

United States Senate

WASHINGTON, DC 20510-2603
(202) 224-2644

COMMITTEES:
APPROPRIATIONS
COMMERCE, SCIENCE AND
TRANSPORTATION
ENERGY AND NATURAL
RESOURCES
SMALL BUSINESS AND
ENTREPRENEURSHIP
SPECIAL COMMITTEE ON AGING

May 8, 2006

The Honorable W. Douglas Buttrey
Chairman
Surface Transportation Board
1925 K Street N.W.
Washington DC 20423

Dear Chairman Buttrey:

I applaud the decision of the Surface Transportation Board to hold a hearing examining fuel surcharges collected by railroads. This hearing will give shippers a chance to document the unfair practices that are effectively imposing rate increases on customers, and I believe will clearly show the need for immediate action by the Board. I request that you include this letter as a part of the hearing record.

Mr. Chairman, you and I have personally talked at length about my many concerns with the current practices of the rail industry, as well as what I believe is the lack of meaningful action on the part of the Surface Transportation Board. The Board has been charged by Congress with ensuring competition in captive markets and restraining abuses of monopoly power, and clearly, the Board is making little progress.

Thus, I greet this hearing with mixed feelings. I am pleased that the Board is taking action on what is clearly an unreasonable practice in the rail industry, but concerned that this hearing will not translate into action on the part of the Board. I expect that the Board will take very seriously the comments and concerns it hears from shippers today and realize that something must be done immediately to end this practice.

Let me be clear, it is not the fuel surcharge itself that disturbs me – it is the practice of charging *more* than the increase in fuel costs that truly amounts to an unreasonable practice. By charging shippers more than the increase in fuel costs, the Class I railroads are simply adding to the bottom line and imposing new rate hikes on customers, not covering unexpected increases in operating expenses. For captive shippers especially, these charges are particularly frustrating, because not only do they come on top of unreasonably high rates, unreliable service and growing capacity challenges, but they are imposed upon customers without any influence of the market. Monopoly power gives the railroads an unrestrained ability to levy these backdoor rate increases, and that is simply unacceptable. I urge the Board to carefully consider the facts and figures that will be discussed today and take immediate action against these unreasonable and indefensible monopolistic practices.

As you well know, I have long fought for reform in the rail industry. I will not sit idly by and watch a monopoly restrain Montana's economy and place a burden on the working families

of my state and so many others. Fundamentally, this comes down to a tax on Montanans, an unreasonable imposition of rate increases that affects utility customers, small businesses, and family farmers. The Board is charged with the responsibility to restrain the monopoly power of the freight railroads, and you have an obligation to my constituents and those across the nation to do just that.

In fact, there are few sectors of the economy that are as uniquely burdened by the abuses of monopoly power in the rail industry as agriculture. Montana growers pay a premium for any of their inputs that come into the state by rail and then they take a discount on their grain at the elevators when they ship product out. Unreliable service from the railroads often results in grain being piled on the ground, with thousands of bushels spoiled every harvest. Retailers are growing increasingly concerned about their ability to supply fertilizer and chemicals to growers, as efforts on the part of the railroads to push hazardous material shipments on to the nation's highways increase. On top of all those legitimate frustrations that growers are dealing with, the Class I railroads now impose a "fuel surcharge" that, in many cases, far exceeds the actual increase in fuel costs.

Montana farmers are simply fed up, yet because of the Board's unresponsive actions in the past, they often feel they have no where to turn to try to resolve their concerns with rail rates and service. Because Montana is captive to just one Class I railroad, producers lack the ability to "vote with their feet" and exercise the type of meaningful choices that characterize free and competitive markets. Instead, they must absorb whatever costs the monopoly power chooses to impose upon them.

While the impact on producers is extreme, agriculture is certainly not alone in feeling the pinch of these unfair practices. During its hearing, the Board will hear from a diverse cross-section of the American economy and will hear in colorful detail just how far these unfair practices are being taken. All of these stories come down to an inescapable fact – imposing charges on shippers that exceed the increase of cost in fuel amounts to a tax on the American economy that is being unilaterally imposed by monopoly or oligopoly power. That is a situation that cries out for Board action. Where markets are competitive, the Board's reach is limited. But in captive markets, the Board has a duty to act in the face of unrestrained abuse of monopoly power. This is not "business as usual" – this is an unreasonable practice on the part of a monopoly.

Sincerely,

A handwritten signature in blue ink, appearing to read "Conrad Burns", with a large, stylized initial "C" and "B".

Conrad Burns