

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 334 (SUB-NO. 8A)

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

**REPLY OF TTX COMPANY TO
RSI PETITION TO REOPEN AND CONDITION OR REVOKE APPROVAL**

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**REPLY OF TTX COMPANY TO
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TTX Company (“TTX”) replies as follows to the Petition to Reopen and Condition or Revoke Approval filed in this docket by the Railway Supply Institute (“RSI”). Although the relief requested by RSI pertains to the “Arbitration Rule” implemented by the Association of American Railroads (“AAR”) and thus does not directly involve TTX, RSI’s Petition pays a great deal of attention to TTX’s activities relating to boxcars.

TTX is submitting this Reply to set the record straight. First, TTX is just one potential source of boxcar supply. TTX plays an important role in operating the Railbox Pool, which contributes to the overall efficiency and productivity of the North American boxcar fleet, and in acquiring new boxcars to supplement that fleet when demand for boxcars is evident. However, TTX does not and could not impose any limitations or restraints on the freedom of its participating railroads or others to acquire or use non-TTX boxcars.

Second, to the extent RSI’s premise for reopening this proceeding is that a “boxcar cliff” justifies efforts to increase car hire rates, TTX’s ongoing monitoring and analysis of boxcar supply and demand indicates that there is no such “cliff.” At the current pace of new boxcar additions by TTX and others, there will be no gap between available supply and demand for boxcar loadings, much less a “cliff.”

Third, RSI's premise that TTX's boxcar usage rates provide an appropriate benchmark for "market rates" for car hire applicable to railroad-marked boxcars is equally incorrect. TTX's mandate and motivations are different from those apparently driving RSI's members. TTX's role is not to make money by collecting usage charges on its boxcars. Rather, TTX's role is to be a low-cost provider of a pool of high-performance, universally useful boxcars that pool participants use to earn revenue from rail transportation.

In TTX's view, RSI's Petition does not support reopening this proceeding. The Board should beware of the potential unintended consequences for the rail network of changes to the current depreservation regime. Decades of experience with trying to address car surpluses and shortages through regulation led the Board's predecessor to depreserve car hire, beginning with the depreservation of car hire for boxcars in the early 1980s.¹ TTX is particularly concerned that RSI's Petition implicitly seeks to re-regulate car hire rates through some form of Board-prescribed "default rate" levels aimed at providing returns on the ownership of railcars that are untethered to supply and demand factors. As the legacy of years of intense ICC evaluation of car hire issues during the 1970s, 1980s, and 1990s should show, regulation of car hire rates poses extraordinary risks to the efficient functioning of the rail network.

If the Board nonetheless elects to reopen this proceeding, TTX would of course cooperate with any inquiry the Board may choose to undertake. But TTX believes that RSI's request for data from TTX is misguided. TTX's decision-making with respect to its acquisition, ownership, and management of its pooled boxcars, including the rates pool participants pay when using those boxcars, has no bearing on the functioning of the car hire arbitration process that arose

¹ See generally *Exemption from Regulation – Boxcar Traffic*, 367 I.C.C. 747 (1983) (discussing multitude of pernicious effects on railroad efficiency and railcar supply associated with regulated car hire rates).

from depreservation. Accordingly, TTX urges the Board to focus any inquiry arising from RSI's Petition on railroad-marked boxcars, not the operation of TTX's Railbox Pool.

I. TTX's ROLE

TTX's predecessor, Trailer Train, was formed in 1955 to meet the demand for a nationwide fleet of pooled, free-running flatcars. In 1974, Railbox was organized as a wholly owned subsidiary of Trailer Train. Railbox was created in an effort by railroads to supplement the then-existing sources of boxcar supply. The pool is open to participation by all railroads, with 274 current signatories to the Railbox Form BX Car Contract, the vast majority of which are shortlines. Railbox's mission is to acquire, finance, and manage a pool of high-performance, universally useful boxcars to supplement the existing fleet and accomplish better service to the public while also improving car utilization and efficiency. The ICC authorized the Railbox Pool in 1974.²

As operator of the Railbox Pool, TTX is charged with gathering information about the present and estimated future requirements for boxcars so it can make informed decisions about the number and types of boxcars to acquire for the pool. Those decisions are made against the backdrop of TTX's mission to provide an efficient and low-cost source of cars to supplement those acquired by individual railroads and others, not to limit the overall number of boxcars acquired by the industry. Indeed, a central principle of TTX's Railbox Pool has always been that participants remain free to acquire and use non-TTX cars without limitation. *See, e.g., Railbox Approval*, 347 I.C.C. at 874 ("No participating railroads shall be prevented from satisfying its car needs outside of the pool.").

² *See American Rail Box Car Co. & Trailer Train Co., et al. –for Approval of the Pooling of Car Service with Respect to Box Cars*, 347 I.C.C. 862 (1974) ("*Railbox Approval*").

When demand for pooled boxcars is evident, TTX has consistently made investments to augment the North American boxcar fleet. For example, as shown in Figure 1, below, TTX has added 17,695 boxcars since 2016 (through 2023), at a cost of \$2.25 billion.

FIGURE 1
TTX BOXCAR ACQUISITIONS SINCE 2003

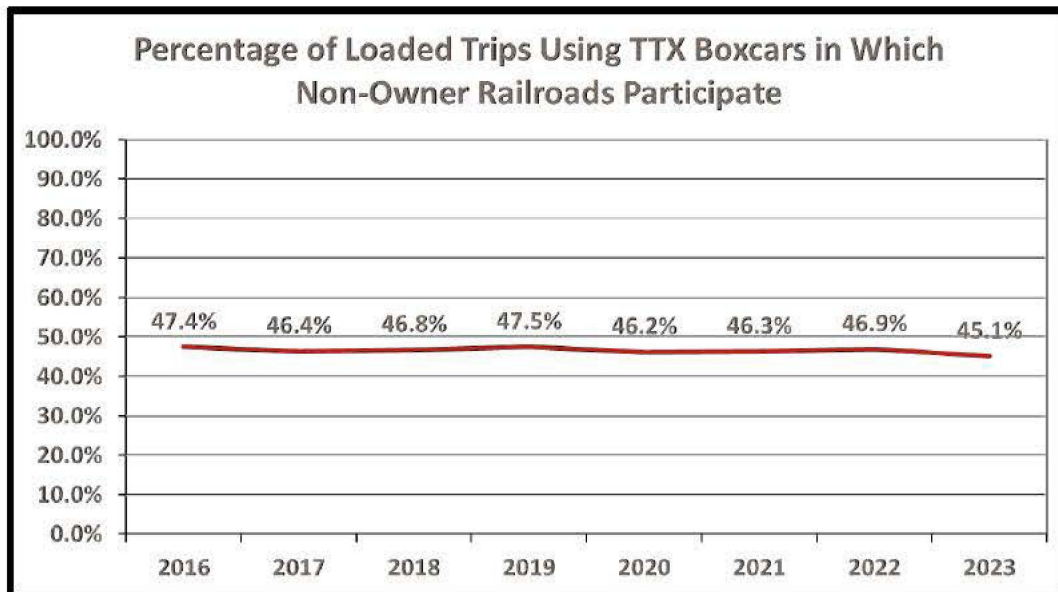
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TTX's boxcars are, of course, devoted to use by its many participating railroads, not TTX itself (which is not a carrier). TTX's boxcars facilitate the movement of freight across the North American rail network by a wide array of carriers, not just TTX's owners, which are primarily the Class 1 railroads. As shown in Figure 2 below, almost half of all loaded movements using TTX boxcars originate, terminate, or both originate and terminate, on non-Class 1 railroads.

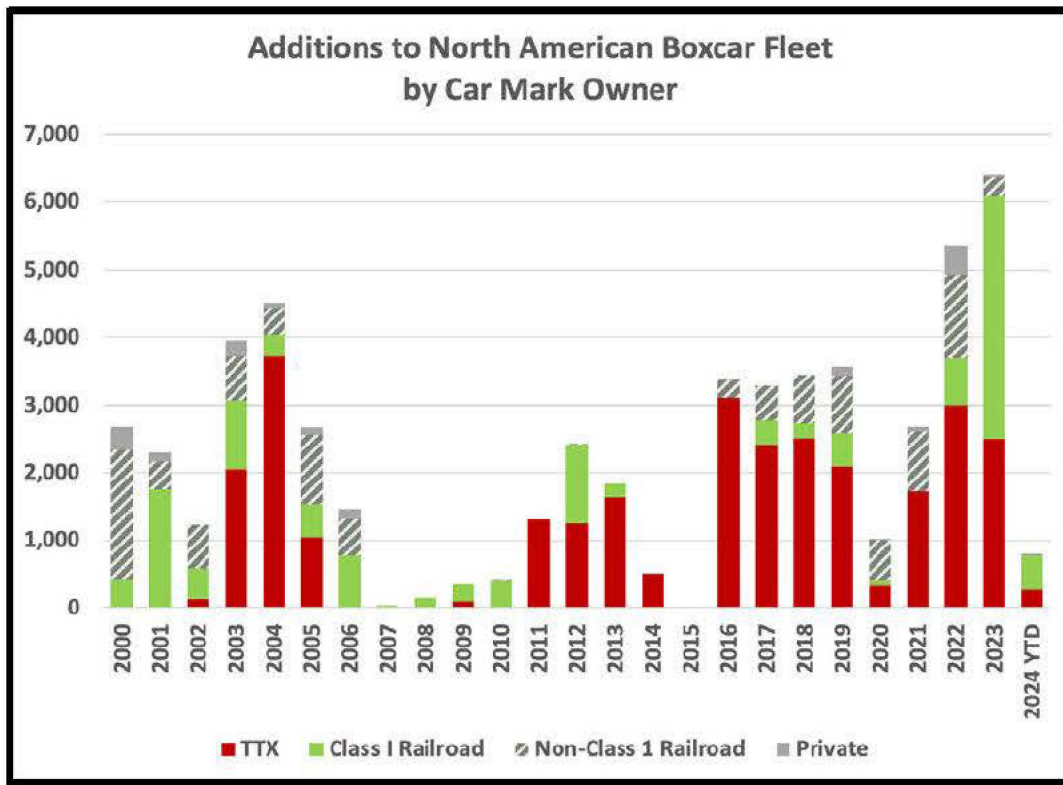
³ Highly Confidential information in this document is enclosed in double braces and redacted from the public version of this document.

FIGURE 2
TTX BOXCAR MOVEMENTS IN WHICH SMALLER RAILROADS PARTICIPATE



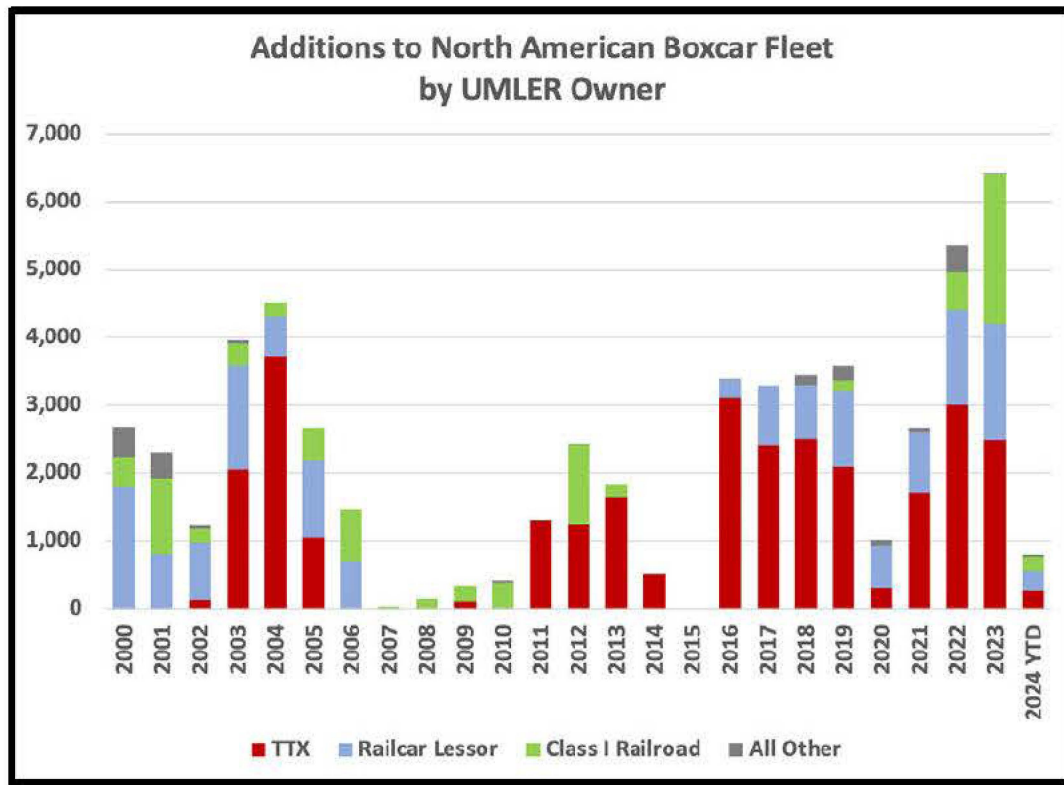
TTX is proud of its track record of supporting investments in boxcars that facilitate the provision of efficient rail transportation by its pool participants. TTX's acquisitions since 2000 represent just over half of the 55,000 boxcars that have been added to the fleet in that period as shown in Figure 3 below. Figure 3 reflects the marks assigned to the newly-added boxcars when they were added to the fleet, as recorded in the UMLER equipment database (Class 1 railroads, other railroads, TTX, and private cars). Even with these acquisitions, TTX remains only a supplemental source of boxcar supply to the industry. TTX-owned boxcars comprise less than 32 percent of the North American fleet

FIGURE 3
ADDITIONS TO NORTH AMERICAN BOXCAR FLEET SINCE 2000 BY MARK



Railcar leasing companies have participated heavily in the acquisition of boxcars since 2000, particularly for the cars that have ended up bearing Class 1 railroad marks. Figure 4 below shows the breakdown of the same new car acquisitions since 2000 based on the *record owner* of the cars when they were added to the fleet, as recorded in the UMLER equipment database. Leasing companies invested in more than 15,100 new boxcars since 2000, and more than 7,700 new boxcars between 2016 and 2023, evidencing that they are entirely capable of participating in the marketplace (and incentivized to do so) when there is demand for cars in anticipation of future loadings.

FIGURE 4
ADDITIONS TO NORTH AMERICAN BOXCAR FLEET SINCE 2000 BY UMLER OWNER



As shown in both Figures 3 and 4, TTX’s share of boxcar acquisitions in 2023 was only 39 percent, with cars acquired by Class 1 railroads directly and by leasing companies (primarily for marking by Class 1 railroads) comprising 61 percent of the new boxcar acquisitions in that year. In other words, TTX’s owners themselves have been acquiring most of their new boxcars from sources other than TTX.

II. THERE IS NO “BOXCAR CLIFF”

The same analysis that has informed TTX’s investments in boxcars also shows RSI’s claims about a “boxcar cliff” are incorrect. The TTX PowerPoint presentation attached to RSI’s Petition (as Appendix E) tells most of the story.⁴ The large number of boxcars approaching

⁴ RSI does not try to refute the information provided in TTX’s PowerPoint. In fact, RSI’s Petition does not mention the PowerPoint, apart from listing it in the Table of Contents.

retirement age are those added to the fleet in the late 1970s, after ICC intervention to increase car hire rates for boxcars induced significant overinvestment by numerous “astute [non-railroad] investors.”⁵ The ICC’s “deprescription” of car hire for boxcars in the 1980s (which RSI does not mention) followed by the agency’s broader deprescription orders in the early 1990s (about which RSI complains), were in large part responses to the overinvestment and resulting operational inefficiencies.⁶ The 1980s boxcar glut became the poster child for the rate prescription system’s inability to respond to market conditions.

There is ample evidence that retirements of these 1970s-era boxcars, which have been underway for some time and will continue over the next several years, will not threaten railroads’ collective access to the boxcars necessary to meet the demand for such cars.

First, from a supply perspective, the rail industry has been acquiring new boxcars at a rate more than sufficient to offset reductions in capacity. Capacity is about more than the raw number of cars in the fleet. Approximately one-third of plain boxcars are scheduled to retire through 2030. However, existing boxcars have not been intensively utilized in recent years. As TTX’s PowerPoint shows, more than 15,000 boxcars, or 15 percent of the fleet, were idle in September 2023, which means they had not moved in 61 or more days. Further, in mid-2022,

⁵ As ICC Commissioner Andre explained in 1986:

“What is actually happening here is that a small number of car leasing companies have recently found themselves with more boxcars than the railroad industry needs for transportation. The boxcars were financed by astute investors who were able to benefit handsomely from tax breaks, the high car rental rates in the 1970s, and the boxcar shortage prior to the Staggers Act. By leasing their cars to small railroads, the owners of the boxcars are able to utilize the mandatory car interchange of the Interstate Commerce Act to force the larger carriers to accept these unneeded cars in interchange and to pay prescribed car hire rates.”

Boxcar Car Hire & Car Service, 3 I.C.C.2d 1, 18 (1986) (Commissioner Andre, dissenting).

⁶ The ICC’s 1983 decision in the *Boxcar Exemption* proceeding noted that even at that early date the agency was dissatisfied with the regime of prescribed car hire for all car types and was exploring the availability of regulatory alternatives. 367 I.C.C. at 765 & n.54.

during the most recent boxcar usage peak, more than 7,000 boxcars remained idle, which suggests many cars on the verge of retirement are already functionally obsolete in the sense that they are not sought after for the loading of freight.

In addition, the rail industry will require less than one new car to replace the capacity provided by each retiring boxcar. The new boxcars TTX and others are acquiring today have higher carrying capacities and a more standardized design than the 1970s-era equipment facing retirement. A new, high-capacity 60-foot boxcar carries 25 percent more tons per load than an older 50-foot car, which means fewer cars will be needed to move the same amount of freight. At the same time, increased standardization of equipment will allow the boxcar fleet to operate more efficiently – that is, with shorter empty movements needed to find a new load – thus allowing railroads to handle more loads with each boxcar, as TTX’s own experience bears out.

In Figure 5 below, we portray the interaction of these supply trends. As the chart in Figure 5 illustrates, with the addition of new boxcars to the fleet at a rate even lower than in prior years,⁷ the anticipated retirements of 1970s-era cars create only an exceedingly small reduction in capacity – and that is before any adjustment for increased fleet efficiency. The bars reflect the capacity of the North American boxcar fleet in each year shown, with additions from the prior period shown in yellow, retirements since the prior period shown in grey, capacity that remains in the fleet shown in red, and capacity associated with stored cars shown in red and white stripes. The chart reflects the increased capacity of newer boxcars by using each car’s load limit – for example, a typical 1970s-era 50-foot boxcar has a load limit of 70 tons, while a modern 60-foot Plate F boxcar has a load limit of 100 tons.

⁷ As Figure 3 shows, investment in boxcars dipped during the COVID pandemic, but over the period since 2016 an average of 3,638 cars has been added to the fleet annually.

As Figure 5 demonstrates, the boxcar supply has not fallen off any “cliff,” nor will it given the recent pace of investments in new boxcar capacity by railroads, lessors, TTX, and others.

FIGURE 5
ANTICIPATED RETIREMENTS CREATE
NO SHORTFALL IN BOXCAR CAPACITY

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Further, from a demand perspective, the aggregate need for boxcars has been declining steadily over many decades and is not expected to return to prior levels. As TTX’s PowerPoint shows, boxcar loadings dropped by more than 16 percent between 2010 and 2023. In the period from 2016 to 2023, total loadings fell by 6.9 percent – more than twice as much as the 3.4 percent reduction in the total load limit of the boxcar fleet. Although boxcars remain a vital car type for the rail industry, many shipments formerly carried in boxcars now move in other car types: merchandise and mixed shipments move in intermodal containers, grain moves in hoppers, automobiles and farm equipment move on flatcars and multilevel autoracks. Vast numbers of businesses no longer have facilities adjacent to rail sidings and instead move their

goods initially by truck, with terminal-to-terminal intermodal rail shipments replacing dock-to-dock movements in boxcars.

In sum, from TTX's perspective, the pace of ongoing boxcar acquisitions by TTX and others will ensure the rail industry has sufficient cars to meet the demand for transportation in boxcars without the need for regulatory intervention.

III. TTX'S POOLED BOXCARS DO NOT PROVIDE AN APPROPRIATE BENCHMARK FOR CAR HIRE RATES ON RAILROAD-MARKED CARS

Not only is RSI wrong about the existence of a "boxcar cliff," RSI's attempt to blame the Arbitration Rule for the cliff has no foundation. RSI claims potential suppliers of boxcars will not save the industry from the supposed cliff because the Arbitration Rule deters investment in new cars by creating an environment in which car hire rates are below "market rates." As proof, RSI points to TTX's usage rates for boxcars. But TTX's rates are not designed to reflect supply and demand conditions, and they are accordingly irrelevant to whatever issues RSI has with car hire rates for cars that are subject to the Arbitration Rule.

RSI's claim that TTX's rates are *too high* might be interesting if one were evaluating the sincerity of RSI's challenge to the Arbitration Rule. Many car leasing companies that are also RSI members previously told the Board that TTX's rates for pooled equipment are *too low* to enable them to compete in the market for flatcars.⁸ However, the truth is that the level of TTX's rates is not relevant in a proceeding addressing the Arbitration Rule. TTX's rates are not subject to the Arbitration Rule, as RSI acknowledges. Further, the notion that TTX's rates are a reasonable benchmark for "market rate levels" that the depreservation process is designed to reflect is misguided.

⁸ See *TTX Co., et al. – Application for Approval of Pooling of Car Service with Respect to Flatcars*, 7 S.T.B. 778, 782 (2004) ("They assert that TTX sets its flatcar usage rates at levels that are below those that leasing companies profitably can charge for similar equipment.").

As the ICC recognized when it authorized the Railbox Pool, TTX's basic rate policy in operating the pool is established in the Railbox Pooling Agreement. Under the Railbox Pooling Agreement, TTX rates must be cost based, not based on supply/demand factors. TTX is required to set rates at the lowest level required to cover the costs of fulfilling its multifaceted role as pool operator, not to reflect the market value assigned by any individual railroad to a particular group of cars that it may end up using. Specifically, TTX is required to set rates:

“at the lowest level required to meet TTX's ordinary and necessary costs and expenses, including, as appropriate, return on investment, to establish for it a financial position enabling it to finance box car acquisitions on a reasonable terms and to keep cars in proper condition for operation at the highest point of efficiency and to accumulate retained earnings adequate to support continued reasonable enlargement of the number of cars in the pool, to that number found to be needed, and, within a reasonable time, without need for guarantees by Railroad Participants.”⁹

Nor does TTX have any guarantee that it will earn usage charges on all of its cars at all times. Railroads using TTX's boxcars are free to take them “off the clock” through a mechanism referred to as “turnback” if there is not demand for the cars or if the railroad would prefer to use other equipment because it is more attractive financially or for any other reason.¹⁰

In other words, TTX's objective is not to mimic the “market” or seek to maximize profits derived from “car hire” payments on the boxcars it owns. TTX is required to charge rates that allow it to acquire cars on reasonable terms when there is a collective demand for pooled boxcars, maintain the cars in a condition that allows for efficient operations, and manage the pooled fleet. TTX does not view rising demand as a signal to raise rates or falling demand as a

⁹ See Exhibit A hereto (excerpts from Railbox Pooling Agreement); see also *Railbox Approval*, 347 I.C.C. at 874-75.

¹⁰ *Railbox Approval*, 347 I.C.C. at 872 (“A participating railroad may deliver any pool cars which are surplus to its operations to any connecting participating railroad, unless the connecting railroad has given such notice of its unwillingness to accept empty cars. If a participating railroad is unable to find a connecting participating railroad willing to receive its surplus cars, has received no disposition instructions for such cars, and has given Railbox at least 5 days' notice of their surplus status, no further car-hire charges will be levied on those cars.”).

signal to reduce rates.¹¹ In addition, TTX’s rates reflect efficiencies created by pooling, but they will not necessarily reflect the full value provided by TTX’s pooled fleet, including its high maintenance standards and other significant pooling efficiencies.

In addition to these key distinctions between TTX’s usage charges for pooled equipment and the car hire rates earned on off-line railroad-marked boxcars, the RSI Petition also ignores the fact that TTX’s usage charges are the *only* source of revenue to support TTX’s investment in pooled cars, whereas other owners of boxcars – most notably railroads and leasing companies – earn revenue from both car hire payments as well as the underlying transportation revenues that these cars generate. Railroads, of course, receive transportation revenues directly as a function of the services they provide using boxcars. Leasing companies do not earn transportation revenues directly, but they can and often do earn lease revenue derived from those transportation services by negotiating leases with railroads that incorporate fixed payment terms reflecting the railroads’ demand for (and earnings from) boxcars for transportation purposes, rather than relying sole on a pass-through of car hire payments generated when the cars are off the lines of the lessee railroad.¹² This form of leasing likely explains the substantial participation by leasing companies in the acquisitions of boxcars since 2016 shown in Figure 4 above.

RSI’s Petition does not address TTX’s cost-based rate policy or its limited source of revenues, much less provide any support for the notion that rates set under these circumstances serve as an appropriate benchmark for market rates.

¹¹ Of course, TTX might raise rates to ensure it has sufficient funds to acquire and maintain a larger fleet, or reduce rates to incentivize use of the pooled cars to maximize the efficiencies associated with the pooled fleet’s operation.

¹² The ICC’s 1983 *Boxcar Exemption* decision describes the distinction between a fixed rate lease and so-called “per diem lease arrangements,” which the agency noted were “obviously ... predicated on the present system of prescribed car hire” that provided an inappropriate “illusion for the investor that regulation guarantees a return on all car investments regardless of the size of the car fleet.” With the demise of prescribed car hire rates for boxcars, the agency noted, “[c]ar purchase decisions will [instead] be based on forecasts of future car supply and demand.” 367 I.C.C. at 770, 773.

IV. IF THE BOARD DOES REOPEN THIS PROCEEDING, IT SHOULD NOT REQUIRE TTX'S PARTICIPATION

In the event the Board chooses to reopen this proceeding, TTX urges it to do so in a manner that maintains a narrow focus on the specific issues RSI raises about the Arbitration Rule's effect on boxcar supply.

The Arbitration Rule is part of a regime designed to establish the rates paid by one railroad when it participates in the movement of railcars of all types that are owned or leased by another railroad. If the Board elects to examine the issues raised by RSI, it should confine any proceeding to boxcars rather than threatening disruption of the regime applicable to other car types.

TTX of course would cooperate with any inquiry the Board chooses to undertake, but the Board should recognize that TTX's usage charges are not an appropriate benchmark for the "market rates" that are the object of the depreservation regime, and that the data that RSI suggests TTX should provide would not shed light on the appropriate functioning of the Arbitration Rule.

CONCLUSION

The Board should reject RSI's Petition for the reasons set forth in these Reply. In the event the Board reopens this proceeding or seek additional information, it should not require TTX to provide information about rates for pooled boxcars or operation of the Railbox Pool.

Respectfully submitted,

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April 15, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing TTX Reply to RSI Petition to be served electronically on

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/s/ Michael L. Rosenthal
Michael L. Rosenthal

April 15, 2024

VERIFICATION

I, William J. Sheehan, TTX's Vice President of Fleet Management, declare under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to provide this verification.

Executed on April 15, 2024

/s/ William J. Sheehan
William J. Sheehan
TTX Vice President of Fleet Management

RAILBOX POOLING AGREEMENT

(Restated June 20, 2006)

THIS AGREEMENT, dated as of the 1st day of October, 1974, by and among the railroad companies, the trustees of certain railroad companies, signatories hereto (hereinafter collectively called the "Railroad Participants"), and TTX Company, 101 North Wacker Drive, Chicago, IL 60606 (hereinafter called "TTX") as successor in interest to American Rail Box Car Company (hereinafter called "RAILBOX").

In consideration of their mutual and reciprocal undertaking, the Railroad Participants agree with each other and with TTX as follows:

ARTICLE I--THE PARTIES

1.1. All of the Railroad Participants are common carriers engaged in the transportation of property by railroad in interstate commerce, between points in the United States, subject to the provisions of Part I of the Interstate Commerce Act. In such operations, they transport freight in railroad cars, including box cars, and compete with one another in providing such transportation service.

1.2. TTX Company was incorporated as Trailer Train Company under the laws of the State of Delaware on November 9, 1955. Currently, 100% of its capital stock is owned directly or indirectly by Railroad Companies as hereinafter defined. It presently is a car owning company furnishing flat cars to Railroad Companies under car contracts and provides related procurement, financing and management services with respect thereto.

1.3. RAILBOX was incorporated under the laws of the State of Delaware on January 14, 1974, for the purpose of acquiring and owning or leasing a fleet of box cars for use as a national box car pool. The capital stock of RAILBOX is wholly owned by TTX.

ARTICLE II--DEFINITIONS

2.1. "Railroad Company" means a common carrier by railroad as defined in Section 1, Part I, of the Interstate Commerce Act.

2.2. The "Act" means the Interstate Commerce Act and the "Commission" means the Interstate Commerce Commission.

2.3. "Car service" means those functions defined in Section 1 (10) of the Act, including the design, acquisition, financing, utilization, maintenance and accounting for the use of freight cars.

5.3. The parties expressly acknowledge that the agreement, undertakings and plans set forth herein will mutually benefit each of them and will enable them to improve car service to the members of the shipping public without any undue restraint on competition between them, or between them or any of them, and any other person.

ARTICLE VI--STUDIES of BOX CAR TYPES

6.1. Pursuant to this Railbox Pooling Agreement, the Railroad Participants herewith undertake and agree to conduct, through TTX, studies, from time to time, and to consider the application of the terms of this agreement to particular types of box cars.

ARTICLE VII--THE BOX CAR POOLING PLAN

7.1. There shall be established a pool of general purpose box cars of a standardized design or designs to be controlled and managed by TTX as a nationwide pool of free-running cars in minimum number of 10,000 such cars pursuant to this Railbox Pooling Agreement.

7.2. All Railroad Companies in North America shall be invited and encouraged to participate in the Railbox Pooling Agreement. Participation shall be limited to those meeting the requirements set forth herein.

7.3. TTX shall be the instrumentality through which this agreement and pooling plan shall be carried out and the board of directors of TTX shall be vested with the authority necessary to accomplish that purpose.

7.4. Participation in this box car pooling plan shall be dependent upon compliance by each Railroad Company desiring to participate with the following requirements:

- (a) Being a signatory to this Railbox Pooling Agreement and included within the scope of an order of the Interstate Commerce Commission approving an application under Section 5(l) of the Act with respect thereto; and

- (b) Being a signatory to such Form "BX" Car Contract, as amended and supplemented, covering terms of use of the pool cars, as the board of directors of TTX shall, from time to time, have established.

7.5. Each Railroad Company signatory agrees with each other signatory to comply with the terms and conditions of this agreement.

7.6. The board of directors of TTX shall determine, from time to time, the number, type, and design characteristics of the box cars to be acquired by TTX and other matters pertaining to their design, purchase, financing; utilization, maintenance, accounting, and methods to be employed for the division of gross or net earnings.

7.7. Each Railroad Participant, without limitation upon its right to secure any or all of its requirements for box cars by other means, shall:

(a) Furnish to TTX such information relative to the types of box cars under consideration for purchase by TTX as TTX may reasonably request; and

(b) Furnish to TTX such other information as it may reasonably request concerning utilization of the type of box cars to which this agreement relates, including such Railroad Participant's anticipated requirements of such car types.

7.8. Box cars to be included in the pool shall be purchased and owned or leased by TTX, using such methods of financing as shall be available to it. It is recognized that initially RAILBOX will not have sufficient credit of its own to support normal financing of such purchases and that guarantees by one or more Railroad Participants may be required. Accordingly, certain of the Railroad Participants have indicated that subject to certain conditions, including Commission approval, if required, they will agree to guarantee the initial car purchase money obligations of RAILBOX.

7.9 Rates and charges and orders and regulations relative to cars in the box car pool shall be fixed, from time to time, by the board of directors of TTX in accordance with the following principles:

(a) It shall be the policy of TTX to maintain per diem, mileage and other charges at the lowest level required to meet TTX'S ordinary and necessary costs and expenses, including, as appropriate, return on investment, to establish for it a financial position enabling it to finance box car acquisitions on reasonable terms and to keep the cars in proper condition for operation at the highest point of efficiency and to accumulate retained earnings adequate to support continued reasonable enlargement of the number of cars in the pool, to that number found to be needed and, within a reasonable time, without need for guarantees by Railroad Participants. It is the intention of the parties to the Railbox Pooling Agreement that the total compensation paid to TTX by Railroad Participants shall be no greater than consistent with the foregoing policy;

(b) Rates and charges, orders and regulations shall be observed by all Railroad Participants in the box car pooling plan;

(c) With such exceptions as the board of directors of TTX may from time to time prescribe, all detention and movement of cars on a Railroad Participant's line will be subject to rental charges;

(d) Charges shall include a per diem charge and/or a rate or rates for each mile of movement of such car, whether loaded or empty, on the line of a Railroad Participant; and

(e) To the extent that per diem, mileage and other charges exceed the criteria set forth in subparagraph (a) hereof, such charges may be subject to adjustment, referred to as an "adjustment refund", as provided in this subparagraph (e). An adjustment refund for any year may be determined at the beginning of the following year by the board of directors of TTX and be expressed as a percentage of the amount by which all car-hire compensation earned by TTX during such prior year shall exceed the ordinary and necessary expenses of operation, together with the net earnings to be retained by it, for such year. In determining the amount of any such adjustment refund, said board of directors may take into account such other factors as in their judgment shall be appropriate. The adjustment refund, if and to the extent declared by the board and approved by the Commission, shall be paid to Railroad Participant as an adjustment of per diem, mileage and other charges paid by them for the use of TTX cars during such prior year, such amount to be divided among them on the basis of