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SEC

SERVICE DATE - MARCH 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33552

BUDGET CHAUFFER DRIVE, PTY., LTD.  
--PETITION FOR DECLARATORY ORDER--  
FEDERAL PREEMPTION

Decided: March 6, 1998

By petition filed February 9, 1998, Budget Chauffer Drive, Pty., Ltd. (Budget) seeks a declaratory order determining, in essence, that the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (ICCTA) preempts state regulation of the transfer of "small carrier"<sup>1</sup> intrastate motor passenger carrier operating authority when such a transfer is associated with the transfer of small carrier interstate motor passenger carrier operating authority.

Budget asserts that a controversy has arisen out of its purchase of the interstate and intrastate operating authorities of bankrupt motor passenger carrier Nevada Showboat, Inc., dba Showboat Lines, pursuant to an order of the United States Bankruptcy Court for the District of Nevada (Reno Court) in In Re: NV Showboat, Inc., Debtor(s), BK-N-91-30608 (order dated Sept. 3, 1997). According to Budget, subsequent to the purchase, Nevada regulatory authorities notified it that any transfer of the state authority will require an application process and state approval. Budget contends that the ICCTA, specifically 49 U.S.C. 14303, preempts state regulation of the transfer.

Budget has served a copy of its petition on the U.S. Department of Justice and the Federal Trade Commission. However, it has not served the Public Service Commission of Nevada (PSCN). Accordingly, before taking any action on the petition, the Board will require Budget to serve PSCN, to advise PSCN of its right to participate in this matter, and to certify to the Board that it has done so. PSCN will then have an opportunity to reply to the petition.

It is ordered:

1. By March 16, 1998, Budget shall serve PSCN with a copy of its petition for declaratory order and this decision and certify to the Board that it has done so.
2. PSCN shall have until April 15, 1998, to file a reply to the petition.
3. This decision is effective on its service date.

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<sup>1</sup> A "small carrier" transaction is one which involves carriers whose aggregate gross operating revenues were less than \$2 million over a 12-month period.

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By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary