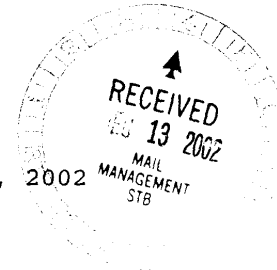


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ORIGINAL



December 13, 2002

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

DEC 13 2002

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in each of STB Finance Docket No. 33995, SF&L Railway, Inc.--Acquisition and Operation Exemption--Toledo, Peoria and Western Railway Corporation, and STB Finance Docket No. 33996, Kern W. Schumacher and Morris H. Kulmer--Continuance in Control Exemption--SF&L Railway, Inc., are the originals and ten copies of the Petition to Reopen Administrative Action, for Reconsideration and/or Clarification of Decision and to Hold in Abeyance Order to Reconvey of SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer.

This firm's checks in the amount of \$150 each in payment of the filing fees are attached.

Additional copies off this letter and of the Petition are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

If you have any question concerning this filing, please let me know.

FEE RECEIVED

DEC 13 2002

SURFACE
TRANSPORTATION BOARD

Sincerely yours,

Fritz R. Kahn
Fritz R. Kahn

FILED

DEC 13 2002

SURFACE
TRANSPORTATION BOARD

enc.

cc: Gordon P. MacDougall, Esq.
Louis E. Gitomer, Esq.
William A. Mullins, Esq.
Daniel R. Elliott, III, Esq.
Michael J. Van Wagenen, Esq.

-206848

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL

STB Finance Docket No. 33995 .. 206848

SF&L RAILWAY, INC.
--ACQUISITION AND OPERATION EXEMPTION--
TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

STB Finance Docket 33996

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

DEC 13 2002

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EXPEDITED ACTION RESPECTFULLY REQUESTED

PETITION TO REOPEN ADMINISTRATIVE ACTION,
FOR RECONSIDERATION AND/OR FOR CLARIFICATION OF DECISION
AND TO HOLD IN ABEYANCE ORDER TO RECONVEY
OF

SF&L RAILWAY, INC., KERN W. SCHUMACHER
and MORRIS H. KULMER

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SURFACE
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DEC 13 2002

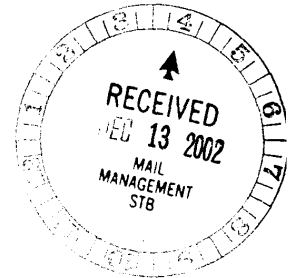
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Attorneys for

SF&L RAILWAY, INC.,
KERN W. SCHUMACHER and
MORRIS H. KULMER

Dated: December 13, 2002



BEFORE THE
SURFACE TRANSPORTATION BOARD

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

EXPEDITED ACTION RESPECTFULLY REQUESTED

PETITION TO REOPEN ADMINISTRATIVE ACTION,
FOR RECONSIDERATION, AND/OR
FOR CLARIFICATION OF DECISION
AND TO HOLD IN ABEYANCE ORDER TO RECONVEY

Petitioners, SF&L Railway, Inc. ("SF&L"), Kern W. Schumacher, and Morris H. Kulmer, respectfully petition the Board, pursuant to 49 U.S.C. § 10901(d)(2) and 49 C.F.R. 1115.3, 1115.4, and 1117.1, to reopen the above-captioned administrative proceedings; to reconsider its Decision issued October 15, 2002 and served October 17, 2002; and/or to clarify its Decision and the application of its order to reconvey under the circumstances presently at hand. Petitioners further respectfully request that the Board hold in abeyance its order that Petitioners reconvey the subject property pending the Board's disposition of this petition.

1. The Board issued a Decision ("Decision") in the above-captioned administrative proceedings on October 15, 2002, a copy of which was served on SF&L on October 17, 2002. The Decision revokes the exemptions pursuant to which SF&L had obtained the Board's authorization to acquire the La Harpe-to-Peoria railroad line and to allow Messrs. Schumacher and Kulmer to continue in control of SF&L. The Decision further ordered that SF&L reconvey the La Harpe-to-Peoria line to Toledo, Peoria and Western Railway Corporation ("TP&W"), effective November 16, 2002. The Decision also provided that, in effecting the reconveyance, neither SF&L nor TP&W are to profit from the ordered reconveyance.

2. On November 7, 2002, RailAmerica, Inc. ("RailAmerica"), the owner of TP&W, transmitted to SF&L, via e-mail, documents drafted by RailAmerica to effect the reconveyance of the La Harpe-to-Peoria line by SF&L to TP&W. Pursuant to the terms of those documents and in accompanying correspondence,¹ RailAmerica indicated that it would not pay more for the La Harpe-to-Peoria railroad line than the \$2,179,878.00 that SF&L paid for it on December 29, 2000, regardless of the statutory "minimum constitutional value" of the subject property, and without any compensation to SF&L for the benefit to TP&W of its use of the \$2,179,878.00 in funds paid it by SF&L almost two years ago or reimbursement to SF&L for the corresponding opportunity cost associated with loss of the use of those funds by SF&L--or even the payment of interest to SF&L on the amount effectively "borrowed" by TP&W.

3. The effect of the reconveyance documents drafted by RailAmerica and transmitted to SF&L via E-mail on November 7, 2002, if used by the parties, would be to allow TP&W and/or RailAmerica to profit substantially from a reconveyance by SF&L to TP&W of the La

¹ See, letter from John T. White, Esq., to Michael Van Wagenen, Esq., dated November 5, 2002.

Harpe-to-Peoria railroad line. Such an effect² was not contemplated by the parties at the time the Decision was rendered and served, and further would contravene the express directive of the Board in the Decision that neither party should profit from the ordered reconveyance. The insistence by TP&W of such terms of any reconveyance, which was only recently communicated to SF&L on November 7, 2002, constituted a change in circumstances that would materially affect the prior action in the above-captioned proceedings.

4. RailAmerica's transmission of its draft reconveyance documents to SF&L on November 7, 2002, on behalf of TP&W, rendered it impossible for SF&L to file a petition for reconsideration within the presumptive 20-day period for such filings specified in 49 C.F.R. 1115.3(e), and further rendered it impossible for SF&L to file a stay request ten days in advance of the effective date of the Board's Decision, as contemplated by 49 C.F.R. 1115.5. An earlier version of this petition was filed, however, within the additional 20-day period for the filing of a petition for reconsideration that may be authorized by the Board pursuant to 49 C.F.R. 1115.3(e). Immediately thereafter, TP&W informed SF&L that it had obtained an informal extension of the effective date of the Decision, and that it desired to negotiate with SF&L to reach a mutually agreeable and equitable resolution of the matter. TP&W further requested SF&L to withdraw its initial petition to facilitate such negotiations. Based upon, and in reliance upon, TP&W's statement that it had obtained an extension of the effective date of the Decision and desired to negotiate in good faith to reach a consensual resolution of the matter, SF&L withdrew its previously filed petition and engaged in negotiations with TP&W. Those negotiations are still ongoing, and an informal resolution of the matter may yet be achieved. Progress in the

² Indeed, as set forth in more detail below, the prospect of a reconveyance of the subject property was not, itself, contemplated by the parties, as no party had requested an order of reconveyance, much less raised the issues implicated by such an order or a proposed method of dealing with them.

negotiation of a mutually acceptable and equitable resolution of the matter has been slow to date, however, and a risk exists that such negotiations may not be successful. SF&L believes that the Board's reconsideration of the Decision at this time would either assist the parties in reaching a consensual and equitable resolution of the matter or, absent such a resolution, potentially relieve SF&L of the inequities it would suffer in any conveyance of the subject property to TP&W if forced to do so under TP&W's initial interpretation of the Board's Decision. Accordingly, SF&L respectfully requests the Board to extend the time for SF&L to file this petition as a petition for reconsideration so as to render this petition timely as a petition for reconsideration under the Board's rules.

5. SF&L seeks reconsideration of the Decision pursuant to 29 C.F.R. 1115.3(b) on the grounds that (1) the prior action involves material error, and (2) that the prior action will be affected materially because of changed circumstances.

6. Independent of its petition for reconsideration, SF&L seeks to reopen the above-captioned administrative proceeding under 29 C.F.R. 1115.4 on the grounds that (1) the prior action involves material error, and (2) that the prior action will be affected materially because of changed circumstances.

7. Also independent of the foregoing requests for reconsideration and to reopen the proceedings, SF&L seeks clarification of the Decision and of the application of the order contained therein that SF&L reconvey the subject property to TP&W without "profit" to either party under the circumstances at hand.

8. In addition, given the current practical impossibility of performance by the Parties of a reconveyance of the subject property by the date specified in the Decision, SF&L further respectfully requests that the Board refrain from enforcing, and to hold in abeyance, SF&L's

obligation under the Decision to reconvey the line to TP&W pending final disposition by the Board of this petition and any related proceedings.³

9. To the extent a consensual resolution of the matter between the parties cannot be reached on terms and conditions that are fair and equitable as between the parties, the prior action will be affected materially because of changed circumstances due to TP&W's insistence that the property be reconveyed to WIRC and leased to TP&W on terms not contemplated by the Decision and the order contained therein, which directed that SF&L reconvey the line and associated property in such a manner that neither SF&L nor TP&W profit from the transaction. In particular, any continued or renewed insistence by TP&W that the line and associated property be reconveyed to TP&W in exchange for payment to SF&L for less than the subject property's net liquidation value, exclusive of realty, of at least \$5.7 million, both in December 2000 and at present; the value of any improvements made by SF&L to the subject line and/or of the losses incurred by SF&L in its operation of the line from at least December 2001 to the present; or the value of TP&W's use, for almost two years, of the \$2,179,878.00 it received from SF&L--and the corresponding lost opportunity cost to SF&L of such use by TP&W of those monies--would constitute a material change in circumstances.

10. Recent developments have also rendered unclear whether a transfer of the railroad line by SF&L to under the circumstances at hand would satisfy the term's of the order within the Decision that SF&L transfer the line "to TP&W." In particular, In advance of the anticipated closing date of November 18, 2002, a new RailAmerica affiliate, Western Illinois Railway Company ("WIRC"), filed a 7-day notice of exemption in STB Finance Docket No. 34282,

³ See The Land Conservancy of Seattle & King County—Acq'n & Op. Exemption—The Burlington Northern & Santa Fe R. Co., STP Finance Docket No. 33389, 1997 WL 651658 (I.C.C.).

Western Illinois Railway Company--Acquisition Exemption--Toledo, Peoria & Western Railway Corporation, to enable TP&W to transfer the track materials to WIRC, which then would lease them back to TP&W for TP&W to render service on the line. RailAmerica made a companion notice filing in STB Finance Docket No.34283, RailAmerica, Inc., et al.--Corporate Family Reorganization Exemption--Western Illinois Railway Company, requesting that it be allowed to remain in control of WIRC upon its becoming a railroad. On November 26, 2002, however, RailAmerica filed a motion to dismiss in both proceedings on the ground that simply accepting ownership of the track materials did not make WIRC a railroad. The motion remains pending. Given the foregoing and the resulting lack of clarity regarding whether a transfer of the railroad line by SF&L under the circumstances would satisfy the Board's order that SF&L transfer the railroad line to TP&W, a new compliance date pending further clarification is called for in this matter.

11. Independent of the change in circumstances, the prior action involves material error in at least the following respects:

a. The Board revoked the exemptions previously granted to SF&L on grounds not authorized by law. In the matter at hand, the Board based its decision to revoke the exemptions on the ground that revocation of the exemptions was necessary to ensure the integrity of the Board's processes. The governing statute, however, permits the Board to revoke an exemption only "when it finds that Application in whole or in part of a provision of this part . . . is necessary to carry out the transportation policy of section 10101 of this title." 49 U.S.C. § 10502(d). In interpreting the predecessor to section 10502(d) (previously numbered as 49 U.S.C. § 10505(d)) the Board concluded, based on the legislative history of the statute and a canvassing of prior Board decisions, that "the appropriate analysis in determining whether a revocation is proper should be the same as

the analysis for determining whether exemption is proper at the outset of a proceeding. This analysis focuses on the sections of the [Rail Transportation Policy] related to the underlying statutory section from which an exemption is sought.” Minnesota Comm’l R. Inc.—Trackage Rights Exemption—Burlington Northern R. Co., STB Finance Docket No. 31603, 8 I.C.C.2d 31, 35-36, 1991 WL 171624 at *36 (I.C.C.) (effective Aug. 30, 1991) (citing, inter alia, Village of Palestine v. ICC, 936 F.2d 1335 (D.C. Cir. 1991)). As further explained by the Board in Minnesota, the Board “retain[s] the right to review the transaction to protect the integrity of our processes. To the extent, however, that revocation of an exemption is sought to undo the underlying transaction, and RTP analysis is thus implicated, only those sections of the RTP related to the underlying section of the statute are required to be addressed.” 8 I.C.C.2d at 37, 1991 WL 171624 at *4 (emphasis added).⁴

In its Decision in the proceeding at hand, the Board failed to consider the specific sections of the provisions of the rail transportation policy related to the statutory section from which the exemption was sought by SF&L in connection with its acquisition of the La Harpe-to-Peoria railroad line, as, for example, 49 U.S.C. §§ 10101(1), (2), (3) and (5). Instead, the Board focused almost exclusively on a single enumerated policy statement, 49 U.S.C. § 10101(7), which is not directly related to the underlying statutory section from which the subject exemptions were granted. Furthermore, 49 U.S.C. § 10901(a)(4)

⁴ See also Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901, Ex Parte No. 392 (Sub-No. 1) (STB 1985) (hereinafter “Class Exemption Decision”). In addition to consideration of the specific sections of the RTP related to the underlying statutory section from which an exemption is sought, an exemption is properly revoked upon a finding that the notice of exemption “contains false or misleading information.” 49 C.F.R. 1150.32(c). In the proceeding at hand, however, there was no contention, much less a “finding,” that the notice(s) of exemption filed by SF&L contained “false or misleading information.”

permits a person other than a rail carrier, such as SF&L, merely to "acquire a railroad line" if found by the Board to be consistent with the public convenience and necessity. SF&L was denied the opportunity to make that requisite showing. In addition, the Board did not enable SF&L to overcome the alleged deficiency in its exemption filing by permitting it to file an application, pursuant to 49 U.S.C. § 10901(a).

b. The Board's decision to revoke the subject exemptions on the "evidence" before it is contrary to Board precedent. The Board based its decision to revoke the subject exemptions exclusively on a "determination" that "Respondents from the start evidently intended to raise rates and degrade service with the ultimate intent to abandon and salvage the Line." Decision at 14. The Board based its determination upon "a variety of indicia" that SF&L never seriously intended to operate the subject line, but purchased it solely with an eye toward abandoning and salvaging it. Decision at 9. The Board arrived at that conclusion notwithstanding the undisputed fact that SF&L actually, and directly, operated the line for approximately one year, Decision at 14, and that it had done so for just short of 9 months, at a loss, before seeking to abandon the line.⁵ The Board further considered "SF&L's affiliation with A&K," an affiliated business entity that deals in scrap rail materials," in arriving at its determination of Respondents' "evident intent" not to operate the line. Decision at 13. In the only published Decision that counsel for SF&L has been able to locate to date that involves facts similar to those in the matter at hand, but much more supportive of an inference of a lack of serious intent to operate the rail line at issue, the Board determined that revocation of an exemption was inappropriate. See

⁵ SF&L filed its Verified Petition for Exemption seeking permission to abandon the line on September 3, 2002, as amended September 10, 17, and 19.

Track Tech, Inc. —Abandonment Exemption—in Adair and Union Counties, IA, STB

Docket No. AB-493 (Sub-No. 7X) , served November 1, 1999.

More fundamentally, however, the Board's determination in the matter at hand appears to be based, at least in significant part, on what has subsequently been revealed to be an inaccurate assumption that "the La Harpe Line was not inherently unprofitable[,] and the shippers wanted to continue to use the Line." Decision at 13. As subsequently revealed in TP&W's Motion to Substitute in the abandonment proceeding seeking Board authorization for the abandonment of the line,⁶ TP&W "agrees with the analysis made by SF&L that the traffic currently on the Line does not warrant TP&W's continued operation or maintenance of the Line;" that "TP&W's operations over the Line prior to its sale to SF&L showed steadily declining traffic;" Motion to Substitute at 6-7 (emphasis added); that TP&W had considered abandoning the line "[p]rior to agreeing to sell the Line to SF&L;" and that TP&W had approached SF&L to take over operation of the line, and that, given the troubled economic picture of the line, had provided SF&L with a number of inducements to get SF&L to take over operation of the line, including such things as an agreement not to oppose an abandonment "if SF&L's venture failed[.]" Motion to Substitute at 4 n.3. TP&W's motion further confirms that at least one shipper has "agreed that 'SF&L should be allowed to abandon the line,'" Motion to Substitute at 6, and that "no shippers on the Line oppose the abandonment." Motion to Substitute at 9. Accordingly, the Board's determination that the exemptions granted to Respondents in the case at hand should be revoked is both against Board precedent, and is based on certain

⁶ See, Motion to Substitute filed October 30, 2002, by TP&W in Docket No. AB-448 (Sub-No. 2X), SF&L Railway, Inc.—Abandonment Exemption—In Hancock, McDonough, Fulton and Peoria Counties, IL (hereinafter "Motion to Substitute").

fundamental assumptions that subsequently have been shown to be inaccurate.

c. An order issued by the Board requiring SF&L to reconvey the subject property to TP&W for less than the property's net liquidation value would result in the imposition of a monetary penalty on SF&L that the Board is not authorized to impose. Although the Board is statutorily empowered to initiate, on its own behalf or with the assistance of the Attorney General, civil actions to enforce various requirements of the Act, 49 U.S.C. §§ 11701 – 11703, and may seek the imposition of various civil and criminal monetary penalties in such actions, 49 U.S.C. §§ 11901 – 11908, it is not authorized, as a general proposition, to impose direct monetary penalties on individuals or entities subject to regulation under the Act.

As revealed by a recent appraisal of the La Harpe-to-Peoria railroad line, purchased by SF&L on December 29, 2000, which was recently completed by R. L. Banks & Assoc., Inc. at the request of SF&L, the railroad line had and has a net liquidation value of approximately \$5.7 million, exclusive of the underlying realty. TP&W concedes that the subject railroad line is worth at least \$5.7 million in net liquidation value, exclusive of realty.⁷ Thus, any imposition by the Board of an order requiring SF&L to reconvey the

⁷ See, the offers of Pioneer Railcorp, dated November 21, 2000, and December 1, 2000, produced by Keokuk Junction Railway Co., in which TP&W concedes that the railroad line is worth at least \$5.6 million. Furthermore, as noted above in paragraph 10 of this petition, in advance of the anticipated closing date of November 18, 2002, Western Illinois Railway Company, a new RailAmerica affiliate, filed a 7-day notice of exemption in STB Finance Docket No. 34282, Western Illinois Railway Company--Acquisition Exemption--Toledo, Peoria & Western Railway Corporation, to enable TP&W to transfer the track materials to WIRC, which then would lease them back to TP&W for TP&W to render service on the line. RailAmerica made a companion notice filing in STB Finance Docket No. 34283, RailAmerica, Inc., et al.--Corporate Family Reorganization Exemption--Western Illinois Railway Company, to be allowed to remain in control of WIRC upon its becoming a railroad. In connection with the foregoing, an agreement was entered into between TP&W and WIRC for the sale by TP&W to WIRC of the track materials at a price of \$5.7 million. Thus, it is clear that RailAmerica, in effect, agrees that the track materials on the railroad line alone, exclusive of the underlying realty, have a net liquidation value of \$5.7 million.

subject property for less than the property's net liquidation value would subject SF&L to substantial monetary losses, and would amount to the imposition of an immediate and substantial monetary penalty on SF&L, which the Board is not authorized to impose.

d. Although the parties have move beyond TP&W's initial position, they have had serious difficulties in attempting to structure the reconveyance in a manner that comports with the Board's express directive that the neither SF&L nor TP&W may "profit" from the ordered reconveyance. As set forth above, the net liquidation value of the subject property, excluding realty, is approximately \$5.7 million, a fact acknowledged by TP&W. TP&W is not willing to pay SF&L \$5.7 million (less the \$2,179,878.00 previously paid to it by SF&L). In addition, while TP&W received the immediate benefit of the initial transaction, in the form of a payment of monies by SF&L to it in the amount of \$2,179,878.00 and the resultant benefit accruing to TP&W by virtue of the elimination of a significant portion of its cash-flow difficulties, and the use of those monies over an approximately two-year period, SF&L has incurred operating losses of over \$200,000.00 in running the line since December 12, 2001, as well as the lost opportunity cost associated with its payment of the \$2,179,878.00 to TP&W.⁸ TP&W and/or RailAmerica sought to profit even further by its initial insistence that it be allowed to have the benefit of the use of \$2,179,878.00 in funds paid it by SF&L without reimbursement or compensation to SF&L for the value to TP&W of the use of those funds or for the lost

⁸ Under the terms of reconveyance initially insisted on by TP&W, through RailAmerica, TP&W and/or RailAmerica would receive a windfall from the Decision. In particular, TP&W and/or RailAmerica would pocket the difference between the \$2,179,878.00 it proposed to repay SF&L and the \$5.7 million, exclusive of the realty, that it acknowledges as the net liquidation value of the property to be reconveyed (which SF&L had hoped to realize from the abandonment of the line, and which TP&W similarly hoped, and may still hope, to realize from an abandonment of the line). See Motion to Substitute.

opportunity cost to SF&L associated with its payment of those funds to RailAmerica in December 2000. Such a windfall to TP&W hardly squares with the express directive of the Board in the Decision that neither RailAmerica, Inc./TP&W nor SF&L should profit from the revocation of the exemptions and the ordered reconveyance.

In contrast, SF&L would not be gaining anything more than it bargained for if it were to receive the \$5.7 million acknowledged by both parties to be the net liquidation value of the property to be reconveyed by SF&L to TP&W (less the \$2,179,878.00 already paid by it). That was the true value of the property when SF&L bought it on December 29, 2000, and is, at minimum, its true value today. Thus, to require SF&L to reconvey the property to TP&W for anything less than the actual market value of the property that it purchased through arms-length bargaining with RailAmerica, Inc., would be tantamount to a taking of its property without just compensation, in violation of the due process clause of the United States Constitution. Other sections of the statute, 49 U.S.C. §§ 10904(f)(1)(B) and 10907(b)(2), are explicit that a railroad's property cannot be taken from it for less than the "constitutional minimum," namely, the greater of the property's net liquidation value or going-concern value. In addition to, but independent of the "takings" issue, any requirement imposed by the Board on SF&L that it accept less than the "constitutional minimum" for the property at issue would impose an extraordinary penalty on SF&L. Any such penalty would be unlawful, however, because the Board is without statutory authority directly to impose financial penalties—even for allegedly proscribed conduct.

12. The Board in its Decision may have found that SF&L improperly used the class

exemption of 49 C.F.R. 1150.21, et seq., to obtain the Board's authorization to acquire the La Harpe-to-Peoria railroad line; the Board did not find, and it could not have found, however, that SF&L had not purchased the property properly, subject to the Board's approval, by application pursuant to 49 U.S.C. 10901 and 49 C.F.R. 1150.1, et seq., instead of the class exemption.

13. The Board's order that SF&L reconvey the railroad line to TP&W, and to do so in such a manner that neither SF&L nor TP&W would profit, has spawned a number of difficult and complex issues that may not be able to be resolved by the parties—notwithstanding their current attempts to do so. By way of example, SF&L should not be forced to forego the 10.2% interest⁹ on the \$2,179,878.00 it paid for the La Harpe-to-Peoria railroad line plus the more than \$200,000.00 of operating losses it incurred in operating the line since December 12, 2001 if the amount to be paid to SF&L by TP&W and/or RailAmerica for the subject property is less than its undisputed net liquidation value of \$5.7 million (less the \$2,179,878.00 previously paid by SF&L to ST&W).

WHEREFORE, Petitioners, SF&L Railway, Inc., Kern W. Schumacher and Morris H. Kulmer, respectfully ask (a) that the Board to determine that its prior action will be adversely affected by changed circumstances and that it involved material error; (b) that the Board reconsider its Decision in this matter; (c) that the Board re-open the administrative proceedings in these matters; (d) that the Board clarify that its Decision requires RailAmerica, Inc., and/or Toledo, Peoria and Western Railway, Inc., pay the greater of the net liquidation value or on-going concern value of the property for the reconveyance of the La Harpe-to-Peoria railroad line; and (e) that the Board stay the effective date of its Decision (or otherwise hold in abeyance its

⁹ See, STB Ex Parte No. 558 (Sub-No. 5), Railroad Cost of Capital – 2001, served June 20, 2002.

Decision) until ten days after the date of service of the Board's determination of this Petition.

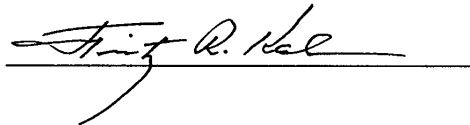
Respectfully submitted,

SF&L RAILWAY, INC.,
KERN W. SCHUMACHER
and MORRIS H. KULMER

By their attorneys,

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Dated: December 13, 2002

Fritz R. Kahn
FRITZ R. KAHN, P.C.
1925 N Street, NW (8th fl.)
Washington, DC
Tel.: (202) 263-4152

A handwritten signature in dark ink, appearing to read "Fritz R. Kahn", is written over a horizontal line.