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September 21, 2006

Surface Transportation Board
Attn: STB Ex Parte No. 661
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Rail Fuel Surcharges
STB Ex Parte No. 661

Enclosed please find a copy of the Comments on the Board's proposed measures set forth in its Decision of August 3, 2006, submitted by CRI/Criterion which is being filed electronically today.

Sincerely,

H. Bruce Gallun
Manager Manufacturing Scheduling and Rail Coordinator

CRI/Criterion, Inc.
Two Greenspoint Plaza, Suite 1000 16825 Northchase Drive Houston, Texas 77060
Tel: 281-874-2600 Fax 281-874-2465



Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423

RAIL FUEL SURCHARGES	)	STB Ex Parte No. 661
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REPLY OF H. Bruce Gallun
CRI/Criterion (Shell USA)
TO STB DECISION AND REQUEST FOR COMMENTS,
DATED AUGUST 3, 2006

H. Bruce Gallun
CRI/Criterion
16825 Northchase Drive
Suite 1000
Houston, TX 77060
September 21, 2006

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I. INTRODUCTION

My name is H. Bruce Gallun and I am The Manager of Manufacturing Scheduling and The Rail Coordinator for CRI/Criterion which is a company that relies on rail transportation. We have four manufacturing plants, warehouses, and/or distribution centers) that are rail served; our rail transportation expenses in 2005 totaled \$2.6 + million.

We commend the Board for initiating this rulemaking proceeding and for developing the measures set forth in the Decision. The intent of the Decision was very clear and requires only minor changes so reporting requirements are not open to misinterpretation. Because we agree with the Board's recommendations, the comments presented herein will focus only on the Board's opinion that the current fuel surcharge programs constitute an unreasonable practice, the need for clarification of the reporting requirements, and a request for the Board to develop and establish a process to allow rail customers to seek recourse if the railroads fail to comply with the new guidelines.

II. THIS RULEMAKING PROCEEDING ADDRESSES AN UNREASONABLE PRACTICE OF APPLYING WHAT THE RAILROADS LABEL A FUEL SURCHARGE, IN A MANNER THAT IS NOT LIMITED TO RECOUPING INCREASED FUEL COSTS THAT ARE NOT REFLECTED IN THE BASE RATE.

We agree with the Board's decision that the application of the standard fuel surcharge programs by the railroads constitutes an unreasonable practice. Since 2003, the railroads have been the subject of on-going criticism, because they have profited from fuel surcharges. Numerous studies have been published that revealed the railroads were over-recovering under their fuel surcharge programs and articles have appeared in various trade publications questioning the fairness of the fuel

surcharges.¹ While a few of the railroads have announced changes to their programs, others have adopted a take-it-or-leave-it attitude when we attempt to address the impact fuel surcharges have on our transportation costs.

We recognize that Canadian National (CN) and Canadian Pacific (CP) modified their programs which reduced surcharge levels for those railroads; however, since both programs are based on a percentage of the rates, we believe it likely that inequities still exist.

Further, Burlington Northern Santa Fe (BNSF) attempted to move in the right direction by establishing a mileage based program. Reportedly, the BNSF program was rejected by some shippers who believed they were not ready to administer surcharges based on miles, and because the program as presented required further refinement. We agree with the Board's recommendation to the railroads to develop fuel surcharge programs based on miles and weight of shipments, and administration will not be a concern as long as the miles are accessible on the railroads' web pages. Our only concern is that the base rates per mile produce surcharges that actually relate to the increase in fuel costs and do not produce surcharges that are a higher percentage of the rate than the current programs.

III. THE FUEL SURCHARGE PROGRAMS SHOULD INCLUDE A MECHANISM SO CALCULATION OF INCREASES OR DECREASES IN FUEL COSTS CAN VARY, BASED ON DIFFERENT START DATES.

The railroads initiated the current fuel surcharge programs in October, 2002, that were designed to recover cost increases that had occurred since 2001. A surcharge in October, 2002 was 2.5%; the railroads have been using the same indexes since and the surcharges have increased to levels as high as 18%. During this same time period, rates have been increased, and new rates have been

¹ John Gallagher. "Following the Competition". Traffic World, July 28, 2003, pp. 28 - 29.

negotiated, including rates for new moves. (Because the surcharges are based on a percentage of the rates, rate increases also result in increased fuel surcharge revenues for the railroads.)

Fuel surcharges should reflect the change in fuel prices from an established starting point. If a new rate is negotiated, especially if there have been no prior movements, prior changes in fuel prices are not relevant, so the shippers and carriers should be able to agree on a starting date and base surcharge, and the fuel surcharges should reflect changes in fuel prices from that point forward.

IV. THE REPORTING REQUIREMENTS PROPOSED BY THE BOARD REQUIRES CLARIFICATION.

The Monthly Report of Fuel Cost, Consumption and Fuel Surcharge Revenues proposed by the Board should give the shippers adequate information to better monitor the railroads' fuel costs and fuel surcharge practices. However, the form does not specify what is to be used to measure the increased or decreased fuel costs in Line 2, Increased or Decreased Cost of Fuel. Are the railroads to report increased or decreased costs of fuel since 2001, 2002, the previous month, or some other date? The base starting date for calculating changes in fuel costs needs to be defined.

V. THE STB SHOULD ESTABLISH A PROCESS TO GIVE SHIPPERS PROTECTION FROM UNREASONABLE PRACTICES THAT MAY OCCUR IN THE FUTURE.

We respectfully request that the Board establish a procedure that will give shippers recourse if railroad(s) fail to comply with the new rules, and the right to challenge surcharges that exceed the incremental changes in fuel costs for the movements to which the surcharges are applied. The process should be simple and user friendly, so it is affordable for all rail customers, including small shippers.

VI. SUMMARY

We agree with the Board's position that the current railroad fuel surcharge programs constitute an unreasonable practice.

We believe there is sufficient evidence that the railroads have been aware that they were over-recovering fuel expenses from some of their customers. Further, we concur with the Board's recommendation, that surcharge programs be developed based on mileage and weight of shipments.

Fuel surcharges should reflect changes in fuel prices from an established starting point.

Fuel cost increases that occurred prior to the effective date of a new rate are not relevant. Further, if there have been no prior movements, prior changes in fuel prices are also not relevant. The carriers' surcharge programs should have the flexibility so shippers and carriers can agree on a base surcharge and the fuel surcharges should reflect changes in fuel prices from that point forward.

The base date for calculating changes in fuel costs needs to be defined.

With the objective to preclude potential misinterpretation of the reporting requirements proposed by the STB, the base date needs to be defined for the railroads to report changes in the cost of fuel (refer to Monthly Report of Fuel Cost, Consumption and Fuel Surcharge Revenue, Line 2, Increased or Decreased Cost of Fuel).

CRI/C riterion appreciates the opportunity to present our views to the Board, and we urge the Board to establish the guidelines, enforceable on complaint, to require that fuel surcharges be limited to those amounts necessary for railroads to recover potential fuel cost increases.