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SEC

SERVICE DATE - LATE RELEASE NOVEMBER 8, 1996

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41909

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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 PATES 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: November 4, 1996

These proceedings are related to Docket No. 41911, Infinity Systems, Inc.--Petition for Declaratory Order-- Certain Rates and Practices of Superior Fast Freight, Inc. (Infinity), in that they arise out of the efforts of Superior Fast Freight, Inc. (SFF or respondent), to collect undercharges for certain transportation services, raise the same issues, and are before the Board on referral from the United States Bankruptcy Court for the Central District of California. Specifically, in these proceedings and in Infinity, the Board was requested by the court to determine (1) whether SFF operated as a freight forwarder or as a motor carrier, and (2) whether SFF's failure to adopt the tariffs of its predecessor results in the absence of a filed tariff on which to support its alleged undercharge claims (threshold issues). The court also referred unreasonable practice, rate unreasonableness, and other regulatory defenses asserted by petitioners to the Board for consideration.

Consistent with the action of the court, the Board acknowledged Infinity to be the lead docket for related undercharge proceedings. By decision in Infinity served October 30, 1996, the Board recognized that the threshold issues may be dispositive of all of the related proceedings and established a two-phased, bifurcated procedural schedule under which the two threshold issues (SFF's status as a freight forwarder or a motor carrier and the impact of SFF's failure to adopt the tariffs of its predecessor on its ability to pursue its asserted undercharge claims) would be considered first. The Board noted in the decision that if, after disposition of either or both of the threshold issues,

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

it became necessary to consider unreasonable practice, rate reasonableness, or other issues, a

STB No. 41909 et al.

second procedural phase allowing for further development of the record would be established and a new procedural schedule would be issued.

Because resolution of the threshold issues to be considered in Infinity may be dispositive of these proceedings, Board action in these proceedings will be held in abeyance pending disposition of the threshold issues in Infinity. Upon disposition of the threshold issues in Infinity, petitioners may request further Board action in their respective proceedings.

It is ordered:

1. These proceedings will be held in abeyance pending resolution of the threshold issues in Infinity.
2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

