

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

No. 40471

AGRIBUSINESS SHIPPERS GROUP - PETITION FOR DECLARATORY ORDER -  
DELINKING OF RATE CHANGES FROM THE RCAF-RCCR PROCESS

Decided: February 10, 1997

This proceeding involves a petition filed by Agribusiness Shippers Group (ASG) seeking a declaratory order concerning the effect of "delinking" on the protections that were previously available under the rail cost adjustment factor (RCAF) of former 49 U.S.C. 10707a.<sup>2</sup> ASG sought a ruling that railroads that "delinked," i.e., that canceled their participation in tariffs that were directly tied to the RCAF, should lose all section 10707a immunity for their rates, even rates that were initially established under the ICC's cost recovery procedures.

In the ICCTA, Congress repealed the requirement that railroads file tariffs. Additionally, although it continued the requirement that the Board publish the RCAF, Congress repealed the rate immunity conferred by former 49 U.S.C. 10707a, and

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICC Termination Act), which was enacted on December 29, 1995, and which took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain ICC functions to a newly created Surface Transportation Board (Board). Section 204(b)(1) of the ICC Termination Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the new law. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are, to a limited extent, still subject to Board jurisdiction pursuant to 49 U.S.C. 10708. In this decision, we will address both old and new law, as appropriate.

<sup>2</sup> The RCAF was established in the Staggers Rail Act of 1980 as a quarterly index intended to track changes in railroad costs. Its purpose was to protect from challenge on rate reasonableness grounds rail tariff rate increases that simply reflected increased costs.

transformed the RCAF into an index that would be used solely as a benchmark by private parties involved in unregulated contracts.

See H.R. Rep. No. 422, 104th Cong., 1st Sess. 174 (1995).

Section 554(e) of the Administrative Procedure Act permits an administrative agency, "in its sound discretion," to "issue a declaratory order to terminate a controversy or remove uncertainty." Here, we preliminarily conclude that there is no longer any controversy or uncertainty that needs to be resolved: the question raised by ASG will have no application to cases involving services provided since January 1, 1996; it has not to our knowledge been raised in any cases that are currently pending; and in light of the 2-year statute of limitations for rail rate reasonableness cases [49 U.S.C. 11705(c)], the likelihood that the issue raised by ASG will appear in a formal rate case in the future is continually diminishing. We see no basis for addressing, on an industrywide basis, an issue that is unlikely ever to require resolution.<sup>3</sup>

Accordingly, we will accept pleadings filed within 20 days of the date of service of this decision, addressing whether we should continue this proceeding. Unless a party files a pleading demonstrating that there is a good reason to continue this proceeding, it will be dismissed. At the expiration of the 20-day period, we will issue a decision either dismissing the proceeding, or, if a party files a pleading persuading us that the proceeding should be continued, indicating how we intend to proceed with the matter.

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<sup>3</sup> In the unlikely event that the issue presented by ASG does arise in an individual case, it can be addressed in the context of that proceeding.

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

It is ordered:

1. Pleadings addressing whether we should continue this proceeding are due March 6, 1997.

2. The proceeding is effective on February 14, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

Secretary