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SERVICE DATE – LATE RELEASE MAY 12, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34865

ARKANSAS MIDLAND RAILROAD COMPANY, INC.–PETITION FOR DECLARATORY  
ORDER–CADDO VALLEY RAILROAD COMPANY

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by the Arkansas Midland Railroad Company, Inc. (AKMD), the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e) to determine if the right of first refusal provided in 49 U.S.C. 10907(h), to repurchase a line sold under the Feeder Line Development Program, applies when a transfer of control of a feeder line operator occurs by stock sale. Responses to the petition have been filed by Caddo Valley Railroad Company (CVR); Bean Lumber Company and Curt Bean Lumber Company (Bean Companies); GS Roofing Products Company, Inc. (GS) and CertainTeed Corporation (CertainTeed); and Pioneer Railcorp (Pioneer) (jointly, Respondents). International Paper Company (IP) also has submitted a response. The Board seeks public comment on this issue.

DATES: Comments are due June 19, 2006. Replies are due June 29, 2006.

ADDRESSES: Send an original and 10 copies of any comments, referring to STB Finance Docket No. 34865, to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to (1) AKMD's representative, William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832; (2) CVR and Bean Companies' representative, Richard H. Streeter, Barnes & Thornburg LLP, 750 17th Street, N.W., Suite 900, Washington, DC 20006-4675; (3) GS and CertainTeed's representative, Mark J. Andrews, Strasburger & Price, LLP, 1800 K Street, N.W., Suite 301, Washington, DC 20006; (4) Pioneer's representative, Daniel A. LaKemper, Pioneer Railcorp, 1318 S. Johanson Road, Peoria, IL 61607; and (5) IP's representative, Edward D. Greenberg, Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., 1054 Thirty-First Street, N.W., Washington, DC 20007-4492.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1609.  
[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

SUPPLEMENTAL INFORMATION: AKMD's petition for declaratory order concerns the Norman Branch line between Gurdon and Birds Mill, AR, which AKMD was forced to sell under the Feeder Line Development Program at 49 U.S.C. 10907. See Caddo Antoine, et al.—Feeder Li. Acq.—Arkansas Midland RR, 4 S.T.B. 610 (2000); GS Roofing Products Co. v. STB, 262 F.3d 767 (8th Cir. 2001). The Bean Companies and CertainTeed's subsidiary, GS, were two of the five shippers authorized to acquire the line. According to the petition, the shippers created a corporation, CVR, to own the assets of, and to operate, the line.<sup>1</sup>

AKMD claims that the shippers are now proposing to sell the stock ownership of CVR to Pioneer, an owner of several Class III shortline railroads. AKMD claims that the proposed sale of all of CVR's stock will subvert its first-refusal rights under 49 U.S.C. 10907(h).<sup>2</sup> AKMD asserts that, if the stock sale goes forward, it would defeat the right of first refusal provision in section 10907(h) in circumstances such as in this case, and it asks the Board to determine that the proposed sale of CVR's stock cannot proceed until the Norman Branch is first offered to it for repurchase.

Respondents oppose AKMD's petition, asserting that CVR is neither selling nor abandoning the line, so that section 10907(h) is not applicable. Respondents argue that, had Congress intended to include stock acquisitions in section 10907(h), it would have done so. According to Respondents, following the stock sale, the rail line will continue to be an asset of CVR and, should CVR ever elect to sell or abandon any portion of the line, AKMD could then invoke its first-refusal rights under section 10907(h).

Respondents contend that the Feeder Line Development Program has worked as intended on the Norman Branch. They state that CVR provided service on the line from September 2000 until the summer of 2005, when the line was embargoed due to the need to make certain repairs. They indicate that CVR resumed service after obtaining funding from the State of Arkansas for those repairs. Respondents explain that CVR's shareholders have determined that preservation of rail service would best be served by having the shippers sell their stock in CVR to an experienced investor who is willing to operate the line. They have begun discussions with Pioneer, an experienced shortline operator, to invest in the line and fund rehabilitation. They claim that CVR is attempting to further the purposes of the Feeder Line Development Program by finding a new shareholder to enhance the future viability of service to shippers on the line.

Respondents request expedited action on this matter. IP, the major shipper on the line, questions whether the proposed transfer of control of the Norman Branch to Pioneer would result

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<sup>1</sup> It is unclear who currently owns CVR's stock.

<sup>2</sup> Section 10907(h) provides that: "If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation."

in the restoration of service levels that existed when AKMD operated the line and agrees that AKMD has raised a significant legal issue that the Board needs to resolve on the merits.<sup>3</sup>

The issue presented in AKMD's petition relating to the right of first refusal in section 10907(h) constitutes a matter of first impression at this agency and involves interpretation of the statute. A declaratory order proceeding is instituted to invite broad public comment. Any person seeking to participate in support of, or in opposition to, AKMD's position is invited to submit written comments to the Board regarding when, if ever, a stock sale triggers section 10907(h).

Board decisions, notices, and filings in this and other Board proceedings are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: May 12, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>3</sup> By pleading filed May 9, 2006, CVR has sought to file a reply to IP's submission, addressing IP's claims of service deficiencies, or, alternatively, a motion to strike. To ensure a complete record, CVR's reply will be accepted into the record.