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ORIGINAL

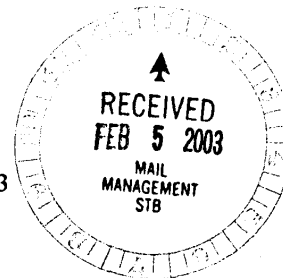
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February 5, 2003



VIA HAND DELIVERY - RETURN COPY

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

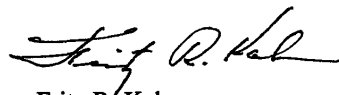
Dear Secretary Williams:

207162
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, STB Finance Docket No. 33996, Kern W. Schumacher and Morris H. Kulmer--Continuance in Control Exemption--SF&L Railway, Inc., and STB Docket No. AB-448 (Sub-No. 2X), SF&L Railway, Inc.--Abandonment Exemption--In Hancock, McDonough, Fulton and Peoria Counties, IL, are the originals and ten copies of the Petition for Stay Pending Review of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer. 207163

Additional copies off this letter and of the Petition 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 or 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.
Daniel R. Elliott, III, Esq.

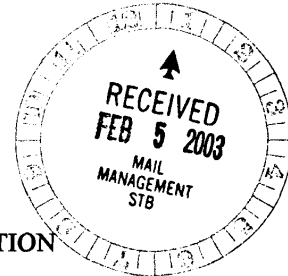
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL

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.

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

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

EXPEDITED ACTION RESPECTFULLY SUBMITTED

PETITION FOR STAY PENDING REVIEW

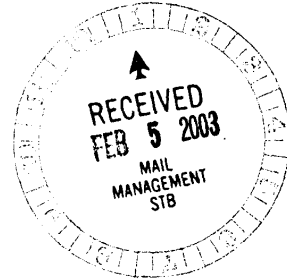
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Attorney for

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

Dated: February 5, 2003

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.

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

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

EXPEDITED ACTION RESPECTFULLY SUBMITTED

PETITION FOR STAY PENDING REVIEW

Petitioners, SF&L Railway, Inc. ("SFL"), Kern W. Schumacher and Morris H. Kulmer, pursuant to 5 U.S.C. 705 and 49 C.F.R. 1115.5(b), seek a stay pending review of the Board's Decision, served January 31, 2003, and in support thereof state, as follows:

1. By its Decision, the Board ordered the immediate reconveyance to the Toledo, Peoria and Western Railway Corporation ("TPW") for the \$2.2 million¹ which on December 29, 2000, SFL had paid TPW for the La Harpe-to-Peoria, Illinois, railroad line, property which the record establishes is worth \$5.7 million.

2. Petitioners will be seeking judicial review of the Board's Decision and ask that the Board enter a stay pending judicial review, in conformity with the standards of Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977), and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). See, McClendon v. City of Albuquerque, 79 F.3d 1014, 1020 (10th Cir. 1996). As the court noted in Cuomo v. United States Nuclear Regulatory Com'n, 772 F.2d 972, 974 (D.C. Cir. 1985):

To justify the granting of a stay, a movant need not always establish a high probability of success on the merits. Probability of success is inversely proportional to the degree of irreparable injury evidenced. A stay may be granted with either a high probability of success and some injury or *vice versa*.

That SF&L will suffer immediate, irreparable harm is beyond dispute.

3. SFL will suffer immediate, irreparable harm in the absence of a stay. As the court observed in Virginia Petroleum Jobbers Association v. FPC, *supra*, 259 F.2d at 925:

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

It is the insufficiency of compensatory or other corrective relief which SFL will be able to pursue against TPW at a later date which militates in favor of a stay pending review.

¹ The Board allowed for interest as provided at 49 C.F.R. 1141.

As already noted, the Board ordered the immediate reconveyance by SFL to TPW of the La Harpe-to-Peoria railroad line. TPW thereupon would be able at once to sell the property as an active line of railroad to a willing purchaser. Keokuk Junction Railway Co. ("KJRY"), having sought to buy the line before it was sold by TPW to SFL and again after the Board ordered the line's reconveyance, is one such willing purchaser. There may be others. Pursuant to the Board's class exemptions, 49 C.F.R. 1150.31, et seq., or 49 C.F.R. 1150.41, et seq., the line could be conveyed upon a seven-day notice filing. TPW is controlled by the Nation's largest short line railroad conglomerate, RailAmerica, Inc., and under its cash sweep policy, whatever amount may be paid by the purchaser to TPW for the line would be passed up to RailAmerica, Inc. TPW would remain essentially cashless. Thus, if SFL were to sue TPW for the \$3.5 million balance due it for the reconveyed property and prevail, SFL would be unable to collect on the judgment. Certainly, SFL would be unable to foreclose on any of TPW's transportation properties. A creditor cannot seize a railroad's rails, ties and other track materials or rights-of-way, as they are committed to fulfilling its common carrier obligation. See, Chicago & N.W. Tr. Co. v. Kalo Brick & Tile, 450 U.S. 311, 320-21 (1981). Yet, SFL sorely needs the additional money. The \$2.2 million may enable SFL to repay the loan it secured to finance its purchase of the La Harpe-to Peoria railroad line; it, however, will leave SFL unable to reimburse its lender for the additional \$456,917.00 it borrowed to cover the losses incurred in operating the line. In short, the denial of a stay pending judicial review will leave SFL without an effective remedy against TPW and, hence, the reconveyance ordered by the Board will occasion SFL immediate, irreparable harm.

4. SFL will be able to make a strong showing that it is likely to prevail on the merits.

Petitioners are not so naive as to believe that they will be able to persuade the Board that its

Decision was fatally flawed and warrants reversal. They, however, have little or no doubt that they will be able to convince the reviewing court that such is the case. Just to cite one example of the Board's reversible error: The Board misrepresented the language of 49 U.S.C. 10901(a)(4) in stating in its Decision that, if allowed to file an application following revocation of the exemption, SFL would need to demonstrate to the Board's satisfaction that it intended to operate the La Harpe-to-Peoria railroad line in addition to asking that it be authorized to acquire it. The statute is not in the conjunctive; its provisions are available for one to acquire a railroad line or to acquire and operate it. Moreover, it is a cardinal precept of administrative law that an agency is not to depart from its precedents without an adequate discussion of why it was doing so. Bush-Quayle '92 Primary Committee v. F.E.C., 104 F.3d 448, 453 (D.C. Cir. 1997); ANR Pipeline Co. v. F.E.R.C., 870 F.2d 717, 723 (D.C. Cir. 1989); King Broadcasting Co. v. F.C.C., 860 F.2d 465, 470 (1988). The Board, as the Interstate Commerce Commission before it, consistently has allowed someone whose exemption was revoked to seek to remedy the deficiency in the record of its case by filing and prosecuting an application. STB Finance Docket No. 33980, Riverview Trenton Railroad Company--Acquisition and Operation Exemption--Crown Enterprises, Inc., served February 15, 2002; STB Finance Docket No. 33950, Jefferson Terminal Railroad Company--Acquisition and Operation Exemption--Crown Enterprises, Inc., served March 19, 2001; Finance Docket No. 32204, Ozark Mountain Railroad--Construction Exemption, served September 7, 1995, December 15, 1994; Docket No. AB-167 (Sub-No. 1088X), Consolidated Rail Corporation --Exemption--Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH, served June 7, 1989. SFL was denied the opportunity to file a section-10901(a)(4) application for authority to acquire the La Harpe-to-Peoria railroad line, and

the Board in its Decision failed to offer any explanation why SFL should not have been allowed to do so consistent with its precedent decisions.

5. A stay pending review will harm no other party. A stay assuredly will not harm TPW. TPW has made it perfectly clear that it believes the La Harpe-to-Peoria railroad line is a loser and sought to be substituted for SFL in the proceeding seeking authority to abandon the property. A stay will not harm KJRY. As it repeatedly has recited in these proceedings, it has a connection with The Burlington Northern and Santa Fe Railway Company at Keokuk, IA, and with the Union Pacific Railroad Company at Fort Madison, IA. Virtually no overhead traffic originating or terminating on the KJRY has moved over the La Harpe-to-Peoria railroad line since SFL began operating it on December 12, 2001. Be that as it may, SFL has offered to allow KJRY to operate the line in SFL's stead. Indeed, SFL has offered to sell the La Harpe-to-Peoria railroad line to KJRY at a price equivalent to its net liquidation value, if only the Board will permit it.² That leaves the United Transportation Union-Illinois Legislative Board, McDonough County and the City of Macomb. They are interested in having service restored on the La Harpe-to-Peoria railroad line, but even they recognize that the restoration of service is more likely to occur if the line were acquired by KJRY than if it were reconveyed to TPW, as ordered by the Board. Therefore, a stay pending review would harm none of the parties.

6. The public interest favors a stay pending review. The commerce of the country is grounded on the sanctity of the contract between a buyer and a seller. In the absence of a stay, that precept would be dealt a serious blow. In desperate straits because it had overextended itself

² The Board approved sale of the La Harpe-to-Peoria railroad line to KJRY would obviate the need for court review of the Board's decision and enable SFL to seek leave to withdraw its petition for review.

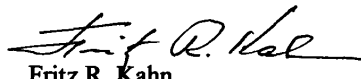
as a result of the acquisition of RailTex, Inc., and the completion of other transactions and with interest obligations falling due before year's end, RailAmerica, Inc., agreed on December 29, 2000, to have TPW sell the \$5.7 million La Harpe-to-Peoria railroad line to SFL for \$2.2 million. Now, two and a half years later, RailAmerica, Inc., wants to back out of the deal, and the Board is perfectly willing to go along with it. While the Board in its Decision at least twice says it ordered the reconveyance of the line "to return the parties to the status quo ante," that is not – and cannot be – the case. The Board is incapable of restoring the parties to the situation as it existed on December 29, 2000, and to the circumstances which led the parties to agree upon the transfer of the property at what the Board, in its October 17, 2002, Decision termed a "fire sale price." Reconveying the line to TPW for \$2.2 million would give RailAmerica, Inc., a windfall for which it had not bargained. Its contractual commitment would be rendered a nullity. The public interest lies with having TPW honor its contractual undertaking, and that requires that there be a grant of a stay pending judicial review.

WHEREFORE, Petitioners, SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer, ask the Board to stay the effective date of its Decision, served January 31, 2003, pending judicial review.

Respectfully submitted,

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

By their attorney,



Fritz R. Kahn
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1920 N Street, NW (8th fl.)
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Tel.: (202) 263-4152

Dated: February 5, 2003

VERIFICATION

I, Morris H. Kulmer, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Petition for Stay Pending Review and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of myself, Kern W. Schumacher and SF&L Railway, Inc.. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Phoenix, AZ, this 4th day of February 2003.

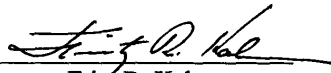


Morris H. Kulmer

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Petition for Stay Pending Review upon each of the parties by facsimile transmitting copies thereof to counsel for each of the parties.

Dated at Washington, DC, this 5th day of February 2003.


Fritz R. Kahn