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January 17, 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 for filing in the above-captioned docket the First Supplement to Keokuk Junction Railway Co.'s Reply to Petition for Exemption. 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) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

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**

**FIRST SUPPLEMENT TO KEOKUK JUNCTION RAILWAY CO.'S REPLY TO
PETITION FOR EXEMPTION**

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Attorneys for Keokuk Junction Railway Co.

January 17, 2006

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SURFACE TRANSPORTATION BOARD
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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 SUPPLEMENT TO KEOKUK JUNCTION RAILWAY CO.'S REPLY TO
PETITION FOR EXEMPTION**

Keokuk Junction Railway Co. ("KJRY") hereby supplements¹ its December 19, 2005 Reply ("Reply") to the petition of Roquette America, Inc. ("RAI") and Roquette America Railway, Inc. ("RARI") (collectively, "Roquette") for an exemption under 49 U.S.C. §10502 from the requirements of 49 U.S.C. §10901. KJRY submits this supplement at this time because it relates to the subject about which the Board's January 12 order authorizes Roquette to submit a reply to KJRY's Reply; namely, whether the track at issue is subject to the Board's jurisdiction under 49 U.S.C. §10901 or, instead, is exempt from the Board's jurisdiction under 49 U.S.C. §10906.

DISCUSSION

The attached verified statement (Exhibit 1) supports KJRY's contention that the construction Roquette proposes is not subject to 49 U.S.C. §10901 because Roquette is proceeding with that construction without approval or exemption from the Board. The attached

¹ KJRY notes that Roquette similarly supplemented its November 29 petition for exemption on December 23. Depending upon the Board's handling of this proceeding and whether or not Roquette is responsive to KJRY's discovery, this First Supplement is not intended to be KJRY's only supplemental filing.

statement shows that Roquette has begun roadbed work to extend certain tracks west from their current location. Roquette's supplement to its petition, filed December 23, contains a map showing the construction proposed under its exemption petition. That map shows the two tracks immediately adjacent to KJRY's main line siding as being part of Roquette's construction proposal for which Roquette is seeking Section 10901 construction authority. Yet, these are the same two tracks that are currently the subject of roadbed work in preparation for their extension. Either Roquette is admitting that such tracks are Section 10906 tracks that can be constructed without prior Board authorization and approval, in which case Roquette's petition must be dismissed, or Roquette simply believes it can perform this work without Board approval and without adequate environmental review, contrary to Board precedent and the statute.

A party may not construct track which is subject to the Board's authority under Section 10901 before approval or an exemption by the Board is effective. See, e.g., CSX Transportation, Inc. - Construction and Operation Exemption - Between Brooker and Hainesworth, FL, Finance Docket No. 30900, 1987 ICC LEXIS 331 (April 27, 1987) at *2, and Missouri Pacific Railroad Company--Construction and Operation Exemption --Ogden and San Antonio, TX, Finance Docket No. 30786 (Sub-No. 1), 1986 ICC LEXIS 289 (May 27, 1986) at *1 - *2 (each stating "The construction and operation of an additional or extended line of railroad requires prior Commission approval" under Section 10901 (emphasis added).) See also Chicago & Eastern Illinois Railroad Co. v. Illinois Central Railroad Co., 261 F.Supp. 289 (N.D. Ill. 1966) (enjoining construction of an extension of a line of railroad until ICC approval of same was obtained); Executive Summary of Final Supplemental Environmental Impact Statement in Dakota, Minnesota & Eastern Railroad Corporation Construction Into The Powder River Basin, Finance Docket No. 33407, at ES-2 ("DM&E cannot begin construction of its new line until the Board issues a final decision approving DM&E's Application and the decision has become effective."),

and 49 U.S.C. §11702 (“The Board may bring a civil action - (1) to enjoin a rail carrier from violating sections 10901 through 10906 of this title . . .”). Notwithstanding this precedent, Roquette is proceeding with the construction. Roquette’s construction activities therefore must be an admission that Board authority under or exemption from Section 10901 is not required for Roquette’s proposed project. Accordingly, dismissal of or other action to terminate Roquette’s petition, as suggested in KJRY’s Reply, is appropriate.

This matter is of concern to KJRY because Roquette’s petition proposes removal and reconfiguring of tracks that KJRY owns. Inasmuch as Roquette has asserted in its discovery responses that KJRY’s ownership of those tracks is irrelevant to this proceeding, KJRY is concerned that Roquette may decide to begin damaging KJRY’s property prior to any hearing before the Board.

Roquette’s decision to proceed with construction prior to Board exemption or completion of environmental review also raises environmental concerns. The Corps of Engineers’ December 5 letter states that “A Section 404 permit will be required for this project.” The U.S. Fish & Wildlife Service’s November 29 letter states that areas along the shore of rivers are winter habitat for Bald Eagles, and that they may not be harmed, harassed or disturbed when present. The Sac and Fox Nation of Missouri in Kansas and Nebraska has asked that any construction be halted if human skeletal remains are uncovered during construction, while the Iowa SHPO has stated, “We want you to be aware that there is a very high probability [sic] that both prehistoric and historic human burials and perhaps cemeteries could be located within the proposed planning study area.” Iowa SHPO letter dated November 15, 2005. All of these stated environmental interests stand to be adversely impacted if Roquette is moving earth or doing other parts of the project prior to Board exemption and environmental/historic analysis and imposition of conditions.

CONCLUSION

By commencing the construction proposed in its petition prior to obtaining an exemption from the Board and prior to completion of environmental analysis, Roquette is admitting that it does not require Board authority to construct the proposed project. Therefore, that project falls outside the scope of 49 U.S.C. §10901, and is not subject to exemption from that section. Accordingly, as stated in KJRY's Reply, the Board should dismiss/deny/reject/otherwise terminate this proceeding.

Alternatively, should the Board not dismiss or reject Roquette's previously submitted petition for exemption at this time, it should issue a written admonition to Roquette that no construction of any part of the proposed project may move forward until the Board determines whether or not the project is truly subject to Section 10901, and if so, no construction activities can occur until all required Board actions, including environmental analysis, have been completed and are in effect. The Board cannot, under its precedents and the statute, allow Roquette to commence its project while simultaneously seeking an exemption from the Board for that work.

Respectfully submitted,



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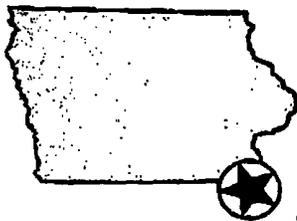
CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 17th day of January, 2006, copies of the foregoing First Supplement to Keokuk Junction Railway Co.'s Reply to Petition for Exemption 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.

EXHIBIT 1



Keokuk Junction Railway

1318 SOUTH JOHANSON ROAD • PEORIA, ILLINOIS 61607 • (309) 697-1400

VERIFIED STATEMENT OF PAUL LOFTON, SR.

My name is Paul Lofton, Sr., and I am the General Manager of Keokuk Junction Railway Co.

As General Manager I supervise switching at the Roquette America plant in Keokuk, Iowa. On Thursday, January 5, 2006, I observed that a contractor for Roquette was preparing for the construction of the roadbed for Roquette's proposed new trackage starting from the Starch building, going west toward A&B Building.

During the week of January 2, 2006, new crossties were brought into Roquette, and construction work has started to join A&B 3 track and A&B 4 track on the east end.

I, Paul Lofton, Sr., verify under penalty of perjury, that I have read the above and foregoing Statement; that I know the facts asserted therein and that such facts are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed: January 12, 2006

Paul Lofton, Sr.
Paul Lofton, Sr.
Paul Lofton, Sr., General Manager
Keokuk Junction Railway Co.