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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. EP 763

**MONTANA RAIL LINK, INC.
PETITION FOR RULEMAKING
CLASSIFICATION OF CARRIERS (49 C.F.R. 1201)**

**COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

**Chuck Baker
President
American Short Line and Regional Railroad Association
50 F Street NW, Suite 500
Washington, DC 20001
(202) 585-3440**

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ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 47,500 miles of track in 49 states, or approximately 29% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. Short lines provide 100% of freight transportation in five states, and more than 25% in thirty-six states, keeping small town and rural America connected to the U.S. economy and beyond.

Class II and III railroads play a vital role in maintaining rail service over hundreds of miles of light density lines throughout the country that in many cases were candidates for abandonment by their former Class I owners. These small railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. They also face pervasive competition from trucks, barges, and transloading operations for freight traffic.

Background

On February 14, 2020, Montana Rail Link, Inc. (“MRL”) filed a petition for rulemaking to amend the Surface Transportation Board’s (“STB” or “Board”) rail carrier classification regulation found at 49 C.F.R. 1201, General Instructions § 1 -1(a) (“MRL’s Petition”), which describes the

revenue thresholds for the classes of railroads for accounting and reporting purposes.¹ MRL is currently classified as a Class II carrier. MRL's Petition seeks to have the STB increase the revenue threshold for changing from a Class II carrier to a Class I carrier to \$900 million.

In a Decision served on May 13, 2020, the STB opened a rulemaking proceeding in response to MRL's Petition. The Board made no determination regarding the merits of the Petition but initiated the rulemaking proceeding and sought comments.

Interests of the American Short Line and Regional Railroad Association

ASLRRA fully supports MRL's Petition to amend the current revenue threshold for classifying Class I railroad carriers for three basic reasons. First, Class II railroads such as MRL are distinctly different than Class I railroads and should continue to be classified in their current category. Second, the burdens imposed on a Class II carrier by becoming a Class I carrier would outweigh any benefits. Third, causing MRL and other Class II railroads similarly situated to be reclassified as Class I railroads would unnecessarily and counterproductively deprive them of certain benefits to which Class II railroads are now eligible.

Differences between Class I and Class II Carriers

The differences between a larger regional railroad such as MRL and current seven Class I railroads are significant and numerous and the STB (and its predecessor, the Interstate Commerce Commission) have long recognized those differences. There are several key general characteristics of smaller railroads that make them different from Class I railroads, including:

- Class II service territories are local or regional and their traffic densities are lower, and this means they are much more vulnerable to local or regional economies. This certainly applies to MRL.
- They have lower shares of dominant rail commodities such as coal, automobiles, and intermodal, but a higher concentration of non-captive, truck competitive general merchandise traffic.
- They are largely dependent on their Class I interchange partner for revenue, power, and car supply and thus there is no evidence that Class II railroads exercise market power. This also certainly applies to MRL.

¹ The current thresholds railroads that have annual operating revenues of \$489,935,956 or more are classified as Class I carriers; railroads that have annual operating revenues of less than \$489,935,956 and more than \$39,194,876 are classified as Class II carriers; and railroads that have annual operating revenues of \$39,194,876 or less are classified as Class III carriers.

- They are often dependent upon a limited market and a traffic base that can be non-diversified. This also applies to MRL.
- The total operating revenues of the smallest Class I railroad is approximately \$1.414 billion, which is about three times the current threshold for classifying a railroad as a Class I and would still be about 50% higher than the increased threshold suggested by MRL. In other words, there is a massive revenue gap between the largest Class II and the smallest Class I railroad, which suggests that it would make sense to adjust the classifications so that MRL and similarly situated Class IIs remain classified as Class IIs.
- Class I carriers are currently required to comply fully with many Federal Railroad Administration regulations, including 49 C.F.R. §§ 243, 271, and 272, whereas, Class II carriers are partially exempted from the requirements due to differing operational characteristics – thus becoming a Class I would subject a Class II to a raft of new burdensome regulatory requirements.

Burdens Imposed on Class II Carriers

Among the biggest burdens that would be placed on MRL and other similarly situated Class II railroads are the accounting and financial burdens that would result from being reclassified as Class I carriers. Pursuant to 49 C.F.R. § 1201 Subpart A – Uniform System of Accounts, Class I railroads are required to create and maintain substantial financial records and file them with the STB. Class II railroads are exempted from these requirements pursuant to 49 C.F.R. § 1201 at 1-1(c).

As noted in MRL's Petition, the STB estimated that each Class I railroad would spend up to 2,116 hours annually to prepare just eight financial reports. MRL's Petition at p.8. While this number of hours and the resulting costs may not be a significant burden on any Class I railroad, even the smallest one, the same would not be true for a railroad with revenues far less than even the smallest Class I. In fact, MRL estimated it would have to expend at least \$150,000 annually just to prepare the required reports, not to speak of the cost it would take to convert its accounting system, train employees, and to maintain and record the reports. MRL's Petition at p. 9. One Hundred Fifty Thousand Dollars (\$150,000) is an extremely costly sum for a regional railroad that operates a lean business order to maintain exemplary and cost-effective service for its customers. This does not

even address the additional regulatory requirements that the FRA currently imposes on Class I carriers that would be imposed on MRL and other Class II carriers and the resulting costs of complying with those requirements if it were to become a Class I.

There are very few benefits that would spring from requiring a current Class II carrier to create, maintain, and report the data currently required from Class I carriers. The submission of such information would not, for example, assist the calculation of variable costs in a rate complaint against a non-Class I carrier nor would it assist the STB in calculating off-branch costs in abandonment applications. On the other hand, it would increase inefficiencies and complexities to the conduct of the business by current Class II railroads. Accordingly, ASLRRA believes the cost/benefit analysis weighs in favor of granting MRL's Petition.

Deprivation of Benefits

Class II railroads currently are the beneficiary of at least two important benefits that Class I railroads are not. The first is the Short Line Rehabilitation Tax Credit (a/k/a 45G). This tax credit was first enacted by Congress in 2005. The credit, which is effective until 2023 at minimum, has allowed short-line and regional railroads to privately invest over \$4B since its inception and is anticipated to drive \$200M per year in infrastructure spending. For MRL, the credit provides close to \$3 million per year in additional funds to invest in the infrastructure, which would be lost if the railroad became a Class I. This would make some infrastructure projects unattainable, make the railroad less viable, and potentially harm service to customers, for no discernible benefit. 45G exists to support exactly the type of rural infrastructure that MRL maintains.

The second benefit that would be lost by a Class II railroad becoming a Class I railroad is the Railroad Industry Agreement ("RIA"), an agreement between Class I railroads on the one hand, and Class II and III railroads on the other. It provides a mechanism for all railroads to work together to increase rail traffic. The RIA addresses such issues as switch charges, heavy axle loads, rate policies, car supply, and service policy.

Reclassification of MRL or any other Class II railroad as a Class I would deprive them of the benefits of these agreements without a concomitant benefit to them.

Conclusion

ASLRRA urges the STB to grant MRL's Petition. Granting it would recognize the significant operational and financial differences between MRL and similarly situated Class II railroads compared to Class I railroads, permit MRL and other similarly situated regional railroads to continue to efficiently serve their customers, and retain the benefits contained in 45G and the RIA. The cost/benefit clearly shows the cost of imposing numerous regulatory requirements on it greatly outweighs any benefits.

Respectively submitted,

Charles H Baker

Chuck Baker
President
American Short Line and Regional Railroad Association