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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34865

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



ENTERED
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Public Record

COMMENTS

By Decision served May 12, 2006, the Board has requested Comments regarding when, if ever, a stock sale triggers section 10907(h). The answer is that section 10907(h) is not triggered by a stock sale. Rather, the only time that this section would be triggered would be when a line, or portion of a line that was acquired pursuant to 49 U.S.C. § 10907, is sold or abandoned by the purchasing carrier. If the line is not abandoned or sold by the purchasing carrier, section 10907(h) is not triggered.

These Comments are filed on behalf of Caddo Valley Railroad Company ("CVR") and its four shareholders.¹ CVR has provided service over the Norman Branch line, which is located in Southwestern Arkansas, since it acquired the entire line from Arkansas Midland Railroad Company, Inc. ("AMR") in September 2000. CVR acquired the line from AMR pursuant to the Feeder Line Development Program (49 U.S.C. § 10907) based on the Board's determinations that (a) AMR had failed to provide any service to a majority of the shippers on the line;² (b) the public convenience and necessity

¹ CVR was incorporated in June 1997 for multiple purposes, which include (a) engaging in the operation of a short haul railroad, (b) conducting any other business enterprise not contrary to law, and (c) exercising all of the powers enumerated in the Arkansas Business Corporation Act. Its shareholders are Gina Garner, Tim Bean, Melanie Hall and Corey Thomason. Each shareholder holds the same number of shares.

² Although International Paper has attempted to introduce an argument that CVR's service has not been the equivalent of the service that it had received prior to the sale to CVR, those contentions (which are not based on any demonstrated facts) have no bearing on the narrow issue of whether a stock sale triggers the

required the sale of the line; and (c) that CVR was a “financially responsible person” as defined at § 10907(a)(1) and (2). Following the sale of its stock to new shareholders, CVR will continue to provide vital rail service on behalf of all shippers that are located on the Norman Branch.

The language of § 10907(h) could not be simpler or clearer. That section reads as follows (emphases added):

If a purchasing *carrier* under this section proposes to sell or abandon all or any portion of a purchased line, such purchasing *carrier* shall offer the right of first refusal to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

The foregoing provision provides no indication that Congress imposed any restrictions whatsoever on the ability of the stockholders of a purchasing carrier to transfer or sell their stock to new shareholders. Nor is there any indication that the Board, following its initial determination that the purchaser of the line fits the definition of a financially responsible person, has any jurisdiction (pursuant to 49 U.S.C. § 10907) over the future disposition of shares of stock of the acquiring carrier.

In the first place, CVR, which is the purchasing carrier, is not proposing to sell or abandon all or any portion of the line that it purchased from AMR. Hence, the requirement imposed by subsection (h) will not be triggered.

Second, the four current shareholders are not proposing to sell or abandon all or any portion of the line that CVR acquired from AMR. Instead, they intend to sell only

Board’s jurisdiction under section 10907(h). Most importantly, CVR has provided rail service to the majority of shippers on the line that is far superior to the non-existent service that was provided by AMR after December 1993.

their corporate stock to other shareholders. That stock sale, which would be governed by 49 U.S.C. § 11323(a)(5), does not fit within the § 10907 restriction, which applies only to the sale of the line or a portion thereof.³

In short, § 10907 reflects the well-settled distinction between the sale of a corporate asset and the sale of the corporate stock of an ongoing business concern. Should the stock sale occur, the buyer will be purchasing CVR's stock, not merely its assets. Hence, nothing will be changed in terms of the actual ownership of the line of railroad. Both before and after the stock sale, CVR will continue to be the sole owner of the line of railroad. As such, the situation is distinct from an asset sale or purchase.

Conclusion

Should CVR at some point in the future decide that it wants to sell or abandon the line of railroad or a portion thereof, it would be required to offer the right of first refusal to AMR. However, there is nothing in the wording of subsection 10907(h), or in any other provision of the Act, that would require the current shareholders to offer their corporate stock to AMR. As a result, the proceeding should be summarily discontinued.

Respectfully submitted,



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Dated: June 19, 2006

³ The statute for many decades has distinguished between the purchase of rail property of a carrier and the acquisition of control of a rail carrier. *Compare, e.g.,* 49 U.S.C. § 11323(a)(2) with 49 U.S.C. § 11323(a)(3), (4) & (5).

CERTIFICATE OF SERVICE

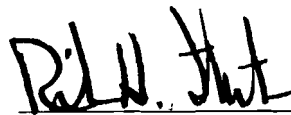
I hereby certify that on this 19th day of June, 2006, a true copy of the foregoing
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