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SERVICE DATE - MARCH 12, 1997

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33316]<sup>1</sup>

RailAmerica, Inc.--Continuance in Control Exemption--

Minnesota Northern Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: RailAmerica, Inc. (RailAmerica) has filed a notice of exemption under 49 CFR 1180.2(d) and 1180.4(g) from the prior approval requirements of 49 U.S.C. 11323 to continue in control of Minnesota Northern Railroad, Inc. (MNR) upon MNR's becoming a Class III rail carrier. The transaction was scheduled to be consummated on or about December 27, 1996.

MNR is a corporation newly formed for the purpose of acquiring and operating 204.10 miles of rail line from

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<sup>1</sup> RailAmerica, Inc. (RailAmerica) originally filed the notice of exemption on December 11, 1996. On December 16, 1996, the United Transportation Union (UTU) filed a petition to revoke the exemption, reject, and/or stay the effectiveness of the notice. On December 18, 1996, RailAmerica filed a notice of withdrawal. On December 20, 1996, RailAmerica filed an amended notice of exemption. On December 24, 1996, UTU filed a supplemental petition to revoke, reject, and/or stay. The stay was filed too close to the consummation date for it to be acted on. The petition to reject or revoke will be handled in a subsequent decision.

Burlington Northern Railroad Company (BN)<sup>2</sup> in Minnesota. MNR has concurrently filed a notice of exemption in Minnesota Northern Railroad, Inc.--Exemption--Acquisition, Operation, and Incidental Trackage Rights Exemption, Burlington Northern Railroad Company, STB Finance Docket No. 33315, to acquire and operate the rail lines together with incidental overhead trackage rights. MNR has also filed a notice of exemption for 2 miles of trackage rights from BN in Erskine, MN, in Minnesota Northern Railroad, Inc.--Trackage Rights Exemption-- The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33337.

RailAmerica controls 10 Class III railroads in addition to MNR. These other carriers are: Evansville Terminal Company, Inc.; Huron & Eastern Railway Company, Inc.; Saginaw Valley Railway Company, Inc.; West Texas & Lubbock Railroad Company, Inc.; Plainview Terminal Company; Dakota Rail, Inc.; South Central Tennessee Railroad Company; Cascade and Columbia River Railroad Company; Gettysburg Railway Company; and Otter Tail Valley Railroad.

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<sup>2</sup> On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company merged with and into the Burlington Northern Railroad Company. The name of the surviving corporation is The Burlington Northern and Santa Fe Railway Company. In this notice we will continue to refer to this entity as BN.

RailAmerica states that: (1) MNR does not connect with any other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect MNR with any other railroad in its corporate family; and (3) the transaction does not involve a Class I carrier. The transaction is thus exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III railroad carriers only, the Board, under statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings that are filed up to and including March 12, 1997 referring to STB Finance Docket No. 33316, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423. Pleadings filed after March 18, 1997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20006.<sup>3</sup> A copy of all pleadings must be served on petitioner's representative: Edward D. Greenberg, Esq., Galland, Kharasch, & Garfinkle, P.C., Canal Square, 1054 Thirty-First St., N.W., Washington, DC 20007.

Decided: February 28, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>3</sup> Because the Board is relocating between March 13 and March 18, 1997, mail will not be received until March 19, 1997. See Surface Transportation Board--1997 Office Relocation Business Plan, STB Ex Parte No. 546 (served February 21, 1997).