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SERVICE DATE – OCTOBER 13, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 656 (Sub-No. 1)

INVESTIGATION INTO THE PRACTICES OF THE NATIONAL CLASSIFICATION  
COMMITTEE

Decided: October 12, 2005

As part of the current cycle of review under 49 U.S.C. 13703(c), the Surface Transportation Board is instituting this separate investigation to develop a more thorough record regarding charges of abuse of market power by the National Classification Committee (NCC), in its practices generally, and particularly in connection with its action changing the classification of lighting products and fixtures in 2004. Numerous shippers and organizations involved in shipping these products have submitted papers in STB Ex Parte No. 656 criticizing the process used by NCC in changing the classification, and opposing any further extension of antitrust immunity for the bureau agreement of NCC. Our investigation will proceed expeditiously, and upon the close of this record, we will issue a decision in STB Ex Parte No. 656 addressing all issues raised in these proceedings.

BACKGROUND

Under 49 U.S.C. 13703, the Board may authorize motor carriers (including motor carriers of passengers and household goods) to enter into “bureau” agreements for the collective establishment of rates, fares, classifications, and certain ancillary activities. Board authorization immunizes such activities from the antitrust laws. See 49 U.S.C. 13703(a)(6). The collectively set rates are sometimes called “class rates” because they are developed for classes of commodities with similar transportation characteristics. The commodity classes are collectively developed under Board authority by the NCC, which does not set rates.

In its prior periodic review conducted under 49 U.S.C. 13703(c), the Board renewed the antitrust immunity of all of the extant motor carrier bureaus, subject to conditions. The conditions pertaining to NCC required that bureau to amend its agreement to provide: (1) shipper access to specified additional information at an earlier stage in the classification process; (2) resolution of classification dockets by a single, expedited decision; and (3) the right to seek an initial review of that decision by a neutral arbitrator.<sup>1</sup>

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<sup>1</sup> See National Classification Committee – Agreement, 3 S.T.B. 917 (1998), 4 S.T.B. 496 (2000), and slip ops. served Nov. 20, 2001, Mar. 27, 2003, Oct. 16, 2003, and Dec. 10, 2003.

In STB Ex Parte No. 656, the Board is conducting its current periodic review of all of the motor carrier bureau agreements that it has previously approved, including NCC's agreement. In the notice commencing that proceeding, the Board sought comments from all of the bureaus and from any interested persons on how the bureau agreements have been working in light of the changes imposed during the prior review proceedings. The record in STB Ex Parte No. 656 is now closed.

NCC was the only bureau attracting individual shipper opposition.<sup>2</sup> Numerous comments opposing renewal of that bureau's antitrust immunity were submitted. Almost all of the comments from businesses were from entities connected with the business of producing or selling lighting or lighting fixtures. Most of those comments ask that NCC's agreement be changed to give shippers an equal vote with carriers in approving classification changes if the collective establishment of classifications is to continue to receive antitrust immunity from the Board. In most instances, it appears that the lighting industry's opposition was precipitated by an increase in the classification ratings for lamps and lighting fixtures that NCC put into effect in 2004. An increase in a classification rating generally has the effect of shippers paying more for movement of a product than they had been paying.

In addition to the comments from persons connected with the lighting industry, the National Small Shipments Traffic Conference and the National Industrial Transportation League (NASSTRAC/NITL) jointly filed comments in opposition to the renewal of NCC's agreement. NASSTRAC/NITL maintain that, despite the reforms imposed by the Board during the prior review cycle, NCC's procedures continue to be biased toward increases in classification ratings. To eliminate the alleged bias against shippers in the event that the Board decides to continue antitrust immunity for NCC, NASSTRAC/NITL propose that the Board: (1) change the density guidelines adopted by NCC to eliminate an alleged tendency to penalize movements of light density products, such as light bulbs (those organizations maintain that the classification system reflects a "non-linear" relationship between density and weight, whereby ratings rise more quickly as density falls than they fall as density rises); (2) reconsider the proposal, rejected in the prior review cycle, to allow shipper voting participation in NCC proceedings; (3) take steps to ensure that shippers know the precise issues involved in classification proceedings; and (4) take whatever other steps may be necessary to further facilitate shipper participation. As an alternative to shipper voting participation in NCC actions, NASSTRAC/NITL suggest formation under Board auspices of an advisory panel of shippers and carriers to consider additional reforms.

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<sup>2</sup> In addition, Congressmen Harold Ford, Bart Gordon, Pete Sessions, and Jim Cooper; and Senator Kay Bailey Hutchison sent letters expressing views on the Board's consideration of the question of continued antitrust immunity for NCC.

## DISCUSSION AND CONCLUSIONS

We are instituting this investigation proceeding to give interested persons the opportunity to develop a more complete record regarding the renewal of antitrust immunity for NCC's bureau agreement, and to give NCC an opportunity to respond. As noted, a substantial number of shipper interests in the lighting industry have voiced strong opposition to such renewal, claiming that NCC, under its bureau agreement, has abused its market power through its process of raising the classification for lighting products. These shippers and other interested parties may use this investigation to address the issue of the possible abuse of market power.

As discussed above, the Board imposed conditions as part of its last renewal of antitrust immunity for the NCC bureau agreement. We are particularly interested in receiving detailed comments on how those conditions are working, and, if persons did not avail themselves of any of those protections, why they did not do so.

To allow for a fair and expeditious proceeding, we will make opening comments from those opposing the renewal of NCC's bureau agreement due 30 days from the issuance of this decision. Reply comments from NCC will be due 20 days after that date. Board staff will post all comments on the Board's website<sup>3</sup> shortly after receipt so interested parties will have access to all comments filed without having to engage in cross service. Parties must, however, furnish a copy of their comments to any other participant on request. Once this record is closed, the Board will proceed to issue a decision in STB Ex Parte No. 656 addressing all issues raised in these proceedings.

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

It is ordered:

1. Notice of this proceeding will be published in the Federal Register.
2. Opening comments from persons opposing renewal of NCC's bureau agreement are due by November 18, 2005.
3. Reply comments from NCC are due December 8, 2005.

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<sup>3</sup> [www.stb.dot.gov](http://www.stb.dot.gov)

4. This decision will be served on all persons on the service list for STB Ex Parte No. 656.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary