

KEOKUK JUNCTION RAILWAY CO.

1318 S. JOHANSON ROAD
PEORIA, ILLINOIS 61607
(309) 697-1400



May 2, 2005

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

ENTERED
Office of Proceedings

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Public Record

213 909

RE: Docket No. FD 34668 — Keokuk Junction Railway Co. — Temporary Trackage Rights Exemption — BNSF Railway Company between Blair Junction and Bushnell, Illinois.

Dear Secretary Williams:

Enclosed, per 49 C.F.R. §1180.6(a)(7)(ii), is an executed copy of the Temporary Trackage Rights Agreement between Keokuk Junction Railway Co. ("KJRY") and BNSF Railway Company ("BNSF"), providing for the movement of KJRY trains over BNSF between Blair Junction and Bushnell, Illinois, pending the installation of new crossing diamonds at Bushnell, per the Board's Order of February 7, 2005 in F.D. No. 34335.

I am also pleased to report to the Board that train operations on the feeder line (between LaHarpe and Hollis, Illinois) began on Monday, March 21, 2005 (the connection at Blair Junction was completed on Friday, March 18). While work continues on the feeder line, and much remains to be done before the line is fully operational, KJRY has moved 229 revenue loads over the line since March 21, for five different customers, including 118 cars originating in Keokuk and interchanged to another carrier at Peoria, and 110 cars that originated or terminated on the feeder line segment (one other load was handled over the line from Peoria to a KJRY station west of LaHarpe). KJRY is aggressively marketing this line, and has received an enthusiastic reception from customers, and local communities. In fact, we have received requests for rates from long-dormant customers.

KJRY appreciates the opportunity the Board gave us to restore this much-needed service to the feeder line, and also appreciates the efforts of the Board's staff, particularly Mel Clemens, in helping resolve the diamond issue.

Sincerely yours,

Guy L. Brenkman,
CEO.

**TEMPORARY TRACKAGE RIGHTS AGREEMENT
AND
SUPPLEMENTAL AGREEMENT TO THE SEPTEMBER 16, 1932
CROSSING AND INTERLOCKER AGREEMENT
BUSHNELL, ILLINOIS**

This SUPPLEMENTAL AGREEMENT made this 18th day of March, 2005 ("effective date"), by and between BNSF RAILWAY COMPANY, formerly known as The Burlington Northern and Santa Fe Railway Company ("BNSF"), a Delaware corporation (hereinafter referred to as "BNSF") and THE KEOKUK JUNCTION RAILWAY CO., an Iowa corporation (hereinafter referred to as "KJRY").

WHEREAS, BNSF, as the successor to the Chicago, Burlington & Quincy Railroad Company, and KJRY, as the successor to the Toledo, Peoria & Western Railroad ("TPW") with regard to the rail line between Hollis, IL and LaHarpe, IL, are parties to an agreement dated September 16, 1932 (as amended on November 1, 1939, October 10, 1956, and June 20, 1979, providing for the ownership, maintenance, repair and renewal of two railroad crossings at grade and related interlocking plant near BNSF's Milepost 191.44 at Bushnell, Illinois (the "Original Agreement"); and

WHEREAS, the two (2) diamond crossings at Bushnell, Illinois have been removed; and

WHEREAS, for reasons of economy and efficiency the parties desire to use, as a temporary measure only, an alternate crossing means to the diamond crossings by constructing connecting tracks and turnouts between KJRY's line and BNSF's line at the locations of Blair Junction, IL and Bushnell, IL and further seek to define responsibility for construction, maintenance, and operations of the diamond crossing configuration at Bushnell, IL.

NOW, THEREFORE, the parties hereto agree as follows:

A. Temporary Crossing Arrangements

BNSF and KJRY agree to implement temporary crossing arrangements ("Temporary Crossing Arrangements") pursuant to the terms set forth in this Section A of this Supplemental Agreement until such time as permanent crossing arrangements are implemented pursuant to the terms of Section B of this Supplemental Agreement.

1. Turn-out and Connecting Track Reconstruction at Blair Jct., IL and Bushnell, IL

(a) At Blair Junction, near BNSF Milepost 157.2 on BNSF's Beardstown Subdivision, BNSF will construct one (1) No. 11 turnout as well as trackage from that turnout to the end of its property line necessary to connect BNSF's track with KJRY's track. KJRY shall pay \$25,000.00 for its share of the cost of the temporary installation on BNSF property, and BNSF shall bear all other costs related to the construction on BNSF

property. KJRY shall render said payment to BNSF not later than 30 days following implementation of the temporary crossing arrangements.

(b) At Blair Junction, near KJRY Milepost 167.4, KJRY will reconstruct, at its sole cost and expense, all necessary facilities and trackage required to be located on KJRY property as necessary to facilitate the temporary crossing and connect KJRY's track with BNSF's track at said location.

(c) At Bushnell, extending westward from BNSF's yard track number 6301 near BNSF Milepost 191.48 on BNSF's Brookfield Subdivision, BNSF has existing trackage to the end of its property line necessary to connect BNSF's track with KJRY's track. At Bushnell, near KJRY Milepost 170.9, KJRY will reconstruct, if necessary, at its sole cost and expense, any turnouts, facilities, and/or trackage on KJRY property as necessary to connect KJRY's track with BNSF's track.

(d) Upon execution of this Supplemental Agreement, the parties will initiate the reconstruction tasks for the temporary crossing and pursue them to completion with reasonable dispatch. BNSF anticipates that its turnout installation will be completed by March 18, 2005, assuming no uncontrollable events delay the completion date.

2. Turnout and Connecting Track Maintenance at Blair Jct., IL and Bushnell, IL.

(a) At Blair Junction, BNSF will maintain, repair and renew the turnout and connecting track, at its sole cost and expense, from the switch point on its mainline to the end of its property line.

(b) At Blair Junction, KJRY will maintain, repair and renew the turnout and connecting track, at its sole cost and expense, from the switch point on its mainline to the end of its property line.

(c) At Bushnell, BNSF will maintain, repair and, at its sole cost and expense, the connecting track extending beyond its yard track 6301 to the end of its property line.

(d) At Bushnell, KJRY will maintain, repair and renew the turnout and connecting track, at its sole cost and expense, from the switch point on its mainline to the end of its property line.

3. Grant of Temporary Overhead Operating Rights to KJRY

(a) For the lesser of a term i) coterminous with the temporary crossing operations; or ii) one year from the effective date of this Supplemental Agreement, BNSF shall grant to KJRY the temporary trackage rights to operate its trains, locomotives, cars and

equipment with its own crews (hereinafter referred to as the "Overhead Operating Rights") over BNSF's railroad between a point near Milepost 157.2 at Blair Junction, IL and near Milepost 159.7 at Bushnell, IL on BNSF's Beardstown Subdivision and between a point near Milepost 192.4 and near Milepost 191.48 at Bushnell, IL on BNSF's Brookfield Subdivision for a total distance of approximately 3.48 miles (hereinafter referred to as "Subject Trackage") including any sidings or appurtenances, as a temporary crossing arrangement and as so marked by a red dashed line on the Exhibit "A" hereto attached. The parties hereto agree, subject to the terms and conditions herein provided, that KJRY shall have these Overhead Operating Rights over the Subject Trackage for the sole purpose of crossing BNSF lines to enter and exit from its own line and for no other purpose whatsoever.

(b) The operation by KJRY on or along the Subject Trackage shall at all times be in accordance with the rules, instructions, and restrictions of BNSF. (Trains will be powered to a minimum horsepower of 1.2 per trailing ton). The gross weight limit on the rail per car load will not exceed 286,000 lbs.

(c) It is understood and agreed that KJRY shall not have a right to:

(i) Handle any traffic other than its own trains, locomotives, cars and equipment over the Subject Trackage (except for haulage cars handled by KJRY trains in the ordinary course of business); or

(ii) Set out, pickup or store cars, or switch upon the Subject Trackage, or any part thereof, except as necessary for handling equipment that is bad ordered en route; or

(iii) Serve any industry, team or house track now existing or constructed in the future along the Subject Trackage, which heretofore has not been served by KJRY;

(iv) Connect with itself or any other railroad at any location along the Subject Trackage; or

(v) Interchange with any other railroad along the Subject Trackage; or

(vi) Permit or admit any third party to the use, directly or indirectly of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage.

(d) In the event that for operating convenience, necessity or emergency, BNSF permits or directs KJRY to use adjacent BNSF track and/or track connections between or beyond the terminal of the Subject Trackage as an alternative route, then such trackage, track connections and appurtenances shall be deemed to be part of the

Subject Trackage for the limited time and scope necessary to effect BNSF's directed reroute.

(e) The Subject Trackage is the property of BNSF and this Supplemental Agreement does not vest any right of ownership to KJRY or any other right other than for the purpose of allowing KJRY to enter and exit its own track at Blair Junction, IL and Bushnell, IL.

(f) In lieu of the crossing diamond maintenance expenses and the interlocking signal expenses, all ordinary maintenance, operating and capital expenses covering maintenance of the Subject Trackage shall be apportioned to KJRY as follows:

(g) For the maintenance, repair, and renewal of the Subject Trackage, KJRY will pay to BNSF a flat monthly rate of (\$1,566.51) which rate shall be prorated, as appropriate, in the event the commencement and/or termination of operations under the temporary trackage rights occurs midmonth.

(h) The crossing protocols governing the crossing in the Original Agreement shall govern the temporary crossing operations under this Supplemental Agreement.

(i) KJRY has filed a Temporary Trackage Rights Exemption Notice with the Surface Transportation Board. BNSF will cooperate with such filing and reimburse KJRY for the filing fees of such Notice. KJRY shall bear the attorney fees and all other costs and expense.

4. Liability and Indemnity

This Supplemental Agreement provides for a temporary alternate route for KJRY's contiguous line of railroad in lieu of using crossing diamonds as a means of crossing the lines of BNSF at Bushnell. The liability and indemnity provisions of the Original Agreement shall have the same application to the temporary crossing arrangement covered by this Supplemental Agreement as if the temporary crossing infrastructure were the "interlocking plant" as described in the Original Agreement. For so long as the temporary crossing rights remain in effect, KJRY shall maintain in effect, at its sole cost and expense insurance coverage which shall cover the temporary crossing on the same terms as set forth in the BNSF/KJRY Keokuk Crossing Agreement for Keokuk, IA, which terms and conditions shall be deemed incorporated herein by reference. Coverage for the temporary crossing shall have BNSF named as an additional insured.

B. Reinstallation of Permanent Crossing Arrangements at Bushnell, IL

BNSF and KJRY agree to implement permanent crossing arrangements pursuant to the terms set forth in this Section B of this Supplemental Agreement. Upon execution of this Supplemental Agreement, the parties will initiate the tasks necessary to reinstall diamonds at Bushnell, IL in lieu of the temporary crossing arrangements and shall pursue them to completion with reasonable dispatch. The parties anticipate that the diamonds will be restored within 90-180 days from the effective date of this Supplemental Agreement.

1. Installation of Crossing Diamonds at Bushnell, IL

- (a) BNSF will install two "OWLS" crossing diamonds ("Crossing Diamonds") at Bushnell, IL in the same locations as the previously existing diamonds under the Original Agreement.
- (b) The material costs of one Crossing Diamond shall be borne by BNSF and the material costs of the other Crossing Diamond shall be borne by KJRY, as provided hereinbelow.
- (c) All labor reinstallation costs for both Crossing Diamonds shall be BNSF's responsibility. After both Crossing Diamonds have been reinstalled, all future renewals shall be governed by the terms of the Original Agreement.
- (d) BNSF shall order and deliver both of the Crossing Diamonds in accordance with its specifications for a good and sufficient crossing.
- (e) Within thirty (30) days after said Crossing Diamonds have been ordered by BNSF, KJRY shall, upon presentation of a copy of an invoice, reimburse BNSF within thirty (30) days for the cost of one such Crossing Diamond in an amount not to exceed \$85,000.

2. Maintenance, Repair, and Operation of Crossing Diamonds

Once the Crossing Diamonds are installed, the terms of the Original Agreement shall govern the maintenance, repair, renewal and operation thereof, except that BNSF shall perform, and bear the costs of, regular maintenance, repair and operation thereof on the OWLS diamonds, provided that KJRY shall reimburse BNSF for the costs thereof at a monthly flat rate of \$500.00 for the ordinary maintenance, for so long as the crossings have OWLS diamonds.

Said monthly flat rate of \$500.00 shall be subject to increase or decrease commencing on July 1, 2008, and July 1st of each year thereafter, based on the percentage of change in the Association of American Railroads Railroad Cost Recovery Index, Series RCR (1977=100), Table A-1, for the Western District Material Prices, Wage Rates and Supplements Combined (excluding fuel) for the year 2006, which shall be used as the "base year," to the calendar year immediately prior to the year in which the charge is to be made effective. Thus, the percentage change from the year 2007 to the year 2006 will be used to adjust the charge July 1, 2008. In no case, however, will the monthly amount be reduced below \$500.00

C. Term of Supplemental Agreement and Effect of Original Agreement

- (1) Except as expressly provided otherwise in this Supplemental Agreement, the terms and conditions of this Supplemental Agreement shall continue in force and effect for the term of the Original Agreement. No termination or expiration of the term of this Supplemental Agreement shall release any party hereto from any liability or obligation that may have been incurred by or that may have accrued against it hereunder during the term hereof.
- (2) The parties acknowledge and agree that the terms of the Original Agreement (including, without limitation, all rights, liabilities, obligations, and indemnities thereunder) shall have been effectively assigned to KJRY as of February 11, 2005.
- (3) KJRY acknowledges and agrees that the terms of that certain Bushnell, IL Switching/Train Handling Agreement Between The Burlington Northern and Santa Fe Railway Company and The Toledo, Peoria & Western Railway Corp., dated effective June 2, 2004, shall, as between the parties hereto, have no binding force and effect.
- (4) Except as amended and supplemented herein, all other terms of the Original Agreement remain in full force and effect.
- (5) Upon written notice from BNSF to KJRY that the Crossing Diamonds have been installed and have become operational, the Temporary Crossing Arrangements, as provided for in Section A of this Supplemental Agreement, shall be terminated as of the date of such notice and thereafter have no force and effect. Each party may, at its discretion, remove the necessary trackage constructed to facilitate the Temporary Crossing Arrangements.
- (6) Except to the extent expressly provided otherwise herein, the dispute resolution procedures under the Original Agreement shall govern any disputes concerning this Supplemental Agreement; provided, however, disputes concerning the enforcement of performance or enforceability of the terms of Section B (1) of this Supplemental

Agreement may be resolved in any federal district court of competent jurisdiction, or if no federal court is vested of competent jurisdiction, any court of competent jurisdiction in Cook County, Illinois. Notwithstanding any provision to the contrary, after the Crossing Diamonds have been installed, the dispute resolution procedures under the Original Agreement shall govern any and all disputes.

(7) Except where expressly provided otherwise herein, the billing and payment procedures under the Original Agreement shall apply to any matters requiring billing and payment under the terms of this Supplemental Agreement.

D. Notices

Notwithstanding any provision to the contrary in the Original Agreement, any notice required or permitted to be given by one party to the other under this Supplemental Agreement or the Original Agreement shall be served upon the following:

If to the BNSF:
Assistant Vice President Contracts and Joint Facilities
BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76161-0034

If to the KJRY:
Chief Operating Officer
Keokuk Junction Railway
1318 S. Johanson Road
Peoria, IL 61607

IN WITNESS WHEREOF, the parties have caused this Supplemental Agreement to be executed dates listed below and effective as of the agreed Effective Date.

BNSF RAILWAY COMPANY

By: D. B. Valentine

Printed: D. B. VALENTINE

Title: AVA CONTRACTS & JOINT FAC

Date: 4/25/2005

**KEOKUK JUNCTION RAILWAY
CO.**

By: Guy Breukman

Printed: GUY Breukman

Title: PRESIDENT

Date: APRIL 12, 2005

Exhibit for KJRY Temporary Crossing over BNSF Trackage between Blair Junction, IL and Bushnell, IL

