

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
December 30, 2025
Part of
Public Record

STB Ex Parte No. 334 (Sub-No. 8A)

**JOINT PETITION FOR EXEMPTION OF ARBITRATION RULE
FROM APPLICATION OF 49 U.S.C. § 10706 AND MOTION TO DISMISS**

**REPLY OF THE ASSOCIATION OF AMERICAN RAILROADS TO
THE RAILWAY SUPPLY INSTITUTE'S POSITION ON THE EAC REVIEW
AND
OPPOSITION TO RSI'S MOTION TO STRIKE**

Pursuant to 49 C.F.R. § 1104.13, the Association of American Railroads ("AAR") respectfully submits this reply in response to the Railway Supply Institute's ("RSI") December 10, 2025 filing concerning the review of the Code of Car Hire Rules conducted by AAR's Equipment Assets Committee ("EAC").¹ At this procedural stage, AAR will not be drawn into arguing the merits of RSI's positions on the purpose and adequacy of the default car hire rate. However, certain statements by RSI do warrant a response. In the interest of efficiency, AAR will also respond here to RSI's December 15, 2025 Motion to Strike.²

¹ RSI, Position of the Railway Supply Institute on the EAC Review, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (Dec. 10, 2025) ("Position").

² RSI, Motion to Strike by the Railway Supply Institute, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (Dec. 15, 2025) ("Motion to Strike").

I. AAR Did Not Abuse Its Own Committee Process.

First, AAR is compelled to respond to the accusation that the EAC abused its own process for reviewing AAR rules.³

RSI is not a member of AAR, and RSI does not have a seat on the EAC. There is good reason for this. RSI does not own, lease, or use railcars and, thus, does not have a direct interest in the AAR Code of Car Hire Rules. RSI is an advocate for the interests of its members when they share a common position.⁴ But AAR's committee process is not a forum for advocacy or adversarial proceedings; it is a process for actual stakeholders in AAR's rules to provide input on those rules, and for rule changes to be considered and voted upon. The general public does not have a right to be included in the EAC rule review process, and when it comes to the EAC, RSI stands on no greater footing than the rest of the general public. Neither RSI nor its outside counsel have any right to demand access and participation, and nothing about the Board's decision to hold RSI's Petition in abeyance while the EAC did its work changed that. Notwithstanding this, RSI's counsel and retained consultant were permitted to attend and participate in every EAC meeting and every non-data TAG meeting, until their efforts to turn the rule review into an adversarial proceeding became too disruptive.⁵

³ RSI, Position at 4.

⁴ RSI's counsel's assertion that RSI's members cannot adequately represent their own interests in the EAC process and are not "in a position to harmonize the TAG's work with RSI's core concerns," *id.* at 12, calls into question the extent to which RSI's members are knowledgeable about and support RSI's positions in this matter. See, e.g., TTX, Reply to Position of the Railway Supply Institute on the EAC Review, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (Dec. 16, 2025).

⁵ Contrary to RSI counsel's assertion that no one objected to his threat at the October 13 meeting, AAR's counsel in fact immediately intervened and stated to the entire group that the comments were "inappropriate."

In contrast to RSI’s counsel, some of RSI’s members do have a direct interest in AAR’s Code of Car Hire—albeit not by subscription to the Code, but through their involvement as agents of subscribing railroads. By virtue of AAR’s long-standing committee rules and procedures, some of these RSI members have seats on the EAC and its technical advisory groups (“TAGs”) and, thus, have the right to provide input and participate in rule reviews. Here, RSI members fully participated in every step of the rule review process. At least 15 individuals on the Car Hire Rule Review TAG represent various RSI member companies, and an RSI member was Chair of the TAG and ran the meetings. Notably, RSI’s counsel’s complaint is not about RSI members’ ability to fully participate in the committee process. Counsel’s complaint is that he was not permitted to see confidential data, and that he was not permitted to continue to attend meetings after he threatened TAG members with the prospect of an STB proceeding.

RSI’s attacks on AAR’s counsel—who is the legal advisor to the EAC and is charged with ensuring the committee and the TAG ran a fair and appropriate process—are out of bounds. Contrary to RSI’s assertion that “AAR’s counsel controlled who could participate in the TAG review, what they could review, and when they could discuss it,” RSI acknowledges that the TAG—formed from self-selected volunteers—“used a raised-hand queue and managed turns during . . . meetings.”⁶ RSI also acknowledges that participants were “invited to speak by the chair” of the TAG, who was from The Greenbrier Companies, an RSI member.⁷ RSI members on the committee were never prevented from attending or participating in the EAC or the TAG,

⁶ RSI, Position at 10, 11.

⁷ Id. Discussions of confidential AAR/Railinc data were limited during open meetings, as is appropriate for confidential information. Counsel for AAR also ensured that the discussions complied with AAR’s antitrust compliance guidelines.

including in closed data sessions.⁸ However, as noted above, neither RSI nor its outside counsel is a member of the EAC and neither had any right to participate in the AAR rule review process.

II. The Rail Transportation Policy and the Board's Regulations Require Denial of RSI's Petition.

The Board's regulations limit its role in car hire disputes to instances of abuse of the arbitration process provided in Rule 25 (referred to as "the Arbitration Rule"), 49 C.F.R. §1033.1(c)(2)(ii), and to cases involving parties not subscribing to the Code of Car Hire Rules, 49 C.F.R. §1033.1(c)(2)(iii). See STB, Joint Petition for Rulemaking on Railroad Car Hire Compensation, EP 334 (Sub-No. 8) (STB served Apr. 9, 1997), at 5-6 ("Our involvement in car hire disputes is limited to instances where the arbitration process is abused, 49 CFR 1033.1(c)(2)(ii), or a party has not subscribed to the Car Hire Code. 49 CFR 1033.1(c)(2)(iii).").

AAR entered the rule review process believing that RSI's core complaint was with the arbitration process in the Arbitration Rule, which RSI had complained was too expensive and unwieldy to serve as a backstop for failed negotiations. However, as RSI concedes in its December 10 filing, "RSI did not propose to change how parties negotiate or arbitrate."⁹ Rather, "RSI . . . desired to correct the . . . default rate."¹⁰ In other words, there has been no allegation of abuse of the arbitration process or, for that matter, any changes proposed to the arbitration process made by RSI. This is—and always has been—an attempt to achieve higher car hire rates for car owners and lessors that choose to use the AAR car hire system. The STB's

⁸ RSI complains about its inability to access AAR/Railinc data that its members reviewed and discussed. The question of whether the Board can or should order data production from Railinc and/or TTX is one that AAR will address if the Board decides to open a proceeding.

⁹ RSI, Position at 7-8.

¹⁰ Id. at 8.

regulations deprescribing car hire rates do not authorize the Board to intervene in such a dispute.

RSI's alternative argument that the Board should topple the whole system and revoke Rule 25's antitrust immunity granted under 49 U.S.C. § 10706 based on the Rule's violation of the Rail Transportation Policy ("RTP") is upside down. Car hire was deprescribed because the ICC found that "[t]o the extent that bilateral agreements eventually become the norm . . . , [deprescription] will carry out the Rail Transportation Policy which emphasizes allowing competition to set rates to the maximum extent possible so as to minimize federal regulatory control. 49 U.S.C. § 10101a(1) and (2)."¹¹ RSI complains that bilateral agreements are not achievable because the arbitration process has too many internal costs, but does not seek to change the arbitration process. Instead, RSI wants the Board to toss out the deprescription framework and decision, and re-regulate (i.e., raise) the default rate so that bilateral agreements are no longer necessary.¹² That is the opposite of what the RTP demands.

III. RSI's "Motion to Strike" Should Be Denied.

RSI's confusion of the AAR rule review process with an adversarial proceeding is evident in this motion. As RSI acknowledges, Federal Rule of Evidence 408 only applies "in jury and non-jury trial[s] before federal courts."¹³ Moreover, as RSI recognizes, "[t]he Board's evidentiary rules are 'more informal than the Federal Rules of Evidence; they permit the Board

¹¹ ICC, Joint Petition for Exemption of Arbitration Rule from Application of 49 USC 10706 and Motion to Dismiss, EP No. 334 (Sub-No. 8A) (ICC served Oct. 23, 1992).

¹² RSI, Position at 4-5.

¹³ RSI, Motion to Strike at 4.

to accept any evidence that is reliable and probative (49 C.F.R. § 1114.1) and are to be construed liberally (49 C.F.R. § 100.3).”¹⁴

In any event, the review of AAR Car Hire Rules by the EAC and its TAG was not a “compromise negotiation” between adversaries, as RSI asserts.¹⁵ To the contrary, the Car Hire Rule review process is typically a collaborative one, and it was generally so in this instance as well. It is a deliberative process through which stakeholders provide input on, discuss, and ultimately vote on, rule changes. RSI could not possibly have had a reasonable expectation that its members’ statements would be confidential and kept from the STB where the meetings were generally open to the public,¹⁶ meetings were required to be recorded *for submission to the STB*,¹⁷ and the STB ordered that the parties inform the Board of the review undertaken by the EAC.¹⁸

¹⁴ Id.

¹⁵ Id.

¹⁶ The Greenbrier proposal excluding TTX rates from the default rate calculation that RSI now seeks to strike was introduced at the November 10, 2025 EAC meeting, which was open to the public, and both RSI’s outside counsel and its consultant were in attendance. Counsel for AAR does not recall with certainty at which meeting the “bottom line” statement was made, but believes it was that very same public EAC meeting.

¹⁷ See 49 USC § 10706(a)(2)(C). All attendees of EAC and EAC TAG meetings, including RSI’s counsel and consultant, were reminded at the outset of each meeting that it would be recorded pursuant to section 10706.

¹⁸ STB, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (STB served April 9, 2025).

CONCLUSION

Based on the foregoing, as well as the reasons previously set forth by AAR in its opposition filings to the petition, the Board should dismiss RSI's Petition to Reopen and Condition or Revoke Approval, and deny RSI's Motion to Strike.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "K. Kirmayer", is positioned above the typed name.

Kathryn D. Kirmayer
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December 30, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December 2025, I caused to be served by electronic mail a copy of the foregoing.

A handwritten signature in blue ink, appearing to read "Amber L. McDonald", with a stylized, cursive script.

Amber L. McDonald