

Office of  
2005

# PACIFIC COAST LIGHTING®

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Public Record

November 13, 2005

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

215 257



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

Dear Secretary Williams:

Pacific Coast Lighting would like to thank the Surface Transportation Board for the opportunity to provide additional information for your investigation and decision of STB Ex Parte No. 656.

Pacific Coast Lighting strongly believes that the NCC's antitrust immunity be revoked. If this is truly a deregulated industry, then there is no need for the NCC. Carriers currently have the ability to create their own rates. Why then can't they establish their own classifications? Negotiating pricing (Rates and Classifications) should be a function conducted between carriers and shippers without intervention of the NCC. This process of self regulating of the trucking industry is inherently unfair and in our experience has resulted in an abuse of power by the NCC. Continuing with the antitrust immunity is purely government sanctioned collusion between competing carriers.

To determine abuse of power you need only look back at the decision by the NCC at the August 3<sup>rd</sup>, 2004 meeting to increase the number of classifications from 5 to 11. As an attendee of the meeting, it was quite clear to me that the decision had already been made and the vote (33 in favor, 1 opposed, and 1 abstained) was just a formality. This accusation is based on the conduct of the committee that I observed while at the meeting. Data which was provided from the lighting industry represented 1.1 million shipments and showed no significant changes in density from prior NCC Dockets (1990, 1997). In other words, there was no reason to make a change in classifications. No reason other than the increased revenue generated as a result of higher freight classifications. A windfall for carriers voted for overwhelmingly by carriers.

One would think that interested committee members would have had questions about the data for the eleven persons there representing the lighting industry. That is why we were there. No questions were asked. As I recall, a couple of committee members made comments, they thanked us for coming, and then they voted. At a minimum, in the interest of fairness and a desire to make

the right decision, a follow up meeting with industry and the NCC should have been scheduled to review our data prior to any vote. Clearly, the concerns and interests of the lighting industry were not important to the NCC. The abuse of power was the NCC's failure to fully consider and investigate the lighting industry's data and claims before making the vote. They voted what was best for them not what was in the best interests of both parties.

We considered going to arbitration after the vote but after a review of how the arbitration procedure works we ruled it out. Arbitration seems to favor the NCC as no new information can be provided to the arbitrator we would not have had any way to respond to statements made by the NCC at the NCC meeting. Instead we chose to take our concerns to the STB as we were aware that the NCC's antitrust exemption was up for review. We felt this was a better forum for our concerns to be heard.

Clearly there is a need for change. We believe that the NCC's antitrust immunity should be eliminated and would strongly urge the STB to take this action immediately. If the STB feels that there is a need for the NCC then we would like to suggest second option. The STB should change the makeup of the NCC. The committee should consist of 50% carriers and 50% shippers and an independent chairperson appointed by the STB. Other rules changes could be made after the change in the structure of the NCC, which would consider the needs and concerns of carriers and shippers more equally.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce D. Nelson', with a long horizontal flourish extending to the right.

**Bruce D. Nelson**  
Vice President of Operations