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SUPPLEMENTARY INFORMATION: On May 11, 1995, Anacomp, Inc.; Crest Manufacturing Incorporated; Godfrey Marine; Harrison International Incorporated; Health and Personal Care Distribution Conference, Inc.; National Small Shipments Traffic Conference, Inc.; and Truckpro Parts & Service, Inc. (petitioners) jointly filed a petition for declaratory order pursuant to the provisions of 5 U.S.C. 554(e). Petitioners request that the Commission take expedited or emergency action in order to bring an immediate halt to what they characterize as an aggressive undercharge campaign being waged by Trans-Allied on behalf of Churchill against the petitioners and hundreds of other shippers.

For many years, Churchill maintained discount tariffs applicable to services provided to points for which it held irregular route authority. Petitioners state that prior to ceasing operations in early 1994, Churchill filed tariffs with this Commission [ICC CHTL 681, ICC CHTL 604 and ICC CHTL 627 series] that included a note providing that ''* * * the discounts named herein apply only to and from irregular route points actually served direct by CHTL.''

Beginning in January 1995, petitioners, who had previously used Churchill's services, began receiving dunning letters from Trans-Allied accompanied by ''balance due freight bills.'' Subsequently, further letters were received from Trans-Allied claiming: that the discounts provided to shippers by Churchill's Tariff ICC CHTL 682 contain an unambiguous provision that restricted their application to shipments moving to and/or from irregular route service points only; that legal effect must be given to every provision of a tariff; that the movements covered by the balance due bills were less-than-truckload shipments moving to points specified in Churchill's regular route certificate and to which Churchill provided a regular less-than-truckload service; that under the filed rate doctrine reaffirmed in *Maislin Indus.* v. *Primary Steel*, 497 U.S. 116 (1990), Churchill must seek payment of the undiscounted rates on shipments to regular route shipping points; and that shippers are not entitled to discounts off the applicable class rates.

The facts as presented by petitioners suggest that the services involved could have been performed under either Churchill's regular route or its irregular route authority. Petitioners point out that, during its many years of service, Churchill never contended that the discounts did not apply to shipments moving to and from all points for which it held irregular route authority, regardless of whether or not they also happen to be points for which it held regular route authority. Only after Churchill ceased operations did its auditor assert that the published discounts were not applicable to shipments moving to irregular route points that were also named in Churchill's regular route certificates.

Petitioners contend that Trans-Allied's theory of recovery is fatally flawed. They claim, that, under the Supreme Court's decision in *Hewitt-Robins, Incorporated* v. *Eastern Freight-Ways*, 371 U.S. 84 (1962), if two routes are available (in that case, one interstate and the other intrastate), the carrier is legally obligated to use the lower-rated route. The Court, according to petitioners, specifically condemned the use of principles of misrouting to collect a higher tariff charge as being an unlawful practice under the Interstate Commerce Act and the common law. Petitioners argue that Churchill's shippers are entitled to the lowest published tariff rate between two points.

Citing *Hewitt-Robins, Inc.* v. *Eastern Freight-Ways*, 302 I.C.C. 173, 174 (1957), petitioners conclude that ''when no routing instructions are given, a motor carrier has a duty to select the least expensive route, unless it is an unreasonable one.'' 302 I.C.C. at 174. *See also Great Atlantic & Pacific Tea Co.* v. *Ontario Frt. Lines*, 46 M.C.C. 237, 239, 242–243 (1946); *Mentzner Stove Repairs Co.* v. *Ranft*, 47 M.C.C. 151, 154 (1947); *Murray Co. of Texas, Inc.* v. *Marron, Inc.*, 54 M.C.C. 442, 444 (1952). They urge that the application of the *Hewitt-Robins* principles to the Churchill situation leaves no room for Trans-Allied to argue that Churchill is entitled to a non-discounted rate because, if it handled shipments in regular route service, rather than its irregular route service, it did so without consulting the shipper. Petitioners, therefore, ask the Commission to declare that Churchill had an affirmative duty to route its shippers' movements in irregular route service in order to take advantage of its published tariff discounts, and that, if it routed them in non-discounted regular route service, Churchill engaged in an unreasonable practice.

Petitioners also argue that Trans-Allied's position is not supported by the literal wording of the tariff note cited above. They contend that Trans-Allied's rationale must be rejected because it erroneously reads into the note the nonexistent words ''in irregular route service.'' They emphasize that there is no such qualification within the four corners of Churchill's tariff rule and that, as numerous courts have reasoned, tariff construction requires that ''the four corners of the instrument must be visualized and all the pertinent provisions considered together, giving effect so far as possible to every word, clause, and sentence therein contained.'' *United States* v. *Missouri-Kansas-Texas R. Co.*, 194 F.2d 777, 778 (5th Cir. 1952).

Petitioners contend that the shipper is entitled to the benefit of the doubt if the tariff is ambiguous, and that, because there are no such qualifying words to alert the potential shipper to the possibility that it would be forced to pay higher rates for shipments handled pursuant to Churchill's regular route certificates, rather than its irregular route certificate, Trans-Allied's construction must be rejected. ''[A]ny ambiguity or reasonable doubt as to their meaning must be resolved against the carriers.'' *Id.* at 778. Citing *Carrier Service, Inc.* v. *Boise Cascade Corp.*, 795 F.2d 640, 642 (8th Cir. 1986), petitioners argue that, to the extent that Churchill's tariffs ''would lend themselves to misinterpretation by the ordinary users of such tariffs,'' they must be construed in favor of the shippers.

Finally, petitioners submit copies of correspondence to shippers in which Churchill's representatives adopted an interpretation consistent with petitioners' position that the published discount ''applies only on shipments either originating at or destined to all of Churchill's direct interstate points.'' Petitioners argue that such representations clearly indicate that Churchill intended that shippers would receive the discount, and that without such competitive rates these shipments would have been shipped via other carriers.

Because it appears that a controversy exists within the meaning of 5 U.S.C. 554(e), the petition will be granted and a declaratory order proceeding instituted. Churchill and Trans-Allied will be directed to file comments on the issues presented, and the petitioners will be directed to file reply comments. All other interested persons may also file comments. The parties are specifically directed to address whether the collection of undercharges by or on behalf of Churchill Truck Lines, Inc. or Trans-Allied Audit Company, Inc., based on recharacterization of the service provided by Churchill, as regular route instead of irregular route, constitutes an unreasonable practice under 49 U.S.C. 10701(a).