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April 17, 2008

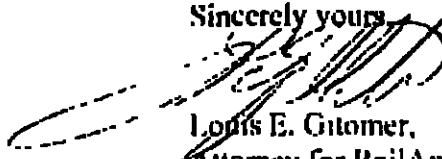
Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Ex Parte No. 677, *Common Carrier Obligation of Railroads*

Dear Acting Secretary Quinlan:

Enclosed for filing are the Comments of RailAmerica, Inc. Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer,
Attorney for RailAmerica, Inc

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 677

COMMON CARRIER OBLIGATION OF RAILROADS

COMMENTS OF RAILAMERICA, INC.

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Dated April 17, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 677

COMMON CARRIER OBLIGATION OF RAILROADS

COMMENTS OF RAIL AMERICA, INC.

RailAmerica, Inc. ("RailAmerica") submits comments in response to the Notice of Public Hearing served by the Surface Transportation Board (the "Board") on February 22, 2008. The Board requested comments on:

various topics related to the extent of the common carrier obligation, including, but not limited to: (1) service limitation resulting from a capacity constrained environment, (2) cost and safety issues related to the transportation of hazardous materials, especially toxic inhalation hazards, (3) carrier-imposed requirements for infrastructure investments by shippers; (4) the impact of volume requirements or incentives; (5) economically motivated service reductions and metering of the demand for service; (6) the proper use of rail embargoes; (7) when it becomes necessary to obtain abandonment authorization, and (8) to whom does the common carrier obligation apply

RailAmerica notified the Board on March 24, 2008 that it would participate in the hearing and submit comments addressing

1. The common carrier obligation requires the railroad to provide rail transportation services upon reasonable demand. Implicit in fulfilling this obligation is the right of the railroad to receive a reasonable fee that adequately compensates the railroad for its operating costs, capital investments, risk, and a reasonable return.

2. Carrier-imposed requirements for shippers, such as for infrastructure investments and volume requirements or incentives are proper.

3. Rail embargoes are a necessary tool in order to protect the safety of employees, local communities, and the goods handled by the railroads.

4 The determination of whether and when to seek abandonment authorization should be left to the individual railroad.

5. The Board's Office of Compliance and Consumer Assistance should continue to act as an unbiased informal mediator between the shipper and the railroad.

RailAmerica will be represented at the hearing by Mr. Paul Lundberg, Vice President

BACKGROUND

RailAmerica, today, is a leading operator of short lines and regional railroads in North America. We operate in 27 United States and three Canadian provinces. The Board has granted authority for RailAmerica to control the Florida East Coast Railway, LLC ("FEC").

Most of RailAmerica's properties were, at one time, part of a Class I railroad system. While in Class I ownership, many of these lines were operated as low-density, relatively high-cost branch lines or were lines where the operating and capital costs did not generate an appropriate return to the Class I. The Class-I railroads either sold or leased these lines to companies like RailAmerica. These lines had infrastructure needs and were susceptible to fragile economic conditions, generally being dependent upon the business fortunes of only a few on-line customers and industries.

RailAmerica's rail lines, like most short lines, are often the sole route available to shippers and receivers for accessing the Class I rail system. We are the only entrance and exit point to the broader regional and national rail networks for distribution and receipt of shippers' goods and products. Our services are frequently billed either by the RailAmerica railroad itself or by the Class I partner through interline settlement as a segment in the longer Class I rail movement. However, many of the RailAmerica

railroads were established as "handling roads," which receive a fee (subject to various inflation adjustments) from the Class I railroad, usually determined at the time of acquisition

RailAmerica seeks to run a high-quality and safe business operation, one that helps its existing customers to succeed and expand their businesses and further seeks to expand our rail services to new businesses.

RailAmerica is also committed to improving its capital infrastructure. RailAmerica's properties were divested by the Class Is, over the past 20-plus years, for good and valid reasons. It is fair to say that when the Class Is were contemplating abandonment of those lines, or turning them over to short line operators such as RailAmerica, very little capital investment went into these lines and maintenance was scaled back to minimum levels. RailAmerica inherited those lines in such circumstances, and knowing where and how to apply our capital resources remains a continuous management challenge. Between 2003 and 2007, RailAmerica invested over \$300 million of capital in track, facilities and equipment on its North America railroads. For 2008, the capital plan is to invest an additional \$54 million.

COMMENTS

RailAmerica understands its common carrier obligation and welcomes the opportunity to meet the reasonable needs of our customers. In order to meet its common carrier obligation, each of the RailAmerica railroads must be revenue adequate, i.e., earn a return that will cover the operating and maintenance costs, the cost of risk, and fund capital expenditures, plus generate a reasonable return on its investment

1. The common carrier obligation requires the railroad to provide rail transportation services upon reasonable demand. Implicit in fulfilling this obligation is the right of the railroad to charge a reasonable fee that adequately compensates the railroad for its operating costs, capital expenditures, risk and a reasonable rate of return.

The obligation to provide reasonable service to its customers is understood by RailAmerica. A railroad must accept and transport all commodities tendered to it for carriage. A railroad must provide reasonable service, which has customarily included a reasonable opportunity for the customer to deliver freight for shipment, transporting the freight with reasonable dispatch and safety, caring for the freight, and placing the freight in a reasonably accessible place for receipt. A railroad may perform ancillary activities as well.

In return for providing service, a railroad is entitled to reasonable compensation. The quid pro quo for reasonable service is reasonable compensation that adequately compensates the railroad for its operating costs, capital expenditures, risk, and a reasonable return.

Rail served shippers are the major, and in many cases the only source of revenue for all railroads. RailAmerica's railroads generate revenue from shippers through either (1) independent pricing freedom, or (2) a fixed fee from the Class 1 partner that is set forth in the acquisition agreement.

Where the short line's compensation has been established in the acquisition agreement, the railroad is severely limited in its revenue opportunities. Through its experience, RailAmerica has found that those subsidiary railroads are likely to be revenue starved. In such instances, RailAmerica would argue that the implicit concept of the common carrier quid pro quo (a reasonable fee) is absent, in that there is inadequate

revenue accruing to the short line to cover its operating costs, capital expenditures, risk and a reasonable return. If revenues are not adequate to cover operating expenses and capital investment, safe service cannot be provided or sustained.

RailAmerica is not placing blame, nor is it asking the Board to interfere with these private agreements. The plain fact is where a railroad does not receive adequate revenues from its shippers or its Class I partners, the common carrier obligation to provide a reasonable and safe service upon reasonable demand becomes a fragile and unsustainable economic proposition.

RailAmerica is seeking to solve these problems through negotiations with its shippers and its Class I partners

As has been stated before, the payment of reasonable rates by the shipper that compensates the railroad for its operating costs, supports the capital investment needed to sustain a safe infrastructure, covers the risk, and provides a reasonable return. Those rate driven revenues are the quid pro quo for a railroad fulfilling its common carrier obligation. A railroad cannot be expected to fulfill the obligation when it is revenue starved, for whatever reason. These are fact based issues that the Board should consider on a case-by-case basis instead of through a general rule or policy statement.

2. Carrier-imposed requirements for shippers, such as for infrastructure investments and volume requirements or incentives are proper.

Shippers are the major source of revenue for railroads. If the revenue that shippers provide is insufficient to cover operating and maintenance costs, cover risk, and fund capital expenditures, plus a reasonable return on investment, then the railroads cannot provide service.

RailAmerica advocates infrastructure investments that shippers can make to sustain viable rail service: one is to improve the shipper's own facilities and the other is to improve the railroad's facilities.

Shipper investment in infrastructure allows the railroad to operate more efficiently and safer at lower cost. If the railroad is less efficient because of the shipper's facilities, the shipper will incur increased costs for rail service since it is causing the railroad to operate less efficiently. This too is part of the quid pro quo of payment for common carrier service.

Where a shipper is asked to make an infrastructure investment, the shipper is being asked if it is willing to pay for the cost of rail service. Whether that investment is made through a one time investment, higher rates or long term volume commitments, it is the quid pro quo for a railroad providing service and fulfilling its common carrier obligations. The decision of the shipper should be informed by its need for rail service, not government fiat.

3. Rail embargoes are a necessary tool in order to protect the safety of employees, local communities, and the goods handled by the railroads.

An embargo is a temporary measure that permits a railroad to stop serving its shippers because there is a problem with the railroad line that makes it unsafe to operate. By embargoing a rail line, a railroad temporarily suspends the requirement to fulfill its common carrier obligation.

An embargo is imposed under Revised Circular TD-1 of the Association of American Railroads (the "AAR") and is for "controlling traffic movements when, in the judgment of the serving railroad, an actual or threatened Physical or Operational Impairment, *of a temporary nature*, warrant restrictions against such movement."

Section III of TD-1 states that "When necessary to restrict traffic movements for periods in excess of 24 hours, an embargo must be used." "Embargoes will remain in effect until cancelled but, unless cancelled, will automatically expire one year after the effective date." TD-1, Section III F

The most immediate impact of an embargo is the cessation of service to a particular shipper or group of shippers. However, an embargo does much more. It notifies the remainder of the railroad system of impairment so that cars or even trains are not moved toward the problem area in an unnecessary and inefficient manner.

There are additional benefits when an embargo is imposed for reasons of safety. As noted above, RailAmerica intends to operate its railroads as safely as possible. Not only is a safe railroad more efficient and less costly, but at RailAmerica the safety of our employees is the highest priority. An embargo allows RailAmerica to keep its employees from working in an unsafe environment

Not only is the safety of its employees essential to RailAmerica, but so is the safety of its neighbors and the environment. An accident on a rail line can be disruptive and dangerous. The imposition of an embargo allows a railroad the time to take corrective steps to alleviate the problems with the rail line, and avoid disruptive or dangerous situations.

An embargo can also protect the commodities that rail customers ship from damage. Normally, goods can be replaced, but monetary compensation is not as effective as preventing the problem in the first instance. An embargo may prevent damage to goods, avoid the time spent by the railroad and customer resolving the issue, and avoid loss of good will.

In determining whether an embargo is reasonable, the Board has developed a fact based balancing test. Factors that the Board considers include the length of the service cessation, the intent of the railroad, the cost of repairs, the amount of traffic on the line, and the financial condition of the carrier. The Board pays particular attention to the cost of repairs relative to the volume of traffic on the line— going back to the need for the rail customers' obligation to pay for the operation and repair of the rail line.

RailAmerica supports the Board's precedent of determining whether an embargo is reasonable using a fact based balancing test upon a complaint being filed. RailAmerica considers the Board's precedent as a major factor in determining how it responds to an embargo situation. RailAmerica urges the Board to follow its precedent in judging embargoes.

4. The determination of whether and when to seek abandonment authorization should be left to the individual railroad.

Railroads determine when and if to seek abandonment of their lines today. It is a difficult decision and not taken lightly.

RailAmerica has acquired over 7,000 miles of rail line in the United States by purchase, lease, or other means. Many of these lines were low density and in need of substantial repair. Some were in moderate condition, but did not justify major capital expenditures. Many of the RailAmerica railroads could have been abandonment candidates by the Class I railroad. However, the creation of the short line saved the line from abandonment, and the shippers on the line have been provided continuous low cost rail transportation. Had there been some criteria other than managerial discretion for seeking abandonment, many of the lines operated by short lines today would have been abandoned.

Indeed, the Interstate Commerce Commission studied whether it should require the filing of abandonment applications if there was a proposed abandonment in the general location of a pending abandonment and determined that it was best to leave the matter to the discretion of management. RailAmerica urges the Board to continue that policy.

There have been recent discussions about requiring a railroad to file for abandonment of a line that has insufficient revenues to justify capital investment in order to permit a different operator to take over the line. As with the shipper obligation to pay the railroad for meeting its common carrier obligation, these discussions failed to address the statutory requirement that the new operator of a rail line would have to compensate the current owner for the value of the line, as well as having the financial backing to make repairs, and subsidize the operating costs. In the United States, property cannot be taken without paying the owner the constitutional minimum value. In the case of railroads, the constitutional minimum value is the greater of the going concern value or net liquidation value. Therefore, if a third party wants to force the sale of a railroad line through one of the Board's processes, the buyer would have to pay the seller the constitutional minimum value of the line. Depending on the length of the line, its value could easily run into the tens of millions of dollars, and perhaps more depending on the location of the line. The public should be aware that such a transfer of a rail line to a new operator comes with the price tag of the constitutional minimum value of the line.

Because of the varying tools at the Board's disposal to assure that needed rail service is provided (i.e., service that a shipper is willing to pay for), the Board should continue to allow railroad management the discretion as to when to seek abandonment.

5. The Board's Office of Compliance and Consumer Assistance should continue to act as an unbiased informal mediator between the shipper and the railroad.

The Board's Office of Compliance and Consumer Assistance ("OCCA"), recently reorganized as the Office of Public Assistance, Governmental Affairs and Compliance, serves a useful purpose in informally resolving disputes and opening lines of communication between railroads and their customers. RailAmerica has first hand experience dealing with OCCA.

RailAmerica's experience is that OCCA is a neutral party that facilitates communication between the railroad and its customer. OCCA acts as an honest broker with no economic or other interest. RailAmerica believes that the Board should continue to allow OCCA to act as an honest broker.

Respectfully submitted,



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Dated: April 17, 2008