

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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
RSI'S MOTION FOR LEAVE TO FILE A SURREPLY**

The Association of American Railroads ("AAR") replies in opposition to the Motion for Leave to File a Surreply ("Motion"),¹ filed by the Railway Supply Institute ("RSI") in support of its Petition to Reopen and Condition or Revoke Approval ("Petition").² As RSI concedes, the rules of the Surface Transportation Board ("Board") "prohibit a reply to a reply."³ The Board should enforce its rule to ensure its processes are respected and fair.

While the Board has allowed for a surreply "when it will contribute to the just determination of the issues presented, does not prejudice any party, and will not unduly prolong the proceeding," those elements are not present here.⁴ First, RSI's proposed surreply is nothing more than a jumble of false, unsupported, and/or confusing assertions that do not contribute to the just determination of RSI's Petition. Second, accepting RSI's proposed

¹ See Railway Supply Institute ("RSI"), Motion for Leave to File a Surreply, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (May 6, 2024) ("Motion").

² See RSI, Petition to Reopen and Condition or Revoke Approval, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (Mar. 25, 2024) ("Petition").

³ RSI, Motion at 2; see also 49 C.F.R. § 1104.13 (c) ("A reply to a reply is not permitted.").

⁴ RSI, Motion at 2 (emphasis added).

surreply would prejudice AAR and other interested parties, which do not necessarily have the opportunity to respond to new and expanded arguments in the surreply. Finally, permitting the filing of RSI's surreply would necessarily extend the time for the Board to reach its determination on RSI's Petition.⁵

The grant of a "reply to a reply" should occur only in rare and exceptional circumstances where there is a new fact that obviously could not have been presented earlier. However, RSI offers no persuasive reason why it could not have presented all arguments in favor of its petition at the outset, so the surreply smacks of procedural gamesmanship. AAR has previously urged the Board to enforce its procedural rules, in the interests of fairness and efficiency to all involved.⁶ Enforcement of such rules is in keeping with both the Board's goals and the rail transportation policy.⁷ Because the standards for granting the Motion here have not been met, the Board should refuse to permit RSI's proposed surreply.⁸

⁵ Justice would require the Board to consider the counterarguments made by AAR in this Reply, in response to RSI's newly—and belatedly—raised arguments.

⁶ See, e.g., AAR, Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704 (Sub-No 1) (Oct. 21, 2016), at 2 ("[A]ny incompleteness [of the record] is due entirely to [movant's] failure to file all supporting evidence with its opening comment (or with its reply). . . . Allowing Movants' belated filing not only would be contrary to the rules, it would be prejudicial to AAR and all of the other participants who complied with the Board's rules and who will not have an opportunity to respond substantively to Movants' . . . filing.").

⁷ "Since its creation on January 1, 1996, the Board has attempted to be a model of common-sense government -- an entity that provides an efficient, expeditious, even-handed, and effective forum for the resolution of disputes." *Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the STB*, 2 S.T.B. 564, 1997 STB LEXIS 222, *35-36 (STB Served Aug. 25, 1997). Further, the rail transportation policy (RTP) at 49 U.S.C. § 10101 states that, in regulating the railroad industry, it is the policy of the United States Government to "provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part." 49 U.S.C. § 10101(15).

⁸ As noted below at page 9, in the event that the Board grants RSI's Motion, AAR requests that the Board also consider the evidence contained in this filing and the attached Verified Statement of M. Rapik Saat, which have been provided in response to RSI's belatedly submitted new evidence.

ARGUMENT

I. **RSI’s proposed surreply will not contribute to the just determination of the issues because its arguments are confusing, unsupported, and misleading.**

The proposed surreply confuses—rather than clarifies—the facts and issues surrounding RSI’s Petition, by making claims without any meaningful factual support. Indeed, the surreply is replete with generalities and unfounded allegations. For example, RSI’s theory that railroads are somehow “gaming” the system by manipulating the default rate is nothing more than an inflammatory accusation.⁹ RSI’s unsupported allegations would fall far short of the standard necessary to assert a viable claim in court.¹⁰ Another example is RSI’s claim that “[b]oxcar lessors cannot avoid the Code of Car Hire.”¹¹ This claim is not supported, and that is because it is patently false. The Car Hire Rules speak clearly to their scope, and apply only to railcars, including boxcars, bearing railroad reporting marks, as AAR pointed out in its April 15, 2024 Reply to the Petition to Reopen and Condition or Revoke Approval (“Reply to the Petition”).¹² RSI’s members are free to purchase boxcars and register them with their own marks, thereby avoiding the Car Hire Rule system entirely. Instead, RSI’s members purposefully *seek out* railroad marks and *choose* to participate in the Car Hire Rule system.

⁹ See, e.g., RSI, Attachment to the Motion at 12.

¹⁰ The Supreme Court has held that a complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

¹¹ See RSI, Attachment to the Motion at 13.

¹² See AAR, Reply to the Petition to Reopen and Condition or Revoke Approval, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (Apr. 15, 2024) (“Reply to the Petition”), at 2, 11, 12.

II. RSI's proposed surreply introduces new issues and would prejudice AAR and other interested parties.

RSI claims that “[a]ccepting RSI’s surreply will not prejudice AAR or TTX” because “[t]he surreply does not introduce new issues.”¹³ This is false. The proposed surreply introduces new arguments and facts without an opportunity for opposing parties to respond, and the surreply reiterates and expands on previous arguments. Preventing this imbalance is precisely the reason why STB regulations prohibit a “reply to a reply.”¹⁴ The Board should enforce its rule so as to not encourage such behavior.

RSI’s proposed surreply presents a number of new arguments, all of which were available to RSI at the time of its initial filing:

Boxcar investment. RSI argues for the first time in its surreply that the circumstances underlying the recent investments into boxcars “were unique and no longer exist.”¹⁵ RSI also provides a new verified statement from GATX Corporation’s Executive Vice President and President, Rail North America. The verified statement outlines the reasons why GATX elected to invest in boxcars in 2020 and 2021—*i.e.*, historically low interest rates and corresponding lower boxcar prices.¹⁶ In fact, the argument that these conditions were “unique” and will not reoccur is contrary to expert analysis that says the Federal Reserve will cut interest rates as soon as September 2024.¹⁷ There has been and will continue to be points in the business cycle

¹³ RSI, Motion at 5.

¹⁴ 49 C.F.R. §1104.13(c).

¹⁵ RSI, Attachment to the Motion at 3.

¹⁶ Id.

¹⁷ See, e.g., Aimee Picchi, *The Fed rate decision meeting is today. Here’s their rate decision.*, CBS News (May 1, 2024), available at <https://www.cbsnews.com/news/federal-reserve-interest-rate-meeting-may-1-2024/> (last visited May 12, 2024).

where it is especially advantageous to purchase new boxcars. The market will also incentivize the purchase of new boxcars when needed. Regardless, RSI's argument is new.

Boxcars in storage. RSI next argues that the record number of boxcars presently in storage is “not indicative of boxcar supply” and a “large portion of these cars are unusable.”¹⁸ In support of this argument, RSI claims that “approximately 7,000 of the boxcars in storage . . . are functionally obsolete” and cites TTX's reply as support.¹⁹ This new argument relies on an egregious assumption that, during the period when the demand for boxcars usage was at historically high levels, all available and functional boxcars were 100% in use (*i.e.*, no functional cars were in storage).²⁰ Even if one were to exclude cars that had not had a loaded move over an extended period, the total number of boxcars in storage has been above the historical average since August 2023.²¹ Regardless, RSI's argument is new.

Boxcar capacity. As ARR noted, many of the newer additions to the fleet are 60-ft high-capacity boxcars, which are capable of carrying approximately 20 tons per load more than the 50-ft boxcars that are being retired.²² In response, RSI pivots to a new claim that “[s]hifts in boxcar capacity will not avert the coming boxcar shortage.” Like several of RSI's new arguments, this one is generally unsupported by specific facts—beyond naked allegations that “many” shipper facilities are unable to take advantage of the larger boxcars. However, the

¹⁸ RSI, Attachment to Motion at 6.

¹⁹ Id.

²⁰ See Reply Verified Statement of M. Rapik Saat (“Saat V.S.”) at ¶ 5.

²¹ Id. at ¶ 7.

²² AAR, Reply to Petition, at 7.

reality is that shippers loaded an average of {{ [REDACTED] }}²³ in the older 50-ft boxcars, while shippers now load an average of {{ [REDACTED] }} in each of the new 60-ft boxcars—an increase of more than {{ [REDACTED] }} over prior loads.²⁴ Regardless, RSI’s argument is new.

Boxcar demand. Next, RSI newly contends (based on a prediction by its member, GATX) that boxcar demand is anticipated to stay level, not fall—despite the fact that demand has fallen in recent years.²⁵ AAR’s members have a vested interest in seeing demand for rail services grow, so, despite the evidence to the contrary, AAR hopes that RSI’s prediction is correct. And, if demand stays flat—or, preferably, grows—the market will respond by adding additional boxcars to the fleet as has always been the case, despite cries of a pending “boxcar cliff” since depreservation occurred.²⁶ Regardless, RSI’s argument is new.

RSI’s mission in filing its Petition is to guarantee a level of income for boxcar lessors higher than the market supports. However, the Interstate Commerce Commission (“ICC”) determined that it was inappropriate to “give boxcar investors any semblance of a future guarantee concerning car compensation or the return on their investment.”²⁷ Rather, returns “must be dictated by forces of supply and demand”—as they presently are, following depreservation.²⁸ “To do otherwise . . . would be counterproductive, reducing efficiency,

²³ Highly Confidential information is enclosed in double brackets and redacted from the public version of this document.

²⁴ Saat V.S. at ¶ 11. Moreover, if RSI’s arguments were true, the market would respond with new 50-ft boxcars. Yet, even RSI touts its members’ new 60-ft boxcars. See RSI, Attachment to Motion at 3-4.

²⁵ See RSI, Attachment to Motion at 9; see also AAR, Reply to the Petition at 8.

²⁶ See, e.g., Exemption from Regulation--Boxcar Traffic, EP No. 346 (Sub-No. 8), 367 I.C.C. 747, 758 (ICC served Oct. 21, 1983) (aff’d in part, rev’d in part by Brae Corp. v. U.S., 740 F.2d 1023 (D.C. Cir. 1984)).

²⁷ Exemption from Regulation--Boxcar Traffic, EP No. 346 (Sub-No. 8), 367 I.C.C. at 761.

²⁸ Id.

competitiveness and profitability of boxcar service, and it is contrary to the goals of the rail transportation policy enacted by Congress”²⁹

RSI disclaims seeking regulatory intervention to protect car owner/lessor profits, instead urging that it only wants market intervention to regulate box car capacity (in the form of “adjustments to the current negotiation-based structure that would promote an adequate, but not excessive, supply of boxcars).”³⁰ This is semantic sleight-of-hand. RSI does not specify what would be an “adequate” number of boxcars in its view—nor could it, as that is exactly what the market is designed to determine. Apparently, from RSI’s perspective, the “adequate” number is not the number in the present fleet, which has grown steadily since 2022 and already exceeds present demand.³¹ One can only presume that, in RSI’s opinion or that of its leasing company members, the appropriate number of boxcars is limited only by the number for which they can earn profitable streams of revenue.

Ultimately, most of the proposed surreply is dedicated to repeating, refining, and/or expanding upon arguments already made in RSI’s initial filing, under the guise of correcting “AAR’s misapprehension of the Petition and the problems with the Arbitration Rule.”³² Essentially, RSI contends that its members are “at a disadvantage when negotiating rates” and “the Arbitration Rule pressures car owners to agree to below-market rates” in the form of the

²⁹ Id.

³⁰ RSI, Attachment to the Motion at 2.

³¹ AAR, Reply to Petition at 6, 8.

³² RSI, Motion at 4.

default rate.³³ But RSI neglects to acknowledge that railroads operate pursuant to the default rate, too.

Approximately {{ [REDACTED] }} of boxcars that are eligible for the default rate operate pursuant to that rate only (*i.e.*, have no negotiated rates).³⁴ There are {{ [REDACTED] }} different owners of boxcars that operate pursuant to the default rate only—many owning fewer than {{ [REDACTED] }} boxcars operating under the default rate only.³⁵ Only the top {{ [REDACTED] }} owners on this list (of {{ [REDACTED] }} different owners) operate more than {{ [REDACTED] }} cars operating pursuant to the default rate only—{{ [REDACTED] }} of which are Class I railroads.³⁶ In other words, when railcar lessors like RSI’s members opt to enter the Car Hire System—the system *intended for railroads*—they are put in the same position as railroads whose marks their cars bear.

Most notably, even in its proposed surreply, RSI fails to address—in any manner whatsoever—why it is necessary or appropriate for the STB to permit it to bypass the established methods for amending the Car Hire Rules.³⁷ RSI has sought relief from the Board and bypassed the AAR’s Equipment Assets Committee (“EAC”), which oversees the Arbitration Rule. RSI is well aware (and the Board has recognized) that the EAC—which is comprised of a variety of stakeholders, including RSI members—provides “adequate safeguards . . . to protect those who oppose specific amendments to the Arbitration Rule,” as well as those who would

³³ See RSI, Attachment to the Motion at 10.

³⁴ See, *e.g.*, AAR, Reply to the Petition at 9.

³⁵ See *Saat V.S.* at ¶ 14.

³⁶ *Id.*

³⁷ AAR, Reply to the Petition at 14-15.

participate in the amendment process.³⁸ If RSI wants “more process,” as their surreply filing would indicate, they should have followed the preestablished process of the EAC. Instead, they have circumvented that procedure, wasting time and resources by piling on more spurious claims.

III. Granting RSI’s motion would extend the time needed for the Board to reach its determination on RSI’s petition.

RSI argues that “the surreply will not cause any undue delay because there is no further procedural schedule for this proceeding.”³⁹ In other words, RSI assumes that neither AAR nor any other interested party would seek or be granted an opportunity to respond to RSI’s new and expanded arguments. In the event the Board grants RSI’s Motion, AAR requests that the Board also consider the evidence contained in this filing and the attached Verified Statement of M. Rapik Saat, which have been provided in response to RSI’s belatedly submitted new evidence. Other interested parties may seek leave to file in opposition to RSI’s new arguments, as well. But as 49 C.F.R. §1104.13(c) makes plain, a petitioner is not entitled to file a reply brief to respond to the opposition and expand on its initial arguments. Instead, the Board’s procedural rules are intended to foster a prompt resolution and encourage those involved in a proceeding to present their arguments fully in their initial filing. RSI should not be permitted to flout explicit regulations.

³⁸ Id.; see also Joint Petition for Rulemaking on Railroad Car Hire Compensation, EP 334 (Sub-No. 8) (STB served Apr. 22, 1997), at 2.

³⁹ RSI, Motion at 5.

CONCLUSION

Based on the foregoing, the Board should deny RSI's Motion for Leave to File a Surreply. Further, the Board should deny RSI's Petition to Reopen and Condition or Revoke Approval for the reasons outlined in AAR's April 15, 2024 Reply to the Petition.

Respectfully submitted,

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

Kathryn D. Kirmayer
J. Frederick Miller Jr.
Amber L. McDonald
Association of American Railroads
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May 24, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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 VERIFIED STATEMENT OF M. RAPIK SAAT, Ph.D.

1. I am M. Rapik Saat, Director of Operations Analysis for the Association of American Railroads (AAR). I submitted a Verified Statement in Ex Parte No. 334 (Sub-No. 8A) on April 15, 2024, as part of the Reply of the Association of American Railroads (“AAR”).

2. I am submitting this Reply Verified Statement to refute some unsupported and misleading new claims in the Motion for Leave to File a Surreply (“Motion”), filed by the Railway Supply Institute (“RSI”) on May 6, 2024, in support of its Motion for Leave to File a Surreply (“Motion”), before the Surface Transportation Board.⁴⁰

3. Specifically, I used information from various AAR reports and industry data maintained by Railinc, a fully owned AAR subsidiary to show that:

⁴⁰ See Railway Supply Institute (“RSI”), Motion for Leave to File a Surreply, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (May 6, 2024) (“Motion”).

- 1) even after excluding cars that had not been loaded over an extended period, the total number of boxcars in storage has been elevated since August 2023, indicating an excess supply of boxcars to the market;
- 2) shippers have been able to utilize the higher capacity with the larger 60-ft boxcars; and
- 3) railroads (as opposed to leasing companies that have leased to railroads) are among the major owners of boxcars that are eligible for the default rate and that operate pursuant to that rate only (i.e., have no negotiated rates).

I. Total boxcars in storage have been elevated since August 2023, even after excluding cars that had not been loaded over an extended period.

4. RSI claims that the record number of boxcars currently in storage is “not indicative of boxcar supply” as the statistic includes “functionally obsolete cars” or approximately 7,000 of the total boxcars in storage at the historical peak of boxcars usage in May 2022.⁴¹ This claim is based on a TTX’s slide RSI referred to with a title “At peak, 7,128 boxcars were idle (~2,400 had not been loaded in a year), these are likely functionally obsolete.”⁴²

5. RSI falsely claims that “[e]ven TTX concedes that approximately 7,000 of the boxcars in storage... are functionally obsolete.” RSI did not acknowledge that those 7,128 boxcars in storage at the peak usage are only likely, as TTX stated, “functionally obsolete.” RSI also did not provide any data or estimate if all or a fraction of the total boxcars in storage at the

⁴¹ See RSI, Attachment to the Motion.

⁴² See RSI, Petition to Reopen and Condition or Revoke Approval, Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. § 10706 and Motion to Dismiss, EP 334 (Sub.-No. 8A) (Mar. 25, 2024) (“Petition”).

peak boxcar demand should be categorized as “functionally obsolete.” Just because the period indicates the highest recorded boxcar usage level, it is implausible that all available and functional boxcars were 100% in use (i.e., zero stored).

6. Figure 1 shows the number of boxcars in storage on May 1, 2022, by the number of days since their last loaded move. Cars in storage is defined in the AAR report as cars that have not moved while loaded in the previous 60 days and have moved empty since their last loaded move. Out of the 7,128 stored boxcars, it’s plausible that cars with more than two years since their last loaded move would not be used again – the 1,979 boxcars comprised of 28% of the total boxcars in storage at the peak period, or 2% of the fleet.

FIGURE 1

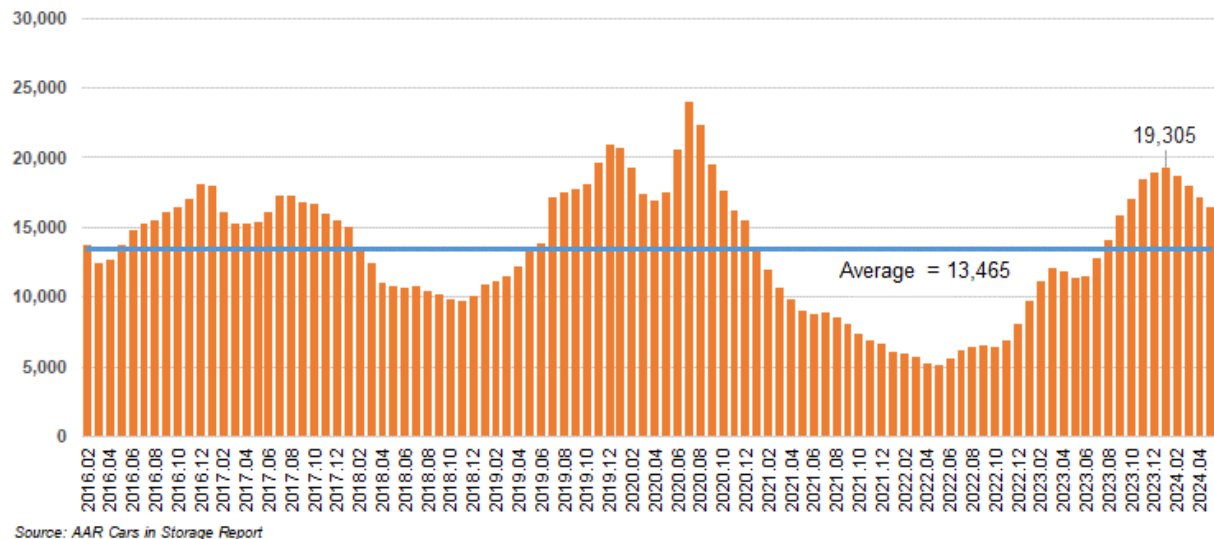
Freight Cars in Storage, by Days Since Last Loaded Move
5/1/2022

Car GroupLetter CodeTypeSub-Type				Stored Cars								
				Days Since Last Loaded Move							Other/ Unknown ⁴	Total Stored
				61 – 90	91 – 120	121 – 150	151 – 180	181 – 365	1 Yr ²	2 Yrs + ³		
Box Cars												
1	A, L	Equipped Box	<59' IL	650	360	262	169	513	587	941	244	3,726
2	A, L	Equipped Box	59' or longer IL	482	200	130	91	278	381	619	132	2,313
3	B	Unequipped Box	<59' IL	93	84	35	19	86	111	378	69	875
4	B	Unequipped Box	59' or longer IL	57	24	10	1	16	22	41	43	214
Total Box Cars				1,282	668	437	280	893	1,101	1,979	488	7,128

7. Using the same assumption, excluding the cars with more than two years since their last loaded move, the total number of boxcars in storage has been above the historical average since August 2023 as shown in Figure 2.

FIGURE 2

Monthly **Boxcars in Storage** (Excluding cars with the last loaded move more than two years ago)



8. Figure 3 shows the latest boxcars in storage numbers on May 1, 2024. Even if one were to also exclude boxcars that had not moved over more than one year, one would still have about 12,000 total boxcars in storage – this high absolute number of total boxcars in storage cannot be ignored to prop up the “boxcar cliff” myth. The high number of boxcars in storage in recent months, with or without the cars that had not been loaded over an extended period, indicates an excess supply of boxcars to the market.

FIGURE 3

Freight Cars in Storage, by Days Since Last Loaded Move
5/1/2024

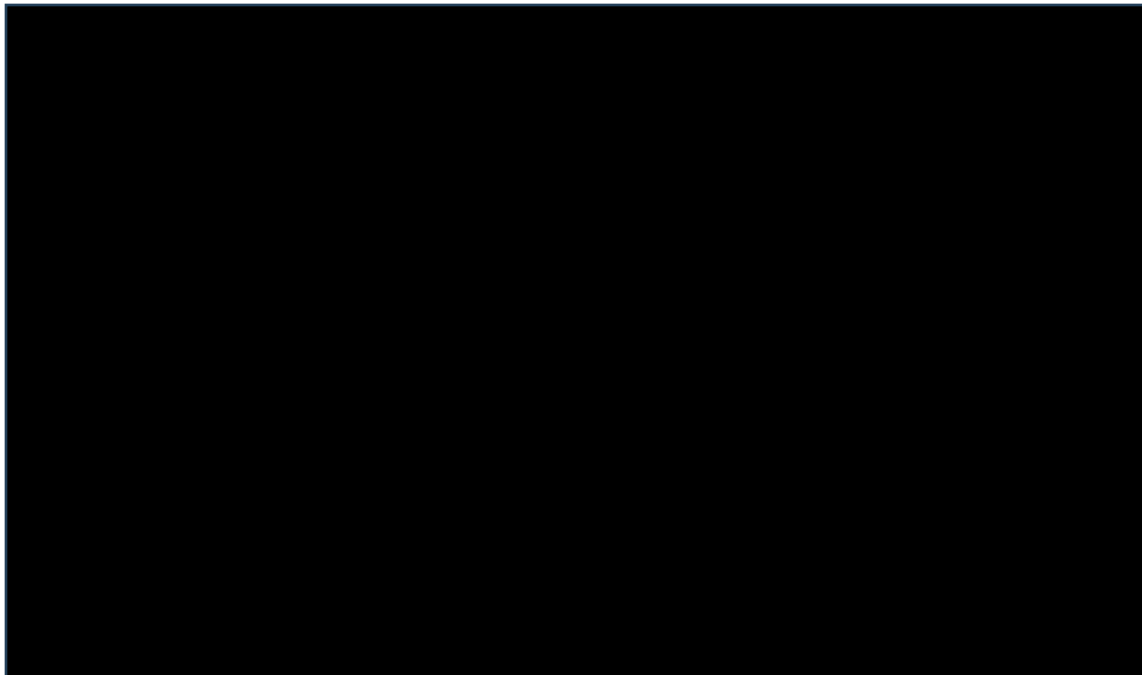
Car GroupLetter CodeTypeSub-Type				Stored Cars								
				Days Since Last Loaded Move							Other/ Unknown ⁴	Total Stored
				61 – 90	91 – 120	121 – 150	151 – 180	181 – 365	1 Yr ²	2 Yrs + ³		
Box Cars												
1	A, L	Equipped Box	<59' IL	1,044	706	827	509	2,725	2,047	908	175	8,941
2	A, L	Equipped Box	59' or longer IL	804	552	262	259	1,970	1,077	717	128	5,769
3	B	Unequipped Box	<59' IL	297	292	181	152	1,195	938	399	92	3,546
4	B	Unequipped Box	59' or longer IL	55	29	12	19	101	45	41	5	307
Total Box Cars				2,200	1,579	1,282	939	5,991	4,107	2,065	400	18,563

II. Shippers have been able to utilize the higher capacity with the new 60-ft boxcars.

9. AAR noted that older 50-ft boxcars are generally being replaced with new 60-ft boxcars, which are capable of carrying more than an additional 20 tons per load.⁴³ I used Umler snapshots on Jan 1, 2024, and Jan 1, 2018, to compare the boxcar fleet composition of the 60-ft high capacity⁴⁴ vs 50-ft standard and 50-ft high-capacity boxcars. Figure 4 reaffirms the increase and decrease of the 60-ft boxcars and 50-ft standard boxcars, respectively. Table 1 shows that although the total boxcar fleet decreased by {{ [REDACTED] }} from {{ [REDACTED] }} on Jan 1, 2018, to {{ [REDACTED] }} on Jan 1, 2024, the aggregated load limit capacity increased by {{ [REDACTED] }}.

FIGURE 3

{{



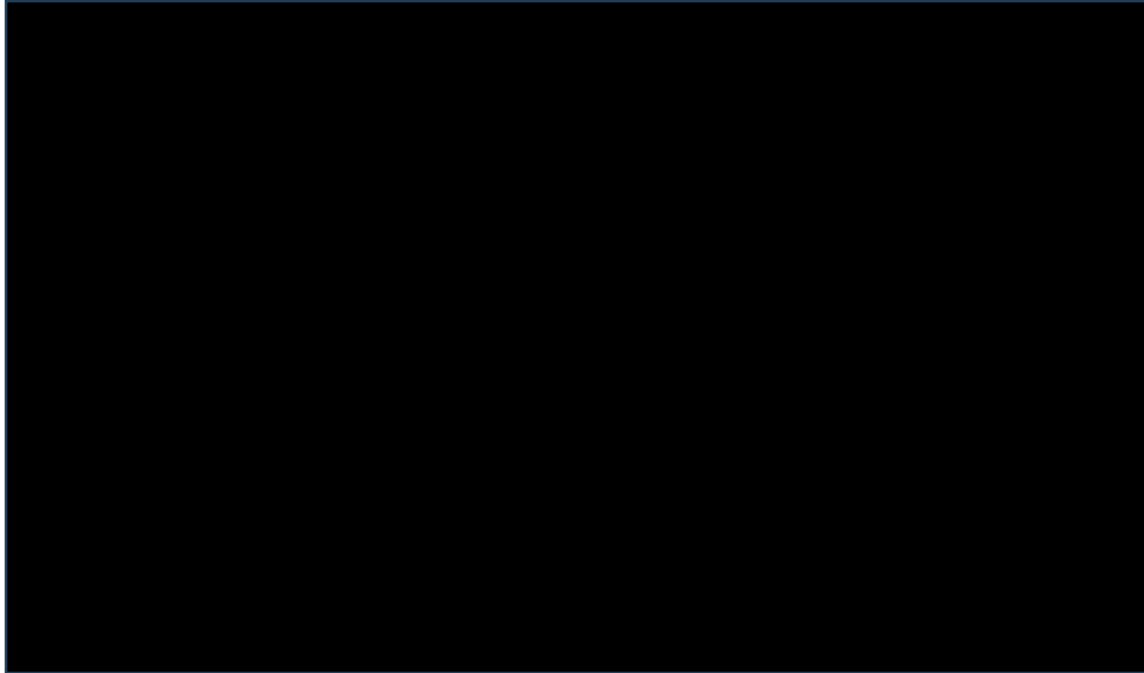
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⁴³ AAR, Reply to Petition.

⁴⁴ High capacity refers to the nominal 100-ton boxcars with a minimum of 263,000 gross rail load (GRL)

TABLE 1

{{



}}

10. RSI claims that the transition of the fleet’s mix of sizes toward larger boxcars “will not avert the coming boxcar shortage” as “many” shipper facilities are unable to use the larger boxcars efficiently.⁴⁵ To the contrary, my analysis of all boxcar shipments in 2017 vs 2023 using the AAR/Railinc TRAINII data shows that the share of the total annual boxcar tonnage in 60-ft high-capacity boxcars increased from {{ [REDACTED] }} in 2017 to {{ [REDACTED] }} in 2023, reflecting shippers’ wide adoptions of the larger boxcars.

⁴⁵ RSI Motion.

FIGURE 4

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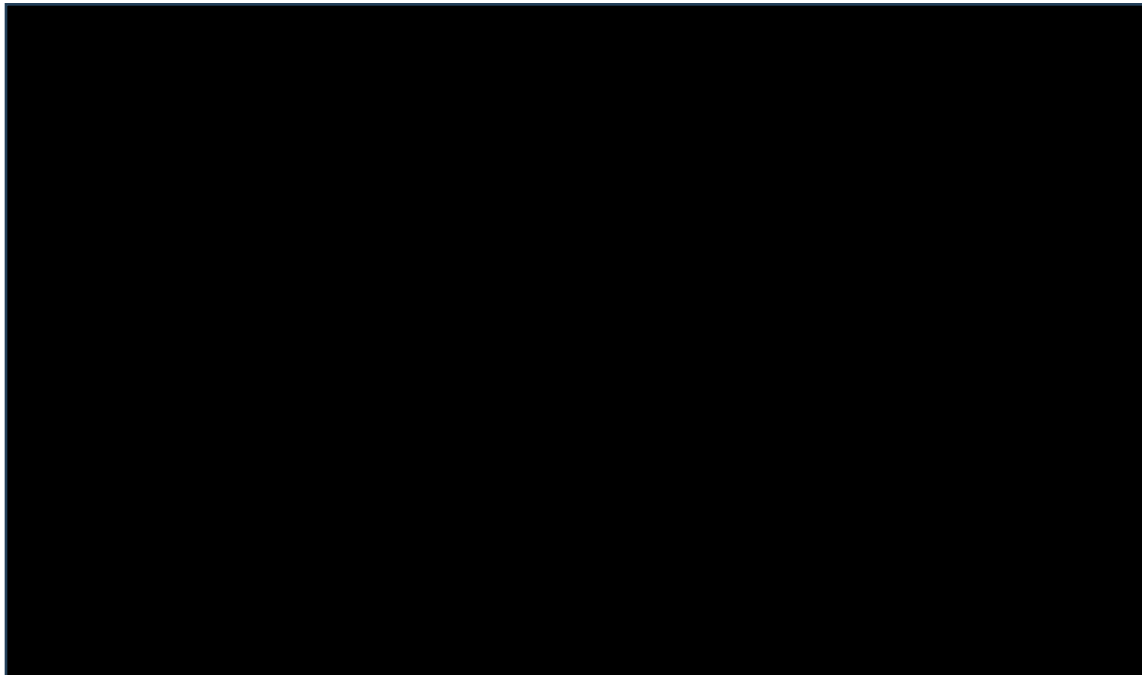
11. RSI also claims that “only a small portion of this capacity increase [from using a 60-ft high-capacity boxcar] will be usable for many shippers.”⁴⁶ To the contrary, my analysis of all boxcars shipments in 2023 shows that shippers loaded an average of {{ [REDACTED] }} in the older 50-ft boxcars, while the average loaded weight in the new 60-ft boxcars was {{ [REDACTED] }} — thus, shippers have been able to use the extra capacity as reflected by the increase in the average loaded weight per shipment by more than {{ [REDACTED] }}. And for those shippers whose circumstances lead them to prefer 50-foot boxcars, many thousands will remain in the fleet long past the retirement of the 1970s-era cars. Indeed, {{ [REDACTED] }} brand new, 50-foot high-capacity boxcars have been acquired in the past decade (Figure 5). The continuing and

⁴⁶ RSI Motion.

accelerating addition of 60-ft high capacity and, to some extent, 50-ft high-capacity boxcars in recent years (over {{ [REDACTED] }} new box cars built in the last 10 years) should put the “boxcar cliff” myth to rest.

FIGURE 5

{{



}}

III. Railroads are among the major owners of boxcars that are eligible for the default rate that operate pursuant to that rate only (i.e., have no negotiated rates).

12. One of the false premises in RSI’s new arguments in its Surreply is that the default rate somehow uniquely impacts owners of railcars that are not users of railcar – i.e., leasing companies. That is simply not so.

13. AAR noted that just {{ [REDACTED] }} boxcars or approximately {{ [REDACTED] }} of boxcars that are eligible for the default rate operate pursuant to that rate only (i.e., have no negotiated rates)⁴⁷ I identified the owners of those {{ [REDACTED] }} boxcars.

14. There are {{ [REDACTED] }} different owners of boxcars that operate pursuant to the default rate only—many owning fewer than {{ [REDACTED] }} boxcars operating under the default rate only. Only the top {{ [REDACTED] }} owners on this list (of {{ [REDACTED] }} different owners) operate more than {{ [REDACTED] }} cars operating pursuant to the default rate only—{{ [REDACTED] }} of which are Class I railroads.

15. Overall, {{ [REDACTED] }} of the boxcars that operate pursuant to the default rate only are owned by railroads and {{ [REDACTED] }} are owned by private railcar lessors that opted to use railroad marks on their cars. In other words, when railcar lessors like RSI's members opt to enter the Car Hire System—the system intended for railroads—they are put in the same position as railroads.

⁴⁷ AAR, Reply to Petition.

VERIFICATION

I, M. Rapik Saat, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 24th day of May, 2024.



M. Rapik Saat, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2024, I caused to be served by electronic mail a copy of the foregoing on the following:

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