

SERVICE DATE - NOVEMBER 15, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-101

GOVERNMENT OF THE TERRITORY OF GUAM

v.

SEA-LAND SERVICE, INC.,
AMERICAN PRESIDENT LINES, LTD.,
AND MATSON NAVIGATION COMPANY, INC.

Decided: November 13, 2001

The Government of the Territory of Guam (GovGuam) has filed a complaint challenging the reasonableness of the rates, rules, classifications, and practices for all transportation by water (including the water portion of intermodal transportation) provided by defendants — Sea-Land Service, Inc. (Sea-Land), American President Lines, Ltd. (APL), and Matson Navigation Company, Inc. (Matson) — in the noncontiguous domestic trade¹ to and from Guam. GovGuam also seeks reparations and damages. Defendants have answered the complaint and have filed a joint motion to dismiss.²

BACKGROUND

Historically, jurisdiction over rates in the domestic offshore trade was bifurcated. The Federal Maritime Commission (FMC) had jurisdiction over complaints challenging the reasonableness of so-called “port-to-port” rates (rates that do not involve the services of an inland U.S. railroad or motor carrier). The Interstate Commerce Commission (ICC) had jurisdiction — which it was never called upon to exercise — over complaints challenging the reasonableness of joint rates in the domestic offshore trade (rates held out jointly by water carriers and inland rail or motor carriers).³

Effective January 1, 1996, Congress, in the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the ICC and transferred certain ICC functions to the Surface Transportation Board (Board). The ICC functions transferred to the Board included the responsibility to handle complaints challenging joint rates in the noncontiguous domestic trade.

¹ The noncontiguous domestic trade involves domestic water transportation (that is, transportation between states, United States territories, or U.S. possessions) that originates or terminates in Alaska, Hawaii, or a U.S. territory or possession. See 49 U.S.C. 13102(15). It is sometimes referred to as the “domestic offshore” trade.

² The parties proposed a procedural schedule, which we adopted, providing for a three-step process for resolving this matter. In Phase I (this decision), we address defendants’ joint motion to dismiss the complaint, as well as a petition to intervene. In Phase II, we will address an appropriate methodology for assessing rate reasonableness. In Phase III, we will consider the merits of the complaint.

³ See Joint ICC/FMC Policy Statement, 8 I.C.C.2d 243 (1991).

Congress also transferred to the Board the FMC's jurisdiction over complaints challenging the reasonableness of port-to-port rates in the noncontiguous domestic trade.

This complaint, involving a challenge to the overall level of all of defendants' domestic water rates to or from Guam, is quite similar to a pre-ICCTA complaint that was recently resolved, in part, by the FMC. In Government of the Territory of Guam, et al. v. Sea-Land Service, Inc., et al., 28 S.R.R. 252 (FMC 1998) ("FMC Decision"), the FMC permitted GovGuam to challenge defendants' overall rate structure for their Guam services, notwithstanding defendants' argument that the statute that governed at the time permitted only challenges to specific rates. In its decision, the FMC found that defendants' overall revenues were unreasonable, based on a rate-of-return analysis.

One of the issues in the case filed here is whether Congress, when it transferred to the Board regulatory authority over joint rates (from the ICC) and over port-to-port rates (from the FMC), intended to permit broad "rate structure" challenges such as the case that GovGuam had brought before the FMC. Another issue is whether, in a noncontiguous domestic trade rate case, we should apply the regulatory standards and approach previously applied by the ICC, those applied by the FMC, or "none of the above."

On those issues (and on others that have been raised), each side argues that the Congressional intent is plain and inescapable.⁴ However, as to most of the issues raised, the Congressional intent is neither plain nor inescapable. We know, for example, that when it transferred jurisdiction to us in 1996, Congress intended for such cases to be handled under the then-"current basic rate reasonableness requirements."⁵ But there is no indication whether that meant that "Congress clearly intended" that the Board apply "the consistent approach of the ICC to [railroad and motor carrier rate cases that had been brought before it],"⁶ or whether "Congress [was] explicitly [referring to] the then 'current' FMC regulatory approach."⁷ Therefore, as to this and the other issues that have been raised, absent clear guidance from Congress, we must ultimately interpret the statute in a way that makes the most sense to us.

MOTION TO DISMISS

Under 49 U.S.C. 13701(a), rates for transportation "by or with a water carrier in noncontiguous domestic trade . . . must be reasonable." The Board may begin an investigation on its own initiative or on complaint. 49 U.S.C. 14701(a). A governmental authority such as GovGuam can file a complaint about alleged carrier violations, 49 U.S.C. 14701(b), and a

⁴ See, e.g., Complainants' Motion to Dismiss, at 26 ("To grant relief on the basis of GovGuam's complaint would frustrate Congress' clear intent in the ICCTA."); GovGuam's Opposition to Complainants' Motion to Dismiss, at 2 ("The statute itself, as well as a wealth of precedent, is dispositive. . .").

⁵ H.R. Rep. No. 311, 104th Cong., 1st Sess. 113 (1995) (House Report).

⁶ Defendants' Motion to Dismiss, at 21.

⁷ GovGuam's Opposition to Defendants' Motion to Dismiss, at 26.

governmental authority is explicitly permitted to pursue a complaint on behalf of shippers affected by rates asserted to have been unreasonable, 49 U.S.C. 13701(d)(4).

We may dismiss a complaint that “does not state reasonable grounds for investigation and action.” 49 U.S.C. 14701(b). We may issue a final decision upon the filing of an answer or on a motion to dismiss. 49 CFR 1111.4(a), 1111.5. The ICC, our predecessor agency, exercised its authority to dismiss complaints without holding an evidentiary hearing where the issues involved were essentially legal. See ZoneSkip, Inc. v. UPS, Inc. and UPS of America, Inc., 8 I.C.C.2d 645 (1992), aff’d mem. ZoneSkip, Inc. v. United States, 998 F.2d 1007 (3d Cir. 1993). Thus, a complaint will be dismissed if there are no material issues of fact to be resolved in the proceeding. See Caribbean Shippers Assoc., Inc. v. NPR, Inc. et al., STB Docket No. WCC-100 (STB served Mar. 25, 1997), aff’d sub nom. Caribbean Shippers Assoc., Inc. v. NPR, Inc., et al., 145 F.3d 1362 (D.C. Cir. 1998).

In considering a motion to dismiss, we must construe factual allegations in the light most favorable to the complainant. See, e.g., Sierra Pacific Power Co. & Idaho Power Co. v. Union Pacific Railroad Co., STB Docket No. 42012 (STB served Jan. 26, 1998); Trailer Bridge, Inc. v. Sea Star Lines, LCC, STB Docket No. WCC-104 (STB served Dec. 10, 1999) (Trailer Bridge). A decision on a motion to dismiss is not an indication of how the case will ultimately be decided on the merits, after all of the evidence is submitted. Rather, it is simply a determination of whether the factual allegations, when considered in the light most favorable to the complainant, would provide a basis for relief. We dismiss complaints only when we find that there is no basis on which we could grant the relief sought. See Grain Land Coop v. Canadian Pacific Limited and Soo Line Railroad Company d/b/a CP Rail System, STB Docket No. 41687 (STB served Dec. 8, 1999).

Here, with the exception of GovGuam’s discrimination claim, we cannot say that there is no basis on which we could grant the relief sought. Thus, we will deny the motion to dismiss the complaint.

We turn now to the specific arguments raised by defendants as to why the complaint should or must be dismissed.⁸

Aggregate Rate Challenge. Defendants assert that GovGuam’s complaint must be dismissed in its entirety because, according to defendants, section 13701(a) permits only challenges to specific rates. Here, the complaint does not challenge the reasonableness of any individual rate, but instead asserts that all of the defendants’ numerous rates are unreasonable because, in the aggregate, they produce excessive revenues.

Section 13701(a) provides that “a rate for a movement by or with a water carrier in noncontiguous domestic trade . . . must be reasonable.” While this language expressly provides

⁸ Defendants also argue as a general matter that competition in the Guam trade has held rates at reasonable levels. But the Department of Transportation, we note, has concluded, in Competition in the Noncontiguous Domestic Maritime Trades, March 1997, at III-18, that “concentration is high in the Guam trade.” Thus, defendants’ general assertions about the state of competition in the Guam trade cannot be regarded as establishing facts sufficient to warrant summary dismissal.

for a party to challenge a rate, it does not on its face preclude challenges to a group of rates. Indeed, in the FMC Decision, the FMC considered a complaint challenging rates in the aggregate under a similar statutory provision. This reading of the statute is bolstered by 49 U.S.C. 13701(d)(4), which provides that, when a finding of unreasonableness has been made, “the Board shall award reparations . . . in an amount equal to all sums assessed and collected that exceed the reasonable rate, division, rate structure, or tariff” (emphasis supplied).

In their response to GovGuam’s opposition to their motion to dismiss (at 7), defendants argue that the term “rate structure” in section 13701(d)(4) does not signify rates in the aggregate, but instead “most naturally means the method by which rates in a tariff are constructed – for example, by mileage, by weight, by some classification system, or on a carload, multicarload or group basis.” But we do not believe that Congress would have provided for reparations for sums that exceed a “reasonable rate structure” if it had simply been referring to such mechanics. Indeed, as the ICC observed in a broad investigation of railroad general rate increases: “Basic to this investigation is the realization that the ‘railroad rate structure’ embraces a large number of interrelated and individually formulated rates and rate patterns.” Investigation of Railroad Freight Rate Structure, 340 I.C.C. 868, 880 (1971). Thus, the language providing that “a rate . . . must be reasonable,” and that the Board may award reparations for amounts that exceed “the reasonable rate [or] rate structure,” is broad enough to require that complainant at least be offered a chance to present its case.

Defendants argue that acceptance of this complaint would contravene the intent of Congress in the ICCTA when it transferred regulation of port-to-port rates from the FMC to the Board. However, the only clear Congressional intent that we can see was to centralize jurisdiction over the noncontiguous domestic trade in a single agency. The divided regulatory authority was a source of concern to Congress for many years, and Congress considered centralizing regulatory jurisdiction of the trade in the “Domestic Offshore Commerce Regulatory Reform Act of 1986,”⁹ and again in the “Intermodal Shipping Act of 1989,”¹⁰ but neither bill was enacted. In the ICCTA, Congress finally centralized review at a single agency — the Surface Transportation Board — with the intent of “consolidating the regulation of these trades in a single panel, [so that] a more consistent and efficient transportation policy can be achieved.” House Report at 113. But in transferring sole responsibility to the Board, rather than the FMC, Congress did not clearly articulate a preference for the regulatory approach of the ICC or the FMC. In fact, it is reasonable to infer that Congress knew that a major GovGuam case was pending at the FMC, and that it left it to the Board to decide whether or not to follow whatever approach the FMC might finally adopt.

Defendants argue that permitting challenges to multiple rates would be unworkable, as it would lump together diverse products moving under different conditions, and could require across-the-board rate reductions even for movements subject to highly competitive rates. Defendants’ concern about how we might approach any rate reasonableness review is premature under the three-stage approach to which the parties have agreed in this case. But we note that a finding that rates in the aggregate are unreasonable would not necessarily require across-the-board rate reductions as a remedial measure.

⁹ H.R. Rep. No. 4973, 99th Cong., 2d Sess. (1986).

¹⁰ H.R. Rep. No. 2498, 101st Cong., 1st Sess. (1989).

Defendants also argue that a rate-of-return-based methodology is impermissible under our statute and infeasible given the nature of the traffic that they handle. We understand their arguments (as well as GovGuam's argument that a rate-of-return approach is what Congress expected the Board to apply to cases such as this one), and we will determine, in Phase II of the proceeding, whether there is a reasonable methodology for assessing a rate structure complaint in this trade. For purposes of the motion to dismiss, however, arguments about methodological issues are premature and will not be addressed further at this time. The parties will have an opportunity to brief those issues more fully before we issue a Phase II decision.

In short, we will not dismiss this complaint simply because it challenges a group of rates rather than specific rates.

Discrimination. Defendants maintain that GovGuam's complaint must be dismissed to the extent that it alleges that the defendants' rates, rules, and practices are discriminatory. Defendants argue that former section 10741(b), which prohibited unreasonable discrimination by common carriers, was repealed in the ICCTA for all carriers except rail carriers. GovGuam acknowledges this repeal, but argues that the rate reasonableness requirement in section 13701(a) encompasses discrimination, i.e., that a rate, classification, rule or practice can be unreasonable because it is discriminatory.

GovGuam's claim that "reasonableness" embraces a prohibition against discrimination is not tenable, given the fact that the pre-ICCTA provision specifically permitting claims of discrimination was eliminated for water carriers. To import the repealed provision into another section of the statute, as GovGuam would do, would plainly violate the Congressional intent. Thus, GovGuam could not prevail simply by showing that different shippers pay different rates for arguably similar services, and this aspect of its complaint will be dismissed.

Statute of Limitations. GovGuam, which filed its complaint on September 10, 1998, seeks reparations for movements since September 10, 1995. Defendants assert that the 2-year statute of limitations period in section 14705 for claims for damages governs this action, requiring dismissal of the complaint for shipments prior to September 10, 1996. We agree.

The applicable statutes of limitations are set forth at 49 U.S.C. 14705(b) and (c). Section 14705(b) provides that a complaint for overcharges must be filed within 3 years. Section 14705(c) provides that a complaint to recover damages must be filed within 2 years. The term "overcharges" refers to amounts charged by a carrier in excess of the applicable tariff rate,¹¹

¹¹ The term "overcharges" has a specific meaning in the transportation context. Before 1978, the term was specifically defined, in § 16(3)(g) of the Interstate Commerce Act:

(g) The term "overcharges" as used in this section shall be deemed to mean charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

And the term was defined in nearly identical words at § 308(f)(4), as applicable to domestic water carriers subject to the ICC's jurisdiction under Part III of the Interstate Commerce Act:

(continued...)

whereas the term “damages” refers to amounts recoverable for violations by a carrier other than overcharges.

In this case, GovGuam does not claim that defendants have charged anything other than the rates in the applicable tariffs. Instead, it seeks relief on the ground that defendants’ rates, overall, are unreasonably high. Under section 14705(c), and under the laws that applied for many years before passage of the ICCTA,¹² claims for damages are subject to the 2-year statute of limitations period.

GovGuam argues, however, that a 3-year statute of limitations should nevertheless be applied to its complaint. It interprets sections 14705(b) and (c) as creating three statute of limitations periods. Specifically, GovGuam maintains: (1) the first sentence of section 14705(b) provides an 18-month statute of limitations for civil actions for overcharges; (2) the second sentence of section 14705(b) provides a 3-year statute of limitations for all complaints brought before the Board other than overcharges (i.e., damages); and (3) section 14705(c) provides a 2-year statute of limitations for overcharge complaints before the Board.

GovGuam’s position is based on what we have concluded is an “apparent technical error in the statute.” See National Association of Freight Transportation Consultants, Inc.—Petition for Declaratory Order, No. 41826 (STB served Nov. 26, 1996), at 8 n.3. The 3-year statute of limitations for overcharges in section 14705(b) makes reference to section 14704(c)(1), whereas the 2-year statute of limitations for damages in section 14705(c) makes reference to section 14704(b). But section 14704(b) (to which the 2-year damages limitation refers) describes damages in terms of an overcharge (“amounts charged that exceed the applicable [tariff] rate”).

It is obvious that a technical mistake was made in executing amendments to H.R. 2539, which, after reconciliation with S. 1396, became the ICCTA. As reported by their respective committees, both the House and Senate bills placed the overcharges provision in section 14704(b)(1) and the damages provision in subsection (b)(2). In both bills, section 14705(c) accurately referred to damages as described in section 14704(b)(2). See House Report at 62; 141 Cong. Rec. S17573 (daily ed. Nov. 28, 1995) (Senate bill). When certain amendments to the bill

¹¹(...continued)

(4) The term “overcharges” as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Commission.

Although the 1978 recodification of the Interstate Commerce Act eliminated these specific definitions, it did not substantively change the law. See Section 3(a) of Pub. L. No. 95-473, Oct. 17, 1978, 92 Stat. 1466 (“Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced.”).

¹² Former section 11706(c)(1), for example, provided for a 2-year statute of limitations for damage complaints, while former section 11706(b) provided for a 3-year statute of limitations for overcharge claims.

reported out by the House¹³ were executed, however, section 14704(b)(2) (making a carrier or broker liable for damages) was redesignated as section 14704(a)(2), and what had been section 14704(b)(1) (pertaining only to rate overcharges) was designated as section 14704(b), under the new title “LIABILITY AND DAMAGES FOR EXCEEDING TARIFF RATE.” This switching of subsection numbers was clearly not intended by the House to change well established limitations periods; indeed, in the House bill reported out, section 14705(c) continued to refer to section 14704(b)(2), a subsection that did not continue to exist under the House bill as inadvertently modified. See 141 Cong. Rec. H12292.

Moreover, it is clear that the House and Senate conferees did not intend to change the statute of limitations for damages. Both the House and the Senate, in describing section 14705 in the bills that each body reported out, stated that the intent was to preserve existing statutes of limitations. See House Report at 121; S. Rep. No. 176, 104th Cong., 1st Sess. 48 (1995). There was no discussion in the House about statutes of limitations, and the Conference Report,¹⁴ at 222, clearly indicates that both the House and Senate bills, which were deemed to be “identical” on this matter, “preserve[] the current statutes of limitations.” We do not believe that an unintentional technical error such as the one made here overrides the obvious Congressional intent.

Thus, we conclude that, if the complaint succeeds on the merits, reparations may not be awarded for transportation provided more than 2 years before the complaint was filed, i.e., before September 10, 1996.¹⁵

American President Lines. Because APL left the trade before the September 10, 1996 limitations date, no shipments handled by APL are subject to this complaint. Therefore, we will dismiss APL as a defendant in this proceeding.¹⁶

Zone of Reasonableness. Notwithstanding the FMC’s finding that Guam rates during the years 1988, 1989, and 1990 were too high, defendants argue that GovGuam is now barred by the statutory “zone of reasonableness” (ZOR) from challenging many of these same rates for post-ICCTA movements. Section 13701(d)(1) states that “a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases . . . in any such rate or division is not more than 7.5 percent above . . . the rate or division in effect 1 year before the effective date of the proposed rate or division.”¹⁷ Defendants argue that, because most of their rates have not been increased by

¹³ See 141 Cong. Rec. H12262-12265 (daily ed. Nov. 14, 1995).

¹⁴ H.R. Rep. No. 422, 104th Cong., 1st Sess. (1995).

¹⁵ Because we have determined that the 2-year statute of limitations applies, defendants’ argument that considering the rates on shipments prior to January 1, 1996, would constitute improper retroactivity is rendered moot.

¹⁶ APL may, if it chooses, continue to participate as an intervenor.

¹⁷ Section 13701(d)(1) also provides a ZOR for rate decreases, which is not relevant here.

more than 7.5 percent in any year, GovGuam is barred by the ZOR from challenging those rates as unreasonable.

We do not agree. Although the language of this provision is not entirely clear — as defendants note, the first part of the cited sentence states that “a rate . . . is reasonable if . . .” — it appears to us to provide a safe harbor for rate increases, not for “base” rates. The rest of the cited sentence indicates that the ZOR applies only to a “proposed rate,” i.e., a rate that is to be changed, and that the new rate would be deemed reasonable if the amount by which it increases the prior rate is within the ZOR. Nowhere does the provision say that a party may not challenge a base rate to which the ZOR is applied.¹⁸ Moreover, the legislative history indicates that base rates are not immune from challenge. The House Report, in explaining the meaning of the ZOR, states (at 113):

[A] carrier may increase or decrease a base rate by not more than 10 percent of the base rate in effect one year before that date and the new rate is considered reasonable. . . . However, this zone of reasonableness of rate increases does not mean that the base rate cannot be challenged as unreasonable.

Defendants argue that the House approach was rejected because the ICCTA adopted the Senate version of the ZOR. But the language of the ZOR was virtually identical in the House and Senate bills, with the exception of size (10 percent in the House Bill, 7.5 percent in the Senate Bill), and there is no indication that Congress intended to upset the House’s expectation that base rates would be challengeable.¹⁹

Defendants further argue (Motion to Dismiss at 84) that the language in the House Report, at most, “can be understood simply to state the obvious proposition that the ZOR works forward but not backward.” In other words, they assert (*id.* at 86), “the ZOR means that a rate on Day 0 is reasonable if it is not 7.5 [percent] higher than the rate [365 days earlier], but it does not mean that the rate [365 days earlier] is reasonable just because it is within 7.5 [percent] of the rate on Day 0.” Rather, to determine whether that rate is challengeable, their position is that we

¹⁸ The ZOR for water carriers appears to have been modeled after the zone of rate freedom (ZORF) adopted for motor carriers in the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 (1980) (MCA). Section 11 of the MCA essentially precluded the ICC from investigating and suspending a proposed rate if the proposal would produce a rate not more than 10 percent above or below a base rate. The statutory language and the legislative history of the MCA (*see* H.R. Rep. No. 1069, 96th Cong., 2d Sess. 24-25) plainly indicate that the provision applied only to a “proposed rate,” and not to a base rate itself, and that in practical terms, it served as a limit on “the Commission’s authority to suspend and investigate a proposed rate,” *id.* at 25.

¹⁹ Indeed, the Conference Report states, at 205:

The Conference adopts the House Provision modified by the Senate language in subsection (d) establishing a “zone of reasonableness” of 7.5 percent . . . above or 10 percent below the rate in effect one year prior to the proposed rate for motor carriers and port-to-port movements by water carriers in the noncontiguous domestic trade.

would again look back and see if it is more than 7.5 percent higher than the rate in effect 365 days earlier; “[a]nd so on, and so on.”

We understand that Congress wanted to give water carriers some degree of certainty as to whether rate changes could be challenged. But absent a clear intent — such as that expressed in the 1980 railroad legislation — that then-existing rates would become protected base rates that could not later be challenged,²⁰ we cannot read a provision protecting “proposed” rates as immunizing existing rates that were found unreasonable when they were challenged before the FMC.

Rate Divisions. The complaint challenges “rates for all transportation by water, including the water portion of all intermodal transportation.” Defendants state that the majority of their rates between Guam and the West Coast of the continental United States are joint through rates with participating motor carriers, not port-to-port rates.²¹ Defendants assert that GovGuam’s complaint must be dismissed to the extent that it challenges only the water portion of such joint intermodal rates, on the ground that a carrier’s individual share (division) of a joint water/motor rate may not be separately challenged.

We do not agree. The general rule is that joint rates are unitary rates that must be challenged as a whole.²² But that is not always the case. See Pennsylvania v. ICC, 561 F.2d at 281 (for international traffic subject to overlapping agency jurisdiction, ICC required tariff filing but “limit[ed] its substantive regulation of the single factor joint land/ocean rate to the [land] portion only.”); *id.* at 292 (in the context of that case, substantive review of a division of a joint rate was “not an attempt to regulate inter-carrier ‘divisions’ as such,” but was simply a

²⁰ In section 203 of the Staggers Rail Act of 1980 (Staggers Act), Pub. L. No. 96-448, 94 Stat. 1895, Congress set up a more expansive ZORF for railroad rates. The rail ZORF established a safe harbor for certain base rates, and for inflation-based changes to those base rates. See Western Coal Traffic League v. United States, 677 F.2d 915, 918 (D.C. Cir.), *cert. denied*, 459 U.S. 1086 (1982). The Staggers Act ZORF, however, applied only to base rates that were found reasonable after complaint, or that were deemed reasonable because they were not challenged within a 180-day window. See section 229 of the Staggers Act, former 49 U.S.C. 10701a note. The specific procedure established in the Staggers Act for immunizing base rates that were not challenged within the time period that Congress provided is in stark contrast to the motor carrier ZORF and the water carrier ZOR.

²¹ When carriers hold out joint-rate services, because the carriers are jointly and severally liable for damage to the freight, shippers typically pay a single freight bill, with the payments then divided among the participating carriers. See Pennsylvania v. ICC, 561 F.2d 278, 281-82 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1011 (1978).

²² See Great N. Ry. v. Sullivan, 294 U.S. 458, 463 (1935) (Great Northern); L&N R.R. v. Sloss-Sheffield Steel & Iron, 269 U.S. 217, 234 (1925). But see Central P&L v. Southern Pac. Transp., et al., Nos. 41242, 41295, 41626 (STB served Dec. 31, 1996) and (STB served April 30, 1997), *aff’d sub nom. Union Pac. R.R. v. STB*, 202 F.3d 337 (D.C. Cir. 2000) (Union Pac.) (shippers may challenge a “bottleneck segment” of a rail joint rate when the non-bottleneck portion of the service was handled under a rail contract not subject to Board regulation).

permissible action “to focus ICC regulation on” a particular portion of the rate). See also Union Pac., supra note 22.

GovGuam argues that in the ICCTA Congress created an exception that would permit water carrier divisions to be challenged separately. But we need not decide here whether, as a general matter, Congress intended that we entertain complaints about divisions of specific joint rates in the noncontiguous domestic trade. This complaint does not challenge any particular joint rates; it is directed at the water carriers’ overall rate levels. As we understand it (although the parties have not addressed the point here) joint rates in the noncontiguous domestic trade are often set by simply adding a motor carrier component to the same water carrier component that is used for port-to-port rates. Therefore, while numerous motor carriers may participate in particular joint rates with the water carriers, the motor carrier component does not appear to be a part of the water carriers’ rate structures, so that review of the combined motor-water rates would not add anything to a review of the water carriers’ overall rate levels. Unless the carriers can demonstrate that the motor carriers are integral components of the water carriers’ rate structures, for purposes of this case GovGuam need not join all of the participating motor carriers in this complaint.

PETITION TO INTERVENE

Caribbean Shippers Association, Inc. (CSA) has petitioned to intervene as a party in this proceeding. Though CSA has no interest in the particular rates challenged in this complaint, it is concerned with the potential impact of the outcome of the determination of rate reasonableness standards on future rate proceedings involving other geographic segments of the domestic offshore trades. It asserts that this proceeding may set precedent that will apply to future rate reasonableness cases. CSA states that its intervention would be limited to Phase II of this proceeding. GovGuam and respondents oppose intervention on the ground that CSA’s interests, stemming from an entirely different market, would, of necessity, burden the record with matters irrelevant to this complaint.

Because CSA’s interests are limited to matters of general regulatory policy, we do not believe its participation in this proceeding will unduly broaden the issues, nor will it disrupt the procedural schedule in any significant manner. Therefore, we will grant CSA’s petition to intervene.

PROCEDURAL SCHEDULE

By the terms of the January 6, 1999 decision, service of this decision begins the timetable for Phase II of this proceeding, in which the parties will address the appropriate rate reasonableness methodology to be applied to this case. Unless the parties agree on a different schedule, and submit it to us for approval, simultaneous initial submissions on the rate reasonableness methodology are due 55 days from the service date of this decision. Simultaneous replies are due 110 days after the service date.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. APL is dismissed as a party defendant to the complaint.
2. The motion to dismiss the complaint is granted in part and denied in part as indicated in this decision.
3. Caribbean Shippers Association, Inc., is permitted to intervene as a party in this proceeding.
4. Under the procedural schedule previously established for this proceeding, the parties' submissions on the rate reasonableness standard are due January 9, 2002. Replies are due February 25, 2002.
5. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary