

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42104

222 324

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

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

RESPONSE OF MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.
TO COMPLAINTS' MOTION TO EXTEND PROCEDURAL SCHEDULE

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Dated: May 12, 2008

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TO COMPLAINANTS' MOTION TO EXTEND PROCEDURAL SCHEDULE**

Missouri & Northern Arkansas Railroad Company, Inc. ("M&NA") responds to the Motion to Extend Procedural Schedule (the "Motion") filed with the Surface Transportation Board (the "Board") on May 8, 2008 by Entergy Arkansas, Inc. ("EAI") and Entergy Services, Inc. ("ESI"), jointly referred to as Entergy. In the Motion, Entergy seeks not only a modification of the procedural schedule, but also to depose M&NA. M&NA does not oppose the extension sought by Entergy. However, M&NA moves the Board to quash the request for deposition as contrary to the Board's prior ruling in this proceeding concerning discovery to be provided by the Union Pacific Railroad Company ("UP")

M&NA has advised the Board that a possible result of this proceeding is the involuntary termination of the lease between UP and M&NA. Without the line that is leased from UP, the future viability of M&NA would be placed in issue. Certainly, Entergy would no longer receive service from M&NA if the lease terminated. Through the proposed deposition, Entergy is seeking to evade the Board's discovery rules and obtain M&NA's most sensitive data, without a showing of need.

THE EXTENSION REQUEST.

Throughout this proceeding, M&NA has attempted to honor the scheduling requests of Entergy and UP. M&NA does not oppose the extension sought by Entergy, except to the extent that Entergy seeks additional time to conduct depositions. M&NA opposes Entergy's request for an extension of time to conduct depositions as depositions are not required in this proceeding.

THE BOARD SHOULD QUASH THE DEPOSITION SOUGHT BY ENTERGY.

Entergy is seeking to depose M&NA concerning financial statements that M&NA supplied to Entergy in response to Request for Production No. 6. Entergy asked M&NA to "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."

In response, M&NA objected to Request for Production No. 6 on the grounds of relevancy and "the burden of providing reports and/or financial statements prepared during the period 1992 through the present." See Complainants' Motion to Compel the Missouri & Northern Arkansas Railroad Company, Inc.'s Production of Documents filed April 28, 2008 (the "Motion to Compel"), Exhibit 2 - Missouri & Northern Arkansas Railroad Company, Inc. Response to Complainants' First Set of Interrogatories and Requests for Production of

Documents dated April 16, 2008. Without waiving its objections, M&NA stated that it "is producing HIGHLY CONFIDENTIAL Unaudited Income Statements, Balance Sheets, and Capital Expenditures for the years ending December 31, 2000 through December 31, 2007." As can be seen in Exhibit 4 to the Motion, M&NA did produce the information that it stated it would produce. Entergy did not challenge M&NA's objection

The Motion to Compel did not seek data for the years 1992 through 1999. Now under the guise of a deposition, Entergy seeks production of information that it did not deem necessary to seek through the Motion to Compel. M&NA urges the Board to deny Entergy's attempt to evade the Motion to Compel process through the use of an after the fact deposition.

Entergy also seeks in the deposition "sufficient supporting detail and/or workpapers to understand the changes in income, expenses, and assets shown in the unaudited income statements, balance sheets, and summaries of capital expenditures provided." Entergy did not seek this information when it sought discovery. Nor did Entergy seek this additional information in the Motion to Compel. Anyone familiar with the railroad industry, as Entergy and its consultants are, knows that railroad income, expenses and assets are not static, particularly when dealing with a smaller Class III railroad. Minor fluctuations are not offset within a multi-billion dollar enterprise, nor are they dwarfed by the overall scope of financial reports. Indeed, a \$5 million change in UP's income, expenses, or assets would be so de minimus as to be of no regulatory concern. Unfortunately, M&NA does not have billions of dollars to offset fluctuations, so each appears substantial and is to M&NA, but would not be to UP. If Entergy wanted this information, the appropriate time was to seek it in its initial discovery. Instead, Entergy now seeks support for these changes from M&NA through deposition.

First, Entergy has waived its right to seek this information. Second, Entergy has not provided any justification for seeking information concerning the changes in revenue, expenses or assets. Third, the variance of the income, costs and assets is shown on the documents provided to Entergy and speak for themselves.

M&NA has attempted to cooperate with Entergy throughout this proceeding. However, in seeking to circumvent the Board's discovery rules and obtain the most sensitive details of M&NA's operations, Entergy goes too far, and M&NA respectfully requests the Board to quash the depositions requested by Entergy.

Respectfully submitted,

/s/ Louis E. Gitomer

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ARKANSAS RAILROAD COMPANY, INC.

Dated: May 12, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon counsel for Entergy Arkansas, Inc., Entergy Services, Inc., and Union Pacific Railroad Company electronically.

/s/ Louis E. Gitomer
Louis E. Gitomer
May 12, 2008