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May 5, 2006

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20423-0001

Re: **Finance Docket No. 34865**
Arkansas Midland Railroad Company, Inc. -- Petition for
Declaratory Order -- Caddo Valley Railroad Company

Dear Secretary Williams:

We are in receipt of the "Response to Petition for Declaratory Order and Motion to Dismiss" of Caddo Valley Railroad Company ("CVR"), dated April 18, 2006, the "Response to Petition for Declaratory Order and Motion to Dismiss" of Bean Lumber Company and Curt Bean Lumber Company (the "Bean Companies"), dated April 18, 2006, and the "Response to Petition for Declaratory Order, Incorporating Motion to Dismiss Petition" of CertainTeed Corporation and GS Roofing Products Company, Inc. ("GS Roofing"), dated April 19, 2006, each filed in the above-captioned declaratory order proceeding initiated by Arkansas Midland Railroad Company, Inc. ("AKMD").¹ Because each of these pleadings purports to include a motion to dismiss, AKMD is technically entitled to respond. AKMD believes, however, that the existing record is sufficient for at least initial Board action in this matter, and offers only the following brief points in reply.

CVR's primary theme is that it was well-known that the feeder line applicants in Finance Docket No. 32479² would use a new entity to acquire the Norman Branch, and that it is "patently frivolous" for AKMD to claim otherwise. CVR Response at 1, 3-6. AKMD, of course, did not claim otherwise. AKMD quoted extensively from Board orders discussing the Shippers' intention to "acquire the Norman Branch through a newly formed corporation." AKMD Petition at 5, n.3 (quoting Caddo Antoine et. al. -- Feeder Line Acq. -- Arkansas Midland RR, 4 S.T.B.

¹ In addition, Pioneer Railcorp ("Pioneer") filed a "Statement in Opposition to Petition" dated April 19, 2006.

² The Bean Companies, GS Roofing, Beazer West, Inc. d/b/a Gifford-Hill & Company and Barksdale Lumber Company ("the Shippers").

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326, 331, 343, 345 (1999) ("Caddo I"). Cf. CVR Response at 3 (referring to the identical citation, 4 S.T.B. at 331). Indeed, AKMD explained that the issues raised in this proceeding are important precisely because it is common for shipper-related feeder line applicants to form a new entity to complete the transaction. AKMD Petition at 4 (citations omitted).

What is undisputed here is that the Board knew virtually nothing about Caddo Valley Railroad Company itself at the time the Board rendered its decisions in Finance Docket No. 32479.³ More pertinently, it is plain that the Board didn't care -- it looked solely to the Shippers as the feeder line applicants to demonstrate financial responsibility in accordance with the statute. Caddo I, 4 S.T.B. at 331, 343-345; see AKMD Petition at 5. The particular corporate structure, capitalization or financial wherewithal of the then-unnamed (to the Board) CVR were unknown and ultimately irrelevant to the feeder line proceeding before the agency. We thus agree entirely with CVR when it explains that "the identity of the new corporation was of little or no significance in that the Shippers agreed to ensure its financial viability." CVR Response at 3, n.1.

To now allow the presence of that same entity to defeat the statutory right of first refusal under 49 U.S.C. § 10907(h) and permit the true feeder line applicants in Finance Docket No. 32479 -- the Shippers -- to dispose of the Norman Branch without offering AKMD a first refusal opportunity would indeed be a use of CVR as a structural artifice that is unwarranted in law, policy or logic. That is the legitimate and important issue presented in this proceeding.

AKMD also notes that it is cooperating with CVR to provide mortgage release documents in accordance with the Board's decision in Caddo I, 4 S.T.B. at 346. See CVR Response at 8-9; GS Roofing Response at 5. There were no remaining mortgages on the Norman Branch at the time of the line's transfer in 2000, and the subject of prior mortgage releases was apparently not considered by the parties at that time. The matter resurfaced only in recent weeks when CVR began making oral requests for any releases, presumably in contemplation of what is now known to be an anticipated transaction with Pioneer. AKMD was initially reluctant to pursue mortgage releases, given CVR's absolute refusal to discuss anything else with AKMD and the likelihood that the release would be used to facilitate what AKMD believed would likely be an improper sale. See AKMD Petition at 4 and Exhibit 4 at 10A (CVR position is "Forget Arkansas Midland. We're not talking to them.").

CVR and Pioneer have now disclosed in their responses to AKMD's petition the actual nature of their proposed transaction, and it is clear that the Board will have a chance to

³ CVR points out that it was mentioned by name at the end of a status letter filed with the Board on July 19, 2000, a month after the last Board decision in Finance Docket No. 32479. CVR Response at 5 and Exhibit 1. It is thus not quite the case that CVR has never been referenced in the Board's files. See AKMD Petition at 5.

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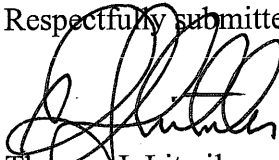
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consider and rule on any such transaction before consummation. With those developments, AKMD is now working closely with CVR and Pioneer to generate and provide appropriate mortgage release documentation. A prior mortgage on the Norman Branch was paid off in 1997, but an appropriate release document was apparently never issued or recorded. AKMD is now arranging with its former bank for issuance of a release document, and is coordinating with Pioneer regarding the language and form of such a release.

Ultimately, AKMD's purpose in this declaratory order proceeding is neither to be Dickensian nor to be contumacious. GS Roofing Response at 1; CVR Response at 8. AKMD has not made any determination that it would exercise a right of first refusal to acquire the Norman Branch. Indeed, the unexpectedly acerbic response to AKMD's petition from GS Roofing -- an entity to which AKMD provided extensive and largely successful assistance during last year's embargo of CVR service -- makes such a prospect less likely. AKMD should, however, have the opportunity to exercise its first refusal rights, and the Board should act here to protect that important component of the feeder line statute.

Respectfully submitted,



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TJL:tl

cc: Richard H. Streeter, Esq.
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