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October 30, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423



lgitomer@dc.bjllp.com

**RE: Docket No. AB-448 (Sub-No. 2x), SF&L Railway, Inc.-Abandonment
Exemption-in Hancock, McDonough, Fulton and Peoria Counties, IL**

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Motion to Substitute the Toledo, Peoria and Western Railway Corporation for SF&L Railway, Inc., and three 3.5-inch IBM-compatible floppy diskettes with the file Motion.

Please time and date stamp the extra copy of this letter and the Motion and return it with our messenger.

If you have any questions, please contact me.

Respectfully submitted,

Louis E. Gitomer

Enclosures

ENTERED
Office of Proceedings
OCT 30 2002
Part of
Public Record

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

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



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

MOTION TO SUBSTITUTE THE TOLEDO, PEORIA AND WESTERN RAILWAY
CORPORATION FOR SF&L RAILWAY, INC.

EXPEDITED HANDLING REQUESTED

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ENTERED
Office of Proceedings

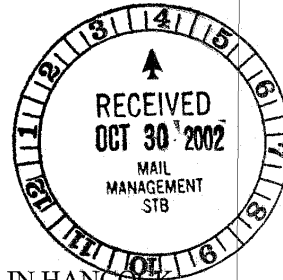
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Dated: October 30, 2002

BEFORE THE
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STB Docket No. AB-448 (Sub-No. 2X)



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

MOTION TO SUBSTITUTE THE TOLEDO, PEORIA AND WESTERN RAILWAY
CORPORATION FOR SF&L RAILWAY, INC.

The Toledo, Peoria and Western Railway Corporation ("TP&W") respectfully requests as of November 16, 2002, the Surface Transportation Board (the "Board") substitute TP&W for the SF&L Railway, Inc. ("SF&L") as the petitioner seeking an exemption in this proceeding in order to abandon the rail line between La Harpe, milepost 194.5, and Peoria, milepost 123.0, in Hancock, McDonough, Fulton, and Peoria Counties, IL (the "Line"). TP&W respectfully requests expedited handling of this Motion due to the imminent reconveyance of the Line to TP&W from SF&L.

BACKGROUND

SF&L acquired the Line from TP&W.¹ The Board revoked the exemption that allowed SF&L to acquire and operate the Line and ordered SF&L to reconvey the Line to

¹ *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 (STB served February 7, 2001).

TP&W.² The *Decision* becomes effective November 16, 2002, and TP&W is planning to reacquire the Line on that date in compliance with the *Decision*.

The Board also stated that it would soon issue a decision dismissing SF&L's abandonment petition as moot. *Decision* at 4. In lieu of dismissing SF&L's abandonment petition, TP&W requests the Board to substitute TP&W as the party seeking abandonment of the Line. Based on TP&W's analysis of the Line's potential traffic weighed against the costs of operating and maintaining the Line, TP&W plans to rationalize the Line, either through possible sale or abandonment. TP&W believes that allowing it to continue the abandonment proceeding started by SF&L will expedite the rationalization of the Line and will foster the rail transportation policy ("RTP"), especially 49 U.S.C. § 10101(2, 3, 4, 5, 7, 9, and 15). Allowing TP&W to step into SF&L's shoes in this abandonment proceeding is not contrary to any of the provisions of the RTP.

SF&L filed a Verified Petition for Exemption (the "Petition") on September 3, 2002, as amended September 10, 17, and 19, in order to abandon the Line.³ SF&L claimed that there was insufficient traffic on the Line to justify the continued operation

² *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket no. 33995 (STB served October 17, 2002) (the "*Decision*").

³ Prior to agreeing to sell the Line to SF&L, TP&W had negotiated with other potential buyers and contemplated abandoning the Line. As the Board recognized in the *Decision* at 4, TP&W wanted to sell the Line in order to pay down debt. TP&W provided several inducements to SF&L to expeditiously complete the transaction, including a "fire sale" price, lease of the real estate underlying the Line at no charge for five years (as long as SF&L was the lessee), and agreeing not to oppose an abandonment if SF&L's venture failed since TP&W still owned the real estate underlying the Line, a valuable asset that TP&W would want to rationalize if SF&L was not successful.

and maintenance of the Line and that the shippers on the Line had alternate transportation service available. The Board served a notice of that filing on September 23, 2002.⁴

Prairie Hills Resource Conservation and Development, Inc. filed a request for a public use condition and trail use condition on September 17, 2002. On September 19, 2002, as supplemented October 15, 2002, McDonough County, the City of Macomb, and Joseph C. Szabo (Illinois Legislative Director for the United Transportation Union) (collectively "Respondents") filed a reply to the Petition seeking dismissal of the Petition if the acquisition of the Line by SF&L was overturned, or in the alternative, notice of the Petition followed by comments and denial of the Petition.

The Keokuk Junction Railway Co. ("KJRY") replied to the Petition on September 23, 2002. KJRY concluded that the Petition should be decided expeditiously so that KJRY could make an offer of financial assistance ("OFA") to acquire the Line. Since about December 19, 2001 (about nine days after SF&L acquired the Line), KJRY has directly connected with the Line as a result of TP&W's sale to KJRY of 12.1 miles between La Harpe, IL, milepost 194.5⁵, and Lomax, IL, milepost 206.6, and the assignment of incidental trackage rights over The Burlington Northern and Santa Fe Railway Company ("BNSF") between Lomax, milepost 218.5, and Fort Madison, IA, milepost 234.0.⁶ The sale in December 2001 closed the gap between the end of the Line at milepost 194.5 and KJRY that was referred to in the *Decision* at page 12. Since there

⁴ *SF&L Railway, Inc.—Abandonment Exemption—in Hancock, McDonough, Fulton, and Peoria Counties, IL*, STB Docket No. AB-448 (Sub-No. 2) (STB served September 23, 2002).

⁵ KJRY connects to the Line at milepost 194.5.

has been no gap between the west end of the Line and KJRY for nearly one year, TP&W believes that KJRY is a logical party to acquire the Line and that the acquisition process can be expedited by TP&W completing the abandonment and KJRY then acquiring the Line through the OFA process.

Farmland Elevator Company, one of the shippers on the Line, agreed that "SF&L should be allowed to abandon the line...." in its letter filed on September 30, 2002.

A comment filed by the County of Peoria on October 18, 2002 concerns repair and removal of grade crossings.

Notice of the proposed abandonment has been given and comments have been filed with the Board. It is TP&W's belief that the record before the Board is complete and that no party to this proceeding will be prejudiced by substituting TP&W for SF&L and the Board approving the requested abandonment exemption. Based on TP&W's analysis of the economics of the Line and Board precedent, TP&W respectfully requests that the Board substitute TP&W for SF&L instead of dismissing the SF&L abandonment petition, and then proceed to grant the Petition.

TP&W'S ANALYSIS OF THE LINE

TP&W agrees with the analysis made by SF&L that the traffic currently on the Line does not warrant TP&W's continued operation or maintenance of the Line.

TP&W's operations over the Line prior to its sale to SF&L showed steadily declining traffic. On the Line in 1999 TP&W handled 4,825 cars generating revenues of \$1.326 million, in 2000 TP&W handled 3,061 cars generating revenues of \$883,022, and

⁶ *Keokuk Junction Railway Co.—Acquisition and Operation—West End of the Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34143 (STB served

in 2001 TP&W handled 2,026 cars generating revenues of \$626,722.⁷ TP&W believes that the Line still generates about 20 cars per month of originated or terminated traffic. TP&W does not believe that 20 originated or terminated carloads per month will cover the costs of operating a 71.5-mile 10 mile per hour line because of the costs necessary to operate the Line, including locomotive costs, car costs, and crew costs (which include overnight lodging), among other costs. Overhead traffic has been diverted from the Line and in TP&W's opinion it is highly unlikely to be recaptured by the Line under TP&W ownership.⁸

TP&W estimates the cost to reinstate service to be at least \$1.3 million, consisting of about \$500,00 in rehabilitation expense to return the Line to FRA Class I standards (which can no longer be deferred)⁹, and \$773,800 of start-up and operating costs. It is TP&W's view that the level of future traffic on the Line (if owned by TP&W) will not approach the 2001 traffic level due to the diversion of overhead traffic. Indeed, based on TP&W's estimate of the cost to reinstate service, even at the high 1999 traffic level, TP&W would not be able to recoup its investment in one year and cover opportunity costs¹⁰, even if the level of traffic were guaranteed. The Board has recently granted a

January 11, 2002).

⁷ Of the traffic using the Line in 1999, 2000, and 2001, TP&W estimates that about 240 cars per year originated or terminated on the Line and that the rest of the traffic was overhead.

⁸ The rates that TP&W made available for the traffic originating or terminating on the Line were based on including that traffic on overhead intermodal trains, which have been diverted from the Line. Without the intermodal trains, TP&W will not be able to make its old rates available.

⁹ TP&W has developed a five-year plan to rehabilitate the Line at a cost of \$1.9 million. The first year will cost about \$500,000.

¹⁰ TP&W believes that the net liquidation value of the Line, excluding real estate is about \$5.6 million.

discontinuance where the projected traffic would not cover rehabilitation costs in one year and there was no guarantee of future traffic.¹¹

By letter dated October 21, 2002, KJRY offered to buy the Line from TP&W. At the present time TP&W and KJRY have not agreed on a purchase price, but TP&W views the OFA process as possibly a very useful means of resolving the differences between TP&W and KJRY, if no agreement can be reached. In addition, KJRY has indicated that it intends to file an OFA for the Line.

BOARD PRECEDENT

The Board revoked a notice of exemption filed by The Land Conservancy of Seattle and King County ("TLC") stating "To protect the integrity of our processes, we will revoke the exemption and order TLC to reconvey the line to BNSF. BNSF itself may pursue abandonment, and interested persons, such as King County, may seek trail use/rail banking conditions or make an offer of financial assistance to provide for continued operations at that point." *Land Conservancy—Acq. & Oper.—Burlington Northern*, 2 S.T.B. 673,677 (1997). The Board also indicated that it would shortly dismiss an abandonment exemption petition that had been filed by TLC. *Id.*, at 674.¹²

¹¹ *CSX Transportation, Inc.—Discontinuance—at Memphis, in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 618) (STB served October 28, 2002), at 24 "Although subsidy arrangements can extend beyond 1 year if mutually agreed by the parties, any amortization of these costs over 10 years assumes that BBB will remain in business and continue to ship the same amount of carloads for the full 10 years. Should that not be the case, CSXT would be left to pick up the remaining bridge repair costs with no revenue to offset those payments. This is an unfair burden to place upon CSXT. Accordingly, we reject any such amortization plans without specific guarantees protecting the railroad from shipper default."

¹² The abandonment was dismissed in *The Land Conservancy of Seattle and King County—Abandonment Exemption—in King County, WA*, STB Docket No. AB-508X (STB served September 27, 1997).

Based upon a petition, the Board reinstated the abandonment exemption proceeding because no shippers or community interests opposed the abandonment and because the environmental review had been completed. In addition, the Board substituted the seller in that instance, BNSF for TLC and redocketed the proceeding.¹³

TP&W requests similar relief here. Although the environmental review of the abandonment has not been completed, TP&W believes that SF&L submitted all of the information necessary for the Board's environmental staff to complete an appropriate environmental review. In addition, no shippers on the Line oppose the abandonment. The County of McDonough opposes the abandonment, but has not questioned the inability of the Line to cover its maintenance or operating costs while operated by SF&L or TP&W. The City of Macomb is not located on the Line. SF&L has authorized TP&W to state that it supports this petition. TP&W believes that KJRY will not object to this petition based on its offer to TP&W and its statement that it would file an OFA for the Line in the SF&L abandonment proceeding.

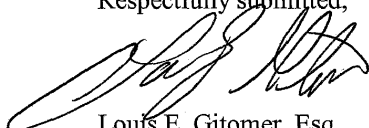
In TP&W's view, the parties to the Petition have expressed their views, and none of them oppose the proposed abandonment on substantive grounds. The procedural status of this proceeding is substantially similar to *Substitution Decision* and in TP&W's opinion warrants similar treatment, whereby the Board substitutes TP&W as the party seeking an abandonment of the Line through the exemption process for SF&L and redockets this proceeding.

¹³ *The Land Conservancy of Seattle and King County—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33389 (STB served May 13, 1998), at 4 (the "*Substitution Decision*").

CONCLUSION

TP&W respectfully requests that the Board substitute TP&W as the petitioner in this proceeding in lieu of SF&L and redocket this proceeding as a TP&W abandonment exemption petition.

Respectfully submitted,



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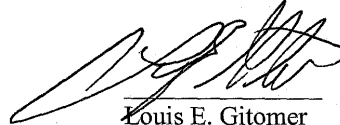
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Attorneys for TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: October 30, 2002

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2002, I have caused this Motion to be served upon counsel for all known parties of record by first class mail, postage pre-paid, or by more expeditious means.

A handwritten signature in black ink, appearing to read 'Louis E. Gitomer', is written over a horizontal line.

Louis E. Gitomer
October 30, 2002