

**Testimony of Ben Abrams
before the Surface Transportation Board
Hearing on Demurrage and Accessorial Charges
May 22, 2019**

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My name is Ben Abrams, and I serve as the President and CEO of Consolidated Scrap Resources, Inc. (CSR). I would like to thank the Board for holding this hearing on changes to railroad demurrage rules and practices. I appreciate the Board's efforts to better understand the impacts of these changes and the challenges rail customers are facing.

We are a privately-held, fourth-generation scrap steel, metal, paper and plastic recycling company with six locations and approximately 140 people in Southcentral Pennsylvania. CSR is a part of the scrap steel recycling industry, which trades commodities worth more than \$15 billion annually in the United States today. CSR is also a member of the Institute of Scrap Recycling Industries, Inc. (ISRI). Scrap steel recyclers were recycling long before it was en vogue to do so, and today are an integral part of the manufacturing chain both in this country and globally.

Our company, CSR, uses rail to ship its scrap steel products to our consumers. These products are the raw material feedstock used by steel mills to melt and make new products. Due to our geographically widespread customer base across the Eastern United States, we are regular users of, and highly dependent on rail service. Our Harrisburg, PA location is located on a direct rail line operated by Norfolk Southern (NS), and our York, PA facility is located on a short line operated by the York Railway Company (a division of the Genessee & Wyoming Railroad). We ship scrap steel products from both of these locations to steel mills in Pennsylvania, Ohio, Indiana, Virginia, the Carolinas, Alabama, Mississippi, Florida, and elsewhere.

Over the last three years, CSR has shipped on average more than 57,000 tons of scrap annually by rail. To ship that scrap to consumers, CSR currently leases and manages a fleet of approximately 90 private railcar gondolas.

Over the last several years, unilateral changes to NS business practices have created unprecedented challenges and cost our company an increasing fortune each year. As I will explain, recent changes in NS rules and practices have adversely affected our business: (1) we

are paying increasingly more and more money each year to NS, particularly for demurrage assessed on private cars, without gaining any measurable benefit to CSR, (2) we have determined in good faith that we cannot alter our operations and shipping schedules, or make additional investments, to accommodate these unilateral changes by NS and make them expense neutral to our company, (3) we have not been able to address our problems through commercial arrangements and cannot avoid the impacts, since we are captive to NS at our Harrisburg facility and do not have an alternative to shipping our products to the customers we supply by rail (trucks can neither handle the volume nor compete on a freight cost basis).

We believe that the Board should require the railroads to establish reasonable, commercially fair and reciprocal demurrage rules that do not unfairly penalize their customers both financially and operationally.

To be clear, we do not demonize or blame the Class 1 railroads or even Norfolk Southern for trying to become more efficient operators and improve their asset management. Of course, all businesses want and should do these things. But we certainly object when businesses, especially ones that can operate as legal monopolies, make unilateral changes to improve their own profitability on the backs of their customers without offering those customers any direct material benefits for the increased money they are paying. That is effectively what has been happening to us, and unless we speak up to object to these patently unfair practices we fear they will continue unchecked and cost us a fortune without any benefits for these increased costs.

By way of some background, for many years, in general prior to 2012, we mainly used NS-owned railcar equipment to ship our products and paid a higher shipping rate to NS for that benefit. Since that time, and particularly after 2014, procuring NS railcar equipment to use for our shipments became increasingly difficult. Often, we would order cars and they would not be available. We came to learn over time, that NS was both reducing the number of system cars available for use in general, and in particular to scrap steel shippers. Our customer account manager told me at the time that we should not look for NS to supply the same number of gondolas they previously offered to us as they could use what gondolas they had left for more profitable products. Indeed, by the later part of 2017, it was rare that we would ever receive the requested railroad car equipment from NS. As a result, we initially entered into multi-year lease

agreements with car lessors beginning in 2012 and continuing to the present day, as we can no longer rely at all on NS to provide the railcar equipment that they provided in the past.

The most difficult situation that we have faced over the last 24 months, however, has been the unilateral move by NS to progressively reduce, and now essentially eliminate, Empty Private Car Storage Credit Days (“Credit Days”). In an announcement on August 1, 2017, NS informed customers that pursuant to its Tariff 6004-D it would gradually reduce the number of Credit Days for customers’ private railcars from five (5) to two (2) beginning on October 1, 2017. By June 1, 2018, customers would earn two Credit Days for each private car constructive placement. Then, in an announcement dated October 1, 2018, NS informed customers that effective January 1, 2019 it would reduce Credit Days earned for each constructive private railcar placement from two (2) days to zero (0) days.

We were stunned to receive both of these notices. After years of relying on the Credit Days to plan for capital investments, operations, shipping strategies, and overall product marketing, NS was informing us that they were changing the rules and there was no discussion about our ability to adjust to these changes or the impacts on our business.

Indeed, CSR’s demurrage costs it has paid to NS have increased dramatically as well over the last several years:

- In 2015, 2016 and 2017, we paid NS on average less between \$1500 and \$2700 per month for demurrage fees.
- In 2018, the average monthly demurrage bill for our company was \$11,300 – a 560% per month increase over the average monthly cost in 2017.
- Through the first quarter of 2019, our average per month demurrage cost is more than \$23,000, more than double the monthly cost of last year’s average and well more than 1,000% greater than our per month cost in 2017.

NS serviced our Harrisburg yard five days per week until January 2019 when we received notice that NS would service this location seven days per week. Yet, NS reduced credit days over the course of 2018 and still charged us demurrage on weekends when they do not provide service. When we protested to NS Revenue Collection personnel, they informed us that

demurrage rules have always applied to weekend days. Prior to 2017, we had five Credit Days to offset those weekend day demurrage charges. Further, our operations are designed around a five and a half days a week work schedule, including Saturday mornings. In a scenario where NS places the rail cars on a Saturday afternoon, we are assessed at least one day of demurrage charges for Sunday. This is not reasonable since the NS should have been aware that our facility is not operational on the weekends, except for the Saturday morning.

Demurrage charges that result from bunching of rail cars is another problem we are experiencing with NS. We have often received twenty or thirty cars at a given time in the NS Harrisburg switching yard, which is across the creek outside of our facility, even though our facility can only handle 10 cars at a time. Additionally, NS does not spot more than 6 cars on our rail siding per day, which makes it impossible for us to avoid these charges. Overall, bunched cars cause an increased workload for our staff and we need to incur additional costs to clear the congestion. Otherwise, we are assessed with demurrage charges for detaining the NS track longer than the prescribed period. Ultimately, CSR is being penalized for NS' service deficiencies and inconsistencies.

Furthermore, when we dispute the demurrage charges that we think are unfair, we often find our claims lingering until NS decides to act on it. NS specifies the time period for the customers to challenge their bills, however there is no deadline for NS to respond to customer claims. We believe that this practice is unacceptable and the Board should consider establishing clear deadlines for the railroads to respond to customer claims disputing demurrage charges.

CSR Has Limited Options to Mitigate the Adverse Impacts From NS Demurrage Practices

We have given some thought on how we can adjust our facility or operations to avoid incurring demurrage fees. However, we believe that operational changes or additional investments are not viable for us.

Our processing plant in Harrisburg, PA is a closed gate facility served by a rail track that has to cross a bridge over a creek for the cars to enter the plant. The plant itself is a long rectangular shape wedged between the creek and a state highway. We depend on NS to spot our cars in the NS Harrisburg switching yard across the creek, and pull the cars through the bridge

once they arrive at the switching yard.

The facility contains numerous fixed internal roadways and systems of large stationary processing equipment. The rail tracks inside the facility were laid decades ago and are also today fixed in their current locations.

Our facility tracks can accommodate up to ten gondolas within the boundaries of the plant at a time, and filling our yard to its full capacity restricts the movement of other equipment around the plant. Given the lack of space in our yard, we are unable to redesign the current layout of the plant to accommodate more railcars and reduce our need to store those cars outside the plant boundaries on NS-owned track. Even if we could tweak the layout of the plant to increase our railcar storage capacity inside, to do so would be incredibly costly and disruptive to operations. As such, a redesign of the plant to help us materially avoid demurrage charges is unrealistic.

As noted, we are also limited in the number of railcars that the NS will spot per day in Harrisburg off the NS tracks onto CSR tracks. The NS will currently spot only six railcars per day for us to bring into the plant to load. We are currently working on a sidetrack agreement with the NS, which may or may not get signed, to increase that number to eight cars per day that NS will spot. Increasing that number of cars the NS will spot at a given time would obviously help get a few more of our private gondolas off NS tracks sooner than they can currently. Even if that siding agreement is eventually signed between our company and NS, we will still be limited by our physical fixed plant layout, additional manpower cost and availability limitations, and market forces beyond our control, for how quickly we can pull our private railcars off NS track and onto our property.

And even if we could bring more railcars into our property, we still get only one spot of railcars per day from the railroad. So adding personnel or shifts to load more cars more quickly would not necessarily help our predicament either. Besides, additional staffing is not economical and practical because of the cost prohibitive nature of adding enough qualified personnel and the general lack of available labor to work multiple shifts at our plant.

In the scrap business, our revenues rise and fall each year depending on the demand for

our products and the value of industrial commodities. As the value of those commodities change our shipping volumes rise and fall as well. We do not have much control over this phenomenon. Notwithstanding the rise and fall of the price of our materials, rail costs seem to move only higher. Normally, when one pays more for a service one would expect to receive some benefit in return. That is what is most frustrating in all of this – we have not had any benefit from paying these huge cost increases from the demurrage tariff.

No one from NS ever even came to us and said something like, “look, we know we have basically pushed you into entering into long term leases for your own gondolas but we want to make changes to get those cars to move off our tracks faster – what is a reasonable solution that works for you and us so that this change would be fair to both of us?” Never did NS consider how their blanket imposition of this new tariff to take away Credit Days, which had been in place for many years and around which businesses like ours made long-term strategic plans, commitments, and investments, would impact individual customers. They never took the time or did the due diligence about the disparate impact their tariff imposition would have. NS simply imposed their tariff, unchecked, demanding that after doing business a certain way for years, customers now have to substantially reconfigure their operations or pay huge penal charges to the railroad.

Even if NS were to claim that the changes to the tariff improves overall efficiency, such a claim is highly dubious in our case. CSR cannot simply change its business plans and practices to pull our private cars off NS rail siding more quickly. CSR is already paying to lease a fleet of cars since NS has forced the shipper to furnish equipment, and our incentive is to turn those cars as quickly as possible.

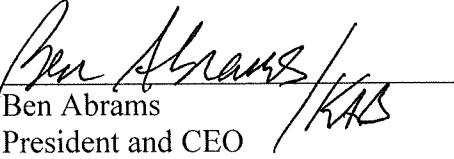
Providing zero (0) Credit Days for shippers who use private cars is unfair and too rigid, since the railroad controls when a car is constructively placed for the shipper to load. Each shipper has unique physical and space limitations at their plants for how many cars they may be able to bring onto their private rail siding at a given time. In fact, often times, it is NS that decides how many cars they are even willing to spot for loading by the shipper at a given time. Providing shippers some flexibility (at least 72 hours) to request their private cars be spotted for loading once NS constructively placed the cars is a reasonable accommodation to the shipper.

Now, by providing zero free time, the NS is expecting, indeed demanding, that if shippers want to avoid large demurrage fees they must change their operations to accommodate NS's new business plans. That is not only unreasonable, it is also completely impractical for many shippers like CSR.

Fundamentally, this is a situation of one dominant party that enjoys a clear monopoly over its customers, using that power position to take advantage of the customer. The NS appears to be intentionally generating higher profits under the pretext of becoming more efficient, ultimately to satisfy shareholders and help their stock price, at the expense of their customers who are paying their bills and have no choice in the matter.

We are asking simply for the Board to establish reasonable, commercially fair and reciprocal rules that will allow small business shippers like CSR to effectively plan their investments and operations in a reasonable and relatively stable and predictable manner.

Respectfully submitted,


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