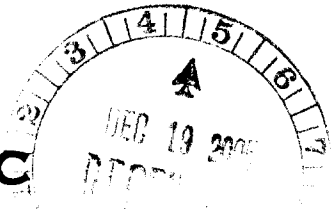


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December 19, 2005

BY HAND DELIVERY

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

RECEIVED
DEC 19 2005
U.S. DEPT. OF TRANSPORTATION
PUBLIC RECORD

Re: STB Finance Docket No. 34795

*Roquette America, Inc. - Petition for Exemption from 49 U.S.C. §10901 to
Construct a New Line of Rail in Keokuk, IA*

Dear Secretary Williams:

I am enclosing herewith an original and 11 copies of the Reply of Keokuk Junction Railway Co. to the petition of Roquette America, Inc. ("Roquette") for an exemption from the application requirements of 49 U.S.C. §10901 to allow Roquette to construct a rail line at Keokuk, IA. As can be seen from the certificate of service, a copy of this reply has been served on all parties of record to this matter today.

Please acknowledge receipt and filing of the accompanying reply by date-stamping the enclosed 11th copy of this reply and returning it to the person making this filing for return to me. If there are any questions concerning this filing, please contact me by phone at (202) 663-7823 or by e-mail at wmullins@bakerandmilller.com.

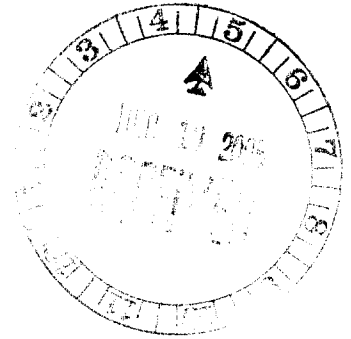
Sincerely,

William A. Mullins

cc: Daniel A. LaKemper
All Parties of Record

CONTAINS COLOR COPIES

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



STB FINANCE DOCKET NO. 34795

**ROQUETTE AMERICA, INC. - PETITION FOR EXEMPTION FROM 49 U.S.C. §10901
TO CONSTRUCT A NEW LINE OF RAIL IN KEOKUK, IA**

REPLY TO PETITION FOR EXEMPTION

215384

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Attorneys for Keokuk Junction Railway Co.

December 19, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB FINANCE DOCKET NO. 34795

**ROQUETTE AMERICA, INC. - PETITION FOR EXEMPTION FROM 49 U.S.C. §10901
TO CONSTRUCT A NEW LINE OF RAIL IN KEOKUK, IA**

REPLY TO PETITION FOR EXEMPTION

Keokuk Junction Railway Co. ("KJRY"), a Class III carrier that provides neutral switching service to the facilities of Roquette America, Inc. ("Roquette" or "Petitioner"¹) at Keokuk, IA, submits this reply to Roquette's petition for an exemption from the application requirements of 49 U.S.C. §10901 ("Petition") to construct a regulated common carrier rail line at Keokuk in order to connect Roquette's existing plant track to the BNSF Railway Company ("BNSF"). KJRY submits that the Petition should be dismissed or, at the very least, that the Board should establish a procedural schedule allowing full exploration of the complex legal and factual issues of Roquette's deceptively simple proposal.

SUMMARY

Roquette's Petition should be dismissed. First, because Roquette proposes only to construct industrial track, not a regulated common carrier line of railroad, the proposed construction cannot be undertaken pursuant to Section 10901 (or an exemption therefrom) but is, rather, classic Section 10906 track. The character of the track, including its length, location and

¹ It is unclear whether the petitioner is Roquette, as indicated in the title of the pleading and in the cover letter and by the verification, or is a newly-created or to-be-created, wholly-owned subsidiary of Roquette named Roquette America Railway, Inc. ("RARI"), as stated in the first paragraph of the petition. Accordingly, the petitioner is referred to herein as Roquette.

intended use, all part and parcel of a large industrial complex, are indicative of a spur or industry track under Board and court precedent. Second, Section 10901 can only be invoked as authority to construct a rail line if the proposed construction involves an extension of service to new territory and will provide the shipper with access to a carrier not already serving the facility. Because BNSF already serves Roquette's Keokuk plant via switching and carried over 93.5% of Roquette's outbound line-haul business from that plant between January 2001 through December 15, 2005, the proposed track would not provide Roquette with access to a new carrier or BNSF with access to new territory. Therefore, the operation and construction of the track cannot be approved by the Board under 49 U.S.C. §10901. Finally, it is clear that the proposal, if approved, would eventually involve RARI operating over what could be argued to be terminal tracks of KJRY without RARI or Roquette having obtained terminal trackage rights authority pursuant to the criteria and precedents of 49 U.S.C. §11102. For all of these reasons, Roquette's petition is legally insufficient and should be dismissed.

Even if the Board refuses to dismiss the Petition at this time, there are substantial factual issues in dispute (KJRY served discovery on Roquette on December 16 to begin developing those facts) which require development on the record before the Board can rule on Roquette's Petition. For example, it is KJRY's belief that Roquette does not own the Hub Track, the centerpiece of Roquette's plan. KJRY has reason to believe that Roquette transferred the Hub Track to KJRY in the 1980's, and thereafter leased that track from KJRY. Only recently has Roquette asserted to KJRY that Roquette owns the Hub Track, and Roquette has yet to support that claim. Although KJRY is still investigating the matter, KJRY believes that Roquette also does not own other sections of the track which it plans to alter or remove as part of its plan. Inasmuch as Roquette's proposal requires Roquette's ownership of these tracks, if KJRY's

ownership is established, Roquette's proposal must be denied. There are other questions as well, especially regarding environmental, safety and historic preservation issues. Indeed, it appears from the Iowa state historic preservation office's letter on file in the environmental comments that Roquette's plan may well adversely impact historic preservation.

If the Board does not dismiss Roquette's petition for its legal insufficiency, the Board should, at a minimum, set a procedural schedule allowing 60 days for discovery, followed by periods of thirty days each for Roquette and KJRY to file a complete statement of their position on the legal and factual issues involved. Should Roquette, as the party bearing the burden of proof, desire a period for rebuttal, such should be added to the schedule.

FACTUAL BACKGROUND

Although some of the facts pertinent to this proceeding have yet to come to light, those that are known at this time are sufficient to require denial of Roquette's Petition without further investigation. A summary of those facts follows.

At Keokuk, IA, Roquette operates a sprawling corn-processing facility. Much of the facility is gated and guarded. The complex is sandwiched between the Mississippi River and a series of bluffs overlooking the river. The southern side of the facility is separated from the river by a floodwall, rail tracks of KJRY and BNSF Railway Company ("BNSF"), and a city water treatment plant. To the east of the facility is BNSF's Mooar Line, while to the north and west is a series of bluffs overlooking the river.

Interlaced among the many buildings of the Roquette industrial complex is a series of industry tracks. All of the tracks connect directly or indirectly on either one or both ends to KJRY's line or to a KJRY spur line off that line. Those industry tracks that do not connect on both ends to KJRY's tracks are stub-ended. *See* Petition at 2-3 and Exhibit 1 and 2. Roquette

claims to own and maintain the tracks shown in blue on Exhibit 1 to Roquette's Petition, which are used only to serve Roquette facilities. KJRY does not believe Exhibit 1 accurately reflects the ownership of the tracks within the Roquette industrial complex. *See* Verified Statement of J. Michael Carr ("V.S. Carr"), Exhibit 1 hereto.

As stated in the Petition, KJRY provides neutral switching service to Roquette pursuant to a contract effective May 17, 1996. *See* Petition at Errata page 5. This arrangement has worked well for nearly ten years, and KJRY has invested millions of dollars in equipment and track to accommodate Roquette's needs. V.S. Carr at 2. This arrangement has also allowed Roquette to have access to either KJRY (and its connections with other Class I carriers) or BNSF for the line-haul moves. Indeed, based on KJRY's initial review of traffic at the Keokuk plant, it appears that KJRY switched over 93.5% of Roquette's outbound shipments to BNSF for line-haul movement between January 2001 and December 15, 2005. *See* V.S. Carr at 2. As stated on Errata page 5 of the Petition, the current switching arrangement meant that there was no competitive impact on Roquette from BNSF's lack of direct access to Roquette's plant. That arrangement will expire in May of 2006. KJRY has proposed a revision and extension of this arrangement, but Roquette has not responded to KJRY's offer. V.S. Carr at 2.

Notwithstanding the fact that Roquette already has access to BNSF and that BNSF handles over 93.5% of Roquette's outbound business, Roquette proposes to construct several hundred feet of a "common carrier rail line" and then to operate over KJRY track so as to gain a physical connection to BNSF's tracks. Petition at 1. To do this, Roquette has created (or, perhaps, will create) a new, wholly-owned subsidiary named Roquette America Railway, Inc. ("RARI"). RARI proposes to (1) remove a portion of Downriver Lead; (2) construct an approximately 200-foot extension of the Hub Track west from its current end at the Downriver

Lead; (3) connect the extended Hub Track to KJRY's line via a new turnout to be installed near KJRY's Fourth Lead; and (4) operate over approximately 180 feet of KJRY's track² to reach another new turnout to be installed in KJRY's track, to connect to additional new track that would connect to BNSF track. Although the Petition states that Roquette intends to construct "a common carrier rail line," the Petition makes no mention of serving any business other than Roquette. The only facilities adjoining the track RARI proposes to construct and acquire are KJRY's lines and Roquette's own plant facilities. No other shipper facility adjoins the tracks. V.S. Carr at 4.

DISCUSSION

I. **ROQUETTE'S PETITION IS LEGALLY INSUFFICIENT AND SHOULD BE DISMISSED**

A. The Proposed Construction Involves The Construction Of Industry Track Under Section 10906 And Is Not Subject To Approval Under Section 10901

Roquette's proposal is not subject to approval under, or exemption from, Section 10901 because the proposal involves the construction of spur or industrial track, not common carrier track. Accordingly, Roquette's Petition should be dismissed. The ICC Termination Act of 1995 ("ICCTA") requires Board authorization and approval (via either an application or exemption) for construction of Section 10901 common carrier track. However, if the track to be constructed qualifies as spur, industrial, team, switching, or side tracks, the Board does not have authority to approve the construction of the track pursuant to Section 10901. Instead, the construction and

² Exhibit 8 to the Petition makes clear that Roquette would actually operate over a few hundred feet of KJRY-owned track between a pair of turnouts that Roquette proposes to install in KJRY's track. Roquette is fond of referring to this as a "crossing" of KJRY's track and admits that it will file a crossing petition pursuant to Section 10901(d) if KJRY does not grant permission for RARI to use KJRY's tracks. While this is not the proper time to address the Section 10901(d) criteria, Roquette's proposed operation is not a "crossing."

operation falls under to 49 U.S.C. §10906. See *Brotherhood of Locomotive Engineers v. United States*, 101 F.3d 718, 720-21 (D.C. Cir. 1996) (“BLE”).³

Whether a particular track segment is a “spur, industrial, team, switching or side” track that Section 10906 places outside the Board’s authority to authorize pursuant to Section 10901 principally depends upon the use of the track segment. *Nicholson v. Interstate Commerce Commission*, 711 F.2d 364 (D.C. Cir. 1983) (“*Nicholson*”). Notwithstanding the fact that all of its other track located within its facility is industrial track, that the various pieces of track that will connect RARI’s proposed “common carrier track” will be industrial track, and that Roquette may argue that it intends to use the newly constructed track as common carrier track, the use test is not unqualified. Rather, the use test is qualified by an examination of the “purpose and effect” of the trackage. See *United Transportation Union – Illinois Legislative Board v. Surface Transportation Board*, 169 F.3d 474, 477 (7th Cir. 1999); *The New York City Economic Development Corporation--Petition for Declaratory Order*, STB Finance Docket No. 34429, 2004 STB LEXIS 434 (served July 15, 2004) (“*NYCEDC*”) at *14 - *15; and *Chicago Rail Link, L.L.C.--Lease and Operation Exemption--Union Pacific Railroad Company*, 2 S.T.B. 534, 1997 STB LEXIS 223 (served Sept. 2, 1997) (“*Chicago Rail Link*”) at *13 - *14, *aff’d United Transportation Union-Illinois Legislative Board v. Surface Transportation Board*, 169 F.3d 474 (7th Cir. 1999).

The purpose and the effect of Roquette’s intended use clearly establishes that the proposed new track will be operated and used no differently than Roquette’s existing track which

³ Section 10906 specifically provides that:

Notwithstanding section 10901 and subchapter II of chapter 113 of this title, . . . the Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

Roquette admits is industrial and switching track. To determine whether or not a proposed new or existing track is spur or industrial track subject to Section 10906 and not Section 10901, the Board has often looked at the following indicia:

- The track typically is used for loading, unloading, storage or switching of cars incidental to line-haul movement;⁴
- The track is predominantly for serving a single shipper;⁵
- The length of track involved is a few miles or less;⁶
- There is no regularly-scheduled service on the track;⁷
- There are no stations on the track;⁸
- The track is owned and/or maintained by the shipper;⁹
- The track connects directly to regulated track;¹⁰ and
- The track lies on land owned by the shipper.¹¹

⁴ See, e.g., *Nicholson*, 711 F.2d at 367-8; *NYCEDC* at *14 - *15; and *Battaglia Distributing Co., Inc. v. Burlington Northern Railroad Company*, 2 S.T.B. 323, 1997 STB LEXIS 135 (served June 27, 1997) ("*Battaglia*") at *8.

⁵ See, e.g., *Battaglia* at *8 - *9; *Hughes v. Consol-Pennsylvania Coal Company*, 945 F.2d 594, 612 (3d Cir. 1991); and *Illinois Commerce Commission v. United States*, 779 F.2d 1270, 1272 (7th Cir. 1985) ("*Cary Spur*") (each indicating that track serving a single shipper is exempt under Section 10906).

⁶ See, e.g., *Battaglia* at *8 (finding 2600-foot track to be a spur exempt under Section 10906), and *NYCEDC* at *17 (finding 1.3-mile track to be spur or switching track exempt under Section 10906).

⁷ *NYCEDC* at *16 and *17; *Battaglia* at *7.

⁸ See *Battaglia* at *9; *Cary Spur* at 1273.

⁹ *NYCEDC* at *17; *Cary Spur* at 1273

¹⁰ See *Cary Spur* at 1273.

¹¹ *Cary Spur* at 1273.

Thus, a relatively short track, owned or maintained by or situated on land owned by a shipper, serving predominantly that shipper, where there are no stations, no scheduled service, and where the trackage is used in the loading, reloading, storage and switching of cars would be “spur, industrial, team, switching or side track” exempt from the Board’s authority under Section 10901, pursuant to Section 10906.

Under these criteria, Roquette’s proposed construction of a few hundred feet of new “common carrier” track is not construction of “common carrier” track at all, but is a classic case of the type of track built and used pursuant to Section 10906; *i.e.* industrial, spur, or switching track. The track Roquette intends to construct pursuant to STB authority under Section 10901 is very short, a few hundred feet at most, *see* Petition at 6, and is much shorter than the lengths of the tracks found exempt in *Cary Spur* and *Battaglia*. The track is located within a large industrial complex that consists of land and facilities owned and operated by one shipper. *See* V.S. Carr at 4. Roquette is responsible for maintaining the majority of the tracks involved. *Id.* There are no stations on the track RARI proposes to construct and acquire nor is there scheduled service. *Id.* The new track and existing tracks will serve only one shipper and there are no other shippers capable of using the track. *Id.* Finally, the track is track that KJRY uses in performing intra-plant switching for Roquette,¹² including storage of cars, *id.*, and Roquette does not propose to use the tracks differently, but merely to connect them directly to a different carrier. Petition at 1 and 6. In short, the tracks involved here meet virtually every test ever enunciated by the ICC

¹² Switching is defined by the Bureau of Transportation Statistics, adopting a definition offered by the Association of American Railroads, as “a railway service performed under yard rules and regulations. It may involve the classification of cars according to commodity and destination; the assembling of cars for train movement; changing the position of cars for purposes of loading, unloading, and weighing; the placing of locomotives and cars for repair and storage; and the moving of equipment in connection with the carrier's work service not constituting a road movement.” See <http://www.bts.gov/cgi-bin/btsprod/expr/expr.pl?letter=s>.

or the Board as establishing that the proposed use of the proposed track is no different than Roquette's current use, which is as exempt track pursuant to Section 10906.

As if to further establish that the tracks at issue are exempt and that the newly constructed track should be treated likewise, it is important to note that KJRY's tracks in that location are themselves not subject to STB regulation. KJRY's line to which the existing Roquette tracks connect was acquired through purchase from the Rock Island bankruptcy estate following abandonment of the Rock Island. The Interstate Commerce Commission's ("ICC's" or "Commission's") notice of the transaction stated, "On August 19, 1981, KNRECO [KJRY's predecessor¹³] purchased 4 miles of abandoned railroad right-of-way and track formerly owned by the Chicago, Rock Island and Pacific Railroad Company in Keokuk, IA. The acquisition was exempt from our jurisdiction pursuant to 49 U.S.C. 10907." *Keokuk Northern Real Estate Co. and Keokuk Junction Railway Co.; Election of Exemption*, Ex Parte No. 395 (Sub-No. 1), 46 Fed. Reg. 45220 (Sept. 10, 1981).¹⁴ KJRY's predecessor KNRECO subsequently elected an exemption under 49 U.S.C. §10910(g)(2) (now 49 U.S.C. §10907(g)(2)) "from all provisions of Title 49, except the provisions of chapter 107 with respect to transportation under a joint rate." *Keokuk Northern Real Estate Company And Keokuk Junction Railway Company -- Election Of Exemption*, Ex Parte No. 395 (Sub-No. 1), 1986 ICC LEXIS 77 (Nov. 10, 1986) at *8. The track which RARI proposes to construct would connect only to this track, which the ICC has already determined is subject to a Section 10906 exemption, and operation of which is exempted from all

¹³ Keokuk Northern Real Estate Co., which conducted rail operations as Keokuk Junction Railway, changed its name to KNRECO, Inc., in the early 1980's. Pioneer Railcorp acquired a controlling stock interest in KNRECO, Inc., on March 12, 1996, pursuant to exemption issued by the Board in *Pioneer Railcorp; Acquisition of Control Exemption; KNRECO, Inc., d/b/a/ Keokuk Junction Railway*, STB Finance Docket No. 32877, 61 Fed. Reg. 13228 (Mar. 26, 1996). KNRECO, Inc., changed its name to Keokuk Junction Railway Co., effective April 10, 1996.

¹⁴ See also *Simmons v. Interstate Commerce Commission*, 871 F.2d 702, 704 (7th Cir. 1988).

of Subtitle IV of Title 49 except with respect to joint rates.¹⁵ As noted in the *Cary Spur* case, the fact that Roquette's track will not connect with regulated track, but instead with exempt track, is yet another indicator that the proposed construction and operation is within Section 10906 and not Section 10901.

In the end, Roquette is simply trying to abuse this Board's policies and procedures by inventing a novel and absurd theory so as to obtain Section 10901 construction authority so that Roquette can try to force terminal access over KJRY's exempt track pursuant to Section 10901(d), rather than Section 11102. As noted, the proposal involves the removal of some tracks and the construction of a few hundred feet of new track. Roquette would like this agency to hold that the removal and reconfiguration of the existing track (*e.g.*, removal of a portion of the Downriver Lead) can all be done under Section 10906,¹⁶ but somehow the construction of a few hundred feet of new track in the very same location and as part of the very same project requires Board authority under Section 10901. Apparently, somehow, a train operating along this trackage in the future would connect with regulated BNSF main line track, then operate over exempt KJRY track, somehow magically transform back into regulated operations over a few hundred feet of regulated track (the newly-constructed Roquette track), and then magically transform back to exempt operations operating over Roquette industrial track. The absurdity of such a scenario is clear on its face. The Board should not condone such a policy. The Board

¹⁵ See *Keokuk Northern Real Estate Company And Keokuk Junction Railway Company -- Election Of Exemption*, Ex Parte No. 395 (Sub-No. 1), 1986 ICC LEXIS 77 (Nov. 10, 1986) at *8.

¹⁶ As if to indicate that Roquette itself knows that the tracks at issue are industry track, Roquette is not seeking abandonment authority from the agency for the removal of its existing tracks, presumably relying upon Section 10906 for such abandonment authority.

should therefore conclude that Section 10906 sets Roquette's proposal outside the Board's authority under Section 10901, and should dismiss Roquette's Petition.

B. Section 10901 Is Inapplicable Because Roquette Is Not Building An Additional Or Extended Rail Line

In order for the Board to authorize construction under Section 10901 (or an exemption from Section 10901), the proposed construction action must fit within the Section 10901 definition in the first instance. Roquette's proposed project fails this test. The test of whether new rail construction or operation requires approval under (or exemption from) Section 10901 is whether or not the rail line being constructed is an "extended or additional" rail line. In order to answer that question, the ICC, STB, and the courts have long held that proposed construction must extend the reach of the railroad so as to allow that railroad to provide service to new territory or new shippers that it did not previously serve. If the proposed construction did so, Section 10901 authority was required. *See, e.g., Texas & Pacific Railway Company v. Gulf, Colorado & Santa Fe Railway Company*, 270 U.S. 266 (1926); and *City of Detroit v. Canadian Nat'l Ry.*, 9 I.C.C. 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Auth. v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995).

Likewise in this case, assuming *arguendo* that the track is not Section 10906 track, if Roquette's proposed "build-out" would provide Roquette with access to a railroad that currently does not serve it, Roquette's proposal would indeed be subject to Section 10901 authority (or an exemption therefrom). Indeed, this is the premise of Roquette's Petition. Roquette claims that: it is "captive to the KJRY for all rail services" (Petition at 2); the proposed construction is necessary to "establish competitive rail service" (Petition at 1); KJRY has a "rail monopoly" over the facility (Petition at 4); and Roquette desires to re-establish its competitive connection to BNSF (Petition at 6). If these statements were indeed true (and again assuming the track was not

Section 10906 track), Roquette might have an arguable position that its build-out was intended to provide it to access to another carrier so as to provide new or extended service for the shipper.

The fallacy of this argument is that Roquette's statements are not true. KJRY is not a monopolist and Roquette is not captive to KJRY. KJRY provides neutral switching service to Roquette pursuant to a contract effective May 17, 1996. See Petition at Errata page 5. This arrangement allows Roquette to have access to either KJRY (and its connections with other Class I carriers) or BNSF for the line-haul moves. Through this access, BNSF has performed the line-haul service for over 93.5% of Roquette's outbound business from the Keokuk plant since 2001. See V.S. Carr at 2. Interestingly, while claiming KJRY is a monopolist, Roquette itself admits the competitive role played by BNSF and notes that KJRY's role is largely switching cars between the Roquette facility and BNSF, which is the long-haul carrier for the vast majority of the traffic. Petition at 3. Roquette also notes that it gets line-haul service from both KJRY and BNSF. Petition at 3-4. Indeed, KJRY merely operates as a neutral switching carrier providing open access to two competitive routing options. See Exhibit 2 hereto, KJRY's switching tariff.

The Board itself recognizes that access to two carriers via reciprocal switching provides a competitive choice and that the loss of reciprocal switching is a cognizable competitive harm. In its decisions in merger cases since the UP/SP merger, the Board has protected so-called "2-to-1 shippers" against a loss of competitive service. "2-to-1" shippers have been defined as "those that [prior to the merger] can be served directly, or through reciprocal switching" by only the two merging carriers. *Union Pacific Corporation, et al. - Control And Merger - Southern Pacific Rail Corporation, et al.*, STB Finance Docket No. 32760, Dec. No. 44, 1996 STB LEXIS 220 (served Aug. 12, 1996) ("UP/SP Dec. No. 44") at *334. See also *Canadian National Railway Company, et al. - Control - Illinois Central Corporation, et al.*, STB Finance Docket No. 33556, Decision

No. 37, 1999 STB LEXIS 305 (served May 25, 1999) at *186, n. 172. The Board has protected against the loss of competition in 2-to-1 situations because such competition is effective, even if the service is provided via reciprocal switching. The Board's policy in merger cases to protect 2-to-1 competition that existed because of reciprocal switching clearly establishes the effectiveness of access such as BNSF's access to Roquette via switching. As stated in Roquette's Petition, KJRY's switching agreement eliminated any competitive impact of BNSF's lack of direct physical access to Roquette. Petition at Errata page 5.

The facts of KJRY's service to Roquette's plant also establish the effectiveness of BNSF access via KJRY switching. As previously noted, BNSF has performed over 93.5% of the outbound line-haul service of cars moving from Roquette's Keokuk plant in the past five years. Moreover, KJRY's \$138/car switch charge under its 1996 contract with Roquette (*see* V.S. Carr at 2) is approximately the same as the standard reciprocal switch fee of \$130 approved by the Board in *UP/SP*. *See UP/SP* Dec. No. 44 at *292. The Board said that fee had been "reduced substantially to \$ 130 per car to ensure that shippers who reach BNSF at 2-to-1 points by reciprocal switching will have meaningful access." Likewise, KJRY's \$138 per car switch fee, set just a few months before *UP/SP* Dec. No. 44 was issued, has insured BNSF meaningful access to Roquette's plant, as shown by BNSF's dominance of Roquette's line-haul service. It thus is obvious that BNSF already has access to Roquette, and that Roquette's proposal does not have the purpose or effect of extending new service to any shipper.

How ironic it is that while many shippers are desperate to obtain reciprocal switching at a neutral rate so as to provide access to two carriers, including fighting very hard for such rights at Congress for many years, Roquette is now claiming that such "open switching" is not really a choice at all and that the neutral switching carrier is a "monopolist." Indeed, as the large share of

traffic carried by BNSF indicates, the Roquette facility is the poster child for "open access" and competitive rail service. Accordingly, Roquette's plan to construct track merely to connect directly to BNSF track does not have the purpose or effect of extending or adding BNSF service to Roquette. There is no invasion of another railroad's territory and there is no new service not heretofore provided by BNSF. As such, Roquette's proposal does not fall within Section 10901.

C. Granting Roquette's Petition Would Illegally Grant Roquette Terminal Trackage Rights Without Complying With the Statutory Requirements of Section 11102

As noted, Roquette is already an "open" shipper able to access two carriers via reciprocal switch. Notwithstanding this access, Roquette's proposal to construct a few hundred feet of track and to then try to operate over several hundred feet of KJRY track is really an attempt to obtain terminal trackage rights so as to avoid the reciprocal switch. The proposal thus really falls within Section 11102, which provides for granting terminal trackage rights to remedy anticompetitive actions of a serving carrier. Granting Roquette this type of access under Section 10901, without requiring Roquette to meet the tests of Section 11102, would illegally contravene the statute. Accordingly, Roquette's Petition under Section 10901 should be dismissed.

Section 11102(a) empowers the Board to:

require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal . . . to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.

Even assuming, arguendo, that KJRY's track adjacent to Roquette's facility was not exempt from the Board's jurisdiction and was thus subject to the Board's authority under Section 11102, Roquette has not met the tests necessary to obtain relief under Section 11102(a).

The standards for implementing Section 11102(a) were enunciated in *Midtec Paper Corp. v. Chicago & N.W. Transp. Co.*, 3 I.C.C.2d 171 (1986), *aff'd sub nom. Midtec Paper Corp. v.*

United States, 857 F.2d 176 (D.C. Cir. 1988) (“*Midtec*”). *Midtec* requires a party seeking terminal trackage rights to show that: (i) the track is a “terminal facility,” (ii) use of the track by another carrier is practicable and will not substantially impair the ability of the owner to handle its own business, and (iii) granting the terminal trackage rights is in the public interest. *Midtec*, 3 I.C.C.2d at 177-78. The public interest test, in turn, requires the Board to focus on whether KJRY has engaged in anticompetitive conduct. *Midtec*, 3 I.C.C.2d at 181. The ICC explained in *Midtec* that the essential questions for determining whether there has been anticompetitive conduct are (i) whether the railroad has used its market power to extract unreasonable terms on through movements, or (ii) whether because of its monopoly position it has shown a disregard for the shipper’s needs by rendering inadequate service. *Id.*

Roquette does not allege that KJRY is charging excessive or unreasonable rates for the switching service it is providing or that KJRY is rendering significantly inadequate switching service, as *Midtec* would require. *See Midtec*, 857 F.2d at 1511 (“An abuse of market power of a railroad thus may take the form of excess rates for otherwise adequate services or alternatively, otherwise ‘reasonable’ rates for inadequate services.”) *See also Philadelphia Belt Line Railroad Co. v. Consolidated Rail Corp.*, Finance Docket No. 32802, 1996 WL 362996 (ICC served on July 2, 1996) at *8 n.9 (“at a minimum, [*Midtec* would] require a showing of some behavior, such as the establishment of excessively high rates or the provision of inadequate service, that would tend to indicate competitive abuse.”) Rather, notwithstanding the fact that KJRY’s contract with Roquette provides Roquette with rail service for seven days a week, 365 days a year, and up to 16 hours a day, Roquette complains vaguely that KJRY’s intraplant switching service is not always immediately available, and that it would be able to operate more efficiently with direct access to BNSF.

These claims do not amount to the showing required by *Midtec*. Accordingly, Roquette seeks to avoid the *Midtec* requirements in the guise of proceeding under Section 10901. KJRY submits that this effort to circumvent Section 11102 and *Midtec* is an abuse of the statute that ICCTA does not allow. To grant Roquette's petition, the Board would have to write out of the statute Sections 10906, 10907(g)(2) and Section 11102. Only Congress, not the Board, has the authority to rewrite ICCTA in this manner.

II. IF THE BOARD REFUSES TO DISMISS THE PETITION AS LEGALLY INSUFFICIENT, FURTHER DEVELOPMENT OF THE RECORD IS NECESSARY TO RESOLVE CRITICAL FACTUAL AND LEGAL ISSUES BEFORE THE BOARD MAY ACT.

Because Roquette proposes to build industry track and not common carrier track and because Section 10901 cannot be used to build a line of railroad to obtain access to a carrier that already serves a shipper via reciprocal switch, the Petition should be dismissed on its face as legally insufficient. If the Board nonetheless determines not to dismiss the Petition at this time, at a minimum, the Board needs to begin a proceeding under Section 10502(b) so as to provide adequate time for further development of the record, both on the merits and with respect to the Board's obligations under the National Environmental Policy Act of 1969 ("NEPA"). In that case, the Board should set a reasonable procedural schedule for discovery and filings by the parties to elucidate the true facts behind Roquette's petition.

KJRY disputes perhaps the fundamental factual premise of Roquette's petition - Roquette's asserted ownership of the Hub Track. Roquette's proposal centers upon its extension of the Hub Track in both directions from its present location. However, it is KJRY's belief that it, not Roquette, owns the Hub Track. KJRY believes that it acquired the Hub Track from Roquette in the 1980's, after KJRY acquired its own tracks from the bankruptcy trustee of the Chicago, Rock Island & Pacific. Given the change in ownership of KJRY, the passage of a

quarter of a century, and the lack of adequate records related to the Rock Island bankruptcy, it is premature to make any definitive statements regarding ownership of the Hub Track. However, KJRY believes that Roquette transferred the Hub Track to KJRY in the 1980's in exchange for KJRY's agreement to repair and maintain the track. As evidence of this, Appendix 1 to V.S. Carr is a copy of a track schematic from a 1995 agreement signed by both Roquette and KJRY. That schematic shows KJRY as the owner of the Hub Track. It is believed that, after conveying the Hub Track to KJRY, Roquette leased the Hub Track from KJRY. V.S. Carr at 3. Obviously, if Roquette owned the Hub Track, it would not have had to lease the track from KJRY. This issue needs further evaluation and study.

Likewise, KJRY also disputes Roquette's asserted right to remove part of the Downriver Lead and to remove its connection to KJRY's line. While KJRY's investigation of this issue is also less than complete, KJRY also believes that Roquette lacks the legal right to undertake these parts of the proposed construction project as well. It appears that KJRY is the owner of the connecting tracks and at least part of the Downriver Lead. Again, these issues need further study. KJRY filed its first set of discovery requests on December 16, 2005 in an effort to obtain further information regarding these and other concerns.

As for the NEPA process, KJRY has already noted its concerns regarding the non-public nature of the previous discussion between the Board's Section of Environmental Analysis and Roquette. KJRY needs additional time and discovery to determine whether or not the NEPA process had been complied with, especially given that those discussions have led to the employment of firm as a third-party contractor to work for the Board that also is under contract by Roquette to perform engineering and other work for Roquette at the very same facility subject to the Petition. KJRY also believes that the comments of the State Historical Society of Iowa

and of the State of Iowa Department of Natural Resources raise significant issues that need to be addressed in the context of the NEPA process.¹⁷

While the Petition should be dismissed for legal insufficiency, at the very least, the Board must begin a proceeding pursuant to Section 10502(b), *see Ameren Energy Generating Company—Construction And Operation Exemption—In Coffeen And Walshville, IL*, STB Finance Docket No. 34435 (served May 5, 2004), and establish a procedural schedule allowing for careful examination of the facts through discovery and then a thorough presentation of those facts and applicable law to the Board. If the Board does not dismiss Roquette's Petition for legal insufficiency, the Board should, at a minimum, set a procedural schedule allowing 60 days for discovery, followed by periods of thirty days each for Roquette and KJRY to file a complete statement of their position on the legal and factual issues involved. Should Roquette, as the party bearing the burden of proof, desire a period for rebuttal, such should be added to the schedule.

CONCLUSION

Roquette's proposal does not fall within the Board's jurisdiction under Section 10901. Rather, the track and operation proposed by Roquette bear virtually all the classic indicia of spur, industrial or switching track which is exempt from the Board's Section 10901 authority under Section 10906. Moreover, even if the track did not qualify as Section 10906, the track cannot be built pursuant to Section 10901 because it does not extend Roquette's rail service into new territory or provide Roquette with access to a carrier that doesn't already provide service to the facility. Furthermore, even setting aside the fact that KJRY's track that Roquette proposes to

¹⁷ There are a number of other factual issues as well, including the frequency of derailments on Roquette-maintained track at the Keokuk plant, Roquette's ability to safely operate the confined tracks within its complex, Roquette's fallacious assertion that KJRY was unwilling to upgrade track to 286K gross weight on rail, *see V.S. Carr* at 5, and the overall effect on KJRY of the prospective loss of revenue from switching operations at Roquette. Policy issues also exist, such as the true effect of the proposal under the national rail transportation policy.

operate on has been found by the Board's predecessor to be exempt from Board regulation under Section 10906 and 10907(g)(2), allowing Roquette to move forward with its proposal to use KJRY's track under Section 10901 would violate Section 11102. For these reasons at least, Roquette's Petition is legally insufficient and should be dismissed.

Roquette's Petition is likewise factually insufficient. A key fact asserted by Roquette – its supposed ownership of the Hub Track – appears to be incorrect. Inasmuch as Roquette has proposed only one route, and that route requires use of the Hub Track, Roquette likely lacks the necessary track ownership to carry forth its plan. Accordingly, for this and other reasons set forth herein and yet to be developed, Roquette's proposal also fails factually, and should be dismissed on that ground as well. At the very least, if the Board does not dismiss Roquette's Petition, the Board should allow a schedule sufficient for discovery and a thorough exploration of the facts and the law by both Roquette and KJRY before reaching any decision in this matter.

Respectfully submitted,



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Washington, DC 20037
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Fax: (202) 663-7849

Attorneys for Keokuk Junction Railway Co.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB FINANCE DOCKET NO. 34795

**ROQUETTE AMERICA, INC. - PETITION FOR EXEMPTION FROM 49 U.S.C. §10901
TO CONSTRUCT A NEW LINE OF RAIL IN KEOKUK, IA**

**VERIFIED STATEMENT OF J. MICHAEL CARR
SUPPORTING
REPLY TO PETITION FOR EXEMPTION**

My name is J. Michael Carr. I am the President and Chief Financial Officer of Pioneer Railcorp ("Pioneer") and Chief Financial Officer of Keokuk Junction Railway Co. ("KJRY"). In that role, I have day-to-day supervisory responsibility for overseeing all of Pioneer's and KJRY's operations. Inasmuch as Roquette America, Inc. ("Roquette"), is an important and valued customer of KJRY, and indeed was the customer originally served when Keokuk Northern Real Estate Company ("KNRECO") began its first rail operations as Keokuk Junction Railway, I am particularly familiar with KJRY's service to Roquette.

I was promoted to President of Pioneer last year. Prior to becoming President, I served as Treasurer and CFO of both Pioneer and KJRY. I joined Pioneer in 1993, following approximately seven years in the public accounting and banking industries. I am a Certified Public Accountant and hold a Bachelor of Science in Accounting from Illinois State University.

Pioneer is a non-carrier holding company that owns numerous subsidiaries engaged in rail transportation or rail-related businesses. Pioneer owns 100% of KJRY. KJRY is a Class III rail carrier with various rail operations in Iowa and Illinois, including providing switching service to Roquette's facilities at Keokuk, IA.

I am informed and believe that KJRY originally acquired the tracks and rail facilities necessary to serve Roquette through the bankruptcy of the Chicago, Rock Island and Pacific Railroad Company. Since that time, KJRY has expended millions of dollars in rebuilding, repairing, and upgrading the track and rail facilities so as to provide rail service to Roquette.

KJRY primarily serves Roquette's facility as a neutral switching carrier pursuant to a ten year contract that became effective June 1, 1996. This arrangement has worked well. This arrangement has allowed Roquette to have access to either KJRY (and its connections with other Class I carriers) or BNSF for the line-haul moves. KJRY's contract set the rate for KJRY's neutral switching service at \$138 per car, subject to inflation adjustment. The contract guarantees Roquette service for seven days a week, 365 days a year, and 16 hours a day.

Although KJRY does obtain some of the line-haul business, mainly for inbound movements of grain from Roquette-owned elevators on KJRY's line, the majority of the line-haul business is handled by BNSF. In fact, based on our initial review of traffic at the Keokuk plant, it appears that KJRY switched over 93.5% of Roquette's outbound shipments to BNSF for linehaul movement between January 2001 and December 15, 2005. As these numbers show, KJRY makes no effort to use its role as a contract switcher to discriminate against BNSF and favor KJRY. Roquette chooses the routing options and we switch it to/from the appropriate line-haul carrier at the same, neutral rate.

Because the contract was about to expire, earlier this year KJRY made a proposal to, and had some discussions with, Roquette about revising and extending it. During those discussions, Roquette's main concerns were the feasibility and cost of upgrading to 286,000 lb.-rated track on the Illinois-portion of KJRY's line, and lowering KJRY's switching rate. KJRY was willing, and is still willing, to work with Roquette to address these concerns.

Roquette did not mention its intention to file its petition and never claimed that it needed direct access to BNSF in order to remain competitive. However, once we learned of the petition through the STB's website, it became clear why our efforts to formulate a new contract with Roquette never progressed and why Roquette was backing away from good faith negotiations. It was during those discussions that Roquette began insisting that it, not KJRY, owned the Hub Track, part of the system of tracks that KJRY uses in providing switching service to Roquette. I was told by Roquette that such discussions were related to Roquette wanting to use the Hub Track in order to install a railcar washing facility. (*See Appendix 2 hereto, dated July 1, 2005, where Roquette's Mr. Tibbets states that Roquette's interest in who owns the Hub Track has "nothing to do" with access by BNSF.*) Of course I now know that was a misrepresentation.

KJRY believes that Roquette is wrong in its newfound insistence that it, not KJRY, owns the Hub Track. From conversations with former KJRY employees and from a review of KJRY documents thus far, it appears that Roquette does not own the Hub Track, which is the centerpiece of Roquette's plan. Rather, KJRY believes that Roquette conveyed the Hub Track to KJRY in the 1980's (prior to Pioneer's acquisition of KNRECO in 1996) in exchange for KJRY rehabilitating and maintaining that track. Thereafter, Roquette leased that track from KJRY.

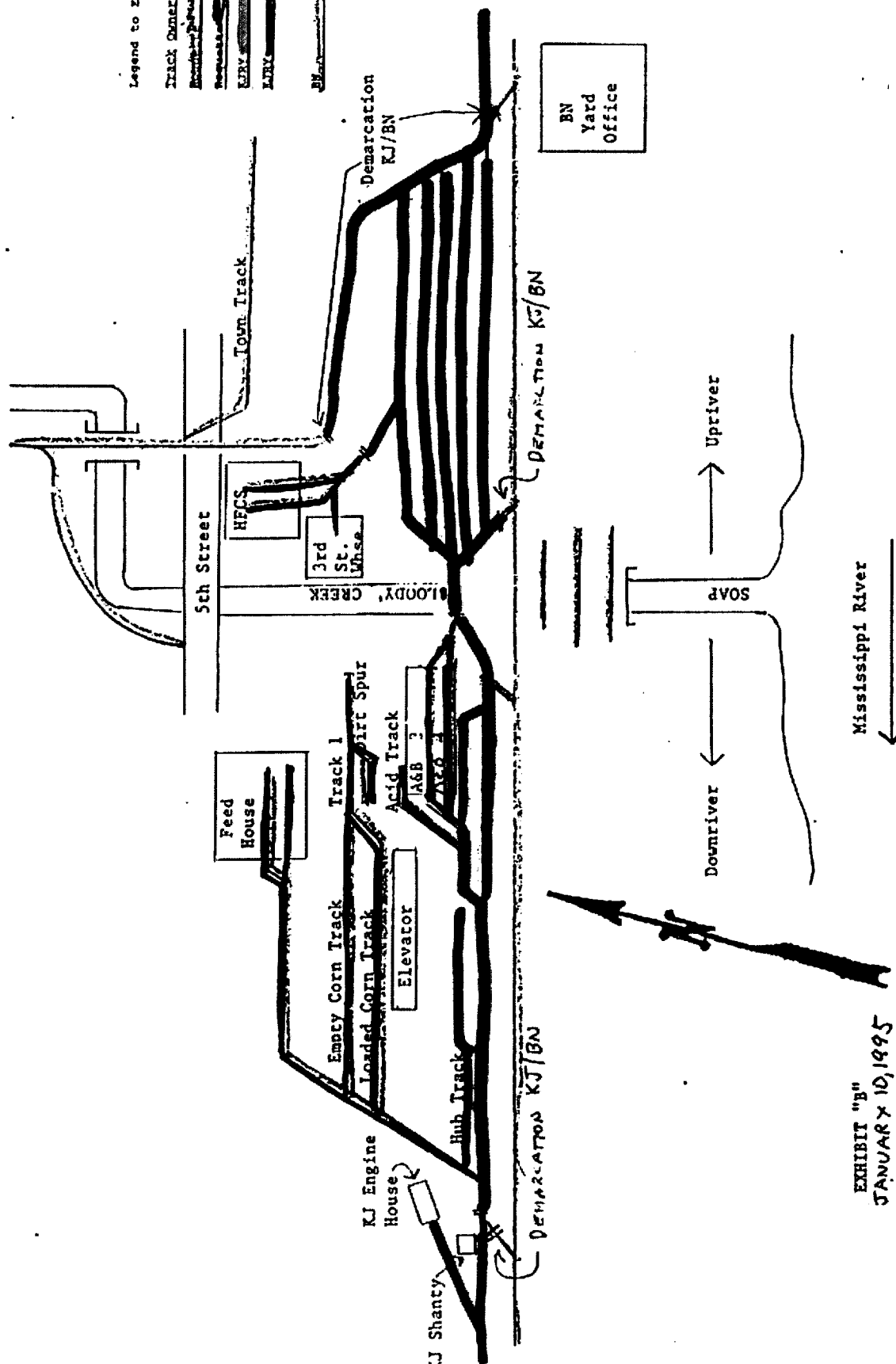
The parties have operated for many years on the basis that KJRY owns the Hub Track. For example, attached as Appendix 1 is a schematic track diagram dated January 10, 1995 that was an exhibit to an agreement between Roquette, BN, and KJRY. On the schematic, tracks owned by KJRY are indicated in orange and in pink. The schematic shows KJRY as owner of the Hub Track. Roquette signed the agreement to which Appendix 1 was attached. KJRY is also investigating other information on this issue.

There may be other factual errors in Roquette's petition as well. Although KJRY is still investigating the matter, KJRY believes that Roquette also does not own other sections of the track, particularly the connection of the Downriver Lead to KJRY's track, or perhaps the property which Roquette says that it plans to alter, remove, or use as part of its proposal in this proceeding. KJRY personnel are working now to establish the facts relating to these other properties as well.

I have received and reviewed color copies of the line schematics that are exhibits to Roquette's petition. Those show lines that Roquette purports to own in blue, and KJRY's lines in orange. The lines that Roquette's exhibits show in blue are all lines which KJRY now uses in providing switching service to Roquette; that is, for placement of cars for loading and unloading, for storage of cars, and for arranging cars for line-haul movement. No other businesses are served on the lines shown in blue on Roquette's exhibits nor, to my knowledge, are there any other businesses at that location which could use rail service there. There are no stations on any of the tracks Roquette claims to own. Service is provided under our contract on an as-needed basis, not according to a set schedule.

To the best of my current information, all of the lines Roquette claims to own (with the exception of the Hub Track and the connection of the Downriver Lead to KJRY's track) are maintained by Roquette. All of those lines are, to the best of KJRY's current information, located on property owned by Roquette. Indeed, virtually all of the existing Roquette-owned track is within a gated and guarded complex controlled exclusively by Roquette. All of those lines connect on one or both ends to KJRY's lines adjacent to Roquette's facility, which have been treated since their acquisition by KJRY as exempt spur, industrial, team, switching, or side track.

In addition to the apparent inaccuracy of Roquette's claims about ownership of the Hub Track and certain other tracks, there are other portions of Roquette's petition to the STB that are not accurate. For example, Roquette implies that KJRY refused to upgrade its tracks at Roquette's facility to 286,000 pound capacity. That is not correct. KJRY quoted rates to Roquette for 286,000 lb. cars for switch to BNSF at Keokuk. However, because many of the cars used by Roquette are not rated for 286,000 pound gross weight, Roquette did not take advantage of those rates. Discussions were, however, on-going as to the upgrade of the Illinois portion of KJRY's line, and KJRY has, for the last couple years, been actively urging the City of Keokuk (which owns the Mississippi River Bridge connecting Keokuk to Illinois) to upgrade the bridge to 286,000lb. capacity. The City recently completed a study of the work necessary to accomplish that upgrade. I also am concerned with whether Roquette could operate safely as a rail carrier, given the number of derailments KJRY has experienced on Roquette-maintained track at the Keokuk plant, and the many close clearances and other safety issues that exist. These and other issues would, in my opinion, require further exploration and factual development should this proceeding move forward.



APPENDIX 1

EXHIBIT "B"
JANUARY 10, 1995

PROQUETTE AMERICA, INC.

KEOKUK JUNCTION RAILWAY

BURLINGTON NORTHERN RAILROAD

APPENDIX 2

Subj: **RE: Hub Track**
Date: 7/1/2005 12:34:40 PM Central Daylight Time
From: ERIC.TIBBETTS@roquette.com
To: JM1Carr@aol.com
CC: FLINT.PEYTON@roquette.com, ERIC.TIBBETTS@roquette.com

Mike,
Roquette's interest in gaining a clear understanding of the ownership of the Hub Track has nothing to do with the question of BNSF access. Although I have not thought about it until you brought it up, I do not see any connection between the two.

Our interest in the Hub track relates to issues such as a unified on-site tank car wash facility, a steaming station to steam cars with solid heels in them prior to a wash rack, the possibility of a run around track to enhance the flow of cars in the Plant and/or a site to steam inbound raw material cars (our current 3 spots gets overwhelmed with very slow turnaround on sulfur cars). In each case, the track is a necessary ingredient to a further infrastructure investment by Roquette. I do not believe Roquette (or KJRY) would make a capital investment, if that investment is based on a piece of leased track.

Your note, as you quoted below, suggested in the phrase "Absent evidence to the contrary provided by Roquette" that Roquette needed to provide documentary proof to KJRY of our ownership. Simply stated, I have done just that. The Agreement between our Companies clearly indicates Roquette (Hubinger) ownership in November, 1977. I have no documentation that suggests an ownership change since that date, but I am willing to admit that such a document might exist. I am asking if KJRY can help me understand events that may have occurred since that time that would have reversed the stated intent of that Agreement.

Mike, I hope this clarifies Roquette's interest in the Hub Track. From my perspective, it has everything to do with inside-the-Plant efficient and nothing to do with the Switching agreement. This is a situation that has passed from year-to-year with each side believing something different as to ownership. I am simply trying to get to the documented facts, and resolve the issue for all parties.

I hope you and your family have a terrific Holiday week-end.

-----Original Message-----

From: JM1Carr@aol.com [mailto:JM1Carr@aol.com]
Sent: Friday, July 01, 2005 11:35 AM
To: TIBBETTS Eric
Cc: PEYTON Flint
Subject: Hub Track

Eric,

In regards to your inquiry about the Hub track and your recent email comment concerning "regaining access to the BNSF". Roquette has always, and continues, to have access to its line haul carrier via its switch operator, KJRY. If you are asking us to allow the BNSF or any other railroad to go over our property to switch your plant we will not allow that to happen. If your interest in the Hub track relates to this type of activity you need to redirect your attention to renewing the switch contract. Repeating prior correspondence "Absent evidence to the contrary provided by Roquette, it is our position that this track is owned by KJRY and has been operated as such for as long as anyone can remember. If it is critical to Roquette operations to utilize this track, we would be willing to enter into a lease agreement with Roquette to use this track, so long as there is no adverse financial impact on KJRY." We would lease this track to Roquette long term for a small nominal fee.

I will try to get back to your other concerns within the next couple weeks.

Friday, July 01, 2005 America Online: JM1Carr

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.

Executed on December 19, 2005.


J. Michael Carr

KJRY 8000-H (corrected)
(cancels ICC KJRY 8000-G in its entirety)

FREIGHT TARIFF KJRY 8000-H
(corrected)

Replaces Freight Tariff KJRY 8000-H with effective date of

Containing
SWITCHING
AND
MISCELLANEOUS RULES AND CHARGES
AT
STATIONS ON THE KJRY
IN ILLINOIS AND IOWA
As Named Herein

SWITCHING TARIFF

NOTICE

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

Governed, except as otherwise provided herein, by Uniform Freight Classification 6000-Series, supplements thereto or successive issues thereof (See Item 20)

ISSUED: May 5, 2004

EFFECTIVE: May 6, 2004

ISSUED BY:

Catherine Busch, Director of Marketing
Keokuk Junction Railway Co.
1318 So. Johanson Road
Peoria, IL 61607

NOTICE

Provisions formerly shown in Tariff KJRY 8000-G and not brought forward are hereby cancelled effective March 23, 2004.

PLAN OF TARIFF

SECTION 1 – General Rules and Regulations

SECTION 2 – Switching charges to or from Roquette America, Inc. via BNSF

SECTION 3 – Switching charges to or from Roquette America, Inc. via carriers other than BNSF

SECTION 4 – Inta-plant, Intra-terminal, Inter-terminal, and Miscellaneous switching charges

SECTION 1

RULES AND OTHER GOVERNING PROVISIONS GENERAL RULES AND REGULATIONS

ITEM

APPLICATION

- 10 This tariff is governed by the Official List of Open and Prepay Station 6000-Series, OPSL 6000-Series, Station List Publishing Company, Agent, to the extent shown below:

Switching charges named herein (unless otherwise specified) will apply for the handling of loaded cars one direction and empty cars in the reverse direction. If cars are moved empty in both directions, then charges for a one-way movement will apply. If cars are moved empty in one direction and are not returned, they will be charged as if they are loaded and switching of other cars loaded will not be considered as offsetting one-way movements of empty cars. If cars are loaded in both directions, the applicable charge will be assessed for each loaded movement.

DEFINITIONS

(a) INTERCHANGE SWITCHING CHARGES contained herein apply only in connection with a roadhaul movement to or from Roquette America, Inc., an industry physically served solely by the KJRY. Except as otherwise provided, rates shown are for switching service BETWEEN Roquette America, Inc., a KJRY served location, and the BNSF.

(b) RECIPROCAL SWITCHING CHARGES contained herein apply only in connection with switching service from a plant or industry located on the KJRY to the point of interchange with connecting carriers or vice versa, on line-haul traffic.

(c) INTRA-PLANT SWITCHING - a switching movement of cars from one point to another point within the trackage limits of the same plant or industry, Without leaving the tracks of the same plant or industry.

(d) INTRA-TERMINAL SWITCHING - a switching movement (other than intra-plant switching) from one point to another point on the same road within the switching limits of one station or industrial switching district.

(e) INTER-TERMINAL SWITCHING - a switching movement of cars from a track of one carrier to a track of another carrier when both tracks and movement are within the switching limits of the same station or industrial switching district.

SECTION 1

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM	APPLICATION
15	DATE TO DETERMINE ABSORBED SWITCHING CHARGES The absorbed switching charge applicable, whether absorbed in whole or in part, will be the charge in effect on the date of the actual physical interchange of the loaded car. Provisions of this Item apply to absorbed switching charges on either transit or non-transit shipments.
20	DESCRIPTION OF GOVERNING CLASSIFICATION Governed, except as othersise provided herein, by UFC 6000-Series, ICC UFC 6000-Series, and by supplements to or successive issues of said publication.
65	SWITCHING OF LOADED CARS TO HOLD/STORAGE TRACKS In the absence of specific provisions to the contrary, the following will apply: When on shipper's order, loaded cars are removed from industry tracks with no further billing instructions in place, cars will be switched to hold/storage tracks on the KJRY with switch charge of \$150.00 (I) per car being assessed for this move. This charge is in addition to any applicable storage charges, demurrage charges, line-haul or other switch charges, etc. that may apply.
70	TERMINAL OR TRANSIT PRIVILEGES OR SERVICES Shipments made under the rates contained in this Tariff, are entitled also to terminal and transit services and privileges and are subject to the charges, allowances, rules and regulations legally applicable thereto, as provided in separately published lawfully filed tariffs (Subject to EXCEPTIONS 1 and 2). EXCEPTION 1 - When provision of this tariff, specifically cover any such charge, allowance, rule or regulation, corresponding or conflicting provisions in such separate tariffs will not apply. EXCEPTION 2 - Where switching is performed on traffic moving under line-haul rates which are subject to special detention charges and rules, the switching charges provided in this Tariff will be subject to the same detention charges, rules and provisions as applicable in connection with the line-haul rates.
75	EXPLANATION OF DELIVERING, RECEIVING, AND INTERMEDIATE CARRIER Delivering Carrier or Delivering Line is the railroad which causes delivery of consignment to connecting railroad. Receiving Carrier or Receiving Line is the railroad that receives consignment from connecting railroad. Intermediate Carrier or Intermediate Line is the railroad that handles the consignment between the delivering and receiving railroad.
125	ORDER BILLS OF LADING COVERING INTRA and INTER-TERMINAL MOVEMENTS Order Bills of Lading will not be issued covering intra-terminal or inter-terminal movements, as described in Item 10.

SECTION 1

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM**APPLICATION**

130**METHOD OF CANCELLING ITEMS**

As this tariff is supplemented, numbered items with lettered suffixes cancel correspondingly numbered items in the original Tariff in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A.

Example: Item 440-A cancels Item 440, and Item 350-B cancels Item 350-A in a prior supplement, which in turn cancelled Item 350.

135**PREPAYMENT OF CHARGES**

Carload freight for delivery to a switching connection at Keokuk, IA whether for public track, team track, private or other siding when such connection performs the switching service only, will not be delivered to such connecting line until all charges assessed in accordance with tariffs, or other instruments are paid. If cars are held for payment of charges pending such delivery, they will be subject to car service and demurrage rules as published in tariffs, or other instruments, while so held.

140**SWITCHING OF CARS FOR WEIGHING ON KJRY SCALE**

When KJRY is requested to switch either a loaded or empty car to KJRY scale for weighing, switching/weighing charge of \$200.00 will be assessed in each direction. This charge of \$200.00 (I) per car will be in addition to all other applicable charges, including line-haul or reciprocal switching charges, and will be billed to the party requesting the weighing service.

145**PACKAGE AND PACKAGING REQUIREMENTS**

Shipments of commodities for switching movement will not be accepted unless they comply with the package requirements published in the Governing Classification (see Item 20).

150**SUPPLEMENTS TO AND REISSUES OF TARIFFS**

Whenever reference is made herein to items, rules or any other publication, such reference is continuous and includes supplements to or successive issues of such items, rules and publications.

Wherever reference is made herein to any other publications, it is intended also to include supplements thereto and successive issues thereof.

SECTION 1

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM	APPLICATION
157 CHARGES FOR MOVING HEAVY LOADS/DIMENSIONAL LOADS/LOADS REQUIRING USE OF SPECIAL TYPE EQUIPMENT OR HEAVY CAPACITY EQUIPMENT	NO SWITCH RATES OR CHARGES as published in this tariff WILL APPLY to movements for any dimensional and/or heavy duty loads requiring use of special type equipment or Heavy Capacity Equipment. Any dimensional shipment or any shipment whose maximum gross weight on rail is in excess of 263,000#, and/or any shipment when loaded in or on any equipment other than "ordinary" equipment (Item 175) will require contacting the Keokuk Junction Railway Company marketing department for rates and consideration to move same.
175 USE OF SPECIAL EQUIPMENT IN CROSSTOWN SWITCHING MOVEMENTS	Rates or charges published in this tariff, for application of Intra-Plant, Intra-Terminal, or Inter-Terminal switching service, apply to shipments which are both loaded and unloaded within the same switching district only when loaded in or on ordinary equipment. Ordinary equipment means: (1) Box cars not exceeding 52' in length, inside measurements, but not including "XF" cars or box cars of any length which are cushioned underframe, insulated or equipped with any type of loading devices. (2) Flat cars not exceeding 54' in length and having marked capacity not greater than 180,000 pounds; but not including flat cars of any length equipped with racks, frames, bulkheads, tie-down devices, hoods or other appurtenances extending above the deck of the car nor on special flat cars with mechanical designation "FD", "FG", "FW", "FM". (3) Gondola cars having marked capacity not greater than 180,000 pounds, but not including gondola cars of any length equipped with covers, hoods, containers or cradle floors. On moves of ferrous scrap, this provision will not apply when gondola cars having marked capacity greater than 180,000 pounds, or gondola cars of any length equipped with covers, hoods, containers or cradle floors are furnished at carrier's convenience in lieu of ordinary gondola cars ordered by shipper. (4) Open top hopper cars not exceeding 60' in length, inside measurement, or having marked capacity not exceeding 180,000 pounds, and gross weight on rail not exceeding 263,000 pounds. (5) Covered hopper cars having marked capacity not exceeding 200,000 pounds, and gross weight on rail not exceeding 263,000#. (6) Cars, other than described as ordinary equipment in Paragraphs (1) through (5) above, which are owned or leased by shipper or consignee and do not exceed gross weight on rail limit 263,000#.

SECTION 1

**RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM**APPLICATION**

185**CHARGES ON OVERLOADED OR IMPROPERLY LOADED CARS**

When cars are discovered to be overloaded, or improperly loaded on the KJRY thereby necessitating transfer, trimming or reloading in the interest of safe transportation, shipper or owner will be notified and requested to advise disposition. See Paragraphs (1) and (2).

(1) Except as provided in Paragraph (2), cars discovered to be overloaded or improperly loaded, will be placed on carrier's track accessible for transfer, trimming or reloading, , and shipper or owner will be required to transfer, trim or reload car to meet loading requirements for safe transportation. A charge of \$500.00 per car will be assessed for the switching of overloaded or improperly loaded cars to and from the carrier's track where the transfer, trimming or unloading is performed.

A overweight charge of \$500.00 per car will be assessed by KJRY should KJRY agree to move an overweight load (exceeds KJRY's 263,000# gross weight on rail).

(2) When cars are discovered to be overloaded or improperly loaded at point of origin, and cars are ordered returned to the shipper's plant or point of loading, the applicable intra-plant, intra-terminal or inter-terminal switching charges will also be assessed.

190**PLACING KJRY OWNED OR LEASED EMPTY EQUIPMENT**

KJRY reserves the right to place empty cars of KJRY ownership or lease at loading points on KJRY for outbound movement via connecting road-haul carrier. When request is made to place a car of other than KJRY ownership or lease, and KJRY states or notifies the party that KJRY has cars of similar type and condition in its yard available for loading, a charge of \$200.00 (I) per car will be assessed to move the empty car from connecting carrier to loading point on KJRY. When KJRY owned or leased cars of suitable type and condition are available for loading, acceptance of cars of other than KJRY ownership or lease, will be at the sole discretion and option of KJRY. The charge of \$200.00 (I) per car will be in addition to all other applicable charges, including reciprocal switching charges, published herein and will be billed to the party requesting empty car movement.

195**EMPTY CARS ORDERED BUT NOT LOADED**

On empty cars that are ordered for loading and the service of transporting from interchange, switching or placing has been performed and the car is not loaded but returned back empty, a switching charge of \$375.00 (I) per car will be assessed for this service and collected from the person, firm or corporation ordering such cars.

196**IMPROPER CARS FURNISHED FOR LOADING BY CONNECTING LINES**

When cars ordered by industries for loading are refused on account of not being in proper condition to load, a charge of \$250.00 (I) per car will be assessed against the railroad furnishing the car.

SECTION 1	
RULES AND OTHER GOVERNING PROVISIONS	
GENERAL RULES AND REGULATIONS	

ITEM	APPLICATION
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198	DESCRIPTION OF ROQUETTE AMERICA, INC.
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Whenever reference is made herein to "Roquette America, Inc.", it will consist of one or more of the following facilities in the plant complex:

Roquette America, Inc. Commercial Warehouse (Feed House)
 Roquette America, Inc. (3rd Street Warehouse)
 Roquette America, Inc. (3rd Street High Fructose Syrup Plant)
 Roquette America, Inc. (Grain Elevator)
 Roquette America, Inc. (A and B Refinery)

All above locations are physically served solely by the KJRY.

SECTION 2	
SWITCHING CHARGES TO/FROM ROQUETTE AMERICA, INC. <u>VIA BNSF</u>	
(For application see Item 10)	
(Charges in Dollars per Car, except as noted)	

ITEM	APPLICATION
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200	SWITCHING TO/FROM ROQUETTE AMERICA, INC. <u>VIA BNSF</u> (For application see Item 10) (Charges in Dollars per Car, except as noted)
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KEOKUK, IOWA

Switching between industries shown below and interchange with the BNSF at Keokuk, IA:

INDUSTRY	COMMODITY	CHARGE
Roquette America, Inc.	All Commodities EXCEPT Sorbitol	\$167.00 (See Note)
	Sorbitol	\$282.00 (See Note)

Note: Charges apply on cars switched to and from the BNSF

SECTION 2A (NEW)	
RECIPROCAL SWITCHING WITH ANY/.ALL CARRIERS (other than BNSF)	
(Carriers having access/interchange rights with KJRY at Keokuk, IA)	
(Charges in Dollars Per Car, Except as Noted)	

ITEM	KEOKUK, IOWA	
250-G	Switching between industries shown below and any/all carriers (other than BNSF) at Keokuk, IA.	
INDUSTRY	COMMODITY	CHARGE (See Note)
Roquette America, Inc. (See Item 198-series)	*All Commodities	\$375.00 (I)

*Note: Applies on all commodities moved in/on "standard" equipment not exceeding 263,000# gwr (gross weight on rail)
 DOES NOT apply on dimensional/high-wide traffic.

SECTION 3

SWITCHING CHARGES TO/FROM ROQUETTE AMERICA, INC. VIA ALL CARRIERS**OTHER THAN BNSF**(For application see Item 10)

ITEM**APPLICATION**

310**SWITCHING TO/FROM ROQUETTE AMERICA, INC. VIA ALL CARRIERS****(OTHER THAN BNSF)**

(Carriers, other than BNSF, having access/interchange rights with KJRY at Keokuk, Iowa)

Switching between industries shown below and any/all carriers (other than BNSF) at Keokuk, Iowa

INDUSTRY**COMMODITY****CHARGE**

Roquette America, Inc.

All Commodities moved in/on "ordinary"
Equipment not exceeding 263,000# gwr
(gross weight on rail – DOES NOT APPLY
on dimensional/high-wide traffic)\$375.00

SECTION 4

INTRA-PLANT, INTRA-TERMINAL, INTER-TERMINAL, AND MISCELLANEOUS SWITCHING

(For application See Item 10)

(Charges in Dollars Per Car, Except as noted)

ITEM**APPLICATION**

400**INTRA-PLANT SWITCHING**An intra-plant switching charge of \$85.00 (I) per car will be assessed for the movement from one point to another point within the trackage limits of the same plant or industry.

410**INTRA-TERMINAL SWITCHING**

An intra-terminal switching charge of \$150.00 (I) per car will be assessed for the movement of any car or locomotive, loaded or empty, between any industry track served or accessed by KJRY and/or any other track served or accessed by the KJRY within the terminal area of any single station.

Charge will be assessed against the party requesting the car movement, whether industry or railroad.

420**INTER-TERMINAL SWITCHING****COMMODITY****APPLICATION****CHARGE**

All commodities

Where KJRY performs switching between any two
lines at Keokuk, IA or any two (2) customers on
the KJRY.\$375.00 (I)

SECTION 4

INTRA-PLANT, INTRA-TERMINAL, INTER-TERMINAL, AND MISCELLANEOUS SWITCHING

(For application See Item 10)

(Charges in Dollars Per Car, Except as noted)

ITEM**APPLICATION**

430**MISCELLANEOUS SWITCHING CHARGES**

TURNING OF CARS TO PERMIT LOADING OR UNLOADING

Car will be placed at industry for loading/unloading the same way as received from the connecting carrier. When placement of a car at industry requires carrier, at request from industry, to turn and return the car to the same track for loading or unloading from opposite side or end of car, the charge of \$300.00 (I) will apply. This charge is in addition to any other applicable switch or line-haul charges and will be assessed to the industry requesting turn of the car, unless otherwise agreed.

455**SWITCHING OF CARS TO OR FROM REPAIR PLANTS OR TRACKS**

Except as otherwise specifically provided to the contrary, when cars are switched to or from repair plants or tracks account having been damaged in the process of loading or unloading, or for any reason, a charge of \$150.00 (I) per car, per movement will apply. This charge is in addition to any other applicable switch or line-haul charges and will be assessed against the responsible party or party requesting such service.

EXPLANATION OF ABBREVIATIONS

ABBREVIATION AND/OR REFERENCE MARK	EXPLANATION
BNSF	Burlington Northern Santa Fe Railway
IA	Iowa
IL	Illinois
KJRY	Keokuk Junction Railway Company
LBS	Pounds
NSO	National Service Order
OPSL	Open & Prepay Station List
RER	Official Railway Equipment Register, The (R.E.R. Publishing Company, Agent)
RPS	Railroad Publication Services
UFC	Uniform Freight Classification (National Railroad Freight Committee, Agent)
WTL	Western Trunk Line
(I)	Increase, Effective March 23, 2004.

EXPLANATION OF REFERENCE MARKS

REFERENCE MARK	EXPLANATION
(R)	Denotes Reduction
(I)	Denotes Increase

END

**SUPPLEMENT 1
TO
KJRY 8000-H**

KEOKUK JUNCTION RAILWAY CO.

SUPPLEMENT 1

TO

FREIGHT TARIFF KJRY 8000-H

(Supplement 1 contains all changes)

Containing

SWITCHING

AND

MISCELLANEOUS RULES AND CHARGES

AT

**STATIONS ON THE KJRY
IN ILLINOIS AND IOWA**

SWITCHING TARIFF

NOTICE

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.)

Governed, except as otherwise provided herein, by Uniform Freight Classification 6000-series, supplements hereto or successive issues thereof (See Item 20).

ISSUED: December 3, 2004

EFFECTIVE: January 1, 2005

ISSUED BY:

**CATHERINE BUSCH
DIRECTOR OF MARKETING
KEOKUK JUNCTION RAILWAY CO.
1318 SO. JOHANSON ROAD
PEORIA, IL 61607**

**SUPPLEMENT 2
TO
KJRY 8000-H**

KEOKUK JUNCTION RAILWAY CO.

SUPPLEMENT 2

TO

FREIGHT TARIFF KJRY 8000-H

(Supplement 2 contains all changes)

Containing

SWITCHING

AND

MISCELLANEOUS RULES AND CHARGES

AT

**STATIONS ON THE KJRY
IN ILLINOIS AND IOWA**

SWITCHING TARIFF

NOTICE

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.)

Governed, except as otherwise provided herein, by Uniform Freight Classification 6000-series, supplements hereto or successive issues thereof (See Item 20).

ISSUED: November 28, 2005

EFFECTIVE: January 1, 2006

ISSUED BY:

**CATHERINE BUSCH
DIRECTOR OF MARKETING
KEOKUK JUNCTION RAILWAY CO.
1318 SO. JOHANSON ROAD
PEORIA, IL 61607**

SUPPLEMENT 2 TO TARIFF KJRY 8000-H

SECTION 2

INTERCHANGE SWITCHING WITH BNSF

(For Application, See Item 10)

(Charges in Dollars Per Car, Except as Noted)

ITEM	KEOKUK, IOWA		
200	Switching between industries shown below and interchange with the BNSF at Keokuk, IA.		
	INDUSTRY	COMMODITY	CHARGE (See Note)
	Roquette America, Inc. (See Item 198-series)	All Commodities except Sorbitol	\$179.00 (I)
		Sorbitol	\$304.00 (I)

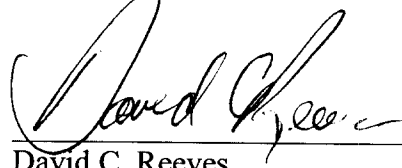
Note: Charges apply on cars switched to and from the BNSF.

(I) – Increase

For explanation of Abbreviations and Reference Marks, see last page of Tariff.

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 19th day of December, 2005, copies of the foregoing Reply have been served by first class mail, postage prepaid, upon all parties of record.

A handwritten signature in black ink, appearing to read "David C. Reeves", is written over a horizontal line.

David C. Reeves

Attorney for Keokuk Junction Railway Co.

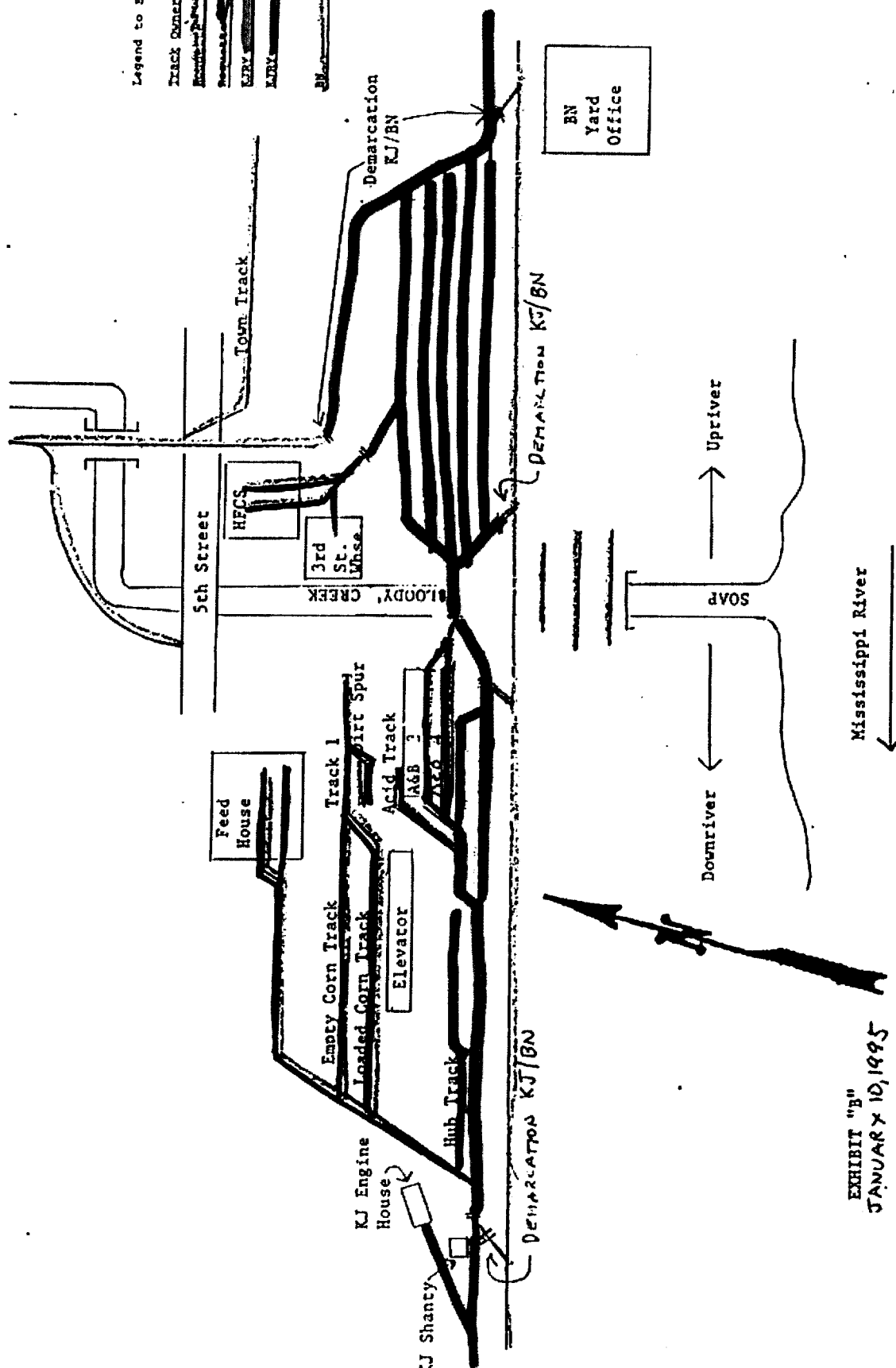


EXHIBIT "B"
JANUARY 10, 1995

ROQUETTE AMERICA, INC.

KEOKUK JUNCTION RAILWAY

BURLINGTON NORTHERN RAILROAD

APPENDIX 1