

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

Finance Docket No. 32479

CADDO ANTOINE AND LITTLE MISSOURI RAILROAD COMPANY—  
FEEDER LINE ACQUISITION—  
ARKANSAS MIDLAND RAILROAD COMPANY LINE  
BETWEEN GURDON AND BIRDS MILL, AR

Decided: May 9, 1997

In a decision issued September 13, 1996, the United States Court of Appeals for the Eighth Circuit remanded this feeder line proceeding and directed that we consider the entire Norman Branch as a single line. *Caddo Antoine and Little Missouri R. Co. v. STB*, 95 F.3d 740 (8th Cir. 1996) (*Caddo*). By decision served November 15, 1996, we reopened the case and invited the parties to present their views on how the Board should proceed on remand. We have considered the parties' responses and, in this decision, we respond to the issues raised and establish a schedule for the parties to submit additional evidence to ensure that we have the information we need to determine whether the public convenience and necessity (PC&N) requires or permits a sale of the entire Norman Branch under the feeder line statute, 49 U.S.C. 10907(c)(1).<sup>2</sup>

PERTINENT BACKGROUND

*A. Prior Proceedings.*

The Arkansas Midland Railroad Company (AMR) acquired the approximately 52-mile Norman Branch line between Gurdon and Birds Mill, AR, from the Union Pacific Railroad Company (UP) in 1992. In December 1993, following flood damage, AMR notified the affected shippers and the Association of American Railroads that track conditions required it to embargo service to 4 stations located at or near the northern end of the line, thereby interrupting service to GS Roofing Products Company, Inc. (GS Roofing), Bean Lumber Company (Bean Lumber), Curt Bean Lumber Company (Curt Bean), and Barksdale Lumber Company (Barksdale). On February 24, 1994, AMR embargoed an additional station to the south of the embargoed stations, interrupting service to Beazer West, Inc. d/b/a Gifford-Hill & Company (Gifford-Hill). AMR was able to continue serving the line's principal shipper, International Paper Company (IP),

which is located on the southernmost 3-mile portion of the line nearest a connection with UP, and was not affected by the flooding.

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<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(c) of the ICCTA provides, in general, that if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by the ICCTA, subsequent proceedings related to the case shall proceed under the applicable law and regulations in effect at the time of the subsequent proceedings. The functions at issue in this proceeding were retained and are now found at 49 U.S.C. 10907. Thus, current 49 U.S.C. 10907 will apply to this proceeding on remand.

<sup>2</sup> The provisions of former 49 U.S.C. 10910(b)(1)(A)(ii) required the ICC to transfer to a willing and qualified buyer any line that was listed as an abandonment candidate, but as to which formal abandonment had not yet been sought. The provisions of former 49 U.S.C. 10910(b)(1)(A)(i), by contrast, required the transfer of a line only when several criteria associated with the PC&N had been met.

On February 18, 1994, AMR initiated the abandonment process, ultimately indicating its intent to abandon the entire Norman Branch except for the portion serving IP. Then, on March 18, 1994, the Caddo Antoine and Little Missouri Railroad Company (CALM), a noncarrier subsidiary of the Dardanelle & Russellville Railroad Company (DRRC), filed a feeder line application under 49 U.S.C. 10910 (now 49 U.S.C. 10907) to acquire the entire Norman Branch line. The application was supported by G.S. Roofing, Gifford-Hill, Bean Lumber, Curt Bean, and Barksdale (collectively, the Shippers). Shortly thereafter, on March 28, 1994, the ICC, pursuant to 49 U.S.C. 11123(a), issued Service Order No. 1516 authorizing DRRC/CALM, based on its willingness to do so and AMR's willingness to permit it to do so, to provide voluntary interim service over the northern portion of the line, including the portion affected by the embargo. The ICC also authorized DRRC/CALM to enter into an agreement with AMR for trackage rights over the rest of the line over which AMR continued to serve IP, so that DRRC/CALM could interchange directly with UP. DRRC/CALM's service continued until August 30, 1996, when it ceased operations. At the request of the Shippers, and with the consent of all parties including AMR, we then amended the service order and substituted the East Texas Central Railroad Company (ETC) as the authorized operator.<sup>3</sup>

In a decision served April 18, 1995 (the *Decision*), the ICC granted CALM's feeder line application only as to the 49-mile northern portion of the line that AMR had sought to abandon. The ICC determined that the southernmost 3-mile portion was not eligible for sale under the PC&N requirements in former section 10910(b)(1)(A)(i). CALM declined to acquire the northern portion of the line on the ground that those operations would not be profitable, and filed a petition for review in *Caddo*.

During the course of the feeder line proceeding, AMR reached an agreement with Glenwood & Southern Railroad Company (GSR), a noncarrier, to lease and operate (with option to purchase) the northern portion, and to operate trackage rights over the southern portion of the line. GSR filed a notice of exemption in Finance Docket No. 32705 on May 17, 1995. The notice became effective May 24, 1995, and was served and published on June 15, 1995 (60 FR 31494).<sup>4</sup>

As noted, we reopened this proceeding in the November 15, 1996 decision after the court in *Caddo* set aside the *Decision* partially granting CALM's feeder line application and remanded the proceeding for us to consider CALM's application to purchase the entire Norman Branch as a single line. Responses to our November 15, 1996 decision were submitted by the Shippers, AMR, and GSR.

#### B. *The Responses.*

1. In their response, the Shippers ask that, with one exception, we decide this feeder line case on the current record. To reflect the circumstances that have changed since the record closed, they submit a revised operating plan that assumes that ETC will be the operator, and

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<sup>2</sup> *East Texas Central Railroad Company--Authority to Operate--Lines of Arkansas Midland Railroad Company*, Supplemental Order No. 7 to Service Order No. 1516 (STB served Sept. 24, 1996).

<sup>3</sup> The ICC subsequently denied a motion by CALM to have GSR's notice of exemption declared void *ab initio*, or in the alternative, to revoke GSR's notice of exemption. CALM's petition for review of that decision is in abeyance in the Eighth Circuit pending the issuance of our decision on remand in the feeder line proceeding.

updated financial projections to support their argument that the entire line could be successfully rehabilitated and operated by ETC for three years.

The Shippers also clarify CALM's role in this case. According to the Shippers, CALM was organized as a vehicle to enable them to acquire the Norman Branch. They state that GS Roofing, Bean Lumber, and Gifford-Hill actually provided the funds for start-up expenses, legal fees, and track materials and locomotives for interim service under Service Order No. 1516, and that GS Roofing and Bean Lumber would provide the funds to acquire the line if the application to purchase the entire line under 49 U.S.C. 10907 is approved. As a result, the Shippers believe that the withdrawal of CALM's president, William K. Robbins, from this venture does not materially affect the overall venture or moot the proceeding.

Furthermore, the Shippers explain that they have reached a verbal agreement with Mr. Robbins to assign to them all of his interests in the pending application, as well as the name "Caddo Antoine and Little Missouri Railroad Company." They note that they are in the process of incorporating a new noncarrier entity to which they would assign their interests, including those received from Mr. Robbins. The Shippers state that if their acquisition of the line is approved, the new corporation would hold title to it, even though the Shippers would provide financial backing and exercise control over the new entity.

Finally, the Shippers object to GSR's participation in this proceeding. They note that the ICC had previously rejected GSR's competing feeder line application,<sup>5</sup> and assert that GSR is interfering with their prospective business relationships.

2. AMR would have us terminate the feeder line proceeding. It asserts that the existing record demonstrates that, if for no other reason than the impact on AMR of the loss of IP's traffic, the applicants cannot meet their burden of showing that the entire Norman Branch is eligible for forced sale under the PC&N standards of 49 U.S.C. 10907(c)(1). AMR further states that the withdrawal of CALM as the applicant has made this proceeding moot. It notes that the record developed in the proceeding was intended to support DRRC/CALM as the operator of the line. AMR argues that it is now too late to substitute another party for the original applicant. Because ETC, and its parent company Southern Railway Services, are unrelated to DRRC/CALM, AMR argues that a new feeder line application is required. AMR expresses concern that ETC will not assume any obligations to pay for DRRC/CALM's interim service under Service Order No. 1516.<sup>6</sup>

AMR states that if the proceeding is terminated, it will lease the northern segment to GSR, thereby allowing rail service to the Shippers to continue. Alternatively, AMR requests that, if the feeder line proceeding goes forward, the parties be allowed to submit additional evidence on the value of the line and applicant's financial responsibility. It notes that the evidence in the record is more than 2 years old. Finally, AMR seeks to strike the evidence submitted by the Shippers projecting ETC's operations of the line. It contends that evidence related to ETC's operations should be submitted in a new application.

3. GSR indicates by letter that it remains interested in leasing and operating the line under the notice of exemption in Finance Docket No. 32705.

## DISCUSSION AND CONCLUSIONS

We reject AMR's assertion that we should terminate this proceeding because the Shippers have proposed that ETC, rather than DRRC/CALM, operate the Norman Branch. The court in *Caddo* was aware that the Shippers had engaged ETC to replace DRRC/CALM as the operator

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<sup>5</sup> See *Caddo Antoine Et Al.--Feeder Li. Acq.--Arkansas Midland RR*, 10 I.C.C.2d 323 (1994).

<sup>6</sup> The compensation proceeding (Finance Docket No. 32625) is not directly at issue here. However, we note that we expect the Shippers to ensure that AMR receives the compensation that is required for all interim service provided under Service Order No. 1516.

when it directed us to consider whether the entire line should be sold under the feeder line statute. This proceeding is not moot merely because a new operator has been proposed. Nor is a new feeder line application required. On remand, we can consider the feeder line application to purchase the entire line based on the current record, updated to reflect the circumstances that have changed, and the additional evidence that we will now require to ensure that we have the information we need to decide the case. We should point out that we do not, as AMR infers, have the option to segment the line into two segments, as was done in the *Decision*. Rather, as the court in *Caddo* specifically directed, on remand we will treat the entire Norman Branch as a single line.

We will also deny the Shippers' request to exclude GSR from this proceeding. If the PC&N is not found to require or permit the sale of the entire line under the feeder line provisions, AMR has provided the Shippers with an alternative by having GSR available to provide them with rail service. Similarly, if the feeder line application is approved, but the Shippers decline to accept the terms set for the purchase, GSR would be available as an alternative operator. Moreover, although it has not done so to date, GSR may want to and should not be precluded from offering to purchase the entire line at whatever price we determine to be reasonable for the entire line. Thus, GSR has a legitimate interest in this proceeding and should be able to participate.

AMR's motion to strike will be denied. As AMR itself points out, the record in the feeder line case may be stale. In these circumstances, the Shippers' updated financial information and revised operating plan are properly part of the record. We will also put the Shippers' "Proposed Decision" in the record. While issuance of a decision in the feeder line case is clearly premature, the "Proposed Decision" provides information that will give us a more complete record. AMR will not be prejudiced if we put these materials in the record, because it will have the opportunity to respond to them when it files its supplemental evidence.

We disagree with the Shippers' argument that we should decide this case only on the current record and the supplemental information that they have already provided. Rather, we will permit the parties to submit updated evidence and argument as to whether the five criteria set forth in 49 U.S.C. 10907(c)(1) require or permit a forced sale of the entire line.

Specifically, we note that in *Caddo* (95 F.3d at 748), the court indicated that we should take into account in reaching our determination on remand AMR's argument that it would suffer a grievous financial loss that would jeopardize the remainder of its rail line operations if it were required to sell the southernmost portion of the line on which it serves IP. We invite further evidence addressing this matter, particularly the views of AMR as to whether the impact of the loss of IP's traffic would be mitigated by receiving the proceeds from the sale of the line, as the Shippers have claimed. Likewise, as the court stated (*id.* at 749), we will consider again the question of financial responsibility. The ICC previously found that the willingness of the Shippers to provide the necessary funding for CALM's application was enough to establish financial responsibility under the statute for the acquisition of the northern portion of the line. The Shippers have stated that financial responsibility should not be an issue on remand because GS Roofing and Bean Lumber have the resources to provide the funds needed to acquire and operate the entire line. After we receive the parties' updated evidence, we will be in a position to resolve the financial responsibility question.

We also direct the parties to file additional evidence addressing the valuation of the line. The feeder line procedures require that we determine the constitutional minimum value of the line. Section 10907(b)(2) defines constitutional minimum value as "not less than the net liquidation value of such line or the going concern value of such line, whichever is greater." In the *Decision*, the ICC indicated that AMR had claimed that the line had a going concern value (GCV) of \$2.65 million. However, the ICC explained that, because it was granting the application only for the northern segment, which was a candidate for abandonment, it did not consider AMR's arguments about GCV. Thus, the ICC determined that the constitutional minimum value was the line's net liquidation value (NLV).<sup>7</sup>

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<sup>7</sup> The *Decision* set the NLV of the entire line at \$972,282. That valuation was based on the (continued...)

The Shippers ask that we use the NLV set previously as the value of the entire line. However, it is almost certain that the line has a GCV, since it is being actively used to serve IP (and, indeed, the Shippers as well). Thus, NLV may be an inappropriate standard to value the whole line here. If a GCV is claimed, the proponent should indicate the methodology used to determine that value.

Finally, we request the applicants to update the record and supply information required by our procedures at 49 CFR 1151.3 for ETC as operator of the line, including its current name. Also, the operator should indicate whether it is electing exemption from Subtitle IV, Part A of Title 49 United States Code. 49 U.S.C. 10907(g)(1).

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

*It is ordered:*

1. The parties are directed to submit initial statements and argument by June 13, 1997. Replies are due June 30, 1997.

2. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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(...continued)

Norman Branch as being 52.9 miles long and located between milepost 426.3 near Gurdon and milepost 479.2 at Birds Mill. However, in a decision involving trackage rights compensation owed by DRRC/CALM to AMR in *Dardanelle & Russellville Railroad Company--Trackage Rights Compensation--Arkansas Midland Railroad Company*, Finance Docket No. 32625 (ICC served June 22, 1995), at 2-3, the ICC accepted DRRC/CALM's assertion that the line actually terminates at milepost 426.87 near Gurdon. As adjusted, the Norman Branch is thus 52.33 miles long and the NLV for the entire line would be \$961,096.24.