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March 12, 2015

VIA ELELCTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

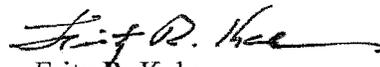
Re: Docket No. NOR 42140, Colorado Wheat Administrative Committee,
Colorado Association of Wheat Growers, Colorado Wheat Research
Foundation and KCVN, LLC

Dear Ms. Brown:

Enclosed for filing in the subject proceeding is the Petition of V and S Railway,
LLC to File Reply to Reply.

If you have any question concerning this filing or if I otherwise can be of
assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

Enc.

Cc: Thomas W. Wilcox, Esq.
Mr. Terry Whiteside

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWERS,
COLORADO WHEAT RESEARCH FOUNDATION
AND KCVN, LLC

v.

V AND S RAILWAY, LLC

PETITION OF V AND S RAILWAY LLC
TO FILE REPLY TO REPLY

Fritz R. Kahn
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Attorney for

V AND S RAILWAY LLC

Dated: October 12, 2015

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42140

COLORADO WHEAT ADMINISTRATIVE COMMITTEE,
COLORADO ASSOCIATION OF WHEAT GROWERS,
COLORADO WHEAT RESEARCH FOUNDATION
AND KCVN, LLC

v.

V AND S RAILWAY, LLC

PETITION OF V AND S RAILWAY LLC
TO FILE REPLY TO REPLY

V and S Railway, LLC (“V&S”), the owner of the Towner Line in Colorado, pursuant to 49 C.F.R. § 1117.1, respectfully asks the Board to accept this brief reply to the Complainants’ Reply to the Motion for Protective Conditions which V&S had filed on February 4, 2015¹, and in support thereof V&S states, as follows:

¹ Replies to replies are not permitted under 49 C.F.R. § 1104.13(c), but the Board often has allowed the in the interest of compiling a more complete record. Docket FD 35745, New Jersey Ass’n of RR Passengers and Nat’l Ass’n of RR Passengers – Petition for Declaratory Order – Princeton Branch (STB, served July 24, 2014); Docket FD 35740, BNSF Railway and Musket Corp. v. Union Pacific RR Co. (STB, served December 31, 2013). That is the purpose of this filing.

1. At page 1 of their Reply, Complainants contend that they had attempted to resolve discovery matters with V&S outside of formal Board involvement so as not to waste the Board's time and resources. That is misleading, at best. Complainants filed their First Discovery Requests on November 21, 2014, without their counsel having had any prior discussion or written exchanges with counsel for V&S concerning the information and documents that the Complainants were seeking. Had he done so, there very likely would not have been a need for Complainants' filing their First Discovery Requests.

2. Exhibit 1 attached to their Reply, the copy of the letter counsel for Complainants had sent to counsel for V&S on January 26, 2015, detailed Complainants' dissatisfaction with V&S' response to the Complainants' First Discovery Requests and was an obvious prelude to Complainants filing yet another discovery request or motion to compel in addition to the ones Complainants previously had filed. Since V&S had responded fully and truthfully to Complainants' First Discovery Request, V&S anticipated that the Complainants filing would be yet a further effort by Complainants to annoy, oppress or impose an undue burden and expense on V&S and to raise issues inappropriate to the proceeding that Complainants initiated and

subsequently revised, and it was to invoke the Board's assistance to avoid such improprieties that V&S filed its Motion for Protective Conditions.²

3. On page 2 of their Reply, Complainants contend that they initiated the instant proceeding because V&S had formally expressed its intent to seek the Board's authorization to abandon the entire Towner Line. That is not altogether accurate. The Board has a regulation, 49 C.F.R.

§ 1152.20, for formally filing of a notice of intent to abandon a line of railroad, and V&S filed none relating to the entire Towner Line. V&S did apply for the Board's authorization to abandon the eastern segment, between Towner and Eads, but the Board rejected V&S' Notice by its Decision in Docket AB 603 (Sub-No. 3X), V&S Railway LLC—Abandonment Exemption—In Kiowa County, Colo. (STB, served October 23, 2014).

V&S has not sought any other abandonment authorization from the Board relating to the Towner Line and most definitely no authorization to abandon the entire Towner Line.

² Complainants' Motion for Emergency and Preliminary Injunctive Relief, which is a basis for the initiation of the instant proceeding, raises a single legal issue, namely, can V&S remove track following the receipt of the Board's discontinuance authorization or must it obtain the Board's abandonment authorization. Complainants' First Discovery Requests have nothing to do with resolution of that legal issue, and the prospect of second discovery requests or motion to compel is nothing more than an attempt to harass V&S while Complainants' Motion is pending.

4. On page 2 of their Reply, Complainants contend that V&S's failure to render service on the entire Towner Line after it had secured the Board's authorization to discontinue serving the Western Segment in Docket AB 603 (Sub-No. 2X), V& S Railway, LLC—Discontinuance of Service Exemption—in Pueblo, Crowley and Kiowa Counties, Colo. (STB, served June 28, 2012), drew "the objections of the other complainants in this action, rail shippers in the vicinity of the line, and local counties and other entities who support KCVN's efforts." This is a complete misrepresentation. No one objected to the V&S' discontinuance of service on the Western Segment, and in the seven years that V&S has owned and operated the Towner Line no one has complained, whether to V&S or the Board, about the transportation or service rendered by V&S on the Towner Line.

5. In footnote 1 on page 2 of their Reply, Complainants distorted the content of the November 25, 2014, letter from V&S' counsel to Complainants' counsel. To enable to Board to see for itself what the letter said, a copy of it is attached as Exhibit A.

6. On pages 3-5 of their Reply, Complainants contended that V&S improperly filed its Motion for Protective Conditions because it had not objected to the instructions of Complainants' First Discovery Requests or its requests for admission, interrogatories and document requests. That's

nonsense. The instructions were boilerplate instructions and were not objectionable. And as for the discovery requests themselves, V&S chose not to object to them but instead responded completely and truthfully to each one.

7. On page 4 of their Reply, Complainants maintained that V&S' response to their First Discovery Requests "appear to have been drafted by counsel for V&S, and that no V&S employee had conducted a review of any V&S files" The assertion is preposterous. How else could V&S' counsel have known that in fact no rail had been removed from the Western Segment of the Towner Line or that, in contemplation of its removal, the rail had been sold by SMS to A&K Railroad Materials, Inc., which in turn sold it to Great Western Railway of Colorado LLC? V&S' response clearly identified Kern Schumacher, Rhonda Nicoloff, Beth Wyatt and Doug Davis as the persons who participated in the discussions, negotiations and decision-making regarding the sale of track materials of any portion of the Towner Line.

8. On page 4-5 of their Reply, Complainants in what can only be described as a desperate move on their part to attempt to have the Board avoid approving V&S' Motion for Protective Conditions misrepresent the Board's regulations. The concluding paragraph of 49 C.F.R. § 1114.21(c)

that says, “A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under § 1114.24(a), § 1114.26(a), or § 1114.31.” V&S sought no relief under these sub-sections, because there was no deposition, and the V&S did not object to the written interrogatories in the Complainants’ First Discovery Requests but answered them completely and truthfully. What prompted V&S’ Motion for Protective Order pursuant to 49 C.F.R § 1114.21(c) is the hostile and aggressive nature of what Complainants signaled in the January 26, 2015, letter from Complainants’ counsel to V&S’ counsel, Exhibit 1 of Complainants’ Reply to Motion for Protective Conditions, would be their second discovery requests or second motion to compel. 49 C.F.R. § 1114.21(c) is explicit that a party need not await reprehensible and scurrilous discovery but in anticipation of it can request the Board to enter an order protecting it from annoyance, undue burden or expense or to prevent the raising of issues inappropriate to the proceeding.

WHEREFORE, V and S Railway, LLC respectfully requests the Board to entertain this brief reply to Complainants’ Reply to the Motion for Protective Order which V and S Railway, LLC had filed and enter an order protecting V and S Railway, LLC from annoyance, undue burden or expense

or to prevent the raising of issues inappropriate to the proceeding which
Complainants may file in a second discovery requests or motion to compel.

Respectfully submitted,

V AND S RAILWAY, LLC

By its attorney,



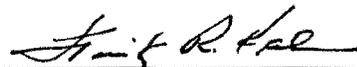
Fritz R. Kahn
Fritz R. Kahn, P.C.
1919 M Street, NW (7th fl.)
Washington, DC 20036
Tel.: (202) 263-4152
e-mail: xiccgc@gmail.com

Dated: March 12, 2015

CERTIFICATE OF SERVICE

I certify that I this day served the foregoing Petition upon the wheat
interest by mailing a copy to their representative, Mr. Terry Whiteside, and
upon KCVN, LLC by e-mailing a copy to its counsel, Thomas W. Wilcox
at twilcox@gkgiaw.com.

Dated at Washington, DC, this 12th day of March 2015.



Fritz R. Kahn

EXHIBIT A

LAW OFFICES
FRITZ R. KAHN, P.C.
1010 M STREET, NW (7TH FL.)
WASHINGTON, DC 20036

TEL: (202) 268-4152 November 25, 2014
FAX: (202) 331-8330
e-mail: xiccgc@gmail.com

Thomas W. Wilcox, Esq.
GKG Law
1054 31st Street NW
Washington, DC 20007

Dear Tom:

As you know, pending before the Board are the Complaint Alleging Violations of 49 U.S.C. §10903, the alleged removal of rail and track materials from the discontinued Western Segment of the Towner Line without having secured the Board's abandonment authorization, and §11101, the alleged failure to provide service or transportation upon reasonable request, and Motion for Emergency and Preliminary Injunctive Relief, filed by the Complainant on October 28, 2014, and, since in its view the two filings were based on the identical contended violations of the law, V and S Railway, LLC, filed its Reply to both on October 30, 2014.

Having had insufficient time to consider the merits of the pleadings, the Board on October 31, 2014, entered a stay order.

Until the Board renders its decision disposing of the stay order, it is uncertain whether it will entertain the Complaint and, if so, what issues it will want to be addressed by the parties. Accordingly, V and S Railway, LLC deems the Complainants' First Discovery Requests to be premature and will not respond to them at this time.

Sincerely yours,


Fritz R. Kahn