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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Re: Ex Parte No. 661; Rail Fuel Surcharges

Dear Secretary Williams:

Please find enclosed an original and ten (10) copies of the written testimony submitted on behalf of The Fertilizer Institute in the above referenced proceeding. Also enclosed is a diskette with a copy of the filing in word format.

An extra copy of this filing is enclosed for stamping and returning to our offices.

If you have any questions or require additional information, please do not hesitate to contact me at (202) 331-8800.

Sincerely,

Jeffrey O. Moreno



The Fertilizer Institute

Nourish, Replenish, Grow

BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 661

RAIL FUEL SURCHARGES

Written Testimony

submitted by

THE FERTILIZER INSTITUTE

April 27, 2006



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The Fertilizer Institute ("TFI") hereby submits these written comments in response to the Notice of Public Hearing issued by the Surface Transportation Board ("Board") in STB Ex Parte No. 661, *Rail Fuel Surcharges* (served March 14, 2006). The Notice requests comments from interested persons on the manner in which fuel surcharges are calculated and charged by railroads. TFI commends the Board for initiating this proceeding and believes that the Board has an important role to ensure that fuel surcharge programs are fair and equitable.

Identity and Interest of TFI

The Fertilizer Institute is the national trade association of the fertilizer industry. The Institute, which traces its roots back to 1883, represents virtually every primary plant food producer, as well as secondary and micronutrient manufacturers, fertilizer distributors and retail dealerships, equipment suppliers and engineering construction firms, brokers and traders, and a wide variety of other companies and individuals involved in agriculture. Many members of TFI

use rail transportation, and thus have a strong interest in the fuel surcharges methodologies applied by the rail industry.

Comments

Fuel surcharges, if administered properly, are an appropriate means for railroads to recover changes in today's highly volatile fuel costs. However, fuel surcharges are not proper if they are administered in a way that over-recovers actual fuel cost increases on individual movements. TFI is concerned that the fuel surcharge methodologies employed by the Class I railroads are substantially over-recovering actual fuel cost increases incurred by the railroads to transport individual movements.

TFI co-sponsored a rail fuel surcharge study with the National Industrial Transportation League and various other organizations in 2004 to examine the relationship of the various fuel surcharge methodologies used by Class I railroads to their costs and revenues. The study concluded that rail customers typically are paying substantially more in fuel surcharges than the railroads are incurring in higher fuel costs for each movement. Although the rate of over-recovery varied among the railroads, the amount of the over-recovery was staggering and the trend indicated that the problem was likely to worsen.

The fundamental problem underlying the current fuel surcharge methodologies is that they are not based upon changes in actual costs. All but one Class I railroad assesses a fuel surcharge based on a percent of the transportation rate of each movement. But, differences in rail rates frequently do not correlate to differences in the total cost of transporting goods. As a consequence, commodities assessed higher line-haul rates pay more in fuel surcharges than commodities assessed lower line-haul rates even when the cost of fuel for transporting them is the same. For example, two shippers who move goods on the same train between the same

points may pay vastly different transportation rates. Although their fuel costs should be similar, the shipper paying the higher transportation rate also will pay a higher fuel surcharge. When the fuel surcharge percentages applied were low, the inequities generated by this methodology may have been insignificant. But at current percentage levels, these distortions have become grossly inequitable.

A cost-based fuel surcharge should consider the most significant factors that influence the consumption of fuel to move particular classes of commodities. These factors likely would include distance and weight, and might vary between unit train and carload movements. At least one railroad, BNSF, has recognized the relevance of distance and recently adopted a mileage-based fuel surcharge methodology for some shipments on its system. TFI commends BNSF for its efforts and urges additional refinements to more accurately reflect actual changes in fuel costs.

Over-recovery of fuel costs also may be occurring through other means. When railroads negotiate new rates with shippers, presumably current fuel costs are factored into the base rate. But, because the baseline for assessing fuel surcharges never changes, a fuel surcharge would be assessed on a much lower fuel cost component than is already factored into the base rate. This allows the railroad to double dip on at least a portion of its actual fuel costs. Furthermore, if a rate is escalated by the Rail Cost Adjustment Factor, changes in fuel costs already are included in the escalation. Thus, the assessment of a fuel surcharge on top of the escalated rate results in an over-recovery of fuel costs.

The current fuel surcharge methodologies also lack transparency. It is difficult for individual shippers to determine if they are paying too much in a fuel surcharge due to a lack of publicly available data. Furthermore, it often is difficult to match the limited public data to other public sources. TFI urges the Board to standardize reporting requirements for railroads and to

include information regarding fuel expenses for various types of services, such as carload, intermodal, unit trains, etc., and along commodity lines. Such information would enable shippers to better estimate fuel use and cost changes for their traffic.

The measure of whether a fuel surcharge is over-recovering actual fuel costs should be on a movement-specific basis, not a system-wide basis. One shipper should not pay a higher fuel surcharge to compensate for the fact that another shipper does not pay any surcharge at all. A carrier's decision not to impose a fuel surcharge on a particular shipper is a commercial decision, which consequences should be born by the carrier, not other shippers.

Indeed, any requirement that one shipper cross-subsidize another shipper's attributable costs would turn the Board's own standards for proper differential pricing on its head. Differential pricing is intended to recover only *unattributable* joint and common costs. *Coal Rate Guidelines—Nationwide*, 1 I.C.C. 2d 520, 526 (1985). Board precedent clearly states that fuel is a directly variable cost, which is a subset of *attributable* costs that should be born by the traffic that incurs the cost. See *Rate Guidelines—Non-Coal Proceedings*, 1 I.C.C. 2d 1004, 1027-28, note 67 (1996); *Cost Standards for Railroad Rates*, 362 I.C.C. 800, 804, note 9 (1980). If a carrier's pricing does not cover its directly variable costs, such pricing would be inconsistent with the so-called Long-Cannon-1 factor, 49 U.S.C. § 10701(d)(2)(A), which requires all rates to contribute to the going concern value of the carrier. *Cost Standards for Railroad Rates*, 364 I.C.C. 893, 899 and 904 (1981). Thus, in addition to being commercially inappropriate, it would be legally unjustified for the Board to approve of differential pricing to recover fuel costs.

The Class I railroads do not recognize this fact, however. When confronted with evidence by TFI members that their fuel surcharge methodologies were over-recovering changes in actual fuel costs, some railroad representatives rejected the very premise that fuel surcharges are for the recovery of increasing fuel costs and should not be a source of profit. In no other

industry would a person challenge this basic assumption, much less brazenly assert this position to their customers.

Respectfully submitted,



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