

208509

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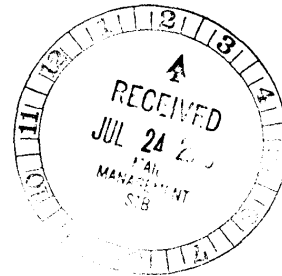
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July 24, 2003

Vernon A. Williams
Secretary
Surface Transportation Board
The Mercury Building
1925 K Street, NW #700
Washington, DC 20423

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Office of Proceedings
JUL 24 2003
Part of
Public Record



Re: STB Section 5a Application No. 118 (Sub-No. 2), et al.
EC-MAC Motor Carriers Service Associations, Inc., Et Al.

Dear Secretary Williams:

Enclosed please find the original and ten copies of Southern Motor Carriers Rate Conference, Inc.'s amendments to its revised Section 5a Agreement incorporating the modifications identified in the Surface Transportation Board's Decision served on March 27, 2003, in the above-styled proceeding.

An additional copy of the amendments is enclosed which it is requested be date-stamped or receipt otherwise acknowledged, and returned to me. A self-addressed, stamped envelope is enclosed for your convenience.

Thank you for your assistance in this matter.

Sincerely,

John R. Bagileo

John R. Bagileo
Counsel for Southern Motor Carriers
Rate Conference, Inc.

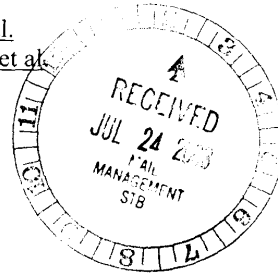
Enclosures

208509
ORIGINAL

Before The
Surface Transportation Board

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

Section 5a Application No. 46 (Sub-No. 21)
Southern Motor Carriers Rate Conference, Inc.



Amendments to Section 5a Agreement Responsive to
Surface Transportation Board's Final Requirements

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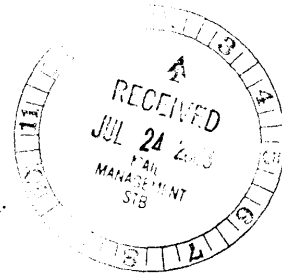
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Counsel for Southern Motor Carriers Rate
Conference, Inc.

Dated: July 24, 2003
Due: July 25, 2003

Before The
Surface Transportation Board

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



Section 5a Application No. 46 (Sub-No. 21)
Southern Motor Carriers Rate Conference, Inc.

Amendments to Section 5a Agreement Responsive to
Surface Transportation Board's Final Requirements

Southern Motor Carriers Rate Conference, Inc. (SMC), by counsel, files the following amendments to its revised Section 5a Agreement incorporating the modifications identified in the Surface Transportation Board's (STB) Decision served on March 27, 2003.¹

I.
Further Requirements of the
STB's March 27, 2003 Decision

On reconsideration, the STB's Decision conditions continued approval of motor carrier rate bureau agreements on the requirements that motor carrier members furnish a "truth-in-rates" notice, and that use of a loss-of-discount penalty for late payment reinstating a collectively-made class rate be prohibited.

¹ Attachment A sets forth the further modifications to SMC's Section 5a Agreement.

In order to prevent a shipper from assuming that an undiscounted class rate collectively established under approved Section 5a procedures is a uniform or the prevailing rate, the STB requires that a “truth-in-rates” notice be provided when the carrier lists or quotes a rate that references a collectively set rate. (STB Decision, p. 12) In its Decision in this proceeding served on November 20, 2001, the STB indicated that the truth-in-rates notice:

[M]ust inform the recipient that the class rates are set through non-competitive, collective action by a group of carriers, but that individual carriers actually offer substantial discounts off those class rates to the majority of their shippers. The notice must also inform shippers that they can negotiate discounts from the class rates, and the notice must publicize, in large print, the range of discounts actually offered by carriers in the rate bureau. (2001 Decision, p. 8)

While not precluding loss-of-discount provisions, the STB conditioned its continued approval of rate bureau agreements by requiring, as a condition of membership in a rate bureau, that a carrier using a rate that references a collectively set class rate may not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment. (2001 Decision, pp. 9-10)

On reconsideration, the STB, in its Decision served on March 27, 2003, with minor modifications, affirmed its requirements regarding the “truth-in-rates” notice, and the condition barring the use of a loss-of-discount penalty for late payment.

The rate bureaus were directed to submit the range-of-discount information to the STB by May 27, 2003. SMC has complied with that requirement. The revised bureau agreements implementing the foregoing requirements must be submitted to the STB by July 25, 2003. (2003 Decision, p. 12) Set forth below are the revisions to SMC’s Section

5a Agreement designed to meet the truth-in-rates and loss-of-discount certification requirements.

II.
Revisions to Section 5a Agreement
Responsive to Decision Served March 27, 2003

A. Truth-in-Rates Requirement

For purposes of consistency and ease of identification SMC has included provisions implementing the truth-in-rates requirement under its rules of procedures related to collectively-made tariff provisions. Accordingly, the following section has been added thereto:

Section VII, Truth-in-Rates Notice

1. When an SMC member motor carrier lists or quotes a rate that is based on or references an SMC collectively-established rate, the member motor carrier must give the potential shipper the minimum truth-in-rates notice required by the Surface Transportation Board. That notice, in large type, must indicate that the rate or rate quote was collectively set by motor carrier competitors acting under immunity from the antitrust laws; that the class rate is not necessarily the prevailing market rate, and, generally, there is a wide range of discounts available.
2. The notice must identify the range of discounts for the past year from SMC member motor carriers. SMC will survey and provide annually to its member motor carriers the range of discounts available for the past year.

B. Loss-of-Discount Certification

Inasmuch as the required loss-of-discount certification is a condition of membership for a motor carrier in the collective ratemaking activities of SMC, Section I of the By-Laws identifying the qualifications for membership will be modified accordingly. In addition to requiring new motor carrier applicants to submit that

certification, existing member motor carriers will be required promptly to submit that certification as well. The new provision in the By-Laws will read as follows:

Section I, Membership

3. As a condition of membership in SMC, a motor carrier must certify that it does not use an SMC collectively established rate as the basis for a loss-of-discount provision.

The certification form SMC would provide to its member motor carriers and applicants for membership would read:

Certification

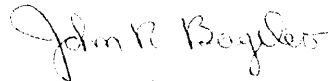
[Name of Carrier] confirms that it does not use a collectively-set class rate published in a Southern Motor Carriers Rate Conference, Inc. class rate tariff as a basis for a loss-of-discount, late payment penalty.

By: _____
Print: _____
Title: _____

Conclusion

It is submitted that the foregoing revisions apply in all material respects with the requirements set forth in the STB's Decision served March 27, 2003, and, therefore, it is requested that, as further amended, final approval be given by the agency to SMC's Section 5a Agreement No. 46.

Respectfully submitted,



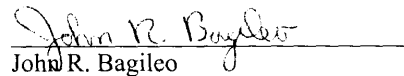
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Counsel for Southern Motor Carriers Rate
Conference, Inc.

Dated: July 24, 2003
Due: July 25, 2003

Certificate of Service

I hereby certify that I have this 24th day of July 2003, served a true and correct copy of the foregoing document upon all parties of record, by first class mail, and with postage prepaid.


John R. Bagileo

Attachment A

By-Law and Procedural
Changes

By-Law Revision:

Section I, Membership

3. As a condition of membership in SMC, a motor carrier must certify that it does not use an SMC collectively-established rate as the basis for a loss-of-discount provision.

Procedures of Southern Motor Carriers Rate Conference, Inc.

Section VII, Truth-In-Rates Notice

1. When an SMC member motor common carrier lists or quotes a rate that is based on or references an SMC collectively-established rate, the member motor common carrier must give the potential shipper the minimum “truth-in-rates” notice required by the Surface Transportation Board. That notice, in large type, must indicate that the rate or rate quote was collectively set by motor carrier competitors acting under immunity from the antitrust laws; that the class rate is not necessarily the prevailing market rate, and generally, there is a wide range of discounts available.

2. The notice must identify the range of discounts available for the past year from SMC member motor common carriers. SMC will survey and provide annually to its member motor common carriers the range of discounts available for the past year.