FILED
United States Court of Appeals
Tenth Circuit

MAR - 2 1990

ROBERT L. HOECKER
Clerk

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

ROCKY MOUNTAIN MOTOR TARIFF BUREAU, INC., Petitioner, v. INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA, Respondents.	)	Nos. 87-1150 88-1873 (I&S M-30388) (I&S 40110) (Pet. for Review)

ORDER AND JUDGMENT*

Before LOGAN, ANDERSON and EBEL, Circuit Judges.

Petitioner Rocky Mountain Motor Tariff Bureau, Inc. ("RMB") petitions for review of two orders of the Interstate Commerce Commission ("ICC"), rejecting two tariff proposals that affect single-line rates. RMB argues that its proposals are "changes in tariff structure," exempt from the ban on collective ratemaking

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

for single-line rates under 49 U.S.C. 10706(b)(3)(D)(iii).[1] We disagree.

In 1986, RMB submitted to the ICC a tariff proposal on behalf of its carrier members providing for a reduction in the rate basis factor in Tariff ICC RMB 583 ("RMB 583") used to determine class rates on general commodity shipments moving to and from the Salt River Project Navajo Electric Generating Plant near Page, Arizona. The proposal would reduce both single-line and joint-line class rates to and from the Generating Plant because the total rate basis would be reduced. RMB argues that the reduction in the rate basis factor is a change in tariff structure under section 10706(b)(3)(D)(iii) because the proposed tariff could conceivably affect the 730 carriers participating in RMB's class rate tariff. RMB also argues that the tariff, as applied to single-line service, would eliminate the need for small carriers to obtain special concurrences from all carriers with which the small carriers might interline.

In 1987, RMB filed another proposal on behalf of its member carriers to make the single-factor class rates in RMB 583 applicable to and from several points in New Mexico and points in 10 Western States, and to and from several points in Oregon and points in the continental United States. The proposed extensions of RMB 583's applicability would affect both single-line and

---

[1] Section 10706(b)(3)(D)(iii) provides that the ban on collective ratemaking for single-line rates shall not apply to:

> changes in tariff structures if discussion of such changes is limited to industry average carrier costs and . . . does not include discussion of individual markets or particular single-line rates.

joint-line service to and from the proposed points. RMB argues that its proposal is a change in tariff structure under 10706(b)(3)(D)(iii) because it would reduce rates on thousands of commodities originating in and destined for more than 100,000 points in the United States.

We find that neither of RMB's proposals is a broad tariff restructuring contemplated by the exception to the ban on collective ratemaking for single-line rates. See Niagara Frontier Tariff Bureau v. United States, 826 F.2d 1186, 1191-92 (2d Cir. 1987) (Niagara II) (tariff structure exemption encompasses "only a broad restructuring of the manner in which rate bureaus organize or calculate tariffs" and excludes "the aggregation of many individual and specific rate adjustments"); see also Clark & Reid Co. v. United States, 851 F.2d 1468, 1470 (D.C. Cir. 1988) (exception limited to "broad" restructurings); Central and Southern Motor Freight Tariff Ass'n v. United States, 843 F.2d 886, 897 (6th Cir. 1988) ("Some limiting adjective, whether 'broad' 'substantial' or 'significant,' must be used to prevent carriers from using the exception to swallow the rule."). Instead, RMB's proposals are of the type Congress intended to prohibit in its prohibitions against collective single-line ratemaking.

Additionally, regardless of the definitional breadth of "changes in tariff structure," the exception expressly precludes "discussion of individual markets or particular single-line rates." Here, insofar as RMB's proposals are applicable to single-line service, they are market specific and pertain to particular single-line rates. See Clark & Reid, 851 F.2d at 1470 ("We need not search for the essential meaning of 'changes in tariff structure,' for the exception explicitly precludes 'discussion of individual markets or particular single-line rates.'"). Moreover, RMB did not even consider industry average costs in its discussions of its two proposals let alone limit its discussion to that consideration as required in 10706(b)(3)(D)(iii). See Niagara II, 826 F.2d at 1191 (tariff restructure "exemption is restricted to industry average costs, and it specifically excludes collective discussion of individual markets").

In keeping with the relevant statutory guidelines, individual carriers may always file independent actions to change their single-line rates. Furthermore, RMB may resubmit the same proposals as long as they eliminate the inclusion of single-line rates.

Accordingly, the ICC's decisions are AFFIRMED.

ENTERED FOR THE COURT

David M. Ebel
Circuit Judge