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A T T O R N E Y S

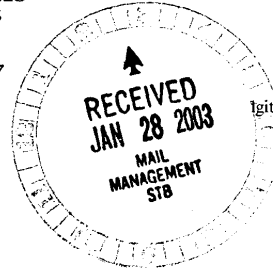
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January 28, 2003



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

RE: Finance Docket No. 34310, *Keokuk Junction Railway Company—Alternative Rail Service—Line of SF&L Railway, Inc.*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Response to Petition to Provide Alternative Rail Service filed by Keokuk Junction Railway Company on January 21, 2003 by the Toledo, Peoria and Western Railway Corporation, and three diskettes with the file Response.doc.

Please time and date stamp the extra copy of this letter and the Response and return it with our messenger. If you have any questions, please contact me.

Respectfully submitted,

Louis E. Gitomer

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Office of Proceedings

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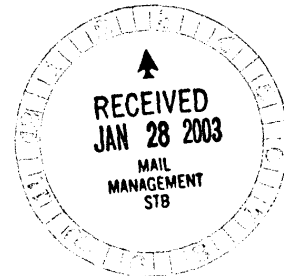
Enclosures

Part of
Public Record

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34310



KEOKUK JUNCTION RAILWAY COMPANY-ALTERNATIVE RAIL SERVICE-
LINE OF SF&L RAILWAY, INC.

RESPONSE TO PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

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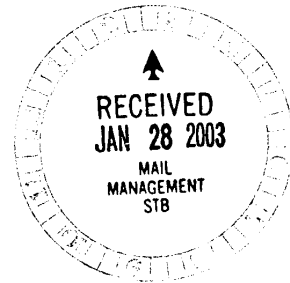
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Attorneys for TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: January 28, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34310



KEOKUK JUNCTION RAILWAY COMPANY—ALTERNATIVE RAIL SERVICE—
LINE OF SF&L RAILWAY, INC.

RESPONSE TO PETITION TO PROVIDE ALTERNATIVE RAIL SERVICE

The Toledo, Peoria and Western Railway Corporation ("TP&W") responds to the Petition to Provide Alternative Rail Service filed on January 23, 2003 (the "Petition") by the Keokuk Junction Railway Co. ("KJRY").¹ TP&W supports the temporary-emergency provision of service by KJRY over the 24.5-mile western end where there are local shippers, subject to several conditions discussed later that TP&W contends are reasonable.

¹ For some unknown reason, KJRY continues to rely upon the "one-mile gap" between the end of the Line and KJRY. Petition at 3, 8, 9, and 12. KJRY knows that the "one-mile gap" was closed nine days after SF&L began operating 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 194.5 (KJRY connects to the Line at milepost 194.5), 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. *Keokuk Junction Railway Co.—Acquisition and Operation—West End of the Toledo, Peoria and Western Railway Corporation*, STB Finance Docket No. 34143 (STB served January 11, 2002). The sale in December 2001 closed the gap between the end of the Line at milepost 194.5 and KJRY. Prior to KJRY's acquisition, TP&W made the one-mile segment available to KJRY and SF&L for interchange through a license arrangement that was free of charge. See the map and first page of the licensing agreement in Exhibit 1.

TP&W has been ready, willing and able to reacquire the 71.5-mile line of railroad between La Harpe, IL, milepost 194.5, and west of Peoria, IL, milepost 123.0 (the "Line") from the SF&L Railway, Inc. ("SF&L") since November 18, 2002, the first business day after the Surface Transportation Board's (the "Board") decision, which revoked the sale of the Line from TP&W to SF&L and ordered SF&L to reconvey the Line to TP&W without profit to either party, became effective.²

Contrary to KJRY's baseless assumption (Petition at 10 and 13), TP&W is ready, willing and able to resume operations over the Line upon its reconveyance from SF&L.³ SF&L agreed to permit TP&W to inspect the Line.⁴ TP&W conducted a hi-rail inspection of the Line on November 12 and 13, 2002. Based on the inspection, TP&W determined that upon reacquisition from SF&L, TP&W would terminate the embargo imposed by SF&L on October 18, 2002, and would be able to operate the Line at FRA Class I speeds with minimal investment while the abandonment petition⁵ was pending or while TP&W made other arrangements to sell, abandon, or continue to operate the Line

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 See page 10 of the Toledo, Peoria and Western Railway Corporation Response to Petition to Reopen Administrative Action, for Reconsideration, and/or for Clarification of Decision and to Hold in Abeyance Order to Reconvey of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer filed on January 2, 2003.

⁴ KJRY claims that TP&W has not permitted an inspection of the Line by KJRY. It is TP&W's position that at the present time it does not own the Line, and therefore, has no power to authorize an inspection of the Line. TP&W has told to KJRY that once it reacquires the Line (depending on the Board's action on the SF&L Petition filed on December 13, 2002), arrangements will be made for KJRY to inspect all or a portion of the Line.

⁵ STB Docket No. AB-448 (Sub-No. 2X), *SF&L Railway, Inc.-Abandonment Exemption-in Hancock, McDonough, Fulton and Peoria Counties, IL*.

in whole or in part. TP&W plans to restore service to the Line once it is reacquired from SF&L.

However, because of the unsettled nature of the reconveyance from SF&L to TP&W, TP&W does not believe that it is in a position to resume operations over the Line at this time. TP&W believes that operation of the Line by TP&W under 49 U.S.C. 11123 before it is reconveyed by SF&L would complicate the issues that TP&W and SF&L are trying to resolve. TP&W believes that there is a very limited volume of local traffic available on the Line and only between La Harpe, milepost 194.5, and Bushnell, milepost 170.00 (the "West Line"), which will support only a limited operation over the Line.⁶ After the overhead intermodal traffic was rerouted from the Line in June 2001, TP&W concluded that it could not continue profitably to operate over the Line with the existing local traffic base that only exists on the West Line. TP&W's experience is that there is not any local traffic originating or terminating on the portion of the Line between Bushnell, milepost 170.00, in the west and milepost 123.0 in the east. TP&W will not oppose giving KJRY the opportunity to perform very limited operations over the West Line (i.e. without KJRY paying for the full costs of ownership) for a short period of time. However, TP&W believes that such limited operation, limited costs and limited traffic are not a representative measure of the potential profitability of the Line. TP&W continues to conclude that full operation over the Line, with the attendant costs, is not a break-even, much less profitable venture. TP&W opposes operations by KJRY over the portion of the Line between Bushnell, milepost 170.00, and west of Peoria, milepost

123.0, because there are no shippers and no need for local service on that portion of the Line. But, because KJRY is willing to accept the risks of service, and there appears to be an immediate need for limited service over only the West Line, TP&W does not oppose KJRY's request to operate over the West Line, subject to the following conditions.⁷

First, KJRY's operations should be limited to the time period between the date that the Board authorizes such action, if indeed the Board grants the Petition, and the date that TP&W reacquires the Line. TP&W plans to operate the Line upon reconveyance by SF&L. As owner of the Line, TP&W should be allowed to operate it safely. Continuing KJRY's operations on the Line, without a private agreement between TP&W and KJRY, will create the potential for an unsafe operating environment and labor unrest.⁸

Second, TP&W requests that if the Board does not limit KJRY's operations to the West Line that the Board will make clear and not permit KJRY, even for operating convenience, to operate over TP&W's line east of milepost 123.0. TP&W operates east

⁶ Since the Line ends at milepost 123.0 and does not reach Peoria to the east of the Line, there is no overhead traffic available to transport over the Line that will not require an interchange with TP&W for traffic moving to and from Peoria.

⁷ Elkem Carbon-Keokuk ("Elkem") is not located on the Line and does not require service to or from a point on the Line. Elkem is located in Keokuk and is seeking direct single line access to points in Peoria, east of the end of the Line at milepost 123.0. This traffic moves between Keokuk and Peoria via another route where KJRY is not the primary railroad providing the service. KJRY's emergency operation over the Line will not result in direct KJRY service for Elkem between Keokuk and Peoria, the traffic will have to be interchanged between KJRY and TP&W at milepost 123.0, west of Peoria.

⁸ TP&W notes that because it was not the owner of the Line at the time KJRY made its offer to purchase the Line and then to operate a portion of the Line, TP&W could not enter a contract for either. Moreover, KJRY's offer to acquire the Line for \$ 2.2 million plus \$250, 000 for 71.5 miles of underlying real estate is not adequate. Finally, TP&W also refused to discuss KJRY operations over the Line once TP&W reacquires the Line because such operation by KJRY would be contrary to TP&W's collective bargaining agreements and could well provoke labor unrest, a risk TP&W is not willing to assume

of milepost 123.0. Allowing KJRY to operate over the same track has the potential to create unsafe conditions. This request is based on TP&W's experience with KJRY operating over TP&W's property without Board approval or TP&W's consent. TP&W understands that FRA fined KJRY for the unlawful operation.

Third, TP&W requests that the Board require KJRY to pay compensation to TP&W in three categories. TP&W seeks reasonable rent from KJRY for the period of time it operates over the real estate underlying the Line, which is still owned by TP&W. Next, TP&W seeks compensation from KJRY for any degradation to either the track or the real estate that comprise the Line and that occurs as a result of KJRY's operation. It is TP&W's belief that it should not be required to incur any loss caused by KJRY's operation of the Line at a time when TP&W cannot operate over the Line because of SF&L's ownership. Finally, TP&W requests that the Board require KJRY to accept full liability and to indemnify TP&W for any environmental or tortious claims that arise as a result of KJRY's operation of the Line. With regard to compensation, the Board said:

We agree that the incumbent railroad is entitled to fair compensation for whatever services and facilities it provides, but not for lost profits for service it is not providing. Because the type of access to an incumbent carrier's facilities and the services the incumbent will be required to provide to an alternative carrier will vary widely, depending on the service inadequacy and the relief that is fashioned, we will not attempt to prescribe in the abstract a compensation formula applicable to all situations. Rather, where appropriate we will be guided by established precedent, taking into account the circumstances of the particular case.

Expedited Relief for Service Inadequacies, 3 S.T.B. 968, 980 (1998).

TP&W believes that it is entitled to be made whole because of the unusual situation facing it and the Board. TP&W, under the *Decision*, is required to reacquire the

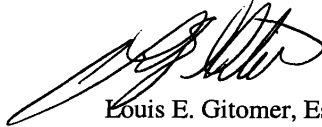
for KJRY's benefit. Once, and if, TP&W reacquires the Line from SF&L, TP&W is

Line, has not done so, but is ready, willing, and able to resume rail service over the Line once it is reconveyed by SF&L. TP&W is not seeking lost profits, merely to be protected from liabilities incurred or created by KJRY's operation and to obtain the same assets from SF&L at the end of KJRY's service as it would today. *See St. Louis-S. F. Ry. Co.—Compensation—Chicago, R. I. & P.*, 363 I.C.C. 248 (1980) and 363 I.C.C. 264 (1980).

CONCLUSION

TP&W believes that KJRY should be given the opportunity to provide limited service to rail shippers only on the West Line. Therefore, TP&W does not oppose the KJRY proposal to provide emergency service on the West Line, subject to the conditions proposed by TP&W. TP&W does oppose KJRY's proposal to provide service on the remainder of the Line east of Bushnell because there is no traffic originating or terminating on that portion of the Line.

Respectfully submitted,



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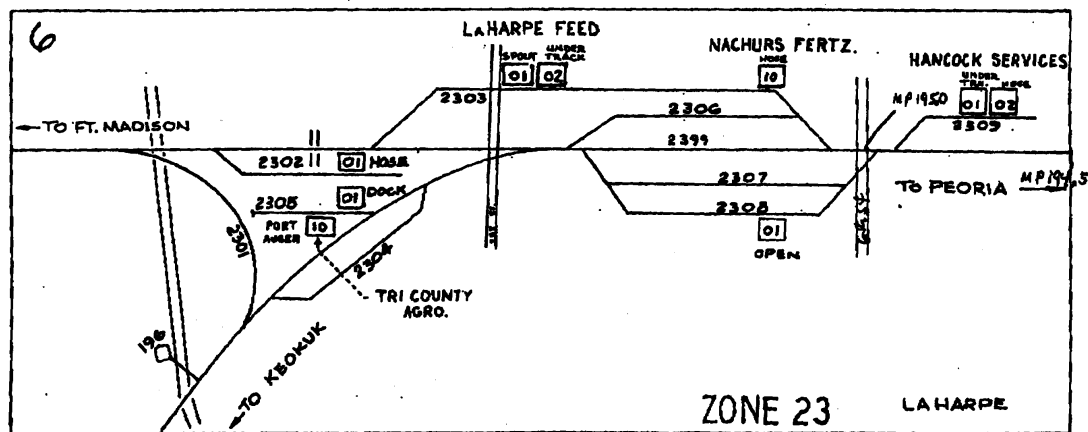
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Attorneys for TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: January 28, 2003

willing to sell all or a portion of the Line to KJRY for its net liquidation value.

EXHIBIT 1



LaHarpe

LICENSE FOR INTERCHANGE

THIS License for Interchange ("License"), made and entered into this 10th day of December, 2001, by and between Toledo, Peoria and Western Railway Corp. a New Jersey corporation, hereinafter called "TPW" and SF&L Railway, Inc. a Nevada corporation, hereinafter called "SF&L".

WITNESSETH:

WHEREAS, SF&L has secured or is now in the process of securing authority or exemption from authority from the Surface Transportation Board (STB) to acquire and operate TPW's line of railroad between MP 123.0 and MP 194.5 in the State of Illinois ("Rail Line"); and

WHEREAS, TPW and SF&L propose to interchange railroad cars, loaded and empty, upon certain trackage at Westend Jct. (MP 194.5) and desire to enter into a written license governing such interchange;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, it is agreed between the parties hereto as follows:

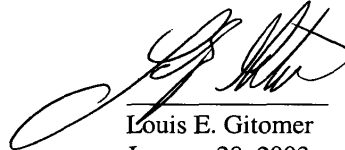
SECTION 1. INTERCHANGE AND INTERCHANGE ACCESS TRACKAGE

Interchange between the parties shall take place on portions of the TPW trackage described as follows:

SF&L is granted permission to operate on the main track of the TPW between MP 194.5 and MP 196.0 for purposes of accessing tracks: 2302, 2306, 2307, 2308 and 2309, along with that portion of the west leg of the LaHarpe track owned by TPW all of which collectively shall be known as (Interchange Track). SF&L will use

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2003, I have caused this Response to be served upon counsel for Keokuk Junction Railway Co., SF&L Railway, Inc., and the Federal Railroad Administration by hand delivery.



Louis E. Gitomer
January 28, 2003