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March 2, 2005

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

Re: STB Ex Parte No. 656
Motor Carrier Bureaus—Periodic Review Proceeding

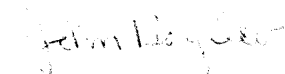
Dear Secretary Williams:

Enclosed please find the original and ten copies of the Comments of Western Motor Tariff Bureau, Inc. (WMTB) in response to the Surface Transportation Board's Decision served in the above-styled proceeding on December 13, 2004. Also enclosed is an IBM-compatible floppy disk in Microsoft Word.

WMTB is the applicant in Section 5a Application No. 70.

Thank you for your assistance in this matter.

Sincerely,



John R. Bagileo
Counsel for Western Motor Tariff
Bureau, Inc.

Enclosures

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Public Record

213453
ORIGINAL

Before The
Surface Transportation Board

STB Ex Parte No. 656
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Comments of
Western Motor Tariff Bureau, Inc.
Section 5a Application No. 70

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Counsel for Western Motor Tariff
Bureau, Inc.

Due and Dated: March 2, 2005

Before The
Surface Transportation Board

STB Ex Parte No. 656
Motor Carrier Bureaus—Periodic Review Proceeding

Comments of
Western Motor Tariff Bureau, Inc.
Section 5a Application No. 70

Western Motor Tariff Bureau, Inc. (WMTB), by counsel, hereby submits these comments in response to the Surface Transportation Board's (Board) Decision served on December 13, 2004, in the above-styled proceeding, as modified by the agency's Decision served on January 21, 2005, and states as follows:

I.
Position of WMTB

As indicated in the accompanying statement of Robert E. Lewis, President of WMTB, the carrier members of that collective ratemaking organization request that the Board continue to approve their collective-activities agreement.

As Mr. Lewis states, the vast majority of its member carriers are engaged in the noncontiguous domestic trade between the mainland United States and Hawaii. Most are small to mid-size carriers that rely heavily on the technical expertise and assistance of WMTB in meeting their tariff requirements. Those rates remain subject to the Board's tariff filing requirements (49 U.S.C. § 13702(b)(1)), and must be reasonable (49 U.S.C.

§ 13701(a).) The rates remain subject to the Board's rate regulatory jurisdiction, and the failure to establish reasonable rates and through rates and divisions for freight moving in the noncontiguous domestic trade can result in an award of reparations to shippers (49 U.S.C. § 13701(d)(4), and/or the prescription by the Board of a reasonable rate, classification, rule, practice, through rate, or division of joint rates (49 U.S.C. § 13701(b)). The collective ratemaking procedures by which the member carriers establish their rates would not and could not be achieved absent Board approval of those activities, and the concomitant antitrust immunity associated with that approval.

WMTB fully complied with the Board's requirements to amend its agreement to provide for (1) the furnishing of a "truth-in-rates notice" when collective rates are quoted; and (2) a prohibition against the use of a loss-of-discount penalty for late payment fees. That compliance was acknowledged by the Board in its approval of WMTB's Section 5a Agreement in its Decision served on October 16, 2003, in the consolidated rate bureau proceedings in STB Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, Inc. Et al.

II.
Statement of
Robert E. Lewis
President, Western Motor Tariff Bureau, Inc.

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**STATEMENT
OF
ROBERT E. LEWIS**

My name is Robert E. Lewis. I am the president of the Western Motor Tariff Bureau, Inc. (WMTB). I am authorized by WMTB's Board of Directors to submit these comments in the proceeding instituted by the Surface Transportation Board (Board) in its Decision served on December 13, 2004 in STB Ex Parte No. 656, Motor Carrier Bureaus—Periodic Review Proceeding. WMTB does desire to have its collective ratemaking activities approved by the Board.

In the Board's Decision served on October 16, 2003 in the consolidated rate bureau proceeding in STB Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, Inc., Et Al., the WMTB's amended Section 5a Agreement was approved as being in compliance with the agency's certification and truth-in-rates notice requirements. WMTB's currently approved collective ratemaking activities are found in Western Motor Tariff Bureau, Inc. Agreement, Section 5a Application No. 70 (Sub-No. 12).

WMTB has some 600 motor carrier members. As pertinent, the members are principally general freight motor carriers transporting commodities moving from the mainland, involving shipments originating at points throughout the United States, destined to numerous points in Hawaii, i.e. freight moving in the noncontiguous domestic trade. Under the Interstate Commerce Commission Termination Act of 1995, the rates

established by motor carriers transporting freight moving in the so-called noncontiguous domestic trade remain subject to the Board's tariff filing requirements. (49 U.S.C. § 13702(b)(1).) Those rates remain subject to complaint before the Board for resolution if they are alleged to violate the reasonableness requirement of 49 U.S.C. § 13701(a).

Of considerable concern to the WMTB's member motor carriers is that under the Interstate Commerce Commission Termination Act of 1995, the failure to establish reasonable rates and through routes and divisions for freight moving in the noncontiguous domestic trade—matters of great importance given the nature of the transportation services they provide between Hawaii and the mainland, can result in the award of reparations to shippers (49 U.S.C. § 13701(d)(4), and/or the prescription of a reasonable rate, classification, rule, practice, through rate, or division of joint rates by the Board (49 U.S.C. § 13701(b)).

The special circumstances surrounding the collective ratemaking activities conducted by the carrier members of the WMTB were duly noted by the Board in its Decision served on October 16, 2003. No discounts are provided on the rates applicable on noncontiguous domestic trade shipments. No traffic presently handled by WMTB member carriers involves discounts or percentages off collectively-made class rates, and WMTB does not publish any loss-of-discount provisions on behalf of its member carriers. Those circumstances continue today.

Based on my many years of personal experience with the motor carrier industry and my involvement and participation in the WMTB, I can state that participation in the rate bureau process is essential for its many small and mid-size motor carrier members. Their ability to implement, utilize and rely upon the joint and proportional class rate

structure collectively established and published by WMTB enables them to have access to class rates which apply on all the commodities they handle throughout the extensive service territory covered by WMTB's Section 5a agreement. Thus, each carrier has available rates on any mainland traffic they handle. That fact is particularly important to WMTB's motor carrier members because the major portion of the mainland traffic they transport must be on a joint-line, intermodal basis.

By having WMTB's joint and proportional class rates available as a baseline, member carriers have reasonable and readily identified rates available in their joint-line negotiations. That pricing mechanism greatly simplifies the negotiation process, avoiding the complexity created by a multitude of rates, and reduces the burdens otherwise associated with the rating and billing of shipments. In the absence of WMTB's joint and proportional class rate structure it would be extremely difficult, if not impossible, for many of WMTB's carrier members to establish individual rate scales for the many commodities they transport, or to monitor or readily negotiate the joint-line rates and divisions which are vital components of their ability to remain competitive in the marketplace. Without the approved procedures in WMTB's Section 5a Agreement, and the resulting antitrust immunity, the carriers would not and could not participate in the collective ratemaking process.

Because of the continued regulation of the general freight moving in the noncontiguous domestic trade transported by WMTB's member motor carriers, the accessibility of the bureau's expertise is critical to the membership. Through collective ratemaking the members can establish and publish competitive and reasonable rates which are the backbone of their through routes and joint rates. Also, given the filing and

publication functions the Interstate Commerce Commission Termination Act of 1995 imposes on our motor carrier members, the availability of the bureau's assistance in constructing, publishing and filing their rates is essential to enable many of the members who do not have that capability in-house to comply with those requirements.

Another ratemaking function important to WMTB's member motor carriers is the continuation of their joint and proportional class rate structure within the broad territory in the continental United States in which WMTB currently is authorized to collectively establish rates. Initially, to meet the needs of its carrier members WMTB applied for and was granted ratemaking authority by the Interstate Commerce Commission in the so-called 11-Western States territory. By 1991, in response to the expanded transportation and ratemaking needs of its members' base, WMTB sought and was granted collective ratemaking authority in a 37-state territory. Through that broadened Section 5a Agreement WMTB was not only able to meet the ratemaking requirements of its member carriers, particularly to Hawaii. These ratemaking activities enable the member carriers to establish reasonable and competitive rates for their transportation services, simplify the establishment of through routes and joint rates, and facilitate divisions of rates among carriers. WMTB believes that such actions taken under its Section 5a Agreement enhances the objectives of the National Transportation Policy of making available reasonable and competitive rates for diverse transportation services, and, therefore, are in the public interest.

Also, as recent as 1992, the Interstate Commerce Commission, in authorizing the expansion of WMTB's Section 5a Agreement to apply on traffic moving between points in the United States and points in Mexico, recognized that such authority would foster the

simplification and streamlining of the procedures for handling international traffic by establishing applicable single factor through rates. Because of the tremendous growth in recent years in traffic moving by motor carrier between the United States and Mexico there is an even greater need today for the continuation of that authority to achieve the recognized benefits which flow from collective ratemaking regarding that traffic.

In order for WMTB to retain its membership and attract additional motor carrier members, it must have the capacity to provide the full range of services now available from the bureau through its Section 5a agreement. Under that collective ratemaking process, which is conducted with antitrust immunity, member motor carriers have available competitive, reasonable class rates which are critical in negotiating the joint-line rates upon which our carriers rely and in simplifying the concomitant divisions among participating carriers and modes. This system has worked exceedingly well in the past in ensuring the uninterrupted flow of goods from the mainland upon which Hawaii relies, and has well-served the needs of WMTB's member motor carriers.

Those class rates established by WMTB's member carriers are essential components of the joint-line arrangements necessary to achieve movements in the noncontiguous domestic trade, and can involve various transportation modes in conjunction with the motor carrier movements performed by WMTB's members. To alter those long-established rates would seriously disrupt the intermodal arrangements necessary to move freight to and from Hawaii, as well as to and from Mexico. The rates in the non-contiguous domestic trade continue to be subject to the Board's jurisdiction, and not only are subject to a standard of reasonableness but also can result in reparations.

WMTB's highly specialized rate structures would be jeopardized by not continuing its
Section 5a Agreement with antitrust immunity.

Respectfully submitted,

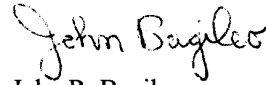
Dated: February 15, 2005


Robert E. Lewis

III.
Conclusion

For all the foregoing reasons, it is requested that the Board continue its approval of WMTB's agreement in Section 5a Application No. 70.

Respectfully submitted,



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