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INEOS

April 20, 2006

The Honorable W. Douglas Buttrey
Chairman, Surface Transportation Board
1925 K Street NW
Washington, DC 20423-0001

Dear Mr Buttrey,

We are writing in regards to the upcoming public hearing by the Surface Transportation Board (STB) in Washington, D.C., on May 11 STB Ex Parte No.661 Rail Fuel Surcharges. Since a representative of INEOS will not be able to attend the hearing, we would like you to know our views on rail fuel surcharges as a major shipper of chemicals and polymers in North America.

- We suggest that it is unreasonable to apply a fuel surcharge indexed to historically low fuel price and then add the escalation to current rates established with current fuel costs.
- We believe that the railroads fuel surcharge mechanism is a revenue surcharge not a fuel based surcharge as it over-recovers the cost of fuel.
- We ask the Board to review revenue to cost ratio reasonableness inclusive of fuel surcharges to accurately reflect the railroads rate cost recovery and discontinue allowing the current practice of profit masked under a fuel surcharge label.

Our company INEOS has more than 75 billion pounds of chemicals and polymer production capacity and $33bn of revenues on a global basis. These figures place INEOS among the largest petrochemical company's in the world. We employ more than 16,000 people worldwide at 72 offices and manufacturing sites.

INEOS recently (2006) negotiated and contracted a significant volume of railroad services with all of the major class 1 railroads in North America. The fuel surcharge was a non-negotiable item with the railroads in this context. As such we have been forced to assume fuel surcharge tariffs based on 2001 fuel energy data.

The fuel surcharge was originally intended to recover unexpected increases in fuel costs. Instead, the surcharge applies a percentage index based on 2001 costs to the rail rate, despite the fact that current market based contractual rates are based on the railroad's current costs and economic factors (and the full recovery of energy related costs). There appears to be no economic justification for basing a fuel surcharge index at the $23.50/bbl West Texas Intermediate Crude Oil price when current crude prices are over $74 a barrel and may never see $23.50 a barrel again. As well, some railroads use crude oil, not diesel as the basis for the index even though they consume high sulfur diesel in locomotives.

Railroad fuel surcharges need to be escalated from the prevailing fuel cost factors when the base rate is established to reflect current economic factors as a surcharge should recover only <u>anomalies</u> in the price of fuel, not cost escalation since 2001.

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We believe the current fuel surcharge mechanisms of all the class 1 carriers can not be justified as legitimate reimbursement to cover a railroad's additional cost of fuel. The railroads are able to obtain added profit under the guise of recovering an uncontrollable fuel expense by applying a percent increase to the whole freight rate. By applying the fuel surcharge index to the entire rate, the current mechanism escalates not only the fuel related components of the rate but also escalates the non-fuel related costs and the profit component of the rate. Compounding this effect, differential pricing and competitive versus captive lane pricing practices result in higher revenue rates that incur larger fuel surcharges on like movements compared to low revenue traffic. There appears to be no economic justification for the railroad to recover more fuel surcharge from the shipper who pays the higher rail rate based on differential pricing and non-competitive lanes given that the shipments may originate and terminate in the same areas, use the same equipment and may even travel together on the same train.

The fuel surcharge has become an additional profit center on both movements, but the captive shipper is paying a higher surcharge based on the higher rate. Although each carrier has published different non-negotiable fuel surcharge tariffs to recover their variable cost of fuel, we struggle with a mechanism which does not reflect actual fuel recovery costs and instead simply enhances revenue for rail service.

Given the above two deficiencies of the current fuel surcharge mechanism, profits built into fuel surcharges are ambiguous to the general public and the STB. These hidden profits increase exponentially considering both the energy basis and the mechanism structure. When reviewing rate reasonableness, rates inclusive of fuel surcharges should be reviewed to illuminate and regulate overly compensated fuel surcharge mechanisms.

We support that railroads need to be able to make the necessary investment in infra-structure to stay viable, and obviously earn the cost of capital necessary to sustain long-term viability. However, with the railroad industry's record profits and the fact most carriers are now earning their cost of capital, we question masking profit enhancement as a fuel cost recovery charge. We strongly urge the STB to influence how railroads set fuel surcharges, and ask the STB to fairly review how railroads recover increases in fuel costs. Specifically, we urge the STB to regulate fuel surcharge recovery to a mechanism that addresses anomalies in the fuel related to only fuel cost components and one that provides for rebasing the fuel surcharge to the period when the base rate is established.

Sincerely,

Chris Hawes
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