

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34479

ARKANSAS MIDLAND RAILROAD COMPANY, INC.–ALTERNATIVE RAIL
SERVICE–LINE OF DELTA SOUTHERN RAILROAD, INC.

Decided: November 1, 2004

We are granting a request by Arkansas Midland Railroad Company (AKMD) for an extension of the emergency service authority issued in a decision served on March 19, 2004, and extended in decisions served on May 4, 2004, and July 30, 2004.

BACKGROUND

This proceeding began when AKMD filed a petition for emergency service authority pursuant to 49 U.S.C. 11123 and 49 CFR part 1146 to provide alternative rail service on a Union Pacific Railroad Company (UP)-owned line extending from milepost 422.32 in Dermott, AR, to milepost 461.74 at Warren, AR (Line), and to conduct interchange operations on UP's Dermott-McGehee line. In a decision served on March 19, 2004, the Board granted AKMD's petition, and it began service on April 5, 2004. In a decision served on May 4, 2004, the Board extended AKMD's service authority to August 3, 2004. In a decision served on July 30, 2004, the Board extended AKMD's service authority to November 1, 2004.

In a petition filed on October 18, 2004, AKMD seeks an extension of its service authority until December 13, 2004. As it had stated previously, AKMD reiterates that the previous leaseholder, Delta Southern Railroad, Inc. (Delta), has voluntarily withdrawn from the Line so that UP can transfer operations to AKMD. AKMD states that it has entered into an agreement with UP to lease and operate the Line on a long-term basis.¹ According to AKMD, an extension of the current authority is needed to preserve rail service to shippers on the Line until its requested exemption becomes effective on December 13, 2004. AKMD states its belief that Delta, UP, and the shippers on the Line do not oppose the extension request. On October 19, 2004, Potlatch Corporation, a shipper on the Line, filed a reply in support of AKMD's extension request.

¹ On October 18, 2004, AKMD concurrently filed a Verified Notice of Exemption, pursuant to 49 CFR 1150.41(c). See STB Finance Docket No. 34567, Arkansas Midland Railroad Company, Inc.–Change in Operator Exemption–Line of Union Pacific Railroad Company.

DISCUSSION AND CONCLUSIONS

Alternative rail service orders may not exceed 30 days initially (49 U.S.C. 11123(a)), but may be extended for an additional 240 days, if the Board finds that a transportation emergency continues to exist (49 U.S.C. 11123(c)(1)). Unless otherwise indicated in the Board's order authorizing alternative rail service, the order establishes a rebuttable presumption that the transportation emergency will continue beyond the initial 30-day period. 49 CFR 1146.1(c). The Board stated in its decision of July 30, 2004, that, upon receiving a request prior to November 1, 2004, it would consider extending the authorization up to December 31, 2004, at which point the statutory period expires. The parties have requested an extension of the service authorization until December 13, 2004. There has been no objection filed to the extension request. The evidence in this case confirms that the transportation emergency continues to exist and that an extension of the alternative rail service order is appropriate. The evidence also confirms that the parties are working towards a long-term resolution of the situation. This extension should provide the parties sufficient time to reach permanent arrangements for future operations on the Line, while in the interim preserving rail service to shippers. Accordingly, AKMD will be authorized to perform alternative rail service on the Line and to conduct interchange operations on UP's Dermott-McGehee line until December 13, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. AKMD's petition for an extension of its emergency service authority is granted, and AKMD is authorized to perform alternative rail service on the Line, and to conduct interchange operations on UP's Dermott-McGehee line, until December 13, 2004.
2. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary