

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1008

2005 HOUSE APPROPRIATIONS

HB 1008

Labor Commission - testifying was LeeAnn Birch (meter #2.8) HB 1007

Ms Birch reviewed the variances listed in handout #4-5 (attached). She highlighted the change in FTE's saying that all changes would be paid for with federal dollars, and explained the discrepancy of the figures on the handout concerning compensation by saying that it represents the percentage that they apply to the federal funds for compensation. **Ms Birch** finished her review by discussing the goals and objectives for the agency.

Public Service Commission - testifying was Kevin Kramer (meter #15.2) HB 1008

Mr Kramer reviewed the notes in the distributed handout #4-6 (attached) regarding the variances from 03-05 and 05-07. **Rep. Mike Timm, Vice Chairman** asked about the Rail Rate Court Case and asked if we could accomplish a positive result for the requested \$900,000 when Montana has been fighting this same case for years and has spent millions of dollars. **Mr Kramer** answered that we are trying this case within a new method that would help keep both time spent and costs, lower. **Rep. Ron Carlisle** asked how many years Montana has been pursuing this issue. Mr Kramer answered that he believed it was 3-4 years. We expect 1-2 years within the new method. **Rep. Chet Pollert** explained that he knew a lot about this case and would be willing to visit with any representative who had any questions. **Rep. Ken Svedjan, Chairman** asked if the counsel for this case was being hired outside the Attorney General's office. **Mr Kramer** confirmed this. **Rep. Ole Aarsvold** asked about the costs of Connect ND and other storage fees. Mike Pillard answered that all indirect costs would be recovered from federal funds.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

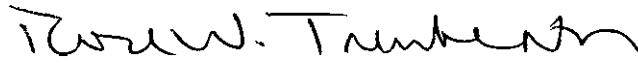
House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date Thursday, January 13, 2005

Tape Number	Side A	Side B	Meter #
1	X		00-5143

Committee Clerk Signature



Minutes:

Chairman Carlisle opened Hearing HB 1008 regarding the Public Service Commission.

Tony Clark, President, Public Service Commission, introduced the following: Commissioners Susan Wefald and Kevin Cramer. He submitted his testimony for the record and read from the first two pages. (See Handout #1)

Commissioner Wefald read into the record pages 3-5 regarding licensing and testing and safety.

(Meter #422) There was discussion about the metrologist and whether or not that FTE is lost.

Commissioner Wefald informed the Committee that our current metrologist has been offered a job in Iowa. The Dept. expects that hiring a new Metrologist will include training. **Pres. Clark** pointed out that there are two separate issues, one an FTE and the other the lab. The lab has conditional certification, pending upgrades. Before certification, though, the Dept. has to have a certified metrologist. The loss of the metrologist means shutting down for a while.

Rep. Kempenich asked about the \$70,000 in the detailed budget for a new facility and if that really means upgrading the current lab. **Comm. Wefald** stated that originally the Dept. thought the State would prefer to own the facility; since then it was decided it would be more feasible for the State to lease space on a year to year basis. **Rep. Thoreson** asked where people would go if this lab shut down and whether or not there are N.Dakotans who go outside the State for testing. **Comm. Wefald** stated the nearest labs are in Minneapolis/St. Paul, Minnesota; one in South Dakota; and one in Montana. She deferred to **Alan Mock, Director of Testing & Safety**, to answer the second part of the question. He stated there are about 40 service companies that use the State Metrology Lab, there are probably one or two that use the services in Minneapolis. There are out-of-state license companies which come from Minnesota, but work in N.D. and they use the Minnesota lab because it's closer for them. There's one individual from Fairview, Montana, who comes to Bismarck because it's closer.

Comm. Wefald continued reading into the record information regarding the Pipeline Safety Inspection Program, Reclamation, and Abandoned Mine Lands. (See p. 5-7, Handout #1) (Meter #1572)

Pres. Clark reviewed Administrative issues. (See p 7, Handout #1) Members asked questions about ITD, including whether or not the \$600,000 figure was a little high. **Pres. Clark** explained that the Commission has a very large storage database primarily associated with the Coal Mine Reclamation Division, which has huge electronically stored topographical maps. Currently, the Commission provides that storage through boxes which the Commission owns. IT consolidation means IT would own the boxes and would bill back on a per gigabyte basis. The Commission

arrived at that figure by examining the ITD rates sheets and calculating the space the Commission would need.

Rep. Timm asked if someday the Commission would be forced to consolidate with the rest of the system. **Pres. Clark** stated that the exemption from consolidation is uncertain because of the sunset clause. At present the exemption is granted by the Director of OMB after consultation with the Director of ITD. **Rep. Thoreson** requested a letter with that information and other documentation that might be helpful

Pres. Clark continued with the Summary and the Rail Rate Complaint (p. 7-10, Handout #1) (Meter #2358). In answer to questions about the Surface Transportation Board (STB), **Pres. Clark** informed the Committee that there are about 3 dozen coal, haul and utility cases reviewed over the last 20 years. Individual cases generally take a year to review. The simplified procedure has evolved over the past 4-5 years. So far no cases have been come to a conclusion yet. Rules have been appealed through the federal court system and have stood. Cost is a prohibitive factor.

Chairman Carlisle commented that this has been a two-year process and asked whether or not there is any room for compromise. **Pres. Clark** said the sticking point is the rates.

Pres. Clark finished his testimony by referencing the attachments 1-4.

Rep. Timm asked for an explanation about the function of the Performance Assurance Fund (See Attachment 1, Handout #1) **Pres. Clark** explained that the State is a third-party beneficiary to some payments that QUEST is making. When QUEST wanted to get into the long-distance business, the FCC required them to set up a tracking system to track the company's performance with regard to leasing services on a wholesale basis to competitors that have to lease the phone lines to provide service. It's basically quality of service on their wholesale performance. The

FCC said that if the company doesn't meet the benchmarks or these standards, it has to make two payments: one to the competitors who've been harmed and one to the State for the harm done to the competitive marketplace. The State is receiving about \$140,000 so far in the biennium. Last session a separate bill was introduced as a special fund appropriation because there are on-going audits of these performance measures. It's basically a self-funding regulatory program. The fund is sunsetted at the end of this biennium and so the monies would be returned to the General Fund. There is legislation from the House IBL Committee which extends the Performance Assurance Fund.

Rep. Timm asked about the Credit Sale Contract Indemnity Fund and noted that the Fund is growing. **Pres. Clark** explained that the Fund is an assessment of .2 of a percent against all credit sale contracts to the State, such as grain contracts. If a farmer is selling grain on a credit sale basis, which means asking for payment beyond 30 days from the date of the sale, then the elevator pays this assessment into this fund. It's basically an insurance pool should an elevator should go insolvent and be unable to pay these credit sale contracts. The assessment builds to \$10 million. At that point the assessment stops until the fund dips below \$5 million. At that point the assessment starts again. It's basically a self-funded insurance pool. Since this fund has started, the Commission has not had an elevator fail. (Meter #4470)

Chairman Carlisle asked about the increases in salary.

Pres. Clark stated the Commission had some additional funds in the salary line item because of retirements and rehires with lower salaries. The Commission granted equity increases which were provided for under the Administrative Rules for 8 employees, specifically targeted to salaries very low in pay grade, far below 45 %. It's an attempt to bring those employees up to a

more adequate level within their pay grade. There were a few internal equity issues where there were two people in the same division who were paid quite differently. The Commissioner agreed to put this in writing for the Accountability Committee.

Rep. Kempenich asked about the option for in the Commissioner's travel budget and why there's an addition of \$42,000. **Pres. Clark** said that travel is associated with the rail rate complaint case. Generally, it's more effective for a commissioner to travel there than to have them come here.

Mr. Ron Schlinger, Tesoro Refinery, testified on behalf of the \$70,000 appropriation to upgrade the Metrology Lab. If the lab is closed, it will cost even more to bring it back. It would be difficult for the Tesoro Company if the Bismarck lab closed because meters would have to be loaded and shipped to Minneapolis and back at a minimum of \$1,000. In answer to questions, Mr. Schlinger stated Tesoro is not the biggest user in the state and that the Company uses the lab yearly and as needed.

Chairman Carlisle asked Mr. Schlinger to provide the Committee a memo stating the Company's concerns.

Mr. Mike Kennedy, Capitol Scale Company, uses the Bismarck lab, but recently took standards down to South Dakota because the Company couldn't get into the Bismarck lab. He pointed out that the State standards need traceability also. If not traceable back to NIS, the State might be in trouble with the Dept. of Commerce.

Mr. Brian Bjella, legal counsel for and appearing on behalf of the North Dakota Grain Dealers Association, submitted written testimony urging the Committee to approve the

\$900,000 appropriated for the rate complaint and read that into the record. (See Handout #2)(meter #5871 to Tape #1, Side B)

The Committee recessed for ten minutes.

Mr. Brian Krammer, PSC, read into the record testimony urging a "Do Pass" for HB 1008, which includes a \$900,000 appropriation for the rail rate complaint. The testimony was originally written by John Mittleider, N.D. Farm Bureau (See Handout #3)

Mr. Harlan Kline, a farmer and rancher from Elgin, N.D., read his testimony urging a "Do Pass" recommendation for HB 1008 with the inclusion of \$900,000 for costs associated with the rail rate complaint, into the record (See Handout #4). Mr. Kline is also Chairman of the N.D. Wheat Commission and the Commission supports his testimony.

Mr. Dale Niezwaag, Basin Electric Power Cooperative, read testimony in favor of the state appropriation to pursue the railroad rate case into record (See Handout #5)

Rep. Williams asked how long the contract referred to in testimony was for and what justification was given for doubling the rates. **Mr. Niezwagg** stated it was a 20-year contract that had expired and the justification was the cost of providing transportation services.

Rep. Kempenich wanted to know when the fuel surcharge came into play. **Mr. Niezwagg** wasn't sure when the surcharge was added whether it was on the contract rate or whether it was portion of the new tariff. The doubling of the rates was independent of the surcharge.

Rep. Kempenich asked if there were an escalator in the old contract and **Mr. Niezwagg** confirmed that.

Rep. Timm asked the name of the carrier to Stanton and **Mr. Niezwagg** stated Burlington Northern.

Mr. Dan Wogsland, Executive Director for the North Dakota Grain Growers Association and the U.S Durum Growers Association, read his testimony in support of the Public Service Commission's proposed \$900,000 appropriation for the rail rate case (See Handout #6).
(Meter #1460)

Mr. Eric Bartsch, Executive Director of the North Dakota Dry Pea and Lentil Association, read his testimony in support of the rail rate complaint case into the record (See Handout #7) In addition to his written testimony **Mr. Bartsch** explained that over the past 3-4 years the Association has hosted trade teams to India, a very price sensitive market, and the cost of transportation has negatively affected exports to that market. Cuba has a large potential for export of dried peas. During sales negotiations, the Association discovered that the rates to get peas from the P & W to the Gulf were cheaper than getting the peas from North Dakota to the Gulf. He claimed that a processor recently experienced a rate hike of 3 % without prior notice, **Rep. Timm** stated that there is a 20-day notice for changes on public tariffs. He asked whether or not the 3 % increase was a fuel surcharge or not. **Mr. Bartsch** responded that the 3 % was an increase on rail rates and there was an 8 % fuel charge on top of that. The producer is facing cost 11 % higher than last year. **Rep. Timm** asked again how they could do this on a day's notice. **Mr. Joe Bloms, Agricorp United**, stated than one of his processors was notified on January 10 that in February shipments were going to be increased 3 %.

Rep. Kempenich asked for an example of a single car rate shipping out of central N.D. **Mr. Bloms** responded that many of the cars travel to the Gulf and that would be \$3,650. It's about \$51 a met ton shipping to Vancoover. **Rep. Kempenich** noted that the web site where rates are posted has thousands of numbers on it.

Rep. Kempenich asked Mr. Bloms how he would like this to work out and **Mr. Bloms** responded that he would like to see fair value. He believes N.D. producers are subsidizing some other part of the railroad's operation. He pointed out that it's not equitable that shipping from Winnipeg to Pensicola is cheaper than shipping from North Dakota to Minneapolis.

Rep. Timm asked if there is pressure to ship through larger facilities and that the railroad is picking on the smaller producers. **Mr. Bloms** responded that efficiency is important to the railroad. He stated that in his personal opinion, he feels the small producers are being penalized.

Mr. Paul Thomas, Administration of the N.D. Ag Coalition, stated that he would follow up his testimony with a written memo which will be given to the clerk. The Coalition represents 40 agricultural commodity groups representing basically all of North Dakota's agricultural interests. The Coalition feels strongly about supporting the rail rate complaint outlined in HB 1008.

Mr. Brian Sweeney, Legislative Counsel for BNSF and based in St. Paul, Minnesota, read into the record the major points of his testimony in opposition to the \$900,000 to be used to file a rate complaint with the STB (See Handout #8) (Meter #2383)

Rep. Timm asked Mr. Sweeney why the railroad is charging N.D. producers higher rates and **Mr. Sweeney** responded that differential pricing is allowed by statute and determined by the market for wheat coming from the Great Plains going to different locations. **Rep. Timm** asked for further explanation and stated a case: if an elevator sells grain to Japan and ships the grain to the Seattle to export it, then the railroad bases cost on the price the Japanese are willing to pay.

Mr. Sweeney responded "that is a factor in it, yes."

Rep. Kempenich asked how fast the surcharges on fuel switch back and forth. **Mr. Sweeney** said the surcharges are determined monthly. **Rep. Williams** asked if a port pays more for

Minnesota wheat than N.D. wheat. **Mr. Sweeney** stated it depends on the type of wheat and restated that the purchaser at the end determines the price.

Mr. Roper, Senior General Attorney, BNSF headquarters in Fort Worth, Texas, informed the Committee that the rules the Board adopted to simplify procedures in December of 1996 state “specifically that their intent is not to cap rates at the jurisdictional threshold. Any allegation that the result of a rate case is going to result in rates of 180 % of variable cost, I think, is inaccurate.” He also pointed out that even though no one has filed a case seeking to use the procedures, “on the same day that the rules were adopted, the Board issued a decision in a rate case that had been pending for some time, and they in fact did apply the simplified rules, and the rates at issue were 242 % of variable cost and those rates were found reasonable.” **Mr. Roper** offered to give Chairman Carlisle a copy of the case and the rules.

Chairman Carlisle asked **Mr. Sweeney** if there were any room for compromise on this issue.

Mr. Sweeney spoke with Comm. Clark a month earlier and stated there is some interest in pursuing this course of action.

Chairman Carlisle also asked about the “McCarty Farms” case mentioned on p. 2 (Handout #8) and whether or not that would be a comparable case. **Mr. Sweeney** referred that issue to **Mr. Roper**. He said the McCarty Farms involved “a statewide challenge to the single car and unit train wheat and barley rates in Montana and it was a stand alone cost case. There were several iterations of it because in the beginning when the case was filed in 1980, the Board tried to use the revenue & variable cost comparison test and we were able to show that that was not the proper test for that type of case. So, the Board basically decided to use the stand alone cost test. In fact, the first time we went to the Court of Appeals and the case was remanded all the parties

agreed to use the stand alone cost test for the case. There was massive evidence produced. At the end of the day, the rates were found not to be unreasonably high...the final decision was probably 1999 or 2000. It took 17 years and went to the Court of Appeals three times. If that's the kind of case this ends up being, you're not talking \$900,000."

Chairman Carlisle asked Mr. Sweeney once again if there might be a compromise...**Mr.**

Sweeney stated, "we'd like to move forward and see if we can come together with ways that both of us can spend our money better than pouring it into Washington D.C. law firms."

(Meter #4205)

Mr. John Risch, N.D. Legislative Director of the United Transportation Union, read his testimony in opposition to the rate case against the BNSF Railway (See Handout #9).

Chairman Carlisle asked if the second attachment to his testimony regarding the Railroad Competition Act was still current, noting the date of 10/23/04. **Mr. Risch** said the legislation will have to be reintroduced to the new Congress.

Rep. Williams asked what it costs the Railway to lay new track. **Mr. Risch** cited an example: about five years ago replacing new track and upgrading with ballast on the eastern edge of Bismarck for approximately 1 ½ miles cost \$5 million. In the past several years, CP Rail has added several sidings near Portal, down through Harvey, and near Enderlin. Some new yard tracks have been established. Double track is badly needed in N.D. and there haven't been any additions of double track in a very long time. (Meter #5143)

Hearing adjourned.

General Discussion

- ☐ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☒ House Appropriations, Gov. Operations
- ☐ Senate Appropriations
- ☐ Other

HB 1008

Date: Tuesday, January 18, 2005

Tape Number

1

Side A

X

B Side

Meter #

00-2197

Committee Clerk Signature

Thore W. Tumbear

Minutes:

Chairman Carlisle called the General Discussion to order.

The Committee divided into groups of three to examine issues more closely. See Attachment #1 for assignments.

(Meter #1093)

Re: Public Service Commission

Ms. Paulson, OMB, sent a note today to get information from ITD. She stated that PSC used rates different from agency rates. These calculations were not done in conference with ITD.

Re: Metrologist

1008

Ms. Paulson, OMB, explained that the Dept. considered moving the lab to the east. The Metrologist said he will go to Iowa if the lab is moved. Iowa offered a 30% increase. If the lab were moved, it's questionable whether or not the \$35,000 would cover the annual rent. There was speculation about economic development groups and whether or not there were interest in building a lab. If most clients in the east, might be more cost effective to locate there. There are many things to work out.

end
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Re: Ebert Ranch

1018

It was noted that Game & Fish is not setting this acquisition as a priority. There is a question about mineral rights.

(Meter #2197)

Meeting adjourned

[Note from the Clerk: The tape did not record this session. I've been having trouble with the connection between the mics and the recorder. It's loose because the machine is old.]

Govt operations

Re: HB 1002, Secretary of State

How to protect & secure the HAVA grant funds. OMB, Legislative Council and Secretary of State are working on a proposal and that should be available Monday.

Re: HB 1003, Attorney General

Losing the Bryne Grant funds is the major concern. Ms. Paulson, OMB, brought up an idea for a temporary fix which the Committee will investigate and that would be to put refund monies into the general fund to cover part of the loss for the Bryne Grant. The estimated amount would be \$5-600,000. Ms. Paulson agreed to speak with Ms. Roll.

Also of concern is a new FTE, extra supply costs to support increased demands for forensics, and how to retain agents in a competitive salary market.

(Meter #2039)

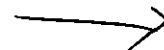
Re: HB 1005, State Treasurer

The \$30,000 appropriation for an IT study seems sufficient with the existing turn back of approximately \$25,000 to implement temporary fixes and to start long-term plan. In reference to working out problems with the State Treasurer, **Rep. Williams** stated, "It's refreshing to see such a good attitude."

Re: HB 1008, Public Service Commission

Two major issues: The dispute between PSC and ID regarding the IT exemption and whether or not to fund the rail rate case.

The Committee will schedule a meeting with Comm. Clark Friday at 10:00 a.m. to get more information on the ITD dispute.



*Govt
operations*

Ms. Paulson agreed to research last session to find out if any money had been taken from the Rail Trust Fund for the rail rate case. Chairman Svedjan advised the Committee to evaluate the case and come to the Full Committee with a their best recommendation. Chairman Svedjan voiced concern as to whether of not BNSF would take any negotiations seriously unless the money is on the table.

Re: HB 1009, Agriculture Department

At issue are three FTE's, 2 for the Animal Board of Health staff (a vet and support staff) and 1 for a meat inspector.

Also at issue is the request for \$250,000 for the saltcedar problem. There's a miss in EARP which is unobligated. The Dept. might be able to use that.

The request for \$85,000 for the Ag in the Classroom which is an optional request.

The request for the Pride of Dakota program. Ms. Paulson informed the Committee that this program has always been off budget or it's an on-going program. The program can only spend whatever it brings in.

Re: HB 1010, Insurance Commission

Firefighters want a larger portion of the premium money. The cap is 2.6 million. The Committee is drawing up an amendment to allow them \$1 million more per year out of that fund, which currently has \$4 million. The increased appropriation will bump the cap to 3.6 million.

Re: HB 1018, Game & Fish

Moving the flora from \$10-15 million to deal with problems: Sweet Briar dam is leaking, carp at D.L., & a road into Graham's Island that's going under water. The Director is not interested in buying that ranch.

General Discussion

1008

- ☐ Committee on Committees
- ☐ Rules Committee
- ☐ Confirmation Hearings
- ☐ Delayed Bills Committee
- ☒ House Appropriations, Gov. Operations
- ☐ Senate Appropriations
- ☐ Other

Date: Friday, January 21, 2005

Tape Number

1

Side A

X

Re: HB 1008

B Side

Meter #

00-44.3

Committee Clerk Signature

Therese W. Trenberth

Minutes:

Chairman Carlisle called the General Discussion regarding HB 1008 to order.

Guests from the Public Service Commission included: Pres. Clark; Mr. Mike Diller, CPA; Comm. Wefald; and Mr. Steve Kahl. Also, from the House Appropriations Full Committee, Representatives Skarphol and Monson.

Chairman Carlisle wanted to discuss three cost issues with regard to the Public Service Commission: Rail rate case, Metrology lab, and the IT.

Re: IT costs (Also, see p. 6)

Comm. Clark reviewed the situation with regard to IT. Currently the Commission has an exemption for three of the five servers. The Commission is receiving consolidated services from

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ITD on e-mail and web-hosting. There are two database servers and a file & printer server that have an exemption. The exemption is due to expire in July. The Commission would like an extension or perhaps a permanent exemption. The concern is that under current ITD rate sheets (those that were provided to the Commission by ITD) that if the rate were applied to the amount of storage needed to lease from them, it would be about \$600,000, more than what the Commission is currently spending.

Rep. Timm asked if the Commission wants a permanent exemption.

Comm. Clark stated that would fix the problem.

Rep. Timm asked what would happen later of if the Commission needed assistance.

Comm. Clark felt the Commission would always have the option if it were in the fiduciary best interests of the Commission to work cooperatively with ITD. The issue is whether the Commission will be forced to consolidate.

Rep. Timm asked Comm. Clark if he actually went to ITD to ask them what they think the cost might be rather than trying to arrive at those figures independently.

Comm. Clark stated that the staff has had a number of those conversations, but the responses over time have been rather vague. There has never been a firm answer on what the rate would be other than the current rate sheets.

Rep. Timm asked what it costs the Commission now to do this work vs. what the consolidation would cost.

Comm. Clark stated that there is \$21,000 budgeted for those expenses, which is about what the trend has been. It's for the upkeep of the servers, potential replacement schedule, licensing, etc. If the Commission goes to a consolidated system, it would cost \$600,000.

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OK

Rep. Timm suggested that it's in the best interest of the State budget to continue as the Commission has and not incur the ITD costs.

Comm. Clark confirmed. He added that besides the monetary considerations, there are issues, particularly with regard to the Coal Reclamation Division, concerning the way the Commission works with industry, the Office of Surface Mining, and the federal & state governments, that make it favorable to keep the system as it is set up right now.

Rep. Timm asked if maybe the Commission was keeping too many records and **Comm. Clark** said the storage space isn't from a lot of years of records; It's more so because the Commission has converted from paper filings for permits for coal mine projects (sometimes 23 ring binders) to electronic filing. It's more efficient for everybody. These permits are dictated by federal law.

Rep. Kempenich asked why there was such a disparity between the \$70,000 budgeted and the potential \$600,000. **Comm. Clark** explained that the Commission is a relatively small agency with only 41 FTE's, but the nature of the agency with regard to the Coal Mine Reclamation Division is very IT intensive. The space requirements are disproportionate for the size of the agency.

Mr. Mike Diller, Director of Accounting, PSC, using the IT summary of all the Commission's costs including labor, the cost is about \$500,000 per biennium. The Governor's recommendation includes a budget of \$572,007, which includes 2 FTE's which make up about half of that and then there's data processing, telephones, contractual software supplies, equipment (less than \$5,000) and equipment (greater than \$5,000). That's the total cost.

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Re: The Costs for the Metrology Lab (Also, see p. 7)

Comm. Wefald updated the Committee as the status of the current Metrologist. He has agreed to stay. If the Legislature decides to relocate the lab to the eastern part of the state, he will agree to a move if the Legislature provides his moving expenses. She confirmed for the Committee that a large number of users are from the eastern part of the State.

Re: Rail Rate Case

Chairman Carlisle asked regarding the status of communications between the Commission and BSNF and **Comm. Clark** said the Commission hasn't spoken to any representatives since a few weeks before the Legislative session began. It's difficult because they'd have to be in a position to offer some cuts.

Rep. Timm inquired as to whether or not the Commission needed all the money up front.

Comm. Clark said the Commission expects to put the case through in 18-24 months, the length of the biennium. Without the complete appropriation, the Commission would have to delay starting the case, so it would run over two bienniums, which would not be the best way to run the case. **Rep. Timm** asked why the attorney for BNSF suggested N.D. would be spinning it's wheels and **Comm. Clark** called those comments tactics. He also pointed out that the credibility of the STB is on the line. They've promised consumers a fairer hearing process. He confirmed that putting the money on the line gives the Commission more leverage.

Rep. Kroeber asked if there will be other partners to share the costs. **Comm. Clark** said a number of parties have already contributed some funds. The Commission can't commit for them.

Rep. Williams summed up apprehensions among legislators: they fear the case will be drawn out and that \$900,000 won't be adequate. **Comm. Clark** stated that the Railway will stall, but if this

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6 out of 7

case is drawn out over two years and tops a \$1million that sends a powerful message to Congress that STB is not providing effective relief under current federal law for small shippers.

Chairman Carlisle asked how the Commission arrived at the \$900,000 figure and

Commissioner Clark said that is based on the recommendation that came out of the study by legal experts and council.

In answer to a **Rep. Monson's** question regarding possible outcomes for a settlement, **Comm.**

Clark said that this will be a test case dealing with one rate and one destination. If successful, the remedy will be a rate reduction for that particular elevator for 20 years. He added that the real advantage is setting a precedent so future shippers can follow in the wake of this case.

Rep. Skarphol suggested that the Commission find a consultant to find a qualified law firm, properly trained, to guarantee the price.

Comm. Clark noted that it's in the firm's best interest to do well; they become expert through the process and that will be a useful skill for future cases.

Rep. Skarphol asked whether or not elevators could file a class action suit. and **Comm. Clark** responded that McCarty Farms did something similar to that, but BNSF took advantage of that. The more complex the case, the more opportunity to demand discovery and cause delays. The Commission will look for an example that has the best chance of winning--the most captive shipper, whether it's a 26-car, a 52-car or a shuttle, and who's paying the most challengeable rates.

(Meter #3.7)

1008
Cost ops

Re: ITD Costs

Chairman Carlisle asked Ms. Paulson if she has received anything from ITD and **Ms. Paulson** responded in the negative.

Rep. Timm asked for more information regarding the rate sheets. **Comm. Clark** referred to **Steve Kahl**, who does the IT work for the Commission. **Mr. Kahl** explained that there were a number of discussions over several months about adding disc storage to the current systems. They offered to do a number of different things. The problem came with regard to a long-term basis; they wouldn't commit to anything other than their published rate. They wanted to determine this on a case by case basis. When the Commission developed the budget numbers, we considered both options, continuing with the current exemption and calculating their long-term ITD rates, for comparison purposes. ITD did offer to purchase discs and put it where the Commission could use it, but they would own it and the problem with that is not knowing the long-term rates.

Rep. Timm asked if maybe the Committee should call ITD and ask them to attend a meeting and **Mr. Kahl** said yes to see what their answer would be. The Commission would also like to know.

Rep. Skarpohl asked if the Commission would be willing to allow ITD to test their requirements in advance to the meeting so they can be prepared. **Mr. Kahl** said that would be appropriate, although there will be discrepancies because they're in the process of initiating new software from the Office of Surface Mining. This is a pilot project for which the Commission is providing hardware.

Rep. Skarpohl offered that some agencies that were exempt from functional consolidation a few years ago have now indicated that they want to consolidate. Opinions change.

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Gout of

Re: Metrology Lab

Comm. Wefald said the Commission will meet next Wednesday regarding the Metrology lab.

The Commission will inform the Committee of the results.

Rep. Kroeber asked if another Metrologist is being trained. **Comm. Wefald** said they are in the process of training an assistant.

(Meter #44.3)

Meeting adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1008

House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date Friday, January 28, 2005

Tape Number	Side A	Side B	Meter #
1	A		00-20.3

Committee Clerk Signature

Rose W. Timberly

Minutes:

Chairman Carlisle called to order committee work on HB 1008 regarding the Public Service Commission.

Chairman Carlisle opened discussion on Proposed Amendments to House Bill No. 1008.0101 regarding the rail rate dispute and pointed out that the bottom line appropriation for initiating the rate case has been raised from \$900,000 to \$1.8 million.

Rep. Thoreson noted that PSC came up with \$900,000. He asked where the \$1.8 million figure came from. **Chairman Carlisle** responded that Rep. Svedjan had it drafted. He thinks it's meant to send a message to BNSF.

Rep. Williams asked about the vested interests here, that of the farmers and the grain dealers, and what part they will play in this case. **Rep. Kempenich** responded that he's pretty certain it will cost more than \$900,000. A more realistic figure would be north of \$1 million. The Senate

will probably bring it down. PSC hasn't figured in their time either other than \$40,000 in travel time. It's meant to be a hammer.

Rep. Williams stated that in principle, he likes the thought of this case. He related what he had learned from Steve Frege from the Grain Dealers Association. Mr. Frege asked the members how many would be willing to donate \$20 a car for the law suit. One or two hands went up. **Rep.**

Williams said that although they are sympathetic, they feel this would be throwing money into a rat hole. There have been several others who've expressed the same thing. He stated reservations about using general funds for this case. **Chairman Carlisle** pointed out that Rep. Berg has become very knowledgeable about this case and he feels the rates are too high.

Rep. Kempenich pointed out that recent studies have shown BNSF are close to 400% of the variable rates, but that it is what the market will bear. If they're shipping at world market prices, then it becomes a compression issue and where that gets made up in the middle. There's also the timing issue. They take advantage of the fact that farmers ship in the spring just before planting. There are a lot of issues at play. He agrees on one point; this case is unknown waters. Even though he will support the Amendment now, he hopes that some kind of agreement can be reached outside a law suit. Expectations have to be realistic, too.

Chairman Carlisle suggested that the Committee wait until Monday to act.

Rep. Kroeber voiced his surprise at the jump from \$900,000 to \$1.8 million. **Rep. Williams** said he liked Rep. Skarphol's suggestion of putting a cap on the amount at \$900,000, and at that he might vote for the Amendment, but he's skeptical about the \$1.8 million.

Rep. Kempenich noted that Ft. Worth needs to know there are problems and the price tag will get their attention.

Rep. Thoreson stated that \$900,000 is a large number and that he has been wavering somewhat even though the merits of this case are obvious. He said that \$1.8 million seems like a big jump. He would like more time to consider the issue.

Rep. Williams stated he'd like to hear Chairman Svedjan's rationale. **Chairman Carlisle** suggested that could be done Monday morning. **Rep. Kempenich** suggested a counter proposal of \$1.4 million. **Rep. Thoreson** asked a procedural question: if the amendment were to fail in the subcommittee, could it be brought back up again in the Full Committee. **Chairman Carlisle** stated that any member can do this. There will be a lot of discussion ahead.

Rep. Kempenich told the Committee he would get the information from Whitehead.

Chairman Carlisle and the Committee agreed to wait until Monday morning to take action.

(Meter #20.3)

The Committee went on to discuss HB 1003. See those minutes for continuation of committee work.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

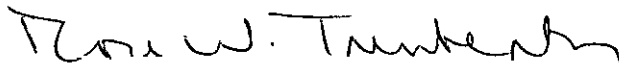
House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date Monday, January 31, 2005

Tape Number	Side A	Side B	Meter #
1	X		00-11.3
1		X	37.2-46.9

Committee Clerk Signature



Minutes:

Chairman Carlisle called to order the committee work on HB 1008 regarding the Public Service Commission budget. He resumed discussion on the Amendment .0101 and stated that the Majority Leader is pretty focused on this case and he wants to ratchet things up.

Rep. Williams asked what the Leader wants in this case and **Rep. Kempenich** responded that he wants some communication. **Rep. Timm** added that they are trying to make a point that the State is serious and will go through with this and if it costs more money, it will be available.

Rep. Timm moved to recommend the Amendment .0101 to the Full Committee and seconded by **Rep. Kempenich**.

Chairman Carlisle asked for further discussion. **Rep. Timm** said he felt this Amendment is important to farmers and elevators in North Dakota, which in his opinion, are being raped by

being charged higher rates than other parts of the country for the same type of load. He asked for a "do pass" on this Amendment.

Chairman Carlisle said Rep. Pollert has a packet of information. **Rep. Kempenich** sent page to make copies for the Committee (See Handout #1). Once copies were handed out, he directed them to the graph chart on p. 3 (Handout #1) regarding revenue to variable costs. He referred to Terry Whiteside, the author of the cover letter, and stated that he was involved with the McCarty Farms case. (Also handed out were copies of a letter from Mr. Steve Strege, Exec. VP, N.D. Grain Dealers Association, dated 1/29/05 (Handout #2), and a letter from Mr. Jim Bobb, Grain Division Manager of Southwest Grain, dated 1/28/05 (Handout #3). Both letters were in support of funding for the rail complaint case.

Rep. Kroeber voiced his concern that the Governor recommended \$900,000 and this Amendment raises that another \$900,000 and whether or not this is death by fiscal note and for that reason he cannot support the Amendment. He also pointed out that in the weekend papers, the Majority Leader said they are planning to cut \$60 million out of the Governor's budget. This additional \$900,000 will put the case in jeopardy. **Rep. Williams** asked if the goal was to try to get them to come together and **Chairman Carlisle** confirmed. **Rep. Williams** said he would support the Amendment, trusting that the Majority Leader has some assurance that it will pass in the Committee and on the Floor. Otherwise, what we're doing doesn't make too much sense.

Rep. Timm restated the importance of this and that the Leader will make every effort to gain bipartisan support. (Meter # 11.3) **Rep. Kempenich** added that most feel this will cost more money than originally estimated, so it might as well put it in. Hopefully, it won't take much more.

Chairman Carlisle called the roll on a "Do Pass" recommendation for Amendment .0101.

The Committee passed 5 "yes" and 1 "no."

Chairman Carlisle told the committee that budgets with salary components will be held for a while longer. He asked **Ms. Paulson, OMB**, if these budgets are 4, 3, and 1, and hold on the medicals or just 4, 3, and 1. **Ms. Paulson** said it's four and four with the 1% for the second share coming out of any savings that is on the emergency. The medical component is built into the Governor's package.

In reference to the Metrology Lab, **Chairman Carlisle** said that's taken care of. He asked if there were any other issues and **Rep. Kempenich** brought up the computer issue. **Chairman Carlisle** said Commissioner Clark will send the Committee a note later in the morning.

Chairman Carlisle ended work on HB 1008 until later in the day. (Meter #11.3)

(Meter #37.2) Later in the day, **Chairman Carlisle** resumed committee work on HB 1008 in order to discuss the memo from Illona A. Jeffcoat-Sacco, Executive Secretary, Public Utilities Director, dated 1/31/05 regarding ITD costs (See Handout #4).

Rep. Kempenich stated that the memo clarifies that earlier discussions were dealing with total ITD costs. Total IT costs for PSC are \$500,000+. The letter from ITD suggests giving PSC \$22,000 more. **Chairman Carlisle** asked what the Committee should do with this and **Rep.**

Kempenich said he feels PSC should keep going toward consolidation. There's nothing in the bill that takes them out of the exemption unless it's amended. **Ms. Paulson** noted that if the Committee plans to go forward, the ITD's recommendation might be acted on.

Rep. Timm asked why the Commissioner was so adamant about the \$600,000 ITD costs. **Rep.**

Kempenich said their issue is that they think ITD is going to come in and take all their equipment away and then charge them back. The issue is summed up in paragraph 2, Memo from Illona A. Jeffcoat-Sacco (See Handout #4) He explained that ITD came in and wanted agencies to have 75% use on their servers; some agencies have servers that are underutilized, so they were taking servers from some agencies. Consolidation makes things run more efficiently. PSC is looking at that and maybe some servers are under their use totals, but they are servers dedicated to what they do. They have a lot of unique programs and technology equipment.

Chairman Carlisle suggested the Committee wait on this issue until a later date.

Chairman Carlisle ended discussion on HB 1008.

(end of Tape 1, Side B)

General Discussion

Page 2

House Appropriations, Government Operations Division
Wednesday, February 2, 2005

Re: HB 1005 regarding the Treasurer's Office

Rep. Timm said that budget is ready.

(Meter #28.2)

Re: HB 1006 regarding the Tax Commission

Rep. Timm said budget is a straight forward appropriation. The Tax Commissioner will take up his new tax plan with the Full Committee.

Re: HB 1007 regarding the Labor Commissioner

Chairman Carlisle and **Rep. Thoreson** met with the Commissioner and got the answer regarding the \$20,000. The money is necessary for that attorney due to a conflict of interest.

Re: HB 1008 regarding Public Service Commissioner

Rep. Kempenich will take this one and the amendment for \$1.8 million will be a subject of debate. The Metrology Lab issue is settled. There is the letter regarding IT.

HB 1011 regarding Securities Commission

Rep. Kempenich didn't raise anything of concern.

Chairman Carlisle called a recess until 10:00 a.m.

(Meter No. 30.4)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

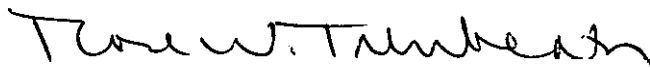
House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date Monday, February 7, 2005

Tape Number	Side A	Side B	Meter #
1	X		00-37.7

Committee Clerk Signature



Minutes:

Chairman Carlisle opened discussion on HB 1008 regarding the budget for the Public Service Commission. **Mr. Tony Clark, President of the Public Service Commission** and **Mr. Mike Diller, Finance** were present to assist the Committee. **Chairman Carlisle** opened the discussion with the word "sustainability" and asked Pres. Clark if he had any thoughts on the key items requested. **Pres. Clark** stated there were no large issues on the horizon other than the rail rate case. He mentioned that there will be additional ITD costs if the Agency is required to consolidate. He mentioned that most of the budget adjustments are primarily one-time expenses, such as the ExamHand software, the lab balance, the Connect ND costs, etc. The one expense that is new is the money for leasing a new metrology lab which will go into future bienniums. **Chairman Carlisle** brought the discussion to #11 on the Green Sheet prepared for House Appropriations by Legislative Council regarding an FTE. **Pres. Clark** said that is the restoration

of the Weights & Measures Inspector from the budget that was submitted to the Governor. In order to meet the budget guidelines, the Agency had turned back one FTE. There aren't any requests for any new FTE's.

Mr. Mike Diller referred the Committee "Overview Presentation..." dated January 7, 2005, which breaks down the adjustments that affect the general fund. (See Handout # 1). The Committee waited for the page to make copies.

Rep. Timm asked how much money the PSC brings in on fees, charges, and services provided to the public and what percentage of that covers the costs incurred when these services are being performed. **Mr. Diller** said that in the projections submitted to OMB, the Agency expects to collect \$1.1 million in general funds. The agency regulates many different things and these are broken out into different areas: scale inspection fees, \$600,000; grain storage license fees, \$300,000; plant siding fees, \$100,000; smaller ones are auctioneer licenses, coal mining fees, etc.

Pres. Clark said the fees are set in statute and the Agency brought a number of bills last session to help bring in the revenue to offset the cost, especially with regard to the weights & measures program, grain elevator licensing, etc. The one area where we have not been able to offset costs is with public utilities. **Rep. Kroeber** said that Legislative Counsel did some research of PSC's around the country and found that there are only two PSC's that are basically not special funded and N.D. is one of them. He also stated that the main group that doesn't pay their share of their regulation is the utilities. **Pres. Clark** noted that most public utility commissions are funded like the insurance department is, out of a special fund, and the fees which eventually get passed onto customers, come from that regulated industry.

Chairman Carlisle asked Pres. Clark if he'd heard anything new with from the rail way and

Pres. Clark said no. **Rep. Williams** asked Pres. Clark how he felt about the amended sum of \$1.8 million and **Pres. Clark** said he appreciated the increase because it raises the level of seriousness and provides the Commission more negotiating power.

Rep. Williams asked if the grain dealers are going to actively support this issue and **Pres. Clark** said they are certainly supportive. As to financial contributions, he does not know. They have already donated \$10,000 to the cause.

Rep. Timm asked if the \$250,000 that was appropriated last biennium was spent. **Pres. Clark** said there is still \$20-25,000 left. \$50,000 went to the firm that does the economic analysis.

Another portion went to the Upper Great Plains Transportation Institute for contract work. He said he'd provide a breakdown of all the costs.

(Meter #15.8)

Mr. Diller reviewed the "Overview Presentation..." dated January 7, 2005 (See Handout #1). He referred to the bottom part that states "Budget Adjustments" and under the "General Fund" column which shows where the increases are coming in the Agency budget. He indicated that the following were one-time expenditures: \$900,000 for the rail rate investigation; ExamHand Software, \$19,500; and the Weight Cart Repairs, \$7,000.

Chairman Carlisle asked for clarification of "Governor's Higher Indirect Cost Recoveries."

(Meter #18.1) **Mr. Diller** said that the Agency collects \$400,000 per biennium from the federal government for indirect costs to manage the federal program. That includes computer and front office FTE's. It's a rate that's negotiated every two years. That money can be collected to offset general fund needs. The agency applies a rate to salaries. When the Governor's Office makes an

adjustment to salaries then there's this nick because that rate automatically calculates that there will be more indirect cost recovery, which the Agency isn't really getting. It's a budget adjustment, but we don't expect to collect that from the feds. **Rep. Timm** asked if the Agency uses federal funds to supplant general fund dollars. **Mr. Diller** said that every biennium the Agency calculates the amount expected from the federal government for indirect costs related to their programs. In the past the agency puts in about 90% to avoid being underfunded. This time the Agency put in 95%. Then the Governor nicked the Agency for \$28,000. **Ms. Paulson** asked if that isn't the charge for salary increases. She pointed out that just because the Agency gives a salary increase, it doesn't mean the feds are going to give them more money.

Rep. Timm asked for clarification on "AML Contractual." There was \$3.6 million appropriated; \$1.8 million was spent. There is another \$3.6 recommended for the next biennium. On the second overview sheet, No. 3, it says: "Budgeted higher federal dollars than were appropriated by Congress." **Mr. Diller** said that is the Agency's Abandoned Mine Lands program, which is 100% federally funded. This has been a consistent budget amount for the last 15 or 20 years. **Rep. Timm** asked what they gave the Agency last year. **Pres. Clark** said that according to federal law, minimum program states are supposed to receive \$2 million a year, which isn't even as much as North Dakota pays in. (North Dakota's mines pay in approximately \$3 million per year.) The AML program is funded through a tax on active coal mines. In the budgeting process, Congress has chosen not to fund \$500,000 of the \$2 million that's appropriated. The Agency receives \$1.5 million per year for regular program costs and then another \$100,000 for emergencies. **Rep. Timm** asked about the variance of \$1.8 million. **Pres. Clark** said the Agency has the authority to

appropriate it, but the Agency doesn't get it. If the Agency had the money, it would have to be spent on work associated with the mines.

(Meter #24.3)

Rep. Timm asked what would happen if the Legislature didn't approve the \$1.8 million for the rail rate case. **Pres. Clark** said the Agency would drop the case; can't build a record with no funds.

Rep. Kempenich asked Pres. Clark if he knows what rates would go up if the Agency went from a general fund agency to a special fund agency. **Pres. Clark** said these ideas were discussed last session. The public utilities budget is a \$700-900,000 budget. Some states that have rate cases will charge back those costs to the utility company and at the end of the year will develop an assessment based on the difference of what was taken in and what was spent. Investor-owned utilities are regulated more heavily than co-ops, so assessments might vary. Telecommunications, depending on the type of company, falls somewhere in between. This would require some consideration.

Rep. Kempenich asked about the mines, if they are all federally funded, and whether or not they pay filing fees. **Pres. Clark** said they are majority federally funded, 2/3 to 1/3 ratio. He confirmed that 35% of the active coal mine program is general funded. When coal mining companies permit new areas, they pay a fee. **Rep. Kroeber** suggested that these issues are best dealt with through an interim study. There will be dissent from the big utility companies. He also commented that the MDU rates are so high they are embarrassing; he didn't like the idea of giving them a reason to raise rates higher.

Pres. Clark read the figures on fees: In 01-03, the Agency received \$134,000 from coal mining fees. In the first 11 months of 03-05, \$45,000. The estimate for the 03-05 biennium was \$90,000. The estimate for the 05-07 is \$20,000. It all depends when new areas are permitted. **Rep.**

Kempenich asked if the costs are covered by the fees. **Pres. Clark** said because it's an on-going process, probably not.

Rep. Kempenich asked if maybe the Committee shouldn't ask for an interim committee to consider these issues. He moved to request in interim study regarding the PSC fees and services and possibly special funding the Agency. **Rep. Kroeber** seconded. During discussion, **Rep. Timm** brought up the best way to do this and how to require that it be done. **Chairman Carlisle** asked **Ms. Stephanie Johnson, Legislative Counsel**, to read back the language of the motion.

She said that this "would add a section to HB 1008 for an interim study on PSC fees and services and look at special funding the Agency." **Chairman Carlisle** called for a roll call vote (#1).

Motion passed 6-0-0.

Rep. Timm mentioned that the Agency's budget is up 30% from last session and that the Legislature is concerned about the growth of government. He asked the President to consider further where savings might be made. **Pres. Clark** said he appreciated the comments. He pointed out that the rail rate case inflates his budget. If that and salaries came out, the increase is very small.

Chairman Carlisle directed Ms. Johnson to draw up the amendment and asked **Pres. Clark** if he could come up with some thoughts relative to Rep. Timm's request. **Pres. Clark** agreed.

Chairman Carlisle closed discussion on HB 1008.

(Meter #37.7)

Page 7

Government Operations Division

Bill/Resolution Number HB 1008

Hearing Date Monday, February 7, 2005

(Tape 2, Side A, Meter #5.2)

Chairman Carlisle reopened discussion on HB 1008 and Amendment .0102 which calls for a

Legislative Council "to consider studying during the 2005-06 interim the feasibility and

desirability of funding the public service commission entirely from special fund revenue

sources." The last sentence of the amendment is standard language attached to such requests.

Committee members felt the wording should be changed to say, "shall study" to insure that this is

done. **Chairman Carlisle** asked **Mr. Donald Wolf, Legislative Council**, to rewrite the

amendment with stronger language.

(Meter #9.6)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date Thursday, February 10, 2005

Tape Number	Side A	Side B	Meter #
1	X		14.0-20.7
1		X	34-35.8

Committee Clerk Signature



Minutes:

Chairman Carlisle opened discussion on HB 1008 concerning the Public Service Commission.

Rep. Timm moved to amend HB 1008 to cut the \$1.8 million previously amended down to \$450,000 for the rail rate case; **Rep. Thoreson** seconded. **Chairman Carlisle** called for discussion.

Rep. Timm said that \$450,000 is enough for Agency to begin the case. If more is needed next biennium, then it will be appropriated at that time. **Rep. Williams** asked why the leadership has gone from one extreme to another. **Rep. Williams** said that leadership raised the appropriation to put pressure on the railway, but since there has been no movement in the past two weeks, and it appears the railway is arrogant about this, the legislature can't responsibly appropriate 1.8 million.

Page 2

Government Operations Division

Bill/Resolution Number HB 1008

Hearing Date Thursday, February 10, 2005

Hearing no further discussion, **Chairman Carlisle** called for a roll call vote (#1). Motion passed 5-0-1.

Chairman Carlisle asked the Committee to review the Amendment .0103. The Committee decided the Amendment still did not clearly show their intent. **Rep. Thoreson** moved that HB 1008 be further amended to remove “consider studying” and replace it with “shall study.” The motion was seconded by **Rep. Kroeber**. Hearing no further discussion, **Chairman Carlisle** called for a roll call vote (#2). Motion passed 5-0-1.

Chairman Carlisle closed discussion on HB 1008.

(Meter #20.7)

(Meter #34)

Chairman Carlisle reopened discussion on HB 1008. **Rep. Timm** asked **Mr. Don Wolf** why the language didn’t change in Amendment .0102 as the Committee had requested. **Mr. Wolf** said he’d changed that language and wasn’t sure what happened. He said he would make sure the corrected version gets in the final amendment.

Discussion closed.

(Meter #35.8)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

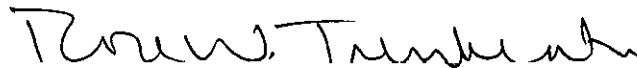
House Appropriations Committee
Government Operations Division

☐ Conference Committee

Hearing Date Friday, February 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		32.8-40?

Committee Clerk Signature



Minutes:

Chairman Carlisle opened discussion on HB 1008 and Amendment .0104 concerning the Public Service Commission budget. **Ms. Roxanne Woeste, Legislative Council**, reviewed the following changes:

- p 2 reduces funding for the rail rate complaint case from \$900,000 to \$450,000
- adjusts for compensation changes
- adds Section 6 to require Legislative Council to study changing the PSC to a special funded agency

Rep. Timm moved to approve Amendment .0104; **Rep. Thoreson** seconded.

Hearing no further discussion, **Chairman Carlisle** called for a roll call vote (#1). Motion passed 4-2-0.

Rep. Thoreson moved a DO PASS on HB 1008 as amended; seconded by **Rep. Timm**.

Page 2

Government Operations Division

Bill/Resolution Number HB 1008

Hearing Date Friday, February 11, 2005

Hearing no further discussion, **Chairman Carlisle** called for a roll call vote (#2). Motion passed
6-0-0.

Chairman Carlisle closed discussion on HB 1008.

(Meter circa #40)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1008

Public Service Commission

House Appropriations Full Committee

☐ Conference Committee

Hearing Date February 15, 2005

Tape Number
4

Side A

Side B
X

Meter #
#13.8 - #20.0

Committee Clerk Signature

Chris Alexander

Minutes:

Rep. Ken Svedjan, Chairman opened the discussion on HB1008.

Rep. Keith Kempenich explained that this budget is as it was introduced but they have the rail rate case. So we used \$1.2 million from the beginning farmer revolving loan fund out of the bank of North Dakota so the PSC can continue with this rail rate case. This is what the amendment #0107 does. There were no increases in FTEs and they got an exemption on the functional consolidation.

Rep. Keith Kempenich moved to adopt amendment #0107 to HB1008.

Rep. Ron Carlisle seconded

Rep. Pam Gulleason asked what the amount was in the revolving loan fund.

Rep. Keith Kempenich answered approximately \$18 million in this fund with \$8 million already loaned out. If the rail rate case is successful any funds coming back into the state would go to regenerate these borrowed fund.

Rep. Al Carlson commented that the Governor had originally had \$900,000 of general fund dollars and now we have borrowed \$1.2 million from a fund that may not even have a tie to it. He also asked if a cost benefit analysis has been done. (meter Tape #4, side B, #16.2)

Rep. Eliot Glassheim commented that the money is there and not in the future and the fund that has to do with agriculture is there to back it up. If this is successful then the farmers stand to benefit in \$90 million from this so there is a large cost benefit analysis that has been done.

Rep. Ken Svedjan, Chairman called for a voice vote on the motion to adopt amendment #0107 to HB1008. Motion carried.

Rep. Keith Kempenich moved a Do Pass As Amended motion to HB1008

Rep. Ron Carlisle seconded.

Rep. Al Carlson commented that he hopes we have a better plan for fighting the railways besides outspending them.

Rep. Chet Pollert supported the bill by saying that there is no doubt that the railroads will spend more money than us to lobby this case but the STB is set up differently administratively.

Rep. Ken Svedjan, Chairman called for a roll call vote on the Do Pass As Amended motion for HB1008. Motion carried with a vote of 19 yeas, 4 neas, and 0 absences. Rep Kempenich will carry the bill to the house floor.

Rep. Ken Svedjan, Chairman closed the discussion on HB1008.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1008

Page 2, line 2, replace "650,000" with "1,550,000"

Page 2, line 3, replace "1,157,479" with "2,057,479"

Page 2, line 5, replace "1,245,107" with "2,145,107"

Page 2, line 16, replace "900,000" with "1,800,000"

Page 2, line 17, replace "11,141,740" with "12,041,740"

Page 2, line 19, replace "5,156,601" with "6,056,601"

Page 2, line 21, replace "\$900,000" with "\$1,800,000"

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1008 - Public Service Commission - House Action

	EXECUTIVE BUDGET	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$5,099,584		\$5,099,584
Operating expenses	1,408,153		1,408,153
Capital assets	58,511		58,511
Grants	7,000		7,000
Abandoned mined lands contractual services	3,668,492		3,668,492
Rail rate complaint case	<u>900,000</u>	<u>\$900,000</u>	<u>1,800,000</u>
Total all funds	\$11,141,740	\$900,000	\$12,041,740
Less estimated income	<u>5,985,139</u>		<u>5,985,139</u>
General fund	\$5,156,601	\$900,000	\$6,056,601
FTE	41.00	0.00	41.00

Dept. 408 - Public Service Commission - Detail of House Changes

	INCREASES FUNDING FOR RAIL RATE CASE ¹	TOTAL HOUSE CHANGES
Salaries and wages		
Operating expenses		
Capital assets		
Grants		
Abandoned mined lands contractual services		
Rail rate complaint case	<u>\$900,000</u>	<u>\$900,000</u>
Total all funds	\$900,000	\$900,000
Less estimated income		
General fund	\$900,000	\$900,000
FTE	0.00	0.00

¹ This amendment increases the funding for the rail rate complaint case from \$900,000 to \$1.8 million.

Date: Monday, Jan. 31, 2005
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. H B 1008

House House Appropriations Government Operations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58031.0101

Action Taken Do pass Attached Amendment

Motion Made By Rep. Timm Seconded By Rep. Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	✓		Rep. Kroeber		✓
Rep. Timm	✓		Rep. Williams	✓	
Rep. Kempenich	✓				
Rep. Thoreson	✓				

Total (Yes) 5

No 1

Absent

Floor Assignment Rep.

If the vote is on an amendment, briefly indicate intent:

Date: 2/7/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1008

House House Appropriations Government Operations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken to Amend HB 1008 to require an interim study to consider PSC fees and service and possibly change look at special funding the Agency

Motion Made By

Seconded By

Representatives
Chairman Carlisle
Rep. Timm
Rep. Kempenich
Rep. Thoreson

Yes **No**
✓
✓
✓
✓

Representatives
Rep. Kroeber
Rep. Williams

Yes **No**
✓
✓

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2/10/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1008

House House Appropriations Government Operations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken to further amend HB 1008 to cut
the \$1.8 million down to \$450,000.
Motion Made By Rep. Timm Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	✓		Rep. Kroeber	✓	
Rep. Timm	✓		Rep. Williams	✓	
Rep. Kempenich					
Rep. Thoreson	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

February 7, 2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1008

Page 1, line 4, after the semicolon insert "to provide for a legislative council study;"

Page 2, after line 31, insert:

**"SECTION 6. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE
COMMISSION FEES AND SERVICES.** The legislative council shall consider studying
during the 2005-06 interim the feasibility and desirability of funding the public service
commission entirely from special fund revenue sources. The legislative council shall
report its findings and recommendations, together with any legislation required to
implement the recommendations, to the sixtieth legislative assembly."

Renumber accordingly

Date: 2/10/05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1008

House House Appropriations Government Operations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58031.0103

Action Taken to further amend to restate: "Council shall consider."

Motion Made By Rep. Timm Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	✓		Rep. Kroeber	✓	
Rep. Timm	✓		Rep. Williams	✓	
Rep. Kempenich					
Rep. Thoreson	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1008

Page 1, line 4, after the semicolon insert "to provide for a legislative council study;"

Page 1, line 22, replace "328,087" with "312,608"

Page 2, line 2, replace "650,000" with "200,000"

Page 2, line 3, replace "1,157,479" with "692,000"

Page 2, line 4, replace "(87,628)" with "(94,484)"

Page 2, line 5, replace "1,245,107" with "786,484"

Page 2, line 11, replace "5,099,584" with "5,084,105"

Page 2, line 16, replace "900,000" with "450,000"

Page 2, line 17, replace "11,141,740" with "10,676,261"

Page 2, line 18, replace "5,985,139" with "5,978,283"

Page 2, line 19, replace "5,156,601" with "4,697,978"

Page 2, line 21, replace "\$900,000" with "\$450,000"

Page 2, line 26, replace "seventy-two" with "seventy-one"

Page 2, line 27, "six" with "nine" and "sixty-nine" with "seventy"

Page 2, line 28, remove "may not exceed", replace "seventy-five" with "seventy-four", remove the overstrike over "eight", remove "five", and replace "seventy-six" with "forty-nine"

Page 2, after line 31, insert:

"SECTION 6. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION FEES AND SERVICES. The legislative council shall study during the 2005-06 interim the feasibility and desirability of funding the public service commission entirely from special fund revenue sources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1008 - Public Service Commission - House Action

	EXECUTIVE BUDGET	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$5,099,584	(\$15,479)	\$5,084,105
Operating expenses	1,408,153		1,408,153
Capital assets	58,511		58,511

Grants	7,000		7,000
Abandoned mined lands	3,668,492		3,668,492
contractual services			
Rail rate complaint case	<u>900,000</u>	<u>(450,000)</u>	<u>450,000</u>
Total all funds	\$11,141,740	(\$465,479)	\$10,676,261
Less estimated income	<u>5,985,139</u>	<u>(6,856)</u>	<u>5,978,283</u>
General fund	\$5,156,601	(\$458,623)	\$4,697,978
FTE	41.00	0.00	41.00

Dept. 408 - Public Service Commission - Detail of House Changes

	DECREASES FUNDING FOR RAIL RATE COMPLAINT CASE 1	REDUCES COMPENSATION PACKAGE TO 3/4	TOTAL HOUSE CHANGES
Salaries and wages		(\$15,479)	(\$15,479)
Operating expenses			
Capital assets			
Grants			
Abandoned mined lands			
contractual services			
Rail rate complaint case	<u>(\$450,000)</u>		<u>(450,000)</u>
Total all funds	(\$450,000)	(\$15,479)	(\$465,479)
Less estimated income		<u>(6,856)</u>	<u>(6,856)</u>
General fund	(\$450,000)	(\$8,623)	(\$458,623)
FTE	0.00	0.00	0.00

1. This amendment decreases the funding for a rail rate complaint case from \$900,000 to \$450,000.

Date: 2/11/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1008

House House Appropriations Government Operations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58031.0104

Action Taken Approve Amendment .0104

Motion Made By Rep. Timm Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	✓		Rep. Kroeber		✓
Rep. Timm	✓		Rep. Williams		✓
Rep. Kempenich	✓				
Rep. Thoreson	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 2/1/05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1008

House House Appropriations Government Operations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58031.0104

Action Taken Do Pass AS Amended

Motion Made By Rep. Thoreson Seconded By Rep. Timm

Representatives	Yes	No	Representatives	Yes	No
Chairman Carlisle	✓		Rep. Kroeber	✓	
Rep. Timm	✓		Rep. Williams	✓	
Rep. Kempenich	✓				
Rep. Thoreson	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Kempenich

If the vote is on an amendment, briefly indicate intent:

Date: **February 15, 2005**
Roll Call Vote #: **1**

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1008

House Appropriations - Full Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number **58031.0107**

Action Taken **DO PASS AS AMENDED**

Motion Made By **Rep Kempenich** Seconded By **Rep Carlisle**

Representatives	Yes	No	Representatives	Yes	No
Rep. Ken Svedjan, Chairman	X		Rep. Bob Skarphol	X	
Rep. Mike Timm, Vice Chairman	X		Rep. David Monson	X	
Rep. Bob Martinson		X	Rep. Eliot Glassheim	X	
Rep. Tom Brusegaard	X		Rep. Jeff Delzer		X
Rep. Earl Rennerfeldt	X		Rep. Chet Pollert	X	
Rep. Francis J. Wald	X		Rep. Larry Bellew	X	
Rep. Ole Aarsvold	X		Rep. Alon C. Wieland	X	
Rep. Pam Guleson	X		Rep. James Kerzman	X	
Rep. Ron Carlisle	X		Rep. Ralph Metcalf	X	
Rep. Keith Kempenich	X				
Rep. Blair Thoreson		X			
Rep. Joe Kroeber	X				
Rep. Clark Williams	X				
Rep. Al Carlson		X			
Total	Yes		No		
		<u>19</u>		4	
Absent					0

Floor Assignment **Rep Kempenich**

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1008: Appropriations Committee (Rep. Svedjan, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1008 was placed on the Sixth order on the calendar.

Page 1, line 4, after the semicolon insert "to provide for a legislative council study; to provide a statement of legislative intent;"

Page 1, line 22, replace "328,087" with "312,608"

Page 2, line 2, replace "650,000" with "950,000"

Page 2, line 3, replace "1,157,479" with "1,442,000"

Page 2, line 4, replace "(87,628)" with "1,105,516"

Page 2, line 5, replace "1,245,107" with "336,484"

Page 2, line 11, replace "5,099,584" with "5,084,105"

Page 2, line 16, replace "900,000" with "1,200,000"

Page 2, line 17, replace "11,141,740" with "11,426,261"

Page 2, line 18, replace "5,985,139" with "7,178,283"

Page 2, line 19, replace "5,156,601" with "4,247,978"

Page 2, line 20, after the first boldfaced period insert "**ESTIMATED INCOME -**" and replace "general fund" with "estimated income line item"

Page 2, line 21, replace "\$900,000" with "\$1,200,000, or so much of the sum as may be necessary, from the beginning farmer revolving loan fund"

Page 2, line 26, replace "seventy-two" with "seventy-one"

Page 2, line 27, replace "six" with "nine" and replace "sixty-nine" with "seventy"

Page 2, line 28, replace "may not exceed seventy-five" with "seventy-four", remove the overstrike over "eight", remove "five", and replace "seventy-six" with "forty-nine"

Page 2, after line 31, insert:

"SECTION 6. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION FEES AND SERVICES. The legislative council shall study during the 2005-06 interim the feasibility and desirability of funding the public service commission entirely from special fund revenue sources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly.

SECTION 7. REPAYMENT OF FUNDING. The public service commission shall reimburse the beginning farmer revolving loan fund for any amounts available from damages or proceeds received net of legal fees from a successful outcome of the rail rate complaint case.

SECTION 8. NORTH DAKOTA RAIL SYSTEM - LEGISLATIVE INTENT. It is the intent of the legislative assembly that a well-maintained, efficient, and fairly priced railroad transportation system in North Dakota is critical to the future of the North Dakota agriculture sector and the use of funds from the beginning farmer revolving loan fund for the rail rate complaint case will assist in achieving that objective."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1008 - Public Service Commission - House Action

	EXECUTIVE BUDGET	HOUSE CHANGES	HOUSE VERSION
Salaries and wages	\$5,099,584	(\$15,479)	\$5,084,105
Operating expenses	1,408,153		1,408,153
Capital assets	58,511		58,511
Grants	7,000		7,000
Abandoned mined lands contractual services	3,668,492		3,668,492
Rail rate complaint case	<u>900,000</u>	<u>300,000</u>	<u>1,200,000</u>
Total all funds	\$11,141,740	\$284,521	\$11,426,261
Less estimated income	<u>5,985,139</u>	<u>1,193,144</u>	<u>7,178,283</u>
General fund	\$5,156,601	(\$908,623)	\$4,247,978
FTE	41.00	0.00	41.00

Dept. 408 - Public Service Commission - Detail of House Changes

	REDUCES COMPENSATION PACKAGE TO 3/4	INCREASES FUNDING FOR RAIL RATE CASE ¹	TOTAL HOUSE CHANGES
Salaries and wages	(\$15,479)		(\$15,479)
Operating expenses			
Capital assets			
Grants			
Abandoned mined lands contractual services			
Rail rate complaint case		<u>\$300,000</u>	<u>300,000</u>
Total all funds	(\$15,479)	\$300,000	\$284,521
Less estimated income	<u>(6,856)</u>	<u>1,200,000</u>	<u>1,193,144</u>
General fund	(\$8,623)	(\$900,000)	(\$908,623)
FTE	0.00	0.00	0.00

¹ This amendment increases the funding for a rail rate complaint case from \$900,000 to \$1,200,000 and changes the funding source from the general fund to the beginning farmer revolving loan fund.

2005 SENATE APPROPRIATIONS

HB 1008

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1008

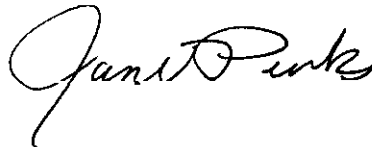
Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 11, 05

Tape Number	Side A	Side B	Meter #
1		x	2,755

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the subcommittee discussion on HB 1008 dealing with the Public Service Commission. **The subcommittee will be Senators Schobinger, Christmann, and Mathern.**

Chairman Holmberg discussed the rail rate case which originally was \$900,000 and they went to the beginning farmer revolving loan fund to go to \$1.2 million. There are lobbyists that have been working on that particular issue.

Senator Tallackson indicated the railroad issue has been a long time coming. If it can come to fruition it would be great.

Senator Krauter indicated he has a problem using funds from the beginning farm revolving loan fund. There has not been a lot of expenditures out of that fund the last two biennium's, but when you look at reasons, there has been low interest rates, but now interest rates are going up and the farmers will be coming back to use that fund. I haven't seen a schedule yet from the Bank of

Page 2

Senate Appropriations Committee

Bill/Resolution Number 1008

Hearing Date March 11, 2005

North Dakota on the status of that loan fund activities. I ask that the subcommittee really look at that so as not to short change that fund. This is a weak rail case issue and we should be taking this out of wheat check off dollars because that is primarily who the case is for.

The discussion closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1008

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 29, 2005

Tape Number	Side A	Side B	Meter #
x	a		1,738

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the discussion on HB 1008.

Senator Schobbing moved a DO PASS on the amendment .0202, **Senator Andrist** seconded.

Senator Schobbing discussed the amendments indicating there are three main changes, the \$5.20 deduction in the health care in the other bills, fund \$800,000 from the beginning farmer revolving loan fund, \$170,000 will come from other interested parties, and the issue of a committee room in the public service commission needs upgrades for a sound system so \$30,000 was added for that with legislative intent that the committee room be available for use by the legislative assembly and other agencies when not being used for commission business.

Senator Krauter asked where the \$170,000 would come from. The response was it would come from the Grain Dealers or Farm Bureau.

Senator Christmann indicated the Grain Dealers contributed substantially the last biennium and it is his belief that between the Wheat Commission and Grain Growers both will be able to contribute.

Senator Mathern asked that it be noted that last time the Farmers Union put in \$10,000, the Farm Bureau put in \$2,500 and he wondered if reducing the \$970,000 could be reduced to \$950,000.

The response was that could be open for discussion, but it was felt that \$970,000 would be better.

Senator Krauter expressed concerns about accessing the beginning farmers loan fund for this.

The response was that there was not extensive discussion on that, but the loan fund has a substantial balance and he will check on the activity of that fund. It was added that with the thought in mind, that is why the amount of this bill was reduced from the amount the House put in.

Senator Mathern indicated that there was a provision in the bill that would authorize repayment of the loan fund and an agreement would be reached by the PSC with the specific institution that would be used for the rail case to refund that money if the case was won.

Senator Krauter raised the question about the funds that are being appropriated from the general fund into the beginning farmer loan fund. The response was money is being appropriated but it is coming from the beginner bank farmer loan fund and Ag Pace which will fund the beginning farmer loan fund.

A voice vote was taken on the amendment. The motion carried.

Page 3

Senate Appropriations Committee

Bill/Resolution Number 1008

Hearing Date March 29, 2005

Senator Fischer moved a DO PASS on HB 1008 AS AMENDED, Senator Schobbing
seconded. A roll call vote was taken. The motion carried resulting in 14 yes, 0 no and 1
absent.

The motion carried. Senator Schobbing will carry the bill.

Chairman Holmberg closed the hearing on HB 1008.

Date 3/29
Roll Call Vote #: /

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 1008

Senate **SENATE APPROPRIATIONS**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

P F de Amend
Freder Seconded By *Schob*

Senators	Yes	No	Senators	Yes	No
CHAIRMAN HOLMBERG	/		SENATOR KRAUTER	/	
VICE CHAIRMAN BOWMAN	/		SENATOR LINDAAS	/	
VICE CHAIRMAN GRINDBERG	/		SENATOR MATHERN	/	
SENATOR ANDRIST	/		SENATOR ROBINSON	/	
SENATOR CHRISTMANN	/		SEN. TALLACKSON		
SENATOR FISCHER	/				
SENATOR KILZER	/				
SENATOR KRINGSTAD	/				
SENATOR SCHOBINGER	/				
SENATOR THANE	/				

Total (Yes)

14

No

0

Absent

1

Floor Assignment

Schob

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1008, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1008
was placed on the Sixth order on the calendar.

Page 1, line 23, replace "312,608" with "307,491"

Page 2, line 1, replace "23,500" with "53,500"

Page 2, line 3, replace "950,000" with "720,000"

Page 2, line 4, replace "1,442,000" with "1,236,883"

Page 2, line 5, replace "1,105,516" with "873,753"

Page 2, line 6, replace "336,484" with "363,130"

Page 2, line 12, replace "5,084,105" with "5,078,988"

Page 2, line 14, replace "58,511" with "88,511"

Page 2, line 17, replace "1,200,000" with "970,000"

Page 2, line 18, replace "11,426,261" with "11,221,144"

Page 2, line 19, replace "7,178,283" with "6,946,520"

Page 2, line 20, replace "4,247,978" with "4,274,624"

Page 2, line 22, replace "\$1,200,000" with "\$970,000"

Page 2, line 23, after the comma insert "consisting of \$800,000" and after "fund" insert "and
\$170,000 from other sources"

Page 2, line 24, after the period insert "The commission must have written commitments for
the \$170,000 from other sources before spending any moneys from the beginning
farmer revolving loan fund."

Page 3, after line 16, insert:

"SECTION 9. COMMISSION HEARING ROOM - LEGISLATIVE INTENT. It is
the intent of the legislative assembly that the public service commission hearing room
be available for use by other state agencies and by the legislative assembly during the
regular session when not being used for commission business."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1008 - Public Service Commission - Senate Action

	EXECUTIVE BUDGET	HOUSE VERSION	SENATE CHANGES	SENATE VERSION
Salaries and wages	\$5,099,584	\$5,084,105	(\$5,117)	\$5,078,988
Operating expenses	1,408,153	1,408,153		1,408,153

REPORT OF STANDING COMMITTEE (410)
March 30, 2005 3:27 p.m.

Module No: SR-57-6709
Carrier: Schobinger
Insert LC: 58031.0202 Title: .0300

Capital assets	58,511	58,511	30,000	88,511
Grants	7,000	7,000		7,000
Abandoned mined lands	3,668,492	3,668,492		3,668,492
contractual services				
Rail rate complaint case	<u>900,000</u>	<u>1,200,000</u>	<u>(230,000)</u>	<u>970,000</u>
Total all funds	\$11,141,740	\$11,426,261	(\$205,117)	\$11,221,144
Less estimated income	<u>5,985,139</u>	<u>7,178,283</u>	<u>(231,763)</u>	<u>6,946,520</u>
General fund	\$5,156,601	\$4,247,978	\$26,646	\$4,274,624
FTE	41.00	41.00	0.00	41.00

Dept. 408 - Public Service Commission - Detail of Senate Changes

	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE ¹	REDUCES RAIL CASE FUNDING ²	ADDS FUNDING FOR SOUND SYSTEM ³	TOTAL SENATE CHANGES
Salaries and wages	(\$5,117)			(\$5,117)
Operating expenses				
Capital assets			\$30,000	30,000
Grants				
Abandoned mined lands				
contractual services				
Rail rate complaint case		<u>(230,000)</u>		<u>(230,000)</u>
Total all funds	(\$5,117)	(\$230,000)	\$30,000	(\$205,117)
Less estimated income	<u>(1,763)</u>	<u>(230,000)</u>		<u>(231,763)</u>
General fund	(\$3,354)	\$0	\$30,000	\$26,646
FTE	0.00	0.00	0.00	0.00

¹ This amendment reduces funding for state employee health insurance premiums from \$559.15 to \$553.95 per month.

² The Senate reduced the funding for the rail rate complaint case from \$1,200,000 to \$970,000. The funding for the case is \$800,000 from the beginning farmer revolving loan fund and \$170,000 from other sources. The Public Service Commission must have written commitments for the \$170,000 from other sources before spending any moneys from the beginning farmer revolving loan fund.

³ The Senate added funding for improvements to the sound system in the Public Service Commission hearing room.

The Senate added legislative intent that the Public Service Commission hearing room be available to other state agencies and the Legislative Assembly when not in use by the Public Service Commission.

2005 HOUSE APPROPRIATIONS

CONFERENCE COMMITTEE

HB 1008

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

House Appropriations Committee
Government Operations Division

☒ Conference Committee

Hearing Date Thursday, April 6, 2005

Tape Number	Side A	Side B	Meter #
1	X		21.7-49.5

Committee Clerk Signature

Theresa J. Tinkler

Minutes:

Chairman Kempenich opened the conference committee on HB 1008 concerning the budget of the Public Service Commission. He reviewed two issues before them. One regards the health benefits and the other the sound system. He asked the Committee how the latter came about. **Sen. Mathern** said the PSC had put in a request to the Governor to remodel the hearing room. Since the legislature is looking for space as well, he thought this might be an opportunity to collaborate. He visited the Commission room and found the sound system doesn't work. They've done estimates for renovation. He thought maybe the legislature could appropriate money for this project with the stipulation that it would be available for legislative assembly business. He said the commissioners are for it. Concurrent with this project, Facilities Management will be gutting floors and ceiling for a circulation project. So, this seems like the right time to do something.

Rep. Thoreson said they met in that room when consulting with the attorneys on the BNSF issue

and at the time, someone commented it would make a nice legislative committee room. **Sen.**

Mathern noted that the House Conference room wouldn't be a good place for someone in a wheelchair to come. **Rep. Thoreson** said this situation occurred several weeks ago and it was difficult. **Sen. Christmann** noted that PSC made it clear this space could be available for legislative use, but only when they're not using it. It was noted that section 9 clearly states this.

He went on to say this might be enhanced to a very high-tech room to allow for tele-conferencing. There is some return on those costs. He pointed out that this technology would be used 12 months out of the year.

With regard to how many other rooms the legislators used outside the legislative wing, the Committee determined that Education and Natural Resources used a room which may or may not be part of the Judicial wing. It was pointed out that the Executive Branch uses the legislative wing when the legislature isn't in session.

Chairman Kempenich raised the issue regarding the general fund money to be used for the rail rate case and whether or not interests like the Wheat Commission should pay for this. He asked for clarification on the written commitment. **Sen. Schobinger** said they used the same language they used two years ago when they started the process. **Sen. Mathern** suggested they may go further, i.e. \$50,000 Grain Growers; \$40,000 Grain Dealers; \$40,000 Durum Growers; Corn Council and other groups...There wasn't time in the Senate to get into more detail, but maybe the Conference Committee should. Maybe intent language. **Chairman Kempenich** said that wouldn't be a problem with the Wheat Commission, but he wasn't sure how to mandate to the rest of the groups. He stated concerns about delaying the process. **Sen. Christmann** confirmed the fact that the Senate ran out of time on this. Just before this came to the floor, representatives

from Farm Bureau and Farmer's Union indicated that there would be enough to pay \$170,000. It wasn't his intention at all. Those groups kicked in last session to do the study. He said if they go back to that well, those groups will be apprehensive about future proposals, assuming that if the study looks good, they will have to pay again. When he said this \$170,000 should come from private groups, he was referring to groups that are getting wheat check-off money. Both just got increased. The figure is negotiable. **Chairman Kempenich** said he has discussed this with the Wheat Commission and has suggested that next biennium, they may be asked to come to the table, since wheat is the number one commodity that is shipped. He added there are some commodities like peas and lentils that don't fit into these rate cases. He said he had no problem with intent language. He restated concerns about how to mandate and whether or not this slows the process. **Sen. Mathern** suggested intent language that the PSC acquire this \$170,000 from the groups that Sen. Christmann is talking about. This could be related to the Wheat Act just passed. If this doesn't happen, then it can be reconsidered at the next legislative session. **Sen. Christmann** noted that the law firms don't need to be paid immediately. There are two full growing seasons for withholding check off money. He suggested contacting these groups to determine a fair dollar amount. **Rep. Kroeber** asked if the two groups are the Wheat Commission and the Grain Growers. **Sen. Christmann** said they didn't specify other than groups that get a check-off. Naming specific organizations might be too limiting should the case end up about corn or soy beans, rather than wheat. As the PSC narrows the case, the correct growers groups would be hit up for the money. **Rep. Kroeber** said the language requires written commitments for \$170,000 from the other sources before it can spend any money. He asked if the case can proceed without this commitment. **Chairman Kempenich** said that's the problem and

whether or not consultants would be leery of that. **Sen. Christmann** asked if maybe they shouldn't get heads of various growers groups together to determine their commitment to this case. **Chairman Kempenich** said he thought the commitment was there. They consider this a 3-year pay back. He suggested language that would commit them to 2007-09 might be appropriate. He thought other groups would step in. He asked how they arrived at the \$170,000. **Sen. Christmann** said the PSC asked for \$970,000. The Governor authorized \$900,000. He restated that a meeting might be in order to firm up commitments. **Sen. Schobinger** added that the process shouldn't exclude any individual or group from having the opportunity to become an interested party. The elevator that gets chosen might want to contribute \$50,000. **Sen. Mathern** noted that the last time the bill said cash up front, now it says written commitment. This gives greater latitude than two years ago. There is no date. He clarified the requests which he checked against the testimony. The Commission asked for \$950,000. The Governor's Office approved only \$900,000. The Commission came in and said \$970,000. He checked this out and the Commission said they misspoke when they said \$970,000. The bottom line is they could probably use \$970,000 too.

Rep. Kroeber asked about the carryover amount of \$250,000. He thought this was taken out of a railway fund for a total of \$250,000 to start with. **Sen. Schobinger** said he thought that referred to a \$20,000-25,000 carry over, not \$250,000.

Sen. Christmann said again that maybe talking to the groups will help determine what's reasonable; the \$170,000 is an arbitrary number. **Rep. Thoreson** said maybe a quick discussion with the groups would be in order, not a full fledged hearing, of course.

Meeting adjourned.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

House Appropriations Committee
Government Operations Division

☒ Conference Committee

Hearing Date Thursday, April 7, 2005

Tape Number	Side A	Side B	Meter #
1		X	29.2-end
2	X		00-5.2

Committee Clerk Signature



Minutes:

Chairman Kempenich opened Conference Committee discussion on HB 1008 concerning the budget of the Public Service Commissioner. He referred the members to Item #2 of the Senate amendment and told them that he had invited representatives from the Wheat Commission, the Grain Growers, and the N.D. Grain Dealers Association. He said this isn't a hearing, but some comments are necessary to determine how to deal with the \$170,000.

Mr. Neil Fisher, Administrator, N.D. Wheat Commission, commended the Committee for taking the issue seriously. He said the Commission has a history of involvement in such issues and wants to be counted in on this one. Consistent with previous testimony, the Commission is stressed by the outstanding trade case debt and money will be tight for a while. He reminded the Committee that the Commission was a prominent player in the matching funds for the study. He suggested that even though wheat is the largest hauler, there are others that will gain from this as

well. **Chairman Kempenich** said there needs to be some commitment from outside sources and he asked if there could be some funds the Commission would commit. **Mr. Fisher** said without Commission approval, he could not commit to any amount, but he's certain they will want to be part of the process. **Sen. Christmann** said the bottom line is either the legislature commits enough money to proceed or not. If PSC proceeds, the Committee needs to know whether the tax payers are to support this alone or whether there's support by the groups. If the groups are going to help, the Committee needs a firmer idea what that commitment means, whether it's \$25 or \$100,000. He said that if the Committee were to delay a decision for a few days, could the groups get together some kind of commitment. **Mr. Fisher** said the Commission will meet April 11 and this could be discussed. He pointed out that with the \$250,000 study, 10% was the agreed portion from each group. The Commission picked up nearly half of that other match. **Sen. Mathern** asked why they couldn't add intent language that required commitment letters for the \$170,000 to come from the commodity groups and facilities likely to benefit directly from the rail rate complaint case. **Mr. Fisher** said there are certainly many who could be included in that list. He deferred to others in the room.

Chairman Kempenich asked **Mr. Dan Wougsland, N.D. Grain Growers**, to comment. **Mr. Wougsland** said the grain and durum growers are very interested in helping with this and that making this inclusive, rather than exclusive, is a good idea. He said the bill must be signed before consideration. There is concern about committing dollars they may not have, should there be referrals and court challenges. Not certain how much money they can commit, but they will help in any way possible.

Chairman Kempenich invited **Comm. Susan Wiefald, PSC**, to comment and she voiced concerns about the language in section 4 that the Commission must have written commitments of \$170,000 from other sources before spending any money from the Beginning Farmer Revolving Loan Fund. The Commission doesn't want to be put in a position of becoming a fund-raising agency. It's also detrimental when the language stays in and the commitments aren't already announced. **Sen. Schobinger** asked if she had a suggestion as to how to accomplish this. **Comm. Wiefald** said that in the last legislative session when they had \$25,000 and the \$250,000, just as they are doing today, the commitments were on the record before the legislation was passed. She commended the Committee for doing this--determining whether or not the \$170,000 is a reasonable figure and to make sure there are commitments, before the language is included in the bill. Otherwise, the PSC has to become a fund-raiser before it can enter the rail case.

Sen. Christmann said the Commissioner makes a good point. He said the \$170,000 is an arbitrary figure. He suggested delaying a decision until the groups come up with some monetary commitment. If it's a minuscule amount, then the Committee can determine what to do from there. **Chairman Kempenich** said it was 10% last time. Any number is arbitrary. Perhaps there should just be intent language. Part of the problem is that the time is off in the future. Six months would help. **Sen. Christmann** observed that these groups have known as long as the legislature has. **Sen. Schobinger** expressed surprise that even though this has been on the table for three months, that those groups haven't come running. (Tape 1, Side B) He's received lots of e-mails on it and if it's that important, \$170,000 is peanuts compared to what this case could likely cost. **Sen. Mathern** said that it is the intent of the Senate that there be some private involvement here. It would not bode well if they returned and said it would all come out of special or general funds.

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Government Operations Division

Bill/Resolution Number HB 1008

Hearing Date Thursday, April 7, 2005

He suggested that the PSC doesn't want to be a fund-raiser afterwards, it could be a fund-raiser in the next couple of days. **Chairman Kempenich** said he agreed with these comments, but he continues to be perplexed about the right figure. **Rep. Thoreson** said he concurs as well.

Rep. Kroeber asked about the council study and whether or not to use "shall." He said in deference to legislative Council, maybe it should be written "may consider." This is in reference to section 6. **Rep. Thoreson** asked if this is to make it permissive rather than a demand. He had considered raising the same comment. **Mr. Wolf** said he could wait until the rest of the changes were firmed up.

Hearing adjourned.

(Meter #5.2)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

House Appropriations Committee
Government Operations Division

☒ Conference Committee

Hearing Date Monday, April 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		29.4-39.8

Committee Clerk Signature

Rae W. Tunkin

Minutes:

Chairman Kempenich opened the Conference Committee Hearing on HB 1008 concerning the budget of the Public Service Commissioner. He informed the Committee that **Mr. Neil Fisher, ND. Wheat Commission**, just called to say that they will kick in \$30,000, which shows some commitment. He asked if they might consider more specifically what those commitment figures should be. **Sen. Christmann** said the 10% precedent set for the study last biennium isn't necessarily so important in this issue. The legislature is short of money and this will cost the state \$900,000 to \$1 million. The \$170,000 was an arbitrary figure, but if other groups would come forward with \$30,000, that would bring the total up to \$90,000. The Committee would have decide how much to take from the Beginning Farmer Trust Fund. He agrees that the Commissioner should have to raise funds. Whatever's not committed, the Committee needs to commit or forget the whole thing. **Chairman Kempenich** distributed an e-mail from **Mr. Steve**

Strege, N.D. Grain Dealers Association, dated 4/8/05 (Handout #1). He said he had planned next biennium to consider whether or not the Wheat Commission might shoulder a greater part of the burden, since there's money appropriated for law suits. He said the shipper who is involved should have a stake in this other than a name of a piece of paper. **Sen. Mathern** suggested that maybe the groups come up with something like \$50,000 for the Wheat Growers, \$50,000 from the Durum Growers, \$50,000 from the facility or other groups, depending on how the PSC designs the case. Then drop the other figure \$20,000. Bring it down to \$950,000. **Sen.**

Schobinger said he agrees. He also expressed disappointment that interested groups have put forth so little. **Sen. Christmann** noted that for lots of small grain dealers a \$10,000 check would be difficult. **Chairman Kempenich** reminded the Committee that there's a \$20,000 carry over. He asked if the Committee if maybe they should take some more time and see what shows up.

Sen. Christmann said if they're not interested and don't get back to us, that tells us something.

Chairman Kempenich closed the Conference Committee.

(Meter #39.8)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

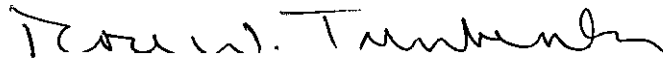
House Appropriations Committee
Government Operations Division

☒ Conference Committee

Hearing Date Thursday, April 14, 2005

Tape Number	Side A	Side B	Meter #
1	X		00-19.2

Committee Clerk Signature



Minutes:

Chairman Thoreson, filling in as Chairman for Rep. Kempenich, opened the Conference Committee on HB 1008 concerning the budget of the Public Service Commissioner. Rep. Carlisle sat in for Chairman Thoreson. He deferred to Sen. Mathern who presented amendment .0204. **Sen. Mathern** moved for consideration; **Rep. Kroeber** seconded. Under discussion, **Sen. Mathern** reviewed the following changes to HB 1008:

- Changes the commission study to determine whether or not the PSC should be a self-funded agency, from a required study to permissive study
- Reduces full allocation for the rail rate case from \$970,000 to \$950,000 in compliance to the Governor's original request
- Clarifies the payment of the remaining \$150,000--\$40,000 from the Wheat Commission, \$40,000 from the Grain Growers, \$40,000 from the U.S. Durum Growers, and \$30,000 from

any other group, facility, or organization as determined and arranged by the Public Service
Commissioner

He told the Committee that in light of the conferee changes, he suggested postponing a vote.

Rep. Carlisle asked if they soften the language for the study, why do it at all. He also asked if these groups are locked in on these amounts. **Sen. Mathern** said in terms of the study, he said the telephone cooperatives requested a permissive study. There was concern among committee members that this is the standard way to do things, so Legislative Council is given some opportunity to prioritize. On the issue of money available by these groups, he said he's heard a lot and has the impression the money is out there. This puts something forward. This also takes the intent one step further from the stipulation that there be written commitment. **Sen.**

Schobinger said this is a good start, but he asked the Committee to wait until there's feedback from the individual groups. He noted there's \$30,000 left over and suggested that Cenex Harvest States be included on the list. He thought they might consider getting rid of the study all together.

Chairman Thoreson said he agrees they're headed in the right direction. He said they will hold this amendment until the next meeting when Rep. Kempenich returns. He thought the study should be removed as well. **Sen. Christmann** said he felt the same way with regard to the study. He wondered if those in attendance had any further offers. **Rep. Carlisle** asked if there has been any movement with regard to a potential settlement between PSC and the Railroad. The response was negative.

Chairman Thoreson invited any organizations who wanted to step forward briefly to do so. **Mr. Dan Wougsland, Executive Director, N.D. Grain Growers and U.S. Durum Growers Association**, said that in a conference call last night, both organizations will go to \$50,000 to

help in this important effort. This is contingent on the condition that they are not referred or court challenged and the bill is signed. **Sen. Schobinger** said that he was happy to see them step forward. (Meter 9.9) **Mr. John Mittleider, N.D. Farm Bureau**, said this is a priority issue and during a conference call this morning, they decided to commit \$5,000. **Mr. Richard Schlosser, N.D. Farmers Union**, said they will commit \$5,000. **Chairman Thoreson** commented that this felt like watching a telethon. **Sen. Mathern** said, "didn't the fire cracker go off?" **Sen.**

Schobinger noted that the Wheat Commission has already committed \$30,000 or \$50,000.

Chairman Thoreson stated he believed it was \$30,000. **Sen. Christmann** asked if the details of who's paying what has to be put into law. There's a record established. He asked if it weren't sufficient to name the amount and give the authorization on the other money to start. **Sen.**

Mathern said that Section 10 is drafted as legislative intent for that reason. **Chairman Thoreson** asked Mr. Don Wolf, Legislative Council, for further clarification. **Mr. Wolf** said that this would be the intent of the legislative assembly that this is how it works. It's not a law, but a way of expressing how the matter should be pursued. **Rep. Carlisle** he agreed about allowing the PSC to determine the range. He said, "these folks are serious or they wouldn't be here." **Sen.**

Schobinger said that in addition to the testimony today, it would be nice to have the letters in the hands of the PSC. **Rep. Kroeber** said he thought the commitments help solve problems. **Sen.**

Mathern said this language evolved as grower groups expressed a preference that the legislature be involved in establishing amounts. **Chairman Thoreson** asked Commissioner Wiefald, PSC, if she had something to add. **Comm. Wiefald** thanked the Committee for getting commitments ahead of time. She reminded the Committee that there's \$20,000 left in the budget from the study and that language might be included to transfer that over. She also suggested that small elevators

might want to give anonymously, if they were provided a way to do so. **Chairman Carlisle** asked Ms. Sandy Paulson, OMB, where that \$20,000 is parked. **Ms. Paulson** said the money was transferred over from the Abandoned Rail Fund in DOT; It wouldn't be returned to the general fund as part of the turn back. It would be returned to the Abandoned Rail Fund. **Chairman Carlisle** said that won't affect the bottom line. **Ms. Paulson** said it could if they allowed it to be carried over instead of letting it go back to the Abandoned Rail Fund.

Mr. John Mittleider spoke on behalf of the Mr. Steve Strege, N.D. Grain Dealers, who said that they would match the average of what Farmers' Union and Farm Bureau committed, which means an additional \$5,000.

Chairman Thoreson thanked those who spoke and suggested that the Committee consider these things until the next meeting. **Sen. Christmann** reminded the chairman that there was a motion on the table. **Chairman Thoreson** confirmed and said they would hold for a while.

Chairman Thoreson recessed.

(Meter #19.2)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1008

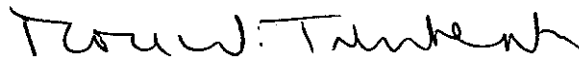
House Appropriations Committee
Government Operations Division

☒ Conference Committee

Hearing Date Monday, April 18, 2005

Tape Number	Side A	Side B	Meter #
1	X		00-33.0

Committee Clerk Signature



Minutes:

Chairman Kempenich opened the Conference Committee on HB 1008 concerning the budget for the Public Service Commissioner. He apologized for missing the last meeting and asked Mr. Neil Fisher, N.D. Wheat Commission, if he had something to report. **Mr. Neil Fisher** said that he called in last week with a starting figure of \$30,000. Since then, the Commission has approved \$50,000. There has been no formal meeting, but the consensus is there to do that.

Chairman Kempenich said that brings the total commitment to \$135,000, which includes the \$20,000 turn back from the study. He directed Mr. Don Wolf, Legislative Council, to make sure the language directs that turn back. **Mr. Wolf** said there would have to be continuing appropriation authority for that.

Sen. Mathern said that he has that language available from a former draft. There was a motion on the table and he suggested that motion be removed. Instead he brought two new amendments

for their consideration. He read footnote #2, p. 2 of amendment .0206. He said the \$935, 000 is a compromise between the \$950,000 proposed by the Commission and the Governor's Budget of \$900,000. **Sen. Schobinger** said he had two concerns. He said since they already have commitments, maybe they don't need to be listed in the amendment. Also, if they wanted to reach the \$150,000, they could require the elevator that's chosen to provide the additional \$15,000. If others come forward, he would like the PSC to have the ability to accept funds, rather than limiting the appropriation to \$950,000. He supports the amendment otherwise. **Sen.**

Christmann said he agrees about not listing. He also said they should authorize additional spending authority. He's reluctant about specifying an elevator because the best case might be the one without any money. He prefers flexibility; if they can, they should and if they can't, they can't. **Chairman Kempenich** said he felt the elevator or shipper should contribute something, not that they have to be alone in raising the money should others want to help. **Sen. Mathern** raised two points. The first is that the shipper, elevator, or entity that might be in the middle of case might also be involved in developing the repayment mechanism to the Beginning Farmers Loan fund. The language in the bill (section 7) says that money should be placed back into the fund. Maybe PSC should negotiate with the parties to not only win the case, but also to figure out what amount might be paid back. **Chairman Kempenich** said he still felt there should be some contribution up front.

Sen. Mathern withdrew his motion last Friday on amendment .0204; **Rep. Kroeber** withdrew the second. He then handed out another option wherein none of the groups are listed, amendment .0207. He referred the Committee to item #2, p. 2. This again refers to the \$20,000 carry over. It states there are to be written commitments, but does not list the organizations that have come

forward. This does not address the question raised by Sen. Schobinger regarding a specific shipper and the opportunity to raise more money. **Rep. Kroeber** suggested listing the shipper's contribution as a minimum of \$5,000 and leave it open so that other groups could contribute if they chose to do so. **Chairman Kempenich** agreed with that. **Sen. Schobinger** suggested that the only change on amendment .0207 would be "page 2, line 24" which now states "must have written commitments for \$115,000." If they added \$10,000, it would be \$125,000. He said "from other sources." This wouldn't name them. He also asked Sen. Mathern about section 6. **Sen. Mathern** said this provides for the clarification that the \$20,000 left over in the investigation could roll over into this rail case.

Sen. Schobinger asked if there were anything in the bill that restricts the PSC from accepting funds over and above. For example, could the elevator chosen put \$50,000 in if they chose to.

Mr. Wolf said this is limited to an appropriation authority of \$935,000 or \$945,000 with the additional \$10,000. The special fund spending authority could be increased, but limit the amount of written commitment before they proceed. Perhaps the language might say \$150,000 or so much as they may need. **Chairman Kempenich** said he prefers the second option. **Sen. Mathern** said that he received no testimony that they needed more money. But, if the others want to add this so the work of the bill gets done, that would be fine. **Mr. Wolf** said he would have to check into how to do that as far as giving them as much authority as they want. That would almost have to be set up as a continuing appropriation. **Chairman Kempenich** said they didn't want to do that. He said just name \$945,000.

Sen. Mathern moved amendment .0207 with the change Sen. Schobinger made. **Sen.**

Schobinger said that is changing the \$115,000 to \$125,000. He seconded. **Sen. Mathern** said

that in amendment .0206 the groups and commitment amounts listed are the ones that the Committee understands will be part of the effort. **Sen. Schobinger** repeated for the record those organizations and the amounts they have pledged: Grain Growers & Durum Growers for \$50,000; Wheat Commission for \$50,000; Farm Bureau for \$5,000; Farmer's Union for \$5,000; Grain Dealers for \$5,000. This totals \$115,000.

Chairman Kempenich raised the issue of the shipper. **Rep. Kroeber** asked what amount they had agreed to and the answer was \$10,000. He asked the Committee how realistic that was for a shipper or an elevator. **Chairman Kempenich** said it's realistic. They can solicit funds. **Rep. Kroeber** asked whether or not it will be stated as a minimum. **Chairman Kempenich** said since the appropriation is limited to \$945,000, then it's limited to \$10,000. **Sen. Schobinger** said that they are not naming the shipper here, even though they would like it to come from the shipper. **Chairman Kempenich** said the commitment should be there.

Sen. Christmann said that he supports what he thinks the amendments say, but he feels the study resolution is a mistake. He asked to have it removed. **Chairman Kempenich** gave Committee members an alternative study proposal (Handout #1). It changes the direction of the study and leaves the discretion to Legislative Council. This study would go beyond fiscal considerations and examine what they take on and where they're going. **Sen. Mathern** said second. **Chairman Kempenich** said he couldn't make a motion. **Sen. Schobinger** said it might be easier and better just to delete section 6 and deal with that in two years. **Sen. Christmann** said he thought the legislature attended to the evolution of agency duties every session. Two examples are coal and oil. Over the past 30 years the legislature has passed some of the strictest reclamation laws in the U.S. The legislature assigns that responsibility to the agency. They

evolve, but they do so by legislative demand. He said he wasn't sure why they needed a study.

Chairman Kempenich said the reclamation part is dictated by the feds. The other side that deals with communications and utilities is a little more fluid as far as the role of PSC. They bring legislation in every session and deal with it. The question is how big an agency it will become.

Rep. Kroeber noted that their responsibilities have changed a great deal. If you consider MDU rate increases; it seems very cloudy from a legislative standpoint as to what they can regulate and what they can't. With regard to cell phones, there are questions as to when can they regulate and when can't they. He supports the study. **Rep. Thoreson** said he agrees with Rep. Kroeber. He also pointed out this study is permissive. **Sen. Schobinger** asked Mr. Wolf if this could be passed without another meeting and **Mr. Wolf** confirmed. **Sen. Schobinger** said the interim committee could deal with it.

Rep. Thoreson moved that they replace the current section with the new language which

Chairman Kempenich proposed. **Sen. Christmann** said he realized the train is leaving...but wanted to comment with regard to reclamation and other utility environments. He acknowledged that things are changing, but all according to the law. These aren't things the PSC comes up with. These are things that are passed on the state and federal level. **Sen. Schobinger** said he agreed with Sen. Christmann. He asked the Chairman to explain where the study language came from.

Chairman Kempenich said he was working with the rural telephones.

There was some discussion as to how to proceed. **Sen. Mathern** moved that the Senate recede from Senate amendments and further amend. **Sen. Schobinger** seconded. Motion passed 5-1-0.

Mr. Wolf asked for clarification regarding the \$10,000 added for the shipper. He asked if they wanted "shipper or some other sources on behalf of the shipper" or if they wanted specifically

from the shipper for \$10,000. **Sen. Schobinger** said he thought they didn't want it designated at all. In conversation they expected it would come from the shipper, but it can come from any source. **Mr. Wolf** said that it's just going to the \$945,000 and they're not mentioning the shipper at all. **Chairman Kempenich** said he likes "including the shipper," but not put a dollar amount. **Sen. Mathern** said there was language back in .0204 that said "for other groups, facilities, or organization as determined and arranged by the Public Service Commission." **Chairman Kempenich** said he thought the intent was to include the shipper in, not named by the \$10,000. **Mr. Wolf** said he would just put down "from other sources including the shipper participating in the railway case." There was general agreement. **Sen. Schobinger** said that could mean \$1, too.

Hearing adjourned.

(Meter #33.0)

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1008

That the Senate recede from its amendments as printed on pages 1467 and 1468 of the House Journal and pages 1162 and 1163 of the Senate Journal and that Engrossed House Bill No. 1008 be amended as follows:

Page 1, line 4, after "study" insert "; to provide an exemption to section 54-44.1-11 relating to unexpended appropriations" and remove "a statement of"

Page 1, line 23, replace "312,608" with "307,491"

Page 2, line 1, replace "23,500" with "53,500"

Page 2, line 3, replace "950,000" with "685,000"

Page 2, line 4, replace "1,442,000" with "1,201,883"

Page 2, line 5, replace "1,105,516" with "838,753"

Page 2, line 6, replace "336,484" with "363,130"

Page 2, line 12, replace "5,084,105" with "5,078,988"

Page 2, line 14, replace "58,511" with "88,511"

Page 2, line 17, replace "1,200,000" with "935,000"

Page 2, line 18, replace "11,426,261" with "11,186,144"

Page 2, line 19, replace "7,178,283" with "6,911,520"

Page 2, line 20, replace "4,247,978" with "4,274,624"

Page 2, line 22, replace "\$1,200,000" with "\$935,000"

Page 2, line 23, after the comma insert "consisting of \$800,000" and after "fund" insert ", \$20,000 of carryover authority from the state rail fund, and \$115,000 from other sources"

Page 2, line 24, after the period insert "The commission must have written commitments for \$115,000 from other sources before spending any moneys from the beginning farmer revolving loan fund."

Page 3, after line 2, insert:

"SECTION 6. EXEMPTION. The amount appropriated for the rail rate complaint case, as contained in section 1 of chapter 29 of the 2003 Session Laws, is not subject to the provision of section 54-44.1-11. Any unexpended funds from the rail rate complaint case line item are available for continued use for expenditures relating to the rail rate complaint case."

The conference committee agreed with the Senate amendment adding legislative intent that the Public Service Commission hearing room be available to other state agencies and the Legislative Assembly when not in use by the Public Service Commission.

The conference committee changed the language for the study of the Public Service Commission fees and services to the Legislative Council may study the issue.

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Page 2, line 3, replace "950,000" with "685,000"

Page 2, line 4, replace "1,442,000" with "1,201,883"

Page 2, line 5, replace "1,105,516" with "838,753"

Page 2, line 6, replace "336,484" with "363,130"

Page 2, line 12, replace "5,084,105" with "5,078,988"

Page 2, line 14, replace "58,511" with "88,511"

Page 2, line 17, replace "1,200,000" with "935,000"

Page 2, line 18, replace "11,426,261" with "11,186,144"

Page 2, line 19, replace "7,178,283" with "6,911,520"

Page 2, line 20, replace "4,247,978" with "4,274,624"

Page 2, line 22, replace "\$1,200,000" with "\$935,000"

Page 2, line 23, after the comma insert "consisting of \$800,000" and after "fund" insert ", \$20,000 of carryover authority from the state rail fund, and \$115,000 from other sources"

Page 2, line 24, after the period insert "The commission must have written commitments for \$115,000 from other sources before spending any moneys from the beginning farmer revolving loan fund."

Page 3, after line 2, insert:

"SECTION 6. EXEMPTION. The amount appropriated for the rail rate complaint case, as contained in section 1 of chapter 29 of the 2003 Session Laws, is not subject to the provision of section 54-44.1-11. Any unexpended funds from the rail rate complaint case line item are available for continued use for expenditures relating to the rail rate complaint case."

Page 3, after line 16, insert:

"SECTION 10. COMMISSION HEARING ROOM - LEGISLATIVE INTENT. It is the intent of the legislative assembly that the public service commission hearing room be available for use by other state agencies and by the legislative assembly during the regular session when not being used for commission business."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1008 - Public Service Commission - Conference Committee Action

	EXECUTIVE BUDGET	HOUSE VERSION	CONFERENCE COMMITTEE CHANGES	CONFERENCE COMMITTEE VERSION	SENATE VERSION	COMPARISON TO SENATE
Salaries and wages	\$5,099,584	\$5,084,105	(\$5,117)	\$5,078,988	\$5,078,988	
Operating expenses	1,408,153	1,408,153		1,408,153	1,408,153	
Capital assets	58,511	58,511	30,000	88,511	88,511	
Grants	7,000	7,000		7,000	7,000	
Abandoned mined lands contractual services	3,668,492	3,668,492		3,668,492	3,668,492	
Rail rate complaint case	<u>900,000</u>	<u>1,200,000</u>	<u>(265,000)</u>	<u>935,000</u>	<u>970,000</u>	<u>(\$35,000)</u>
Total all funds	\$11,141,740	\$11,426,261	(\$240,117)	\$11,186,144	\$11,221,144	(\$35,000)
Less estimated income	<u>5,985,139</u>	<u>7,178,283</u>	<u>(266,763)</u>	<u>6,911,520</u>	<u>6,946,520</u>	<u>(35,000)</u>
General fund	\$5,156,601	\$4,247,978	\$26,646	\$4,274,624	\$4,274,624	\$0
FTE	41.00	41.00	0.00	41.00	41.00	0.00

Dept. 408 - Public Service Commission - Detail of Conference Committee Changes

	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE ¹	REDUCES RAIL CASE FUNDING ²	ADDS FUNDING FOR SOUND SYSTEM ³	TOTAL CONFERENCE COMMITTEE CHANGES
Salaries and wages	(\$5,117)			(\$5,117)
Operating expenses				
Capital assets			\$30,000	30,000
Grants				
Abandoned mined lands contractual services				
Rail rate complaint case		<u>(\$265,000)</u>		<u>(265,000)</u>
Total all funds	(\$5,117)	(\$265,000)	\$30,000	(\$240,117)
Less estimated income	<u>(1,763)</u>	<u>(265,000)</u>		<u>(266,763)</u>
General fund	(\$3,354)	\$0	\$30,000	\$26,646
FTE	0.00	0.00	0.00	0.00

¹ This amendment reduces funding for state employee health insurance premiums from \$559.15 to \$553.95 per month.

² The conference committee reduced the funding for the rail rate complaint case to \$935,000, of which \$800,000 is from the beginning farmer revolving loan fund, \$20,000 from carryover authority from the state rail fund, maintained by the Department of Transportation under Section 49-17.1-02.1, and \$115,000 from other sources. The Public Service Commission must have written commitments for the \$115,000 from other sources before spending any moneys from the beginning farmer revolving loan fund.

The Senate had reduced the funding for the rail rate complaint case from \$1,200,000 to \$970,000, of which \$800,000 was from the beginning farmer revolving loan fund and \$170,000 from other sources.

³ The conference committee agreed with the Senate amendment which added funding for improvements to the sound system in the Public Service Commission hearing room.

The conference committee agreed with the Senate amendment adding legislative intent that the Public Service Commission hearing room be available to other state agencies and the Legislative Assembly when not in use by the Public Service Commission.

The conference committee changed the language for the study of the Public Service Commission fees and services to the Legislative Council may study the issue.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)

Bill Number 1008 (, as (re)engrossed):

Date: 4/18/05

Your Conference Committee: H. App. G.O.

For the Senate:

YES / NO

For the House:

YES / NO

Sen. R. Schobinger ✓

Rep. K. Kampenich ✓

Sen. R. Christmann ✓

Rep. B. Thoreson ✓

Sen. T. Mathern ✓

Rep. J. Lueken ✓

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 1467 -- 1468

____, and place on the Seventh order.

✓, adopt (further) amendments as follows, and place 1008 on the Seventh order:

____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) was placed on the Seventh order of business on the calendar.

DATE: 4/18/05

CARRIER: Rep. K. Kampenich
0209

LC NO. 58031. 0208 of amendment

LC NO. of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

MOTION MADE BY: Sen. T. Mathern

SECONDED BY: Sen. R. Schobinger

VOTE COUNT 5 YES 1 NO 0 ABSENT

Revised 4/1/05

REPORT OF CONFERENCE COMMITTEE

HB 1008, as engrossed: Your conference committee (Sens. Schobinger, Christmann, Mathern and Reps. Kempenich, Thoreson, Kroeber) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1467-1468, adopt amendments as follows, and place HB 1008 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1467 and 1468 of the House Journal and pages 1162 and 1163 of the Senate Journal and that Engrossed House Bill No. 1008 be amended as follows:

Page 1, line 4, after "study" insert "; to provide an exemption to section 54-44.1-11 relating to unexpended appropriations" and remove "a statement of"

Page 1, line 23, replace "312,608" with "307,491"

Page 2, line 1, replace "23,500" with "53,500"

Page 2, line 3, replace "950,000" with "695,000"

Page 2, line 4, replace "1,442,000" with "1,211,883"

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Page 2, line 17, replace "1,200,000" with "945,000"

Page 2, line 18, replace "11,426,261" with "11,196,144"

Page 2, line 19, replace "7,178,283" with "6,921,520"

Page 2, line 20, replace "4,247,978" with "4,274,624"

Page 2, line 22, replace "\$1,200,000" with "\$945,000"

Page 2, line 23, after the comma insert "consisting of \$800,000" and after "fund" insert ", \$20,000 of carryover authority from the state rail fund, and \$125,000 from other sources, including the shipper participating in the case,"

Page 2, line 24, after the period insert "The commission must have written commitments for \$125,000 from other sources, including the shipper participating in the case, before spending any moneys from the beginning farmer revolving loan fund."

Page 3, replace lines 3 through 8 with:

"SECTION 6. EXEMPTION. The amount appropriated for the rail rate complaint case, as contained in section 1 of chapter 29 of the 2003 Session Laws, is not subject to the provision of section 54-44.1-11. Any unexpended funds from the rail rate complaint case line item are available for continued use for expenditures relating to the rail rate complaint case.

SECTION 7. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES AND RESPONSIBILITIES. The legislative council shall

consider studying, during the 2005-06 interim, the changes in responsibilities and duties of the public service commission since its inception. The study should include an evaluation of what additional duties have been given to the commission and those duties no longer performed. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixtieth legislative assembly."

Page 3, after line 16, insert:

"SECTION 10. COMMISSION HEARING ROOM - LEGISLATIVE INTENT. It is the intent of the legislative assembly that the public service commission hearing room be available for use by other state agencies and by the legislative assembly during the regular session when not being used for commission business."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1008 - Public Service Commission - Conference Committee Action

	EXECUTIVE BUDGET	HOUSE VERSION	CONFERENCE COMMITTEE CHANGES	CONFERENCE COMMITTEE VERSION	SENATE VERSION	COMPARISON TO SENATE
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Operating expenses	1,408,153	1,408,153		1,408,153	1,408,153	
Capital assets	58,511	58,511	30,000	88,511	88,511	
Grants	7,000	7,000		7,000	7,000	
Abandoned mined lands contractual services	3,668,492	3,668,492		3,668,492	3,668,492	
Rail rate complaint case	<u>900,000</u>	<u>1,200,000</u>	<u>(255,000)</u>	<u>945,000</u>	<u>970,000</u>	<u>(\$25,000)</u>
Total all funds	\$11,141,740	\$11,426,261	(\$230,117)	\$11,196,144	\$11,221,144	(\$25,000)
Less estimated income	<u>5,985,139</u>	<u>7,178,283</u>	<u>(256,763)</u>	<u>6,921,520</u>	<u>6,946,520</u>	<u>(25,000)</u>
General fund	\$5,156,601	\$4,247,978	\$26,646	\$4,274,624	\$4,274,624	\$0
FTE	41.00	41.00	0.00	41.00	41.00	0.00

Dept. 408 - Public Service Commission - Detail of Conference Committee Changes

	REDUCES RECOMMENDED FUNDING FOR HEALTH INSURANCE ¹	REDUCES RAIL CASE FUNDING ²	ADDS FUNDING FOR SOUND SYSTEM ³	TOTAL CONFERENCE COMMITTEE CHANGES
Salaries and wages	(\$5,117)			(\$5,117)
Operating expenses				
Capital assets			\$30,000	30,000
Grants				
Abandoned mined lands contractual services				
Rail rate complaint case		<u>(\$255,000)</u>		<u>(255,000)</u>
Total all funds	(\$5,117)	(\$255,000)	\$30,000	(\$230,117)
Less estimated income	<u>(1,763)</u>	<u>(255,000)</u>		<u>(256,763)</u>
General fund	(\$3,354)	\$0	\$30,000	\$26,646
FTE	0.00	0.00	0.00	0.00

¹ This amendment reduces funding for state employee health insurance premiums from \$559.15 to \$553.95 per month.

² The conference committee reduced the funding for the rail rate complaint case to \$945,000, of which \$800,000 is from the beginning farmer revolving loan fund; \$20,000 from carryover authority from the state rail fund, maintained by the Department of Transportation under Section 49-17.1-02.1; and \$125,000 from the shipper participating in the rail rate case and other sources. The Public Service Commission must have written commitments for the \$125,000 from other sources before spending any moneys from the beginning farmer revolving loan fund.

REPORT OF CONFERENCE COMMITTEE (420)
April 19, 2005 4:35 p.m.

Module No: SR-72-8339

Insert LC: 58031.0209

The Senate had reduced the funding for the rail rate complaint case from \$1,200,000 to \$970,000, of which \$800,000 was from the beginning farmer revolving loan fund and \$170,000 from other sources.

- ³ The conference committee agreed with the Senate amendment which added funding for improvements to the sound system in the Public Service Commission hearing room.

The conference committee agreed with the Senate amendment adding legislative intent that the Public Service Commission hearing room be available to other state agencies and the Legislative Assembly when not in use by the Public Service Commission.

The conference committee changed the study of the Public Service Commission fees and services to a study of the changes in duties and responsibilities of the Public Service Commission.

Engrossed HB 1008 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

HB 1008

H. B. 1008

Presented by: Honorable Kevin Cramer
Public Service Commission

Before: House Appropriations Committee
Honorable Ken Svedjan, Chairman

Date: January 7, 2005

TESTIMONY

Mr. Chairman and members of the Appropriations Committee, I am Kevin Cramer, Public Service Commissioner. I am here today representing the Commission. My appearance today is to provide you with an overview of our 2005-2007 budget request and answer the questions posed in Mr. Smith's December 13, 2004, letter.

The responses are attached, as follows:

- Page 1 is an explanation of current biennium budget variances, as well as variances between our current budget and the budget recommended by the Governor;
- Page 2 is an explanation of the variances by fund;
- Page 3 is a list of agency goals.

Thank you for the opportunity to appear here today. I will be happy to go over these attachments and answer any questions you may have.

PUBLIC SERVICE COMMISSION

Overview Presentation to the House Appropriations Committee

January 7, 2005

	A	B	(A - B)	C	(C-A)
	2003-05	2003-05		2005-07	
Description	Approp.	Est. Exp.	Variance	Exec. Recom.	Recom. Increase
Salaries and Wages	\$ 4,771,497	\$ 4,721,497	\$ (50,000) 1)	\$ 5,099,584	\$ 328,087 6)
Operating Expenses	1,197,261	1,167,261	(30,000) 2)	1,408,153	210,892 7)
Capital Assets	35,011	35,011	-	58,511	23,500 8)
Grants	62,000	62,000	-	7,000	(55,000) 9)
AML Contractual	3,668,492	1,841,747	(1,826,745) 3)	3,668,492	-
Rail Rate Complaint	250,000	250,000	-	900,000	650,000 10)
Total Line Items	\$ 9,984,261	\$ 8,077,516	\$ (1,906,745)	\$ 11,141,740	\$ 1,157,479
General Funds	\$ 3,911,494	\$ 3,846,494	\$ (65,000) 4)	\$ 5,156,601	\$ 1,245,107 11)
Federal Funds	5,697,767	3,856,022	(1,841,745) 5)	5,860,139	162,372 12)
Special Funds	375,000	375,000	-	125,000	(250,000) 13)
Total Funding	\$ 9,984,261	\$ 8,077,516	\$ (1,906,745)	\$ 11,141,740	\$ 1,157,479
Total FTE's	41	41	-	41	-

NOTES

- 1) Vacancies and reorganization resulting in lower than budgeted salary levels.
- 2) Various projected savings (building and equipment rentals, telephone, postage etc.)
- 3) Budgeted higher federal dollars than were appropriated by Congress.
- 4) Combination of salary savings (\$50k) and operating expense reductions (\$15k).
- 5) Combination of AML Contractual variance and operating expense reductions (\$15k).
- 6) Governor's wage increase.
- 7) Includes additional rent expense (\$70k) for new W&M's building, transfer of line item authority from grants to operating expense for Call Before You Dig program (\$55k), Interstate Mining Compact Commission dues (\$25k), new version of ExamHand software (\$19k), OSM technical support and electronic document conversion (\$17k), Connect ND (\$14k), email storage upgrades (\$12k), IT equipment upgrades less than \$5k specific to Reclamation for electronic permitting (\$8k), weight cart repair (\$7k), NRRI dues (\$6k), Enterprise Forms Management (3k), Virtual Private Network upgrades (\$3k) etc.
- 8) New lab balance equipment (\$16k) and bore hole camera (\$7k).
- 9) Transferred line item authority from grants to operating expense in accordance with State Auditor.
- 10) Increase is difference between preliminary rail rate investigation (\$250k) and funds recommended by the Governor to pursue rate relief (\$900k) from the Surface Transportation Board.
- 11) Culmination of A) through L).
- 12) Culmination of A) through L).
- 13) Eliminates one-time appropriation from DOT special funds for preliminary rail rate investigation.

PUBLIC SERVICE COMMISSION

Overview Presentation to the House Appropriations Committee

January 7, 2005

*All neg
#1's*

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Grants	62,000	62,000	-	7,000	(55,000)
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Rail Rate Complaint	250,000	250,000	-	900,000	650,000
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General Funds	\$ 3,911,494	\$ 3,846,494	\$ (65,000)	\$ 5,156,601	\$ 1,245,107
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Total Funding	\$ 9,984,261	\$ 8,077,516	\$ (1,906,745)	\$ 11,141,740	\$ 1,157,479
Total FTE's	41	41	-	41	-

Budget Adjustments	<u>Gen Fund</u>	<u>Fed Fund</u>	<u>Spec Fund</u>
Rail Rate Investigation	\$ 900,000	\$ -	\$ (250,000)
Governor's Salary Proposal	224,065	104,022	-
Weights and Measures Building Rent	70,000	-	-
ExamHand Software	19,500	-	-
Lab Balance	16,000	-	-
Connect ND	13,986	-	-
Email Storage Upgrade	12,000	-	-
Interstate Mining Compact Commission (\$25k)	8,750	16,250	-
Weight Cart Repairs	7,000	-	-
National Regulatory Research Institutue Dues	6,000	-	-
Enterprise Forms Management	3,000	-	-
Virtual Private Network	3,000	-	-
OSM Technical Support & Electronic Conversion	2,450	14,550	-
Governor's Higher Indirect Cost Recoveries	(28,527)	28,527	-
New Bore Hole Camera	-	7,500	-
Miscellaneous Adjustments	(12,117)	(8,477)	-
Total	\$ 1,245,107	\$ 162,372	\$ (250,000)

**Public Service Commission Goals and Objectives
2005-07 Biennium**

#1
H.A. pp. 6.0
2/1/05
HB 1008
PSC
Mr. Mike
Diller

- Ensure utility customers receive reliable, safe service at reasonable rates
- Represent and protect the interests of industry and consumers in the development of regional electricity markets
- Assist in dispute resolution between utility companies and consumers and provide ongoing education to consumers and the utility companies
- Ensure energy facilities produce minimal adverse effects on the environment and the welfare of ND citizens
- Protect the public interest by implementing statutory policy concerning FCC rules regarding telecommunications services
- Protect the public interest by matching the cost of acceptable conditions and quality of service with rates and revenues for rate regulated utilities
- Ensure that coal mining activities are conducted in an environmentally sound manner that protects the rights of property owners and the public interest
- Work with industry, federal Office of Surface Mining, and the public to achieve optimum, cost-effective and fair reclamation
- Ensure that the productivity of reclaimed lands is restored to pre-mine levels
- Prioritize and reclaim abandoned mine sites to eliminate potential or existing hazards
- Enforce state and federal gas pipeline safety laws governing intrastate gas systems
- Ensure ND's weighing and measuring devices are accurate
- Maintain National Institute of Standards and Technology (NIST) certification
- Regulate grain and auction related licensees to maximize efficiencies and minimize negative economic impacts on industry and consumers
- Monitor collection and disbursement of credit-sale indemnity fund
- Provide a regulatory climate that encourages competition where appropriate
- Fairly represent the state's shipping interests in federal proceedings and in direct negotiations with rail carriers
- Closely monitor the consolidation of the state's information technology to ensure effective services to our employees and the regulated community
- Provide employees with the necessary resources to effectively and efficiently execute the legislative mandates
- Retain experienced staff and manage effective transition to new employees to minimize the loss of institutional knowledge
- Continue progress towards a paperless office

H. B. 1008

Presented by: Honorable Kevin Cramer
Public Service Commission

Before: House Appropriations Committee
Honorable Ken Svedjan, Chairman

Date: January 7, 2005

TESTIMONY

Mr. Chairman and members of the Appropriations Committee, I am Kevin Cramer, Public Service Commissioner. I am here today representing the Commission. My appearance today is to provide you with an overview of our 2005-2007 budget request and answer the questions posed in Mr. Smith's December 13, 2004, letter.

The responses are attached, as follows:

- Page 1 is an explanation of current biennium budget variances, as well as variances between our current budget and the budget recommended by the Governor;
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Thank you for the opportunity to appear here today. I will be happy to go over these attachments and answer any questions you may have.

H. B. 1008

11/13/05 Handout
HB 1008 #1
HAPP 6.0.

Presented by: Tony Clark, President
Susan Wefald, Commissioner
Public Service Commission

Before: House Appropriations
Government Operations Division
Honorable Ron Carlisle, Chairman

Date: January 13, 2005

TESTIMONY

Mr. Chairman and committee members, I am Tony Clark, president of the Public Service Commission. Commissioner Susan Wefald and I will be presenting our testimony today. Commissioner Kevin Cramer is also here in support of our testimony.

Also with us are our executive secretary, and a number of our division directors. Thank you for the opportunity to meet with you to discuss our operations, statutory mandates, and resource needs.

We believe that the Governor's executive budget recommendation provides us with the resources we need and we urge your favorable support of the budget that is before you.

Mr. Chairman and committee members, except for a couple of specific items, which I will discuss later, this is largely a status quo budget proposal. The Commission is not proposing any new programs or asking for any additional FTEs. We do not, however, want to leave you with the impression that the Commission is a status quo agency – it definitely is not.

The Commission's main areas of responsibility, which are well known to you, include:

- Regulation of telephone, electric, and natural gas utilities;
- Pipeline safety inspections;

- Licensing and inspecting grain elevators and grain buyers, and licensing auctioneers;
- Testing and certifying weighing and measuring devices;
- Overseeing coal mining and reclamation;
- Eliminating hazards at abandoned mine sites;
- Siting power plants, power lines, and pipelines; and
- Representing state rail interests in federal proceedings.

Despite few changes in jurisdiction, the Commission has been immersed in a rapidly changing regulatory environment, some of which is mandated by federal and state statutory changes and some of which is related to structural changes within the industries with which the Commission interacts. The Commission has met its challenges in a variety of ways and with a very small staff. For example, the Commission has taken part in several multi-state collaborative efforts to process industry applications and to participate in federal proceedings.

Public Utilities

The Public Utilities Division protects the public interest by promoting the provision of safe, reliable and high quality utility services, educating consumers regarding their rights and responsibilities as purchasers of both monopoly and competitive utility services and assisting in resolving problems. The division implements the state's energy facility siting law to ensure environmentally sound energy development with minimal adverse effects. Projects and cases processed by the division include:

- Continuing evolution of federal telecommunications mandates, including ongoing oversight and facilitation of the wholesale telecommunications market and the transition to competitive services.
- Participation in the establishment of a Midwest Independent Transmission System Operator and the development of a regional wholesale electric market.
- Performance Based Ratemaking (PBR) to provide efficiency incentives for regulated utilities.
- Regulating the rates, terms and conditions of retail gas and electric service by investor owned utilities.

- Directing and enforcing safety requirements for electric service provided by all utilities.
- Wind and coal power generation, and electric and pipeline transmission siting activities, to ensure compatibility with environmental preservation and the efficient use of resources.
- Beginning the Wireless Initiative intended to improve the quality of wireless services to customers in North Dakota, receiving 463 contacts concerning 1,100 locations across the state. Of those locations, 184 cities and 305 rural locations were identified.

The Commission will continue efforts to educate consumers and competitors about the evolving utility marketplaces and the changing role of regulation, striving to identify and implement ways to lessen the regulatory burden on companies while strengthening and preserving necessary consumer protections. The relationships between utilities and the management and allocation of costs will continue to challenge us and those with whom we do business. Regional impacts and environmental priorities and concerns will contribute to the challenges facing policymakers, regulators and interested parties.

All these public utility efforts have been undertaken with a staff of approximately 5 FTEs and one attorney – by far the smallest staff of any regulatory commission in the country.

Licensing

The Licensing Division oversees the licensing and bonding of all the grain elevators and grain buyers in North Dakota and processes all grain elevator insolvency cases. The division also oversees all auction matters. The division is comprised of a director, two inspectors and a part time licensing assistant to help with the auction matters. Some major accomplishments during the biennium include:

- Creation and implementation of the credit sale contract indemnification fund.
- Continuing efforts to maintain state jurisdiction over merchandising despite attempts to preempt state protections at federally licensed grain warehouses.
- Completion of nearly 375 grain warehouse and 40 roving grain buyer inspections.

One new expense item that is included in the PSC executive budget is for an upgrade in the computer software utilized by our Licensing Division. This item is a one-time \$19,500 expense included in the operating line item. The new software will significantly improve the effectiveness of our field staff. In addition to gaining a significantly improved program, we also face the loss of system support on our current version due to incompatibility.

Testing and Safety

The North Dakota Public Service Commission's Testing and Safety Division has three main areas of responsibility: Its Weights and Measures Inspection Program, its Metrology Program, and its Gas Pipeline Safety Inspection Program.

Weights and Measures Inspection Program

The Weights and Measures Program is designed to meet the needs of both the buyer and seller in the commercial marketplace. This program is accomplished through the enforcement of the state's weights and measures laws via the inspection and testing of commercial weighing and measuring devices such as supermarket scales, grain elevator truck scales, livestock scales, and gas station pumps, etc. Some of the accomplishments of the program during the biennium include:

- Testing and inspecting 23,625 commercial devices from July 1, 2003 to December 31, 2004.
- Conducting quality control testing and monitoring the documentation of 86 weighing or measuring devices installed or serviced by the state's registered service companies.
- Depositing revenues totaling \$472,318.00 to the general fund as a result of the above testing during that time period.

Metrology Program

An integral part of the division is the metrology program. All of the field standards used by state inspectors and private service providers are certified in our metrology laboratory. The laboratory also offers certification services to other interested parties including the Federal Grain Inspection Service, Team Torque Laboratory, Bobcat, North Dakota Highway Patrol and the United States Customs Service. The

certification process uses intricate balances and measuring vessels to compare the state's working standards to all of the field standards. The state's metrology laboratory is currently housed in the southwest corner of the Capitol Maintenance Shop located adjacent to the State Capitol in Bismarck. This laboratory is certified by the United States Department of Commerce's National Institute of Standards and Technology (NIST).

As a result of the 2004 NIST laboratory audit, North Dakota is in jeopardy of losing its certification as a NIST-approved tolerance testing laboratory. The audit showed that the physical condition of the building housing the laboratory was not to NIST standards and that certain balances used for tolerance testing were either wearing out or unable to meet tolerance testing specifications. Efforts are currently underway to mitigate those noncompliances. The most significant impact is an additional \$70,000 rent expense for a new metrology building which is included in the commission's executive budget recommendation. Without this new lab, we will be unable to maintain NIST certification and therefore will be unable to continue this program.

The consequences of losing NIST certification are great. Both public and private standards must be recertified annually. Loss of state certification will force industry to go out of state to find another certified lab, which will result in additional costs to these service providers. These providers will have no choice but to pass on these increased costs to their customers.

Pipeline Safety Inspection Program

The Commission is granted regulatory jurisdiction over the safety of North Dakota gas utility distribution and transmission facilities under state law. The Commission enters into an agreement with the United States Department of Transportation (USDOT) annually which grants the state authority to conduct the federal gas pipeline safety program. As part of this agreement, a portion of the cost of the North Dakota Gas Pipeline Safety Program is funded by the federal government.

Reclamation

The Commission's Reclamation Division is responsible for ensuring that active coal mining is carried out in an environmentally sound manner and that mined lands are adequately reclaimed. There are currently four large and two small coal mines operating in North Dakota and they produce about 31 million tons of coal annually. There are nearly 100,000 acres of land presently under permit and between 1,500 and 2,000 acres of land are disturbed and reclaimed each year in North Dakota. The disturbed and reclaimed acres are monitored by the Commission to ensure compliance with state reclamation laws.

One new budget item added to the Commission's budget as recommended by the Governor includes additional state and federal funds for North Dakota to join the Interstate Mining Compact Commission (IMCC) as a full member. This is a \$25,000 addition, about two-thirds of which is federal funds. Very similar to the Interstate Oil and Gas Compact Commission which North Dakota has been a member since the early 1950's, the IMCC is a multi-state organization that represents its member states on mining and related environmental issues and provides a forum for interstate communication and action on issues of concern. A vast majority of the IMCC's efforts pertain to coal related issues at the federal level that involve the Office of Surface Mining and other federal agencies. North Dakota has been an associate member of the IMCC for about five years and its by-laws limit associate memberships to a maximum of five years. The Commission introduced HB 1166 to join the Interstate Mining Compact as a full member and, if approved, the IMCC dues would be paid out of the Reclamation Division's operating budget.

Abandoned Mine Lands

The mission of the Abandoned Mine Lands (AML) Division is to reclaim abandoned coal mine lands that pose a hazard to the health, safety and general welfare of the public. Sites eligible for reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977(SMCRA) include areas mined for coal that were disturbed prior to the existence of any state or federal law. These sites are prioritized on the basis of perceived hazard and reclaimed based on priority and availability of funds. The AML

program is 100 percent federally funded. If you are interested in the specific sites being reclaimed presently, we would be happy to provide you with that information.

The funding source for the AML program comes from a federal reclamation fee that is assessed to all active coal mines. North Dakota coal companies currently pay about 3 million dollars (10 cents/ton) per year into the federal AML fund and the Commission receives roughly half of the money back for funding North Dakota's AML program.

Administration

The budget before you today is predicated on the assumption the PSC's current exemptions from IT consolidation will remain in effect. IT increases currently included into the budget are Connect ND costs of \$13,986, email storage upgrade costs of \$12,000, Enterprise Forms Management costs of \$3,000, and Virtual Private Network upgrade costs of \$3,500. Should further consolidation occur the costs, developed using the ITD's budget guidelines for the 05-07 biennium, would be substantially higher, by approximately an additional \$600,000.

The PSC foresees many unacceptable consequences from IT consolidation. The agency will be unable to quickly and economically acquire new IT products needed to interface with our business partners. It will lose flexibility in daily operations. It will lose the ability to efficiently customize its IT infrastructure. Consolidation will diminish our ability to leverage and integrate federal IT equipment, software, and training.

Summary

Of the Commission's overall budget, about 53 percent comes from federal sources, 46 percent is general fund money, and 1 percent is special funds. The Commission generates about \$1.1 million per biennium in income from statutory license and inspection fees. Indirectly, this income covers about 21 percent of the general fund money that is being requested in H.B. 1008.

The Commission recorded nearly 2,200 complaints and inquiries during the current biennium. The vast majority of these concerned traditional public utility services,

but many involve matters such as grain elevator operations, mining, and weights and measures.

During the current biennium, the Commission processed 1,061 cases. The Commission attempts to process these cases as quickly and at as low a level of formality as possible. As a result, over 98 percent of these cases were processed without the need for a formal hearing and nearly two-thirds were processed and closed in less than thirty days. Only 20 of these cases required formal hearings, several of which were mandated by state law.

The Commission's staff has been reduced in size from 60 FTEs over twenty years ago to 41 today. This has been accomplished despite very few changes in jurisdiction.

Finally, Mr. Chairman, I want to discuss one new item in the Governor's executive budget recommendation, because it is likely to generate a fair amount of discussion. It relates to our request and the Governor's support of \$900,000 to fund a rail rate complaint case.

Rail Rate Complaint

North Dakota's rail rates on grain are among the highest in the country. It costs more to ship corn from North Dakota to Seattle than it does to ship exactly the same amount of corn several hundred miles further from Iowa to the same destination. Similarly, the rates on shipments of North Dakota wheat to Portland, Oregon, are higher than the rates on wheat shipped from Kansas and Nebraska, even though the trip from North Dakota is several hundred miles shorter.

Keeping this money in the state would be a great boost to our rural economy. But to finally establish meaningful rate relief for smaller shippers, state action will be required.

Initiating rate cases before the Surface Transportation Board (STB) is nothing new. Numerous coal hauling electric utilities have done so over the years. Unfortunately, this type of proceeding is expensive – in the neighborhood of \$3-5 million

in expense, and 3-5 years of litigation. This has precluded smaller shippers from pursuing the relief to which they are entitled under federal law.

In response to the intense criticism the STB has received from Congress over this lack of viable relief the STB initiated a new process by which a rate case could be filed – known as a simplified proceeding. The environment for filing a rate complaint case is more favorable now than it has been since the federal Staggers Rail Act was passed back in 1980.

Last session the legislature authorized the PSC to spend up to \$250,000 to begin the leg-work on just such a case. The primary findings of the report are as follows:

- Market dominance can be proven. Before the STB will hear the merits of any rate dispute, complainants must first prove that whatever shipment routes are being challenged are truly captive to the railroad.
- Rates are challengeable. In order for rates to be challenged, the railroad must earn more than \$1.80 in revenue for every dollar in variable cost. Captive locations investigated in the study indicated revenues in the neighborhood of \$3 – \$4 in revenue for every \$1 in variable cost.
- The simplified method of filing a case is a reasonable alternative to a full stand alone cost proceeding (the type traditionally used by larger shippers).

Depending upon the origin, destination, type of movement and other factors, the PSC believes that reductions of approximately 10 to 40 cents per bushel might be achievable for the shipper selected as the "poster-child" case.

The "simplified" process is untested but it appears that the STB is anxious to entertain a complaint under this process. Given its untested nature, agency and court appeals are considered likely. Estimates are in the \$800,000 to \$1 million range for a first case, but substantially less per case after the first case precedent is established. Proceeding time estimates for the first case are 18-24 months, but much less for subsequent cases. The great advantage of, and indeed the reason for bringing a simplified case, would be that a new avenue of relief would be opened for agricultural shippers. In future years, it could make it much more feasible for shippers to bring their own successful cases without state support. It would also finally put the railroads in a

position of needed to set rates in good faith. Currently they have little incentive to even consider the complaints of small shippers.

If the commission receives this funding, the study indicated the following is a likely timetable:

- Mid 2005 - Funding becomes available & counsel/consultants are hired
- Mid - Late 2005 - Prepare case
- Early 2006 - Complaint filed with STB
- Mid & Late 2006 - Process proceeds before STB
- Early 2007 - Decision rendered

Mr. Chairman, this concludes our testimony.

Attached are:

1. Schedule required by Section 34 of 2003 Senate Bill 2015 showing revenue and expenditures for our two continuing appropriation funds,
2. Executive Summary from the Rail Rate Investigation,
3. PSC organizational chart, and
4. 2003-2005 Biennium Salary Increase Survey.

We would be happy to answer any questions you might have.

Continuing Appropriations

Schedule Required by Section 34 of 2003 Senate Bill No. 2015
January 13, 2005

Performance Assurance Fund

Fund No. 280

Statutory Authority: NDCC 49-21-31.

	Biennium Ending		B.T.D.	Projected	
	<u>1999-01</u>	<u>2001-03</u>	<u>1/12/05</u>	<u>1/12/05 to 6/30/05</u>	<u>2005-07</u>
Beginning Balance	\$ -	\$ -	\$ 53,750	\$ 135,123	\$ -
Revenues		54,231	88,155	10,000	-
Total Available	\$ -	\$ 54,231	\$ 141,905	\$ 145,123	\$ -
Expenditures		481	6,782	3,000	-
Ending Balance	\$ -	\$ 53,750	\$ 135,123	\$ 142,123	\$ -

Credit Sale Contract Indemnity Fund

Fund No. 395

Statutory Authority: NDCC 60-10.

	Biennium Ending		B.T.D.	Projected	
	<u>1999-01</u>	<u>2001-03</u>	<u>1/12/05</u>	<u>1/12/05 to 6/30/05</u>	<u>2005-07</u>
Beginning Balance	\$ -	\$ -	\$ -	\$ 1,118,772	\$ 1,878,762
Revenues			1,119,314	759,990	1,997,874
Total Available	\$ -	\$ -	\$ 1,119,314	\$ 1,878,762	\$ 3,876,636
Expenditures			542	-	-
Ending Balance	\$ -	\$ -	\$ 1,118,772	\$ 1,878,762	\$ 3,876,636

Executive Summary Rail Rate Investigation

BACKGROUND

The 2003 North Dakota Legislature appropriated \$225,000 from the Department of Transportation's Freight Rail Improvement Program fund to be used by the Public Service Commission (PSC) to investigate the reasonableness of rail rates charged to move grain from North Dakota to market. The utilization of these monies was contingent on an additional \$25,000 being raised from other sources to assist with the effort. The required funds were subsequently contributed by the North Dakota Wheat Commission, the North Dakota Grain Dealers Association, the North Dakota Farmers Union, and the North Dakota Farm Bureau.

Rail rates are regulated by the federal Surface Transportation Board (STB) and the Staggers Rail Act of 1980. Under federal law and corresponding STB rules, a rate cannot be found unreasonable until it is first proven that the rail carrier involved is "market dominant" over the movement at issue. Other shipping options must be found incapable of effectuating a competitive marketplace that would presumably self-regulate and produce reasonable rates.

Once market dominance is proven, the STB is able to consider the reasonableness of the rates in question. By law, the STB cannot find a rate to be unreasonable if it is yielding revenues that are less than or equal to 180% of the variable costs associated with providing related service.

STB rate proceedings and related costing analysis are extremely technical and specialized. To produce investigation results that would be credible before the STB, the PSC developed a request for proposals and scope of work that focused not only on the specifics of shipments of North Dakota grain but also on the technical nature of rate challenges before the STB and related federal laws, agency rules, and court decisions.

The PSC call for proposals produced significant interest from several of the country's most prominent rail rate litigators. The Commission, with the help of the financial contributors listed above and the Attorney General's Office, ultimately selected a proposal that was submitted jointly by the Washington, DC law firms of Thompson Hine LLP and McCarthy, Sweeney & Harkaway, P.C.. These firms have significant experience involving both the grain trade and STB rate complaints.

Subsequent contracts were also entered into with L.E. Peabody & Associates, the nation's preeminent technical rail costing firm, and the Upper Great Plains Transportation Institute at NDSU. All project work was completed within the budget authorized by the 2003 Legislature.

RAIL RATE FINDINGS

The investigation was framed to analyze chances for success before the STB (i.e., locations that were both clearly "captive" in terms of market dominance and that paid extremely high rates) and to identify complaints that would produce the greatest benefits to the state and its farmers and shippers.

It was determined that the vast majority of grain shippers in the focus area are captive to rail and served by a single railroad. In many cases, grain elevators ship over 90 percent of their wheat to market via railroad. A typical STB benchmark for market dominance is 70 percent rail market share.

L.E. Peabody conducted complex rail costing work on wheat shipments from selected points in North Dakota to eastern and western destinations. Many of these reviews produced revenue to variable cost ratios that ranged from 250 percent to well over 300 percent, well in excess of the 180 percent ratio mentioned earlier. In other words, while the statute has benchmarked as reasonable \$1.80 in revenue for every \$1 in variable cost (though a rate might also be reasonable even if it is in excess of this 180 percent ratio), some locations in North Dakota are generating well over \$3 in revenue for every \$1 in the railroad's variable cost.

A successful rate complaint case could produce significant rate reductions. Depending on the origin, destination, type of movement, and other factors, the PSC believes that reductions of approximately 10 to 40 cents per bushel might be achievable. In short, the investigation verified that rail rates on wheat are significantly high to warrant a complaint before the STB.

PROCEDURAL ANALYSIS

There are two methods by which a rate case could be brought before federal regulators – the "stand alone cost" method and the "simplified" method. The investigation analyzed both approaches and, as the following narrative indicates, there are advantages and disadvantages to both. Filing under either method would allow a successful elevator complainant the possibility of reparations for excess freight charges dating from two years prior to the filing of the complaint through the completion of the case.

"Stand Alone Proceeding"

The "stand alone" or "SAC" process is well tested. In this process, a hypothetical, efficient railroad is built on paper and existing rates are, for purposes of rate setting, compared against the theoretical firm. There are advantages to this type of filing. It has been successfully used a number of times to reduce rail rates, typically by utility companies litigating for lower coal hauling rates. It also has the potential of fixing

rates for up to a 20 year period over a fairly broad geographic area (e.g. at elevators along a fairly long length of rail line).

Its major drawback is cost and time. Cost estimates are \$3.5 to \$4 million and proceedings could take over three years to complete. It should be noted that this type of proceeding tends to be best suited to high volume shipments from one or a small number of origins, to a similar configuration of destinations, which is why coal hauling cases have been well suited to this type of proceeding.

"Simplified Proceeding"

Because the STB has been repeatedly criticized for the effective lack of relief for small and agricultural shippers, it has created a new set of rules known as a "simplified" proceeding. In this filing, the case is streamlined procedurally and certain assumptions are built into the case to cut down on time and expense.

The "simplified" process is untested but it appears that the STB is anxious to entertain a complaint under this process. Given its untested nature, agency and court appeals are considered likely. One major advantage of a simplified case is its cost. Estimates are in the \$800,000 to \$1 million range for a first case, but substantially less per case after the first case precedent is established. Proceeding time estimates for the first case are 18-24 months, but much less for subsequent cases. The great advantage of a simplified case would be that a new avenue of relief would be opened for agricultural shippers. Thus in future years, it would be more feasible for individual shippers to bring their own cases without state support. It is difficult to quantify the value of such a precedent setting case, but it could be significant if shippers are subsequently able to obtain rate relief on their own.

The major disadvantage is the much lower impact any one case has on rates for an entire region of the state. A simplified case would likely involve one or a very small number of elevators shipping to one or two destinations, though there may be some subsidiary effects as the market accounts for lower rates from these points.

BUDGET & SAVINGS

Specific budget estimates were ultimately developed for each approach. The cost of a "stand alone" case was determined to be \$3,843,900. Given the long time frame associated with SAC cases, 80 percent of this amount would be incurred in the 2005-07 biennium (approximately \$3.1 million) and 20 percent (approximately \$700,000) in the following biennium. The cost of a "simplified" case was projected to be \$949,300, all of which would be needed in the 2005-07 biennium. The PSC subsequently submitted a supplemental budget request to the Office of Management and Budget to finance a simplified rate complaint case before the STB.

It is difficult to project exact cost savings (i.e. "return to North Dakota") that would result from a successful complaint case. As indicated earlier, the immediate impacts of

a successful case vary depending on which complaint mechanism is used. A "stand alone" case could produce rate prescriptions over a broader geographic area. The costs of such a case would, however, be prohibitive for subsequent use by other grain shippers. A successful "simplified" case, on the other hand, would have more localized impacts but the newly established precedent and lower costs in subsequent complaint proceedings might make more such cases possible. Success with this type case might also make railroads more willing to negotiate settlements in the future.

For discussion purposes, savings estimates have been developed for each complaint procedure. For a "SAC" case, it was assumed that a complaint might directly involve four elevators that collectively ship 20 million bushels of wheat by rail annually. An STB mandated rate reduction of, for example, 22 cents per bushel would produce annual savings of \$4.4 million. Any reparations for specific elevators would push this total higher.

Concerning a "simplified" case, it is anticipated that the methodology of such a case and the requirement that the case be "small" would restrict the number of origins involved. If such a case involved only one elevator which shipped 3 million bushels of wheat to a single destination each year, annual savings would range from about \$300,000 million to \$1.2 million. Again, reparations might increase this total.

The investigation's steering committee (the PSC, the Governor's staff, and contributing parties) and its consultants spent considerable time discussing possible monetary outcomes of a successful complaint proceeding. The group readily agreed that there are no guarantees that all rate reductions would automatically flow back to North Dakota elevators and farmers. Everyone in the marketing chain would, to the extent possible, attempt to retain a portion of those savings for themselves.

It was also agreed, however, that any savings would, in the long run, either come back to North Dakota in actual freight cost savings or otherwise contribute to making North Dakota wheat more competitive in domestic and world markets. This increased competitiveness would ultimately have a positive impact on price.

As indicated earlier, the Commission has requested funding that would allow it to pursue a simplified rate complaint before the federal Surface Transportation Board. The Commission expects that this funding request may come up against significant lobbying pressure from the rail industry, since the State of North Dakota would be seeking to establish precedents before the Surface Transportation Board that could have broad and far-reaching impacts concerning small rate cases both within and outside the state.

Public Service Commission

2005-07 Budget Request

Organizational Chart

Commissioners

3.0 Employees

Support
Services

7.65 Employees

Commerce
Counsel

1.00 Employee

Testing &
Safety

7.52 Employees

Licensing
& Rail

3.55 Employees

Public
Utilities

5.18 Employees

Reclamation

8.73 Employees

Abandoned
Mine Lands

4.37 Employees

Full-time Employees: 41

STATE AGENCY 2003-05 BIENNIUM SALARY INCREASE SURVEY

Agency | Public Service Commission |

1. Number of authorized FTE for the 2003-05 biennium? | 41.00 |

2. Excluding probationary increases, were salary increases provided during the 2003-05 biennium?
If yes, please provide:

a. The date the salary increases were provided (i.e. July 2003 salary increase,
paid August 2003) | Effective July 1, 2004 |

b. The number of employees who received salary increases | 8.00 |

c. The average salary increase in terms of percentage | 5.3% |

d. The reason for the salary increases

| Six equity adjustments for employees earning less than 45% of their pay range and two
internal equity adjustments. |

e. The cost of the salary increases for the 2003-05 biennium by funding source

General Fund		\$18,631	
Other Funds		\$1,484	
Total Funds		\$20,115	

f. The source of funding used to provide the salary increases (i.e. funded by legislature,
turnover savings, etc.)

| Turnover and reorganization at lower pay levels. |

g. The amount of funding included in the 2005-07 executive budget recommendation by funding source
to continue these salary increases

General Fund		\$37,262	
Other Funds		\$2,968	
Total Funds		\$40,230	

Note: The above information does not include increased salaries resulting from the application and acceptance of higher paying positions within the agency.



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

Honorable Ron Carlisle, Chairman
House Government Operations Division
600 E. Boulevard Ave.
Bismarck, ND 58505

January 17, 2005

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Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
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TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

Re: Additional Information Requested for H.B. 1008

Dear Chairman Carlisle,

In our hearing, your committee expressed a desire for additional information regarding our testimony. Following are our responses.

Further IT Consolidation Will Cost \$600,000

If the PSC is required to relinquish control to ITD of its data storage operations, tape archives, and its dedicated file and print high capacity server, the commission estimates that it will need an additional \$600,000 in funding authority.

Disk storage is provided at three different levels by ITD. Based on our operations, the commission will need two terabytes of storage per month at the lowest service level and four terabytes of storage per month at the medium service level.

The following estimate is based on ITD's projected rates for the 2005-07 biennium and offset by costs already included in the PSC's budget to continue providing services in-house.

Description	Size	Cost	Cost	
			Per Month	2005-07
Disk Storage	4TB	\$ 5,000	\$ 20,000.00	\$ 480,000
Disk Storage	2TB	\$ 1,000	\$ 2,000.00	48,000
Tape Archive	6TB	\$ 550	\$ 3,300.00	79,200
Server	High	\$ 600	\$ 600.00	14,400
Total Increase				\$ 621,600
Less Amount Included in Budget				21,000
Net Increase				\$ 600,600

Equity Pay Adjustments

At our budget hearing, the commission provided Attachment 4 providing details related to equity pay adjustments. On July 1, 2004, the commission granted equity adjustments to raise six employees' pay to 45% of their pay range and

also granted two increases for internal inequities. The funds to grant these increases came from turnover and reorganization at lower pay levels. Attached is a "Revised" Attachment 4 indicating that the average pay increase for these eight employees was 6.6% instead of the 5.3% disclosed at our budget hearing. The error occurred because two cells in the Excel worksheet calculation included zeroes which caused the program to incorrectly calculate the average.

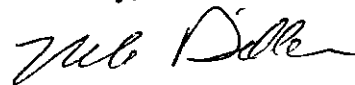
Travel Question by Representative Keith Kempenich

In reviewing our budget request, Representative Kempenich was interested in what caused us to request an optional increase of \$42,509 in travel dollars for the Testing, Licensing and Certification program. We indicated that it was related to the rail complaint case but that was only partially correct.

The commission budgeted an additional \$20,000 in travel costs related to the rail rate complaint and \$22,509 related to the restoration of the weights and measures inspector position initially given up to submit a hold-even budget. Please note that the executive recommendation reinstated the position but does not include the \$22,509 for travel costs related to the position.

Please advise if additional information is needed.

Sincerely,



Mike Diller
Director of Accounting

Cc: Rep. Mike Timm, Vice Chairman
Rep. Keith Kempenich
Rep. Joe Kroeber
Rep. Blair Thoreson
Rep. Clark Williams
Sandy Paulson, OMB
Don Wolf, Legislative Council

STATE AGENCY 2003-05 BIENNIUM SALARY INCREASE SURVEY

Agency

Public Service Commission

1. Number of authorized FTE for the 2003-05 biennium? | 41.00 |

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If yes, please provide:
 - a. The date the salary increases were provided (i.e. July 2003 salary increase, paid August 2003) | Effective July 1, 2004 |

 - b. The number of employees who received salary increases | 8.00 |

 - c. The average salary increase in terms of percentage | 6.6% |

 - d. The reason for the salary increases
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H. B. 1008

Presented by: Illona A. Jeffcoat-Sacco
Executive Secretary

Before: Senate Appropriations Committee
Honorable Ray Holmberg, Chairman

Date: 28 February 2005

TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, Executive Secretary of the Public Service Commission. The Commission asked me to appear here today in support of HB 1008. Commissioner Susan Wefald and Commissioner Kevin Cramer are here in support of our testimony. Commission President Tony Clark is out of town but wanted me to indicate his support. Also with us are a number of our division directors. Thank you for the opportunity to meet with you to discuss our operations, statutory mandates, and resource needs.

We believe that the Governor's executive budget recommendation, as revised by the House, provides us with the resources we need and we urge your favorable support of the budget that is before you.

Mr. Chairman and committee members, except for a couple of specific items, which I will discuss later, this is largely a status quo budget proposal. The Commission is not proposing any new programs or asking for any additional FTEs. We do not, however, want to leave you with the impression that the Commission is a status quo agency – it definitely is not.

The Commission's main areas of responsibility, which are well known to you, include:

- Regulation of telephone, electric, and natural gas utilities;
- Pipeline safety inspections;
- Licensing and inspecting grain elevators and grain buyers, and licensing auctioneers;

- Testing and certifying weighing and measuring devices;
- Overseeing coal mining and reclamation;
- Eliminating hazards at abandoned mine sites;
- Siting power plants, power lines, and pipelines; and
- Representing state rail interests in federal proceedings.

Despite few changes in jurisdiction, the Commission has been immersed in a rapidly changing regulatory environment, some of which is mandated by federal and state statutory changes and some of which is related to structural changes within the industries with which the Commission interacts. The Commission has met its challenges in a variety of ways and with a very small staff. For example, the Commission has taken part in several multi-state collaborative efforts to process industry applications and to participate in federal proceedings.

Public Utilities

The Public Utilities Division protects the public interest by promoting the provision of safe, reliable and high quality utility services, educating consumers regarding their rights and responsibilities as purchasers of both monopoly and competitive utility services and assisting in resolving problems. The division implements the state's energy facility siting law to ensure environmentally sound energy development with minimal adverse effects. Projects and cases processed by the division include:

- Continuing evolution of federal telecommunications mandates, including ongoing oversight and facilitation of the wholesale telecommunications market and the transition to competitive services.
- Participation in the establishment of a Midwest Independent Transmission System Operator and the development of a regional wholesale electric market.
- Performance Based Ratemaking (PBR) to provide efficiency incentives for regulated utilities.
- Regulating the rates, terms and conditions of retail gas and electric service by investor owned utilities.
- Directing and enforcing safety requirements for electric service provided by all utilities.

- Wind and coal power generation, and electric and pipeline transmission siting activities, to ensure compatibility with environmental preservation and the efficient use of resources.
- Beginning the Wireless Initiative intended to improve the quality of wireless services to customers in North Dakota, receiving 463 contacts concerning 1,100 locations across the state. Of those locations, 184 cities and 305 rural locations were identified.

The Commission will continue efforts to educate consumers and competitors about the evolving utility marketplaces and the changing role of regulation, striving to identify and implement ways to lessen the regulatory burden on companies while strengthening and preserving necessary consumer protections. The relationships between utilities and the management and allocation of costs will continue to challenge us and those with whom we do business. Regional impacts and environmental priorities and concerns will contribute to the challenges facing policymakers, regulators and interested parties.

All these public utility efforts have been undertaken with a staff of approximately 5 FTEs and one attorney – by far the smallest staff of any regulatory commission in the country.

Licensing

The Licensing Division oversees the licensing and bonding of all the grain elevators and grain buyers in North Dakota and processes all grain elevator insolvency cases. The division also oversees all auction matters. The division is comprised of a director, two inspectors and a part time licensing assistant to help with the auction matters. Some major accomplishments during the biennium include:

- Creation and implementation of the credit sale contract indemnification fund.
- Continuing efforts to maintain state jurisdiction over merchandising despite attempts to preempt state protections at federally licensed grain warehouses.
- Completion of nearly 375 grain warehouse and 40 roving grain buyer inspections.

One new expense item that is included in the PSC executive budget is for an upgrade in the computer software utilized by our Licensing Division. This item is a one-

time \$19,500 expense included in the operating line item. The new software will significantly improve the effectiveness of our field staff. In addition to gaining a significantly improved program, we also face the loss of system support on our current version due to incompatibility.

Testing and Safety

The North Dakota Public Service Commission's Testing and Safety Division has three main areas of responsibility: Its Weights and Measures Inspection Program, its Metrology Program, and its Gas Pipeline Safety Inspection Program.

Weights and Measures Inspection Program

The Weights and Measures Program is designed to meet the needs of both the buyer and seller in the commercial marketplace. This program is accomplished through the enforcement of the state's weights and measures laws via the inspection and testing of commercial weighing and measuring devices such as supermarket scales, grain elevator truck scales, livestock scales, and gas station pumps, etc. Some of the accomplishments of the program during the biennium include:

- Testing and inspecting 23,625 commercial devices from July 1, 2003 to December 31, 2004.
- Conducting quality control testing and monitoring the documentation of 86 weighing or measuring devices installed or serviced by the state's registered service companies.
- Depositing revenues totaling \$472,318 to the general fund as a result of the above testing during that time period.

Metrology Program

An integral part of the division is the metrology program. All of the field standards used by state inspectors and private service providers are certified in our metrology laboratory. The laboratory also offers certification services to other interested parties including the Federal Grain Inspection Service, Team Torque Laboratory, Bobcat, North Dakota Highway Patrol and the United States Customs Service. The certification process uses intricate balances and measuring vessels to compare the state's working standards to all of the field standards. The state's metrology laboratory

is currently housed in the southwest corner of the Capitol Maintenance Shop located adjacent to the State Capitol in Bismarck. This laboratory is certified by the United States Department of Commerce's National Institute of Standards and Technology (NIST).

As a result of the 2004 NIST laboratory audit, North Dakota is in jeopardy of losing its certification as a NIST-approved tolerance testing laboratory. The audit showed that the physical condition of the building housing the laboratory was not to NIST standards and that certain balances used for tolerance testing were either wearing out or unable to meet tolerance testing specifications. Efforts are currently underway to mitigate those noncompliances. The most significant impact is an additional \$70,000 rent expense for a new metrology building which is included in the commission's executive budget recommendation. Without this new lab, we will be unable to maintain NIST certification and therefore will be unable to continue this program.

The consequences of losing NIST certification are great. Both public and private standards must be recertified annually. Loss of state certification will force industry to go out of state to find another certified lab, which will result in additional costs to these service providers. These providers will have no choice but to pass on these increased costs to their customers.

Pipeline Safety Inspection Program

The Commission is granted regulatory jurisdiction over the safety of North Dakota gas utility distribution and transmission facilities under state law. The Commission enters into an agreement with the United States Department of Transportation (USDOT) annually which grants the state authority to conduct the federal gas pipeline safety program. As part of this agreement, a portion of the cost of the North Dakota Gas Pipeline Safety Program is funded by the federal government.

Reclamation

The Commission's Reclamation Division is responsible for ensuring that active coal mining is carried out in an environmentally sound manner and that mined lands are adequately reclaimed. There are currently four large and two small coal mines

operating in North Dakota and they produce about 31 million tons of coal annually. There are nearly 100,000 acres of land presently under permit and between 1,500 and 2,000 acres of land are disturbed and reclaimed each year in North Dakota. The disturbed and reclaimed acres are monitored by the Commission to ensure compliance with state reclamation laws.

One new budget item added to the Commission's budget as recommended by the Governor includes additional state and federal funds for North Dakota to join the Interstate Mining Compact Commission (IMCC) as a full member. This is a \$25,000 addition, about two-thirds of which is federal funds. Very similar to the Interstate Oil and Gas Compact Commission which North Dakota has been a member since the early 1950's, the IMCC is a multi-state organization that represents its member states on mining and related environmental issues and provides a forum for interstate communication and action on issues of concern. A vast majority of the IMCC's efforts pertain to coal related issues at the federal level that involve the Office of Surface Mining and other federal agencies. North Dakota has been an associate member of the IMCC for about five years and its by-laws limit associate memberships to a maximum of five years. The Commission introduced HB 1166 to join the Interstate Mining Compact as a full member and, if approved, the IMCC dues would be paid out of the Reclamation Division's operating budget.

Abandoned Mine Lands

The mission of the Abandoned Mine Lands (AML) Division is to reclaim abandoned coal mine lands that pose a hazard to the health, safety and general welfare of the public. Sites eligible for reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977(SMCRA) include areas mined for coal that were disturbed prior to the existence of any state or federal law. These sites are prioritized on the basis of perceived hazard and reclaimed based on priority and availability of funds. The AML program is 100 percent federally funded. If you are interested in the specific sites being reclaimed presently, we would be happy to provide you with that information.

The funding source for the AML program comes from a federal reclamation fee that is assessed to all active coal mines. North Dakota coal companies currently pay

about 3 million dollars (10 cents/ton) per year into the federal AML fund and the Commission receives roughly half of the money back for funding North Dakota's AML program.

Administration

The budget before you today is predicated on the assumption the PSC's current exemptions from IT consolidation will remain in effect. IT increases currently included into the budget are Connect ND costs of \$13,986, email storage upgrade costs of \$12,000, Enterprise Forms Management costs of \$3,000, and Virtual Private Network upgrade costs of \$3,500. Should further consolidation occur, ITD has offered the Commission rates under a four year pilot project which would require an addition to our budget of \$22,224. This amount is substantially lower than would be needed under ITD's published rates.

The PSC foresees many unacceptable consequences from IT consolidation. The agency will be unable to quickly and economically acquire new IT products needed to interface with our business partners. It will lose flexibility in daily operations. It will lose the ability to efficiently customize its IT infrastructure. Consolidation will diminish our ability to leverage and integrate federal IT equipment, software, and training. This is the reason we requested and received an exemption from mandatory IT consolidation in SB 2037.

Summary

Of the Commission's overall budget as passed by the House, about 51 percent comes from federal sources, 37 percent is general fund money, and 12 percent is special funds. The Commission generates about \$1.1 million per biennium in income from statutory license and inspection fees. Indirectly, this income covers about 28 percent of the general fund money that is being requested in H.B. 1008.

The Commission recorded nearly 2,200 complaints and inquiries during the current biennium. The vast majority of these concerned traditional public utility services, but many involve matters such as grain elevator operations, mining, and weights and measures.

During the current biennium, the Commission processed 1,061 cases. The Commission attempts to process these cases as quickly and at as low a level of formality as possible. As a result, over 98 percent of these cases were processed without the need for a formal hearing and nearly two-thirds were processed and closed in less than thirty days. Only 20 of these cases required formal hearings, several of which were mandated by state law.

The Commission's staff has been reduced in size from 60 FTEs over twenty years ago to 41 today. This has been accomplished despite very few changes in jurisdiction.

Finally, Mr. Chairman, I want to discuss one new item in the budget because it is likely to generate a fair amount of discussion. It relates to the \$1,200,000 to fund a rail rate complaint case.

Rail Rate Complaint

North Dakota's rail rates on grain are among the highest in the country. It costs more to ship corn from North Dakota to Seattle than it does to ship exactly the same amount of corn several hundred miles further from Iowa to the same destination. Similarly, the rates on shipments of North Dakota wheat to Portland, Oregon, are higher than the rates on wheat shipped from Kansas and Nebraska, even though the trip from North Dakota is several hundred miles shorter.

Keeping this money in the state would be a great boost to our rural economy. But to finally establish meaningful rate relief for smaller shippers, state action will be required.

Initiating rate cases before the Surface Transportation Board (STB) is nothing new. Numerous coal hauling electric utilities have done so over the years. Unfortunately, this type of proceeding is expensive – in the neighborhood of \$3-5 million in expense, and 3-5 years of litigation. This has precluded smaller shippers from pursuing the relief to which they are entitled under federal law.

In response to the intense criticism the STB has received from Congress over this lack of viable relief the STB initiated a new process by which a rate case could be

filed – known as a simplified proceeding. The environment for filing a rate complaint case is more favorable now than it has been since the federal Staggers Rail Act was passed back in 1980.

Last session the legislature authorized the PSC to spend up to \$250,000 to begin the leg-work on just such a case. The primary findings of the report are as follows:

- Market dominance can be proven. Before the STB will hear the merits of any rate dispute, complainants must first prove that whatever shipment routes are being challenged are truly captive to the railroad.
- Rates are challengeable. In order for rates to be challenged, the railroad must earn more than \$1.80 in revenue for every dollar in variable cost. Captive locations investigated in the study indicated revenues in the neighborhood of \$3 – \$4 in revenue for every \$1 in variable cost.
- The simplified method of filing a case is a reasonable alternative to a full stand alone cost proceeding (the type traditionally used by larger shippers).

Depending upon the origin, destination, type of movement and other factors, the PSC believes that reductions of approximately 10 to 40 cents per bushel might be achievable for the shipper selected as the “poster-child” case.

The “simplified” process is untested but it appears that the STB is anxious to entertain a complaint under this process. Given its untested nature, agency and court appeals are considered likely. Estimates are in the \$800,000 to \$1 million range for a first case, but substantially less per case after the first case precedent is established. Proceeding time estimates for the first case are 18-24 months, but much less for subsequent cases. The great advantage of, and indeed the reason for bringing a simplified case, would be that a new avenue of relief would be opened for agricultural shippers. In future years, it could make it much more feasible for shippers to bring their own successful cases without state support. It would also finally put the railroads in a position of needed to set rates in good faith. Currently they have little incentive to even consider the complaints of small shippers.

If the commission receives this funding, the study indicated the following is a likely timetable:

- See testimony given to House Govt Operations on 1/13/05*
- Mid 2005 - Funding becomes available & counsel/consultants are hired
 - Mid - Late 2005 - Prepare case
 - Early 2006 - Complaint filed with STB
 - Mid & Late 2006 - Process proceeds before STB
 - Early 2007 - Decision rendered

Mr. Chairman, this concludes our testimony.

Attached are:

1. Schedule required by Section 34 of 2003 Senate Bill 2015 showing revenue and expenditures for our two continuing appropriation funds,
2. Executive Summary from the Rail Rate Investigation,
3. PSC organizational chart, and
4. 2003-2005 Biennium Salary Increase Survey.

We would be happy to answer any questions you might have.

#1
H. App. G.O.
Lm F. Comm.
Rep. K. Kempner
mon. 4/18/05

The Public Service Commission was created to provide state protection to the people of North Dakota.

- Many of the industries since the agency's creation have become deregulated.
- In other industries formerly regulated by the commission, either technology or federal preemption have eliminated the agency's jurisdiction.

The Legislative Council may study the evolution of responsibilities of the commission since its inception. The study should determine what additional duties have been given to the commission and those duties no longer performed.



Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

Honorable Ron Carlisle, Chairman
House Government Operations Division
600 E Boulevard Ave
Bismarck, ND 58505

January 21, 2005

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TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

Re: Information Requested by Rep. Kempenich
H.B. 1008

Dear Chairman Carlisle,

Attached are documents requested by Representative Kempenich.

Please note that the attached documents are Excel worksheets developed internally. The PeopleSoft financials available to the commission do not adequately depict our financial status.

In particular, adjustments must be made to properly reflect indirect cost recoveries from the federal government as funding sources rather than negative operating fees and services. The amount of indirect cost recoveries included as a negative operating expense was provided by Jill Schafer, OMB.

In addition, it is necessary to make adjustments to exclude the rail rate complaint costs included in operating expenses which were special fund appropriated. My adjustment in this regard removes the operating expenses associated with the rail investigation and moves them to the rail fund line item authority as appropriated by the 2003 legislature.

Please note that I have included notes to explain some of the larger variances between budgeted and actual expenditure levels. The first four attachments represent each of our budget cost centers and the final sheet is a total agency summary. Please let me know if I can be of further assistance.

Sincerely,

Mike Diller
Director of Accounting
Public Service Commission

Public Service Commission
Financial Statement for 18 Months Ending December 31, 2004
Administration

	Budget	Actual Expenditures	Budget Excess (Deficiency)	Note
Salaries and Wages	\$834,908	\$844,255	(\$9,348)	
Fringe Benefits	244,328	250,249	(5,921)	
Salaries and Fringe Benefits	\$1,079,236	\$1,094,504	(\$15,268)	
I.T. - Data Processing	\$34,453	\$32,888	\$1,565	
I.T. - Telephone	28,333	25,007	3,326	
Travel	40,658	34,709	5,949	
I.T. - Software/Supplies	22,667	35,436	(12,769)	A)
I.T. - Equipment Under \$5,000	28,609	15,052	13,557	A)
Other Equipment Under \$5,000	3,124	5,071	(1,947)	
Postage	6,163	3,202	2,961	
I T Contractural	21,268	15,851	5,417	
Lease/Rentals - Equipment	7,360	0	7,360	B)
Lease/Rentals - Buildings/Land	0	0	0	
Dues & Professional Development	22,738	23,575	(838)	
Operating Fees & Services	7,367	3,800	3,567	
Repairs	2,833	3,595	(762)	
Professional Services	638	2,900	(2,263)	
Insurance	8,425	12,374	(3,949)	
Office Supplies	12,077	8,695	3,382	
Printing	7,498	5,344	2,154	
Professional Supplies & Material	6,163	3,589	2,574	
Food & Clothing	0	0	0	
Buildings, Grounds, Vehicle Supplies	213	(10)	223	
Misc. Supplies	3,185	477	2,708	
Operating Expenses	\$263,770	\$231,555	\$32,215	
Equipment	\$26,258	\$8,844	\$17,414	C)
Grants	\$0	\$0	\$0	
AML Contractual Services	\$0	\$0	\$0	
Rail Fund	\$0	\$0	\$0	
TOTAL LINE ITEM AUTHORITY	\$1,369,264	\$1,334,903	\$34,361	
General Fund	\$1,070,742	\$1,013,958	\$56,784	D)
Federal Fund	298,522	320,945	(22,423)	D)
Special Fund	0	0	0	
TOTAL FUNDING AUTHORITY	\$1,369,264	\$1,334,903	\$34,361	

A) these two accounts offset each other. Negative balance in software due to recent procurement of Software Assurance. Expenditures are sporadic so variances fluctuate widely.

B) Purchased copier making lease payments no longer necessary.

C) Purchased high speed disk storage. Budget remaining for high speed copier and tape storage.

D) The G.F. budget is offset by indirect cost recoveries from the federal government and to date the commission has collected \$22,423 more from the feds than was budgeted.

Public Service Commission
Financial Statement for 18 Months Ending December 31, 2004
Testing, Licensing & Certification

	Budget	Actual Expenditures	Budget Excess (Deficiency)	Note
Salaries and Wages	\$563,718	\$571,830	(\$8,112)	
Fringe Benefits	195,697	199,275	(3,578)	
Salaries and Fringe Benefits	\$759,415	\$771,105	(\$11,690)	
I.T. - Data Processing	\$0	\$0	\$0	
I.T. - Telephone	2,656	2,398	258	
Travel	207,731	215,408	(7,677)	A)
I.T. - Software/Supplies	963	368	595	
I.T. - Equipment Under \$5,000	0	2,096	(2,096)	
Other Equipment Under \$5,000	17,248	4,277	12,971	B)
Postage	5,135	5,474	(339)	
I T Contractural	0	1,200	(1,200)	
Lease/Rentals - Equipment	0	0	0	
Lease/Rentals - Buildings/Land	2,833	2,592	241	
Dues & Professional Development	1,204	2,219	(1,015)	
Operating Fees & Services	4,002	5,065	(1,063)	
Repairs	2,338	4,200	(1,863)	
Professional Services	2,621	9,795	(7,174)	C)
Insurance	921	3,009	(2,088)	
Office Supplies	708	112	596	
Printing	4,285	2,396	1,889	
Professional Supplies & Material	496	313	183	
Food & Clothing	1,700	1,103	597	
Buildings, Grounds, Vehicle Supplies	0	363	(363)	
Misc. Supplies	1,983	6,025	(4,042)	
Operating Expenses	\$256,825	\$268,413	(\$11,588)	
Equipment	\$0	\$0	\$0	
Grants	\$41,250	\$38,715	\$2,535	
AML Contractual Services	\$0	\$0	\$0	
Rail Fund	\$187,500	\$226,624	(\$39,124)	D)
TOTAL LINE ITEM AUTHORITY	\$1,244,990	\$1,304,857	(\$59,867)	
General Fund	\$972,284	\$997,866	(\$25,582)	E)
Federal Fund	85,206	80,367	4,839	
Special Fund	187,500	226,624	(39,124)	D)
TOTAL FUNDING AUTHORITY	\$1,244,990	\$1,304,857	(\$59,867)	

A) Travel costs up due to higher tandem axle truck rates.

B) Remaining budget will be used to upgrade weights and measures equipment.

C) Deficiency due to unexpected A.G. legal fees for grain elevator insolvency.

D) Deficiency due to timing of expenditures--\$250k provided for initial rail rate complaint investigation

E) Deficiency due to higher allocated wages and higher than budgeted operating expenses.

Public Service Commission
Financial Statement for 18 Months Ending December 31, 2004
Public Utilities

	Budget	Actual Expenditures	Budget Excess (Deficiency)	Note
Salaries and Wages	\$411,551	\$364,671	\$46,880	
Fringe Benefits	116,307	103,847	12,460	
Salaries and Fringe Benefits	\$527,858	\$468,518	\$59,340	A)
I.T. - Data Processing	\$0	\$0	\$0	
I.T. - Telephone	0	8	(8)	
Travel	7,225	12,786	(5,561)	B)
I.T. - Software/Supplies	0	0	0	
I.T. - Equipment Under \$5,000	0	0	0	
Other Equipment Under \$5,000	0	0	0	
Postage	6,076	5,679	397	
I T Contractural	0	0	0	
Lease/Rentals - Equipment	0	0	0	
Lease/Rentals - Buildings/Land	0	35	(35)	
Dues & Professional Development	6,588	2,775	3,813	B)
Operating Fees & Services	15,510	18,395	(2,885)	
Repairs	142	0	142	
Professional Services	88,542	63,673	24,869	C)
Insurance	0	0	0	
Office Supplies	213	65	148	
Printing	71	384	(313)	
Professional Supplies & Material	2,125	2,129	(4)	
Food & Clothing	0	95	(95)	
Buildings, Grounds, Vehicle Supplies	0	0	0	
Misc. Supplies	708	34	674	
Operating Expenses	\$127,199	\$106,058	\$21,141	
Equipment	\$0	\$0	\$0	
Grants	\$0	\$0	\$0	
AML Contractual Services	\$0	\$0	\$0	
Rail Fund	\$0	\$0	\$0	
TOTAL LINE ITEM AUTHORITY	\$655,056	\$574,576	\$80,480	
General Fund	\$566,515	\$519,580	\$46,935	D)
Federal Fund	0	0	0	
Special Fund	88,542	54,996	33,546	E)
TOTAL FUNDING AUTHORITY	\$655,056	\$574,576	\$80,480	

- A) Excess due to temporary vacancy and restructuring of division.
B) Travel is budgeted in conjunction with professional development.
C) Lower than budgeted expenditures for evaluating telephone and rate increase applications.
D) Primarily due to A) above.
E) Primarily due to C) above.

Public Service Commission
Financial Statement for 18 Months Ending December 31, 2004
Reclamation

	Budget	Actual Expenditures	Budget Excess (Deficiency)	
Salaries and Wages	\$938,222	\$924,874	\$13,348	
Fringe Benefits	273,894	267,581	6,313	
Salaries and Fringe Benefits	\$1,212,116	\$1,192,455	\$19,661	A)
I.T. - Data Processing	\$0	\$0	\$0	
I.T. - Telephone	2,125	1,671	454	
Travel	80,814	87,183	(6,369)	
I.T. - Software/Supplies	3,188	904	2,284	
I.T. - Equipment Under \$5,000	0	6,288	(6,288)	
Other Equipment Under \$5,000	0	648	(648)	
Postage	3,248	2,494	754	
I T Contractural	0	348	(348)	
Lease/Rentals - Equipment	2,125	0	2,125	
Lease/Rentals - Buildings/Land	47,458	52,490	(5,032)	
Dues & Professional Development	6,765	6,949	(184)	
Operating Fees & Services	33,880	31,059	2,821	
Repairs	708	548	160	
Professional Services	5,667	3,247	2,420	
Insurance	89	451	(362)	
Office Supplies	1,243	472	771	
Printing	2,479	2,588	(109)	
Professional Supplies & Material	3,542	1,325	2,217	
Food & Clothing	567	65	502	
Buildings, Grounds, Vehicle Supplies	1,771	27	1,744	
Misc. Supplies	4,599	1,871	2,728	
Operating Expenses	\$200,266	\$200,628	(\$362)	
Equipment	\$0	\$0	\$0	
Grants	\$5,250	\$3,663	\$1,587	
AML Contractual Services	\$2,751,369	\$1,728,791	\$1,022,578	B)
Rail Fund	\$0	\$0	\$0	
TOTAL LINE ITEM AUTHORITY	\$4,169,000	\$3,125,537	\$1,043,463	
 General Fund	 \$279,403	 \$298,638	 (\$19,235)	
Federal Fund	3,889,598	2,826,899	1,062,699	C)
Special Fund	0	0	0	
TOTAL FUNDING AUTHORITY	\$4,169,000	\$3,125,537	\$1,043,463	

A) Due to underspending related to federal part-time position.

B) AML program not fully funded by Congress limiting construction activities.

C) See A) and B) above.

Public Service Commission
Financial Statement for 18 Months Ending December 31, 2004
Total Agency

	<u>Budget</u>	<u>Actual</u> Expenditures	Budget Excess (Deficiency)
Salaries and Wages	\$2,748,398	\$2,705,630	\$42,768
Fringe Benefits	830,226	820,952	9,274
Salaries and Fringe Benefits	\$3,578,624	\$3,526,582	\$52,042
 I.T. - Data Processing	 \$34,453	 \$32,888	 \$1,565
I.T. - Telephone	33,115	29,084	4,031
Travel	336,428	350,086	(13,658)
I.T. - Software/Supplies	26,818	36,708	(9,891)
I.T. - Equipment Under \$5,000	28,609	23,436	5,173
Other Equipment Under \$5,000	20,372	9,996	10,376
Postage	20,622	16,849	3,773
I T Contractural	21,268	17,399	3,869
Lease/Rentals - Equipment	9,485	0	9,485
Lease/Rentals - Buildings/Land	50,292	55,117	(4,825)
Dues & Professional Development	37,294	35,518	1,776
Operating Fees & Services	60,759	58,319	2,440
Repairs	6,021	8,343	(2,322)
Professional Services	97,467	79,615	17,852
Insurance	9,434	15,834	(6,400)
Office Supplies	14,241	9,344	4,897
Printing	14,333	10,712	3,621
Professional Supplies & Material	12,325	7,356	4,969
Food & Clothing	2,267	1,263	1,004
Buildings, Grounds, Vehicle Supplies	1,983	380	1,603
Misc. Supplies	10,476	8,407	2,069
Operating Expenses	\$848,060	\$806,654	\$41,406
Equipment	\$26,258	\$8,844	\$17,414
Grants	\$46,500	\$42,378	\$4,122
AML Contractual Services	\$2,751,369	\$1,728,791	\$1,022,578
Rail Fund	\$187,500	\$226,624	(\$39,124)
TOTAL LINE ITEM AUTHORITY	\$7,438,311	\$6,339,873	\$1,098,438
 General Fund	 \$2,888,944	 \$2,830,042	 \$58,902
Federal Fund	4,273,325	3,228,211	1,045,114
Special Fund	276,042	281,620	(5,578)
TOTAL FUNDING AUTHORITY	\$7,438,311	\$6,339,873	\$1,098,438



Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

4
H. App. G.O.,
Comm. Work
1131105
Re: HB 1008

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
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31 January 2005

Honorable Ron Carlisle, Chairman
House Government Operations Division
600 East Boulevard Avenue
Bismarck, ND 58505

Re: House Bill No. 1008

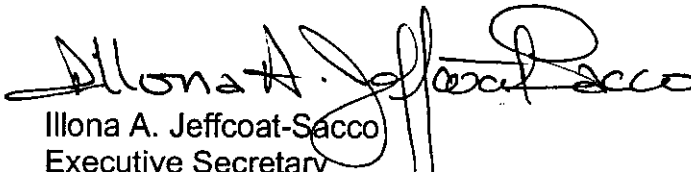
Dear Representative Carlisle:

Thank you for providing us the opportunity to further discuss our budget and respond to your questions.

Attached is a copy of a letter we received from ITD containing their estimate of costs through June 2009 if the PSC's consolidation exemption is revoked at the end of this biennium. The estimate is based on ITD viewing this matter as a pilot project and not on the IT rate schedules that we used to prepare our original budget estimates. Please note that ITD cannot commit to rates beyond the 2007-2009 biennium.

If you have any questions, please do not hesitate to call.

Sincerely,


Illona A. Jeffcoat-Sacco
Executive Secretary
Public Utilities Director

Enclosure

C: Mike Timm, Vice Chairman
Blair Thoreson
Clark Williams
Mike Ressler

Keith Kempenich
Joe Kroeber
Curtis Wolfe
Dan Sipes

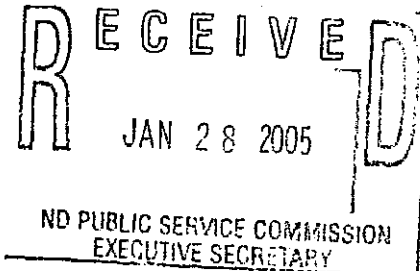


Information Technology Department

600 E Boulevard Ave., Dept 112 • Bismarck, ND 58505-0100 • (701) 328-3190

January 27, 2005

North Dakota Public Service Commission
Steve Kahl, Data Processing Administrator
600 E Boulevard Ave – Dept 408
Bismarck, ND 58505-0480



Dear Steve,

This letter is intended to clarify the hosting costs ITD would charge the Public Service Commission (PSC) for the services the PSC presented to the House Government Operations Division. The scenarios presented below assume hosting services for two dedicated file and print servers and associated storage of 6TB of data with data archive capacity. In order to make a more accurate comparison the hosting scenarios cover a 4 year period and include ITD estimates of PSC equipment replacement costs and staffing time that might be allocated to the services noted above. ITD's estimates of the PSC's internal costs do not include any indirect costs such as training, equipment insurance or other miscellaneous costs. Per earlier conversations we understand the staff time included in the ITD estimates is slightly higher than the PSC's own estimates. However the ITD estimates are consistent with assumptions used in the consolidation process this biennium. We have not presented a scenario utilizing ITD's shared file server environment since the PSC has indicated that the Federal Office of Surface Mining may have issues with this type of hosting environment.

ITD's recommended hosting scenario would be for ITD to provide 2 dedicated file servers, 3TB of Apple Xserve RAID disk for direct attached storage and tape archiving capacity. ITD would purchase the disk and bill back PSC the price of the Apple Xserve RAID and associated tape archive equipment. The file servers, disk and tape would be located at the PSC with overall administration performed by ITD and application administration performed by the PSC. Before buying a remote tape archive system ITD would evaluate the costs of using the centralized tape archive solution over four years based on PSC's projected growth rates for storage.

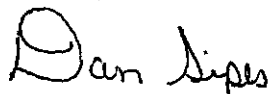
This scenario is similar to the option presented by ITD in August of 2004. As noted in our earlier correspondence this first scenario continues to invest in a technology partner that does not fit with ITD's current storage strategy and future storage purchases may not be able to leverage the Apple investment. However given that the PSC recently invested in Apple storage it appears to be the best option over the next four years.

Until IBM price points for this type of storage come down ITD feels it would be better to defer an IBM solution and revisit an IBM solution or the cost of using ITD's SAN storage when the PSC needs additional storage capacity beyond the needs discussed in this letter.

Over four years estimated hosting costs from ITD are \$65,448 versus ITD estimated PSC costs of \$62,187. I have attached a schedule showing the breakdown of the estimated hosting fees and ITD estimates of the PSC's internal costs. From our most recent conversations regarding the costs you included in your 2005-2007 budget you would need an additional \$22,224 in your 2005-2007 budget since you had not budgeted for the ITD hosting fees in your budget.

I would be happy to discuss any issues you or the Commissioners may have with the proposal. Thank you again for taking the time to work with us on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Dan Sipes".

Dan Sipes
Director, Administrative Services

attachment

Public Service Commission

Migration Billing Worksheet

Service / Cost Component	Units	Install Fee	Monthly Rate	ITD Hosting Cost 05-07	ITD Hosting Cost 07-09	PSC Budget 05-07	PSC Budget 07-09
File & Print - Dedicated Servers							
ITD Hosting Costs:							
Per Server Hosting Fee	2	-	350.00	16,800	16,800		
Per User Hosting Fee	55	-	2.00	2,640	2,640		
Estimated PSC Costs:							
Server Hardware						-	10,000
Operating System						-	930
Window Client Access Licenses						-	1,045
System Administration Time-use Gartner - 5% per server						12,700	12,700
Storage Costs - Remote Dedicated Storage							
ITD Hosting Costs (Pilot project rates):							
Storage Hardware	1	10,000	-	10,000	-		
Tape Archive Hardware	1	11,000	-	11,000	-		
Storage System Administration	2	-	58.00	2,784	2,784		
Estimated PSC Costs:							
Storage Hardware						10,000	-
Tape Archive Hardware						11,000	-
Storage System Administration - assume 1%						1,906	1,906
Total Biennium Estimate				<u>43,224</u>	<u>22,224</u>	<u>35,606</u>	<u>26,581</u>
Total 4 Year Cost					65,448		62,187
PSC Budget Adjustment							
Diff between ITD Hosting Costs and PSC Hardware/Software costs only				22,224	10,249		



Public Service Commission

State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Illona A. Jeffcoat-Sacco

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TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

January 18, 2005

Honorable Ron Carlisle, Chairman
House Government Operations Division
600 E. Boulevard Ave.
Bismarck, ND 58505

Re: Additional Testimony Regarding H. B. 1008

Dear Chairman Carlisle:

In response to your request at our budget hearing last Thursday, Ron Schlinger, Maintenance Supervisor for Tesoro Refinery in Mandan, provided us with the attached testimony to be forwarded to the committee.

Thank you again for the opportunity to discuss our budget with you. If you have any questions, please contact us.

Sincerely,

Illona A. Jeffcoat-Sacco
Executive Secretary
Director, Public Utilities Division

Enclosure

cc: Rep. Mike Timm, Vice Chairman
Rep. Keith Kempenich
Rep. Joe Kroeber
Rep. Blair Thoreson
Rep. Clark Williams

H. B. 1008

To: House Appropriations
Government Operations Division
Honorable Ron Carlisle, Chairman

Date: January 13, 2005

Testimony on Weights & Measures, Metrology Program

Mr. Chairman and committee members, I am Ron Schlinger, Maintenance Supervisor for Tesoro Refinery in Mandan. I have been in this position for the past 15 years, during which time I have had numerous contacts with the Department of Weights and Measures.

I would also like to state that as a customer of the Department of Weights and Measures, Metrology Program. I have been very satisfied with the quality of work performed and the professionalism of this Department. They truly have some dedicated employees.

My concern today is that the Metrology Program of this Department may be discontinued because of inadequate funding. Which I feel would be a significant loss to Tesoro Refinery and the State of North Dakota.

One of the services that is provided by the Metrology Program is calibration of Tesoro's 1000 gallon container. The State requires that the meters are calibrated plus or minus 3 gallons per 1000 gallons. Tesoro's specifications are much more stringent, plus or minus 2 quarts per 1000 gallons.

Shipping this container out of state for calibration would definitely cost more. That is not our main concern though. The reliability of the container and equipment on the container would be questionable after shipping 900 miles round trip. Tesoro's goal is to give our customers the most accurate volume of product possible.

Tesoro would appreciate committee members considering the funding needed to keep the Metrology Program operational in a centralized location within the state, preferably Bismarck.

Thank You for your time and consideration.

Ron Schlenger

Ron Schlenger
Maintenance Supervisor
Tesoro Petroleum

Testimony of North Dakota Grain Dealers Association

HB 1008

January 13, 2005

Government Operations Division of ND House Appropriations
Rep Ron Carlisle, Chairman

Good morning Mr. Chairman and other members of the committee. I'm Brian Bjella, legal counsel for and appearing today on behalf of the North Dakota Grain Dealers Association. NDGDA is a 94 year-old trade association in which over 90% of the state's grain elevators hold membership. We speak in favor of the \$900,000 in the PSC budget for a formal rail rate complaint.

The question before you this morning is a simple one. Does North Dakota concede that it is OK for millions of dollars to be sucked out of our state through excessive railroad rates? If that is not OK, then let's try to do something about it.

North Dakota's rail rates, especially on wheat, are extremely profitable for the railroads. Some rates are at 400% of variable cost. Here's a dollars and cents example. The 110-car shuttle train rate on wheat from Berthold, ND to the Pacific Northwest is \$4,174 per car for 1,300 miles, \$3.21 per car-mile. (\$1.13/bushel) The shuttle rate on soybeans from Clarkfield, MN to the PNW, same weight for 1,750 miles, is \$3,300 per car, \$1.89 per car-mile.

Rest assured that BNSF is not hauling those soybeans at a loss. So their wallet is fattened considerably more by North Dakota wheat. In return for these high rates North Dakota gets no better service than BNSF customers paying lower rates, and often seems to be treated more unfairly. High rates

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HB 1008

reduce prices paid to farmers or make our wheat less competitive at destinations, or some of both. Being less competitive means less volume for elevators and farmers.

Berthold is one of the elevators that has made the multimillion dollar investment to load the big shuttle trains, as BNSF has been pressing for. Smaller shipment sizes pay even more, and usually get less timely service.

This rate complaint is about the base rates, but fuel surcharges are assessed on top of that, increasing the unfairness geometrically. At the December and January 9% fuel surcharge, that shuttle train of wheat from Berthold to the PNW pays \$41,000 in fuel surcharge alone. That shuttle train of soybeans from Clarkfield, MN pays less than \$33,000 in fuel surcharge for moving the same weight a third more distance. Can anyone think this is reasonable? Meanwhile the railroad says it is trying to recover only its extra cost. We have asked the BNSF to change this formula. They refused.

This railroad rate complaint is primarily a farmer issue. It has been said more than once that the farmer pays the freight. When freight rates go up we elevators must lower our bid to the farmers. Of course greater cost for our customers concerns us, and we are also affected. Higher freight rates make North Dakota grain less competitive in both domestic and foreign markets, meaning that our volumes are reduced.

This is certainly not a free market at work. It is a monopoly market. A regulatory relief mechanism has been established. As imperfect as that may be, we need to use it. More could be said about the skirmishes this state has had with railroads in the past, but let's leave it at that for now. We urge you to approve this budget with the \$900,000 for the rate complaint in it.

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H.A.P. 6.0.
H.B. 1008

Testimony of The Burlington Northern and Santa Fe Railway Company
Regarding Public Service Commission Budget Request
January 13, 2005

Good Morning. My name is Brian Sweeney, I am legislative counsel for BNSF and based in St. Paul, Minnesota. With me is Michael Roper, senior general attorney, from our headquarters in Fort Worth, Texas. Mr. Roper has experience with and has practiced before the Surface Transportation Board, or STB.

We are opposed to the requested appropriation of \$900,000 to be used to file a rate complaint with the STB for several reasons, which we will go into detail on later. First, we want to direct your attention to two charts that are attached to this testimony. Those charts show that our rates to haul grain from North Dakota to either the Pacific Northwest or Minneapolis remain essentially unchanged from 1981, the first year of partial rail rate deregulation. (The rates shown are from Devils Lake, and are typical of our North Dakota rates) They also show that had our rates simply been adjusted for inflation, they would be almost double what they are today. We are hard-pressed to think of many things that cost the same today that they did 23 years ago.

We would also like to note a couple of the things we have all heard regarding this matter for the past couple years, and point out that all of them are either inaccurate or meaningless in the context of a rate complaint.

For example, we have routinely heard that a rate complaint is necessary because North Dakota shippers pay higher rates than other shippers or pay more for shipping goods shorter distances than others do. Assuming all of that to be true, it would not be a violation of federal law, which specifically allows for differential pricing. We understand that nobody likes to pay what they believe is a higher rate than someone else pays, but that does not make it illegal.

We have heard repeatedly that a rate case would almost be a slam dunk, because the STB only allows railroads to charge 180 percent of their variable costs and BNSF has rates that are far in excess of that. Not only can we not predict how the STB would rule on any given set of facts, this is also a major mischaracterization of the law. In fact, the STB doesn't even have jurisdiction to review a rate unless it is AT LEAST 180 of variable costs. The federal law specifies that a rate is not in violation merely because it exceeds 180 percent. A copy of that law is attached to this testimony. This whole notion that rates are capped at 180 percent and everything over that is excessive is simply not so. In fact, rates well over 180 percent have been upheld, including grain rates charged by BNSF.

We have heard that the STB has "new rules" in place that make it easier, cheaper and faster for shippers to win cases and that the STB is asking for people to file complaints under those rules. We will go into this in more detail later, but at this point wish to note that the so-called "new rules" are now eight years old, have never been used, and that the STB is contemplating replacing them because many parties, including the advocates of this appropriation and their attorneys, claim those rules are sorely lacking.

BNSF opposes this appropriation for the following reasons:

1. The proponents have mischaracterized the law and prospects of winning relief, as noted above.
2. Pursuing a rate complaint would be even more costly and time consuming than the advocates have claimed.
3. The State is being asked to finance the legal test case for rules that even the proponents have said are not likely to give relief to shippers.
4. The State should not have taxpayers pay the costs for one private business to sue another.

As noted above, the jurisdictional threshold for the STB to review a rate has been routinely mischaracterized as the maximum rate a railroad can charge. The impression has been given that anything over 180 percent of variable costs is excessive, when in fact, federal law specifically says a rate is not excessive simply because it exceeds that threshold. The STB has on many occasions upheld rates that exceeded the 180 percent jurisdictional threshold. Among the rates upheld are grain rates charged by BNSF in Montana.

There are two possible routes for pursuing a rate case. The law is clear, however, that the Stand Alone Cost (SAC) methodology is to be used except in limited circumstances. BNSF would very likely contend that a rate case in North Dakota should be handled under these procedures. Cases filed under the SAC methodology take several years and cost millions of dollars, as the legal analysis done for the PSC states. For example, the "McCarty Farms" case, which was partially funded by the State of Montana, took 17 years and cost the State well over \$3 million. In the end, the State and the shippers lost. The length of time in that case was extreme, but one can expect a SAC case to take six years and cost several million dollars.

We have been told that the PSC will attempt to use the other route: the Small Shipper Rules (SSR). But it is not clear that the PSC will be able to use that methodology. These are the so-called "new rules" that are supposedly simpler, faster and cheaper. As we review the SSR route, ask yourselves this question: If the rules are so quick, simple and cheap, why hasn't any shipper, anywhere used them in the eight years they have been on the books?

The answer is that many parties, including the advocates of this appropriation and their attorneys, have pointed out that there are major problems with the rules. The history of the rules is that they were adopted in 1996. The rail industry challenged the rules in federal court. The court kicked them back to the STB, because nobody had yet filed a complaint under those rules, so the issue was not ripe. The rules have been waiting since then for someone to be the test case and pay the costs of a court challenge.

By the way, when the STB adopted the rules, the Board made it quite clear that it would not cap rates at the jurisdictional threshold of 180 percent of variable costs. As we noted before, if that's the result the proponents expect to get with this appropriation, it is simply not realistic.

The rail industry is not the only group that has problems with those rules. Last summer the STB held a hearing regarding whether the rules need to be overhauled or replaced. Joint testimony was given on behalf of the PSC, the Wheat Commission and the Grain Dealers Association. In that testimony they made the following observation:

"The existing simplified approach is overly complex, cost-prohibitive, and untested. The (STB) decisions appear to be incapable of yielding rate prescriptions near the reasonableness standards recognized by the Staggers Act, and they would likely be appealed."

The statement by the proponents that the STB decisions appear to be "incapable" of doing what they want raises the big question: What's the point of this appropriation? Even the heavily redacted report to the PSC by its outside legal firm notes, "However, it is important to note that the SRR standards are very unclear . . ." (Report to the North Dakota Public Service Commission Concerning an Investigation of Rail Rates on Grain, page 15)

Attached to this testimony is an article from the December 16, 2004 issue of EnergyWashington Week titled "Coal Interests Wary of STB Rate Rulings Favoring Railroads." According to that article, law firms that represent rail shippers before the STB point to recent STB rulings as "... further evidence of the board's trend toward favoring railroads in rate disputes . . ."

Given all of these negative comments, the representations being made by the proponents that a rate complaint would be a sure winner are quite surprising. Even they noted in their testimony to the STB last summer that winning a small-shipper case is far from a sure thing, especially because the rules remain untested after eight years, saying:

"As a result, there is at least a perception, if not a reality, that small rate cases may begin with a costly dispute regarding the eligibility of the complaining party. With the high known costs, probable procedural delays, uncertain approaches concerning non-CMP methodologies, and a wide range of prescriptive rate possibilities, it should not be surprising that no small shippers have approached the STB seeking rate relief."

Again, that was the proponents talking, not us. Yet now, we are being told something very different, that a complaint filed under these rules would be fast, cheap and a sure winner. We come back to the original question: If that's the case, why hasn't anybody, anywhere used the rules in the past eight years?

We also question the validity of the tactics the PSC plans to use. It is our understanding that the PSC hopes to win the first case for \$900,000, then piggyback on that to file other complaints for far less money, in the \$50,000 to \$100,000 range.

First, if that is the case, then groups of shippers could join forces and share the costs themselves, especially if this is really a "can't-lose" case. But we don't believe that tactic can even be employed. In its decision adopting the small shipper rules, the STB said,

"Under the simplified procedures, the rate reasonableness analysis is tailored to the revenue needs of the particular carrier(s) involved and to the relative demand elasticity of the particular traffic involved vis-a-vis the rest of that carrier's traffic base. *Thus, each rate complaint must be judged on its own merits and on its own record.*" (emphasis added)

The Board also did not adopt suggestions made by shippers that decisions under the simplified procedures have precedential effect. So we don't believe they can even do what they plan to do.

In conclusion, we believe this appropriation would be ill-advised. It is apparently based on a misinterpretation of law, a questionable legal strategy that involves hoped-for use of rules that even the proponents claim are so lacking they should be overhauled. We believe that a rate case will take far longer and cost the State far more money than anticipated. Because the rules are untested, there are almost certainly going to be long, expensive court appeals regarding the rules themselves, the ability of the shipper to use the rules and other issues. The only sure winners would be the lawyers hired by the State and by BNSF.

Energy Washington Week

exclusive news on national energy policy

Documents Today Fed Watch State Watch Inside Congress

Thursday, December 16, 2004

Coal Interests Wary Of STB Rate Rulings Favoring Railroads

Lawyers representing coal interests and other captive customers of the nation's freight-carrying railroads see three Surface Transportation Board (STB) rulings this week as further evidence of the board's trend toward favoring railroads in rate disputes -- a trend that could significantly increase overhead for the nation's coal-burning electric utilities. Lobbyists working the issue promise an aggressive effort to secure a congressional fix in the 109th Session, but acknowledge that their railroad lobby adversary -- a 150-year veteran of the Capitol's hallways and a single-issue industry -- has effectively halted such efforts in the past.

In most parts of the country, freight shippers have only one choice of railroad -- two eastern companies and two western companies dominate the entire country -- and while the industry is still exempt from anti-trust laws, shippers can challenge rail tariffs at the STB. Three such cases went before the board Dec. 13 -- Xcel Energy, Otter-Tail Power Company and Pacificorp were all arguing against rates set by Burlington Northern and Santa Fe Railway Company to transport coal from mine mouth to plant. The Otter Tail ruling was delayed, and neither of the other two resulted in substantial award for the companies.

"What we see in these cases is a continued trend toward STB favoring of railroads in rate disputes ... and it is being interpreted by Wall Street as a green light for the railroad companies to raise their rates for captive customers," said an attorney who works on the cases. "When Wall Street thinks you can do something and you don't, you're not doing your shareholders and you can bet on taking a pounding from the analysts."

Power company lawyers say the rate dispute process used to be an effective tool for captive shippers, but that a "sea change" at the STB has occurred in the last few years. These sources said three cases that played out in 2002 and 2003 involving Duke Energy and Carolina Power and Light are viewed as turning points. The STB deemed reasonable tariffs heightened by 50 percent in one of the cases, amounting to a \$50-million rate hike.

The shippers argue that their industries are being forced to play the role of *de facto* subsidizers of the railroads because of a differential pricing scheme whereby railroad's charge captive customers substantially higher rates than those customers who can choose between trucking, cargo ship or other methods of moving freight. The "variable cost" -- a measure of the price a railroad company charges as a percentage of the direct costs incurred in shipping -- is in the area of three times higher for captive coal, grain and chemical shippers.

Railroad companies revising the regulation could see to the demise of critical infrastructure.

"Like businesses throughout the economy, the railroads price their services on the basis of demand: shippers with the greatest demand for rail services pay higher margins than those shippers with lower demand," explained Edward Hamberger, American Association of Railroads president, at a congressional hearing last year. "Differential pricing may seem unfair or harsh. In fact, it is the fairest, most pro-efficiency and most pro-competitive pricing system consistent with the continued functioning of the railroads."

Last year, bills revising oversight of railroads were introduced in both chambers of Congress. Both bills received hearings but never made it out of committee.

1 of 1 DOCUMENT

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*** CURRENT THROUGH P.L. 108-498, APPROVED 12/23/04 ***
*** WITH GAPS OF 108-458, 108-484, 108-487 and 108-496 ***

TITLE 49. TRANSPORTATION
SUBTITLE IV. INTERSTATE TRANSPORTATION
PART A. RAIL
CHAPTER 107. RATES
SUBCHAPTER I. GENERAL AUTHORITY

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

49 USCS § 10707 (2004)

§ 10707. Determination of market dominance in rail rate proceedings

(a) In this section, "market dominance" means an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.

(b) When a rate for transportation by a rail carrier providing transportation subject to the jurisdiction of the Board under this part [49 USCS §§ 10101 et seq.] is challenged as being unreasonably high, the Board shall determine whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies. The Board may make that determination on its own initiative or on complaint. A finding by the Board that the rail carrier does not have market dominance is determinative in a proceeding under this part [49 USCS §§ 10101 et seq.] related to that rate or [for] transportation unless changed or set aside by the Board or set aside by a court of competent jurisdiction.

(c) When the Board finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, it may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. However, a finding of market dominance does not establish a presumption that the proposed rate exceeds a reasonable maximum.

(d) (1) (A) In making a determination under this section, the Board shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than 180 percent.

(B) For purposes of this section, variable costs for a rail carrier shall be determined only by using such carrier's unadjusted costs, calculated using the Uniform Rail Costing System cost finding methodology (or an alternative methodology adopted by the Board in lieu thereof) and indexed quarterly to account for current wage and price levels in the region in which the carrier operates, with adjustments specified by the Board. A rail carrier may meet its burden of proof under this subsection by establishing its variable costs in accordance with this paragraph, but a shipper may rebut that showing by evidence of such type, and in accordance with such burden of proof, as the Board shall prescribe.

(2) A finding by the Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that—

- (A) such rail carrier has or does not have market dominance over such transportation; or
- (B) the proposed rate exceeds or does not exceed a reasonable maximum.

HISTORY:

(Added Dec. 29, 1995, P.L. 104-88, Title I, § 102(a), 109 Stat. 815.)



Southwest Grain

Re: HB 1008
CHS, Inc. H-App-6.0.
3645 98th Ave. SW Mon. Jan. 31.05
Taylor, ND 58656
Tel: 701 483-6212
Fax: 701 483-6213
Email: jim.bobb@swgrain.com #3

January 28, 2005

To: Members of the North Dakota House Appropriation Committee

Regards: Support for funding a rate complaint case in House Bill 1008

From: Jim Bobb, grain Division Manager of Southwest Grain

I would like to make a few comments in regards to the disparity in freight rates charged to North Dakota producers of durum and spring wheat in comparison to all freight handled by the Burlington Northern Santa Fe. Southwest Grain, last year, loaded over 6,400 cars on the Burlington Northern Santa Fe railroad. This represents about 5% of North Dakota's durum and spring wheat production. So captive producers in Southwest North Dakota have a huge interest in this matter.

Burlington Northern Santa Fe Corporation's 2003 annual report recorded the following freight statistics relating to all freight: revenue per ton per thousand miles of \$18.27 per ton. Southwest Grain markets wheat in 110-car shuttle trains, currently the most cost effective freight rate available to both the Pacific Northwest and over Minneapolis. Wheat rates (in shuttles) to the Pacific Northwest creates revenue per ton per thousand miles of \$26.95, or 47% higher than the BNSF average. To Minneapolis the disparity is even greater with a freight rate of \$44.94 per ton per thousand miles.

Burlington Northern Santa Fe's management has publicly commented that the premium freight rate assessed on shipments of spring and durum wheat, over the other classes of wheat, is justified by the premium derived in the marketplace for quality. If this were the case, why wouldn't freight rates fluctuate in relationship to destination prices? Soybeans, in 2004, traded in excess of \$10 a bushel while freight rates stayed flat. *Don't be fooled it is competition!*

I'm asking that you give serious consideration to the Public Service Commission's request. I believe it is money well spent and if successful will be returned many times over.

Thanks for your time and I'm available for questions or comments.

Jim Bobb



NORTH DAKOTA GRAIN DEALERS ASSOCIATION

Re: HB1008
STEVEN D. STREGE, Executive Vice President
CHERYL WELLE, Executive Assistant
CONNIE LEIER, Administrative Assistant
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118 Broadway, 606 Black Bldg., Fargo, ND 58102
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STU LETCHER, Safety & Health Director
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P.O. Box 72, Hatton, ND 58240

HAL GRIEVE, Safety Specialist
Ph: 701-633-5256, Fax: 701-633-5258
204 4th Avenue S., Buffalo, ND 58011

January 29, 2005

TO: Members of the North Dakota House Appropriations Committee
FROM: (Steve Strege, Exec VP, ND Grain Dealers Association)
RE: HB 1008, specifically funding for a railroad rate complaint

The 110-car shuttle train rate on wheat from Berthold, ND to Pacific Northwest ports like Seattle and Portland is \$4,174 per car for 1,300 miles (\$3.21 per car-mile) (\$1.13 per bushel). The 110-car shuttle rate on soybeans from Clarkfield, MN to the PNW, same weight for 1,750 miles is \$3,300 per car, \$1.89 per car-mile. The cars and locomotives are interchangeable, moving over the same track to the same place. BNSF says the rate difference is because these are different markets. They're different all right, one might be a market; the other a monopoly.

The soybean rate from Berthold to the PNW is \$3,400 per car vs. the \$4,174 for wheat. Go figure. Then the BNSF adds a 9% fuel surcharge on top of the rates. They say this is only a "cost recovery mechanism". The total shipping cost on that wheat shuttle from Berthold is \$459,140 PLUS \$41,320 fuel surcharge, over half a million bucks for ONE train. The fuel surcharge on an identical weight train of soybeans is \$33,660. One of the Grain Dealers Directors asked BNSF Ag Products VP Kevin Kaufman at our recent convention: "Does wheat pull harder than soybeans?" He didn't answer the question.

BNSF says North Dakota is getting premium service for the premium rates we pay. BNSF says we are 14 days behind on cars. The elevator managers on my Board say it's more like 30. Granted, this is better than the 50 days of a year ago, but late instead of later is not premium service. One eastern North Dakota train loader reports the following ordered for/received dates: Dec 8/Jan 4, Dec 11/Jan 11, Dec 21/Jan 21, Jan 1/still waiting. BNSF has restricted or cut off for some months some of its car ordering programs. BNSF's own handout from our Jan 22 Board meeting showed North Dakota has the most late orders.

This state has endured this kind of thing long enough! It is time to do something about it! The BNSF indicates that \$900,000 for a rate complaint isn't enough. Well, if we take them at their word, maybe we should double the appropriation. I've heard that BNSF is saying this is another McCarty Farms case that will drag on and on. But the rules of engagement have changed in the past 25 years. We are looking at a case under the simplified guidelines that weren't in existence back then. The roadblocks of product and geographic competition measures have been removed. None of this guarantees victory, but the potential reward for the investment is great. The penalty for doing nothing is getting more of the same.

I will be happy to come and speak before your committee if you so desire.



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HB 1008

North Dakota Farm Bureau

**Testimony of John Mittleider
North Dakota Farm Bureau
Before the House Appropriations
Government Operations Division Subcommittee
Testimony on House Bill 1008**

www.ndfb.org

Brian
Krammer
for
John
Mittleider

Good morning Chairman Carlisle and members of the Committee. My name is John Mittleider and I am representing the 27,500 member families of North Dakota Farm Bureau. North Dakota Farm Bureau wishes to go on record supporting the North Dakota Public Service Commission's proposed appropriation of \$900,000 for the rail rate case. During our annual convention in November 2004 where our delegates decide upon policies for our organization, our members said one of their highest priorities for this Legislative Session was to garner the appropriation for the rail rate case.

Last Legislative Session, the Legislature saw the wisdom of investing \$250,000 toward a rail rate investigation. Numerous agricultural groups including Farm Bureau, Farmers Union, the North Dakota Grain Growers Association and the North Dakota Wheat Commission joined in that effort by providing partial funding for the study. That study is now completed and it reinforced what we believed to be the situation, and it also provided the fundamental criteria required before the Surface Transportation Board (STB) will hear a rail rate case. The preliminary rail rate investigation found that market dominance indeed exists within North Dakota. It also found that our rates are well beyond the STB threshold of rate reasonableness – in many instances two or more times the threshold level.

Undoubtedly, the excessive cost of shipping grain from North Dakota to markets is impeding our ability to capture market share, while at the same time reducing the value of those products to our farmers. We can ill afford to allow the railroads to continue their

One future. One voice.

monopolistic pricing practices. The agricultural community in North Dakota cannot afford to move forward on this case without State support. We believe the time is right for the State to step to the plate and move forward with a formal rail rate complaint case. We hope you concur and we urge a "DO PASS" recommendation for HB 1008 which includes the \$900,000 appropriation to pay for the cost of the rail rate complaint case.

Thank you for your attention and I will attempt to answer any questions you may have.

Testimony of Harlan Klein
North Dakota Wheat Commission
House Bill 1008 — House Appropriations Committee
(Government Operations Division)
January 13, 2005, 8:00.a.m., House Conference Room

4
1113105
H.App. 6.0.
HB 1008

Chairman Carlisle and members of the Government Operations Appropriations Subcommittee, I am Harlan Klein, a farmer and rancher from Elain, North Dakota. At this time I serve as Chairman of the North Dakota Wheat Commission, elected by the wheat producers in District 1 which includes the southwestern portion of the state. Currently, I am the commissioner responsible for transportation issues. The North Dakota Wheat Commission works to expand worldwide markets for North Dakota hard red spring and durum wheat. In addition, I also serve as a director and chairman of the Southwest Grain Cooperative.

I am here today to provide testimony on House Bill 1008, which relates to the Public Service Commission's budget. The North Dakota Wheat Commission supports the appropriation, which includes \$900,000 to pay for the costs associated with the rail rate complaint case.

Approximately 85% of all spring wheat and durum grown in North Dakota is annually shipped by railroads, making rate reform a top priority for the state's producers. Meaningful rail rate reform will result in freight savings to North Dakota farmers that will benefit our state's entire economy.

Here's how:

1. For every penny saved in freight cost, \$2.5 million dollars in revenue would be returned to North Dakota producers.

2. The average freight rate for North Dakota grain is 73 cents per bushel to all locations and estimated potential savings of just 20% would generate approximately \$50 million in annual revenue to North Dakota producers.
3. Lower freight rates will make our wheat more competitive on the world market and help us increase sales and expand market share because the delivered cost will be less, allowing us to attract customers away from alternative wheat suppliers.

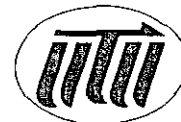
Data compiled by the Upper Great Plains Transportation Institute already confirms that this state's grain rail rates are higher by comparison to almost any other origin. A measurement used by the Surface Transportation Board to assess whether rail rates are reasonable is the revenue-to-variable cost ratio. A ratio of 160% covers variable and fixed-costs plus a reasonable profit. Rates exceeding 180% of variable cost can be examined for market dominance. By comparison, the average North Dakota wheat rate to Pacific Northwest ports is 271% for 52-car trains and 311% for 110-car trains. Going east into Minneapolis, the average ratios are 404% for 52-car trains and 315% for 26-car trains. Rates at these levels invite a formal rail rate complaint case.

A rail rate complaint case may cost hundreds of thousands of dollars, or even millions, but the potential payoff for North Dakota is in the tens of millions of dollars per year, should rates be forced back down to the 180% threshold for what is reasonable. The North Dakota Wheat Commission urges a **DO PASS** recommendation for HB 1008 with the inclusion of \$900,000 to pay for the costs associated with the rail rate complaint case.

I would be happy to answer any questions any of you may have.
Thank you for your consideration.

united transportation union

#9



750 Augsburg Avenue
Bismarck, ND 58504
Office: 701-223-0061
Fax: 701-223-0061
utu@bis.midco.net

JOHN RISCH
Legislative Director
NORTH DAKOTA LEGISLATIVE BOARD

Testimony of John Risch
Before the House Appropriations Committee
Opposing HB 1008
January 13, 2005

11/2/05
H. APP. G.O.
HB 1008

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

We are opposed to the line item appropriation of \$900,000 to the Public Service Commission to pursue a rate case against the Burlington Northern Santa Fe Railway (BNSF).

I and the members I represent across North Dakota work for the Burlington Northern Santa Fe. We are North Dakota residents and taxpayers. We believe it is inappropriate for the State of North Dakota to use our tax dollars in a legal action against our employer with the goal of reducing our company's income—income that is used to pay our wages.

The basis of this case is a claim by some of North Dakota's shippers that the BNSF's rates are too high. That does not make it so. In fact, a case could be made that freight rates should be much higher. It costs a lot of money to run a railroad and the railroad industry is desperately short of infrastructure. As many as 90 trains a day pass through Fargo, and because of that congestion I oftentimes must wait up to four hours to get my train through that terminal. Simply put, we need more tracks, which cost a great deal of money to construct, and lower freight rates will make it harder for BNSF to build needed infrastructure.

To address the captive shipper issue: My wife and I have a farm twenty miles southwest of here. At harvest time, semi-tractor trailers take our grain from the fields to wherever we can get the best price—sometimes 150 miles or more away. We can easily take it to an elevator served by the Canadian Pacific Railway or directly to a processing plant. Clearly, North Dakota farmers are not captive to the BNSF.

If this rate case is successful (after the state and BNSF each spend millions of dollars to complete it), then what? It could be that the BNSF will decide grain hauling from North Dakota is a low priority. If that happens, service in our state would drop dramatically and many railroad jobs would be lost.

Testimony of John Risch
HB 1008
January 13, 2005-Page 2

Attached to my testimony is an excellent editorial by The Bismarck Tribune that sums up the case. Also attached is a press release by Senator Byron Dorgan. He currently has a bill in the U.S. Congress that would make the Surface Transportation Board filing of rate cases less complicated and less costly, and he appears quite optimistic that the bill will move forward.

I would suggest that North Dakota hang on to this \$900,000, or spend it in a more appropriate way, and await the outcome of Congressional action regarding how rate cases are filed before the Surface Transportation Board.

For these reasons, I recommend that the \$900,000 proposed for this rate case be struck from the Public Service Commission budget.

North Dakota Grain Growers Association
U.S. Durum Growers Association
Testimony before the House Appropriations
Government Operations Subcommittee
January 12, 2005

#6
1113105
H. APP G.O.
HB 1008

Mr. Chairman, Members of the House Appropriations Government Operations Subcommittee,

For the record, my name is Dan Wogsland and I am the Executive Director for the North Dakota Grain Growers Association and the U.S. Durum Growers Association.

We support the North Dakota Public Service Commission's proposed \$900,000 appropriation to engage in a rail rate case. Equitable and affordable rail rates are of a major concern to the wheat, barley and durum producers of this state. The high cost of shipping has not only taken money out of our state's farmers pockets, it has also cost our producers foreign markets because foreign shippers refuse to pay the excessive rail costs from North Dakota.

We need only to look back at the 2003 growing season, where grain elevators throughout North Dakota were forced to stockpile grain on the ground because of lack of proper rail service. Elevators paid in advance for shipping that in many cases came 45 days late. Yet at the same time, rail rates continued to rise. Paying more for less is an untenable situation that has time and again left farmers and grain elevators holding the bag.

Members of the committee, this is a dollars and cents issue for North Dakota. If excessive rail rates are allowed to go unchecked, producers and elevators alike will pay the check, and get less for their efforts. Having the North Dakota Public Service Commission take the lead on this critical issue for North Dakota is the right thing to do and it is the right time to do it

OFFICE OF MANAGEMENT AND BUDGET

600 East Boulevard Ave, Dept 110 • Bismarck, North Dakota 58505-0400

FAX - (701) 328-3230

January 24, 2005

Representative Ron Carlisle, Chairman
House Government Operations Subcommittee
600 E. Boulevard Ave.
Bismarck, ND 58505

Dear Chairman Carlisle,

The following is my response to questions by either you, or another member of the subcommittee, during the past week ending January 21, 2005.

ATTORNEY GENERAL HB 1003

- 1) Does the 2005-07 Executive Recommendation utilize revenue from the estimated \$500,000 to \$600,000 that will remain in the Attorney General Refund Fund at the end of the 2003-05 biennium?

No. The availability of funds was not reported to OMB; therefore, the funds were not included as revenue for purposes of developing the executive recommendation.

PSC - HB 1008

- 1) Are there funds available in the State Rail fund?

Pursuant to a discussion with fiscal staff in Department of Transportation, with the exception of a small reserve for emergency repairs, the dollars in the fund have been allocated to rail projects for 2005-07.

- 2) Representative Skarpohl asked me to contact Mike Ressler to set up a meeting between ITD and PSC to discuss IT storage needs and rates for this service.

Mike Ressler was contacted on Friday, January 21, and he will set up a meeting with the Public Service Commissioners to discuss cost estimates.

Sincerely,



Sandy Paulson, OMB

J:sandy/budgetgeneral/Jan 21]infotogovt.ops

Director - Fourth Floor - (701) 328-4904
Fiscal Management - Fourth Floor - (701) 328-2680
State Radio - Fraine Barracks - (701) 328-8154

Central Services - Fourteenth Floor - (701) 328-2780
Human Resources Mgmt. Services - Fourteenth Floor - (701) 328-3290
Facility Management - Fourth Floor - (701) 328-2471

Risk Management - 1600 E. Century Ave, Suite 4 - (701) 328-7584

HB 1008

Mon Jan 31, 2005

Pollert, Chet A.

1. McCarty Farms and a possible rate case – and I made it brief
2. Brief paper on rate comparison coupling state and federal action

#1

Of course, if there is anything more I can do, please do not hesitate to call upon me. I have copied both Jon and Steve so they are in the loop. TC

Terry Whiteside
Whiteside & Associates
3203 Third Avenue North, Suite 301
Billings, Montana 59101
Phone: 406-245-5132



**BRIEF OVERVIEW
THE HISTORY OF THE McCARTY FARMS CASE
AND POSSIBLE RATE CASE IN NORTH DAKOTA**

Note: While the McCarty Farms case in Montana did not result in a win for Montana farmer producers, the case, which took over 17 years to complete, has become a poster child in the halls of Congress for why the captive shippers have been wronged.

One of the key ingredients the ICC (forerunner to the current Surface Transportation Board (STB)) utilized to defeat the McCarty Farms was changing the costing standards three times after it had ruled in February, 1988 that the BN's rate structures on McCarty's Montana wheat and barley rail rates were unreasonably high and directed reparations. However, the ICC later decided that it needed to reexamine the case under three different costing standards and ultimately ruled in August, 1997 against McCarty Farms.

However, the ICC and now the STB has recently abolished the product and geographic competition standards required in rate cases which opens the way for another grain rate complaint.

The two best states to file a rate complaint in are Montana and North Dakota because they have the highest freight rates in the nation on grain and the least competition. Both states move over 75% of their wheat on rail and care captive to lone railroads.

Montana is continuing to look at ways to become less captive. The legislature is currently looking at setting up a revolving account to address some of the railroad issues in Montana such as abandonment, service, rates, build outs to competitive rail, etc.

Montana and North Dakota Congressional delegations continue to be fully immersed and working together in seeking state and federal solutions to increasing the level of rail competition in North Dakota and Montana.

There are two scenarios that a rail rate case could be filed under – a simplified rate case or a stand-alone rate case procedure. The less expensive and least protracted is the simplified rate case. This is probably the one that holds the best prospect for success. While the rate levels decided under a simplified might be as low as a Stand Alone Case (SAC), the reduced cost and lesser complexity fall in favor of a simplified rate case

Terry Whiteside

Whiteside & Associates
Billings, Montana
January, 2005

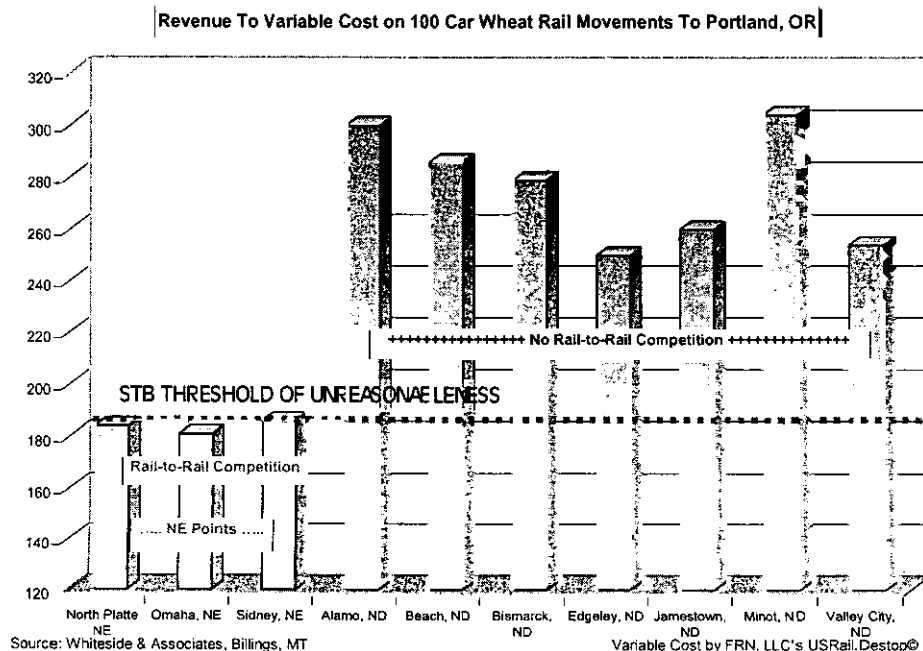
North Dakota Farm Producers Need Your Support On Federal Rail Competition Bills And The Filing of A ND Formal Rate Complaint

Background

- ND has large areas of the state that are captive to the BNSF & CP
- Many ND grain areas have some of the highest freight rates on revenue to cost ratio in the nation because they are captive
- USA is the lowest cost producer of grain but is only a residual supplier of most grains due in large part to having a transportation monopoly between the producers and the ultimate overseas buyer of grain.
- Issue: Virtually all ND farm producers are captive to a single railroad, pay the high rates and get some of the worst service. ND is experiencing some of the worst car shortages in the last decade on the BNSF. The answer is more competition for our rail systems which will bring more innovation and better service to the rail system.

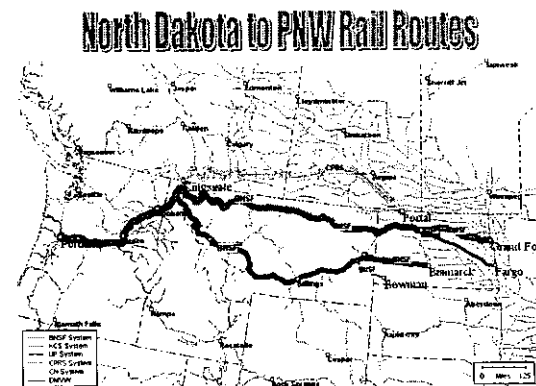
Issues

- BNSF discriminates against ND farmers who don't have rail-to-rail competition by charging much higher rates on cost basis to ND farmers without competition than to farmers in states, such as Nebraska, that have rail-to-rail competition.
- Congressional delegations in other State's have voiced concern – MT, ND, ID, WV, MN, and SD. Governors of ND, MT, WY and SD have signed letters urging fellow governors to oppose BNSF discriminatory rate actions
- The rail rates ND Growers pay for rail transportation is so high due to lack of rail competition that it hurts the ND level of economic prosperity.



ND Wheat growers need help from Congress:

- To provide for expedited, private means of dispute resolution between shippers and rail carriers; and
- To eliminate unreasonable barriers to competition among rail carriers so short lines and other short lines can compete
- To provide focus on areas of inadequate rail competition and seek to resolve anti-competitive problems.
- Eliminate unreasonable barriers to competition among rail carriers; and
- Provide for expedited, private means of dispute resolution between shippers and rail carriers.
- Arbitration – allows the rail customer to call for final offer arbitration
 - If small rail customer is totally captive, arbitrator shall look at rates where rail-to-rail competition exists for appropriate level
- Areas of Inadequate Rail Competition – allows those truly captive shippers to seek designation of AIRC that would bring focus and actions designed to mitigate the lack of rail-to-rail competitive effects.
- Short Line Paper Barriers – allows shippers to call for review by STB if paper barriers are over 10 years old and eliminates them in the future



Source: Whiteside & Associates Billings, MT

PC*RAIL For Windows ALK Technologies

ND GRAIN PRODUCERS NEED HELP FROM THE ND LEGISLATURE

- ND farm producers are losing traditional market because the BNSF and CP railroads are favoring those rail points with rail competition
- ND farm producers need mechanism to level the playing field
- ND farm producers need financial help to prosecute a formal rail rate case on excessive rail rates in front of the federal Surface Transportation Board.
- A victory in a rail rate case will establish a precedent for future rate cases and allow for negotiation of more reasonable rail freight rates in the future

III

SENTATE APPROPRIATIONS COMMITTEE – RAY HOLMBERG CHMN.
TESTIMONY OF BERTHOLD FARMERS ELEVATOR LLC
RE: HOUSE BILL 1008 - FEBRUARY 28TH, 2005

Good Morning, Mr. Chairman and the members of the Appropriations Committee. I am Dan DeRouchey, general manager of the Berthold Farmers Elevator LLC. We are a grain elevator, located in Ward County and served by both the Canadian Pacific Railway and the Burlington Northern Sante Fe Railway. Our grain shipments are primarily transported by these two railroads, with our primary commodity being wheat shipped to Portland, Oregon. I have been the manager of our elevator for the past 18 years and have been directly in charge of coordinating shipments and comparing rates to the destinations for the different commodities that we handle. Berthold Farmers Elevator services the farmers primarily in a four county area of Ward, Mountrail, Renville, and Burke.

We are reliant on the railroad, ninety percent of our shipments are transported by rail and much of what we ship goes directly to terminals that load it on ships for exporting to Asia, and countries throughout the world. These markets are vital to our farmers in North Dakota, and the only way North Dakota can reach those markets is with the railroad transporting them. We have enjoyed a great business relationship over the years, and have worked with the railroads on many projects, from expansions down to giving maintenance crews assistance on railroad trackage and grain cars. None of us here doubt their importance to North Dakota, and to our livelihood.

But in the business process something very wrong is going on, competition for fair rates is lacking. A monopoly exists, extracting as much economically as it can and then calling it market based or market driven when in reality it is price gouging. Gentlemen, we need to see this for what is, it is a monopoly and when it exists, and fairness is replaced by gouging and corporate greed, there needs to be a way that it is brought back into balance. The railroads hiding behind the cloak of knowing what is best and pretending this is a "market based" is truly arrogance of power.

It is time we challenge these monopolistic rates and question what is really fair and how we go about the oversight that is needed. The example of Berthold wheat rates of \$4174 per car compared to Clarkfield, MN bean rate of \$3300 delivered to Portland OR, illustrates how distorted these rates are.

Lets be clear, this example is the same for wheat rates across most of North Dakota. The impact to the North Dakota farmers is up to 50 cents per bushel and when we produce over 300,000,000bu. per year, according to North Dakota Wheat Commission, we are talking about a serious blow to the agriculture. Comparing wheat rates from Winnipeg to Vancouver B.C. would also be interesting as the North Dakota producer competes for the same customer. I have in the past looked at shipping wheat the to west coast via the CP and have found rates 25 to 30 cents per bushel lower, but Canadian Wheat Board would not allow North Dakota wheat to be unloaded in Vancouver elevators.

The railroad has stated that they have not adjusted their rates for inflation; this is another example of a half-truth. First of all, to make that comparison, we need to consider many things including efficiencies created by shipper investment, size of shipments, destination investments and many other factors, but to say that the rail rates have not kept pace with inflation is misleading. Has the price of wheat kept pace with inflation? Do you think grain elevator margins have increased or kept pace with inflation?

I know we all agree how important fair rates are for our state and for the profitability of the railroads. We truly want them to make a fair return for the services they provide. But in turn, if we do continue down this road, we will lose more of an industry that has already been battered by rates that are over 300 to 400 percent of revenue to variable cost. The North Dakota farmer needs your support, the grain industry needs your support, and in the end, what is good for the ag industry will also be good for the railroads. I will try to answer any questions.



www.ndmarketmanager.org

*Working for you,
the producer!*

North Dakota Grain Growers Association
U.S. Durum Growers Association

Dan Wogsland
Executive Director

Testimony before the Senate Appropriations

February 28, 2005

Mr. Chairman, Members of the Senate Appropriations Committee,

For the record, my name is Dan Wogsland and I am the Executive Director for the North Dakota Grain Growers Association and the U.S. Durum Growers Association.

NDGGA and USDGA support the North Dakota Public Service Commission's proposed \$1.2 million appropriation to engage in a rail rate case. Equitable and affordable rail rates are of a major concern to the wheat, barley and durum producers of this state. The high cost of shipping has not only taken money out of our state's farmers pockets, it has also cost our producers foreign markets because foreign shippers refuse to pay the excessive rail costs from North Dakota.

We need only to look back at the 2003 growing season, where grain elevators throughout North Dakota were forced to stockpile grain on the ground because of lack of proper rail service. Elevators paid in advance for shipping that in many cases came 45 days late. Yet at the same time, rail rates continued to rise. Paying more for less is an untenable situation that has time and again left farmers and grain elevators holding the bag.

Members of the committee, this is a dollars and cents issue for North Dakota. If excessive rail rates are allowed to go unchecked, producers and elevators alike will pay the check, and get less for their efforts. Having the North Dakota Public Service Commission take the lead on this critical issue for North Dakota is the right thing to do and it is the right time to do it.

Testimony of North Dakota Grain Dealers Association

HB 1008

February 28, 2005

Senate Appropriations Committee
Senator Ray Holmberg, Chairman

Good morning Mr. Chairman and other members of the committee. I'm Brian Bjella, legal counsel for and appearing today on behalf of the North Dakota Grain Dealers Association. NDGDA is a 94 year-old trade association in which over 90% of the state's grain elevators hold membership. We speak in favor of the \$1.2 million in the PSC budget for a formal rail rate complaint.

The question before you this morning is a simple one. Does North Dakota concede that it is OK for millions of dollars to be sucked out of our state through excessive railroad rates? If that is not OK, then let's try to do something about it.

North Dakota's rail rates, especially on wheat, are extremely profitable for the railroads. Some rates are at 400% of variable cost. Here's a dollars and cents example. The 110-car shuttle train rate on wheat from Berthold, ND to the Pacific Northwest is \$4,174 per car for 1,300 miles, \$3.21 per car-mile. (\$1.13/bushel) The shuttle rate on soybeans from Clarkfield, MN to the PNW, same weight for 1,750 miles, is \$3,300 per car, \$1.89 per car-mile.

Rest assured that BNSF is not hauling those soybeans at a loss. So their wallet is fattened considerably more by North Dakota wheat. In return for these high rates North Dakota gets no better service than BNSF customers paying lower rates, and often seems to be treated more unfairly. High rates

reduce prices paid to farmers or make our wheat less competitive at destinations, or some of both. Being less competitive means less volume for elevators and farmers.

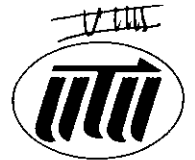
Berthold is one of the elevators that has made the multimillion dollar investment to load the big shuttle trains, as BNSF has been pressing for. Smaller shipment sizes pay even more, and usually get less timely service.

This rate complaint is about the base rates, but fuel surcharges are assessed on top of that, increasing the unfairness geometrically. At the December and January 9% fuel surcharge, that shuttle train of wheat from Berthold to the PNW pays \$41,000 in fuel surcharge alone. That shuttle train of soybeans from Clarkfield, MN pays less than \$33,000 in fuel surcharge for moving the same weight a third more distance. Can anyone think this is reasonable? Meanwhile the railroad says it is trying to recover only its extra cost. We have asked the BNSF to change this formula. They refused.

This railroad rate complaint is primarily a farmer issue. It has been said more than once that the farmer pays the freight. When freight rates go up we elevators must lower our bid to the farmers. Of course greater cost for our customers concerns us, and we are also affected. Higher freight rates make North Dakota grain less competitive in both domestic and foreign markets, meaning that our volumes are reduced.

This is certainly not a free market at work. It is a monopoly market. A regulatory relief mechanism has been established. As imperfect as that may be, we need to use it. More could be said about the skirmishes this state has had with railroads in the past, but let's leave it at that for now. We urge you to approve this budget with the \$1.2 million for the rate complaint in it.

united transportation union



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Bismarck, ND 58504
Office: 701-223-0061
Fax: 701-223-0061
utu@bis.midco.net

Testimony of John Risch Before the Senate Appropriations Committee Opposing HB 1008 February 28, 2005

Mr. Chairman and members of the committee, my name is John Risch. I am the elected North Dakota legislative director of the United Transportation Union. The UTU is the largest rail labor union in North America. Our membership includes conductors, engineers, switchmen, trainmen, and yardmasters.

We are opposed to the line item appropriation of \$1.2 million to the Public Service Commission to pursue a rate case against BNSF.

I and many of the members I represent across North Dakota work for BNSF. We are North Dakota residents and taxpayers. We believe it is inappropriate for the State of North Dakota to use our tax dollars in a legal action on behalf of some businesses against the business we work for, with the goal of reducing our company's income— income that is used to pay our wages.

Just because some claim that BNSF's freight rates are too high does not make it so. In fact, a case could be made that BNSF freight rates should be higher. It costs a lot of money to run a railroad and the railroad industry is desperately short of infrastructure. As many as 80 trains a day pass through Fargo, and because of that congestion I oftentimes must wait up to four hours to get my train through that terminal. Simply put, we need more tracks, which cost a great deal of money to construct, and lower freight rates will make it harder for BNSF to build that needed infrastructure.

If North Dakota grain dealers or farmers have issues with their freight rates, then they should pay the costs of the rate case. The wheat tax or other commodity taxes, elevator revenues, and dues from farm organizations are all legitimate sources for pursuing a rate case. In the unlikely event that the rate case succeeds, the grain dealers will be paid damages, not taxpayers. There is an old legal saying which applies here: "He who stands to gain should bear the pain".

If this rate case is successful (after the state and BNSF each spend millions of dollars to complete it), then what? It could be that BNSF will decide grain hauling from North Dakota is a low priority. If that happens, service in our state could drop dramatically and many railroad jobs would be lost.

HB 1008 Testimony of John Risch
Senate Appropriations Committee
February 28, 2005-Page 2

To address the captive shipper issue: My wife and I have a farm twenty miles southwest of here. At harvest time, semi-tractor trailers take our grain from the fields to wherever we can get the best price—sometimes 150 miles or more away. We can easily take it to an elevator served by the Canadian Pacific Railway or directly to a processing plant. Clearly, North Dakota farmers are not captive to BNSF.

Attached to my testimony is an excellent editorial from The Bismarck Tribune that sums up the case. Also attached is a press release by Senator Byron Dorgan. He currently has a bill in the U.S. Congress that would make the Surface Transportation Board filing of rate cases less complicated and less costly, and he appears quite optimistic that the bill will move forward.

I suggest that North Dakota save this \$1.2 million or spend it in a more appropriate way and await the outcome of Congressional action regarding how rate cases are filed before the Surface Transportation Board.

For these reasons, I recommend that the \$1.2 million proposed for this rate case be struck from the Public Service Commission budget.

Bismarck Tribune

THE BISMARCK TRIBUNE

Editorial Board

Julie Bechtel, Publisher
Dave Bundy, Editor
Ken Rogers, Managing Editor;
Kristin Wilson, Advertising Director
Frederic Smith, Opinion Page Editor

Train ride to nowhere

Well, Gov. John Hoeven and the Public Service Commission were right on last January when they said pursuing a rate case against the Burlington Northern and Santa Fe Railway would probably cost "more than a million."

Just eight months later, a PSC spokesman has told the North

Tribune editorial

Dakota Wheat Commission that a formal complaint to the federal Surface Transportation Board could cost "up to \$2 million." The Legislature, which already has \$250,000 of taxpayer money invested in this wild-goose chase, will be asked to cough up.

It should keep our money in its pocket. The case has virtually no chance of success. If the two Washington, D.C., firms we have apparently hired say otherwise, they should be happy to take the case on a contingency basis.

The state, filled with partial information by commodity groups, is convinced that North Dakota farmers and elevators are being "overcharged" by BNSF. This, in spite of the railroad's claim — as yet unrefuted by anybody — that, because of truck competition, it is charging about the same at most locations as it was in 1981, the year the rails were deregulated.

At one location that has been loud in its complaints, the railroad is actually charging \$144 less for a hopper car of wheat than it did in '81, according to a BNSF letter that ran in the Tribune — unrefuted — in January.

What's going on here?

One suspects politics of the most cynical — or ignorant — kind. The farmer's real problem is a price for his product so lousy that even the same charge for transportation takes a bigger bite than it did 22 years ago. The lousy price is largely the fault of Washington, with its cheap-food policy and cold-blooded trade deals. The commodity groups have been mostly ineffective in forcing changes in either.

So, federal politicians and commodity groups have a big interest in diverting fire from their angry constituents. What better scapegoat than the railroads — which everybody loves to hate anyway for instances of arrogance, questionable service and poor public relations?

Price-gouging is hard to list among their offenses, though, because the industry has failed to earn the cost of the capital it borrows since World War II. Its stock is a drug on the market. Part of the reason is its methods of operation. A large part is heavy subsidization of competing modes by the federal government.

If the state wants to do something, it could add its voice to others calling for the Surface Transportation Board to require a railroad to quote rates between any point on its system and other points at which a shipper could "jump" to another carrier. This would do more, at this late date, to restore vanishing railroad competition than any other idea out there.

But getting after the BNSF for its North Dakota rates is a nonstarter that aspires to be an expensive train wreck. Let's not put our \$2 million on it.

— Frederic Smith for the Tribune

DORGAN'S RAILROAD COMPETITION ACT IS ON TRACK AND MOVING FORWARD

Thursday, October 23, 2003 at 9:00 AM

It could save North Dakota farmers up to \$100 Million a year

(WASHINGTON, DC) --- U.S. Senator Byron Dorgan told a Senate Commerce Subcommittee Thursday price gouging by railroads that have no competition in rural areas cost North Dakota farmers and businesses up to \$100 million annually. Dorgan's comments came at a hearing at which the committee is considering his bill to put an end to such price gouging, the Railroad Competition Act. Dorgan and Senator Conrad Burns (R-MT) are the bill's main sponsors.

"Our rail system is broken," Dorgan said. "Deregulation has led to a system dominated by regional monopolies and both shippers and consumers suffer because of it," Dorgan said. "This bill will introduce some competition and promote better service by the railroads and it will stop the price gouging."

Since the rail industry was de-regulated in 1980, the number of major Class I railroads has declined from approximately 42 to only 8 today, Dorgan noted. "Four major mega-railroads dominate railroad traffic, racking up 95 percent of the nation's gross ton-miles."

"This consolidation has led to exorbitant and often irrational prices," he said. "For example, it costs \$2,600 to move one rail car of wheat 400 miles from North Dakota to Minneapolis. But for the next 400 miles between Minneapolis and Chicago, the railroad will charge just \$918 to deliver that car. It is actually \$500 per car cheaper to ship a carload of corn from Iowa through North Dakota to the Pacific Northwest than it is if that carload were to originate in North Dakota."

A recent study by the North Dakota Public Service Commission found that North Dakota shippers could save up to \$100 million a year in excess shipping costs they pay as captive shippers, if competition could temper the price padding.

Farmers now have little recourse: It costs nearly \$65,000 simply to file a case with the Surface Transportation Board (STB) and then many years and millions of dollars to pursue it. According to the General Accounting Office (GAO) it regularly takes up to 500 days to decide, some cases last much longer. "Is it any wonder that there are only nine rate cases pending before the STB?" Dorgan asked.

This bill will reaffirm the strong role the STB should play in protecting shippers by clarifying national rail policy; requiring railroads to quote a rate on any given segment; facilitating terminal access and the ability to transfer goods among railroads in terminal areas; creating a Rail Customer Advocacy Office in the Department of Agriculture; designating "Areas of Inadequate Rail Competition"; and by making the rate relief process cheaper, faster and easier through a streamlined arbitration process.

Vote Democrat!

united transportation union



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IN RISCH
Legislative Director
NORTH DAKOTA LEGISLATIVE BOARD

URGE NO VOTE ON BNSF RATE CASE

Why North Dakota should not use millions of dollars in tax money
to bring a rate action against the BNSF Railway

MISUSE OF TAX DOLLARS

If North Dakota grain dealers or farmers have issues with their freight rates, then they should pay the costs of the rate case. The wheat tax or other commodity taxes, elevator revenues, and dues from farm organizations are all legitimate sources for pursuing a rate case. In the unlikely event the rate case succeeds, the grain dealers would be paid damages, not taxpayers. He who stands to gain should bear the pain.

FARMERS ARE NOT CAPTIVE SHIPPERS TO BNSF

Most farmers haul their products in large trucks capable of transporting their grain to either a BNSF-served terminal, a Canadian Pacific-served terminal or directly to market or a processing plant. No farmer in North Dakota is captive to only shipping on the BNSF.

STATE UNLIKELY TO WIN A RATE CASE AGAINST BNSF

It is unlikely that North Dakota would prevail in a rate case against the BNSF. Many of BNSF's rates have remained flat for 20 years. If BNSF simply adjusted their 1980s rates for inflation, some rates would be twice what they are today. In addition, it costs a lot of money to run a railroad and BNSF is entitled to earn a fair rate of return.

UNFAIR USE OF TAX DOLLARS

Railroad workers across North Dakota are residents and taxpayers. It is unfair and inappropriate for the State of North Dakota to use our tax dollars in a legal action against our employer with the goal of reducing our company's income—income used to pay our wages and invest in needed infrastructure. If the rate action were successful (an unlikely outcome), BNSF may reduce service to North Dakota and rail jobs could be lost. Using tax money to help some state businesses to essentially sue others is unfair and undermines the marketplace.

It is worth noting that a grain rate case in Montana took 17 years to complete and cost that state millions of dollars. The outcome? BNSF rates were found to be fair.

The law firm that advised our Public Service Commission that this proposed rate case was strong should take it on a contingency basis and not stick North Dakota taxpayers with the bills.

This fact sheet was produced by railroad workers and not done at the request of the BNSF or any other entity or individual.
This fact sheet was not printed at taxpayer expense. We believe in paying our own way.

SUMMARY OF BEGINNING FARMER REVOLVING FUND

	Cash Available	Loans	BND Funds Loan Amount	BF Revolving Fund Usage Loan Amount	Buydown
12/31/2001	\$ 8,356,000				
Beg Farmer - RE		40	\$ 3,588,126		\$ 347,544
Beg Farmer - Chattel		14		\$ 583,869	\$ 99,831
12/31/2002	\$ 7,693,000				
Beg Farmer - RE		101	\$ 9,746,000		\$ 936,692
Beg Farmer - Chattel		53		\$ 1,999,000	\$ 311,911
12/31/2003	\$ 9,555,000				
Beg Farmer - RE		84	\$ 8,135,000		\$ 741,638
Beg Farmer - Chattel		52		\$ 1,994,000	\$ 309,859
12/31/2004	\$ 10,679,000				
Beg Farmer - RE		80	\$ 7,996,929		\$ 741,367
Beg Farmer - Chattel		59		\$ 1,938,000	\$ 347,812

Summary of 2003 - 2005 Biennium Beg Farmer Buydown Fund As of Dec 31, 2004

Total Available Funds	\$ 2,080,926 **
Buydown - RE Funded/Committed Lns	\$ 1,195,525
Buydown - Chattel Funded/Committed Lns	\$ 428,570
Remaining Funds Available	\$ 456,831 ***

** \$950,000 appropriation less \$169,074 previous biennium commitments. \$500,000 was transferred from AgPACE fund on 4-26-04 & \$800,000 on 11-24-04 to the Beg Farmer Buydown Fund.

*** Remaining Funds Available as of 1-31-05 is \$270,881.85.

FOR YOUR INFORMATION
JOHN RISCH, NORTH DAKOTA
STATE LEGISLATIVE DIRECTOR
UNITED TRANSPORTATION UNION

**Testimony of the
North Dakota Wheat Commission
House Bill 1008 — Senate Appropriations Committee
February 28, 2005, 8:30 a.m., Harvest Room**

Chairman Holmberg and members of the Senate Appropriations Committee, the North Dakota Wheat Commission supports HB 1008 which includes \$1,200,000 million to pay for the costs associated with the rail rate complaint case.

Approximately 85% of all spring wheat and durum grown in North Dakota is annually shipped by railroads, making rate reform a top priority for the state's producers. Meaningful rail rate reform will result in freight savings to North Dakota farmers that will benefit our state's entire economy.

Here's how:

1. For every penny saved in freight cost, \$2.5 million dollars in revenue would be returned to North Dakota producers.
2. The average freight rate for North Dakota grain is 73 cents per bushel to all locations and estimated potential savings of just 20% would generate approximately \$50 million in annual revenue to North Dakota producers.
3. Lower freight rates will make our wheat more competitive on the world market and help us increase sales and expand market share because the delivered cost will be less, allowing us to attract customers away from alternative wheat suppliers.

Data compiled by the Upper Great Plains Transportation Institute already confirms that this state's grain rail rates are higher by comparison to almost any other origin. A measurement used by the Surface Transportation Board to assess whether rail rates are reasonable is the revenue-to-variable cost ratio. A ratio of 160% covers variable and fixed costs plus a reasonable profit.

Rates exceeding 180% of variable cost can be examined for market dominance. By comparison, the average North Dakota wheat rate to Pacific Northwest ports is 271% for 52-car trains and 311% for 110-car trains. Going east into Minneapolis, the average ratios are 404% for 52-car trains and 315% for 26-car trains. Rates at these levels invite a formal rail rate complaint case.

By comparison, hard red winter wheat that moves from Nebraska to the PNW is \$.30 to \$1.00 per mile cheaper than from similar distances in North Dakota. This erodes part of the quality premium that hard red spring wheat typically demands at the PNW. This costs North Dakota wheat producers and North Dakota's economy.

A rail rate complaint case may cost hundreds of thousands of dollars, or even millions, but the potential payoff for North Dakota is in the tens of millions of dollars per year, should rates be forced back down to the 180% threshold for what is reasonable. The North Dakota Wheat Commission urges a **DO PASS** recommendation for HB 1008 with the inclusion of \$1,200,000 to pay for the costs associated with the rail rate complaint case.

I would be happy to answer any questions any of you may have.
Thank you for your consideration.

VT

Dale Niezwaag - Basin Electric Power Cooperative
Supporting House Bill No. 1008
Senate Appropriations Committee
February 28, 2005

*Same given to House appropriations
court operations
division*

Mr. Chairman and members of the committee, my name is Dale Niezwaag and I am here representing Basin Electric Power Cooperative. Basin Electric would like to express its support for the state appropriation to pursue a railroad rate case.

Basin Electric has several reasons for supporting this appropriation.

1. We are currently engaged in a complaint with the federal Surface Transportation Board along with several other utilities and coal producers because of rates charged for hauling coal from Wyoming mines to our Laramie River Generating Station in Wheatland Wyoming. Our contract with the railroad expired in October of last year and has resulted in a doubling of costs.
2. We currently rail in small amounts of Wyoming coal to meet environmental compliance regulations.
3. Within North Dakota we rail 3.5 million tons of coal from Coteau's Freedom Mine near Beulah to our Leland Old Generating Station near Stanton.
4. 95% of the lime used in our environmental control equipment at the Antelope Valley Station near Beulah is railed in from our production facilities in Montana.

The rail contracts associated with bringing coal to the Leland Olds Station from Wyoming and North Dakota expired at the end of 2004 so we are currently operating under public tariffs for all of our railroad services. The railroads have told us that they are not interested in negotiating any contracts and only want to work from public tariffs.

Another issue we feel needs to be investigated along with competitive rates is the surcharges assessed by the railroads. Based on the public tariffs we are using in Wyoming the fuel surcharges do not follow fuel market activities and in our opinion have become a revenue stream. The fuel surcharges alone added 55 cents to the cost of coal we transport in Wyoming.

We understand the situation agricultural rail users in North Dakota find themselves confronted with and support the states efforts to obtain competitive rates for the railroad services provided to all the railroad users of North Dakota.

That concludes my testimony and I would be happy to answer any questions at this time.

V

North Dakota Farmers Union

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HB 1008

Senate Appropriations

Chairman Holmberg and Members of the Senate Appropriations
Committee

My name is Woody Barth; I am here representing over 35,000 members of North Dakota Farmers Union. I am here to testify in favor of HB 1008, which relates to the budget of the Public Service Commission, in particular the Rail Rate Case.

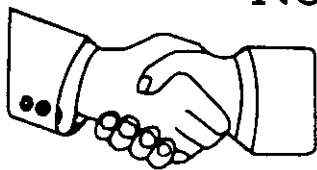
The 2003 Legislature funded an initial investigation of rail rates. North Dakota Farmers Union contributed toward the effort, which found that railroads charge significantly higher rates for moving Ag commodities from North Dakota as compared to other similar Ag producing states.

The higher rates are attributed to a lack of competition from other railroads or river barges. At least 85% of North Dakota wheat moves by rail. Railroads charge \$5.88 per mile to ship grain from central North Dakota to Minneapolis. The cost to ship the same car from Minneapolis to Chicago is \$1.76 per mile, even though the two distances are comparable at 425 miles each. The investigation concluded that rail rates are 250-300% over variable costs. Revenue exceeding 180% of variable costs is considered excessive.

HB 1008 would provide funding to initiate a challenge of rail rates to ship grain from North Dakota. Although, North Dakota Farmers Union applauds lawmakers for addressing this issue, we urge that you appropriate an adequate amount of money for the rail rate case directly out of North Dakota's general fund. We would be hesitant to support taking the money out of the current Beginning Farmer Revolving Loan Fund.

Thank you, Chairman Holmberg and members of the committee, I will answer any questions at this time.

North Dakota



Ag Coalition

Testimony of Paul Thomas
North Dakota Ag Coalition
Before the Senate Appropriations Committee
February 28, 2005
Testimony on HB 1008

Chairman Holmberg, members of the Senate Appropriations Committee. I am Paul Thomas, Administrator of the North Dakota Ag Coalition. I thank you for the opportunity to appear before you today to provide testimony in support of HB 1008, specifically the appropriation for a rail rate case. The members of the North Dakota Ag Coalition have voted to support the appropriation, potentially returning millions of dollars to North Dakota's economy. I have included a list of Coalition members at the conclusion of my testimony for your information.

A large percentage of North Dakota's agricultural commodities are shipped by rail. The ND Grain Dealers and Public Service Commission have found convincing economic data showing North Dakota wheat shippers are charged excessive amounts. For example, the 110-car shuttle train rate on wheat from Berthold, ND to Pacific Northwest ports like Seattle and Portland is \$4,174 per car for 1,300 miles (\$3.21 per car-mile) (\$1.13 per bushel). The 110-car shuttle rate on soybeans from Clarkfield, MN to the PNW, same weight for 1,750 miles is \$3,300 per car, \$1.89 per car-mile.

It will likely be argued that you cannot compare shipments from other parts of the country to rail shipments from North Dakota, nor can you compare charges for soybeans and other commodities to the rates assessed wheat leaving North Dakota. The only reason you cannot compare these scenarios is most other shipping destinations and commodities have competition for their transportation, North Dakota wheat shipments do not.

Let's not be fooled with flashy opposition to the rail appropriation in HB 1008. Many arguments have and will be made by the railroad industry on why the state should not fund this case. Members of the Coalition don't accept the railroads explanation of shipping rates and you shouldn't either. The marketplace will not work itself out in this case, the case of no competition. The railroad is a monopolistic grain shipper in North Dakota. Without action, North Dakota grain shippers will continue to be charged excessive rail rates.

The economic benefit of a positive ruling in North Dakota's favor will reap huge benefits for North Dakota grain producers. For every one-cent reduction in shipping charges passed on to all North Dakota wheat producers, an increase of \$2.5 million will result in the North Dakota economy. A ten-cent reduction in the cost of shipping wheat would mean North Dakota farmers would have \$25 million more revenue each year. These financial returns are only looking at wheat.

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A nonpartisan group of organizations involved in all aspects of agriculture. Organized in April 1982, the Coalition has been successful in providing a unified "voice" on behalf of North Dakota agricultural interests.

I am concluding my testimony with this final and important point. The legislatures favorable passage of this appropriation is not a 100% guarantee that the PSC's case will be successful, but what is certain, is that if no action is taken, producers and the state of North Dakota will continue to be gouged by unfair rail shipping prices.

Members of the Senate Appropriations Committee I urge your support for the appropriation contained in HB 1008.

Coalition Members	
ND Lamb and Wool Producers	ND Farm Bureau
American Renewable Oil Association	ND Grain Dealers Association
Federation of Farm Credit Services	ND Grain Growers Association
Red River Valley Sugar Beet Growers	ND Oilseed Council
Milk Producers Assn. Of ND	ND Pork Producers
Minn-Dak Farmers Coop	ND Soybean Council
ND Agricultural Association	ND Soybean Growers Association
ND Ag Aviation Assn.	ND State Seed Dept
ND Agri-Women	ND Turkey Federation
ND Assn. Of Soil Conservation Dist.	ND Wheat Commission
ND Assoc. of Ag Educators	Northern Canola Growers Association
ND Bankers Assn	Northern Plains Potato Growers
ND Buffalo Association	US Durum Growers Association
ND Corn Growers Assn	ND Elk Growers
ND Corn Utilization Council	AmeriFlax
ND Crop Improvement & Seed Assn	ND Ag Consultants
ND Dept. of Agriculture	ND Dry Edible Bean Seed Growers
ND Dry Bean Council	ND Dry Pea & Lentil Association
ND Beekeepers Association	ND Beef Commission

VIII

**Testimony of The Burlington Northern and Santa Fe Railway Company
Regarding HB 1008 (Public Service Commission Budget)
February 28, 2005**

Good Morning. My name is Brian Sweeney, I am legislative counsel for BNSF and based in St. Paul, Minnesota.

We are opposed to the requested appropriation of \$1.2 million to fund a rate complaint with the STB for several reasons, which I will go into detail on later. First, I want to direct your attention to two charts that are attached to this testimony. Those charts show that our rates to haul grain from North Dakota to either the Pacific Northwest or Minneapolis remain essentially unchanged from 1981, the first year of partial rail rate deregulation. They also show that had our rates simply been adjusted for inflation, they would be almost double what they are today. These charts deal with 52-car shipments out of Devils Lake, but they are typical of the rate histories at other locations in North Dakota.

The rates charged for smaller-sized shipments, in either single cars or 26-car units, also have moved over time in sync with the 52 car rates and have lagged well behind inflation. In fact, we recently adjusted wheat rates out of North Dakota by raising the rate on 52-car shipments \$50 per car, while lowering the rates on singles and 26s anywhere from \$10 to \$50 per car. Based on last year's shipments of wheat out of North Dakota, 8,000 carloads got a rate increase, but 21,000 carloads got a rate decrease. And the decrease went to the smallest shippers.

We are hard-pressed to think of many things that cost the same today that they did 23 years ago.

I would also like to note the amount of money we spend in North Dakota, not just on our \$70 million payroll, but the many purchases we make and the reinvestment we make in our North Dakota facilities. For example, in just the past three years BNSF spent more than \$110 million in capital dollars on its track and facilities in North Dakota. That does not include maintenance spending.

We have purchased several thousand new grain cars in recent years, and committed to North Dakota that we would purchase 6,000 more between 2004 and 2007. The total cost of those cars will be well in excess of \$300 million.

We have added 800 new locomotives to our fleet in the past two years, at a cost of \$1.2 billion.

I also want to note our North Dakota payroll, which I noted is more than \$70 million annually, is growing. This year alone, we will hire about 125 new employees in the State.

We would also like to note a couple of the things we have all heard regarding this matter for the past couple years, and point out that all of them are either inaccurate or meaningless in the context of a rate complaint.

For example, we have routinely heard that a rate complaint is necessary because North Dakota shippers pay higher rates than other shippers or pay more for shipping goods shorter distances than others do. Assuming all of that to be true, it would not be a violation of federal law, which specifically allows for differential pricing. We understand that nobody likes to pay what they believe is a higher rate than someone else pays, but that does not make it illegal.

We have heard repeatedly that a rate case would almost be a slam dunk, because the STB only allows railroads to charge 180 percent of their variable costs and BNSF has rates that are far in excess of that. Not only can we not predict how the STB would rule on any given set of facts, this is also a major mischaracterization of the law. In fact, the STB doesn't even have jurisdiction to review a rate unless it is AT LEAST 180 of variable costs. The federal law specifies that a rate is not in violation merely because it exceeds 180 percent. A copy of that law is attached to this testimony. This whole notion that rates are capped at 180 percent and everything over that is excessive is simply not so. In fact, rates well over 180 percent have been upheld, including grain rates charged by BNSF.

We have heard that a successful rate case could mean more than \$100 million for the State economy. First, that is based on rates being capped at 180 percent statewide, which I have just explained is not a correct reading of the law. Second, you are not being asked to fund a statewide case, but a small shipper case.

We have heard that the STB has "new rules" in place that make it easier, cheaper and faster for shippers to win cases and that the STB is asking for people to file complaints under those rules. We will go into this in more detail later, but at this point wish to note that the so-called "new rules" are now eight years old, no one has ever filed a complaint under them, and that the STB is contemplating replacing them because many parties, including the advocates of this appropriation and their attorneys, claim those rules are sorely lacking.

BNSF opposes this appropriation for the following reasons:

1. The proponents have mischaracterized the law and prospects of winning relief, as noted above.
2. Pursuing a rate complaint would be even more costly and time consuming than the advocates have claimed.
3. The State is being asked to finance the legal test case for rules that event he proponents have said are not likely to give relief to shippers.

4. The State should not have taxpayers pay the costs for one private business to sue another.

As noted above, the jurisdictional threshold for the STB to review a rate has been routinely mischaracterized as the maximum rate a railroad can charge. The impression has been given that anything over 180 percent of variable costs is excessive, when in fact, federal law specifically says a rate is not excessive simply because it exceeds that threshold. The STB has on many occasions upheld rates that exceeded the 180 percent jurisdictional threshold. Among the rates upheld are grain rates charged by BNSF in Montana.

There are two possible routes for pursuing a rate case. The law is clear, however, that the Stand Alone Cost (SAC) methodology is to be used except in limited circumstances. BNSF would very likely contend that a rate case in North Dakota should be handled under these procedures. Cases filed under the SAC methodology take several years and cost millions of dollars, as the legal analysis done for the PSC states. For example, the "McCarty Farms" case, which was partially funded by the State of Montana, took 17 years and cost the State well over \$3 million. In the end, the State and the shippers lost. The length of time in that case was extreme, but one can expect a SAC case to take six years and cost several million dollars.

We have been told that the PSC will attempt to use the other route: the Small Shipper Rules (SSR). But it is not clear that the PSC will be able to use that methodology. These are the so-called "new rules" that are supposedly simpler, faster and cheaper. As we review the SSR route, ask yourselves this question: If the rules are so quick, simple and cheap, why hasn't any shipper, anywhere used them in the eight years they have been on the books?

The answer is that many parties, including the advocates of this appropriation and their attorneys, have pointed out that there are major problems with the rules. The history of the rules is that they were adopted in 1996. The rail industry challenged the rules in federal court. The court kicked them back to the STB, because nobody had yet filed a complaint under those rules, so the issue was not ripe. The rules have been waiting since then for someone to be the test case and pay the costs of a court challenge.

By the way, when the STB adopted the rules, the Board made it quite clear that it would not cap rates at the jurisdictional threshold of 180 percent of variable costs. As we noted before, if that's the result the proponents expect to get with this appropriation, it is simply not realistic.

The rail industry is not the only group that has problems with those rules. Last summer the STB held a hearing regarding whether the rules need to be overhauled or replaced. Joint testimony was given on behalf of the PSC, the Wheat Commission and the Grain Dealers Association. In that testimony they made the following observation:

"The existing simplified approach is overly complex, cost-prohibitive, and

untested. The (STB) decisions appear to be incapable of yielding rate prescriptions near the reasonableness standards recognized by the Staggers Act, and they would likely be appealed."

The statement by the proponents that the STB decisions appear to be "incapable" of doing what they want raises the big question: What's the point of this appropriation? Even the heavily redacted report to the PSC by its outside legal firm notes, "However, it is important to note that the SRR standards are very unclear . . ." (Report to the North Dakota Public Service Commission Concerning an Investigation of Rail Rates on Grain, page 15)

That view is shared by others. Attached to this testimony is an article from the December 16, 2004 issue of Energy Washington Week titled "Coal Interests Wary of STB Rate Rulings Favoring Railroads." According to that article, law firms that represent rail shippers before the STB point to recent STB rulings as "... further evidence of the board's trend toward favoring railroads in rate disputes . . ."

Given all of these negative comments, the representations being made by the proponents that a rate complaint would be a sure winner are quite surprising. Even they noted in their testimony to the STB last summer that winning a small-shipper case is far from a sure thing, especially because the rules remain untested after eight years, saying:

"As a result, there is at least a perception, if not a reality, that small rate cases may begin with a costly dispute regarding the eligibility of the complaining party. With the high known costs, probably procedural delays, uncertain approaches concerning non-CMP methodologies, and a wide range of prescriptive rate possibilities, it should not be surprising that no small shippers have approached the STB seeking rate relief."

Again, that was the proponents talking, not us. Yet now, we are being told something very different, that a complaint filed under these rules would be fast, cheap and a sure winner. We come back to the original question: If that's the case, why hasn't anybody, anywhere used the rules in the past eight years?

We also question the validity of the tactics the PSC plans to use. It is our understanding that the PSC hopes to win the first case for \$900,000, then piggyback on that to file other complaints for far less money, in the \$50,000 to \$100,000 range.

First, if that is the case, then groups of shippers could join forces and share the costs themselves, especially if this is really a "can't-lose" case. But we don't believe that tactic can even be employed. In its decision adopting the small shipper rules, the STB said,

"Under the simplified procedures, the rate reasonableness analysis is tailored to the revenue needs of the particular carrier(s) involved and to the relative demand elasticity of the particular traffic involved vis-a-vis the rest of that carrier's traffic base. *Thus, each rate complaint must be judged on its own*

merits and on its own record." (emphasis added)

The Board also did not adopt suggestions made by shippers that decisions under the simplified procedures have precedential effect. So we don't believe they can even do what they plan to do.

In conclusion, we believe this appropriation would be ill-advised. It is apparently based on a misinterpretation of law, a questionable legal strategy that involves hoped-for use of rules that even the proponents claim are so lacking they should be overhauled. We believe that a rate case will take far longer and cost the State far money than we are being told. Because the rules are untested, there are almost certainly going to be long, expensive court appeals regarding the rules themselves, the ability of the shipper to use the rules and other issues. The only sure winners would be the lawyers.



North Dakota

Dry Pea & Lentil Association

Testimony of Eric Bartsch
North Dakota Dry Pea and Lentil Association
House Bill 1008
Senate Appropriations
Harvest Conference Room
February 28, 2005

*Same to
House
Appropriations*

Chairman Holmberg, members of the Senate Appropriations committee, for the record my name is Eric Bartsch and I am the Executive Director of the North Dakota Dry Pea and Lentil Association. The North Dakota Dry Pea and Lentil Association represents pea, lentil and chickpea growers and processors throughout North Dakota. I am here to testify in favor of the proposed rail rate complaint case that is presented in House Bill 1008.

North Dakota is the nation's leading producer of dry peas and lentils. Acres of pulse crops in North Dakota are continually climbing and have provided positive economic returns to producers. Processing facilities specializing in both domestic and foreign food grade markets have developed along with the growth of acreage. These pulse-processing plants are located in Minot, Ray, Crosby, Crary, Bowman and Garrison North Dakota. Pulse crops from North Dakota are heavily dependent upon exports into international food markets through government food aid or directly to international pulse buyers. It is estimated that over 80% of the North Dakota dry peas, lentils and chickpeas are exported to international destinations.

Cost effective transportation has been a major disadvantage for North Dakota producers and exporters of dry peas, lentils and chickpeas. In many instances transportation costs have priced North Dakota out of very large markets and have yielded the sales to Canada and other major producing countries. Testimony from several of North Dakotas pulse crop processors has shown that North Dakota has seen as high as \$1,000 per car load of peas disadvantage to our competitors in Canada. That difference in transportation costs has limited North Dakota producers from being competitive in several major markets for dry peas, lentils and chickpeas.

According to the Public Service Commissions investigation into the rail rate structure for North Dakota it is evident that a case should be pursued. In order for North Dakota to continue to develop a pulse industry and expand economic development we need to have efficient and cost effective transportation out of North Dakota to the final destinations around the world. The proposed rail rate case is an investment in North Dakota's future.

Chairman Holmberg and committee members, I urge you to support the rail rate complaint case in HB 1008. I would be happy to answer any questions you may have.

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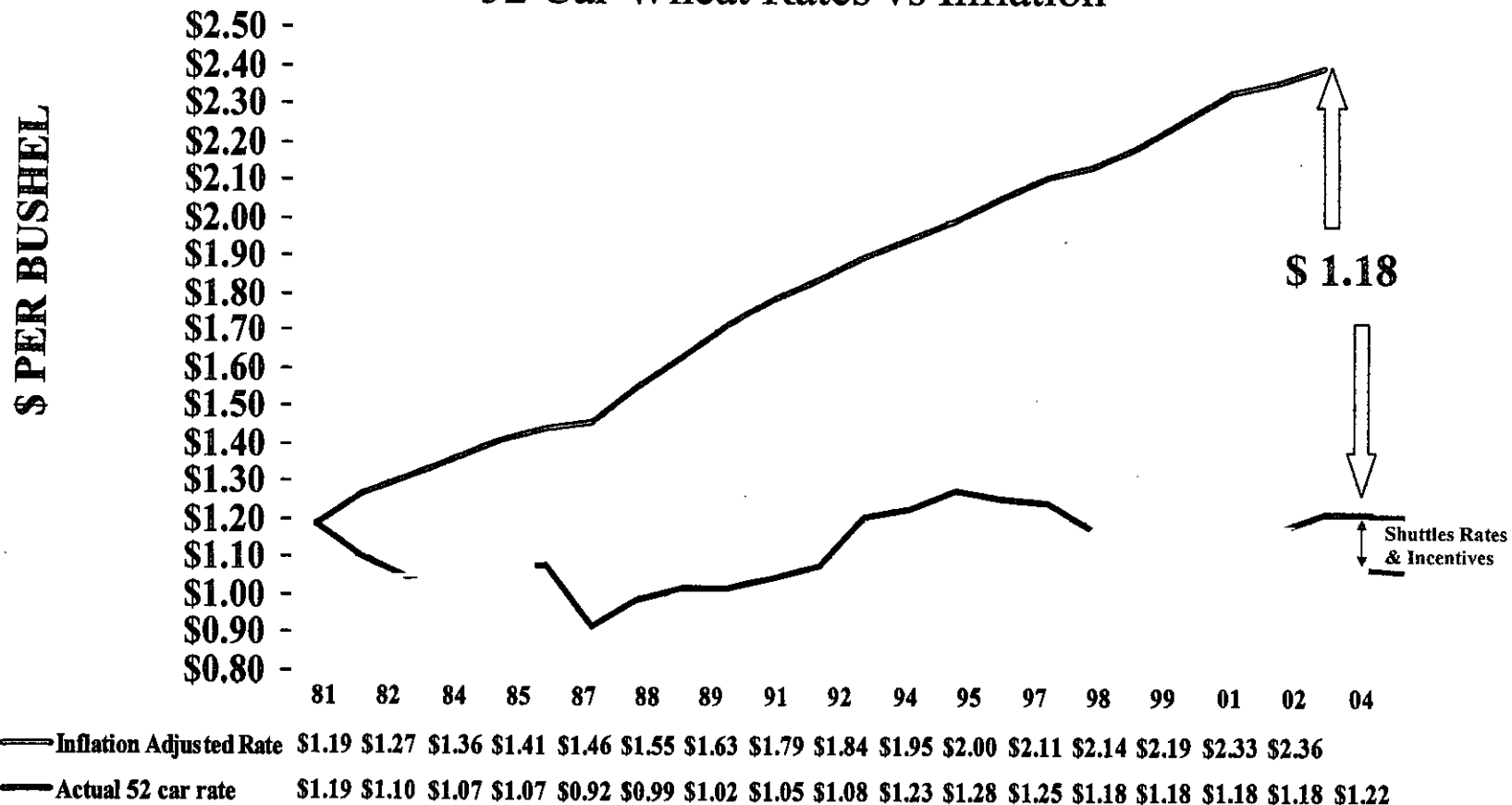
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Rates in North Dakota have remained relatively flat over the last 20 years. In fact, rates are about half of what they would be if the rates had increased at the same rate as inflation.

North Dakota to the PNW

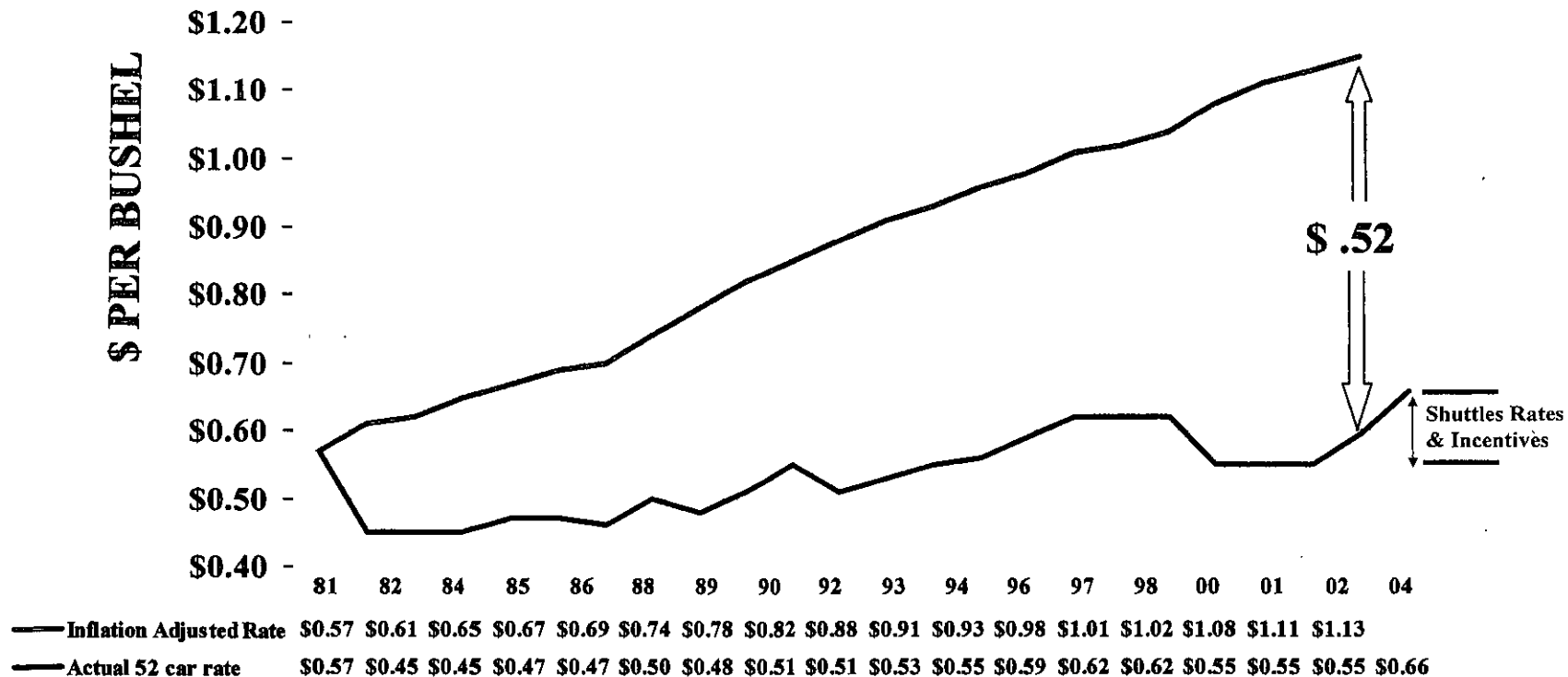
52 Car Wheat Rates vs Inflation



Inflation Adjusted Rate calculated utilizing Consumer Price Index (CPI) factor multiplied by rates with base year of 1981. June 1 Rates from Devils Lake, ND. 2004 based on Jan 1 Rates.

Rates in North Dakota have remained relatively flat over the last 20 years. In fact, rates are about half of what they would be if the rates had increased at the same rate as inflation.

North Dakota To Minneapolis 52 Car Wheat Rates vs Inflation



Inflation Adjusted Rate calculated utilizing Consumer Price Index (CPI) factor multiplied by rates with base year of 1981. June 1 Rates from Devils Lake, ND - 2004 based on announced June 1 rates.



Public Service Commission

State of North Dakota

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March 4, 2005

Honorable Ray Holmberg, Chairman
Senate Appropriations Committee
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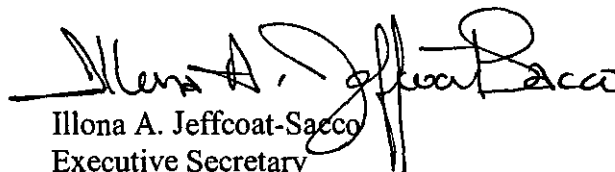
Re: Comments Regarding BNSF's Testimony Regarding H.B. 1008

Dear Chairman Holmberg:

Enclosed are comments by the Public Service Commission regarding BNSF's testimony of February 28, 2005 regarding H.B. 1008.

If you have any questions, please feel free to contact us.

Sincerely,



Illona A. Jeffcoat-Sacco
Executive Secretary
Director, Public Utilities Division

Enclosure

cc: Senator Bill Bowman
Senator John Andrist
Senator Tom Fischer
Senator Aaron Krauter
Senator Elroy Lindaas
Senator Larry Robinson
Senator Harvey Tallackson

Senator Tony Grindberg
Senator Randel Christmann
Senator Ralph Kilzer
Senator Ed Kringstad
Senator Tim Mathern
Senator Randy Schobinger
Senator Russell Thane

**Comments Regarding BNSF's Testimony Regarding HB 1008,
Given on February 28, 2005**

Distributed by the Public Service Commission on March 4, 2005

(A number of assertions were made by the BNSF Railway in its 2-28-05 testimony opposing a rail rate case. The following should help to answer questions raised.)

BNSF Assertion: There have been rate adjustments in North Dakota at different times.

Whether or not 21,000 cars of wheat received a BNSF rate decrease in 2004, while 8,000 carloads got a rate increase, is not the point. It remains true that, even after the rate decrease, BNSF's returns remain well above the level (180% of variable cost) that justifies a maximum rate level examination under the law, when there is an absence of effective competition.

BNSF Assertion: Rail rates compared to inflation rate is a valid measure of rate legality.

The law is clear that, where a railroad has "market dominance" (i.e., where its rates exceed 180% of variable costs and there is no effective competition from other railroads or surface modes), the railroad cannot charge a rate that exceeds a reasonable level. If BNSF's rates are above a reasonable level, it is breaking the law. If BNSF's rates do not violate the law, BNSF should welcome an opportunity to have the STB say so.

BNSF Assertion: "Differential Pricing" justifies its rates under the law when it charges more for short-distance hauls.

The concept of "differential pricing" means that those who have fewer competitive alternatives (have less elastic demand) can be charged higher rates than those with greater competitive alternatives (more elastic demand). All grain shippers who pay high BNSF rates – regardless of the distance that their traffic moves – face essentially equal levels of demand in elasticity.

BNSF Assertion: Existing STB rules for small shipper cases are flawed, which is why no shippers have used this type of case before.

It is quite true, as BNSF points out, that there are flaws in the existing, untested, small rate case rules, and indeed some uncertainties, the railroads have worked hard to make this so. That is precisely the reason why those rules should be tested by a state which has so many elevators required to pay high rates that are potentially unlawful, rather than hoping an individual elevator will assume the burdens of a test case.

The "proponents" of the legislation have not, so far as we are aware, stated that the STB's small rate case guidelines are not likely to give relief to shippers, as claimed by BNSF. What has been said is that the existing guidelines are in certain respects deficient and unclear. It is not within the control of the "proponents" of the legislation to correct those problems. Corrective solutions proposed by the PSC and shipper organizations, including those in North Dakota, have been opposed by BNSF and its fellow Class I railroads.

The choice to be made is between waiting indefinitely for a "perfect," or even improved, set of small rate case rules – which may never be forthcoming – or trying to solve the rate problems of North Dakota agricultural interests by bringing a test case. The test case may not be a perfect answer, but it is the only answer.

BNSF Assertion: The State of North Dakota should not have taxpayers pay the price for one private business to sue another.

Apparently, BNSF would prefer that the small businesses that comprise the fabric of North Dakota's grain elevator structure undertake the immense costs of rate litigation that are created largely by rate case rules advocated by the railroad industry. BNSF concedes that a stand

alone rate costs \$4.5 million. What country elevator can afford to bring such a case? And if the state does not start a "small rate case" test, who will?

BNSF Assertion: The party that brings the first test case will be dragged through the entire court system by the defendant railroad.

What better reason is there for a state to be the "test" complainant, and what better reason is there for a small country elevator to not be forced into that untenable position?

BNSF Assertion: "Proponents" have misstated rules and procedures for rate cases.

No one contends that a shipper has a unilateral right to invoke the small rate case guidelines or that doing so will necessarily cap a carrier's rates at 180% of revenue to variable cost. These arguments by BNSF are red herrings. North Dakota elevators and farmers presently are paying as much as 400% (even more, on some movements) of variable costs to ship wheat via BNSF to available markets served by rail. A rate prescription that reduces rates by \$100 or \$200 per car, even if it leaves the rates above 180% of variable costs, will bestow distinct benefits.

BNSF Assertion: The results of a test case would not constitute precedent for other small rate cases.

While a rate prescribed from point A to point B may not be the same rate that would be prescribed from point X to point B, the first STB small rate case decision will have to address such things as eligibility to bring the small rate case and how the three "benchmark" factors described in the Board's rules are to be weighed. The Board's conclusions in these respects can serve as precedent. Indeed, why would BNSF have threatened, as it did, to institute a judicial appeal from the first small rate case decision of the Board if BNSF did not realize full well that such a decision would have precedential value.



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North Dakota Farm Bureau

www.ndfb.org

North Dakota Farm Bureau Testimony
to the Senate Appropriations Committee
on House Bill 1008

Good morning Chairman Holmberg and members of the Senate Appropriations Committee. My name is Brian Kramer and I am representing the 27,500 member families of North Dakota Farm Bureau. North Dakota Farm Bureau wishes to go on record supporting the North Dakota Public Service Commission's proposed appropriation of \$1.2 million for the rail rate case. During our annual convention in November of 2004 where our delegates decide policies for our organization, our members said one of their highest priorities was to garner the appropriation for the rail rate case.

Last Legislative Session, the Legislature saw the wisdom of investing \$250,000 toward a rail rate investigation. Numerous agricultural groups including Farm Bureau, Farmers Union, the North Dakota Grain Dealers Association and the North Dakota Wheat Commission joined in that effort by providing partial funding for the study. That study is complete and it reinforced what we believed to be the situation. It also provided the fundamental criteria required for the Surface Transportation Board (STB) to hear a rail rate case. The preliminary rail rate investigation found that

market dominance indeed exists with North Dakota. It also found that our rates are well beyond the STB threshold of reasonable rates – in many cases two or more times that threshold level.

Undoubtedly, the excessive cost of shipping grain from North Dakota to markets is impeding our ability to capture market share, while at the same time reducing the value of those products to our farmers. We can ill afford to allow the railroads to continue their monopolistic pricing practices.

The agricultural community in North Dakota cannot afford to move forward on this case without state support. We believe the time is right for the state to step to the plate and move forward with a formal rail rate complaint case. We hope you concur. We urge a “Do Pass” recommendation on HB 1008 which includes the \$1.2 million appropriation to pay for the cost of the rail rate complaint case.

Thank you for your attention. I would try to answer any questions.

Kempenich, Keith A.

From: Steve Strege [sstrege@ndgda.org]
Sent: Friday, April 08, 2005 3:01 PM
To: Kempenich, Keith A.
Cc: Clark, Tony T.; Jon Mielke; Pollert, Chet A.
Subject: Money in HB 1008 for the rail rate complaint in HB 1008.

#1 H. App. G.O.
Conf. Comm.
HB 1008

mm. 4/11/05

Keith,

I may be preaching to the choir, and if you think I sound grumpy today, rest assured it isn't aimed at you. You can share this with other conferees if you'd like.

We were encouraged when the House increased the amount before crossover. We are very disappointed to see such intense legislative counting of a relatively few dollars when millions of dollars are being unfairly extracted from this state. All this quibbling about where those last dollars are coming from simply signals the railroads there is a lack of resolve. Tens and hundreds of millions are appropriated for other uses, but there seems to be reluctance to provide this for agriculture, the largest single horse pulling the wagon of this state's economy.

In the winter of 2001-02 the North Dakota Grain Dealers Association spent approximately \$95,000 on a publicity campaign drawing attention to the unfairness of inverse wheat rates and the ill effects on the state of BNSF ramroding its shuttle train program. We think that campaign raised awareness by state officials and the public in general, and encouraged much of the official attention to railroad matters over the past three years. The 2003 session authorized \$250,000 for an investigation into a rail rate complaint, \$225,000 from a rail assistance fund and \$25,000 from outside sources. Wheat Commission put in \$10,000; Grain Dealers \$7,500; Farmers Union \$5,000 and Farm Bureau \$2,500. With over 100 grand invested in this process already we think the Grain Dealers Association has paid its dues. In addition, officers of this organization have been in DC numerous times in the past several years to testify before the STB or committees of the Congress on rail issues. And, in the end, rail rates are really more of a farmer issue than ours.

The legislature has just mandated that over \$500,000 per year of wheat checkoff dollars go to two grower groups. This is more than \$300,000 per year over and above what those groups were getting from the Wheat Commission on a voluntary basis. Does anyone know where all that money will be spent? We believe that is a good source of the extra money for the rate complaint. In fact we could have supported earmarking some of the wheat checkoff to the rate complaint instead of to grower groups. That would have had the added benefit of not signaling to the railroad how deep our pockets are.

Steve Strege 1-800-342-4778.



Mielke

5/11/05