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Before the
SURFACE TRANSPORTATION BOARD



Docket No. AB-448 (Sub-No. 2X)

SF&L RAILWAY, INC.--ABANDONMENT EXEMPTION--
IN HANCOCK, McDONOUGH, FULTON AND PEORIA COUNTIES, IL

REPLY TO PETITION FOR EXEMPTION

ENTERED
Index of Proceedings

SEP 19 2002

Part of
Public Record

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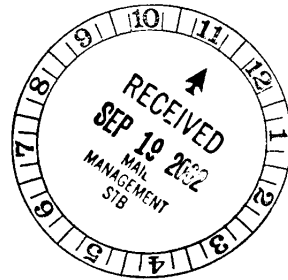
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September 19, 2002

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Preliminary Statement

McDonough County, City of Macomb, and Joseph C. Szabo,^{1/}
make this reply to the Petition for Exemption (Petition), filed
September 3 as supplemented September 10, 2002,^{2/} by SF&L Rail-
way, Inc. (SF&L), which Petition seeks to exempt SF&L from the
requirements of 49 U.S.C. 10903, for abandonment of SF&L's entire
line between Peoria and La Harpe, IL, a distance of 71.5
miles.^{3/}

The Surface Transportation Board (Board) should issue a
Federal Register notice inviting public comments. 49 CFR 1121.4(-
c). Ultimately, SF&L's Petition should be dismissed or denied.

^{1/} Illinois Legislative Director for United Transportation Union,
with offices at 8 So. Michigan Avenue, Chicago, IL 60603; Mr.
Szabo's participation is on behalf of the United Transportation
Union-Illinois Legislative Board (UTU-IL).

^{2/} The September 3 filing was defective in that it did not include
a draft notice of exemption, required by 49 U.S.C. 1152.60(c).

^{3/} SF&L's petition was filed pursuant to 49 U.S.C. 10502(a).

Background

SF&L seeks to abandon a line which it only recently acquired from Toledo, Peoria & Western Railway Corporation (TPW).^{4/} SF&L's notice of exemption, filed under the noncarrier line acquisition class exemption, became effective January 17, 2001, but SF&L did not actually take over operations from TPW until December 12, 2001. (Petition, 5).

McDonough County, City of Macomb, and Szabo have pending a petition to revoke the SF&L acquisition exemption. Finance Docket No. 33995, SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria and Western Railway Corporation; Finance Docket No. 33996, Kern W. Schumacher and Morris H. Kulmer-Continuance in Control Exemption-SF&L Railway, Inc.^{5/}

The instant SF&L request for abandonment authorization comes on the eve of the Board's anticipated decision in the revocation proceedings.

SF&L'S PETITION SHOULD BE DISMISSED; OR NOTICED FOR PUBLIC COMMENT AND THEN DENIED.

SF&L's petition should be dismissed. If not dismissed, the

^{4/}The SF&L Petition asserts it acquired the line pursuant to Board authorization. (Petition, 3). This is incorrect. SF&L invoked the noncarrier class exemption by filing a notice, which is self-executing. The Board does not "authorize" a transaction by such notice. The transaction automatically becomes effective seven days after filing. Railway Labor Executives Ass'n v. Galveston, Tex., 849 F.2d 145, 147 (5th Cir. 1988); Black v. ICC, 837 F.2d 1175, 1176-77 (D.C. Cir. 1988).

^{5/} Keokuk Junction Railway Co. (KJRY) likewise has pending a petition to revoke the SF&L acquisition.

petition should be noticed for public comment, and then denied.

1. Dismissal. We cannot predict of the Board's forthcoming decision in the SF&L acquisition proceedings (Finance Docket Nos. 33395-96), or when such decision might be rendered. However, revocation of the SF&L acquisition exemption would appear to moot the instant SF&L abandonment petition, for SF&L would not possess any acquisition or operation authority which might be abandoned or discontinued. Responsibility to serve the public would revert to TPW.

We hopefully anticipate the Board will revoke the SF&L acquisition exemption. Thereupon, SF&L petition for exemption should be dismissed, preferably in the same written decision.

2. Public Notice. The various proceedings involving this 71.5-mile line segment, embracing Finance Docket Nos. 33395-96 (and related proceedings such as Finance Docket No. 34009, Finance Docket No. 34143, and Finance Docket Nos. 33740 & Sub-No. 1)) have drawn considerable interest from the public. Many letters and various communications have been received by the Board from shippers, communities, elected local and Congressional representatives, and the public at large. Indeed, the Board's Office of Compliance and Enforcement in March, 2002, requested the Board's Office of Public Assistance to contact complaining shippers and communities regarding the Board's procedures for participation.^{6/}

^{6/} For example, see letters dated March 15, 2002, from Melvin F. Clements, Jr. to Jerry M. Bohler, Mayor, City of Canton (ID 187821), and to Fred Hofmeister, Mayor, Village of Blandinsville (ID 187822).

However, notice of the proposed SF&L abandonment has not been provided to the many interests which heretofore have been separately represented in Finance Docket Nos. 33995-96, and in related proceedings throughout the involved area of Illinois. The Board's rules provided that notice of the SF&L acquisition be given through the Federal Register, and such notice was provided. 66 Fed. Reg. 9410-11. (Feb. 7, 2001).

The Board's rules also provide that the agency may give public notice for comments on the merits of an individual abandonment exemption petition. 49 CFR 1121.4(c). The Board should exercise its discretion here and provide such merits Federal Register notice for the instant SF&L abandonment request. The impact of SF&L's abandonment, if consummated, cannot be ascertained from SF&L's petition. Of particular importance, there is an absence of information, from the public, subsequent to the record in Finance Docket Nos. 33995-96, concerning the impact of KJRY's operation of the La Harpe-Lomax segment with trackage rights to Ft. Madison, IA, and the asserted diversion of traffic from the involved line.

The Board could provide the opportunity for comments on the merits of the abandonment petition to run concurrently with the required Federal Register notice for environmental and Offer of Financial Assistance (OFA) procedures. 49 CFR 1152.60(c). In short, a single Federal Register notice could suffice for purposes of 49 CFR 1121.4(c) and 49 CFR 1152.60(c).

3. Denial of Petition. SF&L's petition for an abandonment exemption should be denied. The basic underlying transaction was RailAmerica's purchase of TPW, with RailAmerica then spinning

off TPW's Peoria-Fort Madison line, proposed in two segments--SF&L acquisition of the Peoria-La Harpe portion in Finance Docket Nos. 33995-96, and KJRY's acquisition of the La Harpe-Lomox-Fort Madison portion in Finance Docket No. 34143.

The Board should deny the instant SF&L abandonment request. It is clear the SF&L acquisition has failed; the remedy is not to reward SF&L by permitting SF&L to walk away from the line. Rather, the abandonment should be denied, and operation of the line returned to TPW.^{7/}

Respectfully submitted,

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September 19, 2002

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Certificate of Service

I hereby certify I have served a copy of the foregoing upon counsel for SF&L, Fritz R. Kahn, 1920 N Street, N.W.-8th Floor, Washington DC 20036, by first class mail postage-prepaid.

Washington DC

Gordon P. MacDougall

Gordon P. MacDougall

^{7/}Any issues involving the La Harpe-Lomax-Fort Madison line operation can be resolved by the agency itself reopening Finance Docket No. 34143, if other interests fail to do so.