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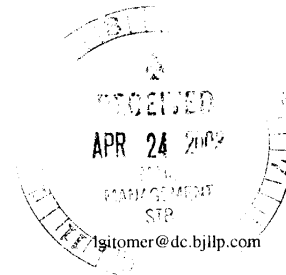
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April 24, 2003

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

ENTERED
Office of Proceedings
APR 24 2003
Part of
Public Record

RE: Finance Docket No. 34335, *Keokuk Junction Railway Company.—Feeder Railroad Development Application—Line of Toledo, Peoria and Western Railway Corporation between La Harpe and Hollis, IL*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Petition for Leave to File Petition to Reject Application and Petition to Reject Application Filed Under 49 C.F.R. § 1151 by the Toledo, Peoria and Western Railway Corporation, and three diskettes with the file Petition.doc.

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

Respectfully submitted,

Louis E. Gitomer

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY COMPANY—FEEDER RAILROAD DEVELOPMENT
APPLICATION—LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL

TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION
PETITION FOR LEAVE TO FILE PETITION TO REJECT APPLICATION
AND PETITION TO REJECT APPLICATION FILED UNDER 49 C.F.R. § 1151

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Dated: April 24, 2003

ENTERED
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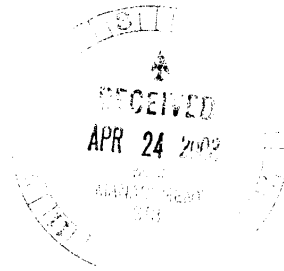
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BEFORE THE

SURFACE TRANSPORTATION BOARD

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KEOKUK JUNCTION RAILWAY COMPANY—FEEDER RAILROAD DEVELOPMENT
APPLICATION—LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
BETWEEN LA HARPE AND HOLLIS, IL

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PETITION FOR LEAVE TO FILE PETITION TO REJECT APPLICATION
AND PETITION TO REJECT APPLICATION FILED UNDER 49 C.F.R. § 1151

PETITION FOR LEAVE TO FILE PETITION TO REJECT APPLICATION

Toledo, Peoria and Western Railway Corporation (“TP&W”), pursuant to 49 C.F.R. § 1117.1, petitions the Surface Transportation Board (the “Board”) for leave to file a Petition to Reject the Application filed under 49 C.F.R. § 1151 by the Keokuk Junction Railway Company (“KJRY”) on April 9, 2003 (the “Application”).

The rules at 49 C.F.R. § 1151 do not provide for the filing of a petition to reject, nor do they prohibit such filing. The Interstate Commerce Commission (the “ICC”), the Board’s predecessor, has considered petitions to revoke feeder line applications in the past.¹ TP&W has carefully reviewed the Application and the Board’s rules and believes that there are grievous defects in the Application that warrant its rejection. For that reason and in an abundance of caution, TP&W requests permission from the Board to file the following Petition to Reject Application filed under 49 C.F.R. § 1151.

¹ *Kansas Southern Railway Company—Feeder Line Application—Atchison, Topeka and Santa Fe Railway Company*, ICC Finance Docket No. 31823 (ICC served July 9, 1991); *Milford-*

PETITION TO REJECT APPLICATION FILED UNDER 49 C.F.R. § 1151

KJRY filed the Application under 49 U.S.C. § 10907 on April 9, 2003 pursuant to the rules at 49 C.F.R. § 1151. Through the Application, KJRY seeks to adversely seize TP&W's 76-mile line of railroad between La Harpe, IL, milepost 194.5, and Hollis, IL, milepost 118.5 (the "Line").² KJRY is contending that the public convenience and necessity permit or require KJRY to acquire the Line and that KJRY is financially responsible. TP&W is outraged that KJRY would seek to use the Board's processes to take the Line for substantially less than its fair market value contrary to the statute and embroil TP&W in lengthy and costly litigation based on such a dissembling and incomplete document, while negotiations are ongoing for TP&W voluntarily to sell KJRY a portion of the Line.

The Board's rules at 49 C.F.R. § 1151.2(b)(1) provide for the Director of the Office of Proceedings (the "Director") to accept a substantially complete application. However, the Director is required to reject an incomplete application (49 C.F.R. § 1151.2(b)(2)), unless "required information ... is primarily or exclusively within the personal knowledge of the owning carrier" and "the applicant ... files at the same time a request for discovery under 49 CFR part 1114 to obtain the needed information from the owning carrier." 49 C.F.R. § 1151.2(d)(1).

Bennington Railroad Company, Inc.—Feeder Line Acquisition—Boston and Maine Corporation Hillsborough Branch, ICC Finance Docket No. 31701 (ICC served October 31, 1991); and *Cheney Railroad Company, Inc.—Feeder Line Acquisition—CSX Transportation, Inc. Line Between Greens and Ivalee, AL*, ICC Finance Docket No. 31012 (ICC served June 2, 1987) considering a motion to reject a competing feeder line application.

² The portion of the Line between milepost 194.5 and milepost 123.0 will be referred to as the "Western Line" and has been the subject of proceedings before the Board and sale discussions with KJRY in the past.

In this proceeding, KJRY has filed an application and a discovery request. However, the egregious defects in the application will not be cured by the discovery sought by KJRY. Among the many defects and shortcomings of the Application that warrant rejection, there are two critical issues to which TP&W would like to direct the Board's attention as egregious and irreparable failures of KJRY to present required evidence in the Application that: (1) KJRY is a "financially responsible person" (49 U.S.C. § 10907(a) and (b)(1) and 49 C.F.R. § 1151.3(a)(3)), and (2) the "public convenience and necessity require or permit the sale of a particular railroad line" (49 U.S.C. § 10907(b)(1)(A)(i) and (c)(1) and 49 C.F.R. § 1151.3(a)(11)(i)) and "the burden of proving that the public convenience and necessity require or permit the sale of a particular railroad line is on the person filing the application" (49 U.S.C. § 10907(c)(2)). TP&W contends that KJRY has not supplied the information in the Application to address either of these critical criteria, that the discovery KJRY seeks will not address these criteria, and therefore respectfully requests the Board to exercise its sound discretion and reject the Application *in toto*, or in the alternative to reject the Application with respect to the Eastern Line.

1. KJRY has not demonstrated that it is a financially responsible person.

The forced sale of a rail line under the feeder line statute is an extraordinary power granted to the Board. It has been found that an offer to assist in securing financing “fails to demonstrate ... the ability to cover the purchase price and expense of operation.” *Wisconsin & Michigan Railway Company—Feeder Line Application—Wisconsin Central, LTD*, ICC Finance Docket No. 31939 (ICC served October 9, 1991), at 2. (“*W&M I*”). In rejecting a feeder line application on grounds that the applicant had not demonstrated financial responsibility, it was concluded that a loan guarantee is not a loan commitment, but a failure to obtain financing. *Wisconsin & Michigan Railway Company—Feeder Line Application—Wisconsin Central, LTD*, ICC Finance Docket No. 31939 (ICC served December 6, 1991), at 3. (“*W&M II*”). KJRY’s evidence does not even reach the level of a loan guarantee. It is mere speculation and inferences that funds might be available.

KJRY suggests that the Line be valued at a net liquidation value (“NLV”) of \$3,393,363, as calculated by KJRY and its purported expert,³ and offers only that amount. Application at 20. First, TP&W contends that KJRY has not demonstrated that it has the funds on hand to acquire the Line or that it has a commitment from either its parent or a financial institution to finance the acquisition of the Line. Second, TP&W contends that KJRY’s offer, even if it were valid, contains no margin for error in that it ignores the clear potentially higher value of the Line based on the NLV of the Western Line and the GCV of the Eastern Line.

³ KJRY assigns no going concern value (“GCV”) to the active portion of the Line between milepost 123.0 and milepost 118.5 (the “Eastern Line”) that TP&W serves six or seven times per week and which generates substantial traffic. Despite numerous inquiries from KJRY, TP&W has refused to discuss the sale of the Eastern Line with KJRY.

The Application contains no independent financial information concerning KJRY, the applicant. There is no balance sheet, no income statement, and no cash flow statement, much less any *pro forma* statements demonstrating the impact of this acquisition for at least three years into the future. KJRY did not even tell the Board whether it earned a profit in 2002 and how much it earned. Instead, KJRY relies on the claimed financial strength of its parent Pioneer Railcorp ("Pioneer").⁴

Pioneer relies on Form 10-KSB filed with the Securities and Exchange Commission (the "SEC") for the period ending December 31, 2002, brief verified statements by Pioneer's President and CEO, Mr. Brenkman and Chief Financial Officer, Mr. Carr, and a half page letter from National City Bank of Michigan/Illinois ("National City"). Separately and collectively these items do not prove the financial responsibility of KJRY or Pioneer as required by precedent.

KJRY relies on the financial wherewithal of Pioneer and Pioneer relies on loans from National City to demonstrate financial responsibility. However, there are no agreements or Board resolutions committing Pioneer to this project. Mr. Brenkman's statements are not a financial commitment, but a hope of being able to finance the transaction.

"I have complete confidence that Pioneer and KJRY are fully capable of financing the acquisition and operation of the Line." Brenkman at 36. The statement is not a commitment, but merely hope.

⁴ To TP&W, it appears that Pioneer is the actual applicant and that KJRY will only be the operator of the Line.

“I am confident, based on my investigation of this project, that Pioneer is fully able to bear the costs of this proposed transaction, and can expect backing in that project from a commercial banking institution as has occurred in the past. Indeed, our principal bank has already expressed interest in the project.” *Id.* Mr. Brenkman is “confident” and expects “backing” from a bank that has “expressed interest”. Again, this is not a commitment of financing. As far as the bank’s expression of interest, that is the best characterization possible. National City sent a letter to Pioneer to “confirm the interest ... in financing the potential acquisition” and stating that it “would be pleased to consider additional financing up to \$5 million subject to our normal and satisfactory due diligence procedures.” Application at 113. National City’s letter indicates that Pioneer has not applied for a loan or line of credit, that National City has not even begun the preliminary work to determine whether it would make the loan, and certainly does not commit National City to make a loan of any amount to Pioneer, much less one to prove that Pioneer is financially responsible to acquire the Line and operate it for three years.

Mr. Brenkman commits “Pioneer’s financial resources, including available cash reserves, lines of credit, and ability to obtain financing through banks and by other means, to pay the Line’s NLV of \$3,393,363 and to support KJRY’s operation of the Line for a minimum of three years following acquisition of the Line.” Brenkman at 37. Mr. Carr piggy backs Mr. Brenkman’s commitment. Carr at 49. But neither Mr. Brenkman nor Mr. Carr provide any *pro forma* statements.

Despite Mr. Brenkman's lofty position with Pioneer, there is no evidence that he alone without Board of Directors or shareholder approval will follow through on his commitment. As such, it is nothing but a hollow statement, not the proof of financial responsibility required under the statute and rules.

Mr. Brenkman pledges Pioneer's "available cash reserves" and Mr. Carr states that Pioneer's annual report shows that KJRY can meet the costs of acquiring and operating the Line through its access to the financial resources of Pioneer." Carr at 49. But neither Mr. Brenkman nor Mr. Carr provide a critical analysis of the financial statements of Pioneer (even though KJRY is the applicant and there is no agreement between KJRY and Pioneer committing Pioneer to support KJRY's proposed acquisition). A cursory review of Pioneer's balance sheet shows only \$1,148,461 cash as of December 31, 2002, an amount insufficient to complete the purchase. Moreover, the balance sheet shows an ongoing disturbing problem, Pioneer's current liabilities have exceeded its current assets and have for the past two years. For the year ended December 31, 2001, Pioneer had current liabilities of \$8,575,417 but current assets of only \$5,045,635, a deficit in its current position of \$3,529,782.⁵ The year ended December 31, 2002 showed a current deficit of \$1,064,514 based on current liabilities of \$6,106,336 and current assets of \$5,041,822 (less than in 2001). With a deficit in its current accounts, Pioneer has no "available cash reserves."

⁵ It appears that Pioneer was able to reduce its current liabilities from 2001 to 2002 through a one-time sale of property (\$1,738,000 for 33 miles of the Alabama & Florida Railway Co., Application at 69).

Mr. Brenkman also commits Pioneer's "lines of credit." However, it seems from the only evidence in the Application at page 73, that Pioneer's lines of credit are only \$1,100,000. It should be noted that Pioneer allowed a \$5 million line of credit with National City to expire because "the commercial lending environment is requiring loan covenants that are stricter than the Company is willing to agree to." Application at 74. Since Pioneer has said it is unwilling to agree to current loan covenants, TP&W urges the Board to view Mr. Brenkman's commitment of Pioneer's ability "to obtain financing through banks and by other means" with great skepticism. TP&W contends that Pioneer's unwillingness to agree to National City's current lending covenants expressed in the Form 10-KSB, as certified by Mr. Brenkman and Mr. Carr, raises serious questions about the availability, much less commitment of such financing to KJRY's proposed acquisition of the Line, especially from National City whose loan covenants are too strict for Pioneer. TP&W also encourages the Board to keep in mind Pioneer's unwillingness to agree to current lending covenants when comparing National City's highly conditional expression of interest in making a loan to a commitment from National City to make a loan.

Mr. Carr claims that Pioneer has retained earnings in excess of \$5 million to meet the purchase cost of the Line. Carr at 50. Again, this is Pioneer, not KJRY. But looking at Pioneer's balance sheet reveals that Pioneer's retained earnings are not based on its negative current position, but on its Goodwill of \$1,017,430, an illiquid asset of no real value unless Pioneer is sold *in toto*, and its Property and Equipment of \$27,793,573, also a highly illiquid asset, that would have to be sold to finance the proposed acquisition of the Line. However, Pioneer has not offered to sell any assets, and an expedited sale might well result in fire-sale prices. Mr. Carr's claim of retained earnings is entitled to no weight in showing that KJRY is financially responsible.

Mr. Carr then attempts to meet the financial responsibility requirement by indicating that Pioneer “expects to obtain similar loans”, that “National City Bank ... has already expressed possible interest in providing up to \$5.0 million”, and that “this expression of interest from the bank at this stage of this project is very encouraging.” Carr at 50. TP&W contends that these statements by Mr. Carr are the type of speculation rejected in *W&M I* and *W&M II* as not proving financial responsibility and leading to the rejection of the application.

Mr. Carr claims that Pioneer can meet any needs for rehabilitation and operation of the Line from its working capital facility and income from operations. TP&W asks the Board to consider how Mr. Carr can reach his conclusion when KJRY has not prepared or presented *pro forma* statements and details of the rehabilitation and operating costs, when Pioneer’s current liabilities exceed Pioneer’s current assets, and when Pioneer reduced its maintenance of way and structures and maintenance of equipment from \$ 3,071,154 by over 17 percent to \$ 2,546,179 from 2001 to 2002. Moreover, there is no detailed marketing or operating plan supporting the projections of Mr. Carr or any other witness.

Finally, KJRY and Pioneer have committed to pay an NLV of only \$3,393,363 despite testimony in other proceedings that the NLV of the track and materials in the Western Line may equal up to \$5.7 million, plus the land value, and that the GCV of the Eastern Line, which generates about 15 percent of TP&W’s revenue has not even been considered.⁶

2. KJRY has not demonstrated that the public convenience and necessity permit or require the acquisition of the eastern Line.

⁶ TP&W notes that KJRY’s financial ability may be further dissipated by an apparent hostile takeover indicated in the filing on March 6, 2003, of a Schedule 13D at the SEC by Rail Partners NV, LLC.

In order to acquire a rail line under the feeder line statute the applicant must show the line is on the owning railroad's system diagram map in category one or two or that the public convenience and necessity permit or require the acquisition of the line. 49 U.S.C. § 10907 (b)(1)(A) and 49 C.F.R. § 1151.3(a)(11). KJRY states that it is seeking a public convenience and necessity finding. Application at 22.

KJRY's public convenience and necessity argument is addressed entirely to the Western Line. KJRY does not address public convenience and necessity issues concerning the Eastern Line, including the Mapleton area. Indeed, as Mr. Sauer states in the attached verified statement, TP&W serves the Mapleton area six days per week and the Union Pacific Railroad Company also serves the Mapleton area through a switching agreement with TP&W.

Instead of addressing the statutory and regulatory public convenience and necessity factors, KJRY offers "to allow TP&W continued access to existing shippers east of Milepost 123.0 at a trackage rights fee of \$2.50 per empty or loaded car, pursuant to an agreement to be completed by TP&W and KJRY under normal commercial terms in the railroad industry." (the "Offer"). Brenkman at 37. So instead of addressing the five public convenience and necessity factors, KJRY makes the Offer. KJRY does not explain how the Offer meets the five public convenience and necessity criteria or provide any rationale for its statement. KJRY's failure to address the public convenience and necessity criteria for the Eastern Line should, in and of itself, be a sufficient basis for the Board to reject the Application with respect to the Eastern Line.

In addition, the Board has recently taken the position that a party must put in all of its evidence in its opening case and not wait for rebuttal. *See Duke Energy Corporation v. CSX Transportation, Inc.*, STB Docket No. 42070 (STB served March 25, 2003). In TP&W's opinion, KJRY made the Offer as an attempt to have the Application accepted and then lure

TP&W into responding to every possible permutation of the Offer and the public convenience and necessity criteria, lying in wait to respond with a brand new and/or fully explicated theory on rebuttal when TP&W would have no further opportunity to respond.

In adopting procedures for processing stand-alone cost rate cases the Board concluded that “Rebuttal may not be used in SAC cases as an opportunity to introduce new evidence that could and should have been submitted in the party’s case-in-chief.” *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, STB Ex Parte No. 347 (Sub-No. 3) (STB served March 12, 2001), slip op. at 5. Even though those procedures do not specifically apply to this type of proceeding, they are soundly based in due process and should be applied here as well.

KJRY has adopted the strategy that it is following in this proceeding. KJRY chose the time to file the Application. KJRY chose to forego addressing the public convenience and necessity criteria in the Application with regard to the Eastern Line. KJRY elected to create a new theory based on the Offer to replace the public convenience and necessity criteria. KJRY decided not to explain how the Offer meets the public convenience and necessity criteria.⁷ KJRY even elected not to file an incomplete application as permitted under 49 C.F.R. § 1151.2(d) and rely on discovery to demonstrate the public convenience and necessity criteria. Instead KJRY created the Offer as the complete answer to very detailed criteria that the statute and regulations require to be met before an adverse acquisition will be approved under the feeder line statute. See 49 U.S.C. § 10907(c)(1)(A-E) and 49 C.F.R. § 1151.3(a)(11)(i)(A-E).

⁷ It is TP&W’s position that no explanation of the Offer will meet the public convenience and necessity criteria.

Even the Offer is not complete. The only known term is \$2.50 per car, which TP&W believes to be more than four times the industry average per car mile charge. KJRY then asks the Board and TP&W to trust KJRY on the other unknown terms. TP&W will not trust KJRY based on KJRY's past actions of operating over TP&W's line without TP&W's or the Board's authorization, or the required qualification by the Federal Railroad Administration, and KJRY's unauthorized contact with TP&W's customers on the Eastern Line. TP&W analogizes the Offer to a car thief offering the owner of a 1956 Thunderbird the scrap value of the car and occasional use of the car when the thief feels like making the car available to the owner at the times and places the thief feels like making the car available, if ever.

KJRY has not met its burden of addressing the public convenience and necessity criteria for the Eastern Line, which is an essential component of the Application. For this reason alone, TP&W urges the Board to reject the Application, at least as to the Eastern Line. In TP&W's view, KJRY has created a confusing Application for the sole purpose of including the traffic rich Eastern Line (which TP&W has refused to sell to KJRY for the last two years) in its acquisition in order to cross-subsidize the Western Line, which has extremely limited traffic.⁸ KJRY has obviously also concluded that the Western Line is not financially viable on its own, and seeks to obfuscate the true nature of the Application in order to adversely acquire the Eastern Line in order to make the Western Line economically viable.

⁸ In TP&W's opinion, the Western Line does not generate sufficient traffic to cover its costs.

3. The discovery sought by KJRY will not allow it to complete the Application.

Under the Board's rules, an applicant is allowed to file and have accepted an incomplete application if it seeks proprietary information from the owner of the line through discovery. 49 C.F.R. § 1151.2(d). KJRY has sought discovery from TP&W. However, the discovery sought is not intended to address the two fatal flaws in the Application.

TP&W has no information that would improve Pioneer's financial position or cause any bank to enter a loan agreement with KJRY or Pioneer. It is TP&W's belief that KJRY is trying to acquire the Line for such a low price that it can turn around to a lender and tell that lender that the Line is actually worth at least 50 percent or more than KJRY is being required to pay for the Line and use the excess value of the Line as the down payment.

KJRY also seeks no discovery to address the public convenience and necessity criteria of 49 C.F.R. § 1151.3(a)(11)(i)(A-E) on the Eastern Line. The traffic, names and addresses of shippers (which is known to KJRY, see Mr. Sauer's statement), and five years of service complaints cannot address 1151.3(a)(11)(i)(C, D, and E). Moreover, TP&W offers six day per week service on the Eastern Line, which KJRY proposes to replace with service three to four days per week. To TP&W that does not seem to be the replacement of inadequate service with improved service. 1151.3(a)(11)(i)(B). The Eastern Line is critical to TP&W. TP&W ensures that its service to the Eastern Line, on an ongoing basis, is more than adequate to its customers. 1151.3(a)(11)(i)(A).

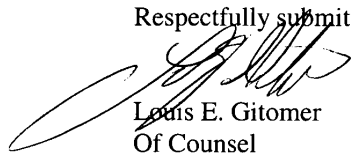
The discovery requested by KJRY will not allow it to complete the Application with respect to its financial responsibility or show that it meets the public convenience and necessity criteria for the Eastern Line. TP&W contends that the Board cannot accept the Application as incomplete predicated on being completed by discovery.

CONCLUSION

TP&W respectfully requests the Board to accept this petition to reject. TP&W respectfully requests that the Board reject the Application as incomplete for the reasons stated in this petition. In the alternative, TP&W respectfully requests the Board to reject the Application as to the Eastern Line for the reasons stated in this petition.

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Respectfully submitted,



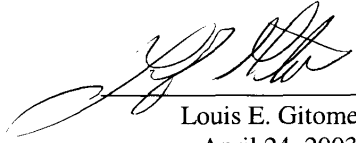
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Attorneys for: TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: April 24, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by overnight delivery on all parties of record in STB Finance Docket No. 34335.

A handwritten signature in black ink, appearing to read "L. Gitomer", is written over a horizontal line.

Louis E. Gitomer
April 24, 2003

VERIFIED STATEMENT OF ALFRED M. SAUER

My name is Alfred M. Sauer and I am Senior Vice President Marketing and Sales for RailAmerica, Inc. and its railroad subsidiaries, including the Toledo, Peoria and Western Railway Corporation ("TP&W"). The purpose of this statement is to advise the Surface Transportation Board (the "Board") that the Keokuk Junction Railway Company ("KJRY") has begun contacting customers of TP&W, not served by KJRY, located in the vicinity of Mapleton, IL, alleging that KJRY will shortly be taking over operations from TP&W and thereby interfering with TP&W's business relationships with its customers.

As the Board is aware, on April 9, 2003, KJRY filed an application to attempt to force TP&W to sell KJRY TP&W's 76-mile line of railroad between La Harpe, IL, milepost 194.5, and Hollis, IL, milepost 118.5 (the "Line"). STB Finance Docket No. 34335, *Keokuk Junction Railway Company—Feeder Railroad Development Application—Line of Toledo, Peoria & Western Railway Corporation between La Harpe and Hollis, IL*. I am informed that a final decision by the Board will most likely not occur in 2003. Based upon counsel's analysis, I am also informed that the Board has not even accepted the application, that the application is incomplete and should be rejected by the Board, and that KJRY has not met the statutory criteria in the application and the Board will deny the application, if it is even accepted,

I became aware of KJRY's contacts with our customer, the Lonza Group, located in Mapleton, IL on TP&W's line more than 75 miles from KJRY's rail line, through voicemails left the night of April 22, 2003 by Al Satunas (General Manager of TP&W) and Scott Hulstrom (Regional Vice President of RailAmerica). Mr. Satunas informed me that he had received a voicemail from Roger Lowe, TP&W's primary contact at the Lonza Group, informing him that KJRY wished to meet with the Lonza Group to discuss the customer's rail service needs once KJRY takes over the TP&W trackage serving the Lonza Group's facility. Based on this contact,

I directed the staff of the TP&W to determine whether any of our other customers at Mapleton had been contacted by KJRY. It appears that KJRY has contacted all of TP&W's Mapleton customers and sought their business under KJRY's presumption that the Board will automatically approve KJRY's Feeder Line Application, enabling KJRY to adversely acquire TP&W's rail line.

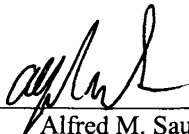
I have also been informed that KJRY is seeking the addresses of TP&W's Mapleton customers in discovery in the application case. Based on KJRY's contacts with those customers it is apparent that KJRY already has those addresses as well as additional information.

TP&W currently serves its shippers in Mapleton at least six days per week. Not only does TP&W serve Mapleton, but the Union Pacific Railroad Company ("UP") serves Mapleton shippers pursuant to a switch agreement between TP&W and UP, whereby TP&W performs switch service for UP cars between Mapleton customers and the UP yard at Sommer, IL. The Mapleton traffic generates about 15 percent of TP&W's revenue. The forced sale of the Mapleton segment of TP&W's line would have an adverse effect on TP&W.

VERIFICATION

I, Alfred M. Sauer, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this 23rd day of April 2003.



Alfred M. Sauer