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SERVICE DATE - MAY 8, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34128

RAILAMERICA, INC.–CONTROL EXEMPTION–NEW STATESRAIL HOLDINGS, INC.  
AND ALABAMA & GULF COAST RAILWAY L.L.C.

STB Finance Docket No. 34129<sup>1</sup>

RAILAMERICA, INC.–CONTROL EXEMPTION– STATESRAIL ACQUISITION CORP. AND  
STATESRAIL, INC.

Decided: May 3, 2002

On December 7, 2001, in STB Docket No. 34128, RailAmerica, Inc. (RailAmerica), a noncarrier, filed a verified notice of exemption to acquire from StatesRail, L.L.C. all of the outstanding stock of New StatesRail Holdings, Inc. (New StatesRail), and, through New StatesRail, to acquire control of its wholly owned subsidiary, the Alabama & Gulf Coast Railway, L.L.C., a Class III carrier. Notice of the exemption was served and published in the Federal Register on December 28, 2001 (66 FR 67363).

Also on December 7, 2001, in STB Finance Docket No. 34129, RailAmerica filed a verified notice of exemption to continue in control of StatesRail Acquisition Corp. (Acquisition), and to obtain control of StatesRail, Inc. (StatesRail), a holding company that controls Arizona Eastern Railway Company, Eastern Alabama Railway, Kyle Railroad Company, San Joaquin Valley Railroad Company, and SWKR Operating Co., all Class III railroads, upon the acquisition of all of the stock of StatesRail by Acquisition. Notice of the exemption was served and published in the Federal Register on December 28, 2001 (66 FR 67363).

Based on the information available to it at the time, the Board determined that RailAmerica would control more than one Class II carrier at the time it acquired control of the Class III carriers in

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<sup>1</sup> These proceedings are not consolidated; they are being considered together for administrative purposes.

these two proceedings.<sup>2</sup> Accordingly, in the December 28 notices, the Board, imposed the New York Dock Ry.–Control–Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock), labor conditions for the protection of affected employees, as required for transactions that come under 49 U.S.C. 11326(a).

On March 1, 2002, RailAmerica filed a petition to reopen the decisions in these two proceedings and requested the Board to impose the labor protective conditions set forth in Wisconsin Central Ltd.–Acquisition Exem.–Union Pac. RR, 2 S.T.B. 218 (1997) (Wisconsin Central) in lieu of the conditions imposed in the December 28 notices, consistent with statutory requirements for transactions that come under 49 U.S.C. 11326(b).

In the petition to reopen, RailAmerica explains that, although it filed a notice of exemption to acquire control of ParkSierra on November 29, 2001 (eight days before it filed the notices in the two subject proceedings), it did not consummate the acquisition of that carrier until January 8, 2002 (four days after it consummated the acquisition of the Class III carriers in these proceedings). As such, according to RailAmerica, at the time it acquired control of the Class III carriers here, it controlled only one Class II carrier. For this reason, RailAmerica now asks the Board to substitute the labor protective conditions set forth in Wisconsin Central for the previously imposed New York Dock conditions.

On the basis of the evidence now presented, the Board will reopen these two proceedings and impose Wisconsin Central protection for affected employees as provided by statute, in lieu of the New York Dock conditions. As indicated, it appeared at the time the Board granted the notices of exemption here that RailAmerica would control two or more Class II carriers when it consummated the acquisition of the involved Class III carriers. This would have required labor protection at the level set forth at section 11326(a). However, such was not the case. The record, as supplemented by the petition to reopen, now demonstrates that, at the time RailAmerica gained control of the Class III carriers, it actually controlled only one Class II carrier, meaning that the two subject transactions came under section 11326(b) instead. Under section 11326(b), the appropriate level of labor protection is that set forth in Wisconsin Central. Accordingly, these proceedings will be reopened in order to substitute those conditions for the New York Dock conditions.

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<sup>2</sup> On November 20, 2001, in STB Finance Docket No. 34100, RailAmerica, Inc.–Control Exemption–ParkSierra Acquisition Corp. and ParkSierra Corp., RailAmerica filed a verified notice of exemption to acquire control of Class II railroad ParkSierra Corp. (ParkSierra), and to continue in control of ParkSierra Acquisition Corp. (Acquisition), a noncarrier, upon Acquisition's purchase of ParkSierra's stock. Notice of the exemption was served and published in the Federal Register on December 20, 2001 (66 FR 65776). At that time RailAmerica already controlled Class II carrier Central Oregon & Pacific Railroad, Inc.

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

It is ordered:

1. The above proceedings are reopened.
2. Upon reconsideration, the New York Dock labor protective conditions imposed in these proceedings in decisions served December 28, 2001 are removed, and the Wisconsin Central labor protective conditions are imposed in their place.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams  
Secretary