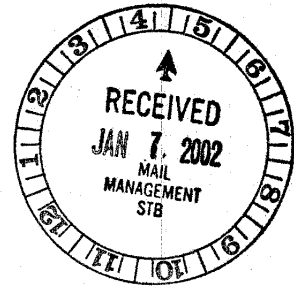


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33995 204324

SF&L RAILWAY, INC.-ACQUISITION AND OPERATION
EXEMPTION-TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION-
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No. 33996

204325

KERN W. SCHUMACHER AND MORRIS H. KULMER
-CONTINUANCE IN CONTROL EXEMPTION-
SF&L RAILWAY, INC.

ENTERED
Office of the Secretary

JAN - 8 2002

Part of
Public Record

SUPPLEMENT TO
PETITION TO REJECT OR TO REVOKE

WILLIAM E. PONCIN
County Courthouse
Macomb, IL 61455

LINDA A. O'BRIEN
City Hall
Macomb, IL 61455

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington, DC 20036

Attorneys for Petitioners

Due Date: January 7, 2002

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33995

SF&L RAILWAY, INC.-ACQUISITION AND OPERATION
EXEMPTION-TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION-
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER
-CONTINUANCE IN CONTROL EXEMPTION-
SF&L RAILWAY, INC.

SUPPLEMENT TO
PETITION TO REJECT OR TO REVOKE

Preliminary Statement

This is a supplement to the May 18, 2001 petition by Petitioners^{1/} which seeks to reject the notice of exemption (FD 33995), filed January 10, 2001 by SF&L Railway, Inc. (SF&L), and also the related notice of exemption (FD 33996), filed the same day, by Kern W. Schumacher and Morris H. Kulmer (Applicants); if the notices are not rejected, the Board should revoke application of the respective class exemptions for the two transactions.

This supplement is authorized by the Board's regulations, 49 CFR § 1121.2, and by the Secretary's specific decision. (Decision,

^{1/} These Petitioners, hereinafter sometimes termed "Joint Petitioners" (Decision, 12/21/01, p.3; Decision, 12/26/01 p.2), are County of McDonough; City of Macomb; and Joseph C. Szabo, Illinois Legislative Director for United Transportation Union-Illinois Legislative Board (UTU-IL).

12/21/01, p.5).^{2/} This supplement is in addition to the May 18, 2001 petition, and is not in lieu thereof.

Background

This is one of two petitions to revoke the SF&L and Applicants notices filed January 10, 2001. The other petition was filed March 6, as supplemented December 12, 2001, by Keokuk Junction Railway Co. (KJRY). The Joint Petitioners presently are aligned with KJRY, and rely upon and incorporate evidence developed by KJRY;^{3/} however, we do not at this time necessarily endorse KJRY's arguments that it ultimately should be substituted in the stead of Toledo, Peoria and Western Railway Corporation (TPW) between Peoria and LaHarpe.^{4/} We urge the Board to reject or revoke the SF&L and Applicants notices in the instant proceedings.

In addition to the two petitions to revoke (the Joint Petitioners May 18, 2001 filing also embraces a petition to reject), there is pending a separate petition by UTU-IL to reject the notices of exemption, filed April 18, 2001, to which SF&L/Applica-

^{2/} The Secretary's decision directs that replies by SF&L and by Applicants to this supplemental petition may be filed January 22, 2002. No provision is made for a reply by TPW, and it appears TPW has waived its earlier request to reply to the initial May 18, 2001 petition by the Joint Petitioners to reject/revoke, and as may be supplemented (filed June 7, 2001), by failure timely to appeal the Secretary's December 21, 2001 decision.

^{3/} In particular, statements of record by various communities and shippers, which also are included in KJRY's submission.

^{4/} KJRY, of course, is free to pursue its case in a separate proceeding. Of interest may be the extent to which KJRY-TPW traffic be diverted from the Peoria-LaHarpe line to the Keokuk-LaHarpe-Lomax-Fort Madison routing as a result of KJRY's recent acquisition of the LaHarpe-Lomax-Fort Madison route. We have an open mind on these developments.

nts replied on April 19, 2001.^{5/} All of the Joint Petitioners now concur in the April 18, 2001 UTU-IL submission.

Recent Related Developments

The objective of RailAmerica when it acquired TPW in 1999 was to dispose of the entire Peoria-LaHarpe-Lomax-Fort Madison line. The process leading up to the instant SF&L/Applicant notices is described in the verified statement of Alfred M. Sauer, included with the TPW filing of March 26, 2001. The principal railroad traffic moved across the entire line between Peoria and Fort Madison, and was interchanged with BNSF at Fort Madison. (TPW Response, 3/26/01, V.S. Sauer, pp. 1-3).

These proceedings have arisen out of proposals by TPW to discontinue operations over its line between East Peoria, IL and Fort Madison, IA. (Decision, 12/26/01, p.1).

The first phase is embraced by the SF&L/Applicants notices. Following the January 17, 2001 effective date for the SF&L notice, involving the TPW line between Peoria and LaHarpe, TPW on February 18, 2001 discontinued operation of its daily train in each direction between Peoria, IL and Fort Madison, IA, which was replaced by TPW train service twice weekly in each direction between Peoria and LaHarpe. The interchange with BNSF was relocated from Fort Madison to Peoria, with TPW providing haulage for BNSF, in BNSF's

^{5/} UTU-IL also has pending a petition, filed June 7, 2001, concerning the proper fees assessed by the Board's Secretary for certain filings made by UTU-IL. The matter of sanctions is pending for confidentiality claims, involving SF&L, Applicants, KJRY, and various attorneys and a law firm. None of the Joint Petitioners are involved in the sanctions and confidentiality disputes.

account, over BNSF's line between Peoria and Galesburg, and with physical BNSF-TPW interchange at Galesburg. Although a circuitous route, rates to shippers were unchanged. (Petition, 5/18/01, Appendix 2; Supp. Petition, 1/7/02, Appendix 3, Letter 7/12/01, p.1; KJRY Supp. Pet., Ex. I, Interrog. 1-4, pp. 5-8).

The STB advised the public that SF&L proposed to acquire the rail and track materials between Peoria and LaHarpe, but not the right-of-way, which would remain with TPW, and that SF&L would contract for TPW to continue to operate the line. (STB Notice, 2/7/01, pp. 1-2).

The TPW operation of the Peoria-LaHarpe line continued until December 10, 2001, when TPW discontinued service. (Supp. Petition, 1/7/02, Appendix 4, pp. 5-7). It is unclear whether SF&L ever became a common carrier prior to December 11, 2001, as SF&L repeatedly denied it was a common carrier or had finalized an agreement with TPW; moreover, SF&L stated its tariffs were simply anticipatory. (KJRY Supp. Pet., 12/12/01, Ex. B, pp. 5-7; Supp. Petition, 1/7/02, Appendix 8, pp.1,3).

SF&L commenced its own operation with its own crews on or about December 11, 2001. (SF&L/Applicants Reply, 12/21/01, p. 2). At the same time, December 12, 2001,^{6/} KJRY filed its notice of exemption to acquire and operate TPW's 12.1-mile line between La Harpe and Lomax, and for trackage rights over the double-track 15.5-mile BNSF line between Lomax and Fort Madison. Finance Docket No. 34143, Keokuk Junction Railway Company-Acquisition and Opera-

^{6/} The December 10, 2001 TPW discontinuance was announced December 12, 2001. (Supp. Pet., 1/7/02, Appendix 4 pp. 5-7).

tion Exemption-West End of Toledo, Peoria and Western Railway Corporation.

KJRY and BNSF had been in disagreement concerning KJRY's action in blocking BNSF's access to the Mooar Line located at Keokuk, IA. The Board ruled in favor of BNSF in Finance Docket No. 33740, The Burlington Northern and Santa Fe Railway Company-Petition for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights (served June 22, 2001). However, BNSF and KJRY could not agree on compensation and other terms, so the Board directed mediation by Judge Joseph Nacy at the Federal Energy Regulatory Commission.^{7/} However, KJRY instituted judicial review with respect to the Board's June 22, 2001 decision, in which KJRY's brief presently is due January 15, 2002.^{8/}

These Joint Petitioners on December 18, 2001, as supplemented December 20, 2001, requested that the Board stay the operation of the January 10, 2001 exemption under which SF&L claims authority to substitute for TPW operations between Peoria and LaHarpe, and also to stay KJRY's acquisition of the TP&W line between LaHarpe and Lomax, as well as KJRY's operations over the BNSF line between Lomax and Fort Madison. KJRY and SF&L replied to the stay request (TPW did not respond). Petitioners in their stay request complained that they had been denied access to the KJRY-TPW agreement with respect to the LaHarpe-Lomax-Fort Madison. acquisi-

^{7/} Finance Docket No. 33740 (Sub-No. 1), The Burlington Northern and Santa Fe Railway Company-Petition for Determination of Compensation and Other Terms, decisions served September 12 and October 11, 2001.

^{8/} Keokuk Junction Railway Co. v. Surface Transp. Bd. (USCA-DC Cir. No. 01-1305), order of October 11, 2001.

tions/operations. (Stay Petition, 12/18/01, 7; Supp. to Stay Petition, 12/20/01, 1-2).

Board Chairman Linda Morgan in her late release on December 26, 2001 denied a stay, adding that Board regulations do not require those filing notices of exemption to provide copies of purchase agreements. (Decision, 12/26/01, p.4). Earlier in the day, the Board received Judge Nancy's advice in Finance Docket No. 33740 (Sub-No. 1) that he treated his connection with the KJRY-BNSF mediation as terminated.

RailAmerica on December 28, 2001, announced it had completed sale of the LaHarpe-Lomax line segment to KJRY, receiving \$500,000. (Supp. Petition, 1/7/02, Appendix 5).

Joint Petitioners, as of January 7, 2002, have not been accorded access to the KJRY-TPW purchase agreement, despite repeated requests to KJRY and TPW/RailAmerica.

ARGUMENT

I. THE NOTICES SHOULD BE REJECTED AS BEYOND THE PROPER SCOPE OF THE CLASS EXEMPTION.

The Board should reject the notice by SF&L in FD 33995, for the mere transfer of "responsibility" for the provision of rail service, without ownership of the line or the ability to actually operate the line, is outside the non-carrier class exemption for line acquisition/operation. This is particularly true where, as here, the actual entity responsible for operating the line, TPW, would continue to operate the line, but free from any obligation to do so, and able to abandon operations. (Petition, 5/18/01, 4-6;

SF&L/Applicants Reply, 6/7/01, 5-10). In short, this is a scam upon the public.

Joint Petitioners reiterate that the Board's Chairman in her January 16, 2001 decision, provided no support for considering a "responsibility" transfer, where there is no transfer of ownership in the line or intent by the transferee to operate, as within the non-carrier acquisition/operation class exemption. It is not within the class exemption. Various entities can always contract for rail services, without Board authorization. There is no basis for licensing such an responsibility arrangement through Board authorization or exemption--thus permitting an existing carrier to permanently withdraw its obligation to provide service.

The citations put forth by SF&L simply do not support its theory of "responsibility" transfer. (SF&L/Applicants Reply, 6/7/01, pp.5-10) Here, TPW retains ownership of the right-of-way, while SF&L "contracts" with TPW to continue TPW's own service. The result is bogus. TPW has been permitted to abandon (discontinue service) without a showing of public convenience and necessity, or exemption therefrom. 49 U.S.C. 10903.

The Board should reject the SF&L notice as the notice does not embrace a transaction within the Board's authority. SF&L is neither acquiring nor operating the Peoria-LaHarpe line. The notice said TPW, not SF&L, would operate the line.^{9/} SF&L is merely acquiring ownership of rails and track materials. No Board authority appears necessary to acquire these items.

^{9/} SF&L asserts it commenced operations on December 11, 2001. (SF&L/Applicants Reply, 12/21/01, p.2). Although we accept that statement, we believe further information as to actual service may be needed.

II. IF THE NOTICES ARE NOT REJECTED
THE EXEMPTIONS SHOULD BE REVOKED.

If the exemption notices are not rejected, the exemptions should be revoked, inasmuch as regulation is necessary to carry out the rail transportation policy (RTP). 49 U.S.C. 10502(d).

The Entire Transaction. It is now clear that the entire TPW proposal to divest operations between Peoria and Fort Madison is now before the Board, with the December 11 substitution of SF&L "service" for TPW service on the Peoria-LaHarpe segment; and with KJRY acquisition of the TPW "West End" between LaHarpe-Lomax-Fort Madison by its December 12 notice. The entire TPW proposal is thus complete. (TPW Response, 3/26/01, V.S. Sauer). The Board's December 26, 2001 decision, in its preamble, now recognizes that the entire Peoria-Fort Madison line is involved. (Decision, 12/26/01, p.1). Revocation of the instant exemptions would be appropriate to allow the Board to have a complete overview of the entire proposal.

An important question is whether the rail carriers' apparent overall settlement should be evaluated in several independent exemption proceedings, and without reference to each other. Added to the uncertainty is the now-secret TPW-KJRY purchase agreement for the LaHarpe-Lomax segment, and the BNSF arrangement for KJRY trackage rights between Lomax and Fort Madison. Finally, there is the discontinued mediation of the KJRY-BNSF controversy over the Mooar Line in Keokuk, and the related proceedings before the U.S. Court of Appeals.

The four rail carriers (TPW, SF&L, KJRY, BNSF)^{10/} should not be permitted to agree for a division of rail operations in western Illinois without regulatory scrutiny in a public proceeding.

Regulation is necessary where such a complex series of interrelated transactions and proceedings are involved.

Public Opposition. The supplemental verified statement of UTU General chairman Randal L. Brandt is attached. (Supp. Petition, 1/7/02, Appendix 4).

The December 18, 2001 verified statement of Thomas C. Carper, Mayor of Macomb, demonstrates the continued and current opposition from the public to withdrawal by TPW and substitution by SF&L. (Supp. Petition, 1/7/02, Appendix 6).

TPW's historical traffic data indicates minimal traffic would remain to sustain the line if TPW's Fort Madison traffic is rerouted in contemplation of abandoning the remaining Peoria-LaHarpe segment through transfer of responsibility to SF&L. See: TPW's presentation to Illinois D.O.T. (Supp. Petition, 1/7/02, Appendix 7).^{11/} Of course, the key Fort Madison intermodal business is not "bridge" traffic, but is business which TPW controls,

^{10/} Also involved is Peoria and Pekin Union Railway Company (P&PU). See: Finance Docket No. 34009, Toledo, Peoria & Western Railway Corporation-Trackage Rights Exemption-Peoria and Pekin Union Railway Company, 66 Fed. Reg. 11383 (Feb. 23, 2001). (TPW Response, 3/26/01, V.S. Sauer p. 2). BNSF on Dec. 11, 2001 made a miscellaneous tariff change for East Peoria. Supp. 21 to Hladick OPSL 6000-V.

^{11/} Joint Petitioners do not vouch for the validity of the TPW data; indeed, it may be highly erroneous, and is not verified.

and which originates and terminates on TPW. (Supp. Petition, 1/7/02, Appendix 7, p. 2).

A. The Exemption Should Be Revoked for Failure of the Contract between SF&L and TPW.

The SF&L notice advised that TPW would be operator of the line under contract with SF&L, and the various Board decisions and notices have relied upon this contract. (SF&L Notice, 1/10/01, p.2; 66 Fed. Reg. 9411 (Feb. 7, 2001); Decision, 1/16/01, pp.1, 3; Decision, 4/13/01, p. 1; Decision, 4/13/01 (late release), p.1; Decision, 6/5/01, p.1; Decision, 12/21/01, p.1).

The action of SF&L or TPW in terminating the TPW-SF&L contract, or perhaps never entering into a contract, violates the pledges given by SF&L throughout the proceeding, and the pledges relied upon by the public and by the Board itself. Of course, conditions can change. However, SF&L should not enjoy the class exemption for such change in its notice as published by the Board; rather, SF&L should be relegated to an individual petition for exemption, or to an application, prior to acquiring or operating the Peoria-LaHarpe segment. The Board need not determine whether SF&L or TPW, or both, may be at fault. The January 10, 2001 SF&L notice of exemption, and the Board's publication, have been vitiated. The exemption should be revoked.

B. The Exemption Should Be Revoked for Consideration of Adequacy of Service and Prospects for Abandonment.

A major supplemental event which has occurred, subsequent to the May 18, 2001 Petition to Reject/Revoke, has been TPW's discontinuance of service between Peoria and LaHarpe. This is alarming to the involved shippers/communities. See: Verified Statement of

Mayor Carper. (Supp. Petition, 1/7/02, Appendix 6). The prospect for immediate service curtailment and ultimate abandonment is now close to becoming a reality. (Petition, 5/18/01, at pp. 8-9). The NTP has a number of criteria directed to adequacy of service, and the "public convenience and necessity" of 49 U.S.C. 10901 is a broad term.

C. The Exemption Should Be Revoked for Consideration of Railroad Competitive Matters.^{12/}

The developments of December 11-12, 2001, threaten to completely destroy the delicate competitive balances worked out by the former ICC and Board for this area in the BN/SF and UP/SP merger proceedings. (Petition, 5/18/01, pp.10-11). Competitive considerations run throughout the RTP, and competition is an element of "public convenience and necessity" under 49 U.S.C. 10901.

D. The Exemption Should Be Revoked for Consideration of the Impact on Railroad Employees.

Railroad personnel represented by UTU have suffered the loss of four positions, two as the result of the February 18, 2001 discontinuance of service to Fort Madison, and two from the TPW termination of service on the Peoria-LaHarpe segment. Job opportunities have been lost, and by the exercise of seniority certain employees have sustained reduced earnings. (Petition, 5/18/01, Appendix 2; Supp. Petition, 1/7/02, Appendix 4).

^{12/} Joint Petitioners have nothing to add for consideration of rate matters. Petition, 5/18/01, p. 10. Rate considerations are important in railroad operations, as witness the controversy over "competitive access."

Although the Board cannot impose employee conditions under 49 U.S.C. 10901, agency practice is that the impact upon employees is a factor to be considered in evaluating the "public convenience and necessity." See: Illinois Commerce Commission v. United States, 347 F. Supp. 1217, 1219-20 (N.D. Ill. 1971) (three-judge). Moreover, fair wages and safe and suitable working conditions are a criterion of the NTP. 49 U.S.C. 10101(11).

TPW promised Oregon Short Line conditions in the event SF&L ceased to use TPW as the provider of contract rail service. (TPW Response, 3/26/01, V.S.Sauer p.5). TPW has not yet followed through on this pledge. (Supp. Petition, 1/7/02, Appendix 4, p. 3). This promise suggests revocation due to employee effects.

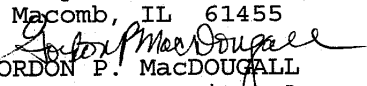
If the exemption is revoked, the impact upon railroad employees is to be evaluated in any acquisition/operation proposal. Further, if TPW should opt for abandonment, Oregon Short Line employee conditions would be mandatory.

CONCLUSION

The Board should reject the notices of exemption. If the notices are not rejected, the exemptions should be revoked.

Respectfully submitted,

WILLIAM E. PONCIN
County Courthouse
Macomb, IL 61455

LINDA A. O'BRIEN
City Hall
Macomb, IL 61455

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington, DC 20036

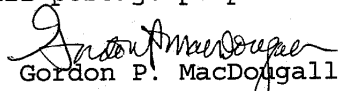
January 7, 2002

Attorneys for Petitioners

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532

lgitomer@bjllp.com

July 12, 2001

BY FAX

Gordon P. MacDougall, Esq.
Law Offices Gordon P. MacDougall
Suite 410
1025 Connecticut Avenue, NW
Washington, DC 20036-5405

RE: Finance Docket No. 33995, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation between La Harpe and Peoria, IL*
Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control—SF&L Railway, Inc.*

Dear Gordon:

This responds to your letter of June 15, 2001 concerning discovery. Enclosed are also responsive documents.

1. General Objection. See No. 5. Were any documents or information withheld pursuant to this objection? If so, please identify.

No.

2. Interrogatories. See Nos. 2 & 3. Please refer to the condition in the next-to-last paragraph, 10 I.C.C.2d 661, 813, and advise whether traffic rerouted from Ft. Madison via Galesburg is carried in the account of TPW between Peoria and Galesburg; or in the BNSF account.

The traffic between Peoria and Galesburg is handled by TPW as haulage moves in the BNSF account.

APPENDIX 3
Page 1 of 2

· BALL JANIK LLP

Gordon P. MacDougall, Esq.
July 12, 2001
Page 2

3. Interrogatories. See Nos. 5, 13 (and Doc. Req. 2). Did Pioneer Railcorp make the only other offer for the line? Are the confidential materials referred to in the response already embraced in those previously submitted under protective order by SF&L and by Schumacher/Kulmer? (Doc. Req. 2).

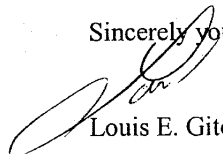
Yes. The confidential materials referred to in the response are not the confidential materials embraced in those previously submitted by SF&L and by Schumacher/Kulmer.

4. Document Request. See No. 3. Are the confidential materials referred to in the response already embraced in those previously submitted under protective order by SF&L and Schumacher/Kulmer?

The confidential materials referred to in the response are not the confidential materials embraced in those previously submitted by SF&L and by Schumacher/Kulmer, except for the Agreement for Sale of Certain Assets, Rights and Obligations of the Toledo, Peoria & Western Railway Corporation to SF&L Railway, Inc. (the "Agreement").

If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer

Enclosures

Cc: Mr. Mullins
Mr. Kahn

SUPPLEMENTAL
VERIFIED STATEMENT
OF RANDAL L. BRANDT

My name is Randal L. Brandt. I am the same person of same name who submitted a verified statement in this proceeding, dated May 17, 2001, which was included as Appendix 2 to the Joint Petitioners' Petition to Reject or Revoke, dated May 18, 2001. I continue to serve as General Chairman for the United Transportation Union (UTU) on the Toledo, Peoria and Western Railroad Company (TPW).

The purpose of this supplemental verified statement is to describe events affecting TPW service and TPW employees since my earlier verified statement. Moreover, I have reviewed filings made with the Surface Transportation Board (Board) in these dockets, other than those accorded confidentiality, and I have read the various notices and decisions of the Board in these proceedings.

As indicated in my May 17, 2001 verified statement, TPW prior to February 19, 2001, operated daily trains, usually 6 days per week, one in each direction, between Peoria-LaHarpe-Fort Madison; and TPW operated a train, usually four days per week, between Peoria and Galesburg, and usually performed some switching in the Peoria area. Subsequent to February 18, 2001, TPW curtailed the Peoria-LaHarpe-Fort Madison operation, so as not to go west of LaHarpe. Service became only twice weekly in each direction, between Peoria and LaHarpe. The Peoria-Galesburg train service was increased to five days per week, but rarely was able to perform

switching in the Peoria area. We lost one crew, involving two employees, in the February 18-19, 2001 changes in the Peoria-LaHarpe-Fort Madison, and Peoria-Galesburg, train services.

Effective December 10, 2001, TPW terminated service between Peoria-LaHarpe, and announced that SF&L Railway would assume ownership and control of the Peoria-LaHarpe line. Attached hereto is TPW's General Order No. 01-35, issued December 12, 2001. This is the same announcement included as Appendix A to the Joint Petitioners' December 18, 2001 filing with the Board in F.D. No. 34143, as well as in these proceedings. This Peoria-LaHarpe discontinuance resulted in the loss of another TPW crew, involving two employees. The Peoria-Galesburg service was increased from five days per week, to the present six days per week.

The attached TPW General Order No. 01-35 acknowledged TPW continued authority between LaHarpe and Lomax. However, I subsequently reviewed the December 12, 2001 filing with the Board by Keokuk Junction Railway Co. (KJRY), that KJRY would acquire TPW's line and operating rights between LaHarpe and Lomax; and that KJRY would acquire trackage rights over the double-track Burlington Northern and Santa Fe Railway Company (BNSF) line between Lomax and Fort Madison.

Thus far, the net effect of the SF&L acquisition of the Peoria-LaHarpe segment has been the loss of two crews, which has only modestly been offset by an increase in Peoria-Galesburg service. In addition, there has been the loss of opportunity for resumption of TPW train service between LaHarpe-Lomax-Fort Madison.

The loss of four jobs and lost opportunities for resumption of TPW services, are not the only adverse impacts upon employees. By virtue of the exercise of seniority, with various displacements, some employees who nevertheless have been retained in service have suffered reduced earning and/or less favorable working assignments.

I am aware that RailAmerica's Alfred M. Sauer, on behalf of TPW, promised Oregon Short Line protection to TPW employees adversely affected by SF&L's ceasing to use TPW as the provider of service--made as part of the TPW March 26, 2001 filing with the Board in these proceedings. However, I have not been served or advised with the required Oregon Short Line notices or conferences, and no protection has been provided for those adversely affected.

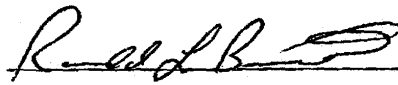
Finally, I wish to address the view of Linda J. Morgan, Board Chairman, expressed in her December 26, 2001 decision to deny a stay of various transactions, that affected employees would be made whole if they prevail on the petition to revoke. I know of no provisions in our TPW-UTU collective bargaining agreements which provide compensation for employee claims arising as a result of unlawful carrier action taken under the Interstate Commerce Act.

Moreover, I disagree that even where the Board may impose retroactive employee protective conditions, such as in trackage rights situations, that compensation and benefits can provide full reparation, for the quality of life can never fully be restored for losses during the interim period.

VERIFICATION

STATE OF INDIANA
COUNTY OF NEWTON

Under the penalties of perjury, I affirm that the foregoing
supplemental verified statement is true and correct as stated.



RANDAL L. BRANDT

Dated at
Goodland, IN
January 7, 2002

**Toledo, Peoria, and Western Railway
A RailAmerica Company**

GENERAL ORDER NO 01-35

December 12, 2001

Subject: Illinois West Subdivision: SF&L Railway Assumption of Ownership

Effective at 1400 hours Wednesday, December 12, 2001, the SF&L Railway will assume ownership and control of the Illinois West Subdivision between MP 123.0 and MP 194.5.

The following changes are effective at 1700 hours Monday, December 10, 2001 as a result of the SF&L Railway's startup of ownership and operation:

Peoria Terminal Subdivision

West Yard Limit extended from MP 122.5 to MP 123.0.

New station "SF&L Junction" in service at MP 123.0. Station number is 11240.

Maximum authorized speed between Iowa Junction MP 113.9 and SF&L Junction MP 123.0 is 10 MPH.

Main Track Authorization between Iowa Junction MP 113.9 and SF&L Junction MP 123.0 is GCOR Rule 6.13 Yard Limits. Trains, engines and on-track equipment must obtain verbal permission from the TP&W Train Dispatcher, St. Albans, before occupying or fouling the Main track within these limits. All movements must report promptly when clear of these limits.

SF&L trains may use the main track between SF&L Junction MP 123.0 and MP 117.0 as prescribed above. Interchange between the TP&W and the SF&L will be made on either Hollis Pass, or at the Transfer track, Sommer, IL. TP&W Customer Service, East Peoria, must be advised promptly when interchange is delivered or pulled, and the track(s) delivered to or pulled from. Crews using Hollis Pass are reminded to

General Order 01-35 (Continued)

observe GCOR Rule 8.20 and make sure derails are left in the derailing position if engines or cars are left on Hollis Pass.

TP&W Timetable No. 1, station page, item 1 and item 3, page 13; and item 4, page 14 modified.

Illinois West Subdivision

New station SF&L Junction, station number 11240, in service at MP 123.0.

Mapleton, MP 122.5, removed from Illinois West Subdivision.

New station West Junction, station number 11950, in service at MP 194.5.

Operations between SF&L Junction, MP 123.0 and West Junction, MP 194.5 are under the control and jurisdiction of the SF&L Railway Superintendent, Canton, IL. SF&L Railway Timetable and Operating Rules are in effect.

Maximum authorized speed between West Junction, MP 194.5 and Lomax, MP 206.0 is 10 MPH.

Main track authority between MP 194.5 and MP 196.0 is GCOR Rule 6.13, Yard Limits. Main track authority between MP 196.0 and MP 204.9 is TWC. Main track authority between MP 204.9 and MP 206.0 is GCOR Rule 6.13, Yard Limits.

Keokuk Junction Railway trains and SF&L Railway trains may use the TP&W main track for purposes of interchange from West Junction MP 194.5 to MP 196.0.

TP&W Timetable No.1, station page and item 1, page 17, item 3 and item 4, page 18, modified.

Bert J. Ruden
Assistant General Manager

The following General Orders are in effect: Nos 01-001, 01-002, 01-003, 01-004, 01-005, 01-006, 01-007, 01-009, 01-013, 01-014, 01-15, 01-16, 01-17, 01-19, 01-20, 01-21, 01-22, 01-23, 01-24, 01-25, 01-26, 01-27, 01-28, 01-29, 01-30, 01-31, 01-32, 01-33, 01-34, and 01-35.

The employee posting this General Order must fill in the information below and return a copy via fax to Assistant General Manager Bert Ruden at 309-698-8120.

Posted At _____
(Location)

By _____
(Name)

Date and Time _____

RailAmerica Completes \$2.2 Million in Asset Sales

Updated: Friday, December 28, 2001 07:59 AM ET

[Printer-friendly version](#)

BOCA RATON, Fla., Dec. 28 /PRNewswire/ -- RailAmerica, Inc. (Nasdaq: [RAIL](#), [news](#), [msgs](#)), the world's largest operator of short line and regional freight railroads, today announced that it has completed two asset sale transactions totaling \$2.2 million. The proceeds from these transactions will be used to reduce the Company's long-term debt and for general working capital purposes.

In the first transaction, RailAmerica Equipment Corporation, a subsidiary of RailAmerica, has sold its fleet of railroad tank cars to The CIT Group/Equipment Financing, Inc., a subsidiary of Tyco Capital, for \$1.7 million. In the second transaction, the Company sold a 12-mile portion of its Toledo, Peoria & Western Railroad located between LaHarpe and Lomax, Illinois to Keokuk Junction Railway Company, Inc. for \$0.5 million.

RailAmerica, Inc. (www.railamerica.com), the world's largest short line and regional railroad operator, currently owns 39 short line and regional railroads operating approximately 11,000 route miles in the United States, Canada, Australia and Chile. In North America, the Company's railroads operate in 22 states and six Canadian provinces. Internationally, the Company operates an additional 4,300 route miles under track access arrangements in Australia and Argentina. In October 2001, RailAmerica was ranked 85th on Forbes magazine's list of the 200 Best Small Companies in America; in July 2001, the Company was named to the Russell 2000(R) Index.

DISCLAIMER REGARDING FORWARD-LOOKING STATEMENTS: This press release contains forward-looking statements regarding future events and the performance of RailAmerica that involve risks and uncertainties that could cause actual results to differ materially including, but not limited to, fuel costs, foreign currency risks, failure to successfully integrate acquisitions, failure to service debt, failure to successfully market and sell non-core/non-strategic properties and assets, failure to accomplish new marketing initiatives, economic conditions, customer demand, increased competition in the relevant market, and others. In particular, forward-looking statements regarding earnings and EBITDA of entities to be acquired are subject to inherent economic, financial and operating uncertainties, including changes in economic conditions, realization of operating synergies, the ability to retain key customers and the impact of unforeseen costs and liabilities of such entities. We refer you to the documents that RailAmerica files from time to time with the Securities and Exchange Commission, such as the Form 10-K, Form 10-Q and Form 8-K, which contain additional important factors that could cause its actual results to differ from its current expectations and from the forward-looking statements contained in this press release.

MAKE YOUR OPINION COUNT - Click Here

<http://tbutton.prnewswire.com/prn/11690X15632796>

SOURCE RailAmerica, Inc.

CONTACT: Wayne A. August, Assistant Vice President Investor Relations of RailAmerica, Inc., +1-561-994-6015

APPENDIX 5
Page 1 of 1

F.D. No. 34143
F.D. No. 33995
F.D. No. 33996

VERIFIED STATEMENT
OF THOMAS C. CARPER

My name is Thomas C. Carper. I serve as Mayor of City of Macomb, a position I have held for a number of years.

Macomb is the seat of McDonough County, and is a commercial and trading center. It also has some manufacturing. Rail service is important to our area, and we have long enjoyed the proximity of the Toledo, Peoria & Western Railroad (TP&W). A number of local shippers and interests have filed letters and statements in these ongoing proceedings at the Surface Transportation Board, virtually all in support of continued service over the TP&W line, and in opposition to what we understand to be an affiliate of a rail scrap enterprise.

I am advised that TP&W has discontinued service over the Peoria-LaHarpe line, to be replaced by SF&L--reportedly the affiliate of a scrap enterprise, with a history of acquiring rail trackage for salvage purposes rather than for continued operation. It appears that the TP&W notice was issued December 12, 2001, and that operation by SF&L is imminent.

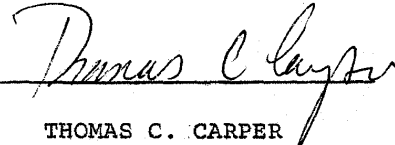
I ask that the Board stay the operation of the withdrawal by TP&W and substitution by SF&L, along with a stay of related railroad notices concerning transfer of TP&W property and rights west of LaHarpe, pending a full investigation by the Board.

A downgrading or elimination of rail service does not only affect existing users of rail service, but also acts as a deterrent to the acquisition of new shippers and industries to our area.

VERIFICATION

City of Macomb)
County of McDonough)

Under the penalties of perjury, I affirm that the foregoing is
true and correct as stated.


THOMAS C. CARPER

Dated at
Macomb IL
December 18, 2001

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532

lgitomer@bjllp.com

July 16, 2001

BY FAX

Gordon P. MacDougall, Esq.
Law Offices Gordon P. MacDougall
Suite 410
1025 Connecticut Avenue, NW
Washington, DC 20036-5405

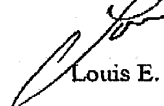
RE: Finance Docket No. 33995, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation between La Harpe and Peoria, IL*
Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control—SF&L Railway, Inc.*

Dear Gordon:

Per your request, we will reclassify the letter dated January 22, 2001 from David L. Smoot to Mr. Gary Williams of the Illinois Department of Transportation from Highly Confidential to Public. I will send along the reference to the TPW timetable as soon as I receive it from TPW.

If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer

Cc: Mr. Mullins
Mr. Kahn

APPENDIX 7
Page 1 of 4

PORTLAND, OREGON WASHINGTON, D.C. BEND, OREGON

07/16/01 16:05

TX/RX NO.3348

P.002



Toledo, Peoria and Western Railway Corporation

1990 East Washington Street, East Peoria, Illinois 61611 - 2961
(309) 698-2600 • Fax (309) 698-2679

January 22, 2001

Hand Delivered

Mr. Gary Williams
Bureau of Railroads
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

Re.: TPW line segment MP 123 to MP 194.5 "West end"

Dear Mr. Williams:

Reference to our meeting today regarding the status of the TP&W Railway between MP 123 (Mapleton) and MP 194.5 (LaHarpe) all located in the State of Illinois, and commonly referred to as the "west end".

In late 2000, the TP&W and BNSF began discussions on the rerouting of the BNSF intermodal traffic which originates and terminates on the TP&W, away from interchanging at Fort Madison in favor of interchanging at Galesburg. Several benefits for both carriers were identified that made this proposal attractive and worth pursuing:

- Intermodal traffic to the Pacific Northwest could gain 24 to 48 hours of transit improvement.
- The moving of the TPW interchange away from Fort Madison would help reduce the congestion issue of BNSF at this location.
- TPW could eliminate 1.5 train crews, save 3 locomotive units, and tens of thousands of dollars in crew taxi, lodging, and meal expenses.
- TPW could save an estimated \$ 3 million in capital monies needed to preserve the class III track status of the west end for road haul traffic.

In late 2000 it appeared that the rerouting from Fort Madison to Galesburg would be successful. Rail America, TPW parent corporation began discussions with Pioneer Rail Corporation for a possible sale of the west end of the TPW to their group for continued operation. Negotiation talks became stalled when Pioneer could not agree on the price, and insisted on including the Mapleton Industrial spur as a part of the deal.

Mr. Gary Williams
January 22, 2000
Page 2

Rail America advised Pioneer that alternative buyer was interested in the rail property, and by the end of December when talks with Pioneer faded, the alternative buyer stepped forward. The alternative buyer is the operating group associated with A&K Railroad Materials.

SF&L Railway has purchased from Rail America the track structure located between MP 123 and MP 194.5, with continuing discussion on the purchase of the underlying right of way, and the balance of the line between MP 194.5 and MP 206.6. The TPW retained the extreme west end to preserve service to Roquette America, with the ultimate goal of finding another operator for this segment, preferably KJRY as the originator of the traffic. It should be noted that to date no traffic, except the overhead intermodal, is handled west of LaHarpe, Illinois.

With respect to traffic on the line, the TPW is in the process of detailing the traffic movements that originated or terminated between MP 123 and MP 194.5, and has the following summary information:

Rawalts:	Pschirrer Asphalt (aggregates)	80 cars
	<i>This is unloaded on a team track and it is believed the traffic will continue by rail but be unloaded nearer to Kolbe on the active TPW.</i>	
Canton:	Hitchcock Scrap:	No traffic
Bushnell:	ADM (feed ingredients)	129 cars
	Wayne Feeds	
	McDonough (fertilizers)	
Sciota:	Farmers Elevator (grain)	588 cars
	McDonough (fertilizers)	
Blandinsville:	Roquette	138 cars
	United Feed	

The above represents on the stations on the line portion sold to the SF&L Railway. In addition to the on line traffic, this segment handles bridge traffic moving from the KJRY at LaHarpe to points east, including interchanges at Peoria with the PPU for designations beyond, and eastward on the TPW to NS and CSXT interchanges. Traffic to/from KJRY is indicated at 2,217 annual cars.

Mr. Gary Williams
January 22, 2000
Page 3

The SF&L Railway has applied with the STB for their operating authority on this line segment, and have entered into negotiations with the TPW to provide for an operator on the line segment. Once the intermodal traffic has switched to Galesburg, the line operation is planned to be twice weekly: Tuesday and Thursday, matching up with the current interchange service of the KJRY at LaHarpe.

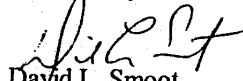
The SF&L Railway address is: SF&L Railway
1505 South Redwood Road
PO Box 26421
Salt Lake City, UT 84126

The principal officer is Michael VanWagennen

I have attached some line drawings to indicate the customers by station, a page from the TPW timetable to provide mile post locations, and two track charts indicating the cut lines of the SF&L Railway at MP 123 and MP 194.5.

We will keep your office updated on the status of this segment, and the extreme western portion of the TPW near Fort Madison. Should you have questions or need additional information please do not hesitate to contact me. Also, please do not hesitate to forward any inquiries regarding this line segment, or any part of the TPW to my attention for handling. I can be reached in my Joplin office at 417-623-0398 or on my cell phone at 417-850-0690.

Respectfully,



David L. Smoot
Regional Vice President - Southeast Region

APPENDIX 7
Page 4 of 4

HIGHLY CONFIDENTIAL

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-9738

June 6, 2001

Mr. Fritz R. Kahn
1920 N St., N.W.-#800
Washington DC 20036

BY HAND

Re: Finance Docket Nos. 33995-96
SF&L Ry.-Acq. & Oper.-TPW Betw. Peoria/LaHarpe, IL
K.W. Schumacher and M.H. Kulmer-Control-SF&L Ry.

Dear Fritz:

Your covering letter to respondents' discovery responses, invites the following questions, for which you may have answers:

1. The respondents repeatedly assert, "SF&L has not yet become the common carrier railroad on the Rail Line." Is it their contention that SF&L is not a rail common carrier on the rail line? I have in mind the SF&L tariff publications, such as Hladick's OPSL 6000-V, Supplements 2 and 6, along with your voting trust filing and subsequence release, only to mention a few items. Please confirm that SF&L is today a rail or railroad common carrier and, if not, why not?

2. The respondents repeatedly assert, "the proposed transaction has not been consummated." Is it their contention that the entire proposal has not been consummated, but that part of the proposal has been consummated? If so, what part of the proposed transaction has not been consummated? Does any part of the unconsummated proposed transaction require STB approval or exemption and, if so, which part or parts?

3. Please reconsider the responses to Nos. IV(1) and IV(3). While relevant documents may not relate or pertain to SF&L, TPW or the Peoria/LaHarpe line, they may nevertheless contain relevant information. For example, if the documents referenced a need for rail affiliates to acquire underperforming rail lines for abandonment, such information would clearly be relevant to this proceeding. More generally, as the heart of the issue is intent, the documents may shed light on the corporate family's plans for rail operation and/or abandonment.

Please let me know at your earliest convenience concerning the above inquiries.

Very truly yours,



APPENDIX 8
Page 1 of 4

cc: Louis E. Gitomer
Thomas J. Healey
Linda A. O'Brien
William E. Poncin

APPENDIX 8
Page 2 of 4

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601
(202) 263-4152
FAX (202) 331-8330
e-mail: xicgc@worldnet.att.net

June 11, 2001

VIA MAIL AND FAX (202) 331-8343

Gordon P. MacDougall
1025 Connecticut Avenue, NW
Washington, DC 20036

Dear Gordon:

Thank you for your letter of June 6, 2001, posing follow-up questions to the June 1, 2001, Discovery Responses of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer to the First Set of Interrogatories and Request to Produce of the County of McDonough, City of Macomb and Mr. Joseph C. Szabo in STB Finance Dockets Nos. 33995 and 33996.

1. SF&L Railway, Inc., is not now a common carrier railroad on the Peoria-to-La Harpe railroad line, since the agreements implementing the two-page letter agreement of December 29, 2000, between SF&L and the Toledo, Peoria and Western Railway corporation still are being negotiated and have not yet been concluded. The tariff publication in Hladick's OPSL 6000-V, Supplements 2 and 6, is simply anticipatory, and the Voting Trust Agreement was precautionary, because at the time I did not know whether the Verified Notice of Exemption to effect the acquisition might not be filed, and, hence, become effective ahead of the filing for approval of the control relationship.

2. The two-page letter agreement of December 29, 2000, between SF&L and TP&W is a valid and binding agreement between the parties, and all of the requisite regulatory approval have been secured from the STB to permit the implementing agreements, including the operating agreement, the interchange agreement, the haulage agreement and I don't know what additional agreements, once they have been negotiated and concluded, to become operative.

3. None of the business plans, corporate strategies or budgets pertaining to A&K Railroad Materials, Inc., or its various product lines, reference a policy for A&K or its affiliates to acquire underperforming rail lines for abandonment

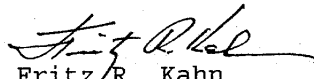
Gordon P. MacDougall, Esq.
June 11, 2001
Page Two

or similar provisions which might shed light on the corporate strategy for acquiring or abandoning railroad lines by A&K or its affiliates.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Best regards.

Sincerely yours,


Fritz R. Kahn

cc: Michael J. Van Wagenen, Esq.