

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42082

MARTIN GAS SALES, INC.—PETITION FOR DECLARATORY ORDER—CERTAIN RATES
AND PRACTICES OF UNION PACIFIC RAILROAD COMPANY

Decided: April 29, 2004

On July 7, 2003, Martin Gas Sales, Inc. (Martin), a wholesaler of asphalt, filed a petition for a declaratory order to resolve a dispute over demurrage charges assessed by the Union Pacific Railroad Company (UP) for shipments of asphalt received at Martin's bulk facility in the Neches Industrial Park, near Beaumont, TX. This matter is on referral from the United States District Court for the Eastern District of Texas, Tyler Division, in Union Pacific Railroad Company v. Martin Gas Sales, Inc., Civil Action No. 6:02-cv-180 (referral order dated May 27, 2003). The court proceeding was initiated by UP to collect from Martin \$737,150 in demurrage charges, which allegedly accrued from December 2000 to February 2002. UP alleged that Martin failed to timely return rail cars pursuant to the provisions of UP's Rail Car Demurrage Tariff 6004. Martin filed a counterclaim alleging that the demurrage charges are: (1) unreasonable and violate 49 U.S.C. 10701, 10702(1), and 10704(a)(1); and (2) an unreasonable practice in violation of 49 U.S.C. 10702(2) and 10704(a)(1). The court referred the matter to the Board to consider the issues raised in Martin's counterclaim and stayed its proceedings pending Board action on the referral. Martin, in its petition, requested that a procedural schedule, including a reasonable period for discovery, be established.

By decision served on November 14, 2003, the Board instituted a declaratory order proceeding and established a procedural schedule. Under the procedural schedule, as modified by decisions served on January 27, 2004, February 26, 2004, and March 26, 2004, Martin's opening statement was due on April 28, 2004. On April 28, 2004, Martin filed a motion requesting an extension until May 12, 2004, to file its opening statement.

In support of its extension request, Martin states that the parties are in the process of formalizing a settlement. According to Martin, UP does not oppose the request for an extension. Under the circumstances, the request is reasonable and will be granted.

It is ordered:

1. The due date for Martin's opening statement is extended to May 12, 2004.

2. The due date for UP's reply to Martin's opening statement is extended from May 28, 2004, to June 11, 2004.
3. The due date for Martin's rebuttal is extended from June 14, 2004, to June 28, 2004.
4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary