

Surface Transportation Board
Review of Commodity, Boxcar, and TOFC/COFC Exemptions
Ex Parte No. 704 (Sub-No. 1)

Summary of Meeting Between Association of American Railroads
and Chairman Begeman
Surface Transportation Board offices
June 17, 2019

Meeting Attendees

247992

STB

Ann Begeman – *Chairman*
Amanda Gorski – *Attorney-Advisor*
Valerie Quinn – *Attorney-Advisor*
William Brennan – *Director, Office of Economics*

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June 20, 2019
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AAR

Timothy Strafford
Associate General Counsel & Corporate Secretary

Summary

The meeting began with AAR thanking Chairman Begeman for the meeting and the opportunity to discuss this proceeding. AAR pointed to its written filings that lay out the basis for AAR's opposition to the Notice of Proposed Rulemaking's proposal to revoke the exemptions for five commodities. AAR noted that those filings were supported by expert witness testimony, which not only explained why the statutory standard for revocation were not met, but also affirmatively showed the competitive forces which constrain the transportation markets for those commodities.

AAR noted the four themes that run through its pleadings. First, revenue to variable cost ratios above 180% cannot, standing alone, establish the presence of market power or the abuse of market power. Second, the NPRM in this proceeding relies almost exclusively on R/VC ratios for this purpose, and the only other evidence in the record is scant, anecdotal, and rebutted by contradictory evidence. Third, the NPRM proposal fails to consider more limited, targeted alternatives to wholesale revocation of commodity exemptions. Finally, the NPRM and the process by which it was issued were deficient.

Dr. Brennan observed that the 180% threshold for rate regulation was silent as to the likelihood of the presence of market power and stated that a shift in R/VC ratios upward over time might indicate market power. AAR said that, among other things, one would have to consider the variable costs generated by the Uniform Railroad Costing System.

The AAR stated that one of the Board's most important tasks was recognizing the line where it has been called on by Congress to regulate in a partially deregulated industry. AAR explained that the Board should be focused on the competitive forces that constrain railroad behavior,

which is a broader inquiry than the shipping preferences of an individual customer. AAR suggested that the Board should look to objective analytical tools to evaluate market power.

Chairman Begeman asked how railroad behavior would change if the exemptions were revoked. AAR stated that revocation of the exemptions would reintroduce all of the regulatory requirements of the Interstate Commerce Act, as amended, to the subject traffic. AAR acknowledged that there are no longer administrative burdens associated with tariff filing requirements for regulated traffic, but explained that the administrative burdens of tariff filing were never a principle consideration in the exemption proceedings and that the paradigm established by Congress requires the agency to deregulate to the maximum extent.

AAR noted that other meetings in this proceeding have explored how the “default” rate applies to boxcars. AAR outlined the car hire process, explaining that the car hire rules apply to all railroad marked cars, not just boxcars.

The meeting concluded with the parties thanking each other for participating in the meeting.