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SEC

SERVICE DATE – LATE RELEASE OCTOBER 20, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34920

SAVANNAH PORT TERMINAL RAILROAD, INC.–
PETITION FOR DECLARATORY ORDER–
CERTAIN RATES AND PRACTICES AS APPLIED TO CAPITAL CARGO, INC.

Decided: October 20, 2006

On October 6, 2006, the Savannah Port Terminal Railroad, Inc., (SPTR) filed a Petition for Declaratory Order asking the Board to consider issues referred by the Superior Court of Chatham County, in the Eastern Judicial Circuit of the State of Georgia in Capital Cargo, Inc. v. Rail Line, Inc., Savannah Port Terminal Railroad, Inc. and Georgia Ports Authority, Civil Action No. CV05-0755-AB. At issue in the court proceeding is whether Capital Cargo, Inc. (Capital) is obligated for \$149,648 in demurrage and related charges that allegedly accrued from April 1, 2003, through May 31, 2005.

The petition asks that the Board determine that Capital failed to provide a written notice of objection to the demurrage charges as provided in governing tariffs for the months of April 2003 through March 2005 and therefore is precluded from raising any defenses for nonpayment of those charges. The petition also asks the Board to determine that the demurrage charges accrued for April and May 2005 were reasonable, applying the facts of the case, and, alternatively, for the period of April 2003 through March 2005 should the Board find that Capital is not preempted from challenging the reasonableness of those charges.

On October 16, 2006, Capital filed a motion for an extension of time until November 30, 2006, to file a response to the petition for declaratory order, asserting that the petition raises substantial and complex issues relating to contracts governing the parties' relationship and the applicability and interpretation of tariffs. The motion indicates further that Capital's counsel is new to the case and requires time to become familiar with the facts and issues in the case.¹ SPTR's counsel has indicated to Board staff that SPTR does not object to the extension request.

¹ Capital's motion incorrectly indicates that its reply to the petition is due on October 22, 2006. The correct reply date is October 26, 2006, which is 20 days from the October 6, 2006 filing date.

The request is reasonable and will be granted. Capital's response will be due November 30, 2006.

It is ordered:

1. Capital's motion for an extension of time for filing a response to the petition for declaratory order is granted.
2. Capital's response is due by November 30, 2006.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary