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April 27, 2006



HAND DELIVERY

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

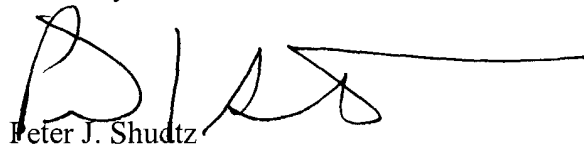
Re: Ex Parte No. 661 - Railroad Fuel Surcharges

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of the Written Statement of CSX Transportation, Inc. A diskette containing an electronic version of the Written Statement is also enclosed.

Please acknowledge receipt of the enclosed Statement for filing by date-stamping the enclosed extra copies and returning them via our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,


Peter J. Shultz

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Enclosures

Public Notice

Office of the Secretary

Public Notice

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 661
RAIL FUEL SURCHARGES

WRITTEN STATEMENT OF CSX TRANSPORTATION

CSX Transportation, Inc. ("CSXT") submits this written statement in response to the Board's request for comment on the subject of rail fuel surcharges collected by railroads. See STB Ex Parte No. 661, *Rail Fuel Surcharges* (Mar. 14, 2006) ("Notice"). Christopher P. Jenkins, CSXT's Vice President - Coal and Automotive Service Group, will present oral testimony at the public hearing on May 11, 2006.

INTRODUCTION

CSXT welcomes the opportunity to explain further its fuel surcharge program to the Board and other interested entities. The fuel surcharge is an important part of our rate negotiations with our customers and is routinely addressed as part of those negotiations. The extraordinary rise in oil prices over the last several years has dramatically increased CSXT's fuel expenses. In an effort to recover those increased expenses and minimize threats to our ongoing efforts to achieve adequate earnings, CSXT has designed a program to adjust its freight rates in response to fuel price changes. Any concern by shippers that CSXT's fuel surcharge might be

over-recovering for increased fuel costs is unwarranted. In fact, CSXT has under-recovered its increased fuel expenses for each year since 2002—the cumulative under-recovery amounts to approximately \$319 million. While CSXT anticipates that in future years its fuel surcharge program may enable it to recover a greater proportion of its total fuel expenses—up to and including full recovery—it is committed to using the fuel surcharge for recovery of its actual increased cost and cumulative loss from increased fuel prices to ensure adequate earnings. CSXT will continue to monitor its fuel surcharge program and will recalibrate it as necessary to ensure that it does so.

Section I of this statement describes the rising fuel costs that were the genesis of CSXT's fuel surcharge and outlines the mechanics of CSXT's fuel surcharge program. Section II sets forth the three key principles of CSXT's fuel surcharge program: (1) full recovery of CSXT's fuel costs; (2) an appropriate distribution of the burden of the fuel surcharge among CSXT's customers consistent with the differential pricing principles that govern all of CSXT's rates; and (3) responsiveness to changing market conditions. Section III addresses the Board's request for comment on the need for additional reporting requirements relating to fuel surcharges. CSXT believes that the existing reporting regime is sufficient, and that shippers' and the Board's need for information is satisfied by CSXT's existing disclosures to the Board about fuel costs and by the public availability of the details of its fuel surcharge program. Finally, section IV discusses the legal context of CSXT's fuel surcharge program. Commercially, economically, and legally CSXT's fuel surcharge is a part of the total freight rate paid by the customer, not a separate charge for some separate service, nor a "practice" that can be evaluated separate from the line haul freight charges.

I. THE HISTORY OF CSXT'S FUEL SURCHARGE PROGRAM

A. Higher Fuel Prices Have Affected A Number of Industries

Over the last several years the price of oil has skyrocketed. On April 26, 2006, the price of West Texas Intermediate Crude Oil ("WTI") stood at \$71.94—a 71% increase from its \$42.13 price at the beginning of 2005 and a 242% increase from its \$21.03 price at the beginning of 2002. This extraordinary price increase has affected all transportation industries. Motor carriers, airlines, barges, and even taxi cabs have confronted unprecedented percentage increases in the cost of fuel. Non-transportation industries using oil as a feedstock or a fuel have also faced fuel cost increases. Auto manufacturers have noted marked changes in consumer demand for larger sport utility vehicles ("SUVs")—a trend that is severely affecting some manufacturers that have positioned their product lines towards SUVs and trucks. The high price of gasoline is a constant source of water-cooler conversation. The soaring price of crude oil in world markets is not a "railroad issue" but a fundamental macro-economic event that is rippling throughout the American economy. Every industry, every business, and every consumer must address and confront the problem in its own way.

Companies in the transportation sector and industries that rely heavily on hydrocarbons for fuel and/or feedstock have been particularly hard-hit by the rapid rise in energy costs, and individual companies in these industries have sought, and continue to seek, to pass through these higher costs to their customers in the form of higher prices for the goods and services produced. In some cases, these higher prices take the form of surcharges; in other cases they are

implemented by withdrawing an existing rate or rate table and publishing a higher rate or rate table.¹

Motor carrier industry trade publications, for example, note that fuel surcharges imposed by trucking firms have grown from approximately 1 percent of a shipper's freight bill in 2001 to 25 percent or more of a typical trucking rate in the first quarter of this year. *Logistics Management*, March 1, 2006, at 34. Consistent with this statement, J.B. Hunt Transport Services, Inc., for example, reported that for the three months ended March 31, 2006, fuel surcharge revenues were \$89.9 million, as compared to revenues from all other sources (*i.e.*, excluding fuel surcharges) of \$690.0 million – a ratio of approximately 13 percent. Similarly, in its 10-K for 2005, YRC Worldwide Inc. (Yellow Transportation and Roadway Express) states that revenues improved year over year in part as the result of increased revenue from a fuel surcharge, which it describes as experiencing a high level of customer acceptance. YRC Worldwide Inc., Annual Report (Form 10-K), at 36 (Mar. 15, 2006). The company notes that:

The fuel surcharge is common throughout our industry and represents an amount that we charge to customers that adjusts with changing fuel prices. We base our fuel surcharge on a published national index and adjust it weekly. Material changes in the index or our cost of fuel can positively or negatively impact our revenue and operating income. Fuel surcharge is an accepted and important component of the overall pricing of our services to our customers. Without an industry accepted fuel surcharge program, our base pricing for our transportation services would require changes. We believe the distinction between base rates and fuel surcharge has been blurring over time and in the pricing continuum it has become difficult to clearly separate all the different factors that influence the price that our customers are willing to pay. [*Id.* at 21.]

Similarly, last October the Transpacific Stabilization Agreement – a conglomerate of 12 major shipping lines that negotiates rates from Asian ports – advised shippers that because of

¹ See, e.g., Janet Ginsburg, *The Pain of Fuel Surcharge Shock* in *Business Week Online* (April 28, 2005) (describing fuel surcharge and other price increases by a variety of industries to offset rising fuel costs).

rising costs of fuel, "TSA member lines are reviewing current calculation formulas and existing contracts, and will be approaching customers to discuss possible options." The TSA noted that "fuel prices have risen faster than quarterly adjusted surcharges" and, as a result, its members had concluded that "they could not wait until the next round of contract negotiations, which begin in March and typically close in May, to pursue the increases." *Shippers: Rising Fuel Prices Could Cause Rate Increases*, in *Business and Industry*, at 10.

Indeed, companies that are unable to readily pass higher fuel costs to their customers face adverse financial consequences. For example, in the electric utility sector, companies that have significant impediments to passing through higher fuel costs to their customers face increased scrutiny from rating agencies and, in some cases, adverse rating actions. *Electric Utility Week*, March 27, 2006, at 19.

In short, across the U.S. economy, companies that are significant consumers of energy are raising prices in order to recover higher energy costs. These price increases take the form of surcharges, list price increases, or combinations of the two; and these price increases cannot always be achieved uniformly, due to contractual restrictions and market factors including the ability of certain customers to absorb those increases. The position CSXT finds itself in, and the solutions it has adopted, are consistent with the experience of these other industries. Furthermore, the need CSXT has to recover its increased fuel costs is particularly acute now, when our shippers are asking us to improve our service and to invest significantly in additional rail capacity, and at a time when CSXT is making such investments at record levels. As the experience of certain electric utility companies makes clear, if the financial markets perceive that we will be constrained from recouping these costs, this will have an adverse effect on our ability to raise the funds necessary to undertake these investments.

B. Higher Fuel Prices Have Caused CSXT's Fuel Expenses To Rise Sharply

CSXT used over 595 million gallons of diesel fuel in 2005, making it one of the largest fuel consumers in the United States.² Diesel fuel constitutes one of CSXT's most significant variable costs. Every \$10 per barrel increase in the price of WTI increases CSXT's fuel expense by approximately \$180 million. Indeed, the extraordinary increase in fuel costs over the last several years has more than doubled CSXT's fuel expense. Before the last few years of increased fuel prices, CSXT could expect to pay \$0.70 per gallon for diesel fuel (which correlated to an approximate WTI price of \$23.00 per barrel). Accounting for the impact of changes in traffic, CSXT's baseline fuel expense at this price would be \$400 million in 2002, \$417 million in 2003, \$431 million in 2004, and \$417 million in 2005. CSXT's actual fuel expense since 2002, however, is starkly higher than this baseline: \$449 million in 2002 (\$49 million over the baseline); \$566 million in 2003 (\$149 million over the baseline); \$736 million in 2004 (\$305 million over the baseline); and \$1.031 billion in 2005 (\$614 million over the baseline). The first quarter of 2006 continued this trend. CSXT spent \$288 million on fuel during the first quarter of 2006, a 25% increase from its fuel expense in the first quarter of 2005. CSXT has worked to reduce its fuel expense by improving fuel efficiency—for example, through the use of auxiliary power units that reduce the amount of diesel fuel used while locomotives are idling. Through various initiatives, CSXT has reduced its fuel consumed per gross ton mile by 3.3% since 2003. But even with this improved efficiency, the increased price of fuel has drastically affected CSXT's total fuel cost. CSXT's cumulative fuel expenses over the last four years have been **\$1.11 billion** higher than they would have been without the increased price of

² The fuel consumption and expense figures in this Statement include fuel expenses for CSX Intermodal, which uses a different cost recovery mechanism than CSX Transportation, and do not include hedging activities.

fuel. CSXT's fuel surcharge program is designed to recover this astounding increase in its costs for fuel.

B. CSXT's Fuel Surcharge Program

CSXT's first post-Staggers Act fuel cost recovery program was implemented on October 25, 2000, and published as Item 12000 to each of CSXT's major terms and conditions tariffs, CSXT 8100 and CSXT 8200 (coal). On June 1, 2003, CSXT refined its fuel surcharge formula to reflect market conditions and replaced Item 12000 with Item 12000-A. Item 12000-A is intended to recoup CSXT's increased fuel costs by adjusting freight rates with the price of oil. Item 12000-A imposes a 0.4% surcharge for every \$1.00 that the average price per barrel of WTI increases above a baseline of \$23.00. For example, if the average price per barrel of WTI is between \$23.01 and \$24.00, the surcharge will be set at 0.4%, and if the average price of WTI is between \$32.01 and \$33.00, the surcharge will be set at 4%.

Under Item 12000-A, CSXT constantly revises its fuel surcharge to reflect current price data. The WTI average price for each month is used to set the fuel surcharge for the second calendar month following that month. For example, the fuel surcharge for May 2006 is a function of the WTI average price for March 2006. Moreover, Item 12000-A creates a simple formula that shippers can use to monitor future fuel surcharges. WTI is a standard measurement of fuel costs, and customers can access current WTI prices easily in the Wall Street Journal or on CSXT's website.³ CSXT's website also includes a detailed matrix that illustrates which surcharges will be triggered by particular WTI prices.⁴

³ See http://shipCSXT.com/public/ec.shipCSXTpublic/Main?module_url=/ec.pricingpublic/Wti.

⁴ See http://shipCSXT.com/public/ec.shipCSXTpublic/Main?module_url=/ec.pricingpublic/Tariff.

II. KEY PRINCIPLES OF CSXT'S FUEL SURCHARGE PROGRAM

CSXT's fuel surcharge program is designed around several key principles. First, fuel surcharges should enable CSXT to fully recover its fuel costs to ensure adequate earnings. Second, fuel surcharges should be fairly distributed among customers in an effective and administrable way. Third, fuel surcharges should be responsive to changing market conditions. Each of these principles is detailed below.

A. CSXT's Fuel Surcharge Is Designed to Promote Full Recovery of Increased Fuel Costs to Ensure Adequate Earnings.

As discussed above, CSXT's cumulative increase in fuel expense since 2002 has exceeded \$1.1 billion. The Board rightly recognizes that "railroads can reasonably be expected to devise methods to collect increases in those costs from their shippers." Notice at 1. This reflects a longstanding policy. As far back as 1975, the ICC recognized that fuel surcharges are an appropriate method for railroads to recover fuel expenses to ensure adequate earnings. *Cf. Fuel Related Increases*, X-305-A, 349 I.C.C. 173, 175 (1975) (describing fuel surcharges approved in response to spike in oil prices).⁵

CSXT's fuel expense for 2005 alone was \$614 million higher than it would have been with baseline fuel prices. It is certainly appropriate for CSXT to pass this extraordinary

⁵ During the early and late 1970's, prior to the enactment of the Staggers Rail Act of 1980, the ICC authorized railroads to collect surcharges based on freight revenues to recover increases in fuel costs. During the oil embargo of 1973-1974, in response to the rapidly increasing fuel costs being incurred by common carriers, the ICC issued Special Permission No. 74-1825, which authorized such carriers and freight forwarders to file, on short notice, surcharges based on fuel price increases. *See* Special Permission No. 74-1825, 38 Fed. Reg. 34771 (Dec. 18, 1973). Pursuant to that authority, the Nation's railroads filed a number of rail surcharges before Special Permission No. 74-1825 expired in September 1974. *See Fuel Related Increases*, X-305-A, 349 I.C.C. 173, 174-175 (1975).

Similarly, in response to dramatic increases in fuel costs during the 1978-1979 period, the ICC issued orders in June 1979 authorizing railroads and other carriers to use surcharges to recover such increases. *See* Ex Parte No. 311, *Expedited Procedures for Recovery of Fuel Costs*, Decisions served June 1, 1979, June 15, 1979, and June 19, 1979 (44 Fed. Reg. 37427 (1979)). The ICC found that the "emergency" situation that existed "dictate[d] that a fuel-based surcharge the appropriate method of implementing" future fuel-based rate increases. *Id.*, Decision served June 1, 1979, at 2. Consistent with those decisions, the nation's railroads filed various fuel-based surcharges. *See, e.g., Coal, Colstrip, Kuehn, and Decker, MT, To Superior, WI*, 364 I.C.C. 152, 153-154 (1980) (noting that between June 5, 1979, and October 15, 1979, the ICC "approved a series of [fuel] surcharges totaling 4.7 percent for all the Nation's railroads," with the exception of coal traffic moving in unit-train rates subject to annual escalation).

additional expense on to shippers. Indeed, if CSXT were not permitted to recover this significant expense, its drive for sustained revenue adequacy and its ability to make necessary capital investments would be seriously hampered. The Board and our customers are well aware of the extraordinary capital expenditures CSXT is undertaking to increase the capacity of its network in the face of unprecedented demand for rail transportation. Forcing CSXT to absorb the entire cost of skyrocketing fuel prices would severely undercut its ability to afford capital investments, maintain its facilities, and improve our service.

The Board has noted that shippers have “voiced concerns that recent fuel surcharges collected by railroads are designed to recover amounts over and above increased fuel costs.” Notice at 1. This concern is certainly not true for CSXT’s fuel surcharge program. In fact, CSXT has under-recovered its excess fuel expenses for each year of its fuel surcharge program. This under-recovery is a function of the nature of CSXT’s business. A very large proportion of CSXT’s carloads are carried pursuant to contracts with its customers—not pursuant to common carrier rates. When Item 12000-A went into effect on June 1, 2003, CSXT could not apply it to many existing contracts. Since June 1, 2003, however, CSXT has sought to incorporate the fuel surcharge into new contracts and renewed contracts, and in the alternative has sought to include an RCAF provision to permit some recovery of increased fuel costs. As a result, nearly 80% of CSXT’s traffic is now subject to fuel adjustments, and we anticipate that these will reach an ever-increasing amount of traffic in the coming years.

Because of CSXT’s inability to apply the fuel surcharge immediately to all of its contract traffic, that surcharge has not recovered CSXT’s fuel costs for any year since 2002. Since 2002, CSXT’s cumulative under-recovery of fuel expense increases not recovered through the fuel surcharge program is approximately \$319 million. This under-recovery belies any suggestion

that CSXT has profited from its fuel surcharge program. On the contrary, CSXT's fuel surcharge program is calibrated to recover increased fuel costs to ensure adequate earnings.

Although CSXT anticipates that future years of the fuel surcharge program will allow more complete recovery of excess fuel expenses, it is likely to be some time before it has recouped its cumulative loss from increased fuel prices. CSXT continually monitors both its increased fuel expenses and its fuel surcharge program, and as it approaches full recovery of its cumulative under-recovery of such costs, it will re-examine the program and make any adjustments necessary to promote that recovery to ensure adequate earnings.

B. CSXT's Fuel Surcharges Are Fairly Distributed Among Our Customers

The fuel surcharge that CSXT has designed is an appropriate way to allocate the burden of the fuel surcharge among our customer base. Development of a cost index that is applied across all rates—so that a percentage increase observed in the cost of providing rail service results in an identical percentage increase in rates—is common in the railroad industry. The Board's RCAF, RCAF-U and RCAF-5 are applied in precisely this fashion. Because the fuel surcharge is calculated as a percentage of the base rate, it incorporates all the competitive considerations that drive the parties' rate negotiations: value of commodity, value of service, length of haul, loading weight, operating considerations, available capacity, equipment availability and ownership, source and geographic competitive factors. Just as the cost of longer and heavier movements is typically reflected in the rates for those movements, so will the cost of increased fuel consumption.

To be sure, CSXT's base rates also reflect the relative market competitiveness of individual movements. This is entirely appropriate; the differential pricing principles that support setting rates based on competitive factors apply equally to base rates and to rate

surcharges. In this regard, it is worth noting that many carriers in the trucking industry, which is often CSXT's most significant competition, regularly assess fuel surcharges as a percentage of a base rate.

The reasonableness of CSXT's approach is highlighted by considering the alternative. To replace CSXT's understandable and readily-calculated percentage with an attempt to precisely assess "the increased cost of fuel for the particular movements to which the surcharge is applied" would invite an administrative nightmare. Taken literally, such an approach would necessitate the calculation (actually, the estimation) of the precise amount of fuel consumed to handle each shipment. Since fuel consumption is a route-specific function of factors like mileage, grade, speed, terrain, and train weight, requiring a separate approximation of fuel cost for each individual carload movement over CSXT's network would be an impossibly complex burden on both carriers and shippers. In 2005, CSX moved over 7.35 million units of traffic. Calculating the precise mileage traveled by each unit is simply not feasible. Indeed, any call for movement-specific cost additives will inevitably be, at best, a very imprecise approximation.

In its Notice, the Board notes that "shippers are complaining of the railroad practice of labeling a rate increase as a fuel surcharge when the increase is not directly and closely correlated to increases in the cost of fuel for the particular movement to which the surcharge is applied." Notice at 2. This complaint misunderstands the fundamentals of demand-based pricing. The economics of demand-based pricing tell us that even when the effect of an increased cost of fuel is identical for two movements, the net effect on the rates charged the two movements will not be identical if they do not have the same elasticities of demand.

Attachment 1 to this statement is a simple example of a railroad that handles two movements. Commodity A is more price inelastic, and Commodity B is more price elastic, each

with a marginal cost of \$6.00 per ton. The top half of Attachment 1 calculates Ramsey prices required to recover the total cost of \$45,000 hypothesized for the railroad. Attachment 1 then assumes that increased fuel costs cause marginal costs for both movements to increase from \$6.00 per ton to \$7.00 per ton.

The bottom half of Attachment 1 recalculates the Ramsey prices that would be required to fully recover the costs of increased fuel *and* fully recover the total costs of the railroad. Increases in rate levels cause volumes of both Commodity A and Commodity B to decline somewhat, but because Commodity B is more price sensitive than Commodity A, the same absolute increase in price would cause a disproportionate decline in Commodity B's volumes. The Ramsey pricing principles set forth in Attachment 1 reveal that the most efficient way to recover these increased fuel costs is to increase the price paid by Commodity B by \$1.02 per ton, and to increase the price paid by Commodity A by \$3.20 per ton. Any effort to further increase the fuel surcharge on Commodity B and decrease the surcharge on Commodity A would cause the fixed costs of \$33,000 for the railroad to be spread over a smaller number of tons, increasing the average rate paid by the average shipper by more than would be the case under the Ramsey-based solution. In short, surcharges that are not necessarily "directly and closely correlated to increases in the cost of fuel" for each individual movement are precisely what one would expect under the demand-based Ramsey pricing paradigm that is the cornerstone of the Board's pricing regulations.

C. CSXT's Fuel Surcharge Is Responsive To Changing Market Conditions

CSXT's fuel surcharge is frequently updated to reflect current fuel costs. Because CSXT recalculates the fuel surcharge every month, it is based on the most recent data that can be used while giving fair notice to customers. For example, the fuel surcharge rate for May 2006 was

publicized on April 3, 2006 and was based on the average WTI price for March 2006. This system ensures that the fuel surcharge rate can fall in response to declining fuel costs as readily as it can rise in response to rising fuel costs.

CSXT will continue to monitor the fuel surcharge program and is prepared to make appropriate adjustments so that the program recovers increased fuel costs to ensure adequate earnings.

III. CURRENT REPORTING REQUIREMENTS ARE ADEQUATE FOR THE BOARD AND SHIPPERS TO MONITOR FUEL COSTS AND FUEL SURCHARGES

CSXT provides extensive information about its fuel costs and fuel surcharges in several forums, and this information is therefore readily available to our customers. CSXT is committed to thorough, timely and convenient communication with our customers about fuel surcharges.

Our website, www.shipcsx.com offers easy navigation to a host of information for customers:

- A matrix that details the precise surcharge that will apply for each average WTI price
- Current and past WTI prices
- Current fuel surcharge
- Next month's fuel surcharge (once determined)
- Following month's fuel surcharge (projected based on WTI price month-to-date)
- The tariff items

And, for our customers who have subscribed, CSXT sends a monthly electronic letter actively advising of the upcoming month's fuel surcharge at no cost to the customers.

As a result, CSXT's fuel surcharge program is completely transparent to its customers and the general public. Indeed, because the fuel surcharge is calculated by applying a simple formula to a widely available measure of fuel prices, shippers can readily predict future

surcharge amounts before CSXT has announced them. Moreover, CSXT and its customers routinely discuss the details of and need for the fuel surcharge program during negotiations and on an informal basis. We will continue to have these discussions with our customers in the future as part of negotiations over rates.

In addition, CSXT already reports essential data on its fuel costs to the Board. CSXT's R-1 includes both an accounting of its consumption of diesel fuel and an account of its total fuel costs. *See* CSX Corporation, 2005 Annual Report (Form R-1), at 91. CSXT respectfully submits that this information is fully sufficient to assure the Board that CSXT's fuel surcharges are reasonable and to enable shippers to monitor their fuel costs. CSXT therefore does not believe that there is a need for any additional reporting. Nevertheless, should the Board wish to consider expanding railroads' reporting obligations in this area, CSXT is willing to participate in an appropriate rulemaking to consider changes to the information required by Form R-1. CSXT respectfully requests that any reporting obligation be prospective only and that the Board allow it a reasonable time to adjust its systems to comply with such a requirement.

IV. CSXT'S FUEL SURCHARGE IS A MECHANISM THAT IS INTEGRAL TO THE TOTAL FREIGHT RATE AND CANNOT BE ADDRESSED SEPARATELY AS A "PRACTICE"

CSXT welcomes the opportunity to explain its fuel surcharge program at this public hearing, and believes that this discussion should fully satisfy any concern of the Board or shippers about whether CSXT's fuel surcharges are closely tied to our increased fuel costs. CSXT will be attentive to the comments of the Board and of its customers about its fuel surcharge program, and CSXT remains open to reexamining its program as necessary.

In addition, several points about the legal status of CSXT's fuel surcharges should be clarified. *First*, as the Board recognized in its Notice for this proceeding, rail fuel surcharges are

components of a railroad's rates. See Notice at 2 ("A surcharge is a separately identified component of the total rate that is charged for the transportation involved."). This recognition accords with the Board's and the ICC's past holdings that surcharges should be regarded as an integral part of the total freight charges paid by the shipper to the carrier.⁶ Therefore, the level of any fuel surcharge rate cannot be examined independently from the total rate charged the customer.⁷

Second, because rail fuel surcharges are rates, the Board's jurisdiction to consider the reasonableness of the level of any particular rate is circumscribed. For example, the Board has consistently held that it has no jurisdiction over fuel surcharges that have been incorporated into contract rates. See 49 U.S.C. § 10709; *Wisconsin Central Ltd. – Petition for Declaratory Order*, STB Docket No. 41995, 2001 STB LEXIS 569, at *8 (June 15, 2001) ("[R]eferenced tariff terms became contract terms for purposes of transportation performed under contract."). Moreover, the Board has recognized that it does not have jurisdiction to determine that a challenged rate is unreasonably high unless it first determines that the railroad has market dominance – *i.e.*, that (1) there is an absence of effective competition from other rail carriers or modes of transportation for

⁶ See, e.g., *Parrish & Heimbecker, Inc. – Petition for Declaratory Order*, 4 S.T.B. 866, 877 (2000) ("surcharges are assessed solely in connection with line-haul movements and form part of, or an addition to, the line-haul rate"); *Parrish & Heimbecker, Inc. – Petition for Declaratory Order*, Decision served May 25, 2001, at 3 (denying reconsideration) ("surcharges, which by their nature apply to line-haul service, are effectively indistinguishable from line-haul rates"); *Second Passengers in Sleeping Car Berths or Sections*, 182 I.C.C. 636, 639 (1925) ("The surcharge is, in fact, a part of the fare accruing to the railroad for the transportation of passengers conveyed by it, and any increase in the surcharge is equivalent to an increase in the rate of passenger fare per mile"); *In the Matter of Charges for Passengers Traveling in Sleeping and Parlor Cars*, 95 I.C.C. 469, 478 (1925) (surcharge for transportation of passengers in sleeping and parlor cars "ought not to be regarded as an independent third charge upon the passenger," but instead as a convenient method of computing an addition to the basic passenger fare).

⁷ See *Great Northern Ry. Co. v. Sullivan*, 294 U.S. 458, 462-463 (1935) (although the ICC may determine whether a "proportional" part of a combination rate is just and reasonable without passing upon the validity of the combination rate as a whole, "the commission may not order or permit payment of damages by way of reparation without finding that the amount of the [combination] charge was unjust and unreasonable"); *Kansas City Power and Light Co. v. The Kansas City Southern Ry. Co.*, 361 I.C.C. 848, 853 (1979) ("*Great Northern* holds that we cannot find a rate unreasonable unless we find the *entire* rate unreasonable. That is, we cannot find a rate to exceed a reasonable maximum by examining only one of its components") (emphasis in original).

the transportation to which the challenged rate applies; and (2) the revenue-to-variable-cost percentage for such transportation exceeds 180 percent. *Id.* § 10707(a).

The Board has rightly recognized these limitations on its authority and has disavowed any intent “to address the level of surcharges.” Notice at 2. Instead, the Board posited that the calculation of fuel surcharges might be addressed as a potentially unreasonable “practice.” *Id.* However, the Board’s authority to regulate fuel surcharges as a “practice,” is limited by the principle that the agency cannot regulate rates using its jurisdiction over unreasonable practices. *Union Pacific Railroad v. ICC*, 867 F.2d 646, 649 (D.C. Cir. 1989). And, under *Union Pacific*, when determining whether an action addresses a “rate” or a “practice,” “form must yield to substance.” *Id.*

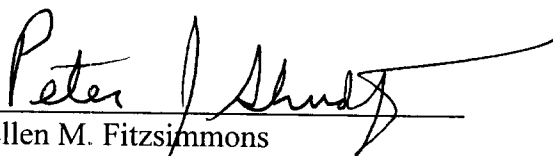
CSXT recognizes that at this stage the Board has called a public hearing so that it can fully inform itself of the views of the shipping public as well as hearing from the carriers, and CSXT appreciates the opportunity to participate in this proceeding. Unquestionably, however, the “substance” of CSXT’s fuel surcharge program is that of a rate. Any determination by the Board that a particular fuel surcharge level might be “unwarranted” would amount to a determination about the reasonableness of a rate—not about a practice. The Board has made clear that a shipper’s complaint about the “mechanism used to establish the rate levels” is a complaint about a rate—not about a practice. *National Grain and Feed Assn. v. Burlington Northern R.R. Co.*, Docket No. 40169, 8 I.C.C.2d 421, 432, *rev’d on other grounds sub nom. National Grain and Feed Assn. v. United States*, 5 F.3d 306 (8th Cir. 1993).

V. CONCLUSION

CSXT’s fuel surcharge program is eminently reasonable. CSXT’s fuel surcharge program is designed to promote the recovery of its increased fuel expenses in a way that ensures

adequate earnings and allocates such increased expenses appropriately among all our customers, consistent with the differential pricing principles that govern all of CSXT's rates. CSXT will continue to monitor its fuel surcharge program and will make any appropriate adjustments to ensure that the program allows full recovery of increased fuel costs to ensure adequate earnings.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter J. Shudtz", is written over a horizontal line.

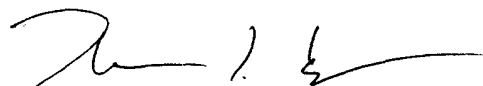
Ellen M. Fitzsimmons
Peter J. Shudtz
Paul R. Hitchcock
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

ATTACHMENT 1

	Commodity A	Commodity B	Total
Starting Point Assumptions			
Price	\$34.766	\$10.234	
Marginal Cost	\$6.000	\$6.000	
Volume	1,000.00	1,000.00	
Total Cost			\$45,000
Elasticity of demand	-0.6	-1.2	
Value of Constant	0.4964511	0.4964511	
Total Marginal Cost	\$6,000.00	\$6,000.00	\$12,000
Total Contribution to Fixed Costs	\$28,766.183	\$4,233.830	\$33,000
Total Revenues	\$34,766.183	\$10,233.830	\$45,000
Assume Fuel Price adds \$1 to Cost			
Price	\$37.967	\$11.250	
Marginal Cost	\$7.000	\$7.000	
Volume	944.8	880.9	
Total Cost			\$45,779
Elasticity of demand	-0.6	-1.2	
Value of Constant	0.4964511	0.4964511	
Total Marginal Cost	\$6,613.319	\$6,166.160	\$12,779
Total Contribution to Fixed Costs	\$29,256	\$3,744	\$33,000
Total Revenues	\$35,869	\$9,910	\$45,779

CERTIFICATE OF SERVICE

I verify that on this day, April 27, 2006, I have caused copies of the Written Statement of CSX Transportation to be served upon all parties of record in this proceeding by first-class mail or more expeditious method of delivery.

A handwritten signature in black ink, appearing to read 'Matthew J. Warren', is written over a horizontal line.

Matthew J. Warren