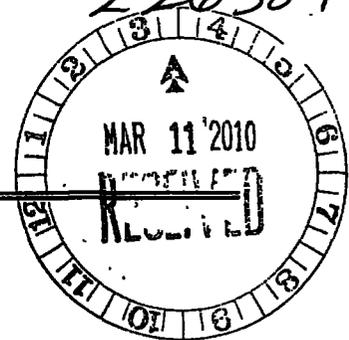


226 583
226584



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERGY ARKANSAS, INC. and
ENTERGY SERVICES, INC.,

Complainants

v.

UNION PACIFIC RAILROAD
COMPANY and MISSOURI &
NORTHERN ARKANSAS RAILROAD
COMPANY, INC., and
BNSF RAILWAY COMPANY

Defendants.

Docket No. 42104

ENTERED
Office of Proceedings
MAR 11 2010
Part of
Public Record

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

Finance Docket No. 32187

SECOND AMENDED COMPLAINT

***PUBLIC VERSION – HIGHLY CONFIDENTIAL
INFORMATION HAS BEEN REDACTED***

ENTERGY ARKANSAS, INC. and
ENTERGY SERVICES, INC.
O.H. Storey
Cory R. Cahn
P.O. Box 551
Little Rock, AR 72203

OF COUNSEL:

Slover & Loftus LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170
Dated: March 11, 2010

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

“ISES”).¹ Moreover, to the extent that Union Pacific Railroad Company (“UP”) exercises its rights under its lease agreement with M&NA regarding service to ISES (as described in greater detail below), Entergy requests that the Board order UP to participate in such a through route with BNSF and/or with BNSF and M&NA.

PREFACE

1. Entergy’s February 19, 2008 Complaint in this proceeding (and the evidence filed in support thereof) confirmed that the continued enforcement of certain provisions of a 1992 lease agreement between UP and M&NA precludes the interchange of traffic with a long-haul carrier other than UP. *See Entergy Arkansas, Inc. and Entergy Services, Inc., v. Union Pacific R.R. and Missouri & Northern Arkansas R.R.*, STB Docket No. 42104, et al. (STB served June 26, 2009) (“*Decision*”). Entergy’s initial Complaint sought relief, *inter alia*, on the basis of Entergy’s claim that the continued enforcement of certain provisions in the UP/M&NA Lease (*i.e.*, those provisions operating as a “paper barrier”) constituted an unreasonable practice in violation of 49 U.S.C. § 10702.

2. On June 26, 2009, the Board issued a Decision in which it “provide[d] an opportunity for the shipper to pursue this case under the appropriate provision” of the statute. *See Decision* at 1. Specifically, the Board ordered that Entergy be allowed the opportunity to amend its February 19, 2008 Complaint in order to seek the prescription of a through route under 49 U.S.C. § 10705. *See Entergy Arkansas, Inc. and Entergy Services, Inc., v. Union Pacific R.R.*

¹ In accordance with 49 C.F.R. § 1144.1, Entergy confirms that it has contacted M&NA and BNSF in efforts to resolve the dispute addressed in this Second Amended Complaint through negotiations. Those efforts have been unsuccessful to date.

and Missouri & Northern Arkansas R.R., STB Docket No. 42104, et al. (STB served June 26, 2009), at 15.

3. In its June 26 Decision, the Board characterized the request for relief under 49 U.S.C. § 10705 as a “straightforward path whereby Entergy could seek to establish that it is entitled to the type of relief it desires – a Board order under 49 U.S.C. 10705 directing MNA to interchange with a long-haul carrier other than UP.” *Id.* at 2.² Consistent with the Board’s June 26 Decision, Entergy submitted a First Amended Complaint seeking the prescription of such a through route (or through routes) and requesting relief from the UP/M&NA paper barrier (*i.e.*, the UP lease payment and the other elements of UP’s paper barrier) in the manner specified by the Board.

4. On December 30, 2009, the Board issued a Decision ruling on M&NA’s Motion to Dismiss Entergy’s Amended Complaint. *See Entergy Arkansas, Inc. and Entergy Services, Inc., v. Union Pacific R.R. and Missouri & Northern Arkansas R.R.*, STB Docket No. 42104, et al. (STB served December 30, 2009). The Board’s December 30 Decision addressed, *inter alia*, the issue of whether Entergy had failed to join a necessary party by not including BNSF in its Amended Complaint. This Decision noted that “Entergy has not alleged that BNSF is foreclosing more efficient service by refusing to interchange traffic with MNA.” December 30 Decision at 3. The Board further held that “[i]f Entergy subsequently determines that it desires relief that would require a Board order directed at BNSF, Entergy may seek leave to amend its complaint further to join BNSF as a defendant.” *Id.* at 4. Based upon communications with BNSF since the December 30, 2009 Decision, Entergy has determined that it would be

² *See id.* (“[S]ection 10705 provides a means to directly address and remedy the precise problem about which Entergy complains”) (emphasis added).

appropriate to amend its Complaint in order to ensure BNSF participation in any through route prescribed by the Board.

5. The Board's December 30 Decision also required Entergy to identify the through route(s) that it seeks to have prescribed in its opening evidence and arguments. With the benefit of discovery and an inspection, Entergy is identifying below its preferred through route(s).

IDENTITY AND INTEREST

6. Complainant EAI is a corporation organized under the laws of the State of Arkansas, with its principal place of business located at 425 West Capitol Avenue, Little Rock, Arkansas 72201. EAI is a wholly owned subsidiary of Entergy Corporation, an investor-owned public utility holding company organized and existing under the laws of Delaware and registered pursuant to the Public Utility Holding Company Act of 1935. EAI produces, distributes and sells electric power at retail to approximately 667,000 residential, commercial, industrial and agricultural customers located in 63 counties in Arkansas, and engages in wholesale power transactions as well.

7. Complainant ESI is a wholly owned subsidiary of Entergy Corporation. ESI is a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business at 639 Loyola Avenue, New Orleans, Louisiana 70113. ESI acts as an agent for Entergy Corporation's public utility operating subsidiaries, including EAI, and is responsible for, among other things, acquiring fuel and related transportation for coal-fired power plants operated by its electric utility affiliates.

8. EAI operates, *inter alia*, a coal-fired power plant located near Newark, Arkansas known as the Independence Steam Electric Station. The Independence Station was

designed to burn low-sulfur southern PRB coal. In generating electric power at Independence, EAI burns approximately 6.5 million tons of coal annually. Since the 1983 commencement of operations at Independence, all PRB coal burned at the plant has been delivered by railroad.

9. Defendant UP is a Delaware corporation with its principal place of business located at 1400 Douglas St., Omaha, Nebraska 68179. UP is a rail carrier subject to the jurisdiction of the Board under Title 49.

10. Defendant M&NA is a Kansas corporation with its corporate headquarters at 5300 Broken Sound Blvd., NW, Boca Raton, Florida 33487, and a business address of 514 N. Ormer, Carthage, Missouri 64836. M&NA is a wholly owned subsidiary of RailAmerica, Inc., a noncarrier holding company with forty-two (42) railroad operating subsidiaries. M&NA is a rail carrier subject to the jurisdiction of the Board under Title 49.

11. Defendant BNSF is a Delaware corporation with its corporate headquarters located at 2650 Lou Menk Drive, Fort Worth, Texas 76161. BNSF provides rail transportation service subject to the jurisdiction of the Board and owns rail facilities that permit it to originate coal transportation service from the PRB.

THE UP/M&NA LEASE AND ACQUISITION

12. On December 4, 1992, M&NA filed a notice of exemption invoking authority to lease, acquire and operate from UP's predecessor in interest, Missouri Pacific Railroad Company ("Missouri Pacific"), 492.27 miles of rail line in the States of Arkansas, Kansas, and Missouri, and to acquire 60.33 miles of incidental trackage rights over Missouri Pacific and Burlington Northern Railroad Company lines in the States of Missouri and Arkansas. *Missouri & Northern Arkansas R.R. – Lease, Acquisition and Operation Exemption – Missouri*

Pacific R.R. and Burlington Northern R.R., ICC Finance Docket No. 32187 (ICC served Dec. 22, 1992) (notice of exemption).³ As Entergy's evidence in this case demonstrated {

}⁴

13. Concurrent with the filing of M&NA's notice of exemption regarding the lease of the Missouri Pacific lines, M&NA's then-current parent company, RailTex, Inc. ("RailTex") filed a notice of exemption to continue in control of M&NA when the latter became a rail carrier. *See RailTex, Inc. – Continuance in Control Exemption – Missouri & Northern Arkansas R.R.*, ICC Finance Docket No. 32188 (ICC served Dec. 22, 1992) (notice of continuance in control exemption). This filing was required because, at the time, RailTex controlled ten other Class III railroads operating in thirteen states. *Id.*

³ As part of the transaction, M&NA purchased the rail line from Bergman to Guion, Arkansas, a distance of 102 miles. *Id.*

⁴ In response to the carrier's invocation of exemption authority in 1992, the United Transportation Union petitioned to stay the effective date of the M&NA notice of exemption and to revoke the exemption. As described by the Commission, UTU had argued "that this transaction involving 522 miles of track is a transaction designed to evade labor protection." *Missouri & Northern Arkansas R.R. – Lease, Acquisition and Operation Exemption – Missouri Pacific R.R. and Burlington N. R.R.*, ICC Finance Docket No. 32187 (ICC served December 15, 1992).

14. On December 11, 1992, M&NA and Missouri Pacific executed their lease (the "UP/M&NA Lease"). See Exhibit No. 2 hereto. Section 3.01 of the Lease provides, in part, that ". . . Lessee shall be entitled to full and exclusive use of the Leased Premises for the operation of common carrier rail freight service, including the right to access and interchange traffic directly with all present and future railroads at Springfield, Joplin, Carthage, Lamar, Aurora and Nevada, MO and Ft. Scott, KS." UP/M&NA Lease at § 3.01.

15. The term of the lease is twenty years from the "Commencement Date" of service. Approximately sixteen years of the term have now expired. M&NA has an option to extend the term of the lease three times for an extended term of up to twenty years for each extension. See UP/M&NA Lease at § 2.02.

CURRENT SERVICE TO INDEPENDENCE

16. UP currently provides rail service to Entergy's Independence Station (and its White Bluff Station) under the terms of a confidential rail transportation contract. See Exhibit No. 3 hereto. This contract obligates Entergy to tender {

}

17. {

},⁵ {

⁵ This case was captioned as *Union Pacific R.R. v. Entergy Arkansas, Inc. and Entergy Services, Inc.*, Case No. CV 2006-2711 and had been pending in the Circuit Court of Pulaski County, Arkansas. The case related to the derailments that occurred in May, 2005 on the Joint

}⁶

18. UP and M&NA currently deliver coal to the Independence Station via a routing that involves UP moving loaded coal trains from the PRB beyond Independence, then via North Little Rock back to Diaz Junction, Arkansas. M&NA then completes the movement over a short segment of the leased line from Diaz Junction to the plant (a distance of approximately eight miles). M&NA delivers empty coal trains from Independence back to UP at Kansas City, Missouri. Diagrams showing the routes over which Entergy's loaded and empty trains move (and have moved) between the PRB and the Independence Station are contained in Exhibit No. 6 hereto.

19. There have been several changes to UP's routing of traffic between the PRB and Independence since UP first began moving Entergy's coal in the mid-1980's. At the outset, the coal was originated by a UP predecessor railroad, Western Railroad Properties, Inc. ("WRPI"), interchanged with UP at South Morrill, Nebraska, and then interchanged with the

Line in the PRB.

⁶ {

}

Missouri Pacific Railroad Company (“MP”) at Kansas City. MP then transported the coal via its Carthage Subdivision – *i.e.*, the line currently operated by M&NA – for delivery to the plant.⁷

20. MP continued to move the coal over this routing until 1989, when UP – which by then had acquired control of MP – proposed a reroute of the traffic over the UP lines to North Little Rock and then to Diaz Junction.

21. After the 1992 sale/lease of the Carthage Subdivision to M&NA, the Independence coal continued to be routed through North Little Rock and Diaz Junction (for interchange with M&NA). During this time period, the portion of the Carthage Subdivision west of Independence was not used for either empty or loaded Independence coal trains.

22. In the Fall of 1997, M&NA moved some empty Independence coal trains west from Independence to interchange with UP at Kansas City on a temporary basis. In 1998, the carriers adopted this routing for all Independence empties.

23. The current UP/M&NA routing for loaded Independence trains is circuitous and less efficient than any of the through routes requested in this Amended Complaint.

24. UP provided inadequate service during a number of different extended time periods during the term of the Lease, including but not limited to, the time periods following the 1993 Midwest floods, during UP’s 1997-1998 Service Crisis after its merger with Southern Pacific Transportation Company,⁸ and during the period from May 2005 through 2007

⁷ Prior to Entergy’s execution of a 1983 coal transportation agreement with UP, Independence coal was transported pursuant to a tariff arrangement that involved Burlington Northern Railroad Company transporting the coal from PRB origins to Kansas City for interchange to MP, with MP then delivering the coal to Independence.

⁸ See, e.g., *Supplemental Statement and Additional Request for Emergency Relief of Entergy Services, Inc. and Entergy Arkansas, Inc.*, filed December 1, 1997 in Ex Parte No. 575, *Rail Service in the Western United States* and Service Order No. 1518, *Joint Petition for Service Order*.

relating to service constraints that UP experienced in the PRB that resulted from maintenance-related issues on the PRB Joint Line.

25. In each of these extended periods, the existence of the paper barrier restrictions in the UP/M&NA Lease precluded Entergy from obtaining interline service from BNSF/M&NA to supplement coal deliveries to Independence at times when UP's service was inadequate. As a result, Entergy was forced to curtail coal-fired generation and incur major damages in the form of significantly higher costs for gas-fired generation or purchased power.

THROUGH ROUTE(S) TO INDEPENDENCE VIA BNSF-M&NA

26. BNSF and M&NA are physically capable of providing rail transportation service to Independence from the PRB.

27. In particular, BNSF-M&NA coal transportation service could be provided from the PRB to Independence with an interchange between BNSF and M&NA either at Aurora or Lamar, Missouri.⁹

28. While the handling of loaded unit coal trains through these interchanges and over the M&NA line as part of a through movement with BNSF may require track upgrades, Entergy is not aware of any reason to believe that the movement of loaded unit coal trains through Aurora or Lamar, or the restoration of loaded coal train service over the M&NA line, would be not be possible.

29. Entergy has recently requested that BNSF confirm that it would be willing to cooperate with M&NA on a through route for movement of SPRB coals to Entergy's

⁹ While there are other potential M&NA/BNSF interchange locations that could be utilized but for the UP/M&NA lease restrictions, Entergy has inspected M&NA's lines and the various potential interchanges and has concluded that Aurora and Lamar are the most desirable potential interchanges.

Independence Station using Aurora or Lamar, as the locations for a BNSF/M&NA interchange.

While BNSF responded that it remained willing to cooperate with M&NA on the development of a through route movement without the need for a Board order specifically directed to BNSF, it did not unequivocally agree to participate in such a through route.

THE UP/M&NA PAPER BARRIER

30. Section 4.01 of the UP/M&NA Lease establishes a “paper barrier” through an annual rent schedule that varies with the percentage of annual traffic that M&NA interchanges with carriers other than UP:

SECTION 4.01 – In consideration of this Lease, and subject to the terms and provisions set forth herein, Lessee agrees to pay Lessor rent for the Leased Premises in the amount of Ninety Million Dollars (\$90,000,000) per year payable annually in advance on the 1st day of March; PROVIDED, HOWEVER, that subject to the provisions of Section 4.02 hereof, for each lease year that 95% or more of all traffic originating or terminating on the Leased Premises is interchanged with Union Pacific Railroad Company or Missouri Pacific Railroad Company and any affiliated company, their successors and assigns, Lessor agrees that it will waive or partially waive the rent for that particular year in accordance with the schedule set forth in Section 4.03. . . .

SECTION 4.03 – Upon request of Lessor, on or before the 1st day of February of each year following the commencement of this Lease, Lessee shall submit a report, signed by an officer of Lessee, certifying the amount and type of traffic originating or terminating on the Leased Premises during the prior calendar year, the railroads (if any) with which all or portions of such traffic were interchanged, the volume of traffic interchanged with each such railroad, and the total amount of rent due and payable for the previous calendar year. The rent due from Lessee for the Year shall be determined by reference to the percentage of the total traffic (as described in Section 4.01, subject to the provisions of Section 4.02) that was interchanged with Lessor, subject to the terms of Section 4.04, in accordance with the following schedule:

<u>PERCENTAGE OF THE TOTAL TRAFFIC THAT WAS INTER- CHANGED WITH LESSOR</u>	<u>RENT DUE LESSOR</u>
--	------------------------

100 - 95%	\$ - 0 -
94 - 85%	\$10,000,000
84 - 75%	\$20,000,000
74 - 65%	\$20,000,000
64 - 55%	\$30,000,000
54 - 45%	\$40,000,000
44 - 35%	\$50,000,000
34 - 25%	\$60,000,000
24 - 15%	\$70,000,000
14 - 5%	\$80,000,000
0 - 4%	\$90,000,000

31. These rental amounts are subject to escalation each year in accordance with the “Producer Price Index – Finished Goods (Reference Base 1982 = 100),” pursuant to Section 4.04 of the Lease. That section adjusts the annual rent obligations based upon the annual change in the PPI Index from December 1992 to the PPI Index figure for December of the then-current year. As of December of 2008, the maximum annual rental amount under the Lease stood at \$112 million.¹⁰

32. In addition to its restrictive provisions regarding rent, the UP/M&NA Lease includes two other provisions that ensure that in the aggregate the Lease’s paper barriers will serve to prevent M&NA’s interchange of Entergy’s PRB coal traffic with any carrier other than UP.

33. First, the UP/M&NA Lease gives UP the right to prohibit M&NA from serving the Independence Plant and to provide exclusive service itself, on seven days’ notice. *See* Section 3.01 (“During the term hereof, Lessor shall not have the right to operate trains over

¹⁰ The December 2008 PPI index level was 168.8. The index level had been 135.2 as of December 1992. (\$90 million x (168.8/135.2) = \$112 million).

the Leased Premises, except that Lessor may obtain trackage rights between Diaz Junction and Independence, AR, after giving seven days' written notice to Lessee to serve, on an exclusive basis, the Arkansas Power and Light Company (AP&L) plant located at Independence, AR, either at AP&L's request or at Lessor's sole discretion."); *see also* Section 3.04 ("Lessor may acquire the right to operate over the Leased Premises between milepost 259.05 at Diaz Junction and milepost 270.00 near Independence to serve AP&L and, if this right is exercised, Lessee shall no longer have the right to serve AP&L, and AP&L shall become a closed industry served only by Lessor."). In order to exercise its right to provide exclusive trackage rights service to Independence, UP must pay \$60,000 per year.¹¹ Through these provisions, UP has unlimited discretion to prevent M&NA from providing any service to Independence, thus further reinforcing the strength of UP's paper barrier.

34. Second, Section 15.01 of the UP/M&NA Lease allows termination of the Lease itself if a court or other body determines that the rental provisions are unlawful or otherwise improper. *See* Section 15.01(f) ("This Lease may be terminated as follows: . . . (f) By Lessor or Lessee, by giving 30 days' written notice to the other party, in the event a court or other body determines that all or any of the provisions of Section IV are unlawful or otherwise unenforceable."). This provision seeks to insulate UP from the risk that the other contract terms designed to prevent any competitive rail service for the Independence Plant would be found to be

¹¹ There is a striking disparity between UP's obligation to pay \$60,000 per year to M&NA if UP elects to provide exclusive service to Independence and M&NA's obligation to pay rent of up to \$112,000,000 per year if it interchanges 96-100% of its traffic with a carrier other than UP. For purposes of comparison, the maximum annual rental obligation is more than *fifteen hundred* (1,500) times higher than UP's potential trackage rights fee. The disparity between these figures remains substantial even if adjusted for diversions of 95% or less of M&NA's annual traffic, or if adjusted to reflect the short distance of the UP's trackage rights to serve Independence.

unlawful, a possibility that the drafters of the Lease obviously recognized as a significant concern when preparing the agreement.

COUNT I (Prescription of a Through Route or Through Routes)

35. Entergy hereby incorporates paragraphs 1-34 as if repeated in their entirety.

36. As the Board observed in its June 26, 2009 Decision, Entergy “would like to have an MNA/BNSF route for the Independence plant traffic as a competitive option,” but “MNA’s lease agreement with UP contains a contractual interchange commitment with UP that makes it prohibitively costly to MNA to hand over Entergy’s traffic to another railroad.” Decision at 4 (emphasis added).

37. The prescription of a through route (or through routes) via either Aurora or Lamar, Missouri is in the public interest. *See* 49 U.S.C. § 10705(a)(1).

38. The prescription of a through route to Independence Station via Aurora or Lamar, Missouri would permit Entergy to obtain adequate transportation service. *See* 49 U.S.C. § 10705(a)(2)(C). As Entergy demonstrated in its evidence in this proceeding, there have been a number of occasions since the date of the UP/M&NA Lease in which UP has not been able to provide adequate rail transportation service to Independence, but – by exploiting its market power – has precluded Entergy from diverting traffic to BNSF service. Prescription of a through route would preclude such a situation in the future.

39. The prescription of a through route to the Independence Station via Aurora or Lamar, Missouri would be less circuitous, more efficient and would permit Entergy to obtain more economic service to the plant than is currently possible for it in the absence of such a

prescription. *See* 49 U.S.C. § 10705(a)(2)(C). In particular, such a routing may afford transportation at a lower overall cost than is currently available.

40. The prescription of a through route via Aurora or Lamar, Missouri would afford Entergy the potential of avoiding the rate demands that would be associated with the diversion of traffic under the UP/M&NA paper barrier. *See* June 26, 2009 Decision at 9 (“[I]t is unclear that the lease payment would play any role in [a] rate reasonableness analysis” regarding BNSF-M&NA rates provided in response to a “section 10705 prescription”). If Entergy were to request M&NA delivery of BNSF-originated coal in the absence of relief in this proceeding, Entergy would face demands from M&NA for rates that were sufficient to cover the excessive annual lease obligation from the UP/M&NA Lease that is associated with traffic diversion. Such transportation would be uneconomic under the standards of 49 U.S.C. § 10705. Accordingly, the availability of relief from the impact of the UP/M&NA lease payment provides a further basis for concluding that a through route prescription under 49 U.S.C. § 10705 is in the public interest.

41. The UP/M&NA Lease gives UP the right to terminate the lease on “30 days’ written notice to the other party, in the event a court or other body determines that all or any of the provisions of Section IV are unlawful or otherwise unenforceable.” UP/M&NA Lease at Section 15.01(f). That termination right applies to the leased property only, and not to the line between Bergman and Guion, Arkansas that M&NA purchased from UP. Entergy requests that the Board’s route prescription be phrased in a sufficiently broad manner in order to apply with equal force to UP in the event that UP elects to terminate the Lease. In the event that UP terminates the UP/M&NA Lease, a through routing to Independence would involve interchanges from BNSF to UP (at its interchange points in Aurora or Lamar, Missouri), from UP to M&NA at Bergman, Arkansas, and from M&NA to UP at Guion, Arkansas.

42. Similarly, Entergy requests that the Board phrase its relief in such a manner as to be sufficiently broad to permit relief in the event that UP exercises its right to provide exclusive destination service to Independence pursuant to Sections 3.01 and 3.04 of the UP/M&NA Lease.

WHEREFORE, Entergy requests that the Board: (1) enter an order prescribing a through route (or through routes) via Aurora or Lamar, Missouri that would permit Entergy to obtain adequate and more economic transportation of coal from the PRB to Entergy's Independence plant; and (2) take such other actions as may be reasonable and necessary.

Respectfully submitted,

ENERGY ARKANSAS, INC. and
ENERGY SERVICES, INC.

O.H. Storey
Cory R. Cahn
P.O. Box 551
Little Rock, AR 72203

OF COUNSEL:

Slover & Loftus LLP
1224 Seventeenth St., N.W.
Washington, D.C. 20036
(202) 347-7170

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



Dated: March 11, 2010

Attorneys & Practitioners

1000

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of March, 2010, served copies of the foregoing Second Amended Complaint on the Chief Legal Officers of each of the Defendants, and the General Manager of M&NA, and the Chief Legal Officer of BNSF Railway Company by overnight courier as follows:

J. Michael Hemmer, Esq. (**HIGHLY CONFIDENTIAL VERSION**)
Sr. V.P. Law & General Counsel
Union Pacific Railroad Company
Union Pacific Center, 1400 Douglas Street
Omaha, NE 68179

Scott G. Williams, Esq. (**REDACTED VERSION**)
Sr. Vice President and General Counsel
RailAmerica, Inc.
5300 Broken Sound Blvd., NW
Boca Raton, Florida 33487

Mr. Thomas Gibson (**REDACTED VERSION**)
General Manager
Missouri & Northern Arkansas Railroad Company
514 N. Orner
Carthage, MO 64836

Roger Nober, Esq. (**REDACTED VERSION**)
Executive Vice President Law & Secretary
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76161

In addition, I hereby certify that I have caused both Highly Confidential and Redacted Versions of the Second Amended Complaint to be served via email on outside counsel for the parties in this case: Linda J. Morgan, Esq., Michael L. Rosenthal, Esq., Louis E. Gitomer, Esq., Adrian L. Steel, Jr., Esq., and Eric Von Salzen, Esq.


Andrew B. Kolesar III

1

REDACTED

2

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

BEST AVAILABLE COPY

Registration No. 33-68938

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**



93 26 0145

POST-EFFECTIVE AMENDMENT NO. 1

Post-ETF

TO

FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

REC'D S.E.C.
NOV 19 1993
010

1959-9000
PROCESSED BY

RailTex, Inc.

(Exact name of Registrant as specified in its charter)

4011

(Primary Standard Industrial Classification Code Number)

74-1948121

(I.R.S. Employer Identification No.)

19
Texas
(State or other jurisdiction of incorporation or organization)

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

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

**Bruce M. Flohr
Chairman of the Board and President
RailTex, Inc.**

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

(Name, address, including zip code and telephone number, including area code, of agent for service)

Copies to:

**John D. Flach, Esq.
Matthews & Branscomb
A Professional Corporation
106 S. St. Mary's, Suite 200
San Antonio, Texas 78205
(210) 226-4211**

**Joel S. Klaperman, Esq.
Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
(212) 848-4000**

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

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

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

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

1 2

EXHIBIT 10.18

LESSEE COUNTERPART

— ORIGINAL - DO NOT REMOVE —

CONFIDENTIAL

LEASE AGREEMENT

BY AND BETWEEN

MISSOURI PACIFIC RAILROAD COMPANY

AND

MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.

CONFIDENTIAL

CONFIDENTIAL

TABLE OF CONTENTS

RECITALS	1
LEASED PREMISES	2
LEASE TERM	5
RAIL SERVICE	6
RENT	8
CONDITIONS PRECEDENT	12
MAINTENANCE	13
ACCOUNTING AND REPORTING	16
MODIFICATIONS AND IMPROVEMENTS	17
REPRESENTATIONS AND WARRANTIES	19
OBLIGATIONS OF THE PARTIES	20
EMINENT DOMAIN	25
INSURANCE AND INDEMNIFICATION	26
TAXES	29
EASEMENTS, LEASES AND LICENSES	30
TERMINATION	33
COMPLIANCE WITH LAW	39
FORCE MAJEURE	39
DEFEASANCE	40
EVENTS OF DEFAULT	40
BREACHES; REMEDIES	41
ARBITRATION	42
DIVISIONS, EQUIPMENT, COMMERCIAL SUPPORT, AAR AGREEMENTS	44
MISCELLANEOUS	45

LEASE AGREEMENT

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

RECITALS:

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

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

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

AGREEMENT:

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

SECTION I
LEASED PREMISES

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

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

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

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

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

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

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

SECTION II
LEASE TERM

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

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

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

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

SECTION III
RAIL SERVICE

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

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

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

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

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

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

SECTION IV.
RENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION V
CONDITIONS PRECEDENT

As conditions precedent to either party's obligations hereunder:

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

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

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

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

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

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

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

SECTION VI MAINTENANCE

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

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

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

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

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

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

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

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

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

SECTION VII
ACCOUNTING AND REPORTING

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

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

SECTION VIII
MODIFICATIONS AND IMPROVEMENTS

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

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

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

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

SECTION IX
REPRESENTATIONS AND WARRANTIES

SECTION 9.01 -- Lessor represents and warrants that:

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

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

SECTION 9.02 -- Lessee represents and warrants that:

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

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

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

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

SECTION X
OBLIGATIONS OF THE PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION XI
EMINENT DOMAIN

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

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

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

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

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

SECTION XII
INSURANCE AND INDEMNIFICATION

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

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

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

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

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

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

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

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

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

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

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

SECTION XIII
TAXES

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

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

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

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

SECTION XIV
EASEMENTS, LEASES AND LICENSES

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

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

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

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

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

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

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

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

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

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

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

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

SECTION XV
TERMINATION

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

(a) By Lessee or Lessor:

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

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

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

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

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

(c) By Lessor pursuant to Section XIX.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION XVI
COMPLIANCE WITH LAW

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

SECTION XVII
FORCE MAJEURE

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

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

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

SECTION XVIII
DEFEASANCE

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

SECTION XIX
EVENTS OF DEFAULT

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

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

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

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

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

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

SECTION XX
BREACHES; REMEDIES

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

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

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

SECTION XXI
ARBITRATION

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

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

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

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

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

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

**SECTION XXII
DIVISIONS, EQUIPMENT,
COMMERCIAL SUPPORT, AAR AGREEMENTS**

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

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

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

SECTION XXIII
MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MISSOURI PACIFIC RAILROAD COMPANY,

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

MISSOURI & NORTHERN ARKANSAS
RAILROAD COMPANY, INC.

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

3

REDACTED

4

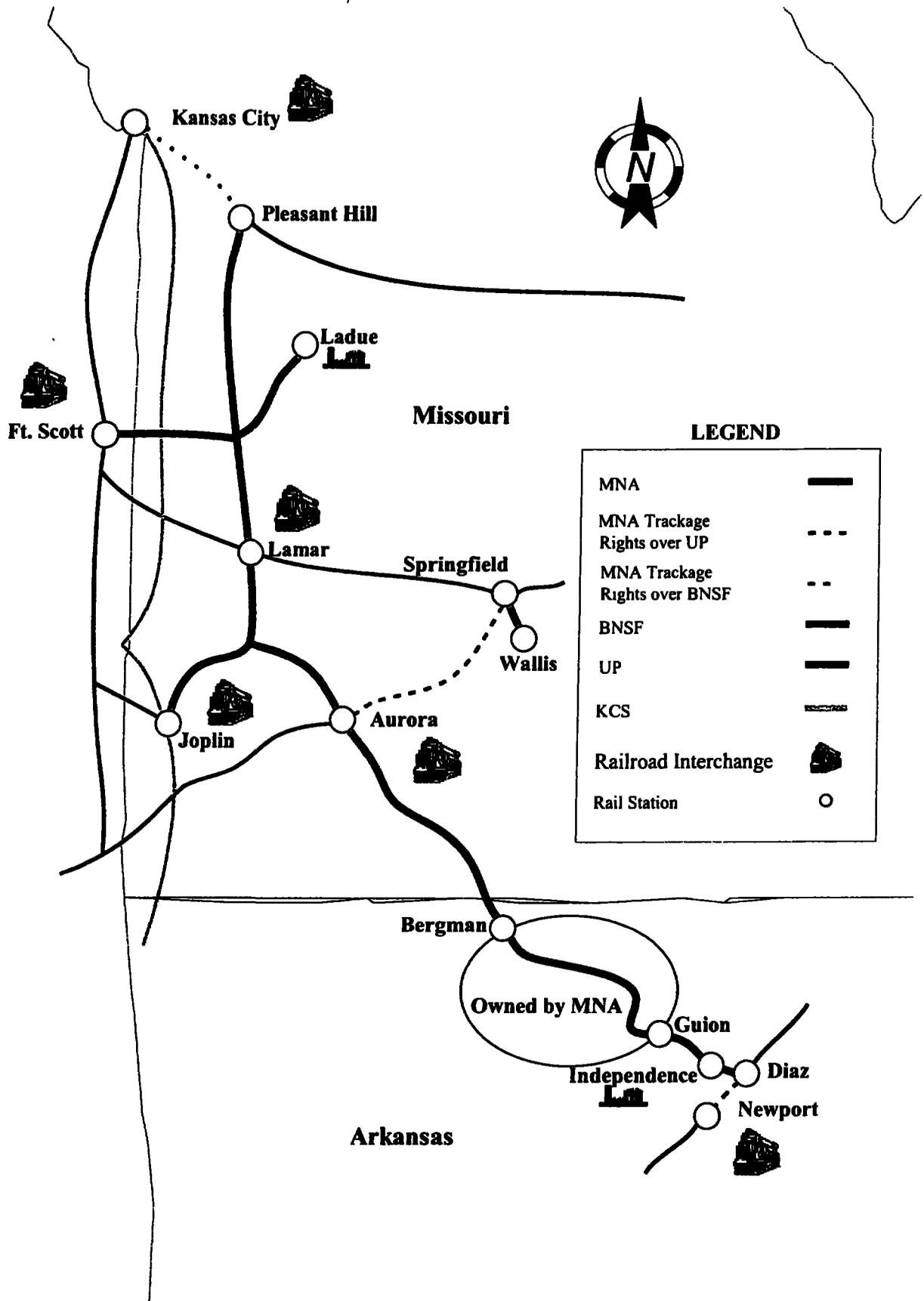
REDACTED

5

REDACTED

6

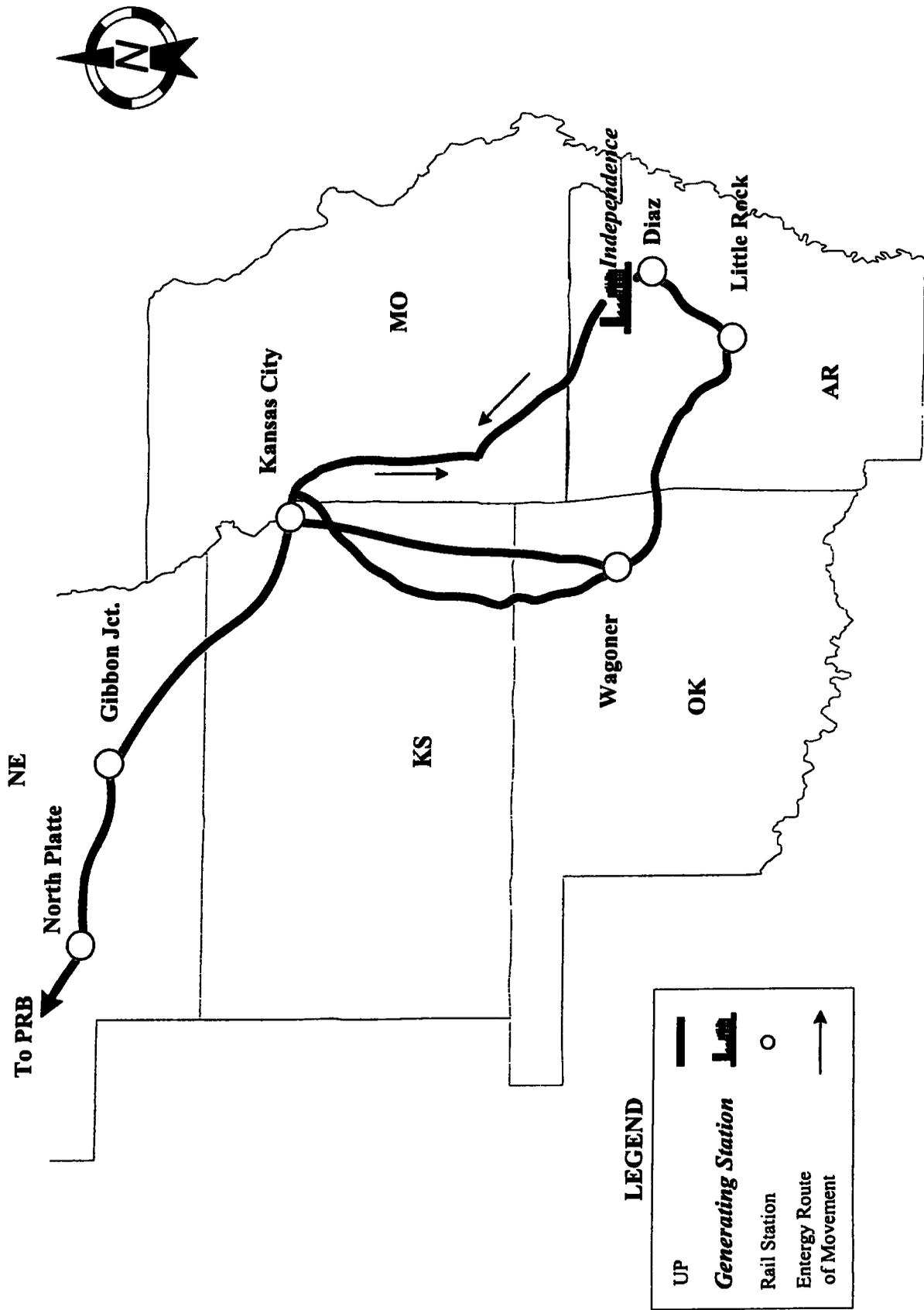
Schematic of M&NA



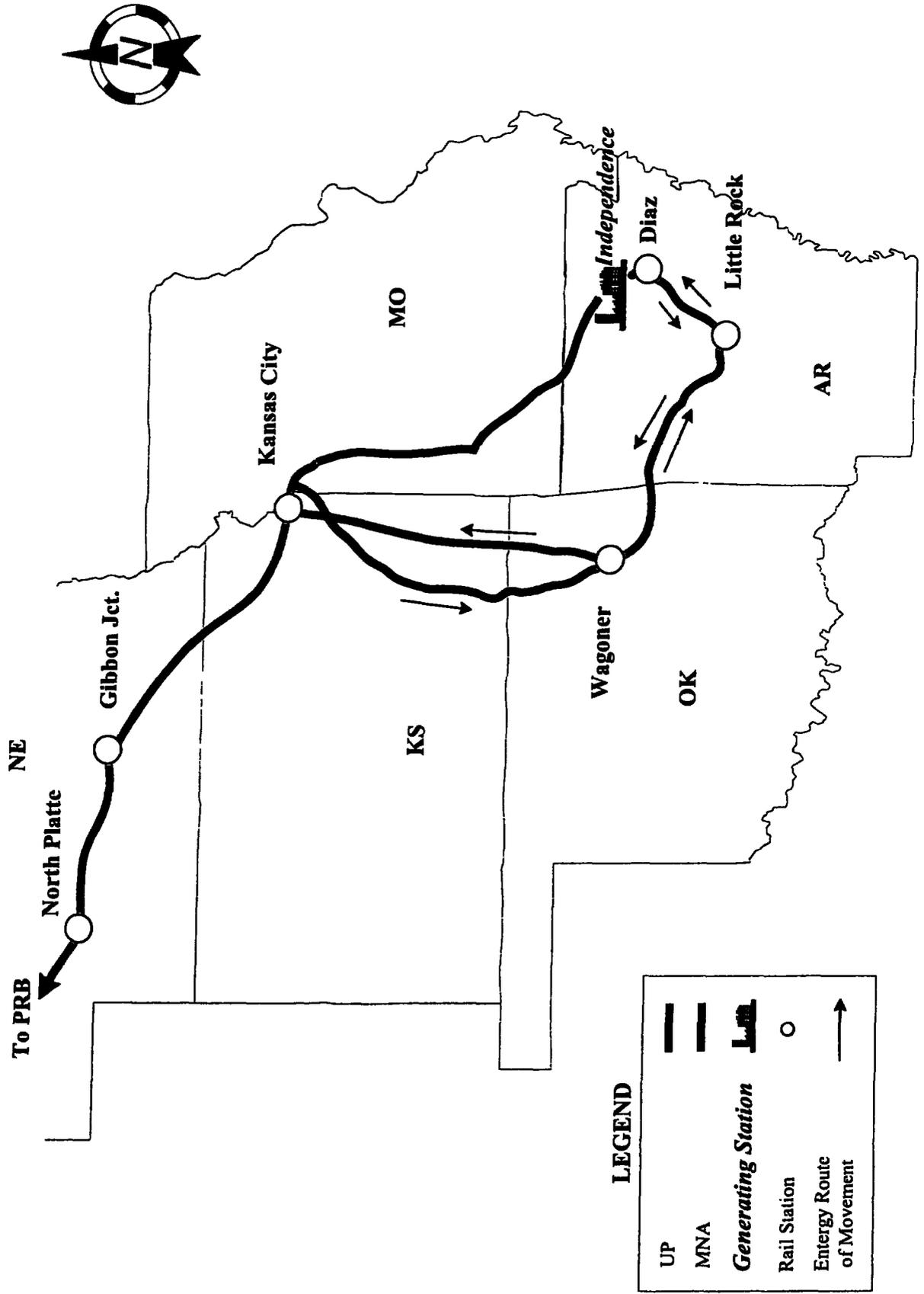
LEGEND

MNA	
MNA Trackage Rights over UP	
MNA Trackage Rights over BNSF	
BNSF	
UP	
KCS	
Railroad Interchange	
Rail Station	

Schematic Of UP's Route From PRB To Entergy's Independence Generating Station (1980's)



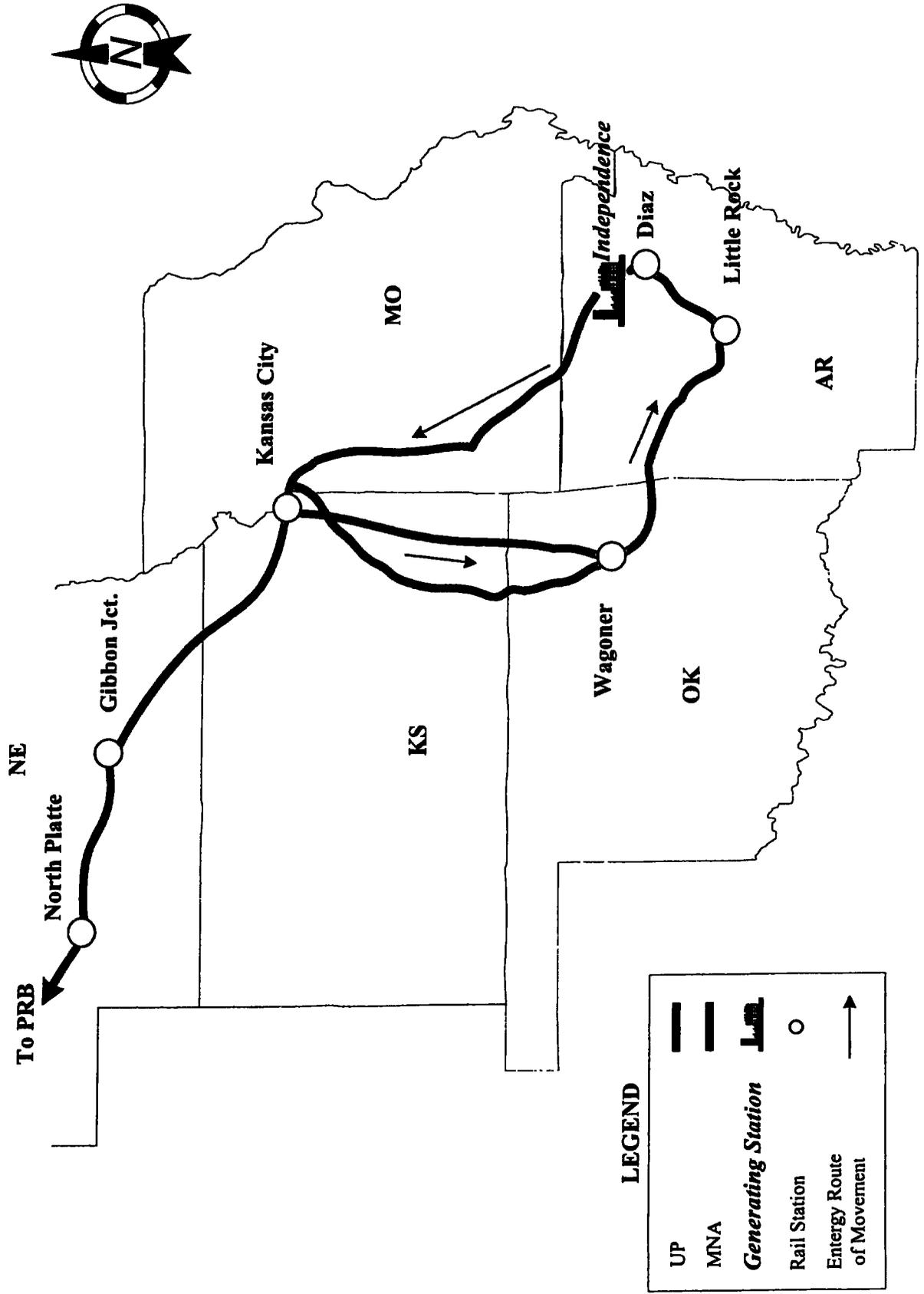
Schematic Of UP's Route From PRB To Entergy's Independence Generating Station (1989 - 1998)



LEGEND

- UP
- MNA
- Generating Station
- Rail Station
- Energy Route of Movement

Schematic Of UP's Route From PRB To Entergy's Independence Generating Station (1998 - Present)



LEGEND	
UP	
MNA	
Generating Station	
Rail Station	
Energy Route of Movement	