

ORIGINAL

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

SUPPLEMENT TO REPLY

ENTERED
Office of Proceedings

OCT 16 2002

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Public Record

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Due Date: October 15, 2002

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SURFACE TRANSPORTATION BOARD



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SUPPLEMENT TO REPLY

Preliminary Statement

McDonough County, City of Macomb, and Joseph C. Szabo,^{1/}
submit this Supplement to Reply with respect to the Notice issued
by the Surface Transportation, served September 23, 2002,^{2/} insti-
tuting an investigation in to the petition for exemption, filed
September 3, 2002, by SF&L Railway, Inc., seeking to abandon its
entire line between La Harpe and Peoria, IL, a distance of approx-
imately 71.5 miles.

The Board's September 23 notice was issued after these
parties had submitted a Reply to the SF&L's petition for
exemption, earlier on September 19, 2002.

This Supplement to Reply is made in light of the Board's
September 23, 2002 decision instituting the investigation.

The SF&L 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 United Transportation Union-
Illinois Legislative Board (UTU-IL).

^{2/} 67 Fed. Reg. 59596 (Sept. 23, 2002).

I. THIS SF&L ABANDONMENT EXEMPTION PROCEEDING
SHOULD BE CONSOLIDATED WITH THE PENDING
SF&L ACQUISITION AND OPERATION PROCEEDINGS.

SF&L on January 10, 2001, filed notices of exemption to acquire and operate the 71.5-mile trackage operated by Toledo, Peoria and Western Railway Corporation (TPW) between La Harpe and Peoria, IL.^{3/} The Board on June 5, 2001, instituted an investigation to consider the issues raised by these parties, and by Keokuk Junction Railway Co. (KJRY), in their petitions to revoke. 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., collectively, SF&L Operation. The investigation was projected to conclude March 5, 2002. The Board in denying procedural relief February 1, 2002, specifically mentioned the impending statutory deadline.^{4/} However, KJRY had not exercised its exemption to operate the 71.5-mile line until December 12, 2001. The line continued to be operated by TPW until that date.

^{3/} SF&L did not seek to acquire the underlying right-of-way; rather, it sought only the track and certain materials.

^{4/} We do not believe the Board was correct in its February 1, 2002 deadline reasoning. The carrier parties filed numerous additional pleadings asserting new evidence, etc. which should operate to extend the deadline for decision. However, the February 1, 2002, agency announcement that decision was imminent, did serve to remove any thought by one or more of these petitioners to seek rejection or revocation of the TPW-KJRY La Harpe-Lomax-Fort Madison transaction at that time. See: Finance Docket No. 34143, Keokuk Junction Railway Co.-Acquisition and Operation Exemption-West End of the Toledo, Peoria and Western Railway Corporation, 67 Fed. Reg. 1535-36 (January 11, 2002).

Now, KJRY seeks to abandon operation of the line. The Board instituted an investigation by its September 23, 2002 notice. (SF&L Abandonment).

1. Basis for Consolidation. The two proceedings, SF&L Operation and SF&L Abandonment should be consolidated for evidentiary purposes; that is, the record in SF&L Operation should be available in SF&L Abandonment. The parties are virtually identical in both proceeding.^{5/} The many statements from the affected public were submitted in SF&L Operation, and are still applicable.

Consolidation of the two proceedings need not be for all purposes. Separate decisions could be issued, as appropriate. These parties are concerned that the record amassed in SF&L Operation need not be repeated in SF&L Abandonment. There are, of course, recent developments in traffic movements subsequent to December 12, 2001, and subsequent to the transfer of the La Harpe-Lomax-Fort Madison segment from TPW to KJRY. It appears that KJRY in its September 23, 2002 Reply may have developed recent facts on this score.

2. Orderly Procedure. Consolidation of SF&L Operation with SF&L Abandonment would promote orderly procedure, expedition, and the ends of justice. It would prevent needless duplication of the record in SF&L Operation and certification of that record in the instant SF&L Abandonment.

^{5/} TPW and its holding company affiliate, RailAmerica, Inc., are not yet parties in SF&L Abandonment. However, as the underlying owner or entity responsible for the 71.5-mile right-of-way, they are obviously apprised of events. If they continue to remain outside SF&L Abandonment, they do so at their own volition.

3. Separate Decisions. These parties desire a prompt decision for SF&L Operation. As indicated in our September 19, 2002 reply, a Board decision revoking the SF&L operation exemptions would moot SF&L Abandonment.

II. THERE IS A STRONG PUBLIC NEED FOR CONTINUED RAIL SERVICE OVER THE ENTIRE 71.5-MILE LINE.

There is a strong public need for continued rail service over the entire 71.5-mile line. Attached is the verified statement of Thomas C. Carper, Mayor of Macomb. There has been a tremendous response by the public in opposition to various proposals which would result in the termination of service. There have been numerous letters over the past 22 months.

In essence, permitting SF&L to substitute for TPW, and then permitting SF&L to abandon operations, would allow TPW to abandon service without a showing of public convenience and necessity (PC&N), or exemption from the PC&N requirements.

The Board, and its ICC predecessor, recently have extensively considered the competitive situation in the involved Keokuk-Fort Madison-Bushnell-Galesburg-Peoria area of western Illinois, which includes Macomb. The agencies in permitting recent mergers, which drastically reduced the number of major carriers in the area, discounted fears that TPW service would be lost or compromised, and imposed certain conditions. Burlington Northern Et Al.-- Merger--Santa Fe Pacific Et Al., 10 I.C.C.2d 661, 682-85, 730-31, 763-68, 778-79, 811, 813 (1995); Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 279-81, 467 (1996). The pending SF&L Operation and SF&L Abandonment proceedings threatened service, and

the competitive balance, which the Board projected would be maintained.

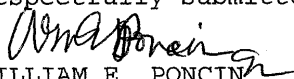
III. THE SF&L EXEMPTION CONTAINS A
NUMBER OF FACTUAL INACCURACIES.

The September 3, 2002 SF&L petition contains a number of inaccurate and erroneous information, particularly concerning TPW operations. Attached hereto is the verified statement of Joseph C. Szabo, which adopts verified statements from TPW employee personnel.

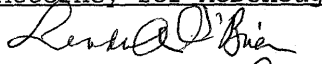
CONCLUSION

The SF&L petition should be dismissed if the Board revokes the exemptions in SF&L Operation; if SF&L Operation is not dismissed, the instant SF&L Abandonment should be denied. The Board should consolidate SF&L Operation and SF&L Abandonment, at least for the purposes of the evidentiary record.

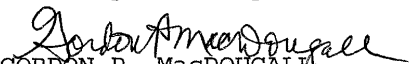
Respectfully submitted,


WILLIAM E. PONCIN
County Courthouse
Macomb, IL 61455

Attorney for McDonough County


LINDA A. O'BRIEN
P.O. Box 377
Macomb, IL 61455

Attorney for City of Macomb


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

Attorney for Joseph C. Szabo

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

VERIFIED STATEMENT
OF THOMAS C. CARPER

My name is Thomas C. Carper. I serve as Mayor of Macomb, a position I have held for a number of years. I have an active interest in the preservation of rail service, submitting a verified statement in December, 2001, and discovery responses in August, 2001, all in Finance Docket Nos. 33995-96.

I attach my December 18, 2001 verified statement concerning what we understand to be an affiliate of a rail scrap enterprise. This SF&L now proposes to abandon operations.

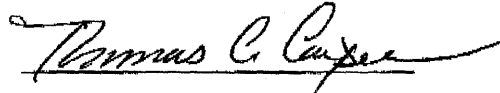
My position today is the same today as in December 2001.

Denial of the SF&L abandonment and revocation of SF&L's operation of the line should be mandated by the Surface Transportation Board. In this manner it is hoped the service would be resumed by a more responsible carrier, such as we had prior to the recent transfer of operations from Toledo, Peoria & Western to SF&L.

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
October 15, 2002

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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.

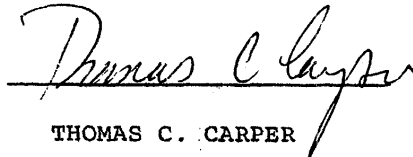
I ask that the Board stay the operation of the withdrawal by TP&W and substitution by SF&L, along with a stay of related railroad notices concerning transfer of TP&W property and rights west of LaHarpe, pending a full investigation by the Board.

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

VERIFIED STATEMENT
OF JOSEPH C. SZABO

My name is Joseph C. Szabo, with offices at 8 So. Michigan Avenue, Chicago, IL 60603. I serve as Illinois State Legislative Director for United Transportation Union (UTU), a full-time position which I have held since February, 1996.

I have read SF&L's petition for exemption, filed September 3, 2002, which seeks to abandon the very 71.5-mile line that is the subject of SF&L's acquisition in Finance docket Nos. 33995-96.

I am familiar with the SF&L Acquisition proceeding, filing a verified statement in January, 2001, and discovery responses in August, 2001. At my direction, our organization submitted operational facts, principally through Randal L. Brandt, General Chairman for UTU on Toledo, Peoria & Western Railway Corporation (TPW).

The instant SF&L petition purports to present a background to the RailAmerica, Inc. acquisition of TPW, with changes in the movement of traffic between Peoria-Fort Madison, and Peoria-Galesburg, which is at a variance from my organization's evidence in Finance docket Nos. 33995-96. In particular, I attach hereto the Brandt statements of May 17, 2001 and January 7, 2002.

I point out, for which Mr. Brandt provides the details, that TPW train service between Peoria and Fort Madison was six times per week, rather than the five trips claimed by SF&L, and was not "overhead intermodal" to TPW. (Petition 2-4).

The interchange between BNSF and TPW was not shifted from Fort Madison to Galesburg, for the purposes of responsibility. TPW

does not serve Galesburg, contrary to TPW's map appearing in its environmental report, following page 7. (Petition, ER, pp.7-8). The shift in the BNSF-TPW interchange was from Fort Madison to Peoria, as shown in our January 7, 2002 submission in Finance Docket Nos. 33995-96, at pp. 3-4. TPW does not have a line between Peoria and Galesburg. TPW provides haulage for BNSF, in BNSF's account, over BNSF's line, between Peoria and Galesburg, as explained by TPW. See: January 7, 2002 submission, Appendix 3. To be sure, the physical interchange of the cars between BNSF and TPW is at Galesburg. But TPW does not have a line between Peoria and Galesburg. See: January 7, 2002 submission. Neither Galesburg nor Yates City is served by TPW, and neither station is a station listed by TPW. My attention has been directed to Hladick's OP&SL 6000-W, which I am advised is a public document on file with the STB.

UTU is the collective bargaining representative for persons employed by TPW. UTU does not represent SF&L employees; indeed, it is my understanding that SF&L's employees are without representation by any organization. The effect of the SF&L Acquisition of operations from TPW, resulting in the displacement of TPW employees by SF&L employees in mid-December 2001, and now the turnaround abandonment request by SF&L, is to deprive TPW employees of the mandatory employee conditions provided by statute for abandonment/discontinuances, and administered through Oregon Short Line conditions. I point out that the involved right-of-way for the line continues to be held by TPW.

I ask that the Board revoke SF&L's acquisition of the line, and deny SF&L's abandonment of the line; however, if the two

transactions are nevertheless upheld by the Board, the mandatory conditions for 49 U.S.C. 10903 abandonment/discontinuance, Oregon Short Line, should be imposed for the benefit of TPW employees.

VERIFICATION

STATE OF ILLINOIS
COUNTY OF COOK

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



JOSEPH C. SZABO

Dated at
Chicago, IL
October 15, 2002

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JANUARY 7, 2002

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

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.

APPENDIX 4
Page 2 of 7

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.

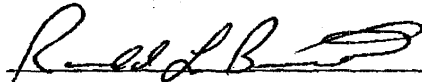
Finally, I wish to address the view of Linda J. Morgan, Board Chairman, expressed in her December 26, 2001 decision to deny a stay of various transactions, that affected employees would be made whole if they prevail on the petition to revoke. I know of no provisions in our TPW-UTU collective bargaining 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 derailling 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 _____

MAY 17, 2001

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

VERIFIED STATEMENT
OF RANDAL L. BRANDT

My name is Randal L. Brandt. I reside in Pekin, IL. I am employed as a locomotive engineer by Toledo, Peoria and Western Railroad Company (TPW). I commenced continuous railroad service in 1979 with Chicago and North Western Transportation Company, and in 1993 went with TPW. I am a member of the United Transportation Union (UTU), and since May 1, 2001, have served as General Chairman for the General Committee of Adjustment (GCA) on the TPW property.

I am fully familiar with TPW train and engine service throughout the TPW system, and have been a member of the crew on assignments serving Peoria-LaHarpe-Lomax-Fort Madison, and also serving Peoria-Galesburg, together with the various yards and terminals. TPW's line extends westward to Lomax, and operates via trackage rights over BNSF between Lomax and Fort Madison. TPW's operations between Peoria and Galesburg are via trackage rights over BNSF, and are restricted to traffic handled with BNSF.

I have reviewed the 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.

There have been operational changes subsequent to the February 18, 2001 discontinuance of service west of LaHarpe, and the transfer of certain TPW/BNSF traffic to Galesburg. There is no physical presence of SF&L on the TP&W property; that is, there are

no locomotives, cars, or trains operated by SF&L, and I have not seen anyone identified to me as an SF&L employee or manager.

Prior to February 19, 2001, TPW operated daily trains, usually 6 days per week, one in each direction, between Peoria-LaHarpe-Fort Madison. These trains primarily carried TPW/BNSF intermodal business between Peoria and Fort Madison, traffic interchanged with Keokuk Junction Railway (KJ) at LaHarpe, and TPW traffic originating or terminating at intermediate points. Other business, such as interchange at Bushnell, has been of lesser volume.

Also prior to February 19, 2001, TPW operated a train between Peoria and Galesburg. The Peoria-Galesburg train crew also performed some switching in the Peoria area. The train usually operated to Galesburg only on four days.

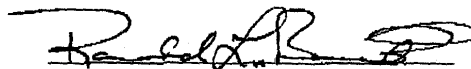
Subsequent to February 18, 2001, TPW curtailed its Peoria-LaHarpe-Fort Madison daily operation, so as not to go west of LaHarpe. The service was cut back to one Peoria-LaHarpe train, which operates only twice weekly in each direction. The former TPW Peoria-Fort Madison intermodal business handled with BNSF has been diverted to Galesburg, and has been combined with the train operating between Peoria and Galesburg. This train is quite lengthy. It now operates 5 days per week between Peoria and Galesburg, but rarely is also able to perform switching in the Peoria area.

TPW employees have suffered a loss of work and job assignments as a result of changes brought about by the SF&L transaction. There has been a loss of one crew, involving two employees.

VERIFICATION

STATE OF ILLINOIS
COUNTY OF PEORIA + Tazwell

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

A handwritten signature in dark ink, appearing to read 'Randal L. Brandt', written over a horizontal line.

RANDAL L. BRANDT

Dated at
Pekin, IL
May 17, 2001