

## **Surface Transportation Board Denies Motion by Sea-Land, Matson to Dismiss Water Carrier Rate Complaint Filed by Government of Guam**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has denied a motion filed by Sea-Land Service, Inc. (Sea-Land) and Matson Navigation Company, Inc. (Matson) to dismiss a complaint filed by the Government of Guam (GovGuam) challenging the overall levels of the rates charged for United States-Guam water carrier services. The Board dismissed GovGuam's complaint against American President Lines, Ltd., which no longer serves the Guam trade.

Before 1996, the Board's predecessor agency shared with the Federal Maritime Commission (FMC) regulatory jurisdiction over rates in the noncontiguous domestic trade (water transportation between states, U.S. territories, or U.S. possessions that originates or terminates in Alaska, Hawaii, or a U.S. territory or possession). In the ICC Termination Act of 1995 (ICCTA), however, Congress centralized jurisdiction over the noncontiguous domestic trade in the Board alone. GovGuam filed a rate complaint with the Board for post-ICCTA movements (those occurring after the ICCTA's December 29, 1995 enactment).

Sea-Land and Matson argued that GovGuam's complaint should be dismissed because it challenges the overall revenues earned by the carriers in the Guam trade, rather than specific rates for specific shippers. The Board found, however, that the law does not on its face preclude challenges to a group of rates. The Board noted that the FMC had in fact considered a complaint challenging overall rate levels for pre-1996 Guam service under a similar statutory provision (and found the aggregate rate levels to be too high). The Board thus declined to dismiss the complaint simply because it challenged aggregate rate levels, and found that GovGuam ought to "at least be offered a chance to present its case."

Sea-Land and Matson also argued that GovGuam's complaint should be dismissed because the challenged rates are protected under the "zone of reasonableness" (ZOR) established in the ICCTA. The ZOR set up a "safe harbor" for proposed rate increases of up to 7.5 percent per year by water carriers in the noncontiguous domestic trade, and Sea-Land and Matson pointed out that the rates at issue have not been increased by more than 7.5 percent per year. The Board, however, found that although the ZOR protects from challenge proposed rate changes, it does not necessarily protect "base rates" (the rates to which the 7.5 percent ZOR is applied). After reviewing the statute and legislative history, and after noting that many of the rates at issue here were the same rates that were before the FMC, the Board concluded that it could not "read a provision protecting 'proposed' rates as immunizing existing rates that were found unreasonable when they were challenged before the FMC."

Finally, Sea-Land and Matson argued that GovGuam's complaint should be dismissed because GovGuam did not name in its complaint all of the motor carriers that participate with the water carriers in the Guam trade. The Board pointed out that this complaint is about the water carriers' overall revenues, not particular water-motor rates, and that it was therefore unlikely that review of the combined motor-water rates would add anything to a review of the water carriers' overall rate levels. It held that, unless the carriers can demonstrate that the motor carriers are integral components of the water carriers' rate structures, for purposes of this case GovGuam need not join all of the participating motor carriers in this complaint.

The Board issued its decision today in the case entitled *Government of the Territory of Guam v. Sea-Land Service, Inc., American President Lines, Ltd., and Matson Navigation Company, Inc.*, STB Docket No. WCC-101. A printed copy is available for a fee by contacting **Da-2-Da Legal, Room 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via [http://Da\\_To\\_Da@Hotmail.com](http://Da_To_Da@Hotmail.com). The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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