

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

David C. Reeves

Direct Dial: (202) 663-7824
E-Mail: dreeves@bakerandmilller.com

January 13, 2006

BY ELECTRONIC FILING

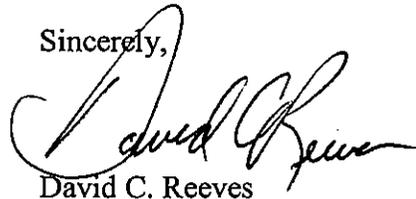
The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

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 Secretary Williams:

I am enclosing herewith Keokuk Junction Railway Co.'s Motion to Compel the petitioners' replies to certain discovery served on them by Keokuk Junction Railway Co., on December 16, 2005, and responded and objected to by the petitioners on December 28, 2005 and January 3, 2006. Please acknowledge receipt and filing of the accompanying motion by return receipt. If there are any questions concerning this filing, please contact me by phone at (202) 663-7824 or by e-mail at dreeves@bakerandmilller.com.

Sincerely,



David C. Reeves

cc: Daniel A. LaKemper, Esq.
All Parties of Record

**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 TO COMPEL

**William A. Mullins
David C. Reeves
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849**

Attorneys for Keokuk Junction Railway Co.

January 13, 2006

**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 TO COMPEL

Keokuk Junction Railway Co. (“KJRY”) hereby moves the Surface Transportation Board (“Board” or “STB”) to compel petitioners Roquette America, Inc. (“RAI”) and Roquette America Railway, Inc. (“RARI”) (collectively, “Roquette”) to submit further responses to KJRY’s December 16 discovery requests, as specified herein. Having conferred with Roquette’s counsel by letter without resolving the parties’ differences over Roquette’s objections, KJRY brings this Motion to Compel.

Background

On June 20, 2005, RAI’s representatives first met with the Board’s Section of Environmental Analysis (“SEA”), kicking off RAI’s efforts before the Board to connect tracks at RAI’s Keokuk, IA plant directly to tracks of BNSF Railway Company (“BNSF”) to eliminate the need for KJRY’s switching service at that plant. RAI’s June 20 meeting and subsequent conversations and electronic and paper correspondence led SEA on July 11 to approve retention of Burns & McDonnell Engineering Company, Inc. (“B&M”) as the Board’s third party contractor to prepare the environmental analysis of the project.

B&M conducted a site visit with RAI personnel to RAI’s plant on the Board’s behalf on July 11 and 12. B&M submitted its findings from that visit to SEA in a memo dated August 11.

Because B&M was concurrently working on designing another project for RAI's Keokuk plant, SEA on August 25 accepted as part of its approval of B&M as the third party contractor the implementation of a so-called "firewall" between the B&M group working on the other project at the plant and the group paid by B&M to work under SEA's direction. SEA concluded that the two projects did not present any conflict of interest for B&M, and that the firewall provision would eliminate any appearance of a conflict of interest.¹ On November 3, the agency consultation letter based on B&M's work and distributed by the Board was sent to consulting governmental agencies and Native American tribes.

On November 29, RAI and/or RARI² petitioned the Board under 49 U.S.C. §10502 to exempt from 49 U.S.C. §10901 construction of two or more sections of track at RAI's plant. The proposed construction would connect two or more existing tracks at the plant, and would move an existing connection between those tracks and KJRY's track adjacent to the plant so Roquette could use several hundred feet of KJRY's track to reach BNSF track, which lies on the other side of KJRY's track. Roquette's Petition asserts that granting the requested exemption would be consistent with the following provisions of the National Rail Transportation Policy: 49 U.S.C. §10101(1, 2, 4, 5, 7, 9, 12 and 15).

On December 16, KJRY served discovery on Roquette and, on December 19, replied to Roquette's petition. KJRY challenged Roquette's contention that its planned construction and

¹ It is unclear from Roquette's discovery responses thus far, as well as from Roquette's January 12 letter, when - or even if - after August 25 the provisions of the "firewall" were completed. In any event, KJRY has challenged the sufficiency of these steps to provide the Board with an independent, third-party contractor as required by 40 CFR §1506.5(c), and accordingly has requested that B&M be replaced with a truly independent third-party contractor. See Attachment 1 hereto, KJRY letter to Victoria J. Rutson dated January 9, 2006.

² RARI apparently was incorporated in Delaware in October 2005. Roquette's discovery responses tendered thus far state that RARI has no personnel or assets. See Attachment 2, Responses 22 and 25.

operation was subject to Section 10901 so as to be eligible for exemption therefrom. KJRY also challenged RAI's ownership of the tracks that it proposed to remove and/or extend and to operate over and suggested that, at a minimum, the Board should establish a procedural schedule allowing for discovery and a full opportunity for both Roquette and KJRY to explain their legal positions and the facts behind them. Roquette subsequently requested that the Board impose an accelerated procedural schedule that would limit discovery and would require KJRY to make its final filing in the proceeding before Roquette presented any argument supporting its petition on the challenges raised by KJRY.

On December 28, Roquette tendered objections and certain partial responses to KJRY's discovery. A copy of those objections and responses is attached as Attachment 2. On January 3, Roquette provided KJRY about 270 pages of discovery responses. These were almost exclusively copies of electronic and written correspondence between Roquette, B&M and/or the Board concerning B&M's selection as the Board's third-party contractor. Following review of those materials, KJRY directed a letter to Roquette's counsel requesting waiver of certain objections and further responses to KJRY's discovery. See Attachment 3. Roquette's counsel responded briefly on January 12, clarifying certain objections but providing no additional substantive information. See Attachment 4. Also on January 12, the Board issued a procedural order giving Roquette until January 23 to reply to KJRY's December 19 reply. KJRY therefore now seeks to compel more complete responses to KJRY's first set of discovery requests than Roquette will provide voluntarily.

Discussion

General STB Discovery Principles

The Board's rules provide for broad discovery rights.³ "[A]ny matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding," is open to inquiry through discovery. 49 CFR §1114.21(a)(1). The Board has defined relevant information as that which "might be able to affect the outcome of a proceeding."

Waterloo Railway Company – Adverse Abandonment – Lines Of Bangor And Aroostook

Railroad Company And Van Buren Bridge Company In Aroostook County, Maine, STB Docket

No. AB-124 (Sub-No. 2), et al. (served Nov. 14, 2003). Moreover, "It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 CFR

§1114.21(a)(2). For example, the Board recently granted a motion to compel production of agreements that "*may be* relevant to matters in dispute in this proceeding." (Emphasis added.)

Illinois Railnet, Inc.–Acquisition And Operation Exemption–BNSF Railway Company, STB

Finance Docket No. 34549 (served April 15, 2005).

Specific Responses to Be Compelled

Request No. 2. In its Request No. 2, KJRY requested all information exchanged between Roquette and B&M in connection with this proceeding. Roquette, however, limited its answer to information concerning the conflict of interest that KJRY has asserted prevents B&M from functioning for the Board in this matter as a truly independent third party contractor. Roquette has not denied that it exchanged other information with B&M concerning this proceeding.

³ The Board's regulations provide that the rules of evidence will be applied in any proceeding to the end that necessary and proper evidence will be conveniently, inexpensively, and speedily produced. 49 CFR §1114.1. See also 49 CFR §1100.3 (the Board's rules are to be liberally construed "to secure just, speedy, and inexpensive determination of the issues presented.")

However, it asserts that any such remaining information is neither relevant nor reasonably calculated to lead to the production of relevant information.

The Board is required by the National Environmental Policy Act to consider the environmental impacts of its actions. See 42 U.S.C. 4332, and 49 CFR §1105.1. B&M is currently functioning for the Board in examining that issue. Much of B&M's work has involved collection of information from Roquette. For example, on July 11, B&M conducted a site visit with Roquette personnel. Inasmuch as the environmental analysis of Roquette's project is required by statute for the Board to approve or exempt that project, and as Roquette likely has provided information to B&M as a basis for that analysis, KJRY's request seeks information that is relevant; i.e., likely to affect the outcome of the proceeding.

This case represents an exception to the Board's normal posture that all environmental issues will be handled exclusively by SEA in the issuance of draft and final EIS's or EA's.⁴ Here, the Board has chosen B&M to do its legwork in this proceeding, much like B&M being a Board employee assigned that work. B&M is a company that was (a) concurrently working for the petitioner on another project at the same facility, and (b) was seeking additional work from the petitioner at that facility.

KJRY respectfully suggests that if the Board were using one of its own employees on this project rather than B&M, the Board would not allow its employee to be under a contract to do work for Roquette, and seeking additional work from Roquette, at the same plant at the same time that person was representing the Board. B&M's work for, and seeking added work from, Roquette is equally unacceptable.

In IC-Baton Rouge, the Board denied discovery into environmental matters, stating in

⁴ See, e.g., Illinois Central Railroad Company-Construction And Operation Exemption-In East Baton Rouge Parish, LA, STB Finance Docket No. 33877 (served Aug. 21, 2001) ("IC-Baton Rouge").

part “There is nothing before us to suggest that, without discovery, KCS somehow has been shut out of the process or that SEA will not be able to adequately analyze the potential environmental impacts in order to satisfy the necessary ‘hard look’ required by NEPA.” Here, where the entity functioning for the Board in this case for the past six months - B&M - has simultaneously been in the employ of and/or seeking work from the petitioner in this case, there is reason to suggest that KJRY has been shut out of the environmental process. Accordingly, KJRY requests that the Board compel Roquette to provide any information responsive to KJRY’s Request No. 2 that has not yet been provided due to the substantive limitations that Roquette placed on its response.

Request No. 3. KJRY’s Request No. 3 seeks information about (a) B&M’s contract with Roquette involving the design of a cogeneration boiler at Roquette’s Keokuk plant, including a description of the work and the amount paid to B&M for the work. It also seeks information on other contracts between B&M and Roquette, to assess the extent to which Roquette’s work as the Board’s third party contractor might be influenced by the financial relationship between B&M and Roquette. Roquette’s response (see Attachment 2 hereto, page 5) states that the design of the cogeneration project was completed after B&M began functioning as the Board’s contractor, and that information concerning that contract and any other work Roquette may be doing for Roquette is neither relevant nor likely to lead to discovery of relevant information.

NEPA requires that a third party contractor chosen by the Board to assist in its environmental analysis of a project not have a “financial or other interest in the outcome of the project.” 40 CFR §1506.5(c). CEQ has interpreted the phrase “financial or other interest in the outcome of the project” broadly to cover “any known benefits other than general enhancement of professional reputation.” Council on Env’tl Quality, 40 Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,031 (Mar. 23, 1981). Disqualifying interests include “any financial benefit such as a promise of future

construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients).” Id. That the contractor not have an interest in the outcome of a project is important to insure the integrity of the agency’s processes. CEQ, Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34,263, 34,266 (1983).⁵

KJRY’s Request No. 3 seeks information to ascertain the extent to which B&M’s work for the Board may be affected by B&M’s financial relationship with Roquette at the Keokuk plant and elsewhere. The request is reasonably limited, calling only for information on the contract at the Keokuk plant that apparently was concluded during the early phases of B&M’s work for the Board and on other current work B&M may be doing for Roquette, while B&M functions as the Board’s contractor.⁶

The integrity and defensibility of the Board’s environmental analysis in this matter is relevant - i.e., likely to affect the outcome of the proceeding - and KJRY’s Request No. 3 seeks information pertinent to that issue. Roquette should be compelled to provide such information.

⁵ In its January 12, 2006 letter to SEA, Roquette appears to cite Associations Working For Aurora's Residential Environment v. Colorado Department Of Transportation, 153 F.3d 1122 (10th Cir. 1998) (“AWARE”) for the proposition that an environmental contractor’s potential, but not promised, future work on a project for a state agency which was both preparing the EIS and which would perform the project is not a conflict of interest. KJRY would point out, however, that the decision states, “Accepting for the sake of argument that the Contractor’s heightened expectation that it would receive the contract for future design work amounted to a conflict,” (emphasis added) that conflict was overcome in that case by the state agency’s supervision of the contractor’s EIS work. Id., at 1128. Decisions following AWARE generally acknowledge that the court did not decide that the contractor’s potential future interest was not a conflict of interest. (KJRY also disputes other portions of Roquette’s letter, but will address those portions separately as appropriate.)

⁶ It is worth noting that Roquette’s responses tendered thus far to KJRY’s Requests Nos. 1 and 2 show that B&M was, at least as of September, seeking additional work from Roquette, and that Roquette was holding out the possibility of such work to B&M. See Attachment 1 hereto, page 4, n.5.

Requests Nos. 6, 8 and 9. KJRY's Requests Nos. 6, 8 and 9 seek information Roquette's ownership interest (or lack thereof) in tracks that the petition indicates that Roquette would modify or remove as part of its proposal, namely the Hub Track, the Plant Lead and the Downriver Lead. Roquette objects to the requests as irrelevant and as not likely to lead to discovery of relevant information because "the Board has no jurisdiction to determine the ownership of any property that is subject of this proceeding." Attachment 2 at 6 and 7.

KJRY's Requests Nos. 6, 8 and 9 go to the feasibility of Roquette's proposal and are, therefore, relevant. See, e.g., Holrail LLC—Construction And Operation Exemption—In Orangeburg and Dorchester Counties, SC, STB Finance Docket No. 34421, et al. (served Oct. 20, 2004) (granting CSXT's motion to compel petitioner to produce more detailed information regarding its proposal to allow assessment of the proposal's feasibility). Even if the Board is not authorized to authoritatively determine ownership of property in Iowa, the Board is still entitled to know whether it is being asked to engage in a hypothetical exercise. See generally The Cincinnati, New Orleans And Texas Pacific Railway Company--Abandonment Exemption--In Roane County, TN, STB Docket No. AB-290 (Sub-No. 236X), 2005 STB LEXIS 587 (served Dec. 2, 2005) (exemption denied without prejudice when exemption sought was merely hypothetical because carrier had not completed an agreement necessary to support the carrier's representation that the petition was unopposed), and Trans-Ontario Railway Company - Exemption - 49 U.S.C. 10901, Finance Docket No. 30566, 1985 ICC LEXIS 599 (Feb. 5, 1985) (exemption denied as hypothetical when petitioner had not reached agreement with owner of line to acquire property). If Roquette does not own the tracks that it seeks to modify, use or destroy in the course of its project, then Roquette must at least show as part of its plan that it has the ability to acquire such property. Otherwise, its proposal is completely speculative. Accordingly,

KJRY’s Requests Nos. 6, 8 and 9 are relevant or at least are likely to lead to the development of relevant evidence. Roquette should be compelled to answer them fully.⁷

Requests Nos. 11, 12, 15, 16, 18, 19, 21 and 29. These requests each seek information related to assertions that Roquette made in its petition for exemption. Frequently, Roquette responded to these requests by asserting that the particular assertion in its pleading was irrelevant, often because Roquette’s statement in question “was provided as background to explain Roquette’s desire to construct the proposed track, but the facts behind the statement are not relevant to the standards from granting a petition for exemption.” See Attachment 2 at 9.

The substance of KJRY’s Requests Nos. 11, 12, 15, 16, 18, 19, 21 and 29, and the portions of Roquette’s petition to which they relate, were as follows:

KJRY Request	Related Roquette Assertion
<u>Request No. 11.</u> Describe in detail all communications between You and representatives or employees of KJRY or Pioneer concerning upgrading KJRY track serving Roquette’s Plant to 286,000 pound gross weight on rail capacity.	p. 3 “Because KJRY has not upgraded its track to handle 286,000 pound rail cars, RAI is restricted to using less efficient 263, 000 pound rail cars.”
<u>Request No. 12.</u> Admit or deny the following: KJRY or Pioneer offered to upgrade KJRY track serving Roquette’s Plant to 286,000 pound gross weight on rail capacity if certain conditions were met.	(See immediately above.)
<u>Request No. 15.</u> Describe in detail all respects in which “RAI’s own internal operations are inefficient,” as stated on page 3 of the Petition “[b]ecause RAI must rely upon the KJRY to move cars between areas within the Keokuk facility that are served by different leads.”	p. 3 “Because RAI must rely upon the KJRY to move cars between areas within the Keokuk facility that are served by different leads, RAI’s own internal operations are inefficient.”
<u>Request No. 16.</u> Produce all Documents and Describe and Identify each non-written communication in which the inefficiencies	(See immediately above.)

⁷ Roquette’s assertion in its December 28 responses and objections that it voluntarily, partially responded to a similar request by KJRY in the past is not responsive to Roquette’s duty under the Board’s discovery regulations to respond fully to KJRY’s request.

alleged in response to the immediately-preceding Request were communicated by You to management personnel of KJRY or Pioneer.	
<u>Request No. 18.</u> Describe in detail all facts relating to Your statement on page 4 of the Petition that “This double-handling of traffic embeds substantial inefficiencies in RAI’s operations.”	pp. 3-4 BNSF delivers cars for Roquette to an interchange track near the facility; KJRY switches those cars into the facility and places empties back on the interchange track; “This double-handling of traffic embeds substantial inefficiencies in RAI’s operations.”
<u>Request No. 19.</u> Produce all Documents and Describe and Identify each non-written communication in which the inefficiencies alleged in response to the immediately-preceding Request were communicated by You to management personnel of KJRY or Pioneer.	(See immediately above.)
<u>Request No. 21.</u> Describe in detail and Identify all facts, assertions and beliefs supporting Your statement on page 6 of the Petition that the project proposed in the Petition would “result[] in more efficient service at a lower cost.”	p. 6 “Roquette desires to construct a common carrier rail line that would both re-establish RAI’s competitive connection with BNSF and connect the ‘Downriver’ and ‘Plant’ leads within the Keokuk complex, resulting in more efficient service at a lower cost.”
<u>Request No. 29.</u> Describe in detail each of “the attendant benefits of such competition” as that phrase is used on page 8 of the Petition, and all facts supporting Your expectation of receiving such benefits.	p. 8 “[G]ranting the requested exemption will <u>promote</u> the rail transportation policy through the restoration of competition between KJRY and BNSF to the Keokuk facility and the realization of the attendant benefits of such competition.”

As shown immediately above, Requests Nos. 11, 12, 15, 16, 18, 19, 21 and 29 relate directly to assertions that Roquette made in its petition. Having put those matters in issue, Roquette should not now be heard to claim that they are irrelevant. See generally Waterloo Railway Company– Adverse Abandonment – Lines Of Bangor And Aroostook Railroad Company And Van Buren Bridge Company In Aroostook County, Maine, STB Docket No. AB-124 (Sub-No. 2), et al. (served Nov. 14, 2003) (motion to compel granted for “documents bearing on specific issues raised by the applicant”); Public Service Company Of Colorado D/B/A Xcel Energy v. The Burlington Northern And Santa Fe Railway Company, STB Docket No. 42057 (served Feb. 1, 2002) (“By placing at issue the reliability and accuracy of the electronic

fuel gauges, BNSF may not now argue that information pertaining to these inquiries is not relevant” in resisting discovery of information from its third party fuel gauge supplier).

Moreover, Requests Nos. 11, 12, 15, 16, 18, 19, 21 and 29 relate to elements of the national rail transportation policy (“NRTP”) that Roquette has asserted support granting its petition. Roquette asserts that granting its petition would serve 49 U.S.C. §10101 (1, 2, 4, 5, 7, 9, 12 and 15). KJRY’s Requests Nos. 11, 12, 15, 16, 18, 19 and 21 all relate to assertions by Roquette about efficiency of rail operations, which is an issue under 49 U.S.C. §10101(9) (“to encourage honest and efficient management of railroads”). These requests also relate to 49 U.S.C. §10101(3), a provision of the NRTP which Roquette did not raise but on which KJRY will rely; namely, “to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board.”

KJRY’s Request No. 21, seeking information on Roquette’s assertion that granting its petition would result in service at lower cost is responsive also to 49 U.S.C. §10101(1 and 6) which, among other sections, seek to encourage reasonable rates. Request No. 21, as well as Request No. 29, each relate to 49 U.S.C. §10101(1, 4 and 5), which discuss the effects of competition; that is, “(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;” “(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;” and “(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes”.

Thus, not only do these requests all respond to specific assertions that Roquette has put in issue, they also respond to elements of the NRTP on which Roquette bases its exemption request. For Roquette to contend that these issues are irrelevant when Roquette itself has put them in

issue is meritless. Roquette should be compelled to respond fully to each of KJRY's Requests Nos. 11, 12, 15, 16, 18, 19, 21 and 29.

Request No. 13. KJRY's Request No. 13 asked Roquette to "Identify all shippers and receivers of goods or commodities who are or will be located on the track that RARI proposes to operate if the Petition is granted." In response, Roquette challenged the relevance of the request, but also stated that "as of this date, Roquette America, Inc. is the only entity that would be located on the proposed track." See Attachment 2 at 8.

Roquette's petition seeks an exemption from the provisions of 49 U.S.C. §10901, which Roquette asserts would apply to its proposal absent an exemption. KJRY's December 19 reply to Roquette's petition recites a number of factors historically considered by the Board in determining whether a railroad track is subject to the Board's authority under 49 U.S.C. §10901 or is exempt under Section 10906. Several of those factors involve who is served by the track and what service is presently available to them. As shown by the Board's procedural order issued January 12, 2006, which granted Roquette's request for permission to reply to KJRY's December 19 reply, the challenges raised by KJRY are certainly relevant to this proceeding. Accordingly, information bearing on what shippers or receivers will be (as opposed to simply "as of this date") located on the track is needed. Roquette should be compelled to answer Request No. 13 fully and completely.

Requests Nos. 32 and 33. These requests sought information concerning derailments of, and accidents, safety violations, or accidental releases of lading concerning, trains or railcars that have been transported over the track at the Roquette Plant which Roquette (directly or through a contractor other than KJRY) is responsible to maintain. Roquette objected that the requests were irrelevant and also that they were unduly broad to the extent that they sought information on occurrences on track that Roquette was not responsible to maintain. KJRY narrowed its request

in its January 10 letter to Roquette's counsel to information on derailments, accidents, etc., that have occurred on track Roquette was responsible to maintain, but Roquette still produced no information.

Several elements of the NRTP, particularly 49 U.S.C. §10101(3, 8 and 11), address the safety of rail operations. Derailments, accidents and the like occurring on track that Roquette or its contractor is responsible to maintain relate to these provisions of the NRTP. Inasmuch as Roquette asserts that the NRTP supports a grant of its petition and KJRY's safety-related requests are responsive to the NRTP, Roquette should be required to respond to them fully.

Request No. 34. Finally, KJRY's Request No. 34 seeks information regarding possible operation by BNSF on the track to be constructed. Roquette states in response to Request No. 28 that it "has not yet developed an intent as to who would operate the proposed line." Moreover, Roquette does not object to the relevance of Request No. 28. Therefore, it is clear that BNSF may be considered as a possible operator of the proposed track.

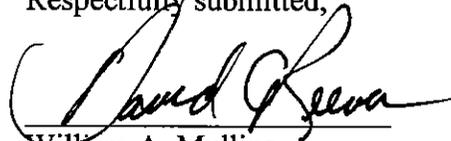
Roquette asserts that granting its petition would be consistent with the NRTP. A number of elements of that policy, including those highlighted in Roquette's petition, pertain to the effects of competition on service and rates. Whether BNSF operation of the track would foster or impede competition is therefore a relevant issue. Roquette should be compelled to respond fully to Request No. 34.

Conclusion

Roquette's objections to KJRY's first discovery requests should not be upheld, and Roquette should be compelled to respond to those requests as specified herein. Many of Roquette's objections seek to stymie discovery on issues that Roquette itself specifically raised. Such objections are completely without merit. Moreover, KJRY's requests dealing with matters such as ownership of tracks that Roquette seeks to alter, use or destroy are clearly pertinent to its

ability to carry out its proposal. Many of KJRY's requests also relate to issues of competition, the rhetorical lynchpin of Roquette's petition. Roquette should be compelled to fully answer KJRY's above-specified discovery requests. Roquette's unwillingness to provide information addressing issues that Roquette itself raises completely undercuts Roquette's call for a hurried procedural schedule by forcing the additional steps involved in compelling adequate responses.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David C. Reeves", written over a horizontal line.

William A. Mullins

David C. Reeves

BAKER & MILLER PLLC

2401 Pennsylvania Ave., N.W.

Suite 300

Washington, DC 20037

Phone: (202) 663-7820

Fax: (202) 663-7849

Attorneys for Keokuk Junction Railway Co.

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 13th day of January, 2006, copies of the foregoing Motion to Compel have been served by first class mail, postage prepaid, or by more expeditious service, upon all parties of record listed on the Board's website.

A handwritten signature in black ink, appearing to read "David C. Reeves", written over a horizontal line.

David C. Reeves
Attorney for Keokuk Junction Railway Co.

**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 TO COMPEL

ATTACHMENT 1

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmilller.com

January 9, 2006

VIA E-MAIL AND E-FILING

Victoria J. Rutson, Esquire
Chief, Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W., Room 504
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 Ms. Rutson:

This letter responds to your letter of December 21, 2005. While Keokuk Junction Railway Co. ("KJRY") understands the positions stated in the letter and agrees with some of your points, there are other areas where we must continue to disagree.

Background

Inasmuch as Roquette America, Inc. ("Roquette") has had multiple meetings, conversations, and correspondence with the Section of Environmental Analysis ("SEA") explaining its position, let me begin by briefly summarizing this case from KJRY's point of view. KJRY has served Roquette's Keokuk, IA plant for many years. For approximately the past nine and one-half years, KJRY has operated under a contract with Roquette as a switch carrier. That agreement has provided Roquette with "open switching," in other words, competitive access to two carriers, exactly the type of competitive access that shippers have been requesting Congress to legislate or the Board to impose. That contract is coming to an end. In good faith, KJRY had been attempting since last spring to renegotiate it, but has gotten no substantive response to its efforts.

Due to the fact that Roquette is an "open" industry, *i.e.* open to switching to two carriers for the line haul moves, Roquette has had the choice to route its traffic via BNSF Railway Company ("BNSF") in a direct single-line move or via KJRY-Union Pacific in a joint line move. In recent years, Roquette has mainly chosen BNSF. Indeed, KJRY has switched well over 90% of Roquette's outbound traffic to BNSF in the past five years.

BAKER & MILLER PLLC

January 9, 2006

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This open switching arrangement has worked extremely well over the years. Thus, it was a great surprise to KJRY when, in late November, it learned for the first time that Roquette had been working with SEA since June to obtain approval of a plan that, in KJRY's view, seeks to allow Roquette to use KJRY's tracks, including the Hub Track, without KJRY's permission and without adequate compensation. Apparently, the plan is to give BNSF direct physical access to the plant, effectively cutting KJRY out of serving Roquette. As stated in Roquette's letter to you dated July 6, "The primary effect of the construction and operation of the line and the crossing would, depending upon the competitive response of both KJR and BNSF, be to possibly eliminate KRJ [sic] as the origin switch carrier for the movements." Roquette is an extremely important customer for KJRY. In some ways, due to the size of Roquette vis-à-vis KJRY it is KJRY that is "captive" to Roquette, not the other way around.

While it was discussing the various environmental issues with SEA to develop its proposal, Roquette was telling KJRY that its intentions were entirely different. In fact, earlier this year, Roquette began seeking 'clarification' from KJRY about who owned the Hub Track. Eric Tibbetts of Roquette, who met with Board staff on June 20, told KJRY's CFO Mike Carr ten days after the STB meeting that "the ownership of the Hub Track has nothing to do with the question of BNSF access. Although I have not thought about it until you brought it up, I do not see any connection between the two." (See Exhibit 1 hereto.) Rather, he suggested, Roquette wanted to install a car washing facility on the Hub Track. We now know that Roquette's use of the Hub Track is entirely related to the planned rail construction project and is an integral part of it.

Not all of the foregoing is directly relevant to the environmental portion of this case. However, I wanted to set out that background to make more apparent to you why it is that KJRY was alarmed to find at the end of November - when KJRY first learned of Roquette's exemption petition - that Roquette had been working behind the scenes for months with Board staff, and why KJRY was even more alarmed to find that the Board's third-party environmental contractor on this project was a company that was simultaneously working for and seeking additional work from Roquette at the Keokuk plant. With this in mind, I now turn to KJRY's areas of continuing disagreement with some of your letter.

Potential Conflict of Interest

Your letter acknowledges that the third party contractor the Board has hired to draft the environmental analysis in this matter, Burns & McDonnell Engineering Company, Inc. ("B&M"), was selected while B&M was engaged to work for Roquette on a cogeneration project at the very same facility that is the subject of the proposed rail construction project. Your letter asserts, however, that the cogeneration project is unrelated to the transportation question in this proceeding, and that implementation of a "firewall" between B&M staff working on that project and the company's staff working on environmental analysis for the Board will "effectively prevent any potential conflict of interest and ensure[] compliance with 40 CFR 1506.5(c)."

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Due to information now uncovered during the discovery process, KJRY believes that B&M's engagements with Roquette constituted "an interest in the outcome of the project" within the scope of 40 CFR §1506.5(c); thereby making the Board's reliance upon a screening mechanism improper, at least in the context of this case. CEQ regulations permit a federal agency to retain a third party consultant to prepare an environmental impact statement only where the consultant can certify that it has no "financial or other interest in the outcome of the project." 40 CFR §1506.5(c). That common-sense limitation is "designed ... to minimize the conflict of interest inherent in the situation of those outside the government coming to the government for money, leases or permits while attempting impartially to analyze the environmental consequences of their getting it." 43 Fed. Reg. 55,987 (1978). As CEQ has explained, avoidance of situations in which a contractor has an interest in the outcome of a project is important for two reasons: it "ensure[s] a better and more defensible statement for the federal agencies," and, more importantly, it "serves to assure the public that the analysis in the environmental impact statement has been prepared free of subjective, self-serving research and analysis." CEQ, Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34,263, 34,266 (1983).¹

KJRY submits that B&M does have a direct financial interest in the outcome of this case, notwithstanding the use of a screening mechanism. It is unclear from the materials that have been provided to you (and now to us) that the cogeneration project is in fact unrelated to the proposed rail build-out project. They may in fact be inextricably linked. At the very least, they both purport to have a financial impact on the same plant, one allegedly cutting expenses and the other involving capital expenditure. It is not hard to imagine that the two are linked economically and indeed, some documents produced in discovery appear to link the projects.²

Indeed, the contractor's interest in this case is even more stark and unavoidable than the examples of disqualifying interests provided by CEQ's guidance.³ For example, not only was B&M working for Roquette at the time B&M's vice president certified, "On behalf of [B&M], I certify that I have no financial or other interests" in Roquette's track construction, but B&M was

¹ In accordance with 40 CFR §1506.5(c)'s prudential purpose, CEQ interprets the phrase "financial or other interest in the outcome of the project" broadly to cover "any known benefits other than general enhancement of professional reputation." CEQ, 40 Most Asked Questions, *supra*. Disqualifying interests include "any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients)." *Id.*

² It is also unknown whether or not B&M has a financial relationship with BNSF. If it does, this could also represent a financial interest in the outcome of the proceeding in conflict with CEQ guidelines.

³ See Council on Env't Quality, 40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,031 (Mar. 23, 1981)

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also apparently seeking further contracts from Roquette. Roquette's discovery responses thus far include a September 21 e-mail from another B&M employee to Mr. Thornhill, B&M's lead on this project. That e-mail states, "This ["Roquette/Confidentiality Agreement/B&M"] is ok ... you may want to change the wording .. we haven't actually been awarded any work yet .. maybe it should say potentially involved in the boiler project." ROQ00035 (Exhibit 2 hereto.)⁴ Similarly, a July 25 e-mail from Roquette's Mr. Tibbetts to B&M and others, also produced in discovery (ROQ00092 - Exhibit 3 hereto) says the following: "As of my conversation this morning, I understand the B&M work has been COMPLETED. Any additional work will ONLY come from another bid process. My suggestion is that we complete this 'firewall' process with the STB's blessing; thus we can insure that any future contracts with B&M will not run afoul of current STB guidelines." It is sufficient to note at this juncture that Mr. Tibbetts was, by this e-mail, holding out to B&M the prospect of future business with Roquette. Again, CEQ's 40 Most Asked Questions, *supra*, specifically mentions promises of future employment as a disqualifying interest.

Given B&M's improper interest in maintaining and expanding its employment relationship with Roquette and the possibility that the cogeneration project may be linked to the rail construction project, we believe SEA should move to disqualify B&M and select another third party contractor. CEQ has made clear that a consultant with an improper interest in a project "should be disqualified from preparing the EIS." CEQ, 40 Most Asked Questions, *supra*. The CEQ regulations do not authorize federal agencies to rely upon screening mechanisms, such as the "firewall" the Board relies upon here, where a consultant in fact has a disqualifying interest in the project, which we would argue B&M has here.⁵

Under these circumstances, we believe that SEA should take immediate steps to disqualify and terminate B&M as its consultant in this project. Continued reliance upon B&M as an alleged neutral and impartial third party contractor will only jeopardize the integrity and

⁴ This also, by the way, indicates that B&M apparently was still, in late September, dicking with the language to be used in the confidentiality agreement and that no actual firewall agreement had been signed at that time. Yet, this occurred more than two months after B&M conducted the site visit and over a month after B&M's August 11 memo to the Board summarizing the results of that visit.

⁵ In addition to the concerns already expressed, KJRY submits that the effectiveness of the 'firewall' has already been compromised. Roquette's discovery responses reveal that B&M's site visit, on which it based its August 11 report to the Board, was conducted July 11, long before the firewall provision B&M planned was even submitted to the Board, but while the cogeneration project was going on. Moreover, as noted above, B&M apparently was still working on the internal agreements to implement the firewall long into September, when the environmental process was well underway. Finally, it appears from B&M's August 11 letter to the Board describing the firewall that the firewall would terminate when B&M concluded its work on the cogeneration contract, which Roquette's discovery responses state occurred in July or August. Thus, it may be that the supposed firewall was never in fact actually implemented.

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defensibility of the Board's environmental analysis and undermine the public's faith in the NEPA process. Certainly there are cases where firewalls are sufficient, but this is not one of them.

Public Participation

Your letter states that KJRY's "assertion that the environmental process has been carried out 'in secret' for months is both misleading and unfair." You then point to the fact that in the future, there will be opportunity for comment on environmental issues. Certainly KJRY will have further opportunity to comment on the environmental process in this proceeding, but what may occur in the future does not change what has happened in the past. Between June and November, the environmental review process in this matter moved many steps along the road to completion with only Roquette's input and without any documents being placed in the public file or even in SEA's environmental correspondence file. In fact, there were no such documents placed into the public record until after the Petition for Exemption was filed on November 29th, and even those were not available on the Board's website until Dec. 6th. So in fact, there was no public disclosure for five or six months. While this may be standard practice in Board rail construction cases, it was not misleading or unfair to call the process "secret" as in fact there was no public disclosure of the project from June until November.

This undisclosed work led, in KJRY's view, to solicitation of environmental comments based on incorrect or slanted information. For example, the environmental consultation letter distributed on November 3 states:

Currently the corn processing facility receives rail service exclusively from the Keokuk Junction Railway. . . . [T]he proposed rail line would provide Roquette with competitive rail service.

In fact, as previously noted, KJRY has switched over 90% of Roquette's outbound traffic to BNSF at a rate effectively the same as the switching rate that the Board found in UP/SP would assure 2-to-1 shippers "meaningful access" to BNSF. In short, Roquette already has competitive rail service. Had the public, including KJRY, been provided notice of the ongoing environmental process at any time during the June to November time period, B&M's consulting letters could have been more accurate in this respect and accordingly any comments received would have been responsive to the actual facts of the proceeding.

It is also important to note that Roquette had a deliberate strategy to keep this project secret and to limit public input. Another of Roquette's discovery responses - ROQ00132-00133, an e-mail from Mr. Tibbetts discussing the June 20 meeting with SEA staff (Exhibit 4) - is revealing in this regard. It says in pertinent part, "The next step would be for B&M to prepare 'Consultation Letters'. . . . At this point, the Project will definitely be public knowledge. We can work with the STB to keep it confidential until then, but normally public disclosure occurs earlier in the process." (Emphasis added.) From this, KJRY believes it is clear that Roquette sought to enlist the Board in preventing public knowledge of the project for an unusually long

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time, and that Roquette intended that secrecy to advantage Roquette. In the end, KJRY finds the secrecy of Roquette's work with the Board from June to November disturbing because that secrecy facilitated Roquette's efforts to mislead KJRY about the reasons for its efforts to obtain control of the Hub Track, explains Roquette's failure to respond substantively to KJRY's contract offers, and led to inaccurate assertions in the environmental consulting letters.

Environmental Report/Availability of Documents

Finally, as a matter of clarification, I was not aware when I prepared my December 6th letter that the Board had approved B&M as a third-party contractor. I understand the fact that your staff provided my administrative assistant with certain documents at the end of the day on December 5, a fact that I appreciate, and that those documents reflected B&M's retention. However, my assistant picked up those documents on her way home for the evening and they were not delivered to Mr. Reeves until the next morning. I was not able to review those documents prior to preparation of the December 6 letter. If I had been able to review them before that letter was filed, I doubtless would have approached that letter differently. I apologize for the fact that those documents were not factored into the December 6 letter.

Sincerely,



William A. Mullins

cc: Vernon A. Williams
Daniel A. LaKemper
Nicholas J. DiMichael, Esq.
Jeffrey O. Moreno, Esq.
Steve Thornhill, Burns & McDonnell

EXHIBIT 1

Subj: RE: Hub Track
Date: 7/1/2005 12:34:40 PM Central Daylight Time
From: ERIC.TIBBETTS@roquette.com
To: JM1Carr@aol.com
CC: FLINT.PEYTON@roquette.com, ERIC.TIBBETTS@roquette.com

Mike,

Roquette's interest in gaining a clear understanding of the ownership of the Hub Track has nothing to do with the question of BNSF access. Although I have not thought about it until you brought it up, I do not see any connection between the two.

Our interest in the Hub track relates to issues such as a unified on-site tank car wash facility, a steaming station to steam cars with solid heels in them prior to a wash rack, the possibility of a run around track to enhance the flow of cars in the Plant and/or a site to steam inbound raw material cars (our current 3 spots gets overwhelmed with very slow turnaround on sulfur cars). In each case, the track is a necessary ingredient to a further infrastructure investment by Roquette. I do not believe Roquette (or KJRY) would make a capital investment, if that investment is based on a piece of leased track.

Your note, as you quoted below, suggested in the phrase " Absent evidence to the contrary provided by Roquette" that Roquette needed to provide documentary proof to KJRY of our ownership. Simply stated, I have done just that. The Agreement between our Companies clearly indicates Roquette (Hubinger) ownership in November, 1977. I have no documentation that suggests an ownership change since that date, but I am willing to admit that such a document might exist. I am asking if KJRY can help me understand events that may have occurred since that time that would have reversed the stated intent of that Agreement.

Mike, I hope this clarifies Roquette's interest in the Hub Track. From my perspective, it has everything to do with inside-the-Plant efficient and nothing to do with the Switching agreement. This is a situation that has passed from year-to-year with each side believing something different as to ownership. I am simply trying to get to the documented facts, and resolve the issue for all parties.

I hope you and your family have a terrific Holiday week-end.

-----Original Message-----

From: JM1Carr@aol.com [mailto:JM1Carr@aol.com]
Sent: Friday, July 01, 2005 11:35 AM
To: TIBBETTS Eric
Cc: PEYTON Flint
Subject: Hub Track

Eric,

In regards to your inquiry about the Hub track and your recent email comment concerning "regaining access to the BNSF". Roquette has always, and continues, to have access to its line haul carrier via its switch operator, KJRY. If you are asking us to allow the BNSF or any other railroad to go over our property to switch your plant we will not allow that to happen. If your interest in the Hub track relates to this type of activity you need to redirect your attention to renewing the switch contract. Repeating prior correspondence "Absent evidence to the contrary provided by Roquette, it is our position that this track is owned by KJRY and has been operated as such for as long as anyone can remember. If it is critical to Roquette operations to utilize this track, we would be willing to enter into a lease agreement with Roquette to use this track, so long as there is no adverse financial impact on KJRY." We would lease this track to Roquette long term for a small nominal fee.

I will try to get back to your other concerns within the next couple weeks.

Friday, July 01, 2005 America Online: JM1Carr

EXHIBIT 2

DePew, Aimee

From: Thornhill, Steve [sthornh@burnsmcd.com]
Sent: Tuesday, September 27, 2005 10:51 AM
To: DiMichael, Nicholas
Subject: FW: #171038 v1 - Roquette/Confidentiality agreement/B&M

Nick - see attached from our Energy group coordinator for Roquette. Looks like things are acceptable on our end.

Sorry I didn't get back sooner, last week was crazy.

Hope things are going well.

Let me know if you have any other questions.

Steve

From: Halil, Rick
Sent: Wednesday, September 21, 2005 4:25 PM
To: Thornhill, Steve
Subject: RE: #171038 v1 - Roquette/Confidentiality agreement/B&M

This is ok ... you may want to change the wording .. we haven't actually been awarded any work yet .. maybe it should say potentially involved in boiler project.



Manager, Development Engineering
816-822-3544 (ph)
816-803-9305 (cell)
rhalil@burnsmcd.com

From: Thornhill, Steve
Sent: Wednesday, September 21, 2005 9:29 AM
To: Halil, Rick
Subject: FW: #171038 v1 - Roquette/Confidentiality agreement/B&M

Rick - please see attached, let me know if you have any revisions or suggestions.

Thanks for your help!

Steve

From: DiMichael, Nicholas [mailto:Nicholas.DiMichael@thompsonhine.com]
Sent: Thursday, September 01, 2005 1:52 PM
To: Thornhill, Steve
Cc: eric.tibbetts@roquette.com
Subject: #171038 v1 - Roquette/Confidentiality agreement/B&M

Steve:

Per the "firewall" letters to and from the STB, we need to have a short confidentiality agreement for the environmental review and

12/20/2005

ROQ00035

DePew, Aimee

From: DiMichael, Nicholas
Sent: Thursday, August 04, 2005 3:36 PM
To: 'TIBBETTS Eric'; Thornhill, Steve
Cc: elindquist@foxlex.com; PEYTON Flint; DUNEK Bruce
Subject: RE: Roquette - Firewall

Eric:

I have heard from Steve Thornhill on this matter, and will revise the letter as you suggest below (and as Steve suggests in his email) (and see my separate email replying to Steve's question), and send the draft on to Christa Dean, on an informal basis. If she tells me that this "does the trick," I will have Steve send me his letter ASAP, and I will send my letter to Christa in final form when I receive the MOU signed by Roquette and B&M.

Nick

-----Original Message-----

From: TIBBETTS Eric [mailto:ERIC.TIBBETTS@roquette.com]
Sent: Monday, July 25, 2005 11:01 AM
To: DiMichael, Nicholas; Thornhill, Steve
Cc: elindquist@foxlex.com; PEYTON Flint; DUNEK Bruce
Subject: RE: Roquette - Firewall

Nick,

I have read the documents below, and given my level of understanding, have two comments.

- In the second paragraph, line three I would change the word "pursuing" to "investigating". At this time, Roquette is evaluating design concepts for a project that does not yet have Board approval. I believe this change more clearly recognizes the current state of affairs.

- In the third paragraph, line four, there is a typo. The phrase should be "as long as possible".

One other comment--which will probably confuse more than help. As of my conversation this morning, I understand the B & M work has been COMPLETED. Any additional work will ONLY come from another bid process. My suggestion is that we complete this "firewall" process with the STB's blessing; thus we can insure that any future contracts with B & M will not run afoul of current STB guidelines.

-----Original Message-----

From: DiMichael, Nicholas [mailto:Nicholas.DiMichael@thompsonhine.com]
Sent: Sunday, July 24, 2005 1:48 PM
To: TIBBETTS Eric; Thornhill, Steve
Cc: elindquist@foxlex.com; PEYTON Flint
Subject: Roquette - Firewall

Eric, Steve:

In order to implement the STB's requirement for a "firewall," I have prepared a letter for B&M, to be sent to me, describing the proposed firewall, as well as a letter from me to the STB, attaching the proposed letter from B&M. Please take a look at these drafts, and let me know if they correctly describe the current situation and whether the proposed firewall is acceptable.

If these are OK, I will send them informally to Christa Dean, so that she can tell us informally whether any changes are needed. If there are no changes, then I would send the letters to the STB at the same time that we send the MOU for signature, so that everything can be executed at the same time.

DePew, Aimee

From: TIBBETTS Eric [ERIC.TIBBETTS@roquette.com]
Sent: Tuesday, June 21, 2005 5:29 PM
To: DiMichael, Nicholas
Cc: PEYTON Flint; TIBBETTS Eric; Eric Lindquist (E-mail); Steve Thornhill (E-mail)
Subject: Visit to STB

This note will summarize the activities covered and the action developed during my visit to Washington DC on Monday, June 21st.

I met with Nick at his office and reviewed the Agenda he had developed, and modified my talking points for the STB. The Agenda covered description of RAI business; RAI rail situation; possible build-out scenarios; and the appropriate spots to discuss the specific items the STB will require.

The first meeting was with Vicky Rutson, Chief of the Section on Environmental Analysis and Christa (spelling ?) Dean, of her staff who will be handling our filing. We spent over an hour walking through the Agenda and answering their questions. Next steps are:

- 1) Normally, the STB requires a six months Advance notice before any filings are made. We must file for a waiver of that requirement, as we will need to move much faster. Vicky indicated that we should be granted the waiver.
- 2) Thompson Hine (T/H) will prepare the letter of engagement for Burns McDonnell. The standard practice is for the applicant (Roquette) to contract with an environmental company, but that the firm take all of its guidance from the STB. Christa will give us an example of such a document that the STB prefers.
- 3) T/H will prepare a Memorandum of Understanding (MOU) between Roquette, STB and Burns and Mc Donnell. This document sets out the roles and responsibilities of each party in the development of an Environmental study to satisfy the STB regulations for a project approval. The STB, through our chosen contractor (Burns & McDonnell), will do an assessment of the environmental impact of our proposed build out/crossing. Their assessment will play a critical role in keeping this to an Environmental Assessment (EA) rather than an Environmental Impact Statement (EIS). Christa will provide example documents to T/H.
- 4) The next step would be for B&M to prepare "Consultation Letters". This would describe the project, and would be sent to all possible stakeholders. This would include state and local environmental Agencies, Federal Agencies (fish & wildlife), Corps of Engineers and many civilian environmental groups. At this point, the Project will definitely be public knowledge. We can work with the STB to keep it confidential until then, but normally public disclosure occurs earlier in the process.
- 5) The STB Environmental group will conduct a public site investigation. This may even include a public hearing, conducted by STB and B&M.
- 6) At this point, RAI will request a waiver of the requirement for an EIS. This document will include all of the information surrounding our chosen alternative (s), and even include any voluntary mitigation projects that RAI might elect to offer.

We then visited briefly with the Office of Proceedings--Dave Konschnik, Director and Joe Dettmar, Deputy Director. We briefly repeated our earlier discussion. In this situation, we were meeting with the folks that will actually be reviewing the docket and providing analysis to the Commissioners. They listened, and asked a few clarifying questions, but refrained from providing any thoughts or guidance, given their role as eventual arbiters of this issue.

Nick and I then reconvened back at his office. We called Steve Thornhill of B&M, and updated him on the discussion. We then spent some time identifying other action items to be addressed. In addition to those required by the STB Environmental group listed above, we added:

- 7) We need to work with Art Cole to develop our preferred design in the next 30 days.
- 8) Eric (and Flint) need to meet with the BNSF to update them.
- 9) Eric needs to send copies of RAI/KJ contract discussions to Nick.
- 10) Eric, Steve & Nick to talk on Thursday, June 30th @ 2:00 EST.

Nick, please correct or amend as appropriate. thanks

Eric Tibbetts
Manager, Logistics
Roquette America, Inc
800-222-5757 Ext 2387
319-526-2387 office
319-795-0154 cell
eric.tibbetts@roquette.com

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**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 TO COMPEL

ATTACHMENT 2

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

OBJECTIONS OF ROQUETTE AMERICA, INC., AND ROQUETTE AMERICA RAILWAY,
INC. TO FIRST DISCOVERY REQUESTS OF KEOKUK JUNCTION RAILWAY CO.

Nicholas J. DiMichael
Jeffrey O. Moreno
THOMPSON HINE LLP
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.*

December 28, 2005

**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**

**FIRST DISCOVERY REQUESTS OF KEOKUK JUNCTION RAILWAY CO., TO
ROQUETTE AMERICA, INC., AND ROQUETTE AMERICA RAILWAY, INC.**

Roquette America, Inc. and Roquette America Railway, Inc. (collectively "Roquette") hereby provide Responses and Objections to the First Discovery Requests of Keokuk Junction Railway Co. ("KJRY"). These Responses and Objections are timely submitted in accordance with 49 C.F.R. § 1114.21 et seq.

GENERAL OBJECTIONS

1. Roquette objects to KJRY's First Discovery Requests to the extent that they are irrelevant to Roquette's Petition for Exemption ("Petition") and/or not reasonably calculated to lead to the discovery of admissible evidence. Some of the foregoing objectionable requests may be relevant to a petition to cross KJRY property, pursuant to 49 U.S.C. § 10901(d), if and when Roquette files such a petition.
2. Roquette objects to KJRY's First Discovery Requests to the extent that they seek information or documents that constitute or disclose confidential or proprietary information, including third-party proprietary information, or other sensitive, non-public information.
3. Roquette objects to KJRY's First Discovery Requests to the extent that they seek information or documents that, if produced, would result in the violation of any obligation,

contractual or otherwise, to third parties.

4. Roquette objects to KJRY's First Discovery Requests to the extent that they seek information or disclosure of documents that are protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and/or any other applicable privilege or doctrine. Any production of privileged or otherwise-protected information or documents is inadvertent and shall not constitute a waiver of any claim or privilege or other protection.

5. Roquette objects to KJRY's First Discovery Requests to the extent that they seek information and/or documents in a form that Roquette does not maintain in the ordinary course of business, or that are not readily available in the form requested by KJRY, where such information and/or documents could be developed, if at all, only through a special study that Roquette objects to performing.

6. Roquette objects to KJRY's First Discovery Requests to the extent that they seek information or documents that are not in Roquette's possession, custody or control, or otherwise kept by Roquette in the ordinary course of business.

7. Roquette objects to KJRY's First Discovery Requests as irrelevant, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent that KJRY has requested discovery of matters beyond the scope of the project proposed in Roquette's Petition for Exemption.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Roquette objects to the following definitions and instructions set forth in KJRY's First Discovery Requests:

1. Roquette objects to KJRY's definition of "identify" in definition no. 5.b. as irrelevant, to

the extent this definition requests the location of a corporation, partnership, or other entity relative to the track Roquette proposes to operate in this proceeding.

2. Roquette objects to Instruction No. 5 as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. The volume of privileged attorney-client communications and attorney work product exchanged between Roquette and its attorneys in preparing to file the Petition for Exemption includes approximately 200 e-mails and letters, covering project planning, legal strategies and assessments. KJRY's interest in this proceeding, in contrast, can only be with the specific proposal set forth in Roquette's Petition for Exemption. To require Roquette to identify all privileged documents, therefore, is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of relevant or admissible evidence and well beyond the scope of this proceeding.

DISCOVERY REQUESTS

Request No. 1. Produce all documents provided by You or on Your behalf to the STB's Section of Environmental Analysis in connection with This Proceeding.

Response or Objection:

Roquette will produce responsive documents.

Request No. 2. Produce all documents provided by You or on Your behalf to the third party contractor hired to work with the STB's Section of Environmental Analysis in connection with This Proceeding, to the extent not produced under the immediately-preceding Request.

Response or Objection:

Roquette objects to this request as overbroad, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. However, because KJRY has alleged a possible

conflict of interest for Roquette's third-party contractor, Roquette is producing responsive documents between and among Roquette, the third-party contractor, and the STB that refer or relate to the alleged conflict, subject to and without waiving its objections.

Request No. 3. Describe the work being performed for Roquette's Plant by B&M under a contract involving the design of a steam generation boiler for a cogeneration project that Roquette was investigating as of August 11, 2005. Specify the amount of all payments already made and all future payments which will be due to B&M when it completes its work called for by said contract. Also, describe and identify all other existing contracts between You and B&M involving any of Your facilities, and state the amount presently owed or which may upon further completion of work under the contract be owed to B&M. Alternatively, produce all such contracts, including the contract(s) relating to Roquette's Plant.

Response or Objection:

There is no work currently being performed by B&M that is responsive to KJRY's request. The work to which Roquette believes KJRY is referring was completed on August 31, 2005. If this is the work to which KJRY is referring, Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 4. Produce all engineering Studies, analyses and reports concerning tracks that You propose to construct, move or remove in performing the project described by the Petition.

Response or Objection:

Roquette will produce responsive documents.

Request No. 5. If not shown by the engineering Studies, analyses and reports produced in response to the immediately preceding Request, state the exact location in relation to existing turnouts from KJRY's line adjacent to Roquette's Plant of each turnout called for by the project described in the Petition. Also state the length of each turnout to be added pursuant to the project described in the Petition.

Response or Objection:

Roquette will produce responsive documents.

Request No. 6. Produce all documents upon which You base any claim that Roquette or RARI own the track identified in the Petition as the "Hub Track."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The Board has no jurisdiction to determine the ownership of any property that is the subject of this proceeding. Subject to and without waiving its objections, Roquette states that it previously has provided KJRY with documents that are responsive to this request.

Request No. 7. Describe in detail all communications between You and representatives of or members of the Board's Section of Environmental Analysis.

Response or Objection:

See Roquette's response to request no. 1. In addition, Roquette is preparing a narrative response to this discovery request.

Request No. 8. Produce all documents upon which You base any claim that Roquette or RARI own the track identified in the Petition as the "Plant Lead."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The Board has no jurisdiction to determine the ownership of any property that is the subject of this proceeding.

Request No. 9. Produce all documents upon which You base any claim that Roquette or RARI own the track identified in the Petition as the "Downriver Lead."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The Board has no jurisdiction to determine the ownership of any property that is the subject of this proceeding.

Request No. 10. Admit or deny the following: In the period since January 1, 1981, Roquette paid KJRY for leasing the Hub Track to Roquette.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, based upon information available to it, Roquette denies this request.

Request No. 11. Describe in detail all communications between You and representatives or employees of KJRY or Pioneer concerning upgrading KJRY track serving Roquette's Plant to 286,000 pound gross weight on rail capacity.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 12. Admit or deny the following: KJRY or Pioneer offered to upgrade KJRY track serving Roquette's Plant to 286,000 pound gross weight on rail capacity if certain conditions were met.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 13. Identify all shippers and receivers of goods or commodities who are or will be located on the track that RARI proposes to operate if the Petition is granted.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving its objection, Roquette responds that, as of this date, Roquette America, Inc. is the only entity that would be located on the proposed track.

Request No. 14. Describe in detail all facts supporting the statement on page 2 of the Petition that “The Keokuk facility is captive to the KJRY for all rail service.”

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Roquette responds that the Keokuk facility is captive to the KJRY because no other railroad currently is able to provide service at the facility.

Request No. 15. Describe in detail all respects in which “RAI’s own internal operations are inefficient,” as stated on page 3 of the Petition “[b]ecause RAI must rely upon the KJRY to move cars between areas within the Keokuk facility that are served by different leads.”

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. This statement was provided as background to explain Roquette's desire to construct the proposed track, but the facts behind the statement are not relevant to the standards for granting a petition for exemption. Subject to and without waiving its objections, Roquette responds, by way of example, that one such internal inefficiency is that the Keokuk facility must maintain three separate washing, steaming and loading stations at each of its three loading points for food-grade liquid products. RAI has long recognized that one centralized facility for washing and steaming would be more efficient in terms of energy, water treatment, maintenance, and other costs. In addition, there are environmental and safety benefits. But, it is important for freshly washed cars to move promptly from the washing station to the loading station. The cost, and especially the time, currently

required to move individual cars via KJRY from a central steaming station to each of the three loading stations has dissuaded RAI from implementing these efficiencies.

Request No. 16. Produce all Documents and Describe and Identify each non-written communication in which the inefficiencies alleged in response to the immediately-preceding Request were communicated by You to management personnel of KJRY or Pioneer.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 17. Identify and Describe all communications between You and BNSF regarding the project described in the Petition and any other project designed to connect tracks at Roquette's Plant directly with BNSF-owned track.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence to the extent it requests information concerning projects that are not within the scope of Roquette's Petition. Subject to, and without waiving, its objections, and subject to entry of a Protective Order by the STB, Roquette will produce responsive documents regarding the project described in the Petition. Roquette also will provide a narrative response, subject to entry of a Protective Order.

Request No. 18. Describe in detail all facts relating to Your statement on page 4 of the Petition that "This double-handling of traffic embeds substantial inefficiencies in RAI's operations."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. This statement was provided as background to explain Roquette's desire to construct the proposed track, but the facts behind the statement are not relevant to the standards for granting a petition for exemption. Subject to and without waiving its objections, Roquette avers that this statement speaks for itself in that double-handling of rail cars is itself inefficient.

Request No. 19. Produce all Documents and Describe and Identify each non-written communication in which the inefficiencies alleged in response to the immediately-preceding Request were communicated by You to management personnel of KJRY or Pioneer.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 20. Admit or deny the following: All references in the Petition to "the 1997 Agreement" were intended to read "the 1977 Agreement."

Response or Objection:

Admitted.

Request No. 21. Describe in detail and Identify all facts, assertions and beliefs supporting Your statement on page 6 of the Petition that the project proposed in the Petition would "result[] in more efficient service at a lower cost."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. This statement was provided as background to explain Roquette's desire to construct the proposed track, but the facts behind the statement are not relevant to the standards for granting a petition for exemption.

Request No. 22. State whether RARI is an existing corporation or has yet to be formed. If RARI is an existing corporation, state where it is incorporated and provide a copy of its current balance sheet.

Response or Objection:

RARI is incorporated in the State of Delaware. It currently has no assets or liabilities on its balance sheet. If the STB authorizes the proposed project, Roquette America, Inc. has committed to guarantee the obligations of its wholly-owned subsidiary, RARI. The Board of Directors of Roquette America, Inc. authorized the necessary funds for this project at its September 2005 meeting.

Request No. 23. Describe in detail the type, frequency, manner, and level of service that RARI proposes to conduct in serving Roquette if the Petition is granted and the project described in the Petition is constructed.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and

without waiving this objection, Roquette states that it does not possess information responsive to this request.

Request No. 24. State the amount that RARI proposes per car, per month, or in whatever other manner it is to be calculated, to charge Roquette for operating the tracks described in the Petition.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this objection, Roquette states that it does not possess information responsive to this request.

Request No. 25. Identify each individual currently employed by RARI or by Roquette at Roquette's plant who has first-hand experience operating trains, and describe each such person's experience in detail.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Roquette responds that there currently are no such employees.

Request No. 26. Identify each individual currently employed by RARI or by Roquette at Roquette's plant who has first-hand experience in safety management of railroad operations.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its objections, Roquette responds that there currently are no such employees.

Request No. 27. Admit or deny the following: The phrase “across the KJRY track for approximately 180 feet” means that if the Petition is granted, RARI or a party operating under contract with RARI plans to operate railroad equipment on a portion of KJRY’s track adjacent to Roquette’s Plant.

Response or Objection:

Roquette admits that, as with any crossing of a rail line, the entity operating over the crossing rail line will by definition also have to operate over a portion of the crossed rail line, including a crossing via a double-turnout switch, which Roquette has proposed.

Request No. 28. Admit or deny the following: The phrase “across the KJRY track for approximately 180 feet” means that if the Petition is granted, RARI intends that BNSF would operate railroad equipment on a portion of KJRY’s track adjacent to Roquette’s Plant.

Response or Objection:

Roquette does not have sufficient information to admit or deny this request, as it has not yet developed an intent as to who would operate the proposed line.

Request No. 29. Describe in detail each of “the attendant benefits of such competition” as that phrase is used on page 8 of the Petition, and all facts supporting Your expectation of receiving such benefits.

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. This statement was provided as background to explain Roquette's desire to construct the proposed track, but the facts behind the statement are not relevant to the standards for granting a petition for exemption. Subject to and without waiving its objections, Roquette responds that the benefits of competition typically include reduced rates and better service and reliability. Roquette expects to receive these benefits of competition through the proposed construction, which will allow Roquette to obtain rail service from BNSF in competition with the current rail service provided by KJRY.

Request No. 30. Describe in detail and state all facts supporting Your assertion on page 4 of the Petition that KJRY has a "rail monopoly over the Keokuk facility."

Response or Objection:

See Roquette's response and objections to request no. 14.

Request No. 31. Describe in detail and state all facts supporting Your statement on page 5 of the Petition that "Because of this 10-year switching contract, there was no immediate competitive impact upon RAI from KJRY's cancellation of the 1997 Agreement."

Response or Objection:

Roquette objects to this discovery request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. This statement was provided as background to explain Roquette's desire to construct the proposed track, but the facts behind the statement are not relevant to the standards for granting a petition for exemption.

Subject to and without waiving its objections, and subject to Roquette's response to request no. 20, Roquette states that there was no immediate competitive impact because exclusive switching rights at the Keokuk facility were awarded to KJRY over BNSF, after a competitive bidding process in 1996. Because the contract with KJRY was for a 10 year period, until the expiration of that contract, there was no further need or opportunity to solicit competitive offers.

Request No. 32. Produce all information in Your possession concerning derailments of trains or railcars that have been transported over the track at the Roquette Plant which Roquette (directly or through a contractor other than KJRY) is responsible to maintain.

Response or Objection:

Roquette objects to this entire request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Roquette further objects to this request as overbroad and unduly burdensome to the extent it requests information concerning incidents that did not occur on track that Roquette is responsible to maintain, even though a rail car may have traversed such track at some point during its journey.

Request No. 33. Produce all information in Your possession concerning any accidents, safety violations, or accidental release of lading concerning trains or railcars that have been transported over the track at the Roquette Plant which Roquette (directly or through a contractor other than KJRY) is responsible to maintain.

Response or Objection:

Roquette objects to this entire request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Roquette further objects to this request as overbroad and

unduly burdensome to the extent it requests information concerning incidents that did not occur on track that Roquette is responsible to maintain, even though a rail car may have traversed such track at some point during its journey.

Request No. 34. Produce all information in Your possession concerning any discussions, contacts, or negotiations between Roquette and BNSF involving rates or service to be provided by BNSF to the Roquette facility in the event the proposed Petition is granted.

Response or Objection:

Roquette objects to this request as irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,



Nicholas J. DiMichael
Jeffrey O. Moreno
THOMPSON HINE LLP
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.*

December 28, 2005

CERTIFICATE OF SERVICE

I, Aimee Depew, hereby certify that on this 28th day of December, 2005, copies of the foregoing Discovery Responses and Objections were served by hand delivery upon counsel for Keokuk Junction Railway Co.

A handwritten signature in cursive script, appearing to read 'Aimee Depew', written over a horizontal line.

Aimee Depew

**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 TO COMPEL

ATTACHMENT 3

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

January 10, 2006

BY HAND DELIVERY

Jeffrey O. Moreno, Esquire
ThompsonHine LLP
1920 N Street, N.W.
Washington, DC 20036-1600

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 Jeff:

This letter addresses the December 28, 2005 responses and objections (as clarified and supplemented on January 3) of Roquette America, Inc., and Roquette America Railway, Inc. (generally herein together referred to as "Roquette"), to discovery served December 16 by Keokuk Junction Railway Co. ("KJRY"). Inasmuch as we anticipate filing a motion to compel by week's end, I would appreciate knowing as soon as possible if you will provide additional responses to any portion of KJRY's discovery. You may contact either David Reeves at (202) 663-7824 or me at (202) 663-7823. I will be out of the office on January 12 and 13, but David will be available.

The general objections:

First, inasmuch as Roquette has not filed a petition for crossing KJRY's property, KJRY is willing to withhold for now any discovery relating exclusively to that issue, provided that KJRY and Roquette have an understanding that any such discovery will be allowed during the handling of any crossing petition which may be filed. If Roquette does not believe that discovery is appropriate in connection with any crossing petition Roquette might file, please advise.

With respect to general objections 2 and 3, concerning confidential or proprietary information, the protective order issued January 3 should alleviate any concerns. If Roquette nevertheless intends to withhold from discovery any requested information based on general objections 2 and 3, please specify what that information is and why, in view of the protective order, it is being withheld. We would also request a list of any such withheld documents.

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With respect to the assertion of a joint defense privilege, I am not aware that Roquette is defending any matter in connection with this case. Please specify with whom and with respect to what subject any asserted joint defense privilege is asserted. Similarly, please specify what is meant by "any other applicable privilege or doctrine," and what information is being withheld on the basis of same.

With respect to general objection 7 on alleged overbreadth of KJRY's discovery requests, KJRY does not believe that its requests are overly broad, inasmuch as the Board's regulations allow discovery of any matter "relevant to the subject matter involved in a proceeding" which, even if itself inadmissible, "appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. §1114.21(a). It is our understanding from the form of the December 28 responses and objections, some of which specifically mention overbreadth, that materials are not being withheld from production on grounds of the alleged overbreadth of the request unless the objection/response to the specific request directly mentions overbreadth. If that is not correct, please advise how KJRY is to ascertain whether materials are being withheld due to alleged overbreadth of the request.

Similarly, KJRY believes that Roquette's objection to Instruction No. 5, that "KJRY's interest in this proceeding, in contrast, can only be with the specific proposal set forth in Roquette's Petition for Exemption," is incorrect to the extent it contravenes the above-quoted language of 49 C.F.R. §1114.21(a). Setting aside that issue, KJRY does not request that Roquette log each attorney-client privileged communication.

Specific requests:

Request No. 2: KJRY requests that all information exchanged between Roquette and Burns & McDonnell Engineering ("B&M"), not just that dealing with the asserted conflict of interest, be made available. It is unclear from the January 3 responses whether the information produced excludes other communications not dealing with the asserted conflict of interest. Please specify whether other communications between Roquette and B&M dealing with Roquette's rail construction proposal are being withheld.

Request No. 3. Roquette's responses concede that B&M's potential conflict of interest is a legitimate area of inquiry by KJRY. Accordingly, it is not irrelevant for KJRY to ask, as it does in its Request No. 3, for the facts pertinent to the work that Roquette paid B&M to do (at least through August 31) while simultaneously offering B&M as a disinterested third-party contractor to work on behalf of the STB. KJRY requests that Roquette reconsider its objection and response on this request.

Request No. 6. Roquette's objection to this request appears to be that whether or not Roquette owns the property which it says it will use if the STB project is approved somehow has no relation to the merits of this proceeding. KJRY disagrees. Even assuming that Roquette were correct that the Board lacks jurisdiction to rule whether Roquette owns the Hub Track or other

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involved tracks, whether Roquette has any legal right to carry out the actions it is proposing, and seeking approval from the STB of, is certainly relevant to whether Roquette's proposal should be exempted, as well as to what procedures the Board should require. See generally The Cincinnati, New Orleans And Texas Pacific Railway Company--Abandonment Exemption--In Roane County, TN, STB Docket No. AB-290 (Sub-No. 236X), 2005 STB LEXIS 587 (served Dec. 2, 2005) (exemption denied without prejudice when exemption sought was merely hypothetical because carrier had not completed an agreement necessary to support the carrier's representation that the petition was unopposed), and Trans-Ontario Railway Company - Exemption - 49 U.S.C. 10901, Finance Docket No. 30566, 1985 ICC LEXIS 599 (Feb. 5, 1985) (exemption denied as hypothetical when petitioner had not reached agreement with owner of line to acquire property). Finally, whether or not Roquette may have voluntarily, partially responded to such a request by KJRY in the past is not dispositive of Roquette's duty under the Board's discovery regulations to respond fully to KJRY's request.

Requests Nos. 8 and 9. The discussion above relating the Request No. 6 applies equally to Roquette's responses to Requests Nos. 8 and 9.

Requests Nos. 11 and 12. Page 3 of Roquette's petition challenges the adequacy of KJRY's rail service to Roquette, stating in part that, "[B]ecause KJRY has not upgraded its track to handle 286,000 pound rail cars, RAI is restricted to using less efficient 263,000 pound rail cars." Having raised this issue, Roquette cannot now assert that information about discussions between KJRY and/or Pioneer and Roquette is irrelevant to the petition. Moreover, inasmuch as Roquette's petition relies upon the element of the national rail transportation policy that encourages efficient management of railroads, and Roquette is contending that KJRY is not efficiently managing its service, these requests are relevant. KJRY therefore requests that Roquette withdraw its objection and answer the question.

Request No. 13. KJRY's December 19 reply to Roquette's petition recites a number of factors historically considered by the Board in determining whether a railroad track is subject to the Board's authority under 49 U.S.C. §10901 or is exempt under Section 10906. Several of these factors involve what shippers are currently served by the track and what the future use of the track will be, including potential new shippers. Accordingly, information bearing on what shippers or receivers will be (as opposed to simply "as of this date") located on the track is needed in order to ascertain whether or not the proposal falls under Section 10901 or 10906.

Requests Nos. 15 and 16. Inasmuch as Roquette's petition asserts that it comports with the national rail transportation policy, and said policy in 49 U.S.C. §10101(3 and 9), among other sections, seeks to encourage efficient rail operations, and in light of Roquette's assertions of inefficiency stated in the request, KJRY seeks a full explanation, not just an example, of ways in which Roquette alleges that Roquette's reliance on KJRY switching operations renders Roquette's operations inefficient. Furthermore, if the proposed plan is to provide BNSF with direct rail service, then information relevant to KJRY's alleged inefficient operations is specifically relevant as to whether or not BNSF's operations will be more efficient.

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January 10, 2006

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Requests Nos. 18 and 19. For the reasons stated with respect to Requests Nos. 15 and 16, KJRY disputes Roquette's relevance objection to these requests, and asks that Roquette provide any further answer and documents responsive to these requests beyond that contained in the last sentence of its response to Request No. 18.

Request No. 21. Inasmuch as Roquette's petition asserts that it comports with the national rail transportation policy; that said policy in 49 U.S.C. §10101(3 and 9), among other sections, seeks to encourage efficient rail operations; that said policy further, in 49 U.S.C. §10101(1 and 6), among other sections, seeks to encourage reasonable rates; and in light of Roquette's assertion stated in the request that the proposed project would allow service at lower cost, KJRY disputes Roquette's relevance objection to this request, and asks that Roquette provide a complete answer to the request.

Request No. 29. This request seeks an explanation of what Roquette meant when it stated in the petition that it would obtain "the attendant benefits of such competition" if the petition were granted. The petition further states that "the primary purpose of the project is to establish competitive rail service." Petition at 1. Moreover, the national rail transportation policy, which Roquette asserts will be served by the grant of its petition, in 49 U.S.C. §10101(1, 4 and 5), among other provisions, refers to the effects of competition. Accordingly, KJRY disputes Roquette's assertion that the information sought in this request is irrelevant, and seeks any further answer beyond that provided in the final sentence of Roquette's response to this request.

Request Nos. 32 and 33. These requests seek information on derailments on track at the Roquette Keokuk plant that Roquette is responsible to maintain. To the extent that the questions can be interpreted as seeking information on derailments that have occurred on other track, KJRY waives that portion of the requests at this time. However, as to derailments occurring on track that Roquette or a contractor other than KJRY is responsible to maintain, the petition seeks a finding that the requested exemption would be consistent with provisions of the national rail transportation policy. That policy, including particularly 49 U.S.C. §10101(8), seeks to promote safety in operation of rail transportation facilities. Therefore, Roquette's prospective safety as a rail operator is an issue. KJRY requests that Roquette withdraw the portion of its objection relating to derailments occurring at the Keokuk plant, and provide a response regarding same.

Request No. 34. This interrogatory seeks information regarding possible operation by BNSF on the track to be constructed. Roquette admits in response to Request No. 28 that it "has not yet developed an intent as to who would operate the proposed line." Moreover, Roquette does not object to the relevance of Request No. 28. Therefore, it is clear that BNSF may be considered as a possible operator of the proposed track. The petition seeks a finding of consistency with the national rail transportation policy. A number of elements of that policy, including those highlighted in Roquette's petition, pertain to the effects of competition on service

BAKER & MILLER PLLC

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and rates. Whether BNSF operation of the track would foster or impede competition is therefore a relevant issue. KJRY requests that Roquette withdraw its objection and respond to the request.

Sincerely,

William A. Mullins

cc: Daniel A. LaKemper

**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 TO COMPEL

ATTACHMENT 4

January 12, 2006

By Fax

William A. Mullins
Baker & Miller PLLC
2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037

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 Bill:

This letter responds to your January 10, 2005 correspondence concerning the responses and objection of Roquette America, Inc and Roquette America Railway, Inc. (collectively "Roquette") to the discovery served by Keokuk Junction Railway Co. ("KJRY") on December 16, 2005. Your letter sets forth KJRY's position as to why the various requests objected to by Roquette are in fact discoverable and asks Roquette to state whether it will provide additional responses to KJRY's discovery.

After carefully considering each of KJRY's arguments, Roquette continues to adhere to its objections. Roquette believes that the responses that it already has provided go above and beyond the scope of relevant or permissible discovery in this proceeding. KJRY's arguments to the contrary are not compelling, and in several instances, only serve to further illustrate the overreaching nature of its requests.

Roquette has attempted to respond to some of your specific requests for clarification below:

1. Roquette has not withheld any documents on the grounds that they are relevant only to a crossing petition.
2. In light of the protective order issued on January 3, Roquette has not withheld any documents on the basis of general objections 2 and 3.
3. With respect to general objection 4, Roquette has not withheld any documents on the basis of any privilege, except for attorney-client and attorney-work product.
4. With respect to general objection 7, Roquette has withheld information on the basis of an overbreadth objection only for those requests where Roquette specifically has alleged overbreadth. However, to the extent that KJRY intends that any request

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encompass matters beyond the scope of the project described in Part II of Roquette's Petition for Exemption, Roquette maintains this objection.

Finally, Roquette wishes to clarify that, contrary to KJRY's characterization of Roquette's responses, Roquette has not conceded that KJRY's allegation of a conflict of interest against Roquette's third party contractor is a legitimate area of inquiry for KJRY. This issue has been dispensed with by the Section of Environmental Analysis both in its August 25, 2005 letter to Roquette and in its December 21, 2005 letter to KJRY. Subject to and notwithstanding its objections, KJRY volunteered to produce information responsive to KJRY's allegations of a conflict in order to assure KJRY that no such conflict existed. This was more than the Board's discovery rules required. Roquette continues to assert its objections to this line of discovery.

Sincerely,



Jeffrey O. Moreno
