

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

MICHAEL L. ROSENTHAL
TEL 202.662.5448
FAX 202.778.5448
MROSENTHAL@COV.COM



226363

January 27, 2010

BY HAND

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

ENTERED
Office of Proceedings

JAN 27 2010

Part of
Public Record

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

Dear Ms. Brown:

TTX Company does not object to the Board's considering the impermissible "reply to a reply" filed in this proceeding by GATX Corp., CIT Rail, and First Union Rail Corporation (collectively, the "Lessors") as long as the Board also considers this brief response.

Most of the Lessors' reply consists of empty rhetoric and requires no response. However, TTX must respond to the Lessors' false claim that TTX "has been able to utilize its monopoly power conferred by the Flatcar Pool to ensure that its flatcars are first in line for transportation of movements to the detriment of private lessor cars." Lessors Reply to Reply at 3. In fact, car utilization data confirm TTX's observation that "in times of low demand, rail carriers typically continue to use their leased cars," while taking advantage of the flatcar pool's "turn back" provisions to avoid paying car hire on TTX cars. TTX Reply at 5. The Lessors say they have more than 10,000 idle railcars. *See* Lessors Reply to Reply at 3. However, they own more than 310,000 railcars, which means their fleet utilization rate is approximately 96.8%. *See* Lessors Comments at 3-5.¹ By contrast, TTX's flatcar utilization rate through the third quarter of 2009 was 66.7% for intermodal flatcars and 44.5% for general service flatcars. *See* TTX Response,

¹ This utilization figure is consistent with GATX's reported fleet utilization rate of 95.9% as of December 31, 2009, which was the "same as in the prior quarter." *See* GATX Press Release (Jan. 21, 2010) (*available at* http://ir.gatx.com/phoenix.zhtml?c=70051&p=irol-newsArticle_Print&ID=377512&highlight=).

COVINGTON & BURLING LLP

Ms. Cynthia T. Brown
January 27, 2010
Page 2

Exhibit B.² The data thus refute the Lessors' claim that TTX has an unfair advantage in promoting the utilization of its railcars.

Sincerely,



Michael L. Rosenthal
Attorney for TTX Company

cc: Parties of Record

² These TTX utilization figures translate to approximately 14,585 idle intermodal flatcars and 17,080 idle general service flatcars in the TTX fleet. *See* TTX Response, Exhibit A.