228295

228297

228298

THOMPSON HINE

ATLANTA CLEVELAND DAYTON WASHINGTON, D.C.
CINCINNATI COLUMBUS NEW YORK

November 22, 2010

Via hand delivery

FILED
NOV 22 2010
SURFACE TRANSPORTATION BOARD

NOV 22 2010
RECEIVED

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: ~~Finance~~ Docket No. ~~35443~~ 42126, *Union Electric Company v. Union Pacific Railroad Company;* Finance Docket No. 33508, *Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company;* Finance Docket No. 33537, *GRC Holdings Corporation – Acquisition Exemption – Lines of Union Pacific Railroad Company*

Dear Ms. Brown:

Enclosed for filing in the above-captioned dockets are the original and ten (10) copies of each the *Highly Confidential and Public Versions* of the Verified Complaint or, in the Alternative, Petition to Revoke in Part filed on behalf of Ameren Missouri and Missouri Central Railroad Company. Please note Exhibit A and B contain color maps. Also enclosed is a check in the amount of $20,600.00 to cover the filing fee. In addition, there are 3 CDs of each the *Highly Confidential and Public Versions* of this filing.

Please acknowledge receipt of this material by date stamping the enclosed copy of this filing and returning it to the undersigned via our messenger.

Please do not hesitate to contact the undersigned if you have any questions.

Yours very truly,

Sandra L. Brown

Sandra L. Brown

ENTERED
Office of Proceedings
NOV 22 2010
Part of
Public Record

enclosures

FEE RECEIVED
NOV 22 2010
SURFACE TRANSPORTATION BOARD

PUBLIC VERSION
Highly Confidential Material Redacted

NOV 22 2010
RECEIVED

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI and MISSOURI CENTRAL RAILROAD COMPANY, **Complainants,** **v.** **UNION PACIFIC RAILROAD COMPANY,** **Defendant.**	42126 **~~Finance~~ Docket No. ~~35443~~**
MISSOURI CENTRAL RAILROAD COMPANY – ACQUISITION AND OPERATION EXEMPTION – LINES OF UNION PACIFIC RAILROAD COMPANY	**Finance Docket No. 33508**
and	
GRC HOLDINGS CORPORATION – ACQUISITION EXEMPTION – LINES OF UNION PACIFIC RAILROAD COMPANY	**Finance Docket No. 33537**

VERIFIED COMPLAINT OR, IN THE ALTERNATIVE, PETITION TO REVOKE IN PART

James A. Sobule
Ameren Corporation
1901 Chouteau Avenue
St. Louis, MO 63103
314.554.2276
314.554.4014 (fax)

ENTERED
Office of Proceedings
NOV 22 2010
Part of
Public Record

Sandra L. Brown
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202.263.4101
202.331.8330 (fax)

Attorneys for Ameren Missouri and Missouri Central Railroad Company

FEE RECEIVED
NOV 22 2010
SURFACE
TRANSPORTATION BOARD

November 22, 2010

FILED
NOV 22 2010
SURFACE
TRANSPORTATION BOARD

PUBLIC VERSION
Highly Confidential Material Redacted

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNION ELECTRIC COMPANY D/B/A AMEREN MISSOURI and MISSOURI CENTRAL RAILROAD COMPANY, **Complainants,** **v.** **UNION PACIFIC RAILROAD COMPANY,** **Defendant.**	42126 **~~Finance~~ Docket No. ~~35443~~**
MISSOURI CENTRAL RAILROAD COMPANY – ACQUISITION AND OPERATION EXEMPTION – LINES OF UNION PACIFIC RAILROAD COMPANY	**Finance Docket No. 33508**
and	
GRC HOLDINGS CORPORATION – ACQUISITION EXEMPTION – LINES OF UNION PACIFIC RAILROAD COMPANY	**Finance Docket No. 33537**

VERIFIED COMPLAINT OR, IN THE ALTERNATIVE, PETITION TO REVOKE IN PART[1]

Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri") and the Missouri Central Railroad Company ("MCRR") respectfully file this Complaint pursuant to 49 USC §§ 10502, 11101, 11701, 10101, relevant Surface Transportation Board ("Board" or "STB") precedent, and other authority, seeking an order from the Board that certain provisions in a Line Sale Contract and the incorporated Trackage Rights Agreement are unlawful and cannot be enforced.

[1] Material in double brackets [[ ]] is Highly Confidential and redacted from the Public Version.

As demonstrated herein, the offending provisions operate to completely prohibit MCRR, a Board-authorized common carrier, from providing rail transportation to Ameren Missouri's Labadie electric generating station ("Labadie") despite the fact that MCRR's tracks directly connect to Labadie and coal service was provided via the rail line prior to MCRR's purchase of the rail line. In violation of 49 USC § 11101, these provisions contravene both MCRR's obligation to provide rail service to Labadie and also Ameren Missouri's right to receive such rail service from MCRR.

In the alternative, Ameren Missouri and MCRR request under 49 USC § 10502 that the Board revoke, in part, the exemption previously applicable to the sale of the relevant rail line and the related trackage rights that facilitate MCRR's operation. *Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*, STB Docket No. 33508, and *GRC Holdings Corporation – Acquisition Exemption – Union Pacific Railroad Company*, STB Docket No. 33537. In particular, Ameren Missouri and MCRR respectfully request that the Board revoke the exemptions and void the unlawful provisions of the sale and trackage rights agreements to the extent that the agreements include provisions preventing MCRR from serving Labadie.

Finally, there is ample evidence that the Board should declare the paper barrier provisions of the MCRR sale void as anticompetitive provisions in violation of the national Rail Transportation Policy ("RTP").

IDENTITY OF THE PARTIES

1. Complainant Ameren Missouri is a subsidiary of the Ameren Corporation, a public utility holding company that provides electricity to approximately 2.4 million customers in Missouri and Illinois.

2. Ameren Missouri is Missouri's largest utility, providing electricity to approximately 1.2 million customers in central and eastern Missouri. Ameren Missouri is incorporated in Missouri and has its principal place of business located at 1901 Chouteau Avenue, St. Louis, MO 63103. Ameren Missouri owns and operates the coal-fired Labadie electric generating station in Franklin County, MO.

3. The Labadie plant began operations in 1970, has a capacity of 2,405 megawatts, and has historically had access to more than one railroad. Labadie is Ameren Missouri's largest power plant and burns in excess of 10 million tons of coal annually. Currently Labadie's coal comes from the Powder River Basin ("PRB") of Wyoming but because of large rail rate increases imposed by PRB rail carriers in recent years and pending installation of scrubbers, it is possible that the plant will convert back to Illinois Basin coal in the future unless the current paper barrier is permitted to remain in place and thereby prohibit the economic transportation of Illinois Basin coal to the Labadie plant.

4. Complainant MCRR is a common carrier by rail that owns the former Rock Island line across Missouri between milepost 19.0 at Vigus, MO in the east to milepost 263.5 at Pleasant Hill, MO in the west. See Map at Exhibit A of the Complaint. MCRR is incorporated in the state of Delaware and has a principal place of business located at 1901 Chouteau Avenue, St. Louis, MO 63103.

5. MCRR is wholly owned by Ameren Development Company, a subsidiary of Ameren Corporation.

6. MCRR purchased the majority of the former Rock Island line in a transaction where GRC Holdings Corporation ("GRC") bought the line from the Union Pacific Railroad ("UP") and then immediately conveyed it to MCRR. *See generally Missouri Central Railroad Company*

– *Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*, STB Docket No. 33508, and *GRC Holdings Corporation – Acquisition Exemption – Union Pacific Railroad Company*, STB Docket No. 33537, slip op. at 1 (served Sept. 14, 1999) (hereinafter "*Acquisition Decision in Dockets 33508 and 33537*").

7. Rail operations on the MCRR are currently provided by the Central Midland Railway pursuant to a lease with MCRR. See paragraph 45.

8. The terms of the Line Sale Contract negotiated by GRC included UP retaining control over the end segments of the line. Thus, UP would grant MCRR trackage rights on the St. Louis side between Vigus, MO and Rock Island Junction, MO (milepost 10.3), where connection with the Terminal Railroad Association ("TRRA") of St. Louis is possible. Additionally, the terms of the sale included giving MCRR trackage rights on UP between Pleasant Hill, MO and Leeds Junction, MO (milepost 288.3), where connection with the Kansas City Terminal Railway ("KCTR") is possible.[2] See Exhibit A of the Complaint.

9. Defendant Union Pacific Railroad Company is the nation's largest railroad, is incorporated in the state of Delaware, and has its principal place of business located at 1400 Douglas Street, Omaha, NE 68179. UP provides rail transportation subject to federal law and the jurisdiction of the Board.

[2] MCRR and Central Midland Railway Company have filed to abandon and discontinue service on 5.6 miles of MCRR (approximately 25 miles from the connection to KCTR) between mileposts 257.283 (near Wingate) and 262.906 (near Pleasant Hill). See STB Docket No. AB-1068X, *Missouri Central Railroad Company –Abandonment and Discontinuance Exemption – in Cass County, Missouri* and STB Docket No. AB-1070X, *Central Midland Railway Company – Discontinuance of Service and Operating Rights Exemption – in Cass County, Missouri*. In light of this development, Ameren Missouri and MCRR are not specifically seeking relief on the Kansas City side at this time; however, the legal basis is the same.

JURISDICTION OF THE SURFACE TRANSPORTATION BOARD

10. The Board has broad jurisdiction over railroad operations in the U.S. pursuant to 49 USC § 10501 and other statutory authority.

11. Pursuant to 49 USC § 11701, complaints about violations of federal railroad statutes are properly filed at the Board.

12. As part of its jurisdiction, the Board also has authority to review paper barriers.[3] *Review of Rail Access and Competition Issues – Renewed Petition of the Western Coal Traffic League*, Ex Parte 575 (served Oct. 30, 2007) ("*Review of Rail Access*").

13. The Board has authority to declare contractual terms, such as paper barriers, void if they conflict with common carrier operations. *Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH and Darlington, PA, in Mahoning and Columbiana Counties, OH and Beaver County, PA*, STB Docket No. AB-556 (Sub-No. 2X), slip op. at 3-4 (served Jan. 7, 2000).

HISTORY OF RAIL SERVICE TO LABADIE

14. When constructed in the early 1970's, Labadie was at the intersection of lines of the Missouri Pacific Railroad ("MP") and the Chicago, Rock Island, and Pacific Railroad ("Rock Island"). See Exhibit B of the Complaint (Map of rail lines Pre-MCRR sale). Both of these railroads have historically delivered coal to Labadie. UP purchased the MP line in 1984, and the Rock Island line was purchased by Southern Pacific Transportation Company ("SP") in 1980 through its subsidiary the St. Louis Southwestern Railway Company. *St. Louis Southwestern Railway Company – Purchase (Portion) – William M. Gibbons, Trustee of the Property of*

[3] The Board has favored use of the term "interchange commitment" in its discussions of paper barriers, but Ameren Missouri and MCRR assert that the phrase "paper barrier" more accurately describes the situation at Labadie due to the scope of the restriction, barring a railroad line that has actually served Labadie in the past from carrying coal to Labadie.

Chicago, Rock Island and Pacific Railroad Company, Debtor, ICC Docket No. 28799 (Sub-No. 1), 363 ICC 320 (1980).

15. SP also obtained the right to operate between Kansas City and St. Louis on the MP line as a result of the UP-MP merger. *Union Pacific Corporation, Pacific Rail System, Inc. and Union Pacific Railroad Company – Control – Missouri Pacific Corporation and Missouri Pacific Railroad Company*, ICC Docket No. 30,000, 366 ICC 459, 585-587 (1982).

16. Ameren Missouri invested in the former Rock Island line between St. Louis and Labadie, in the form of infrastructure improvements, to aid SP service to Labadie, including deliveries of coal. SP did, in fact, provide rail transportation of coal to Labadie on the former Rock Island line between 1990 and 1996. SP provided service to Labadie via SP's trackage rights on the MP line from Kansas City to St. Louis, and then from St. Louis to Labadie on the SP's former Rock Island line now owned by MCRR.

17. SP filed for abandonment of a large portion of the former Rock Island line in 1993. *The St. Louis Southwestern Railway Company – Abandonment Exemption – in Gasconade, Maries, Osage, Miller, Cole, Morgan, Benton, Pettis, Henry, Johnson, Cass, and Jackson Counties, MO*, ICC Docket No. AB-39 (Sub-No. 18X) (published in Federal Register on Nov. 8, 1993 at 58 FR 59278). However, the abandonment proceeding did not include the track between Labadie and St. Louis. This abandonment proceeding was dismissed in 2000; therefore the abandonment did not occur.[4]

[4] Local shippers and others were concerned about possible abandonment of the whole line and a complaint was filed in an effort to restore the line. The complaint of the Save the Rock Island Committee and the abandonment were dismissed with prejudice in the same decision after MCRR purchased the line. See the combined decision of *The St. Louis Southwestern Railway Company – Abandonment Exemption – in Gasconade, Maries, Osage, Miller, Cole, Morgan, Benton, Pettis, Henry, Johnson, Cass, and Jackson Counties, MO*, ICC Docket No. AB-39 (Sub-

18. After UP and SP announced their plan to merge in 1995, a Settlement Agreement was announced between UP and the BNSF Railway Company ("BNSF") whereby shippers that had previously been served by both UP and SP were assured in the Settlement Agreement that BNSF would be given trackage rights over the newly-merged UP to maintain the pre-merger competition. *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corporation, and The Denver and Rio Grande Western Railroad Company*, STB Docket No. 32760 (decision no. 44), 1 STB 233, 247 (n. 15) and 252-254 (1996) ("*UP-SP Merger*").

19. The Settlement Agreement was imposed by the Board as a condition of the merger. *Id.*

20. Ameren Missouri later sought confirmation from the Board that the Settlement Agreement applied to Labadie, and the Board did, in fact, confirm such applicability but the Board found that the "contract modification" condition did not apply to Labadie. *UP-SP Merger*, STB Docket No. 32760 (Decision No. 89), 4 STB 879, 881 and 885 (2000).

21. For the last several years, UP has provided rail transportation for coal deliveries to Labadie in single-line service from the PRB pursuant to a contract with Ameren Missouri. The contract will expire at the end of [[ ]].

THE SALE OF THE FORMER ROCK ISLAND RAIL LINE

22. While UP explored selling the line prior to the completion of the merger with SP, UP signed a Line Sale Contract after the merger, on November 3, 1997, to sell the former Rock Island rail line between St. Louis and Kansas City to GRC, with GRC to immediately transfer the

---

No. 18X) and *Save the Rock Island Committee, Inc. v. The St. Louis Southwestern Railway Company*, STB Docket Nos. 41195 and 41195 (Sub-No. 1) (decision served June 20, 2000).

line to MCRR. Specifically, the transaction included a sale of the line between milepost 19.0 at Vigus, MO in the east to milepost 263.5 at Pleasant Hill, MO in the west, trackage rights on UP between Vigus, MO and milepost 10.3 at Rock Island Junction, MO (for connection to the TRRA), and trackage rights for MCRR on UP between Pleasant Hill, MO and milepost 288.3 at Leeds Junction, MO (for connection to the KCTR). See Exhibit C of the Complaint, Line Sale Contract Recitals (page 1).

23. The Line Sale Contract included a term preventing GRC or any railroad from using the line to transport coal to Labadie.[5] Additionally, the terms of the Trackage Rights Agreement, which were included in the Line Sale Contract, contained a similar restriction on using the trackage rights track for service to Labadie.[6]

24. The Line Sale Contract included terms of Interchange Agreements that would govern interchange between UP and MCRR at the western and eastern ends of the former Rock Island line.[7]

25. Closing on the transaction was to occur November 10, 1997.[8] On December 24, 1997, GRC filed a notice of exemption to acquire the former Rock Island rail line from UP between milepost 19.0 at Vigus, MO and milepost 263.5 at Pleasant Hill, MO. *GRC Holdings*

---

[5] See paragraphs 33-35 for a description of the paper barrier provisions.

[6] See Exhibit C of the Complaint, section 2(b)(3) of the Line Sale Contract [[

]] The Trackage Rights Agreement is found at Exhibit G of the Line Sale Contract, and was later signed by UP and MCRR. See Exhibit D of the Complaint.

[7] See Exhibit C of the Complaint, Exhibits F-1 and F-2 of the Line Sale Contract and Exhibit D of the Complaint.

[8] See Exhibit C of the Complaint, section 2 of Line Sale Contract.

Corporation – Acquisition Exemption – Union Pacific Railroad Company, STB Docket No. 33537.

26. MCRR filed a notice of exemption on December 23, 1997 to acquire the rail assets of GRC, to operate the rail line, and to acquire trackage rights directly from UP between Vigus, MO and Rock Island Junction, MO, and between Pleasant Hill, MO and Leeds Junction, MO. *Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*, STB Docket No. 33508.

27. Closing on the involved transactions was delayed because MCRR could not obtain the financing needed to meet UP's price. The delay was so protracted and, at times, acrimonious that UP issued a press release in February 1999, announcing the collapse of the long-planned sale of the rail line to GRC. *Acquisition Decision in Dockets 33508 and 33537*, slip op. at 3 (served Sept. 14, 1999).

28. Ameren Missouri was aware of the pending sale of the former Rock Island rail line, partly because Ameren Missouri was concerned that UP might revive SP's plan to abandon most or all of the line (which was still pending at the time). The rail line travels through Ameren Missouri customer service territory and Ameren Missouri was concerned about the effect on economic development of any potential loss of rail service to the area. In particular, Ameren Missouri wanted to ensure that existing and future businesses continued to have the option of rail service on the line, and Ameren Missouri wanted to preserve competitive rail access to its largest coal plant, Labadie.

29. During 1999, it increasingly became clear that the MCRR was unable to raise the necessary funds to complete the purchase. As the danger of an abandonment of the line loomed,

GRC and MCRR approached Ameren Missouri to ask for financial assistance in funding the acquisition.

30. In light of the precarious position of GRC and MCRR combined with the fact that Ameren Missouri's 2-to-1 status under the UP-SP Settlement Agreement was still uncertain at the time, Ameren Missouri stepped in at the last minute to provide financing to MCRR so that the transaction could move forward and the line could be saved in one piece. Upon closing, GRC sold a majority interest to an affiliate of Ameren Missouri. *Ameren Corporation – Control Exemption – Missouri Central Railroad Company*, STB Docket No. 33805 (served Oct. 22, 1999).[9]

31. Ameren Missouri had no role in negotiating or determining the final contents of the Line Sale Contract, the Trackage Rights Agreement, or the related Interchange Agreements because the deal terms had been reached long before Ameren Missouri was approached by GRC and MCRR. Although Ameren Missouri knew of the restrictions prohibiting service to Labadie in the Line Sale Agreement, Ameren Missouri believed that UP would refuse to sell the line to Ameren Missouri and would back out of the Line Sale Contract with GRC if Ameren Missouri were to step in and demand changes to the anticompetitive Labadie restrictions contained in the Line Sale Contract. This could have forced the line into a protracted legal battle, during a time of extreme uncertainty regarding the legality of paper barriers, and at least part of the line would have been lost under the pending abandonment proceeding. In light of these circumstances, Ameren Missouri believed that the only course of action available was to finance the purchase of the line under GRC's terms and subsequently challenge the illegal and anticompetitive restriction on MCRR's common carrier obligation at a later date.

---

[9] As stated in paragraph 5, MCRR is wholly owned by Ameren Development Company because GRC sold its minority interest in MCRR in 2001.

THE PROHIBITION ON RAIL SERVICE TO LABADIE

32. The Line Sale Contract, which includes terms of a Trackage Rights Agreement, creates a paper barrier that prevents MCRR from serving Labadie despite the fact that MCRR's tracks directly connect to Labadie and the line had been used to deliver coal to Labadie prior to the date of the Line Sale Contract.

33. Section 3(a) of the Line Sale Contract creates an absolute ban on rail service to the Labadie facility by MCRR. [[

]] See Exhibit C of the Complaint (Line Sale Contract).

34. Section 3(iv) of the Trackage Rights Agreement, attached at Exhibit G to the Line Sale Contract, creates an absolute ban on rail service to the Labadie facility by MCRR. [[

]] See Exhibits C and D of the Complaint.

35. Section 1.8 of the General Conditions (Exhibit B) of the Trackage Rights Agreement attached at Exhibit G to the Line Sale Contract, creates an absolute ban on rail service to the Labadie facility by MCRR. [[

]] See Exhibits C and D of the Complaint.

36. The Line Sale Contract, in conjunction with the incorporated Trackage Rights Agreement, creates a paper barrier that permanently bars MCRR from providing rail service to Labadie despite the fact that MCRR's tracks directly reach Labadie.

37. The Trackage Rights Agreement has a term of [[ ]] . Section 8.1 of the General Conditions (Exhibit D of the Complaint) of the Trackage Rights Agreement, attached at Exhibit G to the Line Sale Contract.

38. The Trackage Rights Agreement gives MCRR virtually permanent overhead rights to operate between Vigus and Rock Island Junction, and between Pleasant Hill and Leeds Junction in Missouri.

39.]] Section 8.1 of the General Conditions (Exhibit D of the Complaint) of the Trackage Rights Agreement, attached at Exhibit G to the Line Sale Contract. [[

]] Section 10 of the General Conditions (Exhibit D of the Complaint) of the Trackage Rights Agreement, attached at Exhibit G to the Line Sale Contract

40. [[

]] Section 7.3 of the General Conditions (Exhibit D of the Complaint) of the Trackage Rights Agreement, attached at Exhibit G to the Line Sale Contract.

41. The restrictive terms of the Trackage Rights Agreement necessitate a finding by the Board that the paper barrier provisions contained within it are unlawful, void, and cannot be enforced.

42. The circumstances surrounding the creation of the Trackage Rights Agreement necessitate a finding by the Board that the paper barrier provisions are unlawful, void, and cannot be enforced.

43. The paper barrier restrictions in both the Line Sale Contract and the Trackage Rights Agreement must be found void because they are materially the same, they work in tandem, and the Trackage Rights Agreement is incorporated in the Line Sale Contract.

44. The paper barrier provisions of both the Line Sale Contract and the Trackage Rights Agreement must be found void because voiding only the paper barrier provisions in the Line Sale Contract, without voiding the similar offending provisions in the Exhibit G Trackage Rights Agreement, would eviscerate the relief afforded to Ameren Missouri and MCRR, as well as allow UP to maintain absolute control over MCRR service to Labadie.

CURRENT RAIL OPERATIONS ON THE MCRR

45. Current rail operations on the MCRR are provided by Central Midland Railway Company pursuant to a lease with MCRR. *Central Midland Railway Company – Operation Exemption – Lines of Missouri Central Railroad Company*, Docket 33988 (served Jan. 29, 2001); *Central Midland Railway Company – Lease and Operation Exemption – Missouri Central Railroad Company*, STB Docket No. 34363 (served Feb. 11, 2004). Central Midland is now owned by Progressive Rail Incorporated. *Progressive Rail Inc. – Acquisition of Control Exemption – Central Midland Railway Company*, STB Docket No. 35051 (served July 5, 2007).

46. Pursuant to the terms of the lease between MCRR and Central Midland, MCRR retains the right to [[

]]

THE LABADIE PAPER BARRIER DOES NOT IMPLICATE 49 USC § 10705

47. While the Board is handling another paper barrier complaint under 49 USC § 10705, the Labadie paper barrier is significantly different from the interchange commitment in the ongoing case, as shown in the chart below:

Factor	Labadie	Pending Case
tracks of two separate railroads reach shipper	yes	no
direct service by two railroads prior to the transaction	yes	no
interchange routes existed prior to the transaction	yes	no
shortline railroad supports removal of paper barrier	yes	no
type of paper barrier	sale, with incorporated trackage rights agreement	lease
absolute prohibition on rail service requested by shipper	yes	no
paper barrier is specifically directed at one commodity	yes	no
paper barrier is specifically directed at one shipper	yes	no
paper barrier term unlimited in duration	yes	no

48. Unlike the restriction in the pending case, the Labadie paper barrier functions as an agreement between two direct competitors to divide a market, with one of those competitors claiming the entire market in perpetuity. See also footnote 10.

49. The Labadie paper barrier does not implicate 49 USC § 10705 or the need for the Board to prescribe a new through route because those railroad rights existed prior to the sale.[10]

50. The Labadie paper barrier is a not a situation where there is a bottleneck carrier that refuses or is limited in its ability to interchange with a second carrier.

[10] If for some reason the Board does believe 49 USC § 10705 is implicated, the burden of proof should be on UP to justify its actions which in effect cancelled all through routes involving MCRR providing any service to Labadie on the former SP line. *Intramodal Rail Competition*, Ex Parte No. 445 (Sub-No. 1), 1 ICC2d 822, 830 (n. 9) (1985).

51. A physically separate route already exists via the former Rock Island line, and was used in the past by SP for coal deliveries to Labadie. The Labadie paper barrier completely bars MCRR from serving Labadie on these tracks which connect to Labadie.

52. In addition, SP in the past moved Illinois Basin coal to Labadie which neither UP nor BNSF have incentive or desire to move to Labadie today. See also paragraph 57.

53. Restoring SP's rights to interchange coal at St. Louis for delivering to Labadie will return status quo ante the sale and UP/SP merger for Ameren Missouri's coal source options.

54. Under these circumstances, the Board does not need to prescribe a through route; instead, the Board should declare that the status quo ante the sale should apply.

55. Different handling of the complaints is proper since the Board said paper barrier complaints would be handled on a case-by-case basis and the differences between these cases are germane to the applicable statutory provisions.

NO ADDITIONAL COMPENSATION IS DUE

56. No additional compensation is due if the MCRR paper barrier is removed because the removal of the paper barrier will return status quo ante and UP will retain its ability to deliver coal in single-line service from the PRB on UP's parallel line to Labadie.

57. Allowing MCRR to transport coal to Labadie would not destroy UP's differential pricing capabilities because removing the paper barrier will return the competitive landscape to the status quo ante the sale and merger of UP/SP. As mentioned in paragraph 3 above, it is contemplated that Ameren Missouri will have the opportunity and the cost incentive to switch Labadie back to Illinois Basin coal when emission control equipment, including wet scrubbers, is installed in the near future. The exact timing of the installation of this equipment is unknown due to uncertainty created by the court vacating the Clean Air Interstate Rules ("CAIR") in 2008,

but installation is expected within the next five or six years. Based on the collective experience of the operating companies of Ameren Corporation at other plants with scrubbers installed, it is quite possible that coal from the Illinois Basin will be more competitively priced on a delivered basis than Powder River Basin coal. Recent extreme rail rate increases by the two western carriers experienced by PRB coal shippers [[ ]] have made other coal basins, such as the Illinois Basin, more attractive, especially to utilities in close proximity such as Ameren Missouri. However, allowing the illegal and anticompetitive paper barrier on MCRR to continue will effectively prevent Ameren Missouri from accessing the lower cost Illinois Basin coal. Of the existing two carriers serving Labadie over the UP tracks, BNSF has no access to mines in the Illinois Basin; therefore the UP has no incentive to quote competitive rates to counter its more lucrative PRB movements. MCRR has direct access to CSX, NS and CN through the TRRA in St. Louis and, therefore, could promote competitive Illinois Basin coal rates to Labadie, something neither western carrier has shown any inclination to do at other Ameren locations.

58. UP should be estopped from arguing that additional compensation is owed to UP for the sale of the MCRR because UP offered to give MCRR access to Labadie, [[ ]] when UP was forced to honor Labadie's 2-to-1 status. *UP-SP Merger*, STB Docket No. 32760 (Sub-No. 21), Decision No. 16, slip op. at 19 (served Dec. 15, 2000).

59. UP should be estopped from asserting that additional compensation is due because UP stated in the UP-SP Merger that it would not sell the MCRR line for less than the net liquidation value which sufficiently compensates a railroad for rail assets, especially one largely slated for abandonment like the MCRR had been at the time. In addition, it is believed that a

track appraisal made by GRC at the time of the sale combined with a land appraisal prepared by SP shortly before the sale showed that the price paid was in excess of the net liquidation value.

COUNT I – VIOLATION OF 49 USC § 11101

60. Ameren Missouri hereby incorporates paragraphs 1-59 as if repeated in their entirety.

61. Railroads have a common carrier obligation under 49 USC § 11101 to serve shippers on their rail lines.

62. The Labadie paper barrier unequivocally deprives the MCRR of its ability to respond to an Ameren Missouri reasonable request for coal rail service to Labadie.

63. The MCRR rail line serving Labadie has not been embargoed or abandoned, therefore there is no justification for any restriction on MCRR's right to serve Labadie.

64. Railroads are not permitted to set contract terms that eliminate shippers' rights, such as the right to receive common carrier rail service.

65. The contractual terms of the MCRR sale and incorporated trackage rights agreement are void because they prevent a railroad from meeting its common carrier obligation.

66. The Labadie paper barrier is unlawful because it is contrary to the public interest as it prevents MCRR from growing, developing, and better serving the communities along its route.

67. The Labadie paper barrier is contrary to the public interest because it violates the national rail transportation policy by prohibiting MCRR from serving Labadie, a shipper on the MCRR tracks, as described in Count III.

68. Voiding the MCRR paper barrier will have a negligible impact on UP's lawful operations.

69. MCRR movement of Labadie coal would not eliminate or reduce UP's ability to compete for the movement of PRB coal to Labadie. UP could still transport coal in single-line

service on its own tracks from the PRB to Labadie. In short, eliminating the paper barrier would not alter UP's opportunity to earn revenue.

70. The Labadie paper barrier is an unreasonable restriction because, among other things, it is specific to one shipper and there is no exception or way to avoid the restriction, and there is no time limitation on the restriction.

71. Voiding the Labadie paper barrier would not result in adding new competition but would restore status quo ante.[11]

72. The Labadie paper barrier is unwarranted under the circumstances.

73. The Labadie paper barrier is an unlawful restraint on MCRR's common carrier obligation and MCRR's ability to provide service to a shipper on its line.

COUNT II - PETITION TO REVOKE IN PART

74. Ameren Missouri and MCRR hereby incorporate paragraphs 1-73 as if repeated in their entirety.

75. Pursuant to 49 CFR § 1121.4(f), a petition to revoke an exemption for a transaction may be filed at any time.

---

[11] As the Board is aware, Labadie was served by both UP and SP prior to the UP-SP merger. After the merger was approved, Ameren Missouri had to petition to the Board to enforce its rights as a 2-to-1 shipper in the merger and the Board ordered that BNSF be given trackage rights to Labadie on UP. Ameren Missouri paid more than $3.2 million for rail infrastructure on BNSF's and UP's lines in the form of a crossover that UP required for BNSF's access ordered under UP/SP Merger Decision No. 89. However, those trackage rights are not providing the full benefit of competition to Labadie that existed prior to the sale and merger. Ameren Missouri now believes that the only solution is to eliminate the paper barrier, restore MCRR with the same rights that SP would have had with respect to the line prior to the UP/SP merger and MCRR sale. Nevertheless, BNSF's current access via trackage rights for PRB coal should be maintained since Ameren Missouri has already paid to establish that access both through the separate legal proceeding required to obtain Decision No. 89 and the $3.2 million Ameren Missouri paid for rail infrastructure improvements on BNSF and UP. Moreover, the Board imposed the UP-BNSF Settlement Agreement as a condition of the merger. See paragraphs 18-19.

76. Under 49 USC § 10502(d), "[t]he Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title."

77. As described in Count III, the Labadie paper barrier violates the transportation policy of 49 USC § 10101. Therefore, partial revocation is warranted of the exemptions in *Missouri Central Railroad Company – Acquisition and Operation Exemption – Lines of Union Pacific Railroad Company*, STB Docket No. 33508, and *GRC Holdings Corporation – Acquisition Exemption – Union Pacific Railroad Company*, STB Docket No. 33537 (served Sept. 14, 1999).

78. Revocation of the Labadie paper barrier is warranted because the Labadie paper barrier is contrary to the public interest, contrary to the national rail transportation policy, and violates antitrust law principles.

79. The Board should revoke the exemptions of the transactions in Dockets 33508 and 33537 to the extent that those exemptions cover the paper barrier provisions of the Line Sale Contract and the included Trackage Rights Agreement as described in paragraphs 32-44.

80. The exemptions for the paper barrier provisions of both the Line Sale Contract and the Trackage Rights Agreement must be revoked because the Line Sale Contract included terms of the Trackage Rights Agreement and because the restrictions in both are materially the same.

81. The exemptions for the paper barrier provisions of both the Line Sale Contract and the Trackage Rights Agreement must be revoked because voiding only the Line Sale Contract, without voiding the Exhibit G Trackage Rights Agreement, would eviscerate the relief afforded to Ameren Missouri and MCRR, as well as allow UP to maintain absolute control over MCRR service to Labadie.

82. The Line Sale Contract has a [[ ]] Therefore, the Board should remove the paper barrier [[ ]] See Exhibits C and D of the Complaint.

83. The Trackage Rights Agreement has a [[ ]] Therefore, the Board should remove the paper barrier [[ ]][12] See Exhibits C and D of the Complaint.

COUNT III – ANTI-COMPETITIVE CONDUCT IN VIOLATION OF 49 USC § 10101

84. Ameren Missouri and MCRR hereby incorporate paragraphs 1-83 as if repeated in their entirety.

85. The Board's statute provides policy goals as the RTP that establish the framework for regulatory oversight of the rail industry.

86. The STB is entrusted with the protection and promotion of competition in the rail industry.

87. The paper barrier violates numerous competition-related elements of the RTP of 49 USC § 10101 while fostering none of them.[13]

---

[12] Given the preexisting relationship between MCRR and Central Midland, MCRR may desire to [[ ]] Ameren Missouri and MCRR understand that Central Midland has a lease with UP for use of the UP track from Vigus (milepost 19.0) and Rock Island Junction (milepost 10.3). *Central Midland Railway Company – Lease and Operation Exemption - Union Pacific Railroad Company*, STB Docket No. 34308 (served Jan. 27, 2003). While MCRR's rights under the Trackage Rights Agreement mean that the Central Midland-UP lease should not be implicated by any of the service described above, Ameren Missouri and MCRR reserve the right to challenge any portions of the Central Midland-UP lease that may impede service to Labadie [[ ]]

[13] In addition to the direct competitive aspects of the RTP, the Labadie paper barrier also violates additional elements of the RTP including: the Labadie paper barrier prevents MCRR from

88. The Labadie paper barrier violates RTP part (1) "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail."

89. The Labadie paper barrier discriminates against Labadie compared to other shippers who are able to use the railroads that directly connect to them, violating RTP (12).

90. The Labadie paper barrier further violates RTP (12) because it represents an "undue concentration of market power" over Labadie coal service by prohibiting MCRR from participating in such coal service.

91. The MCRR and UP are direct competitors because both have the physical ability to deliver coal to Labadie on separate rail lines, yet the paper barrier prevents MCRR from providing delivery service.

92. The MCRR paper barrier is an agreement that unreasonably restrains trade between competitors.

93. The Labadie paper barrier is an unlawful market allocation agreement between direct competitors.

94. The Labadie paper barrier agreement eliminates the potential for competition between direct competitors – the type of arrangement that is of utmost concern because of its adverse effect on competition. *Review of Rail Access,* slip op. at 10.

---

earning "adequate revenues," thereby thwarting a "safe and efficient rail transportation system" and violating RTP (3); the Labadie paper barrier also prevents the "development...of a sound transportation system...to meet the needs of the public" by preventing MCRR from having the opportunity to carry coal to Labadie, thereby violating RTP (4); and the Labadie paper barrier is not a "sound economic condition" because it prevents MCRR from serving a customer directly on MCRR's tracks, violating RTP (5).

95. As a matter of law, the MCRR paper barrier should be deemed to be an unreasonable restriction on competition because, among other things, it is specific to one shipper and there is no exception or way to avoid the restriction, and there is no time limitation on the restriction.

PRAYER FOR RELIEF

For all the foregoing reasons, and as described herein, Ameren Missouri and MCRR respectfully request that the Board void all restrictions that prevent MCRR from providing unfettered rail freight service to Labadie. In particular, Ameren Missouri and MCRR pray for relief as follows:

(1) The Board should find that the paper barrier provisions of the Line Sale Contract, including Section 3(a), are unlawful because they prohibit MCRR from fulfilling its common carrier obligation under 49 USC § 11101 to serve Labadie, a shipper on the MCRR tracks;

(2) The Board should find that the paper barrier provisions of the Trackage Rights Agreement, including Section 3(iv) and Section 1.8 of Exhibit B - General Conditions, are unlawful because they prohibit MCRR from fulfilling its common carrier obligation under 49 USC § 11101 to serve Labadie, a shipper on the MCRR tracks;

(3) The Board should use its authority under 49 USC § 10502 to partially revoke the exemption granted in STB Finance Docket No. 33508 to the extent that the exemption covers the paper barrier provisions of the Line Sale Contract and the included Trackage Rights Agreement as described herein;

(4) The Board should use its authority under 49 USC § 10502 to partially revoke the exemption granted in STB Finance Docket No. 33537 to the extent that the exemption

covers the paper barrier provisions of the Line Sale Contract and the included Trackage Rights Agreement as described herein;

(5) The Board should find that the paper barrier provisions of the Line Sale Contract, including Section 3(a), are unlawful because they are anti-competitive and violate the RTP;

(6) The Board should find that the paper barrier provisions of the Trackage Rights Agreement, including Section 3(iv) and Section 1.8 of Exhibit B - General Conditions, are unlawful because they are anti-competitive and violate the RTP;

(7) The Board should order all relief necessary to allow MCRR to use its track and its rights under the Trackage Rights Agreement to serve Labadie;

(8) The Board should order that MCRR can effectively step into the shoes of the former SP service to Labadie, with all rights of access to the Terminal Railroad Association of St. Louis and all rights under any agreements addressing rail operations in the St. Louis area; and

(9) The Board should order all other relief that the Board may deem just and proper.

Respectfully submitted,

Sandra L. Brown
David E. Benz
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, DC 20036
202.263.4101
202.331.8330 (fax)

James A. Sobule
Ameren Corporation
1901 Chouteau Avenue
St. Louis, MO 63103
314.554.2276
314.554.4014 (fax)

Attorneys for Ameren Missouri and Missouri Central Railroad Company

November 22, 2010

VERIFICATION

I Robert K. Neff, pursuant to 49 CFR § 1104.5 verify under penalty of perjury that the foregoing is true and correct based upon my information and belief. Further I certify that I am qualified and authorized to file this Complaint.

Executed on 10/27/10.

Robert K Neff

Robert K. Neff
President
Missouri Central Railroad Company

VERIFICATION

I WARNER BAXTER, pursuant to 49 CFR § 1104.5 verify under penalty of perjury that the foregoing is true and correct based upon my information and belief. Further I certify that I am qualified and authorized to file this Complaint.

Executed on 10/27/16.

Warner L. Baxter
President and CEO
Union Electric Company d/b/a Ameren Missouri

PUBLIC VERSION
Highly Confidential Material Redacted

CERTIFICATE OF SERVICE

I certify that on November 22, 2010, I served the following parties below as follows:

a copy of the Public and Highly Confidential Complaint via Facsimile and Express Overnight delivery to (except that Exhibit C & D of the Complaint are included only in the Express Overnight delivery):

Michael Hemmer
Senior Vice President Law and General Counsel
Union Pacific Railroad Company
Stop 1580
1400 Douglas Street
Omaha, NE 68179

facsimile number (402) 271-6408

a copy of the Public Complaint via Express Overnight delivery to:

Lon Van Gemert
Chief Executive Officer
Central Midland Railway
c/o Progressive Rail Incorporated
21778 Highview Avenue
Lakeville, MN 55044

Roger Nober
Executive Vice President Law & Secretary
BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, TX 76131-2830

David E. Benz

EXHIBIT A

Map Showing Railroad Connections to Labadie Plant
(Not to Scale)

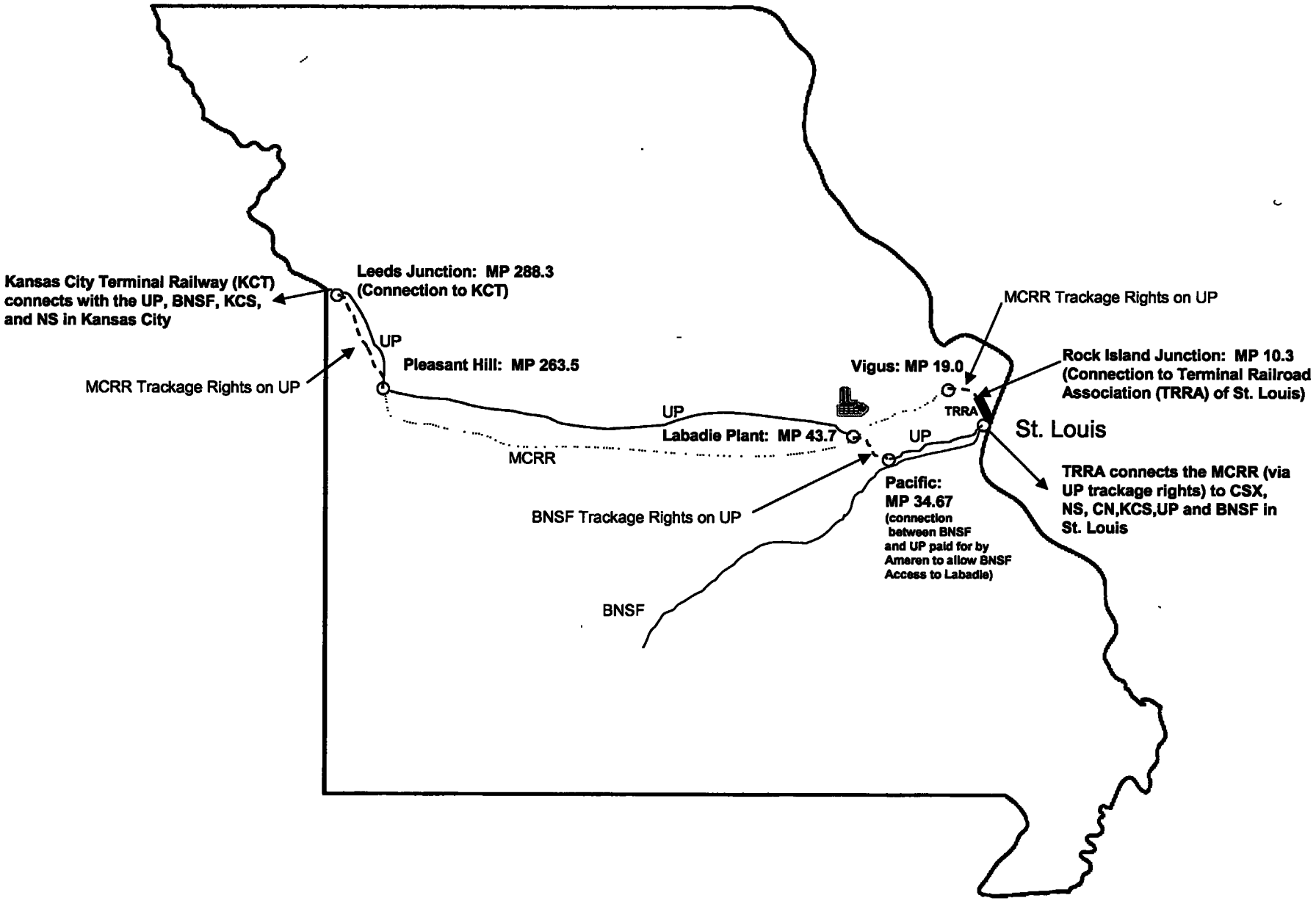

EXHIBIT B

Map Showing Railroad Connections to Labadie Plant – pre MCRR Sale
(Not to Scale)

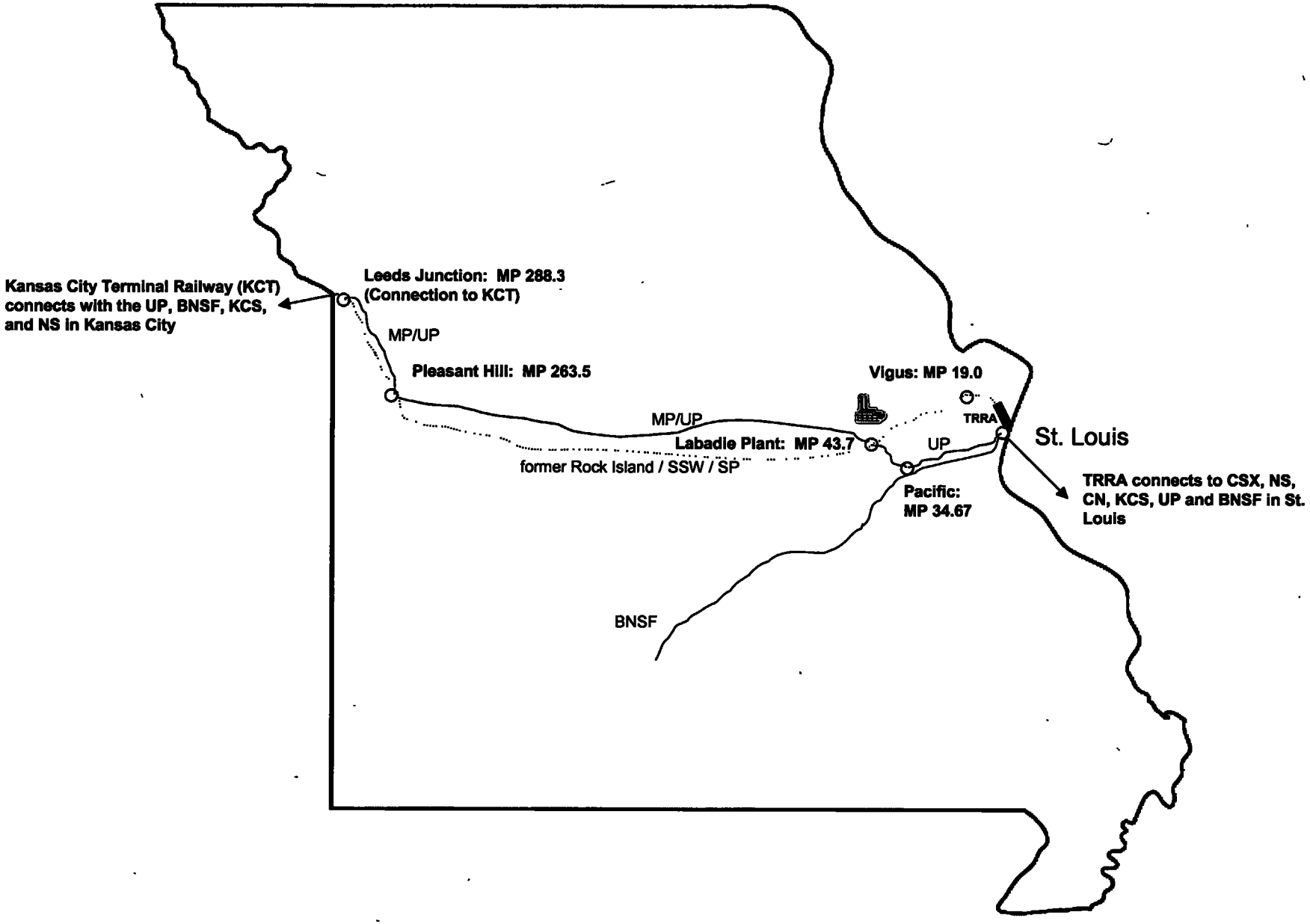

EXHIBIT C

REDACTED

EXHIBIT D

REDACTED