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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**EX PARTE NO. 656
MOTOR CARRIER BUREAU-
PERIODIC REVIEW PROCEEDING**

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**COMMENTS OF
MIDDLEWEST MOTOR FREIGHT BUREAU, INC.**

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Dated and Filed: March 2, 2005

ORIGINAL

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**COMMENTS OF
MIDDLEWEST MOTOR FREIGHT BUREAU, INC.**

Middlewest Motor Freight Bureau, Inc. (MWB or Middlewest) files these comments in accordance with the Board's decisions served in this proceeding on December 13, 2004, and January 21, 2005. Attached hereto is the verified statement of Mr. Jeffrey D. Michalson, President and Chief Executive Officer of Middlewest. Mr. Michalson's statement describes the activities of Middlewest and its member carriers pursuant to its collective ratemaking agreement, explains the benefits of collective ratemaking, and reaffirms the Bureau's desire to have its collective ratemaking agreement approved by the Board.

MWB operated continuously under an approved collective ratemaking agreement prior to the abolition of the Interstate Commerce Commission (ICC) by the ICC Termination Act of 1995. (ICCTA or Termination Act). The Termination Act provided for the expiration of collective ratemaking agreements within 3 years from enactment, unless approval was renewed by the Board. 49 U.S.C. § 13703 (d) (1995). The Board commenced a proceeding in 1997 to review collective ratemaking agreements in general. That proceeding culminated in the decisions in Section 5a Application No. 118 (Sub-No.

2), et al., EC-MAC Motor Carrier Association, Inc., et al., (EC-MAC), served November 20, 2001 and March 27, 2003.

During the review conducted in EC-MAC, MWB's agreement, like those of other bureaus, remained in effect pending the Board's action on its request for renewal in accordance with the provisions of 49 U.S.C. § 13703 (d). Following MWB's compliance with the new requirements imposed in EC-MAC, its agreement was approved by the Board in Section 5a Application No. 34 (Sub-No. 10), Middlewest Motor Freight Bureau, Inc.- Renewal of Agreement, served January 21, 2004.

The Motor Carrier Safety Improvement Act of 1999, P.L. 106-159, Dec. 9, 1999, required the Board to institute a proceeding within 5 years of enactment of that statute, and in each 5 year period thereafter, to review any agreement approved pursuant to 49 U.S.C. § 13703. The statute mandated that any such agreement be continued unless the Board determines otherwise. 49 U.S.C. § 13703 (c) (2). This proceeding was commenced in response to the statute's directive.

The Board's decision requires each Bureau to indicate whether it desires to continue to have its agreement approved. In addition, the decision expresses the Board's interest in whether there has been any change in circumstances since the last review cycle that would affect the public interest in the context of collective ratemaking. The attached statement of Mr. Michalson states unequivocally MWB's desire for continued approval of its ratemaking agreement. He also expresses MWB's belief that there has been no change in circumstances that would adversely affect the public interest in the continuation of collective ratemaking.

The Board's last review cycle demonstrated that collectively made bureau rates are used for benchmarking purposes and serve as the baseline to which individual discounts are applied to reflect market conditions. The attached statement confirms that MWB's class rate tariffs are still used for benchmarking purposes in the same manner as described in the last review cycle. The bureau's class rates are adjusted collectively by the parties to the agreement in strict accordance with the procedures contained in their approved agreement. Those changes are intended to reflect the carriers' average costs and their revenue requirements. The carriers then individually establish their own discount levels to reflect market conditions for their various traffic movements. This benchmark system reflects the industry practice supported by carriers and shippers.

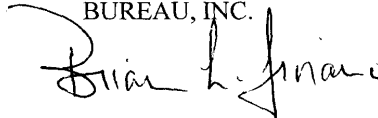
The bureau rate structure is used as a benchmark because it provides a fair, reasonable, and standardized level. It is based on the traditional factors of carrier costs and revenue need which produce a fair and reasonable rate level. Importantly, it serves as a standardized base that permits an "apples to apples" comparison of the discounts established individually for a shipper's particular transportation requirements. And, as a result of EC-MAC, the range of discounts offered by bureau carriers is reported to the Board annually and is public information.

Finally, small and medium carriers continue to comprise the current makeup of the bureau's members. To effectively compete and offer responsive transportation service to the shipping public, they rely on the resources of the bureau to develop and analyze information that ultimately produces a rate level recognized by shippers as a fair and reasonable benchmark.

We submit that collective ratemaking continues to serve the National Transportation Policy set forth in 49 U.S.C. § 13101, and therefore is in the public interest. The use of collectively established rates in today's pricing process encourages fair competition and reasonable rates, meets the needs of shippers and receivers, allows a variety of quality and price options, enables efficient and well managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions. In carrying forward the provisions of 49 U.S.C. § 13703, Congress determined that collective ratemaking is in the public interest unless and until the Board determines otherwise. As recently as last year, the Board concluded that approval of MWB's agreement is in the public interest. MWB carriers and their customers continue to rely on the collective ratemaking system in the same manner as described in the Board's last review cycle. Accordingly, MWB respectfully urges that the Board continue approval of its collective ratemaking agreement.

Respectfully submitted,

MIDDLEWEST MOTOR FREIGHT
BUREAU, INC.



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PERIODIC REVIEW PROCEEDING**

**VERIFIED STATEMENT
OF
JEFFREY D. MICHALSON**

My name is Jeffrey D. Michalson and my business address is 4218 Roanoke Road, Suite 200, Kansas City, MO 64111. I am employed as President and Chief Executive Officer of Middlewest Motor Freight Bureau, Inc. (MWB, Middlewest or Bureau). I am responsible for the day-to-day management, conduct, and administration of the affairs of the Bureau and I report directly to the Board of Directors. I have general supervisory oversight of Middlewest's daily business activities and am directly involved in its tariff publishing functions, development and distribution of its software programs, data collection, rate analyses, preparation of reports, and general administration. I am in regular contact with our member carriers. I am therefore familiar with the facts stated herein and am authorized to submit this statement on behalf of Middlewest.

MWB is a full service motor rate bureau operating pursuant to its approved collective ratemaking agreement. Middlewest's agreement was most recently approved by the Surface Transportation Board (STB or Board) in a decision served January 21, 2004, in Section 5a Application No. 34 (Sub-No. 10), Middlewest Motor Freight Bureau,

Inc. – Renewal of Agreement.¹ Prior to that approval, Middlewest's agreement had been extensively reviewed and approved by the Interstate Commerce Commission in 1987. In accordance with the provisions of the ICC Termination Act, 49 U.S.C. § 13703 (d) (1995), the agreement was continued in effect pending the Board's 2004 action.

Pursuant to its collective ratemaking agreement, MWB maintains and publishes rates for its member carriers on freight moving within the territories described in its agreement. Generally speaking, this area extends from Canada to Mexico and from Ohio to the Rocky Mountains. MWB publishes various agency tariffs containing class and commodity rates, rules, regulations, participating carrier lists, and individual carrier exceptions established by independent action. The Bureau provides the forum for the carriers' ratemaking functions and activities conducted through their General Rate Committee as authorized by the collective ratemaking agreement. The mechanical tasks of publishing and distributing docket proposals, notices, disposition bulletins, and the tariffs are all part of the Bureau's functions. MWB also publishes numerous private tariffs for individual motor carriers, shippers and third party logistics firms.

In the 1980's, MWB entered into computerized rating system development and data services. Today we develop, maintain and distribute a broad range of products and services in this area, including computer rating systems for both PC and mainframe use, customized rate structures, web-based rating systems, computer data for private and bureau rate structures, as well as web design and hosting.

Our members presently number 107 motor carriers. Many large carriers withdrew their participation from bureau tariffs in the 1990's. The medium and small sized carriers

¹ In a decision served July 21, 2003, the Board approved several technical amendments to our Agreement in Section 5a Application No. 34 (Amend. No. 9).

have continued their membership in Midwest to take advantage of the benefits they realize from the collective ratemaking process in addition to the many services provided by the Bureau. The present makeup of our membership is an indication that it is the small and medium carriers that depend on the collective ratemaking process.

MWB member carriers continue to rely on and employ the collective ratemaking procedures authorized by their agreement to discuss, establish, and maintain the fair and reasonable rate structure reflected in MWB's class tariffs. Midwest carriers adjust and update collective tariffs through general rate increases and/or broad tariff restructures in accordance with the procedures set forth in our agreement. Thus, every collective proposal is docketed and noticed in advance. Meetings are open to the public and shippers may voice their views. And, of course, the carriers' action on a proposal is subsequently noticed.

Bureau rate levels are used in today's market to provide a rational "benchmark" or "list price" which reflects average carrier costs and serves as a recognized starting point for individual price negotiations resulting in independently set discounts. The discounts from that baseline reflect current market conditions including shipper – specific traffic characteristics and competitive circumstances.²

A uniform benchmark is useful as a pricing tool to avoid costly and complex analysis of multiple rate offers from a large number of different carriers. The rate structure reflected in our class rates represents a balanced industry average rate level rather than the rate levels found in individual carrier tariffs which are inherently skewed to reflect the characteristics of that particular carrier. In the bureau structure, shippers

² The range of discounts offered by Midwest carriers is reported to the Board annually in accordance with the requirements of the decision served November 20, 2001, in Section 5a Application No. 118 (Sub-No. 2), EC-MAC Motor Carriers Service Assoc., et al.

and carriers have the assurance that they are relying upon an established industry standard as the basis for their price and service negotiations.

The collective ratemaking system benefits small carriers by enabling them to "get their foot in the door" to sell their service. By using the bureau rate structure with which the shipper is familiar, has ready access to, and does not need to further analyze, the carrier does not have to convince the shipper of the soundness of an unknown rate structure. Carriers also find it to be a more economical and efficient utilization of scarce resources to rely on the bureau to gather, develop, and analyze industry data to produce a rate structure based on industry averages and then offer discounts tailored to the particular circumstances of their customers. It is recognized by most economists that the establishment of standards promotes economic efficiencies. Of course, the economies and efficiencies realized by carriers ultimately flow to the shipping public in the form of operational efficiencies and lower costs.

Collective ratemaking is also essential to the establishment and maintenance of joint line rates. Local and regional LTL carriers that handle freight moving beyond their actual operating area are dependent on interline arrangements with other carriers in establishing through routes, joint rates, divisions, points of service, and terms and conditions of transportation. In order to meet changing shipper requirements, distribution patterns, and product lines, carriers need to have in place their rates and conditions and terms of service prior to soliciting or bidding on traffic. Absent immunity to discuss and set joint line rates collectively in advance, the originating carrier would have to commence a search for partners and enter individual negotiations with their potential partners. Such a process is inefficient and unresponsive. Joint line ratemaking provides a

willing and available pool of connecting carriers at an established rate level for all freight movements.

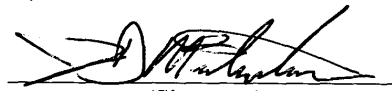
In its recent review of collective ratemaking agreements, the Board concluded that continued approval was in the public interest upon the imposition of the additional conditions prescribed in Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, Inc., et al., served November 20, 2001, and March 27, 2003. Since that review, MWB carriers have not reported any expressions of dissatisfaction from their customers with respect to the collective ratemaking process. We do not believe that there has been any change in circumstances that would warrant a departure from the status quo in the collective establishment and maintenance of rates or the terms and conditions under which the carriers are authorized to engage in collective activities.

MWB and its member carriers hereby confirm their desire to have their collective ratemaking agreement approved by the Board.

VERIFICATION

I, Jeffrey D. Michalson, declare and verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to submit this statement.

DATED: 2/25/05


(Signature)