

SERVICE DATE - OCTOBER 28, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41909<sup>1</sup>

MUENCH-KREUZER CANDLE COMPANY--PETITION FOR DECLARATORY ORDER--  
CERTAIN RATES AND PRACTICES OF SUPERIOR FAST FREIGHT, INC.

STB No. 41910

ISUZU MOTORS AMERICA, INC.--PETITION FOR DECLARATORY ORDER--  
CERTAIN RATES AND PRACTICES OF SUPERIOR FAST FREIGHT, INC.

STB No. 41960

CONAGRA, INC.--PETITION FOR DECLARATORY ORDER--  
CERTAIN RATES AND PRACTICES OF SUPERIOR FAST FREIGHT, INC.

STB No. 41961

VALMONT INDUSTRIES, INC.--PETITION FOR DECLARATORY ORDER--  
CERTAIN RATES AND PRACTICES OF SUPERIOR FAST FREIGHT, INC.

STB No. 41962

BIC CORPORATION--PETITION FOR DECLARATORY ORDER--  
CERTAIN RATES AND PRACTICES OF SUPERIOR FAST FREIGHT, INC.

Decided: October 20, 1997

By order served September 3, 1997, we ordered the parties in these proceedings to show cause why the proceedings should not be dismissed based on our decision in Infinity Systems, Inc.--Petition for Declaratory Order--Certain Rates and Practices of Superior Fast Freight, Inc., No. 41911 (July 2, 1997) (Infinity).

Our Infinity decision concluded that the shippers are not liable for the undercharges sought by Superior Fast Freight, Inc. (SFF) because (1) SFF did not act as a motor carrier as to the transportation at issue, but rather acted as a freight forwarder, whose charges are not subject to the filed rate doctrine, and (2) even if SFF had been acting as a motor carrier, it had no

effective tariff on file to which the filed rate doctrine could apply. Therefore, we indicated that unless SFF demonstrates that

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<sup>1</sup>/ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

these cases involve material facts that would render Infinity inapplicable, they would be dismissed.

Respondent SFF filed two responses to the show cause order. In the first, after asserting that Infinity was wrongly decided, it asked us not to rule on these cases until the court considering its bankruptcy case held a hearing on the matter. After the court held the hearing on September 24, 1997, SFF filed another response, simply asking the Board to await a letter from the court asking for clarification of the Infinity decision.

Neither of these pleadings addresses whether the facts in these cases are materially different from the facts present in Infinity. Therefore, we find that these cases are governed by Infinity, and that SFF acted as a freight forwarder as to these shippers and, in any event, did not have an effective tariff on file as to shipments for these shippers. Under these circumstances, these shippers are not liable for the undercharges sought.

*It is ordered:*

1. These proceedings are dismissed.
2. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary