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SEC

SERVICE DATE - SEPTEMBER 24, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB No. 41999

PHILIPS LIGHTING CO.—PETITION FOR DECLARATORY ORDER—
CERTAIN RATES AND PRACTICES OF J. K. HUTCH, INC.

Decided: September 19, 1997

This proceeding arises out of undercharge claims brought by J.K. Hutch, Inc. (Hutch) against Philips Lighting Co. (Philips). The matter is before the Board on referral from the Superior Court of New Jersey, Law Division, Somerset County, in *J.K. Hutch, Inc. v. Philips Lighting Co.*, Docket No. SOM-L-408-96 (referral order dated March 7, 1997).

In a filing submitted May 23, 1997, Hutch stated that it is withdrawing its undercharge claims against Philips based on its filed tariff rate. It moved to proceed on undercharge claims premised on alleged shipper fraud.

On June 23, 1997, Philips responded that it will continue to challenge Hutch's undercharge claims, asserting that the same statutory defenses that will enable it to challenge Hutch's filed rate undercharge claim are available for its use in challenging other types of undercharge claims.

In a reply filed July 10, 1997, Hutch reiterated its request to limit the proceeding to undercharges resulting from shipper's alleged fraud.

In a decision served July 30, 1997, the Board indicated that its jurisdiction over this matter is questionable in view of Hutch's withdrawal of its filed rate undercharge claim. The Board noted that Hutch's remaining claim based on allegations of fraud in connection with billings for shipments under a contract may be resolved by the court without a determination by the Board. The Board then directed the parties to show cause why it should not dismiss this proceeding.

Neither party has responded to the show cause directive. By their silence, we must conclude that the parties agree that the issues may be resolved without a determination by the Board. Therefore, this proceeding will be dismissed.

It is ordered:

1. This proceeding is dismissed.
2. This decision is effective on the date served.
3. A copy of this decision will be mailed to:

The Honorable Victor Ashrafi
Superior Court of New Jersey
Law Division, Somerset County
P. O. Box 3000
Somerville, NJ 08876

Re: Docket No. SOM-L-408-96

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary