ORDINANCE OF THE CITY OF CANTON
VACATING A PORTION OF EAST MAPLE
STREET AND WITH OTHER PROVISIONS.

ORDINANCE NO. 55.

WHEREAS, it appears and the City Council of the City of Canton, Illinois, finds that a portion of East Maple Street hereinafter particularly described and also a portion of an alley hereinafter more particularly described should be vacated and that these vacations would serve the public interest of this City; and,

WHEREAS, the portion of East Maple Street hereinafter set forth is located generally in an area of the City of Canton occupied by factory buildings and little use thereof is now made by the general public because factory buildings lie on the South thereof and also on the North thereof and to the East of the same is located the railroad tracks of the Chicago, Burlington & Quincy Railroad Company. This City Council finds that there would be relief to the public and the city from the further burden and responsibility of maintaining the portion of East Maple Street hereinafter described, there would also be considerations of safety, and the general welfare of the public would be served by the vacation of that part of said street; and,

WHEREAS, the alley hereinafter described adjoins East Maple Street on the North and the Toledo, Peoria & Western Railroad tracks on the South and is also in a built-up industrial area in the City and in fact for many years last past this alley has not been used by the public. The vacation of the same would relieve the public from the further burden and responsibility of maintaining said alley and the interest of the general public and the city would be served thereby.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CANTON, ILLINOIS, as follows:

Section 1. That all of that portion of East Maple Street of the City of Canton, Illinois, being and lying West of the main track of the Chicago, Burlington & Quincy Railroad and East of a point 208 feet East of the East line of Second Avenue, be and the same is hereby vacated.

Section 2. The alley having a width of about twenty (20) feet and lying West of and adjoining Lots 69, 70, 91, 92, 113, 114, 136 and 137 of Wright's Addition to the City of Canton, Illinois, be and the same is hereby vacated.

EXHIBIT
C

Section 3. The portion of a street and alley being vacated by this ordinance is legally described in more detail as follows:

Beginning at the Northwest corner of Lot 67 in Wright's Addition to the City of Canton, Illinois, which point is the place of beginning; thence running Easterly along the North lines of Lots 67 and 68 of Wright's Addition to the City of Canton (being the South line of East Maple Street) to the Northeast corner of Lot 68 in Wright's Addition, thence South along the Easterly lines of Lots 68, 71, 90, 93, 112, 115, 135, to the Southeast corner of Lot 138 in Wright's Addition, thence East about 20 feet to the Southwest corner of Lot 137 in said Wright's Addition, thence North along the West lines of Lots 137, 136, 114, 113, 92, 91, 70 and to the Northwest corner of Lot 69 in said Wright's Addition, thence Easterly along the North line of said Lot 69, across part of Fourth Avenue, to the center line of the main track of the Chicago, Burlington & Quincy Railroad in Fourth Avenue, thence North along the center line of said main track of said railroad to the North line of East Maple Street extended, thence running Westerly along the North line of said East Maple Street to the Southwest corner of Lot 61 in said Wright's Addition, thence South across East Maple Street to the point of beginning.

Section 4. That upon the passage of this ordinance as required by law and approval by the Mayor, the same shall become effective and the title to the portion of East Maple Street and the alley above described shall vest in the abutting owners of land as provided by law.

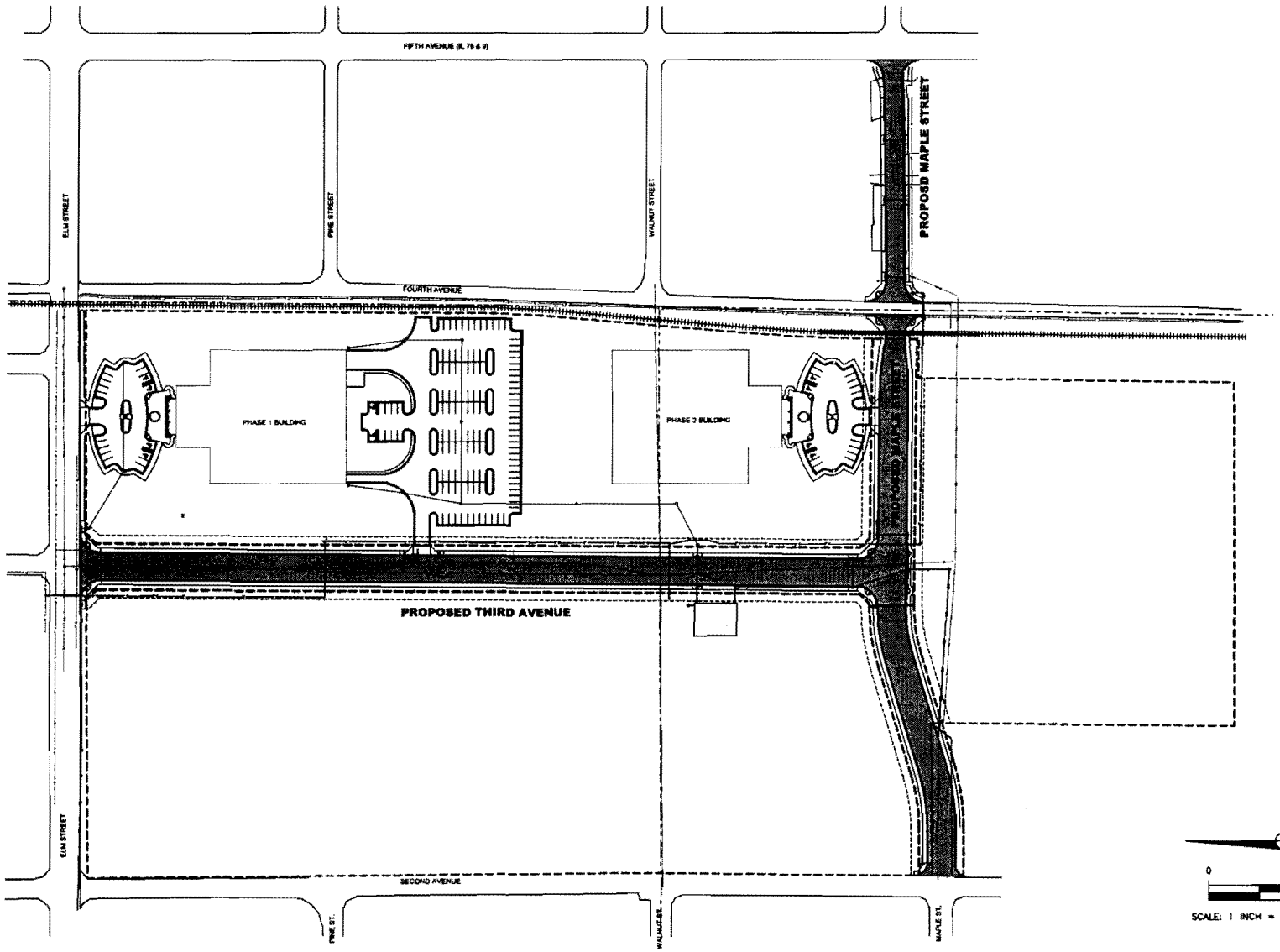
Section 5. Passed by an affirmative aye and no vote of three-fourths of all aldermen authorized by law to be elected in said City and approved by the Mayor this 3rd day of April, A. D. 1962.

APPROVED: Lee Crosf
Mayor.

ATTEST: Nellie Crawford
City Clerk.

EXHIBIT

D



REVISIONS

MAURER & STUTZ, INC.
ENGINEERS SURVEYORS
"WORKING with YOU by DESIGN"

PROPOSED SITE PLAN

FORMER IH SITE DEVELOPMENT

The City of Canton, Illinois

Designed By:
-
Drawn By:
JM
Reviewed By:
KW
Date:
16 April 2009
Project No.:
241-08001
Drawing
2
2 OF 3

Illinois Department of Transportation
Office of the Secretary
2300 South Dirksen Parkway / Springfield, Illinois / 62764
Telephone 217/782-5597

December 5, 2008

Honorable Kevin R. Meade
Mayor
2 North Main
Canton, Illinois 61520

Dear Mayor Meade:

Thank you for your request for Economic Development Program (EDP) funds for construction of roadways to provide access to Cook Incorporated which is planning to locate in the city. This company is a manufacturer of medical devices, and it is our understanding that this company plans to build a 40,000 square-foot facility at a cost of nearly $5.5 million to create 150 new jobs. This will help create a stronger economic employment base for the city of Canton and Fulton County.

We are pleased to inform you that the Illinois Department of Transportation (IDOT) will provide 50 percent of eligible roadway-related items for new construction of 1,182 lineal feet of roadway (3rd Avenue), and 786 lineal feet of roadway and improvements to Maple Street. Funding will include eligible roadway engineering, contingencies and construction costs in an amount up to but not exceeding a total of $1,007,431 from the EDP. Enclosed is an EDP Project Summary which provides a detailed description of this commitment and the employee reporting responsibilities.

Our district office in Peoria will contact you to formulate a state/local joint agreement. Please note that the joint agreement must be fully executed prior to advertisement of this project for engineering or construction. Failure to do so may jeopardize IDOT's ability to reimburse the city for eligible expenses. It is also the responsibility of the city to notify the department of any changes in the status of these companies. If a company fails to locate at its site, IDOT should be notified by the city immediately.

Thank you for your interest in the EDP. Should you have any questions regarding this commitment or the requirements mentioned above, please call Keith Sherman, of this department, at telephone number (217) 782-0378.

Sincerely,

Milton R. Sees, P.E.
Secretary

Enclosure

EXHIBIT
E

EDP PROJECT SUMMARY
Location: Fulton County
Companies: Cook Incorporated
Project Sponsor: City of Canton

State Funding

The Illinois Department of Transportation (DEPARTMENT) will provide funding for eligible roadway-related items for new construction of 1,182 lineal feet of roadway (3rd Avenue) and 786 lineal feet and improvements to Maple Street to serve the above-mentioned company. Funding will include preliminary engineering, construction, construction engineering and contingencies in an amount up to but not exceeding $1,007,431 from the Economic Development Program (EDP).

These improvements must be constructed to State Motor Fuel Tax standards. All necessary land acquisition or building demolition to construct this roadway will be the responsibility of the city of Canton. All EDP commitments are capped. For this project, the EDP funding cap is $1,007,431.

Public Act 93-552

The department is required to comply with Public Act 93-552, the *Corporate Accountability for Tax Expenditures Act*. The act requires any recipient business which is the intended beneficiary of EDP assistance submit an initial report stating that business' commitment to specific employment levels and to subsequently report the progress of the development and specified employment commitments for the project on an annual basis.

The company will be required to fill out an annual Reporting Form for five full calendar years after the execution date of the local intergovernmental agreement. All annual progress reports will be completed on-line through the Department of Commerce and Economic Opportunity. For the purpose of the EDP, Cook Incorporated will be required to enter into agreement the city of Canton to ensure that these reporting requirements are fulfilled. These agreements should be in place prior to the execution of the intergovernmental agreement between the DEPARTMENT and the city of Canton. The agreement between the city of Canton and the business must be in place prior to the disbursement of any EDP funds.

EDP Payback Provision

The commitment of EDP funds is contingent upon the fulfillment of the commitments to business investments and job creation/retention represented to the DEPARTMENT by the city of Canton and recipient businesses. Any substantial modifications to these commitments, change in location of this facility or the failure of the businesses to make firm commitment to this site will cause the DEPARTMENT's commitment to be reevaluated.

The employment levels committed by Cook Incorporated must be created within and retained over the five-year reporting period required by Public Act 93-552. If these commitments are not met, the DEPARTMENT will review the project funding provided to the city of Canton. If reasonable justification for non-performance of the commitments is not provided, the city will be required to repay the EDP funding ($1,007,431) to the DEPARTMENT in total or an appropriate pro rata sum commensurate with the circumstances of the situation.

DEC 27 2006
RECEIVED

MAYER BROWN ROWE & MAW

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1909 K Street, N.W.
Washington, D.C. 20006-1101

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asteel@mayerbrownrowe.com

December 27, 2006

BY HAND-DELIVERY

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

218349

Re: Finance Docket No. 34974, Keokuk Junction Railway Co. D/B/A Peoria & Western Railway – Lease and Operation Exemption – BNSF Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Comments.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.

Enclosures

cc: William A. Mullins, Esq.
Robert M. Wimbish, Esq.
Sandra L. Brown, Esq.

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DEC 27 2006
Part of
Public Record

Berlin Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles New York Palo Alto Paris Washington, D.C.
Independent Mexico City Correspondent: Jauregui, Navarrete y Nader S.C.

Mayer, Brown, Rowe & Maw LLP operates in combination with our associated English limited liability partnership in the offices listed

EXHIBIT
F

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BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34974

KEOKUK JUNCTION RAILWAY CO. D/B/A PEORIA & WESTERN RAILWAY
– LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY

COMMENTS OF BNSF RAILWAY COMPANY

Richard E. Weicher
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(817) 352-2354

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Adrian L. Steel, Jr.
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3261

Attorneys for BNSF Railway Company

Dated: December 27, 2006

BEFORE THE

SURFACE TRANSPORTATION BOARD

Finance Docket No. 34974

KEOKUK JUNCTION RAILWAY CO. D/B/A PEORIA & WESTERN RAILWAY
– LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY

COMMENTS OF BNSF RAILWAY COMPANY

BNSF Railway Company ("BNSF") respectfully submits these comments in response to the Petition for Exemption filed by Keokuk Junction Railway Co. d/b/a Peoria & Western Railway ("KJRY") on December 7, 2006, in this proceeding.

INTRODUCTION

In its Petition, KJRY seeks authority from the Surface Transportation Board ("STB" or "Board") to lease and operate a line of railroad owned by BNSF between Vermont (Milepost 94.3) and Farmington (Milepost 52.2) in Fulton County, IL (the "Line"). KJRY's lease of the Line, originally the subject of a Verified Notice of Exemption filed on August 4, 2006, in Finance Docket No. 34918, has been opposed by Ameren Energy Fuels and Services Company ("Ameren"), whose corporate affiliate, Ameren Energy Generating Company, owns and operates the Duck Creek electricity generating plant near Canton, IL.

Ameren has asserted that the lease of the Line to KJRY will result in the loss of competition between BNSF and Union Pacific Railroad Company ("UP") for the transportation of coal to the Duck Creek plant which was created in 2005 with Ameren's construction of a spur line to a KJRY line that connects to UP's system. Prior to that time, the Duck Creek plant was

exclusively served by BNSF via the southern portion of the Line between Vermont and Canton. Ameren's specific concern is that the Lease would result in a bottleneck situation where KJRY would be the sole destination carrier for both movements with UP and movements with BNSF.

As explained below, however, the structure of the Lease transaction ensures that Ameren will retain the full benefits of the two-carrier coal competition which it created with the construction of the spur line to KJRY. In fact, the Lease not only preserves two-carrier access to the Duck Creek plant, but it also affords all shippers located on the Line the opportunity to not only receive rail service, but also the opportunity to receive competitive service from all of KJRY's connections, including BNSF, Canadian National Railway Company ("CN"), Iowa Interstate Railroad, Ltd. ("IAIS"), Illinois & Midland Railroad, Inc. ("IMRR"), Norfolk Southern Railway Company ("NS"), Toledo, Peoria & Western Railway Corporation ("TPW"), and UP. Accordingly, BNSF supports KJRY's Petition for Exemption and urges the Board to expeditiously consider and grant the Petition.[1]

COMMENTS

As indicated above and as further described in the attached Verified Statement of Dennis P. Eytcheson ("V.S. Eytcheson at ___"), the Duck Creek plant was exclusively served by BNSF prior to the 2005 construction of a spur line by Ameren to a nearby KJRY line that connected to UP's system at Hollis, IL. However, the only traffic on the Line was traffic to and from the Duck Creek plant. V.S. Eytcheson at 2. No other shippers were using the Line. Indeed, the northern portion of the Line between Canton and Farmington had been out of service for a

[1] BNSF notes that KJRY has offered to pursue either the Petition for Exemption filed in this docket or the Verified Notice of Exemption filed in Finance Docket No. 34918 at the Board's discretion in order to obtain approval of the lease and operation of the Line. BNSF supports KJRY's request for approval pursuant to either the Petition or the Verified Notice.

number of years and will require rehabilitation to be put back in service. *Ibid.* Upon completion by Ameren of the spur line to KJRY, BNSF was unsuccessful in its bid to continue the transportation of coal to the Duck Creek plant. Since there was no other traffic, BNSF determined to either sell or lease the Line. *Id.* at 3.

After first offering to sell the Line to Ameren but being unable to reach agreement, BNSF had discussions with KJRY with respect to the possible lease of the Line. BNSF was motivated to sell or lease the Line by its recognition that the Line, absent routine maintenance, would deteriorate to a point where substantial rehabilitation would be required to reactivate the Line. Moreover, as is generally the case with shortline operations, BNSF anticipated that KJRY's local marketing focus could generate new non-coal rail business for the leased Line. V.S. Eytcheson at 3. Further, the Lease enables BNSF to retain a long-term interest in the Line while at the same time ensuring that the Line will be maintained and be available to BNSF in the future should it determine to once again operate over the Line. *Ibid.* (Section 5.2 of the Lease obligates KJRY to maintain the Line, at its cost, to at least FRA Class I Track Safety Standards and to at least FRA Class II Track Safety Standards if BNSF were to be awarded a contract for coal transportation to Duck Creek).[2]

In its discussions with KJRY concerning a lease, BNSF recognized the need to preserve its ability to provide competitive service to the Duck Creek plant, and BNSF structured the Lease to that end. V.S. Eytcheson at 3. BNSF also recognized that potential local shippers on the Line would more likely use rail service if KJRY were to be able to provide them with competitive

[2] A complete copy of the Lease has been submitted by KJRY as Attachment 1 to the Verified Statement of William J. Brennan ("V.S. Brennan") (Exhibit F to the Highly Confidential version of the Petition for Exemption).

long-haul transportation offerings from all of KJRY's connections, including BNSF, CN, IAIS, IMRR, NS, TPW and UP. *Id.* at 3-4. Accordingly, with the limited exception of bridge traffic that would move between BNSF's interchange at Vermont and another line-haul carrier (see Section 4.6 of the Lease), BNSF agreed with KJRY that there would be no "paper barriers" or other marketing restrictions with respect to traffic to and from any shippers that KJRY could develop on the Line.[3] *Id.* at 4.

In order to preserve two-carrier access to the Duck Creek plant (as well as to other potential shippers on the Line), Article XVII of the Lease provides that BNSF will retain the "authority to establish through routes and offer through freight rates via through routes involving both Lessor and Lessee with interchange between Lessor and Lessee at Vermont, Illinois". This includes the exclusive right to establish routes and offer rates for coal to the Duck Creek plant. V.S. Eytcheson at 4. Under this arrangement, BNSF retains its full market presence at Duck Creek and on the Line since BNSF's line-haul rates would be the only rates offered to such traffic. KJRY would provide origination and/or termination services and would be compensated by BNSF on a per-car allowance basis as set forth in the Lease. KJRY would, however, have no ability to quote or challenge rates and in the normal course of business would not know the contract rates BNSF would quote to Duck Creek or other shippers on the Line. *Id.* at 4 (Article XVII provides that KJRY "automatically concurs" in all through rates established by BNSF). *See also* Exhibit G to the Petition which confirms the comprehensive limitations on KJRY's access to pricing information under the Lease.

---

[3] With regard to such potential local shippers, BNSF is aware of a new Central Illinois Energy ethanol plant being constructed near Canton which could be served by KJRY via the Line. In addition, two existing industries – Hitchcock Scrap Yard, Inc. and United Paving & Construction Co. – have indicated a willingness to use rail service. V.S. Eytcheson at 4.

In addition, BNSF required inclusion in the Lease of language in Section 3.6 providing it with the right, subject to certain conditions set forth in the Lease, to terminate the Lease without cause on 30 days' notice. This termination right effectively enables BNSF to monitor and police as necessary any conduct by KJRY detracting from or degrading BNSF's ability to provide competitive service. *See also* V.S. Eytcheson at 5 (Section 23.5 of the Lease obligates KJRY to handle Ameren's coal trains in a "prompt and efficient manner" and "without undue delay").

In sum, the provisions included in the Lease effectively ensure that the Duck Creek plant will continue to receive competitive rail service for its coal needs. Before the transaction, BNSF's routing competed with the UP/KJRY routing, and the post-transaction situation will be exactly the same given BNSF's retention of full pricing authority and given KJRY's fee structure which will enable BNSF to offer competitive prices. In addition to competition being fully preserved at the Duck Creek plant, competition will be enhanced by the establishment of connections with multiple carriers which should incent other potential shippers currently located on the Line or considering locating on the Line to use rail. In the end, the Lease ensures that competition will be preserved (and, in fact, enhanced), that the Line will be maintained, that it will generate a level of income for BNSF, and that KJRY will have the opportunity to find new rail business.

Accordingly, for the reasons set forth above, BNSF respectfully submits that KJRY's Petition for Exemption be expeditiously granted.

Respectfully submitted,

Richard E. Weicher
Sarah W. Bailiff
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131
(817) 352-2354

Robert M. Jenkins III
Adrian L. Steel, Jr.
Mayer, Brown, Rowe & Maw LLP
1909 K Street, NW
Washington, DC 20006
(202) 263-3261

Attorneys for BNSF Railway Company

Dated: December 27, 2006

Verified Statement
of
Dennis P. Eytcheson

1. My name is Dennis P. Eytcheson. I am the Director of Network Rationalization for BNSF Railway Company ("BNSF"). My office address is 2500 Lou Menk Drive, Fort Worth, Texas 76131-2828.

2. In my position as Director of Network Rationalization, I am responsible for negotiating line sales and leases.

3. I have been with BNSF, or its predecessor company The Atchison, Topeka and Santa Fe Railway Company, since October 16, 1971. I hold a Bachelor of Arts degree from Bradley University, Peoria, Illinois and a Masters of Business Administration degree from Illinois State University, Normal, Illinois. I have worked in the Network Development Area, primarily selling or leasing BNSF rail lines to shortline operators, since May of 1999. Prior to my current appointment, I have held various positions in the Marketing and Strategic Studies Departments. Since 1999, I have negotiated the sale or lease of hundreds of miles of BNSF rail lines to various shortlines.

4. This Verified Statement addresses the circumstances surrounding BNSF's decision to lease a line of railroad owned by BNSF between Vermont (Milepost 94.3) and Farmington (Milepost 52.2) in Fulton County, IL (the "Line") to Keokuk Junction Railway Co. ("KJRY"). KJRY's lease and operation of the Line has been opposed by Ameren Energy Fuels and Services Company ("Ameren"), whose corporate affiliate, Ameren Energy Generating Company, owns and operates the Duck Creek electricity generating plant near Canton, IL.

5. I understand that Ameren has opposed the lease of the Line to KJRY on the grounds that it will purportedly result in the loss of competition between BNSF and Union Pacific Railroad Company ("UP") for the transportation of coal to the Duck Creek plant which was created in 2005 with Ameren's construction of a spur line to a KJRY line that connects to UP's system. Prior to that time, the Duck Creek plant was exclusively served by BNSF via the southern portion of the Line between Vermont and Canton. Ameren's specific concern is apparently that the Lease would result in a bottleneck situation where KJRY would be the sole destination carrier for both movements with UP and movements with BNSF.

6. As explained below, I disagree with Ameren's position. The structure of the Lease transaction ensures that Ameren will retain the full benefits of the two-carrier coal competition which it created with the construction of the spur line to KJRY. In fact, the Lease not only preserves two-carrier access to the Duck Creek plant, but it also affords all shippers located on the Line the opportunity to not only receive rail service, but also the opportunity to receive competitive service from all of KJRY's connections, including BNSF, Canadian National Railway Company ("CN"), Iowa Interstate Railroad, Ltd. ("IAIS"), Illinois & Midland Railroad, Inc. ("IMRR"), Norfolk Southern Railway Company ("NS"), Toledo, Peoria & Western Railway Corporation ("TPW"), and UP.

7. As mentioned, the Duck Creek plant was exclusively served by BNSF prior to the 2005 construction of a spur line by Ameren to a nearby KJRY line that connected to UP's system at Hollis, IL. However, the only traffic on the Line was traffic to and from the Duck Creek plant. No other shippers were using the Line. Indeed, the northern portion of the Line between Canton and Farmington had been out of service for a number of years and will require rehabilitation to be put back in service.

8. Upon completion by Ameren of the spur line to KJRY, BNSF was unsuccessful in its bid to continue the transportation of coal to the Duck Creek plant. Since there was no other traffic, BNSF determined to either sell or lease the Line.

9. After first offering to sell the Line to Ameren but being unable to reach agreement, BNSF had discussions with KJRY with respect to the possible lease of the Line. BNSF was motivated to sell or lease the Line by its recognition that the Line, absent routine maintenance, would deteriorate to a point where substantial rehabilitation would be required to reactivate the Line. Moreover, as is generally the case with shortline operations, BNSF anticipated that KJRY's local marketing focus could generate new non-coal rail business for the leased Line. Further, the Lease enables BNSF to retain a long-term interest in the Line while at the same time ensuring that the Line will be maintained and be available to BNSF in the future should it determine to once again operate over the Line.

10. With respect to maintenance of the Line, Section 5.2 of the Lease obligates KJRY, at its cost, to maintain the Line to at least FRA Class I Track Safety Standards. That section also requires KJRY to maintain the Line to at least FRA Class II Track Safety Standards in the event BNSF is awarded a contract for coal transportation to the Duck Creek plant, and it provides that KJRY's failure to maintain the Line so that it is capable of handling Ameren's coal traffic will be deemed a material breach of the Lease.

11. In its discussions with KJRY concerning a lease, BNSF recognized the need to preserve its ability to provide competitive service to the Duck Creek plant, and BNSF structured the Lease to that end by, as I explain below, retaining full marketing and pricing authority. BNSF also recognized that potential local shippers on the Line would more likely use rail service if KJRY were to be able to provide them with competitive long-haul transportation offerings

from all of KJRY's connections, including BNSF, CN, IAIS, IMRR, NS, TPW and UP. Accordingly, with the limited exception of bridge traffic that would move between BNSF's interchange at Vermont and another line-haul carrier as set forth in Section 4.6 of the Lease, BNSF agreed with KJRY that there would be no "paper barriers" or other marketing restrictions with respect to traffic to and from any shippers that KJRY could develop on the Line.

12. As to potential local shippers, BNSF is aware of a new Central Illinois Energy ethanol plant being constructed near Canton which could be served by KJRY via the Line. In addition, two existing industries – Hitchcock Scrap Yard, Inc. and United Paving & Construction Co. – have indicated a willingness to use rail service were it to be reinstituted.

13. In order to preserve two-carrier access to the Duck Creek plant (as well as to other potential shippers on the Line), Article XVII of the Lease provides that BNSF will retain the "authority to establish through routes and offer through freight rates via through routes involving both Lessor and Lessee with interchange between Lessor and Lessee at Vermont, Illinois". This includes the exclusive right to offer rates for coal to the Duck Creek plant, and BNSF is given the "sole and absolute" discretion to specify junctions and routes for all traffic under the Lease. Under this arrangement, BNSF thus retains its full market presence at Duck Creek and on the Line since BNSF's line-haul rates would be the only rates offered to such traffic. KJRY would provide origination and/or termination services and would be compensated by BNSF on a per-car allowance basis as set forth in the Lease. KJRY would, however, have no ability to quote rates and in the normal course of business would not know the contract rates BNSF would quote to Duck Creek or other shippers on the Line. Indeed, Article XVII of the Lease provides that KJRY "automatically concurs" in all through rates established by BNSF as long as it receives the applicable per-car dollar fee.

14. In addition, BNSF required inclusion in the Lease of language in Section 3.6 providing it with the right, subject to certain conditions set forth in the Lease, to terminate the Lease without cause on 30 days' notice. This termination right effectively enables BNSF to monitor and police as necessary any conduct by KJRY detracting from or degrading BNSF's ability to provide competitive service. For instance, Section 23.5 of the Lease obligates KJRY to handle Ameren's coal trains in a "prompt and efficient manner" and not to cause "undue delay in the interchange delivery, unloading or return of Ameren's empty coal trains." This section further provides that KJRY's default of these terms shall be subject to all remedies available at law or in equity to BNSF.

15. The provisions included in the Lease effectively ensure that the Duck Creek plant will continue to receive competitive rail service for its coal needs. Before the transaction, BNSF's routing competed with the UP/KJRY routing, and the post-transaction situation will be exactly the same given BNSF's retention of full pricing authority and given KJRY's fee structure which will enable BNSF to offer competitive prices. In addition to competition being fully preserved at the Duck Creek plant, competition will be enhanced by the establishment of connections with multiple carriers which should incent other potential shippers currently located on the Line or considering locating on the Line to use rail.

VERIFICATION

I, Dennis P. Eytcheson, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on December 19, 2006.

Dennis P. Eytcheson

Dennis P. Eytcheson

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December 2006, a true and correct copy of the foregoing Comments of BNSF Railway Company was served by overnight delivery on the following:

William A. Mullins
Robert A. Wimbish
Baker & Miller PLLC
2401 Pennsylvania Ave., NW
Washington, DC 20037

Sandra L. Brown
Troutman Sanders LLP
401 Ninth Street, NW, Suite 1000
Washington, DC 20004-2134

37629 SERVICE DATE – LATE RELEASE DECEMBER 6, 2007
EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34974

KEOKUK JUNCTION RAILWAY COMPANY d/b/a PEORIA AND WESTERN RAILWAY
– LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY

STB Finance Docket No. 34918

KEOKUK JUNCTION RAILWAY COMPANY d/b/a PEORIA & WESTERN RAILWAY
– LEASE AND OPERATION EXEMPTION –
BNSF RAILWAY COMPANY BETWEEN VERMONT AND FARMINGTON, IL

Decided: December 6, 2007

We are denying the petition of the Keokuk Junction Railway Company, d/b/a Peoria & Western Railway (KJR) in STB Finance Docket No. 34974 for an exemption to lease and to operate a line of railroad owned by the BNSF Railway Company (BNSF). We also are rejecting KJR's notice of exemption filed in STB Finance Docket No. 34918.

BACKGROUND

Ameren Energy Generating Company, a corporate affiliate of Ameren Energy Fuels and Services Company (collectively, Ameren), operates its Duck Creek power plant near the junction of two rail lines at Canton, IL. One of the intersecting lines is the Yates City Subdivision line of BNSF, a portion of which KJR is seeking to lease and operate in these proceedings. The other intersecting line is an east-west line of KJR.

Ameren's plant connects to the Yates City Subdivision and BNSF via an Ameren rail spur. In 2005, Ameren constructed another private rail spur from its Duck Creek facility to the east-west line of KJR to access a competing rail route for obtaining Powder River Basin coal. This build-out increased Ameren's competitive options from one carrier (BNSF) to two (BNSF and KJR). Before Ameren constructed the spur connecting its plant with KJR's east-west line, the plant was served only by BNSF. After Ameren completed its build-out to KJR's track, BNSF lost its coal supply contract for Ameren's Duck Creek plant, and the plant now receives its coal over KJR's existing east-west line via a joint route involving an interchange with the Union Pacific Railroad Company (UP) at Hollis, IL (near Peoria).

EXHIBIT
G

Notice of Exemption. By notice filed on August 4, 2006, in STB Finance Docket No. 34918, KJR invoked the class exemption at 49 CFR 1150.41, et seq., to lease and to operate as a railroad common carrier a 42.1-mile portion of the aforementioned BNSF Yates City Subdivision line that connects with Ameren's plant. This line runs northeast from Vermont, IL (milepost 94.3), to the connection with an Ameren spur track (milepost 67.3), and thence north through the junction at Canton (milepost 62.3) to Farmington, IL (milepost 52.2). According to BNSF, the "northern portion of the line between Canton and Farmington" has been out of service for a number of years and will require rehabilitation to be put back into service.[1]

By petition filed on August 10, 2006, Ameren asked the Board to stay the notice of exemption or to hold it in abeyance. Ameren argued in its stay request that the notice was incomplete and misleading as to the effects on Ameren and that Ameren and the Board needed time to obtain a copy of the proposed lease to determine whether the lease would adversely affect competition by leaving KJR as the sole carrier with direct access to the Duck Creek plant. By decision served on August 10, 2006, the Board stayed the effectiveness of the exemption covered by the class exemption until further order.

By motion filed on September 18, 2006, KJR asked the Board to lift its stay, claiming that it had provided Ameren with the information necessary to assess the impact of the proposed transaction. According to KJR, the lease would not make Ameren captive to KJR for coal service because the lease preserves BNSF's sole pricing authority over movements to the plant via the planned interchange at Vermont, thereby restricting KJR to the role of a contractor moving cars for BNSF. KJR maintained that the lease has numerous provisions designed to keep KJR from surcharging or otherwise interfering with BNSF's pricing and service for the plant.

On September 21, 2006, Ameren filed a motion to compel and a response in opposition to lifting the stay. Ameren pointed out that KJR had only produced a substantially redacted version of the lease and that KJR must produce a complete unredacted version to Ameren's outside counsel to allow for proper analysis. KJR subsequently produced the unredacted lease, subject to the protective order entered in this proceeding. By decision served on November 3, 2006, at the request of both parties, the Board suspended further action in the proceeding until November 15, 2006, to allow the parties to negotiate.

In a pleading filed on November 17, 2006, Ameren notified the Board that the parties' negotiations had failed and filed a petition asking that the agency reject or revoke the notice of exemption. Ameren argued that the notice contained false or misleading information and should be declared void ab initio. Ameren further argued that the lease would place KJR as the sole destination carrier for both the movement with UP and the movement with BNSF to its Duck

[1] Comments of BNSF in STB Finance Docket No. 34974, at 2-3. The exact milepost near Canton where the out-of-service northern portion of the line begins is not entirely clear from the record. Ameren cites BNSF as stating that the portion between Dunfermline (milepost 66.7) and Farmington is out of service. Reply comments of Ameren in STB Finance Docket No. 34974, at 5. KJR refers to the lower terminus as simply being "north of Duck Creek." Petition of Ameren in STB Finance Docket No. 34974, at 4.

Creek facility, resulting in competitive harm, and therefore would be inappropriate for handling under the class exemption process. On December 7, 2006, KJR filed a reply opposing Ameren's petition to reject the notice or to revoke the exemption.

In a pleading filed on December 15, 2006, Ameren addressed allegedly inaccurate statements made by KJR in its reply filed on December 7, 2006, regarding claimed harm to a potentially new shipper of ethanol, Central Illinois Energy (CIE). Ameren urged the Board to accept this pleading even if the Board were to view it as an unauthorized reply-to-a-reply under 49 CFR 1104.13(c).

Petition for Exemption. By petition filed in STB Finance Docket No. 34974 on December 7, 2006, under 49 U.S.C. 10502, KJR pursued an alternate means of obtaining Board authorization for the transaction – by seeking to have the proposed transaction exempted under the Board's case-by-case rail exemption procedures at 49 CFR 1121, et seq.[2] In its petition, KJR renewed its argument that the lease would preserve BNSF's ability to set rates for coal movements over the segment to be leased. KJR further argued that, even if the lease did not do this, KJR is too small in relation to its connecting carriers (BNSF and UP) to be able to exert monopoly power over coal rates to Duck Creek. Under KJR's theory, UP and BNSF would use their economic leverage over KJR to prevent KJR from blocking competition between them. Moreover, KJR also argued that the lease would benefit Ameren and the public interest by spurring rehabilitation of the line, enlisting KJR as a lower-cost operator, and helping the line to attract other shippers. On December 27, 2006, BNSF filed comments in support of KJR's petition for exemption.

On January 8, 2007, Ameren filed a reply opposing KJR's petition for exemption in STB Finance Docket No. 34974. Ameren maintains that the lease would not preserve BNSF's ability to compete effectively with the KJR-UP movement for coal service to Duck Creek because the lease effectively sets a floor on BNSF's rates by requiring BNSF to grant KJR an allegedly high per-car compensation for moving cars under BNSF's independent pricing authority and that KJR would extend this same rate floor to any future movements with UP when their current contracts with Ameren expire, thus undermining Ameren's build-out to access UP as a competitive alternative. And Ameren disputes KJR's argument that KJR is too small to be able to exercise market power over Ameren's coal rates.

Further, Ameren challenges KJR's cost and service arguments. Ameren argues that a small carrier like KJR could not operate unit train coal service to Duck Creek more efficiently than BNSF and notes that the need to interchange cars with BNSF at Vermont might result in less efficient service. Ameren also argues that KJR's ability to serve it and new shippers on the line would be hindered by a need to divert trains from the Peoria area, where its current operations are centered. Ameren concludes that KJR has failed to show that potential benefits to possible new shippers on the line would outweigh the clear competitive harm to Ameren.

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[2] KJR did not withdraw its notice of exemption in STB Finance Docket No. 34918 but stated that it would be willing to have the transaction authorized by either means.

On January 12, 2007, KJR filed a letter with the Board asking the agency to provide for mediation of this dispute under 49 CFR 1109.1. KJR's request led to a series of letters filed with the Board where the parties openly exchanged their views on the terms of any such mediation. At the end of this exchange, it was apparent that the parties would not consent to mediation because they could not agree to its terms, so the Board did not hold these proceedings in abeyance to allow for mediation.

In its letter filed on February 12, 2007, Ameren urged the Board to strike, as an impermissible reply-to-a-reply, KJR's letter filed on February 6, 2007, in which it responds to certain Ameren assertions and offers as a condition of approval that KJR would not accept any increase in compensation under its lease with BNSF during the term of the lease and that KJR would file quarterly service reports regarding service to Ameren during the term of the lease. Ameren argued that the letter further discusses matters in a record that has already closed.

By decision served on March 6, 2007, the Board instituted a proceeding under 49 U.S.C. 10502(b) to consider the issues raised in STB Finance Docket No. 34974. The agency's decision stated that it would not provide for the submission of additional evidence because the issues had been extensively argued and Ameren had been given extra time to prepare its reply to KJR's petition for exemption.

On April 23, 2007, the Edison Electric Institute (EEI) filed a letter asking the Board not to exempt the transaction. On April 27, 2007, KJR filed a reply urging the Board to reject EEI's submission as an untimely and unauthorized pleading. The issue of whether EEI's filing was an unauthorized pleading was argued again in EEI's May 1, 2007 reply to KJR's filing of April 27, 2007, and KJR's reply to that pleading filed on May 3, 2007.

PRELIMINARY MATTERS

In STB Finance Docket No. 34918, we will grant Ameren's request to admit its reply, filed on December 15, 2006, to KJR's response filed on December 7, 2006. Ameren's reply properly addresses matters in KJR's response that were not raised in the pleading to which KJR was responding (Ameren's petition to revoke or reject KJR's notice of exemption), in particular negotiations between the parties and issues concerning a proposal by CIE to locate an ethanol plant on Ameren's spur that connects to the line KJR proposes to lease from BNSF.

In STB Finance Docket No. 34974, in the interest of a more complete record, we will not strike KJR's letter filed February 6, 2007. We also will consider Ameren's response.

In STB Finance Docket No. 34974, we will not admit EEI's letter filed on April 23, 2007. In our decision instituting a proceeding (served on March 6, 2007), we made clear that the record in this proceeding is closed. EEI's untimely submission is merely cumulative legal and policy argument. It adds no facts or data that would improve the record.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502(a), the Board shall exempt, to the maximum extent consistent with the rail provisions of its governing statute, a transaction if it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP); and (2) either (a) the transaction is limited in scope or (b) regulation is not needed to protect shippers from the abuse of market power. As the proponent of the exemption, KJR must show that its transaction satisfies the statutory criteria for an exemption. KJR has not met this burden. Accordingly, we will deny KJR's petition for exemption in STB Finance Docket No. 34974. For similar reasons, we also will reject KJR's notice of exemption filed in STB Finance Docket No. 34918. The use of the Board's class exemption procedures is not appropriate in this case given the competitive issues discussed below.

Under the RTP, the Board is directed to "allow to the maximum extent possible, competition and the demand for services to establish reasonable rates." 49 U.S.C. 10101. The Board is also directed to promote "effective competition among rail carriers," 49 U.S.C. 10101(4), and to avoid "undue concentrations of market power," 49 U.S.C. 10101(12). In administering these policies, this agency has consistently preserved competition where a sale or lease would otherwise reduce a shipper's rail service options from two carriers to one, by requiring trackage rights or other conditions for approval that would preserve the shipper's competitive options.

KJR has failed to show that regulation of the lease is not necessary to carry out the RTP. In particular, KJR has not shown that the lease is consistent with provisions of the RTP favoring competition, given the demonstrated competitive harm the proposed lease would cause to Ameren. KJR has failed to persuade us that there are benefits under other provisions of the RTP that would outweigh KJR's failure to make this showing.

Reduced Competition for Ameren. Ameren's plant is rail dependent for its coal traffic. By reducing the number of rail carriers with direct access to Ameren's plant from two (BNSF and KJR) to one (KJR alone), the proposed lease would reduce the competitive options that are available to Ameren. To counter the obvious conclusion that the lease is anticompetitive on its face, KJR makes several arguments based on specific provisions of its lease agreement with BNSF, and its role as a short line carrier connecting to two large carriers.

First, KJR argues that under the "independent pricing authority" in the lease, BNSF would retain the power to price the traffic that is interchanged with it at Vermont, IL, thus preserving the competitive status quo. BNSF would retain the power to quote rates to Ameren for the entire joint movement, and KJR would not be allowed to impose any surcharge on traffic to or from Ameren's plant. KJR would be required to maintain the leased premises at a level that is sufficient to allow the transport of coal and to interchange coal efficiently with BNSF at Vermont.

The Board agrees that the independent pricing authority provisions would be a better outcome for Ameren than giving KJR unfettered control over BNSF's access to Ameren's plant. However, KJR has not shown that the independent pricing authority would eliminate the

negative competitive impact of the lease or leave BNSF and UP with the same ability to compete for service to Ameren's plant as they now have.

Prior to any consummation of the proposed lease transaction, BNSF and KJR/UP are competitors for Ameren's traffic. Presumably, any fee KJR now receives from its joint movement with UP reflects bargaining and trade-offs made by and between UP and KJR to obtain Ameren's business. Given this scenario, we take particular issue with the per-car fee that KJR would receive under the lease for unit train coal traffic handled for the account of BNSF under its independent pricing authority.[3] Post lease, KJR's fee would set a floor on the rates that would be charged by BNSF under its independent pricing authority. Such an effect would likely be permissible if it did not also indirectly set a floor or impact rates moving under a joint KJR-UP movement after Ameren's UP and KJR contracts expire. With a guarantee of a specific fee from BNSF on any joint movement, KJR simply would have no commercial incentive to accept a lesser fee for its part in a similar movement with UP.

KJR failed to show that the per car fee is competitive or reasonable in light of the limited costs that it would incur under the haulage service agreement.[4] No matter which way the coal moves and regardless of the quality of the service, the lease would assure KJR of receiving at least the amount of the fee provided in the lease for coal traffic moving to Ameren's plant. Again, KJR would have no reason to accept a less lucrative rate in a joint movement with UP. Thus, the lease gives KJR more bargaining power to pit UP and BNSF against each other for KJR's benefit, possibly increasing Ameren's rates in the process.

Second, we find unconvincing KJR's argument that it is too small in relation to its connecting carriers (BNSF and UP) to be able to exert any monopoly power over coal rates to Ameren's plant. While it is true that BNSF and UP, as long-haul carriers, wield more economic power than KJR, it is also true that neither would have physical access to Ameren's plant post-lease without KJR. We are not persuaded that the larger carriers could use their economic leverage over KJR to keep that carrier from reducing competition between them by establishing a

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[3] We do not disclose the fee in this decision because KJR seeks to keep it confidential and disclosing it is not essential in explaining our decision. We note here, however, that the fee is more than nominal.

[4] Under the lease, BNSF has the right to require KJR to use BNSF's locomotives and fuel in order to avoid the need to change locomotives at the Vermont interchange. See Lease, Section 18.1 and the definition of "unit train" in Exhibit E. Unit train cars would most likely be provided by Ameren or BNSF. BNSF could also deduct from KJR's lease payments the cost of wood tie replacements that may be necessary to provide unit train coal service in cars loaded up to 286,000 pounds, up to a maximum amount specified in the lease. See Lease, Section 5.2. If the parties were to agree to expedite unit train coal service through the Vermont interchange (see Lease, Sections 23.2 and 23.5), they would seek ways to minimize the need to change crews at the Vermont interchange by having BNSF provide the crews whenever it can (along with the locomotives). Thus, with regard to Ameren's traffic, KJR could be left with little more than performing routine maintenance on the leased track in exchange for its per-car fee under the lease.

floor on rates based on the per-car fee provided in the lease, especially where that fee has not been shown to be insubstantial. Even if KJR's connecting carriers had enough economic leverage over KJR to force that carrier to pass through to them all or part of its benefit from its market power over Ameren, Ameren might still be worse-off post-lease.

Moreover, KJR's ability to negotiate in a manner that benefits its own interests is reflected in its current deals with UP and BNSF. KJR was sufficiently independent of UP to enter into a separate agreement and billing arrangement with Ameren concerning the joint KJR-UP movement that is currently serving Ameren's plant.[5] In such movements, KJR has independent pricing authority.[6] KJR also had sufficient ability to negotiate with BNSF a rate floor that appears not to be cost or market driven.[7]

We disagree with KJR's argument that BNSF's ability to cancel the lease without cause would constrain KJR from exerting market power over Ameren. Agreements with anticompetitive effects can be harmful even if parties can withdraw from them at will. Thus, BNSF's ability to cancel the lease without cause does not remove our concern about the impact of the lease on Ameren as long as it remains in effect. Moreover, BNSF could exercise its right to cancel without showing cause only by incurring the substantial penalty required, and losing the benefits due, under the lease.[8]

Finally, we believe that Ameren has sufficiently demonstrated the competitive harm that would be caused by the lease, despite its current contract with UP. As the industry moves away from the longer-term contracts of the past, it is reasonable to assume that Ameren's traffic will become contestable during the term of the proposed lease and support for this assumption is found in the record.[9] The proposed lease would deny Ameren the benefits of full competition when that occurs.

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[5] Ameren's Reply Statement, Joint V.S. of Robert K. Neff and Glennon P. Hof, at 3.

[6] Petition, at 11-12.

[7] We reject KJR's argument analogizing this lease to the major rail mergers of the 1990s, where the agency imposed conditions in those few situations where shippers served by one short line would have lost long-haul competition as a result of the transaction. See Petition, at 19-20. The agency imposed conditions to preserve competition there, and the Board is taking action to do the same here based on the record before it. Indeed, the serving short lines involved in those decisions had no more market power after those transactions than they did before, unlike the current situation where the serving short line (KJR) would become the sole carrier with direct access to the shipper's (Ameren's) plant with a rate floor for the only traffic on the line.

[8] If BNSF were to terminate the lease without cause, it would be required (a) to pay KJR a monthly penalty for the remaining duration of the lease (see section 3.6 of the lease), (b) to forgo the rental fees due under the lease (see Article IV of the lease), and (c) to resume its common carrier obligation to maintain the line.

[9] The petition suggests that Ameren's contract with KJR will continue "for the next year or two." Petition, at 12.

Effects of Lease on Other Potential Shippers. KJR argues that the lease would further the rail transportation policy and provide public benefits by substituting KJR as a more efficient, lower-cost operator, on the line, resulting in the restoration of service over the entire line and service to new shippers. See 49 U.S.C. 10101(4), (5), and (9). KJR has attached to its petition letters of support from three potential shippers, and the City of Canton has filed in support of KJR.

One of the letters is from CIE, a potential shipper of ethanol.[10] Before the proposed lease was signed, CIE had reached an agreement with Ameren to construct a plant on the private spur track that Ameren uses to connect its plant with BNSF, and CIE signed a separate service agreement with BNSF. CIE expresses concern that, if the proposed lease is disapproved, BNSF would allow the line to fall into disrepair. CIE also states that KJR would be able to give it more "delivery points" (presumably through access to both BNSF and UP). CIE's basic concern, however, is that it receive reliable rail service regardless of the carrier.

BNSF continues to have a common carrier obligation to provide service over the line on reasonable request.[11] CIE does not claim that the line is physically incapable of handling its traffic now or that BNSF is attempting to back out of its obligation to serve CIE if the lease were disapproved. Should BNSF fail to provide service upon reasonable request, CIE can pursue relief from the Board or any contractual relief it may have in the courts.

CIE states that its search for the plant's location was "largely driven by the desire to have reliable rail transportation."[12] In locating where it did and securing a service agreement with BNSF, presumably CIE determined that BNSF's service would be sufficient. The proposed lease would not alter CIE's competitive options – it would merely substitute KJR for BNSF. An unsupported notion that CIE could get better service under the lease than it expected from BNSF when it signed its agreement with that carrier or that the lease would give it more rail routing options does not meet KJR's burden, given the demonstrated competitive harm to Ameren.

The lease also is supported by two other potential shippers, Hitchcock Scrap Yard, Inc. (Hitchcock), and United Paving and Construction Company (United), and by the City of Canton. Hitchcock and United are currently both shipping entirely by truck. Both firms state that, due to economic considerations, they have had to discontinue trucking shipments to a nearby rail transload facility served by KJR and that they would benefit from having KJR begin service over the line, which runs directly in front of their plants, so that they could have direct rail access. The City of Canton, while already served by KJR on its east-west line, is interested in the potential traffic that would be attracted to a rehabilitated portion of the line north of Canton and the corresponding economic development.

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[10] Future traffic from CIE is uncertain because the record is unclear as to whether the plant has actually been constructed.

[11] See 49 U.S.C. 11101(a).

[12] See KJR's Petition, Exh. C.

Hitchcock and United are not rail dependent, as both are currently shipping entirely by truck. Nor do they give any estimate of the traffic they would ship by rail if the lease is approved. KJR estimates that these shippers together "could generate 1100 carloads annually"[13] but does not explain how it reached this estimate, and we find no support for it in the statements provided by these shippers.[14] Even if KJR's unsupported estimate of 1100 future carloads per year were realistic, the total future traffic would be much less than the 9000 carloads (1 million tons), all captive to rail, that Ameren ships. And neither shipper suggests that it requested service from BNSF and was denied. Again, KJR's showing with regard to the potential public benefits involving these two shippers fails to satisfy its burden regarding the RTP, given the demonstrated harm to Ameren.

Similarly, the City of Canton might benefit over the long term from having KJR lease and rehabilitate the out-of-service portion of the line (the northern segment). However, the future benefit of such development is merely speculative and in any event is outweighed by the more immediate and more certain detriment of a reduction in competition for a high volume shipper that provides electricity for numerous homes and businesses in central Illinois.

On this record, we find that KJR has failed to show that regulation is not needed to carry out the rail transportation policy. Consistent with Board policy, Ameren has expended substantial resources in building a private spur line to access a competing route via KJR and UP for Powder River Basin coal. Ameren has demonstrated that it would suffer competitive harm under the proposed lease, as KJR would become the sole rail carrier directly serving its Duck Creek facility, and the per-car fee under the lease would set a rate floor and otherwise reduce competition between BNSF and UP in future negotiations for this high-volume, captive traffic. Conversely, KJR has failed to show that the proposed lease would sufficiently mitigate Ameren's harm or result in public benefits to other potential shippers that outweigh the demonstrated harm to Ameren. Accordingly, we cannot make the requisite statutory finding that regulation of the lease is not necessary to advance the RTP.

Given our findings on this prong of the statutory criteria for granting an exemption, we need not address whether the transaction is limited in scope or whether regulation is needed to protect shippers from the abuse of market power. We also conclude that we should reject KJR's notice of exemption as inappropriate for handling under the class exemption process for the reasons stated herein. Finally, our decision is without prejudice to modifications of the transaction that better address the potential harm to Ameren and allow the proposal to meet the criteria for exemption.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

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[13] Petition, at 10.

[14] United does not offer an estimate of the traffic that it would ship by rail if KJR were to lease the line. Hitchcock states only that it ships "approximately 100,000 tons of scrap metal" per year but does not state what portion of this traffic is likely to move by rail after the lease.

It is ordered:

1. Ameren's request to admit its December 15, 2006 reply in STB Finance Docket No. 34974 into the record is granted; Ameren's request that we strike KJR's February 6, 2007 letter is denied; and KJR's request that we reject EEI's April 23, 2007 submission is granted.

2. The petition for exemption in STB Finance Docket No. 34974 is denied.

3. The notice of exemption filed in STB Finance Docket No. 34918 is rejected.

4. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary