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Expedited Action Requested

BEFORE
THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO 656
MOTOR CARRIER BUREAUS—
PERIODIC REVIEW PROCEEDING

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PETITION FOR MODIFICATION OF
DECISION EFFECTIVE DATE

Household Goods Carriers'
Bureau Committee

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Dated: May 30, 2007

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Comes now the Household Goods Carriers' Bureau Committee (HGCBC, Bureau or Petitioner), a standing autonomous committee of the American Moving and Storage Association, Inc (AMSA), and, pursuant to 49 C F R. § 1115.5, petitions the Board to modify and extend the September 4, 2007, effective date of its decision served in this proceeding on May 7, 2007. Petitioner respectfully requests that the effective date of the Board's decision be modified and extended to and including October 4, 2008. In support thereof, HGCBC respectfully states as follows.

HGCBC operates pursuant to a collective ratemaking agreement approved in Household Goods Carriers' Bureau Committee – Agreement, STB Section 5a Application No. 1. That Agreement is embraced by the Board's May 4, 2007, decision in this proceeding. In accordance with the provisions of its Agreement, HGCBC publishes and maintains collectively established tariffs on behalf of 2,388 participating motor carriers licensed by the Federal Motor Carrier Safety Administration (FMCSA) to engage

in the interstate transportation of household goods¹ These carriers are parties to the HGCBC Agreement.

For nearly 7 decades, HGCBC carriers have relied on the collective ratemaking process conducted under the Bureau's approved Agreement as the most expedient and efficient means to meet their statutory tariff responsibilities to cover the broad range of transportation services they provide to the public. Notwithstanding this decades of service to the moving industry and the public it serves, the September 4, 2007, effective date of the Board's decision will require the dismantling and replacement of the current industry-wide tariff system in a period of only 120 days which nearly exactly coincides with the moving industry's busy moving season (May 15 to September 30) when, as discussed infra, more than 50 percent of the annual number of household goods shipments are transported in this 4-1/2 month period. It is truly ironic and extremely unfortunate that the 120 day time period set by the Board for industry compliance with its decision falls within the current busy moving season. HGCBC submits that this time frame is wholly inadequate to ensure compliance with applicable legal requirements through an orderly transition to an individual carrier tariff system for nearly 2,400 motor carriers. More importantly, the potential for carrier service failures this moving season is real and, in that event, the shipping public will bear the consequences of those failures

As the Board is well aware, motor carriers of household goods, unlike the vast majority of all regulated interstate motor carriers of property, continue to be subject to mandatory rate reasonableness and tariff publication provisions of the Interstate

¹ The Board's decision (p 19) notes that "a large number of household goods carriers . . . 1,988 . . ." were parties to HGCBC tariffs in 2005. The current number (2,388) indicates that an additional 400 motor carriers also rely on the HGCBC collective tariff system. The number of such carriers is continually increasing.

Commerce Act, 49 U.S.C. §§ 13701 and 13702. Elimination of collective ratemaking antitrust immunity will not affect those requirements. Although it is not clear from the Board's decision, it would appear that, each and every HGCBC tariff participant will be required to develop and implement a new individual tariff system to meet its statutory obligations. This requires a system that ensures compliance with the requirements of the Board's tariff regulations for household goods carriers, 49 C.F.R. Part 1310, and that makes tariffs available for inspection by the Board and shippers upon reasonable request.²

As the Board is also well aware, household goods carriers provide interstate transportation services in the broadest sense of that term and routinely perform or provide a variety of origin and destination services for roughly 1.4 million households each year (packing, unpacking, loading, unloading, shuttle, third party services), in addition to storage-in-transit and linehaul transportation services. The rates, rules, and charges governing each of those services must be contained in the carriers' tariffs. Likewise, the terms and conditions underlying the carriers' services and shipper elections of limitations of carrier liability for loss or damage pursuant to STB released rates authority must also be contained in their tariffs. The existing collective ratemaking process has enabled HGCBC tariff participants to comply with their statutorily imposed tariff requirements while also offering the public a pricing system that provides a degree of uniformity, without interfering with the carriers' right of independent action. To fully understand the impact of the Board's decision on the moving industry's tariff system, a description of

² HGCBC has developed explicit tariff interpretation advisories to its tariff participants to assist them when responding to shipper requests for tariff advice or interpretations.

the HGCBC tariffs that must be dismantled as a result of that decision is contained in the appended Attachment.

Breaking the whole into nearly 2,400 separate parts means that each HGCBC tariff participant, from the largest to the smallest, must now determine how it can meet its tariff obligations in a manner that will comport with its operating and administrative functions while continuing to respond to its existing and future customers' service requirements.³ The task at hand will be monumental. The following discussion provides short descriptions of several areas involving the HGCBC and the carriers' operations as impacted by the Board's decision.

The first order of business for the HGCBC, of course, will require a thorough legal analysis of operating in a new environment in order to provide guidance to the parties to the rate agreement on the parameters of permissible conduct and activities that are prohibited under the antitrust laws.⁴ Such guidance will be essential to each carrier's determination of the course it will take in meeting its individual tariff publication requirements. This is no small feat. In addition to the advice they will obtain from the HGCBC, individual carriers must consult with their legal counsel and regulatory compliance, pricing, operations, sales, information technology, administrative, and

³ HGCBC data indicates that nearly 900,000 interstate household goods shipments will be transported between now and the end of the year. A major portion of those shipments have already been booked and priced for transportation in the May 15 to September 30, 2007, moving season according to the HGCBC tariffs. It should also be borne in mind that the same HGCBC carriers are and will be engaged in the intrastate and local transportation of household goods shipments during this same time period. Their numbers add exponentially to the number of interstate shipments that will be transported during the balance of the year.

⁴ As the Board's decision suggests (Decision, p. 25), this may entail a request to the Department of Justice for review of proposed procedures pursuant to 28 C.F.R. § 50.6. Realistically, the DOJ review process will take upwards of one year or more to complete.

executive departments to formulate and implement a course of action. This will not only entail the development of new individual tariffs, it will also require that steps be taken to revise shipment estimating, rating and billing procedures which, in turn, will require changes in the carriers' software systems that drive all carrier revenue and accounting systems. Shipping documents such as bills of lading, estimating forms and others related to the tender of goods must also be modified to reflect the application of carrier individual tariffs.

The by-laws of the American Moving and Storage Association related to the HGCBC collective ratemaking process and the HGCBC Agreement must be reviewed and revised to remove all language that authorizes or suggests any agreement among carriers to engage in conduct prohibited by the antitrust laws.⁵ This may also entail a restructuring of the Association. The amended by-laws must then be submitted for approval by the AMSA membership or Board of Directors at a meeting called for that purpose.

Federally mandated carrier leases with approximately 30,000 owner-operators must be reviewed to determine whether their compensation provisions based on shipment revenue will be impacted by the carriers' individual tariffs. Depending on the results of the carriers' review, amendments may be necessary to ensure that there is no reduction in the independent operators' compensation. Any proposed amendments would be circulated to the carriers' owner-operators for their approval. This is a particularly sensitive area given the extreme shortage of owner-operators being experienced by the moving industry.

⁵ See Section 5a Application No. 1 (Amendment No. 9), Household Goods Carriers' Bureau, Inc.—Agreement (Decided June 25, 1993)

HGCBC carriers will also be required to develop and institute extensive training programs to retrain those personnel involved in regulatory compliance, pricing, sales, operations and administration functions. Carriers are in no position to institute these programs during the current moving season which, as previously noted, nearly exactly coincides with the 120 day period that will elapse between now and the September 4 effective date of the Board's decision. All carrier personnel and operating resources are fully engaged in meeting the service commitments they have made to those shippers that will rely upon their services during this moving season. In addition, many carriers will be required to hire individuals that possess tariff compilation and compliance expertise to manage their individual tariff process. Others must locate resources to provide this assistance

Due to their limited resources, many HGCBC tariff participants today rely extensively on the Bureau staff to assist them with tariff compilation and compliance issues. Undoubtedly these same carriers and, no doubt many more, will rely on the Bureau staff to assist them with those compliance issues related to their individual tariffs. The Bureau fully expects that it will be inundated with such requests for information and assistance from all of its tariff participants. In fact, this process began immediately after notice of the Board's decision was received by HGCBC tariff participants.

In addition, referring to the tariffs listed in the Attachment, two are exceptions tariffs (STB 104-G and 109-C) containing more than 3,000 individually established exceptions (Independent Announcements) to provisions contained in general application tariffs STB HGB 400-N and STB HGB 300-C. Each of those 3,000 plus tariff items must be melded into the carriers' individual tariffs requiring analysis by the carriers' pricing

departments and consultation with the HGCBC staff following the carriers' publication instructions. This will prove to be an extremely time consuming process.

The industry also faces additional legal challenges in converting from a regulated, collective ratemaking environment to a market comprised wholly of individually established tariffs, rates and charges. In the last month AMSA and several of its largest members were served with two nationwide class action lawsuits claiming that the industry's fuel surcharge as set forth in HGB Tariff 400-N violates the antitrust laws Beach et al. v. Atlas Van Lines, Inc., et al., Case No. 2:07-cv764, (D. S.C., filed March 19, 2007); Moad et al. v. Atlas Van Lines, Inc. et al., Case No. 07cv2506, (N.D. Ill., filed May 4, 2007). Although the defendants believe that these cases are without merit and at most present an issue of rate reasonableness suitable for determination by the Board, the plaintiffs assert that the potential damages are significant. In fact, plaintiffs' counsel in the Beach case claim their economic analysis indicates total damages of \$400 million per year, with a four-year statute of limitations and trebled under the antitrust laws, amounting to \$4.8 billion before attorneys' fees or interest. Thus, HGCBC carriers have a substantial interest in ensuring that they reach the correct conclusions under the antitrust laws going forward.

The ripple effect of the Board's decision will also impact the on-going activities of the FMCSA as it enforces the Consumer Protection Regulations, 49 C.F.R. Part 375, and deals with the problems created by rogue movers, whether they are licensed by FMCSA or not. The importance of the FMCSA enforcement activities cannot be over-emphasized. Their efforts are critical to reducing the impact rogue movers have on consumer shippers that require interstate moving services. FMCSA will be required to

modify its compliance audits to determine whether the carriers being audited have issued individual tariffs and if a tariff has been issued, whether it conforms to the STB tariff publication regulations 49 C.F.R. Part 1310. If a carrier's tariff does not conform or has not been issued, enforcement action will be required. This will involve a degree of expertise FMCSA compliance officials do not currently possess. Obviously, the task of ensuring tariff compliance for thousands of carriers presents a challenging additional responsibility for FMCSA.

CONCLUSION

From the moving industry's perspective, the Board's decision and its attendant requirements could not have come at a more inopportune time. During the current moving season, carriers of household goods are totally consumed with meeting the service requirements of each segment of the moving public they serve (consumers, national account personnel and military and civilian government personnel).

Given the scope of the multiple issues to be addressed and the tasks to be undertaken, it should be apparent that the allotted 120-day period is insufficient to accomplish this work. HGCBC submits that the requested modification of the September 4, 2007, effective date of the May 4, 2007, decision is both essential and reasonable considering the magnitude of the changes dictated by elimination of a tariff system that has operated with antitrust immunity for nearly 70 years. In this connection, it is significant to note that the European Competitiveness Council of the European Union recently repealed antitrust immunity for ocean carriers on trade to and from the EU and

granted the affected carriers a 2-year transition period. The Council's decision was issued on September 25, 2006, with an effective date of October 18, 2008.⁶

Similarly, when Congress deregulated the domestic airline industry in the Airline Deregulation Act of 1978, it directed that the Civil Aeronautics Board terminate its route and rate regulation by January 1, 1983, almost five years after enactment. The CAB completed these tasks within a compressed two-year period.

In the instant case, the Board has consumed more than 2-1/2 years since it heard oral argument on October 27, 2004, to issue a decision which clearly recognizes that its ruling will dismantle the existing moving industry tariff system and requires the establishment of a completely new tariff structure for the industry in just 120 days. Without serious question, the time allowed to "adjust to a new environment" (STB Decision, p.2) is insufficient. In view of these circumstances, the requested extension of time is entirely reasonable and absolutely essential to avoid the real possibility of general carrier non-compliance with the statutory and regulatory requirements mandated by the Board's decision and the potential for serious service failures affecting the shipping public.

For all of the foregoing reasons, HGCBC respectfully requests that the effective date of the Board's May 4, 2007, decision in this proceeding be modified and extended to and including October 4, 2008.

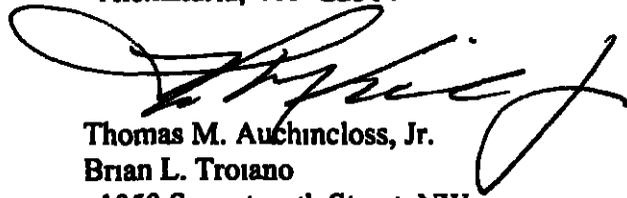
⁶ See VIP White Paper, November 2006, published by The Howland Group and the Delaware River Maritime Enterprise Council.

Respectfully submitted,

Household Goods Carriers'
Bureau Committee



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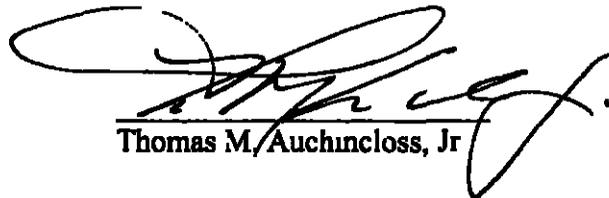
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Dated: May 30, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of May, 2007, served a copy of the foregoing Petition for Modification of Decision Effective Date upon all parties of record in this proceeding by first class mail, properly addressed with postage prepaid



Thomas M. Auchincloss, Jr

ATTACHMENT

HOUSEHOLD GOODS CARRIERS' BUREAU COMMITTEE

TARIFF SERIES

STB HGB 101-G - lists all HGCBC Tariff Participating Carriers and their individual geographic Scopes of Operation (Operating Authority); 107 pages.

STB HGB 107-D - lists all Mileage Guide Participants, including HGCBC Members; includes both common and contract carriers, freight forwarders, passenger carriers, along with pipelines and rail carriers that participate in each of the HGCBC governing distance publications; 152 pages

STB HGB 400-N - contains nationwide rates and charges on all household goods personal effects movements on a general application basis, names linehaul transportation rates and rates for additional services, valuation and storage-in-transit services and related rules and regulations for the transportation of used household goods, 81 pages plus CD-Rom based rating software.

STB HGB 104-G - names approximately 2700 individual carrier's exceptions to the general application provisions published in Tariff ICC HGB 400-N; 1200 pages

STB HGB 415-G - Domestic Household Goods (GSA and other Non-military application) Tender; specifies the standardized level of charges upon which the GSA Request For Offers are based; 212 pages

STB HGB 300-C - contains general application nationwide rates for the movement of valuable or delicate articles which require the specialized handling and equipment provided by movers; contains linehaul transportation rates and additional services rates and charges and related rules and regulations, 130 pages.

STB HGB 109-C - names approximately 650 individual carrier's exceptions to the general application provisions published in Tariff ICC HGB 300-C; 280 pages

STB HGB 303-C - contains general application nationwide rates and charges and related rules and regulations for Exhibit and Display trade show shipments for Trade Shows and Exhibitions, 144 pages

STB HGB 700-D - applies to household goods in containers having import or export application; 174 pages

STB HGB 100-G, MILEAGE GUIDE NO. 18 - governing distance tariff; specifies predetermined mileages between more than 70,000 city-pairs and provides a series of maps for reference purposes; 142 pages of atlas-style maps plus CD-Rom based software for determining distances