

NORTH DAKOTA GRAIN DEALERS ASSOCIATION

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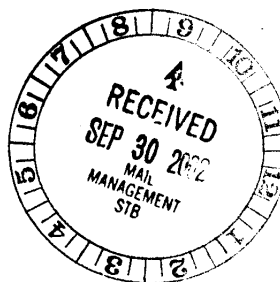
206279

September 27, 2002

ENTERED
Office of Proceedings

SEP 30 2002

Part of
Public Record



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street N.W.
Washington, DC 20423

Dear Mr. Williams:

Enclosed is an original, ten copies and floppy disk of our PETITION OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION FOR LEAVE TO INTERVENE in Docket No. 42054, PPL Montana LLC vs. Burlington Northern Santa Fe Railway Company.

Thank you for your attention to these matters.

Sincerely,

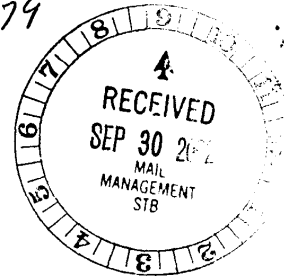
Steven D. Strege
Executive Vice President

Enclosures

Che/STB/tr w/petition for reconsideration

206279

BEFORE THE
SURFACE TRANSPORTATION BOARD



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DOCKET NO. 42054

PPL MONTANA, LLC

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

PETITION OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION
FOR LEAVE TO INTERVENE

Steven D. Strege
Executive Vice President
North Dakota Grain Dealers Association
118 Broadway
606 Black Building
Fargo, ND 58102-4985
(701) 235-4184

Dated: September 27, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 42054

PPL MONTANA, LLC

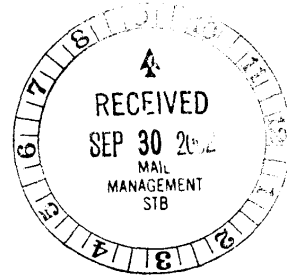
v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

PETITION OF NORTH DAKOTA GRAIN DEALERS ASSOCIATION
FOR LEAVE TO INTERVENE

North Dakota Grain Dealers Association ("NDGDA") is an incorporated trade association representing members who operate over 350 grain elevators in the State of North Dakota. Approximately 60 percent of those elevators are served by The Burlington Northern and Santa Fe Railway Company ("BNSF"), the dominant railroad in North Dakota, or its marketing partner, Red River Valley and Western Railroad.

Agriculture is the leading industry in North Dakota, and wheat is North Dakota's leading crop. The State is the nation's largest producer of spring wheat and durum wheat, and is heavily reliant on rail transportation to market that wheat. Approximately 80 percent of all wheat grown in North Dakota is shipped to market by rail.



Studies performed recently by the Upper Great Plains Transportation Institute, a research organization situated at North Dakota State University in Fargo, ND, estimate that BNSF's wheat rates from North Dakota origins range between 270 and 400 percent of variable costs.¹ Members of NDGDA and NDGDA, on behalf of its members, have begun preliminary exploration of litigation to challenge the reasonableness of BNSF's wheat rates from North Dakota. Consideration is being given to a stand-alone cost ("SAC") case.

The Decision of the Board served in this proceeding on August 20, 2002 (the "Decision") is the first SAC case of which NDGDA is aware that actually applies and reaches a result based on a cross-subsidization test, concluding that the hypothetical SAC railroad there involved "can be viewed in two distinct parts" (Slip op. at 7) and that where one "segment of the [SAC railroad] would not be self-sustaining", the challenged rates applicable to that segment may not be found unreasonably high; as a result, the complaining party cannot prevail (Slip op. at 10). Although earlier SAC cases are claimed in the Decision to support the application of the anti-subsidization theory, the Board has pointed to no other decision in which there is a test for identifying any "segment" of a SAC railroad that may be the beneficiary of "improper" cross-subsidy.

Members of NDGDA operate grain elevators that are located on railroad main lines and railroad branch lines. Grain from these elevators moves under unitary rates, applicable from origin to destination regardless of whether the

¹ Testimony of Gene C. Griffin before a hearing of the Senate Committee on Commerce, Science, and Transportation, Hon. Byron Dorgan, Presiding, Bismarck, N.D., March 27, 2002.

origin is on a branch line or main line. For rate purposes, the branch lines on which many grain elevators are located are not separate "segments" from the main lines with which they connect.

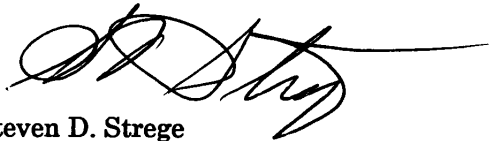
The Decision's reference to "distinct parts" and "segments" of a SAC railroad and possible cross-subsidization that may be fatal to a complaint for rate relief suggests the possibility that branch lines on which potential grain elevator complainants are located will be regarded as "distinct parts" or separate "segments" of a SAC railroad so that a branch line complainant elevator may find it more difficult to obtain rate relief. NDGDA seeks to intervene in this proceeding for the purpose of asking the Board to clarify how a potential complainant may determine, in advance of a final decision on the merits, whether its stand-alone railroad has a "distinct part" or separate "segment" as to which a cross-subsidization analysis would be required. In the alternative, NDGDA asks the Board to reconsider and rescind a SAC test that applies to undefined "distinct parts" or separate "segments" of a SAC railroad. Grain elevator members of NDGDA may conclude that they cannot afford to bring a SAC case if they must wait until the conclusion of the case to learn whether the Board sees their SAC railroad as one with two "distinct parts".

This proceeding was assigned for handling under the modified procedure. Under 49 C.F.R. 1112.4, the Board may grant a petition to intervene in such a proceeding if intervention (1) will not unduly disrupt the schedule for filing verified statements ... and (2) would not unduly broaden the issues raised in the proceeding." Intervention by NDGDA cannot run afoul of the first of these tests

because all verified statements have been filed. Intervention by NDGDA will not unduly broaden the issues because NDGDA is not seeking to argue a new issue, but is seeking clarification of issues raised by the Decision.

For the foregoing reasons, NDGDA urges the Board to permit it to intervene for the limited purpose described above and requests the Board to consider NDGDA's petition for clarification or, alternatively, reconsideration filed herewith.

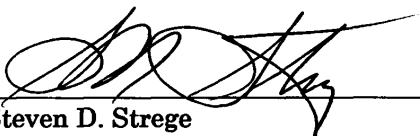
Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. Stregé", with a long horizontal flourish extending to the right.

Steven D. Stregé
Executive Vice President
North Dakota Grain Dealers Association
118 Broadway
606 Black Building
Fargo, ND 58102-4985
(701) 235-4184

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served on all parties of record this 27th day of September 2002, by first-class mail, postage prepaid.


Steven D. Strega