

FLETCHER & SIPPEN LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

June 6, 2011

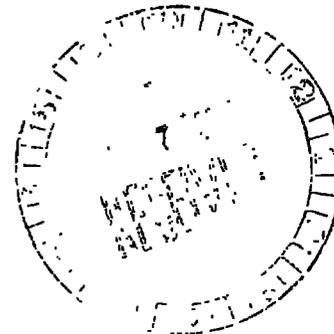
VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENCL
Office of Proceedings

JUN 07 2011

Part of
Public Record



Re: Finance Docket No. 35530 ^{22972 ✓}
Arkansas Midland Railroad Company, Inc. -- Trackage
Rights Exemption -- Caddo Valley Railroad Company

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition to Partially Revoke Class Exemption and Expedite Effective Date**, dated June 6, 2011. Please note that expedited consideration of this Petition is requested.

One extra copy of the Petition and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

FILED

JUN 07 2011

**SURFACE
TRANSPORTATION BOARD**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Litwiler".

Thomas J. Litwiler
Attorney for Arkansas Midland
Railroad Company, Inc.

TJL:tl

Enclosures

cc: Parties on Certificate of Service

FEE RECEIVED

JUN 07 2011

**SURFACE
TRANSPORTATION BOARD**

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35530

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- TRACKAGE RIGHTS EXEMPTION --
CADD O VALLEY RAILROAD COMPANY



**PETITION TO PARTIALLY REVOKE CLASS EXEMPTION
AND EXPEDITE EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

ENR
Office of Proceedings

JUN 07 2011

Part of
Public Record

FEE RECEIVED

JUN 07 2011

SURFACE
TRANSPORTATION BOARD

FILED

JUN 07 2011

**SURFACE
TRANSPORTATION BOARD**

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

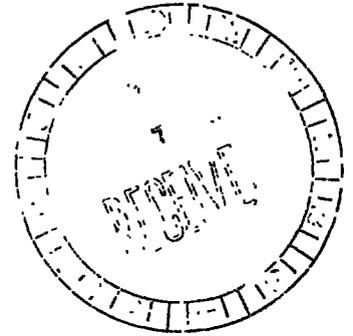
**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: June 6, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35530

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- TRACKAGE RIGHTS EXEMPTION --
CADDO VALLEY RAILROAD COMPANY



**PETITION TO PARTIALLY REVOKE CLASS EXEMPTION
AND EXPEDITE EFFECTIVE DATE**

Arkansas Midland Railroad Company, Inc. ("AKMD") hereby petitions the Board pursuant to 49 U.S.C. § 10502(d) to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the trackage rights notice of exemption filed by AKMD under that class exemption to become effective on June 15, 2011, twenty-two days earlier than otherwise provided by rule. An expedited effective date will avoid a gap in critical rail service on a three-mile line in Arkansas (the "Gurdon Segment") owned by Caddo Valley Railroad Company ("CVR") over which AKMD has provided emergency service for the past nine months. While AKMD expects shortly to consummate an acquisition of the Gurdon Segment pursuant to its statutory right of first refusal under 49 U.S.C. § 10907(h), unexpected last-minute complications with a secondary CVR lender may delay completion of that transaction beyond the expiration of the current emergency service order on June 14, 2011. Because it is not clear that AKMD's emergency service authority on the Gurdon Segment may be extended further under 49 U.S.C. § 11123(c)(1), an expedited effective date for AKMD's proposed trackage rights is necessary to allow operations to continue until a sale can be consummated.

AKMD has consulted with all relevant parties, including Georgia-Pacific LLC ("Georgia-Pacific"), the sole active shipper on the Gurdon Segment, and Union Pacific Railroad

Company ("UP"), the connecting line-haul carrier for the Gurdon Segment, regarding the proposed arrangement for the continuation of AKMD's rail service. AKMD believes that all parties support this petition and the early effectiveness of AKMD's proposed trackage rights. AKMD anticipates submitting a specific letter of support from Georgia-Pacific within the next day.

CVR acquired the Gurdon Segment and the remainder of AKMD's so-called "Norman Branch" in 2000 pursuant to the feeder line provisions of 49 U.S.C. § 10907. See Caddo Antoine et al. -- Feeder Line Acq. -- Arkansas Midland RR, 4 S.T.B. 326 (1999), 4 S.T.B. 601 (2000), aff'd sub nom. GS Roofing Products Co. v. STB, 262 F.3d 767 (8th Cir. 2001). CVR faced severe financial difficulties, and by June, 2010 had ceased operations on all of the Norman Branch other than the Gurdon Segment. In September, 2010, CVR found itself unable to continue service on the Gurdon Segment, and AKMD began operating the segment on September 20, 2010 pursuant to emergency service authority granted in Arkansas Midland Railroad Company, Inc. -- Alternative Rail Service -- Line of Caddo Valley Railroad Company, Finance Docket No. 35416 (STB served September 17, 2010). By subsequent decisions served October 10, 2010 and February 11, 2011, AKMD's emergency service authority was extended to June 14, 2011, the maximum 270-day period allowed by 49 U.S.C. § 11123(c)(1).

In the meantime, AKMD has engaged in extensive negotiations with CVR and its primary lender to acquire the Gurdon Segment pursuant to AKMD's statutory right of first refusal under 49 U.S.C. § 10907(h).¹ AKMD, CVR and the primary lender have finalized documentation for such a transaction, which would include AKMD's waiver of its right of first

¹ See Arkansas Midland Railroad Company, Inc. -- Petition for Declaratory Order -- Caddo Valley Railroad Company, Finance Docket No. 34865 (STB served May 2, 2007), aff'd sub nom. Caddo Valley R. Co. v. STB, 512 F.3d 1021 (8th Cir. 2008).

refusal on the remainder of the Norman Branch so that CVR can proceed with abandonment of that trackage. The parties are ready to consummate the sale immediately.² A scheduled May 26, 2011 closing has been delayed several times, however, by unexpected difficulties in obtaining release of a lien on the Gurdon Segment held by a secondary CVR lender. While the parties continue to work to resolve that issue, it is not clear that resolution will be possible by the June 14, 2011 expiration of AKMD's emergency service authority on the Gurdon Segment.

49 U.S.C. § 11123(c)(1) provides that emergency service authority can extend for a maximum of 270 days. It is unclear whether, upon expiration of that period, an emergency service provider can "re-start" the clock by filing a new petition meeting the statutory requirements of Section 11123. AKMD is unaware of precedent addressing such a situation. Because of that uncertainty, and because of the timing issues that would be presented if a new emergency service petition filed by AKMD was denied, AKMD and CVR have agreed to a trackage rights arrangement that will allow AKMD to continue to provide service on the Gurdon Segment after June 14th (assuming a sale of the Gurdon Segment to AKMD cannot be completed by that date). AKMD is concurrently filing herewith a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(7) for its acquisition of those trackage rights. Ordinarily, AKMD's trackage rights exemption would not become effective until July 7, 2011, thirty days after filing. In order to protect existing service on the Gurdon Segment, however, such trackage rights must be effective by June 15, 2011. AKMD seeks such an expedited effective date through this petition.

In appropriate circumstances, this agency has previously granted similar requests to shorten the effectiveness date of notices of exemption, including notices covering trackage

² AKMD's re-acquisition of the Gurdon Segment pursuant to its right of first refusal under 49 U.S.C. § 10907(h) does not require separate Board approval or exemption. See Cheney Railroad Company, Inc. -- Feeder Line Acquisition -- CSX Transportation, Inc. Line Between Greens and Ivalee, AL, Finance Docket No. 31012 (ICC served March 11, 1994).

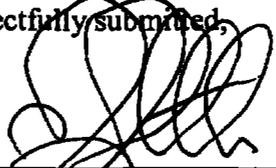
rights. See, e.g., Washington State Department of Transportation -- Acquisition Exemption -- Palouse River and Coulee City Railroad, Inc., Finance Docket No. 35024, et al. (STB served May 30, 2007); CSX Transportation, Inc. -- Temporary Trackage Rights Exemption -- Alabama Great Southern Railroad Company, Finance Docket No. 34762 (STB served September 23, 2005); Ohio & Pennsylvania Railroad Company -- Lease and Operation Exemption -- P&LE Properties, Inc., Finance Docket No. 32711 (ICC served June 23, 1995).³ Prior to the Board's decision in Public Participation in Class Exemption Proceedings, Ex Parte No. 659 (STB served October 19, 2006), AKMD's trackage rights exemption would have been effective in seven days, one day less than the effectiveness period requested here.

As indicated above, AKMD has conferred with Georgia-Pacific, the sole shipper on the Gurdon Segment, as well as with UP and CVR's primary lender regarding an expedited effectiveness date for AKMD's trackage rights. A copy of this petition is being served on each of those parties. Given the unique circumstances involving the Gurdon Line, the need to avoid a gap in rail service, and the widespread consultation with the involved parties, expediting the effective date for the AKMD notice of exemption is warranted.

³ In CSX/AGS and Ohio & Pennsylvania, the agency granted the requested relief through a "waiver" of the then-existing 7-day effectiveness requirement, rather than by a partial revocation of the relevant class exemption.

WHEREFORE, AKMD respectfully requests that the Board partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) invoked by AKMD in this docket and allow AKMD's proposed trackage rights over the Gurdon Segment to become effective on June 15, 2011.

Respectfully submitted,

By: 

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: June 6, 2011

CERTIFICATE OF SERVICE

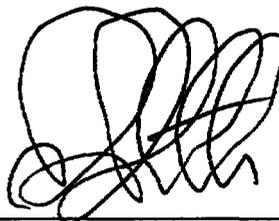
I hereby certify that on this 6th day of June, 2011, a copy of the foregoing **Petition to Partially Revoke Class Exemption and Expedite Effective Date** was served by electronic delivery and U.S. mail, postage prepaid, upon:

James W. Smith, Esq.
Smith & Akins
400 West Capitol Avenue
Suite 1700
Little Rock, AR 72201-3438
Attorney for Caddo Valley Railroad Company

Mr. Glen W. Courtwright
Director, Strategic Operations
Georgia-Pacific LLC
133 Peachtree Street N.E.
Atlanta, GA 30303

Mack H. Shumate, Jr., Esq.
Senior General Attorney
Union Pacific Railroad Company
101 North Wacker Drive, Suite 1920
Chicago, IL 60606

Richard H. Streeter, Esq.
Law Office of Richard H. Streeter
5255 Partridge Lane, N.W.
Washington, DC 20016
Attorney for 1st Source Bank



Thomas J. Litwiler