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October 18, 2002

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Finance Docket No. 34269, *RailAmerica, Inc., et al.—Control and Merger Exemption—A&R Line, Inc. and J.K. Line, Inc.*

Dear Secretary Williams:

Enclosed are the original and 10 copies of the Petition for Exemption, a check for the \$6,900 filing fee, and three 3.5-inch diskettes.

Please time and date stamp the extra copy of this letter and pleading and return it to our messenger. Thank you for your assistance. If you have any questions, please call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for RailAmerica, Inc.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34269

RAILAMERICA, INC., ET AL.—CONTROL AND MERGER EXEMPTION—
A&R LINE, INC. AND J.K. LINE, INC.

PETITION FOR EXEMPTION

EXPEDITED HANDLING REQUESTED



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Dated: October 18, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34269

RAILAMERICA, INC., ET AL.—CONTROL AND MERGER EXEMPTION—
A&R LINE, INC. AND J.K. LINE, INC.

PETITION FOR EXEMPTION



RailAmerica, Inc. ("RailAmerica"), et al., petition the Surface Transportation Board (the "Board"), under 49 U.S.C. § 10502 and 49 CFR Part 1121, for an exemption from 49 U.S.C. §§ 11323-11325 for RailAmerica, et al. to acquire control of A&R Line, Inc. (the "A&R Line") and J.K. Line, Inc. (the "J.K. Line"), two wholly-owned Class III railroad subsidiaries of Cargill, Incorporated ("Cargill"), and to merge A&R Line and J.K. Line into the Toledo, Peoria & Western Railway Corporation. RailAmerica, et al., also request expedited handling so that this transaction can be consummated by December 31, 2002.

RailAmerica directly controls the non-carrier Palm Beach Rail Holding, Inc. ("Palm Beach"), which directly controls the non-carrier RailAmerica Transportation Corp. ("RTC"), which directly controls the non-carrier Florida Rail Lines, Inc., ("Florida Rail"), which in turn controls Toledo, Peoria & Western Railroad Corporation ("TPWRR"), which directly controls Marksman Corp. ("Marksman"), which in turn directly controls the Toledo, Peoria & Western Railway Corporation ("TPWRY").¹ RailAmerica, Palm Beach, RTC, Florida Rail, TPWRR,

¹ The Board issued a notice permitting the merger of Florida Rail, TPWRR, Marksman, and TPWRY. *Toledo, Peoria & Western Railway Corporation-Corporate Family Merger*

Marksman, and TPWRY are jointly referred to as "RailAmerica, et al." TPWRR, Marksman, and TPWRY are jointly referred to as the "TP&W Railroad."

BACKGROUND

TPWRY has agreed to acquire the stock of A&R Line and J.K. Line from their parent, Cargill, the only shipper on either line. Once TPWRY acquires the stock of A&R Line and J.K. Line, it will merge them into TPWRY in order to consolidate the ownership and operation in one entity, generate efficiencies and cost savings, and enhance the financial status of TPWRY. For convenience, the proposed control of the A&R Line and the J.K. Line by RailAmerica, et al. and the proposed merger of the A&R Line and the J.K. Line into TPWRY will jointly be referred to as the "Proposed Transaction."

Since 1997, TPWRY has operated the A&R Line and Marksman has operated the J.K. Line. TPWRY leased the A&R Line from Cargill. *Toledo, Peoria & Western Railway Corporation—Lease and Operation Exemption—A & R Line*, STB Finance Docket No. 33482 (STB served October 16, 1997) (the "*A&R Lease Decision*"). Marksman leased the J.K. Line from Cargill. *Marksman Corporation—Lease and Operation Exemption—J.K. Line, Inc.*, STB Finance Docket No. 33481 (STB served October 16, 1997) (the "*J.K. Lease Decision*").² The A&R Line and the J.K. Line have been operated as part of the integrated TP&W Railroad as a single system. The A&R Line and the J.K. Line have not been operated independent of TP&W Railroad since 1997.

Transaction Exemption, STB Finance Docket No. 34193 (STB served May 6, 2002). The corporate family merger has not yet been consummated.

² Marksman is controlled by TPWRR. *The Toledo, Peoria and Western Railroad Corporation—Continuance in Control Exemption—Marksman Corporation*, STB Finance Docket No. 33483 (STB served October 16, 1997).

The A&R Line is located between the end of the line at Winimac, IN, milepost 21.0W, and Kenneth, IN, near Logansport, IN, milepost 0.0E, a distance of about 27 miles. The A&R Line connects with the TPWRY at Kenneth, IN (milepost 0.0W and 6.1E).

The J.K. Line is located between the end of the line at Monterey, IN, milepost 183, and North Judson, IN, milepost 199, a distance of about 17 miles. At North Judson, the J.K. Line interchanges with CSX Transportation, Inc. The J.K. Line does not connect with TP&W Railroad. It is an island operation.

TP&W Railroad operates about 265.9 miles of railroad in the States of Indiana, Illinois, and Iowa. TP&W Railroad owns and operates 195.6 miles of rail line between Logansport, IN, milepost 0.0, and East Peoria, IL, milepost 108.0, between Crandall, IL, milepost 43.4, and Morton, IL, milepost 48.30, East Peoria, IL, milepost 108.0, and P&PU Junction, milepost 109.4, and between Iowa Junction, IL, milepost 113.9, and Peoria, IL, milepost 123.0. TP&W Railroad has trackage rights over: (1) BNSF between Peoria, IL, milepost 52.3, and Galesburg, IL, milepost 0.00; (2) Union Pacific between Iowa Junction, IL, milepost 113.9, and Sommer, IL, milepost 119.1; (3) Peoria and Pekin Union Railway Company ("P&PU") between P&PU Junction, IL, milepost 109.4, and Iowa Junction, IL, milepost 113.9; and (4) Norfolk Southern between East Peoria, IL, milepost 410.6, and Crandall, IL, milepost 403.3.³ TP&W Railroad interchanges with: (1) Bloomer Shippers Connecting Railroad at Chatworth, IL; (2) BNSF at

³ TP&W Railroad agreed to sell the common carrier obligation and certain of the assets in the line between East Peoria, Milepost 23.0 and La Harpe, IL, Milepost 94.5 to SF&L Railway, Inc. See *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation—Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 (STB served February 7, 2001). The Board ordered SF&L to reconvey that property to TP&W Railroad in *SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation—Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 (STB served October 17, 2002) ("FD 39995").

Bushnell, Canton, Galesburg, and Peoria, IL; (3) CSXT at Reynolds, IN, and Watseka, IL; (4) Illinois & Midland Railroad Inc. at Peoria, IL, via the P&PU; (5) Illinois Central Railroad Company at Gilman, IL and Peoria, IL via P&PU; (6) Iowa Interstate Railroad Ltd. at Peoria, IL indirectly via P&PU; (7) Kankakee, Beaverville and Southern Railroad Company at Sheldon and Webster, IL; (8) Keokuk Junction Railway Company at La Harpe, IL; (9) Logansport and Eel River Shortline Company at Logansport, IN via WSRV; (10) Norfolk Southern at Marion, via WSRV and CERA, and Logansport, IN, Farmdale, IL, and Peoria, IL via P&PU; (11) Union Pacific at Bushnell, Chenoa, East Peoria, Lomax, and Peoria, IL; and (12) WSRV at Logansport, IN.

The only customer on either the A&R Line or the J.K. Line is Cargill. With Cargill's consent and support TPWRY intends to file a petition for exemption to abandon and discontinue service for the entire 17 miles of J.K. Line and 15 miles of the A&R Line between Winimac, milepost 21.0W, and Kenneth, milepost 0.0W, while the instant petition for exemption is pending. Unlike *FD 39995*, TPWRY is not seeking to acquire and commence operations over the A&R Line and the J.K. Line under 49 U.S.C. §§ 10901 or 10902, and is not committing to the Board that is seeking to acquire these lines to operate them as rail lines. TP&W Railroad already operates the A&R Line and the J.K. Line pursuant to the *A&R Lease Decision* and the *J.K. Lease Decision*. TPWRY is seeking to acquire the stock of the A&R Line and the J.K. Line and then merge the entities into TPWRY. Having operated the A&R Line and the J.K. Line, TP&W Railroad is familiar with the operations and the use of the lines by their current owner and sole shipper Cargill. TPWRY intends to seek to abandon 17 miles of the J.K. Line and 15 miles of the A&R Line because the only shipper using the lines has decided that it no longer

needs rail service, does not want to continue to own the lines, and apparently does not want to file to abandon the lines.

A map of the TP&W Railroad, the A&R Line and the J.K. Line is in the Exhibit.

JURISDICTION

The “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers” may be carried out only with the approval and authorization of the Board. 49 U.S.C. §11323(a)(5). RailAmerica, Palm Beach, RTC, and Florida Rail are not rail carriers, but control one or more rail carriers.⁴ They are seeking to obtain control of two more Class III railroads. Since RailAmerica, Palm Beach, RTC, and Florida Rail control rail carriers and are seeking to acquire control of the A&R Line and the J.K. Line, which are Class III rail carriers, the proposed transaction falls within the jurisdiction of the Board under 49 U.S.C. §11323(a)(5).

The “merger of the properties or franchises of at least 2 rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties” may be carried out only with the approval and authorization of the Board. 49 U.S.C. §11323(a)(1). Since the component railroads of TP&W Railroad are each a Class III railroad and are seeking to merge with two Class III railroads, the proposed transaction falls within the jurisdiction of the Board under 49 U.S.C. §11323(a)(1).

The class exemption does not apply where the acquisition of control is part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family. 49 CFR §1180.2(d)(2)(ii). Given the physical connection between the TP&W Railroad and the A&R Line and the operation over the J.K. Line by Marksman, RailAmerica, et

al. have concluded that the class exemption at 49 CFR §1180.2(d)(2) does not apply to the proposed transaction. Accordingly, RailAmerica, et al. have filed this Petition for Exemption rather than a Notice under Section 1180.2(d)(2).

LABOR

RailAmerica, et al. do not expect any of the employees of TP&W Railroad to be adversely affected by the Proposed Transaction. The only employees working on the A&R Line and the J.K. Line are employees of TP&W Railroad. However, any employees affected by this transaction will be entitled to labor protection in accordance with *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR*, 2 S.T.B. 218 (1997).

ENVIRONMENTAL AND HISTORIC

RailAmerica, et al. are acquiring control of the A&R Line and the J.K. Line, and then merging them into the railroads that operate them today. The Proposed Transaction does not require the filing of a Safety Integration Plan, an Environmental Assessment, or a Historic Report.

The control and merger of two Class III railroads by a holding company and its subsidiaries that control one Class II railroad and 31 Class III railroads is not the type of transaction that requires the filing of a Safety Integration Plan. 49 CFR §1106.2 and .3. A Safety Integration Plan is required to be filed by “a Class I railroad proposing to merge, consolidate, or acquire another Class I railroad, or a Class II railroad with which it proposes to amalgamate operations.” *Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers,*

⁴ RailAmerica, et al. control one Class II and 31 Class III rail carriers in the United States.

and Acquisitions of Control, STB Ex Parte No. 574 (STB served March 8, 2002), at 66. The A&R Line and the J.K. Line are Class III railroads. They are currently operated by the TP&W Railroad. No further amalgamation of operations is expected. Therefore, RailAmerica, et al. contend that a Safety Integration Plan is not required to be filed.

Neither environmental documentation nor a Historic Report is required under the exception in 49 CFR § 1105.6(c)(2)(ii). There will be no operational changes that exceed the thresholds of 49 CFR § 1105.7(e)(4) or (5).

The Proposed Transaction will not cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) an average of 50 rail carloads per mile per year for any part of the affected lines. The Proposed Transaction will not result in either: (A) an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) an increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment. Where any of the lines are located in a class I or nonattainment area under the Clean Air Act, the Proposed Transaction will not result in either: (A) an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line, (B) an increase in rail yard activity of at least 20 percent (measured by carload activity), or (C) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment. The transportation of ozone depleting materials (such as nitrogen oxide and freon) is not contemplated. *See* 49 CFR § 1105.7(e)(4) and (5).

RailAmerica, et al. do not intend to substantially change the level of maintenance of the railroad properties of the A&R Line and the J.K. Line as part of the Proposed Transaction. *See* 49 CFR § 1105.8(b)(3). Board approval will be required to abandon any service over a line of railroad and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older outside of the abandonment process. *See* 49 CFR § 1105.8(b)(1).

The Proposed Transaction does not meet the thresholds established in the regulations cited above. The Proposed Transaction will not meet the thresholds of 49 CFR § 1105.7(e)(4) and (5), and 49 CFR § 1105.8(b)(1) and (3). Therefore, it is not necessary for RailAmerica, et al. to submit a Safety Integration Plan, an Environmental Report, or a Historic Report as part of this Petition for Exemption.⁵

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

ARGUMENT

A. THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. §§ 11323-25.

The control of the A&R Line and the J.K. Line by RailAmerica, et al. and the merger of the A&R Line and the J.K. Line into TPWRY is subject to prior review and authorization by the Board pursuant to 49 U.S.C. § 11323(a)(1 and 5).

Pursuant to 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either: (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984) (the “Boxcar Exemption”). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision applicable in the absence of the exemption. *See Blackstone Capital Partners -- Cont. Exemp. -- Chicago & N.W. Trans. Co.*, ICC Finance Docket No. 31493 (ICC served July 5, 1989), slip op. at 2; *Village of Palestine v. I.C.C.*, 936 F.2d 1335 (D.C. Cir. 1991).

⁵ Environmental Reports and Historic Reports will be filed with the abandonment to be filed that

The Proposed Transaction does not involve the merger or control of at least two Class I rail carriers. Therefore, absent an exemption, the Proposed Transaction would be subject to Board review under the standards set forth in 49 U.S.C. § 11324(d). Section 11324(d) provides that the Board “shall approve” the transaction unless it finds both that:

- (1) as a result of the 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
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

In transactions subject to Section 11324(d), the primary focus is on the probable competitive effects of the proposed transaction. *See, e.g., Canadian Pacific Ltd., and Soo Line R.R.—Control—Davenport, Rock Island & North Western Ry., ICC Finance Docket No. 32579 (ICC served February 10, 1995), at 5; Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc., 6 I.C.C. 2d 799, 803 (1990), pet. for review denied sub nom. Railway Labor Executives Ass’n v. ICC, 930 F.2d 511 (6th Cir. 1991).* The public interest factors are considered only where significant anticompetitive effects are found. *Id.* Since there are no significant anticompetitive affects that will result from the Proposed Transaction, the Board does not need to consider the public interest factors.

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both “likely” and “substantial.” *Wisc. Central Transportation Corporation, Et Al., 9 I.C.C.2d 233, 238 (1992).* Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section

was previously noted in order to fully address environmental and historic concerns.

11324(d)(2) "would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two." *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. Et Al.*, 5 I.C.C.2d 1015, 1019 (1989). The Proposed Transaction will not lead to higher rates or worsened service. Today, TP&W Railroad operates the A&R Line and the J.K. Line. Upon consummation of control, TP&W Railroad will continue to operate the A&R Line and the J.K. Line, the only difference being that the A&R Line and the J.K. Line will become part of TPWRY, instead of being leased properties.

As is demonstrated in this Petition, the Proposed Transaction will have no adverse impact on competition. The Proposed Transaction will have no adverse horizontal effects on competition and will not result in any vertical foreclosure of competition in the transportation corridors served by the individual carriers. RailAmerica, et al. have no plans to close any existing interline route or to alter or cancel any existing divisions with connecting carriers (except where abandonment may be approved).

In summary, no anticompetitive consequences would result from the Proposed Transaction. As a practical matter, the Proposed Transaction will only result in a change in ownership, not service, operations, or competition.

The Proposed Transaction meets the criteria of Section 11324(d). Therefore, the Proposed Transaction also meets the criteria of Section 10502, as discussed below.

1. The Application of 49 U.S.C. § 11323(a)(1 and 5) Is Not Necessary To Carry Out The Rail Transportation Policy.

Detailed scrutiny of the Proposed Transaction is not necessary to carry out the rail transportation policy. As previously noted, absent an exemption, the primary substantive issue the Board would need to address is the effect of the Proposed Transaction on competition.

Consequently, the provisions of the rail transportation policy most relevant in this exemption proceeding are 49 U.S.C. § 10101(4) and (5), which encourage the preservation of effective competition.

That objective is fully satisfied by the Proposed Transaction. In addition, an exemption will foster other aspects of the national transportation policy, including preservation of a sound rail transportation system, encouraging efficient management, and minimizing federal regulatory control.

The requested exemption will foster other objectives of the Rail Transportation Policy. The proposed transaction will foster the development and continuation of a sound rail transportation system. *See* 49 U.S.C. § 10101 (4). The Proposed Transaction will not result in any change in operations.

Granting the requested exemption would also minimize Federal regulatory control over the rail transportation system and promote the deregulatory objectives of the Staggers Act and the ICCTA Act. This exemption proceeding will provide the Board with all the information necessary to evaluate the proposed transaction, but minimize regulatory delay and expedite decision making. *See Chicago West Pullman Corp.—Control Exemption—Chicago Rail Link*, ICC Finance Docket No. 31390 (ICC served February 24, 1989); *Itel Rail Corp.—Continuance in Control Exemption—FRVR Corp.*, ICC Finance Docket No. 31206 (ICC served February 5, 1988). While regulatory delay would be minimized, the interests of shippers, employees and the general public are fully protected.

Requiring the filing of an application would serve no useful purpose in this proceeding. As the information in this Petition unquestionably demonstrates, the Proposed Transaction readily satisfies the requirements of Section 11324(d), which, absent the granting of the

exemption, would govern the Proposed Transaction. As previously noted, under Section 11324(d), the Board must approve a proposed transaction unless it finds there is likely to be a substantial lessening of competition and the anticompetitive effects outweigh the public benefits. The Proposed Transaction will not result in any, much less in a substantial, lessening of competition. Consequently, if the Proposed Transaction were brought before the Board in a full application proceeding, the Board would be required to approve the Proposed Transaction.

Other aspects of the rail transportation policy are not adversely affected.

2. The Proposed Transaction Will Not Result In An Abuse of Market Power

It follows from the conclusion that there will be no competitive harm as the result of the Proposed Transaction that the Proposed Transaction will not subject shippers to an abuse of market power. Cargill is the only shipper on the A&R Line and the J.K. Line. Cargill owns the A&R Line and the J.K. Line and through an arms-length agreement has agreed to sell their stock to TPWRY. Cargill supports this transaction. Being the owner, seller, and sole shipper on the A&R Line and the J.K. Line, through the sale agreement, Cargill has been able to protect itself from any potential market abuse. Consequently, the Proposed Transaction will not result in any market abuses. A mere change in ownership will not alter the competitive atmosphere in which each of these carriers operates.

3. The Proposed Transaction Is Of Limited Scope

Because regulation is not needed to protect shippers from abuse of market power, the Board need not address whether the Proposed Transaction is of limited scope. See *Illinois Commerce Commission v. ICC*, 819 F.2d 311, 314 (D.C. Cir. 1987). It is noteworthy, however, that the Proposed Transaction is less extensive than many others that have been exempted by the Board's predecessor. See, e.g., *Blackstone-CNW*; *Montana Rail Link—Exemption, Acquisition*

and Operation—Certain Lines of Burlington Northern Railroad, ICC Finance Docket No. 31089 (ICC served May 26, 1988); *Wisconsin Central Ltd.—Exemption, Acquisition and Operation—Certain Lines of Soo Line Railroad*, ICC Finance Docket No. 31102 (ICC served July 28, 1988).

The Proposed transaction will simply add two Class III rail carriers to the carriers already controlled by RailAmerica, et al. The A&R Line and the J.K. Line only operate over 27 miles and 17 miles, respectively, in one state. The A&R Line and the J.K. Line will continue to be operated as they are today.

REQUEST FOR EXPEDITED HANDLING

RailAmerica, et al., respectfully request the Board to act on this Petition within 60 days of its filing. For tax purposes, Cargill desires to complete this transaction before the end of 2002. To that end, TPWRY and Cargill have agreed that if the stock sale and acquisition is not consummated on or before December 31, 2002, the purchase and sale agreement will terminate. RailAmerica, et al. do not expect any opposition to the Proposed Transaction. The Proposed Transaction will not result in any change in operations or harm to shippers or employees. Therefore, RailAmerica, et al. believe that there is ample ground for the Board to expedite its handling of this Petition.

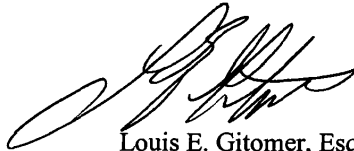
CONCLUSION

RailAmerica, et al. have demonstrated in this Petition that the Proposed Transaction will not result in any competitive harm. The proposed transaction fosters the transportation policy, will not result in the abuse of market power, and is of limited scope.

PRAYER FOR RELIEF

For the reasons provided herein, RailAmerica, et al. pray that the Board grant this Petition for Exemption in an expedited fashion.

Respectfully submitted,



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Attorneys for RAILAMERICA, INC., et al.

Dated: October 18, 2002

EXHIBIT

