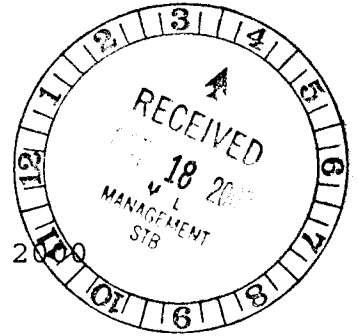


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ORIGINAL



October 18, 2000

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

Dear Secretary Williams:

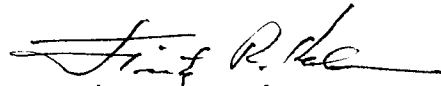
Enclosed for filing in STB Ex Parte No. 634, Consolidated Railroad Reporting, are the original and ten copies of the Comments of StatesRail.

A diskette with the text of the Comments in WordPerfect format is enclosed.

Additional copies of this letter and of the Notice are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

If you have any question concerning this filing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Mr. Jim Shaffer
Alice C. Saylor, Esq

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL

STB Ex Parte No. 634
CONSOLIDATED RAILROAD REPORTING



COMMENTS
OF
STATESRAIL

Fritz R. Kahn
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Attorney for
STATESRAIL

Dated: October 18, 2000

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Ex Parte No. 634
CONSOLIDATED RAILROAD REPORTING

COMMENTS
OF
STATESRAIL

StatesRail of Dallas, Texas,¹ pursuant to the Board's decision, served September 25, 2000, offers the following comments in opposition to the proposed consolidation of reports of affiliated Class III short line railroads and the resultant change in their classification:

StatesRail is a non-carrier holding company in control of seven Class III short line railroads:

a. Alabama & Gulf Coast Railway of Monroeville, AL, which operates over lines in Alabama and Florida acquired from The Burlington Northern and Santa Fe Railway Company.

b. Arizona Eastern Railway of Claypool, AZ, which operates over lines in Arizona acquired from the Southern Pacific Transportation Company.

¹ StatesRail is the trade name for StatesRail, Inc., and StatesRail L.L.C, the common control of which was approved in STB Finance Docket No. 33341, Kauri L.L.C.--Continuance in Control Exemption--StatesRail, Inc., served April 17, 1997.

c. Eastern Alabama Railway of Sylacauga, AL, which operates over lines in Alabama acquired from CSX Transportation, Inc.

d. Kiamichi Railroad Company of Hugo, OK, which operates over lines in Arkansas, Oklahoma and Texas acquired from the Burlington Northern Railway Company.

e. Kyle Railroad Company of Phillipsburg, KS, which operates over lines in Colorado and Kansas acquired from the estate of the Chicago, Rock Island & Pacific Railroad Company, Missouri Pacific Railroad Company and Union Pacific Railroad Company.

f. San Joaquin Valley Railroad Co. of Exeter, CA, which operates over lines in California acquired from the Southern Pacific Transportation Company and The Atchison, Topeka and Santa Fe Railway Company.

g. SWKR Operating Co., Inc., d/b/a San Pedro & Southwestern Railroad Company of Benson, AZ, which operates over lines in Arizona acquired from the Southern Pacific Transportation Company.

Each of the StatesRail railroads is a separate and distinct enterprise. The operations of the railroads are not integrated, and each is independently run by its own general manager.

If there has been one outstanding success attributable to the deregulation of the railroad industry, it has been the significant role played in the commerce of the country by the short line and regional railroads. The statistics are ones with

which the Board is well familiar. The number of short line and regional railroads has doubled since the enactment of the Staggers Rail Act of 1980. There now are more than 400 short line and regional railroads, operating over nearly 50,000 miles, or 29 percent, of the railroad tracks in the U.S. They employ 22,000 rail workers, accounting for eleven percent of all railroad employees, and earn nine percent of the railroad industry's freight revenues. StatesRail is proud to have been among those who have contributed to this phenomenal development in domestic transportation, particularly in rural America.

What makes the heightened importance of the short and regional railroads particularly gratifying is that, but for their intervention, probably most of the railroad lines over which they operate would have been abandoned. It is no secret — to the contrary, it is well documented — that most of the railroad lines which have been acquired by the short line railroads over the past twenty years were deemed to be marginal by the Class I railroads which had operated them and were slated for abandonment. The intervention of the short line railroads, which either purchased or leased the lines from their Class I railroad owners, kept them from being abandoned and, in most instances, even stimulated the growth of railroad traffic.

None of this would have happened but for the foresight and resourcefulness of the Board's predecessor, the Interstate Commerce Commission, because it was the agency's granting of

exemptions² from the statutory and regulatory requirements that otherwise would have applied³ that allowed the short line railroads quickly, easily and relatively inexpensively to obtain the ICC approvals required for them to acquire railroad lines from the Class I railroads contemplating their abandonment.⁴ The success of these early acquisitions led to the ICC's promulgation of the §10901 class exemption in Class Exemption--Acq. & Oper. Of R. Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810 (1985), aff'd., Illinois Commerce Com'n v. I.C.C., 817 F.2d. 145 (D.C. Cir. 1987). The ICC, 1 I.C.C.2d at 813, said:

Transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves shipper and community interests by continuing rail service, and allows the selling railroad to eliminate lines it cannot operate economically. Transfer before a financial crisis (with attendant plans for abandonment) helps assure continued viable service.

The §10901 class exempting became an immediate success and very quickly led to the establishment of a large number of short line

² The exemptions were granted under 49 U.S.C. 10505, now 49 U.S.C. 19502.

³ Acquisition of railroad lines require approval pursuant to 49 U.S.C. 10901 and 49 C.F.R. 1150.1, et seq.

⁴ See, i.e., CMC Real Estate Corp. v. I.C.C., 807 F.2d 1025 (D.C. Cir. 1986), affirming, Finance Docket No. 30554, Iowa Interstate Railroad--Petition for Exemption, served October 1, 1984; Finance Docket No. 29158, Seattle North Coast Railroad Company--Acquisition and Operation of a Line of Railroad in the State of Washington, served March 26, 1981; Finance Docket No. 30439, Gulf & Miss. R.R. Corp.--Purchase (Portion)--Exemption--I.C.G. R.R. Co., served January 2, 1985.

railroads.⁵ Moreover, as is relevant to this proceeding, the ICC made its §10901 class exemption available to newly formed affiliates of other Class III short line railroads. As the ICC said in Finance Docket No. 32304, Gateway Eastern Railway Company--Acquisition and Operation Exemption--Lines of Consolidated Rail Corporation, served July 6, 1995, "[A] subsidiary formed for a valid business purpose and sufficiently independent of the parent will not be deemed the parent's alter ego [citation omitted]."⁶ StatesRail was among the non-carrier holding companies that availed itself of the §10901 class exemption when it sought to acquire another line from a Class I railroad. See, i.e., STB Finance Docket No. 33439, Alabama & Gulf Railway LLC--Acquisition and Operation Exemption--The Burlington Northern and Santa Fe Railway Company, served August 14, 1997.

In taking up the ICC Termination of 1995, the Congress

⁵ See, i.e., Finance Docket No. 31187, Southeast Rail Corporation--Acquisition and Operation Exemption--Gulf and Mississippi Railroad Corporation, served December 24, 1987; Finance Docket No. 31176, LNAC Acquisition Corp.--Acquisition and Operation Exemption--The Louisville, New Albany & Corydon Railroad Company, served December 24, 1987; Finance Docket No. 31168, Little Kanawha River Rail, Inc.--Acquisition and Operation Exemption--CSX Transportation, Inc., Line in Wood County, WV, served December 24, 1987.

⁶ See, i.e., Railway Labor Executives' Ass'n v. I.C.C., 914 F.2d 276 (D.C. Cir. 1990), affirming, Finance Docket No. 31205, FRVR Corporation--Acquisition and Operation Exemption--Chicago & North Western Transportation Company, served February 28, 1989; Railway Labor Executives Ass'n v. I.C.C., 819 F.2d 1172 (D.C. Cir. 1987), affirming, Finance Docket No. 30779, Rochester and Southern R.R., et al.--Exemption from 49 U.S.C. 10901, 11301 and 11343, served June 27 1986.

recognized the folly of having a non-carrier holding company, such as StatesRail, establish yet another company whenever it proposed to acquire additional trackage under the §10901 class exemption. In explaining what it intended to accomplish by the enactment of 49 U.S.C. 10902, the House Committee on Transportation and Infrastructure, H. Rep. 104-311, page 101, said:

This new provision delineates the authority of the agency to approve construction and operation of rail lines by Class II and Class III railroads and by noncarriers, previously governed by former section 10901. Section 10702 is intended to avoid the protracted regulatory and court litigation generated by the former dichotomy between "carrier" and "noncarrier" transactions and the consequent applicability or inapplicability of mandatory "carrier" labor protection requirements. Instead, this new provision, in combination with Section 10710, establishes a clear statutory division between transactions involving large Class I railroads on the one hand and small railroads on the other. This should promote clearer and more expeditious handling of the affected transactions, and avoid imposing additional and sometimes potentially fatal costs on start-up operations of smaller railroads who often can keep rail lines in service, even if not viable as part of a larger carrier's system.

The Conference Report, H. Rep. 104-422, at page 180, noted that the conferees adopted the substantive provisions of the House bill.

In promulgating the implementing §10902 class exemption, 49 C.F.R. 1150.41, et seq., the Board, in Class Exem. For Acq. or Oper. Under 49 U.S.C. 10902, 1 S.T.B. 95, 103, specifically observed, "A class exemption from the requirements of section 10902 will facilitate the acquisition of rail lines by Class III carriers and ensure the continuation of rail service on lines

that may otherwise be abandoned if not for sale." Neither the statute nor the Board's §10902 class exemption distinguishes between acquisitions of additional trackage by Class III short line railroads that are affiliated with other Class III short line railroads and those that have no such affiliation, and Class III short line railroads affiliated with others freely have made use of the §10902 class exemption.⁷ StatesRail, too, has availed itself of the §10902 class exemption to have one of its Class III short line railroads acquire additional trackage. See, i.e., STB Finance Docket No. 33870, Eastern Alabama Railroad, Inc.--Acquisition Exemption--CSX Transportation, Inc., served May 19, 2000.

The Board's proposal threatens to jeopardize continued acquisitions under the §10902 class exemption and will go a long way toward undermining the very purpose and intent for Congress' enactment of 49 U.S.C. 10902. If, as the Board proposes, a short line railroad seeking to avail itself of the §10902 class exemption were part of a family of short line railroads reclassified as being a Class II railroad, employee protection would be mandated as part of the Board's authorization of the transaction. As the Board noted in Class Exem. For Acq. or Oper.

⁷ See, i.e., Finance Docket No. 33927, SMS Rail Service, Inc.--Acquisition and Operation Exemption--Valero Refining Company--New Jersey, served September 14, 2000; Finance Docket No. 33895, Ohio Southern Railroad Incorporated--Acquisition and Operation Exemption--Pennsylvania Lines, LLC., et al., served September 12, 2000; Finance Docket No. 33886, Arizona & California Railroad Company, LLP d/b/a Puget Sound & Pacific Railroad Company--Lease and Operation Exemption--Union Pacific Railroad Company, served July 7, 2000.

Under 49 U.S.C. 10902, supra, 1 S.T.B. at 95, "The new provision requires Class II rail carriers to provide adversely affected railroad employees a maximum of 1 year of severance pay, equal to the employee's earnings during the 12 months preceding the application filing date." Moreover, the proposed transaction can not be effected until after 60-days' notice to the employees and their unions. The cost of the mandatory employee protection, which, one way or another, will be borne by the transferee, and the additional time required for effecting the acquisition may be enough to deter the short line railroad from going ahead with the purchase or lease of a marginal line from its Class I railroad owner; instead of acquiring the trackage, the short line railroad simply may allow it to be abandoned. At a time when most of the remaining Class I railroads are under great financial pressure to improve their bottom lines, and, as Norfolk Southern Corporation already has announced, they undoubtedly will seek to divest themselves of additional marginal railroad lines, it would be improvident for the Board to cut off potential purchasers or lessees of such properties as its proposed reclassification of affiliated Class III short line railroads assuredly would.

WHEREFORE, StatesRail opposes to the proposed consolidation of reports of affiliated Class III short line railroads and the resultant change in their classification.

Respectfully submitted,

STATESRAIL

By its attorney,



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Dated: October 18, 2000