

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

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

Decided October 9, 2003

Board approval of the collective ratemaking agreements is renewed for those six bureaus that have fully complied with the conditions for renewal established in the Board's prior decisions. For three other bureaus, additional changes are required. Approval of the agreements of the three bureaus that have made no attempt to comply will automatically expire in 45 days, unless they show cause why this should not happen.

BY THE BOARD:

By decision served in *Rate Bureau Agreements—EC-MAC Motor Carriers Assoc., et al.*, 6 S.T.B. 785 (2003) (the *March 2003 Decision*), the Board renewed its approval of the bureau agreements at issue, subject to three conditions. First, the bureaus were directed to amend their agreements to require bureau members to give the truth-in-rates notice described in that decision, and in greater detail in a prior decision served on November 20, 2001 (the *November 2001 Decision*),² when they list rates or otherwise give a rate quote that references a collectively set rate. Second, the bureaus were directed to submit to the Board the range-of-discount information specified in the *March 2003 Decision*. Third, bureau members were required to certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment.

The requirements of the truth-in-rates notice were described in the *November 2001 Decision*, 5 S.T.B. at 1072, as follows:

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

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 Tariff Bureau, Inc.*, 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*, STB Section 5a Agreement No. 116 (Sub-No. 1).

² The prior decision was *Rate Bureau Agreements—EC-MAC Motor Carriers Assoc., Inc., et al.*, 5 S.T.B. 1065 (2001).

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.

The Board also required that the range of discounts must be recalculated each year, and the revised calculations must be substituted in the notice for those of the prior year. *November 2001 Decision*, 5 S.T.B. at 1075.

To implement these truth-in-rates requirements, the Board developed the following model truth-in-rates notice (*November 2001 Decision*, 5 S.T.B. at 1075 n.24):

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%].

In the *March 2003 Decision*, the Board modified the truth-in-rates requirement in three minor respects. First, when a member carrier of a bureau quotes a rate orally, the truth-in-rates notice must be given orally at the same time. Second, a carrier need not repeat the notice to the same representative of the shipper during ongoing negotiations for a particular shipment (or set of shipments). Third, a truth-in-rates notice is not required where there is no possibility of a discount from the class rate, as is the case, for example, with certain tariff rates for joint motor-water movements in the noncontiguous domestic trade between the United States mainland and Hawaii.

In accordance with the *March 2003 Decision*, the following nine bureaus submitted amended agreements and range-of-discount information: EC-MAC Motor Carriers Service Association, Inc.; Machinery Haulers Association, Inc.; Midwest Motor Freight Bureau, Inc.; Nationwide Bulk Trucking Association, Inc.; Niagara Frontier Tariff Bureau, Inc.;³ Pacific Inland Tariff Bureau, Inc.; Rocky Mountain Tariff Bureau, Inc.; Southern Motor Carriers Rate Conference, Inc.; and Western Motor Tariff Bureau, Inc.

The following three bureaus have not submitted the required amendments and range-of-discount information: The New England Motor Rate Bureau, Inc.; Motor Carriers Traffic Association; and Willamette Tariff Bureau, Inc.

³ The filings of the Niagara Frontier Tariff Bureau, Inc. (NFTB) were handled by an entity called the North American Transportation Council, Inc. (NATC). NFTB's agreement filing, docketed as *Niagara Frontier Tariff Bureau, Inc. – Agreement*, STB Section 5a Application No. 45 (Amendment No. 17), also contains proposals for unrelated minor amendments to its agreement, one of which would change NFTB's name to NATC. NFTB's filing also withdraws its applications in the following proceedings: *Niagara Frontier Tariff Bureau, Inc. – Agreement*, Section 5a Application No. 45 (Amendment No. 13), filed on April 18, 1994, which sought to obtain nationwide authority; and *Niagara Frontier Tariff Bureau, Inc. – Agreement*, STB Section 5a (Section 13703(a)) Application No. 45 (Amendment No. 15), filed on August 25, 1997, which sought to make minor changes.

DISCUSSION AND CONCLUSIONS

We find that the range-of-discount information provided by the submitting bureaus complies with our prior decisions as follows.

The agreement amendments submitted by the following three bureaus fully comply with the Board's instructions concerning truth-in-rates and loss-of-discount: Rocky Mountain Tariff Bureau, Inc.; Southern Motor Carriers Rate Conference, Inc.; and Western Motor Tariff Bureau, Inc. These bureaus either followed the aforementioned model notice or proposed an acceptable substitute. Accordingly, the agreements of these bureaus will be approved in this decision.

Although the amendments submitted by Niagara Frontier Tariff Bureau, Inc. (NFTB) fully comply with the Board's prior decisions, the Board cannot grant final approval to NFTB's agreement now because the text of the amendments also contains minor, unrelated changes that require separate consideration in STB Section 5a Application No. 45 (Amendment No. 17) (*see supra* note 3). In a decision issued today, those changes are tentatively authorized, subject to analysis of any comments that may be received within the period provided therein. NFTB may continue to operate under its current agreement pending final action on the minor amendments presented in that proceeding. At NFTB's request, pending applications in Amendment 13 and Amendment 15 will be dismissed.

The amendments submitted by EC-MAC Motor Carriers Service Association, Inc., Machinery Haulers Association, Inc., and Nationwide Bulk Trucking Association, Inc., should be revised to add the following language pertaining to annual modification of the discount range information: "The discount range in the above notice will be determined on an annual basis through a survey of member carriers."⁴ These bureaus must file the additional changes with the Board within 60 days of the date of service of this decision. Their revised agreements will become effective automatically (without further Board decision in the absence of further error) when they are filed. Until then, these bureaus may continue to operate under their current agreements.

The amendments submitted by two bureaus—Middlewest Motor Freight Bureau, Inc., and Pacific Inland Tariff Bureau, Inc.—contain a more significant deficiency, the correction of which will require further review by the Board. The truth-in-rates notices proposed by these bureaus would merely ask member carriers to comply with the *November 2001 Decision* and the *March 2003 Decision*, leaving it up to each member carrier, or its attorney, to determine the precise information that is to be conveyed to the shipper. The intent of these decisions, however, was to require carriers to provide either the aforementioned model notice or, as several bureaus have proposed in this proceeding, an acceptable substitute notice, both of which convey detailed information. Accordingly, these bureaus must file revised amendments with the

⁴ EC-MAC Motor Carriers Service Association, Inc., must also enter its name into the appropriate blank space of our standard notice.

Board within 90 days of the date of service of this decision. The Board will then evaluate the amendments and rule on them in a subsequent decision. In the meantime, these bureaus may continue to operate under their current agreements.

The agreements of the following three bureaus will not be renewed because they have filed nothing to comply with the *March 2003 Decision*: The New England Motor Rate Bureau, Inc.; Motor Carriers Traffic Association; and Willamette Tariff Bureau, Inc. The antitrust immunity of these bureaus under 49 U.S.C. 13703 will automatically expire in 45 days, unless these bureaus show cause why this should not happen.

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

It is ordered:

1. The agreements of the following bureaus are approved as amended in compliance with the Board's prior decisions: Rocky Mountain Tariff Bureau, Inc.; Southern Motor Carriers Rate Conference, Inc.; and Western Motor Tariff Bureau, Inc.

2. The agreements of the following bureaus will be automatically approved if the bureaus file with the Board the changes set forth in this decision by December 15, 2003: EC-MAC Motor Carriers Service Association, Inc.; Machinery Haulers Association, Inc.; and Nationwide Bulk Trucking Association, Inc. In the meantime, these bureaus may continue to operate under their current bureau agreements.

3. Middlewest Motor Freight Bureau, Inc., and Pacific Inland Tariff Bureau, Inc., must file with the Board revised amendments as discussed in this decision by January 14, 2004. If such amendments are timely filed, these bureaus may continue to operate under their current agreements until the Board reviews and rules on the amendments in a subsequent decision.

4. NFTB may continue to operate under its current agreement pending final action by the Board in STB Section 5a Application No. 45 (Amendment No. 17).

5. NFTB's applications in the following dockets are dismissed: *Niagara Frontier Tariff Bureau, Inc. – Agreement*, Section 10706 Application No. 45 (Amendment No. 13); and *Niagara Frontier Tariff Bureau, Inc. – Agreement*, STB Section 5a (Section 13703(a)) Application No. 45 (Amendment No. 15).

6. The antitrust immunity under 49 U.S.C. 13703 of the following bureaus will automatically expire on November 30, 2003 and their renewal applications will be dismissed, unless they show cause, before this deadline, why this should not happen: New England Motor Rate Bureau, Inc.; Motor Carriers Traffic Association; and the Willamette Tariff Bureau, Inc.

7. This decision is effective on October 16, 2003.

By the Board, Chairman Nober.