



April 15, 2009

Legislation

S 146, the rail antitrust legislation, is still expected to be considered by the Senate before Memorial Day. Since time on the Senate floor is a rare commodity, it's likely that S 146 will be the only rail legislation to move this year. Agricultural groups and other shipping interests are working to find agreement on additional rail reform priorities this week with the intent to bring the package as a group to the Senate Transportation Committee and urge its inclusion in the bill.

These priorities may include the three (below) identified by the National Grain & Feed Association as well as some form of Final Offer Arbitration (if language can be agreed upon):

1. Address Unreasonable Practices by Railroads at the STB by requiring a more rapid process and effective injunctive relief; address the concerns of private car owners (concerns of the North American Freight Car Association – NAFCA); constrain efforts by railroads to shift and avoid lawful liability for their own negligence; and amend national transportation policy.
2. Requiring economically reasonable access to reciprocal switching at railroad junction points; and meaningful access to small rate case relief.
3. Effective regulation and a process to challenge “Paper Barriers”

Surface Transportation Board

Uniform Railroad Costing System Hearing - The STB has scheduled an April 30th public hearing in Washington DC beginning at 9 am to determine if modifications are needed to the Uniform Railroad Costing System (URCS) used to calculate variable costs for railroads. The STB is seeking comments and suggestions on changes to the URCS. Those wishing to testify or submit written comments should notify the Board by April 23rd, and comments regarding the proceedings will be accepted until May 30th. The hearing will be webcast via the STB site under "Information Center" / "Webcast" / "Live Video" on the home page. Full notice and information on the Hearing can be found at: <http://www.stb.dot.gov/decisions/readingroom.nsf/WebDecisionID/39876?OpenDocument>

Supplemental Report Completed – Wisconsin based Christensen Associates has completed a supplement – *A Supplemental Report to the U.S. Surface Transportation Board on Capacity and Infrastructure Investment* – to its November 2008 report titled *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition*. The STB is seeking comments on the supplement through May 8th. The Supplemental Report can be accessed at: <http://www.stb.dot.gov/stb/docs/CompetitionStudy/March%202009%20Supplemental%20Report.pdf>

2008 Rail Earnings Report – The STB has released a report showing that Class I railroads increased their average rate of “Return On Net Investment” to 11.21% in 2008 from 10.10% in 2007. Individual company returns ranged from Norfolk Southern’s 15.19% on the high end to a low of 8.31% for Kansas City Southern. The nation’s two largest railroads – BN/SF and UP – had returns of 11.11% and 10.57% respectively. The report can be found at:

Fuel Surcharges – Starting in 2003, some railroads began collecting fuel surcharges to cover escalating fuel prices. The STB held hearings in 2006 after fielding numerous complaints from shippers about the methods used to develop the surcharges. The STB issued a decision on January 25, 2007 (STB Ex Parte No. 661) finding that both (1) “computing rail fuel surcharges as a percentage of a base rate” and (2) “the practice of ‘*double dipping*,’ i.e. applying to the same traffic both a fuel surcharge and a rate increase that is based on a cost index that includes a fuel cost component” were unreasonable and directed carriers to change these practices. The decision also imposed mandatory reporting requirements for all Class I railroads with regards to their fuel surcharges, but did not “prescribe the index to be used for measuring increases in fuel costs.”

The railroads began filing quarterly reports on their fuel surcharges on December 31, 2007, and to date, five quarters have been filed (the sixth is due April 30th). The reports contain five lines of data – (1) Total Fuel Cost; (2) Total gallons of fuel consumed; (3) Total increase or decrease in cost of fuel; (4) Total revenue from fuel surcharges; and (5) Revenue from fuel surcharges on regulated traffic.

Compiling the reports for all the companies and the five quarters shows that the railroads since October 1, 2007 have cumulatively:

1. incurred \$15.6 billion in total fuel costs;
2. used 5.1 billion gallons (at an average cost of \$3.03/gal);
3. incurred a cumulative \$22 million *decline* in fuel prices (a large increase, then an equally large decrease);
4. collected \$10.4 billion in fuel surcharges (an average of \$2.02/gal);
5. with \$1.8 billion of the fuel surcharges being applied to regulated traffic.

What these reports **do not show** is the component of the underlying freight rate dedicated to fuels costs. For instance, if the underlying freight rate is covering \$1 per gallon on average over this time-frame, the \$2 per gallon fuel surcharge would be spot on.

However, an examination of the surcharges and costs by quarter does indicate some disparities. For the quarter ending December 31, 2008, fuel costs decreased by \$1.25 billion while the surcharges decreased by a lesser \$826 million; and for the September 30, 2008 quarter, fuel costs *decreased* by \$15 million but the surcharges *increased* by \$647 million. For the June 30, 2008 quarter, fuel costs increased \$671 million and the surcharges increased by the smaller amount of \$457 million. And the March 31, 2008 quarter saw fuel costs increase \$218 million while the surcharges increased \$295 million.

Attached is a compiled table of all the reports.

The individual quarterly fuel surcharge reports can be found at:

<http://www.stb.dot.gov/econdata.nsf/260029d11703bd498525740100662c49?OpenView&Start=1&Count=300&Collapse=1#1>

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