

September 26, 2006

Comments on Proposed Rulemaking: STB Ex Parte No. 661

On behalf of the members of the Steel Manufacturers Association¹ (SMA), I would like to thank the Surface Transportation Board for its proposed rulemaking, issued August 3, 2006, following the May 11, 2006 public hearing. The level of participation in the hearing should serve as an indication of the importance of this issue to shippers, and to the U.S. economy as a whole. SMA appreciates the initiative of the STB in addressing this practice, and its intention of issuing a final rulemaking.

As stated in our initial submission, SMA members understand the financial challenges faced by rail carriers as a result of the increases in fuel prices due to forces beyond their control, and believe that fuel surcharges can be considered an acceptable method of recovery; but surcharges issued by carriers should be in accordance with actual costs incurred on a per-shipment basis. Surcharges should be used only to recover expenses, not to function as a mechanism for revenue generation. It is SMA's belief that the Class I railroads are indeed over-recovering assets from shippers, particularly those who are not the beneficiaries of favorable contract terms.

SMA is supportive of the STB's findings in its August 3, 2006 decision, and urges the Board to enact the numerous terms outlined in this proposal.

It is worth noting that despite declining fuel prices in the weeks following the proposed rulemaking, SMA members have seen little to no break in the surcharges they have faced, and are still subjected to fuel surcharges exceeding the costs incurred by the railroads. This places an undue burden on the competitive position of domestic steel producers, relative to competitors in the global marketplace. Our members have estimated that fuel surcharges have increased the total cost of production by as much as \$4 to \$6 per ton of shipped steel, significantly impacting the market position of domestic product. The STB must act firmly in support of its findings, and work to correct this unreasonable practice.

¹ SMA is the primary trade association for EAF steel makers and rerollers, often referred to as "minimills." SMA is the largest steel industry trade association in North America, whose members account for over 70 percent of total U.S. steel production.

Furthermore, SMA is concerned with the recent Class I railroad practice of fuel surcharges being rolled into established rates, thereby avoiding the authority of the STB. Beginning July 1, 2006, Norfolk Southern introduced its plans to permanently increase rates by 16.4 percent to account for fuel surcharges. This plan is based on a flat \$64.00 per barrel monthly average price of West Texas Intermediate Crude Oil. In addition, a 0.3 percent surcharge increase is included for every dollar beyond \$64.00. While railroad efforts to remove fuel surcharge oversight from the STB are troubling enough, SMA is also concerned that there is no mechanism built into the system to allow for adjustment should the average oil price drop below \$64.00 per barrel. This seems shortsighted on the part of the Norfolk Southern, and SMA is concerned that other Class Is may adopt this practice as well. The STB may not have authority over rates, but it does have oversight on the practice of rolling fuel surcharges; accordingly, SMA urges the STB to consider this matter when issuing its final rulemaking.

The application of rate-based surcharges places an additional burden on commodity groups already paying the highest freight rates. If fuel surcharges are to be utilized to recover assets, they should be applied fairly and evenly to all shippers. In short, the shippers who are not fortunate enough to enjoy a favorable contract should not be left subsidizing the rest. SMA supports the STB's finding that "fuel surcharges be tied not to the level of the base rate, but to those attributes of a movement that directly effect the amount of fuel consumed: either mileage alone, or, preferably, weight and mileage". A rate-based methodology does not accurately recover costs incurred by carriers as a result of increasing fuel prices, and any methodology utilized should more precisely link costs to surcharges on a per-shipment basis.

As noted in the STB's proposal, some carriers have engaged in the unreasonable practice of "double dipping", escalating rates through the application of an index, such as the RCAF, while simultaneously issuing an additional fuel surcharge – thereby ostensibly charging shippers twice for the same fuel cost increases. SMA supports the Surface Transportation Board's findings relative to the prohibition of double dipping.

SMA is supportive of the usage of a uniform index to measure increases in fuel costs, and considers the EIA's "U.S. No. 2 Diesel Retail Sales by All Sellers (Cents per Gallon)" to be an acceptable choice. The data provided in this Department of Energy-

sponsored index is policy-neutral, and is available with only a one-month lag. This ensures accurate data that is reflective of actual costs and market conditions. The uniformity of its application will aid the STB's collection of more accurate data in its monitoring of fuel surcharge practices.

Finally, SMA supports the STB's determination that each Class I railroad should submit a monthly report detailing actual total fuel costs, total fuel consumption, and total fuel surcharge revenues. Hopefully this will bring a greater deal of transparency to the process for all parties involved.

We at the SMA appreciate the initiative of the Surface Transportation Board in actively addressing shipper concerns over fuel surcharge practices, as clearly their application has had a substantial effect on the competitive position of many industries. The rising cost of fuel has impacted shippers and carriers alike, and SMA members understand the need of Class I railroads to recover these unanticipated costs. But surcharges should be applied evenly and transparently, not as a mechanism to generate revenue while unduly penalizing shippers who have nowhere else to turn.

Sincerely,



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President, SMA

CC: SMA Board of Directors
SMA Transportation Committee