

**MCCARTHY, SWEENEY & HARKAWAY, P.C.**

**SUITE 700**

**1825 K STREET, N.W.**

**WASHINGTON, D.C. 20006**

**(202) 775-5560**

**FAX (202) 775-5574**

**ANDREW P. GOLDSTEIN**  
**[apg@mshpc.com](mailto:apg@mshpc.com)**  
**(202) 775-2509**

**[www.mshpc.com](http://www.mshpc.com)**

Cynthia T. Brown  
Chief, Section of Administration Office Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

August 17, 2010

Re: STB Docket No. 42124, State of Montana v. BNSF Railway Company

Dear Ms. Brown,

1. This letter is a report by Complainant, State of Montana, pursuant to 49 C.F.R. § 1111.10(a).
2. Montana filed its complaint in this proceeding on July 9, 2010 and BNSF answered on July 29, 2010. The complaint involves allegations by Montana of certain unreasonable practice claims in violation of 49 U.S.C. § 10702 arising from BNSF's cancellation of 52-car wheat rates from Montana and substitution of 48-car wheat rates. BNSF denies that relief should be granted.
3. On August 9, 2010, the parties conferred regarding discovery and other procedural matters, as required by 49 C.F.R. § 1111.10(a). Subsequently, further conversations were held between counsel for the parties. BNSF has informed Montana that BNSF intends to file a motion to dismiss the complaint or, alternatively, to hold the proceeding abeyance (hereafter "BNSF Motion") by approximately August 23.
4. The parties have been unable to agree on a procedural schedule largely on account of disagreements over the interval between pleadings. Montana's proposed schedule is as follows:

Period of Discovery:	90 days
Complainant's Opening Statement of Fact and Argument:	45 days after completion of Discovery
Defendant's Reply Statement of Fact and Argument:	45 days after filing Complainant's Opening Statement
Complainant's Rebuttal	30 days after Defendant's Reply

Although Montana wishes to see the proceeding reach a prompt conclusion, Montana must unfortunately agree that this procedural schedule should not begin to run until the Board rules on BNSF's Motion because of the potential for duplicative pleadings. If BNSF does not file its motion by August 23, Montana reserves the right to request the Board to promptly establish Montana's proposed procedural schedule. Montana urges the Board to decide BNSF's Motion with expedition, and respectfully submits to the Board that, by acknowledging the right of BNSF to file its motion, Montana is not conceding that there are valid grounds for dismissal, or, most emphatically, for indulging BNSF's hope to delay resolution of the issues raised in the complaint by holding it in abeyance.

Respectfully Submitted,



Andrew P. Goldstein  
John M. Cutler, Jr.  
McCarthy, Sweeney & Harkaway, P.C.  
Suite 700  
1825 K Street, N.W.  
Washington, D.C. 20006  
(202) 775-5560

Attorneys for the State of Montana

CC: Samuel M. Sipe, Jr., Esq.  
Linda S. Stein, Esq.