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SERVICE DATE - NOVEMBER 16, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33813

RAILAMERICA, INC.—CONTROL EXEMPTION—RAILTEX, INC.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of petition for exemption and request for public comments.

SUMMARY: RailAmerica, Inc., a railroad holding company that controls 12 Class III rail carriers, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for its acquisition of control of RailTex, Inc., a railroad holding company that controls 17 Class III rail carriers. We seek comments on the requested exemption of control of RailTex by RailAmerica.

DATES: Comments are due by December 6, 1999. Petitioners' reply is due by December 15, 1999. Decision on the merits of the proposed exemption is due to be issued on January 14, 2000.

ADDRESSES: Send comments (an original and 25 copies) referring to STB Finance Docket No. 33813 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to RailAmerica's representative: Louis E. Gitomer, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1613. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: On November 8, 1999, RailAmerica, Inc. (RailAmerica), and RailTex, Inc. (RailTex), filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for RailAmerica's acquisition of direct control of RailTex and indirect control of RailTex's 17 rail carrier subsidiaries in common with the rail carriers RailAmerica already controls.¹ Under 49 U.S.C. 11323(a)(5), the acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires the approval of the Board. Because RailAmerica controls Class III rail carriers and is

¹ Petitioners designated their filing as RAAM-2, which includes the Petition for Exemption (Volume 1), Public Exhibits (Volume 2), Confidential Exhibits (Volume 2A), and Highly Confidential Exhibits (Volume 3).

seeking to acquire control of RailTex, which also controls Class III rail carriers, the proposed transaction is within the jurisdiction of the Board.² To minimize the period of uncertainty for employees and to permit the petitioners and their customers to realize the projected benefits of the transaction as soon as possible, petitioners have asked the Board to establish an expedited schedule under which comments would be due by December 6, 1999, petitioners' reply would be due by December 15, 1999, and a decision by the Board on the merits of the proposed exemption would be due on January 14, 2000.

RailAmerica controls 12 Class III rail carriers in the United States. Petitioners describe RailAmerica's rail subsidiaries as follows: (1) the Cascade and Columbia River Railroad Company operates 137 miles of rail line in the State of Washington; (2) Dakota Rail, Inc., operates 43.66 miles of rail line in the State of Minnesota; (3) Delaware Valley Railway Company, Inc., formerly operated over approximately 50 miles of rail line in the States of Delaware and Pennsylvania; (4) The Huron & Eastern Railway Company, Inc. (Huron & Eastern), operates approximately 171 miles of rail line in the State of Michigan; (5) the Minnesota Northern Railroad, Inc., operates approximately 241 miles of rail line in Northwestern Minnesota; (6) the Otter Tail Valley Railroad Company operates approximately 72 miles of rail line in Western Minnesota; (7) the Saginaw Valley Railroad Company, Inc. (Saginaw Valley), operates approximately 65 miles of rail line in the State of Michigan; (8) the St. Croix Valley Railroad Company operates over 44.4 miles of rail line in Eastern Minnesota; (9) the South Central Tennessee Railroad Corporation operates 52 miles of rail line in the State of Tennessee; (10) the Ventura County Railroad Company operates approximately 12.09 miles of rail line in the Port of Hueneme, in the State of California; (11) the West Texas & Lubbock Railroad Company, Inc., operates approximately 104 miles of rail line in the State of Texas; and (12) Toledo, Peoria & Western Railway Corporation (TP&W) operates approximately 369 miles of rail line in the States of Indiana, Illinois, and Iowa.

RailTex controls 17 Class III rail carriers in the United States. Petitioners describe RailTex's rail subsidiaries as follows: (1) the Austin & Northwestern Railroad Company, Inc. (AUNW), owns a 107-mile rail line in the States of Texas and New Mexico, which is operated by AUNW's division, the Texas New Mexico Railroad; (2) the Central Oregon & Pacific Railroad, Inc., operates over approximately 449 miles of rail line in the States of Oregon and California; (3) the Central Railroad Company of Indiana operates approximately 157 miles of rail line in the States of Indiana and Ohio; (4) the Central Railroad Company of Indianapolis (CERA) operates approximately 45.6 miles of rail line in the State of Indiana, and operates as agent for, and in the

² If, however, the acquisition of control does not involve a Class I railroad and is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in the corporate family, the transaction is exempt as a class. See 49 CFR 1180.2(d)(2). Petitioners state that, given the indirect connection between two of the involved carriers and the possible future connection between two other carriers, discussed in further detail below, the class exemption at 49 CFR 1180.2(d)(2) may not apply to their proposal. Accordingly, petitioners have filed a petition for exemption rather than a notice of exemption.

name of, Winamac Southern Railroad Company (WSRY) over approximately 44 miles of rail line in the State of Indiana; (5) the Connecticut Southern Railroad, Inc., operates approximately 78 miles of rail line in the States of Connecticut and Massachusetts; (6) the Dallas, Garland & Northeastern Railroad, Inc., operates approximately 187 miles of rail line and trackage rights over various railroads in the State of Texas; (7) the Georgia Southwestern Railroad, Inc., operates 357 miles of rail line in the States of Georgia and Alabama; (8) the Indiana & Ohio Central Railroad, Inc., operates approximately 154.6 miles of rail line in the State of Ohio; (9) the Indiana & Ohio Railway Company operates approximately 471.1 miles of rail line in the States of Michigan, Ohio and Indiana; (10) the Indiana Southern Railroad, Inc., operates 176 miles of rail line in the State of Indiana; (11) the Mid-Michigan Railroad, Inc. (MMRR), and its three subsidiaries (the Grand Rapids Eastern Railroad, the Michigan Shore Railroad, and the Texas Northeastern Railroad), operate approximately 217 miles of rail line in the States of Michigan and Texas; (12) the Missouri & Northern Arkansas Railroad Company, Inc., operates approximately 530 miles of rail line in the States of Missouri, Kansas and Arkansas; (13) the New England Central Railroad, Inc., operates approximately 343 miles of rail line in the States of Vermont, New Hampshire, Massachusetts, and Connecticut; (14) the North Carolina & Virginia Railroad Company, Inc., and its two divisions (the Chesapeake and Albemarle Railroad, and the Virginia Southern Railroad), operate approximately 210 miles of rail line in the States of Virginia and North Carolina; (15) the Pittsburgh Industrial Railroad, Inc., operates 42 miles of rail line in the State of Pennsylvania; (16) the San Diego & Imperial Valley Railroad Company, Inc., operates approximately 153 miles of rail line in Mexico and the State of California; and (17) the South Carolina Central Railroad Company, Inc., and its division (the Carolina Piedmont Railroad), operate approximately 95 miles of rail line in the State of South Carolina.

RailAmerica states that its rail carrier subsidiaries do not connect with any of the RailTex rail carrier subsidiaries except for an indirect connection between the TP&W and CERA via the WSRV line, which CERA operates as an agent for WSRV between Kokomo and Logansport, IN. RailAmerica also states that MMRR may interchange traffic with Huron & Eastern and Saginaw Valley in or near Saginaw, MI, in the future. RailAmerica estimates that the transaction will generate approximately \$10 million in annual cost savings. RailAmerica estimates that 21 jobs will be abolished, 10 at RailTex's headquarters in San Antonio, TX, and 11 on various lines. Petitioners state that no unionized employee will be affected by the proposed transaction and that they will not abrogate any collective bargaining agreements.

The Board invites comments on the proposed acquisition. Because the procedural schedule proposed by the petitioners appears to be adequate for full and fair development of the record in this proceeding, the proposed schedule will be adopted. Comments may address such issues as the rail transportation policy of 49 U.S.C. 10101, the potential for market abuse, whether as a result of the proposed transaction there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and whether any anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

STB Finance Docket No. 33813

Comments (an original and 25 copies) must be in writing, and are due by December 6, 1999. Additional information may be obtained from RailAmerica's representative. In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all pleadings and attachments (e.g., textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence) and clearly label pleadings and attachments and corresponding computer diskettes with an identification acronym and pleading number. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1-2-3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.³ The computer data contained on the computer diskettes submitted will be subject to the protective order⁴ granted by decision served on November 3, 1999, in this proceeding.

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

Decided: November 16, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams
Secretary

³ Parties may individually seek a waiver from the disk-CD requirement.

⁴ Petitioners filed a motion for protective order (designated RAAM-1) on October 28, 1999.