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SEC

SERVICE DATE – AUGUST 25, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34918

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

PROTECTIVE ORDER

Decided: August 23, 2006

By notice filed on August 4, 2006, the Keokuk Junction Railway Company, d/b/a Peoria & Western Railway (KJR), invoked the class exemption at 49 CFR 1150.41, et seq., to lease and to operate, as a railroad common carrier, track owned by the BNSF Railway Company between Vermont (milepost 94.3) and Farmington (milepost 52.20), in Fulton County, IL. The line consists of approximately 42.1 miles of mainline trackage and what KJR calls an “industrial spur” at Dunfermline. KJR states that the line currently has no traffic.

By petition filed on August 10, 2006, Ameren Energy Fuels and Services Company (Ameren) asked the Board to hold the proceeding in abeyance to allow Ameren to inquire into the details of the lease through discovery so that Ameren and the Board can properly determine whether approval for this transaction may be sought under the Board’s class exemption procedure. Ameren urged the Board to obtain a copy of the lease in order to determine whether the transaction will cause competitive harm to Ameren’s Duck Creek Power Plant by making it captive to KJR for coal delivery. To facilitate its acquisition of a copy of the lease, Ameren submitted a draft protective order that would apply to any future examination of the lease.

A housekeeping stay was entered by decision served on August 10, 2006, staying the exemption until further order of the Board.

We will grant Ameren’s motion for a protective order. The protective order will allow parties to examine the lease without compromising its confidentiality. The order appears in the Appendix.

It is ordered:

1. The protective order in the Appendix is adopted.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

Appendix
PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the provisions of the Lease Agreement between Keokuk Junction Railway Company d/b/a Peoria & Western Railway Company (KJR), and BNSF Railway Company (BNSF) deemed confidential by those parties.

2. The Confidential Information produced by KJR and BNSF shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. Disclosure of the Confidential Information shall be limited to outside counsel of Ameren Energy Fuels and Services Company (Ameren) solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom. Before such disclosure, outside counsel for Ameren will read and sign a copy of this Protective Order and agree to be bound by its terms by signing the attached Undertaking prior to receiving access to the Confidential Information. The Confidential Information shall not be disclosed in any way or to any other person without the written consent of BNSF and KJR or an order of the Board.

4. Any documents containing the Confidential Information in the possession of Ameren’s outside counsel will be destroyed and notices of such destruction will be served on the Board at the completion of this and any related Board proceedings, or any judicial review arising therefrom.

5. If the Confidential Information is retained by the Board, it shall, in order to be kept confidential, be treated in accordance with the procedure set forth at 49 C.F.R. § 1104.14.

6. All parties must comply with all the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order governing the disclosure of Confidential Information by BNSF and KJR in STB Finance Docket No. 34918 and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any information learned as a result of receiving such information, for any other purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 34918 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any information obtained under this Protective Order to any person who is not also bound by the terms of this Order and who has not executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that BNSF and KJR shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to remedies available at law or equity.

Signature

Date