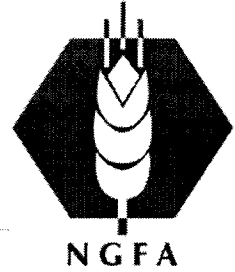




THE
NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE



May 31, 2006

The Honorable Douglas Buttrey
The Honorable Frank Mulvey
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

216691

Dear Chairman Buttrey and Vice Chairman Mulvey:

Re: Ex Parte 661, Rail Fuel Surcharges

The of National Grain and Feed Association and The National Industrial Transportation League would like to reiterate our thanks for conducting the hearing on rail fuel surcharges on May 11. While we thought the hearing permitted an exchange of views, we would offer the following points:

1. Regarding whether the railroads are "over-charging" for fuel price increases that have occurred since the surcharge formulas were put into place, we submit that the relevant question is whether individual shipments (or the average shipper that is paying the full surcharge) are being over-charged. You received significant input during the hearing demonstrating that such over-charging is common. We didn't hear a single railroad specifically address this issue. Rather the carriers responded to the question: Are you receiving more in total fuel surcharge revenue than the system-wide fuel cost increases you have incurred since the inception of the fuel surcharge formula? With the exception of the Canadian National, they all proclaimed they were not. This question and this response by the carriers simply means each carrier has not been able to over-charge individual shippers who are paying the surcharge an amount high enough to compensate for those shippers that do not pay the fuel surcharge. This offers little comfort to the individual shipper that is being consistently over-charged. A practice that transfers cost burdens from one customer to another is unreasonable, particularly when the surcharge has been advertised as a specific cost recovery hardship measure, unrelated to demand elasticity.
2. While there is substantial evidence that many, if not most, rail customers are being overcharged under existing carriers' fuel surcharge programs, with rising rail rates, there can be no question that the over-charging will increase unless the application of this unreasonable practice is curtailed. Rail rates, on average, have risen 20% or more since 2001, and on many individual movements, rates have risen far in excess of this level. Simply put, by tying fuel surcharges to the freight rate, not only have fuel surcharges risen in proportion to the applicable index but also by the increase in the freight rate. As surcharge formulas are applied to higher rate levels, the over-charging will in some cases become outrageously excessive if the carriers leave their established formulas in place. The rapid rise in fuel costs has been challenging to absorb in all industries, and for many rail customers the situation they face is not unlike being charged \$5 per gallon of fuel, or more, while they see other customers paying \$3 or less.

3. If there was anything made abundantly clear at this hearing, it is that all the Class I railroads have large portions of their customer base that sincerely believe they are being unfairly over-charged, and that inadequate information is being provided by the rail carriers to demonstrate otherwise. If railroads expect their customers to compensate them for increased fuel costs, then they should be willing to provide appropriate documentation to demonstrate they are only assessing charges that recover those costs and nothing more. Until the carriers provide this information to their customers, or until the STB orders that such information be made available, many rail customers will remain dissatisfied with the railroads' and the STB's response to the situation. We urge the STB to assert its regulatory jurisdiction and require railroads to provide relevant cost data that will allow customers to understand the surcharges being paid and the appropriateness of the methodology. In a word – transparency.

As you know, our two associations have been engaged in private sector negotiations with the Class I railroads to address this issue for almost two years. We still believe that this is the most prudent and expeditious method to finding resolution to our concerns. But while some carriers have responded to these discussions with at least some changes to their fuel surcharge programs, other carriers have not. Indeed, NS has attempted to take its fuel surcharge overcharges "off the table" by incorporating them in its freight rates – a matter that we believe should have no bearing at all on the Board's analysis of the fuel surcharge question and on any future action taken by the Board.

We urge the Board to promptly set forth its view as to principles that should form the basis for a proper fuel surcharge program. The Board should then direct each railroad to undertake a review of its fuel surcharge methodology in light of those principles and make preliminary proposed changes within 30 days. The railroads should then consult with representatives of rail users and their organizations, such as NGFA and NITL, and submit program changes to the Board within a total of 90 days from the date the Board sets forth acceptable surcharge principles. At that point, interested parties should be able to submit comments regarding each carrier's report, and advise the Board as to appropriate future action.

We look forward to working with the Board on this issue which is critical to the preponderance of rail shippers.

Sincerely yours,



John B. Ficker
President
The National Industrial Transportation League



Kendell Keith
President
National Grain and Feed Association