

NORTH AMERICAN TRANSPORTATION COUNCIL, INC.

P.O. Box 548
Buffalo, NY
14225-0548

427 Garrison Rd., Unit 4
Ft. Erie, ON
L2A 6E6



July 24, 2003

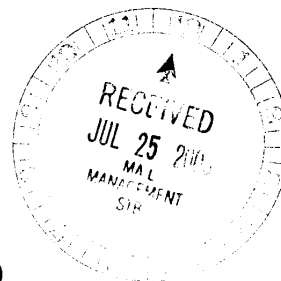
FEE RECEIVED

208521

JUL 25 2003

**SURFACE
TRANSPORTATION BOARD**

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, DC 20423-0001



**RE: Section 13703(a) Application No. 45 (Amendment No. 17)
Niagara Frontier Tariff Bureau, Inc. - Agreement**

Dear Mr. Secretary:

Please find enclosed one signed original and six (6) copies of an Application for Approval of Minor Amendment. The amendment will apply to the Agreement noted above.

In this amendment, we seek to accomplish three things:

First; to withdraw pending amendment 13 which seeks to obtain nationwide authority. In doing so, petitioner retains the right to file for such authority at a later date;

Second; to bring forward minor amendment 15 in a slightly modified form. This is being done to eliminate the need for the Surface Transportation Board (STB) to consider two slightly different amendments.

Third; to incorporate the provisions required by the STB decision of March 21, 2003.

Also enclosed is a check in the amount of \$70.00 required for the filing fee.

Sincerely,

David J. Sergey
President

FILED

JUL 25 2003

**SURFACE
TRANSPORTATION BOARD**

DJS/jg
Enclosures

Turning Data Into Information

Tel: 800-559-7421
FAX: 905-994-0117

Email: info@fca-natc.org
Website: <http://www.fca-natc.org>

FILED

JUL 25 2003

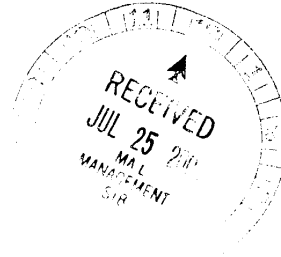
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB

WASHINGTON, D.C.



FEE RECEIVED

JUL 25 2003

**SURFACE
TRANSPORTATION BOARD**

Section 5a Application No. 45 (Sub. No. 17)
NIAGARA FRONTIER TARIFF BUREAU, INC.

REQUEST FOR APPROVAL OF MINOR AMENDMENT

Niagara Frontier Tariff Bureau, Inc., (NFB) and the signatories to Section 5a Agreement No. 45, (Sub-No. 17), submit this request for renewal of its revised Agreement (Appendix A) pursuant to the provisions of 49 U.S.C. 13703 (d).

In this amendment, we seek to accomplish three things:

First; to withdraw pending amendment 13 which seeks to obtain nationwide authority. In doing so, petitioner retains the right to file for such authority at a later date;

Second; to bring forward minor amendment 15 in a slightly modified form. This is being done to eliminate the need for the Surface Transportation Board (STB) to consider two slightly different amendments.

Third; to incorporate the provisions required by the STB decision of March 21, 2003.

Introduction

NFB is a corporation organized under the laws of New York State and its headquarters are in Buffalo, Erie County, NY. NFB was founded in 1939 and has continuously operated as a rate bureau since that time and in full compliance with Section 5a of the Interstate Commerce Act since its passage.

NFB represents more than 50 small and medium sized motor carriers, about 70% of whom are headquartered in seven different Canadian provinces and operate in all Canadian provinces and parts of the United States. The other 30% are headquartered in the United States and operate in all the Continental United States and parts of Canada.

For the past sixty-four years, NFB has specialized in the Canada/US transborder market and the formulation of rate structures between Canada and the United States. In doing so, it has acquired expertise in all aspects of motor carrier operations and costs in both countries as well as the customs clearance and border crossing transactions involved on all transborder shipments. During this same period it has performed the same services between points within the United States in interstate commerce. Since its founding, NFB has performed services for its member carriers relating to collective ratemaking in the formulation, publication, and distribution of baseline class rates. In addition to the collective ratemaking and related services, NFB also performs supporting services such as: data collection and analysis; development of performance factors; shipment costing studies; maintenance of motor carrier cost indices --labour, non-labour and fuel-- in both Canada and the United States; individual carrier tariff publication;

traffic flow analyses; market analyses; benchmarking surveys; presentation of seminars and information sessions; and software development. NFB disseminates to its members valuable information on the topics listed above.

While some of these functions may not require antitrust immunity, differentiating between the ones that do and the ones that do not is at best ambiguous. For this reason, any elimination, restriction, or change in the present immunity would place its members in a precarious situation and in all probability would result in carriers having to withdraw from the Bureau because of the uncertainty as to potential antitrust exposure. This would cause these small and medium sized carriers irreparable harm as it would hamper their ability to compete with the larger carriers who can serve most points direct. NFB's August 18, 1997 filing contains several testimonials to that effect.

Since the ICC Termination Act (ICCTA)

Congress in its continuation of Antitrust Immunity under ICCTA found the limited antitrust immunity was in the public interest. It established the three-year renewal period to determine if the changes in the marketplace brought about by the ICCTA would make antitrust immunity no longer in the public interest. Later Section 227 of the Motor Carrier Safety Improvement Act of 1999 (Safety Act) established a 5-year statutory review period. The initial period runs through December 31, 2004.

ICCTA's Effect on NFB Operations

NFB's operations have not changed since ICCTA and are the same as before with the exception of the filing of its tariff publications with a regulatory agency. Its existing

functions, including the collective ratemaking permissible under the current Act, have remained unchanged.

The Carriers' Position

The carriers' need for antitrust immunity has not diminished nor changed since the passage of ICCTA. Small and medium sized carriers continue to require the services the regional rate bureaus provide which are only possible through the limited antitrust immunity provided under ICCTA. The comments filed by NFB in *EC-MAC* as well as those filed by other bureaus clearly support this fact.

The Shippers' Position

Shipper organizations - At the hearing held on August 5, 1998, before the House Subcommittee on Surface Transportation, two shipper organizations appeared. The spokesman for the National Industrial Transportation League (NITL) stated that rate bureaus created no problem and were "inconsequential". The spokesmen for the Health & Personal Care Distribution Conference, Inc., and the National Small Shipments Traffic Conference, Inc. (NASSTRAC) objected to rate bureaus on the same old basis: 1) baseline rates are unrealistically high and, 2) carriers are establishing liability limitations that are harmful to shippers. It should be noted the bureaus have been prohibited from collectively establishing liability limitation provisions since the Motor Carrier Act of 1980, carriers can only publish them independently.

Nothing has changed since Congress last considered the antitrust immunity issue. Congress at the time recognized both of NASSTRAC's objections as being unrelated to collective ratemaking. Comparisons of baseline rates published by the rate bureaus with those published by individual carriers show that some individual carrier

rates are higher, some are lower and some are the same as the bureau rate levels. Rates were then, as they are now, responsive to the demands of shippers. Shippers control both how rates are formulated, formatted as well as the rate level. Attempts to reduce the baseline rates and simultaneously the percent of discount, either collectively or by individual carriers, have failed miserably as shippers continued to prefer the high discounts.

The STB required for our 5a Agreement renewal the furnishing of a truth-in-rates notice and barred the use of a loss-of-discount provision on collectively made rates. This has been done.

Individual shippers - In EC-MAC, about 100 individual shippers expressed their desire for the continuation of the existing antitrust immunity and state such immunity is in the public interest. They further state that without the immunity they would not participate in the collective ratemaking process. No individual shipper in this proceeding has demonstrated any harmful effect.

The record clearly shows that since the enactment of ICCTA, the need for the continuation of antitrust immunity is identical to the need for antitrust immunity which existed when Congress passed ICCTA.

The proposed Revised Agreement, as adopted by the Board of Directors of NFB, satisfies the criteria set by the Surface Transportation Board. The entire new bylaws are shown in the attached Appendix A. Language which is being eliminated is ~~crossed-out~~ or marked with the word "delete" in the margin. New Language which has been added is indicated by underlining, or marked with the word "new" in the margin.

A summary of the significant changes follows. Where no explanation is given for a specific change it is because the change is insignificant.

Summary of Changes

<u>Old</u>	<u>New</u>	<u>Part 1</u>
1.1	1.1	The name of the organization is being changed to North American Transportation Council, Inc. and an office for the conduct of business has been opened in Ontario, Canada. The organization remains a New York corporation. The reason for the name change is to more clearly identify the services now being provided. The office in Ontario is to meet the growing need of members domiciled in Canada. Changes where needed have been made in other sections of the Bylaws.
2.1	2.1	The objects (services) have been reworded to, again, more clearly spell out the objectives of the organization. They do no result in any change.
3.6		No longer applicable.
4.1 b)	4.1 b)	Changes made to reflect changes required by the STB.
	4.1 c)	[NEW] Member carriers must certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as penalty for late payment.
4.5 a)	4.5 a)	Reduction in Quorum required due to decrease in membership.
4.5 b)	4.5 b)	Rates and rules are not discussed at Board or Annual Meetings.
4.7 d)		There are no longer participating carriers. All carriers are now members.
5.1		There are no longer participating carriers. All carriers are now members.
	5.1	[NEW] To establish a new class of membership. Adds the category of Associate Membership for non-carrier entities.
6.4		Reinstatement fee is no longer applicable.
8.1	8.1	The title of the present officers is being changed to more clearly outline the offices held. The functions and obligations remain the same. Changes where needed have been made in other sections of the Bylaws.

<u>Old</u>	<u>New</u>	<u>Part 1 (continued)</u>
10.1		The Rate and Tariff Agreement is being eliminated as under today's procedure it is no longer required.
	12.1	[NEW] The Liability Release provision is being added to advise of the liability of the Council (Bureau).

<u>Old</u>	<u>New</u>	<u>Part 2</u>
1.5		The time requirements for final disposition no longer have application.
1.6		Amendment provisions are no longer applicable.
1.7		Concurrence provisions are no longer applicable.
2.1		(DOCKETING NOT REQUIRED) This section is no longer applicable.
4.2	3.2	The Buffer and the Canadian General Rate Committees have been combined.
4.3		No longer applicable.
4.4	3.3	Meeting Quorum - Time reduced to 10 days to allow quicker response.
4.5	3.4	Sub-Committees - Time reduced to 10 days to allow quicker response.
4.8	3.6	Notice - Time reduced to 10 days to allow quicker response.
4.7		No longer applicable.
4.10	3.8	Time reduced to 10 days to allow quicker response.
4.11	3.9	Reconsider - Portions deleted that no longer have application.
4.12	3.10	General Increases - Portions deleted that no longer have application.
4.14	3.11	Voting - Portions deleted that no longer have application.
	4.1	[NEW] The Truth-in-Rates provision is being added to meet STB requirements.
	4.2	[NEW] Adds the annual survey of member carriers to ascertain the applicable range of discounts.
5.1	5.1	Reflects the carrier's rights under independent action.
5.2	5.2	Reflects the carrier's rights under independent action.
5.3	5.1	Reflects the carrier's rights under independent action.
5.4		Deleting portions of independent action procedures that no longer to apply.
5.11		

Part 3

Agreement with SMCRC has been terminated.

Part 4

Agreement with RMB has been terminated.

Conclusion

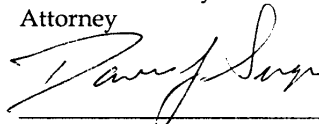
Congress established the antitrust provisions fifty years ago and has reviewed and modified those provisions many times over the years. As late as December 1995 in ICCTA Congress has found that limited antitrust immunity continues to be in the public interest. Nothing has happened since that time that would in any way support a finding that the limited antitrust immunity provided for in ICCTA is no longer in the public interest. It is the purview of Congress to determine whether a change in public policy is warranted.

For the foregoing reasons, we urge the Board approve NFB's Section 5a Agreement No. 45 (Sub-No. 17).

Respectfully submitted,



Robert G. Gawley
Attorney

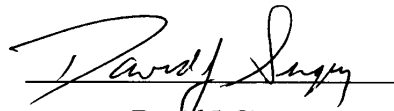


David J. Sirgey
Attorney-in-fact

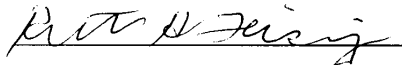
AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

I, David J. Sirgey, being first duly sworn, depose and state on oath: that I am the duly appointed attorney-in-fact for each of the applicants in this proceeding; that I am authorized and directed by said applicants to verify and file this petition to amend their Section 5a Agreement No. 45 as referenced herein; that the procedures and Bylaws set forth in Appendix A have been adopted by the carriers' Board of Directors; that I have knowledge of the matters contained in this petition, and that the statements of fact set forth therein are true and correct to the best of my knowledge, information and belief.


David J. Sirgey
Attorney-in-Fact

Subscribed and sworn before me
this 24th day of July 2003

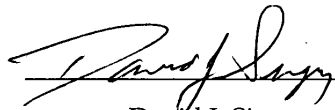


Kenneth H. Leising
Notary Public, State of New York
Qualified in Erie County
My Commission Expires May 23, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served a copy of the foregoing Application upon all parties of record¹ to the 10703 Agreement noted herein, by first class mail.

Dated at Buffalo, New York this 24 day of July, 2003.


David J. Sirgey

OPINION OF COUNSEL

Undersigned counsel has examined Appendix A containing amendments to Section 13703 (formerly Section 5a) Agreement No. 45. In my opinion, said amendments meet the requirements of the law as set forth in section 13703 of the Interstate Commerce Commission Termination Act of 1995 and will be legally authorized if approved by the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert G. Gawley", written over a horizontal line.

Robert G. Gawley
Attorney

¹ Due to the changes in legislation the individual State Regulatory Commissions have not been served.

PART 1

I

NAME

Delete

1.1 The name of this corporation shall be the Niagara Frontier Tariff Bureau, Inc. and the general offices for the conduct of its business shall be located in the County of Erie, New York.

New

1.1 The name of this corporation shall be the North American Transportation Council, Inc., and the general offices for the conduct of its business shall be located in the County of Erie, New York and in the Niagara Region, Ontario, Canada.

II

OBJECTS OF THE BUREAU

2.1 The Bureau will:

- a) Maintain a system for the joint consideration of new and changed rates, ratings, charges, classifications, exceptions to classifications, divisions, allowances, rules, regulations and practices pertaining thereto.
- b) Compile, publish and file, or cause to be compiled, published and filed, with the Interstate Commerce Commission and other regulatory bodies all necessary tariffs covering movements to, from and within Niagara Frontier-Territory as referred to herein.
- c) Investigate, procure, analyze, compile, publish and disseminate statistics, reports and information which pertain to any of the purposes for which this Bureau is organized.
- d) When desirable or necessary for the interests of its members, collect evidence and appear and take action before the appropriate government agencies or courts as may be permitted by law.

Delete

II

OBJECTS OF THE ORGANIZATION

2.1 The North American Transportation Council, Inc. will:

- a) Carry out throughout Canada and the United States, without profit, the services of a Trade Association for parties engaged in the Transborder and/or Interstate trucking who subscribe to its services and pay its fees. Should Interstate come out since Nationwide is withdrawn
- b) Maintain a system for the joint consideration of new and changed rates, ratings, charges, divisions, rules regulations and practices pertaining thereto.
- c) Compile and publish, or cause to be compiled and published, in paper or electronic media, tariffs covering rates to, from and within North American Transportation Council, Inc. territory
- d) Investigate, procure, analyze, compile, publish and disseminate statistics, reports and information which pertain to any of the purposes for which this Council is organized.
- e) When desirable or necessary for the interests of its members and associate members, collect evidence and appear and take actions before the appropriate government agencies or courts as may be permitted by law.
- f) To provide a source of information to carriers, shippers and the general public as to collectively established rates within the territory served by its membership.
- g) To assist its members and associate members in the correct interpretation of rates, charges, rules and regulations pertaining to freight carriage.
- h) To hold meetings of its members and/or associate members to provide information, discuss common problems and deal with matters of interest to the membership.

New

III

DEFINITIONS

3.1 As used in these Bylaws ~~and in the Rate and Tariff Agreement pursuant to Article XI-X hereof~~ the terms defined below, unless otherwise required by context, shall be interpreted to have meanings respectively assigned to them as follows:

3.2 ~~NIAGARA FRONTIER~~ **NORTH AMERICAN TRANSPORTATION COUNCIL TERRITORY** includes: (1) Points in Canada and points in the United States, only insofar as those points are the origin or destination of a movement between a point in the United States, on the one hand, and a point in Canada, on the other hand. (2) all points in the United States located within the following zip codes as designated by the United States Postal Service: 14000 through 14399; 14700 through 14799; 15000 through 15499; 15600 through 15699; 16000 through 16599; 26000 through 26099.

3.3 **CHARGE or CHARGES** means any rate, rating, charge, division, rule or regulation, which determines, affects, or limits the compensation to be received for the transportation of freight by a motor carrier. ~~or a joint-line participant.~~ 3.4 **NOTICE BY PUBLICATION** and phrases of similar import mean publication of such notice in ~~Niagara Frontier Tariff Bureau~~ **North American Transportation Council** Docket Bulletin.

3.4 **NOTICE BY PUBLICATION** and phrases of similar import mean publication of such notice in North American Transportation Council Docket Bulletin.

3.5 **DOCKET BULLETIN** means a publication, available to all persons upon payment of a charge to cover its cost, and forwarded immediately to all such persons by first class mail, which gives notice of any matter for which notice or notice by publication is herein provided.

Delete

[3.6 **JOINT-LINE PARTICIPANT** means any person, firm or corporation engaged in the
| transportation of property as a common carrier by other than motor vehicle and which participates
| in joint charges published by this Bureau .
]

IV
MEMBERSHIP

4.1 ELIGIBILITY - APPLICATION.

- a) Any motor common carrier engaged in the lawful transportation of property within ~~Niagara Frontier~~ North American Transportation Council Territory is eligible for membership in the ~~Niagara Frontier Tariff Bureau, Inc.~~ North American Transportation Council, Inc. (hereinafter referred to as the Bureau Council).
- b) Any such eligible carrier may become a member of the Bureau Council by executing an agreement to abide by the Charter, the Bylaws, and Rules of Procedure of the Bureau Council, upon the execution of proper Power of Attorney, upon the payment of dues and assessments as fixed by the Board of Directors, ~~upon the execution of proper Power of Attorney and, upon executing a Rate and Tariff Agreement as provided herein, and upon filing with the Interstate Commerce Commission a Verified Statement containing the information required by 49 U.S.C. Section 10706(b)(3)(A).~~
- New [c) Member carriers must execute a certification that they will not apply a loss-of-discount
L provision that they would reinstate the collectively set rate as a penalty for late payment.

4.2 ACCEPTANCE. If, upon due investigation and consideration, the ~~Executive Vice President~~ finds that such application is in due form, that applicant is eligible to become a member of this Bureau Council and that applicant has duly executed ~~and filed the Rate and Tariff Agreement, a Power of Attorney,~~ he shall accept said application. ~~provided that any such applicant who heretofore has been a member and has been expelled shall be eligible for re-admittance only after the Board of Directors, by resolution, has found that cause for which said member was expelled has been removed or remedied.~~

4.3 ANNUAL MEETINGS. There shall be an annual meeting of members of the Bureau Council held at such time and place as the Board of Directors may decide, for election of members of the Board of Directors, and for receiving the annual reports of officers, directors and committees and the transaction of other business. ~~If the day designated falls upon a legal holiday, the meeting shall be held on the next succeeding secular day not a holiday.~~ Notice of such meeting, signed by the Secretary, shall be mailed, except as herein or by statute otherwise provided, to the last recorded address of each member at least (10) days and not more than thirty (30) days before the time appointed for the meeting. All notices shall set forth the place, date, time and purpose of the meeting.

4.4 SPECIAL MEETINGS. Special meetings may be called by the Board of Directors at their discretion. Upon the written request of ten (10) members of the Bureau Council, the Board of Directors shall call a special meeting to consider a specific subject. Notice for any special meeting to be given in the same manner as the annual meeting. No business other than that specified in the notice of meeting shall be transacted at any special meeting of the members of the Bureau Council.

4.5 QUORUM.

- Delete
- a) ~~Except at Annual Meetings or special meetings at which rates or rules are discussed or considered,~~ The presence in person or by proxy of ~~fifteen (15)~~ ten (10) members of the Bureau Council entitled to vote shall be necessary to constitute a quorum for the transaction of business at Annual Meetings or Special Meetings, but a lesser number may adjourn to some future date not less than six (6) nor more than twenty (20) days later, and the Secretary shall thereupon mail notice of the adjournment at least three (3) days before the adjourned meeting to each member entitled to vote who was absent from the meeting adjourned.
 - b) At Annual Meetings or Special Meetings at which rates or rules are discussed, or considered, a and all actions shall be by a majority vote of those present and eligible to vote and voting. Notice of such meeting must be given at least fifteen (15) days prior to the meeting and transmitted through the Bulletin, and will set forth the time and place of the meeting and the rates or rules which will be discussed or voted upon, including a list or general description of the commodities moving under the rate, the relevant origin and destination points, and the appropriate justification for the proposed action as well as any other relevant data. Any person must be admitted to that portion of any meeting involving discussion of or voting upon rates or rules. Note taking and sound recordings by any person attending such meeting is permissible provided the conduct of the meeting is not disrupted.

4.6 **INSPECTORS OF ELECTION.** Two inspectors of election shall be chosen by vote of the members at ~~the first annual meeting and at each subsequent annual meeting.~~

4.7 **TERMINATION OF MEMBERSHIP OR PARTICIPATION.**

- a) The membership of any member or Associate Member may be terminated by resignation, but such resignation shall not become effective until thirty (30) days after written notice is received by the Bureau Council and then only upon the last day of the month after the expiration of the thirty (30) days.
- b) The membership of any member carrier may be terminated for failure to pay fees, assessments or other charges lawfully owed by such member to the Bureau Council. Upon the failure of a member to pay dues or other financial obligations to the Bureau Council within ~~thirty (30)~~ ninety (90) days of the date of first statement of account on which such obligations are shown, the Secretary or ~~Executive Vice~~ President shall give notice in writing to such member that its membership in the Bureau Council and its participation in Bureau Council tariffs are being canceled. Cancellation shall become effective in not less than thirty (30) days after such notice, unless within the ten (10) days after the date of such notice the member informs the Bureau Council in writing of its intention to appear at the next designated meeting of the Board of Directors of the Bureau Council to show cause why its membership and participation in Bureau Council tariffs should not be canceled. In this event, cancellation will be withheld pending the member's appearance at the meeting of the

Board of Directors. After hearing, a majority vote of the Board of Directors present at the meeting shall be sufficient to expel said member.

- c) If any member of the Bureau Council by resignation, death, expulsion or other cause shall cease at any time to be a member of the Bureau Council, neither he nor his heirs, assigns or representatives shall have any interest in or claim upon any of the property of the Bureau Council or of its funds or income, no matter when acquired, nor be entitled to demand or receive any distributive share thereof, either declared or distributed during the existence of or upon the dissolution or merger of the Bureau Council, provided that nothing herein contained shall be taken to impair the right of any person ceasing to be a member to hold or own any bond or other evidence of indebtedness which the Bureau Council may owe to said person in accordance with the terms of said bond or the legal effect of such indebtedness.

Delete

- d) Any participating carrier not a member of the Bureau will be eliminated from participation in tariffs published by the Bureau and services of the Bureau to such carrier will be terminated upon the failure of such carrier to pay fees, assessments of other charges lawfully owed by such carrier to the Bureau. The Board of Directors of the Bureau shall establish rules and regulations providing for procedure of elimination of such carriers and termination of services to such carriers, but in no event shall elimination from Bureau tariffs be effected on less than ten (10) days' notification in writing to such participating carrier.

V

PARTICIPATING CARRIER

Delete

5.1 Any motor common carrier or common carrier, by other than motor vehicle, engaged in the lawful transportation of property within Niagara Frontier Territory, other than member carriers as provided for in Section 1 of Article IV may become a participating carrier in any tariff published by the Bureau by executing an agreement to abide by the Charter, the Bylaws, and Rules of Procedure of the Bureau, upon the execution of proper Power of Attorney, upon the payment of dues and assessments as fixed by the Board of Directors, upon executing a Rate and Tariff Agreement as provided herein and upon filing with the Interstate Commerce Commission a Verified Statement containing the information required U.S.C. Section 10706(b)(3)(A).

New

~~IV~~ V

ASSOCIATE MEMBERSHIP

5.1 Any non-motor common carrier of property including shippers, receivers, logistics companies, associations, private carriers and individuals, among others, may become an associate member of the Council upon payment of fees and/or assessments fixed by the Board of Directors. Such associate member will have no voting rights.

VI

DUES AND ASSESSMENTS

6.1 **BASIS.** Each member ~~and or participating carrier in tariffs published by the Bureau of the Council~~ shall pay fees and/or assessments upon a properly apportioned basis, consideration being given to the size of the carrier as well as the service performed for it. The schedule of fees and/or assessments shall be established by the Board of Directors of the Bureau Council and may be changed by the Board on not less than ten (10) days notice to such members ~~and/or participating carriers~~.

6.2 **RESERVE DEPOSIT.** Each member ~~and/or participating carrier~~ must keep on deposit with the Bureau Council an amount equal to ~~twice~~ its monthly assessment.

6.3 **REVENUE REPORTS.** Each member ~~and/or participating carrier~~ shall submit to the Bureau Council a sworn report containing such data as may be required by the Board of Directors to establish proper and reasonable fees and/or assessments.

Delete [6.4 **REINSTATEMENT.** Members or participating carriers whose participation in tariffs of this Bureau has been canceled in accordance with Part 1, Paragraph 4.7, Subparagraph (b) or (d), may be reinstated only on payment of all obligations to the Bureau, plus a reinstatement fee of ten (\$10) dollars.

VII

DIRECTORS

7.1 **NUMBER AND TERM.** The management of the property, affairs, business and concerns of the Bureau Council shall be vested in a Board of Directors, consisting of eight (8) Directors. At each annual meeting, four (4)) Directors shall be elected for a term of two (2) years.

7.2 **NOMINATION AND ELECTION.** Not less than thirty (30) days prior to the annual meeting of the members, the Secretary shall send to all members of the Bureau Council a nominating ballot containing the names of all members of the Bureau Council except those who are represented on the Board of Directors by Directors whose terms will not expire at the ensuing annual meeting. Each member shall be

entitled to cast a vote for the nomination of each of four (4) candidates. These nominating ballots shall be returned to the Secretary within a reasonable time fixed by him, and the eight (8) candidates receiving the highest number of nominating votes shall be placed upon an election ballot which shall be circulated to the members not later than fifteen (15) days in advance of the annual meeting. In the event the voting for nominees results in a tie vote for the eighth (8th) nominee, all nominees receiving such equal vote shall be listed on the ballot. Each member shall be entitled to cast one vote for each of the four (4) Directors to be elected, and may cast that ballot either at the annual meeting or by mailing the ballot to the Secretary in advance of the meeting. The four (4) receiving the highest number of votes shall be declared elected, and the members so elected, if other than individual member, shall designate in writing to the Secretary, a partner, a corporate officer or official of the member to serve on the Board of Directors. In the event of a tie vote for the fourth (4th) director, the balance of the directors present at the first board meeting following the annual meeting shall resolve the tie by a majority vote.

7.3 **MEETINGS.** Regular meetings of the Board of Directors shall be held ~~immediately following the annual meeting of members and at such other times during~~ throughout the year as the Board may deem necessary. Notice of such meetings signed by the Secretary, shall be mailed to the last recorded address of each member at least ~~ten (10)~~ five (5) days before the time appointed for the meeting, ~~but the President Chairman or the Executive Vice President may, when he deems necessary, or the Secretary shall, at the request in writing of five (5) members of the Board, issue a call for a special meeting of the Board, and only five (5) days' notice shall be required for such special meetings.~~

7.4 **QUORUM.** ~~Four (4)~~ Three (3) members of the Board shall constitute a quorum for the transaction of business. In the absence of the ~~President Chairman~~ and Vice ~~President Chairman~~, a quorum present may choose a Chairman for the meeting. If a quorum is not present, a lesser number may adjourn the meeting to a later date, not more than ten (10) days later.

7.5 **ABSENCE.** The Board of Directors shall have the power to declare vacant the seat of any Director who shall absent himself from three (3) consecutive meetings of the Board of Directors, without submitting a reasonable justification for such absence to the Board of Directors through the ~~President Chairman~~ or Secretary.

7.6 **VACANCIES.** Whenever any vacancy shall occur on the Board of Directors by reason of death, resignation, retirement from business or any other reason, such vacancy shall be filled by appointment by the Board of Directors of an eligible member within ninety (90) days after the vacancy has occurred, said director to be appointed to fill the unexpired term.

7.7 **COMMITTEES.** The Board of Directors, by majority vote of the Directors present, may constitute committees to consider and report to it upon particular subjects, and may appoint to such committees either members of the Board or other members of the ~~Bureau~~ Council.

VIII

OFFICERS

8.1 **OFFICERS.** The officers of this Bureau Council shall be a President Chairman, a Vice President Chairman, an Executive-Vice President, a Secretary, an Assistant Secretary and a Treasurer. All of whom shall be elected by the Board of Directors, ~~the majority of the Board of Directors constituting a quorum~~, each for a term commencing with their election and continuing until the next election of officers at the next following annual meeting. The President Chairman and the Vice President Chairman shall be elected from the Board of Directors. The Board of Directors shall also employ a Executive-Vice President and shall fix the terms of his compensation, powers or duties, and the Board may authorize the employment of such other persons as may be needed for the purposes of the Bureau Council.

8.2 **PRESIDENT CHAIRMAN.** The President Chairman, if present, shall preside at all meetings of the Board and when the Board of Directors is not in session shall possess and exercise the powers of the Board of Directors subject to its approval and ratification, and shall have such other powers, and perform such other duties as from time to time shall be prescribed by the Board of Directors.

8.3 **VICE PRESIDENT CHAIRMAN.** It shall be the duty of the Vice President Chairman, in the absence of the President Chairman to preside at all meetings of the Board of Directors.

8.4 **SECRETARY.** It shall be the duty of the Secretary to keep, or cause to be kept, minutes of all meetings of members, the Board of Directors, and of every Committee, and to file the same among the file records of the Bureau Council. ~~He also~~ The Secretary shall attest upon behalf of this Bureau Council contracts, deeds, and instruments executed in its name or in its behalf.

8.5 **ASSISTANT SECRETARY.** It shall be the duty of the Assistant Secretary, in the absence of the Secretary to keep, or cause to be kept, minutes of all meetings of members, the Board of Directors, and of every Committee, and to file the same among the file records of the Bureau. He also shall attest upon behalf of this Bureau contracts, deeds, and instruments executed in its name or in its behalf.

8.6 **TREASURER.** The Treasurer of this Bureau Council shall have general supervision over the receipt, custody and disbursement of its funds, and shall at least once each year, and from time to time thereafter, as required by the Board of Directors, make reports of the financial condition of this Bureau Council.

8.7 **EXECUTIVE-VICE PRESIDENT.** The Executive-Vice President shall be the Chief Executive Officer and Secretary of the Bureau Council and shall be charged with the management, conduct and administration of its affairs, under the direction of the Board of Directors.

IX

PUBLICATION OF TARIFFS

9.1 **PARTICIPATION.** ~~Carriers operating within Niagara Frontier North American Transportation Council Territory must become members of the Bureau Council in order to have local rates or quotations published for their account. All other carriers may become members of the Bureau Council but need not do so in order to participate in joint rates.~~ All participants in Bureau Council tariffs shall have on file with this Bureau Council powers of attorney and other documents necessary to authorize this Bureau Council to prepare and file the tariffs of such participants as provided herein.

9.2 **BUREAU COUNCIL TARIFFS.** This Bureau Council, as agent of participants in its tariffs, will compile and publish all Bureau Council tariffs, which are hereby defined as tariffs giving effect to dispositions pursuant to Parts 2 and 3, Rate Procedures, Paragraphs 2.1, 3.1, 3.2, 3.3, 3.4 and/ 3.5; or pursuant to an order of the ~~Interstate Commerce Commission~~ Surface Transportation Board or other regulatory agency applicable to such tariff.

9.3 **INDEPENDENT ACTION.** This Bureau will compile and publish ~~quotations rates, rules and/or and charges~~ for participants in its tariffs pursuant to the directions given by them under the independent action provisions of Part 2 and 3, Rate Procedures, Paragraphs 5.1 through 5.10 5, as a part of Bureau Council tariffs, or supplements thereto, within the compiling and publishing capacity of the Bureau Council ~~as from time to time determined by the Executive Vice President.~~ Where request for immediate publication is made, it shall be at the cost of the participant requesting such publication; ~~otherwise the Bureau will publish charges giving effect to independent action of its participants in regular Bureau tariffs, or supplements thereto.~~ Individual tariffs may be compiled and published by any participant with or without a prior request that the Bureau Council publish the tariff.

9.4 **TARIFF COSTS.** Bureau Council tariffs will be compiled and published at the expense of the Bureau Council and copies thereof distributed and sold at such prices as shall be fixed by the ~~Executive Vice~~ President in accordance with resolution of the Board of Directors.

X

RATE AND TARIFF AGREEMENT

10.1 Each participant in the tariffs of this Bureau shall execute and deliver to the Bureau a standard form Rate and Tariff Agreement, reading as follows:

"The undersigned carrier, in consideration of the covenants of Niagara Frontier Tariff Bureau, Inc., and of each other carrier who shall enter into like and similar agreements, hereby covenants and agrees with said Bureau and each and every said other carrier, that it will initiate, change, publish or cause to be published and filed, tariffs of rates, classifications, exceptions to classifications, divisions, ratings, rules, regulations or practices governing the transportation of property by it in interstate or foreign commerce to, from or within the Niagara Frontier Territory, as such territory is used for ratemaking purposes, in accordance with the provisions of said Bylaws, as the same may from time to time hereafter be revised, amended, or supplemented. In consideration of which, the Niagara Frontier Tariff Bureau, Inc. agrees to publish or cause to be published the tariffs for the account of said undersigned carrier in accordance with its said Bylaws, as revised, amended or supplemented.

It is expressly stipulated that the undersigned and any other carrier party to this agreement shall have the free, unrestricted and unrestrained right to take independent action with respect to any tariff proposal as provided in said Bylaws.

The undersigned carrier further hereby constitutes said Niagara Frontier Tariff Bureau, Inc., or the then duly elected or acting Executive Vice President of said Niagara Frontier Tariff Bureau, Inc. or either or any of them, its agent and attorney in fact, which appointment said Niagara Frontier Tariff Bureau, Inc. hereby accepts, to file and prosecute any and all applications to competent authority which may be required for the approval and authorization of its agreement.

IN TESTIMONY WHEREOF the parties hereto have set their hands and seal on this _____ day of _____, 19__."

Delete

~~XI~~ X

AGREEMENTS WITH OTHER ORGANIZATIONS

~~11.1~~ 10.1 **SCOPE.** The ~~Executive Vice~~ President, subject to the authorization, approval or ratification of the Board of Directors, shall have the power upon behalf of this ~~Bureau Council~~ to cooperate, confer, or enter into agreements with other associations, bureaus, agencies, or organizations of common carriers by motor vehicle with respect to any of the following:

- a) The points between which, the territory for or within which, this ~~Bureau Council~~ and/or any such other organization shall respectively publish motor freight tariffs;
- b) The investigation, procurement, analysis, compilation or interchange of statistics or information which pertains to any of the purposes for which this corporation is organized;
- c) The employment of this ~~Bureau Council~~ or of such other organization, either upon a reciprocal or non-reciprocal basis, as agent in the discharge of this ~~Bureau's Council's~~ or of such other organization's powers, duties or functions;

or to cooperate, confer and report with respect to the establishment, consideration, change, revision and/or publication: (1) of charges within or which may affect charges within ~~Niagara Frontier~~ North American Transportation Council Territory; (2) present or potential conflicts, disparities or inequalities arising because of publication or proposals to publish charges; (3) uniform procedures, rules, regulations, practices and methods of establishing, considering or publishing charges.

XI XI

AMENDMENTS

~~+2.4~~ 11.1 These Bylaws, including the Rate Procedures provided in Part 2 ~~and Part 3~~, may be amended, at any meeting of the Board of Directors called for that purpose, by the affirmative vote of two-thirds (2/3rds) of the members of the Board of Directors present, provided that such two-thirds (2/3rds) constitutes at least a majority of the entire Board of Directors, and provided further that ten (10) days' written notice prior to said meeting of such proposed amendment shall have been given to all members of the Board of Directors. Such notice shall be set forth in the exact words in which it is proposed, but the Board of Directors shall be authorized to change or modify such language so long as the intent of such amendment is preserved. These amended Bylaws upon becoming effective, shall supersede, annul and void all prior Bylaws and resolutions of the Board of Directors inconsistent herewith. Where the amendments affect the ratemaking process, or other matters subject to the approval of the ~~Interstate Commerce Commission~~ Surface Transportation Board (STB) under 49 U.S.C. 10703(a), they will not become effective until approved by the ~~Commission~~ STB.

~~+2.2~~ 11.2 Notice of any modification or change in, or addition to, the Bylaws, including the Rate Procedures provided in Part 2 ~~and Part 3~~, shall be given to the members of the ~~Bureau~~ Council within twenty (20) days after such modification, alteration, change or addition is made. Any modification, alteration, change, or addition thereto may be rejected by a majority vote of the members of the ~~Bureau~~ Council in good standing at any annual meeting, or special meeting called by the membership in accordance with Paragraph 4.4 within sixty (60) days after the adoption, alteration, or change thereof.

XII

LIABILITY RELEASE

New [12.1 Each member, participating carrier and associate member agrees that no loss or damage to it
| caused by the exercise of the powers granted herein to the Council, its Board Members, or its officers,
| agents or employees, shall be charged or imputed to the Council, its Board Members, or its officers,
| agent or employees, except such loss or damage as may be caused by bad faith or gross negligence
| in the exercise of such powers.

PART 2

RATE PROCEDURE

THE FOLLOWING RULES OF PROCEDURE RELATE TO TARIFFS PUBLISHED BY THE BUREAU COUNCIL COVERING THE TRANSPORTATION OF PROPERTY IN INTERSTATE OR FOREIGN COMMERCE.

I

PROPOSALS

1.1 **PROPOSALS.** All proposals for collective action ~~applicable to tariffs published by the on new or changed rates, ratings, charges, exceptions to classification, classifications, divisions, allowances, rules, regulations and practices pertaining thereto, applicable by any carrier participating in tariffs published by the~~ NIAGARA FRONTIER TARIFF BUREAU, INC. NORTH AMERICAN TRANSPORTATION COUNCIL, INC., hereinafter referred to as the Bureau Council, shall be submitted in writing by any such carrier or any shipper or receiver of freight to the Bureau Council at its office in Buffalo Erie County, New York and Niagara Region, Ontario, Canada. Communications transmitted by telecopier or electronic messaging will be recognized as original written communications. No employee or employee committees of the Bureau Council is permitted to docket or to act upon or dispose of any proposal effecting a change in any tariff item published by or for the account of any member or participating carrier. Employees and employee committees of the Bureau Council may provide expert analysis and technical assistance to carriers or shippers in developing or evaluating a proposal. ~~Such employee or employee committee analysis and assistance concerning or involving an independent action proposal shall remain confidential. No employee or employee committee of the Bureau Council is permitted to act upon or dispose of any proposal effecting a change in any tariff item published by or for the account of any member or any participating carrier. Upon request, the name of a proponent of a rate or rule any proposal docketed with the Bureau Council and/or any vote cast must be promptly divulged to any person. No carrier committee or carrier subcommittee may be a proponent of a rate or rule docketed with the Bureau Council.~~

Delete

1.2 **PROPOSAL FORMS.** Where practical, proposals shall be on the form approved by the General Rate Committee and shall furnish such information as is requested on the form.

~~1.3~~ 1.2 **PUBLICATION.** Except as otherwise provided herein, all proposals for changes as provided herein shall be publicized by publication in the Bureau Council bulletin. The publication containing the notice of the proposal shall be mailed to all ~~carriers participating in the tariffs affected~~ members who have requested in writing such information and to all other parties who have requested such information (provided the charge established therefore shall have been paid). ~~said publication to be mailed not later than Friday of each week.~~

~~1.4~~ 1.3 **WITHDRAWAL.** Nothing herein shall prevent the proponent of a proposal from withdrawing the same, or any portion thereof, at any time prior to its effective date. The withdrawal of a proposal or any portion thereof, by the proponent shall withdraw such proposal or such portion thereof, for the account of all carriers who may have concurred therein. Notice in writing shall be given to all concurring carriers therein upon receipt by the Bureau of such notice of withdrawal.

Delete

1.5 TIME FOR FINAL DISPOSITION. All proposals shall be processed to final disposition within a maximum period of 120 days after the proposal is docketed. Should any proposal not be finally disposed of within the 120 day period, the Bureau shall formally request approval of an extension from the Interstate Commerce Commission. Such request shall be in sufficient time to allow the Interstate Commerce Commission to act on it prior to the expiration of the 120 day period. The term "final disposition" as used herein means adoption, rejection, withdrawal or publication of the proposals, including appeal procedure, if any, so as to render such determination administratively final within the procedures set forth in Articles III and IV of these Rules of Procedure.

1.6 AMENDMENTS. No proposal may be amended to broaden the territorial or commodity scope without additional public notice in the manner set forth in Paragraph 1.2 of this article.

1.7 CONCURRENCES. Concurrences of carriers forming a through route should be furnished. Where such concurrences are not received, the proposal shall be referred to the appropriate General Rate Committee.

II

DOCKETING NOT REQUIRED

2.1 Changes of the character described below may be made without filing a formal proposal, public notice, or placing on the public docket for consideration by any carrier committee.

(a) Rates in tariffs of the Bureau via one or more routes may be published via additional routes.

Delete

(b) Correction of clerical and/or typographical errors provided such errors have not been in effect more than ninety (90) days.

(c) Tariff changes required by reason of the revocation or modification of concurrences and/or powers of attorney, or the cancellation of rates necessitated by reason of the discontinuance of service by any carrier party to such rates due to the revocation or modification of such concurrences and/or powers of attorney.

III II

DISPOSITION OF PROPOSALS

~~3-1~~ 2.1 **NOTICE.** Proposals ~~for new tariff items or tariff changes~~ will be listed on the public docket issued in the Bureau Council bulletin.

~~3-2~~ 2.2 **PUBLICATION.** All proposals will be published without any modification unless an objection thereto is received or a request for referral to the ~~appropriate~~ General Rate Committee for consideration is received from an interested party within ~~fifteen (15)~~ ten (10) days from the date the bulletin listing the proposal is issued. Any interested party filing a proposal for docketing may elect to have the proposal referred directly to the ~~appropriate~~ General Rate Committee for consideration by so stating at the time the proposal is submitted. Any interested party may object to or request referral of a proposal. If an objection or request for referral is received, notice thereof will be made in the first bulletin following the ~~fifteen (15)~~ ten (10) day notice period. Disposition of proposals that are to be published and disposition of proposals that are to be considered by the General Rate Committee may be delayed at the request of the proponent of a proposal. Proposals that do not specify otherwise will be published for the account of all carriers except those specifically instructing the Bureau Council otherwise within ~~fifteen (15)~~ ten (10) days from the date of the Bulletin. ~~If specified, proposals may be published for the account of proponent and carriers desiring or for the account of carriers desiring. Every proposal for a general increase or decrease, or for a change in tariff structure, or for a change in a generally applicable tariff rule will be referred to the General Rate Committee for consideration.~~

~~3-3~~ 2.3 **WITHDRAWAL OF OBJECTIONS.** If objections to or requests to refer a proposal are withdrawn in writing by the party so objecting or requesting referral, and such withdrawal is made prior to publication of the General Rate Committee agenda listing such proposal, the withdrawal of the objections or the requests to refer will be reported in the Bureau Council bulletin and publication of the proposal will be made without any modification as provided in Sub-Paragraph 2.2 provided no other objection to or request for referral of said proposal then exists.

~~3-4~~ 2.4 **OBJECTIONS.** Proposals to which there is an objection or a request to refer will be placed on the ~~appropriate~~ General Rate Committee agenda for the next scheduled meeting if the objection to or request for referral of such proposal is reported in the Bureau Council bulletin at least ~~fifteen (15)~~ ten (10) days prior to that scheduled meeting; otherwise the proposal will be included on the General Rate Committee agenda for the following meeting. The bulletin will set forth the time and place of the meeting at which a proposal will be considered which shall not be less than ~~fifteen (15)~~ ten (10) days from the date the bulletin listing the proposal is issued.

~~3-5~~ 2.5 **EMPLOYEE PARTICIPATION.** No employee or employee committee of the Bureau Council is permitted to docket or to act upon or dispose of any proposal. ~~effecting a change in any tariff item published by or for the account of any member or participating carrier.~~

IV III

GENERAL RATE COMMITTEE

~~4.1~~ **3.1 COMMITTEE.** All proposals, ~~which for new or changed rates, ratings, charges, classifications, exceptions to classifications, divisions, allowances, rules, regulations and practices pertaining thereto, applicable by any carrier participating in tariffs published by the Bureau Council, which proposals have been objected to or referred, shall be considered and disposed of by the appropriate General Rate Committee. Such General Rate Committee shall be composed of representatives, and an alternate for each representative, of participating carriers listed in Bureau Council published tariffs of carriers who are members of the Council. At the first meeting each year the Committee shall elect a chairman.~~

~~4.2~~ **3.2 MEMBERSHIP.** There shall be two (2) General Rate Committees constituted as follows:

- ~~a) A Buffer~~ The General Rate Committee shall be composed of owners, partners, officers, or full-time employees of participants in the tariffs of the Bureau Council members operating naming charges between United States points within the Niagara Frontier North American Transportation Council Territory, and who signify in writing their intention to attend meetings regularly. Each participant MEMBER CARRIER shall be entitled to only one (1) representative on the Committee.
- ~~b) A Canadian General Rate Committee composed of owners, partners, officers, or full-time employees of participants in the tariffs of the Bureau Council naming charges between points in Canada and points in the United States and who signify in writing their intention to attend meetings regularly. Each participant shall be entitled to only one (1) representative on the Committee.~~

Delete

4.3 TERMINATION OF MEMBERSHIP. If a member is absent for more than two (2) consecutive meetings of the General Rate Committee, without submitting reasonable justification for such absence to the General Rate Committee through its secretary, his membership on such committee shall be automatically terminated and may be reinstated only by the majority vote of the General Rate Committee on good cause for absence shown.

4.4 3.3 MEETINGS-QUORUM. Meetings of the General Rate Committee shall be held at such time and place as the Committee shall decide, or in the absence of action by the General Rate Committee, at such times and places as may be decided by the Chairman of the General Rate Committee. At all meetings of the General Rate Committee at which rates or rules are discussed, or considered, a quorum shall be thirty percent (30%) of such Committee qualified to vote, and all actions of said Committee shall be by a majority vote of those present and eligible to vote and voting. The Chairman must give each member of the Committee at least ~~fifteen (15)~~ ten (10) days' notice in writing of any such meeting. Any person must be admitted to that portion of any meeting involving discussion of or voting upon rates or rules. Note taking and sound recordings by any person attending such meeting is permissible provided the conduct of the meeting is not disrupted. Notice of meetings at which rates or rules will be discussed or voted upon will be given at least ~~fifteen (15)~~ ten (10) days prior to the meeting and transmitted through the Bulletin, and will set forth the time and place of the meeting and the rates or rules which will be discussed or voted upon. ~~including a list or general description of the commodities moving under the rate, the relevant origin and destination points, and the appropriate justification for the proposed action as well as any other relevant data.~~

4.5. 3.4 **SUB-COMMITTEES.** The General Rate Committee may create such carrier subcommittees as it may from time to time decide to be proper and necessary including a Research Committee. Any such subcommittees created by the General Rate Committee shall have authority, unless otherwise specifically instructed, to study, discuss, consider and make recommendations to the General Rate Committee any matter or matters set out in Section 4.1 3.1 of this article referred to such subcommittee by the General Rate Committee. The membership of each subcommittee shall be composed of members and their alternates of the General Rate Committee or persons eligible for membership on the General Rate Committee. The membership of such subcommittees shall be designated by the General Rate Committee, or in the absence of such designation, then by appointment by the Chairman of the General Rate Committee. Any person must be admitted to that portion of any carrier subcommittee meeting involving discussion of rates or rules. Note taking and sound recordings by any person attending such meeting is permissible provided the conduct of the meeting is not disrupted. Notice of meetings at which rates or rules will be discussed will be given at least ~~fifteen (15)~~ ten (10) days prior to the meeting and transmitted through the Bulletin, and will set forth the time and place of the meeting and the rates or rules which will be discussed, ~~including a list or general description of the commodities moving under the rate, the relevant origin and destination points, and the appropriate justification for the proposed action as well as any other relevant data.~~

4.6 3.5 **FUNCTIONS.** The function of the General Rate Committee shall be the consideration of and disposition of all objected to or referred subjects with which it is concerned as well as any other matters related to the tariffs involved under its applicable rules of procedure together with overall general policy matters.

4.7 **REPRESENTATIVES.** Authorized representatives of carriers of other classes (such representatives to have the same qualifications with the carriers they represent as members of the General Rate Committee) may meet with the General Rate Committee, or subcommittee thereof, or with motor carriers participating in tariffs published by the Bureau or similar organizations with whom the Bureau has a contract as provided herein, only for the purpose of discussing and studying any matter affecting joint rates or through routes between such motor carriers and carriers of such other classes who are a party to such joint rates or through routes. Any person must be admitted to that portion of any meeting involving discussion of rates or rules. Note taking and sound recordings by any person attending such meeting is permissible provided the conduct of the meeting is not disrupted. Notice of meetings at which rates or rules will be discussed will be given at least fifteen (15) days prior to the meeting and transmitted through the Bulletin, and will set forth the time and place of the meeting and the rates or rules which will be discussed, including a list or general description of the commodities moving under the rate, the relevant origin and destination points, and the appropriate justification for the proposed action as well as any other relevant data.

4.8 3.6 **NOTICE.** Proposals to which there is an objection or a request to refer will be placed on the General Rate Committee agenda for the next scheduled meeting if the objection to or request for referral of such proposal is reported in the ~~Bureau Council~~ bulletin at least ~~fifteen (15)~~ ten (10) days prior to the scheduled meeting; otherwise the proposal will be placed on the General Rate Committee agenda for the following meeting. No subject receiving an objection or a request to refer, may be considered by the General Rate Committee at any meeting unless such subject is on the agenda or has been on the agenda. An agenda of all subjects to be considered at any meeting of the General Rate Committee shall be mailed not less than ~~fifteen (15)~~ ten (10) days prior to the date of the meeting to all carriers participating in the affected

Delete

tariffs who have requested such information in writing. Notice of any subject on the agenda will be mailed to any other party expressing an interest in that subject.

4-9 3.7 **WITHDRAWAL.** Proposals for consideration before the committee may be withdrawn upon request of the proponent. If the proponent is present at the meeting, the request for withdrawal may be made verbally; otherwise, the request for withdrawal must be submitted in writing prior to that proposal being considered by the committee.

4-10 3.8 **APPEARANCE.** Any person interested in any subject on the agenda for a meeting of the General Rate Committee may appear before such committee and be heard on such subject. Said views of any interested person may be presented orally, in writing, or both. Persons may so participate individually and/or collectively through leagues, associations, organizations, institutes or any other such group. Any person must be admitted to that portion of any meeting at which proposals to establish or change rates or rules will be discussed or voted upon. Note taking and sound recordings by any person attending such meeting is permissible provided the conduct of the meeting is not disrupted. Notice of meetings at which proposals to establish or change rates or rules will be discussed or voted upon will be given at least ~~fifteen~~ ten (10) days prior to the meeting and transmitted through the bulletin, and will set forth the time and place of the meeting and the rate proposals or rules which will be discussed or voted upon, including a list or general description of the commodities moving under the rate, the relevant origin and destination points, and the appropriate justification for the proposed action as well as any other relevant data.

4-11 3.9 **RECONSIDER.** The General Rate Committee may reconsider the vote on any subject at the same meeting at which such committee acted thereon, by an affirmative vote of two-thirds of the members present of such committee. Any proposal may be amended and may be adopted on such amended basis including adoption on the basis for the account of proponent and carriers desiring or for the account of carriers desiring provided that such amendment does not substantially broaden the scope of the proposal. Within five (5) days following the close of a meeting of the General Rate Committee, the Chairman shall mail a notice advising of the disposition of all subjects considered by such committee to all parties receiving the docket service and to other interested parties who have requested such information. Upon request, the name of the proponent and/or the vote cast by any carrier on any proposal before the General Rate Committee must be divulged promptly to any person. ~~Any carrier may discuss any rate proposal docketed for collective action, except that only those carriers with authority to participate in the transportation to which the rate proposal applies may vote upon such proposal. Each carrier member of the committee will make written certification concerning its eligibility to vote on collectively processed proposals upon which that carrier voted.~~

4-12 3.10 **GENERAL INCREASES.** Any proposal involving either general increases, general reductions or a major change in the general rate structure which has been adopted by the General Rate Committee shall be published for the account of all carriers participating in the affected tariffs involved as provided in this paragraph. Notice of the disposition of such proposal will be mailed to all carriers participating in the affected tariffs advising that publication will be made for the account of all carriers except those specifically instructing the Bureau Council otherwise in writing within seven (7) days from the date of such notification. Publication of instructions received after seven (7) days will be promptly made in succeeding supplements. ~~Such exclusions will apply only to the extent of such carrier's single-line application, except where notification, as hereinabove provided, is received from connecting carriers, in which event such instructions shall apply to joint-line traffic to the extent of such connecting line notification. If specific written and signed instructions concerning handling and docketing of the independent announcement (exclusion[s]) are not given, the Bureau Council may not docket (notice) the~~

~~independent announcement until the independent announcement has been filed with the Interstate Commerce Commission.~~

4.13 (Not used.)

4.14 3.11 **VOTING.** A majority vote of those carriers eligible to vote and voting shall govern action on all proposals docketed. ~~subject to the following requirements:~~

1. Any carrier may discuss any rate proposal docketed, for collective action except that only those carriers with authority to participate in the transportation to which the rate proposal applies may vote upon such proposal. Each carrier member of a committee will make written certification concerning its eligibility to vote on collectively processed proposals upon which that carrier voted.
2. Each carrier has the right to determine whether or how the Bureau will docket rate adjustments under 49 U.S.C. 10708(d) and 10730(b). Carriers may not discuss or vote on rates considered or established under Section 10708(d) (Zone of Rate Freedom). Released rates, as defined by Section 10730(b), may not be discussed or voted upon. Except where specific written and signed instructions concerning handling and docketing are given, rates established or changed Section 10708(d) (Zone of Rate Freedom) and Section 10730(b) (Released Rates) may not be docketed (noticed) until the proposal has been filed with the Interstate Commerce Commission.
3. All single-line rate proposals will be treated and considered as independent actions. Carriers and carrier committees may not discuss or vote upon single-line rates except that this restriction shall not apply to:
 - a) General rate increases or decreases only when public notice through docket bulletin publication of at least fifteen (15) days prior to the and/or oral public comment at or prior to the meeting at which the proposal is considered is provided. Discussion is to be limited to industry average carrier cost information and subsequent action may not include discussion of individual markets or particular single-line rates. Shippers', carriers', and any interested parties' comments will be given appropriate weight and consideration in discussion and voting upon such proposals.
 - b) Changes in commodity classifications.
 - c) Changes in tariff structures (broad tariff restructurings) if discussion of such changes is limited to industry average carrier cost information and does not include discussion of individual markets or particular single-line rates.

Delete

Delete

d) Publishing of tariffs, filing of independent actions, providing of support services and changes in rules or regulations which are of at least substantially general application throughout the area in which such changes will apply.

4. Single-line rates shall not be included in the same proposal as joint-line rates except as authorized by 49 U.S.C. 10706(b)(3)(B). As used in the foregoing definitions, the phrase "single-line rate" is defined as a rate, charge or allowance proposed by a single motor common carrier of property that is applicable only over its line and for which the transportation can be provided by that carrier.
5. Voting by proxy is prohibited.

IV

TRUTH-IN-RATES

- 4.1 Member carriers utilizing the collectively set Council's rates must give "truth-in-rates" notice every time they list rates or otherwise give a rate quote that references a collectively set rate. The "truth-in-rates" notice should include the following information:

New

The class or benchmark that was used as a reference point in determining this rate (or rate quotation) was set collectively by motor carrier competitors acting under immunity from the antitrust laws. The class rate is not necessarily the prevailing market rate, and there are generally a wide range of discounts available. Motor carriers that are members of NATC typically offer discounts ranging from [xx% to xx%].

- 4.2 The Council will survey member carriers on an annual basis to ascertain the range of discounts applicable to collectively set rates. A notice of the range of discounts as determined by each survey will be sent to all member carriers and the STB.

INDEPENDENT ANNOUNCEMENT

5.1 **I.A.** Any carrier shall be accorded the free and unrestricted right to take independent action, either before, during or after any determination under the Rules of Procedure or Bylaws of the Bureau

5.2 **PROCEDURE.** Any carrier or carriers taking independent action where the publication is to be in ~~Bureau-Council~~ tariffs shall notify the ~~Bureau-Council~~ in writing, furnishing such information as is necessary to make such publication, ~~including a description of the points or states between which the publication will be generally applicable.~~

5.3 **DOCKETING.** Each carrier, in submitting an independent announcement to the Bureau for publication in its tariffs, has the right to decide whether or not the ~~Bureau-Council~~ will docket the independent announcement and, if it chooses to have the independent announcement docketed, to establish the time of that docketing. If specific written instructions concerning handling and docketing are not given, the ~~Bureau-Council~~ may not docket the independent announcement. ~~until the independent announcement has been filed with the Interstate Commerce Commission. If specific written instructions are given by the carrier to the Bureau to docket the independent announcement, the independent announcement will be docketed and processed as follows:~~

~~When docketing of the independent announcement is requested, it will be docketed and processed in the Bureau-Council bulletin in coordination with normal bulletin and publishing schedules, which includes a fifteen (15) day waiting period from the date of the bulletin, and such independent announcement will be published only for the account of the announcing carrier unless within those fifteen (15) days competitive carriers advise that they desire publication be also made for their account. If specific written instructions are given by the carrier to the Bureau-Council to docket the independent announcement in the Bureau-Council bulletin and such instructions establish the specific time of that docketing, the independent announcement will be published in accordance with such instructions. Such independent announcement will be published only for the account of the announcing carrier unless competitive carriers advise before the tariff supplement containing the independent announcement is filed with the Interstate Commerce Commission that they desire the publication be also made for their account. If specific written instructions are given by the carrier to the Bureau not to docket the independent announcement, the independent announcement will be published in accordance with such instructions. There may be no discussion of the merits of independent announcements until they have become effective.~~

Delete

5.4 **CHANGES.** Other than by a general increase or broad rate restructuring, a provision established by independent action after July 1, 1980, may be changed or canceled only for the purposes of tariff simplification, removal of discrimination, or elimination of obsolete items. The written consent of the carrier which initiated the independent action must be obtained and kept on file before a change may be made under these three circumstances. With the exception of a carrier changing or canceling its own independent action for its own account, the following procedures will be utilized to change or cancel a provision established by independent action:

Delete

1. All interested parties including shippers and those carriers whose independently established provision would be affected will be provided 15 days' notice (not counting the date the notice is sent) of any meeting at which a proposal to change or cancel a provision established by independent action will be considered. All interested parties shall have at least 15 days after notice is sent to express their views in writing or in person to the General Rate Committee. Notice of meetings at which proposals to change or cancel rates or rules independently established will be discussed or voted upon will be given at least fifteen (15) days prior to the meeting and transmitted through the bulletin, and will set forth the time and place of the meeting and the proposals which will be discussed or voted upon, including the rate, if there is one, limitation of weight or other restrictions pertaining to the existing rate and the proposed rate, a list or general description of the commodities moving under the rate, the relevant origin and destination points, and the appropriate justification for the proposed action as well as any other relevant data. Notice will also include the identity of each carrier whose independently established rates are proposed to be changed or canceled and the identity of the proponent of the change or cancellation.

2. A change or cancellation of independently established provisions will only apply to those affected carriers which have provided the Bureau with written consent signed by a representative of the consenting carrier to the change or cancellation. The change or cancellation must clearly identify the rate or the change and the written consent cannot be by written proxy. The provision will be treated as an independently established provision for the account of any affected carrier which does not provide the Bureau with written consent to the change or cancellation.

3. In the case of collective general increases or broad rate restructurings, these collective adjustments will not cancel rate differentials or differences in the application of rules existing as a result of any independent action taken previously absent advance written approval signed by a representative of the consenting carrier.

Delete

5.5 CONCURRENCES. Where the provisions on which independent action is taken necessitates participation therein by a connecting carrier or carriers, the interested connecting carrier or carriers must notify the Bureau in writing of its concurrence in such proposed independent action before the same will be considered as an independent action for account of such connecting carrier or carriers.

5.6 5.4 TARIFF. Provisions adopted by the General Rate Committee shall be considered "standard provisions. Where independent action is taken, the Bureau will be under obligation to publish the provisions resulting therefrom either in "standard" tariffs or other tariffs in accordance with provisions in Paragraph 5-7 5.5.

~~5.7~~ 5.5 **PUBLICATION.** Whether such independently announced provisions shall be published in "standard" tariffs shall be decided by the ~~Executive Vice~~ President who shall be governed by the following general rule:

1. Where point to point commodity rates or other tariff provisions are independently announced they will be published in "standard" tariffs unless they are deemed to be of a character which involve the publication of a large volume of additional tariff matter and result in complicating and unnecessarily enlarging the "standard" tariffs.
2. Where independent action is taken in the case of a committee approved readjustment of rates involving either general increases, general reductions, or a major change in the general rate structure of any nature and the immediate or eventual publication of such independent action rates or provisions would involve the duplication in large part of the "standard" rates and other tariff matter, publication will not be made in "standard" tariffs.

Delete 5.8 **WITHDRAWAL.** Nothing herein shall prevent the proponent of an independent announcement from withdrawing the same, or any portion thereof, at any time prior to its effective date. The withdrawal of an independent announcement, or any portion thereof, by the proponent shall withdraw such independent announcement, or any portion thereof, for the account of all carriers who may have concurred therein. Notice in writing shall be given all concurring carriers therein upon receipt by the Bureau of such notice of withdrawal.

5.9 **PROTESTS.** The Bureau is prohibited from filing protests or complaints with the Interstate Commerce Commission against any tariff item published by or for the account of any motor carrier of property.

5.10 **INTERFERENCE.** The Bureau is prohibited from interfering with a carrier's right of independent action.

5.11 **INTRASTATE CARRIERS.** No carrier which is not engaged in interstate or foreign commerce as a motor common carrier of property may participate in collective ratemaking activities under these procedures.

PART 3

***AGREEMENT WITH
SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.
SOUTH-ONTARIO/QUEBEC INTERTERRITORIAL
AGREEMENT***

Agreement has been terminated and this section removed.

PART 4

***AGREEMENT BETWEEN
ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC.
AND
NIAGARA FRONTIER TARIFF BUREAU, INC.
WESTERN STATES/CANADA INTERTERRITORIAL
AGREEMENT***

Agreement has been terminated and this section removed.

Honorable Vernon A. Williams
Surface Transportation Board
Office of the Secretary, Case Control Unit
1925 K Street NW
Washington, DC 20423-0001

Mr. Tim Henry
EC-MAC Motors Carriers Service Association Inc.
4620 Lee Highway, Suite 206
Arlington, VA 22207

Mr. David H. Coburn
Steptoe & Johnson, LLP
1330 Connecticut Avenue NW
Washington, DC 20036

Mr. James R. Atwood
Covington & Burling
1201 Pennsylvania Avenue NW
Washington, DC 20044-2401

Mr. R.C. Thompson
Association of American Railroads
50 F Street NW
Washington, DC 20001-1564

Mr. Peter Gatti
National Industrial Transportation League
1700 North Moore Street, Suite 1900
Arlington, VA 22209

Mr. John Cutler
NASSTRAC & D&TPTC
c/o McCarthy, Sweeney & Harkaway
2175 K Street
Washington, VA 20037

Mr. Brian L. Troiano
Middlewest Motor Freight Bureau, Inc.
1920 N Street NW, Suite 420
Washington, DC 20036

Mr. Brian L. Troiano
Pacific Inland Tariff Bureau, Inc.
1920 N Street NW, Suite 420
Washington, DC 20036

Mr. Don Devine
Rocky Mountain Motor Tariff Bureau, Inc.
10 Lakeside Lane, Unit 2
Denver, CO 80202

Mr. S.D. Schwartzberg
Southern Motor Carriers
500 Westpark Drive, Suite 300
P.O. Box 2040
Peachtree City, GA 30269

Mr. John Bagileo
Bagileo, Silverberg & Goldman
1101 30th Street NW, Unit 120
Washington, DC 20007

Mr. George Carl Pezold
Transportation Consumer Protection Council, Inc
120 Main Street
Huntington, NY 11743