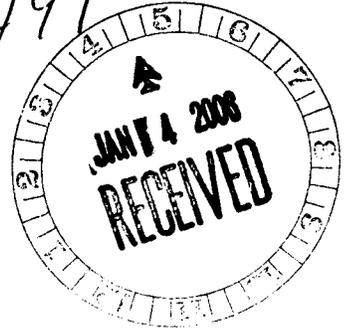


215491

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**



STB FINANCE DOCKET NO. 34795

**ROQUETTE AMERICA, INC. - PETITION FOR EXEMPTION FROM 49 U.S.C. §10901
TO CONSTRUCT A NEW LINE OF RAIL IN KEOKUK, IA**

MOTION FOR PROCEDURAL CLARIFICATION

Roquette America Railway, Inc. and Roquette America, Inc (collectively "Roquette") hereby request that the Board clarify, as more fully set forth herein, the procedural status of the "Reply to Petition for Exemption," filed by Keokuk Junction Railway Company ("KJRY") on December 19, 2005.

Although KJRY has labelled its December 19th pleading a "Reply" to Roquette's Petition for Exemption, KJRY's pleading asks the Board to dismiss the Petition. However, KJRY has separately informed Roquette that its "Reply" is not a motion to dismiss to which Roquette is entitled to reply. For the reasons presented in Exhibit 1, attached hereto, KJRY's inconsistent positions appear to be a procedural "shell game" with the potential to prejudice Roquette in this proceeding.

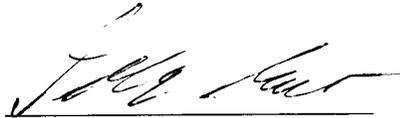
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Public Record

Roquette, therefore, requests that the Board clarify that KJRY's December 19th "Reply" is in fact a reply, and not a motion to dismiss. If the Board determines that the "Reply" is a motion to dismiss, Roquette asks the Board to grant Roquette 20 days from the service date of the Board's decision to reply to the motion to dismiss.

Respectfully submitted,



Nicholas J. DiMichael
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1920 N Street, NW
Washington, DC 20033
Phone: (202) 331-8800
Fax: (202) 331-8330
*Attorneys for Roquette America, Inc. and
Roquette America Railway, Inc.*

January 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2006, copies of the foregoing Motion for Procedural Clarification were served by hand delivery upon counsel for Keokuk Junction Railway Co.



Jeffrey O. Moreno



ATLANTA

CINCINNATI

COLUMBUS

NEW YORK

BRUSSELS

CLEVELAND

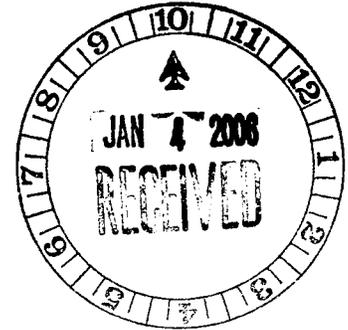
DAYTON

WASHINGTON, D.C.

January 4, 2006

By Messenger

David M. Konschnik
 Director of Proceedings
 Surface Transportation Board
 1925 K Street, N.W.
 Washington, DC 20423-0001



RE: STB Finance Docket No. 34795, *Roquette America, Inc. - Petition for Exemption from 49 U.S.C. 10901 To Construct a New Line Of Rail in Keokuk, IA*

Dear Director Konschnik:

We are writing on behalf of Roquette America Railway, Inc. and Roquette America, Inc. (collectively "Roquette") to express our concern that certain procedural "gamesmanship" by the Keokuk Junction Railway Co. ("KJRY") not prejudice Roquette in this proceeding. KJRY is playing a "shell game" with both Roquette and the Board as to its real interest in this proceeding, in an apparent attempt to confuse and delay matters.

On December 19, 2005, KJRY filed a timely reply to Roquette's Petition for Exemption. Although labeled a "Reply," the first 18 of 21 pages present argument that Roquette's Petition should be dismissed. In the last three pages, KJRY contends that, if the Board does not dismiss the Petition, it should establish a procedural schedule for discovery and three additional rounds of pleading. KJRY did not propose any specific time frame, however.

Since KJRY's December 19th filing appeared to be as much a motion to dismiss as a reply, we asked KJRY's counsel to clarify their intent and to grant Roquette a brief extension of time to reply to a motion to dismiss in light of the Christmas/New Years holiday. In a response, which we have enclosed with this letter, KJRY's counsel informed us that:

We consider what was filed by KJRY on Dec. 19 to be a reply to Roquette's petition, to which no further reply is called for under the Board's regulations. Therefore, we don't see an applicable deadline which we could consent to waiving.

Based on KJRY's denial that it had filed a motion to dismiss (and the associated inference that Roquette has no right of reply), Roquette determined not to file a reply to KJRY's reply.

Although the Board's rules would not permit any further pleadings in this docket, we informed KJRY that Roquette did not object to discovery and to the use of discovery by KJRY to

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January 4, 2006

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supplement its Reply to Roquette's Petition. Roquette also suggested a procedural schedule. KJRY, however, declined to agree to *any* procedural schedule with Roquette.

Shortly thereafter, on December 23, 2005, Roquette filed a Motion for Procedural Schedule, which asked the Board to adopt substantially the same schedule that Roquette had proposed to KJRY. Instead of three *additional* rounds of pleading, which KJRY had suggested, Roquette proposed that its Petition constitute an opening statement; that KJRY's Reply, as supplemented based on Roquette's discovery responses, constitute a reply statement; and that Roquette file a rebuttal statement within 30 days of KJRY's supplemental reply statement. KJRY's suggestion of three additional rounds would merely delay this proceeding unnecessarily, since the first two rounds proposed by KJRY would be redundant of the pleadings already filed in this docket.

On December 29, 2005, KJRY replied to Roquette's Motion for Procedural Schedule. Despite KJRY's declaration to Roquette that its December 19th reply is not a motion to dismiss, KJRY's reply in opposition to the motion for procedural schedule continues to urge the Board to dismiss Roquette's Petition. Dec. 29th Reply at 2, 3, and 4. KJRY cannot have it both ways, by asking the Board to dismiss Roquette's Petition, but then claiming that it has not in fact filed a motion to dismiss in order to deny Roquette an opportunity to respond.

Roquette has relied upon KJRY's representations that it did not file a motion to dismiss on December 19th. If the Board elects to treat KJRY's filing as a motion to dismiss, Roquette asks that the Board notify Roquette and grant Roquette 20 days from such notification to reply to KJRY's December 19th pleading. Roquette, however, believes that its proposed procedural schedule addresses this matter fairly by granting KJRY discovery,¹ by allowing KJRY to supplement its December 19th Reply with information obtained through discovery, and by allowing Roquette to respond to KJRY's Reply.

Finally, Roquette notes that, in this proceeding, it is attempting to obtain competitive rail service through a build-out to a competing carrier, which has been a means repeatedly favored by the Board. KJRY, as the incumbent carrier, has every incentive to delay this proceeding to avoid

¹ Roquette has objected to many of KJRY's discovery requests, because those requests intrude into areas that are irrelevant, and in some cases beyond the Board's jurisdiction. Roquette believes such requests are an attempt to burden Roquette and to delay this proceeding through discovery disputes. Furthermore, KJRY may be attempting to use the Board's discovery procedures to obtain discovery of matters that are more appropriately addressed in another forum. Nevertheless, to the extent there is a dispute as to the legitimacy of these discovery requests, Roquette's procedural schedule provides for resolution through a motion to compel.

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competition. The Board should not countenance KJRY's transparent attempts at delay. Therefore, Roquette has sought expedited consideration of its Motion for Procedural Schedule, which Roquette hopes the Board will approve as soon as possible.

Sincerely,



Jeffrey O. Moreno

Enclosure

cc: William A. Mullins (w/ enclosure)
Counsel for Keokuk Junction Ry. Co.

Vernon A. Williams (w/enclosure)
Secretary, Surface Transportation Board

Moreno, Jeffrey

From: DReeves@bakerandmiller.com
Sent: Thursday, December 22, 2005 11:56 AM
To: Moreno, Jeffrey
Cc: WMullins@bakerandmiller.com
Subject: Roquette petition

Jeff -

Bill is out of the office today, and so asked me to respond to your questions to him.

We consider what was filed by KJRY on Dec. 19 to be a reply to Roquette's petition, to which no further reply is called for under the Board's regulations. Therefore, we don't see an applicable deadline which we could consent to waiving.

With respect to the protective order, we agree with the need for that and if you will send it to me (again, since Bill is out of the office), I will review it and get back to you. I will be in both today and tomorrow. Bill will be out both days.

David C. Reeves
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202-663-7820 (receptionist)
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