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SERVICE DATE - SEPTEMBER 3, 1997

EB

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41909¹

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 RATES 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: August 21, 1997

The parties are ordered to show cause why these cases should not be dismissed based on our decision in *Infinity Systems, Inc.-Petition for Declaratory Order--Certain Rates and Practices of Superior Fast Freight, Inc.*, No. 41911 (July 2, 1997) (*Infinity*), without prejudice to their being refiled in the event that the court requests further involvement on our part.

These proceedings, like *Infinity*, arise out of the efforts of Superior Fast Freight, Inc. (SFF or respondent) to collect undercharges for certain transportation services. Moreover, they raise issues identical to those that were resolved in that decision.

Infinity came before the Board when the United States Bankruptcy Court for the Central District of California stayed all SFF adversary proceedings to allow us to rule on certain threshold issues. In doing so, the court recognized that there were issues of fact and law common to all of SFF's attempts to collect undercharges. It designated *Infinity* as the lead case for purposes of resolving those common threshold issues.

In staying all of the adversary proceedings, the court recognized that resolution of the threshold issues in *Infinity* could control the disposition of other adversary proceedings. In particular, it noted the possibility that a determination by the Board that SFF was operating as a freight forwarder, rather than a motor carrier, could essentially eliminate SFF's ability to

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

collect undercharges. Nevertheless, the court allowed parties other than *Infinity* to file their own complaints or petitions with the Board. Petitioners in these proceedings did so. Realizing that resolution of the threshold issues to be

considered in *Infinity* might be dispositive of these proceedings, we held them in abeyance pending disposition of *Infinity*.

In our *Infinity* decision, we found, based on the record before us in that case, that the shippers are not liable for the undercharges sought by SFF because (1) SFF did not act as a motor carrier as to the transportation at issue, but rather acted as a freight forwarder, whose charges are not subject to the filed rate doctrine, and (2) even if SFF had been acting as a motor carrier, it had no effective tariff on file to which the filed rate doctrine could apply. That decision is administratively final.

Consistent with the bankruptcy court's designation of the *Infinity* case as the lead case for resolving the threshold issues, and considering that the threshold issues have been resolved by the Board in *Infinity*, we conclude that, unless the facts in these cases are substantially different from those in *Infinity*, there is no need for further processing of these cases. Therefore, unless SFF demonstrates, within 30 days, that these cases involve material facts that would render *Infinity* inapplicable, we intend to dismiss these cases on the basis of the *Infinity* ruling, without prejudice to their being refiled should the court request further involvement on our part.

The parties will be given 30 days in which to show cause why these cases should not be dismissed.

It is ordered:

1. Any party to these proceedings that opposes dismissal of the proceeding to which it is a party shall, within 30 days of the service date of this order, show cause why that proceeding should not be dismissed.

2. Responses to any such pleading opposing dismissal may be filed within 50 days of the service date of this order.

3. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary