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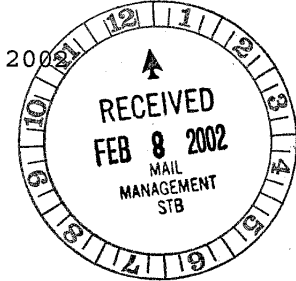
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February 8, 2002



VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

Dear Secretary Williams:

204725
Enclosed for filing in each of STB Finance Docket No. 33995, SF&L Railway, Inc.--Acquisition and Operation Exemption--Toledo, Peoria and Western Railway Corporation, and STB Finance Docket No. 33996, Kern W. Schumacher and Morris H. Kulmer--Continuance in Control Exemption--SF&L Railway, Inc., are the originals and ten copies of the Surrebuttal of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer.

Additional copies off this letter and of the Surrebutal are enclosed for you to stamp to acknowledge your receipt of them and to return to me in the enclosed stamped and self-addressed envelope.

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

Sincerely yours,


Fritz R. Kahn

enc.

cc: Gordon P. MacDougall, Esq.
Louis E. Gitomer, Esq.
William A. Mullins, Esq.
Michael J. Van Wagenen, Esq.

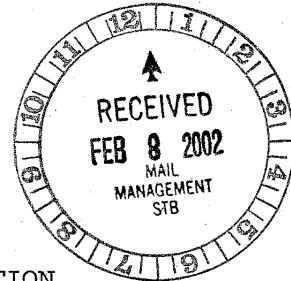
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

204724

STB Finance Docket No. 33995

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



STB Finance Docket No. 33996

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

204725

SURREBUTAL
OF
SF&L RAILWAY, INC., KERN W. SCHUMACHER
and MORRIS H. KULMER

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Fritz R. Kahn
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Attorney for

SF&L RAILWAY INC.,
KERN W. SCHUMACHER and
MORRIS H. KULMER

Due and dated: February 8, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 33995

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

STB Finance Docket No. 33996

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

SURREBUTAL
OF
SF&L RAILWAY, INC., KERN W. SCHUMACHER
and MORRIS H. KULMER

SF&L Railway, Inc. ("SF&L"), Kern W. Schumacher and Morris H. Kulmer (together "Applicants"), pursuant to the Decision of the Board, Secretary Williams, served February 1, 2002,, respond to the Rebuttal filed, January 28, 2002, by Keokuk Junction Railway Co. ("KJRY"), as follows:

I.

INTRODUCTION

KJRY's Rebuttal is an altogether obvious effort by KJRY to

shore up its case. KJRY's earlier Petition¹ and Supplement,² fell far short of satisfying KJRY's burden proving why regulation of the transactions — putting SF&L to the time and expense of filing an acquisition application, pursuant to 49 U.S.C. 10901 and 49 C.F.R. 1150.1, et seq., and Messrs. Schumacher and Kulmer, a continuance-in-control application, pursuant to 49 U.S.C. 11324 and 49 C.F.R. 1180.0, et seq. — would advance any of the goals and objectives of the Rail Transportation Policy, 49 U.S.C. 10101. KJRY Rebuttal is no more persuasive than its earlier filings were.

KJRY prefaces its Rebuttal with an outrageous misrepresentation, and the statement's utter falsehood sets the tone for KJRY's entire pleading. At page 2 of its Rebuttal, KJRY charges that Applicants "have not moved even one carload of traffic or otherwise taken even the basic steps necessary toward operating a viable railroad." KJRY knows better than that. As the Assistant Vice President of SF&L, Mr. Steven J. Van Wagenen, notes in his Verified Statement, which is attached hereto, since December 12, 2001, when SF&L took over the operation of the La Harpe-to-Peoria railroad line, SF&L has received approximately 172 carloads of freight from KJRY and delivered 58 carloads to KJRY.

SF&L is providing two-days-a-week service on the La Harpe-to-Peoria railroad line, as it had anticipating doing. The

¹ Petition to Revoke Notices of Exemption, filed March 6, 2001.

² Keokuk Junction Railway Co.'s Supplement to its March 6, 2001, Petition to Revoke Notices of Exemption, filed December 12, 2001.

railroad is making every reasonable effort to operate efficiently and to increase traffic wherever it can. To be sure, the rates have had to be increased from the incremental, marginal-cost level at which they had been assessed when the traffic on the line was handled by the Burlington Northern and Santa Fe Railway Company ("BNSF") manifest intermodal trains, now diverted to another line. SF&L must price its services to cover the costs associated with operating and maintaining the line, but, in that regard, SF&L is performing no differently than any other short line railroad which might have bought the line and sought to earn a profit operating it.

II.

ARGUMENT

A.

Applicants did not demean the shippers but noted how they had been manipulated by KJRY.

Contrary to KJRY's self-serving assertion, Applicants, at pages 19-23 of their Reply, did not denigrate the shippers whose letters had been attached to KJRY's Petition and again to its Supplement. Rather, Applicants quoted from KJRY's own interrogatory responses to demonstrate how the shippers had been used by KJRY to advance its own objectives in these proceedings.

In keeping with the admonition in the Board's Decision of February 1, 2002, that Applicants avoid repeating arguments previously advanced, Applicants will not quote again from KJRY's interrogatory responses in which KJRY detailed just exactly what the shippers were to say in their letters to the Board but will simply refer the Board to KJRY's responses to Interrogatory No.

4(a)-(e) of Applicants' initial discovery requests, appended as Attachment D to Applicants' Reply, filed January 11, 2002.

Indeed, Ms. Catherine Busch, in her Verified Statement, attached as Exhibit A to KJRY's Rebuttal, acknowledges that she drafted the shippers' letters addressed to the Board and appended to KJRY's Petition and Supplement.

KJRY contends that the shippers may have been confused as to which railroad operated the La Harpe-to-Peoria railroad line before December 12, 2001, when SF&L began operating it. The only confusion, however, is that which KJRY itself has sown. KJRY knew that the authorizations which Applicants received as the result of the filing of their Verified Notices of Exemption were permissive and not mandatory.³ Notwithstanding that SF&L bought the La Harpe-to Peoria railroad line on December 29, 2000, SF&L did not undertake rendering service on line until nearly a year later. KJRY, moreover, knew that the intervening time had been spent trying to arrive at a mutually acceptable operating agreement, haulage agreement and interchange agreements between SF&L and the Toledo, Peoria and Western Railroad Corporation ("TP&W"), the former owner and operator of the line. KJRY had been provided with the initial drafts of those agreements in response to KJRY's document production requests and, pursuant to 49 C.F.R. 1114.29, was kept apprized of the revisions of those agreements as they occurred.

Additionally, there cannot have been any confusion on KJRY's part, since, before December 12, 2001, KJRY dealt only with the

³ See, Chicago & N. W. Ry. Co.--Control, 347 I.C.C.556 (1974).

TP&W. KJRY had through-route, joint-rate arrangements with TP&W, and not SF&L, and interchanged traffic with TP&W, and not SF&L. As far as KJRY was concerned, SF&L was not a railroad with which it connected, as KJRY itself continues to emphasize,⁴ or a railroad which it needed to cooperate in providing service to the affected shippers.

If, as the letters drafted by KJRY and attached to KJRY's Petition and Supplement assert, the shippers were concerned about rate increases and service deterioration on the La Harpe-to-Peoria line, they can only have been referring to TP&W and whatever rate and service changes occurred before December 12, 2001.

At page 5 of its Rebuttal, KJRY falsely accuses Applicants of intimating that the shippers⁵ who expressed concern about the representations made by Michael J. Van Wagenen, Esq., SF&L's General Counsel, at the time he met with them in mid-January 2001 "are lying." Applicants did no such thing. What Applicants did do, at pages 19-20 of their Reply, is show that the identical statement which appeared in the letters to the Board from Mr. William D. Edwards and Mr. Robert D. Pschirrer, attached to KJRY's Petition and Supplement, came directly from the draft letter which KJRY had prepared.⁶ Applicants, furthermore, stated that the unverified statement attributed to the two shippers was

⁴ See, Verified Statement of Mr. B. Allen Brown, Exhibit B to KJRY's Rebuttal.

⁵ KJRY refers to "many" shippers; in fact, there were only two.

⁶ See, Document No. KJRY 0002-0003 appended at Attachment D to Applicants' Reply.

flatly contradicted by Mr. Van Wagenen's declaration in his Verified Statement submitted under penalty of perjury.⁷ Mr. Steven J. Van Wagenen, in his Verified Statement, confirms that no attempt was made to obscure the corporate relationship between SF&L and A&K.

At page 5 of its Rebuttal, KJRY notes that no shipper has come forward to express support for SF&L's purchase of the La Harpe-to-Peoria railroad line. KJRY cannot be so naive as to think that the shippers whose traffic heretofore had been handled as part of BNSF's manifest intermodal trains are pleased by the trains' rerouting. The rerouting by BNSF and/or TP&W of those trains from the Fort Madison, IA, interchange to the one at Galesburg, IL, meant that the shippers on the La Harpe-to-Peoria railroad line no longer would be charged the incremental, marginal-cost rates which they had been paying or receive service as frequently as five or six days a week as they heretofore had experienced. When Mr. Van Wagenen met with the shippers on the line, he was very candid in explaining that they very likely would need to pay higher rates and receive service only twice a week. As distressed as they may have been to learn what they might anticipate in the way of higher rates and less frequent service, it is significant that no shipper deemed himself sufficiently aggrieved to become a party to these proceedings. Not one shipper has joined KJRY in seeking the revocation of the Applicants' Verified Notices of Exemption and putting Applicants to the time and expense of filing acquisition and control

⁷ See, Verified Statement of Michael J. Van Wagenen, attached to Applicants' Reply, filed March 26, 2001.

applications.

B.

KJRY sought to avoid entering into
an interchange agreement with SF&L.

The excuse offered by Mr. B. Allen Brown in his Verified Statement, attached as Exhibit B to KJRY's Rebuttal, for not entering into an interchange agreement with SF&L is not convincing. Mr. Brown contends that KJRY could not enter into an interchange agreement with SF&L in June 2001, when Mr. Steven J. Van Wagenen first asked KJRY to sign one, because "the tracks of KJRY did not physically touch the tracks of SF&L." In June 2001, however, SF&L continued to expect that TP&W would be its contract operator on the La Harpe-to-Peoria railroad line, rendering service in the name of SF&L and for its account. The tracks of KJRY connected with those of TP&W, and an interchange agreement would have been perfectly feasible. KJRY, however, made it abundantly clear it simply did not wish to deal with SF&L.

At page 7 of its Rebuttal, KJRY acknowledges that it now has bought the short segment of railroad line that physically had separated KJRY and SF&L and concedes that KJRY is under a legal obligation to interchange traffic with SF&L. Mr. Brown in his Verified Statement, however, neglects to mention the change in the track's ownership or the resultant duty imposed by statute upon KJRY to interchange traffic with SF&L.

C.

KJRY's purchase of the line
to Fort Madison may be a means of
bypassing SF&L's La Harpe-to-Peoria line.

At pages 5-6 of Applicants' Reply, Applicants acknowledged not knowing what Pioneer Railcorp's motives may have been in having KJRY acquire TP&W's La Harpe-to-Fort Madison railroad line. Applicants did note, however, that, as a result of the purchase of the line, KJRY no longer will require SF&L to haul its cars to and from interchanges with BNSF and Union Pacific Railroad Company ("UP") at Peoria or some other station on the La Harpe-to-Peoria railroad line. Nothing that Ms. Busch had to say in her Verified Statement has served to alleviate Applicants' concern that the purchase of the line may have been just another means whereby Pioneer Railcorp, owner of KJRY, will try to put SF&L out of business.

At page 4 of their Reply, Applicants noted that the local traffic on the La Harpe-to-Peoria railroad line is sparse, amounting to no more than about 800 carloads a year. Critical to keeping the line operating is the traffic received from KJRY, some 3,600 carloads a year. The preponderance of that traffic heretofore has been turned over the BNSF or UP at Peoria or some other station on the line. Here is what Ms. Busch had to say about that traffic, "Products that move between Keokuk and Peoria cannot be routed through Fort Madison because those products either terminate in Peoria or are interchanged with another carrier such as Canadian National or Norfolk Southern at Peoria." That does not alleviate Applicants' concern that KJRY may be able to divert the traffic, which in the past moved over the La Harpe-

to-Peoria railroad line for interchange with BNSF or UP at Peoria, to the Fort Madison gateway and direct interchange with BNSF or UP.

At page 7 of its Rebuttal, KJRY offers nothing to dispel Applicants' concerns that KJRY's purchase of the La-Harpe-to Fort Madison railroad line may be just another means whereby Pioneer Railcorp intends to force SF&L out of business except to point to the resources KJRY has expended in seeking the revocation of Applicants' Verified Notices of Exemption.

Denying SF&L the much needed interchange traffic to move on the La Harpe-to-Peoria railroad line at the very time that Applicants would have to expend the time and money to process their acquisition and control applications, as KJRY is hoping to accomplish by its revocation request, may serve to put SF&L out of business as effectively as an abandonment, which KJRY, at page 7 of its Rebuttal, claims it wishes to avoid.

The spin which, at page 9 of its Rebuttal, KJRY attempts to put on paragraph 10 of Ms. Busch's Verified Statement just won't work. She did not in any way dispute that KJRY now has the ability to route the BNSF or UP bound traffic via the Fort Madison gateway. The only traffic which she contends SF&L can count on being turned over to it at La Harpe would be traffic terminating "in Peoria or interchanged with another carrier such as Canadian National or Norfolk Southern at Peoria." Limited to Canadian National or Norfolk Southern bound traffic, it well may be, as KJRY asserts, "Even if it wanted to [,] KJRY could not force traffic moving through Peoria to be interchanged at Fort Madison." KJRY did not, and cannot, say the same about the

traffic which it interchanges with BNSF or UP.

Finally, at page 10 of its Rebuttal, referencing paragraph 9 of Ms. Busch's Verified Statement, KJRY contends that "most Keokuk shippers who desire to use the [La Harpe-to-Peoria] Rail Line for access to Peoria (and beyond) have seen their rates doubled subsequent to Respondent's purchase of the Rail Line." What KJRY fails to acknowledge, however, that in part, at least, the rate increases have been the result of KJRY's own action. As Mr. Steven J. Van Wagenen explains in his Verified Statement, KJRY has imposed a \$100 per car penalty if SF&L loads cars (ALAB marked cars supplied by KJRY) returning from Peoria, as, for example, at Farmers Elevator Company in Scotia, IL, even if the shipments are consigned to industries in Keokuk, IA, served by KJRY. Thus, the very rate increases which KJRY contends may encourage Keokuk shippers to divert traffic from the Peoria gateway to the one at Fort Madison have been occasioned, in part, by KJRY's own conduct.

D.

Applicants' disclosure of classified data was of no moments and fails to aid KJRY in its revocation request.

At pages 11-13 of its Rebuttal, KJRY attempts to make much out of the fact that Applicants in their Reply made public certain information which in their responses to KJRY's discovery requests they had classified as "Confidential" or "Highly Confidential," namely, the retention by TP&W of the ownership of the bridges and culverts on the La Harpe-to-Peoria railroad line, the internal corporate financing of TP&W's purchase of the line and the provision in one of the draft agreements, never executed,

whereby RailAmerica and/or TP&W said they would not protest the line's abandonment, if and when it were sought by SF&L.⁸

Of course, the Protective Order appended to the Board's Decision, served April 13, 2001, specifically contemplated such use by a party of classified material. Paragraph 17 of the Protective Order provided:

Nothing in this Order restrict the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Moreover, if KJRY had thought any of Applicants' discovery responses had been improperly classified as "Confidential" or "Highly Confidential," KJRY could have availed itself of paragraph 8 of the Protective Order, which provided:

Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by filing a motion with the Surface Transportation Board (Board), an administrative law judge (ALJ), or any other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).

KJRY, however, did not challenge the classification of the materials the public disclosure of which it now endeavors to portray as being so very significant.

KJRY contends that Applicants' disclosure enabled outside counsel for KJRY to review the matters with in-house KJRY personnel, as a result of which KJRY is more convinced that ever

⁸ At page 13 of its Rebuttal, KJRY maintains that TP&W and/or RailAmerica could have been expected to "insist upon a right of first refusal to repurchase the line." That makes no sense since they marketed the line because it failed to meet their profitability standards.

that Applicants intend to downgrade and abandon the La Harpe-to-Peoria railroad line. KJRY fails to identify who the in-house KJRY personnel were whom counsel consulted or have them express their views in verified statements attached to KJRY's Rebuttal. Certainly, neither Ms. Busch nor Mr. Brown, whose Verified Statements were appended to KJRY's Rebuttal, said anything that would indicate that they believed that SF&L intended to downgrade the La Harpe-to-Peoria railroad line and abandon it.

As Applicants previously pointed out, at page 3 of their Reply, KJRY's entire case consists of counsel's contrived arguments. Indeed, the very arguments advanced on pages 11-13 of KJRY's Rebuttal are merely repetitious of the arguments made at pages 13-16 of KJRY's Supplement. Observing the Board's admonition, Applicants will not repeat what it said in response to KJRY's arguments but simply invite the Board's attention to pages 15-17 of their Reply, filed January 11, 2002. KJRY did not succeed in establishing in its Petition or Supplement that SF&L intends to downgrade the La Harpe-to-Peoria railroad line and abandon it; nothing in KJRY's Rebuttal lends credence to its claim.

E.

KJRY's responses to Applicants' miscellaneous arguments are strained and unavailing.

At page 13 of its Rebuttal, KJRY disputes that it has waged a collateral attack upon the Board and Interstate Commerce Commission ("ICC") decisions which over the years had granted the abandonment requests of SF&L and other A&K affiliated railroads. KJRY, however, immediately turns around and faults the agency for

not having addressed what KJRY claims was the applicant railroads' operating their lines in a manner intended to drive all viable traffic from them or in purchasing lines with no existing traffic. KJRY may deem its assault to fall short of being a collateral attack upon the Board or ICC decisions; Applicants, however, submit that KJRY's assault upon the agency can be characterized no differently.

At page 14 of its Rebuttal, KJRY maintains that Applicants had wrongly accused them of having misrepresented the holdings in Docket No. 547X, Roaring Fork Railroad Holding Authority--Abandonment Exemption--In Garfield and Pitkin Counties, served May 21, 1999, and Docket No. 33 (Sub-No. 71X), Union Pacific Railroad Company--Abandonment Exemption--In Lancaster County, NE, served September 28, 1992. KJRY, however, manages to rely only upon the representations of one or more of the parties in those proceedings. In its Rebuttal, KJRY is unable to point to the language in the Board or ICC decision that would permit KJRY to contend, as it did at page 8 of its Supplement, that the agency "itself has recognized that [Applicants] are basically in the business of scrapping rail lines and for that reason has itself refused to allow [Applicants] to acquire rail lines under the Offer of Financial Assistance procedures." KJRY persists in its misrepresentation of the two decisions.

At pages 14-15 of its Rebuttal, KJRY rehashes what it contended, at pages 10-17 of its Supplement, were the deficiencies in SF&L's due diligence inquiries during the very abbreviated period in which it negotiated the purchase of the La Harpe-to-Peoria railroad line. Again, mindful of the Board's

admonition, Applicants will not repeat its response, as set forth of at pages 12-14 of their Reply, served January 11, 2002.

Suffice it to say that at the time of its purchase of the line SF&L expected that TP&W, the former owner and operator of the line, would continue to operate the line, albeit as SF&L's contract operator, in SF&L's name and for its account. Thus, the sort of due diligence inquiry which KJRY maintains is typical in short line acquisitions would have been redundant. The action of SF&L cited by KJRY most assuredly does not permit it fairly to conclude, as it does, that Applicants' only interest in the line was its scrap value, to be realized upon the line's abandonment.

III.

CONCLUSION

KJRY's Rebuttal is more revealing for what it does not say than for what it does say.

Nowhere does KJRY respond to Applicants' challenge, at pages 7-8 of their Reply, served January 11, 2002, that KJRY identify a single instance in which SF&L or another A&K affiliated railroad was found by the Board or ICC to have failed to render adequate service, imposed unreasonable rates or discontinued service without the agency's authorization or, with a single 1.7-mile exception, to cite to a single Board or ICC abandonment decision granted in favor of SF&L or another A&K affiliated railroad in which there was sufficient traffic on the line to have prompted the filing of an offer of financial assistance.

Nowhere does KJRY respond to Applicants' assertion, at page 6 of its Reply, that Pioneer Railcorp, having failed in its bid to purchase the La Harpe-to-Peoria railroad line, still has

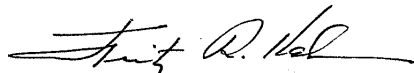
aspirations to acquire it. As a matter of fact, just within the past several weeks, Pioneer Railcorp made overtures to SF&L to purchase the line, and it is only the difference in each party's estimate of what the line is worth that has kept the sale from being consummated. KJRY's revocation request must be recognized for what it is, namely, just another means of putting pressure on SF&L so that KJRY, one way or another, itself will be able to acquire the line. Certainly, KJRY has failed to establish how putting Applicants to the time and expense of filing acquisition and control applications would advance any of the goals or objectives of the Rail Transportation Policy. That was the burden of proof that KJRY needed to meet, and it has failed to satisfy that requirement.

WHEREFORE, SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer ask that the Petition to Revoke filed on behalf of Keokuk Junction Railway Co. be denied.

Respectfully submitted,

SF&L RAILWAY, INC.,
KERN W. SCHUMACHER and
MORRIS H. KULMER

By their attorney,



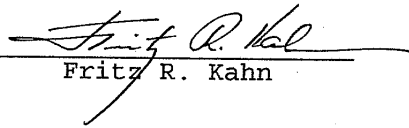
Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
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Tel.: (202) 263-4152

Due and dated: February 8, 2002

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing pleading upon counsel for each of the parties by mailing them copies thereof, with first-class postage prepaid.

Dated at Washington, DC, this 8th. day of February 2002.


Fritz R. Kahn

**VERIFIED STATEMENT
OF
STEVEN J. VAN WAGENEN**

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 33995

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

STB Finance Docket No. 33996

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

VERIFIED STATEMENT
OF
STEVEN J. VAN WAGENEN

My name is Steven J. Van Wagenen, and I am Assistant Vice President of SF&L Railway, Inc. ("SF&L"). I previously submitted a Verified Statement in these proceedings, attached as Attachment A to Applicants' Reply, filed January 11, 2002. I have read the Rebuttal filed, January 28, 2002, by Keokuk Junction Railway Co. ("KJRY") and have just a few comments to offer in response.

Let me say at the outset that, contrary to KJRY assertion, SF&L is off and running. Since December 12, 2001, when SF&L took over operation of the La Harpe-to-Peoria railroad line from the Toledo, Peoria & Western Railroad Corporation ("TP&W"), we have run an efficient short line railroad, fully responsive to the

demonstrated needs of the shippers on the line. Yes, rates have had to be increased. The local traffic on the line heretofore was handled by the manifest intermodal trains of the Burlington Northern and Santa Fe Railway Company. Shippers, accordingly, were assessed incremental, marginal-cost rates. Those trains now have been diverted to another line, and the rates which the shippers now need to pay are simply reflective of costs of operating and maintaining the line. Yes, service has been reduced. Again, as long as the manifest intermodal trains ran on the line, shippers received service five or six times a week. Now that those trains have been diverted to another line, SF&L is rendering round-trip service on the line twice a week. That is the frequency of service we anticipated being able to offer the shippers, and, to my knowledge, none of the shippers have complained about the frequency of service.

SF&L since commencing its own operations has made an earnest effort to reduce car cycle times and to increase loading capability for its on-line shippers. In particular, SF&L has worked with the largest shipper on the line, Farmers Elevator Company in Scotia, IL, to double its loading capacity each week.

SF&L has endeavored to operate an efficient short line railroad and increase the traffic it carries wherever it can. The actions of increasing rates and reducing service would had to be taken by any other short line operator of the La Harpe-to-Peoria railroad line endeavoring to earn a profit.

The A&K family of companies has a variety of business interests. In each of these areas we seek to conduct business in a professional and profitable manner. SF&L is no different.

KJRY contends that the shippers may have been confused as to which railroad operated the La Harpe-to-Peoria railroad line before December 12, 2001, when SF&L began operating it. I don't believe that was the case at all. In visiting with the shippers on the La Harpe-to-Peoria railroad line, I did not get the impression that the shippers misunderstood that SF&L did not become the operator of the line until December 12, 2002.

Certainly, KJRY was not confused about which railroad operated the La Harpe-to-Peoria railroad line before December 12, 2001. KJRY dealt only with the TP&W. KJRY had through-route, joint-rate arrangements with TP&W, and not SF&L, and interchanged traffic with TP&W, and not SF&L. As far as KJRY was concerned, SF&L was not a railroad with which it connected, as Mr. B. Allen Brown reaffirms in his Verified Statement, or a railroad which it needed to cooperate in providing service to the affected shippers.

KJRY contends that the shippers who wrote the Board were concerned about rate increases and service deterioration on the La Harpe-to-Peoria line. They can only have been referring to TP&W, which operated the line until December 12, 2001.

At page 5 of its Rebuttal, KJRY again raises the matter of the representations allegedly made by my father, Michael J. Van Wagenen, Esq., SF&L's General Counsel, at the time he and I met with the shippers on the La Harpe-to Peoria railroad line in mid-January 2001. At no time did he attempt to hide the fact that SF&L was a corporate affiliate of A&K Railroad Materials, Inc. The unverified statement of the two shippers was flatly contradicted by Mr. Van Wagenen's declaration in his Verified

Statement submitted under penalty of perjury,¹ and I agree completely with his disclaimer.

To be sure, the shippers expressed concern about the effect of the anticipated rerouting of the manifest intermodal trains of The Burlington Northern and Santa Fe Railway Company ("BNSF"). The rerouting by BNSF and/or TP&W of those trains from the Fort Madison, IA, interchange to the one at Galesburg, IL, would mean that the shippers on the La Harpe-to-Peoria railroad line no longer would be charged the incremental, marginal-cost rates which they had been paying or receive service as frequently as five or six days a week as they heretofore had experienced. When my father and I met with the shippers on the line, he was very candid in explaining that they very likely would need to pay higher rates and receive less frequent service. Just what the level of the rates and the frequency of the service would be he could not say. That all would depend on the volume and nature of the traffic that remained on the line and the revenue earned and the costs incurred in operating it.

In his Verified Statement, Mr. Brown contends that KJRY could not enter into an interchange agreement with SF&L in June 2001 when I first asked it to do so, because "the tracks of KJRY did not physically touch the tracks of SF&L." I don't find his explanation to be convincing. In June 2001 SF&L continued to expect that TP&W, which had owned and operated the La Harpe-to-Peoria railroad line, would be SF&L's contract operator, rendering service in the name of SF&L and for its account. The

¹ See, Verified Statement of Michael J. Van Wagenen, attached to Applicants' Reply, filed March 26, 2001.

tracks of KJRY connected with those of TP&W, and an interchange agreement, in my view, would have been perfectly feasible. KJRY, however, made it abundantly clear it simply did not wish to deal with SF&L.

In my earlier Verified Statement, I noted that the local traffic on the La Harpe-to-Peoria railroad line is sparse, amounting to no more than about 800 carloads a year. Critical to keeping the line operating is the traffic received from KJRY, some 3,600 carloads a year. The preponderance of that traffic heretofore has been turned over the BNSF or UP at Peoria or some other station on the line. With respect to that traffic, Ms. Catherine Busch, in her Verified Statement, said, "Products that move between Keokuk and Peoria cannot be routed through Fort Madison because those products either terminate in Peoria or are interchanged with another carrier such as Canadian National or Norfolk Southern at Peoria." Although KJRY now has the ability to divert the La Harpe-to-Peoria traffic to the Fort Madison gateway and direct interchange with BNSF or UP, I am pleased to acknowledge that such diversion has not yet occurred. Since December 12, 2001, when SF&L took over the operation of the La Harpe-to-Peoria railroad line, SF&L has received approximately 172 carloads from KJRY and delivered 58 carloads to KJRY.

In paragraph 9 of her Verified Statement, Ms. Busch says "Most Keokuk shippers who desire to use the [La Harpe-t-Peoria] Rail Line for access to Peoria (and beyond) have seen their rates doubled subsequent to Respondent's purchase of the Rail Line." In my opinion, the increased rates in part, at least, are the result of KJRY's own action. For example, KJRY historically

provided cars free on line for traffic originating at Scotia, IL, for delivery to Keokuk, IA. On January 31, 2002, this policy was changed, allowing only five (5) days free on line. Based on operating constraints and schedule, the five days offered are inadequate. I have asked KJRY for a minimum of seven (7) days free time on KJRY cars, but KJRY has held to five days of free time, which increases SF&L's car hire costs and, inevitably, its rates.

In order to reduce this cycle time, SF&L has approached KJRY with a proposal to utilize empties returning from Peoria, as both loaded cars from Scotia and empties from Peoria are consigned to Keokuk, served by KJRY. Although this approach improves car utilization and allows cars to be loaded in Scotia and delivered in Keokuk within three days' time, KJRY has imposed a penalty charge of \$100 per car (ALAB marked cars supplied by KJRY) if SF&L were to load a car returning from Peoria without the empty first being interchanged to KJRY and then interchanged back to SF&L at La Harpe.

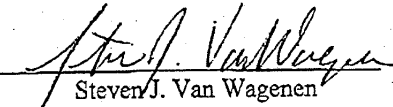
It is evident to me that Pioneer Railcorp, having failed in its bid to purchase the La Harpe-to-Peoria railroad line, still has aspirations to acquire it. As a matter of fact, just within the past several weeks, Pioneer Railcorp made overtures to SF&L to purchase the line, and it is only the difference in each party's estimate of what the line is worth that has kept the sale from being consummated. KJRY's revocation request must be recognized for what it is, namely, just another means of putting pressure on SF&L so that KJRY, one way or another, itself will be able to acquire the line. Certainly, KJRY has failed to

establish how putting Applicants to the time and expense of filing acquisition and control applications would advance any of the goals or objectives of the Rail Transportation Policy. That, as I understand it, was the burden of proof that KJRY needed to meet, and it is my judgment that it has failed to satisfy that requirement.

VERIFICATION

I, Steven J. Van Wageningen, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf Applicants. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Winnipeg, Manitoba, this 8th day of February 2002.


Steven J. Van Wageningen