FOR RELEASE
12/18/98 (Friday)
No. 98-81

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SURFACE TRANSPORTATION BOARD EXTENDS RATE AGREEMENTS FOR ONE YEAR; PROVIDES THAT, ABSENT CONGRESSIONAL DIRECTIVE TO CONTRARY, MOTOR CARRIER CLASSIFICATION BUREAU MUST CHANGE PROCEDURES, MOTOR CARRIER RATE BUREAUS MUST REDUCE RATES

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued decisions that, in deference to a legislative process to be initiated in the immediate future, permit the motor carrier classification bureau and the motor carrier rate bureaus to extend their agreements for one year. However, the decisions provide that, absent legislation addressing the status of rate bureaus, or some other Congressional directive to the contrary, after December 31, 1999, the Board will approve the agreement of the motor carrier classification bureau only if the bureau's operating procedures are changed, and will approve the motor carrier rate bureau agreements only if "benchmark" rates are reduced.

Under the law, interstate motor carriers may enter into agreements under which competitors may discuss certain matters related to rate setting, and the Board is directed to continue its approval of existing "rate bureau" agreements unless it finds them contrary to the public interest. Activities conducted under such rate bureau agreements approved by the Board are protected from the application of antitrust laws. Under the ICC Termination Act of 1995 (Termination Act), all existing rate bureau agreements will expire on December 31, 1998, unless their renewal is approved by the Board. In earlier decisions, the Board sought comment on whether classification immunity and ratesetting immunity should be continued.

Classification. The National Classification Committee (NCC) administers the National Motor Freight Classification by grouping all articles moving by truck into commodity classes based on their transportation characteristics. Most of the comments received by the Board supported continuation of immunity for classification. Those that opposed it generally did not dispute the general benefits of classification but, rather, expressed concern over the way in which the NCC operates. The Board found that, even with its operating problems, the classification system can produce public benefits. It stated:

> [W]e understand that classification as it is currently set up can be viewed as unnecessary hairsplitting, and the public perception of the fact that a candy cane with a crook may be classified higher than a candy stick without a crook is not lost on us. Yet, while the candy cane/candy stick issue was one of the more prominently publicized lightning rods for abolishing the [Interstate Commerce Commission (ICC)], Congress, in enacting the Termination Act, did not abolish rate bureaus in general or the classification bureau in particular. And in theory, at least, the hairsplitting is not without basis: the alternative to producing general groupings that provide some basis for decisions about transportability could be to require carriers to attempt to establish individual standards for density, stowability, liability, and handling, and to apply them to every shipment individually, a process that would not be efficient. Thus, viewed theoretically, the classification system should produce efficiencies for motor carriers that should be passed on to their customers. All things considered, as long as classification is effected in a rational way that gives an adequate voice to the users of the system, we would not find it contrary to the public interest.

To ensure that the users of the classification system would indeed have an adequate voice in the event the NCC agreement were approved, the Board found that shippers and others would first need an opportunity to present recommendations on how the agreement should be amended to provide for shipper input from the outset to the completion of the process; to guarantee that the entire classification process will be fully open to the public; and to be certain that all written reports and recommendations will be available to any interested person.

Collective Rate Setting. Many rates are derived from the class rate system, under which commodities are assigned to

classes, and rates are then applied (often through collective rate bureau action) to classes of commodities. Rate bureaus cannot generally interfere with individual carrier rate actions, and can generally vote only on matters such as changes in commodity classifications and general rate increases (GRIs). The GRIs, however, produce class rates that are not in fact paid by most shippers. That is because once a class rate is set, it becomes simply a "baseline" rate, in the nature of a "sticker price" on a car. The actual rate paid by a particular shipper might be discounted by as much as 50-60 percent from the baseline rate.

Like the ICC before it, the Board expressed its concern over the practice of taking GRIs that produce unrealistically high benchmark rates, and then discounting the resulting class rates for particular shippers. It rejected the bureaus' contention that the existing framework is the only reasonable way to develop baseline rates, finding that, even if carriers do need a baseline to which they may refer when making individual pricing decisions, they already have it: the class rate on any given commodity as of any given date. The Board also found that, although many shippers are able to obtain substantial discounts, some are not. To protect these shippers, which the Board found are likely to be the least able to bring a case to the Board, the agency concluded that a carrier wanting to charge a rate above a competitive level should not be able to justify its charges by reference to an unrealistically high list price set through a governmentally sanctioned collective ratemaking process. The Board thus found that, if bureaus want to retain their immunity, their class rates should be reduced to market-based levels. The Board stated:

> We understand the bureaus' position that list prices used by trucking companies that are not rate bureau members, and by businesses in other industries, are typically set at relatively high levels, from which customers in a position to do so can obtain discounts. Those list prices, however, are not set through discussions among competitors that are protected by government immunity. Any motor carrier that wants to do so should be able to set its baseline rates at unrealistically high levels, and perhaps it should even be permitted to charge those undiscounted rates to shippers willing to pay them. If it is to do so, however, we believe that it should be required to do so pursuant to individual rather than collective action.

The Board's Rulings. The Board, however, did not initiate at this time the rate reduction process or the process to modify the classification bureau's procedures. That is because, in a letter dated November 17, 1998, the Republican and Democratic leadership of the Committee on Transportation and Infrastructure of the U.S. House of Representatives asked the Board to defer issuing a final ruling in these cases. As pertinent, the letter, signed by the Honorable Bud Shuster, Chairman, the Honorable James L. Oberstar, Ranking Democratic Member, the Honorable Thomas E. Petri, Chairman, Subcommittee on Surface Transportation, and Nick J. Rahall, II, Ranking Democratic Member, Subcommittee on Surface Transportation (collectively, "Members of the Committee") reads as follows:

> As you know, the Committee on Transportation and Infrastructure intends to pass legislation next year to reauthorize the Surface Transportation Board. As part of this reauthorization process, we will be reviewing a number of provisions contained in the ICC Termination Act of 1995 (ICCTA) related to motor carriers. . . . We therefore urge the Board to refrain from taking action in any case that would set major new policies or overturn existing practices in the motor carrier area before Congress has the opportunity to more fully consider and act upon these issues.

The Board indicated that, to permit the reauthorization process to move forward to completion next year, in accordance with the Congressional intent expressed in that letter, it would postpone the effectiveness of its decisions on these issues. The Board found that it could best meet its statutory responsibility, which calls for a decision one way or the other by the end of calendar year 1998, while respecting the legislative process that the Members of the Committee indicated in the November 17 letter would be initiated, by: (1) extending approval of all existing motor carrier rate bureau and classification agreements that are refiled in a timely manner for one year, until December 31, 1999; (2) issuing decisions expressing the Board's views on matters that the statute requires it to consider; and (3) awaiting the legislation to which the November 17 letter refers. If legislation addressing the rate bureau issue has not been enacted in sufficient time before the end of calendar year 1999, then, absent a clear expression from Congress to the contrary, the Board indicated that it would initiate proceedings on how to effect appropriate reductions in benchmark rates and to change the NCC's

procedures.

The Board's decisions were issued today in *National Classification Committee--Agreement*, Section 5a Application No. 61, and *EC-Mac Motor Carriers Service Association, Inc., Et. Al.*, Section 5a Application No. 118 (Amendment No. 1). The decisions are available on the Board's web site at **www.stb.dot.gov**.

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