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SERVICE DATE - LATE RELEASE JANUARY 24, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY COMPANY—FEEDER LINE ACQUISITION—
LINE OF TOLEDO PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN
LA HARPE AND HOLLIS, IL

Decided: January 24, 2005

In a decision served on October 28, 2004 (the October 28 Decision), the Board under 49 U.S.C. 10907 granted the feeder line application filed by Keokuk Junction Railway Company (KJRY) to purchase the La Harpe-Hollis Line (the Line) in western central Illinois. The Line is owned by Toledo, Peoria & Western Railway Corporation (TP&W) and extends 76 miles eastward from La Harpe (milepost 194.5), where it connects with KJRY's line, to Hollis (milepost 118.5), where it connects with a line of the Union Pacific Railroad Company. A petition to stay the effectiveness of the October 28 Decision was denied in a decision served on November 24, 2004.

The October 28 Decision, which became effective on November 27, 2004, requires the parties to close on the transaction by January 26, 2005. On January 13, 2005, TP&W filed a request for expedited action on its petition for reconsideration, which was filed on November 29, 2004, and a request to extend the closing date until 2 weeks after the Board issues a decision on the merits of the petition for reconsideration. KJRY filed a reply on January 14, 2005. TP&W responded to that reply on January 18, 2005, and KJRY supplemented its reply the same day and on January 19, 2005.

TP&W states that it is preparing to close on the transfer, but is concerned that KJRY will neither be able nor willing to pay for the Line if the Board finds on reconsideration that the Line's net liquidation value exceeds \$7 million, which, TP&W claims, is the admitted limit of KJRY's financial ability. Asserting that the transaction might have to be unwound, TP&W argues that a delay of the closing date could save the parties the costs of preparing and reviewing transaction documents and quitclaim deeds, paying transfer taxes, and training personnel. Additionally, TP&W claims that there are a number of critical issues (e.g., interchange, dispatch, timetables, and liability) that must be resolved to permit a smooth transfer of the Line, one that will allow it to continue serving the shippers on the Mapleton Industrial Spur and Wye Facilities (the Spur).

In reply, KJRY contends that this is just another of TP&W's efforts to stay the transaction and argues that the requested extension would further delay and complicate the transfer and increase the cost of restoring rail service on the Line. KJRY claims that it has made three efforts to initiate closing discussions and was rebuffed by TP&W each time. KJRY also points out that the additional time TP&W sought, and was granted, to submit its petition for reconsideration reduced the Board's time to issue a decision on reconsideration. Finally, KJRY asserts that most if not all of the issues raised by TP&W are resolved in KJRY's trackage rights agreement, which TP&W has not yet accepted. KJRY requests that the Board keep the January 26 closing date and, if necessary, order TP&W to meet with KJRY to discuss outstanding issues. In the event the extension is granted, KJRY requests that we issue a directed service order, which would direct KJRY to operate over the Line.

To facilitate the orderly processing of this proceeding and ensure the orderly transfer of the La Harpe Line, we will grant a 30-day extension of the closing date. The parties will be directed to use this time to prepare for the transfer so as to permit a rapid commencement of operations by KJRY without affecting the quality of TP&W's service to the shippers on the Spur.

KJRY's request for a directed service order will be denied. KJRY has failed to demonstrate service disruptions or inadequacies within the meaning of 49 U.S.C. 11123. See, e.g., Keokuk Junction Railway Company—Alternative Rail Service—Line of Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 34397 (STB served Oct. 31, 2003).

KJRY has expressed concern, which we find well founded, that an extension will give TP&W more time to sell pieces of the right-of-way; remove track, switches, and other materials; and otherwise take steps that would further increase the cost of restoring rail service. Indeed, TP&W, in its petition to stay the October 28 Decision, stated at 9 n.5, that it would show "that it has sold parcels along the Line that the Board has concluded are not owned by TP&W in fee simple as fee simple property and that the buyer has obtained title insurance for those parcels." We will therefore direct TP&W to identify which, if any, of the properties sold were included in its valuation. We will also direct TP&W to refrain from selling such properties. The Line's purchase price will be reduced by an appropriate amount to account for any land that was sold if that land had been included in the total acreage TP&W owned in fee.

Finally, we will direct TP&W to refrain from removing track, switches, and other materials or otherwise taking steps that would further increase the cost of restoring rail service to the Line. See, e.g., Railroad Ventures, Inc.—Abandonment Exemption—Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH and Beaver County, PA, STB Docket No. AB-556 (Sub-No. 2X) et al. (STB served Oct. 4, 2000), aff'd sub nom. Railroad Ventures, Inc. v. STB, 299 F.3d 523 (6th Cir. 2002).

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

It is ordered:

1. Closing on this transaction shall be on or before February 25, 2005.
2. KJRY's request for a directed service order is denied.
3. TP&W shall identify which, if any, of the properties it sold were included in its valuation of the Line's right-of-way by February 3, 2005, and refrain from any such sales. TP&W shall also refrain from removing the Line's track, switches, and other materials or otherwise taking steps that would further increase the cost of restoring rail service.
4. KJRY shall hold open until February 18, 2005, its offer to enter into the trackage rights agreement contained in Appendix 3, Exhibit C, of the June 9, 2003 supplement to its feeder line application.
5. This decision is effective on its service date.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary