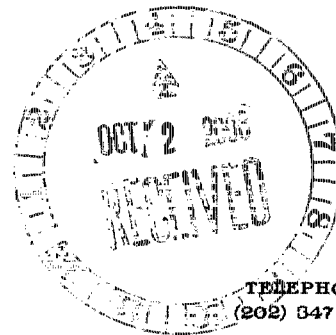


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October 2, 2006

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Attn: STB Ex Parte No. 661
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001

ENTERED
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Re: Ex Parte No. 661, Rail Fuel Surcharges

Dear Secretary Williams:

Enclosed for filing in the referenced docket please find an original and ten copies of the Comments of the Concerned Captive Coal Shippers. These Comments are submitted pursuant to the Board's Decisions served August 3 and September 15, 2006, and include the Verified Statement of James N. Heller. Three computer-readable disks are also enclosed which contain copies of these Comments in Microsoft Word format.

Finally, we have enclosed an additional copy of these Comments to be date-stamped and returned to the bearer of this letter. Thank you for your attention to this matter.

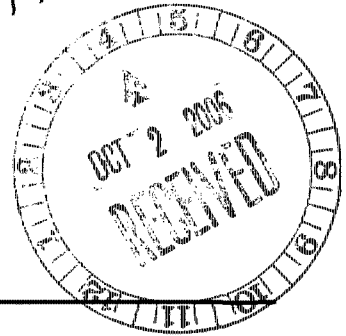
Sincerely,

C. Michael Loftus
An Attorney for the Concerned Captive
Coal Shippers

Enclosures

217711

BEFORE THE
SURFACE TRANSPORTATION BOARD



RAIL FUEL SURCHARGES)

) Ex Parte No. 661
)

COMMENTS OF THE CONCERNED CAPTIVE COAL SHIPPERS
IN RESPONSE TO AUGUST 3, 2006 DECISION

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THE CONCERNED CAPTIVE
COAL SHIPPERS

OF COUNSEL:

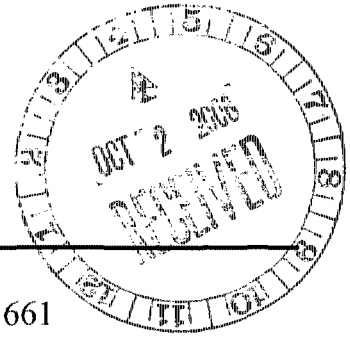
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Dated: October 2, 2006

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Their Attorneys

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



RAIL FUEL SURCHARGES)

Ex Parte No. 661

**COMMENTS OF THE CONCERNED CAPTIVE COAL SHIPPERS
IN RESPONSE TO AUGUST 3, 2006 DECISION**

INTRODUCTION AND SUMMARY

On May 11, 2006, the Board conducted a public hearing on the subject of rail fuel surcharges. The Concerned Captive Coal Shippers (“Concerned Coal Shippers”), a group of eleven entities that consume coal to generate electricity and rely upon rail carriers to transport that coal,¹ participated in the May 11, 2006 public hearing. At the hearing, and in their advance written Comments submitted on April 27, 2006 (“April 27 Comments”), the Concerned Coal Shippers contended that the railroads’ current fuel surcharge mechanisms constitute unreasonable practices because they fail to limit surcharge revenues on individual movements to levels that are directly and closely correlated to changes in the cost of fuel for such movements.

¹The Concerned Coal Shippers include American Electric Power Service Corporation, City of Grand Island, Nebraska, Dairyland Power Cooperative, Duke Energy Corporation, Grand River Dam Authority, Hastings Utilities, Intermountain Power Project, Lafayette Utilities System, Progress Energy, Inc., Seminole Electric Cooperative, Inc., and South Mississippi Electric Power Association. A description of each of these entities, except for the City of Grand Island, Nebraska and Hastings Utilities, is contained in the Concerned Coal Shippers’ April 27 Comments. Descriptions of the City of Grand Island and Hastings Utilities are set forth in the Appendix to these Comments.

On August 3, 2006, the Board issued a decision in this proceeding (“August 3 Decision”) containing proposals regarding railroad fuel surcharge practices, and seeking public comment on those proposals. In the August 3 Decision the Board agreed with the basic position of the Concerned Coal Shippers, and suggested that railroad fuel surcharge practices will be found to be unreasonable if they are “designed to recover more than the incremental cost of fuel attributable to the movement involved” (*id.* at 4-5). The Board further indicated that it intended to preclude fuel surcharges “unless the surcharge is directly tied to and limited to the incremental changes in that particular cost for the movements to which the surcharge is applied” (*id.* at 4).

The August 3 Decision proposes to adopt several measures designed to ensure that the railroads’ fuel surcharge procedures are transparent, uniformly calculated, and more closely reflect actual changes in the railroads’ fuel costs. These proposed measures include the following:

1. A “linkage” requirement that fuel surcharges be directly tied to the attributes of a movement that directly affect the amount of fuel consumed, rather than to the level of the base rate.
2. A prohibition against “double-dipping” by requiring railroads that collect a fuel surcharge to remove the fuel cost component from the RCAF (or other) index used to escalate the base rate.
3. A requirement that all Class I railroads use a single, uniform index to measure changes in fuel costs.
4. A requirement that each Class I railroad report, on a monthly basis, information on its total consumption of and expenditures for fuel.

5. Partial revocation of the class exemption for broad classes of traffic in order to apply the other four requirements listed above to those classes of traffic, as well as to non-exempt traffic.

The Concerned Coal Shippers support each of these proposals. In these Comments, they focus principally upon the “linkage” requirement. They present, in the attached Supplemental Statement of James N. Heller, a proposed method of implementing a ton-mile based fuel surcharge mechanism that (1) provides a cost-based approach to assessing fuel surcharges, and (2) would enable the Board to determine whether its “linkage” requirement is being met by assessing whether a particular fuel surcharge is recovering more than “the incremental cost of fuel attributable to the movement involved” (August 3 Decision at 4). The proposed method does this by comparing the increase in a carrier’s fuel surcharge revenues per ton-mile for a specific movement with the increase in fuel costs per ton-mile for the carrier generally. If the movement-specific revenue increase exceeds the system-average fuel cost increase, then the surcharge methodology used to generate those revenues would be presumed to be unreasonable in an individual complaint proceeding challenging the surcharge methodology.

The Concerned Coal Shippers also address the “double dipping” issue and the index to be used to measure changes in railroad fuel costs. In addition, they address the reporting requirements needed to give effect to the comparative method for assessing the reasonableness of a particular fuel surcharge methodology described above.

Finally, the Concerned Coal Shippers recommend that the Board declare that the railroads will have a period of sixty (60) days from the date of service of its final

decision in this proceeding to establish new fuel surcharge procedures that comply with the “linkage” requirement as described in that decision, and that thereafter the Board will use the methodology described herein as the basis for evaluating unreasonable-practice complaints initiated to challenge the application of individual railroad fuel surcharge mechanisms to individual movements.

COMMENTS

I. The Board Should Adopt Its Proposed Linkage Requirement and Implement It in the Manner Proposed Herein

At present, most railroad fuel surcharges are calculated as a percentage of the base freight rate.² At the May 11, 2006 public hearing and in the written submissions prior to the hearing, the shipper community was unanimous in condemning this practice because fuel surcharges that are tied to the level of the rate bear no direct relationship to actual fuel consumption or actual fuel costs for any particular movement.

The Board’s August 3 Decision recognized the impropriety of using a percentage-based fuel surcharge mechanism. As the Board stated:

tying the amount of a fuel surcharge to the level of the base rate means that even two shippers that have shipments moving over the same route between the same points could be charged vastly different fuel surcharges,

² The only exception among the major railroads is BNSF. In addition to a percentage-based surcharge, BNSF has a mileage-based surcharge for certain coal and grain movements. However, shifting from a percent-of-revenue to a mileage or ton-mile based surcharge does not alone guarantee that the level of the surcharge will be reasonable in relation to actual fuel costs.

notwithstanding the fact that the fuel costs associated with their movements could be identical.

Id. at 4. The Board went on to hold as a general proposition that it is an unreasonable practice for railroads to compute fuel surcharges as a percentage of existing rates; that “[a] carrier should not identify a surcharge as a cost-recovery mechanism for a discrete portion of its costs unless the surcharge is directly tied to and limited to the incremental changes in that particular cost for the movements to which the surcharge is applied”; and that a fuel surcharge should not be “designed to recover more than the incremental cost of fuel attributable to the movement involved.” *Id.* at 4-5.

In accordance with these holdings, the Board presented the following proposal for comment and possible adoption as a general rule (*id.* at 5):

We propose to require that fuel surcharges be tied not to the level of the base rate but to those attributes of a movement that directly affect the amount of fuel consumed: either mileage alone or, preferably, weight and miles. Railroads would have discretion to devise an alternative methodology, so long as it would have a reasonable nexus to the fuel consumption for the movement involved.

The Concerned Coal Shippers urge the Board to adopt this proposal, utilizing the methodology described in these Comments. They also concur with the Board that the most appropriate measure of changes in fuel consumption for a particular movement is “weight and miles,” *i.e.*, ton-miles. However, the Board needs a mechanism that it (and shippers) can utilize to determine if a given fuel surcharge is recovering more than the “incremental cost of fuel attributable to the movement involved” (August 3

Decision at 4), which is the proper measure of whether the surcharge is “tied. . . to those attributes of a movement that directly affect the amount of fuel consumed” (*id.* at 5). Such a mechanism is presented in the Supplemental Statement of James N. Heller submitted herewith.

In essence, the “linking” mechanism proposed by Mr. Heller is based on a comparison of (1) the revenues generated by a carrier’s fuel surcharge for a particular movement, expressed in dollars per ton-mile, and (2) the change in the carrier’s system-average total fuel cost (excluding the effects of hedging) in dollars per ton-mile for a defined period of time. Changes in the system-average fuel cost per ton-mile would serve as the benchmark for ascertaining the reasonableness of a particular fuel surcharge mechanism. For example, if the revenue per ton-mile generated by the fuel surcharge for a specific movement exceeds the amount of the increase in the carrier’s system average fuel cost per ton-mile, then the carrier’s surcharge procedure would be deemed presumptively unreasonable and could be challenged as an unreasonable practice in a complaint filed by the shipper.

Mr. Heller’s calculations evaluate the increase in fuel costs for a given carrier from 2003 (the year in which most Class I carriers imposed their fuel surcharge programs) to the present. The same “linkage” principles advocated by Mr. Heller and the Concerned Coal Shippers would apply with equal force to a shipper that began receiving service from the carrier after the imposition date of the fuel surcharge program, or even to a shipper that begins to receive service from the carrier at some point in the future

(whether as an entirely new shipper on the system or merely as a pre-existing shipper utilizing a new arrangement with the carrier). Under the proposed linkage approach, a shipper could complain that it is being asked to bear a “greater than system average” share of the carrier’s fuel cost increase between any two points in time, even if the commencement date of service (or its new service arrangement) was subsequent to the date on which the carrier first imposed its fuel surcharge program.

It should be noted that under this proposal each carrier would remain free to devise a fuel surcharge procedure of its choosing (although it would be logical to use ton-miles as the basis for applying the surcharge since the surcharge would be evaluated on a ton-mile basis). The only requirement is that the fuel surcharge revenue per ton-mile collected for a given movement does not exceed the increase in the carrier’s system-average fuel cost per ton-mile during a defined period.

To make Mr. Heller’s proposed procedure work, it is important that the effects of each carrier’s fuel hedging practices (if any) be excluded in calculating its average fuel cost per ton-mile. In analyzing the fuel cost data reported by the four major Class I railroads for each of the years 2003-2005 and the first two quarters of 2006, Mr. Heller noted an inconsistency between these carriers’ fuel costs per ton-mile if the effects of hedging are included; the data were much more consistent when the revenues from hedging (which are different for each railroad, depending on its hedging program) were removed from the calculation. *See Heller Supp. Statement at 5-6.*

Mr. Heller also notes that the revenue effects of the railroads' fuel hedging programs during the past three years were very significant. For example, BNSF (the carrier with the most effective hedging program) realized total benefits of \$338 million and \$521 million from fuel hedging in 2004 and 2005, respectively. *See Heller Supp. Statement at 5.* The Concerned Coal Shippers do not propose that the effects of hedging be included in the comparison of fuel surcharge revenues with average changes in fuel costs (which would give shippers the benefits of hedging when hedging reduces overall fuel costs). However, the very significant benefits of hedging are certainly relevant in considering the railroads' apparent position that it is acceptable for them to collect more in surcharge revenue than their actual fuel costs for particular movements because they are presently unable, for various reasons, to impose fuel surcharges on all of their traffic.³

II. Double-Recovery of Increases In Fuel Costs Should Be Prohibited

In its August 3 Decision the Board recognizes the likelihood that "some carriers have been charging twice for the same fuel cost increases, by both escalating the base rate using [the RCAF or similar] index (without first subtracting out the fuel cost

³ The Board noted the railroads' arguments in this regard at pp. 2-3 of the August 3 Decision. As the Concerned Coal Shippers emphasized at p. 13 of their April 27 Comments, and as the August 3 Decision implicitly recognizes, it is inappropriate for the railroads to utilize fuel surcharges to force one group of shippers to cross-subsidize another group.

component) and by applying a fuel surcharge,” which the Board refers to as “double dipping.” *Id.* at 5. The Concerned Coal Shippers support the Board’s proposal “to prohibit the use of a fuel surcharge to recover increases in fuel costs to the extent the same increased costs are also recovered through the application of an escalator to the base rate that incorporates changes in fuel costs.” (*Id.*)

Indices such as the RCAF-U (or variants thereof), which include a fuel cost component, are commonly used as an escalator to adjust the freight rates under both coal transportation contracts and common carrier pricing authorities for coal movements. It is wholly inappropriate to allow a rail carrier to recover increases in fuel costs a second time by imposing a fuel surcharge. In the case of the RCAF index, the fuel component should be removed if a separate fuel surcharge is to be applied. This can be done by adjusting the freight rate using the All-inclusive Index Less Fuel (“AILF”) which is published quarterly by the Association of American Railroads (“AAR”).

The Board should declare that imposition of any fuel surcharge constitutes an unreasonable practice in a situation where the common carrier pricing document uses the RCAF index (or any other adjustment mechanism that includes a fuel cost recovery component) to adjust the freight rate. This would effectively require that all common carrier pricing documents that use the RCAF index be modified by substituting the AILF, if the carrier also wishes to impose a fuel surcharge. In addition, since changes in the AILF are not presently subject to review and approval by the Board, the Board should

require the AAR to submit the quarterly AILF to it for approval at the same time the AAR submits the quarterly RCAF-U index for approval.

The Concerned Coal Shippers note that there is another form of “double dipping” that the Board did not address in its August 3 Decision. This involves situations where a rail carrier establishes a new rate upon expiration of a rail transportation contract or previous common carrier rate, and also imposes a fuel surcharge. Such a new rate must be presumed to cover all of the carrier’s relevant costs at the time the rate is established, including fuel costs. To add a fuel surcharge on top of the rate from Day 1 results in double-recovery of fuel costs.

This situation can be rectified by requiring the carrier to “re-base” its fuel surcharge so that it starts at zero on the effective date of a new rate, and would not increase until the carrier’s fuel costs can be shown to have increased to an extent not contemplated by the carrier when it established the rate. In other words, the fuel surcharge should reflect increases in fuel costs only from the effective date of the new rate forward. In the absence of such re-basing, a fuel surcharge that is based on changes in fuel prices from a date prior to the date the new rate was established should be deemed an unreasonable practice when it is applied in connection with any new rate.

Shippers should also get the benefit of decreases in railroad fuel costs. If a railroad’s fuel surcharge declines at any time (including declines from the base level on the effective date of a new rate), then the decrease in the benchmark should serve as the metric of reasonableness. *See Heller Supp. Statement at 7-8.*

III. Indexing to Measure Changes in Fuel Costs

At present, the Class I railroads in the west and in the east use different indices to measure changes in their asserted fuel costs for purposes of applying fuel surcharges. The western carriers use monthly changes in the EIA's U.S. Average Retail On-Highway Diesel Price (commonly referred to as "HDF" prices) as their index; the eastern carriers use monthly changes in the price of West Texas Intermediate Crude Oil as their index. The Board's August 3 Decision proposes to require all of the Class I railroads to use a single retail index of diesel fuel prices to measure changes in their fuel costs: the EIA's "U.S. No. 2 Diesel Retail Sales by All Sellers (Cents per Gallon)." *Id.* at 6. This appears to be the same index used by BNSF and UP to determine changes in their fuel surcharge levels.

Under the Concerned Coal Shippers' proposal to implement the Board's linking requirement, described above, it is irrelevant what index or indices a carrier uses to measure changes in the cost of diesel fuel. The results of applying any particular index are what matter. So long as revenue increases resulting from application of a fuel surcharge to a particular movement do not exceed the carrier's increases in fuel cost per ton-mile generally, then the surcharge procedure would be deemed reasonable regardless of the index used.

Nonetheless, the Concerned Coal Shippers understand the Board's desire for uniformity. If the Board remains inclined to require that a single index be used by all Class I railroads, the EIA index chosen by the Board is acceptable. *See Heller Supp.*

Statement at 7. Mr. Heller notes that an equally acceptable index is the Railroad Fuel Price index (RR FPI) produced monthly by the AAR, which represents the average monthly price for gallons purchased by the railroads and which is used in the RCAF index. *Id.*

IV. The Board's Proposed Reporting Requirements Should Be Enhanced to Implement the Linking Evaluation Proposed By the Concerned Coal Shippers

In the August 3 Decision the Board expressed an intention to impose certain reporting requirements on the Class I railroads "that would allow the Board and affected shippers to better monitor railroads' fuel surcharge practices" (*id.* at 6). Specifically, the Board proposed that each Class I railroad report, on a monthly basis, its total expenditures for fuel, the total gallons of fuel it consumed, the increase or decrease in its cost of fuel from the previous month, its revenue from fuel surcharges, its revenue ton-miles to which the fuel surcharge was applied, and its total revenue ton-miles. *Id.* at 6, 9-10.⁴

The Concerned Coal Shippers concur with these reporting requirements, all of which are necessary to enable their proposed "linking" comparison to be made. In addition, monthly information concerning the railroads' hedging results should also be reported. The specific information needed is:

⁴ In addition, the Board proposed to require each Class I railroads to report the revenue it collects on joint shipment with, and from fuel surcharges shared with, Class II and Class III rail carriers. Ton-miles related to joint shipments with Class II and III carriers should also be reported, to enable the "linking" comparison described in the text to be made on joint shipments with such carriers.

- Total fuel costs (expenditures), including the effects of hedging (in millions of dollars)
- Total fuel costs (expenditures), excluding the effects of hedging (in millions of dollars)

As Mr. Heller explains at p. 8 of his Supplemental Statement, this additional information is needed to enable the Board (and affected shippers) to exclude the net benefit (or net cost) associated with hedging, and thus to make a valid comparison of changes in fuel surcharge-related revenue for a particular shipment to changes in the carrier's "benchmark" system-average fuel cost. All of the required information should be reported retroactively for the first two quarters of 2006.

V. Implementation of New Fuel Surcharge Procedures

As discussed in the Concerned Coal Shippers' April 27 Comments (at pp. 10-12) and in the August 3 Decision (at 4), the Board clearly has the authority to declare a railroad fuel surcharge that recovers more than the incremental cost of fuel for a particular movement an unreasonable practice. In the August 3 Decision the Board also states that "[w]e may adopt rules of general applicability for future conduct to address an unreasonable practice, even though our authority to award shipper-specific remedies is limited to a formal complaint proceeding," citing *Mr. Spout, Inc. v. United States*, 8 F.3d 118, 128-29 (2nd Cir. 1993) (*id.* at 4n.9).

In *Mr. Spout*, the court held that the Interstate Commerce Commission ("ICC") had authority to insure that rail carriers establish reasonable regulations and

practices related to their transportation services. *Id.* Thus the Board, as the ICC's successor, has authority to promulgate rules and standards for determining when a railroad fuel surcharge may be deemed an unreasonable practice.⁵

The Concerned Coal Shippers submit that the appropriate way for the Board to exercise its jurisdiction is to adopt final rules in this proceeding that set forth the essential criteria for determining whether a particular railroad fuel surcharge should be deemed an unreasonable practice.⁶ Such rules should include (1) a requirement that the railroads adopt cost-based fuel surcharge procedures, (2) the methodology proposed by the Concerned Coal Shippers for assessing whether a particular fuel surcharge recovers more than the incremental increase in the cost of fuel for a particular movement, and (3) the reporting requirements described above.

The railroads should then be given a reasonable period (60 days) to adjust their fuel surcharge procedures so as to comply with the Board's requirements and to implement the proposed reporting requirements (including a requirement that the specified information be reported retroactively to the first calendar month of 2006). At

⁵ This is essentially what the Board did in adopting guidelines for rail rate cases involving coal movements. *See Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 530 (1985), *aff'd sub nom. Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987).

⁶ This procedure negates a possible argument by the railroads that the Board's authority does not extend to declaring an individual railroad's fuel surcharge procedures unreasonable, or awarding damages for breach of its reasonable-practice obligation, except upon formal complaint challenging the surcharge as an unreasonable practice. *See* 49 U.S.C. §§ 10702, 10704(b), 11701 and 11704(b) and (c).

the end of the 60-day period (or any time thereafter), any individual shipper would have the right to file a formal complaint challenging a particular fuel surcharge, as applied to an individual movement, as an unreasonable practice. If the shipper establishes that the movement-specific revenue increase resulting from application of the fuel surcharge exceeds the system-average fuel cost increases experienced by the carrier on a dollars per ton-mile basis, the shipper would prevail on its complaint.

CONCLUSION

For the foregoing reasons, the Concerned Coal Shippers respectfully request that the Board (1) adopt a requirement that railroad fuel surcharge methodologies be directly linked to incremental changes in their fuel costs; (2) adopt their proposed methodology for determining whether its proposed linkage requirement is being achieved; and (3) supplement its proposed reporting requirements to facilitate the proposed linkage evaluation methodology by removing the effects of hedging.

The Board should also establish a 60-day period within which the railroads must convert to fuel surcharge mechanisms that meet the Board's requirements and implement the new reporting requirements. After the end of that period, relief setting aside any fuel surcharge mechanism that fails to satisfy the Board's requirements and awarding damages for any fuel surcharges paid on any individual movement in excess of the railroad's increased cost of fuel for the movement (measured using the Concerned Coal Shippers' linking methodology) should be available upon complaint.

Respectfully submitted,

THE CONCERNED CAPTIVE
COAL SHIPPERS

OF COUNSEL:

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(202) 347-7170

Dated: October 2, 2006

By:

C. Michael Loftus 
Christopher A. Mills
Andrew B. Kolesar III
Slover & Loftus
1224 Seventeenth St., N.W.
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Their Attorneys

APPENDIX

City of Grand Island, Nebraska

Grand Island, Nebraska is the third largest stand-alone city in the State of Nebraska, and includes a population of more than 43,000. Grand Island owns and operates the 100 MW Platte Generating Station, which consumes approximately 400,000 tons of Powder River Basin coal per year.

Union Pacific ("UP") is the only rail carrier that serves the Platte Station. Since the termination of the parties' rail transportation contract as of the end of 2004, UP has provided service to Platte Station pursuant to its Circular 111 public pricing arrangements.

Hastings Utilities

Hastings Utilities ("Hastings") is a municipally-owned utility that provides electric service to customers in Hastings, Nebraska, a city in central Nebraska with a population of approximately 24,000 people. Hastings owns and operates the Gerald T. Whelan Energy center ("Whelan Station") which is located in Hastings, Nebraska. The Whelan Station is powered by a single generating unit with a nameplate capacity of 76.3 megawatts.

Hastings purchases approximately 350,000 tons of Wyoming Powder River Basin ("PRB") coal annually for use at its Whelan Station. This coal is transported from the PRB to the Whelan Station by rail.

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2006, I caused copies of the foregoing
Comments to be served upon all parties of record in Ex Parte No. 661 by first-class
United States Mail.


Andrew B. Kolesar III

HELLER

**SUPPLEMENTAL STATEMENT OF
JAMES N. HELLER**

**Submitted to
U.S. Surface Transportation Board**

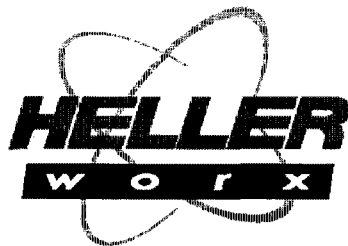
**On Behalf of
Concerned Captive Coal Shippers Group**

Ex Parte No. 661, Rail Fuel Surcharges

By

**James N. Heller
President
Hellerworx, Inc.**

October 2, 2006



**Hellerworx, Inc. 4803 Falstone Avenue
Chevy Chase, MD 20815
301-654-1980**

**SUPPLEMENTAL STATEMENT OF JAMES N. HELLER
ON BEHALF OF
CONCERNED CAPTIVE COAL SHIPPERS GROUP**

I. Background and Purpose

I am submitting this supplemental statement on behalf of the Concerned Captive Coal Shippers Group to the STB under Ex Parte No. 661, Rail Fuel Surcharges, in response to the Board's August 3, 2006 decision. (My initial statement was included with the Concerned Captive Coal Shippers' initial Comments in this proceeding filed on April 27, 2006.)

The Board's August 3 decision recognized that computing railroad fuel surcharges as a percentage of the freight rate is improper, and that fuel surcharges should be tied more directly to variations in the cost of fuel. The purpose of this statement is to develop and present a methodology for implementing this "linkage" requirement, including a procedure for determining when increases in revenue resulting from a railroad's fuel surcharge exceed increases in the railroad's fuel costs over a given time period. In this regard, I have analyzed railroad fuel expenses, fuel consumption, revenue ton-miles and the various fuel surcharge mechanisms being applied by railroads on coal shipments in order to develop a proposed fuel surcharge mechanism that would be more closely tied to the railroad's actual changes in fuel costs.

This statement also recommends changes in the reporting requirements for Class I railroads set forth in the August 3 decision, in order to permit the STB (and rail shippers) to more accurately monitor the relationship between fuel surcharges applied to specific movements and actual changes in fuel costs.

II. Conclusions and Recommendations

Based upon the results of this analysis the following are my conclusions and recommendations:

1. The major Class I railroads' (BNSF, NS, UP, CSX) fuel price hedging programs had a significant effect on the fuel cost per gallon and thus the fuel cost per revenue ton-mile for the time periods analyzed (2003 – Q2 2006). The differences were so significant that there was not a high correlation between the fuel costs per gallon reported by each railroad until the effects of hedging were removed. The hedging-related distortions in reported data presented a significant obstacle to development of a fuel surcharge mechanism that would accurately match changes in fuel cost per revenue ton-mile.

2. Once the hedging effects were removed, the average fuel costs per gallon and per revenue ton-mile for each railroad were similar and each correlated well with the overall average of all four carriers.
3. The average fuel costs per revenue ton-mile for each of the railroads and the overall average of all four railroads also correlated well with each of the fuel price indexes in use today, the U.S. #2 Diesel Retail Sales by All Sellers (HDF) used by BNSF and UP,¹ and the West Texas Intermediate Crude (WTI) price used by NS and CSX. There is also a Railroad Fuel Price Index (RR FPI) produced by the AAR which represents the average monthly price for fuel purchased by railroads and is used in the RCAF index. The overall average fuel cost per revenue ton-mile also correlated well with this index. Each of these indexes correlates reasonably well with the others. The STB has indicated a preference for a common index on which to base fuel surcharges. I recommend using either RR FPI or HDF since those two relate more closely to diesel fuel prices than does the WTI price. RR FPI is presumably the most accurate representation of railroad fuel prices since it comes from railroad reports. However HDF is compiled independently which may make it preferable to rail customers. Used as the standard index and based on historical performance, either one would produce similar results.
4. I recommend that the Board adopt a fuel surcharge benchmark for each major Class I railroad (BNSF, UP, CSX and NS) based on its system average fuel cost (excluding hedging) per revenue ton-mile. Each railroad would create its own fuel surcharge mechanism. A shipper could then compare the actual change in the fuel surcharge revenue per ton-mile for a movement between two time periods resulting from the railroad's fuel surcharge mechanism with the change in the benchmark. If the increase in fuel surcharge per revenue ton-mile produced by the surcharge mechanism exceeds the per revenue ton-mile increase in the benchmark it should be deemed presumptively unreasonable; if it does not, then the surcharge mechanism may be deemed reasonable. If the fuel surcharge mechanism declines then the decrease in the benchmark would serve as the metric of reasonableness for declines.
5. In order for the STB to calculate the benchmark accurately, each Class I carrier should be required to report the fuel costs and other parameters described in Part III-E below on a monthly basis.

¹ The HDF index is the same index the STB proposes be used by all Class I railroads to measure changes in fuel costs (August 3 decision at p. 6). I will refer to that index as the "HDF" index herein.

III. Analysis

- A. Methodology:** Discusses the approach to gathering and analyzing the information used in this supplemental statement
- B. Comparison and Analysis of Changes in Fuel Expenses, Fuel Consumption and Revenue Ton-Miles:** Compares this data for each of the full years 2003 – 2005 and the first and second quarters of 2006 to examine the correlations between the various parameters.
- C. Impact of Fuel Hedging on Fuel Expenses:** Analyzes the actual dollar impact of fuel hedging practices on reported fuel expenses for each railroad.
- D. Develop a Potential Fuel Surcharge Mechanism:** Recommends a benchmark index and an approach.
- E. Proposed Changes in Reporting Requirements:** Recommends several changes in reporting from those proposed by the STB in its August 3 decision to identify actual changes in fuel expenses per revenue ton-mile and changes in fuel surcharge revenue per ton-mile

A. Methodology

This report was developed using:

- Railroad 10K and 10Q, annual and quarterly reports, and R-1 reports to the STB
- Historical fuel surcharges and current fuel surcharge methodologies from each carrier's website
- Information provided by members of the Concerned Captive Coal Shipper group about the operating parameters of their coal traffic
- Information on typical coal movement parameters based upon my experience with rail coal movements
- Movement parameters which I developed based on the two previous items
- Information from Energy Information Administration (EIA) on diesel fuel prices
- Information from the AAR website on monthly railroad fuel prices

The railroad reports were used to calculate the system average fuel cost per gallon, revenue ton-miles and fuel cost per revenue ton-mile for each carrier for each of the time periods.

B. Comparison and Analysis of Changes in Fuel Expenses, Fuel Consumption and Revenue Ton-Miles

The total reported fuel expenses, fuel consumption and revenue ton-miles were obtained from each railroad's financial reports. I then calculated the average fuel expense per gallon and the average fuel expense per revenue ton-mile. The results for each carrier for each period are shown in the tables and graph below. (These numbers include the effects of hedging.)

Average Fuel Cost/Gallon

	BNSF	NS	UP	CSX
2003	\$ 0.8842	\$ 0.8050	\$ 0.9159	\$ 0.9574
2004	\$ 0.9935	\$ 0.8935	\$ 1.2173	\$ 1.0688
2005	\$ 1.3976	\$ 1.4165	\$ 1.7655	\$ 1.3153
Q1 2006	\$ 1.5583	\$ 1.6807	\$ 1.8700	\$ 1.6125
Q2 2006	\$ 1.8324	\$ 2.0114	\$ 2.1500	\$ 1.9512

Average Fuel Cost/RTM

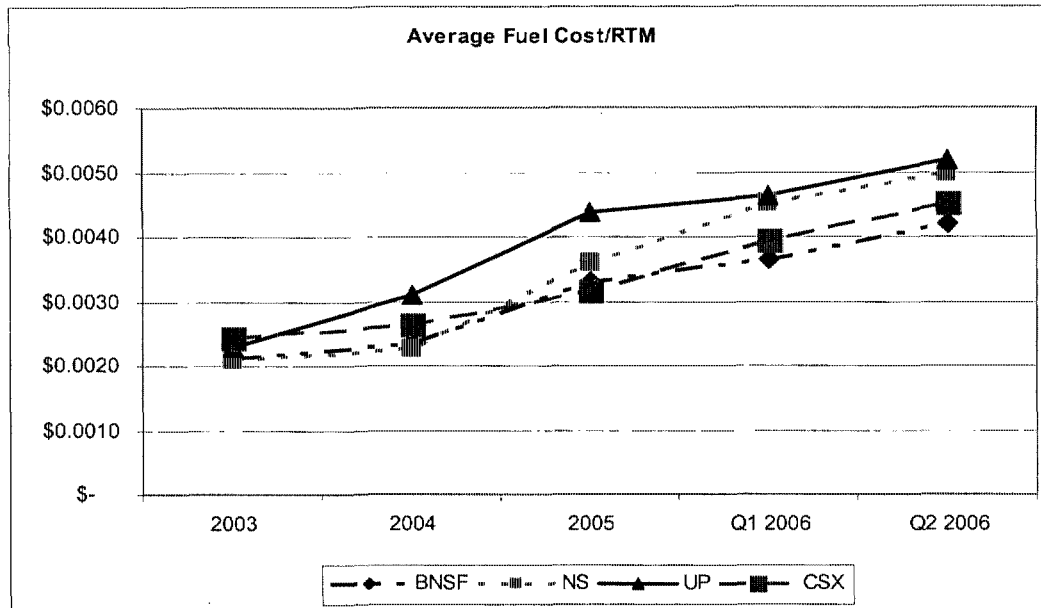
	BNSF	NS	UP	CSX
2003	\$ 0.0021	\$ 0.0021	\$ 0.0023	\$ 0.0024
2004	\$ 0.0023	\$ 0.0023	\$ 0.0031	\$ 0.0026
2005	\$ 0.0033	\$ 0.0036	\$ 0.0044	\$ 0.0032
Q1 2006	\$ 0.0037	\$ 0.0045	\$ 0.0046	\$ 0.0040
Q2 2006	\$ 0.0042	\$ 0.0050	\$ 0.0052	\$ 0.0045

Change in Average Fuel Cost/RTM

	BNSF	NS	UP	CSX
2003				
2004	\$ 0.0002	\$ 0.0002	\$ 0.0008	\$ 0.0002
2005	\$ 0.0009	\$ 0.0013	\$ 0.0013	\$ 0.0005
Q1 2006	\$ 0.0004	\$ 0.0009	\$ 0.0002	\$ 0.0008
Q2 2006	\$ 0.0005	\$ 0.0005	\$ 0.0006	\$ 0.0006

As shown in the prior tables and the graph below, there are differences among the railroads in average fuel cost per revenue ton-mile and in the period to period changes in fuel cost per revenue ton-mile. Part of the difference can be explained by differences in fuel efficiency (each of the railroads improved its fuel efficiency from 2003 to 2006) and traffic mix. However most of the difference in fuel cost per revenue ton-mile is due to the differences in average fuel cost per gallon. Since our objective was to develop a fuel surcharge mechanism that would both correlate well with changes in system average fuel

costs per revenue ton-mile and be applicable across all of the carriers, the differences in fuel costs per gallon presented an obstacle to achieving these objectives.



The differences in their reported average fuel cost per gallon are largely due to the differences in hedging practices and results at each carrier.

C. Impact of Hedging on Fuel Expenses

In order to better measure the change in fuel cost per revenue ton-mile relative to the change in fuel price, I analyzed the impact of fuel hedging as reported in each railroad's 10K or 10Q. The hedging impacts for each railroad are shown in the following table. All hedging impacts were positive in that they reduced reported fuel costs. The impacts of hedging varied considerably by railroad and were very significant.

Fuel Hedge Impact					
	BNSF	NS	UP	CSX	Total
2003	\$ 68,000,000	\$ 59,000,000	\$ 28,000,000	\$ -	\$ 155,000,000
2004	\$ 338,000,000	\$ 14,000,000	\$ 14,000,000	\$ 63,000,000	\$ 429,000,000
2005	\$ 531,000,000	\$ 148,000,000	\$ -	\$ 249,000,000	\$ 928,000,000
Q1 2006	\$ 107,000,000	\$ 15,000,000	\$ -	\$ 35,000,000	\$ 157,000,000
Q2 2006	\$ 120,000,000	\$ 5,000,000	\$ -	\$ 19,000,000	\$ 144,000,000
TOTAL	\$ 1,164,000,000	\$ 241,000,000	\$ 42,000,000	\$ 366,000,000	\$ 1,813,000,000

I then added back the impact of hedging to reported fuel costs and recalculated the average fuel cost per gallon, fuel cost per revenue ton-mile and the period to period change in fuel cost per revenue ton-mile. The results are displayed in the following tables and graphs. They indicate a much closer relationship among the railroads for each of these parameters.

Average Fuel Cost/Gallon Without Hedging

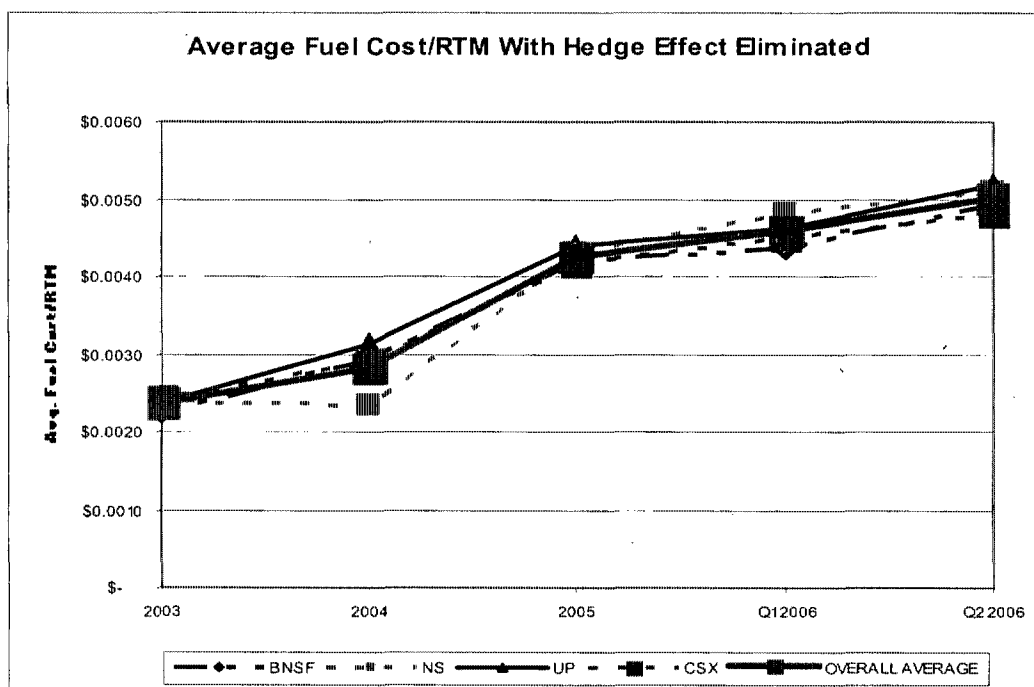
	BNSF	NS	UP	CSX
2003	\$ 0.9403	\$ 0.9299	\$ 0.9368	\$ 0.9574
2004	\$ 1.2451	\$ 0.9214	\$ 1.2274	\$ 1.1713
2005	\$ 1.7762	\$ 1.7047	\$ 1.7655	\$ 1.7334
Q1 2006	\$ 1.8556	\$ 1.7899	\$ 1.8700	\$ 1.8356
Q2 2006	\$ 2.1568	\$ 2.0501	\$ 2.1500	\$ 2.0799

Average Fuel Cost/RTM - Without Hedging

	BNSF	NS	UP	CSX	Average	STD Dev
2003	\$ 0.0023	\$ 0.0024	\$ 0.0024	\$ 0.0024	\$ 0.0024	\$ 0.0001
2004	\$ 0.0029	\$ 0.0023	\$ 0.0031	\$ 0.0029	\$ 0.0028	\$ 0.0003
2005	\$ 0.0042	\$ 0.0043	\$ 0.0044	\$ 0.0042	\$ 0.0043	\$ 0.0001
Q1 2006	\$ 0.0044	\$ 0.0048	\$ 0.0046	\$ 0.0045	\$ 0.0046	\$ 0.0002
Q2 2006	\$ 0.0049	\$ 0.0051	\$ 0.0052	\$ 0.0048	\$ 0.0050	\$ 0.0001

Change in Average Fuel Cost/RTM Without Hedging

	BNSF	NS	UP	CSX	Average	STD Dev
2003						
2004	\$ 0.0007	\$ (0.0001)	\$ 0.0008	\$ 0.0005	\$ 0.0005	\$ 0.0003
2005	\$ 0.0012	\$ 0.0020	\$ 0.0013	\$ 0.0013	\$ 0.0014	\$ 0.0003
Q1 2006	\$ 0.0002	\$ 0.0005	\$ 0.0002	\$ 0.0003	\$ 0.0003	\$ 0.0001
Q2 2006	\$ 0.0006	\$ 0.0003	\$ 0.0006	\$ 0.0003	\$ 0.0004	\$ 0.0001



Eliminating the effects of hedging, the combined system average fuel cost per revenue ton-mile for the four major carriers should represent a reliable benchmark by which to judge the reasonableness of a fuel surcharge mechanism.

D. Develop Principles for a Fuel Surcharge Mechanism and a Recommended Approach

Fuel Price Index

The Board has indicated a preference that each railroad use the same index on which to base its fuel surcharge. BNSF and UP currently use the HDF index. NS and CSX use WTI. The AAR also produces the RR FPI which is a measure of the average monthly price per gallon purchased by freight railroads during each month. RR FPI figures are used in the fuel component of the RCAF. As the table below indicates, each of these indexes correlates reasonably well with the others.

Correlation

INDEX - Average for the Periods 2004, 2005, Q1 2006, Q2 2006

	RR FPI	HDF	WTI
RR FPI	1.000000	0.999998	0.978879
HDF	0.999998	1.000000	0.979227
WTI	0.978879	0.979227	1.000000

The RR FPI also has a .988 correlation with the combined system average fuel cost per revenue ton-mile without hedging for the four major railroads so it represents a reliable index of the average fuel prices paid by the major railroads. HDF has a .999 correlation with RR FPI, so I recommend either of these as the standard index on which to base fuel surcharges. The results would be similar.

Fuel Surcharge Mechanism

BNSF's new mileage based coal fuel surcharge is the only mechanism used by any major railroad that is based on a parameter that directly relates to fuel costs (miles). However, even used only for coal shipments, a system based solely on mileage produces distortions between shipments traveling the same number of miles as tons per car will vary. A ton-mile based mechanism is likely to best approximate changes in the costs that railroads incur for fuel across a variety of commodities and types of movements.

My recommendation is to adopt a ton-mile based fuel surcharge benchmark as the industry standard for all shipments. The system average fuel cost per revenue ton-mile for each of BNSF, UP, NS and CSX would be calculated as the benchmark for each carrier. Each carrier can then develop its own specific ton-mile based fuel surcharge mechanism based on a common variable (i.e. ton-miles).

Under this proposed approach a shipper can compare the actual increase in fuel surcharge revenue per ton-mile for its movements between two time periods with the increase in the benchmark. If the increase in the surcharge revenue per ton-mile exceeds the benchmark it should be deemed presumptively unreasonable; if it does not then the surcharge mechanism may be deemed reasonable. If the fuel surcharge mechanism declines then

the accompanying decrease in the benchmark would serve as the metric of reasonableness for declines.²

Under this approach, railroads would still retain the benefits of any hedging activities.

E. Proposed Changes in Reporting Requirements

In order to calculate the proposed benchmark the Board should require each Class I railroad operating in the United States to report the following data on a monthly basis.

- Total gallons of fuel consumed
- Revenue ton-miles
- Total expenditures for fuel (including the effects of hedging)
- Total expenditures for fuel (excluding the effects of hedging)

In its August 3, 2006 decision the Board requested that each Class I railroad report the first two items above. The last two items are also necessary to calculate the benchmark.

IV. Qualifications

Jamie Heller is the founder and president of Hellerworx, Inc. Hellerworx was developed to provide strategic and economic consulting services to electric generators, energy producers and transportation companies.

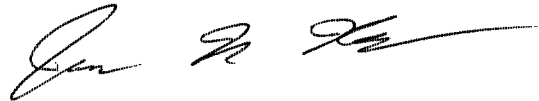
Mr. Heller has worked for numerous electric generators, coal companies and transportation companies on issues related to coal, and coal transportation. Mr. Heller's resume was attached to his initial statement in the proceeding which was included with the Concerned Captive Coal Shipper group's initial Comments filed April 27, 2006.

² In the case of a decline, it should be noted that the same mechanism which caused the fuel surcharges to increase more rapidly than the increase in average fuel costs will likely deflate more rapidly than would an index which better tracks actual fuel cost changes.

VERIFICATION

I, JAMES N. HELLER, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on September 29, 2006

A handwritten signature in black ink, appearing to read 'James N. Heller', with a long horizontal flourish extending to the right.

JAMES N. HELLER