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January 24, 2007

VIA E-FILING

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

ENTERED
Office of Proceedings

JAN 23 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:

A little over one week ago, Keokuk Junction Railway Co. d/b/a/ Peoria & Western Railway ("KJRY") filed a letter with the Board, served on all other parties in this proceeding, advising the Board of KJRY's desire to submit the matter to voluntary, nonbinding mediation. KJRY proposed no conditions on its willingness to mediate and left all issues open for discussion. On January 18, 2007, Ameren Energy Fuels and Services Company ("Ameren")¹ advised the Board it was unwilling to participate in an unconditioned Board-sponsored mediation and instead insisted that the parties agree to certain specific preconditions ("Ameren Preconditions") before any such mediation could take place. Although KJRY had envisioned a mediation process that was free of the limitations and strictures that Ameren insists upon, KJRY is amenable to most of Ameren's preconditions subject to clarification and minor modification.

In its letter indicating its acceptance of mediation by Board staff, Ameren insists upon three enumerated preconditions. KJRY observes that Ameren Precondition 1 (requiring BNSF's participation and contemplating potential changes to the lease) inserts undue complexity into the mediation process and is unnecessary to the resolution of Ameren's concerns. As Ameren's reply to KJRY's petition for exemption in this proceeding makes abundantly clear, Ameren is

¹ BNSF Railway Company ("BNSF") has not yet replied to KJRY's mediation request.

concerned that KJRY would purposely increase its division requirements over the KJRY/Union Pacific Railroad Company ("UP") routing to such a high level that it would price the UP/KJRY routing out of the market and force the traffic to BNSF. Allegedly, BNSF and KJRY would then conspire to increase the rates on BNSF's routing to just below the artificially high UP/KJRY rate. At that point, Ameren would have no choice but to accept the new BNSF rate. In exchange for BNSF getting higher rates and for KJRY telling BNSF what its rates were for the UP move, BNSF would agree to change the lease and provide KJRY with a larger per car revenue payoff than under the existing lease (and presumably higher than what KJRY could get from the UP/KJRY routing).

Despite the numerous false and unrealistic assumptions underlying such an argument and the obvious violations of the antitrust laws that such a scenario entails, it nonetheless is what Ameren is claiming as the reason it opposes this Lease. Under such an argument, however, it is not the terms of KJRY's lease with BNSF that are truly relevant, but rather KJRY's allegedly unfettered ability to raise rates on the UP routing that causes the concern. Yet, KJRY has stated both in private and in public that it is willing to enter into a contract with Ameren whereby KJRY would voluntarily limit its ability to raise its rates on the UP routing, which would make Ameren's conspiracy theory impossible. KJRY has also agreed, in principle, to Board oversight to prevent arbitrary changes in the Lease Agreement that Ameren fears may be anti-competitive.

BNSF, however, is most certainly not essential to discussions about UP/KJRY rates and should not be present for such discussions. To the extent Ameren's Precondition 1 contemplates such BNSF participation, KJRY cannot agree with it. To the extent that BNSF's participation in mediation may be appropriate on other issues, and assuming BNSF is willing to consent, KJRY has no objection, but BNSF's presence and participation in the mediation on all issues would be improper.

KJRY has no objection in principle to Ameren Precondition 2, and KJRY sees no need further to comment on it.

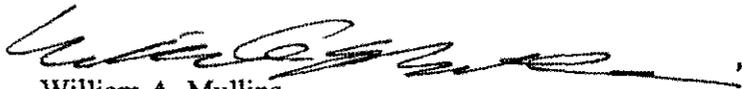
KJRY will agree to Ameren Precondition 3, provided however, that the BNSF-KJRY lease will terminate only upon an appropriate finding of material breach of a settlement agreement by the Board or a duly authorized court. KJRY believes that this clarification is consistent with Ameren Precondition 3, and offers this clarification in the interest of specificity. Certainly Ameren would not be insisting upon termination of a lease agreement simply because it believes, without a due finding in court or at the STB, that a breach of the settlement may have occurred.²

² It is doubtful that Ameren's request is even legal under Board precedent because termination of a prior STB approved lease requires an affirmative finding by the Board that the termination is consistent with the public interest. See Thompson v. Texas Mexican Ry. Co., 328 U.S. 134 (1946). Nonetheless, if it is legally feasible, KJRY has no objection to this precondition as long as there has been a finding in court or at the STB that a breach of the settlement has in fact occurred.

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January 24, 2007
Page 3 of 3

If Ameren is amenable to Board-sponsored mediation subject to such conditions as modified herein, KJRY respectfully repeats its request that a designated Board staff member (or a panel of staff members) be designated to serve as mediator. The mediation period would begin immediately upon Ameren's consent and run until March 6, 2007, which is the 89th day from the filing of KJRY's Petition.

Sincerely,



William A. Mullins

cc: Parties of Record