

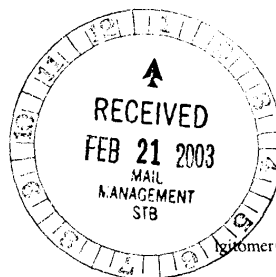
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February 21, 2003

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

207265
RE: Finance Docket No. 33995, *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation between La Harpe and Peoria, IL* *207266*
Finance Docket No. 33996, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control—SF&L Railway, Inc.* *207267*
Docket No. AB-448 (Sub-No. 2X), *SF&L Railway, Inc.—Abandonment Exemption—in Hancock, McDonough, Fulton and Peoria Counties, IL*
Finance Docket No. 34282, *Western Illinois Railway Company—* *207268*
Acquisition Exemption—Toledo, Peoria & Western Railway Corporation

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Response by the Toledo, Peoria and Western Railway Corporation, and three diskettes with the file Response.doc.

Please time and date stamp the extra copy of this letter and the Response and return it with our messenger. If you have any questions, please contact me.

Respectfully submitted,

**ENTERED
Office of Proceedings**

[Signature]
Louis E. Gitomer

Enclosures

FEB 21 2003

**Part of
Public Record**

ORIGINAL

ENTERED
Office of Proceedings

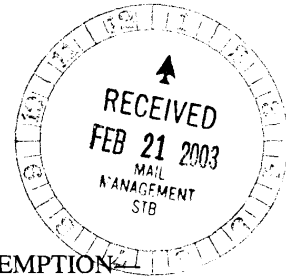
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Part of
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BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33995



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

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

STB Finance Docket No. 34282

WESTERN ILLINOIS RAILWAY COMPANY—ACQUISITION EXEMPTION—
TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION

TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION RESPONSE

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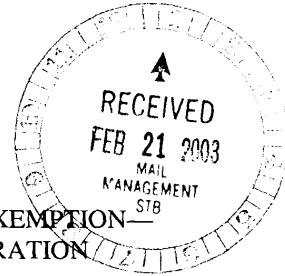
Attorneys for TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: February 21, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33995

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



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STB Finance Docket No. 34282

WESTERN ILLINOIS RAILWAY COMPANY—ACQUISITION EXEMPTION—
TOLEDO, PEORIA & WESTERN RAILWAY CORPORATION

TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION RESPONSE

The Toledo, Peoria and Western Railway Corporation ("TP&W"), a wholly-owned indirect subsidiary of RailAmerica, Inc. ("RailAmerica") responds to the letter filed by SF&L Railway, Inc. ("SF&L"), Kern W. Schumacher, and Morris H. Kulmer (collectively the "Petitioners") on February 11, 2003 (the "Letter"). As noted in the Letter, TP&W concurs with Petitioners' request to vacate the conditions imposed by the Surface Transportation Board (the "Board") in *SF&L Railway, Inc.—Acquisition And Operation Exemption—Toledo Peoria And Western Railway Corporation Between La*

Harpe and Peoria, IL, STB Finance Docket No. 33995 (STB served February 6, 2003) (the “*February 6 Decision*”).

TP&W and SF&L have entered a settlement whereby, for certain consideration, SF&L agreed to convey the 74.5-mile rail line between La Harpe, IL, milepost 194.5, and west of Peoria, IL, milepost 123.0 (the “Line”) to TP&W and to dismiss each of the pending Petitions for Review in the Tenth Circuit. The Line was reconveyed to TP&W on February 10, 2003 and Petitioners are in the process of having the pending Petitions for Review in the Tenth Circuit dismissed.

After reacquiring the Line, TP&W inspected the Line and determined that it could make repairs to the Line at a reasonable cost that would allow TP&W to operate the Line as excepted track. As the Board required the restoration of the *status quo ante*, SF&L’s ability to impose an embargo on the Line terminated upon SF&L’s reconveyance to TP&W. In TP&W’s view, the embargo ended upon the reconveyance on February 10, 2003. On February 14, 2003 TP&W published tariffs for the Line.

To date, TP&W has received no unconditional requests for service from shippers. TP&W received a request to quote rates for certain movements from the Keokuk Junction Railway Co. (“KJRY”) and is following the process in 49 C.F.R. § 1300.3. Scotia Elevator requested a rate quote from TP&W to move grain from Scotia, IL to an interchange at La Harpe, IL with KJRY, and ordered 18 rail cars. TP&W quoted rates on the day the request was made. Scotia Elevator told TP&W that the rates were not competitive and canceled the car order. TP&W is waiting for Scotia Elevator’s proposal for guaranteed traffic in exchange for lower rates.

The Western Illinois Railway Company ("WIRC") was created in November 2002 to facilitate a settlement then being negotiated between SF&L and TP&W. That proposed settlement has been discarded by SF&L and TP&W. WIRC has not been qualified to do business in the State of Illinois and RailAmerica intends to dissolve WIRC. Therefore, TP&W believes that the condition imposed on WIRC in the *February 6 Decision* will be of no effect once WIRC is dissolved.¹

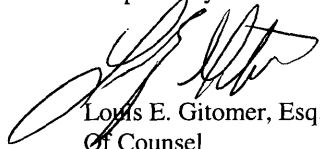
In the *February 6 Decision*, at pages 3-4, the Board required TP&W "not to convey any portion of its interests in the Line pending the completion of judicial review of these proceeding, unless TP&W receives further authority from us to do so." (the "Alienation Condition"). As stated earlier, Petitioners will be moving to dismiss their petitions for judicial review. Since the predicate for the Alienation Condition is being removed, and TP&W's alienation of the Line via abandonment, sale, lease, etc. is still subject to regulatory review by the Board (See 49 U.S.C. §§ 10901, 10902, 10903, 11323, etc.), TP&W respectfully requests that the Alienation Condition imposed at pages 3-4 and in ordering paragraph 3 of the *February 6 Decision* be removed. TP&W contends that there is no longer any reason for the Alienation Condition and that retention of the Alienation Condition could be the basis for mischief in the future and could require TP&W to defend any alienation of the Line under both the Alienation Condition and the statute.

¹ Since the Line will not be transferred to WIRC, RailAmerica respectfully requests the Board to dismiss the Motion to Dismiss filed on November 26, 2002 in *Western Illinois Railway Company-Acquisition Exemption-Toledo, Peoria & Western Railway Corporation*, STB Finance Docket No. 34282.

CONCLUSION

TP&W respectfully requests that the Board remove the Alienation Condition.

Respectfully submitted,



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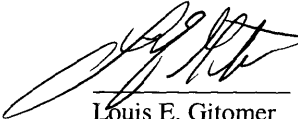
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Attorneys for TOLEDO, PEORIA AND
WESTERN RAILWAY CORPORATION

Dated: February 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2003, I have caused this Response to be served upon counsel for all known parties of record by first class mail, postage pre-paid, or by more expeditious means.


Louis E. Gitomer
February 21, 2003