

STATEMENT OF JOSEPH LEVIN
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STB Docket No. AB-308 (Sub-No. 3X)

CENTRAL MICHIGAN RAILWAY COMPANY–
ABANDONMENT EXEMPTION–IN SAGINAW COUNTY, MI

In this case, a shipper on the line that the Board approved for abandonment asks the Board to clarify how long it is entitled to a per car rebate from the railroad.

In a decision served on October 31, 2003, the Board granted an exemption to the Central Michigan Railway Company permitting it to abandon approximately 1.77 miles of railroad in Saginaw County, MI, extending over a railroad bridge that passes over Interstate Highway 75. In the decision, the Board noted that the principal reason for granting Central Michigan's abandonment request was to facilitate plans by the Michigan Department of Transportation to widen Interstate Highway 75. The only active shipper on the line, Plastatech Engineering Ltd., a manufacturer of vinyl roofing laminates, had objected to the abandonment.

In the exemption decision, the Board noted that Central Michigan had offered to provide a \$200 per car rebate on future rail freight charges for Plastatech shipments transloaded at Central Michigan's facility in Saginaw, MI, as one of the terms for a transload service it offered to provide as an alternative to direct rail service. In granting the exemption, the Board held Central Michigan to its offer and imposed conditions requiring Central Michigan to provide alternative transload service to Plastatech under the terms the carrier proposed, including the payment of the \$200 per car rebate.

Plastatech filed a petition asking the Board to clarify the \$200 per car rebate condition. According to Plastatech, Central Michigan had originally offered the \$200 per car rebate for all future rail shipments handled in the transload operation without limitation. But, in attempting to implement the condition, Central Michigan argued that the rebate should be limited to a 3-5 year time period, depending on traffic commitments. Plastatech asks that the Board clarify whether the rebate condition imposed in the exemption decision is open-ended.

Central Michigan argues that it did not offer to provide the \$200 rebate forever without qualification. It notes that most industry transportation contracts expire in 1 year and most pricing arrangements under which Plastatech's PVC is presently shipped expire in less than 2 years. Central Michigan states that it now has offered to extend the subsidy to a full 5 years without any corresponding minimum volume commitment by Plastatech.

The draft decision before you grants the petition to clarify to assist the parties in completing the agreement for the transload operation. The decision determines that Central Michigan's arguments for imposing a time limit for paying rebates to Plastatech appear to be consistent with industry practice. Rate agreements uniformly have time limits and are not open-ended, because the carrier must be able to take actions to adjust to changes in the marketplace

within a reasonable period of time. Consistent with that notion, in deciding several recent rate reasonableness complaints, the Board has found that a certain condition imposed in a merger proceeding was not, and could not have been, meant to freeze existing rates indefinitely, thereby depriving the merging carriers of the ability to adjust their rates to react to changing market conditions. These precedents dictate against an open-ended rebate condition, because the carrier would never be able to adjust the arrangement to meet changing economic circumstances.

The draft decision clarifies that the \$200 per car rebate should not be required in perpetuity and that a 5-year time limit appears reasonable. The decision notes that the Board would entertain a request to extend the rebate after 5 years, if circumstances warrant.

We are available for your questions.