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SERVICE DATE – AUGUST 17, 2012

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FR-4915-01-P

DEPARTMENT OF

TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35660]

GWI Voting Trust and R. Lawrence McCaffery, Voting Trustee—Control Exemption—
RailAmerica, Inc., et al.

GWI Voting Trust (Voting Trust), a noncarrier, created by Genesee & Wyoming Inc. (GWI),¹ a noncarrier holding company, and R. Lawrence McCaffery, a noncarrier individual (Voting Trustee), (collectively, applicants) have filed a verified notice of exemption to acquire control of RailAmerica, Inc. (RailAmerica) and the 41 United States Class III rail carriers that RailAmerica indirectly controls (the RailAmerica Railroads).

GWI has created the Voting Trust so that the common stock of RailAmerica will be placed into an independent voting trust during the review of an application for approval that is pending before the Board in Docket No. FD 35654, Genesee & Wyoming Inc.—Control—RailAmerica, Inc., et al. In that proceeding, GWI is seeking approval of such control.

RailAmerica controls the following Class III rail carriers in the United States:
Alabama & Gulf Coast Railway L.L.C, Arizona & California Railroad Company,

¹ Applicants state that GWI is participating in this proceeding as the settlor.

Bauxite & Northern Railway Company, California Northern Railroad Company, Carolina Piedmont Division, Cascade and Columbia River Railroad Company, Central Oregon & Pacific Railroad, Inc., The Central Railroad Company of Indiana, Central Railroad Company of Indianapolis, Chesapeake & Albemarle Railroad Co., Inc., Chicago, Ft. Wayne & Eastern, Conecuh Valley Railway, Connecticut Southern Railroad, Inc., Dallas, Garland & Northeastern Railroad, Inc., Eastern Alabama Railway, LLC, Grand Rapids Eastern Railroad Inc., Huron & Eastern Railway Company, Inc., Indiana & Ohio Railway Company, Indiana Southern Railroad, LLC., Kiamichi Railroad Company L.L.C., Kyle Railroad Company, Marquette Rail, LLC, The Massena Terminal Railroad Company, Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., Missouri & Northern Arkansas Railroad Company, Inc., New England Central Railroad, Inc., North Carolina & Virginia Railroad Company, LLC, Otter Tail Valley Railroad Company, Inc., Point Comfort & Northern Railway Company, Puget Sound & Pacific Railroad, Rockdale, Sandow & Southern Railroad Company, San Diego & Imperial Valley Railroad Company, Inc., San Joaquin Valley Railroad Co., South Carolina Central Railroad Company, LLC, Texas Northeastern Railroad, Three Notch Railway, LLC, Toledo, Peoria & Western Railway Corporation, Ventura County Railroad Corp., Wellsboro & Corning Railroad, LLC and Wiregrass Central Railway, LLC.

Applicants state that, pursuant to an agreement and plan of merger, Jaguar Acquisition Sub Inc., a wholly owned subsidiary of GWI, will merge with and into RailAmerica, with RailAmerica being the surviving corporation. As a result of the

merger, GWI will obtain direct control of RailAmerica and indirect control of the RailAmerica Railroads. Upon completion of the merger, GWI plans immediately to place the shares of RailAmerica into the Voting Trust that has been established in accordance with the Board's regulations at 49 C.F.R. pt. 1013.² Applicants state that, because they would have temporary voting control of more than one railroad, they are filing this notice of exemption to confirm that, if and when the stock of RailAmerica is placed into the Voting Trust, they will have appropriate authority to control RailAmerica and the RailAmerica Railroads.³ Applicants also note that the Voting Trustee will be entitled to vote all of the stock held by the Voting Trust.

According to applicants, they will not be in control of any railroads prior to the stock being placed in the Voting Trust, and that there will be no substantial change in the management or operation of the RailAmerica Railroads during the time they are in control of them.

The transaction may be consummated on or after September 5, 2012 (30 days

² GWI has submitted a copy of the voting trust agreement to the Board for an informal, nonbinding opinion asking whether the voting trust would effectively insulate GWI from unauthorized acquisition of control of RailAmerica, pending Board review of the control application filed in FD 35654. In a letter dated August 3, 2012, the Director, Office of Proceedings, informed GWI that it is her opinion that the proposed voting trust agreement would effectively insulate GWI from unauthorized control of RailAmerica.

³ Applicants state that, pursuant to the voting trust agreement, the Voting Trust will only hold the shares of RailAmerica until the Board acts on the application. If the application is approved, the shares of RailAmerica will be distributed to GWI. If the application is denied, the shares of RailAmerica (or the controlled railroads) will be sold to buyers approved by the Board in accordance with the terms of the voting trust agreement.

after the notice of exemption was filed).

Applicant states that: (1) the rail lines of the RailAmerica Railroads do not connect with any rail lines in the corporate family of the Voting Trust or the Voting Trustee (they have none); (2) the transaction is not part of a series of anticipated transactions that would connect these rail lines with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 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 §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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 effectiveness of the exemption. Petitions for stay must be filed no later than August 29, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35660, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on David H.

Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC
20036 and Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square,
2005 Market Street, Suite 1000, Philadelphia, PA 19103.

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Decided: August 17, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.