

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 4, 2019 between
Sadoff Iron & Metal Company and Tri-State Iron & Metal Company
and Chairman Begeman

Institute of Scrap Recycling Industries, Inc. (“ISRI”), Sadoff Iron & Metal Company (“SIMC”) and Tri-State Iron & Metal Company (“TSIMCO”) Attendees:

- David Borsuk, Senior Advisor, SIMC
- Haley Glick, Vice President, TSIMCO
- William Johnson, Chief Lobbyist, ISRI
- Karyn Booth, Thompson Hine LLP
- Kerem Bilge, Thompson Hine LLP

247947

ENTERED
Office of Proceedings
June 13, 2019
Part of
Public Record

STB Attendees:

- Chairman Ann D. Begeman
- Amanda Gorski, Attorney-Advisor
- Valerie Quinn, Attorney-Advisor
- Frank O’Connor, Deputy Director, Office of Economics

Meeting Summary:

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

TSIMCO explained its generational family business operations in Texarkana, AR and high dependence on rail service for 90-95% of its outbound shipments (see map attached as **Exhibit 1**). Ms. Glick stated that its scrap yard and steel shredding facility is directly served by a large class I railroad, with a reciprocal switching agreement with a smaller class I carrier. TSIMCO generally moves about 130 rail cars per month but has the capacity to ship about 200 rail cars per month if it would receive more consistent and reliable rail service. TSIMCO explained that its relationship with the large class I railroad is very challenging and the carrier has made it clear that they are not interested in serving its facility. This carrier’s customer service interface continually changes and its dispute resolution processes have been frustrating and ineffective. TSIMCO faced a \$100,000 demurrage bill in 2018 primarily due to missed switches and bunching, and even though TSIMCO was willing to accept some responsibility for a portion of the invoice, the carrier refused to negotiate and future service was threatened if the entire invoice was not paid in full. TSIMCO believes that it may have been treated differently if it was not shipping an exempt commodity.

SIMC explained its business model, use of rail service, and concerns with the current exemption. SIMC explained that its rail shipments involve inbound iron/steel materials and outbound shipments to steel mills and foundries. One of its major customers is a foundry located about 40

miles away from the SIMC Wisconsin facility. This foundry has highly specific product requirements that are needed for the products that it fabricates and SIMC is not able to substitute one type of scrap for another.

SIMC stated that rail service issues, including missed switches, bunching and inconsistencies of the weight scales are major concerns. SIMC also explained that rail rates continue to increase, and that their relationship with the railroads are one-sided as there is no true negotiation of prices or service. It was also explained that SIMC faced increased demurrage bills in connection with its traffic moving to the Foundry (i.e., \$50,000 for the first quarter of 2019 which is as much as it incurred in all of 2018), and they do not have any alternative other than rail because its customer requires shipments by rail with 2 rail cars per day regardless of freight costs. Thus, SIMC supports revocation of the exemption and STB oversight over its rail shipments.

Chairman Begeman asked about the arguments for the revocation of the exemption. ISRI/SIMC/TSIMCO explained that the ISRI members' experiences and concerns indicate that there is an abuse of market power. Thompson Hine explained that since the ICC granted the exemptions in 1995, the railroad industry has undergone significant changes, including substantial consolidation and the carriers have become highly profitable and most of the major carriers are revenue adequate. Furthermore, it was explained that the ICC Termination Act of 1995 ("ICCTA") eliminated the benefits to ISRI members gained from the exemption since Congress eliminated tariff filing, contract summary filing and other pricing restrictions for all rail movements. It was also explained that there have been changes in the scrap metal industry, including the markets and the geographical locations they serve. It was asserted that the totality of the circumstances and evidence in the record justify revocation of the exemption.

Chairman Begeman was interested in why the shippers of exempt commodities do not petition the Board for revocation on an individual basis. ISRI/SIMC/TSIMCO explained that it is not practical since it creates additional litigation costs, uncertainty and it is generally time consuming. SIMC and TSIMCO stated that they do not want to bear the added litigation risks and expense.

Chairman Begeman asked whether all exemptions should be revoked. ISRI/SIMC/TSIMCO stated that they are reluctant to speak on behalf of all exempt industries and that they are here in response to a specific proposal initiated by the Board itself for their industry.

Chairman Begeman inquired about the potential changes that would result if the STB was to revoke the exemption. SIMC and TSIMCO explained that the industry would hope to be on a more level playing field with the railroads due to STB oversight and that they may be treated more fairly. If they are not, then at least they have direct access to the STB like other industries. Currently, they stated, there is no benefit from the exemption for the rail customer, it is only a benefit to the railroad.

Thompson Hine also explained that R/VC data in the record shows that market power of the railroads have increased significantly. Staff explained that in evaluating market power, they look at different factors holistically, including modal market share and R/VC ratios.

Chairman Begeman asked whether SIMC and TSIMCO are concerned about retribution from the railroads. ISRI/SIMC/TSIMCO each responded that this is a concern.

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

4

