

EXPEDITED HANDLING REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35972

**WEST BELT RAILWAY LLC – LEASE AND OPERATION
EXEMPTION INCLUDING INTERCHANGE COMMITMENT
– TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS**

MOTION FOR HOUSEKEEPING STAY

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November 13, 2015

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On October 22, 2015, the West Belt Railway LLC (“WBRY”) filed a Verified Notice of Exemption (“Verified Notice”) in this docket to lease and operate two pieces of track that total an approximately 9.66-mile rail line currently owned and operated by the Terminal Railroad Association of St. Louis (“TRRA”) in the City of St. Louis, St. Louis County, Missouri (“the Rail Line”). The Surface Transportation Board (“Board” or “STB”) published the Notice on November 6, 2015 and stated that the proposed transaction may be consummated on November 21, 2015. The Board’s Notice states that petitions to stay must be filed by November 13, 2015.

Ameren Missouri (“Ameren”) is filing this Motion for Housekeeping Stay at least 7 days before the exemption becomes effective, which is the same time period required for similar Petitions to Stay, as noted in the Board’s November 6th Notice.¹

¹ Ameren believes a housekeeping stay is appropriate because more time is needed than is allowed under the fast exemption timeframes. More time is needed in order to obtain and analyze Confidential Documents related to the transaction under the procedures provided in the Board’s regulations at 49 C.F.R. § 1150.33(h)(2). Ameren is aware of the traditional standard for stay requests, as set forth in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977). Ameren does not believe *Holiday Tours* applies to this Motion for a Housekeeping Stay due to the Board’s history of holding proceedings in abeyance or issuing housekeeping stays in order to obtain more information about a proposed

Ameren does not necessarily oppose the transaction but more time is needed for Ameren to obtain documents under the Board’s regulation, 49 C.F.R. § 1150.33(h)(2), and to determine if Ameren could be harmed by the transaction. Ameren seeks a housekeeping stay of a reasonable amount of time in order to determine whether this transaction has any new or expanded competitive harm to shippers such as Ameren. A housekeeping stay of three weeks after the issuance of the Protective Order being filed concurrently today with the Motion for Access to Confidential Documents should be an appropriate amount of time if the documents are produced in a timely fashion after issuance of the Protective Order.

Ameren’s interest in this transaction is that it owns and operates a coal-fired electric generating station, known as the Labadie Energy Center (“Labadie”), that is physically connected to the rail line operated by the “third-party connecting carrier” mentioned in the Verified Notice (see information provided in response to 49 C.F.R. § 1150.33(h)) and Labadie could be impacted by the lease terms. The Verified Notice mentions an interchange commitment, but the Verified Notice is unclear as to the full nature of that interchange

transaction where the applicant was attempting to use the expedited Exemption process. *See, e.g., New Haven National Rail Terminal Transportation Company, LLC – Lease and Operation Exemption – 3.5 miles of track in the former Cedar Hill Yard, New Haven and North Haven, CT*, Docket 34690, (served June 14, 2005) (where third party made no mention of *Holiday Tours*, the Board nonetheless held the Notice of Exemption in abeyance to allow filing of additional information by applicant). *See also U.S. Rail Corporation – Lease and Operation Exemption – Shannon G., a New Jersey Limited Liability Company*, Docket 35042 (served June 15, 2007); *Milwaukee Industrial Trade Center, LLC, d/b/a Milwaukee Terminal Railway – Acquisition and Operation Exemption – Line Owned by Milwaukee Industrial Trade Center, LLC, d/b/a Milwaukee Terminal Railway*, Docket 35133 (served Dec. 17, 2008); *SteelRiver Infrastructure Partners LP, SteelRiver Infrastructure Associates LLC, SteelRiver Infrastructure Fund North America LP, and Patriot Funding LLC—Control Exemption—Patriot Rail Corp., et al.*, Docket No. FD 35622 (served May 25, 2012); *BNSF Railway Company, CBEC Railway Inc., Iowa Interstate Railroad, Ltd., and Union Pacific Railroad Company—Joint Relocation Project Exemption—In Council Bluffs, Iowa*, Docket No. FD 35755 (served Nov. 8, 2013); *Union Pacific Railroad Company—Operation Exemption—in Bexar and Wilson Counties, Tex.*, Docket No. FD 35776 (served Nov. 15, 2013); and *Maryland Transit Administration—Abandonment Exemption—in Somerset County, MD*, Docket No. AB 590 (Sub-No. 1X) (served Dec. 30, 2014).

commitment. Ameren should be permitted to independently assess the underlying documents to understand whether Labadie will be harmed by the proposed interchange commitment. Of note, Ameren was not listed as an affected shipper in the original Verified Notice filed on October 22, 2015, yet the updated shipper list filed on October 23, 2015 lists “AmerenUE” (now known as Ameren Missouri). While the reason for the correction is described for some shippers in footnote 1, there is no mention of Ameren. Ameren is concurrently filing a “Motion for Access to Confidential Documents” and a Protective Order, as provided for under 49 C.F.R. § 1150.33(h)(2).

Under the Board’s rules, the Verified Notice becomes effective, unless stayed, rejected, or held in abeyance, 30 days after filing. 49 C.F.R. § 1150.32(b). In this case, the effective date would be November 21, 2015. Therefore Ameren requests that the Board act expeditiously in response to this Motion. Pursuant to 49 C.F.R. §§ 1117.1 and 1150.32(c), Ameren respectfully requests that the Board issue a housekeeping stay until the procedures under § 1150.33(h)(2) are completed and Ameren has had sufficient time to assess any potential for harm by the proposed transaction.

BACKGROUND

Founded in 1902, Union Electric, now known as Ameren Missouri, is a subsidiary of the Ameren Corporation. Ameren Missouri owns and operates the coal-fired Labadie station with 2,374 MW net generating capacity in Franklin County, Missouri. As Missouri’s largest utility, Ameren Missouri provides electricity to approximately 1.2 million customers across central and eastern Missouri, including the greater St. Louis area.

Labadie is Ameren Missouri’s largest power plant and burns approximately 10 million tons of Powder River Basin (“PRB”) coal annually. PRB coal (which comes from Wyoming) is

the current source for Labadie's coal. The Labadie plant began operations in 1970 and has historically had access to more than one railroad. Ameren has invested millions of dollars in self-help measures aimed at increasing fuel supply options at all of its plants.² Notwithstanding Ameren's overall self-help efforts, Ameren has needed to seek Board intervention repeatedly to protect Labadie's rail service options.

In 2000, Ameren was forced to petition the Board for clarification of the UP/SP merger conditions to have Labadie declared a "2-to-1" shipper entitled to certain merger protections. *Union Pac. Corp. – Control and Merger – Southern Pac. Corp.*, 4 S.T.B. 879, 881 (2000). As a result of the Board's decision in UP/SP, UP was ordered to provide BNSF access to Labadie via the UP/SP merger condition known as the "omnibus" clause that attempted to replicate SP's service on the St. Louis to Labadie section of the former SP line. That former SP line contains the Rock Island Junction interchange point mentioned in the WBRY Verified Notice and presumably is part of the interchange commitment restriction.

Diminished rail options at Labadie were again an issue in a proceeding decided by the Board in 2013. In that proceeding, the Board determined that an existing paper barrier could remain in place because of other competitive access relief that Labadie had obtained in the 2000 clarification of the UP/SP merger. *Union Electric Company D/B/A/ Ameren Missouri and Missouri Central Railroad Company v. Union Pacific Railroad Company*, Docket No. 42126

² As just a few examples, Ameren, through an affiliate, completed its first rail build-out in 1990 with the Joppa and Eastern Railroad Company to the Joppa Plant in Illinois (STB Docket No. 31656). In addition, in 2006 Ameren obtained STB approval for the construction of the Coffeen and Western Railroad Company's build-out from Ameren's Coffeen Power Plant (STB Docket No. 34435). Ameren also invested roughly \$4.7 million for construction of a track connection and siding at Pacific, MO in order to facilitate implementation of the UP/SP Settlement Agreement and BNSF's access rights to Labadie.

(served Feb. 27, 2013).³ Regardless of whether Ameren agrees with the paper barrier decision in that proceeding, it is not clear from the WBRY Verified Notice whether the interchange commitment in the pending transaction contains the same restriction, or if the pending transaction could be an attempt to expand the restriction. Under any scenario, Ameren is entitled to make an independent determination of the potential harm and use the Board's regulations developed to address such issues regarding interchange commitments and that are now set out at 49 C.F.R. § 1150.33(h)(2). A housekeeping stay is warranted for this transaction to provide time to implement those regulations.

ARGUMENT

I. A Housekeeping Stay Is Warranted In This Proceeding

Even ignoring the fact that Ameren has no details regarding the interchange commitment cited in the Verified Notice, it is impossible to fully address the impact of this transaction on Ameren within the very short time frames of the expedited exemption process. Ameren seeks a reasonable housekeeping stay in order for the Board to consider the "Motion for Access to Confidential Documents" and issue a Protective Order as provided for under 49 C.F.R.

³ This decision was a significant impetus for the subsequent abandonment and discontinuance of service of portions of the former Rock Island/SP line that was acquired by the Missouri Central Railroad. See, *Missouri Central Railroad Company – Abandonment and Discontinuance of Service Exemption – In Cass County, MO*, STB Docket No. AB-1068X; *Missouri Central Railroad Company – Abandonment Exemption – In Cass, Henry, Johnson, and Pettis Counties, MO*, STB Docket No. AB-1068 (Sub-No. 1X); *Missouri Central Railroad Company – Discontinuance of Trackage Rights Exemption – In Cass and Jackson Counties, MO*, STB Docket No. AB-1068 (Sub-No. 2X); *Missouri Central Railroad Company – Abandonment Exemption – In Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, MO*, STB Docket No. AB-1068 (Sub-No. 3X). Related proceedings for the discontinuance of service by the operator, Central Midland Railway Company, are found under STB Docket No. AB-1070X; STB Docket No. AB-1070 (Sub-No. 1X); STB Docket No. AB-1070 (Sub-No. 2X); and STB Docket No. AB-1070 (Sub-No. 3X).

§ 1150.33(h)(2). A reasonable time period will then be needed for Ameren to assess whether there is any harm to Labadie from the proposed transaction.

As the Board noted when it adopted its final rules regarding the information required for transactions containing interchange commitments, there are a limited number of transactions filed involving interchange commitments. *See, Information Required in Notices and Petitions Containing Interchange Commitments*, Docket No. EP 714, slip op at 9 (served Sept. 5, 2013). Nevertheless, the Board recognized the importance of the interchange commitment regulations and accompanying information to assist in “its case-by-case review of transactions that contain interchange commitments.” *Id.* at 5.

Due to the unknowns regarding the proposed transaction, Ameren has filed this Motion for a Housekeeping Stay and the concurrent Motion for Disclosure of Confidential Documents and Protective Order to request that the Board direct WBRY to produce the information regarding the interchange commitment that would be imposed under the transaction. A housekeeping stay to accommodate this necessary step is consistent with Board practice. *Cf. New Haven National Rail Terminal Transportation Company, LLC – Lease and Operation Exemption – 3.5 miles of track in the former Cedar Hill Yard, New Haven and North Haven, CT*, Docket 34690, (served June 14, 2005) (holding Notice of Exemption in abeyance until applicant files additional information addressing issues raised by third party). Additional information will enable Ameren to resolve uncertainty and will also fulfill the Board’s regulations that permit shippers like Ameren to obtain information regarding interchange commitments. Likewise, the Board has previously placed a “housekeeping stay” on a Notice of Exemption in order to “permit full consideration of the issues” presented by two parties requesting rejection, revocation, or stay of the Notice. *General Railway Corporation d/b/a Iowa Northwestern Railroad – Exemption for*

Acquisition of Railroad Line – In Osceola and Dickenson Counties, IA, Docket 34867, slip op. at 1 (served July 3, 2006) (describing stay imposed by the Board in a decision served May 25, 2006).

The Board has also held other proceedings in abeyance to allow discovery to occur and/or the gathering of more information. *Meridian Southern Railway, LLC – Acquisition and Operation – Line of Kansas City Southern Railway Company*, Docket 33854 (served May 15, 2000); *New York New Jersey Rail LLC and New York Cross Harbor Railroad Terminal Corporation – Corporate Family Transaction Exemption*, Docket 34813 (served Jan. 9, 2006). Finally, the Board has also stayed Notices of Exemption where a “substantial controversy” exists. *Northeast Interchange Railway, LLC – Lease and Operation Exemption – Line in Croton-on-Hudson, NY*, Docket 34734, and *Gordon Reger – Continuance in Control Exemption – Northeast Interchange Railway, LLC*, Docket 34735, slip op. at 4 (served Nov. 18, 2005). It is impossible for Ameren to confirm at this time if a “substantial controversy” exists due to the lack of information regarding the interchange commitment. The expedited exemption process does not provide a sufficient amount of time to make that determination and, consequently, a housekeeping stay is appropriate.

Ameren believes its proposed three-week housekeeping stay is reasonable. Two recent cases support this three-week time period for the housekeeping stay requested by Ameren. The stay period would begin from the date of issuance of the Protective Order and presumes that the Confidential Documents are promptly provided. Ameren commits to reviewing those documents expeditiously and reporting back to the Board on whether Ameren supports lifting the stay or will be seeking additional relief.

The three-week period is consistent with the Board's decision in *SteelRiver Infrastructure Partners LP, SteelRiver Infrastructure Associates LLC, SteelRiver Infrastructure Fund North America LP, and Patriot Funding LLC—Control Exemption—Patriot Rail Corp., et al.*, Docket No. FD 35622 (served June 15, 2012). While not an interchange commitment transaction, the housekeeping stay in *SteelRiver* effectively provided three additional weeks after the issuance of the protective order and before the effective date of the transaction (protective order issued May 25 and housekeeping stay expired June 16). Similarly, in an interchange commitment transaction challenged on labor grounds, the time period from issuance of the Protective Order to the date the transaction could be consummated was approximately three-and-a-half weeks. *Ann Arbor Railroad, Inc. – Lease Exemption – Norfolk Southern Railway Company*, Docket No. 35729 (served July 12, 2013) (protective order issued July 29 and consummation permitted August 23⁴).

Finally, Ameren understands that some parties in the rulemaking regarding disclosure of interchange commitments raised concerns regarding the potential delay in closing that the Board's review process could have from the implementation of the Board's interchange commitment regulations. *Information Required in Notices and Petitions Containing Interchange Commitments*, Docket No. EP 714, slip op at 2 (served Nov. 26, 2013). Ameren's proposed time period is sensitive to that issue. If the Protective Order is issued expeditiously and the Confidential Documents are provided to Ameren on or before December 10, and there is no competitive harm to Ameren as a result of the transaction (such harm would make the transaction

⁴ The *Ann Arbor* case required a 60-day period before consummation after the parties submitted its labor certification to the Board. The additional 30 days for that exemption period made a housekeeping stay unnecessary.

proposed in Docket No. 35972 inappropriate for the expedited exemption process), it would still be possible for the transaction to be consummated before the end of the year.

II. The Traditional Stay Criteria Can Also Be Met

Ameren asserts that the traditional stay criteria do not apply to this expedited exemption process transaction. Nevertheless, Ameren briefly addresses those criteria here. The party seeking a formal stay must establish that: (1) there is a likelihood that it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public interest supports the granting of the stay. *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958). Ameren recognizes that the party seeking a stay carries the burden of persuasion on all of the elements required for such a request. *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974).

A. Ameren is Likely to Succeed on the Merits

Ameren is likely to succeed on the merits because the expedited exemption process is not appropriate for transactions that raise competitive issues. *Cf. Burlington N. & Santa Fe Ry. Co. – Acquisition and Operation Exemption – South Dakota*, Docket No. 34645, slip op. at 2 (served Jan 14, 2005) (holding that the exemption procedure is “typically reserved for uncomplicated and noncontroversial cases.”) The Verified Notice fails to disclose the full context and possible impact to Labadie of the proposed transaction. The potential for competitive issues in the proposed transaction makes it inappropriate for the expedited exemption process. Therefore, Ameren is likely to succeed on the merits.

B. Ameren Will Suffer Irreparable Harm in the Absence of a Stay

If a stay is not granted and the transaction is permitted to go forward, irreparable harm will result. The Notice of Exemption process is intended for simple, non-controversial transactions. At this time, it is unclear if the proposed transaction meets this standard. If the transaction involves creation of a new interchange commitment, or enhancement of an existing interchange commitment, then the competitive options available to Ameren and other shippers in the area would be reduced. In such a scenario, the Board would be entitled to wholly reject the Notice of Exemption. *See, e.g., Kan Rail, Inc. – Acquisition and Operation Exemption – In Wapakoneta, Ohio*, STB Docket No. 35794 (served Aug. 27, 2014) (rejecting Notice of Exemption that was improperly utilized). Ameren is not seeking wholesale rejection of WBRY’s Notice, but merely the smaller step of a stay because of the irreparable harm that would result to Ameren and other shippers from any reduction in rail service options.

Furthermore, the transaction would involve WBRY lease and operation of a rail line from TRRA, and if the transaction goes forward, TRRA may redeploy assets previously dedicated to operating on the Rail Line. Indeed, TRRA had authorization from the Board in a separate transaction to begin utilizing new trackage rights less than one week ago – on November 7, 2015.⁵ If the WBRY-TRRA transaction goes forward but the exemption is later revoked by the Board, it is unclear if TRRA could expeditiously resume operations on the Rail Line. Any reduction in TRRA service or redeployment of TRRA assets could adversely affect shippers and applicable rail service options. Such adverse effect could take the form of reduced competitive options and increased transportation costs.

⁵ *See Terminal Railroad Association of St. Louis – Trackage Rights Exemption – Norfolk Southern Railway Company*, STB Docket No. 35962 (served Oct. 23, 2015). This separate transaction itself is related to a discontinuance of operations by Norfolk Southern Railway on a “nearby two-mile segment of trackage.” *Id.*

Normally, irreparable harm does not exist simply due to monetary damages. *See, e.g., American Chemistry Council, et al. v. Alabama Gulf Coast Railway and RailAmerica, Inc.*, STB Docket No. 42129, slip op. at 4 (served May 4, 2012). However, this doctrine proceeds from the assumption that the monetary damages are recoverable; it is unclear if any of Ameren's possible money damages would be recoverable. Upon first review, if the transaction is permitted to proceed the cause of action that Ameren would have may not be redressable by money damages nor is the defendant for such a claim potentially redressable.⁶ The applicant in this proposed transaction, WBRY, is a non-carrier and may be a newly-created corporate entity. According to publicly available information, WBRY is controlled by an investment management firm that invests in assets with "quasi-monopolistic" characteristics.⁷ The exact corporate relationship between the investment firm and WBRY is unknown, and it is unclear if WBRY has any recoverable assets at this time.

C. No Other Interested Parties Will be Substantially Harmed by a Stay

The brief housekeeping stay will not cause substantial harm to any interested party. Service to the existing shippers will continue as it has been provided in the past. The stay will also not substantially harm WBRY or TRRA. The delay will only be a temporary delay to assess the full impact of the transaction. Assuming that the interchange commitment is one that is appropriate for the use of the exemption process, the transaction will be permitted to be consummated after a minimal delay and likely before year-end.

⁶ The Board has found irreparable harm to exist where economic harm is "unredressable." *Colorado Wheat Administrative Committee*, slip op. at 4.

⁷ *See SteelRiver Infrastructure Fund et al. – Continuance in Control Exemption – West Belt Railway LLC*, STB Docket No. 35973 (filed Oct. 22, 2015). *See also* <http://steelriverpartners.com/company.html>.

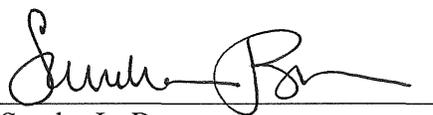
D. A Stay Will Be in the Public Interest

The public interest supports full regulatory scrutiny of interchange commitments. The Board's procedures for obtaining the Confidential Documents under 49 C.F.R. § 1150.33(h)(2) evince the Board's recognition that interchange commitments can have adverse competitive effects and should be subject to scrutiny. In short, a brief delay is necessary to accomplish this scrutiny and is in the public interest.

CONCLUSION

For the foregoing reasons, Ameren respectfully requests that the Board issue a housekeeping stay and hold the Notice of Exemption in abeyance until the procedures under 49 C.F.R. § 1150.33(h)(2) are completed and Ameren has had sufficient time to assess any potential for harm from the interchange commitment in the proposed transaction.

Respectfully submitted,



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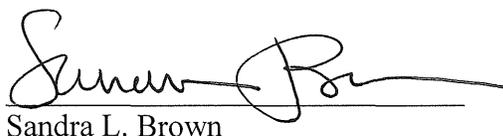
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November 13, 2015

CERTIFICATE OF SERVICE

I, Sandra L. Brown, certify that on November 13, 2015, I caused a copy of the foregoing to be served by e-mail and overnight delivery upon the following:

Thomas F. McFarland
Thomas F. McFarland, P.C.
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A handwritten signature in cursive script, appearing to read "Sandra L. Brown", written over a horizontal line.

Sandra L. Brown