



ARC

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March 1, 2009 Newsletter - Montana Rail Rates Study Released

Montana Attorney General's Report finds that Montana shippers pay the highest rates in the country, are the most captive, and often receive substandard service. Both Montana Attorney General and Montana Governor show support for Rail Competition and Anti-Trust Legislation in Congress

Montana Attorney General Steve Bullock on Thursday, February 26, 2009 released an in-depth report on the rates charged to shippers by railroads in Montana. The study, conducted in response to concerns raised by the 2007 Montana Legislature, also examined the service provided to those shipping by rail.

The report, titled *Railroad Rates and Service Provided to Montana Shippers (PDF)*, found that Montana shippers pay the highest rail rates in the country. Burlington Northern Santa Fe Railways (BNSF) controls 95 percent of rail freight transportation in Montana. This lack of competition makes Montana shippers the most captive in the country.

The study was conducted by a team of experts who have represented captive rail shippers for more than 30 years. The team included John Cutler and Andrew Goldstein, of the firm McCarthy, Sweeney & Harkaway, P.C.; G.W. Fauth III of G.W. Fauth & Associates; Thomas Crowley of L.E. Peabody & Associates; and Terry Whiteside of Whiteside & Associates in Billings, who also serves as Chairman of the Alliance For Rail Competition.

Attorney General Steve Bullock said the consequences of high rates are felt beyond the farm. "Agriculture is one third of our economy, and it's going to impact us all when our producers pay more and have less money to take home. Don't kid yourself," Bullock said.

In determining how much wheat producers were overcharged for shipping grain by rail, the report refers to a method created by Congress in 1980, when the federal government decided to partially deregulate railroads. At that time, Congress

determined that if railroads charged customers 150 percent of the company's variable costs to move freight, then revenues would be adequate. If the charges were higher than 180 percent, customers that felt overcharged would have a case.

In 2006, the year studied in the attorney general's report, the cost of shipping wheat from Montana to ports in the Pacific Northwest was 253 percent of BNSF's variable costs.

BNSF responded to the report by saying it had been in informal negotiations with Montana grain groups for the past four years and that rates for wheat shipments in many areas were now near the 180 percent threshold cited by the report.

"Our rates out of Montana are no higher than any other state" in the region, said Kevin Kaufman, BNSF's group vice president of agriculture products. "Three, four or five years ago, they were, but they're not anymore."

But the report found that "BNSF charges Montana shippers more than twice as much as the long-term variable costs of the rail service they receive."

And for wheat producers shipping by shuttle train, the bill was higher than the average for any other state. Had Montana grain been shipped for the average rate charged in neighboring states, the total bill would have been \$19 million less. Montana's attorney general says state wheat farmers are being over billed as much as \$50 million a year to ship grain by rail, according to the study.

The BNSF recently signed a Mediation/Arbitration agreement with two Montana grower groups (Montana Grain Growers and Montana Farm Bureau). Not all grain groups struck a negotiation deal with BNSF. The Montana Farmer's Union considered joining the other grain groups but backed out, opting to put its support behind the Rail Competition legislation making its way through Congress. Alan Merrill, the group's president, said in a written statement Thursday that the attorney general's findings were spot on.

"The findings outlined in Attorney General Bullock's news release have been experienced and discussed by Montana's agriculture producers for years," Merrill said. "Montana Farmers Union is in full agreement with the findings."

Montana Governor Brian Schweitzer said that he would join Bullock in pushing for action at the federal level that will alleviate the burden placed on Montana shippers. Moreover, Schweitzer and Bullock affirmed their commitment to a recent arbitration agreement reached between the railroad and Montana agricultural advocacy groups. Both the Governor and Attorney General said they plan on working with all parties to make sure the new arbitration agreement works.

Schweitzer and Bullock also said that they would continue to work through the Montana Rail Service Competition Council. The 2005 Legislature created the MT RSCC to promote rail service and competition in Montana.

"The lack of rail competition has caused both excessive freight rates and poor service," Schweitzer said. "Our farmers, ranchers and other rail shippers deserve better."

Bullock is spearheading efforts with the Attorneys General of South Dakota and Ohio to encourage congressional leaders to pass the *Railroad Antitrust Enforcement Act*, federal legislation that would subject railroads to the same antitrust laws that apply to other industries.

"This report clearly documents what Montana farmers and ranchers already know from hard experience—they are being charged excessive rates for substandard service. Shippers need competition and they need a fair rate to move their goods to the marketplace," Bullock said. "My office is going to explore every option we have to make sure that Montana's number one industry, family farm agriculture, is given a fair shake."

Bullock's spokesman O'Brien said Bullock also would support the Rail Competition and Service Improvement Act, which would ensure competition in the rail industry, enable rail customers to obtain reliable service, and provide them with a reasonable process for challenging rate and service disputes, if it is introduced again before Congress.

STB Rules Against BNSF: This Montana report was preceded the day before (Feb.25) by the STB issuing a decision to grant the largest award in history against the BNSF for overcharging in a coal movement in Wyoming. The federal agency that regulates railroads awarded \$345 million in damages and rate reductions to cooperatives in Bismarck and Denver in a rate case against BNSF Railway. The Surface Transportation Board said it is the single-largest award the board has given to a captive shipper - one that is forced to rely on a railroad that has no competition. The STB decision was unanimous and bipartisan, board Chairman Charles Nottingham said in a statement. He said it shows the commitment to "strong regulatory oversight over the freight rail market when necessary to protect captive shippers from monopoly pricing."

National Barley Growers Association Hold Shipper Day Last Week

The NBGA, last week, held a shipper day on the Hill meetings with many members of Congress urging support of the soon-to-be introduced Rail Competition bill. This shipper day was preceded the week before by the members of the National Association of Wheat Growers meeting with many members of Congress sharing the same message of support.