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SEC

SERVICE DATE - AUGUST 5, 1999

SURFACE TRANSPORTATION BOARD

DECISION

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

MOTION FOR PROTECTIVE ORDER

Decided: August 4, 1999

By motion filed July 30, 1999,¹ RailAmerica, Inc. (RailAmerica) seeks a protective order under 49 CFR 1104.14 to maintain confidentiality with respect to a Stock Purchase Agreement that RailAmerica and its wholly owned subsidiary Florida Rail Lines, Inc. (Florida Rail) have entered into with Bank Austria AG, Grand Cayman Branch, CSX Transportation, Inc., Delaware Otsego Corporation, and Charles Brenner to obtain control of the Toledo, Peoria and Western Railroad Corporation (TPW), Marksman Corporation (Marksman), and Toledo, Peoria & Western Railway Corporation (Railway) through the acquisition of all of the common stock of TPW.²

Good cause exists to grant the motion for protective order. According to RailAmerica, the Stock Purchase Agreement contains highly sensitive information that could harm it and its railroad subsidiaries if the terms of the agreement were made public. RailAmerica further states that the agreement contains proprietary commercial information, that if disclosed, could be competitively damaging.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, subject to the Protective Order and Undertaking contained in the Appendix.

It is ordered:

1. RailAmerica's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The confidential information of the Stock Purchase Agreement submitted in STB Finance

¹ A proposed protective order and undertaking were included with the motion.

² RailAmerica states that a verified notice of exemption is scheduled to be filed on or about August 11, 1999, wherein RailAmerica will seek to continue in control of Florida Rail and to acquire control of TPW, Marksman and Railway.

Docket No. 33777 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.

3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “confidential information” means the provisions of the Stock Purchase Agreement among RailAmerica, its wholly owned subsidiary Florida Rail Lines, Inc., Bank Austria AG, Grand Cayman Branch, CSX Transportation, Inc., Delaware Otsego Corporation, Charles Brenner, and the Toledo, Peoria and Western Railroad Corporation, to be filed on or about August 11, 1999, in STB Finance Docket No. 33777.
2. The confidential information shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.
3. The confidential information shall not be disclosed in any way or to any person without the written consent of RailAmerica or an order of the Board, except: to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order agrees to be bound by its terms by signing the attached Undertaking prior to receiving access to this information.
4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.
5. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.
6. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.
7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order governing the filing of confidential information by RailAmerica in STB Finance Docket No. 33777 and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or

information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 33777 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that RailAmerica shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated:

Name

Position/Affiliation: