

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CARGILL, INCORPORATED)	
)	
Complainant,)	
)	
v.)	Docket No. 42120
)	
BNSF RAILWAY COMPANY)	
)	
Defendant.)	
)	

BNSF RAILWAY COMPANY'S ANSWER

Defendant BNSF Railway Company ("BNSF") hereby answers the Complaint filed by Cargill, Incorporated ("Cargill") in this proceeding. BNSF responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. BNSF admits that Cargill is a corporation that produces and markets food and agricultural products. BNSF denies the remaining allegations of Paragraph 1 because it lacks knowledge or information sufficient to form a belief as to their truth.
2. BNSF admits the allegations of Paragraph 2.
3. BNSF admits the allegations of Paragraph 3.
4. BNSF denies the allegations of Paragraph 4. BNSF further states that it has provided common carrier transportation service to Cargill for some but not all of the commodities identified in paragraph 4 under some but not all of the price authorities identified in paragraph 4 during the two year period prior to the filing of Cargill's complaint.
5. BNSF admits the allegations of the first and second sentence of Paragraph 5 to the extent that it invoices Cargill for fuel surcharges on some common carrier transportation services

provided by BNSF to Cargill under BNSF Rules Book 6100-A, Item 3375L, Section B and to the extent that Cargill pays those fuel surcharges. The third sentence of paragraph does not set forth an allegation to which a response is required.

6. BNSF denies the allegations of Paragraph 6.
7. BNSF denies the allegations of Paragraph 7.
8. BNSF denies the allegations of Paragraph 8.
9. Paragraph 9 states a legal conclusion to which no response is required.
10. Paragraph 10 states a legal conclusion to which no response is required.

DEFENSES

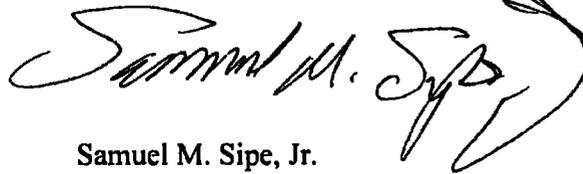
1. The Complaint fails to state a claim that BNSF has engaged in an unreasonable practice in violation of 49 U.S.C. § 10702.
2. The Complaint fails to state a claim that the rates and fuel surcharges referenced in the Complaint exceed a reasonable maximum.
3. The Board lacks jurisdiction to consider the Complaint because BNSF does not have market dominance over the traffic at issue.
4. The rates and fuel surcharges referenced in the Complaint do not exceed a reasonable maximum.
5. Any claims for damages on traffic transported more than two years prior to the filing of the Complaint are barred by the statute of limitations.
6. The Complaint fails to state a claim on which relief can be granted to the extent that it addresses movements of commodities that have been exempted from regulation by the Surface Transportation Board or the Interstate Commerce Commission.

7. The Complaint fails to state a claim on which relief can be granted to the extent that it seeks relief for any payments, including payments of fuel surcharges, made by a freight payor other than Cargill.

8. The Complaint fails to state a claim on which relief can be granted to the extent that it seeks relief for any payments made to BNSF, including payments of fuel surcharges, for interline transportation service provided by a carrier other than BNSF.

9. The Complaint fails to state a claim on which relief can be granted to the extent that it seeks relief for any payments, including payments of fuel surcharges, made to a carrier other than BNSF for the provision of interline transportation service.

Respectfully submitted,



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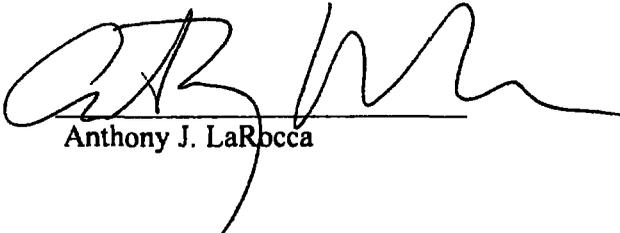
May 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that this 10th day of May, 2010, I have served a copy of BNSF Railway

Company's Answer on the following by hand delivery:

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