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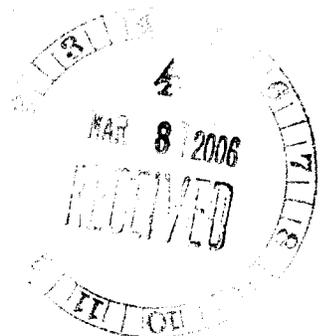
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March 8, 2006

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423-0001



Re: Ex Parte No. 575, Review of Rail Access and
Competition Issues – Renewed Petition of the
Western Coal Traffic League

Dear Secretary Williams:

Enclosed for filing in the captioned proceeding please find an original and ten (10) copies of the Opening Comments of Entergy Services, Inc.

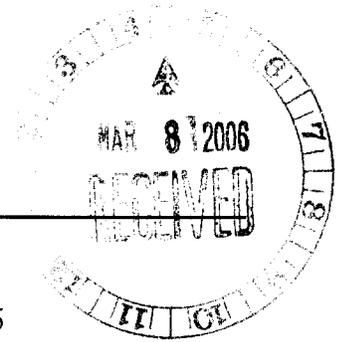
An additional paper copy of the Comments also is enclosed. Kindly indicate receipt of the filing by time-stamping this extra copy and returning it to the bearer of this letter. Thank you for your attention to this matter.

Sincerely,

Donald G. Avery
Donald G. Avery

An attorney for Entergy Services, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD



REVIEW OF RAIL ACCESS AND)
COMPETITION ISSUES – RENEWED)
PETITION OF THE WESTERN COAL)
TRAFFIC LEAGUE)

Ex Parte No. 575

**OPENING COMMENTS OF
ENERGY SERVICES, INC.**

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March 8, 2006

Attorneys for Entergy Services, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

REVIEW OF RAIL ACCESS AND)	
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PETITION OF THE WESTERN COAL)	Ex Parte No. 575
TRAFFIC LEAGUE)	
)	

**OPENING COMMENTS OF
ENERGY SERVICES, INC.**

Entergy Services, Inc.¹ respectfully submits these opening comments in response to the order of the Surface Transportation Board (“STB” or “Board”) served February 1, 2006 in this proceeding, which sought input on several issues related to “paper barriers” – provisions in rail line sale and lease agreements that inhibit or prevent short line lessees from interchanging traffic with competitors of the lessor. In these Comments, Entergy will (1) address the Board’s authority to bar enforcement of “pre-existing” paper barriers, and (2) provide detailed information regarding the anticompetitive impacts of the particularly egregious paper barriers contained in a specific short line lease agreement: the 1992 lease agreement between Union Pacific Railroad Company (“UP”), as successor to the Missouri Pacific Railroad Company (“MP”), and the Missouri & Northern Arkansas Railroad (“M&NA”). These Comments

¹ Entergy Services, Inc. is a subsidiary of Entergy Corporation, a public utility holding company whose utility subsidiaries provide electricity to more than 2.7 million customers in Arkansas, Louisiana, Mississippi, and Texas. For convenience, Entergy Corporation and its subsidiaries will be collectively referred to as “Entergy.”

are supported by the attached verified statement of Mr. Jeffrey G. Herndon (“Herndon VS”), Manager – Coal Supply, and include a copy of the lease agreement in question.

Identity and Interest

As Entergy explained in its April 29, 2005 Reply to the Renewed Petition of the Western Coal Traffic League (“WCTL”) that precipitated these proceedings, one of its public utility affiliates is Entergy Arkansas, Inc., formerly known as Arkansas Power & Light Company, which operates a coal-fired generating station in northeastern Arkansas known as the “Independence” station. The Independence Station is located on a rail line operated by the M&NA under a long term lease from the UP, and as Mr. Herndon explains, while the M&NA publishes interchanges with the BNSF Railway Company (“BNSF”) and the Kansas City Southern Railway Company (“KCS”) as well as UP, the paper barriers in the lease effectively prohibit it from doing so with respect to coal destined for the Independence station. Those paper barriers therefore have a direct and adverse impact on Entergy by forcing it to rely on UP, and UP alone, to transport the Powder River Basin coal that the Independence plant requires to meet the electricity needs of Entergy’s customers in Arkansas and elsewhere – even when UP is unable to do so.

Discussion

A. **Impact of the M&NA Paper Barriers on Entergy.** As Mr. Herndon testifies, four distinct provisions of the M&NA Lease operate in tandem to prohibit M&NA from *ever* accepting coal shipments in interchange from either BNSF or

KCS, and delivering them to Independence: *First*, Section IV of the lease imposes enormous financial penalties on the short line if it interchanges more than a miniscule amount of traffic with a railroad other than UP; this is similar in concept (although far greater in magnitude and effect) to the paper barrier addressed in Finance Docket No. 34495, *Buckingham Branch Railroad Company—Lease—CSX Transportation, Inc.* (unprinted decision served November 5, 2004) at 6-7. *Second*, the M&NA is prohibited from interchanging traffic with any railroad other than UP at Kansas City, which would be the most logical and efficient interchange point for BNSF-originated coal destined for Independence, and which was in fact the interchange point for such traffic before UP gained access to Powder River Basin mines in 1984. *Third*, Section 15.01 gives UP the right to terminate the lease and take back the leased lines if the financial penalties provisions of Section IV are invalidated – effectively precluding any challenge to them by the M&NA. *Fourth*, and finally, Section 3.04 gives UP the absolute right to take over direct service to Independence and “close” the facility to M&NA at any time, on just seven days notice – obviously preventing M&NA from making any long-term commitments to deliver non-UP coal to the plant even if it were somehow willing and able to bear the financial penalties such service would entail.

Mr. Herndon points out that none of the M&NA paper barriers could possibly be justified as mere vehicles for financing M&NA’s acquisition of the former MP lines, since they are not tied to the volume of traffic interchanged with UP or the revenue UP derives therefrom, but rather are triggered by the interchange of any

significant amount of traffic with BNSF or KCS even if UP's profits and revenues from M&NA traffic remain constant or increase. And significantly, M&NA's paper barrier restrictions never expire, no matter how many times over the line ends up being paid for by UP's profits on the captive traffic it interchanges with M&NA.

All in all, the M&NA lease constitutes a veritable poster child for the excessive and overreaching paper barriers that have been demanded by so many Class I carriers in their dealings with short lines. Moreover, the M&NA paper barriers have already caused significant harm to Entergy and its customers in Arkansas and elsewhere and threaten to cause even more harm in the future. Specifically, as Mr. Herndon explains, UP was unable to deliver all of the coal Independence requires during its service "meltdown" in 1997-1998, and similar problems recurred last summer when the PRB Joint Line was undergoing massive repairs. During both periods, the M&NA paper barriers prevented Entergy from mitigating these UP-caused shortfalls by substituting non-UP coal, and as a result Entergy was forced to curtail generation at Independence and replace that power with far more expensive gas-fired generation, as well as imported power purchased at premium prices. With PRB track work scheduled to resume this coming summer, Entergy faces the unhappy prospect of renewed curtailments and expensive replacement power purchases for at least another year.

Mr. Herndon further points out that because the Independence plant will remain captive to UP due solely to the M&NA paper barriers even after Entergy's current coal transportation contract with UP expires, those paper barriers will force Entergy to

pay the premium prices that market dominant Class I railroads can and do extract from their captive customers, rather than the more nearly reasonable prices they offer to customers with transportation alternatives.

B. Jurisdiction of Board Over Pre-Existing Paper Barriers. The M&NA's acquisition and operation of the MP's Carthage Subdivision was authorized by the Interstate Commerce Commission on December 15, 1992.² The M&NA assumed control over the line under the lease shortly thereafter, and the lease has remained in effect ever since. The paper barriers in the M&NA lease are therefore examples of the "pre-existing" paper barriers on which the Board requested comments.

Entergy respectfully submits that the Board has clear jurisdiction and authority to provide relief from the anticompetitive effects of unreasonable paper barriers that are already in effect. In the first place, as WCTL and others have noted in prior filings, where (as in the case of the M&NA) the short line transaction that resulted in the establishment of anticompetitive paper barriers was authorized by exemption rather than on the basis of a formal application, 49 U.S.C. §10502(d) explicitly authorizes the Board to revoke the prior exemption when it finds that regulation is now needed to carry out the rail transportation policies set out in 49 U.S.C. §10101. Those policies of course include the promotion of "effective competition among rail carriers" (§10101(4)).³

² Finance Docket No. 32187, *Missouri & Northern Arkansas Railroad Company, Inc.-- Lease, Acquisition and Operation Exemption—Missouri Pacific Railroad Company and Burlington Northern Railroad Company* (served December 22, 1992).

³ Revocation of an exemption to acquire and operate a line of railroad would not vitiate the short line's authority – and indeed, legal obligation – to continue its common carrier operations, at least if the revocation were not made *ab*

The Board also has jurisdiction under 49 U.S.C. §722 to “reopen” its prior decisions at any time, including the decisions that authorized particular short line transactions.⁴ This, too, has been noted in prior submissions to the Board in this proceeding.

A third and independent basis for STB jurisdiction to review – and, where appropriate, reject – paper barriers contained in leases that are already in effect is found in 49 U.S.C. §11322, which explicitly requires STB authorization for railroads to enter into agreements to “pool or divide traffic or services.” Without such authorization, of course, pooling and traffic division agreements between carriers are simply void and unenforceable. *See, e.g., Chicago & N. W. Ry. Co. v. Peoria & P. U. Ry. Co.*, 319 F.2d 117 (7th Cir. 1963), *cert. den.* 375 U.S. 969 (1964).

Although the M&NA lease is between UP and a subservient Class III carrier (rather than being between the two primary long-haul coal carriers, UP and BNSF), its paper barrier provisions clearly fall within the scope of §11322’s prohibitions because they effectively require M&NA to turn all of Entergy’s coal traffic over to UP instead of participating in a through route and rates on such traffic with UP’s competitors.

initio. *See* Finance Docket No. 34014, *Canadian National Railway Company – Trackage Rights Exemption – Bangor and Aroostook Railroad Company and Van Buren Bridge Company* (decision served June 25, 2002), at 6, 8-9. Revocation would, however, appear to allow the Board to revisit the terms governing such continued operations on a prospective basis, and thus allow the imposition of conditions to remedy unreasonable restrictions contained in the lease agreement.

⁴ Section 722(c) provides that “the Board may, at any time ... because of material error, new evidence, or substantially changed circumstances ... change an action of the Board.” The Board apparently interprets this as precluding it from reopening and changing its “administratively final” decisions unless one or more of those factors is demonstrated. Assuming for present purposes that this interpretation of the statute is correct, it should be noted that the details of the paper barriers in specific short line leases will virtually always constitute new (that is, newly-discovered) evidence for complaining shippers and STB alike, since carriers are not required to, and typically do not, file copies of their leases with their exemption notices or petitions. *See, e.g.,* 49 C.F.R. §1150.33(c).

Note in this regard that in the *CNW* case just cited, the contract provisions which the courts found to constitute an unauthorized traffic division agreement required the CNW to interchange its traffic in Peoria, Illinois through the defendant carrier rather than directly to other carriers – in other words, it was an agreement between railroads that were primarily end-to-end carriers and thus “competed” with one another only on a local level, just as is the case for UP and M&NA.

Of course, §11322, in addition to prohibiting enforcement of unapproved pooling or traffic division agreements, also authorizes the STB to bless such agreements if it finds *inter alia* that their implementation “will not unreasonably restrain competition.” In other words, §11322 provides a statutory foundation well suited to the Board’s systematic evaluation of all paper barriers to interchange, both prospective and pre-existing, under the substantive rules and procedures proposed by WCTL, or such other rules as the Board may promulgate at the conclusion of this proceeding.

Conclusion

By any reasonable measure, the draconian – and by their terms perpetual – restrictions in the M&NA lease agreement that prevent that railroad from delivering non-UP coal to Entergy’s Independence Power Plant, are unreasonable restraints of trade and should be condemned as such by this Board. The Board has ample legal authority to take such action; Entergy respectfully but urgently asks the Board to consider and adopt the rules and procedures suggested by the Western Coal Traffic League, and thereby provide

a forum in which Entergy, and other shippers adversely affected by unreasonable paper barriers, may seek relief.

Respectfully submitted,

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March 8, 2006

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A handwritten signature in black ink, appearing to read "Donald G. Avery", is written over the typed name and extends to the right.

Attorneys for Entergy Services, Inc.



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

REVIEW OF RAIL ACCESS AND)	
COMPETITION ISSUES – RENEWED)	Ex Parte No. 575
PETITION OF THE WESTERN COAL)	
TRAFFIC LEAGUE)	

VERIFIED STATEMENT OF JEFFREY G. HERNDON

Introduction

My name is Jeffrey G. Herndon, and my business address is 10055 Grogans Mill Road, Suite 501, The Woodlands, TX 77380. I am Manager – Coal Supply for Entergy Services, Inc., a subsidiary of Entergy Corporation. Entergy is a public utility holding company whose utility subsidiaries provide electricity to more than 2.7 million customers in Arkansas, Louisiana, Mississippi, and Texas. (For convenience, I’ll refer to Entergy Corporation and its subsidiaries collectively as “Entergy”.) In that capacity I am responsible for ensuring that all of the coal-fired electric generating units operated by Entergy receive the fuel they require to meet the needs of their customers, and I am therefore quite familiar with the rail transportation options available at each of the coal-fired units operated by Entergy. Each of the coal-fired units operated by Entergy is owned by Entergy and other co-owners, among whom are cooperatives and municipalities.

The purpose of my testimony is to respond to the Board's February 1, 2006 request for information on the "problems experienced by shippers as a result of paper barriers," and "the short and long term economic impacts of paper barriers."

In its April 29, 2005 Reply to the Western Coal Traffic League's "Renewed Petition for Rulemaking," Entergy noted that its "Independence" coal-fired generating station, located in northeastern Arkansas, is situated on a 382 mile long rail line running from Pleasant Hill, MO (near Kansas City) to Diaz, Arkansas operated by the Missouri & Northern Arkansas Railroad ("M&NA"), a Class III carrier. Unit 1 of the Independence plant began commercial operations in 1983; Unit II did so in 1984. Initially, coal was delivered to Independence pursuant to a tariff arrangement, whereby a predecessor of BNSF Railway Company ("BNSF") originated the coal in the Powder River Basin of Wyoming ("PRB") and interchanged it to the Missouri Pacific Railroad Company ("MP") at Kansas City. MP then transported the coal via its Carthage Subdivision – which is included in the line currently operated by M&NA – for delivery to Independence. In 1983 Arkansas Power & Light Company ("AP&L"), now named Entergy Arkansas, Inc., entered into a long term coal transportation contract with Western Railroad Properties, Inc. ("WRPI"), Union Pacific Railroad Company ("UP"), and MP, under which – once WRPI gained access to AP&L's coal suppliers over what is now known as the BNSF-UP "Joint Line" – Independence's coal requirements would be originated by WRPI and delivered to the Kansas City interchange by UP. MP continued to move the coal over its Carthage Subdivision from Kansas City to Independence until

1989, when UP – which of course controlled MP – proposed to reroute AP&L’s unit coal trains over its own lines down to Little Rock and then over to Diaz, from which point they would move over a short stretch of MP trackage to Independence. AP&L agreed to the changed routing based on UP’s assurances that AP&L’s service would not be less efficient over the new route, despite its somewhat greater circuitry.

Three years later – in December 1992 – MP conveyed virtually its entire Carthage Subdivision to M&NA. Specifically, M&NA purchased outright a 102-mile segment from Bergman, AR to Guion, AR (in the middle of the line), and entered into a long-term lease of the segments at either end. (Because the terms of the 1992 M&NA lease agreement are important to the discussion that follows, I have attached a copy of it to this statement as Exhibit 1.). Currently, M&NA operates as a subcontractor for UP by interchanging loaded coal trains with UP at Newport, delivering the loaded coal trains to Independence for unloading and returning the unloaded coal train via their railroad to Kansas City for interchange with the UP.

Today, M&NA publishes interchanges with the Union Pacific Railroad Company (“UP”) at Kansas City, MO¹ and Newport, AR (adjacent to the line’s endpoint at Diaz). It also publishes interchanges with Kansas City Southern Railway (“KCS”) at Joplin, MO, and with BNSF Railway Company (“BNSF”) at Lamar, Aurora, and Springfield, MO, and it has a physical connection with BNSF at Fort Scott, Kansas. In fact, since M&NA interchanges with UP at Kansas City, MO, it should be able to

¹ M&NA operates over UP trackage between Pleasant Hill and Kansas City, MO, and between Diaz and Newport, AR.

interchange there with all the other railroads serving Kansas City, including BNSF. From all public appearances, therefore, M&NA should be able to accept unit train coal shipments in interchange from either UP or BNSF and deliver them to the Independence plant. It should also be able to accept shipments of imported coal transported by KCS from Gulf of Mexico ports to Joplin or Kansas City and deliver them to Independence. Given the substantial profits that line-haul railroads typically enjoy from high volume unit train coal traffic, one would expect M&NA to be eager to participate in any and all routings for the delivery of Entergy's coal requirements at Independence. Unfortunately, as Entergy pointed out in its prior filing, the paper barriers included in the UP-M&NA Lease Agreement have effectively prevented M&NA from doing so, thereby limiting Independence to the receipt of UP-originated coal – regardless of whether UP is able or willing to deliver the volumes that Independence requires. As I will explain, these restrictions have blocked Entergy's efforts to obtain substitute coal (such as imported coal) to make up for UP's chronic under-deliveries, and if left intact are likely to prevent Entergy from realizing the benefits of intramodal rail competition for its future coal shipments to Independence once its current contract with UP expires.

M&NA Paper Barriers

A review of the M&NA-UP Lease reveals four separate provisions that effectively prevent M&NA from delivering to Independence coal that was originated by any railroad other than UP. Turning first to Section IV, at pages 8-12 (Exhibit 1 at 12-16), note that M&NA must pay UP escalating rentals of between \$10 million and \$90

million per year any time it fails to interchange at least 95% of its interline traffic with UP and its affiliates. Although UP has claimed that this provision was simply intended as an alternative methodology for M&NA to pay a fair rental for UP's property, this is belied by the fact that the escalating rentals are not tied to the level of revenues UP receives on traffic it interchanges with the short line, or even to the absolute volume of such interchanges. To the contrary, UP will get the same rent – zero – if M&NA exchanges one carload a year or 1 million carloads a year with UP, so long as M&NA doesn't exchange 5% or more of its total interlined carloads with a UP competitor. On the other hand, if M&NA interchanges, say, 95,000 carloads with UP, but interchanges 5,001 carloads with BNSF and/or KCS, M&NA will owe UP \$10 million for having interchanged that last carload after having owed nothing for the interchanging the first 5,000 carloads. It would be hard to imagine a more direct and unequivocal barrier to competitive interchange than this – but for the fact that UP indeed managed to conjure up an even more direct and unequivocal paper barrier, and included it in this very lease, as I shall discuss in a moment.

A second layer of paper barriers built into the M&NA lease is found in Section 15.01(e), found on pages 36-37 (Exhibit 1 at 40-41), under which “either party” may terminate the lease at any time if all of any part of Section IV (including the penalties for interchanges with another railroad discussed above) is determined by a court or “other body” to be “unlawful or otherwise unenforceable.” This “poison pill” would by its terms give UP a right to take back the entire M&NA system and resume operating

the lines itself if the STB were to declare the interchange penalties unlawful – although of course it would then also have to re-shoulder the high operating and maintenance costs that MP had sought to avoid by spinning off the lines in the first place.

A third layer of paper barriers in the lease may be found in Section 5.05, on page 13 (Exhibit 1 at 17), which specifies that M&NA's trackage rights between Pleasant Hill and Kansas City are to be used only for interchange with UP, and not for interchange with any other carrier. As I explained above, coal shipments to Independence at one time were originated by BNSF and interchanged at Kansas City for subsequent movement over what is now the M&NA line, and thus the preclusion of BNSF-M&NA interchanges at Kansas City effectively severs what would otherwise have been a direct and efficient routing for shipments of PRB coal to Independence.

Finally, UP – apparently fearful that all of the foregoing paper barriers might not be enough to prevent M&NA from delivering non-UP coal to Independence – also included in the lease what must be the ultimate barrier to such an interchange.

Specifically, Section 3.04 (page 8, Exhibit 1 at 12) provides that

Lessor [UP] may acquire the right to operate over the Leased Premises between milepost 259.05 at Diaz Junction and milepost 270.00 near Independence to serve AP&L [Entergy] and, if this right is exercised, Lessee shall no longer have the right to serve AP&L, and AP&L shall become a closed industry served only by Lessor. This right shall be acquired effective seven days after Lessee's receipt of Lessor's written notice to Lessee that Lessor desires to begin operation over such trackage.

Considered separately, UP's reserved right to obtain direct access to Independence over M&NA's lines would be unobjectionable from Entergy's standpoint, as it would at least in theory provide an added safeguard against the possibility that M&NA's service might at some point deteriorate, for example if M&NA ran into financial problems. However, UP's added right to "close" the Independence plant to service by M&NA and thereby prevent M&NA from fulfilling its common carrier obligation to serve Entergy – a shipper on M&NA's own lines – is a shocking, and in my experience unprecedented, violation of railroad industry norms. It is also a naked restraint on competition that offers no countervailing public benefits whatsoever.

Economic Effects of Paper Barriers
On Entergy

In light of the formidable paper barriers embedded in the UP-M&NA lease – provisions which, I might add, never terminate but rather remain in effect as long as M&NA continues to operate – it should come as no surprise that not a single ton of non-UP coal has been delivered to Independence during the 13+ years that M&NA has been in operation.

As Energy explained in its 2005 filing, this lack of alternatives has had two adverse consequences for Entergy and its customers: first, the paper barriers in the M&NA lease effectively deny Entergy access to substitute coal deliveries – including the delivery of coals from non-UP origins – *even when UP is unable to deliver all of the coal that Entergy needs to operate Independence!* For example, when UP suffered its

systemwide service “meltdown” in 1997-98, Entergy sought to arrange for substitute transportation of its PRB coal purchases by BNSF, but UP categorically refused to waive the paper barriers that prevented M&NA from delivering such shipments to Entergy, and as a result Entergy was forced to curtail generation at Independence and substitute purchased power and generation from alternative fuels at significantly higher energy cost in order to avoid cutting vital service to Entergy’s customers

More recently, as the Board is aware, this past summer UP once again experienced massive congestion and slowdowns in its unit train coal operations, and this time BNSF was also having difficulty meeting its commitments. Entergy, like many other electric utilities in the West, ran critically short of coal at all of its coal-fired generating stations, and – again, like other utilities – sought to obtain substitute coals from other sources. Now, as I mentioned earlier, M&NA publishes an interchange with the KCS at Joplin, MO, and should be able to accept coal delivered by KCS from ports on the Gulf coast, thus making imported coal a potential alternative to the PRB coal that neither UP nor BNSF could deliver. Unfortunately, although other utilities with competitive delivery options were able to obtain some relief through use of imported coal (albeit at substantial extra expense), the paper barriers in the M&NA lease effectively eliminated that option for Entergy at Independence, and as a result it was once again forced to curtail coal-fired generation and substitute much more expensive gas-fired generation and purchased power. With both UP and BNSF predicting another season of curtailed coal deliveries as they resume work on their joint line trackage in the PRB, the

spectre of renewed shortages and enormous extra costs for natural gas and purchased power once again confronts Entergy and its customers.

The second adverse consequence of the M&NA paper barriers is that by precluding any competition from BNSF, the paper barriers will likely allow UP, even after Entergy's current contract with UP expires, to demand high, captive-customer prices on Entergy's Independence coal traffic rather than the more reasonable prices that both UP and BNSF were long willing to accept on coal traffic to destinations where they competed head to head. Entergy has gone to great lengths in order to obtain the benefits of rail-to-rail competition wherever possible, including building a costly spur at one of its power plants in Louisiana to reach a second carrier and obtaining trackage rights for another carrier to deliver coal to Independence's sister plant in Arkansas through a settlement agreement with UP in 2000. Thus, Entergy is in a good position to know the difference between captive customer pricing and competitive pricing in the railroad industry. Based on that experience, Entergy anticipates that UP's continued captivity of Entergy's Independence traffic will cost Entergy and its customers millions of dollars a year in additional rail charges once the existing contract expires.

On behalf of Entergy, the co-owners of Entergy's coal-fired plants, and, perhaps most importantly, Entergy's 2.7 million customers and the millions of customers of the co-owners of Entergy's coal-fired plants, as well as the many other parties adversely affected by the anticompetitive paper barriers to interchange that the Class I railroads have continued to employ in order to perpetuate their monopoly power, I submit

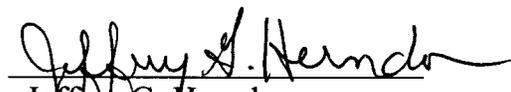
that the establishment of effective remedies to constrain such abuses is long overdue.

Entergy urges the Board to consider, and adopt, the standards proposed by the Western Coal Traffic League.

VERIFICATION

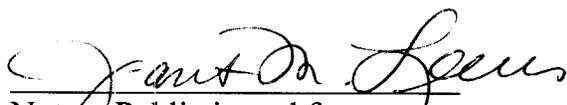
CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

JEFFREY G. HERNDON, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated.



Jeffrey G. Herndon

Subscribed and sworn to before me this
8th day of March 2006.



Notary Public in and for
The District of Columbia.

My Commission expires _____
 JANET M. LEWIS
 District of Columbia
 My Commission Expires
 June 30, 2010

As filed with the Securities and Exchange Commission on November 19, 1993

BEST AVAILABLE COPY

Registration No. 33-68938

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549



93 26 0145

POST-EFFECTIVE AMENDMENT NO. 1
TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Post-ET

REC'D S.E.C.
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1259-906
PROCESSED BY

RailTex, Inc.

(Exact name of Registrant as specified in its charter)

TX
Texas
(State or other jurisdiction of incorporation or organization)

4011

(Primary Standard Industrial Classification Code Number)

74-1948121
(I.R.S. Employer Identification No.)

4040 Broadway, Suite 200
San Antonio, Texas 78209
(210) 841-7600

(Address, including zip code and telephone number, including area code of Registrant's principal executive offices)

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Chairman of the Board and President
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Approximate date of commencement of proposed sale of securities to public: As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

This Post-Effective Amendment No. 1 to the Registration Statement shall become effective on such date as the Commission, acting pursuant to Section 8(c), may determine.

Total of sequentially numbered pages 1166
Exhibit Index on sequential page number 87

1 2

EXHIBIT 10.18

— ORIGINAL - DO NOT REMOVE —

CONFIDENTIAL

L E A S E A G R E E M E N T

BY AND BETWEEN

MISSOURI PACIFIC RAILROAD COMPANY

AND

MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.

CONFIDENTIAL

CONFIDENTIAL

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of the 14th day of December, 1992, by and between MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation ("Lessor") and MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC., a Kansas corporation ("Lessee").

RECITALS:

A. Lessee intends to lease certain lines of railroad in the States of Arkansas, Missouri and Kansas from Lessor as follows: the Carthage Branch from milepost 643.13 near Pleasant Hill, MO, to milepost 415.0 at Bergman, AR, and from milepost 313.0 at Guion, AR, to milepost 259.05 near Diaz Junction, AR, a total distance of 282.08 miles; the Clinton Branch from milepost 262.6 near North Clinton, MO, to milepost 340.5 near Griffith, KS, a distance of 78.3 miles (there is a 1.4 mile equation between mileposts 272 and 273); the Webb City Branch from milepost 527.94 near Carthage, MO, to milepost 544.66 near Joplin, MO, a distance of 16.72 miles; the Atlas Branch from milepost 0.07 near Webb City, MO, to milepost 6.43 near Atlas, MO, a distance of 6.36 miles and the Wallis Spur from milepost 506.59 near Wallis, MO, to milepost 512.40 near Springfield, MO, a distance of 5.81 miles, including 0.11 miles of rights over Burlington Northern Railroad Company trackage as indicated below. By way of the assignment document referenced in Section 14.07, the Lessor also will assign to Lessee, Lessor's trackage rights over 0.11 miles of

Burlington Northern Railroad Company (hereinafter "BN")
trackage in Springfield, Missouri and over BN trackage
from chaining station 14187+07 near Aurora, MO, to
chaining station 10637+09+2354 feet near Springfield, MO,
as set forth in that separate agreement between Lessor
and BN dated July 8, 1970. The foregoing trackage shall
be referred to hereinafter as "Leased Premises".

B. The parties desire to enter into this Lease
Agreement to set forth the terms and conditions for the
use, management and operation of the Leased Premises
described above.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and
other good and valuable consideration, intending to be legally
bound, the parties do hereby agree as follows:

SECTION I
LEASED PREMISES

SECTION 1.01 -- Lessor does hereby lease to Lessee and Lessee
does hereby lease from Lessor the Leased Premises described in the
Recitals above and the property described in Section 1.02.

SECTION 1.02 -- The Leased Premises shall include, without
limitation, right-of-way, tracks, rails, ties, ballast, other track
materials, switches, crossings, bridges, culverts, buildings,
crossing warning devices and any and all improvements or fixtures
affixed to the right-of-way as indicated on Exhibit A hereto
attached, but excluding radio and microwave communications
structures and equipment and any and all items of personal property
not owned by Lessor or not affixed to the land, including, without

limitation, railroad rolling stock, locomotives, equipment, machinery, tools, inventories, materials and supplies. Within thirty (30) days after the Commencement Date (which is defined in Section 2.01), Lessor shall remove all its personal property from the Leased Premises. Items not so removed shall be deemed included in the Leased Premises. Lessee expressly acknowledges that Lessor has previously leased and/or licensed portions of the Leased Premises. This Lease is made subject to those leases and licensees. To the extent that there exists, on the Leased Premises, property owned by such prior lessees or licensees, that property may remain on the Leased Premises to the extent permitted by the terms of the lease or license under which it was placed on the Leased Premises.

SECTION 1.03 -- Lessee shall take the Leased Premises in an "AS IS, WHERE IS" condition and without any express or implied warranties, including but not limited to any warranties of merchantability and subject to: (a) reservations or exceptions of record of minerals or mineral rights, including but not limited to all coal, oil, gas, casinghead gasoline and minerals of any nature and character whatsoever underlying the Leased Premises together with the sole, exclusive and perpetual right to explore for, remove, and dispose of said minerals by any means or methods suitable to Lessor, (b) all easements, public utility easements and rights-of-way, howsoever created, for crossings, pipelines, wirelines, fiber optic facilities, roads, streets, highways and other legal purposes; (c) existing and future building zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (d) encroachments or

other conditions that may be revealed by a survey, title search or inspection of the property; (e) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created; (f) any liens of mortgage or deeds of trust encumbering said property; (g) the Lessor's exclusive right to grant any and all easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Leased Premises, or any portion thereof, for the purpose of construction, installation, operation, use, maintenance, repair, replacement, relocation and reconstruction of any fiber optic facilities, signboards or coal slurry pipeline PROVIDED, HOWEVER, that the exercise of these rights shall not materially interfere with Lessee's railroad operations, and that the entry onto the Leased Premises by Lessor or an authorized third party in order to accomplish the foregoing purposes shall be upon prior written notice to Lessee, which notice shall include a reasonably detailed explanation of the acts to be taken or work to be performed; and (h) the right, interests, contracts, agreements, leases, licenses and easements (which are hereinafter referred to as "Lessor Agreements" or "Lessee Agreements" as defined in Sections 14.01 and 14.03) and any Supplemental Agreements or Amendments thereto which are or become effective on or prior to the Commencement Date hereof. The Lessee Agreements to be assigned to Lessee are identified in the attached Exhibit B.

SECTION 1.04 -- Lessor agrees that it will, so long as Lessee is not in default under the terms and provisions of this Lease, indemnify and hold Lessee harmless from and against any damages, losses and losses of reasonably anticipated net income from its

operation of the Leased Premises (discounted to present value) resulting from any foreclosure of any mortgage on any segment of the Leased Premises or resulting from any actions by any mortgage holder which adversely affects Lessee's use and operation of any segment(s) of the Leased Premises.

SECTION II
LEASE TERM

SECTION 2.01 -- Unless this Agreement is terminated earlier in accordance with Section XV, Lessee shall have and hold the Leased Premises unto itself, its successors and assigns, for a term of twenty (20) years beginning on the Commencement Date. The Commencement Date shall be five (5) days after Lessor has notified Lessee in writing that Lessor has satisfactory evidence of compliance with the conditions precedent provided in Section V unless such notice period is waived by mutual agreement.

SECTION 2.02 -- Subject to Lessor's possible reacquisition of the Leased Premises pursuant to this Agreement, Lessee shall have the right to extend the term of this Lease three (3) times for an extended term of up to twenty (20) years for each extension. Lessee shall notify Lessor of any election to extend the term hereof by giving Lessor not more than 12 months, but not less than 6 months' written notice prior to the expiration of the then current lease term.

SECTION 2.03 -- If, subject to the right of Lessor to evict or remove Lessee from the Leased Premises by all available legal means, Lessee holds over and remains in possession of the Leased Premises following expiration of the then current term, original or extended, or following an early termination of this Lease pursuant

to Section XV, such holding over will create a month-to-month tenancy only. During any such hold over period, Lessee agrees to pay to Lessor as rent, a sum equal to one-twelfth (1/12th) of the Annual Rental, as adjusted pursuant to Section 4.04, required pursuant to the first sentence of Section 4.01 without, however, any reduction pursuant to the schedule set forth in Section 4.03. Such monthly payments shall be due each month on the same day of the month as the Anniversary Date of this Lease. Any profits or losses from Lessee's operations during any holdover period shall enure and accrue to the Lessee.

SECTION III
RAIL SERVICE

SECTION 3.01 -- Beginning on the Commencement Date and throughout the term of this Lease, Lessee shall be entitled to full and exclusive use of the Leased Premises for the operation of common carrier rail freight service, including the right to access and interchange traffic directly with all present and future railroads at Springfield, Joplin, Carthage, Lamar, Aurora and Nevada, MO and Ft. Scott, KS. During the term hereof, Lessor shall not have the right to operate trains over the Leased Premises, except that Lessor may obtain trackage rights between Diaz Junction and Independence, AR, after giving seven days' written notice to Lessee to serve, on an exclusive basis, the Arkansas Power and Light Company (AP&L) plant located at Independence, AR, either at AP&L's request or at Lessor's sole discretion. Lessor would pay Lessee \$60,000 per year for these rights if they are obtained. Lessor shall not grant trackage rights to any third party. Except for the Southeast Kansas Railroad operation between Nassau Junction

and Nevada, MO, Lessor further warrants that as of the date of this Lease, there is no other freight rail carrier to which Lessor has granted rights to use the Leased Premises other than pursuant to joint facility agreements or arrangements that are superior to those granted herein to Lessee. During the term hereof, Lessee shall not grant to any third party the right to operate over the Leased Premises, nor shall it enter into any commercial or other agreement to move the traffic of any third party over the Leased Premises without the prior written consent of Lessor. During the term hereof, Lessee shall not use the Leased Premises for any purpose other than for rail freight service, or with prior consent of Lessor, rail passenger service.

SECTION 3.02 -- During the term of this Lease, Lessee will not suspend or discontinue its operation as a common carrier by rail over all or any part of the Leased Premises without first applying for and obtaining from the ICC, and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; PROVIDED, HOWEVER, that Lessee will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Leased Premises, without first giving Lessor sixty (60) days' notice of Lessee's intent to do so.

SECTION 3.03 -- Upon suspension or discontinuance of Lessee's operations as a rail carrier of freight over all or any part of the Leased Premises during the term or any extended term hereof, for reasons other than events of force majeure or a lawful embargo,

whether or not pursuant to necessary and proper regulatory authority as required by Section 3.02 of this Section III, Lessee will promptly relinquish to Lessor possession of the Leased Premises and this Lease Agreement will terminate as provided by Section XV of this Lease; PROVIDED, HOWEVER, any discontinuance of service or abandonment of any portion(s) of the Leased Premises which are inconsequential to rail freight service over the Leased Premises generally will be permitted and will not result in a termination of this Lease or require relinquishment of possession of the Leased Premises by Lessee.

SECTION 3.04 -- Lessor may acquire the right to operate over the Leased Premises between milepost 259.05 at Diaz Junction and milepost 270.00 near Independence to serve AP&L and, if this right is exercised, Lessee shall no longer have the right to serve AP&L, and AP&L shall become a closed industry served only by Lessor. This right shall be acquired effective seven days after Lessee's receipt of Lessor's written notice to Lessee that Lessor desires to begin operation over such trackage.

SECTION IV
RENT

SECTION 4.01 -- In consideration of this Lease, and subject to the terms and provisions set forth herein, Lessee agrees to pay Lessor rent for the Leased Premises in the amount of Ninety Million Dollars (\$90,000,000) per year payable annually in advance on the 1st day of March; PROVIDED, HOWEVER, that subject to the provisions of Section 4.02 hereof, for each lease year that 95% or more of all traffic originating or terminating on the Leased Premises is interchanged with Union Pacific Railroad Company or Missouri

Pacific Railroad Company and any affiliated company, their successors and assigns, Lessor agrees that it will waive or partially waive the rent for that particular year in accordance with the schedule set forth in Section 4.03. The 95% level must be achieved separately and simultaneously on the Pleasant Hill-Bergman (including connecting branches) and Guion-Diaz Junction segments.

SECTION 4.02 -- The following traffic shall not be counted in calculating either total traffic or the percentage of traffic in Section 4.03: (a) Industries open to reciprocal switching at Ft. Scott, KS; Lamar, MO; Joplin, MO; Carthage, MO; Aurora, MO; and Springfield, MO as shown in Exhibit C, and (b) traffic that is local to Lessee, i.e., traffic which both originates and terminates at stations on the Leased Premises or at the stations served by Lessee pursuant to the Line Sale Contract between Lessor and Lessee which is being executed by the parties concurrently with this Agreement, and not involving line haul movement by any railroad other than Lessee. Lessor will consider further exceptions to this section on a case by case basis.

SECTION 4.03 -- Upon request of Lessor, on or before the 1st day of February of each year following the commencement of this Lease, Lessee shall submit a report, signed by an officer of Lessee, certifying the amount and type of traffic originating or terminating on the Leased Premises during the prior calendar year, the railroads (if any) with which all or portions of such traffic were interchanged, the volume of traffic interchanged with each such railroad, and the total amount of rent due and payable for the previous calendar year. The rent due from Lessee for the Year shall be determined by reference to the percentage of the total

traffic (as described in Section 4.01, subject to the provisions of Section 4.02) that was interchanged with Lessor, subject to the terms of Section 4.04, in accordance with the following schedule:

<u>PERCENTAGE OF THE TOTAL TRAFFIC THAT WAS INTER- CHANGED WITH LESSOR</u>	<u>RENT DUE LESSOR</u>
100 - 95%	\$ -0-
94 - 85%	\$10,000,000
84 - 75%	\$20,000,000
74 - 65%	\$20,000,000
64 - 55%	\$30,000,000
54 - 45%	\$40,000,000
44 - 35%	\$50,000,000
34 - 25%	\$60,000,000
24 - 15%	\$70,000,000
14 - 5%	\$80,000,000
0 - 4%	\$90,000,000

Lessee shall pay to Lessor all rent determined to be payable pursuant to this Section 4.03 on or before March 1st for each calendar year following the commencement of this Lease.

SECTION 4.04 -- Rent shall be adjusted each year to reflect changes in the Producer Price Index - Finished Goods (the "Index") and the amount due each year shall be determined as follows:

The Index for the month of December 1992 shall be deemed to be the base index ("Base Index"). Rent shall be adjusted annually as of each December thereafter by multiplying the rent shown in Section 4.03 by a fraction, the denominator of which is the Base Index and the numerator is the Index for the month of December in each year. The term "Producers Price Index" shall mean the Producer Price Index - Finished Goods (Reference Base 1982 = 100), published by the United States Department of Labor, Bureau of Labor Statistics, or, if the Producer Price Index ceases to be published, such comparable index or measure of change in the

purchasing power of the dollar as may then be in common usage of adjustments in rents. Adjustments so made each December shall be effective for the following calendar year.

SECTION 4.05 -- Lessee shall pay all due rent payments, and all other payments required by this Lease, to Lessor at 1416 Dodge Street, Omaha, Nebraska 68179, Attn: Senior Director of Interline Marketing, or at such other location or to such other individual as may be designated by Lessor in writing .

SECTION 4.06 -- If Lessee fails to pay any installment of rent when due, and such failure continues for thirty (30) days, Lessee shall pay interest at the rate of 2% over the prime rate of CHASE MANHATTAN BANK, N.A., its successors and assigns, in effect on the day the rent was due, which interest shall accrue from the date it was due until the date of payment. No such failure to pay any installment will accrue any interest or constitute an Event of Default in the event it is determined that no rent was, in fact, payable by reason of the provisions of Section 4.03.

SECTION 4.07 -- Acceptance by Lessor, its successors, assigns or designees of rent or other payments shall not be deemed to constitute a waiver of any other provision of this Lease.

SECTION 4.08 -- Upon receipt by Lessor of the report required by Section 4.03, Lessor shall, upon giving at least fifteen (15) days' written notice, have the right, at its sole cost and expense, to review and audit all of Lessee's records relating to or forming the basis for such report.

SECTION 4.09 -- As additional security for the payment by Lessee to Lessor of any sums of money required hereunder to be paid by Lessee, it is agreed that in the event Lessee fails, neglects or

refuses to timely pay any sums due and owing to Lessor hereunder, Lessor may use any and all sums which it may collect from any third party and which may, in whole or in part, be payable to Lessee, as an offset against any and all payments for which Lessee is delinquent. In addition, any sums at any time due and payable to Lessee by Lessor may also be used by Lessor and credited to Lessor's account to the extent of any delinquent payment owed by Lessee to Lessor. Lessee does hereby waive any and all claims, demands and causes of action against Lessor which it may have or claim to have as a result of Lessor's use or implementation of the provisions of this Section 4.09 and/or any offset.

SECTION V
CONDITIONS PRECEDENT

As conditions precedent to either party's obligations hereunder:

SECTION 5.01 -- Lessor and Lessee shall have received Board of Directors' approval for this transaction.

SECTION 5.02 -- There shall not be a work stoppage imminent or in effect on the lines of Lessor or any of its affiliated companies as a result of the execution and/or implementation of this Lease.

SECTION 5.03 -- Lessee shall have acquired the right to conduct rail freight service over the Leased Premises from the Interstate Commerce Commission, and shall have obtained such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

SECTION 5.04 -- Lessor and Lessee shall not be prevented from fulfilling their respective obligations under this Lease as a result of legislative, judicial or administrative action.

SECTION 5.05 -- Lessor and Lessee shall execute trackage rights agreements between Kansas City (Neff Yard) and Pleasant Hill, MO and between Diaz Junction and Newport, AR (Lessee over Lessor's tracks) solely for the purpose of interchange with Lessor.

SECTION 5.06 -- Lessee shall not have discovered any contract, agreement, award, judgment, title defect or condition which would prevent Lessee from operating a rail freight operation on the Leased Premises in substantially the same manner as presently conducted by Lessor. Upon execution hereof, Lessor shall make available for Lessee's inspection and review all contracts, deeds, agreements and documents pertaining to or affecting the Leased Premises. Lessee shall notify Lessor in writing within forty-five (45) days from date of execution hereof whether or not its review of Lessor's records and the Leased Premises has satisfied this condition precedent.

SECTION 5.07 -- Lessee and Lessor are agreeable to any conditions which might be imposed by the Interstate Commerce Commission or other regulatory body as part of the authority required to consummate this transaction.

SECTION VI
MAINTENANCE

SECTION 6.01 -- During the term hereof, Lessee shall maintain the Carthage Subdivision main track of the Leased Premises between mileposts 643.13 and 259.05 to Class 3 standards, as defined by the Federal Railroad Administration and capable of operating speeds of

at least 40 miles an hour, with the speed restrictions in effect as of the date of the Lease as shown in Exhibit D. All other leased track shall be maintained to the class necessary to maintain speeds as shown in Exhibit D at Lessee's own cost and expense and to a standard that is sufficient to continue rail freight service commensurate with the needs of the rail users located thereon. Lessor shall have no obligation under the terms of this Lease to perform any maintenance upon, or furnish any materials for the maintenance of the Leased Premises during the term hereof. Lessee shall comply with all applicable federal, state or local laws, ordinances and regulations and shall protect the Leased Premises against all encroachments or unauthorized uses. Lessee shall not apply for any Federal or State funding for rehabilitation or maintenance of the Leased Premises unless Lessor provides written consent to such application.

SECTION 6.02 -- Lessor shall have the right to inspect the Leased Premises at all reasonable times. Lessor shall notify Lessee in writing of any deficiencies in Lessee's maintenance program and Lessee shall, within ninety (90) days of its receipt of such notice, commence necessary repairs and maintenance and shall proceed to complete same with reasonable diligence. Lessee may relocate switches and industrial tracks from one location on the Leased Premises to another location on the Leased Premises upon receiving any necessary and proper regulatory authority and after ten (10) days' written notice to Lessor. Any rehabilitation or reconstruction, including but not limited to that necessitated by an Act of God, will be the sole responsibility of Lessee. Such maintenance will include any function which Lessor, but for this

Lease, would be required to perform pursuant to applicable federal, state, and municipal laws, ordinances, and regulations.

SECTION 6.03 -- Nothing herein shall preclude Lessee, at its sole cost and expense, from maintaining the Leased Premises to a standard higher than the minimum herein provided, but Lessee shall not be required hereunder to do so.

SECTION 6.04 -- Lessee's maintenance obligations hereunder shall include, but shall not be limited to, highway grade crossings, grade crossing signal protection devices, bridges, culverts and other structures, and sub-roadbed. Lessee agrees that all grade crossings and grade crossing protection devices will be given a high priority in Lessee's maintenance program.

SECTION 6.05 -- Without the prior written consent of Lessor, Lessee will not replace existing track and other track materials ("OTM") on the Leased Premises with substitute or replacement track or OTM having a lighter weight, of lesser quality, or having a lower fair market value. Such requirement shall also apply to all other facilities leased hereunder. Any repair or replacement of welded rail shall also be welded. Lessee may make any replacement and substitute with any material having the same or higher weight and quality as the materials being replaced, without the prior written consent of the Lessor, provided that the work being performed by the Lessee and the materials being provided by the Lessee are sufficient to maintain the trackage to the standards set forth in Section 6.01.

SECTION 6.06 -- Subject to Section XII, Lessee will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by Lessee

during the term of this Lease in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether said improvements are the property of Lessor or of Lessee, and Lessee will indemnify and save harmless Lessor from all such claims, liens, or demands whatsoever.

SECTION VII
ACCOUNTING AND REPORTING

SECTION 7.01 -- Lessee agrees to furnish to Lessor such copies of reports pertaining to Lessee and the Leased Premises prepared in the normal course of Lessee's business as Lessor may reasonably request and Lessee may lawfully furnish. Upon request, Lessee will deliver to Lessor copies of all financial statements showing the financial condition of Lessee which are furnished by Lessee to the Interstate Commerce Commission ("ICC"), FRA (pursuant to any agreement between FRA and Lessee relating to financial assistance), the Securities & Exchange Commission ("SEC") or stockholders. All such financial statements will be furnished to Lessor at the same time as they are furnished to other parties.

SECTION 7.02 -- Irrespective of any obligations of Lessee to furnish financial statements to others, Lessee shall furnish Lessor financial statements prepared in accordance with generally accepted accounting principles (which need not be in addition to those furnished to others as aforesaid) fairly presenting the financial position and results of operation of Lessee as and at the end of each fiscal year. Such statements shall be furnished to Lessor within ninety (90) days following the end of each fiscal year.

SECTION VIII
MODIFICATIONS AND IMPROVEMENTS

SECTION 8.01 -- In connection with its use of the Leased Premises, Lessee shall have the right to remove, replace, add to or relay elements of the Leased Premises in the interest of cost or operating efficiency, provided that a continuous and usable line of railroad between the termini in effect on the Commencement Date is maintained. Lessee shall have the right to apply the net proceeds from salvaged materials to maintenance or improvement of the Leased Premises; provided that any such net proceeds not reinvested in the Leased Premises shall be paid to Lessor. Improvements to the Leased Premises, whether normal maintenance or otherwise, will be treated as capital expenditures or operating expenses under the then current rules of the ICC; and, except as provided in Section 8.03, such improvements shall become part of the Leased Premises and, at the termination of this Lease, shall be the property of Lessor unless Lessor has determined that Lessee may retain ownership as provided in Section 8.03.

SECTION 8.02 -- The provisions of Section 8.01 shall also apply and govern any work or maintenance done by Lessee pursuant to Section VI. On or before February 1st of each calendar year, Lessee shall provide Lessor with a written summary of all salvage or other materials removed from the Leased Premises, the proceeds received therefor and the manner in which the proceeds were reinvested. Failure to either reinvest such proceeds or pay any unreinvested proceeds to Lessor within six months following such reporting date shall, at Lessor's sole discretion, constitute a Default hereunder.

SECTION 8.03 -- Prior to making any improvement of the Leased Premises to which it desires to retain ownership, Lessee shall notify Lessor of its intent to make such improvement, and its desire to retain ownership thereof. If Lessor determines that an improvement may be removed or severed from the Leased Premises upon termination of this Lease without diminishing Lessor's investment in the Leased Premises and without interfering with the utilization of the Leased Premises as part of an interstate rail system, Lessor will notify Lessee that such improvement shall be Lessee's sole property and may be removed by Lessee upon termination of this Lease subject to Section XV of this Lease. Regardless of eventual ownership, Lessee shall notify Lessor prior to making any substantial improvement or modification of the Leased Premises costing in excess of \$25,000.

SECTION 8.04 -- Lessee may from time to time establish, relocate or remove sidetracks or industrial spur tracks on the Leased Premises after Lessee obtains any necessary regulatory authority. Lessor shall have no obligation to bear any cost of materials, construction or maintenance of said industrial spur tracks. That portion of any such spur track which is located upon the Leased Premises shall become part of the Leased Premises and, upon termination of this Lease, the property of Lessor. Any industry track agreement executed by Lessee shall first be submitted to Lessor for written approval, which shall not unreasonably be withheld. All industry track agreements, regardless of duration, shall contain provisions indemnifying Lessor and holding it harmless from all liability in connection with the construction, maintenance or operation thereof.

SECTION IX
REPRESENTATIONS AND WARRANTIES

SECTION 9.01 -- Lessor represents and warrants that:

(a) It has full statutory power and authority to enter into this Lease and to carry out the obligations of Lessor hereunder.

(b) Its execution of and performance under this Lease do not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

SECTION 9.02 -- Lessee represents and warrants that:

(a) It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Kansas and is qualified to do business in the States of Arkansas, Missouri and Kansas.

(b) It has full power and authority to enter into this Lease, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder.

(c) Upon expiration of the original or any extended term of this Lease or upon termination hereof by Lessor pursuant to Section XV, Lessee will bear any and all costs of protection of its current or future employees, including former employees of Lessor that may be employed by Lessee, arising from any labor protective conditions imposed by the ICC, any other regulatory agency or statute as a result of Lessee's lease or operation of the Leased Premises and any related agreements or arrangements, or arising as a result of the termination of this Lease. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder. Nothing in this Lease shall be construed as an

assumption by Lessee of any obligations to Lessor's current or former employees under collective bargaining or other agreements that may exist or have existed between Lessor and its employees, or any of them.

SECTION X
OBLIGATIONS OF THE PARTIES

SECTION 10.01 -- During the term hereof, Lessee will pay all bills for water, sewer, gas and electric service to the Leased Premises. If Lessor is required to, or does pay, any such bills, Lessee will promptly reimburse Lessor upon receipt of a bill or bills therefor. If the Leased Premises are not billed separately but as a part of a larger tract or parcel, Lessee shall pay that portion of such bills as is attributable to usage on or in connection with the Leased Premises.

SECTION 10.02 -- During the term of the Lease, Lessee will comply with all applicable federal, state and municipal laws, ordinances, and regulations.

SECTION 10.03 -- During the term of the Lease, Lessee will comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. Except to the extent that such activities are the responsibility of the Lessor under Section 10.04, Lessee at its own expense will make all modifications, repairs, or additions to the Leased Premises, install and bear the expense of any and all structures, devices, or equipment, and implement and bear the expense of any remedial

action which may be required under any such laws, rules, regulations, ordinances, or judgments. During the term of this Lease, Lessee will not dispose of any wastes of any kind, whether hazardous or not, on the Leased Premises.

SECTION 10.04 -- Lessee assumes the risk of and agrees to indemnify and hold Lessor harmless, and to defend Lessor against and from any claims, costs, liabilities, expenses (including without limitation court costs and attorneys' fees), or demands of whatsoever nature or source for any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattal property to be conveyed hereunder; for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of Lessor, Lessee, or any third party), or property damage or destruction of whatsoever nature (including without limitation property of Lessor or Lessee, or property in Lessee's care, custody, or control, and third party property), where such contamination, Environmental Problems, injury or damage arise out of acts, omissions or events occurring on the Leased Premises after the Commencement Date. Lessor assumes the risk of and agrees to indemnify and hold Lessee harmless, and to defend Lessee against and from any claims, costs, liabilities, expenses (including without limitation court costs and attorney fees), or demands of whatsoever nature or source for any contamination or Environmental Problems, latent or obvious, discovered or undiscovered, in the real and chattal property to be conveyed hereunder, for personal injury to or death of persons whomsoever (including without limitation employees, agents or contractors of Lessor, Lessee or any third party) or property

damage or destruction of whatsoever nature (including without limitation property of Lessor or Lessee, or property in its or their care, custody or control, and third party property) where such contamination, Environmental Problems, injury or damage arise out of acts, omissions or events occurring on the Leased Premises prior to the Commencement Date, provided, however, Lessee has the burden of proving such contamination, Environmental Problems, injury or damage arose out of such pre-Commencement Date acts, omission or events.

"Environmental Problems" means any cause or action under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended) and any cause or action arising from similar federal, state or local legislation or other rules of law, and private causes of action of whatever nature which arise from environmental damage, contamination, toxic wastes or similar causes.

If Lessor's indemnification of Lessee for such contamination or Environmental Problems becomes effective, Lessor has the right to assume sole control of and/or implement any order, demand, plan or request, or defend against any cause of action of whatever nature using legal and technical counsel of its choosing.

SECTION 10.05 -- Lessee will promptly furnish Lessor written notice of any and all (i) releases of hazardous wastes or substances of which it becomes aware which occur during the term of this Lease whenever such releases are required to be reported to any federal, state, or local authority, and (ii) alleged water or air permit condition violations, and (iii) any notification received by Lessee alleging any violation of any state, federal or

local statute, ordinance, ruling, order or regulation pertaining to environmental protection and/or hazardous material, handling transportation or storage. To the extent practicable, such written notice will identify the substance releases, the amount released, and the measures undertaken to clean up and remove the released material and any contaminated soil or water, will identify the nature and extent of the alleged violation and the measures taken to eliminate the violation, and will certify that Lessee has complied with all applicable regulations, orders, judgments or decrees in connection therewith, or the date by which such compliance is expected. Lessee will also provide Lessor with copies of any and all reports made to any governmental agency which relate to such releases or such alleged violations during the term of this Lease.

SECTION 10.06 -- During the term of this Lease, Lessor will have the right to enter the Leased Premises for the purpose of inspecting the Leased Premises to ensure compliance with the requirements of this Lease. If Lessor detects any violation, including any contamination of the Leased Premises which it deems to be the responsibility of Lessee under this Section X, Lessor will notify Lessee of the violation. Upon receipt of such notice Lessee will take immediate steps to eliminate the violation or remove the contamination to the satisfaction of any governmental agency with jurisdiction over the subject matter of the violation. Should Lessee inadequately remedy or fail to eliminate the violation, Lessor or its representative will have the right, but not the obligation, to enter the Leased Premises and to take

whatever corrective action Lessor deems necessary to eliminate the violation, at the sole expense of Lessee.

SECTION 10.07 -- Regardless of any acquiescence by Lessor, Lessee will (i) indemnify and hold harmless Lessor and its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns from all liability, costs, expenses, fines, or penalties resulting from any violation of any federal, state, or local law, rule, regulation, or ordinance controlling air, water, noise, hazardous waste, solid waste, or other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, wastes, or other pollutants arising out of Lessee's operation of the Leased Premises and from any violations of this Section X, (ii) reimburse Lessor and its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns for all costs and expenses incurred by Lessor or its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns in eliminating or remedying such violations, pollution, or contamination, and (iii) reimburse and hold harmless Lessor and its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns from any and all costs, expenses, attorneys' fees, and penalties, fines, or civil judgments sought or obtained against Lessor or its officers, agents, employees, lessors, parent corporation, subsidiaries, affiliates, successors, and assigns as a result of Lessee's lease and operation of the Leased Premises or any release or disposal of any hazardous material, substance, waste, or other pollutant onto or into the ground or into the water

or air from or upon the Leased Premises during the term of this Lease; PROVIDED, HOWEVER, that Lessee shall have no obligation or liability where such release or disposal is attributable to acts or omissions of Lessor, its agents, employees or third parties acting under Lessor's authority.

Lessee waives and will not assert as a defense against Lessor any statute of limitations applicable to any controversy or dispute arising under this Section X, and Lessee will not raise or plead a statute of limitations defense against Lessor or its lessors in any action arising out of Lessee's failure to comply with this Section X.

SECTION XI
EMINENT DOMAIN

SECTION 11.01 -- In the event that at any time during the term of this Lease the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose the following provisions shall be applicable:

SECTION 11.02 -- If such proceeding shall result in the taking of the whole or a portion of the Leased Premises which materially interferes with Lessee's use of the Leased Premises for railroad purposes, Lessee shall have the right, upon written notice to Lessor, to terminate this Lease in its entirety. In that event, and subject to any necessary regulatory approvals or exemptions, this Lease shall terminate and expire on the date title to the Leased Premises vests in the condemning authority, and the rent and other sums or charges provided in this Lease shall be adjusted as of the date of such vesting.

SECTION 11.03 -- If such proceeding shall result in the taking of less than all of the Leased Premises which does not materially interfere with Lessee's use of the Leased Premises for railroad purposes, then the Lease shall continue for the balance of its term as to the part of the Leased Premises remaining, without any reduction, abatement or effect upon the rent or any other sum or charge to be paid by the Lessee under the provisions of this Lease.

SECTION 11.04 -- Except as otherwise expressly provided in this Section, Lessor shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by Lessee; provided, however, that nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

SECTION 11.05 -- Each party shall provide prompt notice to the other party of any eminent domain proceeding involving the Leased Premises. Each party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other party, its attorneys, and experts. Lessee and Lessor shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure Lessee's continued ability to use the Leased Premises for the conduct of freight railroad operations.

SECTION XII
INSURANCE AND INDEMNIFICATION

SECTION 12.01 -- Except where the sole proximate cause of any injury, death, loss or damage is the negligence of Lessor, its agents or employees, Lessee shall protect, defend, hold harmless,

and indemnify Lessor from and against any and all liability, expense, cost, claim or suit, including attorney's fees, incurred by or assessed against Lessor, its agents, servants, affiliated companies and its successors and assigns on account of injuries, death, or property loss or damage arising from Lessee's use, operation or maintenance of the Leased Premises, it also being the intent of the parties that Lessee shall indemnify Lessor for any negligence on Lessor's part which may contribute to any such injury, death, loss or damage; PROVIDED, HOWEVER, that all liability, including liability for any injury, death, loss, or damages arising in connection with toxic waste or environmental conditions shall be governed by the provisions of Section 10.04 hereof.

SECTION 12.02 -- Notwithstanding the provisions of Section 12.01, Lessee will be absolutely responsible for and will indemnify, defend and save harmless Lessor and its officers, agents, employees, affiliates, successors, and assigns from all liability, claims, penalties, fines, expenses, damages, and costs, including attorney's fees, arising from Lessee's violation of or from its failure to comply with any provisions of this Lease, regardless of whether contributed to by any negligence of Lessor or its officers, agents, employees, or affiliates, but not if due solely to the gross negligence of Lessor, its officers, agents, employees or affiliates.

SECTION 12.03 -- Lessee shall, at its own sole cost and expense, procure the following kinds of insurance for the term of this agreement commencing as of the date of Closing and promptly pay when due all premiums for that insurance. Upon the failure of

Lessee to maintain insurance as provided herein, Lessor shall have the right, after giving Lessee ten days written notice, to obtain such insurance and Lessee shall promptly reimburse Lessor for that expense. The following minimum insurance coverage shall be kept in force during the term of this Agreement:

Comprehensive Railroad Liability insurance providing bodily injury, including death, personal injury and property damage coverage with a combined single limit of at least \$10,000,000 each occurrence or claim and a general aggregate limit of at least \$10,000,000. This insurance shall contain Broad Form Contractual Liability covering the indemnity provisions contained in this Lease (150 Form GL 24 14 or equivalent), severability of interests and name Lessor as an additional insured with respect to all liabilities arising out of Lessee's obligation to Lessor in the Lease. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Lease be canceled unless replaced with a policy containing the same Retro Anniversary Date as the policy being replaced.

SECTION 12.04 -- Lessee warrants that this Lease has been reviewed with its insurance agent(s)/broker(s) and the agent(s)/broker(s) has been instructed to procure the insurance coverage required herein and name Lessor as additional insured with respect to all liabilities arising out of Lessee's obligation to Lessor.

SECTION 12.05 -- Lessee shall furnish to Lessor certificate(s) of insurance evidencing the required coverage and endorsement(s) and upon request a certified duplicate original of any of those policies. The insurance company(ies) issuing such policy(ies) shall notify Lessor in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

SECTION 12.06 -- The insurance policy(ies) shall be written by a reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class X or better. Such insurance company shall be authorized to transact business in the States of Arkansas, Missouri and Kansas.

SECTION 12.07 -- Insurance coverage provided in the amounts set forth herein shall not be construed to otherwise relieve Lessee from liability hereunder in excess of such coverage, nor shall it preclude Lessee from taking such other action as is available to it under any other provision of this Agreement or otherwise in law.

SECTION 12.08 -- The limits of liability required under Section 12.03 shall be increased every five (5) years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index, in the same manner as rent adjustments are calculated pursuant to Section 4.04.

SECTION XIII
TAXES

SECTION 13.01 -- It is understood and agreed that Lessee shall pay all taxes and assessments, general and special or otherwise which may be levied, assessed or imposed upon the Leased Premises during the Lease Term. Lessee shall pay such taxes and assessments directly to the taxing authorities on or before the due date, but reserves the right to contest any tax or assessment, in good faith, by appropriate proceeding, as it may deem necessary or appropriate.

SECTION 13.02 -- Lessee shall be liable for and pay all special assessments and/or taxes levied against the Leased Premises

as may be imposed by any taxing jurisdiction having authority in the premises.

SECTION 13.03 -- Real property ad valorem taxes, fees and special assessments, if any, shall be prorated between Lessor and Lessee as of January 1, 1993. Lessee shall be responsible for paying any and all such taxes, fees or assessments accruing after January 1, 1993.

SECTION XIV
EASEMENTS, LEASES AND LICENSES

SECTION 14.01 -- Lessor covenants and agrees to pay to the Lessee a portion of the revenues collected by Lessor from use of the Leased Premises pursuant to any easement, lease (excluding leases of trackage) or license (excluding licenses of trackage) affecting the use of the Leased Premises (hereinafter referred to as "Lessor Agreements"). The payment to be paid by Lessor in connection with this provision will be fifty percent (50%) of all amounts billed (as adjusted for the difference between billings and collections for prior periods) by Lessor pursuant to Lessor Agreements payable semi-annually in arrears on January 31 and July 31 of each year. Lessee shall not receive any amounts paid to Lessor for preparation fees and for services performed by Lessor pursuant to Section 14.03. At its discretion, Lessor may enter into new Lessor Agreements applicable to the Leased Premises without Lessee's consent. Lessee shall notify Lessor of any attempt to locate new customers on the Leased Premises, including the location of the possible new customers. If Lessor desires to lease the same portion of the Leased Premises, Lessor shall provide to Lessee thirty (30) days' advance notice of that intent.

Nothing in this Lease shall prevent Lessor from selling any portion or portions of the Leased Premises which is or are located beyond 50 feet of the centerline of any branch or main line track, including areas of any station ground provided such areas are not being used in connection with Lessee's rail freight operations. All proceeds from such real estate sales shall accrue solely to Lessor and Lessee shall either execute an amendment to this Lease which deletes any such sale property from the description and terms hereof, or shall execute any other document reasonably necessary to remove the encumbrance of this Lease from such property.

SECTION 14.02 - The revenues collected by Lessor described in Section 14.01 shall not be prorated as of the Commencement Date. Lessor shall be entitled to receive and retain all payments due and payable prior to the Commencement Date whether payable in advance or in arrears. If Lessee is not in default under this Agreement, Lessee will receive revenues due and payable prior to termination hereof.

SECTION 14.03 - From and after the Commencement Date, Lessor will manage all Lessor Agreements. From and after the Commencement Date, Lessee will manage all agreements, other than Lessor Agreements, applicable to the Leased Premises (hereinafter referred as "Lessee Agreements"). Lessee shall document all of such Lessee Agreements using standardized forms prepared and approved by Lessor in accordance with Lessor's policies concerning hazardous materials storage and handling and engineering standards. Lessee shall not execute or deliver any Lessee Agreement, including any renewal, termination or cancellation thereof, which deviates from Lessor's

standard forms, engineering standards or operating instructions without first receiving the written concurrence of Lessor. Lessor's concurrence or non-concurrence (as the case may be) shall be delivered to Lessee within thirty (30) days of Lessee's written request therefore.

All preparation fees and all expenses billed by Lessor applicable to the Lessor Agreements shall be retained by Lessor. All preparation fees and expenses billed by Lessee applicable to the Lessee Agreements shall be retained by Lessee.

SECTION 14.04 - Lessee shall not execute any Lessee Agreements affecting the Leased Premises having a term extending beyond the initial term of this Lease (or beyond any given extended term which may be in effect at the time of execution) without securing Lessor's express written consent.

Cancellation of any Lessee Agreement for any reason during the term of this Lease must be approved, in advance and in writing, by Lessor. This approval or non-approval (as the case may be) shall be forwarded to Lessee within thirty (30) days of Lessee's request therefore.

SECTION 14.05 - Lessee shall carefully supervise the use of the Leased Premises by any third party to ensure that the value of the Leased Premises is not diminished by reason of such use. In particular, Lessee shall ensure that (i) all uses of the Leased Premises are pursuant to appropriate documentation and that all unauthorized use is either covered by agreement or promptly removed from the Leased Premises; (ii) no use is permitted which could jeopardize the value of the Leased Premises and that Lessee Agreements for storage or handling of hazardous materials are

strictly in conformity with Lessor's policies; and (iii) upon the termination of any Lessee Agreement for any reason whatsoever, the Leased Premises are cleared and restored as required by the terms of the Lessee Agreements. In addition, if the unauthorized use is of a type which would be covered by a Lessor Agreement, Lessee shall promptly bring the unauthorized use to Lessor's attention.

SECTION 14.06 - Lessor reserves the exclusive right to grant easements or other occupations by coal slurry pipelines, or fiber optic or other communication systems or signboards. Any requests for such permits or easements shall be referred to Lessor for appropriate action. Lessor will give at least thirty (30) days notice to Lessee prior to initiation of any easements or other occupations pursuant to this Section. Revenues from the granting by Lessor of those agreements shall accrue solely to Lessor.

SECTION 14.07 - As soon as reasonably practicable after the Commencement Date, Lessor shall assign to Lessee all Lessee Agreements affecting the Leased Premises and Lessee shall assume Lessor's duties and obligations thereunder.

SECTION XV
TERMINATION

SECTION 15.01 -- This Lease may be terminated as follows:

(a) By Lessee or Lessor:

1. on or at any time prior to the Commencement Date if any substantive condition unacceptable to Lessee or to Lessor is imposed in the regulatory approvals or exemptions contemplated by Section V of this Lease for Lessee's lease and operation of the Leased Premises;

2. upon the occurrence of an Event of Default as provided in Section XIX;
3. upon thirty (30) days' notice to Lessee, as a consequence of an uninterrupted abandonment or discontinuance of operations, as the case may be, for six (6) months by Lessee over any line segment of the Leased Premises (other than an inconsequential abandonment or discontinuance not affecting rail service generally over the Line) other than by reason of an event of force majeure, a lawful embargo, or changes in the demand for service; or
4. upon thirty (30) days' notice to Lessor, following Lessee's obtaining all necessary regulatory approvals or exemptions to permit Lessee to abandon or discontinue rail operations;

(b) By Lessor if Lessee fails to provide a core service of six (6) days per week to customers located between and including Diaz Junction and Guion, Arkansas, PROVIDED, HOWEVER, that Lessee shall have this obligation only if (i) volume on the Diaz Junction-Guion line (excluding unit coal trains) in any three (3) month period is at least eighty percent (80%) of the 1991 volume divided by 4 and (ii) such core service of six (6) days per week was requested by any customer located adjacent to the Diaz Junction-Guion line and Lessee failed to provide such service.

Lessee's failure to maintain six (6) day per week service on the Diaz Junction-Guion portion of the Leased Premises will subject Lessee to being placed on probationary status by Lessor

pursuant to written notice from Lessor, for a period of two (2) months commencing no earlier than two (2) weeks after the date of the notice from Lessor. If Lessee fails to both restore six (6) day per week service by the time of commencement of the probationary period and maintain such service throughout the probationary period, Lessor, at its option, may terminate Lessee's lease of the Diaz Junction-Guion portion of the Leased Premises effective on or after three (3) months' written notice to Lessee and Lessor then may again begin operation over the Diaz Junction-Guion portion of the Leased Premises. Lessee agrees to permit Lessor's immediate operation over the Diaz Junction-Guion portion of the Leased Premises at no charge to Lessor to permit Lessor's service to customers during the period between the date of Lessor's written notice of termination of the Lease and the date of Lessor's actual repossession of the Diaz Junction-Guion portion of the Leased Premises. Lessor shall not exercise its rights hereunder if Lessor agrees with Lessee that Lessee's failure to provide six (6) day per week service was due to a bona fide force majeure condition resulting from Acts of God, war, insurrection or any like cause beyond Lessee's control. The provisions of this Section shall not apply to Lessee's operation over Lessor's Pfeiffer Spur, and Lessee shall not be required to provide six (6) day per week service over the Pfeiffer Spur.

(c) By Lessor pursuant to Section XIX.

(d) By Lessee in the event Lessor is no longer able to interchange traffic with the Lessee at Kansas City, MO or Newport, AR, or at an alternate location satisfactory to both Lessee and Lessor.

(e) In the event that within 365 days after Commencement Date (i) any of Lessor's labor organizations cause a work stoppage as a result of this Lease and Lessor is unable to negotiate a satisfactory resolution with the organization or (ii) conditions unacceptable to Lessor are imposed by the Interstate Commerce Commission or a court or other body, Lessor shall have the right, anytime within such 365 day period, to terminate this Lease by giving thirty (30) days' written notice to Lessee. In such event Lessee shall deliver possession of the Leased Premises to Lessor on such 30th day, subject to all necessary prior regulatory approvals or exemptions, and Lessee shall comply with the provisions of Section XV within such thirty (30) day period. In the event Lessor exercises this right of termination, it will pay Lessee a sum equal to the total of the Verified Costs incurred by Lessee in commencement of operations on the Line, subject to a maximum of \$250,000. "Verified Costs" shall mean costs incurred in purchases of tangibles such as, but not limited to, capital improvements, computers and office and real property, title to which shall pass to Lessor in the event of a termination as provided for hereunder. Thereafter, Lessor will give Lessee the right of first refusal to lease the Leased Premises, exercisable within one year following Lessor's notice to Lessee, on the same terms as set forth in this Lease, provided the conditions which caused termination pursuant to this Section 15.01(d) have, in Lessor's sole opinion, been remedied.

(f) By Lessor or Lessee, by giving 30 days' written notice to the other party, in the event a court or other body determines that

all or any of the provisions of Section IV are unlawful or otherwise unenforceable.

SECTION 15.02 -- In the event of termination as provided in Section 15.01 above, future rental shall be abated as of the date Lessee ceases operation and no equity in title shall be deemed to have been accumulated by Lessee except as provided in Section 8.03. Lessee shall be liable for, and pay to Lessor, all rent accruing prior to the date of such termination.

SECTION 15.03 -- In the event this Lease is terminated, Lessee shall cooperate with Lessor and/or its designee in obtaining operating rights equivalent to those enjoyed by Lessee. Lessee shall assign all Lessee agreements affecting the Leased Premises to Lessor.

SECTION 15.04 -- In the event of termination of this Lease, Lessee shall vacate the Leased Premises in an orderly manner. Upon any termination resulting from an Event of Default by Lessee, Lessor or its designee may immediately re-enter and take possession of the Leased Premises by providing written notice to Lessee that this Lease has been terminated. Upon any termination resulting from an Event of Default, Lessor may immediately assign this Lease to a new lessee and that lessee may immediately begin operation over the Leased Premises pursuant to the terms of this Lease. Lessor or its designee at Lessor's discretion may immediately begin operation over the Leased Premises if Lessee ceases operation on the Leased Premises.

SECTION 15.05 -- Upon any termination of this Lease, Lessee agrees to make available for sixty (60) days thereafter, without charge, any improvements thereon which it may own or hold under

lease (pursuant to Section 8.03 or otherwise) to Lessor or its designee for use in rail freight service. For an additional period of sixty (60) days, Lessor or its designee may purchase such improvements at market value less Lessee's cost of removal; PROVIDED, HOWEVER, that if Lessee receives and is willing to accept a bona fide offer to purchase any such improvement(s), Lessee shall notify Lessor and Lessor shall have the right to purchase the said improvement for the same price offered to Lessee within fifteen (15) days of Lessor's receipt of such notice.

SECTION 15.06 -- Within thirty (30) days of receipt by Lessee of Lessor's notice of termination, or Lessee's notice to Lessor of termination, as provided for above, Lessee shall file any and all required applications or filings with the ICC or other body requesting and securing authority to abandon and cease operations over the Leased Premises. In the event Lessee fails, refuses or neglects to take such action or fails to diligently pursue same to conclusion, Lessee agrees to pay to Lessor, as liquidated damages, the sum of \$1 million per month for each month during the first year or portion thereof following such failure, refusal or neglect; \$2 million per month during the second such year; \$5 million per month during the third such year; and \$10 million for every month thereafter. In the event of termination of this Agreement, Lessee shall assign all agreements affecting the Leased Premises to Lessor.

If Lessor terminates this Lease as a result of the imposition by the ICC of any conditions or restrictions which will result in expenses, losses or damages to Lessor, Lessee may agree, in lieu of termination, and upon consent of Lessor, which consent

shall not be unreasonably withheld, to indemnify, reimburse and hold Lessor harmless from and against all such expenses, costs and damages for the duration of this Lease.

SECTION XVI
COMPLIANCE WITH LAW

SECTION 16.01 -- Lessee agrees to comply with all provisions of law, and Lessee will not knowingly do, or permit to be done, upon or about the Leased Premises, anything forbidden by law or ordinances. Lessee further agrees to use its best efforts to secure all necessary governmental authority for its operation on the Leased Premises.

SECTION XVII
FORCE MAJEURE

SECTION 17.01 -- Lessee shall have no obligation to operate over any portion of the Leased Premises as to which it is prevented from operating by Acts of God, public authority, strikes, riots, labor disputes, or any cause beyond its control; PROVIDED, HOWEVER, Lessee shall use its best efforts to take whatever action is necessary or appropriate to be able to resume its operations. In the event of damage or destruction caused by an Act of God, Lessee shall commence repairs within 10 days of the occurrence causing same and shall pursue such repairs with reasonable diligence.

SECTION 17.02 -- In the event the cost of such repairs are such that Lessee will be unable to recover or recoup such costs within a reasonable period of time, not less than seven (7) years, following completion of the repairs, Lessee may, upon verification of the foregoing, seek relief from Lessor and request that Lessor permit it to abandon the affected segment of the line in question. In the event Lessor determines that Lessee will not in fact be able

to recoup its repair costs, Lessor shall grant permission to Lessee to seek abandonment from the ICC. In the event the ICC approves such abandonment, this Lease shall be amended to delete the segment in question from this Lease, but rental shall remain the same.

SECTION XVIII
DEFEASANCE

SECTION 18.01 -- Lessee shall not make any use of the Leased Premises inconsistent with Lessor's right, title and interest therein and which may cause the right to use and occupy the Leased Premises to revert to any party other than Lessor or Railroad. So long as the Leased Premises are sufficient to permit Lessee to operate between the termini described in Section I, this Lease shall not be affected by any determination, whether by judicial order, decree or otherwise, that ownership of any portion of the Leased Premises is vested in a person other than Lessor or Lessee, and there shall be no abatement of rent on account of such determination. Lessor and Lessee shall make all reasonable efforts to defend Lessor's title to the Leased Premises against any adverse claims.

SECTION XIX
EVENTS OF DEFAULT

SECTION 19.01 -- The following shall be Events of Default:

(a) Failure by Lessee to make payments of rent or other amounts due and payable for any reason arising in connection with this Lease or Lessee's operation over the Leased Premises, and such failure continues for ten (10) days following written demand therefor.

(b) Filing of petition for bankruptcy, reorganization or arrangement of Lessee by Lessee pursuant to the Bankruptcy Reform

Act or any similar proceeding, which petition is not dismissed within thirty (30) days.

(c) Lessee breaches any provision of this Lease other than for the payment of rent which is subject to subparagraph (a) above, and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the Lessor or fails to commence to cure such default within thirty (30) days, or, once commenced, fails to use due diligence to complete the cure.

(d) The filing of any involuntary bankruptcy, receivership or arrangement proceeding, which filing is not dismissed within 120 days.

SECTION XX
BREACHES; REMEDIES

SECTION 20.01 -- Upon the occurrence of any breach of any term hereof the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach. If, upon the expiration of forty-five (45) days from the receipt of said notice, the breach has not been cured (or, if such breach cannot be cured within 45 days, steps have not been taken to effect such cure and pursued with all due diligence within said period) and is a material breach, the injured party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney's fees, and for any reasonably foreseeable consequential damages. Nothing herein shall prevent the injured party from resorting to any other remedy permitted under this Lease or at law or equity, including seeking damages and/or specific performance, as shall be necessary or

appropriate to make the injured party whole in the premises. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

SECTION 20.02 -- The failure of any party hereto to enforce at any time any of the provisions of this Lease or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this Lease or any part hereof or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Lease shall be held to be a waiver of any other or subsequent breach.

SECTION XXI
ARBITRATION

SECTION 21.01 -- If at any time a question or controversy shall arise between the parties hereto in connection with this Lease upon which the parties cannot agree, (other than questions or controversies arising under Sections XIX or XX which shall not be subject to arbitration), and if the parties agree to arbitration, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. If the parties cannot so agree, the party demanding such arbitration (the demanding party) shall notify the other party (the noticed party) in writing of such demand, stating the question or questions to be submitted for

decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator, notify the demanding party in writing of such appointment, and at its option submit a counter-statement of question(s). Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select one for the noticed party so failing. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Missouri upon application by any party after ten (10) days' written notice to the other party.

Upon selection of the arbitrator(s), said arbitrator(s) shall with reasonable diligence determine the questions as disclosed in the parties' statements, shall give all parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem reasonable or as either party may submit with witnesses required to be sworn, and may hear arguments of counsel or others. If any arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom he was chosen or said judge shall appoint another to act in his place. After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on all parties to the arbitration

when delivered to them. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Lease shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

SECTION 21.02 -- Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

The non-privileged books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the other parties and the arbitrator(s).

SECTION XXII
DIVISIONS, EQUIPMENT,
COMMERCIAL SUPPORT, AAR AGREEMENTS

SECTION 22.01 -- For the term of this Lease, Lessor will pay Lessee revenue divisions per loaded car on traffic originating or terminating on the Leased Premises and interchanged cars as provided in Exhibit E attached hereto and incorporated by reference herein, which divisions shall be subject to any RCAF increases or decreases as shown on Exhibit E. Such increases or decreases will be calculated annually and only one adjustment to the divisions shown in Exhibit E will be made and applied as of December 31st, to be applicable to the following calendar year.

SECTION 22.02 -- For the term of this Lease, Lessor agrees to provide the equipment and commercial support as provided for in Exhibit F.

SECTION 22.03 -- For the term of this Lease, Lessee agrees to comply with and be legally bound by the terms and provisions of the Association of American Railroads' practices, rules, agreements, and circulars such as OT-55, claim handling, as they apply to lading and equipment damage occurring while in Lessee's possession.

SECTION XXIII
MISCELLANEOUS

SECTION 23.01 -- Entire Agreement. This Lease expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Lease shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

SECTION 23.02 -- Notices. All notices, demands, requests or other communications which may be or are required to be given, served or sent by any party to the other pursuant to this Lease shall be in writing and shall be deemed to have been properly given or sent:

(a) If intended for Lessor, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Lessor at:

Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, Nebraska 68179
Attention: Senior Director Interline Marketing

(b) If intended for Lessee, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to Lessee at:

Missouri & Northern Arkansas Railroad Company, Inc.
514 North Orner
Carthage, MO 64836
Attention: General Manager

SECTION 23.03 -- Each notice, demand, request or communication which shall be mailed by registered or certified mail to any party in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Any party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

SECTION 23.04 -- Binding Effect. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee, and shall be binding upon the successors and assigns of Lessee, subject to the limitations hereinafter set forth. Lessee may not assign its rights under this Lease or any interest therein, or attempt to have any other person assume its obligations under this Lease, without the prior written consent of Lessor, which consent shall not unreasonably be withheld; PROVIDED, HOWEVER, in the event Lessee elects to assign its interest in the Leased Premises, and Lessor consents to this assignment, Lessee will first secure the approval of the Interstate Commerce Commission, and/or, such other regulatory approvals as may be then required; and PROVIDED FURTHER, that Lessor has approved the financial condition and operational ability of the new Lessee, which approval will not be unreasonably

withheld and which evaluation of the new Lessee will be consistent with then existing practices in the industry.

SECTION 23.05 -- Severability. If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Lease in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Lease shall remain operative and in full force and effect.

SECTION 23.06 -- Headings. Article headings used in this Lease are inserted for convenience of reference only and shall not be deemed to be a part of this Lease for any purpose.

SECTION 23.07 -- Governing Law. This Lease shall be governed and construed in accordance with the laws of the State of Missouri. It is expressly agreed that no party may sue or commence any litigation against the other party unless such legal proceeding is brought in Federal court in Missouri. Lessee's operations under this Lease shall also comply with the applicable provisions of Federal law and the applicable rules, regulations and policies of any agency thereof.

SECTION 23.08 -- Amendment. No modification, addition or amendments to this Lease or any of the Appendices shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties.

SECTION 23.09 -- Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an

original and all of which together shall be deemed to be one and the same instrument.

SECTION 23.10 -- Confidentiality. No party may disclose any of the terms of this Lease Agreement to any non-party without the prior written consent of the other party except (1) as required by law; (2) to a corporate parent, subsidiary or affiliate; or (3) to auditors retained by a party for the purpose of assessing the accuracy of charges, if, and only if, the auditor agrees in a legally binding instrument that it will abide by this confidentiality clause as if auditor were a party to this Lease Agreement. Each party agrees to indemnify the other from and against any damage suffered by a party as a result of any disclosure in violation of this confidentiality provision.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their behalf, as of the date first herein written.

MISSOURI PACIFIC RAILROAD COMPANY,

By *R.B. Schaub*
Title: *Executive Vice President - Operations*

MISSOURI & NORTHERN ARKANSAS
RAILROAD COMPANY, INC.

By *D.T. McShane*
Title: *VICE PRESIDENT*

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