STB SECTION 5A APPLICATION NO. 118 (SUB-NO. 2), ET AL.[1]

EC-MAC MOTOR CARRIERS SERVICE ASSOCIATION, INC., ET AL.

Decided November 19, 2001

The Surface Transportation Board renews approval of the rate bureau agreements provided that the members of the rate bureaus (1) give "truth-in-rates" notice every time they list rates or otherwise give a rate quote that references a collectively set rate and (2) certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment.

BY THE BOARD:

Under 49 U.S.C. 13703, we will condition our approval of the rate bureau agreements at issue in these proceedings on the requirement that, whenever a member motor carrier offers a rate that is based on or references a bureau-set class rate, it must give a "truth-in-rates" notice to the potential shipper. The notice must prominently disclose the range of discounts that the motor carriers in the rate bureau have provided to shippers. In this way, all shippers will be informed that the benchmark (or list) rates that motor carriers set collectively through rate bureaus are not necessarily the prevailing market rates and that there may be a wide range of discounted rates available. We will also require bureaus to provide, as a condition of membership, that their member carriers may not impose a loss-of-discount penalty for late payment that references or is linked in any way to a bureau-set class rate.

[1] This decision embraces the following other motor carrier bureau applications: *Pacific Inland Tariff Bureau, Inc. — Renewal of Agreement*, Section 5a Application No. 22 (Sub-No. 8); *The New England Motor Rate Bureau, Inc.*, Section 5a Application No. 25 (Sub-No. 9); *Middlewest Motor Freight Bureau, Inc. — Renewal of Agreement*, Section 5a Application No. 34 (Sub-No. 10); *Niagara Frontier Tariff Bureau, Inc.*, Section 5a Application No. 45 (Sub-No. 16); *Southern Motor Carriers Rate Conference, Inc.*, Section 5a Application No. 46 (Sub-No. 21); *Motor Carriers Traffic Association — Agreement*, Section 5a Application No. 55 (Amendment No. 2); *Machinery Haulers Association Inc. — Agreement*, Section 5a Application No. 58 (Sub-No. 4); *Rocky Mountain Motor Tariff Bureau, Inc. — Agreement*, Section 5a Application No. 60 (Sub-No. 11); *Nationwide Bulk Trucking Association, Inc. — Agreement*, Section 5a Application No. 63 (Sub-No. 4); *Western Motor Tariff Bureau, Inc. — Agreement*, Section 5a Application No. 70 (Sub-No. 12); and *Willamette Tariff Bureau, Inc. — Renewal of Agreement*, Section 5a Agreement No. 116 (Sub-No. 1).

BACKGROUND

The members of the various motor carrier rate bureaus are trucking companies. In most cases, the companies that comprise a rate bureau are domiciled in a particular region of the country (regional rate bureaus), and in a few instances, they are trucking companies that haul a particular type of goods (*e.g.*, machinery haulers).

Because their underlying agreements were approved by our predecessor, the Interstate Commerce Commission (ICC), the rate bureaus enjoy antitrust immunity, under 49 U.S.C. 13703(a)(6), to meet and collectively set what are known as "class rates." These class rates, which have come to be known as "benchmark" rates, constitute "list prices" that serve as the basis for discounts that are common throughout the motor carrier industry. In this proceeding, we have sought to improve the process by which the motor carrier rate bureaus collectively set class rates and/or their members use those collectively set class rates as the base point for rate negotiations and quotations.[2] Our efforts have been directed at ensuring that the collective ratesetting process does not skew market pricing or mislead shippers as to the rates prevailing in the market.

We have taken public comment on various occasions and issued various decisions addressing these matters over the past 4 years. Most significantly, in a decision issued in December 1998,[3] we found that collective ratemaking, as it was then (and is still) being administered by the rate bureaus, produces benchmark rates that are unrealistically high. While we recognized that discounts from benchmark rates are widespread, we determined that "not every shipper is in fact in a position to shop for a reasonable and competitive [discount] rate." *1998 Decision* at 931. We concluded that the most effective shipper protection (short of abolishing collective ratemaking entirely) would be to require collectively set class rates to be reduced to prevailing "market" levels, so

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[2] The process of devising a class rate begins with the classification component. Classification is a process by which the commodities shipped by motor carrier are divided into numerically labeled groups, or classes, with similar transportation characteristics. *See* our decision issued simultaneously in *National Classification Committee — Agreement*, 5 S.T.B. 1077 (2001) at 1078 n.3. For each class of commodities, the motor carrier rate bureaus collectively set class rates, which then serve as the baselines from which the member carriers' actual rates charged are derived. Thus, assuming that a widget is one of the commodities found in Class 100, and that the class rate for a 1,000-pound shipment of Class 100 traffic moving 500 miles is $53 per hundred pounds, then a carrier bidding on a 1,000 pound shipment of widgets moving 500 miles would typically offer to haul the traffic at a rate expressed as a certain percentage discount off the $530 class rate "benchmark."

[3] *EC-MAC Motor Carriers Service Assoc., Inc., et al.*, 3 S.T.B. 926 (*1998 Decision*).

that "if a carrier wants to charge a rate above a competitive [discounted] level, it will not be able to justify its charges by reference to an unrealistically high list price set through a governmentally-sanctioned collective ratemaking process." *Id.* at 932.

At the request of several members of Congress, we deferred further action in order to give Congress an opportunity to revisit the statutory provisions relating to motor carrier collective ratemaking. *1998 Decision* at 934. A year later, in Section 227 of the Motor Carrier Safety Improvement Act of 1999, Pub. L. No. 106-159, 113 Stat. 1748 (Dec. 9, 1999) (*1999 Act*), Congress addressed motor carrier rate bureaus. As most pertinent, Congress — which knew that we were in the process of changing the conditions under which rate bureau agreements would be approved — enacted a savings provision stating that, with one exception, nothing in the *1999 Act* "shall be construed to affect any case brought under this section that is pending before the Board as of the date of the enactment of this paragraph."[4] 49 U.S.C. 13703(e)(2).[5]

Accordingly, finding that Congress had in effect ratified our intention to require changes in the existing rate bureau agreements, in a decision issued in February 2000,[6] we denied the requests of various rate bureau interests that we reconsider the *1998 Decision*. Instead, we indicated that we would move forward to develop methodologies to adjust collectively set class rates so that they would reflect the rate norm rather than the exception. We invited rate bureaus and others to propose ways to achieve the goal of reducing these class rates to market levels, so that collectively set class rates would not be misleading. As a possible alternative, we asked whether establishing an automatic minimum discount off unadjusted, collectively set class rates might be a way to achieve our objective.

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[4] The one exception identified by Congress related to a proposal, which we are no longer considering, to permit regional rate bureaus to operate on a nationwide rather than a territorial basis. *See* 49 U.S.C. 13703(d).

[5] In the *1999 Act*, Congress also prospectively changed the 3-year renewal process for the approval of rate bureau agreements, which had been included in the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (Dec. 29, 1995) (*see* former 49 U.S.C. 13703(d)), into a 5-year periodic review process (*see* current 49 U.S.C. 13703(c)(2)). That change, of course, could not affect this proceeding, because this is a continuation of a proceeding that was pending before the Board as of the date of the enactment of the new law. In any event, under section 13703(c)(1), "[t]he Board may review an agreement approved under this section, on its own initiative or on request, and shall change the conditions of approval or terminate it when necessary to protect the public interest."

[6] *EC-MAC Motor Carriers Service Association, et al.*, 4 S.T.B. 503 (2000) (*2000 Decision*).

DISCUSSION

In response to the *2000 Decision*, various motor carrier rate bureaus submitted comments,[7] as did various shipper interests,[8] and two others.[9] None of the parties proposed a specific methodology to determine the level or levels at which class rates should be set so as to reflect prevailing market rates. And, with the exception of Southern, no party provided specific information on actual pricing experience and how such experience could be used to ensure truth in rates.

We do not in this decision need to revisit the rate bureaus' continuing argument that,

absent a finding that each and every class rate is unreasonably high, we lack the statutory authority to order an across-the-board rollback of class rates. Nor do we need to address the continuing argument of some of the shipper interests that rate bureaus serve no purpose and that we should not renew approval of their agreements under any circumstances. Those arguments have been fully addressed in our earlier decisions. Rather, in this decision we address the best way to carry out our goal of protecting the public interest by conditioning continued approval of rate bureau agreements so that the collective ratemaking process facilitates rather than impedes the dissemination of rate options available to shippers.[10]

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[7] Opening comments were filed by: EC-MAC Motor Carriers Service Association, Inc., jointly with the Niagara Frontier Tariff Bureau, Inc., and the Rocky Mountain Tariff Bureau, Inc., and in which New England Motor Rate Bureau, Inc. also joined (collectively, "Four Regional Rate Bureaus"); Middlewest Motor Freight Bureau, Inc., with substantially similar comments submitted by Pacific Inland Tariff Bureau, Inc. ("Middlewest/Pacific Inland"); Motor Carriers Traffic Association, Inc. (MCTA); Southern Motor Carriers Rate Conference, Inc. (Southern); and Western Motor Tariff Bureau, Inc. (Western). Reply comments were filed by: Four Regional Rate Bureaus; Middlewest/Pacific Inland; MCTA; Southern; and Western.

[8] Opening comments were filed by: Halogenated Solvents Industry Alliance, Inc.; Health and Personal Care Distribution Conference, Inc., jointly with National Small Shipment Traffic Conference, Inc. (Shipper Conferences); National Industrial Transportation League (NITL); and Transportation Consumer Protection Council, Inc. (TCPC). Reply comments were filed by: Shipper Conferences; NITL; and TCPC.

[9] Professor Andrew F. Popper renewed his earlier comments, which we discussed in the *2000 Decision* at 510. In addition, Bohman Industrial Traffic Consultants, Inc. submitted comments.

[10] Western and MCTA ask that they be excepted from any requirements we may adopt here. They point out that the shipper complaints have focused on the other bureaus rather than on them. Western also points out that most of its carriers participate principally in joint motor-water movements between the mainland and Hawaii (the "noncontiguous domestic trade"), for which

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1. *Rollback of Class Rates.* In our earlier decisions, we thought that we could best accomplish our objectives by requiring collectively set class rates to be reduced to prevailing competitive levels, with individual rates either discounted below or set at a premium above that "norm." That way, no carrier would be precluded from charging any rate it wished, but every shipper would know where it stood vis-a-vis other shippers by checking how far above or below the norm its rate was set. The rate bureaus, however, note that carriers and shippers have millions of shipping arrangements in place, and they express concern about the substantial transaction costs and disruptions that would result for carriers and shippers alike as they would need to renegotiate their commercial arrangements.[11]

The Shipper Conferences indicate that they have sought to work with the rate bureaus to find common ground, which we appreciate. The Shipper Conferences acknowledge the substantial disruption that would result if the basic framework for doing business were changed. While expressing their preference for abolishing rate bureaus or drastically modifying the way rate bureaus work, the Shipper Conferences also recognize (Opening Statement at 13) that the disruption that would result from a broad rate rollback might outweigh any benefits that could result:

> It is easier for a shipper to compare two carriers' discount percentage bids off the same class rates than to compare two carriers' 500 page rate tariffs, in which each may have some rates that are higher and some rates that are lower than competitors' rates * * *. [W]e are not writing on a clean slate. Much time and effort have gone into adjusting to the status quo. Many deals have been struck, and contracts executed, in the context of motor carrier ratemaking based on discounting off class rates. Simply reducing class rates could necessitate amendments to thousands of contracts to address pricing impacts that were unanticipated by one or both parties.

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tariffs still must be published and filed. MCTA notes that its tariffs essentially track those of Southern.

We will not except Western and MCTA from the requirements we are adopting, which are designed to ensure that class rates are not used in a misleading manner or in an inappropriate way to address late-payment situations. Western's members use class rates as a baseline for discounting, just like the members of the other bureaus (*see* Statement of Robert E. Lewis, filed Apr. 11, 2000, at 2). And, because MCTA concedes that it uses class rates that track those of Southern, MCTA members should be subject to the same restrictions.

[11] The rate bureaus also argue that they would be unfairly disadvantaged in relation to large, nationwide carriers that do not participate in rate bureaus, as the latter would not have to roll back their own, individually set baseline rates and therefore would not have the same transaction costs as the smaller carriers that are members of rate bureaus.

In addition to these broader issues, there is a more immediate concern: how to roll back rates to prevailing "market" levels. The only commenter that has suggested a methodology, the TCPC, proposes what it describes as a simple "statistical analysis of the market based cluster of rates for various traffic lanes" that we would need to periodically conduct to "determine a correction factor" to be applied to existing class rates to reduce them to market level. TCPC Opening Comments at 6. But the process suggested by TCPC does not sound simple to us. The more precise we would try to make such an analysis, the greater the number of commodities and traffic lanes we would need to separately consider, so that ultimately we could annually be reviewing discounts for shipments of thousands of commodities in hundreds of thousands of traffic lanes. Without a readily usable methodology, it would be difficult to implement this approach, even if it did not have the undesirable side effects that we have just described.

Because we are aware of no suitable and readily available methodology, and because of the disruption that a broad class rate reduction order could produce, we will not require broad rollbacks of collectively set rates at this time.

2. *Automatic Minimum Discounts.* In the *2000 Decision*, we indicated that we would also explore the possibility of directing carriers using rate bureau rates to provide for an automatic minimum discount off the collectively set class rates. The idea was to protect less sophisticated shippers and shippers with less leverage from paying above-market rates when a carrier quotes a rate using a bureau-set benchmark.[12] We cautioned that this minimum discount would need to be set at an appropriate level and (in contrast to a default discount) would need to be available to all shippers.[13]

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[12] The automatic minimum discount idea stems from the actions of various rate bureaus in connection with general rate increases (GRIs) that took effect in 1999. Several of the GRIs were protested, and in response to the protests, six of the rate bureaus established discounts of 35% off class rates for any shipper that did not already have a negotiated discount. Another rate bureau, Southern, took a different approach. Southern surveyed its members and determined that the discounts they had negotiated with shippers ranged from 21.2% to 73.3% off the class rate. Southern then established a minimum discount of 20%. Southern's proposed GRI was also established using different criteria and was smaller than the GRIs proposed by the other rate bureaus that year. In contrast to the experience of most rate bureaus that year, no shippers protested the Southern GRI.

[13] The approach that Southern adopted in 1999 produced a default discount that was smaller than 35% but available to all shippers. Under the approach taken by the other bureaus, by contrast, a carrier could avoid the 35% default discount by establishing instead a minimal individual discount of as little as 1% or 2%.

The shippers generally support a guaranteed-minimum-discount requirement. NITL suggests that rate bureaus be required to establish minimum discounts of at least 50% off their class rates that would apply to any shipper under any circumstance. The Shipper Conferences also suggest a minimum across-the-board discount requirement, at a 45% to 50% level. Each of these groups asserts that any lesser discount would not reflect true market rates.

On further reflection, we do not believe we should require automatic minimum discounts for two reasons. First, throughout these proceedings, our objective has not been to prescribe rates, but rather to put into place a mechanism under which knowledgeable shippers and carriers can enter into arm's length transactions that reflect actual market conditions. A minimum discount approach could place us in the position of prescribing rates.[14]

Moreover, we have no confidence that the levels of discounts suggested by NITL and the Shipper Conferences would reflect market conditions and thus achieve our original objectives. The Shipper Conferences suggest a figure that they claim is an average discount figure. But in a market as diverse as the trucking industry, we would expect a broad range of rates and discounts.[15] Moreover, the nature of any average figure is such that approximately half of the discounts offered by bureau members would be greater, and half less, than the average figure. Requiring that no discount be less than the average discount would thus give shippers of some traffic a windfall far beyond what they could expect in competitive market dealings between knowledgeable shippers and carriers.[16] Moreover, such an approach would have a compounding effect over time, as average discounts would become even greater once all of the less-than-

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[14] A minimum discount provision — by setting a ceiling on the actual rate that a carrier could charge — would be quite different from our original proposal to roll back class rates and then permit carriers to set the rates they actually charge as far above or below the "re-based" class rate as they chose.

[15] *See* 49 U.S.C. 13101(2)(D) (Federal policy is "to promote competitive and efficient transportation services in order to * * * allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping * * * public."). An appropriate minimum-discount level could vary for different commodities under different service and market conditions.

[16] As we said in our prior decisions, some shippers may be paying more than they would under a truth-in-rates regime, and thus the average discounts actually offered might be somewhat smaller than they would be under a system in which every shipper knows what all of its competitive options are. But even with every piece of available shipping information at their fingertips, not every shipper would be able to negotiate a discount as steep as the average discount offered today.

average discounts were brought up to the average. Thus, requiring minimum discounts at an average level would not be appropriate.[17]

3. *Truth in Rates*. Our goal throughout these proceedings has not been to require rates to be set at any particular levels, but rather to guarantee that carriers are not able to use the rate bureau process to set above-market class rates and then foist those collectively set class rates onto shippers unaware of the substantial discounts potentially available to others. The objective is to ensure that no shipper ever pays the full undiscounted class rate when that is not the prevailing market rate. The best way to achieve that goal, given the inherent competitiveness of the motor carrier industry, is to require carriers that use the rate bureaus to ensure that the shippers they serve are well informed. Thus, we believe that the public interest requires that rate bureaus provide a means by which all shippers can be informed of the variety of prices potentially available when they receive rate quotations that are based on collectively set class rates.

Accordingly, we will require member carriers, as a condition of participating in collective ratemaking, to provide a truth-in-rates notice each and every time they list rates or otherwise give a rate quote (whether verbally, electronically, or in writing) that references a collectively set rate. The notice must inform the recipient that the class rates are set through non-competitive, collective action by a group of carriers, but that individual carriers actually offer substantial discounts off these class rates to the majority of their shippers. The notice also must inform shippers that they can negotiate for discounts from the class rates, and the notice must publicize, in large print, the range of discounts actually offered by carriers in the rate bureau.

Under this truth-in-rates process, reference to artificially high, collectively set rates should no longer be misleading. Even the occasional shipper will be advised that it can and should shop around to determine the actual prevailing market rate for the shipment(s) for which it needs transportation service.[18]

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[17] Nothing in this discussion, of course, precludes Southern and MCTA from adhering to the minimum 20% discount policy that those bureaus have voluntarily adopted, or the several other bureaus from applying the 35% default discount they adopted, in addition to applying the truth-in-rates notice that we are requiring here.

[18] The shippers complain that even sophisticated shippers can be charged above-market rates when, for example, a customer returns a shipment via a carrier with which the original shipper (now the receiver of the returned goods) has not negotiated a discount for such return shipments. But the truth-in-rates notice should at a minimum alert all motor carrier customers to the fact that the rate quoted may not be the prevailing market rate. To avoid a situation where a customer that is not paying for the transportation may not care what rate is charged, the original shipper can protect itself

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4. *Loss of Discount for Late Payment.* One of the practical consequences of allowing discounted rates to be pegged to artificially high class rates is that a shipper could be charged the full class rate, regardless of how much lower the competitive level might be, if payment is late and the carrier has a loss-of-discount provision. The rate bureaus do not defend this result on a substantive basis. Rather, they argue that we lack any regulatory authority to address this concern because loss-of-discount provisions are permissible under the current motor carrier credit regulations, originally adopted by the ICC and now maintained by the Department of Transportation (DOT).[19]

We do not believe that prohibiting rate bureau members from using artificially high class rates as the basis for a loss-of-discount provision is inconsistent with the credit regulations. The credit regulations allow carriers to assess reasonable and identifiable collection-expense charges against shippers that fail to pay their freight bills on time. *Payment of Rates & Charges — Penalty for Nonpayment,* 4 I.C.C.2d 340 (1988) (*Penalty Charges*). They were not intended to enrich carriers,[20] but merely to allow carriers "to recover costs incurred in connection with overdue charges." *Id.* at 341. While the ICC recognized that the loss-of-discount provisions would not necessarily match the exact amount of the carrier's collection expenditures, it cautioned that the level of the charge had to be reasonable. *Id.* at 343 n.2.

Where, as here, discounts of 50% may be the norm, and discounts of as much as 70% are not uncommon, the amount of the discount may well be so out of line with collection costs that a loss-of-discount provision could not withstand a reasonableness scrutiny.[21] That is why we do not believe that it is in the public interest to approve, and thereby exempt from the antitrust laws, agreements that

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by providing that it will select the carrier to be used if there is a customer return.

[19] *See* 49 CFR 377.203(g)(1)(ii). Under 49 U.S.C. 13707, DOT is responsible for maintaining the regulations governing credit provisions in the motor carrier industry.

[20] We note that the loss-of-discount provisions were authorized prior to the ICC's decision in *Investigation of Motor Carrier Collective Practices*, 7 I.C.C.2d 388, 458 (1991), where the ICC observed that rate bureaus set unrealistically high base rates, which carriers then discounted in order to bid on traffic that would not have moved at the class rate. As we learned from the "undercharge crisis," in the loss-of-discount context, where the carrier is no longer serving the traffic of a particular shipper, the carrier may no longer have a business incentive to keep its rates and charges reasonable.

[21] *See Robins Motor Transport, Inc. v. Associated Rigging and Hauling, Inc.*, 944 F. Supp. 409, 412 (E.D. Pa. 1996) (finding that a 50% collection charge for late payment was "unconscionably high"). While shippers can contest a loss-of-discount provision through case-by-case litigation, as in *Robins*, such litigation can be costly and inefficient, particularly where the amount in dispute is small.

permit rates that are collectively set at artificially high levels to be used as the basis for late-payment penalties.

This action is well within our regulatory authority over collective ratemaking matters and does not impermissibly intrude on DOT's general authority over credit matters. We are not here precluding carriers from using loss-of-discount provisions — only those tied to class rates that are collectively set pursuant to an agreement that we approve. Nor are we precluding rate bureau members that use collectively set class rates from setting other reasonable late-payment charges under the credit regulations. Our interest and our regulatory authority here is simply to ensure that, where collectively set rates are used, shippers are not prejudiced by the artificially high level at which those rates may have been set, and they could otherwise be prejudiced by the impact on the level of any late-payment penalty. Therefore, we will condition our continued approval of rate bureau agreements by requiring, as a condition of membership in a rate bureau, that a carrier using a rate that references a collectively set class rate may not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment.[22] Accordingly, each rate bureau must require from each member carrier a certification that the carrier will not apply a loss-of-discount provision for late payment of freight bills in connection with its use of the bureau-set class rates.

5. *General Rate Increases.* Noting that GRIs widen the already wide gap between class rates and the typical (discounted) rates actually charged, the shippers ask that we pay particularly close attention to ensure that GRIs do no more than recoup documented cost increases. The shippers suggest that we require rate bureaus to provide us with timely and complete information underlying each GRI. The bureaus, for their part, argue that they do not seek unjustified GRIs, and that they already provide, in a timely manner, relevant information to parties entitled to it.

Like the shippers, we find it curious that rate bureaus will take a GRI that has the effect of raising class rates, only to have their members turn around and increase the discounts offered to most of their shippers to counteract the effect of the GRI. However, given the infrequency and apparent lack of substantial

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[22] The rate bureaus assert that they could not impose such a condition on their members because to do so would violate the statutory protection of independent action found at 49 U.S.C. 13703(a)(4). That provision was adopted to prevent bureaus from inhibiting price competition among bureau members; it does not apply to actions required by the Board as a condition of approval of a rate bureau's agreement.

impact of GRIs, we will not at this time require specific additional procedures for GRIs as a condition to continued approval of rate agreements. Rather, we will continue to review GRIs on a case-by-case basis, and, in that context, we will consider any claims about the adequacy of documentation, notice, and so forth.

6. *Implementation by Bureaus and Their Members.* To provide the truth-in-rates notice required by this decision, each rate bureau must determine the range of the percentages of discounts off class rates that its carriers have provided to shippers over the past year. Bureaus must submit this information to us and supply it to the other parties to this proceeding.[23] The range of discounts must be recalculated each year (with underlying information supplied to us and to any interested shipper groups that request it), and the revised calculations substituted for those of the prior year, so as to continue to provide an accurate picture of pricing in the industry.

We emphasize that members of rate bureaus must prominently give this truth-in-rates notice, informing prospective shippers of the range of discounts applied by all of the carriers in the bureau, each and every time they reference collectively set rates, either in writing, electronically, or verbally. The notice also must prominently accompany any rate quote (whether verbal, electronic, or written) that is based upon or references a collectively set rate.[24] Also, member carriers may not apply loss-of-discount provisions to rates that are based on or reference collectively set rates.

7. *Further Proceedings.* We will afford the rate bureaus a 60-day period to collect and submit the range-of-discount information that we are requiring and 120 days to submit to us revised agreements that conform to this decision.

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[23] Any shipper or shipper organization that believes that the range of discounts has been understated may then file with us such information as will permit us to verify the actual minimum and maximum discounts that have been offered by bureau members in the past year, and to take any necessary action.

[24] The notice shall state the following in large type (with the appropriate information supplied in the bracketed parts):

> NOTICE: The class or benchmark rate that was used as a reference point in determining this rate [or rate quotation] was set collectively by motor carrier competitors acting under immunity from the antitrust laws. The class rate is not necessarily the prevailing market rate, and there are generally a wide range of discounts available. Motor carriers that are members of the [name of rate bureau] typically offer discounts ranging from [xx% to xx%].

CONCLUSION

Under 49 U.S.C. 13703, we may approve agreements for collectively setting rates only if we find the agreement to be in the public interest, and we may change the conditions of approval when necessary to protect the public interest. We find that the truth-in-rates notice described above, as well as the prohibition against using collectively set rates as a basis for late-payment penalties, are necessary and appropriate to the public interest.[25]

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

It is ordered:

1. Continued approval of the rate bureau agreements listed in the title and in footnote 1 is made subject to the condition that the members of those rate bureaus (1) give the truth-in-rates notice described herein every time they list rates or otherwise give a rate quote that references a collectively set rate; and (2) certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment.

2. The rate bureaus are directed to submit the range-of-discount information discussed in this decision to the Board, with service on all parties to this proceeding, by January 22, 2002. The rate bureaus must submit to the Board revised agreements that conform to this decision, with service on all other parties, by March 20, 2002.

3. This decision is effective December 20, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

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[25] These conditions will also advance several elements of the NTP at 49 U.S.C. 13101(a)(2). The conditions "encourage fair competition and reasonable rates for transportation" (subsection (A)), and meet the needs of shippers and receivers of freight (subsection (C)), by providing shippers with information regarding competitive rate levels and by preventing artificially high, collectively set rates from skewing rate negotiations or providing a basis for after-the-fact price gouging. The notice requirement promotes a "variety of quality and price options" for shippers (subsection (D)). Our action will not undercut efficiency (subsection (B)), but rather, by enabling rate bureaus to retain antitrust immunity, we will advance the efficient carrier operations that the bureaus claim they promote. Finally, our action is consistent with the NTP factor relating to carrier profits (subsection (F)), as it does not directly limit the rates or late-payment penalties that carriers can charge when they establish rates on an individual basis without reference to collectively set rates.