TESTIMONY TO ND LEGISLATIVE TRANSPORTATION COMMITTEE
SENATOR DAVID O'CONNELL, CHAIRMAN
JANUARY 30, 2008
FROM STEVE STREGE, ND GRAIN DEALERS ASSOCIATION

Good morning Mr. Chairman and members of the committee

Thank you for the invitation to speak about rail car issues. Because this is meant to be an informational presentation rather than persuasive, and because of the weather, I've asked Jon Mielke to read this to you. Jon & I are experienced warriors on railroad matters. From his own experience he will be able to answer many of your questions. I will be available at 701-235-4184 if you wish to call and put me on a speakerphone.

North Dakota has gone through quite a transformation in rail grain transportation in the past several years. The 52-car trains of wheat and 54-car trains of corn and soybeans that were the optimum in efficiency for the railroads several years ago have been superseded now by 110-car shuttle trains on the BNSF and 100-car trains on the Canadian Pacific. There are 25 shuttle loading elevators on the BNSF and RRVW. That is the most of any state. Nebraska is second with 23. There are about 20 100-car loaders on the CP and its short line affiliates DMVW and Northern Plains Railroad.

This conversion to larger trains has meant consolidation of many grain elevator companies into larger companies. Millions of dollars have been spent on new facilities. Around some of those there is new and severe road impact. Smaller shipments, the singles, 26 and 52/54 car units have at times felt shortchanged by all this. Even the big shuttle train shippers also ship the smaller sizes of trains and some singles. The railroad will tell you that shuttle trains enable it to handle more grain faster and so the smaller shipments are getting more cars than they would otherwise.

Shippers report BNSF performance has improved over several recent years. There has been less satisfaction with CP. One member reports he is still waiting for cars due in October. Poor car condition continues to be a problem on the CP. Shippers use spray-expanding foam on the bottom gates of some cars to stop the leaks. CP says it is on a car rehabilitation program, but progress is slower than hoped for.

One concern for the shuttle loaders is inaccurate ETAs, estimated time of arrival. Those 110-car trains on BNSF are to be loaded and billed within 15 hours of spot time, although this has been relaxed to as much as 21 hours in some cases. CP is at 24 hours and for the winter has given some leniency on when the clock starts. Elevator loading crews are sometimes called out at odd hours and then the train doesn't show up on time. Both major railroads acknowledge they don't have this perfected. BNSF says it will go back to 15 hours in the second quarter of 2008 when it expects to have a new notification of arrival system in place. We have appealed for longer loading times in the winter, with its shorter daylight hours, cold, wind, and sometimes ice.

Car supply programs are mostly of an auction type, where shippers bid above the tariff rate. The BNSF still puts out 2,000 cars per month in a lottery at the tariff rate. Recently the BNSF announced that with certificate of transportation trains the BNSF would assign a want date rather than the shipper picking it. This created quite an uproar and that program will not be put in place. A couple years ago the BNSF went to only shuttle and non-shuttle rates. There was no rate break between a single car and a 26-car or 52-car train. Now it is going back to a $50 per car incentive for shipping in blocks of 25 cars or more. Apparently they have discovered there are efficiencies for even these smaller trains.

Some on this committee were involved in the fuel surcharges debate of the 2005 legislative session. North Dakota made more noise than anyone. The facts were pretty clear that assessing a surcharge as a percentage of the rate was grossly unfair to captive shippers who pay higher rates. North Dakota wheat shipped west was paying 70% more fuel surcharge per car mile than soybeans from Minnesota to the same destination. At first BNSF lowered the westbound wheat rate to compensate for some of this. Then on January 1, 2006 it went to a mileage-based fuel surcharge. Shortly after that the federal Surface Transportation Board opened a legal proceeding on the matter and has since ordered all railroads to charge on the basis of distance.

We still don't know if the surcharge actually reflects the increased fuel cost. Unfortunately the railroads don't disclose the formula for getting from crude oil or diesel price to cents per car mile and the Surface Transportation Board has chosen not to require them to. The grain surcharge is now 54 cents per loaded car mile on the BNSF. On a 110-car wheat train from western ND to Portland, Oregon that's over $75,000 surcharge. On top of the rate of over $400,000. Grain shippers wonder why their fuel surcharge is 50% more than the surcharge on coal.

On Monday of last week we had Senator Dorgan speaking at our convention about the federal legislation he is sponsoring, along with about 10 other Senators, to reform federal law regarding railroads. I won't go into the details, but don't let the railroads tell you that it is reregulation or that it will take us back to the bad old days of railroad bankruptcy prior to passage of the Staggers Railroad Deregulation Act of 1980.

Also on our convention program was Mr. Francis Mulvey, Vice Chairman of the Surface Transportation Board. He spoke about some of the ongoing processes there; processes we think should be speeded up and made more shipper-friendly.

About five years ago the Surface Transportation Board had started the process of reforming its small rate case rules. That was put on ice for a couple years under former Chairman Roger Nober and restarted again under Chairman Buttrey, who a few of you met when he was here in North Dakota in August 2006. The new rules have three levels of cases instead of the two previously. Those were the stand-alone cost method, and the simplified guidelines North Dakota was planning to file under. The proposed rules were published late last summer and after another round of comments they have been improved somewhat. All the Class I railroads except BNSF have appealed the STB's decision. Once again we have an example of an agency trying to do a little to accommodate the shippers and the railroads lawyering-up to fight it.

Our grain rates out of North Dakota are still at very profitable levels. We want our railroads to be profitable, but there is a limit. The legislature has had a role in this and should continue with that. Back in 2003 you found $250,000 to investigate the feasibility of a railroad rate complaint. Then in 2005 $900,000 was cobbled together, with a majority of public funds and some private funds, to have ready a war chest to prosecute a rate complaint. In January 2006 BNSF reduced some of its wheat rates. These rates were the most vulnerable to challenge. We knew that and BNSF knew that. Annual rate savings is in the neighborhood of $10 million per year. Now that's real money.

This past session the legislature cut that $900,000 in half to $450,000. We wanted it at the higher level and think it should go back there. Let's keep our powder dry. We haven't spent any of it. It is a deterrent.

The Surface Transportation Board recently changed its method of calculating railroad cost of capital. Railroad stocks have been doing very well on Wall Street the past few years, but yet every year the STB declares most railroads to be revenue inadequate. The new method is more realistic and should deny some railroads the ability to claim they aren't making ends meet.

The STB has commissioned a rail competition study.

The railroads are hoping for a $35 billion tax credit incentive for infrastructure. Senator Conrad is a prime sponsor of that bill. We have encouraged him to get on Senator Dorgan's bill and force the railroads to accept some shipper-friendly reform before getting a tax break.

One of the issues we discussed with Vice Chairman Mulvey at convention last week was the definition of the railroad's common carrier obligation. The giant railroad corporations of today have been created by the federal government allowing merger after merger. Should it be solely these railroad companies' decision about which traffic to haul? If it is more profitable to haul Chinese electronic goods from Los Angeles to Chicago, should they be able to concentrate on that at the expense of coal shipments or grain shipments that may bring less to their bottom line? Mulvey said STB is looking into this.

The final matter is the Canadian Pacific Railway attempting to buy the Dakota, Minnesota and Eastern Railway which is primarily in South Dakota. The CP intends to shell out about $1.5 billion for the DME. Our question to them is if they have that kind of money to spend on a different railroad, why aren't they adding some better grain cars for their current shippers who have contributed heavily to the $1.5 billion? The Grain Dealers has filed a Notice of Intent to Participate in this STB merger proceeding. The North Dakota Wheat Commission has also filed. I think the point needs to be made that railroads should take care of their current customers before going off buying new customer bases with money sorely needed for better equipment.

The Grain Dealers Transportation Committee met with both railroads at its convention a year ago, again in March 2007, and again just this past week at our 96th Annual Convention in Fargo.

There is much more to say but that is enough for now. Jon will be able to answer many of your questions and I will be available if you would like to call. Thank you for your interest in rail issues and your support of our work on them.

Steve Strege
ND Grain Dealers Association

Steve/Parking SDS/Testimony interim transportation 1-30-08