BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. EP 704 (Sub-No. 1)

REVIEW OF COMMODITY, BOXCAR, AND TOFC/COFC EXEMPTIONS

COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

Introduction

The American Short Line & Regional Railroad Association ("ASLRRA" or "Association") is a non-profit trade association representing the interests of over 500 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate about 50,000 miles of track or approximately 30 percent of the national freight network, connecting manufacturers, businesses, and farmers in communities and small towns to larger markets, urban centers and ports. The ASLRRA railroad members operate in 49 states and in some cases, account for the state's entire rail network. Class II and III railroads play a vital role in maintaining rail service over hundreds of miles of light density lines throughout the country that in many cases were candidates for abandonment by their former Class I owners. These small railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. They also face pervasive competition from trucks, barges, and transloading operations for freight traffic.

Interest of ASLRRA

ASLRRA is filing Comments in this proceeding (the "September 30 Decision") both because it opposed the Surface Transportation Board's ("STB or Board") proposal in Docket No. EP 704 (Sub-No 1), Notice of Proposed Rulemaking, served March 23, 2016 (the "2016 NPRM Decision") and because the September 30 Decision merely adds yet another layer of complexity to the issues without providing any clear direction whether to revoke a class exemption or establish a class exemption.

Background of the Proceedings

In the 2016 NPRM Decision, the STB stated it sought 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. The STB proposed to revoke the exemptions for these five commodities, stating its rationales for this conclusion were (1) there have been many changes in the railroad industry; (2) it has received informal inquiries questioning the relevance or necessity for the exemptions (3) 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 (4) 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%.

The Board reached these conclusions notwithstanding that nothing has changed vis-à-vis the facts that short line railroads provide a limited scope of service in the movement of the five commodities in terms of the average distance and revenue derived from transporting them; that short line railroads do not exert any market power over the movements since in the main they do not control the rates charged; without identifying from whom, when or the number of such alleged informal inquiries about the relevance or necessity for the exemptions; and despite a stale record developed in comments and a hearing held in 2011 regarding the exemptions. 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." 2016 NPRM Decision at 4.

In the September 30, 2020 Decision, the STB announced it was seeking comments concerning a new approach its Office of Economics ("OE") developed for possible use in considering class exemption and revocation issues. In a Decisions served on December 4, 2020, the Board announced it would hold a technical conference on December 18, 2020, at which Board staff would provide a presentation on and answer technical questions related to the approach proposed by OE. Subsequently, in a decision served January 7, 2020, the Board announced the OE would hold a second technical conference to answer questions about the proposed approach. Representatives of ASLRRA and its expert witness, William F. Huneke, attended both technical conferences.

Position of the ASLRRA

ASLRRA continues to oppose the proposal initiated by the STB in the 2016 NPRM Decision. In its Comments in the 2016 NPRM proceeding, ASLRRA stated that its opposition was based on a number of facts. The bases of ASLRRA's opposition as stated in its Comments are:

- Regulation of the listed exempt commodities would be inconsistent with rail transportation policy.
- Short line railroads provide a limited scope of service in the movement of the exempt commodities in terms of the average distance the commodities are transported and the total revenue derived from their transportation.
- Short line railroads do not exert any market power over the transportation of exempt commodities as they rarely control the rates charged.
- The exemptions regarding the listed commodities are effective, having worked as Congress intended.
- The low number of revocation petitions demonstrate the exemptions are not being abused.
- The exemptions are of critical importance to short line railroads and have worked as intended for traffic handled by them.
- The listed exempt commodities are subject to intense intra- and intermodal competition.
- For short line railroads, the competition for traffic moving short distances is particularly susceptible to diversion to truck.
- Short line railroads have to compete with trucks, barges, intermodal, and transload operations for the freight.
- Short line railroads are inherently incapable of abusing market power.
- 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.
- Although the STB's proposal could have a significant impact on short line railroads,

it failed to analyze the potential impact on Class II and 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.

ASLRRA adduced evidence in support of each of these points, both in its Comments and through the Verified Statement of its expert witness, Gerald W. Fauth III. Perhaps the most egregious problem with the proposal in the 2016 NPRM Decision is the STB's reliance on waybill data and on the STB Uniform Railroad Costing System ('URCS"). That reliance is totally misplaced with respect to short line railroads.

The issue with the use of confidential waybill samples is that many shipments handled by short lines do not appear in the waybill samples because the short lines often do not appear on the waybills or the routings. Further, the confidential waybill samples contain relatively few records from short lines and is largely relevant only to Class I railroads. Another concern with the use of the confidential waybill samples is a reporting problem, which has impacted the CWS for many years, associated with so-called "rebill" traffic, which is essentially the rebilling of interline or bridge traffic as local traffic. This practice impacts the R/VC ratios the confidential waybill samples because the R/VC of a published joint-line rate subject to STB rate regulation is 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.

The Board's determination of an R/VC ratio relies in large measure on URCS. A position paper unanimously adopted by the Railroad-Shipper Transportation Advisory Council ("RSTAC") reported a number of problems with URCS:

- The Board recognized that 'the development of system-wide costs associated with a particular rail movement requires that any costing methodology incorporate many assumptions and generalizations about railroad operations.' The problem as it relates to Class II and III carriers is that URCS contains no assumptions about small railroads' operations. Without those assumptions, URCS is not useful as it relates to small railroads.
- URCS relies entirely on data obtained from the R-1 forms and other data filled by the Class I railroads. On high density Class I rail lines, the fixed costs of track maintenance, supervision, and communications and control

can be spread over large amounts of traffic. As a result, average costs of operation over these lines may not be greatly in excess of variable costs and it is fairly easy to determine the costs of operation over the network.

- For light density lines of small railroads, fixed costs must be allocated to a much smaller amount of traffic and average total costs will be well in excess of variable costs. As a result of the small size and light densities typical of the small railroads, their fixed costs are generally the largest proportion of their total costs on a per carload basis.
- Engineering time and motion analysis form the basis of the special study factors used in URCS. Some of those studies date back to the 1930's. In the decades since those studies were done, dramatic changes have occurred in the rail industry. Not least among those changes since 1980 is the emergence of hundreds of short line and regional railroads and a concentration of heavier cars and trains creating operating and maintenance factors unlike the conditions of the 1030's and unlike those experienced by any regional or short line. The engineering studies do not take into account those changes. In fact, URCS does not contain an of the operating characteristics of short line or regional railroads or their cost structures.

RSTAC Position Paper on the Uniform Rail Costing System, November, 2011.

ASLRRA also adamantly opposes the use of the so-called new approach developed by OE in considering class exemptions and revocation issues announced in the September 30 Decision. Its opposition is based on a number of factors. First, the same problems with Waybill Sample URCS detailed by ASLRRA in its Comments filed in the 2016 NPRM Decision still exist. The STB has tacitly acknowledged the problems by retaining a consultant to review URCS and suggest improvements to it. As noted by Witness Huneke, in a 2015 report, the Transportation Research Board issued a scathing critique of URCS and its use by the STB to do cost allocation. That report said that the use of URCS to for this purpose was not possible for three reasons: "…because railroads have shipments that share facilities and equipment and so have many joint and common costs; the large majority of cost items characterized by URCS as 'variable' are clearly not variable (e.g., road property) with respect to priced units of traffic; STB characterizes results from URCS as being 'systemwide averages,' acknowledging that they do not reflect the actual cost of providing any specific service." Huneke VS, p. 7, quoting Transportation Research Board, Special Report 318, *Modernizing Freight Rail Regulation,* 2015, p.111. These factors plus the infirmities related in the RSTAC Position Paper show unequivocally that the use of waybill samples and URCS in both the 2016 NPRM Decision and the September 30, 2020 Decision to determine whether a commodity should be exempted or have an existing exemption revoked is fatally flawed, particularly insofar as short lines are concerned.

Additionally, EO staff repeatedly stated at the technical conferences that the proposed methodology would not provide a final answer whether a commodity exemption should be revoked or adopted. As ASLRRA's expert witness states, "… does the methodology proposed here simplify the analysis that would follow a shipper's petition [for a partial or full exemption] – probably not." Huneke VS, p. 4. Despite a lengthy exposition of the methodology in the 2016 NPRM Decision and its appendices and two technical sessions, the only conclusion one can reach is that the proposal only adds another layer of complication to the process resulting in extensive and expensive litigation over whether a commodity should be exempted or re-regulated. As Witness Huneke states it, "… this methodology is not simple. Litigators will have to arm themselves with statisticians and data tools. The litigants will have to get access to the confidential Waybill data. The example provided in the decision is 40 pages. How will this morph as the litigators get into it"? Huneke VS, p. 5.

Finally, the proposed use of the revenue per carload ("RPC") to analyze whether a commodity should be exempted or not is equally questionable. It is not a valid indicator of market power. This is especially true as it relates to short line railroads due to the facts that they do not control the revenue per car, have short lengths of haul or equipment changes.

Witness Huneke describes in detail the frailties with the proposed implementation of the methodology. *See*, Huneke VS, pp. 8-10. In addition to the detailed he provides, suffice to say that EO did not offer any rationale as to why it chose a break point of 500 miles as the limit for effective truck competition or 30 miles for effective barge competition.[1] Rather, it simply said those were the models it chose with no rationale for those choices given. It is also very unclear just how the STB intends to use the methodology in determining revocation petitions and the

[1] Alternatively, the U.S. Department of Transportation states that trucks carry the largest shares by value, tons and ton-miles for shipments moved less than 1,000 miles. *See* U.S. Department of Transportation, Bureau of Transportation Statistics, Freight Facts and Figures (Washington, DC: 2019).

technical sessions provided not clarity on this point.

Conclusion

ASLRRA submits that the overall attempt to regulate the exempt commodities listed in the 2016 NPRM Decision would be inconsistent with rail transportation policy, particularly regarding short lines and regional railroads. The STB should not rely upon the rationale contained in the 2016 NPRM Decision to regulate the exempt commodities that are the subject of that decision, it should not apply them to any other proceeding wherein a party seeks to have any exempt commodity regulated. In particular, not one of the stated rationales apply to short line railroads.

Nor should the Board use the methodology proposed in the September 30, 2020 Decision. As shown in these Comments and the Huneke Verified Statement, the approach is overly complicated, relies on models or assumptions for which EO provided no basis for using, the models are internally inconsistent, the added regulatory burdens are not outweighed by any benefits, the costs and complexity of filing a petition to revoke an exemption or to seek to have a commodity exempted would clearly be exorbitant, and relies on data that are not relevant to short lines. The STB should not adopt the proposed methodology.

Respectfully submitted,

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January 29, 2021

VERIFIED STATEMENT

WILLIAM F. HUNEKE, Ph.D.

I am Dr. William Huneke. I was employed at the Surface Transportation Board (STB) from 2001-2017 and served as the STB's Chief Economist and Director of the Office of Economics. I hold a PhD in economics from the University of Virginia. A copy of my vita is attached to this statement.

Executive Summary

The Surface Transportation Board (STB) has not provided sufficient justification to move ahead with this exemption proposal. By the STB's own words, this proposal adds one more layer of litigation to the exemption process without explaining how it would benefit STB or its stakeholders in a cost- effective way.

STB presents this methodology for comment without explaining in detail how it plans to use it beyond saying: "The Board does not anticipate that the approach would necessarily provide a final conclusive answer…"[1] It presents the commodities for exemption revocation or new exemption with a mix of all grades, and does not explain how STB might use the results, which begs the question of why run the methodology at all.

The example of hydraulic cement is telling. In STB's 2016 proposal, hydraulic cement was one of the commodities that STB suggested for revoking the commodity's exemption. Yet, the proposed methodology gives hydraulic cement only "moderate" support for exemption

[1] STB Decision Sept 30, p. 6.

revocation. A possible suggestion here is that STB's on-again and off-again rulemaking cannot keep up with the dynamism of the transportation marketplace. Moreover, this example and the others presented with this proposal provide limited confidence that the proposed methodology can provide clear signals or even justify implementation.

STB should maintain the status quo until if and when it can develop a proposed methodology that the agency can show has benefits that exceed costs to the stakeholders and the American public. STB should rely on its stakeholders, who have a more current feel for the pulse of transportation markets, to initiate exemption changes instead of implementing a complicated new methodology. This would reduce the regulatory and litigation burden on many small businesses like those represented by American Short Line and Regional Railroad Association (ASLRRA).

ASLRRA is particularly concerned that this methodology is based on the Uniform Railroad Cost System (URCS) and the Carload Waybill Sample (Waybill), which do not provide adequate coverage of the operations and economics of the short line & regional railroad industry. URCS and the Waybill are based on Class I Railroad data. URCS and the Waybill are not representative of ASLRRA data, operations or economics.

This analysis addresses these topics:

- STB's mission and how exemptions serve to further that mission
- Litigation expense and complexity
- STB's internal tools: URCS and the Waybill
- Revenue Per Carload

- The Methodology's Implementation
- Maintain the Status Quo

<u>STB's mission and how exemptions serve to further that mission</u>

STB exists to regulate when unfettered market forces fail to provide a reasonable economic outcome for rail market participants, particularly shippers. A major STB concern is rates. Because Congress believed the Interstate Commerce Commission (ICC) had provided too much regulation prior to the 1970s, Congress passed a series of legislation that curtailed the agency's power and partially deregulated the industry.

One tool Congress provided the regulators was the ability to exempt commodities and particular rail services from regulation. Congress allowed STB to exempt traffic when it deems that market forces can provide sufficient protection from railroads using market power to charge unreasonable rates.

STB writes about its mission regarding the investigation of market power in the September 2020 decision:

> the agency shall exempt a person, class of persons, or a transaction or service when it finds that the application of a provision of 49 U.S.C. subtitle IV, part A, is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (RTP) and either (a) the transaction or service is of limited scope, or (b) the

application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.[2]

Since 2011 STB has been considering ways to update exemptions, but STB seldom seems to stay focused on the effort. It held a hearing in 2011. Five years later it issued a proposal to revoke exemptions for five commodities:

- crushed or broken stone or rip rap
- coke produced from coal
- primary iron or steel products (plates, pipes, and rods)
- hydraulic cement
- iron or steel scrap, wastes, or tailings

The fourth item, hydraulic cement, STB uses in its Appendix B of the current proposal as an example of how the proposed methodology would work. Ironically, STB's methodology only scores this commodity to have "moderate" evidence for an exemption revocation.

In 2019 STB continued on its exemption update quest and conducted Ex Parte conversations with stakeholders. This evidence combined with STB staff work has led to the creation of the current proposal, undoubtedly, STB felt this was necessary to further its regulatory mission.

[2] Surface Transportation Board, "Review of Commodity, Boxcar, and TOFC/COFC Exemptions," Ex Parte 704 (Sub-No. 1), September 29, 2020, p. 2.

Litigation expense and complexity

The first question has to be whether the STB has justified the new methodology in place of the status quo. A shipper could always petition for a partial or full exemption, but does the methodology proposed here simplify the analysis that would follow a shipper's petition: probably not. In STB's own words this methodology really just adds another layer:

> The Board does not anticipate that the approach would necessarily provide a final conclusive answer on whether the commodity exemptions at issue should be revoked, or whether additional commodity exemptions should be adopted… Most fundamentally, the approach does not seek to answer the ultimate qualitative question of whether a commodity's regulation is necessary to carry out the RTP [Rail Transportation Policy].[3]

and

> [The methodology's results] could be used as an initial or partial step in evaluating whether an existing commodity class exemption should be revoked or whether a commodity should be exempted from regulation in the first instance. The Board would not expect that the Indicator Dashboard (or the approach as a whole) could fully answer the question of whether revocation or exemption is appropriate, given the market-specific issues, among other matters, that might also need consideration. [4]

[3] *Ibid*., p.6.
[4] *Ibid*., p. 9.

By developing this methodology and suggesting it will not provide a final answer, STB is just adding another regulatory layer, increasing the potential burden on stakeholders, particularly small businesses like ASLRRA members. Another question that needs clarifying is whether the methodology's dashboard results create a presumption that will have to be overcome in the subsequent rulemaking, e.g., a "strong" signal for revocation would create for opponents a presumption to overcome.

Moreover, this methodology is not simple. Litigators will have to arm themselves with statisticians and data tools. The litigants will have to get access to the confidential Waybill data. The example provided in the decision is 40 pages. How will this morph as the litigators get into it? I remember the original Stand-Alone Cost rate case decisions started out with fewer pages than contained in this proposal. Perhaps STB has developed this methodology to avoid a full-blown market analysis that an exemption change would require but will it? I suggest the subsequent litigation would still require that detailed market analysis. While STB is asking some of the right questions in its methodology, one overall-question is whether the tools it is using are adequate to generate robust answers.

<u>STB's internal tools: URCS and the Waybill</u>

URCS is the agency's regulatory costing tool and is used in many applications, notably setting STB's regulatory jurisdiction of 180 RVC. The Waybill is STB's key database, which is largely a sample of Class I railroad movements. STB develops these tools from Class I Railroad sources, which means they poorly represent ASLRRA members' operations and economics.

Because the methodology uses Revenue/Variable Cost (RVC) ratios, it is relying on URCS to provide the variable cost estimates. STB is looking at RVCs because it wants to gauge market power by measuring profit margins. Profit margin is a reasonable indicator of market power, but economists use price to marginal cost ratios for such an indicator. URCS does not even pretend to estimate marginal cost. Using URCS generated RVCs in this way highlights the flaws in URCS.

STB recently ended an URCS rulemaking aiming to improve how the cost system accounted for unit train and multiple car shipments efficiencies. That rulemaking aimed to fix an URCS flaw but because the rulemaking ended without resolution, the flaw remains.[5]

Another flaw in URCS is that it proportions insurance expenses evenly across all commodities. This means hazardous traffic does receive a cost premium in URCS.

Yet another flaw is that URCS relies on engineering studies that were done in the 1930s when steam locomotives were still pervasive. Now, they are museum pieces. Does STB have any plans to review or update those engineering studies?

In 2015 the Transportation Research Board issued a report assessing current US rail regulation in which it provided a scathing critique of URCS.[6] TRB observes that URCS's attempts to do cost allocation is foolish because it is virtually impossible to do so for railroads because railroads have shipments that share facilities and equipment and so have many joint and common costs. Here are two other notable flaws TRB reported:

[5] Surface Transportation Board, "Review of the General Purpose Costing System," Ex Parte 431 (Sub-No. 4), June 5, 2019.
[6] Transportation Research Board, Special Report 318, *Modernizing Freight Rail Regulation*, 2015.

- "the large majority of cost items characterized by URCS as 'variable' are clearly not variable (e.g., road property) with respect to priced units of traffic"
- "STB characterizes results from URCS as being 'systemwide averages,' acknowledging that they do not reflect the actual cost of providing any specific service."[7]

For ASLRRA and its members, URCS presents a further complication: URCS costs do not reflect the costs of Class II and Class III railroads. STB uses Class I railroad data as inputs in creating URCS costs. Class I costs will be different from those costs for Class II and Class III railroads. On the one hand, Class Is have a lot of linehaul and unit train operations that are highly efficient and therefore generate smaller unit costs than their smaller brethren. Additionally, many Class II and IIIs are non-unionized so they would have lower labor costs. When STB costs Class II and III movements, it uses regional averages of the Class Is, which may or may not good estimates of Class II and III actual costs.

The Waybill is also a concern for ASLRRA because it may not capture a reasonable sample of Class II and Class III movements. For example, there were only about four dozen non-Class I railroads reporting waybills out of several hundred.[8] Smaller carriers (ASLRRA members) face fiercer highway competition, which suggests less need for regulatory oversight.

<u>Revenue Per Carload</u>

In addition to its RVC analysis, STB does a Revenue Per Carload (RPC) analysis. STB probably used RPC because it recognized the flaws in URCS. RPC is a questionable indicator of

[7] *Ibid.*, p. 111.
[8] Railinc, *2018 Surface Transportation Board, Carload Waybill Sample, Reference Guide, December 3, 2019*, p.33.

market power. A far better indicator are profit margins, which, I noted, STB attempts to measure with RVC ratios. The problem with RPC is that other factors related to cost might increase RPC like length of haul or fuel expenses and may not reflect actual profit changes.

For example, fuel expenses could rise faster than rail rates so RPCs might increase while profit margins would fall. Such an increase in RPC would not indicate any increase in market power. Equipment changes might also affect profit margins differently than RPC.

The Methodology's Implementation

The proposed methodology models highway, waterway and intra-railroad competition, but STB merely asserts the parameters for each. For example, STB uses a break point of 500 miles as the limit of robust highway competition for railroad traffic, but a Federal Highway Administration study suggests that 750 miles might be a better gauge.[9] Similarly, STB asserts a 30-mile radius for a truck haul to a competing waterway or railroads without justifying this mileage.

ICC's practice had been to use market share studies when doing exemption analysis. Is STB employing this proposed methodology as a replacement for those studies? Such market share analyses might help validate Dashboard results. In the appendices, STB aims to describe the proposed methodology, and how it can use it to test for updating exemptions it has in place for commodities and railroad services. It may aim to use this methodology instead of conducting a thorough review of the transportation markets affected by these exemptions.

[9]https://ops.fhwa.dot.gov/freight/freight_analysis/nat_freight_stats/docs/13factsfigures/pdfs/fff2013_highres.pdf

The first appendix, Appendix A, presents a detailed description of the methodology and the sources used. STB's description is written to follow the way STB's methods and tools were assembled rather than how the results would be reported, which makes it a bit convoluted.

Appendix B presents a detailed set of results for using the methodology to evaluate hydraulic cement, a commodity that currently has an exemption. Hydraulic cement is an interesting example for STB to discuss because it was one the commodities it teed up in its 2016 proposal. Ironically, the RVC Dashboard reveals for this example shows an overall "moderate" signal: high RVCs ae offset by "weak" signals (meaning robust competition) from the rail and waterway alternatives indicators. This suggests that hydraulic cement is profitable traffic but could divert to waterway or another railroad.

STB concludes: "The full Data Visualization analysis then provides additional information on the market conditions that might support or weaken the case for exemption revocation. "However, STB does not go further at this point to opine on what its reading of "full Data Visualization" and the strength or weakness of revoking the exemption.

The result for hydraulic cement is most curious. STB does explain why it found hydraulic cement worthy of consideration for exemption revocation in 2016, and yet, now, the proposed methodology only finds "moderate" support for exemption revocation.

Appendix C presents a complete listing of results purporting to show candidates for exemption revocation and candidates for new exemptions. These are reported for both RVC and RPC based analyses. These results are most curious as it is not clear how STB will use them, i.e., why STB would pursue any change for a "moderate" or "weak" graded- commodity. One would expect candidates for exemption revocation would all grade “strong,” OR is this mix of results questioning the value of the methodology?

In a particularly curious example, STB suggests that, using RVC analysis, STCC 26611: Insulating Board is suggested for exemption and yet its Dashboard reports an overall signal of “insufficient” and its indicators as being “indeterminate” or “N/A.” There is no explanation of what STB might do to review this commodity or other candidates when the methodology provides no answer.

Looking at the commodities STB proposed in 2016 for exemption revocation, they get these grades:

- STCC No. 14-2, crushed or broken stone or rip rap: MODERATE, but WEAK for RPC analysis
- STCC No. 29-914, coke produced from coal: STRONG for RVC analysis and MODERATE for RPC analysis
- STCC No. 33-12, primary iron or steel products (plates, pipes, and rods) MODERATE or STRONG (both RVC & RPC analyses)
- STCC No. 32-4, hydraulic cement: MODERATE (both RVC & RPC analyses)
- STCC No. 40-211, iron or steel scrap, wastes or tailings: MODERATE (both RVC & RPC analyses)

Stakeholders might have expected a full explanation of these anomalous results, assessing why STB thought these were good candidates in 2016 but its proposed methodology presents mixed results in late 2020. These results argue perhaps that transportation markets have evolved from what STB was assessing in 2016 or the proposed methodology cannot replace STB's status quo approach to exemption analysis.

<u>Maintain Status Quo</u>

The detailed example of hydraulic cement and the results reported for the other 4 commodities from the 2016 proposal are curious and most suggestive. The proposed methodology gives hydraulic cement only "moderate" support for exemption revocation. The other four commodities receive a mix of grades from the proposed methodology. A possible suggestion here is that STB's on-again & off-again rulemaking cannot keep up with the dynamism of the transportation marketplace. Crucially, STB must explain why the proposed methodology captures the market conditions that would justify or even suggest exemption revocation.

STB should maintain the status quo until if and when it can develop a proposal that the agency can show has benefits that exceed costs to the stakeholders and the American public. The status quo relies on the stakeholders, who have a more current feel for the pulse of transportation markets, to initiate exemption changes. This would avoid increasing the regulatory and litigation burden on stakeholders, particularly many small businesses like those represented by ASLRRA.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

Executed this 29th day of January 2021

____

William F. Huneke

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Summary:

Dr. Huneke has more than 35 years of experience in economics, railroad regulatory policy, management consulting, business analysis and teaching in the commercial and government sectors. He led the analytical work at the Surface Transportation Board. At UUNET he introduced new information technology that dramatically reduced product deployment cycles. He has directed projects that positioned major financial firms to improve business operations and use new technology for competitive advantage. Dr. Huneke taught graduate business courses at the University of Maryland, Robert H. Smith School of Business.

Positions Held

Consulting Economist

Dr. Huneke provides economic advice to private sector clients. His expertise includes management economics, regulatory economics, antitrust, statistics and econometrics. As part of an Organization of Economic Cooperation and Development, Dr. Huneke has advised the Mexican Rail Regulator (Agencia Reguladora del Transporte Ferroviaro) on rail regulatory policy and access charge regimes. He has provided testimony and litigation advice to Class I Railroads. He has advised in a private arbitration.

National Academy of Sciences, Transportation Research Board, Committee Rail Freight Transportation, 2017-2020

Dr. Huneke advised the Committee on economic and regulatory matters. He reviewed papers for presentation at the TRB's annual meeting.

Chief Economist and Director, Office of Economics, Surface Transportation Board, 2001-2017

Dr. Huneke led the economic and management analysis on rate regulation cases, railroad practice cases, agency rulemakings, railroad construction cases and railroad mergers. His group was responsible for industry financial reporting, auditing, regulatory costing and the industry traffic sample database.

Adjunct Professor, College of Business and Management, University of Maryland, College Park, MD 1990-2010

For 20 years, Dr. Huneke taught graduate courses in international business, global economic environment, and managerial economics. He also developed and taught executive MBA courses for the University of Maryland sponsored Polish American Management program at University of Lodz in Poland.

Director, Planning & Infrastructure, UUNET Technologies, 1998-2001

At UUNET he introduced new information technology that dramatically reduced product deployment cycles Dr. Huneke managed new technology evaluation and deployment, systems architecture, quality assurance, software testing, data administration and database administration, capacity planning and security planning. He administered the IT division's budget, which was over $60 million in expense and $150 million in capital.

Vice President, Avatar Solutions, 1995-1998

Dr. Huneke was responsible for leading the company's production operations. As the company's business grew, he managed the company's operations from serving one client in Northern Virginia to multinational operations serving clients on multiple continents. He directed operations to achieve the company's goals of consistently meeting and exceeding customer expectations.

Vice President, Disclosure, Inc., 1994-1995

For a financial information electronic publisher, he led a staff of 50 in the rapid development of products to meet market opportunities. Responsibilities included understanding the market so that developed products best met market needs and achieved competitive advantage. He was instrumental in redesigning business operations to dramatically reduce product cycle times from years to months.

Director, Freddie Mac, Reston, VA 1987- 1994

Dr. Huneke analyzed the competitive and technical environment facing Freddie Mac and sought opportunities to achieve superior economic returns. He directed projects that positioned Freddie Mac to improve business operations and use new technology for competitive advantage. He reviewed Freddie Mac lines of business and created product development plans for a new product cycle. Analyzed the productivity of systems development and evaluated the opportunities for gaining competitive advantage through reduced product cycle times. Dr. Huneke managed the preparation and administration of $50 million budget for capital and other expenses.

Assistant Director, Intermodal Policy Division, Association of American Railroads, Washington, DC 1983-1987

For the Association, he managed research and analysis of key industry issues including vertical mergers, cost-benefit analyses of government projects and user fee impacts. Dr. Huneke directed competitive analyses of three industries including computer simulation of management strategies, new technology and comparative cost structure.

Senior Economist, DNS Associates, Washington, DC 1981-1983

In his first job in Washington while completing his dissertation, Dr. Huneke served as an analyst in the specification and development of automated management information systems. He analyzed the competitive effects of mergers and government regulation on the transportation industry.

Instructor and Research Assistant, University of Virginia, 1978-1981

Taught economic principles courses and worked on constructing an economic model of a consumer goods industry.

Publications

Book:

The Heavy Hand: The Government and the Union Pacific, 1862-1898, Garland Publishing, 1985.

Articles:

"The Uniform Regulatory Cost System: Implications for Transportation Management," (with Tom O'Connor and John M. Robinson) Proceedings of the Transportation Research Forum, 1983.

"Financial Performance of the Shallow Draft Barge Industry: Problems and Prospects," (with Kevin Horn and David Benforado) Proceedings of the Transportation Research Forum, 1985.

"Greater Efficiency or Predation: The CSX-ACBL Merger," (with L. Lee Lane and Thomas M. McNamara) Transportation Research Record 1038, Freight Papers--1985.

"A Competitive Analysis of United States Lines Round-the-World Service," (with L. Lee Lane and David J. Benforado) Proceedings of the Transportation Research Forum, 1986.

"A Comparison of Regulated and Exempt Towing Rates on the Inland Waterways: Implications for Deregulation," (with Kevin Horn) Transportation Research Record, 1987.

"United States Lines' Round-the-World Service: What Went Wrong?" (with L. Lee Lane and David J. Benforado) Intermodal Forum, Spring 1987.

"An Assessment of the Rail Competitive Motor Carrier Industry, 1977-1986," (with K. Eric Wolfe and Vijaya Krishna) Journal of the Transportation Research Forum, 1987.

"Railroads, Historical Overview," in The Oxford Encyclopedia of Economic History, Edited by Joel Mokyr, 2003.

"Road Transportation, Regulation," in The Oxford Encyclopedia of Economic History, Edited by Joel Mokyr, 2003.

"Working Party No. 2 on Competition and Regulation, Roundtable on Structural Reform of the Rail Industry – United States," (with Russell Pittman) Organization for Economic Co-operation and Development, February 2005.

"Role of STB Economists," Journal of Transportation Law, Logistics and Policy, Fourth Quarter 2005.

"A Game Theory Approach to Railroad-Shipper Negotiations," Journal of the Transportation Research Forum, Spring 2006.

"The Political Economy of Regulatory Costing: The Development of the Uniform Rail Costing System," Journal of Transportation Law, Logistics and Policy, Third Quarter 2017.

"Open Access and Revenue Adequacy" in U.S. Freight Rail Economics and Policy: Are We on the Right Track?, Edited by Jeffrey T. Macher and John W. Mayo, Routledge, 2019.

Internet Blogs

"Observations on STB's Rate Reform Task Force Report," *Railway Age*, June 20, 2019
https://www.railwayage.com/regulatory/observations-on-stbs-rate-reform-task-force-report/?RAchannel=home

"URCS: Love It or Hate It, We're Stuck With It" *Railway Age*, August 9, 2019
https://www.railwayage.com/regulatory/urcs-love-it-or-hate-it-were-stuck-with-it/?RAchannel=home

"Convenience Fees, Profit Centers and Fuel Surcharges," *Railway Age*, September 25, 2019
https://www.railwayage.com/regulatory/convenience-fees-profit-centers-and-fuel-surcharges/?RAchannel=home

"STB 'Whack a Mole,'" *Railway Age*, November 20, 2019
https://www.railwayage.com/regulatory/stb-whack-a-mole/?RAchannel=home

"When Should Regulation Supersede Market Processes?" *Railway Age*, February 12, 2020
https://www.railwayage.com/regulatory/when-should-regulation-supersede-market-processes/?RAchannel=home

"Put Aside Narrow Interests. Think About What's Best," *Railway Age*, June 12, 2020.
https://www.railwayage.com/regulatory/put-aside-narrow-interests-think-about-whats-best/?RAchannel=home

Book Reviews

Stagecoach East, by Oliver W. Holmes and Peter T. Rohrbach, Journal of Economic History, March 1984.

The Rebirth of Missouri Pacific, 1956-1983, by H. Craig Miner, Journal of Economic History, December 1984.

The Southern Railway: Road of Innovators, by Burke Davis, Journal of Economic History, March 1986.

Performance of the U.S. Railroads Since World War II, by Kent T. Healy, Journal of Economic History, September 1986.

Public Transport, by Peter White, Journal of the Transportation Research Forum, 1996.

Merging Lines: American Railroads, 1900-1970, by Richard Sanders, Jr., EH.NET, 2002.

Urban Transportation Planning, by Michael D. Meyer and Eric J. Miller, Transportation Quarterly, Summer 2002.

Statistical and Econometric Methods for Transportation Data Analysis, by Simon P. Washington, Matthew G. Karlaftis and Fred L. Mannering, Journal of the Transportation Research Forum, Summer 2004.

21st Century Highways, edited by Wendell Cox, Alan Pisarski, and Ronald D. Utt, Journal of Transportation Law, Logistics and Policy, 2006

Public Transport in Developing Countries, by Richard Iles, Journal of the Transportation Research Form, 2007.

Commuting in America III: The Third National Report on Commuting Patterns and Trends, by Alan S. Pisarski, Journal of the Transportation Research Form, 2009.

Railroaded: The Transcontinentals and the Making of Modern America, by Richard White, Journal of the Transportation Research Form, 2012.

Harriman vs. Hill by Larry Haeg, Journal of the Transportation Research Form, Journal of the Transportation Research Form, 2014.

Unpublished Papers

"The Road to Ruin: The Union Pacific and the Sinking Funds Cases," Research Triangle Economic History Workshop, Chapel Hill, NC, March 1980.

"Jay Gould and the Financial Management of the Union Pacific," Western Economic Association Annual Meeting, Seattle, WA, July 1983.

"Efficiencies from Intermodal Ownership: The CSX-ACBL Merger," (with L. Lee Lane and Thomas M. McNamara) Transportation Research Forum Annual Meeting, Boston, MA, October 1984.

"Revolution in Rail-Truck Competition: The Advanced Truckload Firm," (with L. Lee Lane), Transportation Table, National Press Club, September 18, 1987.

"Inside the Software Microcosm," Southern Economic Association Annual Meeting, New Orleans, LA, November 1990.

"Are Banks like Trucking Companies or Pizza Parlors? Or Both!" (with Thomas M. McNamara) working paper. 1990.

"Freddie Mac Present and Future Lines of Business," Freddie Mac white paper. 1990.

"Economics Education in Poland," Southern Economic Association Annual Meeting, Atlanta, GA, November 1997.

"Railtrack and the Treatment of Railroad Infrastructure," Surface Transportation Board working paper, 2001.

"A Mixed Strategies Approach to Railroad-Shipper Negotiations," American Economic Association Annual Meeting, Boston, MA, January 2006.

Presentations

"The Political Economy of Regulatory Costing: The Development of the Uniform Rail Costing System," Georgetown Railroad Colloquium, June 17, 2016.

"American Railroads: The Regulatory Perspective," Brookings, Railroads, Policy, and the Economy, June 19, 2015.

"Research at the Association of American Railroads," Transportation Research Board, Group I Council Summer Meeting, Washington, DC, September 1, 1987.

Education

Ph.D., Economics, University of Virginia
MA, Legal History, University of Virginia
BA, (Honors) Swarthmore College

Honors

Named outstanding teaching assistant, University of Virginia
National Merit Scholar
Dupont Fellow at University of Virginia