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Surface Transportation Board
Attn: STB Docket No. EP 704
395 E Street, S.W
Washington, DC 20423-0001

To Whom It May Concern:

My name is Paul Bergant and I am the President of J.B Hunt Intermodal, a division of J.B Hunt Transport Services, Inc. J.B Hunt is one of, if not the largest, retailer of Intermodal services in the United States. The company expects to move 1,300,000 shipments for our customers in 2011. This will provide over $2,500,000.00 in revenue. Obviously, the U.S Class 1 Railroads are a critical part of our service to the thousands of shippers we serve. As part of my job, I am responsible for procuring rail transportation for the movement of these commodities. Intermodal shipments today are subject to an exemption from STB regulation, and we think it should stay that way.

J.B Hunt Transport Services, Inc. has been operating in a deregulated environment with respect to rail transportation since we started our intermodal program in 1989. I understand that the Surface Transportation Board has asked for input from the public regarding the re-regulation of certain commodities or classes of rail service by revoking exemptions from current regulation. We oppose such government action. One of our goals, as a user of rail intermodal services, is to offer innovative, efficient services which allow shippers to effectively compete both domestically and worldwide. That is what drew us to Intermodal in the first place, and the continuing improvement in service and transit times has allowed us to grow this business for the benefit of the shipping public.

The current Surface Transportation Board process of permitting companies like ours to ask the STB to revoke the exemption from regulation for certain classes of service or certain commodities is the appropriate system. We do not want unnecessary regulation and government intervention to be the rule. It should be the exception to the rule. We urge the STB to keep the regulatory situation as it is.

Sincerely,

Paul Bergant

Paul Bergant
President of Intermodal Services

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January 27, 2011

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

Re: STB Ex Parte No. 704 – Review of Commodity, Boxcar and TOFC/COFC Exemptions

Dear Acting Secretary Quinlan:

I am the Vice Chairman, President and Chief Operating Officer of Hub Group, Inc., a $1.8 billion transportation company that is traded on NASDAQ under the symbol HUBG. Intermodal is Hub Group's largest line of business representing approximately $1.3 billion in revenue in 2010. Hub Group also has a substantial highway brokerage business with over $335 million in revenue in 2010. Hub Group is a significant customer of the major U.S. rail carriers, moving over 635,000 intermodal containers per year. Additionally, Hub Group has a proprietary fleet of approximately 18,000 containers that move on the Norfolk Southern and Union Pacific railroads. Hub Group has over 2,200 active customers and our customer list represents many of the Fortune 500 companies in the United States. I understand that the Surface Transportation Board has asked for input from the public about whether certain commodities or classes of rail service should be re-regulated by revoking exemptions from regulation. Hub Group believes that the intermodal shipment exemption from STB regulation needs to remain in place.

Hub Group began business in 1971 and has therefore operated an intermodal business in both a regulated and a deregulated environment. We believe that the deregulated environment is best for shippers and transportation providers alike. When Hub Group is approached by a customer to provide transportation services, it does not focus on rail services as the only option. Rather Hub Group looks at the total package offered by its carriers, which includes price, service, transit time and equipment availability. The decision as to which mode to use or carrier to employ is determined by which total package best meets our customer's needs for that particular shipment. Different situations call for different carriers and, while rail is the strongest option in certain circumstances, by no means is it our only option for moving our customers' freight. Motor carriers are essentially deregulated, and we would like for rail carriers to remain on a level playing field with motor carriers. Hub Group believes we can best meet our goal of providing cost-effective, safe and on-time service for our customers without government interference in our relationship with the railroads.

The current Board process of permitting interested parties to ask the STB to revoke the exemption from regulation for certain classes of service or certain commodities is the appropriate system and should remain in place. Hub Group does not want unnecessary regulation and government intervention to be the rule. It should be the exception to the rule. We urge the STB to keep the regulatory situation as it is.

Sincerely,

Mark A. Yeager
Vice Chairman, President and Chief Operating Officer

Surface Transportation Board
Attn: Docket No. EP 704
395 E Street, S.W.
Washington, DC 20423-0001

228713

RE: Ex Part 704, Review of Commodity, Boxcar, and TOFC-COFC Exemptions

Dear Sir/Madam:

I am writing to offer the comments of the Portland Cement Association (PCA) in response to the above-referenced notice served on October 25, 2010.

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Interest of PCA

Portland cement is a manufactured powder that acts as the glue or bonding agent that forms concrete. As an essential construction material and a basic component of our nation's infrastructure, portland cement is utilized in numerous markets, including the construction of highways, streets, bridges, airports, mass transit systems, commercial and residential buildings, dams, and water resource systems and facilities. The low cost and universal availability of portland cement ensures that concrete remains one of our nation's most essential and widely used construction materials.

PCA represents 25 cement companies, operating 97 manufacturing plants in 36 states, with distribution centers in all 50 states. PCA members account for 97.1 percent of domestic cement production capacity.

The cement industry is regional in nature. Most cement manufacturing plants are located in rural areas near large limestone deposits, the principal ingredient in producing cement. However, at the same time plants also must be located near markets because the cost of shipping cement quickly overtakes its value. As such, customers traditionally purchase cement from local sources. California, Texas, Florida and Missouri, are the leading cement

manufacturing states, respectively, producing nearly 51 million metric tons in 2005 or 39 percent of domestic cement production.

Considering the regional nature of the cement industry, it is critical that there are reliable and cost-effective transportation options available. Average cement shipments range between 250 to 300 miles. Truck transportation is not economical beyond 100 to 125 miles. As such, the cement industry is reliant on railroads to deliver our product beyond the economical range of trucks. Several cement plants have access to water transportation for domestic shipments. Domestic portland cement manufacturers rely on rail transportation to move 50 percent of all shipments between cement plants and distribution terminals, according to 2009 U.S. Geological Survey data, the most recent independent figures available. About 68.4 million metric tons of cement was produced domestically in the same year. As recently as 2004, about 95 million tons of cement was produced domestically.

Most bulk cement shipments are from the manufacturing plants to the more than 400 regional distribution terminals, where the cement is then delivered by truck to local contractors and ready mixed producers. It is vitally important to our industry that the railroads provide reliable, efficient and cost-effective service to meet the widespread demand for our product. More than 80 percent of U.S. cement manufacturing plants are captive to a single railroad. Due to the absence of competition, these plants are charged substantially higher rates and often receive less reliable service. On the other hand, dual rail-served facilities typically have lower rates and more reliable service.

Under Federal law, rail carriers are forbidden from charging unreasonably high rates to shippers of freight that have no effective competitive alternatives. In addition, rail carriers have a common carrier obligation in which carriers cannot refuse to provide service if a shipper makes a reasonable request for that service, and must engage in commercially reasonable practices. These requirements of federal law are enforced by the federal Surface Transportation Board (STB), which has been given the authority to oversee freight railroads' rates and practices under circumstances specified in the statute.

However, under the statute, the STB also has the authority to exempt a person, a class of persons, or a transaction or service from the protections of the statute. Beginning in about 1981, the Board's predecessor, the Interstate Commerce Commission (ICC), engaged in a broad campaign to exempt from the protections of the law the transportation by rail of significant portions of the nation's goods. Rail transportation of construction materials, including cement and fly ash were among these exemptions.

However, in the two decades since many of these exemptions were imposed, much has changed, both in the law and in the rail transportation marketplace. Given these changed circumstances, it makes sense to revoke many of these exemptions. This is particularly true for the construction materials industry, particularly cement and fly ash, which have become increasingly dependent upon rail transportation, and which need fair and reasonable rail rates and practices to survive in today's marketplace.

The Agency's Exemption Decisions – Background and Rationale

As noted above, beginning in about 1981 the ICC, the Board's predecessor, initiated a program to exempt significant numbers of commodities shipped via rail from the protections of federal law. The rationale for these decisions was twofold. First, the agency determined that an exemption from federal regulatory requirements would provide certain benefits in the rail transportation marketplace. Second, the agency also perceived that many of the commodities selected for exemption had competitive transportation alternatives that rendered protection under federal law unnecessary.

Until 1995, shippers did in fact obtain certain benefits as a result of these exemptions. Under federal law as it existed up to that time, the transportation by rail of commodities subject to oversight by the ICC was subject to various restrictions. For example, "tariffs" setting forth a rail carrier's rates, charges and practices had to be filed with the ICC, and were subject to complex federal filing rules. Rail carrier "divisions" (the splitting of revenue for a rate from

origin to destination that involves more than one rail carrier) were tightly regulated. Rail transportation contracts had to be filed with the agency. Moreover, during this time, rail carriers were in relatively precarious financial condition, and exemptions permitted them to reduce these paperwork costs and respond more flexibly to the marketplace.

Moreover, during the 1980s and until the mid-1990s, the rail industry itself was competitive. In 1986, for example, there were 23 Class I rail carriers in the United States, and even as late as 1993 there were still a dozen Class I rail carriers competing in the marketplace. There was excess capacity in the rail industry. Just as importantly, railroads faced vigorous competition from motor carriers, especially since fuel prices (which are a far higher percentage of the costs of trucking, compared to the cost of rail transportation) were low.

For example, in a decision in 1995, the ICC exempted hydraulic cement from the protections of the statute.[1] In that decision, the agency noted that the transportation of cement was competitive, with intramodal (rail-to-rail), intermodal, and geographic competition existing in many markets. Rates were at competitive levels. Similarly, in a decision in 1993, the agency exempted from the protections of the statute several other important commodities used in the manufacture of cement for many of the same reasons.[2]

The agency took similar actions to exempt the transportation of commodities used in the paper and forest products industry. For example, in 1991, the agency exempted the rail transportation of lumber and wood products from the protections of the statute.[3] In that decision, the agency noted that the exemption would result in reductions in overhead expenses, in administrative and paperwork burdens, and in the delays and costs associated with tariff filing. The agency also noted that lumber shippers supported the grant of the exemption,

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[1] Ex Parte No. 346 (Sub-No. 34), *Rail General Exemption Authority – Exemption of Hydraulic Cement*, 10 I.C.C.2d 649 (1995).

[2] Ex Parte No. 346 (Sub-No. 29), *Rail General Exemption Authority – Petition of the AAR to Exempt Rail Transportation of Selected Commodity Groups*, 9 I.C.C.2d 969 (1993).

[3] Ex Parte 346 (Sub-No. 25), *Rail General Exemption Authority – Lumber or Wood Products*, 7 I.C.C.2d 673 (1991). See also, Ex Parte 346 (Sub-No. 24), *Rail General Exemption Authority – Miscellaneous Manufactured Commodities*, 6 I.C.C.2d 186 (1989) (exemption for certain pulp, paper or allied products); and Ex Parte 346 (Sub-No. 8), *Exemption from Regulation – Boxcar Traffic*, 367 I.C.C. 425, 437-438 (1983) (exemption for commodities carried in boxcars, including paper and forest products).

that rate levels were competitive, and that there was vigorous competition from other modes of transportation.

In summary, this combination of vigorous competition within the rail industry and between trucks and rail carriers, as well as tangible benefits from exemptions in the form of decreased paperwork and restrictive federal rules, may have justified the broad grant of exemptions in the past. But today things have changed.

Legal and Marketplace Changes Have Eliminated the Basis for and Benefits of the Exemptions for Shippers and Have Created a Need for Statutory Protections

A wide variety of changes in both the law and the marketplace have eliminated the basis and need for many of the exemptions entered by the agency during the 1980s and early 1990s. Instead, many shippers now need the protections of the statute restored.

In 1995, the Congress passed the "ICC Termination Act of 1995." As part of that Act, the statute was changed to remove, for all shippers, a variety of regulatory requirements applicable to rail carriers. Rail carriers no longer had to file tariffs and contracts for any shipper. Certain provisions as to joint rates were eliminated. Thus, cost savings resulting from a reduction in "paperwork" requirements no longer required the agency to grant an exemption.

Moreover, over the past several years, the rail industry's financial situation has improved markedly. A Report issued by the Senate Commerce, Science, and Transportation Committee on September 10, 2010 concludes that, "Today, the goal of restoring the financial health of the rail industry has been achieved. Class I freight railroads have regained the pricing power they lacked in the 1980s, and are now some of the most highly profitable business in the U.S. economy".[4] Since the 1980s, the railroads were able to reduce operating costs by shedding

[4] "The Current Financial State of the Class I Freight Rail Industry," Senate Commerce Committee, Office of Oversight and Investigations Majority Staff, issued September 15, 2010. The Report is available at http://commerce.senate.gov/public/?a=Files.Serve&File_id=76823478-a901-4b4d-869b-9301bb43343b.

thousands of miles of underutilized track; reducing total employment; purchasing more efficient equipment; and, frequently transferring railcar ownership to private car owners. The latter is particularly true of the cement industry, although this did not necessarily translate to an improved level of service for the cement industry. In fact, service can arbitrarily be reduced at anytime, increasing the industry's need to purchase yet additional railcars thereby increasing overall costs to the cement industry. Revoking the exemption for cement and construction materials would help address this problem.

Most importantly, rail carriers have far more market power than they did when the exemptions from the protections of the statute were entered. Instead of 23 Class I rail carriers in the nation in 1986, today there are only seven. Of these seven, only four carry the vast majority of goods in the United States – two in the Eastern United States, and two in the West. Thus, there is a "shared duopoly" east and west, with little competition between the nation's major rail carriers.

The bleak competitive situation within the rail industry is exacerbated by the declining competitiveness of the motor carrier industry, which is beset by high fuel prices, a shortage of drivers, and increasing congestion on our nation's highways and roads. For example, according to the American Trucking Association (ATA), diesel fuel represents as much as 25 percent of total operating costs of truck transportation, a far higher percentage than in the railroad industry, thus making trucks less competitive with rails as fuel prices trend higher.[5] ATA reports that the United States is currently experiencing a national shortage of 20,000 truck drivers, and if current demographic trends continue, this shortage is expected to reach 111,000 drivers in just six years. The shortage of drivers is reducing and will continue to reduce the ability of the trucking industry to compete with railroads.

Congestion is equally affecting motor carriers' ability to compete with railroads. Recently, the National Surface Transportation Policy and Revenue Study Commission, a body created by Congress to examine our nation's infrastructure, called the nation's current level of

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[5] See, http://www.truckline.com/priorityissues/fuel/index and http://www.truckline.com/priorityissues/drivershortage/index.

highway congestion "crippling." The Commission noted that in 1982, only one urban area experienced over 40 hours of delay per peak traveler, whereas by 2005 more than 28 cities across the United States were in that same category.[6] Railroads, of course, are not affected by highway congestion.

Adding to the lack of competition is the rail industry's lack of capacity. The overcapacity that characterized the rail industry in the 1980s has now changed to a situation where there are substantial rail capacity constraints. For example, in 1985, the nation's Class I rail carriers owned over 270,000 miles of track, whereas by 2007, they owned only about 160,000 miles of track. More significantly, the rail industry's standard measurement of traffic density (ton-miles per mile of track) is triple what it was in 1980, a situation which, according to the Association of American Railroads (AAR), can "signal the risk of congestion."[7] Capacity constraints in the rail industry are causing rail prices to increase significantly as rail carriers take advantage of the tight market, especially for commodities that have few other transportation options.

There is, therefore, an increasing need to restore the protections against rail carrier abuse granted by the statute to shippers of our nation's freight. However, for many shippers, the exemptions granted two decades ago eliminated those protections.

Cement Industry Demographics Changing

The premise of maintaining commodity exemptions under 49 CFR Part 1039 is that sufficient intermodal and intramodal competition exists that regulation by the STB is not needed to protect shippers from the abuse of market power. However, since commodity exemptions were established changes in both the railroad and construction material industries have been dramatic, resulting in reduced transportation options, reduced transportation competition, and increased market power and abuses by railroads. Specifically, due to

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6 See, http://www.transportationfortomorrow.org/final_report/pdf/volume_2_chapter_3.pdf, p. 3-13 and14.

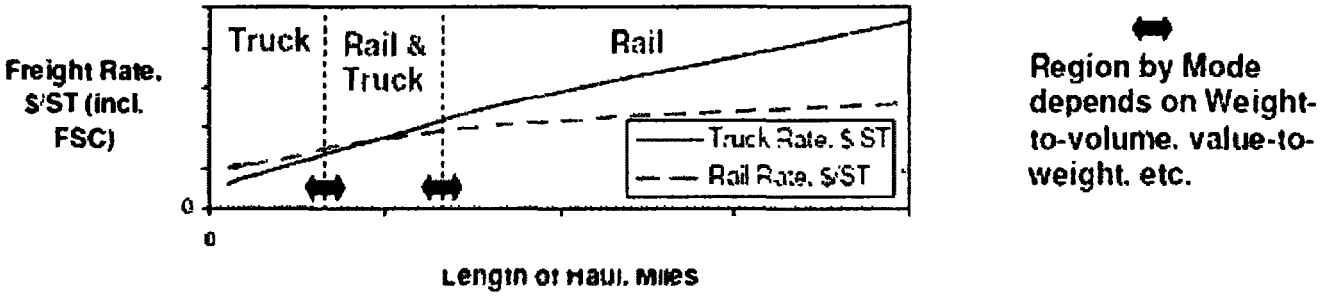
7 See, http://www.aar.org/PubCommon/Documents/AboutTheIndustry/Statistics.pdf and Railroad Facts, 2005 Edition, p. 42

environmental considerations and new technology, the capacity of individual construction material production facilities has increased significantly, resulting in a larger geographic coverage and requiring a much longer average length of haul for product delivery.

For example, in 1974 prior to establishment of commodity exemptions, there were 179 cement plants with an average capacity of 500,000 tons per year. Today, there are less than 100 plants with an average of 1 million tons per year, with several exceeding three million tons per year. Smaller, less efficient production plants have been closed. Currently there are 15 states in the U.S. in which no cement plants exist. Trucks offer little competition to rail beyond a certain length of haul, determined in large part by the value-to-weight ratio of the commodity shipped. Similarly, rail provides little competition to truck below a certain length of haul characteristic to bulk commodities, but by contrast there is sufficient competition within truckers within this distance. Truck and rail only compete in practical terms in a fairly narrow range of length of haul, as demonstrated in the Figure below on page 9.

According to STB data, the average rail length of haul for construction material products is in the range of 500 to 600+ miles in the Eastern U.S. and is even longer in the Western U.S. (although as mentioned earlier, average cement shipments range between 250 to 300 miles verses other construction materials). Practically speaking, truck is able to compete with rail in lengths of haul no greater than 100-150 miles for construction materials. (Since 1980, the average length of haul for the rail industry has grown at an average annual rate of approximately 1.6 percent per year.) Given the typical length of haul for bulk commodities, truck provides no realistic competition on the vast majority of rail shipments of bulk commodities in general and construction materials in particular.

Freight Rates by Mode vs Length of Haul



Since commodity exemptions were imposed on construction materials, the majority of railcars used to ship bulk commodities have increased in gross weight rating from 263,000 to 286,000 pounds per railcar, allowing an increase in net weight of lading shipped. At the same time, the Class I railroads, and organizations they fund, have blocked efforts to allow an increase in truck gross (and net) weights to equal truck weights in Canada. The railroads' efforts have predictably reduced the ability of truck to provide competition to railroads.

In 1980 (Pre-Staggers Act), there were 43 Class I railroads in the U.S. An unintended consequence of the Staggers Act has been the consolidation of railroads through mergers to where there are currently only 7 Class I railroads in the U.S., resulting in significantly less intramodal competition within rail carriers for shippers to utilize. The rail industry has designed and implemented a dominant service and pricing position, which would not have been allowed had certain anti-trust provisions been applied to the industry.

The Exemptions From Protections Against Market Abuse Should Be Revoked For the Cement Industry

Many shippers of cement and related products are reporting double-digit increases in rail rates, far beyond the effects of inflation. AAR's figures show that in 2009, although commodities related to the cement and paper and forest products industries comprised 5.1

percent of the railroads' tons originated, these same products totaled 8.2 percent of the railroads' gross revenue, indicating that they are contributing more than their share to the railroads' bottom line.[8]

The STB's statistics show that nearly 40 percent of cement-industry-related commodities transported by rail in 2005 had a revenue-to-variable-cost ratio of more than 180 percent, up from less than 30 percent just four years earlier.[9] A review of 2009 statistics doesn't show any appreciable change from the 2005 figures. This means that, as a result of the exemption, nearly two-fifths of cement shipments (producing revenue to the rail industry of over $615 million per year) are exempted from the protections provided by the statute.

Conclusion

In the last 30 years the railroad industry consolidated from 23 to seven Class I railroads. During the same timeframe, cement plants have modernized resulting in reduction from 179 to less than 100 manufacturing plants with on average double production capacity. Consequently, cement shippers are shipping greater distances where truck is not economically feasible and rail is a "shared duopoly". PCA urges the Board to revoke cement and construction materials as an exempt commodity. If the Board does not repeal these exemptions, we request that the Board commit to periodic future reviews at least every five years.

Respectfully yours,

David Hubbard
Vice President, Legislative Affairs

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[8] See, http://www.aar.org/PubCommon/Documents/AboutTheIndustry/Statistics.pdf (statistics for stone, clay and glass products, lumber and wood products, and pulp, paper and allied products)

[9] See, http://www.stb.dot.gov/econdata.nsf/CRSR?OpenView