

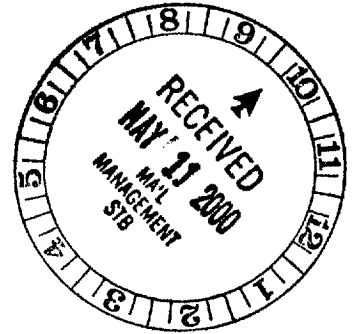
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Part of
Public Record

Before The
Surface Transportation Board

ORIGINAL



-198489
Section 5a Application No. 118 (Amendment No. 2), et al.
EC-MAC Motor Carriers Service Association, Inc., Et Al.

-198490
Section 5a Application No. 70 (Sub-No. 12)
Western Motor Tariff Bureau, Inc. - Agreement

Reply Comments of
Western Motor Tariff Bureau, Inc.

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Due and Dated: May 11, 2000

Before The
Surface Transportation Board

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

Section 5a Application No. 70 (Sub-No. 12)
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Reply Comments of
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Western Motor Tariff Bureau, Inc. (WMTB), on behalf of its member motor carriers, respectfully submits these reply comments in this proceeding, and states as follows:

I.
No Opposition to the Continuation of WMTB's
Section 5a Agreement Has Been Submitted

Much of WMTB's Opening Comments was dedicated to explaining the unique nature of the rates collectively made by WMTB which underpin the joint and proportional rates established for shipments moving in the noncontiguous domestic trade, principally between the mainland and Hawaii. Also addressed was the fact that, unlike other class or related tariffs, rates applicable to shipments moving in the noncontiguous domestic trade must be filed with the Surface Transportation Board (STB), and the tariffs are subject to statutory requirements as to content and the jurisdiction of the STB as to any further information deemed necessary. (See 49 U.S.C. § 13702(b).) Further, those

rates specifically are subject to complaint on the grounds that they are not reasonable (49 U.S.C. § 13702(b)(6)); and if the carriers' rates are found unreasonable a remedy is provided for reparations, including interest (49 U.S.C. § 13702 (d)). Moreover, unlike other rates, those applicable to transportation moving in the noncontiguous domestic trade remain subject to the filed rate doctrine, i.e. a carrier may not charge or receive a different compensation for the transportation than that set forth in its tariff. (See 49 U.S.C. § 13702(a).)¹

None of the comments submitted in this proceeding has raised a single complaint regarding the collective ratemaking activities conducted by the WMTB member motor carriers, or the reasonableness of the joint and proportional class rates or the level of any other published WMTB rates. Moreover, WMTB is not aware of any complaints regarding WMTB collectively-made rates which have been filed with the STB.

II.

The Public Interest Requires No Protection Regarding WMTB's Continued Collective-Ratemaking Activities

As indicated, no one has opposed the continuation of WMTB's Section 5a Application No. 70 as not being in the public interest. Moreover, pursuant to the changes made by the Motor Carrier Safety Improvement Act of 1999 regarding the approval of Section 5a Agreements, an even greater burden exists in demonstrating that an approved Section 5a Agreement should be modified or terminated than previously existed.

Whereas under former Section 13703(d) of 49 U.S.C. an approved Section 5a Agreement would not be renewed if it was shown that continuation was somehow "not in the public

¹ Another significant difference is that rates for transportation services for shipments moving in the noncontiguous domestic trade are provided with a zone of reasonableness wherein the rates are deemed reasonable if the aggregate of increases and decreases in any such rates or division is not more than 7.5

interest,” under the present provisions such Agreement can be terminated only when it is shown that action is “necessary to protect the public interest.” (See 49 U.S.C. § 13703(c).) No such allegation or evidence of any nature has been raised on this record regarding the ratemaking activities conducted by WMTB as endangering the public interest.

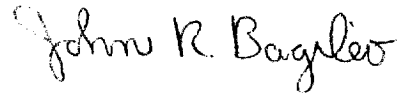
To the contrary, as indicated in its Opening Comments dated April 11, 2000, each time WMTB has sought the approval of, or amendments to, its Section 5a Agreement, it was concluded that the public interest would be served by the granting thereof. As the Interstate Commerce Commission aptly recognized in approving the expansion of WMTB’s Agreement to include the creation of a new rate committee, the California—Mexico Dry Freight Committee, those activities would result in the elimination of the need for shippers and carriers to combine rates from two tariffs to determine the applicable through rate and would result in streamlined procedures, the elimination of duplicate efforts, and tariff simplification. Those observations are particularly relevant and applicable to the extensive tariff functions performed by WMTB with respect to freight moving in the noncontiguous domestic trade.

percent above, or more than 10 percent below, the rate or division in effect one year before the effective date of the proposed rate or division. (See 49 U.S.C. § 13701(d)(1).)

III.
Conclusion

For the foregoing reasons, and those set forth in its Opening Comments, WMTB respectfully requests that its approved Section 5a Agreement be continued, and that the applicable joint and proportional class rates, which are the basis for the establishment of the joint rates moving in the noncontiguous domestic trade, not be modified.

Respectfully submitted,



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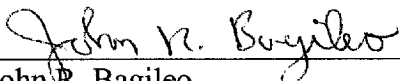
Counsel for Western Motor Tariff
Bureau, Inc.

Due and Dated: May 11, 2000

Certificate of Service

I hereby certify that I have served a true and correct copy of the foregoing Reply Comments upon all parties of record identified by the Surface Transportation Board in its Decision served on April 20, 2000 in Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, Inc., Et Al., by first class mail, properly addressed and with postage prepaid.

Dated at Washington, DC this 11th day of May 2000.



John R. Bagileo