Thank you, Mr. Chairman and Commissioner Morgan. I appreciate the opportunity to speak before you today.

For the record, I am Tony Clark, Commissioner and President of the North Dakota Public Service Commission, which is a three-member, publicly-elected, constitutional body in North Dakota that regulates public utilities and other corporations. In addition, it has its historic origins as the Board of Railroad Commissioners, which is why we continue to maintain our involvement today. My testimony today is presented on behalf of the PSC, the North Dakota Grain Dealers Association, and the North Dakota Wheat Commission.

First, thank you for recent decisions, particularly changes regarding product and geographic competition rules that we believe make possible rate relief more achievable for small shippers. We also want to be very clear in noting that there is far more that should be done, however.

As a matter of background, agriculture is the single largest industry segment within North Dakota's economy. Without the ability to move its agricultural production to distant markets at reasonable and competitive rates, our vast production capabilities lose all or part of their value.

This proceeding is extremely important to North Dakota, its grain elevator industry, its economy, and individual farmers. Grain elevators serve as the primary market for a farmer's grain, and the State's 420 elevators purchase between 500 and 550 million bushels of grain per year. Over 80 percent of the grains sold by North Dakota's grain elevators each year is sent to out-of-state markets.

North Dakota does not have direct access to any navigable waterways, and almost all of its out-of-state markets are too distant to be effectively reached by a truck. Typically, trucks are not an effective way to move low-value, bulk commodities like grain over distances of more than 250 miles.

The average distance to North Dakota's nearest major out-of-state market is over 300 miles. Many markets are over 1,200 miles away. This level of captivity explains why nearly 80 percent of the grain that was shipped to out-of-state destinations during the last crop year was shipped by rail. North Dakota shippers simply have no other options. This also explains why many of the rates charged to move grain out of North Dakota generate revenue-to-variable-cost ratios of 220, 300, or even 400 percent.

North Dakota's grain elevator industry is heavily dependent on rail service. Without rail, the industry would have no feasible means of transporting North Dakota grain to market. This near total reliance has a direct impact on farmers since grain is the only commodity grown by the majority of North Dakota farmers, and local grain elevators are the only major market for this grain.

North Dakota and its farmers and grain elevators are clearly dependent on railroads. North Dakota is served by two Class I railroads and three affiliated short lines. Only about 3 percent of the State's grain elevator locations are directly served by more than one rail carrier.

It is vitally important that the STB understand North Dakota's dependence on railroads. Like any commodity, the farmers' grain is virtually worthless unless it can be delivered to buyers. Given this lack of options, rail rates have a direct and immediate impact on shipper profitability and farmer income.

The price that farmers receive for their grain is based on destination market prices minus transportation charges and elevator margins. Elevators, typically, hope to achieve a margin of 10 cents per bushel. This amount is used to pay operating costs and, hopefully, provide a profit at the end of the year.

Competition in the local grain market prevents elevators from taking a larger margin, and low profit levels make it impossible to operate on a smaller margin. Therefore, there is a direct correlation between grain prices and rail rates. As rail rates increase, elevator offering prices decline and so does farmer income. The railroads' influence on North Dakota's economy is, to say the least, enormous.

In Ex Parte No. 586, the STB asked shippers for help in defining big versus small shippers. In that proceeding, the Board initially suggested that a small shipper might be one that ships in the range of 200 to 500 carloads per year. The PSC had replied at that point that, for shippers who are dealing with low-value, bulk commodities such as grain, that particular range is far too low.

In North Dakota, the 50 largest grain elevator locations handle an average of only about 3.65 million bushels of grain per location. This volume equals only about 1,000 or 1,100 carloads per year for these largest elevators.

On this point, it is important to recognize that North Dakota grain elevators typically handle a wide variety of grains, and they typically sell these grains to many different markets. Not all of their rail shipments go to the same place. Conversations with one of North Dakota's largest grain elevators indicate that, of the 5,000 rail cars shipped in a year, perhaps 1,500 might go to a single receiver. The remaining 3,500 cars might go to any one of 50 different locations.

If this firm decided to pursue a rate complaint case, it is unlikely that they would have what many people would consider a large volume of traffic moving between a single-origin destination pair. It is also unfortunate that, if the shipper was successful in a rate complaint proceeding involving its largest-volume destination, the outcome would influence only a small percentage of its shipments. Obtaining relief on other traffic would necessitate more complaint proceedings.

As indicated in the introductory section of this statement, grain elevators often operate on a gross margin of about 10 cents per bushel. An elevator with an annual volume of 2 million bushels and a 10-cent margin would generate about $200,000 in annual gross, post-transportation-expense operating income.

While this amount of money may sound significant, it must cover all of the company's non-transportation expenses, including salaries, utilities, maintenance, and so forth. Anything that is left over is profit or money that could be used to pursue a rail rate complaint case.

The PSC has approached North Dakota's Legislature and requested funding to pursue the preliminary stages of a rate complaint proceeding. To develop the budget, we sought estimates for legal costs and consulting fees from several attorneys who are experienced in rate proceedings before the STB. Cost estimates for the initial stages of a rate complaint proceeding approached $250,000 with the full prosecution of a rate case estimated between a million and a million and a half, if not more.

Obviously, these costs will be prohibitive for even the largest of North Dakota's grain shippers. Now although the State of North Dakota appears close to beginning the initial stages of a complaint case, it is unfortunate that captive, small-volume shippers need an entity the size of State government to seek regulatory relief from unreasonable freight rates being charged by service providers with extreme market power. Administrative remedies should be straightforward, timely, and affordable to the extent that aggrieved shippers can seek relief on their own accord.

The STB has indicated that constrained market pricing is a preferred procedure for evaluating the reasonableness of challenged rates. It has also developed guidelines for handling rate complaint cases where CMP guidelines would be too costly, given the value of the case. These are the guidelines that would be applied in small rate challenges.

When the Board adopted its small rate case guidelines, it declined to implement a firm set of rules, so a potential complainant could determine beforehand whether its case qualified for the simplified procedures. Instead, the Board instructed small rate case complainants to proceed in a case-by-case demonstration of why they regard their case as being too costly for the guidelines.

As a result, there is at least a perception, if not a reality, that small rate cases may begin with a costly dispute regarding the eligibility of the complaining party. With high known costs, probable procedural delays, uncertain approaches concerning non-CMP methodologies, and a wide range of prescriptive rate possibilities, it should not be surprising that no small shippers have approached the STB seeking rate relief.

As mentioned earlier, a shipper should not have to appeal to an entity like state government for help to access the levers of relief to which they are entitled under the law, but we are concerned that is precisely the type of system we currently have in place. Something has to change or shippers, and in our case farmers, will continue to pay unreasonable rates with very little prospect of relief.

Over the years, the PSC has advocated a number of policies to address inequities in the current system. In this filing we advocate for an Office of Consumer Advocacy to represent small shippers. In other filings we have discussed the pros and cons associated with mediation and arbitration. There are, undoubtedly, other reforms worth consideration, and we will continue to analyze each of them as the dialog proceeds.

The STB has made significant strides towards making rate relief more achievable. For that, we are thankful. The foregoing discussion illustrates, however, that the Board's procedures regarding the processing of small shipper rate complaints should be modified even further to ensure that small-volume shippers are provided the meaningful access to the relief intended by Congress.

The existing simplified approach is overly complex, cost-prohibitive, and untested. The Board decisions appear to be incapable of yielding rate prescriptions near the reasonableness standards recognized by the Staggers Act, and they would likely be appealed.

The Board should establish a Consumer Advocacy Office to represent small shippers in agency rulemaking proceedings. If the Board feels that existing statutes preclude it from developing mechanisms that will provide small shippers with timely and affordable access to reasonable rates, we recommend aggressively working with Congress to craft the legislation that will provide small shippers with relief from monopolistic railroad practices. The economic well-being of vast regions of this country are dependent upon that occurrence. Thank you.