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SIDNEY L. STRICKLAND JR
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April 3, 2007

Honorable Vernon A. Williams
Surface Transportation Board
395 I. Street, S W
Washington, DC 20423

**Re: Surface Transportation Board Finance Docket No. 34979,
BNSF Railway Company – Trackage Rights Exemption –
Grand Trunk Western Incorporated**

Dear Secretary Williams

Enclosed for filing in the above referenced docket are an original and ten copies of a
Response to Rebuttal to Reply to Protest

Please acknowledge receipt of this material by date stamping the enclosed copy of this
letter and returning it to me in the enclosed self-addressed stamped envelope

Sincerely,

Sidney L. Strickland, Jr.
Sidney L Strickland, Jr.

SI S/cac
Lncs

cc John Sims
JM Karukian

ENTERED
Office of Proceedings
APR 3 - 2007
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34979

BNSF RAILWAY COMPANY
- TRACKAGE RIGHTS EXEMPTION -
GRAND TRUNK WESTERN RAILROAD INCORPORATED

RESPONSE TO REBUTTAL TO REPLY TO PROTEST

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ATTORNEYS FOR
BNSF RAILWAY COMPANY

Dated April 3, 2007

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 34979

**BNSF RAILWAY COMPANY
TRACKAGE RIGHTS EXEMPTION--
GRAND TRUNK WESTERN RAILROAD INCORPORATED**

RESPONSE TO REBUTTAL TO REPLY TO PROTEST

BNSF Railway Company ("BNSF") hereby files this Response to Rebuttal to Reply to Protest ("Response") in response to the Rebuttal to Reply to Protest ("Rebuttal") filed on March 27, 2007, by Mr. Karakian, for and on behalf of the Brotherhood of Locomotive Engineers & Firemen-General Committee of Adjustment- Grand Trunk Western Railroad ("BLEF"). BNSF moves for the Board to strike the Rebuttal as an impermissible reply to a reply.

BACKGROUND

On January 30, 2007, BNSF filed its Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), to permit BNSF to acquire overhead trackage rights over a 2.4 mile rail line owned by Grand Trunk Western Railroad Incorporated d/b/a Canadian National Railway Company ("CN") located between CN's Connection with Norfolk Southern Corporation ("NS") trackage at or about CN's Milepost 8.5 and CN's

connection with NS at the west end of CN's Fence Track at or about CN's Milepost 6 1, all on CN's Elson Subdivision, all within the State of Illinois. The Notice was published in the Federal Register on February 15, 2007. The exemption became effective on March 1, 2007.¹

On March 5, 2007, BLET filed what it termed as a "Protest" with the Board, speculating, among other things, the subject trackage rights may allow BNSF or NS to capture work of the GTW/Elson Assignment #510. On March 23, 2007, BNSF filed a Reply to Protest ("Reply to Protest"), arguing BLET's filing included, at best, speculation and hearsay that failed to substantiate any claim that would merit revocation of the Notice of Exemption. On March 27, 2007, BLET submitted the present Rebuttal.

ARGUMENT

BLET's Rebuttal Is an Impermissible Reply to a Reply

BLET's Rebuttal is in violation of 49 C.F.R. 1104.13(c), which provides "[a] reply to a reply is not permitted." Here, BLET only reasserts the same speculative arguments that were made in its previous filing.

The Board and its predecessor have routinely held that the filing of a reply to a reply is impermissible and violates Section 1104.13. See, e.g., Northeast Interchange Ry. LLC—Case and Operation Exemption—Line in Croton-on-Hudson, NY, STB Docket No. 34734 (STB served November 18, 2005), CSX Transp., Inc.—Abandonment Exemption—in Franklin County, PA, STB Docket No. AB-55 (Sub-No. 568X) (STB

¹ Applicants were agreeable to the imposition of the standard labor protective conditions imposed by the Board pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendicino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). The Federal Register notes the imposition of this condition

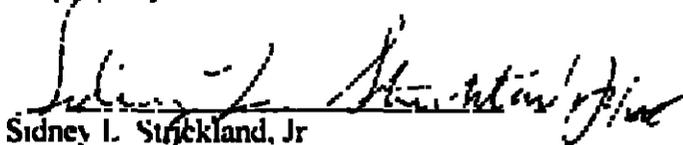
served July 28, 2005). CSX Corp —Control - Chessie System, Inc., 2 S.T.B. 554 (1997),
St. Louis S.W. Ry. Co —Trackage Rights Over Missouri Pac. R.R. Co —Kansas City to
St. Louis Trackage Rights Compensation, 4 J.C.C. 2d 668 (1987). In its Rebuttal,
BLEF claims BNSF, in its Reply, omitted five words when quoting from BLEF's Reply
to Protest, to "*slant the opinion* of the Surface Transportation Board [sic]." See Rebuttal
at 1. To the contrary, the quote is simply more of the same material—unsupported
speculation that need not be repeated. The omission was simply to excise redundancy.

Here, BLEF's Rebuttal clearly reasserts the same speculative arguments of its
March 5, 2007 filing, repeating the speculative five words "But then again who knows."
See Rebuttal at 3. As such, BLEF's present filing is an impermissible reply to a reply.

CONCLUSION

BNSF respectfully urges that the Board deny BLEF's Rebuttal to Reply to
Protest. BLEF's filing simply repeats the same speculation and hearsay arguments of the
March 5, 2007 filing and is a reply to a reply that should be stricken or rejected.

Respectfully submitted,

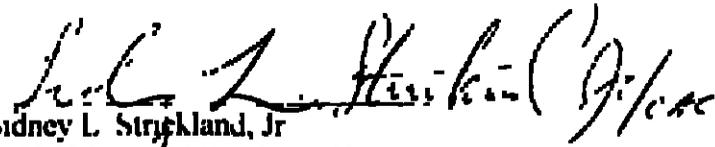


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ATTORNEYS FOR BNSF RAILWAY COMPANY

CERTIFICATE OF SERVICE

BNSF Railway Co ("BNSF") by and through its authorized counsel, certifies that on April 3, 2007, BNSF sent copies of the foregoing Response to Rebuttal to Reply to Protest, by facsimile transmission and by mailing copies thereof by first-class-mail to J M Karakian, 43422 West Oaks Drive, PMB 337, Novi, MI 48377-3300


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