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SEC

SERVICE DATE – MARCH 6, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34974

KEOKUK JUNCTION RAILWAY COMPANY d/b/a PEORIA AND WESTERN RAILWAY
− LEASE AND OPERATION EXEMPTION −
BNSF RAILWAY COMPANY

Decided: March 5, 2007

By petition filed on December 7, 2006, under 49 U.S.C. 10502 and the Board's exemption procedures at 49 CFR 1121, et seq., Keokuk Junction Railway Company, d/b/a Peoria & Western Railway (KJR), is seeking to exempt its lease and operation as a railroad common carrier of a line of railroad owned by BNSF Railway Company (BNSF). The line runs northeastward from Vermont, IL (milepost 94.3), to Farmington, IL (milepost 52.2), and consists of approximately 42.1 miles of main line trackage. The line that KJR proposes to lease crosses KJR's existing east-west main line at a junction near Canton, IL.

Ameren Energy Generating Company, a corporate affiliate of Ameren Energy Fuels and Services Company (collectively, Ameren), operates its Duck Creek power plant near the Canton junction. The Duck Creek plant connects to both of the intersecting lines via spurs owned by Ameren. Before the spur connecting Ameren's plant with KJR's existing line was constructed in 2005, Ameren's plant was served only by BNSF, over the southern segment of the line proposed for lease to KJR (running approximately 26 miles between Vermont and the Duck Creek plant's private spur track). Following the build-out, Ameren's Duck Creek plant can now, and currently does, access coal via a joint route with KJR and Union Pacific Railroad Company.

Anticipating objections that were raised by Ameren in an earlier class exemption proceeding involving the same transaction,[1] KJR argues in its petition that the lease would preserve BNSF's ability to compete for coal service to Duck Creek and that, even if the lease did not do this, KJR would not be able to exercise enough market power over Ameren's coal rates to

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[1] By notice filed on August 4, 2006, in STB Finance Docket No. 34918, KJR had earlier attempted to obtain Board authority for the same transaction by invoking the class exemption at 49 CFR 1150.41, et seq. By decision served on August 10, 2006, the Board stayed the effectiveness of that exemption until further order. A substantial record has been developed in the class exemption proceeding, which will be incorporated into the record of the instant proceeding.

be able to extract monopoly profits. KJR also maintains that the lease would benefit Ameren and the public interest by spurring rehabilitation of the line, enlisting KJR as a lower-cost operator, and helping the line to attract other shippers.

On January 8, 2007, Ameren filed a reply in opposition to KJR's petition for exemption. Ameren renewed its objection raised in STB Finance Docket No. 34918 that the lease would adversely affect competition by leaving KJR as the sole carrier with direct access for the delivery of coal to the Duck Creek plant. Ameren declined a subsequent proposal by KJR for Board-sponsored mediation.

KJR's petition for exemption and Ameren's reply raise issues that require consideration by the Board. Pursuant to 49 U.S.C. 10502(b), the Board must determine whether to begin a proceeding within 90 days of the filing of a petition for exemption. A decision must then be issued within 9 months of the date when the proceeding is formally instituted. The 90th day in this proceeding is March 7, 2007. In compliance with the statute, this order will be issued, and a proceeding will be formally instituted.

We will not provide for the submission of additional evidence because the issues have been extensively argued and Ameren was given extra time to prepare its reply to KJR's petition for exemption.

It is ordered:

1. Under 49 U.S.C. 10502(b), a proceeding is instituted to consider the issues raised in this proceeding.

2. The proceeding will be completed by December 6, 2007.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary