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JUL 06 2004

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Public Record

July 6, 2004

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 Clarification 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

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 CLARIFICATION OF THE RECORD REGARDING THE REMOVAL OF
THE CROSSING DIAMOND BY KEOKUK JUNCTION RAILWAY CO.

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Attorneys for: TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: July 6, 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
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TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION
RESPONSE TO CLARIFICATION OF THE RECORD REGARDING THE REMOVAL OF
THE CROSSING DIAMOND BY KEOKUK JUNCTION RAILWAY CO.

Toledo, Peoria and Western Railway Corporation (“TP&W”) responds to the Clarification of the Record Regarding the Removal of the Crossing Diamond filed on June 15, 2004 (the “Clarification”) by the Keokuk Junction Railway Company (“KJRY”). TP&W urges the Surface Transportation Board (the “Board”) to conclude that the “Clarification” is nothing more than another misleading pleading filed by KJRY that misrepresents the facts. As Mr. Hulstrom explains in the attached verified statement: “KJRY recently requested two cars from TP&W, which TP&W delivered to KJRY in a timely fashion over the detour. TP&W’s actual operation over the detour is the true answer to any of KJRY’s misplaced concerns. The detour works.” The fact that the detour has been successfully used for cars ordered by KJRY should resolve all of the issues erroneously raised by KJRY.

TP&W is not moving to strike the Clarification, even though it is nothing more than a thinly veiled impermissible reply to a reply (See 49 C.F.R. § 1104.13(c)), so as not to burden the record with another reply from KJRY, unless KJRY elects to file another impermissible reply to reply, and to preserve an example of unreliable evidence.

BACKGROUND

KJRY filed a letter on May 25, 2004 “advising” the Board that the crossing diamond at Busnell, IL had been removed “breaking the historic through route between Peoria and Keokuk”. Not only was the May 25th letter filed well beyond the close of evidence in this proceeding and without even the pretense of asking the Board to reopen the record to permit the filing of such purported evidence, but the May 25th letter was wrong. On June 4, 2004, TP&W responded.

TP&W explained that the Burlington Northern and Santa Fe Railway Company (“BNSF”) crossed TP&W’s line at Bushnell, and had removed the diamond for safety reasons so that BNSF could continue to operate it’s through trains over its line. TP&W presented a verified statement from Mr. Scott Hulstrom, the Heartland Regional Vice President for the TP&W, and agreements with the Acher Daniels Midland Company (“ADM”) and BNSF for the detour of traffic. As was clear from TP&W’s prior response, BNSF removed the diamonds and the detour used by TP&W is solely for the convenience of BNSF.

KJRY has now filed a “Clarification” that includes a verified statement of the detour operations by KJRY’s General Counsel, Mr. LaKemperer. Mr. LaKemperer states that he has “18 years experience representing KJRY and numerous other Class III railroads.” Mr. LaKemperer, however, carefully fails to mention any railroad operating experience. Mr. LaKemperer, then goes on to state that after TP&W replied to KJRY’s May 25th letter that it became “imperative to provide this verified statement.” If Mr. LaKemperer were truly as experienced representing railroads as he claims to be, then he would have known that it was imperative to provide a verified statement with the May 25th letter and that the verified statement should have been from someone knowledgeable about railroad operations. But, as has been typical throughout this proceeding, KJRY has again flaunted the Board’s rules in seeking a litigating advantage where the true facts belie KJRY’s claims.

ARGUMENT

KJRY’s “Clarification” is grounded in the following statement made on page 4, “other than the bold assertions made by TP&W’s counsel, TP&W makes no effort to demonstrate specifically how it can actually bridge the gap created by the removal of the diamonds or whether operation on BNSF’s line is required to accomplish it.” To counter TP&W’s “bold assertions” KJRY sent its General Counsel to inspect the operations. Were it not for the seriousness of KJRY’s false claims, the irony of KJRY’s action would be worthy of O’Henry.

KJRY makes an incredible leap of faith when it states that “As Mr. LaKemperer’s investigation establishes, the statements by TP&W’s counsel are misleading at best and simply wrong in most instances.” “Clarification” at 5. Actually, Mr. LaKemperer’s investigation and verified statement establish that Mr. LaKemperer does not know what he is doing and knows nothing about railroad operations, a malady infecting KJRY’s entire case in this proceeding. The verified statement of Mr. Hulstrom in the Attachment explains the operation of the detour.

For west bound traffic, the TP&W train travels north on the ADM track to a connection with BNSF’s main track 2, not the “northbound main” created in Mr. LaKemperer’s fiction. The train then travels south on BNSF’s main track 2 to a crossover from BNSF main track 2 to BNSF main track 1, where it is taken north to one of two side tracks (either 6301 or 6302) for connection back to TP&W’s main line. For east bound traffic, the reverse move would occur.

The crossing of BNSF and TP&W occurs at about milepost 191.4 on the BNSF. The crossover on BNSF between main track 2 and main track 1 occurs between milepost 192.4 and milepost 192.5, apparently outside of Mr. LaKemperer’s field of observation.

KJRY even has the audacity to raise the issue of safety in the “Clarification” even though KJRY refused to provide information about its safety record. In response to TP&W’s motion to compel KJRY argued “This sort of request is irrelevant and clearly outside the purview of this proceeding because it is the FRA that oversees issues relating to rail carriers, not TP&W.” Reply of Keokuk Junction Railway Co. to Toledo, Peoria and Western Railway Corporation’s Motion to Compel Discovery dated September 15, 2003, at 13-14. TP&W is more than willing to compare its safety record and Jacobson awards to KJRY. TP&W knows how to and does operate a safe railroad. Unlike KJRY, TP&W does not invade another railroad’s property without permission using untrained personnel.

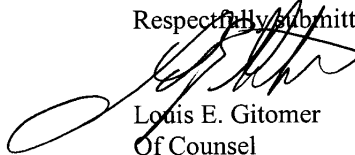
KJRY has filed an impermissible pleading under the guise of a "Clarification." TP&W does not seek to have the "Clarification" stricken from the record, but preserved in the record as a prime example of the unreliability of KJRY's evidence in this proceeding. KJRY has submitted a verified statement by its General Counsel, not a person experienced in railroad operations. The inspection conducted by Mr. LaKemperer was at best incomplete and at worst incompetent. In either case, Mr. LaKemperer's false claims have been completely refuted by Mr. Hulstrom, who is in charge of TP&W's operations, maintenance and marketing.

CONCLUSION

TP&W respectfully requests the Board to conclude that it has arranged a detour necessary to serve its customers as an accommodation to BNSF as a result of BNSF's removal of the crossing diamonds at Bushnell, IL.

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Respectfully submitted,



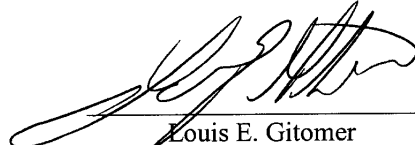
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Attorneys for: TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: July 6, 2004

CERTIFICATE OF SERVICE

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



Louis E. Gitomer
July 7, 2004

ATTACHMENT-VERIFIED STATEMENT OF SCOTT HULSTROM

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY COMPANY—FEEDER RAILROAD DEVELOPMENT
APPLICATION—LINE OF TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION
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TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION RESPONSE TO
CLARIFICATION OF THE RECORD REGARDING THE REMOVAL OF THE CROSSING
DIAMOND BY KEOKUK JUNCTION RAILWAY CO.

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 previously filed a verified statement in this proceeding on June 2, 2004, regarding the detour of TP&W’s routing. I have read the Clarification filed by the Keokuk Junction Railroad Company (“KJRY”) with the Surface Transportation Board (the “Board”) on May 25, 2004, and closely studied the verified statement by Mr. LaKemperer. I am responding to Mr. LaKemperer’s inaccurate statement.

KJRY recently requested two cars from TP&W, which TP&W delivered to KJRY in a timely fashion over the detour. TP&W’s actual operation over the detour is the true answer to any of KJRY’s misplaced concerns. The detour works.

I find it unusual that the KJRY would assign its General Counsel, who apparently has no railroad operating experience, to inspect the detour arrangement instead of an operating officer.

However, this may explain why Mr. LaKemperer was unable to find the tracks that are used for the detour. I also take it as a personal affront that KJRY would not believe my sworn testimony and send its lawyer out to check my statement.

I am responsible for the TP&W's operations, maintenance and marketing. Unlike Mr. LaKemperer, I am familiar with the TP&W line, the crossing of the TP&W by The Burlington Northern and Santa Fe Railway Company ("BNSF") near of Bushnell, IL, and the detour arranged by BNSF and agreed to by TP&W. I want to assure the Board that TP&W would not have agreed to the detour arrangement proposed by BNSF if TP&W would not have been able to serve its customers. Moreover, TP&W did not remove the diamonds, BNSF did. TP&W is accommodating BNSF by agreeing to the detour arrangement, and if the detour becomes burdensome, TP&W can and will request BNSF to replace the diamonds. BNSF has agreed to replace the diamonds upon TP&W's request.

Attached as Exhibit 1 is a BNSF track chart of the Bushnell, IL area that I will use to illustrate TP&W's use of the detour. A west bound train would move from TP&W's line onto the Acher Daniels Midland Company ("ADM") track north of the TP&W line at point 1. The train will then move from the ADM Track, south on BNSF main track 2 to the cross-over to main track 1 at point 2 on the track chart. The train will enter either track 6301 or 6302 and then proceed back to the TP&W line at point 3. An east bound train would reverse the movement of a west bound train.

Although this is not as efficient a movement as directly over TP&W's main line, TP&W retains its ability to provide service. In light of the lack of requests for service that TP&W has received for traffic moving west of Bushnell in recent years, this detour is sufficient. In addition, this detour is safe. Since I am responsible for TP&W's operation and maintenance, I would not

risk TP&W's excellent safety rating for an unsafe detour. The detour is safe. This detour is not of TP&W's making, but is an accommodation to BNSF.

As I stated in my previous verified statement, BNSF broke the TP&W line and has pledged to repair it expeditiously when necessary. Mr. LaKemperer made an incomplete inspection of the facilities and submitted an inaccurate statement to the Board. I urge the Board to reject Mr. LaKemperer's statement that TP&W severed a historic line and cannot provide service. The service TP&W provided to KJRY belies Mr. LaKemperer's statement.

I remain 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 July 2004.

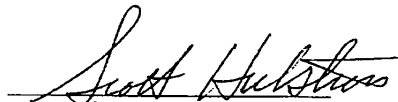

Scott Hulstrom

EXHIBIT 1

