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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 January 12, 2007, Keokuk Junction Railway Co. d/b/a/ Peoria & Western Railway (“KJRY”) proposed Board-sponsored mediation in the above-captioned proceeding without conditions in order to resolve differences between KJRY and Ameren Energy Fuels and Services Company (“Ameren”) that have arisen in this proceeding. Ameren initially embraced the proposal, but insisted upon preconditions. KJRY generally accepted those preconditions on January 24, 2007, but offered one of its own. Although questioning whether its participation would be necessary, BNSF Railway Company (“BNSF”) made clear that it did not oppose mediation and would participate on an “as needed basis” in the mediation. Unfortunately, on January 30, 2007, Ameren rejected mediation,¹ meaning, of course, that the Board must now turn to the merits of KJRY’s Petition for Exemption (“Petition”) to lease from BNSF and operate the so-called Vermont Line (“Line”).

Ameren’s rejection of mediation is mystifying, given the thrust of its opposition to KJRY’s proposed lease. In its Reply to KJRY’s Petition (“Reply”) Ameren asserts that, through

¹ Ameren misconstrues the KJRY and BNSF positions on mediation. Neither KJRY nor BNSF stated that BNSF should be excused from mediation. Rather, they questioned whether BNSF would be *essential* to a mediated settlement and BNSF clearly stated they were willing to participate as needed. In rejecting the mediation, Ameren either deliberately misconstrued BNSF’s position or did not carefully consider BNSF’s comments.

the lease, KJRY will accrue market power, and that KJRY will abuse such market power by increasing rates for KJRY's portion of the existing Union Pacific Railroad Company ("UP")-KJRY coal service to Ameren in order to make the UP/KJRY route uncompetitive.² KJRY was, and is, quite willing to mediate over its rates with UP, and it is hard to see how BNSF would be essential to such discussions.

Ameren's more recent filing, however, now claims that it is not KJRY's ability to raise rates for future movements on the UP/KJRY route that is of concern (an act, by the way, that KJRY can take today with or without Ameren's or BNSF's consent), but rather KJRY's ability to somehow use its market power on the UP/KJRY routing to *collude* with BNSF to change the terms of the KJRY/BNSF lease and to increase rates.³ Of course if that were BNSF's and KJRY's goal, why go through the charade of a lease? Instead, BNSF and KJRY could just agree to undertake the scenario with BNSF giving KJRY a portion of its revenues in thanks for KJRY pricing UP (and itself) out of the UP/KJRY routing. As KJRY has previously pointed out, besides market forces, there are also legal safeguards in place under the ICC Termination Act of 1995 and the antitrust laws to protect against this unrealistic, fantastical scenario. The lease transaction is simply irrelevant to such a theory.

Ameren's filings reveal that it isn't sure what argument would best obstruct the proposed transaction, as it constantly switches its argument to cause delay and obstruction. Ameren's overarching goal here is obviously not to reach a settlement, but rather to force BNSF to sell the Line to Ameren. The Board should resist Ameren's indirect attempt to subvert BNSF's normal business dealings or its selection of a short line partner.

Despite Ameren's transparent efforts, KJRY hereby offers to clarify its Petition in the interest of swifter Board action. Specifically, if Ameren is truly concerned that KJRY would abuse its purported new found market power to leverage more favorable terms than those now contained in the lease, KJRY would accept the following as a condition to Board approval of KJRY's Petition: During the term of the lease, KJRY would not negotiate for or accept – (1) any increase in the per car allowance provisions of its agreement with BNSF, or (2) any other lease

² Ameren's case hinges upon an implausible economic theory divorced from the realities of short line railroad operations and relationships with connecting Class I carriers. Ameren offers no precedent where the Board has denied a petition for exemption on the basis that a shortline leasing a line from a Class I railroad would be able to exercise market power over another Class I railroad. Nor has Ameren provided any examples of a short line, through a comparable transaction, accruing sufficient market power to abuse shippers. Ameren has simply failed to present any evidence or precedent to support its theories or to show that the transaction will result in the abuse of market power.

³ Even if collusion is Ameren's principal concern, then KJRY's view as to BNSF's role in mediation would not change. That is because the mechanism that KJRY ostensibly would use to manipulate the Duck Creek coal transportation market is KJRY's rate via the UP/KJRY route, and BNSF clearly would not be necessary to any mediation surrounding that rate.

adjustments that would increase KJRY's revenues on traffic to and from Ameren.⁴ Further, KJRY would agree to file quarterly reports with the Board during the term of the lease concerning service to Ameren's Duck Creek plant. Such Board oversight would ensure that KJRY and BNSF do not collude to the detriment of Ameren.

Absent a settlement or expeditious Board action on the Petition, Central Illinois Energy ("CIE"), a shipper in dire need of direct rail service via the Line, would remain deprived of such service, and, as BNSF's reply in support of the Petition clearly reflects, the Line will continue to deteriorate. KJRY's offer here is motivated not by any sense of shortcoming in its Petition or because of any perceived merit to Ameren's opposition to the transaction, but rather as a goodwill gesture that might speed Board consideration of the Petition.

For these reasons, KJRY urges the Board to be mindful of KJRY's request for expedited consideration and to consider carefully the above-described condition to approval of its Petition.

Sincerely,



William A. Mullins

cc: Parties of Record

⁴ The proposed lease agreement is a part of the record here. Were KJRY and BNSF to agree to substantive changes to that agreement, Ameren could call for a reopening of this proceeding to determine if further Board action is warranted in light of the changed circumstances. KJRY's offer here would make such a request to reopen unnecessary. Obviously, if KJRY and BNSF were to collude to manipulate rates, Ameren would have numerous avenues for redress, and Ameren has not offered any precedent for denying an exemption due to the alleged "opportunity" to engage in illegal conduct.