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January 31, 2011

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VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
FEB 01 2011
Part of
Public Record

Re: STB Ex Parte No. 704
Review Of Commodity, Boxcar, And TOFC/COFC Exemptions

Dear Ms. Brown:

In accordance with the decision served on November 19, 2010 in the above-referenced proceeding, enclosed is Kansas City Southern's ("KCS") "Notice of Intent to Participate" in the Board's February 24, 2011 public hearing in the above-captioned matter. Also enclosed is KCS's "Written Testimony" to be submitted as part of the record in this proceeding. If there are any questions concerning these filings, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

William A. Mullins

Enclosures

cc: Patrick J. Ottensmeyer
Warren K. Erdman
W. James Wochner
David C. Reeves

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 704

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

KANSAS CITY SOUTHERN'S
NOTICE OF INTENT TO PARTICIPATE IN THE PUBLIC HEARING

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ATTORNEYS FOR KANSAS CITY SOUTHERN

Dated: January 31, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 704

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

KANSAS CITY SOUTHERN'S
NOTICE OF INTENT TO PARTICIPATE IN THE PUBLIC HEARING

Pursuant to the Surface Transportation Board's Decision served November 19, 2010 in Ex Parte No. 704, Kansas City Southern ("KCS") hereby gives notice of its intent to participate in the February 24, 2011 public hearing and provides the following information in accordance with the Board's decision:

1. The Party is Kansas City Southern.

2. The proposed speaker is Patrick J. Ottensmeyer. Mr. Ottensmeyer is KCS's Executive Vice President for Sales & Marketing.

3. KCS requests ten (10) minutes of speaking time.

4. KCS intends to address the importance of class exemptions in the current marketplace and the benefits of the existing exemptions for smaller carriers such as KCS.

Respectfully submitted,

William A. Mullins

January 31, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 704

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

WRITTEN TESTIMONY OF PATRICK J. OTTENSMEYER,
EXECUTIVE VICE PRESIDENT OF SALES & MARKETING,
KANSAS CITY SOUTHERN

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Dated: January 31, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 704

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

WRITTEN TESTIMONY OF PATRICK J. OTTENSMEYER, EXECUTIVE VICE PRESIDENT OF SALES & MARKETING, KANSAS CITY SOUTHERN

INTRODUCTION AND BACKGROUND

My name is Pat Ottensmeyer. I am Executive Vice President – Sales & Marketing for Kansas City Southern and The Kansas City Southern Railway Company (collectively, "KCS"). I joined KCS in May 2006 as Executive Vice President and Chief Financial Officer. Prior to joining KCS, I served as Chief Financial Officer of Intranasal Therapeutics, Inc., from 2001 to May 2006. From 2000 to 2001, I served as Corporate Vice President Finance and Treasurer for Dade-Behring Holdings, Inc. From 1993 to 1999, I served as Vice President Finance and Treasurer at Burlington Northern Santa Fe Corporation and BNSF Railway and their predecessor companies. I am pleased to submit these comments on behalf of KCS in response to the Surface Transportation Board's ("STB" or "Board") announced hearing to review certain class exemptions from regulation, specifically the commodity exemptions, the boxcar exemption, and the trailer-on-flatcar/container-on-flatcar ("TOFC/COFC" or "intermodal") exemption.

KCS appreciates the opportunity to participate in this hearing and to share KCS's perspective on these important exemptions. As noted, the Board has requested that the hearing focus on the commodity exemptions, the boxcar exemption, and the TOFC/COFC exemption. KCS does not intend to address all aspects of these exemptions, but notes that all of these exemptions, and other issues, are being addressed in the comments being filed by the Association of American Railroads ("AAR"). KCS joins in those comments.

In its comments, KCS intends to focus on the importance of the TOFC/COFC and boxcar exemptions to KCS's operations. KCS will also discuss the unique role KCS plays in the marketplace, and the need for the Board to be mindful of the impacts on smaller carriers such as KCS of removing exemptions if the Board were to take further steps toward revoking existing class exemptions.

COMMENTS

I. THE TOFC/COFC AND BOXCAR EXEMPTIONS ARE VALUABLE AND SHOULD NOT BE REVOKED

A. The Exemptions Are Effective And A Valuable Tool For KCS To Respond To Ever-Changing Market Conditions

The Board's Notice requested comments on "the effectiveness of these exemptions in the marketplace" and "whether the rationale behind any of these exemptions should be revisited." Notice at 3. KCS's experience shows that the TOFC/COFC and boxcar exemptions are beneficial in helping KCS provide competitive service to shippers and the public. The absence of regulation has given KCS the flexibility to improve its system and to price its service according to market conditions. As a result of this market flexibility, enhanced marketing, innovative IT technology and general growth in the overall freight transportation market, KCS's share of intermodal traffic has grown substantially and now is one of the fastest growing sectors of KCS's traffic.

For example, notwithstanding the recent recession and significant downturn in freight volumes and traffic, intermodal volume in each quarter in 2010 was 10-15% higher than the corresponding 2008 quarters. Consolidated KCS intermodal revenue compound annual growth rate from 2007 through 2010 is 11%. Similarly, over the past 5 years there has been a resurgence in transporting commodities in boxcars, made possible by round trip back hauls and other equipment utilization improvements that have improved the competitiveness of boxcars in the marketplace.

The significant growth of the intermodal market on the KCS system has contributed crucial revenues for safety, IT technology and capacity improvements. Yet, to accommodate all of the future growth opportunities without future capacity constraints, KCS will need to invest at even higher levels than it does today.

Overall demand for freight rail service is projected by AASHTO to grow by 44% between 2000 and 2020. KCS believes that it has growth potential that could exceed these levels as more and more opportunities come online due to the growth in trade between the U.S. and Mexico and the location of our crossborder franchise.

Given this projected growth in demand, how does KCS continue to obtain enough capital to support that growth? The answer is that KCS needs to continue to grow its market participation. Intermodal and boxcar revenues will be one of the key supporters of the investment needed to maintain that growth.

Increasing intermodal and boxcar market share has significant public benefits. Various studies have shown that railroads offer many advantages over long haul truck transport, not only in terms of fuel efficiency and reduced adverse environmental impacts, but also with respect to safety and cost. Indeed, it is critical that the rail industry, shippers, and public policy makers not disadvantage railroads' ability to compete in the market place relative to largely unregulated truck transportation services.

If the Board's actions in subsequent proceedings result in revoking existing class exemptions, those actions would discourage, rather than encourage, the goal of getting freight off the highways. Rather than encouraging innovation, flexibility, and investment driven by market conditions, re-regulation of intermodal and boxcar traffic would discourage investment in equipment resulting in market share being driven to other modes of transportation not by market forces but by increased cost and time delays resulting from unnecessary regulation.[1]

This is not just speculation, but can be seen by looking at the real example of what was happening in the marketplace before the exemptions and what happened afterwards. Prior to adoption of the boxcar and TOFC/COFC exemptions, the ICC administered a pervasive scheme of railroad rate regulation. KCS could not raise or lower its rates without following government regulations and without being subject to challenge. KCS had to publish and file tariffs for all rates and shippers and other railroads were allowed to challenge our rates before they even took effect. This scheme of regulation prevented KCS from quickly responding to marketplace conditions – preventing timely rate adjustments to accommodate changing rail costs or to compete against trucks. This was further complicated as there were strict rules governing the rates and practices of a shipment that was carried by KCS and our interchange partners and such joint rates could only be changed or cancelled through the concurrence of the other carriers or through ICC action.

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[1] In fact, the mere presence of this and other proceedings has already resulted in certain cautionary comments in the investment community that railroad revenues may suffer as a result; therefore putting downward pressure on railroad share prices and reducing the capital available for reinvestment. See Edward M. Wolfe, Scott H. Group, Michael A. Addeo, *STB Hearings Could Once Again Shine Light On Regulatory Risk*, WOLFE TRAHAN, January 12, 2011. Such cautionary statements and the potential for reregulation imposed through Congressional action will certainly result in investors wanting to take a "wait and see" and a "don't invest yet" approach. Such investment hesitation is especially harmful to smaller companies like KCS who already have higher costs of capital in comparison to the other Class I carriers.

After the boxcar and TOFC/COFC exemptions were adopted, the tariff filing requirements were ended. There was no longer a delay in rate adjustments which had been caused by tariff filing requirements. The process of establishing and quoting a rate became simpler and more responsive to the circumstances of a particular movement or shipper. Now, adjustments to rates can be made quickly in order to keep each rate both competitive and compensatory. Being largely unregulated, trucks can change prices as they back up to the freight dock to pick up a load. Railroads need the same level of flexibility.

An example of how this works in the marketplace, one needs only to look at the importance of rail intermodal service in helping to deal with periodic truck capacity constraints faced by dry freight shippers during the spring and summer months when the fruit and vegetable harvest is being brought to market. Starting every April and May, depending on when the harvest starts in Southern California, motor carriers withdraw capacity from the dry freight market because they can get paid more per load handling perishable crops like lettuce, asparagus, carrots, etc. Rail intermodal service fills the void caused by the withdrawal of long haul truck capacity for imported dry freight. Intermodal service is able to price in line with the market to move more dry commodities in intermodal containers from the port cities to the population centers, providing a competitive buffer for shippers (and ultimately consumers) to seasonal truck capacity shortages and trucking price fluctuations. As the trucks move from Southern California to Northern California for the harvest of tomatoes and grapes at the end of the summer, intermodal again fills the void.

Likewise, intermodal is able to quickly meet the seasonal demands of the steamship market. Starting in mid-to-late summer, steamship traffic into the ports surges as retailers begin to accumulate Christmas inventories of retail items. Again, flexible daily intermodal pricing allows this traffic to be shipped seamlessly. If intermodal pricing were re-regulated, the lag time required to secure concurrence from other railroads and delays in price changes would cause spikes in truck pricing that would disrupt and delay retailers' shipments and dramatically increase the cost of transporting their goods.

As relevant to KCS, the pricing flexibility and ratemaking simplicity provided by the exemptions actually reversed the decline in boxcar and TOFC/COFC traffic that KCS had been experiencing, and provided the impetus to innovate and adapt to actually grow this type of traffic. As previously noted, intermodal traffic has been the fastest-growing sector of KCS's business year over year for the past 5 years. Growth in our boxcar traffic has also played an important role.

I can state without a doubt that the boxcar and TOFC/COFC exemptions played an integral role in fueling KCS's growth in these sectors. Knowing that we have the freedoms provided by the exemptions to compete more effectively has made KCS more willing to commit capital, time, manpower, research and service to TOFC/COFC and boxcar operations. Exemptions have been, and are, a very effective tool enabling KCS to respond to the ever-changing marketplace.

B. The Rationale for Exempting Traffic Remains Viable; Competition Among and Between Modes Is As Strong As Ever

The second issue raised in the Notice is whether or not the rationale behind the commodity, boxcar, and TOFC/COFC exemptions needs to be "revisited" because the original underlying rationales for those exemptions are no longer applicable. KCS submits that far from being no longer valid, the original rationales for the exemptions are even more valid today.

The decisions of the ICC to grant the boxcar and TOFC/COFC exemptions were based largely on the agency's finding that there was effective competition for the railroad service at issue – and, therefore, regulation was not needed to protect shippers from the abuse of market power. For example, the ICC granted the TOFC/COFC exemption because trailers and containers move over the highways as well as the railroads – and, therefore, trucking companies would have "ample opportunities" to compete with the railroads for such traffic.[2] The same applies with respect to the boxcar exemption. As the ICC itself found -

> Virtually anything that can be transported in a boxcar can be transported in a truck. Motor carriage tends to be faster, more accessible, more convenient, and sometimes less damaging to freight than rail service, meaning that boxcar transportation generally must be priced to reflect these service differences to compete successfully. Thus, the market itself places an effective ceiling on rail rates for boxcar transportation, and regulation is unnecessary to assure that boxcar rates do not rise to unreasonably high levels.

Exemption From Regulation – Boxcar Traffic, 367 I.C.C. 425, 432 (1983). These findings were reconfirmed in 1995 when, upon reviewing its intermodal exemption, the ICC stated that "the national transportation system, insofar as it involves intermodal transportation, has not only survived but flourished" and went on to explain that exemptions had not allowed intermodal shippers to become captive to the railroads. American Rail Heritage, Ltd., d/b/a Crab Orchard & Egyptian Railroad, Transportation Concepts, Inc., And The Grafton & Upton Railroad Company v. CSX Transportation, Inc., No. 40774, 1995 ICC LEXIS 143 * 11 (ICC served June 16, 1995).

As someone who is involved day to day in the marketing activities of KCS, I can personally confirm that the competition facing KCS for the movement of intermodal and boxcar traffic is very intense. KCS faces pervasive truck competition for its intermodal and boxcar movements. This is because in general, trucks have greater pickup and delivery flexibility and can offer a high degree of service reliability. The trucking industry also utilizes sophisticated

[2] Improvement of TOFC/COFC Regulations (Railroad-Affiliated Motor Carriers and Other Motor Carriers), 3 I.C.C.2d 869, 881 (1987); Improvement of TOFC/COFC Regulation, Ex Parte No. 230 (Sub-No. 5) 45 Fed. Reg. 79123 (1980).

pricing technology that enables truckers to spot price loads on a daily or unit basis. Efforts by KCS to raise rates or change service terms are routinely met with a threat to shift the traffic to truck. This is especially the case for short haul intermodal moves and for almost all of our boxcar business, which tends to be short haul traffic in small lots. Furthermore, our pricing freedom is also constrained by rail alternatives offered via competing intermodal ramps and by the ability of customers to draw from more than one source of supply or use substitute products.

For longer-haul transcontinental or international movements, such as those on the Meridian Speedway or between Mexico and the United States, rail often enjoys a cost advantage over long-haul trucking for single stop loads. That fact, however, does not mean that such long-haul shippers are "captive" to the railroads or to any particular railroad. Truckers offer competitive options through transit advantages and the ability to provide in-transit deliveries. KCS also faces price and service pressure from other railroads that provide intermodal options via competing rail terminals within any given commercial zone or market. There is intense competition between railroads and the numerous third party IMC's, such as Alliance Shippers, The Hub Group, J.B. Hunt, and Schneider National, for long-haul container traffic. This intense competition constrains our rates and spurs us to offer even better service.

It is a similar story for boxcar traffic. The typical KCS boxcar commodities are a packaged or palletized commodity, paper or appliances, most loaded by a forklift -- the same type of commodity that is typically transported in motor carrier trailers. Virtually anything that can be transported in a boxcar can be transported in a truck. As noted, trucks tend to be faster and more accessible. To compete successfully boxcar transportation generally must be priced to reflect these service differences. Thus, the market itself places an effective ceiling on rail rates for boxcar transportation. Regulation is not required to assure that boxcar rates do not rise to unreasonable levels or to ensure there is no market abuse.

As with intermodal traffic, shippers do not have to rely on truck competition alone to control boxcar rates. Alternate rail routes are often available, especially over longer routes, giving shippers the benefit of rail-to-rail price competition. Moreover, most boxcar commodities can also be transported in other types of rail equipment, including TOFC/COFC containers. As noted, there is significant modal, intra-modal, product and geographic competition constraining our intermodal rates.

In summary, the fierce truck competition that justified the boxcar and intermodal exemptions remains a powerful constraint on our pricing and service terms. This competition has intensified as the IMC and logistics companies have matured over the past two decades since the adoption of the exemptions. The competition has even further intensified as our competitors have established intermodal terminals in virtually every market where KCS has an intermodal facility. These parallel services enhance competition between railroads and trucks and between the railroads themselves. In the end, the legal rationale behind the exemptions – the unlikelihood of any abuse of market power due to the presence of effective competition to rail service and effective competition among the railroads themselves – remains valid. This Board should not take further steps toward revoking or modifying these exemptions.

C. The Board Should Only Consider Revoking An Exemption In The Context Of A Specific Case

KCS recognizes that there are some shippers who believe they have not enjoyed the full benefits of competition under the exemptions. Even if that were true, however, it does not mean that the Board should revoke an entire equipment or commodity exemption simply to deal with these few instances of alleged abuse.

The proper remedy, and one that the Board has employed before, is for that particular party to seek revocation of an exemption, in whole or in part, based on a claim of carrier abuse of market power in a specific instance, or on a contention that competitive market conditions have materially changed since the grant of the exemption and that revocation of the exemption for a particular lane or movement is necessary to carry out the Rail Transportation Policy. As has happened before, a shipper may petition the Board for revocation of the exemption pursuant to the provisions of 10502(d) and contemporaneously file a complaint challenging the carrier's conduct as a violation of a specific provision of ICCTA. See, e.g., Rail Exemption Misc. Agricultural Commodities, 8 I.C.C. 2d at 682; see also Rail General Exemption Authority – Nonferrous Recyclables (served April 21, 1998). Ass'n of Am. Railroads-Petition to Exempt Indus. Dev. Activities from 49 U.S.C. § 10761(a), 10761(a)(1), 11902, 11903, & 11904(a), 8 I.C.C.2d 365, 377 (1992) ("The legislative history of the Staggers Act reveals a Congressional intention to have the Commission be liberal in granting exemptions and to correct problems with particular exemptions after the problems actually arise"); Brae Corp. v. United States, 740 F.2d 1023, 1043 (D.C. Cir. 1984)("Congress itself envisioned after the fact review to correct isolated market abuses that may follow the lifting of protective regulations under section 10505(a)"). While KCS does not support revoking any of the exemptions, if the Board believes any revocation actions are required, it should only do so within the context of a specific complaint and revoke the exemption only for that particular complainant.

II. THE BOARD NEEDS TO BE ESPECIALLY MINDFUL OF THE IMPACTS ON SMALLER CARRIERS LIKE KCS OF ANY DECISION TO REVOKE ANY CLASS EXEMPTION

As the smallest of the Class I carriers, KCS is especially concerned about the potential unintended consequences that could result from wholesale revocations of the various exemptions at issue in this proceeding. KCS knows what it was like to operate as a smaller, regional domestic carrier, struggling with the need to raise capital, improve service, and compete against the larger carriers for market share, yet, at the same time, operate as a interline partner with these very same carriers. As KCS has pointed out on a number of occasions (see e.g. Major Rail Consolidation Procedures, Ex Parte No. 582 (Sub-No. 1)), rail mergers in recent decades have created several large railroads with enormous market reach who present a formidable challenge to KCS's ability to compete on rates and routing. These larger rail systems play a far different role in the national rail transportation scene than do regional railroads such as KCS.

One only needs to look at the 2009 annual domestic revenues[3] for the Nation's Class I carriers to understand that there is a dramatic difference between KCS (and CP) and the larger carriers:

BNSF Railway	$ 14.1 billion
Union Pacific Railroad	$ 14.1 billion
CSX Transportation, Inc.	$ 8.2 billion
Norfolk Southern Corporation	$ 7.9 billion
Canadian National Railway (U.S. Operations)	$ 1.9 billion
The Kansas City Southern Railway Company	$ 860 million
Canadian Pacific Railway (U.S. Operations)	$ 699 million

A similar picture emerges from looking at the total track miles operated by each of the Class I carriers:

BNSF Railway	32,140
Union Pacific Railroad	32,094
CSX Transportation, Inc.	21,190
Norfolk Southern Corporation	20,623
Canadian National Railway (U.S. Operations)	6,896
Canadian Pacific Railway (U.S. Operations)	3,154
The Kansas City Southern Railway Company	3,076

Revenue and size differences are not the only distinguishing characteristics, as these

[3] Railroad Facts, 2010 Edition (Association Of American Railroads)(2009 revenues).

differences in size also mean that there are significant differences in the operating characteristics and market power between the larger carriers and KCS. For example, the vast majority of the traffic transported by the four largest Class I carriers (on average, 70% or more)[4] is handled in single-line service where the same carrier serves both the origin and the destination. Some shippers who have complained about rail rates or service argue that because these carriers serve both the origin and destination for such a large amount of traffic, these carriers have significant market power. The same has not been said with respect to KCS.[5]

There is a reason why KCS does not have the same market reach and market power as these larger carriers. KCS's size, geographic reach and traffic patterns make it different than the larger Class I carriers. Only about 15% of the traffic that KCS transports both originates and terminates on KCS. The vast majority of KCS's traffic – approximately 85% - KCS either receives from, or delivers to, one of the larger carriers. As a result, like shortlines, KCS has very little market power because it is, in many respects, as dependent upon the larger carriers as are the shippers and the shortline industry.

It is precisely because KCS lacks the same market power as the larger carriers that the exemptions are particularly useful and helpful to KCS. KCS needs the exemptions in order to offer more flexible and responsive service. Take boxcars, for example. For the larger carriers

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[4] 2009 Freight Commodity Statistics (FCS). The FCS has traffic for all the Class I carriers is broken down by local, forwarded, received, and bridged. "Local" traffic constitutes "single-line" traffic. For 2009, the percentage of local, or single-line traffic, was as follows: BNSF (72.6%); CN (U.S. Ops)(48%); CP (U.S. Ops)(9.2%); CSX (83.3%); KCS (U.S. Ops)(14.8%); NS (70.3%); and UP (63.5%).

[5] The intense competition from motor carriers, the lack of ability to move traffic in single-line service, and the competition with other railroads have more than constrained KCS's rates and have prevented KCS from exercising market power. Indeed, KCS's lack of market power is reflected in the fact that KCS has not been the subject of any formal rate or service complaint at the STB in over 25 years.

the rate of return on the boxcar business (especially 50-foot cars) does not justify their reinvesting in them. Yet, for KCS, because it acts more like a shortline, boxcar traffic actually plays a significant role. The exemption allows KCS to make quick and easy decisions regarding pricing, service, and operating characteristics. KCS can offer innovative approaches for the use of boxcars and on a moment's notice.

This is not just theory but plays out in the marketplace day by day with respect to our paper mill business. Since we are exempt on a spot price basis for boxcars, we adjust rail rates every day to meet or beat truck rates at paper mills. As trucks bring inbound scrap paper into mills, they are constantly quoting spot truck prices for the outbound paper loads as well. By being nimble and quick to respond, we have been successful in securing both the inbound scrap moves as well as the outbound paper moves through roundtrip pricing. This enables us to improve our overall return on investment per boxcar. If boxcars were to be re-regulated, KCS likely would lose both the inbound and outbound loads at these mills. It would take us too long to respond to minute-by-minute pricing changes, and the return on investment per boxcar would drop to the point where the existing fleet would shrink faster.

Additionally, another example of nimbleness occurs with intermodal. We enjoy the advantages of roundtrip pricing for intermodal containers. Our intermodal partners move auto parts southbound to Mexican automotive assembly plants and reload the same containers north to various destinations in the U.S. using the KCS network. If we were re-regulated and had to wait 20 days to change prices, we would risk losing both the inbound as well as the outbound loads by not being quick to respond to highly competitive motor carriers.

Removal of the exemption on a wholesale basis means most of our paper mill business and other forms of boxcar business would simply shift back to trucks and discourage our investment in such boxcars. Indeed, removing the exemption and subjecting these moves to regulation would most likely just speed the decline of an already shrinking fleet since additional regulation would hinder KCS's responsiveness and would make KCS less competitive with trucks and with the larger carriers than we are today. Most likely, in such a post-revocation environment, KCS would shed 50-foot cars quicker and become more of a niche player with specialty equipment such as 60-foot high-cubes.

As a result of the differences in size, scope, and market power of rail carriers, the Board needs not only to carefully evaluate any decision it may make with respect to possible future revocation of existing class exemptions but also be especially mindful of what its decisions mean with respect to smaller railroads, like KCS and others. If not done carefully, any efforts by this Board to undo exemptions could actually have the unintended consequence of harming smaller railroads like KCS who provide an important competitive balance in the industry. Any effort by this Board to increase regulation and subject more traffic to potential rate and service complaints could deprive KCS of the revenue necessary to maintain its system, weaken it as a competitive force, and ultimately lead to its consolidation with or division among its large competitors, which would actually reduce competition and result in the precise opposite effect of what the Board (and shippers) would desire.

The Board must be mindful that the removal of the class exemptions would have a disparate impact on KCS and other smaller carriers than it would on the larger Class I's. While KCS does not believe any of the exemptions should be revoked and fully supports the comments of the AAR, at minimum, if the Board does intend to move forward with any future proceedings, it should not conclude that the consequences of subjecting all rail carriers to identical regulatory treatment are the same.

CONCLUSION

The Board's Notice requested comments on "the effectiveness of these exemptions in the marketplace" and "whether the rationale behind any of these exemptions should be revisited." As I have noted in these comments, the evidence demonstrates that the TOFC/COFC and boxcar exemptions have benefited shippers and the public, and have been especially beneficial to KCS. Exemption from regulation has given KCS the flexibility to improve its system, to price its service according to market conditions, and to better compete against other rail carriers whose systems and networks are much larger than ours. Indeed, KCS continues to face intense competition not only from the other rail carriers, who have many more intermodal and transload terminals than us, but from trucks and other third party providers (intermodal marketing companies, logistics companies, etc.). As such, the rationale behind the exemptions - i.e., that government regulation is not needed to prevent market abuse - is not only relevant, but is even truer today than when the exemptions were first adopted.

KCS shares the views of AAR that the Board should not take any action to undo or revoke these exemptions. However, if the Board does move forward with any such initiatives, the Board needs to be particularly mindful of the adverse impacts such actions could have on KCS and other smaller carriers. In large part, due to its limited network, smaller workforce, and the fact that the majority of its traffic is interline traffic, the removal of the exemptions could hamper KCS's ability to continue to compete against the larger carriers. That would be exactly opposite of what the Board should be promoting. As such, the impacts on KCS and other smaller carriers need to be carefully examined.

Respectfully submitted,

Pat Ottensmeyer