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

Re: Ex Parte No. 768, *Petition for Rulemaking to Adopt Rules Governing Private Railcar Use by Railroads*

Dear Ms. Brown:

Enclosed for filing in the above-reference proceeding are the Reply Comments of the Association of American Railroads ("AAR"). We are submitting under seal a version containing Highly Confidential information subject to the Board's Protective Order and simultaneously filing in the public docket a redacted version. AAR will provide a copy of the Highly Confidential version of these Reply Comments to participants in this proceeding who have executed a Highly Confidential undertaking pursuant to the Protective Order entered in this case.

AAR's Reply Comments are supported by the Reply Verified Statement of John T. Gray. Workpapers relating to Mr. Gray's testimony will be made available to participants in this proceeding who have executed a Highly Confidential undertaking. Parties who are interested in making arrangements to receive access to such workpapers should contact the undersigned.

Please contact me with any questions.

Respectfully submitted,



David L. Meyer

Attorney for the Association of American Railroads

Attachment

REDACTED PUBLIC RECORD VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 768

PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS

**ASSOCIATION OF AMERICAN RAILROADS’
REPLY COMMENTS**

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ASSOCIATION OF AMERICAN RAILROADS' REPLY COMMENTS

The Association of American Railroads (“AAR”) submits this Reply to the Comments filed in this proceeding on June 30, 2022.

When put to the test of supporting their proposed new regulatory regime with evidence of a problem in need of solution or a valid legal foundation for their proposal to micro-manage how railroads move trains (and the cars they carry) across the railroad from origin to destination, Petitioners and their supporting commenters come up empty. The comments filed in support of Petitioners’ regulatory proposal (or some variant thereof) ground their position on three core but wholly unsupported propositions:

- That railroads lack incentives to operate private railcars efficiently (supposedly in contrast to railroads’ acknowledged incentives to operate their own cars efficiently), such that “leveling the playing field” by imposing so-called “reciprocal demurrage,” is necessary to provide such incentives;
- That private railcars are operated inefficiently, as purportedly demonstrated by a variety of anecdotes and Petitioners’ analysis of “CLM” data showing the incidence of what Petitioners characterize as 48- and 72-hour “dwells;” and
- That railroads’ statutory “car service” obligation somehow provides the Board with the regulatory authority to regulate every aspect of railroad operations simply because everything on a railroad moves in a railcar.

In truth, of course, the underlying complaint made by all of these commenters is that *railroad service* – not car supply – does not measure up to their expectations, and they would like railroads to compensate them when – as inevitably occurs as an intrinsic part of railroad operations – their shipments (or returning empty cars) do not move continuously and speedily

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from origin to destination. As we demonstrate in these Reply Comments, Petitioners are wrong on all counts: their proposal has no foundation in any problem that needs addressing, the Board lacks regulatory authority to do what Petitioners desire, and implementing regulations of the sort Petitioners propose would be impractical and exceedingly bad policy.

In Sections I-III below we demonstrate that none of the necessary predicates for Board action is present in this record. There is no “incentive” problem, and certainly no problem warranting Board intervention in the manner proposed by Petitioners.

- The evidence confirms that there is no lack of incentives for railroads to handle private railcars efficiently;
- The evidence demonstrates that the kinds of “dwells” that Petitioners hold up as proof of operational malfeasance are in fact part of sound railroad network design; and
- In the absence of any demonstrated shortage of railcars or service emergency, the Board lacks the authority to superintend railroad operations and transportation service under the guise of regulating “car service.”

In Section IV below we further explain why adopting regulations of the sort proposed by Petitioners would be unwise and counterproductive even if there were evidentiary and legal support for the proposed new regulatory regime. As we demonstrate:

Any regulation purporting to penalize (or “disincentivize”) some pre-defined category of presumptively “inefficient” rail network operations (whether based on “dwells” of a certain duration or any other metric) would wreak havoc with efficient rail network operations. That is because neither the CLM-based metric proposed by Petitioners nor any other proposal advanced by commenters would be capable of separating sound rail network operations from the

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“inefficient” or “substandard” levels of service about which the commenters complain. Nor is there any silver-bullet source of data that could guide application of any bright-line regulatory standard even if such a standard existed.

In the absence of a viable bright-line standard, of course, any new regulatory regime would necessarily require case-by-case adjudication against the backdrop of some set of legal or regulatory standards. To the extent such a regime sought to involve the Board in ad hoc decision-making regarding whether a carrier’s transportation plan applicable to specific traffic – or its execution of that plan – was “efficient,” the Board would be acting far outside its expertise (not to mention statutory authority). Substituting the Board’s judgments for those of trained railroaders would inevitably lead to less, not more, efficient rail operations. Stated plainly, the Board is ill-equipped to micro-manage the rail network.

To the extent any case-by-case examination of rail carriers’ service design were warranted, the Board’s statutory framework already provides for it, by allowing shippers to seek to adjudicate whether, as applied to a particular factual context, a railroad’s rules and practices are reasonable and whether it has adequately discharged its obligations as a common carrier to provide transportation and car service upon reasonable demand.

The Board should decline Petitioners’ invitation to regulate railroad operations and terminate this proceeding.

I. THE COMMENTERS’ QUEST TO “LEVEL THE PLAYING FIELD” CONTINUES TO BE BASED ON FACTUAL MISCONCEPTIONS AND PROVIDES NO SUPPORT FOR THE PROPOSED REGULATIONS

Petitioners and their supporters continue to assert that Board regulation is justified by the bare facts that (a) private cars have come to represent a large share of all railcars and (b), unlike with regard to railcars owned by railroads, railroads lack a demurrage-like regime providing

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incentives to operate private cars efficiently. Accordingly, these commenters argue, the Board needs to “level the playing field” by creating new incentives – so-called “reciprocal demurrage.” *See, e.g.*, Opening Comments of Petitioners at 13 (Board should “start to level the playing field”); 16 (seeking “better balance”); Comments of the U.S. Department of Agriculture (“USDA Comments”) at 5; Comments of Portland Cement Association (PCA Comments”) at 3, 8 (seeking “mutuality of treatment” and incentives “comparable and reciprocal” to demurrage).

As the Opening Comments of AAR and several railroads demonstrated, however, there is no factual foundation for Petitioners’ claims regarding railroad incentives. Railroads in fact have strong incentives to operate *all railcars on their network* efficiently, and nothing in the opening comments calls into question this conclusion. To the contrary, the CLM data put forward by Petitioners as showing alleged “delays” to private railcars confirms that railroad-owned cars and private cars are operated with equal efficiency.

A. Railroads Have Incentives to Move All Cars Efficiently, and in Practice They Treat Private Cars No Differently from Railroad-Owned Cars

The principal justification provided by Petitioners and their supporters for “leveling the playing field” is that there are no incentives for railroads to move private cars efficiently. As we have already shown, however, railroads have strong incentives to handle private cars efficiently, including the costs to their operations and capacity associated with parked (or slow-moving) railcars and the opportunity costs associated with slower cycle times. AAR Opening Comments at 6-11; Comments of Norfolk Southern Railway Company (“NS Comments”) at 13-14 & Moore V.S. at 2-4; Comments of Union Pacific Railroad Company (“UP Comments”) at 8-9.

To borrow from the graphic included in USDA’s Comments (as USDA’s Figure 1), the lower-left quadrant of USDA’s grid is in fact green, not red. Figure 1 below corrects USDA’s

table to take account of the fact that railroads already internalize the costs associated with inefficient handling of private cars, just as they do for railroad-owned cars.

FIGURE 1
(CORRECTED USDA FIGURE 1)
THERE IS NO NEED FOR FEES TO INCENTIVIZE EFFICIENT PRIVATE CAR USE

		Owner	
		Shipper	Railroad
User	Shipper	No additional fees needed. Shippers inherently account for delay costs using shipper-owned cars.	Fees already exist in the form of demurrage, so that shippers fully account for delay costs in moving railroad-owned cars.
	Railroad	No additional fees needed. <u>Railroads inherently account for delay costs using shipper-owned cars.</u>	No additional fees needed. Railroads inherently account for delay costs using railroad-owned cars.

USDA's matrix sets up a useful framework for examining whether railroads act on those incentives. As USDA acknowledges, "railroads inherently account for delay costs using railroad-owned cars" (see the lower right quadrant of its matrix). USDA Comments at 4.¹ USDA is not alone in recognizing railroads' incentives to handle their own cars efficiently. ACC, for example, contends that "railroads have a strong incentive to handle their own cars efficiently." Comments of ACC, et al. ("ACC Comments") at 12. American Fuel and

¹ See also *Id.* at 5 ("railroads already bear the full cost of inefficient railroad-owned car use").

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Petrochemical Manufacturers (“AFPM”) goes farther, providing examples of what drives railroads’ incentives to “efficiently use system-owned cars” (AFPM Opening Comments at 14), all of which apply with full force to private cars as well. In particular, as with railroad-owned cars, railroads have incentives to “to run their networks more efficiently” (of which private cars are a big part) and to “move cars to obtain the highest possible revenue” (*i.e.*, moving more freight, not less). *Id.*²

The degree to which railroads act upon such incentives with respect to private cars can be assessed by comparing how the two fleets of cars are handled in the real world on the rail network. Petitioners Opening Comments put forward a set of metrics that they applied to data on a selected group of private cars to assess the portion of “trips” in which the cars incurred what Petitioners characterize as “idle time” or “dwell” (*i.e.*, the time between two CLM events) of greater than 48 or 72 hours.³ We explain below that these data are not appropriately interpreted as reflecting cars sitting idle, much less doing so for reasons of inefficiency. Nonetheless, Petitioners Own metric and methodology provides a means of comparing the performance of privately-owned railcars with the performance of railroad-owned cars.

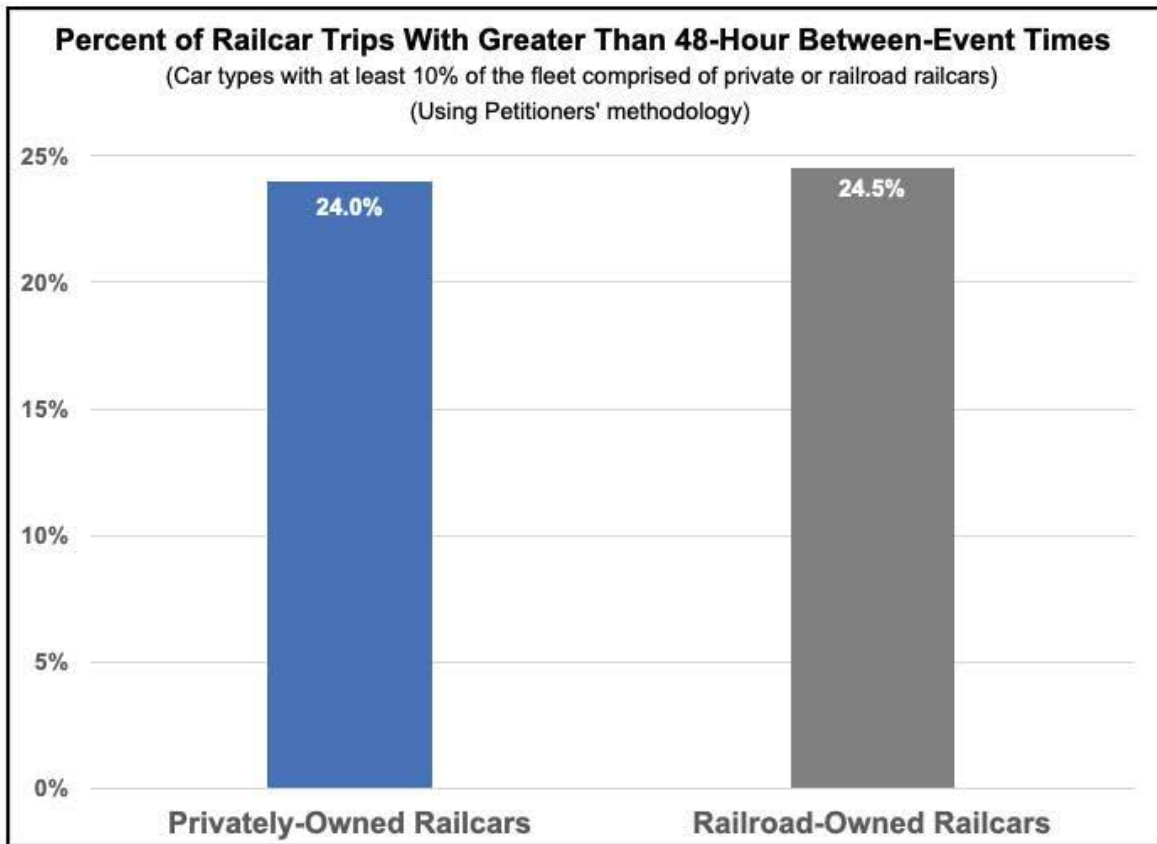
John Gray, AAR’s Senior Vice President – Policy & Economics, applied Petitioners’ methodology to the same type of CLM data as used by Petitioners for the same time period (July 1, 2021 through April 30, 2022), but covering movements of both private and railroad-owned

² See also ACC Opening Comments at 12 (asserting that railroads would benefit from improved network fluidity by operating private cars efficiently); *cf.* Petitioners Opening Comments at 19 (explaining that “shipper[s] make money by selling products,” just like railroads make money by moving freight).

³ Petitioners Opening Comments at 6-7, Johnson V.S. Petitioners define a “trip” as the movement of a loaded or empty car from origin to destination, although Petitioners treated the beginning of trips as the “release” of a car rather than the beginning of its physical movement. *Id.*

cars.⁴ As Mr. Gray explains in his Reply Verified Statement, he used these data to compare the handling of the two groups of cars *and found the two groups to perform quite similarly*. As shown in Figure 2 below, approximately 24.5 percent of trips in railroad-owned cars incurred 48-hour Between-Event Times, as compared to 24 percent for private cars.⁵

FIGURE 2
PRIVATE AND RAILROAD-OWNED CARS PERFORM SIMILARLY



⁴ Petitioners' consultant made clear that the CLM data he analyzes was merely a subset of similar data for all cars that is "sourced from railroads" and would "readily be accessible to them" to audit claims made by shippers. Petitioners Opening Comments, Johnson V.S. at 5, Notes B & D. That is exactly what Mr. Gray has done in this case.

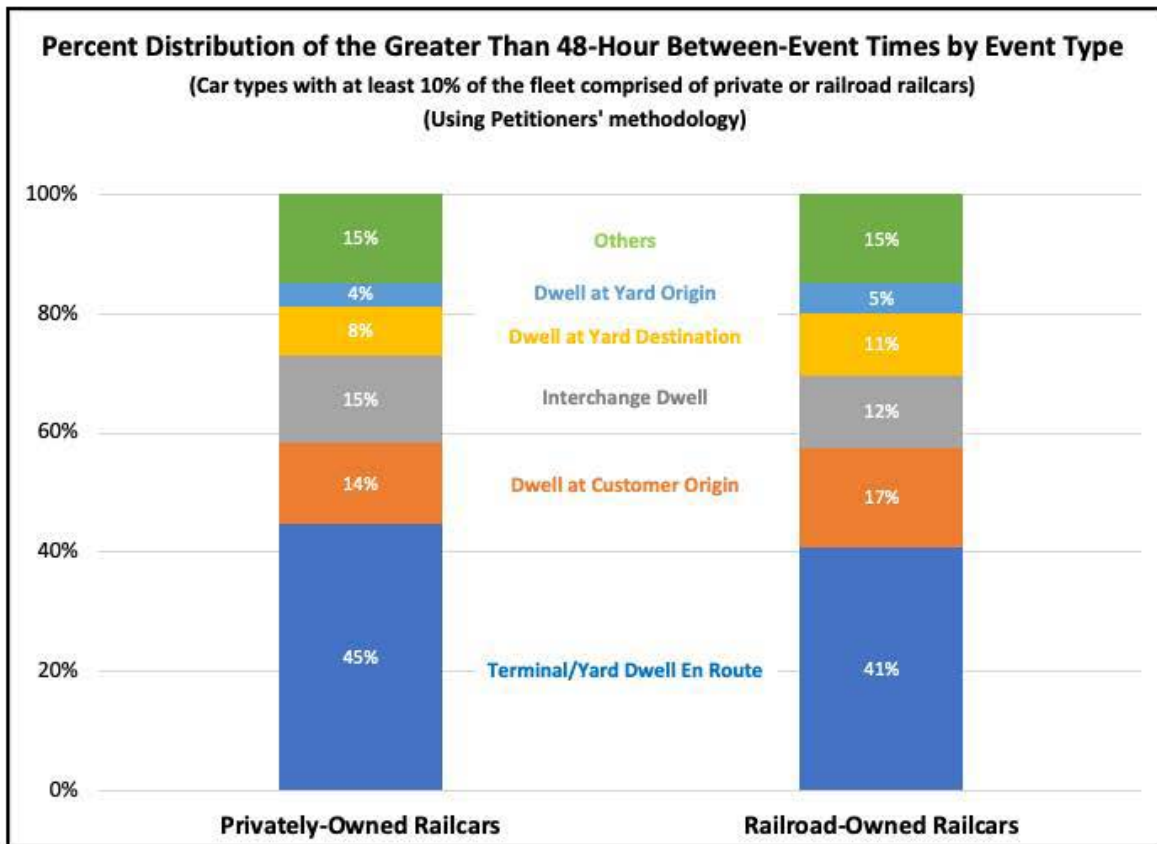
⁵ Reply Verified Statement of John T. Gray ("Gray R.V.S.") (Exhibit 1 hereto) at ¶¶ 29, 32 & Gray Figure 3. Examining dwells of 72 or more hours reveals the same pattern. *Id.* at ¶ 29 n.8 & Appendix A, page 35, Gray Figure A3.

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Mr. Gray limited his comparisons to car types that are meaningfully represented in both the private and railroad-owned fleets in order to avoid skewing the comparisons based on differences in movement characteristics among the types of commodities for which those cars are used. This primarily affected intermodal flatcars and automotive flatcars (which are almost entirely railroad (or TTX) owned) and tank cars and specialty covered hoppers (which are almost entirely privately owned). Gray R.V.S. at ¶ 31. But these exclusions did not drive the results. Even comparing 100 percent of both car populations demonstrates that significant percentages of all trips in both railroad-owned cars and private cars experience 48- or 72-hour Between-Event Times. *Id.* at ¶ 32 n.10. Since railroads have acknowledged incentives to handle their own cars efficiently, this means that such performance is an inherent part of railroading, and not indicative of service failures or inefficiencies.

To confirm that the similar incidence of long Between-Event Times revealed in the CLM data for railroad-owned and private railcars reflected similar handling patterns, and not just similar outcomes, Mr. Gray compared the distribution of observed 48-hour (or 72-hour) Between-Event Times for the two groups of cars and found that it too was nearly identical. *Id.* at ¶ 34 & Gray Figure 5. As shown in Figure 3 below, when private railcars and railroad-owned cars experience long periods of time between CLM events during their origin-to-destination transit, they tend to do so at the same stages of the trip.

FIGURE 3
THE DISTRIBUTION OF BETWEEN-EVENT TIMES FOR PRIVATE
AND RAILROAD-OWNED CARS IS SIMILAR



In other words, the CLM data put forward by Petitioners as support for their claim that there is a “problem” crying out for a regulatory solution in fact proves the opposite: railroads treat private cars just as efficiently as they treat their own cars, and the same kinds of Between-Event Times experienced by private cars are also experienced by railroad-owned cars. This finding is entirely consistent with common sense and the confirmation provided by individual railroads on the record in this proceeding that they handle private and railroad-owned cars the same way and in the same trains.⁶ Given that railroads are acknowledged to have incentives to handle their own cars efficiently, this confirms that supposed “dwells” (or more properly

⁶ *E.g.*, NS Comments, Moore V.S. at 2-3.

Between-Event Times) incurred by private cars are just part of normal railroading, not something requiring a remedy. Stated in Petitioners' terms: there is nothing unlevel about the playing field.

B. Commenters' Reliance on the "Demurrage" Analogy Remains Flawed and Seeks to Treat *Unlike Situations* as Though They Were the Same

Petitioners and supporting commenters continue to rely heavily on the absence of a "demurrage-like" regime as support for their proposed regulations. Petitioners Opening Comments at 13, 15-16. However, the analogy to demurrage upon which Petitioners and others rely – specifically, the absence of "reciprocal demurrage" – is inapt and provides no support for the proposed regulations. Far from proving that there is a problem in need of a solution, the absence of a demurrage-like regime applicable to railroads' use of private railcars is fully explained by fundamental differences in the factual and legal framework applicable in the two settings.

Quite simply, the justifications for demurrage do not support a regime of payments by railroads related to their handling of private railcars. Petitioners and their allied commenters are the ones inappropriately seeking to "unlevel" the playing field by treating *unlike situations* the same.

1. Commenters Continue to Falsely Equate the Regime They Desire With Demurrage

Commenters' analogy to demurrage – and demands for demurrage "reciprocity" – remains a crucial underpinning of their proposed new regulations. They pretend that the mere absence of a regime like demurrage applicable to railroad handling of private railcars must mean that railroads lack adequate incentives regarding the handling of privately-owned cars and jump to the conclusion that the transportation provided using private railcars suffers "inherent

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inefficiency” as a result. Petitioners Opening Comments at 3-4, 15-16; *see also, e.g.*, USDA Comments at 4-5.

This reasoning is factually and logically unsupported and wrong. There is no symmetry between demurrage and the new regulations Petitioners seek. Imposing new penalties (or payments) for railroad handling of private railcars would *distort* incentives, not equalize them. There are compelling (and long-recognized) justifications for railroads establishing demurrage rules applicable to the conduct of shippers that affects the handling of railroad-owned cars (and sometimes private cars when on railroad property) that are simply not present – and would not make sense to apply – in the case of railroad conduct affecting the handling of private cars.

There are at least three compelling reasons why the existence of demurrage does not support the regulatory regime Petitioners desire:

First, as AAR’s Opening Comments explained, demurrage exists because without it there would be no assurance that shippers would have any incentive at all to handle railroad-owned cars efficiently: for example, they could hold them indefinitely on their industry tracks as free warehouse space or they could order in many more cars than they are capable of loading or unloading promptly and thereby force railroads to hold those cars for free at local serving yards. In other words, demurrage applies to conduct by individual shippers and receivers that would otherwise be beyond the control of railroads because it takes place off the rail network.

There is no situation where railroads have any similar lack of incentives. None of the railroad network resources that would be consumed by inefficient utilization of private railcars are “free” to the railroads. Every inefficiency that consumes unnecessary railroad resources (track capacity, crews, locomotives, etc.) hurts the efficiency of the overall network, and every

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inefficiency that unduly prolongs transit times reduces railroads' opportunities to earn freight revenue on the next shipment using that railcar. *See* AAR Opening Comments at 7-9, 24.

Second, unlike the new Board-imposed regulatory mandate that Petitioners seek, law and regulation recognize demurrage as a *carrier-initiated* system that can be freely modified by carriers to optimize efficiency, subject only to the Board's regulatory backstop. That regime is thus responsive to market forces and capable of ongoing adjustment and refinement to achieve its goals, whereas the proposed new regime would be rigid and unyielding in the absence of further regulatory intervention by the Board. *See Id.* at 19-21, 24-25.

Finally, the Board's statutory framework expressly enshrines the need for payments to railroads in the form of demurrage when it commands that carriers "shall compute demurrage charges, and establish rules related to those charges." 49 U.S.C. § 10746. The statute contains no similar authorization, much less command, regarding a regime of reciprocal demurrage calling for payments from railroads to shippers. *Id.* at 23. In fact, when efforts to have Congress establish such a regime were proposed, Congress rejected it. *See* NS Comments at 8.

The argument of PCA (Comments at 3) that it is "fundamentally unfair" to allow demurrage for exempt commodities and not apply penalties for private railcar used to transport such commodities reveals how upside down the shippers' thinking is in this proceeding. The Board does not "allow" demurrage – railroads establish it in furtherance of their goals of running an efficient rail networks, and the Board has elected to *regulate demurrage* with the express authorization of Congress. Here, shippers are seeking to regulate the economic and service terms for the transportation railroads provide.

In short, the new regulations Petitioners' propose would have nothing to do with "demurrage." They would be an entirely new, and unwarranted, intrusion into railroads'

operations of their rail networks. The fact that demurrage has for more than 100 years been a vital part of supporting the efficient operation of the rail network – by keeping railroad-owned cars in circulation – provides no support for the regime Petitioners’ propose.

2. Some Commenters Falsely Equate the Regime They Desire With “Car Hire”

A few commenters suggest that the regime of “car hire” applicable to railroad-owned cars operates to incentivize the efficient use of railroad-owned cars in ways that are lacking as to private equipment. *See* AFPM Opening Comments at 14, 21; Petitioners Opening Comments at 15. This analogy is equally inapt.

Car hire is a set of rules agreed among railroads under Board oversight to compensate the owning railroad for the use of its car by another railroad. The regime flows from the mandatory interchange obligation, which requires railroads to hand over their own cars to other railroads.⁷ The car hire rules work in tandem with the car service rules. Among other things, the obligation to pay car hire to the owning road enables a more-efficient “free running fleet” through the relaxation of the reverse-routing principle while providing disincentives for railroads to misappropriate the cars of other railroads to meet their own transportation needs. For example, if foreign-owned cars were free to use, a railroad could hold onto them and use them to originate its own traffic rather than investing in its own cars.⁸

The issues addressed by car hire are completely absent with respect to privately-owned railcars, for multiple reasons. First and foremost, shippers – not railroads – direct the disposition of those cars. There is no possibility that a railroad in possession of a privately-owned car will

⁷ *See, e.g., Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules and Practices*, 335 I.C.C. 264, 290 (1969).

⁸ *E.g., Zone of Reasonableness of Car Hire Charges (49 CFR Chapter X)*, 364 I.C.C. 299, 302 (1980).

misappropriate that car to serve another shipper, since doing so would require the permission of the car owner. Because of this, there is no need for incentives to avoid railroads' hoarding private cars to meet their own loading needs.

Second, the benefits shippers receive from private car ownership (and their related investment incentives) are extensive, as AAR's Opening Comments explained (at 21-23), and those benefits in many cases include financial consideration geared to the cars' usage on a given railroad. There is no need for a further stream of "car hire" to motivate shippers to acquire cars or motivate railroads to handle them efficiently, and indeed any new stream of incentives could have perverse consequences for investment incentives. *See Id.* at 15-19.

II. COMMENTERS' "DATA" AND ANECDOTES REGARDING PRIVATE RAILCAR HANDLING PROVIDE NO SUPPORT FOR THE PROPOSED REGULATORY REGIME

Neither Petitioners nor any of the other supporters have put forward *any evidence* establishing a systematic problem with the handling of privately-owned railcars. Petitioners and their supporters continue to rely on a handful of unrepresentative anecdotes regarding railroad service levels to support their expansive new regulatory regime, but the centerpiece of their support for the proposed regulations is the analysis of CLM data presented by Petitioners' witness Matt Johnson. Petitioners characterize these data as demonstrating that a high percentage of all "trips" made by private railcars incur what Petitioners call "idle time" or "delays" of 48 or 72 hours, which they contend shows how much needs to change in the way railroads handle private railcars. Petitioners assert that the CLM data show railroads "holding onto Private Railcars too long" and that it "identif[ies] inefficient usage" of those railcars. Petitioners Opening Comments at 5. In fact, however, these data show nothing of the sort.

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First, contrary to Petitioners' characterization, the data they present was not designed to address, and does not reflect, "delays" to railcar movements or even whether a railcar has been "stationary" for some period of time. Petitioners variously refer to the data as evidencing "delays," "dwell times," and private cars being "held" or "idled" for some period of time (Petitioners Opening Comments at 6-8). Those characterizations misrepresent the data. In fact, the CLM data reports the physical location of a car at a single point in time, usually based on that car being detected by an AEI reader while the car is *in motion*. The time between two CLM observations does not indicate that the car was sitting still for that period, and provides no evidence regarding the work that was being performed (*e.g.*, the movement across the network, processing within a yard complex, etc.) during the intervening period. Gray R.V.S. at ¶¶ 4-9.

Second, as explained above, taking the data at face value, using Petitioners' methodology to calculate the time between CLM events (which we will call "Between-Event Times" rather than "dwell" or "delay" to avoid confusion about what these data mean), and expanding the sample to encompass the universe of trips using both private and railroad-owned railcars shows that the incidence of "long" Between-Event Times reflects *normal railroading*, not any phenomenon unique to privately-owned cars. *See* Gray R.V.S. at ¶¶ 10-20, 37-49.

Third, the sample of private car trips examined by Petitioners is {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }⁹ Gray R.V.S. at ¶¶ 21-26. Whatever

⁹ AAR has redacted from the Public Record Versions of these Reply Comments and Mr. Gray's Reply Verified Statement content relating to Petitioners' CLM data analysis because Petitioners have designated their CLM data and workpapers as Highly Confidential.

the explanation, the fact is that private railcars experience 48- or 72-hour Between-Event Times {{ [REDACTED] }} *Id.* at page 12, Gray Figure 1; Appendix A, page 31, Gray Figure A1.

Fourth, as Mr. Gray explains, an examination of the 48- or 72-hour Between-Event Times revealed by Petitioners' analysis shows that – consistent with the Opening Comments of AAR and several railroads¹⁰ – they are broadly consistent with sound and efficient rail network operations, rather than reflecting any kind of mishandling or inefficiencies associated with private car movements. Gray R.V.S. at ¶¶ 35-49.

As a result, far from supporting the proposed new regulations, the data show that any effort to prescribe a maximum number of hours that are permitted to elapse between CLM events would at best provide a windfall to private car owners associated with the normal operation of their cars and at worst (and more likely) create disincentives for efficient rail operations.

A. The “Between-Event Time” Statistics that Petitioners Present Do Not Demonstrate Any Problem

As Mr. Gray explains, Petitioners' submission of data purporting to demonstrate that 55 percent of all private car trips incur 48-hour Between-Event Times, and 31 percent incur 72-hour Between-Event Times, is not probative of any “mishandling” or poor service associated with the use of private railcars. Setting aside that private cars fare no worse than railroad-owned cars when assessed against Petitioners' metric, the metric itself is not indicative of “delays” or other malfeasance related to the movement of railcars.

First, the Between-Event Times events *do not represent cars sitting idle*. As Mr. Gray explains, Petitioners' calculations measure the elapsed time between one “CLM” message and

¹⁰ AAR Opening Comments at 11-13; NS Comments at 14-15 & Moore V.S. at 3-9; Comments of BNSF Railway Company (“BNSF Comments”) at 6-9.

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the next CLM message. For most of the reported “events,” the observation represents the time when the railcar (or the train the railcar was part of) passed an AEI reader *while in motion*. Gray R.V.S. at ¶¶ 4-8. And for {{[REDACTED]}} of the observations in Petitioners’ data for which there were long periods between events, the events occurred some distance apart. *Id.* at ¶ 12.

Even when the sequential events occur at the same location or at locations that are very near one another, that does not mean that the cars were stationary during the intervening period. For example, when a car passes a particular point en route into a yard complex, it may be worked multiple times before departing the complex (when it passes the same AEI reader some number of hours or days later). Gray R.V.S. at ¶¶ 14-20.

Second, the CLM data that Petitioners used in their analysis is not designed to measure railcar delays or service levels. Instead, it merely reports the physical progress across the network of a particular loaded or empty railcar. No aspect of the reported times or the elapsed time between events identifies whether the railcar is “late,” moving slower than planned, or progressing slower than a reasonable service plan might dictate. To the contrary, as Mr. Gray explains at length, for any given movement “extra” time spent on one segment of the journey (between sequential CLM events) may actually speed up the overall trip from origin to destination. Gray R.V.S. at ¶¶ 16-17, 40-41 & Gray Figure 7.

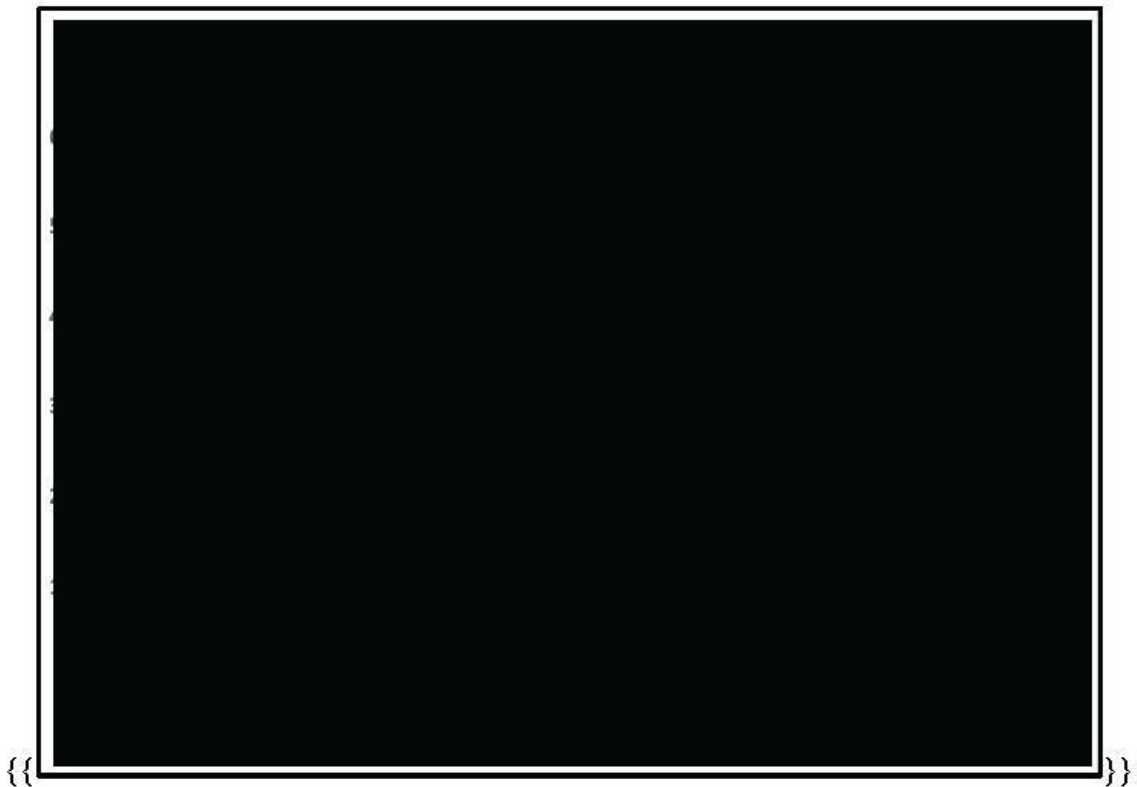
Third, the specific results that Petitioners report reflect an {{[REDACTED]}}
[REDACTED]}} There are two crucial flaws in what Petitioners report: the {{[REDACTED]}}
[REDACTED]
[REDACTED]
[REDACTED].}}

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As Mr. Gray explains, the trips reported in the data examined by Petitioners' consultant represent a {{ [REDACTED] [REDACTED] }} Petitioners reported that 55 percent of all of their trips experienced dwells over 48 hours in length. But {{ [REDACTED] [REDACTED] }} For the {{ [REDACTED] [REDACTED] }} had Between-Event Times of 48 hours or more. When the {{ [REDACTED] [REDACTED] }} as shown in Figure 4 below. Gray R.V.S. at ¶¶ 25-26 & Gray Figure 2.

FIGURE 4

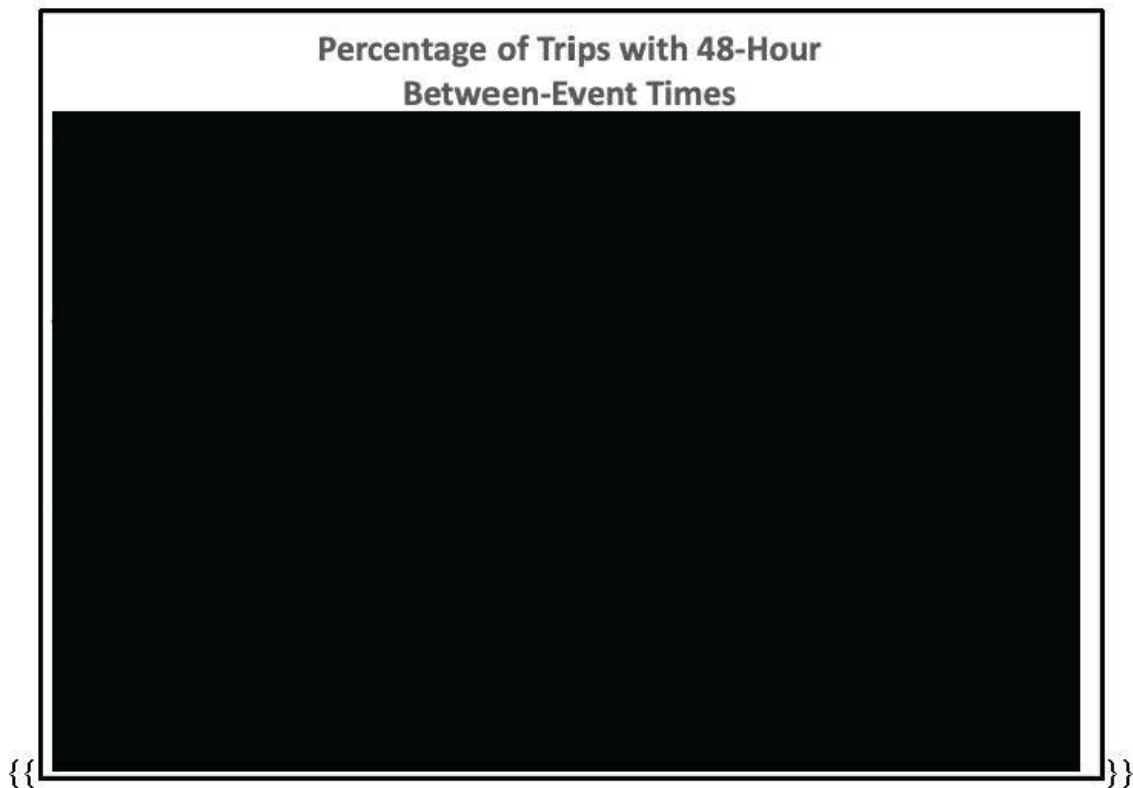
PETITIONERS' ANALYSIS WAS {{ [REDACTED] }}



Even if Petitioners' analysis had examined {{ [REDACTED] }} the sample would still have been unrepresentative of the broader fleet of private cars. As Mr. Gray explains, whereas {{ [REDACTED] }} of the trips made by the cars in the study group experienced 48-hour Between-Event Times, during the same period only 35 percent of all private cars experienced Between-Event Times of that duration, as shown in Figure 5 below. Gray R.V.S. at ¶¶ 22-24 & Gray Figure 1.

FIGURE 5

SAMPLED TRIPS ARE [REDACTED]



As shown above, when Petitioners' methodology is applied to representative populations of railroad and private car movements, it tends to show that all cars are treated the same, suggesting that the data is reflecting normal railroading and not anything inefficient about private car handling.

B. Examining the Specifics of the Between-Event Times Seen in the Data Confirm the Lack of any Systematic Inefficiency

Petitioners' effort to characterize all of the 48-hour and 72-hour Between-Event Times revealed by the data as reflecting insufficiently efficient service is misguided and wrong. First of all, the fact that "long dwells" (or other Between-Event Times) are commonplace for both private and railroad-owned cars is powerful evidence that pauses in the onward movement of railcars are part and parcel of how railroad networks function, as explained in AAR's Opening Comments (at 11-13).

Mr. Gray drills into the kinds of operating scenarios that show up in the CLM data to confirm precisely this point. The details underlying Petitioners' analysis show that the Between-Event Times Petitioners complain about (or at least a significant portion of them) are just ordinary railroading. Far from being indicative of service "failures," such events reflect sound network service design, and often facilitate more expeditious overall movements of cars from origin to destination, particularly in light-density origin-destinate lanes.

As Mr. Gray demonstrates, the vast majority of the long Between-Event Times that show up in the CLM data involve situations where some pause in the movement of railcars is an inherent part of efficient railroading, and in many cases are the product of service designs that are honed to provide shippers with efficient and economical transportation across rail networks that serve tens or hundreds of thousands of origin-destination ("O-D") pairs, using a series of network nodes (local switchers and serving yards, intermediate classification yards, etc.) to gather traffic, build density and allow the traffic of individual shippers to take advantage of economies of scale, scope and density. For example:

- It is no surprise that low-volume shippers (large numbers of which generate fewer than one car per week in any given O-D pair), would be served at origin only once

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or twice per week, meaning many of those cars would “dwell” at origin awaiting pickup by the serving carrier after the shipper makes a car ready for pick up and “releases” it by sending notice to the railroad.

- It is no surprise that many shipments are held at origin serving yards or intermediate classification yards awaiting sufficient density to support a block moving in the ultimate direction of the car’s destination. Such a design is ordinarily more efficient – and faster – than the approach of the early 1900s of simply forwarding a car in the direction of the next yard in the direction of movement.
- It is no surprise that railcars may dwell at yards along the route in order to be appropriately staged for deliver to facilities that have limited unloading (or storage) capacity, such as grain terminals at ports. This kind of metering fosters the overall efficiency of the supply chain by avoiding congestion at destination or long delays preceding the pickup of loaded cars at origin.

This list merely scratches the surface of dwells that appear with regularity in the CLM data, but which reflect good, not bad, railroad operations.

A fundamental driver of the Between-Event Times observed in the CLM data (and the reality that “dwells” are an inherent and pro-efficiency part of railroading) is the fact that the manifest carload network must integrate hundreds of thousands of light-density origin-destination pairs into service patterns that support the density necessary to deliver efficient and economical service. More than 99.7 percent of all origin-destination pairs (at the SPLC-to-SPLC level) see fewer than 10 carloads per day, and 97 percent see fewer than one carload per day on average. Gray R.V.S. at ¶¶ 43-49; page 27, Gray Table 1; page 28, Gray Figure 8. These light-

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density lanes account for 68.9 percent of all carload traffic. *Id.*, Gray Figure 8. The rail network supports this traffic because railroads design services that match shipment frequency and build volume (density) at intermediate network nodes, which can slow down overall transit times and building in dwells (but can also speed up overall transits by incorporating intermediate dwells). *Id.* at ¶¶ 37-42. As Mr. Gray demonstrates, the traffic handled in the private cars of the shippers who provided CLM data to Petitioners' consultant is {{[REDACTED] [REDACTED] .}}} *Id.* at ¶¶ 50-53 & Gray Figure 9.

To be sure, lurking in the millions of car movements reflected in the CLM data there no doubt are examples of shipments – in both private and railroad-owned cars – that suffered some form of unexpected delay. But as Mr. Gray explains, no amount of examination of the CLM data would be capable of separating that subset of movements from the broader group of dwells that reflected efficient service design. *Id.* at ¶¶ 6, 8, 20.

In light of the reality that efficient and economical railroading inherently involves a wide array of circumstances in which shipments are not constantly moving at the highest-possible rate of speed in the direction of the destination, it is not unexpected that Petitioners shift the focus away from “delays” and instead complain about the level of service that railroads provide even when all goes according to plan. Petitioners, for example, would condemn 72-hour dwells even when they are the direct consequence of shippers receiving less-than-daily service, in the process ignoring the economic implications of providing daily service where traffic density does not support it on an economical basis. Petitioners Opening Comments at 23. In a similar vein, Petitioners appear to contend that their shipments ought to be handled with every bit as much “priority” as “intermodal or other ‘premium’ services” (*id.* at 8), ignoring all of the factors that differentiate shipments from one another – including most notably the likelihood that intermodal

and other premium services involve dense terminal-to-terminal movements, would only exist if they provided truck-competitive levels of service, and likely are provided at “premium” rate levels commensurate with their character as “premium” services. Gray R.V.S. at ¶ 31; *see also* BNSF Comments at 7-8.

C. Other “Anecdotes” of Disappointing Rail Service Are Not Evidence of any Systematic Inefficiency

The handful of other anecdotes set forth in the comments of Petitioners and their supporters similarly provide no basis for concluding that there is any systematic inefficiency associated with the handling of private railcars. Even if all of the proffered anecdotes in fact reflected true service failures, they would prove nothing. With 30,000 new carloads originating every day on the rail network, the availability of a few anecdotes would not be a valid basis for regulation – especially where there is no reason to think that similar anecdotes could be found for shipments in railroad-owned cars.

The few anecdotes that commenters offer certainly do not unambiguously indicate any kind of service failure.

- ISRI offers one anecdote about 32 cars held in an unidentified hump yard. ISRI Opening Comments at 4-5. On the face of this example, it is impossible to know whether there were legitimate reasons for staging cars at this location. Nor does ISRI indicate whether there were other, railroad-owned cars handled the same way.
- PCA points to bunching, time in railyards, time at interchange, and separation in service days. PCA Opening Comments at 4-5. But all of these features could be part of the *designed level* of railroad service rather than indicative of a service failure. And as Mr. Gray points out, railroad-owned covered hoppers used for

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cement shipments experience dwell patterns similar to those of privately-owned cars of this type. Gray R.V.S. at ¶ 34 n.12 & Appendix, Gray Figure A6.

AAR does not contend that every railroad handles every single shipment or empty car movement in the manner that would optimize network efficiency – service failures undoubtedly occur from time to time for many reasons. But the proposed regulation is built upon a false foundation that such failures are so systematic as to call for an entirely new regime of private car compensation. No evidence supports this claim. The fact that the service concerns expressed by Petitioners and their supporters arose during the challenges associated with the economy’s recovery from the COVID pandemic only further underscores that their concerns about service during this period provide do not provide a valid evidentiary foundation for sweeping and permanent regulatory change.

III. THE OPENING COMMENTS CONFIRM THAT THE REGULATIONS BEING SOUGHT ARE OUTSIDE THE BOARD’S STATUTORY AUTHORITY

In AAR’s Opening Comments, we explained that the Board lacks the authority to regulate in the manner Petitioners propose even if it were to conclude that there is a problem to solve (which there is not) and that it makes good policy sense to regulate in the proposed manner (which it does not). Several of the railroad comments provide additional support for this conclusion. *See* NS Comments at 4-12; UP Comments at 2-4.

Comments submitted by proponents of new regulation strongly confirm the Board’s lack of statutory authority to do what they ask.

First, proponents of regulation repeatedly acknowledge that the “problem” they are trying to solve – if there is one at all – involves *transportation*, not “car service.” Their concerns are

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stated explicitly in terms of alleged failures by railroads to provide adequate service for their freight shipments, and *expressly not* about the adequacy of the railcar supply. For example:

- Petitioners decry the alleged “systemic deterioration of rail service” and seek through the proposed regulations to “help resolve some of the root causes of periodic Class I railroad service failures” (Petitioners Opening Comments at 2, 21);
- Petitioners similarly urge adoption of the regulations to “speed up the pace at which Private Railcars are transported” (*Id.* at 12);
- USDA states unequivocally that its aim is to create “incentives around service quality” (USDA Comments at 2);
- AFPM seeks enactment of the regulations to address “reductions in service days, ... an increase in missed switches due to crew issues, and many other detrimental service issues” (American Fuel & Petrochemical Manufacturers Comments (“AFPM Comments”) at 10);
- As noted (at pages 24-25 above), Petitioners suggest that railroads are inappropriately prioritizing intermodal and other “premium” shipments over their shipments, revealing that their real aims are service-level improvement and not anything about “car handling” (Petitioners Opening Comments at 8; *see also* AFPM Comments at 16); and
- The alternative metrics proposed by certain commenters underscore their desire to regulate railroads’ transportation service levels, and not anything about “car service”: ISRI proposes an “allowable transit idle time” metric that would explicitly seek to regulate whether railroads provide transportation from origin to

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destination in accord with their own trip plans (Comments of the Institute of Scrap Recycling Industries (“ISRI Comments”) at 7), and PCA’s “overall idle time” metric similarly seeks to regulate how rapidly railroads move shipments from origin to destination (PCA Comments at 8).

At the same time, the Opening Comments make clear that these concerns have nothing to do with the adequacy of railcar supply. PCA says this in no uncertain terms when it states that the “level of railcars supplied by customers is not the issue” and that “railcar supply issues are not informing the railroads’ poor service.” PCA Opening Comments at 7. Petitioners and ACC pay lip service to the need for a linkage between their proposals and some car-supply-related issue, but that rhetoric is entirely hollow and unsupported by evidence of a car supply issue. Petitioners, for example, invoke the bald “possibility” – backed up by no evidence whatsoever – that inefficient transportation service could leave some shippers without cars immediately available for loading. Petitioners Opening Comments at 14. ACC similarly recites the truism that fewer cars must be owned when cycle times are shorter. ACC Comments at 9.¹¹ These attempts at linking their service concerns to railcar supply would, if accepted, prove far too much: there would literally be nothing about rail operations outside the scope of the car service statute if any issue affecting “cycle times” supported regulation.

Aware of the problems associated with trying to shoehorn their concerns about railroad transportation service into the Board’s authority to regulate “car service,” a few commenters

¹¹ If anything, these assertions are just another way of saying that railroads already have strong incentives not to handle private cars inefficiently. A shipper without cars to load is a foregone opportunity for railroads to earn revenue, and shippers investing in more cars than they need will tend to clog the railroad’s network.

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grope unsuccessfully for alternative foundations for the proposed regulations. None of them holds up under scrutiny.

AFPM points to the definition of “transportation” in 49 U.S.C. § 10702 as including “railcars” (AFPM Comments at 11), but it overlooks two critical points: the statute does not provide the Board with any omnibus authority to regulate the “transportation” railroads provide. And even if it did, the definition AFPM cites expressly limits the covered railcars to those that “railroads provide,” thereby carving out privately-owned cars from the scope of this provision.

In a similar vein, PCA invokes the Rail Transportation Policy’s (“RTP’s”) expression of a desire for the Board’s regulatory actions to further, among many other and oft-conflicting goals, the aim of encouraging “honest and efficient management of railroads.” PCA Comments at 6-7 (quoting 49 U.S.C. § 10101(8)). Here too, the stumbling block is that the RTP does not provide the Board with any free-floating regulatory authority to “regulate to achieve its goals.” The Board’s regulations must be tethered to explicit statutory grants of authority, as the court of appeals in the *ATSF v. ICC* case found the last time the Board’s predecessor sought to regulate transportation under the guise of the car service statute.

In that case, the ICC had attempted to justify its requirement to publish train schedules for perishables shipments on the “national transportation policy,” and it argued that its actions did not need to be authorized by any statutory grant of authority: such a view, the ICC argued, was “out of step with the “modern view” that if a problem is within the purview of an agency, Congress intended that the agency have the power to remedy it notwithstanding the absence of an express delegation of authority.” *Atchison, Topeka & Santa Fe Ry. v. ICC*, 607 F.2d 1199,

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1202-03 (7th Cir. 1979).¹² Applying black letter principles of administrative law, the court of appeals squarely rejected that view. As the court explained, simply because the rule is not prohibited “does not mean that the ICC is free to make this substantive change. The ‘modern view’ is still subject to the well-recognized rule that an administrative agency cannot exceed the specific statutory authority granted by Congress.” *Id.* at 1203. Neither the car service statute nor the National Transportation Policy provided any such authority. *Id.* at 1205.

In their quest for some statutory tether for their proposed unprecedented regulation of rail network operations, Petitioners and their supporters seek refuge in the car service statute’s reference to the “efficient use” of railcars (49 U.S.C. § 11122(a)), suggesting that this necessarily means the Board can regulate every aspect of railroads’ transportation services, since every shipment necessarily moves in a railcar, and the more efficient a rail network is, the fewer cars are needed to support any given level of shipment volume. *See, e.g.* Petitioners Opening Comments at 12. ACC goes so far as to assert that the statute “directs” the Board to “encourage efficient use of railcars.” ACC Comments at 10.

This is bootstrapping of extraordinary proportions. Such an interpretation is not supported by the statutory text or framework, and it would swallow whole the statutory limits on the Board’s authority. If every issue of railroad service levels and operating efficiency were a “car service” issue, there would be no distinction between “transportation” and “car service.” This view is inconsistent with the plain text of the statute, the context in which the Board’s

¹² Petitioners’ effort (at 13) to distinguish this case (and the *Peoria* case also cited in AAR’s Opening Comments at 4-5) as involving the ICC “directly order[ing] two carriers to take specific action concerning their transportation service” is inexplicable. The *ATSF* case involved an industry rule, and both cases rested their decisions on an interpretation of the same statutory language that Petitioners invoke here.

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authority over “car service” arises in the statute, and the history of the Board’s regulation of car service.

First, the plain text of the statute makes plain that the “efficient use of railcars” is a factor the Board shall consider when regulating “car service,” not a freestanding goal of the statute. By its terms, the statute limits the Board’s regulatory authority to regulations that are “on car service.” As the ICC’s decision in *LOSAC* explained, “encouraging the efficient use of cars” is a factor to consider when the agency regulates car service, not a free-standing end of such regulation. *LO Shippers Action Committee v. Aberdeen & Rockfish Ry.*, 4 I.C.C.2d 1, 13 (1987) (“*LOSAC*”), *aff’d sub nom. LO Shippers Action Committee v. I.C.C.*, 857 F.2d 802 (D.C. Cir. 1988).

Second, the statutory provisions related to “car service” are founded upon rail carriers’ obligation to “furnish safe and adequate car service” and “establish, observe, and enforce reasonable rules and practices on car service.” 49 U.S.C. § 11121(a)(1). In other words, railroads are obligated to provide the railcars needed to carry out the transportation that the statutory common carrier obligation mandates that they provide.¹³ Then, in Section 11122 (entitled “Compensation and practice”), Congress authorized the Board to make regulations “on car service” to “encourage the purchase, acquisition, and efficient use of freight cars.” 49 U.S.C. § 11122(a).

The “car service” that may be regulated is that which carriers are required by Section 11121 to provide – *i.e.*, “safe and adequate” car service. As the Board has held, the car service

¹³ *E.g., Shippers Committee, OT-5 v. The Ann Arbor R.R.*, 5 I.C.C.2d 856, 859 (1989) (“because carriers have a duty to provide cars necessary for the transportation they hold themselves out to provide, they have a corresponding right to use their own cars in preference to private cars in fulfilling this obligation”), *aff’d sub nom. Shippers Committee, OT-5 v. I.C.C.*, 968 F.2d 75 (D.C. Cir. 1992).

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provisions “authorize the Board to act only if added cars are ‘reasonably necessary to furnish safe and adequate car service,’ and if the rail carrier ‘has materially failed to furnish that service.’”¹⁴ If the supply (in terms of quantity or quality of cars) is not adequate to enable a rail carrier to discharge its obligation to respond to reasonable demands for transportation service, the car service obligation kicks in. But as the court of appeals held, the car service provisions do not purport to address the level of “transportation” service that carriers must provide. This was the clear teaching of the *Peoria* and *ATSF* cases discussed in AAR’s Opening Comments.

Regulation of rail transportation service is addressed, if at all, by two separate statutory provisions: the general obligation of rail carriers to “provide ... transportation ... on reasonable request” (49 U.S.C. § 11101), and the Board’s emergency powers under Section 11123, which expressly apply not only to “shortages of equipment” but to “congestion of traffic” and “other failure of traffic movement” (49 U.S.C. § 11123). Neither transportation service levels nor the inner workings of a railroad’s movements of cars across its network from origin to destination involve providing shippers with access to “safe and adequate” railcars, and those activities thus are simply not within the ambit of Section 11122.

Third, the agency has consistently understood the limits of this provision. For example, when the ICC exempted boxcar *transportation* from regulation, it expressly carved out from the scope of the exemption its “jurisdiction over car hire and car service regulation.” *Exemption from Regulation – Boxcar Traffic*, 367 I.C.C. 425, 454 (1983). This retention of jurisdiction over “car regulation” meant that the ICC could continue to “enforce the railroads’ obligation as common carriers to supply boxcar equipment to shippers for loading upon reasonable request”

¹⁴ *WTL Rail Corp. Petition for Declaratory Order & Interim Relief*, Docket No. 42092 NOR (STB served Feb. 17, 2006) at 6.

and could in the future address such matters as the “wasteful empty movements of boxcars.” *Id.* at 449, 455. But the ICC certainly understood that this carve-out did not mean that railroad train schedules, transit times, dwells during the movement of cars across the network, or performance relative to service commitments would be regulated just because shipments were transported in a boxcar. To the contrary, exempting all aspects of transportation from regulation was the entire thrust of the boxcar exemption, which (contrary to PCA’s misguided citation to the RTP) “encourage[d] efficient railroad management” by giving railroads (not regulators) the “full flexibility to manage boxcar service in the most economic manner.” *Id.* at 446 (emphasis added).

Commenters’ reliance on the “efficient use” language in Section 11122 ignores this structure and context and would wipe away any meaningful nexus between Section 11122 and “car service.” When “efficient service” has come into play in the application of Section 11122, it has been in the context of railroad *car distribution practices* that have the potential to undermine the adequacy of freight car supply. The *Allegheny-Ludlum* case¹⁵ is illustrative. The Court reviewed and upheld the ICC’s decision to promulgate “car service rules” that generally required freight cars to be returned in the direction of the road owning the cars when unloaded. The ICC had acted only after finding that there was “a nationwide shortage of freight car ownership” and that rules requiring the return of cars to their owners would encourage investment in additional cars. *See also LOSAC*, 4 I.C.C.2d at 13.

To be sure, in some contexts the “inefficient use” of railcars could contribute to the inadequacy of railcar supply, as it did when railroads were found to have hoarded empty cars rather than making them promptly available to other railroads for loading, and upon such a

¹⁵ *United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742 (1972).

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finding the Board might have authority to impose its own “car service” regulation.¹⁶ But only in these contexts would doing so be in furtherance of regulating car supply rather than transportation service. The car service statute is not an all-purpose authorization to make rules regarding the efficient movement of freight. *See ATSF v. ICC*, discussed above. If the reference to the “efficient use of freight cars” authorized the Board to regulate such matters as how long a block of cars could dwell at an intermediate classification yard – untethered from any failure to respond to reasonable demands for transportation service, or any emergency failure of traffic movement” – there would literally be no aspect of rail operations outside the scope of the Board’s command-and-control regulatory authority.

The Board’s authority to engage in the sort of heavy-handed regulation of railroad service Petitioners seek is not only absent from the statutory framework, it would represent the antithesis of the deregulatory thrust of Staggers and ICCTA, which sought to remove regulation altogether except where necessary to guard against the potential for market power abuse. Indeed, Petitioners are the ones seeking to turn the regulatory framework upside down, by seeking Board intervention in market outcomes to substitute for rail customers’ asserted lack of bargaining leverage. They want the service guarantees that they claim they are unable to negotiate at arm’s length and they also want the “premium” service that they claim is reserved for intermodal and other transportation (presumably at premium rates they do not wish to have to pay). Petitioners Opening Comments at 8, 23; *see also* AFPM Opening Comments at 15-16. Petitioners’

¹⁶ *See Investigation of Adequacy of Railroad Freight Car Ownership, Car Utilization, Distribution, Rules and Practices*, 335 I.C.C. 264, 293-94 (1969) (prescribing mandatory car service rules providing for routing of foreign cars to or in the direction of home lines in order to increase availability of cars to owners and allow owner to “provide for the needs of his shippers for whom the equipment was acquired”). (The Court in *Allegheny Ludlum* reversed a district court order enjoining this ICC action.) Private car owners intrinsically have the ability to direct the “homeward” movement of their cars.

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suggestion (at 16) that because *rail customers lack market power* to “otherwise commercially impose a penalty on their carrier,” the Board should step in to do it for them through regulation would turn the Staggers Act and RTP on their heads: favoring regulatory solutions over marketplace outcomes in the absence of any showing of market power abuse.

This is not to say that the Board’s statutory scheme provides no role whatsoever for potential Board action to address railroad service matters. It surely does authorize the Board to take action in certain circumstances, but the authority it gives the Board does not apply here. Apart from the case-by-case adjudication of railroad failures to discharge their common carrier obligation, the statute authorizes the Board to respond to emergency conditions that result in “congestion” or a “failure of traffic movement.” Section 11123 addresses that power. It authorizes the Board to take action when “congestion of traffic” or “other failure of traffic movement” has caused an “emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States.” 49 U.S.C. § 11123(a). It does not authorize such steps more generally, telegraphing quite clearly that the Board’s general “car service” powers likewise do not provide that authority.

As a result, in the past when the Board’s predecessor proposed to regulate the amount of time that loaded and empty railcars can be kept idle, it explicitly invoked these emergency powers. The ICC’s Service Order No. 778 issued in 1947 (but which was withdrawn before it became effective) was based on a finding that “an emergency exists requiring immediate action to alleviate the shortage of all types of cars in all sections of the country,” in part because “cars loaded with property are being unduly delayed in terminals and at industries in such terminals”

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and “empty cars are being held at points for prospective loading.” 12 Federal Register 6811 (Oct. 17, 1947).¹⁷ No such emergency could be claimed today.

Against this statutory backdrop, it would be truly extraordinary to imagine that Congress had given the agency the sweeping powers of service regulation that petitioners seek to invoke. Just because “railcars” are used in every aspect of rail transportation does not convert “car service” regulation into an all-purpose regulatory license to “do what is right for the industry.” The Supreme Court’s recent ruling in *West Virginia v. EPA* confirms what has long been true: were Congress to have intended that the Board have broad authority to regulate the day-to-day details of rail operations – in the utter absence of any proven service emergency or abuse of market power – it would have spoken clearly and directly, and not done so through the back door of “car service.” *West Virginia v. EPA*, 597 U.S. --- (2022). This general administrative law principle has particular and longstanding application in the railroad regulatory sector, as Justice Gorsuch’s concurring opinion in the *West Virginia* case explains. He traces it to the Court’s 1897 decision in *ICC v. Cincinnati, N.O. & Texas Pacific Ry.*, 167 U.S. 479, which rejected the agency’s claim that Congress gave it the power to prescribe rates absent “language *open to no misconstruction, but clear and direct.*” *Id.* at 499 (emphasis provided in quotation by Gorsuch, J., concurring in *West Virginia v. EPA*).¹⁸

Petitioners’ reliance on “demurrage” as the lodestar for the regulations they propose only drives this point home more strongly. For many decades, Congress has expressly addressed in “clear and direct terms” the obligations of rail carriers, and the authority of the Board, with

¹⁷ Even in this emergency context, the ICC’s authority to take such action was questioned, and the Board withdrew its proposed Service Order before it took effect when the AAR made revisions to its Car Service Rules. *Railway Age*, Vol. 124, No. 26 (June 26, 1948) at 135 (Exhibit 2 hereto).

¹⁸ Such authority was subsequently provided by Congress via express language in the Hepburn Act of 1906. *See Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Ry.*, 284 U.S. 370, 385-86 (1932).

regard to demurrage. There is no similar recognition of any authority to regulate railroad service outside of true emergencies, much less to impose “reciprocal demurrage” obligations on railroads. Simply put, Congress has not given the Board the authority to impose the regulatory regime Petitioners propose.

IV. THE OPENING COMMENTS PROVIDE NO BASIS FOR THINKING THE PROPOSED REGULATIONS COULD EVER BE WORKABLE OR GENERATE NET PUBLIC BENEFITS

Even if the Board were to conclude that there is a problem with the way railroads handle private railcars, and that the Board possesses the authority to promulgate regulations aimed at addressing that issue, the Board should still reject the proposed regulations because they are fundamentally unworkable and would likely cause more harm than good.

First, as Mr. Gray’s analysis demonstrates, neither the CLM data relied upon by Petitioners nor any other available source of data would be capable of separating the “dwells” (or other operational events) associated with normal, efficient railroading, from the kinds of service failures that the Board might conceivably seek to prevent. Gray R.V.S. at ¶¶ 6, 8, 20. The inevitable result of attempting to link a regulatory remedy (such as Petitioner’s proposed demurrage-level penalty) to any data-based metric would be innumerable false positives, creating inefficient incentives to distort operations to avoid those remedies and providing windfalls to private railcar owners.

Mr. Gray’s analysis demonstrates that attributing “inefficiency” to any particular metric based on CLM data lacks factual foundation and would in practice ignore the myriad circumstances in which such dwells are a normal part of efficient network service design, including situations where such pauses actually enable more rapid movement of railcars from origin to destination. The root cause of the dwells experienced by a railcar on any given trip

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cannot be deduced from the CLM data alone, but instead would require case-by-case adjudication – at great cost to the Board and all participants – to even attempt to discern.

Petitioners and their supporters are well aware of this problem, as they affirmatively seek to avoid any adjudicative processes the Board might use to understand how a particular dwell fit into a rail carrier's transportation plan. Petitioners acknowledge that they are proposing one-size-fits-all "industrywide obligations which must be able to be applied to a broad set of potential circumstances." Petitioners Opening Comments at 20. Yet they offer nothing beyond the categorical condemnation of all "dwells" of a duration they deem offensive.

Petitioners' absolutist position "fail[s] to see any justification" for the 48- or 72-hour Between-Event Times they seek to penalize, and thus would only allow carriers off the hook if they could show those CLM observations were "caused by an Act of God, flood, strike, government action, of derailment of the train that the Private Railcar was part of, or, if the delay was entirely the fault of a third party." Petitioners Opening Comments at 17. Events that were consistent with a rail carrier's network service design could never clear this bar, because – in Petitioners' misguided assessment – railroads could always speed up the movement of private railcars by serving shippers more frequently, adding more crews and locomotive resources, and treating their shipments like higher-priority, "premium" intermodal traffic. *Id.* at 8, 23; *see also* AFPM Opening Comments at 15-16 (proposed incentives seek "equal service treatment for all customers").

Similarly, PCA suggests that rules should be promulgated when railroads "hold" cars for an "unreasonable" amount of time and those dwells "adversely impact[] the shipment or delivery." Though these formulations may sound less categorical, PCA proceeds to eschew any effort to determine the reasonableness or overall impact of any particular dwell. Instead, PCA

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contends that any single period of *24 hours* or more in duration between events, or an aggregate of 72-hours across the entire movement, ought to trigger compensation to private car owners.

PCA Opening Comments at 6, 8. ACC likewise (and un-self-consciously) explains that the new regime should strive to remove “the administrative burden” of the proposed regulations by untethering it completely from the alleged problem at hand (the supposedly inefficient handling of private railcars by railroads) and linking it blindly to railroads’ demurrage programs. ACC Opening Comments at 15.

By rejecting any regulatory approach that would allow for an examination of the actual reasons for the operational patterns reflected in the CLM data, however, Petitioners and their allies would guarantee that the Board’s rule was overbroad and overreaching, and would not yield incentives favoring efficient rail operations. Ironically, to Petitioners this is a feature, not a bug.

Their comments on the question of the temporal threshold for imposing penalties is quite revealing in this regard. That threshold has nothing to do with any assessment whether Between-Event Times of a certain duration are in fact inefficient under the circumstances at hand. Instead, it is blatantly calculated to *effect as much change in railroad service as possible*. Petitioners’ analysis of the (biased) CLM data they present shows that their choice of a 48-hour or 72-hour threshold is not based on an analysis of rail network operations, but solely by their goal of having the regulation apply sufficiently often to force railroads to change how they provide service. A 72-hour threshold is good because it would “apply to a realistic percentage of Private Railcar movements,” whereas a 96-hour threshold is unacceptable for the sole reason that “it would not create sufficient incentives to make a meaningful change to the current industry practices.” Petitioners Opening Comments at 21-22.

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Second, to the extent it made sense to try to address the putative “problem” identified by Petitioners via case-by-case adjudication – namely, complaints about poor rail service – the Board’s existing statutory framework already provides a pathway for assessing whether railroads are living up to their obligation to provide service on reasonable demand.¹⁹ Shippers are already free to make that case that rail service does not measure up to that standard, as many have tried to do over the years.²⁰ Once it is recognized that no bright-line rule can substitute for a probing examination of the particular circumstances underlying an alleged failure of service, the justification for an entirely new regulatory regime vanishes.

Third, one commenter that supports regulation nonetheless express dissatisfaction with CLM-based metrics precisely because they are ill-suited to identifying actual service failures. As ISRI explains, “a railcar may sit for 3 days at a given location for various reasons but the railroad may still be able to deliver the car within 4 days thereby satisfying the applicable delivery window.” ISRI Opening Comments at 7. This recognition of the realities of railroad service is refreshing. But ISRI’s recommended solution is just as impractical and inappropriate as that proposed by Petitioners. ISRI recommends basing penalties on deviations from railroads’ “original trip plan[s]” and “published transit times,” which it asserts would be “less complicated” and “more administratively manageable.” *Id.* But such an approach would merely transform the proposed regime into an overt enforcer of railroads’ own proposed service levels, and in the

¹⁹ As the Board has emphasized, “[w]hat constitutes a reasonable request for service is not statutorily defined but depends on all the relevant facts and circumstances.” *Sherwin Alumina Co., LLC v. Union Pacific R.R.*, Docket No. NOR 42143 (STB served Sept. 29, 2015) at 5 & n.10 (collecting cases).

²⁰ *E.g., Pejepscot Industrial Park, Inc., d/b/a Grimm Industries – Petition for Declaratory Order*, Finance Docket No. 33989 (ICC served May 15, 2003); *Alliance Shippers, Inc. v. Southern Pacific Transp. Co.*, 858 F.2d 567 (9th Cir. 1988). Notably, however, the Board has consistently required revocation of an exemption to address alleged common carrier obligation complaints.

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process create counterproductive incentives for railroads to promise less rather than more. Gray R.V.S. at ¶ 54-56.

Fourth, neither Petitioners nor any other commenters have come to grips with the fact that many – if not most – of the private car shipments that would be covered by the proposed regime occur under rail transportation contracts that address the shippers’ provision of the railcars to be used in the move. Whether or not those contracts contain “service commitments” of the sort Petitioners claim to desire (although one might question whether the shippers represented by these associations are really willing to pay the commercial price to negotiate such provisions), they cover the purchase of transportation services from railroads and the Board accordingly may not impose any regulatory “duty in connection with services provided under such contract[s].” 49 U.S.C. §§ 10709(a), (b).

CONCLUSION

As shown above and in the accompanying comments of AAR member railroads, Petitioners’ proposed regulations (and the variants suggested by their supporters) are misguided. There is no “problem” warranting a regulatory solution, the Board would lack the authority to do what Petitioners ask in any event, and even if the Board nonetheless sought to take action to address the alleged problem, the path being proposed would be unworkable and counterproductive.

The Board should accordingly reject the proposed regulations and terminate this proceeding.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 768

PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS

EXHIBIT 1

**REPLY VERIFIED STATEMENT
OF JOHN T. GRAY**

REDACTED PUBLIC RECORD VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS**

REPLY VERIFIED STATEMENT OF JOHN GRAY

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1. I am John T. Gray, currently Senior Vice President of Policy and Economics for the Association of American Railroads. During the 40 years of my railroad career, my employers have included four Class I railroads and one Class II railroad with senior positions in in marketing, strategic planning and operational roles. I have also managed inbound freight transportation for a major crude oil production company. While Vice President of Network Strategy at Southern Pacific Railroad, part of my portfolio included management of the cost analysis group and the service design group, where I was responsible for the planning and design of all train consists and movement schedules as well as train blocking plans for use in terminal operations. Additionally, I have managed marketing business units at two of my Class I employers and have been involved in strategic studies at three of these railroads.

2. I am submitting this Verified Statement to address claims by Petitioners regarding the handling of private railcars, and in particular assertions based on the analysis of certain Car Location Message (“CLM”) system data that was provided by certain shippers to Petitioners’ consultant, Matt Johnson of AllTranstek. The data and workpapers underlying Mr. Johnson’s analysis were provided to be pursuant the Protective Order in this proceeding.

3. As Mr. Johnson explains, the data he used was a subset of CLM data compiled by railroads and maintained on their behalf by AAR’s subsidiary, Railinc. The CLM system contains data compiled by the railroads, processed by Railinc and then made available to rail customers for use in management of their shipments by either the individual railroads or by Railinc. Railinc (with the specific permission of the Class I railroads that provided these data to Railinc) has given me access to the broader set of CLM data reflecting all railcar movements – both private and railroad-owned – during the period studied by Petitioners for the limited purpose of assessing and analyzing the data presented by Petitioners in this proceeding.

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I. THE DATA RELIED UPON BY PETITIONERS DOES NOT MEASURE STATIONARY RAILCARS, MUCH LESS “DELAYS”

4. The analysis presented by the Petitioners in the statement of their consultant, Matt Johnson of AllTranstek, relies entirely on information available within the CLM system.

Contrary to the characterizations of Petitioners and Mr. Johnson, the times between events reflected in the CLM system (which I will refer to as “Between-Event Times”) *do not* measure railcars that are idle, incurring dwell, or otherwise stationary.

5. CLM event information is gathered by the railroads utilizing (a) electronic reporting by customers when a freight car is released for loading or movement to destination and is available for the railroad to pick up, (b) electronic reporting by railroad employees when they physically pick up or deliver freight cars at a customer facility, or (c) by wayside electronic equipment scanners (known as AEI readers) that read car information on equipment enroute that is passing a scanner location. The latter reporting method is the source of by far the greatest number of the readings providing car location data and, by definition, the information that it provides is for equipment *moving past the scanner*, not for railcars that are standing still in a given location.

6. As its name implies, “Car Location Message” data in the CLM system literally identifies nothing more than the specific location of a specific railcar at a specific point in time. The AEI readers are most commonly located to detect railcars entering or exiting major terminals. It is not the norm for those scanners to be located throughout terminals¹ or otherwise located in a manner that would allow them to observe all of the movements of a railcar. The CLM system does not, and given its limitations cannot, serve as a reliable tool to measure of

¹ Certain terminals may have limited scanner coverage located within their boundaries in order to assist railroad personnel in the management of terminal operations.

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dwelling incurred by railcars.² Nor do such data reflect “delays” relative to a railroad’s planned movement of a given railcar.³ The time-stamp associated with a CLM event and the time-stamp associated with the next CLM event for that car do not provide any information on what happens in between the two events: *e.g.*, the terminal processing and other activities that occur between electronic reporting of events. Because the time between CLM events is neither “dwell” nor “delay,” I will refer to it herein neutrally as “Between-Event Time.” It is worth emphasizing that, without specific information beyond that conveyed by CLM datapoints, there is no reliable way to assess what may have occurred between reported CLM sightings of a railcar. Attempting to do so, as Petitioners have, represents pure speculation.

7. The only records within the CLM system that can be interpreted, with certainty, as representing a freight car standing still is the time between the initial release notification by the customer and the railroad’s pick up of that car as reflected in the delivery record created by the switching crew that makes that pick up or the time following the corresponding record created by the switching crew upon delivery at destination. Even during the time that a freight car is at a customer location, there may be movement of the car if the customer operates a switching locomotive or car movement device within their plant.

8. Petitioners assert that any extended periods between location reports involved the railcar unnecessarily sitting idle. However, since the CLM system is not designed to record all movements that take place in a railcar’s journey between origin and destination, it is

² “Dwell” is generally considered to be the time that a railcar remains at a specific location such as a terminal, a particular track within a terminal, a station area, a customer or railroad facility, or any intermediate location where it may pause in its journey. Dwell may be either planned or unplanned.

³ “Delay” represents unplanned events that cause a railcar to take longer to complete its journey than planned in advance of its journey which may be due to disruptive natural events, actions on the part of the railroad or its customer, or other conditions not considered *a priori* to the movement of the railcar.

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fundamentally impossible to accurately extract from CLM information whether an extended period between sightings is due to planned inactivity, activity that has not been electronically recorded or, as the Petitioners assert, unplanned inactivity of the railcar. If the latter is the case, whether that inactivity was due to railroad operational issues, customer problems, weather, other unpredictable events, or a myriad of other possible causes *cannot be determined* by examining data contained solely in the CLM system. Trying to stretch the CLM data to make such an assessment goes beyond credible limits of the information that can be extracted from this data system.

9. Unfortunately, Petitioners have misused the CLM information in their analysis by leaping to the conclusion that the elapsed time between time stamps associated with the recorded events represents idle or delay time for en-route railcars. As is often the case, reality is significantly more complex than this simplistic analysis would suggest.

10. A straightforward review of Petitioners' own data finds numerous examples of the fundamental problems posed by trying to understand the actual circumstances of an extended period between CLM readings. Among many categories of such observations that on their face reflect normal and efficient rail operations rather than malfeasance by the handling railroad are long Between-Event Times associated with (a) movements a considerable distance across the rail network; (b) significant processing within terminal areas; and (c) intermediate dwells while awaiting connections (and the density required to support those connections). The fact that there are extended Between-Event Times in circumstances like these reflect efficient railroad network design, not mishandling of railcars.

11. **Sequential Events at Different Locations.** My review of the CLM data underlying Petitioners' analysis revealed that many of the railcars reported as being "delayed"

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for an extended period reflected the fact that the successive readings used to measure the Between-Event Time occurred at two completely different locations, sometimes several hundred miles apart or at the opposite ends of a broad terminal area. There is no fixed standard for the placement of AEI readers, and the distance between them can be substantial, especially on lines that see relatively light traffic density.

12. In the Railinc CLM database, 20 percent of the situations where CLM events are more than 48 hours apart involve events occurred at different locations. Within the Petitioners' data, {{[REDACTED]}} of the of the events more than 48 hours apart occurred in different locations. In such cases, there was no identifiable "delay" or "dwell" – there were simply no scanner readings between the two locations taken during the movement of the railcar on that portion of its journey.

13. Several concrete examples, some from Petitioners' own data, others from the broader set of Railinc CLM data that also document extended Between-Events Times, illustrate this phenomenon:

- I observed Long Between-Event Times for {{[REDACTED]}}
[REDACTED] a distance of 864 miles between successive CLM events.
- I observed Long Between-Event Times for an international movement of {{[REDACTED]}}
[REDACTED]
[REDACTED] location on a northbound train after taking the time to be switched from the customer to a sorting yard and {{[REDACTED]}}

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[REDACTED]

[REDACTED]

[REDACTED]} rail yard triggering the second event. The total distance involved in the move between these two events was only a few miles, however, it would be almost impossible for the series of activities needed in order to cover those miles to take place in less than 48 hours and, in fact, 72 hours would be very challenging.

- I observed long Between-Event Times for a group of {[REDACTED]
[REDACTED]
[REDACTED]} Petitioners' consultant stated that he excluded storage cars from this analysis; however, he used an incorrect event code in developing his estimates of long Between-Event Times resulting in {[REDACTED]
[REDACTED]} of cars going into storage being included in the Petitioners' results. Assuming that each of these event records matches to a single railcar, this factor alone would reduce the incidence of 48-hour Between-Event Times to {[REDACTED]}

- I identified in Petitioners' sample movements of more than a {[REDACTED]
[REDACTED]
[REDACTED]

⁴ It is important to note that many Class II and Class III railroads do not have AEI scanner coverage, or have only limited coverage, on their properties and rely primarily on either paper records of events or reporting of events by dispatchers, local agents, or train crews, sometimes electronically but more often manually.

⁵ No event was recorded for removal of the cars from storage.

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[REDACTED]}} With there clearly being no equipment
scanners located between the {{ [REDACTED]
[REDACTED]}} at which they were interchanged and with the two locations are {{ [REDACTED]
[REDACTED]}} it is clear that the equipment was in motion between the reports and
that the progress made by the car during this time period involved activity on both
railroads.

In all, my analysis identified more than {{REDACTED}} event pairs in the {{REDACTED}} trips reported within the Petitioners' "sample" as incurring long Between-Event Times that arose from movements of railcars between events at separated geographic locations.

14. *Meaningful Activity Between Nearby CLM Events.* Even when CLM events are at the same location – or locations very near one another – perfectly ordinary switching and train management processes come to light that often explain longer time between events. One of the most common of these involves the situation where, during the time between reporting locations or events, the railcar appears to have not moved from terminal (and thus might be mischaracterized as sitting idle) but in fact was processed in a terminal complex. Although unplanned versions of this sort do happen occasionally, usually such cars are not sitting idle. In most cases, the railcar is being moved either within a terminal or between adjacent terminal areas in order to join it with other cars moving toward a common (or geographically adjacent) destinations and, as is the norm in most terminals, simply did not pass an equipment scanner during these intra-terminal switching and sorting movements.

15. Major classification yards and other large terminal facilities are typically the largest source of this type of perceived dwell. Indeed, one of the purposes of these large terminal facilities is to provide the capacity needed to hold railcars needing to make the dozens of

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different connections essential to moving complex manifest business through the network (as I discuss further below). As in all transportation networks, some of these movements in the manifest rail network may also get off schedule for a wide variety of reasons. It is the capacity of these large volume terminals that provides the structure and volume of business necessary to take railcars that have experienced delay enroute and get them back into a restructured movement plan that allows reasonable delivery to take place. Additionally, these large terminals will frequently serve significant industrial areas or be the originating point for local trains moving traffic to and from nearby customers both along the railroad's main lines and to nearby branch lines. All of these factors guarantee that there will be extended, planned dwell time for railcars moving through major terminals as they wait for connections or for pick-up or delivery utilizing these local services.

16. *Dwells to Facilitate Efficient Operations.* Another scenario that I observed in the data involved what appear to be actual dwells at terminals in circumstances where {{[REDACTED]}}
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]}} In short, this kind of "dwell" or "delay" represents good management of a bad situation that results in helping both the customer and the railroad.

17. Another situation {{[REDACTED]}}
[REDACTED]
[REDACTED]}}
In such cases the dwell might be lengthy, but in many cases would be planned dwell where the

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railcar needed to wait so that sufficient movements in the same direction could justify operation of a forwarding or delivering block or train.

18. As an example, {{ [REDACTED]

[REDACTED]

[REDACTED] }} However, it also has an

{{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] }

19. I discuss in more detail in Section IV the underlying causes of these types of extended, planned dwells and the substantial probability that it can occur in manifest moves, particularly those of the Petitioners. As I explain there, dwells are inherent in efficient network design that takes into account the complex nature of the manifest railcar movements across a rail network characterized by over 200,000 low-density traffic lanes.

20. In all of the described situations, the data I observed reflects normal operational functions and effective field management of railroad operating plans. However, none of that

reality will be evident from the use of the Petitioners' proposed simplistic measurement of successive event time stamps. The metric Petitioners propose makes unsupportable assumptions about the information being conveyed by the data and then utilizes that data in an inappropriate manner. The Petitioners' process would ignore causality and rely on a single, misused snippet of data – the time between two successive scanner readings – as the basis for penalizing railroads, regardless of the specific events, either planned or unplanned, that may have caused the movement or dwell represented by misused data.

II. THE PETITIONERS DID NOT EXAMINE A REPRESENTATIVE SAMPLE OF PRIVATE CAR TRIPS

21. The CLM data Petitioners used in their analysis was not representative of the universe of private cars as a whole. We know that Petitioners' consultant received data from {{ [REDACTED] [REDACTED] [REDACTED] }} experienced by the universe of private railcars.

22. Applying Petitioners' methodology to 100 percent of private car trips during the same time period studied by Petitioners' consultant shows that the private car population as a whole experiences 48- and 72-hour Between-Event Times {{ [REDACTED] [REDACTED] [REDACTED] }} as shown in the first column of Figure 1.⁶ Once again, it is important to emphasize that, with the data source Petitioners have used,

⁶ Analysis of 72-hour Between-Event Times shows a similar pattern. See Appendix A, Figure A1.

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FIGURE 1

23. There are at least two reasons why the data presented by the Petitioners did not represent a reasonable, statistically valid sample of private railcar movements:

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25. Second, {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]}} during the same time period) experienced long Between-Event Times considerably less often than did those in the data Petitioners presented to the Board.

26. Figure 2 below demonstrates this. It shows that trips {{ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]}⁷

⁷ Analysis of 72-hour Between-Event Times shows a similar pattern. *See* Appendix A, Figure A2.

FIGURE 2



III. APPLYING PETITIONERS' METHODOLOGY TO A REPRESENTATIVE SAMPLE OF PRIVATE AND RAILROAD-OWNED CARS REVEALS THE SAME OPERATIONAL PATTERNS, CONFIRMING THAT PRIVATE CARS ARE NOT TREATED INEFFICIENTLY

27. As Petitioners' and their supporters explain, the regulations they ask the Board to adopt are offered for the purpose of "leveling the playing field" between railroad-owned cars and private cars. They acknowledge that railroads have strong incentives to operate railroad-owned cars efficiently, but no such incentives exist for private cars. I know from my experience in the railroad industry that this assertion is incorrect: railroads have compelling incentives to operate all cars efficiently.

28. The CLM data Petitioners rely upon to demonstrate the existence of long "Between-Event Times" for private cars provides a way to test the validity of Petitioners' claims. If they were correct in asserting that long Between-Event Times demonstrates inefficient

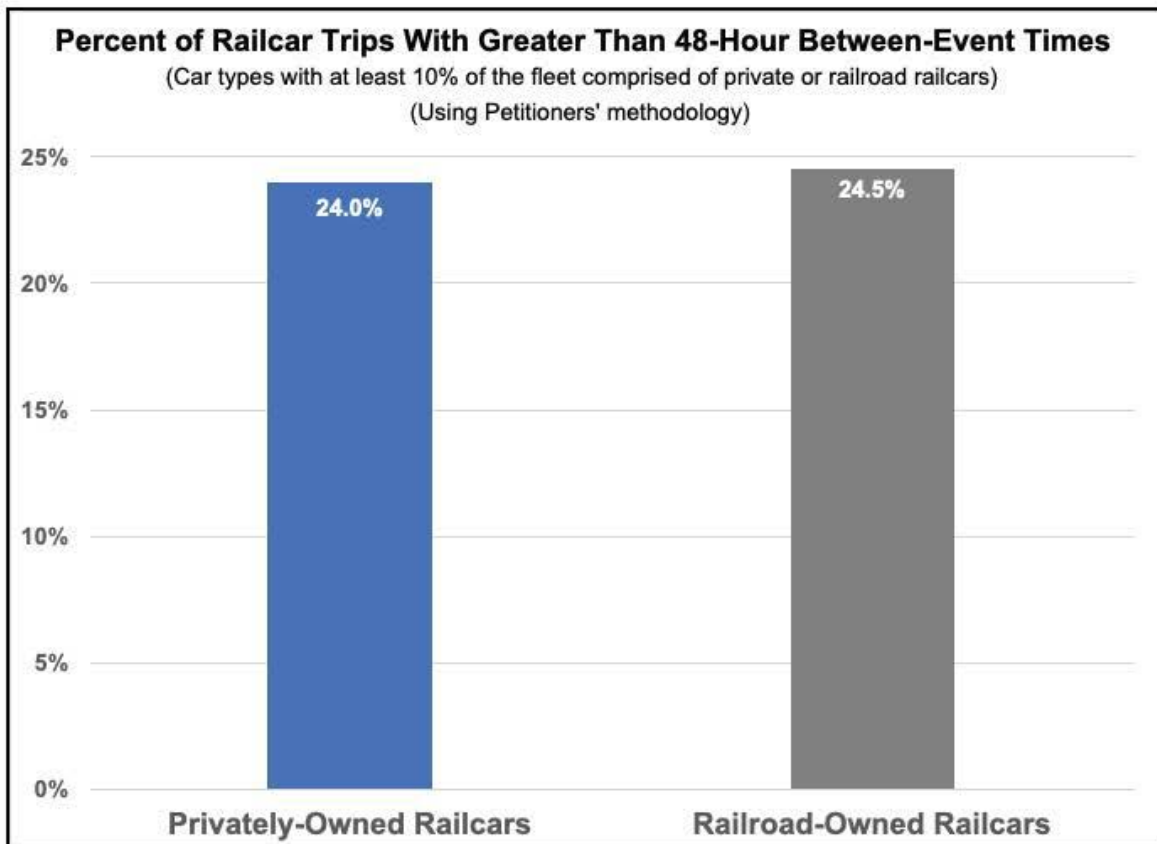
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handling of private cars, then one would expect that railroad-owned cars do not experience similarly long Between-Event Times.

29. I applied Petitioners' (flawed) methodology for calculating Between-Event Times (including their approach of excluding certain categories of events) to CLM data regarding both private and railroad-owned cars to assess the validity of Petitioners' claims. To facilitate an apples-to-apples comparison, I examined car types that are present in both groups – specifically types for which both railroad-owned cars and private cars make up at least 10 percent of the overall fleet. Figure 3 below presents the results, and shows that railroad-owned cars and private cars incur long Between-Event Times with very comparable frequency.⁸

⁸ Analysis of 72-hour Between-Event Times shows a similar pattern. Private railcars experienced 72-hour Between Event Times on 12.8 percent of trips, whereas railroad-owned cars did so on 13.8 percent of trips during the study period. *See* Appendix A, Figure A3.

FIGURE 3



30. As noted, the results reported in Figure 3 do not include certain car types that are present in only the railroad-owned or private car fleets, but not both. These exclusions helped control for commodity-driven variations in car handlings.

31. The exclusions primarily related to four car types: autoracks and intermodal flatcars, which are almost exclusively owned by railroads or TTX, and tank cars and specialized covered hoppers, which are almost exclusively privately owned. There are many reasons to think that a comparison that included these car types would have been uninformative – and interfered with the goal of comparing railroad-owned and private cars – because of attributes of the operation of these cars that would not be representatives of railcars as a whole. For example:

- Intermodal flatcars and autoracks are utilized primarily in high-density service lanes for premium services, and are not subject to extended loading and unloading

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times or the frequent need to change trains enroute between origin and destination that are experienced by cars used primarily in manifest freight service. They carry high value, highly time sensitive freight, their service is focused in very high-density lanes, they are subject to very few switching movements, they are typically loaded with revenue producing freight in both directions of movement, and they are significantly less likely to be subject to delay in terminals or on line-of-road than are manifest movements. One would expect the incidence of long Between-Event Times to be considerably lower than average for these car types.

- Tank cars and specialized covered hoppers likewise have unique operating profiles. Both car types are almost exclusively privately owned: of the approximately 400,000 tank cars that were in active service during the period covered by Petitioners' data, only about 100 (0.03%) are owned by railroads;⁹ similarly, almost 100 percent of specialized covered hoppers are privately owned. Both types of cars are frequently used for storage of product, particularly by the party receiving a loaded tank car. The result of this practice and the time needed to clean and load cars by the originating customer is that tank cars and specialized covered hoppers frequently spend significantly longer times between the start or end of loaded moves than do other manifest car types. As can be seen in Figure 4 below, the result is that between {{ [REDACTED] }} of the tank car fleet

⁹ The railroad-owned tank cars are used almost exclusively to move and store fuel for railroad operations, are not involved in any commercial activity, and thus, do not enjoy service or movement patterns comparable to those of shipper owned or leased equipment. They also represent a portion of the total tank car populations that is too small to be statistically sufficient to represent a railroad owned population even if their movement characteristics were similar to those of the privately owned counterparts.

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takes an excess of 30 days between loaded moves and {{[REDACTED]}} of specialized covered hoppers do so, while the same metric for most railcars in the portions of the fleet where there is a significant mixture of railroad and private cars is only {{[REDACTED]}} of the active fleet being empty for more than 30 days.

Some of the “storage” events associated with these car types would be identifiable within the CLM data, but a large portion would not be. Cars are routinely staged on available trackage en route to destination on behalf of the shippers (or receivers) of the lading, and the prevalence of such events would be expected to cause the incidence of long observed Between-Event Times to be above average relative to the car fleet as a whole.

FIGURE 4



32. The analysis reported in Figure 3 above (and the similar results for 72-hour Between Event Times shown in Table A3 in the Appendix) demonstrates that roughly the same percentage of trips on railroad and private cars incurred greater than 48- or 72-hour Between-Event Times. As would be expected, no clear pattern emerged suggesting that there is discrimination between equipment types in the expectation that a long dwell will be encountered during a journey. Indeed, railroad-owned equipment often experiences long dwells more frequently than do privately owned cars. Thus, long Between-Event Times must be due to factors unrelated to equipment ownership.¹⁰

¹⁰ I also compared the incidence of long Between-Event Times for the entire population of private and railroad-owned cars, without the exclusions noted above. Despite the addition of railroad-owned intermodal and automotive cars that are inherently less likely to incur such Between-Even Times, and

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33. This is not an unexpected result since, practically speaking, in railroad field operations it is impossible to discriminate between cars based on ownership. Doing so would disrupt the flow of equipment of all types through terminals and would make it almost impossible to design effective flow patterns that for the movement of business, regardless of car ownership.

34. To confirm that data reflecting comparable propensities for railroad-owned and private cars to incur long Between-Event Times was not masking differences in how those cars were handled, I examined the distribution of the long Between-Event Times across the movements of those cars. The results are shown in in Figure 5 below, which demonstrates that the “long” Between-Event Times are distributed across categories of operational events on the rail network almost identically for private and railroad-owned cars (which again uses 100 percent CLM data for the period covered by Petitioners’ study).¹¹ Given Petitioners’ repeated acknowledgement that railroads have ample incentives to operate their own cars as efficiently as possible, this match strongly corroborates that the kinds of dwell events experienced by private cars are no less a product of normal, efficient rail network operations than the comparable dwells experienced by railroad owned cars.¹²

private tank cars that may be more likely to do so, the results remain quite close. For both 48- and 72-hour Between-Event Times, the two car fleets are within nine percentage points of one another, as shown in the table below:

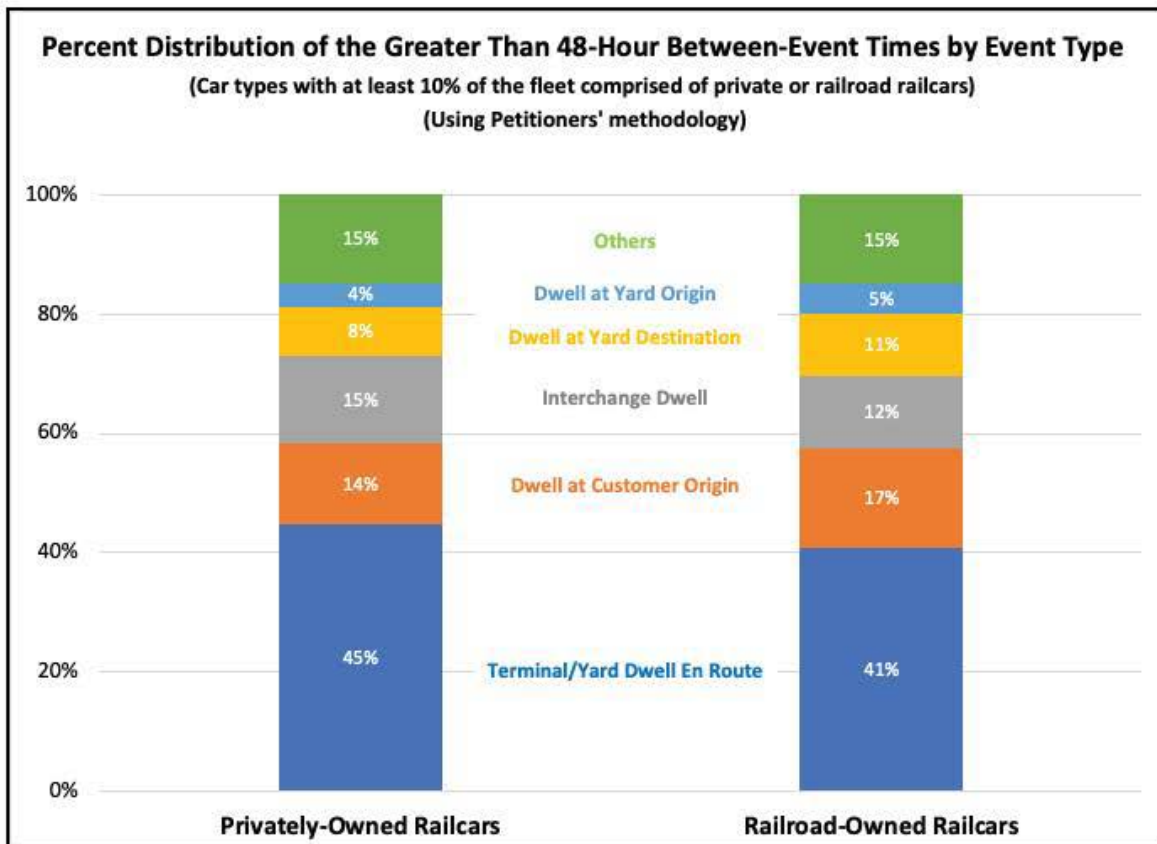
	Private Cars	Railroad-Owned Cars
48-hours	35.1%	26.8%
72-hours	19.2%	14.8%

In short, all cars experience such Between-Event Times as part of normal railroading.

¹¹ Again, analysis of 72-hour Between-Event Times shows a similar pattern. *See* Appendix A, Figure A5.

¹² PCA complains that private cement covered hoppers experience dwells in various situations. But as Figure A6 in the Appendix shows, railroad-owned cars of this type experience long Between-Event Times in the same patterns.

FIGURE 5



IV. BETWEEN-EVENT TIMES REVEALED IN PETITIONERS' DATA ARE CONSISTENT WITH SOUND RAILROAD NETWORK SERVICE DESIGN AND MANAGEMENT, NOT SERVICE FAILURE

35. The circumstances revealed by the data indicate that when rail cars spend 48 hours or more between events there are usually plausible explanations based on sound principles of rail network service design and operational management rather than service failure. To be sure, there may be individual situations involving service failure underlying these data, but there is no way to identify those isolated instances based on CLM data alone. In other words, the regulatory methodology proposed by Petitioners would not enable the Board to separate the occasional incidents of service failure from the vast majority of instances that merely reflect day-to-day railroad network operations.

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36. Basic principles efficient rail network operating design make long Between-Event Times an inherent part of railroading regardless of car type or car ownership. The phenomenon may be most intuitive with respect to manifest traffic flows in relatively-light density origin-destination pairs, but “dwells” can be efficient even for unit train operations. Just a few illustrations of inherent sources of efficient dwell events are:

- The need to design local service at origin and destination customer locations that match the frequency of originating or terminating traffic flows;
 - The need to stage carloads en route to destination to take account of limited throughput at the destination, including facilities (like grain terminal elevators) designed to receive unit train volumes; and
 - The need for carloads (or groups of carloads) to make connections to blocks or trains moving efficiently in the direction of ultimate destination, which can entail dwells awaiting the right connection, especially in lighter-density lanes.
- A. Extended Dwells Are an Inherent Part of Railroading in Relatively Light-Density Origin-Destination Pairs**

37. The propensity for extended dwells (or other long Between-Event Times) and the possibility for unplanned events to disrupt movements will necessarily vary as the required service becomes more complex to both design and then, manage in the field. Thus, unit train and intermodal movements which are relatively straightforward to understand, which require only very occasional switching of railcars, which, by design can quickly accommodate loading and unloading processes and thus, are able to fit comfortably into various, en-route time slots, may be significantly less likely to have extended dwells or delays than are most other types of movements. As operations move further from this relatively straightforward ideal, the increased complexity introduced also increases opportunity for and the likelihood of unplanned events. The

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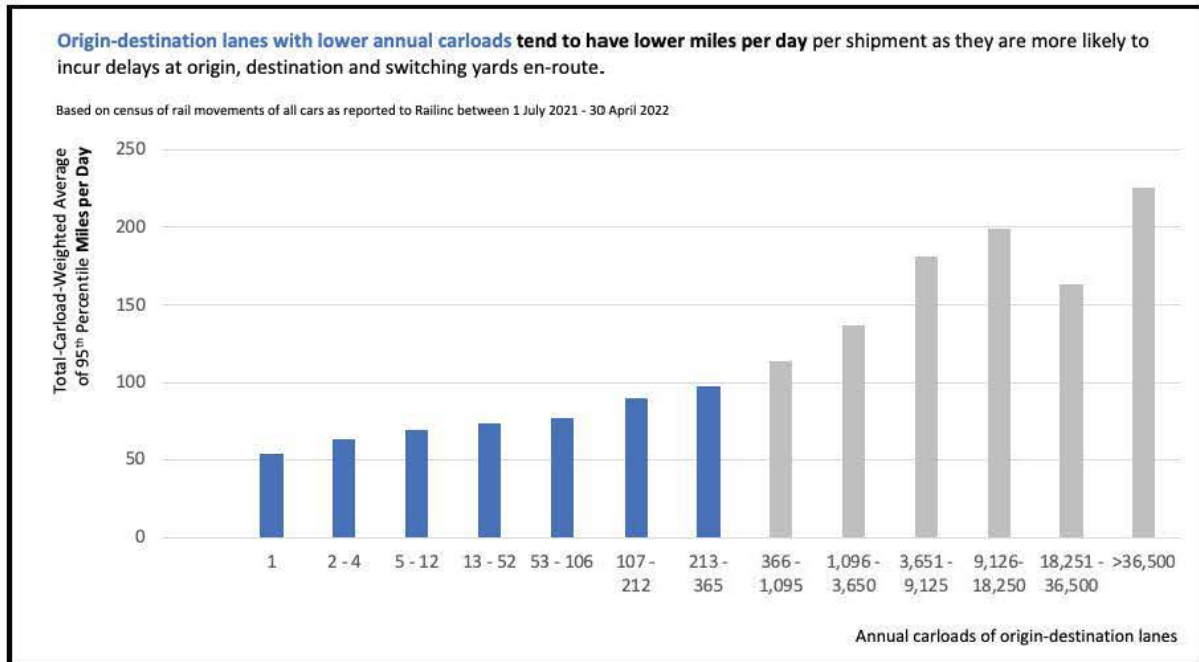
ultimate complexities and likelihoods of extended, planned dwells along with increasing potential for unplanned disruptions results when manifest freight movements between light density origin-destination pairs need to be accommodated.

38. The obvious operating problem created by low traffic densities is that it often takes an extended time to collect sufficient carloads at either an origin or destination point (occasionally both) to create the blocks of railcars that allow efficient handling of either the loaded or empty movements. Service in these low-density lanes is designed around the patterns of release or receipt of cargo demonstrated by past customer practices as well as the known and potential interactions of low-density traffic with other traffic in adjacent areas.

39. Hard data confirm that density has a direct impact on the ability to provide efficient service (not to mention its impact on the ability to provide economical service). This can be observed in performance data reflecting the average miles per day moved by railcars serving various lane densities. As shown in Figure 6, the rate of movement for all traffic is significantly lower in the low-density lanes than it is in the higher-density traffic lanes. For example, the rate of movement for cars serving lanes with a density of one railcar per day moves more than twice as rapidly through the network as does a car serving a lane density with only one railcar a year or per quarter. Additionally, rate of movement consistently declines as the density of the traffic in the lane declines. This consistent decrease applies to all traffic and for all lanes with 50 or fewer railcars per day.¹³

¹³ The numbers reflected in Figure 6 are likely conservative in that O-D lanes were defined on a SPLC basis rather than individual customer basis, and thus aggregated volumes across multiple customers in the same SPLC.

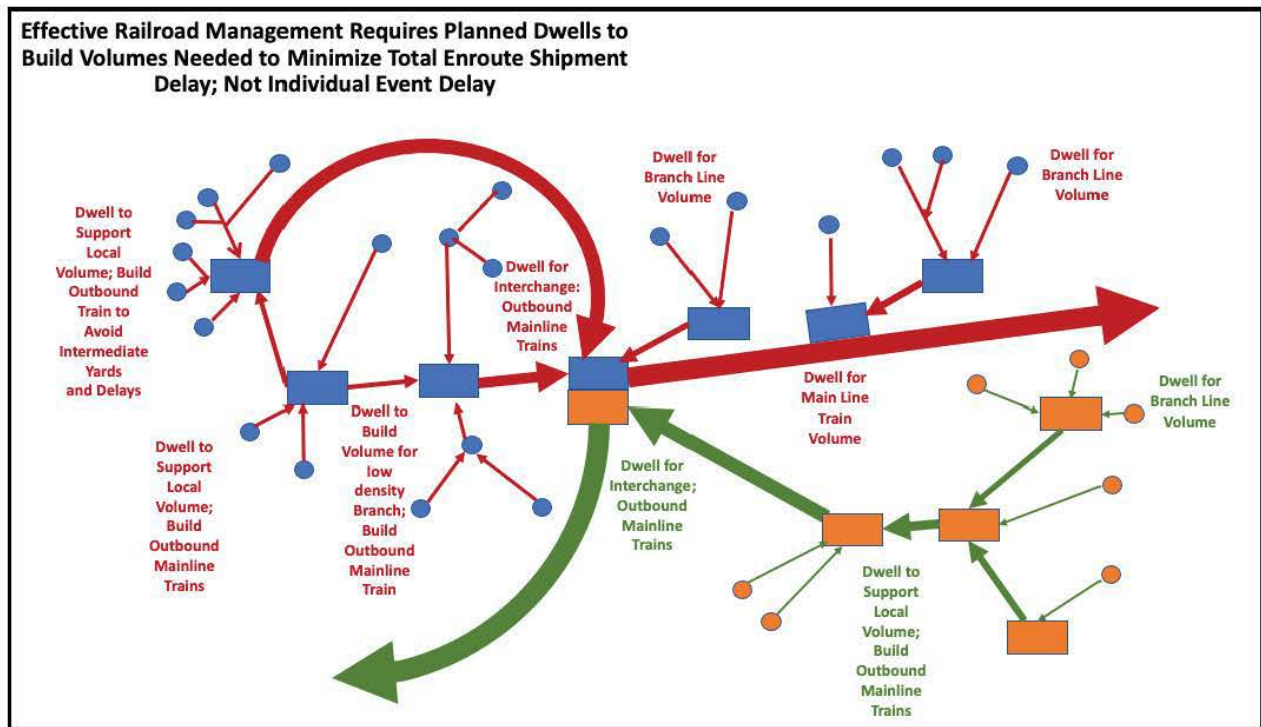
FIGURE 6



40. In the design of service for lighter-density lanes, the ultimate goal is an offering of reasonable service levels within the resources available to provide that service. Accomplishing this very challenging goal usually means combining the traffic of several traffic lanes or customers together in order to create blocks of business moving toward adjacent destinations that can be efficiently served from a central yard location. As such, it is almost inevitable that within such designs there will be planned dwell times that, for some traffic, may exceed either a 48- or 72-hour standard, since for very light-density locations it is unlikely that the business volumes will support daily or, in many cases, even thrice or twice weekly service. In many of these situations, the alternative to such extended dwells would often require a service product having unit costs that would make the railroad an unattractive alternative for many customers. Clearly, this latter solution is, over the long term, not attractive for either the customer or the railroad.

41. Figure 7 portrays the collection, sorting and distribution process that may go into matching movements together in order to build traffic blocks of sufficient size to effectively serve a wide variety of customers and commodities requiring smaller movements.

FIGURE 7



42. The complexity and extended dwells that may result from these lower density situations are often the reason that customers with even modestly larger annual shipment requirements may sometimes find it attractive to invest in the facilities needed to host less frequent, but larger deliveries of railcars for loading or unloading. This phenomenon can be seen at work in data reflecting the strategies of some customers where the CLM records indicate that they are receiving or dispatching carloads in larger blocks than some of their counterparts, but with greater times between those blocks. This is particularly evident in those movements where the density is greater than an average of 10 carloads daily but certainly occurs in some smaller

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volume situations where facilities at both origin and destination are available to accommodate the equipment required to load and unload larger volume, but more infrequent moves.

43. The need for railroad operations to accommodate light-density origin-destination pairs is not the exception, it is the rule, and as a result it would not be surprising to observe a high percentage of all movements experiencing long dwells (or Between-Event Times).

44. Table 1, below, reflects the origin-destination carload volumes moved for all railroad shipments, by all customers, on all traffic lanes, on an annualized basis during the period utilized by the Petitioners to support their statement. In all, a total of 14,554,990 carloads moved on 221,757 origin-destination traffic lanes. The table is broken into thirteen lane density categories ranging from a low of one carload per year to a high of more than 100 carloads per day.

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TABLE 1

Total Carload Traffic Density Measured by Origin-Destination Movement Volumes

Origin-Destination Locations Are Measured at the Standard Point Location Code (SPLC) Level

Origin-Destination *Not Based* on Individual Customer Location-to-Customer Location

(Based on ANUALIZED Census of Rail Movements, as Reported to Railinc between 1 July 2021 - 30 April 2022)

Frequency of Service Required to Meet Customer Demand for Origin-Destination Pair (Carloads per Year)	Number of Origin- Destination Pairs	Percent of Total Origin- Destination Pairs	Annualized Total Number of Carload Movements Requiring This Service Level			Percent of Total Carload Movements
			Private	Railroad	Total	
O-D Pairs with 1 or Fewer Carloads Per Day						
1 Carload per Year	65,189	29.4%	38,455	39,772	78,227	0.5%
2 - 4 Carloads per Year	51,262	23.1%	87,137	79,451	166,588	1.1%
5 - 12 Carloads per Year	32,903	14.8%	158,566	118,102	276,667	1.9%
13 - 52 Carloads per Year	40,395	18.2%	663,388	413,690	1,077,078	7.4%
1 - 2 Carloads per Week	12,225	5.5%	577,174	353,538	930,712	6.4%
2 - 4 Carloads per Week	9,635	4.3%	86,640	616,645	1,403,285	9.6%
4 - 7 Carloads per Week	4,153	1.9%	642,204	505,160	1,147,364	7.9%
O-D Pairs with >1Carload per Day but less Than 10 Carloads Per Day						
>1 - 3 Carloads per Day	4,260	1.9%	1,357,235	1,209,612	2,566,847	17.6%
3 - 10 Carloads per day	1,263	0.6%	1,406,591	976,932	2,383,523	16.4%
O-D Pairs with More Than 10 Carloads Per Day						
>10 - 25 Carloads per Day*	323	0.1%	1,259,056	535,988	1,795,044	12.3%
25- 50 Carloads per Day**	106	0.05%	945,794	355,237	1,301,032	8.9%
50 -100 Carloads per Day**	31	0.01%	350,147	430,458	780,605	5.4%
>100 Carloads per Day***	12	0.005%	302,273	345,746	648,019	4.5%
Totals	221,757	100%	8,574,658	5,980,332	14,554,990	100.0%

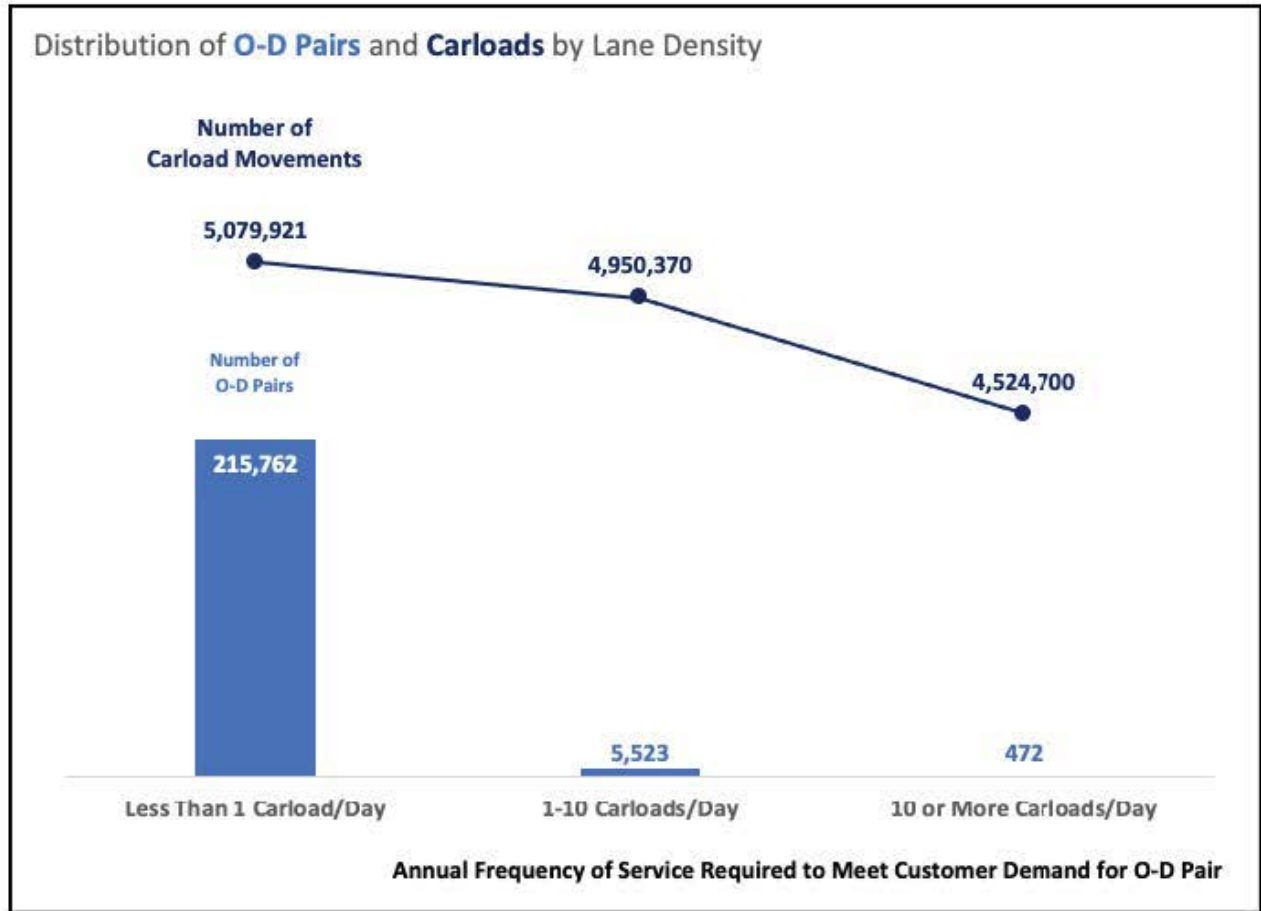
* Movements in this category appear to be either single commodity trains, a few unit trains or large, single commodity blocks of cars.

** All of the movements in this category appear to be moving in single commodity trains or in unit trains.

*** 100% of these O-D pairs represent unit train operations.

45. As shown in Figure 8 below, the distribution of O-D pairs is heavily weighted toward light density lanes.

FIGURE 8



46. Of the four largest traffic volume categories, the vast majority of the movements appear to be either unit trains, single commodity trains,¹⁴ or, in a few cases (in the 10-to-25 carloads-per-day category) large, single commodity blocks of traffic moving as either a single

¹⁴ Unit trains will, except when requiring service or maintenance, normally operate as a single consist of road locomotives and freight cars carrying one commodity during loading at a customer's facility, during movement to the unloading point, during unloading and during the return to the next loading location. Single commodity trains may, or may not have the road locomotives connected to the freight cars during loading and unloading processes and also may, or may not have the same freight cars on the loaded and unloaded trips but will operate from origin to destination as a train carrying a single commodity and not requiring switching en route.

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commodity train or as the principal block on a manifest train. All four of these categories together involve only 472 origin-destination pairs even though they handle just over 31% of carload business.

47. An intermediate category of 5,523 lanes, moving more than one and up to 10 carloads per day per lane (or about 4.95 million carloads annually) represents the core of the manifest business and, with 35 percent of all carloads moved, provides the underlying structure that supports the manifest network. Much of this traffic consists of single-car shipments, but there are also a substantial number of single commodity blocks for larger shippers.

48. Finally, there are the 215,762 low-density lanes, those having one or fewer carloads per day, which constitute 97 percent of all origin-destination pairs served by the rail industry. These lanes handle just over 5,000,000 carloads, or 35 percent of total carload volume. 100 percent of this business is handled in mostly single car, manifest service. As would be expected, this is easily the most complex portion of the entire rail network to plan and operate, and, because of both the complexity and the low volumes moving on many portions of this system, it is the portion of the network most likely to see longer planned dwells needed to accommodate smaller, infrequent shipments.

49. All of this business, whether unit train or only one annual carload, requires a planned route and schedule of events that will move it through the network and these plans must include, where needed, provisions for interchange of cars between railroads, whether Class I carriers, short lines or terminal railroads. Some plans are relatively straightforward, such as those required for unit trains and most single commodity trainload movements. Larger volume manifest moves, although significantly more complex than trainload plans, still tend to be based around a daily, or reasonably frequent schedule that is regularly performed and because of the

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volumes involved, usually provides for a straightforward movement process through the network. However, as the volumes become smaller, the plans also become relatively more complex and involve more time between movement events, particularly at the smaller yards that often provide the direct service to infrequent customers.

B. The Traffic Moving in Petitioners' Private Cars Is {{[REDACTED]}}

50. In the particular focus of this proceeding, over half of the movements brought forward by the Petitioners {{[REDACTED]}}

[REDACTED]

[REDACTED]}}

51. As shown in Figure 9 below, the traffic offered as evidence in Petitioner's data is {{[REDACTED]}}

[REDACTED]

[REDACTED]

[REDACTED]

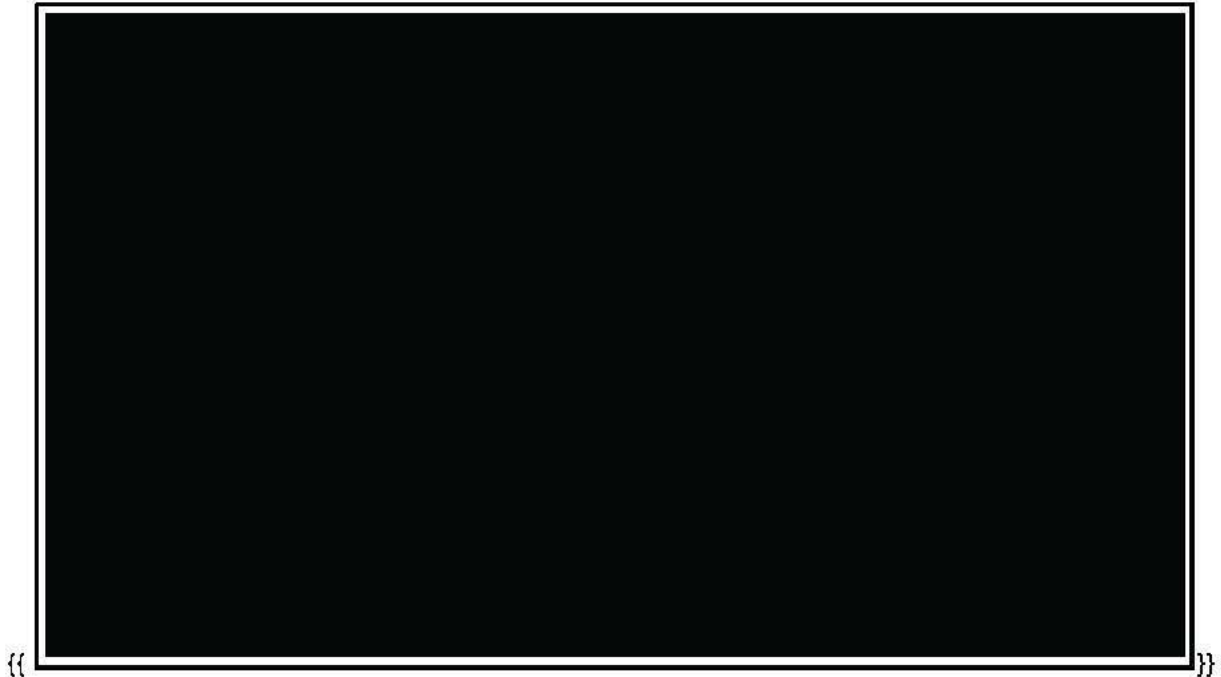
[REDACTED]

[REDACTED]}}

as also shown in Figure 9.

52. Within the manifest network during the period modeled by the Petitioner's consultant, {{[REDACTED]}} of the origin-destination pairs utilized by the Petitioners saw only one carload a day or less. In fact, almost {{[REDACTED]}} of the origin-destination lanes they utilized had a movement rate generating only *one carload per year*.

FIGURE 9

[illegible]

V. USING OTHER PROPOSED SOURCES OF “DELAY” DATA WOULD NOT BE PRODUCTIVE

54. For the reasons I have addressed, it is clear that CLM data do not provide a viable approach to identifying service failures that lead to railcars being held idle for extended periods. I am not aware of any other data source that would provide a reliable basis for identifying “delays” to railcars (private or otherwise).

55. One commenter has suggested that an inference of service failure might be drawn from comparisons between planned transit times (reflected in railroad trip plans) and the actual transit time experienced by a particular railcar. This approach would not provide a sensible basis for identifying, measuring, or enforcing penalties for service failures. It would ignore all of the unplanned and uncontrollable events that can arise during the course of a railcar’s trip from origin to destination and treat all deviation from expectation as a “failure” when it is most likely a part of normal, expected performance variance, and in the process (and perhaps worse) it would discourage realistic planning. Particularly for low density origin-destination traffic lanes, service plans will almost certainly change, at a minimum, for each day of the week and any deviation at any point along the route can change the potential dwell periods following the deviation in an unpredictable, and often substantial, manner, either positively or negatively depending on the nature of the unplanned event.

56. If service plans were used to determine absolute transit time expectations for purposes of regulatory penalties, it would almost certainly have the perverse impact of lengthening planned trip length expectations. The end result would be slower rather than faster transit times for all equipment, whether railroad or privately owned. This, in turn, would lead to a perception that additional equipment was necessary to accommodate the same volumes, which would have the further effect of creating congestion of rail terminals and thus, further slowing movement through the rail system.

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**APPENDIX A
ADDITIONAL FIGURES**

FIGURES REFLECTING ANALYSIS OF 72-HOUR BETWEEN-EVENT TIMES

FIGURE A1



FIGURE A2

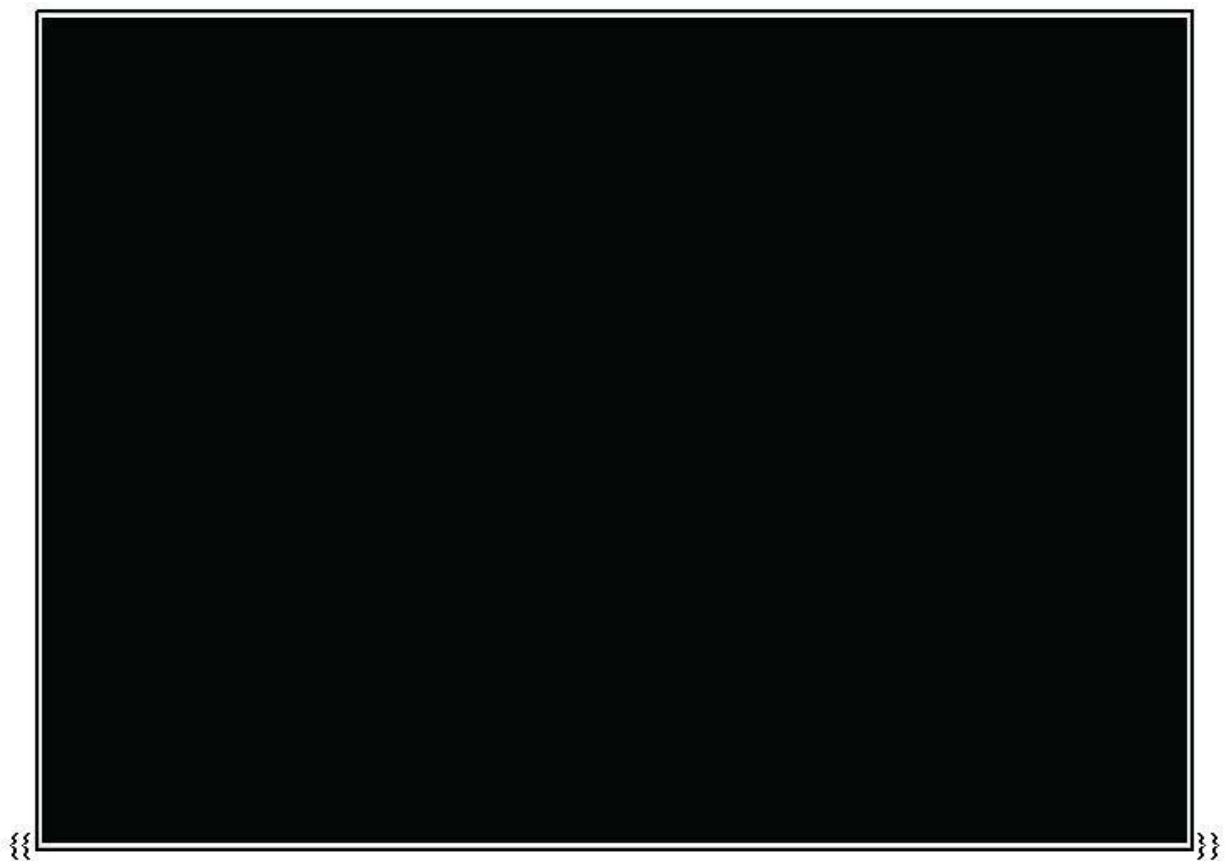


FIGURE A3

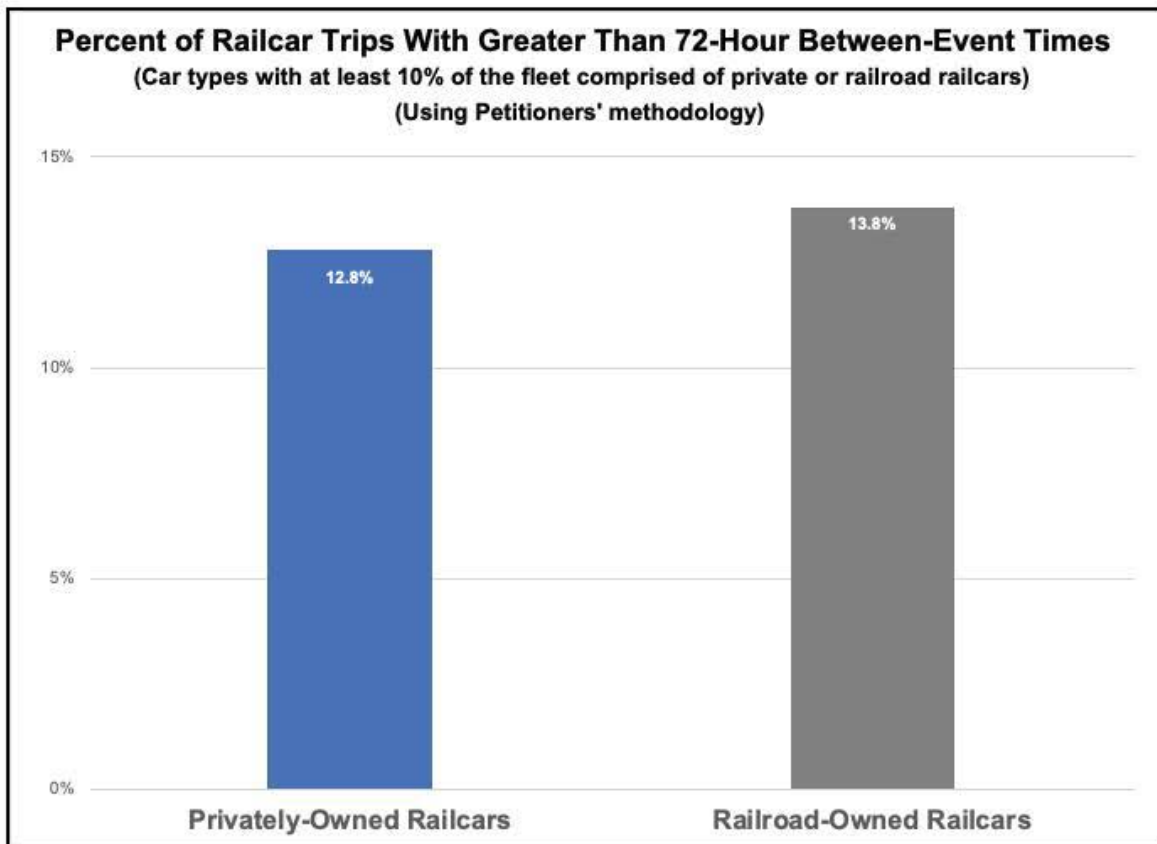
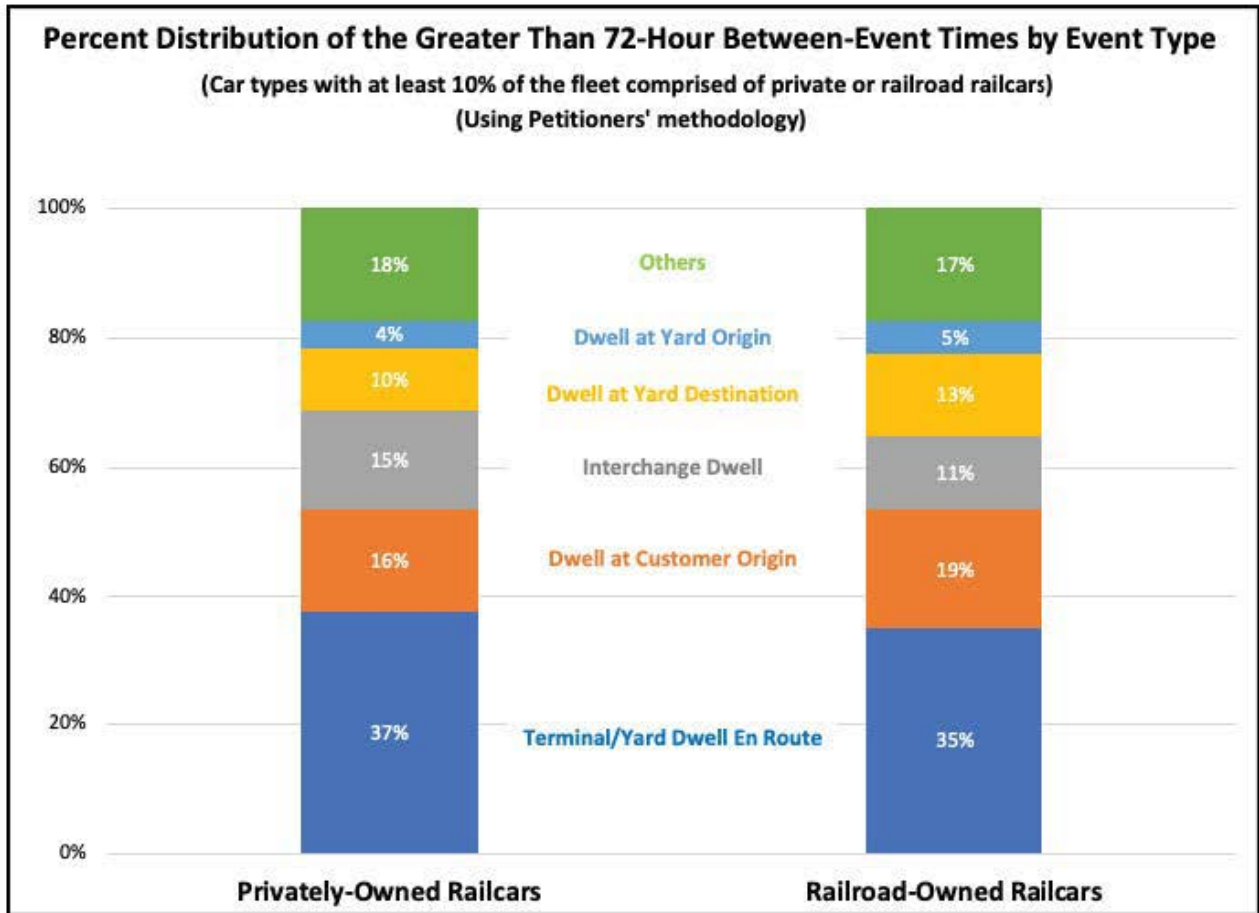


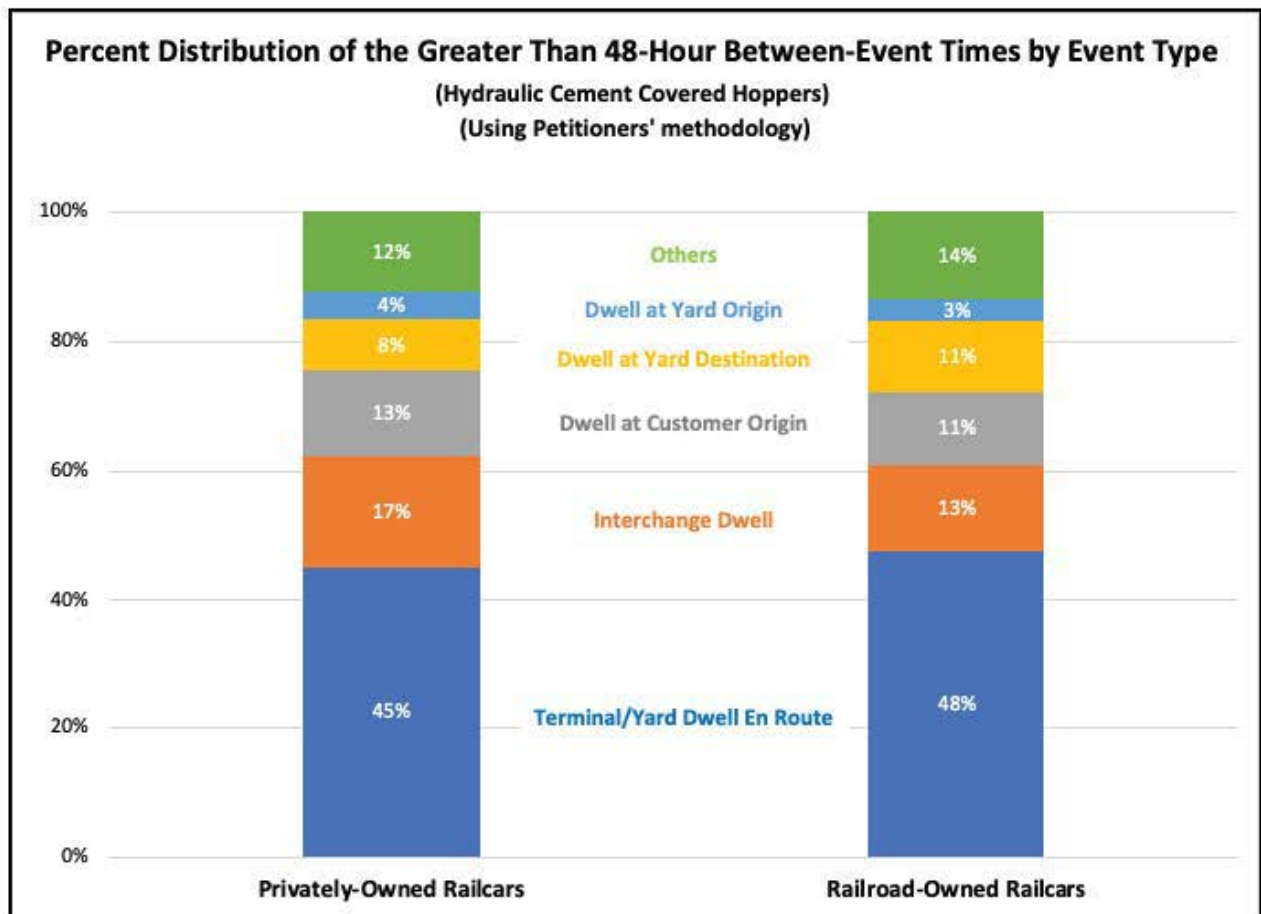
FIGURE A5



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FIGURE REFLECTING ANALYSIS OF BETWEEN-EVENT TIME DISTRIBUTION
FOR CEMENT COVERED HOPPERS

FIGURE A6



VERIFICATION

I, John Gray, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 8th day of September, 2022.


John Gray

REDACTED PUBLIC RECORD VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 768

PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS

EXHIBIT 2

***RAILWAY AGE*, VOL. 124, NO. 26 (JUNE 26, 1948)**
(EXCERPT)

ing with the New York, Chicago & St. Louis at Linden, Ind. The 12 by 17-in. control panel will be equipped with eight track indication lights and four miniature levers for the control of two electric switch machines and 12 signals. Model 5D dual-control electric switch machines, welded steel relay cases, and Type SA searchlight signals will be used in this installation.

The **Baltimore & Ohio** has ordered equipment from the General Railway Signal Company for the remote control of three switch machines and five signals at Harvey Junction, Ill., where the single-track Baltimore & Ohio Chicago Terminal joins the double-track B. & O. main line. The control point will be at North Harvey. Model 5D dual-control electric switch machines, Type K relays, and Type U color-position-light signals will be used in this installation.

The **Missouri-Kansas-Texas** has ordered from the Union Switch & Signal Co. the necessary materials to install absolute permissive block signaling on 35 mi. of its single-track line between Waxahachie, Tex., and Hillsboro. The installation involves H-5 searchlight signals, color-light switch indicators, necessary switch boxes, rectifiers, transformers and housings, with the field installation work to be performed by the railroad's construction forces.

CAR SERVICE

I.C.C. Service Order No. 87, which modifies the free time allowed on tide-water coal and coal products at North Atlantic ports, will be supplanted by Revised Service Order No. 87, effective July 1. The revised order provides that no railroad shall allow more than an average of six days free time on cars loaded with bituminous coal, cannel coal and the coal products described in Trunk Line Tariff Bureau Tariff No. 139-D, I.C.C. No. A-859, supplements thereto or reissues thereof, held for delivery to vessels at North Atlantic ports; or allow more than an average of three days' free time on such cars delivered at port storage facilities for subsequent delivery to vessels. The revised order will expire January 1, 1949, unless otherwise modified.

I.C.C. Service Order No. 817, effective from June 14 until September 5 unless otherwise modified, directs railroads serving Arizona and California to furnish so-called giant type refrigerator cars for perishable loadings in those states, and to transport the shipments at rates applicable to the same commodities in standard reefers.

I.C.C. Service Order No. 780-A suspended Service Order No. 780 from June 12 until October 15, the presently-

scheduled expiration date. The suspended order had required 25 per cent of the carload minimum to be loaded in cars of lumber forwarded from Washington and Oregon points to be stopped to complete loading.

Special Direction ODT 18A-2A, Amendment 10, effective June 10, was issued by the Office of Defense Transportation to reduce the minimum-loading requirement on cantaloupes from 24,000 lb. to 22,400 lb.

General Permit 39-B, effective June 14, was issued by the Office of Defense Transportation to increase, from 30,000 lb. to 40,000 lb., the minimum-loading requirement on new fresh-harvested Irish potatoes originating at points in Arizona, California, and New Mexico.

Special Direction ODT 18A-1, Amendment 11, effective June 16, was issued by the Office of Defense Transportation to establish a minimum-loading requirement of 80,000 lb. on sugar in any type of container and irrespective of the size of the car used.

President William T. Faricy of the Association of American Railroads has recommended that the railroads extend for another six months the voluntary agreements "to effect further improvements in car handling," which were filed with the Interstate Commerce Commission early this year and resulted in cancellation by the commission of its proposed Service Order No. 778. That order, which never became effective, would have prescribed railroad operating regulations for car movement (see *Railway Age* of October 18, 1947, page 80). It was cancelled last January by Service Order No. 778-D, after its effective date had been postponed three times from the original November 1, 1947, and after the voluntary agreements, which Mr. Faricy would now have extended, had been filed.

The form of the agreements was outlined in the *Railway Age* of December 27, 1947, page 62; they carry a June 30 expiration date. Mr. Faricy's recommendation, embodied in a June 16 circular to A.A.R. member roads and all other signers of the car service and per diem agreement, is that they be continued without change until December 31. Meanwhile, he advised that the commission was agreeable to having its proposals for "some minor changes" in the agreements set aside for the time being.

Revised I.C.C. Service Order No. 87, which relates to free time allowed on tidewater coal and coal products at North Atlantic ports, will be modified by Amendment No. 1, effective July 1. The amendment will exempt from the order's provisions shipments of coke delivered to vessels in the Hampton Roads, Va., area, destined to points outside the Virginia capes and to points on the Albemarle, Pamlico, and Currituck sounds, and tributaries thereto; coke delivered to ves-

sels in the Baltimore (Md.) harbor area for movement to points beyond the capes of Chesapeake bay; and delivered to vessels at Philadelphia, Pa., for movement to points beyond the capes of Delaware bay.

Revised I.C.C. Service Order No. 620-A, effective June 24, vacated Revised Service Order No. 620, which had prohibited lightweighing of cars placed at the ports for loading with import freight.

I.C.C. Service Order No. 95 has been modified by Amendment No. 9, which set back the expiration date from June 30 until December 31. The order makes the manager of the Refrigerator Car Section, Car Service Division, A.A.R., the commission's agent to control the distribution and use of refrigerator cars.

ABANDONMENTS

Application has been filed with the Interstate Commerce Commission by:

Atlantic Coast Line.—To abandon operation over the line of its lessor, the Tampa Southern, between Belpur, Fla., and Southfort, approximately 35 miles. Authority to abandon the line itself also is sought by the lessor.

FINANCIAL

Lehigh Valley Proposes Debt Adjustment Plan

The board of directors of the Lehigh Valley on June 23 approved a program for debt adjustment to be submitted to the Interstate Commerce Commission for approval under the terms of the "Mahaffie Act." After the board meeting, C. A. Major, president, said the plan would be filed shortly.

The Lehigh Valley, Mr. Major explained, faces bond maturities in the next eight years of approximately \$45,000,000, of which \$32,500,000 are due by October 1, 1951. "To meet this situation," he added, "we had to devise a plan which would not only solve the problems presented by the approaching maturities but also reduce the company's fixed charges and thereby strengthen its financial structure. Our plan would accomplish this without change in the obligations of the company either as to amounts of principal or of their security."

In summary, the following is planned: (1) The maturities of the principal of the various senior bonds will be extended and, in the case of the annuity bonds, which presently have no fixed maturity date, a stated maturity date of April 1, 1989, will be established.