

June 9, 2005

Via Hand Delivery

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



RE: STB Finance Docket No. 42060 (Sub-No. 1), *North America Freight Car Association v. BNSF Railway Company*

Dear Secretary Williams:

Enclosed please find the original and ten (10) copies of the National Industrial Transportation League's "Petition to Withdraw as Intervenor and to Participate as Amicus Curiae" for filing in the above-referenced proceeding. Also enclosed is one diskette with a copy of the Petition in PDF format.

An extra copy of this Petition is enclosed for time and date stamping and return to our offices.

If you have any questions regarding the foregoing, then please do not hesitate to contact me.

Sincerely,

Nicholas J. DiMichael
Michael H. Higgins
Counsel for the National Industrial Transportation League

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JUN 10 2005

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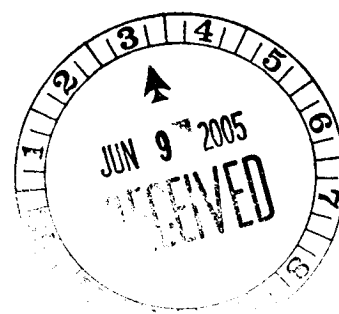
**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. 42060 (SUB-NO. 1)

NORTH AMERICA FREIGHT CAR ASSOCIATION

v.

THE BNSF RAILWAY COMPANY



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**THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE'S
PETITION TO WITHDRAW AS INTERVENOR AND
TO PARTICIPATE AS AMICUS CURIAE**

Pursuant to 49 C.F.R. § 1117.1, the National Industrial Transportation League ("NITL"), an Intervenor in the above-captioned proceeding, hereby submits this Petition to Withdraw as Intervenor and to Participate as Amicus Curiae ("Petition"). NITL submits this Petition in order to ameliorate certain outstanding discovery disputes with the Defendant, BNSF Railway Company ("BNSF"), and because it anticipates that its future participation in this proceeding will be akin to that of an *amicus curiae* in a court case. Accordingly, NITL believes that it is proper for the Board to formally modify its status.

In support of this Petition, NITL states as follows:

1. On or about September 13, 2001, NITL filed a Petition for Leave to Intervene ("Petition for Leave") in this proceeding, pursuant to 49 C.F.R. § 1112.4. In support of that petition, NITL stated that the storage and demurrage charges subject to the Complaint filed by the North America Freight Car Association ("NAFCA") "will have substantial economic consequences for NITL members that own or lease rail car fleets." Petition for Leave at ¶1.

NITL also stated that it supported “innovative measures designed to improve the efficiency of the rail network,” but believed that the storage and demurrage rules and charges proposed by BNSF, in practice, might adversely affect shippers and constitute violations of federal law, as alleged by NAFCA. *Id.* at ¶¶2 and 3. Accordingly, NITL supported the Complaint and an investigation by the Board. *Id.* at ¶3. NITL also stated that its participation in the proceeding would not broaden the issues presented or delay its resolution. *Id.* at ¶4. The same day, NITL submitted a similar Petition for Leave to Intervene in the lead docket of this proceeding. The Board allowed NITL to participate as an Intervenor in both proceedings. *See* STB Docket No. 42060; STB Docket No. 42060 (Sub-No. 1); STB Docket No. 42064, *North America Freight Car Association—Protest and Petition for Investigation—Tariff Publications of the Burlington Northern and Santa Fe Railway Company; North America Freight Car Association v. Burlington Northern and Santa Fe Railway Company; E. I. Dupont de Nemours and Company—Protest and Petition for Investigation*, (Served May 29, 2002).

2. As an Intervenor, NITL has participated at various stages of this proceeding and the lead-docket proceeding. However, NITL has not independently developed and presented major written submissions to the Board; rather, NITL has joined NAFCA and the other Intervenor, the American Chemistry Council (“ACC”), in making joint submissions. As this proceeding moves forward, NITL does not anticipate that it will develop and submit its own evidence and argument based on such evidence on the remaining issues identified by the Board in its decision served on August 13, 2004. Instead, NITL anticipates that it will seek to comment, on behalf of its members, on evidence and argument submitted to the Board by the Complainant and the Defendant. Accordingly, NITL believes that it is appropriate to withdraw as an Intervenor in the case, and to participate further as an *amicus curiae*.

3. NITL is confident that its further participation in this proceeding, as an *amicus curiae*, will be beneficial to the Board's understanding and resolution of the disputed issues. As the Board is aware, NITL's membership includes many companies that ship substantial amounts of freight traffic by rail on BNSF (and other major railroads) and that own or lease large railcar fleets. NITL's constituency also includes other entities involved in the rail transportation industry, such as third-party intermediaries, logistics companies, railroads, and motor and ocean carriers that use rail transportation for intermodal operations. Thus, NITL believes that offering its perspective, as a major transportation industry stakeholder, will assist the Board in its decision-making. Additionally, NITL submits that its participation as an *amicus curiae* will not broaden the issues presented in this case, or unduly delay its disposition.

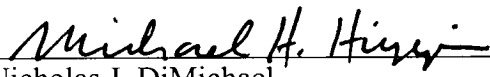
4. Additionally, granting NITL's Petition will resolve outstanding discovery disputes with BNSF, which have the potential to disrupt the Board's timely resolution of this case. BNSF has agreed to withdraw certain of its discovery requests in consideration for NITL's agreement to withdraw from this case as an Intervenor, and to seek leave to participate further as an *amicus curiae*, in the manner herein described.

5. Neither BNSF nor NAFCA objects to NITL's withdrawal from this case as an Intervenor and its continued participation as an *amicus curiae*.

6. In the event the Board decides to deny the relief requested herein, NITL requests that the relief be denied in whole, rather than in part. NITL's request to withdraw as intervenor from this proceeding is contingent upon its request to participate further as an *amicus curiae*. NITL does not wish to withdraw as intervenor from this case, if in doing so, it does not gain the right to participate further in the manner herein described.

WHEREFORE, NITL respectfully requests that the Board allow it to withdraw as an Intervenor, and to participate in this case as an *amicus curiae*.

Respectfully submitted,



Nicholas J. DiMichael

Michael H. Higgins
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 331-8800

Counsel for Intervenor
The National Industrial Transportation League

Dated: June 9, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of this "Petition to Withdraw as Intervenor and to Participate as Amicus Curiae" upon all parties of record in this proceeding by hand delivery.


Michael H. Higgins

June 9, 2005