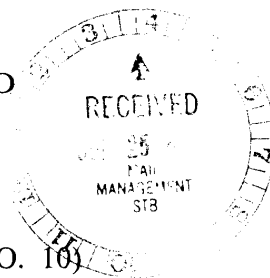


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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



SECTION 5a APPLICATION NO. 34 (SUB-NO. 10)
MIDDLEWEST MOTOR FREIGHT BUREAU, INC.—
AGREEMENT

ENTERED
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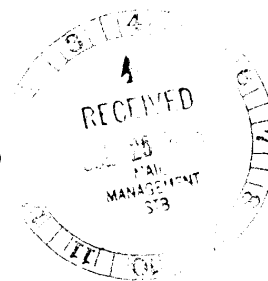
Counsel for Middlewest Motor
Freight Bureau, Inc.

OF COUNSEL:

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DATED: JULY 25, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD



SECTION 5a APPLICATION NO. 34 (SUB-NO. 10)
MIDDLEWEST MOTOR FREIGHT BUREAU, INC.—
AGREEMENT

Middlewest Motor Freight Bureau, Inc. (MWB) and its member motor carriers of property who are party to the above-entitled agreement (hereinafter referred to as “Agreement”) hereby submit their amendments to the Agreement in accordance with the Board’s decisions in STB Section 5a Application No. 118 (Sub-No. 2), *et al.*, *EC-MAC Motor Carriers Service Association, Inc., et al.*, served on November 20, 2001 (2001 Decision) and March 27, 2003 (2003 Decision).¹

RELEVANT BACKGROUND

Under former 49 U.S.C. § 13703(d), motor carrier collective ratemaking agreements approved and in effect prior to the ICC Termination Act of 1995 expired by operation of law on December 31, 1998, unless renewed by the Board. The statute further provided that so long as a request

¹ MWB’s Agreement is embraced by these and all other decisions issued in the title proceeding.

for renewal was filed prior to the statutory expiration date, the agreement would remain in effect while the request is pending before the Board. *Id.* MWB's Agreement is subject to these provisions.

In a decision served December 18, 1998, in Section 5a Application No. 118 (Amend. No. 1), *et al.*, *EC-MAC Motor Carriers Service Association, Inc., et al.*, the Board temporarily extended its approval of existing motor carrier rate bureau agreements to December 31, 1999, provided that requests for renewal of such agreements were timely filed in accordance with the requirements of 49 U.S.C. § 13703(d) in effect at the time.² Pursuant to that decision, MWB filed its Request for Renewal on December 22, 1998. Subsequently, the Board again extended its approval of agreements of the bureaus that had timely submitted applications for renewal. See Section 5a Application No. 118 (Sub-No. 2), *EC-MAC Motor Carriers Service Association, Inc., et al.*, served December 29, 1999.³

On February 11, 2000, the Board issued a decision in Section 5a Application No. 118 (Amend. No. 1), *et al.*, denying petitions for

² Section 13703 was amended by Section 227 of the Motor Carrier Safety Improvement Act of 1999, P.L. No. 106-159, 113 Stat. 1748, Dec. 9, 1999. However, the Act provided that, except for one provision, it did not affect cases pending before the Board at time of enactment.

³ The 1998 Decision was issued in Amendment No. 1 to Application No. 118, *et al.*. The December 29, 1999 Decision was issued as Sub-No. 2 to Application No. 118, *et al.*, although it refers to the 1998 Decision as being "issued in this proceeding". Then on February 11, 2000, the Board issued two decisions – one as Amendment No. 1 and the other as Sub-No. 2. Correspondingly, all of the embraced agreements were converted from Amendment Nos. to Sub-Nos. MWB's Agreement was changed from Amendment No. 9 to Sub-No. 10. For consistency, we refer to the decisions as titled by the Board.

reconsideration and indicating that it would initiate another proceeding to explore issues discussed in its earlier decisions. It simultaneously served a decision in Section 5a Application No. 118 (Sub-No. 2), *et al.*, requesting comments and proposals addressing specific issues. That decision culminated in the aforementioned 2001 and 2003 Decisions.

In its 2001 Decision, the Board concluded that approval of the embraced rate bureau agreements would be in the public interest provided that such agreements were revised to require that: (1) member motor carriers give a “truth-in-rates” notice to potential shippers whenever they offer a rate that references a bureau-set class rate; and (2) member carriers certify that they will not apply a loss-of-discount provision that would reinstate a collectively set class rate as a penalty for late payment. It also required the bureaus to file with it range of discount information gathered from member carriers. The 2003 Decision denied petitions for reconsideration and affirmed the 2001 Decision in all material respects.

In accordance with those decisions, MWB submitted its range of discount information on May 23, 2003. To finalize its compliance with those decisions, MWB now tenders amendments to its Agreement to require carriers, as a condition of membership, to: (1) give the “truth-in-rates” notice required by the Board when they list rates or give a rate quote that

references a collectively set class rate; and (2) certify that they will not apply a loss-of-discount provision that reinstates a collectively set bureau class rate as a penalty for late payment of freight charges.

These revisions amend Section 4.4 of Article IV of MWB's By-Laws governing membership eligibility and requirements to require as a condition of membership the carrier's agreement to be bound by these requirements. Section 4.6 of Article IV currently provides MWB with authority to terminate membership for a member's failure to cure any breach of any duty or obligation of the member under this Agreement. The new language to be added to Section 4.4 is set forth in Appendix A hereto. MWB's entire Agreement was submitted with its Request for Renewal on December 22, 1998.⁴

Upon the Board's approval of these amendments MWB will issue a certification form to all members which will require that they acknowledge the new obligations, agree to comply, and then return the completed form to the bureau.⁵

MWB has timely submitted its range of discount information and now tenders amendments to its Agreement to conform to the Board's

⁴ On July 21, 2003, the Board served a decision approving minor amendments to MWB's agreement in Section 5a Application No. 34 (Amendment No. 9). Those changes are being incorporated into MWB's Agreement.

⁵ The 2003 Decision approved use of a check-off box on a form. Note 17, p. 11.

requirements. Accordingly, MWB respectfully requests the Board to approve its Agreement as amended.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brian L. Troiano".

Brian L. Troiano
1707 L Street, NW
Washington, DC 20036
202-785-3700

Counsel for Middlewest Motor
Freight Bureau, Inc.

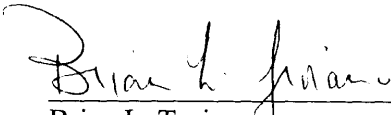
Of Counsel:

Rea, Cross & Auchincloss
Suite 570
1707 L Street, NW
Washington, DC 20036

Dated: July 25, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of July 2003, served the foregoing document upon all parties of record in this proceeding by first class mail, properly addressed with postage prepaid.



Brian L. Troiano

APPENDIX A

SECTION 5a AGREEMENT NO. 34 (SUB-NO. 10) MIDDLEWEST MOTOR FREIGHT BUREAU, INC.—AGREEMENT

Amend Article IV, Section 4.4 of the By-Laws by striking the period at the end of the section, replacing it with a comma, and adding the following language:

“and provided further that by executing the Rate
and Tariff Agreement, the member:
(a) agrees to give the truth-in-rates notice required
by the decisions in STB Section 5a Application No. 118
(Sub-No. 2), et al., EC-MAC Motor Carrier Service
Association, Inc., et al., served November 20, 2001, and
March 27, 2003, when it lists rates or gives a rate quote
that references a collectively set class rate; and
(b) certifies that it will not apply a loss-of-discount
provision that reinstates a collectively set bureau
class rate as a penalty for late payment of freight charges.”