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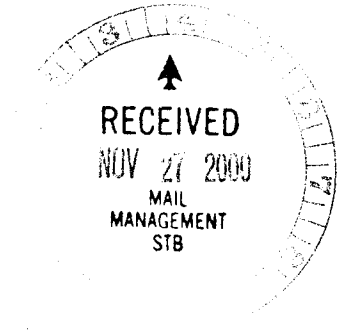
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November 27, 2000

BY HAND

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 634
1925 K Street, NW
Washington, DC 20423-0001



Re: STB Ex Parte No. 634 (Sub-No. 1), *Consolidated Railroad Reporting*

Dear Secretary Williams:

Enclosed for filing in the above-referenced matter are an original and 10 copies of the Comments of RailAmerica, Inc., together with a Word '97 diskette. Kindly date-stamp the extra copy of this letter and the Comments, which our messenger is presenting, and return them to the messenger.

If there are any questions concerning this matter, please call the undersigned at (202) 466-6532.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Louis E. Gitomer".

Louis E. Gitomer
Counsel for RailAmerica, Inc.

Enclosures

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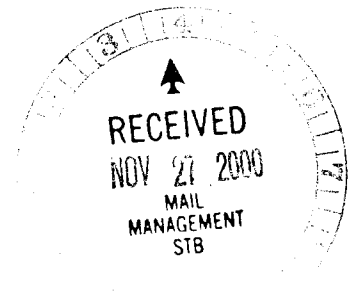
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 634

CONSOLIDATED RAILROAD REPORTING

COMMENTS
OF
RAILAMERICA, INC.



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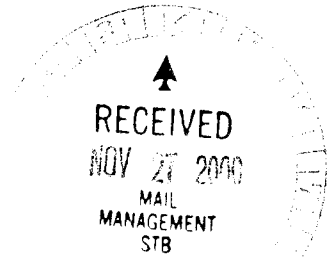
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BEFORE THE
SURFACE TRANSPORTATION BOARD

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CONSOLIDATED RAILROAD REPORTING

COMMENTS
OF
RAILAMERICA, INC.



RailAmerica, Inc. ("RailAmerica") appreciates the opportunity to present its views to the Surface Transportation Board (the "Board") pursuant to the Board's Decision served September 20, 2000, in the above matter. RailAmerica believes that there are compelling reasons for the Board not to require consolidated financial reporting by commonly controlled railroads, particularly non-integrated Class III Carriers.

I. SUMMARY OF REASONS FOR OPPOSITION.

Based on the information contained in the Proposal to Require Consolidated Financial Reporting by Commonly Controlled Railroads (the "Proposal"), it appears that the Board failed to consider the direct costs of complying with Proposal, the unintended costs of complying with the Proposal, or any alternatives.

Today, RailAmerica's subsidiary railroads consolidated annual railroad revenues in the United States are about \$210 million. Through internal growth and external acquisitions, RailAmerica expects its railroad subsidiaries to increase their gross railroad operating revenues within the United States by at least 10 percent per annum over the next few years, which will make RailAmerica's railroad revenues,

on a consolidated basis, exceed the threshold for a Class I railroad.¹ Based on the Proposal, RailAmerica, if the Board reclassifies it as a Class I rail carrier, expects to incur a one-time cost of \$615,000 to be able to comply with the Board's accounting and reporting rules, and annual costs of \$240,000 to comply with the Board's Uniform System of Accounts and to file form R-1. RailAmerica expects to face other substantial costs if the Board adopts the Proposal when all of RailAmerica's railroad subsidiaries combined revenues exceed the Class I threshold and RailAmerica is classified as a Class I railroad.

In addition, the Proposal could create potential barriers for RailAmerica to future acquisitions that its competitors do not face. The Proposal tends to override the judgement of RailAmerica's management in creating separate subsidiary entities. Finally, the cost savings expected from a short line holding company would be reduced, if not eliminated.

Instead of adopting this costly regulatory approach, the Board should merely rely on the annual and quarterly reports that RailAmerica and the other publicly traded short line railroad companies and holding companies file with the Securities and Exchange Commission (the "SEC"). This is certainly a much simpler and less costly alternative to the Proposal.

II. DESCRIPTION OF RAILAMERICA AND ITS RAILROAD SUBSIDIARIES.

In the United States, RailAmerica controls 26 Class III railroads that operate in 26 States, employ about 1,000 people, and in 1999 generated about \$210 million in gross railroad revenue. RailAmerica is a publicly traded company that files publicly available reports with the SEC in compliance with its regulations. Following is a general description of the individual RailAmerica railroad subsidiaries. A more complete description is available in the Petition for Exemption, Volume 1

¹ As of today, on a consolidated basis, RailAmerica's subsidiary railroads generate annual
footnote continued on following page

dated November 8, 1999, in STB Finance Docket No. 33813, *RailAmerica, Inc.—Control Exemption—RailTex, Inc.*

The Cascade and Columbia River Railroad Company (“CSCD”) owns and operates 137 miles between Olds Junction, milepost 6.0, and Oroville, WA, milepost 137.2. In 1998, CSCD generated gross revenues of about \$2,700,000.

Dakota Rail, Inc. (“DAKR”) owns and operates 43.66 miles of rail line between Wayzata, milepost 24.5, and Hutchinson, MN, milepost 68.5. In 1998, DAKR generated gross revenues of about \$650,000.

Huron & Eastern Railway Company, Inc. (“HESR”) owns or operates about 171 miles between Saginaw, MI, milepost 0.0, and the end of track, milepost 108.3. In 1998, HESR generated gross revenues of about \$3,400,000.

Otter Tail Valley Railroad Company (“OTVR”) owns and operates about 72 miles in western Minnesota. In 1998, OTVR generated gross revenues of about \$2,100,000.

Saginaw Valley Railroad Company, Inc. (“SGVY”) owns and operates over 65 miles of rail line in Michigan between Denmark Junction, milepost 14.1 and Harger, milepost 4.6, and between Brown City, milepost 55.82, and Steering Gear, milepost 4.5. In 1998, SGVY generated gross revenues of about \$550,000.

South Central Tennessee Railroad Corporation (“SCTR”) owns and operates about 52 miles between Dickson, at milepost 2.9, and Hohenwald, TN, at milepost 52.1. In 1998, SCTR generated gross revenues of about \$1,000,000.

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revenue for RailAmerica to be classified as a Class II railroad.

Ventura County Railroad Company ("VCRR") leases and operates approximately 12.09 miles of rail line from the Ventura County Railway Company between milepost 0.0 and milepost 5.7 on the docks of Port Hueneme. In 1998, VCRR generated gross revenues of about \$240,000.

West Texas & Lubbock Railroad Company, Inc. ("WTLR") owns and operates about 104 miles of track in Texas between: (1) Lubbock, milepost 0.0, and end of line, milepost 63.8; and (2) Lubbock, milepost 0.0, and Whiteface, milepost 39.2. In 1998, WTLR generated gross revenues of about \$1,750,000.

Toledo, Peoria & Western Railway Corporation ("TP&W") operates about 369 miles of railroad in the States of Indiana, Illinois, and Iowa between Logansport, IN, milepost 0.0, and Ft. Madison, IA, milepost 234.0. In 1998, TP&W generated gross revenues of about \$13,000,000.

The Austin & Northwestern Railroad Company, Inc. ("AUNW") owns a 107-mile rail line in the States of Texas and New Mexico located between milepost 1.0, at Monahans, TX, and milepost 107.5, at Lovington, NM. Operations over the line are performed in the name of AUNW's division: the Texas New Mexico Railroad ("TNMR"). In 1998, TNMR generated gross revenues of about \$1,100,000.

The Central Oregon & Pacific Railroad, Inc. ("CORP") operates over approximately 449 miles of rail line in the States of Oregon and California between milepost 425.3, at Belleview, and milepost 786.5, at Coquille, OR; and milepost 425.3, at Belleview, OR, and milepost 344.0, at Black Butte, CA. In 1998, CORP generated gross revenues of \$21,390,235.

The Central Railroad Company of Indiana ("CIND") owns and operates approximately 157.2 miles of rail line located between milepost 0.0, (Wood Street) at Cincinnati, OH, and milepost 35.3, at Frankfort, IN. In 1998, CIND generated gross revenues of about \$940,000.

The Central Railroad Company of Indianapolis ("CERA") operates over approximately 45.6 miles of rail line in north central Indiana under lease and operating rights arrangements. In addition, CERA operates as agent for and in the name of the Winamac Southern Railroad Company ("WSRY") over a rail line owned by WSRY. In 1998, CERA generated gross revenues of about \$1,200,000.

The Connecticut Southern Railroad, Inc. ("CSO") owns and operates approximately 78 miles of rail line in the States of Connecticut and Massachusetts. In 1998, CSO generated gross revenues of about \$4,700,000.

The Dallas, Garland & Northeastern Railroad, Inc. ("DGNO") operates over a combination of owned and leased rail lines approximately 187 miles in length, including industrial leads, in the State of Texas. In 1998, DGNO generated gross revenues of about \$5,000,000.

The Georgia Southwestern Railroad, Inc. ("GSWR") owns and leases over 357 miles of rail line in the States of Georgia and Alabama. GSWR and its division operate the rail lines: the Georgia and Alabama Railroad ("GAAB"). In 1998, GSWR generated gross revenues of about \$4,400,000.

The Indiana & Ohio Central Railroad, Inc. ("IOCR") operates over approximately 154.6 miles of rail lines in the State of Ohio. In 1998, IOCR generated gross revenues of about \$3,200,000.

The Indiana & Ohio Railway Company ("IORY") operates over approximately 471.1 miles of rail line in the States of Michigan, Ohio and Indiana. The operations between Flat Rock, MI and Cincinnati, OH, a distance of approximately 245 miles, are conducted over a

combination of owned track and trackage rights. In 1998, IORY generated gross revenues of about \$19,500,000.

The Indiana Southern Railroad, Inc. ("ISRR") owns and operates a 176-mile rail line in the State of Indiana located between milepost 6.0, south of Indianapolis, and milepost 163.9, at Evansville, IN. In 1998, ISRR generated gross revenues of about \$11,700,000.

The Mid-Michigan Railroad, Inc. ("MMRR") owns approximately 110 miles of rail line in the State of Michigan and leases approximately 107 miles of rail line in the State of Texas. The rail lines are operated by MMRR and its three divisions: the Grand Rapids Eastern Railroad ("GRE"), the Michigan Shore Railroad ("MS"), and the Texas Northeastern Railroad ("TNER").²

MMRR operates two separate rail lines in Michigan totaling about 65 miles. In 1998, MMRR generated gross revenues of about \$2,400,000. GRE owns and leases a 45-mile rail line located between milepost 160.2, at Grand Rapids, MI, and milepost 122.0, at Ionia, MI. In 1998, GRE generated gross revenues of about \$1,500,000. MS operates approximately seven miles of rail line in Michigan and generated gross revenues of about \$960,000 in 1998. TNER operates approximately 107 miles of leased rail lines in the State of Texas. In 1998, TNER generated gross revenues of about \$2,800,000.

The Missouri & Northern Arkansas Railroad Company, Inc. ("MNA") operates approximately 530 miles of owned, leased and trackage rights lines in the States of Missouri,

² In STB Finance Docket No. 33809, *RailTex, Inc., North Carolina & Virginia Railroad Company, Inc., Chesapeake and Albermarle Railroad Company, Inc., Dallas, Garland & Northeastern Railroad, Inc., Mid-Michigan Railroad, Inc., and Indiana Southern Railroad, Inc.—Corporate Family Transaction Exemption* (not printed), served October 29, 1999, RailTex
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Kansas and Arkansas between Kansas City, MO and Newport, AR. In 1998, MNA generated gross revenues of about \$19,000,000.

New England Central Railroad, Inc. ("NECR") owns and has freight easements over approximately 343 miles of rail line in the States of Vermont, New Hampshire, Massachusetts and Connecticut. In 1998, NECR generated gross revenues of about \$19,000,000.

The North Carolina & Virginia Railroad Company, Inc. ("NCVA") owns approximately 53 miles of rail line and leases approximately 157 miles of rail lines in the States of Virginia and North Carolina that are operated by NCVA and its two divisions: the Chesapeake and Albemarle Railroad ("C&A") and the Virginia Southern Railroad ("VSRR").

NCVA operates the 53-mile owned line located between: (1) milepost 54.3, at Boykins, VA, and milepost 84.1, at Kelford, NC (Severn Sub); and (2) milepost 162.6, at Kelford, NC, and milepost 185.5 end of track, near Tunis, NC (Ahoskie Sub). In 1998, NCVA generated gross revenues of about \$990,000. C&A operates approximately 82 miles of leased rail line located between: (1) milepost 8.0, near Chesapeake, VA, and milepost 74.0, at Edenton, NC; and (2) milepost 0.0, at Elizabeth City, NC, and milepost 8.0 end of line, near Weeksville, NC. In 1998, C&A generated gross revenues of about \$1,100,000. VSRR operates approximately 75 miles of leased rail line located between: (1) milepost 84.5, at Burkeville, VA, and milepost 67.0, at Keysville, VA; and (2) milepost 0.0, at Keysville, VA, and milepost 54.9, at Oxford, NC. In 1998, VSRR generated gross revenues of about \$990,000.

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was authorized, among other things, to merge the assets of DGNO and TNER into a new corporation. That transaction has not as yet been consummated.

The Pittsburgh Industrial Railroad, Inc. ("PIRR") owns and operates a 42-mile rail line located in western Pennsylvania. In 1998, PIRR generated gross revenues of about \$2,100,000.

The San Diego & Imperial Valley Railroad Company, Inc. ("SDIV") is the operator of approximately 153 miles of rail line located in the State of California and Mexico. The line is located between: (1) milepost 0.75, at San Diego, and milepost 18.5, at El Cajon, CA; and (2) milepost 18.5, at San Diego, and milepost 14.9, at San Ysidro, CA, where it crosses the border; (3) milepost KP 0.0, at Tijuana, Baja, Mexico, and milepost KP 70.9, at Lindero, Baja, Mexico, where the line crosses back into the United States; and (4) milepost 59.6, at the U.S. border, and milepost 130.0, at Plaster City, CA. In 1998, SDIV generated gross revenues of about \$3,000,000.

The South Carolina Central Railroad Company, Inc. ("SCRF") owns approximately 95 miles of rail line in the State of South Carolina that are operated by SCRF and its division: the Carolina Piedmont Railroad ("CPDR"). In 1998, SCRF generated gross revenues of about \$8,000,000. CPDR operates the rail line located between milepost 585.3, at East Greenville, and milepost 554.5, at Laurens, SC. In 1998, CPDR generated gross revenues of about \$2,300,000.

As is apparent from the above descriptions of RailAmerica's railroad subsidiaries, several of these railroads physically connect, but most do not. While all of RailAmerica's railroad subsidiaries are currently classified as Class III railroads, their gross annual revenues range from under \$1,000,000 to about \$20,000,000. These railroads are located throughout the United States and, for the most part, are independently managed and operated.

III. HARM TO RAILAMERICA.

RailAmerica is hopeful that within a few years its railroad subsidiaries will generate sufficient revenue on a cumulative basis to exceed the Class I railroad revenue threshold as currently defined by

the Board at 49 CFR Part 1201 1-1. Under the Proposal, once its railroad subsidiaries reach the Class I threshold RailAmerica will be required to comply with the Board's accounting and reporting requirements for Class I railroads.³

RailAmerica incurs no cost today complying with the Board's accounting and reporting rules. Under the Proposal, RailAmerica will incur a one-time cost of compliance with the Uniform System of Accounts of \$615,000 consisting of \$15,000 for computers, \$50,000 for computer software, \$300,000 for a consultant, and in-house employee costs of \$250,000. On an annual basis, RailAmerica conservatively estimates that the cost of complying with the Uniform System of Accounts and the filing of the R-1 Annual Report will cost \$240,000 consisting of \$100,000 for one full time employee, \$50,000 for one-quarter year of electronic data services, \$70,000 for RailAmerica's departments to compile data, \$10,000 for computer maintenance, and \$10,000 for software maintenance.

In addition to these specific costs that RailAmerica expects to incur, there will be other harm which cannot be quantified, but is harm nonetheless.

Being considered a Class I railroad despite its structure will cause RailAmerica to be treated differently and therefore unfairly compared to other short line and regional holding companies. The added costs of regulatory compliance will reduce RailAmerica's return to investors and reduce its available capital.

The Board should not need to be reminded of the difference between RailAmerica and the multi-billion dollar Class I railroads, but there are two points that must be made. The mere fiscal size of a

³ At a minimum, RailAmerica expects to face the high costs of litigation before the Board or in other venues over the issue of whether RailAmerica and its individual Class III rail carrier subsidiaries should be treated as a Class I railroad. If the Board adopts its Proposal, RailAmerica expects to be involved in litigation immediately on the issue of whether it should be treated as a Class II railroad.

group of commonly controlled railroads does not make them the same as a large integrated Class I railroad. RailAmerica's subsidiaries are not one continuous network system spanning half the nation, but a conglomeration of separate railroads operating under common ownership. Additionally, many of RailAmerica's subsidiary railroads are the result of plant rationalization by the Class I railroads. RailAmerica's subsidiaries are not the high density, high revenue lines typical of many Class I railroads, but instead are light density low revenue lines. It is highly likely that many of the lines owned and operated by RailAmerica's railroad subsidiaries would have been abandoned by the Class I railroads if not for the growth of the short-line railroad industry that was fostered by the Staggers Rail Act of 1980 and the interpretation of that law by the Board's predecessor and the Board.

If the Board adopts the Proposal and reclassifies RailAmerica as a Class I railroad, the Board will be substituting its judgement for that of RailAmerica's management, which crafted the current corporate structure for legitimate business purposes. Separate entities were created as subsidiaries to localize operations and compartmentalize the risk of failure of these properties, which the Board has recognized as a legitimate business judgement. If the Proposal is adopted, RailAmerica's costs will increase. It was not that long ago that the Interstate Commerce Commission decided to end the financial reporting by Class II and Class III railroads in order to reduce costs for the smaller rail carriers.

In *Designation of Class III Railroads*, No. 36730 (ICC decided June 9, 1978) ("*Designation*"), the Class III designation was established to relieve smaller railroads from the burden of complying with the expanded accounting and reporting requirements of the revised USOA for Class II railroads. *Designation* pointed out that the public interest would be served because the reduced burden should result in cost savings that should eventually be passed on to shippers and the public. The Board has issued the Proposal, which would reverse *Designation*, without addressing why the rationale of *Designation* no longer exists.

Several years later the elimination of all accounting and reporting requirements of Class II railroads was adopted. *Elimination of Accounting and Reporting Requirements of Class II Railroads*, No. 37614 (ICC served February 25, 1982) (“*Elimination*”).

Our avowed intention is that accounting and reporting requirements shall be limited to meeting the Commission’s current needs in performing regulatory functions, including the compilation of essential transportation statistics and the execution of Federal laws. The Commission reviewed the use of information filed by Class II railroad companies and found that it was not used on a regular basis for analysis or monitoring purposes. Therefore, the Commission concluded that the accounting and reporting burden is no longer justified.

Id., at 2. Now, under the guise of complying with an accounting rule, the Board is attempting to revive this discontinued practice without any justification, or even a discussion as to why the rationale from 20 years ago is wrong.

The Board’s Proposal will also reduce, if not eliminate, the cost savings generated by the creation of the larger Class III railroad holding companies. The purchasing and synergy savings will be offset by costs of complying with the Proposal. The Board has not justified such costs.

Moreover, being reclassified as a Class I railroad will increase the costs that RailAmerica incurs in acquiring additional short line railroads or selling any of its current properties. First, there will be increased regulatory costs and delays because certain of the Board’s expedited and streamlined procedures will no longer be available to RailAmerica (See e.g., 49 CFR §§ 1150.41 and 1180.2(d)(2)). Second, RailAmerica may be required to incur labor protection costs for itself and the seller under the statute (49 U.S.C. §§ 11326 and 10902).

Another major cost that RailAmerica will suffer will be the loss of certain Federal Railroad Administration regulatory modifications or exceptions for Class II and/or Class III railroads that were

negotiated between FRA and ASLRRA.⁴ Class III railroads are excepted from certain FRA requirements that apply to Class I and Class II railroads.

For example, pursuant to 49 CFR §219.205(c)(3), FRA's regulations governing Alcohol and Drug Use, FRA maintains testing kits at its field offices that a Class III railroad may utilize. If RailAmerica's rail carrier subsidiaries are reclassified as Class I or Class II railroads, they will have to maintain such kits on their property and incur the accompanying costs.

FRA's rules governing communication devices also vary by railroad class. Under 49 CFR §220.21, Railroad operating rules; radio communications; recordkeeping "(1) Each Class I railroad, each Class II railroad, each railroad providing intercity rail passenger service, and each railroad providing commuter service in a metropolitan or suburban area shall retain such rules at each of its division headquarters and at its system headquarters; and (2) Each Class III railroad and any other railroad subject to this part but not subject to paragraph (b)(1) of this section shall retain such rules at the system headquarters of the railroad." Hence, the Board's proposed action would require each of RailAmerica's subsidiaries to retain copies of these rules.

The same is true for operating rules under 49 CFR §217.7. "Sec. 217.7 Operating rules; filing and recordkeeping. b) After November 21, 1994, each Class I railroad, each Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area shall file each new amendment to its code of operating rules, each new timetable, and each new timetable special instruction with the Federal Railroad Administrator within 30 days after it is issued. (c) On or after November 21, 1994, each Class III railroad and any other railroad subject to this part but not subject to paragraphs (a) and (b) of this

⁴ The Proposal could also jeopardize the status of RailAmerica's rail carrier subsidiaries as small
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section shall keep one copy of its current code of operating rules, timetables, and timetable special instructions and one copy of each subsequent amendment to its code of operating rules, each new timetable, and each new timetable special instruction, at its system headquarters, and shall make such records available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.”

FRA treats Class III railroads differently in the oversight of locomotive engineers. “No later than March 31 of each year (beginning in calendar year 1993), each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year. 49CFR §240.309(a). For RailAmerica’s Class III railroad subsidiaries to have to comply with this FRA requirement because of a Board action would add additional costs to the operation of RailAmerica’s railroad subsidiaries.

In addition to the costs incurred, the Board would artificially be eliminating the policy reason for these exceptions without any input from the FRA. The Board should not substitute its judgement for FRA’s lightly in the area of railroad safety.

IV. THE BOARD HAS NOT EXPLAINED THE NEED FOR IT TO EXERT JURISDICTION OVER RAILAMERICA UNDER 49 U.S.C. §721(b).

Prior to the ICCTA, the ICC could require railroad holding companies to comply with certain accounting, reporting, securities and other requirements under 49 U.S.C. 11348. Before asserting

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businesses before the Small Business Administration.

jurisdiction over a holding company, the ICC would determine whether the holding company would “have an influence upon the national transportation which is immediate in effect and wide in scope.” *Illinois Cent. Gulf R.—Acquisition—G., M. & O., et al.* 338 I.C.C. 805, 856 (1971). RailAmerica suggests that before the Board requires short-line railroad holding companies to prepare and submit consolidated reports, that the Board shall make the same determination of the influence and immediate effect on national transportation. If the Board adopts this time-tested rule, it will conclude that short-line railroad holding companies do not meet the test and do not have to submit consolidated reports.

V. THE STB SHOULD ADOPT THE NON-CONNECTING EXCEPTION AND NOT REQUIRE REPORTING WHERE CONNECTING RAILROADS DO NOT MEET CLASS I OR CLASS II THRESHOLD.

If the Board is inexorably intent on adopting this unjustified and costly proposal, then it should create an exception for railroads that do not connect with every other railroad in their corporate family. A lesser exception would lead to questions as to when do railroads connect. Do they connect through trackage rights? What about haulage arrangements? Moreover, to avoid the onerous reporting and accounting requirements, small railroads may well be willing to sacrifice some efficiency by not connecting over that last mile or tenth of a mile. There are enough inefficiencies in the railroad system today so that the Board should not be adopting rules that may lead to more inefficiency. Indeed, this rule could create a regulatory structure where every quarter the Board would have to audit every mile of track to see where commonly controlled short lines connect and issue orders requiring certain continually varying consolidated reporting.

Another problem created by the proposed exception if it does not apply system wide on short-line railroads is the situation where perhaps there are groups of segregated railroads that connect within a short-line railroad holding company so that perhaps two or three groups meet Class I or II revenues

levels within a corporate family, but not all of the railroads connect. The burden created would be even greater for keeping track of several entities.

VI. HAS THE BOARD PROPOSED NEW RULES, AND, IF SO, THE FEDERAL GOVERNMENT REQUIRES AGENCIES TO MEET CERTAIN REQUIREMENTS BEFORE ADOPTING RULES THAT THE BOARD HAS NOT EVEN ACKNOWLEDGED HERE.

We have reviewed the Proposal and it is unclear whether the Board has proposed new rules or in essence something else. The Proposal does not refer to the legal authority underlying a proposed rule, nor does it contain a proposed rule, as required by 5 U.S.C. § 553(b). In addition, there is no statement under the National Environmental Policy Act, 42 U.S.C. § 4321, et seq., the Paperwork Reduction Act, 44 U.S.C. § 3501, et seq.⁵, the Regulatory Flexibility Act, 5 U.S.C. § 601, et seq., or the Small Business Regulatory Enforcement Fairness Act of 1996. The Board cannot adopt a regulation without complying with these procedures that were enacted to protect the regulated from over zealous regulators who have not fully thought out the ramifications of the Proposal.

If the Proposal is not a notice of proposed rulemaking, then it appears that the Board is trying to change the rules governing the classification of railroads at 49 CFR 1201, 1-1 without the benefit of a rulemaking. Railroad classification is defined in instruction 1-1. A change to the instruction in the Code of Federal Regulations requires a rulemaking, not the incomplete proceeding containing the Proposal.

⁵ The ICC supported this Act's purpose of eliminating agency requests for information, which are duplicative, unnecessary and cost-inefficient. Interstate Commerce Commission 1980 Annual report, at 23. As has been demonstrated, the Board's request is duplicative, unnecessary and cost-inefficient.

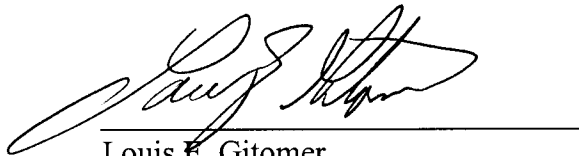
VII. THE SOLUTION.

Instead of imposing a new regulatory structure on RailAmerica and similarly situated holding companies, the Board should make use of the existing SEC reporting structure. RailAmerica complies with the SEC's reporting requirements, and even reports its results on a consolidated basis. This should more than meet the Board's needs.

VIII. CONCLUSION.

For the reasons stated above, the Board should discontinue this rulemaking. The Board should use the information that is regularly filed with the SEC and readily available instead. In the alternative, the STB should adopt an exception for non-connecting railroads as described in Section V above.

Respectfully submitted.



Gary Laakso
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Counsel for RailAmerica, Inc.

November 27, 2000