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December 14, 2006

VIA E-FILING

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

Re: Finance Docket No. 34974
Keokuk Junction Railway Co. d/b/a/ Peoria & Western Railway – Lease And
Operation Exemption – BNSF Railway Company

Dear Secretary Williams:

On December 7, Keokuk Junction Railway Co. d/b/a/ Peoria & Western Railway (“KJRY”) filed (1) a Petition for Exemption (“Petition”) seeking authority for KJRY to lease and operate a line of railroad between Vermont, IL, and Farmington, IL, which is currently owned and operated by BNSF Railway Company (“BNSF”); and (2) a Motion for Protective Order (“Motion”) seeking to maintain the confidentiality of certain documents and information. Ameren Energy Fuels and Services Company (“Ameren”) has replied in opposition to paragraphs 2, 3 and 4 of the proposed Protective Order. Because Ameren’s request to eliminate these three paragraphs from the proposed Protective Order constitutes a motion to strike, KJRY hereby files these brief reply comments.

Ameren’s objection appears to be based upon the view that the proposed protective order is not precisely the type usually employed in lease transactions and therefore is somehow inappropriate for this proceeding. Ameren acknowledges that certain informational protections would flow from the objected to paragraphs (and implicitly admits the procedural efficiencies that would flow from those paragraphs) but at the same time provides no evidence that it or anyone else would be harmed if the three paragraphs were allowed to remain. Similarly, Ameren has not articulated any basis for concern over the presence of the proposed paragraphs.

Ameren has given no good reason to reject the proposed Protective Order, especially in light of the fact that the same provisions have been approved and used in other proceedings. While it is true that the proposed Protective Order is in a form more commonly used in merger and common control proceedings, there is nothing in the Board's rules or precedents barring its use in lease transactions which have issues in common with acquisition proceedings. Indeed, notwithstanding Ameren's objection, the proposed Protective Order has in fact been used in at least one other proceeding involving the lease of rail assets, Paducah & Louisville Railway, Inc.-Acquisition-CSX Transportation, Inc., STB Finance Docket No. 34738 (STB served August 19, 2005), and is virtually identical, albeit not exactly word for word, to numerous other protective orders used in almost every trackage rights or lease situation.

As noted, Ameren has failed to explain why the three paragraphs are somehow inappropriate or would otherwise cause harm to it. Its stated position is that it does not like the three paragraphs or KJRY's rationale for proposing their use here. This is not a valid basis for the Board to reject the Protective Order as proposed. KJRY's counsel explained to Ameren's counsel in a phone conversation that the three paragraphs are necessary to allow KJRY and BNSF to discuss the case and exchange information between them regarding the case. They are particularly important because BNSF is not a party to the proceeding and may choose to remain a non-party. Paragraph 17, on which Ameren relies to argue that paragraphs 2, 3 and 4 are not needed, only protects information among a "party" to the proceeding.

Moreover KJRY cannot merely serve discovery against BNSF, a non-party, to obtain any necessary information as Ameren so dismissively asserts. The Board has no authority to order discovery against non-parties. See 49 CFR 1114.21, 1114.26, and 1114.30; San Jacinto Rail Limited Construction Exemption and The Burlington Northern and Santa Fe Railway Company Operation Exemption - Build-out to the Bayport Loop Near Houston, Harris County, TX, STB Finance Docket No. 34079, Letter from STB Secretary sent to Galveston Bay Conservation and Preservation Association dated February 11, 2003 (discovery in not available from an entity that is not a party to a proceeding). KJRY's proposed Protective Order would streamline a process that would otherwise become overly cumbersome. It would be difficult, time-consuming, and inefficient for the board to adjust the Protective Order to constrain the protected flow of information in this proceeding in favor of a process that might necessitate the filing of a subpoena and otherwise avoidable discovery against BNSF. In reality, this is probably why Ameren is engaging in such maneuvers here - it wants to prolong the process to its perceived tactical advantage.

Ameren's counsel explained in her discussions with me that she feared that information exchanged between BNSF and KJRY would be used for commercial purposes to harm Ameren or that BNSF and KJRY would use it to conspire against Ameren. KJRY has no such intent, will not do so, and to do so would be a violation of both the protective order and the antitrust laws. The paragraphs are simply standard provisions that would allow KJRY and BNSF to exchange otherwise commercially sensitive information as necessary for KJRY to participate in this proceeding. There may not in fact be *any* such information to exchange, but to protect KJRY and

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BNSF during the course of the proceeding, these paragraphs are necessary. Furthermore, any such exchanged information must be destroyed upon completion of the case. There is no conspiracy against Ameren or some nefarious attempt by BNSF and KJRY to use this proceeding and the protective order to do something that the parties could not otherwise do and it is ridiculous to so suggest.

In short, because Ameren has failed to articulate any valid basis to strike paragraphs 2, 3 and 4 of the proposed Protective Order, the Protective Order that KJRY has requested should be granted in full. It is consistent with prior precedent, reduces the need for unnecessary discovery, and contains sufficient protections to prevent any unauthorized use.

Sincerely,



William A. Mullins

Enclosure

cc: Sandra L. Brown