

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34865

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

STATEMENT IN OPPOSITION TO PETITION

Pioneer Railcorp, a non-carrier interested party in the above-captioned proceeding, respectfully requests leave to participate in the proceeding, and hereby files its Statement in Opposition to Arkansas Midland Railroad Company Inc.'s Petition for Declaratory Order.

Pioneer Railcorp ("PRC") is a non-carrier holding company that owns the common stock of several Class III carriers¹. Recently, PRC has been negotiating to purchase the stock of Caddo Valley Railroad Company ("CVR"), an existing Class III carrier. It is contemplated that CVR would remain the carrier, and PRC would merely be a stockholder, as is its established practice (PRC would be required to file only a Continuance in Control Notice of Exemption).

Whereas the Petitioner, Arkansas Midland Railroad Company, Inc. ("AKMD") conveyed the rail line in question (the "Line", between Gurdon and Birds Mill, Arkansas) to CVR, by quit-claim deed, in August, 2000, and the plain language of 49 U.S.C. §10907(h) states "If a purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line...", PRC submits that there is no basis for this proceeding. The Line was conveyed to CVR, which was, by definition, the purchasing carrier, and is now the owning and operating carrier.

¹ See Also F.D. 34010, Pioneer Railcorp - Continuance in Control Exemption, Served February 27, 2001.

There are absolutely no plans, if the contemplated transaction takes place, for CVR to sell or abandon all or any portion of the Line. CVR is not, technically, even a party to the transaction. AKMD's "right of first refusal" remains unimpaired. If CVR ever elects to sell or abandon any portion of the Line, AKMD could invoke §10907.

To read into the statute a requirement that the purchasing carrier has to offer the Line back to AKMD just because of a change in stockholders, however, is contrary to the law and logic. It is beyond argument that a corporation is a separate legal entity from its shareholders. A corporation has a perpetual existence. Shareholders inevitably change over time. AKMD is essentially asking the Board to invent restrictions on the transfer of shares in a carrier. There is no legal basis for it, and the result would be clearly contrary to the intent of the statute, which is the preservation of rail service.

The contemplated transaction has already been delayed by the discovery that AKMD apparently never provided releases of the mortgages recorded against the property. This Petition was likely filed to further complicate and delay the transaction, to the detriment of the shippers, who are now facing more uncertainty.

The Board should reject AKMD's invitation to rewrite the statute, and deny the Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper". The signature is fluid and cursive, with the first name "Daniel" being more prominent.

Daniel A. LaKemper, General Counsel
Pioneer Railcorp
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served by E-mail and by United States Mail, first class, postage fully pre-paid, this 19th. day of April, 2006 upon:

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel, LLC
29 North Wacker Drive, Suite 920
Chicago, IL 60606
tlitwiler@fletcher-sippel.com

Richard H. Streeter
Barnes & Thornburg
750 17th. St. N.W.
Suite 900
Washington, D.C. 20006
richard.streeter@BTLaw.com

Mark J. Andrews
Strasberger & Price, LLP
1800 K Street, N.W.
Suite 301
Washington, D.C. 20006
Mark.Andrews@strasburger..com


