

TROUTMAN SANDERS LLP

ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

401 NINTH STREET, NW
SUITE 1000
WASHINGTON, DC 20004-2134
WWW.TROUTMANSANDERS.COM

William A. Mullins
william.mullins@troutmansanders.com

Direct Dial: 202-274-2953
Direct Fax: 202-654-5621

December 23, 2002

VIA HAND DELIVERY -
IMMEDIATE ATTENTION REQUESTED

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



RE: STB Docket No. AB-448 (Sub-No. 2X)
SF&L Railway, Inc. -- Abandonment Exemption --
In Hancock, McDonough, Fulton and Peoria Counties, IL
Request to Toll OFA Deadline

Dear Secretary Williams:

On behalf of Keokuk Junction Railway Co. ("KJRY"), I am enclosing an original and 11 copies of a petition pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1152.27(c)(1)(i)(C), to toll the deadlines of 49 U.S.C. 10904(c) and 49 C.F.R. § 1152.27(b)(2) for filing KJRY's offer of financial assistance in this matter. As detailed in the attached filing, the deadline should be tolled because, among other reasons, the petitioner, SF&L Railway, Inc., has refused to provide the information on the value of the line that it is obligated to provide pursuant to 49 C.F.R. § 1152.27(a). Unless tolled, the deadline for filing an OFA in this matter is December 31, 2002.

Please acknowledge receipt and filing of the enclosed request by receipting the 11th copy of the filing, which is enclosed for that purpose, and returning that copy to the person delivering the filing, for return to me. As can be seen from the certificate of service, copies of this filing have been served on all parties of record.

Please notify me of the Board's action on this request at (202) 274-2953 or by facsimile at (202) 654-5621.

ENTERED
Office of Proceedings

DEC 23 2002

Part of
Public Record

Sincerely,

William A. Mullins

cc: All Parties of Record
Keokuk Junction Railway Company

ATLANTA • HONG KONG • LONDON • NORFOLK • RICHMOND
TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB DOCKET NO. AB-448 (SUB-NO. 2X)

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



**PETITION TO TOLL DEADLINE FOR FILING
KEOKUK JUNCTION RAILWAY COMPANY'S
OFFER OF FINANCIAL ASSISTANCE**

**ENTERED
Office of Proceedings**

DEC 23 2002

**Part of
Public Record**

**WILLIAM A. MULLINS
DAVID C. REEVES
TROUTMAN SANDERS LLP
401 NINTH STREET, N.W.
SUITE 1000
WASHINGTON, DC 20004-2134**

**ATTORNEYS FOR KEOKUK
JUNCTION RAILWAY CO.**

**DUE: DECEMBER 26, 2002
DATED: DECEMBER 23, 2002**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB DOCKET NO. AB-448 (SUB-NO. 2X)



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

**PETITION TO TOLL DEADLINE FOR FILING
KEOKUK JUNCTION RAILWAY COMPANY'S
OFFER OF FINANCIAL ASSISTANCE**

Keokuk Junction Railway Company ("KJRY") hereby petitions the Surface Transportation Board ("STB" or "Board"), pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. 1152.27(c)(1)(i)(C), to toll the deadlines of 49 U.S.C. 10904(c) and 49 C.F.R. § 1152.27(b)(2) for KJRY to file an offer of financial assistance ("OFA") in this matter until each of the following has occurred:

- The Board has issued a decision granting the petition in this proceeding, determining who is the proper petitioner in this matter *and* who owns the rights sought to be abandoned;
- That petitioner responds to KJRY's request for information about the value of the line; and
- Ten days have elapsed following the later of the two above-listed events.

In support of this request, KJRY shows the following.¹

¹ Although the Board's December 20 decision in this proceeding says that 'action' in this proceeding is being 'deferred' for 30 days, the order does not clearly extend the OFA deadline. KJRY submits this petition out of an abundance of caution to assure tolling of the OFA deadline under the Board's regulations and the statute.

BACKGROUND

This case arises in a unique procedural posture of such uncertainty that the petitioner, SF&L Railway, Inc. ("SF&L"), has refused to provide KJRY with the valuation information required for an OFA, including a valuation study performed for SF&L by R.L. Banks & Associates. That uncertainty stems from the interrelationship of four matters now pending before the Board or in court -

1. the instant abandonment exemption petition, which was filed by SF&L on September 3, but where Toledo, Peoria & Western Railway Company ("TP&W") on October 30 requested, and SF&L on November 19 agreed, for TP&W to be substituted for SF&L as the petitioner that is seeking to abandon the Peoria to La Harpe rail line;
2. the related acquisition exemption proceedings,² in which SF&L's exemption to acquire the Peoria to La Harpe rail line was revoked by decision effective November 16, a decision that SF&L has asked the Tenth Circuit to review³; and
- 3 & 4. two related exemption petitions, filed by RailAmerica, Inc. ("RailAmerica")⁴ and its newly-created subsidiary Western Illinois Railway Company ("WIRC"),⁵ to transfer rail assets of the Peoria-La Harpe line to WIRC while TP&W retains the operating obligation.

² *SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria & Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995, and *Kern W. Schumacher, et al.-Continuance in Control-SF&L Railway, Inc.*, Finance Docket No. 33996 (together, "Acquisition Exemption").

³ *SF&L Railway, Inc. v. Surface Transportation Board*, No. 02-9591 (filed Dec. 16, 2002).

⁴ *RailAmerica, Inc., et al.-Corporate Family Reorganization Exemption-Western Illinois Railway Company*, STB Finance Docket No. 34283, 67 Fed. Reg. 78039 (Dec. 20, 2002).

⁵ *Western Illinois Railway Company-Acquisition Exemption-Toledo, Peoria & Western Railway Corporation*, STB Finance Docket No. 34282, 67 Fed. Reg. 78040 (Dec. 20, 2002).

Together, these interrelated proceedings create uncertainty about who currently owns the Peoria to La Harpe line, whether that party may properly pursue abandonment in this docket, and the Board's jurisdiction, in light of the pending Tenth Circuit review, to issue orders affecting ownership of that line. Because of this uncertainty and the fast-approaching December 31, 2002,⁶ deadline for submission of an OFA, KJRY files this petition to toll the OFA deadline.

GROUND FOR TOLLING DEADLINE

The Board should toll the deadline as requested by KJRY because SF&L has refused KJRY's request for the information required by 49 U.S.C. § 10904(b) and 49 C.F.R. § 1152.27(a). In addition, SF&L's pending petition for review of the *Acquisition Exemption* decision may deprive the Board of jurisdiction to reopen the *Acquisition Exemption* decision to resolve issues that would allow OFA submission to go forward, unless the Tenth Circuit approves.

I. Ample Reasons Exist for the Board to Toll KJRY's OFA Deadline

SF&L has refused KJRY's request for information on the value of the line. KJRY expects to file an OFA for the Peoria-La Harpe line. On December 17 and 18, counsel for KJRY requested SF&L to provide the required information. *See* Exhibit 1 at 1-2 and 4. While agreeing that KJRY was due the information, *see* Exhibit 1 at 3, SF&L refused to provide it, relying on the Board's October 17 statement that it would dismiss this matter.⁷ *Id.* at 3 and 5. Among the

⁶ That is, the last business day before the 120th day following filing of SF&L's exemption petition in this docket. *See generally* 49 C.F.R. § 1152.27(b)(2)(i).

⁷ KJRY also requested valuation information from TP&W, in the event that TP&W's request to be substituted for SF&L as the petitioner in this proceeding is granted. TP&W's counsel agreed verbally to provide information to KJRY, but said such information would not be available until approximately mid-January. If TP&W becomes the petitioner in this proceeding, KJRY would be entitled to tolling of the OFA deadline until at least 10 days after TP&W provides the requested information.

information that SF&L has refused to provide is, apparently, a valuation study R.L. Banks & Associates, which is mentioned in SF&L's petition to reopen the October 17 *Acquisition Exemption* decision.

SF&L's exemption petition does not contain valuation information which would avoid the need to toll the OFA deadline. Section 1152.27(c)(1)(C) provides that if the abandoning carrier's application or exemption petition contains the information listed in Section 1152.27(a), the carrier's failure to provide information at the offeror's request will not justify extension of the OFA deadline. SF&L's petition, however, does not contain such information. The petition does not contain information on the net liquidation value of the line⁸ such as recent reports on the line's physical condition, assessments of the quality and quantity of track materials in the line, and removal cost estimates, each specified in Section 1152.27(a). Therefore, extension of the OFA deadline is warranted under the terms of Section 1152.27(c)(1)(C).

Tolling the OFA deadline is also warranted because it is unclear whether KJRY should make its offer to and negotiate with SF&L or TP&W. While KJRY presumes that it should make its offer to TP&W, TP&W has not filed for abandonment and has not been substituted for SF&L in this proceeding. Furthermore, SF&L still owns the line. The Board's October 17 order in *Acquisition Exemption* directed SF&L to immediately convey the Peoria-La Harpe line back to TP&W. Because there were no pending petitions for reconsideration or for judicial review, and because no stay had been granted, that order took effect November 16, 2002. Likewise, neither SF&L's December 13 petition to reopen nor its petition for review in the Tenth Circuit has effected a stay. Accordingly, the order to reconvey the line immediately is in full force and

⁸ Because SF&L seeks to abandon the line and claims a net loss on operations in 2002, the line has no going concern value; moreover, KJRY will not offer to subsidize SF&L's continued operation of the line.

effect. Nevertheless, SF&L still owns the line. SF&L's December 13 petition to reopen the *Acquisition Exemption* decision recites that SF&L has not conveyed the line back to TP&W. However, it also recites that SF&L and TP&W are negotiating over the conveyance. Thus, it is unclear from day to day who owns the Peoria to La Harpe line.

SF&L's petition for review before the Tenth Circuit further complicates matters by compromising the Board's jurisdiction to handle SF&L's reopening petition. Under some judicial precedent, a petition for review vests jurisdiction of a case with the reviewing court, depriving the agency of jurisdiction. See *Greater Boston Television Corp. v. Federal Communications Commission*, 463 F.2d 268, 283 (1971), cert. denied 406 U.S. 950 (1972), and *AT&T Corporation v. Federal Communications Commission*, 2002 U.S. App. LEXIS 13675 at *3 (D.C. Cir. July 5, 2002). Thus, it appears questionable whether the Board can resolve the questions posed in SF&L's December 13 reopening petition, absent consent of the Tenth Circuit to do so.⁹

II. Exemption Under Section 10502 is Appropriate

A. The Board Has Previously Applied Its Exemption Power to OFA Time Limits

KJRY requests that the Board invoke 49 U.S.C. § 10502 to exempt this proceeding from the time limits imposed by the OFA statute, current 49 U.S.C. § 10904. The Board has previously employed Section 10502 or its predecessor to exempt matters from Section 10904 deadlines. See *SWKR Operating Co.--Abandonment Exemption--In Cochise County, AZ; Exemption Pursuant to 49 U.S.C. 10502 from the Provisions of 49 U.S.C. 10904(e) and 49 CFR 1152.27(g)*, STB Docket No. AB-441 (Sub-No. 2X), 1997 STB LEXIS 89 (served April 29, 1997); *Norfolk Southern Railway Company--Abandonment Exemption--In Fayette County, AL*,

⁹ KJRY anticipates responding to SF&L's petition to reopen the *Acquisition Exemption* decision within the 20-day deadline specified in 49 C.F.R. § 1104.13(a).

STB Docket No. AB-290 (Sub-No. 190X), 1998 STB LEXIS 41 (served Feb. 12, 1998). The Board has applied Section 10502 to exempt matters from other statutory deadlines as well. *See Application of Ventura County Transportation Commission for an Order Requiring Joint Use of Terminal Facilities in Ventura County, CA*, STB Finance Docket No. 33557, 1998 STB LEXIS 207 (Aug. 11, 1998). Application of Section 10502 is equally appropriate here.

B. This Matter Satisfies Statutory Criteria for Exemption Under Section 10502

Exemption of this proceeding from the pertinent statutory deadlines is appropriate under 49 U.S.C. § 10502(a). Application of the Section 10904(c) deadline is not necessary to carry out the national transportation policy. Exemption of this matter from that deadline will serve principles of the National Rail Transportation Policy by -

- promoting fair (*i.e.*, fully-informed) decision-making by requiring compliance with 49 U.S.C. § 10904(b) - 49 U.S.C. § 10101(2);
- ensuring continuation of a sound rail transportation system meeting needs of the public by fostering the OFA portion of the statute - 49 U.S.C. § 10101(4); and
- reducing regulatory barriers to entry into and exit from the industry by enforcing the provisions of Section 10904 - 49 U.S.C. § 10101(7).

Exemption of this matter from the deadlines of Section 10904(c) is also appropriate because the requested exemption is of limited scope. The circumstances of this proceeding - an abandonment exemption prosecuted by a carrier which has already been ordered to transfer the line to a third party - are unique. Moreover, the exemption sought in this highly unusual case - tolling a statutory deadline because the exemption petitioner has not complied with Section 10904(b) - is a very narrow issue. Accordingly, the Board should exempt this tolling request from the requirements of Section 10904(c), pursuant to 49 U.S.C. § 10502(a).

CONCLUSION

SF&L has violated the Board's *Acquisition Exemption* order because it has retained the Peoria - La Harpe line. Yet, SF&L refuses to provide valuation information on the property, including an R.L. Banks study which SF&L's petition to reopen the *Acquisition Exemption* decision shows that SF&L has. TP&W, meanwhile, is willing to provide information, but that information is not currently available. Even when that information becomes available, there remains the question of who owns the line - SF&L, TP&W or WIRC - and the question of whether TP&W may properly be substituted for SF&L in this proceeding.

Accordingly, KJRY petitions the Board to toll the deadline for KJRY to file an OFA in this matter until KJRY has been provided the information required under 49 U.S.C. § 10904(b) and 49 C.F.R. § 1152.27(a) and until it is settled who owns the Peoria - La Harpe line and who the proper petitioner in this proceeding is.

Respectfully submitted,



William A. Mullins
David C. Reeves
TROUTMAN SANDERS LLP
401 Ninth Street, N.W.
Suite 1000
Washington, DC 20004-2134

Attorneys for Keokuk Junction Railway
Company

Exhibit 1

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE: 202-274-2950

William A. Mullins
william.mullins@troutmansanders.com

Direct Dial: 202-274-2953
Fax: 202-654-5621

December 17, 2002

BY FACSIMILE - (202) 331-8330

Fritz R. Kahn, Esquire
Fritz R. Kahn, P.C.
Eighth Floor
1920 N Street, N.W.
Washington, DC 20036-1601

RE: *SF&L Railway, Inc.--Abandonment Exemption--In Hancock,
McDonough, Fulton and Peoria Counties, IL*
STB Docket No. AB-448 (Sub-No. 2X)

Dear Mr. Kahn:

I represent Keokuk Junction Railway Company ("KJRY"). In the above-captioned matter, SF&L Railway has petitioned for an exemption to abandon the involved rail line. However, SF&L is presently under an obligation, effective November 16, to transfer the involved line back to TP&W. TP&W also has sought to be substituted for SF&L in the above-entitled exemption matter. Accordingly, it is impossible for KJRY to determine who owns the Peoria-La Harpe line from moment to moment and who has the obligations to potential offerors of financial assistance under 49 U.S.C. Section 10904 to provide information on the value of the line.

KJRY is considering submitting an offer of financial assistance ("OFA") for the Peoria-La Harpe line. Since both SF&L and TP&W claim to have the right to own the line, and since both SF&L and TP&W apparently have some information on the value of the line and may, ultimately, remain or become the petitioner in the above-captioned matter, on behalf of KJRY, I hereby require you to immediately deliver to me all information on the value of the line which is subject to the above-referenced abandonment exemption petition that your company, if it were the abandonment petitioner in the captioned matter, is required to provide to potential OFA offerors pursuant to 49 U.S.C. 10904(b), the related regulations at 49 C.F.R. Section 1152.27, and any related provisions.

Please deliver all such information to me immediately at the address shown on this letter. In light of the impending holidays, I would appreciate your communicating to me in advance and

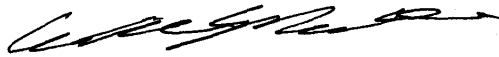
ATLANTA • HONG KONG • LONDON • NORFOLK • RICHMOND
TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

Fritz R. Kahn, Esq.
December 17, 2002
Page 2

as soon as possible when you will be able to provide the requested information and what information I may expect to receive from each of you.

Sincerely,

A handwritten signature in black ink, appearing to read 'William A. Mullins', with a stylized flourish at the end.

William A. Mullins

cc: Guy Brenkman

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1801
(202) 868-4152
FAX (202) 331-8330
e-mail: xicgc@worldnet.att.net

December 18, 2002

VIA MAIL AND FAX (202) 654-5621

William A. Mullins, Esq.
Troutman Sanders LLP
401 9th Street, NW (#1000)
Washington, DC 20004-2134

Dear Bill:

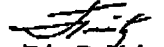
Your letter of December 17, 2002, certainly does confirm, as SF&L Railway, Inc., maintained in STB Finance Docket No. 33995, SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL, that Keokuk Junction Railway Company all along was motivated in waging its ruthless campaign against SF&L and diverting traffic away from its La Harpe-to-Peoria railroad line so that KJRY itself might acquire the property, by way of an offer of financial assistance upon the line's abandonment, if not by the purchase of the line from TP&W as an active line of railroad.

I regret I am unable to provide you with the data which I fully understand needs to be furnished a potential offeror of financial assistance, pursuant to 49 C.F.R. 1152.27. However, you were served with the Board's decision of October 17, 2002, as well as I, and, hence, you are as aware as I that the Board, at pages 2-3 of its decision said, "Because we are revoking the acquisition and control exemptions [as sought by KJRY], the Board will soon issue a decision dismissing SF&L's petition for an abandonment exemption [in STB Docket No. AB-448 (Sub-No. 2X)] as moot." In the absence of an abandonment proceeding, there can be no OFA.

Just a note about the intemperate language of your letter. I can only speculate that it was used by you to impress your client; as I am sure you know, it carries no weight with me.

Best wishes for a joyous holiday season.

Sincerely yours,


Fritz R. Kahn

cc: Mr. Guy Brenkman

— TROUTMAN SANDERS LLP —

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

401 9TH STREET, N.W. - SUITE 1000
WASHINGTON, D.C. 20004-2134
www.troutmansanders.com
TELEPHONE: 202-274-2950

William A. Mullins
william.mullins@troutmansanders.com

Direct Dial: 202-274-2953
Fax: 202-654-5621

December 18, 2002

BY FACSIMILE - (202) 331-8330

Fritz R. Kahn, Esquire
Fritz R. Kahn, P.C.
Eighth Floor
1920 N Street, N.W.
Washington, DC 20036-1601

RE: *SF&L Railway, Inc.—Abandonment Exemption—In Hancock,
McDonough, Fulton and Peoria Counties, IL*
STB Docket No. AB-448 (Sub-No. 2X)

Dear Mr. Kahn:

Yesterday, I requested on behalf of Keokuk Junction Railway Company ("KJRY") that your client SF&L Railway, Inc. ("SF&L") provide me with valuation information on the Peoria-La Harpe line, which is at issue in the captioned matter. You and I apparently agree that such information is required to be provided to potential offerors of financial assistance. You declined to provide the information, stating that the Board's October 17, 2002 decision in Finance Docket Nos. 33995 and 33996 said that the Board would soon dismiss the above-referenced petition.

As you know, no such dismissal has occurred; accordingly, the current deadline for filing an OFA is December 31. So long as the abandonment exemption petition SF&L filed remains pending with SF&L as petitioner, it is KJRY's position that SF&L is obligated by statute and regulation to provide the information that I requested. This is particularly true inasmuch as SF&L has petitioned to reopen the Finance Docket Nos. 33995 and 33996 decision, reciting that SF&L still owns the line and that SF&L recently had a valuation of the line prepared.

Because the OFA deadline is fast-approaching, I therefore reiterate the request contained in my letter yesterday. Should your client dismiss the abandonment exemption petition, that would put a different light on the matter. Unless that happens, however, KJRY believes (and I believe your letter admits) that SF&L is required to provide the information I requested. Again, please deliver all such information to me immediately at the address shown on this letter, and let me know as soon as possible when you will be able to provide the requested information and what information I may expect to receive.

Sincerely,



William A. Mullins

cc: Guy Brenkman

ATLANTA • HONG KONG • LONDON • NORFOLK • RICHMOND
TYSONS CORNER • VIRGINIA BEACH • WASHINGTON, D.C.

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1800 N STREET, N.W.
WASHINGTON, D.C. 20000-1801
(202) 288-4122
FAX (202) 331-0030
e-mail: rickgo@worldnet.att.net

December 19, 2002

VIA MAIL AND FAX (202) 654-5501

William A. Mullins, Esq.
Troutman Sanders LLP
401 9th Street, NW (#1000)
Washington, DC 20004-2134

Dear Bill:

Thank you for your letter of December 18, 2002, reiterating your request that this firm's client, SF&L Railway, Inc., provide your firm's client, Keokuk Junction Railway Company, with unspecified information on the value of the La Harpe-to-Peoria railroad line.

I assume that you had in mind the study which SF&L had R. L. Banks & Assoc., Inc., undertake of the net liquidation value of the line's track materials, to which reference was made in the Petition which SF&L, et al., filed December 13, 2002, in Finance Dockets Nos. 33995 and 33996, a copy of which was served upon you.

SF&L is reviewing the study and may request that additional data be provided it. Be that as it may, SF&L continues to have reservations about its obligation to provide the study to KJRY, pursuant to 49 C.F.R. 1152.27(a), because of the uncertainty that SF&L will be allowed to proceed with the abandonment of the line, as it had asked in STB Docket No. 448 (Sub-No. 2X).

As I am sure you know, the Surface Transportation Board, upon request, will postpone the due date for an offer of financial assistance until thirty days after data sought by an offeror and to which it is entitled has been furnished the offeror.

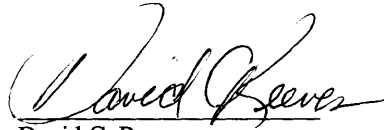
Sincerely yours,


Fritz R. Kahn

** TOTAL PAGE.02 *

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 23rd day of December, 2002, I have served a copy of the foregoing Petition To Toll Deadline For Filing Keokuk Junction Railway Company's Offer Of Financial Assistance upon all parties of record by first class mail, postage prepaid, and upon counsel for SF&L and TP&W by facsimile transmission as well.


David C. Reeves