

40282  
SEC

SERVICE DATE – LATE RELEASE OCTOBER 7, 2009

SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 693

ORAL ARGUMENT

AGENCY: Surface Transportation Board.

ACTION: Notice of Oral Argument.

SUMMARY: The Surface Transportation Board will hold oral argument on Tuesday, October 27, 2009, at 9:30 a.m., at its offices in Washington, DC, regarding two cases, STB Docket No. 42104, Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc., and STB Finance Docket No. 34914, DesertXpress Enterprises, LLC—Petition for Declaratory Order.

DATE/LOCATION: Oral argument will begin at 9:30 a.m., Tuesday, October 27, 2009, at the Board's offices at 395 E Street, S.W., Washington, DC. A video broadcast of the oral argument will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

FOR FURTHER INFORMATION, CONTACT: Timothy Strafford, (202) 245-0356. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339.

SUPPLEMENTARY INFORMATION: In STB Docket No. 42104, Entergy Arkansas, Inc., and Entergy Services, Inc. (collectively, Entergy), co-owners of a coal-fired utility plant, seek the prescription of a through route (or routes) directing the Missouri & Northern Arkansas Railroad Company, Inc. (MNA) and/or Union Pacific Railroad Company (UP) to interchange traffic with a long-haul carrier other than UP in order to provide adequate and more economic or efficient transportation of coal from Powder River Basin mines to the utility plant near Newark, AR. MNA has filed a motion to dismiss Entergy's complaint and a motion to require Entergy to make the complaint more definite. The Board will hold an oral argument on those two motions.

In STB Finance Docket No. 34914, DesertXpress, a private entity, asked the Board to issue a declaratory order that the construction and operation of its proposed interstate, passenger-rail system between Victorville, CA, and Las Vegas, NV, would be within the Board's jurisdiction under 49 U.S.C. 10501(a) and therefore the federal preemption of 49 U.S.C. 10501(b) would apply and preempt most state and local laws. By decision served on June 27, 2007, the Board found that the proposed passenger-rail system would be within the Board's exclusive jurisdiction, would require Board authority under 49 U.S.C. 10901, and, if such authority were granted, federal preemption would apply. California-Nevada Super Speed Train Commission, a bi-state commission and an agency of the State of Nevada, and its private-sector

partner, American Magline Group, jointly petitioned to intervene and reopen the 2007 declaratory order, arguing that, because DesertXpress's rail system would not transport any freight or connect to lines on which freight is transported, the Board erred in determining that the line would be part of the interstate rail network and thus subject to its jurisdiction. The Board will hear argument on that petition to intervene and reopen.

The Board will hear argument regarding the above-mentioned proceedings on October 27, 2009. The Board will provide further procedural guidance, including the time allotted for each party to present its argument, in a future decision. The oral argument will be open for public observation, but only counsel for the parties will be permitted to present argument.

The Board will hold another oral argument on Monday, November 23, 2009 at 9:30 a.m. The cases to be argued then will be announced by decision at a later date.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: October 7, 2009.

Anne K. Quinlan  
Acting Secretary