

216392

April 27, 2007



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Attention: STB Ex Parte No. 661 – Rail Fuel Surcharges

Dear Secretary Williams:

Pursuant to the Notice of Public Hearing issued by the Surface Transportation Board ("Board") in the above-captioned proceeding on March 14, 2006, the American Chemistry Council ("ACC") requested 10 minutes to present its comments on railroad fuel surcharges. ACC appreciates that the Board granted that request in an order served on April 25. ACC therefore looks forward to appearing among the trade associations on Panel III during the hearing on May 11.

The Board's Notice of Public Hearing also set today as the date for the submission of written testimony in this docket. In accordance with that Notice, the original and ten copies of ACC's testimony are enclosed. Please contact me if you have any questions about ACC's participation in Ex Parte No. 661.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Tom Schick'.

Thomas E. Schick
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enclosures

SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 661



RAIL FUEL SURCHARGES

COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL

April 27, 2006

The American Chemistry Council ("ACC") appreciates the opportunity to participate in this examination of the reasonableness of railroad practices relating to fuel surcharges. These comments include, in Attachment A, the assessment of rail fuel surcharge practices that has been prepared for ACC by the firm of Snavely King Majoros O'Connor & Lee, Inc. ("Snavely King"). That assessment proposes a remedial action plan to deal with concerns about railroad fuel surcharge practices.

ACC represents the companies that make the products that make modern life possible, while working to protect the environment, public health, and security of our nation. Under ACC's Responsible Care® initiative, the 129 member-companies have committed to implement a set of goals and guidelines that go above and beyond federal regulations on safety, health, security and the environment. ACC's membership accounts for about 85 percent of the productive capacity of basic industrial chemicals in the United States. Chemical shippers depend on the U.S. railroad industry for the safe, secure, and efficient transportation of approximately 170 million tons of products that provide the carriers with more than \$5 billion in annual revenues.

Railroad fuel surcharge practices are not "reasonable" under 49 U.S. Code Section 10702(2). ACC respectfully requests that the Surface Transportation Board ("Board") exercise its authority to remedy the fundamental flaws in the ways that rail carriers calculate and apply fuel surcharges.

As a participant in this docket, ACC recognizes and respects the Board's determination that this docket is not a rate reasonableness proceeding (Ex Parte No. 661, Notice of Public Hearing served March 14, 2006). Without getting into the rate aspect of fuel surcharges, however, ACC must point out that a railroad's ability to engage in unreasonable practices vis-à-vis its customers is clearly related to the absence of effective competition for the traffic that many chemical companies ship by rail. At 63% of the manufacturing facilities operated by ACC members, the rail customer has access to only one carrier. Railroad market power is enhanced in other circumstances where the shipper has access to two carriers but only one of them provides service to the consignee at the destination location.

Among the various modes of transportation that serve the business of chemistry, ACC members find that railroads have a unique ability to take advantage of their market power. Motor carriers, for instance, also face rising fuel costs. But while a trucking company may establish its own individual fuel surcharge program, it would certainly have to take into account the likely effects of what other motor carriers are doing in that competitive sector. Indeed, ACC's members consume large quantities of energy in operating their businesses – natural gas (both as fuel and as feedstock), electricity, petroleum products, etc. But as much as any company would like to recover the entire amount of its increased fuel costs in the prices of the products that it sells, the extremely competitive domestic – indeed, global – market for chemicals precludes that outcome. In other words, competition has an important effect on how any company deals with its customers when it sets up a program intended to recover unanticipated increases in fuel or other costs.

From ACC's perspective, the unreasonable aspects of railroad practices with regard to fuel surcharges include the following:

- **Fuel surcharges are not based on actual fuel consumption.** To the extent it is appropriate for a railroad to recover its unanticipated changes in fuel costs, surcharges should be related to the amount of fuel consumed to provide service to shippers. ACC urges the Board to find surcharge programs to be unreasonable unless they are based on factors that are found to be relevant to fuel consumption. See the recommended approach in Attachment A, where Tom O'Connor and Kim Hillenbrand of Snavely King address this topic.
- **Fuel surcharges are inappropriately linked to freight rates.** Freight rates differ in ways that are not relevant to the amount of fuel that is consumed in providing rail service. While a carrier's ability to engage in "differential pricing" is clearly not at issue in this proceeding, even when all other factors are essentially identical, rates can vary based on the availability of competitive options.

To illustrate, assume that Shipper A and Shipper B manufacture the same chemical product and ship it in the same type of equipment from facilities in the same origin city. Their customers are in the same destination city.

Further assume that Railroad X is the only carrier serving Shipper A, but that both Railroad X and Railroad Y serve Shipper B. Intramodal competition will almost certainly result in Railroad X charging more to move Shipper A's traffic than Shipper B's traffic. But with Railroad X setting its fuel surcharge as a percentage of the freight rate, it will collect more from Shipper A than from Shipper B, even if the traffic shipped by both customers is carried in the same train.

The same point can also be made using comparisons involving rail movements of different commodities (see Figures 1 and 2 in Attachment A). ACC therefore believes that basing fuel surcharges on freight rates is an inherently unreasonable practice.

- **Higher fuel costs are also being recovered by other means.** Railroads and their customers agree to various rate escalation factors, such as the Rail Cost Adjustment Factor. To the extent that such factors rise with the cost of fuel, it is inappropriate not to reduce a fuel surcharge in accordance. In a similar manner, it is not reasonable for a carrier to maintain a fuel surcharge on traffic when the carrier has either published a new rate or negotiated a new contract that rolls in the higher cost of fuel. New freight rates should not be subject to surcharges unless there is a subsequent unanticipated increase in fuel costs and the shipper has agreed to be subject to such a surcharge. Put another way, no portion of fuel costs should be recovered twice from any shipper. While deferring to Snavely King, as well as others in this docket, to recommend specific methods to accommodate this concern, ACC emphasizes its importance to the Board.
- **Some shippers are over-charged because others are not subject to fuel surcharges.** A railroad may not be able to recover increased fuel costs from some portion of its customer base. But that clearly does not make reasonable the assessment of even higher fuel surcharges on the railroad's other customers. If a contract prevents a railroad from assessing fuel surcharges on Shipper C, that "shortfall" should be borne by the carrier itself – and not passed through to the other customers who are subject to fuel surcharges. The recovery of unanticipated fuel cost increases is a business objective. That does not mean, however, that it is guaranteed. There is simply no justification for Shipper D and Shipper E having to help to "make the railroad whole" because of particular terms and conditions governing that carrier's business relationship with Shipper C.
- **Transparency is needed.** Railroads should regularly report their fuel cost information in a consistent and comprehensive manner, as specified by the Board in this proceeding. In addition, railroads should be required to report clearly the revenue that they obtain via fuel surcharges. This should also be reported in a uniform manner, as established by the Board. In addition to reporting their overall fuel surcharge revenue, carriers should uniformly provide the fuel surcharge component as a separate and identifiable element in the records that go into the Waybill Sample. Given the importance of determining whether railroad fuel surcharge practices are reasonable, the Board must support transparency.

In conclusion, ACC urges the Board to remedy the serious problems that have arisen in railroad fuel surcharge practices. Adoption of the Remedial Action Plan proposed by Mr. O'Connor and Mr. Hillenbrand in Attachment A would benefit not only rail shippers, but also the carriers and the Surface Transportation Board itself.

Respectfully submitted on behalf of ACC by

A handwritten signature in black ink, appearing to read "Th E Schick".

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Attachment A:

**An Action Plan
For Consideration By The
Surface Transportation Board
In STB Ex Parte No. 661
Rail Fuel Surcharges**

**Tom O'Connor and Kim Hillenbrand
Snavelly King Majoros O'Connor & Lee
1111 14th St NW
Washington, DC 20005
April 27, 2006**

I. Introduction

We welcome the opportunity provided by the Surface Transportation Board (STB or Board) to express our views on the subject of railroad fuel surcharges.

The American Chemistry Council (ACC) requested Snavelly King Majoros O'Connor & Lee, Inc. (Snavelly King or SK) to carry out analyses of Class I Rail Fuel Surcharges. This testimony, prepared by Tom O'Connor and Kim Hillenbrand, presents the results of our analyses.¹

Snavelly King is an economic and management consulting company focusing on transportation and utilities. Snavelly King has been in business for more than 35 years, serving transportation clients including railroads, shippers and government agencies in the United States, Canada and Europe.

This STB public hearing provides much needed discussion of fuel surcharges and the manner in which those fuel surcharges have been calculated and applied by railroads. The cost of fuel is a significant component of rail operating costs. The incurrence and recovery of those costs is an issue of vital concern to railroad shippers and to their customers, many of whom are dependent on rail transportation.

The STB recognized the serious concerns of rail shippers regarding fuel surcharges. These concerns are well placed. In our testimony we estimate that the over recovery is in the range of \$1 billion for 2005. This is the amount by which Class I fuel surcharge revenues collected by US railroads exceed the increased fuel costs incurred by the railroads. We note in passing that, due to gaps in the data reported by the railroads, this is a partial estimate of the fuel surcharge over-recovery. As part of our recommendations, we suggest a remedy for this reporting gap.

□ The Nature of a Surcharge

As the Board noted in calling for this public hearing, a surcharge is a separately identified component of the total rate charged for the transportation involved.

In a September 22, 2000 announcement, CSX Transportation Inc. (CSXT) defined its fuel surcharge as a "fuel cost recovery charge to offset costs from continuing sharp increases in fuel prices."

¹ Appendix I includes a summary of our qualifications.

That definition captures essential attributes of the proper role of a fuel surcharge. Specifically, the fuel surcharge is intended to recover increases in fuel costs. It is not intended to become a means for generating revenue over and above those fuel cost increases.

The CSXT fuel cost recovery charge was applied to all traffic moving under tariffs, private price quotes and certain contracts that incorporate those general tariffs. CSXT noted the fuel surcharge was not applied to contracts that contain a price escalator index published by a government entity. CSXT specifically cited RCAF as one such index. We concur with this approach of distinguishing among surcharge and non-surcharge traffic. We have incorporated it in our recommended action plan.

"Fuel prices have doubled during the past year," said CSX Corporation Chairman, President and CEO John W. Snow. "We have no recourse but to offset these spiraling, unanticipated fuel cost increases."²

Almost six years later, in calling for this hearing, the Board noted that its authority to regulate the level of a railroad's rates was limited and confined to rates meeting specific criteria. The criteria summarized in the Notice include:

- The Board has jurisdiction over a railroad's common carriage rates, not rates governed by a rail transportation contract
- The Board can review the level of the rate only if there is no effective competition from other rail carriers or modes of transportation
- The Board noted that it was precluded from regulating rates which produce revenues less than 180% of the carrier's variable costs

In addition to the constraints noted in its decision calling for this hearing, under STB regulations, the reasonableness of a rate cannot be challenged if either of the following conditions hold:

- Rates for traffic or services exempted from regulation are free from challenge.
- Rates accepted under the grandfather provision of section 229 of the Staggers Act, which conferred regulatory immunity upon the rate levels in place at that time

Reflecting these constraints on its jurisdiction, the Board stated in its Notice that this hearing was not intended to address the level of surcharges.

² Source: CSXT press release issued September 22, 2000; Jacksonville, FL.

The STB recognizes that it has broad authority over the reasonableness of a railroad's practices. 49 U.S.C. 10702(2).³ The STB recognized that many shippers are opposed to what they see as the railroad practice of labeling a rate increase as a fuel surcharge; an increase seen as going well beyond fuel cost recovery. Clearly, fuel surcharge oversight falls within the jurisdiction of the STB as to the reasonableness of the railroad's practice. Our comments address defects in the railroad fuel surcharge practices.

II. Summary of Our Findings and a Recommendation

As we show in our testimony, railroad fuel surcharges greatly exceed the increases in railroad fuel costs. We find railroad over recovery of fuel costs to be an unreasonable and widespread practice.

We see a convergence in the fuel surcharge methodologies adopted by the railroads, a convergence which is more notable by the apparent confluence of shared errors in those fuel surcharge methodologies. We see two primary errors: the rail fuel surcharge process is incorrectly designed and the data is unnecessarily general and possibly unrelated to the actual rail fuel costs incurred.

1. **The rail fuel surcharge process is incorrect.** The existing railroad practice of applying a fuel cost metric to revenue over-recovers fuel costs. The over-recovery will vary among shipments and commodities and impacts higher rated shipments most heavily. We present and recommend appropriate practices for computing and recovering fuel cost increases.
2. **The rail fuel surcharge data is needlessly general although specific railroad fuel cost data is readily available.** The measurement of railroad fuel cost increases is best done directly using railroad data, rather than attempting to infer railroad fuel cost changes from external non-railroad data series such as highway diesel fuel costs.

Railroad fuel costs are well defined and widely understood. Measurement of changes should be straightforward. Reliance on non-railroad fuel data series, when the railroads have readily available decades of their own direct fuel cost experience, is neither optimal nor necessary.

□ Recommendation

We recommend replacing reliance on non-railroad measures of fuel cost with a simple process using the railroads' own measurement of fuel cost increases. The railroads have demonstrated they can measure railroad fuel cost increases. The railroads have decades of experience in recording the fuel cost component of the

³ The Board cannot use its authority over the reasonableness of a carrier's practices to regulate the level of a carrier's rates. See Union Pacific R.R. v. ICC, 867 F.2d 646 (D.C. Cir. 1989).

Rail Cost Adjustment Factor (RCAF) and the fuel cost component of the predecessor AAR rail cost index.⁴ The procedures recommended in our Action Plan should be applied and overseen in a standardized manner for all carriers.

Our recommended change to proven metrics for fuel costs can restore confidence in the rail fuel surcharge process and eliminate reliance on unproven techniques whose design is unsupported and whose application is inequitable.

As the Board recognized in its Notice, in order to carry out its various statutory responsibilities, the Board requires railroads to collect and submit to the Board extensive cost and revenue information. 49 CFR parts 1200-1280.

We recommend that those reporting requirements be expanded to include fuel costs and fuel surcharge revenue. This will provide accurate information on a carrier's fuel costs and fuel surcharge revenues. Much of the recommended information is already being collected by the railroads. The hard part is done: collecting railroad specific fuel data. The obvious part is pending: simply use that data.

Since passage of the Staggers Rail Act in 1980, rail rate regulation has receded from its former dominant status and is now a rarity. The rail rate process has shifted increasingly toward reliance on market forces. In recent years rail mergers have led to consolidation of the industry and the widespread disappearance of rail to rail competition. As reliance on market forces has increased, the presence of market competition has diminished. This creates recurring and persistent imbalances and stresses in the rail marketplace and reinforces the advisability of adopting reliable metrics of key cost factors such as fuel cost.

III. Analysis of the Railroad Fuel Surcharge

An appropriate fuel surcharge objective is cost recovery of an unanticipated fuel cost increase. However, Class I Railroad Fuel Surcharges are flawed in design. Rather than being directed to cost recovery, they have become revenue generators.

The fundamental flaw in the railroad surcharge is that it applies a cost change percentage not to a base cost but to revenue. Use of revenue as the basis of the fuel surcharge recovers costs differently among commodities. Use of revenue recovers costs differently among industries. Use of revenue over recovers fuel costs since revenues exceed cost by varying and very substantial margins.

⁴ We are familiar with the RCAF. The RCAF was designed and adopted by the rail industry and the AAR Economics and Finance Department while Tom O'Connor served as Assistant Vice President Economics at the Association of American Railroads.

Because the chemical industry has higher than average revenues they also pay much higher fuel surcharges.

Even at the individual shipment level, the impact of fuel surcharges varies significantly. Similar cars in the same train will pay widely different fuel surcharges. Over recovery of fuel cost grows as the individual shipment rate increases.

Somewhat surprisingly, Class I Railroads have each adopted Fuel Surcharge designs which share the same flawed structure of applying a cost increase to revenue. The Class I Railroads Fuel Surcharge structure is both unsupported in its design and inequitable in its application. As noted above, similar shipments transported in the same train can and do pay vastly different fuel surcharges. SK analyses of major rail lanes demonstrate that shipments pay fuel surcharges ranging from 200% to almost 500% of the average fuel surcharge on that lane. Chemicals tend to pay the highest fuel surcharges. SK lane analyses demonstrate that fuel surcharges generate significant and vastly different "fuel profit" margins.

Figures 1 and 2 demonstrate that the fuel surcharge on individual shipments can and does vary from the average fuel surcharge. In this sample of lanes the surcharge on the shipment ranges from less than 80% of the average surcharge to more than 450%. These fuel surcharges were computed based on the 2004 STB Public Waybill Sample and published Class I railroad fuel surcharges.

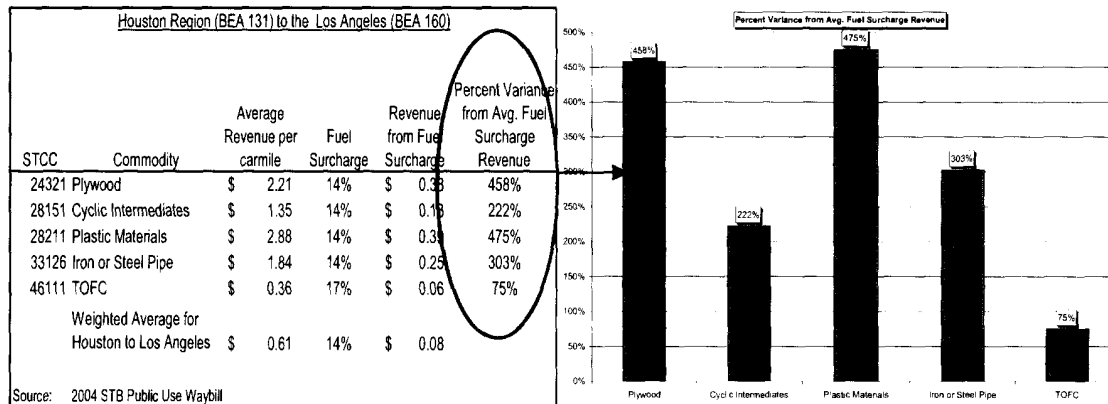


Figure 1. Variations in Fuel surcharge Revenue by Commodity

The following chart shows the same differential surcharge effect, highlighting the dollar amount paid.

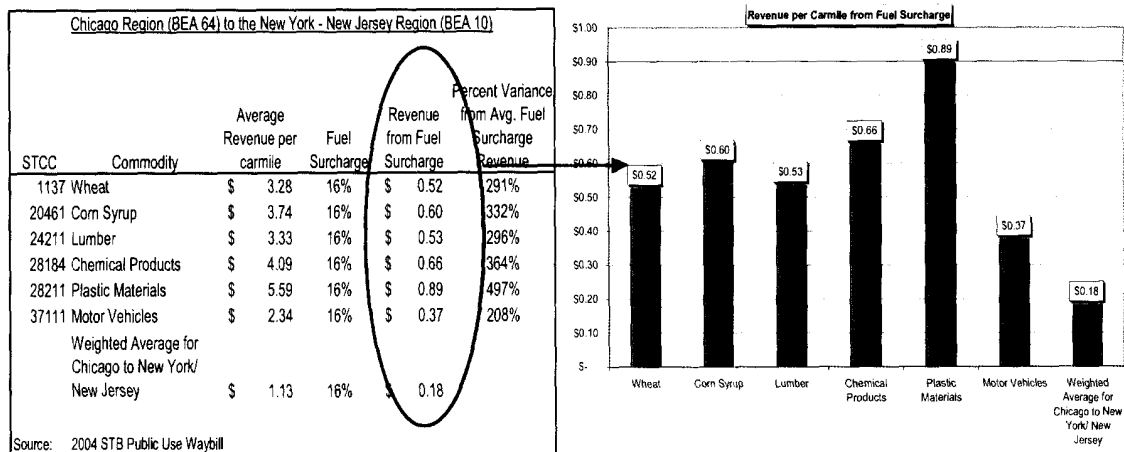


Figure 2. Variations in Fuel surcharge Revenue per mile by Commodity

❑ Relationship of Rail Fuel Surcharges to RCAF

The Rail Cost Adjustment Factor (RCAF) was designed by the rail industry to measure rail costs after passage of the Staggers Rail Act in 1980. RCAF has been reviewed and approved quarterly for more than 20 years by the ICC and the STB. RCAF provides a reliable mechanism for cost recovery and has always included recovery of fuel cost. The fuel component of RCAF demonstrates that the rail industry can measure fuel cost directly. For decades RCAF has routinely provided the railroads a reliable mechanism for recovery of fuel costs.

Fuel cost is currently 12 percent of the costs in the RCAF. Fuel has accounted for 9 % to 12% of RCAF costs over the years. The current railroad fuel surcharge methodologies seek to apply a metric reflecting 12% of the rail costs to all of the rail revenues.

Figure 3 shows the relatively minor effect of including fuel costs in the RCAF. This provides another indication that the double digit rail fuel surcharges are overstated. Until recently, the RCAF with and without fuel were relatively close. In some periods, the RCAF with fuel costs was less than the RCAF without fuel.

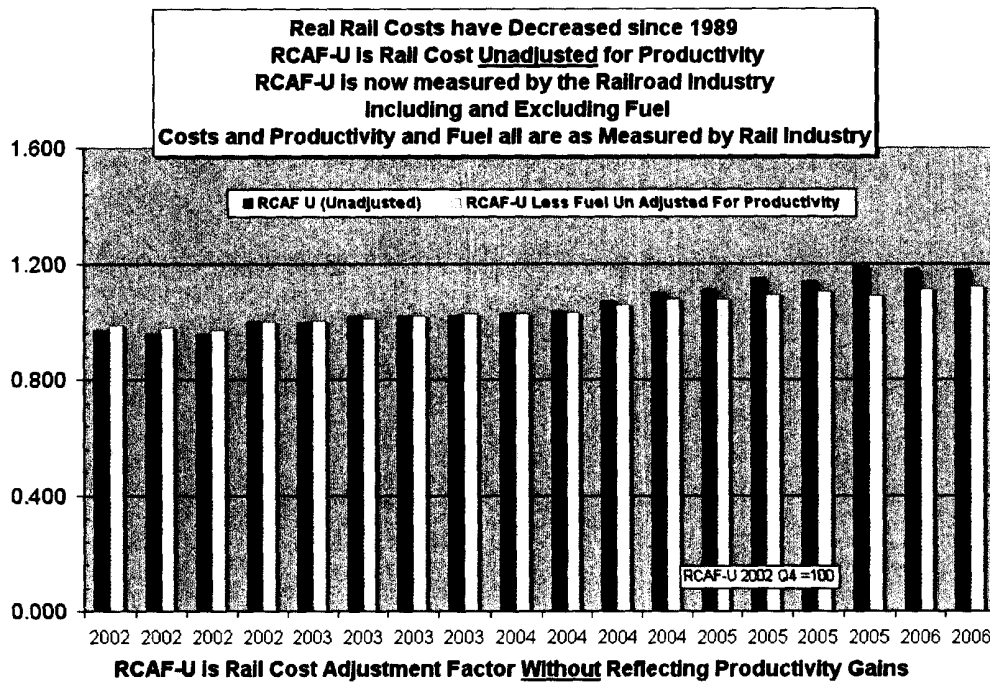


Figure 3. Recent trend in RCAF with and Without Fuel

As shown on Figure 4, viewed as a percentage of freight revenue, each of the railroads and the total of US carriers show annual changes in fuel cost which are well below the railroad surcharge percentages. Note that the relevant measure is not total fuel costs but rather the year over year change in fuel cost. For example 12% in the base year followed by 16% in the subsequent yields a change of 4 percentage points. This pattern again indicates that the railroad surcharge percentages overstate and over-recover the increase in fuel cost.

We note further that with each passing year, much of the prior period's fuel cost is internalized into the rate structure in the normal course of business. Accordingly any base period used in calculating a fuel surcharge has a definite "half-life" after which the costs are no longer appropriately viewed as the base of a change suitable for recovery through a surcharge.

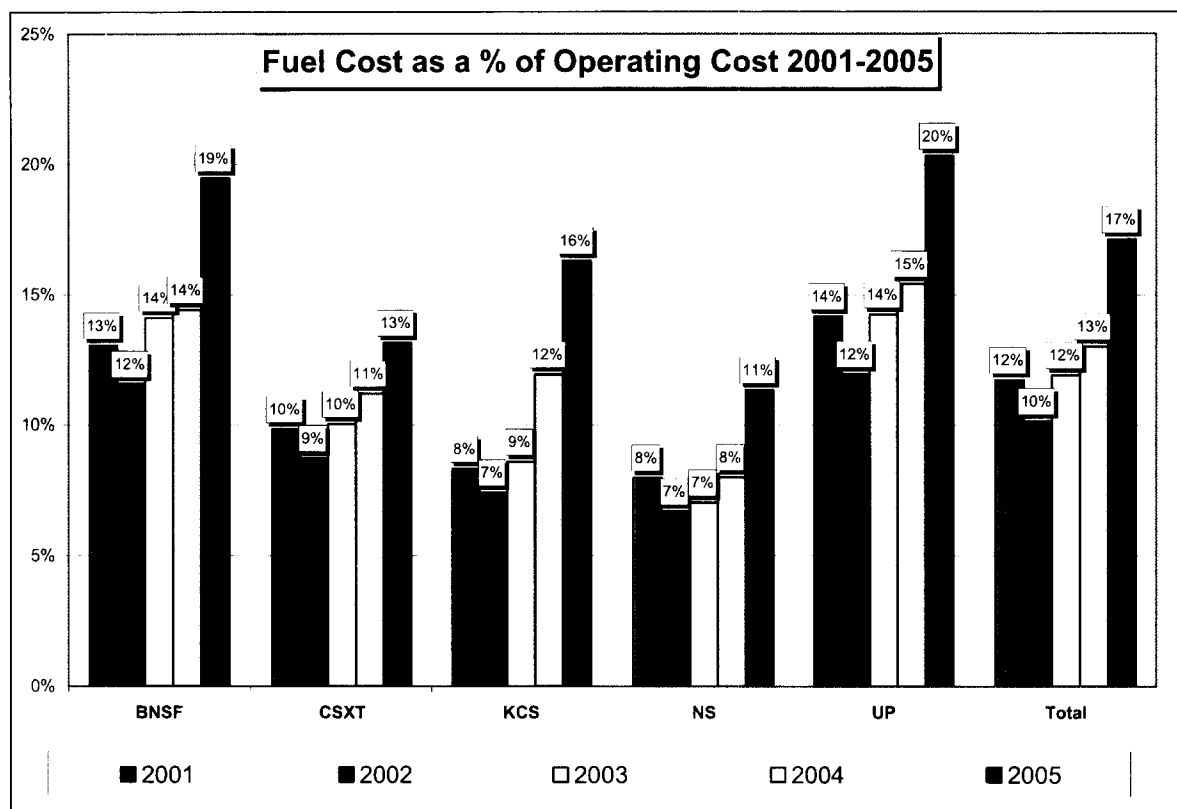


Figure 4: Fuel Cost as a Percentage of Operating Cost

Figure 5 a shows chemical revenues are 12 percent of overall rail revenues. Chemicals are one of the highest rated commodities. Chemicals generate a share of revenue significantly larger than its share of tons, carloads or carmiles.

As Figure 5 b shows, chemical rail tons are only 9 percent of overall rail tons. The railroads' surcharge approach, with its application of fuel costs to revenue virtually guarantees that chemicals bear a disproportionate share of the railroad fuel surcharge.

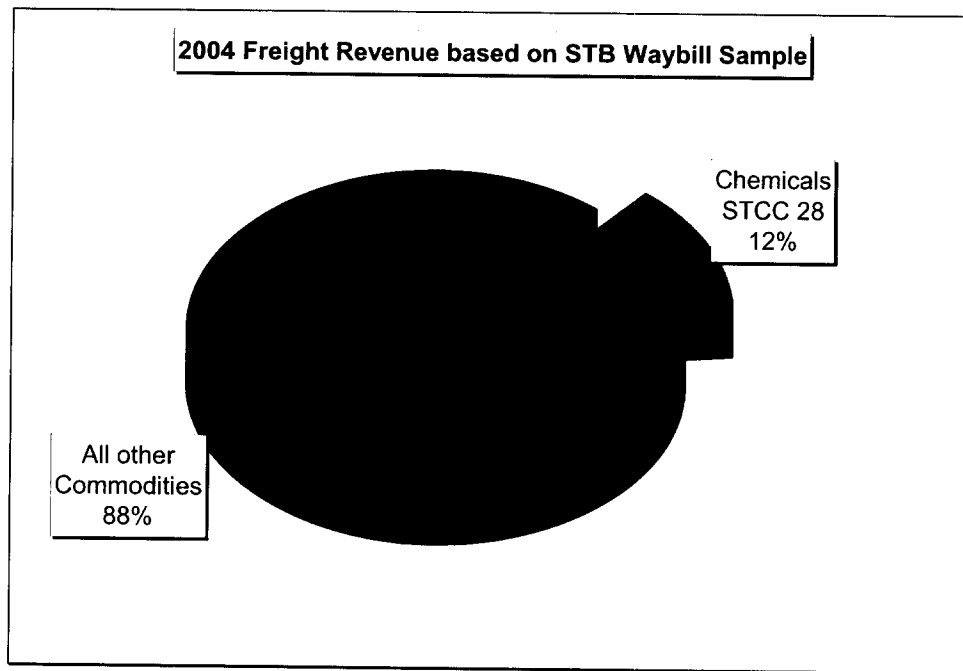


Figure 5a: Chemical Revenue as a Percent of Overall Revenue

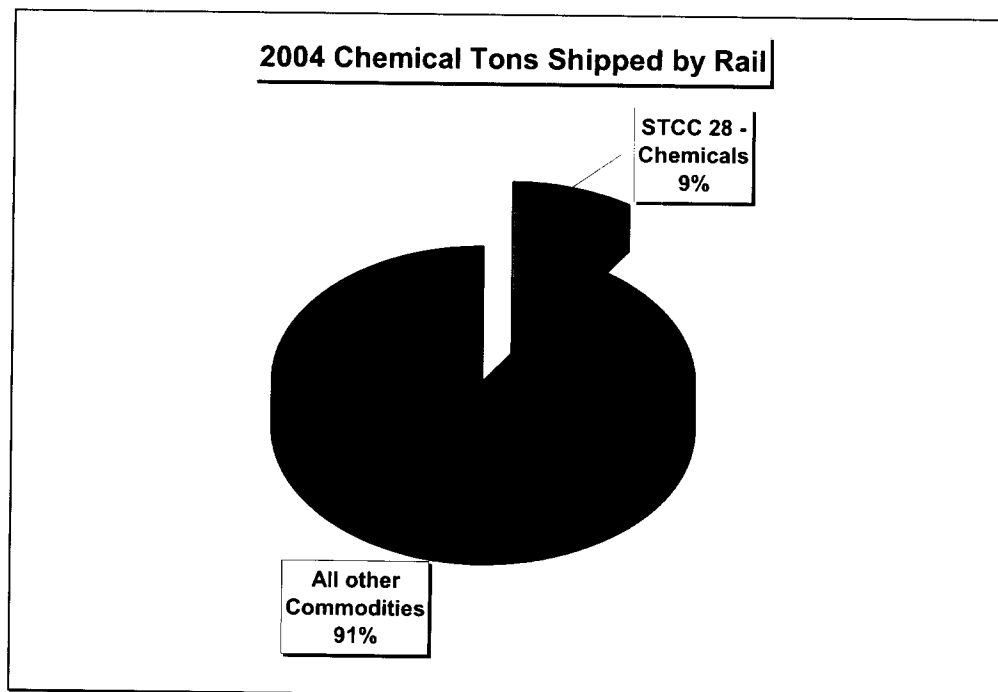


Figure 5b: Chemical Rail Tons as a Percent of Overall Rail Tons

In effect the existing railroad surcharge methods dictate that commodities deemed to have few options bear an excessive and inequitable assessment; in

effect a rate increase presented as cost recovery. Clearly, this is a structural defect which produces inequitable results.

Figure 6 shows that the fuel surcharges claimed by the BNSF and the UP are virtually identical. Figure 7 shows that the fuel surcharges claimed by KCS, NS and CSXT are also virtually identical.

In contrast with this uniformity, fuel cost as a percent of revenues differs both among the carriers and within the same carrier. Again the rationale for the existing railroad fuel surcharge structure is unclear and is at best weakly tied to the economics.

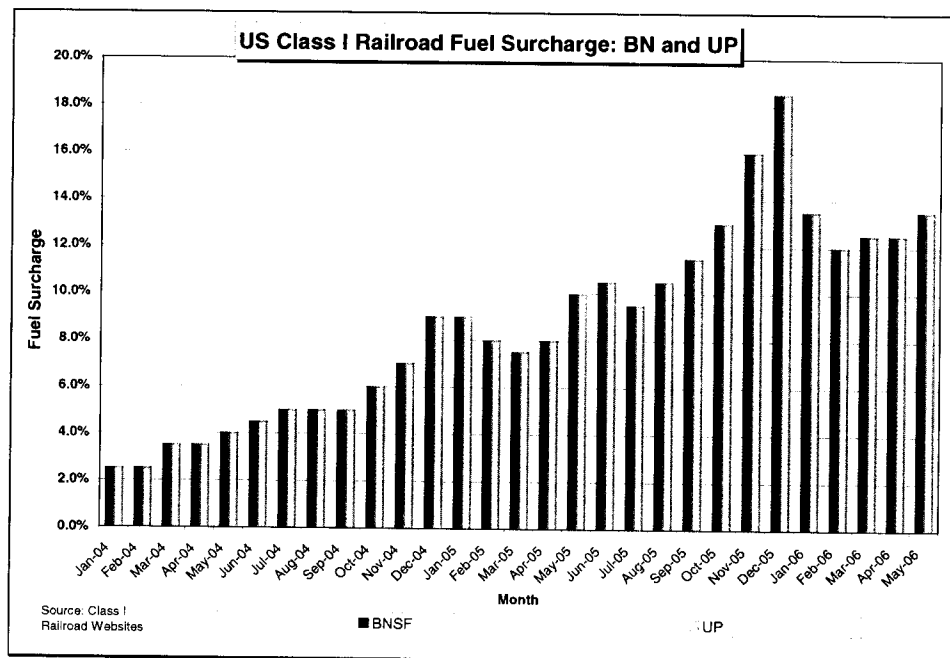


Figure 6: The Fuel Surcharges for BNSF and UP are Virtually Identical

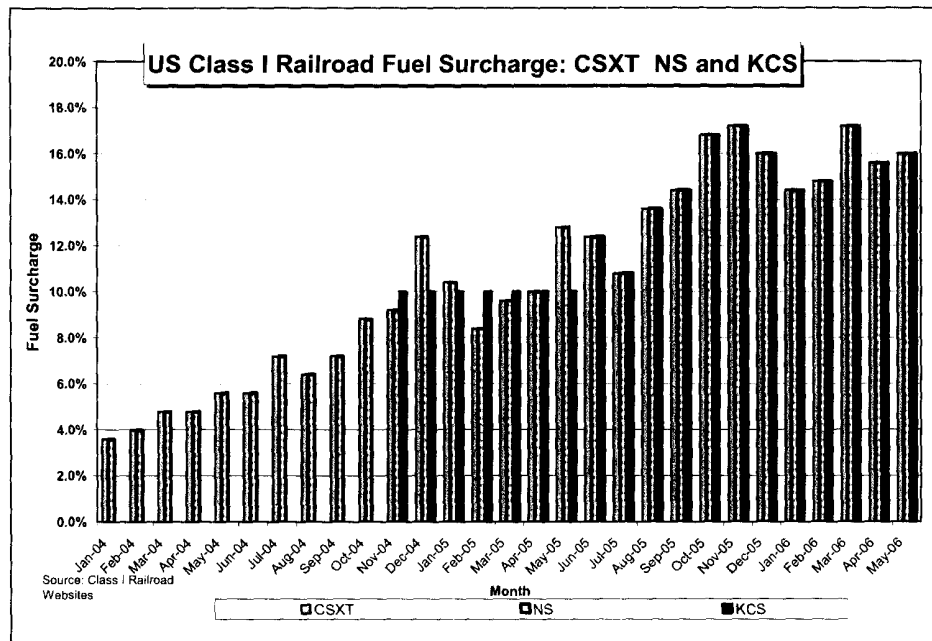


Figure 7: The Fuel Surcharges for KCS, NS and CSXT are Also Virtually Identical

Fuel Surcharge Analysis							
Line		BNSF	CSXT 1/	KCS 2/	NS	UP	Total
1	2005 Fuel Costs	\$ 1,959	\$ 783	\$ 124	\$ 727	\$ 2,393	\$ 5,986
2	2004 Fuel Costs	\$ 1,335	\$ 656	\$ 66	\$ 449	\$ 1,684	\$ 4,190
3	2005 Increase in Fuel Costs, \$ amount needed to be recovered	\$ 624	\$ 127	\$ 57	\$ 278	\$ 709	\$ 1,795
4	2005 Estimated Revenue from fuel surcharge	\$ 1,100			\$ 396	\$ 1,017	\$ 2,513
5	2005 Over Recovery	\$ 476	\$ -	\$ -	\$ 118	\$ 308	\$ 902
Note: Fuel hedging benefits have not been factored in the analysis 1/CSXT estimated fuel surcharge revenue is for Q3 2005 only 2/ KCS estimated fuel surcharge revenue is currently unavailable							

Figure 8: Fuel Surcharge Over-Recovery

Figure 8 shows the magnitude of the over-recovery of fuel costs. We estimated more than \$900 million in over recovery of fuel costs based on data reported by three of the five US railroads. We present a step by step Action Plan which will correct these reporting gaps and make the reporting uniform.

The proven reporting capability of BNSF, NS and UP demonstrates that the recommended Action Plan can be implemented. Uniform reporting is required to make this crucial aspect of cost recovery both transparent and credible.

IV. Remedial Action Plan

To address the issues centered on fuel surcharge practices, our recommended method is a simple Action Plan consisting of five steps. The Action Plan establishes recovery of incurred fuel costs and will be applied even handedly across all tonnage subject to fuel surcharge. We note that this fuel cost recovery process excludes rail traffic for which fuel cost increases have been addressed through the RCAF, contractually, or in other agreed ways. The Action Plan should be applied and overseen by the STB in a standardized manner for all carriers.

1. Require uniform railroad reporting of railroad fuel costs. The fuel cost information should be collected by the railroads, compiled by the AAR and reviewed by the STB. The fuel costs should be measured directly, based on auditable records. This is similar to the RCAF fuel cost data routinely compiled by the AAR and reviewed by the Board.
2. The relevant fuel surcharge measure is the change in the fuel cost. This is computed by comparison of a prior period's recorded fuel cost and a subsequent period fuel cost. The prior period is denoted as the base period. The recorded change in fuel cost is converted to a fuel cost increase or decrease by subtracting the base period fuel cost from the subsequent period fuel cost. This produces the change in fuel cost which the fuel surcharge is designed to recover.
3. For both the base period and the subsequent period, fuel cost will be related to a simple and readily measured service unit such as revenue ton miles. The fuel surcharge is then computed as a fuel cost change per revenue ton mile. This metric reflects both changes in fuel cost and changes in volume.
4. The railroads will also report the actual fuel surcharge revenues they collect during each period. Similarly to RCAF, the data would be collected

by the railroads, compiled by the AAR and reviewed by the STB. Following the guideline stated by the CSXT in September 2000, the data collected by the railroads will also include an estimate of the traffic to which a fuel surcharge would not apply. This "non-fuel surcharge" traffic would include traffic using RCAF as a rate adjustment mechanism; traffic under a contract precluding fuel surcharges and similar agreed exclusions.

5. Comparisons of the fuel costs incurred and the fuel revenues received will be made using appropriate metrics on the "fuel surcharge" traffic after excluding "non-fuel surcharge" traffic. The railroads should not apply fuel surcharges on traffic which excludes those due to contract provisions and other agreements. Railroads should absorb those fuel cost increases. Based on these comparisons any over or under collection of fuel costs incurred on the "fuel surcharge" traffic will be balanced by crediting or debiting the next period fuel surcharge for the prior period over-recovery or under-recovery of costs.

V. Benefits of the Recommended SK Action Plan

- **Benefits for The Rail Shipper**

The rail shipper benefits by providing fuel cost compensation, sustaining needed rail service.

- **Benefits for The Railroads**

The railroads benefit by recovering their fuel costs on a predictable basis.

- **Benefits for The STB**

The STB benefits by ensuring recovery of needed fuel cost increases while preventing unjustified rate increases presented as cost recovery.

These are just some of the benefits provided by the proposed fuel cost recovery mechanism. The action plan provides an opportunity for the parties to move beyond disputes to a better solution.

VI. Recommendation

SK recommends adoption of this simple approach to fuel cost recovery, which ensures adequate cost recovery and restores equity and transparency to the surcharge process.

Appendix I

Qualifications and Experience Of Snavely King Majoros O'Connor & Lee, Inc. And Project Staff

Snavely King Majoros O'Connor & Lee, Inc. ("Snavely King") was founded in 1970 to conduct research on a consulting basis into the rates, revenues, costs and economic performance of regulated firms in the transportation and public utilities industries. The firm has since expanded the scope of its activities to address the problems of unregulated firms and other entities in these and related industries. The firm currently has a professional staff of 9 economists, accountants, engineers and cost analysts.

Snavely King assists clients by providing regulatory and litigation support and by offering management consulting services. The firm's regulatory and litigation support activities involve the development, preparation and presentation of expert witness testimony before courts and regulatory agencies. Over the course of its 28 year history, members of the firm have participated in over 500 proceedings before almost all of the state commissions and all Federal commissions that regulate the utilities and transportation industries in both the U.S. and Canada. The firm has provided litigation support in the form of expert witness or economic research services in antitrust, tax, valuation and fraud litigation cases before Federal and state courts.

In the area of management consulting, Snavely King assists both government and private clients in developing management information systems, evaluating contract performance and conducting management audits.

The firm is organized into two interactive groups. The Utilities Group, headed by Charles W. King, President, and Michael J. Majoros, Jr. and Richard B. Lee, Vice Presidents, provides regulatory support to state commissions, state consumer advocates, user associations and individual users of regulated telecommunications, energy and postal services. It also provides management information services, as well as regulatory and litigation support, to several telecommunications firms.

The Transportation Group, headed by Tom O'Connor, Vice President, specializes in the analysis of the operations, costs, revenues and services of enterprises, both public and private, involved in all modes of surface transportation. Snavely King has developed an array of transportation-related financial and management tools, including detailed models for cost allocation, accounting, traffic flow, and carrier operations. These tools have been successfully employed on behalf of clients in merger proceedings, contract negotiations, strategic planning and operational analyses. Snavely King's transportation practice extends beyond the U.S. borders throughout North America and into Eastern Europe.

Tom O'Connor

Experience

Snively King Majoros O'Connor & Lee, Inc. **Washington, DC** *Vice President (1988-Present)*

Mr. O'Connor has over twenty years' experience in the transportation industry. His experience includes key management and policy positions with government agencies and private industry. He has created and managed numerous computerized transport management and regulatory systems.

Mr. O'Connor has provided expert testimony before state and federal courts and commissions in the U.S. and Canada on economic and policy issues. He has testified as an expert on computerized systems, economics, sampling and costing. He also has served as an impartial and expert monitor of data and processes at issue in litigation on costing.

Mr. O'Connor is directing SK's work relating to the Bulgarian State Railways (BDZ).

DNS Associates Inc., **Washington, DC** *Vice President (1982-1988)*

Mr. O'Connor directed and participated in numerous projects including merger analyses, transportation infra-structure plant and network rationalization and feasibility studies. He designed and implemented mainframe and microcomputer systems for analyzing rail, truck and barge logistics. The computerized cost systems Mr. O'Connor created are in widespread use throughout the United States and Canada.

Association of American Railroads, **Washington, DC.** *Assistant Vice* *President, Economics (1979-1982)*

Mr. O'Connor designed and managed major economic analysis projects. He helped formulate economic policy positions culminating in the Staggers Rail Act of 1980 and its implementation. He submitted expert testimony and appeared regularly in national forums on economic issues.

He directed the most significant computerized industry Costing System project in 40 years and conducted seminars on related economic issues and systems.

He also directed development and installation of a computerized economic and market analysis system now used by virtually all major railroads.

Consolidated Rail Corporation, PA *Assistant Director, Cost & Economics (1977-1979)*

Mr. O'Connor was responsible for all Conrail management and regulatory cost analyses. He implemented and managed computerized economic analysis systems used to guide transportation, pricing and management decisions. Mr. O'Connor also directed profit maximization and plant rationalization programs.

R.L. Banks & Associates Inc., **Washington, DC** *Consultant (1975-1977)*

Mr. O'Connor conducted and directed numerous transportation-related projects in the U.S. and Canada ranging from national logistics analyses to site-specific studies. He specialized in costing systems and appeared as an expert witness on such systems.

U.S. Railway Association, Washington, DC *Manager, Local Rail Service Planning (1973-1975)*

Mr. O'Connor developed the computerized light density lines cost analysis system which defined Conrail. He served as liaison with congressional staffs and shipper groups, as well as federal, state, and local governments. The system he created was a major element in the design and implementation of the streamlined Midwest-Northeast regional rail system.

Interstate Commerce Commission, **Washington, DC** *Economist (1972-1973)*

Mr. O'Connor participated in a comprehensive review of ICC policy decisions and their economic basis.

Education

University of Massachusetts, B.A. in Economics
University of Wisconsin Graduate School; Economics
University of Delaware Graduate School; Statistics
American University Graduate School; Computer Science

Professional Organizations

American Economic Association
American Statistical Association
Transportation Research Board, Committee Chairman
Transportation Research Forum, Past Chapter President
National Defense Transportation Association
Air Force Association
Phi Beta Kappa

Kim Hillenbrand

Experience

Snavelly King Majoros O'Connor & Lee Inc Washington, DC

Analyst, Transportation (2003 to Present)

Mr. Hillenbrand provides analytical support to SK clients and senior consultants. His responsibilities include cost modeling, operations simulation, financial analysis and reporting, database management and research.

Mr. Hillenbrand's work has primarily been in SK's Transportation group. His projects have included extensive cost and revenue analyses of rail freight movements, along with preparation of databases for use in rate negotiations with railroads. Mr. Hillenbrand has prepared action plans and presentations for clients including potential merger analyses, plant site locations, and rail service issues. Additionally, he conducts research in the chemical, petroleum and transportation industries. Mr. Hillenbrand has assisted in the preparation of presentations and testimony before the Surface Transportation Board. In addition Mr. Hillenbrand has assisted in the marketing of SK products to potential clients.

Leventhal Seneter & Lerman PLLC, Washington DC

Temporary Legal Assistant (Spring 2003)

Mr. Hillenbrand assisted in the migration of Televisa's patent and trademark portfolio from Leventhal Seneter & Lerman to Televisa's in house counsel. Mr Hillenbrand managed the distribution of incoming documents including from EEO and FCC filings from clients and assisted in all aspects of LS & L's broadcasting, media, and satellite practices.

Skadden, Arps, Slate, Meagher & Flom LLP, Washington DC

Temporary Legal Assistant (2002)

While contracted with Skadden Arps, Mr. Hillenbrand assisted in a wide range of legal work. Mr. Hillenbrand coordinated a 750,000 page document production and privilege log for a Department of Justice antitrust filing for the Northrop Grumman-TRW merger. He also compiled and managed privilege logs and prepared document productions on behalf of clients for SEC investigations. Mr. Hillenbrand conducted first review of client documents for SEC and Congressional investigations.

North American Securities Administrators Association (NASAA), Washington DC

Temporary Legal Assistant (Spring 2002)

Mr. Hillenbrand assisted in a wide area for projects for NASAA. He assisted state security regulators in the first settlement between New York State and Merrill Lynch regarding conflict of interest between there research groups and investment banking groups. Mr. Hillenbrand conducted verification and complaint checks of stockbrokers and Certified Financial Advisors for investors and answered questions regarding the Series 6 and 63 Exams.

Acsys, Inc (2003) Law Resources (2001-2003) Washington DC

Mr. Hillenbrand provided temporary work for law, financial, and real-estate firms.

RVC (formerly Reuters Venture Capital) London, England

Analyst, Intern (2000)

Mr. Hillenbrand assisted on a survey of Asia venture capital markets in preparation for future venture capital and fund of fund investments in the region. The survey comprised of an analysis of sources of capital, major investors, and destinations of capital in Asia.

Education

Connecticut College, 2001

B.A. Economics

B.A. International Relations

Georgetown University, Summer 1999

Summer Course Work