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SERVICE DATE - MARCH 7, 2000

SURFACE TRANSPORTATION BOARD

DECISION

No. 40819

UARCO INCORPORATED

v.

JAMES B. ORR and FREIGHTWAYS EXPRESS, INC.

Decided: March 2, 2000

On June 25, 1999, we issued a decision ("June Decision") addressing issues of rate reasonableness, reasonable practices, and rate interpretation and application in this proceeding. Freightways Express, Inc. and James B. Orr (collectively "Freightways" or "carrier") have sought judicial review of that decision in the United States Court of Appeals for the Sixth Circuit,¹ and have filed an opening brief in court setting forth for the first time their objections to our decision.² Based on the petitioners' opening brief, we concluded that our June Decision had failed to address certain material issues that had been presented to us by the parties. Accordingly, on October 29, 1999, we issued a decision reopening the case subject to the approval of the Sixth Circuit and, on November 3, 1999, moved for a voluntary remand of the case in order to correct our errors. While the court has not remanded the case, it has directed the Board to identify with specificity the errors in our June Decision. The only way that we can do so is by issuing this supplemental decision, in which we determine and correct the errors in our June Decision but do not otherwise disturb our findings and conclusions in that decision. This decision serves to instruct Board counsel, inform the parties, and advise the court as to those errors.

BACKGROUND

State Court Referral

This case arose from a referral by the Chancery Court of Shelby County, TN, in No. 91799-2, James B. Orr and Freightways Express, Inc. v. Uarco, Inc., a suit brought by the carrier in 1985 to collect approximately \$55,000 in undercharges from a former shipper, UARCO, for various shipments transported from 1981 through 1984. The carrier also requested an accounting for shipments for which it claimed to have lost or misplaced the substantiating records.

¹ Orr et al. v. STB et al., No. 99-4036 (6th Cir. filed Aug. 14, 1999).

² Petitioners did not present their objections to the agency first, as they could have done. See 49 U.S.C. 722(c); 49 CFR 1115.3.

Freightways amended its original complaint several times – most recently in 1991 – as it located documents and conducted further audits based on those documents. In the process, the carrier narrowed the time period for the claimed undercharges (to the period January 1982 through February 1984), substantially boosted the number of shipments for which it claimed undercharges, increased the total amount of its undercharge claim (to \$117,606.36), and added at least one additional basis for the undercharge claim (the loss-of-discount argument relating to use of a cartage agent).

The shipper asserted various defenses and argued that issues of rate applicability, tariff interpretation, and unreasonable rates and practices should be referred to our predecessor, the Interstate Commerce Commission (“ICC”). The shipper also filed a counterclaim, alleging that the carrier had actually overcharged the shipper by more than \$10,000 and also owed the shipper \$667.62 for damaged or lost goods. On April 20, 1992, the Chancery Court referred to the ICC issues of rate applicability, unreasonable practice, and rate reasonableness, and stayed its own proceedings pending the ICC’s determinations.

Administrative Proceedings

On June 17, 1992, the shipper filed its complaint with the ICC pursuant to the state court’s referral. Both parties then filed evidence and argument related to the issues of tariff applicability and interpretation and the reasonableness of the carrier’s rates and practices. The ICC subsequently twice provided an opportunity for the record to be supplemented (first in response to ICC decisions establishing the standards to be used for determining the reasonableness of motor carrier rates in an undercharge context, and later in response to enactment of the Negotiated Rates Act of 1993³ concerning motor carrier undercharge claims). The case was later transferred to the Board by section 204(b) of the ICC Termination Act of 1995.⁴

June Decision.

In our June Decision, we addressed five areas of dispute. First, we found that the carrier’s use of a cartage agent during the period April 1982 to March 1983 did not make the shipper ineligible for discounts to which it otherwise was entitled. (June Decision, Part I, Section A, at 3-5.) Second, we found that it would be an unreasonable practice for the carrier retroactively to enforce a 60-day discount eligibility notice that it had routinely ignored because it already possessed the requisite information. (June Decision, Part I, Section B, at 5-6.) Third, we determined that the collectively set, undiscounted class rates that the carrier now seeks to apply were unreasonably high and cannot be charged. (June Decision, Part III, at 10-13.)

³ Pub. L. No. 103-180, 107 Stat. 2044 (1993).

⁴ Pub. L. No. 104-88, 109 Stat. 803 (1995).

Fourth, we interpreted how a particular tariff provision⁵ regarding a discount for aggregation of shipments could be satisfied. (June Decision, Part I, Section C, at 7.) Finally, we attempted to address the remaining tariff interpretation and application disputes presented to us by the parties by examining selected individual shipments. While the complainant (shipper) had submitted a 124-page computer printout allegedly representing the proper application of the relevant tariffs to each of the 5,996 shipments that the shipper claims are in issue,⁶ it had not submitted its auditor's work papers, nor shown how the application of the auditor's analysis to all of the shipments at issue would produce the claimed net overcharge. Instead, the shipper had presented detailed analysis, evidence and argument as to how the relevant tariffs applied to 12 sample shipments. In our June Decision, we addressed only the 5 sample shipments for which the shipper claimed overcharges. As to those 5 shipments, we concluded that the shipper's auditor had correctly interpreted and applied certain of the tariff provisions but had erred in interpreting and/or applying others. (June Decision, Part II, at 7-10).

The carrier does not challenge the first three determinations — involving the effect of using a cartage agent, the nonenforceability of the 60-day discount eligibility notice requirement, and the unreasonableness of the class rates. Rather, the carrier only challenges our findings regarding the aggregation discount and the proper interpretation and application of its tariff provisions. The carrier charges that we failed to consider all relevant tariff provisions, that we failed to rule on specific tariff issues that it had presented, and that we misapplied the rules of tariff construction.

DISCUSSION AND CONCLUSIONS

Because we agree with the carrier that our June Decision failed to discuss certain tariff provisions and issues that had been presented to us, we must supplement our June Decision. However, we cannot address each and every one of the thousands of shipments involved. Even if we were inclined to do so and had sufficient staff, the parties have not provided the necessary information regarding each shipment to enable such an undertaking. Thus, as in our June Decision, our more modest objective here is to provide the necessary guidance on issues of tariff construction and application to enable the referring court to resolve the claims that are before it and calculate the total amounts that each party owes for the shipments at issue.

We rely on well-settled rules of tariff construction, construing tariffs according to their plain meaning and attempting to give effect to each provision. Coca-Cola Co. v. Atchison, T.&S.F. Ry., 608 F.2d 213, 220 (5th Cir. 1979) (“Coca-Cola”). Ambiguities are strictly construed against the publishing carrier, id. at 221, but we avoid strained interpretation of tariff language, Penn Cent. Co. v. General Mills Inc., 439 F.2d 1338, 1341 (8th Cir. 1971), and reject unfair, unusual, absurd or improbable results, id. In the event of duplicating provisions, specific provisions are construed to

⁵ Tariff MWB 129, Supplement 355, Item 902-65.

⁶ According to the carrier, there are more than 9,000 shipments at issue.

take priority over general provisions. Coca-Cola, 608 F.2d at 220. If it is unclear which among competing tariffs applies, the shipper is entitled to the lowest of the rates. Rebel Motor Freight v. ICC, 971 F.2d 1288, 1294-95 (6th Cir. 1992).

We turn now to the specific issues left unresolved by our June Decision.

1. Whether the Shipper Was Entitled to Cumulative Discounts.

The parties have raised various issues relating to whether multiple discounts can be applied to particular shipments. For less-than-truckload (“LTL”) shipments, Freightways offered discounts (from the otherwise applicable class rates) both through tariffs that it published itself (designated as FWXP tariffs) and tariffs that were published on its behalf by two different rate bureaus: the Middlewest Motor Freight Bureau (designated as MWB tariffs) and Southern Motor Carriers Rate Conference (designated as SMC tariffs)]. These tariffs contained three different types of discounts.

Generally applicable discounts provide a specified discount to all shipments transported between origins and destinations listed in the tariff. (Freightways offered these discounts in SMC 570, Item 18005-Q;⁷ FWXP 601, Item 50;⁸ MWB 129, Supplement 355, Item 902-65(1-3); FWXP 601-B, Item 68; SMC 128-K, Supplement 91, Item 23900-12260; SMC 128-L, Supplement 24, Item 165050-D; SMC 128-L, Supplement 32, Item 168100-40; SMC 128-L, Supplement 37, Item 198000-A; and SMC 128-L, Supplement 44, Item 156800-E.) Ordinarily, generally applicable discounts cannot be combined with each other. **Aggregation discounts** provide an incentive for shippers to aggregate multiple shipments so that the carrier can realize economies of scale. (Freightways offered these discounts in SMC 128, Item 10950⁹ and MWB 129, Supplement 355, Item 902-65(4).) By its nature, no more than one aggregation discount may be applied to a

⁷ The parties provided us with copies of SMC 570-A, Supplement 140, Item 18005-Q (effective Apr. 19, 1982) and SMC 570-B, Item 21010 (effective Sept. 7, 1982). There was apparently a predecessor provision (not provided to us) in SMC 570-A, Supplement 130. We refer to the tariffs collectively as SMC 570 and to the pertinent provisions as Item 18005-Q. (In our June Decision, we incorrectly referred to this provision as Item 18005-O.)

⁸ The relevant tariffs published in the FWXP 601 series include FWXP 601, 601-A and 601-B, along with various supplements. We refer to these tariffs collectively as FWXP 601. Item 50 was re-designated as Item 50-A (effective May 23, 1982), Item 50 (effective Oct. 18, 1982), and then Item 50-A (effective July 17, 1983). We refer to these collectively as Item 50.

⁹ From the materials supplied to us by the parties, we are unable to determine when this provision was first published. The provision was redesignated as SMC 128-K, Supplement 55, Item 10950-A (as of Dec. 14, 1981), and again as SMC 128-L, Item 94800 (as of July 26, 1982). Item 94800-A (which we do not have a copy of and for which we cannot determine the effective date, but which was apparently a modified version of Item 94800) was canceled in SMC 128-L, Supplement 46 (as of May 9, 1983). We refer to these collectively as Item 10950.

shipment. **Loading discounts** encourage the shipper to perform a service that the carrier would otherwise be obligated to perform, such as loading trailers. (Freightways offered these discounts for shipments loaded at Kennett, MO — the origin point for all shipments at issue here — in FWXP 601, Item 70.¹⁰)

A shipment is entitled to all of the published discounts for which it is eligible, unless the discounts duplicate or conflict with each other or the terms of the tariff expressly preclude their application in combination. Thus, while a particular shipment cannot receive more than one discount of the same type – because like discounts would duplicate or conflict – it can receive more than one type of discount so long as there is no express tariff restriction. Where there are duplicative or conflicting discounts, the discount that results in the lowest rate generally takes precedence over similar discounts unless the tariff provides to the contrary. However, discounts provided in an individually published tariff (here, FWXP 601) take precedence over those contained in a rate bureau tariff.

Here, the carrier argues that, once FWXP 601, Item 20(3) became effective (on Apr. 29, 1982), no discount that Freightways published in any other tariff could apply to any of the subject shipments. While Item 20(3) stated that “discounts provided in any other tariff will not apply to shipments subject to the provisions of this tariff,” this trumping provision was inconsistent with Items 40(b) and 40(c) of the same tariff, which expressly permitted the application of aggregation and loading discounts contained in other tariffs but limited the level of those discounts.¹¹ Given this internal inconsistency, the tariff was ambiguous and must be interpreted against the drafting carrier. Thus, Item 20(3) did not preclude application of discounts allowed by Items 40(b) and (c).

The carrier argues that, once FWXP 601 became effective (on Apr. 29, 1982), no discounts in SMC 128 could apply because Item 499 of SMC 128 provided:¹²

Rates, rules or provisions named in this tariff do not apply for the account of any individual participating carrier to the extent that such carrier provides conflicting or duplicating rates, rules or provisions in any applicable tariff issued by such individual carrier and lawfully on file with the Interstate Commerce Commission.

¹⁰ Item 70 was re-designated as Item 68 (effective Feb. 23, 1984). We refer to these collectively as Item 70.

¹¹ The carrier argues that Items 40(b) and (c) did not allow for discounts under SMC 128 and MWB 129, because those tariffs were not listed in Item 10 of FWXP 601 as tariffs that applied in conjunction with FWXP 601. We do not read Items 40(b) and (c) as so constrained. Because the bureau tariffs listed in Item 10 were class rate tariffs and as such would not include any aggregation or loading discounts, Items 40(b) and (c), which expressly permit aggregation and/or loading allowances, would be rendered meaningless if read the way the carrier now suggests.

¹² The copy of Item 499 supplied to us was contained in SMC 128-L (effective July 26, 1982).

This provision is consistent with the general principle that a carrier's individual tariff takes priority over bureau tariffs where there is a duplication or conflict. Thus, discounts in SMC 128 would not apply where FWXP 601 contained conflicting or duplicating discounts. However, because FWXP 601 did not contain its own aggregation discount,¹³ the aggregation discount in SMC 128 (Item 10950) remained available. Similarly, because FWXP 601 did not apply to joint-line shipments, those discounts in SMC 128 applicable to joint-line shipments also remained available.¹⁴

The carrier also argues that, because a more specific tariff provision governs over a more general provision, the discount in Item 70 of FWXP 601 (which is limited to shipments originating at Kennett, MO) applied to the exclusion of the discount in Item 50 (which applied to a wide range of origins and destinations). The carrier ignores, however, the fundamental difference between Item 50 (a generally applicable discount) and Item 70 (a loading discount). Because there is no conflict or duplication, both discounts should be applied.¹⁵

Different types of discounts cannot be combined, however, when the tariff expressly precludes such a combination. Here, for instance, Note A(c) of Item 18005-Q of SMC 570 expressly precluded combining the generally applicable discount of that Item with an aggregation "allowance" under SMC 128. The shipper, attempting to find a distinction between a "discount" and an "allowance," argues that Note A(c) precluded combination only with aggregation "allowances" in SMC 128, while SMC 128, Item 10950 states that it is an aggregation "discount." However, Item 18005-Q clearly used these terms interchangeably, as evidenced by the reference to "Discount Rules" at the end of Note A(c), and it is common practice in the industry to use these terms interchangeably. Thus, the shipper is not entitled to combine the two types of discounts in that situation.¹⁶

¹³ FWXP 601 contained a generally applicable discount (Item 50), a loading discount (Item 70), and a limitation on aggregation discounts in other tariffs.

¹⁴ The carrier has proffered a letter that it sent to its tariff publishing agent, Missouri-Illinois Traffic Service, Inc., expressing an intention to cancel out of the bureau tariffs once it published its individual tariff. However, under the filed rate doctrine, the provisions of the tariffs that were on file with the ICC at the time must be strictly applied regardless of what rates the carrier may have intended to (but failed to) establish or cancel. See Maislin Indus., Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990); Security Serv. Inc. v. KMart Corp., 511 U.S. 431 (1994).

¹⁵ For the same reason, the aggregation discount in SMC 128, Item 10950 can be combined with the generally applicable and loading discounts in FWXP 601.

¹⁶ Thus, the shipment covered by Pro 589188 (May 3, 1982), was entitled to the aggregation discount of Item 10950 of SMC 128, as discussed in our June Decision, at 8. However, it was not also entitled to the generally applicable discount of Item 18005 of SMC 570, as the shipper claims, because the aggregation claim endorsement is reflected on that shipping order (which
(continued...))

Alternatively, the shipper argues that it is entitled to select the larger discount of the generally applicable discount of SMC 570, Item 18005-Q and the aggregation discount of SMC 128, Item 10950. However, Item 18005-Q expressly provided that the generally applicable discount was not available where the bill of lading was endorsed with a claim for the aggregation discount. Thus, the shipper is not entitled to select the larger of the two discounts in that situation.

2. Whether Certain Tariff Provisions Applied to Single- and/or Joint-line Shipments.

All of the shipments at issue here were tendered to Freightways at Kennett, MO. While some shipments were transported by Freightways the entire distance in single-line service, other shipments were interlined with other carriers in joint-line service.¹⁷ The parties disagree on whether particular tariffs applied only to single-line shipments or embraced joint-line shipments, and whether certain joint-line tariffs applied to any of the shipments at issue.

a. Discounts Applicable Only to Single-line Shipments.

i. FWXP 601.

FWXP 601 clearly stated in Item 40 (containing rules on how to apply the tariff) that the provisions of that tariff applied “only on Local (Single Line) Traffic,” and this language was repeated in several other provisions in the tariff, including Item 50. The shipper argues that there is an inconsistency within the tariff because the Note to Item 50 contained a discount for shipments “to or from direct points” not listed, suggesting that the discount could apply to movements for which only the origin or destination (but not both) were served by Freightways. While this phrase appears to be superfluous, we do not find it to be ambiguous, as the pertinent language is limited to “direct” (i.e. single-line) points.

The shipper further argues that because the tariff repeats the single-line restriction in some provisions but not others, individual provisions could be read as not limited to single-line shipments unless the provision so specifies. Based on this reasoning, the shipper would read Item 70, which contained a loading discount for “all shipments loaded at Kennett,” as embracing joint-line shipments loaded at Kennett. We disagree. Because Item 40 governed the entire tariff, it was not necessary to repeat the single-line restriction in each provision of the tariff. The fact that it was repeated in some provisions but not others does not, by itself, create an ambiguity. Moreover, the fact that the carrier may have applied this discount to both single- and joint-line shipments does not

¹⁶(...continued)
served as the bill of lading).

¹⁷ The terms “single-line,” “local traffic” and “direct traffic” are used interchangeably to refer to movements that a single carrier transports from origin to destination. The term “joint-line” refers to shipments that one carrier originates but hands off to another carrier prior to destination.

alter our analysis. The filed rate doctrine requires the carrier to charge, and the shipper to pay, the rates contained in lawfully filed tariffs. If the carrier charged different rates from those set out in its filed tariffs, it did so unlawfully. If the shipper is entitled to compensation for loading joint-line shipments, the basis for that compensation would have to be elsewhere.

Finally, as the carrier correctly points out, in order for the provisions of its individually published tariff to apply to another carrier, ordinarily the other carrier would need to have provided a notice of concurrence or the tariff itself would need to have listed the other carrier as a participating carrier. See former 49 CFR 1310.1(f), 1310.6(e), 1310.27. Compare SMC 570, Item 18005-Q (providing for joint-line movements with carriers listed in SMC 570, Item 6300).¹⁸ Alternatively, the publishing carrier would have had to state in its tariff that it would absorb the entire cost of the discount on any joint-line movement. Compare SMC 128, Item 10950 (containing such a statement). Here, there is no evidence that any of those means of effecting a joint-line rate were used. Thus, the terms of FWXP 601 could not apply to any joint-line movements.¹⁹

ii. MWB 129, Supplement 355, Item 902-65.

MWB 129, Supplement 355, Item 902-65 also expressly provided that it applied only to single-line shipments. Thus, during the period when it was in effect (Sept. 3, 1981 to Nov. 29, 1982), this tariff applied only to certain single-line shipments destined for points in the MWB territory.²⁰

b. Discounts Applicable Only to Joint-line Shipments.

Some of the discounts contained in the SMC 128 series applied only to joint-line shipments. These included:

¹⁸ The versions supplied to us are SMC 570-A, Supplement 130, Item 6300-FF (effective date unknown) and SMC 570-B, Item 6300-6 (effective date unclear but possibly Sept. 7, 1982).

¹⁹ Our June Decision at 9 thus incorrectly applied a discount from FWXP 601 to a joint-line shipment identified as Pro 659778 (May 2, 1983).

²⁰ Accordingly, the discussion in our June Decision at 7 regarding how this particular aggregation provision could be satisfied applies only to single-line shipments and, as discussed infra, only to the extent that the provisions of MWB 129, Item 902-65 were not superceded after April 28, 1982, by the discount limitation contained in FWXP 601, Item 40(b).

- SMC 128-L, Supplement 32, Item 168100-40, which provided a discount for shipments transported jointly with a carrier designated as “GORD” destined for Indiana, Kentucky or Ohio, but only if no other discounts (other than loading discounts) applied.²¹
- SMC 128-K, Supplement 91, Item 23900-12260 provided a discount for shipments transported jointly with a carrier designated as “OVNT.”
- SMC 128-L, Supplement 24, Item 165050-D provided a discount for certain shipments transported jointly with Gadsden Truck Lines, Inc.
- SMC 128-L, Supplement 37, Item 198000-A provided a discount for certain shipments transported jointly with a carrier designated as “RABK,” but if no other discounts applied.
- SMC 128-L, Supplement 44, Item 156800-E provided a discount to certain shipments transported jointly with a carrier designated as “LTEI,” but only if other discounts did not apply.

We note that there may be additional joint-line tariff provisions that applied to particular shipments in issue, but we have not been presented with evidence as to any.

c. Discounts Applicable to Both Single- and Joint-line Shipments.

i. SMC 570, Item 18005-Q.

SMC 570, Item 18005-Q provided a 10% discount for certain shipments transported from Missouri via carriers indicated in Item 6300. Item 6300 in turn provided that the tariff applied to both single-line traffic and joint-line traffic with the carriers listed there.

ii. SMC 128, Item 10950.

SMC 128, Item 10950 expressly provided that, where joint-line traffic was involved, Freightways would absorb the cost of the discount provided therein. Thus, the discount applied to both single- and joint-line shipments.

²¹ This tariff provision would appear to apply to sample shipment 11, Pro 647412 (Mar. 1, 1983), provided that the tariff provision was in effect on that date, no conflicting discounts applied, and the shipment otherwise met the criteria of this provision. However, other discounts — SMC 570, Item 18005-Q or SMC 128, Item 10950 — may have applied to this shipment, thereby precluding application of this provision.

3. Whether Aggregation and Loading Discounts Were Limited to 10%.

FWXP 601, Items 40(b) and 40(c) purported to limit any aggregation and loading discounts, respectively,²² that were “allowed under the provisions of this or any other tariff” to a maximum of 10% each. However, in Item 70 of the same tariff, Freightways offered a maximum 18% loading discount for shipments loaded at Kennett, MO, that were destined to Arkansas, Missouri, Tennessee, or Illinois. Because the tariff was internally inconsistent, we construe the ambiguity against the drafting carrier. Thus, the Item 40(c) limit on loading discounts was modified by Item 70.

We note that, once FWXP 601 took effect (on Apr. 29, 1982), the terms of this individually published tariff took precedence over those contained in rate bureau tariffs. Thus, from that date, FWXP 601 limited the aggregation discounts that were available for single-line shipments in MWB 129, Supplement 355, Item 902-65 (discussed in our June Decision at 7) and in SMC 128, Item 10950.²³

4. Application of Our Tariff Analyses to the Remaining 7 Sample Shipments.

Finally, the carrier charges that we erred in our June Decision by limiting our individual-shipment analysis to the 5 sample shipments for which the shipper claimed overcharges. We limited our analysis in the belief that the guidance provided in our decision was adequate to resolve any issues relating to the other shipments. As it is now apparent that we had not resolved all of the issues in our June Decision, we address the remaining 7 sample shipments here.

With respect to two of those shipments — Pro 582621 (Apr. 1, 1982) and Pro 595436 (June 1, 1982) — the shipper does not claim eligibility for any discount. Thus, we see no basis for any dispute between the parties as to these shipments.

The remaining five shipments — Pro 647412 (Mar. 1, 1983); Pro 659917 (Apr. 29, 1983); Pro 665200 (May 31 1983); Pro 684917 (Oct. 3, 1983); and Pro 695122 (Dec. 29, 1983) — were all joint-line shipments for which the shipper claims discounts under FWXP 601. However, because that tariff applied only to single-line shipments, none of these shipments was eligible for those discounts.

For Pro 659917 (Apr. 29, 1983), the shipper also claims the 5% aggregation discount in SMC 128, Item 10950. However, that discount applied only where the shipper tendered a minimum

²² Although the phrase “and/or aggregate weight allowance” appears in both Items 40(b) and (c), the phrase would have meaning in connection with Item 40(b) but not Item 40(c). We construe the ambiguity against the drafting carrier.

²³ The full aggregation discount contained in SMC 128, Item 10950 remained available for joint-line shipments, because the FWXP tariff provisions applied only to single-line shipments.

of 3 shipments with an aggregate weight of 10,000 pounds. The documentation accompanying this shipment indicates that the aggregate tender weighed only 8,671 pounds. Because the minimum weight requirement was not met, this discount did not apply.

Finally, for Pro 684917 (Oct. 3, 1983), the shipper also claims the 10% generally applicable discount from SMC 570, Item 18005-Q. Because this was an LTL shipment transported from Missouri to Tennessee in connection with an interline carrier listed in SMC 570, Item 6300, the shipment appears to be eligible for that discount.

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

It is ordered:

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

Kenny W. Armstrong, Clerk
Chancery Court
Shelby County Courthouse, Room 308
140 Adams Avenue
Memphis, TN 38103
Re: Case No. 91799-2

3. A copy of this decision will also be mailed to:

Leonard Green, Clerk
United States Court of Appeals for the Sixth Circuit
100 East Fifth St., Room 532
Cincinnati, OH 45202-3988

By the Board, Chairman Morgan, Vice Chairman Burkes and Commissioner Clyburn.

Vernon A. Williams
Secretary