

Surface Transportation Board
Ex Parte 704—Review of Commodity, Boxcar, and TOFC/COFC Exemptions

Summary of Ex Parte Meeting held on June 6, 2019 between
the Packaging Corporation of America
and Vice Chairman Fuchs

Packaging Corporation of America (“PCA”) Attendees:

- Bruce Ridley, Senior Vice President – Environmental, Health, Safety and Operations, PCA
- Ross Corthell, Vice President – Transportation, PCA
- Karyn Booth, Thompson Hine LLP
- Kerem Bilge, Thompson Hine LLP

STB Attendees:

- Vice Chairman Patrick Fuchs
- Lisa S. Novins, Attorney Advisor
- Douglas W. Pelsey, Economist

Meeting Summary:

The meeting began with introductions, and PCA thanked the STB Attendees for the opportunity to meet and discuss the Board’s proposed rule and the issues in this proceeding.

PCA explained its facilities and rail supply chain for white and brown paper mills. (See **Exhibit 1**). PCA has eight facilities in total (six brown paper and two white paper mills), five of which are captive to a single Class I railroad. PCA explained that it relies on rail for both types of facilities. PCA also explained that it ships approximately 60% by rail outbound at brown paper mills, and 70% by rail outbound at white paper mills. PCA also has 95 converting operations.

PCA explained how Class I railroads de-market certain lanes by increasing prices to force PCA to ship by truck, even though rail is the preferred mode of transportation and the truck pricing is still very high. PCA further explained that the railroads are not interested in shorter-distance hauls.

Vice Chairman Fuchs asked PCA to describe the factors that are relevant to deciding whether to ship via truck versus rail. PCA explained that, besides rates, product size, facility design, volume and geography, and length of haul are among the factors they consider.

Vice Chairman Fuchs asked why PCA cannot move everything by truck. PCA explained that certain products have to move by rail (i.e., large rolls of paper) because they are too large and/or heavy to move via truck. PCA also explained that many of its facilities (both paper mills and receiving distribution centers) are configured to ship and receive via rail, and they are already working close to maximum capacity for truck traffic at their facilities. PCA described the

capacity constraints in truck movement due to a variety of factors, including geography, as the mills are often located in remote locations without sufficient truck availability, driver shortages, and the simple fact that there are not enough trucks available to move 100 percent of its volumes by truck. PCA also explained how the length of haul is determinative in their decision-making, as they would be required to increase the number of trucks used for movements of 500 miles or more, compared to shorter distances, which is inefficient and cost-prohibitive.

PCA also explained that railroad claims that trans-loading and intermodal are effective competition are not accurate for PCA. Trans-load is used only in rare circumstances due to product damage risks and high costs. Intermodal is used for only less than 2% of PCA's traffic. Product and geographic competition also is not realistic since PCA must manufacture to meet specific customer requirements and machines at brown paper mills cannot be used for white paper production.

Vice Chairman asked whether there is a price difference for facilities captive to a single railroad. PCA explained that the railroads generally try to impose the highest price possible when there is no competition. Furthermore, PCA believes that the railroads are well aware of the exemption when they enter negotiations and possibly even with respect to service decisions. PCA explained that they support exemption revocation to be treated like all other regulated industries.

Vice Chairman asked whether one could see an appreciable difference in service treatment between exempt and non-exempt commodities by looking at the railroad time stamps. PCA explained that the difference more likely exists on the marketing and pricing side, not at the local level.

Vice Chairman Fuchs asked PCA to talk him through the differences in price and service between captive and non-captive locations. PCA explained that service is not noticeably different. However, PCA explained that in three mills that are dual served, they have been able to utilize competition and negotiate with the railroads. This is not possible for its five captive locations. PCA also explained that competition at both origin and destination is important.

PCA described a situation at one of its mills that moves 50% outbound by rail and 50% by truck. However, PCA shared that 96% of the R/VC ratios for this facility's rail moves are over the 180% jurisdictional threshold.

With respect to the issue of railroad market power, PCA explained a recent contract they were forced to sign, where the railroad imposed terms that would shield the carrier from liability caused by its own negligence. There was no ability to negotiate.

Vice Chairman Fuchs inquired about the importance of 50 foot boxcars to PCA. PCA explained that it relies heavily on the 50 foot boxcar based on the configuration of its facilities and that the railroads' shift towards 60 foot box cars substantially reduces efficiency at loading, and in the

amount of product delivered, since the 60 foot car “weighs out” before it can be fully loaded. PCA also explained that they have a double exemption – commodity and boxcar.

PCA explained that each exempt industry may have various needs for regulation (e.g., common carrier obligations, unreasonable practices, and reasonable rates rules) and that it needs the same oversight as other industries to address service and demurrage problems as well as rising rates.

The Vice Chairman asked about the arguments supporting maintaining the exemptions. Thompson Hine explained that the benefits gained from the exemptions at the time they were granted do not exist anymore. Thompson Hine described how the market has changed, the railroads have been consolidated, and the tariff and contract filing requirements, along with other pricing regulation, was eliminated with the ICC Termination Act of 1995. Thompson Hine also explained how the railroads currently have significant market power, which is demonstrated from the Waybill data and evidence in the record.

The meeting concluded with PCA handing out its Summary Bullets (attached as **Exhibit 2**) and each side thanking the other for participating in the meeting.

EXHIBIT - 1

Our Packaging and Services Network



EXHIBIT-2

PCA EP 704 Summary Bullets

1. PCA strongly supports revocation of the exemption for both paper and forest products and for box cars used for paper and forest products shipments.
2. **PCA Description of its Facilities and Rail Supply Chain for White and Brown Paper Mills.** PCA has 6 brown paper (containerboard) mills and two white paper mills. We also have 95 converting facilities. PCA relies heavily on rail for both our brown and white paper mills and cannot shift all of its traffic to truck despite significant rail service problems. Five of our eight paper mills are captive to a single Class I railroad.

Even with significant rail service issues, we ship approximately 70% by rail outbound at our white paper mills and about 60% by rail at our brown paper mills. We depend on rail for a variety of reasons:

- o **product size:** Rail is the preferred mode to transport large rolls of paper and some at 130 inches tall have to go by rail.
 - o **facility design:** PCA mills are primarily designed for rail and receiving distribution facilities are also configured for and require rail. It would be cost prohibitive to convert to all truck.
 - o **length of haul**
 - o **volume:** 1 rail car equates to 3 trucks (or 6 trips, 3 loaded and 3 empty)
 - o **geography:** Paper mills are often in remote locations near two-lane roads that are not designed
3. **Limits on Alternatives to Rail.** Truck is not a viable alternative for the majority of our traffic for the reasons noted above and because there is not enough capacity.
 - o Transload also is not effective competitive due to high handling costs and risk of product damage.
 - o Water options are not used by PCA. Both origin and destination would require a water option for this to be viable.
 - o Less than 2% of PCA traffic uses intermodal.
 4. **Product and Geographic Competition is Not Readily Available.** PCA can only ship products that are manufactured to meet specific customer requirements. Geographic competition is extremely limited since our mills use different equipment and white paper machinery cannot be substituted for brown paper machinery; and our northern and southern mills produce different types of brown paper (e.g. corrugated versus liner).
 5. **Car Supply Challenges.** Car supply is inconsistent and unreliable. Our industry depends heavily on the 50 foot boxcar due to customer facility configurations and

weight limits due to product size. Railroads are shifting new cars to a 60 foot model which reduces our efficiency at loading and in the amount of product delivered. Another big issue we are facing is the shrinking of the box car fleet. Only a couple of class 1s are buying new cars and they have refused to work with car owners / lessors on improving the default rate so that investing in a new box car has a justifiable return.

6. **Other Rail Challenges.** As our testimony at the Demurrage and Accessorial hearing explained, PCA has many issues and challenges in dealing with the Class 1s today, including unreliable rail service and high demurrage and other costs. Yet, as an exempt commodity, we have no direct and immediate STB oversight for our commodity. We have used the STB's Public Assistance Group many times and when this is successful it usually results in only short term improvements.
7. **Rail Rates and Contract Negotiations.** Rates on our rail movements rise consistently every year and there is no real negotiation of contracts. As an exempt commodity we get "de-marketed" when the rails raise rates often above the 180% RVC with no recourse, our option is to just take it or leave it.
8. **No Benefit to the Exemption for Rail Customers only Detriments.** There is no benefit to us to being exempt. Revocation would hopefully help us gain some leverage in our contract negotiations due to potential STB rate and service regulation. The bottom line is that we just want to be on the same level playing field as other shippers and have the STB oversight to help us gain leverage and to challenge railroad conduct when needed.