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March 23, 2004

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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

RE: Docket No. 42086, *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*

Dear Secretary Williams:

Enclosed are the original and 10 copies CSX Transportation, Inc.'s Response to Oral Argument Request. Please time and date stamp the additional copy of this letter and the Response, and return them to our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42086

TERMINAL WAREHOUSE, INC.
v.
CSX TRANSPORTATION, INC.



RESPONSE OF CSX TRANSPORTATION, INC.
TO REQUEST FOR ORAL ARGUMENT OF TERMINAL WAREHOUSE, INC.

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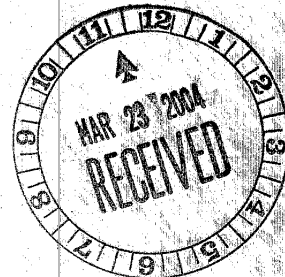
Attorneys for: CSX TRANSPORTATION,
INC.

Dated: March 23, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42086

TERMINAL WAREHOUSE, INC.
v.
CSX TRANSPORTATION, INC.



RESPONSE OF CSX TRANSPORTATION, INC.
TO REQUEST FOR ORAL ARGUMENT OF TERMINAL WAREHOUSE, INC.

CSX Transportation, Inc. ("CSXT") requests leave to respond to the Request for Oral Argument (the "Request") filed by Terminal Warehouse, Inc. ("Complainant") on March 19, 2004. CSXT does not oppose the Request, at this time, but questions the timing of the Request and the basis for the Request.

Complainant filed a complaint against CSXT on February 11, 2004. CSXT filed an answer on March 2, 2004. Complainant and CSXT have agreed, except for the issue of oral argument, to a procedural schedule, which was filed with the Surface Transportation Board (the "Board") on March 19, 2004. To date, discovery has not begun and evidence has not been filed. A full factual record has not been developed before the Board.

Complainant's first basis for oral argument is that it "anticipates that CSX will attempt to introduce factual evidence which is in conflict with the supporting information submitted by" Complainant. CSXT wants to be clear that it will introduce evidence proving that CSXT has not violated 49 U.S.C. § 11101(a) when CSXT files its reply evidence as provided in the procedural schedule agreed to by CSXT and Complainant. Complainant will then have an opportunity to

submit rebuttal evidence under the agreed upon schedule. Complainant does not need oral argument to have an opportunity to rebut CSXT's evidence.

Complainant next argues that "oral argument will provide an opportunity for the Board, in its discretion, to direct that additional information be filed if the significant adverse impact to" Complainant "and other shippers of the proposed individual exemption cannot be ascertained from the information contained in" the evidentiary submissions. In making this argument, Complainant overlooks the fact that a complainant bears the burden of proof. *Minnesota Power, Inc. v. Duluth, Missabe and Iron Range Railway Company*, STB Docket No. 42038 (STB served March 6, 2000). Complainant is asking the Board to allow Complainant another bite at the evidentiary apple before Complainant has even taken its first bite. Complainant seems to also ask the Board to request additional evidence from Complainant and other shippers at the oral argument if Complainant has not proven its case and met its burden of proof through two rounds of evidentiary filings.

Complainant appears to seek oral argument to submit additional facts, and if it has not submitted sufficient facts to prevail, to have the Board tell Complainant what it missed. It is CSXT's belief that the Board typically holds oral argument to discuss the issues raised in the proceeding. *Duke Energy Corporation v. CSX Transportation, Inc.*, STB Docket No. 42070 (STB served August 11, 2003). CSXT contends that oral argument should not be scheduled for the purpose of permitting Complainant the opportunity to submit additional evidence or to receive guidance from the Board as to the evidence that Complainant has failed to submit in two rounds of pleadings. CSXT further contends that Complainant is the only complaining party in this proceeding, is the only party seeking relief, and therefore, the impact on other non-party shippers, if any, is not relevant to the resolution of this proceeding.