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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 704 Sub 1

REVIEW OF COMMODITY, BOXCAR/ AND TOFC/COFC EXEMPTIONS

COMMENTS OF TEXAS CRUSHED STONE COMPANY

***Please note that any comments referencing confidential information have been redacted**

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July 26, 2016

My name is William B. (Bill) Snead, I am President of Texas Crushed Stone (TCS) in Georgetown, TX. TCS was founded by my father, Edwin Snead more than 50 years ago. My father was a visionary; when Missouri Pacific Railroad was trying to abandon a branch line from Round Rock to Georgetown, he and other local businessmen wanted to continue to be served by two railroads, so they incorporated the Georgetown Railroad (GRR).

In 1965 after a three-year tour of duty with the U.S. Air Force, I started working for my father full time. I am a graduate of Texas A&M University; I now serve as President of Texas Crushed Stone and I hold a majority interest in the Georgetown Railroad. However, this statement is filed on behalf of Texas Crushed Stone.

TCS is served by Georgetown Railroad with direct connections to BNSF Railway (BNSF) and Union Pacific Railroad (UPRR). While access to the two railroads expands our market reach, the preponderance of our customers are located on BNSF or on UPRR, so the shipments beyond the GRR interchanges are single line and, therefore, the business is captive.

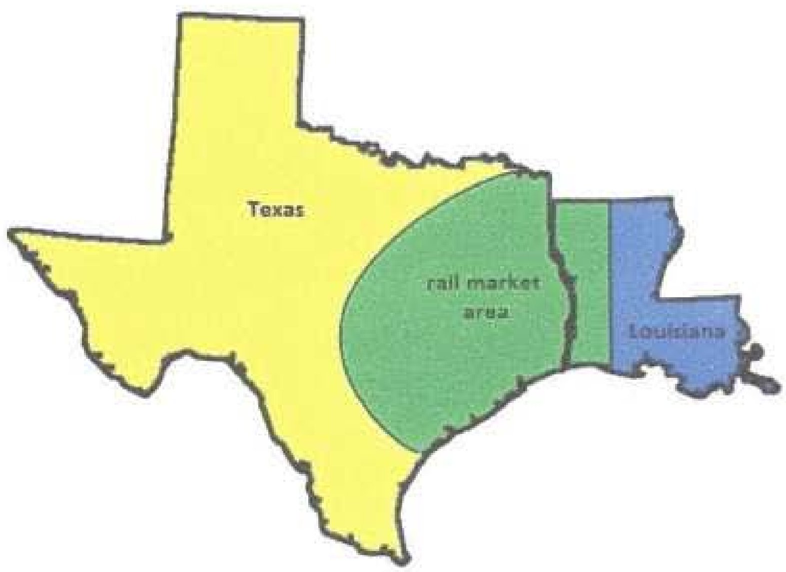
The comments submitted herein will focus on the Board's proposal to remove the exemption on STCC 142, Crushed or Broken Stone or Rip Rap. I commented on this subject in STB Ex Parte 704[1]; those comments are factual and they are still relevant today.

It is my understanding that when the Staggers Rail Act was enacted, the decision to exempt certain commodities, equipment, and shipment types from regulation was based on the assumption that there was adequate competition in

[1] STB Ex Parte No. 704, Texas Crushed Stone, Inc., January 31, 2011.

those markets. Also, shippers in the exempt markets embraced deregulation because carriers were no longer required to file tariffs or contracts with the ICC, while the rules required filing tariffs and contracts with the agency for non-exempt shipments. That reasoning no longer applies on our commodities; shipment dynamics have changed, competition has been reduced, and carriers are no longer required to file tariffs or contracts with the STB. Therefore, the time has come to remove the exemption on STCC 142.

TCS's rail market area is limited by the cost of transportation. Our market area is Central Texas, the eastern half of Texas, and the western third of Louisiana, as shown in the illustration below.



The primary use of crushed stone is a component in concrete, asphalt, and flexible base. Historically an average of 7 tons per year of aggregate per capita per year is used. Modern society lives on some form of pavement as pavement takes the form of house slabs, sidewalks, parking lots, and city and county streets.

When a new family moves into a city it requires about 1800 tons of crushed stone to set them up with a city street, sidewalks, plus their share of the parking lots and building slabs at school, church, fire station, retail stores. Therefore, when forecasting volumes for the long term, there is a direct relationship between these statistics and population growth.

The business landscape of the rail industry has changed significantly since the passage of the Staggers Rail Act. The number of Class I railroads consolidated from 22 companies in 1980 to only seven today, and four of those generate 95% of Class I revenues. This loss of competition has had a dramatic impact in our region; the number of Class I Railroads serving Texas and Western Louisiana has consolidated from eight to three.

Our company has experienced a series of aggressive rail rate increases and as a result, we have lost business. Furthermore, multiple railroad representatives told us they did not want our business. Trucks serve customers within 60 miles of the plant. Factoring in the volumes and costs, it is not practical to truck farther than about 60 miles. TCS estimates the total crushed limestone in our rail served market to be 15,000,000 people times 7 tons per capita or 105,000,000 tons per year. Truck is simply not a practical solution as there are not enough trucks or drivers to handle those volumes.

Today the railroads have incredible pricing power and they have made decisions that have made a significant negative impact on Texas Crushed Stone's ability to be market competitive. It has been very difficult to understand their point of view as it seems the railroads try to force us to fit their business models. Georgetown Railroad furnishes the cars, and we ship unit trains or multiple car shipments based on our customers' track capacity and operations - not necessarily the ideal *"hook and haul"* business that fits the railroad's business model of the day.

For many years prior to Staggers, the rates to move aggregates were the same for a single car or blocks of cars. Under this rate structure, the most popular shipment size was 10 to 20 cars. Many ready mix and hot mix plants received 10 to 20 cars direct to their plant site. Contractors receiving flex-base would also receive shipments of 10 to 20 cars per day as this is the amount that is typically processed daily on a job site. Maximum value is generated when rail shipments can be shipped to smaller sidings close to where the rock will be placed. While these huge unit train yards make sense to the Class I Railroads, they are very inefficient for the construction industry.

One would think that the increase in train size would help to mitigate some of the rate increases. However, while we have been forced to accept dramatic rate increases, UPRR has progressively increased the train size for our shipments. Initially subsequent to Staggers, UPRR viewed a shipper's yard with 40-car loading capacity to be acceptable. However, that minimum has increased to 60 cars, then 80 cars, 90 cars, and now they are offering incentives for 125 – car shipments.

The UPRR managers would roll out a new minimum size yard and wait for some company to build a facility. Then the UP managers would raise the rates on all smaller trains to force the traffic to the newer larger yards. No consideration was given to the economic loss of the company's investment in yesterday's smaller yard, or to the requirements of our customers. As a result of this practice there are many abandoned 40, 60, and 80 car yards that are no longer in operation. The UP even had the gall to brand this process "Rocktimization".

In the Board's decision to initiate this proceeding, they said their analysis revealed the average RVC ratio for potentially captive traffic for this commodity group increased from 232.2% in 1992 to 254.9% in 2013. Furthermore, the potentially captive traffic by revenue for this commodity group increased from 14.8% to 62.0% in 2013.[2]

[redacted]. Highroad's analysis is discussed in detail in a report prepared by Joseph Grantner, Highroad's Operations Manager. Mr. Grantner's curriculum vitae and report are attached to this statement.

We do not expect the Board to address rates and shipment terms in this proceeding. However, the facts presented herein, along with the supporting statistics developed in Highroad's analysis, show the impact that the loss of competition has had on TCS and other shippers of STCC 142. Of course, exempt shippers have the option to request revocation of the exemption to address a specific issue, but that is not a practical solution as it would not address the big picture, and such a request would incur litigation costs with no assurance of success.

Texas Crushed Stone and other aggregate shippers need to have access to the Board to seek relief from rates or unreasonable practices. The lack of competition

[2] STB Ex Parte No. 704 (Sub No. 1) Review of Commodity, Boxcar, and TOFC/COFC Exemptions, pp 5-6.

and increased costs are not in the public interest. Many of our shipments are captive to one railroad and we should have the same legal options as non-exempt rail customers. We believe our request for revocation of the exemption on shipments of aggregates is basic common sense, and is also fair and reasonable. This does not necessarily mean that we are planning to react by filing a complaint with the Board, but we should have that option if needed.

Texas Crushed Stone commends the Board for opening this proceeding and initiating a process to determine if certain current class-wide exemptions should be continued or revoked. We respectfully request that the Board confirm its proposed rule to revoke the exemption on STCC 142.

Respectfully submitted,

W.A. [signature]

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July 26, 2016

[redacted]

For Commodity Group STCC 142, Crushed or Broken Stone or Rip Rap

For Texas Crushed Stone, Inc.

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1.0 BACKGROUND

In a decision dated March 23, 2016, the Surface Transportation Board (STB) sought public comment on a proposal to revoke the class exemption for a number of commodities, including STCC 142 (Crushed Stone/ Rip Rap).

When the decision was made to exempt this commodity group, the Commission concluded that regulation of this commodity was not necessary to carry out the transportation policy of § 10101 because transportation was competitive, and an exemption would, among other things, minimize the need for federal regulatory control; increase competition between rail carriers and trucks by allowing quick, selective rate changes in response to competition; and allow more efficient management by allowing pricing changes in response to changing business conditions.

When the Commission first exempted the rail transportation of this commodity group, testimony provided by witnesses on behalf of individual rail carriers indicated that this commodity group was subject to motor carrier competition because movements were often short haul in nature. Petition of AAR, 9 I.C.C.2d at 975. 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. Recent information suggests that certain market dynamics may have changed significantly.

Texas Crushed Stone's prior testimony suggests that trucking does not effectively limit railroad market power with respect to this commodity group. 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 stone/rip rap.[1]

Texas Crushed Stone, Inc. (TCS) asked Highroad Consulting, Ltd. (Highroad) to perform an analysis [redacted] with the objective to find evidence that supports TCS' position that the dynamics of this commodity group has changed, and competition has been reduced.

[1] Surface Transportation Board, "Docket No. EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions" (March 2016), 5 - 6

Through [redacted] an examination of the current state of the transportation and crushed stone industries, this report will show that:

1. [redacted]

2. Competition, both by truck and other rail carriers, has decreased since the exemption of STCC 142.

2.0 REVENUE AND COST TRENDS

One of the reasons cited for the exemption of crushed stone by the STB was that rail transportation of the commodity "was characterized by declining or stagnant revenue per unit of service–market characteristics not consistent with a finding of market power"[2]. Perhaps this was the case in 1983 when crushed stone was exempted [redacted]

Figure I

[redacted]

[2] Surface Transportation Board, "Docket No. EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions" (March 2016), 5

Figure II

[redacted]

Figure III

[redacted]

[redacted]

Figure IV

[redacted]

A detailed summary of my approach to this analysis is attached as an Appendix to this report.

3.0 THE CURRENT STATE OF TRANSPORTATION COMPETITION

As the case was being made for the exemption of crushed stone shipments, testimony provided by the railroads "indicated that this commodity group was subject to motor carrier competition because movements were often short haul in nature."[3] Again, this may have been the case in 1983. After the trucking industry was deregulated in 1980, many new carriers entered the marketplace. The expansion of the trucking market along with the lifting of former restrictions such as route restrictions and pricing regulation, led to a sharp increase in truck capacity. Before the end of the decade new trailer designs, increased tractor fuel economy, and fuel surcharges helped to keep truck rates relatively low and competitive. But the state of the trucking industry today is quite different from what it was in the 1980s, with the biggest difference being the current driver shortage. According to the American Trucking Association:

> "In 2014, the trucking industry was short 38,000 drivers. The shortage was expected to reach nearly 48,000 by the end of 2015. If the current trend holds, the shortage may balloon to almost 175,000 by 2024."[4]

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[3] Surface Transportation Board, "Docket No. EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions" (March 2016), 5

[4] Bob Costello, Rod Suarez, "Truck Driver Shortage Analysis 2015", American Trucking Associations (October 2015), 3

With the current decline in freight volumes the effects of the driver shortage have not yet been fully realized. However, according to the latest projections by the U.S. Bureau of Transportation Statistics, freight tons moving on the nation's transportation network will grow 40% by 2046[5]. Even today, the competition provided by the trucking industry is much lower than it was in 1983. As stated by William Snead, President of Texas Crushed Stone Company (TCS), it is inefficient for his company to truck farther than 60 miles. TCS estimates the total crushed limestone in their rail served market to be 105,000,000 tons per year, and Mr. Snead has stated that there are already not enough drivers to handle those volumes. As the supply of drivers continues to decrease while freight volumes increase, the growing gap between supply and demand will result in higher trucker rates and fewer available drivers, making trucking even less competitive.

The railroad's assertion that the rail transportation of this commodity group was subject to truck competition, as cited in Ex Parte 704_1[6], is no longer valid. It is clear through both quantitative and qualitative analysis that trucking, for anything other than very short hauls, has become an inefficient and costly mode of transportation for shippers of crushed stone.

Lack of competition for this commodity class is not only due to changes in the trucking industry, but the railroad industry as well. After crushed stone was exempted, subsequent railroad mergers decreased the amount of rail-to-rail competition in the industry. The number of Class I railroads consolidated from 22 companies in 1980 to only seven today, and four of those generate 95% of Class I revenues.

Union Pacific Railroad acknowledged the consolidation of the freight rail industry in written testimony for Ex Parte 704, stating:

> "We are also aware of claims that rail mergers have reduced competition, but the Board knows that those claims are incorrect. The Commission and the Board carefully reviewed each proposed merger and imposed conditions when necessary to ensure that no shipper would lose the benefit of rail-to-rail competition. In fact, railroad mergers have enhanced competition by creating shorter routes, more single-line service, faster schedules, better service reliability, lower costs, and a wide range of other efficiencies."[7]

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[5] Bureau of Transportation Statistics, "DOT Releases 30-Year Freight Projections", US Dept. of Transportation (March 2016)

[6] Surface Transportation Board, "Docket No. EP 704 (Sub-No. 1), Review of Commodity, Boxcar, and TOFC/COFC Exemptions" (March 2016), 5

[7] J. Michael Hemmer, Louise Rinn, Gayla Thal, Michael Rosenthal, Virginia Rosado Desilets, "Ex Parte No. 704 Review of Commodity, Boxcar, and TOFC/COFC Exemptions - Written Testimony of Union Pacific Railroad Company" (January 2011), 4-5

There is certainly proof that supports this statement in a general sense, however, it is clearly not true across all regions and industries.

One of those industries is the aggregates industry which ships crushed stone [redacted] As stated by William Snead, the most effective shipment size for his customers is up to 20 cars, however Union Pacific is currently attempting to force, with incentives, TCS and other shippers to comply with train size policies as high as 100 cars per shipment. It is understandable that Union Pacific would want larger shipments, but sometimes bigger is not better and statistical analysis shows that attractive revenues can be achieved through smaller shipments. The enforcement of 100-car minimum shipments appears to be unreasonable, especially when shipping to TCS customers that have limited track capacity.

In summary, the experience that TCS and other aggregate shippers in the region have had with rail transportation is at odds with the testimony from Union Pacific, as they have yet to see the benefit of enhanced competition, lower rates, or other efficiencies.

3.0 CONCLUSION

Revoking the class exemption for STCC 142 would be a judicious move by the STB. As data and shipper testimony have shown, much has changed since the commodity was exempt. The two main justifications for exemption, declining rail revenues and ample competition, no longer apply. Given the fact that deregulation and rail mergers have led to lower costs and efficiency gains for the railroads and yet shippers of crushed stone have experienced triple-digit rate increases despite growing minimum train sizes, it becomes clear that these shippers are now in need of adjudication from the STB.

Respectfully Submitted,

Joseph Grantner
Highroad Consulting, Ltd.
[redacted]

APPENDIX

I. CALCULATIONS

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

CURRICULUM VITAE

JOSEPH M. GRANTNER
Operations Manager
Highroad Consulting, Ltd.

Joseph Grantner (Joe) is responsible for ensuring the quality of consulting projects, confirming the accuracy of data for studies, and the performance of special studies, for Highroad Consulting, Ltd. Joe is a hands-on manager; he directs statistical analysis and development of data for client projects including benchmarking studies, rail costing, and regulatory costing, and he assists with logistics network designs for industrial development projects.

Joe performed the statistical analysis for Highroad's Reply Comments in STB Ex Parte No. 661 (Sub No. 2), Railroad Fuel Surcharges (Safe Harbor), October 15, 2014. That decision is pending.

Joe came to us with a strong background in 3PL transportation and warehousing. In his previous position with Jacobson Companies, he managed the logistics and customer service functions for their Midwest Region DC, including transportation planning and supply chain management.

Joe served as a Subject Matter Expert on an economic development project in the Michigan I-69 Thumb Region, organizing and serving as team leader for the field interviews, developing logistics maps, and driving the development of strategy. He was also responsible for the heavy lifting of data for a mode conversion study and strategic network design for a Fortune 20 corporation. As a result, Highroad helped the client to locate logistics terminals to serve 16 destination markets in North America. Further, he designed and produced destination market profiles and analyzed the bids received from the RFP process. On another project, Joe assumed the lead on a Paper Warehousing Study which involved identifying turnkey warehouses at 21 locations for the client's newly designed DC network.

Joseph Grantner earned a B.S. in Management and an MBA at Purdue University.