BEFORE THE

SURFACE TRANSPORTATION BOARD




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Ex Parte No. 661

RAIL FUEL SURCHARGES

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# COMMENTS

submitted by

## PAPER & FOREST INDUSTRY TRANSPORTATION COMMITTEE

and

## AMERICAN FOREST & PAPER ASSOCIATION

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THE PAPER & FOREST INDUSTRY TRANSPORTATION COMMITTEE

THE AMERICAN FOREST & PAPER ASSOCIATION

*By Its Attorneys*

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Dated: April 27, 2006

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These comments are submitted by the Paper & Forest Industry Transportation Committee ("PFITC") and the American Forest & Paper Association ("AF&PA") in response to the Surface Transportation Board's ("STB" or the "Board") Notice of Public Hearing issued on March 14, 2006 ("Hearing Notice"). In addition to the comments provided herein, PFITC and AF&PA also endorse the Testimony submitted by The National Industrial Transportation League in this proceeding.

PFITC is an association of paper, pulp and forest products logistics professionals whose purpose is to work with our transportation providers, local, State and Federal governments and other associations to ensure that our industry has access to a transportation network that can provide the service required to ensure our industry remains competitive domestically and

globally. AF&PA is the national trade association of the forest and paper industry and represents more than 200 member companies and related associations that engage in or represent the manufacturers of pulp, paper, paperboard and wood products. PFITC and the AF&PA together represent the forest products industry, which ships 65% of its forestry products and 20% of paper products by rail. Our industry is one of the largest commodity shippers and the largest general merchandise shippers in the nation, moving an average of 19,300 carloads of products per week by rail.

In the Hearing Notice, the Board announced it would hold a hearing to provide a "forum for the expression of views by rail shippers, railroads, and other interested persons, on the manner in which fuel surcharges are calculated and charged by railroads." Hearing Notice, p. 1. The Board stated that the proceeding will focus on "whether railroad fuel surcharges are being set in such a manner as to insure that they are used only to recover the increased costs of fuel for the particular movements to which the surcharge is applied." Hearing Notice, p. 2. In addition, the Board asked for comments on whether and how the Board's reporting requirements should be adjusted to provide rail customers with better information on a carrier's fuel costs and the revenues collected through fuel surcharges. *Id.*

PFITC and AF&PA appreciate the opportunity to comment on current rail fuel surcharge programs and we strongly commend the STB for conducting this proceeding. We are confident that the Board can help ensure that the railroads recover their increased fuel costs through reasonable practices that are fair to all rail shippers. We believe the Board can play an important role in bringing about much-needed change to many of the existing rail fuel surcharge programs, which are not applied on a fair and equitable basis and which at least one study has found

generate revenue over and above the railroads' actual fuel costs. *See Railroad Fuel Surcharge Study*, Escalation Consultants, Inc., Dec. 2004.

## I. FUEL SURCHARGE PROGRAMS MUST BE APPLIED ON A FAIR AND EQUITABLE BASIS

As one of the largest rail commodity shippers, the importance of rail service to the forest and paper products industry cannot be overstated. Rail fuel surcharges significantly affect the costs our members incur for rail transportation. We realize, however, that the substantial increases in fuel prices cannot be born by the railroads alone, and that shippers have a role to play in covering a portion of these increases. PFITC and AF&PA are concerned, however, that the methodologies by which the railroads assess fuel surcharges are unfair and unreasonable.

The current processes used by most railroads do not attempt to recover only the increased costs of fuel associated with a particular rail-related move, but instead attempt to spread the system-wide cost of increased fuel prices onto some shippers. The Union Pacific Railroad ("UP"), the Norfolk Southern ("NS"), and CSX Transportation ("CSXT") currently determine the fuel surcharge as a percentage of the rate charged for a particular rail movement. The Burlington Northern and Santa Fe Railroad ("BNSF") has adopted a mileage based fuel surcharge program for some moves, while still relying on a rate-based program for other moves. The result of the rate-based programs is that some shippers are forced to pay a disproportionately larger share of the increased fuel costs than do other shippers.[1]

Rate-based fuel-surcharge programs have no direct correlation to the fuel expense incurred by railroads in transporting goods for shippers. Due to the substantial differences in the

[1] In addition, NS and CSXT currently base their fuel surcharge rate on the changes in the price of West Texas Intermediate Crude Oil ("WTI"). We understand that the price of WTI has no direct correlation to the cost of fuel paid by either of these railroads because this oil is not used in locomotives. Furthermore, the WTI appears to increase at a significantly higher rate than other oil and gas indices. Accordingly, the use of WTI as an index does not appear to accurately reflect the actual price increases of fuel used by these railroads. If so, it would be an unreasonable factor by which to base a fuel surcharge rate.

rates for transporting different commodities, a rate-based fuel surcharge program results in substantially higher fuel surcharge costs for some commodities than for others. Under a rate-based fuel surcharge program, similar moves (e.g., same origin and destination, same type of railcar, and same weight) of two different commodities may result in substantially different fuel surcharges; despite the fact that the railroad's fuel expenses for transporting the two commodities are essentially the same.

Furthermore, because a rate-based fuel surcharge program has no correlation to the actual increased costs of fuel, it is difficult if not impossible to ensure the railroads are not using the programs to simply enhance their profit margins. Indeed, at least one study of railroad fuel surcharges has reached this conclusion. *Railroad Fuel Surcharge Study*, Escalation Consultants, Inc., Dec. 2004. The purpose of a fuel surcharge is simply to recover unanticipated and excessive increases in fuel costs. It is not an appropriate venue for the railroads to utilize to increase profits.

PFITC and AF&PA believe that fuel surcharge programs that are not based on actual increases in fuel expenditures and that allow the railroads to recover revenue from a shipper that is materially above the cost of fuel consumed for that shipper's rail movements is unjust and unreasonable conduct. PFITC and AF&PA recognize that the railroads are under contracts with some shippers where they are not specifically permitted to impose a fuel-surcharge. The railroads entered these contracts freely and fairly of their own volition, however. It is unfair and inappropriate for a railroad to charge other customers an excess fuel surcharge in order to compensate for the fact that it cannot collect a fuel surcharge from some customers under contract. Railroads should instead adopt fuel surcharges programs that are cost-based and reasonably related to actual changes in the fuel expense for a particular move. Their failure to

apply such formulas in assessing fuel surcharges should be closely scrutinized by the Board and, as appropriate, the STB should exercise its authority provided by the Interstate Commerce Act, as amended, to prohibit such unreasonable practices. 49 U.S.C. § 10702(2).

Moreover, the railroads' fuel surcharge programs should account not only for fuel cost increases but also fuel cost reductions. The railroads should continually monitor the fuel indices and baseline costs relied upon to assess the surcharges and eliminate or adjust the surcharges downward when the cost of fuel drops.

## II. FUEL SURCHARGES APPLIED BY RAILROADS MUST BE MORE TRANSPARENT

In its Hearing Notice, the STB asked whether and how reporting requirements should be adjusted to provide rail customers with better information on carriers' fuel costs. In order to ensure fairness in the assessment of fuel surcharges, the Board should require railroads to provide more information on their actual fuel costs related to particular moves.

The information currently reported by railroads limits the ability of shippers to identify the actual fuel costs associated with a particular move. If the railroads expect shippers to provide additional compensation to cover unexpected increases in fuel costs, the railroads should provide additional information that will make the assessment of fuel surcharges more transparent. Without increased transparency, we will continue to be concerned that fuel surcharges are applied inequitably and carriers will continue to have the ability to over-collect. Requiring the railroads to provide more information regarding their actual fuel costs would help to alleviate our concern that the carriers are using fuel-surcharge programs to enhance revenue.

PFITC and AF&PA are further concerned that the information currently available permits carriers to "double-dip" when collecting fuel surcharges. The current fuel-surcharge programs are based on fuel prices that have not been seen in nearly four years. Since that time, rail freight

rates have increased, in part presumably to recover increased fuel costs. Although not yet implemented, the NS recently announced a change in its fuel surcharge program, so that the fuel surcharge will only apply when the price of WTI exceeds $64 a barrel, rather than its current trigger point of $23 per barrel. It should be noted, however, that the NS has simultaneously announced it will adjust its tariff rates, presumably to continue to recover the increased fuel costs between $23 per barrel and the new base rate of $64. It is appropriate for the NS and other railroads to adjust the fuel surcharge rates, either up or down, when fuel costs change. NS has not indicated, however, whether it will adjust the tariff rates downward should the price of WTI drop below $64 per barrel. Accordingly, the NS can continue to collect the increased tariff rates even if the price of WTI drops below the $64 threshold level. It is important that shippers have access to the true fuel expenses incurred to ensure the railroads cannot continue to both charge higher tariff rates and a fuel surcharge, in order to recover their fuel costs.

Towards increasing transparency, PFITC and AF&PA urge the Board to require carriers to provide additional information, including: percentage of shipments where a fuel surcharge is applicable versus those where no fuel surcharge is applied; percentage of shipments where other fuel cost recovery devices, such as RCAF, are utilized; total revenue collected from fuel surcharges for each quarter; and individual shippers who are assessed a fuel surcharge should be provided information regarding the consumption and cost of fuel for that shipper's individualized movements on a monthly or quarterly basis.

## III. FUEL SURCHARGES MUST BE RELATIVELY EASY TO ADMINISTER

Although it should not be the only criteria for developing a fuel surcharge program, ease of administration is an important factor that should be considered. PFITC and AF&PA recognize that the railroad infrastructure and rate system is extremely complex. We do not

encourage the development of complex formulas for assessing fuel surcharges. We do expect, however, that the railroads' surcharge programs be applied fairly and equitably and that they be relatively easy to administer and analyze. It is critical that the surcharge programs be designed to more closely correlate the amount of the charge to the actual increase in fuel costs incurred for individualized movements.

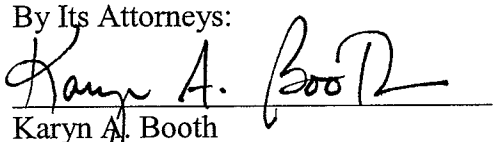
## IV. CONCLUSION

In conclusion, PFITC and AF&PA believe that the Board can play an integral role in helping to resolve shippers' concerns over the railroads' assessment of fuel-surcharges. We urge the Board to seek relevant information from the railroads and to take other appropriate action to ensure that all fuel-surcharge programs are applied equitably and that the carriers' practices in assessing fuel surcharges are reasonable.

Respectfully submitted,

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