

SURFACE TRANSPORTATION BOARD

DECISION

STB SECTION 5a APPLICATION NO. 70 (AMENDMENT NO. 11)

WESTERN MOTOR TARIFF BUREAU, INC.--AGREEMENT

Decided: April 18, 1997

Western Motor Tariff Bureau, Inc. (WMTB), has filed a petition seeking approval of minor amendments to its collective ratemaking agreement, which was approved under former 49 U.S.C. 10706(b), the predecessor to 49 U.S.C. 13703.¹ The amendments would modify WMTB's bylaws as follows: (1) Article II, Section 3 reduces the notice members must provide to WMTB upon their withdrawal from the rate bureau from 60 days to 45 days; (2) Article II, Section 4 reduces the notice period for termination for failure to pay dues and fees from 90 days to 45 days after the member has received notice of delinquency and upon expiration of the 30-day period to correct the delinquency; (3) Article II, Section 7 adds a new section to divide the membership into two classes of carriers, "mainland membership" and "Hawaii membership," to allow for redemption, partial liquidation, and dissolution in conformity with state law;² (4) Article IV, Section 1 provides that, in addition to meetings held in Los Angeles County, CA, annual meetings of the membership may be held in Hawaii; and (5) Article XIV, Section 1 provides for separate fee arrangements for member carriers performing intrastate service within the State of California.³

In addition, in order to conform to state law applicable to nonprofit membership corporations, a new Article XVII would be added to place in the corporate bylaws the provisions of state law applicable to partial or complete liquidation and corporate dissolution. Article XVII contains the following sections: (1) Section 1 provides the procedures for the adoption of a plan of partial redemption or partial liquidation of corporate assets upon recommendation of the board of directors and an affirmative membership vote; (2) Section 2 provides the procedures for the adoption of a plan for complete liquidation and dissolution upon the recommendation of the board of directors and an affirmative vote of the membership; and (3) Section 3 provides the formula for distribution to member carriers which were members during the 12-month period prior to the adoption of a plan of

¹ See ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (effective Jan. 1, 1996).

² This addition has no effect on the collective ratemaking activity conducted by WMTB members, but provides for orderly procedures in the event that circumstances call for action under new Article XVII, *infra*.

³ WMTB has separate antitrust immunity under an agreement approved by the State of California. However, there are legislative proposals pending in the California legislature that may affect regulation in California. The amendment to Article XIV would permit fee flexibility depending on the action taken by the California legislature and/or the California Public Utilities Commission.

partial or complete liquidation.⁴ WMTB asserts that the amendment has no effect on collective activity.

We tentatively conclude that the minor modifications proposed in the amendments will have no impact on WMTB's previously approved procedures for collective ratemaking and are consistent with the statutory requirements of 49 U.S.C. 13703. Accordingly, WMTB's petition will be tentatively granted.

This decision will become effective automatically at the close of the comment period if no timely filed adverse comments are received. If adverse comments are received, the comments and any reply will be considered, and the Board will issue a further decision.

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

It is ordered:

1. Notice will be published in the *Federal Register*.
2. Unless timely filed adverse comments are received, WMTB is authorized to amend its bylaws as proposed.
3. Comments are due May 30, 1997.
4. Replies are due June 24, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

⁴ Under the partial or complete liquidation formula, the board of directors ascertains rate bureau revenues paid by members from 1985 to the date of liquidation. The revenue paid is multiplied by the number of years the carrier was a member (qualified revenue). The ratio of the qualified revenue paid by the mainland member to the total revenue and the ratio of the qualified revenue paid by the Hawaii member to total revenue is established. This ratio determines the ratio of rate bureau assets allocable to the two classes of membership and to individual members. An accounting of the fair market value of the rate bureau's assets is undertaken in the event that there is to be partial or complete liquidation. Distribution to the membership will then be based on the established ratios.