

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

Summary of Ex Parte Meeting held on June 14, 2019 between
American Forest and Paper Association, Escalation Consultants, Inc., and Board Member
Oberman

Escalation Consultants, Inc. (“Escalation”) and American Forest and Paper Association (“AF&PA”) Attendees:

- Jay Roman, President, Escalation
- Julie Landry, American Forest & Paper Association
- Karyn Booth, Thompson Hine LLP
- Kerem Bilge, Thompson Hine LLP

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STB Attendees:

- Board Member Martin J. Oberman
- Katherine C. Bourdon, Attorney Advisor

Meeting Summary:

The meeting began with introductions, and AF&PA thanked the STB Attendees for the opportunity to meet and discuss AF&PA’s evidence supporting revocation of the paper and forest products exemptions and the issues in this proceeding.

Escalation presented information (*See Exhibit-1*) showing the operating profit per car on constant dollars for the railroads between 1980 and 2017. Escalation explained that the profit per car stayed stable until 2005. In 2005, the profit per car number started increasing drastically. Escalation discussed the relationship between the data and the change in the railroads’ business model, shifting from increasing market share to de-marketing business model and a focus on increasing profitability in the traffic transported. Escalation also explained how the railroads’ share prices increased significantly during the same period (*See Exhibit-2*). Additionally, Escalation discussed how the rail carloads for paper and forest products commodities substantially decreased between 2006 and 2017. Escalation explained that even though the carloads decreased substantially, there was a 940% increase in potentially captive revenue, in which railroads priced their movements in excess of 180% R/VC. Escalation further explained that, overall, these changes indicate that between 1980 and 2017 the railroads de-marketed lower margin traffic and substantially increased their market power over the remaining more rail dependent traffic for paper and forest products.

Board Member Oberman and Escalation discussed whether it would also be helpful to look at the operating profit per car metric on an industry basis.

Thompson Hine explained the legal and policy arguments supporting revocation including that the statute and legislative history provide the Board with broad discretion to revoke a class exemption and the railroads are wrong that a showing of competitive abuse is required. Thompson Hine also explained that revocation is justified by the substantial changes that have

occurred in the rail market and the statute since the exemptions were granted, including the loss of any benefits to rail customers. Additionally, Thompson Hine discussed the substantial increase in the exercise of railroad market power over paper and forest products shippers which is systemic and not episodic, and the lack of effective competitive alternatives for rail dependent traffic. *See Exhibit-3.*

Board Member Oberman and Thompson Hine discussed whether railroads are entitled to de-market facilities or lanes that are not profitable, or operating on a low margin, and whether the common carrier obligation applies to this practice.

Board Member Oberman and Thompson Hine discussed whether it would be possible to craft a policy that would balance the interests of shippers who want to utilize 50-foot box cars, and the railroads who are shifting to 60-foot box cars.

AF&PA stated that the current rail market data and its members' experiences indicate that railroads have changed their business models and de-marketed paper and forest products shipments for the sake of their own profitability at the cost of the rail customers' efficiency in moving these products. In response to the 50-foot box car discussion, AF&PA stated that in a competitive market, railroads would be working with their customers in order to serve them better. However, that is not the case here, and they force a shift to 60-foot box cars even though their customers do not have such a demand. AF&PA also stated that the ex parte meetings showed that its members are highly rail dependent, and cannot shift to other modes of transportation due to facilities that are designed for rail, customer requirements, product dimensions, and length of haul. AF&PA stated that its members are facing systemic problems in a variety of areas, such as service, car supply, demurrage and rates and the Board should revoke the exemptions for forest and paper products. -AF&PA stated that the forest and paper industry desires and needs access to the STB's regulatory oversight and processes.

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

Exhibit-1

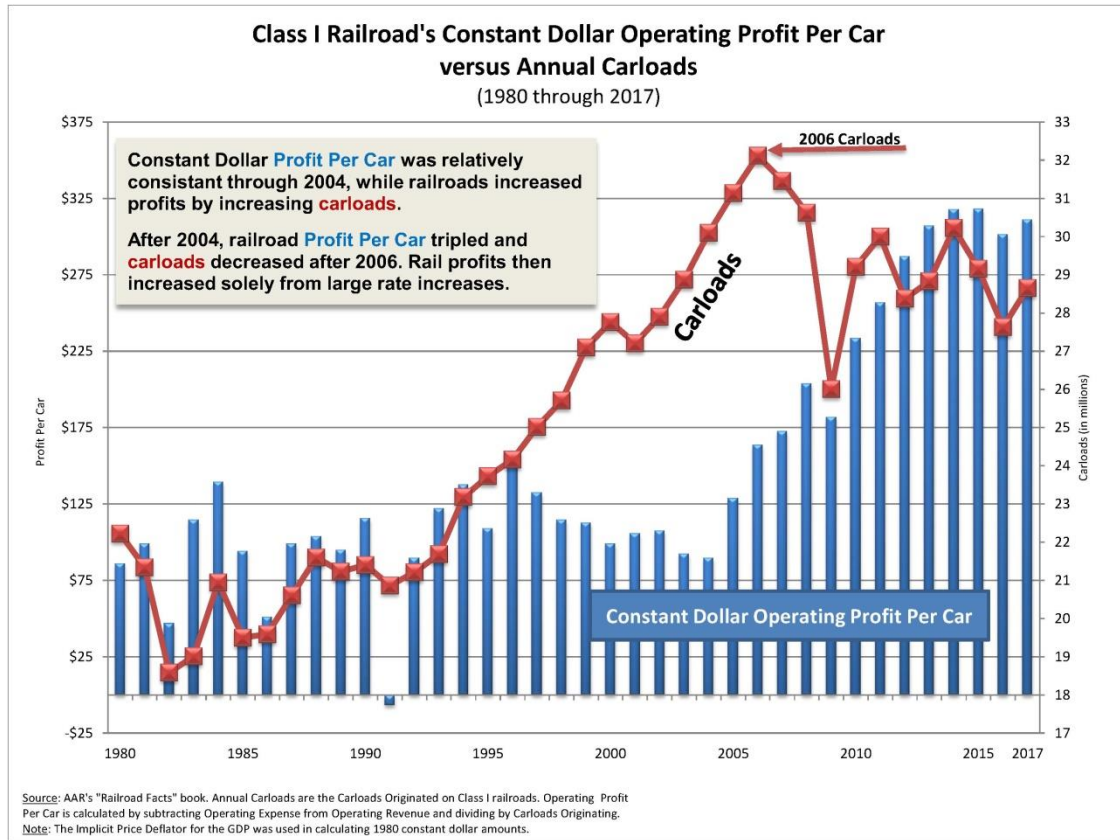


Exhibit-2

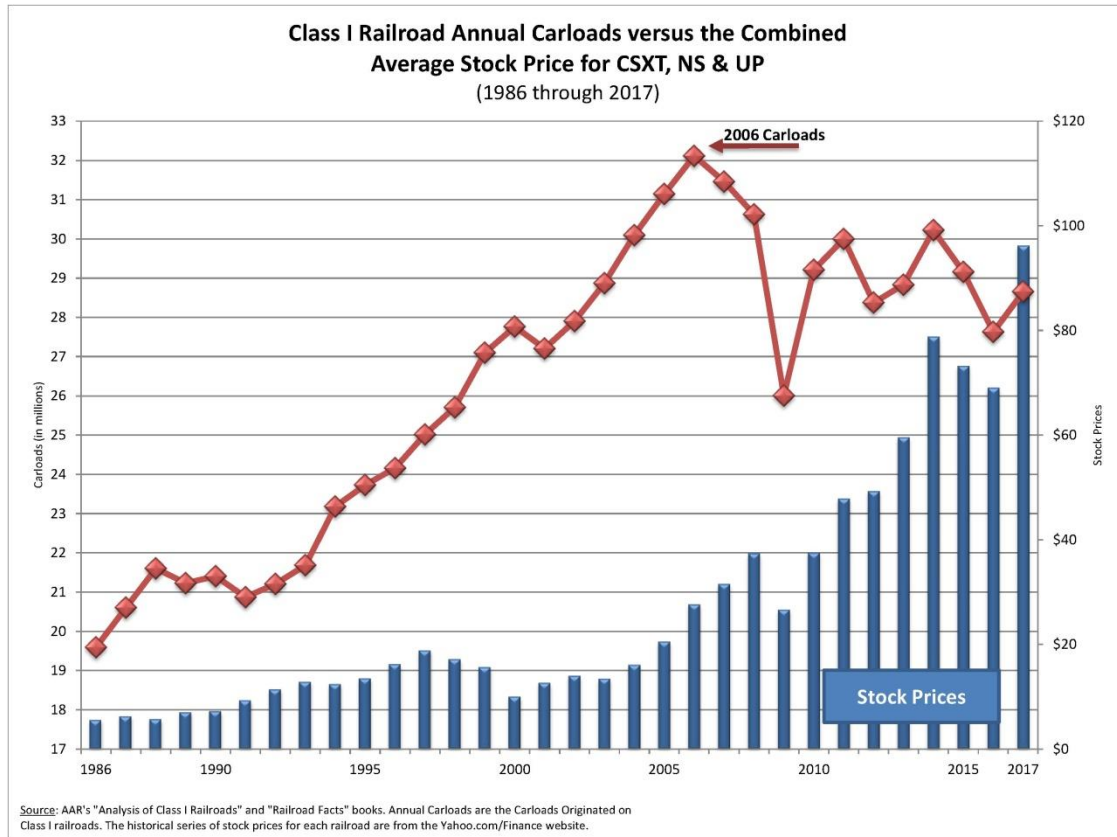


Exhibit-3