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October 2, 2006

VIA E-FILING

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

**RE: Supplemental Comments of CEMEX, Inc. in response to *Rail Fuel*
Surcharges, Ex Parte No. 661**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the Supplemental Comments of CEMEX, Inc.

Yours very truly,



Sandra L. Brown

SLB:bgh
Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 661

REVIEW OF RAIL FUEL SURCHARGES

SUPPLEMENTAL COMMENTS OF CEMEX, INC.

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ATTORNEYS FOR CEMEX, INC.

October 2, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 661

RAIL FUEL SURCHARGES

SUPPLEMENTAL COMMENTS OF CEMEX, INC.

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 request for testimony to address fuel surcharges collected by railroads (hereinafter "Notice"). CEMEX, Inc. ("CEMEX") submitted written comments in response to the Notice on April 27, 2006 (hereinafter "CEMEX Comments").¹ In an STB decision served August 3, 2006 in this proceeding, the Board has sought public comments on the Board's proposals set out in the August 3 decision (hereinafter "Decision").

Supplemental Comments

CEMEX strongly supports the Board's efforts to establish policies which will encourage a reasonable solution to the current unreasonable practice used by the railroads to assess fuel surcharges on shippers. CEMEX generally supports the Supplemental Comments that CEMEX

¹ The Identification and Interest of CEMEX can be found in CEMEX's Comments filed with the Board on April 27. CEMEX's comments filed herein are intended as a supplement to the CEMEX Comments and CEMEX will limit repetition of issues except to the extent necessary to address the Board's proposals as requested.

expects to be filed by The National Industrial Transportation League with the Board on or before October 2, 2006.

First, CEMEX supports the Board's finding that it has the authority to regulate the unreasonable practices of the railroads, including those practices associated with fuel surcharges. 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).² The Board must order the railroads to immediately desist with their unreasonable fuel surcharge practices.

Second, CEMEX supports the Board's proposal to revoke commodity exemptions to the extent necessary to implement the Decision to all traffic. CEMEX ships commodities that are currently subject to exemptions from Board regulation under 49 CFR § 1039.11, Miscellaneous Commodities Exemptions. Making the Board's Decision apply to exempted traffic is a positive step for shippers such as CEMEX. While CEMEX understands that certain shippers may request the Board to not apply the exemption revocation to them, see letter filed by HUB Group, Inc. on September 27, 2006 (referencing intermodal traffic), CEMEX believes that most shippers will support such a necessary revocation. See for example, the Alliance of Automobile Manufacturers comments dated September 22, 2006. Most importantly, CEMEX supports the Board's concern that the reasonableness of the railroads' fuel surcharge practices should apply equally to all classes of traffic. Decision at 7.

Third, CEMEX supports the Board's finding that fuel surcharge programs must be linked to the actual increased cost of fuel for individual movements and that it is an unreasonable practice to compute fuel surcharges as a percentage of the total rate. In line with this finding, the

² Additional support of the Board's authority under 49 U.S.C. § 10702 can be found in CEMEX's Comments filed with the Board on April 27.

Board should find that any fuel surcharge must operate in both a positive and negative fashion so the carriers are not overcompensated when fuel costs decrease.

Fourth, CEMEX supports the Board's finding that it is an unreasonable practice to engage in "double dipping." In order to protect shippers from railroad double dipping, the Board should require the railroads to separate out the fuel and non-fuel components of the total rate and only permit a fuel surcharge, if needed at all, on the fuel portion of the rate. At a minimum, the Board must require the railroad to certify the base period, by month and year, used for establishing base rates.

Fifth, CEMEX generally supports the Board's proposal to require the use of a uniform index to measure increases in fuel costs and supports the Board's proposal to use the EIA No. 2 Diesel Retail Sales Index. However, a separate fuel cost index would not be necessary if the Board just required the use of the RCAF to adjust for all changes in costs, including fuel, and then modify the RCAF as may be needed to provide for appropriate time adjustments.

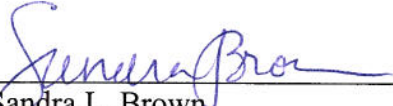
Finally, CEMEX supports the Board's proposals for railroad reporting and supports the immediate implementation of the proposed reporting. CEMEX is concerned that it appears, from the few filings made by some of the railroads on September 20th that the railroads are going to take the position that they are not able to provide the information requested by the Board. Thus, new or different reporting requirements may be necessary. For example, the Board should consider adding data fields to its Waybill Sample to better monitor fuel surcharge revenues and require carriers to report revenue ton-miles for the month and revenue ton-miles to which the fuel surcharge applies, not just revenue tons. The Board should take whatever additional steps are necessary to ensure that fuel surcharge mechanisms are carried out in transparent, rational and equitable manner.

CONCLUSION

CEMEX applauds the Board for taking action on the fuel surcharges and for proposing to revoke commodity exemptions to the extent necessary to apply the fuel surcharge findings to all traffic. Proactive and quick steps must be taken to expand and implement the proposals regarding fuel surcharges. The Board must reaffirm its findings made in its August 3 Decision and must take swift action to implement any additional fuel surcharge principals needed to assure that the Board's findings are followed.

Respectfully submitted,

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