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April 28, 2008

**BY HAND DELIVERY**

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings

APR 28 2008

Part of  
Public Record

222206

Re: Docket No. 42104, Entergy Arkansas, Inc. and Entergy Services, Inc  
v. Union Pacific R.R. and Missouri & Northern Arkansas R.R. Co., Inc ;  
Finance Docket No. 32187, Missouri & Northern Arkansas Railroad –  
Lease, Acquisition and Operation Exemption – Missouri Pacific R.R. and  
Burlington Northern R.R. 222207

Dear Ms. Quinlan:

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of Complainants' Motion to Compel the Missouri & Northern Arkansas Railroad Company, Inc.'s Production of Documents. Complainants respectfully request that the Board afford **EXPEDITED CONSIDERATION** to this motion.

We have enclosed an additional copy of this motion to be date-stamped and returned to the bearer of this filing. Thank you for your attention to this matter.

Sincerely,

Andrew B. Kolesar III  
An Attorney for Entergy Arkansas, Inc.  
and Entergy Services, Inc.

Enclosures

**EXPEDITED CONSIDERATION REQUESTED**



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

ENERGY ARKANSAS, INC. and )  
ENERGY SERVICES, INC., Complainants )

v. )

Docket No. 42104

222206

UNION PACIFIC RAILROAD )  
COMPANY and MISSOURI & )  
NORTHERN ARKANSAS RAILROAD )  
COMPANY, INC., Defendants. )

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MISSOURI & NORTHERN ARKANSAS )  
R.R. - LEASE, ACQUISITION AND )  
OPERATION EXEMPTION - MISSOURI )  
PACIFIC R.R. and BURLINGTON )  
NORTHERN R.R. )

Finance Docket No. 32187

222207

**COMPLAINANTS' MOTION TO COMPEL THE MISSOURI  
& NORTHERN ARKANSAS RAILROAD COMPANY, INC.'S  
PRODUCTION OF DOCUMENTS**

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Dated: April 28, 2008

Attorneys & Practitioners

**EXPEDITED CONSIDERATION REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



**ENERGY ARKANSAS, INC. and  
ENERGY SERVICES, INC., Complainants**

**v.**

**UNION PACIFIC RAILROAD  
COMPANY and MISSOURI &  
NORTHERN ARKANSAS RAILROAD  
COMPANY, INC., Defendants.**

**Docket No. 42104**

**MISSOURI & NORTHERN ARKANSAS  
R.R. – LEASE, ACQUISITION AND  
OPERATION EXEMPTION – MISSOURI  
PACIFIC R.R. and BURLINGTON  
NORTHERN R.R.**

**Finance Docket No. 32187**

**COMPLAINANTS' MOTION TO COMPEL THE MISSOURI  
& NORTHERN ARKANSAS RAILROAD COMPANY, INC.'S  
PRODUCTION OF DOCUMENTS**

Complainants Entergy Arkansas, Inc. ("EAI") and Entergy Services, Inc. ("ESI") (collectively, "Entergy"), pursuant to 49 C.F.R. Part 1114, hereby move to compel the production of documents in response to Entergy's First Set of Discovery Requests to the Missouri & Northern Arkansas Railroad Company, Inc. ("M&NA"). Copies of Entergy's Requests and M&NA's Responses are set forth in Exhibit Nos. 1 and 2, respectively.

Given the procedural schedule in place in this case, Entergy requests expedited consideration of this motion.

### **BACKGROUND**

In its October 30, 2007 decision in *Review of Rail Access and Competition Issues – Renewed Petition of the Western Coal Traffic League*, STB Ex Parte No. 575 (STB served October 30, 2007), the Board set forth the standards under which it would consider challenges to paper barriers. Those standards include an inquiry regarding the net “revenue streams” associated with the subject line and the financial impact of the restriction on the leasing carrier:

[A] carrier considering a line sale or lease of line with traffic that makes a revenue contribution presumably calculates the net present value of the stream of revenue contribution from the traffic it would be foregoing and either (a) demands an equivalent value in the sale price or rental fee, or (b) includes interchange limiting provisions in the sale or lease. The revenue stream resulting from the agreement should be no more than what the carrier would have received had it not divested or leased the rail facilities in question, or had it demanded more in the sale price or rental fee. So long as that is the case, the interchange limiting provision would not overcompensate the carrier and may shift the risk of unexpected traffic loss to the selling or leasing (Class I) carrier – the party that was more able to assume the risk.

*Id.* at 10-11 (footnote omitted) (emphasis added); *see also id.* at 15 (“When the Board considers whether a proposed interchange commitment is in the public interest, we will examine the relevant facts and circumstances surrounding that agreement.”); *id.* (“Under

our case-specific review, we will examine the particular facts, the competitive conditions before and after the interchange commitment, the nature of the commitment, and its actual or likely effects.”).

Through the instant proceeding, Entergy seeks relief from the continued enforcement of the paper barrier restriction set forth in the 1992 Lease between UP and M&NA (“UP/M&NA Lease”). That agreement imposes a substantial annual rental obligation upon M&NA, but relieves that obligation in part or in its entirety if M&NA limits its interchange of traffic with a carrier other than UP. As Entergy will demonstrate herein, the discovery requests at issue in this motion were directed specifically to the analysis of the revenue stream associated with the subject paper barrier that the Board articulated in Ex Parte No. 575.

In its “Verified Complaint or in the Alternative Petition to Revoke in Part” (“Complaint”), Entergy alleges, *inter alia*, that the continued enforcement of the paper barrier restriction constitutes an unreasonable practice. Entergy argues in the alternative that the Board should revoke the exemption authorizing M&NA’s acquisition and operation of the subject property to the extent that it permits UP to enforce the paper barrier. Finally, Entergy also requests that the Board find that the subject lease constitutes a pooling and/or traffic division arrangement as to which agency authorization was not properly obtained.

Entergy's Complaint specifically addresses the economic impact of the UP/M&NA paper barrier both in terms of the prior economic benefit obtained by UP and the financial effect of precluding further enforcement of that barrier:

26. On information and belief, UP has obtained significant net financial benefits through the UP/M&NA Lease in the more than fifteen years since its inception, in the form of cost reductions (e.g., reduced labor and maintenance expense) that have exceeded the amounts of the revenue divisions that UP has paid to M&NA in accordance with Section XXII of the Lease.

...

31. The continued enforcement of the annual rental amounts set forth in Section 4.03, as adjusted, is unreasonable in light of: (i) the fact that UP already has obtained significant net financial benefits in the form of cost reductions that exceeded the amount of revenue divisions through the first fifteen years of the term of the Lease; and (ii) the fact that UP has enjoyed the benefit of monopoly rates for service in conjunction with M&NA during the course of those fifteen years.

32. The continued enforcement of these rental amounts also is unreasonable in relation to the amount of any contribution that would be lost (or could be lost) by UP as the result of being forced to price its rail transportation services to meet a competitive rate offering from another long-haul carrier. Stated differently, the annual rental amounts in Section 4.03 that would be applicable in the event of a diversion of some or all of the Independence traffic are unreasonable in relation to the difference between the revenues that would be associated with: (i) a monopoly UP rate offering for service to Independence; and (ii) a UP rate offering for service to Independence in the absence of the paper barrier restrictions.

Complaint at 11-13.

In order to develop the economic evidence needed to present these claims to the Board, Entergy served discovery requests upon M&NA on March 17, 2008. Those requests seek information that is directly relevant to the issues identified by the Board for consideration in Ex Parte No. 575 and to the issues set forth in Entergy's Complaint.

M&NA served its responses and objections to Entergy's requests on April 16, 2008. As described in detail below, there are several respects in which the Board assistance is required in order to allow discovery to be completed in an adequate fashion.

Entergy has conferred with counsel for M&NA regarding their responses to Entergy's requests, but the parties were not able to resolve their disputes. This motion and the Board's assistance therefore are necessary.

### **ARGUMENT**

The Board's Rules of Practice permit "discovery . . . regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a). It is also well-settled that the Board's discovery rules are to be liberally construed. *See, e.g., Finance Docket No. 32821, Bar Ale, Inc v. California Northern Railroad Co.* (STB served March 15, 1996) at 2.

**A. Agreements Subject to Confidentiality Restrictions**

Two of Entergy's requests (*i.e.*, Request Nos. 4 and 5) seek copies of agreements between M&NA and BNSF Railway Company ("BNSF"), including but not limited to the agreements that M&NA identifies in its Answer to Entergy's Complaint. In its responses, M&NA states that confidentiality issues prevent it from producing copies of the responsive agreements without a Board order, but that "M&NA will not oppose a motion to compel production of the documents responsive" to these two requests.

Entergy's requests seek information that is reasonably calculated to lead to the discovery of admissible evidence regarding the relationship between M&NA and BNSF and regarding M&NA's acquisition of certain BNSF rail lines connecting with the UP property that is the subject of this proceeding. In light of M&NA's willingness to produce the requested documents in response to a Board order, and the relevance of the information sought, Entergy respectfully requests that the Board compel M&NA to produce documents responsive to Request Nos. 4 and 5.

**B. Division of Revenues and Fees Paid to M&NA**

Entergy's Request No. 8 seeks the production of documents showing the division of revenues and fees paid to M&NA by UP for each year from 1992 to the present, including "documents showing the basis for calculating the revenues and fees owed M&NA, such as the number of carloads of each commodity forwarded to or received from M&NA, by location and origin or destination." In other words, this

Request seeks information showing the amount of money that UP has paid to M&NA over the term of the Lease and the basis for those payments. As such, it requests the production of documents showing the amount of revenue that UP has given up as a result of entering into the Lease with M&NA.

M&NA objects to this request on grounds of relevancy, but states that it will produce "Speed Sheets" for the years 1999-2008, which apparently include some division information for this limited time period, but do not include the detail needed to quantify the financial impact of the transaction upon UP in a precise manner.<sup>1</sup> In particular, it is Entergy's understanding that M&NA's speed sheets show the amount of the divisions to be paid to M&NA in certain circumstances but do not combine that information with actual historical carload data to permit a calculation of the actual payments that M&NA received for the different shipments that it handled in interchange with UP.

In addition, Entergy's Request No. 10 seeks M&NA's traffic data for all M&NA movements interchanged with UP for each year or partial year from 1992 to the present. This request, which is standard in maximum rate reasonableness proceedings, requests data that Entergy can utilize to prepare evidence regarding the net financial impact of the Lease upon UP, both in terms of the reduction in UP's revenues and the

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<sup>1</sup> As described below, M&NA has refused to produce these or any other confidential/highly confidential documents to Entergy because of a dispute regarding the requirements of the protective order in the case

associated reduction in UP's costs of providing service. For present purposes, however, Entergy is seeking an order compelling M&NA's production of documents in response to only one of the thirty-four (34) subparts of this request. In particular, Entergy seeks an order compelling M&NA response to Entergy's Request No. 10(t), which seeks "M&NA's share or division of the total freight revenues [on movements M&NA received in interchange from UP or interchanged to UP for each year or partial years 1992 to the present], including any adjustments thereto." M&NA objected to Request No. 10 on grounds of relevance and the need to perform a special study and stated that it will not produce any documents in response to this request. (Entergy's Request No. 11 seeks production of decoders and record layouts for the information sought through Request No. 10, and M&NA has objected to that request as well. Entergy seeks production of such decoders and record layouts only insofar as they may be necessary to interpret the information produced in response to Request No. 10(t).)

The revenue divisions paid to M&NA are reasonably calculated to lead to the discovery of admissible evidence in this case. These payments go directly to the question of the financial impact of the 1992 transaction upon UP. Entergy intends to use this information to evaluate the net benefit of the paper barrier to UP.

Upon entering into the Lease, UP incurred an obligation to pay a division to M&NA for all shipments interchanged with M&NA, but in exchange for that payment, UP obtained a reduction in its costs while maintaining its control over all of the traffic on

the line. Entergy intends to evaluate the amount by which UP's cost reductions exceeded its payments to M&NA. Without information regarding the divisions paid to M&NA throughout the term of the Lease, Entergy would be unable to present a complete analysis of this central issue.

**C. Requirements of the Protective Order**

Finally, M&NA has refused to provide any confidential or highly confidential information to Entergy whatsoever, unless and until Entergy provides executed copies of the undertakings in this case for Entergy's outside counsel and any consultant who may be given access to the M&NA document production. Entergy counsel has assured M&NA that it has executed the undertaking, that each of Entergy's attorneys and consultants will do so prior to reviewing document production, and that all individual who review the documents will comply with their obligations under the protective order. Entergy further has advised M&NA that it has never engaged in a pre-production exchange (or even a post-production exchange) of undertakings in the absence of an explicit requirement to do so in the governing protective order. M&NA reports that its counsel's experience has been to provide signed undertakings as a matter of course.

Significantly, the agreed-upon protective order that the Board imposed in this case does not include a requirement that the parties serve executed copies of all undertakings upon opposing counsel before parties are required to make any document

production. Counsel for M&NA, in fact, was the party that drafted the protective order in this case. and could have proposed a service requirement if it had desired to do so.

Entergy notes that there have been instances in the past in which the Board has imposed protective orders that require a party to provide signed copies of its undertakings to opposing counsel. *See, e.g., Potomac Elec. Power Co. v. CSX Transp., Inc.*, STB Docket No. 41989, 1997 WL 43233, at \* 4 (STB served Feb. 5, 1997) (“[A] copy of each such undertaking shall be served upon counsel of record for each party no later than ten (10) days after such undertaking is executed.”); *Ariz. Pub. Serv. Co. v The Burlington N and S F Ry.*, STB Docket No. 42077, at 3 (STB served Feb. 21, 2003) (same); *CF Indus Inc v Kaneb Pipe Line Partners, L.P.*, STB Docket No. 42084, at 4 (STB served July 14, 2006) (same). Even in those limited instances, however, producing parties were not authorized to condition their production of documents upon the prior receipt of all undertakings to be executed in the case. To the contrary, protective orders of this type require the party signing the undertaking to serve a copy of it upon counsel for the opposing party within a specified period of time after actual signing.

Counsel for Entergy is well aware of its obligations under STB-approved protective orders and has a long history of compliance with those orders. Entergy respectfully submits that there is no basis for M&NA to impose a new obligation upon Entergy that simply is not included within the terms of the governing protective order.

**CONCLUSION**

For the foregoing reasons, Entergy requests that the Board afford expedited consideration to this motion, issue an order overruling M&NA's objection as to the nature of the protective order in this case, and require M&NA to produce all documents responsive to Entergy's Request Nos. 4, 5, 8, 10(t), and 11 (to the limited extent necessary to interpret documents produced in response to Request No. 10(t)).

Respectfully submitted,

ENTERGY ARKANSAS, INC. and  
ENTERGY SERVICES, INC.  
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Dated: April 28, 2008

Attorneys & Practitioners

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 28th day of April, 2008 caused copies of the foregoing to be served by email and first-class mail upon counsel for the parties of record in this case.

  
Andrew B. Kolesar III

**1**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

<b>ENTERGY ARKANSAS, INC. and ENTERGY SERVICES, INC., Complainants</b>	)	
<b>v.</b>	)	<b>Docket No. 42104</b>
<b>UNION PACIFIC RAILROAD COMPANY and MISSOURI &amp; NORTHERN ARKANSAS RAILROAD COMPANY, INC., Defendants.</b>	)	
<b>MISSOURI &amp; NORTHERN ARKANSAS R.R. – LEASE, ACQUISITION AND OPERATION EXEMPTION – MISSOURI PACIFIC R.R. and BURLINGTON NORTHERN R.R.</b>	)	<b>Finance Docket No. 32187</b>

**COMPLAINANTS' FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT  
MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY**

Complainants Entergy Arkansas, Inc. ("EAI") and Entergy Services, Inc. ("ESI") (collectively, "Entergy") hereby serve this first set of interrogatories and requests for production of documents upon Defendant, Missouri & Northern Arkansas Railroad Company ("M&NA"). Entergy requests that M&NA answer each interrogatory separately, in writing and under oath, and produce responsive documents at the offices of Entergy's counsel within thirty days of the date of these requests (*i.e.*, by April 16, 2008).

## **I. DEFINITIONS**

The following terms shall have the meanings set forth below whenever used in any Interrogatory or Request for Production of Documents.

1. "BNSF" means BNSF Railway Company, a/k/a The Burlington Northern and Santa Fe Railway Company, and any affiliates or predecessors thereof.

2. "Communicate" or "communication" mean every manner or means of disclosure, transfer, or exchange and every disclosure, transfer, or exchange of information, whether orally or by document or whether face-to-face, by telephone, mail, personal delivery, electronic mail, facsimile, or otherwise.

3. "Complaint" means the "Verified Complaint, or in the Alternative, Petition to Revoke" that Entergy filed with the Surface Transportation Board on February 19, 2008.

4. "Document" means the original and all non-identical copies, whether internal or otherwise, of any printed, typewritten, handwritten, photocopied, filmed, microfilmed, photographed, taped, recorded, stored, or graphic matter or reproduction thereof of every kind, character, or description or any means of electronic storage of information in your actual or constructive possession, care, custody, or control including, without limitation, correspondence, memoranda, contracts, agreements, warnings, instructions, manual and computer generated records, drafts, books, letters, telegrams, brochures, reports, studies, articles, plans, permits, engineering designs, analyses, summaries, speeches, minutes, charts, tabulations, working papers, sampling data, lab

analysis, reports of data, calendar and diary entries, vouchers, invoices, pamphlets, bulletins, transcripts, exhibits, briefs, handwritten or typewritten notes, tape recordings, microfiche, computer disks, and computer printouts, whether original or reproductions.

5. "EAI" means Entergy Arkansas, Inc. and is intended to include its predecessor company Arkansas Power & Light Company.

6. "ESI" means Entergy Services, Inc.

7. "Entergy" collectively means EAI and ESI.

8. "Entergy train(s)" means the trains containing loaded or empty coal cars moving between origins and the Independence Station.

9. "Identify" or "state" or "describe" or "describe in detail" mean:

- (a) describe fully by reference to underlying facts rather than by reference to ultimate facts or conclusions of fact or law;
- (b) where applicable, particularize as to time, place, and manner;
- (c) set forth all relevant facts necessary to the complete understanding of the act, process, event, or thing in question;
- (d) as to a person (as defined): name, business and residence address(es), last known telephone number, occupation, job title, and dates so employed; and, if not an individual, state the type of entity, last known address of its principal place of business, and the names of its officers and directors; to the extent that any of the above information is not available, please state all other available means of identifying and locating such person;
- (e) as to a document (as defined): the type of document (letter, memorandum, printed version of an electronic mail message, printed version of a facsimile, etc.), the identity of the author or originator, the date authored or originated, the identity of

each person to whom the original or a copy was addressed or delivered, the identity of such person known or reasonably believed by you to have present possession, custody, or control thereof, and a brief description of the subject matter thereof;

(f) as to a communication (as defined): the date of the communication, the type of communication (telephone conversation, electronic mail message, meeting, etc.), the place where the communication took place, the identity of the person who made the communication, the identity of each person who received the communication and of each person present when it was made, and the subject matter discussed; and

(g) as to a meeting: the date of the meeting, the place of the meeting, each person invited to attend, each person who attended, and the subject matter discussed.

10. "Independence" means Entergy's Independence Steam Electric Station.

11. "Lease" or "UP/M&NA Lease" means the lease between UP and M&NA dated December 11, 1992.

12. "M&NA" means Defendant the Missouri & Arkansas Railroad Company, and any parent company or affiliate thereof.

13. "M&NA Answer" means the Answer that M&NA filed in this proceeding on March 10, 2008.

14. "Person" means any natural person and any entity, including any corporation, association, partnership, or other business enterprise.

15. "Relating to," "related to," "in relation to," and "regarding" mean referring to, reflecting, describing, evidencing, supporting, discussing, or pertaining in any manner, logically, factually, indirectly, or directly to the matter discussed.

16. The singular herein includes the plural and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive, as required by the context to bring all information within the scope of these Interrogatories; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including but not limited to" and "including without limitation;" the masculine includes the feminine and neutral genders; the past tense includes the present tense where the clear meaning is not distorted by change of tense.

17. "UP" refers to the Union Pacific Railroad Company, and references to its predecessors, including, without limitation, Western Railroad Properties, Inc., Chicago & North Western Transportation Company, Missouri Pacific Railroad Company, Western Pacific Railroad Company, Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and Denver and Rio Grande Western Railroad Company.

## **II. INSTRUCTIONS**

1. Each Interrogatory and Request for Production herein extends to any information in the possession, custody, or control of M&NA, its attorneys, any other agents or representatives.

2. If you object to an Interrogatory or Request for Production on the ground of privilege, answer the Interrogatory or Request for Production by providing such non-privileged information as is responsive.

3. With respect to any item of information withheld from your answer based upon a claim of privilege or for any other reason:

- (a) identify the nature and general subject matter of the information;
- (b) identify the date to which the information pertains;
- (c) identify the person(s) who developed the information;
- (d) identify all person(s) who received the information;
- (e) identify the names, addresses, and job title of all person(s) who are in possession or control of the information; and
- (f) state with particularity the nature or basis of the claim(s) of privilege or other ground(s) for non-production.

4. Each Interrogatory and Request for Production herein shall be construed independently, and no Interrogatory or Request for Production shall be viewed as limiting the scope of any other Interrogatory or Request for Production. Please indicate where any portion of your response to an Interrogatory or Request for Production has been provided in response to another Interrogatory or Request for Production and please specify the Interrogatory or Request for Production at issue.

5. If you object to any portion of an Interrogatory or Request for Production on any ground other than privilege, you should still provide information responsive to the remaining portion.

6. If you claim that any information responsive to any Interrogatory or Request for Production is lost or destroyed, (a) identify and describe such information, and (b) describe how the information was lost or destroyed.

7. If you claim that any information responsive to any Interrogatory or Request for Production is already in the possession of either Defendant, please identify the information with sufficient specificity to allow such Defendant(s) to locate it.

8. Separately for each Interrogatory and Request for Production to which you object in whole or in part, describe in detail and itemize each basis of your objection.

9. If the basis of an objection to any Interrogatory or Request for Production, or any portion thereof, is a statute, contract, other agreement, or any other obstacle to production that you claim is based in the law, please identify that legal obstacle with specificity.

10. Upon producing any document requested herein, you are instructed to indicate to which of the following numbered Requests for Production the document is being produced in response.

11. If no documents exist that are responsive to any request to identify or to produce, please so state.

12. Where these discovery requests seek data in a computer-readable or machine-readable format, for each computer file supplied provide:

- (a) The name and description of the source database or other file from which the records in the computer file were selected;
- (b) A description of how the records in the file produced were selected;
- (c) The name, title and location of the individual (or contractor) responsible for developing the data responsive to the request; and
- (d) Each computer program (in native software and text file) and intermediate file used in deriving the files produced; and for each field in each computer file provide:
  - 1. The name of the field;
  - 2. The starting and ending positions of the field;
  - 3. A detailed definition of the field;
  - 4. A detailed description of the data in the field, including an explanation of the purpose for which they are used;
  - 5. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits, whether signed or unsigned (i.e., negatives allowed);
  - 6. If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each;
  - 7. An indication of whether the data in the field are packed or compressed; and
  - 8. If the data in the field are packed or compressed, the type of packing or compression:
    - a. Zoned with low-order sign;
    - b. Binary with LSB first;
    - c. Binary with MSB first;
    - d. Packed with high-order sign;
    - e. Packed with low-order sign;
    - f. Packed with no sign; and

- g. Other (specify and provide detailed instructions for unpacking).

13. These Interrogatories and Requests for Production are continuing in nature, and you should file supplemental answers as additional information becomes known to you.

### **INTERROGATORIES**

#### **Interrogatory No. 1:**

Please provide a complete description of Missouri and Northern Railroad Company, Inc.'s ("M&NA") service to Entergy's Independence Station, including, but not limited to, an identification of the route(s) used and a description of all transportation-related activities at interchange, destination, and all intermediate stations and other locations on the route(s) of movement.

#### **Interrogatory No. 2:**

Please identify the date, nature, and amount of the "substantial capital expenditures" that M&NA references on page 6 of its Answer.

#### **Interrogatory No. 3:**

Please identify the basis for M&NA's statement in paragraph 12 of M&NA Answer regarding the "rounding of the escalated rental" under the UP/M&NA Lease, and please identify the current rental amounts that apply under the Lease.

**Interrogatory No. 4:**

Please identify the basis for M&NA's statement in paragraph 21 of its Answer that the potential BNSF-M&NA routes would require substantial upgrading to handle loaded unit coal trains, and please identify any specific upgrades that would be required to permit unit train operations.

**Interrogatory No. 5:**

Please identify the date of the removal of the interchange tracks at Fort Scott that M&NA references in paragraph 22 of its Answer, and please explain the disposition of any assets removed from that location.

**Interrogatory No. 6:**

Please identify the current rental amounts that apply under the Lease.

**Interrogatory No. 7:**

Please identify, by year, the total amount of rent that M&NA has paid to UP under the Lease.

**Interrogatory No. 8:**

Please identify, by name, title and address, the person(s) who prepared each answer to these Interrogatories, and who reviewed and selected the documents to be produced in response to each of the following Document Production Requests.

## **DOCUMENT PRODUCTION REQUESTS**

### **Request for Production No. 1:**

Please produce a complete copy of the UP/M&NA Lease, including all amendments and supplements thereto.

### **Request for Production No. 2:**

Please produce complete copies of all other agreements between UP and M&NA, including but not limited to any agreement(s) granting M&NA trackage or haulage rights over UP's lines, including all amendments and supplements thereto.

### **Request for Production No. 3:**

Please produce complete copies of the Verified Notice of Exemption and any other pleadings filed in *Missouri & Northern Arkansas R.R. – Lease, Acquisition and Operation Exemption – Missouri Pacific R.R. and Burlington Northern R.R.*, ICC Finance Docket No. 32187.

### **Request for Production No. 4:**

Please produce copies of: (i) all agreements related to M&NA's purchase of the three "owned" lines identified on page 4 of M&NA's Answer; and (ii) all filings at the ICC/STB associated with M&NA's acquisition and operation of those lines.

### **Request for Production No. 5:**

Please produce complete copies of all agreements between M&NA and BNSF, with all amendments and/or supplements thereto, including but not limited to the agreement relating to the haulage service that M&NA identifies on page 5 of its Answer.

**Request for Production No. 6:**

Please produce any reports and/or financial statements prepared during the period 1992 through the present, which show the financial condition or results of operation of M&NA.

**Request for Production No. 7:**

Please provide any study, analysis, evaluation or estimate of the expected reduction in cost, cost, income, benefit, margin or return on investment that UP anticipated from entering into the Lease Agreement with M&NA.

**Request for Production No. 8:**

Please produce any and all documents showing the division of revenues and fees paid to M&NA by UP for moving freight for each of the years 1992 to the present, including documents showing the basis for calculating the revenues and fees owed M&NA, such as the number of carloads of each commodity forwarded to or received from M&NA, by location and origin or destination.

**Request for Production No. 9:**

Please produce documents which show any payments received by UP from M&NA in accordance to the terms of the UP/M&NA Lease from 1992 to the present, including documents which show the basis for the calculation of the payments.

**Request for Production No. 10:**

Please produce, in a computer-readable format (with all documentation related to any data bases or computer programs used to generate the requested

information), the information listed below for each movement M&NA received in interchange from UP, or interchanged to UP, for each year or partial year 1992 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin city and state;
- c. Destination city and state;
- d. For shipments that originated on UP's system, the date and time the shipment was originated;
- e. For shipments UP received in interchange, the on junction location and station number;
- f. For shipments UP received in interchange, the road received from;
- g. For shipments UP received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, the off junction location and station number;
- i. For shipments given in interchange, the road given to;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on UP's system, the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code ("FSAC");
- m. Destination FSAC;
- n. Origin Standard Point Location Code ("SPLC");
- o. Destination SPLC;
- p. Number of Cars;
- q. Tons (Net);
- r. Tare weight;
- s. Total freight revenues from Origin to Destination, including any adjustments thereto;

- t. M&NA's share or division of the total freight revenues, including any adjustments thereto;
- u. Waybill number and date;
- v. TOFC/COFC plan;
- w. Car/trailer initial for each car/trailer used to move the shipment;
- x. Car/trailer number for each car/trailer used to move the shipment;
- y. If a trailer or container is used to move the shipment, the car initial and number used to move the trailer or container;
- z. The train identification number of all trains used to move the shipment;
- aa. The number of locomotives, by train identification, by segment, used to move the shipment;
- bb. The total horsepower, by train identification, by line segment, used to move the shipment;
- cc. Total loaded movement miles;
- dd. Total loaded miles on UP's system;
- ee. AAR car-type code;
- ff. Ownership of car (i.e., system, private or a foreign road);
- gg. Car hire rates and car hire paid by UP on foreign road and private cars, including any contract adjustments that result in zero car hire on private cars; and
- hh. Contract of tariff identification number.

**Request for Production No. 11:**

Please provide all documents, including programs, decoders, field descriptions, record layouts, and instructions, necessary to identify and understand the data produced in response to Request for Production No. 10.

**Request for Production No. 12:**

Please produce any analyses regarding the nature and/or cost of any work that would be necessary to upgrade M&NA's lines to permit M&NA to handle loaded Entergy trains.

**Request for Production No. 13:**

Please produce copies of all correspondence relating to requests for M&NA service in conjunction with a carrier other than UP.

**Request for Production No. 14:**

Please produce all internal documents relating to potential M&NA service (whether generated in response to a shipper request or generated for internal purposes) that would involve a carrier other than UP, including but not limited to, studies, reports, or analyses of the rates that would be charged for such service or the costs associated with such service.

**Request for Production No. 15:**

Please produce all documents identified in M&NA's Answers to Entergy's Interrogatories.

Respectfully submitted,

ENERGY ARKANSAS, INC. and  
ENERGY SERVICES, INC.

O.H. Storey  
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OF COUNSEL:

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Dated: March 17, 2008

By: C. Michael Loftus  
Frank J. Pergolizzi  
Andrew B. Kolesar III   
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Attorneys & Practitioners

**2**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. 42104

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ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC  
v.  
UNION PACIFIC RAILROAD COMPANY AND MISSOURI & NORTHERN  
ARKANSAS RAILROAD COMPANY, INC.

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Finance Docket No. 32187

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MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.  
~~LEASE, ACQUISITION AND OPERATION EXEMPTION~~  
MISSOURI PACIFIC RAILROAD COMPANY AND  
BURLINGTON NORTHERN RAILROAD COMPANY

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MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.  
RESPONSE TO COMPLAINANTS FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS

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ARKANSAS RAILROAD COMPANY,  
INC

Dated. April 16, 2008

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. 42104

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ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.  
v.  
UNION PACIFIC RAILROAD COMPANY AND MISSOURI & NORTHERN  
ARKANSAS RAILROAD COMPANY, INC.

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Finance Docket No 32187

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MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.  
RESPONSE TO COMPLAINANTS' FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS

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Missouri & Northern Arkansas Railroad Company, Inc. ("M&NA") responds to the First Set of Interrogatories and Requests for Production of Documents propounded by Entergy Arkansas, Inc. and Entergy Services, Inc. ("Complainants") served on March 17, 2008 (the "Discovery Request").

**GENERAL RESPONSES**

The following general responses are made with respect to all of the discovery requests.

1. M&NA has conducted a reasonable search for responsive documents and information to respond consistent with the stated objections <sup>1</sup>

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<sup>1</sup> Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine are not being produced

2 Where objections have been raised to the scope of the request, M&NA is willing to discuss searching for and producing documents or information covered by a more limited request taking into account the stated objection.

3 Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

### **GENERAL OBJECTIONS**

The following general objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each discovery request.

1. M&NA objects to production of, and is not producing, documents or information subject to the attorney-client privilege, the work product doctrine, or administratively confidential documents or information.

2. M&NA objects to production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.

3. M&NA objects to production of, and is not producing, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.

4. M&NA objects to the production of, and is not producing, information or documents that are as readily attainable by Complainants from their own files.

5 M&NA objects to the production of, and is not producing, information or documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order

6. M&NA objects to the production of, and is not producing, information or documents to the extent they are sought in a form not maintained by M&NA in the regular course of business and are not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which M&NA objects to performing.

7. M&NA objects to Complainants' Definitions and Instructions to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

8. M&NA objects to all discovery sought by Complainants relating to Finance Docket No 32187 because Complainants have no legitimate use for the material requested in discovery. Under 49 U.S.C. §10502(d), Complainants are seeking a partial revocation of the exemption of the lease. The rules governing a petition for exemption before the STB are at 49 C.F.R. § 1121.2, which required Complainants to submit their discovery requests at the same time they filed their petition to revoke and the completion of discovery within 30 days of the filing of the petition to revoke. Complainants did not comply with either of these requirements

## INTERROGATORIES

**Interrogatory No. 1:** Please provide a complete description of Missouri and Northern Arkansas Railroad Company, Inc.'s ("M&NA") service to Entergy's Independence Station, including, but not limited to, an identification of the route(s) used and a description of all transportation-related activities at interchange, destination, and all intermediate stations and other locations on the route(s) of movement

**Specific Objections:** M&NA objects to Interrogatory No. 1 on the ground that it is unclear as to the time period for which Complainant seeks the information. M&NA further objects to Interrogatory No. 1 on the ground that is burdensome since M&NA has provided service to Entergy's Independence Station since 1993. M&NA further objects to Interrogatory No. 1 on the ground that Complainant is aware of the routes used and the destination

**Response:** Without waiving the General Objections or Specific Objections, M&NA responds to Interrogatory No. 1.

M&NA serves the Entergy Independence Station seven days per week. Each train used to serve the Entergy Independence Station is manned by two crew members, an engineer and a conductor. The crews originate in Batesville, AR, and travel by automobile to Newport, AR, which is located on the Union Pacific Railroad Company (the "UP"). The trip generally takes one hour.

At Newport, the M&NA crews take control of the train that has been delivered by UP for the ultimate destination of Entergy Independence Station. The train generally consists of three locomotives and 135 coal cars. The crew performs the 1,000 mile inspection which consists of inspecting both sides of the train for safety defects, dragging equipment, etc.

The M&NA crew operates the train to Diaz Junction pursuant to an interchange agreement with UP. At Diaz Junction, the train leaves the UP track and enters the M&NA line through a CTC power turnout. The train travels approximately eight miles in about one hour on the M&NA to the Entergy Independence Station. The operation between Newport and the Entergy Independence Station is non-stop.

At the Entergy Independence Station, the M&NA crew spots the first car and then turns the train over to the Complainants' employees. Complainants notify M&NA when the train is released. It takes M&NA employees about three hours to travel to the Entergy Independence Station from Batesville after notification. There is no inspection of the released train.

M&NA delivers the empty train to UP's Neff Yard. It moves the train the 445 miles. From the Entergy Independence Station, the first crew is relieved by the second crew from Cotter at the end of their tour and takes the train to Carthage, MO, where a Carthage crew completes the move to Neff Yard in Kansas City. M&NA travels over its own track and trackage rights over UP between Pleasant Hill, MO and Kansas City. Upon delivery of the train, M&NA's crew secures the train and departs for Carthage via a contract vehicle.

Service to the Entergy Independence Station requires four crews consisting of two men per crew. All crew transportation is done via contract vehicle.

**Interrogatory No. 2:** Please identify the date, nature, and amount of the 'substantial capital expenditures' that M&NA references on page 6 of its Answer.

**Response:** Without waiving the General Objections, M&NA responds to Interrogatory No. 2

In response to Request for Production No. 6, M&NA has provided a HIGHLY CONFIDENTIAL spreadsheet that identifies two line items related to capital. The first line item is normalized capital spending, and the second line item refers to project capital

Normalized capital spending is to maintain the physical plant in a safe, efficient condition to enable the railroad to continuously provide service to customers. These expenditures are relatively consistent over the years, and are made in several key strategic areas. Following is a table of the type of expenditure and the percentage of the normal capital spending.

Expenditure	Percentage
Replacement of defective wood crossstics	56
Replacement of defective bridge components	11
Replacement of defective rail	5
Signal up-grades	5
Track ballast & alignment	5
Turnouts, Drainage, Rail Grinding, Buildings and Rolling Stock	8 evenly divided

Project capital is used to upgrade the physical plant in order to provide service to new or additional business. Between 2001 and 2006, there were four (4) specific projects funded (ranging from \$50,000 to \$100,000), involving the installation of new crossstics, ballast, and surfacing of existing track to improve track conditions to accommodate additional business. In 2007, a project was funded to upgrade the Fort Scott Subdivision to serve a newly-constructed ethanol facility, and planned construction of a new bio-diesel facility. This project required \$869,000.00 and involved installation of new crossstics, ballast, track surfacing, and signal improvements.

**Interrogatory No. 3:** Please identify the basis for M&NA's statement in paragraph 12 of M&NA Answer regarding the "rounding of the escalated rental" under the UP/M&NA Lease, and please identify the current rental amounts that apply under the Lease.

**Specific Objection:** M&NA objects to making a calculation based on a formula presented by Complainants in the Complaint, which is obtainable by Complainants making the calculation.

**Response:** Without waiving the General Objections or Specific Objection, M&NA responds to Interrogatory No. 3. The calculation provided in footnote 1 of the Complaint is rounded to \$114 million. The actual solution to the formula provided by Entergy equals \$113 56508 million.

**Interrogatory No. 4:** Please identify the basis for M&NA's statement in paragraph 21 of its Answer that the potential BNSF-M&NA routes would require substantial upgrading to handle loaded unit coal trains, and please identify any specific upgrades that would be required to permit unit train operations

**Specific Objections:** M&NA objects to Interrogatory No. 4 on the grounds of relevancy. M&NA also objects to Interrogatory No. 4 on the ground that it cannot estimate the level of upgrades required over potential BNSF-M&NA routes without specific information concerning the traffic to be handled over those routes.

**Response:** Without waiving the General Objections or Specific Objections, M&NA responds to Interrogatory No. 4.

*The track structure of the southernmost 200 track miles of the MNA presents maintenance and engineering challenges associated with multiple high degree curves. The track structure has poor access, and much of the track runs adjacent to waterways. The overall tie condition is currently in fair condition and the rail, while being CWR, has extensive wear at certain locations. The majority of the rail traffic currently moving over this line is empty unit coal trains and, therefore, track structure degradation is occurring*

more slowly and the overall track condition required to complete this service is less than what would be required for transporting loaded coal trains. As a result of these physical characteristics and less than optimal conditions, the addition of one to two loaded unit coal trains per day would demand significant capital investments in rail and ties. These investments would need to be implemented immediately and continue for so long as the heavier loaded trains are running. Some re-engineering, upgrading and construction of additional track would also be required at designated interchange locations in order to accommodate the loaded unit coal trains.

**Interrogatory No. 5:** Please identify the date of the removal of the interchange tracks at Fort Scott that M&NA references in paragraph 22 of its Answer, and please explain the disposition of any assets removed from that location.

**Specific Objection:** M&NA objects to Interrogatory No 5 on the grounds of relevancy.

**Response:** Without waiving the General Objections or Specific Objection, M&NA responds to Interrogatory No 5.

M&NA believes and avers that the interchange tracks (diamond) at Fort Scott were removed by the Burlington Northern Santa Fe Railway Company (BNSF) in August 1998. Documents are provided in response to Request for Production No 15.

**Interrogatory No. 6:** Please identify the current rental amounts that apply under the Lease.

**Response:** Without waiving the General Objections, M&NA responds to Interrogatory No 6

Rental amounts are determined in accordance with Section 4.03 of the Lease, and are adjusted in accordance with Section 4.04 of the Lease. Section 4.03 provides for a gross rental amount of \$90 million, annually, subject to abatement based upon

percentages of total traffic interchanged with UP. If the percentage of total traffic interchanged with UP is equal to or exceeds 95%, the rental is entirely abated to \$0.00.

The Tenth Supplement Agreement to the Lease temporarily modified the threshold percentage of total traffic to be interchanged with UP such that a total traffic percentage of 90% or greater qualified for full rental abatement for the Lease year 2005

In response to Request for Production No. 15, two sets of email communications are provided that granted waivers from the 95% rental threshold with regard to certain specific products and movements. The first is a November 14, 2006 waiver received from UP as to forest products from Weyerhaeuser at Simsboro, LA to O'Sullivan Industries at Lamar, MO, with the waiver expiring December 31, 2007. The second is a waiver from UP as to construction sand from Arkhola Sand at Van Buren, AR to Arkhola Sand at Branson, MO, with the waiver expiring December 31, 2006

**Interrogatory No. 7:** Please identify, by year, the total amount of rent that M&NA has paid to UP under the Lease.

**Response:** Without waiving the General Objections, M&NA responds to Interrogatory No. 7.

By virtue of the annual abatements applied pursuant to Section 4.03 of the Lease, M&NA has paid \$0.00 to UP under the Lease from 2001 to the present. Upon information and belief, M&NA states that it believes the same to be true for the period prior to 2001 when RailTex, Inc. was acquired by RailAmerica, Inc.

**Interrogatory No. 8:** Please identify, by name, title and address, the person(s) who prepared each answer to these Interrogatories, and who reviewed and selected the documents to be produced in response to each of the following Document Production Requests.

**Specific Objection:** M&NA objects to Interrogatory No. 8 on the grounds of relevancy.

**Response:** Without waiving the General Objections or Specific Objection, M&NA responds to Interrogatory No 8 that the answers to these Interrogatories and the selection of documents to be produced was under the direction and supervision of Scott G. Williams Esq., Senior Vice President & General Counsel, RailAmerica, Inc., 5300 Broken Sound Boulevard N.W., Second Floor, Boca Raton, FL 33487, (561) 226-1757.

### **DOCUMENT PRODUCTION REQUESTS**

**Request for Production No. 1:** Please produce a complete copy of the UP/M&NA Lease, including all amendments and supplements thereto.

**Specific Objection:** M&NA objects to Request for Production No. 1 on the grounds that it is duplicative of the discovery sought from UP. M&NA further objects to Request for Production No. 1 on the grounds that the burden of providing all amendments and supplements to the Lease outweighs the likely benefit.

**Response:** Without waiving the General Objections or Specific Objections, in response to Request for Production No. 1, M&NA is producing the UP/M&NA Lease and all supplements and amendments to thereto.

**Request for Production No. 2:** Please produce complete copies of all other agreements between UP and M&NA, including but not limited to any agreement(s) granting M&NA trackage or haulage rights over UP's lines, including all amendments and supplements thereto.

**Specific Objection:** M&NA objects to Request for Production No 2 on the grounds of relevancy. M&NA further objects to Request for Production No. 2 on the grounds that it is duplicative of the discovery sought from UP. M&NA further objects to Request for Production No 2 on the grounds that the burden of providing all other agreements outweighs the likely benefit

**Response:** Without waiving the General Objections or Specific Objections, in response to Request for Production No. 2, M&NA is producing the documents

**Request for Production No. 3:** Please produce complete copies of the Verified Notice of Exemption and any other pleadings filed in *Missouri & Northern Arkansas R.R. – Lease, Acquisition and Operation Exemption – Missouri Pacific R.R. and Burlington Northern R.R.*, ICC Finance Docket No. 32187.

**Specific Objection:** M&NA objects to Request for Production No. 3 on the grounds of relevancy. M&NA further objects to Request for Production No. 3 on the ground that the documents sought are public documents that are obtainable from some other source that is more convenient, less burdensome and less expensive.

**Response:** Without waiving the General Objections or Specific Objections, in response to Request for Production No. 3, M&NA is producing the documents

**Request for Production No. 4:** Please produce copies of: (i) all agreements related to M&NA's purchase of the three "owned" lines identified on page 4 of M&NA's Answer; and (ii) all filings at the ICC/STB associated with M&NA's acquisition and operation of those lines

**Specific Objection:** M&NA objects to Request for Production No. 4 on the grounds of relevancy. M&NA further objects to Request for Production No. 4 on the ground that the documents sought are public documents that are obtainable from some other source that is more convenient, less burdensome and less expensive.

**Response:** Because of the confidentiality provisions in the agreement that prohibit production absent an order from the Board or court, M&NA will not produce the Line Sale Agreement without an order from the Board requiring production. M&NA will not oppose a motion to compel production of the documents responsive to Request for Production No. 4

**Request for Production No. 5:** Please produce complete copies of all agreements between M&NA and BNSF, with all amendments and/or supplements thereto, including

but not limited to the agreement relating to the haulage service that M&NA identifies on page 5 of its Answer.

**Specific Objection:** M&NA objects to Request for Production No. 5 on the ground of relevancy. M&NA further objects to Request for Production No. 5 on the grounds that the burden or expense of the proposed discovery outweighs its likely benefit.

**Response:** Because of the confidentiality provisions in the agreements that prohibit production absent an order from the Board or court, M&NA will not produce the agreements without an order from the Board requiring production. M&NA will not oppose a motion to compel production of the documents responsive to Request for Production No. 5.

**Request for Production No. 6:** Please produce any reports and/or financial statements prepared during the period 1992 through the present, which show the financial condition or results of operation of M&NA.

**Specific Objection:** M&NA objects to Request for Production No. 6 on the grounds of relevancy. M&NA further objects to Request for Production No. 6 on the grounds that the burden of providing reports and/or financial statements prepared during the period 1992 through the present.

**Response:** Without waiving the General Objections or Specific Objections, in response to Request for Production No. 6, M&NA is producing HIGHLY CONFIDENTIAL Unaudited Income Statements, Balance Sheets, and Capital Expenditures for the years ending December 31, 2000 through December 31, 2007.

**Request for Production No. 7:** Please provide any study, analysis, evaluation or estimate of the expected reduction in cost, cost, income, benefit, margin or return on investment that UP anticipated from entering into the Lease Agreement with M&NA.

**Specific Objection:** M&NA objects to Request for Production No. 7 on the grounds that it does not have any information relating to the expected reduction in cost, cost, income,

benefit, margin or return on investment that UP anticipated from entering into the Lease Agreement with M&NA." M&NA further objects to Request for Production No. 7 on the grounds that Complainants has had ample opportunity by discovery to obtain the information sought from UP

**Response:** M&NA will not produce documents not in its possession.

**Request for Production No. 8:** Please produce any and all documents showing the division of revenues and fees paid to M&NA by UP for moving freight for each of the years 1992 to the present, including documents showing the basis for calculating the revenues and fees owed M&NA, such as the number of carloads of each commodity forwarded to or received from M&NA, by location and origin or destination.

**Specific Objection:** M&NA objects to Request for Production No. 8 on the grounds of relevancy.

**Response:** Without waiving the General Objections or Specific Objection, in response to Request for Production No. 6, M&NA is producing HIGHLY CONFIDENTIAL Speed Sheets for the years 1999-2008.

**Request for Production No. 9:** Please produce documents which show any payments received by UP from M&NA in accordance to the terms of the UP/M&NA Lease from 1992 to the present, including documents which show the basis for the calculation of the payments.

**Specific Objection:** M&NA objects to Request for Production No 9 on the grounds of relevancy. M&NA only retains records of payments to UP from and after RailAmerica's acquisition of RailTex, Inc. in 2000. During the period of time since that acquisition, M&NA has paid real property ad valorem taxes, fees, special assessments and utilities directly to the taxing authorities and to the utility companies, and has not made payment for any of these matters to UP. M&NA also pays UP car hire in the normal course of business and will not produce documents concerning car hire payments because of

relevancy and burden M&NA is unaware of other payments from M&NA to UP pursuant to the Lease.

**Response:** M&NA will not produce documents not in its possession.

**Request for Production No. 10:** Please produce, in a computer-readable format (with all documentation related to any data bases or computer programs used to generate the requested information), the information listed below for each movement M&NA received in interchange from UP, or interchanged to UP, for each year or partial year 1992 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin city and state,
- c. Destination city and state;
- d. For shipments that originated on UP's system, the date and time the shipment was originated;
- e. For shipments UP received in interchange, the on junction location and station number,
- f. For shipments UP received in interchange, the road received from,
- g. For shipments UP received in interchange, the date and time the shipment was interchanged;
- h. For shipments given in interchange, the off junction location and station number;
- i. For shipments given in interchange, the road given to;
- j. For shipments given in interchange, the date and time the shipment was interchanged;
- k. For shipments terminated on UP's system, the date and time the shipment was terminated;
- l. Origin Freight Station Accounting Code ("FSAC"),
- m. Destination FSAC;
- n. Origin Standard Point Location Code ("SPLC"),
- o. Destination SPLC;
- p. Number of Cars;
- q. Tons (Net);
- r. Tare weight,
- s. Total freight revenues from Origin to Destination, including any adjustments thereto;
- t. M&NA's share or division of the total freight revenues, including any adjustments thereto,
- u. Waybill number and date;
- v. IOFC/COFC plan;
- w. Car/trailer initial for each car/trailer used to move the shipment;
- x. Car/trailer number for each car/trailer used to move the shipment;
- y. If a trailer or container is used to move the shipment, the car initial and number used to move the trailer or container,

- z. The train identification number of all trains used to move the shipment,
- aa. The number of locomotives, by train identification, by segment, used to move the shipment;
- bb. The total horsepower, by train identification, by line segment, used to move the shipment,
- cc. Total loaded movement miles;
- dd. Total loaded miles on UP=s system;
- ee. AAR car-type code;
- ff. Ownership of car (i.e., system, private or a foreign road);
- gg. Car hire rates and car hire paid by UP on foreign road and private cars, including any contract adjustments that result in zero car hire on private cars; and
- hh. Contract of tariff identification number.

**Specific Objection:** M&NA objects to Request for Production No. 10 on the grounds of relevancy M&NA further objects to Request for Production No. 10 on the grounds that it would be required to conduct a special study to provide the response in the format sought by Complainants M&NA further objects to Request for Production No. 10 on the grounds that the burden or expense of the proposed discovery outweighs its likely benefit.

**Response:** M&NA will not produce documents responsive to Request for Production No. 10.

**Request for Production No. 11:** Please provide all documents, including programs, decoders, field descriptions, record layouts, and instructions, necessary to identify and understand the data produced in response to Request for Production No. 10.

**Specific Objection:** M&NA objects to Request for Production No 11 on the grounds of relevancy.

**Response:** Based on M&NA's objection to Request for Production No. 10, M&NA will not produce documents responsive to Request for Production No. 11.

**Request for Production No. 12:** Please produce any analyses regarding the nature and/or cost of any work that would be necessary to upgrade M&NA's lines to permit M&NA to handle loaded Entergy trains.

**Specific Objection:** M&NA objects to Request for Production No. 12 on the grounds of relevancy. M&NA further objects to Request for Production No. 12 on the grounds that it is ambiguous in that M&NA is currently handling loaded Entergy trains without additional upgrading and that M&NA does not know what other service Complainants are seeking. M&NA further objects to Request for Production No. 12 on the grounds it would require a special study to consider all of the potential permutations of interchange to serve Complainants without input from Complainants as to the move.

**Response:** M&NA will not produce documents responsive to Request for Production No. 12

**Request for Production No. 13:** Please produce copies of all correspondence relating to requests for M&NA service in conjunction with a carrier other than UP.

**Specific Objection:** M&NA objects to Request for Production No. 13 on the grounds of relevancy. M&NA further objects to Request for Production No. 13 on the grounds that the burden or expense of the proposed discovery outweighs its likely benefit.

**Response:** Without waiving the General Objections or Specific Objections, in response to Request for Production No. 13, M&NA is producing documents for 2005, 2006, and 2007.

**Request for Production No. 14:** Please produce all internal documents relating to potential M&NA service (whether generated in response to a shipper request or generated for internal purposes) that would involve a carrier other than UP, including but not limited to, studies, reports, or analyses of the rates that would be charged for such service or the costs associated with such service.

***Specific Objection:*** M&NA objects to Request for Production No 14 on the grounds of relevancy M&NA further objects to Request for Production No. 14 on the grounds that the burden or expense of the proposed discovery outweighs its likely benefit

**Response:** Without waiving the General Objections or Specific Objections, in response to Request for Production No 14, M&NA is producing documents.

**Request for Production No. 15:** Please produce all documents identified in M&NA's Answers to Entergy's Interrogatories

***Specific Objection:*** M&NA objects to Request for Production No. 15 on the grounds of relevancy.

**Response:** Without waiving the General Objections or Specific Objections, in response to Request for Production No. 14, M&NA is producing documents.

Respectfully submitted,



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