April 2, 2007

By E-Filing

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Ex Parte No. 661 (Sub-No. 1) – Rail Fuel Surcharges – Comments

Dear Secretary Williams:

Enclosed for filing in the above proceeding are the Comments of Union Pacific Railroad Company pursuant to the Board's January 26, 2007, decision.

Please direct any questions about these Comments or Union Pacific's participation in this proceeding to me at (402) 544-3897 or at the e-mail address indicated below.

Sincerely,

Lawrence E. Wzorek

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Enclosure

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 661 (Sub-No. 1)

RAIL FUEL SURCHARGES

COMMENTS OF UNION PACIFIC RAILROAD COMPANY

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April 2, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 661 (Sub-No. 1)

RAIL FUEL SURCHARGES

COMMENTS OF UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company ("UP") submits these comments in response to the Surface Transportation Board's ("STB" or "Board") decision served January 26, 2007, inviting comments on the Board's proposal that Class I railroads file a monthly report to the Board concerning fuel surcharge revenue and fuel costs.

The STB instituted this separate proceeding by Notice of Proposed Rulemaking dated January 26, 2007, when it solicited comments from all interested parties on a report format that would require Class I railroads to report monthly on their consumption and cost of fuel, as well as the fuel surcharge ("FSC") revenue each of the Class I's collects from its customers. The Board issued this proposal concurrently with its decision requiring railroads to modify their FSC programs to the extent those programs apply fuel surcharges to regulated traffic based on a percentage of the rate the railroad charges the shipper. That decision mandates a change in rate-based FSC programs for regulated traffic not later than April 26, 2007.

UP will endeavor to comply with whatever reporting requirement the Board decides to impose. However, the STB should clarify its decision concerning the fuel surcharge revenue it expects railroads to report. Also, and equally important, is the frequency of the report. UP asks the Board to revisit its conclusion that these reports should be filed not later than 20 days after the end of each month.

I. SUMMARY OF UP'S POSITION.

- UP appreciates the Board's efforts to balance shipper issues with the railroads' concerns about reporting on FSC programs. UP applauds the Board for reducing the reporting burden from what it outlined in its original proposal.

- The Board should reconsider its reporting proposal and require reports no more frequently than quarterly.

- The Board should clarify its proposed reporting requirement to state whether it expects railroads to report all fuel surcharge revenue, or just that revenue derived from regulated business, which is subject to the STB's decision on FSCs.

- The Board and shippers should recognize that the FSC reports will necessarily contain information aggregated from a number of different FSC programs and may not provide the transparency that is anticipated. The contents of these reports may be subject to misinterpretation and mischaracterization by those who do not accept the information that has already been supplied and certified by the railroads to date.

II. UP'S FSC PROGRAM IS EVOLVING AS REQUIRED BY THE STB.

From the inception of its fuel surcharge program in 2002, UP's goal has been to have a fuel surcharge program that recovers its incremental fuel costs as a result of the extraordinary increase in energy prices. UP's program was designed to be responsive to its customers, fair and equitable, and simple to administer for both UP and its customers. The STB has now ruled that railroads can no longer apply a fuel surcharge as a percentage of the freight revenue on regulated traffic. Accordingly, UP has redesigned its fuel surcharge program to conform to the STB ruling.

As UP explained to the Board in its previous comments, UP has a variety of FSC programs. These were created over the last several years in response to the requests and requirements of its customers. Currently, UP has four basic programs: (1) carload (based on Department of Energy U.S. No. 2 Diesel Retail Sales by All Sellers (Cents per Gallon) – "HDF") ; (2) carload (West Texas Intermediate crude oil – "WTI"); (3) Energy (HDF); and (4) Intermodal (HDF). Today, there are 41 different individual FSC programs that UP administers for various customers. All these FSC programs are based on a percentage of the price for transportation. The FSC revenue is calculated by multiplying the freight bill amount by a percentage related to the monthly average fuel cost in the applicable fuel index.

The STB requested comments on FSC programs. Many shippers and shippers' associations expressed their views on how railroads should calculate their FSCs. On January 26, 2007, the Board decided that railroads should no longer calculate their FSCs as a percentage of the freight revenue for regulated traffic.

UP has responded to the Board's pronouncement by revising its FSC program. As explained to its customers, UP has redesigned its FSC programs. Beginning April 26, 2007, UP will implement mileage-based FSC programs for all of its regulated traffic. That traffic represents approximately 15% of UP's revenue.

UP communicated the details to its customers on March 21, 2007. http://www.uprr.com/customers/updates/2007/0321.shtml. UP plans to extend mileage-based FSC programs to its traffic that is exempt from STB regulation and traffic covered by transportation contracts in the future. UP expects to have the mileage-based FSC programs in place for the remainder of its publicly priced shipments by January 1, 2008.

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.

These FSC program changes are responsive to the STB's decision and the comments filed with the Board. However, these changes also complicate the reporting process. UP will report results of its new FSC programs, but UP will also have revenue from its current percentage-of-rate FSC programs — many of which will continue in effect for exempt traffic and shipments moving pursuant to rail transportation contracts. Those programs will remain in place until UP is able to transition all traffic to a mileage-based fuel surcharge. That itself may not be attainable if customers insist on entering into transportation contracts that have a rate-based FSC because those particular customers do not have the ability or inclination to work with a mileage-based FSC.

Consequently, the Board's decision will result in an increase in the number of UP FSC programs in place and in the complexity of calculating the revenue derived from the various programs. In addition, some of UP's FSC revenue is derived from contract traffic. While those terms and provisions are beyond the Board's jurisdiction, the revenue derived from those programs is an integral part of the complete picture of FSC revenues. In essence, UP will need to find a way to calculate and report in aggregate all the FSC revenue it receives from different programs, including those from traffic beyond the scope of the Board's order, if the Board expects those to be reported as well. That will be even more complex since, in response to customer comments, UP is rebasing its fuel cost from $0.75 per gallon to a higher number.

III. THE BOARD SHOULD AGAIN RECONSIDER ITS REPORTING PROPOSAL.

The STB's current proposal for FSC reporting is narrower in scope than the STB previously proposed. The Board would have the Class I railroads submit a one-page report 20 days after the end of each month that would include four line items: (1) total fuel cost, (2) gallons of fuel consumed, (3) increase or decreasing cost of fuel over the previous month, and (4) the total revenue collected from fuel surcharges.

UP appreciates this refinement of the reporting requirement. Once again, though, UP asks the Board to review its proposal and refine it even further.

Frequency: UP renews its request that the fuel surcharge reports be filed quarterly, rather than monthly. As a publicly traded company, UP is subject to extensive financial reporting requirements established by the Securities and Exchange Commission ("SEC"). The SEC requires publicly traded companies to file financial statements and accompanying periodic reports within 40 days after the end of each quarter and 60 days following the close of the fiscal year. UP suggests that the FSC reports requested by the STB be submitted on an identical timetable to reduce the reporting burden and to ensure consistent timing for the dissemination of financial information.

Monthly filings will not improve the quality of the information. In fact, the time period is so brief that there are likely to be fluctuations from month to month that are neither meaningful nor substantive, but will be misinterpreted and misapplied by those who see the information. Quarterly reports submitted to the STB on the same timetable used for SEC filings will ensure that the data is more meaningful, informative, and accurate, as well as in conformity with financial statements submitted to the SEC.

Timing: The Board expects the new report to be filed not later than 20 days after the end of each month. UP submits that, unless the Board makes these reports quarterly as suggested above, the Board should consider requiring the submission of the report not later than 30 days after the end of a month.

Content of Report: The four line items in the report are straightforward. The data will be easier to compile than the prior reporting proposal. However, UP suggests that the Board clarify the scope of the fuel surcharge revenue it expects to be included in the report.

The STB limited the immediate scope and effect of its decision on FSC programs to regulated traffic. It did not specify in its reporting proposal, however, whether it expects the report to include only fuel surcharge revenue encompassed by the Board's decision or all fuel surcharge revenue collected by each Class I railroad. UP suggests that the Board clarify its intent by being explicit in its explanation of the scope of the report it expects to be filed.

IV. THE REPORTS TO THE BOARD WILL INCLUDE A VARIETY OF INFORMATION.

Since 2004, UP has provided information on its rising fuel costs and the steps it has taken to recover those costs from its customers. These statements have been in public documents readily available to the STB and shippers. *See*, e.g., UP's Form 10-

K's and Form 10-Q's, which, along with UP's other filings, are available at http://www.up.com/investors/secfiling/index.shtml. UP also posts a significant amount of information about its fuel surcharge programs on its customer website in part to address requests for greater transparency. http://www.uprr.com/customers/myterms.shtml.

UP asks the Board to recognize that the clamor about FSCs may get even louder with the filing of these reports. As noted above, UP has a variety of FSC programs in place. They will remain in place for sometime to come. Also, the fuel surcharge factor applied in the majority of these programs and in the mileage-based programs will have a built in time lag of two months. In most cases, the FSC rates will be changed on the first day of each month based on the monthly average HDF cost per gallon from two months prior.

In sum, a FSC report will include FSC revenue calculated from different indices with different fuel bases, many of which are two months different than the reporting period. The aggregation of information will undoubtedly lead to confusion and misinterpretation. The Board and the shippers should be prepared to review the data carefully without jumping to unfounded conclusions and accusations.

CONCLUSION

The Board reduced the scope of the reporting requirement to make it more manageable than originally contemplated. UP is prepared to use its best efforts to supply the Board with the information it designates for reporting on the schedule selected by the Board. However, UP suggests that the report be filed no more frequently than quarterly and that the scope of the report be better defined with respect to the fuel surcharge revenue to be included.

Respectfully submitted,

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