

215294

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW

401 9TH STREET, N.W. - SUITE 1000

WASHINGTON, D.C. 20004-2134

www.troutmansanders.com

TELEPHONE: 202-274-2860

Sandra Brown
sandy.brown@troutmansanders.com

Direct Dial: 202-274-2959
Fax: 202-654-5603

December 15, 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 "Motion for Extension of Time" to reply to the Lease and Operation Exemption filed by the Keokuk Junction Railway Company.

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

Very truly yours,


Sandra L. Brown

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

MOTION FOR EXTENSION OF TIME

**James A. Sobule
AMEREN ENERGY FUELS AND SERVICES
COMPANY
1901 Chouteau Avenue
St. Louis, MO 63103
TEL: (314) 554-2276
FAX: (314) 554-4014**

**Sandra L. Brown
Michael H Higgins
TROUTMAN SANDERS LLP
401 9th Street, N.W.
Suite 1000
Washington, DC 20004
TEL: (202) 274-2959
FAX: (202) 654-5603**

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

December 15, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

MOTION FOR EXTENSION OF TIME

Pursuant to 49 C.F.R. § 1104.7(b), Ameren Energy Fuels and Services Company (“Ameren”) hereby respectfully submits this Motion for Extension of Time (“Motion”) to reply to the Lease and Operation Exemption (“Petition”) filed by Keokuk Junction Railway Company (“KJRY”) in this proceeding, on December 7, 2006. As Ameren demonstrates below, good cause strongly supports the Board’s exercise of its discretion to extend the due date for Ameren’s reply by twenty days from the date of the protective order is imposed in this Proceeding¹ or until January 8, 2007, whichever is later.² In response to Ameren’s request for consent, KJRY’s counsel has informed Ameren that KJRY will not consent to Ameren’s request for an extension of time. KJRY claims that they must object to an extension because KJRY consulted with a potential shipper, Central Illinois Energy (“CIE”) and CIE asked KJRY to not agree to the

¹ Ameren has disputed the contents of the protective order that KJRY submitted for the Board’s consideration. KJRY’s assertion that Ameren’s reason for that objection is to cause delay is wrong. Ameren has legitimate concerns that it has rightfully raised in a pending legal proceeding instigated by KJRY.

² This Motion is timely, pursuant to 49 C.F.R. § 1104.7(b).

extension because CIE has been led to believe that such an extension will be detrimental to CIE's construction schedule. However, CIE's construction schedule should not be impacted by this proceeding since CIE is still entitled to service by BNSF since the lease has not been improved. In fact, Ameren has been led to believe that CIE has a long-term contract with BNSF for rail service. These facts have not changed and are not impacted by Ameren's reasonable request. Further, as shown below Ameren's reasonable request is supported by Board precedent.

I. INTEREST OF AMEREN.

For purposes of describing its interest in this proceeding, Ameren refers to and incorporates by reference the "Motion to Hold Verified Notice of Exemption" and the "Petition to Revoke or Reject Notice of Exemption" that Ameren filed on August 10 and November 17, 2006, respectively, in STB Finance Docket No. 34918, Keokuk Junction Railway Co. d/b/a Peoria & Western Railway – Lease and Operation Exemption – BNSF Railway Co. between Vermont and Farmington, IL. As Ameren explained in those filings, the lease transaction underlying KJRY's Petition—the same transaction that KJRY purported to accomplish via 49 C.F.R. 1150.41—eliminates the competitive rail access that Ameren assiduously established for the transportation of coal to the Duck Creek Power Plant ("Duck Creek"). The transaction also substantially undermines the value of Ameren's considerable investment in its spur track from Duck Creek to KJRY's east-west line. Plainly, Ameren's interest in this proceeding is significant. Thus, it reasonably requests a fair and full opportunity to present its opposition.

II. ARGUMENT.

A. Ameren Cannot Effectively Respond to the Petition until it Receives the Unredacted, Highly Confidential Version.

Pursuant to 49 C.F.R. § 1104.13, Ameren has until December 27, 2006 to respond to KJRY's Petition. However, as of the date of this Motion, Ameren has not been able to review a

complete copy of the Petition because it designated the pleading “Highly Confidential” and filed under seal. Ameren’s access to the Petition has been limited to the heavily-redacted “Public” version that its counsel received as a courtesy copy. This version is simply inadequate for purposes of preparing a reply since it lacks crucial argument and information that purportedly supports KJRY’s Petition. For example, the Petition refers repeatedly to the Verified Statement of KJRY’s expert witness, William J. Brennan, which supposedly demonstrates that elimination of dual rail access at Duck Creek will strengthen the facility’s competitive position. But, large portions of Mr. Brennan’s analysis are excised from the “Public” version. Similarly, the “Public” version heavily redacts the lease agreement between BNSF Railway Company and KJRY that is at the center of this proceeding.³ Simply put, Ameren cannot effectively move forward until it obtains a copy of the “Highly Confidential” version of the Petition. Furthermore, the current date to respond falls two days after a major religious holiday with other significant holidays also within that time and shortly thereafter. Addressing these legitimate circumstances constitutes good cause for the Board to grant Ameren’s request for an extension of time.⁴

³ It appears the “Public” version of the lease agreement is the same one originally produced to Ameren under the Confidential designation of the protective order imposed in Finance Docket No. 34918. While KJRY subsequently provided to Ameren’s outside counsel, after Ameren was forced to file a motion to compel, additional portions of the lease agreement, Ameren’s outside counsel and the outside expert it has now be forced to retain, have not seen the full lease agreement nor the full filing and arguments asserted by KJRY in this proceeding.

⁴ In STB Finance Docket No. 34918, KJRY produced a copy of the lease to Ameren’s counsel with fewer redactions, but not all the lease terms, than the version contained in the Public version in this proceeding. However, by the terms of the protective order governing that proceeding, disclosure of “Confidential Information” is limited to Ameren’s “outside counsel.” See STB Finance Docket No. 34918, Keokuk Junction Railway Co. d/b/a Peoria & Western Railway – Lease and Operation Exemption – BNSF Railway Co. between Vermont and Farmington, IL, 2006 STB Lexis 450 (Served Aug. 25, 2006). Because this proceeding is a different proceeding and KJRY has filed a new Motion for Protective Order, the restriction effectively prevents Ameren from sharing the lease with the outside consultant(s) that it will engage to respond to the Petition.

STB precedent fully supports the relief that Ameren requests under these circumstances. For example, in STB Finance Docket No. 34536, Indiana & Ohio Central Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc., 2004 STB LEXIS 834 (Served Dec. 24, 2004), the Board granted a thirty day extension requested by the United Transportation Union, so that it could effectively supplement a petition to revoke using unredacted documents produced by the Indiana & Ohio Central Railroad pursuant to a protective order. Similarly, in STB Docket No. AB-33, Union Pacific Railroad Co.—Abandonment—In Polk County, IA, 2002 STB LEXIS 118 (Served Feb. 21, 2002), the Board granted an extension to Union Pacific Railroad, allowing the carrier to submit its reply, as requested, five days after it received an unredacted exhibit released under a protective order. The Board noted, “[t]he extension will be granted because UP has shown good cause and no party will be prejudiced by the delay.” *Id.* at *2. And, in STB Finance Docket No. 34335, Keokuk Junction Railway Co.—Feeder Line Acquisition—Line of Toledo and Western Railway Corp. between La Harpe and Hollis, IL, 2003 STB LEXIS 703 (Served Nov. 4, 2003) the Board granted an extension of two days to KJRY, so that it could properly review a commenter’s workpapers before filing a reply. In light of this precedent, Ameren’s Motion establishes good cause for the Board to grant an extension.⁵

B. Ameren’s Request for an Extension will not Prejudice KJRY or Unduly Delay the Board’s Resolution of this Proceeding.

Ameren submits that granting its request for an extension of twenty days will not prejudice KJRY, or any other party, or unduly delay the Board’s timely resolution of this proceeding. Ameren is not at fault for any minor delay that may occur. Ameren is prevented from reviewing a “Highly Confidential” copy of the Petition which inhibits Ameren’s ability to

⁵ See also STB Docket NOR 42072, Carolina Power & Light Co. v. Norfolk Southern Railway Co., 2002 STB LEXIS 338 (Served May 29, 2002) (extending the procedural schedule by ten days to allow the complainant to evaluate supplemental traffic and revenue data).

fully respond to KJRY's allegations and assertions. Ameren rightfully seeks the full opportunity to respond to the harm it believes it will suffer under this transaction.

Furthermore, while Ameren had hoped to reach a commercial settlement to address this harm, it appears that KJRY had instead been developing this new Petition. KJRY has submitted a verified statement by Mr. Brennan which invokes such theories of monopoly pricing and anti-competitive behavior and claims that such principals do not apply to Class III carriers, including KJRY, in an effort to discount the manifest harm to the generating facility. Ameren's request for an extension of time is justified since it still has not been able to review a complete copy of Mr. Brennan's statement. In this regard, STB precedent again favors relief. See STB Docket NOR 42071, *Otter Tail Power v. The Burlington Northern and Santa Fe Railway Co.*, 2005 STB LEXIS 39 (Served Jan. 18, 2005) (granting the complainant an extension of twenty-five days to evaluate data generated by a computer model). Moreover, Ameren believes that a brief extension of twenty days will not unduly delay the Board's resolution of this proceeding.

C. Granting an Extension will Accommodate Significant Holidays.

As noted above, Ameren's reply is presently due on December 27, 2006, just two days after Christmas Day, and four days before New Year's Day. Hanukkah (Dec. 16 – 23) and Kwanzaa (Dec. 26 – Jan. 1) also occur before the deadline for Ameren's reply. As such, preparation of a reply will inconvenience both Ameren employees and its counsel, disrupting holiday travel and family plans. Under similar circumstances, the Board has previously accommodated extension requests. See STB Finance Docket No. 34281, *LB Railco, Inc.—Lease and Operation Exemption—Providence and Worcester Railway Co.*, 2003 STB LEXIS 2 (Served Jan. 3, 2003) and STB Finance Docket No. 33200, *Cities of Auburn and Kent, WA—Petition for Declaratory Order—Burlington Northern Railroad Co.—Stampede Pass Line*, 1997 STB LEXIS

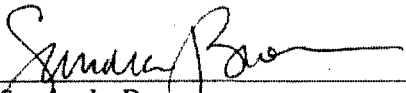
2942 (Served Jan. 15, 1997). Accordingly, it is proper for the Board to grant an extension to Ameren, allowing a reasonable period of time after the conclusion of the holiday season to file its reply.

III. CONCLUSION.

For the foregoing reasons, the Board has good cause to exercise its discretion, pursuant to 49 C.F.R. § 1104.7(b), to extend the period of time for Ameren to respond to the Petition by twenty days. Wherefore, Ameren respectfully requests that the Board grant the relief it has requested in this Motion.

Respectfully submitted,

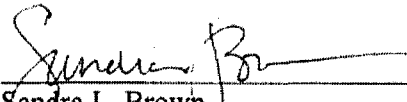
James A. Sobule
AMEREN ENERGY FUELS AND SERVICES
COMPANY
1901 Chouteau Avenue
St. Louis, MO 63103
TEL: (314) 554-2276
FAX: (314) 554-4014


Sandra L. Brown
Michael H Higgins
TROUTMAN SANDERS LLP
401 9th Street, N.W.
Suite 1000
Washington, DC 20004
TEL: (202) 274-2959
FAX: (202) 654-5603

*ATTORNEYS FOR AMEREN ENERGY FUELS AND
SERVICES COMPANY*

CERTIFICATE OF SERVICE

This is to certify that on this 15th day of December 2006, I caused the foregoing Motion for Extension of Time in STB Finance Docket No. 34974 to be served upon counsel for all known parties of record by electronic means.


Sandra L. Brown