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January 24, 2006

Via Hand Delivery

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

ENTERED
Office of Proceedings

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Part of
Public Record



RE: STB Docket No. 34795, *Roquette America, Inc. – Petition for Exemption from 49 U.S.C. § 10901 to Construct a New Line of Rail in Keokuk, Iowa*

Dear Secretary Williams:

On January 23, 2006, Roquette America, Inc. filed a “Reply of Roquette America Railway, Inc. to KJRY Reply to Petition for Exemption” in the above referenced proceeding. On pages 6, 7, 8, and 9, “170” should be replaced with “180.” For the convenience of the Board, please find enclosed for filing the original and ten (10) copies of the Errata pages to be replaced in the original filing.

An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Jeffrey O. Moreno

shipper is "neutral"—it focuses on whether the carrier proposing to build is extending its line of railroad into new territory.

Even if the Board were to ask the question as posed by KJRY, it still must conclude that RARI's proposed construction is within the scope of Section 10901, because RAI will in fact receive service from a new carrier, RARI. KJRY's focus on BNSF simply is wrong, since BNSF is not the carrier proposing to extend its line. KJRY has lost sight of the fact that RARI, not BNSF, is the new carrier that proposes to extend its rail line in order to serve RAI.

Furthermore, RARI does not agree with KJRY's characterization of itself as a neutral switching carrier. KJRY Reply at 14. The situation described by KJRY at RAI's Keokuk facility exists only by a contractual arrangement that was negotiated when RAI was capable of receiving direct competitive service from both KJRY and BNSF. As detailed on pages 4-5 of RARI's Petition, RAI no longer has direct competitive service due in significant part to the actions of KJRY itself. Through the proposed build-out, RARI would restore that competitive balance by becoming a second carrier at RAI's Keokuk facility, so that RAI no longer must rely exclusively upon KJRY to serve the Keokuk facility.

III. RARI's Proposal Is Not a Request For Trackage Rights Under Section 11102.

KJRY improperly attempts to convert RARI's need to cross KJRY's line with its new construction into a request for trackage rights under Section 11102. This argument is nothing more than an absurd attempt by KJRY to avoid the crossing requirement of Section 10901(d).

What KJRY cavalierly refers to as "trackage rights" is the short distance (approximately 180 feet) that RARI must travel over KJRY track as part of a double-turnout crossing. There is nothing improper, or even unprecedented, about a double-turnout crossing. The Board noted this very fact in another recent decision involving a crossing of KJRY in Keokuk, Iowa:

KJRY argues that BNSF does not have section 10901(d) crossing rights because BNSF's operation over KJRY's track is not a crossing. KJRY claims that section 10901(d) can only apply to a crossing that is accomplished by means of the traditional "diamond" or "frog" configuration originally utilized here. But the fact that the typical crossing uses a diamond configuration does not mean that there is only one form that a crossing can take.³⁸ Nor is there any requirement that a crossing can only involve a certain amount of track. In fact, there are all sorts of configurations in the rail network that serve as crossings.³⁹ Thus, the term "crossing" must be viewed pragmatically, as we (and KJRY for several years after the crossing was relocated) did here.

³⁸ For example, in Public Service Company of Colorado—Petition for Crossing Authority Under 49 U.S.C. 10901(d), STB Finance Docket No. 33862 (Sub-No. 1 (STB served Mar. 22, 2001), we noted that the crossing carrier would cross BNSF's track by means of a double turnout configuration, rather than a diamond, so as to minimize interference with perpendicular traffic.

Similarly, in STB Finance Docket No. 34178 (Sub-No. 1), Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc.—Control—Iowa, Chicago & Eastern Railroad Corporation, Union Pacific Railroad Company discussed a situation at Owatonna, MN, where a diamond crossing was replaced by a two-turnout configuration.

³⁹ A configuration other than a diamond crossing can be beneficial to the railroads involved because of the generally higher cost of maintaining that type of crossing.

The Burlington Northern and Santa Fe Ry. Co.—Pet. for Declaration or Prescription of Crossing, Trackage, or Joint Use Rights, 2003 STB LEXIS 244, *32 (served May 13, 2003) [emphasis added] ("*BNSF Crossing*"). In that decision, the Board authorized BNSF to cross nearly one-quarter mile of KJRY track via two turnouts, a far greater distance than the 180 feet proposed by RARI. *Id.* at *3.

In many ways, the facts of this case are very similar to the facts in *BNSF Crossing*. Both cases involve crossings of KJRY track in the vicinity of Keokuk, Iowa for the purpose of restoring the rail service status quo that existed prior to construction of a floodwall in 1995 that

required both KJRY and BNSF to relocate their rail lines in the area. *Compare* RARI Petition at 4-5 with *BNSF Crossing* at *2-3. In *BNSF Crossing*, BNSF sought to restore access to its Mooar Line, and in this proceeding, RARI seeks to restore RAI's direct access to two rail carriers.

Indeed, Exhibit 1 shows that, prior to construction of the floodwall, BNSF operated over a double turnout crossing of KJRY in almost the same exact area that RARI has proposed to cross KJRY. Exhibit 1 is a map that was Exhibit A to the "1977 Agreement" that is attached as Exhibit 3 to RARI's Petition for Exemption. The BNSF crossing is located on the far left side of the map just above the phrase "To St. Louis." The map indicates that the BNSF crossing was 188 feet long, which is comparable to RARI's proposed crossing of approximately 180 feet. Both crossings have the same configuration and are located in virtually the same location. RARI's crossing would restore this prior crossing in a manner that is more true to the original crossing than was the BNSF's Mooar Line crossing in the *BNSF Crossing* decision, since the Mooar Line crossing was restored in a different location and in a different configuration from the original crossing.

The Board should view RARI's crossing of KJRY in the same "pragmatic" manner that it viewed BNSF's crossing of KJRY in *BNSF Crossing*. The area in which RARI must cross KJRY is on a narrow strip of land situated between the Mississippi River and a high bluff that is occupied by the RAI facility, KJRY's mainline, BNSF's mainline, BNSF's yard, the floodwall, and various road crossings. *See* RARI Petition, Exhibit 1. When constructing its track in this area, RARI must consider the location of these facilities, the location of other track turnouts, operating efficiencies, and various engineering considerations.

For example, it is undesirable for a locomotive or railcar to turn in two different directions at once. Therefore, at a minimum, a double turnout crossing must be as long as the

longest piece of equipment that will operate over the crossing, so that the equipment is able to clear the first turnout before turning into the second turnout. The location of the turnouts also must not interfere with the adjacent rail operations of KJRY and BNSF, including the locations of other turnouts on their track. The 180 foot length of RARI's double-turnout crossing has taken into consideration all of these factors in order to develop a crossing that will cause the least amount of interference with KJRY's operations. To the extent that KJRY contends otherwise, those issues will be addressed when RARI files its Crossing Petition pursuant to 49 U.S.C. § 10901(d).

KJRY's Reply says nothing as to why it alleges that RARI's crossing should be treated as a request for trackage rights under Section 11102, except for the fact that the double-turnout crossing requires RARI to cross over a short segment of KJRY's track. As demonstrated above, that alone is not sufficient to bring the crossing within Section 11102. Furthermore, under the circumstances, it would be absurd to treat RARI's 180-foot double turnout crossing differently from the similarly situated quarter-mile double turnout crossing approved by the Board in *BNSF Crossing*.

IV. KJRY Has Not Justified Its Request For Additional Discovery and Pleadings.

If the Board does not dismiss RARI's Petition, KJRY has asked the Board to establish a procedural schedule allowing for discovery and three rounds of additional filings. On January 4, 2006, RARI asked the Board to adopt a procedural schedule that attempts to address KJRY's request for discovery and to provide KJRY with an opportunity to supplement its Reply with information obtained through the discovery process.² Indeed the discovery process already is underway inasmuch as RARI and RAI responded to KJRY discovery requests on January 3,

² Although RARI sought KJRY's agreement to this procedural schedule, KJRY stated that it would not agree to *any* procedural schedule with RARI. This refusal even to discuss a procedural schedule is compelling evidence of KJRY's overall strategy of delay in this proceeding.