

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036-3003

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
KAREN HASSELL HERREN
KENDRA A. ERICSON

TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:
abk@sloverandloftus.com

December 3, 2003

VIA HAND DELIVERY

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

ENTERED
Office of Proceedings

DEC 3 2003

Part of
Public Record

Re: Finance Docket No. 34438, Huron & Eastern Ry. –
Acquisition and Operation Exemption – Central Michigan Ry.

Dear Mr. Secretary:

On behalf of Lake State Railway Company ("Lake State"), we write to express serious concerns regarding the November 26, 2003 filing by the Huron & Eastern Railway Company, Inc. ("HESR") in this docket. HESR stated in its certification filing that it intends to acquire and operate substantially all of the railroad lines currently owned by Central Michigan Railway Company ("Central Michigan"), and that it intends to claim exemption authority for that transaction under 49 C.F.R. § 1150.41. HESR is a subsidiary of RailAmerica, Inc. ("RailAmerica") which currently owns five separate railroads within ninety miles of the Central Michigan.

Lake State is a Class III railroad carrier operating in the state of Michigan. Lake State was formed in 1992 by two former officers of the affiliated Central Michigan and Detroit & Mackinac Railway Company ("D&M"). See Finance Docket No. 32012, Lake State Ry. – Lease and Operation – Detroit and Mackinac Ry., Decision served Feb. 27, 1992 (authorizing Lake States' lease and operation of approximately 275 miles of railroad line owned by D&M in Michigan). In 1997, Lake State purchased this line from D&M. See Finance Docket No. 33372, Lake State Ry. – Acquisition and Operation Exemption – Rail Lines of Detroit & Mackinac Ry., Notice of Exemption served March

The Hon. Vernon A. Williams
December 3, 2003
Page 2

28, 1997. Lake State currently maintains connections with CSX Transportation, Inc. ("CSXT") and Central Michigan in Bay City, Michigan.

Lake State is concerned with the potential impact of the HESR transaction for two principal reasons. First, Lake State's own viability depends upon the use of trackage rights over a five-mile portion of the Central Michigan in North Bay City, Michigan between Kawkawlin, Michigan (MP 57.6) and Bay City, Michigan (MP 1.62). Absent enforceable assurances that HESR will fully assume Central Michigan's obligations under Lake State's trackage rights and related agreements, the proposed transaction would have a significant, adverse impact on Lake State. Second, the dominant position already held by RailAmerica in the mid-Michigan area raises a serious risk that the accretion of even more market power through the subject transaction would give RailAmerica the means to disrupt the competitive balance between rail carriers in the region.

Lake State's trackage rights over Central Michigan, which are memorialized in a Trackage Rights Agreement dated March 27, 1997, permit Lake State to operate between two unconnected portions of its system and to access its only point of interchange with CSXT. Lake State also is a party to a "Coordination Agreement" with Central Michigan, also dated March 27, 1997, which defines the parties' business relationship and assures Lake State of the ability to continue to provide rail transportation service to its customers. If HESR were to acquire Central Michigan's assets without assuming Central Michigan's responsibilities under those agreements, Lake State would experience immediate and irreparable harm.

RailAmerica states in its press release regarding the transaction (copy attached) that the benefits to be derived from the Central Michigan acquisition relate to RailAmerica's ownership of five separate rail carriers in the immediate vicinity of Central Michigan:

With five existing RailAmerica railroads within a 90-mile radius of CMGN, the Company anticipates deriving further synergies and cost savings from its Michigan cluster of rail operations. CMGN also has a direct connection with RailAmerica's Huron & Eastern Railway (HESR) and Saginaw Valley Railway (SGVY) railroads.

The Hon. Vernon A. Williams
December 3, 2003
Page 3

CMGN provides rail freight service to the Saginaw area in Michigan's 'Thumb' region and interchanges traffic with Canadian National, CSXT, Lake State Railway Company and the Tuscola & Saginaw Bay Railway, in addition to HESR and SGVY. . . .

Gary O. Marino, Chairman, President & CEO of RailAmerica, said: "With Central Michigan's strong operational performance and excellent free cash flow, we expect that it will be immediately accretive to RailAmerica's earnings. This transaction represents a compelling growth opportunity for Central Michigan and RailAmerica's other Michigan railroads as we expect to derive significant benefits from operating CMGN within our Michigan cluster of railroads. Once this transaction is consummated, we will have six railroads in Michigan operating approximately 500 miles of rail line. The acquisition will double our freight carloads in the state to over 60,000 annually and will further solidify RailAmerica's presence in Michigan, where our flagship operation, the Huron & Eastern railroad, commenced rail service in 1986."

(Emphasis added). This statement strongly suggests that the transaction in question is not merely intended as the routine acquisition of an additional railroad line by an individual Class III rail carrier, but instead, is intended specifically as a means to further the combined operations of a group of carriers under common corporate control.

HESR states that it intends to employ the Board's seven-day exemption procedure under 49 C.F.R. § 1150.41 with respect to this transaction. Lake State is unaware of a prior instance in which the procedures set forth in the Board's regulations at 49 C.F.R. §§ 1150.41 et seq. have been used to claim exemption authority for the acquisition of substantially all of the railroad lines of another carrier where the acquiring carrier's parent company already holds a dominant position in the relevant geographic market. Lake State respectfully submits that the potential competitive concerns implicated by such a transaction extend far beyond the normal application of the § 1150.41 exemption, and warrant detailed scrutiny by the Board.

The Hon. Vernon A. Williams
December 3, 2003
Page 4

Lake State intends to pursue an acceptable commercial agreement with RailAmerica that will alleviate its concerns regarding the proposed acquisition. However, Lake State reserves its rights to seek relief from the Board if and to the extent necessary, including but not limited to, a stay of the effectiveness of any HESR exemption notice pending a full investigation by the Board. See, e.g., Finance Docket No. 33180, *Indiana & Ohio Ry. – Acquisition Exemption – Lines of the Grand Trunk Western R.R.*, Decision served December 20, 1996.

Please accept this letter for inclusion in the formal record of this docket.

Respectfully submitted,

A handwritten signature in black ink, reading "Andrew B. Kolesar III". The signature is written in a cursive style with a stylized "III" at the end.

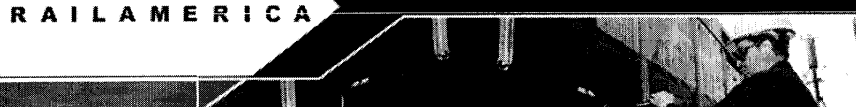
Andrew B. Kolesar III
An Attorney for Lake State
Railway Company

Enclosure

cc: Louis E. Gitomer, Esq.



RAILAMERICA



[Home](#)
[About Us](#)
[Investor Relations](#)
[Overview](#)
[Stock Audio](#)
[Stock Chart](#)
[Press Releases](#)
[Presentations](#)
[Fundamentals](#)
[Analyst Coverage](#)
[SEC Filings](#)
[Annual Report](#)
[Corporate Governance](#)
[Request Information](#)
[Email Alerts](#)
[Rail Maps](#)
[North American Rail](#)
[International Rail](#)
[Recent News](#)
[Employment](#)
[Customers](#)

Press Releases



RailAmerica, Inc. (ticker: RRA, exchange: New York Stock Exchange) News Release - 26-Nov-2003

RailAmerica Enters Into Agreement to Acquire Central Michigan Railway

BOCA RATON, Fla.--(BUSINESS WIRE)--Nov. 26, 2003--RailAmerica, Inc. (NYSE:RRA) today announced that it has entered into an agreement to acquire the assets of the Bay City, Michigan-based Central Michigan Railway Company (CMGN). CMGN, which operates 100 miles of track from Midland, Michigan, south to Durand, Michigan, moved approximately 30,000 carloads and had revenue of approximately \$11 million in 2002. The transaction, which is subject to regulatory approval and other customary closing conditions, is expected to be completed within 60 days.

With five existing RailAmerica railroads within a 90-mile radius of CMGN, the Company anticipates deriving further synergies and cost savings from its Michigan cluster of rail operations. CMGN also has a direct connection with RailAmerica's Huron & Eastern Railway (HESR) and Saginaw Valley Railway (SGVY) railroads.

CMGN provides rail freight service to the Saginaw area in Michigan's 'Thumb' region and interchanges traffic with Canadian National, CSXT, Lake State Railway Company and the Tuscola & Saginaw Bay Railway, in addition to HESR and SGVY. Major shippers on CMGN include Dow Chemical and Consumers Energy. Commodities moved on CMGN include agricultural commodities, lumber, automotive parts, heavy machinery, chemicals, sugar beets, fertilizer, military hardware, fuels, stone, cement and coal. CMGN also has cross-dock, warehouse and transload facilities. Established in 1987, CMGN employs 43 people and is owned and operated by The Straits Corporation.

Gary O. Marino, Chairman, President & CEO of RailAmerica, said: "With Central Michigan's strong operational performance and excellent free cash flow, we expect that it will be immediately accretive to RailAmerica's earnings. This transaction represents a compelling growth opportunity for Central Michigan and RailAmerica's other Michigan railroads as we expect to derive significant benefits from operating CMGN within our Michigan cluster of railroads. Once this transaction is consummated, we will have six railroads in Michigan operating approximately 500 miles of rail line. The acquisition will double our freight carloads in the state to over 60,000 annually and will further solidify RailAmerica's presence in Michigan, where our flagship operation, the Huron & Eastern railroad, commenced rail service in 1986."

C. A. Pinkerton, President of The Straits Corporation, added: "The purchase of Central Michigan by RailAmerica will assure the continued growth of the company by combining the strong financial strength of RailAmerica with the solid operating performance of Central Michigan. The Central Michigan Railway has enjoyed continued growth since its inception in 1987 due to its diversified and strong customer base, and talented and loyal work force. This acquisition will have a

positive influence on all concerned and will allow the company to continue to grow and take advantage of opportunities within the industry, making for a stronger and more competitive company. I look forward to seeing the next chapter of growth within the Central Michigan Railway."

RailAmerica, Inc. (NYSE:RRA) is the world's largest short line and regional railroad operator with 49 railroads operating approximately 17,700 miles in the United States, Canada, Australia, Chile and Argentina, including track access arrangements. The Company is a member of the Russell 2000(R) Index. Its website may be found at <http://www.railamerica.com>.

DISCLAIMER REGARDING FORWARD-LOOKING STATEMENTS: This press release contains forward-looking statements regarding future events and the performance of RailAmerica that involve risks and uncertainties that could cause actual results to differ materially including, but not limited to, fuel costs, foreign currency risks, failure to successfully integrate acquisitions, failure to service debt, failure to successfully market and sell non-operating/non-strategic properties and assets when scheduled or at all, failure to accomplish new marketing initiatives, economic and weather conditions, customer demand, increased competition in the relevant market, and others. In particular, forward-looking statements regarding earnings of the Company and entities to be acquired are subject to inherent economic, financial and operating uncertainties, including changes in economic and weather conditions, the ability to retain key customers and the impact of unforeseen costs and liabilities of such entities. Forward-looking statements speak only as of the date the statement was made. The Company assumes no obligation to update forward-looking information to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information. If the Company does update any forward-looking statement, no inference should be drawn that the Company will make additional updates with respect to that statement or any other forward-looking statements. We refer you to the documents that RailAmerica files from time to time with the Securities and Exchange Commission, such as the Form 10-K, Form 10-Q and Form 8-K, which contain additional important factors that could cause its actual results to differ from its current expectations and from the forward-looking statements contained in this press release.

CONTACT: RailAmerica, Inc., Boca Raton
Susan Wright Greenfield, 561/994-6015

SOURCE: RailAmerica, Inc.

Copyright © 2002, RailAmerica, Inc. Rights Reserved. | 1