

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB EX PARTE NO. 661
RAIL FUEL SURCHARGES**

COMMENTS OF ALLIANCE FOR RAIL COMPETITION

I. INTRODUCTION

The Alliance for Rail Competition (ARC) welcomes the opportunity to file comments on the fuel surcharges. We, at the Alliance also welcome the opportunity to voice our concerns about this important issue. The Alliance for Rail Competition thanks the Board for taking hearings on the subject of Rail Fuel Surcharges and shining a light on the issue.

II. IDENTITY AND INTEREST OF ARC

ARC is an association of shippers that are captive to rail carriers for significant portions of their freight shipments. ARC members include shippers of agricultural commodities, coal, chemicals and other bulk commodities, and include Fortune 500 companies, small companies, and shipper associations and groups.

ARC was founded in 1997 by shippers who were concerned that ICC and STB regulation under the Staggers Rail Act and subsequent legislation was falling short of fairly protecting the interests of captive shippers, as required by law. ARC's goal is to

help such shippers (rail customers), as well as competitive shippers and the railroads themselves, by pursuing increased rail-to-rail competition as an alternative to regulatory remedies. ARC and its members believe that the railroad industry's limited exposure to competition accounts for much of the poor service, high rates and lack of responsiveness to customer needs that characterize rail transportation. Greater competition would discourage these characteristics, benefiting the railroads as well as their customers.

Many of ARC's members will be presenting data and issue points on fuel surcharges in this hearing, therefore, ARC's statement herein will focus on the broader issues contemplated by the call by the Board in this Ex Parte.

ARC's main focus has been and continues to be on its legislative efforts. ARC is a leading member of a coalition of shipper groups and shippers supporting the Railroad Competition Act of 2005, S. 919, and the Railroad Competition Improvement and Reauthorization Act of 2005, H.R. 2047. However, ARC continues to follow and participate in regulatory developments, and has filed comments on numerous occasions with the STB.

In addition to seeking legislation as one method of affecting improvements, ARC calls on the STB to revisit key aspects of current rail regulation as it is doing in this proceeding. In the past, in too many cases, contested issues have been resolved in ways that leave captive shippers remediless. And the cumulative effect of these actions, which has

received too little attention from the ICC and STB in the past, has left captive shippers vulnerable to abuse on many fronts.

ARC notes that at least one Class I railroad achieved revenue adequacy in 2004, and more may do so in 2005-2006, even under revenue adequacy standards that clearly favor railroads looking for special consideration in rate cases and rulemaking proceedings. These developments, as well as the elimination of excess rail capacity and the demonstrated falsity of claims that rates cannot be increased on the traffic of non-captive shippers to achieve balance, provide additional grounds for new approaches to rail regulation, and for new measures to enhance rail competition.

ARC believes the Board should move forward with new approaches tailored to new circumstances and therefore welcomes the Board's initiation of this Ex Parte on Rail Fuel Surcharges. The Board therefore needs to continue to analyze alternatives to business as usual.

As many ARC members and other rail customers will be filing and testifying separately and in order not to be duplicative, these comments will concentrate on the conceptual issues.

III. ARC ACCEPTS THE VALIDITY OF FUEL SURCHARGES AS A METHOD OF RECOVERING UNANTICIPATED FUEL COST INCREASES

ARC does not find the concept of the railroads collecting for increased fuel surcharges as invalid, however, an unexpected increase in real fuel costs should not be treated as a revenue opportunity by railroads. The levy of fuel surcharge must be both equitable to all rail customers and cover only unanticipated fuel cost increases.

This Board will hear from many rail customers about unfair application of fuel surcharges or over-collection of fuel costs by the railroads in this proceeding. The over assessing of fuel surcharge by the railroad industry the last few years clearly reflects an alarming trend of the nation's railroads seeking an ever increasing level of wealth transfer from its rail customers to the railroad industry.

It is the opinion of many ARC members that while a fuel surcharge program is warranted by the rail industry, the current system of rail fuel surcharge system generates in revenues to the rail industry that are over and above the actual increase expenditures of the railroads for their fuel purchase, which may be considered an unreasonable carrier practice.

A surcharge by definition is a charge that is an "additional charge to the amount somebody has to pay." Collections not exceeding the changes in fuel costs are a reasonable practice. However, when a fuel surcharge program collects more than changes in

fuel costs and becomes a profit center designed to enhance revenues, the fuel surcharge program becomes an unreasonable carrier practice.

IV. FUEL SURCHARGE PROGRAMS SHOULD REFLECT THE INCREASED COST OF FUEL ON INDIVIDUAL MOVEMENTS

ARC and its membership believe that fuel surcharge programs should closely reflect the cost of the fuel increase of the actual movement that is being assessed.

The current railroad fuel surcharge programs are:

1. **Collecting from less than the full universe of rail customers.**
2. **Assessing fuel surcharges greater than the incremental increase in fuel costs incurred by the railroad for their particular movement.**
3. **Given the movement in question, generally based on rate levels which does not generally reflect a measure that has a strong correlation to fuel utilization.**

Also the fuel surcharges that are being levied on each shipment are not being broken out in the Public Way bill samples by the Board.

V. FUELS SURCHARGES SHOULD BE BASED UPON THE FUEL UTILIZED TO FACILITATE THE MOVEMENT

ARC believes that any rail fuel surcharge programs should reflect the cost of the fuel increase of the actual movement that is being assessed.

VI. RAIL CARRIERS SHOULD BE REQUIRED TO REPORT TO THIS BOARD THE ADJUSTMENTS THEY ARE RECEIVING UNDER CONFIDENTIAL CONTRACT RATE ADJUSTMENTS

Many rail customers have confidential transportation contracts. Some of the older contracts do not have specific provisions for fuel escalations. Many other rail contracts utilize the Rail Cost Adjustment Factor (RCAF) or Rail Cost Adjustment Factor Unadjusted (RCAFU) adjustment factors to cover adjustments in rail costs.

The Railroad Cost Recovery Index (RCR), published by the Association of American Railroads (AAR), measures changes in railroad inflation i.e. changes in the price level of inputs to rail operations. The RCR is composed of 10 components – fixed charges (interest), plus freight operating expense classified into nine categories. One of the components is fuel.

The fuel index represents the change in the average price per gallon of No. 2 diesel fuel paid by the four largest railroads. Beginning in February 1991, the price includes federal excise taxes, transportation, and handling charges. The index reflects the original purchase price of fuel charged to railroad operating expenses during the middle month of the quarter. In order to reflect an average inventory holding period of one month before being charged to expense, the purchase price is measured in the first month of the quarter.

The Rail Cost Adjustment Factor (RCAF) or RCAFUadjusted is one method utilized by the railroads to factor up or increase rates. This factor is a summary of all 10 components of the RCR. Many standard rail contracts have RCAF or RCAFU language included as a basis for year to year freight increases. Any rail contract that utilized the

RCAF or RCAFU thereby incorporates the change in the fuel component. However, the railroads are not required to report to the Board the amount of fuel cost increase they are obtaining from the contract in the form of RCAF or a RCAFU pass-through.

The rail carriers may not be reporting these contract rate adjustments as offsets to their fuel cost increases. This Board should require the carriers to report to them the amount of fuel recovery they are receiving in the form of RCAF and RCAFU adjustments they are receiving from their rail contracts.

VII. MILEAGE BASED FUEL SURCHARGES ARE BEING ASSESSED BY ONE RAILROAD ON AGRICULTURAL AND COAL DIRECT SHIPMENTS

A mileage based fuel surcharge on its face, tends to be a more reasonable way to assess extraordinary rises in fuel costs than revenue based fuel surcharges. A mileage based fuel surcharge must reflect actual or allocated increase in fuel costs. As with all rail fuel surcharges, the practice must be applied with equal application to all rail customers at levels that will return the incremental increase in fuel costs and not generate returns of revenue in excess of the actual fuel cost increases.

VIII. IN THIS EX PARTE PROCEEDING, THE BOARD WILL HEAR FROM RAIL CUSTOMERS EVIDENCE THAT THE RAILROADS ARE OVERCOLLECTING ON FUEL SURCHARGES

This Ex Parte proceeding is not about the level of the surcharge but it centers on the reasonableness of the practice. The March 14th Ex Parte announcement in this case desires to ascertain "whether railroad fuel surcharges are being set for the particular movements to which the surcharge is applied." The announcement also wanted the re-

spondents to focus on “whether the 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...”

You will hear data at the hearing that will show that the railroads are collecting up to 40+% more in fuel surcharge than the entire allocated fuel cost for the movement – which suggests that rail customers are being subjected to fuel surcharges that not only cover the increases in fuel costs but the entire fuel costs associated the movements.

VI: A RAIL FUEL SURCHARGE PROCESS MUST BE CONFIRMABLE AND CLEAR

Any methodology developed to assess fuel surcharges in the future should be readily ascertainable and verifiable for all rail customers and the calculation methodology should be readily and easily retrievable. Transparency in the process is the best mark of fairness.

For Fuel surcharge calculations in the future – all of the tools must be readily available to all rail customers.....it should not be an onerous clerical exercise or a treasure hunt. Lastly, the carriers should be required to provide a search engine and a complete database, that will allow individual origin-destination pair retrievals as well large area retrievals such whole states, whole regions including single origin to a large number of destinations and vice versa.

VII. NEW FUEL SURCHARGE REPORTING REQUIREMENTS ARE NEEDED

ARC believes that fuel surcharges are going to be a component of rail charges for the foreseeable future. With that in mind, ARC agrees with the statement presented by Mr. Mike Behe of USRail.Desktop wherein they request that the railroads be required to

report the actual fuel surcharge being collected for each railroad movement so the STB can report the data in the Public Waybill file.

VIII. CONCLUSION

ARC thanks the Board for the opportunity to present these Comments to the Board. The opportunity to present comments on this issue provides a needed forum to examine the legitimacy of fuel surcharge assessment as being practiced by the nation's railroads. We, who shoulder the burden of assessment, look forward to Board action in the future on this issue through the promulgation of rules that will bring fairness to the assessment process.

It will no doubt be argued in Class I railroads' comments in this proceeding that any change in any of these policies will condemn the railroad industry to financial ruin. This is nonsense. Injustice has hidden behind this argument since the Garden of Eden.

The Board should exercise its obligation to the taxpayers who fund it and rein unreasonable carrier practices where the Class I railroads use their economic power to over collect fuel costs. It is the hope of ARC and its members that this proceeding results in a new understanding of the public interest, and suggests a

willingness by this Board to question outmoded assumptions, policies, and regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terry C. Whiteside". The signature is fluid and cursive, with a large initial "T" and a stylized "C" and "W".

Terry C. Whiteside

Chairman

Alliance for Rail Competition

101 Constitution Avenue, N.W.

Suite 800

Washington, DC 20001

(202) 742-4435