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May 10, 2010

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. 42104, *Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc. and BNSF Railway Company*
Finance Docket No. 32187, *Missouri & Northern Arkansas Railroad Company, Inc. – Lease, Acquisition and Operation Exemption – Missouri Pacific Railroad Company and Burlington Northern Railroad Company*

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of Union Pacific's Answer to the Second Amended Complaint of Entergy Arkansas, Inc. and Entergy Services, Inc.

An additional paper copy of this filing is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

Sincerely,

Michael L. Rosenthal

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

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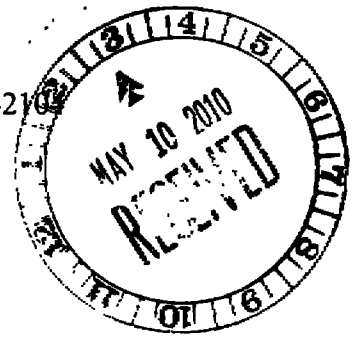

ENTERGY ARKANSAS, INC. and ENTERGY SERVICES, INC., Complainants.	)	
v.	)	Docket No. 42104
UNION PACIFIC RAILROAD COMPANY and MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC. and BNSF RAILWAY COMPANY, Defendants.	)	
MISSOURI & NORTHERN ARKANSAS R.R. – LEASE, ACQUISITION AND OPERATION EXEMPTION – MISSOURI PACIFIC R.R. and BURLINGTON NORTHERN R.R.	)	Finance Docket No. 32187

UNION PACIFIC RAILROAD COMPANY'S ANSWER TO THE SECOND AMENDED COMPLAINT OF ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.

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May 10, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERGY ARKANSAS, INC. and ENTERGY SERVICES, INC., Complainants, v. UNION PACIFIC RAILROAD COMPANY and MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC. and BNSF RAILWAY COMPANY, Defendants.	)	Docket No. 42104
MISSOURI & NORTHERN ARKANSAS R.R. – LEASE, ACQUISITION AND OPERATION EXEMPTION – MISSOURI PACIFIC R.R. and BURLINGTON NORTHERN R.R.	)	Finance Docket No. 32187

MAY 10 2010

UNION PACIFIC RAILROAD COMPANY'S ANSWER TO THE SECOND AMENDED COMPLAINT OF ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.

Defendant Union Pacific Railroad Company ("UP") hereby answers the "Second Amended Complaint" filed by Entergy Arkansas, Inc. ("EAI") and Entergy Services, Inc. ("ESI") (collectively, "Entergy") in this proceeding.

UP responds to the allegations in each separately numbered paragraph of the Second Amended Complaint as follows:

1. UP admits that Entergy filed a Complaint in this proceeding on February 19, 2008, which sought relief, *inter alia*, on the basis of Entergy's claim that continued enforcement of certain provisions of UP's 1992 lease agreement with Missouri & Northern Arkansas Railroad Company, Inc. (the "UP/M&NA Lease") constituted an unreasonable practice in violation of 49 U.S.C. § 10702. UP denies the remaining allegations of Paragraph 1, including the allegations

that Entergy's Complaint "confirmed" anything and that certain provisions in the UP/M&NA Lease operate as a "paper barrier."

2. UP admits that Entergy has accurately quoted from a portion of the Board's Decision served June 26, 2009 and states that the Decision speaks for itself.

3. UP admits that Entergy has accurately quoted from a portion of the Board's Decision served June 26. 2009 and states that the Decision speaks for itself. UP denies the remaining allegations in Paragraph 3.

4. UP admits that on December 30, 2009, the Board issued a Decision ruling on M&NA's motion to dismiss Entergy's Amended Complaint, that Entergy has accurately quoted from a portion of the Board's Decision, and states that the Decision speaks for itself. UP denies the remaining allegations in Paragraph 4 because it lacks knowledge or information sufficient to form a belief as to their truth.

5. UP admits the allegations in the first sentence of Paragraph 5. UP denies the remaining allegations in Paragraph 5 because it lacks knowledge or information sufficient to form a belief as to their truth.

6. UP admits the allegations in the first sentence of Paragraph 6 and that EAI distributes and sells electric power. UP denies the remaining allegations in Paragraph 6 because it lacks knowledge or information sufficient to form a belief as to their truth.

7. UP admits the allegations in the first sentence of Paragraph 7. UP denies the remaining allegations in Paragraph 7 because it lacks knowledge or information sufficient to form a belief as to their truth.

8. UP admits the allegations in the first three sentences of Paragraph 8. UP denies the remaining allegations in Paragraph 8 because it lacks knowledge or information sufficient to form a belief as to their truth.

9. UP admits the allegations in Paragraph 9.

10. UP admits the allegation in the third sentence of Paragraph 10. UP denies the remaining allegations in Paragraph 10 because it lacks knowledge or information sufficient to form a belief as to their truth.

11. UP admits the allegations in Paragraph 11.

12. UP admits the allegations in the first sentence of Paragraph 12, except that UP denies that the exemption in Finance Docket No. 32187 involved the acquisition of 492.27 miles of railroad lines. UP avers by way of further response that the Verified Notice of Exemption stated that the transaction involved the acquisition of 491.27 miles of railroad lines. UP denies the remaining allegations in Paragraph 12.

13. UP admits the allegations in Paragraph 13.

14. UP admits the allegations in Paragraph 14, and admits that Exhibit No. 2 appears to be an accurate copy of the UP/M&NA Lease as executed on December 11, 1992, except that it omits the exhibits to the UP/M&NA Lease. UP further admits that the quotation in Paragraph 14 is an accurate quotation from the UP/M&NA Lease, but it avers by way of further response that the use of an isolated quotation is potentially misleading because other portions of the UP/M&NA Lease make clear that UP retained certain rights to operate over the leased premises. UP also avers by way of further response to this Paragraph that the UP/M&NA Lease has been amended several times since December 11, 1992, and that the lease speaks for itself.

15. UP admits the allegations in Paragraph 15. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself.

16. UP admits the allegations in Paragraph 16, and admits that Exhibit No. 3 appears to be an accurate copy of a confidential rail transportation contract between UP and Entergy. UP avers by way of further response to this Paragraph that the contract speaks for itself.

17. UP admits the allegations in Paragraph 17. UP further admits that Exhibit No. 4 appears to be an accurate copy of a confidential rail transportation contract between UP and Entergy and that Exhibit No. 5 appears to be an accurate copy of an amendment to that contract.

18. UP admits that UP and Missouri Northern Arkansas Railroad Company ("M&NA") currently transport Powder River Basin ("PRB") coal to Entergy's Independence Steam Electric Station (the "Independence plant") via a routing that involves UP moving loaded coal trains from the PRB to Diaz Junction, Arkansas, via Parsons, Kansas, and Little Rock, Arkansas, and that M&NA moves the loaded trains between Diaz Junction and the plant. UP further admits that M&NA delivers empty coal trains to UP at Kansas City, Missouri. UP denies the remaining allegations in Paragraph 18.

19. UP admits the allegations in the first two sentences of Paragraph 19. UP denies the remaining allegations in Paragraph 19, except that it admits that the Missouri Pacific Railroad Company ("MP") used a portion of the Carthage Subdivision line currently operated by M&NA as part of its route for transporting coal to the Independence plant. UP also avers by way of further explanation that UP acquired control of MP in December 1982, long before the

UP/M&NA Lease, and even before Entergy had begun commercial operations at the Independence plant.

20. UP admits the allegations in Paragraph 20.

21. UP admits the allegations of Paragraph 21.

22. UP admits the allegations of Paragraph 22, except that in situations in which the M&NA routing for empty trains has been unavailable, empty coal trains have been routed back over the loaded route.

23. UP denies the allegations of Paragraph 23.

24. UP admits that it has had difficulties delivering coal to the Independence plant following record Midwest flooding in 1993-1994, following its merger with Southern Pacific in 1997-1998, and as a result of issues on the PRB Joint Line in 2005-2006. UP denies the remaining allegations in Paragraph 24. UP avers by way of further explanation that none of these service difficulties were caused by or exacerbated by the UP/M&NA Lease.

25. UP denies the allegations in Paragraph 25.

26. UP denies the allegations in Paragraph 26. UP avers by way of further response that even Entergy's Opening Evidence and Argument in this case acknowledges that track upgrades would be required for BNSF and M&NA to provide through service from the PRB to the Independence plant.

27. UP denies the allegations in Paragraph 27 because it lacks knowledge or information sufficient to form a belief as to their truth.

28. Paragraph 28 consists of allegations regarding whether Entergy is "aware of any reason to believe" certain facts, and UP denies the allegations because it lacks knowledge or information sufficient to form a belief as to their truth.

29. UP denies the allegations in Paragraph 29 because it lacks knowledge or information sufficient to form a belief as to their truth.

30. UP denies the allegation in Paragraph 30 that Section 4.01 of the UP/M&NA Lease establishes a "paper barrier." UP admits that the annual rent due under the lease is determined by reference to the percentage of traffic originating or terminating on the leased premises that is interchanged with UP, with certain exceptions. UP further admits that the quotation in Paragraph 30 appears to be an accurate quotation from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that UP and M&NA amended sections 4.01 and 4.03 of the lease in 2005 to modify the interchange commitment and rent provisions for the year 2005 and that the UP/M&NA Lease speaks for itself.

31. UP admits the allegations in the first two sentences of Paragraph 31 and in the first sentence of footnote 10. UP denies the remaining allegations in Paragraph 31.

32. UP denies the allegation in Paragraph 32 that the UP/M&NA Lease contains "paper barriers." UP admits that the lease contains several provisions designed to insure that UP is appropriately compensated by M&NA for M&NA's use of UP's property. UP avers by way of further response that it provided exclusive service to the Independence plant before entering into the UP/M&NA Lease and that it never would have entered into the lease without ensuring that it could preserve its existing stream of revenue from that traffic and that it could resume direct service itself to the Independence plant. UP also avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. UP denies the remaining allegations of Paragraph 32.

33. UP admits that Sections 3.01 and 3.04 of the UP/M&NA Lease allow UP to acquire the exclusive right to serve the Independence plant using trackage rights between Diaz

Junction and Independence, Arkansas, after giving seven days' written notice to M&NA and that UP would pay M&NA $60,000 per year for these rights if they are obtained. UP further admits that the quotations in Paragraph 33 are accurate quotations from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. UP denies the remaining allegations in Paragraph 33, including the allegations in footnote 11. UP avers by way of further explanation that the comparison in footnote 11 between the rent M&NA would have to pay UP if it interchanged traffic from the leased line with a carrier other than UP, which was intended to compensate UP for the loss of the traffic, and the trackage rights payment that UP would have to make if it elected to serve the Independence plant directly, which was intended to reflect UP's share of maintenance costs to operate over one short segment of the leased line, is invalid.

34. UP admits that Section 15.01 of the UP/M&NA Lease allows UP to terminate the lease if, among other possible reasons, a court or other body determines that all or any of the provisions of Section IV are unlawful or otherwise unenforceable. UP further admits that the quotation in Paragraph 34 is an accurate quotation from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. UP denies the remaining allegations in Paragraph 34.

35. UP repeats its responses to the allegations in Paragraphs 1 through 34.

36. UP admits that the quotations in Paragraph 36 are accurate quotations from the referenced Decision. UP denies the remaining allegations in Paragraph 36 because it lacks knowledge or information sufficient to form a belief as to their truth.

37. Paragraph 37 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

38. The first sentence in Paragraph 38 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegation in the first sentence of this Paragraph. UP denies the remaining allegations in Paragraph 38.

39. UP denies the allegations in Paragraph 39.

40. Paragraph 40 states legal conclusions to which no response is required; to the extent that a response is deemed to be required. UP denies the allegations in Paragraph 40.

41. UP admits that the quotation in Paragraph 41 is an accurate quotation from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. The remainder of Paragraph 41 states legal conclusions or requests for relief to which no response is required; to the extent that a response is deemed to be required, UP denies these allegations.

42. Paragraph 42 states a request for relief to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations of this Paragraph.

DEFENSES

1. The Second Amended Complaint fails to state a claim for a prescribed through route to the Independence Plant involving a long-haul carrier other than UP, pursuant to 49 U.S.C. § 10705.

2. The Second Amended Complaint fails to establish a basis for revoking the exemption in Finance Docket No. 32187.

3. Entergy admittedly has been on notice of the terms of the UP/M&NA Lease about which it complains since at least 1994 and is thus precluded from petitioning to revoke the exemption in Finance Docket No. 32187 by the doctrine of laches.

4. The Board lacks jurisdiction to preclude the enforcement of individual contractual terms of the UP/M&NA Lease.

5. The remedies sought by Entergy would result in an unconstitutional taking of UP's property.

WHEREFORE, UP requests that the Second Amended Complaint be dismissed with prejudice and that the Petition to Revoke be denied, that no relief of any kind be awarded to Entergy, that UP be awarded its costs, and that the Board grant UP such other and further relief as may be appropriate.

Respectfully submitted,

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May 10, 2010

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 10th day of May, 2010, I caused copies of Union Pacific Railroad Company's Answer to the Second Amended Complaint of Entergy Arkansas, Inc. and Entergy Services, Inc. to be served on counsel as follows:

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