

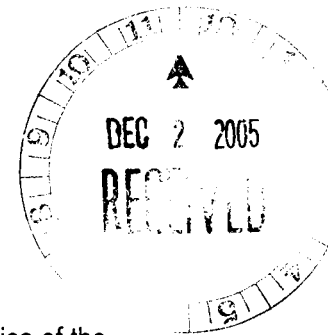
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1 December 2005

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Secretary Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423



Re: Ex Parte No. 656 (Sub-No. 1), Investigation Into the Practice of the
National Classification Committee

215258

Dear Secretary Williams:

The American Lighting Association appreciates the Surface Transportation action to invite additional input into your evaluation/decision of STB EX Parte No. 656.

First, the American Lighting Association petitioned the STB in this matter last January because we strongly believe that in today's deregulated economy the NCC's antitrust immunity should not be continued. We believe it is very important to emphasize this point. Preserving NCC's antitrust immunity amounts to deciding that the trucking industry should continue to have a special advantage or protection in the market place. They should not. Antitrust immunity is anti free market! As you state in your decision of 12 October 2005 - *"An increase in a classification rating generally has the effect of shippers paying more for movement of a product than they had been paying."* In our view, rates should only be a function of business negotiations between shippers and truckers. We urge the STB to terminate the NCC's antitrust immunity now.

We note the US Department of Transportation concurs with our position. DOT's April 2005 comments stated: *"A policy favoring protection from the laws that preserve competition does not serve the public interest nearly as well as competition itself - - the Board (STB) should disapprove the rate setting and classification agreements at issue."*

Second, with respect to the revision of lighting products classifications that were acted on by the NCC on 3 August 2004, we believe the decision to raise the number of classes from 5 to 11 was over before we presented our case. Substantial time and money was spent by the lighting industry to research data. Our case was developed jointly by the American Lighting Association (ALA) and the National Electrical Manufacturers Association (NEMA). Combined, the two Associations have more than 1600 members. Our data was based on 1.1 million shipments. The NCC case was based on 65,000 shipments. Importantly, our data indicated that the results were in line with two previous NCC lighting Dockets (1990 and 1997): In both Dockets the proposed increase in classifications were defeated. Our data clearly showed the density records and results for lighting fixtures in 2004 remained virtually the same as the 1990 and 1997 Dockets.

World Trade Center
P.O. Box 420288
Dallas, Texas 75342-0288

800.60.light toll-free
214.698.9898 telephone
214.698.9899 fax

www.americanlightingassoc.com

FORWARDALA

Recognizing the importance of the 3 August 2004 Docket, eleven persons representing the lighting industry, including industry leadership, attended the 3 August 2004 hearing. Following our presentation, several members of the trucking industry spoke about the "need" for an increase in classes from 5 to 11. No questions were directed to any of our delegation. In spite of what we believed to be solid evidence for no change, the vote to increase the number of classifications was 33 in favor, 1 opposed and 1 abstained.

We would point out that shippers' need for confidentiality of data is a critical issue. ALA and NEMA, when collecting shipping data from our members, were successful in gaining that information because it was delivered to a secure source and data was reported in aggregate or in a manner to preserve confidentiality. NEMA's Business Information Services department, recognized for its integrity, received and organized the data for our presentation. During the Docket hearing, we had the sense from NCC staff comments that they questioned the validity of our statements because they were not privy to our confidential raw data.

Third, we did not request arbitration because our group of eleven attendees, which worked on the issue for several months, felt it would not be productive. Arbitration, as it is presently structured, provides the NCC with distinct advantages. Shippers, when opposing a revision of class ratings, must submit their evidence in advance of the NCC meeting. This allows the NCC the opportunity to develop its testimony to oppose the shipper's case. The shippers, if they request arbitration, are at a serious disadvantage because current rules require the arbitrator to make judgment based only on existing data/arguments. Shippers are precluded from offering any evidence refuting NCC arguments made at the NCC meeting.

Importantly, we understood the STB would shortly be reviewing whether or not the NCC antitrust exemption should be continued for another five-year period of time. We chose to participate in the STB's review with the hope of: 1) ending the NCC antitrust exemption to permanently free our members, and all shippers, from the extensive time and significant cost of NCC Dockets/Reviews and their antitrust exemption that leads to hidden freight increases or 2) if there is some overriding reason why the NCC should continue, that is not evident to us, substantial changes must be made that include: a) longer notice of Dockets/Reviews must be given to shippers to have time to prepare, preferably 180 days; b) for fairness NCC voting panels in the future must consist of 50% shippers and 50% truckers and a chairperson appointed at large by STB, and c) NCC procedures should not favor carriers. In our view, these are the minimal changes necessary for the STB to expect fairness in decisions. However, the best decisions will be made without the NCC and they will be concluded as a function of business negotiations between shippers and truckers. The very fact that the STB recognizes that the antitrust immunity may be susceptible to market abuse is reason enough to end the immunity now.

Abuse of Power

We have recently experienced another challenging experience with the NCC. The Ceiling Fans/Light Kits industries are members of ALA. We and our Ceiling Fan members were notified of a Review by the NCC last spring. The Review Matter was heard at the 8 August 2005 NCC meeting in San Francisco and 8 November in Arlington, VA.

ALA organized our Ceiling Fan Manufacturers and also contacted three non-members to coordinate efforts to develop data. The stated reason for the Review was a carrier requested that Ceiling Fans and Ceiling Fan light kits be listed together. This was non-controversial and we would have agreed to it. However, the NCC Review Matter raised the possibility of a 25% increase in the class rating for fans in the under 15 pounds per cubic feet category. This would have led to significant increases in manufacturers' baseline freight rates.

ALA, on behalf of the Ceiling Fan Manufacturers retained two specialists to help us; John Cutler, a transportation attorney of Washington, DC and Don Varshine, a transportation logistics professional who has 25 plus years of experience in lighting transportation/logistics. We developed a detailed questionnaire for ceiling fan manufacturers to collect data needed for our case. To insure accuracy, Mr. Cutler and Mr. Varshine personally called the Ceiling Fan Manufacturers to secure the data from their firms. Upon completion of the calls and tallying the data, Mr. Cutler and Mr. Varshine reported that the data showed the ceiling fan industry should actually see a lowering of class ratings, and the data clearly proved no higher class rating was warranted. Our statement was filed and to protect our interests, we arranged for Mr. Varshine to attend the San Francisco Review.

After the Review, we understand the Panel concurred with our position that no Docket should be set. The Panel directed the NCC staff to contact industry representatives to review data and report to the November Panel. ALA and its designated representatives have no record of being contacted by the NCC staff.

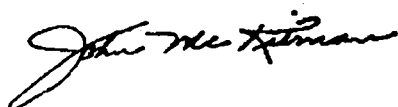
Given the outcome of the Panel's decision at the 8 August 2005 San Francisco meeting, we were surprised to learn the NCC staff, for the 8 November Panel Review still, called for an increase in ceiling fans and light kits classification (item 61870 (fans.))

We spent more time and money preparing for the 8 November meeting, fighting an issue that should not exist. The NCC staff initially and following the San Francisco hearing in August, in our opinion, expanded the case beyond: 1) what was requested by the carrier and 2) the direction of the Panel for the purpose of increasing ceiling fan class ratings, which would, as you know, likely lead to higher freight rates.

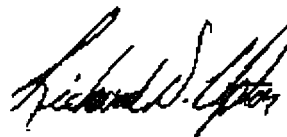
The challenge for shippers is the NCC can keep throwing out these calls for information and continue to set Reviews or Dockets which have to be defended. Small industries, such as ceiling fans, lighting fixtures, or this trade association and many others like it, do not have in-house legal counsel or the staff to respond to what we call "battles." However, because freight costs are a major component of our members' expense, we are compelled to try to protect our members' and the customers' interest, paying the cost of these continuing battles from resources that should be used for more productive purposes. If the STB authorizes the continuance of antitrust immunities for the NCC, we and all shippers and their trade associations will be required to continue bearing the time and expense of fighting what we believe is abuse of power

In our view the NCC antitrust exemption should, please, be ended now. Let truckers and shippers determine rates via their own business negotiations and end the "hidden" rate increases. Thank you.

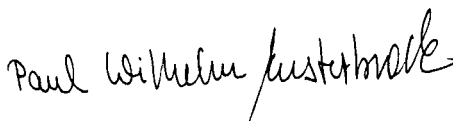
Respectfully,



John F. McKiernan
Chairman, Board of Governors
American Lighting Association



Richard D. Upton, CCE
President/CEO
American Lighting Association



Paul W. Eusterbrock
Chairman, Freight Classification Task Force
American Lighting Association