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SEC

SERVICE DATE - DECEMBER 7, 1998

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

No. 40658

CO-OPERATIVE SHIPPERS, INC.

v.

OLD DOMINION FREIGHT LINE, INC.

Decided: December 4, 1998

This matter arises out of a court action in the Circuit Court of Cook County, Illinois, County Department, Law Division, in Old Dominion Freight Line, Inc. v. Co-Operative Shippers, Inc., No. 90-L-20245. The court proceeding was instituted by Old Dominion Freight Line, Inc. (Old Dominion), to collect undercharges from Co-Operative Shippers, Inc. (Co-Op), for services rendered in transporting 41 shipments from the Chicago area to a government installation depot in Richmond, VA, between April and December 1989. By order dated June 11, 1991, the court stayed the proceeding and directed Co-Op to submit the rate matters at issue to the ICC for resolution.

Pursuant to the court order, Co-Op, on August 27, 1991, filed a complaint requesting the ICC to determine the applicability, reasonableness, and lawfulness of the rates that Old Dominion is attempting to assess. Both parties submitted statements of evidence and argument, and the record closed.

In the process of reviewing the record in this proceeding, the Board became apprised of the fact that, by order entered on May 13, 1994, the Circuit Court of Cook County, Illinois dismissed the underlying court proceeding for want of prosecution. In light of the court order of dismissal, the Board, in a decision served October 28, 1998, directed the parties to show cause within 30 days as to why the pending complaint in this Board proceeding should not be dismissed. Because neither party has responded to our order to show cause, we will dismiss the complaint in this proceeding.

It is ordered:

1. The complaint in this proceeding is dismissed.

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the 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 Act. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 13710(a).

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2. This decision is effective on the date served.
3. A copy of this decision will be mailed to:

Clerk  
Circuit Court of Cook County  
50 West Washington  
Chicago, IL 60602

Re: No. 90-L-20245

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary