

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34865

**ARKANSAS MIDLAND RAILROAD COMPANY, INC.
– PETITION FOR DECLARATORY ORDER –
CADD VALLEY RAILROAD COMPANY, INC.**

COMMENTS OF THE INTERNATIONAL PAPER COMPANY

Pursuant to the decision of the Board served May 12, 2006 in this matter, The International Paper Company (“IP”) is submitting its comments concerning the issues raised in this proceeding.

In responding to Caddo Valley Railroad Company, Inc.’s (“CVR”) motion to dismiss the petition filed by the Arkansas Midland Railroad Company, Inc. (“AKMD”), IP pointed out that the petition raised a significant legal issue, especially in view of long-standing service implications that are directly related to the financial viability of whatever carrier is charged with providing service to shippers on the line.¹ And while CVR prefers to avoid Board scrutiny of the proposed sale of this line to Pioneer Railcorp. (“Pioneer”), IP continues to believe that the right of first refusal provision in 49 U.S.C. §10907(h) should not be so easily circumvented through the use of a stock, rather than an asset, sale.

As is the case with any asset transaction, it appears rather clear that the substance of this transaction will result in a change of operators of this rail line. While it may be true that CVR

¹ See IP’s Reply to Motions to Dismiss the Petition for Declaratory Order, filed May 8, 2006.

will continue to exist as a separate corporation at least for some period of time, it also appears that Pioneer will be conducting all future operations of the company. Pioneer apparently will be providing locomotives to be used, will manage the operation and be responsible for car supply, service to shippers, and billing. Presumably, Pioneer would also be making all decisions relating to rate issues. This particular arrangement accordingly represents a fundamental change in the identity of the company that is actually providing service to the shipping public and, in reality, is more akin to the transfer of rail assets that typically requires Board approval under 49 U.S.C. §10901. Even if, for the sake of argument, a “straight” stock transaction (namely, a transaction where only the owner of an ongoing company is changing) would not trigger Section 10907(h), in this case the transaction is one in which it is the line that AKMD previously serviced that is being sold, not the stock; hence, it is appropriate for AKMD to have the right of first refusal in this situation.

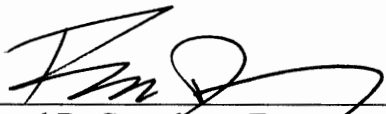
Moreover, when this line was originally acquired using the forced sale provisions of §10907, the acquiring company was owned by five shippers who were located at the northern end of the branch line that was being acquired. It now appears that the only remaining owner of CVR are the Bean Companies. The CVR has provided no information as to what has happened to the other owners. Nor has it explained whether Pioneer or anyone else will finally carry through with the commitments made years ago both to IP and the Board, to provide adequate service to IP, as well as the other shippers on the line, to adequately maintain the track or to otherwise do more than reap financial benefits – by deferring maintenance and avoiding investment – from the sale of this stock to Pioneer.

As IP has stated previously, since AKMD was compelled to sell the Norman Branch, service to IP has been substantially reduced from the levels that previously existed. AKMD has

indicated that it is fit, willing and able to resume providing the service to which IP is entitled. Simply stated, IP cannot comprehend how circumventing the right of first refusal provisions of Section 10907(h) furthers the purposes of the Feeder Line Development Program when this would appear to continue the cycle of devaluing service to IP at the same time the company is being required to cross-subsidize service being provided to shippers on the northern end of the line. IP has already been compelled to shift a substantial amount of traffic from rail to truck due to CVR's inability or disinterest in IP's business, and believes that this line will ultimately not be sustainable for any traffic unless a financially viable operator is able to resume operations.

Accordingly, IP respectfully requests that the Board find that the sale of CVR stock has triggered AKMD's right of first refusal and that, assuming AKMD wishes to exercise that right, the line should be returned to that company.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of June, 2006, served a copy of the foregoing Comments of The International Paper Company on the following persons listed below via first-class mail, postage pre-paid:

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