BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. Ex Parte 704 (Sub-No. 1)

NOTICE OF PROPOSED RULEMAKING

COMMENTS OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

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Introduction and Interest of the American Short Line and Regional Railroad Association

The American Short Line & Regional Railroad Association ("ASLRRA" or "Association") is an international trade organization of approximately 1,030 members consisting of about 480 short line and regional small, locally-based railroads ("Small Railroads") in 49 states[1] approximately 550 suppliers and contractors. These railroads operate about 50,000 miles of track connecting largely less populated, rural areas to the national rail network, which track constitutes 32 percent of the nation's rail system. These Small Railroads participate in 40 percent of all carload movements but earn only five percent of the revenue generated on the national rail system. Small Railroads frequently provide the first and last mile of service on many rail movements.

In a decision served March 23, 2016, The Surface Transportation Board ("STB" or "Board") issued a Notice of Proposed Rulemaking ("NPR") in which it stated it is seeking public comment on its proposal to revoke existing class exemptions under 49 C.F.R. Part 1039 for (1) crushed or broken stone or rip rap; (2) hydraulic cement; (3) coke produced from coal; (4) primary iron or steel products; and (5) iron or steel scrap, wastes or tailings (collectively the "Exempt Commodities").

ASLRRA is filing Comments in this proceeding because it opposes the STB's proposal in its entirety. ASLRRA submits that, contrary the assertions by the Board in its NPR that changes in the transportation market warrant the application of the Interstate Commerce Act to the

[1] The ASLRRA also has railroad members in six Canadian provinces.

Exempt Commodities in order to carry out the federal government's Rail Transportation Policy, the facts demonstrate that Small Railroads do not possess market power in any of the Exempt Commodity markets. Further, the STB's conclusion that waybill rate data for these commodities shows a substantial increase in revenue from potentially captive traffic is not only wrong, but is clearly misplaced insofar as small railroads are concerned.

Background of the Proceeding

As part of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat.31, Congress gave the Board's predecessor very broad authority to exempt railroads from regulation when regulation is not necessary to protect shippers against abuses of market power. In 1980, Congress revised and broadened the statutory exemption standard when it passed the Staggers Rail Act of 1980, 94 Stat. 1985. Pursuant to the Staggers Rail Act, the ICC:

> … *shall* exempt a … service when it finds that the application of a provision of 49 U.S.C. subtitle IV (1) is not necessary to carry out the national transportation policy of §10101a and (2) either (a) the … service is of limited scope or (b) the application of the statute is not necessary to protect shippers from the abuse of market power.

Congress essentially repeated this language in the ICC Termination Act of 1995 in §10502(a) of that act, adding the words, "*...the Board, to the maximum extent consistent with this part, shall exempt a ... service*" when it finds regulation of a commodity unnecessary under the provisions cited above. *See* 49 U.S.C. §10502(a)(emphasis added). This directive was also unchanged in the STB Reauthorization Act, P.L. 114-110. Using the statutory power promulgated by Congress, the ICC exempted from regulation a number of commodities or services from regulation, including the five that are under consideration in this proceeding.

There is no rational basis under the law to regulate the Exempt Commodities. With respect to the Small Railroads, regulation of the Exempt Commodities would be inconsistent with rail transportation policy. As has been the case for decades, Small Railroads provide a limited scope of service in the movement of the Exempt Commodities in terms of the average distance and revenue derived from transportation. The Small Railroads do not exert any market power over the Exempt Commodities since they rarely even control the rates charged. The STB's conclusion to revoke the exemptions for these commodities is flawed. The STB's stated rationales for this conclusion are (1) there have been many changes in the railroad industry; (2) it

has received informal inquiries questioning the relevance or necessity for the exemptions – without identifying the number of such alleged inquiries, from whom, and when they occurred; (3) a stale record developed in comments and a hearing held in 2011 regarding the exemptions; (4) an alleged change in the dynamics of the transportation markets that indicate that railroads exert a greater market power for each of the commodities causing a need to regulate them; and (5) the STB's waybill study that allegedly shows a substantial increase in revenue from "potentially captive" traffic – described as traffic with a revenue to variable cost ratio ("R/VC") of more than 180%. Using these faulty rationales, the Board states that the exemptions involved in this proceeding must be revoked in order to "… restore shippers' access to the Board's regulatory oversight and processes." NPR at 4.

ASLRRA's Comments respond in detail to each of these rationales and show that the STB's reliance on them to justify its conclusion to revoke the exemptions is simply wrong. Further, not one of these rationales applies to Small Railroads.

First, while there have been changes in the rail industry in general, the operations of Small Railroads are largely the same today as they were years ago. As was the case when the exemptions were adopted, the Small Railroads still continue to provide the first and last mile of service, largely at the fringes of the National Rail Network. Thus, despite the passage of many years, the dynamics of the Small Railroads have not significantly changed.

Second, the failure to identify who made an inquiry about exemptions, what the inquiries were, and when they were made renders reliance on this ambiguous rationale unsustainable. For example, there has been at least one inquiry from a railroad asking why more commodities are not exempted.

Third, as Commissioner Miller says in her concurring opinion, "I agree … that the record on which we are basing this decision is less than robust… ." NPR at 15. As Commissioner Begeman points out in her dissent, the record is half a decade old and a number of significant events have occurred since 2011, but none of those events appear in the proceeding held in 2011. NPR at 16. Without a complete, up-to-date record, the STB cannot make an informed decision to revoke these exemptions.

Fourth, the market dynamics of Small Railroads remain largely unchanged. They face tremendous intermodal/intramodal competition, there still exists geographic and product competition, and transload operations provide very strong competition for their short-distance

traffic. The average length of haul for these commodities is 105.9 miles for stone; 19 miles for coke; 75.1 miles for cement; 38.9 miles for iron and steel; and 46.9 miles for iron and steel scrap. These short distances expose the freight to rampant truck competition.

Fifth, the STB's reliance on waybill data is totally misplaced with respect to Small Railroads. Many shipments handled by Small Railroads do not appear in the waybill samples because the Small Railroads do not appear on the waybills or the routings. As pointed out in the Verified Statement of Gerald Fauth, III, filed contemporaneously with these Comments, there are numerous problems with the STB's approach to determining to revoke the exemptions for these five commodities. The confidential waybill sample that the STB uses contains relatively few records from Small Railroads and is largely relevant only to Class I railroads. Mr. Fauth sets forth this flaw in detail in his Verified Statement. The NPR does not analyze the impact of the decision on Small Railroads at all. As set forth in these Comments, the evidence adduced by the ASLRRA in these Comments shows that revoking the exemptions would have a devastating adverse effect on Small Railroads. However, even using the limited information extracted from the 2014 waybill sample, it shows that the R/VC's are in fact as follows: 130.7% for crushed stone, 186.4% for coke, 190.7% for cement, 176.4% for iron and steel, and 165.9% for scrap.

The STB's assertion that there is no effective competition for this traffic and that there is an undue concentration of market power in the rail industry is fatally flawed with respect to Small Railroads. Unlike Class I railroads, Small Railroads are characterized by high fixed costs, short distances they transport freight[2], light traffic densities, intense competition from trucks, barges, intermodal, and transload operations, and lack of control over pricing.

None of these facts support the premise that there is a lack of competition facing Small Railroads with respect to the Exempt Commodities, and nor do they support an assertion that the Small Railroads exercise undue market power in the rail industry. As these Comments and the verified statement of Mr. Fauth show, all rationales used by the STB to revoke the exemptions are unsupported by the facts and the reality of operations of Small Railroads.

Overall Comments

In order to prepare these Comments on the NPR, the ASLRRA surveyed its railroad members to gauge the importance of the movement of these Exempt Commodities to their

[2] For example, for Small Railroads, the average route mile distance is 91 and the median route mileage is only 34. ASLRRA 2014 Facts, pp. 10 – 12.

operations. Included in the survey were questions that would show the average length of haul, the total revenues for the respondents and the revenue derived from transporting these exempt commodities, and the number of carloads of exempt commodities they handle in comparison with their total annual traffic. ASLRRA received replies from 170 Small Railroads, and 81.2% of the respondents supplied information showing that they transported one or more of the currently exempted products. This high percentage of responding members is indicative of the Small Railroad's sensitivity to the proposed revocations and their dependence on the exempt commodities.

The table below shows the average length of haul for each of the Exempt Commodities for each of the respondents:

Number	Crushed Stone	Coke	Iron or Steel	Cement	Scrap
1	70 miles		40 miles		75 miles
2			75 miles		75 miles
3					1 mile
4	500 miles				
5		22 miles			65
6			8 miles		
7		5 miles	5 miles		5 miles
8					7 miles
9			12 miles	18 miles	2 miles
10	63 miles		144 miles	15 miles	15 miles
11	90 miles				90 miles
12			52 miles		48 miles
13				3 miles	6 miles
14	40 miles	30 miles	50 miles	50 miles	30 miles
15	4 miles				

16			4 miles	4 miles	4 miles
17			3 miles	4 miles	
18	22 miles		2 miles		48 miles
19			15 miles		
20	1 mile				1 mile
21	100 miles	50 miles	125 miles	50 miles	50 miles
22	40 miles	20 miles	40 miles	15 miles	25 miles
23			25 miles		50 miles
24		3 miles			
25			292 miles		100 miles
26	6 miles		11 miles		2 miles
27	6 miles		11 miles		2 miles
28	70 miles		10 miles		
29			106 miles		106 miles
30	16 miles		21 miles		28 miles
31			2 miles		.5 Miles
32	50 miles			30 miles	
33					6 miles
34	101 miles				
35					3 miles
36	35 miles		5 miles		15 miles
37	36 miles			26 miles	38 miles
38	160 miles				
39	500 miles*				
40	75 miles				

41	12 miles	38 miles			
42					4 miles
43		3 miles			
44			12 miles	12 miles	60 miles
45			10 miles	10 miles	15 miles
46			3 miles		
47			3 miles	2 miles	4 miles
48		2 miles	2 miles		2 miles
49			260 miles		260 miles
50					1 mile
51	30 miles				30 miles
52			32 miles		32 miles
53	166 miles		200 miles	6 miles	200 miles
54					40 Miles
55	2 miles	1 mile	15 miles	12 miles	5 miles
56	500 miles*		500 miles		
57	18 miles		67 miles	25 miles	18 miles
58	100 miles			45 miles	
59	200 miles	40 miles	200 miles	40 miles	150 miles
60			1 Mile		5 miles
61			20 miles		30 miles
62	125 miles		350 miles	350 miles	120 miles
63			13 miles	13 miles	3 miles
64	36 miles	14 miles	80 miles	80 miles	110 miles
65			29 miles		

66	200 miles		300 miles		300 miles
67					15 miles
Total Average Miles	105.44	19	75.12	38.09	46.97

*Represents a response from holding companies that reported the totals for all their railroads.

It is important to note that the average length of haul is 105.44 miles for the transport of stone, 19 miles for coke, 75.1 for cement, 38.09 for iron and steel, and 46.97 for scrap for the responding carriers that handle these exempt commodities. The survey results for these same 67 carriers shows the average length of haul for them overall is 217 miles. Small Railroads consider the effective radius for truck competition to be 300 miles, and these statistics readily show that the average movements are well within that radius.

In response to the question about competition for this traffic, the railroads listed the following major sources: 91 - trucks, 26 - barge, 24 - Class I railroads, 17 - transloads, five - geographic competition, and six - product competition. These Small Railroads reported that the reasons trucks and barges were effective sources of competition were related to the short length of haul for the railroads. Truckers and barge operators can set very competitive rates for the traffic where the highway has the advantage of speed, routing flexibility, and more frequent service or the origins or destinations are proximate to barge facilities. The Small Railroads also said that transload operations are increasingly capturing business. allowing their on-line shippers to move the product short distances to the transload site for transfer to long-haul Class I railroads.

Statistics for the overall average length of haul and the average length of haul for each of the Exempt Commodities prove that there is effective intermodal and intermodal competition as well as other factors that form viable and strong competition for this traffic.

The statistics on operating revenue show how critical the transportation of the Exempt Commodities is to Small Railroads. The respondents reported total operating revenues for the years 2013–2015 at $1,186,515,100. Of that amount, these railroads had operating revenues for each of the commodities in those same years of $181,626,696 from stone, $241,042,286, $89,301,274 for iron and steel, $103,532,554 for cement, and $107,979,628 for scrap. The Exempt Commodities accounted for 15.3% of their total revenues from transporting stone,

20.3% from coke, 7.3% from iron and steel, 8.7% from cement, and 9.1% from scrap. Revenues attributable to these exempt commodities and the percentage they represent to the Small Railroads are critical to their continued viability. Regulation of the Exempt Commodities without a clearly established purpose could have catastrophic impacts on the Small Railroads.

The carload statistics are equally telling. For the years 2013-2015, the responding carriers handled a total of 1,026,268 carloads of these exempt commodities: 320,000 stone (31% of their total carloads), 86,754 coke (8.45%% of their total carloads), 171,017 iron and steel (16.7% of their total carloads), 207,888 cement (20% of their total carloads), and 239,850 scrap (23.3% of their total carloads).

A great majority of the exempt commodities transported by Small Railroads are interline shipments, as illustrated in the following table:

Commodity	**Local***	**Interline**
Crushed stone	20	39**
Coke	1	28
Iron or steel	4	64
Cement	-	39
Scrap	4	75
Totals	29	245

- Shipments wholly on a Small Railroad
- Shipments interchanged with another railroad

Coupled with this data is the information about who sets the rates on these moves. The following table shows that the predominance of rate setting is done by connecting Class I carriers:

Commodity	**Contract**	**Short Line**	**Jointly**	**Class I**	**Customer/market place**	**Tariff**
Crushed Stone	2	11	5	22	10	1

Coke	-	9	1	12	5	1
Iron or Steel		8	4	23	5	1
Cement	1	15	3	20	4	1
Scrap	2	14	1	46	5	3
Totals	5	57	14	123	29	7

Total traffic in the five categories is only 10.6% local to the short lines and 89.4% interline. If stone is eliminated, the captive short-line share is only 4.2%, reflecting the critical role of Class I interline pricing on these moves and definitively shows that Small Railroads do not possess any market power over these commodities.

These data do not support the STB's postulate insofar as Small Railroads are concerned:

- The dynamics of these particular transportation markets have not changed. Small Railroads still have short hauls for these commodities, have high fixed costs, that necessitate the continuation of all traffic that currently travels over their lines. To cover their fixed costs, Small Railroads are cognizant of competition for their traffic and, where they have pricing power, they use it within the confines of supply and demand for services to offer competitive rates;
- The length of haul and other modes of transportation that participate for short haul traffic establishes that there is substantial competition for this traffic from trucks, barges, transloads, intermodal, Class I carriers, and geographic and product competition;
- The waybill data are largely inapplicable to Small Railroads; notwithstanding that fact, what can be shown from the analysis of the most recent waybill sampling from 2014 is that the R/VC ratios are either far below 180% or only marginally higher;
- Small Railroads do not have demonstrable market power regarding these commodities, as they frequently do not control the rate, service levels or any other indicia of such power; and
- The revenue and carloads derived from handling these commodities is critical to the economic health of the economically fragile Small Railroads.

Revocation of the exemptions would have an adverse effect on the economic health of the Small Railroads, would not improve the competitive situation, and would not foster sound economic conditions in the rail transportation industry.

Comments Regarding the Individual Commodities

At page 4 of the NPR, the STB begins its discussion of the individual exempted commodities and describes in each case the reasons it believes the exemptions should be revoked as to each commodity. In large measure, the rationale the Board uses to bolster its arguments as to each is a repetition of what it said in the previous part of the NPR. The ASLRRA will, however, respond to each section of the NPR due to the importance of the transportation of these commodities to their well-being and continued operations.

1. STCC No. 14-2, Crushed or Broken Stone or Rip Rap

In support of its position that the exemption for this commodity be revoked, the STB cites the testimony from the 2011 hearing from Texas Crushed Stone, a limestone quarry operator. First, as noted above, this testimony is dated and may well be irrelevant to current conditions in the rail industry. Second, the testimony is from a single shipper, hardly qualifying as a spokesperson for an entire industry.

This commodity group is still subject to intense competition. The involved products can be handled by truck, rail or barge. The Small Railroads' average length of haul is only 105.44 miles, well within the radius where trucks are competitive for this traffic. Thus, this traffic is still subject to motor carrier competition because the movements continue to be short in nature. To quote one responding carrier, "Stone by barge has historically been [a] monopoly. We have succeeded in competing effectively, but we are still [a] minority player. Proximity to deep water port in New Jersey and Philadelphia makes competition difficult."

Small Railroads have also lost market share concerning the transportation of stone due to some Class Is demarketing this lower rated commodity. ASLRRA has received complaints from some Small Railroads that compete for the stone traffic that certain Class I railroads have priced interline movements of lower-rated commodities like stone out of the market, to the detriment of originating and terminating Small Railroads. This has the effect of depriving the connecting Small Railroads of traffic they consider revenue adequate and important to their continued

existence. Revocation of the exemption for these commodities would likely further the decline in Small Railroad shipments, to the eventual detriment of one mode of transport, as Small Railroads are reliant on maintaining all their traffic to cover their fixed costs.

The STB's reliance on the waybill analysis is also misplaced. The R/VC for Small Railroads on this traffic is 130.7%, well below the jurisdictional threshold of 180%. This low R/VC definitely shows that Small Railroads do not possess market power over this commodity and that it is neither captive or "potentially captive."

2. STCC Nos. 29-914, Coke Produced from Coke; 33-12, Primary Iron or Steel Products (Plates, Pipes, and Rods); and 40-211, iron or steel scrap, wastes or tailings.

Overall, the ICC originally granted exemptions for these commodities because it found there was a significant rail market share for them, and nothing has changed in that regard. The percentages of revenues derived from the transportation of these exempt commodities by the responding Small Railroads compared to their total revenues show that during the period 2013-2015, the responding carriers earned 20.3% from transporting coke, 7.5% from transporting for iron and steel, and 9.1% from transporting scrap. The percentages handled did not vary over the three-year period. These represent significant market shares for the Small Railroads that responded to the survey for each of these commodities. Small Railroads are not widely gaining market share and that shows they do not have market power.

As was the case with stone, there is still significant product, geographic, intermodal, truck, barge, and other competition for the coke, iron and steel, and scrap traffic. As an example of the continued competition for the iron and steel traffic, for example, one Small Railroad responded, "Truck is an extremely strong competitor. Rail market share with [a steel producer] at [named location] is less than 35%, and [the Small Railroad] competes with NS for this rail market share."

Moreover, the average length of haul is 19 miles for coke, 38.09 miles for iron and steel, and 46.97 miles for scrap – all well within the radius within which trucks are competitive. These mileage figures did not vary year-to-year over the three years reported.

When the ICC exempted iron and steel, it found that the majority of the traffic moved under contract. The fact that the majority of this traffic moves pursuant to contracts is relevant because contracts show that the parties have freely negotiated rates and service levels to which they have voluntarily agreed. It shows that there is competition because contract rates are usually lower for the shipper. Contracts are a sign that healthy competition exists. The survey showed this to still

be the case as 23 Small Railroads reported that the traffic moved under contract, 18 reported it moved under tariff, and 23 said both. Accordingly, this basis for originally exempting iron and steel still exists.

In exempting scrap, the ICC found that one of the reasons to do so was that the average R/VC ratios were 139.5% in 1991 and 138.6% in 1992, noting that these ratios were "… more than 40 points less than the Commission's statutory 180% R/VC rate threshold." NPR at p. 7. The R/VC ratio in 2014 for Small Railroads for scrap is 165.9% - still 14 points under 180%.

The Board also states that the average lengths of haul for coke, iron and steel products, and scrap have increased, resulting in the STB concluding for all three commodities that trucking is less competitive today. The reality of operations by Small Railroads belies both the assertion by the Board that the average length of haul for these commodities has increased and its illogical conclusion. The average length of haul for Small Railroads for coke is 19 miles; for iron and steel products it is 46.97; and for scrap, it is 46.97. As the STB says in footnote 12 on page 7 of the NPR, "Trucking becomes less viable when the length of haul exceeds 500 miles… [.]" Taking the Board at its word, the facts show that the average length of haul for these commodities remains truck (and barge) competitive since they are all substantially below 500 miles. Moreover, the fact that the average length of haul has not increased for Small Railroads is another indicium that they do not exert increased market power over shippers of these commodities.

The STB next uses the data from the waybill samples to assert that the commodities may be subject to increased market power by railroads because the percentage of revenue that was "potentially captive" doubled from 1992 to 2013 and the average R/VC's for the "potentially captive traffic" is being charged higher R/VC ratios over those same years, suggesting that railroads may be exerting increased market power over shippers of each of these commodities. Again, the facts do not support these assertions vis-à-vis Small Railroads.

The percentages of revenues earned from the transportation of these exempt commodities by the responding Small Railroads compared to their total revenues show that during the period 2013-2015, the responding carriers earned 20.3% from transporting coke, 7.5% from transporting for iron and steel, and 9.1% for transporting scrap. These percentages handled did not vary over the three-year period. This represents a significant market share for the Small

Railroads that responded to the survey for each of these commodities. But, these facts demonstrate a steady state and in no event are the Small Railroads growing their market power.

The waybill data for 2014 show that the average R/VC's for coke are 186.4%, for iron and steel 176.4%, and for scrap 165.9%. These average R/VC's do not support the STB's assertion that Small Railroads may be exerting increased market power over shippers of these commodities.

3. STCC No. 32-4, Hydraulic Cement.

The STB recites the reasons for exemption in 1995 on the bases that the traffic is predominantly short haul in nature and that railroads faced pervasive competition for this traffic from other railroads, barges, and trucks. However, the Board states the changes in both the cement and rail industries have reduced the effectiveness of competitive transportation alternatives. It also cites evidence from the 2011 hearing from a cement association to find that the average length of haul has increased.

For Small Railroads, the average length of haul for cement is 75.1 miles, well within the 500 mile range within which the STB considers a commodity may be truck competitive and certainly well within the range of 100 to 125 miles that the Board says is truck competitive. NPR at p.10. In short, this traffic is still predominantly short haul in nature, so the length of haul justification for exempting cement is still extant.

Trucks and barges remain strong competitors to transport cement. There is also intermodal competition among the railroads – both Class I and competing Small Railroads. Ninety-one of the responding railroads stated that trucks serve as the biggest competitive threat to their operations for all the commodities currently under consideration that are exempt from regulation today. That is the reality of the world of Small Railroad world, the reason they are often referred to as "feeder lines."

The STB asserts that its analysis of the waybill data from 1992-2013 shows that the R/VC for cement trended upward over the years – from the 1992 ratio of 208.3% to 239.6% in 2013. The more current Small Railroad data show that the average 2014 R/VC for Small Railroads handling this commodity was 190.7%, slightly above the jurisdictional threshold of 180%. This ratio hardly supports a finding that the average R/VC supports reinstating regulation of cement.

Summary

Nothing in the NPR supports the STB's proposal to revoke the exemptions subject to the NPR. The Small Railroads have definitively shown that significant intermodal and intramodal, product, geographic competition still exists for all the commodities and restrains the market power of Small Railroads. The average length of haul remains short for each of the commodities – well within the range the STB views as being truck competitive. The R/VC for Small Railroads on this traffic is 130.7%, well below the jurisdictional threshold of 180%. This low average R/VC definitely shows that Small Railroads do not possess market power over this commodity and that it is neither captive or "potentially captive." The ASLRRA does not believe the Exempt Commodities should be subject to regulation for any rail movements, but the distinct facts and circumstances of the Small Railroads further justifies that there is no compelling argument to regulate the Exempt Commodity traffic moved by the Small Railroads.

Comments Regarding the Regulatory Flexibility Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) ("SBREFA") requires regulatory agencies to maintain policies concerning small entities subject to the regulation by the STB. These required policies apply along with the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) ("RFA"), and the "excessive demand" provisions of the Equal Justice Act (5 U.S.C. 504 (a)(4), and 28 U.S.C. 2412 (d)(1)(D). Class III railroads meet the economic criteria established for inclusion in 49 CFR 1201.1.

The RFA, as amended by SBREFA, gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. Moreover, Executive Order 13272 requires federal agencies to notify Small Business Administration Office of Advocacy ("Advocacy") of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy.

The STB faithfully recites the requirements imposed be these Acts, the related policies, and court decisions, the STB gives rather short shrift to the requirements. The NPR states that the rules proposed by it in this proceeding might have a significant economic impact on a substantial number of small entities and invites comment on anything a party believes is relevant

to this issue. On page 10 of the NPR, the Board lists some potential adverse effects it believes may result from the adoption of these rules. However, the NPR does not perform any analysis by the STB to determine the impact of the proposed rules on Small Railroads. Nor is there any indication in this record that the STB notified the Advocacy of the proposed rules. ASLRRA respectfully submits that both of these steps must be undertaken before any final rules are promulgated or face the possibility that a court would later reject any rules the STB adopts.

The rules proposed here would indeed have significant adverse effects on Small Railroads. First, the Small Railroads would be expected to fulfill their common carrier obligations regarding these commodities, which means they could be required to spend scarce resources defending an allegation that they did not fulfill the obligation. Similarly, they would be exposed to other regulatory oversight on compliance with the STB regulations, which would require them to expend time and money addressing those issues where they do not have to do that now. While Class III carriers are exempt from some reporting and recordkeeping requirements, if these commodities are reregulated, the approximately 480 short lines and regional railroads that are members of ASLRRA would still have to bear the cost of maintaining additional reports and records. For example, approximately 100 ASLRRA members have 10 or fewer employees, all of whom perform multiple functions on their railroads. Imposing additional burdens to address a spurious issue would either necessitating hiring or add make-work duties to multi-tasking employees. Such requirements of Small Railroads would be costly both financially and operationally.

Respectfully submitted,

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Public Version

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. EP 704 (SUB-NO. 1),

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

Verified Statement

of

Gerald W. Fauth III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. I have over 38 years of experience in the private sector and in the Federal government. The vast majority of my experience has involved Federal regulatory proceedings, litigations, arbitrations, legislative issues and other projects related to the North American freight railroad industry and the U.S. Surface Transportation Board (STB). A statement describing my background, experience, and qualifications is attached hereto as Appendix GWF-1.

The STB seeks public comment on its proposal to revoke the existing class exemptions under 49 C.F.R. Part 1039 for five (5) commodity groups as classified under the following Standard Transportation Commodity Code (STCC) groups:

Issue STB EP 704 (Sub-No.1) STCC Groups

- **STCC 14-2** Crushed or Broken Stone or Rip Rap;
- **STCC 29-914** Coke Produced From Coal;
- **STCC 32-4** Hydraulic Cement;
- **STCC 33-12** Primary Iron or Steel Products (Plates, Pipes, and Rods); and
- **STCC 40-211** Iron or Steel Scrap, Wastes, or Tailings.

These five STCC groups were previously exempt from regulation by various decisions issued by the Interstate Commerce Commission (ICC) in the 1990's. The Board has now proposed to revoke these exemptions. The STB's decision states:

> With regard to each of these commodity groups, the dynamics of the particular transportation markets appear to have changed so significantly since the exemptions were first promulgated as to warrant the application of the Interstate Commerce Act in order to carry out the Rail Transportation Policy.[1]

I have been asked by the American Short Line and Regional Railroad Association (ASLRRA) to review the STB's decision and underlying data and analyze the potential impact of the Board's proposal on its members. ASLRRA's membership includes the owners and operators of short line and regional railroads throughout North America. Most ASLRRA railroad members are classified as Class II and Class III railroads by the STB.[2] The website *Freight Rail Works* indicates that there are more than 550 Class II and III railroads in the United States operating over 43,260 miles.[3]

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1 See STB Docket No. EP 704 (Sub-No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, served March 23, 2016, page 4.

2 A Class II railroad has between $20 million to $250 million (the Class I threshold) in inflation adjusted annual revenues. A Class III railroad has between $0 and 20 million in revenues.

3 See: http://archive.freightrailworks.org/network/class-ii-and-class-iii/ Of these, approximately 480 belong to the ASLRRA.

As indicated herein, there are numerous problems with the approach used by the STB in reaching this decision. The STB's heavy reliance on a 22-year study of revenue-to-variable cost (R/VC) ratios is seriously flawed. The STB has failed to utilize or produce any updated transportation market share study, such as the market share studies utilized by the ICC in making the initial determinations. Moreover, although the STB's proposal could have a significant impact of ASLRRA's members, the STB failed to analyze the potential impact on Class II and Class III railroads, which move significantly lower volumes than Class I railroads, have significantly shorter hauls than Class I carriers and, in most cases, have significantly lower R/VC ratios.

STB's 22-Year CWS R/VC Study

The STB reached this conclusion by primarily studying various R/VC ratios associated with these STCC groups generated from the STB's Carload Waybill Sample (CWS) for the years 1992 to 2013. The STB found that the R/VC ratios for these groups increased during this 22-year study period. The Board states that there was "a substantial increase in revenue from potentially captive traffic (i.e., traffic with a revenue-to-variable cost (R/VC) ratio of more than 180%) over the last 22 years."[4] The following table summarizes the STB's CWS R/VC study for the impacted STCC groups:

[4] STB Decision No. EP 704 (Sub-No. 1), served March 23, 2016, page 4.

Table 1

Summary of STB's CWS R/VC Study of All Traffic and ≥180% Traffic for the STB EP 704 (Sub-No.1) STCC Groups

Year	Crushed or Broken Stone STCC 14-2		Coke STCC 29-914		Hydraulic Cement STCC 32-4		Primary Iron or Steel STCC 33-12		Iron or Steel Scrap STCC 40-211	
	All	>180%	All	>180%	All	>180%	All	>180%	All	>180%
1992	119.5%	232.2%	138.6%	225.0%	133.9%	208.3%	127.0%	219.1%	126.8%	225.6%
1993	125.8%	225.3%	138.4%	224.1%	141.6%	224.5%	126.9%	221.9%	124.5%	225.8%
1994	135.9%	233.2%	142.2%	228.1%	139.8%	218.7%	131.2%	227.6%	128.6%	219.8%
1995	134.8%	222.7%	143.1%	219.8%	142.1%	220.7%	133.8%	218.4%	122.8%	211.6%
1996	132.6%	242.0%	147.3%	218.1%	134.7%	217.4%	126.4%	220.6%	132.1%	216.1%
1997	126.5%	238.3%	150.5%	238.1%	134.6%	218.5%	128.9%	219.2%	128.9%	216.4%
1998	129.0%	224.5%	152.9%	233.0%	140.6%	221.1%	126.4%	208.1%	126.4%	218.9%
1999	140.1%	230.4%	162.3%	232.2%	145.4%	216.8%	137.7%	216.0%	133.3%	217.3%
2000	134.5%	222.9%	172.1%	238.2%	150.1%	221.3%	128.8%	214.6%	128.8%	216.7%
2001	143.5%	222.2%	180.7%	239.6%	161.9%	227.3%	134.7%	210.6%	131.6%	221.0%
2002	148.5%	230.9%	169.4%	245.5%	161.2%	234.8%	134.7%	214.1%	130.1%	220.4%
2003	141.8%	229.9%	157.7%	252.5%	163.0%	225.2%	131.4%	219.3%	128.9%	214.9%
2004	139.3%	224.2%	157.8%	250.5%	156.0%	218.0%	129.7%	213.9%	131.8%	216.0%
2005	146.8%	229.0%	184.6%	258.0%	154.4%	223.3%	136.4%	219.1%	144.0%	219.9%
2006	167.1%	237.5%	200.9%	275.5%	172.2%	228.7%	151.2%	224.1%	155.0%	225.9%
2007	163.6%	241.2%	182.6%	251.6%	170.4%	233.5%	146.5%	223.9%	142.9%	216.7%
2008	166.7%	237.8%	184.2%	238.3%	169.3%	235.1%	144.0%	221.5%	145.3%	218.9%
2009	168.9%	247.0%	193.8%	256.8%	169.2%	232.5%	129.2%	233.6%	135.4%	222.6%
2010	178.0%	255.3%	212.4%	275.1%	169.3%	241.3%	143.1%	227.7%	144.0%	221.0%
2011	177.8%	256.7%	200.9%	280.4%	172.6%	233.7%	148.2%	228.5%	153.9%	220.4%
2012	177.1%	257.1%	201.6%	268.0%	175.9%	233.8%	150.2%	229.9%	145.9%	218.9%
2013	184.2%	254.9%	194.7%	248.2%	182.7%	239.6%	159.2%	236.6%	164.4%	229.8%
% Change	64.7%	22.7%	56.2%	23.1%	48.8%	31.3%	32.2%	17.5%	37.6%	4.3%

The STB also studied the percent of potentially captive by traffic by revenue, tons and carloads. The following table summarizes the STB's percentages by revenue:

Table 2

Summary of STB's CWS R/VC Study of Percent of Potentially Captive Traffic by Revenue for the STB EP 704 (Sub-No.1) STCC Groups

Year	Crushed or Broken Stone STCC 14-2	Coke STCC 29-914	Hydraulic Cement STCC 32-4	Primary Iron or Steel STCC 33-12	Iron or Steel Scrap STCC 40-211
1992	14.8%	20.1%	18.9%	18.8%	22.1%
1993	21.8%	24.6%	23.5%	21.8%	18.2%
1994	28.6%	29.5%	22.9%	21.6%	19.9%
1995	28.4%	34.3%	22.0%	23.3%	11.1%
1996	27.4%	41.3%	22.2%	18.0%	17.5%
1997	17.2%	37.9%	21.9%	20.4%	18.8%
1998	18.7%	42.5%	27.7%	14.8%	16.7%
1999	26.9%	51.3%	29.0%	19.2%	16.5%
2000	24.6%	63.4%	31.4%	12.8%	12.0%
2001	31.9%	64.0%	39.0%	15.0%	15.4%
2002	33.7%	49.5%	40.7%	17.4%	16.8%
2003	32.3%	57.0%	40.5%	16.5%	15.8%
2004	26.9%	44.0%	34.7%	16.9%	16.3%
2005	35.2%	57.9%	34.5%	23.4%	25.6%
2006	50.9%	68.4%	45.8%	35.9%	34.4%
2007	49.8%	57.7%	43.0%	32.3%	24.0%
2008	51.2%	63.2%	45.0%	28.3%	27.2%
2009	51.8%	63.6%	47.5%	21.2%	24.0%
2010	57.4%	70.5%	46.4%	28.7%	27.8%
2011	56.5%	59.0%	48.4%	29.8%	33.9%
2012	58.0%	62.9%	50.4%	31.3%	29.5%
2013	62.0%	58.9%	54.6%	37.6%	44.0%
% Change	47.2%	38.9%	35.7%	18.9%	21.9%

The STB's March 23, 2016 decision in this proceeding includes the following references to these Waybill Sample R/VC studies:

- **STCC 14-2, Crushed or Broken Stone** - Moreover, waybill data analysis demonstrates that the average R/VC ratio for potentially captive traffic for this commodity group increased from 232.2% in 1992 to 254.9% in 2013. Similarly, the percentage of potentially captive traffic by revenue for this commodity group during the 22-year review period increased from 14.8% in 1992 to 62.0% in 2013. These significant changes indicate that revocation of the exemption may be necessary to carry out the RTP provisions discussed above with regard to crushed or broken stone or rip rap. (pages 5 and 6)

- **STCC 29-914, Coke –** Likewise, the Board's confidential waybill data for coke produced from coal indicates that the percentage of revenue that was potentially captive almost tripled from 1992 to 2013. In1992, 20.1% of revenue was potentially captive compared to 58.9% in 2013. During that same time period, the average R/VC ratio for potentially captive coke traffic increased by approximately 23 points from 225.0% to 248.2%. Thus, it appears that coke produced from coal is becoming increasingly captive to railroads, and that the captive traffic is being charged higher R/VC ratios over time. These findings are consistent with increased market power. (page 9)

- **STCC 32-4, Hydraulic Cement** – The Board's analysis of waybill data for years 1992 through 2013 reveals that R/VC ratios for hydraulic cement have trended upwards over the course of 22 years. In 1992, the R/VC ratio for potentially captive cement traffic was 208.3%, compared to 239.6% in 2013. Also, the percentage of potentially captive traffic by revenue increased from 18.9% in 1992 to 54.6% in 2013. The Board finds that increases in both the R/VC ratio for potentially captive traffic and the percentage of potentially captive traffic by revenue are possible indicators of increased railroad market power sufficient to warrant regulatory oversight. This data further supports the Board's proposal to revoke the exemption for hydraulic cement. (page 10)

- **STCC 33-12, Primary Iron or Steel Product –** With regard to primary iron or steel products (STCC No. 33-12), from 1992 to 2013, the percentage of revenue that was potentially captive for primary iron or steel products doubled from 18.8% to 37.6%. . . . Also, for primary iron or steel products, the average R/VC ratio for potentially captive traffic increased during the 22-year period, from 219.1% in 1992 to 236.6% in 2013. (page 8)

- **STCC 40-211, Iron or Steel Scrap** - Similarly, for iron and steel scrap (STCC No. 40-211), the percentage of revenue that was potentially captive doubled from 22.1% to 44.0% during this same time frame. . . . For the iron or steel scrap commodity group, the average R/VC ratio for potentially captive traffic increased by approximately four points, from 225.6% to 229.8%. Thus, the Board observes that the traffic for both primary iron or steel products and iron or steel scrap appears to be increasingly potentially captive to railroads, and that this potentially captive traffic is being charged higher R/VC ratios over time. This data suggests that railroads may be exerting increased market power over shippers of these commodities. (page 8)

As these passages from the STB's decision indicate, the STB placed a heavy reliance on the 22-year CWS R/VC study (Table 1) and percentages of captive revenue (Table 2) for the 22 year period. To show why the reliance on the CWS is flawed regarding the STB's findings generally and specifically as to Class II and III railroads, it is necessary for me to point out the problems with the CWS data

Problems Concerning the Use of STB's CWS Data

There are several inherent problems associated with the use of the STB's CWS. One problem, which has impacted the CWS for many years, is the reporting problem associated with so-called "Rebill" traffic, which is essentially the rebilling of interline or bridge traffic as local traffic. This problem primarily adversely effects the Class I carriers in particular. For example, an interline railroad movement from San Francisco, CA to New York, NY, via Chicago, IL, may show up as two separate Rebill movements, i.e., San Francisco to Chicago and Chicago to New York. The STB's *2014 Carload Waybill Sample Reference Guide*, dated November 1, 2015, describes this Rebill problem as follows:

> . . . One example is the rebilling of interline received or bridge traffic as local traffic. This rebilling tends to understate the actual length of haul for the movement. Unless these nuances in the Waybill Sample are fully understood, the use of these data and the ensuing conclusions from their analysis may be flawed. (page 174)
>
> With the cancellation of joint rates and the desire to receive quicker revenue settlements and remain competitive, railroads are increasingly making use of this accounting rule which allows them to rebill deregulated traffic. Apart from the rebill designation on the waybill, these waybills appear to be "local" movements. Use of rebilling can be illustrated in the high portion of waybill movements which appear to originate or terminate in the state of Illinois. Over the years, Illinois appeared to originate and terminate more carloads than the west coast states of California, Oregon, and Washington combined. In actuality, many of these movements involved long-distance traffic which was rebilled in Chicago. However, estimates of true commodity length of haul may be understated. As transcontinental shipments are often billed as two or more separate waybills, the Waybill Sample will not indicate a true representation of mini-bridge movements, although it will provide accurate estimates of import or export traffic. (page 178)

> Freight Mandatory Rule 11 rebilling has the effect of overstating tonnage and units (car loads and intermodal boxes) and understating the length of haul in the Waybill Sample. Each rebilled waybill record in the sample double counts the tonnage and units of the originating waybill. Although the total distance moved by rebilled traffic is captured in full, length-of-haul statistics are understated by showing a single shipment as two, shorter-haul, shipments. Ton-mile statistics from the sample, however, are not affected by rebilled traffic. . . . (page 178)
>
> Analyses that do not address the issue of rebilled traffic in the Waybill Sample are likely to lead to erroneous conclusions. (page 178)

This Rebill issue obviously impacts the R/VC ratios generated by the STB's CWS. The R/VC of a published joint-line rate subject to STB rate regulation would be different than the R/VC ratios associated with two separate local movements because of the STB's Uniform Railroad Costing System (URCS) treatment and allocation of terminal and interchange costs.

Another problem with the CWS, which more directly impacts ASLRRA members, is the under-reporting of movements by Class II and Class III railroads. As indicated, there are more than 550 Class II and Class III railroads in the U.S. However, the STB's *2014 Carload Waybill Sample Reference Guide*, dated November 1, 2015, indicates that only 42 Class II and Class III railroads reported information which was included in the 2014 CWS. Attached hereto as Appendix GWF-2 is page 33 from this document, which lists the railroads included in the 2014 CWS. Some other Class II and Class III railroad movements may be reported by the Class I railroads. For example, a movement originating on a non-reporting Class II or Class III railroad may be reported by the terminating Class I carrier. However, there are a significant number of Class II and III railroad movements are unreported by the Class I carriers, especially in many cases in which the railroads may "absorb" the Class II or III railroad's rate or switching fee. As a result, a movement may involve two railroads, but the CWS treats the movements as a Class I railroad movement.

Lack of Updated Market Share Data

Notwithstanding the inherent problems associated with the CWS data, there are other problems associated with the STB's approach and heavy reliance on the 22-year R/VC study. For example, the STB's decision also references relevant, but outdated, transportation market share studies from the 1970's to the 1990's, which were utilized by the ICC in making its initial determinations. However, the STB did not attempt to update these outdated market share studies.

- **STCC 14-2, Crushed or Broken Stone -** "The Commission also found, based on data provided by AAR, that the rail market share of this commodity group was 5.4% in 1975, 4.8% in 1980, 4.0% in 1985, and 4.6% in 1990, evidencing a lack of railroad market dominance. Id. At 974. Recent information suggests that certain market dynamics may have changed significantly." (page 5)

- **STCC 29-914, Coke –** "With regard to coke produced from coal, the Commission observed that there was, overall, a significant railroad market share for this commodity." (page 6)

- **STCC 32-4, Hydraulic Cement** – "When the ICC first exempted the rail transportation of hydraulic cement, the Commission found that railroads faced pervasive competition. The ICC concluded that intermodal and intramodal competition for hydraulic cement existed in many regions—trucking was dominant, and barges and other rail carriers also competed in the marketplace. See Rail Gen. Exemption Auth.—Exemption of Hydraulic Cement, EP 346 (Sub-No. 34), slip op. at 4." (page 9)

- **STCC 33-12, Primary Iron or Steel Product -** "In determining whether to exempt the rail transportation of primary iron or steel products, the Commission reviewed modal market share data for this commodity group. 9 I.C.C.2d at 979. The agency concluded that fluctuating railroad market shares over the course of 15 years (i.e., 40.4% (1975), 39.2% (1980), 29.7% (1985), and 37.8% (1990)) was consistent with a lack of market power." (page 6)

- **STCC 40-211, Iron or Steel Scrap -** "The Commission found the transportation of this commodity group to be extremely competitive. Specifically, the ICC found that intramodal competition with other railroads and intermodal competition with trucks and barges existed in many markets. Id. at 3." (page 6)

Certainly, the transportation markets and the railroad market share for these STCC groups have changed in the last 20 to 30 years. Before the STB decides the revoke the exemptions of these STCC groups, it should, at minimum, update the market share studies utilized by the ICC is making these determinations. The STB admits that market share data may be helpful, but apparently expects interested parties to prepare such market share studies:

> . . . We note that the submission of modal market share data over time (between railroads, trucks and barge) with regard to these commodity groups will be helpful in assessing the degree to which the geographic migration may have affected intermodal competition. (pages 7 and 8)

Ignoring the major problem associated with the absence of updated market share studies, there are several are other major problems with the STB's approach.

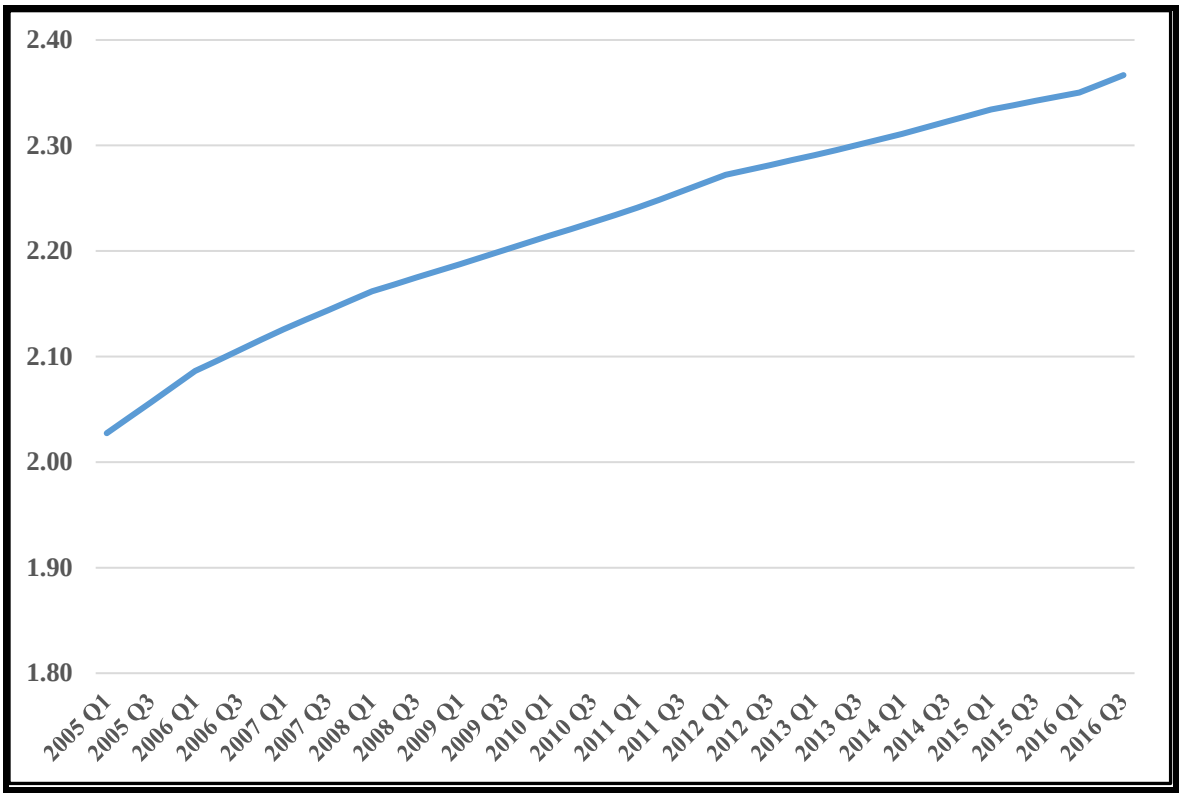
Failure to Reflect Major Changes
in the Railroad Industry Since 1992

The STB highlights the fact that there have been increases in the R/VC ratios since 1992, but fails to recognize or make any adjustments for the major changes in the U.S. railroad industry that have taken place since 1992.

For example, the have been major railroad productivity gains during this period, which have undoubtedly impacted the R/VC ratios. The following chart shows the significant increase in the Productivity Adjustment Factor (PAF) since 2005 according to the Association of American Railroads (AAR):

Table 3

Changes in the Productivity Adjustment Factor
From Q1 2005 to Q3 2016 (Q4 2012 Base)



The STB's decision makes no mention of the productivity changes since 1992, which undoubtedly impacted the R/VC ratios during this 22-year period.

Moreover, there were several major railroad mergers and transactions during the 22-year study period, which created productivity gains and synergies which have impacted the R/VC ratios, i.e.:

- 1994 Kansas City Southern Railway Company (KCS) acquires MidSouth Rail Corp;
- 1995 Union Pacific (UP) merger with Chicago & North Western (CNW);
- 1995 Burlington Northern (BN) merger with the Atchison, Topeka and Santa Fe (ATSF), which created BNSF;
- 1996 UP merger with Southern Pacific (SP);
- 1996 KCS acquires Gateway Western Railway (GWR);
- 1998 sale of Consolidated Rail Corporation's (Conrail) assets to Norfolk Southern (NS) and CSX Transportation, Inc. (CSX);
- 1999 Canadian Nation (CN) merger with Illinois Central (IC);
- 2000 RailAmerica acquires RailTex, Inc.;
- 2001 acquisition of Wisconsin Central (WC) by CN;
- 2007 acquisition of the Dakota, Minnesota & Eastern (DME) by Canadian Pacific; and
- 2009 acquisition of BNSF by Berkshire Hathaway.

As a result, the structure and make-up of the North American railroad industry has significantly changed during this 22-year period. In addition to the consolidation of the Class I railroad industry (moving from 14 to 7 Class I railroads), the Class II and Class III railroad industry has also changed. There are now fewer regional railroads and more smaller railroads. Last year, the Federal Railroad Administration (FRA) published the following comparison of the railroad industry in 1990 versus 2012 (which is essentially the same period studied by the STB):[5]

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[5] See: *Freight Railroads Background*, FRA Office of Policy, Office of Rail Policy and Development, April 2015.

Table 4

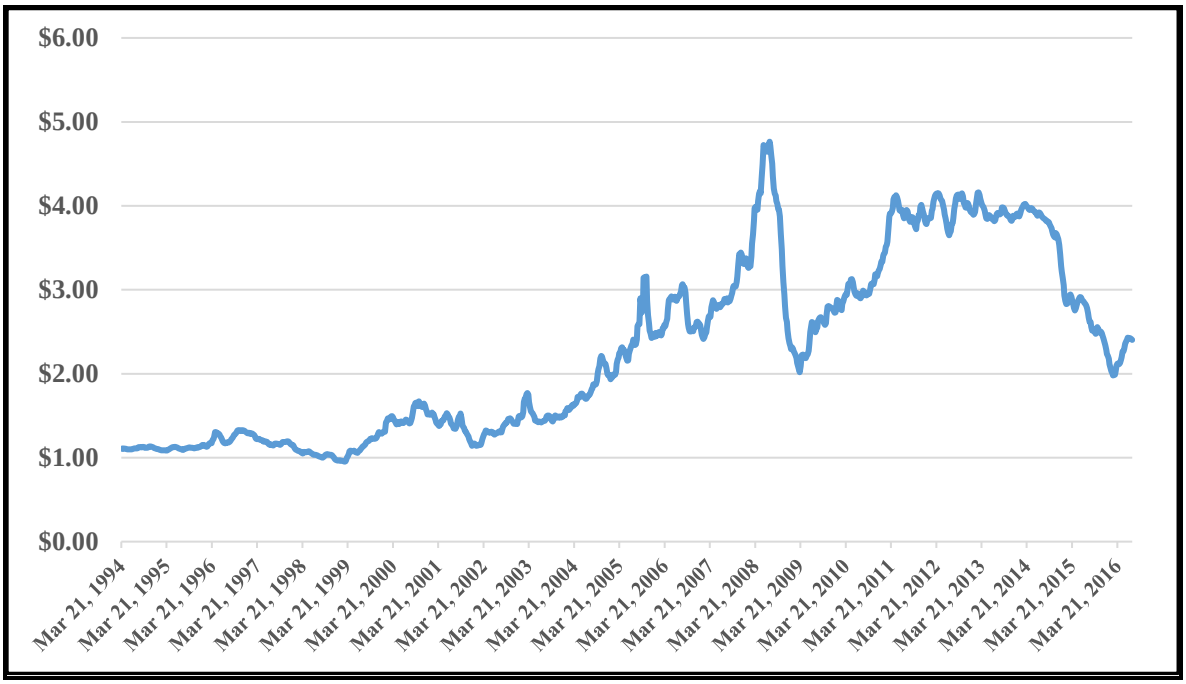
U.S. Freight Railroad Industry 1990 vs. 2012

Item	Class I Railroads		Regional Railroads		Local Railroads		Total Railroads	
	1990	2012	1990	2012	1990	2012	1990	2012
Number	14	7	30	21	486	546	530	574
Employment	209,748	163,464	11,578	5,507	14,257	12,293	235,583	181,264

In addition to the major restructuring of the railroad industry during this period, there was also a tremendous fluctuation in diesel fuel prices, especially from 2002 to the present, which likely impacted the R/VC ratios during this period. The following chart shows the changes in diesel fuel prices from 1994 to the present based on data from U.S. Energy Information Administration (EIA):

Table 5

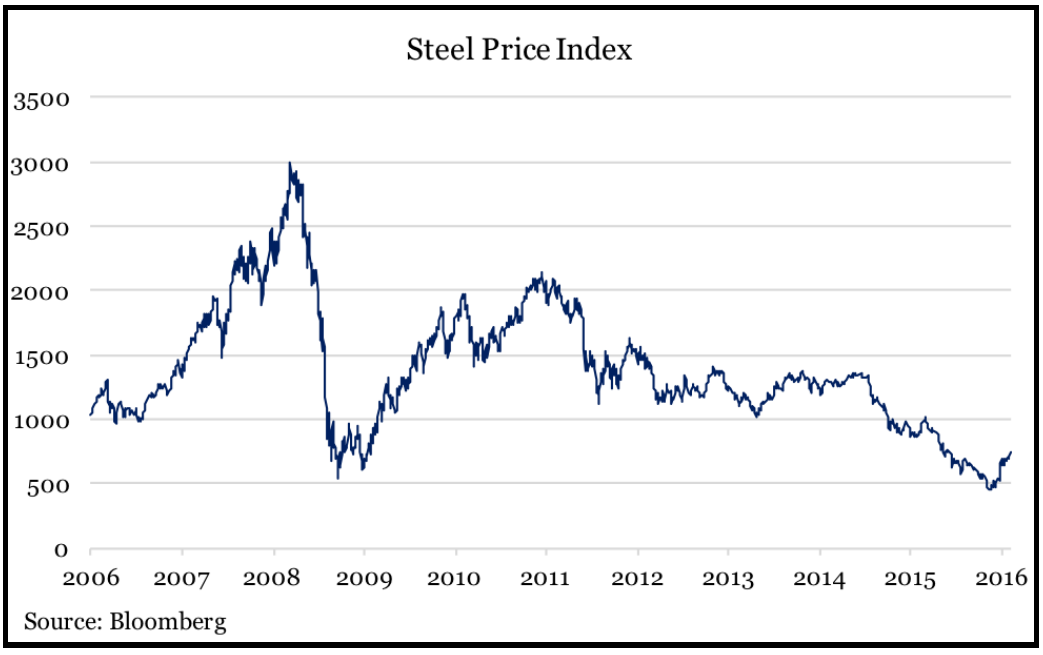
Changes in Diesel Fuel Prices from 1994 to Present



The STB's decision also ignores other more recent market forces, which likely have impacted the R/VC ratios since 1992. For example, the STB's study ignores significant changes in the steel industry since 2013 (the end date of the STB's 22-year study), which undoubtedly have impacted transportation prices on STCC 33-12, Primary Iron or Steel Products (Plates, Pipes, and Rods), and STCC 40-211, Iron or Steel Scrap, Wastes, or Tailings. These recent changes are primarily a result of a slowdown in China and a significant increase in steel exports from China. The following table illustrates these recent changes:

Table 6

Bloomberg Steel Price Index



As can be seen, there was a significant drop in steel prices in 2008. Prices rebounded in 2011, but have generally continued to decline since 2013, which is the end of the STB's study period. The drop in steel prices has undoubtedly impacted prices and production of STCC 29-914, Coke Produced From Coal, which is used in the steel-making process.

In fact, the sharp drop in steel prices in 2008 may be reflected in the STB's R/VC study. As Table 1 indicates, the average R/VC ratio for STCC 33-12, Primary Iron or Steel Products (Plates, Pipes, and Rods), and STCC 40-211, Iron or Steel Scrap, dropped significantly from 2008 to 2009, i.e., the average R/VC for STCC 33-12 dropped from 144.0% to 129.0% and the R/VC for STCC 40-211 dropped from 145.3% to 135.4%.

As a result of the significant changes in the U.S. railroad industry since 1992, such as the consolidation of the rail industry, the significant increase in railroad productivity and the significant fluctuations in fuel and steel prices, it is improper for the STB to place such a heavy reliance on the changes in R/VC ratios during the 22-year period. If the STB had limited its review to a more current period, such as from 2010 to 2013, it would have found that, in most cases, the R/VC ratios have not significantly changed in recent years, as shown in the following table:

Table 7

Summary of STB's CWS R/VC Study for the Years 2010 to 2013 for the STB EP 704 (Sub-No.1) STCC Groups

Year	Crushed or Broken Stone STCC 14-2		Coke STCC 29-914		Hydraulic Cement STCC 32-4		Primary Iron or Steel STCC 33-12		Iron or Steel Scrap STCC 40-211	
	All	>180%	All	>180%	All	>180%	All	>180%	All	>180%
2010	178.0%	255.3%	212.4%	275.1%	169.3%	241.3%	143.1%	227.7%	144.0%	221.0%
2011	177.8%	256.7%	200.9%	280.4%	172.6%	233.7%	148.2%	228.5%	153.9%	220.4%
2012	177.1%	257.1%	201.6%	268.0%	175.9%	233.8%	150.2%	229.9%	145.9%	218.9%
2013	184.2%	254.9%	194.7%	248.2%	182.7%	239.6%	159.2%	236.6%	164.4%	229.8%

As can be seen, these R/VC ratios have not significantly changed in recent years. In fact, the most significant change is the R/VC ratios for STCC 29-914, Coke Produced From Coal, which decreased from 212.4% in 2010 to 194.7% in 2013.

Issue Class I Traffic

The STB's decision, and its published public work papers (which are summarized herein as Tables1 and 2), includes information regarding the R/VC ratios of the issue traffic, but fails to provide any details concerning the characteristics of the potentially impacted rail traffic, i.e., annual carloads, revenue, miles, railroads, etc.[6]

According to the 2015 Class I Freight Commodity Statistics (FCS) reported to the STB, which is the most current annual data available, these five potentially impacted STCC groups represent over 2 million annual carloads and nearly $4 billion in annual Class I freight revenues. Thus, these five potentially impacted STCC groups represent a significant amount of railroad traffic. As a result, if the STB decides to revoke the existing class exemptions of the commodities, there could be a significant impact on railroad traffic levels, revenues and even railroad revenue adequacy.

The following table summarizes the 2015 carloads carried by the Class I railroads:

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[6] See: https://www.stb.dot.gov/stb/docs/Economic%20Data/EP%20704-1%20STB%20Public%20Workpaper.xlsx

Table 8

Summary of 2015 Class I Carloads For
The STB EP 704 (Sub-No.1) STCC Groups

Ln.	Item	Crushed or Broken Stone STCC 14-2	Coke STCC 29-914	Hydraulic Cement STCC 32-4	Primary Iron or Steel STCC 33-12	Iron or Steel Scrap STCC 40-211	Total
1	Total 2015 Class I Carloads	787,211	109,698	227,633	665,405	260,072	2,050,019
2	% of 2015 Carloads by STCC	38.40%	5.35%	11.10%	32.46%	12.69%	100.00%
3	BNSF Carloads	132,545	1,278	51,573	100,119	37,121	322,636
4	% of STCC Carloads	16.84%	1.17%	22.66%	15.05%	14.27%	15.74%
5	CN (U.S.) Carloads	48,532	10,552	1,894	42,627	17,186	120,791
6	% of STCC Carloads	6.17%	9.62%	0.83%	6.41%	6.61%	5.89%
7	CP (U.S.) Carloads	1,541	280	14,375	17,892	13,802	47,890
8	% of STCC Carloads	0.20%	0.26%	6.31%	2.69%	5.31%	2.34%
9	CSX Carloads	183,563	37,799	42,358	136,597	70,156	470,473
10	% of STCC Carloads	23.32%	34.46%	18.61%	20.53%	26.98%	22.95%
11	KCS Carloads	18,422	6	4,102	27,834	13,106	63,470
12	% of STCC Carloads	2.34%	0.01%	1.80%	4.18%	5.04%	3.10%
13	NS Carloads	153,870	58,314	38,692	238,903	75,314	565,093
14	% of STCC Carloads	19.55%	53.16%	17.00%	35.90%	28.96%	27.57%
15	UP Carloads	248,738	1,469	74,639	101,433	33,387	459,666
16	% of STCC Carloads	31.60%	1.34%	32.79%	15.24%	12.84%	22.42%

As Table 8 shows, STCC 14-2, Crushed or Broken Stone or Rip Rap, and STCC 33-12, Primary Iron or Steel Products (Plates, Pipes, and Rods), are the largest of the five STCC groups with 787,211 (38.40%) and 665,405 (32.46%) carloads, respectively (Lines 1 and 2).

NS handled the most of the impacted carloads with 565,093 carloads (27.57%), followed by CSX (470,473 carloads), UP (459,666 carloads), BNSF (322,636 carloads), CN (120,791 Carloads), KCS (63,470 carloads), and CP (47,890 carloads).

The following table shows the 2015 Class I revenues for the five STCC groups:

Table 9

Summary of 2015 Class I Revenue (000) For
The STB EP 704 (Sub-No.1) STCC Groups

Ln.	Item	Crushed or Broken Stone STCC 14-2	Coke STCC 29-914	Hydraulic Cement STCC 32-4	Primary Iron or Steel STCC 33-12	Iron or Steel Scrap STCC 40-211	Total
1	Total 2015 Class I Revenue	$745,172	$179,425	$474,227	$1,957,641	$584,196	$3,940,661
2	% of 2015 Rev. By STCC	18.91%	4.55%	12.03%	49.68%	14.82%	100.00%
3	BNSF Revenue	$134,923	$4,332	$136,307	$356,393	$99,353	$731,308
4	% of STCC Revenue	18.11%	2.41%	28.74%	18.21%	17.01%	18.56%
5	CN (U.S.) Revenue	$24,935	$3,144	$903	$103,378	$22,768	$155,128
6	% of STCC Revenue	3.35%	1.75%	0.19%	5.28%	3.90%	3.94%
7	CP (U.S.) Revenue	$1,930	$866	$19,753	$41,972	$28,380	$92,901
8	% of STCC Revenue	0.26%	0.48%	4.17%	2.14%	4.86%	2.36%
9	CSX Revenue	$172,179	$73,574	$81,348	$377,217	$152,154	$856,472
10	% of STCC Revenue	23.11%	41.01%	17.15%	19.27%	26.05%	21.73%
11	KCS Revenue	$16,855	$16	$6,608	$70,428	$19,810	$113,717
12	% of STCC Revenue	2.26%	0.01%	1.39%	3.60%	3.39%	2.89%
13	NS Revenue	$143,445	$90,433	$66,680	$550,059	$144,263	$994,880
14	% of STCC Revenue	19.25%	50.40%	14.06%	28.10%	24.69%	25.25%
15	UP Revenue	$250,905	$7,060	$162,627	$458,194	$117,468	$996,255
16	% of STCC Revenue	33.67%	3.93%	34.29%	23.41%	20.11%	25.28%

Although STCC 14-2, Crushed or Broken Stone or Rip Rap, is the largest STCC group in terms of Class I volume with 787,211 carloads (38.40%), STCC 33-12, Primary Iron or Steel Products (Plates, Pipes, and Rods), is by far the largest group in terms of revenue, with a total of $1.958 billion or 49.68% of the total.

Issue Class II/III Traffic

The STB failed to analyze the potential impact on Class II and Class III railroads. In order to do so, notwithstanding the problems associated with the STB's CWS, especially in regard to Class II and III railroads, I have reviewed the 2014 CWS records for the impacted traffic. The STB's 2014 CWS is the most current available. I first sorted these records by STCC code and then sorted and summarized the data by railroad combination, e.g., BNSF-direct, BNSF to CN, CN to BNSF, NS to CSX, Class III to UP, etc. I then grouped the traffic into three groups:

(1) **Class I Exclusive Traffic** - Traffic which moves exclusively on Class I railroads (i.e., Class I direct and Class I to Class I):

(2) **Class I & Class II/III Traffic** - Traffic which moves in in combination of Class I and Class II/III railroads (i.e., Class I to Class II/III, Class II/III to Class I, and other Class I combinations with Class II and Class III); and

(3) **Class II/III Traffic** - Traffic which moves exclusively on Class II/III railroads (Class II/Class III direct or Class II/III to Class II/III).

The STB's 2014 CWS indicates that _____ carloads of the impacted commodities moved in 2014. The following table shows the breakdown of these carloads by traffic group:

Table 10

Summary of 2014 Carloads For
The STB EP 704 (Sub-No.1) STCC Groups

Ln.	Item	Crushed or Broken Stone STCC 14-2	Coke STCC 29-914	Hydraulic Cement STCC 32-4	Primary Iron or Steel STCC 33-12	Iron or Steel Scrap STCC 40-211	Total
1	Total 2014 Carloads						
2	% of 2014 Carloads by STCC						
3	Class I Direct						
4	Class I to Class I						
5	Total Exclusive Class I						
6	% Exclusive Class I						
7	Class I to Class II/III						
8	Class II/III to Class I						
9	Other Class I & Class II/III						
10	Total Class I & Class II/III						
11	% Class I & Class II/III						
12	Class II/III Direct						
13	Class II/III to Class II/III						
14	Total Exclusive Class II & III						
15	% Exclusive Class II/III						
16	Total 2014 Handled by Class II/III						
17	% 2014 Handled by Class II/III						

As can be seen (Lines 1 and 2), STCC 14-2, Crushed or Broken Stone or Rip Rap, and STCC 33-12, Primary Iron or Steel Products (Plates, Pipes, and Rods), are the largest of the five groups with _____ (_____%) and _____ (_____%) carloads, respectively. Table 10 also shows (Line 3, 4, 5 and 6) that the Class I railroads exclusively moved the majority of the carloads, i.e., _____ carloads or _____%. In addition, the Class I railroads were involved in the movement of _____ carloads with Class II or III railroads (Lines 7, 8, 9, 10 and 11). Therefore, Class I railroads were involved in the movement of _____ out of a total of _____ carloads or _____% of the carloads.

Class II and Class III railroads exclusively moved _____ carloads (____%) (Lines 12, 13, 14 and 15). With the aforementioned movement of _____ carloads in which Class I railroads were involved in joint-line movements, Class II and/or Class III railroads handled a total of _____ carloads or _____% of the five issue commodity groups (Lines 16 and 17).[7] However, Class II and Class III railroads received a much smaller percentage of the revenues (____%), as shown in the following table:

Table 11

Summary of 2014 Revenues for the
STB EP 704 (Sub-No.1) STCC Groups

Ln.	Item	Crushed or Broken Stone STCC 14-2	Coke STCC 29-914	Hydraulic Cement STCC 32-4	Primary Iron or Steel STCC 33-12	Iron or Steel Scrap STCC 40-211	Total
1	Total 2014 Revenue						
2	Average Revenue Per Carload						
3	% of 2014 Revenue by STCC						
4	Class I Direct						
5	Class I to Class I						
6	Total Class I Exclusive						
7	% Class I Exclusive						
8	Class I to Class II/III						
9	Class II/III to Class I						
10	Other Class I & Class II/III						
11	Total Class I & Class II/III						
12	% Class I & Class II/III						
13	Class II/III Direct						
14	Class II/III to Class II/III						
15	Total Class II/III Exclusive						
16	% Class II/III Exclusive						
17	Class I Revenue						
18	% Class I Revenue						
19	Class II/III Revenue						
20	% Class II/III Revenue						

[7] Since many Class II and Class III railroads do not report carload waybill data, the total Class II and Class III carloads and revenues are likely understated.

Although STCC 14-2, Crushed or Broken Stone or Rip Rap, is the largest STCC group in terms of volume with _____ (_____%), STCC 33-12, Primary Iron or Steel Products (Plates, Pipes, and Rods), is by far the largest group in terms of revenue, with a total of $_____ or _____% of the total.

The 2014 average revenue per car for STCC 33-12 was also significantly higher than STCC 14-2 with an average of $_____ per car and $___ per car, respectively (Line 2). This difference is partially due to the fact that the average haul for STCC 14-2 (_____ miles) is significantly lower than the average haul for STCC 33-12 (_____ miles). The average miles for the five impacted STCC groups are summarized in the following table:

Table 12

Summary of Average Railroad Miles for the
STB EP 704 (Sub-No.1) STCC Groups

Ln.	Item	Crushed or Broken Stone STCC 14-2	Coke STCC 29-914	Hydraulic Cement STCC 32-4	Primary Iron or Steel STCC 33-12	Iron or Steel Scrap STCC 40-211
All Impacted Traffic						
1	Total Average Miles					
Class I Exclusive						
2	Average Class I Miles					
Class I & Class II/III						
3 4 5	Average Class I Miles Average Class II/III Miles Total Average Miles					
Class II/III Exclusive						
6	Average Class II/III Miles					

Class II/III R/VC Ratios

The STB studied the total R/VC ratios of the five STCC groups, but failed to review the R/VC differences between Class I and Class II/III railroads. The following table summarizes and compares the R/VC ratios for the five impacted STCC groups and by the three afore-mentioned traffic groups (Class I Exclusive Traffic; Class I and Class II/III Traffic and Class II/III Exclusive Traffic).

Table 13

Summary of Average R/VC Ratios For
The STB EP 704 (Sub-No.1) STCC Groups

Ln.	Item	Crushed or Broken Stone STCC 14-2	Coke STCC 29-914	Hydraulic Cement STCC 32-4	Primary Iron or Steel STCC 33-12	Iron or Steel Scrap STCC 40-211	Total
1	**Total 2013 R/VC All Traffic**						
2	**Total 2014 R/VC All Traffic**						
3	2014 Class I Direct						
4	2014 Class I to Class I						
5	**2014 Class I Exclusive**						
6	Class I to Class II/III						
7	Class II/III to Class I						
8	Other Class I & Class II/III						
9	**2014 Class I & Class II/III**						
10	2014 Class I Direct						
11	2014 Class II/III to Class II/III						
12	**2014 Class II/III Exclusive**						
13	**2014 Class II/III RVC**						
14	**2014 Class I RVC**						

As can be seen, the 2014 R/VC ratios for all traffic which I developed (Line 2) are only slightly different from the 2013 R/VC ratios developed by the STB (Line 1).[8] However, the STB did not provide a breakdown of these R/VC ratios by the type of movement. Several key points can be determined from this analysis:

- The average R/VC ratios for STCC 33-12 (_____%) and STCC 40-211 (_____%) are below 180% (Line 2);
- The highest average R/VC (_____%) is for STCC 29-914 (Line 2). However, STCC 29-914 has the lowest number of annual carloads (_____ carloads or only ____% of the total impacted carloads). STCC 29-914 also has lowest annual revenue ($___ _____ or only ____% of the total impacted revenue);
- The highest average R/VC ratios are for Class I Exclusive traffic (Lines 3, 4 and 5). The Class I Exclusive R/VC ratios are, in most cases, higher than the R/VC ratios for Class I & Class II/III traffic (Lines 6, 7, 8 and 9) and Class II/III Exclusive traffic (Line 10, 11 and 12);
- The lowest average R/VC ratios are for Class II/III Exclusive traffic (Lines 10, 11 and 12);
- The largest Class II/III Exclusive movements are STCC 14-2 (_____ out of _____ carloads). This STCC 14-2 Class II/III Exclusive traffic has an average R/VC ratio of only _____%, which is far below the average of _____% (Line 2).

Clearly, in most cases, movements involving Class II/III railroads have lower R/VC ratios than Class I Exclusive movements and Class II/III Exclusive movements have lower R/VC ratios than movements involving Class I railroads.

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8 I excluded all 2014 CWS records with no ($0) variable cost from my analysis. It is unclear whether or not the STB excluded these $0 cost records.

In order to study this issue in more detail, I reviewed all railroad routing groups for the five impacted commodities involving Class II/III railroads with more than 1,000 carloads per year. This group of movements involved __ individual routing groups (e.g., BNSF to a Class II/III railroad, a Class II/III railroad direct, etc.) and represents __% of the total Class II/III carloads. I sorted these __ routing groups first by total carloads and second by R/VC, both in descending order. This analysis is attached hereto as Appendix GWF-3.

This analysis indicates these __ largest Class II/III movements have an average R/VC of only _____%. Most of the largest Class II/III movements have R/VC ratios below 180%. The five largest Class II/III movements are summarized below:

Table 14

Summary of Five Largest Class II/III Movements
For The STB EP 704 (Sub-No.1) STCC Groups

STCC	Type of Movement	Average Miles	Carloads	Revenue (000)	R/VC
14-2	Class II/III Direct				
14-2	Class II/III Direct				
33-12	Class II/III to Class I				
14-2	Class II/III to Class I				
14-2	Class II/III to Class II/III				

These five largest Class II/III movements represent __% of the total Class II/III carloads. The three largest movements, which represent __% of the total Class II/III carloads, have R/VC ratios well below 180%. The only movement with a R/VC ratio above 180% is only marginally above 180% (i.e., _____%) and would likely not be high enough to justify a STB rate complaint.

Table 15

Summary of Class II/III Movements with Highest R/VC
For The STB EP 704 (Sub-No.1) STCC Groups

STCC	Type of Movement	Average Miles	Carloads	Revenue (000)	R/VC
32-4	Class II/III to Class I				
33-12	Class I to Class II/III				
14-2	Class II/III to Class I				
33-12	Class II/III to Class I				
40-211	Class I to Class II/III				

These five movements involving Class II/III railroads represent only ____% of the total movements involving Class II/III railroads. The studied movement with the highest R/VC (_____%) has a ratio that significantly higher than 180%, but its low volume (_____ carloads) and relatively short distance (_____ miles) means that it would likely be subject to truck competition and, therefore, market dominance may be difficult to prove. In fact, out of the __ Class II/III movements studied, only __ have R/VC ratios in excess of 180%. These __ movements represent only _____% of the total Class II/III impacted carloads and have an average R/VC ratio of _____%, which would likely not be found unreasonable by the STB.

Summary

As indicated herein, there are several problems with the STB's proposal to revoke the exemptions of the five STCC codes:

- The STB's 22-year study of R/VC ratios is seriously flawed since it was primarily based on the STB's CWS data, which has significant inherent reporting problems, especially in regard to Class II and Class III railroad traffic;

- The STB's heavy reliance on the 22-year CWS R/VC study is misplaced since it does not adequately reflect or account for the significant changes in the rail industry during the time period, which have impacted the R/VC ratios during this period (e.g., the consolidation of the Class I railroad industry, the increase in railroad productivity, the significant fluctuation in fuel prices and the recent drop in steel and scrap prices);

- The STB failed to utilize or produce updated transportation market share studies, which were an important part of the ICC's decisions in the 1990's to exempt these STCC groups;

- The STB apparently did not review the characteristics of the current railroad transportation market place. Since over _____carloads and over $_____ in freight revenues could be impacted, the STB's proposal could have a significant impact on railroad traffic levels, revenues and even railroad revenue adequacy; and

- The STB failed to study the differences between Class I, Class II and Class III movements, traffic levels and R/VC ratios of the impacted STCC groups.

For these reasons, the STB should withdraw the proposed exemption revocations, at least until a more comprehensive and more proper review is conducted.

The STB should also consider retaining the current exemptions as they would apply to Class II/III movements since:

- The Class I railroads dominate these movements;
- The R/VC ratios for Class II/III movements are, in most cases, significantly lower that Class I movements; and
- Class II/III railroads move much shorter distances and are thus exposed to more intermodal competition.

Verification Page

I, Gerald W. Fauth III, declare under penalty of perjury that the foregoing Verified Statement submitted in Surface Transportation Board Docket No. EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions, is true and correct. Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed, July 26, 2016, by:

Gerald W. Fauth III

STATEMENT
OF
BACKGROUND, QUALIFICATIONS AND EXPERIENCE
OF
GERALD W. FAUTH III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc. (**GWF**), an economic consulting firm with offices at 116 S. Royal Street, Alexandria, Virginia 22314. I a recognized expert on transportation issues with over 38 years of experience in the private sector and in the Federal government.

This statement generally describes my background, qualifications and experience. The majority of experience has involved economic, regulatory, public policy and legislative issues primarily associated with, or related to, the U. S. railroad industry. Most of my work has involved regulatory proceedings and related projects before, or related to, the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC).

I have extensive experience in working in regulatory and other proceedings and projects involving railroad mergers, transactions, acquisitions, rail line construction, rail line abandonments, rate reasonableness and other railroad related issues. These matters have involved railroad issues on a nation-wide, system-wide and individual railroad line basis.

GWF has been engaged in the economic consulting business for over 50 years. My part time affiliation with GWF began in 1972. I began working for GWF on a full-time basis on May 15, 1978 and was employed by GWF continuously until November 1, 1999 at which time I took a leave of absence in order to take a position with the STB.

At the STB, I served as Chief of Staff for one of the three Board Members appointed by the President, Vice Chairman Wayne O. Burkes. I returned to GWF and consulting work effective June 23, 2003 after Mr. Burkes resigned his position to run for a political office.

Over the years, I have submitted expert testimony before ICC, STB, state regulatory commissions, courts and arbitration panels on a wide-variety of issues in numerous proceedings. In addition, I worked for 3½ years at the STB where I reviewed, analyzed and made recommendations on over 600 written formal decisions that were decided by the entire Board. These proceedings and decisions involved all matters of STB jurisdiction and had an impact on the transportation industry and the national economy.

Railroad transactions have long been the subject of ICC and STB regulatory proceedings and other matters involving: railroad merger and acquisition approval and oversight proceedings; railroad line abandonment proceedings; line sales; feeder line application proceedings; and other railroad transaction-related proceedings. I have been involved in numerous such proceedings and projects as an expert witness and as an STB staff advisor. For example, I was an expert witness in the last two major Class I railroad merger proceedings: STB Finance Docket No. 32760, Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al. and STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al. – Control and Operating Leases / Agreements – Conrail, Inc., et al. My testimony in these major merger proceedings concerned the potential adverse competitive impact of these mergers on two key areas.

In addition to my work in major railroad merger proceedings, I have submitted expert testimony in other railroad finance docket and abandonment proceedings before the ICC and STB. In these proceeding, I have developed and submitted evidence relating to the impacted railroad traffic and the valuation and economics of the railroad line at issue (such as: going concern and net liquidation values; freight revenues and traffic; operating costs; maintenance costs: right-of-way valuation; etc.).

In addition to my testimony in railroad mergers and other rail finance and transaction proceedings, I served as an original member of the Conrail Transaction Council, which was established by the Board in Finance Docket No. 33388. This council consisted of representatives of the CSX, NS and shipper organization and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the Conrail Transaction Council and attended every meeting of the council until my employment with the Board.

During my time at the Board, I was actively involved in the STB merger oversight proceedings associated with the UP/SP and Conrail transactions. Perhaps the most significant merger-related proceedings that I was involved in during my time at the Board were STB Ex Parte No. 582, Public Views on Major Rail Consolidations and STB Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures. These STB major rulemaking proceedings involved extensive oral hearings and written testimony from hundreds of witnesses. The Board concluded that its existing rules governing railroad mergers and consolidations, which had been developed nearly 20 years earlier, were not adequate for addressing the broad concerns expressed and initiated a major rulemaking proceeding which resulted in a major revision to the Board's railroad merger rules.

I have a significant amount of experience in issues involving railroad rate reasonableness. I was actively involved in the initial ICC regulatory proceedings over 30 years ago in which the ICC first proposed and established guidelines which have since evolved into the STB's current railroad rate reasonableness guidelines. I was actively involved in several of the first cases to test the ICC's then proposed guidelines. For example, I was the primary expert witness in ICC Docket No. 40073, South-West Railroad. Car Parts Co. v. Missouri. Pacific Railroad, which was the *first* case to test the ICC's proposed simplified guidelines, which have since evolved into STB's Three-Benchmark approach.

I submitted extensive written and oral testimony in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, on behalf of a group of 30 major stakeholders and my testimony was cited by the Board in its decision served September 5, 2007. My work and testimony in these ICC/STB proceedings has helped shape the STB's current railroad rate reasonableness guidelines.

I have extensive experience in working in STB regulatory proceedings, litigation and other projects involving railroad valuation issues. These matters have involved railroad valuation issues on a nation-wide, system-wide, individual line and individual movement scope and basis.

Many of our projects have involved the development of railroad variable cost analyses based on the application of URCS and its predecessor, Rail Form A (RFA). URCS is used to determine STB jurisdiction and is an integral component of the STB's Full-SAC method, new Simplified-SAC standard and recently modified Three-Benchmark approach.

I have an extensive working knowledge of the development and application of URCS and RFA. I have prepared URCS cost analyses for thousands of individual railroad movements. I also submitted expert testimony in ICC Ex Parte No. 431 (Sub-No.1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for Regulatory Costing Purposes and more recently in STB Ex Parte No. 431 (Sub-No. 3), Review of the Surface Transportation Board's General Costing System.

Proceedings before the Board often involve traffic and market analyses using the Board's Waybill Sample, which is a computer database of approximately 600,000 records of sampled railroad movements. I am extremely familiar with this railroad traffic database. Over the years, I have performed hundreds of analyses using this data which has been used as evidence in merger and other proceedings before the Board.

I am a 1978 graduate of Hampden-Sydney College in Hampden-Sydney, Virginia where I earned a Bachelor of Arts degree. My major areas of study were history and government. My senior paper in college dealt with the History of Railroad Deregulation. I am a 1974 graduate of St. Stephen's School for Boys (now St. Stephen's and St. Agnes School), located in Alexandria, Virginia. My senior project and paper in high school dealt with the ICC and the Energy Crisis of 1973.

My professional memberships included the Transportation Research Forum and the Association of Transportation Law Professionals.

2014 Reporting Railroads

Monthly Reporting Road

Burlington Northern & Santa Fe (BNSF-777)
C P Rail System (CPRS-105)
CSX Transportation (CSXT-712)
Union Pacific (UP-802)
Kansas City Southern (KCS—400)
Norfolk Southern (NS—555)

Quarterly Reporting Roads

Arkansas Louisiana & Mississippi (ALM—016)
Arkansas & Missouri (AM—906)
Apalachicola Northern (AN—012)
Apache Railway (APA—011)
Atlantic & Western Railway (ATW-025)
Bay Line (BAYL—088)
Buffalo & Pittsburgh (BPRR—154)
Birmingham Southern (BS—065)
Cedar Rapids & Iowa City (CIC—111)
Chattahoochee Industrial Railroad (CIRR—222)
Columbia & Cowlitz Railway (CLC—163)
Canadian National (CN—103)
Chicago South Shore & South Bend (CSS—168)
Columbus & Greenville (CAGY—177)
DeQueen and Eastern (DQE—200)
Escanaba & Lake Superior Railroad (ELS—241)
Florida East Coast (263)
Illinois & Midland Railroad (IMRR—361)
Indiana Rail Road (INRD—780)
Iowa Interstate Railroad (IAIS—316)
Louisville & Indiana Railroad (LIRC—434)
Lake State Railway (LSRC – 408)
Lake Superior and Ishpeming (LSI—425)
Montreal Maine & Atlantic Railway (MMA—
Maryland Midland Railway (MMID – 495)
M&B Railroad (MNBR—480)
Montana Rail Link (MRL—871)
Mississippi Export Railroad (MSE—506)
New England Central Railroad (NECR—496)
New York & Atlantic Railway (NYA—501)
New York Susquehanna & Western (NYSW—
Paducah & Louisville (PAL—907)
Providence and Worcester (PW—631)
Red River Valley (RRVW— 321)
Rochester & Southern (RSR—941)
Rockdale Sandow & Southern (RSS—675)
Sand Springs Railway (SS-707)
ST Rail System (ST-746)
Toledo Peoria & Western (TPW—769)
Trona Railway (TRC—779)
Vermont Railway (VTR—817)
Wheeling & Lake Erie (WE—856)
Wisconsin & Southern (WSOR—879)

Summary of STB 2014 Confidential Waybill Data
Largest Railroad Combinations Involving Class II and Class III Railroads
For Commodities Impacted By STB EP No. 704 (Sub-No.1)

STCC	Railroad			Total Carloads	Total Tons	Miles				Total Revenue	Total Variable Cost	Average R/VC
	Origin RR	Inter. RR	Dest. RR			Origin RR	2nd RR	3rd RR	Total			

REDACTED

Summary of STB 2014 Confidential Waybill Data
Largest Railroad Combinations Involving Class II and Class III Railroads
For Commodities Impacted By STB EP No. 704 (Sub-No.1)

STCC	Railroad			Total Carloads	Total Tons	Miles				Total Revenue	Total Variable Cost	Average R/VC
	Origin RR	Inter. RR	Dest. RR			Origin RR	2nd RR	3rd RR	Total			

REDACTED