Overview

On August 12, 2013, the Surface Transportation Board (STB) dismissed the complaint Cargill, Inc. filed against the fuel surcharge assessed by BNSF Railway Company. This is the STB's first decision addressing a fuel surcharge complaint since its January 2007 decision declaring that fuel surcharges measured as a percent of the rail rate are unreasonable.

Cargill had challenged the BNSF fuel surcharge as an unreasonable practice on the following three grounds:

- The fuel surcharge formula bore no "reasonable nexus" to BNSF's fuel consumption for the agriculture traffic to which it applied
- BNSF used the fuel surcharge to extract "substantial profits" over and above its incremental fuel costs for the agriculture traffic to which it applied
- BNSF was "double recovering" the same incremental fuel cost increases in both the base rate and the fuel surcharge

The STB previously had dismissed the "double recovery" claim in a January 4, 2011 decision. In this decision, it rejected the remaining two claims.

Cargill's "reasonable nexus" claim argued that BNSF's fuel surcharge is flawed because it applies equally to agricultural and industrial products. The STB determined that it is reasonable for BNSF to adopt a single fuel surcharge for both products that is simple and easy to administer, given that most of the traffic is transported at roughly similar fuel consumption levels in the same trains.

Cargill's "substantial profits" claim alleged that BNSF over-recovered its incremental fuel expenses on Cargill's tariff shipments of agricultural products between April 2008 and December 2010 by approximately $560 million. Cargill used BNSF's internal fuel costs to develop a study that made movement-specific cost calculations for more than 5.6 million individual shipments subject to the BNSF fuel surcharge during the complaint period and then compared those costs to more than $2 billion in fuel surcharge revenue that BNSF had collected.

The STB rejected Cargill's methodology on multiple grounds, primarily that Cargill should have used the Highway Diesel Fuel (HDF) Index rather than BNSF's internal fuel costs. In the January 2007 decision on fuel surcharges, the STB had declared the HDF Index to be a "safe harbor," which means that if a rail carrier uses the HDF Index to measure changes in its fuel costs, the STB will measure those changes the same way. The STB also rejected Cargill's methodology because it made movement-specific adjustments to URCS regulatory accounting costs, accounted for fuel hedging, and excluded unattributable locomotive costs and non-locomotive costs.

Nevertheless, the STB noted that had it used BNSF's internal fuel costs instead of the HDF Index, it would have found that BNSF did over-recover its incremental fuel costs by $181 million. This has raised concern that the "safe harbor" may have the unintended consequence of allowing carriers to exploit their fuel surcharges as profit centers. Therefore, the STB announced that it soon will initiate another proceeding to allow the general public to comment on this issue.

This STB decision is unrelated to the fuel surcharge class action case in federal court. That case concerns fuel surcharges assessed on contract shipments, whereas this STB decision concerns fuel surcharges assessed on tariff shipments.