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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Ex Parte No. 704 (Sub-No. 1), *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*

Dear Ms. Brown:

I am writing on behalf of the Association of American Railroads ("AAR") regarding the Technical Conference held in this matter on December 18, 2020.

AAR appreciates the Board's decision to hold a technical conference in this proceeding so that Board Staff could "provide a presentation on the approach and ... answer technical questions about the mechanics of the approach." Decision served Nov. 25, 2020, at 2. The presentation by Board Staff at the Conference was in some respects useful and informative and will assist stakeholders in constructively engaging with the proposed approach. Overall, however, AAR was disappointed with the level of detail in the presentation and the fact that many important questions were left unanswered.

Specifically, many of the questions submitted by AAR and its member railroads were designed to gain a greater understanding of the design features of Board Staff's proposed "Indicator Dashboard," which reports color-coded indicators of the level of concern associated with specific metrics built from the underlying data examined in other stages of its approach.¹ AAR's questions about the Dashboard (the most

¹ In accord with the Board's instructions, AAR submitted written questions via email on December 11. A copy of the questions submitted by AAR is attached as Appendix A.

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significant of which are highlighted in Appendix A) addressed such issues as Board Staff's choices to compare datapoints for two specific years (1992 and 2018), to compare metrics for each commodity with the average of all commodities and assign numerical scores when the difference crossed a predetermined threshold (typically 5%), to average numerical scores and use another set of thresholds (0.67 and 1.33) for purposes of assigning a weak/moderate/strong signal (and color), and then to use a similar scoring and averaging approach to derive an overall signal. These features were critical steps that converted Staff's apparent observations about certain underlying data into concrete color-coded signals of potential concern, and AAR's questions about them sought to understand what considerations underlay the Board Staff's choices.

At the Technical Conference, Board Staff devoted considerable time to describing several aspects of its proposed approach, including sources of data and data visualization techniques, and in the course of this discussion Staff answered some of the questions AAR and others had posed about those aspects. When Board Staff addressed its Indicator Dashboard, by contrast, it did not give any explanation of the Dashboard's key design features. Instead, it merely described the basic pyramidal structure of the Dashboard (*i.e.*, with an Overall Signal, two Initial Screens, and eight Indicators) and noted that there were four separate dashboards (*i.e.*, versions using R/VC and RPC metrics in both the revocation and exemption context). AAR's questions about the Dashboard's design were not answered, despite the seeming importance of the Dashboard in the approach proposed by Board Staff.

Unfortunately, the online Q&A feature of the Conference did not provide an opportunity to explore these issues. AAR's expectation was that Staff would respond to the written questions submitted in advance, and so did not seek to re-ask those questions using the online feature. When Board Staff concluded its prepared remarks and asked for questions, AAR proceeded to begin typing a note requesting time to raise the questions that had not been addressed. AAR was disappointed that Board Staff concluded the Conference (by shutting down the Zoom link) before this message could be sent.

AAR's January 22 Comments will address the proposed Indicator Dashboard, but AAR will be handicapped by the lack of information concerning the specific design choices that Staff made in building the Dashboard. Accordingly, AAR respectfully requests that the Board consider either (a) asking Staff to respond in writing to AAR's questions relating to the Indicator Dashboard (specifically those highlighted in Appendix A), as well as those submitted by AAR member railroads and other participants, or (b) reconvening the Technical Conference so as to permit Board Staff to provide meaningful responses to those questions and allow a reasonable opportunity for

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participants to submit additional questions in real time.² Given the fast-approaching January 22 due date for Opening Comments in this proceeding (a date that was set to provide interested parties with 30 days to digest information provided by Board Staff at the Technical Conference), AAR requests that the Board act as promptly as feasible so that AAR and other interested parties will have a fair opportunity to incorporate whatever is learned into their Opening Comments.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "David L. Meyer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David L. Meyer

*Attorney for the Association of
American Railroads*

Attachment

² In either event, AAR requests that all questions submitted to the Board for consideration at the Technical Conference be made public.

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The Association of American Railroads (“AAR”) submits the following questions to be addressed by Board Staff at the Technical Conference scheduled for December 18, 2020. AAR greatly appreciates the hard work of Board Staff in developing a set of tools aimed at examining available data that may be relevant to the question whether commodity exemptions should be granted or revoked. Below are a series of questions intended to better understand these tools and the reasoning underlying them, as well as to help Board Staff improve the utility of its proposed approach.

In light of uncertainty about how the ultimate set of tools will be deployed by the Board, many of our questions concern the possibility that they may be used to generate explicit signals of concern, or to rank commodities in order of potential concern. A number of these questions could turn out to be of less importance were the tools used only as a means of gathering potentially useful data for consideration by the Board and interested parties in future proceedings.

We begin with several overarching questions about the proposed approach and then turn to more detailed and technical questions about specific features.

Overarching Questions:

1. ***Support for Relevance of Proposed Metrics.*** In general, what support does Board Staff have that the various metrics and thresholds it deploys in the proposed approach are relevant to the potential presence of railroad market power?
2. ***Basis for Thresholds Used in Proposed Screens and Indicators.*** Many of the proposed Screens and Dashboard Indicators set thresholds (e.g., 5% differences) above or below which certain numerical scores (0, 1, 2) or color-coded signals (strong, medium, or weak) are assigned. As a general matter, how did Board Staff go about deciding which thresholds to use?
3. ***Rationale for Scoring/Averaging Rather than Merely Reporting Pertinent Data.*** Many of the Indicators, and the Dashboard as a whole, report weak/moderate/strong signals based on relative scores (0, 1, 2) and averaging across multiple metrics (or Indicators). What considerations led Board Staff to propose to report results in this way rather than to report the specific metrics or calculated results? Has Board Staff considered whether its scoring/averaging approach might obscure potentially relevant data?
4. ***Procompetitive and Other Factors Affecting R/VC and RPC.*** Many of the proposed Screens and Dashboard Indicators treat certain levels of R/VC (or RPC) or changes in those levels (both absolute and relative to other commodities) as indicative of potential concern. In general, what analysis did Board Staff undertake to consider changes since 1992 – such as rail productivity gains, shifts in demand or shipment characteristics, etc.

- that could drive R/VC higher for reasons unrelated to changes in railroad market power?
5. ***Limitation to Single-Year Snapshots (and Snapshot Comparisons).*** The proposed Screens and Dashboard Indicators examine data for a single year (2018) or changes in data between two single years (1992 and 2018). In general, what considerations led Board Staff to limit consideration to a single year rather than multiple years? Did Board Staff take into consideration the possibility that examining multiple years of Waybill Sample data might reveal additional movements of competitive relevance (either because of changes in shippers' selection of rail transportation provider from year to year or because in any given year many specific carload movements are not sampled under the Waybill Sample's incomplete sampling ratio) or address year-to-year fluctuations in the relevant metric?
 6. ***Limitation to Waybill Sample Data on Transportation Movements.*** By using only Waybill Sample data to identify transportation movements, Board Staff's approach examines only railroad movements rather than movements via other transportation modes. In general, what considerations led Board Staff not to include available data concerning the movement of these commodities by truck or water, especially in light of the fact that non-rail modes account for the vast majority of intercity freight shipments? For example, did Board Staff explore the availability of data reflecting actual truck movements, such as Commodity Flow Survey data, that might be used to gauge the effective distance of truck competition or calculate the share of shipments moved by truck?
 7. ***Absence of Metrics Indicative of Geographic Competition.*** None of the Screens or Indicators appears to measure the degree to which shippers could avail themselves of the opportunity to ship to alternative destinations or receive from alternative origins via alternative rail or non-rail transportation alternatives. Did Board Staff consider metrics relating to potential geographic competition? For example, did Board Staff consider metrics measuring the degree to which the Waybill Sample reveals that alternative origins or destinations for rail shipments revealed by the Waybill Sample were within short-haul trucking distance of the actual destinations or origins?
 8. ***Examination of Validity or Robustness of Results.*** Did Board Staff perform any analysis of the validity of its methodologies or robustness of the results of its Screens or Dashboard Indicators in sending appropriate signals regarding potential concerns about railroad market power? For example, did Board Staff compare results from the proposed Dashboard with the results of any more-in-depth examination of market conditions undertaken by the Board or Board Staff, or examine the sensitivity of the results to small changes in the underlying data? Similarly, did Board Staff consider the implications of apparent inconsistencies between individual Indicators? For example, the September 2020 decision presents results indicating that of 18 commodities receiving a "Strong" signal for "R/VC Change," 12 of those same commodities received a

“Weak” signal for “Competitive Influence Change”? (at 65) On its face, this seems to suggest that R/VC changes do not flow from changes in competitive conditions.

Specific Questions About Individual Elements of the Proposed Approach

9. Questions about Board Staff’s ***proposed use of R/VC Metrics*** (applicable to Initial Screen 1, Dashboard Indicators 1 and 2 (R/VC and R/VC Change) and Dashboard Indicators 7 and 8 (Competitive Influence R/VC Difference and Difference Change)):
 - (a) How did Board Staff adjust R/VC to take into account inflation. What considerations led Board Staff to select a single index (GDP-IPD) as the basis for indexing revenues and costs from 1992 to 2018? Did Board Staff give any consideration to other indices or adjusting revenues to take account of demand-side factors that might have influenced the level of revenues in a manner different from the overall average inflation rates?
 - (b) There have been substantial productivity gains in the rail industry since 1992. In light of these gains, one would expect traffic that was at 180% R/VC in 1992 to be well above 180% R/VC in 2018 even if all productivity gains were passed on to shippers. What consideration did Board Staff give to the implications of these productivity gains?
 - (c) Did Board Staff’s application of this screening tool take into consideration any other factors that might drive R/VC higher in ways unrelated to changes in railroad market power?
10. Questions about Board Staff’s ***proposed use of RPC as an alternative to R/VC*** (applicable to Initial Screen 1, Dashboard Indicators 1 and 2 (RPC and RPC Change) and Dashboard Indicators 7 and 8 (Competitive Influence RPC Difference and Difference Change)):
 - (a) As with R/VC, what considerations led Board Staff to select a single index (GDP-IPD) as the basis for indexing revenues from 1992 to 2018?
 - (b) What steps did Board Staff take to control for developments that might be expected to result in increased RPC but would not be indicative of any increase in railroad market power, such as larger railcars, heavier axle loadings, and increasing lengths of haul?
 - (c) Does Board Staff have any support in academic or other research for the proposition that R/VC is a reliable measure of potential market power?
11. Questions about Board Staff’s consideration of ***other competition-related metrics***:
 - (a) Did Board Staff consider including in its Dashboard any other analysis or data on additional factors relevant to competitive market conditions and railroad performance, such as geographic and product competition, changes in shipping volumes (quantity), investments in capacity, changes in revenue-per-ton-mile, or

improvements in service quality? Does Board Staff recognize that additional analyses like these would take place in individual proceedings related to specific commodities, even if they are not included in the Initial Screens or Dashboard Indicators?

12. Questions about the Board Staff's **choice of thresholds**:

- (a) What considerations led Board Staff to select the **5% and 180% R/VC thresholds** for application of **Initial Screen 1**?
- (b) What considerations led Board Staff to select the **40% intermodal threshold** for application of **Initial Screen 2**?
- (c) What considerations led Board Staff to select the **30-mile threshold** for application of the rail and water influence components of GMIM? Does Board Staff have any evidence supporting use of such a threshold as an appropriate measure of the range of effective truck transloading? Did Board Staff consider whether a threshold greater than 30 miles might be appropriate where the rail movement identified in the Waybill Sample is already associated with a prior or subsequent truck movement (e.g., from a shipper facility to a warehouse or other rail-served transload)?
- (d) What considerations led Board Staff to select the **500-mile threshold** for consideration of truck competition influence? Does Board Staff have any evidence supporting the proposition that the putative distance a driver can cover in a day is an appropriate measure of the range of effective truck competition?
- (e) What considerations led Board Staff to select **5% above or below the average for all commodities** as the threshold difference for purposes of assigning numerical scores for **Dashboard Indicators 1 and 2 (R/VC or RPC and R/VC or RPC Change)** and **Dashboard 6 (Length of Haul Change)**, and for each of the three modal influence factors in **Dashboard Indicators 3 and 4 (Competitive Influence and Competitive Influence Change)**. What support does Board Staff have for the proposition that an average difference that is, say, 6% higher than for all commodities is potentially indicative of a material difference in railroad market power?
- (f) Similarly, what considerations led Board Staff to select **5% above or below the group of traffic with GMIM-assigned rail or water modal influence** as the threshold difference for purposes of assigning numerical scores for **Dashboard Indicators 7 and 8 (Competitive Influence R/VC or RPC Difference and Difference Change)**?

13. Questions about Board Staff's approach to **scoring for its Initial Screens and Dashboard Indicators**:

- (a) In designing the Initial Screens and Dashboard Indicators, did Board Staff refer to any precedent from prior Board (or ICC) practice in evaluating market power or the academic literature or practice of other regulatory agencies?
- (b) For its **Overall Signal**, what considerations led Board Staff to use a numerical scoring system (i.e., 0, 1, 2 and an overall average of these scores), and to assign equal weight to each separate Indicator signal?
- (c) Did the Board consider alternatives to a scoring system using only three numerical scores, such as a system using five or more scores (e.g., 0-5, or 0-10) so as to reflect more of the variation observed in the data?
- (d) In cases where a 0/1/2 scoring system was used, what considerations led Board Staff to choose 0.67 and 1.33 as the boundaries between "weak"/"moderate" and "moderate"/"strong"?

14. Questions about Board Staff's examination of **changes in metrics between 1992 and 2018** (applicable to Dashboard Indicators 2 (R/VC or RPC Change), 4 Competitive Influence Change), 6 (Length of Haul Change), and 8 (Competitive Influence R/VC or RPC Difference Change)):

- (a) What considerations led Board Staff to compare figures for a single year (1992 or 2018) rather than examining comparisons between averages over different two- or three-year periods (e.g., 2016-18). Did Board Staff consider the potential that expanding the range of data might reveal additional movements of competitive relevance or take into account year-to-year fluctuations in the relevant metrics?
- (b) What considerations led Board Staff to choose to compare the most recent period with 1992 specifically, rather than some other year (or group of years)? Does Board Staff anticipate that the approach would continue to use 1992 as the base year for all future comparisons?

15. Questions about Board Staff's **validation of the results of its proposed Initial Screens and Dashboard Indicators**:

- (a) Did Board Staff perform any analysis of the degree to which there is correlation in the data or calculations underlying the individual Indicator signals, such that certain factors might be over- or under-represented in determining the overall signal?

16. Questions about Board Staff's proposed **Data Visualization tools**:

- (a) In plotting data using Board Staff's visualization tools, what considerations led Board Staff to limit the portrayed data to a sample of 100 movements?

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- (b) Why did Board Staff conclude that data visualization tools such as those set forth in the September 30 Decision provide a useful set of inputs for assessing whether closer investigation into market conditions might be warranted? Does Board Staff regard visualization tools such as those proposed as having advantages over the “weak/moderate/strong” indicators included in the proposed Dashboard?
17. Additional specific questions about ***Initial Screen 1***:
- (a) Is it correct that under Board Staff’s approach the average or median R/VC for all traffic could be well below 180%, yet the proposed Screen threshold would still indicate potential market power concern?
18. Additional specific questions about ***Initial Screen 2***:
- (a) Is the goal of this screen to identify situations where there is likely to be pervasive truck and/or rail competition?
 - (b) Does Board Staff regard this metric as meaningful in part because it reflects the ability of railroads to compete with one another to/from alternative rail origins or destinations (i.e., intermodal terminals) for traffic that has a truck movement before or after the rail movement?
 - (c) How did Board Staff identify whether rail movements were intermodal for purposes of this screen?
 - (d) Much rail traffic classified as “intermodal” in the Waybill Sample does not have corresponding information about which specific commodity was being moved. Were the implications of this lack of data considered or addressed by Board Staff? Did Board Staff consider the likelihood that this means the percentage of traffic moved intermodally could be higher than would appear from a calculation that considers only movements with commodity-specific information?
19. Additional specific questions about the ***rail competition component of GMIM***:
- (a) What considerations led Board Staff to limit consideration of potential alternative rail options to the identical commodity, especially given that the water competition component of GMIM was not restricted in this way? Did Board Staff perform any analysis of the extent to which alternative rail transportation options available for the shipment of other commodities might reveal the availability of those options for the commodity at issue?
 - (b) As elsewhere in the proposed approach, what considerations led Board Staff to limit consideration of potential alternative rail options to a single year in the Waybill Sample?

20. Additional specific questions about the ***water competition component of GMIM***:
- (a) What considerations led Board Staff to impose a requirement that the origin and destination be near ports that are on the same waterway system despite the fact that significant volumes of freight move by water from one waterway system to another? Has Board Staff considered any alternative approaches that relax this restriction?
 - (b) When Board Staff implemented this methodology, did it include ports on the Missouri River and the Arkansas River systems?
21. Additional specific questions about the ***500-mile radius for potential truck competition***:
- (a) Did Board Staff base its 500-mile radius on rail miles reflected in the Waybill Sample, despite the fact that highway miles are often considerably shorter than the length of the rail route?
22. Additional specific questions about ***Dashboard Indicators 1 and 2 (R/VC or RPC and R/VC or RPC Change)***:
- (a) When comparing R/VC (or RPC) (or R/VC or RPC change) for a commodity with the average R/VC (or RPC) for other commodities, did Board Staff remove the studied commodity from the comparison group? If not, why not?
 - (b) What considerations led Board Staff to calculate the differences in both average and median R/VC (or RPC) and then assign these two measures equal weight in calculating the average score? What significance does Board Staff attach to the median?
 - (c) What significance does Board Staff attach to the 25th percentile?
23. Additional specific questions about ***Dashboard Indicators 3 and 4 (Competitive Influence and Competitive Influence Change)***:
- (a) When comparing each modal influence metric for a commodity with the average for other commodities, did Board Staff remove the studied commodity from the comparison group? If not, why not?
 - (b) What considerations led Board Staff to choose to compare modal competition data with the average for other commodities rather than examining the extent of competitive alternatives (or the change thereof) directly? In other words, if there is ample effective competition from other modes for a particular commodity, why is it relevant that there may be even more intensive competition for another?
 - (c) Has Board Staff considered the potential that its averaging approach might obscure the presence of material competitive factors? For example, as we understand the methodology, even if the percentage of traffic within 500 miles was 100%, earning a score of zero, but there were no observed rail or water

alternatives (each earning a score of 2), the overall average would be over 1.22, earning this Indicator a “red/strong” classification; is this correct?

24. Additional specific questions about ***Dashboard Indicators 5 and 6 (Length of Haul and Length of Haul Change)***.
- (a) What considerations led Board Staff to select the 500-mile and 1000-mile thresholds?
 - (b) More generally, what support does Board Staff have for the proposition that average length of haul or changes in average length of haul are indicative of potential railroad market power?
 - (c) Has Board Staff examined the degree to which these metrics might be correlated with inputs into Indicators 3 and 4?
 - (d) As to Indicator 6, what analysis has Board Staff done on the various developments since 1992 that might have caused average length of haul to increase? Has Board Staff examined the extent to which that metric is influenced by successful competition by other modes, railroads competing successfully to reach distant markets, improvements in railroad interline service options, or other factors?
25. Additional specific questions about ***Dashboard Indicators 7 and 8***:
- (a) Please explain in detail how these Indicators are calculated, and how the ultimate weak/moderate/strong signal is derived.
 - (b) When comparing the R/VC (or RPC) level or change for traffic with and without GMIM-assigned modal influences, what considerations led Board Staff to omit any metric related to the presence of truck competition when separating the traffic into groups with and without GMIM-assigned rail and water influences?
 - (c) The Board’s September 30 Decision refers (at 12 n.36) to the potential that “including a factor that captures longer haul traffic could obscure the impact of GMIM-assigned modal influences on R/VC ratios.” Does this imply that for at least some commodities, Board Staff does not find significant differences in R/VC between traffic with and without GMIM-assigned modal influences with respect to longer haul traffic? Why does Board Staff not regard this as relevant to the question whether there is railroad market power with respect to transportation of the commodity?
 - (d) What support does Board Staff have for the proposition that the traffic group with GMIM-assigned rail or water influences was comparable to the traffic group without such influences in all other respects relevant to R/VC (or RPC) (or changes in R/VC or RPC), including factors affecting revenue (such as demand factors) and cost?

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- (e) What support does Board Staff have for the proposition that potential differences in R/VC (or RPC) for traffic groups with and without GMIM-assigned rail or water influences are the result of railroad market power rather than other factors?
- (f) What considerations led Board Staff to calculate the differences in both the average and median R/VC (or RPC) differences then assign these two measures equal weight in calculating the average score? What significance does Board Staff attach to the median?
- (g) What significance does Board Staff attach to the 25th percentile?