



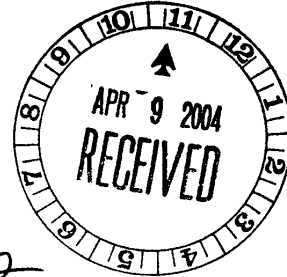
REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
MILITARY SURFACE DEPLOYMENT & DISTRIBUTION COMMAND
Operations Center
661 Sheppard Place
Fort Eustis, VA 23604-1644

April 8, 2004

Office of the Staff Judge Advocate

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Notice of TTX pooling application and request for public comments – Surface
Transportation Board Finance Docket No. 27590 (Sub No. 3)

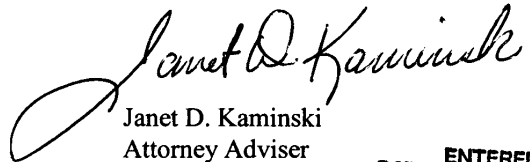
Dear Secretary Williams:

Enclosed is a filing in the above-reference proceedings; please find an original and ten (10) copies of the Military Surface Deployment and Distribution Command's comments.

I certify that a copy of this petition was sent to each of the following TTX, Covington & Burling, Burlington Northern and Santa Fe Railway Company, CSX Transportation, Inc., Florida East Coast Railway Company, Guilford Rail System, Kansas City Southern Railway Company, Norfolk Southern Railway Company, Canadian Pacific -Soo Line R.R., Canadian National Railroad for Grand Trunk Western Railroad Company and the Union Pacific Railroad Company by regular first class mail on April 8, 2004.

Should any questions arise regarding this request, please feel free to contact me at (757) 878-8061 or at kaminskij@sddc.army.mil. Thank you for your consideration in this matter.

Sincerely,


Janet D. Kaminski
Attorney Adviser

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DEPARTMENT OF THE ARMY
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
200 STOVALL STREET
ALEXANDRIA, VA 22332-5000

April 5, 2004

Office of the Commander

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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW.
Washington, DC 20423-0001

Re: Finance Docket No. 27590 (Sub-No.3), TTX Company, et al – Application for Approval of Pooling of Car Service with Respect to Flatcars

Dear Secretary Williams:

This comment is filed on behalf of the Department of Defense (DOD). The Military Surface Deployment and Distribution Command (SDDC) is an Army major command and the traffic manager for DOD. It negotiates the cost of military shipments, tracks shipments while in transit, and operates seaports. It owns and manages the freight cars, which the military services have purchased for interchange use. These cars are referred to as the Defense Freight Railway Fleet (DFRIF) and carry DODX reporting marks.

SDDC has three objectives in filing this comment:

- a. To encourage the Surface Transportation Board (Board) to further the national defense objective of the National Transportation Policy by granting TTX Company's (TTX) application for extension of its pooling authority.
- b. To encourage the Board to improve the ability of the TTX fleet to achieve the economic benefits of pooling flatcars by directing TTX to take appropriate steps to improve the free running status of the TTX cars used by the military to deploy.
- c. To request the Board rule that TTX would not endanger its pooling authority should it and DOD mutually desire to contract or make other agreements with each other in furtherance of national defense.

Each of these objectives will be addressed in turn.

Application for Extension

From before the Civil War until today, the military has relied on the nation's railroads to move its materiel and equipment in both peace and war. This reliance was formally codified in the National Transportation Policy of the Transportation Act of 1940. Still in effect today, the amended policy states:

In regulating the railroad industry, it is the policy of the United States Government to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense (49 USC Sec.10101.(4)).

While the percentage of military freight shipped by rail has dropped over the years since Congress first defined the National Transportation Policy; the performance of the railroads during a mobilization has become even more important. Mobilizations now must rapidly establish a significant U.S. military presence where little or none existed. This requires that the forts, railroads, ports, and ships perform as if they were a single unit in the movement of equipment, with the best performance in one deployment seeming to become the minimum acceptable performance in the next. Key to all of this happening is the on-schedule arrival at the deploying forts of the necessary numbers of the right kinds of empty cars in suitable condition for loading.

At present, the principal manner in which DOD makes use of the railroads involves the use of flatcars to carry containers and vehicles. As may be expected from the size and composition of the TTX fleet, many of these car types, which are supplied by the railroads, are owned by TTX. While the military is making increasing use of intermodal and bilevel cars, it is especially reliant on chain-tiedown flatcars such as those with TTX's HTTX, ITTX, OTTX, and TTDX reporting marks.

DOD benefits from TTX's ownership of flatcars in the following ways:

a. First, TTX's fleet is international in scope, yet owned by a U.S. corporation. This permits TTX to supply DOD at times of peak demand with the cars it needs in quantities which are in excess of the fleet size needed to meet normal demand for these cars by U.S. railroads.

b. Second, railroads which serve few DOD installations, and thus might be expected on their own to buy few cars to meet the particular needs of DOD, by their participation in TTX increase the funds which are made available to buy the flatcars that DOD uses, especially those which are chain-tiedown capable.

c. Third, the chain-tiedown cars which DOD uses were largely built to serve markets which are now significantly diminished from when the cars were ordered. Because TTX can make these cars available for loads throughout North America, it can achieve higher levels of utilization than any individual railroad. Because TTX has its own repair facilities across the continent, it can maintain the cars to higher maintenance standards at lower costs than any individual railroad. The combination of greater utilization and lower costs under TTX ownership has enabled TTX to keep a greater number of these cars in service, despite the downturn in demand for them, than would otherwise have been the case if they were owned by individual railroads. This is shown by the fact that, while the railroads supply significant percentages of

double-stack and centerbeam flats, for which there is a growing demand, there is only one railroad, which owns more than 50 chain-tiedown flatcars.

d. Fourth, although DOD is not, strictly speaking, a customer of TTX at all, TTX has a long history of being responsive to the needs of DOD, a history of which TTX and its railroad owners should be justifiably proud. A few examples will illustrate. TTX has participated in war games and in study groups analyzing the railroads' capacity to support deployments and how that capacity can be increased and the pace of the deployment accelerated. When DOD largely shifted its shipment of ammunition during the 1990s from boxcars to ISO containers, TTX modified over 500 cars to carry the heavily loaded ammunition containers, equipping them with container locks and with spark shields. When a joint railroad-SDDC study group in the late 1990s concluded that DOD's ability to deploy would suffer from a retirement of cars because of age beginning in 2004, TTX promptly decided to make the investment in the cars necessary to ensure that they could operate up to the maximum age permitted by Federal Railroad Administration (FRA) regulations, delaying the crisis by 10 years. Not content with that, when SDDC asked if TTX would accept a purchase order from SDDC to modify the design of some cars that they planned to buy so that they could be equipped with chain-tiedowns in an emergency, TTX's response was simply to go ahead and make the changes at its own expense. As a result, there are now being built 400 modified flatcars, for which there is now no commercial need to equip as chain-tiedown cars, but which are a down payment, as it were, toward TTX and the railroads meeting the need for militarily-useful flatcars for decades to come.

e. Fifth, TTX's lead in forming a pool of chain-tiedown flatcars resulted in nearly all chain-tiedown cars being built to lengths of 60 and 89 feet and using a standard system for attaching the chain-tiedown anchors. This has simplified war planning and also the grouping of different types of vehicles for efficient loading. SDDC expects that TTX's decisions on the shape and dimensions of the anchor holes used to modify general-purpose cars inexpensively so that they can be equipped with chain-tiedowns in an emergency will likewise establish the industry standard for this feature. This will enable DOD to stockpile chain-tiedown assemblies with the assurance that they can be used on any modified car.

For the reasons listed above, DOD believes that it would be an action in consonance with the national defense objective of the National Transportation Policy for the Surface Transportation Board to approve TTX's application for extension of its pooling authority.

Economic Benefits of Pooling

Because DOD acknowledges the benefits of car pooling and therefore strongly supports the continued pooling authority of TTX, it requests that the Board intervene in the way that chain-tiedown flatcars are made available to the members of TTX so as to make the cars more freely interchangeable.

The primary benefit of car pooling, as found in the successive applications of TTX for approval of its car pooling arrangements, and in the ICC's approvals of those arrangements, is the increased utilization of the cars that results from pooling. Increasing utilization brings in its train such subsidiary benefits as greater investment in cars, more willingness to experiment with new and presumably better car designs, etc. In earlier applications, TTX stressed, and the ICC concurred, that the full benefit of car-pooling would come only if the pooling entity both owned and managed the pooled cars. Indeed, in the 1980 decision *Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution Rules, and Practices*, 362 I.C.C. 844, enforcement of the ownership rights of common carrier car owners was largely seen as antithetical to achieving better utilization.

To the layman, having a free-running fleet means that the right of the railroad to a car moving loaded upon it ends once it reaches its destination and is unloaded. This understanding is neatly summarized in the "Next Load, Any Road" slogan painted on the side of TTX's boxcars. In practice, of course, fleet management is not that simple, as is brought out in exhibits M and N of the current TTX application. Without being privy to the details of the rules governing each of the fleets owned and managed by TTX, one assumes that there is a range of arrangements occupying a continuum from something close to "Next Load, Any Road" at the one extreme to TTX's complete control over the loading of the QTTX heavy capacity and special type flat cars on the other.

Where the car owner is not a common carrier, as TTX is not, a pure "Next Load, Any Road" pool can be as insulated from the influence of the railroads handling the car as a QTTX pool in which no railroad can load the car without the prior approval of the car owner. In between those two extremes, however, the needs and desires of the handling railroads have some level of influence, as is evident from the arrangements for management of intermodal cars (e.g. Exhibit M, Supplement No. 175 to TTX Company Form A Car Contract). To ensure that this level is appropriate for the circumstances governing a particular car type, the ICC, and now the Board, requires that the manner in which each of TTX's fleets is managed be subject to its review. It is reasonable to assume that, as time passes, an arrangement which would have been appropriate when first submitted to the Board may no longer be appropriate for the changed circumstances in which it now operates. It is DOD's contention that such is the case with respect to the chain-tiedown flatcars which it uses (HTTX, ITTX, OTTX, and TTDX reporting marks), based on its experience during and since the Operation Iraqi Freedom (OIF) deployment in 2003.

As best SDDC can determine, these cars are managed by a TTX member railroad committing to pay the per diem charge for certain specific car numbers. If these cars are loaded off the line of the railroad agreeing to pay the daily charge, the per diem charge is assumed by the railroad that happens to possess the car. Should the car become idle, it is routed back to the railroad that has committed to the daily charge. During times of high demand for the cars, the railroad which has agreed to pay the daily charge makes arrangements with the railroad receiving them to return the cars promptly, either as soon as they are made empty or after an agreed upon subsequent move. The committing railroad can release cars that it no longer needs back to TTX upon 5 days

notice. Cars released back to TTX may sit idle or may be committed to by another railroad. In practice, except during periods of extended low demand, all the cars are committed, and a railroad will be reluctant to release cars back to TTX, even if it has no current demand for them, for fear that other railroads will commit to the cars and they will not be available to the original railroad should its own need for cars increase.

Given the decline in the types of commercial traffic that helped to justify the initial purchase or conversion of the chain-tiedown cars, and the sporadic nature of the military traffic which now primarily uses the cars, SDDC can appreciate that such arrangements as it has described may have been responsible for the survival of so many chain-tiedown cars, given the low level of demand for the cars compared with TTX's larger fleets. It can also appreciate that a railroad's ability to lay claim to a certain number of chain-tiedown cars may be necessary to assure a prospective commercial customer that the railroad can provide it reliable service. Therefore, it will confine itself to delineating the problems it has encountered, rather than attempt to specify how they should be resolved.

The OIF rail deployment in many respects was a signal success, with SDDC, the railroads, and TTX cooperating on a daily basis to solve car supply needs. Nevertheless, car supply issues did arise at times that could cause critical problems in a future deployment where a greater amount of equipment is to be moved in a shorter period of time, perhaps with a smaller chain-tiedown fleet than is currently available to DOD. As listed below, most of these issues have to do with railroads exercising a degree of control over those TTX cars committed to military use that is not unlike the control that railroad would exercise over cars that it operates under its own reporting marks.

First, railroads that served forts with early-deploying units quickly committed to all the idle chain-tiedown cars, causing different railroads serving forts with late-deploying units either to experience car shortages or to have to negotiate with the early-deploying railroads for cars.

Second, to the extent that railroads had committed cars on hand in excess of immediate demand, they tended to position them to serve future deployment needs of the forts they served, rather than make them available for current deployment needs on other railroads.

Third, empty cars committed to railroad A, but located on railroad B, were ordered back to railroad A. Promises to return the cars to handle future military movements on railroad B were not always kept.

Fourth, forts which were served by two TTX members tended to accumulate cars in excess of their needs, as both railroads competed for the forts' business by using their ability to supply cars.

Fifth, forts on regional railroads or short lines with connections to two or more TTX members had car supply difficulties, as the connecting railroads were reluctant to commit cars for a

movement that might, for military operational reasons, have to be routed over a different railroad than that supplying the cars.

Sixth, additional switching was required at forts served by two TTX members to keep cars segregated by the railroad supplying them and to load a particular movement on the cars supplied by the railroad which would handle the movement.

Seventh, cars supplied by railroad A to railroad B for a loaded movement to a fort served by railroads A and C were not made available after arrival and unloading for a loaded movement from the same fort involving railroads C and B.

These issues appear to indicate that TTX's chain-tiedown cars, in circumstances of heavy usage, do not achieve its stated objective of operating "a 'free-running' fleet that is 'not encumbered' by adherence to the AAR's car service rules or the parochial incentives that often apply to cars owned or leased by individual railroads." (Application, p. 13), which "... encourages competition among railroads for traffic." (Application, p. 23). This is disconcerting because the opposite might be expected during periods of high demand, as the following quote concerning intermodal cars from Exhibit J, the Verified Statement of Thomas R. Brown (p. 10) indicates.

In my experience, the TTX pool plays a particularly critical role during peak periods when, absent TTX's participation, individual railroads would be more likely to retain their flatcars on-line out of concern for meeting the requirements of their own originating shippers, and be less likely to utilize them in run-through interchange service with connecting roads. Additionally, individual railroads may be inclined to accumulate cars on-line in anticipation of shifts in demand. In both cases, this has the effect of making less efficient use of intermodal flatcars.

SDDC therefore requests that Board condition its approval of TTX's application on TTX reviewing and responding to Board on how it will improve the arrangements used to distribute the chain-tiedown flatcars used by DOD. Such arrangements should allow for DOD using up to 80 percent of the total TTX chain-tiedown fleet during periods of peak military demand. Cars made available to the military will need to be capable of being directed to any fort for their initial loading, and then, as they are made empty at ports, to any fort for reloading, and so on, without regard for the railroad which initially possessed or committed to paying for the cars or which carried an inbound load, via the most direct service route. Anything less, in terms of the proportion of cars made available or freedom of routing empties, may cause delays in empty car supply that will result in delayed arrivals overseas. Such delayed arrivals may put troops in danger or frustrate operational plans.

Clarification of TTX's Ability to Act without Prior Board Approval

TTX in its application asks for clarification of its ability to act without prior Board approval, provided that changes in car contracts and other policies fall within the scope of the Board-

approved Pooling Agreement. SDDC supports this request and also asks that the Board clarify the limits of TTX's ability to enter into agreements or contracts with DOD or to supply DOD with information without violating its car-pooling authority. This request should not be taken as indication that DOD now intends to contract with TTX. Rather, it should be seen as an attempt to foresee how DOD's relationship with TTX might evolve over the requested 15 year term of TTX's renewal of authority, and to minimize the legal questions that would have to be addressed should a more formal relationship between DOD and TTX appear to both parties as desirable. Some examples of more formal relationships follow.

a. At present, approximately 93 percent of all the chain-tiedown flatcars in North America are in TTX or DODX reporting marks. To use DODX cars the railroads must obtain SDDC's permission, while to add to the TTX cars they have on hand the railroads must make a request of TTX, if there are uncommitted cars, or of other railroads if there are not. This inability to go to a single source for cars can cause delay and misrouting of empty cars. One possible way to improve the arrangements used to distribute TTX chain-tiedown flatcars, at least during periods of peak military usage, is to have TTX manage its chain-tiedown cars in the same manner as it manages its QTTX cars, namely, no TTX empty chain-tiedown flatcar may be placed or loaded without TTX's permission (Exhibit M, Supplement No. 128 to Trailer Train Company Form A Car Contract). This would cause the two chain-tiedown fleets, DODX and TTX, to be treated alike. Building on this, and given the proportion that the two fleets comprise of the total population of chain-tiedown flatcars, in the future SDDC may conclude that it would be advantageous to DOD for TTX to manage the DODX chain-tiedown fleet. This could be done in at least two ways. One way would be for TTX to manage the DODX fleet separately from its own and to supply it to only those shippers that SDDC would approve. Another way would be for TTX to integrate the DODX fleet into its own, giving it the ability to supply DODX or TTX cars to any railroad that requires chain-tiedown flatcars.

b. Another area where DOD may in the future desire to contract with TTX concerns car design. As discussed in the first part of this comment, SDDC discussed with TTX the feasibility of modifying TTX's general purpose flatcar design to give it the ability to secure vehicles and containers as well as freight that could be secured using the already planned stake pockets, winches, and lading strap anchors. TTX concluded that the idea was both feasible and commercially attractive, and proceeded on its own to incorporate the features in its standard design. SDDC may in the future approach TTX with a design change, which TTX does not find commercially desirable.

DOD has in place agreements with air and sea carriers specifying and committing the carrier signatories to certain levels of support during periods of high military demand for transportation. SDDC is negotiating with the railroads to see if it can conclude a similar agreement for rail support. Each mode has its own unique circumstances that must be reflected in the agreement for it to be effective. For the railroads, one of those unique aspects is that the railroads directly control the locomotives, crews, and track access that the military needs, but the cars that they supply are largely owned by TTX. SDDC and the railroads may conclude that the only way to

ensure that commercial cars are made available to the military is for DOD to contract, perhaps jointly with the railroads, with TTX.

Lastly, SDDC is quite concerned to make sure that, when TTX's existing chain-tiedown fleet must largely be retired because of age, in the 2010-2019 decade, there will still be sufficient commercially available chain-tiedown flatcars for DOD to deploy as planned. If such is not going to be the case, it needs to know that as early as possible so that DOD can change the way it mobilizes in order to adjust to the reduced number of cars that will be available. SDDC may in the future approach TTX with a request that it share its long term purchasing plans with SDDC.

Please note that SDDC is limiting its request of the Board to ruling on whether TTX may undertake such actions as illustrated above, if TTX finds them to be in its own interest. SDDC is not requesting that the Board compel any particular response on the part of TTX in the event SDDC should approach it with a proposal for a more formal relationship.

Conclusion

SDDC wishes to reiterate its support of TTX's application. The changes and clarifications that it is requesting should not be considered complaints, but attempts to assist an already valuable partner in the defense of the nation to achieve the most effective use of its fleet.

Sincerely,

A handwritten signature in black ink, appearing to read 'AED', with a long horizontal flourish extending to the right.

Ann E. Dunwoody
Major General, U.S. Army
Commanding