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October 2, 2006

**VIA HAND DELIVERY**

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 711  
Washington, D.C. 20423

ENTERED  
Office of Proceedings

OCT 2 - 2006

Part of  
Public Record

Re: Ex Parte No. 661, Rail Fuel Surcharges

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and ten copies of the Comments of Kennecott Utah Copper Corporation in response to the Board's Decision served August 3, 2006 in the above-referenced proceeding.

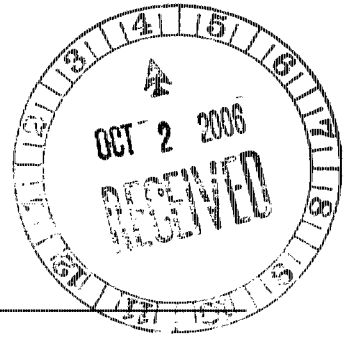
We have enclosed an additional copy of this filing. Kindly indicate receipt and filing by time-stamping this copy and returning it to our messenger.

Sincerely,

Christopher A. Mills

CAM:jml  
Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



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RAIL FUEL SURCHARGES

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Ex Parte No. 661

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**COMMENTS OF  
KENNECOTT UTAH COPPER CORPORATION**

**KENNECOTT UTAH COPPER  
CORPORATION**

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Dated: October 2, 2006

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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RAIL FUEL SURCHARGES

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Ex Parte No. 661

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**COMMENTS OF  
KENNECOTT UTAH COPPER CORPORATION**

Kennecott Utah Copper Corporation ("Kennecott") submits the following comments in response to the Board's Decision in this proceeding served August 3, 2006 ("August 3 Decision").

Kennecott is a mining, smelting and refining company with facilities in the Great Basin region of the western United States. Kennecott produces substantial quantities of copper cathode and sulfuric acid (as a by-product of the copper smelting process) which are shipped by rail. Kennecott participated in an earlier phase of this proceeding, by submitting written comments in response to the Board's Notice of Public hearing issued on March 14, 2006. Kennecott's rail transportation needs, and its concerns with the railroads' fuel surcharge procedures, were described in its written submission filed on April 14, 2006. Kennecott joined numerous other shippers in pointing out the inequities of assessing fuel surcharges as a percentage of the freight rate, noting that rate increases recently imposed by the railroads resulted in substantial increases in fuel surcharge costs without any change in Kennecott's shipment parameters.

Kennecott applauds the Board's recognition, in its August 3 Decision, that assessing a fuel surcharge as a percentage of the freight rate constitutes an unreasonable practice. Kennecott supports the Board's proposals to rectify the situation. These proposals include:

1. A 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 increases 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 class exemption for broad classes of traffic so that the other requirements can apply to those classes of traffic as well as other, non-exempt traffic.

Kennecott's comments on each of these proposals are set forth below.

1. Fuel Surcharges Should be Directly Tied to Incremental Changes in Fuel Costs

The Board's August 3 Decision recognizes the impropriety of calculating fuel surcharges as a percentage of the base rate, as there is little if any correlation between an increase in the cost of fuel for an individual rail movement and the level of the base rate for the movement. (*Id.* at 4.) Kennecott's own experience, as reported to the Board in the comments it filed in this proceeding on April 14, 2006, confirms this. Both Class I

western railroads recently imposed substantial rate increases on Kennecott's copper and sulfuric acid shipments that immediately resulted in similar increases in the fuel surcharges Kennecott had to pay – notwithstanding that there was no change in shipment parameters that would affect fuel costs.

Accordingly, Kennecott endorses the Board's proposal that fuel surcharges not be tied to the level of the base rate, but to "those attributes of a movement that directly affect the amount of fuel consumed" (*id.* at 5). Kennecott submits that the attributes that most directly affect fuel consumption are weight and mileage, *i.e.* ton-miles. The Board should reject any new railroad-devised fuel surcharge methodology that is not based on changes in ton-miles for particular movements.

2. Double-Dipping for Recovery of Fuel Costs Should Be Prohibited

The Board's August 3 Decision recognizes that it is inappropriate for a railroad to recover once for increases in its fuel costs through a general rate-adjustment index such as the RCAF-U (which is commonly used as the basis for adjusting the freight rate under both tariffs and rail transportation contracts), and recover a second time by imposing a fuel surcharge. Kennecott supports the Board's proposal to eliminate such "double dipping" by "prohibit[ing] the use of a fuel surcharge to recover increases in fuel costs to the extent those same increased costs are also recovered through the application of an escalator to the base rate that incorporates changes in fuel costs" (*id.* at 5). In the case of the RCAF index, this can be accomplished by adjusting the rate on the basis of the

All-inclusive Index less Fuel (“AILF”) which is published quarterly by the Association of American Railroads. Kennecott notes that, unlike the RCAF index, changes in the AILF are not subject to review and approval by the Board. The Board should require the AAR to submit the quarterly AILF for approval at the same time it submits the quarterly RCAF index for approval.

There is another “double dipping” problem that the Board should address.

When a railroad establishes a new rate, whether upon expiration of a contract or otherwise, the new rate presumably reflects the carrier’s current fuel costs. For this reason it is unreasonable to permit a fuel surcharge to be imposed in addition to a new rate. The Board should require that fuel surcharges be re-based to zero on the effective date of any new rate. The railroads should be permitted to recover only increases in fuel costs that occur after the effective date of the new rate by means of a fuel surcharge mechanism.

3. A Single, Uniform Index That reflects Changes In the Wholesale Cost of Diesel Fuel Should Be Used

The Board’s August 3 Decision recognizes that the indices used by the eastern and western railroads to measure changes in fuel costs are different, and there is a need for uniformity in the index the railroads use for this purpose. Kennecott agrees that a single index should be used by all of the Class I railroads.

The Board proposes to require all Class I railroads to use the EIA’s “U.S. No. 2 Diesel Retail Sales by All Sellers (Cents per Gallon)” index to measure changes in

fuel costs. August 3 Decision at 6. This index appears to be the same index that UP and BNSF presently use to measure changes in their fuel costs. It is an acceptable index for this purpose, although the Board may wish to consider using an index that measures changes in wholesale diesel fuel prices. The Class I railroads are among the largest users of diesel fuel in the United States, and they do not buy diesel fuel at retail prices. Rather, they buy it in bulk in the wholesale market. Kennecott submits that an appropriate EIA index based on wholesale prices is the "U.S. Diesel Fuel Industrial Price By All Sellers (Cents per Gallon)." Use of this index would also be acceptable for purposes of measuring changes in railroad fuel costs.

4. The Board's Proposed Reporting Requirements are Important

Kennecott agrees with the Board that a reporting requirement should be imposed so that the Board and affected shippers can better monitor the railroads' fuel surcharge practices and ascertain whether the surcharges are tracking actual fuel cost changes. The Board's proposed reporting requirements are consistent with those proposed by various shipper groups during the previous stage of this proceeding. The specific items the Board requests each Class I railroads to report on a monthly basis (total expenditures for fuel, total gallons of fuel consumed, the increase or decrease in its cost of fuel from the previous month, its revenue ton-miles for the month, and its revenue ton-miles to which the fuel surcharge was applied) appear appropriate.

5. The Board's Proposed Partial Exemption  
Revocation Is Appropriate

The Board's August 3 Decision proposes to partially revoke its "class" exemption for various broad classes of traffic to the extent necessary to apply the new fuel surcharge measures to them. *Id.* at 7. Kennecott endorses this proposal.

Kennecott's rail shipments consist of copper cathode, which moves in boxcars, and sulfuric acid, which moves in tank cars. The copper cathode traffic is exempt from most aspects of Board's regulatory jurisdiction pursuant to 49 CFR § 1039.14, while the sulfuric acid traffic is subject to the Board's jurisdiction at least to the extent it does not move under rail transportation contracts.<sup>1</sup> Absent a partial revocation of the class exemption for boxcar traffic, the railroads would be free to continue their present fuel surcharge practices, which the Board deems to be unreasonable, on Kennecott's boxcar traffic but not on its other traffic.

There is no logical or equitable reason for disparate treatment of rail fuel surcharge methodologies depending on the class of traffic involved. Fuel surcharges should be subject to the same rules regardless of the class of traffic in issue. Otherwise, the same problem of lack of uniformity the Board cites with respect to the use of

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<sup>1</sup> Kennecott notes that some rail transportation contracts provide that the movement that is the subject of the contract is subject to the fuel surcharges established in the railroad's tariffs or other common carrier pricing documents. To the extent that the fuel surcharge provisions in the railroad's tariffs or pricing authorities must be changed to comply with the Board's final decision in this proceeding, many contract shippers would also receive the benefit of such changes.

different fuel price indexing methodologies would remain with respect to different traffic classes.

Respectfully submitted,

KENNECOTT UTAH COPPER  
CORPORATION

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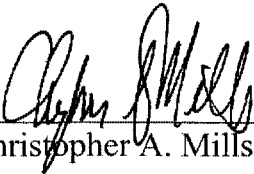


Dated: October 2, 2006

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of October, 2006, I caused copies of the foregoing Comments to be served upon all parties of record in Ex Parte No. 661 (per the Board's Service List therein) by first-class United States Mail.

  
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Christopher A. Mills