



Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

WWW.HSELAW.COM

ENTERED
Office of Proceedings
March 24, 2023
Part of
Public Record

March 24, 2023

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Victor Insulators, Inc. v. Finger Lakes Railway Corp.
Surface Transportation Board Docket No. NOR 42176

Dear Ms. Brown:

Enclosed for filing in the above captioned proceeding is an Amended Complaint filed on behalf of Victor Insulators, Inc. ("Victor Insulators") pursuant to 49 C.F.R. § 1111.3(a). We are filing this Amended Complaint to add Ontario Central Railroad Corporation ("ONCT") as a party and to clarify the relationship of the parties to the subject rail line.

This Amended Complaint incorporates the arguments raised in the original Complaint filed December 27, 2022 (the "Original Complaint"), and is intended to replace the Original Complaint. Attorneys for Finger Lakes Railway Corp. ("FGLK") and ONCT have indicated they do not oppose the filing of the Amended Complaint.

If you have any questions regarding this filing, please contact me.

Respectfully submitted,

Harter Secrest & Emery LLP

Allison E. Bartlett

DIRECT DIAL: 585.231.1302
EMAIL: ABARTLETT@HSELAW.COM

cc: Justin J. Marks (*Counsel for FGLK and ONCT*)
jmarks@clarkhill.com

Eric M. Hocky (*Counsel for FGLK and ONCT*)
ehocky@clarkhill.com

George Heltz
heltzgeorge@gmail.com

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

VICTOR INSULATORS, INC.	)	
	)	DOCKET No. NOR 42176
<i>Complainant,</i>	)	
	)	
v.	)	
	)	
	)	
FINGER LAKES RAILWAY CORP., AND ONTARIO CENTRAL RAILROAD CORPORATION	)	
	)	
<i>Defendants.</i>	)	

AMENDED COMPLAINT

Pursuant to 49 U.S.C. § 11701(b), 49 U.S.C. § 11704, and 49 C.F.R. Part 1111, Victor Insulators, Inc. (“Victor Insulators”) hereby amends the original Complaint filed with the Surface Transportation Board (“Board”) on December 27, 2022 (“Original Complaint”) so as to include Ontario Central Railroad Corporation (“ONCT”) as an additional defendant in this action and to clarify the relationship of the defendants to the subject rail line.

Victor Insulators hereby complains for its First Amended Complaint against ONCT and Finger Lakes Railway Corp. (“FGLK”) as follows:

THE PARTIES

1. Victor Insulators is engaged in the business of manufacturing high-voltage porcelain electric insulators and produces a broad array of insulator types. Victor Insulators relies on receipt of various integral materials via rail service and has been receiving regular shipments of products for over 120 years, since its inception in 1893.

2. Victor Insulators' principal place of business is located at 280 Maple Avenue, Victor, New York 14564.

3. ONCT is a common carrier by rail subject to the jurisdiction of the Board under Title 49 U.S.C., Subtitle IV, Part A.

4. FGLK is a common carrier by rail subject to the jurisdiction of the Board under Title 49 U.S.C., Subtitle IV, Part A.

5. Upon information and belief, ONCT and FGLK's main office is located at 68 Border City Road, Geneva, New York 14456-1099.

JURISDICTION

6. The Board has subject matter jurisdiction over the Complaint under 49 U.S.C. § 11101(a), which requires a rail carrier to provide adequate rail service on reasonable request and under 49 U.S.C. § 11701(b) and 49 U.S.C. § 11704 which authorize Victor Insulators to file this Complaint to remedy ONCT/FGLK's failure to provide adequate rail service to Victor Insulators.

RELATIONSHIP BETWEEN ONCT AND FGLK

7. FGLK is a Class III rail carrier that operates 167 miles of track in Ontario, Seneca, Cayuga, Onondaga, Yates, and Schuyler Counties in New York State (the "FGLK Rail Line").

8. ONCT is the designated operator of a rail line between Shortsville, New York and Victor, New York (the "Victor Rail Line") owned by Ontario County, New York (the "County") (the "FGLK Rail Line" and the "Victor Rail Line", collectively the "Rail Line").

9. FGLK controls and manages the operations of ONCT. Upon information and belief, the operations of FGLK and ONCT are so intertwined that they are operationally one and the same with respect to operations over the Victor Rail Line. For example:

- a. FGLK and ONCT share a common office, representatives, and a Chief Executive Officer.
- b. FGLK holds itself out to the public as the operator of the Victor Rail Line. For example, the New York State Department of Transportation map titled “Railroads in New York State – 2013” available on FGLK’s website illustrates FGLK as the operator of the Victor Line and makes no reference to ONCT operating within the State of New York.
- c. Upon information and belief, ONCT does not operate a website advertising its freight services, and FGLK’s website makes no distinction between the operations of FGLK and ONCT (and simultaneously indicates that FGLK operates the Victor Rail Line). Thus, customers seeking freight services from ONCT presumably must communicate through FGLK as no contact information for ONCT freight services is included.
- d. Victor Insulators has received emails from representatives of FGLK regarding its service and repair estimates. In addition, Ira Knickerbocker (CEO of Victor Insulators) has had numerous discussions with FGLK/ONCT representatives regarding rail service to Victor Insulators’ facility and through these conversations, there are regularly no clear distinctions between the two entities.

- e. Various public records surrounding redevelopment plans within the Town and Village of Victor include references to discussions with FGLK – rather than ONCT – regarding rail operations over the Victor Line.

10. Because FGLK controls ONCT and has routinely held itself out to the public as the operator of the Victor Rail Line, available to perform common carrier rail service to the public on the line for compensation upon reasonable request, FGLK has voluntarily assumed a common carrier obligation to customers on the Victor Rail Line.

11. Even if FGLK was not the designated operator over the Victor Rail Line, for all intents and purposes, FGLK was the operator of the Victor Rail Line and should be held to owe a common carrier obligation to Victor Insulators.

12. Upon information and belief, FGLK never obtained a modified certificate, and thus, FGLK is not exempt from the requirements of 49 U.S.C. § 10901 and § 10903.

13. By holding itself out as operator, FGLK has given the public reason to believe the traditional abandonment processes would apply if service were to be abandoned over the Victor Rail Line.

BACKGROUND

14. The Victor Rail Line includes a spur that runs from the main rail line along Adams Street in Victor, New York through Victor Insulators' property (the "Spur") and directly services the company's manufacturing facility located at 280 Maple Avenue, Victor, New York (the "Facility").

15. Victor Insulators is the last United States-owned (and one of the last two United States-based) wet-process porcelain electric insulator manufacturer and produces the widest product line of any North American insulator manufacturer. Porcelain insulators are made from certain types of clay that provide a nonconductive bridge between electric components to facilitate constant electric flow and reduce electric loss. They are often used to support utility poles and are a key element of the electric power and transmission infrastructure.

16. The insulators manufactured by Victor Insulators are a critical component to insulating high voltage electrical power (the electrical grid) throughout the United States. Victor Insulators provides essential products to utilities, public transit companies, the United States military, and other equipment manufacturers across the United States. Many of its customers rely on it as their only domestic source for their unique insulator needs.

17. Victor Insulators depends on the Victor Rail Line (and rail service in general) for its business, and continued rail service is integral to its continued operations. In particular, it relies on rail service to deliver key ingredients for its manufacture of high voltage porcelain insulators. These materials (STCC No. 3295232) are transported directly from the supplier mine to the Facility using two bulk hopper cars leased by Victor Insulators, each dedicated to transport a specific dry clay material. The Facility has dedicated silos for each specific material as well. Any cross contamination between ingredients would change the properties of the electric porcelains, which would lead to catastrophic losses in manufacturing and threaten the quality of products being made.

18. Victor Insulators' demands for porcelain insulators have greatly increased over the past couple of years and reinstated and continued rail service is necessary to meet these demands. If

the rail lines currently serving Victor Insulators are discontinued or abandoned, there are no possible alternative lines that could provide service. The absence of available rail service would undoubtedly present an economic hardship and impede future business opportunities for Victor Insulators.

19. Not only does continued rail service benefit Victor Insulators, but the community also benefits from continued rail service in Victor, New York. Victor Insulators was founded in 1893 in Victor, New York and has been doing business there ever since. Victor Insulators currently employs over 70 people, nearly all of whom are area residents, and would have the capacity to employ nearly triple that number if employees were currently available for hire. Indeed, Victor Insulators intends to continue hiring employees and expects to return to its previous level of having approximately 150 to 180 employees.

20. On or about November 4, 2021, representatives of FGLK/ONCT informed Victor Insulators that the Victor Rail Line servicing the Facility required repairs and that there would no longer be rail service until the necessary repairs were made.

21. In November 2021, Bruce Habberfield of FGLK told Ira Knickerbocker, CEO of Victor Insulators that the Victor Rail Line remained operational at that time, and the only area requiring immediate repair was the Spur.

22. ONCT/FGLK estimates the cost of repairs to be approximately \$72,000. This cost appears to be grossly exaggerated, as Victor Insulators received an informal estimate that the cost of repairs would be closer to \$20,000 to \$30,000.

23. Regardless of the cost of repair, a common carrier cannot lawfully refuse to make repairs or restore service simply because it would be unprofitable to do so.

24. To date, ONCT/FGLK has not made any repairs or efforts to reinstall rail service to Victor Insulators' Facility. Furthermore, Victor Insulators is unaware of any concrete plans by ONCT/FGLK or any other party to make the necessary repairs to resume service to the Facility.

25. To the contrary, representatives from ONCT/FGLK indicated via discussions with Victor Insulators that there is no intention to make the necessary repairs and that rail service has been discontinued permanently.

26. Indeed, on February 9, 2023, nearly six weeks after Victor Insulators filed its original Complaint against FGLK, ONCT filed a "Notice of Intent to Partially Terminate (Abandon) Service" (the "Notice of Intent").

27. The filing of the Notice of Intent does not relieve ONCT/FGLK of its obligation to provide service upon reasonable request prior to the effective date of its Notice of Intent to terminate service (i.e., April 9, 2023).

28. Since November 2021, ONCT/FGLK has failed to offer continuous rail service to the Facility, stopping service of the Rail Line in Seneca Falls, New York, approximately 30 miles from the Facility.

29. Instead, ONCT/FGLK has been transloading the materials via truck to the Facility from Seneca Falls, New York since November 2021, thereby preventing direct rail service shipment to the Facility.

30. This alternative transloading service is not feasible for a multitude of reasons:

a. First, the transloading process (moving the raw materials from the designated rail cars to separate trucks for delivery by road) raises a significant likelihood of cross-contamination of the raw materials. Unlike the leased rail cars, the trucks used for transport from Seneca Falls to the Facility are not specifically designated for Victor Insulators' sole use. Given the delicate nature of its end use, the powdered ceramic materials have no tolerance for contamination.

b. Second, ONCT/FGLK has indicated that it will only provide the transloading service for so long as Victor Insulators remains under its current ownership. Moreover, ONCT/FGLK has provided no formal guarantee that it would accommodate unlimited transfers in the event of increased supply and demand as opposed to quantities consistent with shipments made over the past few years.

c. Third, the cost of shipping via truck is exponentially more expensive than shipment via rail and would put Victor Insulators at a significant economic disadvantage to its competitors. This process also increases costs by requiring significantly more time and labor to fully unload and transfer the materials from the trucks to the silos than from a rail car. Based on Victor Insulators' experience, it takes about three to four hours to fully unload and transfer 80 or more tons from a rail car to its silos. On the other hand, the transloading process has taken at least four hours to unload each 20 ton truckload to date. Thus, the transloading process further increases costs to Victor Insulators because it requires significantly more time for employees during the unloading process compared to shipments arriving by rail.

d. Finally, the transloading method increases delivery time, creating considerable shipment delays. The shipment delays impact the clay-making process and a loss of a week or more of clay-making has a severe negative impact on the entire production process.

31. The transloading method has already resulted in and will continue to create serious problems and significant delivery delays to the Facility.

- a. For example, ONCT/FGLK's attempt to transload materials in December 2021 resulted in a delay of several weeks and loss of material. Had the shipment continued directly via rail to Victor Insulators, this shipment would have arrived by mid-late December. However, it was not until January 26, 2022, that the final truckload of material expected for delivery in December had arrived to Victor Insulators. Product was also lost during the transfer of materials from rail car to truck and upon arrival to Victor Insulators, including materials blowing off the top of the trucks.
- b. Similar problems occurred in May and June of 2022 when a rail car for shipment to Victor Insulators arrived in Seneca Falls and from there, the materials were transloaded and delivered by truck to Victor Insulators. Not only did the transloading process take weeks to accomplish, it also resulted in substantial spillage and loss of product. A team of Victor Insulators employees had to spend several hours (specifically, four employees for two hours resulting in eight total hours) to clean up the lost product from this event, which could no longer be used due to contamination from being exposed to the ground.

32. Victor Insulators has repeatedly objected to ONCT/FGLK's alternative transloading method and has requested resumption of rail service to its Facility.

33. ONCT/FGLK failed to issue an embargo when it stopped service, and, upon information and belief, to date has not issued an embargo setting forth any type of schedule for restoring rail service on the Victor Rail Line.

34. As of the date the Original Complaint was filed, ONCT/FGLK had not formally commenced any proceeding or issued any formal notice of its intent to discontinue service as required under Board regulations. It was not until February 9, 2023, the day that ONCT/FGLK responded to Victor Insulators' Complaint that ONCT issued its Notice of Intent to terminate service within 60 days (as noted in Paragraph 26 above).

35. ONCT/FGLK's actions, therefore, effectively and permanently discontinued service to the Facility without following the necessary procedures.

36. Concerns surrounding a potential abandonment of the Victor Rail Line are heightened because the Town of Victor is currently in the process of reviewing and adopting redevelopment plans that contemplate the removal of a portion of the Victor Rail Line (including that portion necessary to provide service to the Facility) to build a road in the current railbed (the "Victor Road Plan"), thereby, permanently eliminating any possibility for future rail service to the Facility via the Victor Rail Line.

37. A report associated with the Victor Road Plan (i.e., the Victor Connectivity and Access Plan, prepared by LaBella Associates for Genesee Transportation Council, Town of Victor, and Village of Victor, dated September 2022) states that: "Negotiations to remove the railroad tracks

and reuse the materials elsewhere in the Finger Lakes Railway system are underway, and it is expected that the rail line will be completely removed within the project area.”

38. Victor Insulators explored informal avenues for resolving the ongoing lack of rail service to its Facility. However, ONCT/FGLK has repeatedly refused to restore rail service. In fact, ONCT/FGLK has indicated that it intends to remove the tracks along the Victor Rail Line, thereby eliminating any future possibility of rail service to Victor Insulators’ Facility.

39. As a result of the foregoing, the only avenue for Victor Insulators to restore and receive rail service on the Victor Rail Line is to take formal action with the Board.

**COUNT 1: FAILURE TO PROVIDE TRANSPORTATION OR SERVICE ON REASONABLE
REQUEST**

40. Victor Insulators realleges the assertions in Paragraphs 1-39 of this Complaint.

41. Pursuant to 49 U.S.C. § 11101(a), a rail carrier is required to provide transportation or service on reasonable request to Victor Insulators.

42. As described herein, the actions by ONCT/FGLK have completely eliminated Victor Insulators’ ability to obtain rail service along the Victor Rail Line.

43. On the contrary, ONCT/FGLK has expressed its intent to cease all operation along the Victor Rail Line and has effectively already done so under the guise of unsafe track conditions.

44. The alternative transloading delivery proposed by ONCT/FGLK has proven to be ineffective and has resulted in significant delivery delays to the Facility.

45. ONCT/FGLK's actions have resulted in, and will continue to result in, substantial adverse effects on Victor Insulators.

46. Discussions with ONCT/FGLK have been unsuccessful in persuading ONCT/FGLK to provide rail service by repairing the Spur and restoring service to the Facility.

47. The actions by ONCT/FGLK and its ongoing refusal to make the necessary repairs or restore rail service to Victor Insulators' Facility constitutes a violation of its common carrier obligation.

48. Pursuant to 49 U.S.C. § 11101(a), the Board should order ONCT/FGLK to make necessary repairs and to restore service to provide common carrier service on the Rail Line to Victor Insulators' Facility.

COUNT 2 - FAILURE TO PROVIDE CONTINUOUS CARRIAGE

49. Victor Insulators realleges the assertions in Paragraphs 1-48 of this Complaint.

50. Pursuant to 49 U.S.C. § 10744, a rail carrier providing transportation subject to the jurisdiction of the Board may not enter into an arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination when the stoppage is not made in good faith for a necessary purpose and with the intent of avoiding the continuous carriage.

51. As mentioned above, ONCT/FGLK has arranged for transloading services so that Victor Insulators' rail shipments cease in Seneca Falls, New York and the materials are thereafter transferred and transported the remaining approximately 30 miles to the Facility via truck.

52. ONCT/FGLK has repeatedly indicated that it has no intention of making repairs to restore rail service to Victor Insulators.

53. This intent is further demonstrated by the fact that reports associated with the Victor Road Plan reference negotiations to remove the rails and reuse the materials elsewhere.

54. Thus, ONCT/FGLK has entered into an arrangement preventing continuous carriage of freight from the place of shipment to the place of destination.

55. Given that there have been no efforts to restore service to the Facility coupled with the continued representations by ONCT/FGLK that rail service will not resume and failing to issue a Notice of Intent to discontinue service until it was forced to do so upon responding to the Original Complaint, the stoppage of continuous carriage in Seneca Falls, New York has not been made in good faith, is not for a necessary purpose, and has been made with the intent of avoiding continuous carriage.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should find that:

- 1) ONCT/FGLK has violated, and is continuing to violate, 49 U.S.C. § 11101(a) by failing to provide transportation or service upon reasonable request;
- 2) ONCT/FGLK has violated, and is continuing to violate, 49 U.S.C. § 10744 by entering into an arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination when the stoppage is not made in good faith for a necessary purpose and with the intent of avoiding continuous carriage; and

- 3) ONCT/FGLK has refused, and continues to refuse, to make necessary repairs and to restore service to the Facility.

BASED ON THE FOREGOING FINDINGS, the Board is respectfully requested to order ONCT/FGLK to cease and desist from such violations, require ONCT/FGLK to promptly restore service to the Facility, and award damages to Victor Insulators in such amounts to be determined in proceedings on this Complaint, including, but not limited to, lost profits and costs incurred but for ONCT/FGLK's violations of law.

Respectfully submitted,

VICTOR INSULATORS, INC.
280 Maple Avenue
Victor, New York 14564

Complainant


HARTER SECREST & EMERY LLP
Allison E. Bartlett, Esq.
1600 Bausch & Lomb Place
Rochester, NY 14604
(585)232-6500
abartlett@hselaw.com

Attorneys for Complainant

Date Filed: March 24, 2023

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1111.4, I hereby certify that on March 24, 2023, a copy of this Amended Complaint was served by UPS overnight mail for delivery on March 27, 2023, on:

*Counsel for Finger Lakes Railway Corp.
and Ontario Central Railroad Corp.*

Justin J. Marks

CLARK HILL PLC

1001 Pennsylvania Ave. N.W.

Suite 1300 South

Washington, DC 20004

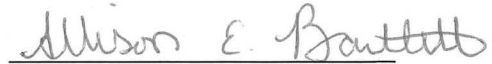
jmarks@clarkhill.com

I also certify that the front of the overnight express courier envelope includes the legend
“Service of STB Complaint.”

In addition, I hereby certify that I have this 24th day of March 2023, caused copies of the foregoing Amended Complaint of Victor Insulators, Inc to be served on the persons listed below by email as indicated:

Eric M. Hocky
CLARK HILL PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
ehocky@clarkhill.com

George Heltz
6966 Morgan Circle
Victor, NY 14564
heltzgeorge@gmail.com



Allison E. Bartlett
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, NY 14604
(585) 231-1302
abartlett@hselaw.com