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January 28, 2002

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Unit - Suite 700
1925 K Street, N.W.
Washington, D.C. 20423-0001



RE: Finance Docket No. 33995 **204609**
*SF&L Railway, Inc.--Acquisition And Operation Exemption--
Toledo, Peoria & Western Railway Corporation--Between La Harpe and Peoria, IL
and
Finance Docket No. 33996
Kern W. Schumacher and Morris H. Kulmer-- 204610
Continuance In Control Exemption--SF&L Railway, Inc.*

Dear Secretary Williams:

Enclosed herewith are an original and eleven copies of the HIGHLY CONFIDENTIAL VERSION of the Keokuk Junction Railway Co.'s Rebuttal to Reply of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer (served under seal, subject to the STB Order of April 12, 2001) and an original and eleven copies of the PUBLIC VERSION of the same document. Also enclosed are two 3.5-inch computer disks, one contains the HIGHLY CONFIDENTIAL VERSION and the other contains the PUBLIC VERSION. Both are marked accordingly and filed with the appropriate version of the document.

Please date stamp the eleventh copy of each version and return it to the messenger for return to me. If you have any questions about this matter, please contact me at your convenience.

Sincerely,

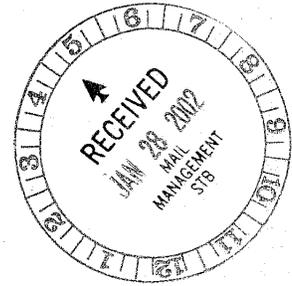
A handwritten signature in black ink, appearing to read 'William A. Mullins'.

William A. Mullins

Enclosures

cc: All known parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33995 204609

SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No. 33996 204610

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

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KEOKUK JUNCTION RAILWAY CO.'S
REBUTTAL TO REPLY OF SF&L RAILWAY, INC.,
KERN W. SCHUMACHER AND MORRIS H. KULMER

PUBLIC VERSION
HIGHLY CONFIDENTIAL INFORMATION
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January 28, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33995

**SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--
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Finance Docket No. 33996

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

**KEOKUK JUNCTION RAILWAY CO.'S
REBUTTAL TO REPLY OF SF&L RAILWAY, INC.,
KERN W. SCHUMACHER AND MORRIS H. KULMER**

**PUBLIC VERSION
HIGHLY CONFIDENTIAL INFORMATION
REDACTED**

Petitioner Keokuk Junction Railway Co. ("KJRY"), by its counsel, hereby files its Rebuttal to the Reply ("Reply") of SF&L Railway, Inc. ("SF&L"), Kern W. Schumacher and Morris H. Kulmer (collectively "Respondents"), filed by Respondents in these dockets on January 11, 2002. Respondents' Reply contains a number of inaccurate, incomplete, and/or misleading arguments and assertions of fact. KJRY believes that the Board should render a decision on the merits of its Petition to Revoke based upon a full and accurate record.

ARGUMENT

In December 2000, Respondents negotiated the basic terms of their purchase of the rail line from Peoria to La Harpe, Illinois (“Rail Line”) with Toledo, Peoria and Western Railway Corporation (“TP&W”). In the thirteen months since then, Respondents have not moved even one carload of traffic or otherwise taken even the basic steps necessary toward operating a viable railroad. Instead, the evidence produced during this proceeding indicates that SF&L intends to ultimately abandon and scrap the Rail Line. Respondents’ Reply does nothing to change this conclusion. The Reply contains little but concocted efforts to explain the many damaging facts uncovered by KJRY in discovery and brought to the Board’s attention in KJRY’s Supplement.¹ In this Rebuttal, KJRY addresses Respondents’ explanations and demonstrates why they provide no basis to delay the revocation of Respondents’ notices of exemption.

I. RESPONDENTS UNFAIRLY DEMEAN THE SHIPPERS THAT SUPPORT KJRY’S PETITION TO REVOKE

Respondents dedicate almost five pages of their Reply to denigrating the many shippers that have stepped forward to register their concerns over the future of the Rail Line. The bulk of these pages assert two points: first, that the shippers’ complaints should be directed toward TP&W, not SF&L; and second, that KJRY improperly enticed the shippers to voice their concerns. Neither of these points has merit.

Addressing first the substance of the shipper support letters, Respondents argue that the numerous complaints registered by shippers cannot be attributed to SF&L, because SF&L did not actually take over operation of the Rail Line until December 2001. Respondents’ efforts to

¹ Contrary to Respondents’ claim that “KJRY’s entire case consists of counsel’s contrived arguments” (Reply, at 3 n.1), KJRY has provided the Board with a variety of documents produced in discovery that confirm Respondents’ intentions toward the Rail Line. Verified statements submitted by KJRY assist in explaining KJRY’s concerns, but the documents produced in discovery are the strongest evidence available of Respondents’ true intentions.

dodge responsibility for the operations on the Rail Line over the past year ignores the facts that Respondents paid in full for the Rail Line in December 2000, obtained an exemption from the Board to buy the Rail Line, and acquired the common carrier authorization to operate it. Whether the details to close the transaction had been finalized by Respondents and TP&W is irrelevant. What is relevant is that SF&L had the financial commitment, the Board's necessary authorization, and the common carrier authorization to make decisions regarding the Rail Line, even though TP&W continued to operate the track.

Indeed, to the extent there is confusion about whose responsibility it was to perform service after publication of SF&L's exemption authority, it is confusion created by SF&L's own actions. The confusion over who actually exercised control of the Rail Line in 2001 is reflected in the written comments of SF&L and TP&W. For example, in March of 2001, TP&W claimed the deal had been consummated. *See* TP&W's "Response to Petition to Revoke" dated March 26, 2001 ("TP&W contends that [KJRY] has not demonstrated that application of the provisions of 49 U.S.C. §§ 10901 and 11324 to the consummated transactions..." (emphasis added). Yet, three months later, SF&L continued to claim the transaction was not yet consummated. Respondents' "Discovery Responses" dated June 1, 2001 ("the proposed transaction has not yet been consummated"). Accordingly, if there was any confusion as to who actually had the common carrier obligation and thus responsibility toward the shippers, it was confusion created by SF&L's own actions, not the actions of KJRY or the shippers.

Having created such confusion, SF&L should not now be allowed to disclaim responsibility for the lack of service to the shippers by pointing at TP&W. Of course it was in SF&L's self-interest to create this confusion: the more confusion, the more SF&L can disclaim

responsibility, which in turn leads to traffic erosion and lack of maintenance on the line, which only furthers SF&L's goal of driving off all the traffic so they can abandon the line for scrap.

SF&L's argument is simply an attempt to divert attention and responsibility away from the fact that they had no intent to operate this line as a viable entity when they purchased it and have no such intent now. As the documents produced in discovery show, the bottom line is that SF&L never had the intent of operating the Rail Line and thus did not care what was happening to the shippers or the service. Indeed, as the documents show and as was publicly disclosed by SF&L, the Rail Line was acquired with proceeds from a loan obtained from SF&L's parent company, A&K. Having pledged the Rail Line as collateral to A&K and having no intent to pay back the loan through a revenue stream generated by rail operations, SF&L simply was looking for a way to abandon the line so that the collateral could then be sold for what A&K hoped would be a tidy profit.² Thus, the more service degraded and the more the traffic disappeared, the closer SF&L and A&K were toward achieving their goal.

Respondents also set forth the baseless claim that KJRY somehow improperly induced the various shippers to oppose Respondents' purchase of the Rail Line. Nothing could be further from the truth. KJRY assisted the shippers in voicing their concern over the future of the rail line by directing them to contact the Board for relief. The draft letters circulated by KJRY were based on concerns expressed to KJRY about the future of the Rail Line by the shippers themselves. See Verified Statement of Catherine Busch, Director of Marketing, Keokuk Junction Railway Co., attached as Exhibit A, ("Busch V.S.") at ¶ 2 and ¶ 3. Thus, Respondents have it backwards: the draft letters did not "put words in the shippers' mouths." Rather, the

² See John Gallagher, Railroad Confidential, TRAFFIC WORLD, October 1, 2001, at 33 (Counsel for SF&L and A&K, Fritz Kahn, is quoted as saying "these folks [SF&L] expect to realize a gross profit of one third more" than what they paid for the line.)

shippers themselves made KJRY aware of certain issues, and KJRY assisted the shippers in writing down their concerns. At no time were the shippers told what to say or that they were required to use the drafts provided to them by KJRY. Busch V.S. at ¶ 4 and ¶ 5.

Respondents' Reply also casts a darker tone by intimating that the many shippers who have stepped forward to express concern to the Board are lying about the representations made by Respondents' General Counsel, Michael J. Van Wagenen. KJRY personnel were not invited to those meetings, and so cannot speak to what was actually said. What we do know is that three shippers have stated in writing that Mr. Van Wagenen attempted to conceal the connection between SF&L and A&K Railroad Materials, Inc. ("A&K"), a fact that should, at minimum, give the Board some concern.

Two other facts should be noted. First, despite the fact that Respondents have alleged that KJRY coerced certain shippers into signing letters containing falsehoods, none of those shippers have stepped forward to retract their declarations. All of the letters remain in the public docket as assertions of fact, duly signed by the party that heard what Mr. Van Wagenen had to say. Whatever impression Mr. Van Wagenen meant to leave with these shippers, the impression he left was that he denied a corporate relationship that Respondents now concede. Second, despite Respondents' efforts to make much of the fact that certain on-line shippers have not yet filed letters supporting revocation of Respondents' notices of exemption, Respondents have failed to produce a single shipper that supports its acquisition of TP&W's Rail Line. For all of Respondents' bluster about how shippers were told what to say by KJRY, no shipper has come forward to express any support for Respondents.

II. RESPONDENTS' COMPLAINTS ABOUT EXECUTION OF AN INTERCHANGE AGREEMENT WITH KJRY ARE BASELESS

At p. 5 of their Reply, and again in the Verified Statement of Stephen J. Van Wagenen, Respondents state that KJRY has not executed an interchange agreement with SF&L, and from that fact infer that KJRY seeks to drive the Rail Line into abandonment. Nothing could be further from the truth. Until KJRY's recent purchase of TP&W's La Harpe to Lomax line, (*Keokuk Junction Ry. Co. -- Acquisition and Operation Exemption -- West End of the Toledo, Peoria & Western Ry. Corp.*, 67 Fed. Reg. 1535 (2002)) KJRY and SF&L have lacked any direct connection. When SF&L bought its track from TP&W, its purchase (to M.P. 194.5) stopped short of the connection to KJRY at La Harpe (at M.P. 195.5). SF&L's transaction left TP&W owning approximately a mile of track between KJRY at La Harpe and SF&L's ownership, which begins east of La Harpe. See Verified Statement of B. Allen Brown, Chief Operating Officer, Keokuk Junction Railway Co., attached as Exhibit B. ("Brown V.S.") at ¶ 3 and ¶ 5. Lacking a direct connection, the two railroads could not interchange cars. Brown V.S. ¶ 2. Thus, there was no point having an interchange agreement with a railroad with which KJRY did not connect. Despite the fact that KJRY pointed out to Respondents the lack of a direct connection in its discovery responses (KJRY's "Responses to the First Set of Interrogatories and Production Requests," dated August 6, 2001, Response No. 5), Respondents continue to attempt to smear KJRY on this point, without ever addressing how any interchange can occur in the absence of a connection.

Respondents also point to the comments of Mr. Allen Brown, KJRY's Chief Operating Officer, regarding the question of whether SF&L has any "right" to seek an interchange agreement with KJRY. Mr. Brown's comment that SF&L had "no right to be asking for an interchange agreement" and that KJRY had no intention of signing such an agreement

manifested nothing more than the fact that KJRY could not enter into an interchange agreement without a connection. Brown V.S. at ¶ 2. Now that KJRY has purchased the short segment of TP&W track that had previously separated the two railroads, KJRY recognizes that it now has a legal obligation to interchange cars with SF&L. As a result, KJRY stands willing and able to interchange any traffic SF&L desires to tender to KJRY. Of course, SF&L has not tendered any such traffic for interchange.

III. KJRY'S RECENT PURCHASE OF TP&W'S LA HARPE TO LOMAX TRACK IS IRRELEVANT TO RESPONDENTS' INTENT TOWARD THE RAIL LINE

A. KJRY's Purchase Was Not Done As A Means Of Hastening The Abandonment Of SF&L's Rail Line

At several points in their Reply, Respondents mention the fact that KJRY recently purchased TP&W's La Harpe to Lomax line. Respondents infer from this purchase that KJRY intends to use the La Harpe to Lomax line in order to reroute Keokuk traffic away from the Rail Line. According to Respondents, KJRY would reroute such traffic in order to force SF&L to abandon its Rail Line so that KJRY could buy the line under the OFA procedures (49 U.S.C. § 10904). This argument is simply nonsensical. If KJRY's intent was to encourage SF&L to abandon the line so that KJRY could buy it, KJRY would have been better off simply sitting back and waiting for the traffic to dry up, the service to degrade, and SF&L file for abandonment authority. KJRY would not have spent significant amounts of limited resources prosecuting this matter out of concern that the Rail Line would be downgraded beyond rehabilitation. Indeed, the reason that KJRY has pursued this matter, at great expense, is precisely the opposite of SF&L's nonsensical theory. KJRY is concerned that by the time SF&L's would have filed its inevitable abandonment petition, existing traffic would have disappeared and any OFA would then be

pointless. KJRY, the shippers, the employees, and the communities all want the Rail Line to remain a viable entity, not have it scrapped.

KJRY believes that the Rail Line can be operated profitably today, with proper management, dedicated marketing efforts, and shipper-oriented service. The successful operation of the Rail Line, however, depends on implementing these measures while sufficient traffic exists to keep the Rail Line viable. It is for these reasons that KJRY has spent a significant amount of resources in this proceeding. As the evidence shows, it is a matter of simple truth: KJRY desires to see the Rail Line operated as a viable going concern while SF&L desires to abandon it for scrap.³

B. KJRY's Purchase Was Intended To Increase The Routing Options Of Its Shippers And Make the KJRY-SF&L Routing More Efficient

Contrary to SF&L's nonsensical theory, KJRY's purchase of the La Harpe to Lomax line had nothing to do with diverting traffic away from SF&L. KJRY's purchase was completed to improve access to two Class I carriers for Keokuk-based rail shippers. Prior to KJRY's purchase, Keokuk-based shippers could route their traffic out of Keokuk via The Burlington Northern and Santa Fe ("BNSF") or via connections to Union Pacific ("UP") at Fort Madison. However, the connection to UP required a more circuitous movement and interchange between KJRY and TP&W at La Harpe. By purchasing the La Harpe to Lomax track (with incidental

³ Respondents seek to impart a personal tone to this proceeding by attacking the actions of KJRY's President and CEO, Guy L. Brenkman. Specifically, Respondents assert that KJRY's challenge to Respondents' invocation of the Board's exemption procedures amounts to nothing more than Mr. Brenkman's "anger and frustration" over KJRY's efforts to buy the Rail Line. As with the remainder of the Reply, Respondents are off base in making this claim. While KJRY would have liked to purchase the Rail Line at a reasonable price, KJRY filed its Petition to Revoke in order to protect the access that the Rail Line provides to its Keokuk-based shippers. Further, the value of KJRY's franchise may well be diminished if the Rail Line is abandoned. Contrary to Respondents' unfounded innuendo, KJRY does not have the resources to engage in a proceeding of this magnitude to settle a corporate grudge.

trackage rights into Fort Madison), KJRY has eliminated one interchange for shippers wishing to make use of UP's services.

The purchase of the La Harpe to Lomax line has also actually improved the ability of KJRY shippers to use the Rail Line for interchanges in Peoria. When SF&L purchased the Rail Line, TP&W retained approximately a mile of track between KJRY at La Harpe and the beginning of SF&L's ownership of the Rail Line, which begins approximately one mile east of La Harpe and continues to Peoria. Thus, after SF&L acquired the Rail Line, any KJRY originated Keokuk traffic to Peoria would have required a KJRY-TP&W-SF&L-TP&W routing. KJRY's purchase of the La Harpe to Lomax segment also included the one mile TP&W segment that had prevented a direct connection with SF&L. Accordingly, with the purchase, TP&W is no longer in the first portion of the Keokuk-Peoria routing and what had been a four interchange move to Peoria has now become a three line move. If SF&L were truly interested in interchanging traffic with KJRY for Peoria destinations and interchanges, one would think that SF&L would be applauding KJRY's purchase of the La Harpe-Lomax segment, as that purchase has made the KJRY-SF&L-TP&W routing much more efficient. Instead, SF&L continues to attack that transaction in what appears to be simply a tactic to divert attention away from their lack of service on the La Harpe to Peoria line.

Furthermore, as explained by Catherine Busch, KJRY's Director of Marketing, SF&L's argument that KJRY will use the La Harpe to Lomax line as a means to divert traffic away from the SF&L line to Peoria does not make economic sense. Existing traffic to and from Keokuk-based shippers is routed through connections at Peoria or Fort Madison, depending upon its origin/destination. Busch V.S. at ¶ 10. The two gateways are simply not fungible. Even if it wanted to KJRY could not force traffic moving through Peoria to be interchanged at Fort

Madison. The routes are simply too different, and the operations of the connecting carriers will not allow for the suggested substitution.

C. It Is Respondents' Most Recent Actions That Have Made Their Rail Line An Inefficient Route Not KJRY's Purchase of the La Harpe To Lomax Segment

Respondents are simply attempting to use KJRY's La Harpe to Lomax purchase as a scapegoat for their efforts to drive the Rail Line into abandonment. Indeed as Ms. Busch explains in greater detail in her Verified Statement, most Keokuk shippers who desire to use the Rail Line for access to Peoria (and beyond) have seen their rates doubled subsequent to Respondents' purchase of the Rail Line. Busch V.S. ¶ 9. Indeed, some rates have almost tripled. *Id.* Thus, while KJRY's purchase of the La Harpe-Lomax segment actually made the KJRY-SF&L routing more efficient by removing TP&W from the route, SF&L's actions are doing precisely the opposite.

If SF&L was truly afraid that KJRY would use its La Harpe to Lomax line as a means of diverting Peoria traffic to Fort Madison, SF&L would be wanting to reduce its rates to make its routing more efficient, not double or almost triple them. It seems clear that SF&L has no desire to move traffic over the Rail Line. Indeed, despite SF&L's assertions about their desire to actually operate the Rail Line and their attempts to move traffic to Peoria, actions speak louder than words and those actions clearly establish that SF&L is driving traffic away from the Rail Line, not attempting to increase the use of the line. All that Respondents have done in their Reply is identify who they will attempt to blame if and when their abandonment plans succeed.

IV. SEVERAL MATTERS ONCE CONSIDERED HIGHLY CONFIDENTIAL BY RESPONDENTS, BUT NOW MADE PUBLIC IN THEIR REPLY, FURTHER ESTABLISH RESPONDENTS' INTENTIONS TOWARD THE RAIL LINE

In all of its pleadings in these dockets prior to the filing of its Reply, Respondents have insisted upon the confidentiality of a host of issues. In its Reply in the Redacted Public Versions, Respondents have chosen to make public at least three formerly "Highly Confidential" subjects: Respondents' refusal to accept the bridges and culverts on the Rail Line; the identity of the party funding SF&L's purchase of the Rail Line; and negotiations for TP&W's support for any impending abandonment of the Rail Line. While Respondents attempt to explain away each of these revelations, their explanations lack credibility. Now that outside counsel for KJRY has had the opportunity to review these matters with in-house KJRY personnel, KJRY is more convinced than ever that Respondents intend to downgrade and abandon the Rail Line.⁴

As first discussed by KJRY in the Highly Confidential version of its Supplement, Respondents have told TP&W that their understanding of what they were purchasing from TP&W did not include the bridges, trestles and culverts on the Rail Line. KJRY pointed out in its Supplement that Respondents' position is inconsistent with a party seeking to operate a shortline railroad, as a party with long-term interests would want ownership and control over as much of its operating assets as possible.⁵ Supplement, at 13-14. Respondents claim that these structures should be owned by the owner of the underlying land, TP&W. Reply, at 14-15. That

⁴ In its Reply (p. 15), Respondents also seek to distance themselves from certain Highly Confidential information provided to KJRY in written discovery and included in KJRY's Supplement by pointing out that the information came from TP&W, not Respondents. Nowhere do Respondents claim that the information in question is in any way inaccurate or misrepresents the positions taken by Respondents during negotiations with TP&W.

⁵ The issue was not that TP&W insisted on keeping the culverts, trestles and bridges. The issue was that Respondents did not want ownership of them.

answer does nothing to explain why Respondents do not wish to own their operating assets. Indeed, given that TP&W retained ownership of the culverts, trestles, and bridges, one would assume that there would be an agreement between SF&L and TP&W covering SF&L's use of those assets and spelling out any maintenance obligations. No such agreement appears to exist as none was produced in discovery. Instead, Respondents' conduct is consistent with a party seeking to scrap the valuable rail while at the same time avoid the costs associated with salvaging and abandoning bridges, culverts, and trestles.

As noted earlier, Respondents' Reply also revealed publicly that A&K actually provided the funding for SF&L's purchase of the Rail Line. KJRY has previously pointed out how this fact demonstrates that the real ownership interest in the Rail Line remains with a national scrap dealer, not SF&L. Respondents try to explain away A&K's financial interest in SF&L's assets as a "perfectly normal transaction within a corporate family" (Supplement, at 15), but they decline the opportunity to explain how A&K will be repaid. The fact remains that the Rail Line was purchased with money borrowed from a nationally renowned scrap dealer, and in the absence of any countervailing evidence, the assumption must be that a security interest in the rail was taken by that scrap dealer as collateral for the loan and that the loan will not be repaid until the Rail Line is scrapped and sold.

Respondents have also chosen to make public the fact that they were negotiating with TP&W to secure TP&W's acquiescence in an abandonment proceeding for the Rail Line before any of the circumstances of the abandonment are examined by TP&W. Respondents blithely suggest that such agreements are "commonplace" in shortline purchase agreements. Reply, at 17. They most certainly are not. Neither KJRY nor any of its other Pioneer Railcorp affiliated shortlines has ever purchased a rail line where it insisted upon and obtained a contractual

commitment from the seller that the seller would not oppose any future abandonment of the Rail Line. In fact, the industry practice is generally the opposite as sellers usually insist upon a right of first refusal to repurchase the line if the buyer ever seeks to abandon it. In fact, many times sellers include a requirement that the seller assent to any future abandonment by the buyer. Here, the exact opposite has occurred as SF&L has sought TP&W's acquiescence in advance to any future abandonment; further evidence that SF&L never intended to truly operate its Rail Line.

TP&W's and SF&L's arrangement is even more unique in that here the seller has retained a connection to the sold line and thus, assuming the parties truly intended for rail service to continue, would have had an interest in generating joint movements with the new operator and would not want to have seen the line abandoned. It seems clear that Respondents were attempting to buy off potential opposition to their abandonment plans right from the very beginning of their purchase. Perhaps it is "commonplace" for A&K-affiliates to seek such understandings in their purchases, but they are surely not commonplace in the shortline industry.

V. RESPONDENTS' REMAINING ARGUMENTS ARE UNAVAILING

Respondents' Reply sets forth several miscellaneous arguments that are as misdirected as they are inaccurate. First, Respondents once again attempt to incite the Board's indignity by claiming that KJRY is collaterally attacking the decisions issued by the Board and its predecessor agency in the many abandonment filings pursued by SF&L and other A&K-affiliated companies. KJRY has raised no such challenge. As KJRY has stated since the inception of this proceeding, the railroads' actions, either in operating rail lines so as to drive all viable traffic from them or in purchasing lines with no existing traffic, are the problems that the Board should address. KJRY's concern over Respondents' actions comes not with the pursuit of

abandonment authority but with the actions that make the granting of that authority a *fait accompli*. The fact that the lines in question are appropriate candidates for abandonment should surprise no one, given that Respondents sought to abandon them from the point of initial acquisition.

Respondents also claim that KJRY has misrepresented the holdings in two decisions, *Roaring Fork Railroad Holding Authority -- Abandonment Exemption -- In Garfield, Eagle, and Pitkin Counties, CO*, Docket No. AB-547X, Slip op. (STB served May 21, 1999) ("*Roaring Fork*") and *Union Pacific Railroad Company -- Abandonment Exemption -- In Lancaster County, NE*, Docket No. 33 (Sub-No. 71X), Slip op. (ICC served Sept. 28, 1992) ("*Lancaster*"). KJRY has misrepresented nothing. In its Supplement, KJRY claimed that these cases stand for the proposition that the Board (and the ICC before it) have found that Respondents "are basically in the business of scrapping rail lines" (Supplement, at 8), and not in the business of operating railroads. In *Roaring Fork* the Respondents' OFA was dismissed pursuant to a petition filed by the abandoning railroad (and joined by Colorado Department of Transportation and the City of Glenwood Springs) that claimed, *inter alia*, that "the offerors do not have good faith plans to provide continued rail service on the line" as a result of their affiliation with A&K. The Board granted the dismissal motion, finding that "the statutory objective of continued freight rail service would not be likely to result from this OFA proposal." *Roaring Fork*, at 8. Similarly, in *Lancaster*, the ICC dismissed an OFA filed by SF&L. The dismissal was based in part on the request of the abandoning railroad, which contended that SF&L's OFA "is a blatant attempt to acquire the line for SF&L's own business purpose, *i.e.*, to salvage it at the earliest possible date." *Lancaster* at 5. KJRY stands by its characterization of these decisions.

Finally, Respondents contend at several points in their Reply that it should not be surprising that they did not perform significant due diligence on their purchase because they relied upon the expertise of TP&W, which at the time the purchase was negotiated was slated to operate the Rail Line for SF&L. This is a partial response at best. Clearly, it was logical for SF&L to rely upon TP&W for expertise on how to operate the Rail Line, because TP&W had been responsible for operations of the Rail Line for many years, as Respondents point out. However, TP&W was not going to share the financial risk of operation. Respondents, as owners of the Rail Line, were to be entirely on the hook for whatever profit or loss was sustained by the Rail Line. Thus, Respondents' claim that they relied upon TP&W's expertise for such things as "revenue of the traffic generated" "what the business potentials of the line were" and "what earnings projections for the line might be made" does not hold water. Any serious shortline railroad operator would investigate these matters thoroughly before investing very significant resources into a purchase. Respondents' absence of due diligence is sensible only if, as KJRY established in its Supplement, Respondents only interest in the Rail Line was in its scrap value, an issue about which they secured significant information prior to purchase.

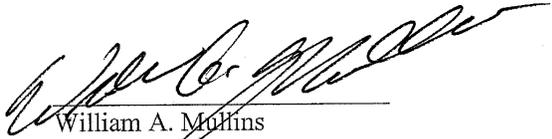
CONCLUSION

In summary, KJRY has supplied the Board with more than enough evidence to validate its "reasonable, specific concerns" that Respondents are intent on abandoning the Rail Line they purchased from TP&W more than one year ago. The shippers, the neighboring communities, the employees and the primary connecting carrier all agree that Respondents seek to drive the Rail Line into abandonment. The Board should therefore revoke the notices of exemption invoked by

Respondents in these dockets and invite Respondents to justify their purchase through the Board's established application for acquisition procedures.

Respectfully submitted,

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January 28, 2002

EXHIBIT A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33995

**SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--
BETWEEN LA HARPE AND PEORIA, IL**

Finance Docket No. 33996

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

**VERIFIED STATEMENT OF CATHERINE BUSCH
SUPPORTING KEOKUK JUNCTION RAILWAY CO.'S
REBUTTAL TO REPLY OF SF&L RAILWAY, INC.,
KERN W. SCHUMACHER AND MORRIS H. KULMER**

My name is Catherine Busch. I have been in charge of marketing for Keokuk Junction Railway Co., since October 1997. I give this Verified Statement on personal knowledge in support of the Rebuttal of Keokuk Junction Railway Co., to the Reply of SF&L Railway, Inc., Kern W. Schumacher, and Morris H. Kulmer.

1. I have been involved with the various shippers on the west end of the TP&W regarding the issues of rates and service received from the TP&W.
2. I spoke with various shippers located on the west end of the TP&W as well as shippers located on the KJRY that ship goods over the west end of the TP&W regarding the efforts of SF&L Railway to acquire a portion of the west end of the TP&W.

3. After speaking with numerous shippers I assembled a draft letter using the concerns and problems those shippers related to me.
4. At no time did I tell any shipper it was required to use the draft language I presented to it.
5. All shippers were free to revise and change the draft letter in any way they thought appropriate given their circumstances.
6. I met with Steve Van Wagenen of SF&L Railway and Warner Clark of TP&W on December 11, 2001 to discuss the rates SF&L and the TP&W would charge to take product between Keokuk and Peoria, Illinois and points east.
7. During my meeting with Steve Van Wagenen and Warner Clark they verbally told me what the new rates for the SF&L/TP&W portion of various moves that had previously been TP&W moves. The new rates were to become effective on February 1, 2002 when SF&L became an interline carrier.
8. On December 12, 2002 Warner Clark sent Steve Van Wagenen and myself an e-mail setting forth the rates that were quoted in the meeting the previous day. Steve Van Wagenen responded by e-mail on December 17, 2001 making one correction to those rate quotes. Otherwise he agreed with the rate quotes. Attached hereto and incorporated herein by reference and labeled Exhibit 1 is the e-mail from Warner Clark dated December 12, 2001 and the e-mail reply of Steve Van Wagenen dated December 17, 2001.
9. Attached hereto and incorporated by reference and labeled Exhibit 2 is a document labeled Contracts/Quotes/Tariffs –Rate Publications Involving TPW. Exhibit 2 compares the current TP&W rates with the combined SF&L/TP&W rates that will become effective February 1, 2002. Almost one half of the rates more than doubled, some almost tripled.

10. Products that move between Keokuk and Peoria cannot be routed through Fort Madison because those products either terminate in Peoria or are interchanged with another carrier such as Canadian National or Norfolk Southern at Peoria.

VERIFICATION

I, Catherine Busch, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed this 24th day of January, 2002

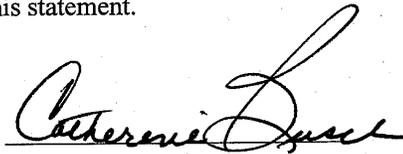
A handwritten signature in cursive script that reads "Catherine Busch". The signature is written in black ink and is positioned to the right of the date.

EXHIBIT A, EXHIBIT 1

REDACTED IN PUBLIC VERSION

OF

VERIFIED STATEMENT OF CATHERINE BUSCH
SUPPORTING KEOKUK JUNCTION RAILWAY CO.'S
REBUTTAL TO REPLY OF SF&L RAILWAY, INC.,
KERN W. SCHUMACHER AND MORRIS H. KULMER

IN

Finance Docket No. 33995

SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No. 33996

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

EXHIBIT A, EXHIBIT 2

REDACTED IN PUBLIC VERSION

OF

VERIFIED STATEMENT OF CATHERINE BUSCH
SUPPORTING KEOKUK JUNCTION RAILWAY CO.'S
REBUTTAL TO REPLY OF SF&L RAILWAY, INC.,
KERN W. SCHUMACHER AND MORRIS H. KULMER

IN

Finance Docket No. 33995

SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No. 33996

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

EXHIBIT B

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33995

**SF&L RAILWAY, INC.--ACQUISITION AND OPERATION EXEMPTION
--TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION--
BETWEEN LA HARPE AND PEORIA, IL**

Finance Docket No. 33996

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

**VERIFIED STATEMENT OF B. ALLEN BROWN
SUPPORTING KEOKUK JUNCTION RAILWAY CO.'S
REBUTTAL TO REPLY OF SF&L RAILWAY, INC.,
KERN W. SCHUMACHER AND MORRIS H. KULMER**

My name is B. Allen Brown. I am the Chief Operating Officer of Keokuk Junction Railway Co. I give this Verified Statement on personal knowledge in support of the Rebuttal of Keokuk Junction Railway Co., to the Reply of SF&L Railway, Inc., Kern W. Schumacher, and Morris H. Kulmer.

1. In both the Reply of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer and the Verified Statement of Steve Van Wagenen there is speculation regarding the reasons for my July 17, 2001 voice mail message to Steve Van Wagenen.
 2. The reason I told Mr. Van Wagenen that KJRY was not going to sign the interchange report that he had sent was because, at the time, the tracks of KJRY did not physically touch the tracks of SF&L.
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3. SF&L received common carrier authority from the Board to operate between mile post 123 and mile post 194.5. It did not have Board authority to operate between mile post 194.5 and mile post 195.5.
4. The KJRY physically connected with TP&W at LaHarpe, Illinois mile post 195.5. It had no authority to operate on TP&W tracks to mile post 194.5.
5. Since TP&W retained ownership and common carrier authority on one mile of track between SF&L at mile post 194.5 and KJRY at mile post 195.5 there could be no direct interchange of cars. As it was then structured any movement of cars to Peoria and points east would have required KJRY to interchange cars to TP&W at LaHarpe who would then interchange the cars to SF&L.

VERIFICATION

I, B. Allen Brown, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed this 24th day of January, 2002



CERTIFICATE OF SERVICE

This is to certify that on this 28th day of January 2002, I caused the foregoing PUBLIC VERSION of the "Keokuk Junction Railway Co.'s Rebuttal to Reply of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer" in the Finance Docket No. 33995 and Finance Docket No. 33996 proceedings to be served upon counsel for all known parties of record by first class mail, postage prepaid, or by more expeditious means.



Thomas J. Healey