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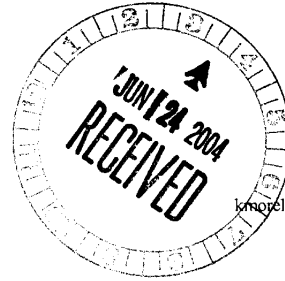
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June 24, 2004

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JUN 24 2004

Part of
Public Record

**RE: Finance Docket No. 34509, Kaw River Railroad, Inc. -- Lease
Exemption -- The Kansas City Southern Railway Company**

Dear Secretary Williams:

Attached for filing are the original and ten copies of the Reply To Petitions To Revoke.

Please time and date stamp the extra copy of the Reply and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in cursive script that reads 'Karl Morell'.

Karl Morell

Enclosures

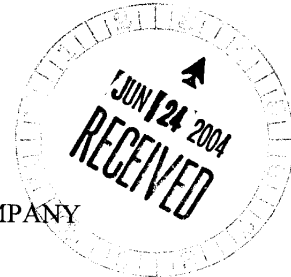
ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34509

KAW RIVER RAILROAD, INC.
--LEASE EXEMPTION--
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

REPLY TO PETITIONS TO REVOKE



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Attorney for:
KAW RIVER RAILROAD, INC.

Dated: June 24, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34509

KAW RIVER RAILROAD, INC.
--LEASE EXEMPTION--
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

REPLY TO PETITIONS TO REVOKE

The Kaw River Railroad, Inc. ("KRR"), hereby replies in opposition to the Petitions To Revoke ("Petitions") filed separately by the Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters ("BLET") on June 4, 2004 and by the United Transportation Union ("UTU"), on June 14, 2004 (collectively, the "Unions").

The Petitions were filed pursuant to the provisions of 49 C.F.R. Part 1121 which, in pertinent part, requires a party seeking to revoke a notice of exemption to "provide all of its supporting information at the time it files its petition."¹ 49 C.F.R. § 1121.3(c). The Petitions, however, are devoid of any meaningful information addressing the statutory standard for revoking an exemption. While it is unclear, the Unions appear to be making the same argument advanced by BLET in its Petition For Stay: namely, that the tracks at issue in this proceeding are switching tracks and, therefore, excepted from the Board's entry jurisdiction under Section

¹ While a party seeking discovery pursuant to Part 1121 may supplement its petition, the supplemental filing is limited to information obtained through discovery. 49 C.F.R. § 1121.3(c).

10906. The Board rejected that argument in its decision served May 28, 2004, denying the Petition For Stay, and should do so again here.

The Unions' request to have the Notice of Exemption revoked is misguided in two fundamental respects. First, as BLET conceded in its stay request and as the Board correctly found in its May 28th decision, some of the trackage over which KRR is operating is main line trackage which does not fall within the scope of Section 10906, even under prior use.

Second, even if some of the trackage at issue in this proceeding constituted excepted yard or switching trackage for The Kansas City Southern Railway Company ("KCS"), the appropriate focus is not KCS's past use, but KRR's intended use. In determining whether a particular track segment is excepted from Board jurisdiction pursuant to Section 10906, the courts, the Board and the Board's predecessor, the Interstate Commerce Commission ("ICC"), focused on the intended use of the track and not on the nomenclature used by a party in describing the track or the use of the track by the prior operator. Finance Docket No. 32394, *Brotherhood of Locomotive Engineers v. Union Pacific Railroad Company and Iowa Interstate Railroad* (not printed), served November 6, 1995; *Brotherhood of Locomotive Eng'rs v. STB*, 101 F.3d 718 (D.C. Cir. 1996) ("*BLE v. STB*"); STB Finance Docket No. 33323, *Chicago Rail Link, L.L.C. – Lease and Operation Exemption – Union Pacific Railroad Company* (not printed), served September 2, 1997; *Effingham RR Co. – Pet. For Declaratory Order*, 2 S.T.B. 606 (1997); *United Transportation Union v. STB*, No. 98-1469, slip op. (7th Cir. February 25, 1999).

Under the Board's now well established intended use test, the jurisdictional status of leased track is determined, not by its historic character or use, but by the tenant's intended use in the context of the larger purpose and effect of the transaction. As KRR previously explained, it will utilize the involved rail lines to serve new shippers and interchange traffic with three Class I

railroads. Thus, the trackage, in KRR's, hands will constitute "an extended or additional railroad line" within Section 10901 and not switching track excepted from the Board's licensing jurisdiction under Section 10906.

CONCLUSION

KRR respectfully urges the Board to summarily deny or reject the Petitions for failing to provide any supporting information as required by the Board's rules and failing to address, much less meet, the revocation standards set forth in 49 U.S.C. § 10502(d).

Respectfully submitted,



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Attorney for:
KAW RIVER RAILROAD, INC.

Dated: June 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2004, I have caused a copy of the foregoing
Reply to the Petitions To Revoke to be served on all parties of record in this proceeding.

A handwritten signature in cursive script, reading "Karl Morell", is written over a horizontal line.

Karl Morell