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December 13, 2006

## VIA E-FILING

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W. Room 711  
Washington, D.C. 20423-0001

**RE:   STB Finance Docket No. 34974, *Keokuk Junction Railway Co. d/b/a  
Peoria & Western Railway – Lease and Operation Exemption – BNSF  
Railway Company between Vermont and Farmington, Illinois***

Dear Secretary Williams:

Enclosed for filing in the above captioned proceeding is Ameren's "Reply to KJRY's Motion For Protective Order."

Please feel free to contact me if you have any questions.

Very truly yours,

  
Sandra L. Brown

Enclosures

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 34974**

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**KEOKUK JUNCTION RAILWAY CO. d/b/a PEORIA & WESTERN RAILWAY –  
LEASE AND OPERATION EXEMPTION – BNSF RAILWAY COMPANY  
BETWEEN VERMONT and FARMINGTON, ILLINOIS**

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**REPLY TO KJRY’S MOTION FOR PROTECTIVE ORDER**

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***ATTORNEYS FOR AMEREN ENERGY FUELS AND  
SERVICES COMPANY***

**December 13, 2006**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**KEOKUK JUNCTION RAILWAY CO. d/b/a PEORIA & WESTERN RAILWAY –  
LEASE AND OPERATION EXEMPTION – BNSF RAILWAY COMPANY  
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**REPLY TO KJRY’S MOTION FOR PROTECTIVE ORDER**

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Ameren Energy Fuels and Services Company (“Ameren”) hereby files this reply (“Reply”) to the Motion for Protective Order filed by Keokuk Junction Railway Co. (“KJRY”) in this proceeding on December 7, 2006 (“KJRY Motion”). Ameren agrees that a protective order will be necessary in this new proceeding, assuming that the proceeding is necessary or permitted. However, Ameren objects to the inclusion of paragraphs 2, 3, and 4 in the proposed Protective Order because they are not appropriate for this lease transaction. The cases cited by KJRY in its Motion for Protective support Ameren’s position since these paragraphs are not included in any of the protective orders adopted in the lease or trackage rights proceedings cited by KJRY. See e.g., Finance Docket Nos. 34495, 34489, 34411, and 34470.

Specifically, KJRY has proposed to include the following language in the Protective Order:

2. Personnel of Keokuk Junction Railway Co. (“KJRY”), BNSF Railway Company (“BNSF”) and their affiliates, including outside consultants and attorneys for any of them (representatives), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose.

3. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of KJRY and BNSF are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904, or any other relevant provision of the ICC Termination Act of 1995.

4. If the transaction which is subject to the accompanying Petition for Exemption is disapproved by the Board, then all Confidential Documents (other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings) that are exchanged between KJRY and BNSF and their affiliates but which are not otherwise available to them as a result of their existing affiliation and pursuant to their reporting responsibilities for securities, tax and other purposes, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents. With respect to parties other than KJRY and BNSF and their affiliates, if the transaction that is subject to the Petition for Exemption is disapproved by the Board, or if the transaction is approved but is not consummated for whatever reason, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents.

In the first place, BNSF is not a party to this proceeding. Second, the above language is proposed to be included in the Protective Order notwithstanding the fact that paragraph 17 of the proposed Protective Order already provides that “to the extent that materials reflecting Confidential Information are produced in these Proceedings ... [such materials] will not be deemed a violation of 49 U.S.C. § 11904 or any other relevant provision of the ICC Termination Act of 1995.” Paragraph 17 provides sufficient protection for any party to the proceeding without inclusion of the inappropriate provisions in proposed paragraphs 2, 3, and 4.

The proposed paragraphs 2, 3, and 4 have been included in Protective Orders governing merger and control transactions or transactions where both railroads are applicants in the pending proceeding. This is not the case in this proceeding. Quite the opposite is true here. KJRY and BNSF have already signed their lease agreement which became effective July 1, 2006 so there is

nothing that KJRY or BNSF need to work on to reach their agreement. Further, KJRY's stated position is that there is no competitive harm to Ameren because KJRY's deal is done and it will only receive a fixed fee from BNSF. Thus, there should be no information related to the lease that KJRY and BNSF would need to share or that would not already be covered by the Protective Order terms without the inclusion of paragraphs 2, 3 and 4.

Counsel for Ameren discussed this issue with KJRY's counsel in an attempt to reach an agreement regarding the proposed language. Ameren understands that KJRY's position is that the proposed paragraphs 2, 3, and 4 are needed in the event that KJRY may need information from BNSF, a non-party, to respond in the future to an unknown but potential allegation made by Ameren.<sup>1</sup> This speculative scenario is not sufficient to justify the broad language in paragraphs 2, 3 and 4 that would give KJRY and BNSF the unbridled right to exchange any Confidential Information concerning Ameren and the competitive circumstances at the Duck Creek plant, including, but not limited to traffic data, waybills, shipper contracts, division of rates and other such information, without the need to propound discovery and that they otherwise would not be permitted to exchange without violation of pre-existing confidentiality agreements, the Board's statutes or the antitrust laws.

Ameren recognizes that the Protective Order provides that any exchange of Confidential Information whether between KJRY and Ameren, or KJRY and a non-party as part of this proceeding, must only be used for this proceeding and for no other business, commercial, or

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<sup>1</sup> KJRY's counsel did suggest that it would consider modifications to paragraphs 2, 3 and 4 that would include Ameren as an entity that would have the unlimited right to exchange Confidential Information as proposed in the language. However, such a proposed change does not limit the protections and blessing received by KJRY and BNSF under the proposed language to exchange any Confidential Information without Ameren or the Board knowing what is exchanged and without the ability of Ameren to object to the exchange of the Confidential Information that might be subject to separate non-disclosure agreements or are otherwise inappropriate for this proceeding.

competitive purpose. This limitation should not be used to permit the inclusion of unnecessary and extraneous language in a Protective Order that would permit railroads to exchange Confidential Information under the protections afforded by the Board especially when there are other reasonable ways to address any need for information, as yet unknown, that KJRY may have in the future. KJRY can serve discovery on BNSF and if BNSF refuses to respond, the Board has the authority to order BNSF, a non-party, to respond subject to the Protective Order. Further, BNSF can become a party to the proceeding if it chooses to do so. But to include the proposed paragraphs 2, 3 and 4 is beyond the scope of previous protective orders in lease transactions such as is proposed and should not be permitted.

### **CONCLUSION**

For the reasons stated herein, Ameren respectfully requests that the Board remove proposed paragraphs 2, 3 and 4 from KRJY's proposed Protective Order before the Board imposes the Protective Order in this proceeding.

Respectfully submitted,

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*ATTORNEYS FOR AMEREN ENERGY FUELS AND  
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**CERTIFICATE OF SERVICE**

This is to certify that on this 13<sup>th</sup> day of December 2006, I caused the foregoing Reply to the Motion for Protective Order in the Finance Docket No. 34974 to be served upon counsel for all known parties of record by electronic means.

  
Sandra L. Brown