SERVICE DATE - JULY 9, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY C0MPANY–FEEDER LINE ACQUISITION–
LINE OF TOLEDO PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN
LA HARPE AND HOLLIS, IL

Decided: July 1, 2003

On April 9, 2003, Keokuk Junction Railway Company (KJRY), a Class III railroad controlled by Pioneer RailCorp (Pioneer), a noncarrier holding company, filed an application to acquire from Toledo, Peoria and Western Railway Corporation (TP&W)[1] a 76-mile rail line, the La Harpe-Hollis Line (or the Line), between milepost 194.5 near La Harpe and milepost 118.5 at Hollis, IL.[2] KJRY also applied to acquire the Mapleton Industrial Spur and Wye Facilities (the Mapleton Spur or the Spur), a 2.5-mile line that connects with the La Harpe-Hollis Line at milepost 121.5 at Kolbe, IL.

KJRY seeks authority to obtain the Line and the Spur, even though TP&W, the owner, has not agreed to sell them and opposes the application. The applicant has invoked a provision of the Interstate Commerce Act called the Feeder Railroad Development Program,[3] set out in the statute at 49 U.S.C. 10907 and in the Board's implementing regulations at 49 CFR Part 1151. As the ICC noted, "[t]he program provides shipper groups and communities with an alternative to inadequate rail service or abandonment and gives them an opportunity to preserve feeder lines prior to their

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[1] TP&W, a Class III railroad, is controlled by RailAmerica, Inc., a noncarrier holding company.

[2] The La Harpe-Hollis Line was part of a line that extended 12.1 miles further west to milepost 206.6 at Lomax, IL. The La Harpe-Hollis Line is separated from the eastern portion of TP&W's system, which terminates at East Peoria, IL. To access the La Harpe-Hollis Line, TP&W operates trackage rights over Union Pacific Railroad Company between Hollis and Peoria, and over Peoria and Pekin Union Railway Company between Peoria and East Peoria.

[3] Congress used this title when it originally enacted the provision as section 401 of the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895. When Congress reenacted the provision in section 102 of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 83, it entitled the provision, "Railroad development." Because the original title is used in the Board's regulations and in Board and Interstate Commerce Commission (ICC) precedent, it is used here.

abandonment or possible downgrading. To accomplish this, the statute authorizes us to require railroads to sell certain rail lines under specific circumstances to financially responsible applicants." Cheney R. Co.–Feeder Line Acq., 5 I.C.C.2d 250, 251 (1989). The Board sets the sale price of the line at either net liquidation value (NLV) or going concern value (GCV), whichever is higher.[4]

KJRY offered to pay $3,393,363, its estimate of the NLV of the La Harpe-Hollis Line and Mapleton Spur. The applicant also offered to grant TP&W nonexclusive trackage rights (at $2.50 per loaded or empty car) so that TP&W could continue serving its existing shippers on the Mapleton Spur.

Under 49 CFR 1151.2(b), the Board, through the Director of the Office of Proceedings, must accept a complete application, or reject one that it is incomplete, no later than 30 days after the application is filed. Notice of an acceptance must be published in the Federal Register.

In a decision served on May 9, 2003, KJRY's application was found deficient in two respects. First, the decision found that KJRY had not included a GCV estimate making it impossible for the Board to ensure compliance with the constitutional minimum value standard, 49 U.S.C. 10907(b)(1).[5] Second, the decision found that KJRY had not established that it is a financially responsible entity, able to pay the NLV and provide adequate transportation service for at least 3 years. The decision gave KJRY an additional 30 days to submit: (1) an estimated GCV and supporting data; and (2) evidence of financial responsibility, more detailed operating plans and pro forma financial statements to support

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[4] Under 49 U.S.C. 10907(b)(1)(A)(i), the Board is authorized to require the sale of a rail line to a financially responsible person at a price not less than the line's constitutional minimum value if the public convenience and necessity (PC&N) permit or require the sale. Constitutional minimum value is defined as the greater of the NLV or the GCV, see 49 U.S.C. 10907(b)(2), and a financially responsible person is defined as a person able to pay the constitutional minimum value and assure that adequate transportation services will be provided for at least the first 3 years of operation, see 49 U.S.C. 10907(a).

Alternatively, under 49 U.S.C. 10907(b)(1)(A)(ii) the Board is authorized to require the sale of a rail line to a financially responsible person at a price not less than the line's constitutional minimum value if the line is listed in categories 1 or 2 of the owning rail carrier's system diagram map and the owning rail carrier has not filed an abandonment application or preliminary filing to that effect. KJRY states that it could find no record of TP&W filing a system diagram map at the Board.

[5] KJRY argued that the constitutional minimum standard could be satisfied without the submission of a GCV. The applicant argued that only the Mapleton Spur has a GCV and that TP&W effectively would retain the GCV because the proposed trackage rights would allow TP&W to continue serving the Mapleton Spur.

either the purchase of the La Harpe-Hollis Line and Mapleton Spur or the purchase of only the "West End."[6]

On June 9, 2003, KJRY filed a supplement to its application offering to purchase the La Harpe-Hollis Line and Mapleton Spur for an estimated GCV of $3,461,434. Alternatively, KJRY offers to purchase only the 76-mile La Harpe-Hollis Line for an estimated NLV of $3,284,605. Under the latter offer, TP&W would retain exclusive access to, and all the revenues from, the Mapleton Spur, and would receive without charge trackage rights over KJRY between Hollis and the Mapleton Spur.[7] TP&W filed a reply on June 24, 2003, requesting that KJRY's feeder line application as amended be rejected. KJRY filed a reply to TP&W's reply on June 29, 2003, asking that the application as amended be accepted.

The supplemental application filed on June 9, 2003, complies with the requirements of 49 CFR Part 1151.3, "Contents of application." The amended application will therefore be accepted for filing, for the reasons noted below, subject to KJRY's compliance with the environmental reporting requirements.

GCV for the Mapleton Spur. In its supplemental filing, KJRY submitted a GCV estimate of $3,461,434, based exclusively on operations on the Mapleton Spur. See supra note 5. The estimate assumes a net operating income of $353,208 based on estimated revenues of $1,412,830 and estimated expenses of $1,059,623. KJRY developed the revenue estimate using a 1998 summary of traffic and overhead revenues that it obtained from TP&W's previous owners and added to it the estimated overhead revenue on approximately 6,000 carloads a year of UP traffic that TP&W switches to and from the Mapleton Spur. KJRY estimated TP&W's expenses at 75% of its revenues using RailAmerica's 2001 and 2002 system average operating-expense-to-revenue ratios.[8] KJRY multiplied

[6] The West End (also referred to as the La Harpe Line) extends 71.5 miles between La Harpe and Peoria, IL, milepost 123. The May 9 decision determined that the West End has a negative GCV. As a result, KJRY was not required to submit a GCV estimate to support a feeder line sale of only the West End.

[7] A copy of the proposed trackage rights agreement was appended to KJRY's supplemental submission.

[8] KJRY claims that it had to rely on the 1998 traffic and revenue summary and system average costs because it was unable to obtain traffic, revenue, and cost data from TP&W in time to be useful. TP&W attributes KJRY's use of 1998 data to a lack of diligence and claims that KJRY consciously decided not to use the current data TP&W provided.

the $353,208 by 10.2%, the after-tax cost of capital for 2001,[9] to obtain the $3,461,434 estimate. See Caddo Antoine and Little Missouri Railroad Company– Feeder Line Acquisition–Arkansas Midland Railroad Company–Line Between Gurdon and Birds Mill, AR, Finance Docket No. 32479 et al. (STB served May 5, 2000) slip op. at 7-8.

KJRY's NLV estimate of $3,284,605 is based on its earlier offer to purchase the La Harpe-Hollis Line and the Mapleton Spur for an estimated NLV of $3,393,363. The earlier offer was based on an analysis of two lists of track materials that TP&W had prepared in connection with its sale of the La Harpe Line to SF&L Railway, Inc. See SF&L Railway, Inc.–Acquisition and Operation Exemption–Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 33995 et al. (STB served Oct. 17, 2002 and aff'd with clarification Jan. 31, 2003) (SF&L Railway). That analysis gave the La Harpe Line an NLV of $3,088,833 and used a pro rata valuation to give the Peoria-Hollis line segment and the Mapleton Spur an NLV of $304,530. KJRY reduced the NLV offer of $3,393,363 by $108,758, the estimated NLV of the Mapleton Spur, to obtain the $3,284,605 NLV estimate.

Financial responsibility. KJRY submitted a copy of a letter of commitment from National City Bank of Michigan/Illinois for a $7 million, 5-year loan to finance the proposed purchase. The loan must be accepted and closed on prior to August 31, 2003, but the closing date may be extended at the option of the bank. KJRY also submitted a copy of a resolution by Pioneer's Board of Directors authorizing Mr. Guy L. Brenckman, President of both KJRY and Pioneer and Chief Executive Officer of the latter, and Mr. J. Michael Carr, Treasurer and Chief Financial Officer of both KJRY and Pioneer, to close on the loan and issue corporate guarantees on Pioneer's behalf to ensure that KJRY will have the use of the loan proceeds and other of Pioneer's funds to the extent necessary to acquire the La Harpe-Hollis Line and Mapleton Spur and operate them for a minimum of 3 years.[10]

KJRY also submitted two sets of pro forma financial statements supported by lists of anticipated shipments and corresponding revenues for the first 3 years of operation. One set is based on the proposed GVC estimate and contemplates 5 employees providing rail service 6 days a week. The other set is based on the NLV estimate as amended and contemplates 2 employees providing rail

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[9] Railroad Cost of Capital–2001, STB Ex Parte No. 558 (Sub-No. 5) (STB served June 20, 2002). The after-tax cost of capital was most recently set at 9.8%. See Railroad Cost of Capital–2002, STB Ex Parte No. 558 (Sub-No. 6) (STB served June 19, 2003).

[10] In the April 9 application, Pioneer claimed that it could fund the rehabilitation and operation of the La Harpe-Hollis Line and Mapleton Spur from a $1.1 million line of credit that was available to it from National City Bank of Peoria and that it could also use its income from operations, which amounted to $1,245,689 in 2002.

service 5 days a week. The financial statements assert that KJRY's operation of either the La Harpe-Hollis Line and Mapleton Spur or just the La Harpe-Hollis Line will generate a profit in each of the 3 years of operation.

Environmental Issues. Under the regulations of the President's Council on Environmental Quality and the Board's own environmental rules, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. As pertinent here, actions whose environmental effects are ordinarily insignificant may normally be excluded from NEPA review under 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4 and 49 CFR 1105.6(c). Included in this category are rail line acquisitions that will not result in operating changes that exceed certain thresholds – generally an increase in rail traffic of at least eight trains per day or 100% in traffic volume (measured in gross ton miles annually).[11]

KJRY states that its proposed operations would not exceed the Board's thresholds for environmental review. Specifically, KJRY explains that it does not anticipate exceeding by more than 100% the traffic levels that moved on the La Harpe-Hollis Line prior to the sale of the La Harpe Line to SF&L in December 2000. But as made clear in KJRY's application and in SF&L Railway, traffic levels on the La Harpe-Hollis Line have declined sharply in the last 2-1/2 years. Therefore, KJRY would have the Board use, as its baseline for measurement, the historic levels of train traffic rather than the current traffic levels. This is not the Board's practice. Rather, the Board has consistently interpreted its thresholds for environmental review as requiring current traffic figures as a baseline.

Further, KJRY states that it anticipates train traffic levels to rise once again to levels closer to those that existed prior to the sale of the La Harpe Line in December 2000. Clearly, this would exceed the Board's threshold of a 100% increase in traffic volume. KJRY notes in its application that, "should the Board believe that an environmental report is required, KJRY is willing to prepare and file one." KJRY Application at 29 n.20. Given that KJRY's proposal would generate traffic volumes exceeding the Board's thresholds, KJRY will be required to prepare and submit an environmental report in compliance with the Board's environmental rules.

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[11] The proposed acquisition clearly falls within an exception to the historic reporting requirement. Under 49 CFR 1105.8(b)(1), proposals that involve a transfer of a rail line for the purpose of continued rail operations do not require an historic report where further Board approval is required to abandon service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. The proposed acquisition meets the standards of this exception.

Conclusion. Subject to the filing of an environmental report, KJRY has submitted sufficient information in its application as amended to meet the requirements of 49 CFR 1151.3. The Board will rule on the merits of the application when the record is complete.[12]

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. TP&W's request to reject the application as amended is denied.

2. KJRY's feeder line application is accepted for filing as amended, subject to KJRY's compliance with the requirements of 49 CFR 1105.7. Notice will be published in the Federal Register on July 9, 2003.

3. Competing applications by any person seeking to acquire all or a portion of the La Harpe-Hollis Line and Mapleton Spur must be filed by August 8, 2003.

4. Verified statements and comments addressing the initial and/or any competing application(s) must be filed by September 6, 2003.

5. Verified replies by applicants and other interested parties must be filed by September 26, 2003.

6. This decision is effective on July 9, 2003.

7. Copies of this decision will be served on the parties in STB Finance Docket Nos. 33995 and 33996.

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[12] TP&W raises a number of arguments pertaining to the PC&N, constitutional minimum value, and financial responsibility standards. This decision is only accepting the application as amended for filing; it is not ruling on the merits of the application. See 49 CFR 1151.2(b)(1). TP&W may advance these and other arguments when it files verified statements and comments.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary