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February 18, 2014
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February 18, 2014

BY E-FILING

Ms. Cynthia 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 for filing in the above-captioned matter is BNSF Railway Company's Answer to James Valley Grain LLC's Petition for an Order Compelling Establishment of Common Carrier Rates. BNSF is separately filing BNSF Railway Company's Motion to Dismiss James Valley Grain LLC's Petition for an Order Compelling Establishment of Common Carrier Rates.

James Valley Grain LLC ("JVG") is proposing to construct a shuttle elevator for grain shipments at Verona, North Dakota on a rail line owned by Red River Valley & Western Railroad ("RRVW") and has asked the Board to compel BNSF Railway Company ("BNSF"), the linehaul carrier, to establish a direct shuttle rate for grain movements from the prospective Verona facility to the Pacific Northwest ("PNW"). JVG asserts that it needs the common carrier rate to allow it to construct a \$30 million elevator at Verona, ND. JVG says it would take 15-17 months to construct the proposed elevator once JVG decides to go forward and that the elevator would be in operation no sooner than the 2015 harvest season. JVG expresses frustration that BNSF has not satisfied its request for a "BNSF-direct, non-discriminatory common carrier rate" for this potential future shuttle train movement.

However, it is not clear how a common carrier rate that is issued now--and which can be changed on 20 days' notice--could be so critical to JVG's planning around a facility that could

not be constructed and come online until late 2015 at the earliest. If JVG's unstated purpose is to use the rate to secure financing for construction, a common carrier rate issued in the first quarter of 2014 would be indicative only and would provide no assurances of what rate would apply 15 or more months from now when JVG is ready to ship. This is particularly true given the volatility of export grain markets that results in frequent and often substantial changes in the level of common carrier rates on grain movements. If JVG needs indicative rates, then that need has been satisfied by the many data points that BNSF has provided to date on Verona shuttle and non-shuttle rates.

More importantly, BNSF has no obligation under the law to issue a common carrier rate on a movement, like JVG's prospective shuttle grain movement, that could not be used for well over a year from now.

Even though BNSF has had no obligation to provide a common carrier rate to JVG for this proposed movement from Verona, ND to the PNW, BNSF has understood JVG's desire to have some information regarding the potential economics of future service from the prospective Verona facility and has provided JVG with as much information as is currently available. BNSF's ability to provide JVG with a common carrier rate estimate that would apply on specialized shuttle movements on BNSF and RRVW has been hindered by the fact that it has been unable to reach agreement with RRVW, the would be originating rail carrier, regarding the terms and conditions, including a per car handling charge that RRVW would receive for the prospective shuttle movement of grain.

The RRVW is a spin off from the former Burlington Northern Railroad Company that came into existence in the late 1980s. Contrary to JVG's claims, BNSF and RRVW do not have a contract that specifies the rate that JVG would receive for JVG's proposed shuttle train movement. The 1987 Agreement between RRVW and BNSF provides for an extremely robust per car handling charge on single car movements interchanged between the two carriers—JVG's pleading discloses that RRVW would earn over \$700 per car on a 151 mile move! However, the 1987 Agreement does not contain a per car handling charge applicable to shuttle train service, which is not surprising given the vintage of the agreement, which pre-dates the establishment of shuttle service by BNSF. Each of the existing shuttle facilities that located on the RRVW has a separate, unique agreement between BNSF and RRVW that establishes the economics of the interline BNSF/RRVW movements from those facilities. BNSF and RRVW have not established the terms and conditions of shuttle service, including a per car handling charge, on a new shuttle facility since 2005.

Thus, in order to establish a common carrier shuttle rate for movements from JVG's prospective shuttle elevator at Verona, BNSF and RRVW would have to agree on the economics and other elements of those future movements. Despite significant efforts, BNSF has not been able to reach such an agreement with RRVW. The commercial relationship between BNSF and RRVW has been complicated in recent years by the fact that RRVW has failed to make the capital investments necessary to maintain its railroad to a level sufficient to accommodate efficient shuttle train movements despite receiving a very high per car handling charge from

BNSF for grain shuttle movements and single car movements originating on the RRVW. Unless and until such investments are made, any grain shuttle movements originating on RRVW at Verona would have to move over a highly circuitous route to Casselton, ND, resulting in higher costs, higher cycle times and otherwise less efficient service.

Despite its inability to reach agreement with RRVW to date, BNSF has provided JVG with as much information as has been available regarding the economics of a future shuttle movement from Verona to the PNW. In March 2013, Mr. Kaufman of BNSF informed JVG that for the portion of the prospective movement over BNSF's rail lines – from Casselton to the PNW – BNSF was willing to allow JVG to use BNSF's existing published shuttle rates from Casselton, ND. BNSF further told JVG that it should ask RRVW for a rate applicable to RRVW's portion of the movement (from Verona to Casselton), and that the RRVW portion of the rate could be combined with BNSF's existing rates from Casselton and published by BNSF for joint interline service. BNSF does not know if JVG has pursued that avenue with RRVW. What RRVW, and by extension JVG, want is for BNSF to (i) agree to pay RRVW its disproportionately high per car handling charge for its highly inefficient, circuitous move, and (ii) absorb the impact of that very high RRVW per car handling charge without reflecting that impact in the through shuttle rate to be paid by JVG. Despite the political interest and pressure RRVW and JVG have sought to create around this issue, there is no reason why BNSF should lock in this framework for future shipments from the potential facility at Verona, particularly in light of the uncertainty that investments will be made to upgrade RRVW's lines for potential shuttle service and improved cycle times.

Although the carriers have not been able to resolve the commercial issues related to a possible Verona shuttle movement, BNSF still hopes that an agreement can be reached with RRVW. To that end, BNSF met with RRVW on February 12, 2014 at its counsel's offices to discuss settlement options. However, while BNSF is willing to meet with RRVW again if further talks appear fruitful, BNSF has no option now but to pursue a formal resolution of its dispute with RRVW and has served RRVW with a notice of arbitration. BNSF has requested that RRVW join it in establishing an expedited schedule for the arbitration in an effort to resolve outstanding issues with RRVW at a point well before JVG would begin shipping out of Verona.

If you have any questions, please do not hesitate to contact the undersigned counsel.

Sincerely yours,



Samuel M. Sipe, Jr.
Linda S. Stein

Enclosures

cc: Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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JAMES VALLEY GRAIN, LLC)	
)	
Petitioner,)	
)	
v.)	Docket No. 42139
)	
BNSF RAILWAY COMPANY)	
)	
Respondent.)	
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**BNSF RAILWAY COMPANY’S ANSWER TO
JAMES VALLEY GRAIN LLC’S
PETITION FOR AN ORDER COMPELLING
ESTABLISHMENT OF COMMON CARRIER RATES**

Pursuant to 49 C.F.R. § 1111.4, respondent BNSF Railway Company hereby answers James Valley Grain LLC’s (“JVG”) Petition for an Order Compelling Establishment of Common Carrier Rates (“Petition”) filed with the Board on January 29, 2014.¹ As a general matter, JVG’s Petition is deficient in that it is based on an inaccurate and incomplete characterization of the facts. More important for purposes of this Answer, JVG’s Request for Common Carrier Rates is premature. JVG also seeks conditions regarding the requested common carrier rates that the Board does not have the authority to impose. As explained in the accompanying motion, the Petition should therefore be dismissed.

¹ JVG’s Petition consists of two separate lawyers’ pieces – a Preface (hereafter referred to as “Petition Preface” and a Legal Argument (hereafter referred to as “Petition Legal Argument”). The lawyers’ pieces are accompanied by a Verified Statement containing factual allegations and arguments based thereon.

I. Preliminary Statement Regarding the Nature and Form of this Pleading

As a preliminary matter, BNSF Railway Company (“BNSF”) notes that JVG’s Petition is actually a version of a formal complaint within the meaning of the Board’s rules. JVG expressly references the provision of the Board’s rules governing the filing of complaints as a basis for its filing, 49 C.F.R. § 1111.1, and it cites no other procedural authority as the basis for attempting to initiate a proceeding before the Board.²

While it has undeniably filed a species of complaint,³ JVG has avoided the normal protocol of numbered paragraphs setting forth the established categories of factual allegations, claims and requests for relief typically found in complaints before the Board. More important, JVG purports to have filed not just a complaint but its entire “case-in-chief.” (Petition Preface at 2: “This Petition is supported by (1) the accompanying Verified Statement of Eric Larson, General Manager of JVG and (2) counsel’s legal argument, which constitute JVG’s case-in-chief in support of the relief requested.”) The implication of this representation, coupled with JVG’s request for expedited treatment, is that JVG expects (or hopes) that BNSF will respond in 20 days not with an answer but with BNSF’s own case-in-chief.⁴ But all BNSF is required to do at this juncture is to answer JVG’s complaint within 20 days. *See* 49 C.F.R. § 1111.4. It would be unreasonable to expect BNSF to prepare a “case-in-chief” within 20 days of the filing of JVG’s

² *See* Petition Preface at 1. The schedule of filing fees set forth in 49 C.F.R. § 1002.2(f)(56)(vi) (the filing fee section referenced in JVG’s cover letter accompanying its Petition) lists “request[s] for an order compelling a rail carrier to establish a common carrier rate” as a sub-category of “formal complaint[s] alleging unlawful rate or practices of carriers.”

³ For administrative purposes, the Board identifies complaint proceedings with the prefix NOR. The Board has assigned the docket in this proceeding the number NOR 42139.

⁴ In its February 13, 2014 letter reply to the Petition to Intervene of Red River Valley & Western Railroad Company, JVG confirms that it expects BNSF to respond to its case-in-chief by February 18, 2014. However, as explained below, no BNSF response to JVG’s case-in-chief would be due unless the Board initiates an investigation and establishes a procedural schedule calling for such a submission.

Petition, particularly given that JVG has clearly expended significant effort in preparing a lengthy verified statement with numerous exhibits. Indeed, nothing in the nature of a “case-in-chief” would be called for unless and until the Board might begin an investigation and call for the submission of evidence.⁵ As explained below, and in BNSF’s accompanying Motion to Dismiss JVG’s Complaint, there are no grounds for the Board to institute an investigation here.

For the foregoing reasons, BNSF will treat JVG’s Petition as a complaint and will set forth herein the responsive information that would typically be found in an answer. However, given the form of JVG’s Petition, which does not conform to that of a normal complaint, the format of this Answer will also differ from that of the typical answer (paragraph by paragraph responses to numbered paragraphs in the complaint) filed in Board complaint proceedings.

II. BNSF’s Responses to JVG’s Factual Allegations

In this section of its Answer, BNSF responds to the factual allegations on which JVG bases its claims for relief. Those factual allegations are found primarily in the Verified Statement of Eric Larson (hereafter “Larson VS”). Some factual allegations are also woven into JVG’s counsel’s legal argument. BNSF’s responses consist primarily of general clarifications and corrections to the incorrect, incomplete and misleading picture painted by JVG. To the extent that BNSF does not expressly address a factual allegation made by JVG below, BNSF denies the allegation.

A. JVG’s Unexplained Assertion that It Needs a Through Shuttle Rate from Verona to the PNW to Construct a Shuttle Facility at Verona

The core and oft-repeated allegation underlying JVG’s claim for relief is that “non-discriminatory grain shuttle through rates to Pacific Northwest (PNW) destinations . . . are

⁵ The relevant statute states that “[e]xcept as otherwise provided in this part, the Board may begin an investigation under the part only on complaint.” 49 U.S.C. § 11701(a).

necessary to allow us to construct a new state-of-the-art \$30+ million elevator at Verona, North Dakota.” Larsen VS at 1-2. The general assertion lacks a factual basis. JVG never explains why the existence of a rate quotation is necessary “to allow” construction, or even what that means. As the Board well knows, the volatility of export grain markets results in frequent and often substantial changes in the level of common carrier rates on grain movements. JVG has asked BNSF to establish a current common carrier shuttle rate for Verona — a rate that by definition can be changed on 20 days’ notice. By JVG’s own representations, the transportation to the facility could start no earlier than the 2015 harvest season and it would take 15 to 17 months to construct the proposed facility. It is not clear exactly what role a 1Q2014 rate — clearly subject to change — would serve in allowing JVG to commence construction. If JVG’s purpose is to obtain rates to use in its efforts to secure financing for construction of the Verona elevator, then it would seem that a 1Q2014 common carrier rate would be indicative only, and would provide no real assurances of what rate would apply in the 2015 harvest season. If JVG needs indicative rates only, then that need has been satisfied by the many data points that BNSF has provided to date on Verona rates.

B. Allegations Regarding BNSF’s Contractual and Commercial Relations with Red River Valley & Western Railroad

The rail carriers that would transport the grain from JVG’s proposed Verona facility to the PNW are Red River Valley & Western Railroad (“RRVW”), the shortline railroad on which JVG proposes to construct a prospective shuttle elevator at Verona, ND, and BNSF, the linehaul carrier that would deliver the grain to the PNW destinations. Perhaps as a result of being misinformed by RRVW, JVG makes numerous incorrect allegations regarding BNSF’s

contractual and commercial relationship with RRVW.⁶ There are also numerous critical omissions in its factual account. It should be noted that none of these facts relating to BNSF and RRVW's relationship is relevant to BNSF's accompanying Motion to Dismiss. However, because JVG's Petition presents such a distorted view of the relationship, BNSF addresses the principal factual allegations below.

As an initial matter, JVG's numerous assertions regarding the meaning of a 1987 Rate and Allowance Agreement between BNSF and RRVW ("1987 Agreement") and its claims that BNSF has violated the terms of this agreement may not properly be considered by the Board in addressing JVG's Petition. The Board is not in a position to determine the validity of JVG's allegations regarding the 1987 Agreement, as the interpretation of that contract is a matter for arbitration. Indeed, as explained further below, last week BNSF invoked arbitration under the 1987 Agreement in an effort to resolve its issues with RRVW.

In any event, the 1987 Agreement does not apply to JVG's request for a common carrier shuttle rate on RRVW. JVG is correct that the RRVW was a contractual line sale to a new entity by the former Burlington Northern Railroad Company, a BNSF predecessor, and that the 1987 Agreement, entered as a result of the line sale, established per car charges for RRVW's handling of carload traffic. However, JVG's suggestion that the 1987 Agreement applies to shuttle train movements is incorrect.⁷ The 1987 Agreement contains no per car handling charge applicable to

⁶ RRVW filed a Petition to Intervene in this proceeding on February 12, 2014 making general assertions in support of JVG's petition. BNSF believes that there is no need for RRVW to be a party to this proceeding because the proceeding should be dismissed for the reasons set forth in BNSF's accompanying Motion to Dismiss.

⁷ JVG adopts and presents as a fact RRVW's characterization of certain provisions of the 1987 Agreement. *See, e.g., Larson VS* at 11: "[T]he fact is that resolution of the issue of divisions between the carriers was actually determined 26 years ago as part of the BNSF/RRVW Rate and Allowance Agreement." This assertion, like others regarding the BNSF/RRVW contractual

shuttle train movements. *See* Larson Exhibit 4. Shuttle train movements were first addressed by BNSF and RRWV in a separate 1999 Agreement between the carriers that JVG does not even mention. And each of the seven different shuttle facilities that has located on the RRWV since 1999 is the subject of a separate, unique agreement between BNSF and RRWV that establishes the economics of the interline BNSF/RRWV movements from those elevators. The last new shuttle facility agreement between BNSF and RRWV was entered in 2005.

JVG is also categorically wrong in asserting that there is no dispute on the subject of the prospective revenue allocation between BNSF and RRWV for hypothetical shuttle train movements from Verona to the PNW under joint through rates. In fact, the inability of the carriers to reach agreement to date on this matter is precisely the reason that BNSF could not have furnished JVG with the joint through common carrier rate it has requested even if BNSF had been obligated to do so. In the past, the carriers have been able to work out the economics and have entered into the individual agreements referred to in the prior paragraph to formalize those arrangements. Unless and until BNSF and RRWV agree on the economics of future movements from JVG's prospective shuttle facility at Verona, BNSF will have no information to convey to JVG regarding such rates apart from its current rate for shuttle movements from Casselton, ND which would apply to BNSF's portion of the through movement from Verona and which BNSF has already provided to JVG. It would be futile for the Board to order BNSF to provide something that it cannot in good faith provide at this time.

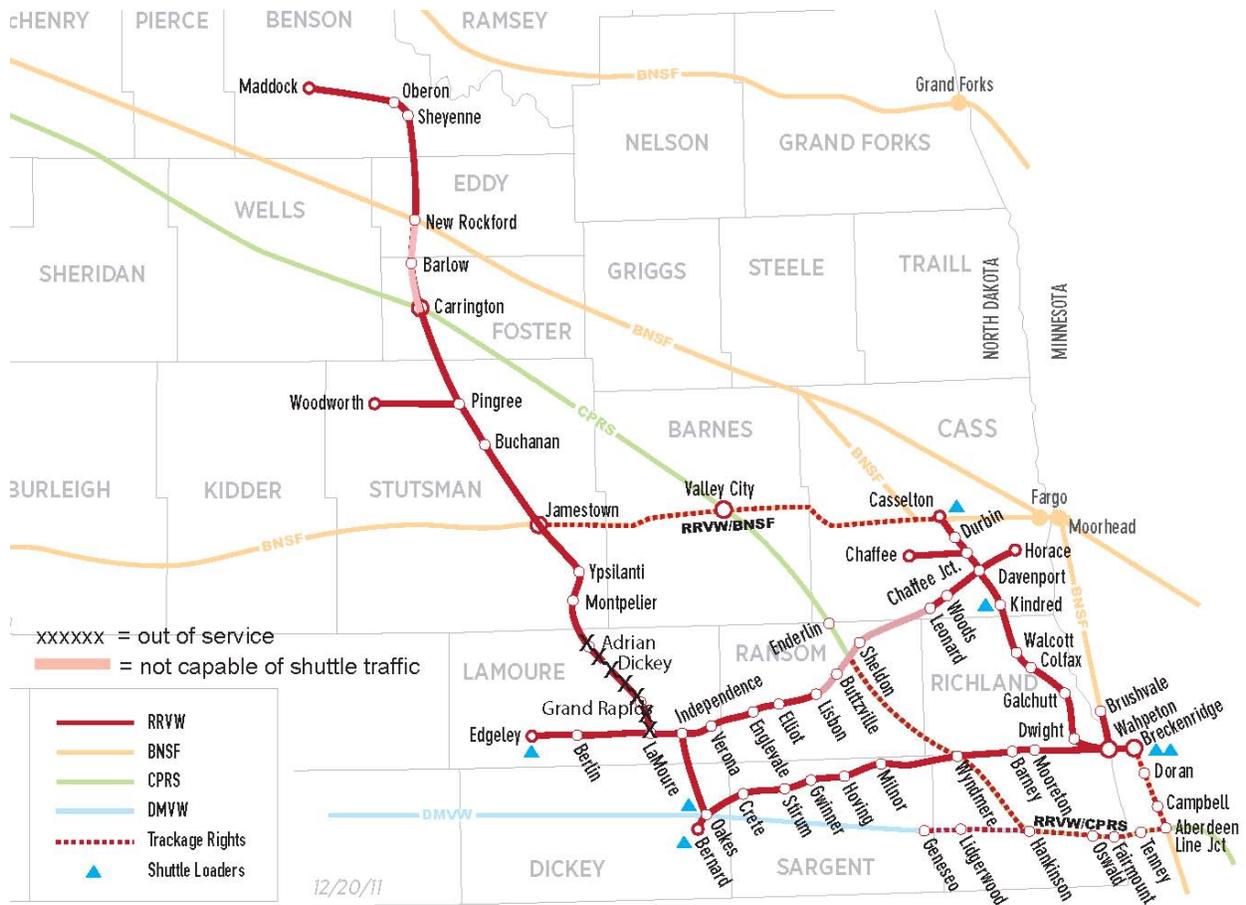
The commercial relationship between BNSF and RRWV has been complicated in recent years by the fact that RRWV has failed to make the capital investments necessary to maintain its

relationship, is incorrect, presumably because RRWV chose not to disclose all relevant information to Mr. Larson.

railroad to a level sufficient to accommodate efficient shuttle train movements despite receiving a very high per car handling charge from BNSF for single car movements (currently approximately 70% of the traffic on RRVW) and for grain shuttle movements originating on RRVW. In particular, as shown on the table below, the segment of the RRVW extending from Verona east to Davenport, ND and north to a connection with BNSF at Casselton, ND is not up to the standard required to handle shuttle train shipments.⁸ Thus, if there were to be shuttle movements originating on RRVW at Verona under current circumstances they would have to move over a highly circuitous and longer route to Casselton,⁹ causing RRVW to incur substantially higher variable costs than if the more direct route had been well maintained.

⁸ This segment also is shown on the RRVW map on page 9 of Mr. Larson's verified statement.

⁹ This more circuitous route would go from Verona west to Independence, south to Oakes, east to Wahpeton and north to Casselton, a distance of 151 miles. *See* RRVW map at Larson VS, page 9; Larson VS at 13. On the other hand, the short route via Davenport is 73 miles.



JVG is seeking a Board order that would compel BNSF to quote a through rate that would meet RRWV’s revenue requirements at the expense of BNSF’s. JVG should not expect the Board to pick and choose among carriers’ competing commercial interests, particularly where the parties’ commercial relationship is regularly determined by private negotiation. Moreover, as discussed below, the Board has no authority to require that common carrier rates be established at a particular level.

BNSF has been working diligently to resolve its differences with RRWV regarding the economics and service terms of a potential movement from a shuttle facility at Verona since mid-2012. BNSF has had multiple discussions with RRWV regarding the matter and those discussions have addressed, among other things, both RRWV’s per car handling charge for shuttle service and the need for RRWV to make investments to allow RRWV to accommodate

shuttle train movements. In May 2013, BNSF proposed to RRVW that the carriers define the specific dispute relating to shuttle per car handling charges and submit it to an arbitrator for speedy resolution. At RRVW's request, BNSF postponed submitting the matter to arbitration so that the parties could attempt to resolve the dispute through negotiation. The last meeting between RRVW and BNSF was held on February 12, 2014. BNSF and RRVW were unable to resolve the dispute. Consequently, BNSF served RRVW with a notice of arbitration and requested an expedited schedule for the arbitration that same day.

C. Allegations Regarding BNSF's Dealings with JVG

BNSF denies JVG's allegations that BNSF has improperly refused to provide a direct through common carrier shuttle rate from JVG's proposed shuttle facility at Verona ND to the PNW and has unreasonably delayed responding to JVG's request for such a rate. There is no shuttle elevator – or any elevator – at Verona, and by JVG's own statements, no such facility could be constructed there for well over a year. Even though BNSF has had no obligation to provide a common carrier rate to JVG for this proposed future movement (*see* accompanying Motion to Dismiss), BNSF has understood JVG's desire to have some information regarding the potential economics of future service from the prospective Verona facility and has provided JVG with as much information as is currently available.

As explained above, BNSF is not able to provide a common carrier rate for shuttle service to JVG for a prospective BNSF-direct Verona to PNW movement unless and until it is able to reach a commercial agreement with RRVW regarding the terms and conditions of shuttle service, including RRVW's revenue on the movement. BNSF has diligently attempted to reach such an agreement with RRVW since mid-2012 but those efforts have been unsuccessful.

Despite its inability to reach an agreement with RRVW, BNSF has provided JVG with as much information as is currently available regarding a common carrier rate for shuttle service. In March 2013, Mr. Kaufman of BNSF informed JVG that for the portion of the prospective movement over BNSF's rail lines – from Casselton to the PNW – BNSF was willing to allow JVG to use BNSF's existing published shuttle rates from Casselton, ND. BNSF further told JVG that it should ask RRVW for a rate applicable to RRVW's portion of the movement (from Verona to Casselton), and that the RRVW portion of the rate could be combined with BNSF's existing rates from Casselton for joint interline service.¹⁰ BNSF does not know if JVG pursued this avenue with RRVW. In response to JVG's subsequent September 2013 request, BNSF explained that while it had no obligation to provide a common carrier rate from the proposed Verona facility it nevertheless reiterated its March 2013 offer and provided other options as well. *See Larson VS, Exhibit 9.*

BNSF also denies JVG's allegation that BNSF has failed to pay adequate attention to JVG's request since October 2013. By September 2013, BNSF already had fully responded to JVG's request and explained BNSF's position regarding its obligation to provide common carrier rates for shuttle service. Subsequent to September 2013, BNSF continued to work diligently to try to reach a commercial arrangement with RRVW regarding the terms and conditions for shuttle service from a prospective shuttle elevator at Verona, ND. During those months, BNSF was exchanging proposals with RRVW in an effort to resolve the issue. In January 2014, BNSF presented its final offer and in February 2014 submitted a notice for expedited arbitration to RRVW when an impasse was reached.

¹⁰ In that March 26, 2013 letter, BNSF stated "we will grant permission to the RRVW to provide you with a rate to Castleton [sic] from your proposed Verona, ND origin." *See Exhibit 1 attached.* Thus, JVG's claim that RRVW was "prohibited from establishing its own rate for its portion of any such movement" (Petition Legal Argument at 19) is incorrect.

III. BNSF's Responses to JVG's Legal Claims and Request for Relief

A. JVG's Request for a Common Carrier Rate is Premature

JVG currently has no elevator at Verona, ND that could make use of rail service. JVG expresses the hope to construct a shuttle elevator at Verona, but it has no definitive plans to do so. JVG attempts to put the onus on BNSF for its own failure to move forward. But the decision to move forward to construction is not BNSF's to make. If JVG were to move forward, it says that the earliest the elevator could be ready to originate shipments would be the 2015 harvest season, which is over a year and a half from now.

Under these circumstances, as explained more fully in BNSF's accompanying Motion to Dismiss JVG's complaint, JVG's request that the Board order BNSF to establish a common carrier rate is unmistakably premature, and its request for relief must be denied pursuant to the D.C. Circuit's decision in *Burlington N. R.R. v. STB*, 75 F.3d 685 (D.C. Cir. 1996) (finding an ICC order requiring establishment of a common carrier rate over a year before common carrier service would be needed to be unlawful.) See Motion to Dismiss at 3-6. The prematurity of JVG's request for common carrier rates is an overriding factor that is fatal to that request. Therefore, JVG's legal argument regarding BNSF's supposed holding out "to exclusively provide BNSF-direct rates and service" (Petition Legal Argument at 10) is irrelevant at the current time and does not need to be addressed in this Answer.

B. The Board Does Not Have the Authority to Order BNSF to Establish a Common Carrier Rate with the Qualifications JVG Seeks

JVG is not simply seeking the publication of a common carrier rate, nor even a common carrier rate for shuttle service. JVG goes further and suggests that the form of the rate must be a joint through rate specifying BNSF direct service from Verona, rather than a Rule 11 rate, and

that the rate must be “non-discriminatory.”¹¹ By “non-discriminatory,” JVG means that the *level* of the rate should be “comparable” to rates previously established by BNSF for other shuttle elevators located on the RRVW. Larson VS at 16.

Even if JVG’s request for a common carrier rate were not premature, as explained more fully in the accompanying Motion to Dismiss, the Board would not have authority to order BNSF to establish a common carrier rate with the qualifications that JVG has specified. *See* Motion to Dismiss at 6. As a common carrier railroad, BNSF is required to establish common carrier rates on reasonable request, but BNSF would have the right to set the form and level of the rate in the first instance. 49 U.S.C. § 10701(c). *Burlington Northern* makes clear the Board could not prescribe the level of a common carrier rate unless and until JVG had challenged the rate as unreasonably high and had prevailed on the merits of its claim.

IV. BNSF’s Response to JVG’s Request for Expedited Treatment

JVG requests an expedited Board decision on its claim. BNSF believes that the Board should resolve this matter expeditiously by granting BNSF’s Motion to Dismiss JVG’s Petition. But if for some reason the Board should decide to institute an investigation, the Board would have to establish a procedural schedule and give BNSF an opportunity to respond to JVG’s “case-in-chief.”¹²

¹¹ JVG repeatedly refers to “BNSF-direct, non-discriminatory through rates.” *See, e.g.*, JVG Legal Argument at 7. In its legal argument, JVG asserts in a footnote that BNSF has violated 49 U.S.C § 10741 which prohibits certain forms of discrimination by rail carriers. JVG does not explain this allegation, and it cannot be squared with JVG’s core allegation that JVG has refused to satisfy JVG’s request to establish a common carrier rate.

¹² There is no greater need for expedition here than in most other Board proceedings, and less need than in many. This is not a case like *Canexus* where the traffic for which a common carrier rate was sought was already moving and expedited action was needed to prevent the possible interruption of ongoing service.

V. BNSF's Affirmative Defenses

1. JVG's claim is barred as premature.
2. JVG seeks relief that is beyond the Board's authority to grant.
3. JVG fails to state a claim in that BNSF has satisfied any common carrier

obligation it might have by advising JVG of the BNSF rate for movement from Casselton, ND to the Pacific Northwest which could be combined with an RRVW Rule 11 factor to form through rates from Verona, ND to the PNW.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

February 18, 2014

EXHIBIT 1



Kevin D. Kaufman
Group Vice President
Agricultural Products

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2650 Lou Menk Drive, 2nd Floor
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817-867-6700 Office
817-352-7932 Fax
Kevin.Kaufman@bnsf.com

March 26, 2013

Mr. Lance Hansen
Chairman of the Board
James Valley, LLC
PO Box 210
600 South 7th St.
Oakes, ND 58474

Mr. Hansen:

We are in receipt of your letter dated March 20, 2013, and appreciate your business and the business that we do with South Dakota Wheat Growers.

We are willing to allow you to use our existing, published rates as a combination rate from our interchange with the RRVW at Casselton, ND. In his letter to you of March 22, Andy Thompson stated that RRVW would price interline traffic to and from Verona via BNSF if it had the ability. In order to enable that, we will grant permission to the RRVW to provide you with a rate to Castleton from your proposed Verona, ND origin that can be used in combination with our aforementioned tariff rate from Casselton, ND for joint interline service. Therefore, we suggest that you contact the RRVW to negotiate your requested rate from Verona to Casselton.

Please contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kaufman", followed by a horizontal line.

Kevin Kaufman
Group Vice President
BNSF Railway Company

cc: Andy Thompson, RRVW RR

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2014, I have served a copy of the foregoing **BNSF RAILWAY COMPANY'S ANSWER TO JAMES VALLEY GRAIN LLC'S PETITION FOR AN ORDER COMPELLING ESTABLISHMENT OF COMMON CARRIER RATES** on the following by hand delivery and in pdf format via e-mail:

Peter A. Pfohl
Christopher A. Mills
Slover & Loftus LLP
1224 Seventeenth Street, N.W.
Washington, DC 20036

A courtesy copy was delivered in pdf format via e-mail on the following:

William A Mullins
Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037