

216360

Before the Surface Transportation Board**Comments in STB Ex Parte 661****RAIL FUEL SURCHARGES**

Arkema, Inc. is a global chemical producer with North American headquarters in Philadelphia, Pennsylvania. In the course of our business, we generate in excess of \$25 million in revenues for the United States railroads. In that context, we respectfully submit our comments for consideration.

In the course of these transactions, we have incurred imposition of fuel surcharges for movement of our cars. Given our volume of movements of higher rated commodities (hazardous chemicals, plastic resins), the fuel surcharges have become a sizeable expense to our company. Nevertheless, Arkema understands the railroads have encountered higher fuel expenses as well in their operations and recovery of that additional expense is justified.

Our argument is the current method of a percentage surcharge related to cost of either highway diesel or crude oil applied against the freight charge is a flawed method and requires study to create a mechanism more closely reflecting the cost of fuel usage in moving rail traffic. We offer the following points to justify our position:

- 1) Under the current method of a surcharge percentage against the individual freight invoice, carloads of various commodities traveling together on the same route (or even the same set of trains) would yield differing fuel revenues. Hence, a car of grain would pay less than a car of vegetable oil, while a car of chemicals would pay more than the previous two cars, but less than the car of plastic pellets. As the surcharge percentages have increased as the fuel indices increased, this differential has widened the disparity of what is being paid to the carriers. Using rates out of BNSF tariffs on a BNSF direct lane from Houston to Chicago, the line haul for a car of caustic soda would be charged \$2583, a car of acrylates \$3135, sulfuric acid \$2460, ethyl alcohol \$2287 and a car of chlorine \$3886. At a fuel surcharge of 12.5% for these cars moving in the same train, the cost would range from \$285.88 to \$485.75, or a differential of \$200 per car.
- 2) The railroads have historically increased rates every year as contracts or tariff items expire. Rate increases the last several years have raised sharply and railroads have told shippers they are "de-marketing," or "pricing to keep the car on the train." Previously, before the surcharge program, part of the rate increase included the higher fuel costs incurred during the previous year. With the higher increase levels, we are not advised if there is a fuel component in the new rate level. Additionally, the higher rate levels generate more surcharge revenue and as surcharge levels increase, that revenue continues to increase, becoming in no way a function of the incremental increase of the fuel.

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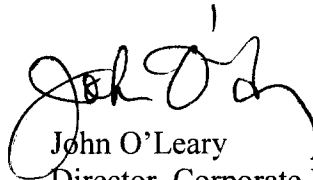
- 3) Historically, railroads have used technological advances (dieselization, computers) and labor savings (through mergers, deregulation, and negotiation) to allow them to more effectively compete with other modes. Those savings, while not directly passed through to shippers, were often shared through rate adjustments or rates on new movements that, by using the lower costs, allowed the shipper and carrier to secure new business, retain current business. Some of the railroads have been able to manage fuel purchases through hedging or heating oil futures resulting in tangible savings for that expense. That economy does not appear in the calculations for the surcharges.
- 4) Shippers have contracts with the railroads subject to annual increases using the RCAF-U index. The use of this index allows the railroads to recover the increased cost of fuel for the previous year with the subsequent higher rate also subject to the fuel surcharge. This allows the railroad to receive revenues for the prior year's fuel increase as well as the surcharge for the higher fuel cost above the baseline of the index. Adjustment of the surcharge in this case should be mandated to factor out the over recovery built into this arrangement.
- 5) Railroads use the crude oil or highway diesel (DOE) price to calculate the fuel surcharge. Basing the fuel surcharge on changes in crude oil (WTI) or highway diesel prices does not accurately reflect the costs the railroads pay for fuel. It mirrors the trend of up or down, but the incremental numbers are either overstated or of a non-related event. Railroads do not run their locomotives on crude oil. Highway diesel prices include various taxes imposed by state, federal and in some instances, local governments. Over time, these taxes are increased to fund highway construction, repair, or enhancements. Such increases find their way into the data and are reflected in the average price of a gallon of diesel fuel. These taxes never go down. Similarly, EPA later this year will require motor carriers to use a diesel fuel designated ultra low sulfur diesel (ULSD) which will result in a higher price in the DOE highway diesel figure. A more accurate index would be the wholesale diesel market price compiled by DOE. Another factor to consider would be heating oil charges not subject to the taxes and ULSD requirement. To bolster that argument, some of the railroads have entered into futures contracts for heating oil, proving that is what they actually use for fueling locomotives.
- 6) The railroads do not share with shipper's data to substantiate their claim of non-recovery regarding increased cost of fuel. Several rail carriers will state in financial reports the revenues generated by surcharges, but not by the business groups in their corporate structure. Only a corporate figure is produced. Publishing such information would enable shippers to understand what business segments of the railroads are not participating as fully in the program, especially if it is the lower rated commodities such as coal that have a limited application, while higher rate chemical and plastic segments may have a higher percentage of participation. It is known there are long term contracts in effect that are not subject to the fuel surcharge programs. When the railroads total fuel costs and

surcharge revenues, they can honestly say they are still absorbing some of the higher fuel charges. This logically can lead one to conclude shippers paying increasing amounts for fuel on their invoices are subsidizing those shippers who are not. The idea of a fuel surcharge is to allow recovery of an added cost that has dramatically risen in a short time. What in fact is happening is shippers are essentially placed in a risk pool like automobile insurance and the higher premiums (surcharges) cover losses incurred due to non-insured drivers (long term contract shippers).

- 7) Similarly, some of the carriers are more efficient in their operations than others as detailed in the AAR/STB weekly reports of train speed (velocity) and dwell time. Those railroads operating at slower velocity would theoretically burn more fuel due to longer idling of locomotives and trains parked awaiting clearance to leave sidings or enter yards. Higher dwell time requires more movements in yards to break down and assemble trains (burning more fuel in the process). For whatever reason this may be occurring, shippers should be relieved of the extra expenses of higher fuel usage since, as pointed out in 3), the railroads are not passing through any efficiencies in fuel purchase or usage. A factor for efficiency in operations should be present in any calculation of a fuel surcharge.
- 8) Railroads and railroad suppliers have undertaken programs and engineering to minimize fuel usage. Per the April, 2006 edition of *Railway Age*, Union Pacific has offered gasoline cards to their engineers as incentive to burn less fuel. A Union Pacific official quoted in the story claims \$30 million in fuel saved. The article mentions as well that per AAR statistics, the industry averaged 235 revenue ton-miles per gallon in 1980, 360 revenue ton-miles per gallon in 1994, and up to 410 in 2004. Other measures such as rail lubrication, AC propulsion, steerable locomotive trucks and tracking devices for minimizing idling have been introduced in past years. The same issue also detailed a program at Conrail for shutting down locomotives during extended periods of inactivity. Conrail managers estimated for the article savings of 400,000 gallons of diesel fuel. While the economies derived from these programs would be reflected in the RCAF-U index, they are not accounted for in the straight fuel surcharge process.
- 9) The billions of dollars in capital being spent by the railroad industry in the United States within the last two years and projected out into the next several years will provide increased capacity. Lengthening passing sidings or double track will allow trains to operate at optimum speeds and minimize delays. All this results in less fuel usage on a gross ton or revenue ton basis. Shippers are having rates increased at levels never before encountered to provide the capital necessary for this expansion. As mentioned previously, the current methodology of a surcharge against this higher rate level results in a higher dollar surcharge. Certainly the fuel efficiency provided by the infrastructure improvements should be factored back into the calculations for the surcharge level.

To summarize, the current method employed by the railroads utilize fuel cost factors that do not reflect what railroads actually pay for fuel, force shippers on the same train to pay for fuel at widely disparate rates, in some instances allows increases that effectively result in double-recovery (RCAF-U plus fuel), produce much higher surcharges as the railroads have imposed significantly higher rate increases during this period of high demand, allow shippers paying the surcharges to pay at higher levels due to other shippers not paying anything at all, and does not adjust to account for efficiencies in fuel use or purchase, nor penalizes carriers for using excess fuel when operating inefficiently. Therefore, the programs employed by the railroads simply do not accurately reflect the true costs of higher fuel prices paid by the railroads.

For Arkema, Inc.,

A handwritten signature in black ink, appearing to read "John O'Leary", with a stylized flourish at the end.

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