

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 Board Member Martin Oberman
Surface Transportation Board offices
June 14, 2019

247982

Meeting Attendees

STB

Martin Oberman – *Board Member*
Katherine Bourdon – *Attorney-Advisor*

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Office of Proceedings
June 19, 2019
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AAR

Timothy Strafford – *Associate General Counsel & Corporate Secretary*

Summary

The meeting began with AAR thanking Board Member Oberman for the meeting and the opportunity to discuss this proceeding. AAR directed Mr. Oberman 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 was not met, but also affirmatively showed the competitive forces which constrain the transportation markets for those commodities. AAR also pointed to the written filings of several of its member railroads, and the expert testimony that supported them.

AAR laid out 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 relied 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.

With regard to more narrowly tailored remedies, Mr. Oberman asked how petitioners could show that a particular exemption should be revoked. AAR pointed to the agency's traditional criteria and suggested that further consideration of how the Board considers market power would be productive, indicating that it would look forward to engaging in that process.

Mr. Oberman noted that there were no longer administrative burdens associated with tariff filing requirements for regulated traffic and asked what the burden would be on railroads if the exemptions were revoked. AAR responded that the administrative burdens of tariff filing were

not a principle consideration in the exemption proceedings and that the paradigm established by Congress requires the agency to deregulate to the maximum extent. Revocation of the exemptions must be based on a finding that the statutory standard is met and would impose all of the regulatory requirements of the Interstate Commerce Act, as amended, to the subject traffic.

Mr. Oberman also asked about the “default” car hire rate applicable to boxcars. AAR outlined the car hire process and explained that the car hire rules apply only to railroad marked cars, but apply to all such cars, not just boxcars.

The meeting concluded with the parties thanking each other for their participation.