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March 15, 2024

The Honorable Martin J. Oberman
The Honorable Karen J. Hedlund
The Honorable Patrick J. Fuchs
The Honorable Michelle A. Schultz
The Honorable Robert E. Primus
Surface Transportation Board
395 E Street, SW
Washington, DC 20423
(via email: martin.oberman@stb.gov)

Re: Docket EP 334 (Sub-No. 8A), Petition to Reopen

Dear Chairman Oberman and Members of the Surface Transportation Board:

Modern Rail Capital ('MRC') is submitting this letter in support of the Railway Supply Institutes Petition to Reopen Docket No. EP 334 (Sub-No. 8A). We urge the Surface Transportation Board to promptly reopen this proceeding and examine its approval of Rule 25 of the Code of Car Hire (the "Arbitration Rule").

MRC is concerned that the Arbitration Rule jeopardizes the long-term availability of boxcars and negatively impacts this important fleet. Boxcars are essential for the transportation of many important commodities, including agricultural, forest, and industrial products. Boxcar transportation is often the only practical option for certain commodities and routings.

The Arbitration Rule, however, has disincentivized investment in new railroad-marked boxcars, causing shippers across the country to face an impending boxcar shortfall unless the Arbitration Rule is changed.

Specifically, the current Arbitration Rule establishes a default-rate standard, which effectively assigns all new cars a car-hire rate equal to the lowest negotiated rate in effect for the car type at the end of the previous calendar quarter. While the Arbitration Rule allows car owners to negotiate rates with individual railroads and these rates can supersede a car's default rate as to the railroad, the boxcar market lacks demand-based pricing signals to inform negotiated rates because car owners

cannot practically allocate boxcars to railroad users based on the car hire rate they are willing to pay.

Also, while the Arbitration Rule provides an arbitration mechanism when car owners and users are unable to agree on a car-hire rate, the absence of demand-based pricing signals effectively encourages owners and users to agree on a rate that reflects avoidance of arbitration costs rather than anything that would resemble a true market rate.

Due to the factors above, MRC believes that the Arbitration Rule effectively limits boxcar car-hire rates to levels that do not reflect the true cost of providing and maintaining boxcars, especially as the existing fleet ages and deteriorates.

Additionally, it provides an unfair advantage to railroad owned TTX. TTX is not subject to the Arbitration Rule and charges rates for its boxcars that far exceed normal negotiated rates under the Arbitration Rule allowing TTX to increase its share of the boxcar fleet. As a result, the size of the railroad-marked boxcar fleet has declined significantly, while TTX has taken a leading role in boxcar investment and has grown its market share.

We believe that fair market rates and competition are essential elements of a system that supports all stakeholders and serves the best interest of the American public. We also have concerns that a failure to address the issues with the Arbitration Rule would lead to increased costs and boxcar shortages that would significantly impact railroad operations and the customers that rely on them. Railroad transportation supports the companies and industries that are the economic engine of our country. From forest products to automotive parts, appliances, food products, beverages, grain, and other manufactured goods, these important commodities depend on a healthy boxcar fleet for reliable, efficient transportation throughout our country.

MRC encourages the Surface Transportation Board to promote a healthy boxcar fleet by reexamining its continued approval of the Arbitration Rule and requiring a 120-day negotiation period between AAR and the RSI to resolve this issue. Otherwise, we request that the Surface Transportation Board develop approval conditions that would improve the car-hire system for all stakeholders: rail customers, short lines, Class I railroads, railcar lessors, car manufacturers, and others.

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We appreciate your consideration on this critical issue and encourage the Board to grant the Petition.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Cook".

Kevin Cook
President
Modern Rail Capital