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January 12, 2007

**VIA HAND DELIVERY**

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

ENTERED  
Office of Proceedings  
JAN 12 2007  
Part of  
Public Record



Re: Finance Docket No. 34974  
Keokuk Junction Railway Co. d/b/a/ Peoria & Western Railway – Lease And  
Operation Exemption – BNSF Railway Company

Dear Secretary Williams:

On December 7, 2006, Keokuk Junction Railway Co. d/b/a/ Peoria & Western Railway (“KJRY”) filed (1) a Petition for Exemption (“Petition”) seeking authority for KJRY to lease and operate a line of railroad between Vermont, IL, and Farmington, IL, which is currently owned by BNSF Railway Company (“BNSF”); and (2) a Motion for Protective Order (“Motion”) seeking to maintain the confidentiality of certain documents and information. The Board issued a Protective Order in a decision served on December 19, 2006. Following a Board-granted extension of time, Ameren Energy Fuels and Services Company (“Ameren”) filed formal comments in response to the Petition on January 8, 2007. BNSF Railway Company (“BNSF”) filed comments in support of the Petition on December 27, 2006.

In light of some of the statements made by both KJRY and Ameren in this proceeding, it may be possible to settle this dispute through mediation and therefore KJRY hereby requests Board-sponsored mediation pursuant to the Board’s alternative dispute resolution provisions at 49 CFR 1109.1. As the record in this proceeding makes abundantly clear, KJRY and Ameren, the chief disputants, have engaged in settlement discussions with one another in the past. It is KJRY’s view that re-starting settlement discussions under the auspices of Board-sponsored mediation could bear fruit and could expedite the Board’s handling of KJRY’s Petition. Hopefully, Ameren will agree with that assessment.

The Board’s regulations at section 1109.1 require that all parties “indicate their written consent” to mediation. As KJRY has previously explained, expeditious processing of this dispute is

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necessary to prevent continued deterioration of the line KJRY proposes to lease and to provide competitive rail service to not only Ameren, but to at least three other shippers on the line. Accordingly, because prompt resolution of this matter would benefit all concerned and because KJRY believes that mediation would be in the interest of all concerned, KJRY hereby urges Ameren and BNSF<sup>1</sup> to furnish the Board with written responses to KJRY's mediation proposal by no later than Thursday, January 18, 2007, in order that mediation proceed as soon as possible.

If Ameren and BNSF are amenable to Board-sponsored mediation, KJRY respectfully requests that a designated Board staff member (or a panel of staff members) be designated to serve as mediator. Such an arrangement would be in keeping with the process available to parties in rate disputes filed under the Board's "small rate case guidelines." See BP Amoco Chemical Company v. Norfolk Southern Railway Company, Docket No. 42093); Williams Olefins, L.L.C. v. Grand Trunk Corporation, Docket No. 42098. KJRY also notes that the Board has utilized its staff to facilitate the settlement (or a "narrowing of the issues") in at least one other matter not involving rate reasonableness litigation, and that the Board has done so even though the parties did not voluntarily submit to such a process. See Ohio Valley Railroad Company – Petition to Restore Switch Connection and Other Relief, Finance Docket No. 34608.<sup>2</sup>

Finally, pursuant to 49 U.S.C. 10502(d), the Board must either act on the Petition based upon the then-existing record within 90 days of the filing of KJRY's Petition by either granting it, denying it, or instituting a proceeding for further consideration. The 90 day period would be March 7, 2007. For this reason, KJRY requests that Board-sponsored mediation run from the date of written statements of concurrence by Ameren and BNSF until March 6, 2007, which is the 89<sup>th</sup> day from the filing of KJRY's Petition. If mediation has not resulted in a settlement or a narrowing of the issues, the parties will by that date so inform the Board.

Sincerely,

  
William A. Mullins

cc: All parties of record

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<sup>1</sup> Ameren's concerns appear directed at KJRY's pre-existing ability to raise or lower its revenue requirements for the Union Pacific/KJRY routing into the Ameren Duck Creek plant. Because BNSF is not involved in that routing, BNSF likely does not need to be involved in the mediation with respect to that issue, although there are other issues that may involve BNSF. Thus, because BNSF is a "party" to the proceeding, their consent to the mediation process is required.

<sup>2</sup> If the Board is not willing to designate staff as mediator here, then KJRY requests in the alternative that the Board designate an independent mediator to oversee the settlement negotiation process, just as the Board would do in facilitating mediation in rates cases to be considered under the Board's stand-alone cost methodology. 49 CFR 1109.4.