

BEFORE THE SURFACE TRANSPORTATION BOARD ENTERED

STB Docket No. EP 334 (Sub-No. 8A)

Joint Petition for Exemption of Arbitration Rule
from Application of 49 U.S.C. § 10706 and Motion to Dismiss

Office of Chief Counsel
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Part of
Public Record

Position of the Railway Supply Institute
on the EAC Review

Jason D. Tutrone
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
(202) 331-8800

Jason.Tutrone@ThompsonHine.com

Counsel for the Railway Supply Institute

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- Exhibit 1: RSI's Rule 25 Presentation to the EAC (May 7, 2025)
- Exhibit 2: Correspondence between AAR counsel and RSI counsel on Access to Railinc Data Distributed to the TAG
- Exhibit 3: Letter from RSI to AAR Recommending Data for TAG Review
- Exhibit 4: Requested Data Disclosure

When the Board held in abeyance this proceeding on the Railway Supply Institute's (RSI) petition challenging the ongoing approval of Code of Car Hire Rule 25 (the Petition), it was to allow the Equipment Assets Committee (EAC) of the Association of American Railroads (AAR) the opportunity to review RSI's concerns with Rule 25 and "facilitate resolution" privately. That is not the review that the EAC performed.

At the outset of the EAC review, AAR—which openly opposed RSI's petition—appointed its counsel who signed its briefs opposing the Petition as the gatekeeper of the review process. AAR's counsel then refused to allow RSI to view the data that Railinc provided AAR and the EAC Technical Advisory Group conducting the review (the TAG) and excluded RSI from the TAGs discussions of the data, which were central to the review. At the most critical juncture in the review process for reaching private resolution—when the TAG began reconciling competing proposals to address RSI's concerns—AAR's counsel banned RSI from all further participation. Unsurprisingly, the EAC's "resolution" contains only token concessions and makes no material change to the status quo.

This abuse of process undermined private resolution as a realistic alternative to Board adjudication. It also undermines the antitrust immunity scheme that Congress enacted.

Under 49 U.S.C. § 10706(c), the Board has a non-delegable duty to revoke or condition its approval of Rule 25—and the resulting antitrust immunity—unless the Rule "furthers" the Rail Transportation Policy in 49 U.S.C. § 10101 and complies

with the public interest. When it approved Rule 25, the Interstate Commerce Commission (ICC) envisioned that the Rule would meet this standard. It presumed that Rule 25's structure of bilateral bargaining backed by final-offer arbitration would approximate an effective market.¹ The EAC outcome—a lowest-5% default rate excluding TTX paid rates, refreshed every 5 years and applying only to new builds—continues the historical shortcomings of the Rule 25 structure that RSI has identified as failing to approximate an effective market. Thus, it cannot lawfully sustain ongoing immunity without further Board action.

The Board should not wait any longer to grant RSI's Petition. As the Petition explains, Rule 25 squeezes rates below market levels, allowing TTX—whose owners control the EAC vote—to increase its market share from around 10% to nearly one third of the overall boxcar market. The continued adequate supply of the boxcar fleet now rests in the hands of a single entity, TTX. And short-line car owners struggle to continue supplying the cars (boxcars and non-boxcars) that their shippers need.

The EAC's resolution does nothing to alter this trajectory. Anchoring the default rate to the market's low tail (5th percentile) continues to suppress negotiated outcomes and invite manipulation; excluding TTX outcomes severs default rates on boxcars from the rates that are paid on one-third of the fleet and benefits the railroads that control EAC voting, and also own TTX; and applying the

¹ Review of Car Hire Regulation, EP 334 (Sub-No. 6) et al., 1992 ICC LEXIS 34, at *15 (I.C.C. Feb. 18, 1992); see *R.R. Car Hire Compensation—Rulemaking (Car Hire D)*, 9 I.C.C.2d 80, 92 (1992).

rule to only new builds with a five-year refresh locks in market-bottom default rates for the legacy fleet, accelerating existing fleet retirements and disadvantaging non-TTX car owners. These results contradict the competition, adequacy, and market-driven objectives in the Rail Transportation Policy.²

Thus, the Board should grant the Petition and reopen the proceeding to evaluate whether continued approval furthers the Rail Transportation Policy and complies with the public interest.³

I. Background.

A. The Petition and the Board's Abeyance Order

On March 25, 2024, RSI petitioned the Board to reopen this proceeding and to revoke or condition its approval of Rule 25, because the Rule's default-rate architecture suppresses paid outcomes below effective-market levels and undermines boxcar fleet investment.⁴ The Petition tied these impacts to three core defects with the Rule: a market-bottom default rate that applies for a car's entire useful life; an impractical final-offer arbitration backstop in a dispersed-usage environment; and vulnerability to gaming that allows default-rate manipulation.⁵ The Petition also showed that Rule 25 rates are materially below the prices

² See 49 U.S.C. §§ 10101(1), (4), (5), (12).

³ When the Board issued the abeyance order, it probably did not envision another round of briefs on the Petition. AAR's decision to turn its report on the EAC outcome into a brief advocating denial of the Petition unfortunately places RSI in a position where it must respond to AAR's advocacy or leave it un rebutted, risking denial of the Petition.

⁴ (RSI Pet. 2–3, 16–17.)

⁵ (*Id.* at 9–13.)

railroads actually pay for comparable TTX cars outside Rule 25, which has coincided with a steady rise in TTX's boxcar fleet share.⁶ RSI asked the Board to reopen the proceeding; require AAR, Railinc, and TTX to provide data necessary to develop solutions to realign Rule 25 with the Rail Transportation Policy; and set a procedural schedule that afforded an opportunity to negotiate a resolution with AAR that would modify the Rule as necessary for continued Board approval.⁷

On April 9, 2025, the Board held the Petition in abeyance to allow the EAC to conduct a review of Rule 25 to facilitate private resolution of RSI's concerns.⁸ It also directed AAR to report back to the Board on the results of the EAC review.⁹

B. RSI's Proposal to Restore a Market-Referencing Default

At the EAC's May 7, 2025 meeting, RSI proposed to recalibrate the default rate to realign Rule 25 with effective-market outcomes while preserving bilateral negotiation and final-offer arbitration. Specifically, RSI proposed to: (i) anchor the default rate to the mean paid rate; (ii) include TTX paid rates in the calculation of the default rate so that it reflects what railroads actually pay across the entire market; and (iii) refresh the default rate periodically to reflect future changes to market conditions.¹⁰ RSI did not propose to change how parties negotiate or

⁶ (*Id.* at 14–17.)

⁷ (*Id.* at 20–23.)

⁸ *Joint Pet. for Exemption of Arbitration Rule (Abeyance Order)*, EP 334 (Sub-No. 8A), slip op. at 2 (STB served Apr. 9, 2025).

⁹ *Id.*

¹⁰ Ex. 1 (RSI EAC Presentation) at 23-24.

arbitrate, nor did RSI request rate prescriptions; RSI explained that it desired to correct the biased default rate so bargaining could work as intended.¹¹

C. The EAC/TAG Review and Restrictions on RSI Participation

The EAC formed a Technical Advisory Group on May 7, 2025, to evaluate potential changes to Rule 25. The TAG began developing options to revise Rule 25 after initially reviewing Railinc data in late August. AAR, however, refused to allow RSI access to the data or to participate in any TAG discussions evaluating the data.¹²

At the beginning of October, several Class I railroads submitted separate proposals for revising Rule 25, each tying default rates to the low end of market rates. These proposals, some more aligned with the market median than others, excluded TTX outcomes and applied only to new builds. They did not contain RSI's proposal to set default rates to the center of the market, include TTX paid rates as market evidence, and refresh default rates annually. In an October 13, 2025 meeting, RSI identified these three deficiencies and offered a compromise. RSI's compromise retained its original proposal to anchor default rates to the center of the market and to apply this architecture to both existing and new-build cars, but proposed a major concession on another key aspect of its proposal. RSI also invited TAG members to propose additional adjustments. AAR's response was to exclude RSI from further TAG participation, after which the railroads coalesced around a

¹¹ *Id.* at 22-24.

¹² Ex. 2 (E-mail from Amber L. McDonald, AAR, to Jason D. Tutrone, RSI Counsel (Aug. 25, 2025)).

fifth percentile default rate proposal applicable to new builds only.

D. The EAC Resolution Compared to RSI's Proposal

The following table summarizes the EAC's adopted changes and compares them with RSI's proposal.

Proposal Element	EAC Resolution	RSI Proposal
Proposal applicability (fleet scope)	New builds only (equipment built on or after January 1, 2027)	Applies to the entire Rule 25 fleet, including existing cars
Default rate definition	"Five Percent Paid Cumulative Threshold": For each subcomponent (loaded hour, loaded mile, empty hour, empty mile), the paid-negotiated rate that first meets or exceeds 5% of cumulative usage in the calculation window.	Mean of paid rates by subcomponent
TTX Inclusion	Excludes TTX paid rate data	Includes TTX paid rate data
Calculation window	12-month period (July 1–June 30)	Similar
Refresh cadence	Every five years for post-2026 builds	Annual, to stay aligned with current paid outcomes
Treatment of existing cars	No change from prior Rule 25; retains prior "lowest negotiated positive rate" default unless superseded by negotiation/arbitration	Applies to existing cars, except cars built before January 1, 1993

II. AAR prevented a good-faith private resolution, contravening the Board's abeyance order.

AAR manufactured the appearance of an open process before the EAC, while foreclosing a genuine, good-faith private resolution—the outcome the Board's abeyance order intended to foster. Under the guise of providing "administrative and

legal support” and ensuring a “fair and appropriate committee process,”¹³ AAR assigned to the EAC and TAG the AAR counsel who signed AAR’s reply in opposition to the Petition. AAR’s counsel controlled who could participate in the TAG review, what they could review, and when they could discuss it. Now, AAR attempts to whitewash its efforts and misrepresent RSI’s attempts to address the issues in its Petition through the TAG as disruptive “distractions.”

A. AAR’s refusal to share Railinc data and its closure of review meetings undercut a fair evaluation.

AAR’s update acknowledges that multiple TAG meetings focused on “examining relevant data prepared by Railinc” but that it closed “sessions involving proprietary Railinc data to non-TAG members.”¹⁴ Simultaneously, AAR denied RSI access to the same underlying datasets and analytics, while willing to enter bespoke confidentiality arrangements to permit access by TAG seat holders.¹⁵ This choice ensured that AAR and its members inside the TAG process could scrutinize the decision-critical data, while it fenced off RSI—the party who petitioned the Board and proposed the Rule 25 changes that the TAG was evaluating—from scrutiny and discussion of data critical to the TAG review.

AAR’s explanation in its Update for refusing RSI access to the Railinc data

¹³ (AAR Update at 3.)

¹⁴ (AAR Update at 3 n.4.) AAR’s contention that TAG sessions were closed to non-TAG members only during detailed data reviews only tells part of the story. AAR’s counsel prohibited any discussion of the data or observations from the data, except extremely high-level observations that provided little insight into the data, at open TAG meetings.

¹⁵ Ex. 2.

and TAG data discussions is misleading. AAR contends that it closed access to RSI because the Railinc data “are generally available for purchase from Railinc.”¹⁶ But the record shows that Railinc refused to allow RSI to purchase the data.¹⁷ Also, AAR’s counsel provided a different rationale to RSI: “RSI is an industry advocacy group.”¹⁸ Yet this same description also describes AAR, which maintained full access and control over the data.

B. AAR excluded RSI’s counsel and economist on a pretext, which was unwarranted and prejudicial.

AAR asserts that RSI’s counsel interrupted TAG discussions and inappropriately warned non-lawyers about “justifying” positions to the Board, so AAR made “the decision . . . to limit TAG meetings to TAG members only.”¹⁹ The record tells a different story.

The TAG used a raised-hand queue and managed turns during virtual meetings, and no one raised an “interruption” concern until AAR’s post-hoc filing—not even AAR’s counsel. AAR’s counsel excluded RSI after its counsel’s comments during the October 13 TAG meeting, made after he raised his hand and was invited to speak by the chair. Further, the purportedly disruptive comments merely pointed out that the railroad proposals did not address any of the three principal issues in RSI’s petition and offered a compromise path that required concessions by both RSI

¹⁶ (*Id.* at 3 n.4.)

¹⁷ (RSI Pet., App. F.)

¹⁸ Ex. 2.

¹⁹ (AAR Update at 3-4.)

and AAR members—quintessential bargaining, not disruption.

Also, AAR's Update demonstrates that AAR's true concern was that RSI reminded TAG that the Board expected that the EAC would consider RSI's concerns against the backdrop of this proceeding. Specifically, AAR characterizes RSI counsel's references to Board scrutiny during his October 13 comments as "inappropriate,"²⁰ even though the entire TAG/EAC process existed because the Board put this proceeding in abeyance and expressly contemplated a return to the Board.

The timing and effect of AAR's exclusion of RSI's counsel were unmistakable and prejudicial. AAR excluded RSI's counsel just as the TAG was converging on a decisive recommendation among five competing proposals. After AAR excluded RSI's counsel, the Class I railroads on the TAG quickly withdrew their proposals that contained some concessions to RSI and coalesced around the proposal that mostly ignored RSI's principle concerns—a five-percent "spot" default applicable only to new builds and excluding TTX rates—the package AAR now claims obviates Board action. This was not a minor process defect. Removing RSI's counsel—the only RSI or RSI-member participant in a position to harmonize the TAG's work with RSI's core concerns—deprived RSI of meaningful participation and skewed bargaining dynamics. It also denies the Board a reliable, tested foundation for assessing whether it must take further action.

²⁰ (*Id.* at 4.)

C. AAR’s portrayal of a full and fair review is illusory; it curated participation to preserve the status quo.

In its update, AAR emphasizes meeting counts and attendance, claiming RSI’s expert and counsel could attend “every open” session.²¹ But AAR itself used open and closed sessions as a gatekeeping tool. AAR closed the meetings to RSI when Railinc data were reviewed, denied RSI and its counsel access to those data, and then excluded RSI’s counsel entirely at the pivotal moment when the TAG was converging on a single recommendation to the EAC.²² Meanwhile, AAR pressed forward with a design that preserves the status quo by (i) pegging default rates to the first paid rate meeting a five-percent usage threshold—an expressly low-tail “spot” proxy AAR admits would “quickly” rise toward the median if moved even modestly higher,²³ (ii) excluding TTX rates altogether, and (iii) applying the changes only to new builds. This design entrenches the very misalignment with effective-market outcomes that RSI documented in its Petition, thereby failing to resolve accomplish anything other than to delay consideration of RSI’s Petition.²⁴

In short, AAR curated participation and controlled narrative to maintain the existing system, and it now contends that further Board action is unnecessary. The Board’s abeyance order envisioned a genuine, stakeholder-driven evaluation capable of resolving RSI’s concerns. Instead, a closed-data, closed-door process

²¹ (AAR Update at 2.)

²² *See supra*, Parts II.A and II.B.

²³ (AAR Update at 8 n.13.)

²⁴ (RSI Pet. 9-11, 14-16.)

occurred that sidelined RSI at critical junctures. That is not consistent with seeking “private resolution;” it is a litigation tactic.

III. 49 U.S.C. § 10706 requires the Board to condition or terminate its approval of Rule 25 unless the rule furthers the Rail Transportation Policy and is consistent with the public interest.

The Board may approve carrier agreements “only when it finds that the making and carrying out of the agreement will further the transportation policy of [49 U.S.C. § 10101].”²⁵ It also may condition its approval as “necessary to make the agreement further that [transportation] policy.”²⁶ Approval erects a regulatory shield from federal antitrust law, including “[t]he Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a).”²⁷

Approvals are not one-and-done events. Section 10706(c) states that the Board “shall change the conditions of approval or terminate it when necessary to comply with the public interest and [further the rail transportation policy at 49 U.S.C. § 10101.]”

The ICC approved Rule 25 on the premise that its negotiation-with-an-arbitration-backstop framework would approximate an effective car hire market,

²⁵ 49 U.S.C. § 10706(a)(2)(A).

²⁶ *Id.*

²⁷ *Id.*

allowing competition to set rates so the Board could deprescribe car hire.²⁸

Effective-market approximation thus is the legal yardstick for continued approval.

Because Rule 25 produces outcomes that do not resemble a competitive market, including an adequate, competitively supplied car fleet, continued antitrust immunity does not further the Rail Transportation Policy or the public interest. Thus, Rule 25 no longer meets the test under 49 U.S.C. § 10706(c) for continued approval.

The Board has recognized this ongoing responsibility, holding that it will retain oversight of Rule 25 “to ensure consistency with the principles embodied in the ICC’s approval of [Rule 25],”²⁹ which emphasize promoting market-like outcomes while minimizing regulation.

IV. Because the EAC’s resolution fails to correct Rule 25’s inability to approximate effective-market outcomes, Rule 25 remains inconsistent with the Rail Transportation Policy and the public interest.

The EAC adjusted Rule 25 to anchor default rates to the first paid negotiated

²⁸ *Car Hire I*, 9 I.C.C.2d 80, 92 (1992) (“To the extent that bilateral agreements eventually become the norm, and arbitrated or adjudicated rates the exception, this program 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.”); *Review of Car Hire Regulation*, EP 334 (Sub-No. 6) et al., 1992 ICC LEXIS 34 at *15 (ICC Feb. 18, 1992) (“To the extent that the current proposal results in reliance on bilateral agreements (rather than primarily on arbitration or complaint to the Commission), the proposal should succeed in approximating an effective market.”)

²⁹ *Joint Pet. for Rulemaking on Car Hire Compensation*, EP 334 (Sub-No. 8) et al., slip op. at 3 (STB served Apr. 22, 1997).

rate that reaches a five-percent usage threshold and refresh the default every five years. But these changes apply only to equipment built on or after January 1, 2027, and continue to exclude TTX's paid rates—which apply to one-third of all boxcars—from the default-rate calculation. None of these modifications address Rule 25's shortcomings in a way that aligns the Rule with the ICC's assumption that it would approximate an effective market and, thus, further the Rail Transportation Policy.

A. The EAC's lowest 5-percent default preserves a low-end default rate and will continue to suppress car-hire rates below effective-market levels.

By basing default rates on the lowest 5-percent of paid rates, the EAC maintains default rates as market-bottom anchors that will continue to pull car-hire rates below effective-market levels. In fact, AAR concedes that moving the threshold above five percent “quickly skews toward the median” and would “suppress negotiations.”³⁰ This confirms that the EAC chose this low-end rate precisely to preserve the status quo of below-market default rates, not to produce effective-market results.

Anchoring the default rate to this low point creates the same lopsided negotiation incentives that have benefited car users and disadvantaged car owners under the prior default rate definition. Basic bargaining economics show that negotiated rates depend on each side's payoff for failing to reach an agreement.³¹ The stronger the car user's payoff is relative to the owner's, the lower the negotiated

³⁰ (AAR Update at 8 n.13.)

³¹ (RSI Pet., Powers V.S. at 25-26.)

rate outcome.³² Depressing default rates to the lowest 5-percent level barely changes the status quo which has produced strong payoffs for car users relative to car owners because, as AAR acknowledges, this rate falls materially below nearly the entire universe of market rates.³³ Thus, the lowest 5-percent rate will shift outcomes toward the bottom of the market. The effect is not theoretical. RSI's record shows roughly a quarter of boxcar paid hours and miles occur at default rates,³⁴ so a low default exerts real pressure on both paid and negotiated outcomes across the fleet.

A car owner cannot simply avoid the impact of a market-bottom default rate by seeking an arbitrated rate, as AAR contends.³⁵ Final-offer arbitration is not a practical, universal cure because it costs too much relative to the fragmented car usage that prevails for most equipment. Consequently, it is not a realistic option except in rare, high-use cases, if at all. Moreover, AAR itself has cautioned the Board that "baseball-style" arbitration, the type that Rule 25 applies, is a poor tool for determining fair market value because the correct value can lie between the parties' offers.³⁶ In short, AAR's position that parties can just negotiate or arbitrate around a depressed default rate ignores the default rate's impact on bargaining and conflicts with AAR's own view that final-offer arbitration poorly approximates fair

³² *Id.* at 26-28.

³³ (AAR Update at 8 n.13.)

³⁴ (RSI Pet., Powers V.S. at 31-32.)

³⁵ (AAR Update at 6 n.9.)

³⁶ Comments of AAR at 13, *Final Offer Rate Review*, EP 755 (filed Nov. 12, 2019).

value.

A lowest 5-percent default rate also invites manipulation. A sophisticated car user can manufacture the default rate by agreeing on a low rate for its own cars with other users and steering enough movements to those other users to cross the 5-percent threshold. The EAC's adopted five-year refresh cycle magnifies this incentive by making any manufactured default rate durable. AAR has provided no data to either RSI or the Board that would allow them to evaluate this potential shortcoming, even though RSI raised these concerns in its Petition and with the EAC and TAG about setting default rates at the market bottom.³⁷

Finally, anchoring the default rate to a low tail of the market is inconsistent with the Rail Transportation Policy. A depressed, manipulable default rate produces car hire rates below effective-market levels, distorts reinvestment incentives (especially for non-TTX car owners), and forces owners to pursue impractical, serial arbitrations to lift rates counterparty-by-counterparty—a path feasible only in rare, high-use cases. This is not the result the ICC envisioned when it approved Rule 25 as a solution to produce effective-market results while reducing the need for regulation, thereby furthering the Rail Transportation Policy.

B. Excluding TTX rates severs Rule 25 from market reality and entrenches concentration.

The EAC's choice to exclude TTX's paid rates—the best evidence it has of market rates for boxcars outside Rule 25—from the default rate calculation ensures

³⁷ See Ex. 1 at 12-14; (RSI Pet. at 12-14).

Rule 25 will continue dragging prices below effective-market levels. It also will allow TTX to continue expanding its boxcar fleet share from 32%, today, to upwards of 50% in the next decade.³⁸

Excluding TTX rates ignores the single most probative benchmark of prevailing boxcar prices: the prices railroads pay for one-third of the boxcar fleet. At these prices, TTX grew its boxcar fleet share from a modest level in the 2000s to 32% in 2024,³⁹ and it has purchased more new boxcars in the last decade than all purchasers of new Rule 25 cars combined.⁴⁰ TTX's sustained growth and increasing market dominance—occurring outside Rule 25—establish that its paid charges are strong evidence of effective market prices. Excluding them masks the divergence between default rates and what carriers actually pay outside Rule 25, which blunts investment incentives relative to Rule 25 cars, thereby shifting supply toward a single boxcar supplier: TTX.

This decision also subverts the antitrust immunity the ICC conferred when it approved Rule 25, by squeezing Rule 25 car hire rates to favor the railroads that own TTX and who also control a majority of the EAC vote. TTX is owned by the six Class I railroads and Ferromex. Those same railroads hold about 76% of the EAC vote, and two of them—BNSF and Union Pacific—can jointly block any reform.⁴¹ By excluding TTX's paid rates from the default rate calculation, these railroads

³⁸ (RSI Pet., Powers V.S. at 65.)

³⁹ (RSI Pet., Powers V.S. at 63.)

⁴⁰ (*Id.* at 64.)

⁴¹ (RSI Pet. at 17-18, App. A).

predictably can depress default rates to benefit net purchasers of car-hire and themselves as TTX owners. Specifically, it lowers what these railroads pay under Rule 25 while leaving TTX free—outside Rule 25—to charge investment-supporting usage rates.⁴² That conflict squarely contradicts 49 U.S.C. § 10706(a), which permits approval only if an agreement “further[s] the [rail] transportation policy,” including allowing competition and demand to set rates, ensuring effective competition, and avoiding undue concentrations of market power.⁴³

While TTX and the AAR claim TTX’s usage charges are “not directly comparable” because TTX operates under pooling authority, uses a turnback feature, and sets cost-based prices including full maintenance,⁴⁴ none of these points justifies excluding TTX data from a market-referencing default.

First, the supposed differences are illusory.

- AAR and TTX contend TTX’s turnback feature, which cuts off car hire after 5 days of non-use,⁴⁵ offers unique value.⁴⁶ But Rule 25 cars can be returned to their owner immediately, which stops the car hire clock.
- AAR and TTX contend that rail-marked boxcar lessors typically do not handle significant railcar maintenance.⁴⁷ However, the AAR

⁴² See 49 U.S.C. §§ 10101(1), (4), (5), (12).

⁴³ (RSI Pet., Powers V.S. at 41.)

⁴⁴ (AAR Update at 9-10).

⁴⁵ See *TTX Co.—Application for Approval of Pooling of Car Service with Respect to Flatcars*, 7 S.T.B. 778, 779 n.5 (2004).

⁴⁶ (*Id.* at 9.)

⁴⁷ (*Id.*)

Interchange Rules place maintenance responsibility on car owners.

Whether railcar lessors or their railroad lessees assume those costs, the maintenance costs for Rule 25 cars and TTX cars are both zero from a car user's perspective.

- AAR contends that TTX's rates do not compare to Rule 25 rates because TTX establishes them using ICC-approved mechanisms in the Railbox pooling agreement.⁴⁸ But those mechanisms only establish a charge cap—not a floor—to prevent TTX from price gouging.⁴⁹

Second, the supposed differences do not prevent using TTX's paid rates, combined with the market's other paid rates, to establish a default rate. That TTX uses a cost-based methodology to set its charges does not make those paid outcomes less indicative of market value. What buyers willingly pay reveals market value, not a seller's internal pricing rubric. Here, railroads have repeatedly chosen to pay TTX's published charges (subject to adjustments) at scale, and TTX's sustained growth—from a far smaller base to roughly one-third of the boxcar fleet—confirms a robust willingness to pay those charges. In other words, the demand side has validated TTX's prices over time, providing the exact real-world evidence a market-referencing default rate should reflect. In fact, Rule 25's arbitration standard—the backstop for assuring approximate effective-market outcomes—points to “comparable arm's-length transactions” among railroads and “other

⁴⁸ (*Id.*)

⁴⁹ *Am. Rail Box Car Co.—Pooling*, 347 I.C.C. 862, 874-75 (1974).

parties,”⁵⁰ and TTX’s paid rates for materially similar boxcars represent just that: prices railroads actually pay to use another’s cars. Where necessary, comparability adjustments can transparently address any systematic differences (e.g., rate adjustments to users), rather than excluding these most probative benchmarks outright.

Third, even if TTX payments run 10-25% below posted paid rates, that does not prevent the EAC from adjusting posted rates to reflect the discount. The EAC nevertheless excluded TTX data and pegged the default rate to the first paid rate reaching five-percent usage within a smaller, depressed market sample, which predictably leaves default rates “substantially lower” than TTX rates for the same car types.

The EAC’s decision to ignore TTX’s rates has visible effects. Negotiated Rule 25 rates for A606/A406 boxcars cluster below TTX’s ranges, and about one-quarter of paid activity occurs at even lower default rates.⁵¹ These earnings fail to cover compensatory returns at normal utilization, deterring private investment and channeling demand to TTX—exactly what the record shows and projects if the default rate continues to ignore TTX.⁵²

AAR’s contention that it “cannot compel” TTX to provide its paid car hire data⁵³ rings hollow. The same railroads that sit on—and hold a supermajority of—

⁵⁰ AAR Circular No. OT-10, Code of Car Hire Rule 25(C)(7)(d) (Rev. Nov. 2025)

⁵¹ (RSI Pet., Powers V.S. at 31, 34-41.)

⁵² (RSI Pet., Powers V.S. at 49-50.)

⁵³ (AAR Update at 10).

the EAC also own and control TTX, and TTX’s counsel acknowledged this relationship during the TAG process. Nothing prevents these owners from directing their jointly owned enterprise, TTX, to make its paid rate data available. Indeed, RSI proposed a method to AAR’s counsel for doing so—using neutral processing by Railinc that anonymizes and aggregates it with non-TTX data⁵⁴—so confidentiality concerns cannot justify excluding the single most probative set of paid outcomes from the record. Even if the data do not directly reflect the full discounts TTX affords, as some TAG members contend, nothing prevents application of accurate adjustment factors to the data.

Ultimately, excluding TTX data conflicts with the Rail Transportation Policy and, thus, the standard under 49 U.S.C. § 10706(c) for continuing to approve Rule 25. Where the same railroads govern both TTX and Rule 25 voting, a default that omits TTX’s paid rates cannot credibly “allow[] competition and the demand for services to establish reasonable rates” or “avoid undue concentrations of market power.”⁵⁵

C. Applying the rule only to new builds and refreshing default rates every five years perpetuates legacy suppression and undermines adequate service and reinvestment.

The EAC’s decision to change its default rate only for new builds leaves decades of existing cars tied to historic “lowest negotiated” default rates. These rates suppress paid rates for these cars below effective market levels, which chills

⁵⁴ Ex. 3.

⁵⁵ 49 U.S.C. § 10101(1), (12).

needed reinvestment, including by the short line railroads who rely on their owned existing cars to serve and grow their origin traffic. This impact also carries over to **new** builds because their default rate under the EAC's changes will be based upon suppressed paid rate data from **existing** cars. The decision is also economically inefficient and conflicts with decades of AAR advocacy urging the Board to let railroads earn revenue based on their assets' market value, not a historic book cost.

First, limiting reform to new builds creates a two-tier market where legacy Rule 25 cars remain tethered to low-tail default rates for the remainder of their useful lives (which, for newer cars, will be decades), while only future builds benefit from any correction.⁵⁶ This deprives car owners of the revenues needed to make ongoing, life-extending investments in existing cars. This approach makes little economic sense, especially considering railroad concerns about overinvestment in long-term assets like railcars.

Second, locking in legacy default rates on existing cars drags down rates for new builds. The EAC's default-rate formula calculates default rates for new builds using paid rates from these existing cars, ensuring the suppressive impact of legacy default rates affects new builds for the foreseeable future.

Third, the five-year refresh cycle amplifies the harm. The longer the refresh interval, the longer legacy default rates continue to impact the system. It also contradicts AAR's concern about making cars vulnerable to a single "bad" year⁵⁷ by

⁵⁶ As discussed above, however, even the EAC's modifications for new-builds are based upon low-tail default rates that are insignificantly incrementally higher.

⁵⁷ (AAR Update at 10.)

effectively extending that year's impact across half a decade. While AAR contends that longer cycles are necessary to avoid undoing lengthy negotiation efforts, these negotiations drag on because Rule 25 sends distorted pricing signals that discourage car users from reaching agreement because they fall back upon a below-market default rate. In fact, several RSI members observed during the September in-person TAG meeting that car users respond slowly to negotiation requests, drawing out negotiations for years while paying market-bottom default rates.

Fourth, this approach suppresses investment in Rule 25 cars relative to TTX. TTX applies its rates uniformly based on car type, regardless of age,⁵⁸ confirming car age is not a relevant pricing factor for users. This allows TTX to earn a return on its boxcars aligned with their economic value, which TTX can then reinvest. In contrast, Rule 25 denies owners of existing cars the same opportunity, locking them into returns dragged down by a historic, market-bottom default rate.

Finally, the approach is inconsistent with the railroads' own advocacy before the Board. In countless proceedings on revenue adequacy and rate regulation, AAR has argued that railroads must have an opportunity to earn a return on the fair market value or replacement cost of their deployed capital, not some depreciated or historical book value that understates the true economic value of long-lived rail assets.⁵⁹ AAR's new-build-only position here does the opposite: it freezes a legacy,

⁵⁸ TTX Form A Car Contract Supplement No. 250, Ex. A at 4, *Am. Rail Box Car Co.*, FD 27589 (Dec. 29, 2023).

⁵⁹ *E.g.*, AAR Petition at 6, *Petition to Institute Replacement Cost Methodology for Revenue Adequacy*, EP 679 (filed May 1, 2008) ("There is no serious question that as a matter of economics and finance theory, the proper asset value for determining

historically anchored default-rate regime for the entire existing fleet and confines any economically corrected rate to future equipment, cementing the very “historic cost” distortions AAR elsewhere condemns.⁶⁰ This disconnect is untenable as a matter of economics and policy, and it appears especially stark given AAR’s extensive record insisting that the Board align regulatory metrics with replacement-cost economics. This does not reflect the serious consideration of RSI’s position that the Board’s abeyance decision envisioned.

V. AAR misstates several facts, underscoring a lack of good faith.

A. AAR’s Rule 1 “pivot” narrative misstates RSI’s position.

AAR claims that, once the TAG/EAC process began, “it became apparent that RSI’s actual complaint was not about Rule 25” and that RSI instead sought to change the “default car hire rate” under Rule 1 for “cars of all types” (including existing equipment).⁶¹ This characterization is wrong on both the facts and the law.

First, RSI’s Petition squarely targeted Rule 25’s failure to produce effective-market outcomes and support adequate boxcar investment due to its low, market-

the level of revenues needed by railroads to maintain themselves over the long term is the cost to replace railroad assets today, not the depreciated book value of the assets.”); *id.* at 10 (“The value of the owners’ investment and the revenues that must be earned for the investors to maintain and replenish the investment has nothing to do with the book value of the [asset].”); *id.* at 11 (“[A] a market-based approach to measuring return on investment, and hence revenue adequacy, cannot be based on the net depreciated book value of assets. The appropriate value of an asset is reflected in its replacement cost.”).

⁶⁰ *E.g.*, AAR Comments, Brinner V.S. at 19, *Railroad Revenue Adequacy*, EP 722 (filed Sept. 5, 2014) (“The use of historic-cost depreciation is particularly distorting when applied to long-lived assets, such as those employed by railroads.”)

⁶¹ (AAR Update at 5.)

bottom default rate and an impractical arbitration backstop.⁶² The Petition explained that a large share of paid use occurs at the default rate, that the default rate is set at the lowest negotiated rate and can be gamed, and that final-offer arbitration is rarely viable in a dispersed-usage environment, thereby depressing both default and negotiated outcomes.⁶³ At the very essence of these concerns is Rule 25’s core design and its ability to approximate an effective market, consistent with the ICC’s original premise for approving it.

Second, AAR’s suggestion that the “default rate” is a Rule 1 concept divorced from Rule 25⁶⁴ ignores the Code’s structure. The concept and economic role of a default rate originates in Rule 25’s market framework; Rule 1 simply administers how Railinc’s systems implement that default. The Petition itself describes Rule 25 as “establish[ing] the process for setting car-hire rates,” with “supporting rules” (including Rule 1.H) that implement that process.⁶⁵ Put simply, addressing a default rate construct that suppresses paid outcomes means addressing Rule 25’s effectiveness, not changing topics.

Third, AAR’s “Rule 1 pivot” claim underscores its unwillingness to grapple with RSI’s actual position and AAR’s obligations during the abeyance. In its Update, AAR reframes RSI’s effective-market remedy as an average default rate

⁶² (RSI Pet. at 2, 9-12, Powers V.S. at 31-32.)

⁶³ (*Id.* at 9-14.)

⁶⁴ (AAR Update at 5.)

⁶⁵ (Pet. at 4, 4 n.3.)

demand⁶⁶ while downplaying the record evidence that a low-tail default and an ineffective arbitration backstop suppress rates and chill investment.⁶⁷ This mismatch, along with AAR’s control over data access and process, shows a lack of good-faith effort to resolve RSI’s Rule 25 concerns privately during the abeyance.

B. AAR creates a false dichotomy to claim RSI pivoted from its boxcar cliff concerns.

AAR misleadingly contends that RSI “pivoted” away from its claims of a looming boxcar cliff.⁶⁸ But this ignores AAR’s and TTX’s own evidence that no cliff will occur because TTX will add cars to make up for retirements.⁶⁹ This merely shifts the boxcar cliff’s impact from a lack of cars to a monopolistic concentration of cars—it does not erase the problem.

From the outset, RSI explained that Rule 25’s market-bottom default rate and impractical arbitration backstop create two related risks: (1) a supply shortfall because Rule 25 depresses rates below levels needed to encourage adequate investment to replace retirements, and (2) increasing concentration if TTX fills the gap.⁷⁰ In response, AAR and TTX claimed a cliff will not materialize because newer,

⁶⁶ (AAR Update at 5.)

⁶⁷ (RSI Pet. at 9-16.); Ex. 1 at 22-24 (seeking a neutral default rate to make bargaining work, not prescription),

⁶⁸ (AAR Update at 5.)

⁶⁹ (AAR Reply at 6 (citing TTX as making the up the dominant share of car replacements, by far) (filed April 15, 2024); TTX Reply at 3, Fig. 7 (filed April 15, 2024).)

⁷⁰ (RSI Pet. at 15-20.)

higher-capacity cars and currently “idle” cars will cover retirements.⁷¹ This “no cliff because TTX will build” defense concedes RSI’s parallel concern.

Thus, AAR’s contentions about the boxcar cliff are illusory: either (a) non-TTX investment continues to lag due to market-bottom default rates and an ineffective arbitration mechanism under Rule 25, producing capacity shortfalls and service risk, or (b) TTX fills the gap, increasing concentration. Both outcomes contradict the ICC’s effective-market benchmark assumption when it approved Rule 25 and conflict with the Rail Transportation Policy.

C. AAR conflates all short lines to defend a new-build-only rule that picks winners and losers.

AAR cites “short line” concerns to justify applying the new default rate only to future builds, suggesting uniform harm from higher default rates. This is misleading. Short lines are not all the same in Rule 25’s car-hire economy. There are at least two distinct groups of short lines: short lines that predominantly terminate traffic and, thus, function as net car users, and short lines that have chosen to own cars to serve their traffic and interchange broadly. A prospective-only change advantages the first group by preserving below-market defaults on the legacy fleet they use, and disadvantages the second by denying market-aligned compensation on the legacy fleet they own. In other words, the EAC design picks winners and losers among short lines based on business models, not neutral market evidence.

⁷¹ (AAR Reply at 5; TTX Reply at 9-10.)

This choice cannot be squared with the ICC’s effective-market rationale for approving Rule 25, which aligns with the Rail Transportation Policy’s objectives to “ensure effective competition” and “avoid undue concentrations of market power.”⁷² AAR’s Update confirms the point: it cites a short-line representative opposed to changes of default rates on existing cars precisely because the current, depressed default rate favors net users, but says nothing about the short-line owners who require effective-market returns to maintain and refurbish their existing cars.⁷³ The Board should reject a rule architecture that entrenches these cross-subsidies.

VI. The Board should adopt a procedural schedule and order data disclosure to build a reliable record.

Because the EAC resolution fails to materially change Rule 25 to address RSI’s concerns, and because it reflects AAR’s efforts to prevent RSI from substantively engaging in a private resolution, RSI asks the Board to grant the Petition, set a procedural schedule, and direct AAR, Railinc, and TTX to make available under the protective order the data necessary to evaluate whether Rule 25 fulfills its purpose of approximating an effective market and to determine any necessary conditions for its ongoing approval.

RSI proposes the following procedural schedule:

⁷² 49 U.S.C. §§ 10101(4), (12).

⁷³ (AAR Update at 11.)

Deadline (from Reopening)	Event
15 days	Data Produced by Railinc
30 days	Data Produced by AAR and TTX
120 days	Opening Comments
210 days	Reply Comments
270 days	RSI Rebuttal (limited to new evidence/argument in Replies)

In accordance with this procedural schedule, the Board should also order Railinc and TTX to provide RSI, as appropriate under the protective order, the data RSI sought in the Petition, expanded to cover:

- All car types. This reflects the TAG’s use of data covering all cars.
- TTX adjustments. This reflects TTX and TAG member statements indicating that TTX makes adjustments to published rates.
- TTX Car Contracts and Rules. This is necessary to identify the extent to which any usage rules and TTX standard car contract forms relate to pricing and user value, including to identify specific rules around turnback and maintenance.

RSI has attached a list of the data as Exhibit 4. Since Railinc already makes this data available to some entities, 15 days affords ample time to produce the Railinc data.

VII. Conclusion.

The EAC’s resolution leaves default rates tethered to the low tail of paid outcomes, refreshes the default rate too infrequently, applies reforms only to future builds, and excludes material market evidence from TTX. These choices preserve suppression, distort negotiation, impede reinvestment outside TTX, and entrench

TTX's market concentration, contrary to the Rail Transportation Policy. Thus, the Board should lift the abeyance, grant the Petition, set an expeditious schedule, and order targeted data disclosure under the protective order so it can condition or revoke its approval of Rule 25.

Respectfully submitted,

/s/Jason D. Tutrone
Jason D. Tutrone
Thompson Hine LLP
1919 M Street, NW Suite 700
Washington, DC 20036
(202) 331-8800

Jason.Tutrone@ThompsonHine.com

Counsel for the Railway Supply Institute

Dated: December 10, 2025

Exhibit 1



RSI Presentation to AAR EAC on Car Hire Rule 25

May 7, 2025

Introduction and Agenda

Rule 25: What it is and how it works

Rule 25 suppresses car hire rates

Rule 25 harms the car market for all stakeholders

How to fix Rule 25 to promote a fair and competitive market

Agenda

- Our analysis focuses on boxcar data but Rule 25 factors impacting boxcars would apply to all car types
- Data is generally from the end of 2023
 - RSI's analysis is based on data from several members and publicly available sources
 - See pages 5 and 6 of Powers Verified Statement, RSI Petition, STB Docket EP 334 (Sub-No. 8A) (Mar. 25, 2024)

Rule 25: Background

- **Car Hire:** Compensation that one railroad pays another for use of its railcars
 - Hourly Rate: Largest source of revenues
 - Mileage Rate
- **Code of Car Hire:** Agreement between railroads governing how car hire is established, calculated, and settled
- **Code of Car Hire Rule 25 (the “Arbitration Rule”)**
 - Process for establishing car hire rates
 - Other Car Hire Rules support Rule 25 (e.g., Rule 1.H)

Rule 25: Operation

Default Rate

- Applies to all cars absent negotiated or arbitration rate
- Lowest negotiated positive rate in effect for equipment type at end of previous quarter
- Assigned upon UMLER registration; **remains the same for entire life of car**
- Rule 1.H also contains provisions governing default rates

Negotiated Rate

- Rate agreed between owner and using RR

Arbitration Rate

- If owner and user cannot agree on rate, either party may seek arbitration
- Arbitrator selects best and final offer that is closer to fair market rental value, determined by evidence of comparable transactions

Rule 25: Applicability to Lessors

- Applies to railcar lessors under “per diem” leases
 - Lease cars to rail carriers who subscribe to Code
 - Railcars bear carrier lessee’s reporting mark
 - Lessor receives car hire and becomes lessee’s agent for negotiating and arbitrating car hire under Rule 25
- Highly impractical for lessors and railroad lessees to avoid Car Hire System
 - Per diem leases mitigate risk for railroad lessees, reducing overall costs
 - Access to Car Hire System provides efficient negotiation and settlement
 - STB granted antitrust immunity for Car Hire Rule 25; lessors and lessees do not have their own antitrust immunity

Rule 25 Does Not Apply to TTX

- **TTX**
 - Railroad-owned entity that currently owns ~32% of boxcars
 - Operates pool of TTX supplied boxcars and pool of railroad-supplied boxcars
- **Rule 25 does not apply to TTX-supplied boxcars**
 - TTX (not a RR) is registered “mark owner” of TTX cars
 - TTX has separate antitrust authority to establish and settle car hire for its railcars
- **Because Rule 25 does not apply to TTX, TTX provides a market benchmark for evaluating Rule 25**

Issue: Rule 25 Suppresses Car Hire

1. Low default rates encourage lowball negotiated rate offers by car users
2. Arbitration backstop does not promote market rates
3. Default rates are susceptible to manipulation that further suppresses car hire

Rule 25 Rates vs. TTX Rates: 60ft Boxcars

	Hourly Rate	Mileage Rate
Default Rates ¹	\$0.17	\$0.049
Rule 25 (Average Negotiated Rate) ²	\$0.80	\$0.07
TTX (Published)	\$1.12	\$0.09
Rule 25 Suppression Factor	-39%	-22%

- RSI data show revenues from Rule 25 negotiated rates are approximately **28% lower** than median published TTX rates
- Negotiated rates tell only part of the story: Approx. 1/4 of paid hours and miles under Rule 25 are at **default rates**, which are even lower.

¹ Current A606 default rates

² David Nahass, "Does Growth Look Like a Boxcar?" Railway Age. October 7, 2024. <https://www.railwayage.com/financeleasing/does-growth-look-like-a-boxcar/>

Low Default Rates impair negotiation

- **Theory:** Setting default rates at lowest negotiated rate encourages negotiated or arbitrated rates, which promotes competitive market pricing
- **Reality:** Default rates do not promote competitive-market pricing
 - Mandatory Interchange prevents owners from directing cars to specific users, so higher rates $\neq$ better access
- **Result:** Discourages offers exceeding default rate

Arbitration does not solve the problem

- **Theory:** Arbitration would approximate fair market outcome where negotiation fails
- **Reality:** Arbitration does not promote fair market outcomes
 - Poor demand-based pricing signals preclude market outcome
 - Impractical for owners except in rare cases because car use distributed across many users
- **Result:**
 - Encourages negotiated rate only with largest users
 - But pressures owners to settle at a discount, which further suppresses negotiated rates
- No evidence of boxcar arbitration despite owner concerns about rates

Default Rates easily manipulated downward

- Low Default Rate significantly benefits users
 - Approx. $\frac{1}{4}$ of all hours are at default rates
- Negotiated rate on a single car could set the default rate
 - Car does not have to run on the rate; rate only needs to be in effect
 - Car could be at the end of life
- ICC recognized potential for manipulation

Default Rates: Historic decline

History of Loaded Default Rates Assigned to New A405 Cars, 1994-Present

Rate Begins	Rate Ends	# of Quarters	Loaded Hourly Rate	Loaded Mileage Rate
1994 Q1	1994 Q1	1	\$1.00	\$0.075
1994 Q2	1994 Q2	1	\$0.65	\$0.107
1994 Q3	1994 Q4	2	\$0.54	\$0.066
1995 Q1	1995 Q3	3	\$0.50	\$0.060
1995 Q4	1996 Q2	3	\$0.48	\$0.060
1996 Q3	1997 Q2	4	\$0.42	\$0.069
1997 Q3	1998 Q1	3	\$0.48	\$0.050
1998 Q2	2002 Q4	19	\$0.34	\$0.059
2003 Q1	2003 Q1	1	\$0.33	\$0.065
2003 Q2	2003 Q2	1	\$0.30	\$0.060
2003 Q3	2004 Q2	4	\$0.20	\$0.058
2004 Q3	2004 Q3	1	\$0.30	\$0.060
2004 Q4	2005 Q2	3	\$0.33	\$0.065
2005 Q3	2006 Q2	4	\$0.34	\$0.059
2006 Q3	2007 Q4	6	\$0.30	\$0.052
2008 Q1	2008 Q2	2	\$0.30	\$0.059
2008 Q3	2011 Q4	14	\$0.30	\$0.045
2012 Q1	2015 Q1	13	\$0.05	\$0.067
2015 Q2	2015 Q2	1	\$0.05	\$0.060
2015 Q3	Present	34	\$0.05	\$0.067

History of Loaded Default Rates Assigned to New A606 Cars, 1994-Present

Rate Begins	Rate Ends	# of Quarters	Loaded Hourly Rate	Loaded Mileage Rate
1994 Q3	1995 Q1	3	\$0.58	\$0.070
1995 Q2	1996 Q2	5	\$0.55	\$0.055
1996 Q3	1997 Q2	4	\$0.46	\$0.069
1997 Q3	1997 Q3	1	\$0.54	\$0.066
1997 Q4	1998 Q1	2	\$0.39	\$0.260
1998 Q2	2015 Q1	68	\$0.17	\$0.049
2015 Q2	2015 Q2	1	\$0.17	\$0.078
2015 Q3	Present	34	\$0.17	\$0.049

Sources and Notes:

Compiled from CHARM data.

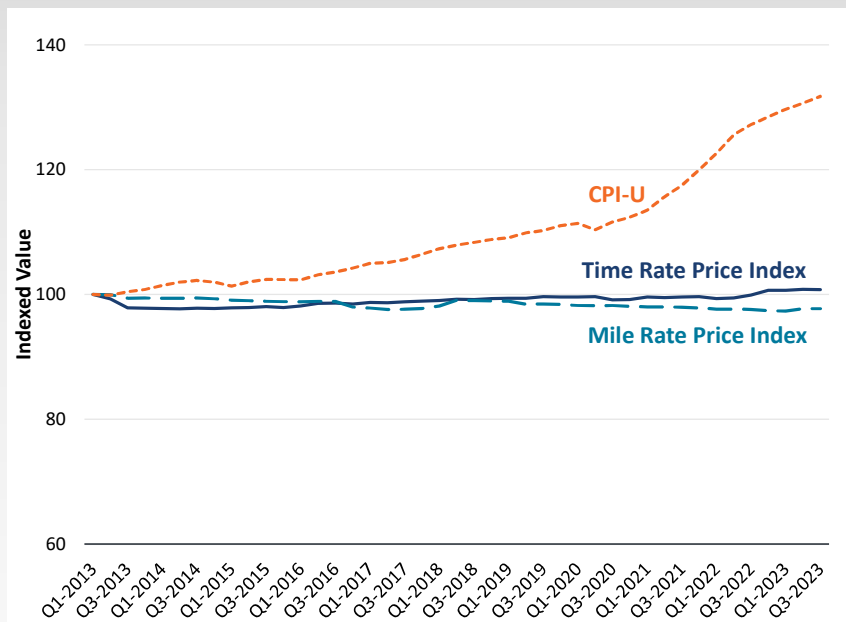
Default Rates are extreme outliers

- \$0.20-\$0.70 less than the 10th percentile negotiated paid hourly rate
- Comparison to TTX

	A406	A606
Default Hourly	\$0.17	\$0.17
Default Mileage	\$0.049	\$0.049
TTX Hourly	\$1.35	\$1.12
TTX Mileage	\$0.09	\$0.09

Impact: Stagnant Car Hire Rates

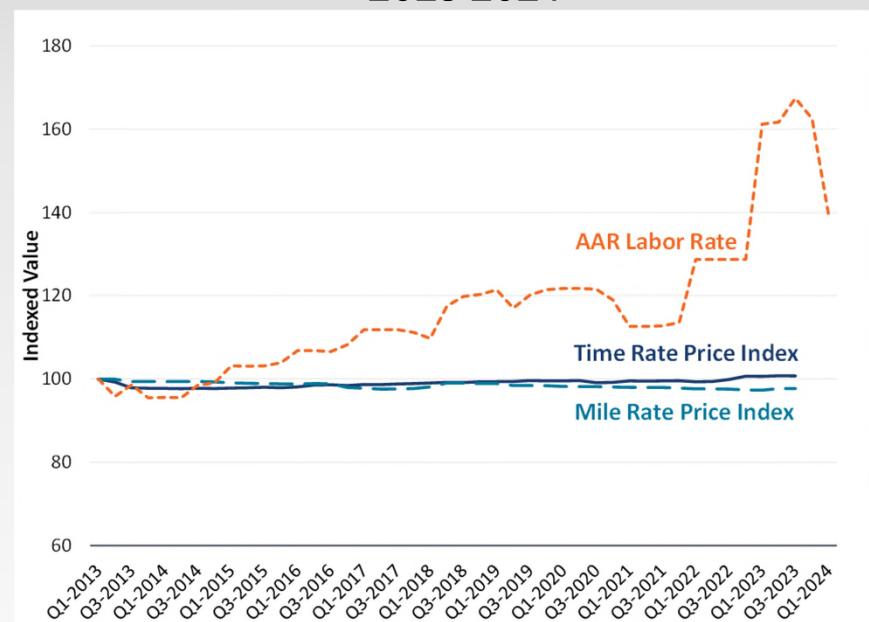
Quarterly Index Of Paid Rates And CPI-U, 2013-2023



Sources and Notes:

Data from RSI members; Federal Reserve Bank of St. Louis (FRED) Consumer Price Index for All Urban Consumers, quarterly data from Q1 2013 to Q3 2023. The price index is calculated using the Fisher method.

Quarterly Index Of Paid Rates and AAR Labor Rate, 2013-2024

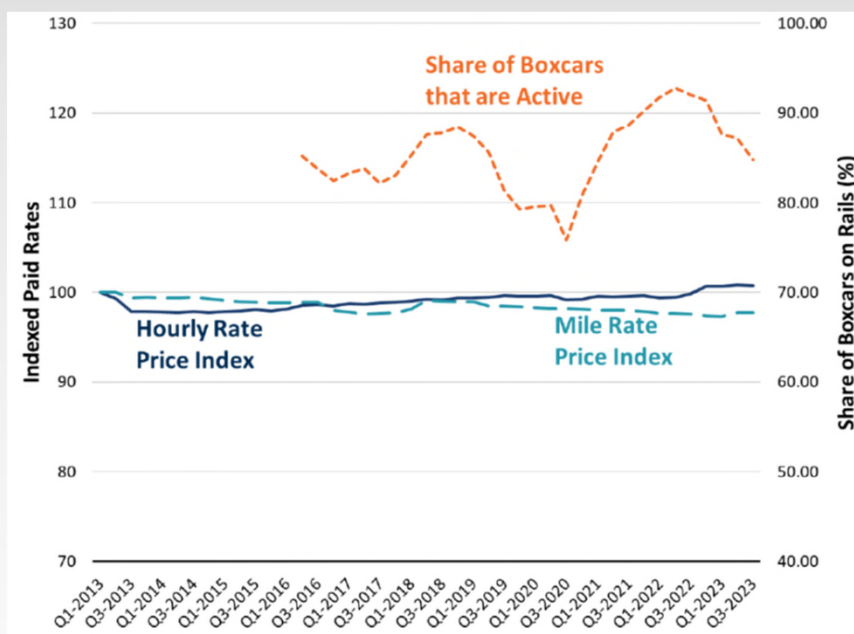


Sources and Notes:

Data from RSI members; AAR. The price indices are calculated using the Fisher method.

Impact: Car hire not responsive to demand

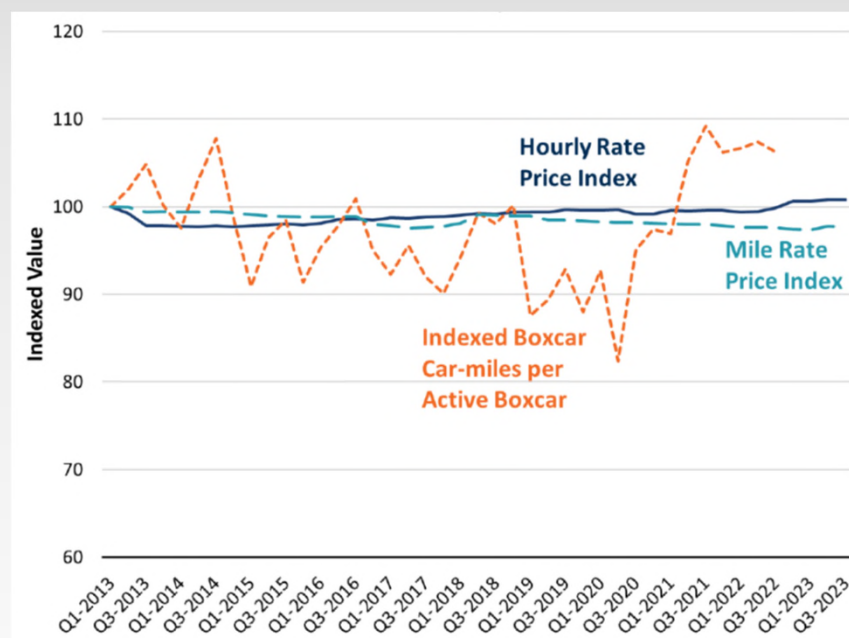
Quarterly Index Of Paid Rates and Indexed Boxcar Car-Miles per Active Boxcar, 2013-2023



Sources and Notes:

Data from RSI members; AAR Freight cars in storage data. The price indices are calculated using the Fisher method.

Quarterly Index Of Paid Rates and Indexed Boxcar Car-Miles per Active Boxcar, 2013-2023



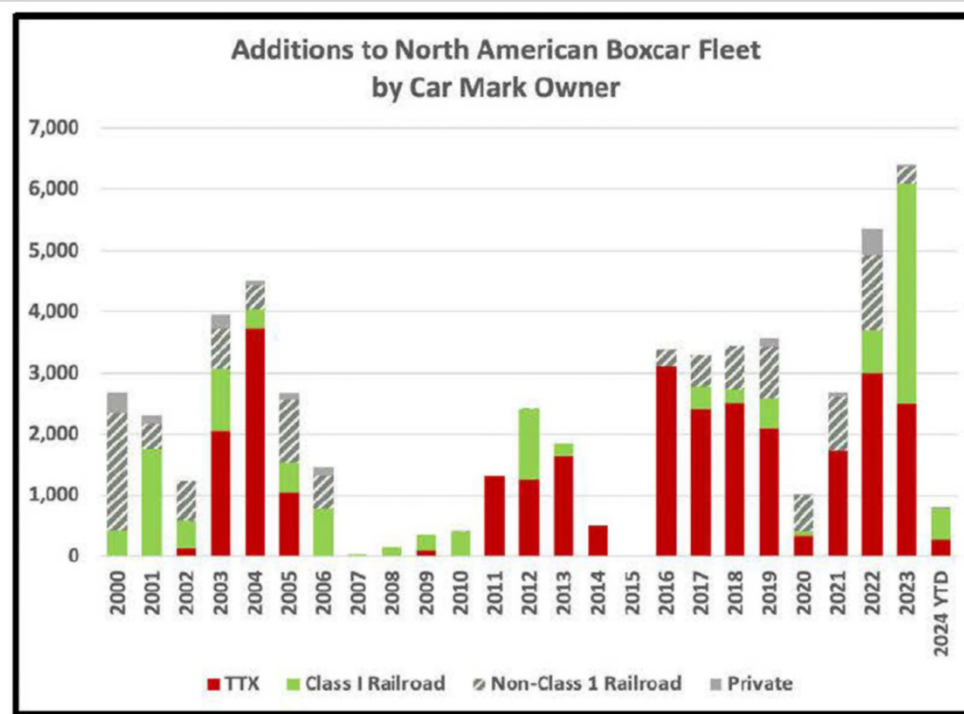
Sources and Notes:

Data from RSI members; AAR; Surface Transportation Board. The price indices are calculated using the Fisher method.

Impact: Car hire does not support investment

- Cost of a new A606 boxcar: \$155,000
- Net present value of cash flows over 45 years assuming normal utilization: \$96,334
- I.e., on net owners would expect to **lose 38%** of their investment
 - Increasing utilization to **every hour** over 45 years yields NPV of \$125,986 and an expected loss of 19%
- Recent boxcar investment limited to generationally favorable economic conditions from 2020-2022 and conversion of orders for other car types that would have been unused

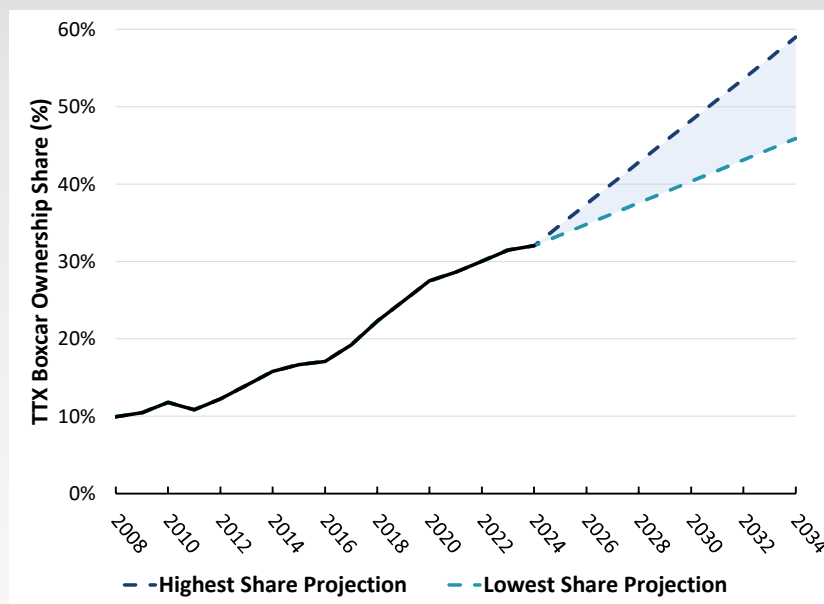
But TTX invests



And TTX grows market dominance

- TTX has become the dominant owner of boxcars despite the rate premium it charges
- TTX owns 58% of the boxcars added to the fleet since 2004
- As a result, TTX share has grown from 10% in 2008 to 32% in 2024
- TTX's share projected at 46% or higher in the next decade

Share of the Boxcar Fleet Owned by TTX, 2008-2034 (proj.)



Sources and Notes:

Historical shares from 2008 to 2024 based on Umler data. Projected shares based on scenarios defined in Verified Statement of Dr. Nicholas E. Powers, p. 66, Table 9. Refrigerated boxcars excluded from market share calculations. Highest share projection corresponds to Scenario 1 of Table 9. Lowest share projection corresponds to Scenario 3 of Table 9.

And TTX charges higher rates

TTX is growing its market dominance despite charging higher rates than Rule 25 negotiated rates

Rates on 60' Boxcars

	Hourly Rate	Mileage Rate
Default Rates ¹	\$0.17	\$0.049
Rule 25 (Average Negotiated Rate) ²	\$0.80	\$0.07
TTX (Published)	\$1.12	\$0.09
TTX Premium	40%	29%

¹ Current A606 default rates

² David Nahass, "Does Growth Look Like a Boxcar?" Railway Age. October 7, 2024. <https://www.railwayage.com/financeleasing/does-growth-look-like-a-boxcar/>

Impact: Uncompetitive Boxcar Market

- TTX is the dominant supplier
 - Rule 25 rates insufficient to encourage investment in private cars
- TTX will have significant control over:
 - Boxcar costs
 - Boxcar capacity
 - Availability of boxcar types
- Car costs increase significantly to TTX levels

Fixing Rule 25

- Principle 1: Promote fair outcomes
 - Railcar owners and users negotiate on level playing field
 - Reduce incentives for manipulation
 - Eliminate barriers to competition
- Principle 2: Improve efficiency of establishing car hire
 - Reduce influence of negotiation and arbitration procedural costs on car hire
- Principle 3: Do not prescribe rates

Solution: Revise Default Rate

Redefine as the mean paid rate for the car type in the prior quarter

- **Levels playing field:** Encourages owners and users to negotiate rates reflecting market
- **Improves Market Fidelity:**
 - Difficult to manipulate
 - Eliminates noise of unused negotiated rates
- **Efficiency:** Reduces influence of negotiation and arbitration procedural costs on car hire

Include TTX rates in calculation of mean paid rate

- **Improves Market Fidelity:** Does not ignore major share of the market (i.e., TTX)

Solution: Revise Default Rate

Reset the Default Rate periodically to reflect current negotiated rates

- **Improves Market Fidelity:** Adjusts for changing market, rather than locking in car hire at the same rate for the entire life of the railcar

Maintain negotiation and arbitration aspects of Rule 25

Questions?

Appendix

Common Misconceptions

Misconception: Few cars run under the default rate

- Default rates account for 27% of paid hours and 22% of paid miles in the RSI sample
- Magnitude of default rates and percentage of paid hours and miles under default rates is economically significant

Common Misconceptions

Misconception: Boxcar lessors participate in the Car Hire System voluntarily

- Assumes that lessors can use fixed rate leases and leasing railroads will participate directly in the system
- But lessors do not control the structure of the boxcar market
 - *Per-diem* leases have been primary lease type since the 1970s
 - *Per-diem* leases mitigate financial risk for lessee railroads

Common Misconceptions

Misconception: Private car owners have no standing under the Car Hire System since they don't control railroad marks

- The rail industry has accepted the practice of private car owners licensing shortline marks and participating in the car-hire system for over 5 decades
- Private car owners were recognized participants during the deprescription process leading to Rule 25
- Private lessors play a vital role in ensuring competitive access to railcars and have a critical interest in the car hire system

Common Misconceptions

Misconception: Default rate reform will lead to excess car supply

- Oversupply arose in 1980s because ICC prescribed rates using a formula that increased rates as demand dropped
- Default Rate reform would not revert to 1980s rules
 - Reform would not impact rules designed to discourage owners from the inefficient use that contributed to 1980s surplus
 - Reform would not reward reduced utilization with higher rates
- Default Rate reform is not rate prescription and merely reduces Rule 25's rate distortion
 - Maintains reliance on negotiated rates
 - Levels playing field for negotiation
 - Discourages manipulation
- Oversupply would reduce utilization and, thus, revenue, stifling investment
 - Existing rules effectively eliminate car hire on unused cars.
- No private car owner may introduce any railcar into interchange service with railroad marks without first securing the permission of at least one railroad

Common Misconceptions

Misconception: Default rate reform is a return to prescribed rates

- RSI's proposed reform would move further from prescribed rates than the current rules
 - Current rules favor users by setting default rates at a fraction of market rates
 - RSI proposal would tie default rate to market rates more directly, without favoring owners or users
- Rule 25 negotiation and arbitration remain
 - RSI proposal levels playing field for negotiation and reduces friction costs that distort market

Common Misconceptions

Misconception: Default rate reform requires changing rules governing TTX

- Default rate reform does not involve any rules governing TTX because TTX operates outside the Car Hire System
- TTX will be able to set rates and operate as it does today
- TTX is an example of how the car hire market operates outside Rule 25's constraints, and default rate reform aims to reduce distortions from those constraints

Common Misconceptions

Misconception: Default rate reform guarantees that car owners will recover their investment in their cars

- Default rate reform does not guarantee any return on investment
 - Default rates would still be based on negotiated rates
 - Arbitration would still be based on market rates
 - Revenues will be tied to utilization the same way they are today, which constrains returns
 - Rules governing when car hire accrues do not change
- Default rate reform only reduces Rule 25's suppressive influence on car hire rates

Exhibit 2

Tutrone, Jason

From: McDonald, Amber <amcdonald@aar.org>
Sent: Monday, August 25, 2025 5:51 PM
To: Tutrone, Jason
Subject: RE: Request for Access to Railinc Data Distributed to Rule 25 Technical Advisory Group

CAUTION EXTERNAL EMAIL

Dear Jason,

I am writing in response to your August 19, 2025 email regarding distribution of confidential AAR/Railinc data. Specifically, you have requested that AAR share confidential AAR/Railinc data with members of the Car Hire Rule 25 Review TAG (the TAG) who are not on AAR's Equipment Assets Committee (EAC), and with RSI.

All AAR committee members are required to sign seat holder agreements representing that the committee member has read and will abide by the Safety & Operations Committee Handbook and, further, that the committee member understands that confidential data shared with AAR committees must be used appropriately and not shared outside the committee. Members of the TAG who are also on the EAC and who therefore have signed seat holder agreements currently have access to the AAR/Railinc data. I note that two of RSI's member companies have representatives on both the EAC and the TAG and, therefore, those TAG members already have been given access to the data—subject to the conditions in the seat holder agreement.

The Car Hire Rule 25 Review TAG also includes individuals who are not on the EAC and, therefore, until now have made no confidentiality commitments. However, to enable all TAG members to participate fully in this process, I have circulated a confidentiality agreement for those TAG members who are not on the EAC and do not have a signed seat holder agreement in place. This will effectively make them subject to the same conditions that apply to all EAC members and the rest of the TAG. Those who wish to receive the confidential AAR/Railinc data are invited to sign the agreement.

RSI is differently situated than these TAG members: RSI is an industry advocacy group. RSI itself is not a stakeholder; it is not a railroad, a car owner, or a car lessor. RSI thus does not have a seat on the EAC or the TAG. RSI's member companies have seats. In this particular instance, at least 15 individuals on the TAG represent various RSI member companies. RSI has nonetheless been given the opportunity to attend TAG meetings and advocate directly to the EAC and to the TAG through multiple presentations and letters. However, the TAG members—including representatives of RSI member companies—will do the work of the TAG. It is neither necessary nor appropriate to share confidential data with RSI.

Kind regards,

Amber

Amber L. McDonald

Associate General Counsel

Association of American Railroads

425 Third St., SW, Suite 1000

Washington, DC 20024

O: 202.639.2507 | C: 202.631.0569

amcdonald@aar.org



Tutrone, Jason

From: Tutrone, Jason
Sent: Tuesday, August 19, 2025 2:36 PM
To: Amber McDonald (amcdonald@aar.org)
Subject: Request for Access to Railinc Data Distributed to Rule 25 Technical Advisory Group

Dear Amber,

I'm writing to request access to the Railinc data that has been distributed to the Rule 25 Technical Advisory Group (TAG) in connection with its consideration of the Railway Supply Institute's (RSI) proposed amendment to Rule 25. I am also requesting that Railinc distribute the data to all TAG participants.

At the TAG's request, the Association of American Railroads (AAR) recently authorized distribution of Railinc data sets identifying negotiated and default car-hire rates—by car type—to TAG members who also hold seats on the Equipment Assets Committee. As you know, the TAG sought this data to inform its evaluation of RSI's proposed amendments to Rule 25, including revisions to the default-rate methodology.

RSI is committed to engaging constructively with all stakeholders throughout this process. However, without access to the same Railinc data that the TAG participants are reviewing, we cannot meaningfully contribute to the technical analysis of our proposal. Similarly, depriving some TAG members of this data will limit their ability to contribute to the TAG. In fact, we understand that these TAG members and RSI will not be able to attend the discussion of the data at the TAG meeting scheduled for September 3. Equitable access to the data thus is essential to ensuring a transparent, data-driven discussion and to maintaining the integrity of the TAG's work.

If you would like to discuss this request, please let me know.

Best regards,

Jason

Jason Tutrone | Partner | **Thompson Hine LLP**
1919 M St. NW Ste 700 | Washington, DC 20036
O: 202.263.4143 | **M:** 202.603.3109
www.ThompsonHine.com
Jason.Tutrone@ThompsonHine.com



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Exhibit 3

July 29, 2025

Amber McDonald
Associate General Counsel
Association of American Railroads
425 Third St., SW, Suite 1000
Washington, DC 20024

Re: Rule 25 TAG / Recommended Data for Evaluating RSI's Proposal

Dear Amber:

At the July 23 meeting of the Equipment Assets Committee's Technical Advisory Group on Car Hire Rule 25 (the TAG), recommendations were sought regarding which Railinc-held data would be useful for evaluating the Railway Supply Institute's (RSI's) proposed changes to Rule 25. On behalf of the RSI, this letter identifies data that RSI believes would be relevant to evaluating the proposal.

As background, RSI has proposed amending the default rate that applies to a car under Rule 25 to the mean paid rate for that equipment type at the end of the previous quarter. To calculate the mean paid rate, RSI proposes using all Rule 25 paid rates, except zero rates,¹ and all TTX paid rates. RSI has also proposed updating each car's default rate periodically.

Recommended Dataset Disclosure

RSI recommends that Railinc provide the following data, reported separately for every unique combination of car type, rate, and CHARM rate code:

- Car Type
- Paid Hours
- Paid Miles
- Rate
- Rate Type (empty or loaded)
- CHARM Rate Code

Additionally, the data should meet the following parameters:

- The data should cover each car type with car-hire rates assigned under Rule 25.
- The data should cover the most recent 12-month period available so the TAG can review a current snapshot of the market.
- The data should not include railcars with in-service dates before January 1, 2003, because default rates on cars that entered service before this date may have been based on prescribed rates. *See*

¹ Zero rates would not be used because zero rates might indicate that a car was ineligible for car hire earnings. Code of Car Hire, Rule 1.B. A zero rate also may indicate that the rate does not reflect the compensation for use of the car.

Jason.Tutrone@thompsonhine.com Fax: 202.331.8330 Phone: 202.263.4143

Amber McDonald, AAR
July 29, 2025
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Code of Car Hire, Rule 1.H. However, additional consideration of this parameter may be necessary to the extent car types contain a large proportion of cars with in-service dates before January 1, 2003.

- The data should not include paid hours and miles at zero rates, because zero rates indicate special circumstances or that the rate does not capture the compensation provided for the car's use.

We understand that Railinc makes these data available to railroads through market reports.

Recommended Analyses

Providing the dataset described above will allow the TAG to calculate several important metrics related to RSI's proposed changes to Rule 25. It will also give the TAG flexibility to refine those calculations if it later identifies irrelevant rate codes or other anomalies. Specifically, RSI's recommended disclosure will allow the TAG to determine:

1. **Share of Paid Miles and Hours Moved at Default Rates.** By dividing paid hours and miles assessed at default rates by total paid hours and miles at all rates (except zero rates), the TAG can quantify the extent to which Rule 25 fails to yield negotiated rates, causing cars to move at lower default rates.
2. **Distribution of Paid Rates.** Access to the full distribution of paid default and negotiated rates will permit the TAG to assess the extent to which default rates for new cars are outliers.
3. **Mean Paid Rates.** Calculating the mean paid rate by car type will illustrate the impact of RSI's proposal to set the default rate equal to the mean paid rate.

These analyses may in turn prompt the TAG or individual members to conduct additional, more granular studies of the dataset—such as examinations limited to specific car categories (e.g., boxcars or hopper cars).

RSI further proposes that Railinc provide the initial set of the analyses described above. This will help ensure that the TAG has a consistent and comprehensive starting point for its evaluation of the proposed changes to Rule 25.

TTX Data

To evaluate the impact of including TTX data when calculating the mean paid rate, RSI recommends that Railinc provide the initial set of mean paid rates (i.e., Item 3 of the Recommended Analyses, above) by car type both with and without TTX data. Because this would be an aggregated analysis involving multiple variables, it would not disclose specific TTX rate information or allow a party to determine specific TTX rates or mileage.

If you have questions about this recommendation, please contact me.

Amber McDonald, AAR
July 29, 2025
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Very truly yours,

/s/ Jason D. Tutrone

Jason D. Tutrone

Exhibit 4

Exhibit 4 Data

I. Historical Car Hire Data Exchange (“CHDX”) data.

A. Data Holder: Railinc

B. Data Scope: All fields in the CHDX dataset, for all payee and payor railroads and TTX, for the period from January 2013 to the present. The dataset should not be limited by rate type or account type. The fields should include, but not be limited to:

1. EIN (a permanent car identifier)
2. Car Mark and Number
3. Earned Year and Month
4. Reporting Year and Month
5. Paying Railroad
6. Paid Hours
7. Paid Miles
8. Time Rate
9. Mile Rate
10. CHARM Rate Type
11. Empty/Loaded Indicator

II. Historical UMLER data.

A. Data Holder: Railinc

B. Data Scope: Snapshots for all cars in Umler, as of the first of every calendar month since January 2013 to the present. Each snapshot should include:

1. pre-registered cars.
2. the retirement date for each car that retires during the sample period.
3. all fields included in the UMLER profile for each car in this fleet.

III. Historical CHARM data.

A. Data Holder: Railinc

B. Data Scope: Monthly CHARM files for every month since January 2013, covering all cars. The files should include each field in the database for each car, including:

1. Car Mark and Number

2. User Mark
3. Car Type Code
4. Dataset Date
5. CHARM Rate Type
6. Umler Rate Type
7. Loaded Time Rate
8. Loaded Mile Rate
9. Empty Time Rate
10. Empty Mile Rate
11. Rate Effective Date
12. Rate Expiration Date

IV. Historical TTX payment data.

A. Data Holder: TTX

B. Data Scope: Monthly car hire activity and payment data since January 2013 for all cars, including the following fields:

1. Year and Month
2. Paying Railroad
3. Utilization applied
4. Effective Time Rate
5. Effective Mile Rate
6. Paid Hours
7. Paid Miles
8. Empty/Loaded Indicator

V. Historical TTX adjustment data.

A. Data Holder: TTX

B. Data Scope: All adjustments to paying railroads for car activity since January 2013. TTX must include any linking factors and instructions for linking the adjustments to specific car activity and the rules governing the calculation of the adjustments, to the extent not provided in response to item VI., below.

VI. TTX Car Contracts and Rules

A. Data Holder: TTX

B. Data Scope:

1. All form contracts for TTX cars, applicable on or after 2013.
2. All rules applicable on or after 2013 governing use and charges for TTX cars, including rules governing turnback, bad ordered

cars, delegation of cars between carriers, and directives to shift cars between carriers.

3. All rules applicable on or after 2013 governing use of non-TTX cars in TTX managed pools.

VII. Historical Rule 25 arbitration data.

A. Data Holder: Association of American Railroads

B. Data Scope: Best and final offers submitted to AAR, and associated arbitrator awards, pursuant to Arbitration Rule paragraph C.2.a and Code of Car Hire Appendix F since January 2013, including:

1. The date of the notification;
2. The identity of the notifying party;
3. The identity of the counterparty;
4. The mark, number, and AAR car type of the railcar(s) involved;
5. The date certain by which both parties were to file best and final offers with the AAR;
6. The best and final offer submitted by each party;
7. An indicator as to whether the parties pursued final and binding arbitration;
8. The best and final offers submitted by each party during final and binding arbitration (if different than those filed during the notification phase);
9. If resolved prior to the arbitration making a final selection, an indication of that outcome;
10. An indicator as to whether a hearing was held;
11. The time and mile rates ultimately selected by the arbitrator; and
12. The fee charged by the arbitrator.

VIII. Decoders and Linking Factors.

For each data file they provide, AAR, Railinc, and TTX shall provide decoders and also any linking factors internal to the file or between files.

Certificate of Service

I certify that I have this day served copies of this petition upon all parties of record in this proceeding by e-mail.

/s/Jason D. Tutrone

Jason D. Tutrone

Dated: December 10, 2025