

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EX PARTE NO. 656

**MOTOR CARRIER BUREAUS
PERIODIC REVIEW PROCEEDING**

**PETITION OF
ROCKY MOUNTAIN TARIFF BUREAU, INC.
FOR EXTENSION OF EFFECTIVE DATE**

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June 5, 2007

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ROCKY MOUNTAIN TARIFF BUREAU, INC.
FOR EXTENSION OF EFFECTIVE DATE**

Rocky Mountain Tariff Bureau, Inc. ("RMB") hereby files this petition on behalf of its member motor carriers for an extension of the date fixed by the Board in its May 7, 2007 Decision in this proceeding for termination of the approval of the RMB collective ratemaking agreement and the antitrust immunity currently conferred by such approval on RMB and its members. That effective date is currently September 4, 2007, which is 120 days following the May 7 decision. RMB hereby seeks an extension that is the same as that which may be granted by the Board to the National Classification Committee ("NCC") in response to NCC's May 18, 2007 request for an extension of the effective date to November 4, 2008. In support of this request, RMB states as follows:

RMB is a rate bureau composed of motor carriers that transport freight in the less-than-truckload ("LTL") sector of the trucking industry. It currently operates under an approved ratemaking agreement in Section 5a Application No. 60, *Rocky Mountain Tariff Bureau – Agreement*. By virtue of regulatory approval of that agreement, RMB and its member carriers have antitrust immunity with respect to activities carried out under the terms of the approved agreement. However, following any termination of approval, the carriers will no longer be able

to engage in certain currently immunized activities that would otherwise violate the antitrust laws, such as the formulation of general rate increases to class rates published by RMB.

As a result of the termination of the approval of its agreement and the consequent loss of immunity, the motor carrier members of RMB will be faced, upon the effectiveness of the Board's decision, with a new legal environment with respect to their pricing activities. All pricing decisions will need to be made individually and the carriers will each need to determine some means, other than a collectively made decision, by which they will adjust their rates going forward to take into account their increased costs. Carriers will also need to advise their shipper customers of the changes that will be made to their rates. This may well entail changes to pricing software. It will certainly involve a good deal of education of carrier employees to the new situation.

It is doubtful that all of this can be accomplished within the allotted 120 days, of which only about 90 days are left. Indeed, these past 30 days have been consumed with reviewing the Board's 37 page May 7 decision, assessing the impact of the major changes it portends and determining how best to respond. This process of assessment will continue to take some time, as will the implementation by individual carriers of new plans and strategies.

RMB too will need to assess the changes that will need to be made to its role in the pricing of motor carrier services, e.g., the extent if any to which RMB staff can support the individual activities of member carriers and offer various services to each carrier. Ultimately, of course, that will be dictated by legal considerations and by the decisions of the RMB carrier members. It will take time to make these decisions, and it is unlikely that all of this can be accomplished in the remaining 90 days before the May 7 Decision becomes effective.

RMB notes that not only have several other rate bureaus requested an additional year for compliance before the Board's decision becomes effective, but perhaps more importantly so has the National Classification Committee. NCC's May 16 petition requesting more time sets forth detailed reasons why such additional time, until November 4, 2008, is needed by that organization. Were the Board to grant NCC an extension, thereby allowing it to continue to collectively formulate classifications under a cloak of antitrust immunity, then under the Board's reasoning in the May 7 decision it should likewise grant an extension to RMB. The Board stated in its May 7 decision that it was terminating NCC's immunity in part because it feared that with the termination of immunity for the rate bureaus, carriers might improperly, albeit "perhaps unintentionally," use the classification as a means of producing or protecting revenues that might otherwise be achieved through the collective ratemaking process. To guard against that possibility, which the Board stated would be difficult to detect, the approval of NCC's agreement, and thus its immunity, was to be withdrawn coincident with that of the rate bureaus.¹

The Board thus stated as follows at page 21 of its Decision:

.... [i]t would be a natural and likely step for some carriers, perhaps unintentionally, to look for ways to use the classification process as a revenue protection device. Such a result would undo the deregulatory aims of today's decision and would perpetrate the prior harms to shippers. Thus, continued approval of NCC's agreement would be contrary to the public interest. Our action [terminating approval of the NCC agreement coincident with the termination of the approval of rate bureau agreements] the protects the shipping public's interest in competitively set rates and neutral classification ratings.

¹ The Board also concluded that carriers could continue to engage in classification making without antitrust immunity.

While RMB does not agree with the proposition that its carrier members or others have abused, or would abuse, the classification process, RMB appreciates that the Board and shippers have expressed concern about such potential abuse. By making the effective date of the termination of the rate bureau agreement approvals the same as the effective date of the termination of NCC approval, the Board addressed the concern. Accordingly, if the effective date of the Board's decision for NCC is extended until November 4, 2008 (or some other date), then a like extension should be granted to RMB. Such an extension will also allow the RMB carriers the additional time that they will need, as described above, to adjust to a non-antitrust immunized setting.

RMB further notes in support of its request that collective ratemaking has been taking place in the motor carrier industry for well over 50 years, including during the several years of STB deliberation in this proceeding. In deciding to terminate its approval of rate bureau agreements, the Board did not point to any specific wrongdoing by the rate bureaus or their member carriers, or to any specific harm done to small shippers or others. The record in this proceeding is in fact devoid of any discernable evidence of wrongdoing or shipper prejudice, and demonstrates that class rates have not proven to be a trap for unwary shippers.

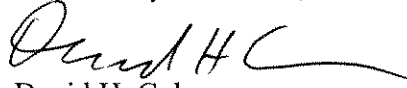
The Board's May 7 Decision was therefore not based on some urgent need to address a situation where persons were being harmed, but instead on a policy judgment by the Board that the public interest would be better served without immunized ratemaking. Whatever ones views of the merits of that determination, the fact is that the current situation is one in which the need for an appropriate period of carrier education and adjustment outweighs any vague notion of prejudice to others that might arise from a delay in the implementation date for the Board's decision. While RMB appreciates that the Board did provide for a 120 day transition period, the

fact is that the task of sorting through the legal thicket and minimizing antitrust risks going forward is a daunting one and that more time will be used judiciously to ensure as smooth a transition as possible. During the entire transition period, RMB carriers will of course continue to respect the "truth-in-rates" notification requirements already in place.

CONCLUSION

For the above-stated reasons, RMB hereby seeks an extension of the effective date of the May 7 Decision. The measure of that extension should be the amount of additional time granted to the NCC for compliance with the Board's Decision. NCC has asked for an extension until November 4, 2008. If that extension is granted in full or in part, RMB requests that the same extension be granted to it.

Respectfully submitted,



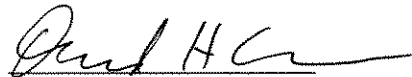
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CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of June 2007 served a copy of the foregoing
Petition for Extension of Effective Date upon all parties to this proceeding by first class mail,
postage prepaid.


David H. Coburn