

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34918

KEOKUK JUNCTION RAILWAY CO.,
d/b/a PEORIA & WESTERN RAILWAY

-LEASE AND OPERATION EXEMPTION-

BNSF RAILWAY COMPANY
BETWEEN VERMONT AND FARMINGTON, ILLINOIS

RESPONSE TO
AMEREN ENERGY FUELS AND SERVICES COMPANY
PETITION TO REVOKE OR REJECT NOTICE OF EXEMPTION

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Dated: December 7, 2006.

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NOW COMES Keokuk Junction Railway Co., d/b/a Peoria & Western Railway ("KJRY"), and for its response to the Petition to Revoke or Reject Notice of Exemption filed by Ameren Energy Fuels and Services Company ("Ameren"), hereby states as follows:

As stated in the Petition, KJRY and Ameren have been in discussions for many weeks in an effort to resolve this dispute. Unfortunately, those discussions have to date, been unsuccessful. KJRY, however, absolutely does not agree that any competitive harm will come to Ameren as a result of this transaction, and, in fact, believes this transaction is pro-competitive. This transaction most certainly does not create a "bottleneck situation" or eliminate competitive options for Ameren. Ameren not only retains its competitive options, but it is assured of the continuation of those options, since KJRY is required to maintain the BNSF access (not currently being utilized), and other shippers will gain competitive access.

DISCUSSION

I. Content of the Notice.

Ameren alleges that the Notice of Exemption is “misleading”. The first alleged defect is that Ameren (alleged to be the “sole shipper”) will be “captive to KJRY”. This, of course, is not the case. Ameren will not be captive to KJRY. As to BNSF shipments to Ameren, KJRY will act only as a handling line carrier. KJRY will have no control over, or indeed, knowledge of, the rates for BNSF shipments to Ameren. KJRY will only receive a fixed per-car fee from BNSF.

Ironically, Ameren’s next complaint is that KJRY failed to disclose that it is to act as a handling line. This is a particularly disingenuous complaint, given that the initial Motion to Hold Verified Notice of Exemption in Abeyance complained that the BNSF/KJRY joint letter of July 14, 2006 stated that KJRY would be a handling carrier “which means that BNSF will continue to be able to set transportation prices from, to and via” the Line and that KJRY “will not appear in the pricing route when BNSF participates in a linehaul move,” and Ameren’s Motion argued that it needed to confirm those facts. Now, having done so, Ameren continues to complain, to what end KJRY cannot determine.¹

Finally, Ameren complains that the “Notice attempts to gain STB authority to operate over [an] ‘industrial spur’”. The Notice does no such thing. The Notice simply stated that the leased property included an industrial spur near Dunfermline. Contrary to Ameren’s

¹ Ameren makes aspersions about the “nefarious purpose of the proposed transaction” based upon the alleged “slow to come information”. The fact is, all the information is totally consistent with what Ameren was told in the original joint letter. They are perplexed, perhaps, because they found no nefarious purpose, but, the truth is, private lease arrangements such as this contain sensitive information that the parties are reluctant to disclose unless absolutely necessary.

statements in the Petition, the spur is not entirely owned by Ameren.² By using the term “industrial spur” it should be clear to anyone not desperate to find a “nefarious purpose” that this was simply a description of the property involved in the transaction. No doubt, had it been omitted, Ameren would have alleged its absence to be a material omission.

II. Appropriateness for Class Exemption

Ameren’s other arguments center upon the appropriateness of the transaction for Class Exemption. Obviously the “short notice” period has no bearing in this situation, since Ameren was able to stay the transaction for over four months already. Ameren’s other arguments center around the allegation that it is the only shipper (which it is not) and, therefore, “KJRY’s interest can only be to create captivity.”

The fact is, this transaction will not create any captivity. The competitive situation as to the KJRY/UP move will remain unchanged.³ On the BNSF side, the handling line status of KJRY, and the fact that KJRY will be maintaining the BNSF line and marketing service to other customers, will, in reality, make BNSF more competitive, not less.

Ameren also pretends to the Board that it is unaware of other potential shippers. KJRY is informed and believes that Ameren well knows the identity of other potential shippers, and, in fact, has been holding one of them (Central Illinois Energy) hostage as a bargaining chip.

Ameren’s professed confusion about this transaction and ignorance of the interest of

² BNSF track charts show that BNSF owns some distance beyond the point of the Dunfermline “Y”, as well as industrial trackage, adjacent to the Ameren trackage, which formerly served the United Electric Coal Company.

³ Ameren states “KJRY will not receive a fixed fee for the KJRY/UP movement”. While this is true, this is the current situation. This transaction gives KJRY no more rate power than it currently has.

other potential shippers is all about putting pressure on KJRY to reduce Ameren rates on the Union Pacific side and/or its desire to “buy the line” which Ameren admits it desires to do.⁴

It is revealing to review Ameren’s original Motion (which the Board granted). That Motion was based on the need for more information, which Ameren has been provided. Notwithstanding receipt of the information it claimed it needed to confirm that KJRY would be acting as a handling line as to BNSF line-haul movements, Ameren still claims it will suffer competitive harm, although it is unable to define any, except to claim that Ameren has a “fear” that there is a “nefarious purpose” for the transaction. Irrational fears are not a legal basis for denying an Exemption. Notwithstanding all of the rhetoric, Ameren totally fails to delineate any harm this transaction will visit on it.

CONCLUSION

KJRY believes this transaction is pro-competitive, and will, far from resulting in harm to shippers, lead to restoration of service to shippers, and allow for the start-up of service to Central Illinois Energy. As such, KJRY believes its Notice was appropriate and Ameren’s complaints are without legal basis. In the interest of resolving this matter expeditiously, however, given the timing for Central Illinois Energy in particular, KJRY hereby offers to withdraw its Notice of Exemption and is simultaneously filing a Petition for Exemption seeking authority for the lease transaction. After reviewing the Petition for Exemption and this Reply, KJRY leaves it to the Board’s discretion to either continue with the Notice of Exemption process and lift its housekeeping stay in order to allow the transaction to be

⁴ KJRY is informed and believes that Ameren attempted to purchase the line from BNSF prior to it being leased to KJRY. Such a transaction would, of course, put other shippers on the Line at a decided disadvantage.

consummated or to accept KJRY's offer to withdraw its notice and instead proceed under the Petition for Exemption process. If the Board moves forward with the Petition for Exemption process, KJRY respectfully requests that the Board act as soon as possible to grant its Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper". The signature is fluid and cursive, with the first name "Daniel" and last name "LaKemper" clearly distinguishable.

Daniel A. LaKemper, Esq.
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Peoria, Illinois 61607
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the all parties of record, by electronic communications, on December 7, 2006.

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper". The signature is fluid and cursive, with the first name "Daniel" and last name "LaKemper" clearly distinguishable.

Daniel A. LaKemper