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February 13, 2014

VIA HAND DELIVERY

235461

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

ENTERED
Office of Proceedings
February 14, 2014
Part of
Public Record

Re: STB Docket No. 42139, *James Valley Grain, LLC v. BNSF Railway Company*

Dear Ms. Brown:

Petitioner James Valley Grain, LLC (“JVG”) submits the following reply to the Petition to Intervene of Red River Valley & Western Railroad Company (“RRVW”) filed on February 12, 2014 in the above-captioned proceeding.

In its Petition, RRVW states that it has an interest in this proceeding as the serving carrier at JVG’s proposed Verona, North Dakota facility.¹ RRVW verifies that it is defendant BNSF Railway Company’s (“BNSF’s”) responsibility to provide direct, non-discriminatory through rates from JVG-Verona; it represents that its intervention will not be disruptive to the proceeding nor unduly broaden the issues raised in JVG’s Petition; and it states that it “supports the relief that JVG has requested.”

While at this time JVG does not take a position on RRVW’s Petition to Intervene, *per se*, and it takes RRVW at its word that it does not seek to disrupt this proceeding or broaden the issues raised, JVG would oppose any initiatives to prolong or expand the scope of this proceeding. *See Waccamaw Coast Line R.R. – Modified Rail Certificate*, STB Finance Docket No. 24064 (STB served Feb. 3, 2014) (denying intervention where potential intervenor sought to raise additional issues that would “unduly broaden the issues raised”).

¹ To be clear, the joinder of RRVW has not been sought, nor is it necessary, because, as JVG has emphasized in its Petition, in this instance, BNSF has rate-setting authority for the involved service and BNSF holds itself out to provide BNSF-direct through service from RRVW-served points including Verona.

In this respect, RRVW states that it “encourages the Board to take appropriate action by instituting a proceeding,” and it discusses the possibility of Board-sponsored alternative dispute resolution (“ADR”). RRVW Petition at 3 n.2. While JVG assumes that RRVW is referring to *this* proceeding initiated by JVG and not the possible institution of collateral proceeding(s), to be clear, JVG would oppose any attempts to connect this proceeding with any newly created proceeding(s) concerning peripherally related RRVW/BNSF controversies. Additionally, as JVG’s Petition makes clear, JVG has already engaged in extensive efforts involving the STB’s Office of Consumer Assistance to resolve this matter through non-adjudicatory means, but, unfortunately, all to no avail.

RRVW also references that it is seeking to intervene “at this stage of the proceeding,” and “very early in [the] proceeding.” RRVW Petition at 2 n.1, 3. Again, JVG assumes that RRVW does not seek to turn this proceeding into a prolonged, multi-staged proceeding, but to be clear, JVG would oppose any attempts to do so. When JVG filed its Petition, it made it clear that (i) its Petition constituted “JVG’s case-in-chief in support of the relief requested” (Petition at 1); and (ii) it was seeking expedited consideration to enable it to complete construction of the JVG-Verona facilities in time for the 2015 harvest season.

Under the Board’s rules (49 C.F.R. § 1104.13), BNSF’s response to JVG’s case-in-chief is due on February 18, 2014.² Filing on this schedule would allow for full participation by the parties and a prompt Board decision, hopefully by early March. The Board’s rules³ and precedent strongly favor such an expedited resolution. *See, e.g., Arizona Elec. Power Coop., Inc. v. Burlington N. & Santa Fe Ry. and Union Pac. R.R.*, STB Finance Docket No. 34041 (STB served May 8, 2001) (“*AEPCO*”). In *AEPCO*, a petition for establishment of responsive common carrier rates was filed on April 4, 2001, the defendant’s reply was filed 20 days later on April 24, 2001, and the STB served its final decision two weeks later on May 8, 2001, ordering the establishment of responsive rates within six days of the decision’s service date. JVG has already waited over 2 years and 3 months for responsive rates, and it should not have to wait any longer to obtain the relief it seeks.

Respectfully submitted,



Peter A. Pfohl

An Attorney for James Valley Grain, LLC

Enclosure (Certificate of Service)

² JVG provided RRVW and its outside counsel a courtesy copy of JVG’s Petition on the date it was filed, and RRVW has been aware of the February 18, 2014 reply due date since that filing date. Should RRVW’s intervention request be granted, the Board should require RRVW to reply by February 18, 2014.

³ *See* 49 C.F.R. § 1300.3 (requiring responsive rates to be provided “as soon as reasonably possible, but no later than 10 business days from receipt of the request.”)

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of February, 2014, caused a copy of the foregoing Reply to be served by U.S. Mail (and email) upon the chief legal officer of BNSF Railway Company, as follows:

Roger Nober
Executive Vice President, Law and Secretary
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131-0039

With a courtesy copy by email to:

Richard E. Weicher
Vice President and General Counsel, Regulatory
BNSF Railway Company
richard.weicher@bnsf.com

With a courtesy copy by email to outside counsel for Red River Valley & Western Railroad Company:

Mark H. Sidman
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