

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. 33996<sup>1</sup>

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

Decided: February 1, 2002

SF&L Railway, Inc. (SF&L), a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to acquire from Toledo, Peoria and Western Railway Corporation (TP&W)<sup>2</sup> an operating easement over, and the rail, ties, and improvements on, a 71.5-mile rail line between milepost 194.5 at La Harpe and milepost 123.0 at Peoria, IL (the La Harpe Line).<sup>3</sup> Messrs. Kern W. Schumacher and Morris H. Kulmer (Applicants) also filed a notice of exemption under 49 CFR 1180.2(d)(2) to allow them to continue in control of SF&L after it becomes a rail carrier.<sup>4</sup>

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<sup>1</sup> These proceedings are not consolidated; they are being considered together for administrative convenience.

<sup>2</sup> TP&W, a Class III railroad owned by RailAmerica, Inc., retained the underlying real estate, subject to what TP&W describes as a permanent and unconditional easement to permit SF&L to fulfill its common carrier obligations with respect to the La Harpe Line. The exemption permits the acquisition to go forward without going through the formal regulatory process of 49 U.S.C. 10901 (authority for a noncarrier to acquire and/or operate a rail line).

<sup>3</sup> 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 Feb.7, 2001).

<sup>4</sup> Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Railway, Inc., STB Finance Docket No. 33996 (STB served Feb. 7, 2001).

Keokuk Junction Railway Company (KJRY)<sup>5</sup> filed a petition to revoke, United Transportation Union-Illinois Legislative Board (UTU-IL) filed a petition to reject, and UTU-IL jointly with the county of McDonough and the city of Macomb (Joint Petitioners) filed a petition to reject and/or revoke, the two notices of exemption. A proceeding to consider the issues raised in the petitions was instituted under 49 U.S.C. 10502(d) in a decision served on June 5, 2001. KJRY filed a supplement to its petition to revoke on December 12, 2001, and Joint Petitioners filed a supplement to their petition to reject and/or revoke on January 7, 2002. SF&L and Applicants filed a reply to these supplements on January 11, 2002.

On January 28, 2002, KJRY filed a rebuttal statement replying to the January 11, 2002 statement filed by SF&L and Applicants. SF&L and Applicants, on January 29, 2002, filed a motion to strike KJRY's rebuttal statement, contending that a reply to a reply is not permitted under 49 CFR 1104.13(c). In the alternative, SF&L and Applicants request leave to file a surrebuttal statement. KJRY replied on January 30, 2002, opposing the motion to strike and objecting to SF&L's request that it be permitted to file a further statement.

In their January 11 reply to the supplemental petition, however, SF&L and the Applicants did not merely address arguments in the supplemental petition. They made new arguments. KJRY should therefore be permitted to reply to them. It did so in its January 28, 2002 rebuttal, and that filing will be accepted.

While we are denying SF&L's motion to strike, we will permit SF&L to file its surrebuttal. SF&L had asked that it be given 10 days to file after issuance of this order. The deadline for deciding this proceeding is approaching and SF&L has not shown that it needs that much time. SF&L will be given 10 days after the filing of KJRY's January 28, 2002 statement to file its surrebuttal. SF&L is admonished that it must limit its filing to arguments contained in KJRY's January 28 filing that SF&L has not previously addressed.

It is ordered:

1. SF&L's and Applicants' motion to strike is denied and their request for leave to file a surrebuttal statement is granted. Their surrebuttal statement will be due on or before February 8, 2002.

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<sup>5</sup> KJRY, a Class III shortline railroad controlled by Pioneer Railcorp, operates a 38-mile line of railroad between Keokuk, IA, and La Harpe and Warsaw, IL. See Pioneer Railcorp—Acquisition of Control Exemption—KNRECO, Inc., d/b/a Keokuk Junction Railway, Finance Docket No. 32877 (STB served Mar. 26, 1996).

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary