

BALL JANIK LLP

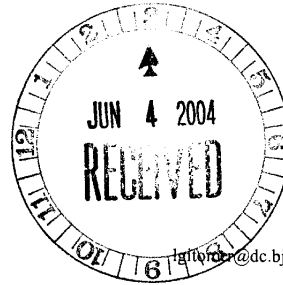
A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532



June 4, 2004

211241

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

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 Toledo, Peoria and Western Railway Corporation Response to Letter Dated May 25, 2004 and three diskettes.

Please time and date stamp the extra copies of this letter and the Response and return them with our messenger. Thank you for your assistance. If you have any questions, please contact me.

Respectfully submitted,

Louis E. Gitomer
Attorney for: Toledo, Peoria and Western
Railway Corporation

Enclosures

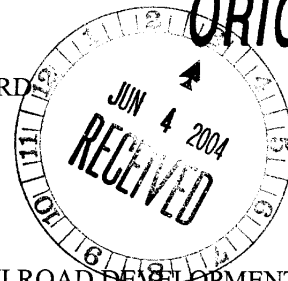
ENTERED
Office of Proceedings

JUN - 7 2004

Part of
Public Record

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

211241

TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION
RESPONSE TO LETTER DATED MAY 25, 2004

ENTERED
Office of Proceedings

JUN - 7 2004

Part of
Public Record

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

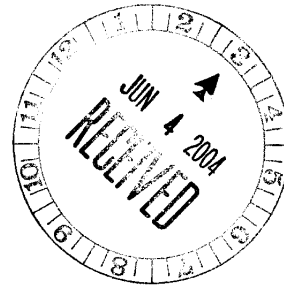
Louis E. Gitomer
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for: TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: June 4, 2004

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
RESPONSE TO LETTER DATED MAY 25, 2004

Toledo, Peoria and Western Railway Corporation ("TP&W") responds to the letter filed on May 25, 2004 (the "Letter") by the Keokuk Junction Railway Company ("KJRY") in order to provide the Surface Transportation Board (the "Board") with the facts concerning the removal of the diamond at Bushnell, IL.

KJRY erroneously claims that TP&W has broken an historic 130-year old route and has disrupted service to three shippers located west of Bushnell. KJRY is wrong. The diamond has been temporarily removed for safety purposes by maintenance forces of The Burlington Northern Santa Fe Railway Company ("BNSF"), the carrier charged with maintenance responsibilities for the crossing, and service to and from the east for shippers on TP&W's line west of Bushnell remains available over a relatively short detour.

BACKGROUND

On April 9, 2003, KJRY filed a Feeder Line Application (the "Application"), as supplemented, seeking 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") for substantially less than the constitutional minimum value of the Line. In the Rebuttal filed on November 7, 2003, KJRY withdrew its request to include the Mapleton Spur as part of the Application. KJRY has now further burdened the record in this proceeding with another irrelevant, immaterial and incompetent pleading.

For decades the tracks of the TP&W, and its predecessors, and BNSF, and its predecessors, have crossed at-grade at Bushnell, IL, most recently through the use of a crossing diamond. BNSF operates many trains across TP&W at Bushnell daily, including two Amtrak trains.

On March 15, 2004, BNSF wrote to TP&W reporting that it had inspected the diamonds that permit BNSF to cross the TP&W at Bushnell and found safety defects. BNSF proposed a detour for TP&W over the track of Archer Daniels Midland Company ("ADM") and removal of the diamonds. See the attached Verified Statement of Scott Hulstrom, the Heartland Regional Vice President. ADM has granted TP&W permission to use its track. Use of the detour over ADM permits TP&W to continue to serve the Line west of Bushnell.

BNSF has also stated that in the event of an emergency, the diamonds will be reinstalled within five days of notification to BNSF. The TP&W/BNSF crossing diamond at Bushnell was removed for safety purposes by maintenance forces of BNSF, the carrier charged with maintenance responsibilities for the crossing. TP&W can provide service west of Bushnell using the detour over ADM.

ARGUMENT

Contrary to KJRY's unfounded assertions, the diamonds were not removed to break the Line. The diamonds were removed to cure safety defects after detour arrangements had been made so that TP&W could continue to serve any customers west of Bushnell who requested service. TP&W points out that no shipper west of Bushnell has requested service from TP&W for over two years.

Following from KJRY's faulty premise of TP&W's inability to operate and serve customers west of Bushnell, the remainder of KJRY's arguments fail.

Shippers on the TP&W west of Bushnell have a direct connection to the east, through the use of the ADM detour. If there is a demand for service from west of Bushnell, there is no need to route traffic west through Keokuk, as KJRY argues. There is no circuitous routing. Traffic can be routed east over the TP&W and the ADM detour. The TP&W line west of Bushnell is not an island. TP&W can access the Line west of Bushnell through use of the ADM detour. The shippers west of Bushnell have not been cut off. Traffic that might move westbound from Peoria still has the option of using the TP&W Line because of the ADM detour. The Line has not been severed, there is no more circuitry, no less efficiency, and no fewer options for shippers.

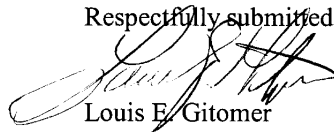
The new "facts" that KJRY alleges in the Letter are wrong. TP&W remains ready, willing and able to serve the shippers on the Line. Despite TP&W's willingness to provide service, the shippers continue to fail to request rail service. The removal of the diamonds at Bushnell has not adversely affected TP&W's ability to serve shippers west of Bushnell.

The Letter adds no facts to the deficient Application filed by KJRY. KJRY has failed to carry its burden of proof on any of the public convenience and necessity criteria ("PC&N") of 49 U.S.C. § 10907(c)(1). KJRY is not required to carry its burden on just one or some of the PC&N

criteria, but on all of them. 49 U.S.C. § 10907(c)(2). Therefore, TP&W respectfully requests that the Board deny the Application.

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Respectfully submitted,



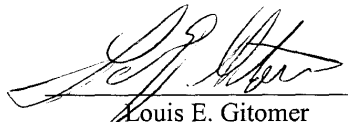
Louis E. Gitomer
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for: TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: June 4, 2004

CERTIFICATE OF SERVICE

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



Louis E. Gitomer
June 4, 2004

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
RESPONSE TO LETTER DATED MAY 25, 2004

VERIFIED STATEMENT OF SCOTT HULSTROM

I am Scott Hulstrom, the Heartland Regional Vice President for the Toledo, Peoria and Western Railway Corporation (“TP&W”), among other short line railroads. I am responsible for the operation, maintenance and marketing for four railroads, including the TP&W.

I am familiar with the TP&W line and the crossing of the TP&W by The Burlington Northern and Santa Fe Railway Company (“BNSF”) east of Bushnell, IL. BNSF moves many trains per day over the crossing at Bushnell, including two Amtrak passenger trains. For at least the past two years, TP&W has not received a request for service that would require it to operate a train over the Bushnell crossing with BNSF.

On March 15, 2004, BNSF wrote to me requesting permission temporarily to remove the crossing diamonds at Bushnell. BNSF had inspected the diamonds at Bushnell and found serious safety defects. BNSF determined that the defects would require significant repair or replacement and that the project would take an extended period of time to complete. Attachment A, letter from Mr. David Clifton.

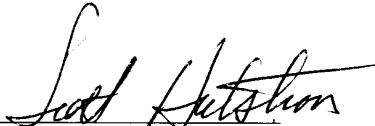
BNSF realized that removing the diamonds would make TP&W unable to serve its customers west of Bushnell and proposed an alternative route over the tracks owned by the Archer Daniels Midland Company ("ADM"). ADM is agreeable to the detour. Attachment B, ADM Permission to Use Trackage.

I have read the letter filed by the Keokuk Junction Railroad Company ("KJRY") with the Surface Transportation Board (the "Board") on May 25, 2004. The premise of the KJRY letter that the shippers on TP&W's line west of Bushnell have lost rail service options and rail service is wrong. Based on the detour arranged by BNSF and agreed to by ADM and TP&W, the shippers on TP&W's line west of Bushnell retain the option of shipping over TP&W and TP&W is able to serve them. It has been more than two years since any shipper west of Bushnell requested service over the TP&W. Service remains available over the "historic" route between Peoria and Keokuk, despite the lack of demand for service. Shippers located on the TP&W east of Bushnell do not have to route traffic west to La Harpe, but can continue to route traffic east on the TP&W line. The TP&W line west of Bushnell is not an island.

I am satisfied that removal of the diamonds at Bushnell will provide for safe operations and the detour arrangement over ADM will permit TP&W to serve its customers west of Bushnell, if any of them request service.

VERIFICATION

I, Scott Hulstrom declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed this 1st day of June 2004.



Scott Hulstrom

ATTACHMENT A



DAVID CLIFTON
*General Manager
Springfield Division*

The Burlington Northern
and Santa Fe Railway Company

1625 Lexington Avenue
Springfield, MO 65802

Phone (417) 829-3200
Fax (417) 829-3222
E-mail David.Clifton@BNSF.com

March 15, 2004

Mr. Scott Hulstrom
Regional Vice President Heartland Region
1990 East Washington Street
East Peoria, IL 61611

Dear Mr. Hulstrom

As you know Burlington Northern Santa Fe Railway has a railroad crossing diamond at Bushnell, IL that crosses the Toledo Peoria and Western Railroad. During a recent inspection of the diamonds by the Burlington Northern Santa Fe, both diamonds were discovered to have serious FRA safety defects. The defects are going to require significant rebuilding of the crossing frogs and or replacement. Unfortunately these repairs will take an extended time period to complete.

Pending review by our Engineering Department I feel the safety of both railroads would be enhanced by temporarily removing the crossing diamonds.

Temporary removal will cause The Toledo Peoria and Western Railroad to be unable to access your customer base west of the diamonds. Burlington Northern Santa Fe can provide an alternative route to cross the Burlington Northern Santa Fe mainlines at Bushnell, IL.

Burlington Northern Santa Fe Railway has contacted The Archer Daniels Midland Company and asks that they provide the Toledo Peoria and Western Railroad access to our main line, storage tracks and connections tracks via their track, which has a common connection between the two Railroads. Archer Daniels Midland is agreeable to this temporary arrangement. All Toledo Peoria and Western customers could be served by use of the Archer Daniels Midland Connection Track at Bushnell, IL

Archer Daniels Midland would require the Toledo Peoria and Western to provide a standard liability document relieving them of any damage and injury liability as a result of any accident on Archer Daniels Midland property at Bushnell.

In the event of an emergency the crossing diamonds will be re-installed within 5 days of notification to Burlington Northern Santa Fe Railway by the Toledo Peoria and Western Railroad.

The crossing signals protecting the diamond and manual interlocking plant will remain in service.

I regret the inconvenience that this has caused your railroad but, look forward to hearing from you in the near future.

If you have any questions please feel free to contact me or David Adams, Springfield Division Superintendent Operations at (309) 345-6221.

Sincerely,

David Clifton
General Manager

Cc: David Adams
Mark Johnson
Greg Luck

ATTACHMENT B

Archer Daniel Midlands

PERMISSION TO USE TRACKAGE

Archer Daniel Midlands (hereinafter referred to as "Owner") hereby grants to Toledo, Peoria & Western Railway Corp. (hereinafter referred to as "Railroad"), the right to enter upon its property and right of way for the following purposes: use the trackage owned by Owner that connects the Railroad mainline with that of The Burlington Northern and Santa Fe Railway Company at Bushnell, IL. Said right shall expire on April 1, 2005.

In consideration of the permission herein granted by Owner and without any other consideration, Railroad hereby agrees to indemnify, defend, and hold harmless Owner and its directors, officers, employees and agents from and against any and all loss, damages, claims, demands, actions, causes of action, and liability of any kind (including reasonably attorneys' fees, court costs and expenses related thereto) including loss resulting from injury to or death of any persons, including Railroad's officers, agents, employees, and contractors, or damage to property, arising from or related to Railroad's operation or repair of the track owned by Owner. Railroad's indemnity obligation hereunder shall apply regardless of whether the negligence of Owner is a sole or contributing cause of such injury, death, or damage. Railroad accepts the condition of the track "AS IS, WHERE IS" and agrees that any and all improvements to the track once added are the property of Owner.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in duplicate this 28 day of March 2004.

I agree to be bound by the terms and conditions set forth above.

Railroad:

Signature

Name (printed)

Title

Company

Scott A. Hulstrom
Scott A. Hulstrom
Regional Vice President
Raw America / TPOR

PERMISSION GRANTED:

By: Carolyn Murray
Owner
Senior Vice President-Transportation

V:\Dept\Legal\FORMS\Railroad\Permission to Enter.doc