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BEFORE THE SURFACE TRANSPORTATION BOARD

STB EX PARTE DOCKET NO. 658

**THE 25TH ANNIVERSARY OF THE STAGGERS RAIL ACT OF 1980:
A REVIEW AND LOOK AHEAD**

**WRITTEN STATEMENT
OF
THE PRIVATE CAR OWNER ALLIANCE**

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October 12, 2005

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Pursuant to the Surface Transportation Board's September 14, 2005 notice of public hearing and request for written statements on the impact, effectiveness, and future of the Staggers Rail Act of 1980 ("Staggers Act"), the Private Car Owner Alliance ("PCO Alliance") submits the following statement. The PCO Alliance is a coalition of over 80 individual private rail car owners representing ownership of over 772,000 freight cars, or 49% of the North American fleet.¹ The PCO Alliance was recently formed to address the common concerns of private rail car owners. As discussed below, the PCO Alliance believes that the concerns of private car owners, who today own nearly two-thirds of the entire North American fleet, should be placed on the agenda of any comprehensive discussion of future railroad economic regulation.

¹ The members of the Private Car Owner Alliance are listed at Attachment A to these comments.

The reforms brought about by the Staggers Act have produced significant successes for the railroad industry. The flexibility Staggers provided has enabled railroads to upgrade their systems, reinvest in productive rail infrastructure, generate higher levels of service and greater volumes of traffic, dramatically increase productivity, improve profitability, and improve safety. The PCO Alliance recognizes and applauds those significant achievements.

One of the core underlying principals of the Staggers Act, and a key to its success, is recognition that railroad economic regulation must accurately reflect current economic circumstances and business practices. The rail crisis of the 1970s that produced the Staggers Act was precipitated in large part by a regulatory regime which no longer reflected the realities of the rail transportation business.

As the U.S. Department of Transportation noted in 1978: "The current system of railroad regulation . . . is a hodgepodge of inconsistent and often anachronistic regulations that no longer correspond to the economic condition of the railroads, the nature of intermodal competition, or the often-conflicting needs of shippers, consumers, and taxpayers." These archaic regulations, in combination with strong competition from other transportation modes, had driven the railroad industry to the brink of ruin and an unprecedented capital crisis. Railroads lacked the capital to properly maintain their tracks, much less maintain an appropriately sized fleet of modern freight cars. According to the AAR, by 1976, more than 47,000 route-miles had to be operated at reduced speeds because of dangerous conditions. The amount of deferred maintenance was in the billions of dollars and the term

"standing derailment" (in which stationary railcars simply fell off poorly maintained track) entered the railroad lexicon.

On the 25th anniversary of Staggers it is therefore appropriate to focus on what additional changes have occurred since 1980, and whether those changes once again require adjustments to the status quo in order to insure the continued success of the industry. One of the most significant changes has been the increasing role that private car owners play in financing and maintaining the North American freight car fleet through private ownership of cars. The absolute number of freight cars supplied and the percentage of total freight cars supplied by Class I railroads has declined steadily since 1980, requiring shippers to furnish an increasing number of and percentage of total freight cars. Table 1 below shows the dramatic shift in the supply of freight cars that has occurred since 1980, according to data compiled by the Association of American Railroads ("AAR").

Year	Total Cars	Class I	Private/Other ²
1980 ³	1,711,000	1,168,000 (68%)	543,000 (32%)
2004 ⁴	1,279,000	467,000 (37%)	812,000 (63%)

² Includes privately owned cars leased to shortlines and operated with shortline reporting marks.

³ Railroad Facts, 2004, AAR.

⁴ Railroad Equipment Report, 2004, AAR.

The private supply of freight cars has been critical to the post-Staggers growth of the rail industry. For example, private car owners own virtually 100% of the tank cars and 70% of all covered hopper cars in service today. PCO Alliance members alone provide nearly \$9.8 billion in annual freight revenues.

Standing in sharp contrast to the change in car ownership is the fact that critical decisions and policies regarding car maintenance, and car hire rates are still made exclusively by railroads who own an increasingly smaller minority percentage of the cars directly affected by those decisions and who, as a result, bear less of the cost. There is currently no private car ownership representation on the AAR's Safety and Operations Management Committee ("SOMC"), the Technical Services Working Committee ("TSWC"), or the Advanced Technology Safety Initiative ("ATSI") Core Working Group. Nor is there a voting seat provided to private car owners on the Equipment Asset Management Working Committee ("EAMWC"). Each of these committees have unilaterally issued binding rules which in turn have had a major economic and operating impacts on private car owners pertaining to issues such as: hollow worn wheels as a newly defined defect, retrofit of long travel constant contact side bearings ("CCSB") on tank cars, installation of Wheel Impact Load Detectors, and related changes to the Interchange Rules produced by the AAR's ATSI initiative.

These rules were adopted without meaningful input from private car owners who have incurred a substantial cost in the implementation of their requirements. The estimated *incremental* maintenance cost for fiscal 2005 incurred

by the PCO Alliance members attributable to the referenced rules is estimated to be in excess of \$90 million. This cost will undoubtedly be higher in the future.

In marked contrast to the cost allocation, it is clear that the railroads not unsurprisingly derive a substantial benefit from the referenced rulemakings. Implementation of constant contact side bearings is an illustrative example. Part of the justification for the CCSB rule is that it would reduce derailments of empty tank cars. In support of this proposal the AAR developed a cost / benefit analysis which showed that over 80% of the benefit associated with the CCSB rule would accrue to railroads through higher train speeds, and reduced track maintenance. Tank cars comprise approximately 43% of the car types that experience the types of problems the CCSB rule was designed to address. Speed restrictions which cost the industry approximately \$25 million per year are imposed on these car types when empty. Retrofitting tank cars with constant contact side bearings is expected to reduce these delays by 70%. Notwithstanding this clear benefit to the railroads, substantially all of the costs associated with implementing the requirements of the rule were born by the private car owners who had no effective voice in its adoption.

The AAR's exclusive control over decision-making that affects a fleet that they have less and less stake in is an anachronism much like the pre-Staggers regulated freight rate regime. In the spirit of self regulation, the PCO Alliance is actively pursuing an consensual industry-wide solution in which decision-making responsibilities are shared by all the stake holders and where the cost of rule

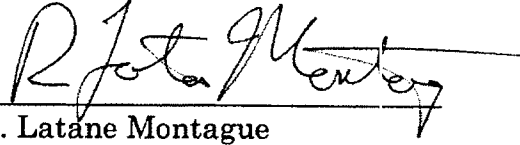
changes are born in proportion to the benefits that accrue, which would include the following:

- Private car owner representation on key AAR decision making committees;
- Adoption of a strategic implementation plan which takes into account both an allocation of the costs based on associated benefits and timing of new initiatives.
- Prioritization of improvements (with an emphasis on safety) based on data driven solutions.

The success of this effort is critical to continuing the success that the industry has enjoyed over the last 25 years, and where industry-driven solutions cannot be achieved, the private car owners will have no choice but to invoke the assistance of the Surface Transportation Board, the Federal Railroad Administration and other federal agencies and departments with appropriate jurisdiction and expertise to resolve these issues. While Staggers has been largely successful in many areas, it did not create an unlimited mandate for self-regulation by the Class I railroads at the expense of other industry participants, whose continued contributions will certainly be needed to insure the future success of the industry.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

A handwritten signature in black ink, appearing to read "R. Latane Montague", written over a horizontal line.

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Counsel for The Private Car Owner Alliance

October 12, 2005

ATTACHMENT A

ACF Industries LLC
Archer Daniels Midland
AG Processing
Bunge North America Inc.
Cargill, Inc.
Chicago Freight Car Leasing Co.
CHS, Inc
CIT-Rail Resources
ConAgra
First Union Rail Leasing Co.
GATX Rail Corporation
General Electric Rail Services Corporation
GLNX Corporation
Greenbrier Companies
Helm Financial Corporation
Joseph Transportation
PLM Transportation
Perdue Farms, Inc.
Tate & Lyle Ingredients Americas, Inc.
The Andersons
Trinity Industries Leasing Companies Inc.
Union Tank Car Company
Alliant Energy
Ameren Energy Services
American Electric Power
Arizona Electric Power Coop., Inc.
Arizona Public Service Company
Arkansas Electric Cooperative Corporation
Associated Electric Coop., Inc.
Cleco Corporation
Cinergy Corp.
City of Colorado Springs Electric Dept.
City Public Service of San Antonio
City Utilities of Springfield
CONSOL Energy, Inc.
Consumers Energy Company
Dairyland Power Cooperative
Dayton Power & Light Company
Detroit Edison
DTE Rail Services, Inc.
Dynegy Marketing & Trade
The Empire District Electric Co.

Entergy Services, Inc.
Excel Energy
First Energy
Florida Power & Light Co.
Grand River Dam Authority
Idaho Power Company
Kansas City Power & Light Company
Lower Colorado River Authority
Midwest Generation EME Fuel Service, Inc. .
MidAmerican Energy Co.
Millennium Energy LLC
Minnesota Power
Muscatine Power & Water
Nebraska Public Power District
Northern Indiana Public Service Company
NRG Power Marketing
Oglethorpe Power Corp.
Oklahoma Gas & Electric Co.
Omaha Public Power District
Otter Tail Power Company
Oxbow Carbon & Minerals, Inc.
PacifiCorp
Peabody COALSALES, Co.
Platte River Power Authority
Portland General Electric Company
Progress Energy Carolinas
Railroad Financial Corporation
Salt River Project
Sempra Generation
Sierra Pacific Resources
Seminole Electric Cooperative, Inc.
Southern Company Services
Tennessee Valley Authority
Texas Genco
Texas Municipal Power Agency
TUCO, Inc.
Tucson Electric Power Company
TXU Electric Company
We Energies
Western Farmers Electric Coop.
Western Fuels Association, Inc.
Westar Energy, Inc.
Wisconsin Public Service Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2005, I served by U.S.

Mail a service a copy of the foregoing comments to all parties of record:

A handwritten signature in cursive script, appearing to read "R. Latane Montague", written over a horizontal line.

R. Latane Montague