

212488

LAW OFFICE OF JOHN R. BAGILEO
GEORGETOWN PLACE
SUITE 300
1101 30TH STREET, N.W.
WASHINGTON, D.C. 20007

JOHN R. BAGILEO
DIRECT: (202) 298-4760

TELEPHONE: (202) 944-3734
FACSIMILE: (202) 944-8611
E-MAIL: jrb@bagileo.com

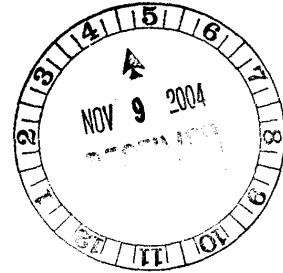
November 9, 2004

Vernon A. Williams
Secretary
Surface Transportation Board
The Mercury Building
1925 K Street, NW #700
Washington, DC 20423

ENTERED
Office of Proceedings

NOV 10 2004

Part of
Public Record



Re: Section 5a Application No. 46 (Sub-No. 20)
Southern Motor Carriers Rate Conference, Inc.

Dear Secretary Williams:

Enclosed please find the original and ten copies of Southern Motor Carriers Rate Conference, Inc.'s (SMC) response to National Industrial Transportation League's (NITL) Letter Memorandum submitted to the Surface Transportation Board on November 3, 2004.

A copy of this Response has been served on all parties of record, and because the NITL's filing indicates direct service on the Board's Members, copies have been mailed to the Members.

Respectfully submitted,

John R. Bagileo
Counsel for Southern Motor Carriers
Rate Conference, Inc.

Enclosures

212 488
ORIGINAL

LAW OFFICE OF JOHN R. BAGILEO
GEORGETOWN PLACE
SUITE 300
1101 30TH STREET, N.W.
WASHINGTON, D.C. 20007

JOHN R. BAGILEO
DIRECT: (202) 298-4760

TELEPHONE: (202) 944-3734
FACSIMILE: (202) 944-8611
E-MAIL: jrb@bagileolaw.com

November 9, 2004

VIA MESSENGER

Honorable Roger Nober
Chairman
Surface Transportation Board
1925 K Street, NW #810
Washington, DC 20423

ENTERED
Office of Proceedings

NOV 10 2004

Part of
Public Record



Re: Section 5a Application No. 46 (Sub-No. 20)
Southern Motor Carriers Rate Conference, Inc.

Dear Chairman Nober:

On Friday, November 5, I received a copy of a letter memorandum from the National Industrial Traffic League, Inc. (NITL) which apparently had been submitted to the Surface Transportation Board by messenger on November 3, 2004. The memorandum purportedly responds to a comment made during oral argument that "the statute does not impose the burden of proof upon the Southern Motor Carriers Rate Conference, Inc. ("SMC") to show that nationwide collective ratemaking authority is in the public interest." SMC submits that NITL's letter memorandum misstates the Chairman's observation and improperly has been submitted to the Board.

In the Board's Decision served in this proceeding on October 1, 2004, it expressly stated that: "No additional written comments may be filed in connection with the oral argument (other than the written summary noted above), as an extensive written record has already been developed in this proceeding." (Decision, p. 1) Notwithstanding that clear directive, NITL, without seeking authorization from the Board, has elected to file its additional written comments in connection with the oral argument.

Moreover, and most importantly, the comment of the Chairman has been taken out of context in an effort to justify NITL's filing. Chairman Nober, referring to the express and applicable provisions of 49 U.S.C. Section 13703, noted that it is the "burden" of the Board, in order to approve a collective ratemaking agreement, to determine whether the agreement serves the public interest. Given the voluminous record in this proceeding, and the extensive shipper, transportation intermediary and motor

Honorable Roger Nober
November 9, 2004
Page 2

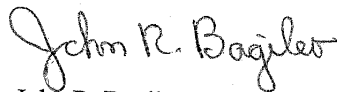
carrier statements in evidence, it cannot seriously be suggested by NITL that any comment during the oral argument relieved SMC of the applicable burden of proof.

The NITL filing then goes on to make additional arguments, not raised previously in its pleadings or addressed during the course of oral argument, which allegedly justify not granting SMC nationwide collective ratemaking authority—a position contrary to the evidence of record submitted by a number of NITL's own members.

Also disturbing is the fact that on the Board's website the NITL filing is being shown as a "Status Report—Minutes." That description is wholly incorrect, and is further indication why NITL's untimely and inappropriate filing should be expunged from the record.

SMC, therefore, requests that the Board remove NITL's unauthorized and inappropriate letter memorandum from the record in this proceeding.

Respectfully submitted,



John R. Bagileo
Counsel for Southern Motor Rate Carriers
Conference, Inc.

Cc: The Honorable Frank P. Mulvey
The Honorable W. Douglas Buttrey
Parties of Record