

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

RAIL FUEL SURCHARGES (SAFE HARBOR)

EX PARTE NO. 661 (SUB-NO. 2)

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**OPENING COMMENTS
OF THE DOW CHEMICAL COMPANY**

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The Dow Chemical Company (“Dow”) hereby submits its Opening Comments in the above-captioned proceeding in response to the Advance Notice of Proposed Rulemaking (“ANPRM”) issued by the Surface Transportation Board (“Board”) on May 29, 2014.¹ As described below, serious questions exist regarding the fuel surcharge revenues of the nations’ major railroads in comparison to the incremental fuel costs that they actually pay. Further investigation by the Board is warranted. The Board should institute a rulemaking proceeding wherein the Board could propose (1) to create a process whereby railroads explain how their fuel surcharge programs are designed to recover only incremental fuel costs, and (2) to require that more information be filed by the railroads under 49 CFR § 1243.3.

I. Summary of Argument.

Dow commends the Board for initiating this proceeding on the important subject of railroad fuel surcharges. In the years since fuel surcharges became common in the rail industry,

¹ The due date for comments was revised by the Board in a later decision served on July 8, 2014.

Dow and others have been concerned about the fuel surcharge programs devised by the railroads. The Board, too, has shared that concern as exemplified by various decisions issued over the past eight years.

The time is appropriate, again, for further scrutiny of railroad fuel surcharge programs because a variety of data sources suggest that the railroads may be recovering in excess of their incremental fuel cost through their fuel surcharges. Dow has engaged in an analysis of the limited data publicly available about the railroads' fuel surcharge programs. The results of this analysis raise serious questions about whether the fuel surcharge programs of the major U.S. railroads are actually resulting in recovery of only their incremental fuel costs. Board investigation of these questions is warranted.

The Board has made clear that fuel surcharges may only be used for recovery of actual incremental fuel costs incurred, and are not to be used as a revenue or profit enhancement mechanism.² Elimination of the Highway Diesel Fuel ("HDF") Index safe harbor would not eradicate the need for Board investigation because the fuel surcharge revenues of any particular railroad are based upon not just the index used, but also the strike price and the step function elements of the fuel surcharge program. Moreover, elimination of the safe harbor would likely encourage carriers to revert to behaviors before 2007 and utilize a variety of indices that could be inferior to the HDF. The data compiled by Dow suggests that there may be a fundamental, structural problem with the railroads' fuel surcharge programs. However, all three elements (index, strike price, and step function) of the fuel surcharge programs must be analyzed in order to determine the source of the problem.

² See, e.g., Rail Fuel Surcharges, STB Ex Parte No. 661, slip op. at 4 (served Aug. 3, 2006) ("A carrier should not identify a surcharge as a cost-recovery mechanism for a discrete portion of its costs unless the surcharge is directly tied to and limited to the incremental changes in that particular cost for the movements to which the surcharge is applied.").

In sum, the Board is right to be concerned by the dramatic railroad over-recovery that was so evident in the Cargill decision.³ The Board needs to take a more active role in oversight of the railroads' fuel surcharge programs, by regular analysis and oversight to determine whether the HDF is tracking railroads' fuel prices and by requiring regular explanation and data from the railroads to show that the specific mechanisms of their fuel surcharge programs are only recovering incremental fuel costs. This is the legal standard for such programs, as made clear by the Board back in 2006.

II. Identity and Interest of Dow.

A. Identity of Dow.

Dow is a diversified chemical company that harnesses the power of science and technology to constantly improve what is essential to human progress. Dow offers a broad range of innovative products and services to customers in more than 175 countries, helping them to provide everything from fresh water, food, and pharmaceuticals to paints, packaging, and personal care products. In order to provide many of these essential products and services, Dow makes significant use of rail transportation. The broad range of products that Dow produces span virtually every industry, including railroads, and make possible approximately 90% of the goods people use every day.

Dow's major manufacturing sites in the United States are located in Texas, Louisiana, and Michigan. These sites, and others around the country, are dependent upon railroads for the safe, secure, and reliable transportation of raw materials and products.

³ Cargill, Incorporated v. BNSF Railway Company, STB Docket No. 42120 (served Aug. 12, 2013) ("Cargill").

B. Interest of Dow in this proceeding.

As described above, Dow makes frequent use of rail transportation in the United States, and transportation costs are a significant part of Dow's operating expenses. Dow is concerned about any rail fuel surcharge program or methodology that results in railroads receiving funds from shippers in excess of the railroads' incremental fuel costs.

III. Background.

The use of fuel surcharges by railroads has been frequently seen as problematic since widespread application of such surcharges began over a decade ago. Initial concern by shippers and others led to a 2007 decision wherein the Board made several determinations. Rail Fuel Surcharges, STB Ex Parte No. 661 (served Jan. 26, 2007) ("Jan. 2007 Decision"). First, the Board determined that it has authority to review railroad fuel surcharges under the unreasonable practice standard of 49 USC § 10702. In response to railroad claims that fuel surcharges can only be evaluated pursuant to rate reasonableness standards, the Board noted that the term fuel surcharge "most naturally suggests a charge to recover increased fuel costs" and that the Board has authority to address "the manner in which railroads apply what they label a fuel surcharge." Id. at 7. In other words, the Board required that a railroad fuel surcharge be linked to actual changes in a railroad's fuel costs; otherwise, a fuel surcharge would be "misleading" and an unreasonable practice.⁴

The Board cautioned that it was not adjudicating the lawfulness of any particular railroad's fuel surcharge program but, instead, developing "rules of general applicability for

⁴ Jan. 2007 Decision at 6-7. The Board made several related findings, such as the determination that it is an unreasonable practice for a railroad to assess a fuel surcharge as a percentage of the transportation rate. Id. at 6

future conduct.” Id. at 8. Any award of remedies or railroad-specific determination would require the filing of a complaint. Id. at 8.

In its 2007 decision, the Board also created a safe harbor. Specifically, railroad selection of a certain diesel fuel index published by the Energy Information Agency (“EIA”) would be immune from challenge. Id. at 11. This index is now commonly known as the HDF Index.⁵ Even though a railroad’s choice of the HDF Index would be within a safe harbor, the Board made clear that “if a carrier chooses to use a fuel surcharge program...there must be a reasonable nexus to fuel consumption.” Jan. 2007 Decision at 9.⁶

The Board later had an opportunity to clarify and explain the proof required when a specific railroad fuel surcharge program is challenged as unreasonable. The Board stated that “when a complainant challenges a carrier’s fuel surcharge program as an unreasonable practice, it must show that the general formula used to calculate fuel surcharges bears no reasonable nexus to the fuel consumption for the traffic to which the surcharge is applied.” Dairyland Power Cooperative v. Union Pacific Railroad Company, STB Docket No. 42105, slip op. at 6 (served July 29, 2008). It is insufficient, said the Board, to simply show that the fuel surcharge dollars collected from a particular shipper exceed the actual incremental cost of fuel incurred by the railroad in providing the service. Dairyland, slip op. at 6. The Board “cannot expect a precise match between fuel surcharge revenues and increased fuel costs for any one shipper.” Id. at 6.

Just last year, the Board issued its first decision on the merits of a fuel surcharge challenge in the Cargill v. BNSF case. See STB Docket No. 42120 (served Aug. 12, 2013). In that case, the parties had disputed how to measure the incremental change in BNSF’s fuel costs

⁵ Cargill, slip op. at 2.

⁶ See also Cargill, slip op. at 9 (“A fuel surcharge program employing the HDF Index could still be shown to be unreasonable if other aspects of the program are unreasonable.”).

as part of the determination of whether the challenged BNSF fuel surcharge program resulted in over-recovery of such incremental costs. Cargill, slip op. at 7. The shipper had used BNSF's fuel price data to calculate BNSF's incremental fuel costs, but the Board decided that, because BNSF's fuel surcharge program utilized the HDF Index, BNSF was entitled to use the change in HDF to calculate BNSF's incremental fuel costs. Id. at 7. Using the HDF Index to calculate BNSF incremental fuel costs, the Board found that the BNSF fuel surcharge program did not result in BNSF over-recovery of incremental fuel costs. Id. at 6 and 13. More importantly, the Board found that the existence of the safe harbor meant that Cargill could not challenge use of the HDF Index as a proxy for BNSF's fuel price. Id. at 1 and 9.

The Board said its Cargill decision regarding how to measure BNSF's incremental fuel cost was necessitated by the creation of the HDF safe harbor in the January 2007 Decision. Cargill, slip op. at 7-10. Nonetheless, the Board expressed concern that use of BNSF's internal fuel price to calculate BNSF's incremental fuel cost showed that BNSF's fuel surcharge program actually resulted in a \$181 million over-recovery. Id. at 17 ("This proceeding has raised concerns about the safe harbor."). Due to the potential for "future abuse," the Board decided that an Advanced Notice of Proposed Rulemaking was appropriate to permit evaluation of the safe harbor. Id. at 17-18. This ANPRM followed less than a year later.

In the ANPRM, the Board reiterated its concerns about use of the HDF Index as a proxy for a railroad's fuel price. ANPRM, slip op. at 2. The Board wondered whether the disconnect unearthed in Cargill was a "unique situation" or "a more widespread phenomenon that could undermine the usefulness of the safe harbor provision." ANPRM, slip op. at 2-3. If the problem were widespread, the Board recognized that "[t]his could allow a rail carrier to recover

substantially more than its incremental internal fuel costs yet still be permissible under the safe harbor.” ANPRM, slip op. at 3.

Therefore, the Board requested comment from the public on five separate issues:

1. whether or not the phenomenon observed in Cargill (“a growing spread between a rail carrier’s internal fuel costs and the HDF Index”) was an aberration
2. whether there are problems associated with the Board’s use of the HDF Index as a safe harbor in judging the reasonableness of fuel surcharge programs
3. whether any problems with the safe harbor could be addressed through a modification of it
4. whether any problems with the safe harbor are outweighed by its benefits
5. any other matter that bears on whether the safe harbor should be modified or removed

ANPRM, slip op. at 3.

IV. Comments.

Dow will primarily respond to request numbers 1 and 5 listed by the Board in the ANPRM. As shown herein, the phenomenon noted by the Board in Cargill may not be an aberration. Four of the five largest U.S. railroads have fuel surcharge programs based, at least in part, on the HDF Index.⁷ Publicly available data raises serious questions about whether the significant revenue generated by these fuel surcharge programs is limited solely to recovery of the incremental fuel cost incurred by the railroads (as shown in the railroads’ own internal data).

Of course, the fuel index used, whether the HDF Index or otherwise, is only one component of a fuel surcharge program. The revenues generated by a fuel surcharge program also depend upon the strike (or trigger) price as well as the step function that explains the fuel surcharge payment per increase in the relevant index, i.e., the fuel consumption rate. Given the paucity of publicly available data, Dow is not able to determine the ultimate cause behind much

⁷ According to their respective websites, Union Pacific Railroad Company, CSX Transportation, Inc., Kansas City Southern Railway, and BNSF Railway Company all utilize the HDF Index. BNSF recently removed its fuel surcharge program from public view, but the version that was publicly available in early 2013 showed use of the HDF Index.

of the evidence provided herein; the index could be involved, but so could the strike price, the step function, or some combination thereof. Nevertheless, evidence suggests the Board's Cargill concern is not misplaced, and Dow urges the Board to continue its investigation into the fuel surcharge programs used by the nations' railroads.

As shown in the remainder of this Section IV, the evidence supporting Dow's Opening Comments consists of the following:

- A. Railroad fuel surcharge revenue is growing much faster than railroad spending on fuel.
- B. It is unclear if the design of specific fuel surcharge programs is related to the incremental cost of fuel.
- C. Railroads are recovering an increasingly large percentage of their total fuel cost via fuel surcharges.
- D. Publicly available information suggests that at least one railroad aside from BNSF is using the safe harbor to obtain revenue via its fuel surcharge program that exceeds its actual incremental fuel cost.
- E. Many fuel surcharge programs have remained unchanged for years despite significant and ongoing fuel efficiency gains by the railroads.

The evidence provided in this Section IV strongly suggests that the phenomenon in Cargill (BNSF fuel surcharge revenue dramatically exceeding internal incremental BNSF fuel cost) is not an aberration.

A. Railroad fuel surcharge revenue is growing much faster than railroad spending on fuel.

Dow has analyzed the railroad information provided to the Board since 2007 pursuant to 49 CFR § 1243.3.⁸ This analysis shows that railroad fuel surcharge revenue growth exceeds the increase in fuel cost for four of the five major U.S. railroads. As shown in Table 1 below, the percent change in railroad fuel surcharge revenue collected has substantially increased in comparison to the percent change in fuel cost at four of the five major U.S. railroads from the fourth quarter of 2007 to the first quarter of 2014.

Railroad	% change in Fuel Revenue	% change in Fuel Cost	Simple difference by which % change in Fuel Revenue exceeds % change in Fuel Cost
BNSF	32%	17%	15%
CSXT	47%	15%	32%
KCS	53%	18%	35%
NS	22%	23%	(1)%
UP	59%	1%	58%

Source data is provided in Exhibit 1. While these figures are not conclusive as to the propriety of any fuel surcharge, they at least suggest that further Board investigation is warranted.

The fact that the Norfolk Southern Railway Company (“NS”) is the lone outlier in this analysis may not be a surprise because Dow believes NS is the sole major U.S. railroad that omits a fuel surcharge on its common carriage traffic. In other words, NS collects no fuel

⁸ Background information regarding this requirement is provided in the Board’s decision served August 14, 2007 in STB Ex Parte No. 661 (Sub-No. 1), Rail Fuel Surcharges.

⁹ Table 1 is based on data submitted to the Board pursuant to 49 CFR § 1243.3. The Board has called these railroad data submissions the “Quarterly Reports of Rail Fuel Surcharges.” The quarterly reports are found on the Board’s website on the page titled “Economic Data: Financial & Statistical Reports.”

surcharge for a significant portion of its traffic despite incurring fuel costs for that traffic. The exact relationship between this fact and the percent change in both fuel surcharge revenue and incremental fuel cost is not entirely clear given the limited public data available.

Of course, railroads have also been enjoying a “pricing renaissance” for the past decade, with rail rates increasing substantially.¹⁰ Since the cost of fuel, or some part of it, may also be included in the base rates, the rising rail rates also call into question whether or not the railroads are recovering a greater portion of their fuel costs in their base transportation rates.

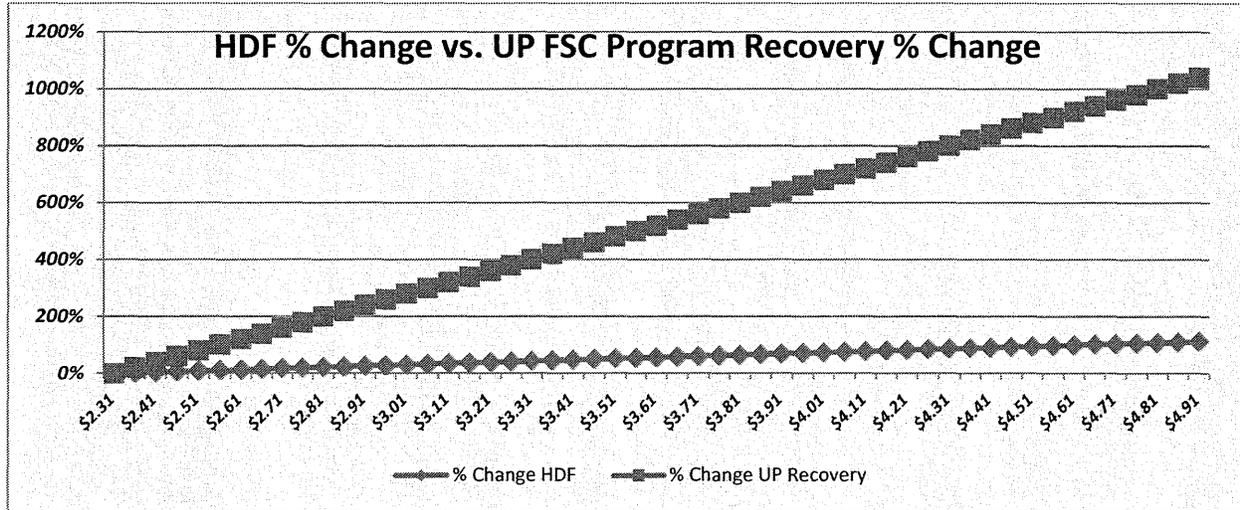
B. It is unclear if the design of specific fuel surcharge programs is related to the incremental cost of fuel.

A simple regression analysis reveals that the major railroads’ fuel surcharge programs have correlations of 0.79 to 0.90 compared to the HDF Index. See Exhibit 4. Yet, at the same time, some fuel surcharge programs are designed such that, as the price of fuel rises in the HDF Index, the corresponding fuel surcharge fee paid by shippers rises much more sharply.

As part of its analysis to support these Opening Comments, Dow has looked more closely at the standard mileage-based carload fuel surcharge program of certain railroads. Under the mileage-based fuel surcharge program of the Union Pacific Railroad Company (“UP”), a small increase in the HDF Index results in a much larger increase in the fuel surcharge per mile fee that must be paid. For example, a 57.6% increase in the HDF price, from \$2.50 to \$3.94 per gallon, results in a 311% increase in the per-mile fuel surcharge fee paid by shippers, from \$0.09 to \$0.37 per mile. See Exhibit 5. The graph below shows the difference in rate of increase between the HDF and the fuel surcharge fee under the UP carload program, with a starting HDF strike

¹⁰ A recent Congressional report included a sub-section titled “Freight Railroads Continue to Enjoy Strong Pricing Power.” See Update on the Financial State of the Class I Freight Rail Industry, p. 11-12, U.S. Senate Committee on Commerce, Science, and Transportation, Staff Report for Chairman Rockefeller (Nov. 21, 2013).

price of \$2.30 per gallon. Lack of data prevents analysis regarding the ultimate issue – how the fuel surcharge fee paid to UP relates to the actual incremental cost of fuel incurred by UP.



Dow also contrasted the UP program with the fuel surcharge programs of BNSF Railway Company (“BNSF”) and CSX Transportation, Inc. (“CSXT”). Under BNSF’s mileage-based carload program, that same 57.6% increase in the HDF Index (from \$2.50 to \$3.94 per gallon) results in a 3600% increase in the per-mile fuel surcharge fee, from \$0.01 to \$0.37 per mile. See Exhibit 6. Finally, the same change (HDF from \$2.50 to \$3.94 per gallon) in CSXT’s mileage-based program results in a 277% increase in the per-mile fuel surcharge fee, from \$0.13 to \$0.49 per mile. See Exhibit 7.

Obviously, antitrust concerns prevent UP, BNSF, and CSXT from agreeing upon identical fuel surcharge programs.¹¹ However, it remains unclear if the differences described above actually relate to recovery of each railroad’s incremental cost of fuel, which is the only lawful use of a fuel surcharge program. The lack of publicly available data prevents further analysis, meaning that, again, further investigation by the Board is warranted.

¹¹ See, e.g., In re Rail Freight Fuel Surcharge Antitrust Litigation, MDL Docket No. 1869, Misc. No. 07-489 (pending in U.S. Federal District Court for the District of Columbia).

C. Railroads are recovering an increasingly large percentage of their total fuel cost via fuel surcharges.

The fuel surcharge programs of the nations' major railroads are becoming a major revenue source. In the fourth quarter of 2007, the nations' five major railroads recovered between 45% and 68% of their total fuel cost via fuel surcharges. By the first quarter of 2014, however, the recovery range had increased to between 60% and 71%. Table 2 below shows the details:

Railroad	Percent Recovered in Q4 2007	Percent Recovered in Q1 2014	Simple Difference in Percent Recovered
BNSF	53%	60%	7%
CSX	51%	64%	13%
KCS	50%	66%	16%
NS	68%	67%	(1)%
UP ¹²	45%	71%	26%

Source data is provided in Exhibit 2.

Certainly, innocent explanations are possible. The portion of total fuel costs recovered in a fuel surcharge can be increased simply by lowering the strike price. Additionally, a rise in diesel prices, with no other changes, would also result in an increase in fuel surcharge revenues as a percent of total fuel costs. It is also possible that a larger percentage of rail traffic was subject to a fuel surcharge in 2014 compared to 2007. However, it is unclear if such explanations are behind the data in the table above.

¹² Over this same time period, UP's total fuel surcharge revenue has increased 59% (see Table 1), UP's total fuel cost has increased only 1% (see Table 1), UP fuel consumption has decreased 14% (see Table 3), and the HDF price has risen 56%, from \$2.49 to \$3.88 per gallon (see Exhibit 8).

Without doubt, Table 2 does reveal that fuel surcharges are an increasingly important source of revenue for railroads. The Board made clear in 2006 that fuel surcharges were to be limited to “incremental changes” in the fuel cost “for the movements to which the surcharge is applied.” Rail Fuel Surcharges, STB Ex Parte No. 661, slip op. at 4 (served Aug. 3, 2006). In conjunction with the questions raised in Cargill and these Opening Comments, the prominent role of fuel surcharges as a revenue source confirms that the issues are industry-wide in scope, and further Board investigation is warranted.

D. Publicly available information suggests that at least one railroad aside from BNSF is using the safe harbor to obtain revenue via its fuel surcharge program that exceeds its actual incremental fuel cost.

As mentioned above, Dow analyzed the carload mileage fuel surcharge program of UP during preparation of these Opening Comments. UP has publicly stated that its fuel surcharge program is based upon a difference of \$0.60 per gallon between the HDF Index value and the actual price paid by UP for diesel fuel.¹³ In other words, UP has indicated that a HDF Index value of \$2.30 per gallon is based upon actual payment by UP of \$1.70 per gallon for fuel.

UP publicly reports how much it pays for diesel fuel on a quarterly basis. Analysis of this information reveals that the UP carload fuel surcharge program (Exhibit 5) consistently over-recovered in 2013 compared to UP’s actual internal fuel costs using the \$0.60 differential. See Exhibit 10 (also labeled Attachment No. 2). In this Exhibit 10, Column 9 shows the amount actually paid by UP for diesel fuel in a given calendar quarter. Column 4 shows the HDF Index

¹³ See Comments of Union Pacific Railroad Company, in Rail Fuel Surcharges, STB Ex Parte No. 661 (Sub-No. 1), page 6 (filed April 2, 2007). UP mentioned the \$0.60 differential in the context of rebasing its rates and fuel surcharge program. There is no further information from UP regarding a new differential after the rebasing, nor is there any other information about the relationship between the HDF Index and the price actually paid by UP for fuel. Consequently, Dow assumes that the \$0.60 differential still exists. See also Exhibit 9 (also labeled Attachment No. 1).

value for each month. Based on the implicit \$0.60 differential, Column 6 shows the diesel fuel price being recovered by UP via its fuel surcharge program (i.e., the price UP is presumed to have paid for fuel under its fuel surcharge program formula). Comparison of Columns 6 and 9 reveals that the UP fuel surcharge program resulted in recovery beyond UP's actual per gallon diesel fuel price in every month of 2013. See Column 11. The per-mile fuel surcharge over-recovery attributable to this discrepancy (which is directly attributable to use of the safe harbor to determine incremental fuel cost) is shown in Column 15.

E. Many fuel surcharge programs have remained unchanged despite significant and ongoing fuel efficiency gains by the railroads.

Just like businesses in all industries, railroads constantly seek to increase efficiency in their operating practices. Given that fuel costs represent approximately 20 to 25 percent of railroad operating expenses¹⁴, the railroads understandably make ongoing, concerted efforts to reduce fuel consumption. Since the fourth quarter of 2007, railroad overall fuel consumption has been as follows:

RR	Q4 2007	Q1 2014	Percent Change
BNSF	385,312	375,144	-3%
CSXT	145,975	138,326	-5%
KCS	18,760	17,922	-4%
NS	132,659	136,768	3%
UP	346,935	298,753	-14%

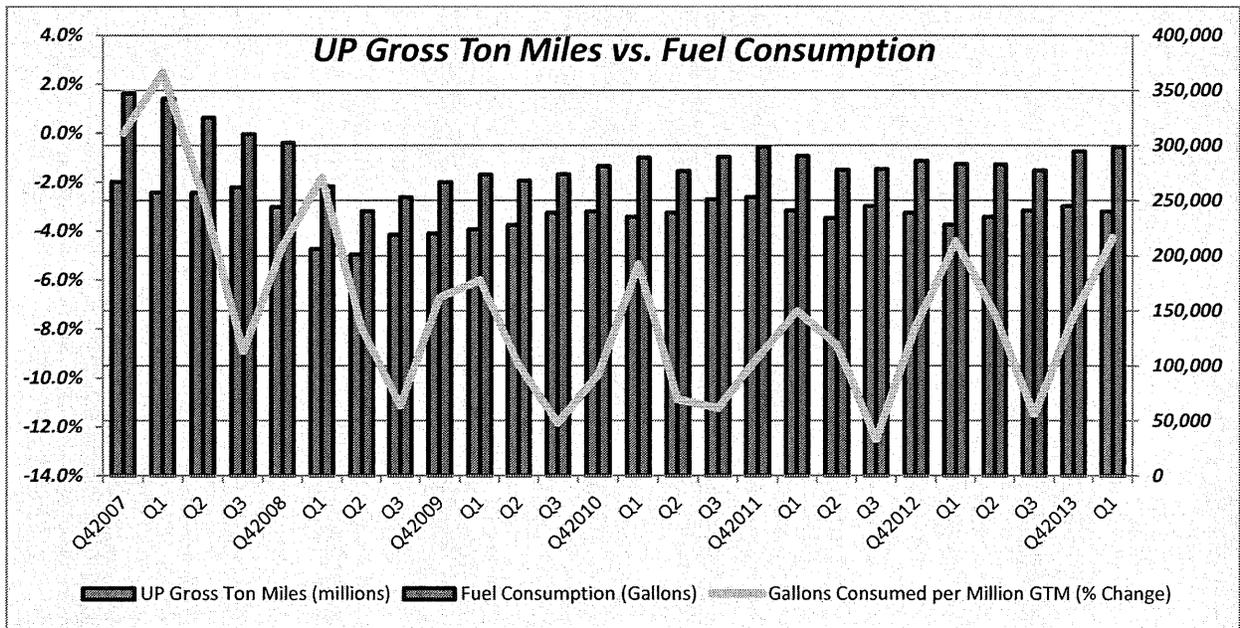
Source data is provided in Exhibit 3.

¹⁴ This is the weighting in the Rail Cost Adjustment Factor. See, e.g., Quarterly Rail Cost Adjustment Factor, STB Ex Parte No. 290 (Sub-No. 5) (2014-3), slip op. at 4 (served June 20, 2014).

In addition, there are numerous public comments by several of the Class I railroads regarding their successes in achieving fuel efficiency gains:

- UP has increased fuel efficiency by 17% from 2000 to 2013 through improvements in locomotive technology, engineer training, and greater employee involvement in operating practices.¹⁵ The line in the chart below shows that UP’s fuel consumption per million gross ton miles has decreased by 4.3% since 4Q2007. Of course, the UP website reveals that its carload mileage-based fuel surcharge program has been unchanged since 2007.

See Exhibit 8 (stating that UP fuel surcharge program begins in April 2007).



The chart above is based upon two separate data sources. Gross ton-miles are from the UP “Investor Fact Books” at <<http://www.up.com/investors/factbooks/index.shtml>>. Fuel consumption in gallons is included in data submitted to the Board in the Quarterly Reports of Rail Fuel Surcharges pursuant to 49 CFR § 1243.3.

¹⁵ See <<https://www.uprr.com/she/emg/operations.shtml>>.

- CSXT has saved more than 19 million gallons of fuel between 2005 and 2009 through improved employee training and elimination of unnecessary idling.¹⁶
- BNSF has improved fuel efficiency 7.7% since 1999.¹⁷

Thus, it appears that Class I railroads are successfully reducing their overall fuel consumption. Improved fuel efficiency increasingly offsets or even reduces the railroads' incremental fuel costs, yet the railroads have not consistently revised and revamped their fuel surcharge programs to take account of these efficiencies.

V. Further Board Investigation is Warranted.

Evidence suggests that the “aberration” found by the Board in Cargill may be a symptom of a larger problem. As shown above, the nations' major railroads are, for the most part, increasingly relying on their fuel surcharge programs as a significant revenue source. Due to the lack of publicly available detailed data, it is impossible to determine how this increasing revenue stream relates to the railroads' incremental fuel cost, and whether and by what means (the use of the HDF Index, the strike price, the step function, or a combination of one or more of these elements) such railroads are deviating from the permissible use of such fuel surcharge programs as described by the Board in 2006 and 2007. The time is appropriate for the Board to engage in a more searching review of fuel surcharge programs, including the index used, the strike price, and the step function, in order to determine whether the carriers are recovering only their incremental fuel cost. A rulemaking proceeding is warranted.

Additional Board oversight should be proposed in the rulemaking. Board oversight could take any number of forms, but Dow suggests, as one option, that the Board could look to its cost of capital proceeding in Ex Parte No. 558 as an example of how this process could work. The

¹⁶ See <<http://www.csx.com/index.cfm/about-csx/projects-and-partnerships/fuel-efficiency/>>.

¹⁷ See <<http://www.bnsf.com/communities/bnsf-and-the-environment/fuel-efficiency/>>.

Board may want to consider a process whereby the railroads or their industry association could make regular filings (every two or three years, for example) at the Board to show that their fuel surcharge programs appropriately recover only their internal incremental fuel costs. The filings could be open for comment just as the cost of capital filings of the Association of American Railroads are open for comment in Ex Parte No. 558. After receiving comment, the Board could issue a decision on the fuel surcharge mechanisms used by the railroads.

The Board should consider expanding the information required in the quarterly fuel surcharge reports pursuant to 49 CFR § 1243.3. Additional information would be useful to evaluation of fuel surcharge programs and whether they are designed to only recover incremental fuel costs, as required by the Board. For example, the Board may want to require reporting of the total annual miles that apply to the rail fuel surcharge revenue recovered, the fuel-related revenue recovered through the base rates, and actual railroad incremental fuel costs.

Regardless of the avenue chosen by the Board for further investigation and oversight of railroad fuel surcharge programs, Dow looks forward to participating in the process and assisting the Board in any way possible.

VI. Conclusion.

For all the reasons stated above, Dow respectfully requests that the Board commence a rulemaking proceeding and engage in further investigation of railroad fuel surcharge programs to ensure that such programs are linked to incremental fuel costs. Dow appreciates the opportunity to submit these comments.

Respectfully submitted,



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Exhibit 1

Exhibit 1 to Table 1: Q4 2007 to Q4 2010*

	Q42007	Q12008	Q22008	Q32008	Q42008	Q12009	Q22009	Q32009	Q42009	Q12010	Q2010	Q32010	Q42010
BNSF Fuel Revenue	533,838	641,330	815,540	1,033,576	750,320	314,300	229,351	311,910	367,245	421,596	477,323	522,672	544,726
BNSF Fuel Cost	1,007,052	1,060,638	1,306,380	1,371,502	969,181	623,707	518,945	617,051	650,747	669,542	775,734	762,226	859,146
CSXT Fuel Revenue	190,869	238,689	289,058	383,950	281,368	84,482	44,604	76,372	93,262	108,468	118,589	156,434	168,747
CSXT Fuel Cost	377,935	431,969	526,022	496,928	321,580	185,864	179,839	218,429	243,673	276,286	297,679	272,793	340,046
KCS Fuel Revenue	23,652	27,531	33,462	44,983	32,020	6,765	3,122	7,444	10,739	16,658	18,663	19,056	19,764
KCS Fuel Cost	47,095	49,747	59,383	60,951	38,535	23,993	22,418	27,614	31,149	33,386	35,392	35,228	39,186
NS Fuel Revenue	241,821	318,946	409,454	534,874	359,531	93,503	62,420	98,815	114,824	158,983	198,807	179,447	186,263
NS Fuel Cost	356,971	408,084	496,970	479,407	274,674	163,522	156,466	197,454	225,391	256,964	262,076	263,760	313,146
UP Fuel Revenue	409,327	453,022	585,036	750,284	534,404	146,753	84,428	159,413	213,986	255,587	309,400	330,667	340,887
UP Fuel Cost	907,969	957,163	1,158,479	1,134,751	732,017	386,395	370,047	465,661	540,511	583,046	607,800	607,926	686,997

*Note all costs and revenues shown in thousands of dollars (\$1,000).

*Source Data: Quarterly Report of Rail Fuel Surcharges submitted to the Surface Transportation Board pursuant to 49 CFR § 1243.3.

Exhibit 1 to Table 1: Q1 2011 to Q1 2014*

	Q12011	Q22011	Q32011	Q42011	Q12012	Q22012	Q32012	Q42012	Q12013	Q22013	Q32013	Q42013	Q12014
BNSF Fuel Revenue	581,818	684,951	704,765	691,849	672,112	732,291	675,544	741,404	710,527	727,869	723,970	749,400	702,628
BNSF Fuel Cost	952,333	1,116,230	1,112,256	1,161,325	1,111,014	1,118,903	1,109,353	1,194,974	1,142,714	1,097,217	1,166,451	1,179,280	1,177,783
CSXT Fuel Revenue	199,792	291,639	291,411	270,550	281,267	301,571	261,167	287,652	284,303	301,114	272,791	291,704	279,752
CSXT Fuel Cost	393,107	422,185	402,819	414,032	433,876	402,214	389,601	412,737	434,222	388,886	400,211	398,898	435,707
KCS Fuel Revenue	23,996	33,183	35,757	32,878	33,159	34,802	33,315	34,357	32,156	36,139	38,821	35,824	36,297
KCS Fuel Cost	45,696	50,958	49,329	52,721	49,635	48,522	49,736	52,700	50,223	49,697	55,260	53,247	55,394
NS Fuel Revenue	248,845	361,123	358,411	287,142	325,382	365,193	285,994	301,383	373,804	306,491	321,109	352,529	294,543
NS Fuel Cost	393,975	417,371	391,685	408,307	417,763	396,496	384,365	401,071	434,006	397,449	398,295	408,315	438,203
UP Fuel Revenue	412,364	580,125	636,625	614,050	614,162	684,750	633,388	671,436	635,975	664,830	633,268	662,036	651,098
UP Fuel Cost	825,498	904,340	915,709	935,477	926,315	881,391	880,009	920,246	900,076	862,372	866,601	904,802	921,246

*Note all costs and revenues shown in thousands of dollars (\$1,000).

*Source Data: Quarterly Report of Rail Fuel Surcharges submitted to the Surface Transportation Board pursuant to 49 CFR § 1243.3.

Exhibit 2

Exhibit 2 to Table 2: Q4 2007 to Q4 2010*													
	Q42007	Q12008	Q22008	Q32008	Q42008	Q12009	Q22009	Q32009	Q42009	Q12010	Q2010	Q32010	Q42010
BNSF Fuel Recovery	53%	60%	62%	75%	77%	50%	44%	51%	56%	63%	62%	69%	63%
CSXT Fuel Recovery	51%	55%	55%	77%	87%	45%	25%	35%	38%	39%	40%	57%	50%
KCS Fuel Recovery	50%	55%	56%	74%	83%	28%	14%	27%	34%	50%	53%	54%	50%
NS Fuel Recovery	68%	78%	82%	112%	131%	57%	40%	50%	51%	62%	76%	68%	59%
UP Fuel Recovery	45%	47%	51%	66%	73%	38%	23%	34%	40%	44%	51%	54%	50%

Exhibit 2 to Table 2: Q1 2011 to Q1 2014*													
	Q12011	Q22011	Q32011	Q42011	Q12012	Q22012	Q32012	Q42012	Q12013	Q22013	Q32013	Q42013	Q12014
BNSF Fuel Recovery	61%	61%	63%	60%	60%	65%	61%	62%	62%	66%	62%	64%	60%
CSXT Fuel Recovery	51%	69%	72%	65%	65%	75%	67%	70%	65%	77%	68%	73%	64%
KCS Fuel Recovery	53%	65%	72%	62%	67%	72%	67%	65%	64%	73%	70%	67%	66%
NS Fuel Recovery	63%	87%	92%	70%	78%	92%	74%	75%	86%	77%	81%	86%	67%
UP Fuel Recovery	50%	64%	70%	66%	66%	78%	72%	73%	71%	77%	73%	73%	71%

*Source Data: Quarterly Report of Rail Fuel Surcharges submitted to the Surface Transportation Board pursuant to 49 CFR § 1243.3.

Exhibit 3

Exhibit 3 to Table 3: Q4 2007 to Q4 2010*													
	Q42007	Q12008	Q22008	Q32008	Q42008	Q12009	Q22009	Q32009	Q42009	Q12010	Q2010	Q32010	Q42010
BNSF Fuel Consumption	385,312	379,179	368,954	366,049	364,019	332,704	307,223	305,109	310,552	322,889	328,885	344,088	359,123
CSXT Fuel Consumption	145,975	150,705	142,866	136,535	141,623	131,690	113,357	114,006	118,137	128,723	126,916	123,469	143,418
KCS Fuel Consumption	18,760	17,783	16,831	16,796	15,777	15,965	14,909	15,739	16,187	15,620	15,336	15,276	16,558
NS Fuel Consumption	132,659	139,359	131,881	126,627	122,343	116,383	98,969	103,226	110,509	119,648	115,382	116,952	123,874
UP Fuel Consumption	346,935	342,247	325,298	310,158	302,485	262,847	240,335	252,930	266,667	273,611	268,217	273,781	281,122

Exhibit 3 to Table 3: Q1 2011 to Q1 2014*													
	Q12011	Q22011	Q32011	Q42011	Q12012	Q22012	Q32012	Q42012	Q12013	Q22013	Q32013	Q42013	Q12014
BNSF Fuel Consumption	346,933	341,996	346,746	370,537	350,915	339,138	350,748	359,946	352,928	349,226	363,941	381,055	375,144
CSXT Fuel Consumption	135,369	129,797	126,873	133,943	136,080	126,248	121,881	124,159	131,723	124,563	120,858	128,736	138,326
KCS Fuel Consumption	16,927	16,533	15,652	17,157	16,115	15,846	16,040	16,380	15,892	16,084	17,483	17,056	17,922
NS Fuel Consumption	133,028	125,418	123,680	128,271	128,707	123,198	120,074	122,318	131,709	126,617	122,832	130,706	136,768
UP Fuel Consumption	288,986	276,794	289,482	298,628	290,382	277,746	278,564	286,109	283,170	282,828	277,239	294,614	298,753

*Source Data: Quarterly Report of Rail Fuel Surcharges submitted to the Surface Transportation Board pursuant to 49 CFR § 1243.3.

Exhibit 4

Exhibit 4 - Regression Analysis				
Time Frame	HDF Quarterly Avg	UP Actual Cost/Gallon	BNSF Actual Cost/Gallon	CSXT Actual Cost/Gallon
2007Q4	\$2.97	\$2.62	\$2.61	\$2.59
2008Q1	\$3.35	\$2.80	\$2.80	\$2.87
2008Q2	\$3.78	\$3.56	\$3.54	\$3.68
2008Q3	\$4.60	\$3.66	\$3.75	\$3.64
2008Q4	\$3.97	\$2.42	\$2.66	\$2.27
2009Q1	\$2.54	\$1.47	\$1.87	\$1.41
2009Q2	\$2.17	\$1.54	\$1.69	\$1.59
2009Q3	\$2.43	\$1.84	\$2.02	\$1.92
2009Q4	\$2.64	\$2.03	\$2.10	\$2.06
2010Q1	\$2.79	\$2.13	\$2.07	\$2.15
2010Q2	\$2.92	\$2.27	\$2.36	\$2.35
2010Q3	\$2.98	\$2.22	\$2.22	\$2.21
2010Q4	\$2.99	\$2.44	\$2.39	\$2.37
2011Q1	\$3.26	\$2.86	\$2.75	\$2.90
2011Q2	\$3.85	\$3.27	\$3.26	\$3.25
2011Q3	\$3.96	\$3.16	\$3.21	\$3.17
2011Q4	\$3.83	\$3.13	\$3.13	\$3.09
2012Q1	\$3.89	\$3.19	\$3.17	\$3.19
2012Q2	\$4.07	\$3.17	\$3.30	\$3.19
2012Q3	\$3.82	\$3.16	\$3.16	\$3.20
2012Q4	\$4.07	\$3.22	\$3.32	\$3.32
2013Q1	\$3.96	\$3.18	\$3.24	\$3.30
2013Q2	\$4.04	\$3.05	\$3.14	\$3.12
2013Q3	\$3.86	\$3.13	\$3.21	\$3.31
2013Q4	\$3.92	\$3.07	\$3.09	\$3.10
2014Q1	\$3.87	\$3.08	\$3.14	\$3.15

Source data for actual cost per gallon of fuel for UP, BNSF, and CSXT is derived from the total fuel cost incurred and total fuel gallons consumed, as reported to the Surface Transportation Board in the Quarterly Report of Rail Fuel Surcharges pursuant to 49 CFR § 1243.3.

HDF Quarterly Average Correlated to UP Actual Cost/Gallon	
<i>Regression Statistics</i>	
Multiple R	0.916595676
R Square	0.840147633
Adjusted R Square	0.833487118
Standard Error	0.245349511
Observations	26

HDF Quarterly Average Correlated to BNSF Actual Cost/Gallon	
<i>Regression Statistics</i>	
Multiple R	0.95038943
R Square	0.90324006
Adjusted R Square	0.8992084
Standard Error	0.1781332
Observations	26

HDF Quarterly Average Correlated to CSXT Actual Cost/Gallon	
<i>Regression Statistics</i>	
Multiple R	0.8932955
R Square	0.7979769
Adjusted R Square	0.7895593
Standard Error	0.285664
Observations	26

Exhibit 5



Mileage - HDF Fuel Surcharge Table

In the event the average price of Retail On-Highway Diesel Fuel (as set forth below, the "HDF Average Price"), calculated monthly based on prices reported on the U.S. Department of Energy Web site (eia.doe.gov) equals or exceeds \$2.30 per gallon, UP will add a mileage-based fuel surcharge to freight charges referencing or subject to this authority. The fuel surcharge shall be applied to each shipment having a waybill dated on or after the 1st day of the second calendar month following the calendar month of a given HDF Average Price (e.g., a fuel surcharge applied beginning July 1 would be based on May's HDF Average Price).

The HDF Average Price for a given calendar month will be determined by adding the weekly Retail On-Highway Diesel Fuel prices reported on the U.S. Department of Energy Web site (eia.doe.gov), and dividing the result by the number of weeks so reported. The result will be rounded to the nearest tenth of a cent. If the Department of Energy ceases reporting of the price of Retail On-Highway Diesel Fuel, UP will employ a suitable substitute source of price or measure. Schedule reflects the applicable fuel surcharges within the HDF Average Price ranges noted in the table below.

HDF Average Price (Per Gallon)	Fuel Surcharge (Cents Per Mile Per Car)
\$0.00 to \$2.299	\$0.00
\$2.30 to \$2.349	\$0.05
\$2.35 to \$2.399	\$0.06
\$2.40 to \$2.449	\$0.07
\$2.45 to \$2.499	\$0.08
\$2.50 to \$2.549	\$0.09
\$2.55 to \$2.599	\$0.10
\$2.60 to \$2.649	\$0.11
\$2.65 to \$2.699	\$0.12
\$2.70 to \$2.749	\$0.13
\$2.75 to \$2.799	\$0.14
\$2.80 to \$2.849	\$0.15
\$2.85 to \$2.899	\$0.16
\$2.90 to \$2.949	\$0.17
\$2.95 to \$2.999	\$0.18
\$3.00 to \$3.049	\$0.19
\$3.05 to \$3.099	\$0.20
\$3.10 to \$3.149	\$0.21
\$3.15 to \$3.199	\$0.22
\$3.20 to \$3.249	\$0.23
\$3.25 to \$3.299	\$0.24
\$3.30 to \$3.349	\$0.25
\$3.35 to \$3.399	\$0.26
\$3.40 to \$3.449	\$0.27
\$3.45 to \$3.499	\$0.28
\$3.50 to \$3.549	\$0.29
\$3.55 to \$3.599	\$0.30
\$3.60 to \$3.649	\$0.31
\$3.65 to \$3.699	\$0.32
\$3.70 to \$3.749	\$0.33
\$3.75 to \$3.799	\$0.34
\$3.80 to \$3.849	\$0.35
\$3.85 to \$3.899	\$0.36
\$3.90 to \$3.949	\$0.37
\$3.95 to \$3.999	\$0.38
\$4.00 to \$4.049	\$0.39
\$4.05 to \$4.099	\$0.40
\$4.10 to \$4.149	\$0.41

UP: Mileage - HDF Fuel Surcharge Table

\$4.15 to \$4.199	\$0.42
\$4.20 to \$4.249	\$0.43
\$4.25 to \$4.299	\$0.44
\$4.30 to \$4.349	\$0.45
\$4.35 to \$4.399	\$0.46
\$4.40 to \$4.449	\$0.47
\$4.45 to \$4.499	\$0.48
\$4.50 to \$4.549	\$0.49
\$4.55 to \$4.599	\$0.50
Each \$0.05 per gallon increase thereafter	Additional 1 cent per mile

Exhibit 6

BNSF Rules Book 6100 – A

**Item 3376-F - Charge – Carload Percentage Based and Mileage Based Fuel Surcharge (\$2.50 Strike Price)
(Item Concluded)**

Section B: Mileage Based Fuel Surcharge

Carload Mileage Based Fuel Surcharge Table			
Price of HDF Between	Fuel Surcharge Cents per Mile	Price of HDF Between	Fuel Surcharge Cents per Mile
Each \$0.04 HDF per gallon decrease thereafter to \$1.25	Decrease 0.01 per mile	\$2.98 to \$3.019	0.13
\$1.90 to \$1.939	-0.14	\$3.02 to \$3.059	0.14
\$1.94 to \$1.979	-0.13	\$3.06 to \$3.099	0.15
\$1.98 to \$2.019	-0.12	\$3.10 to \$3.139	0.16
\$2.02 to \$2.059	-0.11	\$3.14 to \$3.179	0.17
\$2.06 to \$2.099	-0.10	\$3.18 to \$3.219	0.18
\$2.10 to \$2.139	-0.09	\$3.22 to \$3.259	0.19
\$2.14 to \$2.179	-0.08	\$3.26 to \$3.299	0.20
\$2.18 to \$2.219	-0.07	\$3.30 to \$3.339	0.21
\$2.22 to \$2.259	-0.06	\$3.34 to \$3.379	0.22
\$2.26 to \$2.299	-0.05	\$3.38 to \$3.419	0.23
\$2.30 to \$2.339	-0.04	\$3.42 to \$3.459	0.24
\$2.34 to \$2.379	-0.03	\$3.46 to \$3.499	0.25
\$2.38 to \$2.419	-0.02	\$3.50 to \$3.539	0.26
\$2.42 to \$2.459	-0.01	\$3.54 to \$3.579	0.27
\$2.46 to \$2.499	0.00	\$3.58 to \$3.619	0.28
\$2.50 to \$2.539	0.01	\$3.62 to \$3.659	0.29
\$2.54 to \$2.579	0.02	\$3.66 to \$3.699	0.30
\$2.58 to \$2.619	0.03	\$3.70 to \$3.739	0.31
\$2.62 to \$2.659	0.04	\$3.74 to \$3.779	0.32
\$2.66 to \$2.699	0.05	\$3.78 to \$3.819	0.33
\$2.70 to \$2.739	0.06	\$3.82 to \$3.859	0.34
\$2.74 to \$2.779	0.07	\$3.86 to \$3.899	0.35
\$2.78 to \$2.819	0.08	\$3.90 to \$3.939	0.36
\$2.82 to \$2.859	0.09	\$3.94 to \$3.979	0.37
\$2.86 to \$2.899	0.10	\$3.98 to \$4.019	0.38
\$2.90 to \$2.939	0.11	\$4.02 to \$4.059	0.39
\$2.94 to \$2.979	0.12	Each \$0.04 HDF per gallon increase	Additional \$0.01 per mile

Exhibit 7

You are here: [ShipCSX](#) > [Resources](#) > [Rail Mileage Look-Up](#) > Fuel Surcharge Tariffs & Publications

[HDF CSXT Fuel Surcharge Publication 8661-B](#)

[WTI Tariff CSXT 8100 & 8200](#)

HDF CSXT Fuel Surcharge Publication 8661-B

APPLICATION: This publication applies to: (1) all regulated common carrier linehaul freight rates existing or established by CSXT on or after April 23, 2007; and (2) all linehaul freight rates and charges with respect to exempt traffic, and linehaul freight rates and charges in contracts, private price quotations or other pricing documents, that both reference this publication and are entered into or issued and effective on or after April 23, 2007.

In the event that the monthly average price per gallon of highway diesel fuel (as determined below, the "HDF Average Price") equals or exceeds 200.0 cents, CSXT will apply a mileage-based fuel surcharge to the linehaul rates and charges described above. The fuel surcharge will be applied to each qualifying shipment having a bill of lading or other shipping instruction dated on or after the first day of the second calendar month following the calendar month of a given HDF Average Price determination.

The "HDF Average Price" for a month will be the average price for that month of U.S. No. 2 Diesel Retail Sales by All Sellers, as determined and published by the U. S. Department of Energy, Energy Information Administration ("DOE-EIA") ¹ . That average price will, in calculating the HDF Average Price, be rounded to the nearest 1/10th of a cent applying conventional rounding principles. The fuel surcharge will be 1¢ per mile per railcar for every 4¢ per gallon, or portion thereof, by which the HDF Average Price for the calendar month two months prior to the calendar month of shipment exceeds 199.9 cents.

If DOE-EIA ceases publication of the above information, CSXT will employ a suitable substitute source of price or measure.

The Mileage to be applied in calculating the fuel surcharge will be based on rail miles between origin, interchange(s) and destination, and can be found at www.csx.com. ²

The following table reflects a sampling of the fuel surcharge within the included HDF Average Price ranges.

HDF Average Price Cents Per Gallon	Cents Per Mile
0 - 199.9	0
200.0 - 203.9	1
204.0 - 207.9	2
208.0 - 211.9	3
212.0 - 215.9	4
216.0 - 219.9	5
220.0 - 223.9	6
224.0 - 227.9	7

The fuel surcharge will be 75¢ per mile plus 1¢ per mile for every 4¢ per gallon, or portion thereof, by which the HDF Average Price exceeds 499.9 cents.

When CSXT is the billing railroad with respect to a joint rate as to which another railroad's fuel surcharge is to be applied, the mileage (if any) used in calculating the fuel surcharge will be derived from CSXT' s mileage lookup system and facility which can be found at www.csx.com. ²

¹ The referenced DOE-EIA publication can currently be found at www.eia.doe.gov . On the home page select "Petroleum;" under "Prices" select "Weekly Retail Gasoline and Diesel Prices;" for the "Area" select "U.S.;" for the "Period" select "Monthly;" then refer to the data on the line entitled "Diesel (On-Highway)." Monthly data is normally published Wednesday after the last Monday of a given month.

² The referenced rail miles can be found at www.csx.com . On the home page select "Customers;" select "Prices, Tariffs, Fuel Surcharge;" select "Fuel Surcharge;" then select "Mileage" and follow the instructions provided. First time users will need to register to use ShipCSX.

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Fuel Surcharge

- [➔ Status Report](#)
- [➔ Fuel Prices](#)
- [➔ Tariffs & Publications](#)
- [➔ Archive](#)
- [➔ Mileage](#)

Fuel Surcharge News

[CSXT HDF Fuel Surcharge will change August 1, 2014](#)

Fuel Surcharge E-mails

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Exhibit 8

UP: Carload Mileage Based Standard HDF Fuel Surcharge



BUILDING AMERICA®

Carload Mileage Based Standard HDF Fuel Surcharge

Union Pacific's carload mileage based standard HDF fuel surcharge program is based on the Department of Energy (DOE) On-Highway Diesel Fuel Price (US Average). Information about actual fuel surcharges applied and details about the program are included below.

This fuel surcharge program will apply as follows:

- › Fuel surcharge will be adjusted on a monthly basis.
- › The basis for the surcharge will be determined by the U.S. Average price of DOE On-Highway Diesel Fuel for a calendar month, as reported weekly on the U.S. Department of Energy [http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report_combined.asp] Web site (www.eia.doe.gov).
- › In the event the average monthly price of Retail On-Highway Diesel Fuel, equals or exceeds \$2.30 per gallon, a surcharge beginning at \$0.05 per mile will apply.
- › For every five cent increase above \$2.30 per gallon, the surcharge applied will increase by \$0.01 per mile. See threshold schedule for more details.
- › When the average DOE price drops below \$2.30 per gallon, no fuel surcharge will apply.
- › The surcharge will be billed to applicable shipments beginning the second month following the month on which the DOE average price calculation was based. (Example: the average reported DOE price for the month of February 2007 would determine the fuel surcharge applied throughout the month of April 2007.)
- › PC*Miler Rail product (FNII) will be used to calculate total miles. If interline price routing is involved, mileages will be calculated via the revenue route junction(s) of the price used to rate the shipments.
- › Fractions of dollars resulting from the application of a fuel surcharge will be dropped if less than fifty (50) cents and increased to the next whole dollar if fifty (50) cents or more.

This surcharge will become effective with shipments billed on or after April 26, 2007. The surcharge will initially apply to most Union Pacific regulated public pricing documents for local and interline freight movements.

The fuel surcharge will be applied to the line haul freight charge(s) that make reference to this fuel cost recovery program.

This program does not affect UP's existing Intermodal surcharge program.

The DOE price is reported weekly on the U.S. Department of Energy Web site.

UP: Carload Mileage Based Standard HDF Fuel Surcharge

Month Applied	Surcharge Applied	Basis month	HDF Avg. monthly price
Sep 2014	36 cents/mile	Jul 2014	\$3.884
Aug 2014	37 cents/mile	Jun 2014	\$3.906
Jul 2014	37 cents/mile	May 2014	\$3.943
Jun 2014	38 cents/mile	Apr 2014	\$3.964
May 2014	39 cents/mile	Mar 2014	\$4.003
Apr 2014	38 cents/mile	Feb 2014	\$3.984
Mar 2014	36 cents/mile	Jan 2014	\$3.893
Feb 2014	36 cents/mile	Dec 2013	\$3.882
Jan 2014	35 cents/mile	Nov 2013	\$3.839
Dec 2013	36 cents/mile	Oct 2013	\$3.885
Nov 2013	38 cents/mile	Sep 2013	\$3.961
Oct 2013	37 cents/mile	Aug 2013	\$3.905
Sep 2013	36 cents/mile	Jul 2013	\$3.866
Aug 2013	35 cents/mile	Jun 2013	\$3.849
Jul 2013	36 cents/mile	May 2013	\$3.870
Jun 2013	37 cents/mile	Apr 2013	\$3.930
May 2013	40 cents/mile	Mar 2013	\$4.068
Apr 2013	41 cents/mile	Feb 2013	\$4.111
Mar 2013	37 cents/mile	Jan 2013	\$3.909
Feb 2013	38 cents/mile	Dec 2012	\$3.961
Jan 2013	39 cents/mile	Nov 2012	\$4.000
Dec 2012	40 cents/mile	Oct 2012	\$4.094
Nov 2012	41 cents/mile	Sep 2012	\$4.120
Oct 2012	38 cents/mile	Aug 2012	\$3.983
Sep 2012	33 cents/mile	Jul 2012	\$3.721
Aug 2012	34 cents/mile	Jun 2012	\$3.759
Jul 2012	38 cents/mile	May 2012	\$3.979
Jun 2012	41 cents/mile	Apr 2012	\$4.115
May 2012	41 cents/mile	Mar 2012	\$4.127
Apr 2012	38 cents/mile	Feb 2012	\$3.953
Mar 2012	35 cents/mile	Jan 2012	\$3.833
Feb 2012	36 cents/mile	Dec 2011	\$3.861
Jan 2012	38 cents/mile	Nov 2011	\$3.962
Dec 2011	34 cents/mile	Oct 2011	\$3.798
Nov 2011	35 cents/mile	Sep 2011	\$3.837
Oct 2011	36 cents/mile	Aug 2011	\$3.860
Sep 2011	37 cents/mile	Jul 2011	\$3.905

UP: Carload Mileage Based Standard HDF Fuel Surcharge

Aug 2011	37 cents/mile	Jun 2011	\$3.933
Jul 2011	39 cents/mile	May 2011	\$4.047
Jun 2011	40 cents/mile	Apr 2011	\$4.064
May 2011	37 cents/mile	Mar 2011	\$3.905
Apr 2011	30 cents/mile	Feb 2011	\$3.584
Mar 2011	26 cents/mile	Jan 2011	\$3.388
Feb 2011	23 cents/mile	Dec 2010	\$3.243
Jan 2011	21 cents/mile	Nov 2010	\$3.140
Dec 2010	20 cents/mile	Oct 2010	\$3.052
Nov 2010	17 cents/mile	Sept 2010	\$2.946
Oct 2010	18 cents/mile	Aug 2010	\$2.959
Sept 2010	17 cents/mile	Jul 2010	\$2.911
Aug 2010	17 cents/mile	Jun 2010	\$2.948
Jul 2010	20 cents/mile	May 2010	\$3.069
Jun 2010	20 cents/mile	Apr 2010	\$3.059
May 2010	17 cents/mile	Mar 2010	\$2.915
Apr 2010	14 cents/mile	Feb 2010	\$2.785
Mar 2010	15 cents/mile	Jan 2010	\$2.845
Feb 2010	13 cents/mile	Dec 2009	\$2.745
Jan 2010	14 cents/mile	Nov 2009	\$2.792
Dec 2009	12 cents/mile	Oct 2009	\$2.672
Nov 2009	11 cents/mile	Sept 2009	\$2.626
Oct 2009	11 cents/mile	Aug 2009	\$2.634
Sept 2009	9 cents/mile	July 2009	\$2.540
Aug 2009	9 cents/mile	June 2009	\$2.529
July 2009	0 cents/mile	May 2009	\$2.227
June 2009	0 cents/mile	Apr 2009	\$2.220
May 2009	0 cents/mile	Mar 2009	\$2.092
Apr 2009	0 cents/mile	Feb 2009	\$2.195
Mar 2009	0 cents/mile	Jan 2009	\$2.292
Feb 2009	7 cents/mile	Dec 2008	\$2.449
Jan 2009	16 cents/mile	Nov 2008	\$2.876
Dec 2008	30 cents/mile	Oct 2008	\$3.576
Nov 2008	39 cents/mile	Sept 2008	\$4.024
Oct 2008	45 cents/mile	Aug 2008	\$4.302
Sept 2008	53 cents/mile	July 2008	\$4.703
Aug 2008	52 cents/mile	June 2008	\$4.677
July 2008	47 cents/mile	May 2008	\$4.425
June 2008	40 cents/mile	April 2008	\$4.084

Exhibit 9

Establishment of UP Presumed Static Spread of \$0.60 per Gallon between HDF and UP Fuel Price

UP Public Statement:

"At the same time, UP will rebase its affected prices to reflect a higher base level of diesel fuel cost than has been reflected in our FSC to date. UP's FSC programs since their inception have been set to recover UP's incremental cost of diesel fuel in excess of approximately \$0.75 per gallon. That equates to approximately \$1.35 per gallon in UP's FSC programs that utilize DOE's HDF index. UP's new mileage-based programs will commence at \$2.30 per gallon under the HDF index."

Source: STB Docket No. EP 661 (Sub-No. 1); UP Comments; April 2, 2007; page 6.

UP Presumed Spread Calculation:

1. Strike Price	\$0.75 per gallon	Source: UP Public Proclamation
2. HDF Equivalent	\$1.35 per gallon	Source: UP Public Proclamation
3. Presumed Static Price Spread	\$0.60 per gallon	Source: Line 2 - Line 1

"In the event the average monthly price of Retail On-Highway Diesel Fuel, equals or exceeds \$2.30 per gallon, a surcharge beginning at \$0.05 per mile will apply. For every five cent increase above \$2.30 per gallon, the surcharge applied will increase by \$0.01 per mile."

Source: http://www.uprr.com/customers/surcharge/index_mileage.shtml

HDF Price 1/ (1)	Surcharge per Loaded Car-Mile 1/ (2)	Presumed Spread 2/ (3)	Presumed UP Fuel Price 3/ (4)
\$2.30	\$0.05	\$0.60	\$1.70
\$2.35	\$0.06	\$0.60	\$1.75
\$2.40	\$0.07	\$0.60	\$1.80
\$2.45	\$0.08	\$0.60	\$1.85
\$2.50	\$0.09	\$0.60	\$1.90
\$2.55	\$0.10	\$0.60	\$1.95
\$2.60	\$0.11	\$0.60	\$2.00
\$2.65	\$0.12	\$0.60	\$2.05
\$2.70	\$0.13	\$0.60	\$2.10
\$2.75	\$0.14	\$0.60	\$2.15
\$2.80	\$0.15	\$0.60	\$2.20
\$2.85	\$0.16	\$0.60	\$2.25
\$2.90	\$0.17	\$0.60	\$2.30
\$2.95	\$0.18	\$0.60	\$2.35
\$3.00	\$0.19	\$0.60	\$2.40
\$3.05	\$0.20	\$0.60	\$2.45
\$3.10	\$0.21	\$0.60	\$2.50
\$3.15	\$0.22	\$0.60	\$2.55
\$3.20	\$0.23	\$0.60	\$2.60
\$3.25	\$0.24	\$0.60	\$2.65
\$3.30	\$0.25	\$0.60	\$2.70
\$3.35	\$0.26	\$0.60	\$2.75
\$3.40	\$0.27	\$0.60	\$2.80
\$3.45	\$0.28	\$0.60	\$2.85
\$3.50	\$0.29	\$0.60	\$2.90
\$3.55	\$0.30	\$0.60	\$2.95
\$3.60	\$0.31	\$0.60	\$3.00
\$3.65	\$0.32	\$0.60	\$3.05
\$3.70	\$0.33	\$0.60	\$3.10
\$3.75	\$0.34	\$0.60	\$3.15
\$3.80	\$0.35	\$0.60	\$3.20
\$3.85	\$0.36	\$0.60	\$3.25
\$3.90	\$0.37	\$0.60	\$3.30
\$3.95	\$0.38	\$0.60	\$3.35
\$4.00	\$0.39	\$0.60	\$3.40
\$4.05	\$0.40	\$0.60	\$3.45
\$4.10	\$0.41	\$0.60	\$3.50

1/ UP Program Formula Table

2/ April 2007 UP Comments in STB Docket No. EP 661 (Sub-No. 1)

3/ Column (1) - Column (3)

Exhibit 10

Calculation of UP Monthly Over Recovery of Incremental Fuel Costs per Loaded Car-Mile Attributable to the Safe Harbor Provision

Month Applied 1/ (1)	Surcharge Applied 1/ (2)	Basis Month 1/ (3)	Basis Month HDF Avg. Monthly Price 1/ (4)	UP Presumed Static Spread between UP Fuel and HDF Price per Gallon 2/ (5)	Basis month Presumed UP Fuel Price per Gallon 3/ (6)	Quarter Applied 4/ (7)	Basis Quarter 5/ (8)	Basis Quarter Actual UP Fuel Price per Gallon 6/ (9)	Actual Spread Based on UP Basis Quarter Fuel Price per Gallon 7/ (10)	Overstatement of UP Fuel Price Attributable to Safe Harbor Static Spread Presumption 8/ (11)	HDF Basis Price Adjusted to Correct for Safe Harbor Fuel Price Overstatement 9/ (12)	Calculated FSC per Mile 10/ (13)	FSC per Mile Corrected for Safe Harbor 11/ (14)	Safe Harbor-Related Per-Mile Over Recovery 12/ (15)	
1.	Dec-13	36 cents/mile	Oct-13	\$3.885	\$0.600	\$3.285	4Q13	4Q13	\$3.110	\$0.775	\$0.175	\$3.710	\$0.360	\$0.330	\$0.030
2.	Nov-13	38 cents/mile	Sep-13	\$3.961	\$0.600	\$3.361	4Q13	3Q13	\$3.170	\$0.791	\$0.191	\$3.770	\$0.380	\$0.340	\$0.040
3.	Oct-13	37 cents/mile	Aug-13	\$3.905	\$0.600	\$3.305	4Q13	3Q13	\$3.170	\$0.735	\$0.135	\$3.770	\$0.370	\$0.340	\$0.030
4.	Sep-13	36 cents/mile	Jul-13	\$3.866	\$0.600	\$3.266	3Q13	3Q13	\$3.170	\$0.696	\$0.096	\$3.770	\$0.360	\$0.340	\$0.020
5.	Aug-13	35 cents/mile	Jun-13	\$3.849	\$0.600	\$3.249	3Q13	2Q13	\$3.100	\$0.749	\$0.149	\$3.700	\$0.350	\$0.330	\$0.020
6.	Jul-13	36 cents/mile	May-13	\$3.870	\$0.600	\$3.270	3Q13	2Q13	\$3.100	\$0.770	\$0.170	\$3.700	\$0.360	\$0.330	\$0.030
7.	Jun-13	37 cents/mile	Apr-13	\$3.930	\$0.600	\$3.330	2Q13	2Q13	\$3.100	\$0.830	\$0.230	\$3.700	\$0.370	\$0.330	\$0.040
8.	May-13	40 cents/mile	Mar-13	\$4.068	\$0.600	\$3.468	2Q13	1Q13	\$3.230	\$0.838	\$0.238	\$3.830	\$0.400	\$0.350	\$0.050
9.	Apr-13	41 cents/mile	Feb-13	\$4.111	\$0.600	\$3.511	2Q13	1Q13	\$3.230	\$0.881	\$0.281	\$3.830	\$0.410	\$0.350	\$0.060
10.	Mar-13	37 cents/mile	Jan-13	\$3.909	\$0.600	\$3.309	1Q13	1Q13	\$3.230	\$0.679	\$0.079	\$3.830	\$0.370	\$0.350	\$0.020
11.	Feb-13	38 cents/mile	Dec-12	\$3.961	\$0.600	\$3.361	1Q13	4Q12	\$3.250	\$0.711	\$0.111	\$3.850	\$0.380	\$0.360	\$0.020
12.	Jan-13	39 cents/mile	Nov-12	\$4.000	\$0.600	\$3.400	1Q13	4Q12	\$3.250	\$0.750	\$0.150	\$3.850	\$0.390	\$0.360	\$0.030
13.	2013 Avg. 13/	\$0.375	xxx	\$3.943	\$0.600	\$3.343	xxx	xxx	\$3.176	\$0.767	\$0.167	\$3.776	\$0.375	\$0.343	\$0.033
14.	2013 Min. 14/	\$0.350	xxx	\$3.849	\$0.600	\$3.249	xxx	xxx	\$3.100	\$0.679	\$0.079	\$3.700	\$0.350	\$0.330	\$0.020
15.	2013 Max. 15/	\$0.410	xxx	\$4.111	\$0.600	\$3.511	xxx	xxx	\$3.250	\$0.881	\$0.281	\$3.850	\$0.410	\$0.360	\$0.060

1/ Columns (1) through (4) are published on UP's website at: https://www.uprr.com/customers/surcharge/index_mileage.shtml

2/ UP publicly disclosed its presumed spread of \$0.60 per gallon in its Comments filed in Ex Parte 661 (Sub-No. 1). See Attachment No. 1 for details.

3/ Column (4) minus Column (5); UP's fuel surcharge program assumes UP pays this amount for its railroad diesel fuel. See Attachment No. 1 table for verification.

4/ Column (1) Quarter

5/ Column (3) Quarter

6/ Source: UP Quarterly Financial Reports published on its web page. UP does not publish its monthly fuel prices. Quarterly fuel prices are the most granular fuel price data publicly available.

7/ Column (4) minus Column (9).

8/ Column (6) minus Column (9); UP's program collects fuel surcharges based on the presumption that it pays Column (6) prices for fuel, when it actually pays Column (9) prices for fuel.

This overstatement is entirely attributable to the STB's Safe Harbor provision.

9/ Column (4) minus Column (11); This adjustment corrects for the false presumption that the spread between UP fuel price and HDF price is always \$0.60.

It reflects the HDF price that was \$0.60 greater than the the actual UP fuel price for the month.

10/ UP Fuel Surcharge program formula applied to Column (4) HDF price (fuel surcharge level applied by UP). Confirmation of Column (2) rate calculation.

11/ UP Fuel Surcharge program formula applied to Column (12) Spread-adjusted HDF price (fuel surcharge level that should be applied based on actual UP fuel costs).

See Attachment No. 1 table for verification.

12/ Column (13) minus Column (14).

13/ Simple Average of lines 1 through 12.

14/ Minimum of lines 1 through 12.

15/ Maximum of lines 1 through 12.