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April 27, 2006

VIA E-FILING

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

**RE: Comments of Entergy Corporation, in response to *Rail Fuel*
 Surcharges, Ex Parte No. 661 (STB served Mar. 14, 2006).**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding is the Comments of Entergy Corporation.

Yours very truly,



Sandra L. Brown

SLB:kjm
Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 661

REVIEW OF RAIL FUEL SURCHARGES

COMMENTS OF ENTERGY CORPORATION

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ATTORNEYS FOR ENTERGY CORPORATION

April 27, 2006

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 661

RAIL FUEL SURCHARGES

COMMENTS OF ENTERGY CORPORATION

I. INTRODUCTION

The Surface Transportation Board's ("STB" or "Board") decision served March 14, 2006 in this proceeding provided notice of a public hearing to be held on May 11, 2006 and a request for testimony to address fuel surcharges collected by railroads (hereinafter "Notice"). Entergy Corporation ("Entergy") hereby submits comments in response to the invitation in the Board's Notice requesting comments on fuel surcharges. On April 20th, Entergy filed a Notice of Intent to Participate in this proceeding and present testimony at the May 11th hearing. The oral testimony will be presented by Bill Mohl, Vice President Commercial Operations for Entergy Services, Inc.

A. Identification and Interest of Entergy Corporation

Entergy Corporation is an integrated energy company engaged primarily in electric power production and retail distribution operations. Entergy owns and operates power plants with approximately 30,000 megawatts of electric generating capacity. Entergy delivers electricity to 2.7 million utility customers in Arkansas, Louisiana, Mississippi and Texas.

Entergy's subsidiary, Entergy Gulf States, Inc. ("EGS"), receives coal shipped from the Powder River Basin ("PRB"), Wyoming pursuant to contracts with Burlington Northern Santa

Fe Railway Company ("BNSF") and The Kansas City Southern Railway Company ("KCS"). EGS's Nelson Station plant near Lake Charles, Louisiana has received coal delivered by BNSF since 1981. The Nelson Plant received coal provided by BNSF predecessor Burlington Northern and KCS throughout the 1980's. In 1984, EGS entered into a long-term transportation contract with BNSF and KCS which expired in 1999. EGS entered into additional contracts with KCS and BNSF for Nelson Station service which expired in 2004. New contracts were executed with BNSF and BNSF-KCS during 2004 for coal delivery from January 1, 2005 through December 31, 2007. In addition to the transportation rate contained in the contract, a coal fuel surcharge has been added pursuant to BNSF Rules Book 6100, Item 3380. While Entergy uses several of the Class I railroads to deliver its coal, these comments are focused on the fuel surcharge imposed by BNSF set forth in BNSF Rules Book 6100, item 3380. However, the same principles stated herein also apply to fuel surcharges applied through a similar process by the Union Pacific Railroad Company for certain movements which it performs for another Entergy company.

B. Summary of Comments

The Board has authority to review railroad fuel surcharge mechanisms. In addition, the STB can declare certain practices, such as the current fuel surcharge mechanism, unlawful without undertaking a rate reasonableness review. As the Board's predecessor has done in the past, the Board should prescribe practices to be followed to insure that railroads are only recovering their actual fuel costs.

Entergy does not object to the concept of a railroad fuel cost pass-thru provided that the pass-thru is (1) limited to the purpose of recovering—or refunding—documented variations in fuel costs from those assumed and built into the transportation rates to which they apply, and (2) is transparent and subject to regulatory oversight. Entergy has reviewed BNSF's fuel surcharges

which are applied to its coal movements to Entergy's Nelson Plant and has found several compelling indications that these surcharges are not cost-based and may result in significant over-recovery of the fuel costs which BNSF incurs for these movements.

The Board should (1) clarify that the lawfulness of a railroad fuel surcharge may be challenged separately from the level of a railroad rate; (2) find that BNSF's surcharge is an unreasonable practice in violation of the Board's established rate guidelines; (3) establish narrow, cost-based standards consistent with the Entergy-proposed principles, for the imposition of positive and negative fuel surcharges for the sole purpose of recovering (or refunding) actual cost variations of fuel expended for a particular shipper's transportation that are not adjusted for by other means; and (4) require transparency in the submission of revenue and cost data justifying the imposition of railroad fuel surcharges and provide oversight of railroad fuel cost recovery.

II. STB HAS AUTHORITY TO REVIEW RAILROAD FUEL SURCHARGES

A. The Assessment of Fuel Surcharges is a Railroad Practice Subject to the Board's Jurisdiction

Under 49 U.S.C. §§ 10702 and 10704(a)(1), the Board has authority over railroad practices. If a railroad practice is found to be unreasonable, the Board can order the railroad to cease engaging in it or the Board can prescribe the "practice to be followed." 49 U.S.C. § 10704(a)(1). It is clear that surcharges are universal rules or charges subject to Board jurisdiction as "transportation-related" practices such as demurrage. *Capitol Materials Incorporated – Petition for Declaratory Order – Certain Rates and Practices of Norfolk Southern Railway Company*, Docket No. 42068 at 2 (served April 12, 2004). The manner in which the railroads calculate and assess their individual fuel surcharges is subject to a determination of reasonableness under 49 U.S.C. § 10702.

In order to ensure that railroad practices are reasonable, the Board has previously used its authority under 49 U.S.C. § 10702 to assert jurisdiction over various other railroad rules and surcharges. For example, the Board evaluated the specific demurrage charges assessed against a shipper under the unreasonable practice standard. *Capitol Materials* at 6. The Board has found a light-density line surcharge to be an unreasonable practice when used in conjunction with contract service. *Parrish & Heimbecker, Inc. – Petition for Declaratory Order*, Docket No. 42031 at 9 (served May 26, 2000). *Parrish & Heimbecker* at 10. Likewise, the Board looked at whether BNSF's imposition of storage and demurrage charges on all types of empty private cars awaiting loading is an unreasonable practice. *North America Freight Car Association – Protest and Petition for Investigation – Tariff Publications of the Burlington Northern and Santa Fe Railway Company*, Docket No. 42060 (Sub-No. 1) at 9 (served August 13, 2004). In addition, the Board has also evaluated whether it was unreasonable for a railroad to limit the hours its track could be used by a second railroad under a trackage rights agreement. *Granite State Concrete Co., Inc. and Milford-Bennington Railroad Company, Inc. v. Boston and Maine Corporation and Springfield Terminal Railway Company*, Docket No. 42083 at 1 (served September 24, 2004).

The fuel surcharges established by BNSF and other Class I railroads that provide transportation service to Entergy's facilities are usually contained in publicly available rules or tariffs and incorporated by reference in a coal transportation contract or pricing authority. Entergy, like other shippers, have no choice but to accept the fuel surcharge terms in whatever pricing method is used. In fact, in response to Entergy's concerns about the fuel surcharge application and over-recovery by BNSF, BNSF responded during contract negotiations that BNSF's company policy is that fuel surcharge is non-negotiable and a "take it or leave it" issue.

B. Specific Fuel Surcharges Can Be Challenged Without Using The Board's Rate Reasonableness Procedures

As discussed above, the Board can evaluate the Class I railroads' general fuel surcharges under the unreasonable practice standard of 49 U.S.C. § 10702. A fuel surcharge is a universally-applicable tariff item that exists independently of the rate and can be unilaterally modified by the railroad. As the Board recognized in the Notice, whether a fuel surcharge is a reasonable practice can be determined by examining whether the railroads' alleged fuel cost recovery mechanism "fairly reflect[s] the increasing fuel costs of the particular movements to which [it is] applied." Notice at 2. There is no need for a stand-alone cost or other rate analysis to make this determination. For example, the Board has previously determined the reasonableness of a particular demurrage charge without resort to rate reasonableness standards. *Capitol Materials* at 4 (finding a \$60 per day demurrage charge to be reasonable without resort to the rate reasonableness standards). The determination of whether a purported fuel surcharge fulfills its cost recovery purpose can be aided by the submission of fuel cost and revenue data requested by the Board in the Notice and any additional data that might be needed by the Board.

C. Railroad Fuel Surcharges and Fuel Cost Recovery Has Previously Been the Subject of Regulatory Review

This proceeding is not the first time fuel surcharges and fuel cost recovery mechanisms have been questioned for over-recovering fuel costs. Prior to the passage of the Staggers Rail Act of 1980 and the development of the Rail Cost Adjustment Factor ("RCAF"), the Interstate Commerce Commission ("ICC") permitted fuel surcharges in very narrowly prescribed circumstances to permit recovery of extraordinary and temporary increases in fuel costs for the brief time before such increased costs could be recovered through normal rate adjustment provisions. In *Ex Parte No. 311*, the ICC permitted the imposition of fuel surcharges on an

“experimental basis” in 1973-74, primarily for motor carriers.¹ The ICC noted that “...generally, surcharges have only been considered as appropriate in situations where it is anticipated that their use will be of temporary duration or where in extenuating situations the service performed under the surcharge is considered local to the carrier assessing the charge.”²

The ICC took even more authority over fuel cost recovery when it created the RCAF index in 1980. Based on filings by the Association of American Railroads (“AAR”), the RCAF index “permit[s] railroads to recover fuel cost increases along with other cost increases on a quarterly basis.” *Id.* at 852. Furthermore, the ICC stated that the RCAF means that “[m]aintaining a separate surcharge mechanism for fuel would, in our view, serve no useful purpose once these rules are in place, and would, in fact, only complicate the operation of the new system.” *Id.*

These statements from the ICC reveal that the RCAF was intended to not only replace the general rate increase method of adjusting rail rates with a simpler method, but also to supplant the need for fuel surcharges. The RCAF methodology takes into account the fluctuation of railroad diesel prices caused by events in the world oil markets. For example, the filing made on December 5, 2005 by the AAR described the damage done by hurricanes Katrina and Rita as largely responsible for the rise in the fuel component of the RCAF. AAR forecast, Appendix B (page 1), Ex Parte 290 (Sub-No. 5) (2006-1), *Quarterly Rail Cost Adjustment Factor* (filed Dec. 5, 2005). These are exactly the same reasons now cited by the railroads in justifying the use of their privately developed fuel surcharges.

The railroads shift from using the RCAF to utilizing the AILF lends further support to the point that the Board can and should take steps to rectify the fact that fuel surcharges are

¹ *Effect of Modifying Proclamation No. 3279 and Other Anticipated Energy Conservation Measures on the Operation of Carriers Subject to the Interstate Commerce Act*, 350 ICC 563, 566 (1975) (“Ex Parte No. 311”)

² *Id.* at 572 (emphasis added).²

recovering more than actual costs. Unlike the RCAF, the AILF has not been formally approved by the Board, meaning the railroads, through the AAR, can change the index without seeking the Board's permission and, therefore, circumvent the RCAF protections of the over-recovery of fuel costs. In fact, it can be demonstrated that the manner in which the AILF is applied to certain movements results in a disproportionate increase of the weights of the non-fuel cost components so that each is given a disproportionately greater weight than its REAL share of the rates to which they apply. This is why one of Entergy's principles for a railroad fuel surcharge mechanism, addressed below, addresses AILF.

III. ENTERGY'S RECOMMENDED PRINCIPLES FOR ANY RAILROAD FUEL SURCHARGE OR FUEL COST RECOVERY MECHANISM

Entergy does not object to the concept of a railroad fuel cost pass-thru provided that the pass-thru complies with certain principles to assure that (1) the pass-thru is limited to the purpose of recovering—or refunding—documented variations in fuel costs from those assumed and built into the transportation rates to which they apply, and (2) the pass-thru mechanism, and the fuel costs by which it is driven, are transparent and subject to regulatory oversight. In fact, Entergy, like most other utilities, has certain abilities to pass its own fuel costs for electrical generation directly through to its customers in order to expedite the process of fuel-cost-related price adjustments—both upward and downward—through a regulatory process separate and apart from its other cost-related rate adjustments.

The Board should establish narrow, cost-based standards for permitting railroad fuel surcharges which permit the railroads to only recover significant documented increases in fuel costs, and/or require the railroads to refund significant decreases in fuel costs, as compared to the fuel costs assumed and built into the rate to which they apply. To this end, Entergy proposes that the Board require that any railroad surcharge mechanism comply with the following principles:

1. Fuel surcharge mechanisms to be strictly cost-based and not increase the railroads profitability of the movement to which they apply. No minimum fuel surcharge should be allowed.
2. Fuel surcharge mechanisms to be transparent and subject to the oversight of regulatory authority, in this case the Surface Transportation Board.
3. Fuel surcharge mechanism to provide for both positive and negative fuel surcharges, i.e., to allow railroads to recover significant cost increases, and/or require railroads to refund significant cost decreases, as compared to the fuel cost assumed and built into the rate(s) which they apply.
4. If index-based, a fuel surcharge mechanisms to apply an index determined by the Board, with input from shippers, to most accurately track variations in the actual unit cost the railroads pay for fuel.
5. Application of any non-fuel cost indexes, for example, the AILF, to be capped to apply, at most, to only the remaining non-fuel portion of those rates. For example, if fuel represents 12 percent of the AILF, then the remaining cost components would only represent, or be applied to, 88 percent of the rate.

IV. THE FUEL SURCHARGE IMPOSED BY BNSF IN RULES BOOK 6100-A IS A REVENUE ENHANCEMENT MECHANISM

Entergy has reviewed BNSF's fuel surcharges and related adjustments which are applied to its coal movements to Entergy's Nelson Plant and has found several compelling indications that these surcharges are not cost-based and may result in significant over-recovery of the fuel costs which BNSF incurs for these movements.

A. BNSF's Fuel Surcharge in Item 3380 is Not Strictly Cost-Based

Item 3380 imposes a fuel surcharge on Coal Unit Trains and Trainload Shipments which is calculated by applying a percentage increase to the overall transportation rate. BNSF Rules Book 6100-A, Item 3380. The fuel surcharge is adjusted monthly and calculated according to the U.S. Average Price of Retail On-Highway Diesel Fuel ("HDF") when the daily average HDF of the second prior month equals or exceeds \$1.24 per gallon. However, the HDF has not been at or below that level since March 2002.³ In addition, when the HDF is between \$3.00 and \$3.039 the applicable added surcharge rate would be 22.5% of the total freight charges. On its face, applying a fuel surcharge adder to the total freight charges is not a cost-based mechanism.

BNSF acknowledges on its web site that its fuel surcharge is revenue-based and utilizes market-based pricing.⁴ When the fuel surcharge percentage in Item 3380 is applied to BNSF's rates, it is applied to the entire rate including market value components as well as fuel and other cost components. The effect of this linkage is plain. Incremental fuel surcharge costs increase when movements have high market values and decrease when movements have low market values, irrespective of the actual fuel costs for the movements. Furthermore, there are other compelling indications that BNSF's fuel surcharge mechanism acts to enhance overall revenues.

1. *No Negative Adjustment below Floor*

The BNSF fuel surcharge as defined by Item 3380 of BNSF-Rules Book 6100 provides for incremental rate increases when fuel costs exceed a certain threshold level, but does not provide, or allow, for negative adjustments if and when fuel costs fall below that level. Therefore, the surcharge requires that shippers pay additional revenues for fuel cost increases above a certain threshold level, but refuses to refund to its shippers any savings, or windfall

³ See <http://tonto.eia.doe.gov/dnav/pet/hist/ddr001m.htm>

⁴ <http://www.bnsf.com/tools/prices/fuelsurcharge/faqs.html#20>

profits, that might occur if and when the fuel cost falling below the threshold level. This behavior is not limited to BNSF, but rather is an industry practice.

2. *Index Behaves Differently from Actual Railroad Fuel Costs*

The fuel cost index designated in Item 3380 is not a measure of actual fuel costs. It represents instead the average HDF cost for the second prior month to the month in which the surcharge tied thereto applies. The HDF is essentially the price paid at truck stops and service stations for diesel fuel. BNSF's actual fuel costs rarely match the HDF price, particularly since BNSF would be able to buy fuel (1) in bulk at wholesale prices not retail prices, and (2) without various highway use and other taxes imposed by states and other entities.⁵ At a minimum, these differences may cause the HDF to behave differently from actual railroad fuel costs which invalidates HDF's use as a fuel cost proxy. For example, BNSF's average cost for diesel fuel in 3rd Quarter 2003 was \$0.864 per gallon and its average cost of diesel fuel for 3rd Quarter 2004 was \$0.988 per gallon, an increase of 12.3%.⁶ In contrast, the average HDF price for 3rd Quarter 2003 was \$1.46 per gallon, and the average HDF price for 3rd Quarter 2004 was \$1.83 per gallon, an increase of 25.3% increase. Therefore, the increase in the fuel surcharge, from 2003 to 2004, paid by BNSF shippers was about twice the increase which BNSF paid for its actual fuel costs. Additionally, BNSF itself is utilizing WTI and NYMEX#2 heating oil as a hedge against their fuel cost exposure.⁷

⁵ Moreover, railroads consume huge quantities of railroad diesel fuel annually and often engage in price hedging activities. Entergy does not support penalizing railroads for successful hedging, but to the extent a railroad engages in fuel hedging and uses a revenue-based surcharge the railroad is even further overcompensated for fuel cost.

⁶ See <http://tonto.eia.doe.gov/oog/ftp/area/wogirs/xls/psw/8vwall.xls>

⁷ 2005 BNSF Annual Report at page 44.

B. Current Fuel Surcharge Mechanism Ignores The Fact That The Current Cost Of Fuel May Already Be Factored Into New Rates

Shippers have no control over or insight into the cost of fuel used as a basis when a new transportation rate is set by the railroad. The base rate is then adjusted by an index which escalates the entire base rate including the fuel costs. If the base rate was already set with a high cost of fuel factored into the rate, the added fuel surcharge is an additional part of the total overall reimbursement railroads receive.

C. Fuel Surcharge Allows Escalation Twice On A Portion Of The Fuel Cost

The fuel surcharge is not applied differently depending on how much of the transportation rate is fuel-dependent. Thus, the fuel charge may be escalated twice, both as part of the base rate and the added fuel surcharge. For example, if the base rate contains 20% fuel cost, and it is escalated by an annual index, the 20% fuel cost is escalated by this index before the fuel surcharge is applied to the new rate. Shippers, like Entergy, are therefore paying at least double for the portion of the fuel costs in the fuel increases in the new transportation rates and the additional fuel surcharges imposed. As long as the fuel surcharge is applied to all portions of the rate equivalently in addition to the fuel cost already being factored into the rate, the incremental fuel costs recovered by BNSF do not reflect the actual incremental costs incurred by BNSF for fuel.

Entergy has evaluated BNSF's fuel surcharge together with its related rate adjustment mechanisms, and is firmly convinced that the characteristics thereof, as described herein, permit BNSF to over-recover its incremental fuel costs for the Entergy movements. Since the railroads don't provide specifics of the fuel portion of the base rate, Entergy is unable to analyze whether the fuel surcharge is over- or under-collecting actual fuel costs, requiring independent oversight of the practice. Most importantly, the railroads hold the data that the Board needs to fully

evaluate the manner in which fuel surcharges are calculated and what correlation, if any, those calculations have to the railroads' actual costs. This is why transparency and STB oversight, as discussed below, is so important.

D. BNSF's Mileage-Based Fuel Surcharge Is Not Cost-Based

According to BNSF, railroads have traditionally applied a fuel surcharge based, not on cost, but on a percentage of revenue to be gained from each shipment. BNSF admits during periods of high fuel prices, a fuel surcharge based on percentage of revenue has and will continue to create significant disparities between the fuel surcharge assessed and the actual incremental fuel costs.⁸

BNSF has established the Mileage-based Fuel Surcharge which is applicable to certain traffic after January 1, 2006. BNSF touts this surcharge as an effort to "better align the fuel surcharge assessed...with the actual incremental fuel cost of transporting...goods" but in fact it falls far short of a cost-based fuel adjustment.

BNSF's Mileage-Based Fuel Surcharge is calculated by multiplying the fuel surcharge per mile times the number of miles per carload per shipment.⁹ The mileage-based fuel surcharge is determined by using the HDF, the same fuel pricing table as used in Item 3380. "Mileage calculations will be based on BNSF Railway Miles between shipments' billed origin and destination as published on BNSF web page titled "BNSF Coal Unit Train and Trainload Mileage Table."¹⁰

⁸ Frequently Asked Questions: BNSF Mileage-Based Fuel Surcharge:
<http://www.bnsf.com/tools/prices/fuelsurcharge/faqs.html>.

⁹ Coal Mileage-Based Fuel Surcharge: http://www.bnsf.com/tools/prices/fuelsurcharge/pdf/coal_mileage.pdf

¹⁰ The BNSF Railway Miles is the calculation of total miles a carload is transported. This calculation can be performed in the BNSF website. Also, see BNSF Coal Unit Train and Trainload Mileage Table included on the BNSF website.

While distance may be a better proxy for the amount of fuel used in a movement than the transportation rate, it still is unnecessarily imprecise. The use of distance ignores a variety of factors that affect fuel usage, such as topography, train weight, train speed, frequency of stops, and the time required for the movement. The mileage-based surcharge also suffers from the same basic deficiency as Item 3380 in that it may use as a baseline a fuel price that (a) has no relation to BNSF's actual fuel costs; and (2) is not reflective of the current cost of diesel fuel, thereby guaranteeing the surcharge will be assessed. These fuel surcharge practices therefore do much more than provide recovery of fuel costs. They provide significant additional revenue to the railroads.

To summarize the above points on revenue enhancement, the BNSF fuel surcharge programs are flawed on their face because they do not measure actual costs but merely apply a multiplier to the transportation rates or to an imprecise mileage factor are not tied to the actual cost of fuel. They thus bears little to no relation to the amount of fuel used, or cost thereof, for the movement being assessed the charge. Clearly, if there is no evaluation of the amount of fuel used or the actual cost paid for fuel, then the surcharge is not "used only to recover the increased cost of fuel for the particular movements to which the surcharge is applied." Notice at 2.

V. THE BOARD SHOULD REQUIRE TRANSPARENCY IN THE SUBMISSION OF REVENUE AND COST DATA JUSTIFYING THE IMPOSITION OF RAILROAD FUEL SURCHARGES AND PROVIDE REGULATORY OVERSIGHT OF RAILROAD FUEL COST RECOVERY

To the extent the Board does not believe it already receives enough data from the Class I railroads, or has not received enough data from the Class I railroads as a result of this proceeding, to enable the Board to determine whether a particular fuel surcharge provides a railroad with more revenue than it needs to recover the railroad's fuel costs for a particular movement, the STB should adopt procedures to govern the submission of such data. The STB has clear authority to

obtain the data it needs under 49 U.S.C. § 721(B).¹¹ Railroads already provide certain fuel cost data to the STB on a quarterly basis through the RCAF process. 49 U.S.C. § 10708.¹² In addition, the Board also requires railroads to submit certain cost and revenue data under 49 CFR Parts 1200 through 1300. Furthermore, railroads are required to report certain information regarding carrier rates and service terms pursuant to 49 CFR Parts 1300 through 1332. Thus, Entergy believes the Board has the requisite power to use existing or add regulations to obtain any additional information needed to substantiate that “railroad fuel surcharges are being set in such a manner as to insure that they are used only to recover the increased cost of fuel for the particular movements to which the surcharge is applied.” Notice at 2.

Finally, high fuel surcharges coupled with increasingly poor service have caused shipper confidence in the rail system to deteriorate. Rail transportation has become increasingly vital to shippers, particularly coal shippers. Yet, rail service failures and reliability problems have negatively impacted utilities’ coal supplies over the last year. Rail service from areas such as the PRB needs to improve substantially in order to return coal stockpiles to acceptable levels. An important start to restoring shipper confidence in railroad rates, service and reliability is for the railroads to provide transparency with respect to the fuel surcharge practice and for principles to

¹¹ 49 U.S.C. § 721 (b) (2006). “Inquiries, Reports, and Orders. - The Board may - (1) inquire into and report on the management of the business of carriers providing transportation and services subject to subtitle IV; (2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier; (3) obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV; and (4) when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5.”

¹² 49 U.S.C. § 10708 (a) (2006). “Rail cost adjustment factor: (a) The Board shall, as often as practicable, but in no event less often than quarterly, publish a rail cost adjustment factor which shall be a fraction, the numerator of which is the latest published Index of Railroad Costs (which index shall be compiled or verified by the Board, with appropriate adjustments to reflect the change in composition of railroad costs, including the quality and mix of material and labor)....”

be put in place to insure the recovery of only actual fuel costs. Furthermore, the STB should provide regulatory oversight of the railroads fuel cost recovery.

Oversight by the STB is important particularly because of the inability of shippers to determine what unit price level is assumed in its newly established rates, i.e., the threshold level at which point the fuel charges "kick in" or become effective, or the then-current fuel cost level which would result in still greater excess fuel surcharges applying between the threshold level and the unit price level assumed in its new rate

VI. CONCLUSION

Entergy applauds the Board for taking action on the fuel surcharge issue and holding a public hearing. However, the Board must be proactive and take definitive steps to rectify the problem following the public hearing. The Board should (1) provide clarification that the lawfulness of a railroad fuel surcharge may be challenged separately from the level of a railroad rate; (2) find that BNSF's surcharge, and other similarly imposed surcharges, are an unreasonable practice in violation of the Board's established rate guidelines; (3) establish narrow, cost-based standards consistent with the Entergy proposed principles for the imposition of positive and negative fuel surcharges with no minimums allowed, for the sole purpose of recovering (or refunding) actual cost variations of fuel expended for a particular shipper's transportation that are not adjusted for by other means; and (4) require transparency in the submission of revenue and cost data justifying the imposition of railroad fuel surcharges and provide oversight of railroad fuel cost recovery.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra L. Brown", with a long horizontal flourish extending to the right.

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