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SERVICE DATE - SEPTEMBER 17, 1999

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33777]

RailAmerica, Inc.--Control Exemption--Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation, and Toledo, Peoria & Western Railway Corporation

RailAmerica, Inc. (RailAmerica), a noncarrier holding company, has filed a verified notice of exemption to continue in control of Florida Rail Lines, Inc. (Florida Rail), a noncarrier, and to acquire control of Toledo, Peoria and Western Railroad Corporation (TPW), Marksman Corporation (Marksman), and Toledo, Peoria & Western Railway Corporation (Railway). Florida Rail will acquire 100% of the outstanding stock of TPW. TPW owns 100% of the stock of Marksman,<sup>1</sup> and Marksman owns 100% of the stock of Railway.<sup>2</sup>

The transaction was scheduled to be consummated on or shortly after August 31, 1999.

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<sup>1</sup> See The Toledo, Peoria and Western Railroad Corporation--Continuance in Control Exemption--Marksman Corporation, STB Finance Docket No. 33483 (STB served Oct. 16, 1997).

<sup>2</sup> See Marksman Corporation--Lease and Operation Exemption--J.K. Line, Inc., STB Finance Docket No. 33481 (STB served Oct. 16, 1997).

On July 30, 1999, RailAmerica also filed a motion for protective order under 49 CFR 1104.14 and a protective order was granted.<sup>3</sup>

RailAmerica states that, at the time of its filing of the notice of exemption, it controlled 11 common carrier Class III rail carriers operating in 8 states.<sup>4</sup>

RailAmerica states that: (i) these railroads do not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is 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 sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

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<sup>3</sup> See RailAmerica, Inc.--Control Exemption--Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation, and Toledo, Peoria & Western Railway Corporation, STB Finance Docket No. 33777 (STB served Aug. 5, 1999).

<sup>4</sup> See RailAmerica, Inc.--Continuance in Control Exemption--Ventura County Railroad Company, STB Finance Docket No. 33650 (STB served Sept. 24, 1998).

If the verified 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 will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33777, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on (1) Gary A. Laasko, Esq., RailAmerica, Inc., 5300 Broken Sound Boulevard N.W., Second Floor, Boca Raton, FL 33487, and (2) Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

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Decided: September 10, 1999.

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

Vernon A. Williams  
Secretary