



The Fertilizer Institute

Nourish, Replenish, Grow

BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 661

RAIL FUEL SURCHARGES

Comments

submitted by

THE FERTILIZER INSTITUTE

October 2, 2006

The Fertilizer Institute ("TFI") hereby submits these written comments in response to the Decision issued by the Surface Transportation Board ("Board") in STB Ex Parte No. 661, *Rail Fuel Surcharges* (served August 3, 2006). The Decision requests comments from interested persons on the Board's proposed measures designed to ensure that the practice of applying fuel surcharges is reasonable. TFI applauds the Board its Decision and believes the Board correctly addressed several issues regarding practices related to fuel surcharges. TFI believes, however, that the Board's Decision can be improved for all parties involved.

Identity and Interest of TFI

The Fertilizer Institute is the national trade association of the fertilizer industry. The Institute, which traces its roots back to 1883, represents virtually every primary plant food producer, as well as secondary and micronutrient manufacturers, fertilizer distributors and retail dealerships, equipment suppliers and engineering construction firms, brokers and traders, and a

wide variety of other companies and individuals involved in agriculture. Many members of TFI use rail transportation, and thus have a strong interest in the fuel surcharges methodologies applied by the rail industry.

Comments

The Board correctly asserts its statutory authority to regulate practices related to fuel surcharges. The proposals contained in the Decision do not seek to regulate the actual level of fuel surcharges applied by railroads, but instead properly seek to preclude certain unreasonable practices related to fuel surcharge programs of several railroads. TFI strongly supports the Board's decision to require fuel surcharges to be applied to the "attributes of a movement that directly affect the amount of fuel consumed." *Decision* at 5.

TFI believes the most important attribute, and the attribute that can most readily be applied to a fuel surcharge, is the total miles of a particular movement. While TFI understands that a weight-and-mileage-based surcharge methodology could be a more accurate reflection of the actual fuel consumed for a particular move, the administration of a fuel surcharge based on such a methodology could be difficult to administer, especially for shippers that do not weigh their shipments. Because many shippers do not have the equipment to weigh railcars before shipments, any requirement to base fuel surcharges on weight and mileage would require a reliance on estimates of weights. The errors naturally inherent in such estimates could have the effect of eliminating any increased accuracy that is sought through the application of a weight-and-mileage-based fuel surcharge. Thus, TFI believes that a mileage-based surcharge method would be most appropriate.

Additionally, TFI suggests that fuel surcharges for a particular move be based on the shortest rail mileage on the carrier's system, not the actual rail mileage that a rail car may move

over the system. Carrier's sometimes transport rail cars on circuitous routes simply for ease of handling. Under such a scenario, shippers should not be required to pay for any additional fuel consumed for the additional miles. Requiring shippers to pay for additional mileage would essentially require shippers to compensate railroads for their own inefficiencies in operations.

TFI believes the Board's proposal to require all Class I railroads to use a single, uniform index to measure increases in fuel costs is an important element necessary to ensure fuel surcharge programs are reasonable. *See*, Decision at 6. Use of one index for all railroads will prevent the use of a fuel cost index that has no relation to the changes in fuel costs. Additionally, requiring the use of a uniform index will ensure the availability of accurate cost information, increase transparency, and provide for ease of administration of fuel surcharges for shippers and for railroads administering fuel surcharge programs on interline movements. TFI has no objection to the Board's choice of the EIA's No. 2 Diesel Retail Sales by All Sellers (Cents per Gallon).

TFI also strongly supports the Board's proposal to prohibit the railroads' practice of "double-dipping" by charging twice for increased fuel costs – once when it applies a fuel surcharge and once when they adjust rates based on an index such as RCAF. *Decision* at 5. The Board's proposal to "prohibit 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" will ensure fairness in business dealings and prevent railroads from illegally applying this unreasonable practice. *Id.*

TFI believes, however, that the Board's proposal does not go far enough to ensure railroads do not "double-dip." Accordingly, TFI urges the Board to adopt provisions that permit a fuel surcharge program only when it is a "two-way street." Specifically, the Board should

require railroads to provide a credit toward the rate charged for a movement when the cost of fuel drops below the cost of fuel used to determine the rate for the movement.

To administer this process, TFI proposes that carriers certify a base period for the cost of fuel used in calculating their rates. Fuel surcharges applied to any established rate would be based on the certified base cost of fuel for that period. Any increase in the price of fuel above that certified base cost of fuel would permit the railroads to implement a fuel surcharge. Conversely, any decrease in the price of fuel below the certified base cost of fuel would require railroads using a fuel surcharge to provide a credit toward the rate of the movement.

It is critical for the Board to adopt its proposal to require monthly reporting of certain factors affecting fuel surcharge programs. By requiring reporting, the Board increases transparency for stakeholders, thus providing shippers the ability to audit the carrier's charge or to calculate the charge that is to be initially paid to the carrier. Accordingly, TFI urges the Board to adopt the reporting proposed in its Decision.

Respectfully submitted,



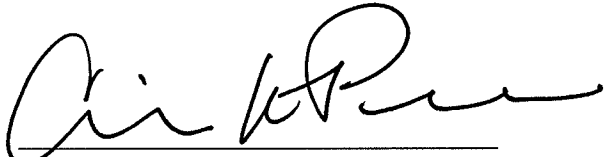
Nicholas J. DiMichael
Jeffrey O. Moreno
Laurence W. Prange
Thompson Hine LLP
1920 N St. N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4107

Ford B. West
President
The Fertilizer Institute
820 First Street, N.E.
Suite 430
Washington, D.C. 20002
(202) 515-2704

Attorneys for The Fertilizer Institute

CERTIFICATE OF SERVICE

I hereby certify that I have on this 2nd day of October, 2006, served a copy of the foregoing Comments on all parties of record, by first-class mail, postage prepaid.



Aimee DePew