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RAIL TRANSPORTATION OF GRAIN, RATE REGULATION REVIEW

OPENING COMMENTS OF

ALLIANCE FOR RAIL COMPETITION
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NATIONAL FARMERS UNION
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
IDAHO BARLEY COMMISSION
IDAHO GRAIN PRODUCERS ASSOCIATION
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I. INTRODUCTION

Alliance for Rail Competition (“ARC”) and the agricultural shipper and producer interests identified on the cover of these Opening Comments (collectively “ARC, et al.”) commend the STB for initiating this proceeding. Producers and shippers of grain, including wheat, corn, soybeans, barley, peas and lentils and related products, have, for far too long, had little or no effective regulatory recourse when forced to pay excessive rail rates and charges.

When such shippers and producers are captive to a single railroad, this state of affairs has effectively vitiated the intent of Congress that, when rail carrier market dominance is found, “the rate established by such carrier for such transportation must be reasonable.” 49 USC Section 10701(d)(1), emphasis added.

ARC includes among its members captive shippers of coal that have had the ability to challenge excessive rail rates using the Board’s SAC methodology. Despite varying degrees of success in a number of rate cases over the years, this ability has given these shippers, and others like them, the ability to negotiate with railroads from a position of other than total weakness. Other members of ARC, particularly smaller agricultural interests, as well as members and constituents of the other groups joining these comments, have had fewer options. Such shippers and producers have been largely powerless in negotiating with major railroads.¹ We welcome the opportunity to suggest ways of redressing these inequities in these Opening Comments, which include Opening Verified Statements by Terry Whiteside and Gerald W. Fauth III.

¹ As explained more fully in the attached Verified Statement of Terry Whiteside, we refer in these comments to producers as well as shippers of grain because many grains and grain products are bought from farm producers by grain elevators, which pay rail rates directly to railroads but deduct such rates from amounts paid to farmers for their grain. Farmers therefore often bear such rail rates even if they do not pay them directly.

II. BACKGROUND OF THIS PROCEEDING

ARC, et al., have been frequent participants in rulemaking proceedings before the STB.² The reason for these efforts is simple. During the almost 35-year period since the Staggers Rail Act of 1980 substituted limited regulation with a focus on captive shippers for pervasive rail regulation, decisions by the ICC and STB have made regulatory recourse more apparent than real, even where railroads have clear market power over smaller and more isolated customers.

Many of the decisions in question were issued in the early years after 1980, when many railroads' financial health was considered inadequate. A tendency to favor struggling railroads in those years may be understandable, even aside from the statutory "policy of this part that rail carriers shall earn adequate revenues, as established by the Board". 49 USC 10701(d)(2).

The fact remains that the railroad industry, like the trucking, ocean shipping and air carrier industries, exists to serve its customers and not vice versa. Even revenue inadequate railroads are subject to service obligations, the common carrier obligation of 49 USC 11101, the requirement that rules and practices must be reasonable under 49 USC 10702, and the requirement, cited above, that rates on captive traffic must be reasonable. Monopolies can be good corporate citizens while fulfilling their essential public functions, but they can also abuse their power, as Congress recognized, and as many captive rail shippers know from experience.

² Examples include EP 658, The 25th Anniversary of the Staggers Rail Act of 1980; EP 575, Review of Access and Competition Issues – Renewed Petition of Western Coal Traffic League; EP 646 (Sub-No.1), Simplified Standards for Rail Rate Cases; EP 671, Rail Capacity and Infrastructure Requirements; EP 705, Competition in the Railroad Industry; EP 712, Improving Regulation and Regulatory Review; EP 715, Rate Regulation Reforms; EP 711, Revised Competitive Switching; EP 431 (Sub-No.4), Review of General Purpose Costing System; and others.

The checks and balances mandated by Congress have not always worked well, or at all, necessitating frequent efforts by ARC, et al. and other captive shippers groups and shippers to seek improvements in rail regulation. For example, the ICC adopted Constrained Market Pricing five years after Stagers, in Ex Parte 347 (Sub-No.1), Coal Rate Guidelines, Nationwide, 1 I.C.C 2d 520 (1985), aff'd sub nom. Consolidated Rail Corp. v. United States, 812 F.2d. 1444 (3rd Cir. 1987), establishing the Stand-Alone Cost (“SAC”) test used by captive utility coal shippers to obtain rate relief. However, it would be more than a decade later, and sixteen years after Stagers, before the Board issued a rate reasonableness methodology designed for the more than 90% of captive rail shippers for whom SAC cases are prohibitively expensive or otherwise ineffective. See Ex Parte No. 347 (Sub-No.2), Rate Guidelines – Non-Coal Proceedings, 1 S.T.B. 1004 (1996).

That decision came out at the end of 1996 only because Congress, in the ICC Termination Act of 1995, gave the Board a deadline for establishing a “simplified and expedited method for determining the reasonableness of challenged rail rates in those proceedings in which a full stand-alone cost presentation is too costly, given the value of the case.” 49 USC 10701(d)(3). And, as this proceeding illustrates, the Three-Benchmark test first adopted in 1996 has not been workable for grain shippers and producers despite subsequent modifications to the test.³

The Board still does not have a standard for assessing the reasonableness of many charges imposed on captive shippers, except for demurrage charges and, in broad terms, fuel surcharges. Railroads also have the upper hand when it comes to car supply, having effectively forced many shippers to provide private cars (including many grain cars as well as cars for coal and oil

³ See the decisions in EP 646 (Sub-No.1), Simplified Standards for Rail Rate Cases, served September 5, 2007, in which the Board adopted Simplified SAC (“SSAC”) as an alternative to Three-Benchmark, and EP 715, Rate Regulation Reforms, served July 18, 2013, in which it raised the Three-Benchmark relief cap.

shipments). As Mr. Whiteside explains (VS at 18-19), in the current service meltdown in the upper Great Plains states, shippers are having to bid as much as \$3000 per car for cars in railroad-run grain car auctions. (For background on these car auctions, see National Grain and Feed Ass'n. v. United States, 5 F.3d 306 (8th Cir. 1993).)

On the rail competition front, competition between major railroads has been needlessly curtailed by such decisions as Midtec Paper Corp. v. Chicago & N. W. Transp. Co., 3 I.C.C 2d 171 (1986), aff'd sub nom. Midtec Paper Corp. v. United States, 857 F.2d 1487 (D.C. Cir. 1988), and the Bottleneck Decisions, Central Power & Light Co. v. Southern Pacific R.R., 1 S.T.B. 1059 (1996), aff'd in part, MidAmerican Energy Co. v. S.T.B., 169 F.3d 1099 (8th Cir. 1999). ICC and STB approval of paper barriers has largely neutralized short line railroads as competitors for Class I railroads. And while the Board has frequently rejected attempts by major railroads to block build-outs designed to break shipper captivity and bring competition to bear, it has been unable to do much to help when railroads that could compete decline to do so, preferring a comfortable duopoly to the better rates and service the shipper sought.

Those duopolies, one in the East and one in the West, with the four biggest railroads controlling some 95% of rail freight, reflect a series of merger proceedings in which the agency employed the most restrictive possible definition of the competition that needed to be preserved, post-merger. And, as Mr. Fauth shows in his attached VS, ICC and STB costing procedures effectively disenfranchise many smaller grain interests.

To the Board's credit, there have been signs recently of a willingness to revisit old policies that were adopted when railroad revenues were far lower than they are now. ARC, et al., commend the Board not just for initiating this proceeding, but also for initiating EP 722, Railroad Revenue Adequacy, in which we plan to participate, and EP 711, Petition for

Rulemaking to Adopt Revised Competitive Switching Rules. In that proceeding, ARC, et al. filed comments supportive of a full rulemaking proceeding, even though most grain shippers and producers represented by ARC, et al. are too small, too isolated (or both) to be likely to benefit from the increased rail competition that might result. In its comments in that proceeding, NITL acknowledges that its suggested new rules might affect less than 10% of captive rail shippers.

A small increase in rail competition may be better than no increase in rail competition, but the regulatory status quo can and should be improved for all captive grain shippers and producers. Given concerns about service and capacity among major grain hauling railroads, which raise the real possibility of increased rates on captive grain traffic, development of improved approaches to grain rate reasonableness is an excellent place to start.

III. RAIL TRANSPORTATION OF GRAIN

As noted in the Board's December 12, 2013 decision in this docket, this proceeding is an outgrowth of EP 665, Rail Transportation of Grain, in which ARC, et al., and Montana Wheat & Barley Committee, et al., and other grain interests filed comments on October 30, 2006 and on January 12, 2007. The Board's attention is respectfully directed to those comments for an overview of challenges facing rail dependent grain producers and shippers. In his attached Opening VS, Mr. Whiteside provides additional details on those challenges, and discusses more recent developments.

Although grain shipments represent a significant percentage of total freight volumes for railroads, and a significant source of revenue, many grain shipments are rail-dependent. Most grain shipments originate in rural areas, particularly in the West, where BNSF and UP are the dominant rail carriers. Some three-quarters of wheat and corn shipments by rail move west of the

Mississippi River. See the Verified Statements of Mr. Whiteside and Mr. Fauth for a fuller discussion of grain shipping by rail, and rail pricing of grain shipments.

ARC et al., do not contend that all grain shipments move at excessive rail rates. Indeed, there are shipments moving at rates below the STB jurisdictional threshold, and others moving at rates with R/VCs only slightly higher, though URCS costing procedures and the unadjusted URCS approach adopted by the Board in 2007 effectively preclude many grain shippers from filing rate complaints. Fauth VS at 4-13. This proceeding's focus should be on shipments for which rate regulation is needed but works poorly, not shipments for which regulation is unnecessary. As Mr. Fauth also shows (VS at 6), many grain shipments do move at rates producing high R/VCs. However, numerous obstacles hinder or prevent the effective use of remedies against abuse of railroad market power that are available to non-grain shippers.

For many grain shippers and producers, competitive remedies are not effective. Destination markets are often too far away for significant use of truck transportation, or destination facilities, such as export facilities at Pacific Northwest ports, are set up for rail deliveries, not truck deliveries. Some grain shipments move by barge on rivers, particularly the Mississippi to the Gulf, but most grain shippers are not close to navigable waterways. Nor is rail to rail competition commonly available. In Montana, a single railroad, BNSF, controls over 90% of grain shipments by rail. In states served by more than one railroad, many shippers have access at reasonable cost to only one of the railroads.

In addition, railroads have used various tactics to encourage grain shipments in shuttle trains of 100 cars or more, and have discouraged shipments from the mid-sized elevators handling roughly 50 cars that the railroads themselves encouraged shippers to build as replacements for even smaller elevators. See generally the opening statement filed July 7, 2011 by the State of

Montana in STB Docket No. 42124, State of Montana v. BNSF Railway. As the Board's decision in that case, served April 26, 2013, shows, BNSF sought to deprive Montana grain shippers and producers of any recourse to rate challenges through the device of gaming STB URCS costing. BNSF officials knew that URCS allocates more costs to 48-car trains than to 50-car trains, so a limit on shipment sizes imposed by BNSF would create the appearance that mid-sized elevator rates were reasonable when the same rates applied to the 50+ cars for which the mid-sized elevators were designed would produce much higher R/VC percentages.

The Board's decision criticized this practice, even though it stopped short of declaring it unlawful. BNSF has since abandoned the shipment size limit, but the situation illustrates the ability and willingness of railroads to use their power to block access by wheat shippers and producers to STB rate remedies.⁴

The grain industry is very concerned at this time about the willingness of railroads to get the current harvest picked up and delivered to markets in time to make room for the next harvest. Thousands of shipments are behind schedule, and the growing cycle will not wait for railroads to resolve their service problems. New shipments will need to move, just as they always have, and rail carriers will need to move older stocks to make room for storage of newer production.

Rail service, including rail cars, locomotives, and scheduling of pickups and deliveries, has always been of critical importance to grain shippers and producers, and to their competitiveness in world markets. As Mr. Whiteside explains (VS at 19), wheat from the US has traditionally commanded a premium in world markets, both for its quality and because the US has always

⁴ More recently, BNSF has required shippers at such mid-sized elevators to shoulder the burden of contacting their competitors to identify another block of 50 cars or more headed to the same destination at the same time, so that BNSF can make up a 100-car train. Where this could not be done, shippers of 50 cars would be charged single-car rates.

been a reliable supplier, making deliveries when promised. If that dependability is undermined by poor rail service, not only could market premiums vanish, but overseas buyers could take less US grain, sourcing more from Brazil and other producing countries.

Timely corn deliveries are needed for ethanol production and for feedlots supporting livestock and meat production. Wheat and barley shipments that are not for export are necessary for breads, pastas and beer. The ripple effects of poor rail service and high rail rates on grain shippers and producers are significant. As a consequence of grain producers' and shippers' reliance on major railroads, particularly BNSF and UP, there is a natural reluctance to be too critical, even when railroads increase rates for no other reason than that grain prices have risen in markets, and railroads want to extract a share of that increase through higher rates on captive shippers.

Of course, increasing rail rates can increase the delivered cost of grain, affecting demand and grain prices, but railroads have shown little concern. Rail rates that go up in good markets rarely seem to come down when grain prices fall. But many shippers are reluctant to complain to regulators for fear that their requests for rail service will not be met, or will be delayed further.

The farm producers who bear rail rates and rate increases indirectly are particularly vulnerable. In contrast, if rail rates on merchandise shipments rise, the cost may be borne by millions of customers paying a few cents more at Walmart and similar stores. For grain, the rail rate buck tends to stop with farmers.

These are some of the reasons that it was high time for the Board to initiate a proceeding with a particular focus on grain transportation by rail, the pricing of rail service, and the effectiveness of regulatory remedies for unlawful rail rates. Many of the deficiencies in the status quo may not

be unique to grain, but grain producers and shippers are especially vulnerable to excessive rates. Among major captive shipper groups, grain shippers and producers are least able to invoke regulatory protections.

For elevators, a major concern is that even if a rate challenge at one elevator were undertaken, a defendant railroad ordered to reduce rates at that location might simply raise rates at one or more other elevators operated by the same complainant, leaving the elevator worse off than if it had not filed a successful rate challenge.

Farm producers may face additional obstacles to relief, due to their status as indirect rail purchasers, and due to the relatively small scale of any individual farmer's freight volumes, as compared with even the smaller-sized grain elevators. The Act provides some help in 49 USC 11701(a). Congress there provided that "the Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant." ARC, et al. submit that this provision enables farm producers to file complaints, challenging rail rates on captive traffic as excessive and unlawful.

IV. PROPOSED IMPROVEMENTS IN GRAIN RATE REGULATION

As a preliminary matter, ARC, et al. would request confirmation by the Board that grain producers have the legal right to file rate complaints, and that such complaints are not subject to dismissal due to the absence of direct damage to the complainant. For reasons discussed above, grain producers are not litigious, and would prefer to negotiate with railroads. However, a Board holding that the rights promised by 49 USC 11701(a) are in fact available would reassure many producers who may be unsure of their standing. See Whiteside VS at 28.

Turning to improvements in STB rate remedies for grain, ARC, et al. will address first the implications of the attainment of revenue adequacy by major grain-hauling railroads. It is not necessary in this proceeding to establish the definition of a revenue adequate railroad (or a long-term revenue adequate railroad). The Board's proceeding in EP 722, Railroad Revenue Adequacy, in which comments will be due soon, will assuredly involve such definitional issues. ARC, et al. will participate actively in that proceeding, and will address further in those comments the implications of revenue adequacy for captive grain shippers and producers. For present purposes, ARC, et al. will assume that at least some major railroads, probably including the largest grain-haulers, BNSF and UP, will be subject to the revenue adequacy constraint by the time concrete action is taken in, or as a result of, this proceeding. No action has been proposed by the Board in this docket, so any changes will require further proceedings.

A. Rate Challenges Against Revenue Adequate Railroads

The attainment of revenue adequacy by railroads, particularly under the Board's standards (which captive shipper groups including ARC regard as far too conservative), is a development to be welcomed. It means that decades of effort by the ICC and STB, pursuing with arguably excessive zeal the statutory goal of revenue adequacy, have paid off for railroads. The price for captive shippers has been high. Not only do they generally pay higher rail rates than their non-captive competitors and counterparts, but in proceeding after proceeding, agency concerns about revenue adequacy have led to outcomes that have been favorable to railroads, and that have restricted or eliminated regulatory protections for captive shippers.

For their part, the major railroads have taken advantage of their new freedom to abandon tracks and services, reduce labor expenses, shift costs and burdens to shippers, and raise rates

and charges. They have also invested heavily in infrastructure, at least in some markets, though periodic service meltdowns continue to occur.

Today, however, with revenue adequacy either achieved or imminent for all major railroads, the time has come for the Board to begin to level the playing field, revisiting policies and precedents that too often left captive shippers defenseless against market dominant railroads. Assuming those policies were defensible when the railroad industry was struggling, they can no longer be justified now that railroads are flourishing, and their future is bright.

Achieving revenue adequacy should produce changes that are not limited to rate regulation, but discussion of the full scope of such implications can await comments in EP 722. Even with a focus limited to rate regulation, revenue adequacy should be the most significant rail development for grain shippers and producers in more than 30 years.

Key elements of the changes needed were discussed in Coal Rate Guidelines, cited above. The most important change is recognition that, once revenue adequacy is achieved (let alone exceeded), there is no further justification for differential pricing of captive traffic. See 1 I.C.C. 2d at 535-36:

In other words, captive shippers should not be required to pay differentially higher rates than other shippers when some or all of that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.

Many of the most troubling problems captive grain shippers and producers face, year in and year out, stem from the fact that railroads can and do price their services differentially, and that no effective regulatory recourse has been available to those who believe the differentials they must pay are excessive.

The decision in Coal Rate Guidelines goes on to provide specific guidance as to two practical implications of revenue adequacy. The first involves rate increases. As the decision explains (at page 536):

A railroad seeking to earn revenues that would provide it, over the long term, a return on investment above the cost of capital would have to demonstrate, with particularity: (1) a need for the higher revenues; (2) the harm it would suffer if it could not collect them; and (3) why captive shippers should provide them.

The foregoing discussion applies to the revenue adequacy constraint, considered in isolation. However, Constrained Market Pricing also includes two other constraints of potential significance. The management efficiency constraint “protects captive shippers from paying for avoidable inefficiencies (whether short-run or long-run) that are shown to increase a railroad’s revenue need to a point where the shipper’s rate is affected.” See the Board’s decision served September 5, 2007 in EP No. 646 (Sub-No.1), Simplified Standards for Rail Rate Cases, at page 8. Like the revenue adequacy constraint, the management efficiency constraint has received little attention in the past because so few railroads were close enough to revenue adequacy for management inefficiencies to be analyzed and quantified.

Now, however, this constraint could lead to a finding of revenue adequacy for a railroad that is almost there, or that has fallen short of honest, economical and efficient management. The management efficiency constraint could also increase the relief available to shippers successfully invoking the revenue adequacy constraint. See the VS of Mr. Fauth (at 26-29) for further discussion of the revenue adequacy and management efficiency constraints. Mr. Fauth also discusses the phasing constraint, which can lead to deferred implementation of otherwise reasonable rate increases.

These new requirements, as applied to the rates of captive grain shippers and producers, would go far to alleviate their current vulnerability to rail rate increases imposed whenever, and in whatever amounts, the railroad sees fit. For reasons discussed above and explored further below, rate cases do not currently provide the needed protection. However, if rates on captive traffic could not be raised differentially, and might not be raised at all, or not raised more than inflation (except for non-captive shippers), the benefit to captive grain interests would be significant. See the Board's decision served May 9, 2000 in Docket No. 41685, CF Industries, Inc. v. Koch Pipeline Co., LP, aff'd sub nom. CF Industries, Inc. v. S.T.B., 255 F.3d 816 (D.C. Cir. 2001), "If we find that Koch's revenues are adequate without the challenged rate increases, then those rate increases are unreasonable." Decision at 21.

Of particular help would be the shift of evidentiary burdens to the railroads, which would have to justify increasing rates for captive shippers. Captive shippers and producers might still have to establish market dominance, and might have the burden of proof as to management efficiency, if that constraint were invoked. However, giving the benefit of the doubt to captive customers opposing rate increases rather than to railroads imposing them would better recognize two facts. Railroads typically have greater resources than many of their grain industry customers, and much of the relevant data is more likely to be in railroad possession than in the hands of rail customers.

Even if achieving revenue adequacy brings about the changes as to rate increases on captive traffic called for in Coal Rate Guidelines, such limited prospective relief should not be the only benefit for shippers once railroads are revenue adequate. If no other changes in regulation were adopted for revenue adequate railroads, future rate increases would presumably be curtailed. But

nothing would be done to remedy excessive differential pricing already reflected in rates, or remedy other unreasonableness built into grain rates due to past actions by market dominant railroads. Captive grain shippers' existing disadvantages might not get worse (thanks to limits on rate increases), but there should also be procedures available to reduce those disadvantages.

The point was stated as follows in Coal Rate Guidelines, 1 I.C.C. 2d at 535 (emphasis added):

Our revenue adequacy standard represents a reasonable level of profitability for a healthy carrier. It fairly rewards investors and assures shippers that the carrier will be able to meet their needs for the long term. Carriers do not need higher revenues than this, and we believe that, in a regulated setting, they are not entitled to any higher revenues.

ARC, et al. recognize that the Board will be reluctant to go so far in making rate reductions available to captive shippers that a revenue adequate railroad might become revenue adequate. At the same time, the Board should guard against railroad attempts to “game” Board standards in order to avoid being found revenue adequate. The Board must also consider, and consider how to prevent, the possibility of a rush by railroads to quickly raise as many captive shipper rates as possible, by as much as possible, if railroads expect their ability to raise rates further in the future will be curtailed by the revenue adequacy constraint and a finding of revenue adequacy.

We will address below the issue of regulation of grain rates charged by railroads slightly below revenue adequacy, bearing in mind that “a rate may be unreasonable even if the carrier is far short of revenue adequacy,” Rate Guidelines – Non-Coal Proceedings, 1 S.T.B. at 1017. Here, ARC, et al. will address regulatory changes appropriate to a situation in which a railroad's revenues are well above revenue adequate levels. We believe that railroads found to be “long-

term” revenue adequate are far more likely to be well above revenue adequacy than to be at, but not above, that level.

Guidance comes from the principle, quoted above, that captive shippers should not have to pay differentially higher rates, to the extent that some or all of the differential is no longer needed for a financially sound (i.e., revenue adequate) rail carrier. As stated elsewhere in Coal Rate Guidelines, a railroad “should not use differential pricing to consistently earn, over time, a return on capital above the cost of capital.” See also the Board’s decision served October 30, 2006 in EP 657, Major Issues in Rail Rate Cases, recognizing “the important principle that a railroad should recover as much of its costs as possible from each shipper before charging differentially higher rates to its captive customers.” Decision at 12.

These principles are especially important when the captive shippers in question are highly vulnerable grain shippers and producers. In testimony before Congress, former STB Chairman Roger Nober stated “If no small cases are brought, this means that, in practice, only about 75 coal shippers have a meaningful opportunity to challenge rail rates. This is unacceptable.” October 23, 2003 Testimony before the Senate Commerce Committee.

Applying these concepts to grain rates charged by long term revenue adequate railroads, there is no sound reason to limit relief to future rate increases, and ignore grain rates set in the past that were set differentially and helped the railroad not just achieve but exceed revenue adequacy. Rate reductions, and not just limits on future rate increases, should be available, to the extent of excess revenues based on differential pricing, and to the extent that revenue adequate railroads will remain revenue adequate. (Of course, rate reductions also cannot lead to rates with R/VCs below 180%.)

For railroads earning revenues above revenue adequacy, the Board should consider the Long-Cannon provisions, and particularly 49 USC 10701(d)(2)(C), “whether one commodity is paying an unreasonable share of the carrier’s overall revenues.” Under current STB rate reasonableness procedures, this Long-Cannon factor is addressed in the R/VC>180 benchmark of the Three-Benchmark test. As explained in Rate Guidelines – Non-Coal Proceedings, 1 S.T.B at 1038, the purpose of the R/VC>180 benchmark is to “consider the defendant carrier’s rate structure, as judged by Long-Cannon-3, to ensure that the complaining shipper’s traffic is not bearing a disproportionate share of the carrier’s revenue requirements vis-à-vis other relatively demand-inelastic traffic without good cause.”

ARC, et al. believe R/VC>180 could be considered in conjunction with the RSAM benchmark in the future, inasmuch as RSAM “accounts for a railroad’s need to earn adequate revenues as required by 49 USC 10704(a)(2)”. See 1 S.T.B. at 1027. However, the R/VCcomp benchmark should have no application in assessing the rates of revenue adequate carriers, because it “provides a means of reflecting demand-based differential pricing principles” (1 S.T.B. at 1034). Differential pricing should not affect rates on captive traffic to the extent those rates provide revenues above revenue adequacy levels.

In addition, as explained further below, the R/VCcomp benchmark is especially flawed in the context of grain rates, which tend to produce uniform R/VCs for large groups of shippers and producers. It is also so costly and complex as to constitute a barrier to rate relief for captive grain shippers. In its present form, the Three-Benchmark test is therefore not appropriate for grain rate challenges against revenue inadequate railroads, let alone revenue adequate railroads. In fact, where the RSAM and R/VC>180 numbers are near or below 200 (as they are for BNSF for 2012), and the R/VCcomp numbers are significantly higher, as would be the case for many grain

rates, the conclusion is almost inescapable that the Long-Cannon-3 prohibition against one commodity paying an unreasonable share of a carrier's overall revenues is being violated.

The Board should also consider the following observation from Rate Guidelines -- Non-Coal Proceedings, 1 S.T.B. 1042-43, as to the interaction of the benchmarks other than R/VCcomp:

[W]here the RSAM figure (the average markup on the >180 traffic required for the carrier to recover all of its URCS fixed costs) is lower than the R/VC>180 measure (the actual average markup on the traffic), the carrier is exacting a greater markup than necessary to meet the revenue need standard represented by RSAM. The greater the difference between the two benchmarks, the greater the downward adjustment to the carrier's average rates on its >180 traffic that would still permit it to meet the RSAM revenue need standard.

The R/VC>180 and RSAM numbers are calculated for each railroad annually by the STB, and are therefore readily available for captive grain customers' use in negotiations, or, if necessary, in rate cases. At page 25-26 of his VS, Mr. Fauth suggests application of a Two-Benchmark variation on the Three-Benchmark test, based on RSAM and R/VC>180, where a captive grain shipper or producer seeks relief from high rates charged by a revenue adequate railroad.

Notably, the Board said in Rate Guidelines -- Non-Coal Proceedings that the R/VCcomp benchmark could be dispensed with in appropriate circumstances:

There may well be some cases in which there is no readily identifiable traffic that is truly comparable. In those instances, we may have to forego what the R/VCcomp benchmark would add to the analysis if it were available, and be guided only by the other two benchmarks – the RSAM measure and the fairness of how the carrier is

pricing that commodity in relation to other commodities that it handles (the R/VC > 180 measure, discussed more fully below).

1 S.T.B. at 1035, fn. omitted.

Given the special circumstances and challenges faced by captive grain shippers, the Board would be well-advised to treat such complainants' grain rate challenges against revenue adequate railroads as warranting use of a Two-Benchmark approach in place of a Three-Benchmark test incorporating R/VC comp.

Full implementation of these concepts as applied to rates generating revenue from differential pricing in excess of revenue need levels raises legal and policy issues as to which further proceedings will be needed. The Board did not explain exactly how to apply a Two-Benchmark analysis. Some simplifying assumptions may be needed as a practical matter or as a matter of fairness. However, it would be anomalous to say that, for a railroad enjoying revenues 15% above revenue adequacy levels thanks largely to differential pricing of captive traffic, there should be no application to past rate increases on such traffic of the principle that differentially raising captive shippers' rates is unjustified.

At a minimum, a captive grain shipper whose own rates have been raised differentially during the two years prior to the filing of a complaint should be able to obtain reductions reversing such improper rate increases. Without such a remedy, railroads would be encouraged to differentially price as much as possible during the run-up to a finding of revenue adequacy. Moreover, base grain rates with high R/VC ratios, which are subject to challenge today, certainly cannot be immune from challenge by captive shippers once railroads become revenue adequate or long term revenue adequate, and constrained in their ability to raise those rates further. Some

means of testing the reasonableness of such rates will continue to be necessary, and the Two-Benchmark approach described by Mr. Fauth, though not previously used, is consistent with principles enunciated in past STB decisions.

This Two-Benchmark standard for testing the reasonableness of grain rates is not the only option for determining the reasonableness of grain rates charged by revenue adequate, market dominant railroads. ARC, et al., understand that NGFA is developing its own approach that also addresses deficiencies in the R/VCcomp component of the Three-Benchmark test. Though ARC, et al. could not conduct a thorough evaluation of the new NGFA methodology in time for further discussion in these Opening Comments, we believe the concept is promising and warrants further consideration.

B. Rate Challenges Against Revenue Inadequate Railroads

At the outset, ARC, et al., do not believe any major grain hauling railroads are revenue inadequate today, much less that any such railroad will become revenue inadequate by the time the Board completes action in this proceeding. Revenues for major railroads stayed high during the recent economic slump, and a growing economy is likely to improve their revenues.

Nevertheless, it is likely that the railroads will seek, in this proceeding and in EP 722, to define long-term revenue adequacy so conservatively as to maintain indefinitely the fiction that they are earning inadequate revenues. It is also conceivable that the Board itself will adopt tests under which at least some railroads will appear a year or two away from long term revenue adequacy, or that the Board will want to follow this proceeding with a proceeding seeking comments on improved policies that will make grain rate regulation more effective regardless of railroad revenue adequacy. Assuming any of these suppositions is correct, the fact remains that the regulatory status quo for grain shippers and producers must be improved.

ARC, et al., presume that SAC and SSAC, rate case options today, will remain so despite a railroad becoming revenue adequate. We do not believe, however, that SAC or SSAC are today, or will ever be, viable options for many, if any, grain shippers or producers. Nor will we attempt in these comments to suggest ways those methodologies might better serve captive grain customers. For virtually all producers and shippers on whose behalf ARC, et al., are participating in this proceeding, SAC and SSAC would be prohibitively expensive, given the value of a rate case. Accordingly, our focus will be on alternatives to SAC-based approaches. The only existing procedure that approaches feasibility for most grain shippers and producers is the Three-Benchmark approach. As already indicated, that methodology emphatically needs modification in the context of grain rates.

As more fully explained in the attached VS of Mr. Fauth, the first obstacle to relief under the Three-Benchmark approach for grain interests, and particularly for small grain interests, is that current URCS costing policies understate the R/VCs produced by the rail rates they pay. The STB has a duty to ensure that its jurisdictional costing procedures are fair, reasonable and accurately reflect the costs associated with these movements.

Enabling more grain shippers and producers without transportation alternatives to challenge rates, whether they actually file complaints or not, will enhance such customers' leverage in negotiating with railroads. Modified costing processes for grain shipments are needed, in the form of improvements suggested by Mr. Fauth as part of his Grain Cost Adjustment Factor, as well as remedies for costing errors introduced when multiple-car shipments are recorded as single car shipments, and through shipments are treated as individual "Rebill" shipments.

Another major concern for grain shippers involves the Board's new Limit Price test for market dominance, discussed by Mr. Fauth at 13-16. Though the Board evidently intended its

new test to simplify market dominance determinations, ARC, et al. believe the danger of false negatives, with railroads found to lack market dominance even though effective competition is lacking, is high. As previously pointed out by ARC, et al., the question of whether truck service is available lends itself to gaming, given the number of small trucking companies willing to quote rates for business they do not currently enjoy. See ARC's Amicus Comments filed November 28, 2012 in Docket NOR 42123, M&G Polymers USA, LLC v. CSX Transportation, Inc., at pages 7-16.

Under the Limit Price approach, RSAM appears poised to become the effective threshold of STB jurisdiction, replacing the statutory R/VC percentage of 180. While some RSAM numbers, including BNSF's for 2012, are low, many other RSAM numbers are higher, and their use in Limit Price analyses could preclude even the possibility of a rate challenge by grain shippers with R/VCs above 180% and no real effective competition. For grain shippers, the Board should consider a more traditional approach to market dominance determinations, or require satisfaction of the Limit Price test only if a grain shipper elects to proceed under that test.

Even if deficiencies in the costing of grain shipments are remedied, and market dominance determinations become less burdensome and uncertain, the current Three-Benchmark test is too costly and too complex for grain shippers and producers in its current form. ARC, et al., note that in one "successful" rate case under the Three-Benchmark test, the relief awarded was a reduction of challenged rates to no more than around 350% of variable cost. See U.S. Magnesium, LLC v. Union Pacific R.R., NOR 42114 (decision served January 28, 2010), aff'd Union Pacific R.R. v. S.T.B., 628 F.3d 597 (D.C. Cir. 2010).

Such an outcome amounts to no relief at all for many grain shippers and producers, and could encourage significant rate increases by market dominant railroads, unless and until the revenue

adequacy constraint becomes a reality. See also the Board's decision served March 12, 2012 in EP 646 (Sub-No.3), Waybill Data Released in Three-Benchmark Rail Rate Proceedings, where the Board said "The Three-Benchmark method begins with the assumption that, in setting rail rates for captive traffic, 'the carrier will not exceed substantially the level permitted by the SAC constraint'." Decision at 6, citation omitted.

In any event, one of the benchmarks, R/VCcomp, is inherently problematical for grain shippers and producers. The R/VCcomp benchmark, discussed above in the context of demand-based differential pricing, is most effective when a railroad singles out one shipper among many for extraordinarily high rates. However, railroad grain rates generally produce R/VCs that are uniform, or uniform in geographic areas, for states or regions. Whiteside VS at 12. If a railroad is charging a grain producer or shipper rates with R/VC percentages of 300, or 250, but is also charging similar rates to similarly situated shippers, the test is ineffective. Instead of protecting captive shippers, it protects market dominant railroads with entire rate structures well above the Board's jurisdictional threshold.

Under the circumstances, the Board should revisit its current restrictions on what traffic may be considered for the comparison group under the R/VCcomp benchmark. As detailed by Mr. Fauth, restricting the comparison group to the same commodity transported by the defendant railroad in shipments other than those at issue in the case is an unreasonable limitation in many grain rate cases. Complainant shippers should be able to argue for the inclusion of similar shipments by other railroads. Fauth VS at 23.

Another improvement recommended by Mr. Fauth (Id.) is to allow inclusion in the comparison group of certain traffic with R/VC percentages below 180, such as comparable

traffic which exceeds the “revenue-need” level, i.e., covering a carrier’s full cost and generating a return on investment equal to or exceeding the current cost of capital.

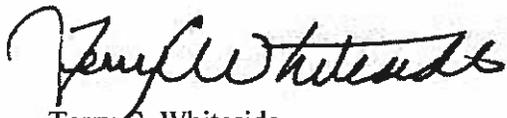
Such changes will make the Three-Benchmark test less irrelevant to grain shippers, but will not provide the simple and inexpensive test many need if they are to resist excessive rates and rate increases by market dominant railroads that have not yet been officially found revenue adequate and subject to constraints on differential pricing. Nevertheless, such changes are needed. In addition, ARC, et al. urge the Board to consider remedies for the phenomenon of rail rates rising when grain prices rise, and staying high when grain prices fall. See also Fauth VS at 29-30, suggesting limits on rate increases when rail service is poor. It compounds the challenges faced by captive grain shippers when they encounter rising grain rates at the same time their rail service quality hits new lows, as described at pages 17-24 of Mr. Whiteside’s VS.

V. CONCLUSION

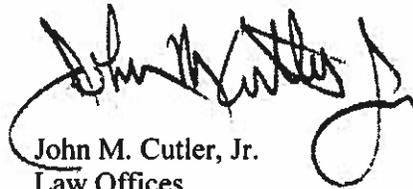
In its decision initiating this proceeding, the Board noted the absence of grain rate cases on its docket, despite the significance and captivity of grain shipments by rail. For reasons discussed in these Opening Comments, the explanation is not that there is any shortage of grain shippers or producers who regard their rail rates as excessive. Rather, there are numerous ways in which the needs of grain shippers and producers for regulatory recourse align poorly, or not at all, with STB rate reasonableness procedures. Without changes like those recommended by ARC, et al., effective remedies for unreasonable grain rates will continue to be unavailable to captive grain producers and shippers.

After consideration of the opening and reply comments in this proceeding, the Board needs to initiate a follow-up proceeding to consider proposed modifications in grain rate reasonableness standards as recommended by ARC, et al. and USDA and NGFA.

Respectfully submitted,



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Dated; June 26, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of June, 2014, caused copies of the foregoing Public Version of the Opening Comments of ARC, et al. to be served on all parties of record electronically or by first class mail, postage prepaid.

A handwritten signature in black ink, reading "Terry Whiteside", written in a cursive style. The signature is positioned above a horizontal line.

Terry Whiteside

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

EP 665 (Sub No. 1)

**RAIL TRANSPORTATION OF GRAIN, RATE REGULATION
REVIEW**

**VERIFIED STATEMENT
OF
TERRY WHITESIDE**

Terry C. Whiteside, Registered Practitioner
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Email: twhitesd@wtp.net
Dated: June 26, 2014

VERIFIED STATEMENT

My name is Terry Whiteside and for the past thirty-five years I have been involved in the rail and freight transportation industry. I have worked both in private and government based public entities in capacities for both carriers and shippers. I am a registered practitioner and have been Principal in Whiteside & Associates, a transportation and marketing consulting firm located in Billings, MT, for the past 27 years. I also serve as Chairman of the Alliance for Rail Competition. Our clients at Whiteside and Associates cover a broad range of industries including agriculture, processing, mining, lumber, ports, manufacturing, bulk transport and finished goods.

We have been asked by the ALLIANCE FOR RAIL COMPETITION MONTANA WHEAT & BARLEY COMMITTEE, NATIONAL FARMERS UNION, COLORADO WHEAT ADMINISTRATIVE COMMITTEE, IDAHO BARLEY COMMISSION, IDAHO GRAIN PRODUCERS ASSOCIATION, IDAHO WHEAT COMMISSION, MONTANA FARMERS UNION, NORTH DAKOTA CORN GROWERS ASSOCIATION, NORTH DAKOTA FARMERS UNION, SOUTH DAKOTA CORN GROWERS ASSOCIATION, SOUTH DAKOTA FARMERS UNION, MINNESOTA CORN GROWERS ASSOCIATION, MINNESOTA FARMERS UNION, WISCONSIN FARMERS UNION, NEBRASKA WHEAT BOARD, OKLAHOMA WHEAT COMMISSION, OREGON WHEAT COMMISSION, SOUTH DAKOTA WHEAT COMMISSION, TEXAS WHEAT PRODUCERS BOARD, WASHINGTON GRAIN COMMISSION, WYOMING WHEAT MARKETING COMMISSION, USA DRY PEA AND LENTIL COUNCIL, NATIONAL CORN GROWERS ASSOCIATION, to submit these comments.

I have worked as both a carrier and shipper representative and I have, for the past 30 years, assisted shippers in obtaining needed transportation service including rail.

I have had extensive experience with shipper and carrier rate and service negotiations. I have surveyed Montana, Colorado, Texas, Oklahoma, Nebraska, South Dakota, Idaho, Oregon, Washington, Wyoming and other state grain shippers in preparing evidence filed in many proceedings before this Board including Ex Parte No. 665, Rail Transportation of Grain, and numerous other proceedings.

I was the filing party in the Section 229 proceeding in 1980 before the Interstate Commerce Commission which ultimately became one of the base cases in the McCarty Farms proceeding, McCarty Farms, Inc., et al. v. Burlington Northern, Inc., 2 S.T.B. 460 (1997). That case was the first and last major challenge of agricultural rates in the West. It consumed 18 years, and cost the producers/State of Montana about \$3 million dollars (in 1980's dollars). It has become the poster child for the western agricultural producers of why agricultural rate challenges at the ICC/STB don't work for agricultural producers. Hopefully, this proceeding can provide the basis for changing regulatory procedures and allowing reasonable rate challenges.

This proceeding concerns "what regulatory changes could be implemented to ensure that the Board's rate case procedures are fully accessible to grain

shippers and provide effective relief from excessive freight rail rates, as appropriate.”⁵ The Board instituted this proceeding to seek “input from interested parties on grain shippers’ ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary.”⁶

Working together on behalf of ARC et al, we are outlining proposals for modifying procedures in my Statement, the accompanying Verified Statement of Gerald Fauth III and the argument section of these Opening Comments.

Agricultural producers and shippers have two major markets for their products: domestic consumption and markets accessible from tidewater transfer points (export). What is common to both of these two markets is that in order for agricultural production to have or create value to the farm producing industry, the farm products must be moved from the field to the ultimate markets. The distance of move and the amount of harvest can vary from a few miles and a few truckloads to thousands of miles and hundreds of thousands of carloads. Generally agricultural commodities require movement in bulk quantities.

⁵ STB Docket No. EP 665 (Sub-No.1), Rail Transportation of Grain, Rate Regulation Review, served December 12, 2013, page 2.

⁶ *Ibid.*

The bottom line is that all rail movements ultimately distill to rate and service levels. Rail rates that are too high to economically compete in the market place effectively shut out farm production movement to that location. Service levels on rates that don't move traffic do not matter. Rail service levels become important only when rail rates are reasonable enough to foster competitive movements of agricultural products.

The Board has also requested proposals for “new alternative rate relief methodologies, should they be necessary.”⁷ Because of the problems faced by grain and grain products shippers associated with the application of the SAC and Three-Benchmark tests, the Board should seriously consider a new rate reasonableness methodology, or combination of approaches, for grain and grain products. First, the STB's SAC and Simplified-SAC tests are essentially useless for most grain and grain products shippers – See Fauth VS at page 26.

As outlined in Mr. Fauth's Verified Statement:

In these comments we recommend the modifications in the Board's current Three-Benchmark procedures (particularly as to the R/VCcomp benchmark) in grain rate cases against revenue inadequate railroads (if any). For revenue

⁷ STB Docket No. EP 665 (Sub-No.1), served December 12, 2013, page 2.

adequate railroads, the revenue adequacy constraint would be available, along with a Two-Benchmark approach discussed at page 25 of Mr. Fauth's VS. Other topics we address include the following:

- **Management Efficiency and Phasing Constraints** – Railroad service is critically important to grain and grain products shippers who have recently experienced a combination of deterioration of service and an increase in rates. The STB could adopt an approach which limits rate increases and ties rate increases to adequate service.
 - **Export Grain Rate Adjustments** – Export movements of grain and grain products, which often involve high volumes, long rail distances and efficient shuttle and trainload movements, are also critically important to grain and grain products shippers. There is an economic relationship between grain prices and grain exports, i.e., when grain prices decrease, exports increase. When exports of grain and grain products increase, railroad profits increase, yet high railroad export grain rates serve to suppress exports. A methodology which promotes exports via lower export rail rates would benefit grain and grain products shippers and the railroads and be in line with President Obama's 2010 National Export Initiative.⁸ At a minimum, rail rates that are increased to extract
-

greater revenues when grain prices rise should not stay high when grain prices fall.

- **NGFA's Proposal** - We understand that National Grain & Feed Association (NGFA) is proposing a new methodology based on the application of a Revenue Adequacy Adjustment Factor (RAAF) to grain and grain products traffic included in the STB's Confidential Waybill Sample records by 5-digit Standard Transportation Commodity Code (STCC). As of this writing, ARC et al. have not had the opportunity to study and review the specifics of NGFA's proposal, but what we have seen indicates that it also certainly warrants serious consideration by the Board.

OUTLINE OF TERRY WHITESIDE VERIFIED TESTIMONY:

1. Need for increased transparency of railroad metrics and actions

⁸ See: <http://trade.gov/nei/> "The Obama Administration has made it a top priority to improve the conditions that directly affect the private sector's ability to export – working to remove trade barriers abroad, help firms and farmers overcome hurdles to entering new markets, and assist with financing. President Obama announced the National Export Initiative in his 2010 State of the Union address to renew and revitalize our efforts to promote American exports abroad."

2. Rail Rates on Grain continue to exhibit high Revenue/Variable cost levels
3. Service and capacity issues dominate both short term and long term concerns
4. Need for increased access to railroad public documents such as tariffs which serve to provide education (to agricultural producers, small and large elevators, and merchandisers), and access to more complete summaries of transportation contracts, and operational data
5. Results of transportation surveys conducted in the last few weeks on service issues facing the farm community in the northern tier states.
6. Carriers' goals lead to conflict in the transport of farm production. A main goal of railroad carriers is to maximize profit. Railroads in agricultural America desire to move agricultural commodities in trainload quantities to market (highest return to railroads). There is continued resistance to moving stratified farm products (multiple grades, alternative crops or non-homogeneous mixes) and products that do not lend themselves to trainload shipments such as peas, lentils, pulse and developing varieties. Stratification of farm production through diversification creates greater returns to farm production but railroads provide disincentives to such actions. Today, railroad profit goals do not necessarily coincide with long term profitability for farm production.

7. Rail carriers now believe it is their right to set the market price of the commodity they are transporting. This has led to rail carriers demarketing certain shippers while promoting others and limiting their access to their markets.
8. In recent years especially the last decade, we continually hear from shippers of numerous reductions in rail service by major railroads and their inability to utilize the current STB rate standards to access regulatory review. Rail rates and charges that exceed maximum lawful levels cannot be justified by service quality, no matter how good. High rates are even more objectionable when accompanied by poor service. Given their market power throughout the grain agricultural region, the railroads have been able to restructure the way wheat and other grains move to market. A railroad with the market power is in a position to use its control of pricing and service to encourage some routings and shipments, and to discourage others, influencing which products move where.
9. Current Car Allocation System has resulted in Cars being Auctioned at sky-rocketing prices.

Shippers of grain have seen prices of pool cars on the BNSF escalate to over \$4,000 per car and current prices running about \$3,000 per car.

NEED FOR INCREASED TRANSPARENCY OF RAILROAD METRICS AND ACTIONS

As the current rail service crisis started to unfold in the summer of 2013, it was apparent that service was deteriorating but there were no metrics published that gave the shippers and the regulators a heads up of trouble ahead. At the STB Car Council meeting in the fall of 2013, there was little indication to the Board that the lingering service issues would get worse. It is unbelievable that one of the worst service crisis the northern plains would ever experience, was looming at the railroads' headquarters but not shared with the shipping public.

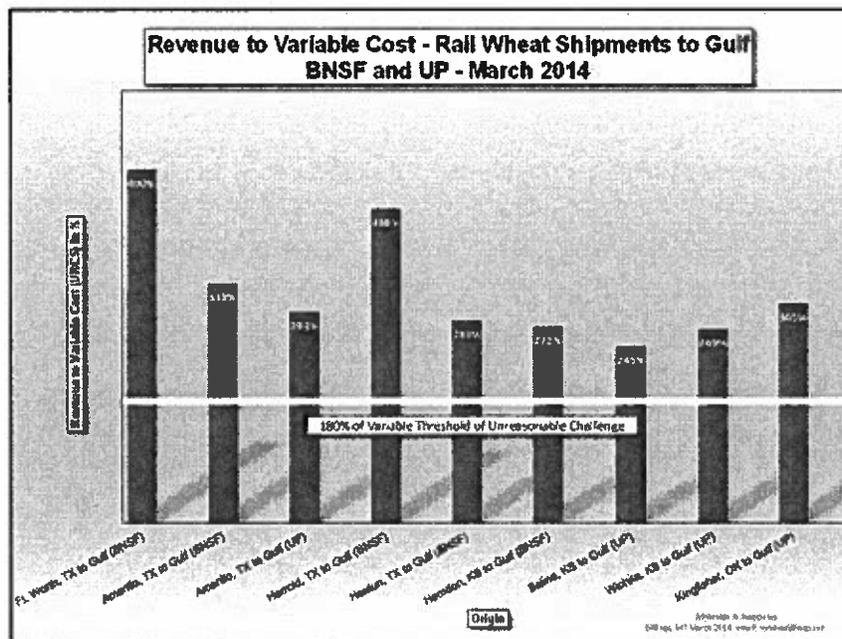
The shippers and the regulators need to have published, timely reports from the railroads showing trends such velocities, back orders by state and regions within states, backorders by region within states, etc.

To the extent that rail rates are reduced from shuttle elevators, those elevators and some of the producers they serve arguably benefit, even if most of the economic benefit goes to BNSF, whose cost savings exceed its rate reductions by a significant margin. However, this is only part of the story. When smaller elevators fold, leaving fewer, larger elevators that producers must use, many producers find themselves driving significantly longer distances from farms to elevators. The loss of these smaller elevators also injures the ability of the farm community to access their market for crops that are not marketable through the shuttle system, including crops such as rotational crops, pulse crops, peas, lentils, barley,

durum and white wheat as well as new and developing wheat or grain classes and varieties. Associated trucking costs increase, including fuel and truck maintenance, and wear and tear on state highways. On-farm storage requirements and costs also rise.

RAIL RATES ON GRAIN CONTINUE TO EXHIBIT HIGH REVENUE/VARIABLE COST LEVELS

Grain rates are published in tariffs for the majority of rates moving farm produce in the United States. The grain rates are, for the most part, also distance based, meaning that rates are a function of distance. There are



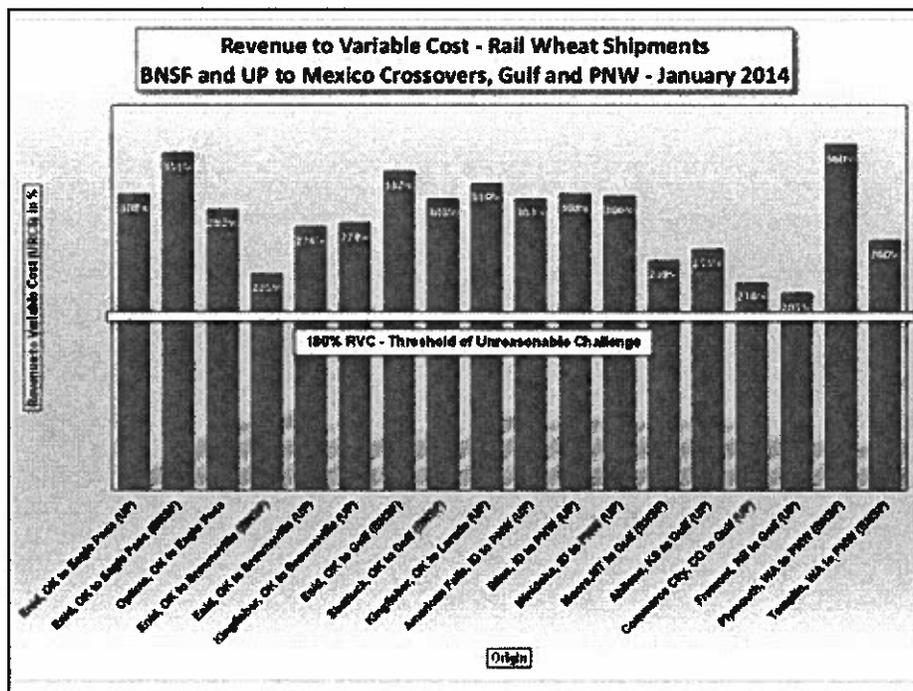
very few blanket rate structures (sometimes referred to as group or zone rates) as the carriers tend to price from origins to destinations.

When examining the wheat rate structures, it is clear that the rate structures are uniform in their RVC ratios for an entire region. This may include entire states, entire regions and even focus the rate structures that apply to multiple origins. Finding comparative grouping of rates in a region or into a specific market is not possible. We have examined hundreds of R/VC's on grain rates. In other words, the railroads are setting the rate structures through vast areas based upon distance but at R/VC's that are uniform. This creates problems when defining comp groups under Three-Benchmark. Other shippers in a comparison group of shippers of the commodity (such as wheat) would be paying relatively the same R/VC rates as for the complained-of rate, i.e., the rate being challenged.

One rate practice that is utilized occasionally by the railroads to alter distance base rate structures is called the inverse rate structure. An inverse rate structure is a situation where the rail carrier publishes a lower rate to a destination than the rates in existence to the same destination from intermediate points. Such distortions will favor the more distant origins over the intermediate origins. This action can be executed because of the market dominance of the carrier. Of course, inverse rates cause market distortion and are generally detrimental to movement from the intermediate destinations. A number of charts showing inland origins to PNW and Gulf

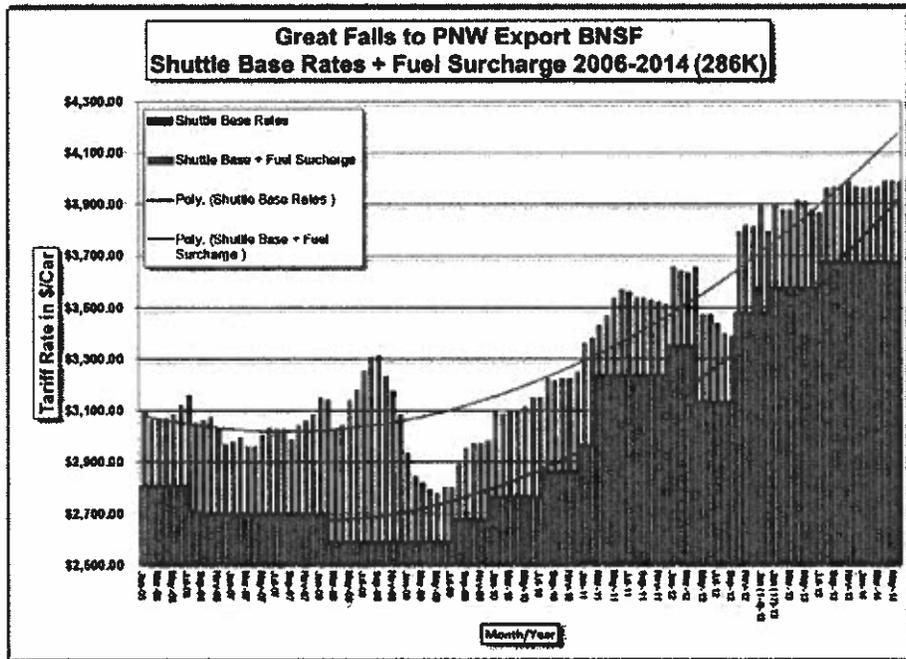
ports show the rapid and continuous escalation of wheat rates from the inland origins to the main export terminals. Even when the price of wheat has fallen, the railroads continue to take ever increasing rail rate hikes.

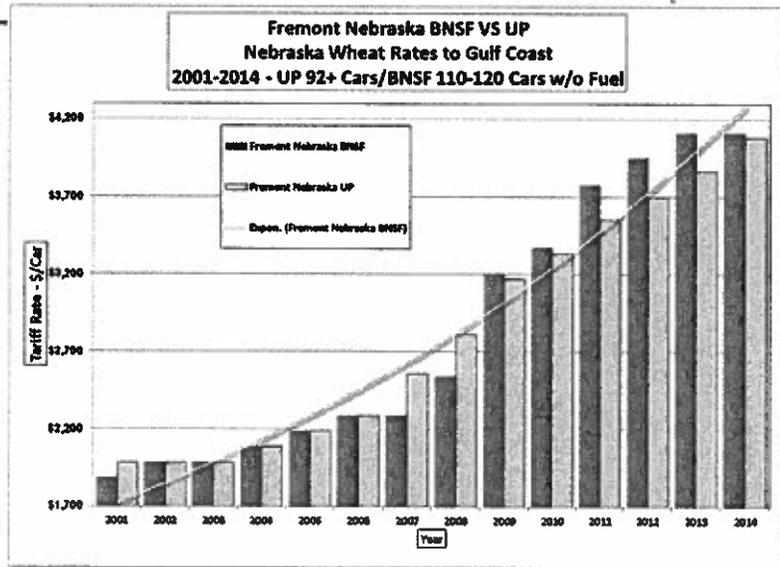
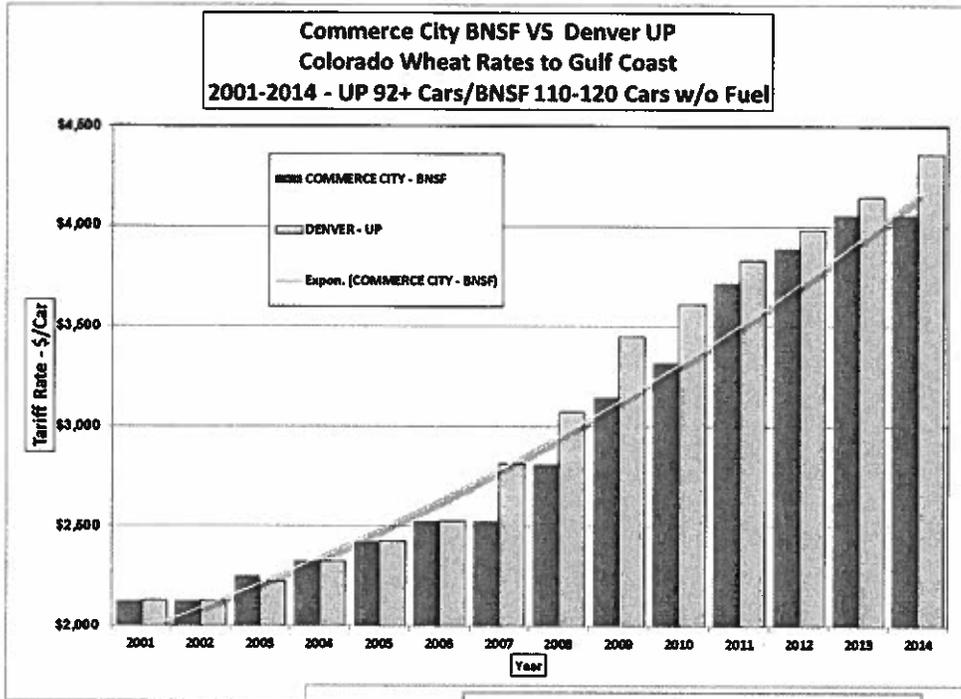
Shuttle service is highly efficient, consisting of 100 cars or more moving together loaded with grain bound for the PNW and then returning to elevators for more grain. Shuttle trains enable BNSF to transport the most grain at the lowest cost of service, and therefore with the highest margins. Because of their relatively low cost, such shipments also are highly profitable for the railroad. Wheat producing states moving non-shuttle

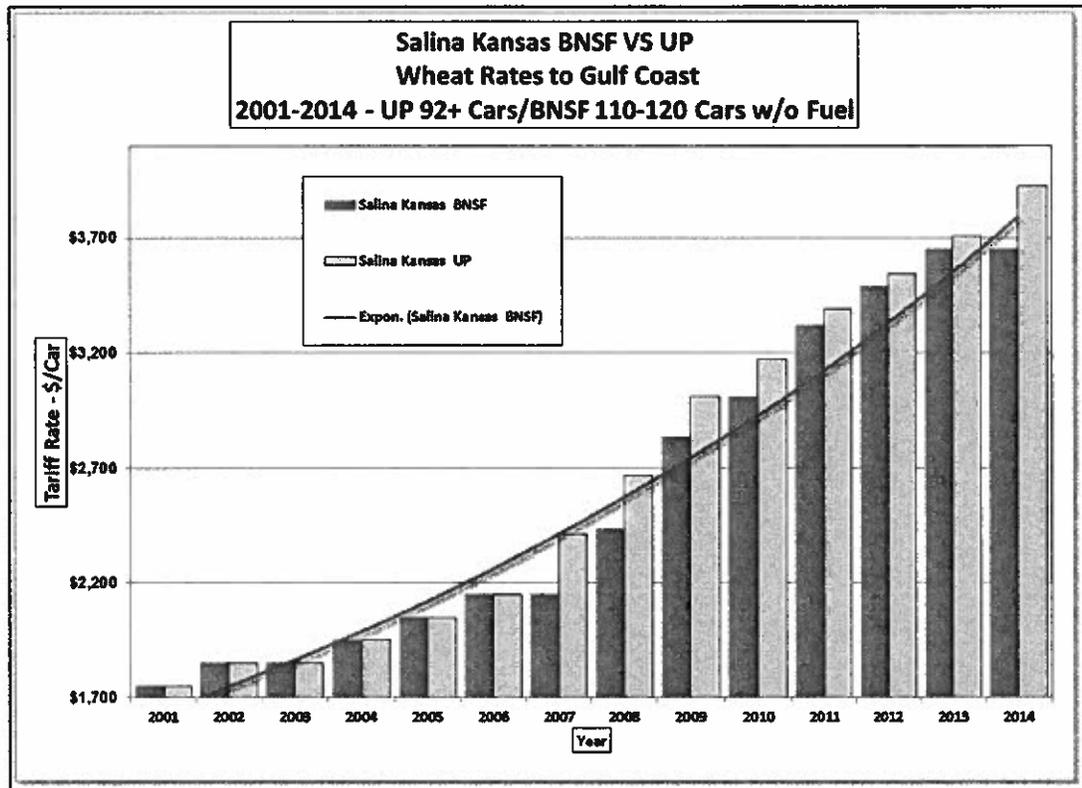


wheat movements of less than 100 car trains to the PNW also moved at high R/VCs. See chart below.

There is a very close interrelationship between the freight rates and the movement of grain. As we have developed the absence of competition affects both three types and volumes of economic activity at the export tide water market. The trend lines in the tariff charts outline steep rise in wheat grain rates over the past decade. The rail rates for the transport of wheat show ever-increasing rates with and without the fuel surcharge at both PNW and Gulf Coast destinations.







Please note that backup for charts showing the beginning and ending rates on the above charts are outlined in Exhibit 3

SERVICE AND CAPACITY ISSUES DOMINATE BOTH SHORT TERM AND LONG
TERM CONCERNS

Service limitations/capacity problems will and do affect the pricing of rail service, especially in areas of rail shipper captivity to single railroads.

Service limitations resulting from an allegedly constrained capacity environment or operational efficiency needs limit service for existing or new business. The Board in Ex Parte No. 724 is studying the current service meltdown in the northern plains grain areas (MT, ND, SD, MN and WI) and on the BNSF and CP system in general.

As for service limitations resulting from an allegedly constrained capacity environment, a common carrier must treat all customers fairly in allocation of equipment, power and rates. In Ex Parte No. 677, Common Carrier Obligation, the STB entertained comments on today's railroads and their requirements to fulfil common carrier obligations focused by the shippers on the railroads' shirking of the mandate to live up to their common carrier responsibilities to captive rail shippers.

Rates and charges for service in areas of rail captivity continue to be at elevated levels compared to other rates and charges for service in areas with rail competition, thereby limiting access to rail transportation.

The rail car allocation system used to be based upon fairness, but as the railroads have become dominant in the market place, they have set up car allocation systems which reduce the supply of tariff cars and have allocated (with Board blessing) based upon operational efficiency, volume

requirements or other incentives rather than upon fair and equal allocation of cars. Shippers of grain have seen prices of pool cars on the BNSF escalate to over \$4,000 per car and current prices running about \$3,000 per car. All of these costs will be transferred back to the farm producer in the form of pricing.

Additionally, through U.S. Wheat Associates and other intensive marketing efforts by the wheat growers, the U.S. has a reputation of being a reliable supplier of quality wheat and grains. With the continuing service disruptions being experienced by the wheat industry in filling orders of wheat for export, the U.S. is in jeopardy of losing this long-developed “reliable” supplier status. What goes hand-in-hand with the reliable supplier is the ability to command a higher price in the market place. Missed loadings, delays causing demurrage of ship loadings, wheat being stored on the ground, untimely deliveries, etc. are all being reported. The merchandisers and the farm producers are paying a huge price for the service meltdowns that are occurring. It is clear that the rail delays and service irregularities are causing economic hardship both now and into the future for the grain industry. This economic hardship is focused on the backs of the rail shippers/users not on the railroads.

Gerald Fauth in his Verified Statement develops a concept called Grain Rail Performance Standards (GRPS).

“ I recommend that the STB take an active role in carefully and transparently monitoring railroad service for grain and grain products shippers by establishing grain and grain products specific rail service performance standards and matrixes by railroad, which could be called Grain Rail Performance Standards (GRPS) (or something similar)⁹.”

This standard would provide a simple measure to ascertain poor, average, or good service levels.

“The STB should also consider limiting future rate increases on grain and grain products based on established performance standards, even if a railroad has not yet been found revenue adequate. For example, if the railroad’s performance levels are in the efficient service zone, certain rate increases might be allowed (subject to captive shipper challenges), whereas, if service levels are in the poor service zone, no rate increases would be allowed¹⁰.”

NEED FOR INCREASED ACCESS TO RAILROAD PUBLIC DOCUMENTS SUCH AS
TARIFFS

⁹ Gerald Fauth III, Verified Statement

¹⁰ Gerald Fauth III, Verified Statement

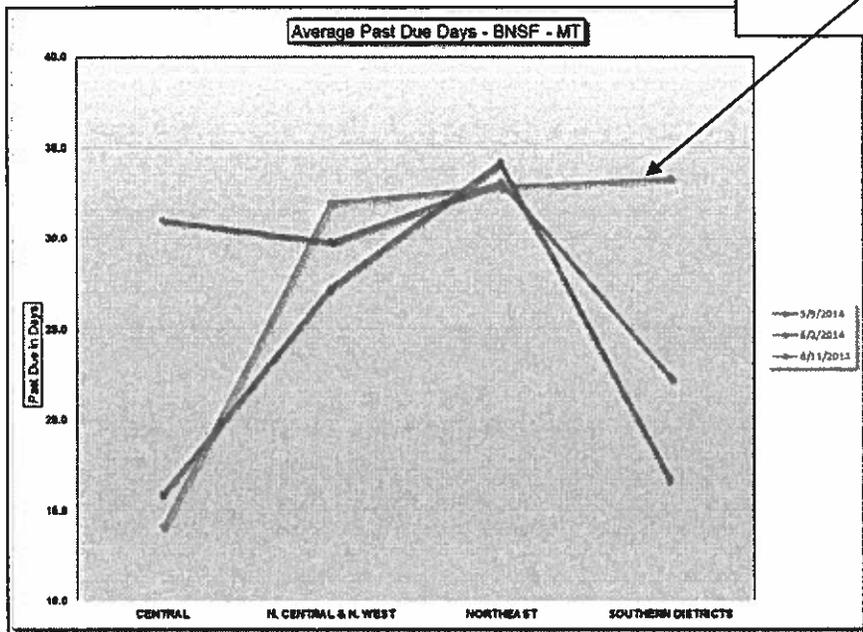
It has become clear during the hearings in Ex Parte No. 724 that the shipping community and the regulators do not have access to the railroad records containing data adequate to ascertain looming problems with rail service.

It is noteworthy that based upon the current reports of the BNSF on Past Due cars, the analysis shows that in the most captive areas of the country, over the last 45 days, the Past Due cars, as a percentage of system-wide Past Due cars, continues to grow. This means, that as the BNSF starts to lower the amount of Past Due car orders, they are going down faster in the not so captive areas than they are in the captive or single rail carrier dominated grain areas.

For example:

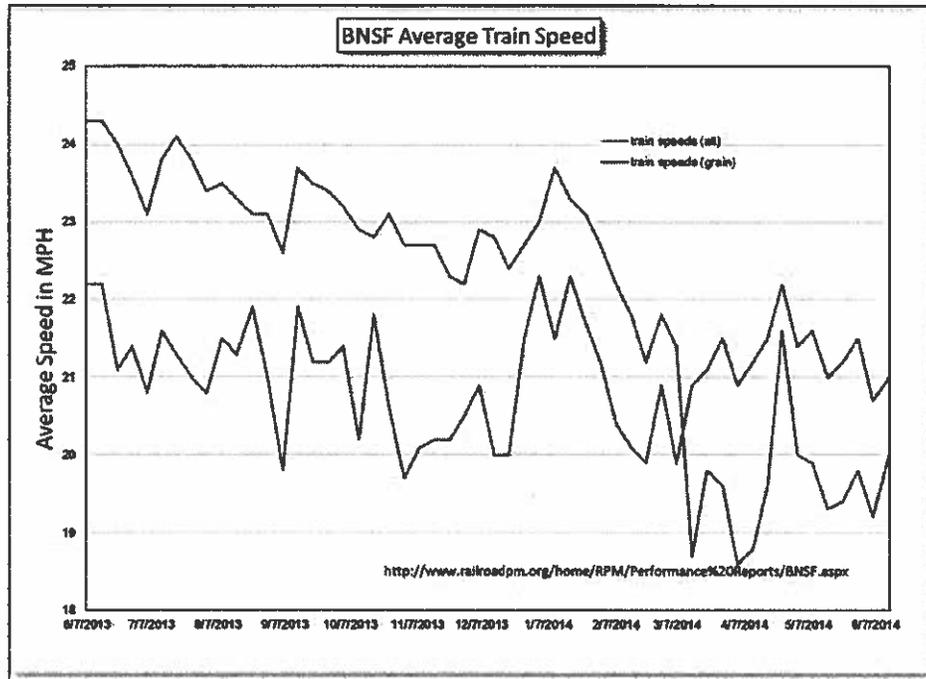
The Average Days Past Due continues to rise in captive areas such as Montana, while the Average Days Past Due number

Average Past Due Days are continuing to grow



on the BNSF system is falling. The railroad wants to stress that things are getting better week to week. Meanwhile the BNSF system Average Train Speeds are not getting better and are at historically low levels and continuing to fall.

Avg Days Past Due	5/9/2014	6/2/2014	6/11/2014
MT Totals	29.9	30.9	32.2
BNSF System	26.9	30.0	28.2



RESULTS OF A MONTANA WHEAT AND BARLEY COMMITTEE/MONTANA
FARMERS UNION TRANSPORTATION SURVEY CONDUCTED IN JUNE 2014
IN MONTANA – WHAT IS THE CURRENT STATE OF GRAIN
TRANSPORTATION IN THE NORTHERN STATES AND WHAT ARE THE
OUTLOOKS?

Background Analysis: Universally all reports from all over the Montana wheat and barley production areas show a unanimity of statements of transportation delays of their 2013 crop. All of the respondents believe that these delays have negatively affected the price of their 2013 grains. Several respondents suggested losses of incomes of tens of thousands of dollars and one producer reporting that his estimated losses are over \$90,000 this year thus far. This survey did not ask for their estimated losses this year but did request their opinion of the transportation delays and the price they are receiving – 100% believe they have suffered losses.

Transportation Delays Analysis: Delays were reported all from all growing areas – Golden Triangle (winter, spring and other crops), NE corner (spring wheat, durum and pulse crops), Central Montana (winter wheat, spring wheat, and pulse) and South Central around Billings/Pompey's Pillar (winter wheat, spring wheat and pulse).

Storage Availability Going Forward Analysis: Several respondents reported they have adequate storage for storing 2014 crops but the majority (84%) see problems of storing the coming 2014 crop (which will start to hit the bins in the next 60 days in Montana). Montana farm producers have storage capability larger than most of their counterparts in other states, but there is a looming problem with the lack of movement of the current crop in anticipation of the coming harvest.

Possible Disruptions in the Marketing of Grain in Northern Plains Analysis: There is a large and almost universal concern that the problems that Canadian grain growers are experiencing moving their 2013 crop (a record) will continue to potentially affect the access to the Montana elevators along the Hi-Line. The further south the respondent farm producer was located, the less concern about potential disruption from the marketing of Canadian grain in Montana. To the extent that Canadian grain is moved into U.S. markets, the greater the potential to put downward pressure on price for U.S. grains.

CARRIERS' GOALS LEAD TO CONFLICT IN THE TRANSPORT OF FARM
PRODUCTION.

A main goal of railroad carriers is to maximize profit. Railroads in agricultural America desire to move agricultural commodities in trainload quantities to market (highest return to railroads). There is continued resistance to moving stratified farm product (multiple grades, alternative crops or non-homogeneous mixes) and products that do not lend themselves to trainload shipments such as peas, lentils, pulse and developing varieties. Stratification of farm production through diversification creates greater returns to farm production but railroads provide disincentives to such actions. Today, railroad profit goals do not necessarily coincide with long term profitability for farm producers.

March 12, 2014: CP CEO Hunter Harrison confirmed what grain shippers have long feared — the railroads view grain as something they can move now or move later.

Speaking to a Wall Street audience March 12, Harrison said bulk shipments, including grain, were “modestly” affected by the severe winter, but his railway did well moving container traffic.

“Because that’s one commodity that we’re sensitive to,” the Globe and Mail quoted Harrison as saying. “If you miss, you miss. It’s not like grain or it’s not like coal, (where) if you’re a little bit late you’re still going to haul it. If

that (intermodal) trailer comes in Friday night and you're not able to handle it, it's probably not going to be there Monday."

From a railroad's perspective, it is more efficient to move grain in large trains of 100 cars or more from a smaller number of elevators, than to move single cars, 26 cars, or 48-55 cars from a larger number of elevators, many of which lack the space or equipment to load 100 cars at a time. These smaller elevators were built in the 1980's when the BNSF encouraged and directed the elevators to build 'multi-car' loading facilities to the specifications. BNSF then favored. Today, the BNSF uses pricing to encourage the use of 100 car trains, particularly shuttle trains that move back and forth between elevators and the PNW, the Great Lakes and the Gulf coast.

Many smaller elevators in the grain producing states have, as a result of railroad pricing, gone out of business.

One elevator company serving North Dakota and Montana grain producers for almost 100 years on a rail line that has become clogged with oil tankers from the Bakken, was told in March, 2014 by railroad personnel that loading grain from their elevators was becoming "annoying."

The farm producers bear the freight charges associated with transportation of grains, but the elevator/merchandisers pay the railroads for freight transportation. The farm producers bear the cost of transportation of their

grain. However, the elevator, which has deducted the transportation cost from the price paid to the farm producer, actually pays the railroads for the freight charges. That fact makes agricultural transportation unique: namely, the farm producer bears the cost of transportation, while the elevator pays the cost of transportation. The STB has, in the past, acknowledged understanding of this uniqueness. The STB needs to clearly state that in agricultural filings, the farm producer has, and will continue in the future to have, standing to file rate actions, and complaints filed by or on behalf of producers will not be subject to dismissal because the producers pay rail rates indirectly.

HEAVY TRAFFIC AHEAD

As outlined in Gerald Fauth III's Verified Statement, "Railroad service is critically important to grain and grain products shippers, many of which face short seasonal growing and rail shipping periods." Grain and grain products shippers have recently experienced a combination of deterioration of rail service and an increase in costs and rail rates.¹¹ More specifically,

¹¹ See, for example, <http://www.jsonline.com/business/slow-trains-delay-great-plains-grain-b99270987z1-259664221.html> and <http://online.wsj.com/news/articles/SB1000142405270230348030457957965261248262>

rail capacity on BNSF, the largest grain hauler, has tightened as a result of a significant increase in Bakken crude oil shipments, primarily from North Dakota.

In a recent report titled Heavy Traffic Still Ahead, February, 2014, which Gerald Fauth III and I co-authored, we estimated that BNSF's loaded and empty Bakken oil trains could increase by over 28 trains per day, or more than one every hour, which excludes the numerous inbound loaded and empty trains of fracking sand utilized to complete each well and other material.¹² These Bakken oil related trains have clogged BNSF's lines in North Dakota, Montana, South Dakota, Minnesota, Iowa, Washington and beyond, which could be considered as the very heart our Nation's northern grain-growing region.

¹² See Heavy Traffic Still Ahead, <http://heavytrafficahead.org/pdf/Heavy-Traffic-Still-Ahead-web.pdf>, page 12. I co-authored the report with Gerald Fauth III.

The current agricultural movements to the PNW total around 48-49 Million Tons. The Bakken oil movements westbound to Portland have been estimated at an additional 66 Million Tons. As Gerald Fauth's explains in his Verified Statement: "Yet this influx and Bakken oil-related rail traffic in the region is only the beginning as plans and permitting are under way to significantly increase the amount of export coal moving from the Powder River Basin in Montana and Wyoming to proposed and existing export coal terminals in the Pacific Northwest (PNW) (primarily to two proposed massive coal export terminals near Longview and Bellingham Washington).¹³ These planned PRB-to-PNW export coal movements could easily exceed 100 million tons per year and add over 36 trains per day to the already congested lines."

If projected export coal numbers of 100+ million tons are added on top of the current congestion being experienced by the grain and lumber industries, the service disruptions to the PNW may be long lived.

BNSF has known about these potential service and rail congestions problems for several years and has already spent hundreds of millions in

¹³ *Ibid*

investing in related rail maintenance and infrastructure projects in primarily North Dakota, Montana, Washington, Illinois and Minnesota. Indeed, the Federal government has contributed to the cause by spending over \$600 million on related infrastructure projects in Washington.¹⁴ BNSF has also increased its hiring of workers to help with the vast increases in anticipated rail traffic.¹⁵ Certainly, these tremendous expenditures will help BNSF increase its rail capacity in the region and, hopefully, will help improve rail service. However, most of these improvements are geared toward moving Bakken oil and export coal to the PNW rather than improving rail service for existing grain and grain products shippers. Notwithstanding this fact, these improvements will take years to complete and during those years the related maintenance and construction projects will also cause service disruptions and delays.

¹⁴ See, for example, <http://www.bnsf.com/media/news-releases/2014/may/2014-05-01a.html>

¹⁵ See, for example, <http://www.star-telegram.com/2014/03/18/5659053/bnsf-ceo-says-railroad-will-hire.html>

BNSF has also undertaken major rehabilitation of the railroad line between Billings and Great Falls (a dark line at this time) in anticipation of heavy coal traffic ahead. Rebuilding virtually all of the bridge abutments, the laying of miles of continuous welded track, and the installation of miles and miles of concrete ties on a 'dark line' (no CTC controls) suggests there are big changes coming in the use of the line between Billings and Great Falls, Montana. Those changes focus on one of the major routes for future coal movements up and onto the Hi-Line (a line that connects Chicago to Seattle/Portland -- former Great Northern line).

RAIL CARRIERS NOW BELIEVE IT IS THEIR RIGHT TO SET THE MARKET PRICE OF THE COMMODITY THEY ARE TRANSPORTING. THIS HAS LED TO RAIL CARRIERS DEMARKETING CERTAIN SHIPPERS WHILE PROMOTING OTHERS AND LIMITING THEIR ACCESS TO THEIR MARKETS.

Much of this demarketing occurred long before the alleged capacity constraints that railroads suggest are going on today. The key this Board needs to focus on is that the common carrier obligation does not give the rail carriers the unrestricted right to set prices for the commodities they are hauling. While they may have the economic power granted to them by the statute and ICC and Board precedent, they remain common carriers. Indeed, the common carrier obligation should limit the railroads from demarketing

any shipper on their system and the Board needs to set the bar so that it is more difficult for the railroads to pick winners and losers in the market place.

A Senate Commerce Committee hearing in April, 2002 a VP of Grain for a major Class I railroad in the West made the following statement:

- “What we do as a rail transportation provider is look at the difference between the value of the grain at the origin and value of the grain at the destination, and try and determine the level of charges for transportation with margin for the elevators to operate and make money.”
- “The fact that winter wheat off Texas Gulf at the destination has a lower value than hard Spring wheat off the PNW...it is clear Spring wheat has a higher value. Therefore, it can stand a higher transportation cost and still move in the marketplace.”

The STB needs to be mindful that the railroad here is making the price in the marketplace and the farm producers, coal producers, chemical producers, etc. are the ones paying for the transportation cost that is now dictated by captivity and not by market demands. Only a company with absolute power and little or no effective competition can price in this way.

SUMMARY:

We commend and thank the Board for taking on this most important issue. It is long overdue.

As the railroads have continued to have more control over the market through a federally granted franchise, they are entering into transportation contracts and selling car supplies in auctions, while requiring shippers to consolidate into ever larger units – all actions that benefit the railroad industry. Operational and railroad economics are now clouding the response to reasonable requests for commitments for common carrier service and there is a lack of ability to access the STB regulatory system. In this filing we have given the Board some ideas to address the inequities that exist in the regulatory system. Additionally, the USDA and National Grain and Feed Association are providing thoughtful and intriguing ideas that are worthy of consideration.

As we have noted before, when any carrier of goods takes on the transportation function, they are not private companies just like any other companies. They knowingly take on the responsibility of fulfilling their common carrier obligations in the marketplace. They are greatly affected with the public interest.

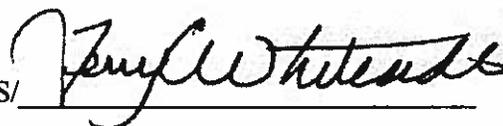
Car allocation programs, limiting capacity, operational desires to serve larger and larger facilities, pricing of the commodity in the market place all

conspire to violate the premise of responding to reasonable requests for common carrier service.

Transportation policy has grown like Topsy Turvy and has had little overall goal or orientation other than helping railroads achieve revenue adequacy. To a marked degree, our national policy has been patched up to address real or emerging emergencies as they arose. Our policy in this country has been backward looking rather than forward looking. As we look at this proceeding, this Board is taking a forward look at access to regulatory oversight for agricultural production and this holds great hope that the future may lead to forward-looking, well-thought-out changes that will promote a more economical, efficient, fair and productive rail transportation system for the national economy.

VERIFICATION:

I hereby certify that the foregoing is true and correct on penalty of perjury.

S/  Date: June 26, 2014

By Terry Whiteside, Registered Practitioner
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Exhibit TCW – 1:

Grain Survey by Montana Farmers Union/Montana Wheat and Barley Committee – June, 2014

BACKGROUND

This survey taken in early June 2014 suggests that Montana farm producers

- continue to carry 2013 crop in their bins,
- the carryover is larger than normal
- have had difficulty with moving and marketing their current 2013 crop
- 100% believe that transportation delays have negatively affected the price they received for their grain

Analysis: universally all reports from all over the Montana wheat and barley production areas show a unanimity of statements of transportation delays of their 2013. All of the respondents believe that these delays have negatively affected the price of their 2013 grains. Several respondents suggested losses of incomes of tens of thousands of dollars and one producer reporting that his estimated losses is over \$90,000 this year thus far. This survey did not ask for their estimated losses this year but did request their opinion of the transportation delays and the price they are receiving – 100% believe they have suffered losses.

Exhibit TCW – 1:

TRANSPORTATION DELAYS

- have universally had to deal with ‘plugged’ elevators multiple times, in most cases well into the winter months (well after 2013 harvest push)
- virtually all of the farm producers believe ‘lack of rail cars’ were the reason their elevators experienced multiple ‘pluggings’
- farm producers believe that smaller elevators have experienced more transportation delays than their larger elevators system.
- Feel that harvest transportation delays ran between >30 days and <90 days
- In general, the farm producers ‘held off delivery until elevator until elevator could accept grain’ as opposed to transport to alternative elevator

Analysis: Delays were reported all from all growing areas – Golden triangle (winter, spring and other crops), NE corner (spring wheat, durum and pulse crops), Central Montana (winter wheat, spring wheat, and pulse) and south central around Billings/Pompey’s pillar (winter wheat, spring wheat and pulse).

STORAGE AVAILABILITY GOING FORWARD

When questioned about storage availability for the 2014 crops (yet to be harvested)

- 40% believe they do not have room for their entire 2014 crop without moving more of their 2013 off the farm
- 90% believe they have more of their previous year’s crop in their on-farm storage than normal
- 84% have concerns about storing and moving their 2014 in a timely manner due to the lack of movement of 2013 crop

Analysis: Several respondents reported they have adequate storage for storing 2014 crops but the majority (84%) see problems of storing the

Exhibit TCW – 1:

coming 2014 crop (which will start to hit the bins in the next 60 days in Montana). Montana farm producers have storage capability larger than most of their counterparts in other states, but there is a looming problem with the lack of movement of the current crop in anticipation of the looming harvest.

POSSIBLE DISRUPTIONS OF MARKETING GRAINS

- 90% believe that if Canadian grain (wheat and barley) starts to move into the elevators along the hi-line, would cause further delays in marketing their 2013 and 2014 crops
- 84% have concerns that Canadian grain may start to compete with their grain marketing at locations where they market their grain.
Note: of those that have concerns about Canadian grain – 100% were 'very concerned' compared to 'not very concerned'

Analysis: There is a large and almost universal concern that the problems that Canadian grain growers are experiencing moving their 2013 crop (a record) will continue to potentially affect the access to the Montana elevators along the hi-line. The further south the respondent farm producer was located (from the Canadian border), the less concern about potential disruption from the marketing of Canadian grain in Montana.

Exhibit TCW – 2:

Montana Grain Transportation Survey – 12 Findings – 2012-2013

1. Grain is being hauled further and further over the state and county highway systems.
2. The majority of farm producers have experienced increasing hauling distances over the past 10 and 20 years.
3. Those farm producers experiencing increased haulage are hauling over 3 times as far as those farm producers who have not experienced any increased hauling distances.
4. The non-wheat crops are experiencing significantly greater hauling distances that wheat crops further burdening alternative and rotational crop practices.
5. Some counties show average hauling distances upwards of 80+ miles.
6. The vast majority of farm producers have the capabilities of storing most if not all of their grain production in Northern states – Southern states goes on the ground.
7. *Even with the diversity of yields, most prairie farm producers experienced elevator pluggings multiple times during harvest – due to lack of rail cars (NOTE – Currently Northern Plains – continuing plugging for months).*

Exhibit TCW – 2:

8. With the multiple elevator pluggings, most farm producers held onto to their crops and waited for the rail car shortages to abate rather than take their grain to more distant elevators – (NOTE can only do that so long).
9. *Farm producers generally thought delays and elevator pluggings were 'about average' and par for the course.*
10. Farm producers are finding unloading delays at ever more distant elevators each year.
11. *As the elevator system is being forced to larger, more rail efficient shuttles coupled with the loss of thousands of miles of rail branchlines in the state, the costs of transportation for gathering grain seem to be shifting from the railroads to the farm producers and to the State and local highway system.*
12. The service levels do not seem to be improving with the transition to larger grain handling facilities.

Exhibit TCW – 3:

WHEAT RATES FROM COLORADO TO GULF PORTS-2001

\$/BU estimates based on average loading of 3,366 bushels/car

		1-25 CARS		26-51 CARS		52-103 CARS		104-110 CAR	
	BNSF Des.	1-25 CARS	26-51 CARS	52-103 CARS	104-110 CAR				
	UP Des.	1-74 CARS	75-99 CARS	100 -105 CAR					
	RR	\$/CAR	\$/BU	\$/CAR	\$/BU	\$/CAR	\$/BU	\$/CAR	\$/BU
COLORADO									
AKRON	BNSF	\$2,650	\$0.79	\$2,450	\$0.73	\$2,350	\$0.70	\$2,250	\$0.67
ALAMOSA	UP	\$3,200	\$0.95						
AMHERST	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74
ANSEL	UP	\$3,200	\$0.95						
ARRIBA *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
BARTLETT	BNSF	\$2,450	\$0.73	\$2,250	\$0.67	\$2,150	\$0.64	\$2,050	\$0.61
BENNETT	UP	\$2,525	\$0.75						
BETHUNE *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
BLANCA	UP	\$3,200	\$0.95						
BRANDON	CKP	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
BRUSH	BNSF	\$2,625	\$0.78	\$2,425	\$0.72	\$2,325	\$0.69	\$2,225	\$0.66
BURLINGTON *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
BYERS	UP	\$2,525	\$0.75	\$2,195	\$0.65	\$2,125	\$0.63		
CAMPO	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56

Exhibit TCW – 3:

CENTER	UP	\$3,200	\$0.95																
CHEYENNE WELLS	UP	\$2,500	\$0.74	\$2,170	\$0.64	\$2,100	\$0.62												
COMMERCE CITY	BNSF	\$2,525	\$0.75	\$2,325	\$0.69	\$2,225	\$0.66	\$2,125	\$0.63										
COMMERCE CITY	UP	\$2,525	\$0.75	\$2,195	\$0.65	\$2,125	\$0.63												
DELTA	UP	\$3,200	\$0.95																
DENVER	BNSF	\$2,525	\$0.75	\$2,325	\$0.69	\$2,225	\$0.66	\$2,125	\$0.63										
DENVER	UP	\$2,525	\$0.75	\$2,195	\$0.65	\$2,125	\$0.63												
EADS	CKP	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64										
FIRST VIEW	UP	\$2,500	\$0.74																
FLAGLER *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66										
FLEMING	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74										
FRUITA	UP	\$3,200	\$0.95																
GENOA *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66										
GRANADA	BNSF	\$2,450	\$0.73	\$2,250	\$0.67	\$2,150	\$0.64	\$2,050	\$0.61										
GRAND JUNCTION	UP	\$3,200	\$0.95																
HASWELL	CKP	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64										
HAXTUN	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74										
HOLLY	BNSF	\$2,450	\$0.73	\$2,250	\$0.67	\$2,150	\$0.64	\$2,050	\$0.61										
HOLYOKE	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74										
HUGO	UP	\$2,525	\$0.75																
HYDE	BNSF	\$2,675	\$0.79	\$2,475	\$0.74	\$2,375	\$0.71	\$2,275	\$0.68										
JULESBURG	UP	\$2,900	\$0.86																
LAMAR	BNSF	\$2,450	\$0.73	\$2,250	\$0.67	\$2,150	\$0.64	\$2,050	\$0.61										

Exhibit TCW – 3:

LIMON		UP	\$2,500	\$0.74															
LIMON *		KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66									
MONTE VISTA		UP	\$3,200	\$0.95															
MONTROSE		UP	\$3,200	\$0.95															
OLATHE		UP	\$3,200	\$0.95															
OTIS		BNSF	\$2,650	\$0.79	\$2,450	\$0.73	\$2,350	\$0.70	\$2,250	\$0.67									
PAOLI		BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74									
PEETZ		BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74									
ROGGEN		BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64									
SEIBERT *		KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66									
SHERIDAN LAKE		CKP	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64									
SPRINGFIELD		BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56									
STERLING		BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74									
STRATTON *		KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66									
SUGAR JCT		UP	\$3,200	\$0.95															
TOWNER		UP	\$2,575	\$0.77	\$2,245	\$0.67													
VASTINE		UP	\$3,200	\$0.95															
VILAS		BNSF	\$2,450	\$0.73	\$2,250	\$0.67	\$2,150	\$0.64	\$2,050	\$0.61									
VONA *		KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66									
WALSH		BNSF	\$2,450	\$0.73	\$2,250	\$0.67	\$2,150	\$0.64	\$2,050	\$0.61									
WRAY		BNSF	\$2,675	\$0.79	\$2,475	\$0.74	\$2,375	\$0.71	\$2,275	\$0.68									
YUMA		BNSF	\$2,675	\$0.79	\$2,475	\$0.74	\$2,375	\$0.71	\$2,275	\$0.68									
ZINZER		UP	\$3,200	\$0.95															

Exhibit TCW – 3:

ALL RATES APPLY IN C6 CARS ONLY
 BNSF Rates from BNSF-4022-J Book: 4 Section: F Revision: 20 Item: 46540 Eff: 04/19/2001
 UP Rates from UP-4052 Item: 2170.00 F Eff: 12/16/2000
 UP Rates from UP-4052 Item: 2160.00 G Eff: 12/16/2000
 * Rates from KYLE origins are subject to co-load provisions of Tariff KYLE 3000-Series, Item 600

WHEAT RATES FROM COLORADO TO GULF PORTS-2014

\$/BU estimates based on average loading of 3,400 for C6 cars and 3,666 for C6X cars (shuttles where applicable)

COLORADO	RAIL MILEAGE	BNSF	1-23 CARS (C6)		24-48 CARS (C6)		110-120 CARS (C6X)								
			1-68 CARS (C6)	\$/CAR	\$/BU	69-91 CARS (C6X)	\$/CAR	\$/BU	92-104 CARS (C6X)	\$/CAR	\$/BU	105 CARS (C6X)	\$/CAR	\$/BU	
HYDE	114	BNSF-D	\$4,949	\$1.46	\$4,899	\$1.44									
SPRINGFIELD	769	BNSF-D	\$4,689	\$1.38	\$4,639	\$1.36									
BARTLETT	796	BNSF-D	\$4,776	\$1.40	\$4,726	\$1.39									
VILAS	796	BNSF-D	\$4,771	\$1.40	\$4,721	\$1.39									
WALSH	808	BNSF-D	\$4,774	\$1.40	\$4,724	\$1.39									
LAMAR	884	BNSF-D	\$4,798	\$1.41	\$4,748	\$1.40									
GRANADA	901	BNSF-D	\$4,803	\$1.41	\$4,753	\$1.40									

Exhibit TCW – 3:

NA JCT	907	BNSF-D	\$4,775	\$1.40	\$4,725	\$1.39			
HOLLY	911	BNSF-D	\$4,776	\$1.40	\$4,726	\$1.39			
BLANCA	953	UP	\$5,719	\$1.68					
COMMERCE CITY	1038	BNSF-D	\$4,898	\$1.44	\$4,848	\$1.43	\$4,055	\$1.11	
DENVER	1039	UP	\$4,995	\$1.47	\$4,498	\$1.23	\$4,362	\$1.19	\$4,275
CHEYENNE WELLS	1040	UP	\$4,807	\$1.41	\$4,293	\$1.17	\$4,157	\$1.13	\$4,070
COMMERCE CITY	1044	UP	\$4,995	\$1.47					
JOHNSTOWN	1053	UP	\$5,041	\$1.48	\$4,180	\$1.14	\$4,055	\$1.11	\$3,975
MONTE VISTA	1068	UP	\$5,719	\$1.68					
WRAY	1079	BNSF-D	\$4,937	\$1.45	\$4,887	\$1.44			
BYERS	1083	UP	\$4,941	\$1.45	\$4,439	\$1.21	\$4,303	\$1.17	\$4,216
ROGGEN	1098	BNSF-D	\$4,925	\$1.45	\$4,875	\$1.43			
VASTINE	1102	UP	\$5,719	\$1.68					
BRUSH	1117	BNSF-D	\$4,938	\$1.45	\$4,888	\$1.44			
AKRON	1134	BNSF-D	\$4,945	\$1.45	\$4,895	\$1.44			
HUGO	1144	UP	\$4,834	\$1.42					
OTIS	1155	BNSF-D	\$4,949	\$1.46	\$4,899	\$1.44			
LIMON	1157	UP	\$4,807	\$1.41					
YUMA	1167	BNSF-D	\$4,946	\$1.45	\$4,896	\$1.44	\$4,106	\$1.12	
PEETZ	1172	BNSF-D	\$5,046	\$1.48	\$4,998	\$1.47			
FLEMING	1173	BNSF-D	\$5,061	\$1.49	\$5,011	\$1.47			
HAXTUN	1184	BNSF-D	\$5,057	\$1.49	\$5,007	\$1.47			
PAOLI	1192	BNSF-D	\$5,055	\$1.49	\$5,005	\$1.47			

Exhibit TCW – 3:

HOLYOKE	1202	BNSF-D	\$5,052	\$1.49	\$5,002	\$1.47	\$4,315	\$1.18
JULESBURG	1202	UP	\$4,397	\$1.29				
AMHERST	1211	BNSF-D	\$5,049	\$1.49	\$4,999	\$1.47		
CENTER	1643	UP	\$5,719	\$1.68				

ALL RATES APPLY IN C6 CARS AND C6X CARS (shuttles where applicable)

BNSF Rates from BNSF-4022-M Book: 4 Section: F Revision: 15 Item: 46107 Eff: 5-8-14

BNSF Rates from BNSF-4022-M Book: 4 Section: F Revision: 21 Item: 46307 Eff: 5-8-14

Price is subject to a fuel surcharge per item 3375 series of BNSF rules book 6100

UP Rates from UP-4052-A Item: 7101-BL Eff: 6-1-14

Additional Fuel Surcharges may apply. All rates are subject to UP 6007, Item 690

WHEAT RATES FROM KANSAS TO GULF PORTS-2001

\$/BU estimates based on average loading of 3,366 bushels/car

	BNSF Des.		1-25 CARS		26-51 CARS		52-103 CARS		104-110 CARS	
	RR	UP Des.	\$/CAR	\$/BU	\$/CAR	\$/BU	\$/CAR	\$/BU	\$/CAR	\$/BU
KANSAS										
ABILENE	BNSF		\$2,150	\$0.64	\$1,950	\$0.58	\$1,850	\$0.55	\$1,750	\$0.52
ABILENE	UP		\$2,150	\$0.64	\$1,820	\$0.54	\$1,750	\$0.52		
AGRA *	KYLE		\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
ALAMOTA	BNSF		\$2,415	\$0.72	\$2,215	\$0.66	\$2,115	\$0.63	\$2,015	\$0.60
ALBERT	BNSF		\$2,250	\$0.67	\$2,050	\$0.61	\$1,950	\$0.58	\$1,850	\$0.55

Exhibit TCW – 3:

ALDEN	BNSF	\$2,175	\$0.65	\$1,975	\$0.59	\$1,875	\$0.56	\$1,775	\$0.53
ALEXANDER	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
ALMENA	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
ALMENA *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
AMY	BNSF	\$2,415	\$0.72	\$2,215	\$0.66	\$2,115	\$0.63	\$2,015	\$0.60
ARLINGTON	UP	\$2,120	\$0.63						
ATCHISON	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
ATCHISON	UP	\$2,150	\$0.64	\$1,820	\$0.54				
ATHOL *	KYLE	\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
ATTICA	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
ATWOOD	BNSF	\$2,625	\$0.78	\$2,425	\$0.72	\$2,325	\$0.69	\$2,225	\$0.66
BAZINE	BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
BEARDSLEY	BNSF	\$2,650	\$0.79	\$2,450	\$0.73	\$2,350	\$0.70	\$2,250	\$0.67
BEELEER	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
BELLAIRE *	KYLE	\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
BELLEFONT	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
BELLEVILLE *	KYLE	\$2,425	\$0.72	\$2,225	\$0.66	\$2,125	\$0.63	\$2,025	\$0.60
BIGBOW	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
BIRD CITY	BNSF	\$2,675	\$0.79	\$2,475	\$0.74	\$2,375	\$0.71	\$2,275	\$0.68
BLACK WOLF	UP	\$2,200	\$0.65						
BLOOM	UP	\$2,300	\$0.68						
BREMEN	UP	\$2,350	\$0.70						
BRETON *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64

Exhibit TCW – 3:

BREWSTER *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
BUCKLIN	UP	\$2,270	\$0.67						
BUFFALO PARK	UP	\$2,400	\$0.71						
BUNKER HILL	UP	\$2,200	\$0.65						
BURDETT	BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
BURDICK	BNSF	\$2,075	\$0.62	\$1,875	\$0.56	\$1,775	\$0.53	\$1,675	\$0.50
BURLINGAME	BNSF	\$1,975	\$0.59	\$1,775	\$0.53	\$1,675	\$0.50	\$1,575	\$0.47
CAIRO	BNSF	\$2,125	\$0.63	\$1,925	\$0.57	\$1,825	\$0.54	\$1,725	\$0.51
CALDWELL	UP	\$2,020	\$0.60						
CAMPUS	UP	\$2,450	\$0.73						
CEDAR BLUFFS	BNSF	\$2,600	\$0.77	\$2,400	\$0.71	\$2,300	\$0.68	\$2,200	\$0.65
CHANUTE	BNSF	\$2,100	\$0.62	\$1,900	\$0.56	\$1,800	\$0.53	\$1,700	\$0.51
CHARLESTON	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
CHASE	BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
CIMARRON	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
CLAYTON *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
CLIFTON *	KYLE	\$2,425	\$0.72	\$2,225	\$0.66	\$2,125	\$0.63	\$2,025	\$0.60
COATS	BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
COFFEYVILLE	UP	\$2,270	\$0.67						
COLBY	UP	\$2,450	\$0.73	\$2,120	\$0.63	\$2,050	\$0.61		
COLBY *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
COLDWATER	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
COLLYER	UP	\$2,350	\$0.70						

Exhibit TCW – 3:

COLUMBUS	BNSF	\$1,775	\$0.53	\$1,575	\$0.47	\$1,475	\$0.44	\$1,375	\$0.41
CONCORDIA	BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
COOLIDGE	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
COPELAND	BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
CORINTH **	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
COURTLAND	BNSF	\$2,225	\$0.66	\$2,025	\$0.60	\$1,925	\$0.57	\$1,825	\$0.54
CULLISON	UP	\$2,190	\$0.65						
CUNNINGHAM	BNSF	\$2,100	\$0.62	\$1,900	\$0.56	\$1,800	\$0.53	\$1,700	\$0.51
DANVILLE	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
DARTMOUTH	BNSF	\$2,225	\$0.66	\$2,025	\$0.60	\$1,925	\$0.57	\$1,825	\$0.54
DEERFIELD	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
DENMARK **	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
DIGHTON	BNSF	\$2,415	\$0.72	\$2,215	\$0.66	\$2,115	\$0.63	\$2,015	\$0.60
DILLWYN	BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
DODGE CITY	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
DORRANCE	UP	\$2,200	\$0.65						
DRESDEN *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
DURHAM	UP	\$2,085	\$0.62						
EDGERTON	BNSF	\$1,950	\$0.58	\$1,750	\$0.52	\$1,650	\$0.49	\$1,550	\$0.46
ELBING	UP	\$2,085	\$0.62						
ELKHART	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
ELLINWOOD	BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
ELLIS	UP	\$2,350	\$0.70						

Exhibit TCW – 3:

HAGGARD	BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
HALSTEAD	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
HANOVER	UP	\$2,185	\$0.65						
HARPER	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
HAVILAND	UP	\$2,220	\$0.66	\$1,890	\$0.56	\$1,820	\$0.54		
HAYS	UP	\$2,300	\$0.68						
HAZELTON	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
HERINGTON	UP	\$2,085	\$0.62						
HERKIMER	UP	\$2,350	\$0.70						
HERNDON	BNSF	\$2,600	\$0.77	\$2,400	\$0.71	\$2,300	\$0.68	\$2,200	\$0.65
HIAWATHA	UP	\$2,350	\$0.70						
HICKOK	BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
HOBART	UP	\$2,300	\$0.68						
HOWELL	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
HUGOTON	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
HUNTER **	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
HUTCHINSON	BNSF	\$2,085	\$0.62	\$1,885	\$0.56	\$1,785	\$0.53	\$1,685	\$0.50
HUTCHINSON	UP	\$2,085	\$0.62	\$1,755	\$0.52	\$1,685	\$0.50		
INDEPENDENCE	UP	\$2,270	\$0.67						
INGALLS	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
ISABEL	BNSF	\$2,150	\$0.64	\$1,950	\$0.58	\$1,850	\$0.55	\$1,750	\$0.52
JENNINGS *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
JETMORE	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59

Exhibit TCW – 3:

JOHNSON	BNSF	\$2,425	\$0.72	\$2,225	\$0.66	\$2,125	\$0.63	\$2,025	\$0.60
JOY	UP	\$2,270	\$0.67						
KANONA	BNSF	\$2,575	\$0.77	\$2,375	\$0.71	\$2,275	\$0.68	\$2,175	\$0.65
KANOPOLIS	UP	\$2,120	\$0.63						
KANORADO *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
KANSAS CITY	BNSF	\$1,950	\$0.58	\$1,750	\$0.52	\$1,650	\$0.49	\$1,550	\$0.46
KANSAS CITY	UP	\$2,050	\$0.61	\$1,720	\$0.51	\$1,650	\$0.49		
KENDALL	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
KENSINGTON *	KYLE	\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
KINGSDOWN	UP	\$2,120	\$0.63						
KIOWA	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
KISMET	UP	\$2,300	\$0.68						
LAKIN	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
LARNED	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
LATIMER	UP	\$2,085	\$0.62						
LEBANON *	KYLE	\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
LEVANT *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
LEWIS	BNSF	\$2,250	\$0.67	\$2,050	\$0.61	\$1,950	\$0.58	\$1,850	\$0.55
LIBERAL ***	BNSF			\$2,625	\$0.78	\$2,475	\$0.74		
LIBERAL	UP	\$2,300	\$0.68	\$1,970	\$0.59				
LINCOLN **	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
LINCOLNVILLE	UP	\$2,085	\$0.62						
LONG ISLAND	BNSF	\$2,500	\$0.74	\$2,300	\$0.68	\$2,200	\$0.65	\$2,100	\$0.62

Exhibit TCW – 3:

LOWE		GCW	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
LUDELL		BNSF	\$2,625	\$0.78	\$2,425	\$0.72	\$2,325	\$0.69	\$2,225	\$0.66
LYONS		BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
MACKSVILLE		BNSF	\$2,225	\$0.66	\$2,025	\$0.60	\$1,925	\$0.57	\$1,825	\$0.54
MANKATO *		KYLE	\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
MANTER		BNSF	\$2,425	\$0.72	\$2,225	\$0.66	\$2,125	\$0.63	\$2,025	\$0.60
MARIETTA		UP	\$2,285	\$0.68						
MARYSVILLE		UP	\$2,285	\$0.68						
MAYFIELD		BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
MCALLASTER		UP	\$2,500	\$0.74						
MCDONALD		BNSF	\$2,650	\$0.79	\$2,450	\$0.73	\$2,350	\$0.70	\$2,250	\$0.67
MCPHERSON		BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
MEADE		UP	\$2,300	\$0.68						
MILTONVALE		BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
MINGO		UP	\$2,450	\$0.73						
MINNEOLA		UP	\$2,300	\$0.68						
MISSLER		UP	\$2,300	\$0.68						
MONTEZUMA		BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
MONUMENT		UP	\$2,450	\$0.73						
MOSCOW		BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
MOUNDRIDGE		UP	\$2,085	\$0.62						
MULLINVILLE		UP	\$2,270	\$0.67						
MULVANE		BNSF	\$2,020	\$0.60	\$1,820	\$0.54	\$1,720	\$0.51	\$1,620	\$0.48

Exhibit TCW – 3:

NASHVILLE	BNSF	\$2,125	\$0.63	\$1,925	\$0.57	\$1,825	\$0.54	\$1,725	\$0.51
NAVARRE	BNSF	\$2,125	\$0.63	\$1,925	\$0.57	\$1,825	\$0.54	\$1,725	\$0.51
NEKOMA	BNSF	\$2,325	\$0.69	\$2,125	\$0.63	\$2,025	\$0.60	\$1,925	\$0.57
NESS CITY	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
NEWTON	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
NICKERSON	BNSF	\$2,125	\$0.63	\$1,925	\$0.57	\$1,825	\$0.54	\$1,725	\$0.51
NORCATUR	BNSF	\$2,575	\$0.77	\$2,375	\$0.71	\$2,275	\$0.68	\$2,175	\$0.65
NORTON	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
NORTON *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
NORWAY *	KYLE	\$2,425	\$0.72	\$2,225	\$0.66	\$2,125	\$0.63	\$2,025	\$0.60
OAKLEY	UP	\$2,450	\$0.73						
OBERLIN	BNSF	\$2,600	\$0.77	\$2,400	\$0.71	\$2,300	\$0.68	\$2,200	\$0.65
OFFERLE	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
OGALLAH	UP	\$2,350	\$0.70	\$2,020	\$0.60	\$1,950	\$0.58		
OTTAWA	BNSF	\$1,950	\$0.58	\$1,750	\$0.52	\$1,650	\$0.49	\$1,550	\$0.46
PARTRIDGE	BNSF	\$2,100	\$0.62	\$1,900	\$0.56	\$1,800	\$0.53	\$1,700	\$0.51
PAULINE	BNSF	\$2,025	\$0.60	\$1,825	\$0.54	\$1,725	\$0.51	\$1,625	\$0.48
PAWNEE ROCK	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
PEABODY	BNSF	\$1,975	\$0.59	\$1,775	\$0.53	\$1,675	\$0.50	\$1,575	\$0.47
PHILLIPSBURG *	KYLE	\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
PIERCEVILLE	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
PLAINS	UP	\$2,300	\$0.68	\$1,970	\$0.59	\$1,900	\$0.56		
PRAIRIE VIEW *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64

Exhibit TCW – 3:

PRATT	BNSF	\$2,125	\$0.63	\$1,925	\$0.57	\$1,875	\$0.56	\$1,725	\$0.51
PRATT	UP	\$2,190	\$0.65						
PRESTON	UP	\$2,155	\$0.64						
PROTECTION	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
QUINTER	UP	\$2,350	\$0.70						
RAMONA	UP	\$2,085	\$0.62						
REAGER	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
REXFORD *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
RIGA	UP	\$2,350	\$0.70						
ROLLA	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
ROZEL	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
RULETON *	KYLE	\$2,620	\$0.78	\$2,420	\$0.72	\$2,320	\$0.69	\$2,220	\$0.66
RUSH CENTER	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
RUSSELL	UP	\$2,250	\$0.67						
RYUS	BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
SALINA	BNSF	\$2,150	\$0.64	\$1,950	\$0.58	\$1,850	\$0.55	\$1,750	\$0.52
SALINA	UP	\$2,150	\$0.64	\$1,820	\$0.54	\$1,750	\$0.52		
SANFORD	BNSF	\$2,325	\$0.69	\$2,125	\$0.63	\$2,025	\$0.60	\$1,925	\$0.57
SATANTA	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
SAUNDERS	BNSF	\$2,425	\$0.72	\$2,225	\$0.66	\$2,125	\$0.63	\$2,025	\$0.60
SAWYER	BNSF	\$2,175	\$0.65	\$1,975	\$0.59	\$1,875	\$0.56	\$1,775	\$0.53
SCOTT CITY	BNSF	\$2,415	\$0.72	\$2,215	\$0.66	\$2,115	\$0.63	\$2,015	\$0.60
SCRANTON	BNSF	\$2,000	\$0.59	\$1,800	\$0.53	\$1,700	\$0.51	\$1,600	\$0.48

Exhibit TCW – 3:

SELDEN *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
SHALLOW WATER	GCW	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
SHARON SPRINGS	UP	\$2,500	\$0.74	\$2,170	\$0.64	\$2,100	\$0.62		
SILICA	BNSF	\$2,200	\$0.65	\$2,000	\$0.59	\$1,900	\$0.56	\$1,800	\$0.53
SMITH CENTER *	KYLE	\$2,490	\$0.74	\$2,290	\$0.68	\$2,190	\$0.65	\$2,090	\$0.62
SPEARVILLE	BNSF	\$2,300	\$0.68	\$2,100	\$0.62	\$2,000	\$0.59	\$1,900	\$0.56
ST FRANCIS	BNSF	\$2,675	\$0.79	\$2,475	\$0.74	\$2,375	\$0.71	\$2,275	\$0.68
ST JOHN	BNSF	\$2,175	\$0.65	\$1,975	\$0.59	\$1,875	\$0.56	\$1,775	\$0.53
STERLING	BNSF	\$2,150	\$0.64	\$1,950	\$0.58	\$1,850	\$0.55	\$1,750	\$0.52
STUTTGART *	KYLE	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
SUBLETTE	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58
SULLIVANS TRACK	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
SYRACUSE	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
TAMPA	UP	\$2,085	\$0.62						
TENNIS	GCW	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59
TIMKEN	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
TIPTON **	BNSF	\$2,275	\$0.68	\$2,075	\$0.62	\$1,975	\$0.59	\$1,875	\$0.56
TOPEKA	BNSF	\$2,050	\$0.61	\$1,850	\$0.55	\$1,750	\$0.52	\$1,650	\$0.49
TOPEKA	UP	\$2,150	\$0.64	\$1,820	\$0.54	\$1,750	\$0.52		
TOULON	UP	\$2,300	\$0.68						
TRAER	BNSF	\$2,600	\$0.77	\$2,400	\$0.71	\$2,300	\$0.68	\$2,200	\$0.65
TURON	UP	\$2,155	\$0.64						
ULYSSES	BNSF	\$2,400	\$0.71	\$2,200	\$0.65	\$2,100	\$0.62	\$2,000	\$0.59

Exhibit TCW – 3:

ALMENA	1231	BNSF-D	\$5,013	\$1.47	\$4,963	\$1.46
AMY	858	BNSF-D	\$4,829	\$1.42	\$4,779	\$1.41
ASHERVILLE	798	UP	\$4,754	\$1.40		
ATCHISON	863	BNSF-D	\$4,468	\$1.31	\$4,418	\$1.30
ATCHISON	825	UP	\$4,486	\$1.32	\$3,944	\$1.08
ATWOOD	1295	BNSF-D	\$5,108	\$1.50	\$5,058	\$1.49
AXTELL	877	UP	\$4,915	\$1.45		
BAXTER SPRINGS	653	BNSF-D	\$3,854	\$1.13	\$3,804	\$1.12
BAZINE	807	BNSF-D	\$4,773	\$1.40	\$4,723	\$1.39
BEARDSLEY	1305	BNSF-D	\$5,137	\$1.51	\$5,087	\$1.50
BEATTIE	867	UP	\$4,915	\$1.45		
BEELER	835	BNSF-D	\$4,807	\$1.41	\$4,757	\$1.40
BELLEFONT	800	BNSF-D	\$4,671	\$1.37	\$4,621	\$1.36
BELOIT	806	UP	\$4,754	\$1.40		
BIGBOW	849	BNSF-D	\$4,807	\$1.41	\$4,757	\$1.40
BIRD CITY	1322	BNSF-D	\$5,167	\$1.52	\$5,117	\$1.51
BISON	784	UP	\$4,716	\$1.39		
BLACK WOLF	780	UP	\$4,647	\$1.37		
BUCKLIN	807	UP	\$4,722	\$1.39		
BUFFALO PARK	900	UP	\$4,700	\$1.38		
BUNKER HILL	830	UP	\$4,647	\$1.37		
BURDETT	826	BNSF-D	\$4,771	\$1.40	\$4,721	\$1.39
BUSHTON	715	UP	\$4,550	\$1.34		

Exhibit TCW – 3:

HARPER		667	BNSF-D	\$4,404	\$1.30	\$4,354	\$1.28					
HAVILAND		776	UP	\$4,668	\$1.37	\$4,142	\$1.13	\$4,006	\$1.09	\$3,919		\$1.07
HAYS		839	UP	\$4,754	\$1.40							
HEALY		894	UP	\$4,877	\$1.43							
HERINGTON		711	UP	\$4,523	\$1.33							
HERNDON		1279	BNSF-D	\$5,079	\$1.49	\$5,029	\$1.48					
HICKOK		859	BNSF-D	\$4,785	\$1.41	\$4,735	\$1.39					
HOBART		827	UP	\$4,754	\$1.40							
HOISINGTON		720	UP	\$4,716	\$1.39							
HUGOTON		788	BNSF-D	\$4,696	\$1.38	\$4,646	\$1.37	\$3,825	\$1.04			
HUNTER		830	BNSF-D	\$4,680	\$1.38	\$4,630	\$1.36					
HUTCHINSON		727	BNSF-D	\$4,450	\$1.31	\$4,400	\$1.29	\$3,559	\$0.97			
HUTCHINSON		705	UP	\$4,523	\$1.33	\$3,984	\$1.09	\$3,848	\$1.05	\$3,761		\$1.03
ISABEL		727	BNSF-D	\$4,523	\$1.33	\$4,473	\$1.32					
JOHNSON		839	BNSF-D	\$4,828	\$1.42	\$4,778	\$1.41					
JOY		793	UP	\$4,722	\$1.39							
KANCO		884	UP	\$4,968	\$1.46							
KANONA		1271	BNSF-D	\$5,052	\$1.49	\$5,002	\$1.47					
KANOPOLIS		768	UP	\$4,561	\$1.34							
KANSAS CITY		815	BNSF-D	\$4,352	\$1.28	\$4,302	\$1.27					
KANSAS CITY		787	UP	\$4,379	\$1.29	\$3,828	\$1.04	\$3,692	\$1.01	\$3,605		\$0.98
KENDALL		911	BNSF-D	\$4,830	\$1.42	\$4,780	\$1.41					
KIOWA		649	BNSF-D	\$4,398	\$1.29	\$4,348	\$1.28					

Exhibit TCW – 3:

KISMET	815	UP	\$4,754	\$1.40					
LA CROSSE	784	UP	\$4,716	\$1.39					
LA CYGNE	748	BNSF-D	\$3,985	\$1.17	\$3,935	\$1.16			
LAIRD	827	BNSF-D	\$4,804	\$1.41	\$4,754	\$1.40			
LAKIN	919	BNSF-D	\$4,825	\$1.42	\$4,775	\$1.40			
LARNED	776	BNSF-D	\$4,688	\$1.38	\$4,638	\$1.36			
LEOTI	884	UP	\$4,716	\$1.39	\$3,855	\$1.05			
LEWIS	802	BNSF-D	\$4,638	\$1.36	\$4,588	\$1.35			
LIBERAL	798	UP	\$4,754	\$1.40					
LINCOLN	798	BNSF-D	\$4,674	\$1.37	\$4,624	\$1.36			
LINCOLNVILLE	699	UP	\$4,523	\$1.33					
LUDELL	1290	BNSF-D	\$5,107	\$1.50	\$5,057	\$1.49			
MANTER	810	BNSF-D	\$4,826	\$1.42	\$4,776	\$1.40			
MARIENTHAL	884	UP	\$4,716	\$1.39					
MAYFIELD	634	BNSF-D	\$4,396	\$1.29	\$4,346	\$1.28			
MCCRACKEN	784	UP	\$4,716	\$1.39					
MCDONALD	1313	BNSF-D	\$4,139	\$1.22	\$5,089	\$1.50			
MEADE	810	UP	\$4,754	\$1.40					
MEDICINE LODGE	677	BNSF-D	\$4,412	\$1.30	\$4,362	\$1.28			
MILTONVALE	786	BNSF-D	\$4,591	\$1.35	\$4,541	\$1.34			
MINGO	1013	UP	\$4,807	\$1.41					
MINNEOLA	829	UP	\$4,738	\$1.39					
MISSLER	831	UP	\$4,754	\$1.40					

Exhibit TCW – 3:

QUINTER	920	UP	\$4,647	\$1.37					
REAGER	1254	BNSF-D	\$5,021	\$1.48	\$4,971	\$1.46			
RIGA	857	UP	\$4,807	\$1.41					
ROLLA	772	BNSF-D	\$4,741	\$1.39	\$4,691	\$1.38			
ROZEL	793	BNSF-D	\$4,743	\$1.40	\$4,693	\$1.38			
RUSH CENTER	786	BNSF-D	\$4,691	\$1.38	\$4,641	\$1.37			
RUSSELL	813	UP	\$4,700	\$1.38					
SALINA	789	BNSF-D	\$4,538	\$1.33	\$4,488	\$1.32	\$3,653	\$1.00	
SALINA	763	UP	\$4,593	\$1.35	\$4,060	\$1.11	\$3,924	\$1.07	\$3,837
SATANTA	843	BNSF-D	\$4,755	\$1.40	\$4,705	\$1.38			
SAUNDERS	801	BNSF-D	\$4,823	\$1.42	\$4,773	\$1.40			
SAWYER	721	BNSF-D	\$4,551	\$1.34	\$4,501	\$1.32			
SCOTT CITY	900	BNSF-D	\$4,834	\$1.42	\$4,784	\$1.41	\$3,975	\$1.08	
SCOTT CITY	835	UP	\$4,716	\$1.39					
SCOTTSVILLE	816	UP	\$4,807	\$1.41					
SCRANTON	754	BNSF-D	\$4,381	\$1.29	\$4,331	\$1.27			
SELKIRK	884	UP	\$4,716	\$1.39					
SHARON SPRINGS	1006	UP	\$4,807	\$1.41	\$4,293	\$1.17	\$4,157	\$1.13	\$4,070
SILICA	770	BNSF-D	\$4,580	\$1.35	\$4,530	\$1.33			
SOLOMON RAPIDS	811	UP	\$4,807	\$1.41					
ST FRANCIS	1338	BNSF-D	\$5,172	\$1.52	\$5,122	\$1.51			
STERLING	721	BNSF-D	\$4,521	\$1.33	\$4,471	\$1.32			
SUBLETTE	852	BNSF-D	\$4,758	\$1.40	\$4,708	\$1.38			

Exhibit TCW – 3:

SULLIVANS TRACK	835	BNSF-D	\$4,808	\$1.41	\$4,758	\$1.40			
SYRACUSE	923	BNSF-D	\$4,833	\$1.42	\$4,783	\$1.41			
TAMPA	732	UP	\$4,523	\$1.33					
TIMKEN	804	BNSF-D	\$4,664	\$1.37	\$4,614	\$1.36			
TIPTON	839	BNSF-D	\$4,683	\$1.38	\$4,633	\$1.36			
TOPEKA	773	BNSF-D	\$4,438	\$1.31	\$4,388	\$1.29			
TOPEKA	793	UP	\$4,486	\$1.32	\$3,944	\$1.08	\$3,808	\$1.04	\$3,721
TOULON	834	UP	\$4,754	\$1.40					
TRIBUNE	884	UP	\$4,716	\$1.39					
ULYSSES	841	BNSF-D	\$4,810	\$1.41	\$4,760	\$1.40			
VICTORIA	729	UP	\$4,754	\$1.40					
WAKEENEY	899	UP	\$4,807	\$1.41	\$4,293	\$1.17	\$4,157	\$1.13	\$4,070
WALKER	824	UP	\$4,700	\$1.38					
WALLACE	970	UP	\$4,968	\$1.46					
WALTON	679	BNSF-D	\$4,333	\$1.27	\$4,283	\$1.26			
WELLINGTON	624	BNSF-D	\$4,316	\$1.27	\$4,266	\$1.25	\$3,418	\$0.93	
WHEELER	1332	BNSF-D	\$5,170	\$1.52	\$5,120	\$1.51			
WICHITA	644	BNSF-D	\$4,368	\$1.28	\$4,318	\$1.27	\$3,471	\$0.95	
WICHITA	640	UP	\$4,454	\$1.31	\$3,909	\$1.07	\$3,773	\$1.03	\$3,686
WINONA	948	UP	\$4,968	\$1.46					
WRIGHT	840	BNSF-D	\$4,700	\$1.38	\$4,650	\$1.37	\$3,830	\$1.04	
YOCEMENTO	844	UP	\$4,754	\$1.40					
ZENDA	685	BNSF-D	\$4,516	\$1.33	\$4,466	\$1.31			

Exhibit TCW – 3:

ZENITH	760	BNSF-D	\$4,525	\$1.33	\$4,475	\$1.32
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ALL RATES APPLY IN C6 CARS AND C6X CARS (shuttles where applicable)
 BNSF Rates from BNSF-4022-M Book: 4 Section: F Revision: 15 Item: 46107 Eff: 5-8-14
 BNSF Rates from BNSF-4022-M Book: 4 Section: F Revision: 21 Item: 46307 Eff: 5-8-14
 Price is subject to a fuel surcharge per item 3375 series of BNSF rules book 6100
 UP Rates from UP-4052-A Item: 7101-BL Eff: 6-1-14
 Additional Fuel Surcharges may apply. All rates are subject to UP 6007, Item 690

WHEAT RATES FROM NEBRASKA TO GULF PORTS-2001

\$/BU estimates based on average loading of 3,366 bushels/car

NEBRASKA	BNSF Des.		1-25 CARS		26-51 CARS		52-103 CARS		104-110 CARS	
	RR	\$/CAR	\$/BU	\$/CAR	\$/BU	\$/CAR	\$/BU	\$/CAR	\$/BU	
ALLIANCE	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74	
ALMA	BNSF	\$2,350	\$0.70	\$2,150	\$0.64	\$2,050	\$0.61	\$1,950	\$0.58	
ARAPAHOE	BNSF	\$2,475	\$0.74	\$2,275	\$0.68	\$2,175	\$0.65	\$2,075	\$0.62	
ARCHER	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64	
AUBURN	UP	\$2,385	\$0.71							
AURORA	BNSF	\$2,500	\$0.74	\$2,300	\$0.68	\$2,200	\$0.65	\$2,100	\$0.62	

Exhibit TCW – 3:

BARTLEY	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
BEATRICE	BNSF	\$2,285	\$0.68	\$2,085	\$0.62	\$1,985	\$0.59	\$1,885	\$0.56
BEAVER CITY	BNSF	\$2,525	\$0.75	\$2,325	\$0.69	\$2,225	\$0.66	\$2,125	\$0.63
BENKELMAN	BNSF	\$2,675	\$0.79	\$2,475	\$0.74	\$2,375	\$0.71	\$2,275	\$0.68
BEVERLY	BNSF	\$2,700	\$0.80	\$2,500	\$0.74	\$2,400	\$0.71	\$2,300	\$0.68
BIG SPRINGS	UP	\$2,865	\$0.85						
BLADEN	BNSF	\$2,375	\$0.71	\$2,175	\$0.65	\$2,075	\$0.62	\$1,975	\$0.59
BRANDON	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74
BROWNSON	UP	\$2,900	\$0.86	\$2,570	\$0.76	\$2,500	\$0.74		
BRULE	UP	\$2,865	\$0.85						
BRUNSWICK	BNSF	\$2,700	\$0.80	\$2,500	\$0.74	\$2,400	\$0.71	\$2,300	\$0.68
BUSHNELL	UP	\$2,900	\$0.86						
BYRON	BNSF	\$2,250	\$0.67	\$2,050	\$0.61	\$1,950	\$0.58	\$1,850	\$0.55
CAMBRIDGE	BNSF	\$2,525	\$0.75	\$2,325	\$0.69	\$2,225	\$0.66	\$2,125	\$0.63
CARLETON	UP	\$2,330	\$0.69	\$2,000	\$0.59	\$1,930	\$0.57		
CHAPPELL	UP	\$2,900	\$0.86	\$2,570	\$0.76	\$2,500	\$0.74		
CHESTER	BNSF	\$2,250	\$0.67	\$2,050	\$0.61	\$1,950	\$0.58	\$1,850	\$0.55
COZAD	UP	\$2,635	\$0.78	\$2,305	\$0.68	\$2,235	\$0.66		
CRAWFORD	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74
CRETE	BNSF	\$2,285	\$0.68	\$2,085	\$0.62	\$1,985	\$0.59	\$1,885	\$0.56
CRETE	UP	\$2,285	\$0.68						
CULBERTSON	BNSF	\$2,650	\$0.79	\$2,450	\$0.73	\$2,350	\$0.70	\$2,250	\$0.67
DANBURY	BNSF	\$2,575	\$0.77	\$2,375	\$0.71	\$2,275	\$0.68	\$2,175	\$0.65

Exhibit TCW – 3:

GURLEY	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74
HAIGLER	BNSF	\$2,675	\$0.79	\$2,475	\$0.74	\$2,375	\$0.71	\$2,275	\$0.68
HAMLET	BNSF	\$2,750	\$0.82	\$2,550	\$0.76	\$2,450	\$0.73	\$2,350	\$0.70
HARDY	BNSF	\$2,250	\$0.67	\$2,050	\$0.61	\$1,950	\$0.58	\$1,850	\$0.55
HASTINGS	BNSF	\$2,410	\$0.72	\$2,210	\$0.66	\$2,110	\$0.63	\$2,010	\$0.60
HASTINGS	UP	\$2,410	\$0.72	\$2,080	\$0.62				
HEARTWELL	BNSF	\$2,425	\$0.72	\$2,225	\$0.66	\$2,125	\$0.63	\$2,025	\$0.60
HEMINGFORD	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74
HENDLEY	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
HERSHEY	UP	\$2,795	\$0.83						
HOLBROOK	BNSF	\$2,500	\$0.74	\$2,300	\$0.68	\$2,200	\$0.65	\$2,100	\$0.62
HOLDREGE	BNSF	\$2,450	\$0.73	\$2,250	\$0.67	\$2,150	\$0.64	\$2,050	\$0.61
HUBBELL	BNSF	\$2,225	\$0.66	\$2,025	\$0.60	\$1,925	\$0.57	\$1,825	\$0.54
HUNTSMAN *	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74
IMPERIAL	BNSF	\$2,825	\$0.84	\$2,625	\$0.78	\$2,525	\$0.75	\$2,425	\$0.72
JANSEN	UP	\$2,285	\$0.68	\$1,955	\$0.58				
JEFFERS	UP	\$2,400	\$0.71	\$2,070	\$0.61	\$2,000	\$0.59		
KEARNEY	UP	\$2,585	\$0.77	\$2,255	\$0.67	\$2,185	\$0.65		
KIMBALL	UP	\$2,900	\$0.86	\$2,570	\$0.76	\$2,500	\$0.74		
LEBANON	BNSF	\$2,575	\$0.77	\$2,375	\$0.71	\$2,275	\$0.68	\$2,175	\$0.65
LEXINGTON	UP	\$2,635	\$0.78	\$2,305	\$0.68	\$2,235	\$0.66		
LINCOLN	BNSF	\$2,285	\$0.68	\$2,085	\$0.62	\$1,985	\$0.59	\$1,885	\$0.56
LINCOLN	UP	\$2,385	\$0.71	\$2,055	\$0.61	\$1,985	\$0.59		

Exhibit TCW – 3:

WALLACE	BNSF	\$2,900	\$0.86	\$2,700	\$0.80	\$2,600	\$0.77	\$2,500	\$0.74
WAUNETA	BNSF	\$2,775	\$0.82	\$2,575	\$0.77	\$2,475	\$0.74	\$2,375	\$0.71
WILSONVILLE	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64
SIDNEY	UP	\$2,900	\$0.86	\$2,570	\$0.76	\$2,500	\$0.74		
SIDNEY	UP	\$2,900	\$0.86	\$2,570	\$0.76	\$2,500	\$0.74		
SIDNEY	UP	\$2,900	\$0.86	\$2,570	\$0.76	\$2,500	\$0.74		
WILSONVILLE	BNSF	\$2,550	\$0.76	\$2,350	\$0.70	\$2,250	\$0.67	\$2,150	\$0.64

ALL RATES APPLY IN C6 CARS ONLY

BNSF Rates from BNSF-4022-J Book: 4 Section: F Revision: 20 Item: 46540 Eff: 04/19/2001

UP Rates from UP-4052 Item: 2160.00 G Eff: 12/16/2000

UP Rates from UP-4052 Item: 2170.00 F Eff: 12/16/2000

* Rate includes maximum of \$120 per car switch absorption at origin

** Rate includes maximum of \$75 per car switch absorption at origin

WHEAT RATES FROM NEBRASKA TO GULF PORTS -2014

\$/BU estimates based on average loading of 3,400 for C6 cars and 3,666 for C6X cars (shuttles where applicable)

NEBRASKA	RAIL	BNSF	1-23 CARS (C6)	24-48 CARS (C6)	110-120 CARS (C6X)
	MILEAGE	UP	1-68 CARS (C6)	69-91 CARS (C6X)	92-104 CARS (C6X)
		RR	\$/CAR	\$/BU	\$/CAR
					105 CARS (C6X)
					\$/CAR
					\$/BU
					\$/BU

Exhibit TCW – 3:

FREMONT	1008	UP	\$4,738	\$1.39	\$4,218	\$1.15	\$4,082	\$1.11	\$3,995	\$1.09
GIBBON	1005	UP	\$4,872	\$1.43	\$4,364	\$1.19	\$4,228	\$1.15	\$4,141	\$1.13
GOTHENBURG	1087	UP	\$5,113	\$1.50	\$4,626	\$1.26	\$4,490	\$1.22	\$4,403	\$1.20
GRAINTON	1294	BNSF-D	\$5,133	\$1.51	\$5,083	\$1.50				
GRANT	1237	BNSF-D	\$5,141	\$1.51	\$5,540	\$1.63				
GUIDE ROCK	862	BNSF-D	\$4,665	\$1.37	\$4,615	\$1.36				
GURLEY	1204	BNSF-D	\$5,325	\$1.57	\$5,275	\$1.55	\$4,512	\$1.23		
HAIGLER	1063	BNSF-D	\$5,127	\$1.51	\$5,077	\$1.49				
HAMLET	1028	BNSF-D	\$5,131	\$1.51	\$5,081	\$1.49				
HASTINGS	1121	BNSF-D	\$4,838	\$1.42	\$4,788	\$1.41	\$3,981	\$1.09		
HASTINGS	987	UP	\$4,872	\$1.43	\$4,364	\$1.19	\$4,228	\$1.15	\$4,141	\$1.13
HEMINGFORD	1286	BNSF-D	\$5,433	\$1.60	\$5,383	\$1.58	\$4,628	\$1.26		
HENDLEY	953	BNSF-D	\$5,039	\$1.48	\$4,989	\$1.47				
HERSHEY	1135	UP	\$5,284	\$1.55						
HOLDREGE	955	BNSF-D	\$4,895	\$1.44	\$4,845	\$1.43				
HUNTSMAN	1197	BNSF-D	\$5,323	\$1.57	\$5,273	\$1.55	\$4,509	\$1.23		
IMPERIAL	1052	BNSF-D	\$5,139	\$1.51	\$5,089	\$1.50				
JANSEN	908	UP	\$4,738	\$1.39	\$4,218	\$1.15				
KEARNEY	1027	UP	\$5,059	\$1.49	\$4,567	\$1.25	\$4,431	\$1.21	\$4,344	\$1.18
KIMBALL	1282	UP	\$5,397	\$1.59	\$4,935	\$1.35	\$4,799	\$1.31	\$4,712	\$1.29
LEBANON	1250	BNSF-D	\$6,044	\$1.48	\$4,994	\$1.47				
LEXINGTON	1062	UP	\$5,113	\$1.50	\$4,626	\$1.26	\$4,490	\$1.22	\$4,403	\$1.20
LINCOLN	1023	BNSF-D	\$4,944	\$1.45	\$4,894	\$1.44	\$4,095	\$1.12		

Exhibit TCW – 3:

LINCOLN	1052	UP	\$4,738	\$1.39	\$4,218	\$1.15	\$4,082	\$1.11	\$3,995	\$1.09
LODGEPOLE	1228	UP	\$5,397	\$1.59						
LOOMIS	963	BNSF-D	\$4,923	\$1.45	\$4,873	\$1.43	\$4,072	\$1.11		
LYMAN	1307	UP	\$5,397	\$1.59	\$4,536	\$1.24	\$4,411	\$1.20	\$4,331	\$1.18
MADRID	1308	BNSF-D	\$5,138	\$1.51	\$5,088	\$1.50				
MAX	1033	BNSF-D	\$5,118	\$1.51	\$5,068	\$1.49				
MAYWOOD	1253	BNSF-D	\$5,105	\$1.50	\$5,055	\$1.49				
MCCOOK	991	BNSF-D	\$5,070	\$1.49	\$5,020	\$1.48				
MEAD	994	UP	\$4,738	\$1.39						
MINDEN	937	BNSF-D	\$4,863	\$1.43	\$4,813	\$1.42				
MOTALA	1155	BNSF-D	\$4,890	\$1.44	\$4,840	\$1.42	\$4,035	\$1.10		
NORTH PLATTE	1125	UP	\$5,209	\$1.53	\$4,731	\$1.29	\$4,595	\$1.25	\$4,508	\$1.23
O NEILL	1248	BNSF-D	\$5,022	\$1.48	\$4,972	\$1.46	\$4,180	\$1.14		
OMAHA	1009	BNSF-D	\$4,748	\$1.40	\$4,698	\$1.38				
OMAHA	976	UP	\$4,738	\$1.39	\$4,218	\$1.15	\$4,082	\$1.11	\$3,995	\$1.09
ORLEANS	924	BNSF-D	\$4,830	\$1.42	\$4,780	\$1.41				
PALISADE	1021	BNSF-D	\$5,129	\$1.51	\$5,079	\$1.49				
PAXTON	1154	UP	\$5,284	\$1.55						
PERRY	996	BNSF-D	\$5,096	\$1.50	\$5,046	\$1.48				
PLYMOUTH	927	UP	\$4,738	\$1.39	\$3,877	\$1.06	\$3,752	\$1.02	\$3,672	\$1.00
POTTER	1263	UP	\$5,397	\$1.59						
RAVENNA	983	BNSF-D	\$5,003	\$1.47	\$4,953	\$1.46				
RED CLOUD	1160	BNSF-D	\$4,768	\$1.40	\$4,718	\$1.39	\$3,903	\$1.06		

Exhibit TCW – 3:

REPUBLICAN	910	BNSF-D	\$4,784	\$1.41	\$4,734	\$1.39			
ROSELAND	1135	BNSF-D	\$4,803	\$1.41	\$4,753	\$1.40	\$3,941	\$1.08	
SCHAFFER	1055	UP	\$4,738	\$1.39					
SCHUYLER	1024	UP	\$4,738	\$1.39					
SEDAN	954	UP	\$4,872	\$1.43	\$4,364	\$1.19	\$4,228	\$1.15	\$4,141
SHELTON	1010	UP	\$4,872	\$1.43	\$4,364	\$1.19	\$4,228	\$1.15	\$4,141
SIDNEY	1246	UP	\$5,397	\$1.59	\$4,935	\$1.35	\$4,799	\$1.31	\$4,712
STRATTON	1023	BNSF-D	\$5,115	\$1.50	\$5,065	\$1.49			
SUPERIOR	847	BNSF-D	\$4,660	\$1.37	\$4,610	\$1.36	\$3,787	\$1.03	
SUPERIOR	842	UP	\$4,700	\$1.38	\$4,177	\$1.14	\$4,041	\$1.10	\$3,954
SUTHERLAND	1142	UP	\$5,284	\$1.55					
TAMORA	1059	BNSF-D	\$4,776	\$1.40	\$4,726	\$1.39	\$3,912	\$1.07	
TRENTON	1011	BNSF-D	\$5,111	\$1.50	\$5,061	\$1.49			
VENANGO	1219	BNSF-D	\$5,146	\$1.51	\$5,096	\$1.50	\$4,315	\$1.18	
WALLACE	1288	BNSF-D	\$5,281	\$1.55	\$5,231	\$1.54			
WAUNETA	1036	BNSF-D	\$5,134	\$1.51	\$5,084	\$1.50			
WEST ALLIANCE	1209	BNSF-D	\$5,629	\$1.66	\$5,579	\$1.64	\$4,628	\$1.26	

ALL RATES APPLY IN C6 CARS AND C6X CARS (shuttles where applicable)
 BNSF Rates from BNSF-4022-M Book: 4 Section: 6 Revision: 15 Item: 46107 Eff: 05/08/14 (1-23/24-47)
 BNSF Rates from BNSF-4022-M Book: 4 Section: 6 Revision: 21 Item: 46307 Eff: 05/08/14 (shuttle)
 Price is subject to a fuel surcharge per item 3375 series of BNSF rules book 6100
 UP Rates from UP-4052-A Item: 7101-BL Eff: 6-1-14

Exhibit TCW – 3:

Additional Fuel Surcharges apply. All rates are subject to UP 6007, Item 690

WHEAT RATES FROM MONTANA TO PNW PORTS-2006

\$/BU estimates based on average loading of 3,366 bushels/car

	RAIL MILES	BNSF		1-25 CARS		26-51 CARS		52-110 CARS		110-120 CARS	
		UP	RR	1-22 CARS \$/CAR	1-22 CARS \$/BU	23-91 CARS \$/CAR	23-91 CARS \$/BU	52-110 CARS \$/CAR	52-110 CARS \$/BU	110-120 CARS \$/CAR	110-120 CARS \$/BU
MONTANA											
BAINVILLE*											
BAKER	1266	BNSF-D		\$3,973	\$1.18	\$3,923	\$1.17	\$3,573	\$1.06		
BELGRADE	867	MRL		\$2,817	\$0.84	\$2,767	\$0.82	\$2,417	\$0.72		
BIG SANDY	911	BNSF-D		\$3,396	\$1.01	\$3,346	\$0.99	\$2,996	\$0.89		
BIG TIMBER	935	MRL		\$2,889	\$0.86	\$2,839	\$0.99	\$2,489	\$0.74		
BILLINGS	1017	MRL		\$3,228	\$0.96	\$3,178	\$0.94	\$2,828	\$0.84	\$2,628	\$0.78
BOX ELDER*											
BOZEMAN	876	MRL		\$2,827	\$0.84	\$2,777	\$0.83				
BRADY*											
BROADVIEW*											
BROCKTON*											
CARTER	902	BNSF-D		\$3,227	\$0.96	\$3,177	\$0.94	\$2,827	\$0.84		
CHESTER*											

Exhibit TCW – 3:

GLENDIVE	1242	BNSF-D	\$3,927	\$1.17	\$3,877	\$1.15	\$3,527	\$1.05	\$3,327	\$0.99
GREAT FALLS	873	BNSF-D	\$3,181	\$0.95	\$3,131	\$0.93	\$2,781	\$0.83	\$2,581	\$0.77
GROVE	969	BNSF-D	\$3,271	\$0.97	\$3,221	\$0.96	\$2,871	\$0.85	\$2,671	\$0.79
HAMILTON*										
HARDIN	1073	BNSF-D	\$3,368	\$1.00	\$3,318	\$0.99	\$2,968	\$0.88		
HARLEM	928	BNSF-D	\$3,484	\$1.04	\$3,434	\$1.02	\$3,084	\$0.92	\$2,884	\$0.86
HARRISON	881	MRL	\$2,771	\$0.82	\$2,721	\$0.81	\$2,371	\$0.70		
HAVRE	884	BNSF-D	\$3,396	\$1.01	\$3,346	\$0.99	\$2,996	\$0.89	\$2,796	\$0.83
HELENA*										
HINGHAM*										
HINSDALE*										
HUNTLEY*										
ISMAY*										
JOPLIN	833	BNSF-D	\$3,290	\$0.98	\$3,240	\$0.96	\$2,890	\$0.86		
KALISPELL	650	BNSF-D	\$2,139	\$0.64	\$2,089	\$0.62	\$1,739	\$0.52		
KERSHAW	912	BNSF-D	\$3,271	\$0.97	\$3,221	\$0.96	\$2,871	\$0.85		
KREMLIN*										
LAUREL	1002	MRL	\$3,124	\$0.93	\$3,074	\$0.91	\$2,724	\$0.81		
LEDGER*										
LEWISTOWN*										
LINDSAY*										
LIVINGSTON*										
LOGAN*										

Exhibit TCW – 3:

LOUISVILLE	789	MRL	\$2,782	\$0.83	\$2,732	\$0.81	\$2,382	\$0.71	
LUDINGTON	1185	BNSF-D	\$4,090	\$1.22	\$4,040	\$1.20	\$3,690	\$1.10	
MACON	1094	BNSF-D	\$3,998	\$1.19	\$3,948	\$1.17	\$3,598	\$1.07	\$3,398
MALTA*									\$1.01
MANHATTAN	857	MRL	\$2,808	\$0.83	\$2,758	\$0.82	\$2,408	\$0.72	
MEDICINE LAKE	1188	BNSF-D	\$4,114	\$1.22	\$4,064	\$1.21	\$3,714	\$1.10	
MERC	1208	BNSF-D	\$4,114	\$1.22	\$4,064	\$1.21	\$3,714	\$1.10	
MERIWETHER	735	BNSF-D	\$3,037	\$0.90	\$2,987	\$0.89	\$2,637	\$0.78	
MILES CITY	1164	BNSF-D	\$3,720	\$1.11	\$3,670	\$1.09	\$3,320	\$0.99	
MISSOULA*									
MOCCASIN	1140	BNSF-D	\$3,271	\$0.97	\$3,221	\$0.96	\$2,871	\$0.85	
MOCCASIN	1140	CMR	\$3,271	\$0.97	\$3,221	\$0.96	\$2,871	\$0.85	
MOORE	1134	BNSF-D	\$3,271	\$0.97	\$3,221	\$0.96	\$2,904	\$0.86	
NASHUA*									
PABLO*									
PARADISE	566	BNSF-D	\$2,416	\$0.72	\$2,366	\$0.70			
PLAINS	555	MRL	\$2,416	\$0.72	\$2,366	\$0.70	\$2,016	\$0.60	
PLENTYWOOD *									
POLSON	621	BNSF-D	\$2,416	\$0.72	\$2,366	\$0.70	\$2,016	\$0.60	
POMPEYS PILLAR	1048	BNSF-D	\$3,253	\$0.97	\$3,203	\$0.95	\$2,853	\$0.85	\$2,653
POPLAR	1109	BNSF-D	\$4,026	\$1.20	\$3,976	\$1.18	\$3,626	\$1.08	
POWER*									
REDSTONE*									

Exhibit TCW – 3:

CMR = Central Montana Railroad - Takes Moccasin, MT Rate Base and BNSF Direct Fuel Surcharges

MRL = Montana Rail Link, Inc. subject to BNSF Direct Fuel Surcharges

Price is subject to a fuel surcharge per item 3375 series of BNSF rules book 6100

UP Rates from UP-4052-A Item: 6011-D Eff: 08/01/05

Additional Fuel Surcharges may apply. All rates are subject to UP 6007, Item 690

****Railroad variable costs utilize FRN, LLC's *USRail.desktop*

* Indicates an Origin Point that has been eliminated from the tariff

Exhibit TCW - 3:

June 2014 Fuel Surcharge BNSF \$37 Cents per mile
 June 2014 Fuel Surcharge UP \$38 Cents per mile
 Based on 3400 Bushels per car average for 288000 pound cars and 1666 bushels per car for 288000 pound cars BNSF MT average loadings 2007

Export Wheat rates June 2014 with fuel surcharges to PNW
 STANDARD SIZE (288000 pound) on Single, 24 Car and 48 Car Movements and HEAVY AXLE (288000 pound) on 110-120 Cw Movements

UP BNSF	Miles***	Fuel PST CAR	110-120 CAR**			48-48 CAR			24 CAR			132 CAR			SRU		
			SCAR	SEU	WTRU	SCAR	SEU	WTRU	SCAR	SEU	WTRU	SCAR	SEU	WTRU	SCAR	SEU	WTRU
BRANWELL*	1517	\$ 480.29				\$4,842	\$1.42	\$5,292.29	\$1.56	\$5,091.29	\$1.87	\$5,291	\$1.06	\$5,741.29	\$1.89		
BAKER	817	\$ 392.29				\$4,040	\$1.19	\$4,342.29	\$1.28	\$4,342.29	\$1.28	\$4,080	\$1.20	\$4,392.29	\$1.29		
BIG GRUDE	843	\$ 319.21				\$4,234	\$1.26	\$4,553.31	\$1.34	\$4,952.31	\$1.46	\$4,083	\$1.38	\$4,902.31	\$1.47		
BIG SANDY	888	\$ 327.82				\$4,133	\$1.22	\$4,460.82	\$1.31	\$4,183	\$1.23	\$4,183	\$1.23	\$4,810.82	\$1.33		
BIG TIMBER	968	\$ 368.16				\$4,498	\$1.32	\$4,886.16	\$1.43	\$4,546	\$1.34	\$4,546	\$1.34	\$4,906.16	\$1.44		
BELLEVUE																	
BOY ELDER*	827	\$ 309.89				\$4,053	\$1.18	\$4,355.99	\$1.28	\$4,103	\$1.21	\$4,103	\$1.21	\$4,408.99	\$1.30		
BUDMAN*																	
BUCKHORN*																	
BURTON*	854	\$ 318.99				\$4,052	\$1.18	\$4,377.98	\$1.29	\$4,461	\$1.31	\$4,461	\$1.31	\$4,826.98	\$1.42		
CHARLO	660	\$ 203.00				\$3,566	\$1.06	\$3,784.50	\$1.11	\$3,866	\$1.08	\$3,866	\$1.08	\$3,968.50	\$1.12		
CHESTER	773	\$ 286.01				\$3,986	\$1.17	\$4,274.01	\$1.26	\$4,386	\$1.29	\$4,386	\$1.30	\$4,722.01	\$1.39		
CHROOK*																	
CHUTEAU*	832	\$ 307.84				\$4,010	\$1.18	\$4,317.84	\$1.27	\$4,408	\$1.30	\$4,408	\$1.31	\$4,765.84	\$1.40		
CIRCLE*																	
CLARKSTON	789	\$ 293.93				\$3,986	\$1.18	\$4,337.93	\$1.28	\$4,046	\$1.18	\$4,046	\$1.18	\$4,337.93	\$1.28		
COLLINS	784	\$ 290.08				\$3,983	\$1.18	\$4,333.08	\$1.28	\$4,443	\$1.31	\$4,443	\$1.31	\$4,733.08	\$1.39		
COLUMBUS	826	\$ 343.22				\$4,303	\$1.27	\$4,646.82	\$1.37	\$4,353	\$1.28	\$4,353	\$1.28	\$4,696.82	\$1.38		
CONRAD	761	\$ 293.87				\$4,200	\$1.26	\$4,597.87	\$1.37	\$4,307	\$1.26	\$4,307	\$1.26	\$4,717.87	\$1.39		
CORNER	1094	\$ 401.08				\$5,257	\$1.66	\$5,658.08	\$1.66	\$5,307	\$1.66	\$5,307	\$1.66	\$5,708.08	\$1.68		
CULBERTSON	766	\$ 260.35				\$4,200	\$1.26	\$4,526.85	\$1.33	\$4,310	\$1.27	\$4,310	\$1.27	\$4,676.85	\$1.35		
CUT BANK	912	\$ 337.44				\$4,484	\$1.32	\$4,831.44	\$1.42	\$4,544	\$1.34	\$4,544	\$1.34	\$4,881.44	\$1.44		
DUMFRIES	912	\$ 337.44				\$4,484	\$1.32	\$4,831.44	\$1.42	\$4,544	\$1.34	\$4,544	\$1.34	\$4,881.44	\$1.44		
DUTTON	749	\$ 277.13				\$4,470	\$1.31	\$4,897.13	\$1.38	\$4,470	\$1.31	\$4,470	\$1.31	\$4,747.13	\$1.40		
DEYON																	
DEWAM	811	\$ 294.18				\$4,311	\$1.29	\$4,721.18	\$1.39	\$4,311	\$1.29	\$4,311	\$1.29	\$4,721.18	\$1.39		
DEWAM*																	
DUTTON	791	\$ 292.87				\$3,987	\$1.18	\$4,359.87	\$1.26	\$4,365	\$1.28	\$4,365	\$1.31	\$4,737.87	\$1.39		
EAST BRIDGER*																	
FARFIELD*																	
FAYVER*																	
FALLON*																	
FROBER*																	
FROBERG*																	
FT BERTON	870	\$ 321.90				\$4,111	\$1.21	\$4,432.90	\$1.30	\$4,510	\$1.23	\$4,510	\$1.23	\$4,831.90	\$1.44		
FRALDRE	912	\$ 337.44				\$4,087	\$1.21	\$4,434.44	\$1.30	\$4,084	\$1.22	\$4,084	\$1.22	\$4,881.44	\$1.44		
GEYER*																	
GILFORD	606	\$ 298.22				\$4,025	\$1.16	\$4,325.22	\$1.27	\$4,424	\$1.30	\$4,424	\$1.32	\$4,772.22	\$1.40		
GLADWIN	860	\$ 343.60				\$4,817	\$1.33	\$4,976.60	\$1.44	\$4,915	\$1.48	\$4,915	\$1.48	\$5,337.60	\$1.57		
GLADWIN*	1190	\$ 440.30				\$4,702	\$1.41	\$5,232.30	\$1.54	\$5,241	\$1.53	\$5,241	\$1.54	\$5,681.30	\$1.67		
GLADWIN*	826	\$ 303.25				\$4,097	\$1.18	\$4,512.25	\$1.27	\$4,400	\$1.28	\$4,400	\$1.31	\$4,761.25	\$1.40		
GREAT FALLS	914	\$ 358.18				\$4,087	\$1.21	\$4,435.18	\$1.30	\$4,484	\$1.32	\$4,484	\$1.34	\$4,882.18	\$1.44		
GRONE																	
HAMILTON*																	
HARDEN	1025	\$ 379.25				\$4,257	\$1.25	\$4,636.25	\$1.36	\$4,665	\$1.27	\$4,665	\$1.28	\$5,066.25	\$1.50		
HARLEM	870	\$ 321.90				\$4,194	\$1.23	\$4,516.90	\$1.33	\$4,565	\$1.28	\$4,565	\$1.31	\$4,964.90	\$1.65		
HARRISON	832	\$ 307.84				\$3,996	\$1.18	\$4,306.84	\$1.27	\$4,084	\$1.19	\$4,084	\$1.19	\$4,386.84	\$1.28		
HAYNE	826	\$ 309.32				\$4,095	\$1.28	\$4,404.32	\$1.30	\$4,084	\$1.22	\$4,084	\$1.24	\$4,863.32	\$1.43		
HELENA*																	
HIGHAM*																	
HIGHLAND*																	

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 665 (SUB-NO. 1)

RAIL TRANSPORTATION OF GRAIN, RATE REGULATION REVIEW

**OPENING VERIFIED STATEMENT
OF
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. A statement describing my background, experience and qualifications is attached hereto as Appendix GWF-1.

As indicated therein, I have been working on railroad rate reasonableness issues and regulatory proceedings for over 35 years. I submitted expert testimony in many of the first coal and non-coal railroad rate reasonableness rulemakings and formal complaint proceeding before the Interstate Commerce Commission (ICC) and Surface Transportation Board (STB or Board). I also worked on these issues and proceedings while serving for over 3 years as a staff advisor for a STB Board member. I am also very familiar with the railroad transportation characteristics and markets associated with the movement of grain and grain products. I have performed numerous studies concerning railroad grain movements and rate levels. I worked on these issues at the Board and served as the Designated Federal Official (DFO) to the National Grain Car Council (NGCC), which was founded by the ICC in 1994 and made up of railroad, grain industry and grain car representatives.

PUBLIC VERSION

I have been asked by the National Corn Growers Association (NCGA), Alliance for Rail Competition (ARC), Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Grain Producers Association, Idaho Wheat Commission, Minnesota Corn Growers Association, Minnesota Farmers Union, Montana Farmers Union, Montana Wheat & Barley Committee, Nebraska Wheat Board, North Dakota Corn Growers Association, North Dakota Farmers Union, Oklahoma Wheat Commission, Oregon Wheat Commission, South Dakota Corn Growers Association, South Dakota Farmers Union, South Dakota Wheat Commission, Texas Wheat Producer Board, Washington Grain Commission, Wisconsin Farmers Union, Wyoming Wheat Marketing Commission and U.S. Dry Pea & Lentil Council to submit these comments.

This proceeding concerns “what regulatory changes could be implemented to ensure that the Board’s rate case procedures are fully accessible to grain shippers and provide effective relief from excessive freight rail rates, as appropriate.”¹ The Board instituted this proceeding to seek “input from interested parties on grain shippers’ ability to effectively seek relief for unreasonable rates, including proposals for modifying existing procedures, or new alternative rate relief methodologies, should they be necessary.”²

The Board did not specifically identify the STCC codes that would be included under the term “grain.” Under the published STCC codes, grains are included under the STCC 01-13, which includes:

¹ STB Docket No. 665 (Sub-No.1), Rail Transportation of Grain, Rate Regulation Review, served December 12, 2013, page 2.

² *Ibid.*

PUBLIC VERSION

STCC 01-13 Commodities

- Barley (STCC 01-131);
- Corn (STCC 01-132);
- Oats (STCC 01-133)
- Rye (STCC 01-135);
- Sorghum Grains (STCC 01-136);
- Wheat (STCC 01-137); and
- Grains, NEC (STCC 01-139)

In addition to these STCC 01-13 commodities, most studies of grain and most railroad grain transportation documents include soybeans (STCC 01-144) and other farm products, such as flaxseed (STCC 01-142), under the “grain” category. Although the Board did not define the term grain, the STB subsequently granted parties access to certain grain and grain products records included in the Confidential Waybill Sample.

The STB approved a list of grain and grain products based on the STCC codes included in the Rail Arbitration Rules, which were adopted by an agreement between the Association of American Railroads (AAR) and the National Grain and Feed Association (NGFA).³ This list includes many commodities which would be considered grain products, such as wheat flour (STCC 20-411), corn syrup (STCC 20-461), soybean meal (STCC 20-923) and ethanol (STCC 28-184). The Board should not limit this proceeding to the STCC 01-13 commodities such as corn, wheat and barley. Railroad rates on grain products are also important to farmers and grain shippers.

³ A list of the commodities and STCC codes included in this AAR/NGFA agreement is attached hereto as Appendix GWF-2.

Inability of Most Grain and Grain Products Shippers To Seek STB Railroad Rate Relief

The principal grain commodities potentially subject to STB jurisdiction in terms of volume are: corn (21.57 million tons); wheat (20.80 million tons); soybeans (11.50 million tons) and alcohols (ethanol) (14.62 million tons). Although these annual volumes are significant, they represent only a small percentage of the total railroad transportation market for grains and grain products.⁴ The following table (Table 1) compares the STB jurisdictional traffic (R/VC>180) with the total rail traffic for the top four (4) grains and grain products:⁵

Table 1
2012 Top 4 Grain and Grain Products
Movements with R/VC>180

Commodity	STCC	R/VC>180 Tons	Total Tons	Percent R/VC>180
Corn	01-132	21,569,446	68,989,586	31%
Wheat	01-137	20,802,615	40,349,257	52%
Soybeans	01-144	11,503,430	27,811,657	41%
<u>Barley</u>	01-131	<u>1,240,272</u>	<u>2,979,672</u>	<u>42%</u>
Top 4 Grains		55,115,763	140,130,172	39%
Alcohols (Ethanol)	28-184	14,622,354	37,434,855	39%
Soybean Meal	20-923	3,847,445	20,691,466	19%
Corn Syrup	20-461	3,328,565	13,637,626	24%
<u>By-Products of Liquor Dist.</u>	20-859	<u>2,724,713</u>	<u>7,737,560</u>	<u>35%</u>
Top 4 Grain Products		24,523,077	79,501,507	31%

⁴ Based on STB's 2012 Expanded Stratification Report (ESR). The STB's 2012 ESR includes redactions of some information. For example, the R/VC>180 data for railroad rye (STCC 01-135) movements has been redacted. Therefore, Tables 1 and 2 may understate the amount of grain and grain products potentially subject to STB jurisdiction.

⁵ Based on the STB's 2012 ESR and 2012 Public Waybill Sample.

PUBLIC VERSION

Grain shippers' ability to "effectively seek STB relief for unreasonable rates" is severely hampered by the fact that most grain (61% of the top 4 grains – corn, wheat, soybeans and barley) and grain products (69% of the top 4 grain products – ethanol, soybean meal, corn syrup, and liquor by-products) cannot get in the STB's door, i.e., most grain and grain products movements have revenue-to-variable cost (R/VC) ratios falling below 180%.

This fact has much more to do with the STB's Uniform Railroad Costing System (URCS) costing methodologies and procedures than the reasonableness of railroad freight rates. The STB is currently considering certain changes to URCS in STB Docket No. EP 431 (Sub-No. 4), Review of the General Purpose Costing System. These URCS-related factors, such as the application of the STB's so-called "*make-whole adjustments*," were described in my testimony therein. If and/or when these URCS changes are adopted by the Board, the amount of jurisdictional grain and grain products traffic will undoubtedly change. In which direction, will depend on the changes and the characteristics of the traffic.

Many grain and grain products shippers were also hurt by the STB's adoption of an "*unadjusted URCS jurisdictional costing*" approach in 2007 under which movement-specific cost adjustments were no longer allowed.⁶ Many grain and grain products move in efficient shuttle trains and larger-than-average trainloads. Many represent some of the most-efficient and least-costly movements for the railroads. However, these economies cannot be reflected by making adjustments to the URCS system-average costs, which are no longer allowed.

⁶ See STB EP No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, served September 5, 2007.

PUBLIC VERSION

Despite the fact that most grain and grain products shippers are disadvantaged by the STB's URCS make-whole adjustments and the unadjusted URCS jurisdictional costing approach (which drives many R/VC ratios below 180% and beyond STB jurisdiction), there are many railroad grain movements with very high R/VC ratios, which could possibly benefit from new simplified and expedited railroad rate reasonableness procedures.

In order to demonstrate this point, in Appendices GWF-3 and GWF-4, I have listed all railroad corn and wheat movements included in the 2012 Confidential Waybill Sample with R/VC ratios equal to or greater than 300%. I have sorted these R/VC \geq 300% records by origin and destination states in order to give Board an idea of the problem areas. These R/VC \geq 300% records are summarized in the following table:

Table 2
Summary of 2012 Corn and Wheat
Railroad Movements With R/VC>300%

Item	Corn	Wheat
2012 Carloads		
2012 Tons		
2012 Revenue		
2012 Average R/VC		

As can be seen, over carloads and nearly million tons of corn and wheat moved at high R/VC ratios.

PUBLIC VERSION

In addition to these URCS costing issues, which shut the STB's door for many grain and grain products shippers, grain producers and farmers (who are also economically impacted by high rail rates) may not be considered as the "shipper" and thus may not know whether they access to the STB's rate procedures. This problem was recently described by the U.S. Department of Agriculture (USDA):⁷

Transportation costs have a direct impact on agricultural producers' profits. Agricultural producers in remote areas have few transportation alternatives, and the price they receive for their products is net of transportation and other marketing and handling costs. . . .

Agricultural shippers believe the formal procedures for challenging unreasonable rail freight rates available through the Surface Transportation Board (STB) are too lengthy and expensive, with the risk not being worth the reward, effectively preventing them from accessing meaningful rate relief. Also, although affected by rail rates, agricultural producers do not have access to STB rate-challenge procedures because they typically do not ship their products to the ultimate consumer, but rather sell them to agribusinesses that arrange for transportation to the final customer.

Need For Grain Cost Adjustment Factors (GCAF)

In order to account for the problems and issues associated with the URCS costing procedures and the Board's unadjusted URCS approach, I propose that the Board develop and adopt Grain Cost Adjustment Factors (GCAF), which would be applied to the STB's URCS Phase III Costing program for railroad movements of grain and grain products and which would more accurately reflect the fact that these movements generally have lower than system average switching, crew, locomotive, car and other costs. If properly developed and applied, such GCAF adjustments would increase the amount of grain and grain products traffic which would be potentially subject to STB rate jurisdiction.

⁷ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5106990>

PUBLIC VERSION

There are several factors which result in the significant understatement of the profitability associated with most railroad shipments of grain and grain products and result in low percentages of grain and grain products shippers who are subject to STB jurisdiction and its railroad rate reasonableness guidelines and rules. Some of these factors, such as the application of the STB's so-called "make-whole" adjustments, were described in my testimony in STB Docket No. EP 431 (Sub-No. 4). Hopefully, the STB will adopt changes to URCS which will more accurately reflect the numerous economies associated with the railroad transportation of grain and grain products. Only time will tell.

In the meantime, many grain and grain products shippers cannot seek rate relief from the Board, which effectively renders any possible changes to the Board's rate reasonableness guidelines in order to provide grain shippers with "effective relief from excessive freight rail rates" meaningless and inconsequential for such shippers. There are several distinct and unique transportation characteristics and factors associated with railroad movements of grain and grain products which would justify the development and adoption of GCAF adjustments for use in the application of the URCS Phase III costing methodology.

A substantial amount of grain and grain products move in efficient shuttle trains or large trainloads, which generally have lower than system average switching, car, crew, locomotive and other costs. The following table (Table 2) shows the 2012 rail tonnages for corn, wheat, soybeans and ethanol based on the shipment size:⁸

⁸ Based on the 2012 Public Waybill Sample.

Table 3

2012 Corn, Wheat, Soybean and Ethanol Tons By Shipment Size

Item	Corn		Wheat		Soybeans		Ethanol	
	Tons (000)	%	Tons (000)	%	Tons (000)	%	Tons (000)	%
TOFC/COFC (1 Car)	269	0.39%	32	0.08%	386	1.39%	92	0.25%
Single (1) Car	2,804	4.07%	2,691	6.67%	607	2.18%	12,268	32.77%
<u>2 to 5 Cars</u>	<u>3,084</u>	<u>4.47%</u>	<u>3,083</u>	<u>7.64%</u>	<u>686</u>	<u>2.47%</u>	<u>2,595</u>	<u>6.93%</u>
Total Single Car	5,888	8.53%	5,774	14.31%	1,294	4.65%	14,863	39.70%
6 to 24 Cars	5,946	8.62%	8,728	21.63%	2,130	7.66%	3,260	8.71%
<u>25 to 49 Cars</u>	<u>8,574</u>	<u>12.43%</u>	<u>8,439</u>	<u>20.92%</u>	<u>2,692</u>	<u>9.68%</u>	<u>2,748</u>	<u>7.34%</u>
Total Multiple Car	14,520	21.05%	17,167	42.55%	4,822	17.34%	6,008	16.05%
50 to 74 Cars	8,769	12.71%	1,082	2.68%	4,769	17.15%	1,202	3.21%
75 to 99 Cars	13,324	19.31%	1,447	3.59%	3,132	11.26%	14,869	39.72%
<u>100 Plus Cars</u>	<u>26,219</u>	<u>38.00%</u>	<u>14,848</u>	<u>36.80%</u>	<u>13,409</u>	<u>48.21%</u>	<u>401</u>	<u>1.07%</u>
Total Trainload	48,312	70.03%	17,377	43.07%	21,310	76.62%	16,472	44.00%
Total - All Shipments	68,990	100.00%	40,349	100.00%	27,812	100.00%	37,435	100.00%

As can be seen, over 70% of corn, 43% of wheat, 77% of soybeans and 44% of ethanol tons moved in shipments of 50 or more cars, which are currently considered as trainloads by the STB.⁹ Moreover, most multiple-car grain shipments move in larger-than-average trainloads to the same destinations or destination areas, such as the Pacific Northwest (PNW) export grain terminals.

⁹ In Ex Parte No. 431 (Sub-No. 4), Review of the General Purpose Costing System, served February 4, 2013, the STB proposed to change the definition of a trainload from 50 to 80 cars per shipment

PUBLIC VERSION

BNSF, the largest grain hauler, has taken some unpopular actions to promote the use of efficient trainload shipments.¹⁰ Over the past decade, BNSF has been increasing the tariff rate spreads between trainload shipments and less-than-trainload shipments (raising less-than-trainload rates higher than trainload rates in rate adjustments – thereby increasing the spread) in an attempt to provide economic disincentive to ship in less-than-trainload quantities.

As previously indicated, in 2007, the STB adopted an unadjusted URCS jurisdictional costing approach under which movement-specific cost adjustments were no longer allowed.¹¹ Therefore, movement specific cost adjustments, which more accurately reflect the railroad's variable costs, are not allowed. Since URCS reflects a railroad's system average cost, movement-specific cost adjustments can work both ways – actual variable costs can be higher or lower than system average costs. In STB EP 646 (Sub-No.1), the railroads argued for upward cost adjustments for hazmat shipments. The Board rejected this argument stating:

“URCS costs are averages of costs for a carrier's entire traffic group. Accordingly, any higher costs associated with hazmat movements increase the average cost for the entire system. This means that to the extent the system-average costs understate the costs of hazmat movements, they overstate the costs for non-hazmat movements.”¹²

¹⁰ For example, BNSF recently instituted a “marriage rule” requiring all 48-55 car shippers of wheat to contact their competitors and identify another 48-55 car shipment going to the same location at the same to ‘marry’ up with their shipments. (see Testimony of Terry Whiteside in STB Docket EP 724, dated April 24, 2014), criticizing BNSF's program.

¹¹ See STB EP No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, served September 5, 2007.

¹² STB EP No. 646 (Sub-No. 1), page 58.

PUBLIC VERSION

This is especially the case for most non-hazmat grain and grain products railroad shipments.¹³ URCS may understate the cost of certain hazmat shipments, which may require special planning and handling and extra insurance costs, but URCS overstates the cost of most grain and grain products shipments.¹⁴ The STB disallowed movement-specific adjustments which could account for these cost overstatements. For example, in lieu of using URCS railroad car ownership cost, it would be relatively easy to develop the actual rail car ownership cost based the car age and value and a study of the car cycle time. The Board did, however, state that it would separately consider appropriate URCS adjustments:

The same reasoning applies with equal force here and, therefore, we will not allow these adjustments to URCS. As we noted in Major Issues, if a party believes that URCS could be improved, or better tailored to particular movements, it may request a separate rulemaking in which it offers its specific proposal, so that the proposal will be subjected to public comment and, if adopted, uniform application.¹⁵

The STB could develop GCAF adjustments which would be “*better tailored*” to grain and grain products movements. Specifically, the STB should consider developing GCAF adjustments based on 5-digit STCC codes and by railroad to account for lower than average switching costs, lower than average car costs, and higher than average train sizes associate with most grain and grain products movements.

¹³ Ethanol and some other grain products are considered hazardous materials.

¹⁴ Because of the high volumes and the use of unit trains, the variable cost for ethanol movements may be lower than most other hazardous materials moved by rail.

¹⁵ STB EP No. 646, Sub-No. 1, page 59

PUBLIC VERSION

The development of such adjustments may require additional information from the railroads. In 2009, the STB initiated a proceeding (STB Ex Parte No. 681, Class I Railroad Accounting and Financial Reporting – Transportation of Hazardous Materials) which sought comment on whether and how the Board should update its accounting and financial reporting for Class I rail carriers and refine URCS “to better capture the operating cost of transporting hazardous materials.” A similar STB proceeding should be initiated to “*better capture*” the lower operating cost of transporting grain and grain products.

There is a significant amount of publicly available data which could be used to develop such GCAF adjustments. For example, the Association of American Railroads (AAR) maintains railroad performance data such as cars on line, train speed and terminal dwell time. Relevant data already reported by the railroads to the STB, such as the Quarterly Commodity Statistics (QCS), could also be used to develop GCAF adjustments. The Confidential Waybill Sample data could also be used to develop such adjustments.

The STB also already has an available resource which could be used to help develop such GCAF adjustments – the National Grain Car Council (NGCA). The following is the STB’s description of the NGCC:

The National Grain Car Council was founded by the former Interstate Commerce Commission (ICC) in 1994, and is made up of a balanced representation of executives knowledgeable in the transportation of grain, including members from the Class I railroads (the Nation's largest) representing marketing and management; representatives from the Class II and Class III railroads; members representing grain shippers and receivers; and members representing private rail car owners and rail car manufacturers. The purpose of the Council is to convene meetings at least once a year that allow the members to discuss openly the issues affecting the grain transportation industry.¹⁶

¹⁶ http://www.stb.dot.gov/stb/rail/graincar_council.html

PUBLIC VERSION

Alternatively, the STB could create and charge a new industry council to help create and develop the GCAF adjustments. For example, STB could create an industry council similar to the Conrail Transaction Council (CTC), which was which was established as a shipper/railroad forum to address service problems during the implementation of the Conrail transaction between CSX and NS.¹⁷

The development and adoption of such GCAF adjustments would not require the STB to reverse its position concerning no movement specific adjustments. The GCAF adjustments would be applied to movements by commodity and by railroad and would not be movement-specific. Failing to adopt such GCAF adjustments to better capture the operating cost of transporting grain and grain products amounts to *defacto* deregulation of many grain and grain products movements.

Difficult STB Market Dominance Standards

The small number of grain and grain products shippers who can potentially bring STB rate cases (i.e., R/VC>180 traffic) are faced with another hurdle – the STB’s recently adopted Limit Price approach under which R/VC ratios must exceed the STB’s published “RSAM” percentages, which range from 216% to 362%, in order for the Board to find market dominance.¹⁸ The following table summarizes Class I corn and wheat tons which could potentially pass the STB’s new Limit Price/RSAM market dominance test:

¹⁷ I appointed by the STB to the CTC, which consisted of representatives of CSX, NS and shipper organizations and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the CTC.

¹⁸ See STB Docket No. NOR 42121, Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc., served May 31, 2013 and updated August 19, 2013.

Table 4
Summary of 2012 Single-Line
Jurisdictional Corn and Wheat Movements¹⁹

Railroad	4-Year RSAM	Total Tons	R/VC>180		R/VC>RSAM	
			Tons	%	Tons	%
Corn						
BNSF	217%					
CN U.S.	318%					
CP U.S.	362%					
CSXT	280%					
KCS	306%					
NS	283%					
<u>UP</u>	222%					
Total						
Wheat						
BNSF	217%					
CN U.S.	318%					
CP U.S.	362%					
CSXT	280%					
KCS	306%					
NS	283%					
<u>UP</u>	222%					
Total						

The relatively low percentages of grain and grain products tonnages potentially subject to STB jurisdiction and its railroad rate reasonableness guidelines and rules (less than 1% in several cases) are not indicative of the railroads' lack of market power or the reasonableness of railroad freight rates on grain and grain products. This situation has much more to do with STB's unadjusted URCS costing approach and other factors, which should be considered and addressed by the Board.

¹⁹ This table excludes interline shipments and shipments involving non-Class I railroads. Therefore, the total corn and wheat figures do not match up with the figures shown in Table 1.

PUBLIC VERSION

There are far more captive grain and grain products shippers than these low percentages would suggest who have no reasonable transportation alternatives to a single dominant Class I railroad and no effective rail competition. Such shippers are without recourse if their rates are raised, due to the ineffectiveness of regulatory remedies and the absence of effective competition.

Many grain and grain products movements with high R/VC ratios which could easily clear the STB's new Limit Price market dominance hurdle could have problems proving market dominance. Many large volume railroad grain movements involve relatively short distances to processing facilities and river terminals and many large grain destinations have two or more railroads serving the facilities. In a STB rate complaint case for such movements, the defendant railroad(s), which have extensive resources and a long history of denying their market dominance, might use these facts to argue that there is a lack of market dominance, which would be difficult, costly and time-consuming for a complainant to refute.

For example, one the largest railroad corn destinations in the U.S. is _____, which is served by two Class I carriers and shortline (_____). The 2012 Confidential Waybill Sample indicates that _____ carloads carrying _____ tons moved to _____, with an average haul less than 200 miles (_____ miles). _____ average R/VC for corn moving to _____ is _____ (much higher than _____ RSAM of _____) and the average haul is _____ miles. In STB Docket No. NOR 42121 (in which the STB adopted the Limit Price approach), the complainant argued that truck competition for the issue chemical movements was effective for distances of less than 250 miles.²⁰

²⁰ STB Docket No. NOR 42121, page 38.

PUBLIC VERSION

In a hypothetical STB rate complaint involving high corn rates and large volumes to , despite the high R/VC ratios, the large volumes (which makes trucking less viable and less effective competition) and the fact that the origins are only served by would likely attempt to use this 250-mile standard as a precedent, along with the fact that is also served by and , to argue that there is a lack of market dominance.

The STB could consider relaxing its market dominance standards for grain and grain products. For example, the STB could decide not to apply the Limit Price / RSAM approach to future rate complaints involving grain and grain products. The STB could also make it clear that the 250- mile standard used in STB Docket No. NOR 42121 to determine effective truck competition for chemical shipments would not be applicable to most rail movements of grain and grain products.

Difficulty in Obtaining STB Rate Relief

The average R/VC ratios for grain and grain products rail traffic which can potentially get in STB's door (i.e., have R/VC ratios which exceed both the STB's jurisdictional and limit price thresholds) are very high as reflected in the following table (Table 4), which summarizes an analysis of single-line jurisdictional corn and wheat records which originated and terminated on the same Class I carrier and moved in covered-hoppers (since intermodal traffic is exempt from STB jurisdiction) included in the STB's 2012 Confidential Waybill Sample:

Table 5

Summary of 2012 Class I Single-Line Corn and Wheat
STB Jurisdictional Movements with R/VC>RSAM²¹

Railroad	Tons	RVC
CORN		
BNSF CN U.S. CP U.S. CSXT KCS NS <u>UP</u> Total		
WHEAT		
BNSF CN U.S. CP U.S. CSXT KCS NS <u>UP</u> Total		

Assuming a grain or grain products shipper can clear the STB’s jurisdictional and market dominance hurdles, they, like any other captive rail shipper, would have the choice of the STB’s three rate reasonableness tests: Full Stand Alone Cost (Full-SAC); Simplified-SAC; or Three-Benchmark approach.

The STB’s Full-SAC and Simplified-SAC tests are not viable options for most grain and grain products shippers, and the same is true for most non-coal shippers. For example, in STB 42125, E.I. DuPont De Nemours And Company v. Norfolk Southern Railway Company, served

²¹ This table excludes interline shipments and shipments involving non-Class I railroads.

PUBLIC VERSION

March 14, 2014, the complainant used the STB's Full-SAC test and the STB recently determined that issue chemical rates were not unreasonably high. In fact, there has only been one instance in which a non-coal shipper has been able to use Full-SAC to successfully challenge its freight rates (see STB Docket No. NOR 42022, FMC Wyoming Corporation and FMC Corporation v. Union Pacific Railroad Company, served May 12, 2000). Although many grain and grain products shippers have high rates, they simply do not have the volumes and track densities necessary to make use of these expensive and time-consuming SAC tests.

Problems With the Three Benchmark Test

Grain and grain products shippers also face many problems with the application of the STB's Three-Benchmark test. The STB's Three-Benchmark test is simpler and cheaper to pursue than the Full-SAC and Simplified-SAC tests, but it is still complex, burdensome and difficult for most grain and grain products shippers to successfully utilize. The main source of complexity and cost is the third, RVC_{COMP} benchmark, under which the complainant must show that the challenged rates are not just in excess of the RSAM and $RVC_{>180}$ levels, but are also substantially higher than rates being charged to similar shippers.

The RVC_{COMP} test was intended be based on "traffic with demand characteristics comparable to those of the issue traffic."²² The RVC_{COMP} component of the Three Benchmark test is limited to the same or similar jurisdictional (i.e., $RVC_{>180}$) traffic on the same railroad. These restrictions and problems with the Waybill Sample make it very difficult for most grain and grain products shippers to obtain meaningful rate relief under the STB's Three Benchmark test.

²² STB Ex Parte 347 (Sub-No. 2), Rate Guidelines – Non-Coal Proceedings, 1 S.T.B. 1011 (1996).

PUBLIC VERSION

The obvious deficiency in this aspect of Three-Benchmark is that if most or all nearby shippers are charged rates producing similar R/VC ratios under a state-wide or regional rate structure, the RVC_{COMP} component will make the Three-Benchmark test difficult or impossible to satisfy. A rate reasonableness methodology that can so easily be neutralized by a large market-dominant railroad will often be ineffective, and even if a shipper were to win such a case, the defendant railroad might find it easy and profitable to adjust rates to make sure that no other shipper could follow suit.

For example, under the RVC_{COMP} benchmark, a reasonable rate for a BNSF wheat movement moving 1,000 miles would likely be primarily based on other $RVC \geq 180\%$ BNSF wheat movements moving approximately the same distance. As indicated by the testimony of Terry Whiteside, BNSF's wheat rates produce uniform R/VC ratios within geographic regions. BNSF also plays close attention to the URCS cost and the resulting R/VC ratios. Therefore, the comparison of the R/VC ratio of a single wheat movement is likely to be similar to other comparable BNSF wheat movements.

Another problem impacting many grain and grain products shippers is that the Three-Benchmark test does not apply to local Class II and Class III movements:²³

We will not, however, apply the Three-Benchmark approach to a purely local movement of a Class II or Class III carrier. Two of the three benchmarks needed for that approach would not be available without analyzing the traffic tapes of the shortline (to calculate the $RVC_{>180}$ benchmark) and performing a revenue adequacy inquiry (to derive RSAM benchmark). We see no way to modify the Three-Benchmark method to render it suitable for purely local shortline movements without increasing the cost to near that of a Simplified-SAC presentation. For a purely local movement of a Class II or Class III carrier, the complainant may use the Simplified-SAC approach.

²³ See STB Docket No. EP 646 (Sub-No. 1), Simplified Standards for Rail Rate Cases, served September 5, 2007, page 102.

PUBLIC VERSION

The 2012 Confidential Waybill Sample indicates that over _____ tons of corn and _____ tons of wheat (_____ tons of corn and _____ tons of wheat) originated and terminated on the same non-Class I carrier. In addition to this direct non-Class I traffic, non-Class I railroads are involved in many interline movements with Class I carriers.

There are also inherent problems with the Confidential Waybill Sample data which significantly impact grain and grain products more than other bulk commodities. As I indicated in my testimony in STB Docket EP No. 431 (Sub-No. 4), Review of the General Purpose Costing System, the Waybill Sample indicates that a significant amount of grain traffic moved in single-car (1 car) shipments. The following table (Table 5) shows the amount (tons) of corn, wheat, soybeans and ethanol moving in single cars:²⁴

Table 6
Summary 2012 Tons of Corn, Wheat, Soybean and Ethanol
Moving As Single (1) Car Shipments

Item	Corn		Wheat		Soybeans		Ethanol	
	Tons (000)	%						
Single (1) Car	2,804	4.07%	2,691	6.67%	607	2.18%	12,268	32.77%
Total - All Shipments	68,990	100.00%	40,349	100.00%	27,812	100.00%	37,435	100.00%

It is likely that only a very small minority of these single-car shipments were actually switched by the origin and destination railroads as single cars, which, in most cases, would be very inefficient. The railroads, presumably for accounting purposes, currently treat as single-car shipments many shipments that involve more than 1 car per switch. Most of these single-car shipments, like many multiple car shipments, likely moved in larger trainload shipments, which

²⁴ Based on the 2012 Public Waybill Sample.

PUBLIC VERSION

are allocated less costs under the STB's make-whole adjustments. Thus, the cost associated with these single-car shipments is likely much less than the amounts allocated by the STB under its costing of the Waybill Sample.

Still another problem associated with the STB's the Waybill Sample is in its treatment of so-called "Rebill" traffic, which is a code for traffic which is either: originated and delivered (O&D) (Code 1); received and delivered (R&D) (Code 2) or received and terminated (R&T) (Code 3). Although this traffic moves from origin to destination as *through* movements, segments of the movements appear in the Waybill Sample as individual Rebill segments. The 2012 Waybill Sample indicates that a significant amount of grain and grain products moved as Rebill shipments. As can be seen, Rebill records account for 11% of the corn tons, 30% of the wheat tons, 9% of the soybean tons and 48% of ethanol tons:

Table 7
Summary 2012 Tons of Corn, Wheat, Soybean and Ethanol
Moving As "Rebill" Shipments

Item	Corn		Wheat		Soybeans		Ethanol	
	Tons (000)	%						
Rebill Shipments	7,609	11.03%	11,992	29.72%	2,490	8.95%	17,890	47.79%
Total - All Shipments	68,990	100.00%	40,349	100.00%	27,812	100.00%	37,435	100.00%

A significant amount of eastbound Rebill grain traffic shows Chicago, Illinois as the destination (e.g., Great Falls, MT to Chicago, IL), when, in fact, Chicago is merely the interchange point.

PUBLIC VERSION

The previously discussed URCS costing problems significantly limit the amount of traffic in the potential RVC_{COMP} groups. The STB's limitation to the same or similar jurisdictional (i.e., $RVC > 180$) traffic on the same railroad further limits the amount of traffic in the potential RVC_{COMP} groups. The misreporting of single-car shipments and problems associated with "Rebill" shipments also creates problems and limits the amount of traffic in the potential RVC_{COMP} groups. The end result is that the amount of traffic available for comparison RVC_{COMP} groups is significantly limited it is likely that the $R/V C$ ratio for the resulting comparison group is not significantly different than the $R/V C$ ratio for the issue traffic.

Proposals For Modifying Existing Procedures

The STB asked for "proposals for modifying existing procedures." The STB's Full-SAC and Simplified-SAC tests are essentially useless for most grain and grain products shippers. The costs associated with the development of these tests are too high and they take too long to produce. Moreover, it would be difficult to obtain any relief for most grain and grain products shippers under these SAC tests because the annual volumes associated with specific movements are generally much lower than coal movements.

In response to the Board's request, there are potential modifications to RVC_{COMP} component which could potentially improve the application the Three-Benchmark test for grain and grain products shippers:

- Allow for the use of similar non-defendant rail traffic in the RVC_{COMP} groups; and
- Allow for the use of similar $R/V C < 180\%$ traffic in the RVC_{COMP} groups.

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The RVC_{COMP} component of the Three-Benchmark test was intended be based on “traffic with demand characteristics comparable to those of the issue traffic.”²⁵ For many railroad movements of grain and grain products, however, the limitation of RVC_{COMP} groups to the defendant railroad’s $R/VC > 180$ traffic eliminates a significant amount of traffic with similar demand characteristics. Unlike many coal movements which may have two railroads serving the origin (e.g., BNSF and UP serving the Powder River Basin joint line) and only one railroad (e.g., either BNSF or UP) serving the destination coal-fired generating station, many grain and grain products shippers are served by only one railroad (like BNSF’s wheat origins in Montana), but move to many destinations which are served by more than one railroad. For example,

is the largest corn destination with tons moving there in 2012, with moving approximately tons and moving approximately . Despite the fact that all corn moving to would have similar demand characteristics, a Three-Benchmark case involving a corn movement to could not use comparable corn movements to in the RVC_{COMP} group.

Another limitation associated with the RVC_{COMP} component of the Three Benchmark test is its limit on comparable traffic on the defendant railroad which generates R/VC ratios equal to or exceeding 180%, i.e., $R/VC > 180$ traffic. This limitation significantly reduces the amount traffic available for a RVC_{COMP} group. This is demonstrated in Table 1 which shows that the majority of grain and grain products traffic moves at R/VC levels below 180%. For example, 61% of the top four grain commodities and 69% of the top four grain products commodities move at R/VC ratios below 180%.

²⁵ STB Ex Parte 347 (Sub-No. 2), Rate Guidelines – Non-Coal Proceedings, 1 S.T.B. 1011 (1996).

PUBLIC VERSION

The Three Benchmark test for grain and grain products would be more effective if it allowed certain comparable traffic with R/VC ratios below 180% to be included in the RVC_{COMP} group. For example, the Board could allow for all comparable traffic which exceeds the so-called revenue-need level (i.e., traffic which covers a carrier's total or full cost and generates a return on investment equal to or exceeding the current cost of capital) to be included in the RVC_{COMP} group.

If the Board decides to retain the Three-Benchmark test, it should, at a minimum, allow the use of comparable traffic on other, non-defendant railroads and allow for certain traffic with R/VC ratios below 180% to be included in the RVC_{COMP} group in Three-Benchmark cases involving grain and grain products.

New Alternative Rate Relief Methodologies

The Board has also requested proposals for “new alternative rate relief methodologies, should they be necessary.”²⁶ Because of the problems faced by grain and grain products shippers associated with the application of the SAC and Three-Benchmark tests, the Board should seriously consider a new rate reasonableness methodology, or combination of approaches, for grain and grain products. There are numerous methodologies or approaches which could be considered by the Board. I will discuss the following proposals for the Board's consideration, which could potentially provide grain and grain products shippers with “effective relief from excessive freight rail rates, as appropriate.”

²⁶ STB Docket No. EP 665 (Sub-No.1), served December 12, 2013, page 2.

Two Benchmark Test

Because of the problems associated with the application of the RVC_{COMP} component of the Three Benchmark test to railroad movements of grain and grain products, the STB should consider the use of a Two Benchmark test using the other components, i.e., the RSAM and $RVC_{>180}$ percentages, for grain and grain products, for cases involving railroads that are revenue adequate. The RVC_{COMP} benchmark, which is most problematical for grain shippers, is designed to reflect demand-based differential pricing, and this is inappropriate under the revenue adequacy constraint announced many years ago in Coal Rate Guidelines, Nationwide, 1 I.C.C 2d 520 (1985).

Since the STB develops the RSAM and $RVC_{>180}$ percentage for each Class I carrier, a Two-Benchmark test would be relatively easy to administer and would be especially appropriate for grain and grain products, which have problems with the RVC_{COMP} component of the Three Benchmark Test.

Table 8

Current STB 4-Year RSAM and $RVC_{>180\%}$ Benchmarks

Railroad	4-Year RSAM	4-Year $RVC_{\geq 180\%}$
BNSF	217%	221%
CN U.S.	318%	260%
CP U.S.	362%	229%
CSXT	280%	265%
KCS	306%	243%
NS	283%	276%
UP	222%	233%

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Under a two-Benchmark test, if grains and grain products shippers have rates which generate R/VC ratios in excess of the RVC>180 percentages (e.g. 221% for BNSF), then the R/VC ratio could not exceed the RSAM level (e.g., a four year average of 217% for BNSF). Such a test would be simple to administer and provide an effective cap of railroad grain rates.

With the elimination of the R/VC_{COMP} benchmark, the Board would not need the confidence interval aspects of its Three-Benchmark test, and I would also recommend elimination of consideration of so-called “other relevant factors”. This part of the Three-Benchmark test has too often been used by railroads to add complexity and cost to rate cases designed for smaller shippers unable to afford SAC or SSAC.

Revenue Adequacy, Management Efficiency and Phasing Constraints

Railroad service is critically important to grain and grain products shippers who have recently experienced a combination of deterioration of service and an increase in rates. The STB could adopt an approach which limits future rate increases and ties rate increases to adequate service. There are four (4) constraints under the STB’s Constrained Market Pricing (CMP) approach:²⁷

- (1) **Revenue Adequacy Constraint** – “A captive shipper should not be required to pay more than is necessary for the carrier involved to earn adequate revenues.”
- (2) **Managerial Efficiency Constraint** – A captive shipper should not “pay more than is necessary for efficient service.”
- (3) **Stand-Alone Cost (SAC) Constraint** - “A captive shipper should not bear the costs of any facilities or services from which it derives no benefit.”
- (4) **Phasing Constraint** – “Changes in the rate structure should not be so precipitous as to cause severe economic dislocations.”

²⁷ STB EP No. 646, Footnote 6/

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As previously indicated, the STB's SAC and Simplified-SAC tests are essentially useless for most grain and grain products shippers.

In a decision served April 2, 2014 in Docket No. EP 722, Railroad Revenue Adequacy, the STB asked for comments "to explore the Board's methodology for determining railroad revenue adequacy, as well as the revenue adequacy component used in judging the reasonableness of rail freight rates." The Board stated:

Both the structure of the rail industry and the flow of commerce have continued to change substantially over the past decade. In the last several years, questions have been raised regarding the agency's methodology for determining revenue adequacy and whether it appropriately measures the financial condition of the railroad industry. These questions cover a range of issues, such as the viability of the Board's current methodology and possible alternative methodologies, what it means to be revenue adequate and how such a finding should impact the railroads, and how to apply the revenue adequacy constraint in regulating rates, among many others.

The revenue adequacy component should be utilized in judging the reasonableness of rail grain and grain products rates, especially now that the three revenue adequate railroads (BNSF, UP and NS) are the major haulers of grain and grain products (see Table 4).

The achievement of revenue adequacy means there should be no further differential pricing of rail rate increases for captive shippers, and the burden should be on the railroad seeking such increases to explain "why captive shippers should provide them." Relief from periodic and essentially unregulated increases in grain rates (because most grain shippers cannot afford to challenge them), would be extremely helpful to struggling grain and grain products shippers. And a Two-Benchmark test, which would include the RSAM component, would account for revenue adequacy. I will have more to say about grain rate challenges against revenue adequate railroads in comments to be filed in EP 722.

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Railroad service is critically important to grain and grain products shippers, many of which face short seasonal growing and rail shipping periods. Grain and grain products shippers have recently experienced a combination of deterioration of rail service and an increase in costs and rail rates.²⁸ More specifically, rail capacity on BNSF, the largest grain hauler, and CP, also a large grain hauler, has tightened as a result of a significant increase in Bakken crude oil shipments, primarily from North Dakota. In a recent decision in STB Docket No. EP 724 (Sub-No. 2), United States Rail Service Issues—Grain, served June 20, 2014, the STB required BNSF and CP to file reports and plans to resolve the backlog of grain car orders on its network.

A recent report titled Heavy Traffic Still Ahead estimated that BNSF's loaded and empty Bakken oil trains could increase by over 28 trains per day, or more than one every hour, which excludes the numerous inbound loaded and empty trains of fracking sand and other material.²⁹ These Bakken oil related trains have clogged BNSF's lines in North Dakota, Montana, South Dakota, Minnesota, Iowa and beyond, which could be considered as the very heart our Nation's of grain-growing region. Yet this influx and Bakken oil-related rail traffic in the region is only the beginning as plans and permitting are under way to significantly increase the amount of export coal moving from the Powder River Basin in Montana and Wyoming to proposed and existing export coal terminals in the Pacific Northwest (PNW) (primarily to two proposed massive coal export terminals near Longview and Bellingham Washington).³⁰ These planned PRB-to-PNW export coal movements could easily exceed 100 million tons per year and add over 36 trains per day to the already congested lines.

²⁸ See, for example, <http://www.jsonline.com/business/slow-trains-delay-great-plains-grain-b99270987z1-259664221.html> and <http://online.wsj.com/news/articles/SB10001424052702303480304579579652612482622>

²⁹ See Heavy Traffic Still Ahead, <http://heavytrafficahead.org/pdf/Heavy-Traffic-Still-Ahead-web.pdf>, page 12. I co-authored the report with Terry Whiteside.

³⁰ *Ibid*

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BNSF has known about these potential service and rail congestions problems for several years and has already spent hundreds of millions investing in related rail maintenance and infrastructure projects in primarily North Dakota, Montana, Washington, Illinois and Minnesota. Indeed, the Federal government has contributed to the cause by spending over \$600 million on related infrastructure projects in Washington.³¹ BNSF has also increased its hiring of workers to help with increased rail operations.³² Certainly, these tremendous expenditures will help BNSF increase its rail capacity in the region and, hopefully, will help improve rail service. However, most of these improvements are geared toward moving Bakken oil and export coal to the PNW rather than improving rail service for existing grain and grain products shippers. Notwithstanding this fact, these improvements will take years to complete and during those years the related maintenance and construction projects will also cause service disruptions and delays.

Under the STB's Managerial Efficiency Constraint, a captive shipper should not "pay more than is necessary for efficient service." BNSF recently blamed the weather for many of its service delays.³³ The credibility of this explanation remains to be seen, and the Board should monitor if and when good rail service for grain shippers is restored, now that winter is over. Regardless of the cause, service delays and poor service should not be considered as "efficient service" under STB standards.

I recommend that the STB take an active role in carefully and transparently monitoring all railroad service for grain and grain products shippers by establishing grain and grain products specific rail service performance standards and matrixes by railroad, which could be called Grain

³¹ See, for example, <http://www.bnsf.com/media/news-releases/2014/may/2014-05-01a.html>

³² See, for example, <http://www.star-telegram.com/2014/03/18/5659053/bnsf-ceo-says-railroad-will-hire.html>

³³ See, for example, <http://www.startribune.com/politics/statelocal/247613111.html>

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Rail Performance Standards (GRPS) (or something similar). These rail performance standards could be similar in some respects to the departure and tarmac delay times reported and utilized the airline industry. Clearly, a rail service crisis impacting grain and grain products shippers has already begun and will likely get much worse in the next five years, notwithstanding attempts to blame all service problems on bad weather.

The STB could either assign the establishment of these GRPS railroad performance standards to the established NGCC or to a newly-established industry council similar to the CTC in the Conrail transaction. Once these GRPS performance standards have been established and monitored, the STB will be able to establish service benchmarks and determine levels which range from very efficient service to very poor service or no service.

The STB should also consider limiting future rate increases on grain and grain products based on established performance standards, even if a railroad has not yet been found revenue adequate. For example, if the railroad's performance levels are in the efficient service zone, certain rate increases might be allowed (subject to captive shipper challenges), whereas, if service levels are in the poor service zone, no rate increases would be allowed. Thus, the railroads would have an economic incentive to improve service for grain and grain products shippers.

Export Grain Rate Adjustments

Export movements of grain and grain products, which often involve high volumes, long rail distances and efficient shuttle and trainload movements, are also critically important to grain and grain products shippers. There is a recognized economic relationship between grain prices and grain exports - when grain prices decrease, exports increase. As exports of grain and grain products increase, railroad revenues and profits increase, yet high railroad export grain rates

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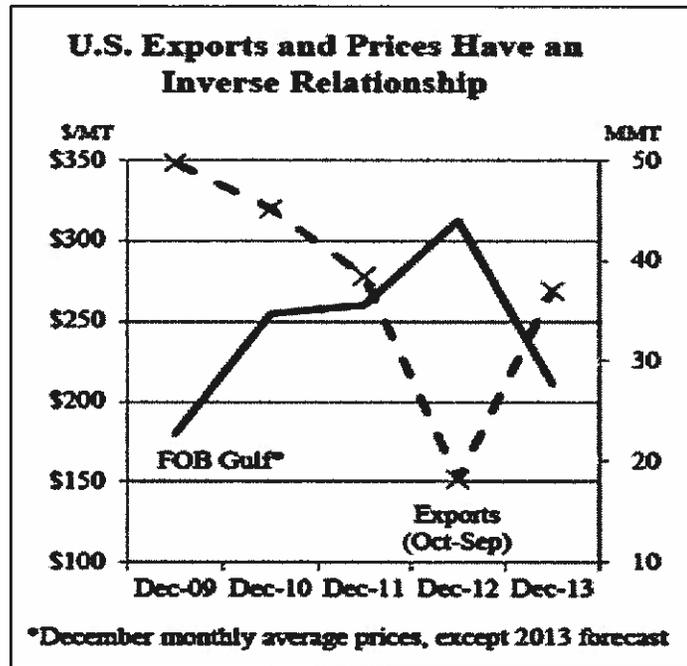
serve to suppress exports. Moreover, rail rates are often raised based on higher grain prices in the market and a belief by some railroads that they are entitled to extract part of that increase in grain prices through rate increases. However, such rate increases are generally not rescinded when market prices of grain fall. A methodology which promotes exports via lower export rail rates would benefit grain and grain products shippers and the railroads and be in line with President Obama's 2010 National Export Initiative.³⁴

There is an economic relationship between grain prices and grain exports, i.e., when grain prices decrease, exports increase relationship. When exports of grain and grain products increase, railroad profits increase, yet high railroad export grain rates serve to suppress exports. USDA demonstrates that "U.S. Exports and Prices Have an Inverse Relationship." When grain prices go down, exports go up and vice versa:

³⁴ See: <http://trade.gov/nei/> "The Obama Administration has made it a top priority to improve the conditions that directly affect the private sector's ability to export – working to remove trade barriers abroad, help firms *and farmers* overcome hurdles to entering new markets, and assist with financing. President Obama announced the National Export Initiative in his 2010 State of the Union address to renew and revitalize our efforts to promote American exports abroad." (emphasis added)

Table 9

Export Grain Inverse Relationship



When grain exports go up, railroad profits go up, because the exports move in higher-rated, long-distance efficient shuttle trains, which are very profitable. However, when exports go up, crop prices go down and the farmers and producers get squeezed – in other words, the railroads make more money and higher profits and the farmers make less money.

NGFA's Proposal

I understand that National Grain & Feed Association (NGFA) is proposing a new methodology based on the application of Revenue Adequacy Adjustment Factors (RAAF) to grain and grain products traffic included in the STB's Confidential Waybill Sample records by 5-digit Standard Transportation Commodity Code (STCC). As I understand it, NGFA's approach would be similar in some respects to the STB's RVC_{COMP} test, in that it would rely on the STB's

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Confidential Waybill Sample and involve the evaluation of similar traffic (i.e., same 5-digit STCC) moving a similar distance (i.e., plus or minus 20%). NGFA's comparison groups, however, would include all other railroad movements and thus would not be limited to the defendants R/VC>180 traffic. As of this writing, I have not had the opportunity to adequately review the specifics of NGFA's proposal, but it also certainly warrants serious consideration by the Board.

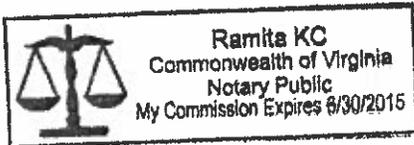
VERIFICATION

The foregoing statement is true and accurate to the best of my belief and knowledge.



Gerald W. Fauth, III

Subscribed and sworn to before me this 25 day of June 2014.



Notary Public
7506510

My commission expires: 06-30-2015

**STATEMENT
OF
BACKGROUND, QUALIFICATIONS AND EXPERIENCE
OF
GERALD W. FAUTH III**

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc. (GWF), an economic consulting firm with offices at 116 S. Royal Street, Alexandria, Virginia 22314. I am a recognized expert on transportation issues with over 35 years experience in the private sector and in the Federal government.

This statement generally describes my background, qualifications and experience. The majority of experience has involved economic, regulatory, public policy and legislative issues primarily associated with, or related to, the U. S. railroad industry. Most of my work has involved regulatory proceedings and related projects before, or related to, the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC).

I have extensive experience in working in regulatory and other proceedings and projects involving railroad mergers, transactions, acquisitions, rail line construction, rail line abandonments, rate reasonableness and other railroad related issues. These matters have involved railroad issues on a nation-wide, system-wide and individual railroad line basis.

GWF has been engaged in the economic consulting business for over 50 years. My part time affiliation with GWF began in 1972. I began working for GWF on a full-time basis on May 15, 1978 and was employed by GWF continuously until November 1, 1999 at which time I took a leave of absence in order to take a position with the STB.

At the STB, I served as Chief of Staff for one of the three Board Members appointed by the President, Vice Chairman Wayne O. Burkes. I returned to GWF and consulting work effective June 23, 2003 after Mr. Burkes resigned his position to run for a political office.

Over the years, I have submitted expert testimony before ICC, STB, state regulatory commissions, courts and arbitration panels on a wide-variety of issues in numerous proceedings. In addition, I worked for 3½ years at the STB where I reviewed, analyzed and made recommendations on over 600 written formal decisions that were decided by the entire Board. These proceedings and decisions involved all matters of STB jurisdiction and had an impact on the transportation industry and the national economy.

Railroad transactions have long been the subject of ICC and STB regulatory proceedings and other matters involving: railroad merger and acquisition approval and oversight proceedings; railroad line abandonment proceedings; line sales; feeder line application proceedings; and other railroad transaction-related proceedings. I have been involved in numerous such proceedings and projects as an expert witness and as an STB staff advisor.

For example, I was an expert witness in the last two major Class I railroad merger proceedings: STB Finance Docket No. 32760, Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al. and STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al. – Control and Operating Leases / Agreements – Conrail, Inc., et al. My testimony in these major merger proceedings concerned the potential adverse competitive impact of these mergers on two key areas.

In addition to my work in major railroad merger proceedings, I have submitted expert testimony in other railroad finance docket and abandonment proceedings before the ICC and STB. In these proceeding, I have developed and submitted evidence relating to the impacted railroad traffic and the valuation and economics of the railroad line at issue (such as: going concern and net liquidation values; freight revenues and traffic; operating costs; maintenance costs: right-of-way valuation; etc).

In addition to my testimony in railroad mergers and other rail finance and transaction proceedings, I served as an original member of the Conrail Transaction Council, which was established by the Board in Finance Docket No. 33388. This council consisted of representatives of the CSX, NS and shipper organization and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the Conrail Transaction Council and attended every meeting of the council until my employment with the Board.

During my time at the Board, I was actively involved in the STB merger oversight proceedings associated with the UP/SP and Conrail transactions. Perhaps the most significant merger-related proceedings that I was involved in during my time at the Board were STB Ex Parte No. 582, Public Views on Major Rail Consolidations and STB Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures. These STB major rulemaking proceedings involved extensive oral hearings and written testimony from hundreds of witnesses.

The Board concluded that its existing rules governing railroad mergers and consolidations, which had been developed nearly 20 years earlier, were not adequate for addressing the broad concerns expressed and initiated a major rulemaking proceeding which resulted in a major revision to the Board's railroad merger rules.

I have a significant amount of experience in issues involving railroad rate reasonableness. I was actively involved in the initial ICC regulatory proceedings over 30 years ago in which the ICC first proposed and established guidelines which have since evolved into the STB's current railroad rate reasonableness guidelines. I was actively involved in several of the first cases to test the ICC's then proposed guidelines. For example, I was the primary expert witness in ICC Docket No. 40073, South-West Railroad. Car Parts Co. v. Missouri. Pacific Railroad, which was the *first* case to test the ICC's proposed simplified guidelines, which have since evolved into STB's Three-Benchmark approach.

More recently, I submitted extensive written and oral testimony in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, on behalf of a group of 30 major stakeholders and my testimony was cited by the Board in its decision served September 5, 2007. My work and testimony in these ICC/STB proceedings has helped shape the STB's current railroad rate reasonableness guidelines.

Many of our projects have involved the development of railroad variable cost analyses based on the application of URCS and its predecessor, Rail Form A (RFA). URCS is used to determine STB jurisdiction and is an integral component of the STB's Full-SAC method, new Simplified-SAC standard and recently modified Three-Benchmark approach. I have an extensive working knowledge of the development and application of URCS and RFA. I have prepared URCS cost analyses for thousands of individual railroad movements. I also submitted expert testimony in ICC Ex Parte No. 431 (Sub-No.1), Adoption of the Uniform Railroad Costing System as a General Purpose Costing System for Regulatory Costing Purposes and more recently in STB Ex Parte No. 431 (Sub-No. 3), Review of the Surface Transportation Board's General Costing System.

Proceedings before the Board often involve traffic and market analyses using the Board's Waybill Sample, which is a computer database of approximately 600,000 records of sampled railroad movements. I am extremely familiar with this railroad traffic database. Over the years, I have performed hundreds of analyses using this data which has been used as evidence in merger and other proceedings before the Board.

I am a 1978 graduate of Hampden-Sydney College in Hampden-Sydney, Virginia where I earned a Bachelor of Arts degree. My major areas of study were history and government. My senior paper in college dealt with the History of Railroad Deregulation. I am a 1974 graduate of St. Stephen's School for Boys (now St. Stephen's and St. Agnes School), located in Alexandria, Virginia. My senior project and paper in high school dealt with the ICC and the Energy Crisis of 1973.

My professional memberships included the Transportation Research Forum and the Association of Transportation Law Professionals.

NGFA Rail Arbitration Rules

such a case based upon the express terms of such sidetrack agreement between the parties unless the arbitrators find that the relevant liability provision(s) in such agreement is/are commercially unreasonable. In that event, the arbitrators may decide the case based upon what they find to be commercially reasonable under the facts of the particular case.

10(A) Except as provided in (B), specific railroad-rail user disputes involving the reasonableness of a railroad's published rules and practices as applied in the particular circumstances of the dispute on matters related to transportation or service (including demurrage), that otherwise would be subject to the unreasonable practice jurisdiction of the Federal Surface Transportation Board under 49 U.S.C. § 10702(2).

(B) Disputes involving the following are not subject to arbitration hereunder: (i) a railroad's rates or charges, including rate levels and rate

spreads, (ii) whether an industry or station is or should be open or closed to reciprocal switching, (iii) a railroad's credit terms, or (iv) a railroad's car allocation/distribution rules or practices.

(C) In determining whether the application of a particular rule or practice is reasonable, the arbitrators should consider, among other things, (i) the practical effects on the operation of both the railroad and rail user involved, and (ii) whether the rule or practice, or its absence, has a disparate negative impact on either the rail user or the railroad.

(c) The disputes for which a party to the "Agreement on Predispute Consent to NGFA Arbitration" is obligated to arbitrate under subsection (b) above shall be limited to those involving grain, feedstuffs and/or grain products, which shall be deemed to include commodities designated by the following Standard Transportation Commodity Code (STCC) definitions:

STCC	Description	STCC	Description
01-131	Barley	20-465	Corn oil
01-132	Corn	20-466	Other starch
01-133	Oats	20-467	Wet process corn or similar mill by-products
01-135	Rye	20-469	Wet process corn milling or by-products
01-136	Sorghum Grains	20-471	Bird Food or Seed, Domestic
01-137	Wheat	20-511	Bakery Products
01-139	Grain, NEC	20-619	Beet Pulp Pellets
01-141	Cottonseeds	20-823	Spent Grains
01-142	Flaxseeds	20-831	Malt
01-144	Soybeans	20-839	Malt Products
01-149	Oil Kernels, nuts or seeds	20-859	Distillers By-Products
01-152	Popcorn	20-914	Cottonseed Meal or By-Products
01-159	Seeds	20-921	Soybean oil
01-191	Fodder Hay or Roughage	20-923	Soybean meal and hulls
01-341	Beans, Dry Ripe	20-933	Nut or Vegetable Oils
01-342	Peas, Dry	20-939	Oil Seed Meals and By-Products, NEC
01-343	Cowpeas, Lentils or Lupines	20-943	Fish Meal
01-992	Alfalfa Meal	20-144	Animal Protein Products
20-143	Grease/inedible tallow	01-134	Rough Rice
20-411	Wheat Flour	20-449	Milled Rice, Rice By-Products, etc.
20-412	Wheat bran, middlings	20-442	Rice Flour
20-413	Corn meal or flour	20-933	Rice Oil
20-414	Rye flour	20-442	Rice Bran
20-415	Oat flour	37-422	Freight cars moving on own-wheels
20-418	Grain mill by-products	28-184.45	Ethanol
20-419	Flour or other grain mill products, NEC		
20-421	Prepared Feeds		
20-461	Corn syrup		
20-462	Corn starch		
20-463	Corn sugar		
20-464	Dextrine, corn, tapioca or other		

