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September 1, 2010

Electronic Filing

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

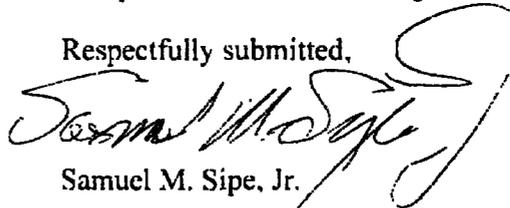
Re: **State of Montana v. BNSF Railway Company, Docket No. 42124**

Dear Ms. Brown:

Enclosed for filing is BNSF Railway Company's ("BNSF") Amended Answer in the above-referenced matter. BNSF is amending its answer to reflect that BNSF published interim rates applicable to shipments of Montana wheat to the Pacific Northwest in 48 to 110 car blocks in between its publication of rates for shipments in 52 to 110 car blocks and its publication of rates applicable to shipments in 48-car blocks. BNSF's amended answer also corrects the mischaracterization in paragraph 8 of the State of Montana's complaint that the rates set forth in Appendix A to the complaint applied to shipments in 52 to 109 car blocks.

Please direct any questions concerning this correspondence to the undersigned.

Respectfully submitted,



Samuel M. Sipe, Jr.

cc: John M. Cutler, Jr., Esq.  
Andrew P. Goldstein, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>STATE OF MONTANA</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 42124</b>
	)	
<b>BNSF RAILWAY COMPANY</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**BNSF RAILWAY COMPANY'S AMENDED ANSWER**

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

Unnumbered paragraph on top of page 2: This unnumbered paragraph states legal conclusions to which no response is required. Nevertheless, BNSF denies the allegations that BNSF engaged in any unreasonable practice in violation of 49 U.S.C. § 10702 or any other provision of the governing statute.

1. BNSF admits the allegations in the first sentence of Paragraph 1. On information and belief, BNSF admits the allegations in the second sentence of Paragraph 1.
2. BNSF admits the allegations in Paragraph 2.
3. With respect to the allegations in Paragraph 3, BNSF admits only that it transports a significant percentage of the wheat and other agricultural commodities produced in Montana that are shipped by rail and that it has agreements with some short-line railroads in Montana.

The remaining allegations in Paragraph 3 are vague and ambiguous and therefore BNSF denies them.

4. With respect to the allegations in the first sentence of Paragraph 4, BNSF admits that substantial quantities of agricultural commodities, including wheat, barley and other commodities, are produced in the State of Montana. BNSF denies the remaining allegations in the first sentence of Paragraph 4 because it lacks knowledge or information sufficient to form a belief as to their truth. With respect to the second and third sentences of Paragraph 4, BNSF admits that it transports significant quantities of wheat produced in Montana to locations in the Pacific Northwest as well as other locations, that much wheat produced in Montana is transported by rail, that BNSF transports more wheat produced in Montana than any other rail carrier, and that some of the Montana-produced wheat transported by BNSF is subject to BNSF tariffs and rate publications. The remaining allegations in the second and third sentences of Paragraph 4 are vague and ambiguous and therefore BNSF denies them.

5. BNSF denies the allegations in the first sentence of Paragraph 5. With respect to the allegations in the second sentence of Paragraph 5, BNSF denies that its tariff rates and practices have not been subject to challenge by Montana wheat shippers in recent years and states that no Montana wheat shipper has actually filed such a challenge before the Surface Transportation Board ("STB") in recent years. BNSF denies the allegations in the third sentence of Paragraph 5, except that BNSF admits that significant expense can be incurred by shippers and railroads alike in reasonable rate and practice proceedings before the STB. BNSF further states that it has partnered with Montana grain growers, namely the membership of the Montana Grain Growers Association and the Montana Farm Bureau Federation, and instituted a mediation and arbitration rate dispute mechanism to provide a streamlined and less costly alternative to

resolving rail rate disputes where they exist. No entity has requested review of BNSF's published rates for 48-car shipments of Montana wheat under this mediation and arbitration mechanism.

6. Paragraph 6 states a legal conclusion to which no response is required.

7. Paragraph 7 states a legal conclusion to which no response is required.

8. With respect to the first sentence of Paragraph 8, BNSF admits that it has published rates that applied to shipments of Montana-produced wheat in 52 or more cars for approximately 30 years. With respect to the second sentence of Paragraph 8, BNSF admits that after it introduced rates for "shuttle" trains that transported Montana-produced wheat in 110 to 120 cars, BNSF continued to publish rates that applied to shipments of wheat in 52 to 110 cars. BNSF denies the remaining allegations in the first and second sentences of Paragraph 8. BNSF admits the allegations in the third and fourth sentences of Paragraph 8 except that BNSF denies any implication in those sentences that the tariff provision attached as Appendix A applies to shipments in 52-109 cars; in fact, the rates in Appendix A apply "if minimum tender per shipment is 48 cars and maximum not greater than 110 cars." See Appendix A at 1.

9. With respect to Paragraph 9, BNSF admits that it currently publishes rates for "shuttle" trains that transport wheat in 110 to 120 cars, publishes rates that apply to 26-car shipments of wheat, and publishes rates applicable to single-cars (*i.e.* 1 to 23 cars) that transport wheat produced in Montana.

10. BNSF admits the allegations in Paragraph 10 except that the rate publication eliminated by BNSF in February 2009 applied to trains of 48 to 110 cars, not just to trains of 52 or more cars.

11. With respect to the first sentence of Paragraph 11, BNSF admits that its prior rates that were applicable to shipments of 52-cars of wheat and those applicable to shipments of 48-cars of wheat were expressed on a dollar per car basis. BNSF further states that the 48 to 110 car rates for wheat shipments were converted to 48-car rates for wheat shipments at the same dollar per car amount; the 48 to 110 car rates for wheat shipments are no longer published. BNSF denies the remaining allegations in Paragraph 11 and, specifically denies any implication that the dollar per car rate for shipments of wheat should decline as the number of cars in the shipment is reduced.

12. With respect to Paragraph 12, BNSF admits that Montana grain elevators paid the same rate on a dollar per car basis under the 48-car per train rates that they paid for 52-car trains under the 48 to 110 cars per train rates. For example, if the dollar per car rate was \$100 per car, the shipper would pay BNSF \$4800 for a 48-car train under the 48-car per train published tariff and would have paid BNSF \$5200 for a 52-car train under the 48 to 110 cars per train published tariff. BNSF denies the remaining allegations in Paragraph 12 and specifically denies any implication that Montana grain elevators were harmed by paying the same dollar per car rate under the 48-car per train tariff that they paid for a 52-car train under the 52 to 110 cars per train or 48 to 110 cars per train tariffs.

13. BNSF denies the allegations in Paragraph 13.

14. The allegations in Paragraph 14 consist of broad generalities regarding a diverse population and therefore BNSF denies them. To the extent the allegations in Paragraph 14 relate to activities of 52-car elevators, BNSF further denies them because it lacks knowledge or information sufficient to form a belief as to their truth.

15. The allegations in first sentence of Paragraph 15 are vague and unintelligible and therefore BNSF denies them. BNSF denies the allegations in the second sentence of Paragraph 15 except that BNSF admits that the Uniform Rail Costing System (URCS) categorizes shipments based on the shipment's waybill into the following individual movement types, which can affect the resulting revenue to variable cost (R/VC): single carload movements (usually 1-5 units); multi carload movements (usually 6-49 units); and unit train movements (50-plus units).

16. BNSF denies the allegations in Paragraph 16, except that BNSF admits that the make-whole adjustment contained in the STB's current URCS methodology is intended to be a cost allocation mechanism that attempts to allocate the relative expected efficiencies of shipments of differing numbers of cars. The movements not costed as unit trains, and therefore subject to some form of make-whole adjustment under the STB's current URCS methodology, are movements that are costed as either single carloads or multiple carloads.

17. The allegations in the first and second sentences of Paragraph 17 are vague and ambiguous and therefore BNSF denies them. BNSF denies the allegations in the third sentence of Paragraph 17.

18. BNSF denies the allegations in Paragraph 18.

19. BNSF denies the allegations in Paragraph 19, specifically denies the allegation that Montana grain elevators experienced rate increases when BNSF began to publish rates that applied to 48-car shipments of wheat (see BNSF's answer to Paragraph 12 above) and further denies any implication that BNSF's published rates for 48-car shipments of Montana wheat are unreasonable.

20. BNSF denies the allegations in Paragraph 20.

21. With respect to the first sentence of Paragraph 21, BNSF admits that it has conducted tutorials for Montana grain producers. at their request, that, among other things, assisted them in calculating the R/VCs under the URCS costing model for 48-car shipments of wheat. BNSF denies the remaining allegations in the first sentence of Paragraph 21. The allegations in second sentence of Paragraph 21 are vague and unintelligible and therefore BNSF denies them.

22. BNSF denies the allegations in Paragraph 22.

23. BNSF denies the allegations in Paragraph 23 because it lacks knowledge or information sufficient to form a belief as to the truth of allegations relating to other railroads. BNSF further specifically denies the allegation that BNSF is “gaming” the system.

24. With respect to Paragraph 24, BNSF admits only that in the circumstance where a Montana short line railroad functions as a handling carrier for BNSF, BNSF has control over the pricing of that Montana short line railroad. BNSF denies the remaining allegations in Paragraph 24.

25. BNSF denies the allegations in Paragraph 25.

26. BNSF denies the allegations in Paragraph 26.

27. With respect to Paragraph 27, BNSF admits only that its rates for 52 to 110 car wheat shipments increased more than its rates for shuttle train shipments of wheat over time. BNSF denies the remaining allegations of Paragraph 27 because it lacks knowledge or information sufficient to form a belief as to their truth.

28. BNSF denies the broad allegations in Paragraph 28 because it lacks knowledge or information sufficient to form a belief as to their truth.

29. BNSF denies the broad allegations in Paragraph 29 because it lacks knowledge or information sufficient to form a belief as to their truth. BNSF further denies any implication in the second sentence of Paragraph 29 that BNSF rail rates to Montana wheat producers have effectively gone up since BNSF ceased publishing rates that applied to trains of 52-car blocks transporting wheat and began publishing rates that apply only to trains of 48-car blocks transporting wheat. As explained in Paragraph 12, Montana wheat producers paid the same rate on a dollar per car basis under both published rates.

30. BNSF denies the allegations in Paragraph 30.

31. BNSF denies the allegations in Paragraph 31.

32. With respect to the allegations in Paragraph 32, BNSF admits that it was knowledgeable that the change from 52-car rates to 48-car rates had an impact on the URCS costs associated with the 52-car and 48-car movements. The remaining allegations in Paragraph 32 are vague and ambiguous and therefore BNSF denies them.

33. The allegations in Paragraph 33 are vague and ambiguous and therefore BNSF denies them.

34. The allegations in Paragraph 34 are vague, ambiguous and speculative, and therefore BNSF denies them.

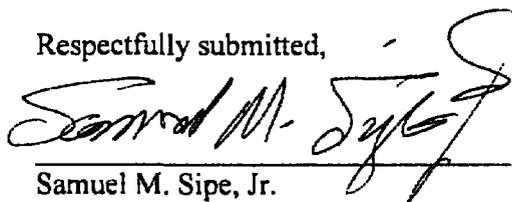
35. The first sentence of Paragraph 35 states a legal conclusion to which no response is required. BNSF denies the remaining allegations in Paragraph 35.

36. Paragraph 36 states legal conclusions to which no response is required. Nevertheless, BNSF denies the allegation in this paragraph that BNSF has engaged in any unreasonable practice in violation of the governing statute.

**DEFENSES**

1. The Complaint fails to state a claim that BNSF engaged in any unreasonable practice in violation of 49 U.S.C. § 10702 or any other provision of the governing statute.
2. The Complaint fails to state a claim that is ripe for consideration by the Board.
3. The Complaint fails for lack of case or controversy because it does not identify any party who has been injured by the challenged practice.
4. The Complaint fails to state reasonable grounds for investigation and action.
5. The relief sought in the complaint is unavailable, as it conflicts with BNSF's statutory right to set a rate or rates it elects on its own initiative, which includes the right to establish or cancel particular multiple car rates on its own initiative.

Respectfully submitted,



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September 1, 2010

ATTORNEYS FOR DEFENDANT

**Certificate of Service**

I hereby certify that on this 1<sup>st</sup> day of September, 2010, I have served a copy of the foregoing BNSF Railway Company's Answer on the following by hand-delivery:

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