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February 18, 2014

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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

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

Dear Ms. Brown:

Enclosed on behalf of the Red River Valley & Western Railroad Company ("RRVW") please find a copy of RRVW's reply to the complaint of James Valley Grain, LLC, in the above-referenced proceeding.

Please let me know if you require any additional information to process the following petition.

Respectfully submitted,



William A. Mullins
Attorney for Red River Valley & Western
Railroad Company

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. 42139

**JAMES VALLEY GRAIN, LLC
v.
BNSF RAILWAY COMPANY**

REPLY OF RED RIVER VALLEY & WESTERN RAILROAD COMPANY

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**Attorneys for Red River Valley & Western
Railroad Company**

Dated: February 18, 2014

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SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. 42139

**JAMES VALLEY GRAIN, LLC
v.
BNSF RAILWAY COMPANY**

REPLY OF RED RIVER VALLEY & WESTERN RAILROAD COMPANY

Pursuant to 49 C.F.R. § 1104.13, Red River Valley & Western Railroad Company (“RRVW”) hereby tenders its reply to the complaint filed by James Valley Grain, LLC (“JVG”) in the above-docketed proceeding before the Surface Transportation Board (the “Board”), and, for the reasons set forth herein, requests that the Board institute a formal investigation for the purpose of allowing full and fair consideration of the novel and complex issues that JVG has presented in its complaint and that RRVW has advanced herein. Such a proceeding is necessary in order to allow the complete development of the record in accordance with standard practice in formal complaint proceedings adjudicated under the Board’s modified procedures.¹

¹ RRVW petitioned for leave to intervene in this proceeding on February 12, 2014. RRVW anticipated that the Board would act on its intervention request by instituting an investigation on its own motion (or by adopting a procedural schedule proposed by the parties), as is the normal course in a complaint proceeding. Such a process allows for the development of the record which, among other things, provides for discovery and the presentation of evidence and argument thereafter. However, it appears that JVG wishes to circumvent the usual formal complaint process by proposing that the Board adjudicate this dispute on the limited basis of JVG’s complaint and BNSF Railway Company’s (“BNSF”) reply thereto. See JVG’s February 13, 2014 Reply to RRVW’s Petition To Intervene. As discussed more fully herein, JVG’s proposal is at odds with the normal procedural processes for a complaint proceeding and would prevent RRVW from pursuing its interest under a properly-developed record.

As set forth in JVG's complaint, this case presents complex questions about the common carrier obligations of a line-haul carrier (BNSF), when it spins off one of its lines to a short line carrier (RRVW) but, at the same time, reserves to itself the sole right to price interline rail services to shippers located on that line. The issue is whether, under such circumstances, the line-haul carrier has a common carrier obligation to continue to quote such rates or can refuse to do so.

The complaint also raises concerns that BNSF is engaging in discriminatory pricing among similarly-situated shippers in violation of 49 U.S.C. §10741 and has engaged in unreasonable practices by threatening to favor shippers on BNSF's own lines in order to extract allowance concessions from RRVW. These are not purely legal issues that can be dealt with through a "case-in-chief" filing by JVG followed by a BNSF "reply." They are factual issues requiring the development of a full record.

On the issue of BNSF's common carrier obligation, RRVW agrees with JVG that, because BNSF has secured an exclusive pricing right and obligation, and where BNSF has conducted itself for decades in accord with that right and obligation, such practices constitute a "holding out" to provide common carrier service, and that BNSF must provide that service. Although JVG and RRVW may differ about precisely how that issue should be adjudicated, JVG and RRVW agree that BNSF cannot shirk its obligations to shippers located on RRVW's lines by refusing to quote single-line through rates to JVG at Verona.

Although RRVW and JVG share many of the same goals, the issues arising under the facts of the case (as presented to this point) run much deeper than JVG's understandable frustration with a Class I carrier that should, but will not, quote single-line rates to JVG at a point on RRVW's line in accordance with its unvarying practice since the day BNSF spun off the

RRVW line. Based upon the complaint, it appears that BNSF is also engaging in pricing and other conduct intended to discriminate among similarly situated shippers and to deprive RRVW of revenues. In order to understand why BNSF has suddenly refused to quote a through rate to a shipper located on RRVW, after having quoted such rates on 100 percent of the interline traffic handled by RRVW and BNSF since 1987, it is essential that the Board understand the impact of BNSF's actions not only on JVG, but also on RRVW. RRVW's intervention seeks to examine these issues – first raised by JVG itself – not to unduly broaden the proceeding, but rather to ascertain the validity of JVG's and RRVW's concerns.

When fully developed, the record may establish that BNSF has adopted a corporate policy of pricing traffic in such a way as to divert traffic away from RRVW in an effort to undermine the financial structure that both parties agreed upon decades ago and have operated under for decades. If true, the continuation of such actions would threaten the demise of RRVW.² Only a fully-developed record can determine whether this is occurring, and, if so, whether such a policy violates any statutory prohibitions against discrimination or unreasonable practices, or a party's common carrier obligations.

Having first raised these issues in its complaint, JVG has responded to RRVW's intervention petition by suggesting that RRVW should not be allowed to intervene to explore the validity of these claims. In JVG's view, notwithstanding the fact that their complaint was the first to raise these issues of concern, the Board should, upon receiving and reviewing BNSF's reply (or answer), issue an opinion limited to the legal question regarding BNSF's common

² If BNSF's actions are not limited solely to RRVW, and instead, BNSF has adopted a corporate pricing policy of favoring shippers on its own line in order to undermine the financial terms of other long standing shortline relationships, such a policy would have much broader implications, although it would be beyond the scope of this proceeding.

carrier obligation. Such an artificially limited Board analysis would be short-sighted and ignores the other issues raised in JVG's complaint. These other issues are also of concern to RRVW and are so intertwined with the basics of JVG's complaint that RRVW respectfully submits that rushed adjudicatory action based solely upon the common carrier obligation issue would be unwise, especially where the continued viability of a BNSF-established short line railroad is at stake. JVG, having raised these issues, should not be allowed to insist on a truncated procedural process which prevents RRVW from addressing the issues in a formal proceeding.³

If the Board elects to accommodate JVG by prohibiting or delaying RRVW's participation or otherwise severely limiting RRVW's ability to develop the record to fully address all of the issues raised in JVG's complaint, then RRVW would have little choice but to pursue its own complaint before the Board under a separate docket. Such a development, of course, would raise questions of whether the facts and outcomes of the two cases would be so inextricably linked that the adjudication of the one would warrant concurrent adjudication of the other. RRVW respectfully submits that if it is effectively forced to file its own complaint, the interrelatedness of the two cases and the efficient deployment of the Board's resources, argues in favor of either consolidated adjudication, or allowing RRVW to participate as an intervenor here, with an opportunity to develop the record in accordance with the usual formal complaint processes.

³ Given the importance of the issues raised in this proceeding, RRVW respectfully submits that this is a matter that does not properly lend itself to expedited adjudication, regardless of JVG's desire for expedited Board action. Instead, the facts thus far presented warrant careful examination on a fully-developed record in keeping with the customary Board procedures.

For the reasons set forth above, RRVW respectfully requests that the Board accept its reply, and establish a formal proceeding to govern the adjudication of this proceeding under the usual formal complaint procedures.⁴

Respectfully submitted,

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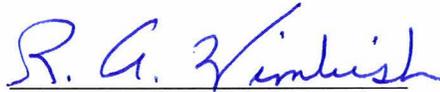
Attorneys for Red River Valley & Western
Railroad Company

Dated: February 18, 2014

⁴ As it explained in its petition to intervene, RRVW welcomes STB-sponsored mediation or arbitration to resolve the issues presented in JVG's complaint as well as those presented here.

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Reply of Red River Valley & Western Railroad Company upon all parties of record by U.S. mail in a properly-addressed envelope with adequate first-class postage thereon prepaid, or by other, more expeditious means.



Robert A. Wimbish
Attorney for Red River Valley & Western
Railroad Company

Dated: February 18, 2014