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**BEFORE THE
SURFACE TRANSPORTATION BOARD, MAY 11, 2006**

**STB EX PARTE NO. 661
RAIL FUEL SURCHARGES**

COMMENTS OF U.S. SENATOR BYRON DORGAN

Mr. Chairman, thank you for holding this hearing today. I have heard from many North Dakotans who are very concerned about the impact of railroad fuel surcharges on the profitability of their operations.

Railroads, like other industries, must confront the challenge of rising fuel costs. And railroads, like other industries, have the right to recover some of their increased fuel costs by imposing a fuel surcharge on their customers. Many businesses do this. Even taxi drivers in Washington, D.C. impose a fuel surcharge on their customers.

But the question the Board is considering today is whether fuel surcharges imposed by the railroads were intended to simply help cover the additional cost of fuel on the particular shipment to which they were applied, or whether these surcharges were inappropriately designed to offset the railroads' system-wide fuel costs.

I have heard from many North Dakota shippers who believe, as I do, that there does not appear to have been any relationship between the amount of the surcharge imposed and the actual increase in fuel costs for a particular shipment. That is not appropriate, and it is not fair.

The largest carrier in North Dakota is BNSF Railway, which since the beginning of 2006 has used a mileage-based fuel surcharge system, instead of assessing fuel surcharges as a percentage of the rail rate. BNSF should be commended for making this change, and other carriers should do the same. However, there are still serious questions

about whether surcharges assessed under the percentage-based system accurately reflected the increased costs of fuel for those shipments.

In some cases, the railroad's fuel surcharges exceeded the actual cost of fuel on a particular shipment by several hundred percent. These surcharges were like a taxi driver who imposes an extra fee on his customers to offset not only the increased costs of fuel for their trip, but also the costs of fuel for cabs he owns in six other cities. Of course, in the real world, customers have the ability to take a different taxi cab. But many rail customers in North Dakota do not have that luxury; they are captive to one rail shipper, and they have no choice but to pay the additional fuel surcharge.

Fuel surcharges and North Dakota coal shippers

These surcharges were often exorbitantly high. One coal shipper in North Dakota faced fuel surcharges as high as 23.5% last year. In December 2005, this shipper paid \$23,848 in fuel surcharges on one shipment, although the actual increase in fuel costs for that shipment were just \$6,636. That represents an overcharge of more than \$17,000 or more than 250%. If this captive shipper had paid the fuel surcharge under the new mileage-based system, they would have paid just \$7,629.

One coal shipper estimates that from October 2004 through the end of December 2005, it paid close to \$7.75 million in fuel surcharges. These shipments were frequently from the same point of origin, traveling to the same destination. We can assume that the majority of these fuel surcharges were not designed to help the railroad recover its costs for those shipments, but were intended to help the railroad offset its system-wide fuel costs.

These fuel surcharges are even more outrageous when you consider that many shipping contracts already contain a method to reflect the rising cost of fuel. These coal contracts were already being adjusted several times a year using the Rail Cost Adjustment Factor index, which reflects changing costs such as fuel. Essentially, then, this coal shipper paid the railroad's fuel costs twice: once through the surcharge, and

once through their contracts, which were already being adjusted to take rising fuel costs into account.

Fuel surcharges and North Dakota agricultural shippers

North Dakota's grain elevators are also subject to steep fuel surcharges that eat into farm income and threaten the survival of our farm families.

At my request, researchers at North Dakota State University's Upper Great Plains Transportation Institute analyzed fuel surcharge data and found numerous cases where the surcharges exceeded not only the *increase* in fuel costs, but actually exceeded the shipment's *entire* fuel cost!

For example, researchers at the UGPTI found that shipments of wheat from North Dakota grain elevators to Duluth, Minnesota paid an average fuel surcharge of \$302 per-car. This was 112% higher than the actual average fuel cost for that shipment, which was \$142 per-car. In these cases—and many others—BNSF recouped its fuel costs for that trip, and then some.

The North Dakota Grain Dealers Association has also gathered data made available by BNSF Railway to illustrate glaring examples of fuel surcharges that greatly exceeded the increased cost of fuel for a particular shipment, some by as much as \$20,000.

For example, in 2004, a grain elevator in Crete, North Dakota shipped a 26-car train of wheat to Minneapolis, Minnesota. According to BNSF's data, the cost of fuel for this shipment increased by \$569 to a total of \$1,623. Yet the surcharge on this shipment was \$4,172. This is an overcharge of \$3,603. It is also 633% more than the actual fuel increase.

Ultimately, of course, the burden of these surcharges falls on the farmers who produce these crops. Last September, a representative of the North Dakota Farm Bureau

estimated that in 2005, North Dakota producers lost an average of five cents per bushel of wheat due to overcharges in fuel surcharges. That means North Dakota's wheat producers lost approximately \$10 million in farm revenue last year due to unfair fuel surcharges on just one commodity.

I appreciate the opportunity to share my perspective on this issue with the STB, and I commend the Board for holding this hearing. I encourage the Board to take immediate steps to ensure that fuel surcharges are applied fairly, in a manner that is truly based on the cost of fuel for a particular shipment.