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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 661
RAIL FUEL SURCHARGES

COMMENTS OF
MONTANA WHEAT & BARLEY COMMITTEE
COLORADO WHEAT ADMINISTRATIVE COMMITTEE
IDAHO BARLEY COMMISSION
IDAHO WHEAT COMMISSION
NEBRASKA WHEAT BOARD
OKLAHOMA WHEAT COMMISSION
SOUTH DAKOTA WHEAT COMMISSION
TEXAS WHEAT PRODUCERS BOARD
WASHINGTON WHEAT COMMISSION
NATIONAL ASSOCIATION OF WHEAT GROWERS

I. INTRODUCTION

The MONTANA WHEAT & BARLEY COMMITTEE, COLORADO WHEAT ADMINISTRATIVE COMMITTEE, IDAHO BARLEY COMMISSION, IDAHO WHEAT COMMISSION, NEBRASKA WHEAT BOARD, OKLAHOMA WHEAT COMMISSION, SOUTH DAKOTA WHEAT COMMISSION, TEXAS WHEAT PRODUCERS BOARD, WASHINGTON WHEAT COMMISSION AND NATIONAL ASSOCIATION OF WHEAT GROWERS (known as Wheat & Barley Commissions) welcomes the opportunity to file comments on railroad fuel surcharges in this hearing and proceeding.

This practitioner will be testifying before the Board on behalf of the Wheat & Barley Commissions at the scheduled May 11th hearing and anticipates talking about the major points outlined in these Comments.

This is a focused effort by the Wheat & Barley Commissions in this proceeding because of the importance that federal regulatory oversight of railroads bears on the marketing and transportation of wheat and barley.

Your Wheat and Barley Commissions have filed together and participated in various Ex Parte proceedings in the past and they welcome the opportunity to address this issue in this proceeding. The past, present and future regulatory oversight affects the daily lives of this nation's wheat and barley producers.

II. IDENTITY AND INTEREST OF WHEAT & BARLEY COMMISSIONS

The Wheat & Barley Commissions represent wheat and barley producers in the major wheat and barley producing areas of the United States. They represent the majority of wheat and barley production. The Wheat & Barley Commissions are charged with representing the interests of wheat and barley producers in the marketing of their grains both domestically and internationally. A vast majority of the wheat and barley producers represented by the Wheat & Barley Commissions are captive to rail carriers for significant portions of their freight shipments. The Wheat & Barley Commissions also concur in the statement in this proceeding filed by the Honorable Brian Schweitzer, Governor of Montana; the Alliance for Rail Competition and by USRail.Desktop. There will be many participants in this proceeding covering a whole host of issues and the Wheat & Barley Commissions would like to focus on a couple of issues for your consideration.

III. WHEAT & BARLEY PRODUCERS ARE THE ONES WHO BEAR THE FREIGHT CHARGES IN THE TRANSPORTATION OF GRAIN

For the layman, a simplistic discussion of how wheat is marketed will illustrate the product flow and the importance that transportation rate levels play as a price determinant of agricultural commerce. Wheat and barley is sold by growers through local country elevators or grain sub-terminals located in the various states and subsequently transferred to merchandisers and exporters. The wheat or barley is delivered by a farm producer to a local elevator. The producer is given the Grain Exchange price (basis), less rail transportation charges, less deduction for elevation and margin. For example, if the price of wheat at the market is \$4.00 and the transportation price is \$1.00 and elevation is \$.15, the farm producer would receive \$2.85 for his wheat or barley. Thus, the farm producer bears the transportation costs of moving the wheat or barley to market. The grain merchandiser pays the railroad, but the farm producer is the bearer of freight rates. There are many grain companies that may profess to paying the freight bills, but the party that bears the freight charges are the farm producer. Adverse rail rate practices directly affect the farm producer.

For the farm producer, the cost of transporting grain can represent as much as one third (1/3) the overall price received for the grain. The key to understanding the uniqueness of the farm producers plight is to understand: unlike virtually every other industry, the farm producers bear the freight charges and cannot pass them on to any other party in the distribution chain, and yet the farm producer does not physically pay the freight charges. This does not make the farm producers victims but it does make their captivity issues unique in the transportation of their commodities.

IV. THE WHEAT & BARLEY PRODUCERS RECOGNIZE THAT RAILROADS
NEED TO RECOVER UNANTICIPATED INCREASES IN FUEL COSTS

The Wheat & Barley Commissions constituents incur increasing fuel costs every-day and although they are unable to pass along those costs to anyone else, they recognize that a fair and equitable fuel surcharge program is an appropriate method for transportation providers (truck, barge and rail) to recover unanticipated increases in fuel costs. It may very well be that the methodologies that were introduced by the various railroads for collecting increased fuel surcharge based upon rates, were initiated because it was an easy way of applying their increased costs to shippers.

The Wheat and Barley Commissions have no quarrel with the concept of the railroads collecting for increased fuel surcharges provided the methodology is fair, equitable to all rail customers and collections are not exceeding recovery of changes in the costs of fuel, i.e. the fuel surcharge program has not become a profit center designed to enhance revenue. In essence, fuel surcharges properly structured can be an appropriate tool for recovering unexpected changes in railroad fuel costs.

V. FUEL SURCHARGE PROGRAMS SHOULD BE COST-BASED AND BASED
UPON THE FUEL EXPENDED ON INDIVIDUAL MOVEMENTS

It is the view of the Wheat & Barley Commissions that fuel surcharge programs should closely reflect the cost of the fuel increase of the actual movement that is being assessed.

The current system by the railroads has four inherent flaws.

1. **The current railroad fuel surcharge program is collecting from less than the full universe of rail customers.** Some rail customers are not being charged fuel surcharges, and some rail customers are being charged at different levels than other rail customers. BNSF officials have stated that they are not collecting fuel surcharges on about ½ of their revenue base.
2. **Rail customers (less than full universe) that are being assessed fuel surcharges are being charged surcharges that are greater than the incremental increase in fuel costs incurred by the railroad for their particular movement.** Fuel surcharges should be just that – surcharges. Surcharges by their definition are tools for collecting unanticipated changes in cost levels. Fuel surcharges should not be tools for collecting more than incremental increases in fuel charges associated with a particular movement. All Class I railroads have an embedded level of fuel incorporated in the rate levels. Attempting to collect all or a major portion of ones increase in fuel from only a portion of the rail customers – may prove to be an unreasonable carrier practice. Our data in this presentation will also show that the Class I railroads may be collecting more in fuel surcharges on individual movements than the total cost of fuel.
3. **Some of the rail customers are being charged fuel surcharges based upon rate levels and some are being charged based upon a mileage formula** which creates differing level of fuel surcharge burdens on different rail customers.
4. **Methodologies for attaining fuel surcharge information leads to uncertainty in calculating the correct fuel charge assessment.** This Board needs to require more detailed information from

the railroads in the Public Way Bills in order to provide transparency for the Board and the public.

The Wheat and Barley Commissions do not quarrel with the institution of a mileage fuel surcharge if it is reflective of the actual fuel cost increase being incurred by the movement and not some system-wide fuel cost number allocated to some but not all of the rail customers equally.

A Mileage based fuel surcharge is on its face, a more reasonable way to assess extraordinary rises in fuel costs than revenue based fuel surcharges, as fuel costs vary with distance. However, a mileage based fuel surcharge program cannot be allowed to also be a profit center whereby the amounts collected are greater than actual increased costs associated with the movement being assessed.

When looking at wheat movements throughout the western states, one finds that there is very little difference when one compares the calculated fuel costs for a particular movement and the effects of a mileage (BNSF) vs. a rate based surcharge (UP). The Wheat & Barley Commissions are not surprised by the results of the calculations, as the switch by the BNSF to a mileage based fuel surcharge from a rate based fuel surcharge was not ever designed to collect LESS fuel surcharge revenue. The UP does show considerably higher average fuel costs in their 4th Q 2005 reports than BNSF (BNSF - \$1.69/gallon vs UP - \$2.08/gallon).

Origin	Destination	Estimated Fuel Cost*	RR Multi Car Tariff Rates	Railroad	Rail Miles	BNSF 12/05 FSC Based Upon Mileage FSC	UP 12/2005 FSC Based on Rate	FSC/Calculated Fuel Cost Ratio
Garden City KS	Gulf Coast	\$315.02	\$2.665	BNSF D	871	\$409.37		1.30
Colby KS	Laredo TX	\$517.54	\$3.585	UP	1181		\$663.23	1.28
Great Falls MT	PNW	\$315.60	\$2.781	BNSF D	873	\$410.17		1.30
Great Falls MT	Twin Cities MN	\$399.75	\$3.353	BNSF D	1071	\$503.37		1.26
Fremont NE	Gulf Coast	\$380.69	\$2.650	BNSF D	1045	\$491.15		1.29
Crawford NE	PNW	\$519.52	\$4.349	BNSF D	1444	\$678.68		1.31
Altus OK	Gulf Coast	\$176.77	\$2.095	BNSF D	509	\$239.23		1.35
Enid OK	Eagle Pass TX	\$282.40	\$2.620	BNSF D	778	\$365.66		1.29
Fleming CO	Houston TX	\$431.75	\$3.165	BNSF D	1165	\$547.55		1.27
Commerce City CO	PNW	\$601.58	\$4.349	BNSF D	1665	\$782.55		1.30
Cheney WA	PNW	\$130.04	\$1.142	BNSF D	364	\$171.08		1.32
Huron SD Via Wolsey	Gulf Coast	\$486.57	\$3.963	BNSF D	1437	\$675.39		1.39
Lemmon SD	Twin Cities MN	\$171.17	\$2.390	BNSF D	474	\$222.78		1.30
Idaho Falls ID	PNW	\$336.32	\$2.423	UP	763		\$448.26	1.33
Bonnars Ferry ID	Twin Cities MN	\$475.76	\$3.047	BNSF D	1300	\$611.00		1.28

BNSF D = BNSF Direct
 * utilizing 4th Q Fuel Published Fuel Costs BNSF@ \$1.69/gal, UP @ \$2.08/gal
 BNSF = 778 GTM/gal; UP = 770 GTM/gal
 Calculations: w/ USRail.Desktop

The calculations show that based upon fuel costs associated with the actual movement using 4th Q 2005 published fuel costs (last available) and BNSF and UP GTM/gallon fuel usage numbers with the BNSF and UP wheat rates in effect on 01-01-06, the BNSF and UP are showing FSC/Fuel Cost ratios in the range of 1.26-1.39 on a variety of grain shipments.

This Ex Parte proceeding is not about the level of the surcharge but it centers on the reasonableness of the practice. The March 14th Ex Parte announcement in this case desires to ascertain “whether railroad fuel surcharges are being set for the particular movements to which the surcharge is applied.” The announcement also wanted the respondents to focus on “whether the railroad fuel surcharges are being set in such a manner as to insure that they are used only to recover the increased cost of fuel for the particular movements to which the surcharge is applied...” Clearly, the Wheat & Barley farm producers are being assessed more fuel costs through surcharges than that the incremental fuel costs associated with their actual movement thereby leading to the conclusions that Wheat & Barley farm producers are subsidizing the railroads and other shipping operations in the collection of fuel surcharges – an unreasonable carrier practice. The data shows that the railroads are collecting up to 40% more in fuel surcharge for these

movements than the entire allocated fuel cost for the movement – which suggests that Wheat & Barley farm producers are being subjected to fuel surcharges that not only cover the increases in fuel costs but the entire fuel costs associated the movements.

VI: ANY FUTURE METHODOLOGY PRESCRIBED BY THIS BOARD MUST BE
READILY ASCERTAINABLE, FAIRLY APPLIED AND PREDICTABLE FOR THE
RAIL CUSTOMERS

Any methodology developed to assess fuel surcharges in the future should be readily ascertainable and importantly, verifiable for all rail customers and the calculation methodology should be readily and non-onerously retrievable.

When the BNSF moved from a rate based fuel surcharge to a mileage based surcharge, the transition was complicated by the lack of clear direction from the BNSF as to criteria to be utilized to calculate the new announced fuel surcharge. To the BNSF's credit they did give the rail customers nine months notice before implementation. But the BNSF continued to stutter for months over the implementation of the new rules for mileage based fuel charge assessment. Also it is noted to its credit, the BNSF was the first (and only so far) railroad to move to a mileage based fuel surcharge program and it is not the Wheat & Barley's position to criticize the BNSF for moving to a mileage based program

However, the implementation of the BNSF mileage based fuel surcharge turned into what is best characterized as a treasure hunt.

First, the BNSF decided the mileages would be highway miles between an origin and destination pair instead of rail miles. The logic of that decision continues to puzzle most rail customers. A mileage based fuel surcharge based upon the rail

miles makes infinitely more sense if the goal is to assess a surcharge based upon actual rail movement costs.

Secondly, all rail customers already had in their computer base, the rail miles associated with their traditional movements. Thirdly, the rail miles were readily available through models, if not the BNSF website. However, they continued down this path of wanting to utilize Highway miles. The BNSF contracted with Rand McNally to produce a special highway based mileage program for these upcoming calculations. This Rand McNally program cost between \$500 and thousand of dollars depending on how many computers a rail customer needed to hook up to look up mileages for their movements and many rail customers made the investment.

The BNSF, just before implementation, changed their mind, and decided to base the mileage calculations on their origin-destination pair mileages from internal records. The BNSF has stated publicly that the miles they are using are the shortest BNSF rail miles between the origin and destination, but experience has shown that they are rarely the short miles but somewhere between short and traditional operating miles. However, if one looks at the mileage based fuel charge discussion on the BNSF website today (04-24-06), one will still find reference to utilizing the Rand McNally mileage program, even though the BNSF has abandoned it months ago.

Next the mileage lookup tables presented by the BNSF contained a very small portion of the origin-destination pairs that have published rates and the mileages were not compatible with known and widely utilized computer programs such as PCMiller. Instead, the BNSF decided to utilize their own distinct mileages. While these mileages did not vary much from the mileages in other computer programs, in order to be accurate in a rate determination, it required that rail customers do a complete redo of all of the BNSF-direct point to point origin-destination pairs on the BNSF system. Whiteside & Associates built an internal database search en-

gine for the new BNSF database on origin-destination pairs, only to find out that the BNSF supplied database had less than 10% of the BNSF origin-destination pairs on agriculture movements. The BNSF refused to expand there database to include all BNSF origin-destination pairs. Since this newly supplied database was inadequate, rail customers who maintained rate databases were forced to look up individual origin-destination pairs for each fuel surcharge mileage. For this office, which maintains rate databases for virtually all of wheat and barley rates of all railroads in the United States, the switch by BNSF to special BNSF mileages for the mileage surcharge on all BNSF direct and rule 11 movements required mileage ascertainment of about 6,000 origin-destination pairs. We are now hearing rumors of the BNSF again contemplating changing the methodology of mileage ascertainment to possible block mileages.

For Fuel surcharge calculations in the future – all of the tools must be readily available to all rail customers.....it should not be an onerous clerical exercise or a treasure hunt. Lastly, the carriers should be required to provide a search engine and a complete database, that will allow individual origin-destination pair retrievals as well large area retrievals such whole states, whole regions including single origin to a large number of destinations and vice versa.

VII. FUEL SURCHARGE REPORTING REQUIREMENTS

The Wheat & Barley Commissions believe that fuel surcharges are going to be a component charge for the foreseeable future. With that in mind, your Wheat & Barley Commissions agree with the statement presented by Mr. Mike Behe of USRail.Desktop wherein they request that the railroads be required to report the actual fuel surcharge being collected for each railroad movement so the STB can report the data in the Public Waybill file.

VIII. CLASS I RAILROADS SHOULD BE REQUIRED TO MINIMIZE THEIR FUEL EXPENSE

The Wheat & Barley Commission would respectfully suggest that this Board may want to ensure that railroads continue in the future to strive diligently to minimize their fuel expenses. Our concern centers on the premise that if an industry becomes comfortable that they can always levy and receive surcharges which more than cover the full cost of fuel increases, they may not be motivated to seek out every avenue to minimize cost. Such an activity would not tend to serve the public interest. The Wheat & Barley Commissions agricultural producers constantly compete in domestic and world marketplace for a position in a sale of agricultural product and elevated rail costs continue to be a major issue in remaining competitive in traditional markets.

IX. CONCLUSION

The Wheat & Barley Commissions thank the Board for the opportunity to present these Comments to the Board. The opportunity to present comments on this issue provides a needed forum to examine the legitimacy of fuel surcharge assessment as being practiced by the nation's railroads. We, who shoulder the burden of assessment, look forward to future Board action on this issue through

the promulgation of rules that will bring fairness to the fuel surcharge assessment process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terry C. Whiteside". The signature is fluid and cursive, with the first name "Terry" and last name "Whiteside" clearly distinguishable.

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