

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33813

RAILAMERICA, INC.—CONTROL EXEMPTION—RAILTEX, INC.

Decided: January 7, 2000

On November 8, 1999, RailAmerica, Inc. (RailAmerica) and RailTex, Inc. (RailTex) filed a petition for exemption¹ under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for RailAmerica, which controls 12 domestic Class III rail carriers, to acquire direct control of RailTex and indirect control of RailTex's 17 domestic Class III rail carriers.² On November 16, 1999, the Board served a notice of the petition and published the notice that day in the Federal Register at 64 FR 62245-46. Under the Board's procedural schedule, comments were due on December 6, 1999, and petitioners' response was due December 15, 1999.³

Petitioners have submitted letters of support from over 100 customers of RailAmerica and RailTex. See RAAM-2, Volume 2; petitioners' letter dated November 12, 1999; and RAAM-3, Exhibit 2.⁴ In addition, letters in support of the transaction were filed by United States Senator Spencer Abraham; U.S. Representatives Robert Wexler and Ray LaHood; and Representatives Terry Coleman and Johnny Floyd of the Georgia House of Representatives. Governmental entities that submitted letters supporting the proposed transaction include: the Oregon Department of Transportation Rail Division; the State of Vermont, Agency for Transportation; Jackson County, OR; the City of Petersburg, IN; the Dallas Area Rapid Transit; the Oregon International Port of

¹ Petitioners designated their November 8th filing as RAAM-2, which includes the Petition for Exemption (Volume 1), Public Exhibits (Volume 2), Confidential Exhibits (Volume 2A), and Highly Confidential Exhibits (Volume 3). Petitioners designated their December 15th Response To Comments as RAAM-3.

² Petitioners' rail subsidiaries are listed in Appendix A to this decision. The smallest railroads are categorized as Class III railroads. A Class III rail carrier remains in that category until and unless it generates more than \$20 million annually in inflation-adjusted 1991 revenues for 3 consecutive years.

³ In addition, the Board had scheduled the issuance of a decision on the merits of the proposed exemption for January 14, 2000.

⁴ On December 28, 1999, petitioners submitted two letters of support (one from the Illinois Department of Transportation and one from a RailTex customer) that they received too late to include in their December 15th (RAAM-3) filing.

Coos Bay; and the Illinois Department of Transportation. Railroad entities that submitted letters supporting the proposed transaction include: The Burlington Northern and Santa Fe Railway Company; Canadian Pacific Railway Company; CSX Transportation, Inc. (CSXT); Norfolk Southern Corporation; Union Pacific Railroad Company; Vermont Railway; and National Railroad Passenger Corporation (Amtrak). The largest rail union, United Transportation Union, also has submitted a letter stating that it does not oppose the proposed transaction.

In response to the notice, no comments have been filed in opposition to the petition. Comments seeking the imposition of conditions on any approval of the exemption were filed by: the Kansas City Power and Light Company (KCPL); and Mr. James D. Fenske, Ms. Dorothy J. Reed, and Mr. Ronald D. Nuse, three employees of the Missouri & Northern Arkansas Railroad Company, Inc. (collectively, the MNA employees).⁵ We are granting the exemption without the requested conditions.⁶

BACKGROUND

RailAmerica controls 12 Class III rail carriers in the United States operating in the States of California, Delaware, Illinois, Indiana, Iowa, Michigan, Minnesota, Pennsylvania, Tennessee, Texas, and Washington. The most pertinent RailAmerica rail subsidiaries are: the Huron & Eastern Railway Company, Inc. (HERC) and Saginaw Valley Railroad Company, Inc. (SVRC), which operate in the State of Michigan and connect at Vassar and Denmark Junction, and have the future potential to interchange traffic with RailTex carrier Mid-Michigan Railroad, Inc. (MMRR) in Saginaw, MI; and the Toledo, Peoria & Western Railway Corporation (TP&W), which operates in the States of Indiana, Illinois, and Iowa, and indirectly connects in Kokomo, IN, with RailTex carrier Central Railroad Company of Indianapolis (CERA), which operates a rail line of the Winamac Southern Railroad Company (WSRY) between Kokomo and Logansport, IN, as an agent of WSRY.

RailTex controls 17 Class III railroads in the United States operating in the States of Alabama, Arkansas, California, Connecticut, Georgia, Kansas, Indiana, Massachusetts, Michigan, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South

⁵ The three MNA employees ask the Board to impose the employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), on any approval or exemption of the transaction. They ask that labor protection be imposed for the benefit of all affected employees, regardless of union status.

⁶ On December 1, 1999, the Commonwealth of Virginia, Department of Rail and Public Transportation (Virginia), filed comments asking the Board to protect the Commonwealth's contingent interest in three RailTex railroads operating in Virginia. By letter filed December 15, 1999, Virginia indicates that, because petitioners have addressed and satisfied its concerns, it withdraws its prior request to impose a condition.

Carolina, Texas, Vermont, and Virginia. The most pertinent RailTex subsidiaries are: CERA, which serves as an agent for WSRV and indirectly connects with RailAmerica carrier TP&W in Kokomo, IN; CERA and Central Railroad Company of Indiana (CIND), which connect and interchange with each other in the State of Indiana; CIND and Indiana & Ohio Railway Company (IORY), which connect and interchange with each other in the States of Indiana and Ohio; IORY and Indiana & Ohio Central Railroad, Inc. (IOCR), which connect and interchange with each other in the State of Ohio; and MMRR, which operates a rail line to Paines, MI, about 7 miles from Saginaw and has entered into an agreement to acquire 2 miles of CSXT track in Paines and to obtain trackage rights from Central Michigan Railway Company to access CSXT's Potter Street Yard in Saginaw, which would allow MMRR, with CSXT's acquiescence, to interchange traffic with two RailAmerica carriers, HERC and SVRC.

We note that the 12 RailAmerica railroads and 17 RailTex railroads involved in this transaction are all Class III railroads. Together, they operate in 26 States, employ about 1,000 workers, and in 1998 generated about \$200 million in revenue. Petitioners state that RailAmerica will pay \$205 million in cash and stock for RailTex's stock⁷ and will assume \$123 million of RailTex's long term debt. RailAmerica intends to issue new debt to finance the cash purchase price of RailTex, and states that this will be accomplished as part of an overall refinancing of \$342 million of RailAmerica's and RailTex's debt. The debt of the combined companies is expected to increase by \$138,375,000. Petitioners state that RailAmerica will be able to repay the debt incurred by the acquisition through the cash flow of the combined company and the projected \$10 million in annual cost savings.

Petitioners maintain that, by combining RailAmerica and RailTex, a number of duplicative activities at the holding company level, valued at about \$6 million per year, can be eliminated and another \$4.1 million in annual savings will occur at the railroad level, and that the proposed transaction will thus generate about \$10 million per year in public benefits. According to petitioners, these annual railroad savings will come from: (1) reducing annual locomotive lease costs by \$1.1 million and annual maintenance and operating costs by \$300,000; (2) abolishing management and other jobs for \$1.68 million in annual savings; (3) more efficient car management leading to annual savings of \$558,000; and (4) savings from Canadian operations of \$469,000 per year. Petitioners have not projected any benefits resulting from increased revenues, including revenue transfers, which are generally considered private benefits. Petitioners state that, because the transaction involves only Class III carriers, the transaction does not require the filing of a Safety Integration Plan, an Environmental Assessment, or a Historic Report.

Petitioners indicate that the proposed transaction will result in only minimal operating changes; the train schedule, yard work, and other operating changes that occur in larger railroad

⁷ Petitioners state that, based on 10,250,000 shares of RailTex and a \$9.75 per share valuation for RailAmerica stock at the time of consummation, RailAmerica will pay \$138,375,000 in cash and \$66,625,000 in RailAmerica stock for all of RailTex's stock.

consolidations will not occur. Petitioners also state that the acquisition of RailTex by RailAmerica will not result in a reduction in the number of railroad operating employees and that no unionized employees will be affected by the proposed transaction. Petitioners state that they have no intention of avoiding or abrogating collective bargaining agreements (CBAs) and that, in conformity with the minimal operating changes proposed, petitioners do not seek and will not use the preemption provision of 49 U.S.C. 11321(a) to revise any of their CBAs with employees. Petitioners waive the use of the so-called “cram down” provision⁸ and ask the Board specifically to find that use of the “cram down” provision with regard to CBAs is not necessary to implement this transaction.

DISCUSSION AND CONCLUSIONS

Exemption. Under 49 U.S.C. 11323(a)(5), the acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires the approval of the Board. Because RailAmerica controls Class III rail carriers and is seeking to acquire control of RailTex, which also controls Class III rail carriers, the proposed transaction is within the jurisdiction of the Board.⁹ Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 11323-25 here is warranted under the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. By reducing the administrative expense of the application process, an exemption will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)] and reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)]. By enabling RailAmerica to realize estimated cost savings of \$10 million a year, an exemption will promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues [49 U.S.C. 10101(3)], ensure that a sound rail transportation system will continue to meet the needs of the shipping public [49 U.S.C. 10101(4)], foster sound economic conditions in transportation and ensure effective coordination among carriers [49 U.S.C. 10101(5)],

⁸ Pursuant to section 11321(a), a transaction approved or exempted by the Board under the provisions of 49 U.S.C. 11323-25 is exempt from the antitrust laws and from all other law as necessary to permit the resulting entity to carry out the transaction.

⁹ If the acquisition of control does not involve a Class I railroad and is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in the corporate family, the transaction is exempt as a class. See 49 CFR 1180.2(d)(2). Petitioners state that, given the indirect connection between two of the involved carriers and the possible future connection between two other carriers, the class exemption at 49 CFR 1180.2(d)(2) may not apply to their proposal. Accordingly, petitioners have filed a petition for exemption rather than a notice of exemption.

and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

RailAmerica and RailTex have demonstrated that the proposed control of RailTex and its 17 rail carrier subsidiaries by RailAmerica will not result in any competitive harm. The 17 RailTex carriers to be acquired by RailAmerica do not compete directly or indirectly with any of the 12 current RailAmerica carriers. The proposed transaction essentially involves the combination of two holding companies whose transportation subsidiaries will continue to operate in the manner they have operated prior to the acquisition. Because rail operations and service to shippers will not substantially change, and petitioners' customers uniformly support the transaction, we find that the transaction will not result in any abuse of market power. Accordingly, regulation is not necessary to protect shippers from an abuse of market power.¹⁰

Interchange/Connection Possibilities. RailAmerica's rail carrier subsidiaries do not connect with any of the RailTex rail carrier subsidiaries with the exception of an indirect connection between the TP&W and CERA via the WSRV line, which CERA operates as an agent for WSRV between Kokomo and Logansport, IN. RailAmerica also states that MMRR may interchange traffic with HERC and SVRC in or near Saginaw, MI, in the future. Because these railroad affiliates do not compete for the same traffic, neither of these situations has anticompetitive implications. Moreover, any prospective connection between them would be end-to-end and not involve common facilities where preferential or discriminatory conduct could take place. In addition, no parties have appeared in this record to assert harm of any kind. We therefore conclude that the transaction would not have an adverse effect on competition.

Kansas City Power & Light. KCPL does not oppose the proposed transaction. KCPL, however, asks the Board to impose a 3-year oversight condition to evaluate petitioners' progress in combating paper barriers.¹¹ According to KCPL, the acquisition of RailTex by RailAmerica will

¹⁰ Because we have found that regulation is not needed to protect shippers from the abuse of market power, we need not decide whether the transaction is limited in scope. We note, however, that 24 of the 29 rail carriers serve geographic markets different from one another. Of the other five rail carriers, two are RailTex carriers (CERA and MMRR), which are located in proximity to three RailAmerica carriers (TP&W, HERC, and SVRC). But, as discussed further below and in Appendix B (attached), these carriers do not compete.

¹¹ Paper barriers are clauses in contracts for the sale or lease of rail lines to shortline carriers by which Class I carriers selling or leasing track segments to smaller railroads seek to ensure that the traffic originated or terminated by shortline carriers on the segments (sold or leased) continues to flow over the lines of the seller to the maximum extent possible. Burlington Northern, Inc. & Burlington Northern R.R.—Control & Merger—Santa Fe Pacific Corp. & Atchison, Topeka & Santa Fe Ry., Finance Docket No. 32549 (ICC served Aug. 23, 1995), slip op. at 17, 94. The

(continued...)

cause competitive harm by reducing buyer competition for the rail lines offered for sale by larger carriers. KCPL also contends that the relevant market for line sales is the shortline community, not the rail industry as a whole, and that RailAmerica and RailTex are dominant parties that dwarf the rest of the market.

KCPL does not seek to remedy any competitive harm stemming from the proposed transaction. KCPL seeks instead to use the Board's oversight process as a means of altering preexisting conditions, i.e., the removal of so-called paper barriers negotiated between consenting sellers and buyers. KCPL also seeks to circumvent the process established in the Railroad Industry Agreement,¹² dated September 10, 1998, between the Class I carriers and the Class II and III carriers. We believe that the condition requested by KCPL would single RailAmerica out for disparate treatment vis-a-vis the rest of the shortline industry. In addressing this same issue as recently as May 1999, we stated that there must be a nexus between the relief sought and the consolidation under our review and that "in view of the ongoing negotiations in Review of Rail Access, we will not undo or undermine these private contractual arrangements between rail carriers." Canadian National Railway Company, et al.—Control—Illinois Central Corporation, et al., STB Finance Docket No. 33556 (STB served May 25, 1999) (CN/IC), Decision No. 37, slip op. at 38.

Based on the past experience of petitioners, the combined company will not have the power to force the price of shortlines lower. Petitioners state that in the bidding process there are normally up to 30 bidders for each property. The combination of RailAmerica and RailTex will at most remove one of those bidders. We do not believe that RailAmerica will be in the position to dictate the bids of its competitors nor the properties, if any, that the Class I railroads choose to make available for purchase or lease.

Labor. The MNA employees claim that they are entitled to employee protection under former 49 U.S.C. 11343, et seq. Sections 11343-47, however, were amended by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, and replaced with sections 11323-26, which changed the requirements for employee protective arrangements in transactions involving only Class III rail carriers. Under former section 11347, all employees were entitled to employee protection in transactions approved under former sections 11344 and 11345. That has changed under the ICC Termination Act. Section 11326(c) now provides that "[w]hen approval is sought under sections 11324 and 11325 for a transaction involving only Class III rail carriers, this section

¹¹(...continued)

largest railroads are categorized as Class I railroads, which must generate more than \$250 million annually in inflation-adjusted 1991 revenues for 3 consecutive years to be so categorized.

¹² This industrywide agreement was entered into under our urging in Review of Rail Access and Competition Issues, STB Ex Parte No. 575 (STB served Apr. 17, 1998 and Mar. 2, 1999) (Review of Rail Access).

shall not apply.” RailAmerica and RailTex control only Class III rail carriers. Therefore, the employee protective conditions otherwise provided for in section 11326 do not apply to this transaction. See StatesRail, Inc.—Acquisition of Control Exemption—Kyle Railways Inc., STB Finance Docket No. 33340 (STB served Apr. 17, 1997), slip op. at 2, “[s]ection 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Because these transactions involve only Class III rail carriers, the Board, under the statute, may not impose labor protective conditions.” See also Genesee & Wyoming, Inc.—Continuance in Control Exemption—Illinois & Midland Railroad, Inc., STB Finance Docket No. 32863 (STB served Oct. 1, 1997), aff’d sub nom. International Brotherhood of Locomotive Engineers, American Train Dispatchers Department v. Surface Transportation Board and United States of America, D.C. Cir. No. 97-1708 (Sept. 14, 1998).

Although we may not impose labor protective conditions in our approval of the exemption, we will hold petitioners to their representations that they will not attempt to abrogate CBAs. In cases where the override of CBAs has been an issue, we have normally deferred to an arbitrator to make findings on the necessity for modifications of CBAs in the first instance. Given the nature of this particular transaction, however, we find that there is no need for the override of any CBAs for the implementation of this transaction. This is a finding with which petitioners have indicated they do not disagree.

Environmental Matters. The control of one railroad holding company that controls only Class III railroads by another holding company that controls only Class III railroads is not the type of transaction that requires the filing of a Safety Integration Plan. Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control, STB Ex Parte No. 574 (STB served Dec. 24, 1998) at 16-17. See proposed rules 49 CFR 244.1(a)(4) and 49 CFR 1106.2 and 1106.3. Thus, none will be required here.

Petitioners state that there will be no operational changes that exceed the thresholds of 49 CFR 1105.7(e)(4) or (5) and the transaction will not result in an action that requires environmental documentation, such as an abandonment or construction of a rail line. This control transaction, therefore, is exempt from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) because it will not result in any significant change in carrier operations. Similarly, the transaction is exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) because it will not substantially change the level of maintenance of railroad properties.

Service and Effective Date. In addition to an expedited procedural schedule, petitioners have asked us to make our decision approving the exemption effective on January 14, 2000, the same day a decision on the merits is due. Normally, our decision granting an exemption petition becomes effective 30 days after the decision is served. Petitioners request the earlier effective date to minimize the period of uncertainty for employees and to permit petitioners and their customers to

realize the projected benefits of the transaction as soon as possible. We will grant petitioners' request. Although we are issuing this decision prior to January 14, it will be effective on that day.

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the acquisition by RailAmerica of direct control of RailTex and indirect control of RailTex's 17 domestic Class III rail carriers.
2. Notice of this decision will be published in the Federal Register on January 13, 2000.
3. The exemption is effective on January 14, 2000.
4. Petitions to reopen must be filed by February 2, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes and Commissioner Clyburn.

Vernon A. Williams
Secretary

APPENDIX A

RailAmerica controls 12 Class III rail carriers in the United States. Petitioners describe RailAmerica's rail subsidiaries as follows: (1) the Cascade and Columbia River Railroad Company operates 137 miles of rail line in the State of Washington; (2) Dakota Rail, Inc., operates 43.66 miles of rail line in the State of Minnesota; (3) Delaware Valley Railway Company, Inc., formerly operated over approximately 50 miles of rail line in the States of Delaware and Pennsylvania; (4) The Huron & Eastern Railway Company, Inc. (HERC), operates approximately 171 miles of rail line in the State of Michigan; (5) the Minnesota Northern Railroad, Inc., operates approximately 241 miles of rail line in Northwestern Minnesota; (6) the Otter Tail Valley Railroad Company operates approximately 72 miles of rail line in Western Minnesota; (7) the Saginaw Valley Railroad Company, Inc. (SVRC), operates approximately 65 miles of rail line in the State of Michigan; (8) the St. Croix Valley Railroad Company operates over 44.4 miles of rail line in Eastern Minnesota; (9) the South Central Tennessee Railroad Corporation operates 52 miles of rail line in the State of Tennessee; (10) the Ventura County Railroad Company operates approximately 12.09 miles of rail line in the Port of Hueneme, in the State of California; (11) the West Texas & Lubbock Railroad Company, Inc., operates approximately 104 miles of rail line in the State of Texas; and (12) Toledo, Peoria & Western Railway Corporation (TP&W) operates approximately 369 miles of rail line in the States of Indiana, Illinois, and Iowa.

RailTex controls 17 Class III rail carriers in the United States. Petitioners describe RailTex's rail subsidiaries as follows: (1) the Austin & Northwestern Railroad Company, Inc. (AUNW) owns a 107-mile rail line in the States of Texas and New Mexico, which is operated by AUNW's division, the Texas New Mexico Railroad; (2) the Central Oregon & Pacific Railroad, Inc. operates over approximately 449 miles of rail line in the States of Oregon and California; (3) the Central Railroad Company of Indiana operates approximately 157 miles of rail line in the States of Indiana and Ohio; (4) the Central Railroad Company of Indianapolis (CERA) operates approximately 45.6 miles of rail line in the State of Indiana, and operates as agent for, and in the name of, Winamac Southern Railroad Company (WSRY) over approximately 44 miles of rail line in the State of Indiana; (5) the Connecticut Southern Railroad, Inc., operates approximately 78 miles of rail line in the States of Connecticut and Massachusetts; (6) the Dallas, Garland & Northeastern Railroad, Inc., operates approximately 187 miles of rail line and trackage rights over various railroads in the State of Texas; (7) the Georgia Southwestern Railroad, Inc., operates 357 miles of rail line in the States of Georgia and Alabama; (8) the Indiana & Ohio Central Railroad, Inc., operates approximately 154.6 miles of rail line in the State of Ohio; (9) the Indiana & Ohio Railway Company operates approximately 471.1 miles of rail line in the States of Michigan, Ohio and Indiana; (10) the Indiana Southern Railroad, Inc., operates 176 miles of rail line in the State of Indiana; (11) the Mid-Michigan Railroad, Inc. (MMRR), and its three subsidiaries (the Grand Rapids Eastern Railroad, the Michigan Shore Railroad, and the Texas Northeastern Railroad), operate approximately 217 miles of rail line in the States of Michigan and Texas; (12) the Missouri & Northern Arkansas Railroad Company, Inc., operates approximately 530 miles of rail line in the States of Missouri, Kansas and Arkansas; (13) the New England Central Railroad, Inc., operates approximately 343 miles of rail line in the States of Vermont, New Hampshire, Massachusetts, and

Connecticut; (14) the North Carolina & Virginia Railroad Company, Inc., and its two divisions (the Chesapeake and Albemarle Railroad, and the Virginia Southern Railroad), operate approximately 210 miles of rail line in the States of Virginia and North Carolina; (15) the Pittsburgh Industrial Railroad, Inc., operates 42 miles of rail line in the State of Pennsylvania; (16) the San Diego & Imperial Valley Railroad Company, Inc., operates approximately 153 miles of rail line in Mexico and the State of California; and (17) the South Carolina Central Railroad Company, Inc., and its division (the Carolina Piedmont Railroad), operate approximately 95 miles of rail line in the State of South Carolina.

APPENDIX B

CERA/TP&W

CERA, a RailTex subsidiary, is a local carrier operating over approximately 45.6 miles of rail line in northern Indiana. In 1998, CERA handled approximately 6,300 carloads and during the first 10 months of 1999 it handled about 9,700 carloads. Approximately 50% of the 1999 carloads consisted of haulage traffic for NS between Kokomo and Marion. Petitioners state that the NS haulage movements are only temporary reroutings caused by NS's recent integration of Conrail. Approximately 30% of CERA's traffic base consists of grain and fertilizer and 16% consists of sand and soda ash. The grain traffic mainly originates at four locations on CERA and is interchanged with NS at Kokomo. Petitioners state that the shippers determine the routings for this traffic and that, because of CERA's short haul, its traffic is highly truck competitive to nearby NS stations. CERA's sand traffic originates on CSXT origins in Illinois and is interchanged to CERA by NS in Marion. The soda ash traffic originates in Wyoming and is also interchanged to CERA by NS in Marion. The sand and soda ash traffic terminates in Marion and CERA's sole participation in this traffic consists of switching operations at Marion.

CERA connects with Winamac Southern Railroad Company (WSRY) at Kokomo and WSRY, in turn, connects with RailAmerica's TP&W and NS at Logansport. TP&W operates a 283-mile rail line between Logansport and Lomax, IL. In 1998, TP&W handled about 42,000 carloads consisting principally of grain, intermodal, coal, fertilizer, chemical and general merchandise shipments.

WSRY is currently operated by CERA as agent for WSRY. Pursuant to the agreement between CERA and WSRY, CERA performs rail freight service over the WSRY line in the name of WSRY and the freight charges are billed and collected by CERA in the name of WSRY and forwarded to WSRY. CERA receives a monthly fee and is reimbursed for certain costs. CERA and WSRY have also entered into two haulage agreements. Pursuant to these agreements, CERA provides haulage service for WSRY between Marion and Kokomo and WSRY provides haulage service for CERA between Kokomo and Logansport.

During the first 10 months of 1999, CERA handled about 1,500 carloads over the WSRY lines as agent for WSRY. Approximately 51% of the carloads consisted of fertilizer traffic destined to points on the WSRY and interchanged to WSRY by TP&W at Logansport and by NS at Logansport and Kokomo. Approximately 14% of the carloads were handled under the haulage agreements and received by CERA from Conrail at Marion and handled over the WSRY for interchange with TP&W at Logansport. Since the split-up of Conrail, petitioners state that the traffic handled under the haulage agreements has all but disappeared. Approximately 9% of the carloads consisted of grain traffic that was local to WSRY. Approximately 10% of the carloads consisted of shipments of hazardous waste received from TP&W or NS at Logansport and locally switched by WSRY to the consignee in Logansport. Approximately 7% of the carloads consisted of

empty rail cars received from Conrail at Marion and handled over the WSRV for destination on the TP&W in Logansport.

In addition, TP&W and CERA and TP&W and WSRV have separate agreements whereby CERA and WSRV provide haulage operations over their respective lines for TP&W on TP&W-Conrail traffic moving between Logansport and Marion. During the first 10 months of 1999, about 400 carloads of traffic moved pursuant to these agreements. Petitioners state that, since the June 1, 1999 start-up of the Conrail acquisition, traffic moving pursuant to these agreements has declined significantly. According to petitioners, only 43 cars have moved since June 1.

Petitioners state that the common control of CERA and TP&W will have no anticompetitive effects because the two carriers do not compete for the same traffic and they serve different geographic markets. Petitioners indicate that CERA operates a short, isolated rail line with a limited traffic base and that CERA's only direct connections are with NS at Marion and Kokomo and with WSRV at Kokomo. Except for the limited haulage arrangement with NS between Kokomo and Frankfort, CERA is isolated from other RailTex carriers. Petitioners state that 50% of CERA's current traffic base consists of temporary haulage movements for NS between Marion and Frankfort. All of CERA's grain traffic originates on its line and is interchanged with NS. The remainder of its operations consist of switching services in Marion.

Petitioners maintain that, given the localized nature of CERA's operations, TP&W does not compete with any of CERA's operations and that the railroads serve two separate geographic markets and face substantial competition in providing freight service. The connection between CERA and TP&W is the WSRV line, which CERA operates as an agent for WSRV. CERA also has haulage agreements, which provide a paper connection between CERA and TP&W. Petitioners contend that, if these arrangements are deemed to be a direct connection between CERA and TP&W, the connection would be end-to-end. Such end-to-end connections, according to petitioners, generally do not have an adverse effect on competition.

MMRR/HERC/SVRC

MMRR, a RailTex company, operates a 35-mile rail line between Elwell and Paines, MI, and is in the process of purchasing 2 miles of track from CSXT in Paines. MMRR currently interchanges with CSXT in Paines on the track being acquired. MMRR has also negotiated a trackage rights arrangement with Central Michigan Railway (CMGN), which will grant MMRR trackage rights over CMGN's rail line between Paines and CSXT's Potter Street Yard in Saginaw. Once the acquisition of the 2-mile line and the trackage rights over CMGN are consummated, MMRR will interchange traffic with CSXT in the Potter Street Yard. HERC and SVRC, both RailAmerica subsidiaries, have trackage rights over CSXT into the Potter Street Yard.

As part of the overall arrangement, MMRR will have the right to interchange with CMGN in Saginaw. CMGN, in turn, interchanges with the HERC and SVRC in Saginaw. Consequently, MMRR will have an indirect connection with the two RailAmerica carriers in the near future. In

addition, the three carriers may at some future date request permission from CSXT to directly connect and interchange traffic in Saginaw for certain new traffic. A grain shipper has an elevator located on the MMRR and on the HERC. With a direct connection between the two carriers, that shipper would be able to move grain by rail between its two storage facilities. In addition, MMRR has identified potential movements of fertilizer and stone from Lake Huron over the HERC to destinations on the MMRR.

Petitioners contend that a direct interchange between MMRR and HERC and SVRC would have no anticompetitive effects because the connection would be end-to-end. Petitioners state that the three carriers would not be able to serve any common facilities nor would they be able to engage in preferential or discriminatory routing of traffic. Petitioners further assert that the potential connection would be procompetitive because MMRR has identified potential grain, fertilizer and stone traffic that either does not move today or moves by truck.