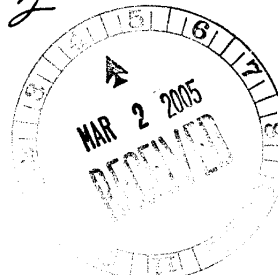


213462



BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings

EX PARTE NO. 656

MAR - 2 2005

Part of
Public Record

MOTOR CARRIER BUREAUS
PERIODIC REVIEW PROCEEDING

OPENING STATEMENT OF
EC-MAC Motor Carriers Service Association, Inc.

Pursuant to the Surface Transportation Board's order in Ex Parte No. 656 served December 13, 2004, this proceeding has been instituted in order to meet the statutory requirement that the STB conduct a periodic review of previously approved motor carrier collective activities. 49 U.S.C. 13703(c). The EC-MAC Motor Carriers Service Association, Inc. (EC-MAC) motor carriers hereby request the continuation of STB approval of EC-MAC's Collective Ratemaking Agreement, Section 5a Agreement No. 118.

BACKGROUND

On December 18, 1995, the 104th Congress enacted Public Law 104-88, the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"). That legislation authorized continuation of the limited antitrust immunity for certain collective ratemaking activities, including, *inter alia*,

procedures for the initiation, establishment, maintenance and joint consideration of through routes and joint rates, classifications, rules, divisions and rate adjustments of general application based on industry average carrier costs.

Effective Agreements previously approved by the ICC, including the Agreement under which EC-MAC operates, were "grandfathered", i.e., approved as of January 1, 1996. See 49 U.S.C. 13703(e). Pursuant to the provisions of ICCTA, such Agreements would be considered for renewal prior to January 1, 1999 on request of the parties based upon the resubmission of the existing unchanged Agreement to the Surface Transportation Board ("Board"). EC-MAC timely filed its request for renewal. In EC-MAC Motor Carriers Service Association, Inc., et al. STB Section 5a Application No. 118 (Sub-2), et al. (STB served Oct. 16, 2003), after extensive proceedings concerning the impacts of collective ratemaking activities, the Board approved the EC-MAC Agreement upon compliance with the required conditions imposed in that proceeding, i.e., the truth-in-rates notice requirement and the requirement that EC-MAC member carriers forego the application of any loss of discount penalty based on collectively made class rates. EC-MAC has complied with these conditions and is otherwise

in full compliance with all other conditions imposed by collective ratemaking agreements. EC-MAC is not aware of any complaints by shippers or others with respect to its activities under its collective ratemaking agreement in recent years.

The public interest broadly, and the National Transportation Policy specifically, are enhanced and furthered by the role played by EC-MAC. As an entity that facilitates the dissemination of information which assists in the coordination of transportation services in an intensely competitive market, EC-MAC makes it possible for small to medium sized carriers to provide competitive and efficient transportation services at reasonable rates. The delivery of information and services provided by EC-MAC promotes efficiency, meets the needs of shippers, allows a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public, and allows the most productive use of equipment and energy resources. These benefits conform precisely with the goals and objectives set forth in the National Transportation Policy, 49 U.S.C. 13101(a)(2).

EC-MAC's existing ratemaking territory is defined in its ratemaking agreement to include most of the Eastern part of the United States. The variety of tariffs it

publishes apply to the transportation of shipments moving between literally tens of thousands of individual points. All member carriers do not physically operate between all points in EC-MAC territory. However, all EC-MAC carriers, in addition to their direct line regional service, do provide joint-line service throughout the territory with many connecting carriers, which are in many cases also competitors.

EC-MAC publishes a variety of tariffs for the account of its member carriers naming rates, rules, charges and exceptions to classification ratings applicable between some 50,000 pairs of origin and destination zip codes - almost 9 million rates - covering all ten weight brackets and eighteen classification ratings. Moreover, since many zip codes embrace several cities or points, the actual number of joint rates is undoubtedly in the tens of millions.

The approved collective ratemaking procedures permit those who utilize the information and services generated by EC-MAC to operate economically and efficiently, and without fear of antitrust concern. More importantly, through collective ratemaking, the complex system or network of through routes and joint rates functions with extraordinary fluidity and is the bedrock of competition in the market.

From a consumer standpoint, particularly the consumers in small towns that are not regularly served by large carriers, this system confers a substantial benefit on the shipping public, providing a diverse and broad array of price and quality options.

It is widely recognized that the trucking industry has been operating in a highly competitive price and service market since the passage of the Motor Carrier Act of 1980. For groups of carriers, particularly small and medium size carriers, immunized collective ratemaking has continued to function in that highly competitive market, providing a basis through class rate tariffs on which carriers can readily formulate joint rates and providing a baseline for discounting. This system has enabled regional groups of carriers to offer effective price and service competition for larger carriers in the marketplace for shippers. Collective ratemaking has not had any negative impact on the level or quality of trucking competition. Further, the STB's required conditions imposed in its decision of October 16, 2003 granting the EC-MAC renewal, responds to any potential concerns that have been raised in that connection.

In summary, the EC-MAC carriers submit that retention of the antitrust immunity for carriers specializing in

less-than-truckload shipments is an appropriate, necessary, and rational means of maintaining the current vigorous competitive environment and avoiding the establishment of an unduly concentrated transportation marketplace. The public interest and the National Transportation Policy are enhanced and furthered by the role played by EC-MAC, and thus approval of its ratemaking agreement should be continued.

Respectfully submitted,

James T. Henry

James T. Henry
President
EC-MAC Motor Carriers
Service Assn., Inc.
4201 Wilson Blvd.
Arlington, VA 22203
(703) 841-4604

March 2, 2005