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April 29, 2008

BY HAND DELIVERY

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



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.

Dear Ms. Quinlan

Enclosed for filing in the above-referenced proceeding please find an original and ten (10) copies of Complainants' Motion to Compel Union Pacific Railroad Company'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,

A handwritten signature in black ink that reads "Andrew B. Kolesar III".

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

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Enclosures

EXPEDITED CONSIDERATION REQUESTED

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Office of Proceedings

APR 29 2008

Part of
Public Record

**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

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**COMPLAINANTS' MOTION TO COMPEL UNION PACIFIC
RAILROAD COMPANY'S PRODUCTION OF DOCUMENTS**

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Dated: April 29, 2008

Attorneys & Practitioners

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

Finance Docket No. 32187



**COMPLAINANTS' MOTION TO COMPEL
UNION PACIFIC RAILROAD COMPANY'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 Union Pacific Railroad Company ("UP"). Copies of Entergy's Requests and UP'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 Ex Parte No. 575, 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.

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 UP on March 17, 2008. Those requests were designed to obtain 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.

UP served its responses and objections to Entergy's requests on April 16, 2008. UP initially objected to producing information in response to a number of Entergy's requests for documents regarding the financial impact of the UP/M&NA Lease. Entergy has conferred with UP regarding its responses to Entergy's requests, however, and the parties have been able to resolve the vast majority of their disputes. Nevertheless, there remain two subjects as to which this motion and the Board's assistance are necessary: (1) a complete record of UP's payments to M&NA during the term of the Lease; and (2) UP's coal transportation rates/profitability and the impact of competition on those rates and profitability.

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. Division of Revenues and Fees Paid to M&NA (Request Nos. 6 and 9(t))

Two of Entergy's requests seek information regarding the divisions and fees that UP has paid to M&NA during the term of the Lease. These include Request Nos. 6 and Request No. 9(t).¹ Entergy's Request No. 6 to UP seeks the production of documents showing the division of revenues and fees paid by UP to M&NA 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." Entergy's Request No. 9(t), which is part of Entergy's request for UP's traffic tapes, seeks "M&NA's share or division of the total freight revenues, including any adjustments thereto" for each movement interchanged between UP and M&NA from 1992 to the present.²

In discussions with Entergy, UP has committed to produce responsive documents regarding UP's payments to M&NA that it has been able to locate – or will be able to locate – through a search of its records. However, it appears from UP's

¹ In a related matter, Entergy requests an order compelling production of decoders and record layouts (*see* Request No. 10) to the extent necessary to interpret information produced in response to Request No. 9(t).

² UP initially objected to Request No. 6 "on grounds that it is unduly burdensome, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study." UP Responses at 9. In addition, UP directed Entergy to UP's response to Entergy's Request No. 1 (*ie*, setting forth UP's willingness to produce a complete copy of the Lease) UP initially objected to Request No. 9 on grounds of burden, overbreadth, relevance, and the supposed need to engage in a special study.

description of the documents that it has located to date as though UP's production may be limited to several recent months of actual payment data (out of the fifteen year term of the Lease) and certain other information regarding the level of divisions from which Entergy may or may not be able to calculate the actual division amounts that UP has paid to M&NA in a precise manner.

While Entergy appreciates UP's willingness to attempt to locate and produce responsive documents, Entergy is concerned that UP's search may not be sufficiently broad to obtain the requested information. Entergy respectfully submits that it is reasonable to expect that UP maintains records of its actual payments to M&NA in a form that UP should be able to identify and produce without undue burden. These payments are critical to the calculation of the net revenue benefit of the Lease. In the absence of production from the Defendants, Entergy will not be able to obtain this information and will be precluded from fully addressing the evidentiary criteria set forth in Ex Parte No. 575.³ As such, Entergy requests that the Board compel UP's production of a complete record of its payments to M&NA in the form requested by Entergy.

³ Entergy filed a motion in this proceeding on April 28, 2008 seeking to compel, *inter alia*, M&NA's production of information regarding UP's division payments to M&NA. Entergy understands from M&NA, however, that there may be limits to the scope of the divisions records in its possession. In particular, M&NA reports that records of its divisions payments from UP may no longer exist for the time period prior to the year 2000 change in ownership of M&NA. Moreover, Entergy understands that there may be limits to M&NA's records even for the post-2000 time period. As a result, Entergy respectfully requests that the Board not decline to grant its motion to compel on the basis of a perception that divisions information will be available from the other Defendant's records.

B. Profitability Differential Between Captive and Competitive Coal Traffic (Request Nos. 11 and 12)

The Board's evaluation of the reasonableness of permitting the continued enforcement of the UP/M&NA paper barrier should consider the questions of: (i) the past benefit to UP from maintaining control over the destinations served by M&NA (as opposed to having to compete to retain the traffic); and (ii) the future benefit, if any, that UP might lose if the Board were to find that the continued enforcement of the paper barrier constitutes an unreasonable practice (thus requiring UP to compete to keep the traffic in the future).

In order to develop evidence regarding those potential benefits, Entergy served discovery requests that seek information from UP regarding the revenues and contribution/profitability associated with its coal transportation movements (Request No. 11), and seek information regarding the comparison of profitability on captive versus competitive coal transportation movements (Request No. 12). In each case, Entergy seeks information for the time period from 2000 to the present.

UP objected to Request No. 11 on grounds of burden, overbreadth, relevance, and the supposed need to conduct a special study. UP objected to Request No. 12 on grounds of burden, vagueness, overbreadth, and relevance. The parties have not been able to resolve UP's objections through their discussions.

UP's objections to these requests are unavailing. UP has obtained a benefit over the past fifteen years through its ability to maintain control over the pricing of traffic interchanged with M&NA. The information that Entergy seeks through these requests will permit Entergy to develop evidence quantifying that historic benefit. In addition, if the Board were to grant relief from the paper barrier, then UP could be required to modify its pricing on traffic interchanged with M&NA if it wished to prevent such traffic from diverting to UP's competitor. Information regarding the relative profitability of captive versus competitive coal traffic on the UP system therefore also is directly relevant to the likely impact, if any, of any order granting Entergy the relief that it seeks through its Complaint.

CONCLUSION

For the foregoing reasons, Entergy requests that the Board afford expedited consideration to this motion and issue an order requiring UP to produce documents

responsive to Entergy's Request Nos. 6, 9(t), 10 (to the limited extent necessary to interpret information produced in response to Request No. 9(t)), 11, and 12.

Respectfully submitted,

ENTERGY ARKANSAS, INC. and
ENTERGY SERVICES, INC.

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Andrew B. Kolesar III 

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Washington, D.C. 20036

Dated: April 29, 2008

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of April, 2008 caused copies of the foregoing to be served by email and first-class mail, postage-prepaid upon counsel for the parties of record in this case.


Andrew B. Kolesar III

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

**COMPLAINANTS' FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS TO
DEFENDANT UNION PACIFIC 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, Union Pacific Railroad Company ("UP"). Entergy requests that UP 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. "Person" means any natural person and any entity, including any corporation, association, partnership, or other business enterprise.

14. "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.

15. 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.

16. "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.

17. "UP's Answer" means the Answer that UP filed in this proceeding on March 10, 2008.

II. INSTRUCTIONS

1. Each Interrogatory and Request for Production herein extends to any information in the possession, custody, or control of the UP, 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 UP's service to Entergy's Independence Station, including, but not limited to, an identification of the route(s) used (in both the loaded and empty directions) and a description of all transportation-related activities at origins, destination, and all intermediate stations and other locations on the route(s) of movement.

Interrogatory No. 2:

Please identify the basis for the statement in paragraph 18 of UP's Answer that UP was "prepared to allow BNSF to handle Entergy trains via interchange with M&NA on a temporary, detour basis," and please explain what is meant by "temporary, detour basis."

Interrogatory No. 3:

Please identify the basis for the statement in paragraph 19 of UP's Answer that Entergy "currently has reliable transportation service and competitive pricing to its Independence Plant and White Bluff Station." In particular, please identify any competition UP faces for the transportation of Entergy's coal from the PRB to Independence.

Interrogatory No. 4:

Please identify the basis for the denial in paragraph 21 of UP's Answer that "M&NA could use its trackage rights between Pleasant Hill and Kansas City, Missouri, to interchange traffic with BNSF in Kansas City."

Interrogatory No. 5:

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

Interrogatory No. 6:

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

Interrogatory No. 7:

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 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. 5:

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. 6:

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. 7:

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. 8:

For each valuation section on M&NA's system covered by the UP/M&NA Lease, please provide the following information as of December 31, 1992 in a computer-readable format to the extent available, and specify, for each subpart, whether the accounting methodology is on a depreciation accounting basis or on a betterment accounting basis:

- a. A description by milepost and station name of the properties encompassed by each valuation section;
- b. Gross values by ICC/STB property account included within the valuation section identified in response to (a) above;
- c. Annual and accumulated depreciation by ICC/STB property account for all properties included within each valuation section identified in response to (a) above;
- d. The annual total gross ton-miles of cars and contents and the annual total gross ton-miles of locomotives and cabooses for each year 1992 through the present for each valuation section identified in response to (a) above.

Request for Production No. 9:

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 UP interchanged to or received from M&NA, 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 or tariff identification number.

Request for Production No. 10:

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. 9.

Request for Production No. 11:

For each UP coal movement originating in the Powder River Basin from January 1, 2000 to the present, please identify: (i) the specific PRB coal origin; (ii) the destination; (iii) the rate applicable to such transportation for each calendar quarter; and (iv) the contribution and/or profitability index calculated by UP for such transportation for each time period that such contribution and/or profitability index was calculated.

Request for Production No. 12:

Please produce any analyses, studies, or reports comparing the profitability of one or more UP coal movements to customers whose destinations are served by a single rail carrier to the profitability of one or more UP coal movements to customers whose destinations are served by more than one rail carrier.

Request for Production No. 13:

Please produce all documents identified in UP's Answers to Entergy's Interrogatories.

Respectfully submitted,

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Dated: March 17, 2008

Attorneys & Practitioners

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will be supplied upon payment of duplicating costs (including, in the case of computer tapes, costs for programming, tapes, and processing time).

2. Production of information or documents does not necessarily imply that they are relevant to or admissible in this proceeding and is not to be construed as waiving any objections stated herein.

3. In line with past practice in cases of this nature, UP has not secured verifications of the answers to interrogatories herein. UP is prepared to discuss this matter with Entergy if this is of concern with respect to any particular answer.

GENERAL OBJECTIONS

UP makes the following General Objections with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each request.

1. UP objects to the discovery requests insofar as they seek information or documents subject to the attorney-client privilege, work-product doctrine, joint defense privilege or any other applicable privilege or protection. Any production of privileged documents or information is inadvertent and should not be deemed as a waiver of any privilege.

2. UP objects to the discovery requests to the extent they purport to require UP to produce information or documents that are not within its possession, custody, or control.

3. UP objects to the production of documents that constitute or disclose confidential, proprietary, or sensitive nonpublic information. Subject to and without waiving this objection, UP will produce such information, if not otherwise objectionable, under the terms of an appropriate protective order. UP reserves the right to seek additional protection as needed.

4. UP objects to the discovery requests to the extent they would require UP to disclose proprietary internal costing information.

5. UP objects on the grounds of burden and relevance to producing documents or information from prior to January 2005 and to the extent that the requests seek information or documents "to the present." UP will only provide relevant, responsive, non-privileged information and documents covering the time period ending December 2007. Any production by UP of information or documents from earlier or later periods shall not be considered a waiver of this objection.

6. UP objects to production of documents prepared in connection with, or information relating to, possible settlement of this or any proceeding.

7. UP objects to the discovery requests to the extent that they call for the preparation of compilations, documents, summaries, analyses, or other special studies of any sort not already in existence, and UP by its responses does not, unless otherwise noted, undertake to prepare or produce any special studies. Any production by UP of information or documents in this category shall not be considered a waiver of this objection.

8. UP objects to the definition of "relating to," "related to," "in relation to," and "regarding" as unduly vague insofar as it encompasses information and documents that bear "indirectly" on the matter discussed.

9. UP objects to Instruction Nos. 3, 6, 7, 9, 12, and 13 as unduly burdensome and to the extent that these Instructions seek to impose obligations on UP beyond those in the Board's rules.

10. UP objects on the grounds of burden to the extent that discovery requests seek the production of "all documents" regarding an evidentiary point when the information

necessary for complainants' evidentiary submissions could be obtained through a request for documents "sufficient to show" that evidentiary point.

11. UP expressly reserves the right to supplement these responses.

12. UP hereby incorporates each and every General Objection in its specific objections and responses below.

INTERROGATORIES

Interrogatory No. 1:

Please provide a complete description of UP's service to Entergy's Independence Station, including, but not limited to, an identification of the route(s) used (in both the loaded and empty directions) and a description of all transportation-related activities at origins, destination, and all intermediate stations and other locations on the route(s) of movement.

UP Response:

UP objects to this interrogatory on the grounds that it is unduly burdensome, is vague, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP further objects to this interrogatory to the extent that it seeks information that is within the possession, custody, or control of M&NA.

Subject to and without waiving its objections, UP states that, under normal operating conditions, Entergy traffic moves over a route stretching roughly 1,300 miles, from Wyoming's Southern Powder River Basin coal fields, across Nebraska, through Kansas City, south to Wagoner, Oklahoma, then east to Arkansas to North Little Rock, and then north to Diaz, where the train is provided to M&NA for movement to Entergy's Independence Station. The return route is similar, except that empty trainsets travel via M&NA to reach Kansas City. UP will provide a map depicting the route used for Entergy traffic in response to Request for Production No. 13.

Interrogatory No. 2:

Please identify the basis for the statement in paragraph 18 of UP's Answer that UP was "prepared to allow BNSF to handle Entergy trains via interchange with M&NA on a temporary, detour basis," and please explain what is meant by "temporary, detour basis."

UP Response:

UP states that the basis for the statement in question was the fact that UP was prepared to allow BNSF to handle Entergy trains via interchange with M&NA on a temporary, detour basis. UP further states that "temporary, detour basis" meant that UP was not willing to relinquish its rights under its long-term transportation contract with Entergy. *See also* Reply Comments of Union Pacific Railroad Company, *Review of Rail Access & Competition Issues – Renewed Petition of the Western Coal Traffic League*, STB Ex Parte No. 575, Reply Verified Statement of F.M. "Rick" Gough, at 2 (Mar. 28, 2006).

Interrogatory No. 3:

Please identify the basis for the statement in paragraph 19 of UP's Answer that Entergy "currently has reliable transportation service and competitive pricing to its Independence Plant and White Bluff Station." In particular, please identify any competition UP faces for the transportation of Entergy's coal from the PRB to Independence.

UP Response:

UP objects to this interrogatory on the grounds that it is unduly burdensome and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP states that the basis for its statement that Entergy "currently has reliable transportation service" is, among other things, National Coal Transportation Association ("NCTA") data showing that Independence was above 100% of the NCTA demand target for loads in 2007 and is at 96% of the NCTA demand target through February 2008, the basis for its statement that Entergy has "competitive pricing to its

Independence and White Bluff Station” is the relationship between UP’s rate for transporting Southern PRB coal to Independence and UP’s rate for transporting Southern PRB coal to White Bluff; and that it faces product and geographic competition for transportation of Entergy’s coal from the Southern PRB to Independence, as well as the possibility of a rail build-in, as reflected in Entergy’s recent filing in STB Finance Docket No. 35122.

Interrogatory No. 4:

Please identify the basis for the denial in paragraph 21 of UP’s Answer that “M&NA could use its trackage rights between Pleasant Hill and Kansas City, Missouri, to interchange traffic with BNSF in Kansas City.”

UP Response:

UP states that the basis for its denial is the terms of the applicable trackage rights agreement. See also UP’s Response to Request for Production No. 2.

Interrogatory No. 5:

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

UP Response:

See UP’s Response to Request For Production No. 1.

Interrogatory No. 6:

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

UP Response:

M&NA has never paid any rent to UP under the UP/M&NA Lease.

Interrogatory No. 7:

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.

UP Response:

UP objects to this interrogatory on the grounds that it is vague, is overbroad, and seeks information that neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP states that it is willing to address specific requests by Entergy with respect to particular discovery 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.

UP Response:

UP will produce responsive documents after an appropriate protective order has been entered in this proceeding.

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.

UP Response:

UP objects to this request on the grounds that it is unduly burdensome, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP will produce copies of all agreements other than the M&NA Lease granting M&NA trackage rights or haulage rights over UP's lines, including all amendments and supplements thereto, to the extent reasonably available, after an appropriate protective order has been entered in this proceeding.

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.

UP Response:

UP objects to this request on the grounds that Entergy can obtain the documents from the public files of the Surface Transportation Board.

Request for Production No. 4:

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.

UP Response:

UP objects to this request on the grounds that it unduly burdensome, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. UP further objects to this request on the grounds that it is more appropriately directed at M&NA.

Request for Production No. 5:

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.

UP Response:

UP objects to this request on the grounds that it is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving its objections, UP will produce responsive documents, to the extent reasonably available, after an appropriate protective order has been entered in this proceeding.

Request for Production No. 6:

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.

UP Response:

UP objects to this request on the grounds that it is unduly burdensome, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Subject to and without waiving its objections, UP directs Entergy to UP's Response to Request For Production No. 1.

Request for Production No. 7:

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.

UP Response:

UP objects to this request on the grounds that is overbroad and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks information about payments other than rental payments under the UP/M&NA Lease.

Subject to and without waiving its objections, UP directs Entergy to UP's Response to Interrogatory No. 6 and UP's Response to Request For Production No 1.

Request for Production No. 8:

For each valuation section on M&NA's system covered by the UP/M&NA Lease, please provide the following information as of December 31, 1992 in a computer-readable format to the extent available, and specify, for each subpart, whether the accounting methodology is on a depreciation accounting basis or on a betterment accounting basis:

- a. A description by milepost and station name of the properties encompassed by each valuation section;
- b. Gross values by ICC/STB property account included within the valuation section identified in response to (a) above;
- c. Annual and accumulated depreciation by ICC/STB property account for all properties included within each valuation section identified in response to (a) above;
- d. The annual total gross ton-miles of cars and contents and the annual total gross ton-miles of locomotives and cabooses for each year 1992 through the present for each valuation section identified in response to (a) above.

UP Response:

UP objects to this request on the grounds that it is unduly burdensome, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP further objects on the grounds that the request for information in sub-part d is more appropriately directed at M&NA.

Request for Production No. 9:

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 UP interchanged to or received from M&NA, 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 or tariff identification number.

UP Response:

UP objects to this request on the grounds that it is unduly burdensome, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Request for Production No. 10:

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. 9.

UP Response:

UP objects to this request on the grounds that it is unduly burdensome, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study.

Request for Production No. 11:

For each UP coal movement originating in the Powder River Basin from January 1, 2000 to the present, please identify: (i) the specific PRB coal origin; (ii) the destination; (iii) the rate applicable to such transportation for each calendar quarter; and (iv) the contribution and/or profitability index calculated by UP for such transportation for each time period that such contribution and/or profitability index was calculated.

UP Response:

UP objects to this request on the grounds that it is unduly burdensome, is overbroad, seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, and seeks information that would require a special study. UP

further objects on the grounds that information relating to UP's internal costing and profitability calculations is highly sensitive, proprietary, and irrelevant to these proceedings.

Request for Production No. 12:

Please produce any analyses, studies, or reports comparing the profitability of one or more UP coal movements to customers whose destinations are served by a single rail carrier to the profitability of one or more UP coal movements to customers whose destinations are served by more than one rail carrier.

UP Response:

UP objects to this request on the grounds that it is unduly burdensome, is vague, is overbroad, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Request for Production No. 13:

Please produce all documents identified in UP's Answers to Entergy's Interrogatories.

UP Response:

UP will produce responsive documents after an appropriate protective order has been entered in this proceeding.

Respectfully submitted,



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April 16, 2008

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 16th day of April, 2008, I caused a copy of Union Pacific's Objections and Responses to Entergy's First Set of Discovery Requests to be served electronically and by first class mail postage prepaid on counsel for Entergy Arkansas, Inc. and Entergy Services, Inc.



Michael L. Rosenthal