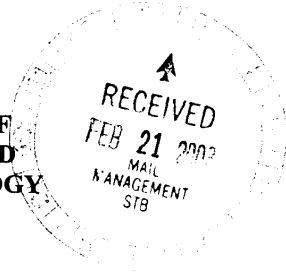


ORIGINAL

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB EX PARTE NO. 638

**PROCEDURES TO EXPEDITE RESOLUTION OF
RAIL RATE CHALLENGES TO BE CONSIDERED
UNDER THE STAND-ALONE COST METHODOLOGY**



**ENTERED
Office of Proceedings**

**WRITTEN TESTIMONY OF
CSX TRANSPORTATION, INC.**

FEB 21 2003

**Part of
Public Record**

**Summary of Testimony of Peter J. Shudtz for
CSX Transportation, Inc.**

- I. I am Peter J. Shudtz, Senior Vice President - Regulatory Affairs and Washington Counsel for CSX Corporation, and I have primary responsibility for overseeing CSX Transportation, Inc.'s ("CSXT") regulatory litigation, including rate cases before the Board. We endorse the written comments and testimony of the AAR in this proceeding, but welcome the opportunity to share CSXT's views on a few matters relating to the procedures governing SAC cases.
- II. CSXT strongly supports the Board's efforts in this proceeding, especially as those efforts are directed towards adopting procedures designed to help parties avoid rate litigation by resolving their commercial disputes without regulatory intervention. CSXT has fully supported the initiatives of the Staggers Act which permit railroads to use negotiation and contracting as our principal means of cooperatively setting rates with our customers. The Board's present initiative to require non-binding mediation will provide an additional tool to help parties avoid the need for resorting to formal rate cases. We do, however, ask the Board to consider carefully the procedures it puts in place for selecting

mediators, both to insure the impartiality of the process and to avoid making mediation simply an initial step to a rate case.

III. We also strongly support the Board's efforts to review its discovery procedures and to reduce unnecessary burdens and costs on the parties. Certainly our experience in a recent case made very clear to CSXT just how onerous compliance with the extensive discovery requests in a SAC case can become, including just how disruptive it can be to the conduct of our regular business operations. We believe that the inclusion of Board staff in informal discovery conferences aimed at helping the parties limit the scope of their respective requests and at sharing the costs of compliance with those requests is a sound initiative, and one which not only should enhance the prospects of parties reaching reasonable accommodations but also will more fully inform the Board of the circumstances surrounding a controversy should a formal ruling be necessitated.

IV. We have a particular concern about the pervasive use of the "Highly Confidential" terminology on virtually everything filed in SAC cases. Not only is it our experience that the classification is seriously overapplied, but it creates a significant impediment to our own personnel – including CSXT's in-house legal counsel, like me – being able to review, assess and respond to filings in a timely and meaningful way. Although there are procedures in the Protective Orders embodying the proscriptions on client access to "Highly Confidential" information for requesting the opposing side to reconsider such designations, in practice the process is cumbersome and time-consuming. Moreover, unless the request is based upon an obvious mistake (such as a party erroneously redacting evidence on the grounds that it reveals "Highly Confidential" information that came from us in the first place), and the opposing party refuses to reconsider and forces us to file with

the Board for relief, the reality of the schedules in SAC cases is such that by the time the Board is able to review the arguments and issue a decision, the proverbial ship will have sailed in terms of in-house counsel being able to participate in a timely manner in assessing how to respond to the redacted material. Accordingly, we ask the Board to remove the bar against in-house counsel viewing "Highly Confidential" materials in SAC cases.

Respectfully submitted,


Peter J. Shudtz
CSX Transportation, Inc.

Dated: February 21, 2003