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Honorable Patrick Fuchs
Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: *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*

Dear Chairman Fuchs:

The National Industrial Transportation League (NITL), one of the nation's oldest organizations acting as the “voice of the shipper” in freight transportation policy matters, urges the Board to grant the Railway Supply Institute’s (RSI) petition in Docket No. EP 334 (Sub-No. 8A). NITL represents a broad array of companies from many industries reliant on rail transportation, including forest products, paper, and other box-car-dependent commodities. NITL has a direct stake in ensuring an adequate, competitive supply of railroad-marked freight cars.

Background

In March 2024, RSI petitioned the Board to reopen EP 334 and review the Board’s approval granting antitrust immunity for AAR Code of Car Hire Rule 25, which governs negotiation and arbitration of car hire rates for railroad-marked cars. The review would explore whether to either condition or terminate the approval. RSI’s petition identified a core problem that has prevented the Rule from achieving its goal of producing effective-market outcomes: a market-bottom default rate that anchors negotiations to the lowest possible outcomes.

For over three decades, the default-rate mechanism has systematically driven car hire rates below levels necessary to sustain private investment. The Rule assigns each new car a default rate equal to the lowest negotiated rate for that car type. The default rate stays with the car for its entire life and applies to every user unless replaced by a negotiated rate or arbitration. This design anchors all negotiations to isolated, atypically low transactions, suppressing rates across the fleet and discouraging new railcar construction.

While this affects all car types that railroads supply, the boxcar market illustrates the impact most vividly because data is available. That data shows that approximately 20% of the boxcar

fleet must retire by 2030,¹ yet the only entity consistently investing in boxcars is TTX, which operates outside Rule 25, sets its own rates, and has grown its boxcar market share from 10% to 32%.²

In April 2025, the Board held RSI's petition in abeyance to allow AAR an opportunity to review Rule 25. But the AAR's Equipment Assets Committee made only modest adjustments to the default-rate mechanism—and only for new-build cars starting in 2027. The revised rule sets the default rate at the lowest rate paid for at least five percent of all car use, subject to automatic updates every five years. These changes preserve the core problem: a market-bottom anchor that continues to suppress car hire rates below effective market levels. The AAR Committee made no changes for existing cars, despite RSI's showing that Rule 25 deprives car owners of an opportunity to earn car hire reflecting current economic value.

NITL's Position

NITL supports RSI's petition because Rule 25 places shippers at significant risk of long-term harm. Even with AAR's recent changes, the Rule will continue to discourage investment in railroad-supplied cars.

AAR's changes do not alter the fundamental dynamics of the default-rate mechanism, which still incentivizes negotiations to remain at the low end of the market. While Rule 25 makes arbitration available when negotiations fail, the wide dispersion of car use among many railroads makes arbitration impractical. As RSI documented, no ELC member had participated in an arbitration in the past decade. These changes will predictably produce two results: a large proportion of car movements will occur at default rates at or near the market bottom, and those low-end rates will continue to drag down negotiated rates.

AAR has also locked in for existing cars the market-bottom anchoring that RSI's petition sought to correct. Car hire for existing cars remains tied to historical rates that may be decades old, undercutting incentives to invest in the continued operation of those cars. And because rates for existing cars inform the default rates for new cars, this anchoring will weigh down default rates for new cars for decades to come.

Without adequate investment incentives, the boxcar market will inevitably consolidate around a single supplier, TTX. Operating outside Rule 25's constraints, TTX can set rates that cover costs plus a return on investment. Its market share has already grown to nearly one-third of all boxcars

¹ RSI Petition at 2.

² RSI Petition, Powers V.S. 64; TTX Reply Fig. 4, at 8, Apr. 15, 2024; RSI Comments, Ex. 1 at 19, Dec. 10, 2025.

and could reach 50% or higher within the decade.³ As that share climbs, shippers will increasingly depend on a single entity's fleet decisions and face higher transportation costs and reduced supply diversity.

This concentration poses operational risks. TTX is pursuing a standardized boxcar fleet comprising only two high-capacity car types.⁴ Many shippers cannot efficiently accommodate these cars without costly facility modifications because their sidings, door intervals, and interior layouts were built for traditional 50-foot cars. As TTX's market share grows, shippers will face an untenable choice: accept boxcar types of incompatible with their operations or undertake significant capital expenditures to retrofit facilities they have used efficiently for decades.

NITL acknowledges that recalibrating Rule 25 may increase car hire costs in the near term. But the status quo will lead to even higher costs. As Rule 25 continues to suppress investment, TTX will capture a growing share of the boxcar market—and TTX's rates far exceed typical Rule 25 rates. The Rule's suppressive effect also means less reliable supply of railroad-provided cars, placing greater pressure on shippers to invest their own capital in rolling stock. These investments divert funds from the shippers' core business and should be unnecessary in a well-functioning market.

Conclusion

Car hire rates that approximate effective market levels are critical to cost-efficient and reliable freight rail service. The Rail Transportation Policy calls for allowing competition and demand to establish reasonable rates and for avoiding undue concentrations of market power.⁵ Rule 25, as currently structured, is inconsistent with both objectives. The Board should grant RSI's petition and conduct a thorough review of Rule 25 to promote effective-market car hire rates before further consolidation forecloses competitive alternatives and shippers are forced to make costly long-term railcar investments.

Sincerely,



E. Nancy O'Liddy
Executive Director

³ RSI Petition, Powers V.S.at 63, 65-67.

⁴ RSI Petition, App. E, at 10.

⁵ 49 U.S.C. § 10101(1) and (12).