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May 25, 2005

By Hand Delivery

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

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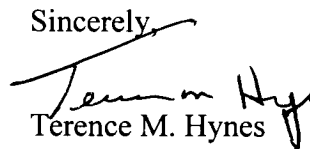
Re: STB Docket No. 42092, *WTL Rail Corporation – Petition for Declaratory Order*; and Ex Parte No. 230 (Sub-No. 9), *Improvement of COFC/TOFC Regulation* — 214064

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and ten (10) copies of the Reply of Canadian Pacific Railway ("Reply") in Opposition to WTL Rail Corporation's Petition for Declaratory and Interim Relief and Petition for Partial Revocation of Exemption, filed by WTL on May 5, 2005. A diskette containing an electronic version of the Reply is also enclosed.

Please acknowledge receipt of the Reply for filing by date-stamping the enclosed extra copies and returning them via our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,


Terence M. Hynes
Gabriel S. Meyer

Enclosures



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42092

-214063

WTL RAIL CORPORATION – PETITION FOR DECLARATORY ORDER

and

Ex Parte No. 230 (Sub-No. 9)

-214064

IMPROVEMENT OF TOFC/COFC REGULATION

**REPLY OF CANADIAN PACIFIC RAILWAY
IN OPPOSITION TO WTL RAIL CORPORATION'S
PETITION FOR DECLARATORY AND INTERIM RELIEF
AND PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

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Dated: May 25, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. 42092

WTL RAIL CORPORATION – PETITION FOR DECLARATORY ORDER

and

Ex Parte No. 230 (Sub-No. 9)

IMPROVEMENT OF TOFC/COFC REGULATION

**REPLY OF CANADIAN PACIFIC RAILWAY
IN OPPOSITION TO WTL RAIL CORPORATION’S
PETITION FOR DECLARATORY AND INTERIM RELIEF
AND PETITION FOR PARTIAL REVOCATION OF EXEMPTION**

Canadian Pacific Railway Company and its affiliates, Soo Line Railroad Company and Delaware and Hudson Railway Company, Inc. (collectively, “CPR”) submit this reply in opposition to (1) the Petition for Declaratory and Interim Relief (“Declaratory Order Petition”), and (2) the Petition for Partial Revocation of Exemption (“Revocation Petition”) filed by WTL Rail Corporation (“WTL”) in the above-captioned proceedings on May 5, 2005.¹ WTL, a lessor of truck trailers used in connection with TOFC service, asks the Board to revoke in part the longstanding class exemption for TOFC/COFC service, and to issue an order “requiring the Railroads to continue handling WTL’s trailers as ‘rail controlled’ trailers” Revocation Petition at 4. For the reasons set forth below, the Board should deny the WTL Petitions, as well as WTL’s request for a “housekeeping” stay pending disposition of the WTL Petitions.

¹ The Declaratory Order Petition and the Revocation Petition are referred to collectively hereinafter as the “WTL Petitions.”

I. BACKGROUND

WTL owns or leases a fleet consisting of 950 48' trailers, which it makes available to rail carriers for use in TOFC service pursuant to "Trailer Use Agreements" between WTL and individual carriers (including CPR). *See* Declaratory Order Petition, Exhs. A through E. The gravamen of WTL's Petitions is the decision by Burlington Northern & Santa Fe Railway Company ("BNSF") and several other Class I carriers (including CPR) to terminate their Trailer Use Agreements with WTL. By their terms, those agreements may be cancelled by either party by giving 30 days prior written notice to the other party. *See, e.g.,* Declaratory Order Petition, Exh. A, Equipment Use Agreement dated September 1, 2000 between WTL and BNSF, ¶ 10. Following cancellation of the BNSF-WTL Trailer Use Agreement on April 18, 2005, CPR terminated its agreement with WTL by notice delivered on April 21, 2005. As WTL acknowledges, CPR and other carriers had "little choice" but to terminate their Trailer Use Agreements in light of BNSF's action, lest they be held liable for the payment of trailer hire for WTL trailers located on BNSF's lines in connection with interline TOFC movements. *See* Declaratory Order Petition at 7, V.S. Lombardo at 8.

Cancellation of the Trailer Use Agreements will result in certain changes in the economic terms upon which WTL trailers are used in TOFC service. The railroads will no longer pay the daily trailer hire for WTL trailers prescribed by the Trailer Use Agreements. (Under the agreements, a carrier was required to compensate WTL for every day that a "rail-controlled" WTL trailer remained on that carrier's lines, regardless of whether it was moving loaded, moving empty or sitting idle awaiting a load.) Nor will the railroads be obligated to "manage" WTL's trailer fleet, or to perform repairs to WTL equipment on the terms set forth in the Trailer Use Agreements. However, each of the termination notices issued by the involved railroads indicated that WTL trailers would be accepted for movement as "private" trailers. *See* Declaratory Order

Petition, Exhs. F-1, F-2, G, H, I, J. As a practical matter, cancellation of the CPR-WTL Trailer Use Agreement will have little impact on WTL. Only 156 shipments in WTL trailers moved over CPR's lines during 2004, and only 11 shipments in WTL trailers moved on CPR's lines during 2005 (to date).

WTL contends that a carrier's unilateral decision to terminate a trailer use agreement with an equipment vendor such as WTL violates the railroad's "common carrier" obligation under 49 U.S.C. § 11121(a) (requiring carriers to provide safe and adequate car service to shippers) and §§ 10702(2) and 10704(a) (governing unreasonable practices). WTL is wrong. As an initial matter, railroads do not provide "common carrier service" in handling TOFC traffic, nor do they have a "common carrier obligation" in connection with TOFC/COFC service. In *Improvement of TOFC/COFC Regulation*, 364 I.C.C. 731 (1981) ("*TOFC/COFC Exemption*"), the ICC exempted TOFC/COFC service from all provisions of the former Interstate Commerce Act [now ICCTA]. See *American Rail Heritage Ltd., d/b/a/ Crab Orchard & Egyptian Railroad, et. al v. CSX Transportation, Inc.* (served June 16, 1995) ("*Crab Orchard*") at 1. Absent partial revocation of the TOFC/COFC class exemption, the statutory provisions upon which WTL's Petitions are based simply do not apply to TOFC service. Moreover, WTL has failed to demonstrate that partial revocation of *TOFC/COFC Exemption* – for the purpose of applying §§ 11121, 10702 and 10704 to what is essentially a contract dispute between an equipment vendor (WTL) and several railroads -- is necessary to promote any aspect of the rail transportation policy articulated at 49 U.S.C. § 10101. Finally, even if the current dispute were governed by those ICCTA provisions, WTL has utterly failed to demonstrate that the carriers' termination of their Trailer Use Agreements with WTL constitutes either a failure to provide adequate car service under § 11121 or an unreasonable practice under §§ 10702 and 10704.

II. WTL’S PETITION FOR PARTIAL REVOCATION OF THE TOFC/COFC EXEMPTION SHOULD BE DENIED.

As WTL acknowledges (Revocation Petition at 4), before the Board can even consider the claims raised by WTL under §§ 11121, 10702 and 10704, it must first find that partial revocation of *TOFC/COFC Exemption*, and application of those statutory provisions to the railroads’ intermodal service, is warranted. *See Crab Orchard* at 3. However, WTL has failed to satisfy the standards for revocation of a class exemption set forth at 49 U.S.C. § 10502(d).

A. Standards Governing Petitions for Revocation

The standards governing the Board’s consideration of a petition to revoke an exemption are well-established. Section 10502(d) authorizes the Board to revoke an exemption only if it finds that “application in whole or in part of a provision of [Title 49] to the person, class or transportation is necessary to carry out the transportation policy of section 10101 of this title.” 49 U.S.C. § 10502(d). *Crab Orchard* at 3. In applying this standard, the Board’s analysis focuses on those sections of the rail transportation policy that are related to the underlying statutory provision from which the exemption was granted. *Minnesota Commercial Ry., Inc. – Trackage Rights Exemption – Burlington Northern R. Co.*, 8 I.C.C.2d 31 (1991) (“*Minnesota Commercial Ry.*”).

Revocation is not warranted unless the petitioner affirmatively demonstrates that formal regulation of the transaction or service is necessary to carry out the rail transportation policy. “The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted.” *Minnesota Commercial Ry.* at 35. *See also* Finance Docket No. 34503, *Timber Rock Railroad, Inc. – Lease Exemption – The Burlington Northern and Santa Fe Ry. Co.*, (served October 7, 2004) at 2; Finance Docket No. 33326 *et al.*, *I&M Rail Link LLC – Acquisition and Operation*

Exemption – Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, 2 S.T.B. 167 (1997), *aff'd sub nom. City of Ottumwa v. STB*, 153 F.3d 879 (8th Cir. 1998) (“*I&M Rail Link*”). WTL has failed to make the showing required to justify revocation of the longstanding *TOFC/COFC Exemption*.

B. WTL Has Failed To Demonstrate That Regulation Of Railroads’ Trailer Use Arrangements With WTL And Other Vendors Is Necessary To Carry Out Any Element Of The Rail Transportation Policy.

WTL asserts that partial revocation of *TOFC/COFC Exemption* -- and issuance of an order requiring the railroads to continue to handle WTL-owned trailers as “rail controlled” equipment -- is necessary to carry out several elements of the rail transportation policy, including § 10101(1) (allowing competition and demand for rail services to establish reasonable rates for transportation); § 10101(3) (promote a safe and efficient rail transportation system); § 10101(4) (develop a sound rail transportation system with effective competition among rail carriers and with other modes); § 10101(5) (foster sound economic conditions and ensure effective competition and coordination between rail carriers and other modes); § 10101(8) (public health and safety); and § 10101(12) (prohibit predatory pricing and practices, undue concentration of market power, and unlawful discrimination). *See* Revocation Petition at 7. However, WTL’s Petitions do not provide reasonable, specific evidence sufficient to support a finding that revoking *TOFC/COFC Exemption*, for the purpose of regulating the railroads’ trailer use arrangements, is warranted.

In *Crab Orchard*, the ICC denied a similar petition to revoke *TOFC/COFC Exemption* for the purpose of imposing a mandatory interchange requirement for trailers used in TOFC service. In that case, CSXT terminated its trailer interchange agreements with several Class III carriers, and later refused outright to accept those trailers for movement over its lines. As in the instant case, CSXT’s actions led other Class I railroads to impose similar restrictions on the

subject trailers. In denying a petition to revoke the exemption, the ICC reaffirmed its conclusion in *TOFC/COFC Exemption* that regulation of trailer interchange practices is not necessary to further the national rail transportation policy because trailers are, by their nature, capable of movement either by rail or over the highway. *Crab Orchard* at 3-4. The ICC stated (quoting AAR's comments):

There is no arguable need – much less a compelling one that would require partial re-regulation of exempt TOFC/COFC traffic – to impose a mandatory interchange requirement for intermodal equipment (such as trailers and containers). Trailers are by purpose and design bimodal and capable of movement over the highway as well as rail.”

Crab Orchard at 4.

There is even less justification for revoking the *TOFC/COFC Exemption* in the present case. Unlike the situation in *Crab Orchard*, the railroads' cancellation of their Trailer Use Agreements with WTL does not impose an outright ban on WTL trailers for use in connection with TOFC service. While reclassification of WTL's trailers from “rail controlled” to “private” may alter the economic terms upon which WTL is compensated for the use of its equipment, it does not prevent WTL (or shippers) from employing those units in connection with rail intermodal shipments. As WTL witness Lombardo acknowledges, the railroads move large numbers of trailers in TOFC service for motor carriers and express companies (such as United Parcel Service) as “private” trailers. Declaratory Order Petition, V.S. Lombardo at 2-3. WTL-owned trailers would be accorded similar treatment.

WTL's unsupported assertion that the railroads' withdrawal from the business of managing the trailers fleets of WTL and other third party lessors as “rail controlled” equipment creates an opportunity for abuse of “captive shippers” (Revocation Petition at 8) is wrong. As the ICC found in promulgating the TOFC/COFC exemption, TOFC service is “highly

competitive with motor carrier service” and “regulation [of TOFC service] is not needed to protect shippers from abuses of market power.” *TOFC/COFC Exemption*, 364 I.C.C. at 732. WTL proffers no specific evidence upon which the Board might conclude that regulation of TOFC service is now “necessary” to protect shippers from competitive harm. WTL asserts only that partial revocation would somehow “satisfy” the goals of that policy by “preserving an additional source of ‘rail controlled’ trailers for smaller intermodal customers, thereby increasing the competitive alternatives available to them.” Revocation Petition at 8 (emphasis added). But WTL has not demonstrated that the plethora of options available in the intermodal marketplace — including shipment by rail in containers (COFC), leasing trailers from WTL (or other trailer suppliers) and shipping them by rail as “private” equipment, shipment in conventional rail cars, or the movement of trailers over the highway — are not adequate for the vast majority of shippers.

San Andreas Fast Forwarding, Inc. (“San Andreas”), a third party intermodal service provider, suggests that trailers are the preferred vehicle for certain produce shipments, particularly onions. San Andreas acknowledges that onion shippers have multiple alternatives to TOFC service, including refrigerated boxcar service, COFC service and motor carrier service — indeed, San Andreas acknowledges that “we compete mainly with highway carriers.”

Declaratory Order Petition, V.S. Baca (San Andreas) at 1-2 (emphasis added). However, San Andreas claims that other rail alternatives are “slower” than TOFC service. *Id.* at 2. In particular, San Andreas alleges that transcontinental COFC service takes 2-3 days longer than TOFC service, due to delays in providing chassis at rail terminals. *Id.*

San Andreas’ assertions are not consistent with CPR’s experience. While certain railroads have at times offered expedited TOFC train services for perishables traffic with faster

schedules than other TOFC/COFC trains, TOFC service is not inherently “faster” than COFC service. In most instances, containers lifted from an arriving train are placed directly on to a chassis, and are available for movement over the road just as quickly as trailers lifted from the same train. Delays to container shipments on account of chassis availability are the exception, rather than the rule. Indeed, it is equally likely that a trailer may be delayed at the origin terminal due to the unavailability of a trailer-capable flat car in an outbound train consist. Fewer than 30 percent of the current TTX intermodal platform fleet, and less than 11 percent of CPR-owned platforms, can accommodate trailers. In any event, if particular shippers need to use trailers for their intermodal shipments, they can lease them directly from WTL or other trailer vendors.

Thus, WTL has failed to demonstrate that regulation of TOFC service — and, in particular, regulation of the relationships between railroads and third party equipment vendors such as WTL — is necessary to carry out the competitive goals of the rail transportation policy. Nor is such regulation necessary to promote an efficient rail (and intermodal) transportation system. WTL witness Lombardo laments the railroad industry’s shift from trailers to containers for domestic intermodal shipments. Declaratory Order Petition, V.S. Lombardo at 4. The trend toward greater use of containers (and corresponding reduction in TOFC service offerings) will improve the efficiency of rail intermodal service. Domestic cargo moving in containers can be transported in double-stack well cars, and can be commingled with international (ex-ocean) container traffic. Because trailers cannot be double-stacked, TOFC shipments consume more track space (per unit) than containers in yards and terminals. Switching conventional flat cars into and out of intermodal trains to accommodate trailer shipments increases the cycle time for the entire car set. Toplift machines used to load/unload containers must be modified, or separate

trailer lifting equipment must be maintained at yards and terminals, to handle trailers. For these reasons, railroads (including CPR) have actively encouraged the movement of domestic intermodal traffic in containers. This shift has helped to make rail intermodal service more (not less) efficient and cost-competitive with motor carrier service.

Ultimately, the market – and not STB regulation – provides the most efficient means of ensuring that railroads maintain an adequate supply of the types of equipment required to serve intermodal customers. “If the railroad fleet declines to a level that causes the carriers to forfeit profitable traffic of these shippers, there will be ample economic incentive for them to acquire [trailers], either by lease or by purchase.” *Shippers Committee OT-5 v. The Ann Arbor R. Co. et al.*, 5 I.C.C. 2d 856, 868 (1989) (“*SCOT-5*”). STB regulation that “freezes” existing relationships between railroads and intermodal equipment vendors would hamper the ability of the railroads to respond to changes in the intermodal marketplace.

In short, WTL’s Petitions fail to make the requisite showing that partial revocation of *TOFC/COFC Exemption*, and issuance of a declaratory order requiring the railroads to continue to handle WTL trailers as “rail controlled” equipment, is necessary to carry out any element of the rail transportation policy. Accordingly, WTL’s Revocation Petition should be denied. Moreover, the Board should deny WTL’s Declaratory Order Petition seeking a determination that cancellation of WTL’s Trailer Use Agreements violated §§ 11121, 10702 and 10704 of ICCTA, because those provisions do not apply to exempt TOFC/COFC service.

III. WTL’S PETITION FOR DECLARATORY RELIEF SHOULD BE DENIED.

Even if the Board were to revoke in part *TOFC/COFC Exemption* for the purpose of entertaining WTL’s Declaratory Order Petition — and, for the reasons set forth in Section II above, it should not — WTL has failed to demonstrate that it is entitled to relief under §§ 11121, 10702 or 10704.

A. The Railroads' Actions Do Not Violate Section 11121(a).

The decision by BNSF and other carriers to terminate their Trailer Use Agreements with WTL, and to treat those trailers in the future as “private” trailers, does not violate Section 11121(a). It is well-settled that Section 11121(a) requires only that carriers provide cars “reasonably suitable and safe for transportation of the commodity to be loaded therein.” *Texas Gulf Sulphur Company Terminal Allowance*, 288 I.C.C. 315, 320 (1953). *See also Sioux City Terminal Ry. Switching*, 241 I.C.C. 53, 63 (1940); *Use of Privately Owned Refrigerator Cars*, 201 I.C.C. 323 (1934). This “car service” obligation does not require railroads to meet the exact specifications of every shipper for specialized cars, if the equipment provided by the carrier is “reasonably suitable and safe” for the transportation contemplated. *See, e.g., Allied Corp. v. Union Pacific R. Co.* 1. I.C.C. 2d 480, 483 (1985) (carriers required to provide “suitable cars (but not specialized equipment)”); *Winnebago Farmers Elevator Co. v. Chicago and North Western Transportation Co.*, 354 I.C.C. 859, 873-875 (1978) (carrier not required to provide hopper car service where boxcar service suitable). Moreover, Section 11121 imposes no obligation on railroads to include the equipment of any particular third-party vendor in its “rail controlled” fleet.

WTL makes dire predictions regarding the impact of the termination of its Trailer Use Agreements on the future supply of trailers. *See* Revocation Petition at 8-9; Declaratory Order Petition at 11. However, WTL does not document a single instance in which any railroad has, in fact, refused to provide suitable equipment for loading by an intermodal shipper. Moreover, WTL fails to explain why intermodal service in domestic containers, or in trailers handled as “private” equipment, would not be “reasonably suitable and safe” for intermodal shippers.

Indeed, WTL’s claim that the railroads’ refusal to handle its trailers as “rail controlled” equipment violates Section 11121(a) is fatally undermined by the testimony of WTL’s own

witness, John J. Robinson. Mr. Robinson states that a “valid and more appropriate” method for BNSF and other carriers to phase out TOFC service in “rail controlled” trailers would be for the carriers to stop offering Plan 2 [i.e., TOFC in railroad-provided trailer] service. Declaratory Order Petition, V.S. Robinson at 4. If (by Mr. Robinson’s admission) carriers may lawfully eliminate Plan 2 TOFC service altogether, they certainly do not violate Section 11121(a) simply by terminating their trailer use agreements with an individual third party trailer vendor.

Section 11121 provides that the Board may issue a car service order “if the Board decides that the rail carrier has materially failed to furnish that service.” 49 U.S.C. § 11121(a)(1) (emphasis added). WTL has not shown that CPR (or any rail carrier) has, in fact, failed to provide safe, suitable equipment in response a request for service by any intermodal customer. Absent such evidence, there is no basis in the record for the Board to grant the relief requested by WTL pursuant to Section 11121(a).

B. The Railroads’ Actions Do Not Constitute an Unreasonable Practice.

WTL’s claim that the railroads’ termination of their Trailer Use Agreements with WTL constitutes an “unreasonable practice” under Sections 10702(2) and 10704(a)(1) is without merit.

“Unreasonable practices are not specifically defined in the [ICCTA], but this concept does not provide a clean slate on which to write a code of conduct for the carriers. [Citation omitted] Rather, [the Board] must review the carriers’ actions according to the congressional directions embodied in the various relevant portions of the Act.

SCOT- 5, 5 I.C.C. 2d at 863.

As CPR demonstrates above, the railroads’ actions in this case are not inconsistent with any element of the rail transportation policy articulated by Congress in Section 10101, nor would they constitute a violation of the carriers’ car service obligations under Section 11121(a) (even if that provision were applied to TOFC service). Moreover, WTL witness Robinson acknowledged

that it would not be unlawful under ICCTA for the carriers to eliminate their Plan 2 TOFC offerings altogether. Consequently, there is no basis upon which the Board could find that termination of WTL's Trailer Use Agreements, and handling of WTL trailers as "private" (rather than "rail controlled") equipment, constitutes an "unreasonable practice" under Section 10702.

IV. WTL HAS FAILED TO MAKE THE REQUISITE SHOWING FOR ISSUANCE OF A STAY.

The standards governing the Board's consideration of a petition for a stay are well-established. The petitioner must demonstrate: (1) a strong likelihood that it will prevail on the merits of the dispute; (2) that it will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed in the event of a stay; and (4) that the public interest supports granting the stay. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); Finance Docket No. 34225, *Norfolk Southern Railway Co.—Trackage Rights Exemption—Delaware and Hudson Railway Company*, (served July 25, 2002), STB LEXIS 442, LEXIS op. at *5-6; Finance Docket No. 33337, *Minnesota Northern Railroad, Inc.—Trackage Rights Exemption—Burlington Northern and Santa Fe Railway Co.*, (served Jan. 14, 1997), 1997 STB LEXIS 2983, LEXIS op. at *4-5. A stay is an "extraordinary remedy," and a party seeking a stay must demonstrate that it has met each of the four required elements. *Norfolk Southern Railway Co.* at *5.

To meet this burden, a petitioner must provide "sufficient evidence and argument necessary to convince the Board that [it is] likely to prevail in [its] argument" Finance Docket No. 34143, *Keokuk Junction Railway Co.—Acquisition and Operation Exemption*, (served Dec. 26, 2001), 2001 STB LEXIS 965, LEXIS op. at *6. With regard to the irreparable harm element, a party must demonstrate that the threat of harm is "both irreparable and

imminent.” Finance Docket No. 33290, *Sault Ste. Marie Bridge Co. –Acquisition and Operation Exemption*, (served Jan. 24, 1997), 1997 STB LEXIS 2989, LEXIS op. at *12. A petitioner must also provide evidence to demonstrate that no harm would be inflicted upon other interested parties in the event of a stay. Finally, with regard to the public interest element, the Board has held that “[i]t is in the public interest to permit carriers to transact business among themselves absent a showing of harm to the public.” *Keokuk Junction Railway Co.—Acquisition and Operation Exemption*, LEXIS op. at *8.

WTL has failed to satisfy these standards for issuance of a stay. As Parts II and III of this Reply show, WTL is not likely to succeed on the merits of its Petitions. Specifically, WTL has not satisfied the standards for revocation of the *TOFC/COFC Exemption*. Accordingly, the Board is not likely to revoke the TOFC/COFC exemption, or to entertain the claims raised in WTL’s Declaratory Order Petition.

Nor has WTL demonstrated that denial of a stay would inflict irreparable harm on it. Cancellation of WTL’s Trailer Use Agreements will not result in an outright ban of WTL trailers for use in TOFC service. WTL is free to make its trailers available to shippers for movement by the railroads as “private” equipment, or by motor carriers in over-the-road service. Unlike the trailers at issue in *Crab Orchard*, there is no question here that WTL’s trailers are suitable for use in highway service. See Declaratory Order Petition, V.S. Lombardo at 1, n. 1 (“Most of these trailers were previously used by trucking companies in ‘over-the-road’ service.”)

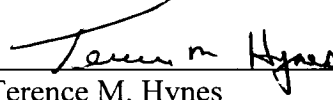
Finally, the public interest does not support a stay (or, ultimately, revocation of the *TOFC/COFC Exemption*). As WTL acknowledges (Revocation Petition at 10), deregulation of TOFC/COFC service has been “very beneficial” both for the rail industry and for the shipping public. WTL’s Petitions — which essentially involve a dispute between the carriers and an

individual third party trailer vendor — do not raise the type of compelling issues that would warrant the Board's regulatory intervention in this highly competitive (and successful) sector of the rail transportation system.

CONCLUSION

For all of the foregoing reasons, CPR respectfully requests that the Board deny WTL Rail Corporation's Petition for Declaratory and Interim Relief and Petition for Partial Revocation of Exemption.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terence M. Hynes", is written over a horizontal line.

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Attorneys for Canadian Pacific Railway

Dated: May 25, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of May 2005, I served the foregoing Reply of Canadian Pacific Railway in Opposition to the WTL Rail Corporation's Petition for Declaratory and Interim Relief and Petition for Partial Revocation of Exemption by causing a copy thereof to be hand-delivered to:

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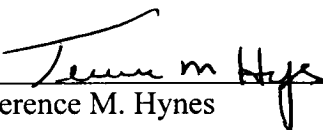
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