

OPPENHEIMER

OPPENHEIMER WOLFF & DONNELLY LLP

1350 Eye Street N.W., Suite 200
Washington, D.C. 20005-3324

202.312.8000
Fax 202.312.8100

Direct Dial: 202.312.8209
E-Mail: KSheys@oppenheimer.com

20.637

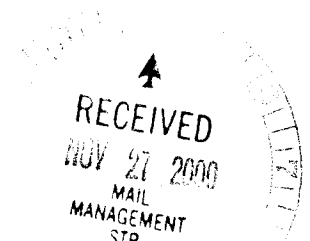
Amsterdam	New York
Brussels	Orange County
Chicago	Paris
Geneva	Saint Paul
Los Angeles	Silicon Valley
Minneapolis	Washington, D.C.

www.oppenheimer.com

November 27, 2000

VIA HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20423-0001



Re: **STB Ex Parte No. 634**
Consolidated Financial Reporting By
Commonly Controlled Railroads

Dear Secretary Williams:

Enclosed for filing are an original and ten copies of the **Comments of Rail Management Corporation** in opposition to the Board's proposal to require consolidated financial reporting by commonly controlled railroads. Also enclosed is a 3.5-inch diskette containing the filing in WordPerfect 5.1.

Please feel free to contact me should any questions arise regarding this filing.

Respectfully submitted,

Kevin M. Sheys
Attorney for Rail
Management Corporation

Enclosures

Doc 637

RECEIVED
NOV 27 2000
MAIL
MANAGEMENT
STB

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 634
CONSOLIDATED FINANCIAL REPORTING BY
COMMONLY CONTROLLED RAILROADS

COMMENTS OF
RAIL MANAGEMENT CORPORATION

Kevin M. Sheys
Oppenheimer Wolff & Donnelly LLP
1350 Eye Street, N.W.
Suite 200
Washington, D.C. 20005

Attorneys for Rail Management Corporation

Date: November 27, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 634
CONSOLIDATED FINANCIAL REPORTING BY
COMMONLY CONTROLLED RAILROADS

COMMENTS OF
RAIL MANAGEMENT CORPORATION

I. Introduction

Rail Management Corporation (“RMC”) hereby submits its comments in opposition to the Surface Transportation Board’s proposal to require consolidated financial reporting by commonly controlled railroads. RMC respectfully submits that the Board’s expressed purpose for the proposal – obtaining “more meaningful and accurate information on major rail systems” – would not be accomplished by requiring consolidated financial reporting by commonly controlled Class III railroads such as RMC’s. In addition, consolidated financial reporting would convert RMC’s 13 Class III railroad subsidiaries into the equivalent of a single Class II railroad. The effect of the Board’s proposal (i) would be inconsistent with Congressional intent expressed at the enactment of line sale provisions now codified at 49 U.S.C. § 10902 (ii) would reduce the

number of railroads entitled to the benefits available to Class III railroads under the AAR/ASLRRA “paper barrier” agreement and (iii) would adversely affect many railroads involved in the leasing of “grandfathered” boxcars.¹

II. Rail Management Corporation

RMC is a diverse transportation company involved in shortline railroad operations, trucking operations, rail equipment and locomotive leasing and other related businesses. Although RMC provides corporate support, each of RMC’s 13 Class III railroad subsidiaries² is an independently operated small business with its own general manager. RMC’s rail subsidiaries have no physical connections to each other. RMC’s short lines serve three port operations, (Galveston, TX, Panama City, FL, and Wilmington, NC) and also major rail industries, including paper, copper, kaolin clay, coal, grain and chemicals. RMC and its railroad subsidiaries have together developed a strategic plan that centers on (i) expanding the number of lines operated by the existing railroads, (ii) diversifying their traffic mix and (iii) continuing to grow the carloadings of existing customers. RMC employs 247 people, including 221 employees on its railroads and 26 employees at RMC’s corporate headquarters.

In the past four years, several of RMC’s short lines have added significant new customers. K.W.T. Railway, a 55-mile short line based in Paris, TN, has added American

¹ Although some of the known harms are summarized below, it is not possible to anticipate all possible adverse consequences of the Board’s proposal. For example RMC understands that some state departments of transportation limit (expressly or in practice) capital grant and loan program funds to Class III railroads. This is just one further example of how the Board’s proposal could have unintended negative consequences.

² A list of RMC’s railroads is attached to these comments as Exhibit A. RMC’s railroads serve customers in 11 states. A map showing the wide distribution of RMC’s short line railroads is attached to these comments as Exhibit B.

Colloid, a major shipper of clay. Valdosta Railway, a 11-mile short line based in Valdosta, GA, has added Western Hay Company and Chemical Conservation of Georgia. East Tennessee Railway, a 11-mile short line based in Johnson City, TN, has added Blossman Gas Company, Safety Kleen and Multi-Modal Technologies. Bay Line Railroad, a 108-mile short lines based in Panama City, FL, has added White Construction, Anderson Columbia, Baxter Asphalt, and Conrad Yelvington Distributors. Georgia Central Railway, a 170-mile short line based in Vidalia, GA, has added Global Communities and recently contracted with International Paper to begin serving a new wood chipping operation. Tomahawk Railway, a 6-mile short line based in Tomahawk, WI, utilized a Wisconsin Department of Transportation Bureau of Railroads and Harbors loan to construct a rail served warehouse for the pulp and paper industries.

III. No Purpose Would Be Served By Requiring Consolidated Financial Reporting By Commonly Controlled Class III Railroads

The Board asserts that adopting FASB No. 94 would provide the Board with “more meaningful and accurate information on major rail systems operating in the United States.” Consolidated Financial Reporting, 65 Fed. Reg. 57650 (Sept. 25, 2000). However, in the case of RMC, the Board’s adoption of FASB No. 94 would not trigger any data reporting requirements. Thus, at least with respect to RMC, the Board’s proposal would not achieve the Board’s stated purpose. RMC submits that the same may be true of many other short line railroads.

IV. Consolidated Financial Reporting Would Be Inconsistent With Congressional Intent

Each of RMC’s railroads is a success story. Like hundreds of others formed since the Staggers Act of 1980, the success of RMC’s short lines is attributable to deregulation of the railroad industry. The success of the newly formed short line railroads on the heels of the Staggers Act prompted the Interstate Commerce Commission to establish a class exemption for

the acquisition of rail lines by non-carriers.³ This class exemption spurred the growth of the short line railroad industry like nothing else. Many of the RMC railroads were formed pursuant to the class exemption. If not for deregulation and the resulting success of short line railroading, many railroad lines formerly operated by Class I railroads would have been abandoned.

In the ICC Termination Act of 1995, Congress enacted a new provision, now codified at 49 U.S.C. § 10902, permitting Class III railroads to acquire additional rail lines on an expedited schedule and free of labor protection. Congress intended the new provision to promote “clear and more expeditious handling of [short line railroad] transactions, and avoid imposing additional and sometimes potentially fatal costs on start-up operations of smaller railroads.” Conference Report of the House Committee on Transportation and Infrastructure, H. R. Rep. No. 104-3101 at 101(1995). Shortly thereafter, the Board promulgated a new Section 10902 class exemption.⁴

The Class III railroad acquisitions provisions in Section 10902 and the Board’s class exemption have helped RMC and its railroad subsidiaries to execute key components of their strategic plan. For example, in September of 1996, RMC rail subsidiary Atlantic & Western Railway used the 10902 class exemption to acquire an additional 6.4-mile rail line from Norfolk Southern Railway Company.⁵ RMC and its rail subsidiaries are hopeful that they will have the opportunity to add additional rail lines to their rosters and that, when it makes sense from a

³ Class Exemption – Acq. & Oper. of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 (1985), aff’d, Illinois Com’n v. I.C.C., 817 F.2d. 145 (D.C. Cir. 1987).

⁴ Class Exem. for Acq. or Oper. Under 49 U.S.C. 10902, 1 S.T.B. 95, 103 (1996).

⁵ Atlantic & Western Railway, L.P. – Acq. Exemption – Lines of Norfolk Southern Railway Company, Finance Docket No. 33021 (STB served September 9, 1996).

business standpoint, RMC's railroads will be free to do the acquisitions with existing rail subsidiaries and without labor protection.

The Board's proposed consolidated financial reporting would make RMC's 13 railroad subsidiaries ineligible to use the Class III rail line acquisition provisions in the Board's 10902 class exemption. In cases where RMC's business judgement would call for adding a rail line to an existing Class III carrier, RMC would not be free to execute on that business judgement without incurring labor protection in the acquisition.

V. Consolidated Financial Reporting Would Reduce The Number Of Railroads Entitled To The Benefits Of The AAR/ASLRRA Railroad Industry Agreement

In 1998, in response to issues raised in Review of Rail Access and Competition Issues, Ex Parte No. 575 (STB served APR. 17, 1998), the Association of American Railroads ("AAR") and the American Short Line and Regional Railroad Association ("ASLRRA") entered into an agreement (the "Railroad Industry Agreement") addressing three issues of special concern to short line railroads: contractual obligations incurred when short line railroads acquired lines from larger connecting railroads ("paper barriers"); inadequate car supply; and lack of alternative routing options. The Railroad Industry Agreement was entered into by the AAR and the ASLRRA on behalf of certain of their participating members, including RMC's railroad subsidiaries.⁶ Provisions in the Railroad Industry Agreement regarding paper barriers and new routes apply to participating Class I and Class III railroads, but not Class II railroads.⁷ The

⁶ RMC's railroad subsidiaries are members of the ASLRRA and subscribers to the Railroad Industry Agreement.

⁷ See Railroad Industry Agreement, Article IV, Section 3.

Railroad Industry Agreement was the product of private-sector negotiations, which the Board has encouraged on numerous occasions.

The effect on the Board's proposal to require consolidated financial reporting by commonly controlled railroads would be to dramatically reduce the number of Class III railroads and simultaneously dramatically reduce the number of railroads entitled to the Class I/Class III provisions of the Railroad Industry Agreement regarding paper barriers and routing options. This would not be in the public interest.

VI. Consolidated Financial Reporting Would Adversely Affect Lessors Of Grandfathered Boxcars

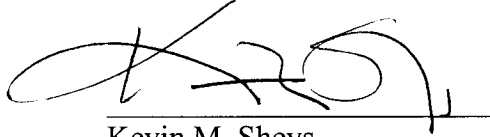
When the ICC exempted boxcars from regulation, it excluded boxcars that were owned or controlled by Class III carriers. Such "grandfathered" box cars were afforded the special protection of receiving prescribed car hire rates for the remainder of their lives.⁸ RMC's railroad subsidiaries operate approximately 4,100 grandfathered boxcars. Atlantic Western Railway alone operates a fleet of approximately 2,000 grandfathered boxcars. Atlantic Western Railway's leasing operation constitutes a significant component of its business. In 1999, last year for which complete information is available, Atlantic Western Railway's grandfathered boxcar lease revenue made up of more than 90 percent of its total revenue. Since the Board's proposal to require consolidated financial reporting by commonly controlled railroads would reduce the number of Class III railroads, it likely would reduce the number of railroads presently engaged in the grandfathered boxcar leasing business, including RMC's subsidiary Atlantic Western Railway. Thus, the Board's proposal would adversely affect some number of Class III railroads engaged in the grandfathered boxcar leasing business.

⁸ Box Car Hire and Car Service, 3 I.C.C.2d 1 (1986).

VII. Conclusion

For the foregoing reasons, RMC opposes the Board's proposal to require consolidated financial reporting by commonly controlled railroads and urges the Board to drop the proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', written over a horizontal line.

Kevin M. Sheys
Oppenheimer Wolff & Donnelly LLP
1350 Eye Street, N.W.
Suite 200
Washington, D.C. 20005

Attorneys for Rail Management Corporation

Date: November 27, 2000

**RAIL MANAGEMENT CORPORATION'S
SHORT LINE RAILROAD SUBSIDIARIES**

The railroads under RMC ownership and management are:

Atlantic & Western Railway, Limited Partnership ("ATW")

ATW is a 3.38-mile short line railroad based in Sanford, NC. ATW has a car leasing operation and performs car hire accounting for a number of railroads and leasing companies. ATW connects with CSXT and NS.

Bay Line Railroad, L.L.C. ("BAYL")

BAYL is a railroad running from Abbeville, AL to Panama City, FL connecting with CSXT and NS. BAYL handles over 28,000 carloads annually. Principal commodities include paperboard, wood chips, chemicals, steel, pipe, and stone. BAYL serves the port of Panama City and owns several major industrial parks for attraction of new industries.

Copper Basin Railway ("CBRY")

CBRY is based in Hayden, AZ and connects with UP and San Manuel Arizona Railroad Company. CBRY interchanges copper, copper concentrates and related products totaling about 20,000 carloads annually. In addition, approximately 100,000 carloads of ore are handled annually in unit trains.

East Tennessee Railway, L.P. ("ETRY")

ETRY is a short line railroad based in Johnson City, TN connecting with CSXT and NS. ETRY serves several customers in Elizabethton, TN, and the primary commodities are paper and lumber products.

Galveston Railroad, L.P. ("GVSR")

GVSR is a terminal railroad based in Galveston, TX. GVSR serves the port of Galveston and handles traffic in connection with UP and BNSF. Traffic primarily consists of export grain trains. GVSR handles up to 100,000 carloads annually.

Georgia Central Railway, L.P. ("GC")

GC is a railroad running from Savannah, GA to Macon, GA and is based in Vidalia. GC connects with NS and CSXT and handles over 24,000 carloads annually. Major commodities include kaolin clay, newsprint, lumber, wood chips, coal, gran and waste paper.

K.W.T Railway, Inc. ("KWT")

KWT is a short line railroad based in Paris, TN, and connects with CSXT. Principal commodities include clay, toys, chemicals and stone.

Little Rock & Western Railway, L.P. ("LRWN")

LRWN is a short line railroad based in Perry, AR and connects with UP and BNSF. Primary commodities include paper products and grain.

M&B Railroad, L.L.C. ("MNBR")

MNBR is a railroad based in Meridian, MS and connects with BNSF, CSXT, KCS and NS. MNBR handles over 25,000 carloads annually. The principal commodities are paper products.

Tomahawk Railway, L.P. ("TR")

TR is a short line railroad based in Tomahawk, WI connecting with CSXT and NS. Primary commodities include paperboard and related products.

Valdosta Railway, L.P. ("VR")

VR is a short line railroad based in Valdosta, GA connecting with CSXT and NS. The principal commodities are paperboard and related products.

Western Kentucky Railway, L.L.C. ("WKRL")

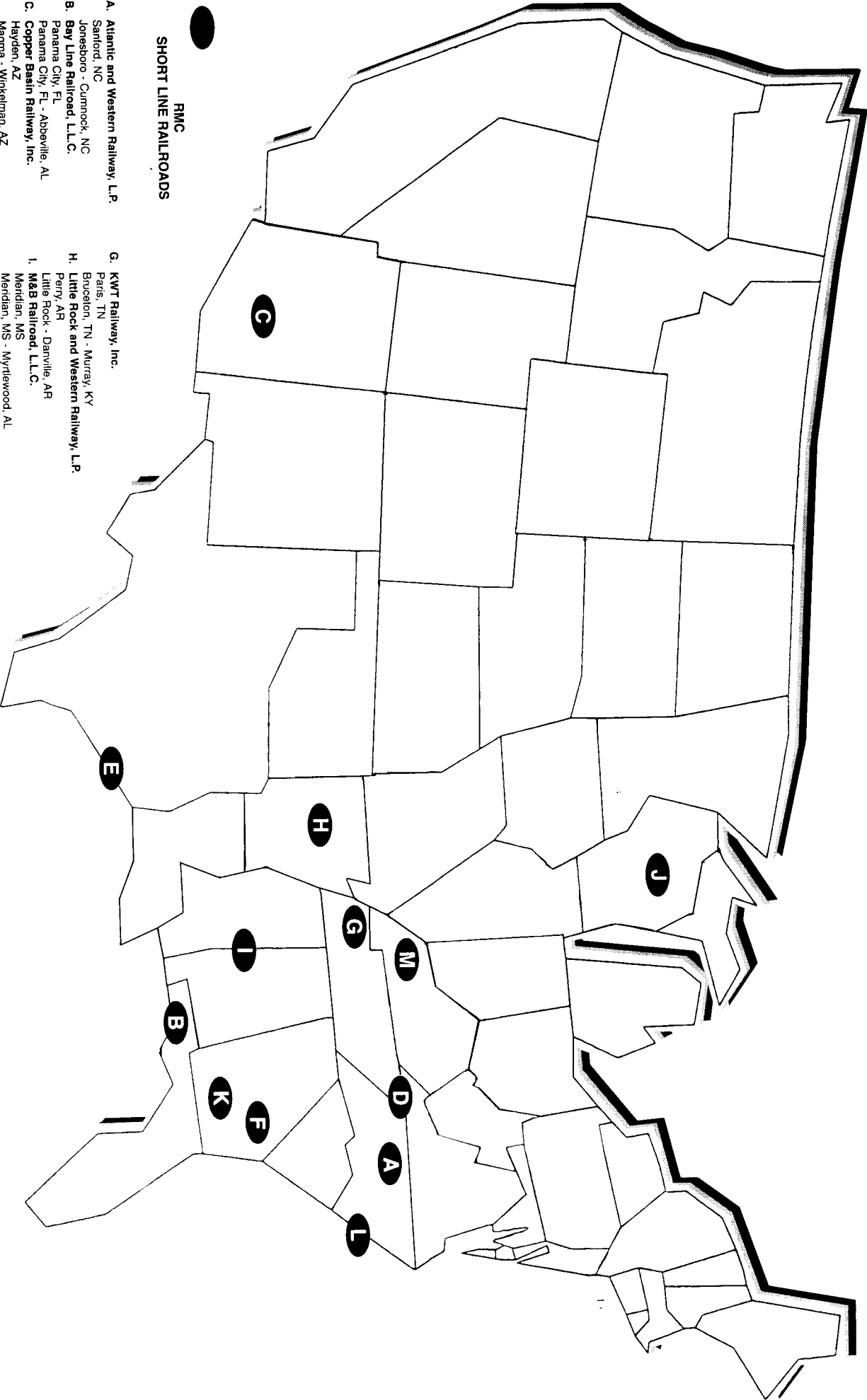
WKRL is a short line railroad based in Clay, KY. WKRL handles unit trains of coal to CSXT and between the mine and the cleaning plant locally on line.

Wilmington Terminal Railroad, L.P. ("WTRY")

WTRY is a terminal railroad serving the Port of Wilmington, NC, connecting with CSXT.

B

RAIL MANAGEMENT CORPORATION



RMC

SHORT LINE RAILROADS

- A. Atlantic and Western Railway, L.P.
Santford, NC
Jonesboro - Cummock, NC
- B. Bay Line Railroad, L.L.C.
Panama City, FL
Panama City, FL - Abbeville, AL
- C. Copper Basin Railway, Inc.
Hayden, AZ
Mazna - Winkelman, AZ
- D. East Tennessee Railway, L.P.
Johnson City, TN
Johnson City - Elizabethton, TN
- E. Galveston Railroad, L.P.
Galveston, TX
Port of Galveston, TX
- F. Georgia Central Railway, L.P.
Vidalia, GA
Savannah - Macon, GA
- G. KWT Railway, Inc.
Paris, TN
Bruceeton, TN - Murray, KY
- H. Little Rock and Western Railway, L.P.
Perry, AR
Little Rock - Danville, AR
- I. M&B Railroad, L.L.C.
Meridan, MS
Meridan, MS - Myrtlewood, AL
- J. Tomahawk Railway, Limited Partnership
Tonahawk, WI
Tonahawk - Wisconsin Dam, WI
- K. Valdosta Railway, L.P.
Lake Park, GA
Valdosta - Ciyetville, GA
- L. Wilmington Terminal Railroad, L.P.
Wilmington, NC
Port of Wilmington, NC
- M. Western Kentucky Railway, L.L.C.
Clay, KY
Providence-Carney Creek, KY