

210 592

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

WILLIAM C. SIPPEL
(312) 252-1505
wsippel@fletcher-sippel.com

April 13, 2004

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

ENTERED
Office of Proceedings

APR 14 2004

Part of
Public Record



Re: **Finance Docket No. 34479**
Arkansas Midland Railroad Company, Inc. -- Alternative
Rail Service -- Line of Delta Southern Railroad, Inc.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition of Arkansas Midland Railroad Company, Inc. for Extension of Emergency Service Authority**, dated April 13, 2004.

One extra copy of the Petition and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'William C. Sippel'.

William C. Sippel
Attorney for Arkansas Midland
Railroad Company, Inc.

WCS:tjl

Enclosures

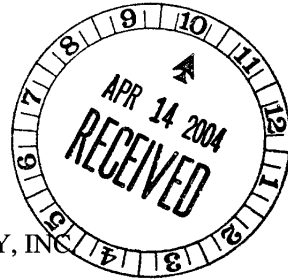
cc: Parties on Certificate of Service
Mr. Melvin F. Clemens, Jr., OCE

210598

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34479

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- ALTERNATIVE RAIL SERVICE --
LINE OF DELTA SOUTHERN RAILROAD, INC.



ENTERED
Office of Proceedings

APR 14 2004

Part of
Public Record

**PETITION OF ARKANSAS MIDLAND RAILROAD COMPANY, INC.
FOR EXTENSION OF EMERGENCY SERVICE AUTHORITY**

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: April 13, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34479

ARKANSAS MIDLAND RAILROAD COMPANY, INC.
-- ALTERNATIVE RAIL SERVICE --
LINE OF DELTA SOUTHERN RAILROAD, INC.

**PETITION OF ARKANSAS MIDLAND RAILROAD COMPANY, INC.
FOR EXTENSION OF EMERGENCY SERVICE AUTHORITY**

Arkansas Midland Railroad Company, Inc. ("AKMD") hereby seeks a 90-day extension of authority under 49 U.S.C. § 11123(a) and 49 C.F.R. § 1146 to provide emergency alternative rail service on a rail line between Dermott and Warren, Arkansas (the "Warren Line") owned by Union Pacific Railroad Company ("UP") and previously leased to and operated by Delta Southern Railroad, Inc. ("DSRR"). By decision served March 19, 2004,¹ the Board authorized AKMD to provide alternative service on the Warren Line for a period of 30 days. The Board's decision provided that AKMD could commence such operations on the Warren Line once it certified to the Board that the Warren Line had been repaired and could be operated safely. AKMD provided such certification to the Board on April 2, 2004, and commenced alternative rail service on the Warren Line on April 5, 2004.

Under 49 U.S.C. § 11123(c)(1), the Board may extend emergency service authority up to a maximum of 240 days beyond the initial 30-day period if the Board finds that the transportation emergency with respect to such service continues to exist. Under 49 C.F.R. § 1146.1(c), unless otherwise indicated an initial Board order issued under Section 1146.1(a)

¹ A previous decision in this proceeding had been served on March 11, 2004.

establishes a rebuttable presumption that the transportation emergency will continue beyond the 30-day period.

Here, a transportation emergency continues to exist on the Warren Line and extension of the alternative service authorized in the Board's March 19th Decision, 2004 is needed to assure continuance of important rail service to shippers on the line. As DSRR indicated in a March 18, 2004 letter filing and the Board acknowledged in its March 19th Decision, DSRR has voluntarily withdrawn from the Warren Line and thus would not be in a position to resume operations as the "incumbent" carrier on the line. While UP and AKMD have engaged in discussions regarding a permanent lease or transfer of the Warren Line to AKMD, the parties' focus for the past several weeks has logically been on the restoration of rail operations and service on the line and no definitive agreement regarding future permanent arrangements has been reached. In the absence of the extension requested herein, rail service on the Warren Line would likely shut down again upon expiration of the current authority.²

AKMD thus seeks extension of its emergency service authority on the Warren Line for an additional period of 90 days (or to August 2, 2004, whichever is longer).³ Such an extension should provide sufficient time to reach permanent arrangements for future operations on the line, and will preserve rail service to shippers on the Warren Line during the interim. AKMD believes

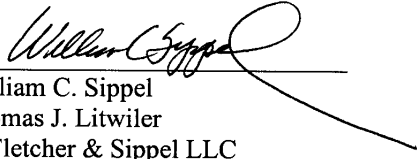
² AKMD notes that there may be some question whether the current emergency service authority extends until April 19, 2004 (30 days from the March 19th Decision), May 3, 2004 (30 days from the AKMD certification that the March 19th Decision required as a prerequisite to operations) or May 5, 2004 (30 days from AKMD's commencement of operations on the Warren Line). AKMD is filing this petition for extension now so that the Board can act within whatever time frame it deems applicable.

³ As before, this emergency service order request encompasses AKMD's provision of alternative local rail service on the Warren Line, from milepost 422.32 at Dermott to milepost 461.74 at Warren, as well as AKMD's overhead operations on UP's line between Dermott and McGehee, Arkansas for interchange purposes.

that UP, DSRR and Warren Line shippers all support or do not oppose this extension request, and has served a copy of this petition on each of those parties by overnight delivery.

WHEREFORE, AKMD respectfully requests that, pursuant to 49 U.S.C. § 11123 and 49 C.F.R. § 1146, the Board extend for a period of ninety (90) days or until August 2, 2004, whichever is later, the emergency service order allowing AKMD to provide alternative rail service to all shippers on the Warren Line and to conduct interchange operations on UP's Dermott-McGehee line.

Respectfully submitted,

By: 

William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ARKANSAS MIDLAND
RAILROAD COMPANY, INC.**

Dated: April 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2004, a copy of the foregoing
Petition of Arkansas Midland Railroad Company, Inc. for Extension of Emergency Service

Authority was served by overnight delivery upon:

John D. Heffner, Esq.
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, DC 20036

Office of Chief Counsel
Federal Railroad Administration
400 Seventh Street, S.W.
Room 5101
Washington, DC 20590

David A. Weisel
Director of Distribution
Potlatch Corporation
805 Mill Road
Lewiston, ID 83501

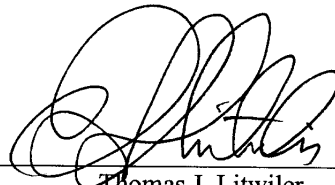
Mr. Keith Williams
Operations Manager
Exopack
1829 Highway 35 South
Monticello, AR 71655

Mr. Thomas V. Maxwell
President & Chief Executive Officer
Maxwell Hardwood Flooring
190 Wilson Mill Road
Monticello, AR 71655

Mr. Kenneth McDougald
Vice President & General Manager
Bradley Lumber Company
822 Fullerton
Warren, AR 71671

Mr. Danny Wood
President
Wood Lumber Company, Inc.
2999 Highway 24 West
Camden, AR 71701

Warren C. Wilson
Senior Manager Rail Line Planning
Union Pacific Railroad Company
1416 Dodge Street, Room 1110
Omaha, NE 68179

A handwritten signature in black ink, appearing to read 'T. Litwiler', is written over a horizontal line.

Thomas J. Litwiler