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August 15, 2012

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By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
August 15, 2012
Part of
Public Record

Re: Finance Docket No. 35654, *Genesee & Wyoming Inc. -- Control -- Rail America, Inc., et al*

Dear Ms. Brown:

Hereby transmitted is a Joint Reply In Opposition To Motion To Establish A Procedural Schedule for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Replicants

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BEFORE THE
SURFACE TRANSPORTATION BOARD

GENESEE & WYOMING INC. --)
CONTROL -- RAIL AMERICA, INC., *et*) FINANCE DOCKET
al.) NO. 35654

**JOINT REPLY IN OPPOSITION
TO MOTION TO ESTABLISH
A PROCEDURAL SCHEDULE**

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US RAIL CORPORATION
7846 Central
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DATE FILED: August 16, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

GENESEE & WYOMING INC. --)
CONTROL -- RAIL AMERICA, INC., *et*) FINANCE DOCKET
al.) NO. 35654

**JOINT REPLY IN OPPOSITION
TO MOTION TO ESTABLISH
A PROCEDURAL SCHEDULE**

Pursuant to 49 C.F.R. § 1104.13(a), WINAMAC SOUTHERN RAILWAY COMPANY (WSRY) and US RAIL CORPORATION (URC) hereby jointly reply in opposition to Motion to Establish a Procedural Schedule (Motion) filed by Genesee & Wyoming, Inc. (GWI) and Rail America, Inc. (RAI) on August 6, 2012.^{1/}

WSRY-URC agree with and endorse Replies in opposition to the Motion filed by Napa Valley Railroad Company and by Yreka Western Railroad Company on August 9, 2012.

With respect to an application for control that is of regional or national transportation significance not involving two Class I rail carriers, the Board must issue a final decision no more than 300 days after the application is filed. 49 U.S.C. § 11325(a), (c)(3). With respect to an application for control that is not of that significance not involving two Class I rail carriers, the Board must issue a final decision no more than 180 days after the application is filed. 49 U.S.C. § 11325(a),(d)(2). GWI-RAI have moved for a procedural schedule under which the Board

^{1/} Replicants will be referred to jointly as WSRY-USR. Applicants will be referred to jointly as GWI-RAI.

would issue a final decision 126 days after the application was filed (Motion at 5). That would be much less than half the time statutorily allowed for significant proceedings, and 30 percent less than the minimal time statutorily allowed for minor proceedings. GWI-RAI have not justified that radically-truncated schedule.

GWI and RAI individually are the two largest conglomerates of local and regional rail carriers in the United States. The proposed control would create a conglomerate of unprecedented size and strength owning or controlling approximately 100 rail carriers responsible for handling nearly one million carloads of traffic per year! The combined conglomerate would be the substantial equivalent of a Class I rail carrier. By any reasonable definition, such a transaction is significant. As such, a procedural schedule for its processing cannot be justified that is less than half of the permissible time allowed for processing significant transactions, let alone a schedule that is 30 percent less than the bare-bones time for processing minor transactions.

The competitive effect of the proposed control is properly measured not from consideration of the extent to which GWI rail carriers and RAI rail carriers connect with each other or overlap, as alleged by GWI-RAI (Motion at 3), but instead from consideration of the significantly increased market power and economic strength that the consolidated GWI-RAI rail carriers will be able to exert on the smaller rail carriers with whom they connect. WSRY and USR are small rail carriers who stand to be adversely affected in that respect. USR leases approximately 60 miles of rail line in central Indiana from WSRY. The WSRY-USR rail lines connect with rail lines of two RAI rail carriers, i.e., Toledo, Peoria, and Western Railway Company (TP&W) at Logansport, IN, and Central Railroad Company of Indianapolis (CERA) at

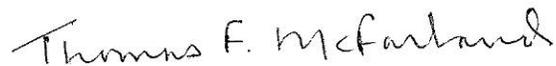
Kokomo, IN. Disputes between WSRY-USR and TP&W and/or CERA arise from time to time. The added market power and economic strength of a combined GWI-RAI will enable TP&W and/or CERA to impose its will in such disputes, to the material detriment of WSRY-USR.

The Board has authority to impose conditions governing control of one carrier by another, including “requiring the granting of trackage rights and access to other facilities.” 49 U.S.C. § 11324(c). WSRY-USR and other small rail carriers facing increased market power and economic strength of GWI-RAI carriers with whom they connect may well seek such conditions to approval of GWI control of RAI. Adequate time should be permitted for small carriers to do so and for the Board to consider and dispose of such requests on a rational basis. The whirlwind procedural schedule sought by GWI-RAI would not provide that adequate time. For that reason, GWI-RAI’s Motion should be denied, and the Board should adopt a procedural schedule providing the maximum time for issuance of a final Board decision on a significant transaction.

Respectfully submitted,

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DATE FILED: August 16, 2012

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2012, I served a copy of the foregoing document, Joint Reply In Opposition To Motion To Establish A Procedural Schedule, by overnight mail on the following:

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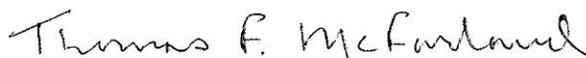
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