

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Fortress Investment Group LLC, et al. -- Control --	)	
Florida East Coast Railway, LLC	)	Finance Docket No. 35031
	)	

**MOTION OF APPLICANTS
TO ESTABLISH A PROCEDURAL SCHEDULE**

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Dated: May 22, 2007

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Fortress Investment Group LLC, on behalf of certain private equity funds managed by it and its affiliates (“Fortress”); Iron Horse Acquisition Holding LLC (“Iron Horse”), a Delaware limited liability company and affiliate of Fortress; NEWCO, a Delaware limited liability company and affiliate of Fortress; RailAmerica, Inc. (“RailAmerica”) and Florida East Coast Industries, Inc. (“FECI”) and its wholly-owned subsidiary, Florida East Coast Railway, LLC (“FECR”) (collectively, the “Applicants”), hereby move for the issuance of an order establishing a procedural schedule in this proceeding.

Applicants have today filed an application pursuant to 49 U.S.C. §§ 11323 *et seq.* seeking the Board’s approval for the acquisition of control of FECR by NEWCO (and, indirectly, by Fortress). For the reasons set forth in the Application, the proposed transaction is a “minor” transaction under the Board’s regulations at 49 C.F.R. § 1180.2(c). In cases involving a “minor” transaction, the Board is required to issue a final decision within 180 days from the filing date of the Application. 49 U.S.C. § 11325(d). Applicants request that the Board establish the following schedule to govern this proceeding:

PROPOSED PROCEDURAL SCHEDULE

May 22, 2007	Application, Petition to Revoke Class Exemptions, Motion for Protective Order, and Motion to Establish Procedural Schedule filed.
June 21, 2007	Notice of acceptance of Application to be published in the Federal Register.
July 5, 2007	Notices of intent to participate in this proceeding due.
July 30, 2007	Comments, protests, requests for conditions, other opposition and evidence, and filings from the U.S. Department of Justice (“DOJ”) and U.S. Department of Transportation (“DOT”) due.
August 14, 2007	Responses to comments, protests, requests for conditions, other opposition and evidence, and DOJ and DOT due. Rebuttal in support of Application due.
September 28, 2007	Service of final decision.
October 29, 2007	Decision effective.

The foregoing schedule will permit the Board to serve a final decision before the statutory deadline otherwise prescribed by Section 11325(d), which is November 19, 2007. The proposed schedule provides interested parties 69 days after filing the Application to pursue discovery, participate and file evidence. The schedule also includes the full 30-day period for the Board to decide whether to accept the Application and 45 days after the close of evidence to serve a final decision. There is sufficient time in the proposed schedule for a public hearing, if such a hearing is deemed necessary by the Board. In addition, there is time to hold an oral argument, if necessary, after the Applicants have responded on August 14, 2007.

The expedited schedule requested by Applicants is appropriate for several reasons. Most importantly, the proposed transaction clearly will not have any anticompetitive effects. As described in the Application, FECR and the RailAmerica Railroads do not compete in the same markets – indeed, they operate in entirely separate geographic territories. FECR and the RailAmerica Railroads do not serve any common points or rail corridors. No shipper will

experience a reduction in the number of rail competitive options available to it as a result of the proposed transaction. Thus, the transaction clearly will not result in a substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States.

Indeed, as explained in the “Petition of Applicants to Revoke Class Exemptions” (“Petition to Revoke”) filed herewith, Applicants could have invoked the class exemptions set forth at 49 C.F.R. §§ 1180.2(d)(2) and 1180.2(d)(3) in this proceeding. However, if a petition to revoke the exemptions were filed, it is possible that proceedings in connection with the petition could extend beyond the end of the year. Failure to complete the transaction on or before December 31, 2007 would have adverse tax consequences that would, in turn, impose substantial additional costs on Applicants. For that reason, Applicants elected to proceed via a “minor” application under Section 11323, so that this proceeding would be subject to the statutory deadline set forth at 49 U.S.C. § 11325(d).

If the Board were to take the full 180-day period permitted by Section 11325(d), a final decision would not be issued until November 19, 2007, with a likely effective date of December 19, 2007. This would leave Applicants only a short period (which included the holiday season) to implement all of the steps required to complete the transaction by year’s end. The proposed schedule will afford Applicants a more reasonable period of time to complete the transaction prior to the end of the year. The Board has established shortened procedural schedules in recognition of such needs in other proceedings involving minor transactions.¹

¹ See, e.g., *Paducah & Louisville Ry., Inc. – Acquisition – CSX Transportation, Inc.*, Finance Docket No. 34738, STB Decision dated August 25, 2005 (2005 WL 2071222 (S.T.B.)), at ** 1, 7, 11(adopting procedural schedule essentially the same as that proposed by applicants, who explained that proposed schedule would allow them to close transaction by December 30 of that year and thus allow changeover in operations to occur before end of year and over a weekend;

The proposed procedural schedule affords interested parties ample opportunity to comment on the proposed transaction. Under the Board's regulations, a class exemption notice filed pursuant to 49 C.F.R. § 1180.2(d) automatically becomes effective 30 days after the date of filing. See 49 C.F.R. § 1180.4(g). By contrast, the procedural schedule proposed by Applicants would provide interested parties 69 days to seek discovery and to file comments regarding the proposed transaction. The Board would then have 45 additional days after the close of evidence to issue a final decision.

In sum, the schedule proposed by Applicants balances equitably the interests of all parties. The proposed schedule provides sufficient time for comments and evidence to be filed and for the Board to meet its responsibilities in a timely fashion. At the same time, it would result in the issuance of a final decision in time to permit Applicants to complete the transaction prior to the end of the year without imposing the hardships associated with attempting to do so during the holiday season. The proposed schedule is similar to those adopted by the Board in other proceedings involving minor transactions.² Therefore, Applicants respectfully request that the Board adopt the proposed schedule.

schedule called for service of final decision slightly more than four months after application was filed, and for effective date 18 days after service of final decision); *Buckingham Branch R.R. Co. – Lease – CSX Transportation, Inc.*, Finance Docket No. 34495, STB Decision dated June 22, 2004 (2004 WL 1387316 (S.T.B.)) (adopting schedule essentially the same as that proposed by Applicants, which would allow them to close their transaction by December 20, 2004, and thus allow changeover in operations to occur before year-end over a non-holiday weekend).

² See, e.g., *The Indiana Rail Road Company – Acquisition – Soo Line Railroad Co.*, Finance Docket No. 34783, STB Decision dated January 6, 2006 (2006 WL 77708 (S.T.B.)), at **7, 10 (establishing schedule calling for service of final decision four months and nine days after filing of Application, and for decision to become effective 30 days thereafter); *Kansas City Southern – Control – The Kansas City Southern Ry. Co., Gateway Eastern Ry. Co., and the Texas Mexican Railway Co.*, Finance Docket No. 34342, STB Decision dated June 9, 2003 (2003 WL 21359928 (S.T.B.)), at **1, 7, 12 (establishing 156-day procedural schedule from date of filing of Application to date of service of final decision); *Kansas City Southern Industries, Inc., KCS Transportation Co., and the Kansas City Southern Ry. Co. – Control – Gateway Western Ry. Co.*

Respectfully submitted,

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Dated: May 22, 2007

and Gateway Eastern Ry. Co., Finance Docket No. 33311, STB Decision dated February 7, 1997 (1997 WL 58983 (S.T.B.)) (establishing, for application filed on January 14, 1997, procedural schedule calling for issuance of final decision by May 1, 1997, with effective date of May 17, 1997); *Burlington Northern Santa Fe Corp., BNSF Acquisition Corp., and Burlington Northern R.R. Co. – Control – Washington Central R.R. Co.*, Finance Docket No. 32974, STB Decision dated July 11, 1996 (1996 WL 396957 (S.T.B.)) (establishing procedural schedule for application filed June 17, 1996, with October 15, 1996, as expected date of final decision and effective date of October 30, 1996).

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Motion of Applicants to Establish a Procedural Schedule to be served by first class mail, postage pre-paid, this 22nd day of May 2007, on the persons listed in 49 C.F.R § 1180.4(c)(5) as follows:

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The Governor, Public Service Commission and/or Department of Transportation of the States of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Vermont, Virginia, and Washington

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