United States Senate
Committee on Commerce, Science, and Transportation

Presented by: Commissioner Tony Clark
North Dakota Public Service Commission

Date: March 27, 2002

Good afternoon. My name is Tony Clark. I am a member of the North Dakota Public Service Commission. Also in attendance this afternoon are my fellow commissioners, Susan Wefald and Leo Reinbold.

The PSC is the state agency charged with both regulating grain elevators and representing the state's rail interests. Since this hearing involves the transportation of grain out of North Dakota, I believe that the Commission is especially well qualified to testify. On behalf of the Commission, thank you for the opportunity.

Burlington Northern Santa Fe's inverse rates on wheat shipped from North Dakota to the Pacific Northwest (PNW) make a great deal of sense from the railroad's perspective – they allow BNSF to maximize profits and shift its costs to the public sector. If this were a competitive market, we likely wouldn't be here today. But in a non-competitive market, this policy raises great concern, as these are essential services that are being provided.

The BNSF has been able to carry out its plan because shippers in almost all of western North Dakota are captive to BNSF. If there was effective competition in this market, BNSF could not implement this rate structure. Unlike so many other regions of the country, we simply have no alternatives. BNSF is the only rail carrier west of the Missouri River, and is the dominant carrier throughout all of North Dakota. We do not have any direct access to water transportation and trucks are inadequate when it comes to moving bulk commodities distances of 300 to 1000 miles.

The extent of North Dakota's captivity is exemplified by the rates that we pay. North Dakota's rail rates are among the highest and most profitable anywhere. While the Stagger's Rail Act sets 180 as a reasonable and profitable revenue-to-variable-cost ratio, many of North Dakota's rates generate ratios of 300 or more. If there was effective competition in the local transportation marketplace, the railroads would not be able to achieve ratios of this magnitude. We estimate that these excessively high rates cost North Dakota farmers and shippers between $50 and $100 million annually.

BNSF's inverse rates were implemented about a year ago. At the present time, the 110-car shuttle train rate from southwestern North Dakota to the PNW is about 28 cents per bushel higher than the rate paid by shippers in eastern North Dakota, even though the shippers in western North Dakota are over 250 miles closer to the market.

These preferential rates are available to only a very small number of eastern shuttle train loaders. They put western North Dakota shuttle and non-shuttle shippers at a disadvantage relative to their eastern counterparts, but they have an even greater impact on non-shuttle loaders in eastern North Dakota.

Prior to the implementation of these inverse rates, eastern shuttle loaders had a 15-cent per bushel rate advantage over nearby 52 car loaders. This advantage increased to as much as 38 cents with the implementation of inverse rates.

Grain elevators cannot compete when they are faced with rate disadvantages of this magnitude. In the long run, we believe these unfair rate advantages will result in the closure of many grain elevators, a loss of local competition and farmers being forced to truck their grain to more distant markets. Farm operating costs will increase and branch lines will be abandoned. The railroad's costs will be shifted to public roadways and state taxpayers. These changes will be forced in ways a competitive market would not allow.

Existing federal law leaves shippers with few workable solutions when they are faced with harmful railroad practices. Railroads are exempt from federal anti-trust laws and other forms of regulatory relief are costly, slow, and largely unworkable. The rail industry has done a masterful job of stacking the deck in its favor.

In closing, I would like to address the BNSF's assertion that North Dakota is simply being resistant to change and macroeconomic forces. Nothing could be further from the truth.

The truth is, as we have said repetitively, we are not against shuttles per se. We are against using market dominance to create unfair and irrational advantages for a small number of shippers. BNSF offered millions of dollars in incentives to select shippers to encourage them to build shuttle train facilities. Then the railroad implemented inverse rates, which doubled the size of the rate advantage that some of these shippers were initially given. It appears that BNSF is attempting to forcibly restructure the state's grain industry rather than responding to its needs. That is what we are opposed to.

North Dakota needs transportation and its shippers have very few transportation options. This captivity makes us very dependent on the railroad. The company needs to be profitable but we also need to be treated fairly.

Thank you for this opportunity for the Commission to express it views. I would be happy to respond to any questions that you may have.