

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the matter of:)
)
APPLICATION OF COLUMBIA GAS) Case No. 2016-00162
OF KENTUCKY, INC. FOR AN AD-)
JUSTMENT OF RATES)

**PREPARED REBUTTAL TESTIMONY OF
ERIC T. BELLE
ON BEHALF OF COLUMBIA GAS OF KENTUCKY, INC.**

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October 21, 2016 Attorneys for Applicant
COLUMBIA GAS OF KENTUCKY, INC.

PREPARED REBUTTAL TESTIMONY OF ERIC T. BELLE

1 **Q: Please state your name and business address.**

2 A: My name is Eric T. Belle and my business address is 290 W. Nationwide
3 Blvd., Columbus, Ohio 43215.

4

5 **Q: Did you file Direct Prepared Testimony in this proceeding?**

6 A: Yes, I did.

7

8 **Q: What is the purpose of your Rebuttal Testimony in this proceeding?**

9 A: To provide a response to AG's Witness Kollen testimony in regards to his
10 statements concerning the expansion of the Accelerated Mains Replace-
11 ment Program ("AMRP") to include Aldyl-A pipe. I will also provide a re-
12 sponse to AG Witness Kollen's opinion to exclude incremental capital ini-
13 tiatives from the revenue requirement.

14

15 **Q: Should the Kentucky Public Service Commission ("Commission")**
16 **adopt Columbia's proposal to expand the scope of the AMRP to include**
17 **Aldyl-A plastic pipe and other first generation plastic pipe?**

18 A: Yes. The Pipeline and Hazardous Materials Safety Administration
19 ("PHMSA") has issued four advisory bulletins to natural gas pipeline

1 owners and operators citing the susceptibility of older plastic pipe to ex-
2 hibit brittle-like cracking. Attachment A to my testimony is a letter issued
3 by the Commission requesting operators to provide reports detailing the
4 presence of this type of pipe in its system and all efforts planned to miti-
5 gate the risks associated with premature brittle-like cracking of first gen-
6 eration plastic pipe. Columbia's proposal is to expand the scope of the
7 AMRP to include these projects, when justified by Optimain, as well as the
8 replacement of smaller segments when a leak occurs. This proposal posi-
9 tions Columbia to respond with both larger scaled and smaller scaled
10 AMRP projects to mitigate future safety related concerns that may arise
11 with respect to this type of pipe.

12

13

14 **Q: Should new incremental capital initiative costs be excluded from the**
15 **revenue requirement as suggested by AG Witness Kollen?**

16 A: No. Although Columbia develops an approved capital budget, the capital
17 planning and execution process is a fluid and ongoing process that is up-
18 dated periodically. This process allows for incremental capital initiatives
19 to be added to the budget that may not have been known or complete
20 when the capital budget was originally approved. As an example, in 2016

1 and 2017, Columbia received an incremental \$0.9 million and \$2.0 million,
2 respectively, towards its AMRP. Columbia will use this incremental capi-
3 tal towards its goal of removing priority pipe from its system. An initia-
4 tive that Columbia is striving to complete is to remove all cast iron from
5 its system in a more accelerated manner than bare steel pipe due its risk of
6 failure. Attachment B to my testimony is an advisory bulletin issued by
7 PHMSA on March 23, 2012 advising operators with cast iron pipeline in
8 their systems to conduct a comprehensive review of their cast iron sys-
9 tems and replacement programs and accelerate the repair, rehabilitation
10 and replacement of these facilities. As of February 3, 2016, Columbia has
11 approximately 14.2 miles of cast iron pipe remaining in its system and be-
12 lieves it is prudent to utilize incremental capital when made available to
13 continue towards this and other initiatives.

14 Lastly, on page 34 lines 2, 3 and 4 of Mr. Kollen's direct testimony, he
15 states that incremental capital expenditures should not be included in the
16 revenue requirement unless there are savings sufficient to justify the cost.
17 Columbia disagrees with the assertion of Mr. Kollen that there must be Opera-
18 tions and Maintenance savings in order to approve incremental capital initiatives.
19 Incremental capital initiatives occur to address specifically identified needs or re-
20 quirements as part of fluid budgets and while economically examined, should not
21 be dependent upon cost savings.

1

2 **Q: On page 33 lines 4 and 6 of Mr. Kollen's direct testimony, he states that**
3 **Columbia's approved age and condition capital expenditures are \$14.5**
4 **million in 2016 and \$15.3 million in 2017. Is this correct?**

5 A: No, it is not. As shown in Filing Requirement 16-(7)(b), which provides
6 Columbia's approved capital expenditure budget for the years 2016
7 through 2019, age and condition expenditures are budgeted at \$16.2 mil-
8 lion in 2016 and \$18.2 million in 2017.

9

10 **Q: Does this complete your Prepared Rebuttal testimony?**

11 A: Yes, it does.



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James W. Gardner
Chairman

Daniel E. Logsdon Jr.
Vice Chairman

J. Roger Thomas
Commissioner

April 1, 2016

TO: ALL NATURAL GAS DISTRIBUTION OPERATORS IN KENTUCKY

RE: PIPELINE INTEGRITY RISK MANAGEMENT ASSOCIATED WITH OLDER PLASTIC PIPES SUSCEPTIBLE TO PREMATURE BRITTLE-LIKE CRACKING

The Pipeline and Hazardous Materials Safety Administration ("PHMSA") has issued four advisory bulletins to owners and operators of natural gas pipeline distribution systems in the past concerning the susceptibility of older plastic pipe to premature brittle-like cracking, which was described by the National Transportation Safety Board in its April 23, 1998 special investigation report, *Brittle-Like Cracking in Plastic Pipe for Gas Service*.¹ PHMSA's advisory bulletins include ADB-99-01 and ADB-99-02 which were both issued on March 11, 1999; ADB-02-07 which was issued on November 26, 2002; and ADB-07-02 which was issued on September 6, 2007.

- ADB-99-01, "Potential Failure Due to Brittle-Like Cracking of Certain Polyethylene Plastic Pipe manufactured by Century Utility Products, Inc.," advised natural gas pipeline distribution system operators that brittle-like cracking may occur on certain polyethylene pipe manufactured by Century Utility Products, Inc.
- ADB-99-02, "Potential Failures Due to Brittle-Like Cracking of Older Plastic Pipe in Natural Gas Distribution Systems," advised natural gas pipeline distribution system operators that brittle-like cracking may occur on plastic pipes installed between the 1960s and early 1980s.
- ADB-02-07, "Notification of the Susceptibility To Premature Brittle-Like Cracking of Older Plastic Pipe," reiterated to natural gas pipeline distribution system operators the susceptibility of older plastic pipe to premature brittle-like cracking and specifically identified, but was not

¹ The National Transportation Safety Board (NTSB) issued its Special Investigative Report, *Brittle-Like Cracking in Plastic Pipe for Gas Service*, NTSB/SIR98/01, which addressed three major safety issues: (1) Vulnerability of plastic piping to premature failures due to brittle-like cracking; (2) adequacy of available guidance relating to the installation and protection of plastic piping connections to steel mains; and, (3) performance monitoring of plastic pipeline systems to detect unacceptable performance (Apr.23, 1998).

limited to (1) Century Utility Products, Inc. products (2) Low-ductile inner wall "Aldyl A" piping manufactured by Dupont Company before 1973 and (3) polyethylene gas pipe designated PE 3306. This advisory opinion also listed several environmental, installation and service conditions in which plastic piping is used that could lead to premature brittle-like cracking failure.

- ADB-07-02, "Updated Notification of the Susceptibility to Premature Brittle-Like Cracking of Older Plastic Pipe," expanded on the information provided in the prior three bulletins by listing two additional pipe materials with poor performance histories relative to brittle-like cracking including (1) Delrin insert tap tees; and (2) Plexco service tee Celcon (polyacetal) caps.

Operators are encouraged to review these four advisory bulletins in their entirety, in which PHMSA identified older pipe materials, which are susceptible to premature brittle-like cracking, ("susceptible materials") to include, but not limited to:

- Century Utility Products, Inc. products;
- Low-ductile inner wall "Aldyl A" piping manufactured by Dupont Company before 1973;
- Polyethylene gas pipe designated PE 3306;
- Delrin insert tap tees; and
- Plexco service tee Celcon (polyacetal) caps.

In addition, in an effort to aid operators with identifying and managing brittle-like cracking issues, PHMSA identified in ADB-02-07 six recommended practices for all operators of polyethylene piping systems, including the following: (1) Review system records to determine if any known susceptible materials have been installed in the system; (2) Establish a process to identify brittle-like cracking failures; (3) Use a consistent record format to collect data on system failures; (4) Collect failure samples of polyethylene piping exhibiting brittle-like cracking; (5) Whenever possible record the print line from any piping that has been involved in a failure; and, (6) For systems where there is no record of the piping material, consider recording print line data when piping is excavated for other reasons.

Due to the inherent safety concerns associated with premature brittle-like cracking on the susceptible materials, the Kentucky Public Service Commission ("Commission") requests that each Operator report to the Commission its progress for reviewing its system for the presence of these susceptible materials and its plan to mitigate the risks to its pipeline system. Specifically, the Commission requests the following from each Operator:

1. Explain if it has determined the extent to which these susceptible materials exist in its pipeline system and how it assesses the risks associated with these susceptible materials to its pipeline system. If it has not made this determination, describe how it is monitoring and mitigating the risks associated with these susceptible materials to its pipeline system.
2. Describe the quantity, size, vintage, location, and type of susceptible materials that exist in its pipeline system.
3. Describe any records on pipeline system failures for which brittle-like cracking failures due to susceptible materials was identified and how the Operator has modified the operations and maintenance of its pipeline system.
4. Describe all efforts it has undertaken or plans to undertake to mitigate the risks associated with premature brittle-like cracking of susceptible pipeline materials.

You are requested to provide a written response to the Commission by April 29, 2016. Should you have any questions regarding this request, please do not hesitate to contact, Virginia Gregg, Commission counsel, at (502) 782-2584 or via email at Virginia.Gregg@ky.gov, or Jason Hurt, Manager Pipeline Safety Branch, at (502) 782-2599 or via email at Jason.Hurt2@ky.gov. We appreciate your continued interest in pipeline safety.

Sincerely,



James W. Gardner
Acting Executive Director

consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the twelve applicants, two of the drivers were involved in crashes and none were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the twelve applicants listed in the notice of February 6, 2012 (77 FR 5874).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the twelve individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the

following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the twelve exemption applications, FMCSA exempts Eugenio V. Bermudez (MA), John A. Carroll, Jr. (AL), Mark W. Crocker (TN), Johnny Dillard (SC), Keith J. Haaf (VA), Edward M. Jurek (NY), Allen J. Kunze (ND), Jack W. Murphy, Jr. (OH), Mark A. Smalls (GA), Glenn R. Theis (MN), Peter A. Troyan (MI) and Gary Vines (AL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 9, 2012.

Larry W. Minor,

Associate Administration for Policy.

[FR Doc. 2012-7084 Filed 3-22-12; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2012-0039]

Pipeline Safety: Cast Iron Pipe (Supplementary Advisory Bulletin)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing an advisory bulletin to owners and operators of natural gas cast iron distribution pipelines and state pipeline safety representatives. Recent deadly explosions in Philadelphia and Allentown, Pennsylvania involving cast iron pipelines installed in 1942 and 1928, respectively, gained national attention and highlight the need for continued safety improvements to aging gas pipeline systems. This bulletin is an update of two prior Alert Notices (ALN-91-02; October 11, 1991 and ALN-92-02; June 26, 1992) covering the continued use of cast iron pipe in natural gas distribution pipeline systems. This advisory bulletin reiterates two prior Alert Notices which remain relevant, urges owners and operators to conduct a comprehensive review of their cast iron distribution pipelines and replacement programs and accelerate pipeline repair, rehabilitation and replacement of high-risk pipelines, requests state agencies to consider enhancements to cast iron replacement plans and programs, and alerts owners and operators of the pipeline safety requirements for the investigation of failures. In addition, the latest survey and reporting requirements of cast iron pipelines required by the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 are included for information.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety home page at: <http://ops.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Jeff Gilliam, Director, Engineering and Research, 202-366-0568 or by email at Jeffery.Gilliam@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2011, an explosion and fire caused the death of one gas utility employee and injuries to several other people while gas utility crews were responding to a natural gas leak in Philadelphia, PA. A preliminary investigation found a circumferential

break on a 12-inch cast iron distribution main that was installed in 1942, and was operating at 17 pounds per square inch gauge (psig) pressure at the time of incident. An investigation continues toward finding the cause.

On February 9, 2011, five people lost their lives and a number of homes were destroyed and other properties impacted by an explosion and subsequent fire in Allentown, PA. A preliminary investigation found a crack in a 12-inch cast iron natural gas distribution main that was installed in 1928, and was operating at less than 1 psig at the time of incident. The crack was located below grade near the destroyed homes. An investigation continues toward finding the cause.

Alert Notice (ALN-91-02)

On October 11, 1991, PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), issued Pipeline Safety Alert Notice (ALN-91-02) alerting pipeline operators of National Transportation Safety Board recommendation P-91-12 in response to the August 1990 explosion and fire in Allentown, PA, caused by a crack in a 4-inch cast iron gas main. The recommendation stated:

"Require each gas operator to implement a program, based on factors such as age, pipe diameter, operating pressure, soil corrosiveness, existing graphitic damage, leak history, burial depth, and external loading, to identify and replace in a planned, timely manner cast iron piping systems that may threaten public safety."

The Alert Notice informed distribution pipeline operators with cast iron pipe of the following:

- The Gas Piping Technology Committee developed guide material to assist them in developing procedures for determining the serviceability of the cast iron pipe and to identify the cast iron pipe segments that may need replacement.
- Computer programs are commercially available that can be used to develop a systematic replacement program for cast iron pipe.
- Pipeline safety regulations require that cast iron pipe on which general graphitization is found to a degree where a fracture might result must be replaced. In addition, the regulations require that cast iron pipe that is excavated must be protected against damage. An operator's compliance with the above guidelines and code requirements can be enhanced by incorporating all of the operator's cast iron responsibilities in an effective cast iron management program that is designed to identify and replace or

remove from service cast iron pipe that may threaten the public.

Alert Notice (ALN-92-02)

On June 26, 1992, RSPA issued a Pipeline Safety Alert Notice (ALN-92-02) as a Supplementary Alert Notice to the 1991 Alert Notice. The Supplementary Alert Notice reminded pipeline operators of the requirement at 49 CFR 192.613 that each operator have a procedure for continuing surveillance of its pipeline facilities to identify problems and take appropriate action concerning failures, leakage, history, corrosion, and other unusual operating and maintenance conditions. This procedure should also include surveillance of cast iron to identify problems and to take appropriate action concerning graphitization.

II. Advisory Bulletin (ADB-2012-05)

To: Each Owner and Operator of a Natural Gas Cast Iron Distribution Pipeline Facility and State Pipeline Safety Representatives.

Subject: Cast Iron Pipe (Supplementary Advisory Bulletin).

Purpose: To Address Continued Concerns Rising Out of Recent Cast Iron Incidents.

Advisory:

On October 11, 1991, Alert Notice (ALN-91-02) was issued reminding all operators of natural gas distribution systems to have a program to identify and replace cast iron piping systems that may threaten public safety. RSPA also informed operators of guidelines and computer programs that were available to help operators determine the serviceability of cast iron pipe and schedule its replacement or retirement. On June 26, 1992, Alert Notice (ALN-92-02) was issued informing pipeline operators that § 192.613 required each operator to have a procedure for continuing surveillance of its pipeline facilities to identify problems and take appropriate action concerning failures, leakage, history, corrosion, and other unusual operating and maintenance conditions. This procedure should also include surveillance of cast iron to identify problems and to take appropriate action concerning graphitization. The two Alert Notices remain relevant, and reaffirm the need for operators of gas cast iron distribution systems to maintain an effective cast iron management program.

PHMSA urges owners and operators to conduct a comprehensive review of their cast iron distribution pipeline systems and replacement programs and to accelerate pipeline repair, rehabilitation, and replacement of aging and high-risk pipe. Recent incidents, such as the deadly explosions in Philadelphia and Allentown, Pennsylvania involving cast iron pipe failures, have focused attention on our Nation's aging pipeline infrastructure and underline the importance of having valid methods for evaluating the integrity of pipelines to better ensure public safety. PHMSA recommends owners and operators of natural gas cast iron pipelines assure their replacement program models are based on relevant risk factors.

In addition, PHMSA reminds owners and operators of cast iron distribution pipelines of their responsibility for the investigation of all failures and that each operator must establish procedures for analyzing incidents and failures, including laboratory examination of failed pipe segments and equipment, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence [192.617]. Owners and operators are required to review pipeline records, validate safe pipeline operating pressure levels and accelerate repairs and replacement where improvements in safety are necessary. The Distribution Integrity Management Program (DIMP) requires natural gas distribution companies to develop and implement DIMP for the pipelines they own, operate or maintain.

PHMSA is asking owners and operators of cast iron distribution pipelines and state pipeline safety representatives to consider the following where improvements in safety are necessary:

- Request, review and monitor operator cast iron replacement plans and programs, actively encourage operators to develop and continually update and follow their plans, and consider establishment of mandated replacement programs.
- Establish accelerated leakage survey frequencies or leak testing considering results from failure investigations and environmental risk factors.
- Focus pipeline safety efforts on identifying the highest risk pipe.
- Use rate adjustments and flexible rate recovery mechanisms to incentivize pipeline rehabilitation, repair and replacement programs.
- Strengthen pipeline safety inspections, accident investigations and enforcement actions.
- Install interior/home methane gas alarms.

The Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, was signed into law (Pub. L. 112-90) on January 3, 2012. Section 7 of the new law requires the U.S. Department of Transportation to measure every two years the progress that owners and operators of pipeline facilities have made in adopting and implementing their plans for the safe management and replacement of cast iron gas pipelines. Additionally, not later than December 31, 2013, the Secretary of Transportation must submit to Congress a report that — (1) Identifies the total mileage of cast iron gas pipelines in the United States; and (2) evaluates the progress that owners and operators of pipeline facilities have made in implementing their plans for the safe management and replacement of cast iron gas pipelines.

PHMSA is committed to working with owners and operators of natural gas cast iron distribution pipelines and state pipeline safety representatives to ensure our Nation's pipeline infrastructure is safe and well-maintained.

Issued in Washington, DC, on March 20, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012-7080 Filed 3-22-12; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35605]

RailAmerica, Inc., Palm Beach Rail Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC, and RR Acquisition Holding, LLC—Control Exemption—Wellsboro & Corning Railroad, LLC

RailAmerica, Inc. (RailAmerica), Palm Beach Rail Holding, Inc. (Palm Beach), RailAmerica Transportation Corp. (RTC), RailTex, Inc. (RailTex), Fortress Investment Group, LLC (Fortress), and RR Acquisition Holding, LLC (RR Acquisition) (collectively, RailAmerica *et al.*), have filed a verified notice of exemption to acquire indirect control of the Wellsboro & Corning Railroad, LLC (W&C), a Class III rail carrier, through the acquisition of control of TransRail Holdings, LLC (TransRail), the parent of W&C, by RailTex.

The proposed transaction is scheduled to be consummated on or after April 7, 2012 (30 days after the notice of exemption was filed).

W&C acquired the assets of the Wellsboro & Corning Railroad Co.¹ W&C owns and operates 35.5 miles of track between Wellsboro, PA., milepost 109.90, and Erwin, N.Y., milepost 74.70, in Tioga County, PA., and Steuben County, N.Y. W&C interchanges traffic with the Norfolk Southern Railway Company and the Canadian Pacific Railway Company.

According to the verified notice of exemption, RailTex entered a Unit Purchase Agreement dated January 31, 2012 (the Agreement), with (1) TransRail, (2) Industrial Waste Group, LLC (IWG), (3) Wellsboro & Corning Railroad Co., and (4) A. Thomas Myles III, A. Thomas Myles IV, and William Myles (the MG Principals). The MG Principals own TransRail, and TransRail owns W&C and the successor to IWG. Under the Agreement, RailTex will acquire 100% of the Class A Common Units of TransRail, giving RailTex a 70% ownership interest in TransRail and control of W&C through TransRail.

¹ *Wellsboro & Corning R.R.—Acquis. & Operation Exemption—Wellsboro & Corning R.R.*, FD 35595 (STB served Feb. 22, 2012).

The MG Principals will retain the Class B Common Units of TransRail, thereby retaining a 30% interest in TransRail, though they will not retain control or the power to control W&C.

Fortress' noncarrier affiliate, RR Acquisition, currently owns about 60% of the publicly traded shares and controls the noncarrier RailAmerica, which directly controls the noncarrier Palm Beach, which directly controls the noncarrier RTC.

RailAmerica states that it controls the following Class III rail carriers: (1) Alabama & Gulf Coast Railway LLC; (2) Arizona & California Railroad Company; (3) Bauxite & Northern Railway Company; (4) California Northern Railroad Company; (5) Cascade and Columbia River Railroad Company; (6) Central Oregon & Pacific Railroad, Inc.; (7) The Central Railroad Company of Indiana; (8) Central Railroad Company of Indianapolis; (9) Connecticut Southern Railroad, Inc.; (10) Conecuh Valley Railway, LLC; (11) Dallas, Garland & Northeastern Railroad, Inc.; (12) Delphos Terminal Railroad Company, Inc.; (13) Eastern Alabama Railway, LLC; (14) Huron & Eastern Railway Company, Inc.; (15) Indiana & Ohio Railway Company; (16) Indiana Southern Railroad, LLC; (17) Kiamichi Railroad Company, LLC; (18) Kyle Railroad Company; (19) The Massena Terminal Railroad Company; (20) Mid-Michigan Railroad, Inc.; (21) Missouri & Northern Arkansas Railroad Company, Inc.; (22) New England Central Railroad, Inc.; (23) North Carolina & Virginia Railroad Company, LLC; (24) Otter Tail Valley Railroad Company, Inc.; (25) Point Comfort & Northern Railway Company; (26) Puget Sound & Pacific Railroad; (27) Rockdale, Sandow & Southern Railroad Company; (28) San Diego & Imperial Valley Railroad Company, Inc.; (29) San Joaquin Valley Railroad Company; (30) South Carolina Central Railroad Company, LLC; (31) Three Notch Railway, LLC; (32) Toledo, Peoria & Western Railway Corporation; (33) Ventura County Railroad Corp.; and (34) Wiregrass Central Railway, LLC.²

Further, Fortress, on behalf of other equity funds managed by it and its affiliates, directly controls the noncarrier FECR Rail LLC, which directly controls FEC Rail Corp., which directly controls Florida East Coast Railway, LLC, a Class II rail carrier.

² On February 3, 2012, in Docket No. FD 35592, RailAmerica *et al.* filed a petition for exemption from the prior approval requirements of 49 U.S.C. 11323-25 to acquire control of Marquette Rail, LLC, a Class III rail carrier. The Board issued a notice on February 28, 2012, instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b).

RailAmerica *et al.* states that: (1) W&C does not connect with any of RailAmerica's subsidiary railroads; (2) the proposed transaction is not part of a series of anticipated transactions to connect W&C and any of RailAmerica's subsidiary railroads; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves the control of one or more Class III rail carriers and one Class II rail carrier, the transaction is subject to the labor protective requirements of 49 U.S.C. 11326(b) and *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad*, 2 S.T.B. 218 (1997).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by March 30, 2012 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35605 must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on: Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: March 20, 2012.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012-7054 Filed 3-22-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2012-2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: Approval of rail cost adjustment factor.