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Via E-Filing

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

Re: Sherwin Alumina Company, LLC v. Union Pacific Railroad, Docket No. 42143

Dear Ms. Brown:

The Brotherhood of Locomotive Engineers and Trainmen's ("BLET") July 17, 2015 filing in the above-referenced proceeding is an impermissible reply to a reply and should be rejected. Moreover, Sherwin Alumina Company, LLC ("Sherwin") submits that BLET materially misstates the facts and law associated with its Notice of Intent to Participate. BLET has not shown that its Notice is sufficient either substantively or procedurally. Sherwin respectfully submits that there is no basis in the Board's rules or precedent for allowing BLET to intervene in this case, much less for allowing BLET to do so at this late date.

1. BLET's filing offers no explanation for its failure to act until now (many months after Sherwin filed its Petition); it ignores the expedited nature of this proceeding; and it does not even bother to dispute the prejudicial effect its late entrance would have on Sherwin. Instead, BLET devotes its filing to misstating the Board's procedural requirements and to mischaracterizing the nature of this case. First, BLET argues that the Modified Procedures (49 C.F.R. Part 1112) do not apply here and therefore that the union was not required to file for leave to intervene. This argument is a red herring. The Board historically has applied the intervention rules of Section 1112.4 beyond the narrow context of the Modified Procedures themselves. *See, e.g., Canexus Chems. Canada L.P. v. BNSF Ry. Co.*, FD 35524, slip op. at 3 (STB served Oct. 14, 2011) (applying 49 C.F.R. § 1112.4 intervention standards in a case using the formal complaint procedures of 49 C.F.R. Part 1111); *Tex. Mun. Power Agency v. The Burlington, N. & Santa Fe Ry*, NOR 42056, slip op. at 2 (STB served Sept. 24, 2004) (applying the Section 1112.4 intervention standards in a stand-alone rate case). BLET further ignores its timing-related obligations under other Board rules. *See, e.g.,* 49 C.F.R. § 1111.4(c) (timely filing required in complaint cases); 49 C.F.R. § 1104.13 (setting the time for replies and motions generally). BLET similarly suggests that there is no applicable procedural schedule, but BLET ignores the

Board's March 25, 2015 decision setting a time for UP's reply and even noting the need for a timely decision in this matter.

2. BLET's alleged interest in this case is purely hypothetical. Any dispute that BLET *may* have at a future date is simply conjecture. There is no case or controversy that requires its participation or elevates its interest to a level at which intervention would be appropriate as the only question pending is whether Union Pacific Railroad ("UP") has a common carrier obligation to serve the Sherwin Plant. Indeed, BLET specifically recognizes that the supposed basis for its intervention here is speculative when it notes that a Board order "might" require BLET members to provide service to Sherwin.

3. BLET is wrong to suggest that its participation is justified because this case supposedly has broad implications for its members. The logical consequence of BLET's argument is that BLET could intervene in any case at any time, which is plainly not permitted. The fact that a case may have implications for railroad employees, for shippers, or for future controversies that come before the Board merely reflects the nature of the Board's adjudicatory system. However, there is no universal right to participate in adjudicatory proceedings simply because a decision might indirectly impact third-parties. Indeed, the Board recognizes this critical limitation through its specific standards for intervention. *See* 49 C.F.R. § 1112.4.

4. The Board's standards for intervention prohibit an intervening party from broadening the issues pending before the Board. *Id.* BLET's insistence that this case has broad implications for its members only reinforces Sherwin's concerns that BLET seeks to divert attention away from the only issue presently before the Board; namely, whether UP has a common carrier obligation to serve the Sherwin Plant. While BLET suggests that its filing will not go beyond the issues presented, BLET's primary concern that its members might have to cross a picket line is plainly beyond the scope of this case.

Sherwin renews its request that the Board deny BLET's Notice of Intent to Participate and instead swiftly issue a decision on the merits.

Respectfully submitted,



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An Attorney for Sherwin Alumina Company, LLC

cc: Michael L. Rosenthal, Esq.
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