

FLETCHER & SIPPET LLC

ATTORNEYS AT LAW

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

March 15, 2004

ENTERED
Office of Proceedings

MAR 22 2004

Part of
Public Record

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

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



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

Dear Secretary Williams:

On March 4, 2004, Arkansas Midland Railroad Company, Inc. filed herein its **Rebuttal in Support of Emergency Service Order**. That filing contained facsimile copies of the March 2, 2004 rebuttal support letter of Potlatch Corporation and the verification page accompanying the statement of Charles Laggan. I am now attaching the original versions of those items, and would request that they be substituted for the copies previously submitted.

Ten copies of this letter, with attachments, are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your assistance. Kind regards.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Arkansas Midland
Railroad Company, Inc.

TJL:tl

Attachments

cc: John D. Heffner, Esq.
Robert T. Opal, Esq.
Mr. David A. Weisel

Potlatch

Potlatch Corporation
805 Mill Road
P.O. Box 1016
Lewiston, ID 83501
208-799-0123

ENTERED
Office of Proceedings

MAR 22 2004

Part of
Public Record

March 2, 2004

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



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

Dear Secretary Williams:

My name is David A. Weisel. I am Director of Distribution for Potlatch Corporation ("Potlatch"). I previously submitted a letter to the Board in support of the Arkansas Midland Railroad's Petition for an Emergency Service Order to provide rail service on the Dermott-Warren Arkansas line ("Warren Branch") owned by Union Pacific and leased to the Delta Southern Railroad ("DSR"). I have reviewed DSR's February 27, 2004 reply opposing Arkansas Midland's petition. I feel compelled to respond to certain incomplete or misleading statements made by DSR therein.

Mr. Wainright, DSR's President, states that the first time that Potlatch "expressed any serious concerns directly to DSR about the quality of its service" was on a conference call around February 11 or 12, 2004. That is simply not true. Potlatch's substantial and continuing complaints to DSR regarding poor DSR service extend as far back as February of 2003. Attached is a log kept by Bubba York, Manager of Rail for the Warren and Saline River Railroad. As can be seen from the log (and from the correspondence attached to my original letter), DSR's service problems go back more than a year and over that time Potlatch had numerous communications with DSR about its service problems. Potlatch also had numerous discussions with UP about DSR's poor service during this period, and I believe UP passed those complaints on to DSR. In fact, Potlatch had a face-to-face meeting with DSR and UP on September 17, 2003 in Warren, Arkansas which included a discussion of DSR's service problems. Mr. Wainright of DSR attended the meeting. Following the meeting, Potlatch concluded that it was not likely that DSR would be able to solve its service problems. Although the parties agreed to hold periodic conference calls thereafter to discuss issues and problems, Potlatch eventually gave up on the calls, because they were not effective in remedying the problems. DSR has known about Potlatch's dissatisfaction with DSR's service for some time.

I also note DSR's attempt in its reply to explain away its failure to provide any service to Potlatch and Fulghum since February 2, 2004 by blaming Potlatch for deciding in early February that we would no longer ship via DSR. Our decision to stop

shipping via DSR was not based solely on DSR's lack of cargo insurance. Before we stopped shipping via DSR, in addition to unpredictable service and erratic delivery and pulling of cars, we had some loaded cars that were picked up but never delivered. For example, on January 29, 2004, we loaded and shipped nine cars of wood chips for Cypress Bend, Arkansas. Those cars are currently sitting on DSR's mainline and have never been delivered. We also have a car of wood chips shipped on October 26, 2003 and one shipped on December 3, 2003 that are currently sitting on sidings along the DSR. We haven't been told why they're there. It is likely that the wood chips in these cars no longer have any value. I do not understand how DSR can claim that it is ready, willing and able to provide service when there are cars out there that haven't been moved.

When we learned in late January that DSR had lost its cargo insurance, that was simply the last straw for Potlatch. DSR's persistent lack of insurance is not an insignificant issue for Potlatch. The value of the lumber and wood chips shipped by Potlatch and its contractor Fulghum each year is approximately \$32,000,000. Over the past year, we have experienced significant loss and damage to our commodities as a result of DSR handling. Although DSR has paid some of our claims, as of the date of this letter, more than \$61,993 in loss and damage claims to DSR remain unpaid. It is Potlatch's corporate policy that we will not turn over custody of our products to a carrier - especially one with as few resources and as small as DSR -- that lacks adequate insurance to cover any loss or damage to our commodities. Potlatch is simply and quite reasonably unwilling to assume that risk. Moreover, payment of loss and damage claims does not begin to compensate us for lost business opportunities and harm to customer goodwill from destroyed or delayed shipments. Nowhere in DSR's Reply does it say that they have been able to obtain cargo insurance.

I also want to respond to DSR's unproven assertion that Potlatch loads 286,000- pound capacity cars to their maximum load limit or otherwise "overloads" cars of lumber and wood chips. First, with respect to the wood chip cars, Potlatch and Fulghum are loading the cars according to industry standards and other than an occasional car, they do not exceed 263,000 pounds gross weight. We know that because all wood chip cars are weighed by Potlatch at Cypress Bend before they are unloaded to determine the invoice price for the chips. Attached are spreadsheets for cars of wood chips weighed at Cypress Bend. The softwood cars are chips from Potlatch and the hardwood cars are chips from Fulghum. As can be seen, only a couple of cars out of all of them exceeded 263,000 pounds gross weight and those cars only modestly exceeded that weight.

With respect to center-beam flat cars of lumber, very few cars below 286,000-pound capacity are available. But, using a car that has a maximum gross weight limit of 286,000 pounds does not mean that we load it to a maximum gross weight of 286,000 pounds. The lumber that we load is Arkansas pine, a lighter density wood than many other kinds of lumber. Fully loaded with Arkansas pine, the weight of these 286,000-pound capacity cars with lading is consistently below 263,000 pounds. Based on cars weighed by UP, we know the approximate weight of a full load of Arkansas pine. Although wet lumber might cause a slightly higher weight, such circumstances would be exceptional and even then would only modestly exceed 263,000 pounds. Although DSR's reply implies that overloaded cars are pervasive, DSR provides no evidence to support its claim. Indeed, Potlatch's own data and UP's letter to the STB of February 20, 2004 indicate that very few cars are loaded above 263,000 pounds gross weight and the few exceptions are only modestly above that weight.

With respect to DSR's claim that some of Potlatch's or Fulghum's wood chip cars were loaded with a "crown" of chips above the car sides or were somehow loaded unevenly, we are aware that other railroads handle wood chip cars with a "crown" of chips without problems. The pertinent measure is the gross weight of the car. In any event, DSR never raised this as an issue until January of this year. We have since made modifications to our loading system that assures that the cars are loaded evenly.

For these reasons and the reasons stated in my previous letter, Potlatch and Fulghum believe there is no reasonable likelihood that DSR will be able to provide adequate rail service to meet Potlatch's needs within a reasonable period of time. Potlatch strongly supports Arkansas Midland's petition for authority to provide emergency rail service over the Warren Branch. To the extent necessary or helpful to obtain relief, Potlatch specifically joins in Arkansas Midland's Petition for an Emergency Service Order.

I verify under penalty of perjury under the laws of the United States that the facts stated in this letter and in my previous letter to the Board (attached to Arkansas Midland's Petition) are true and correct. Further, I certify that I am qualified and authorized to file this letter and my previous letter with the Board.

Respectfully submitted,



David A. Weisel
Director of Distribution

DAW

cc: Mr. Thomas York
WSR Rail Manager

Mr. Rick Warner
Plant Manager, Warren, Arkansas

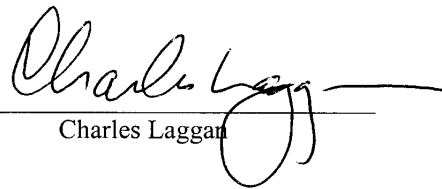
Mr. John Gray
VP, Union Pacific

Mr. Charles Laggan
VP, General Manager, Arkansas Midland Railroad

Mr. Charles Safelo
Fulghum Fibres

VERIFICATION

Charles Laggan, under penalty of perjury, declares and verifies that he is Vice President and General Manager of Arkansas Midland Railroad Company, Inc., that he has read the foregoing Verified Statement, knows the facts asserted therein, and that the same are true as stated.



Charles Laggan

Dated: March 3, 2004