

STEPTOE & JOHNSON ^{LLP}

ATTORNEYS AT LAW

David H. Coburn
202.429.8063
dcoburn@steptoe.com



1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

May 24, 2004

211045

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1924 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

MAY 24 2004

Part of
Public Record

**Re: Section 5a Application No. 46 (Sub No. 20), Southern Motor Carriers
Rate Conference, Inc.**

Dear Secretary Williams:

Enclosed for filing please find an original and 10 copies of the Reply of Rocky Mountain
Tariff Bureau, Inc. to the Initial Statement of Southern Motor Rate Conference, Inc.

Respectfully,

A handwritten signature in dark ink, appearing to read 'David H. Coburn'.

David H. Coburn
Attorney for Rocky Mountain Tariff Bureau,
Inc.

Enclosure

cc: All parties of Record

001

WASHINGTON

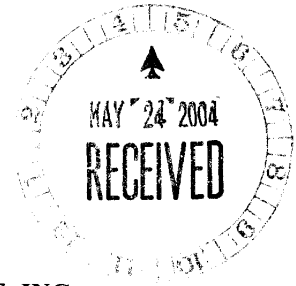
PHOENIX

LOS ANGELES

LONDON

BRUSSELS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



SECTION 5A APPLICATION NO. 46 (Sub No. 20)

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.

**REPLY OF ROCKY MOUNTAIN TARIFF BUREAU, INC. TO INITIAL STATEMENT OF
SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.**

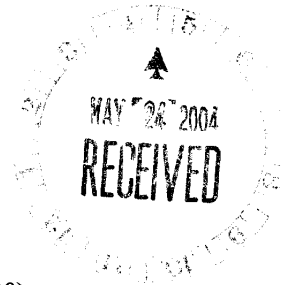
**ENTERED
Office of Proceedings
MAY 24 2004
Part of
Public Record**

David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/429-8063

Attorney for Rocky
Mountain Tariff Bureau, Inc.

May 24, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



SECTION 5A APPLICATION NO. 46 (Sub No. 20)

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.

**REPLY OF ROCKY MOUNTAIN TARIFF BUREAU, INC. TO INITIAL
STATEMENT OF SOUTHERN MOTOR CARRIERS RATE CONFERENCE
INC.**

ENTERED
Office of Proceedings

MAY 24 2004

Part of
Public Record

Rocky Mountain Tariff Bureau, Inc. ("RMB") hereby files this reply in opposition to the April 21, 2004 Initial Statement of Southern Motor Carriers Rate Conference, Inc. ("SMC"). SMC has not offered any credible public interest justification to support its request for expanded antitrust immunity so that it can serve as a forum for nationwide collective ratemaking. As there is no legitimate basis for granting the extraordinary relief SMC seeks, RMB urges that that relief be denied.

SMC's April 21 filing is largely a rehash of its prior submissions, offering little new in the way of justification for expanded immunity. In fact, the only new point it offers in support of its request is that it has numerous motor carrier members located outside the SMC territory who wish to use the services of SMC to engage in collective ratemaking for the areas that they serve.¹ However, as will be shown in more detail

¹ The SMC or Southern Territory is defined in SMC's approved ratemaking agreement as the States of Alabama, Florida, Georgia, Kentucky, Louisiana (east of the Mississippi), Mississippi, North Carolina, South Carolina, Tennessee, southern Virginia, and part of West Virginia.

below, SMC has long had a large number of member carriers (those who were previously called "participating carriers") located outside the SMC territory. The assertion made now is based on the fact that SMC's definition of "member" carrier has changed. Thus, SMC has had approximately the same number and percentage of carriers located outside the core Southern Territory for many years. These carriers are free to use the services of SMC to collectively make rates between the SMC Territory and any point in the United States, free to use the services of other rate bureaus in other geographic areas and of course free to formulate rates on their own or to rely on rate tools such as SMC's CzarLite to price their services.

In addition, membership in SMC does not require participation in tariffs published by SMC. Thus, based on membership marketing information on its website, SMC seeks to attract carriers from outside the SMC territory to become members because it offers them services unrelated to collective ratemaking. Certainly it cannot now legitimately claim that it needs immunity to serve the ratemaking needs of those carriers. Thus, like each of the purported justifications that SMC has offered in the past in support of its request for expanded immunity, its latest argument is an empty shell.

In this Reply, RMB will examine each of the several reasons SMC has offered for expanded immunity at various times over the last several years, showing that SMC has failed in each of its efforts to satisfy its heavy burden. Its stated goals of reducing the number of rates available in the market, making the timing of rate increases more uniform, and eliminating rates that it deems "unsuitable" underscore the anticompetitive nature of its efforts. What this case is really about is SMC's effort to enhance its own revenues and to bring more "order" to motor carrier pricing by shaping ratemaking on a

nationwide basis according to its mold. RMB submits that SMC's goals are fundamentally at odds with the pro-competitive reforms that Congress sought to bring to the motor carrier industry.

Motor carrier pricing today is highly competitive. Shippers are not complaining about a lack of rate options. Carriers can construct any rate they want, and use a wide variety of available baseline rates for quoting discounts. Bureaus play a valuable, but limited, role in helping carriers construct joint rates and make general rate adjustments to baseline rates. The market works just fine. The Board should leave the status quo alone, rejecting SMC's efforts to expand the power and reach of its rate bureau to serve ends that have nothing to do with promoting the public interest. The risks of broadly exempting SMC and its carriers from the antitrust laws is not one the Board should take in an environment where the free market and competition are working well.

A. BACKGROUND

SMC has unsuccessfully sought expanded antitrust immunity for at least the past ten years. During that period, while trucking competition has flourished, SMC has offered a variety of reasons why it should be granted nationwide immunity. None of these reasons is convincing or credible. By a Petition to Reopen and Reconsider filed November 5, 2003 ("November 2003 Petition"), SMC sought once again to bring this matter before the Board.² It offered no new evidence or reasons why expanded immunity was warranted, but instead contended that the Board should rely on its prior submissions and on the fact that Congress, in an appropriations measure adopted in February 2003,

² The 1998 decision as to which SMC seeks reopening and reconsideration was issued in *Section 5a Application No. 118 (Amendment No. 1), et al., EC-MAC Motor Carriers Service Association, Inc., et al.* (served December 18, 1998) ("1998 EC-MAC Decision").

had removed a 1999 statutory bar to nationwide collective ratemaking by amending 49 U.S.C. § 13703.

In response to comments filed by shipper groups, including the opposing comments of the National Industrial Transportation League, the U.S. Department of Transportation and other rate bureaus, the Board decided on March 23, 2004 to reopen this proceeding in order to allow for the submission of new evidence concerning SMC's request for nationwide immunity. The Board's decision notes correctly the present record on this matter is more than six years old and that additional opportunity for public comment is warranted in light of developments in the industry, the statutory revision noted above and prior Board decisions concerning collective ratemaking.

Now that SMC has updated its evidence and arguments in favor of the relief it seeks, RMB submits that the Board should put this matter to rest once and for all by finding that SMC has failed, as it has for the past ten years, to justify an expansion of antitrust immunity. Cutting through the largely irrelevant statements and rhetoric that it offers (most of which are addressed to the propriety of SMC's collective ratemaking practices, not here at issue), the only seemingly new reason that SMC offers for expanded immunity from federal antitrust laws is that it has "member" carriers that are located outside the Southern territory. This and the other, rehashed reasons it offers do not justify expanded immunity, particularly given SMC's heavy burden in this proceeding, discussed next.

B. SMC's HEAVY BURDEN HAS NOT BEEN MET

SMC's April 21 submission is notable for the absence of any meaningful discussion of the burden SMC must meet to justify the unusual and rarely granted

exemption from the antitrust laws that it seeks. While acknowledging that the Board may only approve a collective ratemaking agreement, or an amendment to an agreement, submitted to it by a group of motor carriers if it finds that the agreement or amendment "is in the public interest",³ SMC's fails by a wide margin to articulate a viable public interest rationale for its proposal. While it contends that it is well-equipped to formulate reasonable baseline rates for its member carriers, it fails to explain how it is that those carriers are already managing -- without SMC's expanded antitrust immunity -- to compete successfully in the marketplace. SMC cannot explain how those carriers are impaired from establishing any rate or discount that they need to in order to capture traffic. It also cannot explain how it matters whether those carriers use the rates that SMC seeks to make collectively outside its current territory versus baseline rates that are available from other sources.

SMC puts a lot of paint on the canvass, but it fails to paint a clear picture of why its carriers need expanded antitrust immunity. It fails to paint that picture, and thus to carry its burden, because there really is no public interest need for the unique benefit it wants. This is not to say that SMC itself would not benefit from expanded immunity -- it no doubt would be able to earn more dues, perhaps sell more copies of CzarLite, and likely become a nationwide collective ratemaking monopoly for the LTL sector. These commercial benefits, however, cannot justify immunity from the laws that form the bedrock of the competitive economy. Nor is expanded immunity warranted as a means of reducing the number of rates available in the marketplace, another apparent SMC goal.

³ 49 U.S.C. § 13703(a)(2).

The Board should also bear in mind that the special benefit SMC seeks in the form of broadened immunity from the antitrust laws is unprecedented in the LTL motor carrier industry, the sector in which its members (like those of RMB) focus their operations. The Board and its predecessor Interstate Commerce Commission ("ICC") have for decades consistently approved agreements that allow less-than-truckload ("LTL") motor carriers to engage in collective ratemaking on a *regional* basis, subject to the territorial boundaries set forth in the ratemaking agreements approved by the ICC and the STB. Such territorial boundaries on collective ratemaking reflect the regional nature of the operations of most LTL motor carriers. Although as a matter of course carriers have been granted nationwide operating rights by the ICC and its successor agencies for about 25 years, the actual operations of most LTL carriers (with the exception of a small number of national LTL carriers) remain regional in nature. Thus, the regional ratemaking system has not been a hindrance to carrier opportunities or to the growth of competition in the LTL sector. In large measure, this is because most carriers confine their operations to the regions in which they are based or to shipments between those regions and other regions, consistent with the scope of existing grants of antitrust immunity to the rate bureaus.⁴ Relatively few carriers operate within several regions, and many from this small group of carriers either belong to more than one rate bureau or opted out of the collective ratemaking system years ago.

In fact, regional boundaries have facilitated the ability of carriers in different parts of the United States to maintain class rates that best reflect the operating characteristics of

⁴ For example, a carrier based in Atlanta can rely on SMC collectively made rates to price transportation within the SMC territory and between the SMC territory and other points. No expansion of SMC immunity is needed to accommodate these services.

the area. The regional system allows smaller carriers that compose the bulk of rate bureau membership a more active role in the process than would be the case in the event that the small number of national carriers were to rejoin the rate bureaus and dominate the process.

Since broadened operating rights have successfully coexisted with regional rate bureaus since the operating rights liberalization began in the late 1970's, SMC cannot be heard to argue that broadened operating rights necessitate broadened antitrust immunity. The highly price competitive and economically viable LTL trucking sector offers the strongest possible proof that there is nothing wrong with the status quo, nothing warranting a radical change in the Board's traditional approach to collective ratemaking immunity. No carrier is claiming that it cannot price its services, no traffic is sitting on freight docks because rates were not available to move it, no service is not being offered because antitrust immunity was too narrow to allow it to be competitively priced. SMC has failed to show how the territorial-based collective ratemaking system that has functioned without problem for decades needs to be revamped in a manner that is likely to result in a single nationwide scale of collectively-made rates, controlled by a single rate bureau.

In short, the broadened antitrust immunity SMC seeks is not a solution to any problem because there is no problem to be solved. If a carrier, inside or outside the SMC Territory, needs to price its services, it can. If a carrier inside or outside the SMC Territory wants to rely on collectively made rates, it can. And if a carrier inside or outside the SMC Territory wants to use SMC's successful CzarLite product, it can.

SMC thus has failed to meet its burden of showing a public interest for expanded immunity that outweighs the competition policies that underlie the antitrust laws. Again, underlying its filing is SMC's interest in expanding its revenues, selling more of its commercial products and becoming the sole LTL sector rate bureau. RMB submits that whatever economic pressures are forcing SMC to look to broader immunity plainly cannot justify providing a broadened antitrust exemption to that entity.

C. THE EVIDENCE AND ARGUMENTS OFFERED BY SMC ARE UNCONVINCING

SMC has offered many different arguments over the years in support of expanded antitrust immunity. It has claimed, as noted above, that such immunity is warranted by broadened operating rights awarded to carriers. It has claimed that it needs immunity in order to preserve its ability to market or maintain its CzarLite product, a compilation of collectively made rates. It has claimed that nationwide immunity is warranted because other bureaus may go out of business. It has claimed that carriers need its immunized services to price their transportation services competitively. It has claimed that it deserves broadened immunity since nationwide immunity has been granted to some bureaus whose members are specialized carriers. It has claimed that the Board has previously favored the grant of nationwide immunity. It has claimed that shippers support its request. To varying degrees, it repeats these arguments in its April 21 filing, and adds a new one that was not even mentioned in its November 2003 Petition, namely, that it has members outside the SMC Territory whose pricing needs are not being fully met by SMC.

RMB has previously addressed the arguments earlier made by SMC. It will reiterate its responses here, and address SMC's latest excuse for expanded antitrust immunity as well.

1. The Nationwide Operating Rights Argument

As noted above, motor carriers of property have held nationwide operating rights for decades now. The ICC, followed after 1995 by the Federal Highway Administration and now the Federal Motor Carrier Safety Administration, have for decades now removed previous geographic operating rights restrictions and granted nothing other than nationwide rights to motor property carriers. Any general freight carrier holding anything less than nationwide authority today, if there are any such carriers, would be a rare aberration.

Nationwide operating authority, however, does not translate into a need for nationwide antitrust immunity. That fact is best exemplified by the successful co-existence, for decades, of territorially limited rate bureaus and territorially unlimited motor carriers. The reason is that only a very small number of very large carriers have genuinely national operations, and these carriers have not participated in collective ratemaking for many years. They instead publish their own rate "tariffs" and often serve as price leaders in the industry given the vast amount of traffic they control and the reliance of smaller carriers on interline revenues earned from shipments handled jointly with these large carriers.

The vast majority of other carriers operate within a confined territorial area, specializing in providing transportation services within a few states or a particular region of the nation. This fact is underscored by the small size of most motor carriers.

According to Bureau of Transportation Statistics, there are only 220 LTL carriers that have annual revenues in excess of \$3 million, the cutoff for BTS reporting.⁵ Aside from a handful of very large carriers, most of these are smaller carriers that do not maintain fleets and drivers sufficient to operate in more than a few states. In fact, according to a recent decision issued by FMCSA, 99% of the carriers described as “general freight” trucking companies had revenues in 1997 of less than \$25 million, meaning that the vast majority of these carriers are small businesses.⁶

The bulk of the membership of the rate bureaus is drawn from the ranks of these smaller carriers. *Indeed, virtually all of the carriers that have offered statements in support of SMC’s latest submission describe themselves as small and acknowledge that they confine their operations to a limited number of Southern states.*⁷ Very few of these carriers operate trucks outside of SMC’s territory, and to the extent that they operate between the SMC territory and other points in the U.S., collectively made SMC class rates can serve as a baseline for pricing such shipments.

⁵ See 49 CFR § 1420.1; www.bts.gov

⁶ These statistics, which FMCSA uses for cost/benefit analyses of its rules, include private as well as for-hire carriers. *See Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators: Final Rule*, 69 Fed. Reg. 29384, 29401 (May 21, 2004).

⁷ E.g., Smith and Waters, Inc. (“a small trucking company” that operates in “seven Southern states”); Hazard Express (“a small carrier” that appears to center its operations in Kentucky and surrounding states); Benton Express (“a small” carrier that operates in six Southern states); Terminal Trucking Co., Inc. (“a small family owned” trucking company that operates in five southern states); Shippers Express (a “small, privately owned” trucking company that operates in Mississippi and parts of three other Southern states); Wilson Trucking Corp. (operates primarily in the Southeastern states, reaching other points via interline arrangements); Southeastern Freight Lines, Inc. (“operates principally” in ten Southeastern states).

The regional nature of most LTL carrier operations explains why groups of motor carriers have not petitioned the Board for broadened antitrust immunity. Only SMC has done so and its efforts in promoting broadened immunity to the carrier community have relied on the notion that such immunity is essential for the success of CzarLite, one of SMC's commercial products. As shown next, that is simply not true; CzarLite's continued utility is not dependent on broader antitrust immunity for SMC.

2. The CzarLite Argument

SMC has long argued that broadened antitrust immunity is needed for its CzarLite product, and there is a strong undercurrent of that argument in its latest filing. SMC's CzarLite product is a compilation of rates, including rates collectively formulated by several rate bureaus, such as RMB. It is thus effectively a nationwide set of baseline rates. CzarLite is at the center of this proceeding because SMC's commercial interest in the significant revenues it derives from that product serves as a primary driving force behind SMC's request for expanded immunity. *See* Statement of Jack Middleton ("Middleton") at 5 ("SMC has a growing and valid concern regarding the continuity of CzarLite given the weakened position of several of the present regional rate bureaus."); Middleton at 6-7 (noting problems in adjusting CzarLite rates due to the absence of nationwide immunity).

While SMC and its supporting carriers tout the importance of CzarLite as a ratemaking tool, the very commercial success of that product, and the fact that it is used by many carriers and shippers throughout the U.S., undermines SMC's request for expanded immunity. As RMB has noted in previous filings, the Board has unequivocally found that no antitrust immunity at all is needed for this product, thereby underscoring

that SMC cannot rely on any need tied to CzarLite to support the expanded immunity it now seeks. See EC-MAC, served May 20, 1997 at 3-4:

SMC, in its more recent filings, asserts that it needs immunity to facilitate the publication of "CZAR-Lite," a publication presenting rates of numerous carriers in a single computer or paper document. Yet, in a pleading filed on February 4, 1997, at 8, SMC concedes "that antitrust immunity is not needed for the simple compilation of a nationwide pricing system predicated on the class rates established by [motor carriers]." It does not appear to us that antitrust immunity is necessary or appropriate for the publication and dissemination of rates, in either paper or electronic form.

In explicitly, and correctly, finding that CzarLite is not a basis for expanding the scope of antitrust immunity, the Board has undermined the reason offered for expanded immunity in so many of the carrier statements offered by SMC. Every one of the carrier statements offered in support of SMC's April 21 filing is built to some extent around the argument that CzarLite is an important rate tool used by the carrier.⁸

That argument proves *nothing* about the need for antitrust immunity. What it does prove is that SMC's supporting carriers fail to appreciate that the absence of expanded immunity is no threat to CzarLite. That commercial product was created by SMC in a regional collective ratemaking environment, and can be maintained in a

⁸ The following expressions of support for CzarLite drawn from SMC's supporting carrier statements are typical: Overnight Transportation Company: "The SMC's CZAR-Lite family of products has provided a measure of stability for shippers and has become the industry standard baseline pricing mechanism preferred by a growing number of our shipper customers who prefer a single baseline platform for all of their LTL carriers to use." Averitt Express: "CZAR-Lite, a software product created by SMC and consisting of the matrix of class rates presently available across the nation, has become a pricing standard in my company's rate negotiations."

regional collective ratemaking environment, as over 15 years of history with that product has shown.⁹

Mr. Middleton argues that nationwide immunity should be granted to SMC because not all rate bureaus are taking general increases on the same date, as they used to. This fact, he complains, is adversely impacting CzarLite by requiring that adjustment of the rates in that publication be made only after the last bureau has acted. Middleton Statement at 6-7. In other words, the ease of adjusting the rates in SMC's commercial product is being offered by SMC as a basis for a broadened exemption from the antitrust laws. To state the proposition is to show why SMC's request should be denied out of hand. The notion that the ease of adjusting CzarLite somehow outbalances the application of the federal antitrust laws (about which SMC says virtually nothing in its lengthy submission) is not one that the Board should seriously entertain.

Further, there is nothing contrary to the public interest for different bureaus to adjust their rates by different amounts and at different times. This demonstrates a point that SMC freely acknowledges, which is that carriers in different regions may have different cost experiences and revenue needs. To quote Mr. Middleton, "long recognized differentials exist in the costs associated in operating in various parts of the country. Those different cost factors create distinct revenue needs in the identified ratemaking territories." Middleton at 6. These differentials offer a justification for retaining territorial limits, not eliminating them. Mr. Middleton also complains that regional rate

⁹ CzarLite was first created in 1987. Statement of Danny B. Slaton, SMC Vice President of Sales and Marketing, at 5. Even if it were the case that CzarLite were somehow threatened by the absence of nationwide immunity for SMC, whatever commercial benefits are associated with that product cannot possibly justify an exemption from the antitrust laws.

increases taken by other bureaus may not meet the needs of SMC carriers. He offers no proof of that, but the short answer to the problem (if there is one) is that these carriers can (and undoubtedly do) apply whatever increase they want to their own rates in other ratemaking territories.

3. The “Other Bureaus are Going Out of Business” Argument

Related to the CzarLite argument, SMC contends that it needs antitrust immunity because some rate bureaus have gone out of business and others may in the future. Why the status of other bureaus is relevant to SMC’s immunity is not made clear by SMC. It appears, however, that perhaps SMC is concerned that it will not have class rates from other bureaus to copy into its CzarLite compilation. In other words, this argument is really no more than a variation on the theme of the “we need immunity to enhance and protect CzarLite” argument.

Even if one accepted that the status of other bureaus could have a bearing on CzarLite, it should be clear for the reasons stated above that this does not satisfy the burden on SMC to show that the nation’s antitrust laws should be put aside for SMC’s benefit. Benefits to a commercial product like CzarLite do not equate to benefits to the public interest sufficient to warrant immunity from the antitrust laws.

Further, the status of other bureaus has not had an adverse impact on SMC or CzarLite. If the cessation of New England Motor Rate Bureau operations a few years ago has had any discernable impact on the CzarLite product, which continues to offer rates to/from New England points, it is far from obvious. SMC can continue to use the old New England Bureau rates for its product or it can use the rates of any major carrier that operates in the New England territory as its baseline CzarLite standard. It has not shown

why it needs to have the right itself to collectively set rates in that region. And, again, it has not shown, and cannot show, that even if CzarLite were somehow jeopardized that that would justify the extraordinary relief it seeks.¹⁰

4. The Competitive Pricing Argument

SMC has argued that carriers need its services to price competitively, consistent with their costs and revenues. This claim is made in many of the carrier statements offered in support of SMC's April 21 filing.¹¹ It is also repeated in several different formulations in Mr. Middleton's statement. He claims, for example, that, "SMC is well qualified and able to assist its member carriers in constructing a rational and reasonable baseline of class rates . . . its member carriers can tailor their class rate baseline to reflect their competitive needs, and not be subject to any unrelated class rate levels." Middleton at 6.

Such claims do not withstand any scrutiny; and in fact make no logical sense in the context of a request for nationwide immunity. The LTL motor carrier market is indisputably highly competitive and working well today. Carriers are pricing their

¹⁰ Mr. Middleton also claims that RMB has, "a virtual stranglehold on the collective ratemaking activities" in its territory. That is not true. Carriers in the RMB Territory are free to participate in the collective ratemaking process through RMB, or not to do so, just as they are free to use rate tools such as CzarLite or to publish their own baseline of rates.

¹¹ The following expressions are typical: Estes Express Lines: "My company strongly believes in the fairness and reasonableness of the class rate modifications established by SMC, and is confident that SMC's considerable rate expertise would result in a sound baseline of class rates throughout the nation if SMC's nationwide collective ratemaking agreement is approved." Shippers Express, Inc.: "SMC over the years has demonstrated to me its high level of expertise in motor carrier costing and in assessing revenue need. Its projections of labor and non-labor costs greatly assist me in assessing the pricing levels necessary to meet my revenue needs."

services in response to market forces and negotiating discounts with shippers for all types of traffic, without any structural or other problems impairing healthy competition. And there is nothing “competitive” about class rate baselines. It is the discounts from those rates that reflect market competition. Thus, the idea that SMC’s baseline of rates is somehow more competitive is nonsense.

All of SMC’s extensive arguments about the level of its class rates relative to other baseline rates maintained by individual carriers are also entirely irrelevant to this proceeding. See Middleton Statement at 2; Ridley Statement. If SMC is asking the Board to believe that SMC’s goal in seeking nationwide antitrust immunity is to reduce motor carrier rates, then one might also expect SMC to be selling the Brooklyn Bridge next. It is counter-intuitive to accept that SMC is pursuing a course designed to lower the rates charged by its members.

Further, whether a carrier offers a 60% discount off of a lower baseline, or a 70% discount off a baseline that it is 10% higher should be of no concern to the Board or to shippers. In other words, if SMC’s baseline rates are lower than some others maintained by individual carriers, then it is fair to assume that the discounts offered from those base rates are lower too. It is free market competition, not collectively made baseline rates, that sets market prices charged to shippers. SMC’s argument about its baseline rate levels versus some others is a red herring.

There is also a gross inconsistency in SMC’s presentation. On the one hand, SMC and its carrier supporters laud CzarLite (which compiles under one cover rates collectively made by various LTL rate bureaus) as a critical tool on which they heavily and successfully rely in pricing their services. Yet on the other hand they claim that they

need SMC to develop class rates outside the SMC territory that are better geared to the needs of the SMC carriers. The arguments cannot be reconciled. If CzarLite is working so well for these carriers in the current territorial-restricted environment, then why do they need SMC to engage in collective ratemaking nationwide? The answer is that they do not.

In addition, SMC and some of its carrier supporters seem to claim that they need immunity to assist carriers in developing their own, individual carrier class rates. For example, Mr. Middleton states that, "SMC is well qualified and able to assist its member carriers in constructing a rational and reasonable baseline of class rates." Middleton Statement at 6. To the extent that SMC is working with a carrier to assist it in developing its own class rates unique to that carrier, this does not implicate the need for nationwide collective ratemaking immunity. Further, to the extent that SMC argues that it is better positioned to generally increase the rates for its members outside the current SMC territory, this too is hardly a justification for expanded immunity. As noted previously, any carrier is free at any time to generally adjust its own rates however it sees fit or to follow what any rate bureau or price-leading carrier has done in terms of a general rate adjustment. Nationwide immunity is not needed for this activity.

SMC asks the Board to accept that it provides certain services for carriers that other bureaus may not provide, citing its Carrier Cost Index and National Traffic Database. Such claims have no bearing on the need for nationwide antitrust immunity. All collectively made rates have to meet a statutory reasonable standard,¹² and there is no evidence that SMC's rates are any more reasonable than those of RMB or other bureaus.

¹² 49 U.S.C. § 13701(a)(1)(C).

In any event, it bears noting that SMC's role with respect to general rate increases is statutorily confined to "rate adjustments of general application, based on industry average carrier costs (so long as there is no discussion of individual markets or particular single line rates)". 49 U.S.C. 13703(a)(1)(G). There is no reason to believe that SMC is uniquely able to correctly assess industry average carrier costs.

5. The "Too Many Baseline Rates" Argument

SMC claims expanded immunity will allow it to create a more "reasonable" and "responsive" level of baseline rates than is currently available to its member carriers. Middleton at 6, 10. That carriers need a baseline of rates from which to offer the discounts that characterize LTL motor carrier pricing is not at issue here. Indeed, carriers have many such baselines from which to choose today. They can and do use rate tariffs and products made available through other bureaus. They can and do use CzarLite or similar products that provide a nationwide set of baseline rates. They can and do establish their own baseline rates geared closely to their own costs and revenue needs. They can and do use rates published by one or more of the major national carriers. None of these baseline rates are secret; and there is no shortage of baselines. Nor is their anything that disables a carrier today from publishing its own rates and offering whatever discount the market demands. No motor carrier needs a nationwide rate bureau to readily and efficiently quote any competitive rate that it wants for traffic moving between any two points. Again, SMC's solution remains in search of a non-existent problem.¹³

¹³ In fact, SMC appears to now have invented the notion of a "competitive baseline of class rates", claiming that that is what the SMC carriers seek to apply nationwide. Middleton Statement at 7. SMC does not explain how a set of class rates that is applied to virtually no traffic, and that the Board has determined warrants a "truth in rates" warning when rates are quoted on the basis of it, is inherently competitive or

SMC complains that it “seeks to avoid the reliance of its member carriers on a patchwork of class rates created by other rate bureaus”, a situation it seeks to avoid by creating its own class rates in lieu of those of other bureaus. SMC at 4. SMC’s contention is not only factually wrong, but illustrates clearly why its application should be denied. SMC’s member carriers have all of the options noted above for pricing their services. That some SMC member doesn’t have the option of rates collectively made through SMC for application between, e.g., Denver and Los Angeles, does not prevent that carrier from offering whatever rate it wants on that route or from using any number of baselines (including its own or CzarLite) from which to fashion a discount. The “patchwork” of opportunities available to that carrier is a reflection of a competitive market.

Moreover, the Board should be leery of those who find fault with the fact that the market is not uniform or orderly, or who claim that pricing needs are not being met. Mr. Middleton, for example, decries the “plethora of rate bases utilized by competitors” and the “monumental task in tracking those rates.” Middleton Statement at 4. Such complaints reflect an apparent intent to curtail, not enhance, a free market that by its nature is sometimes disorderly. The Board should no more consider granting expanded immunity to a rate bureau that so overtly complains about excessive competition than it should prohibit carriers from offering more competitive options on the grounds that doing so might confuse the marketplace.

more competitive than some other baseline of rates. In all but a few circumstances, competitive rates are formulated when carriers discount from class rates, and SMC has nothing to do with the formulation of competitive discounts.

Cutting through the pages upon pages of purported justifications for the immunity it seeks, SMC is selling the illogical proposition that expanded immunity from federal laws that protect price competition will somehow lead to expanded price competition or allow carriers to price their services in ways that they cannot now do so. The Board should reject such notions. Any carrier today has ample opportunity to price its services as it sees fit, using any number of baseline rate options for doing so. What the SMC carriers really want is to control a unitary set of baseline rates on a nationwide basis, to the exclusion of other collectively made baselines. This will not be pro-competitive and it will not serve the interests of the public or the carrier community as a whole. As the Board has properly recognized:

We understand the argument that there could be any number of baselines available, and that, unless an authoritative body definitively sets a particular standard as a baseline, businesses would be swamped with too many options to make rational choices. As we give business more credit than that, however, we find the argument hard to accept.¹⁴

The Board should likewise find hard to accept SMC's argument that SMC carriers need expanded immunity in order to create yet another baseline of rates and thereby enhance the pricing opportunities of that bureau's members.

6. The Argument that the Board Has Previously Approved Nationwide Immunity for Other Bureaus and SMC

SMC has argued that the Board or its predecessor have previously approved nationwide antitrust immunity for other bureaus, noting that household goods carriers, machinery haulers, and bulk haulers have nationwide rate bureaus. It is true that these

¹⁴ Section 5a Application No. 118 (Amendment No.1), et al., *EC-MAC Motor Carriers Service Assn., et al.* (Dec. 18, 1998) (1998 EC-MAC Decision) at 6, n. 16.

specialized carriers, most of which have national operations, have each had a single nationwide rate bureau. That fact underscores RMB's point that if there were a nationwide LTL bureau, it too would lead to a *single* LTL rate bureau.

Historically, the much larger LTL sector has been different from the specialized carrier sectors because the LTL sector is composed primarily of carriers that have a regional focus to their operations. Regional bureaus are, and remain, best able to account for the cost experiences of carriers that operate in each respective region, unlike household goods carriers that operate coast to coast.¹⁵

SMC has also argued that the Board previously signaled its approval of nationwide immunity in its *1998 EC-MAC Decision*.¹⁶ However, that 1998 Decision did no more than suggest that the Board was prepared to lift territorial restrictions, but only "provided the bureaus reduce their class rate scales appropriately . . ." *1998 EC-MAC Decision* at 11. The Board had in mind at that time that it would require class rates to be rolled back, and it directly tied nationwide immunity to such a rollback. The Board subsequently reconsidered the rollback approach, however, and quite correctly determined that such a rollback was not feasible.¹⁷ Instead, the Board imposed the "truth

¹⁵ SMC's Mr. Middleton argues at page 5 of his statement that RMB is authorized to establish divisions on a nationwide basis. This is not true. RMB publishes a nationwide division sheet since the transcontinental territory in which it operates (between all 11 Western states to all Eastern states) dictates the need for the publication of divisions between all points. Mr. Middleton fails to note that SMC is now publishing a nationwide division sheet applicable between all points in the U.S. (ProRater 2000).

¹⁶ The Board did not implement any action concerning nationwide ratemaking in that 1998 Decision since some key Congressmen asked the Board to defer any such action pending further Congressional review. The now-repealed statutory prohibition on nationwide ratemaking was subsequently enacted.

¹⁷ See *EC-MAC*, served November 20, 2001 at 7 ("Because we are aware of no suitable and readily available methodology, and because of the disruption that a broad

in rates” notice requirement on rate bureau members in lieu of a class rate rollback.¹⁸ As a result, the class rate rollback action to which the Board had expressly tied its 1998 expression on nationwide ratemaking was never implemented. The Board cannot therefore be said (as SMC has argued) to have already effectively approved, in a decision issued over five years ago, the nationwide immunity SMC now seeks. SMC’s suggestion that it has effectively met the rate rollback requirement by voluntarily maintaining a 20% minimum discount available to all shippers is not convincing. SMC at 5. The retention of a voluntary minimum discount program is plainly not what the Board had in mind when it was contemplating a mandatory reduction in the level of class rates, and the Board has since expressed skepticism about such discount programs. *See EC-MAC Motor Carriers Service Assn., Inc., et al.*, Section 5a Application No. 118 (Sub 2), et al. (served Nov. 20, 2001) at 7-8.

Further, to the extent that the Board may have leaned in the direction of approving nationwide ratemaking six years ago, it should not do so now for the many reasons offered here. The Board’s 1998 *EC-MAC Decision* offers no sustainable reason for granting SMC’s request in 2004. The additional years of experience with motor carrier competition have shown that there are no impediments to the success of the free market model, and that ratemaking territories are certainly not such an impediment.

In 1998, the STB cited in support of nationwide immunity (and, as noted above, subject to the unmet condition of a class rates rollback) the “increasingly globalized

class rate reduction order could produce, we will not require broad rollbacks of collectively set rates at this time.”)

¹⁸ Id at 9. Under this notice requirement, carriers are obligated to advise shippers of the availability of discounts when they quote rates based on collectively made levels.

nature of the transportation system and the anachronistic nature of restrictions limiting bureaus to geographic territories.” *1998 EC-MAC Decision* at 11. RMB of course does not question the global nature of transportation systems. But collective ratemaking territorial restrictions have not been an impediment to the growth of global transportation because any motor carrier can today offer any rate between any two points it wants. The many limitations that exist on collective ratemaking, including the restriction against single-line ratemaking, have not restricted global competition, and neither have the territorial ratemaking limitations. Indeed, SMC does not (and could not credibly) claim that expansion of its ratemaking territory will enhance global competition.

As to the assertion in the *1998 EC-MAC Decision* that territorial limits are “anachronistic,” RMB submits that to the extent that the territorial limits have served to prevent a single nationwide bureau from forming and dominating collective ratemaking, the limits continue to serve a viable function that is consistent with the proposition that antitrust immunity should not be broader than needed. Again, the fact that the industry has competitively flourished since 1998, and that most LTL carriers maintain regional operations, suggests that the Board should not tinker with a status quo in which the interests of carriers and shippers are being met through market forces and regional ratemaking.

7. The Argument that Other Bureaus Could Co-Exist with a Nationwide SMC

SMC argues that other bureaus could co-exist with SMC on a nationwide basis, disputing RMB’s claim that carriers would inevitably gravitate to a single nationwide bureau if territorial limits were eliminated. SMC at 3; Middleton at 7-8. However, SMC’s references to the nationwide rate bureaus maintained by specialized carriers

proves too much: there is only one household goods bureau, one machinery haulers bureau, and one bulk carrier bureau.

SMC undoubtedly plans that if it were granted ratemaking authority in the RMB territory, SMC's collectively made rates would be used in CzarLite instead of RMB's rates. The same situation would repeat itself as to other ratemaking territories. Given SMC's broad efforts to market its CzarLite product to the carrier and shipper community, RMB carriers over time could face substantial pressures to forego use of the RMB rates. Given finite carrier resources for collective ratemaking activities, it is likely that these carriers would eventually cease paying RMB dues, inevitably causing the demise of that rate bureau. The same scenario would replay itself in other territories. In short, the operation of more than one bureau in a single territory would not be sustainable over the long term given SMC's more substantial marketing resources.¹⁹

Nationwide immunity would therefore tend to centralize ratemaking in a single source. It might also create conditions in which a large rate bureau, made more influential by the grant of nationwide immunity, might attract back into collective ratemaking the large national LTL carriers that now price their services independent of the rate bureau process. The implications of these large national carriers collectively formulating rates on a nationwide basis merit careful consideration by the Board,

¹⁹ The fact that RMB and the Pacific Inland Tariff Bureau ("PIN") have had overlapping ratemaking territories for some time, and that there are some modest overlaps between other territories, does not demonstrate that RMB could co-exist with a powerful nationwide bureau. The core of RMB's membership is in the Rocky Mountain states, while the core of PIN's membership is in the Pacific Northwest states, the areas in which these respective bureaus have long focused their ratemaking activities. Thus, the overlap touted by SMC is more "virtual" than real, and not a good predictor of what would happen were SMC to obtain nationwide immunity.

particularly given the current competitive nature of pricing. The Board should be leery of taking any action that could offer opportunities to reduce that competition.

In that regard, Mr. Middleton proclaims that the competitive pricing environment created by deregulation “can be vastly improved for SMC’s carrier members, as well as the shipping public, if its construction is placed in the *control and direction of SMC’s member carriers*, especially given the potential voids and/or unsuitable rate actions which may be taken by other carriers in other regions.” Middleton Statement at 10 (emphasis added). Again, the Board might legitimately ask what such claims really mean. What potential voids can exist when any carrier can make any rate it wishes? And what are “unsuitable rate actions?” Are they competitive rates offered that SMC contends should not be offered? And what kind of “control and direction” over ratemaking is SMC referencing?

Caution is warranted where the only party seeking a change in the status quo also complains about an excess in competition and offers to “control” pricing actions. SMC offers no compelling public interest rationale for expanded immunity from the antitrust laws. The current pricing system is working just fine. It should be left alone.

8. The “Congress Now Allows It” Argument

In its November 2003 Petition, SMC offered one primary reason for expansion of its immunity, namely, that in early 2003 Congress repealed the 1999 prohibition against the Board granting an application for nationwide ratemaking.²⁰ This argument is quickly addressed. While Congress, acting through the back door of a massive omnibus appropriations measure, restored the Board’s discretion to consider expanded immunity,

²⁰ See Section 354 of the Omnibus Appropriations Act for FY 2003, Pub. L. No. 108-7 (Feb. 20, 2003).

it did not offer any indication that such immunity should be granted. There is, in fact, no expression of legislative intent on this matter at all, Congress having adopted this legislation without the benefit of hearings or any other process allowing for public input. Thus, the fact that Congress removed the prohibition against nationwide ratemaking that it adopted in 1999 does not dictate the outcome of this proceeding or mandate a result in this proceeding.

The policy scrutiny that this issue did not receive in Congress underscores the need for such scrutiny by the Board. Indeed, the Board can only grant SMC's request if it makes a finding based on record evidence that expanded immunity meets the statutory public interest test, which it does not.

9. The Argument that SMC Has Members Whose Needs It Cannot Serve

SMC argues that its "need for nationwide collective ratemaking authority has increased over the past seven years" because it now has many member carriers, 68 out of 125, who are located outside of the SMC Territory. It cannot, it says, serve the needs of these members unless its ratemaking authority is expanded. SMC at 2. Mr. Middleton even goes so far as to jettison all of the other alleged justifications SMC has offered in the past and proclaim that, "The *sole reason* SMC is pursuing this application is to enable it to serve the expanded pricing needs of its member motor carriers." Middleton at 9. (emphasis added).

The Board should reject the misleading and hollow argument that SMC's members have unmet "expanded pricing needs." SMC has, for many years, attracted as "members" motor carriers from outside its ratemaking territory. While it seeks to leave the impression that somehow its inability to serve as a collective ratemaking forum for

some members is a relatively new development warranting a change in the scope of its immunity, there is nothing new about the Southern/Non-Southern consist of its member/participating carriers. Attachment A hereto is a list of SMC's members and participating carriers as of December 1, 1996, drawn from SMC's own December 19, 1996 filing with the Board in Section 5a Application No. 46 (Amendment No. 20). The list shows about the same percentage of carriers domiciled outside the SMC territory (54%) as SMC claims is the case relative to its current membership (also, 54%). These non-SMC Territory based carriers have successfully managed for at least the past seven and one half years to price their services without broadened SMC immunity. This hardly makes a case for broadened immunity now. Further, it is reasonable to assume in view of the limits on SMC's ratemaking authority that none of the non-Southern domiciled members of SMC joined that rate bureau in order to collectively formulate rates outside the boundaries of the SMC territory. These members obviously joined for other purposes -- perhaps to participate in SMC tariffs, or to get member discounts on SMC products or to take advantage of the member services that SMC touts on its website, none of which have anything to do with collective ratemaking. See <http://www.smc3.com/>

In other words, these non-SMC based carriers chose to participate in SMC because they saw some advantage to doing so that has nothing to do with whether or not SMC has immunity for collective ratemaking outside the SMC territory. Indeed, as noted above, membership in SMC does not require participation in SMC tariffs. SMC bylaw changes approved by the Board in 1997, allowed carriers formerly known as

“participating carriers” to become “members”, and no longer required “member carriers” to even participate in SMC tariffs.²¹

In effect, SMC is arguing to the Board that having broadened the definition of member carrier and attracted members from around the country on the basis of services other than collective ratemaking services it provides to those carriers, it now needs immunity to offer collective ratemaking services to those same carriers. SMC is playing a game here; the Board should not play along.

If SMC cannot serve as a forum in which some, or even many, of its “members” can participate for collective ratemaking purposes, that is no more than the predictable result of its own efforts to attract member carriers from around the nation on the basis of entirely different services. It is not, as SMC seeks to paint the situation, a new excuse for broadened collective ratemaking immunity. As shown above, carriers do not lack for pricing options and do not need SMC’s services to compete successfully and to price their services consistent with market forces, something that they are already doing.

10. The Argument that Shippers Support SMC’s Efforts

SMC also argues that it has broad shipper support for immunized nationwide collective ratemaking, but offers only a handful of shipper support statements. Each of these does no more than repeat, without any effort at meaningful analysis, the illogical assertion that expanded immunity for SMC carriers will enhance competitive pricing by those carriers. How could that be when those carriers have full pricing freedom today? And do these shippers believe that SMC member rates will decline if SMC is allowed

²¹ See Section 5a Application No. 46 (Amendment No. 20), served Sept. 4., 1997, which liberalized the definition of membership in the SMC Agreement.

broader immunity for collective ratemaking? These questions are left unanswered by SMC.

Further, each of these shippers is a proponent of CzarLite. It is support for that commercial product that underpins each of their statements.²² As shown above, SMC is free to market that product regardless of the scope of its ratemaking immunity. To the extent that SMC has sold these entities on the notion that CzarLite and its future is somehow at issue in this proceeding, that notion is mistaken.

²² Typical is the statement of Cass Information Systems, Inc., which is not a shipper at all, but an auditing firm. It states, "We have come to depend on the CzarLite family of products provided by SMC. We believe that the expansion of SMC's ratemaking authority on a nationwide basis so that it can establish class rates throughout the territories in which its carrier members conduct their operations, and to which shippers and transportation intermediaries move their goods, is in the public interest."

Southern Motor Carriers Rate Conference, Inc.
Members and Participating Carriers
December 1, 1996

A&B Freight Line Inc
Rockford, IL

AAA Cooper Transportation
Dothan, AL

Agricultural Carriers, Inc
Wichita, KS

Alterman Transport Lines, Inc.
Opa-Locka, FL

ANR Advance Transportation Co.
Milwaukee, WI

A-P-A Transport Corp.
North Bergen, NJ

Atlanta Motor Lines, Inc.
Conley, GA

Atlantic City-Phila Express
Atlantic City, NJ

August Deike Transfer Corporation
Mankato, MN

Averitt Express, Inc.
Cookeville, TN

B & H Freight Services Corp.
Chattanooga, TN

B. & S. Transportation, Inc.
Nashville, TN

Beaufort Transfer Company
Gerald, MO

Benton Express, Inc.
Atlanta, GA

Birmingham-Nashville Express, Inc.
Nashville, TN

Bob Aikins Lines, Inc.
Lawrenceburg, IN

Boco, Inc.
Brockton, MA

Brown Transfer Company
Kearney, NE

Burgess Transport, Inc.
Charlotte, NC

Burren Transfer Co
Elgin, IL

Cabano - Kingsway Transport Inc
St-Laurent PQ H4S1B7, CD

Canning Truck Service, Inc.
Fairbury, NE

Carolina Refrigerated Transport Inc
Gaffney, SC

Charlton Bros Transportation Company Inc
Hagerstown, MD

Chester Transfer Inc
Chester, IL

Clark Bros Transfer Inc
Norfolk, NE

Colonial Freight Systems, Inc.
Knoxville, TN

Consolidated Freightways Corporation
Portland, OR

Con-Way Southern Express, Inc.
Fort Worth, TX

Crouse Cartage Company
Carroll, IA

Daro Associates Inc d/b/a M & S Transfer
David City, NE

Dixie Tank Lines, Inc.
Cartersville, GA

Dixie Trucking Company, Inc.
Charlotte, NC

Dohrn Transfer Company
Rock Island, IL

Ebel Transfer Inc
West Point, NE

Empire State Motor Express, Inc
Le Roy, NY

Estes Express Lines
Richmond, VA

Fairway Canadian Express, LTD
Rexdale, ON M9W1G1, CD

FFE Transportation Services, Inc.
Dallas, TX

Fort Transportation & Service Company Inc
Fort Atkinson, WI

Franklin Express, Incorporated
Franklin, KY

Fredrickson Motor Express Corp.
Charlotte, NC

Gay Truck Line, Inc.
Falkner, MS

General Transport Systems, Inc.
Charlotte, NC

Goggin Truck Line Co., Inc.
Shelbyville, TN

Graham Ship By Truck Co
Kansas City, KS

H & O Transport, Inc.
Louisville, KY

H B Russell Truck Service, Inc.
Red Bud, IL

Hanson Transfer Inc
Fremont, NE

Harper Transport, Inc.
Oxford, GA

Harper Trucking Company, Inc.
Raleigh, NC

Hatcher Trucking Company, Inc.
Roanoke, VA

Hazard Express, Inc.
Hazard, KY

Hermitage Express Inc
Springfield, MO

Hilton-Spencerport Express, Inc.
Kendall, NY

HOC Express, Inc.
Wichita, KS

Husker Express Inc
Seward, NE

IHC Transportation
Terre Haute, IN

Intercept (A Division of American, Inc.)
Bluffton, SC

Just In Time Transportation, Inc.
GrandPrairie, TX

K & K Trucking, Inc.
Gordonsville, TN

K Truck Lines Inc
Ord, NE

Kindersley Transport, LTD
Saskatoon, SK S7K 4, CD

Koschkee Transfer Inc
Fennimore, WI

Lange Truck Line
Pleasanton, TX

Lawrenceburg Transfer, Inc.
Louisville, KY

Silver Eagle Company
Portland, OR

Skyline Transportation, Inc.
Knoxville, TN

Smith And Waters, Inc.
Ware Shoals, SC

Southeastern Freight Lines, Inc.
Lexington, SC

Southern Xpress, LLC
Memphis, TN

Southland Express Inc
Montgomery, AL

Southwestern Motor Transport, Inc.
San Antonio, TX

Stott & Davis Motor Express, Inc.
Auburn, NY

Sunrunner Transport Services, Inc.
North Haven, CT

Super Service Motor Freight, Inc.
Memphis, TN

Super Transport, Inc.
Boca Raton, FL

Superior Express Inc
Waterloo, IL

Tennessee Express, Inc.
Nashville, TN

Tennessee Trucking, Inc.
Nashville, TN

Terminal Trucking Company, Inc.
Concord, NC

Texas Louisiana Cartage, Inc.
Pineville, LA

Tri-Lakes Express
Springfield, MO

Tri-State Express, Inc.
Culloden, WV

Truck Air Of The Carolinas, Inc.
Greer, SC

Tulane Truck Service
Birmingham, AL

U P Special Delivery Inc
Iron Mountain, MI

USF Red Star
Auburn, NY

Van Someren Transfer Inc
Baldwin, WI

Van Wyk Freight Lines, Incorporated
Grinnell, IA

Venture Express, Inc.
LaVergne, TN

Vinci's Express, Inc.
Woodbine, NJ

W. M. Burnett Truck Line, Inc.
Haleyville, AL

Wagner Freight Lines, Inc.
Chattanooga, TN

Ward Trucking Corp.
Altoona, PA

Watkins Motor Lines, Inc.
Lakeland, FL

West Brothers Transfer & Storage
Raleigh, NC

Wicker Services, Inc.
Burlington, NC

Wilcox, James D.
Johnson City, TN

Wilson Trucking Corporation
Fishersville, VA

WSA Trucking CO.
Pawtucket, RI

Lewis Truck Lines Inc
Fargo, ND

Lofgren Trucking Service, Inc.
Rush City, MN

Manning Motor Express, Inc.
Glasgow, KY

Merchants Freight Line, Inc.
Nashville, TN

Midland Transport Ltd
Dieppe NB E1A 6X4, CD

Milan Express Co., Inc.
Milan, TN

Morgan Southern, Inc.
Conley, GA

Morrell Transfer Inc
Elk River, MN

Mt. Pleasant Transfer, Inc.
Mt Pleasant, TN

New England Motor Freight, Inc.
Elizabeth, NJ

New Penn Motor Express, Inc.
Lebanon, PA

Niederbrach Truck Service Inc
Steelville, IL

Norrenberns Truck Service
Nashville, IL

North Central Kentucky Express, Inc
Dry Ridge, KY

Nussbaum Trucking Inc
Normal, IL

Old Dominion Freight Line, Inc.
High Point, NC

Palmetto State Transportation Co., Inc.
Greer, SC

Panama Transfer Inc
Panama, LA

Park Ridge Transport, Inc.
Hodykins, IL

Pawnee Transfer
Humboldt, NE

Peet Frate Line Inc
Woodstock, IL

Penner International Inc.
Steinbach Man R0A 2A, CD

Performance Transport Inc
Nashville, TN

Piedmont Transportation Group, Inc.
Salisbury, NC

PJAX, Inc.
Gibsonia, PA

Plant Truck Line
Heber Springs, AR

Polar Transport Inc
Wilmington, NC

Portland Express, Inc.
Portland, TN

Preston Trucking Company, Inc.
Preston, MD

Rainbow Express
Rainbow City, AL

Roy Widener Motor Lines, Inc.
Morristown, TN

Saia Motor Freight Line, Inc.
Houma, LA

Sanborn's Mtr. Express Quebec, Inc.
North Bergen, NJ

Scranton Transfer
Ft Smith, AR

Sewell Motor Express Inc
Wilmington, OH

Shippers Express, Inc.
Jackson, MS

CONCLUSION

For all of the reasons stated above, the Board should not try to fix a motor carrier pricing environment that is not broken. SMC wants expanded immunity so that it can control all of the rates it publishes in its CzarLite product and earn more revenues from that product. From a commercial viewpoint, its goals may be legitimate. But its goals do not serve the public interest or justify the significant broadening of antitrust immunity that it seeks. SMC's request for broadened immunity should therefore be denied.

Respectfully submitted,



David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/429-8063

Attorney for Rocky Mountain Tariff
Bureau, Inc.

May 24, 2004