

MR. SMITH: Good morning. May it please the Board, my name is Paul Samuel Smith, and this morning it is my privilege to represent the United States Department of Transportation.

For years the Surface Transportation Board, like the Interstate Commerce Commission before it, has struggled to refine the process by which it determines the reasonableness of rail rates. This proceeding focuses on two broad elements of that continuing effort: mediation and discovery disputes.

Department of Transportation supports the basic proposals put forth with respect to both of these. Mediation has been widely embraced by the parties in this proceeding. They have suggested various changes to the Board's proposals to address either legal questions arising from statutory time frames or to meet various practical concerns.

The department favors mediation because in common alternative dispute resolution options generally, it offers the premise of efficiency and flexibility that are foreign to formal adjudication. Minor revisions or clarifications to the proposed mediation rules could preserve these benefits consistent with statutory time frames and with the means of the parties.

The department that any rules ultimately adopted by the Board must be tailored both to preserve the confidentiality of the mediation process and to provide an expeditious time frame so that even where mediation is unsuccessful, the resort to that process will not impede the ultimate resolution of the rate dispute.

We urge that the Board adopt rules that reflect these concerns.

The Board's discovery related proposals, on the other hand, have attracted more controversy. Discovery disputes have been a prime contributor to extended delay in major rail rate cases. This makes the task of determining reasonableness both more arduous and renders that process less successful overall.

The department strongly supports the measures proposed

here because we think that together they will reduce the opportunity for parties to abuse and delay the discovery process.

The first proposal is for a higher standard for discovery and would dispense with less well justified requests that are merely relevant. Parties that truly need to obtain specific information from each other should be able to demonstrate that fact and thereby meet the higher standard.

The second proposal is an accelerated procedural schedule for resolving these more weighty discovery disputes, and that is essential. It also requires an unwavering commitment from the Board's staff and the Board itself to expedite decision making.

We also believe that informal conferences with staff and parties in a rate case can be as helpful as are those same conferences in judicial litigation in narrowing issues and injecting notes of realism where that may be lacking. We support these proposals as well.

In closing I was going to recall Prime Minister Gladstone's "justice delayed is justice denied" statement, but Vice Chairman Burkes has already done that for me. So I'll just close my prepared remarks and try to answer any questions you might have.