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SEC

SERVICE DATE - JUNE 5, 2001

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: June 4, 2001

On January 10, 2001, SF&L Railway, Inc. (SF&L), filed a notice of exemption to acquire from Toledo, Peoria and Western Railway Corporation (TP&W),² an operating easement over, and the rail, ties, and improvements of, a 71.5-mile rail line extending between milepost 194.5 at La Harpe and milepost 123.0 at Peoria, IL (La Harpe Line). TP&W retained the realty underlying the rail line, subject to a permanent and unconditional easement to permit SF&L to fulfill its obligations as a railroad common carrier. SF&L will employ TP&W as a contract operator but will retain responsibility for providing rail service. See SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, STB Finance Docket No. 33995 (STB served and published at 66 FR 9411 on Feb. 7, 2001). Also on January 10, 2001, Messrs. Kern W. Schumacher and Morris H. Kulmer (Applicants) filed a notice of exemption under 49 CFR 1180.2(d)(2) to allow

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

² TP&W, a Class III regional carrier, is controlled by Rail America, Inc, a noncarrier holding company. See Rail America, Inc.—Control Exemption—Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation, and Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 33777 (STB served Sept. 17, 1999). TP&W operates approximately 300 miles of rail line between Logansport, IN, and Lomax, IL, with trackage rights over The Burlington Northern and Santa Fe Railway Company (BNSF) between Lomax and Fort Madison, IA. TP&W also has trackage rights over BNSF between Peoria and Galesburg, IL.

them to continue in control of SF&L after it becomes a rail carrier.³ See Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc., STB Finance Docket No. 33996 (STB served and published at 66 FR 9410 on Feb. 7, 2001).

A petition to reopen and revoke the exemptions was filed by Keokuk Junction Railway (KJRY) on March 7, 2001.⁴ KJRY argues that the notices of exemption should be revoked and that SF&L should be required to file an application under 49 U.S.C. 10901 to ensure that a complete record is developed on the merits of the transaction.

Along with its petition, KJRY filed a motion for a protective order and a first set of interrogatories, requests to produce, and requests for admissions. On March 20, 2001, SF&L and Applicants filed a motion to strike certain letters and related discussion in KJRY's petition to revoke and a motion for a protective order in connection with KJRY's discovery request. Additionally, SF&L and Applicants filed a joint reply, and TP&W filed an individual reply, on the merits of KJRY's petition to revoke on March 26, 2001. On April 3, 2001, in response to SF&L's and Applicants' joint reply, KJRY filed a comment on the procedural status of the proceeding.

On March 23, 2001, KJRY filed: (1) a reply to SF&L's and Applicants' motion to strike and motion for a protective order; (2) a motion to compel discovery; and (3) a request to extend the time period to supplement its petition to permit it to use discovered materials. In a decision served on April 13, 2001, the Board denied SF&L's and Applicants' motions, directed SF&L and Applicants to respond to KJRY's discovery requests by April 28, 2001, and granted a 15-day extension, to May 13, 2001, for KJRY to supplement its petition to reopen and revoke.⁵

³ Applicants control Tulare Valley Railroad Company, Kern Valley Railroad Company, and V and S Railway, Inc.

⁴ KJRY, a Class III rail carrier, is controlled by Pioneer Railcorp, a noncarrier holding company. See Pioneer Railcorp—Acquisition of Control Exemption—KNRECO, Inc., d/b/a Keokuk Junction Railway, STB Finance Docket No. 32877 (STB served Mar. 26, 1997). KJRY operates a 38-mile line of railroad between Keokuk, IA, and La Harpe and Warsaw, IL. KJRY states that it can interchange traffic with BNSF at Keokuk but that it is dependent on its connection with TPW at La Harpe for access to 7 other Class I railroads (Union Pacific Railroad Company, Canadian National Railway Company/Illinois Central Railroad Company, Canadian Pacific Railway Company/Soo Line Railroad Company, Norfolk Southern Railway Company, and CSX Transportation, Inc.) and 9 shortline and regional railroads.

⁵ Also on April 13, 2001, the Board served a second decision granting: (1) KJRY's protective order request; and (2) a protective order Applicants had sought in connection with a letter they filed in both a redacted and confidential version with their notice of exemption in STB
(continued...)

A joint petition to reopen and revoke was also filed by Mr. Joseph C Szabo, representing the United Transportation Union-Illinois Legislative Board (UTU-IL), the county of McDonough, and the city of Macomb (Joint Petitioners) on May 18, 2001.⁶ On May 18, 2001, KJRY filed a motion for a second extension of the time period to supplement its petition to revoke. KJRY states that it just learned of the filing of the joint petition and that it was accompanied by the service of discovery requests. Contending that the new round of discovery may shed additional relevant information on the lawfulness of the transaction, KJRY requests that the time period to supplement its petition be extended until 15 days after discovery is concluded. KJRY states that SF&L and Applicants do not object to the extension.

The petitions to reopen and revoke raise issues that require consideration by the Board. Under 49 U.S.C. 10502(d), the Board must determine whether to institute a proceeding within 90 days of the filing of a petition to revoke, and, if it does so, must issue a decision within 9 months of the date the proceeding is formally instituted. In compliance with section 10502(d), this proceeding will be formally instituted. Additionally, KJRY's request for a second extension to supplement its petition to revoke will be granted as the request appears reasonable and is not opposed.

It is ordered:

1. Under 49 U.S.C. 10502(d), a proceeding is instituted to consider the issues raised in the petitions to reopen and revoke the exemptions in these proceedings.
2. KJRY's request to extend the date to supplement its petition to reopen and revoke is granted. The supplement is due within 15 days from the date discovery is completed in connection with the joint petition. Replies will be due 20 days later.
3. This proceeding will be completed by March 5, 2002.
4. This decision is effective on the date of service.

⁵(...continued)
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⁶ UTU-IL previously had petitioned to stay the effectiveness of these notices of exemption and to release the confidential letter Applicants filed in STB Finance Docket No. 33996. The stay petition was denied in a decision served on January 16, 2001, and Applicants were directed in a decision served on March 9, 2001, to file a motion for a protective order if they wished to prevent the release of the confidential letter. Their protective order request was granted in the second of the two decisions served on April 13, 2001. See supra note 5.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary