

Diane Elhakim
Logistics Manager

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April 19, 2006

Surface Transportation Board
Attn: Mr. Joseph H. Dettmar
1925 K Street, N.W.
Washington, DC 20423-0001

RE: STB Ex Parte No. 661

Dear Mr. Dettmar:

I am hereby submitting an original and ten copies of my testimony for the upcoming public hearing on rail fuel surcharges to be held at the STB office on May 11, 2006. Kindly destroy the previous mailing, since the attachments were not numbered. I apologize for the inconvenience.

I have previously filed to be a participant, and am submitting my testimony in writing as instructed. I expect my speech will take no more than twenty minutes.

Kindly advise if there is anything else that is required of me.

Yours truly,



Diane Elhakim
Logistics Manager

TESTIMONY BEFORE THE SURFACE TRANSPORTATION BOARD

To be heard on May 11, 2006

Diane Elhakim

Chairman Buttrey, Honorable Officials:

My name is Diane Elhakim. I am the Logistics Manager for Degussa Corporation, based in Parsippany NJ, and I want to thank you for giving me the opportunity to testify before the Surface Transportation Board today.

The topic at hand is the method of application and calculation of the railroad fuel surcharge.

But first, I would like to tell you something about Degussa Corporation and myself, to give you a better understanding of where I'm coming from.

Degussa Corporation is a global company, with production facilities and offices in more than 60 countries. Worldwide, Degussa employs over 44,000 people. Some of Degussa's main product lines are specialty chemicals, feed additives, carbon blacks, silica, colorants, and polymers.

In North America, Degussa has over 120 locations and over 5,500 employees. For the calendar year 2005, Degussa paid approximately \$32 million to the NAFTA railroads, of which approximately \$2.5 million was in the form of fuel surcharges.

As for me, I have 30 years of experience in the transportation and logistics field, the last 18 years with Degussa Corporation. I hold a BS in General Management from Bloomfield College, an MBA in Marketing from Fairleigh Dickinson University, and a certificate from the Academy of Advanced Traffic.

I would like to preface my testimony by saying that it is not my intention to single out any one railroad, that any examples I may speak about can be applied to any railroad that applies a fuel surcharge as a percentage of the rate, and that I cannot divulge any direct proprietary or confidential information about my company's rates or contracts.

I would like to address the subject of fuel surcharges by speaking on several points.

The first point is the method of application of the fuel surcharge. The railroads calculate the fuel surcharge as a percentage of the rate charged for most commodities. So a shipper with higher rates pays a higher fuel surcharge. Case in point: Degussa has two commodities moving from the same plant to the same transload facility – the very same origin-destination pair carried by the same railroad. Both commodities possess the same shipping characteristics where haulage is concerned – both ship in private tankcars with a tare weight of approximately 58,000 pounds, and the lading weight is 200,000 pounds liquid. Chances are, these cars travel on the same trains. These two commodities carry different per-car rates. Yet, with the method of fuel surcharge application as a percentage of the rate, at a 15% fuel surcharge rate (which is the average for May), one commodity pays \$82 per car more than the other commodity in fuel surcharge. Based on a study we

performed where we compared this one particular business line's fuel surcharges with our other rail movements based on comparable distances, we discovered that in a twelve month period, this business line has paid an estimated \$38,000 in what we call premium fuel surcharges simply because this business line's commodity carries higher rail rates. Is this fair? No.

The examples I am submitting, copies of which are at the end of this written testimony, contain published public prices found on the websites of three railroads. No confidentiality issues are being compromised here. And as I mentioned before, I am not singling out individual railroads. Even though only three railroads were sampled, please know that these examples can be applied to any other railroad who applies the percent of rate method of fuel surcharge. The products sampled are representative of several of Degussa's products, even though they are not true origin-destination pairs for our movements. Carload prices were taken from the sampled railroads' websites as of April 17, 2006.

Example 1 is a sampling of two public tankcar rates via the Union Pacific between East St Louis IL and Kansas City MO, a 276-mile haul. The rate for hydrogen peroxide is \$4,333 per car. The rate for feed-grade lysine is \$2,585 per car. The rate differential is \$1,748 per car. At a 13.5% fuel surcharge rate, the hydrogen peroxide car will be assessed \$236 more in fuel surcharge than the lysine car. A shipper who has 100 carloads annually of the hydrogen peroxide product will pay a premium of \$23,600 in fuel surcharges per year based on UP's current application of the fuel surcharge rate. The distance traveled by the commodities is the same but the fuel surcharge applied to each commodity is different due to the railroad's method of applying the fuel surcharge rate. Is this fair? No.

Example 2 compares two public tankcar rates via the CN from Mobile AL to Chicago IL. The rate for hydrogen peroxide is \$2,892 per car. The rate for feed supplements is \$1,543 per car. The rate differential is \$1,349 per car and based on a 10.75% fuel surcharge, hydrogen peroxide car will be assessed \$145 per car in premium fuel surcharge. At 100 carloads of hydrogen peroxide per year, that equates to \$14,500 in premium fuel surcharges per year. Again, the same distance is traveled by each commodity, but hydrogen peroxide pays a higher fuel surcharge due to the application of the fuel surcharge as a percentage of the overall rate. Is this fair? No.

Example 3 compares two public tankcar rates via the CSX from Mobile AL to Wilmington DE of hydrogen peroxide and silica. In this case, the silica product pays the premium fuel surcharge of \$120 per car. The rate on the silica car is \$4,174 per car, whereas the rate for hydrogen peroxide is \$3,427 per car. The rate differential is \$747 per car and based on a 16% fuel surcharge rate, the silica product pays the premium fuel surcharge of \$120 per car. Is this fair? No. And it must be noted that while hydrogen peroxide loads to 200,000 pounds per car, many silica products can only load to 70,000 pounds per car. Therefore, the \$120 fuel surcharge premium paid for silica has a much larger impact when spread over the fewer pounds of silica per carload.

The current application of the fuel surcharge as a percentage of the rate charged by the railroad not only results in different fuel surcharge costs for commodities traveling the same distance, but this method also increases the fuel surcharge when the underlying rate is increased. I was a member of an internal team of personnel that was asked to handle different pieces of a potential multi-million dollar project. The team was tasked with compiling a proposal and recommendation regarding the

feasibility of the project which involved building a production facility for a major raw material. The project involved getting proposals from engineers, construction companies, railcar manufacturers, railroads, and several other entities. My task was to negotiate a rail rate and obtain a long term contract. I had secured an offer from the railroad which would haul the freight for a five-year contract at X dollars per car plus escalation factors that would apply for each of the four years after the initial year. With this offer as part of the project proposal, the project was approved. When I returned from a short vacation, my voicemail was full of messages from various people who worked on the project saying that the railroad had pulled back their offer, despite the fact that the contract was about to be executed. When I contacted the railroad, I confirmed that the railroad had reclassified the raw material as a PIH – poison by inhalation – withdrew their offer, and gave me a new one year rate at an increase of 220% per car. Given the method of applying the fuel surcharge as a percentage of the rate, this meant that the fuel surcharge also increased by 220%.

Is this fair? No.

Should the railroad have been able to increase the fuel surcharge by 220% simply based on a reclassification of the product? Clearly, it would not have cost 220% more in fuel to haul the commodity whose only change had been its classification by the railroad. This reclassification of our product will increase the rail transportation costs by over \$1,000,000 per year, and applying a 15% fuel surcharge rate, the fuel surcharge will increase by over \$150,000 per year. By virtue of a simple reclassification of our product, the railroad had increased our fuel surcharge by \$150,000 because the railroad is allowed to calculate the fuel surcharge as a percentage of the overall rate. This increase in the fuel surcharge on this particular move cannot be justified because it does not capture an increase in the cost of fuel. Rather the increased fuel surcharge is a product of applying the fuel surcharge percentage to an arbitrary change in the rate classification of the product. This is not how the fuel surcharge was meant to be applied nor does this method of application accurately capture the railroad's increased fuel costs.

One of my main functions is the procurement of rail transportation for 9 of Degussa's 19 business units within the NAFTA region. I interact with rail shippers in all walks of life in various associations and industry events, and I hear it more and more that senior management is not just looking at bottom line anymore. They are looking at the numbers that are used to arrive at the bottom line. The heads of the business units for which I procure rail transportation NEED to know the details of their transportation dollars spent, as transportation and distribution constitute a large part of the cost to run their businesses. Therefore, as the key person for procuring their rail transportation, I must report and justify all of the rail transportation charges incurred by my company.

When I proposed to several railroads what I considered a fair and equitable fuel surcharge for Degussa's rail movements based on a distance scale, I was told that the railroads do not have the personnel to develop and apply this kind of program for individual shippers. So when my senior management asks me what I am paying for with respect to rail freight, what do I tell them – the railroads' increased cost of fuel? The railroads' TOTAL cost of fuel? The railroads' lack of people? When I explained to several of Degussa's business directors the railroads' method of applying fuel surcharges, I could not justify the inequitable impact on certain products.

The intent of the fuel surcharge is to allow the railroads to recoup the increased cost of fuel. The INCREASED cost of fuel. There is no question that the rapid increase in fuel costs over the last few years has sharply affected the railroads. However, the fuel surcharge was meant to allow railroads to recoup the INCREASED cost of fuel and not the total cost of fuel. The method of calculating the fuel surcharge as a percentage of the overall rate leads to a situation of unintended consequences, namely that railroads can charge different fuel surcharges to similar products traveling similar distances. Surely, the fuel surcharge was not intended to be a windfall for the railroads.

Another point I would like to make is when I ask for a carload rate today ... TODAY..., I will receive a price, and the fuel surcharge that would apply is based on a 2003 index. So my rate is automatically increased by, say, 15%. When I questioned a railroad about this, I was told that they are a bit behind in their costing. But THREE YEARS behind? I believe that the railroads HAVE TO BE TAKING into consideration today's cost of fuel when quoting today's rates. With the price of fuel increasing so rapidly, I can understand a small bit of a lag in current costing, but lagging behind three years is simply unbelievable.

One of the key benchmarks used today is the Revenue to Variable Cost benchmark. The STB places the threshold for rate reasonableness at 180% over the railroads' variable cost. Is the railroads' fuel surcharge flying under the radar? Is it considered a part of the rate? How does the URCS program calculate the cost of fuel as a factor in variable cost? These are all questions for which I cannot find a definitive answer.

In speaking to you today, I am not here seeking restitution. Let the past stay in the past. The railroads for years have been deemed revenue-inadequate. With the prosperous economy seen in the recent past, the increased imports, and a shift from truck to rail and intermodal, congestion has bred major capacity and service issues. The trucking industry has experienced a driver shortage and decreased hours of service, and many shippers, including Degussa, have turned to intermodal transportation. Or, let me say, TRIED to go to intermodal. But, whether it is a tankcar, an import container on a flatbed, or a trailer on a flatcar, they all use the same tracks. And most of the tracks are experiencing severe capacity issues. Transit times are erratic, and the general level of service is causing shippers to lease more cars and stock a lot more inventory. It's a vicious circle. The railroads have too many cars, the freight slows down, and the shippers put more cars in the system to avoid stockouts and missed deliveries.

But better times are expected. Over the past two years, the railroads' revenues have greatly increased and their financial health has improved significantly. For 2004, in Docket number EP_552_9 dated November 23, 2005, the STB deemed only one railroad, the Norfolk Southern, revenue adequate. Absent the 2005 report, I would venture to guess that many more railroads are financially sound today. The Association of American Railroads (AAR) has reported that the United States Class I freight railroads will spend more than \$8 billion in improvements this year – laying new track, buying new equipment, and making infrastructure improvements – up 21% over 2005. This will undoubtedly ease congestion, increase capacity, and improve metrics. This is a good thing. The increased revenue for the railroads, whether in rates or fuel surcharges, is enabling the railroads to do this. In my opinion, the railroads – and indirectly the shippers – needed this shot in the arm. But with the fuel prices continuing to rise, and estimated to remain

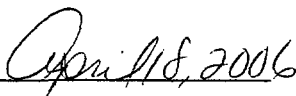
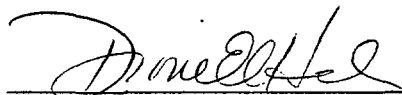
high for the near future and likely go even higher, it is time to change how the fuel surcharge is applied and calculated. It is time to adopt a fair and equitable means by which the railroads recoup their INCREASED cost of fuel only.

Calculating the fuel surcharge as a percentage of the rate charged is no longer acceptable. I do not know of any shipper who expressed serious concerns when the fuel surcharge was 2% or 3%. I, for one, knowing that fuel is such a big expense in rail transportation, expect to reimburse the railroads for their increased cost of fuel. But I do not expect to reimburse the railroads for anything more than their increased cost of fuel. With the surcharges now at 10% to almost 16% of the rate, the reasonableness of this method MUST be questioned strongly.

I hereby request that the STB investigate the method and calculation by which the railroads are applying fuel surcharges. And I personally commend those railroads who are attempting to implement a mileage based fuel surcharge based on a fair scale. It is a first step toward a change that is long overdue.

Thank you.

Signed and dated:



Diane Elhakim
Logistics Manager
Degussa Corporation
379 Interpace Pkwy
Parsippany NJ 07054
Tel. 973-541-8076

Attachments:

- Ex. 1 Screenshots of two public carload prices via UP, taken from the UP website April 17, 2006.
- Ex. 2 Screenshots of two public carload prices via CN, taken from the CN website April 17, 2006.
- Ex. 3 Screenshots of two public carload prices via CSX, taken from the CSX website April 17, 2006.
- Ex. 4 Chart of public fuel surcharge percentages for seven Class I railroads for 2006.
- Ex. 5 Chart of public fuel surcharge percentages for seven Class I railroads for 2005.

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Pricing

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✓1 ✓2 ✓3 ✓4
Rate Search > Choose Route > Choose Equipment > **Your Rate**

From: East St Louis, IL
To: Kansas City, MO
UP Rail Miles: 282
Docket Miles: 276
Hwy Miles: 255
Product: 2819931 (Hydrogen Peroxide (Hydrogen Dioxide))
Route & Service:UP [Standard]

Published Rate (excluding surcharges)	Equipment	Price Document	View Summary
▼ No Weight Requirement			
\$4,333 Per Car	Tank Car	UP 4280 (4000-F)	Details
\$4,900 Per Car	Tank Car	UP 4280 (4000-F)	Details

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Pricing

Search By Rates | Search By Documents

✓1 ✓2 ✓3 ✓4
Rate Search > Choose Route > Choose Equipment > **Your Rate**

From: East St Louis, IL
To: Kansas City, MO
UP Rail Miles: 282
Docket Miles: 276
Hwy Miles: 255
Product: 2042124 (Lysine, Feed Grade)
Route & Service:UP [Standard]

Published Rate (excluding surcharges)	Equipment	Price Document	View Summary
▼ No Weight Requirement			
\$2,585 Per Car	Tank Car	UP 2028 (1000-R)	Details

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CN

eBusiness Hotline
1-800-361-0198

Price Proposal
Origin: Mobile, AL Destination: Chicago, IL Commodity: Hydrogen Peroxide STCC: 2819931

Effective Date	Expiry Date	Equipment Type	Equipment Ownership	Route	Price	Rate Unit of Measure	Transit Time
2002-04-17	2002-07-12	TANK, REGULAR (== 222,000 LBS GROSS WEIGHT)	Private - Zero Mileage Comp.	CN	\$ 2.852 USD	Per Car	7

Note(s)
1 - 2 of 2

Note
Rates will not apply under the provisions of AAR Accounting Rule 11, nor rebill application, nor in the construction of combination rates. Subject to movements defined in CN routing protocol for this gateway. These specified gateways can be found at www.cn.ca/GetRoute. Rates herein are subject to Fuel Surcharge Tariff CN 7401 series, supplements thereto and reissues thereof.

The proposed price is only valid for the period shown above if it is accepted

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CN

eBusiness Hotline
1-800-361-0198

Price Proposal
Origin: Mobile, AL Destination: Chicago, IL Commodity: Lod Dry Fd Supl STCC: 2042135

Effective Date	Expiry Date	Equipment Type	Equipment Ownership	Route	Price	Rate Unit of Measure	Transit Time
2002-04-17	2002-07-12	TANK, == 21500 US GAL	Private - Zero Mileage Comp.	CN	\$ 1.542 USD	Per Car	7

Note(s)
1 - 2 of 2

Note
Rates will not apply under the provisions of AAR Accounting Rule 11, nor rebill application, nor in the construction of combination rates. Subject to movements defined in CN routing protocol for this gateway. These specified gateways can be found at www.cn.ca/GetRoute. Rates herein are subject to Fuel Surcharge Tariff CN 7401 series, supplements thereto and reissues thereof.

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STCC: 2819931 HYDROGEN PEROXIDE

Origin: MOBILE, AL
 Destination: WILMINGTON, DE
 (click on the price for details)

Price	Per	Equipment Size Restrictions	Price Authority	Route	Minimum Weight	Car Owner	Effective Date	Expiration Date
Tank Car								
\$3,427.00	PER CAR		CSXT28199	CSXT Direct		Private	01/05/05	

For ShipCSX questions, call 1-877-ShipCSX (744-7279) Option 2, Option 1
 For Customer Service, call 1-877-ShipCSX, Prompt 5 then Prompt 6

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Price Authority: CSXT3604

STCC: 3296973 SILICA, NEC, SILEX, NEC,

Origin: MOBILE, AL
 Destination: WILMINGTON, DE

Price	Per	Equipment Size Restrictions	Route	Minimum Weight	Private Car Mileage/Cap	Car Owner	Effective Date	Expiration Date
Tank Car								
\$4,174.00	PER CAR		CSXT Direct		Zero	Private	01/15/05	

Origin Group: AL MOBILE
 Destination Group: PA PHILADELPHIA

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2006 Fuel Surcharge – Class I Railroads												
Carrier	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
CSXT	14.4%	14.8%	17.2%	15.6%	16.0%							
NS	14.4%	14.8%	17.2%	15.6%	16.0%							
BNSF	13.5% ¹ 17.0% ¹	12.0% 15.5% ¹	12.5% 15.5% ¹	12.5% 15.5% ¹	13.5% 16.5% ¹							
UP	13.5%	12.0%	12.5%	12.5%	13.5%							
CN	9.75%	10.0%	11.5%	10.5%	10.75%							
CPRS	16.4% ²	16.8% ²	19.2% ²	17.6% ²	TBD							
KCS	14.4%	14.8%	17.2%	15.6%	16.0%							
¹ BNSF Coal Unit Train Surcharge (which became Effective 7/1/2004)												
² CPRS phasing out old program. Surcharge remains 6% on older Price Authorities. CPRS FSC based on CPRS 9000												

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² CPRS phasing out old program. Surcharge remains 6% on older Price Authorities. CPRS FSC based on CPRS 9000

The above chart is a comparison of each Class I carrier's fuel surcharge percentages by month during 2006:

- CSXT and NS became similar March 1, 2004 (0.4% for each dollar above \$23 in WTI monthly average).
- BNSF and UP are similar (0.5% for each \$0.05 above \$1.25 in Retail On-Highway Diesel Fuel (HDF). BNSF initiated a separate program for unit trains of coal July 1, 2004.
- CPRS initiated a new program June 1, 2004. (When the WTI monthly average price equals or exceeds \$24.00, the fuel surcharge will be 2%. When the WTI equals or exceeds \$27.00, the fuel surcharge will be 4%. For each additional \$1 of WTI above \$27.00, the fuel surcharge will increase an incremental 0.4%). Prior to June 1st, CPRS used the same program as CN.
- Effective April 1, 2005, CN began using a similar formula to CSXT and NS but is based on 0.3% for each dollar above \$25.00 in WTI monthly average. Effective October 1, 2005, CN changed their program from 0.3% to 0.25% for each dollar above \$25.00 in WTI monthly average.
- KCS became similar to CSXT and NS June 1, 2005 (0.4% for each dollar above \$23 in WTI monthly average). Prior to June 1, KCS used a program similar to CSXT's former program (2% when WTI over \$28 for 30 consecutive days and an additional 2% for each \$5 above \$28 for 30 consecutive days).

2005 Fuel Surcharge – Class I Railroads

Carrier	Dec	Nov	Oct	Sep	Aug	Jul	Jun	May	Apr	Mar	Feb	Jan
CSXT	16.0%	17.2%	16.8%	14.4%	13.6%	10.8%	12.4%	12.8%	10.0%	9.6%	8.4%	10.4%
NS	16.0%	17.2%	16.8%	14.4%	13.6%	10.8%	12.4%	12.8%	10.0%	9.6%	8.4%	10.4%
BNSF	18.5% 23.5% ¹	16.0% 20.0% ¹	13.0% 16.0% ¹	11.5% 14.5% ¹	10.5% 13.5% ¹	9.5% 12.0% ¹	10.5% 13.5% ¹	10.0% 12.5% ¹	8.0% 10.0% ¹	7.5% 9.0% ¹	8.0% 10.0% ¹	9.0% 11.5% ¹
UP	18.5%	16.0%	13.0%	11.5%	10.5%	9.5%	10.5%	10.0%	8.0%	7.5%	8.0%	9.0%
CN	10.75%	11.5%	11.25%	11.4%	10.8%	8.7%	9.9%	10.2%	8.1%	12.0%	12.0%	12.0%
CPRS	18.0% ²	19.2% ²	18.8% ²	16.4% ²	15.6% ²	12.8% ²	14.0% ²	14.8% ²	12.0% ²	11.6% ²	10.4% ²	12.4% ²
KCS	16.0%	17.2%	16.8%	14.4%	13.6%	10.8%	12.4%	10.0%	10.0%	10.0%	10.0%	10.0%

¹ BNSF Coal Unit Train Surcharge (which became Effective 7/1/2004)

² CPRS phasing out old program. Surcharge remains 6% on older Price Authorities.

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- KCS became similar to CSXT and NS June 1, 2005 (0.4% for each dollar above \$23 in WTI monthly average). Prior to June 1, KCS used a program similar to CSXT's former program (2% when WTI over \$28 for 30 consecutive days and an additional 2% for each \$5 above \$28 for 30 consecutive days).