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BEFORE THE  
SURFACE TRANSPORTATION BOARD

TTX Company – Application for Approval of Pooling  
of Car Service With Respect to Flatcars

Finance Docket No. 27590 (Sub-No. 3)

**TTX COMPANY'S REPLY TO COMMENTS  
IN THE MONITORING REPORT PROCESS**

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PATRICK B. LOFTUS  
ANNE E. TREADWAY  
TTX Company  
101 North Wacker Drive  
Chicago, Illinois 60606  
(312) 984-3838

LINDA J. MORGAN  
MICHAEL L. ROSENTHAL  
Covington & Burling LLP  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401  
(202) 662-6000

*Attorneys for TTX Company*

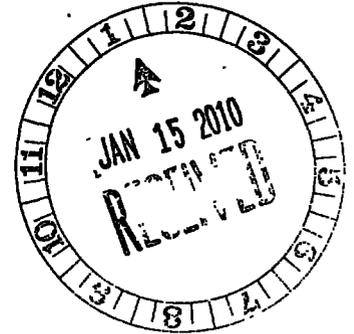
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IN THE MONITORING REPORT PROCESS**

Pursuant to 49 C.F.R. § 1104.13, TTX Company hereby replies to the comments submitted in the monitoring report process that the Board commenced by its decision served September 25, 2009. That decision required TTX to provide certain information regarding its pooling activities from 2004 through 2008 (the “TTX Response”), and it invited interested parties to use that information and their own experiences to comment on “whether any of the activities of TTX pursuant to the Board-approved pooling agreement require any action or particular oversight by the agency at this time.” Decision at 2. The comments demonstrate that there is no need for any action or particular oversight by the agency at this time.

The TTX Response demonstrated that the flatcar pool has continued to generate the types of benefits that the Board expected when it extended TTX’s pooling authorization in 2004. TTX has continued to supply a fleet of high-quality, low-cost flatcars that provides significant benefits to the railroads and shippers, both in times of high demand and during the recent economic slowdown. TTX’s efficient car management practices maximized utilization of flatcars when demand was high, and allowed railroads to reduce their costs by “turning back” unneeded cars when demand fell. TTX has also continued to pursue efforts to improve its flatcar fleet and respond to the evolving needs of railroads and shippers. And TTX has continued to

work cooperatively with shippers that depend on its flatcars, including, in particular, auto industry shippers and the military's Surface Deployment and Distribution Command.

The Board received only two sets of comments in response to its invitation to interested parties. Neither set of comments disputes that the flatcar pool has performed as expected during the past five years or provides any reason for the Board to take any action or to investigate further the operations of the flatcar pool.

The Greenbrier Companies ("Greenbrier") has "no specific concerns to report to the Board at this time." Greenbrier Comments at 1. Greenbrier states that it has long acknowledged the benefits of pooling and that it supported TTX's requests for extensions of its pooling authority in 1994 and 2004. *Id.* at 3-4. Greenbrier notes its belief that there are trends in the railroad industry that require continued watchfulness by the Board, but concludes that it has "nothing to report which would require immediate action or particular oversight at this time." *Id.* at 6.

Comments were also filed on behalf of three railcar leasing companies: GATX Corp., CIT Rail, and First Union Rail Corporation (collectively, the "Lessors"). The Lessors reiterate the arguments they made in 2004 that the pool produces no substantial public benefits and instead harms the public by reducing the incentives of private railcar leasing companies to invest in flatcars. But the Lessors now argue that the Board should require TTX to allow the Lessors to place their cars in the pool so the pool's "benefits to the public will be enhanced even further." Lessors Comments at 7.

The Board need not try to reconcile the Lessors' inconsistent claims about the benefits of pooling, and their request to join the TTX flatcar pool is well beyond the scope of this monitoring proceeding. The Lessors' comments confirm that TTX has continued to operate as

the Board expected when it reauthorized the flatcar pool, and they do not identify “any activities of TTX pursuant to the Board-approved pooling agreement [that] require any action or oversight by the agency at this time.” Decision at 2.

In reauthorizing the flatcar pool in 2004, the Board considered and rejected Lessors’ views on the benefits and harms of the pool. For example, the Board considered arguments that the Lessors are “disincentivized . . . from investing in the flatcar market relative to other car types,” and that the railroad industry would be healthier if TTX’s pooling authority were adjusted to give private railcar leasing companies stronger incentives to invest in flatcars, *see id.* at 7-12, and it rejected them, stating:

“While it may be that the leasing companies forego heavy involvement in the flatcar leasing business, and choose to focus their investment on other car types, the evidence suggests that it is quite likely because of competitive forces that TTX brings to bear in the flatcar market, prompting leasing companies to focus their efforts and investments where the possibility of profit is greater.”

*TTX Company – Application for Approval of Pooling of Car Service With Respect to Flatcars*, STB Docket No. 27590 (Sub-No. 3) (STB served Sept. 25, 2009) at 13.<sup>1</sup>

The Lessors offer no reason for the Board to revisit its decision not to tamper with TTX’s pooling authority for the benefit of private railcar leasing companies. They do not point to any TTX activities, or any consequences of TTX’s activities, that were not anticipated in the reauthorization proceeding. They offer no evidence of unmet need for investment in flatcars, and no evidence that the railroad industry would be healthier if private railcar leasing companies

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<sup>1</sup> In fact, although the Lessors claim to have shifted investment away from flatcars, their filing shows that private car lessor flatcar fleets have grown *faster* than their fleets across all car types. According to the Lessors’ own figures, from 2004 through 2008, operating lessor fleets across all car types grew by 116,810 cars to a total of 764,000 cars, an increase of 18%; at the same time, their flatcar fleets grew by 8,641 cars to a total 46,121 cars, an increase of 23%. *See* Lessors Comments at 6 n.2 & 8.

shifted investment from other car types to flatcars. In short, the Lessors have not identified any issues that “require any action or particular oversight by the agency at this time.” Decision at 2.

As the Board recognized when it reauthorized the flatcar pool, TTX’s position as a strong competitor to private railcar leasing companies reflects the legitimate benefits and efficiencies associated with pooling. *See TTX Company – Application for Approval of Pooling of Car Service With Respect to Flatcars*, at 13-14. Moreover, the Lessors’ complaints that TTX has unfair advantages over private railcar leasing companies are simply untrue. In particular, there is no basis for the Lessors’ complaints that TTX unfairly benefits from “certainty of pricing” and “the certainty of utilization associated with the Flatcar Pool.” Lessors Comments at 13. Private railcar companies typically enter into leases with rail carriers and shippers that provide “certainty of pricing.” TTX, by contrast, is prohibited from entering into similar long-term arrangements. Private railcar companies also have an advantage over TTX with regard to “certainty of utilization.” In times of low demand, rail carriers typically continue to use their leased cars, because they must pay regardless of whether they use the cars, whereas they can “turn back” TTX cars to avoid paying car hire. *See TTX Response* at 7-8.

Finally, the Lessors’ request that the Board require TTX to allow them to place their flatcars in the pool is well beyond the scope of this proceeding. Because the TTX Response and even the Comments confirm that the flatcar pool is operating exactly as the Board intended, and is having only foreseen impacts on the railroad industry, no immediate action or particular oversight by the Board is necessary at this time. Moreover, the Lessors’ request raises many complicated legal questions about the Board’s authority and the intersection of the pooling statute and the antitrust laws. It raises an even larger number of equally complex questions about how the pool would have to change if cars were no longer under common ownership, what

benefits of pooling would be lost, whether the new arrangement would continue to be in the public interest, and whether the pool would even continue to exist. However, the Lessors' comments provide no reason or basis for the Board to address these complex questions.

TTX appreciates the Board's commitment to monitor the results of its decision to reauthorize the flatcar pool. The TTX Response and the few comments received from other interested parties demonstrate that the flatcar pool is performing as expected and that there is no need for any action or particular oversight by the agency at this time.

Respectfully submitted,

PATRICK B. LOFTUS  
ANNE E. TREADWAY  
TTX Company  
101 North Wacker Drive  
Chicago, Illinois 60606  
(312) 984-3838



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LINDA J. MORGAN  
MICHAEL L. ROSENTHAL  
Covington & Burling LLP  
1201 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2401  
(202) 662-6000

*Attorneys for TTX Company*

January 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that this 15th day of January, 2010, I caused a copy of TTX Company's Reply to Comments in the Monitoring Report Process to be served by first class mail, postage prepaid, on all parties of record in Finance Docket No. 27590 (Sub-No. 3).

  
Michael L. Rosenthal