

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Docket No. FD 36511

WASTE MANAGEMENT OF WASHINGTON, INC. AND WASTE MANAGEMENT  
DISPOSAL SERVICES OF OREGON, INC. –  
VERIFIED PETITION FOR DECLARATORY ORDER

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**REPLY IN SUPPORT OF VERIFIED PETITION FOR DECLARATORY ORDER;  
EXPEDITED CONSIDERATION REQUESTED**

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**INTRODUCTION**

Petitioners Waste Management of Washington, Inc. and Waste Management Disposal Services of Oregon, Inc. (collectively, “WM”) hereby respectfully submit this reply<sup>1</sup> in support of their Petition to the Surface Transportation Board (“STB” or “Board”) for a declaratory order to confirm, pursuant to its authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, that the STB

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<sup>1</sup> Although 49 C.F.R. § 1104.13(c) indicates that “[a] reply to a reply is not permitted,” the Board has frequently waived that provision for good cause. *See, e.g., Sierra R.R. Co. v. Sacramento Valley R.R. Co.*, LLC, STB Docket No. NOR 42133, at 1, n.1 (served Mar. 9, 2012); *Cross Oil Ref & Mktg., Inc. v. Union Pac. R.R. Co.*, STB Docket No. 33582, at 1 (served Oct. 27, 1998); *see generally* 49 C.F.R. § 1100.3 (“The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.”). Here, various arguments were made in reply to WM’s Petition that could not have been anticipated, and the Board generally grants leave to file a reply to the replies when that is the case, as well as in the interests of having a complete record. *See, e.g., American Rocky Mountaineer, LLC – Petition for Exemption from 49 U.S.C. Subtitle IV*, F.D. 36468 (served May 28, 2021), slip op. at 3 n.3, *citing City of Alexandria, Va – Pet. For Declaratory Order*, FD 35157, slip op. at 2 (served Nov. 6, 2008) (allowing a reply to a reply “[i]n the interest of compiling a full record”). Accordingly, Petitioners seek leave to file this Reply to the Replies to the Petition filed herein.

has exclusive jurisdiction over Petitioners' container-on-flat-car ("COFC") transportation of solid waste from the McKinley Paper Company ("McKinley Paper") and the Port Townsend Paper Company ("PTP") in the State of Washington to the Columbia Ridge Landfill in the State of Oregon. Because the WUTC's Order is now literally interfering with rail transportation of the materials in question, causing that transportation to cease, Petitioners respectfully request expedited consideration of their Petition.

### **SUPPLEMENTAL FACTUAL BACKGROUND**

Since filing its Petition, WM has appealed the Washington Utilities and Transportation Commission's ("WUTC") Order to the Thurston County Superior Court pursuant to the Washington Appellate Procedure Act. WM timely filed with the Superior Court a motion to stay the WUTC's Order which the Court denied. Consequently, Petitioners and the Union Pacific Railroad ("Union Pacific") and the Puget Sound and Pacific Railroad have ceased their COFC service pending resolution of WM's appeal on the merits.

### **ARGUMENT**

Waste Connections US Holdings, Inc. and Murrey's Disposal Company, Inc. (collectively "Waste Connections") cannot help but mischaracterize the issue presented to the Board. WM is not asking the Board to decide whether its jurisdiction preempts "the enforcement of Washington's system of assigning service territories against Waste Management's intermodal transportation of containerized solid waste." Waste Connections' Reply at 9. The only issue presented to the Board is whether the STB has jurisdiction over the distinctive COFC service utilized by WM in conjunction with Union Pacific. As the Association of American Railroads recognized in its Comments filed herein, at 2 & n.1, this COFC service is an integral part of modern-day railroading that has long been subject to STB jurisdiction as transportation by rail carrier, regardless of whether the trailers are owned or operated by railroads, shippers, or motor carriers. *See, e.g., Movement of Highway Trailers by Rail*, 293 I.C.C. 93, 106 (1954) ("[W]e are of the opinion that trailer-on-flatcar transportation is in fact transportation by railroad. And this

is so whether the trailers are owned or operated by railroads, shippers, or motor common carriers.”). Pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board should issue a declaratory order to again confirm its jurisdiction and terminate the controversy over this issue.<sup>2</sup>

**A. The Board’s Authority to Exempt or Exclude from Exemption Demonstrates Its Jurisdiction.**

Waste Connections argues that, where “the motor carrier arranges and provides the transportation for the customer, and the rail carrier serves as the motor carrier’s agent, then the service falls under intermodal Plan I, and the class exemption for motor carrier service related to rail carrier service is inapplicable.” Waste Connections’ Reply at 11. Thus, it contends, there is no preemption. *Id.* at 12. Waste Connections ignores the key language in the regulation in which the STB exercises its exclusive authority over the “motor carrier” portion of COFC service to exempt it from federal regulation:

... [R]ail ... COFC service and highway ... COFC service provide by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement is exempt from the requirements of 49 U.S.C. subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. **Motor carrier** ... COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a ... COFC movement provided by a rail carrier are similarly exempt.

49 C.F.R. § 1090.2 (emphasis added). Waste Connections contends that WM “cannot satisfy” the “mandatory ‘rail carrier’ element” of the STB’s exclusive authority. Waste Connections’ Reply at 16. More than 20 years ago, the ICC *again* rejected this claim made by motor carriers: “Their view seems to be that the ‘related-to-rail’ language really means ‘provided by rail.’ We

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<sup>2</sup> Waste Connections complains both that WM did not bring its Petition earlier and also that WM did not “exhaust” administrative “remedies” before the WUTC. Obtaining leave from the WUTC to perform COFC service, a service over which the WUTC lacks authority, is not an “administrative remedy” at all. WM did exhaust its actual administrative remedies, litigating the administrative lawsuit to conclusion and then appealing the final WUTC ruling pursuant to the Washington Administrative Procedures Act. Likewise, WM was not required to seek an order from the STB any sooner than it did. Tellingly, Waste Connections cites no authority to the contrary.

reject the motor carriers' arguments, as we did earlier, and find that the motor carrier services at issue here are related to rail carriers providing transportation subject to [ICC] jurisdiction ....” *Improvement of TOFC/COFC Regulations (Pickup and Delivery)*, EP No. 230 (Sub-No. 7), 6 I.C.C.2d 208, 211 (1989), *aff’d sub nom. Cent. States Motor Freight Bureau, Inc. v. ICC*, 924 F.2d 1099 (D.C. Cir. 1991) (Ruth Bader Ginsburg, J.).

Moreover, Waste Connections confuses the concepts of preemption and exemption when arguing that the federal regulation excludes *from exemption* circumstances in which a “rail carrier serves as the motor carrier’s agent,” which Waste Connections contends is the case with the COFC service here. Waste Connections’ Reply at 11 (citing 49 C.F.R. § 1090.2). Waste Connections contends that “[s]ince there is no exemption, there is no preemption ....” *Id.* at 12. Waste Connections is wrong. The STB’s act of exempting from federal regulation – and, conversely, its act of *not* exempting from federal regulation – are both part and parcel of the agency’s exclusive jurisdiction over COFC service, no matter what the arrangements are between the rail carrier and the “carrier performing the highway portion of the service.” 49 C.F.R. § 1090.2. Hence, the STB always retains its authority to “revoke an exemption.” 49 U.S.C. § 10502(d).

The carve-out for Plan I COFC service from the exemption simply means that the STB is allowing federal agencies to regulate Plan I COFC service. The regulation confirms that all COFC service, whether or not *exempted* from federal regulation, is subject to the STB’s exclusive jurisdiction. In other words, the act of deciding what to exempt and what not to exempt means that all of it is subject to STB governance; no state may regulate any COFC service. *See Cent. States Motor Freight Bureau*, 924 F.2d at 1102 (“Exercise of the ICC’s section [10502] exemption authority neither lodges nor dislodges agency jurisdiction; instead, it *presupposes* ICC jurisdiction over the persons or services exempted.”) (emphasis original); *Fayus Enters. v. BNSF Ry. Co.*, 602 F.3d 444, 451-52 (D.C. Cir. 2010) (In the Staggers Act, Congress “‘reaffirm[ed] that where the [ICC] has withdrawn its jurisdiction to regulate, the State

could not assume such jurisdiction.”) (quoting the Congressional Record); *American Rocky Mountaineer, LLC*, FD 36468 (served May 28, 2021) (exempting service from regulation after determining jurisdiction). Waste Connections cannot escape this fact, acknowledging that “[t]he intermodal exemption carried with it some preemptive effect ....” Waste Connections’ Reply at 16. The STB’s authority to exempt – and not exempt – from federal regulation the very service at issue in this proceeding demonstrates its exclusive jurisdiction over such service to the exclusion of any state agency.

**B. The Board’s Jurisdiction Is Not as Limited as Suggested by Waste Connections and the WUTC.**

Waste Connections and the WUTC make much of the obvious and never disputed fact that Petitioners are not themselves railroads. But they misapprehend the very reason why the federal statute and federal regulations protect COFC service from state regulation. That purpose is to benefit the railroads. The benefit to the truckers is wholly in service to allowing railroads to effectively compete for business. “A railroad cannot provide such intermodal service without first receiving a trailer or container, which is generally moved over-the-road by truck. The highway movement of containers and trailers is an integral and necessary element of ... COFC service.” *Improvement of TOFC/COFC Regulations (Railroad-Affiliated Motor Carriers and Other Motor Carriers)*, EP No. 230 (Sub No. 6), 3 I.C.C.2d 869, 873-74 (1987). “[W]hether they are owned by the railroad partners, affiliated with them, or independent companies, the motor carriers involved in the over-the-road segment of ... COFC services are business partners of the railroads that are plainly participating in matters ‘related to a rail carrier’ and are thus within the literal and philosophical scope of § 10505(a) [now codified as 49 U.S.C. § 10502(a)].” *Id.* at 874.

When the ICC adopted the current version of the COFC regulation, it **rejected** the motor carriers’ argument that the expansion of the COFC service exemption did not involve “‘a matter related to a rail carrier providing transportation subject to the jurisdiction of the ... Commission ....” EP No. 230 (Sub-No. 7), 6 I.C.C.2d at 211 (1989) (quoting 49 U.S.C. § 10505(a), now

codified as 49 U.S.C. § 10502(a)). “Their view seems to be that the ‘related-to-rail’ language really means ‘provided by rail.’ We reject the motor carriers’ arguments, as we did earlier, and find that **the motor carrier services** at issue here are related to rail carriers providing transportation subject to Commission jurisdiction ....” *Id.* (emphasis added). The ICC found under its authority at 49 U.S.C. § 10505 (now codified as 49 U.S.C. § 10502(a)), that “COFC pickup and delivery services performed by motor carriers as part of continuous intermodal movement are related to rail carrier transportation” and are exempt from economic regulation. *Id.* at 222, 226.

Without the trucking leg of COFC service, railroads cannot perform the rail leg of such service. It is for that reason that the entire COFC service is subject to exclusive federal regulation, including both the rail **and** truck legs. Waste Connections and the WUTC argue narrowly that Petitioners are not rail carriers so the ICCTA does not apply here. But the very purpose of the ICCTA was “‘to reflect the direct and complete preemption of State economic regulation of railroads.’” *Or. Coast Scenic RR, LLC v. Or. Dep’t of State Lands*, 841 F.3d 1069, 1072 (9th Cir. 2016) (quoting H.R. Rep. No. 104-311 at 95 (1995)). “It is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” *City of Auburn v. United States*, 154 F.3d 1024, 1030 (9th Cir. 1998).

Indeed, if the STB’s jurisdiction did not extend beyond transportation arranged “by rail carriers,” as Waste Connections and the WUTC suggest, the STB would not have had the authority to exempt “TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver ... and performed immediately before or after a TOFC/COFC movement provided by a rail carrier,” or the authority to exclude from exemption “motor carrier service in which a rail carrier participates only as the motor carrier’s agent,” 49 C.F.R. § 1090.2, because each concerns **only the motor carrier** portion of COFC service. Thus, the plain language of the

regulation evidences the reach of the STB's authority, contrary to Waste Connections' and the WUTC's assertions in this proceeding.<sup>3</sup>

Waste Connections' and the WUTC's reliance on *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295, 308 (3d Cir. 2004), to support their arguments to the contrary is wrong. The STB's jurisdiction over COFC service was not at issue in *Hi Tech* and the Third Circuit did not purport to address COFC service in its opinion. That decision is wholly distinguishable because the court addressed the narrow issue of whether New Jersey's environmental regulations governing **solid waste transfer stations** were subject to the exclusive jurisdiction of the STB. *Id.* at 301. Here, it is undisputed that the service provided by the Petitioners is the continuous movement of waste that never leaves the intermodal shipping containers, an essential component of COFC service as defined by the STB. Notably, the transfer activities at issue in *Hi Tech* took place outside of the original shipping containers. *Id.* at 299 ("Hi Tech's Transload Facility operates as follows: (1) trucks hauling C & D waste arrive at the facility; (2) **the trucks discharge C & D into a hopper that Hi Tech provides at the facility**; and (3) the C & D waste is then loaded directly into rail cars from the hoppers.") (emphasis added).

Since *Hi Tech*, Congress has made clear that the STB retains jurisdiction over solid waste transloading when the activity involves the transloading of solid waste in original shipping containers. 49 U.S.C. § 10908(e)(1)(H)(i) (defining a "solid waste rail transfer facility" that is carved out of the STB's exclusive jurisdiction as "the portion of a facility owned or operated by or on behalf of a rail carrier ... where **solid waste, as a commodity to be transported for a charge**, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, **when the activity takes place outside of original containers** ....") (emphasis added); 49 C.F.R. § 1155.2(a)(10)(ii) (confirming that carve out does not apply to a "facility where solid waste is

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<sup>3</sup> The WUTC cites to *Grafton & Upton Railroad Co. v. Town of Milford*, 417 F. Supp. 2d 171 (D. Mass. 2006). That case is inapposite as it did not consider COFC service which is treated uniquely and exclusively by the STB because of its inherent interconnection with rail transportation.

solely transferred or transloaded from a tank truck directly to a rail tank car.”). *Hi Tech* is thus inapposite twice over: first because it did not address the service that is at issue here (COFC) and second because Congress has since codified the STB’s jurisdictional reach over solid waste transfer facilities that transload solid waste in “original shipping containers” from a truck directly to a rail car, such as the transfer facilities operated by Petitioners.

Neither is *Valero Refining Co.*, a case that has nothing to do with COFC service, “exactly on point.” Waste Connections’ Reply at 14 (citing *Valero Refining Co.*, STB Docket No. FD 36036 (served Sept. 20, 2016)). *Valero* concerned the denial of a land-use permit application for the construction and operation of a crude oil off-loading facility. Although the petitioner in *Valero* intended to utilize rail service once the facility was built, the denial of the land-use permit did not have the effect of regulating or infringing rail transportation. There was no rail transportation occurring. Importantly, *Valero* did not involve or otherwise address the sole issue currently before the Board: COFC service. As *Valero* does not purport to address COFC service in any fashion, it is thus inapposite and reveals nothing about the Board’s jurisdiction over the COFC service at issue here, jurisdiction which the Board has affirmed and expanded multiple times.

Without the motor carrier component, there is no COFC service. COFC service – by definition including both a rail leg and a truck leg – benefits rail carriers and has been considered to be transportation “by railroad” for nearly a century, regardless of who owns or operates the motor carrier portion of the service. *See, e.g., Movement of Highway Trailers by Rail*, 293 I.C.C. at 106.

**C. COFC Service Is Preempted Regardless of the Contents of the Intermodal Containers.**

Waste Connections and the WUTC both contend that, notwithstanding the plain language of the ICCTA and the STB’s regulation, a 1965 ICC decision prevents Congress and the STB today from exclusively regulating COFC service, but only if the cargo is solid waste because the ICC only regulated “property” and solid waste is not “property.” *See Joray Trucking Corp.*

*Common Carrier Application*, 99 M.C.C.C. 109 (ICC 1965). This is a ruse to distract from the preemption issue raised here and Waste Connections and the WUTC are wrong on the law. Interpreting ICCTA preemption, the STB and the courts have not looked to the conflicting old ICC decisions regarding the meaning of “property” under the Interstate Commerce Act and repeatedly have ruled that rail transportation **of solid waste** is preempted. The STB held that intermodal containers of municipal solid waste “which would be transferred directly from trucks to rail cars” are subject to its exclusive jurisdiction. *In re New England Transrail, LLC*, FD 34797, 2007 WL 1989841, \*8-\*9 (served July 10, 2017). The transfer of pre-baled municipal solid waste from trucks to rail cars also is subject to exclusive STB jurisdiction. *Id.* Likewise, the STB has exclusive jurisdiction over bulk municipal solid waste unloaded from trucks onto the floor where it was stored temporarily for later loading into rail cars. *Id.* All these “activities would be integrally related to transportation and therefore would be covered by section 10501(b) preemption.” *Id.* at \*9. In 2012, the STB reaffirmed that “the Board’s preemptive jurisdiction extended to solid waste rail transfer facilities owned or operated by rail carriers.” *Solid Waste Rail Transfer Facilities*, EP 684, 2012 WL 5873121, \*1 (served Nov. 20, 2012).

Likewise, the courts agree that solid waste handling associated with rail carriage is “transportation” pursuant to the ICCTA. In regard to a facility that transloaded solid waste from trucks to railroad cars, the Third Circuit recognized solid waste to be “cargo”:

[O]perations of the [waste handling] facilities include dropping off cargo, loading it onto Susquehanna trains, and shipping it. Thus the facilities engage in the receipt, storage, handling, and interchange of rail cargo, which the [ICCTA] expressly defines as “transportation.” *See* 49 U.S.C. § 10102(9)(B). These operations fit within the plain text of the [ICCTA] preemption clause.

*N.Y. Susquehanna & W. Ry. Corp. v. Jackson*, 500 F.3d 238, 247 (3rd Cir. 2007); *accord Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth.*, 945 A.2d 73, 86 (N.J. Super. Ct. App. Div. 2008).

Recognizing the broad scope of ICCTA preemption, Congress in 2008 slightly limited its scope in the Clean Railroads Act (“CRA”), while confirming the STB’s exclusive jurisdiction over rail transportation of solid waste. The CRA added a carve-out from the grant of “exclusive”

jurisdiction to the STB over “transportation by rail carriers,” 49 U.S.C. § 10501(b): “Except as provided in paragraph (3), the [STB] does not have jurisdiction under this part over ... a solid waste rail transfer facility as defined in section 10908 of this title, except as provided under sections 10908 and 10909 of this title.” *Id.* § 10501(c)(2)(B). So, with some exceptions, Congress withdrew from STB jurisdiction authority over solid waste rail transfer facilities, which “shall comply with all applicable Federal and State requirements.” *Id.* § 10908(a). The STB recognized that:

[S]olid waste transfer facilities, which, **in the absence of the CRA** were, or would have been, subject to the Board’s jurisdiction and thus shielded from state and local regulation by federal preemption, must now comply with certain types of federal and state requirements in the same manner as non-rail solid waste management facilities that do not fall within the Board’s jurisdiction or qualify for federal preemption under 49 U.S.C. 10501(b).

*Town of Babylon & Pinelawn Cemetery – Pet’n for Decl. Order*, FD 35057, slip op. at 6, 2009 WL 3329242, \*5 (served Oct. 16, 2009) (emphasis added).

In the CRA, Congress defined a “solid waste rail transfer facility” as: “the portion of a facility owned or operated by or on behalf of a rail carrier ... where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers ....” 49 U.S.C. § 10908(e)(1)(H)(i) (emphasis added). The STB regulation that followed confirmed that the CRA’s withdrawal of STB jurisdiction, did not apply to:

The portion of a facility to the extent that activities taking place at such portion are comprised **solely of the railroad transportation of solid waste** after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or ... A facility where **solid waste is solely transferred or transloaded** from a tank truck directly to a rail tank car.

49 C.F.R. § 1155.2(a)(10) (emphasis added). Congress and the STB thus affirmed that “solid waste, as a commodity to be transported for a charge,” 49 U.S.C. § 10908(e)(1), is subject to the STB’s exclusive jurisdiction except when it concerns a solid waste rail transfer facility.

Similar to its misguided argument that the STB does not have jurisdiction over the transportation of solid waste, Waste Connections also contends that the WUTC's Order requiring immediate cessation of Petitioners' COFC service cannot be preempted because it is an exercise of the state's police power. Waste Connections' Reply at 19. But the state's police power also must bow to federal preemption.<sup>4</sup> State or local actions that “‘have the effect of managing or governing’ and not merely incidentally affecting, rail transportation are expressly or categorically preempted” under § 10501(b). *Tex. Cent. Bus. Lines Corp v. City of Midlothian*, 669 F.3d 525, 532 (5th Cir. 2012) (quoting *Franks Inv. Co v. Union Pac. R.R.*, 593 F.3d 404, 410 (5th Cir. 2010)). “Other state actions may be preempted as applied if they would have the effect of unreasonably burdening or interfering with rail transportation, which is a fact-bound determination.” *Wash. & Idaho Ry.—Pet. For Decl. Order*, FD 36017, slip op. at 4 (served Mar. 17, 2017). Preemption applies even where the Board does not license or actively regulate the activity involved. *See Port City Props. v. Union Pac. R.R.*, 518 F.3d 1186, 1188-89 (10th Cir. 2008).

COFC service, by definition of federal law, requires “the highway transportation, in interstate or foreign commerce,” of a “freight-laden intermodal container” that is “part of a continuous intermodal movement that includes rail [] COFC service, and during which the ... container is not unloaded.” 49 C.F.R. § 1090.1(b). “Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before” COFC movement is subject to the Board's jurisdiction. EP No. 230 (Sub-No. 7), 6 I.C.C.2d at 227.

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<sup>4</sup> Waste Connections' imagined “havoc” to the WUTC's assigned monopolies should *again* be rejected. As the ICC explained in exercising its exclusive jurisdiction over COFC service, “the shipping public” benefits from “more competition among truckers for ex-rail traffic” and from “greater freedom from unnecessary and unproductive economic regulatory constraints.” EP No. 230 (Sub-No. 7), 6 I.C.C. 2d at 215-16.

Waste Connections relies on *In re Vermont Railway*, 769 A.2d 648 (VT. 2000), to argue that the WUTC's Order is a proper exercise of the State's police power. Waste Connections' Reply at 19-20. *Vermont Railway* does not help Waste Connections. In fact, *Vermont Railway* held that regulations that "purported to regulate the operation of the railroad, **including the transport of goods by the railway**," were preempted. *Id.* at 503 (emphasis added). The local regulations that were upheld by the court were those that "merely regulated activity regarding motor vehicles coming and going from the facility and the storage of materials at the facility." *Id.* The regulations that were upheld did not interfere with rail transportation but, rather, "merely address[ed] traffic issues and concerns with environmental contamination." *Id.* And, again, the vehicles subject to the regulations were not providing COFC service.

In contrast, the WUTC's Order directly regulates COFC service because it prohibits the pickup and delivery of intermodal containers performed immediately before the rail leg of COFC movement. EP No. 230 (Sub-No. 7); 49 C.F.R. § 1090.2. In arguing that Petitioners' COFC service cannot be preempted, Waste Connections completely ignores the actual and intended effect of the WUTC's Order. The WUTC ordered Petitioners to immediately cease providing COFC service to McKinley Paper and PTP. The WUTC has taken the untenable position that it can regulate COFC service so long as the intermodal containers being collected and transported contain solid waste. And the Order had the literal effect of interfering with and halting rail transportation of closed intermodal containers. By regulating the collection and highway transportation of closed intermodal containers performed immediately before the Union Pacific's performance of the rail leg of the COFC service, the WUTC is unreasonably burdening and interfering with rail transportation.

#### **D. CONCLUSION**

Petitioners' continuous intermodal transportation of OCC Rejects via COFC service fits squarely within the STB's exclusive jurisdiction over "[m]otor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent)

and performed immediately before or after a TOFC/COFC movement provided by a rail carrier.” EP No. 230 (Sub-No. 7), 6 I.C.C.2d at 227. Accordingly, Petitioners respectfully request that the Board issue a declaratory order finding that (1) Petitioners’ COFC pickup and delivery of OCC Rejects from McKinley Paper and PTP to the Columbia Ridge Landfill is subject to the STB’s exclusive jurisdiction, and (2) state regulation of Petitioners’ COFC pickup and delivery of OCC Rejects is preempted by federal law. Because the WUTC order has now directly interfered with rail transportation, causing it to cease, we respectfully request expedited consideration.

**RESPECTFULLY SUBMITTED,**



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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by the method as indicated below, pursuant to 49 C.F.R. § 1104.12.

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