

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

LOUIS E. GITOMER
OF COUNSEL
(202) 466-6532



January 23, 2004

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

ENTERED
Office of Proceedings
FEB - 4 2004
Part of
Public Record

2/6015

RE: Finance Docket No. 34438, *Huron & Eastern Railway Company, Inc.—Acquisition
and Operation Exemption—Central Michigan Railway Company*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of a Response and three diskettes with the file Response.doc. Please time and date stamp the extra copy of this letter and the Verified Notice of Exemption and return them with our messenger.

If you have any questions, please call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for Huron & Eastern Railway
Company, Inc.

Enclosures

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34438

HURON & EASTERN RAILWAY COMPANY, INC.—ACQUISITION AND OPERATION
EXEMPTION—CENTRAL MICHIGAN RAILWAY COMPANY

RESPONSE TO MR. WALLACE SRADER



Gary A. Laakso, Esq.
Counsel
Huron & Eastern Railway Company, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

ENTERED
Office of Proceedings
FEB - 4 2004
Part of
Public Record

Attorneys for HURON & EASTERN
RAILWAY COMPANY, INC.

Dated: January 23, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34438

HURON & EASTERN RAILWAY COMPANY, INC.—ACQUISITION AND OPERATION
EXEMPTION— CENTRAL MICHIGAN RAILWAY COMPANY

RESPONSE TO MR. WALLACE SRADER

The Huron & Eastern Railway Company, Inc. (“HESR”) responds in opposition to the letter from Wallace Srader (“Mr. Srader”) dated January 8, 2004 that was received by the Surface Transportation Board (the “Board”) on January 20, 2004. The Board provided a copy of Mr. Srader’s letter to HESR.

HESR filed a Verified Notice of Exemption, as amended, under 49 C.F.R. § 1150.41 with the Board on January 5, 2004, for HESR to acquire and operate the assets of the Central Michigan Railway Company (the “CMRY”). HESR is a subsidiary of RailAmerica, Inc. (“RailAmerica”).

HESR urges the Board to treat Mr. Srader’s letter as correspondence, and not a pleading in the instant proceeding. Mr. Srader’s letter was not served on HESR as required by 49 C.F.R. § 1104.12(a). Pursuant to 49 C.F.R. 1104.10(a), HESR urges the Board to reject Mr. Srader’s letter for failure to comply with the service requirements of section 1104.12(a).

If the Board determines to accept Mr. Srader’s letter, HESR contends that Mr. Srader is wrong in his analysis and on the law.

RailAmerica is consolidating dispatching for twelve of its railroad subsidiaries in American Rail Dispatch Center, Inc. ("ARDC"), a new corporation that was created to do dispatching only for the RailAmerica subsidiary railroads and one railroad not affiliated with RailAmerica to perform dispatching. ARDC has state of the art dispatch equipment and can dispatch better and safer than RailAmerica's currently arrangement. Mr. Srader is wrong when he claims that dispatching is being moved to Vermont because HESR is acquiring the assets of CMRY.

Mr. Srader also claims that RailAmerica controls more than one Class II railroad and therefore, in the instant proceeding, the Board must impose labor protection for the benefit of the railroad dispatchers on the Missouri & Northern Arkansas Railroad Company, Inc. Mr. Srader is wrong on both counts.

First, RailAmerica does not control more than one Class II railroads. The two railroads referred to in the decision Mr. Srader cites are the Central Oregon and Pacific Railroad, Inc. ("CORP"), and ParkSierra Corp. ("ParkSierra"). See *RailAmerica, Inc.-Control Exemption-Kiamichi Holdings, Inc. and Kiamichi Railroad L.L.C.*, STB Finance Docket No. 34130 (STB served January 30, 2002) ("*FD 34130*"). Since the decision in *FD 34130*, the facts have changed. RailAmerica no longer controls more than one Class II railroad. ParkSierra has been partitioned into three Class III railroads. See *ARZC Operating Company, Inc.-Acquisition and Operation Exemption-ParkSierra Corp.*, STB Finance Docket No. 34198 (STB served May 23, 2002); *CFNR Operating Company, Inc.-Acquisition and Operation Exemption-ParkSierra Corp.*, STB Finance Docket No. 34199 (STB served May 23, 2002); and *PSAP Operating Company, Inc.-Acquisition and Operation Exemption-ParkSierra Corp.*, STB Finance Docket No. 34200 (STB served May 23, 2002). The Board recognized as a result of these transactions that

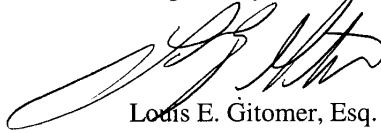
RailAmerica no longer controlled more than one Class II railroad. *RailAmerica, Inc., ARZC Operating Company, Inc., CFNR Operating Company, Inc., and PSAP Operating Company, Inc.-Corporate Family Reorganization Exemption*, STB Finance Docket No. 34197 (STB served May 23, 2002). CORP is the only railroad subsidiary of RailAmerica that is a Class II railroad. As of this date, none of RailAmerica's other rail subsidiaries have exceeded the Class II railroad revenue threshold for three consecutive years.

Mr. Srader is also wrong in claiming that the *New York Dock* conditions apply to the instant transaction. HESR, a Class II railroad filed a notice of exemption under 49 U.S.C. § 10902 to acquire specified assets from CMRY. Under section 10902(d), employee protection is to be imposed only when a Class II railroad acquires a rail line, but not when a Class III railroad acquires a rail line. Moreover, the *New York Dock* conditions are only imposed pursuant to 49 U.S.C. § 11326(a) when approval or exemption of a transaction is sought under 49 U.S.C. §§ 11324 and 11325. See also, *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 69 (1979). The *New York Dock* conditions do not apply to this proposed transaction.

As HESR stated in the Verified Notice of Exemption filed on January 5, 2004, under 49 U.S.C. § 10902(d), labor protection is not to be imposed since a Class III railroad is acquiring the Line.

HESR respectfully requests the Board to either reject Mr. Srader's letter, or deny the relief he requests by refusing to impose employee protective conditions on the instant transaction.

Respectfully submitted,



Gary A. Laakso, Esq.
Counsel
Huron & Eastern Railway Company, Inc.
5300 Broken Sound Boulevard N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

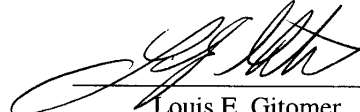
Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for HURON & EASTERN
RAILWAY COMPANY, INC.

Dated: January 23, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by overnight delivery on all parties of record in STB Finance Docket No. 34438.



Louis E. Gitomer
January 23, 2004