



# Railroad Rates and Services Provided to Montana Shippers

A report prepared for the  
State of Montana

**February 2009**



ATTORNEY GENERAL  
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### Authors

This study was conducted by specialized counsel and consultants, all of whom have extensive experience in rail issues, having represented captive rail shippers for more than 30 years.

- From the Washington, D.C. area, attorneys **John Cutler** and **Andrew Goldstein**, of the firm of McCarthy, Sweeney & Harkaway, P.C., have extensive experience representing shippers by rail before the ICC, STB, Congress and in the courts. Mr. Cutler and Mr. Goldstein previously provided legal counsel on similar rail issues to the State of North Dakota.
- Consultants **G. W. (“Trey”) Fauth III** of G .W. Fauth & Associates, and **Thomas Crowley** of L. E. Peabody & Associates have acted as cost and operations consultants in dozens of cases challenging rail rates and practices, and have testified in numerous administrative agency proceedings before the ICC and STB addressing a broad range of regulatory issues.
- **Terry Whiteside** of Whiteside & Associates in Billings is an experienced Montana grain industry and grain transportation consultant. Mr. Whiteside has more than 25 years experience with rail transportation issues, and serves as consultant to numerous associations of producers of agricultural commodities in Montana and in other Western States. He is also active in national organizations of agricultural producers and marketers, and is Chairman of the Alliance for Rail Competition, a national organization representing rail shippers of agricultural and non-agricultural commodities.

Members of this team formerly advised North Dakota on rail rate and service issues in that state.



## **I. EXECUTIVE SUMMARY**

For years, grain producers, elevator representatives and government officials in the Upper Great Plains states, particularly Montana and North Dakota, have complained of a combination of high rail rates and inadequate rail service, especially in comparison with competing shippers in other states.

In 2007, Montana lawmakers appropriated \$3 million for more intensive research into rail issues. A team of consultants and attorneys worked to gather information, analyze options for Montana shippers, and pursue relief.

### **A. Agriculture and Rail Transportation**

Agriculture accounts for more than one third of Montana's economy. The state's distance from ports and population centers, combined with the bulk nature of the commodities – wheat, durum, barley, lentils and others – means moving freight by truck provides a very limited alternative to rail transportation.

Most Montana grain is shipped to the Pacific Northwest (“PNW”) for export, and Montana wheat shipments account for nearly half of all railroad originated wheat shipments to PNW export terminals. North Dakota is a distant second at 24 percent. BNSF Railway controls some 95 percent of rail freight transportation in Montana, making Montana shippers the most captive in the country.

### **B. Rail Rates and Fuel Surcharges**

Among the five states shipping the largest volume of wheat by rail – Montana, North Dakota, South Dakota, Kansas and Nebraska – Montana shippers, on average, pay the highest rail rates, whether figured per car or per ton.

Rail regulators assess rail rate levels using rates, costs, and the ratio of railroad revenue to the variable cost of moving the freight (“R/VC”) expressed as a percentage. The average R/VC for 2006 wheat shipments by railroad from Montana to the PNW, including shuttle train shipments of 100 cars or more and non-shuttle shipments, is 253 percent. In other words, BNSF charges Montana shippers more than twice as much as the long-term variable costs of the rail service they receive. This figure is higher than the shuttle train average from any other state.

To put these figures in perspective, when Congress partially deregulated the railroads in 1980, it chose 180 percent as the R/VC percentage above which captive shippers could challenge their rail rates as unreasonable. Even this level was generous to the railroads. Congress found that if railroads charged all shippers 150 percent of variable cost, the industry would be “revenue adequate” for purposes of sustaining their businesses. The total annual overcharge by BNSF of Montana shippers for wheat alone is between \$19 and \$50 million.

Montana shippers also pay excessive fuel surcharges on top of the highest rates in the country. While BNSF fuel charges are mileage-based, Montana shippers nonetheless pay fuel surcharges well in excess of the cost of fuel associated with the service provided, totaling millions of dollars.

### **C. Service Quality**

BNSF's market power in Montana has enabled it to restructure the way Montana wheat moves to market. However, high rail rates have not produced high service quality.

From BNSF's perspective, it is more efficient to move Montana grain in large trains of 100 cars or more from a smaller number of elevators, than to move single cars, 26 cars, or 52 cars from a larger number of elevators, many of which lack the space or equipment to load 100 cars at a time. As a result, BNSF uses its pricing power to encourage the use of 100-car trains, particularly "shuttle" trains that move back and forth between Montana elevators and the PNW.

Since the introduction of shuttle trains, many smaller elevators have gone out of business. In turn, grain producers are forced to drive longer distances from farm to elevator in order to use the elevators that remain open and operable, increasing trucking costs as well as on-farm storage requirements and costs, and roadway maintenance costs.

### **D. Remedies**

Since 2006, when Montana's intensified effort to address rail rate and service concerns began, there have been indications that BNSF is paying attention. Rates on shuttle trains have been reduced twice, BNSF fuel surcharges are now mileage-based, and BNSF has reportedly reached an arbitration agreement with certain Montana producer groups. However, more progress is needed. BNSF's monopoly position means that Montana's main options are negotiation, litigation and arbitration.

Research and computer modeling done on Montana's behalf suggest that litigation before the federal Surface Transportation Board ("STB") could result in a reduction in shuttle train wheat rates of about \$500 per car. Such litigation, however, would require the participation of one or more grain elevators as the direct buyers of rail service, and some elevators have declined to participate for fear of jeopardizing rail service or business relationships with BNSF.

Arbitration over rail service and rate disputes is another option, and so-called "final offer" arbitration has been used successfully in Canada. Under final offer arbitration, the arbitrator must choose the final offer of one of the parties and may not choose a compromise.

BNSF has promoted a different form of arbitration in its negotiations with Montana producers. BNSF's version of arbitration appears to exclude the grain elevators and other Montana shippers who actually receive BNSF's invoices and pay its freight rates and charges, and would not address rate disparities between shippers in Montana and shippers in other states. Some means for wheat and barley producers to weigh in on rail rates could have benefits, though BNSF may see the arbitration agreement as providing a chance to prove that its rates are reasonable.

Meanwhile, work continues in Congress to seek more effective remedies for shippers under federal law. The state's Congressional delegation co-sponsored legislation aimed at promoting rail competition and improving regulation where competitive options do not exist. As 2008 came to an end, Congress adjourned without enacting relevant legislation.

There are reasons to expect that progress made in recent years will accelerate in the next session of Congress. As this happens, BNSF's incentive to be more responsive to Montana's concerns may increase.

## **II. DATA GATHERING AND ANALYSIS**

Since mid-2007, a team of expert consultants and counsel has been analyzing Montana rail rate and service issues. This Report summarizes those efforts. This is not the first such study, and the issues discussed below have continued for many years.

### **A. Overview of Montana Rail Service**

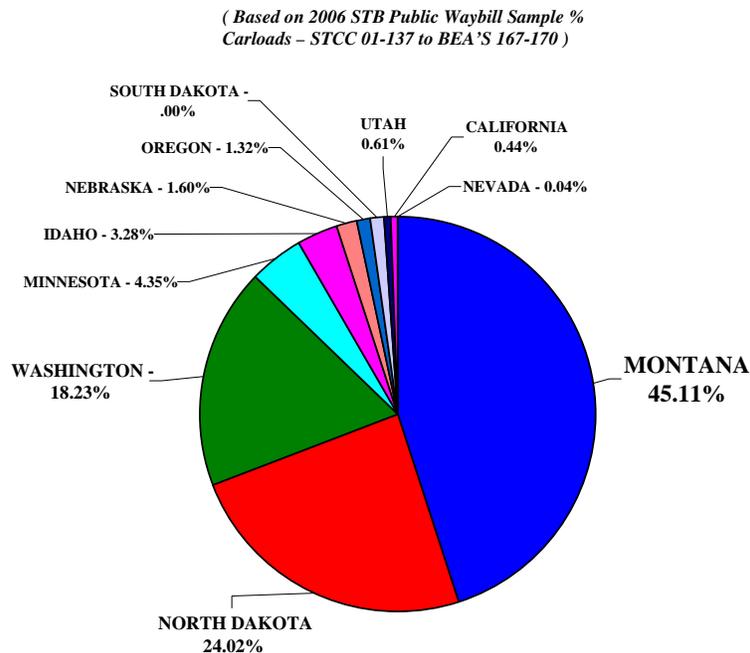
Montana is the fourth largest state in the U.S. by land area, and ranks third among all states in wheat production, and second in production of durum. It is in the top three in production of barley, lentils and other agricultural commodities. Agriculture accounts for more than one-third of Montana's economy. Approximately 100 percent of Montana wheat is shipped by rail and most of this Montana wheat is originated by BNSF. Montana-based companies also ship and/or receive other goods by rail.

Montana's location far from the largest ports and population centers, and the bulk nature of many commodities requiring transportation, mean the movement of that freight by rail predominates. Other options like trucking offer only a limited competitive alternative to rail service provided or controlled by BNSF, and much of that trucking is from farms to the elevators where grain is loaded in rail cars.

The largest wheat producing area in Montana is the "Golden Triangle" in north central Montana, with a secondary concentration of production in the area around the northeastern corner of the state. Most Montana grain is shipped by rail west to the PNW for export. Some grain moves to domestic mills at Chicago, Los Angeles, Spokane and other destinations.

Based on 2006 data, Montana accounted for 45 percent of total originated carloads to the PNW (North Dakota is a distant second with 24 percent), as shown in Figure 1, below.

**Figure 1**  
**2006 RAILROAD WHEAT**  
**MOVEMENTS TO PNW**



Montana producers transport their grain to grain elevators, which are billed for and pay rail rates and charges. When it can, the elevator deducts freight from the amounts paid to producers, who effectively bear the transportation costs. Because grain producers do not deal directly with grain buyers (other than the local elevators) there is no one to whom producers can pass on increases in rail rates. Acting to reduce rates to reasonable levels is nevertheless likely to benefit Montana producers, because savings enjoyed by elevators are likely to be shared with producers.

While Montana farmers' reliance on rail shipping is not unique, adverse impacts on Montana are unusually severe because BNSF rates and charges in Montana are unusually high. Rail transportation costs have risen from 15 percent of the price of wheat 30 years ago to around double that percentage, as grain growing areas become more captive to a single railroad.

## **B. Montana Shippers Are Charged Exceptionally High Rail Rates**

Montana shippers do not need this Report to tell them that they pay high rail rates. They know this from their own everyday experience. In addition, before the current research effort began, the Government Accountability Office (“GAO”), the bipartisan “watchdog” group of Congress, had studied U.S. rail rates and substantiated that rail rates on grain in general, and on Montana grain shipments in particular, exceed rates on other commodities and in other regions.

The GAO’s October 2006 Report, Freight Railroads: Industry Health has Improved, but Concerns about Competition and Capacity Should be Addressed, noted the increasingly strong financial condition of the major railroads. However, GAO found that the routes from Billings, MT and Minot, ND to the PNW “had the highest percentage of traffic traveling at rates over 300 percent R/VC for 2004” of all routes examined.<sup>1</sup> GAO also found that increases in R/VC from 1985 through 2004 “were driven more by increases in revenue [i.e., rates] than by changes in variable cost.” GAO went on to note the difficulty of reaching definitive conclusions given data limitations, but concluded that “the results of our analysis suggest that shippers in selected markets may be paying excessive rates, meriting further inquiry and analysis.”

Even before the GAO issued its report, the State began to pursue an enhanced effort to address local rail and service issues, leading to the decision by the Legislature to appropriate funding in the 2007 Budget to engage counsel and consultants. During this period, BNSF reduced its rates on export wheat moving from Montana shuttle facilities to the PNW by \$109 per car, producing annual savings to Montana shippers of approximately \$3.2 million, based on the 2006 wheat carloads from the affected elevator facilities to the PNW.

The BNSF rate reduction in 2006, and a smaller rate reduction in 2008, discussed below, did not result from any reduction in BNSF’s monopoly power in Montana. In the absence of effective competition with BNSF, how long these rate reductions stay in effect remains to be seen. Meanwhile, the fundamental rate and service issues persist.

The 2006 GAO report led the STB to engage Christensen Associates to inquire further into railroad pricing and competition. The Christensen Study took 14 months and cost roughly \$1 million, and Montana’s rail counsel supplied information to the authors of that study. The Christensen Final Report, issued in November 2008, supported the GAO’s findings about Montana rail rates.<sup>2</sup> For example, Figure 2 from the Report shows that high rail rates for wheat shipments are concentrated in Montana and North Dakota:

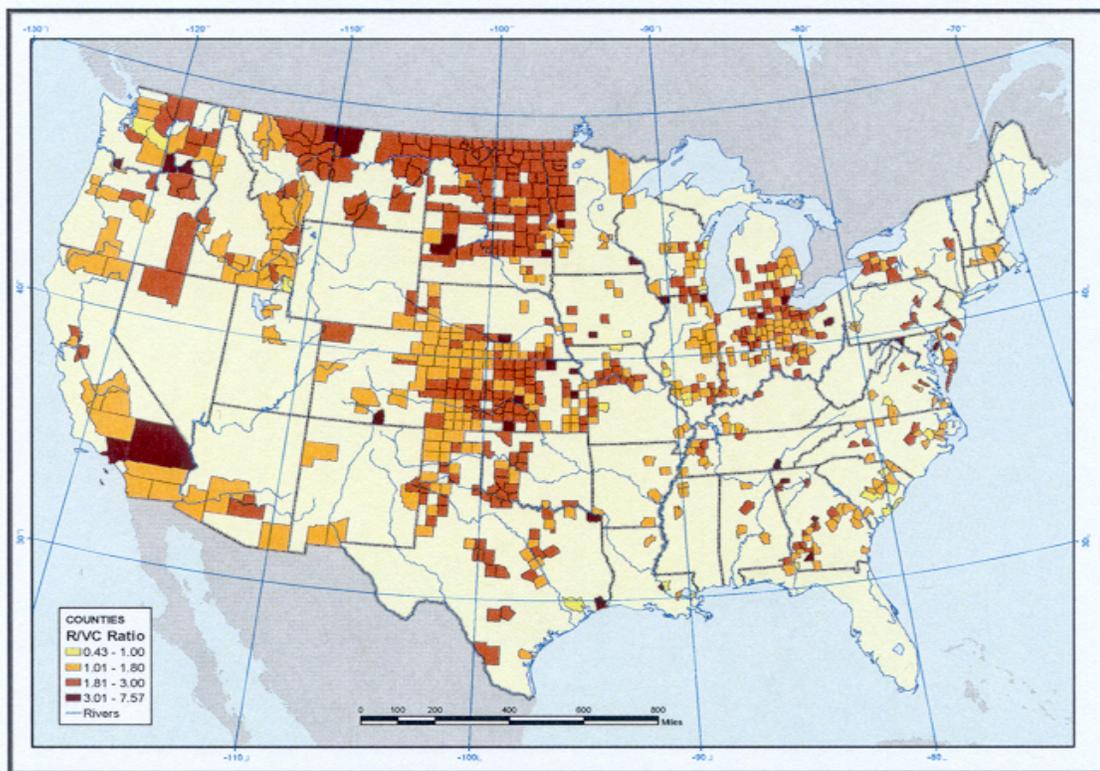
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<sup>1</sup> Report GAO-07-94, at pp. 34-38.

<sup>2</sup> A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition, prepared for the STB by Christensen Associates (hereafter “Christensen Report”), issued November 2008.

Figure 2

FIGURE ES-3  
R/VC AVERAGES BY ORIGIN COUNTY FOR WHEAT SHIPMENTS  
2001-2006 CARLOAD WAYBILL SAMPLE



The Christensen Report also found that rail “rates have increased substantially in the last few years,” to the point that rail industry revenues exceed what the Report calls “revenue sufficiency.”<sup>3</sup> And the Report said “Our results suggest that grain shippers are not unjustified in viewing themselves as paying relatively high markups.”<sup>4</sup>

Findings by GAO and Christensen as to Montana were developed as parts of national studies. The economic consultants engaged by the State performed detailed studies of Montana rates and charges. In those analyses, the Montana consultants analyzed publicly available tariff rate and mileage data from the BNSF website and other sources, and also based their work on the STB’s 2006 Waybill Sample of actual rate and shipment data for movements from, through and to Montana, along with the STB’s 2006 Uniform Rail Costing System (URCS) data.<sup>5</sup> These are the sources of the most recent final costing data available for this Report.<sup>6</sup>

<sup>3</sup> Report at pages ES-15 and ES-21.

<sup>4</sup> Report at page 11-22.

<sup>5</sup> Some of the information studied was developed using the Confidential Waybill Sample available from the STB, and some details therefore cannot be disclosed in this Report. All

Montana wheat shippers pay higher average rail rates, on a per car basis (\$3,453.98 per car) and a per ton basis (\$32.74 per ton), than wheat shippers from other nearby states with large volumes of wheat shipments originated by railroad. Rate levels do not tell the whole story, however. The railroad's cost of service is also relevant to such comparisons, and to the reasonableness of the rates. Rail regulators consider the railroad's cost of service, measuring its revenue (calculated based on rail rates) as a percentage of the variable cost of the movement (R/VC). The R/VC percentage for average rates on Montana wheat shipments to the PNW (shuttle and non-shuttle, and including lower-rated shipments) is 253 percent, well above the averages for all other states with significant wheat shipments to the PNW.

Montana wheat shipping rates also exceed those from the four other top states by several additional measures. As the following tables show, Montana shippers pay the highest rail rates measured by the carload or by the ton. The results are shown below in Figure 3.<sup>7</sup>

**Figure 3**  
**COMPARISON OF 2006 RAILROAD WHEAT**  
**MOVEMENTS FROM THE FIVE LARGEST**  
**RAILROAD ORIGIN STATES TO ALL DESTINATIONS**

*(STB's 2006 Public Waybill Sample)*

<u>LN.</u>	<u>ITEM</u>	<u>KANSAS</u>	<u>MONTANA</u>	<u>NEBRASKA</u>	<u>NORTH DAKOTA</u>	<u>SOUTH DAKOTA</u>
1	Total Tons Originated	6,499,757	6,285,515	2,560,636	10,222,016	3,127,801
2	Total Carloads Originated	63,252	59,584	24,571	98,843	30,639
3	Average Tons Per Car	102.76	105.49	104.21	103.42	102.09
4	Average Shortline Miles	802	1,018	988	992	883
5	Total Railroad Revenue	\$165,924,190	\$205,802,079	\$69,825,696	\$329,735,113	\$98,784,055
6	Average Rate Per Carload	\$2,623.22	<b>\$3,453.98</b>	\$2,841.79	\$3,335.95	\$3,224.13
7	Average Rate Per Ton	\$25.53	<b>\$32.74</b>	\$27.27	\$32.26	\$31.58

information that is in this Report is from public sources or is provided consistent with STB confidentiality requirements.

<sup>6</sup> The STB released URCS data for 2007 in December 2008, after completion of the quantitative analysis in this Report. Montana's consultants have reviewed the latest URCS data but have discovered so many significant flaws that the 2007 data cannot be considered reliable. It is common for the STB to revise URCS data, often multiple times, during the months subsequent to initial publication.

<sup>7</sup> Although the Waybill Sample lists Illinois as one of the top five grain origination States, that ranking is not supported by USDA figures, and is believed to be based on reshipping and interchanges, not originations.

R/VCs for high-rated Montana shipments – those moving to the PNW at rates producing R/VCs in excess of 180 percent – warrant particular emphasis for two reasons. First, they move at rates over which the STB has jurisdiction to determine unlawfulness. Second, PNW export rates have traditionally been used as the basis for establishing payments by elevators to producers, even if the wheat moves to a different destination.

Analysis of the average R/VC levels for movements above the 180 percent threshold of STB jurisdiction for Montana, as well as four other nearby states with major agricultural production moving to the PNW, showed that Montana’s average R/VCs are the highest. Analysis of R/VCs for shuttle trains, i.e. trains of 100 cars or more moving loaded with grain to the PNW and then returning to elevators for more grain, produced the results in Figure 4, below.

**Figure 4**

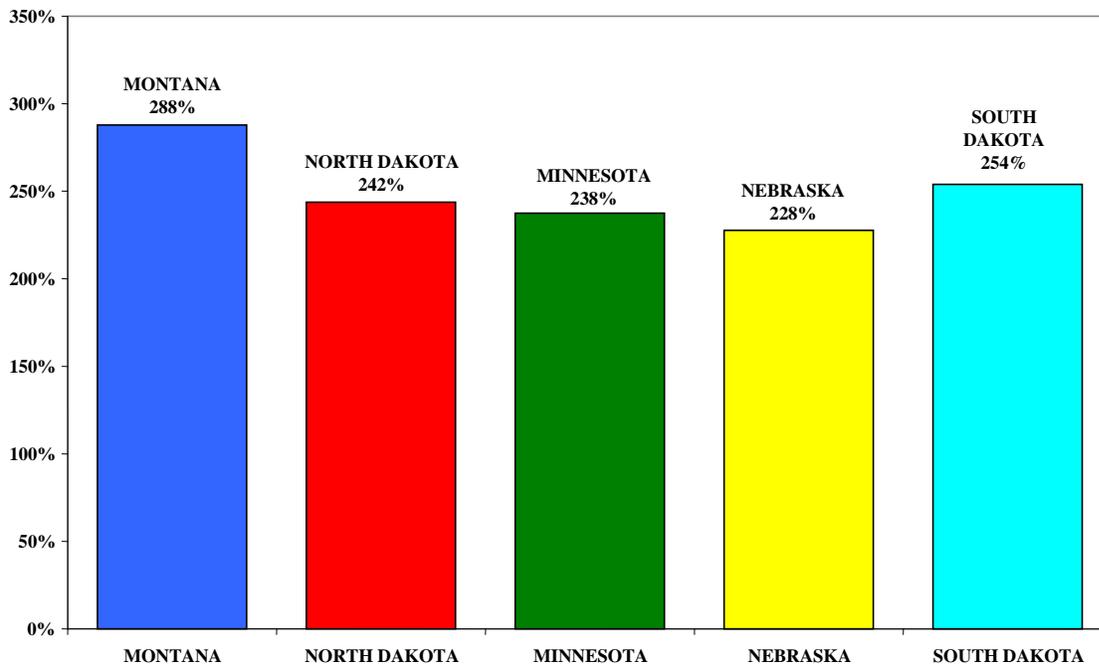
**WHEAT SHIPMENTS  
TO THE PNW – SHUTTLE SERVICE**

STATE	CARLOADS	R/VC
<b>MONTANA</b>	<b>25,418</b>	<b>288%</b>
NORTH DAKOTA	9,998	242%
MINNESOTA	3,060	238%
NEBRASKA	854	228%
SOUTH DAKOTA	218	254%

The average of these R/VCs for all five states is 266 percent, and the average for the states other than Montana is 240 percent, well below the Montana average. These relationships are depicted in bar graph form in Figure 5.

**Figure 5**

**AVERAGE R/VC RATIOS FOR JURISDICTIONAL (R/VC > 180%) WHEAT MOVEMENTS  
BY SHUTTLE SERVICE (IN 100+ CARS PER TRAIN) TO PNW EXPORT TERMINALS**



Shuttle service is highly efficient, consisting of 100 cars or more moving together loaded with grain bound for the PNW and then returning to elevators for more grain. Shuttle trains enable BNSF to transport the most grain at the lowest cost of service, and therefore with the highest margins. Because of their relatively low cost, such shipments also are highly profitable for the railroad. Montana's non-shuttle wheat movements of less than 100 car trains to the PNW also moved at high R/VCs. See Figure 6.

**Figure 6**  
**WHEAT SHIPMENTS**  
**TO THE PNW NON-SHUTTLE SERVICE**

STATE	CARLOADS	R/VC
<b>MONTANA</b>	<b>13,376</b>	<b>248%</b>
NORTH DAKOTA	4,728	217%
MINNESOTA	408	218%
NEBRASKA	--	--
SOUTH DAKOTA	220	191%

The average of these R/VCs for all five states is 239 percent, and the average for the states other than Montana is 216 percent. Again, these averages are well below the average for Montana.

As shown below in Figure 7 and Figure 8, in 2006 and 2007, most rates from major shuttle elevator origins to PNW destinations produce R/VC percentages above 250 percent, well above the level at which the STB has jurisdiction to consider rate reasonableness challenges.<sup>8</sup>

**Figure 7**  
**JULY 2006 R/VC RATIOS FOR BNSF**  
**SHUTTLE TRAIN WHEAT MOVEMENTS**  
**FROM MONTANA TO PNW EXPORT TERMINALS**  
*( 110 CARS PER TRAIN & 112 TONS PER CAR )*

<u>ITEM</u>	<u>COMPANY</u>	<u>PORTLAND</u>	<u>KALAMA</u>	<u>VANCOUVER</u>
Billings, MT	Peavey (Con-Agra)	261%	257%	263%
Carter, MT	Columbia Grain	287%	282%	289%
Collins, MT	Mountain View Coop	301%	296%	304%
Glendive, MT	CHS, Inc.	268%	265%	270%
Grove, MT	United Harvest	276%	272%	279%
Harlem, MT	Columbia Grain	307%	303%	310%
Havre, MT	ADM/CHS	308%	303%	311%
Kasa Point, MT	Columbia Grain	301%	297%	303%
Macon, MT	CHS, Inc.	301%	297%	303%
Pompey's Pillar, MT	United Harvest	257%	254%	259%
Rudyard, MT	Columbia Grain	311%	306%	315%
<u>Shelby, MT</u>	<u>CHS, Inc.</u>	<u>317%</u>	<u>312%</u>	<u>321%</u>
<b>Weighted Average (Based on 2006 Carloads)</b>		<b>303%</b>	<b>292%</b>	<b>288%</b>

<sup>8</sup> The rates in Figures 7 and 8 were analyzed based on actual BNSF rates and mileages and STB URCS costing, with 2007 R/VCs derived by indexing 2006 data. Origin and destination efficiency adjustments offered by BNSF were excluded from these calculations. Those adjustments are not unique to Montana. In addition, they can vary from \$50 to \$150, must be earned, and do not affect producer receipts from elevators.

**Figure 8**  
**JULY 2007 R/VC RATIOS FOR BNSF**  
**SHUTTLE TRAIN WHEAT MOVEMENTS**  
**FROM MONTANA TO PNW EXPORT TERMINALS**  
*( 110 CARS PER TRAIN & 112 TONS PER CAR )*

<u>ITEM</u>	<u>COMPANY</u>	<u>PORTLAND</u>	<u>KALAMA</u>	<u>VANCOUVER</u>
Billings, MT	Peavey (Con-Agra)	237%	234%	239%
Carter, MT	Columbia Grain	260%	256%	263%
Collins, MT	Mountain View Coop	273%	269%	276%
Glendive, MT	CHS, Inc.	245%	242%	247%
Grove, MT	United Harvest	251%	247%	253%
Harlem, MT	Columbia Grain	280%	276%	283%
Havre, MT	ADM/CHS	281%	276%	283%
Kasa Point, MT	Columbia Grain	275%	271%	277%
Macon, MT	CHS, Inc.	275%	272%	277%
Pompey's Pillar, MT	United Harvest	233%	230%	235%
Rudyard, MT	Columbia Grain	283%	279%	286%
<u>Shelby, MT</u>	<u>CHS, Inc.</u>	<u>288%</u>	<u>283%</u>	<u>292%</u>
<b>Weighted Average (Based on 2006 Carloads)</b>		<b>275%</b>	<b>266%</b>	<b>262%</b>

Rates on non-shuttle wheat movements to the PNW also produce high R/VCs, as shown in Figure 9 and Figure 10. Though these rates tend to be higher in absolute terms than BNSF shuttle rates, the costs of operating non-shuttle trains also tend to be higher for BNSF.

**Figure 9**  
**JULY 2006 R/VC RATIOS FOR SELECTED BNSF**  
**NON-SHUTTLE TRAIN WHEAT MOVEMENTS**  
**FROM MONTANA TO PNW EXPORT TERMINALS**  
*( 52 CARS PER TRAIN & 101 TONS PER CAR )*

<u>ITEM</u>	<u>COMPANY</u>	<u>PORTLAND</u>	<u>KALAMA</u>	<u>VANCOUVER</u>
Choteau, MT	Columbia Grain	260%	256%	263%
Conrad, MT	Columbia Grain	278%	274%	281%
Cut Bank, MT	Columbia Grain / CHS	285%	280%	289%
Ft. Benton, MT	Columbia Grain	259%	255%	261%
Glasgow, MT	CHS, Inc.	272%	268%	274%
Great Falls, MT	Columbia Grain / UH	262%	258%	265%
Ludington, MT	Peavey (Con Agra)	257%	254%	259%
Merc, MT	Columbia Grain	254%	251%	256%
Meriwether, MT	Columbia Grain	287%	282%	291%
Moccasin, MT	United Harvest	249%	246%	252%
Moore, MT	Peavey (Con Agra)	245%	242%	247%
Tiber, MT	Columbia Grain	283%	278%	286%
<u>Wolf Point, MT</u>	<u>Columbia Grain</u>	<u>268%</u>	<u>265%</u>	<u>271%</u>
<b>Weighted Average (Based on 2006 Carloads)</b>		<b>266%</b>	<b>250%</b>	<b>264%</b>

**Figure 10**  
**JULY 2007 R/VC RATIOS FOR SELECTED BNSF**  
**NON-SHUTTLE TRAIN WHEAT MOVEMENTS**  
**FROM MONTANA TO PNW EXPORT TERMINALS**

( 52 CARS PER TRAIN & 101 TONS PER CAR )				
<u>ITEM</u>	<u>COMPANY</u>	<u>PORTLAND</u>	<u>KALAMA</u>	<u>VANCOUVER</u>
Choteau, MT	Columbia Grain	245%	241%	247%
Conrad, MT	Columbia Grain	262%	257%	265%
Cut Bank, MT	Columbia Grain / CHS	268%	264%	272%
Ft. Benton, MT	Columbia Grain	243%	239%	245%
Glasgow, MT	CHS, Inc.	256%	252%	258%
Great Falls, MT	Columbia Grain / UH	246%	242%	249%
Ludington, MT	Peavey (Con Agra)	242%	239%	244%
Merc, MT	Columbia Grain	238%	236%	240%
Meriwether, MT	Columbia Grain	270%	265%	274%
Moccasin, MT	United Harvest	234%	231%	236%
Moore, MT	Peavey (Con Agra)	230%	227%	232%
Tiber, MT	Columbia Grain	266%	262%	269%
<u>Wolf Point, MT</u>	<u>Columbia Grain</u>	<u>252%</u>	<u>249%</u>	<u>254%</u>
<b>Weighted Average (Based on 2006 Carloads)</b>		<b>250%</b>	<b>235%</b>	<b>248%</b>

There are different ways of calculating the aggregate impact on Montana of these high rail rates on wheat. If the railroad wheat rates were reduced to the STB jurisdictional threshold, i.e., a 180 percent R/VC, the savings would be on the order of \$50 million annually based on 2006 data. If all Montana shipments of all commodities were reduced to that level, the annual savings would be significantly higher.

More conservatively, if rates on wheat shipments from Montana to the PNW were reduced to levels consistent with the average R/VC percentages for shipments from the states shipping the largest volumes of wheat to the PNW, the savings would be approximately \$19 million per year.

Given the importance of wheat production, marketing and rail transportation to the state, rail rates on wheat were the primary focus of analysis for this Report. However, Montana shippers of other commodities appear to have similar problems with captivity to BNSF. Many Montana shipments of commodities other than wheat produce even higher R/VC percentages, as shown in Figure 11.<sup>9</sup>

**Figure 11**  
**R/VC RATIOS FOR MONTANA SHIPMENTS**  
**OF OTHER COMMODITIES**

<u>COMMODITY</u>	<u>CARS</u>	<u>R/VC</u>
<u>FROM MONTANA TO MONTANA</u>		
Liquefied Gases, Coal or Petroleum	240	760%
Asphalt Pitches or Tars	520	654%
Gasoline or Jet or High Volatile Fuel	10,280	547%
Petroleum Residual Fuel Oils	1,800	513%
Broken or Crushed Stone or Riprap	372	366%
<u>FROM MONTANA TO OTHER STATES</u>		
Sulphur	760	531%
Ammonia or Ammonium Compounds	640	454%
Hazardous Wastes	320	452%
Liquefied Gases, Coal or Petroleum	2,592	442%
Asphalt Pitches or Tars	17,556	386%
Sugar Molasses	200	371%
Distillate Fuel Oil	200	367%
Petroleum Residual Fuel Oils	656	345%
Wheat	47,736	261%
<u>FROM OTHER STATES TO MONTANA</u>		
Sodium Alkalies	440	485%
Liquefied Gases, Coal or Petroleum	2,956	482%
Agricultural Chemicals	240	479%
Alcohols	400	438%
Distillate Fuel Oil	680	433%
Calcium Chloride	600	401%
Chemical Products, NEC	200	388%

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<sup>9</sup> Some of the foregoing data may reflect figures for contract shipments, which are often “masked” in the Waybill Sample, i.e., modified by the reporting railroad to preserve confidentiality. Access to the unmasked Waybill Sample is permitted only if certain types of rate case are filed.

Notably, rail shipments of petroleum products within Montana, and fertilizer and related products from and to Montana, move at rates with R/VCs even higher than the R/VCs on shuttle trains of wheat to the PNW.<sup>10</sup> These commodities move in lower volumes than Montana grain, but could be candidates for a rate challenge under one of the new STB small rate case approaches discussed in Section III.A.

Most of the foregoing figures reflect analyses based on 2006 Waybill Sample and 2006 URCS data. In 2008, BNSF reduced export rates by \$109 per car from most (but not all) Montana shuttle facilities shipping to the PNW. This reduction produced aggregate savings of roughly \$2.55 million for elevators making such shipments. These rate reductions and the use of the preliminary 2007 URCS data will probably produce somewhat lower R/VCs than those in this Report. However, Montana shippers of wheat and other commodities remain at a competitive disadvantage due to rates higher than those charged from competing origins.

BNSF has continued to report increasing quarterly revenues, despite falling freight volumes due to the current economic recession.

### **C. Montana Shippers Pay Excessive Fuel Surcharges**

The analysis of BNSF pricing included fuel surcharges as well as base rates. BNSF was the first major railroad to switch to mileage-based fuel surcharges for grain in place of surcharges based on a percentage of the rate. The older, rate-based surcharges obviously penalized captive shippers like those in Montana who pay elevated rates. It takes no more fuel to move a train 1,000 miles from a captive origin than from a competitive origin, holding all else equal. However, if the captive shipper's rates are 40 percent higher, that shipper's fuel surcharge will also be 40 percent higher. Basing surcharges on a percentage of elevated base rates clearly penalized Montana shippers and provided a windfall to BNSF.

In 2007, the STB found that fuel surcharges based on a percentage of the rate are improper.<sup>11</sup> All railroads have now converted to mileage-based surcharges or have rolled some fuel costs into freight rates. Mileage-based fuel surcharges may allocate fuel costs less arbitrarily than rate-based surcharges, but they do not prevent railroads from using fuel surcharges as unwarranted profit centers.

Fuel surcharges applicable to wheat rates were analyzed using rates and charges on sample shipments moving 951 miles from Grove, MT to Vancouver, WA and Portland, OR, during the period April 2002 through July 2008.<sup>12</sup>

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<sup>10</sup> Other commodities, which faced R/VCs as high as 800% or 900%, moved in smaller volumes of under 100 carloads per year.

<sup>11</sup> STB Ex Parte No. 661, Rail Fuel Surcharges, January 26, 2007.

<sup>12</sup> The analysis includes actual shipments originating in the years 2002 through 2005, and results imputed from 2006 data were used for movements in 2007 and January through July 2008.

There were 8,442 carloads shipped during the study period.<sup>13</sup> These produced total revenues, including fuel surcharges, of \$27,603,000. Total fuel cost recovery took two forms, fuel costs recovered in the freight rates themselves, and fuel costs recovered through fuel surcharges. Fuel costs recovered in rates were calculated using BNSF URCS data for 2002, the time period before the rates were published. During the 2002-2008 time period, the fuel portion of the rates changed by the same percentage as the changes in the rates. Fuel surcharge amounts were calculated based on a percentage of the rate through January 2006, when BNSF switched the form of its surcharges, and on a mileage basis from February 2006 through July 2008.

As shown in Figure 12, the total amount of fuel recovery through rates and fuel surcharges combined was \$3,252,000, while the actual cost of fuel used for these movements was \$2,022,000, an over-recovery of 52 percent. Put another way, 52 cents out of every fuel surcharge dollar collect by BNSF on these movements represents unjustified over-collections in excess of fuel costs.

**Figure 12**  
**FUEL SURCHARGE EVALUATION**  
**FOR SAMPLE MOVEMENTS**  
**OF MONTANA WHEAT**

Total Revenues (rates plus fuel surcharges)	\$27,603,000
Fuel Recovered in Rates	\$886,000
Fuel Surcharges	\$2,366,000
Total Fuel Recovery	\$3,252,000
Actual Fuel Costs	\$2,022,000
Over-Recovery	\$1,230,000
Over-Recovery Percentage	52%

At the time of this analysis, fuel prices were high. They have since fallen, producing significantly lower fuel surcharges for transportation service providers, including BNSF. However, any fuel surcharges that over-recover for fuel costs remain objectionable. In addition, recent reductions in fuel costs and fuel surcharges do not justify retention of past over-collections, and fuel costs and surcharges are sure to rise after the end of the current economic slump. Once fuel charges resume levels that are neither inflated nor depressed, BNSF fuel surcharges will increase.

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<sup>13</sup> Characteristics of the movements include 110 car trains, 110.7 net tons per car, 32.3 tons tare (empty weight) per car and 100% empty returns to Grove.

Fuel surcharges should not recover fuel costs that are already being recovered in railroad freight rates, and the amounts recovered through surcharges should not exceed the incremental cost of fuel above the amount included in the base rate that is associated with the service provided. BNSF fuel surcharges assessed on Montana shipments, though based on mileage, fail both of these tests.

Excessive base rates and fuel surcharges by BNSF on Montana shipments of grain and other commodities cost Montana businesses millions of dollars annually. Well-managed corporations providing services the public needs and wants to buy should make money, including reasonable profits. There is no justification, however, for excessive profits extracted not through buyer choice but through the seller's use of its monopoly power.

#### **D. High Rates Do Not Guarantee Good Service**

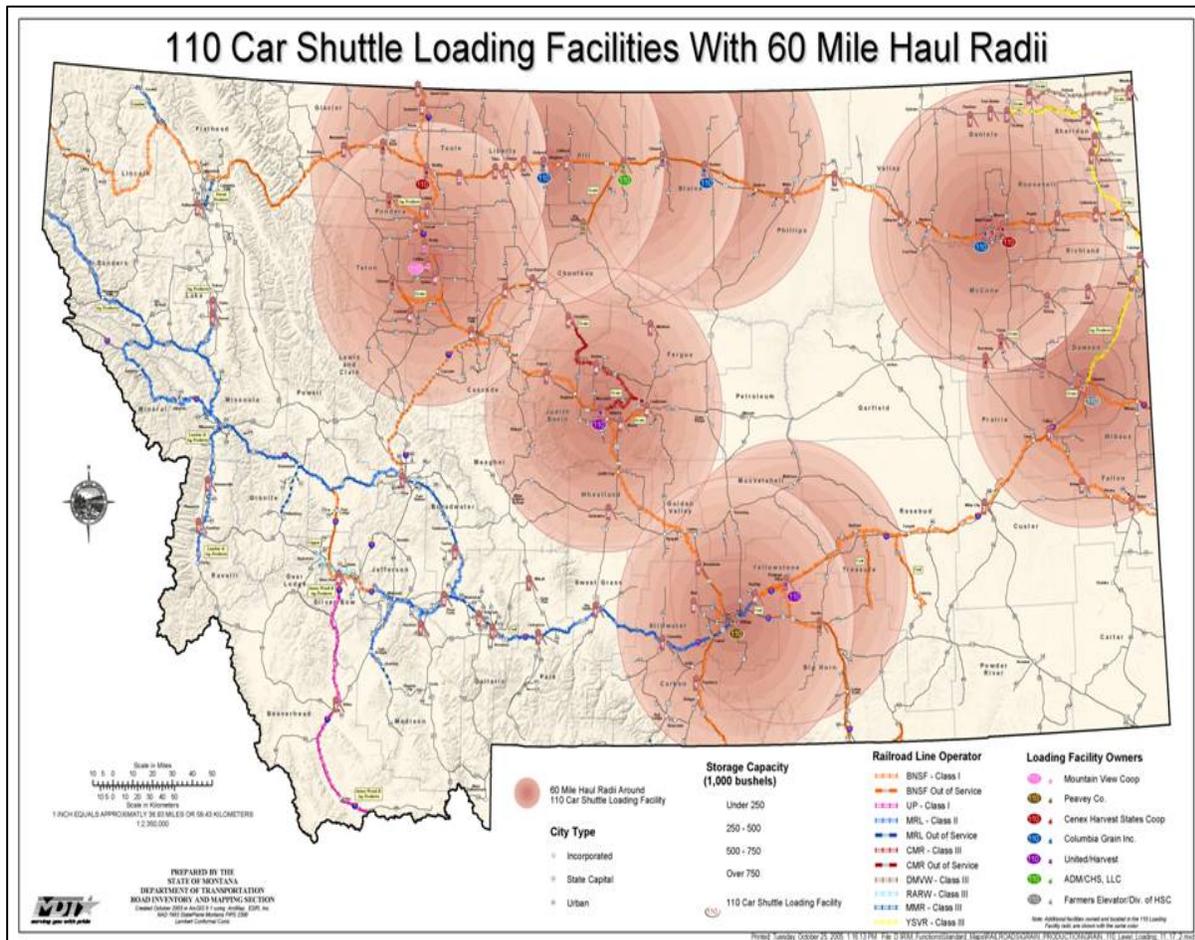
Rail rates and charges that exceed maximum lawful levels cannot be justified by service quality, no matter how good. High rates are even more objectionable when accompanied by poor service. Given its market power in Montana, BNSF has been able to restructure the way Montana wheat moves to market. A railroad with the market power BNSF has in Montana is in a position to use its control of pricing and service to encourage some routings and shipments, and to discourage others, influencing which products move where.

From BNSF's perspective, it is more efficient to move Montana grain in large trains of 100 cars or more from a smaller number of elevators, than to move single cars, 26 cars, or 52 cars from a larger number of elevators, many of which lack the space or equipment to load 100 cars at a time. As a result, BNSF uses pricing to encourage the use of 100 car trains, particularly shuttle trains that move back and forth between Montana elevators and the PNW.

Many smaller elevators in Montana have, as a result, gone out of business. Attached as Appendix A to this Report are maps showing Montana elevators in 1984 and in 2006. The differences are dramatic. According to Montana Department of Agriculture records, there were almost 200 elevators in Montana in the 1980s. That figure fell below 100 in the 1990s, and is less than 50 today, even as production has increased.

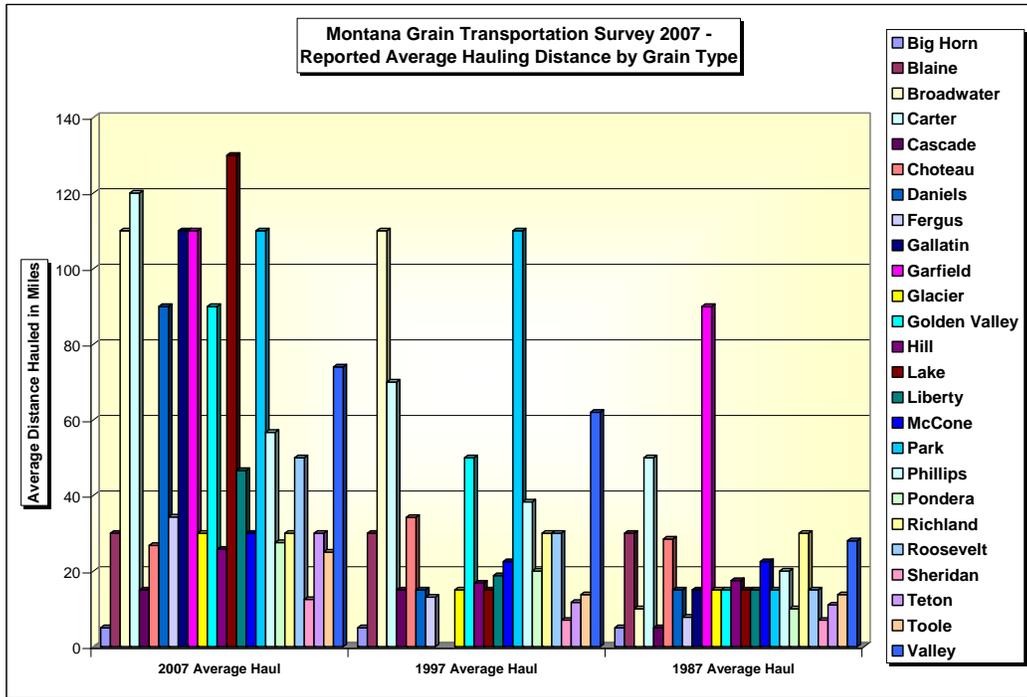
To the extent that rail rates are reduced from shuttle elevators, those elevators and some of the producers they serve arguably benefit, even if most of the benefit goes to BNSF, whose cost savings exceed its rate reductions by a significant margin. However, this is only part of the story. When smaller elevators fold, leaving fewer, larger elevators that producers must use, many producers find themselves driving significantly longer distances from farms to elevators. Associated trucking costs increase, including fuel and truck maintenance, and wear and tear on Montana highways. On-farm storage requirements and costs also rise. The map reproduced below as Figure 13 shows shuttle elevators and the radius from which each attracts business.

**Figure 13**



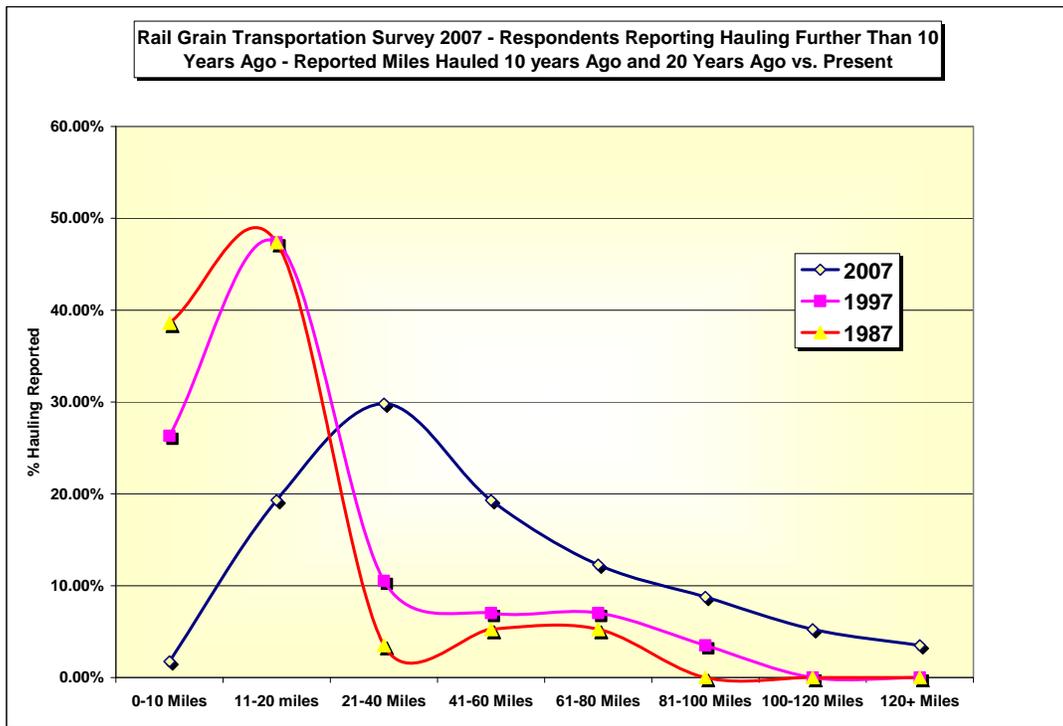
Longer hauls to elevators are not uncommon. The Montana Rail Service Competition Council conducted an extensive survey of Montana producers in 2006, updated in 2007, which found round trips of up to 350 miles for producers in Lake County, and 260 miles for producers in Carter County. The average round trip hauls for producers in those counties were 260 miles and 240 miles, respectively. See Figure 14.

**Figure 14**



Moreover, 70 percent of Montana producers are hauling their grain farther to get to elevators than 10 or 20 years ago, reflecting increasing distances to “local” elevators. See Figure 15, below. Not only do these longer hauls mean higher costs for producers, but they also result in more wear and tear on Montana roads, and higher roadway maintenance costs for the Montana Department of Transportation.

**Figure 15**

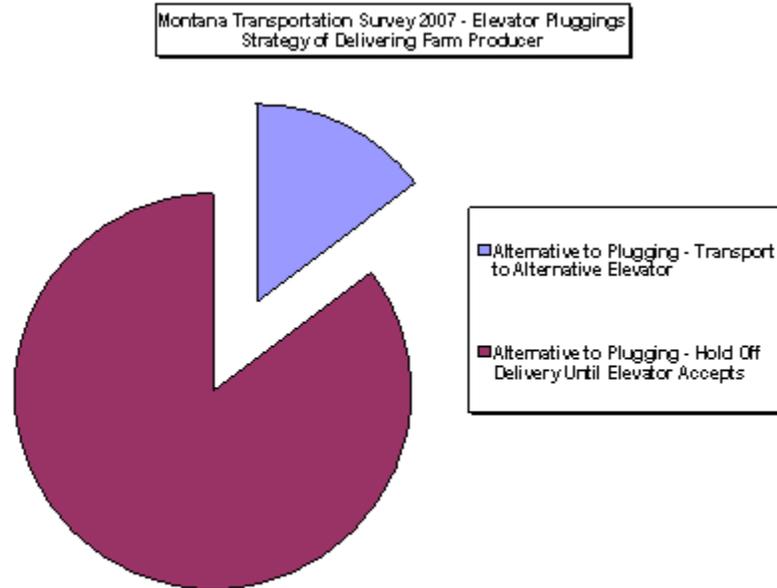


A 2004 survey by Montana Grain Growers Association accords with the 2006 RSCC results. And because 70 percent of initial farm hauls are in smaller, lower capacity farm trucks rather than commercial trucks, these longer trips must be made frequently. The trend to fewer elevators has also led to reduced capacity in the grain transportation system, and increased captivity for producers, fewer of whom can efficiently sell to more than one elevator.

Reduced capacity is reflected in the frequency of plugged elevators, i.e., an elevator that is full and cannot accept any more grain until existing crops are loaded in railcars and shipped. In 2006, Montana’s harvest peak followed below-average production in other states, which should have freed up rail car capacity for service to Montana elevators. However, 78 percent of producers in the survey reported experiencing plugged elevators in late 2006, and 54 percent of respondents encountered plugged elevators multiple times during the 2006 harvest season. Two-thirds of respondents attributed the plugged elevators to a shortage of rail cars.

The long distances to alternative elevators mean that producers almost always wait for rail cars to arrive so the elevator can be unplugged, as Figure 16 shows.

**Figure 16**



BNSF has little reason to fear loss of freight volumes, given the absence of transportation alternatives. However, delays in the ability of producers to bring grain to markets can sometimes mean missing peak grain prices.

Railroads frequently argue that they cannot be expected to maintain car supplies adequate to meet peak system demand, only to have grain cars sit idle at other times. But this is not a case of “building churches to accommodate Easter Sunday crowds.” By the time Montana harvests occur, the national peak has come and gone. In any event, when rail carriers own just one-third of covered hopper cars in use nationwide, they obviously cannot meet average demand without massive rail car investment by shippers. The railroads have evaded their duty to provide cars in compliance with their common carrier obligation.<sup>14</sup> Shippers have therefore had no choice but to make major investments in railcars, assuming additional costs for acquisition and maintenance of equipment that should have been provided by railroads. Erratic rail service exacerbates the need for such investments. Even with these investments, scheduled or projected deliveries of empty cars to origin points ready to load grain are frequently missed by days, and when cars arrive late, they must nevertheless be loaded promptly to avoid penalties. Elevators often have to load at night or in freezing conditions, and pay overtime wages to crews or else incur stiff BNSF penalty charges.

<sup>14</sup> See 49 U.S.C. §§ 11101 and 11121. See also National Grain and Feed Association v. United States, 5 F.3d 306, 311 (8<sup>th</sup> Cir. 1993), rejecting the argument that ordinary customers are not entitled to an equitable supply of cars so long as better car service is available at extra cost, as under BNSF’s Certificate of Transportation (“COT”) program.

Note that these poor service metrics have been collected in the state with the highest, most profitable rail rates in the nation. And yet many producers surveyed see these results as “business as usual” for BNSF, and unlikely to change. This Report addresses options available to ameliorate these problems in its final sections.

### **III. ACTIONS AT THE FEDERAL LEVEL**

Solving Montana’s rail rate and service problems will be difficult without recourse to federal legal and regulatory remedies. Voluntary cooperation by BNSF with its Montana customers is desirable, but full cooperation is unlikely unless Montana shippers have credible legal alternatives to accepting current rate and service levels. Past efforts to invoke these alternatives have not satisfied state needs, but promising changes are now under way at the federal level.

Rail rate regulation before the ICC and STB has been limited for some 30 years. Where there is “effective competition,” there is no regulation of rail rates, though relief may be available for unreasonable railroad practices. Even where effective competition does not exist and a railroad is found “market dominant,” rail rates for a movement that do not exceed 180 percent of the variable cost of the movement are not subject to regulation.<sup>15</sup> Rates with R/VC percentages above 180 percent may be challenged, but the shipper has the burden of showing that rates are unlawfully high.

For many years, the only readily available methodology for testing whether rates were unlawful was the Stand-Alone Cost test. Rail rate cases under this test often cost more than \$5 million (for each party to the case) in legal and consultant fees, and take more than three years to litigate. As a result, rate challenges in the 1980s and 1990s were brought almost exclusively by utilities shipping millions of tons of coal from mines to power plants in unit trains.

In the McCarty Farms case, BNSF was found market dominant (as it would be today) as to Montana grain shipments, but a challenge to high rates based on the Stand-Alone Cost approach was unsuccessful. In the ICC Termination Act of 1995, Congress required the STB to adopt less expensive, less time-consuming alternatives where “a full stand-alone cost presentation is too costly, given the value of the case.” 49 U.S.C. Section 10701(d)(3).

Given the importance of federal law and regulation to the availability of remedies, shipper representatives have worked to reform the statutes and regulatory policies that have, for too long, provided inadequate recourse to Montana rail shippers. The state’s outside counsel and consultants have participated in and intensified these efforts.

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<sup>15</sup> 49 U.S.C. Sections 10701(d)(1) and 10707(d)(1)(A).

## A. Proceedings Before The Surface Transportation Board

Numerous Montana interests, including the Montana Wheat & Barley Committee, have joined with agricultural interests in other Western states in filing comments with the STB on a broad range of rail issues.<sup>16</sup> The Montana Wheat & Barley Committee and other Montana organizations have also filed comments in additional STB proceedings.<sup>17</sup>

Montana's participation in some of these proceedings has been aimed at educating the STB about the state's concerns. As discussed above, the Christensen Report confirmed GAO's earlier conclusion that Montana grain shippers pay very high rail rates. Montana interests filed comments on the Christensen Report with the STB on December 22, 2008.

There have also been more tangible advances as a result of these proceedings. The STB's new test of railroad industry cost of capital may appear to involve arcane finance issues. However, the STB's January 2008 decision has broad impacts on rate case standards and on the issue of revenue adequacy. The closer the railroads are to earning adequate revenues, the closer captive shippers will be to obtaining rate relief. Railroads have argued for decades, with considerable success, that they must be allowed to charge higher rates to captive shippers than to non-captive shippers in order to achieve "revenue adequacy." However, the controlling case law holds that such "differential pricing" will be less defensible once a railroad achieves revenue adequacy.

On the rate front, the STB has adopted two new approaches to small rate cases, so that shippers for whom a \$5 million rate case under the full Stand-Alone Cost approach is prohibitively expensive will not be priced out of all chances at rate relief. The STB's new "Simplified SAC" approach looks particularly promising for larger shippers using higher density lines like the Montana Hi-Line. The "Three Benchmark" approach looks promising for other Montana shippers.

The STB decision adopting these approaches has been appealed by railroads who attack these approaches as too shipper friendly, and by shippers who challenge the caps on relief the STB attached to its new approaches. Montana interests that participated in the STB's small rate case proceeding have joined other shippers in the court cases in order to defend and improve these STB initiatives.

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<sup>16</sup> Rail Transportation of Grain, STB Docket No. Ex Parte No. 665; Rail Fuel Surcharges, Ex Parte No. 661; Simplified Standards for Rail Rate Cases, Ex Parte No. 646 (Sub-No. 1); Rail Capacity and Infrastructure Requirements, Ex Parte No. 671; Common Carrier Obligation of Railroads, Ex Parte No. 677; Railroad Industry's Cost of Capital, Ex Parte No. 664; and Study of Competition in the Freight Railroad Industry, Ex Parte No. 680.

<sup>17</sup> Review of Rail Competition and Access Issues, Ex Parte No. 575; The 25<sup>th</sup> Anniversary of the Staggers Rail Act of 1980: A Review and Look Ahead, Ex Parte No. 658; Rail Rate Challenges in Small Cases, Ex Parte No. 646; Arbitration – Various Matters Relating to its Use as an Effective Means of Resolving Disputes, Ex Parte No. 586; Major Rail Consolidation Procedures, Ex Parte No. 582 (Sub-No. 1), and Review of Rail Access and Competition Issues, Ex Parte No. 575.

As for fuel surcharges, the STB has ruled that railroad fuel surcharges are improper to the extent that they are based on a percentage of the rates, as opposed to mileage. More recently, the STB has held that even mileage-based fuel surcharges are subject to challenge if they “double dip,” i.e., collect for fuel costs that are also being recovered in freight rates, or if the fuel surcharge formula “stacks the deck” in favor of over-recoveries.<sup>18</sup>

Moreover, the major railroads are defendants in pending antitrust class actions alleging industry collusion on fuel surcharges. Their motion to dismiss these cases was denied by the federal court in November 2008, and discovery of the railroads’ surcharge pricing conduct is under way.

The STB’s January 2008 Decision in Ex Parte No. 665, Rail Transportation of Grain, cited evidence regarding Montana concerns submitted by Montana Wheat & Barley Committee and others, and noted GAO’s “troublesome” finding that “grain rates have diverged from the industry trend toward lower rates and that the amount of grain rates with relatively high R/VC ratios has increased markedly.”

## **B. Proceedings Before Congress**

Meanwhile, Congress likely will revisit two key bills designed to help shippers. The Rail Competition and Service Improvement Act contains provisions designed to promote rail competition, as well as better regulation where competitive options do not exist or have not been effective.<sup>19</sup> These provisions include Final Offer Arbitration, based on the Canadian model but preserving deregulation of rates below the established 180 percent R/VC level, and special relief for Areas of Inadequate Competition, drafted with Montana in mind. The Act also requires the STB to replace its full Stand-Alone Cost approach with cheaper, faster methods of challenging high rail rates.

The Railroad Antitrust Enforcement Act would bring an end to the railroads’ claims that they are not fully subject to the antitrust laws because they are subject to STB regulation. They are in fact subject to very limited regulatory oversight, and the regulation that exists has generally failed to protect captive shippers in Montana from the abuse of railroad monopoly power.

## **IV. POTENTIAL REMEDIES FOR RATE AND SERVICE PROBLEMS**

Montana is a rail-dependent state, producing and shipping bulk grain, and shipping and receiving other bulk commodities over long distances. Service by BNSF is therefore important to Montana’s population and economy. However, BNSF enjoys extraordinary market power in Montana – more than in any other state. Assuming that what is best for BNSF is best for Montana, and letting BNSF decide unilaterally what it will charge, who it will serve, how often, and when and where, has not and will not serve the best interests of Montana. Going forward, there are several avenues to relief for Montana shippers: negotiation, litigation and arbitration.

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<sup>18</sup> STB Docket No. 42105, Dairyland Power Cooperative v. Union Pacific Railroad Co., decision served July 29, 2008, at page 6.

<sup>19</sup> The Montana Congressional Delegation co-sponsored this legislation.

## **A. Negotiation**

Of course, it is possible to have market power (as BNSF undoubtedly does) and not abuse that power. There have been occasions when BNSF responded to complaints by its customers, and Montana does not rule out negotiations with the railroad over excessive rates and sub-optimal service.

For negotiations to be productive, each participant must have some leverage, and a reason to prefer compromise. For Montana shippers, that leverage depends primarily on the availability of legal and regulatory remedies. Congress fully intended to preserve such remedies for captive shippers in recognition of the need for oversight of monopolies.

## **B. Litigation**

There are two primary options for shippers seeking rate relief through litigation, each with different procedures.

First, captive grain elevators can challenge their rates under the STB's new simplified stand-alone cost (SSAC) approach. While this approach has never been implemented in a litigated rate case, it is a variant of the well-established full Stand-Alone Cost approach, with which Montana's consultants and counsel have extensive experience. The STB calculates a litigation cost of \$1 million for shipper complainants, and has capped relief at \$5 million over 5 years for each origin-to-destination routing.

The SSAC approach works best for shippers on high-density main lines, including those with movements to the PNW from origins located on or near the Hi-Line. The consultants' research indicates that rate cases challenging wheat rates from these origins could produce significant reductions, on the order of \$500 per car for shuttle service. Details of one such analysis are provided in Appendix B to this Report.

The STB has another new approach, designed for shippers for whom the projected \$1 million litigation cost of SSAC cases is still too high. This less expensive and time consuming approach, the Three Benchmark approach, involves comparing challenged rates with rates for comparable shipments, in the context of the pricing of captive traffic that is needed by railroads to attain revenue adequacy. The Three Benchmark approach can succeed for shippers whose origins are farther from the Hi-Line. The Board estimated litigation costs of \$200,000, though rate relief in a Three Benchmark case is capped at \$1 million over five years (per origin-to-destination routing). Rate cases using the Three Benchmark approach appear viable for smaller and more insulated Montana grain shippers with the highest R/VC percentages, though the rate reduction would probably be less than \$500 per car.

While analyses by consultants and counsel indicate the probability of success in one or more rate cases, BNSF is unlikely to reduce any Montana shipper's rates based solely on such studies. A grain elevator or other shipper must be willing to work with the State and its consultants and counsel on a test case that may provide broad benefits to Montana farmers. However, many

grain elevators have close business relationships with BNSF or have expressed concern about BNSF retaliation.

### **C. Arbitration**

BNSF has sought to avoid litigation through a mediation/arbitration agreement it reportedly reached in January 2009 with two Montana grain groups, the Montana Farm Bureau Federation and the Montana Grain Growers Association. Arbitration of disputes over rail rates and service can help shippers if done correctly. Final Offer Arbitration (or “baseball” type arbitration) has been used successfully for railroad-shipper disputes in Canada for years. Under this approach, the arbitrator(s) must choose the final offer of one of the parties, and cannot adopt a compromise (which could encourage the parties to take extreme positions).

In fact, the availability of Final Offer Arbitration for Canadian grain shippers has provided enough of a level playing field to encourage almost all grain rate disputes in Canada to be resolved without arbitration. Such a system is a feature of the Rail Competition and Service Improvement Act introduced in the last session of Congress on March 21, 2007 and cosponsored by Montana’s Senators and Representative. Arbitration in Montana could be particularly useful as a means of spreading the benefits of a single STB test case finding, for example, that BNSF grain rates are unlawful.

The mediation/arbitration process agreed to by BNSF in Montana differs in significant ways from the approach that has proved successful in Canada. BNSF’s approach to arbitration appears to exclude the grain elevators and other Montana shippers who actually receive BNSF’s invoices and pay its excessive freight rates and charges.

The biggest problem with BNSF rail rates is that they put Montana shippers, including elevators, at a competitive disadvantage as compared with lower rates paid by shippers in other states. The BNSF mediation/arbitration process shifts the focus from BNSF rail rates statewide to individual producer receipts from elevators.

Under BNSF’s proposal, producers of wheat and barley are allowed to seek mediation or arbitration, and they would need the approval of a producer organization which has signed on with BNSF. The elevator that paid the rates to BNSF could not recover anything. However, elevators have the option of filing rate cases at the STB and producers do not.

The arbitrators are instructed by BNSF’s rules to weigh such factors as BNSF’s investment in rail infrastructure versus the farmer’s cost of seed and fertilizer. In addition, where the producer’s payment is based on rail rates with R/VCS below 180 percent (for non-shuttle) or 195 percent (for shuttle), mediation/arbitration would not be available. Where rates exceed these levels, the mediation/arbitration process may provide a rebate option for producers. BNSF reportedly expects the new mediation/arbitration process “to prove their rates are reasonable” according to a Farm Bureau official.

Moreover, a controlling issue in this process appears to be whether the rates on which elevators base their tariff assessments to producers are so high as to warrant reparations to a producer, after taking into consideration BNSF's capital investments in relevant rail facilities and BNSF costs of service. And there can be no challenge under this process if BNSF rail rates are equal to truck rates.

Rail rates are not reasonable under any standard in the case law merely because truck service would cost the same. The Christensen Report discounted trucking as a competitive constraint on rail rates for long-haul bulk commodities like grain.

The mediation/arbitration process might produce benefits to certain producers, depending on the way it is implemented. It does not solve Montana's rail rate, fuel surcharge or service problems, though it may reflect some recognition by BNSF of the need to address some Montana producers' concerns.

## V. CONCLUSION

The State's outside counsel and consultants have performed an exhaustive analysis of rail rates charged by BNSF to Montana's shippers. The results make a compelling case for rate relief.

The STB's current regulatory regime imposes preconditions on a rate case that require a complainant who pays directly for rail service, such as a grain elevator, and some businesses having direct relationships with the railroads have been reluctant to jeopardize those relationships in adversary proceedings. However, as Montana shippers have become better informed about the rate and service practices of BNSF through this Report and other studies, the BNSF itself may become more responsive to its customers' concerns. Experience shows that BNSF's recent unilateral rate reductions may be fleeting, but the State's constant monitoring of railroad practices and continued efforts to seek more effective remedies on behalf of shippers may keep BNSF in check pending more formal actions.

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February 2009



# Montana Grain Elevator Operators 1984



NOTE: In 1984 there were a total of 287 Licensed Grain Dealers in Montana. Only those with storage Capacity (189) are shown on the map

### City Type

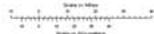
- ◊ Incorporated
- State Capital
- Urban

### Grain Elevator Operators 1984

Number shown in Symbol indicates number of operators in community

### Railroad Line Operators 1984

- BURLINGTON NORTHERN
- SOO LINE RAILROAD
- UNION PACIFIC RAILROAD



PREPARED BY THE  
 STAFF OF MONTANA  
 DEPARTMENT OF TRANSPORTATION  
 ROAD INVENTORY AND MAPPING SECTION  
 Created February 2007 in ArcGIS 9.1 using ArcMap. ESRI, Inc.  
 NAD 1983 StatePlane Montana FIPS 5000  
 Lambert Conformal Conic

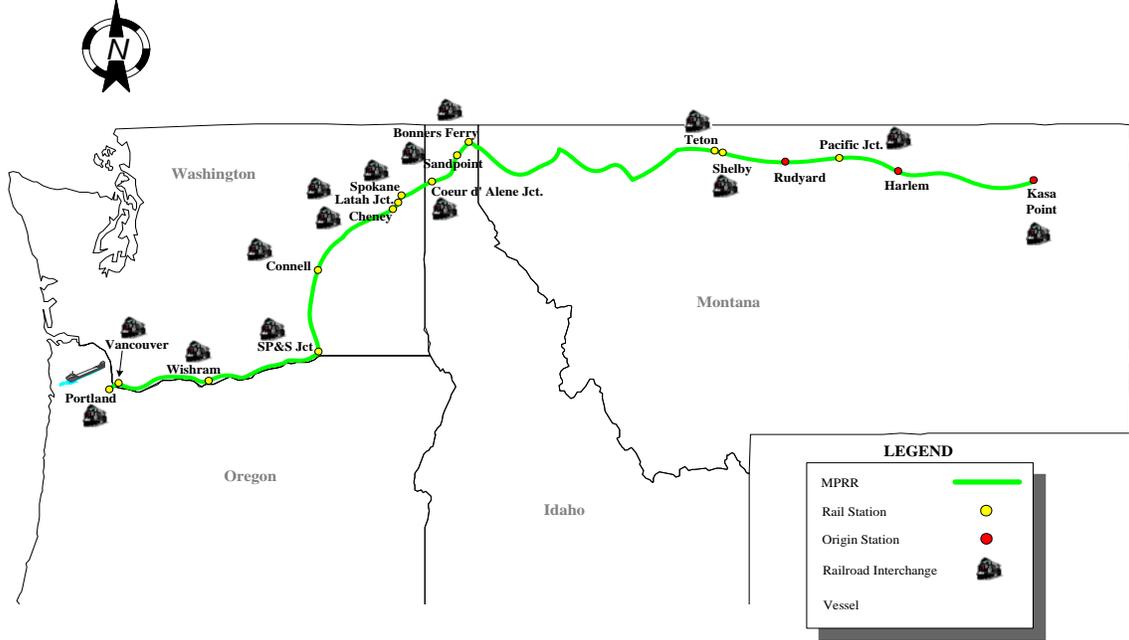
# Montana Grain Elevator Operators 2006



APPENDIX B

July 2008  
Page 1 of 1

**Schematic Of The Montana-Portland Stand-Alone Railroad**



**Montana Reasonable Rates for Montana Origins to Portland, OR**

<u>Item</u> (1)	<u>Rudyard, MT to Portland, OR</u> (2)	<u>Harlem, MT to Portland, OR</u> (3)	<u>Kasa Point, MT to Portland, OR</u> (4)
<b>A. <u>Estimated Future Rates and Charges</u></b>			
1. Current Tariff Rates (\$ per car) <u>1/</u>	\$2,737	\$2,926	\$3,449
2. July, 2008 Fuel Surcharge (\$ per car) <u>2/</u>	\$ <u>674</u>	\$ <u>742</u>	\$ <u>873</u>
3. Estimated Total Charge (\$ per car)	\$3,411	\$3,668	\$4,322
<b>B. <u>Variable Costs and Jurisdictional Thresholds</u></b>			
4. Phase III Cost 3Q08 (\$ per car)	\$1,598	\$1,746	\$2,029
5. Jurisdictional Threshold (\$ per car)	\$2,877	\$3,143	\$3,653
<b>C. <u>Rates Based On Simplified Stand-Alone Costs</u></b>			
6. Maximum Rate Based on Simplified SAC (\$ per car)	\$1,987	\$2,171	\$2,523
<b>D. <u>Maximum Rate</u></b>			
7. Maximum Rate (\$ per car) <u>3/</u>	\$2,877	\$3,143	\$3,653
8. Estimated Over Payment (\$ per car) <u>4/</u>	\$ 534	\$ 526	\$ 669

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1/ Based on BNSF Rate Book 4022-L, Item 43814 for movements in cars with maximum gross weights of 286,000 pounds and moving in shuttle service between origin and destination.

2/ BNSF's fuel surcharge of \$0.80 per loaded car-mile for July, 2008 as reported on BNSF's website.

3/ The greater of the Jurisdictional Threshold Rate from Line 5 or the Maximum Rate based on simplified SAC procedures from Line 6.

4/ Line 3 – Line 7.



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