

29284  
DO

SERVICE DATE - JANUARY 27, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42031

PARRISH & HEIMBECKER, INC. --  
PETITION FOR DECLARATORY ORDER

Decided: January 25, 1999

By petition filed May 20, 1998, Parrish & Heimbecker, Inc. (P&H), an operator of a grain shipping facility at Brown City, MI, seeks a declaratory order to resolve certain claims involving a surcharge sought to be collected by CSX Transportation, Inc. (CSXT), a Class I rail carrier subject to the Board's jurisdiction, in a federal court action.<sup>1</sup> The issue on which P&H seeks a Board determination is whether CSXT may impose a surcharge on P&H in connection with grain shipments, some of which are shipped under endorsed "non-recourse" clauses, from P&H facilities to purchasers of grain that are transported under rail transportation contracts between CSXT and those purchasers. CSXT has not responded.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), 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. See Delegation of Authority—Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989). There, the ICC noted that petitions for issuance of a declaratory order premised on referral from a federal court are routinely accepted.<sup>2</sup>

Under the Board's authority in 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding is instituted to resolve the controversy here. The matter has been referred by a federal court and otherwise appears to be within our primary jurisdiction. The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR 1112.1, et seq.

P&H has requested that the parties simultaneously submit opening statements of fact and

---

<sup>1</sup> The court proceeding was instituted by CSXT in the United States District Court for the Eastern District of Michigan, Southern Division, in Case No. 96-75431, CSX Transportation, Inc. v. Parrish & Heimbecker, Inc., to collect approximately \$190,000 from P&H.

<sup>2</sup> It then delegated the responsibility for taking initial action in disposing of such matters to the Director of the Office of Proceedings. See 49 CFR 1011.8(c)(6).

argument and reply statements of fact and argument. It appears, due to the extensive factual record previously developed before the court, that there are unlikely to be disputes on any material issues of fact here. Thus, P&H's abbreviated schedule seems reasonable. An appropriate procedural schedule is set forth below.

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

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.
2. Opening statements are due February 26, 1999.
3. Reply statements are due March 18, 1999.
4. This decision is effective on the service date.
5. A copy of this decision will be served on:

United States District Court for the Eastern  
District of Michigan, Southern Division  
(Attn: District Judge Nancy C. Edmunds)  
(RE: No. 96-75431)  
U.S. Courthouse  
231 West Lafayette  
Room 211  
Detroit, MI 48226

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary