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SERVICE DATE - OCTOBER 17, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33995

SF&L RAILWAY, INC.—ACQUISITION AND OPERATION EXEMPTION—TOLEDO,
PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN LA HARPE AND
PEORIA, IL

STB Finance Docket No. 33996¹

KERN W. SCHUMACHER AND MORRIS H. KULMER—CONTINUANCE IN CONTROL
EXEMPTION—SF&L RAILWAY, INC.

Decided: October 15, 2002

On January 10, 2001, SF&L Railway, Inc. (SF&L), a noncarrier at the time,² filed a notice of exemption under 49 CFR 1150.31 to acquire from Toledo, Peoria and Western Railway Corporation (TP&W)³ an operating easement over, and the rail, ties, and certain improvements on, a 71.5-mile segment of rail line in Illinois between milepost 194.5 at La Harpe and milepost 123.0 at Peoria (the La Harpe Line or Line). Also on that date, Messrs. Kern W. Schumacher and Morris H. Kulmer, the owners of SF&L, filed a notice of exemption under 49 CFR

¹ These proceedings are not consolidated; they are being considered together for administrative convenience.

² SF&L had nominally been a rail carrier in the past. But by the time this proceeding arose, SF&L had disposed of all of the rail lines it had acquired, amid charges that it had bought those lines only to salvage them. See, e.g., SF&L Railway, Inc.—Abandonment Exemption—In Ellis and Hill Counties, TX, STB Docket No. AB-448 (Sub-No. 1X) (STB served July 30, 1996), at 5.

³ TP&W, a Class III railroad, is controlled by RailAmerica, Inc. (RailAmerica or RA), a noncarrier holding company. See RailAmerica, Inc.—Control Exemption—Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation, and Toledo, Peoria & Western Railway Corporation, STB Finance Docket No. 33777 (STB served Sept. 17, 1999). RailAmerica controlled 11 Class III railroads at the time it acquired TP&W and now controls 2 Class II and 23 Class III railroads in the United States. See RailAmerica, Inc.—Control Exemption—Kiamichi Holdings, Inc. and Kiamichi Railroad L.L.C., STB Finance Docket No. 34130 (STB served Jan. 30, 2002).

1180.2(d)(2) to allow them to continue in control of SF&L after it became a rail carrier.⁴ Messrs. Schumacher and Kulmer already indirectly controlled three other railroads: Tulare Valley Railroad Company (TVRC), Kern Valley Railroad Company, and V and S Railway, Inc. (V & S). They also owned A&K Materials, Inc. (A&K), which they refer to as “the Nation’s leading supplier of new and used . . . rail, ties and other materials for use in railroad track applications.”⁵ Respondents’ Reply at 5.

In March 2001, Keokuk Junction Railway Co. (KJRY) filed a petition under 49 U.S.C. 10502 to revoke the two exemptions (Petition).⁶ In addition, the United Transportation Union-Illinois Legislative Board (UTU-IL), both on its own and jointly with McDonough County and the city of Macomb (collectively, UTU-IL parties), filed petitions to reject and/or revoke the two exemptions. Respondents filed replies to these petitions. TP&W and RailAmerica filed a response to KJRY’s Petition.⁷ On June 5, 2001, the Board instituted this proceeding.

⁴ The notices of exemption were served and published in the Federal Register at 66 FR 9410-11 on February 7, 2001.

⁵ SF&L and Messrs. Schumacher and Kulmer are jointly referred to as Respondents.

⁶ KJRY, a Class III shortline railroad, is controlled by Pioneer Railcorp (Pioneer), a noncarrier holding company that controls a number of other Class III railroads. See Pioneer Railcorp–Acquisition of Control Exemption–KNRECO, Inc., d/b/a Keokuk Junction Railway, Finance Docket No. 32877 (STB served Mar. 26, 1996). At the time of the filing of the notices of exemption for the Line here, KJRY operated a 38-mile line of railroad mostly between Keokuk, IA, and La Harpe. It interchanged traffic with The Burlington Northern and Santa Fe Railway Company (BNSF) at Keokuk and with TP&W at La Harpe.

⁷ The Board issued a protective order in these proceedings on April 13, 2001, to allow confidential information to be filed under seal to prevent the unrestricted disclosure of the information. The order requires the parties to comply with its provisions “unless the Board, an ALJ, or any other officer exercising authority lawfully delegated by the Board determine[s] that good cause has been shown warranting suspension of any provisions herein.” April 13 decision at 7. To resolve certain issues and reach a decision in this proceeding, we find that good cause exists to disclose information filed under seal pertaining to various matters, including inspection of the Line, the issue of the purchase of bridges, trestles, and culverts, why a 12.1-mile line segment was not purchased, the draft service agreement, and the payment terms of a promissory note. See Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 316 n.75 (1996). We do not believe the release of this material will “cause serious competitive injury” (April 13 decision at 3) or that the material contains trade secrets. Cf. Arthur R. Miller, Confidentiality, Protective Orders, and Public Access to the Courts, 105 Harv. L. Rev. 427, 492 (1991) (arguing courts have discretion to prevent both the excessively broad use of protective orders and the unwarranted

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KJRY filed a supplemental petition (Supp. Petition) on December 12, 2001; the UTU-IL parties filed a supplemental joint petition (Supp. Jt. Petition) on January 7, 2002; and Respondents filed a supplemental reply (Supp. Reply) on January 11, 2002. On January 28, 2002, KJRY filed rebuttal (Rebuttal), and on February 8, 2002, Respondents filed surrebuttal (Surrebuttal). On September 3, 2002, SF&L filed a petition for an exemption to abandon the La Harpe Line. See SF&L Railway, Inc.—Abandonment Exemption—in Hancock, McDonough, Fulton and Peoria Counties, IL, STB Docket No. AB-448 (Sub-No. 2X).

After considering the record, we have decided to revoke the acquisition and control exemptions.⁸ The class exemption process is intended to provide an expedited way for noncarriers to acquire rail lines so that rail service can be continued. We find that Respondents abused the class exemption process by using the procedures to acquire lines for salvage rather than for any meaningful operations.⁹ Because we are revoking the acquisition and control

⁷(...continued)
denial of confidentiality to deserving material.)

⁸ Under the statute, a proceeding concerning a request to revoke an exemption “shall be completed within 9 months after it is begun.” 49 U.S.C. 10905(b), (d). In this case, we did not rule on the revocation request within the 9-month period, in part because the parties have continued to file new pleadings that have complicated the questions before us. For example, after an initial round of petitions and replies in 2001, the parties engaged in a second round, which culminated in the Surrebuttal filed by Respondents in February 2002, just 1 month prior to the deadline. The parties submitted several additional pleadings in the summer of 2002, including two filed by KJRY on July 29 and August 12, 2002, and two replies filed by Respondents on August 1 and August 14, 2002, which are accepted into the record.

We nevertheless retain jurisdiction to revoke the exemptions at issue here. See Central States Enterprises, Inc. v. ICC, 780 F.2d 664, 672 n.8 (7th Cir. 1985) (agency failure to act timely does not necessarily strip it of jurisdiction to act “where the underlying jurisdictional statute [here, 49 U.S.C. 10502] fails to set forth a sanction for failure to comply with the statute’s time table.”). See also St. Regis Mohawk Tribe, New York v. Brock, 769 F.2d 37, 41 (2d Cir. 1985); Thomas v. Barry, 729 F.2d 1469, 1470 n.5 (D.C. Cir. 1984). In light of our responsibility to protect the public interest in the continuation of active rail lines and the intent of the parties to the sale to thwart that statutory goal here, we find that we may revoke these exemptions.

⁹ The UTU-IL parties argue that the transaction does not qualify for the class exemption because it would not have been governed by 49 U.S.C. 10901. We disagree; “the acquisition of an active rail line and the common carrier obligation that goes with it ordinarily requires Board approval” under that section. City of Charlotte, NC—Acquisition Exemp.—Certain Assets of the North Carolina Railroad Co., STB Finance Docket No. 33529 (STB served Feb. 24, 1998), at 2. Thus, these types of transactions fall within our jurisdiction under section 10901.

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exemptions, the Board will soon issue a decision dismissing SF&L's petition for an abandonment exemption as moot.

BACKGROUND

When it was acquired by RailAmerica in 1999, TP&W owned 283.2 miles of rail line between Lomax, IL (milepost 206.6), and Logansport, IN, and operated 369 miles of rail line, which included trackage rights over BNSF between Fort Madison, IA, and Lomax and between Galesburg and Peoria, IL. La Harpe is located 12.1 miles to the east of Lomax. One of TP&W's major traffic movements at the time of the acquisition was a time-sensitive intermodal train that TP&W hauled for BNSF between Fort Madison and TP&W's intermodal ramps at East Peoria, IL, and Remington, IN. The train moved over the La Harpe Line, usually 5 or 6 days a week in each direction, and was used by TP&W to pick up and deliver local traffic and traffic interchanged with KJRY at La Harpe.

In January 2000, RailAmerica incurred substantial debt as a result of its acquisition of 17 additional shortline railroads. See RailAmerica, Inc.—Control Exemption—RailTex, Inc., STB Finance Docket No. 33813 (STB served Jan. 10, 2000). To reduce debt, it began disposing of properties.¹⁰ In this regard, Pioneer offered to purchase TP&W's entire West End, which connected with KJRY's line and would allow KJRY to reach Fort Madison and Peoria. While these negotiations progressed, RailAmerica and TP&W entered into an agreement with BNSF to shift BNSF's intermodal train from the Lomax interchange and the La Harpe Line to the Galesburg interchange.

⁹(...continued)

UTU-IL, in a separately filed petition, argues that the exemption should be rejected because SF&L failed to submit all agreements mentioned in its filings. In fact, it appears that whatever agreements had been reduced to writing were put before the Board. Therefore, there is no basis for rejection.

In their jointly filed petition, the UTU-IL parties also argue that the notices of exemption should be revoked because SF&L is a shell company and the immediate transaction is part of a more complex plan to divide rail operations in western Illinois without obtaining regulatory approval. And finally, they assert that revocation is necessary so that we may consider the effect of the transaction on the adequacy of rail service, on rail competition, and on railroad employees. Given our decision to revoke, we need not discuss these various alternative grounds for revocation.

¹⁰ A RailAmerica news release dated January 4, 2001, stated that the sale of the La Harpe Line was part of an "asset rationalization plan to sell non-core, non-strategic assets and reduce debt" following the \$325 million acquisition of a group of shortline railroads from RailTex, Inc. See UTU-IL parties, Petition, Appendix 1.

By December 2000, Pioneer and RailAmerica had not reached an agreement for sale of TP&W's West End. On December 21, 2000, RailAmerica began negotiating to sell the West End to Messrs. Kulmer and Schumacher. Within 8 days, on December 29, 2000, RailAmerica entered into an agreement to sell the La Harpe Line to SF&L, an A&K-affiliated company that, as noted (see supra note 2), has bought and then liquidated rail properties in the past. A&K paid for the property on the same day, December 29, 2000, and received for security a note from SF&L.

Under the purchase agreement, SF&L acquired an operating easement over, and the rail, ties, and certain improvements on, the full 71.5-mile Line. TP&W retained the underlying real estate, subject to what TP&W describes as a permanent and unconditional easement permitting SF&L to fulfill the common carrier obligation for the Line. But the parties also agreed that TP&W would operate the Line for SF&L, and that they would execute additional documents and agreements as necessary to effect the sale and operation of the Line. Significantly, the sale to SF&L did not include the last mile of track by which TP&W had reached the KJRY line. TP&W remained the owner of that last mile and retained the corresponding common carrier responsibility on that piece of track. Thus, for through traffic to move between the KJRY line and the La Harpe Line, it would now need to go through an additional interchange for that 1-mile stretch, making such moves more costly.

After the Line was sold, TP&W continued to operate it for many months, soliciting traffic for its own account. TP&W replaced BNSF's intermodal train with local train service (one train twice a week in each direction between Peoria and La Harpe) on February 18, 2001, and began hauling BNSF's intermodal train via Galesburg on February 19, 2001. In November 2001, Respondents notified RailAmerica, Pioneer and others that SF&L would begin to operate the Line on its own. RailAmerica subsequently notified Pioneer in a letter dated December 12, 2001, that TP&W had "closed on the sale of its line . . . on December 10, 2001."¹¹ Respondents' Supp. Reply, Attachment B. Respondents claim that SF&L began operating the Line itself on December 12, 2001, that it operated one train twice a week in each direction between Peoria and La Harpe after that, and that, as of the time of its supplemental reply, it had received 172 carloads from, and delivered 58 carloads to, KJRY.

¹¹ In Respondents' Reply, Messrs. Schumacher and Kulmer, in their joint Verified Statement (V.S.) of March 23, 2001, at 14, stated to the contrary that they had already closed on their purchase of the La Harpe Line.

KJRY'S REQUEST FOR REVOCATION

In seeking revocation of the sale, KJRY argues that it has depended on its connection with TP&W at La Harpe for access to a number of other Class I railroads,¹² as well as nine shortline and regional railroads. It charges that SF&L acquired the Line not with the intent to continue rail service but with the intent to downgrade service and increase rates and then file for abandonment in order to salvage the track and materials through A&K, its corporate affiliate. KJRY sought revocation to “force TP&W to either operate the [L]ine or file for abandonment authority at which point a company such as KJRY, who is committed to running a shortline railroad, could make an OFA [offer of financial assistance] and purchase the [L]ine.” KJRY Supp. Petition at 21.

KJRY contends that SF&L is one of a number of A&K-affiliated railroads controlled by Messrs. Schumacher and Kulmer and that these individuals have a long history of using A&K-affiliated railroads to acquire rail lines for the purpose of abandoning and salvaging them. KJRY lists 10 earlier proceedings between January 1990 and December 2000 where SF&L and other A&K-affiliated railroads sought to acquire rail lines using either the class exemption or the OFA procedures.¹³ KJRY argues that these A&K-affiliated railroads succeeded in acquiring rail lines

¹² Union Pacific Railroad Company (UP) at Fort Madison, Galesburg, Sommer (Peoria), and Chenoa, IL; Canadian National Railway Company/Illinois Central Railroad Company at Peoria and Gilman, IL; Canadian Pacific Railway Company/Soo Line Railroad Company at Watseka, IL; Norfolk Southern Railway Company at East Peoria and Logansport; and CSX Transportation, Inc., at Watseka and Reynolds, IN.

¹³ KCT Railway Corporation–Acquisition and Operation Exemption–Lines of The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 31640 (ICC served May 4, 1990); T and P Railway, Inc.–Acquisition and Operation Exemption–The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 31901 (ICC served July 11, 1991); Missouri Pacific Railroad Company–Abandonment Exemption–in Denton County, TX, Docket No. AB-3 (Sub-No. 99X) (ICC served June 3, 1992); Union Pacific Railroad Company–Abandonment Exemption–in Lancaster County, NE, Docket No. AB-33 (Sub-No. 71X) (ICC served Sept. 28 1992); Missouri Pacific Railroad Company–Abandonment Exemption–in Ellis and Hill Counties, TX, Docket No. AB-3 (Sub-No. 101X) (ICC served Oct. 2, 1992); Tulare Valley Railroad Company–Acquisition and Operation Exemption–The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32215 (ICC served Jan. 13, 1993); V & S Railway, Inc.–Acquisition and Operation Exemption–Rail Line of St. Louis Southwestern Railway Company–in Franklin, Hopkins, Delta, Titus and Hunt Counties, TX, Finance Docket No. 32634 (ICC served Jan. 20, 1995) (V & S Ry. I); Roaring Fork Railroad Holding Authority–Abandonment Exemption–in Garfield, Eagle, and Pitkin Counties, CO, STB Docket No. AB-547X (STB served May 21, 1999) aff’d sub nom. Kulmer v. STB, 236 F.3d 1255 (10th Cir.

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in 7 of the 10 proceedings,¹⁴ that they disposed of more than 98% of the track acquired in 4 of them,¹⁵ that the bulk of this track was abandoned, and that the abandonments commenced within weeks or only a few months of the acquisitions.¹⁶

¹³(...continued)

2001); Kern Valley Railroad Company–Acquisition and Operation Exemption–Trinidad Railway, Inc., STB Finance Docket No. 33956 (STB served Nov. 21, 2000) (Kern Valley); and V & S Railway, Inc.–Acquisition and Operation Exemption–Central Kansas Railway, L.L.C., STB Finance Docket No. 33964 (STB served Dec. 7, 2000) (V & S Ry. II). SF&L was the acquiring entity in three of these proceedings: Docket No. AB-3 (Sub-No. 99X), Docket No. AB-33 (Sub-No. 71X), and Docket No. AB-3 (Sub-No. 101X).

¹⁴ The OFA was withdrawn by SF&L in Docket No. AB-3 (Sub-No. 99X). In Docket No. AB-33 (Sub-No. 71X) at 5, SF&L’s OFA was “rejected as not being for continued rail service.” In STB Docket No. AB-547X at 5, the OFA was dismissed because “continued rail service would not likely be the result.”

¹⁵ The other three proceedings in which A&K-affiliated railroads obtained lines were the two most recent acquisitions, Kern Valley and V & S Ry. II, and the acquisition in V & S Ry. I. The earlier acquisition in V & S Ry. I apparently was never consummated, as evidenced by the fact that V & S used the class exemption in V & S Ry. II and there is no abandonment record in V & S Ry. I. In Kern Valley Messrs. Schumacher and Kulmer conceded that they acquired the 30-mile rail line in that case with the intent to step into the abandoning carriers shoes and conduct salvage once the line could be abandoned. See Trinidad Railway, Inc.–Abandonment Exemption–in Los Animas County, CO, STB Docket No. AB-573X (STB served Aug. 13, 2001), reconsideration denied (Dec. 12, 2001).

¹⁶ Approximately 319 of the 370 miles of line acquired in the four proceedings were abandoned. Another 45 miles of line were sold. See San Joaquin Valley Railroad Company–Acquisition and Operation Exemption–Tulare Valley Railroad Company, STB Finance Docket No. 33723 (STB served Mar. 30 and May 12, 1999) (7 line segments, approximately 43 miles of the 158 miles of rail line TVRC acquired in Finance Docket No. 32215, were sold to San Joaquin Valley Railroad Company (SJVR), the rail carrier that was operating them), and SF&L Railway, Inc.–Abandonment Exemption–in Ellis and Hill Counties, TX, Docket No. AB-448 (Sub-No. 1X) (STB served July 30, 1996) (municipality used OFA process to acquire 1.7 miles of the 18-mile rail line SF&L acquired in Docket No. AB-3 (Sub-No. 101X)). A 5.9-mile rail line between Ultra and Ducor, CA, the only remaining segment of the line acquired by TVRC in Finance Docket No. 32215, is currently being operated for TVRC by SJVR, the connecting carrier. TVRC had filed a petition for exemption to abandon the 5.9-mile rail line but the petition was denied in Tulare Valley Railroad Company–Abandonment and Discontinuance Exemption–in Tulare and Kern Counties, CA, STB Docket No. AB-397 (Sub-No. 5X) (STB

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KJRY claims that, with the exception of the current situation, no A&K-affiliated railroad has ever conducted its own operations. Instead, KJRY asserts that contract operators were used in the few instances where actual operations commenced and that the A&K affiliates and their contract operators, in those instances, were the subject of numerous letters complaining of poor service and high rates. KJRY also submitted verified statements from shippers and others adversely affected by, or critical of, prior abandonments by A&K affiliated railroads.

KJRY contends that Respondents' original intent to abandon and salvage the La Harpe Line can be seen in the structure of the transaction. KJRY argues that SF&L's failure to acquire the underlying right-of-way, along with its reliance on TP&W to operate the Line, would result in neither additional services nor efficiencies. Moreover, KJRY claims that excluding the last mile of track from the sale, thus inserting an additional carrier into the routing, could only make ratemaking more difficult, complex, and time consuming; create a less efficient routing; and result in higher rates and reduced maintenance. Indeed, KJRY claims that shippers have already seen their rates double and triple.

KJRY contends that Respondents were primarily interested in the Line's salvage value and did not even consider its going concern value, and that this can be seen from their admission that no studies, reports, or analyses were performed at any time before or after the purchase agreement was signed to examine whether the Line could operate profitably. Indeed, KJRY alleges that no pre-sale physical inspection of the Line was made. KJRY claims that Respondents relied solely on a one-page itemized listing by weight of the Line's rail and other track materials, dated December 21, 2000, that was prepared by TP&W to be attached to the purchase agreement. According to KJRY, standard industry practice dictates that, before making a substantial investment, purchasers perform at least some "due diligence" analysis which might include: (1) the development of operating plans, personnel and operating budgets, and traffic projections; and (2) an evaluation of current and potential business, of retaining or losing overhead traffic, and of salvage value. Instead, KJRY claims that Respondents entered into the purchase agreement and transferred the purchase price just 8 days after learning that the Line was for sale without physically inspecting the Line, and knowing that the BNSF intermodal train was to be rerouted.¹⁷

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served Feb. 21, 1997, and Mar. 6, 1998).

¹⁷ Respondents acknowledge that they were aware that the traffic would possibly be rerouted. Respondents' Reply, V.S. of Mr. Michael Van Wagenen at 4 ("I was aware that there was a possibility that the intermodal trains would be diverted . . .") Respondents subsequently admitted that they limited their purchase offer to the Peoria to La Harpe segment after being told that the rerouting was "in the offing." KJRY Supp. Petition, Exhibit F at 2 (confidential version).

Further evidence of Respondents' original intent, according to KJRY, can be seen from their dispute with RailAmerica over whether the purchase agreement included the Line's bridges, trestles, and culverts. KJRY contends that a summary of a May 31, 2001 conference call between A&K and RailAmerica representatives establishes that A&K did not believe it had purchased these assets and did not want them.¹⁸ KJRY also claims that Respondents' intent can be seen from the financing used. SF&L signed a promissory note to secure the funds A&K advanced for the purchase of the Line.

Additionally, KJRY contends that Respondents purchased TP&W's and RailAmerica's support for the future abandonment of the Line. KJRY states that the draft contract for TP&W to operate the Line specifies that TP&W would not oppose SF&L if it sought to abandon all or part of the Line. KJRY also points to Respondents' statement that they expected "that both TP&W and RailAmerica, Inc., would support [abandonment] in view of the aid that SF&L's purchase of the line was to RailAmerica, Inc." Respondents' Supp. Reply at 18.

KJRY also criticizes the delay in consummating the transaction. Respondents' notice stated the transaction would be consummated on or after January 17, 2001, but they claim that SF&L did not begin operations until December 12, 2001. KJRY contends that Respondents would have "worked more diligently to close the purchase and commence operations" if they truly intended to operate the Line. KJRY Petition at 16.

Finally, KJRY claims that confusion over the ownership of, and responsibility for operating, the Line is reflected in service problems that shippers experienced.¹⁹ This confusion,

¹⁸ The May 31, 2001 summary, apparently drafted by a RailAmerica representative and produced by TP&W and RailAmerica in discovery, states: "A&K assumed based on the December 2000 purchase they were not acquiring [the bridges, trestles, and culverts]. Partially based on the assets list provided them by RA which led them not to conduct a physical inspection of the line prior to entering into purchase agreement." The summary continues, stating that this could be an "undo issue" for RailAmerica because the purchase agreement did not include maintenance and liability clauses, and noting that "A&K will revisit the issue and consider accepting bridges and trestles but not culverts, which they believe are a part of the right of way." KJRY Supp. Petition, Exhibit A at 1 (confidential version).

¹⁹ Roquette America, Inc. (Roquette), a large shipper located on KJRY's line at Keokuk, complained in a letter dated July 16, 2001, that service frequency had been reduced from 5 or 6 days to 2 days a week; that SF&L, on June 19, 2001, informed Farmers Elevator Company, one of Roquette's suppliers and a shipper on the La Harpe Line, that its traffic would be switched only on an as-needed basis; and that SF&L did not return phone calls, and TP&W refused to quote rates, on a proposed annual 700-car movement. Keokuk Ferro Sil, Inc. (Ferro Sil), also located on KJRY's line at Keokuk, complained about service frequency, car bunching, and the

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according to KJRY, was created by SF&L and the traffic erosion that could be expected to result allegedly furthered SF&L's abandonment plans.

Respondents concede that the exemptions should be revoked if, as KJRY alleges, they acquired the La Harpe Line with the sole intent to abandon it.²⁰ Respondents insist, however, that they acquired the Line "to make a go of operating it profitably, to see if the shippers . . . will tender sufficient revenue freight and be prepared to pay remunerative rates so that the line will be self-sustaining." Respondents' Reply, V.S. of Messrs. Schumacher and Kulmer at 14. They accuse KJRY of having acted in a way that has caused the traffic on the Line to dry up, and indeed they go so far as to claim that KJRY's December 2001 purchase of the La Harpe to Lomax line, authorized in Keokuk Junction Railway Co.—Acquisition and Operation Exemption—West End of The Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 34143 (STB served Jan. 11, 2002), was a means of forcing SF&L out of business.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502(d), we may revoke an exemption, in whole or in part, if the Board finds that: (1) the notice of exemption (or request for exemption) contained false and/or misleading information;²¹ (2) regulation is necessary to carry out the rail transportation policy of 49 U.S.C.10101;²² or (3) revocation is necessary to ensure the integrity of the Board's processes.²³

¹⁹(...continued)

failure to obtain a rate quote from SF&L in a letter dated February 6, 2001. KJRY Supp. Petition, Exhibit J.

²⁰ "KJRY infers that we acquired TP&W's La Harpe-to-Peoria railroad line for the sole purpose of abandoning it and having A&K remove and resell its rails, ties, and other track materials. If that then had been our intent, we would agree with KJRY that our use of the section-10901 class exemption, 49 C.F.R.1150.31, would have been improper, and revocation of the exemption would be in order." Respondents' Reply, V.S. of Messrs. Schumacher and Kulmer at 14.

²¹ See, e.g., Save the Rock Island Committee, Inc. v. St. Louis Southwestern Railway Co., Docket No. AB-39 (Sub-No. 18X) (ICC served Apr. 1, 1994).

²² See, e.g., Indiana Hi-Rail Corporation—Lease and Operation Exemption—Norfolk and Western Railway Company Line Between Rochester and Argos, IN, and Exemption from 49 U.S.C. 10761, 10762, and 11141, Finance Docket No. 32162 et al. (STB served Jan. 30, 1998).

²³ See, e.g., Minnesota Comm. Ry., Inc.—Trackage Exempt.—BN RR. Co., 8 I.C.C.2d 31 (1991); Land Conservancy—Acq. & Oper.—Burlington Northern, 2 S.T.B. 673

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We take seriously the Congressional directive that we facilitate entry into the rail business, see, e.g., 49 U.S.C. 10101(7), and for that reason we do not revoke exemptions lightly. But the main purpose of the entry provisions of the statute is to promote the availability of rail service. Here, it is clear to us that the actions taken by Respondents reflect instead a scheme to use our processes to obtain active rail assets with a view toward dismantling and selling them. Therefore, we are revoking the exemptions that permitted this scheme to proceed.²⁴

Policy of Class Exemptions.

Our predecessor, the Interstate Commerce Commission (ICC), adopted the class exemption for the acquisition and operation of rail lines by noncarriers because the consideration of individual petitions for exemption from 49 U.S.C. 10901 had become a “burdensome and unnecessary expenditure of resources” on the agency and the individual petitioners. Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. § 10901, 1 I.C.C.2d 810, 811 (1985), aff’d sub nom. Illinois Commerce Comm’n v. ICC, 817 F.2d 145 (D.C. Cir. 1987). The exemption was intended to facilitate the continued operation of marginal and failing rail lines by expediting and reducing the costs of entry into the rail industry and by eliminating uncertainty in negotiations with potential purchasers, especially those unfamiliar with the regulatory process. Id.

As a general matter, the exemption process has worked well; many marginal lines have been saved after being bought by lower-cost new operators. However, as the ICC cautioned in Lone Star Railroad, Inc.—Abandonment and Discontinuance of Trackage Rights—in Wichita, Archer, Baylor, Knox, Haskell and Jones Counties, TX, Docket No. AB-425 et al. (ICC served June 9, 1995) (Lone Star),²⁵ we cannot allow the process to be abused by salvage operators seeking to take over lines for their salvage rather than their operational value, and we will take

²³(...continued)

(1997), reconsideration denied, STB Finance Docket No. 33389 (STB served May 13, 1998), petition for judicial review dismissed sub nom. The Land Conservancy of Seattle and King County v. STB, 238 F.3d 429 (9th Cir. 2000).

²⁴ We understand that as a result of revocation RailAmerica will have to take back a line that it did not want to retain. But when RailAmerica sold the La Harpe Line in an admitted “fire sale” to clear some of its debt by the end of the year 2000, see KJRY Supp. Petition Exhibit A at 4 (confidential version), it clearly knew or should have known by their conduct what Respondents had in mind, and nevertheless Rail America acted in a way that furthered that objective. Neither the buyers nor the sellers should be allowed to profit from their actions here.

²⁵ In Lone Star, the ICC ultimately allowed the bulk of the line to be abandoned because of the absence of protest by the line’s shippers. Here, in contrast, shippers have been harmed by, and have objected strenuously to, the degradation of service on this line.

remedial action (both with regard to the underlying line sale and any subsequent abandonment attempt) where the facts warrant it to maintain the integrity of our practices and procedures.

Indicia of Intent in This Case.

Our finding that Respondents have abused the class exemption process in this case is based on a variety of indicia: the disjointed and incomplete structure of the sale; the buyers' obvious lack of interest in the operational aspects of the Line, as evidenced by their failure even to inspect the Line before the sale; the confusion as to whether certain essential components of the Line were even bought; the delay in consummation and the confusion over whether the buyer or the seller had the responsibility to quote rates; the understanding that TP&W and RailAmerica would support SF&L's future abandonment of the Line; and the unstructured financing of the Line.

1. Structure of the Purchase. There are several aspects of the transactions that, both individually and cumulatively, indicate that Respondents acquired the La Harpe Line for the purpose of salvaging it, rather than committing to operate the Line in a manner consistent with the goal of preserving rail service over the Line. We agree with KJRY that Respondents appear to have intentionally structured the purchase in such a way as to make operating the La Harpe Line unprofitable, so as to facilitate abandonment of the Line, which in turn would permit A&K to salvage the materials from the Line. Although TP&W's entire line west of Peoria was for sale, SF&L limited its purchase to a line segment ending just short of the connection to KJRY's line and in so doing undermined the viability of the Line.²⁶ Omitting the last mile of track (MP 194.5 to MP 195.5) needed to connect to KJRY's line prevented a direct interchange of traffic between KJRY and SF&L, necessitating a costly and inefficient 1-mile movement by TP&W between the lines of KJRY and SF&L.

Respondents claim that there was no point in purchasing the last mile that would have permitted a direct connection to KJRY because there would be no traffic on the entire West End of TP&W's line after TP&W rerouted BNSF's intermodal train via Galesburg. However, SF&L also claimed that the omitted 1-mile stretch carried some 3,600 cars annually that KJRY had

²⁶ Even after signing the purchase agreement in December 2001, SF&L could have purchased the 1-mile segment to connect directly to KJRY's line. Indeed, SF&L could have purchased the entire remaining portion of TP&W's West End. See TP&W's January 22, 2001 response to an inquiry by the Illinois Department of Transportation, in which TP&W stated that "SF&L Railway has purchased from Rail America the track structure located between MP 123 and MP 194.5, with continuing discussion on the purchase of the underlying right of way, and the balance of the line between MP 194.5 and MP 206.6." UTU-IL Supp. Jt. Petition, Appendix 7 at 3.

interchanged with TP&W²⁷ and that the successful operation of the La Harpe Line would depend on retaining this traffic.²⁸ Not buying that 1-mile stretch made it much more expensive to send shipments over the La Harpe Line. KJRY compared TP&W's pre-sale rates with the combined TP&W/SF&L post-sale rates and showed that almost half of the rates more than doubled, while some of them almost tripled. KJRY Rebuttal, Exhibit A (V.S. of Catherine Busch) at 2 and Exhibits 1 and 2. Respondents knew or should have known that rate increases of this magnitude would play an important role in causing shipments over the La Harpe Line to cease.

In the reply filed on August 1, 2002, Respondents argue that traffic on the Line dried up because KJRY has since bought TP&W's West End to divert traffic from the La Harpe Line. In the petition filed on September 3, 2002, SF&L now seeks an exemption to abandon the Line. SF&L's attempt to turn the tables is unpersuasive. KJRY's purchase of TP&W's West End, which was necessary to preserve as much of its own traffic as possible, is not surprising. The purchase of TP&W's West End ensured that preexisting and new traffic from or to KJRY's line could be rerouted, but this was the apparent and intended result of Respondents' actions. Moreover, KJRY's reply to SF&L's petition for an abandonment exemption at 2-6 amply responds to Respondents' allegations of sabotage.

2. Pre-sale Examination of Line Limited to Salvage Value. As KJRY has pointed out, Respondents conducted no studies, reports, or other research into the profitability potential of the La Harpe Line prior to purchasing it. Nor did they physically inspect the Line to assess the future maintenance expenses that would be associated with its continued operation.²⁹ Rather, all they did prior to reaching the purchase agreement was to obtain a list of the Line's salvageable materials, grouped by weight. KJRY Supp. Petition, Exhibit G (track material list) (confidential

²⁷ In its reply to SF&L's petition for an abandonment exemption at 4, KJRY clarified that the 3,600 carload count applied to traffic in 1999, and that, at the time SF&L entered into the purchase agreement in December 2000, the actual number of carloads had dwindled to just over 2,000.

²⁸ See Supp. Reply at 4 and 14 ("What is key to being able to keep the line going is the traffic received or delivered to KJRY, some 3,600 carloads a year."). See also id. Attachment A (V.S. of Steven Van Wagenen) at 5.

²⁹ Respondents made contradictory statements on whether they had conducted a physical inspection of the Line prior to purchase. First, a representative of SF&L stated that he "took a look at the line." SFL Reply V.S. of Steven Van Wagenen at 2. But later SF&L and its owners suggested that no inspection was made: "Nor was there a need for SF&L to conduct a physical inspection [of] the line . . . since SF&L's [expected] contract operator, TP&W, regularly had done so in rendering its operations on the line." Supp. Reply at 13-14. A memorandum concerning a telephone call between buyer and seller makes clear that no inspection was made. See KJRY Supp. Petition, Exhibit A at 1 (confidential version).

version). Armed with this information relevant to the salvage of the Line and little else, Respondents entered into the purchase agreement.

Respondents attempt to explain away their lack of diligence by claiming that there was no need to prepare any profitability analysis because they could rely on the judgment of TP&W as their intended operator of the Line. That explanation also is unpersuasive. TP&W (with which the purchasers never, in fact, reached any operating agreement) was getting rid of a line it no longer wanted. We do not believe a prudent businessman would pay such a large sum for a line (even if it is characterized as a “fire sale” price) in reliance solely on the judgment of the seller as to a line’s future potential unless the real intent was to salvage the line, rather than operate it as a going concern. Cf. Lone Star, at 17 (the negotiation of “a division of revenues agreement with the connecting carrier that sold the line to be abandoned . . . is obviously a precaution that any prudent businessman would take before investing \$2 million in a rail line whose profitability depends in large measure on the financial terms of the interline agreement with its major connection”).³⁰

3. Confusion as to Status of Bridges, Trestles and Culverts. According to a RailAmerica summary of a conference call that occurred some 6 months after the transfer of funds for the purchase, A&K assumed that it had not purchased the bridges, trestles, and culverts that are essential structures of the rail Line. KJRY Supp. Petition, Exhibit A at 1 (confidential version). Respondents assert that, because “RailAmerica insisted on retaining the realty underlying the railroad line,” it made sense to leave the bridges, trestles, and culverts with the party owning the realty. Supp. Reply at 14-15. But the evidence shows that RailAmerica wanted to sell the underlying right-of-way and that Respondents demurred because acquiring the land would make the price too high. KJRY Supp. Petition, Exhibit A at 1 (confidential version). Moreover, even

³⁰ Messrs. Kulmer and Schumacher also claim that they are “experienced operators of shortline railroads” and therefore could determine whether the Line could be operated profitably. Supp. Reply at 16-17. But the shortlines they own did not themselves operate any lines. Rather, in the few instances in which their shortlines provided for service, it was by using a contract operator. See supra note 16. In addition, the supposed analysis of the traffic volume (carloads per mile) that Respondents “performed” in this case was based on what they knew, or should have known, was an incorrect traffic volume, see supra note 27, and in any event is not a “substitute for legitimate methods of determining profitability.” See Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—in Tulare and Kern Counties, CA, STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997), at 8.

One respect in which Messrs. Schumacher and Kulmer — whose principal railroad-related business is salvaging rail and materials — exercised diligence was in prudently obtaining a list of the track materials in the Line prior to entering into the purchase agreement. But that exercise of business judgment has little to do with running a railroad. Rather, it would appear that they placed their attention on the source of the profit they envisioned: salvaging the Line’s material.

after the purchase agreement was signed, RailAmerica still hoped to come to terms on selling the underlying realty to SF&L as well. UTU-IL Supp. Jt. Petition, Appendix 6.³¹

The lack of interest in the bridges, trestles, and culverts indicates that Respondents did not intend to run a rail line in the long term and that they did not want to be burdened in the short term with additional costs. Even now, Respondents have not clarified who owns the bridges, trestles, and culverts, or who is responsible for their maintenance. Such a matter would not have been left ambiguous if Respondents had been intent on ensuring continued service over the Line.

4. Delay in Consummation and Confusion Over Entity Responsible for Quoting Rates.

Although the money for the purchase changed hands in December 2000, the evidence shows that there was an extended delay in consummating the transaction. In their notice of exemption, Respondents indicated that the transaction would be consummated on or after January 17, 2001 — 3 weeks after the money changed hands. But after the exemptions became effective, TP&W continued to operate the Line for its own account (and not for SF&L) until December 10, 2001. Supp. Reply, Attachment B. Respondents fail to give an adequate explanation for the inordinate delay in consummating the purchase. Instead, they blame the delay on TP&W and RailAmerica, point out that the consummation of an authorized transaction is permissive, not mandatory, and otherwise contend that the issue was mooted once they started to operate the Line. Supp. Reply at 18-19 and n.4.

It simply makes no sense for an entity intent on acquiring a line as an ongoing business venture to pay for it in December 2000, obtain the necessary authority in January 2001, but allow the seller to continue operating it for the seller's own account (not as a contract service provider) through December 10, 2001. It only makes sense if the purchaser's real intent is abandonment and salvage.

During the long delay, confusion arose about which entity was responsible for giving rate quotes. As early as February 2001, a shipper complained that it was not able to obtain a rate quote from SF&L. KJRY Supp. Petition at 17-18, Exhibit J, Letter of Ferro-Sil at 2. A few months later, in July 2001, another shipper on the Line complained that SF&L did not return phone calls and that TP&W — the operator of the Line — refused to quote rates on a proposed movement of 700 cars per year over the Line. *Id.*, Letter of Roquette at 1. Indeed, KJRY reported that TP&W advised it to call SF&L about rates. Supp. Reply, Attachment D at 7. Clearly, TP&W and SF&L could not agree on who was responsible for quoting rates on the Line.

³¹ In response to interrogatories, KJRY pointed out that, whereas Pioneer had been forced to bid for the “the entire package,” including real estate, track facilities, and other improvements, when it had negotiated to purchase the Line from RailAmerica, SF&L had not. This is another indication that RailAmerica knew what Respondents had in mind. Supp. Reply, Attachment D at 10.

The shippers' confusion as to which entity was responsible for quoting rates and providing service was mirrored by the confusion of those involved in the transaction. TP&W and RailAmerica gave two different versions of the events surrounding the transaction. Initially, TP&W and RailAmerica stated that the transaction had been consummated and that SF&L "began providing common carrier service once it acquired the Line and is continuing to provide common carrier [service]." TPW/RailAmerica Response of March 26, 2001 at 1, 4. But TP&W and RailAmerica reversed themselves just 2 months later, stating: "At this time [TP&W] provides twice-weekly service. The frequency of service, if SF&L completes the acquisition of the Line, that [TP&W] will provide once the transaction is consummated is still being negotiated. . . ." KJRY Supp. Petition at 18 and Exhibit I at 14. No explanation for the reversal was given.³² Again, the evidence indicates that none of the principals really cared who was responsible for providing service, because the ultimate objective was to degrade rail service with the goal of abandoning and salvaging the Line.

5. Understanding to Support Abandonment. While negotiating an operating agreement with SF&L, TP&W and RailAmerica tentatively agreed not to oppose the Line's future abandonment. Indeed, in light of the infusion of cash they had provided to TP&W and RailAmerica, Respondents expected those parties to affirmatively support a future application to abandon the Line. Supp. Reply at 17-18. Respondents claim that such a commitment is commonplace in purchase transactions. Supp. Reply at 17. We do not agree. It is far more common for selling railroads to insist upon a right of first refusal (to repurchase) in the event that the purchaser decides to abandon the line.³³

In any event, we see no reason for obtaining a commitment not to oppose abandonment. Purchasers who are intent on operating, and who make a serious effort to operate, even a marginal rail line should have little difficulty abandoning it if their efforts fail. Again, this is more evidence that SF&L really intended to abandon the Line and wished to buy off a potential opponent to that abandonment — connecting carrier TP&W.

³² Finally, after some 10 months of unsuccessful negotiation with TP&W concerning agreements covering operation, haulage, and interchanges, Respondents notified RailAmerica, Pioneer, and others that SF&L would operate the Line on its own. RailAmerica then sent notice that TP&W "closed on the sale of its [La Harpe] line" on December 10, 2001. Supp. Reply, Attachment B. But see supra note 11.

³³ See, e.g., Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company, Finance Docket No. 31102 (ICC served July 28, 1988); Georgia Southwestern Division, South Carolina Central Railroad Co.—Abandonment Exemption—In Dodge and Wilcox Counties, GA, STB Docket No. AB-385 (Sub-No. 1X) (STB served Feb. 2, 1996).

6. Financing. To finance the purchase, SF&L signed a promissory note to secure the funds that its affiliate, A&K, advanced. The note specified that interest would begin to accrue on the issue date (December 29, 2000), that the interest would be payable within 30 days of demand, and that the entire principal and any outstanding installment interest would be due immediately if SF&L should default on any installment interest.

Pointing out that there is no mention of how A&K would be repaid by its affiliate SF&L, KJRY argues that the Line's rail and track materials were the collateral for the loan, that there was no intent to repay the loan through a revenue stream generated by railroad operations, and that consequently the loan was to be repaid as soon as the Line could be abandoned and salvaged. In light of SF&L's failure to provide any other explanation for how it expected to repay A&K, we agree that the proceeds from salvaging the Line were the most likely source of repayment. Again, the structure of the transaction points to salvage.

7. The Prior Pattern of Conduct of Respondents and Their Affiliates. By themselves, the six factors discussed above amply justify revocation. The case for finding that the exemption process was abused here is further strengthened when SF&L's affiliation with A&K, and the record of A&K and its affiliates in acquiring, abandoning, and salvaging rail lines are considered. The fact that SF&L's affiliate deals in scrap rail materials is not by itself dispositive but, by the same token, it cannot be wholly ignored. We realize that not every rail line that is acquired will necessarily be a financial and operational success, and we do not wish to discourage or penalize sincere efforts by those endeavoring to preserve service and restore marginal lines to financial viability. In some cases, these efforts will not succeed.³⁴ But in this case, the La Harpe Line was not inherently unprofitable and the shippers wanted to continue to use the Line, yet service was deliberately downgraded and rates were substantially increased. Thus, our conclusion here finds further support in SF&L's affiliation with A&K and the record SF&L and other A&K affiliates have established in the past.

Accusations Against KJRY.

Respondents claim that KJRY tried in several ways to sabotage SF&L's efforts to operate the Line. Their arguments are not convincing.

³⁴ See Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—in Tulare and Fresno Counties, CA, Docket No. AB-397 (Sub-No. 3X) (ICC served Dec. 1, 1995); Minnesota Northern Railroad, Inc.—Abandonment Exemption—in Red Lake and Polk Counties, MN, STB Docket No. AB-497 (Sub-No. 1) (STB served Nov. 14, 1997); Minnesota Northern Railroad, Inc.—Abandonment Exemption—Between Redland Junction and Fertile, in Polk County, MN, STB Docket No. AB-497 (Sub-No. 2) (STB served Nov. 14, 1997). See also Track Tech, Inc.—Abandonment Exemption—in Adair and Union Counties, IA, STB Docket No. AB-493 (Sub-No. 7), et al. (STB served Nov. 1, 1999).

1. Lack of Interchange Agreement with KJRY. Respondents claim that KJRY, knowing the importance to SF&L of the cars KJRY formerly had interchanged with TP&W, refused to enter into an interchange agreement with the SF&L as the new owner of the La Harpe Line. Despite the fact that SF&L's tracks at the time did not connect physically with those of KJRY, SF&L insists that an interchange agreement would have been feasible. We agree with KJRY, however, that an interchange agreement here, in the absence of a direct connection, would not have made sense. If SF&L had sincerely wished to enter into such an agreement with KJRY so that it could have real access to KJRY's traffic, it would have included in its acquisition, or subsequently purchased, the additional 1-mile segment needed to effect a direct interchange.

2. KJRY's Purchase of TP&W's West End. Respondents also charge that KJRY purchased the West End of TP&W's line, which connects with the La Harpe Line, as a means to force SF&L out of business. It appears to us, however, that KJRY had no choice but to buy more track to give it a direct connection with UP. The purchase also had the potentially positive effect of establishing a direct connection with SF&L at La Harpe. In any event, it appears that the situation played out exactly as SF&L intended.

3. Increased Shipping Costs. Finally, Respondents contend that KJRY is partly responsible for the higher charges for shipments on the La Harpe Line. They state that KJRY historically provided cars free on line for traffic originating on the La Harpe Line at Sciota and terminating on KJRY's line at Keokuk. Surrebuttal, V.S. of Steven Van Wagenen at 6. But KJRY changed its policy, effective January 31, 2002, to allow only 5 days of free time. To offset reduced free time and higher car hire costs, SF&L claimed that it proposed loading empty KJRY cars returning from Peoria, but that KJRY imposed a \$100 charge on these cars.

The timing belies the argument that KJRY was responsible for the rate increases. SF&L and TP&W informed KJRY on December 11, 2001 of SF&L's new, increased rates for the SF&L/TP&W portion of movements that previously had been solely TP&W movements. KJRY Rebuttal, V.S. of Busch at 2. It was not until a month and a half later that KJRY changed its free-time policy. There is no indication that SF&L increased the rates in December because it somehow anticipated KJRY's later policy change. Nor is there any indication that KJRY reduced the free time on its cars or imposed the \$100 charge for reasons unrelated to ensuring an adequate car supply for its shippers. See KJRY's reply to SF&L's petition for an abandonment exemption at 7.

Conclusions and Remedial Action.

When we weigh all of the evidence we have just discussed, it is clear to us that revocation is warranted. To support the argument that they intended, at the time of the filing of the notices of exemption, to make a go of rail service, Respondents emphasize that SF&L did in fact operate this Line beginning on December 12, 2001. Given the strong objections that have been voiced in this case, SF&L evidently concluded that it had no other choice. But the fact that SF&L operated a few trains a week is outweighed by overwhelming evidence that Respondents

from the start evidently intended to raise rates and degrade service with the ultimate intent to abandon and salvage the Line. The most telling evidence includes: (1) Respondents' decision not to purchase enough of the West End of TP&W's line to procure interchange traffic from KJRY; (2) the hasty purchase of the Line with no analysis other than an assessment of the salvage value of the track; (3) the failure of Respondents to acquire essential components of the Line (bridges, trestles, and culverts); (4) the anticipation of abandonment and understanding that TP&W and RailAmerica would support the future abandonment of the Line; (5) the unstructured financing; and (6) the unexplained delay in consummating the transaction and related confusion that resulted. We are also mindful of the prior pattern of conduct of SF&L and other A&K affiliates in acquiring and promptly liquidating lines.

After weighing the evidence, we conclude that Respondents wrongly purchased the La Harpe Line for the purpose of abandoning and salvaging it. Our exemption process is designed to facilitate continued service to shippers and continued maintenance of the transportation network. The integrity of that process is undermined by, and must be protected from, tactics such as those employed by Respondents in these cases, which have been detrimental to the shippers on the Line. We will not allow our class exemption processes to be abused by sales of active rail lines to persons whose intent is to degrade, abandon, and salvage those lines. Nor should the persons who engage in such abuses be allowed to profit from them. Accordingly, we revoke the exemptions granted in these cases.³⁵

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The additional pleading filed by KJRY on July 29 and August 12, 2002, and the replies filed by Respondents on August 1 and August 14, 2002, are accepted into the record.
2. KJRY's petition to revoke the exemptions in these proceedings is granted and the exemptions are hereby revoked.
3. SF&L shall immediately reconvey to TP&W the operating easement over, and the rail, ties, and certain improvements on, the 71.5-mile segment of rail line in Illinois between milepost 194.5 at La Harpe and milepost 123.0 at Peoria.

³⁵ We understand that our decision to revoke the exemptions could be viewed as producing unnecessary turmoil, given that a party wishing to acquire the Line for continued rail service could do so under the OFA procedures if an abandonment proposal were pursued. But there is no assurance that an OFA would go through. Moreover, as we have stated, no party to the sale should be allowed to profit from the tactics that were employed in this case.

4. UTU-IL's petition to reject the exemptions is denied.
5. The UTU-IL parties' petition to reject the exemptions is denied, and their alternate request to revoke the exemptions is dismissed as moot in light of our granting KJRY's petition to revoke.
6. This decision is effective on November 16, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary