

STB Finance Docket No. 33995

SF&L RAILWAY, INC.–ACQUISITION AND OPERATION EXEMPTION–TOLEDO,  
PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN LA HARPE AND  
PEORIA, IL

STB Finance Docket No. 33996

KERN W. SCHUMACHER AND MORRIS H. KULMER–CONTINUANCE IN CONTROL  
EXEMPTION–SF&L RAILWAY, INC.

STB Docket No. AB-448 (Sub-No. 2X)

SF&L RAILWAY, INC.–ABANDONMENT EXEMPTION–IN HANCOCK, MCDONOUGH,  
FULTON AND PEORIA COUNTIES, IL

Good morning!

On appeal here is a decision of the Board issued on October 17, 2002, in STB Finance Docket Nos. 33995 & 6. The decision revoked the exemptions from regulation. The first exemption allowed SF&L Railway, Inc. (SF&L), to buy the operating easement over, and the rail, ties, and certain improvements on, a 71.5-mile rail line between La Harpe and Peoria, IL, from the Toledo, Peoria and Western Railway Corporation (TP&W). The second exemption allowed SF&L's owners, Messrs. Kern W. Schumacher and Morris H. Kulmer to continue in control of SF&L after it became a rail carrier.

The Board found that SF&L and its owners (I will refer to them as Petitioners) had abused the Board's class exemption procedures, which are designed to maintain railroad service, by using them to acquire the Line not for operation but for salvage. In reaching this conclusion, the Board found that the acquisition had been structured to make the La Harpe Line unprofitable to operate and that this was to facilitate its abandonment and salvage by one of SF&L's corporate affiliates, A&K Materials, Inc. The Board therefore revoked the two exemptions and ordered SF&L to reconvey its interest in the Line to TP&W. The Board also stated that it would issue a decision dismissing as moot the petition for exemption to abandon the La Harpe Line that SF&L had previously filed in STB Docket No. AB-448 (Sub-No. 2X).

On December 13, 2002, Petitioners requested reopening and reconsideration of the Board's October 17 revocation decision. In the alternative, they requested clarification. They claim that the Board's decision contains material error and is affected by changed circumstances. They argue that the Board has no authority to revoke exemptions based on abuse of Board processes and that the Board failed to consider specific provisions of the rail transportation policy and make specific findings in support of revocation. The Board clearly has the authority to revoke an exemption as necessary to protect the integrity of the Board's processes, and, as the draft decision before you explains, revocation here is in keeping with the rail transportation policy. In short, the draft decision finds no merit to these arguments and

therefore denies the petition to reopen and reconsider.

With regard to the Board's reconveyance order, Petitioners claim that the Line is worth more than they paid for it. Thus, they assert that it is not enough that TP&W refund the original purchase price of the Line. To restore the status quo as it was before this transaction took place, the draft decision clarifies that TP&W must refund the original purchase price plus interest on that amount from the date of the sale, December 29, 2000, to the date of reconveyance, calculated in the manner set forth in the Board's regulations at 49 CFR 1141(a) and (b).

Finally, the draft decision dismisses SF&L's petition for an abandonment exemption in STB Docket No. AB-448 (Sub-No. 2X) and denies TP&W's motion filed on October 30, 2002, to substitute itself for SF&L in that proceeding.

We are prepared to answer any questions you may have.