



March 14, 2019

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

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

Dear Ms. Brown:

The National Industrial Transportation League (“NITL”) supports the Petition for Waiver filed in this proceeding on February 22, 2019 by the American Forest & Paper Association (“AF&PA”) and the Institute of Scrap Recycling Industries, Inc. (“ISRI”). NITL was founded in 1907 and represents companies from a multitude of industries who are involved in the shipment and receipt of goods in both domestic and international commerce. NITL has long advocated for a competitive, efficient, and effective rail transportation system in the United States to facilitate the growth and health of the American economy. In furtherance of these goals, NITL has been an active participant for many years in proceedings before the Board and its predecessor, the Interstate Commerce Commission.

NITL has actively participated in this proceeding regarding the Board’s review and proposed revocation of certain commodity and traffic exemptions.<sup>1</sup> Based on the very substantial changes in the structure of the rail industry that has occurred over the past decades and since commodity exemptions were first granted, the League has strongly supported the Board’s decision to assess whether some exemptions should be revoked, which would restore its oversight over the rail transportation of the affected commodities. In order that the Board can finish its evaluation of the issues in this proceeding and expeditiously reach a decision, NITL supports the Petition for Waiver filed by AF&PA and ISRI.

In their Petition, AF&PA and ISRI have asked the Board to waive its prohibition on *ex parte* communications so that interested stakeholders could participate in meetings with Board members, subject to appropriate safeguards similar to those in the Board’s regulations and

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<sup>1</sup> See, e.g., NITL Notice of Intent to Participate and Written Testimony (filed Feb. 1, 2001); NITL Comments (filed July 26, 2016) and NITL Reply Comments (filed Aug. 26, 2016).

utilized in other proceedings where waivers have been granted.<sup>2</sup> NITL believes that these sorts of *ex parte* meetings would be extremely valuable as the Board considers the important issues that are implicated in possible revocations of certain commodity exemptions.

*Ex parte* meetings are all the more appropriate given the recent abolition of the prohibition on such meetings in rulemakings as determined in the Board's EP 739 proceeding.<sup>3</sup> However, the consideration of commodity exemptions in this proceeding was not covered by the Board's decision in EP 739, since it was initiated before EP 739. Nonetheless, waiver of the *ex parte* communication prohibition is appropriate here, since more than two years have passed since the filing of comments in this proceeding and, in the intervening years, two of the three Board members have been replaced. Permitting *ex parte* meetings would enable these new members to fully understand the important issues at stake in this proceeding, and would facilitate the entire Board's ability to make an informed decision without additional delay. During *ex parte* meetings, Board members would hear from stakeholders regarding the effects of the exemptions at issue, including the need and impacts of any revocations. Such meetings would also enable the Board to ask questions and reach a prompt and thorough decision on the exemption revocations currently under review.

Allowing *ex parte* meetings would also comport with the Board's recent precedent. *Ex parte* meetings were permitted in two other proceedings that began prior to the decision in EP 739 and implicated broad industry-wide issues, like those being considered in this proceeding.<sup>4</sup>

Accordingly, NITL respectfully requests that the Board waive the prohibition on *ex parte* communications to allow stakeholders to meet with Board members on the important issues involved in this proceeding, subject to appropriate safeguards applied by the Board in similar circumstances. NITL believes these *ex parte* meetings would prove invaluable as the Board moves forward in its evaluation of whether certain commodity exemptions remain appropriate.

Respectfully submitted,



Jennifer Hedrick  
Executive Director  
National Industrial Transportation League  
7918 Jones Branch Drive, Suite 300  
McLean, VA 22102

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<sup>2</sup> Safeguards are found at 49 C.F.R. § 1102.2(g)(4). They were also described at United States Rail Service Issues – Performance Data Reporting, STB Ex Parte No. 724 (Sub-No. 4), slip op. at 3 (served Nov. 9, 2015) and Reciprocal Switching, STB Ex Parte No. 711 (Sub-No. 1), slip op. at 29 (served July 27, 2016).

<sup>3</sup> See STB Ex Parte No. 739, Ex Parte Communications in Informal Rulemaking Proceedings (served Feb. 28, 2018).

<sup>4</sup> United States Rail Service Issues – Performance Data Reporting, STB Ex Parte No. 724 (Sub-No. 4) (served Nov. 9, 2015); Reciprocal Switching, STB Ex Parte No. 711 (Sub-No. 1) (served July 27, 2016).