

204795

BEFORE THE
SURFACE TRANSPORTATION BOARD



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Office of the Secretary

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Public Record

STB DOCKET NO. 42052

UNION PACIFIC RAILROAD COMPANY
- PETITION FOR DECLARATORY ORDER -
UNILATERALLY IMPOSED INTERCHANGE CHARGES

NOTICE OF INTENT TO PARTICIPATE
OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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*The National Industrial
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Dated: January 28, 2002

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COMES NOW, the National Industrial Transportation League ("NITL"), pursuant to the decision of the Surface Transportation Board ("STB" or "Board") in STB Docket No. 42052, *Union Pacific Railroad Company—Petition for Declaratory Order—Unilaterally Imposed Interchange Charges* (Served January 14, 2002), and submits the instant Notice of Intent to Participate. In support of this Notice, NITL states as follows:

**I. NAME, ADDRESS, OFFICIAL TITLE, AND OPERATIONAL
EXPERIENCE OF NITL's INDIVIDUAL PARTICIPANT.**

- A. Name:** Edward Rastatter
- B. Address:** The National Industrial Transportation League
1700 North Moore Street
Suite 1900
Arlington, VA 22209-1904
- C. Official Title:** Director of Policy

Mr. Rastatter may attend the meeting with an NITL member with operational experience.

II. IDENTITY OF NITL

NITL is the oldest and largest nationwide organization representing shippers of all sizes and commodities. NITL has over 600 separate company members, ranging from small shippers to some of the largest shippers in the country. NITL's members conduct industrial and/or commercial enterprises throughout the United States and internationally and use all modes of transportation to move commodities in interstate, intrastate, and international commerce. NITL members ship substantial volumes of commodities by rail and regularly employ rail carriers. Accordingly, NITL's membership will be directly affected by the resolution of the issues raised in this proceeding, which concern delays in the interchange of rail cars between railroads and traffic delays associated with interchanges.

III. SUMMARY OF NITL's POSITION AND PRELIMINARY RECOMMENDATIONS

In its Reply Comments, NITL urged the Board to reject the relief requested by UP in its Petition for Declaratory Order. First, NITL contested the legal basis for UP's petition, arguing that 49 U.S.C.A. § 11121 authorizes one carrier to impose charges upon another for interchange operations, as long as those charges are "reasonable." NITL also pointed out that all rail carriers have a legal obligation to provide interchange service under 49 U.S.C.A. § 10742. Second, NITL argued that as a policy matter the charges at issue fostered prompt interchange of rail cars and efficiency in the rail network. NITL asserted that comments filed by several respondents demonstrated that interchange delay charges are an effective incentive for creating and maintaining efficient interchange operations.¹ NITL reiterates these arguments, here.

In decisions served on December 10, 2001 and January 14, 2002, the Board asked interested parties to examine operational solutions to the instant controversy within the

¹ Specifically, NITL cited comments by IHB, Wisconsin Central, and ASLRRRA. NITL also endorses the comments of Ispat Inland, Inc.

framework of the Car Service and Car hire Agreement ("CS/CH Agreement") and Code of Car Service Rules/Code of Car Hire Rules ("CS/CH Rules") and under the auspices of the Association of American Railroads ("AAR"). NITL commends the Board's effort to foster a private-sector solution to this controversy. Without prejudice to its position on the legal issues, NITL believes that the Board's focus on operational aspects of car interchange may help to resolve this dispute.

WHEREFORE, the National Industrial Transportation League provides notice of its intent to participate fully in any meetings conducted in furtherance of this proceeding.

Respectfully submitted,

The National Industrial Transportation League

By its attorneys,

A handwritten signature in dark ink, appearing to read "Nicholas J. DiMichael", is written over the printed name.

Nicholas J. DiMichael

Frederic L. Wood

Michael H. Higgins

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January 28, 2002

CERTIFICATE OF SERVICE

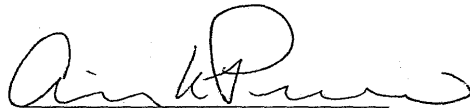
I hereby certify that I have served on this 28th day of January, 2002, two copies of the foregoing Notice of Intent to Participate of the National Industrial Transportation League by first-class mail on each of the parties listed below:

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001

ATTN: STB Docket No. 42052

Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001

ATTN: STB Docket No. 42052


Aimee DePew