BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

MURREY'S DISPOSAL COMPANY, INC., Complainant, v. WASTE MANAGEMENT OF WASHINGTON, INC., WASTE MANAGEMENT DISPOSAL SERVICES OF OREGON, INC., AND MJ TRUCKING & CONTRACTING, Respondents.	DOCKET TG-200650 and TG-200651 (*Consolidated*) **RESPONDENTS' OPPOSITION TO COMPLAINANT'S MOTION FOR SUMMARY DETERMINATION**
MURREY'S DISPOSAL COMPANY, INC., Complainant, v. WASTE MANAGEMENT OF WASHINGTON, INC., WASTE MANAGEMENT DISPOSAL SERVICES OF OREGON, INC., AND DANIEL ANDERSON TRUCKING AND EXCAVATION, LLC, Respondents.	

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1. Respondents Waste Management of Washington, Inc., Waste Management Disposal Services of Oregon, Inc., MJ Trucking & Contracting, and Daniel Anderson Trucking & Excavating, LLC respectfully submit this opposition to Murrey's Disposal Company, Inc.'s ("Murrey's") Motion for Summary Determination ("Motion") and ask that summary judgment issue in favor of Respondents.

I. INTRODUCTION

2. In its Motion, Murrey's misrepresents (or misunderstands) the extent of the federal Surface Transportation Board's ("STB") expansive jurisdiction over services related to rail transportation, including the trailer-on-flatcar/container-on-flatcar service provided by Respondents, known as "TOFC/COFC." Congress has made clear that its intent and purpose in occupying the entire field of rail transportation is to promote and encourage the use of railroads and, therefore, to preempt any state law that has the effect of regulating transportation of any freight by rail.

3. The question before the Commission is not whether the federal government has preempted the regulation of solid waste collection or if the Commission has authority to regulate the transportation of solid waste by motor vehicle or if the Respondents are "rail carriers." These are strawman arguments created by Murrey's and not advanced by Respondents. The COFC service at issue here involves the continuous intermodal transportation of containers that remain closed from initial pickup through final delivery. Such service necessarily requires a motor carrier leg **and** a rail carrier leg unless the point of origin sits on a rail line, and such service undisputedly benefits the railroads that haul the containerized freight, here solid waste.[1] It is this entire, continuous, intermodal transportation that is subject to the STB's exclusive jurisdiction

[1] In its Order, the Commission noted that "Respondents are using COFC Intermodal transportation to transport the solid waste, but that is only a portion of the service they are providing." Order 03 ¶ 13. Respectfully, COFC transportation is the **entire** service provided here, including the rail leg and the motor carrier leg.

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regardless of which party arranges the service and whether the motor carrier leg is performed by a "rail carrier."

II. ARGUMENT

A. There is No Presumption Against Preemption Under These Circumstances.

4. Murrey's begins by urging a presumption against preemption that does not apply under these circumstances. At issue here is not whether federal law preempts state regulation of solid waste collection, nor is it whether states are preempted from regulating the transportation of solid waste by the Commerce Clause or the Federal Aviation and Administration Authorization Act. Rather, the only question is whether the State can regulate the highway portion of the continuous intermodal movement of freight that is a necessary component of TOFC/COFC service, an area controlled for decades by federal laws and agencies. Congress and the STB have answered this question in the negative.

5. The presumption against preemption "is not triggered when the State regulates in an area where there has been a history of significant federal presence." *U.S. v. Locke*, 529 U.S. 89, 108 (2000). Congress may explicitly state its intent to preempt state law, but the "question, at bottom, is one of statutory intent." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992); *see also Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (preemption is "compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.").

6. It is undisputed that transportation of freight by railroad is a field that is traditionally occupied by the federal government. Indeed, federal regulation of railroads is "'among the most pervasive and comprehensive of federal regulatory schemes.'" *City of Auburn v. U.S.*, 154 F.3d 1024, 1027 (9th Cir. 1998) (quoting *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981)). The STB and its predecessor, the Interstate Commerce Commission ("ICC"), have exercised jurisdiction over "[r]ail trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service" for many decades. *Improvement of TOFC/COFC Regulation*, EP

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No. 230 (Sub-No. 5), 364 I.C.C. 731 (ICC 1981) ("Sub-No. 5"), *aff'd sub nom. Am. Trucking Assn's v. Interstate Commerce Comm'n*, 656 F.2d 1115 (5th Cir. 1981). Whether acting to regulate or exclude from federal regulation (*i.e.*, deregulate), the STB's exclusive jurisdiction includes within its purview the highway portion of the continuous intermodal movement of freight.[2]

7. In 1995, Congress enacted the Interstate Commerce Commission Termination Act ("ICCTA"), abolishing the ICC and creating the STB. *See Friends of the Atglen-Susquehanna Trail, Inc. v. Surface Transp. Bd.*, 252 F.3d 246, 250 n.1 (3d Cir. 2001). In the ICCTA, Congress expanded on the earlier Staggers Rail Act and fully preempted a field traditionally occupied by the federal government – rail transportation. Under the ICCTA, STB jurisdiction over transportation by rail carriers "is exclusive":

> The jurisdiction of the Board over –
>
> (1) **transportation by rail carriers**, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> **is exclusive**. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b) (emphasis added). Murrey's does not dispute that "the ICCTA's exclusive jurisdiction over the regulation of rail carriers"[3] means that only the STB may regulate rail carriers' transportation of solid waste. Rather, they argue narrowly that Respondents are not rail carriers so the ICCTA does not apply here.

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[2] *See* Respondents' Motion for Summary Judgment § III.A.

[3] Motion ¶ 17.

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8. But, when Congress enacted the ICCTA, it did so "with the purpose of expanding federal jurisdiction and preemption of railroad regulation." *Or. Coast Scenic RR, LLC v. Or. Dep't of State Lands*, 841 F.3d 1069, 1072 (9th Cir. 2016). The changes from the Staggers Rail Act to the ICCTA were "'made to reflect the direct and complete preemption of State economic regulation of railroads.'" *Id.* (quoting H.R. Rep. No. 104-311 at 95 (1995)). The ICCTA "preempts all state laws that may reasonably be said to have the effect of managing or governing rail transportation…." *Ass'n of Am. R.R.s v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1097 (9th Cir. 2010) (quotation marks & citation omitted). "It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations." *City of Auburn*, 154 F.3d at 1030; *accord Swinomish Indian Tribal Cmty. v. BNSF Ry. Co.,* 951 F.3d 1142, 1152 (9th Cir. 2020); *BNSF Ry. Co. v. Cal. Dep't of Tax & Fee Admin.*, 904 F.3d 755, 760 (9th Cir. 2018); *Or. Coast Scenic R.R.*, 841 F.3d at 1976.

9. Here, Murrey's asks the Commission to extend its regulation to a field traditionally regulated by the federal government. No presumption against preemption applies to the Commission's analysis. *Locke*, 529 U.S. at 108. To the contrary, the structure and purpose of the vast regulatory scheme covering rail transportation (including the highway portion of TOFC/COFC service, as explained below) evidences a clear intent to occupy the entire field and preempt state law except where explicitly authorized. *Morales*, 504 U.S. at 383; *Jones*, 430 U.S. at 525. Additionally, where Congress expressly preempts state law, the plain text of the statute "begins and ends our analysis." *Puerto Rico v. Franklin Cal. Tax-Free Trust*, __ U.S. __, 136 S. Ct. 1938, 1946 (2016). A statute with an express preemption "necessarily contains the best evidence of the Congress' pre-emptive intent." *Id.* (quotation marks & citation omitted).

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B. Congress Has Expressly Preempted State Regulation of TOFC/COFC Service Irrespective of Which Party Arranges the Service.

10. Congress defined rail "transportation" to make plain the breadth of its preemption. *Del Grosso v. S.T.B.*, 898 F.3d 139, 149 (1st Cir. 2018) ("transportation" in "ICCTA-speak" is "expansive"). Congress directs that, for the ICCTA's purposes,

> '[T]ransportation' includes –
>
> (A) A locomotive, **car**, **vehicle**, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind **related to the movement of** passengers or **property**, or both, **by rail**, **regardless of ownership** or an agreement concerning use; and
>
> (B) **services related to that movement**, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.

49 U.S.C. § 10102(9) (emphasis added). "[S]ervices related to that movement . . . include[] **receipt**, **delivery**, elevation, **transfer in transit**, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property." *Id.* § 10102(9)(B). "Of course, the use of the word 'include' indicates the list is illustrative rather than comprehensive." *Del Grosso*, 898 F.3d at 142.

11. Murrey's does not dispute that the receipt, transfer, and delivery of solid waste via TOFC/COFC service constitutes "transportation" under the ICCTA.[4] Neither does Murrey's dispute that the STB's decisions concerning its jurisdiction are determinative.[5] Instead, Murrey's focuses its argument on whether Respondents are "rail carriers." Its focus is misplaced. The long history of decisions addressing TOFC/COFC service establishes that such service is within the exclusive jurisdiction of the STB **regardless** of which party arranges the service and that all segments of the service fall within that exclusive jurisdiction.

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[4] *See* Motion ¶ 19.

[5] *Id.* ¶ 22 (citing *Town of Babylon & Pinelawn Cemetery*, FIN 35057, 2008 WL 275697 at 3 (S.T.B. Jan. 31, 2008)).

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12. In 1981, the ICC exercised its authority to deregulate the highway portion of the "continuous intermodal movement" if the rail carrier itself was performing the highway transportation in rail-owned trucks. Sub-No. 5, 364 I.C.C. 731. The exemption from regulation was limited to "service provided by railroads," including both the rail and the truck legs. *Id.* at 733.

13. The ICC's exemption was challenged, and the United States Supreme Court held that the exemption prohibited Texas from regulating the motor carrier portion of TOFC/COFC service:

> The ICC's statutory authority includes jurisdiction to grant exemptions from regulation as well as to regulate. In 1980, Congress enacted the Staggers Rail Act, 94 Stat. 1895, 49 U. S. C. § 10101 et seq., which authorizes the ICC to exempt from state regulation "transportation that is provided by a rail carrier as a part of a continuous intermodal movement."

ICC v. Tex., 479 U.S. at 452.

14. Several years later in 1987, the ICC expanded the TOFC/COFC exemption from regulation to include highway transportation by a motor carrier either as the agent or the joint rate partner of a rail carrier. *Improvement of TOFC/COFC Regulations (Railroad-Affiliated Motor Carriers and Other Motor Carriers)*, EP No. 230 (Sub-No. 6), 3 I.C.C.2d 869 (1987) ("Sub-No. 6"). The ICC noted that "[i]t has long been recognized that the rail and highway … portions of TOFC/COFC service are integrally related, because no single mode of transportation standing alone normally satisfies the needs of a TOFC/COFC shipper." *Id.* at 872. "'[A]ll piggyback service is, by its essential nature, bimodal' because 'its basic characteristic is the combination of the inherent advantages of rail and motor transportation.'" *Id.* (quoting *Am. Trucking v. A.T.& S.F.R. Co.*, 387 U.S. 397, 420 (1967)) (brackets omitted). Moreover,

> [M]otor TOFC/COFC service that is part of a continuous rail/motor movement is obviously "relat[ed] to a rail carrier providing transportation subject to" the Commission's jurisdiction. A railroad cannot provide such intermodal service without first receiving a trailer or container, which is generally moved over-the-road by

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> truck. The highway movement of containers and trailers is an integral and necessary element of TOFC/COFC service.

Id. at 873-74 (quoting 49 U.S.C. § 10505(a), now codified as 49 U.S.C. § 10502(a)). "[W]hether they are owned by the railroad partners, affiliated with them, or independent companies, the motor carriers involved in the over-the-road segment of TOFC/COFC services are business partners of the railroads that are plainly participating in matters 'related to a rail carrier' and are thus within the literal and philosophical scope of § 10505(a) [now codified as 49 U.S.C. § 10502(a)]." *Id.* at 874. The ICC rejected the argument of the motor carriers that "the exemption may be applied *only* to rail transportation …." *Id.* at 875.

15. Pursuant to Sub-No. 6, the ICC next adopted 49 C.F.R. § 1090.2:

> Except as provided in 49 U.S.C. §10505(e) and (g), §10922(1), and §10530, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement, is exempt from the requirements of 49 U.S.C. Subtitle IV, **regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service**. Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service.

Id. at 886 (emphasis added).

16. In 1989, the ICC took the final step to exempt TOFC/COFC service "arranged **independently** with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier …." *Improvement of TOFC/COFC Regulations (Pickup and Delivery*), EP No. 230 (Sub-No. 7), 6 I.C.C.2d 208 (1989) (Sub-No. 7), 6 I.C.C.2d at 227 (emphasis added). The ICC again rejected the motor carriers' argument that the expansion of the TOFC/COFC service exemption did not involve "'a matter related to a rail carrier providing transportation subject to the jurisdiction of the … Commission ….'" *Id.* at 211 (quoting 49 U.S.C. § 10505(a), now codified as 49 U.S.C. § 10502(a)). "Their view seems to be that the 'related-to-rail' language really means 'provided by rail.' We reject the motor carriers' arguments, as we did earlier, and find that the motor carrier

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services at issue here are related to rail carriers providing transportation subject to Commission jurisdiction …." *Id.* The ICC found under its authority at 49 U.S.C. § 10505 (now codified as 49 U.S.C. § 10502(a)), that "TOFC/COFC pickup and delivery services performed by motor carriers as part of continuous intermodal movement are related to rail carrier transportation" and should be exempted from economic regulation. *Id.* at 222, 226.

17. In Sub-No. 7, the ICC revised 49 C.F.R. § 1090.2 as follows (additions emphasized):

> Except as provided in 49 U.S.C. §10505(e) and (g), §10922(1), and §10530, rail TOFC/COFC service and highway TOFC/COFC service provided by a rail carrier either itself or jointly with a motor carrier as part of a continuous intermodal freight movement, is exempt from the requirements of 49 U.S.C. Subtitle IV, regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service. **Motor carrier TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver (or its representative/agent) and performed immediately before or after a TOFC/COFC movement provided by a rail carrier are similarly exempt.** Tariffs heretofore applicable to any transportation service exempted by this section shall no longer apply to such service. **The exemption does not apply to a motor carrier service in which a rail carrier participates only as the motor carrier's agent (Plan I TOFC/COFC), nor does the exemption operate to relieve any carrier of any obligation it would otherwise have, absent the exemption, with respect to providing contractual terms for liability and claims**.

Id. at 227 (emphasis added).[6] Thus, not only did the ICC confirm that it had jurisdiction to regulate the highway portion of the "continuous intermodal transportation," its jurisdiction

[6] The STB's decision to **exclude** Plan I TOFC/COFC service from the exemption of federal regulation confirms its jurisdiction over such service. The STB can change – and has changed – what services within its authority it exempts from federal regulation (*i.e.*, deregulates).

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includes trucking companies performing the highway portion of TOFC/COFC and operating "independently" of the rail carrier.[7] *Id.*

18. Yet Murrey's seeks to divert the Commission's attention from 49 C.F.R. § 1090.2 by contending that "the STB's jurisdiction over motor carriers" "is actually set forth in 49 U.S.C. Section 13501" and that the STB has not exercised jurisdiction over the service at issue here because "none of the Respondents are actually rail carriers."[8] Indeed, none of the Respondents are rail carriers and this fact is legally irrelevant.[9] In 49 C.F.R. § 1090.2 – a decades-old regulation wholly distinct from the STB's standard jurisdiction over motor carriers – the STB states its jurisdiction **over motor carriers** that are providing TOFC/COFC pickup and delivery services. What is determinative here is the mode of transportation, COFC service with motor carrier and rail carrier legs, **not** the type of freight being transported.

19. Murrey's reliance on *Hi Tech Trans, LLC v. New Jersey*, 382 F.3d 295, 308 (3d Cir. 2004), to support its argument to the contrary is wrong. The STB's jurisdiction over TOFC/COFC service was not at issue in *Hi Tech* and the Third Circuit did not purport to address TOFC/COFC service in its opinion. The *Hi Tech* decision is wholly distinguishable because the Court addressed the narrow issue of whether New Jersey's environmental regulations governing **solid waste transfer stations** were subject to the exclusive jurisdiction of the STB. *Id.* at 301. In other words, *Hi Tech* addressed the movement of waste that was taken out of its shipping

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[7] "Federal regulations have no less pre-emptive effect than federal statutes." *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). The Commission previously noted that "[t]he federal law on which the Respondents rely at most reflects the STB's assertion of jurisdiction over the combination of rail and motor carrier transportation when *rail carriers* provide or arrange provision of that transport …." Order 03 ¶ 14 (emphasis original). Respectfully, the regulation says otherwise. It applies to the entire COFC service, which by definition includes a rail and motor carrier leg, "regardless of the type, affiliation, or ownership of the carrier performing the highway portion of the service" and where the motor carrier leg is "arranged independently." 49 C.F.R. § 1090.2.

[8] Motion ¶ 17.

[9] While Murrey's acknowledges that "none of Respondents" "claim to be rail carriers," according to Murrey's, Respondents also "insist" that they "too, qualify as rail carriers under 39 U.S.C. Section 10501." *Id.* ¶ 18. This sleight of hand is not followed by a citation anywhere in the record to such a claim by Respondents. Respondents **do not** claim they are rail carriers or should be treated as rail carriers. They claim – as the undisputed facts bear out – that they are providing COFC pickup and delivery services governed exclusively by the STB.

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containers; in this case, the service provided by the Respondents is the continuous movement of waste that never leaves the intermodal shipping containers.

20. Notably, the transfer activities at issue in *Hi Tech* took place outside of the original shipping containers. *Id.* at 299 ("Hi Tech's Transload Facility operates as follows: (1) trucks hauling C & D waste arrive at the facility; (2) **the trucks discharge C & D into a hopper that Hi Tech provides at the facility**; and (3) the C & D waste is then loaded directly into rail cars **from the hoppers**.") (emphasis added). Since *Hi Tech*, Congress has made clear that the STB retains jurisdiction over solid waste transloading when the activity involves the transloading of solid waste in original shipping containers. 49 U.S.C. § 10908(e)(1)(H)(i) (defining a "solid waste rail transfer facility" that is subject to a carve out of the STB's exclusive jurisdiction as "the portion of a facility owned or operated by or on behalf of a rail carrier … where **solid waste, as a commodity to be transported for a charge**, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, **when the activity takes place outside of original shipping containers** ….") (emphasis added); 49 C.F.R. § 1155.2(a)(10)(ii) (confirming that carve out does not apply to a "facility where solid waste is solely transferred or transloaded from a tank truck directly to a rail tank car.").

21. *Hi Tech* is thus inapposite twice over: first because it did not address the service that is at issue here (TOFC/COFC) and second because Congress has since codified the STB's jurisdictional reach over solid waste transfer facilities that transload solid waste in "original shipping containers" from a truck directly to a rail car, such as the transfer facilities operated by Respondents. *See* 3/16/21 Declaration of Eric Evans ¶ 11. Below is a photograph of a closed intermodal container of corrugated cardboard rejects being transloaded in COFC service from Respondent Daniel Anderson Trucking and Excavation, LLC's truck directly to the rail line at Olympic View Transfer Station operated by Waste Management of Washington, Inc.[10]

[10] Declaration of Aaron Rebmann, Exhibit A.

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And, below is a photograph of a closed Port Townsend Paper-loaded intermodal container of corrugated cardboard rejects being offloaded at the end of the COFC service from North Mason Fiber Company's rail spur at Waste Management Disposal Services of Oregon, Inc.'s Columbia Ridge Landfill in Arlington, Oregon.[11] As can be seen, unlike the removal of solid waste from their containers in *Hi Tech*, here, the intermodal containers are and remain closed throughout transport, from truck, to rail, to landfill. This is, by definition, COFC service.

[11] Declaration of Marion Bailey, Ex. A.

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22. Congress has demonstrated its clear intent to preempt state regulation of activities that benefit and encourage transportation by rail. As Murrey's concedes, Respondents' COFC arrangement with rail carriers results "both factually and legally" in "the railroad provid[ing] service."[12] Undisputedly, this arrangement benefits the railroads that contract with Respondents "because WM subcontracts that [leg of the] transportation service *to the railroad*."[13] State regulation that would impact this benefit would have the "effect of managing or governing rail transportation" and is thus preempted. *Ass'n of Am. R.R.s*, 622 F.3d at 1097.

[12] Motion ¶ 24.

[13] *Id.*

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C. Murrey's Continues to Misunderstand the STB's Exemption Authority.

23. Murrey's asserts that "Respondents adamantly insisted that the exemptions set forth in 49 C.F.R. 1090.2 were not the source of the broad preemption of state regulation they assert applies to their solid waste collection services,"[14] showcasing that it does not understand the relevance of the exemptions.

24. Whether the specific COFC service here is **exempted from federal regulation** (*i.e.*, deregulated) is irrelevant to the question of whether the STB has exclusive jurisdiction over all COFC service, exempted **and** not exempted from federal regulation. The STB's decision to deregulate some TOFC/COFC service does not constitute an abdication of jurisdiction; rather, it underscores the fact that STB has jurisdiction over all TOFC/COFC service. *See Cent. States Motor Freight Bureau, Inc. v. ICC*, 924 F.2d 1099, 1102 (D.C. Cir. 1991) ("Exercise of the ICC's section [10502] exemption authority neither lodges nor dislodges agency jurisdiction; instead, it *presupposes* ICC jurisdiction over the persons or services exempted."); *see also Fayus Enters. v. BNSF Ry. Co.*, 602 F.3d 444, 451-52 (D.C. Cir. 2010) (In the Staggers Act, Congress "'reaffirm[ed] that where the [ICC] has withdrawn its jurisdiction to regulate, the State could not assume such jurisdiction.'") (quoting the Congressional Record). To the contrary, the import of the exemption is that the STB cannot exempt from federal regulation a service that it does not have jurisdiction over – here, the motor carrier portion of COFC service. The STB's authority to exempt – or not exempt – from federal regulation the very service that is at issue in this proceeding demonstrates its exclusive jurisdiction over such service.

25. If the STB's jurisdiction did not extend beyond transportation arranged "by rail carriers," as Murrey's suggests, the STB would not have had the authority to exempt "TOFC/COFC pickup and delivery services arranged independently with the shipper or receiver . . . and performed immediately before or after a TOFC/COFC movement provided by a rail carrier," or the authority to exclude from exemption "motor carrier service in which a rail carrier participates only as the motor carrier's agent," 49 C.F.R. § 1090.2, because each concerns **only**

[14] *Id.* ¶ 29.

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the motor carrier portion of TOFC/COFC service. Thus, the plain language of the regulation evidences the reach of the STB's authority, contrary to Murrey's assertion in this proceeding.

26. Because the STB has exclusive jurisdiction over TOFC/COFC service, which necessarily includes **both** motor carrier and rail carrier legs, state regulation of any part of that service is preempted.

III. CONCLUSION

27. There is no dispute that a rail carrier's transportation of solid waste falls within the STB's exclusive jurisdiction. It is similarly undisputed that TOFC/COFC service – including the motor carrier portion that is a necessary component of that service – is also within the STB's exclusive jurisdiction. And Murrey's concedes, as it must, that the service at issue in this proceeding is "provide[d]" by "the railroad" by virtue of the railroads' contractual relationships with Respondents.[15] The only remaining question is whether the STB's exclusive jurisdiction is vitiated by the simple fact that a motor carrier **arranged** for the railroads' service. Murrey's offers no authority suggesting that it does and accepting its argument would be contrary to federal regulation and decades of preemption law.

28. The State's regulation of the COFC service at issue in this proceeding is preempted by federal law. Accordingly, summary judgment should issue in favor of Respondents.

RESPECTFULLY SUBMITTED this 7th day of April 2021.

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[15] *Id.* ¶ 24.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding, by the method as indicated below, pursuant to WAC 480-07-150.

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