

SERVICE DATE - APRIL 15, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42085

CLIMATE MASTER INC. AND INTERNATIONAL ENVIRONMENTAL, INC.  
— PETITION FOR DECLARATORY ORDER —  
CERTAIN RATES AND PRACTICES OF TRANS TECH SOLUTIONS, INC., F&M BANK,  
AND MIDLAND TRANSPORTATION CO.

Decided: April 15, 2004

On February 10, 2004, Climate Master, Inc. (Climate), and International Environmental, Inc. (International) (collectively Petitioners), filed a petition for declaratory order. They request that the Board find that the attempt by Trans Tech Solutions, Inc. (Trans Tech), and F&M Bank to collect additional freight charges from Petitioners on behalf of Midland Transportation Co. (Midland) is not permissible under 49 U.S.C. 13710(a)(3)(A), because the bill for additional charges was not issued within 180 days of receipt of the original bills.<sup>1</sup> Alternatively, Petitioners request that the Board find it is an unreasonable practice for Trans Tech and F&M Bank to disregard a valid contract between Petitioners and Midland and attempt to collect the difference between the discounted freight charges and the original charges. Finally, petitioners request that, if the Board does not find an unreasonable practice, it hold that the rates charged by Midland were unreasonable. The petition for declaratory order will be treated as the opening statement in this proceeding.

This matter arises out of an action in the United States Bankruptcy Court for the Northern District of Iowa, Western Division, in which Midland filed a Voluntary Petition for Bankruptcy under Chapter 11 of the United States Bankruptcy Code on June 26, 2001. It was subsequently converted to a Chapter 7 Bankruptcy. The court granted petitioners' motion for relief from the bankruptcy stay, thereby allowing the petitioners to file before the Board. At the time of the shipments at issue, Midland was an interstate motor carrier that provided freight services for petitioners.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or to remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission, have exercised broad authority in handling such requests, considering a number of factors, including the significance to the industry and the ripeness of the controversy.

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<sup>1</sup> F&M Bank, a creditor of Midland and owner of the accounts at issue, hired Trans Tech to perform an audit of Midland's freight bills.

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding is instituted to resolve the controversy here. The Board will resolve this matter pursuant to the modified procedural rules at 49 CFR 1112. A procedural schedule is set forth below.

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

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure rules, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice at 49 CFR subchapter B, including parts 1112 and 1114.

2. The procedural schedule for this proceeding is as follows:

May 17, 2004

Reply statement due.

June 1, 2004

Rebuttal statement due.

3. This decision is effective on the date of service.

4. A copy of this decision will be served on: Melissa Bozeman, VP-Finance, Trans Tech Solutions, Inc., Administrative Dept., Post Office Box 890, Madison, TN 37116-0890, Re: Midland Transportation Co.

5. A copy of this decision will be mailed to:

The Honorable William L. Edmonds, Bankruptcy Judge  
United States Bankruptcy Court  
Northern District of Iowa  
320 6th Street, Federal Building  
Sioux City, IA 51101  
RE: Chapter 7 Bankruptcy No. 01-02613

Wil L. Forker, Trustee  
505 Sixth Street, Suite 530  
Sioux City, IA 51101.  
RE: Chapter 7 Bankruptcy No. 01-02613

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary