

Whiteside & Associates

Transportation & Marketing Consultants

April 13, 2006

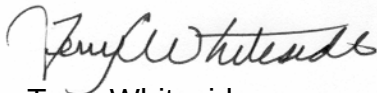
The Honorable Vernon A. Williams, Secretary
Office of the Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

RE: Ex Parte No. 661: Fuel Surcharges – Corrected Copy of
Comments - PROPOSALS REGARDING RAILROAD PRACTICES INVOLVING
FUEL SURCHARGES

Dear Secretary Williams:

The MONTANA WHEAT & BARLEY COMMITTEE, COLORADO WHEAT ADMINISTRATIVE COMMITTEE, IDAHO BARLEY COMMISSION, IDAHO WHEAT COMMISSION, NEBRASKA WHEAT BOARD, OKLAHOMA WHEAT COMMISSION, SOUTH DAKOTA WHEAT COMMISSION, TEXAS WHEAT PRODUCERS BOARD, WASHINGTON WHEAT COMMISSION AND NATIONAL ASSOCIATION OF WHEAT GROWERS (known as Wheat & Barley Commissions) hereby submits a corrected version of its Comments filed in the above styled proceeding. Please accept this corrected filing as the filing for the Wheat & Barley Commissions. The correction involves a typographical error on Page 3, last line which accidentally omitted the word 'NOT'. The Corrected sentence now reads, "To utilize highway miles or some other form of non-traditional calculation of rail miles should **not** be condoned by this Board."

Respectfully submitted,



Terry Whiteside

3203 Third Avenue North, Suite 301
Billings, Montana 59101
Phone: (406) 245-5132
Fax: (406) 252-3778
Email: Twhitesd@wtp.net

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 661
PROPOSALS REGARDING RAILROAD PRACTICES
INVOLVING FUEL SURCHARGES

COMMENTS OF
MONTANA WHEAT & BARLEY COMMITTEE
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
IDAHO BARLEY COMMISSION
IDAHO WHEAT COMMISSION
NEBRASKA WHEAT BOARD
OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
TEXAS WHEAT PRODUCERS BOARD
WASHINGTON WHEAT COMMISSION
NATIONAL ASSOCIATION OF WHEAT GROWERS

I. INTRODUCTION

The MONTANA WHEAT & BARLEY COMMITTEE, COLORADO WHEAT ADMINISTRATIVE COMMITTEE, IDAHO BARLEY COMMISSION, IDAHO WHEAT COMMISSION, NEBRASKA WHEAT BOARD, OKLAHOMA WHEAT COMMISSION, SOUTH DAKOTA WHEAT COMMISSION, TEXAS WHEAT PRODUCERS BOARD, WASHINGTON WHEAT COMMISSION AND NATIONAL ASSOCIATION OF WHEAT GROWERS (known as Wheat & Barley Commissions) welcomes the opportunity to file comments on railroad fuel surcharges. This is a focused effort by the Wheat & Barley Commissions in this

proceeding because of the importance that federal regulatory oversight of railroads or lack of it, bears on the marketing and transportation of wheat and barley. Your Wheat and Barley Commissions have filed together and participated in various Ex Parte proceedings in the past and they welcome the opportunity to address this issue in this proceeding. The past, present and future of regulatory oversight affects the daily lives of this nation's wheat and barley producers.

II. IDENTITY AND INTEREST OF WHEAT & BARLEY COMMISSIONS

The Wheat & Barley Commissions represent wheat and barley producers in the major wheat and barley producing areas of the United States. They represent the majority of wheat and barley production. The Wheat & Barley Commissions are charged with representing the interests of wheat and barley producers in the marketing of their grains both domestically and internationally. The Wheat & Barley Commissions would like to focus on a couple of issues for your consideration.

III. WHEAT & BARLEY PRODUCERS COMMEND THE BOARD FOR ADDRESSING AN UNREASONABLE RATE PRACTICE

The Board in this proceeding appears to get it right. We agree with the Board's decision that is premised on the belief that "we do not believe that it is a reasonable practice for railroads to compute fuel surcharges as a percentage of existing rates."

We also agree with the Board's view that there should only be a single, uniform standard that has a high correlation with the price of the fuel that the railroads are utilizing in fulfilling transportation needs.

IV. THE WHEAT & BARLEY PRODUCERS HAVE EXPERIENCED FIRST
HAND OF SOME CLASS I RAILROADS – 'THIS IS THE ONLY WAY IT WILL
BE' ATTITUDE ON DISCUSSIONS ABOUT THE UNFAIRNESS OF
FUEL SURCHARGE METHODOLOGY APPLICATION

The Wheat & Barley Commissions represent farm producers many of whom have little or no rail transportation choices and have long been subject to very high rate levels. Past discussions with the railroads about the level and unfairness of fuel surcharge methodology have been met with indifference.

It is important that as we proceed in the development of new mileage or mileage/weight based fuel surcharges that the Board insure that the programs developed by the railroads do not turn into a 'treasure hunt for information' as described in our initial filing in this proceeding. The mileages should be based upon rail mileages which all railroad customers already have in the computers – mindful that what the Board is encouraging the railroads to do is base their fuel surcharge assessments upon has merit in the fuel utilized on the movement. To utilize highway miles or some other form of non-traditional calculation of rail miles should **not** be condoned by this Board.

As the Wheat & Barley Commissions stated in their Comments in this proceeding, when the BNSF went to a mileage based fuel surcharge system there are continuing problems with the implementation of the system. The mileage lookup tables presented by the BNSF contained a very small portion of the origin-destination pairs that have published rates and the mileages retrieved were not compatible with known and widely utilized computer programs such as PCMiller. Instead, the BNSF decided to utilize their own distinct mileages. While these mileage did not vary much from the mileages in other computer programs, in order to be accurate in rate determination, it required that rail customers do a complete redo of all of the BNSF-direct point to point origin-destination pairs on the BNSF system. For rail customers that utilize a great number of origin-destination pairs this became a onerous burden.

Since this newly supplied database was inadequate, the rail customers who maintained rate databases were forced to look up individual origin-destination pairs for each fuel surcharge mileage. For this office, which maintains rate databases for virtually all of wheat and barley rates of all railroads in the United States, the switch to special BNSF mileage lookup required ascertainment of about 6,000 origin-destination pairs.

The access of rail mileage information should be available in the public domain on a railroad website – not hidden behind a firewall for active customers. Many times, when looking at a new situation or plant, or when consulting on projects some of the railroads have limited access to public tariff information.

While these situations can usually be worked out with time consuming back and forth conversations, it is incumbent that all of the information that is required to develop the full surcharge on fuel be available in the public domain.

The Wheat & Barley Commissions believe further that all information relating to a railroad's fuel surcharge programs needs to be available in a single location.

V. YOUR WHEAT & BARLEY COMMISSIONS CONTINUE TO BELIEVE THAT
FUEL SURCHARGE PROGRAMS SHOULD BE COST-BASED AND BASED
UPON THE FUEL EXPENDED ON INDIVIDUAL MOVEMENTS

It is the view of the Wheat & Barley Commissions that fuel surcharge programs should closely reflect the cost of the fuel increase of the actual movement that is being assessed.

In our initial Comments in this proceeding, we stated that the current system by the railroads has four inherent flaws.

1. "The current fuel surcharge program is collecting from less than the full universe of rail customers. Some rail customers are not being charged fuel surcharges, some rail customers are being charged at different levels than other rail customers and the rest of the rail customers are paying more than their fair share."

The Wheat & Barley Commissions have concerns that the procedures outlined by this proposed rule making do not clearly prohibit railroads from collecting the full amount of system-wide fuel surcharge from only a portion of their customers. Perhaps by requiring a mileage/weight criteria, the Board believes that railroads will be able to only collect a close approximation of actual fuel surcharge from an individual movement. The Wheat & Barley Commissions continue have their doubts about the level that will be set by the railroads and

therefore respectfully request that the Board continue to 'inspect what it expects' in this issue.

2. "Rail customers (less than full universe) are being assessed fuel surcharges are being charged surcharges that are greater than the full increase in fuel costs incurred by the railroad."

The Wheat & Barley Commissions will look to the proposed reporting system to address and dictate compliance sufficient to satisfy us that fuel surcharge collections are fair. It is clear that since the railroads cannot collect from all of its rail customers, that it should not be able under a reasonable rate practice doctrine be able to collect its full surcharge increases from less than the full universe of customers.

3. "Some of the rail customers are being charged fuel surcharges based upon rate levels and some are being charged based upon a mileage formula which creates differing level of fuel surcharge burdens on different rail customers."

Again the Wheat & Barley Commissions believe that the proposed rules that the Board is contemplating will correct this concern.

4. "Methodologies for attaining fuel surcharge information leads to uncertainty in calculating the correct fuel charge assessment."

Your Wheat & Barley Commissions encourage the Board to maintain oversight of the procedures developed by the railroads as a result of this proceeding in order to ensure that the processes developed by the railroads are both readily accessible, transparent enough to ensure rail customers understand the correct fuel charge assessment and non-burdensome on rail customers in its application process.

VI: THE BOARD NEEDS TO ADDRESS WHETHER CONFIDENTIAL
CONTRACTS THAT UTILIZE PROCEDURES SUCH AS RATE BASED FUEL
SURCHARGE ASSESSMENT PROCEDURES THAT ARE CONSIDERED
UNREASONABLE WILL NOW BE COVERED BY THIS RULING

There are a few, perhaps not many, transportation contracts by the major class I railroads that do assess fuel surcharges through a procedure that the Board has now, with this proceeding, labeled as an 'unreasonable practice'. While the Board does not have direct jurisdiction over transportation contracts, the practice of assessing fuel surcharges based upon rates is clearly labeled by this Board as an 'unreasonable' practice. Since these transportation contracts utilize components such as double dipping with RCAF and On-highway diesel components in their calculations it appears that such practices are unreasonable under the Board's interpretation and won't be utilized in the future for tariff applications.

VII. FUEL SURCHARGE REPORTING REQUIREMENTS NEED TO BE REPORTED IN THE PUBLIC WAYBILL FILE

The Wheat & Barley Commissions believe that fuel surcharges are going to be a component charge for the foreseeable future. With that in mind, your Wheat & Barley Commissions agree with the statement presented by Mr. Mike Behe of USRail.Desktop wherein they request that the railroads be required to report the actual fuel surcharge being collected by each railroad movement in the Public Waybill file.

VIII. RATES ADJUSTED AFTER IMPLEMENTATION OF THE NEW FUEL SURCHARGE STANDARDS SHOULD NOT BE SUBJECT TO 'DOUBLE DIPPING' BY THE FUEL SURCHARGE PROGRAM

When a rate is changed or established, it will have, as a component cost inherent in the rate, the current level of fuel charge in the rate. A fuel surcharge indexing system that establishes fuel surcharge based upon a time period prior to the rate change, will effectively 'recollect' some of the fuel established in the changed rate. This Board needs to address this in their new rules to ensure rail customers

are not be subjected to 'double dipping' by the rail carriers in their collection of fuel costs as they change or establish rates.

IX. CONCLUSION

The Wheat & Barley Commissions thank the Board for the opportunity to present these Comments to the Board. The opportunity to present comments on this issue provides a needed forum to examine the legitimacy of fuel surcharge assessment as being practiced by the nation's railroads. We who shoulder the burden of assessment look forward to Board action on these issues through the promulgation of rules that will bring fairness to the assessment process.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Terry C. Whiteside", is written over a light gray rectangular background.

Terry C. Whiteside
Registered Practitioner
Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, Montana 59101
(406) 245-5132