

211358

ROBERTS, CUNNINGHAM & STRIPLING, L.L.P.

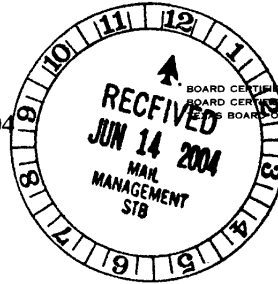
ATTORNEYS AND COUNSELORS AT LAW
800 PRESTON COMMONS WEST
8117 PRESTON ROAD
DALLAS, TEXAS 75225

CARL E. ROBERTS
H. N. CUNNINGHAM, III
ROBERT A. STRIPLING

TELEPHONE:
(214) 696-3200
TELECOPIER:
(214) 696-5971

JAMES C. BAKER
ROBERT H. BEZUCHA*
MARISSA G. JAMES
JEFFREY M. BLACKWELL
TIMOTHY J. GARGIULO

June 8, 2004



Via Certified Mail

Secretary, Surface Transportation Board
1925 K Street NW, Room 700
Washington, D.C. 20423

Re: Climate Master, Inc. and International Environmental, Inc.'s Motor Carrier Undercharge Proceeding Regarding Certain Rates and Practices of Trans Tech Solutions, Inc., F&M Bank, and Midland Transportation, Co.; STB Docket No. 42085.

Dear Secretary, Surface Transportation Board:

Enclosed please find an original and ten (10) copies of Petitioners Climate Master, Inc. and International Environmental, Inc.'s Motion Seeking Grant of Declaratory Relief Sought in their Motor Carrier Undercharge Proceeding Regarding Certain Rates and Practices of Trans Tech Solutions, Inc., F&M Bank, and Midland Transportation, Co. Copies of this motion have been served upon all other parties involved. If there are any questions about or problems with this filing, please feel free to contact the undersigned.

Sincerely,

Timothy J. Gargiulo

Enclosures

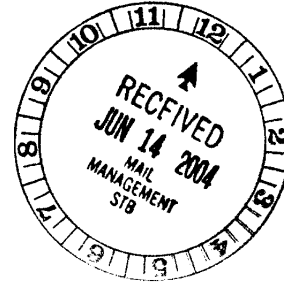
ENTERED
Office of Proceedings

JUN 14 2004

Part of
Public Record

100001

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



Docket No.42085

CLIMATE MASTER, INC. AND INTERNATIONAL ENVIRONMENTAL, INC.'S
MOTOR CARRIER UNDERCHARGE PROCEEDING REGARDING CERTAIN RATES
AND PRACTICES OF TRANS TECH SOLUTIONS, INC., F&M BANK,
AND MIDLAND TRANSPORTATION CO.

MOTION SEEKING GRANT OF DECLARATORY RELIEF SOUGHT

H.N. Cunningham, III
Timothy J. Gargiulo

**ROBERTS, CUNNINGHAM
& STRIPLING, L.L.P.**

800 Preston Commons West
8117 Preston Road
Dallas, Texas 75225
Telephone: (214) 696-3200
Facsimile: (214) 696-5971

**ATTORNEYS FOR PETITIONERS
CLIMATE MASTER, INC. AND
INTERNATIONAL ENVIRONMENTAL,
INC.**

ENTERED
Office of Proceedings

JUN 14 2004

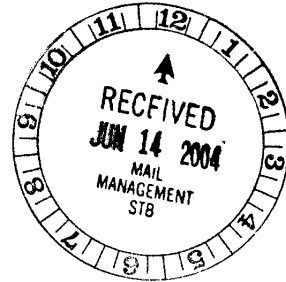
Part of
Public Record

000002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 42085

**MOTION SEEKING GRANT OF
DECLARATORY RELIEF SOUGHT**



COMES NOW, Petitioners, Climate Master, Inc. and International Environmental, Inc. ("Petitioners"), by and through their attorneys, and file this their Motion Seeking Grant of Declaratory Relief Sought with the Surface Transportation Board (the "Board" or "STB").

1. Petitioners filed their Petition for Declaratory Order ("Petition") with the Surface Transportation Board on February 10, 2004.

2. On April 15, 2004, the Surface Transportation Board released a decision regarding Petitioner's Petition for Declaratory Order ordering that a declaratory order proceeding was instituted based on the Petition and that it would be treated as the opening statement of that proceeding. A copy of the April 15, 2004 STB decision is attached hereto as Exhibit A and incorporated by reference. The STB further ordered that the proceeding would be handled under the modified procedure rules and that all parties must comply with the Rules of Practice at 49 CFR Subchapter B, including parts 1112 and 1114.

3. The STB further ordered that the procedural schedule of the proceeding was as follows:

May 17, 2004	Reply statement due.
June 1, 2004	Rebuttal statement due.

4. The STB further ordered that its decision was effective on the date of service, April 15, 2004.

5. Respondent, Trans Tech Solutions, Inc., ("Trans Tech") failed to file a reply statement by

000003

Exhibit A

000005

34468

SEC

SERVICE DATE - APRIL 15, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42085

CLIMATE MASTER INC. AND INTERNATIONAL ENVIRONMENTAL, INC.
— PETITION FOR DECLARATORY ORDER —
CERTAIN RATES AND PRACTICES OF TRANS TECH SOLUTIONS, INC., F&M BANK,
AND MIDLAND TRANSPORTATION CO.

Decided: April 15, 2004

On February 10, 2004, Climate Master, Inc. (Climate), and International Environmental, Inc. (International) (collectively Petitioners), filed a petition for declaratory order. They request that the Board find that the attempt by Trans Tech Solutions, Inc. (Trans Tech), and F&M Bank to collect additional freight charges from Petitioners on behalf of Midland Transportation Co. (Midland) is not permissible under 49 U.S.C. 13710(a)(3)(A), because the bill for additional charges was not issued within 180 days of receipt of the original bills.¹ Alternatively, Petitioners request that the Board find it is an unreasonable practice for Trans Tech and F&M Bank to disregard a valid contract between Petitioners and Midland and attempt to collect the difference between the discounted freight charges and the original charges. Finally, petitioners request that, if the Board does not find an unreasonable practice, it hold that the rates charged by Midland were unreasonable. The petition for declaratory order will be treated as the opening statement in this proceeding.

This matter arises out of an action in the United States Bankruptcy Court for the Northern District of Iowa, Western Division, in which Midland filed a Voluntary Petition for Bankruptcy under Chapter 11 of the United States Bankruptcy Code on June 26, 2001. It was subsequently converted to a Chapter 7 Bankruptcy. The court granted petitioners' motion for relief from the bankruptcy stay, thereby allowing the petitioners to file before the Board. At the time of the shipments at issue, Midland was an interstate motor carrier that provided freight services for petitioners.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or to remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission, have exercised broad authority in handling such requests, considering a number of factors, including the significance to the industry and the ripeness of the controversy.

¹ F&M Bank, a creditor of Midland and owner of the accounts at issue, hired Trans Tech to perform an audit of Midland's freight bills.

000006

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding is instituted to resolve the controversy here. The Board will resolve this matter pursuant to the modified procedural rules at 49 CFR 1112. A procedural schedule is set forth below.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure rules, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice at 49 CFR subchapter B, including parts 1112 and 1114.

2. The procedural schedule for this proceeding is as follows:

May 17, 2004
June 1, 2004

Reply statement due.
Rebuttal statement due.

3. This decision is effective on the date of service.

4. A copy of this decision will be served on: Melissa Bozeman, VP-Finance, Trans Tech Solutions, Inc., Administrative Dept., Post Office Box 890, Madison, TN 37116-0890, Re: Midland Transportation Co.

5. A copy of this decision will be mailed to:

The Honorable William L. Edmonds, Bankruptcy Judge
United States Bankruptcy Court
Northern District of Iowa
320 6th Street, Federal Building
Sioux City, IA 51101
RE: Chapter 7 Bankruptcy No. 01-02613

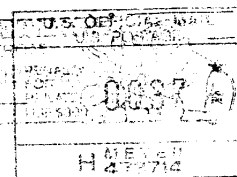
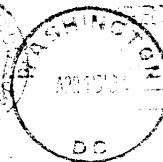
Wil L. Forker, Trustee
505 Sixth Street, Suite 530
Sioux City, IA 51101.
RE: Chapter 7 Bankruptcy No. 01-02613

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423-0001

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300
RETURN AFTER FIVE DAYS



RECEIVED APR 19 2004

STB NOM 42085 0

189309

TIMOTHY J. GARGIULO
ROBERTS, CUNNINGHAM & STRIPLING, L.L.P.
800 PRESTON COMMONS WEST, 8117 PRESTON
DALLAS TX 75225

75225+8332 |||||||

000009