

**UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD**

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

RAIL FUEL SURCHARGES

**COMMENTS OF NORFOLK
SOUTHERN RAILWAY COMPANY**

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Dated: April 2, 2007

Norfolk Southern Railway Company (“NS”) hereby submits its Comments on the STB’s January 25, 2007 Notice of Proposed Rulemaking regarding monthly reports related to fuel surcharges in STB Ex Parte No. 661 (Sub-No. 1) (“*NPRM*”).¹ The Board should not adopt its proposed reporting requirement, but if the Board nevertheless decides to impose a reporting requirement, a railroad that does not charge a fuel surcharge on regulated traffic it originates should be exempt from such reporting.

I. The Board Should Not Require Reporting.

The Board has rejected fuel surcharges that are calculated as a percentage of revenue. *Ex Parte 661* at 6-10. The Board has given further guidance about what fuel surcharge programs should look like. *Id.* The only issue left is a financial disclosure issue. That issue is best left to the Securities and Exchange Commission (“SEC”). One of the national rail transportation policies is to minimize regulation. All of the Class I railroads are subject to extensive financial reporting requirements established by the SEC, including quarterly reporting. Additional reporting is not required.

II. A Railroad That Does Not Assess a Fuel Surcharge on Regulated Traffic It Originates Should Be Exempt from the Proposed Reporting Requirements.

The Board seeks comments on “whether the particular collection of information described [in the *NPRM*] is necessary for the proper performance of the functions of the Board.” *NPRM* at 1. When a railroad does not charge a fuel surcharge on regulated traffic it originates, data collected from that railroad could not serve any

¹ See Decision in STB Ex Parte No. 661 (Sub-No. 1), *Rail Fuel Surcharges* (served January 25, 2007) (“*Ex Parte 661*”).

regulatory purpose. In its decision in *Ex Parte 661*, the Board found that its ruling had limited application to regulated traffic only. It held that, “we have no authority to regulate rail rates and services that are governed by contract.” *Ex Parte 661* at 13.² The Board also found that there was no evidence to warrant re-imposing “regulation over traffic that has been exempted from regulation for almost two decades.” *Id.* Thus, because the data the Board would receive from such a railroad would be data regarding unregulated traffic only, such data would have no relation to the proper performance of any Board function.³

If a railroad that does not impose a fuel surcharge on regulated traffic it originates does in fact collect any fuel surcharge revenues on regulated traffic, those revenues will be based on another railroad’s fuel surcharge. The only fuel surcharges on regulated traffic such a railroad would ever collect would be fuel surcharges assessed on an interline movement that terminates on the railroad. Those fuel surcharges would be assessed based on the originating carrier’s fuel surcharge and would be collected by the originating carrier. Because the destination railroad (which itself has no fuel surcharge on regulated tariff traffic) does not control those terms, its fuel surcharge report would serve no regulatory purpose.⁴

Moreover, throughout the Board’s process of reviewing current railroad fuel surcharges, the Board has been keenly aware of history. The Board found that changes in conditions since the 1970s justified the Board reversing prior precedent

² *Ex Parte 661* at 13; *See also Ex Parte 661*(Sub-No.1) at 3(rejecting reporting on revenue shared with Class II and III carriers because such sharing is pursuant to negotiated agreements).

³ Such data would not even help the Board determine whether to revoke an exemption because it would not bear on any of the relevant inquiries for determining whether to revoke the exemption.

⁴ For most joint line traffic, the railroad that originates the traffic sets the terms of the movement. In particular, the fuel surcharge imposed by the originating carrier is applied to the movement.

regarding whether railroads could charge a fuel surcharge that is calculated as a percentage of the rail transportation rate. However, there has been no change to justify requiring a railroad to file monthly reports when it is not charging a fuel surcharge on regulated traffic it originates. In the 1970s, a railroad was required to file reports containing information similar to what the Board proposes here only (1) when seeking a fuel surcharge (or increase in a fuel surcharge) on regulated traffic or (2) during periods of significant and rapidly increasing fuel prices to permit expedited review of petitions for rate increases related to fuel price on regulated traffic.⁵ Otherwise, railroads were not required to file these reports. Similar justifications for reporting do not exist today because the Board (1) does not approve rates or fuel surcharge levels in advance and (2) may not investigate the reasonableness of rates or fuel surcharges absent a complaint. This is particularly true for railroads which do not have a fuel surcharge on regulated traffic they originate.

⁵ See e.g., ICC Ex Parte 311, *Effect of Modifying Proclamation No 3279 and Other Anticipated Energy Conservation Measures on the Operation of Carriers Subject to the Interstate Commerce Act*, 350 ICC. 563, 578 (Decided Aug. 14, 1975).

III. Summary.

In sum, NS does not believe that reporting is necessary for the proper performance of Board functions. In all events, a railroad that does not charge a fuel surcharge on regulated traffic it originates should be exempt from such reporting.

Respectfully Submitted,



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Certificate of Service

I hereby certify that on this 2nd day of April 2007, I caused a copy of the foregoing **“Comments of Norfolk Southern Railway Company”** to be served upon all parties on the service list for this proceeding by first class mail or more expeditious method of delivery.


