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December 30, 2009

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423

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

Dear Chief Brown:

Enclosed please find the Verified Comments of GATX Corp., CIT Rail and First Union Rail Corporation in connection with the above-referenced proceeding.

Please feel free to contact me if you have any questions. Thank you for your assistance with this matter.

Very truly yours,

Rachel Lei
Assistant General Counsel, Litigation

BEFORE THE
SURFACE TRANSPORTATION BOARD

TTX COMPANY – APPLICATION FOR)	
APPROVAL OF POOLING OF CAR SERVICE)	FINANCE DOCKET
WITH RESPECT TO FLATCARS)	NO. 27590 (SUB-NO. 3)
)	

**COMMENTS OF GATX CORP., CIT RAIL AND
FIRST UNION RAIL CORPORATION**

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222 West Adams
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DUE DATE: December 31, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

TTX COMPANY – APPLICATION FOR)	FINANCE DOCKET
APPROVAL OF POOLING OF CAR SERVICE)	NO. 27590 (SUB-NO. 3)
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**COMMENTS OF GATX CORP., CIT RAIL AND FIRST UNION RAIL
CORPORATION**

Pursuant to the Board’s Notice served on September 25, 2009, GATX Corp. (“GATX”), CIT Rail (“CIT”) and First Union Rail Corporation (“First Union”) (GATX, CIT and First Union collectively referred to herein as “Commentors”) respectfully request that the Board take such action as is necessary to include Commentors and their flatcars within the umbrella of the TTX Flatcar Pool on a voluntary and non-discriminatory basis.

OVERVIEW OF COMMENTORS

Commentors are among the largest railcar leasing companies in North America. We each compete (or at least attempt to compete) with TTX in supplying equipment and services to users of flatcars, boxcars and gondolas.

GATX is primarily engaged in leasing rail equipment and providing equipment-related services to shippers and railroads. GATX has been an important part of the North American rail industry since 1898, and owns a fleet of approximately 111,000 railcars in North America, of which 5% are flatcars.

The facts alleged by GATX in these Comments are verified by Mr. Paul F. Titterton. Mr. Titterton's notarized verification is attached hereto. Mr. Titterton has an extensive background in the railroad industry and is qualified to testify about railroad operations and independent railcar lessors. Mr. Titterton is currently Vice President and Executive Director of Fleet Portfolio Management for GATX, a position in which he is responsible for the composition and utilization of GATX's large and diverse North American fleet of railcars, serving a broad cross section of commodities and customers. Mr. Titterton has held a variety of positions of increasing responsibility with GATX in the areas of pricing, investment analysis, business development, and fleet management since joining the company in 1997. He also currently serves as a director of the Providence and Worcester Railroad Company and as a member of the management committee of European railcar lessor AAE Cargo AG.

CIT is a business unit of CIT Group, Inc., a leading commercial and consumer finance company. CIT has been an integral partner of the rail industry since 1995. CIT provides the rail industry with a broad array of equipment leasing and financial products, owning and managing a fleet in excess of 110,000 railcars, 11,000 of which are flatcars.

The facts alleged by CIT in these Comments are verified by Mr. Mel Kusta, CIT's Senior Vice President of Operations. In that capacity, Mr. Kusta is responsible for the management of CIT Rail's fleet, including mechanical and financial operations, information technology initiatives and contract administration. Mr. Kusta joined CIT Rail in August 2002 and has over 30 years of experience in the railcar leasing business.

First Union is a subsidiary of Wells Fargo, N.A., one of the largest banking institutions in the United States. First Union is one of the industry's largest general-

purpose railcar lessors. It specializes in providing quality railcars of all types, customized finance and operating leases and marketing and transportation services. First Union owns over 92,000 railroad freight cars and related assets. Approximately 15,500 of those freight cars are flatcars.

The facts alleged by First Union in these Comments are verified by Mr. J. J. Thomas, its President. Mr. Thomas' notarized verification is attached hereto. Mr. Thomas is uniquely qualified to testify about TTX and independent freight car lessors. Over thirteen years of Mr. Thomas' forty-five year railroad career were spent in the employ of TTX's predecessor, Trailer Train Company ("Trailer Train"). The most recent twenty-six years of his career have been spent in the employ of independent freight car lessors. After gaining experience in railroad operations with Milwaukee Road, Mr. Thomas joined Trailer Train in 1974 to head up management of the newly-formed Nationwide Boxcar (Railbox) Pool. During his career with Trailer Train, he had responsibility for the nationwide pools of boxcars, gondolas, specially-equipped flatcars and auto-rack cars. He became president of First Union at the inception of its operations in 1994.

INTRODUCTION

Over the past several decades, the deregulatory policies of the Interstate Commerce Commission ("ICC") and its successor, the Surface Transportation Board ("STB" or "the Board") have moved the rail industry consistently toward a free market. During this period, the railroad industry has changed in significant ways that bear directly on the TTX Flatcar Pool. Consolidations have reduced the number of major railroads from 31 to 4, resulting in operational efficiencies and inherent standardization

unavailable when the TTX Flatcar Pool was originally conceived. The railcar leasing market has expanded dramatically, providing railroads with more flexibility than ever in structuring low cost procurement of all types of railcars.

In stark contrast, TTX's pooling authority has stood essentially unchanged since its inception in 1974. TTX still serves as a central purchaser and operator of all types of flatcars; TTX still establishes pool-wide railcar service rates; and TTX still receives antitrust immunity for its activities.

While TTX's pooling authority has remained static, its role in the acquisition and distribution of flatcars has mushroomed. Today, TTX controls over 57% of all flatcars operating in the United States, including 64% of well cars, 85% of automotive cars, 82% of spine cars, and 53% of conventional flatcars.¹ As a consequence of TTX's dominance in the intermodal and other flatcar segments, companies such as Commentors have channeled their investments elsewhere.²

TTX's Flatcar Pool was most recently re-authorized by the STB in 2004.³ In that proceeding, GATX, CIT and First Union opposed certain aspects of the pooling arrangement. GATX, CIT and First Union believe today, as we believed then, that many of the benefits of the pool could be achieved without the requested pooling authority.

In TTX's Response to Requests for Information, filed on November 16, 2009, TTX continues to assert various benefits of the Flatcar Pool with respect to fleet

¹ Source: UMLER data

² Across all car types, operating lessor fleets registered in UMLER grew by 116,810 cars 1/1/04-1/1/09; operating lessor flatcar fleets grew by only 8,641 cars. Thus, it can be shown that lessors devoted only 7% of their net fleet growth to a fleet segment representing 13% of all North American railcars. 84% (11,900 cars) of TTX's net fleet growth over the same period was devoted to flatcars.

³ STB Finance Docket No. 27590 (Sub-No. 3), *TTX Company, et al – Application for Approval of Pooling of Car Service With Respect to Flatcars*, served August 31, 2004.

investments, divestitures and adjustments (Section III.A.). TTX also identifies various maintenance, conversion and design projects in which the company has participated (Section IV). These various investments, adjustments and projects, while certainly valuable, all could have (and likely would have) occurred regardless of whether the equipment in question was supplied by TTX or by independent lessors. The various activities which TTX described are, plainly and simply, basic, prudent fleet management operations, which all good railcar-owning companies, such as Commentors, practice.

Nevertheless, Commentors recognize that the Board disagrees with this view, and they further recognize that the Board has concluded that the Flatcar Pool provides substantial public benefits. In light of the Board's view, it is respectfully submitted that the benefits to the public will be enhanced even further if private car lessors are permitted by the STB to participate in the Flatcar Pool.

**PARTICIPATION OF PRIVATE CAR LESSORS IN THE
FLATCAR POOL MAKES ECONOMIC SENSE AND PROVIDES
SUBSTANTIAL BENEFITS TO THE RAILROAD INDUSTRY**

The Board is charged with the responsibility of upholding the U.S. Rail Transportation Policy. That policy provides, in pertinent part:

In regulating the railroad industry, it is the policy of the United States Government -

(4) 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;

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

(8) to operate transportation facilities and equipment without detriment to the public health and safety. 49 USC §10101.

Private car leasing companies are vital to the economic health of the railroad industry. By the same token, the economic health of that industry is of vital concern to Commentors and the balance of the private car industry. In 2009 alone, the private car leasing industry owned and supplied to the railroad industry over 764,000 railcars.⁴ As the Board recognized in its 2004 decision re-authorizing the Flatcar Pool, “the railcar leasing industry has emerged as a robust, well-established source of equipment supply for various segments of the railroad industry.” (STB Finance Docket No. 27590 (Sub-No. 3), *TTX Company, et al – Application for Approval of Pooling of Car Service With Respect to Flatcars*, served August 31, 2004 at p. 13)

However, private car lessors’ robust role in providing cars and service to the railroad industry, generally, has not been evident in the case of the flatcar supply market. While, as indicated above, private car lessors account for over 764,000 cars supplied to the rail industry, only 46,121 flatcars, of all types, are owned by private car lessors.⁵ For example, GATX owns 110,980 cars, but supplies only 5,589 flatcars. The same is true with CIT, which owns approximately 110,000 cars, of which only 11,000 are flatcars. Finally, First Union owns and operates over 92,000 cars, with roughly 15,500 of those being flatcars. The reasons for this limited investment in flatcars is plain and simple. TTX has market power vis-a-vis individual lessors by virtue of the flatcar pooling authority conferred by the Board. That market power has disincentivized Commentors from investing in the flatcar market relative to other car types.

Each of us, and other car lessors not represented here, have made the independent decision to deploy our limited capital dollars elsewhere and forego, on a relative basis,

⁴ Source: UMLER data

⁵ Source: UMLER data

heavier involvement in the flatcar market. Indeed, from the period extending between 2005 and 2007, which was one of the most favorable climates in history for investment in railcars - due to the dramatic upturn in rail traffic and the significant undersupply of cars, investment in the flatcar market was essentially “flat” for private car lessors. Since 2004, when the STB last considered the Flatcar Pool reauthorization, the private car leasing fleet has increased by almost 117,000 cars, but only 8,641 of those cars were flatcars.⁶

Indeed, the Board itself recognized this possibility in its 2004 flatcar pool reauthorization. There, the Board stated:

“While it may be that leasing companies forego heavy involvement in the flatcar leasing business, and choose to focus their investment on other car types, the evidence suggests that this is quite likely because of the competitive forces that TTX brings to bear in the flatcar market, prompting leasing companies to focus their efforts and investment where the possibility of profit is greater.” (STB Finance Docket No. 27590 (Sub-No. 3), *TTX Company, et al – Application for Approval of Pooling of Car Service With Respect to Flatcars*, served August 31, 2004 at p. 13)

It is precisely the benefits asserted by TTX with respect to the pool which have created TTX’s flatcar market power and the corresponding unwillingness of private car lessors to heavily invest in that market.

In TTX’s 2004 application for approval of the Flatcar Pool, TTX asserted that:

“These cars form 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*. TTX pool cars flow efficiently across the entire North American rail network to satisfy needs for flatcar equipment whenever they arise. Participating railroads have access to TTX pool cars on terms that encourage efficiency. TTX cars can be loaded anywhere and to any destination. When the normal flow of equipment does not result in enough empty equipment in the places needed, TTX’s active management of the pool enables cars to be directed from railroads that have excess capacity to railroads short of cars.” (TTX Company’s Application for Reauthorization of the Flatcar Pool, filed January 7, 2004, at p. 13) (emphasis added)

⁶ Source: UMLER data

“... TTX cars move empty less often than most other cars on the nation’s railroads.” (id at p. 21).

Indeed, in its 2004 filing, TTX acknowledged the disadvantages of private lessor investment in the flatcar pool by virtue of the advantages created by the pool:

“The leasing opponents’ own evidence confirms that TTX is generating significant efficiencies, which in turn explain why TTX’s prices are low. For example, a quartet of economic consultants from Charles River Associates laments on behalf of Trinity Industries that ‘TTX policies currently place railroad leasing companies at a competitive disadvantage’ because ‘leasing companies may be denied *the efficiencies of pool management for flatcars*’ (comments of Trinity Industries, Salop et al, V.S. at 15 [emphasis added]).” TTX Company’s Rebuttal in Support of Approval of Its Flatcar Pooling Application, filed May 12, 2004, at p. 49.

After weighing the various comments, pro and con, with respect to the pool in 2004, the STB re-authorized the Flatcar Pool, asserting, inter alia, that the pool “produces substantial savings by maximizing the efficient use and distribution of pooled equipment;” (STB Finance Docket No. 27590 (Sub-No. 3), *TTX Company, et al – Application for Approval of Pooling of Car Service With Respect to Flatcars*, served August 31, 2004 at p. 10).

Independent leasing companies, such as Commentors, on the other hand, are effectively denied access to these purported efficiencies by virtue of being denied access to the Flatcar Pool. Private car lessors lease cars to individual railroads or shippers, and their cars are subject to the antiquated car service rules, as asserted by TTX, which force those cars back to origin on return movements as opposed to the option of being free runners in the Flatcar Pool. Faced with this “home field advantage” which vested TTX with market power through management of the Flatcar Pool, Commentors, as lessors,

must evaluate the possibility of un-rented equipment in our investment analysis for new railcars. This has limited our investment in flatcars.

In light of the foregoing, Commentors request that the Board re-examine the exclusivity of the pool with respect to non-TTX equipment. Why is it a good idea to foist the burden of capital investment on TTX and the major railroads, when the private car lessors would be ready, willing and able to share in that capital investment, if the car utilization options of the pool justified that investment? Access to the Flatcar Pool, on a voluntary and non-discriminatory basis, would improve that utilization for private lessor cars and justify our increased investment in those car types.

Moreover, in TTX's November 16th Response, it asserted that

"The past five years have tested the resilience of the pool in ways that it perhaps has never before experienced. The years immediately following re-authorization were periods of high economic activity for railroads, producing car shortages across many non-TTX car types and high utilization of cars in the flatcar pool. "...the past two years, however, have seen extraordinary traffic reductions in the markets served by flatcars: intermodal, finished vehicles and lumber for home construction." (Response of TTX Company to Requests for Information, filed November 16, 2009, at p.3) (emphasis added)

Independent car leasing companies can assist TTX and the major railroads to avoid the exigencies of the capital investment market created by the traditional "peaks and valleys" of rail industry car usage cycles. By incorporating the cars of independent lessors into the Flatcar Pool, TTX's and railroad industry's capital expenditures can be better managed, while, at the same time, providing the pool efficiencies for our cars. This corresponding utilization access would justify our increased capital expenditure in those car types. Such a construct would not supplant the pool, but would rather supplement it in ways that serve to further promote the health of the railroad industry while, at the same

time, encouraging our access to car markets currently limited by virtue of the Flatcar Pool.

In short, private car lessor access to the pool will help carry out the National Railroad Transportation Policy by improving the economic health of the railroad industry.

**CAR HIRE DEPRESCRIPTION HAS ALTERED THE INVESTMENT
PERSPECTIVE OF THE CAR LEASING COMPANIES**

Certainly, Commentors' proposal today takes a step beyond our comments in 2004. As noted, our objections to the pooling authority conferred on TTX remain. Our proposal is borne from the recognition that, despite our views to the contrary, the STB has repeatedly concluded that the TTX pooling authority provides benefits to the railroad industry and the public. Faced with the resulting market power conferred upon TTX by this Flatcar Pooling authority, we are limited in our ability to participate in a market in which we firmly believe we can be of greater benefit to the railroad industry and the public than TTX can alone. We believe our proposal addresses this limitation in a way that enhances public benefit and improves competition.

In 2004, we cautioned the STB that the full effects of car hire depreservation had yet to be felt, and it would be prudent for the Board to limit the term of the Flatcar Pool so that the full effects of depreservation could be evaluated. (See eg. comments of First Union Rail Corporation, filed April 9, 2004, at p.11) The Board appropriately limited the pool to a term shorter than that requested by TTX, specifically ten years, with the five year oversight review currently at hand. Indeed, it is clear that car hire depreservation has

had an impact on private car lessors which render participation in the pool more appropriate than we might have anticipated in 2004.

Specifically, since 2004, the car hire rates available for new cars have been depressed relative to the costs of new car construction. Although the car-hire rates for railcars in existence prior to deprecation have held relatively well, default rates for new cars have dropped substantially, and in some cases precipitously (even as new railcar costs have risen). This, in turn, has challenged the ability of railcar lessors and their corresponding lessees to negotiate bilateral agreements which adequately compensate car owners for the cost of new car construction, particularly in the recent climate wherein the costs of new car construction have climbed dramatically.

By the same token, in the Flatcar Pool, the Class I railroads, through TTX, have been willing to charge themselves a car hire rate which, when combined with the certainty of utilization associated with the Flatcar Pool, effectively allows TTX to earn an adequate return on the capital the railroads have invested in TTX. Accordingly, the car hire prices charged by TTX to its pool members confer a pricing benefit on TTX that is unavailable to any other market participant.

In summary, the existence of the Flatcar Pool allows TTX to take advantage of certainty of pricing and certainty of utilization, justifying continued investment in flatcars. In contrast, private-car leasing companies seeking to deploy railcars in a similar fashion enjoy neither type of certainty, causing them to price for uncertainty, and thus rendering them uncompetitive with TTX. This lack of competitiveness, in turn, discourages investment on the part of lessors.

**PRIVATE CAR LESSOR PARTICIPATION
WOULD ENHANCE THE FLATCAR POOL**

As indicated above, private car lessors' participation in the Flatcar Pool would do everything to enhance the Pool, and would do nothing to detract from the benefits which the Board has enunciated with respect to the Pool.

Since 2004, private car ownership has continued to increase significantly, while individual railroad car ownership has continued to decline. Private car lessors now own 44% of the entire railroad fleet (up from 41% in 2004), and railroad ownership of cars has declined to 28% (down from 31% in 2004).⁷ Clearly, the nation's railroad industry is increasingly looking at private car owners to meet the nation's railcar supply needs. In order to meet these needs, private car owners need to be equipped to do so, not hamstrung in their ability to access car markets. It makes absolutely no sense to deprive the railcar fleet, and the railroads and shippers who depend upon that fleet, of private car owner participation in a critical railcar market.

By the same token, private car owner participation in the Flatcar Pool will have no adverse impacts on that pool. Indeed, by way of example, TTX currently successfully manages the automotive reload pool, wherein both TTX and individual railroads each contribute equipment to a common pool for management and distribution by TTX. (*The Baltimore & Ohio R.R. – Pooling of Car Service Regarding Multi-Level Cars, Finance Docket No. 29653* (ICC served August 19, 1981). The example of the reload pool shows

⁷ Source: UMLER data

that the public benefit of pool management can be successfully separately from the provision of equipment.

Commentors anticipate that TTX may object to lessor participation in the Flatcar Pool on the basis that multiple equipment owners might cause excess supply in the Pool, and that TTX's position as sole equipment supplier allows regulation of equipment supply. Commentors respectfully point out that, in recent years, shortages of flatcars occurred during periods of surging demand, and Commentors further note that private car lessors have consistently shown themselves to be rational actors, deploying capital in non-TTX-served markets as demand warrants. This supply, in fact, represents a benefit that private lessors provide, as the cost of potentially inactive cars during weaker markets is borne by the lessors and not by the railroads or TTX.

Through the vehicle of the TTX Flatcar Pool, we can further assist the railroad industry (of which we are an integral component) to better manage its capital investments in times of both peak and limited flatcar demand. Our participation in the pool would significantly enhance the ability of the railroad industry to ameliorate the effects of railcar shortages during periods of "peak" demand while, at the same time, the utilization efficiencies of the pool would help to justify our investment in those car types, despite the "valleys" associated with low railcar demand.

Of course, the exact details of private car lessors' participation in the pool would necessarily be a subject of initial discussions with TTX, together with the expectation that the Board would step in to resolve any terms of disagreement. Generally, Commentors would anticipate that the contribution of flatcars to the pool by private car lessors would be on a voluntary basis and that TTX would use our cars in the Flatcar Pool on a non-

discriminatory basis relative to other cars within the pool. By the same token, we certainly expect that TTX would need to rely on a stream of quality flatcars in the pool. As such, we expect that private car lessors contributing to the pool would have to commit to such a contribution for a specified period of time, and would commit to supplying cars materially commensurate with the quality and technical specifications of TTX's existing pool.

**THE BOARD AND TTX HAVE RECOGNIZED
THE BOARD'S AUTHORITY TO REVISIT THE POOLING AGREEMENT**

As the Board clearly stated in its 2004 reauthorization of the Flatcar Pool, it retains continuing oversight jurisdiction over the Pool. The Board noted that "we can revisit any element of the Pooling Agreement or TTX's pooling authority at any time upon proper showing..." (STB Finance Docket No. 27590 (Sub-No. 3), *TTX Company, et al – Application for Approval of Pooling of Car Service With Respect to Flatcars*, served August 31, 2004 at p. 18)

Similarly, TTX repeatedly pointed out in its 2004 application and corresponding rebuttal statement,

"TTX agrees... that, as in 1994, approval should be conditioned on 'the continuing right of any interested person to petition for reopening and reconsideration on the ground that the pooling operation has not resulted in better service to the public or economies of operation or that it has unreasonably restrained competition,' and that, as the ICC did in 1994, the Board should reserve 'the right to modify its approval, or to revoke its approval entirely if that action is deemed warranted.'" (TTX Company's Rebuttal in Support of Approval of Its Flatcar Pooling Application, filed May, 12, 2004, at p. 30, footnote 18)

Commentors respectfully suggest that the time has come for such action on the part of the Board. While the Board may have believed in 2004 that it made sense to exclude private car owners from the flatcar market, and that they should divert their investments elsewhere, Commentors submit that such a position is no longer compatible with the health of the railroad industry.⁸

Accordingly, we request that the Board consider either (1) reopening this proceeding for the purposes of requiring private car lessor participation in the Flatcar Pool and providing TTX and Commentors a specified period of time to negotiate an agreement in connection therewith or, alternatively, (2) soliciting public comments (including, of course, comments of TTX) as to the advisability of our proposal.

In sum, pursuant to the National Transportation Policy, the economic health of the railroad industry is of paramount concern to the Board. It is of paramount concern to us as well. Our participation in the Flatcar Pool will provide a direct benefit to railroad industry economic health by potentially softening the capital investment necessary by the major railroads while, at the same time, incentivizing the private car industry to make that capital investment themselves.

In an industry in which there is a substantial long-term need to replace older, lower-capacity cars with newer, high-capacity cars, as well as specialty equipment

⁸ The Board's evident view in 2004 was that, "While it may be that leasing companies forego heavy involvement in the flatcar leasing business, and choose to focus their investment on other car types, the evidence suggests that this is quite likely because of the competitive forces that TTX brings to bear in the flatcar market, prompting leasing companies to focus their efforts and investment where the possibility of profit is greater." (STB Finance Docket No. 27590 (Sub-No. 3), decided August 31, 2004 at p. 13)

designed to meet the ever evolving needs of shippers, the current disincentives to private car lessors' investment in flatcars is not beneficial to the health of the rail industry.

Respectfully submitted,

GATX Corp., CIT Rail and First Union Rail
Corporation



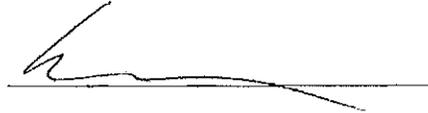
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Attorney for Commentors

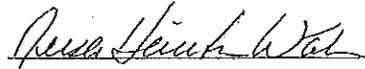
VERIFICATION

I, Paul F. Titterton, Vice President and Executive Director of Fleet Portfolio Management of GATX Corp., hereby declare under penalty of perjury that the foregoing is true and correct. Further, I certified that I am qualified and authorized to file these Comments on behalf of GATX Corp.

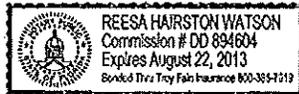
Executed on December 28th, 2009.



Subscribed to and sworn before me
this 28 day of December, 2009



Notary Public



VERIFICATION

I, Mel Kusta, Senior Vice President of Operations for CIT Rail, hereby declare under penalty of perjury that the foregoing is true and correct. Further, I certified that I am qualified and authorized to file these Comments on behalf of CIT Rail.

Executed on December 30, 2009.

Mel Kusta

Subscribed to and sworn before me
this 30th day of December, 2009

Catherine Johnson

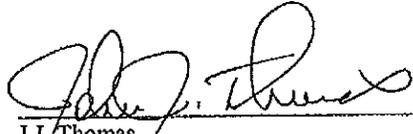
Notary Public



VERIFICATION

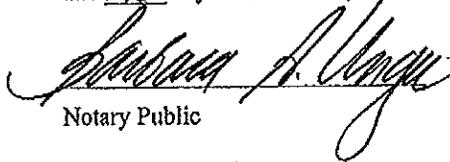
I, J.J. Thomas, President of First Union Rail Corporation, hereby declare under penalty of perjury that the foregoing is true and correct. Further, I certified that I am qualified and authorized to file this Comments of First Union Rail Corporation.

Executed on December 23, 2009.

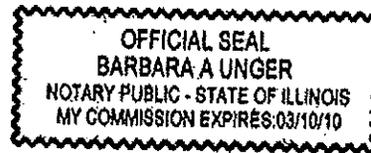


J.J. Thomas

Subscribed to and sworn before me
this 23 day of December, 2009



Notary Public



CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December, 2009, I served the foregoing document, Comments of GATX Corp., CIT Rail and First Union Rail Corporation, by hand delivery on:

Patrick D. Loftus
General Counsel and Corporate Secretary
TTX Company
101 North Wacker Drive
Chicago, Illinois 60606

A handwritten signature in cursive script, appearing to read "Rachel Lei", is written above a horizontal line.

Rachel Lei