

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
Packaging Corporation of America, American Forest & Paper Association
and Member Oberman

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

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STB Attendees:

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

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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 explained that their shipments move in box cars outbound, which are also exempt from STB regulation.

Member Oberman asked why the railroads are shifting towards 60-foot box cars. PCA explained that its products and mills and receiving facilities are designed for 50-foot box cars. Utilizing the 60-foot cars creates inefficiencies because fewer cars can be loaded and unloaded for both PCA and the receiving facilities. PCA also stated that railroads shift towards 60-foot cars because these are more profitable and flexible for the railroads.

Member Oberman asked how the Association of American Railroads (“AAR”) sets the default rates for box cars. PCA explained that AAR sets the formula. PCA stated that it would need to investigate this issue further to give a more elaborate answer.

Member Oberman asked whether PCA receives a lower rate when it uses cars from its private fleet. PCA explained that it leases approximately 1,800 rail cars, and they are railroad marked, as PCA also owns a short-line railroad. Therefore, the pricing for PCA’s private fleet does not differentiate.

Member Oberman asked whether PCA is concerned about a box car shortage in the near future. PCA explained that they foresee a shortage in 2023.

PCA stated that it is not economical to utilize truck over 300-400 miles, and that they have a certain amount of traffic that needs to go by rail. PCA has certain products that must 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. 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 ships only 1-2% intermodal.

Member Oberman asked whether rates are a major part of PCA's concern. PCA explained that they have five facilities that are captive to a single railroad. Three of the facilities are dual served. PCA stated that the rates among these facilities vary, and they are concerned about rising rates, as well as demurrage rules and poor rail service. PCA also explained that recently it was forced to sign a contract with railroad-imposed terms that would shield the carrier from liability for its own negligence when the carrier operates on PCA property.

Member Oberman asked which railroads serve PCA. PCA explained that they are served by all the major railroads and a number of short lines. Only 2 of their facilities are directly served by class-I railroads but PCA typically negotiates rail contracts with the class-I railroads who connect with the short lines.

Member Oberman asked what PCA is aiming to achieve if the exemptions were removed. PCA explained that there is no basis for continuation of the exemption, and they need recourse against the railroads that is available to shippers of non-exempt commodities on rates, service and unreasonable practices. PCA also explained that revoking the exemptions would help reduce the leverage the railroads have over PCA in commercial negotiations.

Member Oberman stated that non-exempt shippers are also having the same problems with the railroads. PCA explained that they are aware that they will continue to have issues with the railroads, however the exemption puts them in a worse position than the other industries and they support the revocation to remove an additional hurdle to STB oversight that is no longer justified in today's consolidated rail market. PCA also believes that the railroads take the exemption into account in their dealings with PCA and other exempt traffic.

Thompson Hine explained that at the time the exemptions were granted, both railroads and the industry supported the exemptions because there were mutual benefits. The exemptions relieved the railroads from administrative burdens, including filing tariffs and contract summaries, and railroads could not reduce prices in response to truck competition without a waiting period. Since then, however, the industry has undergone significant changes. The ICC Termination Act of

1995 eliminated tariff filing and other administrative burdens for the railroads, and competition has been drastically reduced through consolidation. Thus, currently, the exemptions do not confer any benefit for rail customers, and they operate only to the benefit of the railroads. The lack of direct STB access for PCA and other paper and forest products shippers no longer is justified since the railroads have and exercise their market power of these commodities.

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

Provided separately

EXHIBIT-2

Provided separately