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SEC

SERVICE DATE - DECEMBER 5, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34130

RAILAMERICA, INC. AND WEST TEXAS AND LUBBOCK RAILROAD COMPANY,
INC.– CONTROL EXEMPTION–KIAMICHI HOLDINGS, INC.
AND KIAMICHI RAILROAD L.L.C.

MOTION FOR PROTECTIVE ORDER

Decided: December 3, 2001

By motion filed November 15, 2001,¹ RailAmerica, Inc. (RailAmerica) seeks a protective order under 49 CFR 1104.14 for the Stock Purchase Agreement among RailAmerica, its wholly owned subsidiary West Texas and Lubbock Railroad Company, Inc. (West Texas), New StatesRail Holdings, Inc. (New StatesRail), StatesRail L.L.C. (StatesRail), and all of the holders of the equity interests in StatesRail, for West Texas to acquire all of the outstanding shares of Kiamichi Holdings, Inc. (Holdings) from StatesRail.² Kiamichi Railroad L.L.C (Kiamichi) will be a wholly owned subsidiary of Holdings at the time of the acquisition of the shares. RailAmerica and West Texas plan to file a petition for exemption under 49 CFR 1121 for the acquisition of control of Holdings and Kiamichi as described in the Stock Purchase Agreement. The Stock Purchase Agreement is to be filed under seal. RailAmerica states that the Stock Purchase Agreement contains highly sensitive information that could harm RailAmerica and its subsidiaries if it became public and contains proprietary commercial information that if disclosed could be competitively damaging.

Good cause exists to grant the motion for protective order. The unrestricted disclosure of confidential, proprietary, or commercially sensitive material could cause serious competitive injury. Issuance of the requested protective order will ensure that the confidential information in the Stock Purchase Agreement will be used only in connection with this proceeding and not for

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

² On November 15, 2001, RailAmerica filed motions for protective orders in two related proceedings, RailAmerica, Inc. and West Texas and Lubbock Railroad Company, Inc.–Control Exemption–New StatesRail Holdings, Inc. and Alabama & Gulf Coast Railway L.L.C., STB Finance Docket No. 34128, and RailAmerica, Inc.–Control Exemption–StatesRail Acquisition Corp. and StatesRail, Inc., STB Finance Docket No. 34129.

any other business or commercial purpose. The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted.

It is ordered:

1. RailAmerica's motion for protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.

2. The Stock Purchase Agreement, submitted in STB Finance Docket No. 34130, 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, Inc. (RailAmerica), its wholly owned railroad subsidiary West Texas and Lubbock Railroad Company, Inc. (West Texas), StatesRail L.L.C. (StatesRail), and all of the holders of the equity interests in StatesRail, for West Texas to acquire all of the outstanding shares of Kiamichi Holdings, Inc., from StatesRail, filed in STB Finance Docket No. 34130.

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 and 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. 34130, 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. 34130 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 outside counsel or a consultant, who is not also bound by the terms of this order, and who has not 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: _____

Signature

Position

Affiliation