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General Committee of Adjustment
Brotherhood of Locomotive Engineers & Trainmen
Division of Teamsters
Grand Trunk Western Railroad



L. L. GILBERT
Secretary-Treasurer



219011

April 4, 2007

Honorable Vernon A. Williams
Surface Transportation Board
395 E Street, S.W.,
Washington, D.C. 20423-0001

ENTERED
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**RE: RETORT TO REPONSE TO REBUTTAL TO REPLY TO PROTEST /
STB FINANCE DOCKET NO. 34979.**

Dear Secretary Williams

This BLET General Committee is in receipt of the "Response" submitted by BNSF Railway and dated April 3, 2007 (copy attached for you ready reference).

This General Committees stand is stronger than ever, and more unwavering than ever, thanks to the revealing language and the lack of supporting language, flowing forth from BNSF.

BNSF, through the language contained within their very own "Response", once again prove our (BLET) point.

This General Committee has pointed out, again and again, that BNSF desires and plans to capture the work of the GTW/Eldon Assignment #510 and other GTW work and other GTW assignments in or around the area as spelled out within Finance Docket No. 34979.

BNSF's plans and desires in regard to the capturing of the work of the GTW/Elsdon Assignment #510 and other GTW work and other GTW assignments.

We (this General Committee) believes that we have ***smoked them (BNSF) out***, so to speak, in regard to the bottom line truth in connection with BNSF's real desire and intent underlying Finance Docket No. 34979.

This is not speculation on the part of this General Committee. This is fact – that BNSF will not deny that we (BLET) are correct in regard to the above.

Furthermore, in regard to the "Response" from BNSF, it is, once again, more of the same: a literary diversionary tactic to take the focus away from, and slant the truth of, our (BLET) position.

Also, within their "Response", the attorneys for BNSF now admit that they did in fact purposely omit five critical words from the original BLET Protest. BNSF goes on to admit that: ***"the omission was simply to excise redundancy"***.

Obviously, a very pre-meditated, self-serving and convenient omission and rationale by BNSF, i.e. to purposely admit to leaving words out in order to slant the opinion of the Board!

Contrary to such great presumptions on the part of BNSF, those last five words: ***"But then again, who knows"*** are not redundant of their preceding sentence. In fact just the opposite! Those five words actually turn everything around, enlighten, and begin the lead-in to the BLET position (now proven by the BNSF's rhetoric and/or the lack of it) that BNSF is using Finance Docket No. 34979 as a method to capture other GTW work and assignments as stated above.

Furthermore, BNSF can say absolutely nothing, within their "Response", to defend themselves in regard to why they (BNSF) did not just pick up the telephone and have a conversation with this General Committee in regard to their plans. As we stated in our Rebuttal, we are not mind-readers in regard to the hidden business plans of BNSF.

The more that BNSF responds, the more that they reveal and confirm the solid positions that have been made in our (BLET) previous filings.

This BLET General Committee respectfully urges that the Board completely throw out (deny) all BNSF filings in connection with their desire of being granted trackage rights under proposed Finance Docket No. 34979.

In conclusion, since BNSF can only be evasive, elusive, decoying, slanting the opinion of the Board, getting caught red-handed, omitting critical quotations, and

playing *catch me if you can*, they should be completely denied the granting of Finance Docket No. 34979.

These issues are too great and much too serious for BNSF to waste our time and play such games with this General Committee and with the Surface Transportation Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. M. Karakian". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

J.M. Karakian
General Chairman. BLET/GTW

Cc Sidney L. Strickland, Jr./Strickland and Associates, PLLC
D Hahs, NP/BLET
P. Sorrow, NVP/BLET
T. Pontolillo, Dir. Of Regulatory Affairs/BLET
All BLET/GTW Local Chairmen
R McDougall, Senior Director/LR-CN-GTW
E. St. Amant, Manager/LR-CN-GTW

**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

**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 & Trainmen-General Committee of Adjustment- Grand Trunk Western Railroad ("BLET"). 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 CFW/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—Lease 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—Biv.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate.*, 360 I.C.C. 653 (1980). The Federal Register notes the imposition of this condition

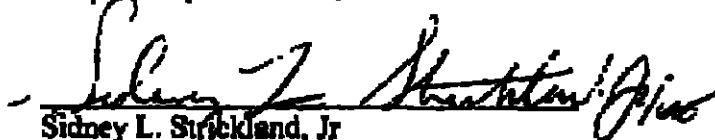
served July 28, 2005); CSX Corp.—Control—Chessie System, Inc., 2 S.T.B. 554 (1997),
St. Louis S.W. Ry. Co.—Trackage Rights Over Missouri Pac. R.R. Co.—Kansas City to
St. Louis Trackage Right's Compensation, 4 I.C.C.2d 668 (1987). In its Rebuttal,
BLET claims BNSF, in its Reply, omitted five words when quoting from BLET'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, BLET'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, BLET's present filing is an impermissible reply to a reply.

CONCLUSION

BNSF respectfully urges that the Board deny BLET's Rebuttal to Reply to
Protest. BLET'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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