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DEC 14 2004
RECEIVED

BY HAND

December 14, 2004

Hon. Vernon A. Williams
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

RE: STB Docket No. EX PARTE NO. 230, ^{SUB-NO. 8} IMPROVEMENT OF
TOFC/COFC REGULATION, WTL Rail Corporation
Petition for Partial Revocation of Exemption

ENTERED
Office of Proceedings

STB Docket No. 42090, WTL Rail Corporation
Petition for Declaratory Relief

DEC 16,

Part of
Public Record

Dear Mr. Williams:

On behalf of Petitioner WTL Rail Corporation, I am filing an original and ten copies of:

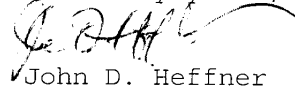
(1) in STB Docket No. 230, Improvement of TOFC/COFC Regulation, a Petition for Partial Revocation of Exemption and

(2) in STB Docket No. 42090, a Petition for Declaratory Relief.

I am also enclosing one check payable to the Board for \$1,200 to cover the applicable filing fees and a computer disk formatted in WordPerfect 8.0 containing these filings.

Please date stamp and return one copy of this filing.

Sincerely yours,


John D. Heffner

cc: Mr. Richard Lombardo

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB Docket NO. 42090

WTL RAIL CORPORATION

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DEC 14 2004

SURFACE
TRANSPORTATION BOARD

PETITION FOR DECLARATORY RELIEF

FILED

DEC 14 2004

SURFACE
TRANSPORTATION BOARD

John D. Heffner
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1920 N Street, NW
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Counsel for WTL Rail Corporation

Dated: December 14, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

▲
DEC 14 2004
RECEIVED

STB Docket NO. 42090

WTL RAIL CORPORATION

PETITION FOR DECLARATORY RELIEF

INTRODUCTION

Pursuant to 5 U.S.C. 554(e) and 49 U.S.C. 721, Petitioner WTL Rail Corporation (hereafter "WTL"), seeks a declaratory ruling from the Board that (1) certain practices of CSX Transportation, Inc. ("CSX") constitute an unreasonable practice in violation of 49 U.S.C. 10702 and 10704(a)(1); (2) CSX's refusal to utilize WTL's trailers as part of its 48' trailer fleet jeopardizes CSX's ability to fulfill its car service obligations under 49 U.S.C. 11121-2; (3) the Board order CSX to cease and desist from further violations of the statute; and (4) the Board issue an order compelling CSX to utilize WTL's trailers and set a "default" rate for trailer compensation in the event the parties are unable to reach terms through negotiations.

Contemporaneously with the filing of this Petition, WTL also petitions for partial revocation of the exemption from regulation from the provisions of Subtitle IV of Title 49 of the U.S. Code, originally granted on February 19, 1981, in Ex Parte No. 230 (Sub-No. 5), Improvement of TOFC/COFC Regulation, 364 I.C.C. 731 (hereafter cited as TOFC). In support of this Petition, WTL

submits the verified statements of its President, Richard Lombardo, and its expert witness, John Robinson, as well as several supporting letters and statements appended to Mr. Lombardo's testimony.

STATEMENT OF FACTS

WTL is a small, closely-held Delaware corporation with offices in the Chicago suburb of Palos Heights, IL. It is in the business of renting truck trailers to railroads to facilitate the movement of truck-oriented freight by rail, a type of intermodal transportation known as trailer-on-flat-car ("TOFC") service. WTL presently owns or leases a fleet of over 1,500 48' TOFC trailers¹ which it furnishes to railroads for use in common carrier service under a type of agreement known as a "Trailer Use Agreement." WTL has a Trailer Use Agreement with each of the major railroads serving the country. To the extent that WTL's Trailer Use Agreement does not address specific operating issues with WTL's contracting railroads, it incorporates provisions from the Code of Trailer and Container Service and Reporting Rules and the Intermodal Interchange Rules of the Association of American Railroads ("AAR").² Lombardo VS at 1-2.

In his verified statement, Mr. Lombardo describes the long

1 The AAR Rules provide for two types of railroad trailers, "railroad controlled trailers" such as those operated by WTL and "private trailers" such as those operated by motor carriers and express companies. Lombardo VS at 2-3.

2 Collectively called "the AAR Rules."

standing relationship which WTL and CSX have had whereby WTL provides trailers for use by CSX pursuant to the WTL/CSX Use Agreement ("the Use Agreement").³ The Use Agreement and the AAR Rules spell out the responsibilities of the parties including CSX's obligation to repair at its expense and/or reimburse WTL for damage to its trailers sustained while in CSX's control. Mr. Lombardo explains that all trailers routinely sustain damage from negligence and vandalism for which the using carrier -- here CSX -- would normally be responsible under both the Use Agreement and the AAR's Rules. Lombardo VS 1-4, 6.

But starting 4 years ago, Mr. Lombardo notes, CSX began to deny any responsibility for certain damages and, beginning in 2003, it began denying all damages. Lombardo VS at 6-7. Significantly, CSX directed its vendors not to perform any running repairs on any of WTL's trailers for which CSX was the handling carrier. Lombardo VS at 7-8. Its actions put WTL's trailers at a competitive disadvantage with trailers furnished by other providers resulting in a loss of rental income to WTL. Mr. Lombardo also relates how CSX has refused to accept WTL's trailers unless new and AAR certified while accepting non-certified trailers from private owners. Lombardo VS at 9. Finally, he describes how CSX threatened to cancel the Use Agreement in retaliation for WTL's enforcement of its rights.

³ That document is identified as the "CSX/WTL Interchange Agreement" and is attached as Exhibit A hereto.

Lombardo VS at 9-10. The unique circumstances of this case are only the "tip of the iceberg" involving abusive, discriminatory and anticompetitive practices detrimental to the national transportation policy requiring a finding to that effect here by the Board.

WTL seeks a declaratory ruling that CSX's cancellation of its Use Agreement with WTL, whether actual or threatened, constitutes an unreasonable practice in violation of 49 U.S.C. 10702 and 10704(a)(1) and that the Board order CSX to cease and desist from further violations of the statute. Additionally, WTL seeks a ruling that CSX's directive to vendors not to perform running repairs on WTL's trailers is an unreasonable practice under sections 10702 and 10704(a)(1). WTL asks the Board to find that CSX's refusal to utilize WTL's trailers as part of its 48' trailer fleet jeopardizes CSX's ability to fulfill its car service obligations under 49 U.S.C. 11121-2. Finally, WTL requests that the Board compel CSX to utilize WTL's trailers to meet its car service obligations and set a "default" rate for compensation for railroad controlled trailers in the event the parties are unable to reach terms through negotiations.

QUESTIONS PRESENTED

This proceeding presents the following questions of first impression involving TOFC transportation:

- 1) Does CSX's threat to cancel its Trailer Use Agreement

with WTL in retaliation for WTL's exercise of its contract rights constitute an unreasonable practice in violation of 49 U.S.C. 10702 and 10704(a)(1)?

- 2) Does CSX's directive to its vendors not to perform running repairs on WTL's trailers for which CSX is the handling carrier constitute an unreasonable practice in violation of 49 U.S.C. 10702 and 10704(a)(1)?
- 3) Does CSX's refusal to utilize WTL's equipment jeopardize its ability to fulfill its car service obligations under 49 U.S.C. 11121-22?
- 4) If the Board concludes that CSX's practices constitute unreasonable practices under the I.C.C. Termination Act ("ICCTA"), does the Board have the power to order CSX to cease and desist from further violations of the statute, and to set a "default" rate for trailer compensation in the event the parties are unable to reach terms through negotiations?

DISCUSSION

1. Does CSX's threat to cancel its Use Agreement with WTL in retaliation for WTL's exercise of its rights constitute an unreasonable practice in violation of 49 U.S.C. 10702 and 10704(a)(1)?

WTL believes that CSX's actions here including its threatened cancellation of the Use Agreement presents a case of first impression requiring Board action. CSX's cancellation

threat is an unreasonable practice which the Board has the power to prevent.

Section 10702 states:

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable-

- (1)
- (2) rules and practices on matters related to that transportation or service.

Section 10704(a)(1) adds as relevant:

When the Board, after a full hearing, decides ... that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation.

The statute (and presumably the cases) do not specifically define the term "unreasonable practice." Rather, the Board's predecessor, the Interstate Commerce Commission ("the ICC"), has said that it must review a carrier's actions according to the congressional directions embodied in the various relevant provisions of the Act to see whether they constitute "unreasonable practices." See, Shippers Committee v. Ann Arbor Railroad Co., 5 I.C.C.2d 856, 863 (1989) (hereafter SCOT-5). While WTL's research has not identified any case holding that cancellation of any form of trailer use agreement is a statutory violation, SCOT-5 suggests that it might be an abuse of market

power under certain circumstances.⁵

CSX's actions here constitute an egregious violation of the country's rail transportation policy as articulated in 49 U.S.C. 10101. As relevant, those policies include:

2. to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail, sec. 10101(1);
3. to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense, sec. 10101(4); and
4. to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes, 10101(5);

To the extent that CSX uses its stranglehold to deny WTL and small shippers who depend upon the trailers it supplies access to the national rail system through CSX, CSX's actions violate one or more of the above-cited rail transportation policy goals. WTL attaches to the verified statement of its President Richard Lombardi letters and/or statements from four parties stating that

4 No footnote exists

5 There the ICC held that the railroad's refusal to enter into OT-5 agreements was "not a per se abuse of market power" but it, nevertheless, ordered the railroads to enter into agreements to assure shippers of car availability when carrier cars would be unavailable. Id. at 870.

CSX's policies have curtailed their competitive alternatives. The 48' trailer supply available to small shippers has been cut by half during the past ten years and is in danger of disappearing completely in the next few years as no new units are being placed in service. These customers are unable to utilize containers or trailers being moved by rail for larger trucking companies such as J.B. Hunt or Schneider Transport. Changes in the trucking industry due to driver shortages, hours of service rules, and higher fuel prices have made motor carrier service impractical or unavailable for certain small shippers. Lombardo VS at 4-5, 11, and the shipper letters attached to his testimony.

As WTL notes in the accompanying Petition for Revocation, there are almost no reported regulatory cases involving intermodal transportation or TOFC equipment. In fact, the only agency precedent on point is No. 40774, American Rail Heritage, Ltd. D/B/A Crab Orchard & Egyptian Railroad, et al (slip op., served June 16, 1995, hereafter cited as Crab Orchard) (where the ICC stated that TOFC service was exempted from all [emphasis supplied] provisions of the Interstate Commerce Act). That case involved CSX's cancellation of its Use Agreements with the complaining railroads and its refusal to either accept loaded TOFC trailers and/or pay compensation for their use. The ICC (Commissioner McDonald dissenting) never addressed the issue of whether CSX's cancellation of the trailer interchange agreements

violated the statute as an unreasonable practice under the present sections 10702 and 10704(a)(1) as well as the interchange and car service provisions of sections 10742 and 11121 because it found that the Complainants had failed to meet the statutory standards for revocation of the TOFC exemption. However, the majority's statement -

In reaching this conclusion [not to grant complainant's request for relief], we do not want class I carriers to interpret what we do here today as a license to begin making imprudent unilateral decisions regarding the interchange of equipment with class III carriers. The Commission has an affirmative duty to help keep the playing field level between class I and class III carriers, and we will take action, when appropriate, to fulfill that obligation. Indeed, it may be that someone, in the future, will demonstrate that TOFC/COFC Exemption should be revoked in part, so that we can regulate the interchange of intermodal equipment -

suggests that there are circumstances when the Board might view the cancellation of an agreement for interchange (or a use agreement) of a trailer as a violation of one of more provisions of the ICCTA. Id. at 5.

While WTL agrees with Commissioner McDonald's conclusion that CSX's behavior in the Crab Orchard presented a clear case of market abuse as relates to mandatory interchange, this petition presents an even stronger example. In 1995, CSX was one of three major eastern railroads and one of about ten major class I railroads. Today CSX is one of two major eastern railroads and one of only seven major national railroads. The refusal of one

carrier to accept a trailer today has the practical effect of allowing a gatekeeper to deny a trailer access to the entire national rail network because other carriers that might have handled the trailer in 1995 no longer do so today.

Moreover, for the reasons which Mr. Lombardo relates in his statement, motor carriers today will not handle WTL's trailers because they regard the 45' and 48' units as commercially obsolete for any dependable alternative over-the-road leasing service and, therefore, motor carrier do not want to handle them. And as Mr. Lombardo notes, it is uneconomic for WTL to employ a trucker to haul its trailers once they reach the end of a cooperative railroad's line. Thus WTL's trailers are captive to a rail system that may not accept them and are also unacceptable to motor carriers that want to handle the longer 53' units that are rejected by some railroads. This factual scenario is exactly the situation which Commissioner McDonald depicted in and described in Crab Orchard as worthy of relief at the ICC. But industry developments between 1995 and the present in terms of the increased monopoly power and gateway access concentrated in a handful of major railroads and the continued shrinkage of the trailer fleet warrant the relief sought in but denied by the ICC majority in Crab Orchard.

2. Does CSX's directive to its employees and contractors refusing to repair WTL's trailers constitute an unreasonable and discriminatory practice in violation of 49 U.S.C. 10702 and 10704(a)(1)?

If the Board concludes that CSX's threatened cancellation of its Use Agreement with WTL is an unreasonable practice, it follows that its directive to employees and contractors denying repairs to WTL's equipment is likewise an unreasonable practice. CSX's refusal to repair equipment as required by the AAR's Rules and its Use Agreement with WTL is the functional equivalent of refusing to handle or accept WTL's trailers.

Based upon past precedent, any action by a railroad which makes equipment unavailable for service for reasons other than safety, mechanical factors, or track storage space is an unreasonable practice in violation of sections 10702, 10704 (a) (2), and 11121 of the ICCTA. SCOT-5 at 864. Here, as Mr. Lombardo relates in his statement, CSX has attempted through various means to deny customers perfectly satisfactory WTL equipment. Mr. Lombardo tells how CSX claimed that WTL's equipment was unsafe for use on CSX despite a contrary opinion from the trailer manufacturer and a safety expert; that CSX would not agree to the accepted industry practice of a joint inspection of the equipment; that CSX directed its contractor not to make repairs and refused to compensate WTL for using noncompliant trailers;⁶ and refusing to handle WTL equipment or compensate WTL for using that equipment unless it was AAR M931 certified knowing full well that the AAR had no process for certifying used

⁶ Equipment that did not meet the AAR's M931 standard.

equipment no matter how good its condition. Lombardo VS at 7-9. The simple fact is that CSX's (or its contractor's) refusal to repair and use WTL's trailers as per the Use Agreement is an unreasonable practice in violation of the ICCTA.

3. **Does CSX's refusal to utilize WTL's equipment jeopardize its ability to fulfill its car service obligations under 49 U.S.C. 11121-22?**

CSX's refusal to utilize WTL-supplied trailers has jeopardized its ability to fulfill its car service obligations under 49 U.S.C. 11121-2, adversely affecting the needs of its shippers. Section 11121-2 requires a rail carrier "to furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service." Section 11121⁷ specifically authorizes the Board "to require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate service if the Board decides that a rail carrier has materially failed to furnish that service." Sections 11121-2 requiring railroads to furnish safe and adequate car service refers to "locomotive, freight car, or other vehicle [emphasis supplied] and the ICCTA's definitions indicate that "car service" includes "other vehicles and special types of equipment used in the transportation of property by a rail carrier." 49 U.S.C. 10101(2).

Indeed, there is no question that the Board has jurisdiction

over trailers generally and WTL's trailers in particular.

"Trailers" are within the ambit of property identified in the I.C.C. Termination Act ("ICCTA") constituting a "railroad."⁸

Trailers fall within the universe of equipment that can be the subject of an equipment recordation at the Board. See, 49 U.S.C. 11301.⁹ The ICC has explicitly stated that "trailer service" is included in the scope of the TOFC deregulation. See discussion in Crab Orchard, supra. (where the ICC ruled that TOFC service was exempted from all [emphasis supplied] provisions of the Interstate Commerce Act).

WTL's Richard Lombardo has testified at length as to how the nation's trailer pool has been shrinking over the years to the point that its future existence is in doubt. Lombardo VS at 5 and 11. Moreover, WTL's supporting shippers have submitted letters stating that they need the trailers furnished by companies like WTL to meet their transportation needs. See shipper letters of San Andreas Fast Forwarding and Broan-Nutone appended to Mr. Lombardo' statement. Absent action by the Board, CSX will soon be unable to meet the demand of its customers for

7 No footnote exists

8 "Railroad" includes "a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad." 49 U.S.C. 10102(6)(A).

9 49 U.S.C. 11301 refers to recordation of various types of leases and encumbrances on "vessels, railroad cars, locomotives, or other rolling stock or accessories used on such vessels, railroad cars, locomotives, or other rolling stockintended for a use related to interstate commerce."

48' trailers in violation of its statutory car (trailer) supply duty.

4. If the Board concludes that CSX's practices constitute unreasonable practices under the ICCTA, does the Board have the power to order CSX to cease and desist from further violations of the statute and set a "default" rate for trailer compensation in the event the parties are unable to reach terms through negotiations?

Should the Board find that CSX's practices violate the ICCTA, there is no question that the agency has the power to stop these practices through issuance of a cease and desist order. SCOT-5, supra at 579 (where the ICC ordered railroads to cease and desist from denying OT-5 approvals except as noted therein) and Buckeye Cellulose Corp. v. L&N R.R. Co., 1 I.C.C.2d 767, 771 (1985) ("upon finding that a practice is unreasonable, we may order the carrier to stop the violation"). Once the Board grants WTL's partial revocation of the TOFC exemption and determines that CSX has violated the statute, the Board has the power and the obligation to take appropriate action. Cf. STB FD No. 33989, Pejepscot Industrial Parks, Inc. d/b/a Grimm Industries-Petition for Declaratory Order at 6-8 (slip op., served May 15, 2003) (where the Board ordered the railroad to provide the shipper with common carrier rates and service during the period before the commodity exemption became effective).

Regarding trailer compensation, as WTL has demonstrated, it lacks the bargaining power of a large class I railroad such as

CSX. Lombardo VS at 5-6; Robinson VS at 2-4. Accordingly, as was done in connection with "box car deregulation," the Board has the power and the responsibility to set a default rate for trailer compensation when the parties are unable to agree on trailer use charges through negotiation. See, Exemption From Regulation-Boxcar Traffic, 367 I.C.C. 424, 426, 454-6 (1983) and discussion in Mr. Robinson's statement.

PROCEDURAL SCHEDULE

Accordingly, WTL requests that the Board act promptly to solicit public comment in connection with its Petition for Declaratory Relief. It proposes the following schedule:

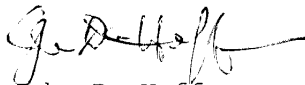
Filing:	Due:
Petition for Declaratory Relief Filed at STB	Day 0
Petitioner's evidence, supplemental argument due supplemental argument due	Day 60
Respondent's reply evidence and argument due	Day 90
Petitioner's rebuttal due	Day 120
Board decision issued	Day 180

CONCLUSION

Wherefor, WTL requests that the Board initiate a Declaratory Relief proceeding under 5 U.S.C. 554(e) and 49 U.S.C. 721, issue a ruling that(1) certain practices of CSX constitute an unreasonable practice in violation of 49 U.S.C. 10702 and

10704(a)(1); (2) CSX's directive to employees and contractors not to make running repairs to WTL's trailers is an unreasonable practice in violation of 49 U.S.C. 10702 and 10704(a)(2); (3) CSX's refusal to utilize WTL's trailers as part of its 48' trailer fleet jeopardizes CSX's ability to fulfill its car service obligations under 49 U.S.C. 11121-2; (4) order CSX to cease and desist from violations of the statute; and (5) prescribe a "default" rate mechanism for railroad controlled trailer compensation in the event the parties are unable to reach terms through negotiations.

Respectively submitted,



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202-263-4180

Counsel for WTL Rail Corporation

Dated: December 14, 2004

EXHIBIT A



ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-07-01 BY 60322

To: R.M. Lombardo
Via Facsimile: (708) 448-9851

From: Dave Ware

Date: October 28, 1997

Subject: CSX / WTL Interchange Agreement

Effective - November 1st, 1997 the following terms and conditions will go into effect for the use of WTL equipment.

Per Diem Relief - Unlimited per diem relief will be granted on all WTL trailers that are idle at all CSXI locations:

Terminations - Unlimited terminations at Chicago. CSX will allow 25 empty WTL trailers to be parked at Chicago. WTL will be responsible for drayage expense if the number of trailers exceed maximum parking. WTL will have 48 hours to remove enough trailers to reduce inventory to agreed level. If the number of trailers do not exceed maximum parking and CSXI desires to terminate trailers to WTL the drayage expense will be CSXI's responsibility. Limited terminations at Atlanta, Jacksonville, Little Ferry, and Philadelphia. WTL will arrange for the termination and removal of a maximum of 25 trailers per month at these locations. In the event that WTL cannot remove equipment from limited termination locations, WTL will offer CSXI per diem relief to move equipment to Chicago.

Maintenance/Repair - AAR Equipment Standards
Repairs will be billed at the standardized between CSXI and WTL.

Per Diem Rate \$11.75 - 48' x 102" x 110"

R.M. Lombardo
R.M. Lombardo, WTL

David Ware
David Ware, CSXI

10-30-97
Date

10/30/97
Date

*** TOTAL PAGE.01 ***

VERIFIED STATEMENT OF RICHARD M. LOMBARDO
PRESIDENT, WTL RAIL CORPORATION

My name is Richard M. Lombardo. I am President of WTL Rail Corporation (“WTL”) and the following is my verified statement of facts supporting WTL’s Petition for Partial Revocation of the TOFC/COFC Exemption and Petition for Declaratory Relief.

I began my railroad career over forty-two years ago in 1963 with the Rock Island Railroad, in Chicago, IL. Over this time I held numerous management positions in Transportation – Fleet Management, Marketing – Equipment Analysis, Intermodal Marketing and Operations, Industrial Development and Car Accounting. During that time and to the present, my primary background has been and still is in the fields of equipment management and car service. In 1992 I started WTL, after leaving my former position as Assistant Vice President – Equipment Management with the Iowa Interstate Railroad.

As WTL’s Petitions for Partial Revocation of Exemption and Declaratory Relief note, WTL is a small, closely held Delaware corporation with offices in the Chicago suburb of Palos Heights. It is a non-railroad entity engaged in the business of renting truck trailers to railroads to fulfill their obligation in supplying the public with trailers for the movement of truck-oriented freight by rail, a type of intermodal transportation known as trailer-on-flat-car service (“TOFC”) service. WTL presently owns or leases a fleet of over 1,500 48’ TOFC trailers¹ that it furnishes to railroads to meet their common carrier trailer service obligation to shippers under a commonly accepted type of agreement

¹ Most of these trailers were previously used by trucking companies in “over-the-road service.”

known as a “Trailer Use Agreement.” WTL has a Trailer Use Agreement with each of the major railroads serving the country.

To better understand the complexities of WTL’s Petitions, it is important to explain certain specific trailer use distinctions. As a general matter, the Association of American Railroads (“AAR”), the railroad industry trade association, maintains a series of rules governing the use and maintenance of different types of railroad equipment. Insofar as intermodal trailers are concerned, the AAR has two sets of relevant industry rules: first, the Code of Trailer and Container Service and Reporting Rules and, second, the Intermodal Interchange Rules (collectively “the AAR RULES”). To the extent that WTL’s Trailer Use Agreement does not address specific operating issues with the railroads with whom WTL contracts, it incorporates provisions from the AAR RULES. A number of the industry’s car service-related rules have been incorporated in various ICC Car Service directives from time to time, and should the current TOFC/COFC exemption be partially revoked, similar action could be initiated by the Board with regard to trailer service issues.

Under the AAR RULES, there are two basic types of trailers in use today. The first type is known as a “rail-owned/controlled” trailer. It includes equipment owned or controlled by railroads or non-railroad equipment providers such as WTL and used by a railroad in common carrier service to meet the trailer needs of individual customers, frequently smaller shippers. The second type is called a “private trailer.” It includes over-the-road trailers owned by trucking companies or express carriers such as United Parcel Service.

These trailers are used to meet the needs of those carriers and their customers, not the needs of the railroad's customers.

The handling of rail-owned/controlled trailers is governed by the AAR RULES. These rules provide for the equal treatment and collective participation in a national non-restricted use, single common public pool (POOL).² WTL satisfied its AAR requirements in 1992 for assignment of reporting marks designating its trailers as rail-controlled for this Classification and exclusive use by railroads. The principal distinction between rail-owned/controlled and private over-the-road trailers for the purpose of these proceedings is two-fold. Under the Trailer Use Agreements and the AAR RULES, railroads are (1) entitled to use a rail owned/controlled trailer in common carrier service as if it is their own or return such trailer via reverse route or to the owner (this is known as "trailer service"); (2) responsible for paying trailer providers such as WTL compensation for the short term use of a trailer (this is known as "trailer hire" or a "trailer use charge"); and (3) responsible for performing running repairs at owner's expense and repairing or reimbursing owner for any damage incurred by a trailer while operating in a railroad's service or under its control (these are known as "owner's "Section G" and handling line responsibility "Section F" repairs"). Conversely, private trailers move under contract carriage, railroads do not pay a private owner for the use of a trailer, are not free to use it to meet their common carrier obligation to furnish equipment to shippers, and are not responsible to the equipment owner for performing owner

²

WTL distinguishes an equipment pool from a pooling of traffic or revenues subject to the approval requirements of 49 U.S.C. 11323.

responsibility repairs. However, railroads are responsible for any damages sustained while operating the trailer over the railroad's lines or under its control.

At the time the former Interstate Commerce Commission (ICC) deregulated TOFC/COFC service in 1981, the trailer POOL totaled³ 117,000 trailers owned by forty-eight participating Class I, II and III railroads and a handful of "rail-controlled" providers similar to WTL. As a result of deregulation, it became necessary for the parties owning or controlling trailers (railroads and non-railroad providers) to negotiate with the trailer users, the railroads, an agreement ["the Trailer Use Agreement" identified previously] for compensation for trailer use, charges for trailer repairs and damages and settlements for trailer casualties

By 1991, the year before I started WTL, the national pool totaled 95,000 trailers, with annual originated trailer loadings of 3 million. At that time twenty railroads owned or controlled 40% of the rail owned /controlled equipment fleet and nine nonrailroad entities owned or controlled the remaining 60%.⁴ Since 1991, Class I railroads have shifted their intermodal equipment focus from owning trailers to investing in fleets of domestic containers and relying primarily on rail-controlled trailer providers to meet their on-line common carrier trailer obligations. Today, the national level of pool trailer ownership is considerably smaller in both size and ownership, for a reported total of only 55,000 pool trailers, contributing to only one half of the 2.7 million annual originated trailer loads estimated for 2004. Only one Class I railroad (the Burlington Northern And Santa Fe

³ Source Official Intermodal Equipment Register, Section D-1, Railroad Trailer/Container Equipment Summary..

⁴ I have included in the rail-controlled percentage, trailers owned by certain Class III railroads which function primarily as trailer providers and not as users (i.e. carriers).

Railway Company) reports ownership of trailers (5,000 trailers). Two major rail-controlled providers, XTRA and TIP, report 73% or 44,000 of the pool trailers, and WTL and two Class III railroad providers (the Kankakee, Beaverville & Southern Railroad and the Vermont Railway) collectively report 6,000 trailers.⁶ Given the current age and lifespan of many rail-owned/controlled trailers and the fact that no new 53' units are being placed in service, the trailer pool utilized by small shippers is in danger of shrinking in the next few years to the point where railroads will no longer be able to provide sufficient trailers to meet normal existing demand. Additionally, railroads are rapidly discontinuing or totally eliminating established trailer routes. Because of such practices, trailer oriented shippers are being forced to forego the use of these trailers and will, in turn, be forced to pay a premium for other slower and or more expensive transportation alternatives (i.e. private trucking companies). Such a result would be contrary to the national transportation policy from the twin perspectives of energy conservation and adverse environmental impacts.

In 1994 the ICC implemented its Deprescription decision establishing a market-oriented system for setting car hire compensation for railcars. Like TOFC/COFC deregulation, that system also relies on negotiations between owners and users to set car hire rates. However, Deprescription "as a fall back", establishes default rates that include as a minimum a mechanism for protecting a portion of each carrier's equipment investment in the absence of an agreement. Because both equipment owners and railroads are involved

⁵ The Official Intermodal Equipment Register "Section D-1 "Railroad Trailer/Container Equipment Summary.

on both sides of the car hire transaction, this reciprocity includes other considerations and guarantees a level playing field in the sharing of each other's equipment. By comparison, the ICC's decision deregulating TOFC/COFC service did not establish any sort of default compensation system for trailers. It relied exclusively on negotiations to set compensation and other terms of use for trailers and presumed at the time that the parties would have equal bargaining power. But it is this lack of equal bargaining power that has put WTL at a disadvantage in dealing with a large carrier like CSX and has led to the initiation of this proceeding.

The facts leading to the present dispute are as follows. In November 1993, CSX and WTL began their business relationship by executing a letter agreement ("the 1993 Use Agreement") captioned "Trailer Use and Repair Charges." The letter specifically referenced the AAR RULES and indicated by reference to the initials "WTLZ" that WTL would be furnishing rail-controlled trailers. The parties amended that agreement by subsequent letter agreements. On September 3, 1997, CSX provided WTL with a notice of termination of the 1993 Use Agreement and the parties then entered into a revised letter agreement dated October 20, 1997, effective November 1, 1997. The terms of that agreement indicated that CSX continued to accept the status of WTL equipment as "rail-controlled" subject to the AAR RULES. That Use Agreement is still in force today.

Trailers routinely sustain damage while operating over a railroad in TOFC service. These damages may be due to poor handling, negligence by the railroad, vandalism, or other causes. Historically, and in accordance with the applicable Use Agreement and the AAR

RULES, railroads including CSX reimburse WTL for damages, which WTL's trailers sustain while operating over their property or under their control.

Commencing in the year 2000, CSX advised WTL it would not reimburse WTL for certain AAR Section F damages to its equipment because the equipment did not meet AAR trailer manufacturing standards known as the "M931 standards." Those standards primarily address the structural capabilities for the prevention of trailer damage during lift-on lift-off events and during rail transit, two distinctly different categories of intended liability coverage. WTL believes that CSX took this action as a result of a company-wide cost-cutting program unrelated to WTL or intermodal service generally. None of the other Class I railroads with whom WTL has a relationship has applied this interpretation or refused to reimburse WTL for Section F equipment damages. Upon being so advised, WTL repeatedly asked CSX in numerous phone calls and correspondence to describe specifically why certain damages, specifically covered under the AAR RULES would not be honored or how these damages were related to the M931 standard. CSX never responded. In an effort to resolve this matter, WTL in April 2000 contacted the trailer manufacturer, Wabash National Corporation, to obtain an opinion attesting to the safety and suitability of WTL's equipment for use in railroad intermodal service. Wabash National provided an engineering report as to the structural integrity of WTL's equipment and discussed the contents of its report with the General Manager of CSX's Intermodal Division, a Mr. David Ware. Finally, during 2001 CSX agreed to accept responsibility for all previous WTL claims for damages.

During March 2003, CSX once again began declining responsibility for damages to WTL equipment specifically allowed under the AAR RULES. This time CSX again asserted the M931 standards, but now also started declining any responsibility for all types of routine damages. Upon inquiry, CSX now alleged a safety hazard, but at no point did CSX personnel identify any specific deficiencies in WTL's equipment that rendered WTL units unsafe for service. WTL continued to document and invoice CSX for specific damage that its equipment continued to incur.⁷

CSX used its safety allegation as a pretext for refusing to make routine repairs to the trailers, as required by both its Use Agreement with CSX and the AAR RULES. Moreover, CSX refused to accept responsibility for returning certain heavily damaged units home (to WTL) at its expense as is required for all "rail controlled" equipment under the AAR RULES.

Discussions between WTL and CSX continued without any successful resolution. Meanwhile, CSX continued to reject WTL's damage claims and instructed its repair contractor not to make the AAR-mandated repairs to WTL equipment. Still anxious to negotiate a favorable resolution, WTL in 2003 retained the services of Len Anderson, a trailer design expert to inspect WTL equipment and to meet with CSX officials in an effort to allay and resolve their safety-related concerns. CSX responded by advising WTL's counsel that it would refuse to meet with Mr. Anderson or participate in the standard railroad industry practice of a joint inspection of damaged equipment. CSX

⁷ The vast majority of the damage sustained involved items such as roof holes, skid flats, punctured side walls, and to a lesser extent, top and bottom rail cuts that would have been damaged whether or not the equipment met the M931 standard in rail owned/controlled equipment furnished by other providers.

refused to make repairs required under the Use Agreement and the AAR RULES and instructed its repair contractor not to repair at CSX's expense damaged WTL trailers.

The parties continued to talk with WTL asking Dave Ware to make a proposal to resolve the matter. He responded by asking WTL to (1) provide CSX with what he termed the "performance specifications" of the trailers WTL desires to use in service on CSX, (2) identify specific units by number so CSX could inspect them, and (3) identify damage and repair costs on specific units. WTL responded by identifying specific units it would retain in CSX service, providing a copy of a letter from Wabash National stating that WTL's equipment meets or exceeds the M931 standard, providing a spread sheet comparison between the performance characteristics of M931 certified equipment and WTL equipment, and itemizing by unit damages caused by vandalism or negligence.

Then WTL representatives held a conference call with CSX officials in late in 2003 in one final attempt to resolve this dispute. CSX stated that it would not handle WTL trailers as rail owned/controlled units and would not pay for repairs to damaged units unless they were "AAR certified", knowing full well that the AAR has no procedure for "certifying" used equipment regardless of condition. When WTL questioned CSX about how it handles non M931 trailers for trucking and express companies, CSX replied that these units were "private" trailers with repairs made at the owner's expense. CSX did not advise how it resolves liability regarding Section F type damage to private trailers. CSX advised it would handle WTL equipment as private equipment (I believe circumventing the ICC majority's conclusion in the Crab Orchard case cited in our pleadings and clearly without owner permission) with CSX absolved of any obligation to pay for "trailer hire"

and WTL responsible for equipment damage. It then became apparent at this time that CSX's excuses regarding M931 standards and safety allegations were merely fabrications to avoid paying for legitimate damages.

In their final discussion on this matter late in 2003, CSX's David Ware admitted to WTL's counsel that the repairs for which WTL had sought compensation were indeed caused by CSX's negligence, that CSX was responsible for repairing them under the Use Agreement and the AAR Rules, that CSX would pay WTL for these costs, and that CSX would terminate the WTL Use Agreement knowing WTL 48' trailers are captive to rail. CSX has never to this date paid WTL for these damages but has not terminated the Use Agreement.

WTL's trailers are captive to rail because the newer 53' long units are the overwhelming standard for commercial motor carrier service. Motor carriers no longer handle WTL's 48' trailers insofar as they are obsolete for any dependable alternative over-the-road leasing service. Moreover, it is uneconomic for WTL to employ private truckers to haul its trailers once they reach the end of a cooperative railroad's line. Thus WTL's 48' trailers are captive to a rail system that may not accept them and are also unacceptable to motor carriers that want to handle the longer 53' units that are rejected by some railroads under common carrier service.

While CSX's unfair practices against WTL highlight an example of one Class I carrier's abusive actions, WTL fears that these practices could become industry-wide absent STB action. Allowing such practices to go unchecked would allow carriers to use their

marketing, pricing, and other practices permissible under the "gray area" of deregulation in a manner contrary to the Congressional objectives of the public interest. As clearly stated in the title of its proceeding, "Improvement of TOFC/COFC Regulation," the primary purpose for exempting regulation was to enhance to the maximum extent possible competitive efficiencies by encouraging the movement of "truck oriented freight by rail" and its demand for services through every possible means and choice of equipment common to the industry.

While the types of equipment used to provide transportation have evolved from boxcars to trailers to containers, certain shippers will always have a need for trailers. These are shippers, usually small shippers that utilize rail service but are not located on a line of railroad. In those instances only a trailer, and not a boxcar or a container, can move more economically or faster from an origin through a point of interchange on a line of railroad(s) to such an off-line destination or visa versa; therefore, railroads must furnish a means to provide and transport trailers in common carrier service.

Shippers who depend upon railroads to furnish trailers for movements to unrestricted destinations are the ultimate beneficiaries of the relief WTL seeks. Through denial of supply, access by reduction and elimination of trailers over existing established routes, these shippers' transportation alternatives are decreasing not only from competitive choice of equipment, but also from a competitive choice of carrier options. During the course of these proceedings, WTL will submit statements from selected intermodal

shippers, trucking companies, and transportation intermediaries⁸ documenting its allegations and attesting to the fact that the shrinkage of the national trailer pool has had and will continue to have even greater adverse consequences for them by decreasing their competitive transportation options and increasing their cost of transportation contrary to the nation's rail transportation policy. Copies of letters and/or statements from four representative parties are included with my statement as Attachments 1-4.

WTL's fleet has functioned safely and satisfactorily in TOFC service over the past twelve years even though its trailers are non M931 certified. To put this fact in its proper perspective, most of the 1.35 million private originated trailers loads that will be interchanged in TOFC service this year will also be transported in non M931 certified trailers. Significantly, CSX handles many of these private trailer loads. CSX has unfairly singled out WTL for discriminatory treatment. CSX is the only carrier to raise the M931 issue with WTL and has done so, WTL believes, as a means to eliminate any car hire payment and liability or responsibility for damaged equipment. Should the Board find the trailer pool in danger of becoming inadequate and that some regulation is needed, it must include in its relief an investment protection mechanism that prescribes minimum fair daily rental rates(s) consistent with the intention of 49 UCS 11122, where agreement on rail controlled trailer use charges have not been successfully negotiated. There are existing equipment appraisal services already expert in ascertaining current market based trailer rental rates. To accommodate the urgent need to introduce 53' replacement units and minimize investment risk exposure, WTL requests the Board to strongly urge the

⁸ WTL notes that some of the parties who have been contacted thus far have been reluctant to present supporting statements for fear of railroad retaliation.

AAR and the railroad industry in general to examine the adaptability of used over-the-road trailers similar to their M9931 recommended standards for railroad intermodal service as a possible additional source of supply in the short term.

An increase in the seamless flow of commerce from the nation's congested highways to the railroads via TOFC was unmistakably a major objective of deregulation, and underlines the necessity for meeting the growing demands of both motor carriers and railroads. This is best accomplished when the trailer is physically useful and compatible for both modes of service and allowed to compete over all established railroad routes. WTL appreciates the opportunity to present its views on this important matter.

VERIFICATION

STATE OF ARIZONA)
CITY OF Green Valley) SS

RICHARD M. LOMBARDO, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.

Richard M. Lombardo

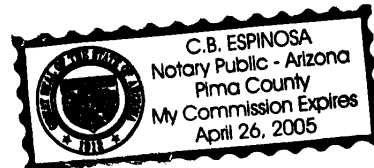
Subscribed and sworn to before me, a Notary Public, in and for the City of Green Valley in the State of Arizona, this 7th day of DEC.

C.B. Espinosa

Notary Public

My Commission expires:

04/26/2005



ATTACHMENT 1



BROAN·NUTONE®

December 1, 2004

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

**RE: STB Docket No. __, Petition of WTL Rail Corporation for Declaratory Order,
Certain Practices of CSX Intermodal**

Dear Mr. Williams:

I am writing on behalf of Broan-NuTone LLC in support of the Petition for Declaratory Relief filed in the above-captioned proceeding by WTL Rail Corporation ("WTL"). WTL seeks a ruling from the Board that certain practices by CSX Transportation, Inc. identified in its Petition are unreasonable and illegal. To put this dispute in perspective, WTL is one of a handful of nonrailroad entities which provide trailers (known as "rail-controlled trailers") to railroad common carriers to satisfy their common carrier need to provide trailers for, TOFC rail service. These trailers make up a national free running trailer pool ("POOL"). WTL operates a fleet of about 1500 48' TOFC trailers, which it provides to railroads including CSX Transportation by agreement to enable them to meet their TOFC trailer needs, primarily for serving smaller customers such as my company.

While railroad-provided intermodal transportation appears to be flourishing with the growth of container service and the handling of trailers for trucking and express companies such as United Parcel Service, that picture is deceiving. Although these elements of intermodal service are indeed growing, they are not available to meet the needs of small customers who are dependent upon rail-controlled trailers to meet their needs. In fact, the number of trailers in the Pool is rapidly declining and the POOL itself is in danger of disappearing completely in the next few years due to actions by class I railroad intended to discourage investment in this type of equipment or eliminate common carrier TOFC service on certain routes or on their system as a whole.

I submit this letter on behalf of Broan-NuTone LLC in my position as a Traffic Analyst. In that capacity, I am familiar with the company's transportation and distribution needs. I am the individual who arranges for transportation of its products with rail and motor carriers. I have been in the transportation industry for over 25 years. Our company ships approximately 276 TOFC loads annually. Broan-NuTone LLC has an annual freight expense of over \$14 Million.

Broan-NuTone LLC considers 48' TOFC equipment a vital segment of its business and requires prompt access to a dependable equipment pool at competitive rates.

Rail trailers provide an inherent advantage to our company with greater options and economic flexibility as opposed to containers or over the road. For example, variable costs involving rising fuel prices, ancillary charges, detention or variable operating impacts such as driver shortages, hours-of-service related operating problems, balance, and speed, all affecting competition.

Currently we have experienced delays in securing proper equipment resulting in an additional 3 or more days to the transit time, which eventually would force us to use a more costly alternative.

With the further decline of the TOFC Pool, our East Coast business would be in jeopardy. Should the WTL Rail Petition be denied our current freight cost could conceivably increase at least 13% due to the loss of competition.

I am prepared to explain in greater detail our company's concerns should the Board initiate a proceeding on this issue as WTL requests. I urge the Board to initiate a proceeding and solicit public comment on WTL's Petition and to grant its request for relief.

Respectfully submitted,

Broan-NuTone LLC

A handwritten signature in cursive script that reads "Richard F. Cordie".

Richard F. Cordie
Traffic Analyst

ATTACHMENT 2

SAN ANDREAS FAST FORWARDING, INC.



P.O. BOX 69100, TUCSON, ARIZONA 85737-0010 (520) 544-9560 FAX (520) 544-9553

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

November 29, 2004

Re: Petition of WTL Rail Corporation for Declaratory Order Concerning Certain Practices of Railroads with Respect to Intermodal Trailers.

I am writing on behalf of San Andreas Fast Forwarding, Inc. ("SAFF") in support of the Petition for Declaratory Relief filed in the above-captioned proceeding by WTL Rail Corporation ("WTL"). In operation since 1988, SAFF is a shipper by rail intermodal service of non-refrigerated perishables (mainly dry onions) from western growing areas to eastern population centers. SAFF depends upon the railroads to supply the conveyance vehicles, either directly or through independent trailer suppliers, such as WTL. WTL in its Petition seeks to identify certain railroad practices relating to trailer supply and service that it believes are unreasonable and illegal. SAFF operates under intermodal transportation rates provided by the railroads that are terminal to terminal and include railroad provided or controlled trailers.

In recent years, the Class I railroads have created a contrived trend away from trailers and to containers. These railroads perceive better economic returns from the use of containers versus trailers, and so have preferred to disinvest in trailers while spending their capital resources on containers and container-carrying cars. WTL and others have stepped in to fill the trailer void with the cooperation of the railroads. However, over the past several years railroad officials have openly stated their intention of ultimately eliminating trailer service, believing that containers would fulfill the needs of all intermodal shippers. But in spite of their container bias, shippers' demand for trailer service persists - they "just can't kill the beast." This is supported by the fact that during 2004 trailer shipment growth reported by the railroads is outpacing container shipment growth.

SAFF's need for trailer service is based on the time-sensitivity of the product it ships. We are not unique - there are many shippers, intermodal marketing companies and trucking companies that ship time-sensitive goods by rail who would be injured if forced to use the slower rail service implicit in the use of containers. On average our experience shows that transcontinental shipments by container take two extra days than by trailer. The main reason for this service discrepancy is the inability of the railroads to match up containers with chassis in a timely fashion. This chassis problem is complex and not easily resolved. Moreover, the railroads seem disinclined to attack the problem.

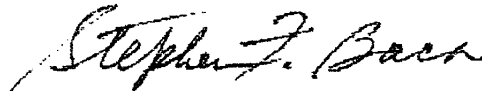
Page Two

Clearly, there is a need to expand the railroad trailer pool, not reduce it. Each year small shippers such as ourselves are denied trailers at certain terminals to fulfill the needs of large shippers such as United Parcel Service. One example of this occurred recently when we were denied trailers at Spokane, WA so that empty trailers could be moved to St. Paul, MN for the benefit of UPS. Obviously, this decision was not driven by economics, but by politics. The public interest or common good is ill-placed in the hands of the railroads as they lack perspective in deciding, for example, that parcels should have a higher transportation priority than perishable food products. There should be a better balance in fulfilling the nation's transportation needs and requirements.

Of great concern to my company, as it is to other similarly situated companies, is the constriction of the railroad trailer service network. Just this year, one eastern railroad discontinued trailer service to Philadelphia, Portsmouth and Cincinnati rendering these terminals suitable for containers only. At other terminals, some railroads are using the tactic of increasing trailer rates so high as to discourage trailer traffic, so, in essence, these facilities are foreclosed to us as well. This is why we say that the trend away from trailers is contrived -- it isn't market driven. This is also made clear in the way the railroads are reducing the economic incentives for providers of trailers as stated in the WTL Petition. Just this past week, one eastern railroad announced it was canceling effective January 1, 2005 its trailer use agreement with one of the principal providers of intermodal trailers to the railroads. No reason was given, but we know that this is all part of a well organized scheme to force intermodal traffic to containers.

There is a compelling need for the continuance of railroad trailer service. The railroads should be required to maintain trailer service at satisfactory levels, and either be required to increase the trailer supply through its own investment or be mandated to provide just compensation to those who provide such equipment or both. Containers cannot fulfill the needs of all intermodal shippers.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen F. Baca". The signature is written in dark ink and is positioned above the printed name and title.

Stephen F. Baca
President

ATTACHMENT 3

IOWA INTERSTATE RAILROAD

November 3, 2004

Verified Statement TIM WOODS, Director Intermodal Iowa Interstate Railroad.

My name is Tim Woods. I am Director of Intermodal for the Iowa Interstate Railroad. (IAIS). My career in intermodal spans twenty-eight years and includes experience in nearly every aspect of the intermodal industry.

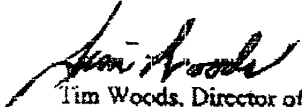
This letter is in support of WTL RAIL CORPORATION Petition for Partial Revocation of the TOFC / COFC Exemption and Petition for Declaratory Relief as it addresses the specific issues of the adequacy of the national trailer pool and the denial of access for TOFC service.

The IAIS is a Class II regional railroad operating 523 miles between points in Illinois and Council Bluffs, IA. Our intermodal program covers an area between Chicago, IL and eastern Nebraska and serves nearly all of Iowa. IAIS handles roughly 23,000 shipments per year within this corridor. We operate intermodal facilities in Chicago (Blue Island, IL), West Liberty, IA servicing Quad Cities, Cedar Rapids, IA, and all points along the Mississippi. Central Iowa is covered by our Newton, IA facility reaching customers as far north as Ft. Dodge, Mason City and Waverly, IA (inherited through the loss of the Chicago, Central and Pacific RR). We operate a joint facility in Omaha with the UP railroad, servicing eastern Nebraska. We are the only railroad providing common carrier trailer services in this region.

Over the past few years our connecting carriers have discontinued trailer quotations and service to certain destinations either partially or entirely on their lines. This has affected our ability to compete and service our customers' needs. Either there is no rail service to specific destinations or in instances where a destination was jointly served it has now become captive to one carrier, diminishing any competitive public benefit. Similarly, our westbound traffic moves only in containers on the UP. However, containers are not always economically suitable for many of our customers' operations that require 45', 48' and 53' trailers. Eastbound loads make up 75% of our shipments and moves through our Chicago gateway. Overall our competition in this segment of business is motor carriers.

IAIS is not a balanced carrier in terms of trailer supply, relying totally upon the availability of national pool trailers for meeting our supply obligations to our customers. To reduce our dependency on supply uncertainties we have recently made arrangements to acquire trailers and have sent standard Trailer Use Agreements to all Class I carriers. Regrettably, our requests are being denied or discouraged. In our view this is another form for denying access to IAIS for promoting its Intermodal program in its customers' best interest.

The future inadequacy of the national trailer pool, the denial of IAIS access through the restriction of rates, routes and acquisition of trailers is of vital concern to the welfare of our customer's transportation alternatives and the adverse costly consequences inherent through the loss of competition and choice.


Tim Woods, Director of Intermodal
Iowa Interstate Railroad
5900 6th Street SW
Cedar Rapids, IA 52404

VERIFICATION

STATE OF Iowa)
) SS
~~CITY OF LINN~~)
County

Tim Woods, being duly sworn according to law,
hereby deposes and states that (s)he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of (her)his knowledge, information and belief.

Tim Woods

Subscribed and sworn to before me, a Notary Public, in and for
County
the City of LINN in the State of Iowa, this 14
day of December.

Carolyn Lee Young
Notary Public

My Commission expires:

8-26  **CAROLYN LEE YOUNG**
Commission Number 192123
My Commission Expires
August 26, 2006

ATTACHMENT 4



117 South Main Street
Spring Hill, KS 66083

November 23, 2004

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423

RE: STB Docket No _____, Petition of WTL Rail Corporation for Declaratory Order, Certain Practices of CSX Intermodal.

Dear Mr. Williams,

I am writing in support of the Petition for Declaratory Relief filed by WTL Rail Corporation. WTL seeks a ruling from the Board that certain practices by CSX Transportation, Inc. are unreasonable and illegal. The trailers they provide us with make up a national free running trailer pool that we utilize all over the country. With out these trailers, we at NYK logistics, would not be able to service our customers needs and meet their demands.

I submit this letter on behalf of NYK Logistics in my position as Customer Service Representative. I am familiar with the company's transportation and distribution needs and am the individual who arranges for rail carriers. I have been working with trailers and containers for twenty years. Out of my office alone, we ship over two thousand loads a month and without the use of free running trailer pools on all railroads, we could possibly loose large customers, like General Mills and Clorox.

This is a very stressful time of year, as we all get ready for the holiday season, so do shippers and shoppers. This makes equipment very tight and with the Trailer Pool we can still cover their loads to support the consumer.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Kirkdoffer".

Lisa Kirkdoffer

VERIFIED STATEMENT OF JOHN J. ROBINSON

My name is John J. Robinson. I am a railroad transportation consultant with over 45 years of experience in the rail industry. A copy of my work experience is appended hereto. I have been requested to submit testimony in support of WTL Rail Corporation's Petition for Partial Revocation of Exemption as well as its Petition for Declaratory Order before the Surface Transportation Board.

As outlined in my resume, I served as Senior Assistant Vice President of the Transportation Division of the Association of American Railroads (AAR) from February 1981 through December 1992 with direct responsibility for car service, car hire and comparable intermodal matters. As such, I am thoroughly familiar with the history of prescribed car hire and the events that led to its deprescription by the ICC. I also followed the evolution of railroad trailer per diem rates and the ultimate deregulation of all TOFC/COFC activity. Although my job description was somewhat modified in 1992, I continued to attend the meetings of the AAR committees with responsibility for these matters, including the OT General Committee to which I served as Secretary, until my retirement early in 1995,

1. The Board Should Order The Payment Of A "Default" Rate By The Using Rail Carriers To The Owners Of Railroad Owned/Controlled Trailers For Which There Are No Negotiated Rates

As an integral part of the relief it seeks, WTL proposes that the Board order the railroads which use trailers to pay a "default" rate to the owners of railroad

owned/controlled trailers for which there are no negotiated rates, and that the Board prescribe a methodology for calculating such rates on an on-going basis. In the case of freight cars, Conrail's original proposal for the deregulation of freight car hire envisioned a default rate of "zero" on equipment for which there was no negotiated rate. The negotiators rejected this approach early on, because they believed the large Class I's would have an overwhelming bargaining leverage under such a scenario. Short lines were particularly concerned about such a situation. The negotiators deemed it inherently unfair to deny a car owner any compensation whatsoever for the use of its equipment when the two negotiating parties were unable to reach agreement. The resulting compromise, to provide for some measure of compensation in the event of an impasse, reflecting current market conditions to the extent possible, was wisely approved by the ICC and incorporated in its final decision in that proceeding.

**2. Virtually All Of The Bargaining Power In The Negotiation
Of Trailer Use Charges Currently Lies With A Small Number
Of Class I Mega Rail Carriers**

A situation similar to the scenario rejected by large and small carriers alike in the freight car hire depreservation proceedings has existed in the intermodal arena ever since the deregulation of TOFC/COFC in 1981. The potential for abuse has in fact increased even more so in subsequent years with the continued consolidation of the Class I's into the handful of mega railroads that exists today. With almost unlimited leverage, including the cancellation of a trailer provider's Use Agreement or the rejection of its trailers when offered in interchange, a Class I can virtually dictate the conditions for its

use of the equipment of the smaller providers of railroad owned/controlled trailers on their lines. When abuses such as those identified by WTL in its Petition occur, it is clearly time for the Board to even the playing field and equalize the bargaining power between the smaller equipment providers and the large Class I users of railroad owned/controlled trailers.

3. The Board's Predecessor (ICC) Established A Precedent When It Incorporated The Default Rate Principle In The Car Hire Deprescription Proceeding Decision

The Board's ICC predecessor set an excellent precedent in the car hire deprescription proceeding when it incorporated the "default rate" principle into its final decision. It is highly unlikely that the Commission could have envisioned the number of limited "players" that would evolve in the intermodal arena today, as well as their relative bargaining power, at the time it deregulated TOFC/COFC, or even later in 1995 when it decided Crab Orchard case cited in WTL's Petitions. Having witnessed the successful utilization of the default rate mechanism during the ten-year phase-in of car hire deprescription, the Board should not hesitate now to extend this principle to railroad controlled trailers. Prompt action is required on the part of the Board inasmuch as the trailer fleet continues to shrink to the point that shippers may not have sufficient equipment available to meet their needs and adversely affecting their competitive options. Lombardo VS at 11.

4. In The Absence Of Railroad Controlled Trailer Use Rate Data, The Board Should Prescribe A Simple Default Rate Methodology Utilizing An Independent Source Of Average Trailer Rental Rates As Its Nucleus

With the present situation within the railroad intermodal arena clearly justifying the establishment of a “default” trailer use rate to become effective only when the parties are unable to reach agreement on an appropriate daily rental charge, the immediate question that arises is: “What should that level of compensation be and how can it be developed in a simple and timely fashion?” Since the AAR does not receive or store any per diem use rate data for intermodal trailers or containers, so-called market rates for the equipment in question cannot be developed in the same fashion as is utilized for default rail car hire rates. However, Petitioners have identified an independent party that tracks current rental rates on various types of commercial equipment, and publishes these rates on a monthly basis for contractors, local/federal governmental agencies and other users. That same company has indicated that it could develop similar information for highway trailers. This would appear to be a true market driven rental rate that reflects current demand for such equipment, although not intermodal trailers per se. Nevertheless, it would seem to suffice during a trial period, with the caveat that interested parties could request the Board to reconsider the specifics at a later date. The objective of the default rate mechanism should be to compensate the equipment owner for its basic ownership costs, including a reasonable return on investment, consistent with 49 USC 11122.

5. One Major Step That The Board Should Immediately Take To Level The Playing Field Between The Class I Carriers And The Smaller Providers Of Railroad Owned or Controlled Trailers Would Be To Implement The Default Rate Principle Into The Trailer Use Rate Negotiation Process

To summarize, the current providers of rail controlled trailers are being penalized by the overwhelming bargaining power of the Class I mega rail carriers. Trailer use rates have been forced down and relief or reclaim days liberalized. Such providers are also

restricted with regard to the types of trailers that the Class I's will accept in interchange. All of the foregoing actions have greatly reduced the profitability of providing rail controlled equipment with the result that the national pool of such trailers is rapidly shrinking and may soon cease to exist because there is no incentive to reinvest in this type of equipment. One major step the Board should take to alleviate this situation would be to prescribe the implementation of a default rate mechanism, to become effective only in instances where the negotiating parties are unable to agree on an appropriate trailer use rate for rail controlled trailers. A positive precedent for the use of such a compensation device for determining deregulated equipment rental when the two negotiating parties cannot agree has already been established in the deregulation of rail car hire.

VERIFICATION

STATE OF MD.)
County) SS
~~CITY~~ OF Balto.)

JOHN J. ROBINSON, being duly sworn according to law,
hereby deposes and states that (s)he is authorized to make the
Verification, has read the foregoing document, and knows the
facts asserted therein are true and accurate as stated, to the
best of (her)his knowledge, information and belief.

John J. Robinson

Subscribed and sworn to before me, a Notary Public, in and for
the ^{County} ~~city~~ of Baltimore in the State of Maryland, this 10th
day of Dec. - 2004

Colleen N. Kelly
Notary Public

My Commission expires:

COLLEEN N. KELLY
NOTARY PUBLIC
BALTIMORE COUNTY, MD
MY COMM. EXPIRES OCTOBER 28, 2008

John J. Robinson
11310 Glen Arm Road
Glen Arm, Maryland 21057
(410) 665-3725

Experience

7/95 – Present	Rail Transportation Consultant
1/95 – 6/95	Executive Director, American Railway Engineering Association (AREA). Responsible for day-to-day management and direction of 4000-member professional railway engineering society, including technical conferences and publications.
1/93 – 12/94	Sr. Ass't. Vice President, Casualty Prevention Division, Operations & Maintenance Department, Association of American Railroads (AAR). Responsible for matters concerning safety, operating rules, derailment prevention, hazardous materials, tank car integrity and railroad scales. Also responsible for AAR's field force of 35 hazardous materials and mechanical inspectors.
2/81 – 12/92	Sr. Ass't Vice President, Transportation Division, AAR. Responsibilities included: car service, car hire, demurrage, station & terminal activities, police, medical and private car compensation. Also responsible for box car pooling, UMLER and TRAIN data bases.
3/71 – 1/81	Executive Director, Operating-Transportation Division, AAR. Directly responsible for car service, car hire, freight car cost of ownership, private car compensation, demurrage, station & terminal and intermodal activities. Served as Secretary to the Operations General Committee, the Committee on Compensation, and the Arbitration Committee, as provided for in the Code of Car Hire Rules, from 1971 through the end of 1994.
5/69 – 2/71	Trust Officer, Mercantile Bank, Baltimore, MD. Completing work toward law degree.
3/67 – 4/69	Transportation Engineer/Yard Supervisor, Patapsco & Back Rivers Railroad (Bethlehem Steel), Sparrows Point, MD.

6/57 – 2/67 Served in various positions (Ass't. Trainmaster, Trainmaster, Transportation Engineer, Supervisor of Train Movement) at 7 major terminals on the Pennsylvania Railroad.

Military Service

5/55 – 5/57 Infantry Officer, U.S. Marine Corps
(Captain USMCR)

Education

1955 Penn State University
B.S. Engineering (Mechanical)

1971 University of Maryland
J.D. Law