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Before the
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1270

ENTERED
Office of Proceedings
August 15, 2019
Part of
Public Record

**PORT OF BENTON, WA
- ADVERSE APPLICATION FOR
DISCONTINUANCE OF RAIL SERVICE -
TRI-CITY RAILROAD COMPANY, LLC**

**REPLY OF PORT OF BENTON, WA
TO PETITION FOR LEAVE TO SUPPLEMENT THE RECORD**

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Dated: August 15, 2019

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On August 9, 2019, Tri-City Railroad Company, LLC (“TCRY”) filed a petition for leave to supplement the record. For the reasons set forth herein, the Port of Benton, WA (the “Port”) believes that the Petition should be denied.

In the notice served on March 19, 2019, the Board clearly set forth a procedural schedule that would allow for the disposition of this proceeding in a timely manner. Comments, including protests, were due by April 15, 2019, and the Port’s reply was due by April 29, 2019. At that point the record was closed. TCRY has not presented any good reason for reopening the record.

The Board’s regulations which limit the available filings (*see, e.g.*, 49 CFR 1104.13(c)) are meant to control its docket, and to establish an end to filings so that a decision can be issued. *Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, Maine (“Waterloo Railway”)*, STB Docket No. AB-124 (Sub-No. 2) (served May 6, 2003), slip op. at 3 (“the pleading process ends with the reply, and replies to replies are not permitted”). While the Board will allow additional replies, and sur-replies if necessary, for “good cause” or when additional information is necessary to provide a complete factual record, *id.*, TCRY has not provided any such justification. First, it should be noted that the additional information that TCRY proposes to

admit into the record does not identify the shippers or locations of the traffic, nor is the information verified, and thus the information is not probative and does not constitute proper evidence under the Board's rules. *See* 49 CFR §1114.1. Further, allowing TCRY to supplement the record with traffic updates would open the door (to either party) continuing to present the Board with never ending monthly updates depending on whether traffic varies up or down, and the Board will never be able to issue a decision in this proceeding.

For the foregoing reasons, the Board should find that TCRY has not presented a sufficient basis for letting it supplement the record nearly four months after the record has closed, and should deny the Petition. The Board is urged to issue its decision on the Application for Adverse Discontinuance of Rail Service to prevent further efforts by TCRY to delay the decision.

Respectfully submitted,



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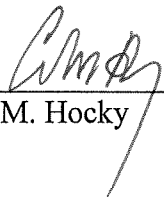
Dated: August 15, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August 2019, I served a copy of the foregoing
Reply on the following persons by e-mail:

Thomas F. McFarland mcfarland@aol.com

Peter Denton pdenton@steptoe.com



Eric M. Hocky