

TESTIMONY BEFORE SURFACE TRANSPORTATION BOARD

**MAY 11, 2006
WASHINGTON, D.C.**

216399

RE: STB EX PARTE 661

RAIL FUEL SURCHARGES

**Submitted by: James L. Conway, Vice President of Sales and Marketing
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Griffin Industries of Cold Spring, Ky. would like to thank the Surface Transportation Board for holding this important hearing regarding the practice of fuel surcharges being added to the base cost of transporting cars by the nation's railroads. We would also like to express our thanks to the board for allowing our representative, Mr. James L. Conway – Vice President of Sales and Marketing, to enter these comments as testimony in this matter.

Griffin Industries is a 63 year old family owned company that is involved in an Agri business enterprise. We recycle all types of food wastes into usable commodities that are used by a variety of customers in many industries. We currently operate some 23 production plants in the SE United States with over 1500 employees. We distribute our finished products from the East Coast to the West Coast and from Canada to Mexico on both rail and highway. We ship both liquid fats and dry feed commodities in our fleet of over 500 rail cars.

Griffin Industries understands that the cost of fuel has escalated at an increasing rate over the past few years. We also understand, as a large truck fleet operator, that these costs must be met in the course of doing business. Certainly we appreciate the fact that the rail road companies in this country are a vital link in our transportation infrastructure and deserve to make a suitable return on both their asset investment and service provided.

We view the rail service providers as companies without traditional competitors. Many rail customers like Griffin usually have only one, or at the most two, provider of rail service at their individual plant locations. Thus, we have no recourse to access competitive bids or alternative suppliers for our transportation needs on the rail. In the case of rail fuel surcharges this issue might not be too significant since all of the roads have nearly identical methods of determining and levying fuel surcharges.

I personally have presented my concern over the past three years to rail road representatives who call on our company that their method of assessing fuel surcharges is

unfair and somewhat arbitrary. At the same time we have experienced these recent escalating fuel prices we have also been subjected to aggressive base rate increases from all rail carriers. Most have even discontinued the practice of negotiating two to three year contracts and leave us with only tariff rates that are subject to change with little notice. This practice has forced us to change our method of doing business with our customers who typically bought on a delivered basis with two to six months contracts at a time. These significant increases in rail costs have resulted in losing some of our long time customers.

These increased rates are justified by the railroads based on the RCAF (RAIL COST ADJUSTMENT FACTOR). This calculation is done by AAR (Association of American Railroads) and then is submitted to the STB for approval. One of the major components, but not the only one, of the RCAF is fuel. Any increase/decrease in the quarterly price of fuel paid by rail roads is factored into the equation and leads to the appropriate change in the factor.

At the prescribed time this RCAF factor is used to adjust the contracted or tariff rates that a customer must pay the carrier. Clearly, increased fuel costs have already been accounted for in this adjustment and the rail roads have passed it through in the form of higher base rates.

Now comes the rub of "fuel surcharges". This surcharge is added to the total of the new rate to supposedly cover the increased fuel cost. It is supposedly measured by the increase in cost of #2 diesel fuel since Feb. of 1991. Obviously, this becomes a duplicate action to recover these increased fuel costs.

The other exacerbating factor of this fuel surcharge is that it is applied to the entire rate. In other words, the surcharge is applied not only on fuel costs but applied against labor costs, asset purchases and all other cost inputs as well as an acceptable profit margin. As base rates go up, as they clearly have over the past couple of years, this surcharge becomes a revenue enhancer rather than cost recovery. It represents a classic example of "double dipping" in an effort to recover supposed increased fuel costs.

As support to this effect I present these actual numbers from our operations:

	<u>2004</u>	<u>2005</u>	
number of RR car moves	3733	3195	
rail billings	\$5,005,151.98	\$5,333,915.58	
fuel surcharges paid	\$248,241.58	\$549,895.88	
% of total	4.95	10.31	
price per move w/o surcharge	\$1274.28	\$1497.35	+\$223.07
fuel surcharge per move	<u>66.50</u>	<u>172.11</u>	<u>+ 84.11</u>
total cost/move	\$1340.78	\$1669.46	\$307.18

What all of this means is the Griffin Industries paid \$307.18 or 22.9% more to pay for each trip that it engaged the various rail companies to haul for us during 2005 vs. 2004. This is represented by a 17.5% increase in the base rate in just one year and then an additional 126% increase in the fuel surcharge is added. I might add that we have had comparable increases in base rates in '04 or even '03.

An additional issue we offer about this system is the fact that it is using "old" data, i.e. 1991, as the baseline. With the substantial increases in base rates that we have sustained over the past few years, as evidenced by the 17.5% last year, the increases in fuel cost have already been factored into those rates. The need for a fuel surcharge should **only** be necessary for the change in base fuel prices since the last contract price was agreed to or since the last tariff rate was established and not based on a 1991 fuel price.

We are pleased to see that the railroads are all reporting substantially higher, even record, profits from recent operations. What we object to is that part of that record is coming from an unfair levy on customers based on duplicate fuel recovery. This issue is only one of several that we have had with our rail service providers in recent months. The "take it or leave it" attitude we have seen has made this situation even more unacceptable. We have also seen increases in the price for other services that the rail companies offer to their customers. All of this has made for a sense that the rail roads really don't care about customers like Griffin Industries anymore. They would most likely prefer to haul unit trains of coal or containers rather than to serve American Agriculture and its typically smaller moves. They have been given a unique situation in American Business as an important element in American transportation with little or no competition for the customers they serve. As such, they should bear a more reasonable responsibility to work with customers and to provide legitimate service at profitable yet reasonable prices. At this time we do not feel that we are getting this type of attitude from the American Rail Road companies.

In summary, our complaints about the current system of rail fuel surcharges can be itemized as follows.

1. We have already been subjected to significantly higher base rates that use the RCAF which includes the increased cost of fuel.
2. The fuel surcharge is calculated on all components of the base rate, not just the extra cost of fuel in that rate calculation.
3. The surcharge is based on 1991 prices which gives an artificially high percentage rate that makes issues 1 and 2 above even more unrealistic.
4. If a surcharge is to be added it should only apply to the change in fuel costs since the last base rate change.

Griffin Industries would again like to thank the Surface Transportation Board for holding these hearings and their efforts to investigate the practice of fuel surcharges. Should you require any additional information from us, please feel free to contact James Conway at 859-572-2582 or jconway@griffinind.com .

Respectfully Submitted,

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