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May 20, 2008

BY HAND

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-00001

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Office of Proceedings
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Re: Docket No. 42105, Dairyland Power Cooperative v. Union Pacific Railroad Company

Dear Secretary Quinlan

On behalf of Union Pacific Railroad Company ("UP"), I write to call to the Board's attention one of its recent decisions supporting UP's arguments that a fuel surcharge must be treated as a component of the total rate and that a shipper seeking to challenge the level of a railroad's fuel surcharge must invoke the Board's jurisdiction over unreasonable rates and challenge the railroad's overall rate for line-haul transportation services. See UP Motion to Dismiss, pp. 6-8, 10.

In *Kansas City Power & Light Co. v Union Pacific Railroad Co.*, STB Docket No. 42095 (STB served May 19, 2008), a case in which the Board found that the rates for the challenged movements exceeded a reasonable level, the Board treated the base rates together with the applicable fuel surcharge as the "Challenged Rates," consistent with the law. Slip Op. at 5. Indeed, if the Board had not treated the fuel surcharge amounts as a component of the total rates, it could not have found any of the challenged rates to be unreasonable. *Id.*, Appendix B.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael L. Rosenthal'.

Michael L. Rosenthal

cc. John H. LeScur, Esq. (Counsel for Dairyland)