

BEFORE THE
SURFACE TRANSPORTATION BOARD

232650

FINANCE DOCKET NO. 35654

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GENESEE & WYOMING INC.
– CONTROL –
RAILAMERICA, INC., *et al.*

MOTION TO ESTABLISH A PROCEDURAL SCHEDULE

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Genesee & Wyoming Inc. (“GWI”), and RailAmerica, Inc. (“RailAmerica”) (collectively “Applicants”) hereby request the Board to adopt the procedural schedule set out below for the above-captioned proceeding. Applicants request that the procedural schedule provide for the completion of proceedings with sufficient time to allow GWI to obtain control of RailAmerica before the end of 2012 if the Board approves the transfer of control.

I. AN EXPEDITED PROCEDURAL SCHEDULE IS WARRANTED HERE

Applicants have filed today an application pursuant to 49 U.S.C. §§ 11323-11325 and the Board’s Railroad Consolidation Procedures, 49 C.F.R. Part 1180, seeking approval for the acquisition by GWI of RailAmerica and the railroads it controls. As the application demonstrates, this is a “minor” transaction under 49 C.F.R. § 1180.2(c). The transaction will produce substantial public benefits while having no adverse impacts on competition, railroad employees or service. In cases involving a minor transaction, the Board is required to issue a final decision within 180 days from the filing date of the application. 49 U.S.C. § 11325(d).

Applicants request the Board to establish an expedited procedural schedule that will allow GWI to complete the transaction, if approval is granted, before the end of this year. The

Board has previously set expedited schedules in minor transaction proceedings when circumstances warranted expedited consideration. *See* STB Finance Docket No. 35147, *Norfolk S. Ry. Co. – Joint Control and Operating Agreement – Pan Am S. LLC* (served June 26, 2008) (adopting accelerated procedural schedule); STB Finance Docket No. 35314 *Massachusetts Coastal R.R. – Acquisition – CSXT Transp., Inc.* (served Dec. 21, 2009) (adopting Applicants’ proposed schedule with minor adjustments); STB Finance Docket No. 35031, *Fortress Inv. Group. LLC – Control – Florida E. Coast. Ry, LLC* (served June 21, 2007) (adopting an expedited procedural schedule “essentially the same as applicants’”). An expedited schedule is justified here on any of several grounds.

First, the proposed transaction involves short line railroads that operate almost entirely in different geographic regions. As the application details, the transaction does not raise any significant competitive issues. There are very few places where the short line railroads at issue here connect or are in close proximity with one another. Where connections do exist, the effect of the combination will largely be end-to-end, creating vertical efficiencies that will benefit shippers. Moreover, the day-to-day railroad operations of the individual railroads will be unaffected by the transaction, so there are no significant service or environmental issues that need to be explored. There is extensive shipper and government support for the transaction, as reflected in the support letters appended to the application.

Second, GWI is establishing a voting trust to hold RailAmerica pending the Board’s decision on the application. While the voting trustee will ensure that the RailAmerica railroads continue to operate effectively, it is in the best long term interests of both the RailAmerica and GWI railroads that the management of the two families of railroads be integrated as soon as possible. Acquisition of control by GWI of RailAmerica will minimize uncertainty and will

allow shippers and the Applicants to take advantage of the benefits of the transaction as soon as possible. For example, GWI is eager to begin extending its highly successful safety program to the RailAmerica railroads. And being able to have RailAmerica integrated for the full year in 2013 will allow for simpler and more transparent financial reporting on a going forward basis.

Finally, it would reduce the burdens on the voting trustee in managing RailAmerica and its railroads and other businesses. For example, railroads frequently need to renegotiate leases and operating agreements as they expire. Since those contractual arrangements may have terms that extend for years into the future, it would be appropriate for GWI’s management to be involved in the renegotiation process, which can only occur after the acquisition of control is approved.

II. PROPOSED PROCEDURAL SCHEDULE

The maximum possible period for considering a minor transaction would require the Board’s decision in early February 2013. In addition, the Board generally provides a 30-day period after the decision is issued for a transaction to close, thus extending until March 2013 the date that the transaction could be completed. As explained above, Applicants seek to close the transaction before the end of 2012.

Applicants therefore request that the following accelerated schedule be adopted in this proceeding so that GWI can acquire control of RailAmerica before the end of 2012 if the Board approves the transaction:

August 6, 2012	Application filed
September 5, 2012	Notice of acceptance of application to be published in the Federal Register
September 19, 2012	Notices of intent to participate in the proceeding due

October 5, 2012	Comments, protests, requests for conditions and supporting evidence, including filings by government agencies, due
October 26, 2012	Applicants' response to comments and rebuttal in support of application due
October 26, 2012	Close of evidentiary proceeding
TBD	Oral argument (if deemed necessary by the Board)
December 10, 2012	Service of final decision
December 20, 2012	Decision effective

The proposed procedural schedule provides 30 days for interested parties to submit comments on the transaction as required by 49 U.S.C. § 11325(a), and 21 days for the Applicants to respond to any issues that may be raised by commenting parties and to complete the evidentiary proceeding. In addition, it provides the Board with the required 45 days after the close of the evidentiary proceedings to reach a decision. *See* 49 U.S.C. § 11325(d)(2); 49 C.F.R. § 1180.4(e)(3)(iii). The proposed schedule also provides that the final decision will be made effective 10 days after its service rather than the customary 30 days. A shortened period for the decision to become effective would be appropriate so that Applicants can finalize the transaction before year-end and avoid delays in closing due to the holiday season.

III. CONCLUSION

For the reasons stated above, Applicants respectfully request that the Board adopt the procedural schedule set out above that will allow them to consummate the transaction by the end of 2012.

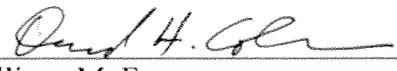
Respectfully submitted,



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