



October 2, 2006

By E-Filing

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

Re: Ex Parte No. 661 – Rail Fuel Surcharges – Comments

Dear Secretary Williams:

Enclosed for filing in the above proceeding are the Comments of Union Pacific Railroad Company pursuant to the Board's August 3, 2006 decision.

Please direct any questions about these Comments or Union Pacific's participation in this proceeding to me at (402) 544-3897 or the e-mail address indicated below.

Sincerely,

A handwritten signature in cursive script, reading "Lawrence E. Wzorek".

Lawrence E. Wzorek

Enclosure

Lawrence E. Wzorek
Assistant Vice President - Law

UNION PACIFIC RAILROAD
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580
ph. (402) 544-3897 fx. (402) 501-0129
lewzorek@up.com

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 661

RAIL FUEL SURCHARGES

COMMENTS OF UNION PACIFIC RAILROAD COMPANY

J. MICHAEL HEMMER
LAWRENCE E. WZOREK
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
Tel: (402) 544-5000

*Attorneys for Union Pacific
Railroad Company*

October 2, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 661

RAIL FUEL SURCHARGES

COMMENTS OF UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company ("UP") hereby submits comments in connection with the Surface Transportation Board's ("STB" or "Board") decision served August 3, 2006, in the above-captioned proceeding.

The STB instituted this proceeding by Notice of Hearing, dated March 14, 2006, when it solicited comments from all interested parties on how railroads calculate and charge fuel surcharges ("FSC") for transportation to their customers. UP has actively participated in this proceeding from the beginning. UP submitted the comments of its Chief Financial Officer, Robert M. Knight, Jr., on April 27, 2006. Mr. Knight subsequently appeared at the daylong hearing the Board held on May 11, 2006, when he explained UP's FSC program in detail.

UP respectfully suggests that the Board's core conclusion — that rate-based FSCs are an unreasonable practice — is fundamentally flawed. We offer this view because a poll of our customers found that a majority of the 463 companies who responded favor the current FSC approach and many of them cannot readily accommodate any other FSC in the near future. A methodology favored by a majority of our customers who responded simply cannot be "unreasonable."

I. SUMMARY OF UP'S POSITION.

- The Board's attempt to address shipper concerns fails to recognize the complex nature of FSCs for shippers and railroads alike.
- The Board's conclusion that it is an unreasonable practice for railroads to compute and assess a FSC as a percentage of the transportation rate is incorrect as a matter of law. More significantly, the Board's determination is contradicted by the fact that more than 50% of UP customers who responded to a recent survey on FSC programs said that, if given an option among FSC programs, their first choice is a rate-based program.
- While the STB's conclusion that a FSC should be tied to attributes of movement that directly affect fuel consumption (i.e., mileage or weight and mileage) is appealing, it does not reflect an appreciation of the difficulties associated with such a change. Not only do other attributes affect consumption, but also many of UP's customers cannot accommodate a mileage- or ton/mile-based FSC program. This too has been confirmed by UP's recent customer survey.
- UP agrees with the STB's conclusion that railroads should not engage in "double-dipping," i.e., charging a shipper a FSC while also applying RCAF or a similar adjustment factor that includes fuel in adjusting a shipper's rates. UP has no public price document that does this.
- UP accepts the STB's choice of a U. S. Department of Energy index for use in calculating a FSC. In fact, more than 90% of UP price documents with a FSC provision today are based on DOE's Highway Diesel Fuel ("HDF") Index. However, the Board should understand that there are a significant number of transportation agreements and price documents in effect today that use other indices — often because those other indices are preferred by UP's customers.
- The STB's determination that its proposals on FSC should apply to "exempt" traffic in 49 C.F.R. Part 1039 is without support in the record and unnecessary. In particular, the Board should make clear that its proposals do not extend to intermodal traffic.
- The Board should revise its reporting proposal to require reports no more frequently than quarterly and limited to appropriate information.
- The Board must assess the practical effects of its FSC proposals on shippers and railroads to determine what can and cannot be accomplished. UP's customer survey results reveal much more than the STB learned from its hearing.

- STB should make any new direction to the railroads prospective.

II. INTRODUCTION TO UP'S ARGUMENT.

UP understands its customers' concerns about fuel surcharges. The price of diesel fuel purchased by UP and all railroads has soared. So have the fuel surcharges. UP developed its FSC program over the years after consulting with its customers, large and small. UP has learned much from its customers and continues to strive for a FSC program that is practical and responsive to their needs, while enabling UP to recover fully its total fuel cost, a cost that has become a larger portion of UP's operating expense as it has escalated rapidly — until just recently.

UP's FSC is NOT a profit center. It never has been a profit center. It was never intended to be a profit center. It was and is intended to be an efficient way of recouping rapidly changing fuel costs. It is much more expedient than changing the transportation rates. Furthermore, UP's FSC programs as currently structured allow shippers to enjoy reductions in the FSC as fuel prices decrease — as they have done just recently. UP's carload surcharge in November will drop to 15.5% from 18% in October as a result of changes in the HDF. See <http://www.uprr.com/customers/surcharge/index.shtml>.

The rate-based FSC has been the vehicle of choice historically because it is easy to administer for both UP and shippers. This conclusion is substantiated by the results of a survey UP conducted recently of shippers who not only make up a majority of UP's revenue, but also pay UP a FSC. UP describes the survey results in these Comments.

The Board's proposals need re-examination and clarification based on a complete factual record consistent with the Board's legal authority. The STB should give clear direction consistent with its legal authority.

III. THE BOARD'S PROPOSALS ARE NOT SUPPORTED BY ITS LEGAL AUTHORITY.

UP submits that the STB's proposals, in several key aspects, exceed the Board's legal authority. Furthermore, the record developed by the Board to date does not support the Board's conclusions. In particular,

- The Board does not have the legal authority to regulate as a "practice" railroad fuel surcharges that are calculated as a percentage of the base rates. Even if it is a "practice," it cannot be considered "unreasonable."
- The record does not support the Board's decision that rate-based FSCs are unreasonable practices or the Board's decision to revoke exemptions.

These issues have been raised and briefed in the Comments filed by the Association of American Railroads ("AAR"). UP subscribes to those comments and, therefore, incorporates them by reference and adopts them as its own on these key issues.

Whether or not the STB accepts AAR's position pertaining to the Board's legal authority in this proceeding, the STB should state unequivocally that its determinations in this proceeding have prospective effect only and are not retroactive. Railroads have used FSC programs for years. It would be inappropriate for the STB to make new law in this area and apply it retroactively. See *Heckler v. County Health Services of Crawford City*, 467 U.S. 51, 61 n. 12 (1984).

Like other transportation companies, UP first began adding a FSC to its intermodal moves in 2000. UP's FSC program for carload business began in 2002. UP has revised its program over the years in response to shipper comments and requests. As UP explained in its previous comments, UP has several basic FSC programs with 58 variations. These have been developed in response to customer requests. Each of

these FSC programs is based on a percentage of the rate. This same approach is used by other transportation modes. It is also used by many of UP's vendors and suppliers.

UP surveyed over 900 companies subsequent to the STB decision. More than 460 of those responded. A majority of those indicated that they prefer the percentage-of-rate method over the alternatives proposed by the Board. The Board cannot conclude that this is an "unreasonable practice" when it is the option preferred by UP's customers. It would be inappropriate to declare a methodology used for years by railroads to be an "unreasonable practice." It would be especially inappropriate to expose UP to claims for damages for using a system that has long been accepted in transportation and other venues of commerce.

IV. THE BOARD'S FINDINGS ON EXEMPT TRAFFIC NEED CLARIFICATION.

The Board proposed to partially revoke the exemptions of traffic from regulation in 49 C.F.R. Part 1039 to the extent necessary to apply its FSC proposals to those classes of traffic. UP asks the Board to clarify its proposal.

Specifically, the Board should make clear that intermodal traffic is not within the scope of its partial revocation of the exemptions. The exemption for intermodal traffic is not contained in Part 1039. The full statement of the exemption is found in Part 1090 of 49 C.F.R.

More importantly, if the Board's proposal is intended to encompass intermodal, there is no justification for extending the Board's proposals to intermodal traffic. No intermodal customer filed comments with the Board or appeared at the hearing on May 11, 2006, in response to the STB's decision of March 2006. In fact, just recently, a major intermodal business filed a letter with the Board in opposition to the STB's

proposal to regulate railroad fuel surcharges on intermodal movements. Letter from David P. Yeager, CEO, Hub Group, Inc., September 19, 2006.

Intermodal is a highly competitive area of business. Railroads compete for intermodal business in a transportation market that is accustomed to a variety of FSC programs. Intermodal customers have demonstrated their ability to address their concerns about FSCs by relying on transportation alternatives.

V. THE BOARD SHOULD MAKE CLEAR THAT ITS PROPOSALS DO NOT EXTEND TO FSCs IN TRANSPORTATION CONTRACTS OR SIMILAR PRICE DOCUMENTS.

Rail transportation contracts are beyond the STB's jurisdiction. 49 U.S.C. Section 10709. The STB's proposals do not state anything to the contrary. Nevertheless, the STB should make clear that its final conclusions on FSCs do not extend to rail transportation contracts. Comments already filed indicate that this point may not be fully appreciated by all those who are participating in this proceeding. See Comments of Montana Wheat & Barley Committee, et al., filed September 25, 2006, at 6-7.

The Board should also clarify that, to the extent it removes the exemption for traffic listed in Part 1039, the revocation does not extend to price documents that constitute transportation contracts today, whether or not they refer to 49 U.S.C. Section 10709. Contracts include those price documents in the exempt arena that have all the characteristics of transportation contracts but do not specifically cite the statutory provision. A variety of such price documents have been developed by UP and other railroads over the many years since the Board exempted a multitude of commodities from regulation.

Railroads and shippers have developed for their mutual convenience and efficiency various rate instruments, including letter quotes (LQs), special commodity quotes (SCQs), and private quotes, that are in fact transportation contracts. They may not refer to 49 U.S.C. Section 10709 simply because the Board had already exempted this traffic from regulation. The Board's proposal on FSC will add another element of confusion and indecision unless the STB makes it clear that any partial revocation of the exemption with respect to fuel surcharges applies only to those public rates that are generally available, not those rate documents that are private contract rates, no matter what format they take.

VI. THE RECORD DOES NOT SUPPORT THE BOARD'S PROPOSALS.

The STB's Notice of Hearing on March 14, 2006, generated comments by shippers, railroads, and consultants. Each of the Class I railroads appeared at the May 11 hearing to describe how it administers its FSC program.

UP provided the Board with information on the impact of diesel fuel cost increases and UP's efforts to mitigate the effect of those increases through its FSC program. Here is a recap of some of those facts, along with supplemental information about events that have occurred since UP's appearance at the May 11 hearing:

A. UP Costs:

- UP's cost per gallon continued to rise until very recently. UP's average price of diesel fuel in 2005 was \$1.77 per gallon. In the second quarter of 2006, UP paid an average price of \$2.15 per gallon. In August 2006, the price was approximately \$2.37 per gal. There has been a decline in September. But note that, prior to instituting its FSC program, UP paid between \$0.70 and \$0.75 per gallon.

- UP's total expenditure on diesel fuel through the second quarter of 2006 was \$1.389 billion, despite extensive programs that have improved fuel efficiency.
- The price of oil affects more than diesel fuel. UP purchases other fuel and utilities. That cost, when combined with diesel fuel expenditures, amounted to \$1.486 billion through the first half of 2006 compared with \$1.136 billion during the first half of 2005. This total does not include the cost of fuel taxes levied by various states, which UP estimates will add over \$46 million to its costs in 2006.
- UP pays fuel surcharges to many of its suppliers, vendors, and contractors, including switching roads and handling carriers, as detailed more fully below.

B. UP's FSC Programs:

- UP began its FSC program for intermodal shipments in 2000; its first carload FSC program began in 2002.
- UP uses various indices: HDF, West Texas Intermediate ("WTI"), and modifications requested by customers. As a result, UP today administers 58 different fuel surcharge programs to meet customers' varying requirements.
- All UP FSC revenue today is based on a percentage of the underlying transportation rate. It is premised on UP's view of the most efficient way to recover incremental fuel cost in excess of \$0.75 per gallon, a price that UP substantiated in its earlier submission to the Board. UP Comments, filed April 27, 2006, at 7, Slide 2.
- UP does not recover all of its incremental fuel cost. Some complain that the FSC is a profit center, but UP has absorbed a substantial share of the increased fuel costs. UP advised the Board that UP has more than \$800 million in unrecovered incremental fuel cost since 2003. UP Comments at 14, Slide 4. In no fiscal year has UP ever recovered 100% or more of its incremental fuel cost.
- Some time ago, UP instructed its Marketing & Sales personnel that "double-dipping" is not an acceptable practice for new price documents. If a FSC applies to any new price, then the All-Inclusive-Index-Less-Fuel is used to calculate rate adjustments.

VII. THE STB'S PROPOSALS ARE BASED ON AN INCOMPLETE AND INADEQUATE RECORD.

The STB proposals are based on a record made at a one-day hearing. The Board concluded that a rate-based FSC is an unreasonable practice and that FSCs should be based on the attributes of each movement, i.e., mileage or weight and mileage. However, these conclusions are based on an insufficient record with respect to a number of salient points.

The STB decision does not reflect an understanding of the challenges faced by shippers and railroads. For example, the decision does not reflect consideration of these factors:

- A regulatory decision will not change the entire pricing/FSC landscape on its effective date. The STB cannot ignore all that has gone before in contracts and other pricing documents that continue in place or need to be transitioned to any new framework directed by the STB. Shippers will be affected in inconsistent ways.
- Can customers/shippers adapt to a system of charges based on miles (and weight)? Shipper comments at the May 11 hearing are only a part of the customer equation. There was no indication that shippers can accommodate a mileage or ton/mile FSC system. UP conducted its own survey of over 900 companies. The results indicate that many customers cannot accommodate a change in the near future.
- If a mileage-based FSC is adopted, what miles should be applied? What mileages are available to be applied? Even those shippers who appeared to endorse a FSC based on mileage could not agree on whether it was fair to them vis-à-vis other shippers who would also pay a mileage FSC.
- The STB proposals cannot be implemented for interline traffic involving more than one railroad without a significant amount of work for railroads and shippers whose systems cannot accommodate the FSC programs suggested by the STB. The importance of interline traffic effect cannot be ignored. In 2005, 61% of the 9.5 million units handled by UP were local moves; 39% were received, forwarded or bridged on UP.

VIII. UP'S EXAMINATION OF ALTERNATIVE FSC PROGRAMS.

UP has made clear to its customers and the Board that it is willing to consider alternative FSC programs that meet the objectives of being fair and easy to administer while allowing UP to recover fully its incremental fuel cost. Subsequent to the Board's decision of August 3, UP studied the alternatives proposed by the STB. These are UP's conclusions:

A. Mileage/Weight-Based FSC.

The Board stated its preference that a FSC be based on weight and mileage of each move. Frankly, that is an impractical solution. Most cars are not weighed today. UP (and many other railroads) have adopted per car pricing. This has accelerated movement away from weighing cars. Today, many weights are estimated. There are also frequent disputes with customers over the accuracy of waybill weights.

Weighing each car subject to a FSC would cause a deterioration in UP's velocity. Only 24 scales are available for customer weights across our system. There are another seven master, reference, and shop scales on UP's system. Not every car goes over a scale. Only 3,500 cars per month are weighed on company scales at a shipper's request. There are approximately 122,000 additional loaded shipments that are weighed incidental to UP's car classification process. UP handles, on average, more than 800,000 carloads every month. Significantly increasing the number of the cars to be weighed would impair efficiency and throughput.

B. Mileage-Based FSC.

The Board stated that mileage alone would be an attribute of movement that railroads could use for FSCs. Again, this conclusion is easier stated than implemented.

There are a variety of mileages available for this calculation. Some databases are incomplete; some or all of them may not be acceptable to even a significant portion of shippers.

UP customers can obtain mileages for moves on UP by referring to UP's website. http://c02.my.uprr.com/cdm/mileagecalculator/mileage_calculator_query.jas.

An inquiry generates mileages under UP's mileage tariff (UP 6000) and mileages to and from UP points east of the Rocky Mountains (Docket 28300 mileages). As explained below, both databases are incomplete for FSC purposes.

Actual Miles: One formula would rely on the actual railroad miles for each movement. That mileage factor could vary for each movement, even for the same commodity shipped between the same O-D pair. Actual miles will not always be the same between origins and destinations for each movement due to reroutes, diversions, detours, directional running, and other factors. These alternative routings are all part of UP's efforts to keep its system fluid, while meeting service requirements, for the benefit of shippers as well as UP. Consequently, a FSC based on actual miles traveled would have to be billed retrospectively — after the movement — in order to include accurate actual miles moved. Similarly, actual mileages for interline movements would be compiled after each movement. Actual mileages would be virtually impossible for customers to audit.

Railroad Tariff Miles – UP Tariff 6000: UP publishes a tariff that includes mileages between UP points. These are the shortest miles on UP, whether or not traffic actually moves via that route. UP 6000 contains mileage for every point on UP to every other point on UP. It is revised and updated periodically. This database is incomplete

in that it does not include mileage for all of the shortline railroads for whom UP handles the billing and collection of shipments. More importantly, UP's current bill rating system cannot add mileage to every bill even if the shipment originates and terminates on UP because UP's systems have not been designed to capture miles for each shipment.

This database also is insufficient for nationwide shipments that move on railroads other than UP. Since it is based on UP data only, it cannot be used to support interline movements.

Docket 28300 Mileages: Docket 28300 refers to the Class Rate Investigation, 262 I.C.C. 447 (1945), where the ICC established and prescribed shortline miles for points east of the Rockies. These mileages are still used in some price documents today. This database does not include mileages for points west of the Rockies.

Highway Miles (Rand McNally's Household Goods Carriers Mileage Guide): The Rand McNally Guide is the database most frequently used by motor carriers. It is used by many rail customers to support their truck movements. While it has nationwide coverage, it is incomplete for rail movements. Highway miles are frequently dissimilar to rail miles. Also, many rail stations are not identified in this database. The geopolitical names for towns and locations also differ from names for rail stations.

UP's Examination of Alternative Available Mileages: In order to assess what mileages would be available for a FSC program as proposed by the STB, UP analyzed how many shipments handled by UP in the first half of 2006 could be matched with available mileages. That analysis produced the following results:

- Between January and June 2006, UP had movements in approximately 63,500 origin / destination pairs. An examination of various databases for mileage indicates that Highway Miles could be generated for nearly 86% of those lanes. Less than 30% of those lanes are covered by UP 6000.

- Highway miles do not accurately reflect rail miles. For example, UP's review of its records indicates that, even where there were highway miles for 82% of the local manifest moves, actual miles by rail exceeded the highway miles by nearly 24%.
- Overall, UP's analysis of UP local waybills for the first six months of 2006 indicates that highway mileages were readily available for only 43% of the UP local moves. Furthermore, the actual miles for those moves exceeded the highway miles by more than 20%. Therefore, use of highway miles would frequently understate the length of haul.

Other Factors Affecting Use of a Mileage FSC: If a FSC is based on loaded movement miles, the empty car movement should also be considered. The empty car movement is reflected in UP's rates for loaded car movements. A FSC that is based on a percentage of the rate takes into consideration the empty movement.

When the FSC is based on mileage or ton/mile, how should railroads account for empty miles and who pays for fuel consumed for the empty miles? There are a variety of situations to be considered. A private car in a closed loop moving back and forth between the same O-D pair may be easily addressed. But how should railroads account for movements where the empty does not consistently move to the next location for loading? As mentioned above, transportation rates typically include consideration for empty repositioning, whereas a mileage or ton/mile basis would not. Adapting a mileage or ton/mile FSC program to the loaded movement based on each empty return scenario would not be practical; and, without appropriate consideration of the empty movement, it will be very difficult for railroads to properly recover their fuel costs. Attempting to manage the empty movement aspect separately would greatly increase the administrative burden and cost associated with a FSC.

Furthermore, fuel consumption to move an empty car may be higher than the loaded move under some circumstances. Fuel consumption depends on terrain and other conditions like weather that affect consumption. Miles and weight are not the only factors.

UP's Capabilities to Assess a Mileage-Based FSC: After reviewing all of these factors, UP has concluded that a mileage-based fuel surcharge might be feasible. However, a North American rail mileage database would need to be compiled. Adopting a highway mileage-based system could support the broadest and most immediate mileage-based FSC program, but it would frequently understate rail miles.

One option would be to construct a North American database of all Origin / Destination pairs with corresponding mileages, which could then be made available for all shippers, receivers, payers of freight, and railroads. This would require the cooperation of all participants. Furthermore, geopolitical name conversions will be required, so that rail stations that often have names different from those used for other purposes are part of a common database. Even with the appropriate common database, UP estimates that it would take substantial effort (a minimum of six man-months) to modify UP's systems to support even the most rudimentary highway mileage-based FSC program.

The Board should consider the following before dismissing the existing FSC programs as unreasonable or inappropriate:

- Can customers' accounts payable systems process, pay, and audit a mileage- or ton/mile-based fuel surcharge?
- Can new O-D pairs be synchronized timely and effectively between carriers and customers?

- Can UP and connecting carriers agree on a mileage basis for interline moves?
- Can the railroad industry quickly develop best practices in order to process and communicate the necessary fields of information electronically?

IX. UP'S RECENT FSC SURVEY OF SHIPPERS PROVIDES DATA ON CUSTOMER PREFERENCE AND CAPACITY.

The STB's proposals are based on comments filed with the Board. While many shippers have been heard, there are many more shippers who will be affected by the Board's final decision.

Some hearing participants indicated preference for mileage or ton/mile FSC programs. This is inconsistent with what UP has understood to be our customers' preference and/or ability to process, pay, and audit a FSC.

UP conducted an electronic customer survey on the FSC topic in order to learn directly from customers what their views and reactions are with respect to FSCs. In early September, UP e-mailed a brief survey to approximately 1,080 individuals at 926 companies. Those customers represent 87% of freight revenue received by UP in 2005. UP surveyed large and small customers from every business segment.

The survey consisted of less than a dozen questions to determine each customer's preference and capability to deal with FSCs that are rate based, mileage based, or ton/mile based. A copy of the survey questions is attached as *Attachment 1* to these Comments.

UP received responses from 504 individuals on behalf of 463 individual companies. In other words, 50% of the companies surveyed responded. Those 463

companies comprise 58% of UP's 2005 freight revenue. Over 90% of those responding indicated that they pay a FSC to UP. The results of the survey are illuminating:

Over 55% of the respondents prefer a rate-based FSC to a mileage-based or a ton/mile-based FSC. The second most preferred option was the mileage-based FSC, with less than 10% of the responding shippers preferring a ton/mile-based FSC as their first choice. When asked to choose their second most preferred option, 56% favored mileage-based versus less than 25% who chose a ton/mile-based FSC.

On questions about the ability of their accounts payable group to process and pay various forms of FSCs, 94% of UP's customers who responded reported that they can process and pay a rate-based FSC. Nearly 40% said they could not process a mileage-based fuel surcharge. Of those respondents who could not pay a mileage-based FSC, nearly 65% would need six months to make changes in order to pay a mileage-based FSC and 44% would require more than a year to be ready to handle such a change.

Concerning a ton/mile FSC, nearly two-thirds of the respondents indicated that their accounts payable group cannot process and pay a ton/mile-based FSC. Almost 80% of those respondents indicated they would require more than six months to implement such a program and 55% would require more than a year. Further complicating the ton/mile-based FSC is the fact that only 40% of those responding to the survey said that they are able to provide UP with a certified weight for their shipments.

X. THE BOARD SHOULD RECONSIDER ITS REPORTING PROPOSAL.

Shippers told the STB that they do not understand the railroads' FSC programs. STB has proposed that Class I railroads submit monthly reports to the Board in an effort to attain the level of transparency that shippers say is lacking today. UP does not oppose reporting meaningful information that is useful and pertinent.

UP posts a significant amount of information about its fuel surcharge program on its customer website. <http://www.uprr.com/customers/myterms.shtml>. UP provided additional detail in its previous comments to the STB and its filing immediately after the hearing. But it should be noted that UP has made information available on its FSC revenue long before this proceeding began. Since 2004, UP has provided a variety of information on its rising fuel costs and the steps it has taken to recover those costs from its customers. These statements have been in public documents readily available to the STB and shippers. See, e.g., UP's 2004 Form 10-K, which, along with UP's other filings, is available at <http://www.up.com/investors/secfiling/index.shtml>. Nevertheless, shippers continue to contend that the railroads' FSC programs are not "transparent."

The Board has proposed a monthly report form. UP submits that the Board should reconsider its proposal in view of the comments it has received and will receive. CSX, CP, and KCS have already reported to the Board that their computer systems and accounting systems are not configured to produce the information the Board has requested. Some of that information, like total fuel consumed and fuel cost, is readily available. However, calculations of revenue derived from fuel surcharges is not a simple exercise.

As UP has explained to the Board, UP has a variety of FSC programs created in response to the request and requirements of its customers. UP has four basic programs: carload (HDF), carload (WTI), Energy (HDF), and Intermodal (HDF). This has produced 58 different individual programs that UP administers for certain customers based on their requests and requirements. All have been based on a percentage of the price for transportation.

If the Board requires additional FSC programs or methodologies, that will increase the number of programs in place and the complexity of calculating the fuel surcharge and the revenue derived from the various programs. In addition, some of UP's FSC revenue is derived from contract traffic. While those terms and provisions are beyond the Board's jurisdiction, the revenue derived from those programs should be included to provide a complete picture of FSC revenues. In essence, UP would be required to find a way to calculate and report in aggregate all the FSC revenue it receives from different programs. That would be even more complex if, in response to customer comments, UP were to rebase its fuel cost from \$0.75 per gallon to a much higher number.

The STB should make the reporting requirements realistic, reflecting the capability of the railroads to supply accurate information. Systems will need to be configured to make these reports. That could take months.

The frequency of these reports should be quarterly rather than monthly. UP, as a publicly traded company, is subject to extensive financial reporting requirements established by the SEC, as are all the other Class I railroads. The SEC requires publicly traded companies to file financial statements and accompanying periodic

reports within 40 days after the end of each quarter and 60 days following the close of the fiscal year. UP suggests that the FSC reports requested by the STB be submitted on an identical timetable to reduce the reporting burden and to ensure consistent timing for the dissemination of financial information.

Reports on Class II and III Railroad FSC are Unnecessary: The Board should not add reporting burdens related to FSC revenue pertaining to Class II and Class III railroads. Additional reporting on this point is not necessary.

There are a variety of contractual commitments and commercial relationships between UP and smaller railroads that connect with and cooperate with UP to serve the shipping public. There are also a variety of approaches to collecting and sharing FSC revenue with these smaller railroads, many of whom are Class II and Class III railroads.

UP works directly with 160 of the more than 570 North American shortline railroads. UP currently pays 98 roads as "handling carriers." A handling carrier is a railroad that does not appear in the route and relies upon UP to set rates, collect the total freight charges, and pay a per carload charge to the small railroad.

Although not contractually obligated to do so, UP voluntarily initiated a Shortline Fuel Surcharge Program in late 2004 in order to assist its handling carriers with the soaring price of fuel. UP's program does not require any conditions or givebacks from its shortline handling carriers, other than they may not duplicate a fuel surcharge on their own. The RCAF-U is typically used to adjust payments made to shortlines. In addition to the fuel component of the RCAF-U, Union Pacific pays out approximately \$7 million per year of its fuel surcharge collections to its handling carrier shortlines. The FSC payment to shortlines, which represents less than UP's total fuel surcharge, is

adjusted for legacy contracts related to shortline railroads that cannot be surcharged and to reflect the fuel cost related changes embedded within the RCAF-U increases that are received by the handling carrier shortlines annually.

Of the 98 handling carriers, 73 participate fully in UP's FSC program. These 73 carriers account for 94% of UP's handling carrier traffic. One other road has the right to partially participate in UP's program; however, that road charges its own FSC in a tariff to UP on the other part of its business. Another road has its own tariff FSC that UP pays rather than a FSC under UP's program. There are 23 handling carriers that do not participate in a FSC program with UP. Some shortlines use UP's locomotive power and fuel so they have no claim to a FSC. That leaves about 3% of UP's handling carrier traffic that is not subject to a FSC.

In addition to this program, UP pays FSC assessments levied by five switching carriers. For the first six months of 2006, UP paid a total of nearly \$526,000 to Indiana Harbor Belt Railroad, Pacific Harbor Line, El Dorado & Wesson Railway, Minnesota Commercial Railway, and Texas Gonzales & Northern Railway.

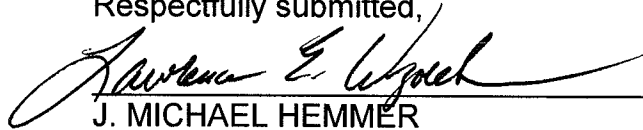
In summary, UP works with a multitude of carriers under a variety of arrangements. Gathering and reporting data on the amount of FSC revenue received from shipments with Class II and Class III railroads and then the amount of that FSC revenue paid over to those railroads is not a simple task.

CONCLUSION

Fuel surcharges have caused significant debate. It is evident that there are complex issues of great significance to UP and its customers. The STB appropriately decided to examine this issue and allow all to be heard.

The Board has made some general, yet sweeping, proposals that are inconsistent with the law and impractical to implement. If the STB wants to pursue these proposals, it should do so with a more complete understanding of the facts. In the end, the Board should help the rail transportation industry find practical solutions that provide shippers with the information they need in a way that they can use it in making transportation decisions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence E. Wzorek", written over a horizontal line.

J. MICHAEL HEMMER
LAWRENCE E. WZOREK
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
Tel: (402) 544-5000

*Attorneys for Union Pacific
Railroad Company*

October 2, 2006

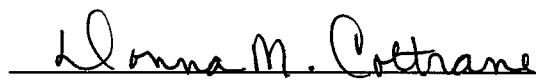
VERIFICATION

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

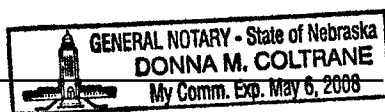
I, Charles M. Adams, Senior Director-Revenue & Information Management, for Union Pacific Railroad Company ("UP"), being duly sworn, depose, and state that I have assisted in the preparation of the foregoing Comments of Union Pacific Railroad Company in STB Ex Parte No. 661. I further depose and state that I have read the portion of UP's Comments relating to UP's price documents, fuel surcharge program, and the consideration of modifications to UP's fuel surcharge program, that I know its contents, and that those contents are true as stated to the best of my knowledge, information, and belief.


Charles M. Adams

SUBSCRIBED AND SWORN TO before me this 29th day of September 2006.


Notary Public

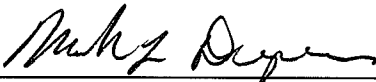
My Commission expires:



VERIFICATION

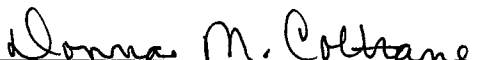
STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

I, Mark J. Draper, Manager, Economic Research & Analysis, for Union Pacific Railroad Company ("UP"), being duly sworn, depose, and state that I have assisted in the preparation of the foregoing Comments of Union Pacific Railroad Company in STB Ex Parte No. 661. I further depose and state that I have read the portion of UP's Comments relating to UP's fuel costs and fuel surcharge revenues, that I know its contents, and that those contents are true as stated to the best of my knowledge, information, and belief.



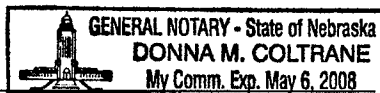
Mark J. Draper

SUBSCRIBED AND SWORN TO before me this 29th day of September 2006.



Notary Public

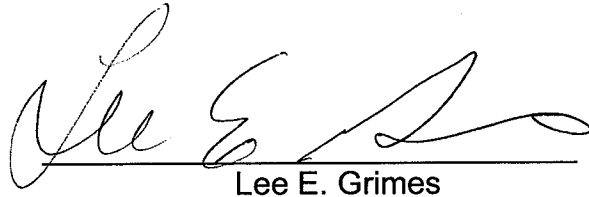
My Commission expires: _____



VERIFICATION

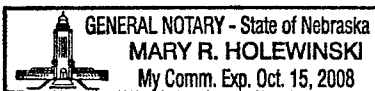
STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

I, Lee E. Grimes, Assistant Vice President-Chemicals, for Union Pacific Railroad Company ("UP"), being duly sworn, depose, and state that I have assisted in the preparation of the foregoing Comments of Union Pacific Railroad Company in STB Ex Parte No. 661. I further depose and state that I have read the portion of UP's Comments relating to a review of UP's fuel surcharge program and UP's fuel surcharge survey, that I know its contents, and that those contents are true as stated to the best of my knowledge, information, and belief.



Lee E. Grimes

SUBSCRIBED AND SWORN TO before me this 2nd day of October 2006.





Notary Public

My Commission expires: October 15, 2008

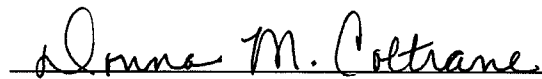
VERIFICATION

STATE OF NEBRASKA)
) ss
COUNTY OF DOUGLAS)

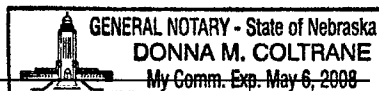
I, Warren C. Wilson, Senior Director-Rail Line Planning, for Union Pacific Railroad Company ("UP"), being duly sworn, depose, and state that I have assisted in the preparation of the foregoing Comments of Union Pacific Railroad Company in STB Ex Parte No. 661. I further depose and state that I have read the portion of UP's Comments relating to the reporting of fuel surcharge information pertaining to short line and switching railroads, that I know its contents, and that those contents are true as stated to the best of my knowledge, information, and belief.


Warren C. Wilson

SUBSCRIBED AND SWORN TO before me this 24th day of September 2006.

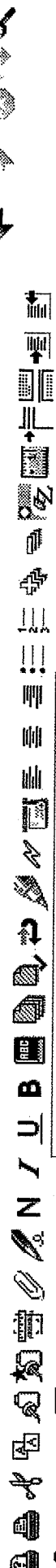

Notary Public

My Commission expires: _____



ATTACHMENT 1

UP'S FSC SURVEY SENT TO CUSTOMERS



Welcome Lee E. Grimes - Inbox Union Pacific Railroad's Fuel Surcharge Survey

Save And Close Save And File Forward

"Kelly K. Wolterman"
 <kkwolver@up.com>
 09/08/2006 03:34 PM
 Please respond to kkwolver

To: _____
 cc: _____
 bcc: _____
 Subject: U/P Fuel Surcharge Survey

Dear Customer :

As fuel costs continue to reach record levels, those higher costs are affecting everyone. Union Pacific Railroad is no exception. Recovery of fuel costs through fuel surcharges has become an important issue to Union Pacific and to its customers. We are evaluating changes to our fuel surcharge and would like your input on your company's freight payable process capabilities.

Please click on the following link to access Union Pacific Railroad's web-based Fuel Surcharge Survey. The survey is expected to take about 5 - 10 minutes to complete. When you have completed the survey, please be sure to hit the "submit" button at the end of the survey. Please respond no later than September 15, 2006.

<http://webemailer.com/C.dll/Jkgkcg70706161D7lccD9U1J.htm>

If you have problems using the link above, copy and paste the link into the Address or Location field in your web browser.

If you have any questions about the survey, please call Kelly Wolterman at (402) 544-3180. Your feedback is very much appreciated.

Sincerely,

Jack Koraleski
 Executive Vice President - Marketing & Sales

Body of message

Outier New ^ 10 ^ [None] Office



Union Pacific Railroad's Fuel Surcharge Survey

Describe your position:

- ☐ Procurement manager
- ☐ Accounts payable manager
- ☐ Third party payor
- ☐ Other (please specify)

If you selected other please specify: _____

[Next Page](#)

This online survey is powered by WebSurveyor.



BUILDING AMERICA™

Union Pacific Railroad's Fuel Surcharge Survey

Do you pay Union Pacific Railroad a fuel surcharge?

- ☐ Yes
☐ No

[Previous Page](#)

[Next Page](#)

This online survey is powered by WebSurveyor.



Union Pacific Railroad's Fuel Surcharge Survey

Can your accounts payable group process a rate based fuel surcharge?

- ☐ Yes
☐ No

Definition:

Rate based fuel surcharge: a percentage based fuel surcharge as applied to the total rate charge amount.

[Previous Page](#)

[Next Page](#)

This online survey is powered by WebSurveyor.



Union Pacific Railroad's Fuel Surcharge Survey

If no, how long before your company would be able to process and pay a **rate based fuel surcharge**?

- ☐ 30 to 90 days
- ☐ 91 to 180 days
- ☐ 181 to 270 days
- ☐ 271 to 360 days
- ☐ Greater than 360 days

[Previous Page](#) [Next Page](#)

[This online survey is powered by WebSurveyor.](#)



BUILDING AMERICA™

Union Pacific Railroad's Fuel Surcharge Survey

Can your accounts payable group process a mileage based fuel surcharge?

- ☐ Yes
☐ No

Definition:

Mileage based fuel surcharge: a fuel surcharge based upon the loaded miles for each rail car movement.

[Previous Page](#)

[Next Page](#)

This online survey is powered by WebSurveyor.



Union Pacific Railroad's Fuel Surcharge Survey

If no, how long before your company would be able to process and pay a mileage based fuel surcharge?

- ☐ 30 to 90 days
- ☐ 91 to 180 days
- ☐ 181 to 270 days
- ☐ 271 to 360 days
- ☐ Greater than 360 days

[Previous Page](#) [Next Page](#)

This online survey is powered by WebSurveyor.



BUILDING AMERICA™

Union Pacific Railroad's Fuel Surcharge Survey

If using a **mileage based fuel surcharge**, which mileage basis would you prefer?

- ☐ Railroad tariff miles
- ☐ Rand McNally highway miles
- ☐ Other (please specify)

If you selected other please specify: _____

[Previous Page](#) [Next Page](#)

This online survey is powered by WebSurveyor.



BUILDING AMERICA™

Union Pacific Railroad's Fuel Surcharge Survey

Can your accounts payable group process a ton / mile based fuel surcharge?

Yes No

Definition:

Ton / Mile based fuel surcharge: a fuel surcharge based upon use of miles and individual per car weights.

Previous Page Next Page

This online survey is powered by WebSurveyor.



BUILDING AMERICA

Union Pacific Railroad's Fuel Surcharge Survey

If no, how long before your company would be able to process and pay a ton / mile based fuel surcharge?

- ☐ 30 to 90 days
- ☐ 91 to 180 days
- ☐ 181 to 270 days
- ☐ 271 to 360 days
- ☐ Greater than 360 days

[Previous Page](#)

[Next Page](#)

This online survey is powered by WebSurveyor.



Union Pacific Railroad's Fuel Surcharge Survey

Can your company supply a certified weight with each rail shipment?

- ☐ Yes
- ☐ No

[Previous Page](#)

[Next Page](#)

This online survey is powered by WebSurveyor.



Union Pacific Railroad's Fuel Surcharge Survey

Rank your fuel surcharge types based upon your process capabilities preference. (Note that 1 is your most preferred option and 3 is your least preferred option.)

- 1)
- 2)
- 3)

Please describe why you chose your most preferred fuel surcharge above:

[Previous Page](#) [Next Page](#)

This online survey is powered by WebSurveyor.



BUILDING AMERICA

Union Pacific Railroad's Fuel Surcharge Survey

Company Information

Your Name: _____

Company Name: _____

E-Mail Address: _____

Address: _____

Address (Line 2): _____

City: _____

State: _____

Zip Code/Postal Code: _____

Phone Number: _____

Thank you for your feedback. Please click on the "Submit" button to send your survey.

[Previous Page](#) [Submit Survey](#)