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February 9, 2005

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

FEB - 9 2005

Part of
Public Record

RE: Finance Docket No. 34335
*Keokuk Junction Railway Co.--Feeder Railroad Development Application
--Line Of Toledo, Peoria & Western Railway Corporation Between
La Harpe and Hollis, IL*

Dear Secretary Williams:

Keokuk Junction Railway Co. ("KJRY") hereby responds to the letter filed by Toledo, Peoria and Western Railway Corporation ("TP&W") on February 8, 2005. TP&W requests "action from the Board on the trackage rights agreement only." What "action" TP&W requests the Board to undertake is unclear. Presumably, TP&W is requesting the Board, within a day's notice, to intervene in a dispute between KJRY and TP&W with respect to the trackage rights agreement and to impose an agreement that is more to the liking of TP&W, contrary to what the Board ruled just one day earlier. The Board should refuse TP&W's request.

When the Board extended the previously-established closing deadline in its January 24 decision, it did not require KJRY to "negotiate" over the terms of the Board approved trackage rights agreement, but instead, as in its October 28 order, simply allowed TP&W the right to accept or reject the trackage rights agreement. Likewise, the Board's February 7th order did the same thing: it gave TP&W an opportunity to either accept or reject the trackage rights agreement. Indeed, the Board went even further and made clear that it would "*not consider requests to change the terms of the trackage rights agreement.*" The agreement was proposed on June 9, 2003, and *approved* by us in the October decision." (emphasis supplied). Of course, TP&W ignores this language and now requests the Board to do precisely what the Board said it would not do, *i.e.*, "change the terms of the trackage rights agreement." The Board should reject TP&W's request to take "action" with respect to the agreement.

In light of the February 7th order, KJRY did contact TP&W to determine whether or not it would accept the trackage rights agreement. In response, TP&W referred KJRY to its February 4th correspondence, in which TP&W for the first time sent extensive comment and numerous

BAKER & MILLER PLLC

Honorable Vernon A. Williams

February 9, 2005

Page 2

proposed changes to the trackage rights agreement and informed KJRY that it would not sign the trackage rights agreement that KJRY had proposed and the Board had approved. TP&W did not offer to negotiate any specific changes, but rather flatly rejected the Board-approved agreement, and proposed substituting its own agreement in its place. As such, TP&W's rejection should be "at its own risk" and the Board should not take action to change the terms of the previously approved agreement.

KJRY agrees with TP&W that the Mapleton Spur shippers must have access to the TP&W line. Therefore, absent the acceptance of the trackage rights agreement by TP&W, KJRY has offered to provide an interchange between the Mapleton Spur and Hollis (which TP&W accesses via trackage rights on the UP). KJRY is prepared to sign a standard interchange agreement to implement this operation. Indeed, KJRY has made arrangements to send two locomotives to the Mapleton Spur in order to ensure that interchange operations can occur soon and that service to the Mapleton Spur shippers will not be disrupted.¹

As for the inspection issue, KJRY has signed the "Permission To Enter Upon Premises – Visit." KJRY did not immediately sign the proposed form because it appeared that the form was drafted to provide individuals, as opposed to the company, a right to enter on the TP&W property. Once KJRY received clarification from RailAmerica's counsel that the form was intended to provide KJRY with access, and not just individual KJRY employees, KJRY signed the form and faxed it to TP&W Tuesday afternoon. KJRY's track foreman has already begun track inspection work.

With respect to the labor issue, KJRY has no need to hire additional personnel to serve the line and therefore will not at this time be offering employment to TP&W employees. Furthermore, it is unclear which TP&W employees deserve priority consideration in hiring under the Board's October 28 order. There has not been TP&W service over the line for almost four years. Thus, there are no TP&W employees that have recently worked on the line whose regular work KJRY's service would replace.

¹ When TP&W rejected the trackage rights agreement, TP&W stated that it would forward a proposed interchange agreement to KJRY, which it has done. That proposed agreement however, would have TP&W retain ownership and control of the Hollis Passing Track, which sits within the TP&W right-of-way and is part of the Line being acquired. This passing track was part of KJRY's application and was to be used by KJRY for through train operations. The attempt by TP&W to retain ownership of this track is just another move to create "issues" for the Board to decide in order to delay closing and prevent service to the shippers. The Board should put a stop to this conduct and order TP&W to transfer all of the Line, including the passing track.

BAKER & MILLER PLLC

Honorable Vernon A. Williams

February 9, 2005

Page 3

Unlike TP&W, BNSF appears to take the Board's orders seriously. As of the afternoon of February 8th, BNSF was reinstalling the crossing diamonds at Bushnell. KJRY appreciates BNSF's cooperation with the Board's request.

Finally, KJRY has wired the requisite purchase price to TP&W's designated account and is in contact with TP&W to arrange for transfer of the quitclaim deed and other closing items on February 11. In addition, KJRY is in discussions with both online and overhead shippers regarding their service needs. In fact, to facilitate this, KJRY and Union Pacific have reached a trackage rights agreement that will allow KJRY to reach the Tazewell & Peoria Railroad ("TZPR")(formerly the "P&PU") in Peoria.² This will allow an interchange with the UP and the TZPR in Peoria. Such connections will facilitate the restoration of the historic through route that had existed for over a century.

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com. There are an original and eleven copies of this letter. Please time stamp the extra copy and return to the courier for delivery to me. Furthermore, by my signature below, I certify that I have on this date caused copies of this submission to be delivered to Louis E. Gitomer and Gordon P. MacDougall by courier, and to be served on other parties of record by first class mail.

Respectfully submitted,



William A. Mullins
Attorney for Keokuk Junction Railway Co.

Enclosures

cc: All Parties of Record

² UP owns that portion of the line between the end of TP&W's ownership just west of Peoria at Hollis Station and the TZPR at Iowa Junction, near Peoria. Indeed, to access its Mapleton Spur shippers from Peoria, TP&W must use trackage rights over approximately 5 miles of TZPR track and then another 5 miles over the UP line before getting on its own line at Hollis Station for final access to the Mapleton Spur at Kolbe. The KJRY trackage rights agreement was modeled on a standard trackage rights agreement used by BNSF, KJRY, and others. It is thus spurious for TP&W to claim that KJRY's proposed trackage rights agreement is inconsistent with industry practice.