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May 22, 2008

**VIA E-FILING**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423-0001

Re: STB Docket No. 42105, *Dairyland Power  
Cooperative v. Union Pacific Railroad Company*

Dear Ms. Quinlan:

On May 20, 2008, counsel for Union Pacific Railroad Company ("UP") submitted a letter to the Board in the above-referenced proceeding. According to UP counsel, the purpose of the letter was to explain that the Board's KCPL decision,<sup>1</sup> served on May 19, 2008, "support[ed]" UP's contentions in the instant case<sup>2</sup> that the only way a shipper can obtain relief at the Board from deceptive rail fuel surcharge practices is to file a maximum rate case

UP's claim that the Board's ruling in KCPL supports UP's contentions is flatly wrong. The Board held in Ex Parte No. 661, Rail Fuel Surcharges, that in cases where a complainant shipper challenges "the total amount that a carrier can charge, through a combination of base rates and surcharges," the shipper must file a maximum rate case. See id. at 4 (STB served Aug. 3, 2006). The Board also held in Rail Fuel

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<sup>1</sup> Kansas City Power & Light Co. v. Union Pacific Railroad Co., STB Docket No 42095 (STB served May 19, 2008)("KCPL")

<sup>2</sup> See UP Motion to Dismiss at 5-8 (Filed March 31, 2008).

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Surcharges that a shipper could bring an unreasonable practice complaint in cases where a carrier engaged in "misleading conduct" by collecting fuel surcharges that exceed "the actual increase in fuel costs for handling the particular traffic to which the surcharge is applied." Id. at 7, 6 (STB served Jan. 26, 2007).

In KCPL, the complainant shipper challenged the total amount UP could collect for the involved rail transportation service. As called for under Rail Fuel Surcharges, the complainant shipper filed a maximum rate case. In the instant case, Dairyland Power Cooperative ("Dairyland") does not challenge the total amount UP can collect for providing the involved service but instead challenges UP's deceptive practice of collecting fuel surcharges that exceed the actual incremental fuel cost increases UP has incurred in transporting the issue traffic. As called for under Rail Fuel Surcharges, Dairyland has filed an appropriate unreasonable practice complaint. See Dairyland's Reply in Opposition to Union Pacific's Motion to Dismiss at 3-8 (filed Apr. 11, 2008).

Respectfully submitted,



John H. LeSeur  
An Attorney for  
Dairyland Power Cooperative

cc: UP Counsel