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DR. DANIEL R. FIEHRER
P.O. Box 1004 . HELENA, MONTANA 59624-1004

November 20, 2006

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, D.C. 20423-0001



RE: FINANCE DOCKET NO. 34947, DR. DANIEL R. FIEHRER, APPLICANT
V. BNSF RAILWAY, RESPONDENT

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding is the original and 10 copies of my response to Charles H. Montange's comment on behalf of Recreation Trails, Inc., Eric Grove and Doug Monger ("Commenters") in support of the position of BNSF Railway that the above Feeder Line Application should not be accepted for filing.

Please date stamp the enclosed copy and return it to me.

I would hope my response would cause my Preliminary Application and allow Discovery.

Sincerely,

Dr. Daniel R. Fiehrer

Enclosures

CC: Joe Dettmar, Director of Proceeding
Charles Nottingham, Chairman

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Office of Proceedings

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34947

**Dr. Daniel R. Fiehrer – Feeder Line Application - A line of
BNSF Railway Company between Helena and Great Falls, Montana**

**Motion of BNSF Railway to Reject
Feeder Line Application and Deny Discovery**

INTRODUCTION

I, Daniel R. Fiehrer, Applicant in above action respectfully request the Board accept the Feeder Line Preliminary Application filed on October 27, 2006 pursuant to 49 USC 10907 to acquire BNSF's rail line that runs approximately 100 miles between Helena and Great Falls and allow Discovery to complete the Application. This is in Response to Charles H. Montange, Esq. November 15, 2006 response and commentary in support of BNSF's position.

- 1) Mr. Montange contends 49 USC 10907 was intended to apply to Feeder lines on "which shippers received or originated shipments" and not to "Trunk Lines" carrying overhead traffic." The Statute is silent with respect to a clear definition of what constitutes "Feeder Lines" or "Trunk Lines" and correctly states the railroad must refuse "to make necessary efforts to provide adequate rail service to shippers who transport traffic OVER such lines", 49 USC 10907 (c) (1) (A).

It doesn't say from or to such line, but says "over" such line. He further contends (*with no basis*) there are no shippers who would transport traffic over the Great Falls line. The reality is shippers can't or couldn't transport traffic over, or, to or from the line because BNSF arbitrarily closed the line, and for six and a half years has refused to re-open the line. The Applicant can't determine who all these shippers are or would be without Discovery of BNSF's list of shippers requested in Motion for Discovery to complete its Preliminary Application. The fact **NO SERVICE** has existed for six and a half years is indisputable prima facie evidence that service is "inadequate" and therefore meets the test outlined in the Statute for inadequate service. To Wit: All the railroads, particularly the Northern lines (*Great Northern, Northern Pacific, Canadian Pacific, Canadian National, Union Pacific, Milwaukee and the connection between Great Falls and Helena*) were built on "speculation" of future traffic that would ensue. (*Please see Background of Preliminary Application, p 13.*) To Wit: All railroads are in fact "feeder" lines, which feed other railroads at each end of their lines. The branch lines or so-called "Granger Lines" were secondary lines built to agricultural lines. The line between Great Falls and Helena has five grain elevators on it: three at Ulm and two at Cascade.

- 2) Possible diversion or prevention thereof by BNSF of traffic from BNSF's present circuitous routes via longer route miles to interline connections with Union Pacific, Montana Rail Link, Canadian Pacific are self-serving by causing shippers and receivers both local, and overhead, to ship via longer BNSF routes at higher rates due to higher route miles and incur longer transit times than could be achieved by the direct connections via the line with shorter route miles from Helena to Great Falls. BNSF contends capacity is very important and Applicant contends BNSF's northern east/west mainline route through Montana is already at or near capacity of 50-55 trains per day. Due to the bottleneck through Glacier Park and Mullen Pass from Browning to Whitefish, Montana, BNSF may not be able to handle more than 55 trains per day or build double track because of the terrain and grade.
- 3) Mr. Montango and his Commenters attempt to make a presumed self-serving distinction between "feeder" lines and "branch" lines, but there is no clear definition in the Statute as what constitutes a "branch" line. The Commentor's implication is that a branch line or feeder line has only one outlet at either end. Thus, all a railroad has to do is abandon a line segment in a through line, as BNSF did when they abandoned a segment of a through line between Big Sandy, Montana and Fort Benton, Montana. This line connected Havre, Montana to Great Falls, Montana, which in effect using Montango's interpretation created two branch lines from Big Sandy to Havre and from Fort Benton to Great Falls, respectively. If this "technical interpretation" were applied to stand for the line between Great Falls to Helena, then, BNSF has created two "branch" lines between Great Falls and Helena by not repairing the washout at Ulm, Montana. One "branch" line has been created from the outskirts of Ulm to Great Falls; and one "branch" line from the grain elevators at Ulm to Helena. Thus two branch

lines or feeder lines have thereby been created using his presumptuous interpretation, which makes no distinction of 50 feet or 50 miles between either end of a rail line which interdicts through service.

- 4) Mr. Montange and BNSF both attempt to put a negative spin or nuance on "speculation" when in fact BNSF "speculates they wish to retain the line and keep in inoperable on the basis of "speculation of future traffic" they cannot substantiate. When James J. Hill built this line in 1886 it was based on "speculation" that this connection from his line "the Manitoba" (later called the *Great Northern Railway*) and the Northern Pacific south at Helena and Union Pacific at Butte might develop traffic. (See Background on p. 13 of Preliminary Application.)
- 5) With respect to re-opening a north/south route East of the Rockies, the Canadian Pacific Railway is routing unit trains of traffic from Alberta to BNSF at Shelby for shipment to the West Coast because of lack of capacity from Alberta via their own route westbound through the Rocky Mountains. Mr. Montange ignores the Homeland Security value of re-opening the north/south line between Great Falls and Helena to provide an alternative rail outlet and inlet to Montana in event a bridge on BNSF's main east/west line is damaged by natural or other causes.
- 6) With regard to Mr. Montange's comments alleging service via BNSF over existing circuitous routes with greater mileage is preposterous and contradicts well known economics of transportation: a shortline moving cars over a shorter route can operate at a lower cost than a Class I operating over greater route miles due to lower transit times, faster turnaround and lower overhead and labor costs than a Class I railroad. BNSF and other Class I's demonstrate this by routing substantial volumes of traffic via shortlines having fewer route miles and crew districts rather than traverse their own lines. Montana Rail Link is only one such line that routes BNSF overhead traffic from Sandpoint, Idaho to Laurel, Montana as overhead traffic due to fewer crew districts. The implication that more "segmentation" implies higher cost has no basis in fact. There are many instances of railroads with multiple carriers in a route vs. a single route. BNSF's arrangement with Montana Rail Link to route traffic from Sandpoint, Idaho to Laurel, Montana, which BNSF could handle via their own local single line service, is but one prima facie example. It is well-established shortlines originate, terminate or "bridge" traffic at a lower cost than a Class I can handle locally, or they wouldn't do it. Added "segmentation" is not directly related to costs unless it is to reduce costs due to lower costs of intermediate shortlines.
- 7) With respect to Mr. Montange's contention Applicant "would or could improve conditions from what they are..." It would appear handling of a minimum number of cars, even one car, would improve the existing condition where there are no cars handled or service provided by BNSF.

- 8) Mr. Montango contends and alleges Applicant's case "for Application of Section 10907 amounts to a hypothetical at all levels" is no less hypothetical than his contention acquisition of the line by Applicant will NOT improve service and it is Unconstitutional whether or not "just compensation" is paid, since neither Mr. Montango nor the Statute defines "just compensation" other than Net Liquidation Value or Going Concern Value as defined by the Statute which empowers the STB to ascertain.
- 9) Mr. Montango correctly alleges the Applicant is a well known opponent of trails from Helena to Great Falls. As yet Applicant has not seen any substantiated reason as why Mr. Montango's clients and Commenters have aligned themselves with BNSF to create a trail over the railroad line between Great Falls and Helena if BNSF prevails in this case, and subsequently abandons the right-of-way to create "a trail." Roadways owned by County, State and Federal Governments already exist from Helena to Silver City, Sieben, Wolf Creek, Hardy Creek, Cascade and Ulm and already parallel the rail line (*See map in Preliminary Application Appendix*)
- 10) Mr. Montango and his Commenters have not indicated the demographics or number of users (*of a so-called new biker's or hiker's recreational trail*) that already use the government roadways and what the user's impact would be on the public interest, convenience and necessity. Perhaps there is a possible *quid pro quo* that if his clients join with BNSF in opposing the Applicant's attempt to acquire this line to restore commerce and service, and, BNSF prevails and abandons the line, Recreational Trails, Inc. will somehow be in a favored position to purchase the line with a combination of private funds and state assistance to buy this line from BNSF, even though alternative tax payer-owned and maintained roadways already exist. It is interesting to note BNSF's response considered contracts, promissory notes, cash and securities were "speculative", yet Mr. Montango indicates his clients were prepared to make a binding "contract with BNSF." Commenters have not demonstrated a need, or even a reason, for an "additional trail" to ever be located on the Helena to Great falls line where government owned and maintained roadways already exist (*See map in Preliminary Application Appendix*)
- 11) Mr. Montango and his Commenters allege the Scrap Value submitted as part of the Applicant's Preliminary Application is less than their evaluation. The Scrap Value of rail, track components, which BNSF receives from existing Montana scrap dealers, who buy both ties and steel, is verifiable through Discovery of BNSF's recent sales of rail, tie plates, spikes and ties, which should be added to Applicant's Motion for Discovery. Steel is allegedly purchased for \$110/ton F.O.B. Great Falls and salvaged ties are purchased on the basis of only 40% being salvageable or saleable at \$5/tie. The Commenters have apparently used a purchase price of steel over \$500/ton and ties at 100% salvage rate at over \$20/tie, which is a new tie cost. Applicant respectfully requests that if STB accepts his Preliminary Application and Motion for Discovery, BNSF be required to furnish

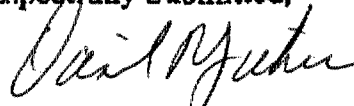
records for track salvage materials sold to vendors in Montana for the last six and a half years the line has been *de facto* abandoned. Buyers of rail salvage make no distinction between what Commenters refer to as "reroll" or relay rail, but only track scrap steel. The issue of underestimation of Scrap Value and subsequent Net Liquidation Value can be decided by Discovery of BNSF's records and bona fide Real Estate Appraisals of land values, track removal costs and any environmental remediation costs to arrive at Net Liquidation Value (NLV).

- 12) Commenter's contention that Going Concern Value (GCV) is supposed to be forward looking, so presumably a GCV may still be calculated for the line based on reasonable expectation of future costs and revenues of the line, which none exists presently, is just that - a "presumption" which has no basis in fact or is defined in the Statute as a basis for calculating GCV.
- 13) Commenters speculate, allege, and contend with no basis in fact or appraisal that they "anticipate a valuation of fee-owned parcels in the seven figures."
- 14) Commenters incorrectly assume Applicant's Net worth would be his only source of funding for purchase of the line once the Constitutional Value is determined by the STB along mandated guidelines specifically defined in the Statute, which empowers STB to make the determination of Constitutional Value.

CONCLUSION

In conclusion the "Commenters" support of BNSF's opposition suggest they would like to see the line abandoned and establish a recreational trail in its place that would reinforce BNSF's apparent strategy to deny rail shippers in Montana, Canada and elsewhere competitive access to maintain their 94% market dominant position enacting BNSF to arbitrarily continue to raise prices with no fear of competitive pricing, provision of better service or more equipment.

Respectfully Submitted,



Dr. Daniel R. Fiehror

Enclosures: News articles and Editorial Endorsements and Letters to Editor
Letter from Oklahoma Dentist

CERTIFICATE OF SERVICE

I certify service by deposit of copies of this letter this date with a direct mail U.S. Postage Service addressed to Charles H. Montange, 426 NW 162nd Street, Seattle, Washington 98177 and Robert Jenkins (Counsel for BNSF) at Mayer Brown, et al 199 K St NW, Washington, D.C. 20006.

Dr. Daniel R. Fiehrer