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Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 704

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

278734

**COMMENTS OF
U.S. CLAY PRODUCERS TRAFFIC ASSOCIATION, INC.**

I. Identification of U.S. Clay Producers Traffic Association

The U.S. Clay Producers Traffic Association, Inc. ("Clay Producers" or "Association") is a non-profit association of member companies engaged in producing and shipping clay in all modes of transportation from Georgia, South Carolina and Tennessee origins to numerous industries throughout the United States, Canada, Mexico, and the world. The Association was formed over 50 years ago to provide information to members concerning the transportation of clay, and also as a forum for discussion of developments and information concerning regulation by governing authorities affecting the transportation of clay. The Association has also historically represented the interests of its members in transportation matters before regulatory agencies, such as this Board.

The members of the Clay Producers, parties to these Comments, represent approximately 95% of the industry in terms of total clay shipments and move clay from a relatively concise geographic area in Georgia, South Carolina and Tennessee, where the mineral deposits are found,

to customers located throughout the United States, Canada, Mexico, and the rest of the world. Clay Producers' clay traffic is captive to the railroads due to the bulk nature of their shipments originating from such a small, mostly rural, geographic area. In addition, the Clay Industry is a major factor in the economy of the small geographic area where it is produced.

II.

By decision served December 14, 1989, in Rail General Exemption Authority - Miscellaneous Manufactured Commodities, Ex Parte No. 346 (Sub-No. 24), 6 I.C.C. 2d 186, the Interstate Commerce Commission concluded that it would not exercise its authority under 49 U.S.C. § 10505 to exempt the transportation of clay and other ground or treated nonmetallic Earths or Minerals (STCC 3295). This protection has been valuable to the economic viability of the Clay Industry. In addition, since Clay Producers have a significant investment in equipment and rail facilities due to the fact that clay moves primarily in privately owned or leased tank cars, the regulation of private car allowances continues to be a vital concern to the Clay Industry, even in instances where a Clay Producer does not make the transportation arrangements or pay the rates. For this reason, it is important that the Board not alter its decision to "decline to exempt carriers from regulation of car service , car hire, and private car allowances ..." 6 I.C.C. 2d at 196.

In the 20 plus years since the Commission has declined to extend the commodity exemption to cover clay, Clay Producers believe they have benefitted from having the Commission and the Surface Transportation Board as a forum which is available to resolve disputes which they have with the railroads. Furthermore, it is obvious that shippers of non-exempt traffic have not abused the available ICC/STB procedures or caused railroads to operate under undue regulatory burdens. If anything, Clay Producers have found that railroads have

from time to time wrongly asserted an exemption as an excuse for refusing to address certain industry wide problems.

When disputes arise, a jurisdictional quagmire can exist which obligates a shipper to go back and forth between civil courts and the Board. Even in instances where the Board does not have primary jurisdiction, civil courts often request that the Board issue an advisory opinion. The Clay Producers believe that a party having a dispute with a railroad over matters involving the Interstate Commerce Commission Termination Act should be able to seek relief from the Board without having to petition for revocation of the exemption or otherwise getting entangled in a jurisdiction dispute involving the Board's primary jurisdiction.

CONCLUSION

Clay Producers urge the Board to broadly revoke all commodity, boxcar, TOFC/COFC exemptions previously granted under its general exemption authority.

Respectfully submitted,

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Dated: January 31, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2011, I am serving a copy of the foregoing Comments by first class mail, postage pre-paid, in accordance with the Rules of Practice on all parties of record, as they appear this date on the board's web published service list.

/s/ Vincent P. Szeligo
Vincent P. Szeligo, Esq.