

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34865



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MAY 15 2006

**Part of
Public Record**

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

216549

**REPLY OF THE INTERNATIONAL PAPER COMPANY TO THE MOTION TO
STRIKE FILED BY CADD O VALLEY RAILROAD COMPANY**

Pursuant to the provisions of 49 C.F.R. § 1104.13, the International Paper Company ("IP") files this reply to the pleading filed by Caddo Valley Railroad Company, ("CVR") on May 9, 2006 entitled Reply to Pleading Filed by International Paper Company, Inc., or in the Alternative, Motion to Strike ("CVR Motion").

IP is aware that the Board served a decision on May 12, 2006, in response to a petition filed by the Arkansas Midland Railroad Company, Inc. ("AKMD") instituting a declaratory order proceeding to determine whether AKMD has the right of first refusal to reacquire control of a line of railroad that had been originally conveyed to CVR's predecessor under the provisions of 49 U.S.C. § 10907(h). And, IP will submit its comments on this matter at an appropriate time.

As relevant here, IP also notes that the Board accepted into the record the CVR Motion which sought to strike IP's reply to various motions to dismiss in order to "ensure a complete record." (May 12 Decision, at 3 n.3.) While IP does not wish to unduly burden the record in this proceeding and does intend to address the CVR's failure to comply with its assurances that service to IP would not be adversely affected by its

takeover of the line, it is constrained at this point to observe that the CVR Motion presented a one-sided picture of the service difficulties that have existed under CVR's stewardship of the line. Although the CVR Motion indicates that "[c]opies of contemporaneous correspondence between counsel for IP and CVR are attached" (CVR Motion at 2 n.4), it neglected to actually provide the correspondence from IP. IP believes that it is only appropriate and fair that the letters from IP which initiated this correspondence also be made a part of the record. For that purpose and to ensure a more complete record on the issue of CVR's service, IP has appended copies of correspondence from the undersigned addressed to counsel for CVR dated July 6 and August 31, 2004.

Accordingly, IP requests that its reply, together with the attached correspondence, also be accepted into the record of this proceeding.

Respectfully Submitted,

By: 
Edward D. Greenberg, Esq.
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1054 Thirty-First Street, NW
Washington, DC 20007-4492
Phone: (202) 342-5277

Attorney for
International Paper Company

Dated: May 15, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of May, 2006, served a copy of the foregoing Reply of the International Paper Company to the Motion to Strike Filed by Caddo Valley Railroad Company on the persons listed below via first-class mail, postage pre-paid:

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July 6, 2004

VIA FACSIMILE - (202) 289-1330

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Suite 900
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Washington, DC 20006

Re: Caddo Valley Railroad and International Paper

Dear Mr. Streeter:

International Paper remains very concerned about the service difficulties it has been having at its Gurdon, Arkansas facility, particularly since it sees little reason to be optimistic that the Caddo Valley Railroad (CVRR) has the ability to resolve the problems and provide reasonable service. Your best intentions and the CVRR's assurances notwithstanding, IP has little basis to believe that CVRR is now, or likely to be in the future, able to provide the type or quantity of cars or the level of service to which IP is entitled and to which the CVRR committed to provide when it sought approval to acquire this line from the Arkansas Midland Railroad (AKMD).

As you now know, the CVRR completely reneged on its commitments to acquire at least the same number and type of cars that AKMD had used to service IP. This resulted in a situation where the CVRR's ability to provide service deteriorated so badly that IP was compelled to move substantial volumes of its product out of the Gurdon mill out via transload service to AKMD's facility at Jones Mill, Arkansas. In addition, IP has been compelled to pay extra switching charges to CVRR and has been threatened with substantial demurrage costs, all of which is directly attributable to CVRR's inadequate service. Parenthetically, I have asked IP to provide additional information these issues and will be submitting a claim for refund of the extra switching and the transload charges to the CVRR in the near future.



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But the main purpose of this letter is to address IP's concerns about the CVRR's ability to ameliorate this situation. Without IP's knowledge or consent, it now appears that the CVRR entered into something called a joint marketing agreement (JMA) with the UP by which CVRR became obliged to obtain cars solely and exclusively from the Union Pacific Railway Company (UP). Whatever CVRR's motivation may have been to enter into such an agreement with UP, the result has been that CVRR has essentially abdicated its responsibilities to IP, which has always been the major shipper on this line, in derogation of its common carrier obligations and of its management's commitments to IP and the STB when it forced the AKMD to sell the line.

IP appreciates the fact that, with your intervention on this issue, the CVRR is finally taking steps in an attempt to obtain cars so that it can attempt to provide reasonable service. However, IP is concerned that CVRR's efforts to obtain UP's approval to lease cars will not provide any meaningful remedy to what has become a critical problem.

For example, we understand that UP has conditioned its waiver of the JMA restrictions against CVRR obtaining its own cars by insisting, among other things, that the cars are to be leased on a short-term basis only, that the approval will expire on January 31, 2005 and that CVRR must agree to pool the equipment with UP. We question, first, whether it is likely that CVRR will be able to obtain the needed cars on such a short-term basis, particularly in view of the current market situation for rail cars. Moreover, to the extent that UP would be able to utilize these cars to service other traffic moving to locations where it is currently facing severe car shortages (the Pacific Northwest, currently), the cars would not be available to service IP; hence the Gurdon mill would continue to suffer inadequate service since the CVRR would not be able provide cars.

As you are aware, your client represented that, if it obtained permission to acquire the line previously owned by the AKMD, it would either acquire the cars that AKMD used to service IP or would lease an alternative number sufficient to service IP. Based upon those representations, IP did not oppose the takeover. The STB then specifically noted, in the August 12, 1999 decision approving the feeder line application, that the owners of the Caddo Antoine and Little Missouri Railroad Company (the predecessor to the CVRR) had committed to continuing to provide service to IP and accordingly concluded that there was then no basis to conclude that service to IP would be materially affected if the application was approved.

Consequently, IP now must insist that CVRR promptly resolve the situation and take such steps as are necessary to honor the past commitments and its statutory obligation to provide reasonable service. The current situation is unacceptable and IP is unwilling to have this continued due either to the vagaries and limitations of the JMA or UP's service difficulties that are, in any event, clearly unrelated to this mill. We hope that the CVRR will quickly take the necessary steps to resolve the situation;

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otherwise, IP will consider taking the steps necessary to obtain the service to which it is entitled via alternative means.

I look forward to hearing from you at your earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to be 'E. Greenberg', written over the typed name.

Edward D. Greenberg

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August 31, 2004

VIA FACSIMILE - (202) 289-1330

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Re: Caddo Valley Railroad and International Paper

Dear Mr. Streeter:

I must take issue with your letter to me of July 23, 2004, which advanced your client's perception of the service it is providing to International Paper's ("IP") facility at Gurdon, Arkansas. Our view is rather different, as IP believes that the Caddo Valley Railroad ("CVRR") has for several years been unable to provide the type or quantity of cars or a level of service to which IP is entitled.

As I have explained previously, the service has been so substandard that IP has often been forced to divert traffic to truck or transload product to the AKMD (which does have rail cars and is willing to provide rail service). And, on numerous occasions when CVRR does provide cars, IP has been compelled to absorb additional switching charges that are attributable to your client's inefficiencies.

My client's frustration with the current situation is particularly understandable when it sees empty cars sitting in the UP/CVRR switching yard that CVRR will not, or cannot, make available to IP. For example, on August 27, IP noted three empty centerbeam cars in that location that



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simply sat, forcing IP to ship 20 trucks of outboard product to an AKMD transload site at Jones Mill. This is not an isolated situation, but it is unacceptable.

We are aware that the car shortage in the West is a problem being experienced at present by a number of carriers. The fact remains, however, the CVRR elected not to invest in rail equipment, notwithstanding the obligation it has to provide cars to service the needs of its shippers. Whether or not CVRR is technically the same corporate entity that originally purchased the line, its principal investor was fully aware of and endorsed the commitments made when it -- in conjunction with the parties you represented at that time -- solicited IP's support in not opposing the takeover of the line from AKMD. Even if relevant to its service obligations (which is not the case), CVRR's current disavowal of the commitments that were originally made to add at least the same number of cars as had AKMD is misguided and unfortunate. While CVRR is a different corporate entity from the company that forced the sale of the line from AKMD, its principal investor had a similar role with the Caddo Antoine & Little Missouri Railroad ("CALM"), was fully aware of its service commitments to IP and cannot properly pretend that this is all a new issue. In not opposing the CALM's acquisition, IP relied on the representations that it would make the necessary investment in cars so that rail service would not be jeopardized. As far as we are aware, neither the CALM or the CVRR has invested any funds to honor that commitment.

Your letter of July 23 suggests that IP is somehow responsible for the situation by not having "affirmatively joined with the other shippers" in supporting the takeover of the line from the AKMD. Completely aside from its total lack of relevance, the statement is also categorically untrue. If IP had challenged CALM's application, it would now have direct access to a rail carrier that invested in an adequate supply of rail cars and that is committed to providing service rather than talking about it. And, of course, if CVRR had obtained cars to handle IP's traffic, it -- rather than trucks or the AKMD -- would have realized substantial additional revenues.

Nor can CVRR now properly seek to avoid its obligations by hiding behind the Cooperative Marketing Agreement ("CMA") it entered into with the Union Pacific. To the contrary, IP regards that agreement as substantially tying CVRR's hands, essentially relegating it to the role of a local switching carrier and leaving IP to the vagaries of some other railroad's goodwill. As Union Pacific's service and assets have been, to use a charitable term, "stretched" for the last ten years, CVRR's reliance on that carrier for car supply is tantamount to an abdication of its own responsibility.

From IP's perspective, it is paramount that CVRR invest in and obtain its own source of rail cars, as neither your client nor its customers should be dependent on another carrier as the source of such equipment. CVRR, not Union Pacific, has the obligation to provide service to IP

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and it is to CVRR that IP is entitled to look. And, CVRR cannot avoid its responsibilities by raising the issue of the CMA. In any event, AKMD was in the same situation as CVRR and it was able to obtain sufficient equipment to service its customers; IP expects no less from CVRR.

Finally, we do not understand why CVRR needs IP to tell it how to go about locating and acquiring cars. CVRR is supposedly interested in being a rail carrier and as such, should be aware of the companies that manufacture or lease this type of equipment. Nonetheless, I have listed below the names of companies and individuals who are in the business of selling and/or leasing rail cars. Since you have indicated that CVRR has been doing everything within its power to locate cars, this list may be unnecessary as these are well-known sources to whom people in this industry will generally turn when cars are needed.

1. Bill Ratcliff -- Trinity Industries -- (281) 890-0433
2. Craig Rehders -- ARI, a Division of ACF Industries - (281) 364-0190
3. Susan Thornton -- GE -- (312) 853-5255
4. Todd Moore -- GATX -- (678) 624-1513
5. Jim Weaver -- Greenbriar -- (800) 204-9943

We expect that CVRR will obtain the necessary waivers from Union Pacific that would make it possible to obtain sufficient equipment on a long-term basis. We similarly expect your client to make the financial commitments necessary to provide a reasonable level of rail service to IP.

I look forward to hearing from you concerning your client's intentions.

Very truly yours,



Edward D. Greenberg

EDG:kmd