

SERVICE DATE - MARCH 9, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33996

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

Dated: March 8, 2001

The “confidential” information filed by applicants in this docket will be released to the public docket unless applicants file a motion supporting the confidentiality of the information.

By notice filed on January 10, 2001, applicants, Kern W. Schumacher and Morris H. Kulmer, invoked the class exemption of 49 CFR 1180.2(d)(2) to allow them to continue in control of SF&L Railway, Inc. (SF&L) after it becomes a carrier pursuant to a notice of exemption filed in another docket.¹ Applicants filed their notice in two separate versions: (1) a “redacted” version that was placed in the public file; and (2) a “confidential” version that was filed under seal. The “confidential” version contained a copy of a 2-page letter confirming agreements entered into between SF&L and RailAmerica, Inc., the corporate parent of the railroad owning the line that SF&L proposed to purchase. This was the only difference between the “confidential” and the “redacted” versions.

By motion filed on February 14, 2001, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), requests that the “confidential” material be immediately released to the public file, arguing that applicants failed to file a motion for a protective order under 49 CFR 1104.14. In a reply filed on February 20, 2001, applicants respond that they would be willing to produce a “redacted copy” of the aforementioned 2-page letter, but that if a redacted copy is unacceptable to UTU-IL, they will file a motion for a protective order. On February 21, 2001, UTU-IL filed a reply reiterating its request that the “confidential” material be released. In a letter filed on March 7, 2001, applicants reiterated their offer to provide a “redacted copy” of the 2-page letter and stated that the inclusion of this letter was the only difference between the “confidential” and “redacted” versions of their notice.

The Board’s regulations, at 49 CFR 1104.14(b), provide for the filing of a separate

¹ See 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.

motion for a protective order if a party wishes to request that a pleading be kept confidential. Applicants failed to do this, and their offer to provide a “redacted copy” of the 2-page letter cannot substitute for such a motion. Unless applicants promptly file a motion for a protective order, the “confidential” version of their notice will be released to the public file. If a motion is filed, UTU-IL will be given an opportunity to reply before a decision on the motion is rendered.

It is ordered:

1. Unless applicants file a motion for a protective order by March 16, 2001, the “confidential” version of their prior filing will be released to the public file.
2. If an appropriate motion is filed within this deadline, UTU-IL may reply by March 23, 2001.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary