

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33995 - 266637

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

Finance Docket No. 33996 - 206638

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

REPLY TO PETITION TO REOPEN,
AND FOR RECONSIDERATION, ETC.

ENTERED
Office of Proceedings
NOV 14 2002
Part of
Public Record

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County Courthouse
Macomb, IL 61455

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Attorneys for Petitioners

Dated: November 14, 2002

Before the
SURFACE TRANSPORTATION BOARD



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REPLY TO PETITION TO REOPEN,
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McDonough County, City of Macomb, and Joseph C., Szabo,¹/
submit this reply to the petition by SF&L Railway, Inc. (SF&L),
Kern W. Schumacher, and Morris H. Kulmer, filed November 13, 2002,
which seeks to reopen and for reconsideration, and for other
relief, with respect to the decision of the Surface Transportation
Board (Board), served October 17, 2002, in this proceeding.

These petitioners participated in this revocation proceeding;
however, the Board in its October 17, 2002 decision found it
unnecessary to pass upon petitioners' request for revocation,
inasmuch as the Board concluded to grant the petition for revoca-
tion filed by Keokuk Junction Railway Co. (KJRY). (Decision, 20).

¹/ Illinois Legislative Director for United Transportation Union,
with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

The instant SF&L petition is addressed to the mechanics for reconveying the line to Toledo, Peoria and Western Railway Corporation (TPW), and the petition only to a small extent addresses the merits of the October 17, 2002 decision. At this time, we leave the reconveyance process to the Board and the involved carriers.

1. Embargo. We call attention to the embargo issued by SF&L (No. 1-2002), effective October 18, 2002, which remains in effect. See: Attachment 1. There is a strong public interest in the prompt resumption of service on this 71.5-mile line.

2. Statute. Although SF&L acknowledges the Board did consider the rail transportation policy (49 U.S.C. 10101), SF&L challenges the legal standard for revocation, urging that the exemption statute (49 U.S.C. 10502) permits revocation only where those criteria of the rail transportation policy related to the underlying section of the statute from which exemption is sought, are required to be addressed, citing Minnesota Comm. Ry., Inc.-Trackage Exempt.-BN RR. Co., 8 I.C.C.2d 31, 35-37 (1991). (SF&L Pet., para. 10a).^{2/} However, as pointed out by Judge Silberman, the agency has discretion to go beyond the minimum requirement, and may address matters under the rail transportation policy in an exemption case, which may not be embraced in the underlying statute. Village of Palestine v. ICC, 936 F.2d 1355, 1342-46 (D.C. Cir. 1991), cert. den. 502 U.S. 1030.

^{2/} On judicial review, see: Winter v. ICC, 992 F.2d 824 (8th Cir. 1993).

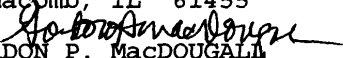
CONCLUSION

The SF&L petition to reopen, and for reconsideration, etc.,
should be denied.

Respectfully submitted,

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November 14, 2002

Attorneys for Petitioners

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

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North American Freight Railroads Online



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Association of American Railroads Embargo Notices for: 10/18/2002 Consecutive Sheet:136

Roadmark:	SFLR
Railroad:	SF & L RAILWAY INC
Embargo Number:	1-2002
Amendment Number:	
Status:	Effective
Embargo Effective Date:	10/18/2002
Commodity:	All Traffic
Destination Gateway or Territory:	To, From or Via all stations from SF&L Junction, IL (FSAC 1124) to and including LaHarpe, IL (FSAC 1196). Intermediate stations include Blandinsville(1189), Bushnell (1171), Canton (1140), Cuba (1149), Good Hope (1180), New Philadelphia (1166), Rawalts (1137), Sciota (1183), Seville (1158) and Smithfield (1155).
Consigned or Reconsigned To, or Intended For:	
Cause:	Track Conditions
Amend:	
Exception:	None
Note:	

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ATTACHMENT 1