

SURFACE TRANSPORTATION BOARD

DECISION

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

Digest:¹ The Board removes this proceeding from abeyance and denies a petition to reopen a 1992 decision approving an agreement that established a process governing the negotiation of car-hire rates for deprescribed rail cars and the arbitration of related disputes. Given that a number of changes to that process have recently been adopted, the Board finds that the appropriate course is to observe how the market responds to those changes to assess their real-world impact on rates, investment, and competitive dynamics before determining whether further intervention is warranted. Additionally, the Board directs the Association of American Railroads to review and address the process' voting structure, notify the Board when it has done so, and, if necessary, promptly seek any required action from the Board.

Decided: May 18, 2026

On March 25, 2024, the Railway Supply Institute (RSI) filed a petition under 49 U.S.C. §§ 1322(c) and 10706(c) and 49 C.F.R. § 1115.4, requesting that the Board reopen this proceeding, review Rule 25 of the Code of Car Hire (the Rule), and either condition or terminate the agency's approval of the Rule. (RSI Pet. 1, Mar. 25, 2024.) The Rule, which established the process for setting car-hire rates, was approved in 1992 under 49 U.S.C. § 10706(a) by the Board's predecessor, the Interstate Commerce Commission (ICC). (RSI Pet. 1, Mar. 25, 2024); Joint Pet. for Rulemaking on R.R. Car Hire Comp., 9 I.C.C.2d 80, 88-92 (1992). According to RSI, the Rule has failed to produce market-based car hire rates that incent investment in the supply of railcars. (RSI Pet. 1, Mar. 25, 2024.) Instead, RSI claims, the Rule is leading to a boxcar supply shortage and has enabled TTX Company (TTX), a railroad-owned entity that operates a pool of boxcars, to dominate the boxcar market, contrary to the public interest. (Id. at 1-2, 16.)

By decision served on April 9, 2025, the Board held this proceeding in abeyance after being notified that the Association of American Railroads (AAR) intended to conduct a review of the Rule via its Equipment Assets Committee (the EAC) and that interested parties, including

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

RSI, would have an opportunity to present their concerns regarding the existing framework of the Rule. (See RSI Letter, Jan. 28, 2025; AAR Letter 1-2, Feb. 25, 2025); Joint Pet. for Exemption of Arbitration Rule from Appl. of 49 U.S.C. § 10706 & Mot. to Dismiss, (Abeyance Ord.), EP 334 (Sub-No. 8A), slip op. at 1-2 (STB served Apr. 9, 2025). By filing dated November 24, 2025, AAR notified the Board that the EAC voted to make certain changes to the Rule (as well as Rule 1 of the Code of Car Hire). (See AAR Letter 4, Nov. 24, 2025.) RSI, thereafter, filed a comment on December 10, 2025, arguing that the EAC's resolution is inadequate. (RSI Comment 5-6, 31-32, Dec. 10, 2025.) As such, RSI submits that the Board should lift the abeyance, grant its petition, set an expedited schedule, and order targeted data disclosure to assess whether to condition or revoke the Rule.

For the reasons discussed below, the Board removes this proceeding from abeyance and denies RSI's petition to reopen.

BACKGROUND

Car hire (or per diem) charges are assessed by railroads that own or control rail freight cars when their cars carry revenue-producing traffic over the lines of other railroads. Joint Pet. for Rulemaking on R.R. Car Hire Comp., EP 334 (Sub-No. 8), slip op. at 1 (STB served Apr. 22, 1997). Beginning in the early 1960's, car hire charges were set using an ICC-prescribed formula. Id. However, the method of setting these charges changed in the 1990's when the ICC deprecrescribed car hire rates. Id. Final rules implementing the deprecrescription, codified at 49 C.F.R. parts 1033 and 1039, essentially froze prescribed car hire rates at their December 31, 1990 levels and permitted the railroads to deprecrescribe up to 10% of their car fleets each year for 10 years beginning on January 1, 1994. Joint Pet. for Rulemaking on R.R. Car Hire Comp., EP 334 (Sub-No. 8), slip op. at 1. At the end of the 10-year period, car hire was fully deprecrescribed, and negotiated, market-set rates applied to virtually all cars. Id.; see also Joint Pet. for Rulemaking on R.R. Car Hire Comp., 9 I.C.C.2d 80 (1992), 9 I.C.C.2d 582 (1993), 9 I.C.C.2d 1090 (1993), appeal dismissed, S. Pac. Transp. Co. v. ICC, 69 F.3d 583 (D.C. Cir. 1995).

The agency has stated that the Rule is an integral part of the car hire deprecrescription. Joint Pet. for Rulemaking on R.R. Car Hire Comp., EP 334 (Sub-No. 8), slip op. at 1. Essentially, the Rule is an agreement among the subscribing railroads that governs the negotiations of car hire rates on deprecrescribed cars and the arbitration of related disputes. Id. The Rule embodies a bid and offer process for negotiating charges; clarifies how negotiations proceed and, if necessary, how disputes are arbitrated; and determines the "default" car hire charges² pending the adoption of new negotiated or arbitrated charges. Id. The Rule was approved by the ICC under 49 U.S.C. § 10706 and is not codified under the Board's regulations but rather is published in the Code of

² The default rate is a rate that applies in the absence of an agreement between the rail car owner and the user. See Circular No. OT-10, Code of Car Hire Rule 1, ¶ H, <https://www.railinc.com/rportal/documents/18/260773/OT-10.pdf>.

Car Hire, a comprehensive set of AAR procedures governing car hire.³ Joint Pet. for Rulemaking on R.R. Car Hire Comp., EP 334 (Sub-No. 8), slip op. at 1-2.

Petition to Reopen

In its petition to reopen, RSI argues that the Rule has not produced market-based car hire rates that incentivize investment in an adequate supply of railcars. (RSI Pet. 23, Mar. 25, 2024.) Instead, RSI alleges, the Rule has “led the rail network to the brink of a boxcar supply crisis and market dominance by TTX.” (*Id.*) RSI argues that the ICC approved the Rule “as part of a ‘market-oriented approach to setting car hire rates’ that addressed ‘a serious problem’ with its existing approach, which was that ‘it failed to adjust rationally to changes in the supply and demand for cars.’” (*Id.* at 8 (citing Review of Car Hire Regul., EP 334 (Sub-No. 6) et al., slip op. at 2 (ICC served Feb. 26, 1992)).) According to RSI, however, the passage of time has shown that the ICC incorrectly assumed that the Rule would produce rates that approximate an effective market. (RSI Pet. 8, Mar. 25, 2024.)

RSI argues that the Rule has led to stagnant car-hire rates that do not encourage adequate investment in new boxcars to avoid the impending boxcar shortage; RSI states that 22% of the boxcar fleet will reach its regulatory life before 2030. (*Id.* at 1-2; *id.*, V.S. Powers 33.) It further argues that default rates are well below the rates offered by TTX, which operates under antitrust immunity and is not subject to the Rule. (*Id.* at 17.) According to RSI, the ICC’s concerns about the risk of rate manipulation under the Rule have also materialized. (*Id.* at 3.) RSI states that the Rule’s default-rate standard—which automatically applies to each car a default rate equal to the lowest negotiated rate in effect for the car type in the quarter before the car was registered—entices users to induce exceptionally low negotiated rates. (*Id.*) RSI argues that, over time, the default rates have dropped to “suspiciously low” levels for several boxcar types. (*Id.*) It further notes that railroad consolidation has undermined the ICC’s attempt to ensure that any two railroads cannot block needed reforms to the Rule. (*Id.*) As explained by RSI, two railroads now hold a high enough voting share to jointly block changes to the Rule. (*Id.*)⁴ RSI states that this fact alone warrants reopening because it is inconsistent with the sole change that the ICC made to the Rule when approving it, which was to lower the minimum vote necessary for an amendment so no two carriers could block it. (*Id.* at 17-18); see also Joint Pet. for Rulemaking

³ AAR’s rate bureau agreements have governed the car hire area, and they have been approved and immunized from antitrust laws since 1950. See Ass’n of Am. R.Rs.—Agreement, 277 I.C.C. 413 (1950); R.Rs. Per Diem, Mileage, Demurrage & Storage—Agreement, 1 I.C.C.2d 924 (1985).

⁴ Specifically, RSI explains that any modification of the Rule requires an affirmative vote of EAC members owning no less than 67% of the revenue freight cars that EAC members own. (*Id.* at 17); see also Circular No. OT-10, Code of Car Hire Rule 25, ¶ D.1, <https://www.railinc.com/rportal/documents/18/260773/OT-10.pdf>. RSI argues, however, that the same railroads that own TTX hold 76% of the EAC vote.

on R.R. Car Hire Comp., 9 I.C.C.2d at 88-89. And, by effectively suppressing boxcar car-hire rates, RSI asserts that the Rule has allowed TTX to establish a dominant share of the boxcar market, inconsistent with the rail transportation policy (RTP) of 49 U.S.C. § 10101, which promotes competition and the public interest in the adequate supply of boxcars. (RSI Pet. 3, Mar. 25, 2024.)

RSI also alleges that arbitration under the Rule has failed to function as an effective backstop for when parties cannot agree on a negotiated rate, as the ICC originally intended. (Id. at 11.) According to RSI, the ICC wrongly assumed that bilateral negotiations would yield market-like car-hire rates and that arbitrators could choose rates close to “fair market value.” (Id.) RSI argues that, in practice, the car-hire market lacks true demand-based pricing signals, making it impossible for arbitrators to identify genuine market rates. (Id.) It further asserts that the threat of arbitration is credible only when car use is high enough to justify arbitration costs—a situation uncommon in boxcar leasing, where cars typically have multiple users and limited revenue potential. (Id. at 11-12.) As a result, RSI argues that arbitration influences rates less frequently and less effectively than the ICC envisioned, failing to produce market-aligned outcomes. (Id. at 11-12.)

For these reasons, RSI argues that material error, new evidence, and substantially changed circumstances warrant reopening of this proceeding. RSI proposes that the Board provide AAR and RSI 120 days to negotiate and submit mutually agreed upon conditions to revise the Rule. (Id. at 21.) RSI further requests that the Board order AAR, TTX, and Railinc (a subsidiary of AAR) to provide RSI with certain boxcar-market data. (Id. at 22-23.) RSI states that the Board should consider conditioning or terminating the rule if AAR and RSI fail to reach an adequate negotiated solution. (Id.)

Replies in Support of RSI’s Petition

Comments supporting RSI’s petition were submitted by stakeholders representing certain rail suppliers, shippers, labor, trade associations, and government interests. Support was expressed by Trinity Industries, Inc. (Trinity), Modern Rail Capital (MRC), the Equipment Leasing and Finance Association, and the United Steelworkers Union (USW). Further, a joint statement of support was submitted by the American Forest and Paper Association, the Distilled Spirits Council of the United States, the National Industrial Transportation League (NITL), and the North American Freight Car Association (collectively, Coalition). Several members of Congress—U.S. Representatives Pete Sessions, Mike Quigley, Troy E. Nehls, Mark Messmer, and the late Doug LaMalfa—as well as Toni Preckwinkle, President of the Cook County, Illinois Board of Commissioners, submitted comments in support. Generally, these commenters express concern that the Rule jeopardizes the rail industry’s boxcar fleet given that the default-rate standard, which they assert is tied to the lowest negotiated rates, suppresses demand-based pricing and disincentivizes investment in railroad-marked boxcars. (Coalition Reply 1-2, Apr. 15, 2024; Trinity Reply 1-2, Apr. 15, 2024; MRC Reply 1-2, Apr. 15, 2024.) Many parties argue that this creates an impending shortfall as the fleet ages, while providing an unfair

advantage to TTX, which is exempt from the Rule and charges higher rates. (MRC Reply 2, Apr. 15, 2024; Trinity Reply 2, Apr. 15, 2024; USW Reply 1, Jan. 26, 2026.) Supporters, thus, request that the Board consider reopening this proceeding to explore ways to promote a transparent, market-based default rate methodology that supports equitable treatment for all stakeholders. (Coalition Reply 2, Apr. 15, 2024; USW Reply 1-2, Jan. 26, 2026; MRC Reply 2, Apr. 15, 2024.)

Replies in Opposition to RSI's Petition

On April 15, 2024, AAR filed in opposition to RSI's petition, arguing that the petition fails to demonstrate material error, new evidence, or substantially changed circumstances. (AAR Reply 1, Apr. 15, 2024.) AAR further asserts that the petition does not establish that the public interest or the RTP require a modification or termination of the Rule. (*Id.* at 1-2.) According to AAR, the Rule supports agreements between parties regarding appropriate rates, which is consistent with the original intent of the ICC. (*Id.* at 2.) AAR states that, although RSI has criticized the Rule's default-rate standard, in practice the default rate is seldom applied, and as of April 1, 2024, only a small fraction of eligible boxcars operated under the default rate. (*Id.* at 5, 9-10.) This fact, AAR suggests, implies that most car-hire arrangements continue to rely on negotiated or arbitrated rates, thereby indicating that the Rule operates largely as the ICC originally intended—as a backstop mechanism rather than a primary pricing tool. (*Id.* at 5, 8-11.) AAR also contends that RSI's members voluntarily participate in the Rule's car-hire framework, despite having the option to operate outside it. (*Id.* at 2, 12.)

AAR further argues that contrary to RSI's warning of an impending shortage of boxcars, i.e., a "boxcar cliff," available data indicates that boxcar fleet capacity has expanded over the past two years. (*Id.* at 4-5.) According to AAR, increased boxcar size and capacity, as well as improved efficiency, has resulted in fewer boxcars being needed overall. (*Id.* at 5.) And, AAR asserts, demand for boxcars has declined, leaving thousands currently in storage. (*Id.*) Finally, AAR argues that the Board should deny the petition because RSI has inappropriately attempted to circumvent the established regulatory methods for amending the Rule, which is by action of AAR's EAC. (*Id.* at 2.)

TTX also filed a reply opposing RSI's petition to reopen. TTX operates the Railbox Pool, a pool of general-purpose boxcars that is "open to participation by all railroads" although "participants remain free to acquire and use non-TTX cars without limitation."⁵ (TTX Reply 4, Apr. 15, 2024; *id.*, Ex. A at 2); see also Am. Rail Box Car Co.—For Approval of the Pooling of Car Serv. with Respect to Box Cars (Railbox Approval), 347 I.C.C. 862, 874 (1974). According to TTX, its rates are not an appropriate benchmark for car hire rates on railroad-marked cars. (TTX Reply 12, Apr. 15, 2024.) TTX states that its rates are not subject to the Rule but rather are dictated by the pooling agreement, which requires it to set rates based on costs rather than

⁵ TTX states that its predecessor, Trailer Train, was formed in 1955 to meet the demand for a nationwide fleet of pooled, free-running flatcars. (TTX Reply 4, Apr. 15, 2024.)

supply and demand.⁶ (Id. at 12-13.) TTX further states that the objective of the pooling agreement is to cover the expenses of pool management and equipment maintenance at the lowest possible level, not to mimic the market or maximize profits. (Id. at 13 (citing Railbox Approval, 347 I.C.C. at 872).) TTX maintains that its decision-making regarding the acquisition, ownership, and management of its pooled boxcars—including the rates paid by pool participants—has no bearing on the car hire arbitration process resulting from deprecation. (Id. at 3-4.) Accordingly, TTX urges the Board to focus any inquiry arising from RSI’s petition on railroad-marked boxcars rather than the operation of the TTX boxcar pool. (Id. at 4.)

In response to RSI’s claim that TTX dominates the boxcar market, TTX asserts that it is only a supplemental source of boxcar supply to the rail industry, with TTX-owned boxcars comprising less than 32% of the North American fleet. (Id. at 6.) And, to the extent that RSI’s premise for reopening this proceeding is due to a potential “boxcar cliff,” TTX argues that its ongoing monitoring and analysis of boxcar supply and demand indicates that no such “cliff” exists. (Id. at 2.) From a supply perspective, TTX states that the rail industry has been acquiring new boxcars at a rate sufficient to offset reductions in capacity. (Id. at 9.) According to TTX, while approximately one-third of the plain boxcar fleet is scheduled for retirement by 2030, existing cars have not been intensively utilized. (Id.) TTX also argues that, as of September 2023, 15% of the fleet was idle, not having moved in 61 days or more. (Id.) TTX further asserts that new high-capacity 60-foot boxcars carry 25% more tons per load than older 50-foot models, meaning fewer cars are required to move the same amount of freight. (Id. at 10.) Thus, TTX maintains that increased equipment standardization has also driven greater operational efficiency. (Id.)

For the foregoing reasons, TTX argues that the Board should recognize that TTX’s boxcar usage charges are not an appropriate benchmark for “market rates” and that any data RSI suggests TTX should provide would not clarify the issue of whether the Rule is functioning appropriately. (Id. at 15.)

Comments on the Outcome of the EAC Review Process

As noted above, following the Board’s decision to hold this proceeding in abeyance, see Abeyance Ord., EP 334 (Sub-No. 8A), slip op. at 1-2, AAR notified the Board on November 24, 2025, of formal changes to the Rule as well as Rule 1 of the Code of Car Hire. (See AAR Letter 4, Nov. 24, 2025). In its November 24, 2025, filing, AAR states that AAR’s EAC formed a Technical Advisory Group (the TAG), which included representatives from five Class I railroads and various industry stakeholders, to review the Rule. (Id. at 2.) While RSI did not have a seat on either the EAC or the TAG, given that it is an industry association rather than a direct stakeholder, AAR asserts that at least 15 members of the TAG represented RSI member companies; it further notes that an employee of an RSI member firm chaired the TAG. (Id.) And, according to AAR, RSI’s outside counsel and economic expert attended all open TAG

⁶ See Railbox Approval, 347 I.C.C. at 874-75.

meetings until the final stage of the process, at which point meetings were restricted to TAG members only. (Id.) On October 31, 2025, the TAG recommended to the EAC that it make certain changes to Rules 1 and 25. (Id. at 4.) On November 10, 2025, the EAC voted to accept the TAG’s recommendations, and on November 18, 2025, AAR’s Safety & Operations Management Committee (SOMC, which oversees the EAC) approved the recommendations. (Id.)

AAR claims that, following the commencement of the EAC/TAG review, it became apparent that RSI’s primary concern was not related to Rule adjustments, new boxcar investment, or a potential “boxcar cliff,” but rather an increase in the default car hire rate for all equipment types, including both new and existing cars. (Id. at 5.)

AAR asserts that, during the review process, RSI proposed several changes to Rule 1, which relates to the default rate calculation methodology, but did not submit any proposals concerning the Rule’s negotiation and arbitration processes. (Id. at 5-6.) According to AAR, while RSI acknowledged the potential benefits of updating components of the Rule, RSI maintained that revisions would be ineffective without concurrent adjustments to the default-rate calculation in Rule 1. (Id. at 6.)

Specifically, AAR states that RSI proposed basing default rates on paid rates instead of negotiated rates due to RSI’s concerns about potential “gaming.” (Id. at 5-6.) AAR asserts that, although there was no evidence of intentional “gaming,” the TAG nonetheless recommended and the EAC and SOMC agreed to adopt a provision using paid rates. (Id. at 6.) AAR also states that RSI sought to raise the default rate to an *average* of paid rates, instead of the *lowest* negotiated (now paid) rate, to reduce reliance on negotiation and arbitration. (Id. at 7.) The TAG declined to recommend this second proposal, emphasizing that the goal of deprescription—outlined by the ICC—was to promote negotiation, not replace it with higher default rates. (Id. at 7-8.) According to AAR, the TAG members also warned that a higher default rate could distort incentives and worsen existing inefficiencies, such as restrictive practices by private shippers. (Id. at 7-8.) However, to address RSI’s concerns about using the lowest paid rate, AAR states that the TAG voted to implement a new default rate that is the paid negotiated rate (i.e., a “market” or “spot market” rate) that first meets or exceeds a five percent usage threshold. (Id. at 8.) AAR states that, in determining the five percent usage threshold, all non-zero rated hourly and/or mileage paid rates are first sorted in ascending order (i.e., from lowest to highest paid rates) and weighted with respect to actual hours or miles utilization respectively. (Id.) The five percent threshold was selected, AAR asserts, because it moves away from a default rate that relies on a “lowest” rate, to which RSI objected, while still encouraging negotiations and guarding against decreased network inefficiency. (Id.) AAR further notes that RSI proposed including TTX rates in the default rate calculation, but the TAG rejected this after determining that TTX rates were not comparable to Code of Car Hire rates. (Id. at 9.) As discussed above, TTX explained that its rates are cost-based, include full maintenance, and operate within a pooled system that provides access and operational flexibilities—such as “off-the-clock” storage—that do not exist in standard bilateral car hire arrangements. (Id.) Additionally, TTX

declined to share its data, and AAR acknowledged that it lacked the authority to compel such disclosure. (Id. at 10.)

AAR also asserts that RSI proposed annual default rate updates, but that the TAG rejected this proposal due to concerns it would undermine negotiations and create volatility. (Id.) AAR states, however, that the TAG voted to permit the default rate to refresh every five years based on the prior 12-month period. (Id. at 11.) RSI also proposed applying the new default rate to all car types and all existing equipment, not just new boxcars builds. (Id.) According to AAR, while the TAG agreed to recommend extending the methodology across all car types, it declined to apply the new rate to existing equipment. (Id.) According to AAR, the TAG members noted that rule changes are typically prospective in nature and that RSI's justification—encouraging future investment—did not support retroactive application. (Id.) Concerns were also raised that applying higher rates to existing cars would effectively subsidize manufacturers and lessors while disproportionately harming short-line railroads. (Id.) Ultimately, the TAG determined the new default rate should apply only to equipment built on or after January 1, 2027. (Id. at 12.)

On December 10, 2025, RSI renewed its request that the Board grant its petition and responded to AAR's November 24 letter. RSI argues that the EAC's resolutions keep default rates low, provide updates infrequently, limit reforms to future builds, and exclude key TTX data—perpetuating suppression, distorting negotiations, and reinforcing TTX's market concentration. (RSI Comment 5-6, 31-32, Dec. 10, 2025.) RSI asserts that while the EAC has adjusted the Rule to anchor default rates to the first paid negotiated rate reaching a five-percent usage threshold with a five-year refresh, these modifications fail to align the Rule with the ICC's goal of approximating an effective market. (Id. at 15-16.)

RSI argues that these changes apply only to equipment built on or after January 1, 2027, and continue to exclude TTX's paid rates—which account for one-third of all boxcars—from the default-rate calculation. (Id. at 16.) According to RSI, applying the Rule only to new builds locks in market-bottom rates for the legacy fleet, accelerating retirements and disadvantaging non-TTX car owners. (Id. at 5-6.) And, by excluding TTX's paid rates, RSI asserts, the Rule will continue to drag prices below effective-market levels, allowing TTX to expand its fleet share from 32% today to a projected 50% over the next decade. (Id. at 18-19.)

RSI also claims that the outcome of the EAC review process subverts the antitrust immunity previously conferred on TTX by the ICC. (Id. at 19.) RSI argues that excluding TTX's rates from the default rate calculation favors the railroads that own TTX—who also hold 76% of the EAC vote and two of whom have sufficient voting shares to jointly block any amendment to the Rule—by allowing them to “depress default rates to benefit net purchasers of car-hire and themselves as TTX owners.” (Id. at 19-20.) This conflict, according to RSI, contradicts 49 U.S.C. § 10706(a), which requires agreements to further the RTP by encouraging competition and avoiding undue market power concentration. (RSI Comment 20, Dec. 10, 2025.)

With respect to AAR’s argument that a “boxcar cliff” will not materialize because newer, higher-capacity cars and currently “idle” cars will cover retirements, RSI asserts that this simply shifts the problem from a supply shortage to a monopolistic concentration of equipment. (Id. at 29.) And, whether the result is a capacity shortfall due to lagging non-TTX investment or increased concentration by TTX, RSI argues that both outcomes conflict with the ICC’s effective-market assumptions and the RTP. (Id.)

RSI also objects to what it describes as its exclusion from the TAG discussions concerning review or analysis of certain data, which it asserts was central to the review process. (Id. at 4.) According to RSI, at the most critical juncture for reaching a private resolution—the point at which the TAG began reconciling competing proposals to address RSI’s concerns—AAR’s counsel banned RSI from further participation. (Id.) This exclusion, RSI asserts, deprived RSI of meaningful participation and skewed bargaining dynamics. (Id. at 12.) As such, RSI submits that the Board should lift the abeyance, grant its petition, set an expedited schedule, and order targeted data disclosure to assess whether to condition or revoke the Rule. (Id. at 32.)

PRELIMINARY MATTERS

RSI’s Surreply

On May 6, 2024, RSI filed a motion for leave to file a surreply to AAR’s and TTX’s replies and simultaneously filed a proposed surreply. According to RSI, its request is necessary to address new arguments and evidence presented by AAR and TTX in their replies to RSI’s petition, and to ensure that the Board has a complete and accurate record upon which to base its decision on RSI’s petition. (RSI Mot. for Leave 2.) Thereafter, on May 24, 2024, AAR and TTX each filed in opposition to RSI’s motion for leave to file a surreply, arguing, among other things, that the surreply is barred by the Board’s procedural rules at 49 C.F.R. § 1104.13(c). (AAR Reply to Mot. 4 n.14, 9; TTX Reply to Mot. 1.)

The Board’s regulations do not permit “replies to replies.” 49 C.F.R. § 1104.13(c). Although the Board has accepted such filings in the past, the Board recently explained that its rule prohibiting them will be more strictly enforced going forward to promote the orderly and efficient administration of cases. See Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025). Moreover, RSI’s May 6, 2024, surreply relies on arguments, information, and documents that were previously available to RSI and could have been provided in RSI’s petition. Accordingly, RSI’s motion for leave to file a reply to a reply will be denied and its reply to the reply will not be accepted into the record. As such, AAR’s and TTX’s oppositions to RSI’s reply to the replies are rejected as moot and will also not be accepted into the record. Nonetheless, given the Board’s past acceptance of replies to replies in many proceedings despite the 49 C.F.R. § 1104.13(c) prohibition, the Board reviewed RSI’s reply and concludes that, even if accepted into the record, it would not change the results reached in today’s decision.

Motions to Strike

On December 15, 2025, RSI filed a motion to strike from AAR’s November 24, 2025, filing language describing certain compromise proposals offered by RSI, and various statements made by an RSI member, during the EAC review process. According to RSI, the statements “arose in compromise negotiations” and inclusion of such proposals and statements violates, among other things, the Board’s evidentiary rules and would chill future attempts by parties to privately resolve disputes before the Board. (RSI Mot. to Strike 2, 8, Dec. 15, 2025.) AAR filed in opposition to RSI’s motion to strike on December 30, 2025, arguing that the EAC’s review of the rule was not a “compromise negotiation” but rather a “deliberative process through which stakeholders provide input on, discuss, and ultimately vote on, rule changes.”⁷ (AAR Reply 6, Dec. 30, 2025.) The Board will deny RSI’s motion to strike. The EAC review process was “generally open to the public” and, according to AAR, participants were informed at the outset of each meeting that meetings would be “recorded for submission to the [Board]” in accordance with 49 U.S.C. § 10706. (AAR Reply 6 & n.17, Dec. 30, 2025.)

On April 20, 2026, NITL filed a letter reasserting its support for RSI’s petition to reopen and noting the inadequacies of AAR’s recent changes to the default-rate mechanism. (NITL Letter 1-2, Apr. 20, 2026.) Thereafter, on April 28, 2026, AAR filed a letter in response, in which it asks the Board to strike NITL’s April 20 letter. According to AAR, NITL’s filing is untimely and restates arguments raised in a joint 2024 letter filed by the Coalition, of which NITL was a signatory. (AAR Letter 1-2, Apr. 28, 2026.) AAR further asserts that the TAG continues to review Rule 25 and consider further improvements to the arbitration process; so, to the extent NITL and others are concerned with Rule 25, not Rule 1, AAR states that those discussions are ongoing. (*Id.* at 2.) Given the atypical procedural history in this case, AAR’s timeliness argument with regard to NITL’s letter is not persuasive and the motion to strike will be denied.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, the Board may reopen a proceeding because of “material error, new evidence, or substantially changed circumstances.” For reopening to be granted, the alleged grounds must be sufficient to convince the Board that its prior decision in the case would be materially affected. See Montezuma Grain v. STB, 339 F.3d 535, 541-42 (7th Cir. 2003); Canadian Nat’l Ry.—Control—EJ&E W. Co., FD 35087 (Sub-No. 8), slip op. at 4 (STB served Dec. 21, 2018).

Further, section 10706(c) provides that “[t]he Board may review an agreement approved under subsection (a) . . . and shall change the conditions of approval or terminate it when

⁷ On January 20, 2026, RSI filed a surreply to AAR’s reply to RSI’s motion to strike. RSI’s surreply will be rejected as an impermissible reply to a reply. See 49 C.F.R. § 1104.13(c).

necessary to comply with the public interest” and further the RTP. 49 U.S.C. § 10101. After reviewing the record, the Board finds that RSI has failed to show that the public interest and the RTP require a change to the conditions of approval for, or termination of, the Rule. 49 U.S.C. § 10706(c). Specifically, the Board finds that reopening this proceeding is unwarranted where AAR’s EAC has recently considered Rule changes through its EAC review process.

Although RSI argues that “serious negotiations,” and hence consideration by the EAC, would occur only if there is a perceived “threat” that the Board might condition or terminate the Rule’s approval pursuant to 49 U.S.C. § 10706(c), (RSI Pet. 21-22), that position is not borne out by the record. Indeed, the record evidence reflects that serious engagement occurred during the EAC review process as stakeholders actively participated, various proposals were considered, and the default-rate methodology was substantively modified.⁸ While the results may not have fully aligned with RSI’s expectations, the record demonstrates that the process nonetheless involved serious deliberations amongst the parties.

Additionally, given the recent changes, reopening, at this time, is not warranted where there are now new standards in place.⁹ The effects of the changes already adopted by the EAC have not yet been realized or evaluated, and it is therefore premature to conclude that additional intervention is required. Administrative efficiency weighs against reopening the record absent a clear showing that existing measures are insufficient. And petitioners bear the burden of proof to sustain their claims that reopening is necessary, *see, e.g., Burlington N. R.R.—Aban. Exemption—Between Klickitat & Goldendale, Wash.*, AB 6 (Sub-No. 335X), slip op. at 3 (STB served June 8, 2005), to prevent material harm or to address deficiencies that cannot be remedied under the now existing framework—yet no such showing has been made.

Accordingly, because AAR has already acted on the requested relief and because it remains uncertain whether any further action may be needed, the petition to reopen will be denied. The Board concludes that the better course is to observe how the market responds to the changes already implemented before determining whether any further intervention—such as reopening—is warranted. Here, the adjustments to the Code of Car Hire necessarily require time to be implemented and reflected in market behavior before their effectiveness can be properly evaluated against their intended objectives. Acting prematurely, without the benefit of updated market evidence, would risk disrupting a framework that may prove effective as implemented.

⁸ The Board is unpersuaded by RSI’s claim that it was not afforded a meaningful opportunity to participate in the EAC review process, as several of its members participated and a substantial portion of its proposals were ultimately adopted.

⁹ Although RSI cites material error, new evidence, or substantially changed circumstances as grounds for reopening, its petition principally relies on alleged market changes and new information arising after the agency’s 1992 decision, rather than identifying any material defect or error in the agency’s underlying analysis approving the Rule.

In this context, the appropriate course is to allow the changes to the Code of Car Hire to take effect and observe their real-world impact on rates, investment, and competitive dynamics. If subsequent market data demonstrates that the changes made have produced unintended consequences, or if additional changes are warranted, there would be a basis to consider reopening. At this time, any request to reopen remains speculative and unsupported by the record evidence.

Finally, RSI contends that reopening is warranted based on the current EAC voting structure—namely, that two carriers have enough voting shares to jointly block any amendment, inconsistent with the sole modification the ICC made when it approved the Rule under 49 U.S.C. § 10706(a). (RSI Pet. 17-18, Mar. 25, 2024.) Notwithstanding this argument, there is no allegation from RSI that the possibility of a two-carrier veto materially affected the TAG’s recommendations and the EAC/SOMC vote. This issue, however, should be reviewed and addressed by AAR because the current implementation appears inconsistent with the ICC’s original objectives. See Review of Car Hire Regul., EP 334 (Sub-No. 6) et al., slip op. at 7 (stating that the voting percentage required for making changes to the Rule should be lowered from 80% to 67% of members’ cars to eliminate the possibility of as few as two major car-owning carriers blocking changes from occurring). The Board expects AAR, which did not directly respond to RSI’s argument about this aspect of the EAC voting structure, to notify the Board when it has reviewed and addressed this issue and, if necessary, to promptly seek any required action from the Board. Should AAR fail to do so in a timely fashion, RSI may renew its petition on that unresolved issue.

Based upon the foregoing, the Board will deny RSI’s petition without prejudice.

It is ordered:

1. This proceeding is removed from abeyance.
2. RSI’s motion to strike is denied. RSI’s January 20, 2026 surreply to AAR’s reply to RSI’s motion to strike is rejected as an impermissible reply to reply.
3. RSI’s May 6, 2024 motion for leave to file a surreply to AAR’s and TTX’s replies will be denied, and its surreply will not be accepted into the record. AAR’s and TTX’s oppositions to RSI’s surreply are rejected as moot.
4. AAR’s request to strike NITL’s April 20, 2026 letter is denied.
5. RSI’s petition to reopen is denied.
6. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, and Schultz.