

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere .....	2.750
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere .....	2.750

The number assigned to this disaster for physical damage is 160956 and for economic injury is 160960. (Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**  
Associate Administrator for Disaster Assistance.

[FR Doc. 2019-19061 Filed 9-3-19; 8:45 am]

**BILLING CODE 8026-03-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #16093 and #16094; Louisiana Disaster Number LA-00094]

**Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Louisiana**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of LOUISIANA (FEMA—4458—DR), dated 08/27/2019.

*Incident:* Hurricane Barry.

*Incident Period:* 07/10/2019 through 07/15/2019.

**DATES:** Issued on 08/27/2019.

*Physical Loan Application Deadline Date:* 10/28/2019.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/27/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/27/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Parishes:* Allen, Iberia, Lafourche, Plaquemines, Saint Mary, Terrebonne, Vermilion.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere .....	2.750

The number assigned to this disaster for physical damage is 160938 and for economic injury is 160940.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**  
Associate Administrator, for Disaster Assistance.

[FR Doc. 2019-19060 Filed 9-3-19; 8:45 am]

**BILLING CODE 8026-03-P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. AB 1261]

**New York State Department of Environmental Conservation—Adverse Abandonment—Saratoga and North Creek Railway in Town of Johnsbury, N.Y.**

On September 10, 2018, the New York State Department of Environmental Conservation (the Department) filed an application under 49 U.S.C. 10903 requesting a third-party, or “adverse,” abandonment by the Saratoga and North Creek Railway (SNCR) of approximately 29.71 miles of rail line between milepost NC 0.0 at North Creek, N.Y., and its terminus at milepost NC 29.71 near the former Tahawus Mine (the Line). Notice of the exemption was served and published in the **Federal Register** on September 28, 2018 (83 FR 49,151).

On October 16, 2018, the Department requested that the proceeding be held in abeyance for 90 days because OmniTRAX, Inc. (OmniTRAX) was negotiating with SNCR for the purchase of the Line and with the Department regarding storage of rail cars. In a decision served October 23, 2018, the request was granted and the comment deadlines on the application and the environmental assessment (EA)

postponed pending further order of the Board. In a series of decisions, the abeyance period was extended, most recently until July 19, 2019.

By letter dated June 14, 2019, OmniTRAX informed the Board that it had discontinued its negotiations with SNCR and the Department. Shortly thereafter, on July 11, 2019, United Rail, Inc. (United Rail), submitted a letter stating that it had initiated preliminary discussions with SNCR regarding the purchase of the Line and requesting the Board continue to hold the proceeding in abeyance so that discussions regarding purchase of the Line could continue.

On July 12, 2019, the Department filed a letter requesting that the Board set a briefing schedule, and on July 31, 2019, the Department filed a letter opposing United Rail's request to continue to hold the proceeding in abeyance. On August 19, 2019, the Adirondack Council filed a letter supporting the Department's position opposing United Rail's request and asks the Board to allow the adverse abandonment application to move forward.

Because the negotiations involving OmniTRAX have terminated and the Department, the applicant here, opposes United Rail's request to continue to hold the proceeding in abeyance, the proceeding will be removed from abeyance and a procedural schedule set.

Any interested person may file written comments concerning the proposed adverse abandonment or protests (including protestant's entire opposition case) by September 30, 2019. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR. 1152.25. The Department's reply will be due by October 18, 2019.

All filings in response to this notice must refer to Docket No. AB 1261 and must be sent to: (1) Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001; and (2) Joshua M. Tallent, New York State Office of the Attorney General, Environmental Protection Bureau, The Capitol, Albany, NY 12224-0341.

Any request for an interim trail use/ railbanking condition under 16 U.S.C. 1247(d) and 49 CFR 1152.29 must be

filed by September 30, 2019, and should address whether the issuance of a certificate of interim trail use in this case would be consistent with the grant of an adverse abandonment application.<sup>1</sup> Each trail use request must be accompanied by the appropriate filing fee. *See* 49 CFR 1002.2(f)(27).<sup>2</sup>

Comments on the EA will be due by September 30, 2019.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment regulations at 49 CFR pt. 1152.

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: August 28, 2019.

By the Board,

Allison C. Davis,

Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2019-19015 Filed 9-3-19; 8:45 am]

BILLING CODE 4915-01-P

## SURFACE TRANSPORTATION BOARD

[Docket No. EP 661 (Sub-No. 2)]

### Rail Fuel Surcharges (Safe Harbor)

In 2006 and 2007, the Board inquired into and made findings regarding rail carrier practices related to fuel surcharges in *Rail Fuel Surcharges*, Docket No. EP 661. A fuel surcharge is a separately identified component of the total rate that is charged for the involved transportation and that is designed to recoup increases in the carrier's fuel costs. Rail shippers had voiced concerns to the Board that these fuel surcharges, because they were typically calculated as a percentage of the base rate<sup>1</sup> for the transportation, recovered amounts over and above the carriers' actual increased fuel costs. *See* Hr'g Tr. at 38-40, 44-45,

<sup>1</sup> In a letter submitted on July 18, 2019, the Town of Newcomb asserted, among other things, that the time to file a request for interim trail use had expired. Although the Board's notice served on September 28, 2018, stated that any request for an interim trail use/railbanking condition would be due by October 25, 2018, the proceeding was held in abeyance on October 23, 2018, before the deadline for such requests.

<sup>2</sup> The Board recently updated its user fees, which will become effective on September 6, 2019. *Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2019 Update*, EP 542 (Sub-No. 27) (STB served July 31, 2019).

<sup>3</sup> The Board has referred to fuel surcharges that are calculated as a percentage of base rate as "rate-based fuel surcharges." *See, e.g., Rail Fuel Surcharges*, EP 661, slip op. at 6-7 (STB served Jan. 26, 2007).

47-49, 52, 61-62, May 11, 2006, *Rail Fuel Surcharges*, EP 661. In response, the Board stated that the term "most naturally suggests a charge to recover increased fuel costs associated with the movement to which it is applied," and if a fuel surcharge is used as "a broader revenue enhancement measure, it is mislabeled." *Rail Fuel Surcharges*, EP 661, slip op. at 7. The Board concluded that a rate increase resulting from a rate-based fuel surcharge, where "there is no real correlation between the rate increase and the increase in fuel costs for that particular movement to which the surcharge is applied, is a misleading and ultimately unreasonable practice." *Id.* As such, the Board prohibited fuel surcharges expressed as a percentage of the base rate. *Id.* at 1, 6-8. The Board directed that any fuel surcharge program applied to regulated traffic must be based on attributes of a movement (such as mileage) that directly affect the amount of fuel consumed. *Id.* at 9.

The Board also, however, established as a "safe harbor" an index<sup>2</sup> upon which carriers could rely to measure changes in fuel costs for purposes of a fuel surcharge program. The Board stated that a carrier's use of that index would not be subject to a reasonableness challenge because the index had already been subject to notice and comment scrutiny. *Id.* at 11.

In 2013, the Board dismissed a complaint by Cargill, Incorporated, challenging fuel surcharges imposed by BNSF Railway Company (BNSF) over a five-year period under a fuel surcharge program applicable to agricultural and industrial products. *Cargill, Inc. v. BNSF Ry.*, NOR 42120, slip op. at 1, 7 (STB served Aug. 12, 2013). In its decision, the Board observed that, if measured by its "internal" fuel costs (the amounts BNSF actually paid for fuel) instead of the safe harbor HDF Index, BNSF's fuel surcharge revenues exceeded its incremental fuel costs (*i.e.*, those additional fuel costs caused by a rise in fuel prices above a certain level) by \$181 million. *Id.* at 14. Nevertheless, the Board noted that, under the safe harbor provision adopted in *Rail Fuel Surcharges*, Docket No. EP 661, carriers are "entitled to rely on the HDF Index as a proxy to measure changes in their internal fuel costs"<sup>3</sup> and concluded

<sup>2</sup> That index was the Energy Information Administration's former "U.S. No. 2 Diesel Retail Sales by All Sellers (Cents per Gallon)," now known as the Highway Diesel Fuel Index (HDF Index).

<sup>3</sup> As the Board put it, "what the safe harbor means is that if a rail carrier uses the HDF Index [in its fuel surcharge program] to measure changes in its fuel costs, then that is how the Board will measure these changes as well, rather than by looking at

that, using the HDF Index as the measure, BNSF had not over-recovered its incremental fuel costs over the five-year period covered by the complaint. *Id.* at 14. At the same time, however, the Board also gave notice that it would be issuing an Advance Notice of Proposed Rulemaking (ANPRM) to give shippers, rail carriers, and other interested parties the opportunity to comment on the safe harbor provision, including whether it should be modified or removed. *Id.* at 17-18.

In May 2014, the Board issued an ANPRM to gain a better understanding of whether the sort of growing spread between HDF-based costs and actual costs seen in *Cargill* was unique to BNSF during a period of particularly high price volatility (or instead a widespread phenomenon in the rail industry) and to determine whether to modify or remove the safe harbor provision. *Rail Fuel Surcharges (Safe Harbor)*, EP 661 (Sub-No. 2), slip op. at 2-3 (STB served May 29, 2014). In the ANPRM, the Board asked whether the growing-spread phenomenon observed in *Cargill* was aberrational; whether there are problems associated with the Board's use of the HDF Index as a safe harbor in judging the reasonableness of fuel surcharge programs; whether any problems with the safe harbor could be addressed through a modification of it; and whether any problems with the safe harbor are outweighed by its benefits. *Id.* at 3.

The 15 comments and 10 replies received in response to the ANPRM were varied, and many did not directly address the Board's question about whether the "growing-spread" phenomenon seen in *Cargill* was an aberration.<sup>4</sup> A few commenters supported the repeal of the safe harbor provision,<sup>5</sup> while others supported retaining the safe harbor provision either outright or in some modified

evidence of changes in the rail carrier's internal fuel costs." *Cargill*, NOR 42120, slip op. at 9.

<sup>4</sup> The following parties submitted comments and/or replies in response to the ANPRM: The U.S. Department of Agriculture; Arkansas Electric Cooperative Corporation (AECC); Colorado Springs Utilities; Consumer United for Rail Equity (CURE); DOW Chemical Company (DOW Chemical), Highroad Consulting, Ltd (Highroad Consulting); Mercury Group; National Coal Transportation Association; National Industrial Transportation League (NITL); National Grain and Feed Association; Allied Shippers (Western Coal Traffic League, American Public Power Association, Edison Electric Institute, National Rural Electric Cooperative Association, South Mississippi Electric Power Association and Consumers Energy Company); BNSF; Canadian National Railway Company; CSX Transportation, Inc.; and Union Pacific Railroad Company (UP).

<sup>5</sup> (*E.g.*, Allied Shippers Comments 3, Aug. 4, 2014.)