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# TROUTMAN SANDERS LLP

ATTORNEYS AT LAW  
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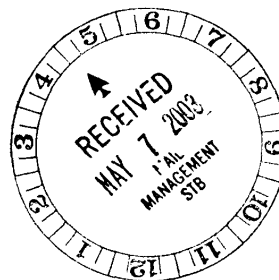
401 9TH STREET, N.W. - SUITE 1000  
WASHINGTON, D.C. 20004-2134  
www.troutmansanders.com  
TELEPHONE: 202-274-2950

William A. Mullins  
william.mullins@troutmansanders.com

Direct Dial: 202-274-2953  
Fax: 202-654-5621

May 7, 2003

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423-0001



RE: 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*

Dear Secretary Williams:

Enclosed please find an original and eleven copies of the Reply of Keokuk Junction Railway Co., to Petition for Leave to File Petition to Reject Application and Petition to Reject Application ("KJRY Reply"). Also accompanying in a separate envelope are an original and eleven copies of a Confidential Exhibit to the KJRY Reply. An original and eleven copies of a Motion for Protective Order are also submitted herewith under separate cover.

Please acknowledge receipt of the accompanying materials by date stamping the extra copies of each and returning them to the individual making this filing to return to me. If there are any questions about this matter, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "William A. Mullins".

William A. Mullins

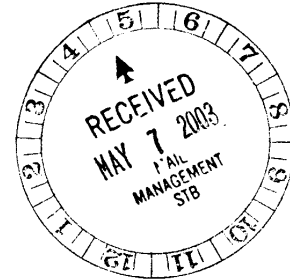
Enclosures

cc: Parties of Record

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

\_\_\_\_\_  
**FINANCE DOCKET NO. 34335**  
\_\_\_\_\_



**KEOKUK JUNCTION RAILWAY CO.--  
FEEDER RAILROAD DEVELOPMENT APPLICATION--  
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION  
BETWEEN LA HARPE AND HOLLIS, IL**

\_\_\_\_\_  
**REPLY OF KEOKUK JUNCTION RAILWAY CO.,  
TO PETITION FOR LEAVE TO FILE PETITION TO REJECT APPLICATION  
AND PETITION TO REJECT APPLICATION**

**ENTERED  
Office of Proceedings**

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**WILLIAM A. MULLINS  
DAVID C. REEVES  
TROUTMAN SANDERS LLP  
401 NINTH STREET, N.W.  
SUITE 1000  
WASHINGTON, D.C. 20004-2134  
TELEPHONE: (202) 274-2950  
FACSIMILE: (202) 654-5621**

**DATED: May 7, 2003**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

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**FINANCE DOCKET NO. 34335**

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**KEOKUK JUNCTION RAILWAY CO.--  
FEEDER RAILROAD DEVELOPMENT APPLICATION--  
LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION  
BETWEEN LA HARPE AND HOLLIS, IL**

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**REPLY OF KEOKUK JUNCTION RAILWAY CO.,  
TO PETITION FOR LEAVE TO FILE PETITION TO REJECT APPLICATION  
AND PETITION TO REJECT APPLICATION**

Comes now the Keokuk Junction Railway Co. ("KJRY" or "Applicant") and files this Reply ("KJRY's Reply") to the Petition For Leave To File Petition To Reject Application And Petition To Reject Application (together, "TP&W's Petition") filed on behalf of Toledo, Peoria & Western Railway Corporation ("TP&W").

**SUMMARY**

TP&W's Petition should be denied. KJRY's application is complete and should be accepted by the Board. TP&W's Petition is an improper attempt to force premature determination of the substantive issues, prior to completion of the record.

At this stage of the proceeding, to accept the application, one of the factors that the Director of the Office of Proceedings needs to determine is that KJRY has submitted evidence to establish that it is a financially responsible person, not that KJRY actually has the financing

already in place. KJRY is a financially responsible person, capable of paying the amount offered for the Line, as the full record in this proceeding will show. Although not required by statute or by the Board's regulations to prove that financing is already in place at this stage, KJRY could, if necessary, produce adequate cash to satisfy its offer within 2 weeks, and could operate the Line for a minimum of three years. Pioneer Railcorp ("Pioneer") will support and finance KJRY's acquisition of TP&W's La Harpe to Hollis, IL rail line (the "Line") as it has with the long series of similar purchases, which together have made Pioneer one of the largest short line railroad holding companies in America.

TP&W seeks to prematurely terminate this proceeding to avoid a public examination of TP&W's neglect of its common carrier responsibility on the Line. First, TP&W sold most of the Line to SF&L Railway, Inc. ("SF&L"), so the line could be scrapped. After more than two years of SF&L's inattention, neglect and even an embargo of traffic, TP&W was forced to re-acquire the property, even though it said that it, too, wanted to abandon the track. Subsequent to re-acquiring the property, TP&W raised prices to discourage traffic west of Milepost 123.0. It's no wonder that a majority of the shippers on the Line have already stated their dissatisfaction with TP&W's 'service.' Even if a minority of shippers, those east of Mapleton, were satisfied with TP&W's service - a fact which has not been shown - the Board should still find that the public convenience and necessity require selling the Line to KJRY.

To treat the Line as two separate properties, as TP&W proposes, would fly in the face of the Eighth Circuit's decision in the *Caddo Antoine* case and the Board's subsequent implementation of that ruling.<sup>1</sup> KJRY's application proposes to preserve the Line as a route for

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<sup>1</sup> *Caddo Antoine and Little Missouri Railroad Company, et al. v. United States*, 95 F.3d 740 (8<sup>th</sup> Cir. 1996) ("*Caddo Antoine*"), on remand at *Caddo Antoine and Little Missouri Railroad Company--Feeder Line Acquisition--Arkansas Midland Railroad Company Line Between*

overhead traffic, consistent with its historic character, even allowing TP&W to continue to serve the existing shippers in the Mapleton area. The alternative TP&W proposes - premature dismissal of KJRY's application - is simply a request that TP&W be freed to do what its proxy SF&L tried to do before - to discourage traffic in order to support elimination of this historic through route. The Board should not cavalierly doom this Line to abandonment, as TP&W's Petition effectively requests.

#### PROCEDURAL BACKGROUND

As the Board is aware, in late December 2000, TP&W sold most of its interest in the portion of the Line west of Milepost 123.0<sup>2</sup> (the "West End" of the Line) to SF&L, an affiliate of A&K Railroad Materials, a rail scrap and materials dealer. As the Board found in October 2002, SF&L's purpose in acquiring that section of the Line was to downgrade service in order to abandon and scrap the line.<sup>3</sup> The Board concluded that TP&W was complicit in this plan, and that neither TP&W nor SF&L should profit from this violation of the Board's procedures. *Id.* at 19, n.35.

Both prior to the sale of the West End of the Line to SF&L, and after TP&W was ordered to re-acquire that part of the Line from SF&L, KJRY offered to purchase some or all of the Line from TP&W. Each time, those discussions were short-lived. Hoping to preserve this important through route, and sensing from TP&W's unwillingness to pursue discussions and from TP&W's

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*Gurdon and Birds Mill, AR*, Finance Docket No. 32479, 1999 STB LEXIS 482 (served Aug. 12, 1999).

<sup>2</sup> TP&W now calls that portion of the Line the "Western Line," which is curious given that prior to the sale to SF&L, TP&W called the entire Line west of Hollis the "West End."

<sup>3</sup> *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, *et al.* ("*SF&L Acquisition*"), slip op. at 3 and 19.

discouragement of service on the West End that time to preserve the Line was running out, KJRY filed a feeder railroad development (“feeder line”) application for the Line on April 9, 2003. KJRY also filed discovery to obtain information important to the application but which was principally or exclusively within TP&W’s possession.

On April 24, TP&W filed its Petition. It also refused any substantive response to KJRY’s discovery, asserting, among other things,<sup>4</sup> that the term “Line” was not defined.<sup>5</sup> However, in the course of responding to KJRY’s Discovery Request No. 4, TP&W stated that KJRY apparently already had identified all shippers who originated or terminated shipments at points on the Line in the preceding 12 months. This objection/response indicates that KJRY’s application was properly served on potentially-affected shippers.

#### DISCUSSION

TP&W’s Petition should be denied because it seeks determination of the ultimate issues in this proceeding without submission of all of the evidence. The Board’s task at this stage is merely to determine whether the application “contains substantially all information required by § 1151.3.” 49 C.F.R. § 1151.2(b)(1)(2002). While TP&W attempts to mask its premature argument on the merits as an argument that the application does not contain substantially all

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<sup>4</sup> KJRY particularly repudiates TP&W’s assertion that requesting discovery in a Board proceeding concerning service to shippers on a line proposed for sale violates Section 11904. Such information is often used in Board proceedings, and normally is subject to protective conditions which the holder of the information requests prior to disclosure. Moreover, the information clearly was not sought for some anticompetitive or other purpose which would harm any shipper, inasmuch as the information was openly requested in a filing before the Board in a proceeding which offers to create new competition for traffic. The information is relevant to any claim that TP&W may make with respect to an asserted Going Concern Value (“GCV”) for all or part of the Line. By objecting to its disclosure, TP&W may now not use such information as support for any argument for GCV that TP&W may make.

<sup>5</sup> Although TP&W assertedly did not know what “Line” meant for purposes of responding to discovery, its Petition defines the term, Petition at 4, exactly the same as does KJRY’s application. *See* Application at 4.

information required by the regulations, it cannot be seriously argued that required information is missing. TP&W may not like what the information submitted says, but the required information is there.

TP&W's Petition consists of two arguments - that KJRY has not shown that it has sufficient funds to purchase the Line and that KJRY has not demonstrated that the public convenience and necessity justify sale of the Line. Both of these matters are issues that should be determined on the record as a whole, not simply rejected out of hand as TP&W would like this Board to do. KJRY's initial evidence clearly shows financial responsibility, and that the public convenience and necessity require sale of the Line to KJRY.

#### **I. Financial Responsibility**

Pioneer Railcorp is one of the largest short line railroad holding companies in the United States. The company has built itself into a publicly-traded powerhouse in the small railroad industry through acquisitions such as this - purchasing lines with good history and potential that has been neglected by other carriers. Pioneer is committed to this project, and will make the funds necessary to satisfy KJRY's offer available to KJRY, as Pioneer's CEO and principal shareholder testified in the April 9 application.

The test of financial responsibility is not, as TP&W contends, whether KJRY has cash in the bank to hand over to TP&W immediately. Clearly, effective financial management would not allow holding millions of dollars in a 'what if' account. Rather, the question is whether KJRY will have the money to purchase the Line when the Board concludes this proceeding and orders the Line sold to KJRY.<sup>6</sup> The answer to that question clearly is "Yes."

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<sup>6</sup> TP&W's filing indicates TP&W's belief that the Board will not conclude this proceeding this year. For the sake of the shippers on the Line, and to minimize deterioration due to TP&W's

KJRY will seek to finance its acquisition of the Line, not out of necessity but to better fit Pioneer's business model of strategic use of either equity or debt financing when terms for doing so are favorable. In the current low interest rate climate, debt-based financing is more favorable than normal.

TP&W proposes an unreasonable standard of certainty for that financing at this stage of this proceeding, given that TP&W itself has been the major stumbling block to obtaining a financing commitment to this point in time. TP&W itself states that this proceeding likely will not be concluded this year. That argument demonstrates why TP&W's demand that KJRY essentially have cash on hand at this moment is both unreasonable and unnecessary. Also, the Board typically orders that closing occur within 90 days following its decision. *E.g., Caddo Antoine and Little Missouri Railroad Company--Feeder Line Acquisition--Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR*, Finance Docket No. 32479, 1999 STB LEXIS 482 at \*45 (served Aug. 12, 1999). It clearly is not necessary that KJRY have cash in hand now to be able to purchase the Line under the Board's regulations for feeder line proceedings.

Moreover, it is principally TP&W's own actions that have prevented obtaining a firm loan commitment by now. In the course of negotiations with TP&W to purchase the Line, KJRY has more than once requested permission to inspect the Line for purposes of assessing its condition and formulating a price acceptable to TP&W. TP&W has denied KJRY such access and has refused to produce any information in discovery that would go to the value of the Line. Accordingly, KJRY performed its own appraisal and submitted it as evidence. If TP&W

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neglect of the track, KJRY hopes that the Board will grant KJRY's application at the earliest possible date.

disagrees with that evidence, it should provide its own information in the course of the proceeding, rather than simply seeking to have the application rejected.

Further, the inability to make an on-the-ground inspection of the Line has also complicated KJRY's efforts in obtaining a written loan commitment from the bank and in assembling the information needed by the bank to make a loan commitment. Thus, while TP&W complains that a written loan commitment is not already sewn up, TP&W's own actions are largely responsible for the delay.

Despite the obstacles created by TP&W, KJRY anticipates securing a loan commitment for the purchase of the Line within the next two weeks. As stated in its application, KJRY is working with Pioneer and with National City Bank of Michigan/Illinois, which has financed several rail line acquisitions by Pioneer. All discussions with the bank thus far have been positive and KJRY and Pioneer are optimistic that a loan commitment will be obtained within two weeks or so. Indeed, the loan officer at the National City Bank responsible for Pioneer's account has informed Pioneer's CFO, J. Michael Carr, that he is recommending to the bank's loan committee that it approve a loan of up to \$5 million to be used for acquisition of the Line and working capital. Mr. Carr is not aware of any transaction that the loan committee has rejected based upon the loan officer's recommendations with respect to Pioneer in the past, and he is very confident that the loan will be approved.<sup>7</sup>

It is not the case, as TP&W insinuates, that KJRY and Pioneer will not accept the bank's normal current terms on financing of this sort of transaction. Until recently, Pioneer had a \$5

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<sup>7</sup> Unfortunately, the bank's loan committee is not meeting until Tuesday, May 13, 2003, and thus KJRY will not be in a position to provide written proof of the loan approval until after that date. KJRY was waiting for this approval before filing its reply to the Petition To Reject, but given the Board's pending deadline to either accept or reject the application, KJRY can only verbally attest to the statements made by the bank's loan officer.

million line of credit which could be used for acquisitions such as these, without any prior due diligence analysis by the bank. Because of changes in the banking industry, the conditions placed upon maintaining such a line of credit included loan covenants that were stricter than the Company was willing to agree to. Because these covenants could potentially encumber Pioneer's normal business activity, Pioneer chose not to renew the line of credit. These stricter covenants related solely to maintaining a sizeable line of credit available for transactions which could be made without bank review or approval. Hence, these strict covenants will not apply to standard financing arrangements for a purchase like KJRY's proposed purchase of the Line, because the Bank reviews the transaction financing prior to funding.

Even if KJRY were required to establish that it could pay the amount offered and could close on purchase of the Line this month, KJRY could do so. KJRY has estimated the value of the Line at slightly less than \$3.4 million. As TP&W admits, Pioneer's balance sheet reflects approximately \$1.15 million in cash. In addition, Pioneer has a \$1.1 million working capital line of credit which could be applied to this purchase if closing were required in short order, prior to obtaining another loan.<sup>8</sup> Moreover, as Mr. Carr states in his Verified Statement attached hereto at Appendix A, his experience in obtaining financing based on security interests in operating equipment tells him that he could raise \$1.5 to \$2.0 million in cash in a matter of weeks using Pioneer's operating equipment as collateral. Together, these sources of readily available funds would exceed KJRY's offer. Again, whether KJRY could come up with the necessary cash so quickly is not the appropriate test under the Board's regulations, but if it were, KJRY meets that

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<sup>8</sup> While KJRY stated that it could use this working capital line to meet any operating revenue shortfall during the first three years of operations, the working capital line would also be available for purchase funding on short notice, which then could be refinanced if necessary.

test. The true test at this stage is whether or not KJRY has submitted evidence to establish that it is a financially responsible person. KJRY clearly has.

With respect to operating costs of the Line, KJRY's initial estimates in its application were very conservative. Based on more detailed information presently available, KJRY's operating pro forma for the Line shows a considerable profit opportunity. A copy of that confidential operating pro forma is being submitted simultaneously with this filing as a confidential Exhibit 1 to the Verified Statement of J. Michael Carr (Appendix A hereto).<sup>9</sup> As can be seen, so long as the Line retains its character as a through route, allowing single-carrier access between La Harpe and Hollis, the Line has the potential for significant overhead traffic and sufficient revenues to more than support its operation. Even allowing for rehabilitation expense of \$200,000, as anticipated by Mr. B. Allen Brown in his verified statement in KJRY's application, operation of the Line would be profitable in its first year.

Finally, TP&W criticizes KJRY's financial responsibility showing for not considering that the Line might be worth more than KJRY's estimate and for not having liquid funds on hand to that unspecified excess amount. In particular, while refusing to divulge any information about traffic on the Line, and objecting to KJRY's supposed effrontery in talking to 'its' shippers at Mapleton, TP&W argues that KJRY should have provided a GCV estimate for the portion of the Line east of Mapleton.

Such a suggestion has no basis in the Board's regulations or the statute. The Board's regulations require that an applicant estimate the NLV or GCV of the Line for which it is submitting an offer, and demonstrate its ability to pay that amount. *See* 49 C.F.R. § 1151.3(a). Ultimately, KJRY will need to demonstrate the ability to pay the amount which the Board

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<sup>9</sup> A Motion for Protective Order is being submitted simultaneously as well.

concludes is the Line's constitutional minimum value. But to require an applicant to have available an undetermined amount of funds *above* its good faith estimate of the value of the property is not required by any part of the feeder line procedures. Moreover, in light of KJRY's offer to allow TP&W continued access to existing shippers at Mapleton for a specified access fee, KJRY reiterates its belief that the Mapleton Segment of the Line has no GCV.<sup>10</sup>

There is no reasonable dispute that KJRY is a financially responsible applicant here. Its parent is one of the largest short line railroad holding companies in the country and has committed itself to financing KJRY's proposed acquisition of the Line. Pioneer has readily available funds to pay KJRY's estimate of that value and could, if necessary, provide KJRY the funds necessary to close on the purchase this month at the price offered in KJRY's application. That KJRY has not budgeted more or did not have more funds on hand than it has offered on the chance that TP&W may submit some as yet unseen evidence of additional value is simply irrelevant at this stage.

## **II. Public Convenience and Necessity Require Line to be Sold**

### **A. TP&W's Attempts To Bifurcate The Line Into Two Segments Should Be Rejected**

As part of its effort to prove that KJRY has not established that the public convenience and necessity requiring selling the Line to KJRY, TP&W tries to make a distinction that the Line really consists of two segments, the West End and the East End (or what KJRY calls the Mapleton segment). TP&W then claims the Board should reject the Application outright, but

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<sup>10</sup> At pages 6 and 14 of the Petition, TP&W admits that the West End segment of the Line has no GCV. Again, because TP&W will continue to have the value of its ongoing operations over the Mapleton segment and because KJRY is willing to grant TP&W trackage rights over the Mapleton segment once it acquires the Line, allowing TP&W continued access to its existing shippers, TP&W cannot claim that it is losing any GCV. Instead, as long as KJRY pays the

then seems to implicitly concede that the Board could accept the Application for the West End but not for the Mapleton segment.

TP&W's attempts to mislead the Board into treating the Line as two separate rail lines should be rejected. While that is the way TP&W has treated shippers - as "have's" and "have-not's" - it is contrary to the history and nature of the Line as an important through route.<sup>11</sup>

If there is any logical dividing point on TP&W's system, it is between points east and west of Hollis. Indeed, it is this location, Hollis, that KJRY establishes as the easternmost end of the Line that KJRY proposes to purchase. In fact, to cut the Line into segments as TP&W proposes and to allow KJRY to purchase just the West End would create the bizarre situation whereby KJRY would operate from La Harpe to Mapleton, TP&W would own from Mapleton to Hollis, and then the Hollis to Peoria segment would be owned by UP. This would create a "TP&W island segment" that would be cut-off from the rest of the TP&W system. Indeed, today, TP&W only accesses the Mapleton shippers via trackage rights from its tracks, which are located at East Peoria, then over the line of the Peoria & Pekin Union Railway Company ("P&PU"), then P&PU's Illinois River Bridge, then over additional P&PU track in Peoria, and then over UP, which owns the line from the connection with PP&U at Peoria to the connection with the TP&W line at Hollis. Were TP&W's request to bifurcate the Line in this proceeding granted, TP&W essentially would be left with a 4.5-mile island railroad from Hollis to Mapleton.

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NLV of that portion of the Line and TP&W continues to have access to its shippers, the constitutional minimum value of the Line will have been paid.

<sup>11</sup> TP&W's invitation to the Board to treat the Line as two different lines invites the same sort of error which the Board recognized and corrected in the Caddo Antoine feeder line proceeding, as directed by the U.S. Court of Appeals for the Eighth Circuit. See *Caddo Antoine and Little Missouri Railroad Company--Feeder Line Acquisition--Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR*, Finance Docket No. 32479, 1999 STB LEXIS 482 (served Aug. 12, 1999).

That island segment would be separated from the rest of the lines TP&W owns by the tracks of two different carriers and a major bridge. A map depicting the lines involved is attached hereto as Appendix B.

Perhaps the strongest public policy reason for not bifurcating the Line as TP&W requests is that doing so would effectively kill the Line's ability to function effectively for overhead traffic, a function that it served well for over 100 years prior to the sale of the West End to SF&L. The history of the SF&L transaction establishes this beyond dispute. When SF&L purchased most of the West End of the Line, it failed to purchase the track immediately adjacent to KJRY's line, leaving TP&W as an intermediate carrier between KJRY and SF&L. This situation prevented the movement of overhead traffic which theretofore had been the mainstay of the Line's operation. As the board said, "Not buying that 1-mile stretch made it much more expensive to send shipments over the La Harpe Line." *SF&L Acquisition*, slip op. at 13. The same factor would be applicable here if TP&W's position were to prevail. Allowing TP&W to break off the East end (the Hollis to Mapleton segment) of this historic through route and stand as an intervening carrier between KJRY and UP at Hollis would, similarly, stymie the opportunity to handle overhead traffic on the Line and facilitate abandonment.

Bifurcating the Line as TP&W proposes would also contradict Board and court decisions in the *Caddo Antoine* case. As particularly pertinent here, the Eighth Circuit said of a similar request for bifurcation in that case:

In light of CALM's application to provide service over the entire length of the Norman Branch, a line that had historically been operated as a unitary operation, the Commission should have treated the entirety of the Norman Branch as 'a particular railroad line' and thus have reviewed CALM's application under the PN&C [sic] standard . . .

The Commission itself has acknowledged that its analytical focus should "be on the ultimate issue: whether abandonment of one segment would foreclose the viability of contiguous segments."

*Caddo Antoine*, 95 F.3d at 747-748.

Here, TP&W similarly urges the Board to reject the portion of KJRY's application pertaining to the line between Milepost 123.0 near Mapleton and Milepost 118.5 at Hollis. There is no such 'portion' of KJRY's application; the application applies to the entire Line currently owned by TP&W, i.e. from La Harpe to Hollis. That line has been operated in its entirety for over 100 years, as the materials attached at pages 39, 40, 197 and 198 of the application, along with Mr. Brenkman's statement, show. Allowing TP&W to break off the 4.5-mile Mapleton segment and retain it as an island track, separated from the remainder of TP&W's system, will assure the infeasibility of the overhead traffic on the Line and thus assure abandonment of the West End segment between Mapleton and La Harpe. The Eighth Circuit's *Caddo Antoine* decision and the Board's decisions which follow from it show that such an outcome is not permitted under these circumstances, particularly when based only on TP&W's attempt to preempt full consideration of KJRY's application.

Finally, TP&W claims that it will be harmed if KJRY purchases the Line. First and most importantly, TP&W has presented no evidence to prove that contention. Merely stating that 15% of its revenue is generated on the Mapleton segment of the Line tells the Board nothing when TP&W does not also show how much of that revenue would be retained through the trackage rights KJRY has offered or what amount of savings TP&W would have if relieved of responsibility to maintain the Line. Without actual evidence from TP&W, and in light of TP&W's refusal to provide discovery responses that would show its revenues and costs, TP&W's claim of harm is completely hollow and should be accorded no weight.

KJRY's application proposes to preserve the Line as a route for overhead traffic, consistent with its historic character, while allowing TP&W to continue to serve the existing

shippers in the Mapleton area. The alternative TP&W proposes - premature dismissal of KJRY's application - is simply a request that TP&W be freed to do what its proxy SF&L tried to do before - to discourage traffic in order to support elimination of this historically important through route. The other alternative, i.e. bifurcating the Line, would interpose TP&W in the middle of an historic route, dooming the line to abandonment similar to what this Board found SF&L was attempting to do when "[n]ot buying that 1-mile stretch made it much more expensive to send shipments over the La Harpe Line." *SF&L Acquisition*, slip op. at 13. The only legitimate alternative is to accept the Application for the entire Line.

B. The Majority Of The Shippers Over The Line Are Not Receiving Adequate Service

By seeking a premature termination of this proceeding, TP&W hopes to avoid the fact that a majority of the shippers on the entire Line have already said that TP&W's service is not adequate to meet their shipping needs. Further, by arguing for *partial* rejection of the application, TP&W is basically asking the Board to ignore the holding of the *Caddo Antoine* case, which held that the Board should not bifurcate what historically has been a single line to allow the incumbent carrier to retain a preferred portion while leaving the neglected portion for the feeder line applicant. The Board should not be misled by either of these arguments.

TP&W seeks to prematurely terminate this proceeding to avoid examination of its neglect of its common carrier responsibility to provide adequate service on the entire Line. TP&W's objections to KJRY's discovery state that KJRY's application correctly identifies the shippers on the Line. That being the case, it is clear that a majority of the shippers on the Line - including those at Mapleton - find TP&W's 'service' inadequate to meet their shipping needs. Letters

from 13 of the 18 shippers on the Line,<sup>12</sup> stating the inadequacy of TP&W's service, are included in the application. For TP&W to assert that KJRY has not demonstrated public convenience and necessity with this evidence is simply wishful thinking on TP&W's part.<sup>13</sup>

Indeed, it is not surprising that a majority of the shippers have found TP&W's service to be inadequate. In December 2000, TP&W severed the historical through route characteristic of the Line and sold a majority portion of the Line to a rail salvage company/scrap dealer. For more than two years after that, the buyer did everything it could to eliminate traffic and to foster the argument that it eventually filed by seeking abandonment and scrapping of the West End of the Line. Fortunately, due to KJRY's efforts and that of local communities, SF&L and TP&W were frustrated in their scheme. The result, however, was that shippers' needs were not met. Those shippers' frustration with their treatment at the hands of TP&W and its proxy, SF&L, are the root cause of this application. TP&W's continued unwillingness to meet these shippers' needs clearly demonstrates that the public convenience and necessity require sale of this Line to KJRY. TP&W has presented no evidence refuting this showing.

#### CONCLUSION

TP&W'S Petition totally fails to address the fundamental fact that the majority of shippers on this Line have not had any service since at least October, 2002, nor has common carrier interchange service been provided to KJRY cars moving east from LaHarpe. Despite the Board's previous finding that the public interest would be harmed if service was not restored on this Line, TP&W wants the Board to ignore its failure to meet that most basic obligation of a

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<sup>12</sup> The shippers are identified on page 116 of the application.

<sup>13</sup> Indeed, it would have been much easier for KJRY to meet the "majority of the shippers" test if it had merely sought a feeder line application for the West End, as it is clear that all of the shippers on that end are receiving inadequate service.

common carrier. The Board should reject that argument, and act promptly to protect the public interest by denying TP&W's Petition and allowing the feeder line process to proceed according to the statutory purpose of maintaining rail service over an entire line of railroad.

Respectfully submitted,



William A. Mullins  
David C. Reeves  
TROUTMAN SANDERS LLP  
401 Ninth Street, N.W.  
Suite 1000  
Washington, D.C. 20004-2134  
Telephone: (202) 274-2950  
Facsimile: (202) 654-5621

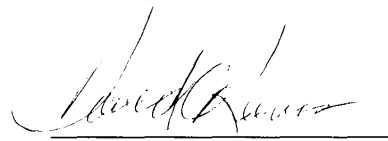
Attorneys for Keokuk Junction Railway Co.

Dated: May 7, 2003

**CERTIFICATE OF SERVICE**

I, David C. Reeves, hereby certify that on May 7, 2003, I caused a copy of the foregoing  
Reply Of Keokuk Junction Railway Co., To Petition For Leave To File Petition To Reject  
Application And Petition To Reject Application, to be served by first class mail, postage  
prepaid, or by more expeditious service upon each of the following persons or entities:

Louis E. Gitomer  
Ball Janik LLP  
1455 F Street, N.W. Suite 225  
Washington, DC 20005

  
\_\_\_\_\_  
David C. Reeves

**VERIFIED STATEMENT OF J. MICHAEL CARR**

My name is J. Michael Carr. I am the Chief Financial Officer of Pioneer Railcorp. The purpose of this statement is to briefly show (1) that Keokuk Junction Railway Co. ("KJRY"), has the ability to obtain long term financing for its purchase of Toledo, Peoria & Western Railroad Corporation's ("TP&W's") La Harpe to Hollis, IL rail line (the "Line"), and anticipate having a written loan commitment in the near term despite TP&W's actions which interfere with that goal; (2) that KJRY could, in the matter of a couple of weeks, raise the cash necessary to purchase the Line for the price estimated in KJRY's feeder railroad development program ("feeder line") application; (3) that KJRY projects being able to operate the Line profitably beginning in the first year of operation and thereafter for more than merely three years; and (4) that Pioneer and KJRY are committed to funding this purchase.

**WITNESS QUALIFICATIONS**

I am the Treasurer of Pioneer, and also serve as Treasurer and Chief Financial Officer for each of Pioneer's subsidiaries, including KJRY. My duties with Pioneer place me as the senior executive over three of Pioneer Railcorp's eight departments – Accounting / Finance, Legal Department and the Real Estate Department. I am responsible for financial reporting to the Board of Directors, the Securities and Exchange Commission (SEC), and Pioneer Railcorp shareholders, and I oversee all financing activities, stock transfer activities, and the day-to-day functions of the Company's accounting staff. I am also a member of Pioneer's Board of Directors. In short, I am fully cognizant of the financial condition of Pioneer and each of its subsidiary railroads, including KJRY. I am the same person who presented a verified statement

in KJRY's feeder line application. I render this statement in response to the arguments put forth by TP&W in its April 24, 2003 petition to reject KJRY's feeder line application.

APPLICANT'S FINANCIAL ABILITY TO FUND THE PURCHASE  
AND OPERATION OF THE LINE

*Long term financing will be available imminently.* KJRY will seek to finance its acquisition of the Line, not out of necessity but to best fit Pioneer's business model of strategic use of either equity or debt financing when terms for doing so are favorable. In the current low interest rate climate, debt-based financing is more favorable than normal.

It is principally TP&W's own actions that have delayed KJRY's obtaining a firm loan commitment. In the course of negotiations with TP&W to purchase the entire Line, KJRY has more than once requested permission to inspect the Line for purposes of assessing its condition and formulating a price which would be acceptable to TP&W. Unfortunately, TP&W has denied KJRY such access and has not provided KJRY data, studies, evaluations, etc., which establish that TP&W's price was the appropriate price.

It was because of this inability to make an on-the-ground inspection of the Line that KJRY has had some difficulty in assembling the information needed by the bank to make a written loan commitment. Thus, while TP&W complains that a loan commitment is not already sewn up, TP&W's own actions are largely responsible for the delay.

Despite the obstacles created by TP&W, KJRY anticipates securing a written loan commitment for the purchase of the Line by May 13. As stated in its application, KJRY is working with Pioneer and with National City Bank of Michigan/Illinois, which has financed several rail line acquisitions by Pioneer. All discussions with the bank thus far have been positive. Indeed, National City's loan officer has agreed to loan Pioneer, for use by KJRY, \$5 million to purchase the Line and provide working capital. This commitment by the loan officer

is subject to approval by the bank's loan committee, which will be meeting on May 13, 2003.

The loan committee has never before rejected a recommendation of the loan officer that involved Pioneer and it is almost certain that they will accept his recommendation again. National City has provided Pioneer financing in numerous short line railroad purchases in the past decade and we look forward to working with them again in this transaction.<sup>14</sup>

Contrary to TP&W's assertions, KJRY and Pioneer do not anticipate any problems in accepting the bank's normal current terms on financing of this sort of transaction. Until recently, Pioneer had a \$5 million line of credit which could be used for acquisitions such as these, without any prior due diligence analysis by the bank. Because of changes in the banking industry, the conditions placed upon maintaining such a line of credit included loan covenants that were stricter than the Company was willing to agree to. Because these covenants could potentially encumber Pioneer's normal business activity, Pioneer chose not to renew the line of credit. These stricter covenants related solely to maintaining a sizeable line of credit available for transactions which could be made without bank review or approval. Hence, these strict covenants will not apply to standard financing arrangements for a purchase like KJRY's proposed purchase of the Line, because the Bank reviews the transaction financing prior to funding.

*KJRY Could Close on the Purchase Within Two to Three Weeks if Necessary.* Even if KJRY were required to establish that it could pay the amount offered and close on purchase of the Line this month, KJRY could do so. KJRY has estimated the value of the Line at slightly less than \$3.4 million. As even TP&W admits, Pioneer's balance sheet reflects approximately

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<sup>14</sup> KJRY hopes that TP&W is incorrect in its assertion that this application will not be resolved this calendar year. The longer TP&W's current neglect of the Line and of the shippers on the

\$1.15 million in cash.<sup>15</sup> In addition, Pioneer has a \$1.1 million working capital line of credit which, by its terms, can be applied to this purchase if closing were, for some reason that is not apparent from the Board's regulations or from TP&W's behavior, required in short order.<sup>16</sup> Moreover, in my experience of over 10 years with Pioneer, obtaining financing for a variety of transactions, I would be able to obtain loans secured by liens on Pioneer's operating equipment in an amount of between \$1.5 to \$2.0 million in a matter of weeks. Together, these sources of readily available funds would exceed KJRY's offer.

*Operating Plan Projects Profitable Operations From Year One through Year Three and Beyond.* With respect to operating costs of the Line, KJRY's initial estimates in its application were very conservative. Based on more detailed information presently available, KJRY's operating pro forma for the Line shows a considerable profit opportunity, even without handling traffic at Mapleton. A copy of that confidential pro forma is being submitted simultaneously with this filing as a confidential Exhibit 1 to this statement. Without revealing the confidential details of the plan in this public document, suffice it to say that when both local and overhead traffic on the Line is considered (on the assumption that the Board will not allow TP&W to break off and retain the east end of the Line, which would stymie handling of overhead traffic), the revenues from operation of the Line will be ample to perform needed rehabilitation and still yield

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Line is allowed to persist, the greater the difficulty of revitalizing the Line once KJRY's application is granted.

<sup>15</sup> While critical of KJRY's level of debt, TP&W fails to recognize that Pioneer reduced its current liabilities last year by \$2.4 million dollars. Pioneer's financial situation is solid, and improving, as this fact demonstrates.

<sup>16</sup> While KJRY stated that it could use this working capital line to meet any operating revenue shortfall during the first three years of operations, the working capital line would also be available for purchase funding on short notice, which then could be refinanced if necessary.

a profit. Again, however, I want to emphasize that this projection is premised on the Line retaining its character as a through route, allowing single-carrier access from La Harpe to Hollis.

*Pioneer Will Make the Funds Necessary for this Project Available to KJRY.* Finally, TP&W criticizes KJRY's presentation as not definitively showing that Pioneer will make the funds for purchase and operation of the Line available to KJRY. Pioneer's President, CEO and principal stockholder, Mr. Guy Brenkman, has committed to providing funds to KJRY and has given sworn testimony to that effect. It is unclear what more is needed. However, if a written contract is required, such a signed contract between Pioneer and KJRY can be produced.

#### CONCLUSION

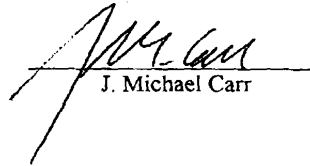
Succinctly, there is no reasonable dispute that KJRY is a financially responsible applicant.

VERIFICATION

I, J. Michael Carr, verify 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.

5-7-03  
Date

  
J. Michael Carr

