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April 19, 2010

VIA HAND DELIVERY

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

APR 19 2010

Part of
Public Record

Re: STB Docket No. 42120, *Cargill, Incorporated*
v. BNSF Railway Company

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding, please find an original and ten (10) copies of the Complaint of Cargill, Incorporated. Also enclosed is the requisite filing fee for this Complaint.

We have included an extra copy of the filing. Please indicate receipt by time-stamping this copy and returning it with our messenger.

Sincerely,


John H. LeSeur
An Attorney for Cargill, Incorporated

Enclosures

APR 19 2010
RECEIVED
REC'D

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CARGILL, INCORPORATED
15407 McGinty Road West
Wayzata, Minnesota 55391-2398

Complainant,

v.

BNSF RAILWAY COMPANY
2650 Lou Menk Drive
Fort Worth, Texas 76131-2830

Defendant.

ENTERED
Office of Proceedings

APR 19 2010

Part of
Public Record

Docket No. 42120

FILED

APR 19 2010

**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED
APR 19 2010
**SURFACE
TRANSPORTATION BOARD**

COMPLAINT



CARGILL, INCORPORATED

OF COUNSEL:

Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington D.C. 20036

Dated: April 19, 2010

By: John H. LeSeur
Peter A. Pfohl
Daniel M. Jaffe
Stephanie M. Adams
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170
Attorneys for Complainant

under 49 U.S.C. § 10101 et seq.

3. Cargill arranges for, and pays for, common carrier services provided by BNSF.

4. Common carrier service provided by BNSF to Cargill has included, without limitation by enumeration, transportation of the following commodities under the referenced common carrier pricing authorities:

<i>STCC Number</i>	<i>Commodity</i>	<i>BNSF Pricing Authority</i>
01131	Barley	BNSF 4022
01132	Corn	BNSF 4022
01133	Oats	BNSF 4022
01136	Sorghum	BNSF 4022
01137	Wheat	BNSF 4022
01144	Soybeans	BNSF 4022
14715	Rock Salt	BNSFQ 112507
20143	Grease	BNSF 4025
20411	Wheat Flour	BNSF 4023
20412	Wheat Bran	BNSF 4022
20413	Corn Meal/Flour	BNSF 4022
20418	Barley/Corn Chaff	BNSF 4022
20419	Flour, Gluten, Grits	BNSF 4022, BNSF 4023
20421	Prepared Feed	BNSF 4022, BNSF 90029
20461	Corn Syrup	BNSF 90029
20462	Corn Starch	BNSF 90022
20465	Corn Oil	BNSF 4024, BNSF 112390
20467	Corn Germ	BNSF 4022
20469	Steepwater	BNSF 90029
20621	Sugar	BNSF 90022
20831	Malt	BNSF 4022
20859	By-Products	BNSF 4022
20921	Soybean Oil	BNSF 4024, BNSF 112390
20923	Soybean Cake	BNSF 4024
20933	Oils	BNSF 4024, BNSF 112390

28991	Salt	BNSF 112507
49091	Alcohols	BNSF 4024

5. BNSF invoices, and Cargill pays, a fuel surcharge on common carrier transportation services provided by BNSF to Cargill. This surcharge is set forth currently in BNSF Rules Book 6100-A, Item 3375L, Section B (a copy of which is appended in Exhibit A hereto) and is incorporated by reference in BNSF's common carrier pricing authorities applicable to Cargill's traffic. Item 3375L, Section B, and its predecessor and successor iterations, shall hereinafter be referred to as the "Assailed Tariff Item."

6. BNSF's collection of fuel surcharges from Cargill under the Assailed Tariff Item constitutes an unreasonable practice under 49 U.S.C. § 10702(2) because the general formula set forth therein to calculate fuel surcharges bears no reasonable nexus to, and overstates, the fuel consumption for the BNSF system traffic to which the surcharge is applied.

7. BNSF's collection of fuel surcharges from Cargill under the Assailed Tariff Item constitutes an unreasonable practice under 49 U.S.C. § 10702(2) because BNSF is using the Assailed Tariff Item to extract substantial profits over and above its incremental fuel cost increases for the BNSF system traffic to which the surcharge is applied.

8. BNSF's collection of fuel surcharges from Cargill under the Assailed Tariff Item constitutes an unreasonable practice under 49 U.S.C. § 10702(2)

because BNSF is double recovering the same incremental fuel cost increases BNSF has incurred in providing common carrier service to Cargill by (i) setting its base rates on Cargill traffic to include recovery of fuel prices higher than the BNSF fuel strike price of \$0.73 per gallon implicit in the Assailed Tariff Item and (ii) by increasing the Cargill base rates (including the fuel component in the base rates) via rate adjustments and, at the same time, requiring Cargill to pay, in addition to the adjusted rates on these movements, the fuel surcharge set forth in the Assailed Tariff Item.

9. This Complaint covers any changes to, or modifications of, the Assailed Tariff Item that BNSF may establish during the course of this proceeding.

10. Neither this proceeding, nor the granting of the relief requested here, will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

WHEREFORE, Complainant Cargill requests that Defendant BNSF be required to answer the charges herein; that after a hearing and investigation conducted pursuant to 49 U.S.C. § 10704(a)(1) and the Board's implementing regulations, the Board find the assailed fuel surcharge practices are unreasonable in violation of 49 U.S.C. § 10702(2); that the Board enter an order requiring BNSF to cease and desist from its unlawful fuel surcharge practices; that the Board prescribe reasonable fuel surcharge practices as requested by Cargill; that the Board award Cargill damages, with interest, pursuant to 49 U.S.C. § 11704(b) for all unlawful fuel surcharge payments it has made to

BNSF; and that the Board grant to Cargill such other and further relief as the Board may deem proper on the record presented.

Respectfully submitted,

CARGILL, INCORPORATED

By: John H. LeSeur 
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Attorneys for Complainant

OF COUNSEL:

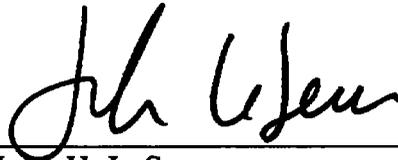
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington D.C. 20036

Dated: April 19, 2010

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1111.3, I hereby certify, that I have this 19th day of April, 2010 caused to be served copies of this Complaint by overnight express courier on the senior legal officer of BNSF Railway Company, as follows:

Roger Nober
Executive Vice President Law
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131-2830

A handwritten signature in black ink, appearing to read "John H. LeSeur", written over a horizontal line.

John H. LeSeur
An Attorney for Complainant

**BNSF RAILWAY COMPANY
BNSF RULES BOOK 6100-A
(Cancels BNSF Rules Book 6100)**

**CONTAINING
RULES, REGULATIONS AND SPECIAL CHARGES
GOVERNING
THE TRANSPORTATION OF FREIGHT
ON
BNSF RAILWAY COMPANY
IN
THE UNITED STATES, MEXICO AND CANADA
AND
REGULATIONS GOVERNING CURRENCY EXCHANGE ON TRAFFIC
FROM, TO AND BETWEEN STATIONS IN CANADA
AND
CAR HIRE ON TRAFFIC TO OR FROM MEXICO**

For explanation of abbreviations / reference marks, see Item 110

ALSO APPLICABLE ON INTRASTATE TRAFFIC

ISSUED DECEMBER 29, 2000

EFFECTIVE JANUARY 1, 2001

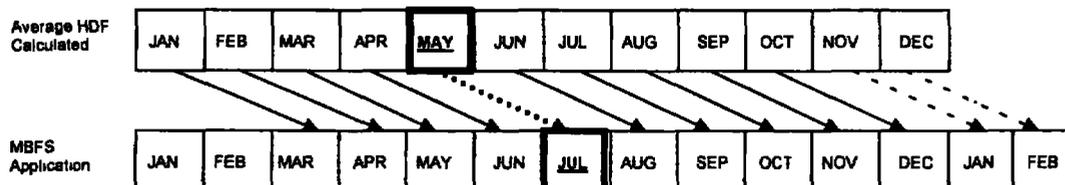
Issued by J. C. Engstrom, P. O. Box 961069, Ft. Worth, TX 76161-0069

BNSF Rules Book 6100 – A

Item 3375L - Charge – Fuel Surcharge – Issued September 1, 2009 – Effective October 1, 2009 (Change in wording)

All tables in Sections A and B herein are calculated by determining the average price of Highway Diesel Fuel (HDF) in the month two months prior to the effective date of the Fuel Surcharge (FSC). Per example below, the HDF as calculated in May will be used for the applicable FSC in July.

Example:



SECTION A: Applying on carload traffic of EXEMPT commodities and all carload traffic moving under non-public rates with the following exceptions; this section does not apply when in conflict with Section B, Item 3375-Series, Item 3376-Series, Item 3380-Series and Item 3381-Series of BNSF Rules Book 6100-Series herein. For a list of EXEMPT commodities, refer to STB Cite: 49CFR1039.11 at Exempt Commodities.

Shipments made under pricing documents referring hereto will be subject to a fuel surcharge, when applicable. When the U. S. Average Price of Retail On-Highway Diesel Fuel (HDF) monthly average equals or exceeds \$1.25 per gallon, in the second calendar month prior to the month in which the fuel surcharge applies, a fuel surcharge, as shown in the Fuel Surcharge Table, will be applied to the total freight charges for each shipment waybill dated on or after the 1st day of the second following calendar month.

The fuel surcharge rates will be adjusted monthly. The Fuel Surcharge Table will be subject to periodic review. The fuel surcharge shall be included on the invoice for freight charges for each shipment.

The source for the price of HDF will be the U. S. Department of Energy's, EIA Retail On-Highway Diesel Prices Report, whose weekly average price is available on BNSF WebPages at: WebPage.

(Item continued on next page)

BNSF Rules Book 6100 – A

Item 3375L - Charge – Fuel Surcharge (Item Continued)

Fuel Surcharge Table			
<u>Time Periods Average</u> <u>Price of HDF Between</u>	<u>Applicable Fuel</u> <u>Surcharge</u>	<u>Time Periods Average</u> <u>Price of HDF Between</u>	<u>Applicable Fuel</u> <u>Surcharge</u>
\$1.25 to \$1.299	0.5%	\$3.10 to \$3.149	19.0%
\$1.30 to \$1.349	1.0%	\$3.15 to \$3.199	19.5%
\$1.35 to \$1.399	1.5%	\$3.20 to \$3.249	20.0%
\$1.40 to \$1.449	2.0%	\$3.25 to \$3.299	20.5%
\$1.45 to \$1.499	2.5%	\$3.30 to \$3.349	21.0%
\$1.50 to \$1.549	3.0%	\$3.35 to \$3.399	21.5%
\$1.55 to \$1.599	3.5%	\$3.40 to \$3.449	22.0%
\$1.60 to \$1.649	4.0%	\$3.45 to \$3.499	22.5%
\$1.65 to \$1.699	4.5%	\$3.50 to \$3.549	23.0%
\$1.70 to \$1.749	5.0%	\$3.55 to \$3.599	23.5%
\$1.75 to \$1.799	5.5%	\$3.60 to \$3.649	24.0%
\$1.80 to \$1.849	6.0%	\$3.65 to \$3.699	24.5%
\$1.85 to \$1.899	6.5%	\$3.70 to \$3.749	25.0%
\$1.90 to \$1.949	7.0%	\$3.75 to \$3.799	25.5%
\$1.95 to \$1.999	7.5%	\$3.80 to \$3.849	26.0%
\$2.00 to \$2.049	8.0%	\$3.85 to \$3.899	26.5%
\$2.05 to \$2.099	8.5%	\$3.90 to \$3.949	27.0%
\$2.10 to \$2.149	9.0%	\$3.95 to \$3.999	27.5%
\$2.15 to \$2.199	9.5%	\$4.00 to \$4.049	28.0%
\$2.20 to \$2.249	10.0%	\$4.05 to \$4.099	28.5%
\$2.25 to \$2.299	10.5%	\$4.10 to \$4.149	29.0%
\$2.30 to \$2.349	11.0%	\$4.15 to \$4.199	29.5%
\$2.35 to \$2.399	11.5%	\$4.20 to \$4.249	30.0%
\$2.40 to \$2.449	12.0%	\$4.25 to \$4.299	30.5%
\$2.45 to \$2.499	12.5%	\$4.30 to \$4.349	31.0%
\$2.50 to \$2.549	13.0%	\$4.35 to \$4.399	31.5%
\$2.55 to \$2.599	13.5%	\$4.40 to \$4.449	32.0%
\$2.60 to \$2.649	14.0%	\$4.45 to \$4.499	32.5%
\$2.65 to \$2.699	14.5%	\$4.50 to \$4.549	33.0%
\$2.70 to \$2.749	15.0%	\$4.55 to \$4.599	33.5%
\$2.75 to \$2.799	15.5%	\$4.60 to \$4.649	34.0%
\$2.80 to \$2.849	16.0%	\$4.65 to \$4.699	34.5%
\$2.85 to \$2.899	16.5%	\$4.70 to \$4.749	35.0%
\$2.90 to \$2.949	17.0%	\$4.75 to \$4.799	35.5%
\$2.95 to \$2.999	17.5%	\$4.80 to \$4.849	36.0%
\$3.00 to \$3.049	18.0%	\$4.85 to \$4.899	36.5%
\$3.05 to \$3.099	18.5%	\$4.90 to \$4.949	37.0%

Each \$0.05 per gallon increase thereafter, apply an additional 0.5%

Example:

For a Fuel Surcharge applied for shipments in the month of April, assuming the prior Time Period's (February) average monthly price of HDF was \$2.488 Per Gallon, April's Fuel Surcharge Rate (FSR) should be 12.5%. Thus, for each \$100.00 of freight charges applicable to a shipment referring hereto the Fuel Surcharge would be \$12.50.

BNSF Rules Book 6100 – A

Item 3375L - Charge – Fuel Surcharge (Item Continued)

SECTION B: Applying on Interline, Local Shipments (Routed BNSF Direct), Accounting Rule 11, Junction Settlement Short Lines of Agricultural Commodities and all Carload shipments of non-contract, non-boxcar regulated commodities moving on public rates. For a list of Agricultural Commodities, refer to BNSF web page at [Agricultural Commodities](#) For a list of EXEMPT commodities, refer to STB Cite: 49CFR1039.11 at [Exempt Commodities](#).

Junction Settlement Carriers appear in the revenue route. To determine if the Short Line in question is a Junction Settlement Carrier, access BNSF web page under Customer Tools then Short Line Partners, [Shortline Partners](#)

Shipments made pursuant to pricing documents referring hereto will be subject to a Mileage Based Fuel Surcharge (MBFS), when applicable. The MBFS will be calculated by multiplying the applicable fuel surcharge per mile times the number of miles per shipment.

The applicable fuel surcharge per mile, as shown in the Fuel Surcharge Table, will be determined by using the U. S. Average Price of Retail On-Highway Diesel Fuel (HDF). When the HDF monthly average equals or exceeds \$1.25 per gallon, in the second calendar month prior to the month in which the MBFS applies, an MBFS will be applied to the total freight charges for each shipment waybill dated on or after the 1st day of the second following calendar month.

The MBFS will be adjusted monthly. The Fuel Surcharge Table will be subject to periodic review. The MBFS shall be included on the invoice for freight charges for each shipment.

The source for the price of HDF will be the U. S. Department of Energy's, EIA Retail On-Highway Diesel Prices Report, whose weekly average price is available on BNSF WebPages at: [WebPage](#)

Mileage calculations will be based on Railway Miles as published in BNSF web page under Customer Tools then Rail Mileage Inquiry, [Mileage Inquiry](#). The mileage calculation will apply between each shipment's billed origin and destination.

Application of PC*Miler Rail from ALK Technologies, [Version 16](#) will be used for mileage-based fuel surcharge on Interline traffic based on the revenue route and applicable interchange with connecting carrier. PC*Miler Rail Fuel Surcharge router will be used to calculate total miles.

Exception: For Agricultural commodities, Pacific North West (PNW) export destinations will be grouped using Seattle, WA as destination upon which the mileage-based fuel surcharge will be calculated for all whole grain (STCC 011) shipments from all BNSF origin states except California, Oregon, or Washington.. Export destinations will be as follows:

PNW Group: Rivergate, OR, Portland, OR, Kalama, WA, Longview, WA, Seattle, WA, Tacoma, WA and Vancouver, WA. As an example, the fuel surcharge from Alton, ND to Vancouver, WA will be calculated using the miles from Alton, ND to Seattle, WA (1,496 miles).

Texas Gulf export facilities will be grouped using Houston, TX as the destination upon which the mileage-based fuel surcharge will be calculated for all whole grain (STCC 011 and STCC 2041979) shipments. Export destinations will be as follows:

Texas Gulf Group: Beaumont, Corpus Christi, Galena Park, Galveston, Houston and Port of Brownsville, TX. Shipments must be unloaded at these destinations. As an example, the fuel surcharge from Wichita, KS to Galveston, TX will be calculated using the miles from Wichita, KS to Houston, TX (646 miles).

(Item continued on next page)

BNSF Rules Book 6100 – A

Item 3375L - Charge – Fuel Surcharge (Item Concluded)

Fuel Surcharge Table			
Time Periods Average	Fuel Surcharge	Time Periods Average	Fuel Surcharge
Price of HDF Between	Cents per Mile	Price of HDF Between	Cents per Mile
\$0.00 to \$1.249	0.00	\$2.97 to \$3.009	0.44
\$1.25 to \$1.289	0.01	\$3.01 to \$3.049	0.45
\$1.29 to \$1.329	0.02	\$3.05 to \$3.089	0.46
\$1.33 to \$1.369	0.03	\$3.09 to \$3.129	0.47
\$1.37 to \$1.409	0.04	\$3.13 to \$3.169	0.48
\$1.41 to \$1.449	0.05	\$3.17 to \$3.209	0.49
\$1.45 to \$1.489	0.06	\$3.21 to \$3.249	0.50
\$1.49 to \$1.529	0.07	\$3.25 to \$3.289	0.51
\$1.53 to \$1.569	0.08	\$3.29 to \$3.329	0.52
\$1.57 to \$1.609	0.09	\$3.33 to \$3.369	0.53
\$1.61 to \$1.649	0.10	\$3.37 to \$3.409	0.54
\$1.65 to \$1.689	0.11	\$3.41 to \$3.449	0.55
\$1.69 to \$1.729	0.12	\$3.45 to \$3.489	0.56
\$1.73 to \$1.769	0.13	\$3.49 to \$3.529	0.57
\$1.77 to \$1.809	0.14	\$3.53 to \$3.569	0.58
\$1.81 to \$1.849	0.15	\$3.57 to \$3.609	0.59
\$1.85 to \$1.889	0.16	\$3.61 to \$3.649	0.60
\$1.89 to \$1.929	0.17	\$3.65 to \$3.689	0.61
\$1.93 to \$1.969	0.18	\$3.69 to \$3.729	0.62
\$1.97 to \$2.009	0.19	\$3.73 to \$3.769	0.63
\$2.01 to \$2.049	0.20	\$3.77 to \$3.809	0.64
\$2.05 to \$2.089	0.21	\$3.81 to \$3.849	0.65
\$2.09 to \$2.129	0.22	\$3.85 to \$3.889	0.66
\$2.13 to \$2.169	0.23	\$3.89 to \$3.929	0.67
\$2.17 to \$2.209	0.24	\$3.93 to \$3.969	0.68
\$2.21 to \$2.249	0.25	\$3.97 to \$4.009	0.69
\$2.25 to \$2.289	0.26	\$4.01 to \$4.049	0.70
\$2.29 to \$2.329	0.27	\$4.05 to \$4.089	0.71
\$2.33 to \$2.369	0.28	\$4.09 to \$4.129	0.72
\$2.37 to \$2.409	0.29	\$4.13 to \$4.169	0.73
\$2.41 to \$2.449	0.30	\$4.17 to \$4.209	0.74
\$2.45 to \$2.489	0.31	\$4.21 to \$4.249	0.75
\$2.49 to \$2.529	0.32	\$4.25 to \$4.289	0.76
\$2.53 to \$2.569	0.33	\$4.29 to \$4.329	0.77
\$2.57 to \$2.609	0.34	\$4.33 to \$4.369	0.78
\$2.61 to \$2.649	0.35	\$4.37 to \$4.409	0.79
\$2.65 to \$2.689	0.36	\$4.41 to \$4.449	0.80
\$2.69 to \$2.729	0.37	\$4.45 to \$4.489	0.81
\$2.73 to \$2.769	0.38	\$4.49 to \$4.529	0.82
\$2.77 to \$2.809	0.39	\$4.53 to \$4.569	0.83
\$2.81 to \$2.849	0.40	\$4.57 to \$4.609	0.84
\$2.85 to \$2.889	0.41	\$4.61 to \$4.649	0.85
\$2.89 to \$2.929	0.42	\$4.65 to \$4.689	0.86
\$2.93 to \$2.969	0.43	\$4.69 to \$4.729	0.87

Each \$0.04 per gallon increase thereafter, apply an additional \$0.01 per mile

Example: If February's average monthly price of HDF is \$2.488 Per Gallon then the MBFS applied in April would be \$0.31 per mile. Thus, for a shipment traveling 1,010 railway miles a Fuel Surcharge of \$313.10 would apply.