

## APPENDIX I

STEVEN D. STREGE, Executive Vice President  
CHERYAL WELLE, Executive Assistant  
SUE BENSON, Office Assistant  
Ph: 701-235-4184, Fax: 701-235-1026  
118 Broadway N Ste 606, Fargo, ND 58102  
Website: [www.ndgda.org](http://www.ndgda.org)

STU LETCHER, Safety & Health Director  
Ph: 701-543-3110, Fax: 701-543-4183  
P.O. Box 314, Hatton, ND 58240

HAL GRIEVE, Safety Specialist  
Ph: 701-633-5256, Fax: 701-633-5258  
204 4th Avenue S., Buffalo, ND 58011



# NORTH DAKOTA GRAIN DEALERS ASSOCIATION

## Interim Transportation Outline June 19, 2008 – NDSU Alumni Center

1. Service is current
2. Rates are increasing
3. Fuel surcharges
4. Surface Transportation Board
5. Rate case rules
6. Cost of capital
7. CP acquisition of DME
8. Common carrier obligation

# RAILROAD FUEL SURCHARGES 6/04 - 7/08

- monthly 07, 08, end of quarter 04, 05, 06;

\*IMPORTANT NOTES: CP's switched to its new mileage-based surcharge on April 26, 2007. CP's base is a Highway Diesel Fuel cost of \$2.25 per gallon. BNSF's is \$1.25 per gallon. At \$2.25 per gallon, BNSF would have a 26¢ per mile surcharge. CP increases its surcharge a half cent per mile for every 2.4¢ per gallon increase in fuel price. Thus a \$1 per gallon difference in fuel price would mean nearly 21¢ per mile in surcharge. Secondly, CP applies the same cents per car mile surcharge to grain as to coal. BNSF is roughly 50% more for grain than coal.

	<u>BNSF</u> Ag	<u>BNSF</u> Coal	<u>CP Rail</u>	<u>BNSF</u> Non-ag Non-coal
	% of rate thru Dec '05 Cents per car per mile <u>after December 2005</u>		% of rate thru April '07. Cents per car <u>mile after April '07</u>	<u>% of rate</u>
<b><u>2008</u></b>				
July	80¢	53¢	44.5¢	32%
June	71¢	48¢	38.5¢	28.5%
May	66¢	44¢	34¢	26.5%
April	54¢	36¢	23.5¢	21.5%
Mar	52¢	35¢	22.5¢	21%
Feb	53¢	35¢	23¢	21%
Jan	54¢	36¢	24¢	21.5%
<b><u>2007</u></b>				
Dec	46¢	31¢	17.5¢	18.5%
Nov	43¢	29¢	15¢	17.5%
Oct	41¢	27¢	13¢	16.5%
Sep	41¢	27¢	13¢	16.5%
Aug	39¢	26¢	12¢	16%
July	39¢	26¢	11.5¢	15.5%
June	40¢	27¢	12.5¢	16%
May	36¢	24¢	9.00¢	14.5%
April	31¢	21¢	8.82%	12.5%
Mar	31¢	21¢	8.82%	12.5%
Feb	35¢	23¢	10.10%	14%
Jan	33¢	22¢	9.46%	13%

## 2006

Dec	32¢	22¢	9.14%	13%
Sep	43¢	29¢	12.66%	17%
June	37¢	25¢	10.74%	15%
Mar	31¢	21¢	8.82%	12.5%

## 2005

Dec	18.5%	23.5%	15%
Sep	11.5%	14.5%	8%
June	10.5%	13.5%	7%
March	7.5%	9%	4%

## 2004

Dec	9%	11.5%	5.5%
Sep	5%	6.5%	1.5%
June	4.5%		1%

BEFORE THE SURFACE TRANSPORTATION BOARD  
FINANCE DOCKET 35081  
CANADIAN PACIFIC RAILWAY CO., *ET AL.* -- CONTROL --  
DAKOTA, MINNESOTA & EASTERN RAILROAD, *ET AL.*

-----  
Rebuttal of

North Dakota Grain Dealers Association and North Dakota Wheat Commission  
to applicant's response to comments and requests for conditions  
-----

On page 10 of his Reply Verified Statement, Don Smith of CP states that since 2004 CP has invested \$160 million in its western Canada lines. We acknowledge and appreciate that. It is important to grain shippers on CP and its DMVW and NP short lines. Prior to that, these shippers were seriously hindered due to inadequate capacity. They had pointed out the problems to CP management and requested more capacity. Shippers said CP had to increase capacity westbound to keep its present business and gain new business. Without shipper provocation there might not have been the improvements and the growth in business that CP now cites as reasons to deny the NDGDA/NDWC request for conditions.

But while the capacity situation has improved, the condition of CP grain hopper cars has deteriorated. On page 10 of his Reply Verified Statement Don Smith says the CP car fleet is "in good condition for its age". CP shippers will dispute the "good condition" and the "for its age" appears to acknowledge a quality deficiency. At recent meetings with grain shippers, CP has been less complimentary of the condition of its grain car fleet.

In its March 4 comments, NDGDA/NDWC had raised the issue of damaged bottom gates on many grain hopper cars. Smith says less than 1% of CP grain cars placed for loading are rejected on account of gate issues. That may be true, but it is only a small part of the story. The rest of the story is that shippers repair many CP cars. In a quick poll conducted by NDGDA, a dozen CP, DMVW and NP shippers in ND estimated they repair bottom gates on 3-7% of CP cars placed for loading and make other repairs on 1-5%. Bottom gates are often wired shut because locking mechanisms don't work. Recent higher grain prices make this cargo more valuable, but protecting it from loss or damage is more difficult under these circumstances.

Shippers repair cars because rejecting them means waiting days or weeks for replacement cars. Shippers wish to stay in contract compliance with their grain sales. When 10 or 100

carloads of grain are sold for delivery in, for example the first half of June, that is what the buyer expects, not 9 or 95 on time or a week or two late and the others sometime in July or August. "Stragglers" create inefficiencies for shipper, receiver and railroad. CP shippers have sometimes been discounted on grain price because they are on the CP and the buyer anticipates late delivery. That hurts not only CP shippers, but CP as well. CP shippers are less competitive in the market and, if there is an option, the grain will go elsewhere and CP will forfeit the revenue.

Another issue is that old cars with round top hatches that don't fit with today's loading procedures are still in service. These cars are usually less cubic feet capacity and so shippers can't fill them to the normal weight. When the freight rate is on a per car basis, this means paying more per bushel. Cars in disrepair should be fixed and out-of-date ones replaced.

On page 9 of his Reply Verified Statement Smith states CP added 500 new hopper cars in 2006. That may be true, but typically less than 40% of CP's grain hopper fleet is in the U.S. and only a portion of that in North Dakota specifically. If CP retired some cars or lost them in accidents the net positive effect would be even less.

We appreciate CP adding capacity and the car repairs it has done. But more is needed. Now when CP plans to spread its car and locomotive fleet over the DME we become even more concerned. In CP's September 4, 2007 news release announcing the agreement to acquire the DME, CP Chief Financial Officer Mike Lambert said, "'With our strong balance sheet, this investment represents the best use of our free cash.'" We beg to differ about the best use of all the "free cash". That is why we request the conditions that CP be required to invest for the benefit of its current grain customers while courting another railroad for merger.

Submitted by:

Steven D. Strege, Executive Vice President  
North Dakota Grain Dealers Association  
118 Broadway, Ste 606  
Fargo, ND 58102

Neal Fisher, Administrator  
North Dakota Wheat Commission  
4023 State Street  
Bismarck, ND 58201-0690

#### CERTIFICATE OF SERVICE

Steven D. Strege hereby certifies that on May 19, 2008 a copy of this document was sent by first class mail to all parties of record as of this date.

/s/Steven D. Strege



Oral comments of Steve Strege to STB hearing on the common carrier obligation of railroads  
April 24, 2008 - Washington, DC

Thank you Mr Chairman and thanks to the entire board for holding this hearing.

I am the Executive Vice President of the North Dakota Grain Dealers Association. The BNSF, CP Rail and spinoffs of each serve North Dakota. 75-80% of our crop production moves to market on rail. Much of our state is captive to rail economically and for practical purposes. Huge volumes cannot be moved great distances by truck.

All three of you board members have been to my state, two very recently. Vice Chairman Mulvey spoke at our convention this past January and met with grain elevator managers.

Chairman Nottingham was there just last month. Mr. Buttrey visited during the harvest of 2006. Both visited some grain elevators and were again reminded of the vastness of the great plains. Grain elevators are scattered around where the crop production is, which is almost everywhere.

Those wide expanses of crop production and long distances to market are reasons why the common carrier obligation is so important and why this Board has a great responsibility in ensuring that it is honored. Getting crops to points of processing, consumption or export is more than economics; it's keeping food on the table for Americans and foreign customers.

Lately this board has been dealing with cost of capital, paper barriers, and rate case rules; all important, but none matter if there is no service. And so the common carrier obligation to serve transcends all of those particular issues. It is a glue that holds our transportation system together, keeping far-flung points connected.

Railroads must be obligated to serve. They should not be able to pick and choose for only their own bottom line interests. They owe their customers and the public more than that. They have been granted huge franchises to serve, not to exploit. Yes, railroads are private businesses. So are investor owned utilities. Both provide essential services. And both have public obligations.

If hauling containers of electronics and toys is more profitable than hauling grain or coal, it is not OK for a railroad to let essential goods like grain and coal fall behind while it hauls the containers. When railroads are granted larger service territories, through mergers approved by a public body such as the ICC or STB, some obligations to the public come with it. Providing essential service is one of those.

Our written comments include nine points regarding the obligation. In summary those involve railroads making available to all of their customers an adequate supply of serviceable equipment under reasonable terms in response to market needs and then delivering that service on a timely basis.

Being 20-30-40 or more days late is unacceptable. Imagine if delivery services to your local grocery store or shopping mall ran that far behind. Delays cost shippers money and grain backs up at farms.

Selling capacity at a premium over already very profitable rates and then being late is even more unreasonable. Paying only a one-time penalty for being late is not reasonable when rail customer costs for the delay continue to accumulate.

Inaccurate estimated times of arrival on trains that must be loaded rapidly is not reasonable.

Delays related to severe weather are understandable. The railroads should remember that when dealing with their customers on loading times and demurrage.

Regarding how much capacity is expected I'll echo what Mr. Mulvey said earlier. If the common carrier obligation is to only distribute fairly the capacity a railroad has, this puts defining the common carrier obligation in the hands of the railroads. I don't think that's what we want to do.

Our written comments address concerns with the marketing of capacity. Shipment size or duration commitments that do not fit customers do not honor the common carrier obligation. When middlemen are involved there is some passing of the buck and railroads are somewhat insulated from true market signals.

Railroads should respond to market needs instead of pushing their concepts on the market. Leaving behind rail customers who cannot comply with expensive new concepts is not honoring the common carrier obligation.

North Dakota has a diversity of crops. Some of these crops are typically marketed in small lots, not 100 car trains, so reliable access to single cars and small train sizes is very important. These should not be pushed to the back of the line in preference for only larger shipments. The common carrier obligation applies to all of them. Most train shippers also load smaller shipments.

A grocery store might find it more efficient to sell potatoes in 100 lb bags only. If there was competition that store would lose much business to stores offering 20, 10 and 5 lb bags. The common carrier obligation means effective service to the smaller shipments.

Much is said about rates being market-based. A market is a number of willing buyers and willing sellers. That is not what we have. Most grain elevators have only one railroad.

Our written comments mention the Certificate of Transportation complaint to the ICC. At least a couple of us at this table are veterans of that. The Eighth Circuit Court of Appeals made it very clear that a common carrier obligation exists and that a preferential program which impairs the railroad's ability to meet it is unlawful. That decision still stands.

A consistent supply of cars offered in ordering programs usable by all customers is essential. The trend however, has been to more complex programs requiring longer commitments. Frequent changes in train sizes, incentives, penalties and more make it difficult to keep up with what's new and the consequences of not knowing the latest railroad change can be significant. This should be the common carrier obligation not the complicated carrier obligation.

Mr. Chairman this morning you mentioned shipper frustration with a \$25 fee for calling in a bill of lading. That reminds me of a BN shipper who got his trains out of the Dilworth, MN yard and was accustomed to calling Dilworth to find out when his train would arrive. Then the BN centralized all that kind of thing to Topeka, Kansas. This shipper called Topeka to find out where his late train was. He left a voice mail and after about three days it was returned and the BN person told him to hang on a minute while he called Dilworth to find out. This is the kind of thing that frustrates rail customers.

Requiring rail customers to pay for switches that suffer much wear from the carrier's other traffic is not reasonable. Neither are onerous lease terms, including requirements to carry insurance to pay for railroad negligence. Another is escalating lease payments. Earlier this week I was told of a situation in Minnesota where one grain elevator's annual lease payment is to be raised from \$1,454 to over \$13,000. These things do not honor the common carrier obligation.

Since Staggers and so much rail industry consolidation the balance of power has shifted even more in favor of the railroads. We believe the STB must take a stronger hand in calling fouls and correcting situations.

Even though shippers are organized into associations like those here today, we have no authority over ever-larger and more powerful railroads. Another problem is shipper reluctance to complain for fear of retribution. And so rail customers look to the STB for assistance. Regarding the Office of Consumer Assistance, a few years ago, back before the present staff was there, I know of a shipper who had a problem. He sent information to the Office of Consumer Assistance, which sent that information on to the railroad. The railroad told the Office the shipper didn't have his facts correct. That message was sent back to the shipper and that was the end of it. We need more than that.

In this proceeding we think this board should define with as much clarity as possible what the common carrier obligation of the railroads is. Then the board should be more willing to step in and correct abuses of the common carrier obligation that have become all too common.

Thank you. I'll try to answer any questions.



**SEC. 7529. AGRICULTURAL AND RURAL TRANSPORTATION RESEARCH AND EDUCATION.**

(a) **IN GENERAL.**—The Secretary, in consultation with the Secretary of Transportation, shall make competitive grants to institutions of higher education to carry out agricultural and rural transportation research and education activities.

(b) **ACTIVITIES.**—Research and education grants made under this section shall be used to address rural transportation and logistics needs of agricultural producers and related rural businesses, including—

- (1) the transportation of biofuels; and
- (2) the export of agricultural products.

(c) **SELECTION CRITERIA.**—

(1) **IN GENERAL.**—The Secretary shall award grants under this section on the basis of the transportation research, education, and outreach expertise of the applicant, as determined by the Secretary.

(2) **PRIORITY.**—In awarding grants under this section, the Secretary shall give priority to institutions of higher education for use in coordinating research and education activities with other institutions of higher education with similar agricultural and rural transportation research and education programs.

(d) **DIVERSIFICATION OF RESEARCH.**—The Secretary shall award grants under this section in areas that are regionally diverse and broadly representative of the diversity of agricultural production and related transportation needs in the rural areas of the United States.

(e) **MATCHING FUNDS REQUIREMENT.**—The Secretary shall require each recipient of a grant under this section to provide, from non-Federal sources, in cash or in kind, 50 percent of the cost of carrying out activities under the grant.

(f) **GRANT REVIEW.**—A grant shall be awarded under this section on a competitive, peer- and merit-reviewed basis in accordance with section 103(a) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(a)).

(g) **NO DUPLICATION.**—In awarding grants under this section, the Secretary shall ensure that activities funded under this section do not duplicate the efforts of the University Transportation Centers described in sections 5505 and 5506 of title 49, United States Code.

(h) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$5,000,000 for each of fiscal years 2008 through 2012.