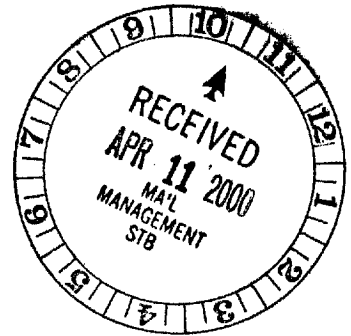


ORIGINAL

Before The
Surface Transportation Board



Section 5a Application No. 118 (Amendment No. 2), et al.
EC-MAC Motor Carriers Service Association, Inc., Et Al.

198036

Section 5a Application No. 70 (Sub-No. 12)
Western Motor Tariff Bureau, Inc. - Agreement

198037

ENTERED
Office of the Secretary

APR 11 2000

Part of
Public Record

Opening Comments of
Western Motor Tariff Bureau, Inc.

John R. Bagileo
Law Office of John R. Bagileo
1101 30th Street, NW
Suite 300
Washington, DC 20007
(202) 944-3734

Counsel for Western Motor Tariff
Bureau, Inc.

Dated: April 11, 2000

Before The
Surface Transportation Board

Section 5a Application No. 118 (Amendment No. 2), et al.
EC-MAC Motor Carriers Services Association, Inc., Et Al.

Section 5a Application No. 70 (Sub-No. 12)
Western Motor Tariff Bureau, Inc. - Agreement

Opening Comments of
Western Motor Tariff Bureau, Inc.

Western Motor Tariff Bureau, Inc. (WMTB), on behalf of its member motor carriers, hereby respectfully submits these comments in response to the Surface Transportation Board's decision, served February 11, 2000 in Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, Inc., Et Al., requesting opening proposals or comments on the renewal of approved rate bureau Section 5a Agreements and the adjustment of the collectively-made rates established by those bureaus to market levels.

I.

Background of WMTB's Section 5a Agreement

In response to WMTB's petition for approval of minor amendments dated March 31, 1992, the ICC, in its decision in Section 5a application No. 70 (Amendment No. 10), Western Motor Tariff Bureau, Inc.—Agreement, served August 13, 1992 (not printed) approved, as pertinent, a proposed amendment permitting the application of the agreement to traffic moving between points in the United States and points in Mexico to foster the simplification and streamlining of procedures for handling that international traffic by establishing single factor joint through rates applicable to that traffic. Further, amendments to the By-Laws were approved

which enabled WMTB to expand its present authority to act as a publishing agent for motor

On May 8, 1959, 238 motor common carrier members of WMTB filed their Application seeking approval by the Interstate Commerce Commission (ICC), under former Section 5a of 49 U.S.C., of their agreement to jointly consider, initiate, or establish rates, charges, rules, regulations and practices applicable to the transportation of property in interstate commerce between points in Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, and Washington. In its decision dated March 16, 1960, and served in Western Motor Tariff Bureau, Inc. - Agreement, 310 I.C.C. 53, the ICC approved the proposed agreement, subject to certain modifications, finding that as so amended, the agreement "is necessary to the effectuation, and will be in furtherance, of the national transportation policy" (310 I.C.C. at 62.)

During the intervening years the territorial scope of WMTB's collective ratemaking authority was broadened through various amendments to meet the needs of its motor carrier members. By 1991 WMTB's By-Laws and Rules of Procedure had been expanded to provide for the joint consideration, initiation, investigation, and establishment of rates, changes in rates, charges, classification, divisions, allowances, rules, regulations and practices applicable to the transportation of property by its member motor common carriers in interstate or foreign commerce between points and places in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New

Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wyoming.

In response to WMTB's petition for approval of minor amendments dated March 31, 1992, the ICC, in its decision in Section 5a Application No. 70 (Amendment No. 10), Western common carriers to include "all other carriers by motor vehicle" that file and post tariffs, mileage guides, or freight classifications with Federal and State regulatory bodies.

Finally, by petition dated April 12, 1996, WMTB, inter alia, proposed to amend its By-Laws so as to divide its membership into two classes of carriers; namely, those designated as "mainland membership" and as "Hawaii membership." Additionally, the By-Laws were revised to provide that annual meetings of the membership could be held in Hawaii, as well as in Los Angeles County, CA. The proposed amendments were initially approved by the Surface Transportation Board and published in the April 29, 1997 issue of the Federal Register. No comments in opposition to the amendments were filed and the STB's approval became effective on May 30, 1997.

II.

Identity of WMTB's Member Motor Carriers And Their Collective Ratemaking Needs

As indicated in the appended statement of Robert E. Lewis, WMTB's President, the organization presently has some 600 members, most of whom are general freight motor carriers

transporting freight moving between the continental United States and Hawaii.¹ Those shipments are, therefore, freight moving within the noncontiguous domestic trade.

In transporting that traffic the carriers must establish joint or proportional rates in order to participate in the intermodal arrangements necessary to move those shipments between the mainland and Hawaii. Such transportation services involve two or more different modes in moving the freight from points originating throughout the continental United States to West Coast ports for delivery in Hawaii. At various points in originating and delivering those shipments motor carrier services are utilized. The rate negotiations necessary to effectuate those intermodal arrangements are challenging and complex. The availability of WMTB's joint and proportional class rates facilitate and make possible the negotiation of the required intermodal arrangements.

Under the provisions of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), the regulatory and tariff requirements for goods moving in the noncontiguous domestic trade are more stringent and restrictive than for the categories of freight otherwise moving within the continental United States. Noncontiguous domestic trade motor carrier rates must be published in tariffs filed with the Board, and must be maintained for public inspection (49 U.S.C. §13702(b)(1)); must be reasonable (49 U.S.C. § 13701(a)(1)(B)); must be set forth in tariffs containing specified information (49 U.S.C. § 13702(b)(2)); are subject to complaint

¹ In its July 28, 1998 Request for Renewal it was indicated that about 71 of its member motor carriers handle household goods. As pertinent to this proceeding, the involved household goods traffic moves intermodally between the mainland and Hawaii and are further identified herein as shipments moving within the noncontiguous domestic trade.

before the Board (49 U.S.C. § 13702(b)(6)); and can be either invalidated for noncompliance (49 U.S.C. § 13702(d), and/or result in an award of reparations to a shipper if found unreasonable (49 U.S.C. § 13701(d)(4)).

As indicated, inasmuch as the traffic of WMTB's member motor carriers between the United States and Hawaii principally moves under joint rates and through routes, and involves the divisions of rates, they remain subject to various regulatory requirements under Section 13701(a) of 49 U.S.C. et seq. The availability of collectively-made joint and proportional class rates which act as a baseline provides the member motor carriers with reasonable and readily identified rates which simplify and facilitate their joint-line negotiations with the various modes participating in that transportation. Moreover, it reduces the complexity and administrative burdens associated with rate divisions which otherwise exist when carriers must deal with a multitude of individually formulated and published rates.

As pertains to carrier member operations within the continental United States, the continued collective establishment of those class rates is essential in enabling the member motor carriers to meet their ratemaking needs and to publish reasonable and competitive rates for their transportation services. The availability of that class rate structure also simplifies the establishment of through routes and joint rates, and facilitates the division of rates among carriers which is critical to the implementation and continued use of those through arrangements. It is submitted that by aiding in making available reasonable and competitive rates and responsive services to shippers in moving their goods in the noncontiguous domestic trade, WMTB furthers the objectives of the National Transportation Policy and, thereby, serves the public interest.

III.
The Consistency of WMTB's Collective Ratemaking
Activities with the Public Interest Has Not Been Questioned

Pursuant to 49 U.S.C. § 13703(c) the basis for any Board action to “change the conditions or terminate” WMTB’s Section 5a Agreement is that such action is “necessary to protect the public interest.” It is therefore important to note that there are no complaints of record pertaining to the joint and proportional class rates established by WMTB, or any of its collective-ratemaking activities, and that no opposition was filed when the WMTB filed its July 28, 1998 Request for Renewal. Those facts are consistent with the views long expressed by the Interstate Commerce Commission (ICC) in granting and expanding the WMTB’s Section 5a Agreement.

When the ICC approved that agreement some 40 years ago, in Western Motor Tariff Bureau, Inc. – Agreement, 310 I.C.C. 53 91960), it concluded that:

We further find that the agreement is necessary to the effectuation, and will be in furtherance, of the national transportation policy when amended as indicated herein, and that by reason of the furtherance of the national transportation policy declared in the act, relief provided in paragraph (9) of section 5a [exemption from the antitrust laws] should apply with respect to the making and carrying out of the agreement. (310 I.C.C. at 62.)

In an order served February 22, 1989, in Section 5a Application No. 70 (Amendment No. 9), Western Motor Tariff Bureau, Inc.--Agreement, the ICC, again finding the Agreement to be in the public interest, granted provisional approval, subject to certain revisions of WMTB's Agreement which had been modified to conform to the Motor Carrier Act of 1980 and the ICC's implementing requirements in Ex Parte No. 297 (Sub-No. 5).^{2/}

^{2/}WMTB filed its Agreement conforming to the ICC's order on April 25, 1989 and was thereafter granted final approval by the ICC.

In a subsequent decision served on August 13, 1992, the ICC, in granting certain sought modifications, including the creation of a new rate committee, the California--Mexico Dry Freight Committee which would have authority to establish and periodically revise a new tariff to facilitate the movement of traffic in foreign commerce with Mexico, found that the amendments complied with former Section 10706(b) of 49 U.S.C. The agency concluded that:

The amendments are in the public interest in that they will facilitate ratemaking over a significant geographic area and otherwise allow for a reasonable expansion of services provided by the Bureau. With regard to extending the Bureau's ratemaking authority to encompass California-Mexico traffic, approval of the amendments is intended to result in streamlined procedures, elimination of duplicate efforts, and tariff simplification. The amendments are designed to eliminate the need for shippers and carriers to combine rates from two tariffs to determine the applicable through rate and will simplify currency conversions.

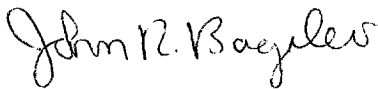
WMTB's long history of obtaining approval from the ICC regarding the bureau's Section 5a Agreement, and amendments thereto as being in the public interest, and the absence of any complaint as to the class rates its member carriers have established, it is submitted that no showing exists necessitating an adjustment to the current joint and proportional class rates. Those rates over a significant period of time have formed the basis for the establishment of the intermodal arrangements under through rates which are essential for the transportation of freight between the continental United States and Hawaii in the noncontiguous domestic trade. Further, unlike other class rate structures, WMTB's rates are subject to filing requirements, must be

reasonable, and are subject to an award of reparations to shippers if the rates exceed reasonable limits.

IV.
Conclusion

For all the foregoing reasons, WMTB requests that its Section 5a Agreement be approved without any further modification and that its joint and proportional class rates, fundamental to the establishment of through rates for freight moving in the noncontiguous domestic trade, not be adjusted.

Respectfully submitted,

A handwritten signature in black ink, reading "John R. Bagileo". The signature is written in a cursive, flowing style.

John R. Bagileo
Law Office of John R. Bagileo
1101 30th Street, NW
Suite 300
Washington, DC 20007
(202) 944-3300

Counsel for Western Motor Tariff
Bureau, Inc.

Dated: April 11, 2000

Western Motor Tariff Bureau, Inc.

P.O. Box 30268

Honolulu, Hawaii 96820

Ph: (808) 836-5874 Fax: (808) 833-8486

**STATEMENT
OF
ROBERT E. LEWIS**

My name is Robert E. Lewis. I am the president of American Pacific Transport Co., Ltd., of Honolulu, Hawaii, a member of the Western Motor Tariff Bureau, Inc. (WMTB). I also serve as WMTB's president, and have been authorized by WMTB's Board of Directors to submit these comments in the proceeding instituted by the Surface Transportation Board (Board) in its Decision served on February 11, 2000, in Section 5a Application No. 118 (Amendment No. 1), et al., EC-MAC Motor Carriers Association, Inc., Et AL, which embraced WMTB's Section 5a Agreement in Western Motor Tariff Bureau, Inc.—Agreement, Section 5a Application No. 70 (Sub-No. 12).¹

WMTB presently has about 600 motor carrier members. Most are general freight motor carriers transporting freight moving from the mainland, involving shipments originating at points throughout the United States, destined to numerous points in Hawaii, i.e. freight moving in the noncontiguous domestic trade. Under the Interstate Commerce Commission Termination Act of 1995, the rates established by motor carriers transporting freight moving in the so-called noncontiguous domestic trade remain subject to tariff filing requirements with the Surface Transportation Board. (49 U.S.C. § 13702(b)(1).) Those rates remain subject to complaint before the Board for resolution if they are alleged to violate the reasonableness requirement of 49 U.S.C. § 13701(a).

¹ On July 28, 1998, WMTB submitted its Request for Renewal of its present Section 5a Agreement.

Of considerable concern to the WMTB's member motor carriers is that under the Interstate Commerce Commission Termination Act of 1995, the failure to establish reasonable rates and through routes and divisions for freight moving in the noncontiguous domestic trade—matters of great importance given the nature of the transportation services they provide between Hawaii and the mainland, or as to any other collective ratemaking and related activities conducted under their Section 5a Agreement, can result in the award of reparations to shippers (49 U.S.C. § 13701(d)(4), and/or the prescription of a reasonable rate, classification, rule, practice, through rate, or division of joint rates by the Board (49 U.S.C. § 13701(b)).

Based on my many years of experience with the motor carrier industry and my involvement and participation in the WMTB, I can state that participation in the rate bureau process is essential for its many small and mid-size motor carrier members. Their ability to implement, utilize and rely upon the joint and proportional class rate structure collectively established and published by WMTB enables them to have access to class rates which apply on all the commodities they handle throughout the extensive service territory covered by WMTB's Section 5a agreement. Thus, each carrier has available rates on any mainland traffic they handle. That fact is particularly important to WMTB's motor carrier members because a substantial portion of the mainland traffic they transport must be on a joint-line, intermodal basis.

By having WMTB's joint and proportional class rates available as a baseline, member carriers have reasonable and readily identified rates available in their joint-line negotiations. That pricing mechanism greatly simplifies the negotiation process, avoiding the complexity created by a multitude of rates, and reduces the burdens

otherwise associated with the rating and billing of shipments. In the absence of WMTB's joint and proportional class rate structure it would be extremely difficult, if not impossible, for many of WMTB's carrier members to establish individual rate scales for the many commodities they transport, or to monitor or readily negotiate the joint-line rates and divisions which are vital components of their ability to remain competitive in the marketplace.

Because of the continued regulation of the general freight moving in the noncontiguous domestic trade transported by WMTB's member motor carriers, the accessibility of the bureau's expertise is critical to the membership. Through collective ratemaking the members can establish and publish competitive and reasonable rates which are the backbone of their through routes and joint rates. Also, given the filing and publication functions the Interstate Commerce Commission Termination Act of 1995 imposes on our motor carrier members, the availability of the bureau's assistance in constructing, publishing and filing their rates is essential to enable many of the members who do not have that capability in-house to comply with those obligations.

Another ratemaking function important to WMTB's member motor carriers is the continuation of their joint and proportional class rate structure within the broad territory in the continental United States in which WMTB currently is authorized to collectively establish rates. Initially, to meet the needs of its carrier members WMTB applied for and was granted ratemaking authority by the Interstate Commerce Commission in the so-called 11-Western State territory. By 1991, in response to the expanded transportation and ratemaking needs of its members' base, WMTB sought and was granted collective ratemaking authority in a 37-state territory. Through that broadened Section 5a

Agreement WMTB was not only able to meet the ratemaking requirements of its member carriers within the mainland, but also to Hawaii. These ratemaking activities enable the member carriers to establish reasonable and competitive rates for their transportation services, simplify the establishment of through routes and joint rates, and facilitate divisions of rates among carriers. WMTB believes that such actions taken under its Section 5a Agreement enhances the objectives of the National Transportation Policy of making available reasonable and competitive rates for diverse transportation services, and, therefore, are in the public interest.

Also, as recent as 1992, the Interstate Commerce Commission, in authorizing the expansion of WMTB's Section 5a Agreement to apply on traffic moving between points in the United States and points in Mexico, recognized that such authority would foster the simplification and streamlining of the procedures for handling international traffic by establishing applicable single factor through rates. Because of the tremendous growth in recent years in traffic moving by motor carrier between the United States and Mexico there is an even greater need today for the continuation of that authority to achieve the recognized benefits which flow from collective ratemaking regarding that traffic.

In order for WMTB to retain its membership and attract additional motor carrier members, it must have the capacity to provide the full range of services now available from the bureau through its Section 5a agreement. Under that collective ratemaking process, which is conducted with antitrust immunity, member motor carriers have available competitive, reasonable class rates which are critical in negotiating the joint-line rates upon which our carriers rely and in simplifying the concomitant divisions among participating carriers and modes. This system has worked exceedingly well in the

past in ensuring the uninterrupted flow of goods from the mainland upon which Hawaii relies, and has well-served the needs of WMTB's member motor carriers.

It is important to note that neither in the consolidated rate bureau proceedings in Section 5a Application No. 118 (Amendment No. 1), et al., EC-MAC Motor Carriers Service Association, Inc., Et AL, nor in the WMTB's Request for Renewal in Section 5a Application No. 70, has anyone complained of the joint and proportional class rates established by WMTB, which rates were established in Tariff WMT500, effective December 20, 1994. Those rates are essential components of the joint-line arrangements necessary to achieve movements in the noncontiguous domestic trade, and can involve various transportation modes in conjunction with the motor carrier movements performed by WMTB's members. To alter those long-established rates would seriously disrupt the intermodal arrangements necessary to move freight to and from Hawaii. Those rates continue to be subject to the Board's jurisdiction and not only are subject to a standard of reasonableness but also can result in reparations. No sound reason appears for disturbing WMTB's highly specialized rate structures.

Respectfully submitted,


Robert E. Lewis

Dated: April 6, 2000