

SK Snavely King Majoros O'Connor & Lee, Inc.
Economic and Management Consultants

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April 2, 2007

By Hand Delivery

**Honorable Vernon A Williams
Secretary
Surface Transportation Board
395 E Street SW
Washington DC 20423**

**RE: Ex Parte No 661 (Sub - No 1) - Rail Fuel Surcharges
Comments of Snavely King Majoros O'Connor & Lee, Inc**

Dear Secretary Williams,

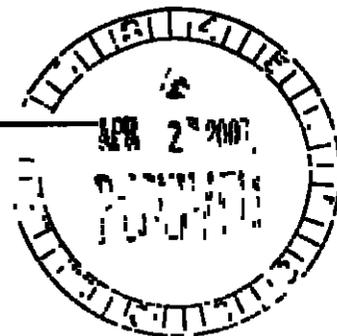
Enclosed for filing please find the original and ten copies of the Comments of Snavely King Majoros O'Connor & Lee, Inc. submitted in the above captioned proceeding

We have enclosed an extra copy to be date-stamped and returned to our messenger.

Respectfully submitted,

Kim N Hillenbrand

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**Analysis and Recommendations
On Fuel Surcharge Data
For Consideration By The
Surface Transportation Board
In STB Ex Parte No. 661 (Sub-No.1)**

**Tom O'Connor and Kim Hillenbrand
Snavely King Majoros O'Connor & Lee
1111 14th St NW
Washington, DC 20005
April 2, 2007**

Snavely King Majoros O'Connor & Lee, Inc (Snavely King or SK) commends the Surface Transportation Board (STB or Board) for its January 25, 2007 decision in Rail Fuel Surcharges, STB Ex Parte No 661 (STB served Jan 26, 2007)

Snavely King is an economic and management consulting company focusing on transportation and utilities Snavely King has been in business for more than 35 years, serving transportation clients including railroads, shippers and government agencies in the United States, Canada and Europe.

In its decision the Board proposed to require all large (Class I) railroads to submit a monthly report containing the following information.

- (1) total monthly fuel cost,**
- (2) gallons of fuel consumed during the month,**
- (3) increased or decreased cost of fuel over the previous month, and**
- (4) total monthly revenue from fuel surcharges**

The proposed new rule, to be codified as 49 CFR 1243.3, was set forth in the STB January 25, 2007 decision

We welcome the opportunity provided by the Board to express our views on the data requirements to implement the STB railroad fuel surcharge decision

Previously in this proceeding the American Chemistry Council (ACC) requested Snavely King to carry out analyses of Class I Rail Fuel Surcharges. The April 27, 2006 testimony and the May 11, 2006 oral presentation by Tom O'Connor and Kim Hillenbrand presented the results of those analyses, including findings and recommendations¹. The STB January 25, 2007 decision in Rail Fuel Surcharges is a significant step forward toward remedying the deficiencies we identified.

This STB proceeding provided much needed analysis of fuel surcharges and the manner in which those fuel surcharges have been calculated and applied by railroads. The cost of fuel is a significant component of rail operating costs. The incurrence and recovery of those costs is an issue of vital concern to railroads, rail shippers and to their mutual customers, many of whom are dependent on rail transportation.

As the Board noted in calling for this public hearing, a surcharge is a separately identified component of the total rate charged for the transportation involved. In a

¹ Attachment I includes a summary of our qualifications

September 22, 2000 announcement, CSX Transportation Inc. ("CSXT") defined its fuel surcharge as a "fuel cost recovery charge to offset costs from continuing sharp increases in fuel prices"² That definition captures essential attributes of the proper role of a fuel surcharge Specifically, the fuel surcharge is intended to recover short term increases in fuel costs It is not intended to become a means for generating revenue over and above those fuel cost increases

The STB believes³, and we concur, that obtaining a monthly report from each Class I railroad regarding its fuel revenue, expenditures and consumption will enable the Board to better monitor the industry's fuel surcharge practices and fuel costs. The STB proposed fuel surcharge data, as modified, will allow the Board, shippers, shareholders, and railroads an opportunity to understand the changes in rail fuel costs and to ensure adequate recovery of such costs

In our prior comments, Snavely King stressed the need for more accurate and more complete reporting of the railroads fuel surcharge costs and revenues Table I, below, from our April 27, 2006 report shows the magnitude of the over-recovery of fuel costs. Using available data, SK estimated more than \$900 million in over recovery of fuel costs in 2005 based on data reported by only three of the Class I US railroads.

The ability to accurately identify the changes in short-term fuel costs and revenue is beneficial to all parties The January 25, 2007 STB decision and data requirements is a major step toward correcting these reporting gaps and making the fuel surcharge much more accurate and reasonable

Table I 2005 Fuel Surcharge Analysis

Fuel Surcharge Analysis							
LINE	AMT	CSX	NCS	TR	LF	Total	Source
1	2004 Fuel Costs	\$ 1,044	\$ 78	\$ 124	\$ 77	\$ 2,390	\$ 598
2	2004 Fuel Costs	\$ 1,27	\$ 25	\$ 46	\$ 1984	\$ 419	
	2005 Increase in Fuel Costs	\$	\$	\$	\$	\$	
3	amount needed to be recovered	\$ 27	\$ 197	\$ 27	\$ 277	\$ 702	\$ 179
	2005 Estimated Revenue from fuel surcharge	\$ 110			\$ 1017	\$ 251	
4	2005 Over Recovery	\$ 4%	\$	\$	\$ 111	\$ 348	\$ 907
NOTE	Not- Fuel and any benefits have not been factored in the analysis.		1 CSX estimated fuel surcharge revenue is for CSX only		2 NCS estimated fuel surcharge revenue is currently unavailable		

² Source CSXT press release issued September 22, 2000, Jacksonville, FL

³ See page 3 of January 25 2007 decision in Rail Fuel Surcharges STB Ex Parte No 661 (STB served Jan 26 2007)

As mentioned above, the Board proposes that Class I railroads file monthly reports that contain four data elements. These elements are

- 1) Total fuel cost⁴
- 2) Gallons of fuel consumed⁵
- 3) Increase or decrease in cost of fuel⁵
- 4) Revenue from fuel surcharges⁶

Snavely King recommends that the Board should clarify the reporting standards for one data element and add two additional data elements to these monthly reporting requirements

The recommended clarification relates to the first data element "Total fuel cost": we recommend that gains or loss from fuel hedging should be excluded. The Class I railroads may or may not elect to engage in hedging and should bear the associated gains or losses from hedging

The recommended additional data elements include a new fifth data element, total car miles. The recommended sixth data element is fuel surcharge revenue per car mile. We note that many of the railroads are already converting to mileage based fuel surcharges. Inclusion of monthly car miles will assist in implementing mileage based fuel surcharges. To date five railroads, BNSF⁷, CN⁸, CP⁹, CSX¹⁰, and UP¹¹ have announced a transition to a mileage based fuel surcharge. BNSF, CSX, CN, and UP have announced that they have already contracted with a vendor to help facilitate the application of their new fuel surcharge mechanism¹²

The monthly fuel surcharge data should distinguish between two categories of freight.

⁴ Include fuel for freight, yard and work train locomotives. Include fuel charged to train and yard service (function 67- Locomotive Fuels). Include all other fuel used for railroad operations and maintenance, including motor vehicles and power equipment not charged to function 67- Locomotive Fuels

⁵ Show the total increase or decrease in fuel cost over previous month

⁶ Show the total revenue collected from fuel surcharges

⁷ <http://newdomino.bnsf.com/website/updates.nsf/updates-marketing-industrial/F6E89946A77B08C0862572970072E645?Open>

⁸ https://ecprod.cn.ca/business/eDistribution/english/public/PriceDocumentDisplay?DOCUMENT_REFERENCE_NUMBER=CN+T+7402+En&DOCUMENT_CONTENT_EFFECTIVE_DATE=2007-04-26

⁹ <http://www8.cpr.ca/cms/English/Customers/Existing+Customers/Bulletins/9700.htm>

¹⁰ http://shipcscx.com/public/ecshipcscxpublic/Main?module=public_fuel&target=blastfax

¹¹ <http://www.uprr.com/customers/updates/2007/0321.shtml>

¹² http://www.alk.com/press/releases/pr_032907.asp

1. That which is subject to fuel surcharge and
2. That which is not subject to fuel surcharges either because the fuel costs are recovered in some other agreed manner or are not applicable based on agreements between the railroad and the shipper.

It is clear that these two categories of freight exist and it is equally clear that failure to reflect that distinction would distort the fuel surcharge calculations. By adding these additional elements the Board will enable production of accurate and equitable fuel surcharges. Failure to make this distinction introduces the certainty of error in computing the fuel surcharge

We recommend that the STB require the railroads to report the revenue derived from fuel surcharges in the accessorial charges field or in another designated field in the computerized rail carload waybill sample. We also recommend that the Board require the railroads to report revenues derived from other fuel surcharge mechanisms

The Board has for decades required railroads to collect and submit to the Board extensive cost and revenue information¹³. The Board's proposed fuel surcharge reporting data should be part of that information reporting requirement. We concur that those reporting requirements should be expanded to include fuel costs and fuel surcharge revenue as specified in the January 26 decision. This will provide more accurate information on a carrier's fuel costs and fuel surcharge revenues.

The additional reporting requirements will not be a burden to the railroads. The railroads currently submit or file data on an annual, quarterly and monthly basis for industry wide benchmarks and statistics. For example, the Association of American Railroads ("AAR") publishes a monthly fuel price index¹⁴. In addition the quarterly publications of the Railroad Cost Recovery Index ("RCR") and Rail Cost Adjustment Factor ("RCAF") contain industry wide fuel metrics based on data collected from individual railroads.

The railroads have amply demonstrated they can produce the data required to measure railroad fuel cost increases. The railroads have decades of experience in recording the fuel cost component of the Rail Cost Adjustment Factor (RCAF) and the fuel cost component of the predecessor AAR RCR rail cost index.

The proposed reporting requirement, with the addition of a few recommended clarifications and additional data elements will benefit all parties. The rail shipper benefits by providing fuel cost compensation, sustaining needed rail service. The railroads benefit by recovering their fuel costs on a systematic basis. The STB

¹³ 49 CFR parts 1200-1280

¹⁴ http://www.aar.org/PubCommon/Documents/AboutTheIndustry/Index_MonthlyFuelPrices.pdf

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benefits by ensuring recovery of needed fuel cost increases while preventing unjustified rate increases presented as cost recovery. These are just some of the benefits provided by the proposed STB fuel cost recovery mechanism.

With these few modifications SK recommends adoption of the STB fuel data reporting requirements. The STB has specified a simple approach to fuel cost measurement, which should ensure adequate cost recovery while restoring equity and transparency to the fuel surcharge process.

Respectfully submitted,

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Experience**Snavely King Majoros O'Connor & Lee Inc
Washington, DC*****Analyst, Transportation (2003 to Present)***

Mr Hillenbrand provides analytical support to SK clients and senior consultants. His responsibilities include cost modeling, operations simulation, financial analysis and reporting, database management and research.

Mr Hillenbrand's work has primarily been in SK's Transportation group. His projects have included extensive cost and revenue analyses of rail freight movements, along with preparation of databases for use in rate negotiations with railroads. Mr Hillenbrand has prepared action plans and presentations for clients including potential merger analyses, plant site locations, and rail service issues. Additionally, he conducts research in the chemical, petroleum and transportation industries. Mr Hillenbrand has assisted in the preparation of presentations and testimony before the Surface Transportation Board. In addition, Mr Hillenbrand has assisted in the marketing of SK products to potential clients.

**Leventhal Seneter & Lerman PLLC,
Washington DC*****Temporary Legal Assistant (Spring 2003)***

Mr Hillenbrand assisted in the migration of Televisa's patent and trademark portfolio from Leventhal Seneter & Lerman to Televisa's in house counsel. Mr Hillenbrand managed the distribution of incoming documents including from EEO and FCC filings from clients and assisted in all aspects of LS & L's broadcasting, media, and satellite practices.

**Skadden, Arps, Slate, Meagher & Flom
LLP, Washington DC*****Temporary Legal Assistant (2002)***

While contracted with Skadden Arps, Mr Hillenbrand assisted in a wide range of legal work. Mr Hillenbrand coordinated a 750,000 page document production and privilege log for a Department of Justice antitrust filing for the Northrop Grumman-TRW merger. He also compiled and managed privilege logs and prepared document productions on behalf of clients for SEC investigations. Mr Hillenbrand conducted first review of client documents for SEC and Congressional investigations.

**North American Securities Administrators
Association (NASAA), Washington DC*****Temporary Legal Assistant (Spring 2002)***

Mr Hillenbrand assisted in a wide area for projects for NASAA. He assisted state security regulators in the first settlement between New York State and Merrill Lynch regarding conflict of interest between their research groups and investment banking groups. Mr Hillenbrand conducted verification and complaint checks of stockbrokers and Certified Financial Advisors for investors and answered questions regarding the Series 6 and 63 Exams.

**Acsys, Inc (2003)
Law Resources (2001-2003)
Washington DC**

Mr Hillenbrand provided temporary work for law, financial, and real-estate firms.

**RVC (formerly Reuters Venture Capital)
London, England*****Analyst, Intern (2000)***

Mr Hillenbrand assisted on a survey of Asia venture capital markets in preparation for future venture capital and fund of fund investments in the region. The survey comprised of an analysis of sources of capital, major investors, and destinations of capital in Asia.

Education

Connecticut College, 2001

*B A Economics
B A International Relations*

Georgetown University, Summer 1999

Summer Course Work