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Docket No. EP 704 (Sub-No. 1)

REVIEW OF COMMODITY, BOXCAR, TOFC/COFC EXEMPTIONS

STEEL MANUFACTURERS ASSOCIATION COMMENTS

The Steel Manufacturers Association (“SMA”) respectfully submits its comments in the above-captioned proceeding in accordance with the decision by the Surface Transportation Board (“STB” or “Board”) served on September 30, 2020 (“Decision”). In this Decision, the Board requested public comment concerning a new approach its Office of Economics (“OE”) has developed for possible use in considering class exemption issues. The Board issued this Decision over 4 years after it issued a notice of proposed rulemaking seeking public comment on its proposal to revoke the existing class exemptions under 49 C.F.R. part 1039 for (1) crushed or broken stone or rip rap; (2) hydraulic cement; (3) coke produced from coal; (4) primary iron or steel products; and (5) iron and steel scrap, wastes, or tailings. *Review of Commodity, Boxcar, & TOFC/COFC Exemptions*, EP 704 (Sub-No. 1) (STB served Mar. 23, 2016) (“NPRM”) (with Board Member Begeman dissenting). As the representative of the steel industry, SMA

was deeply disappointed by this recent Decision to further delay and apparently change the path of a proceeding that has been pending for so long.

IDENTITY AND INTEREST

SMA is the largest steel industry trade association in the United States and is the primary trade association representing North American electric arc furnace (“EAF”) steel producers, often referred to as “minimills.” EAF steelmakers account for almost 70 percent of domestic steelmaking capacity using an innovative, 21st century production process that is less energy-intensive and has lower carbon emissions than traditional steelmaking. In addition, SMA member companies are the nation’s largest recyclers, having recycled more than 70 million tons of steel scrap last year, with approximately 80 percent of that consumed in EAFs. SMA’s 24 producer members and over 70 associate members have operations in 43 states.

The member companies of SMA rely on the railroads to transport inbound movements of raw materials, like steel scrap, inter-plant movements of in-process products, and outbound movements of finished products, like primary steel products. Especially given the current state of the steel industry in the United States, which is suffering from a large amount of steel commodity imports from a number of countries around the world, much of which is dumped and subsidized, SMA’s members have a significant interest in moving their inbound and outbound materials and products efficiently and cost effectively.

Rail transportation costs are a substantial component of the cost of doing business for SMA’s members. Railroad rates for steel commodities have been steadily increasing in recent years, and many members are without adequate modal competitive options for their

shipments. Railroad market power and lack of feasible, competitive options for steel manufacturers in many instances have had an adverse impact on the ability of steel manufacturers to compete in the marketplace, and to obtain adequate service, especially during periods of railroad service problems. Therefore, as movers of exempt commodities, SMA's members have a strong interest in having their exemptions revoked as the Board had proposed in the NPRM in 2016.

STB CLASS EXEMPTIONS

As part of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31, Congress gave the Board's predecessor, the Interstate Commerce Commission ("ICC"), broad authority to exempt rail carriers from regulation. This statutory exemption standard was revised in the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 ("Staggers Act"), however, the substantive standard has remained unchanged since the Staggers Act. The exemption provision, codified at 49 U.S.C. § 10502, provides that the agency shall exempt a person, class of persons, or a transaction or service when it finds that the application of a provision of 49 U.S.C. subtitle IV, part A, is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 ("RTP") and either (a) the transaction or service is of limited scope, or (b) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power. The agency may revoke an exemption (partially or completely) if the agency later determines that application of a provision of part A is necessary to carry out the RTP. *See* 49 U.S.C. § 10502(d).

The agency has exempted from most regulation, as a class, the transportation by rail of numerous commodities, including primary iron or steel products, coke produced from coal, and iron and steel scrap, wastes, or tailings, finding that such regulation was not necessary to carry out the RTP. *See* 49 C.F.R. §§ 1039.10, 1039.11. The agency has also exempted rail operations provided in connection with trailer-on-flatcar/container-on-flatcar (“TOFC/COFC”) services, truck operations provided as part of a continuous intermodal movement that includes rail TOFC/COFC service, and the rail transportation of all commodities in single-line boxcar service. *See* 49 C.F.R. §§ 1090.2, 1039.14.

THE HISTORY OF THIS PROCEEDING

In response to informal inquiries questioning the relevance or necessity of some existing commodity exemptions, the Board held a public hearing in Docket No. EP 704 in February 2011 to explore the continued utility of, and the issues surrounding, the various commodity exemptions under 49 C.F.R. §§ 1039.10 and 1039.11, the boxcar exemption under 49 C.F.R. § 1039.14, and the TOFC/COFC exemption under 49 C.F.R. part 1090. The Board received written comments from numerous interested parties, including railroad interests, shipper interests, and government agencies and officials; additionally, 21 parties testified at the hearing. After considering the oral testimony and written comments, data from the Confidential Carload Waybill Sample (“CCWS”) between 1992-2013, and other industry information, the Board issued the NPRM proposing to revoke the commodity exemptions for the following Standard Transportation Commodity Code (“STCC”) groups: STCC No. 14-2, crushed or broken stone or rip rap; STCC No. 29-914, coke produced from coal; STCC No. 33-12, primary iron or steel products (plates, pipes, and rods); STCC No. 32-4, hydraulic cement; and STCC No. 40- 211, iron

or steel scrap, wastes, or tailings. **The Board noted that the dynamics of the particular transportation markets for those commodity groups appeared to have changed significantly since the exemptions were first promulgated. NPRM, EP 704 (Sub-No. 1), slip op. at 4. The Board also indicated that reestablishing regulatory oversight of these commodities might be necessary to carry out the RTP. *Id.* (citing 49 U.S.C. § 10101(5), (6), (12)).**

The Board stated that its preliminary assessment was supported by the fact that CCWS rate data for these commodities showed a substantial increase in revenue from potentially captive traffic (i.e., traffic with a revenue-to-variable cost (“R/VC”) ratio of 180% or more, the threshold ratio for market dominance determinations in rate reasonableness cases) over the previous 22 years. *Id.* The Board, however, explained that while R/VC ratios in excess of the rate reasonableness market dominance threshold of 180% did not, standing alone, establish market power or an abuse of such power, the ratios have long been used by the Board as one indication of market power; the Board stated that it was appropriate to rely on the data as supporting evidence. *Id.* at n.7. The Board focused its proposal more broadly on whether “the competitive landscape has changed significantly enough to indicate that renewed regulation is needed to carry out the RTP.” *Id.* at 4.

The Board also pointed out that the purpose of this proposal is to restore shippers’ access to the Board’s regulatory oversight and processes—in particular, shippers of those commodities where evidence indicates that the competitive landscape has changed significantly enough to indicate that renewed regulation is needed to carry out the RTP. The

Board stated that it is committed to ensuring that stakeholders have an appropriate, meaningful path to the Board, and the proposal here is an important step towards that goal. *Id.*

Regarding the proposal to revoke the class exemptions for STCC Nos. 29-914, coke produced from coal; 33-12, primary iron or steel products (plates, pipes, and rods); and 40-211, iron or steel scrap, wastes, or tailings, the Board explained that several changes relating to the transportation of these commodity groups suggest that railroads have greater market power today than they did when the ICC issued its exemption decisions. First, as a general matter, in the last several decades, the United States has been generating more scrap and requiring less traditional steel production in general, which has led the steelmaking industry to shift away from traditional blast furnaces towards EAFs to convert scrap into new steel. The Board stated that this trend towards the utilization of EAFs has resulted in the movement of steel production away from the Great Lakes region to the South. It further noted that when steel production was located primarily in the Great Lakes region, water carriage was an option for transportation—e.g., over the Great Lakes themselves—but is now less so after the migration to the South. With respect to trucking, the Board asserted that a review of confidential waybill data for 1992 and 2013 demonstrates that the average length of haul (weighted by tons) for primary iron or steel products and iron or steel scrap has increased for non-intermodal and non-boxcar movements. For primary iron or steel products, the average length of haul has increased by 74 miles, from 652 miles to 726. Similarly, the average length of haul for iron or steel scrap has increased 114 miles, from 306 miles in 1992, to 420 miles in 2013. The Board reasoned that although it is unknown what specific factors have contributed to such increases, this data is one indication of trucking being less competitive in today's marketplace. For these

reasons, the Board contended that railroads may be enjoying more market power now than in the early 1990's over shippers in the iron and steel industry. The Board noted that the submission of modal market share data over time (between railroads, trucks, and barge) with regard to these commodity groups will be helpful in assessing the degree to which the geographic migration may have affected intermodal competition. *Id.* at 7-8.

It went on to explain that similar arguments with regard to EAFs are also applicable to coke produced from coal (STCC No. 29-914). Years ago, blast furnaces in Pennsylvania, for instance, were not located far from coke sources in that same area. These short-haul distances potentially allowed for a significant volume of coke to be shipped to blast furnaces on trucks for use in the steelmaking process. The Board stated that a review of its confidential waybill rate data, however, indicates that the average length of haul for non-intermodal, non-boxcar coke produced from coal has increased by 39 miles, from 372 miles in 1992, to 411 in 2013. A 39-mile increase in the average length of haul is consistent with more transportation movements exceeding 500 miles in 2013 than in 1992, which supports the Board's concern that there is less competition from the trucking industry to transport this commodity. *Id.* at 8.

Second, the Board claimed that analysis of its confidential waybill data further supports a conclusion that each of these commodity groups may be subject to increased market power from railroads. With regard to primary iron or steel products (STCC No. 33-12), from 1992 to 2013, the percentage of revenue that was potentially captive for primary iron or steel products doubled from 18.8% to 37.6%. Similarly, for iron and steel scrap (STCC No. 40-211), the percentage of revenue that was potentially captive doubled from 22.1% to 44.0% during this

same time frame. Also, for primary iron or steel products, the average R/VC ratio for potentially captive traffic increased during the 22-year period, from 219.1% in 1992 to 236.6% in 2013. For the iron or steel scrap commodity group, the average R/VC ratio for potentially captive traffic increased by approximately four points, from 225.6% to 229.8%. Thus, the Board observed that the traffic for both primary iron or steel products and iron or steel scrap appears to be increasingly potentially captive to railroads, and that this potentially captive traffic is being charged higher R/VC ratios over time. The Board concluded that this data suggests that railroads may be exerting increased market power over shippers of these commodities. *Id.* at 8.

Likewise, the Board stated that its confidential waybill data for coke produced from coal indicates that the percentage of revenue that was potentially captive almost tripled from 1992 to 2013. In 1992, 20.1% of revenue was potentially captive compared to 58.9% in 2013. During that same time period, the average R/VC ratio for potentially captive coke traffic increased by approximately 23 points from 225.0% to 248.2%. Thus, the Board also concluded that it appears that coke produced from coal is becoming increasingly captive to railroads, and that the captive traffic is being charged higher R/VC ratios over time. It found these findings to be consistent with increased market power. *Id.* at 9.

The Board sought public comment on whether these exemptions should be revoked. It invited commenters to include any relevant data in support of their comments, including, but not limited to, the types of data (for example, modal market share, among other things), upon which the ICC relied in first promulgating the class exemptions proposed to be revoked. The Board also invited parties to address how market conditions today differ from those that

existed when the exemptions were granted and to reflect upon whether or how those changes should affect the Board's evaluation of those data sources upon which the ICC relied. *Id.* at 10-11.

SMA COMMENTS IN SUPPORT OF NPRM

On July 26, 2016, SMA filed comments with the American Iron and Steel Institute in accordance with the NPRM and in support of revoking the listed class exemptions ("Comments"). It laid out a strong argument for revocation, confirming many of the Board's data analysis findings through an expensive econometric study it conducted in conjunction with its Comments.

SMA emphasized that railroad commodity exemptions, first authorized four decades ago, Pub. L. No. 94-210, 90 Stat. 31 (1976), were implemented in a substantially different economic era, with railroads in financial decline, and the administrative rate filing requirements potentially hindering flexibility in ratemaking and the provision of competitive rates by railroads. Meanwhile, as the Board acknowledged when first initiating this proceeding in 2010, the "transition from a heavily regulated, financially weak component of the economy into a mature, relatively healthy industry that operates with only minimal oversight," has caused certain consumer protection "challenges." *Review of Commodity, Boxcar, and TOFC/COFC Exemptions* ("Board Notice"), EP 704 (STB served Oct. 21, 2010) at 3. The challenge recognized by the Board is that "an exemption under [49 U.S.C.] §10502 excuses carriers from virtually all

aspects of regulation . . . [including] any common law cause of action regarding common carrier duties.” *Id.* at 3.

SMA then discussed the basis for the steel commodity exemptions. In a series of decisions, the ICC used its authority to exempt the steel commodities,¹ along with a number of other commodities. As with other exemptions, the central rationale for the regulatory exemptions was twofold: (1) the need to eliminate tariff and contract regulatory filing requirements that carriers claimed were inhibiting them from growing market share and effectively competing against other carriers and providing shippers with lower competitive rates; and (2) effective and pervasive intra- and intermodal market competition for the commodities meant that no regulatory protections were necessary to protect any steel shippers against possible market power abuses.

SMA first addressed the elimination of these tariff and contract filing requirements that supports the rationale for revoking these exemptions. As noted, the steel commodity exemptions were justified by the ICC in substantial part based on administrative costs and burdens associated with tariff and contract filing (and contract summary filing) requirements. *See Ferrous Recyclables Exemption*, 1995 WL 294272 at *3; *Coke & Iron & Steel Prods.*

¹ See *Rail Gen. Exemption Auth. – Exemption of Ferrous Recyclables*, 1995 WL 294272 (ICC served Apr. 28, 1995) (iron or steel scrap, wastes, or tailings) (“*Ferrous Recyclables Exemption*”); *Rail Gen. Exemption Auth. – Pet. of AAR to Exempt Rail Transp. of Selected Commodity Groups*, 9 I.C.C.2d 969, 987 (1993) (coke produced from coal, primary iron or steel products) (“*Coke & Iron & Steel Prods. Exemption*”); *Rail Gen. Exemption Auth. – Misc. Manufactured Commodities*, 6 I.C.C.2d 186, 206 (1989) (primary iron or steel products) (“*Miscellaneous Commodities Exemption*”). (Collectively “Steel Commodity Exemption Decisions”).

Exemption, 9 I.C.C.2d at 973, 978; *Miscellaneous Commodities Exemption*, 6 I.C.C.2d 186 at 187-88, 190-91.

However, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (“ICC Termination Act”), eliminated carrier tariff filing requirements for the provision of common carrier rates and service for the steel commodities (and other commodities). See former 49 U.S.C. §§ 10761 and 10762. While carriers must disclose their common carrier rates under 49 U.S.C. §§ 11101(b) and (c), tariffs previously filed with the ICC were no longer effective as of January 1, 1996. Additionally, the prior ICC regulations governing the filing of rates, at 49 C.F.R. Part 1314, were repealed. See *Removal of Obsolete Rail Tariff Regulations*, 1 S.T.B. 4, 5 (1996) (“Carriers no longer have to file or maintain tariffs. We are therefore removing the now obsolete part 1314 regulations.”)

Moreover, while the ICC had previously eliminated contract filing requirements for non-agricultural commodities, *Railroad Transportation Contracts*, 8 I.C.C.2d 730 (1992), the ICC Termination Act repealed the provisions for filing of contracts summaries at former 49 U.S.C. 10713(b)(1), replacing it with current 49 U.S.C. § 10709, which “eliminate[d] any regulation of non-agricultural contracts,” including eliminating all former contract summary filing requirements for the steel commodities. *Removal of Obsolete Regulations Concerning R.R. Contracts*, 1 S.T.B. 71, 72 (1996). Because of these changes, the transportation policy findings

found by the Board in the Steel Commodity Exemption Decisions with respect to administrative tariff and contract filing requirements are all no longer valid:

- Exemption is no longer necessary to “allow[] rail carriers to earn adequate revenues” by improving the speed and flexibility with which they can respond to competition or quote rates as the market may require (49 U.S.C. § 10101(3)).
- Exemption is no longer necessary “to encourage honest and efficient management of railroads” (49 U.S.C. § 10101(9)) by enabling rail management to respond more quickly to changing market conditions, and by reducing the administrative costs associated with the filing of tariffs and contract summaries.
- Exemption is no longer necessary to help enable the railroads to attract traffic from motor carriers, in order “to encourage and promote energy conservation” (49 U.S.C. § 10101(14)).

Further, the ICC Termination Act removed former 49 U.S.C. §§ 10707 and 10713, granting the ICC authority to investigate and suspend new rates. As a result, “Congress further facilitated railroads’ rate-making initiative by repealing the rate suspension procedures under which rate[s] . . . were sometimes prohibited from taking effect without first being investigated.” *Ariz. Pub. Serv. Co. & PacifiCorp v. Burlington N. & Santa Fe Ry. Co.*, 7 S.T.B. 76, 81 (2003).

In summary, following the ICC Termination Act, and agency implementing decisions, there are no longer agency tariff filing requirements, contract filing requirements, or contract summary filing requirements potentially inhibiting carrier ratemaking freedoms. Nor are there any investigation or suspension remedies available to potentially hinder carrier ratemaking freedoms. Instead, railroads have full flexibility today to provide expeditious rates and service terms to all shippers, whether through tariff or contract, and to expeditiously respond to competition without any regulatory filing requirements or ratemaking encumbrances.

Accordingly, a substantial basis behind the Steel Commodity Exemption Decisions, that the exemptions were necessary to avoid competition stifling agency tariff and contract filing burdens, has been rendered moot through Congressional and Administrative action.

SMA then confirmed the Board's references to significant changes in the markets and competitive circumstances for the steel commodities in the two plus decades since the ICC adopted the exemptions. The Board correctly noted that, with the industry shift towards EAFs, production has shifted away from the Great Lakes region, with many producers now landlocked, and without alternative water delivery options to rail service.

Additionally, SMA explained that trucking companies have found it difficult to satisfy steel shipper demand based on a then current truck study. Part of the trucking availability problems are attributable to a severe shortage of truck drivers, which shortfall could grow to as much as 174,500 by 2024 if not addressed, according to an American Trucking Association ("ATA") study. *Am. Trucking Ass'n, Truck Driver Shortage Analysis* (Oct. 2015) at 6 ("In 2015, we expect the shortage to increase to 47,500, the highest level ever recorded. Looking ahead to 2016, if the economy picks up slightly, like we expect, the shortage could quickly jump by 26,000 to 73,500.").²

To this point, SMA noted that as the industry has changed and consolidated, the average length of haul by rail for the steel commodities has increased. For iron or steel scrap,

² This driver shortage continues today. The ATA found the driver shortage had reached 60,800 in 2018. It predicted that the driver shortage could climb over 160,000 by 2028. *Am. Trucking Ass'n, Truck Driver Shortage Analysis* (Jul. 2019) at 4.

the average length of haul by rail has increased from 300 miles in 1992 to 419 miles in 2014. For primary iron or steel products, the average length of haul has increased from 639 miles in 1992 to 700 miles in 2014. For coke produced from coal, the average length of haul by rail has increased from 369 miles in 1992 to 380 miles in 2014. At these haulage distances, with the higher volumes required, and the large load sizes, alternate trucking availability often becomes a very limited option, and even where there is availability, trucking becomes uneconomic for many haulage lanes.

The SMA also conducted an expensive waybill analysis study from 1998 to 2014 to support its requests for revocation. This study found that the change in market conditions since the enactment of the steel commodity exemptions and the lack of effective competition is further reflected in the pertinent railroad waybill data over the period. This is confirmed in the Board's waybill data analysis of the R/VC ratios for the steel commodities. See STB "EP 704-1 STB Public Workpaper(7).xlsx," <http://www.stb.dot.gov/stb/rail/Exemption.html>. This study's analysis verified the Board's results and confirmed that the steel commodities traffic is operating at nowhere near fully competitive R/VC ratios. It pointed out that these R/VC ratios are no longer declining, and instead are increasing significantly along with the universe of potentially captive traffic – resulting in a substantial portion of the steel commodities traffic becoming potentially captive and subject to railroad market power abuse.

SMA emphasized that these high average R/VC ratios for the steel commodities and the significant increases in potential captivity confirm and validate the Board results, and further

demonstrate that the competitive landscape for rail service has changed substantially enough to support revocation of each of the steel commodity exemptions.

SMA concluded with the point that, in making a revocation determination, “a significant consideration is whether the participating shippers actually seeking transportation are concerned about an abuse of market power.” *Coke & Iron & Steel Prods. Exemption*, 9 I.C.C.2d at 973. In its Comments, support for revocation was being made by SMA, representing 25 rail shippers accounting for over 75 percent of domestic steelmaking capacity – and constituting the nation’s largest recyclers. These SMA members were deeply concerned about railroad market power and showed that there is a strong need and basis for the Board’s proposed revocation of the exemptions for the steel commodities at this time. The significant marketplace changes that have been experienced by the railroads in the four decades since exemptions were brought about to assist the railroad industry in a dramatically different economic era and regulatory regime that no longer exists also warrant revocation of the steel commodity exemptions. As the Transportation Research Board has concluded:

The Staggers Rail Act itself was passed 35 years ago. In the interval, the railroad industry has been transformed, essentially modernized in step with the other transportation industries that were deregulated at about the same time. The railroad industry was in a fundamentally different position at the time of its deregulation—on the edge of bankruptcy, despite its considerable potential market power, and in need of specialized regulatory reforms that took its financial distress into account.... The economic regulations that remain should be suited to the financially sound railroad industry of today, not to the foundering one that required rescue 35 years ago.

Transp. Research Bd., Special Report 318, Modernizing Freight Rail Regulation (2015) at 218-19, <http://onlinepubs.trb.org/onlinepubs/sr/sr318.pdf>.

Upon submission of these comments in 2016, SMA felt confident that the Board would take the right and just action by revoking the steel commodities exemptions. It waited and waited for this to happen. After remaining patient for over 4 years, it could never have predicted what was to come in 2020.

THE PROPOSAL

On September 30, 2020, the Board served the Decision at issue here seeking public comment concerning a new approach its OE had developed for possible use in considering class exemption and revocation issues. OE developed this new approach to help the Board evaluate market conditions by taking into account a variety of metrics related to or indicative of rail transportation competition. The Board stated that it is considering application of the approach in this proceeding and seeks comment on whether it could provide a useful analysis of the metrics for a particular commodity, and therefore give the Board a helpful tool for evaluating market conditions, including changes to such conditions, that might warrant exemption or exemption revocation. The approach uses a variety of new quantitative and qualitative data and analyses. The Board noted that it views the approach as a potentially important new tool that could facilitate a more comprehensive analysis in this docket and finds it would benefit from public comment.

The approach focuses on (1) developing a snapshot of the current state of a commodity's rail transportation market, (2) identifying changes in market conditions, and (3)

considering certain potential influences from alternative transportation modes that could impact that market. The Board explained that it does not anticipate that the approach would necessarily provide a final conclusive answer on whether the commodity exemptions at issue should be revoked, or whether additional commodity exemptions should be adopted. It asserted that those determinations are complicated and multi-factored, and the approach has limitations (as does any model) and relies on certain assumptions.

The Board also pointed out that most fundamentally, the approach does not seek to answer the ultimate qualitative question of whether a commodity's regulation is necessary to carry out the RTP. The Board claimed that nevertheless, the breadth of relevant data considered under the approach's overall umbrella demonstrates its potential usefulness in considering questions of market conditions in the exemption and revocation contexts.

The Board therefore sought public comment concerning whether and how the approach could be used in this proceeding.

COMMENTS

As the Board can imagine, SMA was extremely disappointed by this Decision in September 2020. Its disappointment was not necessarily with the proposal itself but with the regulatory process that led up to this surprising result. As noted, this proceeding began with the Board Notice of its hearing on categorical exemptions in 2010. Then, in 2016, the Board issued the NPRM discussed in great detail above that led to the Comments from SMA and its

understandable excitement that relief from these exemptions could be coming in the near future based on the strong and convincing reasoning by the Board in the NPRM.

This excitement gradually began to fade as SMA awaited a decision from the Board after the issuance of the NPRM. SMA did understand that the Board has undergone many changes since the issuance of the NPRM and believed these factors could be part of the reason that it had not seen a decision. SMA also understands that the Board simply may not have been able to reach a decision during this period that satisfied a majority of the Board. Therefore, it still held out hope that a decision regarding revocation of the steel commodities exemptions still could be issued.

When the Board issued the Decision that further delayed this proceeding in September, SMA's hopes completely sank. As noted, the Decision simply sought comments on a new, complex econometric model that could possibly be used in this proceeding. The Decision did not even directly address the extensive work already done by the Board and SMA regarding the steel commodity exemptions, which clearly had demonstrated that revocation was warranted. SMA felt its efforts to make its case had been wasted.

Moreover, the Decision ignores the importance of the alleviation of the rate and contract filing requirements and the will of the parties subject to the exemptions that were so important in the issuance of these original exemption decisions.

SMA and the Board in the NPRM already have demonstrated that revocation is warranted now because application of a provision of part A is necessary to carry out the RTP. *See* 49 U.S.C. § 10502(d). As noted, the Board has already stated in the NPRM with respect to

the listed exempt commodities at issue therein that it **"believes reestablishing regulatory oversight is necessary to foster sound economic conditions in transportation, 49 U.S.C. § 10101(5), maintain reasonable rates where there is an absence of effective competition, § 10101(6), and prohibit predatory pricing and practices, avoid undue concentrations of market power, and prohibit unlawful discrimination, § 10101(12)."** NPRM at 4. The Board should stand by this statement and revoke the steel commodity exemptions as it is required to do under 49 U.S.C. § 10502(d).

At this point, SMA has little left to say. SMA is not asking the Board to throw away this proposal. It commends the Board for continuing to work on ways to simplify what has proven to be a difficult and extremely long process. It simply implores the Board to address the issue that has been pending before it since 2016, by changing its direction here and revoking the steel commodity exemptions based on the extensive and compelling record already before it. The alleviation of the tariff and contract filing requirements, the significant changes in the steel industry, the data demonstrating a change in modal options and rail market dominance, and the overwhelming renaissance of the rail industry make these revocations an easy call. Moreover, the participating shippers at issue here unanimously are seeking relief based on their experiences with the rail industry over the last decade while this proceeding has been playing out. Therefore, SMA asks the Board to do what is equitable and needed by revoking these exemptions.

CONCLUSION

SMA thanks the Board for its attempts to fix the exemption revocation process in this proceeding. However, SMA strongly urges the Board to revoke the steel commodity exemptions and put this issue to rest. That is the fair result here.

Respectfully submitted,

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