

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: xiccgc@worldnet.att.net

205970
ORIGINAL

August 1, 2002



VIA HAND DELIVERY - RETURN COPY

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

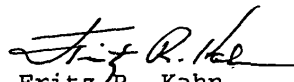
Dear Secretary Williams:

205971 - 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 Reply of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer.

Additional copies off this letter and of the Reply are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

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.

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Part of
Public Record

205970
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



Finance Docket No. 33995

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

Finance Docket 33996

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

REPLY
OF

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

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Attorney for

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

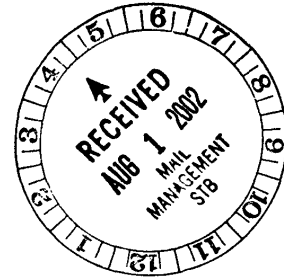
Dated: August 1, 2002

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



Finance Docket No. 33995

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

Finance Docket 33996

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

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

Applicants, SF&L Railway, Inc. ("SFL"), Kern W. Schumacher and Morris H. Kulmer, pursuant to 49 C.F.R. 1104.13(a), reply in opposition to the Supplement to the Record, filed by Keokuk Junction Railway Co. ("KJRY") on July 29, 2002, as follows:

1. More than eight months after the evidentiary records in these proceedings were closed¹ and more than four months after the statutory deadline set forth in 49 U.S.C. 10502(d) for the Board to have acted if it were going to revoke the exemptions

¹ See, Applicants' Surrebuttal, filed February 8, 2002.

herein,² KJRY tendered its Supplement. KJRY avoided seeking leave to file its Supplement, pursuant to 49 C.F.R. 1117.1, and, since the Supplement fails to comport with the Board's rules, the pleading should be rejected summarily, as contemplated 49 C.F.R. 1104.10.

2. The Supplement seeks the admission into evidence of two documents, one, an undated letter from Colusa Elevator Company of Burnside, IL, and, the other, a petition signed by about 112 persons said to be grain producers in the La Harpe - Blandinsville, IL, area allegedly concerned about the loss of railroad service. The records already contain a letter from Colusa Elevator Company, Attachment A to KJRY's Petition to Revoke Notices of Exemption, filed March 6, 2001, and KJRY fails to explain the need for yet a second letter from a shipper which is situated not on SFL's La Harpe-to-Peoria railroad line but, rather, on KJRY's line. As for the grain producers' petition, none of the signatories identifies himself or herself as a shipper on SFL's La Harpe-to-Peoria railroad line, and KJRY offers no explanation why it avoided attaching the grain producers' petition to its Petition to Revoke or to KJRY's Supplement, filed January 7, 2002. In any event, neither the letter from Colusa Elevator Company nor the grain producers' petition offers any support for the conclusion which, at page 3 of its Supplement, KJRY seeks to draw from them, namely, "SF&L,

² See, Decision, served June 5, 2001. See, also, Lyng v. Payne, 476 U.S. 926, 937 (1986) ("[A]n agency's power is no greater than that delegated to it by Congress."); Burlington Nor. R. Co.--Order for Just Compensation, 7 I.C.C.2d 74, 77 (1990) ("[T]he Commission cannot create jurisdiction in the Commission where it has not been granted by the statute.").

when it purchased the Toledo, Peoria, & Western Railway (TP&W) line, had no intention of running a railroad."

3. As records in these proceedings establish, SFL in fact has operated the La Harpe-to-Peoria railroad line since December 12, 2001. SFL, however, has given public notice³ that on or about September 3, 2002, it expects to file with the Board a Petition for Exemption seeking the agency's authorization to abandon the line. SFL will be doing so not, as KJRY irresponsibly charges, because that was SFL's intent when it purchased the line, but, rather, because KJRY deliberately and calculatingly has diverted its overhead traffic away from the SFL's La Harpe-to-Peoria railroad line, over which such traffic regularly had been hauled before December 12, 2001, and, without which, the line cannot survive.

4. As the SFL's Petition for Exemption will spell out in greater detail, SFL genuinely believed it could make a go of maintaining and operating the La Harpe-to-Peoria railroad line. While the local traffic on the line, amounting to about 800 revenue carloads a year, or about 11 revenue carloads per mile of the 71.5-mile line, clearly was insufficient permit the line's continued operation, the approximately 3,600 revenue carloads of overhead traffic interlined annually with KJRY at La Harpe would allow the line to remain in service. The local traffic plus the traffic received from or delivered to KJRY would come to about

³ Copies of letters sent on July 23, 2002, to the Federal and State of Illinois officials and to the principal newspapers in each of the four counties through which the La Harpe-to-Peoria railroad line runs at the same time were provided Victoria J. Rutson, Esq., Chief of the Board's Section of Environmental Analysis.

4,400 revenue carloads a year, or about 62 revenue carloads per mile of the 71.5-mile line. With that amount of traffic an efficiently operated SFL would be able successfully to operate the La Harpe-to-Peoria railroad line.

5. By December 12, 2001, however, when SFL commenced operating the La Harpe-to-Peoria railroad line, KJRY had reached an agreement with RailAmerica, Inc., to purchase TPW's line between La Harpe and Lomax, IL, and with The Burlington Northern and Santa Fe Railway Company ("BNSF") to secure trackage rights between Lomax and Fort Madison, IA.⁴ KJRY's acquisition of the west-end line meant that it could divert traffic away from SFL's La-Harpe-to-Peoria railroad line. KJRY no longer needed SFL to handle the approximately 3,600 revenue carloads of overhead traffic to be interchanged with BNSF or the Union Pacific Railroad Company ("UP") at Peoria or some other station on SFL's La Harpe-to-Peoria railroad line. KJRY would be able to hold on to the traffic and effect direct interchanges with BNSF and UP at Fort Madison.

6. The intervening seven months have proven that such diversion of its traffic away from SFL's La Harpe-to-Peoria railroad line was exactly what KJRY had in mind by its acquisition of the west end line. From 128 revenue carloads of overhead traffic handled by SFL in January 2002, the number of revenue carloads of overhead traffic dropped to one in July 2002. Indeed, in the first six months of 2002, KJRY tendered to SFL or

⁴ STB Finance docket No. 34143, Keokuk Junction Railway Co.--Acquisition and Operation Exemption--West End of Toledo, Peoria and Western Railway Corporation.

received from SFL a total of 161 carloads of revenue freight, less than ten percent of the approximately 1,800 revenue carloads which SFL expected it could count on interlining with KJRY when it purchased the La Harpe-to-Peoria railroad line.

7. The Petition of Exemption will demonstrate that, as a result of KJRY's actions, SFL has sustained operating losses in excess of \$138,000.00 since it began operating the La Harpe-to-Peoria railroad line. It and its owners cannot any longer be expected to bear such revenue losses.

8. It ill behooves, KJRY to malign SFL as it does in its Supplement, when it is KJRY itself that has brought SFL to its financial demise and the need for shutting down its operations.

WHEREFORE, Applicants, SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kullmer, ask that Keokuk Junction Railway Co.'s Supplement to the Record be rejected.

Respectfully submitted,

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

By their attorney,



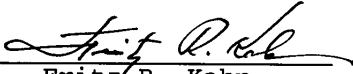
Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: August 1, 2002

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Reply on each of the parties by mailing copies by pre-paid first-class mail to its counsel.

Dated at Washington, DC, this 1st day of August 2002.


Fritz R. Kahn