

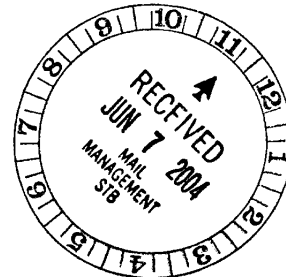
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Office of Proceedings

JUN 07 2004

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. 42082



211265

MARTIN GAS SALES, INC. – PETITION FOR DECLARATORY ORDER –
CERTAIN RATES AND PRACTICES OF UNION PACIFIC RAILROAD COMPANY

MOTION OF MARTIN GAS SALES, INC. TO DISMISS

TO THE HONORABLE SURFACE TRANSPORTATION BOARD:

COMES NOW MARTIN GAS SALES, INC., ("Martin"), and files its Motion to Dismiss and in support thereof would show:

STATEMENT OF THE CASE

On July 7, 2003, Martin filed the instant petition for declaratory order to resolve a dispute over demurrage charges assessed by the Union Pacific Railroad Company ("UP") for shipments of asphalt received at Martin's bulk facility in the Neches Industrial Park, near Beaumont, Texas. The petition was filed pursuant to a referral order dated May 27, 2003 issued by the District Court for the Eastern District of Texas, Tyler Division, in Civil Action No. 6:02-CV-00180.

By Decision served November 14, 2003, the Board instituted the declaratory order proceeding, with Martin's opening statement due, after, several extensions, May 12, 2004.

MOTION TO DISMISS

As indicated in Martin's requests for extension of time to file its opening statement, the parties were pursuing settlement of all issues. On May 18, 2004 the parties executed a Settlement Agreement and Mutual Release ("Settlement

Agreement") that resolves all issues in both this declaratory order proceeding and the suit pending in federal court. As part of the Settlement Agreement, Martin is required to file this Motion to Dismiss and UP is required to file a Stipulation of Dismissal of the lawsuit with the court.

PRAYER

In light of the foregoing, Martin Gas Sales, Inc. respectfully prays that the Board enter its Order dismissing its petition for declaratory order and discontinuing this proceeding.

Respectfully submitted,

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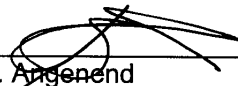

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ATTORNEYS FOR PETITIONER
MARTIN GAS SALES, INC.

CERTIFICATE OF SERVICE

I hereby certify this 27th day of May 2004 that a copy of the foregoing Motion of Martin Gas Sales, Inc. to Dismiss has been served via First Class U.S. Mail on the attorneys of record as listed below.



Paul D. Angenend

Robert T. Opal
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