

Before The
Surface Transportation Board

STB Ex Parte No. 656 (SUB-NO. 1)
INVESTIGATION INTO THE PRACTICES OF THE NATIONAL CLASSIFICATION
COMMITTEE

Comments
Of
Acuity Brands Lighting

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Dated 1 December 2005

December 1, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Reference STB Ex Parte No. 656 (Sub-No.1) Investigation into the Practices of the NCC

Dear Mr. Williams:

As Director of Transportation for Acuity Brands Lighting, the largest manufacturer of commercial and industrial lighting in North America, I must reiterate my previous comments in this matter and ask you to deny the continuance of the collective classification process currently enjoyed by the National Classification Committee (NCC) and the LTL motor carrier industry.

The proponents of continued immunity believe that another five year extension is warranted because all of the current guidelines as previously established have been complied with. Another primary argument of the proponents centers on the issue of lack of participation by motor carriers if immunity is not granted. These arguments do not fulfill the criteria required to consider renewal of antitrust immunity. As stated in the U.S. Department of Transportation letter of 1 April on this matter, "It is thus clear that the 'public interest' is the touchstone for the STB's consideration of motor carrier agreements like these. The burden of showing that an agreement meets the public interest standard is on the party seeking approval and antitrust immunity". I am also in agreement in the US Department of Transportation's position as stated in the same letter that "The supporters of the agreements at issue have not satisfied the statutory standard". There has been no factual evidence provided that continued collective classification-setting or rate-setting serves the public interest better than competition in an open marketplace.

Despite the arguments from the NCC, which are understandable since they are fighting for their continued existence, it is readily apparent to businesses competing in an open, competitive environment that collective classifications set by an organization funded by the very industry that stands to benefit from their conclusions, does not serve the public interest better than an open, deregulated market.

Prior to deregulation, the NCC's function was necessary as the commodity's rate classification was the only way to differentiate pricing levels. In today's deregulated environment, the NCC's function is no longer required. A carrier is no longer required to haul any and all commodities or for any and all shippers. They are free to pick and chose with which shipper's they care to do business. Carriers no longer have barriers to entry into a marketplace. They also no longer have any barriers prohibiting them from exiting a market.

We should give the LTL motor carriers a little credit for their competency as business operators. They will face no undue hardship understanding a shipper's freight characteristics or difficulties arriving at an equitable pricing level if the collective classification of commodities ceased

to exist. The "class" of a commodity is only one of the characteristics that influences a carrier's pricing decision with a shipper. The size of the shipments, type of tender (loose cartons versus palletized, shipper's load and count versus carrier load and count), type of packaging, hours of operation, susceptibility to damage, daily shipping volumes, origin and destination points, etc. are all important aspects of a carrier's pricing proposal. Since base rates are no longer regulated, determining the precise class of a commodity is practically irrelevant. It is the net rate that the carrier receives that is of importance. It is the combination of base rate levels, class, discount, minimum charge, and accessorial charges that yield a net freight charge.

Larger shippers, like many that represented the Lighting Industry in the latest reclassification, are aware of this fact and are largely unaffected by classification changes. It is the smaller or less informed shipper that pays the burden of increased costs due to reclassifications of commodities. Those shippers informed enough about the classification process to challenge reclassification efforts by the NCC are also the shippers that will be least impacted. Therefore, the informed shipper's only motivation to enduring the process, including the time, effort, resources and expense of challenging a docketed proposal, is in doing what is fair and equitable for their respective industry and the shipping community as a whole.

The argument that commodity classifications are distinct and separate from pricing is humorous. The National Motor Freight Traffic Association makes this abundantly clear on their website when they specifically state that "in order for any carrier to use the NMFC in pricing or for any other purpose, they must participate". The classification of a commodity is a vital factor in determining the net freight charge, along with the base rate and discount being used.

I would also like to provide my comments and observations on the latest reclassification of lighting fixtures. When I began my career in the Lighting Industry, lighting fixtures were found by the NCC to be a class 85 commodity. Years later, the NCC decided that lighting fixtures rate class should be based on a density scale to more accurately reflect the characteristics. The NCC concluded a 4 tier density scale was appropriate. Years later, the NCC was recommending a different scale which would result in more tiers and higher class rates. The Lighting Industry provided data that revealed that the characteristics had not changed since the previous change, the NCC agreed, and the classification for lighting remained unchanged. More years pass and the NCC once again proposes a change to the classification of lighting fixtures, many more density tiers at much higher rate classes. The Lighting Industry again assembles and collects data that reveals the characteristics of the commodity have not changed. This time, the NCC approved their proposal as docketed and the new classification for lighting was put in effect.

The Lighting Industry's data was ignored and the NCC elected to go with the data provided by the NMFTA staff. There was no effort made or questions raised to better understand why there were discrepancies between the two sets of data. As the data provided by the Lighting Industry represented all segments of lighting and consisted of the four largest providers of lighting and numerous others, there was confidence that it was accurate and reflected the lighting commodity as a whole. The data clearly showed that the characteristics of lighting fixtures had not changed since the last reclassification was made. It remains unclear to me what, where, how and by whom the NMFTA data was accumulated. It is possible that this data does not represent a cross-section of lighting and instead represents a specific segment.

Under the previous item, lighting fixtures having a density between 4 and 8 (pounds per cubic foot) were found to be a class 100 item. Under the newly adopted classification, lighting fixtures having a density of between 4 and 6 are a class 150 item and lighting fixtures falling between 6 and 8 are now a class 125 item – an approximate 50 and 25 percent increase respectively. Shippers and carriers of lighting fixtures already had rates in place that satisfactorily compensated carriers for their services. The change in classification creates the task for the shipper of contacting the carrier and renegotiating the rates in order to offset the reclassification. If the carrier had needed an increase they would have contacted the shipper previously and negotiated one just like any other industry would (by reducing the discount, increasing the base rates or changing the classification being used). The shipper of lighting fixtures that was unaware of the reclassification realistically just absorbed a substantial increase without ever being directly informed of it.

There is no incentive for a carrier to propose the reclassification of a commodity that would result in a lower class. That would simply erode margin for the carrier or force the carrier to renegotiate the rates with all shippers of that commodity. Likewise, there is little incentive for a firm or individual to propose a reclassification for a commodity since it is far easier and cost effective to negotiate an equitable rate with the carrier based on whatever class is deemed appropriate. Rates are negotiated and mutually agreed upon by both parties. "Hidden" rate increases passed along to shippers due to the reclassification of commodities does not serve the public interest.

It is possible that the current collective classification process could be incrementally improved by allowing greater shipper industry involvement. Shipper involvement in the classification decision-making would provide an improved sense of balance and fairness in the overall process. However, subtly altering requirements and conditions and allowing another 5 year continuance, while an improvement, would be a disappointing outcome. It is clear to the shipping community, industry shipper groups, the D.O.T. legal counsel, and others that the time has come for the antitrust immunity that the NCC and motor carrier industry has enjoyed to come to an end.

The National Classification Committee has served admirably over the years and helped insure a smooth transition from the regulated to deregulated times. However, in the current deregulated environment, the original reason for extending the NCC antitrust exemption no longer exists. We urge you to deny the continuance of this collective agreement

Respectfully submitted



Scott Anderson
Director of Transportation
Acuity Brands Lighting