

TO THE SURFACE TRANSPORTATION BOARD
COMMENTS OF
NORTH DAKOTA GRAIN DEALERS ASSOCIATION
EX PARTE 661 -- RAILROAD FUEL SURCHARGES

In response to STB proposed rules published August 3, 2006
Comment deadline October 2, 2006

The North Dakota Grain Dealers Association (NDGDA) commends the Surface Transportation Board for its attention to railroad fuel surcharges, for holding the hearing on May 11, 2006 and for publishing these Proposed Rules. This proposal addresses all the major concerns of rail customers that have been raised. We will offer supporting comments and some suggestions for what we feel would be improvements.

Identity

NDGDA is a 95-year-old nonpolitical voluntary membership trade association representing the interests of the 400+ country grain elevators in North Dakota. Approximately 90 percent of those grain elevators are NDGDA members and the governing Board consists of managers of 10 companies operating 24 of those elevators. Approximately 85% of North Dakota grain elevators are located on a rail line. Many of the others truck at least a portion of their grain volume to elevators on rail.

NDGDA has been heavily involved in the railroad fuel surcharges matter since 2004. It worked on state legislation in early 2005, compiled information regarding the excessiveness of fuel surcharges, and testified at your May 11 hearing. NDGDA is a member of the National Grain and Feed Association (NGFA) and supports its comments filed in this proceeding.

Summary

Fuel surcharges have a direct negative effect on the price grain elevators can pay farmers for grain. Fuel surcharges should be cost recovery mechanisms only, not profit centers. Assessing fuel surcharges in excess of actual increased fuel cost is deceptively taking money from the pockets of farmers, grain elevators and other shippers. If fuel surcharges are necessary, everyone should pay his share, no robbing shipper Peter to pay for shipper Paul. We applaud

the progress the Board is making on this important issue. Now it needs to complete the job by adopting and enforcing rules that are equitable and consistent for all parties.

Board Authority

NDGDA believes the Board has authority to regulate fuel surcharges as a “practice”, not railroad ratemaking. Even though almost all carriers use a percentage of rate as the basis for calculating the fuel surcharges, the surcharge is added as an extra charge, separate and apart from the rate, allegedly to recover fuel costs and not in response to market conditions. Surcharges are published separately from rates and vary according to periodic changes in oil or fuel index prices. These are not features of a typical railroad rate.

Rate-based vs. Mileage-based

One of our primary objections since fuel surcharges became an issue was railroads using the rate as the basis for determining fuel surcharge. There is no across-the-board linkage of rates and increased fuel cost. This point was hammered home by most rail customer witnesses at the May 11 hearing. The Board agreed when its August 3 proposal stated “The record before us indicates that there is little, if any, correlation between an increase in the cost of fuel for an individual rail movement and the level of the base rate for that movement.” It is simply common sense that distance is related to the amount of fuel consumed. Therefore we support the Board’s proposal that there be a linkage between mileage and fuel surcharge. That mileage should be rail miles, not highway miles as was suggested by the BNSF last year. BNSF later changed to rail miles.

The obvious need for change from rate-based fuel surcharge was underscored in our submission to the Board’s May 11 hearing. According to our calculations, based on railroad data, surcharges on some grain movements from North Dakota were 3-6 times increased fuel cost. BNSF was the first and only carrier to convert to a mileage-based fuel surcharge and we again compliment them for doing that. Whether BNSF’s per car-mile charge is accurate is still an open question however.

These rules should be kept as simple as possible. Mileage is a known quantity and the easiest to determine. All carriers can likely agree it is the single largest factor in fuel consumption. The Board should go with it. Other factors such as speed, topography, weight and wind resistance were mentioned in comments at the May 11 hearing. The Board should be cautious about complicating the rules with other factors. That may delay implementation, will

definitely make calculation more complex, and could cloud the transparency desired by rail customers. A middle ground must be reached between a system-wide, one level-fits-all surcharge and a unique surcharge for each movement. In our testimony on May 11 we used the term “reasonably cost-based”. It was an abuse of that concept that brought us here in the first place.

Calculating the per-mile charge, Reporting requirements

As we pointed out back in May, using a mileage factor doesn’t guarantee an accurate surcharge. The process to determine the surcharge per car mile must be accurate. It should be open to review by rail customers and the Board. That leads us to the reporting requirements.

The proposed reporting requirements are good as far as they go. But we don’t think they will get to the nub of the issue, which is fuel surcharge being reflective of the actual increased cost of fuel on that movement to which it is applied. The proposed reporting requirements may allow the Board and rail customers to determine if the overall fuel surcharge collections are more or less than the overall system-wide increased fuel costs. Of course that is good information for the Board and rail customers to have, but it isn’t specific enough. If the railroads are overcharging on ag commodities to make up for undercharges on some other business units or commodity types, we haven’t solved the problem. The Board should require additional information to assure itself and rail customers that surcharges are reflective of actual increased cost of fuel on the movement to which it is applied. The NGFA has suggested some specifics.

Class II and III Railroads

Proposed reporting requirements for Class I railroads include how much fuel surcharge revenue is collected on joint shipments with Class II and III railroads and how much of that is shared with those Class II and III railroads. The Board should take this one step farther and require the Class I’s to share an appropriate amount of the fuel surcharge back to the Class II and III railroads. We will not attempt to specify a basis for sharing, except to say it might be relative to mileage moved by the respective carriers. After all, Class II and III miles are used in the calculation of joint rates. In cases where rate has been used as the basis of fuel surcharge, the Class II or III share is usually part of the rate quoted. Fuel use for the typical gathering function of smaller railroads compared to longer line hauls of Class I’s might also be considered.

Double-dipping

NDGDA heartily agrees with the Board that railroads should be prohibited from collecting both a fuel surcharge and a rate escalator such as the RCAF (Rail Cost Adjustment Factor) without first subtracting the fuel cost component from the escalator.

Fuel Index

Another bone of contention with rail customers is the index railroads use to calculate fuel surcharges. Here again, common sense should prevail. Using an index that is as closely representative of the actual type of fuel burned by railroads will yield the most accurate surcharge.

Railroads do not burn highway diesel fuel and so there is a disconnect between that and the true increased cost of railroad fuel. On page 3 of its presentation at the May 11 hearing BNSF asserted that the Highway Diesel Fuel (HDF) index and its cost of fuel moved in parallel fashion, meaning the difference remained the same month to month, and so HDF was an accurate index to use. But that is not supported by information about HDF and fuel cost reported in financial reports available on the BNSF website. The difference between HDF and BNSF fuel cost ranges from 57¢ per gallon in the 2nd quarter of 2002 to \$1.13 in the third quarter of 2005. That is not parallel.

Using one common reference point for all railroads increases transparency and makes comparisons easier. NDGDA, along with NGFA, suggests the Board consider using the wholesale price of diesel fuel without taxes.

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