

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-1064

September Term, 2013

STB-FD35705

Filed On: December 30, 2013

Eric Strohmeyer,

Petitioner

v.

Surface Transportation Board and United
States of America,

Respondents

James Riffin, et al.,
Intervenors

**PETITION FOR REVIEW OF AN ORDER OF THE
SURFACE TRANSPORTATION BOARD**

BEFORE: Henderson, Brown, and Srinivasan, Circuit Judges

J U D G M E N T

This petition for review of an order of the Surface Transportation Board was considered on the briefs and appendix filed by the parties, and respondents' letter submitted under Federal Rule of Appellate Procedure 28(j). See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the petition for review of the decision of the Surface Transportation Board dated January 11, 2013 be denied. The Board's determinations whether a transaction qualifies for exemption "epitomize the types of decisions that are most appropriately entrusted to the expertise of an agency." Central & Southern Motor Freight Tariff Ass'n v. United States, 757 F.2d 301, 321-22 (D.C. Cir. 1985) (per curiam). And here, petitioner and supporting intervenor have not demonstrated that the decision rejecting their Notice of Exemption is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, under the standard of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A). See Central & Southern Motor Freight, 757 F.2d at 321. In particular, in light of the applicants'

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proposal to limit their common carrier obligations to exclude the transport of toxic inhalation hazard commodities, the Board reasonably concluded the transaction needed to be thoroughly examined in a full certificate proceeding, rather than under the streamlined procedures for a class exemption. See Riffin v. STB, 733 F.3d 340 (D.C. Cir. 2013); Class Exemption for the Acquisition & Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 811, 816-17 (Dec. 19, 1985), review denied sub nom. Ill. Commerce Comm'n v. ICC, 817 F.2d 145 (D.C. Cir. 1987).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam