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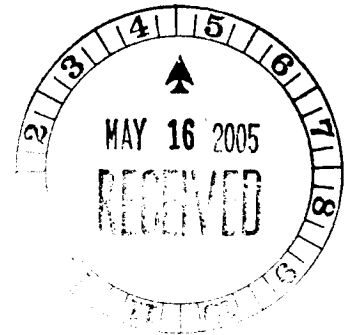
ORIGINAL

BY HAND

Office of the Secretary May 16, 2005

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

213995



RE: STB Docket No. EX PARTE NO. 230, Sub-No. 9
IMPROVEMENT OF TOFC/COFC REGULATION,
WTL Rail Corporation
Petition for Partial Revocation of Exemption

STB Docket No. 42092, WTL Rail Corporation - 213996
Petition for Declaratory and Interim Relief

Dear Mr. Williams:

I am writing on behalf of WTL Rail Corporation ("WTL") to respond to the letter reply filed by BNSF Railway Company ("BNSF") in the above-captioned proceedings. BNSF urges the Board to reject WTL's request for a "housekeeping" stay on the dual grounds of lack of any substantial likelihood of success and irreparable injury.

First, BNSF cites American Rail Heritage, Ltd., D/B/A Crab Orchard & Egyptian Railroad, et al. v. CSX Transportation, Inc. No. 40774 (served June 16, 1995) to support its claim that WTL will not prevail on the merits. BNSF believes WTL cannot show that partial revocation is needed in order to preserve TOFC competition as it relates to its trailer fleet since WTL can freely shift its trailers to either an all highway or a highway/rail movement and since WTL has not asserted that its trailers cannot be used in over-the-road service. Second, BNSF claims that WTL has shown no irreparable injury because BNSF will continue to handle these trailers as "private"

equipment, WTL can continue to move its trailers by truck, and shippers can continue to use WTL trailers as well as other privately owned trailers to move their traffic. Finally, BNSF attempts to minimize the impact of the irreparable injury by asserting that WTL's fleet represents only 2% of the 60,000 trailers in the "rail controlled" fleet.

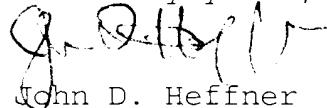
BNSF's comments more than miss the point. They show that BNSF is totally clueless about the needs of the shipping public. In fact, BNSF's reply is more significant for what it fails to say than for what it says.

BNSF would have the Board believe that it can simply transform "rail controlled" trailer traffic into "private" trailer traffic with no adverse affects on the shipping public. Evidence submitted with WTL's Petitions by its President Richard Lombardo and by Stephen Baca of San Andreas Fast Forwarding, Incorporated, and Larry Henry of Alliance Shippers, Inc., show that this is not the case. Collectively, this evidence shows that transportation alternatives such as motor carriage, handling trailers as "private" equipment (in effect as freight), and rail hauled containers are slower, more expensive, or unsuited to shipper needs. Lombardo V.S. at 5, 8-9; San Andreas letter at 2-3; Alliance letter.

Moreover, WTL witness Robinson who formerly worked for the Association of American Railroads, even questions whether a railroad has the unilateral ability to declare that it will no longer recognize "rail controlled" reporting marks and refuse to accept "rail controlled" equipment. Robinson V.S. at 3 and 5. As these witnesses point out, the actions of BNSF and the other railroads would render useless at least 50%, not 2%, of the "rail controlled" fleet. Lombardo V.S. at 8; Alliance letter. BNSF is totally silent on whether its actions are another example of the gradual erosion of railroad common carriage. Finally, BNSF's characterization of the Crab Orchard ruling conveniently forgets Vice Chairman McDonald's dissent and the majority's admonition that class I carriers should not "interpret what we do here today as a license to begin making imprudent unilateral decisions..." [in that case regarding interchange of equipment]. Id. at 5.

The Board should reject BNSF's arguments to its request for a "housekeeping" stay or other interim relief.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John D. Heffner", written over the typed name.

John D. Heffner
WTL Rail Corporation

Cc: David Konschnik, Esq. (by fax)
Robert M. Jenkins, III, Esq. (by fax)
Mr. Richard Lombardo