since lost their relevance. It is true that in the 1970s the ICC held in several decisions that, if the shipper affirmatively demonstrated “due diligence” in avoiding demurrage charges, a railroad could only collect a “per diem” charge for demurrage (as compensation for prescribed car hire expenses) and not any additional penalty component.¹¹ This due diligence standard was exacting: it required “evidence that [the customer] made special efforts to avoid or abate the accrual of demurrage.” *See Prince Mfg. Co. v. Norfolk & W. Ry. Co.*, 356 I.C.C. 702, 707 (1978). Moreover, any such waiver of the full demurrage tariff charge required special dispensation from the ICC, which might not be granted even if the railroad and the customer agreed.¹²

¹¹ *See, e.g., Ormet Corp. v. Illinois Cent. R.R. Co.*, 341 I.C.C. 647, 651 (1972).

¹² *See Prince Mfg.*, 356 I.C.C. at 707 (“The parties are not at liberty to decide between themselves that a particular charge was just and reasonable. Thus, in numerous informal cases involving an allegation that demurrage charges were unjust or unreasonable, we have denied special-docket applications (where carrier-defendants admitted allegations of unreasonableness) and later denied reparations on the same matter.” (footnote omitted)).

These concepts have been left far behind. No one would suggest in 2019 that a railroad and customer could not agree between themselves that a particular demurrage charge should be waived or refunded. The filed rate doctrine is no longer controlling, and there has not been a special docket or waiver proceeding involving demurrage at the agency in more than thirty years.¹³ Car hire rates have been deprescribed and are now determined bilaterally and confidentially by rail carriers, eliminating the basis for a fixed “compensation” component of a railroad’s demurrage charge. Indeed, the idea that demurrage must be separated into identified compensation and penalty components has been cited in only one agency decision since the early 1980s,¹⁴ and customers today receive relief from the entire demurrage charge in appropriate circumstances, not just a “penalty” component. Coupled with the fact that shippers are no longer required to prove their “due diligence” to avoid demurrage, the development of demurrage jurisprudence since the 1970s has in many ways been *favorable* for customers. Prior concepts of a mathematical division of demurrage charges into identifiable components are no longer relevant to how the Board adjudicates demurrage disputes.¹⁵

¹³ See *The Atchison, T. & S.F. Ry. Co. and Ulysses Irrigation Pipe Co. -- Exempt. To Waive Demurrage Charges*, ICC Docket No. 40129, 1987 WL 98283 (1987).

¹⁴ See *R. Franklin Unger – Pet. for Decl. Order – Assessment and Collection of Demurrage and Switching Charges*, STB Docket No. 42030, 2000 STB LEXIS 333 (2000).

¹⁵In any event, CN does not think of demurrage as being made up of a certain percentage of cost recovery and a certain percentage of a “penalty.” CN views demurrage as an incentive for efficiency, not a cost recovery mechanism. That said, CN expects that in most situations the demurrage charge it receives is far outweighed by the costs it incurs from dwelling railcars (which include both operational costs, harms to fluidity, and opportunity costs for the railroad and other

C. Principle 3: A railroad cannot collect demurrage if it is at fault.

Third, the Board has made clear that a railroad may not collect demurrage if it is at fault. As the Board recognized in *Capitol Materials*, “[a] shipper should not be required to compensate a railroad for delay in returning the asset if the reason for the delay is not the shipper’s, but the railroad’s fault.” *Capitol Materials, Inc.—Pet. for Declaratory Order*, 7 S.T.B. 576, 577 (2004). Federal courts agree that current law requires “that a shipper be allowed to demonstrate before the [agency] that erratic service is the fault of the railroad and that a shipper should therefore not be assessed a charge for idle track time caused thereby.” *NAFCA v. STB*, 529 F.3d 1166, 1178 (D.C. Cir. 2008).

The law is clear, however, that “the question of fault is fact-specific,” and that “the burden is on a complaining shipper to show that demurrage fees are excessive in a particular instance because of some fault on the railroad’s part.” *Id.* at 1173. As the D.C. Circuit has observed, the fact that shippers have the burden of proving railroad fault flows directly from the general principle that shippers have the burden of proving that a railroad practice is unreasonable. *Id.* at 1173 n.6.

D. Principle 4: The Board appropriately placed demurrage responsibility on the receiver, if the receiver has actual notice of a railroad’s demurrage tariff.

Finally, the Board made clear in its recent *Demurrage Liability* rules that demurrage can properly be charged against any person receiving railcars from a rail

customers whose service is deteriorated and who are not able to get a car at origin as quickly when cars are dwelling).

carrier for loading or unloading, so long as that person has actual notice of the terms of the demurrage tariff prior to the carrier's placement of the railcars. *See Demurrage Liability*, STB Ex Parte No. 707, at 9-15 & App. A; 49 C.F.R. §§ 1333.1 - 1333.3. The Board's rules were the result of a three-and-a-half-year rulemaking proceeding in which it received comments from multiple parties and resolved a significant divide among courts about the circumstances in which demurrage could be charged to railcar receivers who were responsible for loading and unloading, but who were often not named on the bill of lading. Indeed, in urging the Supreme Court to deny certiorari on a petition seeking to resolve the circuit split, the Solicitor General's amicus brief urged the Court to "allow the Board to apply its expertise to resolve the issue of demurrage liability for warehousemen, as well as other related demurrage issues, through its pending rulemaking proceeding."¹⁶ The Board concluded that the 1969 ICC precedent that led to this confusion was inconsistent with the purpose of 49 U.S.C. § 10746 and with good policy.

Instead, the Board recognized as a policy matter that "responsibility for demurrage should be placed upon the party in the best position to expedite the loading or unloading of rail cars at origin or destination." *Demurrage Liability*, STB Ex Parte No. 707, at 8. And it found that terminals and warehousemen were in the best position to minimize demurrage liability for the shipments they receive—despite their protests to the contrary. *See id.* at 8-9. While many of the same

¹⁶ Brief of United States as Amicus Curiae at 9-10, *Norfolk Southern Ry. Co. v. Groves*, No. 09-1212 (filed Dec. 10, 2010).

parties who participated in Ex Parte 707 returned to this hearing to make the same arguments they made before in an attempt to escape future liability for demurrage charges, there is no cause for the Board to revisit its Ex Parte 707 conclusion.

II. RESPONSES TO OTHER QUESTIONS AND ISSUES.

A. CN Actively Works With Customers To Encourage Prompt Loading and Unloading of Equipment and Address Unique Issues.

Much of the discussion at the hearing focused on what to do about a customer who alleges that it cannot comply with a demurrage tariff and has no choice but to incur charges. While the Board's concern about this hypothetical scenario is understandable, it does not reflect CN's experience with the vast majority of railcar receivers.

CN cannot speak to the circumstances faced by individual customers of other railroads, but CN can say that its general experience is that customers have multiple options to minimize or avoid demurrage charges. Those options might be operational fixes to improve the efficiency of loading or unloading. They might be supply chain improvement and better pipeline management to ensure that the flow of cars into a facility matches that facility's ability to load or unload the cars. Or they might be storage options, such as contracting with railroads or other parties to use storage tracks or investing in internal storage capacity. While every customer is different, most customers have viable options to substantially reduce or eliminate demurrage.

CN works with its customers on an individualized basis to help them reduce demurrage liability and increase efficiency through better pipeline management,

more economical storage, or other options. Mr. Courtoreille's supplemental testimony describes some of the eBusiness tools that CN provides to give customers, including terminals, visibility into the railcars moving in their supply chains. CN also maintains an internal fleet capacity planning group which leverages the same tools and techniques that CN uses for its system cars for large private car customers. This group assists customers in right-sizing their private car fleets to improve network fluidity and help avoid demurrage charges. And where a customer lacks sufficient storage options, CN works to help customers identify economical alternatives.

In short, the hypothetical example of a customer who has no ability to avoid demurrage charges remains, in CN's experience, just a hypothetical. We work with our customers to address their unique situations, and in our view customers have multiple options to minimize or avoid demurrage charges.

B. Customers Do Not Need Extra Free Time To Avoid Demurrage.

Some testimony at the hearing suggested that so-called "zero free time" policies would "invariably" cause receivers to incur demurrage charges even when they "perform perfectly."¹⁷ This is not accurate and is not borne out by CN's experience. As CN has testified, it does not issue credits for the storage of private cars. But "no storage time" for private cars at CN does not in fact mean "zero time," rather, it means no extra free time will be provided if a customer does not ask that cars be delivered in the first available service window. The fact that only 20% of

¹⁷ Day 1 Tr. at 28.

CN's customers pay any demurrage is powerful evidence that its policies on private car storage do not equal automatic demurrage.

When CN provides no additional storage time (as it does for private car unloading), it does not mean that a customer immediately incurs demurrage. It means that a customer is not given an extra day to order a car in for delivery. As Mr. Courtoreille explains in his attached supplemental testimony, no demurrage is charged if a customer orders cars in for the first available service after being notified that the car is ready for delivery. The cut-off times for these orders are specific to a customer's service plan. Thus, if a customer is only served on Mondays and Thursdays, and a car arrives for delivery on a Friday, the customer will not be charged demurrage so long as the customer asks that the car be delivered on the following Monday. The cut-off time for requesting that Monday delivery will be 4 hours before the customer's scheduled time of service.

CN's eBusiness tools make it even easier for customers to avoid demurrage, by providing detailed tracking that allows customers to know in advance when cars arrive and will be available for loading. Mr. Courtoreille's supplemental testimony includes a sample First Mile/Last Mile dashboard that shows the kind of visibility that is available to customers, including terminals, to understand their pipeline. Indeed, a customer does not need to wait for a notice of constructive placement to order a car in for delivery. If the customer sees that a car is en route, it can order it in before the car is actually constructively placed.

For all of these reasons, CN's customers using private cars are able to manage their pipelines without incurring demurrage charges, and most of them do.

C. CN's Demurrage Tariff Easily Passes a Proper Cost-Benefit Analysis.

CN generally supports the Board's use of cost-benefit analyses in carrying out its regulatory role. But suggestions at the hearing that the Board might use a cost-benefit analysis to resolve individual demurrage complaints are impractical. Any cost-benefit analysis has to consider the effect of demurrage incentives on all stakeholders. The Board cannot simply look at costs and benefits for the railroad and the complaining customer; it must also look at other stakeholders who benefit from a more efficient network and the costs to those stakeholders and costs to network fluidity if a particular customer does not efficiently load or unload railcars and cars are dwelling in CN's serving yard.

CN is confident that such an analysis would show that the benefits of its demurrage program far outweigh the costs. Indeed, Congress has already decided that the benefits of demurrage outweigh the costs, when it legislated that railroads "shall compute" demurrage charges and "statutorily recognized [demurrage] as an important tool in ensuring the smooth functioning of the rail system."¹⁸ But it is not practical for the Board to perform a full cost-benefit analysis in an individual adjudication, because the benefits of demurrage are spread so widely among users of the rail network and others who depend upon efficient rail operations.

¹⁸ *Demurrage Liability*, STB Ex Parte 707, at 2.

D. Kinder Morgan’s Allegations About CN Are Meritless.

CN is in federal court litigation against Kinder Morgan (“KM”) over its failure to pay for the demurrage it incurs for cars that back up in CN’s Chicago-area Glenn Yard while awaiting KM’s instructions to deliver them to its Argo terminal. The litigation did not arise from disputes about service problems or allegations of unfair tariff changes. It stems from the fact that KM has refused to pay a single demurrage invoice to CN in nearly four years, because of an apparent decision by KM that the Board’s 2014 *Demurrage Liability* rules are not lawful. Indeed, KM has pressed an affirmative defense asserting that the Board’s final rule holding that terminals like KM are liable for demurrage is legally invalid (despite KM’s failure to appeal that final rule).¹⁹ KM is right that the amount at dispute in that litigation now exceeds \$8 million, but that is a function of the massive congestion that KM has been causing in the Chicago terminal over the past several years and its refusal to pay one penny of demurrage. While KM claimed to the Board that “we will be responsible for the liabilities that we create,” its behavior to date has not matched that claim in CN’s experience. (Tr. at 57).

Given the ongoing litigation, CN will not respond to each of the claims KM makes. KM’s allegations that CN imposes “strict liability” for demurrage, that it does not recognize “fault-based defenses,” and that it fails to provide effective

¹⁹ See Mem. in Support of Motion for Partial Summary Judgment, *Illinois Cent. R.R. Co. v. Kinder Morgan Liquids Terminals LLC*, 1:16-cv-08044 (N.D. Ill. filed May 21, 2019) (Doc. 106); Answer to Amended Complaint at 19, *Illinois Cent. R.R. Co. v. Kinder Morgan Liquids Terminals LLC*, 1:16-cv-08044 (N.D. Ill. Filed May 23, 2017) (Doc. 35).

invoice review or dispute resolution are not supported, and are not consistent with any of the other testimony that the Board has heard regarding CN's demurrage policies. But two points require a specific response.

First, KM's claims of retaliation are nonsense. It first claims that it was "retaliation" for CN to increase the public tariff rate for ethanol shipments to Argo by \$300 in January 2019. That claim makes little sense, since KM does not pay that line-haul rate; its customers do. KM further asserts that it is "discriminatory" for CN's tariff to charge higher demurrage fees in Chicago than it charges elsewhere on its system in the United States. But as the Board well knows, congestion in Chicago has an outsized impact on the fluidity of all rail networks, and CN has good cause to incentivize efficient behavior in that vital area. (CN similarly sets demurrage charges at a higher level in Vancouver and a higher charge that applies during winter months across CN's network.) There is nothing discriminatory about a tariff that applies generally to Chicago carload receivers subject to CN 9000.²⁰

Second, KM alleged that CN "absolutely refused" to be part of three-party agreements among KM and its customers for demurrage liability during the settlement discussions KM and CN conducted under the Court's guidance

²⁰ At the hearing, KM was asked a question asserting that CN "raised the demurrage charge to \$300" and that "the demurrage charge is 1 and [a half] times higher for you than for anybody else in the Chicago area." But the premise of this question about demurrage referred not to CN's demurrage charge from CN 9000 for receivers in Chicago; instead it referred to KM's testimony about the increase in CN's rate for ethanol shipments to Argo. KM's witness did not correct the misunderstanding of its testimony and instead replied "We believe that was retaliatory." Day 1 Tr. at 106.

(settlement discussions that were confidential until KM unilaterally decided to air them in a public hearing). Day 1 Tr. at 94. KM's allegation is inaccurate. While CN will limit its public response out of respect for the confidentiality of settlement discussions, CN notes that litigation was stayed for 18 months in which CN negotiated in good faith with KM seeking a potential resolution. Those negotiations included discussions about agreements involving KM's customers, but those discussions were not successful.

III. CN'S COMMITMENTS TO THE BOARD AND ITS CUSTOMERS.

At the close of the hearing, Chairman Begeman asked railroads to think seriously about the comments at the hearing and to consider whether any changes might be warranted. CN took that advice to heart, and it will continue to think about better ways to communicate with our customers. CN believes that our demurrage program and policies are already responsive to many of the Board's concerns and already embody best practices. In this regard, we were encouraged by the general lack of comments from shippers regarding CN's policies and practices.²¹

While it is fair to say that CN was not a focus of concerns expressed at the hearing, we listened to stakeholders and the Board, and we have reexamined our program in light of the Chairman's request that carriers consider taking actions in response to the hearing. CN is prepared to make the following commitments at this time:

²¹ Kinder Morgan, of course, is an exception, since it is opposed to paying any demurrage under any circumstances and disagrees with the Board's final rule adopted in Ex Parte No. 707.

- In the interest of ensuring that customers have another forum to resolve disputes over demurrage, CN will file a notice in the STB Ex Parte 699 docket of its intent to consent to participate in the Board's arbitration program under 49 C.F.R. § 1108 subject to certain conditions. This will provide another method of alternative dispute resolution to resolve certain disputes over demurrage, in addition to informal resolution of disputes such as the Board's informal mediation process.
- CN is also evaluating mechanisms to regularly gather feedback from customers regarding service and optional services.
- CN will continue to offer technology to assist customers and railcar receivers with supply chain management, including the tools described in Mr. Courtoreille's attached supplemental testimony

Respectfully submitted,

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Dated: June 6, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

SUPPLEMENTAL TESTIMONY OF KEITH COURTOREILLE

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 754

OVERSIGHT HEARING ON DEMURRAGE AND ACCESSORIAL CHARGES

SUPPLEMENTAL TESTIMONY OF KEITH COURTOREILLE

Following the Board's May 21-22 hearing regarding demurrage, CN is submitting this supplemental testimony to provide the Board with additional information relevant to some of the issues that arose at the hearing. While most of the testimony was not directed at CN, there were some areas where some additional information regarding demurrage practices might be helpful to the Board. The following supplemental testimony is intended to clarify and expand upon some of the topics raised at the hearing to complete the record.

A. Demurrage Promotes Asset Velocity and Network Fluidity.

As CN explained at the hearing, we do not treat demurrage as a revenue stream. Instead, demurrage serves as an incentivizing device that encourages customers to turn assets promptly, thereby improving network fluidity.

Imagine a customer who finds it more convenient to leave a rail car in a CN yard for several days rather than ordering it immediately. From the narrow perspective of the customer's business needs, that decision might make economic sense. But because the interconnected rail network in North American involves the

use of shared assets, that customer's individual choice to dwell cars in a CN yard can result in the deterioration of fluidity within that yard. The impacts of that customer's decision can flow throughout the system, impacting both local service for other customers and through service for other traffic moving through the yard. In such instances, demurrage ensures that the customer cannot impose costs to the network and the overall supply chain through its choice to dwell cars in CN's yard without the customer paying a price for those costs. This incentivizes receivers of rail cars to load or unload equipment as quickly as possible.

The impacts of dwelling cars in a yard cannot be overstated. In one instance, CN found that shaving one day of dwell from a pool of 11,000 CN centre beam cars translated into 400 additional loads at origin. As this example illustrates, asset velocity is dependent upon capacity. Dwelling cars in a serving yard reduces the capacity to move cars through the yard, which flows through the whole network.

B. 80% of CN Customers Incur No Demurrage Charges.

As I testified at the hearing, the vast majority of CN's carload customers in the United States incur no demurrage charges. 80% of CN customers incurred no demurrage charges in the sample period we examined of five weeks from the Week of Feb 24- March 24, 2019. *See* Table 1, below. This data is consistent with CN's approach to demurrage as an incentivizing tool to encourage its customers to order/call their calls in from our serving yards, and to load and unload product as quickly as possible and return equipment to the network to promote efficient asset utilization. By ordering in and loading and unloading cars more quickly, the cars or

yard space can be released to CN and be used by the next customer. This in turn reduces the number of cars on the network needed to meet customer demand and increases fluidity of the tracks and yards, which benefits all participants in the supply chain.

Table 1: Customer Demurrage Invoices from February 24-March 24, 2019

Sample Week	Invoiced Demurrage	Not Invoiced Demurrage
2019-02-24	20%	80%
2019-03-03	21%	79%
2019-03-10	19%	81%
2019-03-17	19%	81%
2019-03-24	19%	81%
Average %	20%	80%

The high percentage of CN customers who never incur a single demurrage bill is compelling proof that customers can and do manage their business so as to avoid demurrage, thereby improving asset velocity for the greater good of the network. While other customers make business choices that mean they occasionally incur demurrage charges, rhetoric at the hearing that customers are unable to avoid demurrage charges is plainly overstated.

C. Service Windows Provide for Extra Time for Private Cars.

“Zero free time” was a recurring topic of discussion at the hearing, and some more information on that topic might be helpful. As I explained in my initial comments, CN does not issue credits for dwelling private cars in CN’s yards or on CN’s lines. CN heard the Board’s concern about the concept of “zero free time” at the hearing. However, the concept of “no storage time” for private cars at CN does

not in fact mean “zero time.” Rather, it means “no extra time after a customer chooses not to order/call in cars for its first available service.” At CN, a customer does not begin to be charged demurrage for a constructively placed car until the customer fails to order the car in the next available service delivery window—delivery windows that are based on each customer’s individualized service schedule. CN aligns its “order in” cutoff times to a customer’s individual service schedule, and generally sets each customer’s cutoff time at four hours before its next scheduled time of service. This ensures that customers who do not receive service on weekends, for example, are not penalized if a car arrives in the serving yard during a time when the customer’s facility is closed. All they have to do to avoid demurrage is to ask for delivery before the cutoff time for their next scheduled service. If a customer fails to ask for delivery at its scheduled service date, and instead leaves the car in a CN serving yard while it awaits delivery instructions, then the demurrage clock will start. That policy is entirely consistent with the purposes of demurrage because it ensures that private equipment will not clog railway yards and prevent smooth operations for the handling of all traffic. It creates an appropriate incentive for efficiency while affording customers time to plan.

A few examples illustrate how CN’s practices in this area give customers adequate time to order in the cars to avoid demurrage.

Example A: Customer has service two days per week: Tuesday and Thursday, 10:00AM to 6:00PM, and has a closed gate facility. A car arrives Sunday at 9:00PM. Customer orders the car on Monday at 4:00PM.

In this example, a car arrives at CN's serving yard when the customer's facility is closed. The customer is a "closed gate" facility, which means that CN cannot directly deliver cars when they arrive, and instead must notify the customer that cars are ready for delivery and wait for delivery instructions. Thus, upon delivery the car is constructively placed in the local CN serving yard, and the customer is notified of the constructive placement.

The customer's next service window is Tuesday at 10:00AM. The customer has until Tuesday at 6:00AM to order the car. The customer orders the car on Monday at 4:00PM for delivery on Tuesday. Because the customer orders the car in advance of the Tuesday service cut-off, the customer incurs no demurrage charges, even though the car occupied space in CN's serving yard from Sunday through Tuesday, for a total period of 37 hours.

Changing the example to an "open gate" facility means that cars will be directly delivered to the customer facility without the customer needing to call/order the cars in. Using the above example, the car, upon arriving at 9PM, would be placed on the first available service, which in this case is Tuesday. The customer would not incur any demurrage.

As these examples illustrate, CN's program provides ample free time to its customers whether they are closed gate or open gate.

Example B: Customer's closed gate facility has service three times per week: Monday, Wednesday, Friday, 10:00AM to 6:00PM. A car arrives on Saturday at 6:00PM Customer orders the car at 9:00AM on Tuesday.

In this example, a car arrives on a Saturday at 6:00PM. The customer's next service window is Monday at 10:00AM. The customer has until 6:00 AM on Monday to order in the car to avoid demurrage. If the car is not ordered in time to meet the Monday service cut off, demurrage charges would begin at 00:01 on Tuesday. Demurrage stops when the customer requests delivery and the car is placed. Here, because the customer did not order the car until 9:00AM on Tuesday morning, the car would be delivered on Wednesday, the next available service date for that facility. The customer would therefore be responsible for two days of demurrage by not ordering in their car for the Monday service, and ordering it and having it placed on the Wednesday service. The customer would not pay demurrage for Saturday through Monday (even though the car was placed in the CN serving yard on Saturday evening) because the clock does not start until the customer misses a delivery window. In this example, the customer was not charged demurrage for a total of 36 hours of dwell in a CN yard. Even in circumstances where a customer ultimately pays demurrage, that customer does enjoy more than "zero" free time.

Example C: Customer has seven-day-a-week service at a busy facility, with service scheduled between 1:00AM and 10:00AM. Customer receives a list of cars that are ready for delivery each day at 11:00AM, and has until 9:00PM to order in cars for delivery for the next day.

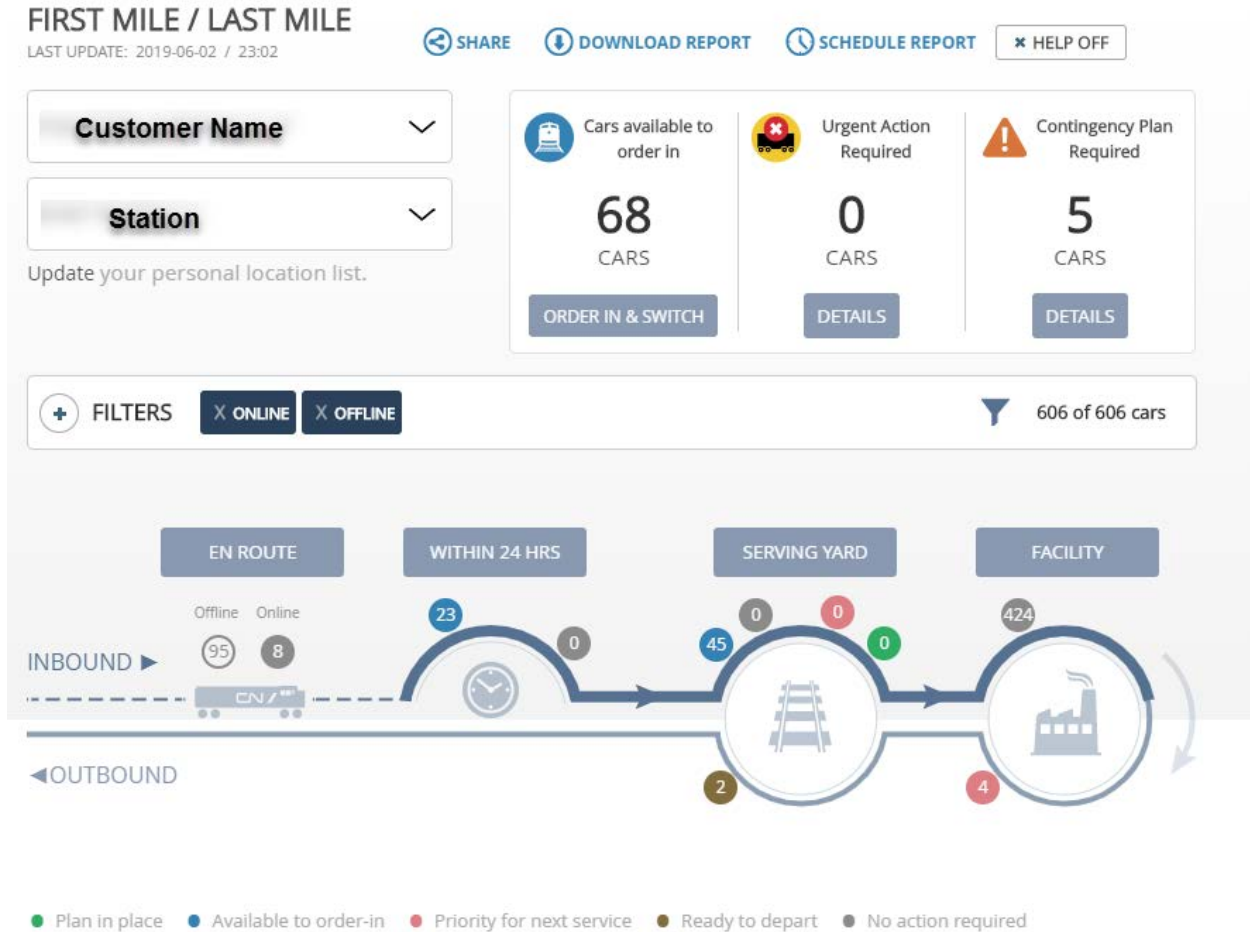
In this example, Customer has the ability every day to avoid demurrage by ordering cars for delivery before the cut off for the next morning's window. Indeed, Customer does not have to wait for the 11:00AM notification of constructive placement if it uses CN's eBusiness tools to track car movement and to identify cars that are en-route to the serving yard and will arrive within 24 hours. CN's customer service tools allow customers to track car movements and order cars in before constructive placement occurs.

Example D: Customer has two-day-a-week service, on Tuesdays and Thursdays between 6:00AM and 4:00PM. Customer orders 5 cars for the Tuesday service, as they have 5 more arriving in 24 hours behind them. In this case, a CN service issue affected the ordinary delivery schedule (a crew ran out of time and had to return to the serving yard), and the Tuesday service was missed. The cars are returned to the serving yard, and CN's systems automatically apply system credits to those 5 cars to offset the failure. Wednesday evening the other 5 cars arrive. The customer is unable to accept all of the cars during its Thursday delivery window. In this case, CN would work with the customer to develop a recovery plan, which might include recovery service outside of the typical window if agreed, or an alternate delivery plan over a longer horizon. Regardless of what recovery plan was used, the customer would not be charged for any demurrage. CN would apply manual credits to the cars left in the yard as result of the service failure.

D. CN Focuses on First Mile/Last Mile Service and Provides Customers With Effective Tools to Monitor First Mile/Last Mile Performance.

During the hearing, CN heard a number of comments from shippers regarding first and last mile service. Shippers complained generally that some carriers do not give customers sufficient visibility into car movements during the first and last mile. While CN cannot address other carriers' efforts in this area, CN has invested in eBusiness tools that provide notifications and alerts in the First/Last Mile to assist customers in making choices that limit demurrage. I visited over 30 customers in the United States in 2014 to introduce these tools and showcase their potential. Figure 1 is an example of the kind of visibility afforded to customers using the First Mile/Last Mile tool. This same tool is available to railcar receivers like terminal operators.

Figure 1: First Mile/Last Mile eBusiness Tool



In the example in Figure 1, the customer has 68 cars available to order in. Of those 68, 45 are already in the CN serving yard, and 23 are slated to arrive in the serving yard within 24 hours. CN provides information in its Alerts Dashboard, which helps the customer plan: the five cars listed in this example exceed their normal transit time, requiring a contingency plan. This customer has 103 cars inbound to the serving yard – eight of those cars on CN’s system, 95 of them offline (*i.e.*, on another railroad). In outbound service, the customer can see that CN has

acknowledged four cars are slated to be pulled from the customer facility at the next service and two cars are ready to depart the CN serving yard.

The electronic version of this tool is interactive, such that it allows customers car-level detail views of their shipments. For example, if the customer clicked on the blue “45” bubble indicating the number of cars in the serving yard available to order in, it would receive car-level details, including, for example, commodity type and shipment origin.

The details available in CN’s first mile/last mile eBusiness tool give our customers transparent visibility into the pipeline of railcars inbound into their facility, the cars currently at their facility, and those that are outbound. This allows customers (and receivers) to plan in advance for rail service at their facility, thereby minimizing demurrage charges.

In addition to the First Mile/Last Mile eBusiness tool, CN offers customers tools specifically designed to help them reduce railcar dwell time, so as to minimize demurrage fees, including the following:

- **Order in Railcars:** This tool offers customers the capability to view railcars en route to them and to order railcars in before they arrive. *See Figure 2, below.* The customers can also view cars still in transit, within the next 48 hours, and order them in while they are still on the train. This functionality was developed to help customers avoid delays and demurrage charges for their cars dwelling at the local serving yard, especially for cars arriving

during the weekend or at times when the customer facility is closed. This tool facilitates a customer's ability to easily order cars before the cut off for its next scheduled service.

Figure 2: Order in Railcars that are Enroute to Serving Yard

Equipment en route to										
Current location: En route								To be delivered as early as possible following arrival at your CN serving station		
arrived										
Seq ▲	Car ▲	L/E ▲	ETA ▲	Status ▲	Last Event Date ▲	Last Event ▲	Last Event Status ▲	Select All	? Unloading/loading location Request Change	? Special Instructions
1	90419	L	2019-06-07 08:31		2019-05-31	RI	RL	☐	Select location ▼	
2	91220	L	2019-06-07 08:31		2019-06-03	RI	RL	☐	Same as above ▼	
3	90451	L	2019-06-07 08:31		2019-06-04	RI	RL	☐	Same as above ▼	
4	90536	L	2019-06-07 08:31		2019-06-04	RI	RL	☐	Same as above ▼	
5	881611	L	2019-06-07 08:31		2019-06-04	RI	RL	☐	Same as above ▼	

- Asset Use:** This tool was designed to give customers insight into equipment that is at risk of being charged demurrage and highlights the action they need to take to so that charges are not incurred. It also provides visibility into equipment currently accruing demurrage, and what action is required to stop the demurrage charges (*e.g.*, provide delivery instructions to release a load). Figure 3 illustrates a sample report customers can generate through this eBusiness tool.

Figure 3: Asset Use Tool Sample Report

Asset Use Details

Private cars held on CN prior to unloading on private track at XXXXXXXXXX Accruing Dwell (Days) "On The Clock", Grouping Commodity 2, as of June 5, 2019

Sort by: Total Dwell (Days) ▼ Then by: ▼ Sort

Order: ☐ A-Z ☒ Z-A Order: ☒ A-Z ☐ Z-A

[Input page](#) [Summary records](#)

Click on the Equipment ID's to view events for that shipment

Equipment ID	Status	Contents	Track	Asset Use Start at 00:01 hrs	Total Dwell (Days) ³
7148 DAN	Chargeable	CORMAT	16	31 May	6
4249 DAN	Chargeable	CSODA	16	05 Jun	1
1666 DAN	Chargeable	CORMAT	16	05 Jun	1
3196 DAN	No charge	CORMAT	16	06 Jun	0
Total :					8

DAN Subject to additional dangerous storage charges.
³ Assumes placement made today.

CN also offers customers the ability to subscribe to service notifications to improve planning at their facility, which in turn will result in better asset turn-around and reduced demurrage. Those notifications include:

- **Local Service Notifications:** Provide customers with the ability to receive an advanced notification of all work CN plans to perform during the customer's next scheduled assignment. These notifications are received before the service assignment starts and are intended to allow customers to complete planning / equipment/ crew setup for the day to safely increase the speed and efficiency when the crew arrives. *See Figure 4.*

Figure 4: Local Service Notification

CN | iAdvise

LOCAL SERVICE NOTIFICATION

CN iAdvise - Local Service Notification

Customer: [Redacted] Location: [Redacted]
 Log Reference ID: 2019-0004131546 Assignment: [Redacted]
 Track Range: [Redacted] 89 Date: Jun 05, 2019 06:37 EST

The following work will be completed on today's assignment:
 Car Summary: 0 to spot, 5 to pull, 0 requiring other work

Work Order	Car	L/E	Commodity	Destination Track
PULL	412568	L	PLPBD FBD N CORR	
PULL	412861	L	PLPBD FBD N CORR	
PULL	412085	L	PLPBD FBD N CORR	
PULL	27620	L	PLPBD FBD N CORR	
PULL	27856	L	PLPBD FBD N CORR	

For more information, please contact your Service Delivery Representative at CNSOUTH@cn.ca or 1-866-926-7245.

- **Service Exception Notifications:** Provide customers the ability to receive advanced warnings of exceptions if CN cannot execute all the work planned at a customer's facility during that day's scheduled assignment. Service Exceptions have two classifications: CN or Customer caused. CN caused are typically operational items like crews running out of time or mechanical breakdowns. Customer causes could include situations where the customer is not ready to receive cars or not available or where a customer's tracks are not safe to operate on. When CN is at fault, we will attempt to recover on the next service and will credit the customer for the service failure so it does not incur demurrage. (If other cars in the yard are impacted, they are also manually assessed and credited). I have a staff of 12 focused on detecting and crediting customers in these types of scenarios.
- If the failure is customer caused, CN will take the cars for that service back to the serving yard and the customer will need to call/order them in again. Demurrage will apply as if the cars had never left the yard. This policy demonstrate that CN is fair and reciprocal with its customers, as it issues credits when it fails and applies demurrage when a customer is responsible. See Figure 5 for CN Failure and Figure 6 for Customer Failure.

Figure 5: Service Exception Notification – CN Failure

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SERVICE EXCEPTION NOTIFICATION



CN iAdvise - Service Exception Notification

Customer: [REDACTED]

Cars: 11

Location: [REDACTED]

Date: Jun 05, 2019 13:15 EST

Log Reference ID: 2019-745013

Service for the equipment listed below will not be carried out due to CN operational issues.

Recovery Plan: Rescheduled for your next planned service

If this will result in a shutdown situation, please advise your Service Delivery Representative ASAP

Car	Work Type	COO	ZT8	Next Service
11253	SPOT		12	Jun. 05 22:00-07:45 PT
38249	SPOT		12	Jun. 05 22:00-07:45 PT
38219	SPOT		12	Jun. 05 22:00-07:45 PT
164149	SPOT		12	Jun. 05 22:00-07:45 PT
164396	SPOT		12	Jun. 05 22:00-07:45 PT
38257	SPOT		12	Jun. 05 22:00-07:45 PT
38255	SPOT		12	Jun. 05 22:00-07:45 PT
8115	SPOT		12	Jun. 05 22:00-07:45 PT
38217	SPOT		12	Jun. 05 22:00-07:45 PT
8153	SPOT		12	Jun. 05 22:00-07:45 PT
8114	SPOT		12	Jun. 05 22:00-07:45 PT

For more information, please contact your Service Delivery Representative at CNWEST@cn.ca or 1-866-926-7245.

Please do not reply to this automated message. This mailbox is not monitored.

To change or turn off these notifications at any time, please update the settings in your eBusiness account. [Learn More](#)

Figure 6: Service Exception Notification – Customer Failure

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SERVICE EXCEPTION NOTIFICATION



CN iAdvise - Service Exception Notification

Customer: [REDACTED]

Cars: 2

Location: [REDACTED]

Date: Jun 05, 2019 20:45 EST

Log Reference ID: 2019-745156

Due to issues at your facility, the service planned for the equipment listed below will not be carried out.

Reason: No room on the customer track - Not delivered to customer

Recovery Plan: Returned to Constructive Placement, please order-in again via [eBusiness](#)

Car	Work Type	COO	ZT5
62205	SPOT		
62175	SPOT		

For more information, please contact your Service Delivery Representative at CNSOUTH@cn.ca or 1-866-926-7245.

Please do not reply to this automated message. This mailbox is not monitored.

To change or turn off these notifications at any time, please update the settings in your eBusiness account. [Learn More](#)

- **Temporary Outage/Disruption Notifications:** Provide customers with a notification of major track issues that could affect the traffic they are receiving or shipping, so that they can formulate contingency plans. See Figure 7.

Figure 7: Temporary Outage/Disruption Notification

CN iAdvise - Temporary Track Outage/Disruption

Customer: [redacted] Cars: 12
 Located Near: [redacted] Date: Jun 16, 2018 16:19 EST
 Reason: Derailment

UPDATE: The site is now clear. Traffic may encounter minimal further delays as we return the corridor to normal operations.

Listed below is a summary of cars that may be delayed. We are doing everything possible to restore regular service and apologize for any traffic that may be affected.

Car	Origin	Destination
627776	[redacted]	OH
323803	[redacted]	, TX
300596	[redacted]	KY
326036	[redacted]	KY
623527	[redacted]	KY
77026	[redacted]	TN
736852	[redacted]	TN
37844	[redacted]	TN
300479	[redacted]	, OH
28113	[redacted]	TN
37151	[redacted]	, IN
623592	[redacted]	, OH

For more information, please contact your Service Delivery Representative at [1-866-926-7245](tel:1-866-926-7245).

E. CN Helps Customers with Fleet Optimization.

CN maintains an internal fleet capacity planning group which leverages the same tools and techniques that CN uses for its system cars for large private car customers who agree to partner with CN. This group helps those customers to right-size their fleets, which helps reduce congestion and promote network fluidity. CN does not charge customers for this service. The actions of this group with customers positively reinforce that the right-sized fleet is an integral part of managing the pipeline and ultimately reducing or even eliminating demurrage.

F. CN Provides Ample Advance Notification of Tariff Changes.

We aim to provide as much notice of our tariff renewals as possible to customers. For the past three years, CN has provided a minimum of 52 days' notice of the annual renewal of its CN 9000 Optional Services tariff. The following table identifies the amount of notice CN has recently provided:

Effective Date	Notification Date	Number of Days' Notice
February 1, 2017	December 1, 2016	62
January 1, 2018	November 10, 2017	52
January 1, 2019	November 2, 2018	60

G. CN Customers Have Options to Avoid Demurrage Charges.

All of the tools and options identified above provide CN customers with numerous means to meter the flow of their traffic, match their car orders to their

plant capacity, and plan their operations to avoid the accumulation of railcars. In CN's experience, these tools also assist customers in avoiding demurrage charges. The majority of CN customers do not pay demurrage and we are convinced that the tools we provide is the primary reason for this success rate.