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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

ORIGINAL



Finance Docket No. 33995

SF&L RAILWAY, INC.

204362 --ACQUISITION AND OPERATION EXEMPTION--  
TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

Finance Docket 33996

204363 KERN W. SCHUMACHER AND MORRIS H. KULMER  
-- CONTINUANCE IN CONTROL EXEMPTION --  
SF&L RAILWAY, INC.

REPLY  
OF

SF&L RAILWAY, INC., KERN W. SCHUMACHER  
and MORRIS H. KULMER

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KERN W. SCHUMACHER and  
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Dated: December 21, 2001

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
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REPLY  
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SF&L RAILWAY, INC., KERN W. SCHUMACHER  
and MORRIS H. KULMER

SF&L Railway, Inc. ("SF&L"), Kern W. Schumacher and Morris H. Kulmer, pursuant to 49 C.F.R. 1104.13(a), reply to the Petition for Stay of Effective Date and/or Operation of Exemption ("Petition"), filed by County of McDonough, City of Macomb and Joseph C. Szabo, Illinois Legislative Director for the United Transportation Union (collectively "Petitioners") filed December 18, 2001,<sup>1</sup> insofar as it relates to the subject proceedings,<sup>2</sup> as

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<sup>1</sup> The copy mailed to repliers' counsel was postmarked December 19, 2001, and received by him on December 21, 2001.

<sup>2</sup> Repliers take no position insofar as the stay is sought in STB Finance Docket No. 34134, Keokuk Junction Railway Co.--

follows:

1. The standards governing the issuance of a stay are as set forth in Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977), and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). The parties seeking a stay carry the burden of persuasion on all of the elements required for a stay. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5<sup>th</sup> Cir. 1974). See, STB Finance Docket No. 34085, Keokuk Junction Railway Co.-- Acquisition and Operation Exemption--West End of Toledo, Peoria and Western Railway Corporation, served August 23, 2001. Petitioners pay lip service to the four requirements for a stay but offer nothing of substance warranting its entry.

2. As Mr. Szabo alleged in his earlier Petition for Stay of Effective Date, filed January 16, 2001, denied by Decision of the Board, Chairman Morgan, served January 16, 2001, Petitioners maintain that they will prevail on the merits in having the Verified Notices of Exemption herein vacated; however, they set forth no additional grounds lending credibility to their claim. Certainly, the fact that, effective December 11, 2001, SF&L has been rendering service on the La Harpe-to-Peoria railroad line, rather than continuing to negotiate the agreements required to have the Toledo, Peoria and Western Railway Corporation ("TP&W") act as its contract operator, affords no basis for a stay. Indeed, Mr. Szabo in his earlier stay request found fault with the concept that SF&L should be rendering service on the line

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Acquisition and Operation Exemption--West End of Toledo, Peoria and Western Railway Corporation.

through a contract operator rather than operating the line itself.

3. In support of their allegation that their constituents will suffer injury if the stay were not granted, Petitioners refer to the Verified Statement of Randal L. Brandt, filed more than six months ago, on May 18, 2001, noting that service on the La Harpe-to-Peoria railroad line had been reduced to one train twice weekly in each direction.<sup>3</sup> The Petitioners do not contend a further reduction in service is in the offing, and, hence, they fail to make a case for a stay.

4. Petitioners say that there would seem to be no adverse impact on the rail carrier parties if a stay were granted; however, such is not the case as it relates to SF&L. SF&L has procured the locomotives and hired the crews, including UTU members, to render service on the La Harpe-to-Peoria railroad line, and, it would suffer significant losses if it were not able to utilize them gainfully.

5. Finally, Petitioners rely upon the Verified Statement of Mayor Thomas C. Carper in support of their contention that it is in the public interest that a stay be entered. He expresses concern that the downgrading or elimination of railroad service would have an adverse effect on existing users and act as a deterrent to the acquisition of new shippers and industries. His fears are unfounded, however. The curtailment in service on the La Harpe-to-Peoria railroad line occurred more than six months ago, as noted in the Verified Statement of Mr. Brandt, and any

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<sup>3</sup> That reduction in service was effected by TP&W, at a time when it continued to be the operator on the railroad line.

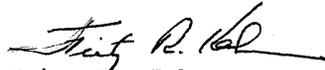
elimination of railroad service would require the advance authorization of the Board.

WHEREFORE, SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer, ask that the Petition for Stay of Effective Date and/or Operation of Exemption of the County of McDonough, City of Macomb and Mr. Joseph C. Szabo, filed December 18, 2001, be denied.

Respectfully submitted,

SF&L RAILWAY, INC.,  
KERN W. SCHUMACHER and  
MORRIS H. KULMER

By their attorney,

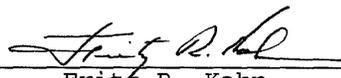
  
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Dated: December 21, 2001

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing pleading upon counsel for each of the parties by mailing them copies thereof, with first-class postage prepaid.

Dated at Washington, DC, this 21st day of December 2001.

  
Fritz R. Kahn