

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35290

WEST POINT RELOCATION, INC. AND ELI COHEN—PETITION FOR DECLARATORY  
ORDER

Decided: October 23, 2009

By petition filed on August 13, 2009, West Point Relocation, Inc. (West Point) and Eli Cohen (collectively, petitioners) seek a declaratory order as to whether it is an unreasonable practice, under 49 U.S.C. 13701, for Horizon Lines LLC (Horizon) to issue tariff rules that hold officers and directors of corporations personally liable for the actions of the corporation. In a reply filed on September 2, 2009, Horizon stated that it does not oppose the commencement of a declaratory order proceeding. Petitioners and Horizon each submitted a proposed procedural schedule.

This matter was referred by the United States District Court for the Central District of California, on August 4, 2009, in Horizon Lines LLC v. West Point Relocation, No. CV 08-6362 RSWL (JTLx). Horizon initiated the court proceeding to collect from petitioners unpaid amounts accrued between 2007 and 2008, allegedly due under a tariff for shipment of goods from Hawaii. The court stayed the case against Mr. Cohen, granting Mr. Cohen's motion to refer to the Board the issue of whether the terms of the tariff were reasonable.<sup>1</sup>

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. Pursuant to the Board's authority under 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding will be instituted to resolve the controversies at issue here. This matter has been referred by a court of competent jurisdiction and otherwise appears to be within the Board's primary jurisdiction. The Board will consider this matter under the modified procedure rules at 49 CFR part 1112.

Under petitioners' proposed procedural schedule, their opening statement is due 60 days from the day the Board institutes a proceeding, and rebuttal is due 20 days after Horizon's reply. Horizon proposes a shorter procedural schedule, allowing only 30 days for petitioners to file an opening statement and 15 days for rebuttal. In the interest of having a more complete, thorough record, petitioners' proposed procedural schedule will be adopted.

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<sup>1</sup> In its referral order, the court noted that only the action against Mr. Cohen would be stayed and that the remainder of the action against West Point would continue and not be stayed.

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

It is ordered:

1. The request for institution of a declaratory order proceeding is granted.
2. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. The parties must comply with the Rules of Practice at 49 CFR subchapter B, including 49 CFR parts 1112 and 1114.
3. Petitioners' opening statement is due by December 28, 2009.
4. Horizon's reply statement is due by January 25, 2010.
5. Petitioners' rebuttal statement is due by February 15, 2010.
6. This decision is effective on its service date.
7. Copies of this decision will be mailed to:

The Honorable Ronald S.W. Lew  
United States District Court for the Central District of California  
Western Division  
312 N. Spring Street  
Los Angeles, CA 90012

RE: No. CV 08-6362 RSWL (JTLx)

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary