

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 6, 2019 between
the Packaging Corporation of America
and Chairman Begeman

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:

- 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 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 they ship approximately 60% by rail outbound at brown paper mills, and 70% by rail outbound at white paper mills. PCA also has 95 converting operations.

Chairman Begeman stated that the statute mandates that the traffic should be exempt to the maximum extent. Thompson Hine explained how the paper and forest products exemptions conferred benefits on both the railroads and the industry by relieving the railroads of regulatory burdens that existed at the time the exemptions were granted, and increasing competition by allowing railroads to respond more quickly to trucking prices. However the benefits for industry were eliminated with the ICC Termination Act of 1995 and the consolidation of the rail industry has resulted in increased market dominance by the railroads over shippers of paper and forest products.

Chairman Begeman asked what PCA would gain if the exemptions were revoked. PCA explained that they want the railroads to have less leverage over PCA in commercial negotiations by gaining STB oversight and they hope to change the railroads’ culture that results in their

unilaterally imposing their terms upon the exempt shippers. PCA explained that due to current exemptions, it does not have access to the tools necessary to challenge railroad actions, and railroads abuse this situation. PCA stated that each exempt industry may have various needs for regulation and that it needs the same oversight as other industries to address service and demurrage problems as well as rising rates.

Chairman Begeman stated that in terms of demurrage, the railroads appear to be indifferent as to whether the industry is exempt and that the Board has a process for individual revocations. PCA stated that it would be impractical to seek revocation of the exemptions for each demurrage claim, and that seeking revocation on an individual basis adds burdens in terms of cost, time, and uncertainty for the exempt shippers which do not make sense in today's consolidated rail market.

Chairman Begeman asked whether the Board erroneously decided to exclude paper and box cars from the 2016 proposal. Thompson Hine explained that the proposal expressly invited other industries that desire to revoke the exemptions to file comments and evidence with the Board, and thus the paper industry specifically responded to this invitation. Thompson Hine also explained that the evidence of market power should be determined based on the totality of the circumstances, and that R/VC ratios are one but not the only component.

PCA explained that a significant de-marketing in certain lanes has taken place, and the pricing in rail dependent traffic has significantly increased. PCA stated that due to ICC Termination Act, and consolidation the industry has lost the benefits of the exemption.

PCA asserted that they in today's market it needs regulatory oversight and should not be treated differently from other industries. Chairman Begeman asked why the industry does not utilize the current process for revocation of exemption for claims. PCA explained that it is costly, slow and creates an additional uncertainty. PCA explained that they need regulatory oversight to increase their leverage against railroads. PCA stated that they have been able to achieve a successful agreement with a railroad by stating that they will pursue a voluntary arbitration.

Chairman Begeman asked how many box cars PCA owns. PCA responded with 1,800. PCA also explained how the railroads are shifting away from 50 foot box cars to 60 foot box cars and this is a big problem, since PCA's mills and receiving facilities are configured for the 50 foot cars. The use of 60 foot cars impedes efficiency by reducing the number of cars that can be loaded and the 60 foot car maxes out on weight before reaching capacity. It was also explained that investment in new 60 foot cars is undermined by the default rate.

PCA also explained that it operates a private truck fleet of about 600 trailers for short-distance deliveries primarily for final deliveries of finished product to customers (not movements from mills to distribution centers), and that they also operate as a common carrier to engage in back-hauls where possible.

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

Our Packaging and Services Network



PCA EP 704 Summary Bullets

1. PCA strongly supports revocation of the exemption for both paper and forest products and for box cars used for paper and forest products shipments.
2. **PCA Description of its Facilities and Rail Supply Chain for White and Brown Paper Mills.** PCA has 6 brown paper (containerboard) mills and two white paper mills. We also have 95 converting facilities. PCA relies heavily on rail for both our brown and white paper mills and cannot shift all of its traffic to truck despite significant rail service problems. Five of our eight paper mills are captive to a single Class I railroad.

Even with significant rail service issues, we ship approximately 70% by rail outbound at our white paper mills and about 60% by rail at our brown paper mills. We depend on rail for a variety of reasons:

- o **product size:** Rail is the preferred mode to transport large rolls of paper and some at 130 inches tall have to go by rail.
 - o **facility design:** PCA mills are primarily designed for rail and receiving distribution facilities are also configured for and require rail. It would be cost prohibitive to convert to all truck.
 - o **length of haul**
 - o **volume:** 1 rail car equates to 3 trucks (or 6 trips, 3 loaded and 3 empty)
 - o **geography:** Paper mills are often in remote locations near two-lane roads that are not designed
3. **Limits on Alternatives to Rail.** Truck is not a viable alternative for the majority of our traffic for the reasons noted above and because there is not enough capacity.
 - o Transload also is not effective competitive due to high handling costs and risk of product damage.
 - o Water options are not used by PCA. Both origin and destination would require a water option for this to be viable.
 - o Less than 2% of PCA traffic uses intermodal.
 4. **Product and Geographic Competition is Not Readily Available.** PCA can only ship products that are manufactured to meet specific customer requirements. Geographic competition is extremely limited since our mills use different equipment and white paper machinery cannot be substituted for brown paper machinery; and our northern and southern mills produce different types of brown paper (e.g. corrugated versus liner).
 5. **Car Supply Challenges.** Car supply is inconsistent and unreliable. Our industry depends heavily on the 50 foot boxcar due to customer facility configurations and

weight limits due to product size. Railroads are shifting new cars to a 60 foot model which reduces our efficiency at loading and in the amount of product delivered. Another big issue we are facing is the shrinking of the box car fleet. Only a couple of class 1s are buying new cars and they have refused to work with car owners / lessors on improving the default rate so that investing in a new box car has a justifiable return.

6. **Other Rail Challenges.** As our testimony at the Demurrage and Accessorial hearing explained, PCA has many issues and challenges in dealing with the Class 1s today, including unreliable rail service and high demurrage and other costs. Yet, as an exempt commodity, we have no direct and immediate STB oversight for our commodity. We have used the STB's Public Assistance Group many times and when this is successful it usually results in only short term improvements.
7. **Rail Rates and Contract Negotiations.** Rates on our rail movements rise consistently every year and there is no real negotiation of contracts. As an exempt commodity we get "de-marketed" when the rails raise rates often above the 180% RVC with no recourse, our option is to just take it or leave it.
8. **No Benefit to the Exemption for Rail Customers only Detriments.** There is no benefit to us to being exempt. Revocation would hopefully help us gain some leverage in our contract negotiations due to potential STB rate and service regulation. The bottom line is that we just want to be on the same level playing field as other shippers and have the STB oversight to help us gain leverage and to challenge railroad conduct when needed.