

EX PARTE 638 PUBLIC HEARING
FEBRUARY 27, 2003
OPENING STATEMENT OF STB CHAIRMAN ROGER NOBER

Good morning.

I want to thank you for attending today's hearing, the first for the Board in 2003.

This morning we will hear testimony regarding Ex Parte 638 -- which is bureaucrat-speak for an examination of the STB's Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology.

Congress gave this Board jurisdiction to address a shipper's complaint that a railroad is charging it more than the maximum reasonable rate in cases where the railroad has market dominance over the shipper. This is one of the core missions of the Board, and in fact we currently have ten pending coal rate cases -- the most ever at one time.

Now, because we currently have the most rate cases ever pending, we might conclude that our procedures for resolving them don't need change, since our stakeholders have certainly not been shy about filing cases. However, I believe just the opposite, that because of the volume of rate cases, we must constantly look at ways to make the process better, faster and cheaper.

Now there is no doubt that litigating a coal rate case before the Board is a time-consuming and expensive proposition. And because the stakes are so high for both sides, it creates an incentive for both sides to litigate them to the fullest. I have been told that before its complete, a rate case it may cost as much as \$10 million in fees and take several years. This is too much money and too much time.

The Board uses Constrained Market Pricing theory to determine the maximum reasonable rate. To implement that theory there are two methodologies from which a complaining shipper may choose. Nevertheless, in every rail rate case filed at the Board, the shipper has used the Stand-Alone Cost (SAC) methodology.

Additionally, when a shipper complains that a railroad is charging a rate that exceeds the maximum reasonable rate, Congress has asked the Board to consider that claim expeditiously. In cases involving the SAC methodology, the Board has nine months after the close of the administrative record to make its decision. (49 U.S.C. 10704©)(1)).

Now, rate cases are not cookie-cutter cases; each rate case is unique and necessarily complex. The Board, however, has never missed a statutory deadline.

The parties must complete their evidentiary submissions to trigger that 9-month deadline. The necessary evidence in stand alone cost rate case is voluminous to gather and time consuming to

analyze. And it takes time for the parties to resolve disputes among themselves and file their evidence. For example, disputes over the scope of discovery can take a long time to resolve.

In one rate case currently pending before the Board, it took the parties 20 months, after the shipper filed its complaint, to complete their evidentiary submissions and thereby start the statutory period in which the Board is to resolve that case.

Last September, Chairman Morgan initiated this proceeding and advanced three possible rule changes. First, the proposed rules would provide for private and confidential mediation at an early stage in a dispute. Second, the proposed rules would alter the standard for discovery. Third, the proposed rules would provide for summary staff rulings on discovery disputes.

Our proposal is a useful starting point, and I look forward to discussing it today. However, I believe that there may be other good suggestions that stakeholders in the process may have. I therefore called this hearing, which is an opportunity for the Board to talk directly with those stakeholders-- railroads, shippers, and public interests alike -- about the Board's proposal and about the stakeholders' own suggestions.

I have reviewed the written submissions and note that several parties, primarily railroads, have proffered several new ideas for expediting rate cases. Other parties have provided additional insights regarding the Board's proposal. I do not know whether this latter group has concluded that the Board's proposal includes the only available alternatives for expediting rate cases, such that the Board's proposal resolves their concerns. I hope that they will let us know today during their oral remarks.

My goal is to use this hearing and the record in this proceeding to arrive at constructive solutions to make this process better, faster and cheaper.

I look forward to the comments of those who have chosen to appear today and to the opportunity to ask questions of them.

Now let me turn to a few procedural details.

In addition to the handout entitled "Hearing Procedures," we have a few other procedures that I would like to outline for you at this time. You will notice that each microphone has a bar on the base. This is a "mute" bar, and holding it down will cut off the microphone. Lifting your hand will activate the microphone again.

We also have speaker timing lights. When the green light comes on, you have one minute of time left. When your time is up, you will see a red light and hear a double chime. Please conclude your remarks when you hear the chime.

You will also see that we have silver toggle switches for each speaker light, which turn each individual light on and off. Please use whatever setting works best for you.

We have divided the witnesses today into panels. I will call each panel up as appropriate. We will take a short break between panels.

Finally, I want to point out that all of the statements that have been filed have been put on the Board's web site. The Board's web site address, for those of you who want to access the statements, is [www dot STB dot DOT dot GOV](http://www.STB.DOT.GOV).

I now recognize Vice Chairman Burkes for any comments that he may wish to make.

I now recognize Commissioner Morgan for her opening statement.