STB Hearing—Ex Parte No. 661, Rail Fuel Surcharges, 5/11/2006

Chairman Buttrey's Opening Statement

Good morning. I'd like to call this hearing to order, and welcome everyone here today for the Surface Transportation Board's public hearing on Rail Fuel Surcharges, in the proceeding entitled STB Ex Parte No. 661. I am pleased that today's hearing is being simultaneously video-webcast and is available for viewing through the Board's website. I'd like to welcome all those who are tuned in and watching over the internet, in addition to those who are here in person.

Vice Chairman Mulvey and I are keenly aware of concerns that have been raised regarding the level of rail fuel surcharges, the way in which they are calculated, how they are levied, and who is or is not paying them. After considerable thought and discussion, we concluded that a public hearing could be very beneficial to provide shippers the opportunity to address the impact of these added charges and their effect on the competitiveness of rail-shipped commodities and merchandise; and to give each of the major railroads the opportunity to present accurate information about their individual surcharges.

We are all painfully aware that fuel prices are at all-time highs. Today, volatility of fuel prices and supply seems to be the norm, not the exception. We all deal with it in our daily lives as we buy gasoline for our personal vehicles. But for railroads, the "sticker shock" and unpredictability of the current fuel environment has an even bigger impact. While railroads are a relatively fuel-efficient way to move freight — and their fuel efficiency has been increasing in recent years as newer locomotives are added to the fleet — the cost of fuel is a very significant operating expense for railroads. Their U.S. operations consume several billions of gallons of diesel fuel each year.

I have not heard anyone suggest that railroads should not be able to respond to the dramatic increases in their fuel costs by imposing surcharges. After all, for their primary freight-movement competitors, the trucking industry, diesel fuel surcharges are an accepted practice. Rather, the concern seems to be focused more on how these rail fuel

surcharges are calculated and applied; or, put another way, with the transparency, predictability and fairness of the process.

We are not without some guidance in this area. This is not the first time the Federal regulatory process has struggled with fuel surcharge issues. Our predecessor, the Interstate Commerce Commission, faced a near-crisis situation when diesel fuel prices escalated sharply after OPEC imposed its 1973 oil embargo. Back then, the ICC had jurisdiction over motor carrier rates and practices, as well as rail. The rapid escalation of fuel prices hit the independent truckers especially hard. Those owner-operators were typically under contract to perform transportation of regulated commodities for a carrier with operating authority, for which the owner-operator received a fixed percentage of the transportation rate. The transportation rate was set by the regulated carrier. The owner-operator was responsible for paying all initial costs connected with providing the transportation, including fuel, out of its fixed percentage of the transportation rate.

Fuel costs rose rapidly in the late 1970's, and the owner-operators faced a severe cost crunch. The ICC authorized the regulated motor carriers to impose fuel surcharges on short notice, but this was not enough to solve the problem. Because the carriers did not pay for the fuel, they had little incentive to impose surcharges promptly, and not all of the surcharge was passed through to the owner-operator because of the terms of the contracts.

After several interim steps during the late 1970's also proved insufficient, the ICC finally mandated that carriers **must** pass through to their owner-operators the maximum allowable surcharge amount, regardless of the terms of their agreements with the owner-operators. This order was issued by the ICC in 1981, in a proceeding called Ex Parte No. 311 (Sub-No. 4).

Although the ICC issued this order with the best of intentions to help the hard-pressed owner-operators, a Federal court ultimately struck it down as being beyond the agency's authority. In a 1983 holding, the Fifth Circuit Court of Appeals found that the

ICC had exceeded its statutory authority when it intruded so far into the specifics of how the industry could impose surcharges to recover increased fuel costs, and in effect altered the terms of the private agreements between the carriers and the owner-operators. This decision, which is printed at 698 F.2d 1266, is some of the only court guidance we have in this area.

While the facts of that 1983 case are different from the situation before us today in some respects, the two situations are very similar in that both involve indexed, mileage-based transportation fuel surcharges. The court's basic message is a good one to keep in mind as we proceed here today ─ the agency must be mindful of the limits on its statutory authority. I think that it is also instructive to consider what the court did NOT have a problem with in this case ─ it clearly did NOT have a problem with the idea of fuel surcharges *per se*, to enable carriers to cope with fluctuating fuel costs.

With that background, let's turn to today's hearing. We have a substantial list of shippers, railroads, and other interested parties that will testify. Some of the questions that may be raised include the nature of the various railroad surcharges, how they are applied, how much revenue they generate, how different classes of traffic are affected, what index is used for escalation, and how the Board should treat rail fuel surcharges in the uniform rail costing system, or "URCS."

The Board, of course, has an open mind about these issues. All of the testimony, both oral and written, will be given full consideration in this proceeding. I would also like to note that the Board has received comments from two Members of Congress, Senator Conrad Burns and Senator Byron Dorgan. They have requested that their comments be put in the record for this proceeding, and they have been, as will comments that may be received later from any other Members of Congress.