

I. The Evidence Speaks For Itself.

At various points during this proceeding, RailAmerica has attempted to obfuscate the facts. For example, RailAmerica has been less than clear on the advance notice requirement, the speed limits on its lines, the need for its special train service, and how many of its subsidiary lines are using the protocols. Nevertheless, using RailAmerica's own internal emails and documentation, CF has been able to clarify these points.² CF has provided copies of the relevant documents in their entirety, and the Board can examine the documents to come to a clear understanding of what RailAmerica is actually doing (as opposed to what it claims in its briefs) or is stating that they will do in the near future.

Moreover, the evidence also makes clear the fact that at no time prior to its Reply Argument did RailAmerica do any studies in an attempt to develop or justify its protocols³ (in fact, RailAmerica requested permission from the Board to "develop and implement any practice without first conducting a scientific study to justify the practice"⁴). The study finally attached to the Reply Argument was limited in scope, not sufficiently supported, and not probative to the issues in this proceeding.

The evidence makes clear that RailAmerica did not follow the requirements in the federal regulations. 49 C.F.R. § 174.20(a) requires RailAmerica to demonstrate that "local conditions" make transporting TIH "unusually hazardous" but at no point did RailAmerica ever present any

² See, e.g., CF Industries, Inc.'s Opening Evidence and Argument (Highly Confidential Version) ("CF's Opening Argument") at 8 (discussing advance notice, citing to RailAmerica's emails); at n. 18 (RailAmerica email stating "[w]e will require 5 days notice of a shipment"); at 8-9 (discussing the speed limit, citing to RailAmerica's emails); at 9 (discussing special train service, citing to RailAmerica's emails); at n. 17 (RailAmerica email stating that "[w]e plan on following our new policy with all roads.").

³ See, e.g., CF's Opening Argument at 9-11.

⁴ Opening of RailAmerica, Inc., Alabama & Gulf Coast Railway LLC, Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc. ("RailAmerica's Opening Argument") at 4.

such evidence.⁵ 49 C.F.R. § 174.20(b) requires RailAmerica to notify the Bureau of Explosives before implementing its new protocols,⁶ but RailAmerica did not make such a filing until more than nine months after the original tariffs were effective and approximately a week before its Rebuttal Argument was filed.⁷

The evidence is not in dispute in this proceeding. The documents provided by RailAmerica and cited by CF speak for themselves, and therefore no evidentiary dispute should impede an expeditious decision by the Board.

II. The Legal Arguments Are Straight-Forward.

The various parties in this proceeding have raised two potential legal issues, both of which are straight-forward. First, RailAmerica raises the issue of which party has the burden of proof. RailAmerica claims that CF, as the petitioner, has the burden of proof.⁸ CF argues that (i) the federal regulations impose the burden of proof on RailAmerica (even before CF filed its petition) and (ii) case law states that where there is a comprehensive regulatory system in place to ensure safety, there is a presumption that additional safety measures are not necessary and that RailAmerica must overcome that presumption in order to implement its protocols.⁹ Nevertheless, as CF discussed in detail in its Rebuttal Argument, even if the Board agrees that the burden lies with CF, CF has met that burden in this proceeding.¹⁰ Thus, this legal issue should not delay any Board decision.

⁵ See CF's Opening Argument at 10.

⁶ See *id.*

⁷ Rebuttal of RailAmerica, Inc., Alabama & Gulf Coast Railway LLC, Indiana & Ohio Railway Company, Point Comfort and Northern Railway Company, and Michigan Shore Railroad, Inc. at 4.

⁸ See RailAmerica's Opening Argument at 14-16.

⁹ See CF's Opening Argument at 2-5; Petition of CF Industries, Inc. for Declaratory Order at 5-7; CF Industries, Inc.'s Rebuttal Argument (Highly Confidential Version) ("CF's Rebuttal Argument") at 7-9.

¹⁰ See CF's Rebuttal Argument at 9-12.

The second legal issue is whether a railroad may impose additional “safety” measures beyond those prescribed by the appropriate federal agencies without providing any scientific support for the protocols and when those protocols impose significant burdens on shippers. As noted above, RailAmerica believes that it may “develop and implement any practice without first conducting a scientific study to justify the practice.”¹¹ CF believes otherwise. Both the plain language of the federal regulations (49 C.F.R. § 174.20) and the case law prohibit RailAmerica’s unsupported protocols. Again, this straight-forward legal issue should not delay any Board decision.

III. RailAmerica Continues To Implement The Protocols On Additional Lines.

As noted in CF’s Opening Argument, RailAmerica has been telling customers that it intends to implement its TIH protocols across its entire system. Since then, RailAmerica has informed CF that it will begin implementing its new protocols on two additional railroads – the Toledo, Peoria and Western Railway and the New England Central Railroad. The longer the Board delays the decision, the more lines RailAmerica will implement its protocols on, negatively impacting shippers.

IV. Absent A Decision, There Is No Way To Protect TIH Shippers.

As discussed in prior pleadings in this proceeding, RailAmerica’s protocols impose significant burdens and costs on TIH shippers. The protocols impact shippers’ ability to move product to the required market in an expeditious manner. And, to the extent that the protocols raise rates, they increase costs on shippers (with no opportunity for a refund even if the shippers prevail in this proceeding). Because there is no way to protect shippers’ interests absent an order

¹¹ RailAmerica’s Opening Argument at 4.

approving CF's petition, CF requests that the Board expeditiously issue an order in this proceeding requiring RailAmerica to cease using the TIH protocols on its system.

V. Conclusion.

CF does not object to RailAmerica and the other intervenors replying to this Motion for an Expedited Decision. However, in order to avoid unnecessary delays, CF requests that the Board require that all responses be submitted within one week and further require parties to limit their response to the motion for an expedited decision (and not allow parties to use their filings as an opportunity to raise new issues, facts, or studies).

CF requests that as soon as practicable, and no later than May 17, 2012, the Board issue an order declaring RailAmerica's TIH shipping practices invalid and unenforceable, require RailAmerica to cease such practices, and prohibit RailAmerica from using such practices to establish rates or terms and conditions for shipping TIH product. In addition, CF requests that the Board grant any further relief that it may deem appropriate in order to protect shippers' rights to transport TIH material over the RailAmerica system.

Respectfully submitted,



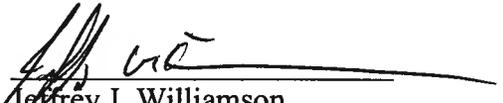
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CERTIFICATE OF SERVICE

I certify that, on March 26, 2012, I have sent copies of CF Industries, Inc.'s Motion for an Expedited Decision to all parties of record on the service list for Docket No. FD 35517.


Jeffrey J. Williamson