

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



226776

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

Finance Docket No. 32187

OPENING EVIDENCE AND ARGUMENT

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Argument

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

PREFACE AND SUMMARY

Entergy Arkansas, Inc. (“EAI”) and Entergy Services, Inc. (“ESI”) (collectively, “Entergy”) hereby submit this Opening Evidence and Argument in accordance with the Board’s June 2009 Decision in this case and with the procedural schedule currently in effect. *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) (“June 2009 Decision”) (permitting Entergy to amend its

complaint in order to seek the prescription of a through route); *see also 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 15, 2009) at 1 (establishing procedural schedule).

Entergy's Opening Evidence and Argument consists of the following individual portions:

- (1) Entergy's Argument of Counsel
- (2) the Verified Statement of Mr. Ryan Trushenski, Manager – Solid Fuel Supply, System Planning and Operations, Entergy Services, Inc.;
- (3) the Verified Statement of Mr. Thomas D. Crowley, President of L.E. Peabody & Associates, Inc.; and
- (4) the Verified Statement of Mr. Harvey Crouch, PE, President and CEO of Crouch Engineering, P.C.

Through its July 27, 2009 Amended Complaint, Entergy requests that the Board: (1) enter an order prescribing a through route (or through routes) that would permit Entergy to obtain adequate and more economic transportation of coal from the PRB to Entergy's Independence Steam Electric Station ("Independence" or "ISES"); and (2) take such other actions as may be reasonable and necessary.¹

¹ On March 11, 2010, Entergy filed a motion for leave to amend its complaint to add BNSF Railway Company ("BNSF") as a Defendant. That motion remains pending before the Board.

Specifically, Entergy requests that the Board issue an order under 49 U.S.C. § 10705 finding that the prescription of a through route (or through routes) from the southern Powder River Basin to ISES via BNSF and the Missouri & Northern Arkansas Railroad Company, Inc. (“M&NA”) with an interchange at Lamar, Missouri (and/or Aurora, Missouri)² is desirable in the public interest. *See* 49 U.S.C. § 10705(a)(1).³ Prescription of this through route is appropriate because of the anticompetitive effect of Union Pacific Railroad Company’s (“UP”) 1992 paper barrier, because Entergy is highly dependent upon adequate and reliable rail transportation service to ISES, and because UP has abused its market power at ISES through the continued enforcement of its paper barrier. In addition, prescription of the through route is appropriate because the BNSF-M&NA routing is shorter and less costly than the current routing, and because the routing represents a feasible alternative for transportation of Entergy’s available tonnages. *See* 49 C.F.R. § 1144.2.

Based upon the particular facts and circumstances of this case, relief also is clearly warranted because each carrier that would participate in the requested through route has argued in a pleading before the Board that it either already holds out – or is willing to hold out – to participate in a through route to serve Entergy. Specifically, in

² A schematic of this movement appears at page 2 of Exhibit TDC-3 to the attached Verified Statement of Mr. Thomas D. Crowley.

³ Because a routing prescription involving BNSF and M&NA would not require either of those two carriers to “to include in a through route substantially less than the entire length of its railroad,” the additional statutory factors set forth in 49 U.S.C. § 10705(a)(2) are not applicable.

August of 2009, M&NA moved to dismiss this case on grounds that, *inter alia*, it already had a tariff in effect that allowed for the movement of coal to Entergy's plant in conjunction with BNSF. See M&NA Motion to Dismiss dated August 17, 2009, at 5 ("There is a tariff permitting the use of a through route between M&NA and BNSF over the route between the PRB and Entergy's Independence, AR power plant. See Exhibit 1, M&NA Tariff 8006-C. The relief sought by Entergy and AECC is unnecessary since Entergy can route traffic over a through route that is open under the M&NA tariff today.").

Likewise, in March of 2010, BNSF replied in opposition to Entergy's motion for leave to amend its complaint, arguing that it is unnecessary to add BNSF as a defendant to the case because it already had committed to participating in the requested through route. See BNSF Response to Entergy Motion for Leave to Amend dated March 19, 2010, at 1 ("Entergy's Motion should be denied, since BNSF has committed in writing to Entergy to cooperate with Missouri & Northern Arkansas Railroad Company, Inc. ('MNA') on the development of a through route movement without the necessity of an STB order specifically directed to BNSF.").

The real difficulty associated with this matter, which Entergy has described to the Board previously, is UP's continued enforcement of its paper barrier restriction.⁴

⁴ In its June 2009 Decision, the Board commented that the "core" of Entergy's challenge relates to the question of whether "it is unreasonable for MNA to refuse to interchange Entergy's traffic with a carrier other than UP." June 2009 Decision at 10. Entergy respectfully submits that the Board's comment misconstrues the basis of

As Entergy explained in its remarks at the Board's October 27, 2009 oral argument in this case, the mere prescription of a through route will not provide a complete resolution of that problem. Unless the Board also addresses Entergy's arguments regarding the unreasonableness of UP's continuing enforcement of that paper barrier, Entergy, M&NA, and BNSF will not be able to engage in the meaningful discussions that would be necessary to permit the development and use of the through route that Entergy seeks through this phase of the case.

Finally, Entergy also requests that the Board confirm, in accordance with its June 2009 Decision, that BNSF and M&NA are obligated to participate in a through route to permit the movement of coal to ISES from northern PRB origins. As the Board observed with regard to coal from NPRB origins, since UP does not serve the northern PRB origins, "MNA would be obligated to interchange with BNSF upon request" June 2009 Decision at 8. Entergy has requested that BNSF/M&NA provide rate quotations involving the through movement of coal from NPRB origins, but to date, BNSF/M&NA have not done so, with their task undoubtedly complicated by concerns regarding UP's continued enforcement of the paper barrier. Entergy requests that, notwithstanding those concerns, the Board confirm that BNSF/M&NA are obligated to

Entergy's challenge. Entergy did not, and does not, principally complain regarding M&NA's refusal to interchange traffic. Instead, the core of Entergy's challenge is the argument that it is unreasonable for UP to continue to enforce its paper barrier restriction.

participate in a through route for the movement of such coal, and were obligated to quote a rate upon Entergy's request.

BACKGROUND

A. Procedural History

This proceeding originated in 2008 as a challenge to UP's continued enforcement of the paper barrier in its 1992 lease agreement with M&NA ("Lease").⁵

Through that lease, UP {

} while still maintaining its monopoly grip on traffic served by an ostensibly independent short-line carrier through the imposition of annual rent payments that can exceed \$100+ million depending upon the share of traffic that M&NA interchanges with carriers other than UP. In the initial phase of this case, Entergy argued that UP's continued enforcement of the paper barrier under the circumstances at issue constituted an unreasonable practice and violated 49 U.S.C. § 10702. *See* Entergy's Opening Evidence dated July 11, 2008 & Entergy's Rebuttal Evidence dated September 2, 2008.

In its June 2009 decision in this case, however, the Board explained that it was inappropriate for Entergy to rely upon the unreasonable practice standard of 49 U.S.C. § 10702 in making its challenge to UP's continued enforcement of the paper barrier because there is a separate statutory provision (*i.e.*, 49 U.S.C. § 10705) that specifically "governs the behavior at issue and its effects." June 2009 Decision at 2. The

⁵ A copy of the UP lease is set forth as Exhibit No. 2 to Entergy's Second Amended Complaint.

Board further stated that Section 10705 provides a “straightforward path” through which Entergy can obtain the relief it desires, and that Section 10705 “provides a means to directly address and remedy the precise problem about which Entergy complains” *Id.*

In summarizing its view that examination under Section 10705 was appropriate in this case, the Board identified three specific factors:

(1) Entergy has alleged an abuse of market power insofar as UP has “exploited [its] market power to foreclose competition.” *Id.* at 7.

(2) Before it entered into a contract with UP in 1983, Entergy received its coal via a joint movement of Missouri Pacific (over the current M&NA lines) and BNSF, “suggesting that the alternative routing Entergy seeks may be feasible, which would be one of the predicates for establishing the route’s efficiency.” *Id.*

(3) The alternative route to ISES via BNSF-M&NA is alleged to be shorter than the current routing. *Id.*⁶

On the basis of its interpretation of the applicable statutes and the relevant facts, the Board gave Entergy the opportunity to amend its complaint to “seek relief in the form of a prescription of a new through route under 49 U.S.C. 10705” and to submit

⁶ The Board also explained that in this next phase of the case, “the parties should be guided by section 10705 and the discussions concerning alternative route prescriptions in CP&L.” *Id.* (citing *Central Power & Light Co. v. Southern Pac., et al.*, 1 S.T.B. 1059, 1069 (1996) (“CP&L”), *aff’d sub nom. MidAmerican Entergy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999)).

evidence in support of that amended complaint. *Id.* at 15. Entergy filed its Amended Complaint on July 27, 2009 in response to that invitation.⁷

B. Existing Service to ISES

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).⁸ M&NA delivers empty coal trains from Independence back to UP at Kansas City, Missouri. A diagram showing the routes over which Entergy's loaded and empty trains move between the PRB and ISES appears in Mr. Crowley's Exhibit TDC-3 (at p. 1). Diagrams showing the routes over which Entergy's loaded and empty trains previously moved between the PRB and the Independence Station are contained in Exhibit No. 6 to Entergy's Second Amended Complaint.

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.

⁷ As Mr. Trushenski explains in his Verified Statement, Entergy has communicated with BNSF and M&NA in an effort to obtain a through route without recourse to the Board. *See* Trushenski V.S. at 5-8 & Exhibits RT-1 through RT-10. Those efforts have been unsuccessful.

⁸ M&NA's loaded movement of coal under the requested through route with an interchange at Lamar, Missouri would be approximately thirty-five times longer than its loaded movement under the existing UP routing (*i.e.*, 280.6 miles vs. 8 miles).

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 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.⁹ 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.

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. 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.

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*

⁹ 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. As noted above, the Board identified this history as a key fact in its June 2009 Decision. *See* June 2009 Decision at 7; *see also* 49 C.F.R. § 1144.2(a)(2)(i) (“The complaining shippers has used or would use the through route . . . to meet a significant portion of its current or future railroad transportation needs between the origin and destination”).

Exhibit No. 3 to Entergy's Second Amended Complaint. This contract obligates Entergy to tender {

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ARGUMENT

I. Legal Standard

In its June 2009 Decision, the Board observed that “[t]hrough route prescription merely entails the activation of interchange relationships that, while perhaps

¹⁰ 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 Line in the PRB.

dormant, already physically exist.” June 2009 Decision at 8. The requirements for obtaining the prescription of a through route are “less rigorous than those required to justify the ‘far more intrusive’ remedies of terminal access or reciprocal switching.” *Id.* (citing *CP&L*, 1 S.T.B. at 1068-70).

A. Title 49

The through route standard set forth in 49 U.S.C. § 10705, which governs this case, is a simple “public interest” standard:

The Board may, and shall when it considers it desirable in the public interest, prescribe through route, joint classifications, joint rates, the divisions of joint rates, and the conditions under which those routes must be operated, for a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

49 U.S.C. § 10705(a)(1) (emphasis added); *accord Dixie Carriers, Inc. v. United States*, 351 U.S. 56, 60 (1956) (under statutory provisions making it mandatory for agency to establish through routes and joint rates whenever deemed by it to be necessary or desirable in public interest, public interest is guide to agency’s actions).

Section 10705(a)(2) of Title 49 lists additional issues for consideration in so-called “short-haul” situations where the Board requires a given carrier to include in a prescribed through route substantially less than the entire length of its railroad:

The Board may require a rail carrier to include in a through route substantially less than the entire length of its railroad and any intermediate railroad operated with it under common management or control if that intermediate railroad lies between the terminals of the through route only when—

(A) required under section 10741, 10742, or 11102 of this title;

(B) inclusion of those lines would make the through route unreasonably long when compared with a practicable alternative through route that could be established; or

(C) the Board decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

The Board shall give reasonable preference, subject to this subsection, to the rail carrier originating the traffic when prescribing through routes.

49 U.S.C. § 10705(a)(2); *see also Pennsylvania R.R. v. United States*, 323 U.S. 588, 590-91 (1945) (“The subsection first mentioned authorizes the Commission, when it deems it to be ‘necessary or desirable in the public interest’ to establish through routes and joint rates. The succeeding subsection is a limitation on the Commission’s power, derived in part from earlier enactments, prohibiting the Commission from requiring a line-haul carrier to short-haul itself as a participant in a prescribed through route.”) (emphasis added).¹¹

¹¹ *See also id.* at 592 (discussing the legislative process leading to the 1940 amendment of the Interstate Commerce Act, in which the Senate had eliminated the short-haul prohibition, but the House had retained an earlier version of the provision without change); *id.* (“In conference § 15(4) was amended by permitting the Commission to require a carrier to short-haul itself under the conditions specified . . . Thus the two sections – 15(3) and (4) – since 1940 have provided that the Commission may establish a through route if found to be ‘in the public interest’ but may not establish such a route which requires a carrier to short-haul itself unless it finds that the route will provide adequate, and more efficient or more economic, transportation.”).

However, since Entergy's request for relief does not seek a prescribed through route that would involve short-hauling a carrier, the additional statutory factors set forth in Section 10705(a)(2) should not apply to this case.

B. The STB's Regulations and Precedent

In its regulations regarding the prescription of through routes under Section 10705, the former ICC identified a list of relevant factors that the agency will consider in attempting to weigh the "public interest" in response to requests for through route prescriptions. As the ICC explained in adopting these regulations, "the test . . . which we have adopted, permits consideration of all public interest concerns [and] [i]t also contains more specific criteria that serve to focus the proceeding." *Intermodal Rail Competition*, 1 I.C.C.2d 822, 834 (1985), *aff'd sub nom. Baltimore Gas & Elec. v. United States*, 817 F.2d 108 (D.C. Cir. 1987) (emphasis added). Notably, in adopting those regulations, the ICC rejected a proposal to employ a more rigorous "anticompetitive practice" standard that, as the ICC explained, would have been "more restrictive than the public interest standard of section 10705, which governs prescriptions." *Id.*

Under its regulations, the Board considers "all relevant factors," including revenues, costs, and efficiency of the existing and requested routes, and the level of traffic that would use the through route, if prescribed:

§ 1144.2 Prescription.

(a) General. A through route or a through rate shall be prescribed under 49 U.S.C. 10705, or a switching arrangement shall be established under 49 U.S.C. 11102, if the Board determines:

(1) That the prescription or establishment is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive, and otherwise satisfies the criteria of 49 U.S.C. 10705 and 11102, as appropriate. In making its determination, the Board shall take into account all relevant factors, including:

(i) The revenues of the involved railroads on the affected traffic via the rail routes in question.

(ii) The efficiency of the rail routes in question, including the costs of operating via those routes.

(iii) The rates or compensation charged or sought to be charged by the railroad or railroads from which prescription or establishment is sought.

(iv) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section; and

(2) That either:

(i) The complaining shipper has used or would use the through route, through rate, or reciprocal switching to meet a significant portion of its current or

future railroad transportation needs between the origin and destination; or

(ii) The complaining carrier has used or would use the affected through route, through rate, or reciprocal switching for a significant amount of traffic.

49 C.F.R. § 1144.2(a).

In its *CP&L* bottleneck decision, the Board explained that “while the Board may prescribe additional through routes ‘when it considers it desirable in the public interest,’ 49 U.S.C. 10705(a)(1), under our competitive access rules we do so only where it ‘(i) is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive and (ii) otherwise satisfies the criteria of 49 U.S.C. 10705 and 11103, as appropriate.’” *CP&L*, 1 S.T.B. at 1065-66 (quoting the language of *former* 49 C.F.R. § 1144.5(a)(1), which now appears in substantially identical form in 49 C.F.R. § 1144.2(a)(1)). The Board further explained that “[a]s first interpreted in *Midtec Paper Corp. v. Chicago & N.W. Transp. Co.*, 3 I.C.C.2d 171, 181 (1986), *aff’d sub nom. Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988) (*Midtec*), to obtain access relief, including the prescription of through routes, shippers must show that a carrier ‘has used its market power to extract unreasonable terms on through movements, or, [] because of its monopoly position, has shown a disregard for the shipper’s needs by rendering inadequate service.’” *CP&L*, 1 S.T.B. at 1066.

Summarizing this standard, the Board explained that “under the competitive access rules and the statutory criteria from which they are derived (*see* 49 U.S.C. 10705), carriers may generally protect their single-line or existing through routes by declining to establish other possible through routes, unless it can be shown that the alternative routes sought are more efficient, or that the carriers have exploited their market power by providing inadequate service over their existing through routes.” *Id.*; *see also CP&L*, 1 S.T.B. at 1068-69 (“*Midtec* and the other prior cases addressing competitive access all involved requests for reciprocal switching or terminal trackage rights, ‘access’ remedies that are far more intrusive than the prescription of through routes. . . . We cannot declare in advance just what must be shown to make a competitive access case justifying the prescription of a new through route. No shipper has brought such a case to date, and relief would, of course, depend on the peculiar circumstances of each particular case.”) (emphasis added).

Notably, in the present case, Entergy seeks the prescription of a through route that does not involve UP. Therefore, this is not a situation in which UP has simply “declin[ed] to establish other possible through routes.” To the contrary, UP has continued to enforce a paper barrier restriction in its 1992 lease agreement that prevents a third-party carrier (*i.e.*, M&NA) from “establish[ing] other possible through routes.” Accordingly, in weighing the public interest under § 10705 and its regulations, and in applying its *CP&L* precedent, the Board should be mindful of the fact that UP would not

be required to participate in the requested routing and that any deference that may be owed to a bottleneck carrier in refusing to obligate it to participate in a through routing that is contrary to its own long-haul interests is not necessary or appropriate here.

II. Entergy's Requested Through Route is Desirable in the Public Interest

Entergy's evidence in this proceeding abundantly confirms that it is desirable in the public interest to prescribe a through route via BNSF-M&NA for service from the PRB to ISES. Among other reasons, the public interest in this case supports the prescription of a through route because of the anticompetitive effect of the UP paper barrier, the inadequacy of UP's service to ISES for extended periods in the past, and the greater efficiency associated with the requested BNSF-M&NA route. As the Board observed in its June 2009 Decision, "UP and MNA cannot contract away the statutory rights of a third party or neglect their own obligations under the statute." June 2009 Decision at 7.¹²

The practical effect of UP's paper barrier restriction is precisely that; namely, to prevent M&NA from participating in a through route with BNSF for service from the PRB to ISES. In the absence of the paper barrier interchange restriction,

¹² The Board further explained in this regard that if Entergy "can demonstrate that, due to this interchange commitment, UP and MNA are providing inadequate service or foreclosing more efficient service over another carrier, we may direct that a new route be opened and order MNA to establish a common carrier rate for interchange with that other carrier." *Id.*

M&NA would be free to participate with BNSF in the movement of coal to ISES, but the paper barrier restricts that ability. The availability of a second possible routing would give Entergy a second transportation option that allows it to maintain reasonable service, even during periods of inadequate UP service, and would allow Entergy to obtain the benefits of competition (both in terms of rate levels and overall customer service). Accordingly, this restriction is anticompetitive and contrary to the public interest.

The Board explained in its June 2009 Decision that the question of “what showing would justify the prescription of a through route . . . is necessarily fact-specific” and that the question “is a matter of first impression and we will consider all relevant factors.” June 2009 Decision at 8. The facts and circumstances of this case are even more unusual than the Board may have anticipated in its June 2009 Decision because – since the date of the Board’s June 2009 Decision – each of the two carriers that would be involved in the requested through movement has asserted that it currently holds out (or would hold out) to provide through service to Entergy.¹³ It is the interchange restriction imposed by an additional carrier, UP, however, that prevents Entergy’s use of that

¹³ See M&NA Motion to Dismiss dated August 17, 2009, at 5 (“There is a tariff permitting the use of a through route between M&NA and BNSF over the route between the PRB and Entergy’s Independence, AR power plant. See Exhibit 1, M&NA Tariff 8006-C. The relief sought by Entergy and AECC is unnecessary since Entergy can route traffic over a through route that is open under the M&NA tariff today.”); BNSF Response to Entergy Motion for Leave to Amend dated March 19, 2010, at 1 (“Entergy’s Motion should be denied, since BNSF has committed in writing to Entergy to cooperate with Missouri & Northern Arkansas Railroad Company, Inc. (‘MNA’) on the development of a through route movement without the necessity of an STB order specifically directed to BNSF.”).

through movement. Entergy therefore respectfully requests that the Board consider the unusual factual posture of this case in weighing whether the relief that Entergy requests is desirable in the public interest.

If the Board prescribes a through route in this case but that routing ultimately cannot be used for some reason (either related or unrelated to the continued enforcement of the UP paper barrier), no party will be harmed. Stated differently, if cost issues associated with the proposed routing preclude its use, neither UP, BNSF, nor M&NA will have been adversely impacted by a through route prescription. However, if the Board declines to prescribe the requested through route, then the Board will have precluded a competitive service option for Entergy that may have provided a substantial benefit to the public interest. Entergy therefore requests for this reason also that the Board grant its request for a through route prescription.

A. Entergy Depends Upon Reliable Service at ISES

Entergy's Mr. Ryan Trushenski explains in his attached Verified Statement that Entergy depends upon reliable and economic rail transportation service at ISES in order to allow Entergy to meet its load requirements. *See* Trushenski V.S. at 3-4. Mr. Trushenski explains that ISES is among the first units that Entergy dispatches in meeting its customer requirements. *Id.* at 3. When coal is not available at ISES, "the lost generation must be replaced with generation from higher-cost alternatives (*i.e.*, typically higher-cost gas, or purchased power)." *Id.* As described below, the unavailability of an

alternative rail transportation option has caused Entergy to incur substantial excess costs during periods of poor UP service.

Mr. Trushenski also identifies the volumes of coal that would be available for diversion to a new BNSF-M&NA through route to ISES. Specifically, Mr. Trushenski explains that Entergy has the ability under its current contractual arrangements with UP to tender the following amounts to BNSF/M&NA:

<u>Time Period</u>	<u>Maximum Volume (in tons)</u>
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See Trushenski V.S. at 2. Entergy's contract with UP expires { }, and from that point forward, Entergy could tender the entire volume of coal to be consumed at ISES to BNSF-M&NA. *Id.*; *see* 49 C.F.R. § 1144.2(a)(2)(i).

Prescription of a through route would serve the public interest because there remains a concern that UP will encounter service difficulties in the future, and

because a through route prescription is preferable to, and less costly than, “other options that Entergy has explored to assure the reliability of fuel supply at Independence, including the construction of a more costly rail spur and having to deal with replacement of lost coal generation with much higher priced alternative generation sources when UP is unable, or unwilling to deliver to Independence.” Trushenski V.S. at 4 (citing Mohl V.S. at 8-9).

B. UP has Abused its Market Power

As noted above, in its June 2009 Decision, the Board explained that further examination under Section 10705 was warranted because “Entergy has essentially alleged an abuse of market power;” namely, that UP has “exploited [its] market power to foreclose competition.” *Id.* at 7. In that regard, Mr. Trushenski’s Verified Statement chronicles the various time periods in the past in which UP’s service to ISES has not been adequate. *See* Trushenski V.S. at 3 (making reference to statements previously submitted in this proceeding by Entergy’s Mr. William Mohl and Mr. Dan Gray and identifying periods of poor UP service in 1993-1995, 1997-1998, and 2005-2008); *id.* (noting that UP claimed force majeure for approximately 42% of the time period between 2005 and 2008). In each of these extended periods of UP service inadequacy, 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 ISES, despite Entergy’s requests to obtain alternative service. *Id.* at 4. As a result of UP’s continued

enforcement of its paper barrier restrictions, 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. *Id.*

Moreover, in his attached Verified Statement, Entergy's expert witness Mr. Thomas D. Crowley of L.E. Peabody & Associates, Inc., explains that – in the context of prior litigation between Entergy and UP – he previously reviewed and analyzed information evidencing {

} *See Crowley V.S. at 6 (citing Exhibit_(TDC-4)).*

Mr. Crowley identifies two specific respects in which UP's past actions have amounted to the abuse of market power. First, Mr. Crowley explains that during the time period of its delivery shortfalls in 2005-2006, {

}

Crowley V.S. at 6-7.

In addition, Mr. Crowley explains that during 2005-2006, {

}

Neither of these two UP actions would have been as effective for UP in maximizing its revenues at Entergy's expense in the absence of UP's continued enforcement of its paper barrier and the unavailability of an alternative BNSF-M&NA through route to ISES.

C. Service Via BNSF-M&NA is Cost-Effective and Feasible

The through route that Entergy requests through this case would involve the movement of PRB coal via BNSF to a point of interchange with M&NA at Lamar, Missouri.¹⁴ M&NA would transport the coal from Lamar to ISES, and the return

¹⁴ Entergy has determined that BNSF and M&NA also could interchange ISES

movement to the mines would traverse these same lines. *See* Exhibit TDC-3 at p. 2. This movement is cost-effective and efficient under the standards set forth in the Board's regulations, and it constitutes a feasible means of transporting the available tonnages.

1. The BNSF-M&NA Through Route is Cost-Effective

In his attached Verified Statement, Mr. Crowley uses the Board's URCS Phase III costing methodology to demonstrate that the costs of the requested routing are lower than the costs of the existing routing.

In that regard, the total distance from the PRB to ISES via the requested Lamar routing is 1,236.3 miles. Crowley V.S. at 8. This is 121.6 miles shorter than the current UP-M&NA routing. *Id.* In addition, the requested BNSF-M&NA routing is shorter than the current routing on a round trip basis by 72.2 miles. *Id.* at 9.

On the basis of this distance disparity and the other parameters that the URCS system considers, Mr. Crowley develops the costs of the current UP/M&NA movement and the costs of the requested BNSF/M&NA through route. *See* Crowley V.S. at 9-10. Based upon this analysis, Mr. Crowley determines that the 1Q10 variable cost for movements under the existing routing is \$14.88 per ton, but that the 1Q10 variable cost for movements under the requested BNSF-M&NA routing via Lamar is only \$14.24 per ton, a difference of \$0.64 per ton. *Id.*

traffic at Aurora, Missouri, but it appears that the Lamar interchange is preferable. *See, e.g.,* Crouch V.S. at 17-20.

Missouri Pacific (over the current M&NA lines) and BNSF, “suggesting that the alternative routing Entergy seeks may be feasible, which would be one of the predicates for establishing the route’s efficiency.” June 2009 Decision at 7.

In November of 2009, Entergy witness Mr. Harvey A. Crouch conducted an inspection of the M&NA lines that would be involved in the requested through route. Mr. Crouch presents the results of his inspection – and his review of documents and responses provided in discovery in this case – in his attached Verified Statement. *See Crouch V.S.* at 4-21. Notably, M&NA’s parent company, RailAmerica, retained Mr. Crouch in 2003 to prepare the most recent version of the track charts for the M&NA system. *Id.* at 8. Accordingly, Mr. Crouch has substantial familiarity with this line.

In his statement, Mr. Crouch explains his inspection of the M&NA property and concludes that “the M&NA line between Lamar and Aurora, Missouri, and the Independence Station would be capable of handling loaded unit coal trains moving via a BNSF/M&NA through route interchanging at either Lamar or Aurora, Missouri, with minor modifications.” *Id.* at 3. Significantly, Mr. Crouch’s statement confirms that M&NA currently transports 286,000 pound railcars over its line. *Id.* at 5. In addition, Mr. Crouch confirms that it would be possible to interchange traffic in a convenient fashion at Lamar (or Aurora) with only minor track upgrades. *Id.* at 17-20.¹⁵

¹⁵ Even in situations – unlike the present situation – where interchange facilities are inadequate, Supreme Court precedent confirms that the prescription of a through route is nevertheless proper if that prescription is desirable in the public interest. *See, e.g., Helix Milling Co. v. Great Northern Ry.*, 287 I.C.C. 77, 85 (1952) (“[T]he fact that

Mr. Crouch also demonstrates in his statement that the grade and curvature of the M&NA line are not beyond the limits of normal coal-hauling railroads and Mr. Crouch explains that the line actually is better suited to unit train coal transportation than a number of lines that eastern carriers utilize for coal movements. *Id.* at 7-10.

CONCLUSION

For the foregoing reasons, Entergy respectfully requests that the Board prescribe a through route from southern PRB origins to ISES as described herein, and in addition, that the Board find that UP should be precluded from including tons moving under the prescribed through route in its calculation of annual diverted tons under Section IV of the UP/M&NA lease.

In addition, Entergy requests that the Board confirm that BNSF-M&NA are obligated to participate in a through route to ISES from northern PRB origins, subject to

interchange facilities are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest.”); *Mfrs. Assoc. of York, PA v. Pennsylvania R.R.*, 107 I.C.C. 219, 239 (1926) (quoting *St. Louis, Springfield & Peoria R.R. v. P. & P. U. Ry.*, 26 I.C.C. 226, 231) (“The fact that the interchange facilities are inadequate for convenient operation is not of itself a defense if through routes are shown to be necessary or desirable in the public interest. Facilities for interchange exist; if inadequate, they may be made adequate to perform the service which the law requires.”); *Chicago, Ottawa & Peoria Ry. v. C. & N. W. Ry.*, 33 I.C.C. 573, 575 (1915) (“It is the needs of the shipping and receiving public that the act was intended primarily to serve; and if a public necessity therefor is shown, our right in the case to require the establishment of the through routes and joint rates prayed for seems to be clear. The details with respect to equipment and facilities for the interchange of traffic devolve upon the carriers that are parties to the routes and rates after they are established.”).

the same additional finding regarding the exclusion of such tonnage for rent calculation purposes under the UP/M&NA lease.

Respectfully submitted,

ENTERGY ARKANSAS, INC. and
ENTERGY SERVICES, INC.

Cory R. Cahn
639 Loyola Avenue, 26th Floor
New Orleans, LA 70113

OF COUNSEL:

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

Dated: April 7, 2010

Attorneys & Practitioners

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of April, 2010, caused copies of the foregoing Opening Evidence and Argument to be served upon the parties of record to this case as follows:

By email and hand delivery (*Two Copies each of Under Seal and Public Versions*):

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Andrew B. Kolesar III

Trushenski

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

| | | |
|-----------------------------------|---|-------------------------|
| ENTERGY ARKANSAS, INC. and |) | |
| ENTERGY SERVICES, INC., |) | |
| |) | |
| Complainants |) | |
| |) | |
| v. |) | Docket No. 42104 |
| |) | |
| UNION PACIFIC RAILROAD |) | |
| COMPANY and MISSOURI & |) | |
| NORTHERN ARKANSAS RAILROAD |) | |
| COMPANY, INC., and |) | |
| BNSF RAILWAY COMPANY |) | |
| |) | |
| Defendants. |) | |
| |) | |

| | | |
|---|---|---------------------------------|
| MISSOURI & NORTHERN ARKANSAS |) | |
| R.R. – LEASE, ACQUISITION AND |) | |
| OPERATION EXEMPTION – MISSOURI |) | Finance Docket No. 32187 |
| PACIFIC R.R. and BURLINGTON |) | |
| NORTHERN R.R. |) | |
| |) | |

**VERIFIED STATEMENT
OF
RYAN TRUSHENSKI**

**Manager, Solid Fuel Supply
Entergy Services, Inc.**

Redacted, Public Version

Dated: April 7, 2010

**VERIFIED STATEMENT
OF
RYAN TRUSHENSKI**

My name is Ryan Trushenski. I am Manager, Solid Fuel Supply for Entergy Services, Inc. (“ESI”). My business address is 10055 Grogan’s Mill Road, Parkwood II Building, Suite 300, The Woodlands, Texas 77380.

Introduction and Background

I am submitting this Verified Statement in support of ESI and Entergy Arkansas, Inc.’s (“EAI”) (ESI and EAI are collectively referred to as “Entergy”) Second Amended Complaint. Through the Second Amended Complaint, Entergy is asking the Surface Transportation Board (“Board”) to prescribe a through route (or through routes) that would require BNSF Railway Company (“BNSF”) and the Missouri & Northern Arkansas Railroad Company, Inc. (“M&NA”) to transport loaded unit coal trains from Powder River Basin (“PRB”) mines to Entergy’s Independence Steam Electric Station (“Independence”). Entergy is asking the Board to establish a through route for the transportation of loaded unit coal trains both from northern PRB mine origins (“NPRB”) and southern PRB mine origins (“SPRB”).

As Manager, Solid Fuel Supply for ESI, I am responsible for overseeing planning and arranging for the purchase and delivery of coal to the coal-fired generating stations that are owned by the Entergy Operating Companies. These stations include EAI’s Independence Station located in Newark, Arkansas. EAI is responsible for management and operation of the two generating units at Independence, which includes responsibility for obtaining the supply and delivery of coal to this station. Unit 1¹ has a maximum dependable capability of approximately

¹ Co-owners of Unit 1 are: AECC 35 percent; EAI 31.5 percent; City of Conway 2 percent; City of Jonesboro 5 percent; Entergy Mississippi 25 percent; City of Osceola 0.5 percent; and City of West Memphis 1 percent.

836 megawatts (“MW”), and Unit 2² has a maximum dependable capability of approximately 842 MW. The two units historically have burned a total of approximately 6.5 million tons of coal on an annual basis.

All of the coal that is currently delivered to Independence is delivered by Union Pacific Railroad Company (“UP”) pursuant to a coal transportation agreement between UP and Entergy. The UP Agreement commits Entergy to transport a minimum of { } of all of its PRB coal delivered to the Arkansas plants, or {

}³ {

} Upon the expiration of the UP Agreement on { } all of Independence’s annual 6.5 million ton coal requirements will be available for shipment outside the UP Agreement.

² Co-owners of Unit 2 are: AECC 35 percent; Entergy Power Inc. 14.37 percent; East Texas Electric Cooperative 7.13 percent; City of Conway 2 percent; City of Jonesboro 15 percent; Entergy Mississippi 25 percent; City of Osceola 0.5 percent; and City of West Memphis 1 percent.

³ But for BNSF/M&NA’s willingness to commit to a through route for 2010 deliveries, the same { } tons of coal would have been available for shipment in 2010. The UP Agreement requires that { }. Given that we were unable to receive any decision from the Board on the paper barrier restriction { }, and given BNSF/M&NA’s unwillingness to provide a through route and revenue requirements by that date, Entergy had no choice but to continue to commit all the Independence tonnage to the UP contract for 2010.

Need for the Proposed Through Route(s)

The requested through route(s) are needed to assure the continued reliability of fuel supply to Entergy's Independence Station. As explained in the July 11, 2008 Verified Statement of William M. Mohl, reliability of fuel supply is a major concern to Entergy. Mohl V.S. at 4-5. The Independence Station is among the lowest-cost units available on the Entergy system and is among the first units that we dispatch in meeting our customer requirements. When coal is not available at this facility, the lost generation must be replaced with generation from higher-cost alternatives (*i.e.*, typically higher-cost gas, or purchased power).

One of the key ways for Entergy to protect the reliability of its coal generation at Independence is to assure that the fuel suppliers serving that plant are themselves reliable and that reasonable options exist so that fuel supply is not unnecessarily interrupted. As Mr. Mohl and Daniel B. Gray explained in earlier rounds of this proceeding, there have been numerous occasions in the past where Entergy has badly needed a transportation option for coal deliveries at Independence. These instances have included the service meltdowns experienced on the UP during periods in 1993-1995, 1997-1998, and 2005-2008 that resulted in substantial under-deliveries of coal to Entergy's Independence Station. Mohl V.S. at 5-9; Gray V.S. at 7-11. As Mr. Mohl noted in his September 2, 2008 Rebuttal Verified Statement, during the latter three-year period (*i.e.*, 2005-2008) UP was claiming force majeure for approximately 42% of this time period. Mohl R.V.S. at 4; Mohl V.S. at 7-8. In other words, UP was claiming it had *no delivery obligation* to Independence for 42% of a three-year period. *Id.* These circumstances put Entergy and its customers at tremendous risk that the Independence Station would not be able to meet its coal generation requirements in times where UP is experiencing service disruptions.

During these past service disruptions, Entergy approached M&NA and attempted to obtain alternative coal transportation service to assure that the reliability of the Independence Station was not compromised. Gray V.S. at 5-11. M&NA was unwilling, or unable, to cooperate because of the restrictions in its lease with UP. *Id.* As a result, Entergy was forced to replace lost coal generation at Independence with substantially higher-cost gas or purchased power from alternative energy suppliers. Mohl V.S. at 4-5.

While service levels have not been of concern in the past year, the public interest in having a service option at Independence remains very real. Entergy continues to be concerned that “absent Board action in this proceeding, it is just a matter of time before there is another service crisis during which UP will again rely on the anticompetitive terms of its lease with M&NA to preclude supplemental coal deliveries to Independence.” Mohl V.S. at 9. Allowing a through-route is preferable to, and will be less costly to our customers, than other options that Entergy has explored to assure the reliability of fuel supply at Independence, including the construction of a more costly rail spur and having to deal with replacement of lost coal generation with much higher priced alternative generation sources when UP is unable, or unwilling to deliver to Independence. Mohl V.S. at 8-9.

Efforts to Obtain Through Route

Through its February 19, 2008 Complaint (and evidence and argument submitted to the Board in support of that Complaint), Entergy asked the Board to find the continued enforcement of certain penalty provisions of the UP/M&NA Lease an unreasonable practice in violation of 49 U.S.C. § 10702. On June 26, 2009 (“*June ‘09 Decision*”) the Board issued a decision encouraging Entergy to amend its Complaint to ask for relief in the form of a through route prescription that would enable M&NA to provide service to Independence in conjunction with a

long-haul carrier other than UP. Consistent with that suggestion, Entergy submitted its Amended Complaint on July 27, 2009 and asked the Board to prescribe such a through route.

Entergy also attempted to obtain agreement with M&NA and BNSF on the desired through route. Towards that end, Entergy wrote a July 21, 2009 letter to M&NA asking if M&NA would agree to participate in a through route with BNSF for PRB coal transportation service to Independence. Exhibit RT-1. Entergy specifically asked that the through route be established with a BNSF/M&NA interchange at Aurora or Lamar, MO. *Id.* On July 24, 2009, M&NA expressed its commitment to “fulfilling its common carrier obligation by providing a through route at a rate that is compensatory to M&NA.” Exhibit RT-2. M&NA noted that it already had a carload tariff for interchange with BNSF at Aurora, and requested further information concerning the details of the transportation service that Entergy contemplated via the requested through route. *Id.* On September 9, 2009, Entergy responded to the questions that M&NA raised that related to information that was available to Entergy, as opposed to the questions that related to information that the carriers would need to exchange amongst themselves. Exhibit RT-3. No further response was received from M&NA on this correspondence.

On October 22, 2009, Entergy also attempted to engage BNSF in discussions concerning the requested through route. Exhibit RT-4. Entergy requested that BNSF provide its revenue requirements for unit train service from SPRB origins to a variety of interchange locations with M&NA, including Aurora and Lamar. We asked BSNF to identify any preferred interchange and also provided details concerning the available tonnages. Entergy also separately requested the same information for coal transportation service from NPRB origins. *Id.* A similar request was sent the same day to M&NA. Exhibit RT-5. The M&NA request also asked that M&NA

“please provide these rates with the assumption that no rental payments under Section 4 of the UP/M&NA lease would apply.” *Id.* at 2.

On November 5, 2009, BNSF provided a response to Entergy’s October 22, 2009 letter. Exhibit RT-6. BNSF expressed concerns relating to the investments that might be necessary to provide transportation service via the requested interchange locations and noted that “in the absence of detailed information regarding the location and manner in which M&NA would interchange coal traffic with BNSF and more detailed analysis of the costs of upgrading the BNSF lines and interchange facilities, BNSF is unable at this time to provide the requested revenue requirements.” BNSF also asked that once Entergy had completed its analysis of M&NA’s lines that Entergy provide BNSF with that information so it would be in a better position to respond to Entergy’s requests. *Id.* M&NA did not provide a response to Entergy’s October 22, 2009 letter.

In the Decision served December 30, 2009 (“*December ‘09 Decision*”) denying M&NA’s Motion to Dismiss Entergy’s Amended Complaint, the Board encouraged Entergy to identify the specific interchange points that it seeks to use to connect with the BNSF. The Board noted that “if MNA is genuinely holding itself out to grant Entergy access to BNSF at the desired points of interchange, MNA should quote rates that Entergy can use to transport train loads of coal from the PRB via those routes.” *December ‘09 Decision* at 4. The *December ‘09 Decision* also noted that if Entergy determined 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.* Consistent with the Decision, Entergy recently filed its Second Amended Complaint adding BNSF as a defendant and has attempted to identify the interchange options for a through route. Entergy’s experts, with the benefit of discovery in this proceeding and the opportunity to hy-rail

the M&NA's facilities, have concluded that the most feasible potential points of interchange between BNSF/M&NA would be Lamar, MO or Aurora, MO.

Prior to submitting the Second Amended Complaint, and in an effort to avoid the need for a Board order establishing a requested BNSF/M&NA through route, Entergy contacted both M&NA and BNSF and requested that they: (1) confirm their willingness to cooperate on a through route movement of SPRB coals using either Lamar or Aurora as the interchange; (2) state any preference that they may have between the two interchanges; and (3) provide Entergy with their revenue requirements for their respective portion of the through route(s). *See* Letter dated February 11, 2010 to M&NA at Exhibit RT-7, and Letter dated February 11, 2010 to BNSF at Exhibit RT-8. Entergy also asked M&NA to state whether its revenue requirements would include "amounts relating to payments to UP for rents or other penalty provisions under the UP/M&NA Lease Agreement." Exhibit RT-7 at 2.

On March 4, 2010, BNSF responded to Entergy's request for a through route and noted: "BNSF remains willing to cooperate with M&NA on the development of a through route movement as described in your letter without the necessity of an STB order specifically directed at BNSF." Exhibit RT-9. While this statement was in itself encouraging, BNSF made clear its unwillingness to provide its revenue requirements for either NPRB or SPRB movements absent clarification of a variety of matters relating to the possible interline service with M&NA at Lamar or Aurora "unless a commercial arrangement was put in place that assured [its] recovery on those investments." BNSF did not express any preference as between the two suggested interchange.

M&NA responded to my letter on March 5, 2010. M&NA's response stated that it {

{

}

The BNSF/M&NA responses confirm the dilemma that Entergy (as well as M&NA and BNSF) has faced throughout the proceedings that have lead to this request for a through route. One of the key inputs that will be needed in order for BNSF, M&NA and Entergy to be able to agree upon any through route and establish through rates is the revenue requirements of the carriers. One of the impediments to M&NA being able to offer revenue requirements for its portion of the through route is the uncertainty that surrounds the enforceability of the UP Lease restrictions and penalties. Entergy is deeply concerned that if the current proceeding does not address the enforceability of the UP/M&NA Lease restrictions and related penalties, Entergy, M&NA and BNSF would be faced with the prospect of pursuing a through route that ultimately may be precluded by the UP through the imposition of its lease penalty provisions. Entergy respectfully submits that it is not in the public interest for the Board to establish illusory through routes and asks that the Board consider the enforceability of the penalty provisions in ruling on the request for the through routes.

CONCLUSION

Entergy has very legitimate concerns relating to reliability issues at Independence Station. One of the keys to protecting against these risks it to have an independent M&NA available to serve the non-contract tonnages, as well as to pick up additional tonnages in periods when UP is unable, or unwilling, to provide service. As long as the UP Lease restrictions and

penalties remain in play, however, M&NA cannot function as a viable option for through route service and the public interest in reliable fuel supply can continue to be thwarted by UP.

VERIFICATION

I, Ryan Trushenski, verify under penalty of perjury that I have read the foregoing Verified Statement and know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



Ryan Trushenski

Executed on: April 06, 2010

1



Entergy Services, Inc.
Parkwood II Bldg., Suite 300
10055 Grogans Mill Road
The Woodlands, TX 77380
Tel 281 297 3629

Bill Mohl -
Vice President
System Planning & Operations

July 21, 2009

Tommy Gibson
General Manager
Missouri & Northern Arkansas Railroad, Inc.
514 North Orner Street
Carthage, MO 64836

Dear Tommy:

We are writing with regard to the coal transportation arrangements for our Independence Station. As you know, the Surface Transportation Board recently issued a decision in our paper barriers case that encouraged Entergy Arkansas, Inc. and Entergy Services, Inc. to seek relief in the form of a through route prescription that would enable M&NA to provide service in conjunction with a long-haul carrier other than UP (*i.e.*, BNSF). We intend to amend our complaint in order to seek that relief.

Prior to doing so, however, we are writing to inquire as to whether M&NA would agree (in the absence of a formal STB prescription) to participate in a through route with BNSF for coal transportation service from the PRB to the plant. We ask that this through route be established with an interchange between BNSF and M&NA at Aurora or Lamar, Missouri, or at any other more appropriate or efficient interchange location.

We look forward to hearing from you and request that you provide a response by the end of the week. Please let us know if you have any questions regarding our request.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Mohl".

Bill Mohl
V.P. System Planning & Operations
Entergy Services, Inc.

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MISSOURI & NORTHERN ARKANSAS RAILROAD

514 N. Ormer • P.O. Box 776 • Carthage, MO • 64836 • Phone: 417.358.8800 • Fax: 417.358.6005

July 24, 2009

Mr. Bill Mohl
Vice President
System Planning & Operations
Entergy Services, Inc.
10055 Grogans Mill Road, Suite 300
The Woodlands, TX 77380

Dear Mr. Mohl:

The Missouri & Northern Arkansas Railway Company, Inc. ("M&NA") acknowledges receipt of your letter dated July 21, 2009. M&NA is well aware of the decision of the Surface Transportation Board (the "STB") served on June 27, 2009, wherein the STB determined that Entergy Arkansas, Inc. and Entergy Services, Inc. (collectively "Entergy") "focused on the wrong provisions of the statute, and [provided] an opportunity for the shipper to pursue this case under the appropriate provision."

You have indicated that Entergy will amend its complaint before the STB, but at the same time as you intend to engage in further litigation, you have asked M&NA whether it "would agree (in the absence of a formal STB prescription) to participate in a through route with BNSF for coal transportation service from the PRB to the plant. We ask that this through route be established with an interchange between BNSF and M&NA at Aurora or Lamar, Missouri, or any other more appropriate or efficient interchange location."

M&NA remains committed to fulfilling its common carrier obligation by providing a through route at a rate that is compensatory to M&NA. Please be aware that M&NA already has a published tariff for interchange with BNSF at Aurora, although this tariff may contemplate movements of smaller carload volumes than Entergy envisions. Your letter provides no information concerning the proposed coal move as far as operations, service requirements, and volume commitments. In order for M&NA to assess its operational and infrastructure capabilities, and to later determine a compensatory rate over the through route, we request that Entergy provide M&NA with the following additional information:

1. When will these shipments commence?
2. What will be the duration for these shipments (how many months or years)?
3. How much will be the gross weight of the cars?
4. What is the total annual tonnage expected to move?
5. Will the shipments be single car or unit train?
6. If they are unit trains, what length will the trains be, both number of carloads and total footage?
7. What is the expected frequency of unit train shipments (# of trains per-week, especially during peak period)?

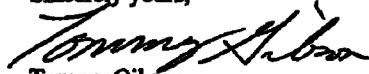
MISSOURI & NORTHERN ARKANSAS RAILROAD

514 N. Ormer • P.O. Box 776 • Carthage, MO • 64836 • Phone: 417.358.8800 • Fax: 417.358.6005

8. What will Entergy's turn time requirements be (i.e. Cycle time of the equipment on M&NA)?
9. Will the trains be scheduled or will they arrive at M&NA at random times?
10. Who will provide the locomotives? Will the locomotives run-through to M&NA?
11. If the locomotives run-through, will they be operated with distributed power?
12. What will be the configuration of the distributed power locomotive consist?
13. What are the arrangements for providing and paying for fuel?
14. Will the equipment be privately owned or railroad owned and, if so, who will provide the equipment and what will be the car hire arrangements?
15. Has Entergy reached a contract with BNSF or received a common carriage rate from BNSF?
16. If the cycle time proposed by Entergy requires M&NA to make improvements to the current condition of the track, how will Entergy assure that M&NA is reimbursed for the full cost of rehabilitation? Will there be a source from Entergy for funding required capital improvements? Will Entergy enter a take or pay contract? Does Entergy have some other plan?
17. The proposed Aurora and Lamar interchange locations are currently inadequate for unit train operations. Does Entergy propose a source for funding required capital improvements to either of these interchange locations?
18. Does Entergy contemplate entering into a contract with volume commitments?
19. Provide any other information concerning the proposed move that will be necessary for M&NA to quote a rate for the type of traffic proposed by Entergy.

Upon receipt of this information, M&NA will be able to provide a more definitive response to your request.

Sincerely yours,



Tommy Gibson
General Manager

Missouri & Northern Arkansas Railway Company, Inc.

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Entergy Services, Inc.
10055 Grogans Mill Road
Suite 300
The Woodlands, TX 77380
Tel. 281-297-3532
Fax 281-297-3832

September 9, 2009

Tommy Gibson
General Manager
Missouri & Northern Arkansas Railway Company, Inc.
514 North Ormer Street
Carthage, MO 64836

Dear Tommy:

This follows up on our letter dated July 29, 2009, and responds to the questions posed in your letter to Bill Mohl of July 24, 2009. Please understand that all of the following responses are subject to (1) the outcome of current litigation known as **Entergy Arkansas Inc., and Entergy Services, Inc. v. Union Pacific Railroad Company, and Missouri & Northern Arkansas Railroad Company, Inc.** before the Surface Transportation Board ("STB"); (2) negotiations between Entergy Arkansas, Inc. ("EAI"), Missouri and Northern Arkansas Railroad Company, Inc. ("M&NA") and other participating carriers, (3) other transportation contracts by which EAI is bound; and (4) evaluation by EAI of transportation terms and conditions offered in proposals submitted by M&NA and other transportation alternatives.

1. **When will these shipments commence?** Potentially as early as 1/1/2010.
2. **What will be the duration for these shipments?** Preferred term of one to five years.
3. **How much will be the gross weight of the cars?** 286,000 lbs GWR.
4. **What is the total annual tonnage expected to move?** Potentially ranging between 100,000 tons and 100% of plant requirements.
5. **Will the shipments be single or unit train?** Unit train.
6. **What length will the trains be?** 135 cars, or approximately 7,200 feet plus locomotives as determined by M&NA and participating carriers.
7. **What is the expected frequency of unit train shipments?** Approximately one to ten trains per week depending on tonnage commitments.
8. **What will be Entergy's turn time requirements?** Approximately 7-8 days round trip between the Wyoming Powder River Basin and Independence plant.
9. **Will the trains be scheduled or will they arrive at M&NA at random times?** To be determined between M&NA and participating carrier(s), subject to EAI consent concerning plant unloading capability.
10. **Who will provide the locomotives? Will they run through to M&NA?** Locomotives to be supplied by carriers as agreed between M&NA and participating carrier(s).

11. **If the locomotives run-through, will they be operated with distributed power?**
To be determined between M&NA and participating carrier(s), subject to EAI consent concerning plant unloading capability.
12. **What will be the configuration of the distributed power locomotive consist?**
To be determined between M&NA and participating carrier(s), subject to EAI consent concerning plant unloading capability.
13. **What are the arrangements for providing and paying for fuel?** To be determined between M&NA and participating carrier(s).
14. **Will the equipment be privately owned or railroad owned...?** Railcars to be supplied by EAI, no car-hire charges will apply to M&NA.
15. **Has Entergy reached a contract with BNSF or received a common carriage rate with BNSF?** No.
16. **If the cycle time proposed by Entergy requires M&NA to make improvements to the current condition of the track how will Entergy assure that M&NA is reimbursed for the full cost of rehabilitation...?** To be determined through discussion and negotiation between M&NA and EAI
17. **The proposed Aurora and Lamar interchange locations are currently inadequate for unit train operations...?** To be determined through discussion and negotiation between M&NA and EAI.
18. **Does Entergy contemplate entering into a contract with volume commitments?** To be determined through discussion and negotiation between M&NA and EAI.
19. **Provide any other information concerning the proposed move...** Additional information will be provided as needed in the course of further discussions between M&NA and EAI.

We look forward to receiving your response to our request that M&NA establish a through route as described in our letter of July 21, 2009.

Yours truly,



Ryan Trushenski
Project Manager, Solid Fuel Operations
Entergy Services, Inc.

Cc: Bill Mohl
Dan Gray
File

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Sami M. Salah
Vice President
Coal Marketing

BNSF Railway Company
P.O. Box 961051
Fort Worth, Texas 76161-0051
2650 Lou Menk Drive
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sami.shalah@bnsf.com

March 4, 2010

Mr. Ryan Trushenski
Project Manager Solid Fuel Operations
Entergy Services, Inc.
10055 Grogans Mill Road
The Woodlands, Texas 77380

Re: Independence Steam Electric Station

Dear Ryan:

I am writing in response to your February 11, 2010 letter requesting (i) 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 Independence Station using Lamar, Missouri and/or Aurora, Missouri as the locations for a BNSF/M&NA interchange; and (ii) that BNSF provide Entergy with its revenue requirements for unit train coal transportation service from SPRB as well as NBPR origins to each of the two stated interchange locations.

BNSF remains willing to cooperate with M&NA on the development of a through route movement as described in your letter without the necessity of an STB order specifically directed to BNSF. However, the preliminary matters identified below need to be addressed before BNSF would be able to provide Entergy with revenue requirements for the BNSF portion of such a move.

In my November 5, 2009 letter, I highlighted the fact that potentially substantial infrastructure upgrades would be required to bring any of the five proposed interchange locations, including Lamar and Aurora, up to a level to support unit train coal service. As previously explained, BNSF would not be willing to undertake the capital investments required for BNSF to provide interline service with M&NA via Lamar or Aurora unless a commercial arrangement was put in place that assured our recovery of those investments. Your letter gives no indication of how Entergy proposes that BNSF would recover those investments, and in the absence of such an arrangement, we remain unable to proceed in developing the revenue requirement you have requested.

In addition, in order to provide a revenue requirement for the BNSF portion of the contemplated joint movement, we need certain information regarding the manner in which M&NA would interchange unit train coal traffic with BNSF. We understand that Entergy has completed its inspection and analysis of the M&NA lines and prospective interchange facilities and has information concerning the location and manner of the proposed interchange operations that we would appreciate receiving. Specifically, we would need to understand the following key operational parameters to determine our revenue requirement: (i) the anticipated physical interchange location (i.e., whether physical interchange would occur on BNSF or MN&A track); (ii) any operation limitations present on the contemplated routes (i.e., the number of railcars per unit train that can be accommodated by the MN&A in interchange or limitations on the MN&A frequency or schedule of service); and (iii) locomotive power

March 4, 2010
Mr. Ryan Trushenski

Page Two

arrangements that would be required (i.e., whether run-through power would be provided or MN&A would provide their own locomotives, MN&A's requirements in terms of horsepower and configuration, and whether MN&A would anticipate performing the required inspections and/or fueling). As you can imagine, such information is needed to enable BNSF to evaluate train cycles and other service parameters in determining BNSF's revenue requirement, and we will be unable to respond to your request for revenue requirements absent such information.

Entergy has also likely gathered information concerning the extent and costs of upgrades and improvements that would be required on the M&NA lines to accommodate unit train coal traffic, and that information would be useful for BNSF to review in the context of further understanding the anticipated interchange operations and might also assist us in gauging the extent of the capital expenditures required on the BNSF lines for our portion of the contemplated joint movement. Review of these details, as well as the operating parameters anticipated by the MN&A for the Lamar or Aurora interchanges, might also result in a preference for BNSF regarding the potential interchange points.

Finally, in October of 2009 you requested a contract proposal from BNSF to transport to Entergy's White Bluff Station the very same limited tons described in your October 22, 2009 request and again covered by your February 11, 2010 request for transportation to the Independence Station. BNSF has previously served the White Bluff Station directly in coal unit train service, and we provided you with the requested contract proposal to cover all the tons here at issue through 2014. We reiterate our view that such a joint route to the Independence Station would be significantly more costly given the need for capital upgrades and interchange operations and likely less efficient than single-line BNSF unit train coal service to the White Bluff Station. To date, we've not received a response to our contract proposal. Given the clear advantages of a BNSF-direct movement to White Bluff over a joint movement to the Independence Plant, we believe it would be mutually beneficial to pursue transportation of the tons covered by this letter to the White Bluff Station and would appreciate your feedback regarding our initial proposal.

Sincerely,



Sami Shalah

cc: Tom Epich

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REDACTED

Crowley

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

| | | |
|---|---|-------------------------|
| ENTERGY ARKANSAS, INC. and |) | |
| ENTERGY SERVICES, INC., Complainants |) | |
| v. |) | Docket No. 42104 |
| |) | |
| UNION PACIFIC RAILROAD |) | |
| COMPANY and MISSOURI & |) | |
| NORTHERN ARKANSAS RAILROAD |) | |
| COMPANY, INC., and BNSF RAILWAY |) | |
| COMPANY, Defendants |) | |

| | | |
|---|---|---------------------------------|
| |) | |
| |) | |
| MISSOURI & NORTHERN ARKANSAS |) | |
| R.R. – LEASE, ACQUISITION AND |) | |
| OPERATION EXEMPTION – MISSOURI |) | Finance Docket No. 32187 |
| PACIFIC R.R. and BURLINGTON |) | |
| NORTHERN R.R. |) | |

Verified Statement

Of

Thomas D. Crowley
President
L.E. Peabody & Associates, Inc.

On behalf of

Entergy Arkansas, Inc. and Entergy Services, Inc.

Redacted, Public Version

Date: April 7, 2010

LIST OF EXHIBITS

| <u>EXHIBIT NO.</u>
(1) | <u>EXHIBIT DESCRIPTION</u>
(2) |
|----------------------------------|--|
| (TDC_1) | Statement of Qualifications of Thomas D. Crowley |
| (TDC_2) | Schematic of M&NA |
| (TDC_3) | Schematic Of UP's Route From PRB To Entergy's Independence Generating Station

Schematic Of BNSF's Route From PRB To Entergy's Independence Generating Station |
| (TDC_4) | Relevant Sections Of T.D. Crowley Expert Report in Case No. CV2006-2711, <u>Union Pacific Railroad Company vs. Entergy Arkansas, Inc. and Entergy Services, Inc.</u> , In The Circuit Court Of Pulaski County, Arkansas, Sixth District, September 7, 2007 |
| (TDC_5) | Mileage Comparison BNSF and UP Routes to Newark, AR |
| (TDC_6) | URCS Phase III Movement Parameters and Cost per Ton to Newark, AR |
| (TDC_7) | Comparison of Total Cost from PRB to Newark, AR via BNSF and UP Routes |

I. INTRODUCTION

My name is Thomas D. Crowley. I am an economist and President of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. I have spent most of my consulting career of over thirty-nine (39) years evaluating fuel supply issues and railroad operations, including railroad costs, prices, financing, capacity and equipment planning issues. My assignments in these matters were commissioned by railroads, producers, shippers of different commodities, and government departments and agencies. A copy of my credentials is included as Exhibit (TDC-1) to this opening verified statement ("OVS").

In December 1992, Missouri Pacific Railroad Company ("MP") and RailTex, Inc., predecessors to Union Pacific Railroad Company ("UP") and Missouri & Northern Arkansas Railroad Company, Inc. ("M&NA") respectively, executed a series of agreements in which: 1) UP leased 492.27 miles of main line and branch lines in the states of Arkansas, Kansas and Missouri to M&NA; 2) M&NA acquired 60.33 miles of incidental trackage rights over lines of the MP and Burlington Northern Railroad Company ("BN"); and 3) as part of this transaction, M&NA purchased 102 miles of mainline track from UP extending from Bergman to Guion, AR. These segments are collectively referred to herein as the "Carthage Line". The above referenced agreements are collectively referred to as the "Lease/Sale Agreement".

The Lease/Sale Agreement provides M&NA full and exclusive use of the leased properties for common carrier rail freight service, including the right to access and interchange traffic directly with all railroads operating at Springfield, Joplin, Carthage, Lamar, Aurora and

Nevada, MO and at Fort Scott, KS. Exhibit_(TDC-2) is a schematic of the M&NA. The term of the Lease/Sale Agreement is 20 years, of which more than 17 years have now expired. At M&NA's discretion, the Lease/Sale Agreement may be extended three times for an additional 20 years for each extension.

M&NA's right to interchange traffic with other carriers at the locations listed in the previous paragraph is conditioned upon an annual rental payment contained in Section 4 of the Lease/Sale Agreement, whereby, M&NA owes an annual rental payment to UP of up to \$90.0 million, which after escalation under the agreement is now approximately \$117 million. The amount of the rental payment is dependent upon the percentage of received or forwarded traffic M&NA interchanges with UP rather than an alternative connecting carrier.

The Surface Transportation Board ("STB" or "Board") decided¹ to examine interchange limiting provisions such as the rental payment (which are contained in the UP/M&NA Lease/Sale Agreement) on a case-by-case basis to ascertain the reasonableness of the specific provision. The standard set forth in Rail Access indicated that reasonableness would be determined based upon an examination of the net present value ("NPV") of the contribution resulting from a line sale or lease transaction compared with the expected contribution had the transaction not occurred. On February 19, 2008, Entergy filed a complaint in this proceeding alleging that the continued enforcement of certain provision of the 1992 Lease/Sale Agreement precludes the interchange of traffic with a long-haul carrier other than UP. Entergy's subsequent Opening and Rebuttal evidence in this proceeding demonstrated the veracity of the allegations of the Complaint.

¹ STB decision in Ex Parte 575 (Sub-No.1), *Review of Rail Access on Competitive Issues – Renewed Petition of the Western Coal Traffic League*, served October 30, 2007 ("Rail Access").

I submitted a Verified Statement on July 11, 2008 and a Rebuttal Verified Statement on September 2, 2008 addressing primarily: (i) the NPV of the stream of revenue contribution resulting from the Lease/Sale Transaction versus the NPV of the contribution UP would have received had it not entered the Lease/Sale Transaction with M&NA; and (ii) whether the rental payments included in Section 4 of the Lease Agreement exceed the contribution UP would have received had it not entered into the Lease/Sale Transaction.

On June 26, 2009 the Board issued a Decision in this proceeding which provided Entergy the opportunity to amend its Complaint in order to seek the prescription of a through route under 49 U.S.C. § 10705.² Consistent with this Decision (and the STB's subsequent Decision in this proceeding dated December 30, 2009) Entergy, on March 11, 2010, filed its Second Amended Complaint in this proceeding.

Among other items, the December 30, 2009 STB Decision required Entergy to identify the through route(s) that it seeks to have prescribed in its opening evidence.³ With the benefit of discovery and an inspection of alternative routes, Entergy identified its proposed route(s) in its March 11, 2010 Second Amended Complaint as The BNSF Railway ("BNSF")/M&NA through routes from the PRB to Independence with an interchange between BNSF and M&NA at either Lamar or Aurora, MO. Exhibit_(TDC-3) contains two schematics showing both the existing UP/M&NA route and the preferred BNSF/M&NA routes.

I have been asked by Counsel for Entergy Arkansas, Inc. ("EAI") and Entergy Services, Inc. ("ESI") (collectively referred to as "Entergy") to address several factors relevant to whether a through route via BNSF/M&NA from the Powder River Basin to Entergy's Independence Station would be: (i) in the public interest; and (ii) less circuitous and more efficient than the

² 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, served June 26, 2009, at 15.

³ 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, served December 30, 2009 at 5.

existing UP/M&NA route from the PRB to Independence. I conclude that the alternative routes, i.e., the BNSF/M&NA routes through both the Lamar and Aurora interchanges would significantly improve the reliability and adequacy of coal transportation to the Independence Station, would protect Entergy from further exploitation by UP of its market power over the Independence traffic, and would permit Entergy to receive more efficient and economic service to Independence than is currently possible in the absence of such a prescription. My testimony is discussed further below under the following topical headings:

II. The BNSF/M&NA Through Routes Would Foster Adequate and Reliable Transportation and Counter Abuse of Market Power

III. The BNSF/M&NA Through Routes Are More Efficient than the UP/M&NA Through Route

IV. Conclusions

II. THE BNSF/M&NA THROUGH ROUTES WOULD FOSTER ADEQUATE AND RELIABLE TRANSPORTATION AND COUNTER ABUSE OF MARKET POWER

Under Section 10705 (a)(1), the Board is authorized to prescribe through routes when it finds it to be “desirable in the public interest.” The Board’s regulations set out at 49 CFR § 1144.2 focus on costs, revenues and efficiency, but also take into account “all relevant factors”. The BNSF/M&NA alternate routes would address two important factors that the Board should consider. First, historically the UP/M&NA route has not provided adequate and reliable transportation service. Second, UP has abused its market power in providing service to Independence. Both of these factors are discussed below.

A. ADEQUATE AND RELIABLE TRANSPORTATION

The transportation of coal for use by Entergy at the Independence Station is vital to Entergy’s operation of that plant. As a baseload plant, Independence is a critical part of Entergy’s generation assets and it depends upon adequate and reliable deliveries of coal to maintain its generation operations. As addressed by Ryan Trushenski, Manager, Solid Fuel Supply for Entergy Services, Inc. in his Verified Statement submitted in this Opening Evidence, there have been prolonged periods when UP’s service to Independence has been inadequate and unreliable. Trushenski V.S. at 3-4. Mr. Trushenski refers to Verified Statements describing these situations and their impacts on Entergy’s Independence operations that were submitted by William M. Mohl and Daniel B. Gray in earlier rounds of evidence in this proceeding. *Id.* The lack of any practical alternative to UP/M&NA for delivery of its PRB coals during UP’s sustained operational problems caused Entergy substantial harm as it was forced to rely on high

cost alternatives to Independence's coal-fired generation. Although M&NA would have been able to provide service in conjunction with BNSF during these periods, as I discuss below, Entergy's efforts to do so were frustrated by UP.

**B. ABUSE OF
MARKET POWER**

In its Decision served June 26, 2009 in this proceeding, the Board suggested that further examination under 49 U.S.C. § 10705 was warranted for a number of reasons, including: “. . . Entergy has essentially alleged an abuse of market power. Entergy is served solely by MNA/UP today, and Entergy alleges that UP, in conjunction with MNA, has exploited that market power to foreclose competition.” *June '09 Decision* at 7.

In the course of preparing an expert report in prior litigation between Entergy and UP over UP's 2005-2006 PRB service crisis, {

} Copies of the relevant sections of my expert report in these matters are attached as Exhibit _(TDC-4).

Specifically, the facts relating to the delivery shortfalls Entergy experienced in 2005-2006 show that {

}

These two actions in 2005-2006 would not have been as effective for UP to enhance its profits, had M&NA and BNSF had the ability to deliver coal to Entergy without fear of the penalty provisions contained in the UP/M&NA Lease Agreement.

Action by the Board to prescribe the requested BNSF/M&NA through route would enhance the adequacy and reliability of coal transportation service from the PRB to Independence and protect Entergy from further abuse by UP of its market power flowing from the challenged paper barrier elements of the Lease Agreement. The efficiency, cost and revenue factors discussed below also support granting the requested BNSF/M&NA through route.

III. THE BNSF/M&NA THROUGH ROUTES ARE MORE EFFICIENT THAN THE UP/M&NA THROUGH ROUTE

As discussed below, the BNSF/M&NA through routes are “more efficient and economic” than the existing UP/M&NA route for four reasons. First, the BNSF/M&NA routes are shorter than the UP/M&NA route. Second, the combined BNSF/M&NA cost of providing service is less than the UP/M&NA cost of providing service. Third, the railroad cost of moving PRB coal to the Independence station using either of the BNSF/M&NA routes is less than via the either of UP/M&NA routes over the next 10 years. {

}

A. THE BNSF/M&NA ROUTES ARE SHORTER THAN THE UP/M&NA ROUTE

The BNSF/M&NA routes are more efficient than the UP/M&NA route because they are shorter than the UP/M&NA route. The average distance from each of the PRB mines south of Gillette, Wyoming to the Independence station via the Lamar, MO interchange equals 1,236.3 loaded miles. The average distance to the Independence station via the Aurora, MO interchange is 1,261.3 loaded miles. By contrast the average distance via the UP/M&NA route from these same mines to Independence via the Diaz Junction, Arkansas interchange equals 1,357.9 loaded miles, 121.6 miles or 9.8 percent greater than the BNSF/M&NA route via Lamar.⁴ Using the Aurora, MO interchange, the UP/M&NA route is 96.6 miles or 7.7% greater than the BNSF/M&NA route. BNSF and UP are both Class I carriers serving the PRB and transporting

⁴ These route miles are calculated using publicly available PC Rail Miler v.16 software and the Coal/Bulk Familized criteria of that software. The average mileage calculations are shown in Exhibit_(TDC-5).

huge volumes of coal. The routes for both carriers to serve the Independence Station are heavy haul coal routes. The shorter of such routes is less costly and thereby more efficient.⁵

B. THE RAILROADS' COST OF PROVIDING SERVICE IS LOWER VIA THE BNSF/M&NA ROUTES THAN VIA THE UP/M&NA ROUTE

The BNSF/M&NA cost of moving unit trains of coal from the PRB to the Independence Station is lower than the UP/M&NA cost of moving unit trains of coal to Independence. Using the STB's Uniform Railroad Costing System ("URCS") Phase III costing program and the individual carrier's URCS unit costs as determined by the Board,⁶ I determined that the URCS cost of providing service to the Independence Station from PRB mines equals \$14.24 per ton via the BNSF/M&NA Lamar route and \$14.52 per ton via the BNSF/M&NA Aurora route compared with \$14.88 per ton via the UP/M&NA route.

As stated in the Board's decision in *Major Issues*,⁷ "The Board uses the Uniform Rail Costing System (URCS) to determine a carrier's variable costs." URCS is a "general purpose costing system for all regulatory costing purposes," designed to measure system-wide average variable costs.⁸ The Board determined in *Major Issues* to use the URCS Phase III cost program and allow adjustments only for the nine movement-specific factors inputted into Phase III of

⁵ The BNSF/M&NA route via the Lamar interchange produces 2,472.6 round trip miles and the BNSF/M&NA route via the Aurora interchange produces 2,522.6 round trip miles. The UP/M&NA route produces 2,544.8 round trip miles.

⁶ The Board's individual carrier's 2008 URCS units costs were used for BNSF and UP and the Western Region 2008 URCS units costs were used for the M&NA portion of each route. Because M&NA is not a Class I carrier, it does not report costs to the Board in a manner that allows the Board to develop URCS costs for M&NA itself. In the STB's September 5, 2007 decision in Ex Parte No. 646 (Sub-No. 1), *Simplified Standards For Rail Rate Cases*, the STB explained that "If the carrier is not a Class I carrier, the Board will use the most appropriate regional URCS data." (page 26)

⁷ Ex Parte No. 657 (Sub-No. 1), *Major Issues in Rail Rate Cases*, served October 30, 2006, *Major Issues*.

⁸ See *Major Issues* at p. 47.

URCS.⁹ The nine inputs used in calculating the carriers' cost for the BNSF/M&NA and UP/M&NA routes and the resulting 2008 URCS variable costs indexed to 1Q10 wage and price levels are shown in Exhibit (TDC-6).

C. THE RAILROADS' COST OF PROVIDING SERVICE FOR AVAILABLE ENTERGY TONNAGE IS SIGNIFICANTLY LESS VIA THE BNSF/M&NA ROUTES THAN VIA THE UP/M&NA ROUTE

The Independence Station burns approximately 6.5 million tons of PRB coal annually. During the ten year period 2011 through 2020, Entergy will burn approximately 65 million tons of coal at the Independence Station. {

}
Entergy is contractually obligated to move {
}. This obligation is based on the {

}
Currently, Entergy does not have any obligation for the movement of any PRB coal tons to Independence after { }. Trushenski V.S. at 2.

Moving the { } million tons of Entergy's PRB coal requirements which are not contractually obligated to move via UP, via a BNSF/M&NA route to Independence, would result in a reduction in the carriers' cost of providing service equal to \$33.6 million during the 2011 though 2020 period if the Lamar interchange is used, and \$18.9 million if the Aurora

⁹ These movement specific factors include (1) the railroad; (2) loaded miles; (3) shipment type (local, originated, delivered, bridge); (4) number of freight cars; (5) tons per car; (6) commodity; (7) type of movement (single, unit, multiple); (8) car ownership; and (9) type of car.

interchange is used. Entergy's annual volumes available for movement over the BNSF/M&NA route and the calculation of the reduction in the railroads' cost of providing service for moving these tons is shown in Exhibit_(TDC-7).

{

}

The current UP/M&NA rate for moving Entergy's PRB coal to Independence is estimated to equal { }. BNSF and M&NA have not provided rate information for a through route movement and therefore there is no directly comparable through rate for the alternative BNSF/M&NA route.

However, as shown in BNSF's 2009 Investors' Report, its average rate for moving coal in 2009 equaled 12.95 mills per ton-mile. As shown in Table 1 below, applying this rate per ton-mile to the loaded miles for each of the BNSF/M&NA alternative routes yields a rate per ton {

}

Table 1
**Comparison of Rates Per Ton-Miles To
 Independence Via BNSF/M&NA And UP/M&NA Routes**

| <u>Item</u>
(1) | <u>BNSF/M&NA
Via Lamar</u>
(2) | <u>BNSF/M&NA
Via Aurora</u>
(3) | <u>UP/M&NA</u>
(4) |
|--|---|--|---------------------------|
| 1. Loaded Miles | 1,236.3 | 1,261.3 | --- |
| 2. BNSF 2009 Average Coal Rate Per Ton-Mile | 12.95 | 12.95 | --- |
| 3. BNSF/M&NA Rate Per Ton 1/ | \$16.01 | \$16.33 | { } |
| 4. BNSF/M&NA rate as percent for UP/M&NA rate 2/ | { } | { } | 100.0% |

1/ Line 1 x Line 2 - 1,000.
 2/ Line 3, Column (2) or Column (3) or Column (4) ÷ Line 4, Column (4).

Given that the average BNSF rate per ton-mile is comprised of coal moves that are both captive to BNSF and for which BNSF faces competition, one would expect that the rate BNSF would actually charge on Entergy's tons moving to Independence which could also move via UP, would be lower than BNSF's average rate per ton for moving coal. Thus were the Board to prescribe the BNSF/M&NA route, it would be reasonable to expect that Entergy should be able to negotiate a through rate lower than \$16.01 per ton.

IV. CONCLUSIONS

The BNSF/M&NA routes from the Powder River Basin to Entergy's Independence Station would provide Entergy an alternate routing that would greatly improve Entergy's ability to ensure the reliability of its vital coal transportation requirements from the PRB. These BNSF/M&NA routes would shield Entergy from future instances of the type of exploitation that has occurred in past periods of inadequate UP service when UP has taken advantage of its paper barrier protected monopoly position {

} In addition, the BNSF/M&NA routes are less circuitous and more efficient than the UP/M&NA route from the PRB to Independence. The alternative routes would permit Entergy to obtain more economic service to Independence than is currently possible in the absence of such a prescription. This conclusion is based on the following facts:

1. The loaded route miles for the BNSF/M&NA alternative routes are as much as 9.8 percent shorter than the UP/M&NA route;
2. The BNSF/M&NA cost of providing service is as much as \$0.64 per ton less than the UP/M&NA cost of providing service;
3. Using the BNSF/M&NA route via Lamar to move tons not contractually obligated to UP between 2011 and 2021 would result in a reduction of the carriers' costs of more than \$33.6 million; and

4. {
- }

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STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, and 10445 N. Oracle Road, Suite 151, Tucson, Arizona 85737, and 21 Founders Way, Queensbury, New York 12804.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of coal. As a result of my extensive economic consulting practice since 1971 and my participating in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers that move coal over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of coal by rail.

STATEMENT OF QUALIFICATIONS

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from coal mine origins in the Powder River Basin and in Colorado to various utility destinations in the eastern, mid-western and western portions of the United States and from the Eastern coal fields to various destinations in the Mid-Atlantic, northeastern, southeastern and mid-western portions of the United States. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal and numerous other commodities handled by rail.

STATEMENT OF QUALIFICATIONS

I have frequently been called upon to develop and coordinate economic and operational studies relative to the acquisition of coal and the rail transportation of coal on behalf of electric utility companies. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various coal shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers,

STATEMENT OF QUALIFICATIONS

with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the Staggers Rail Act of 1980, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively

STATEMENT OF QUALIFICATIONS

involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, North America Freight Car Association, the Fertilizer Institute and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

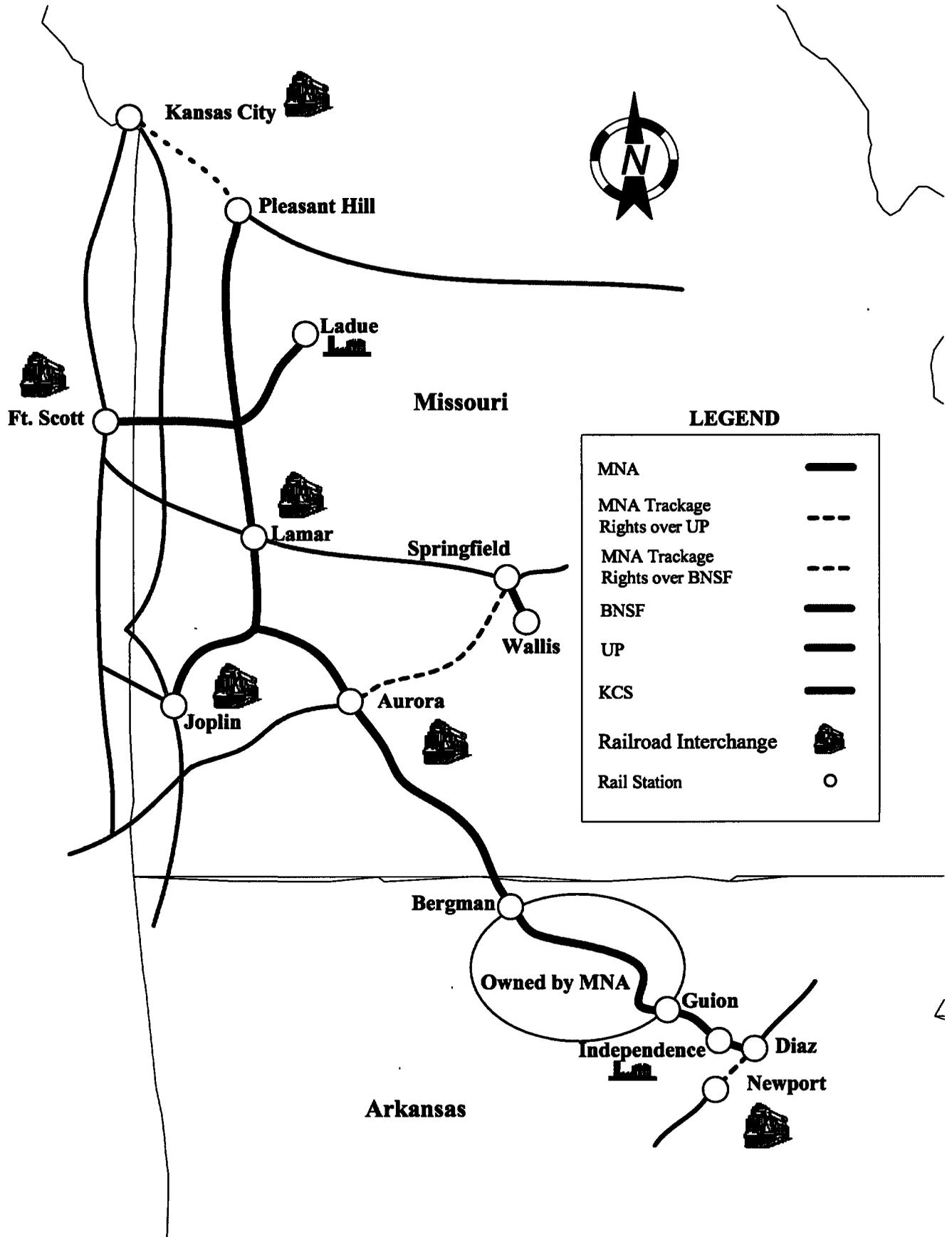
STATEMENT OF QUALIFICATIONS

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al. which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, Notice of Intent to File Division Complaint by the Long Island Rail Road Company.

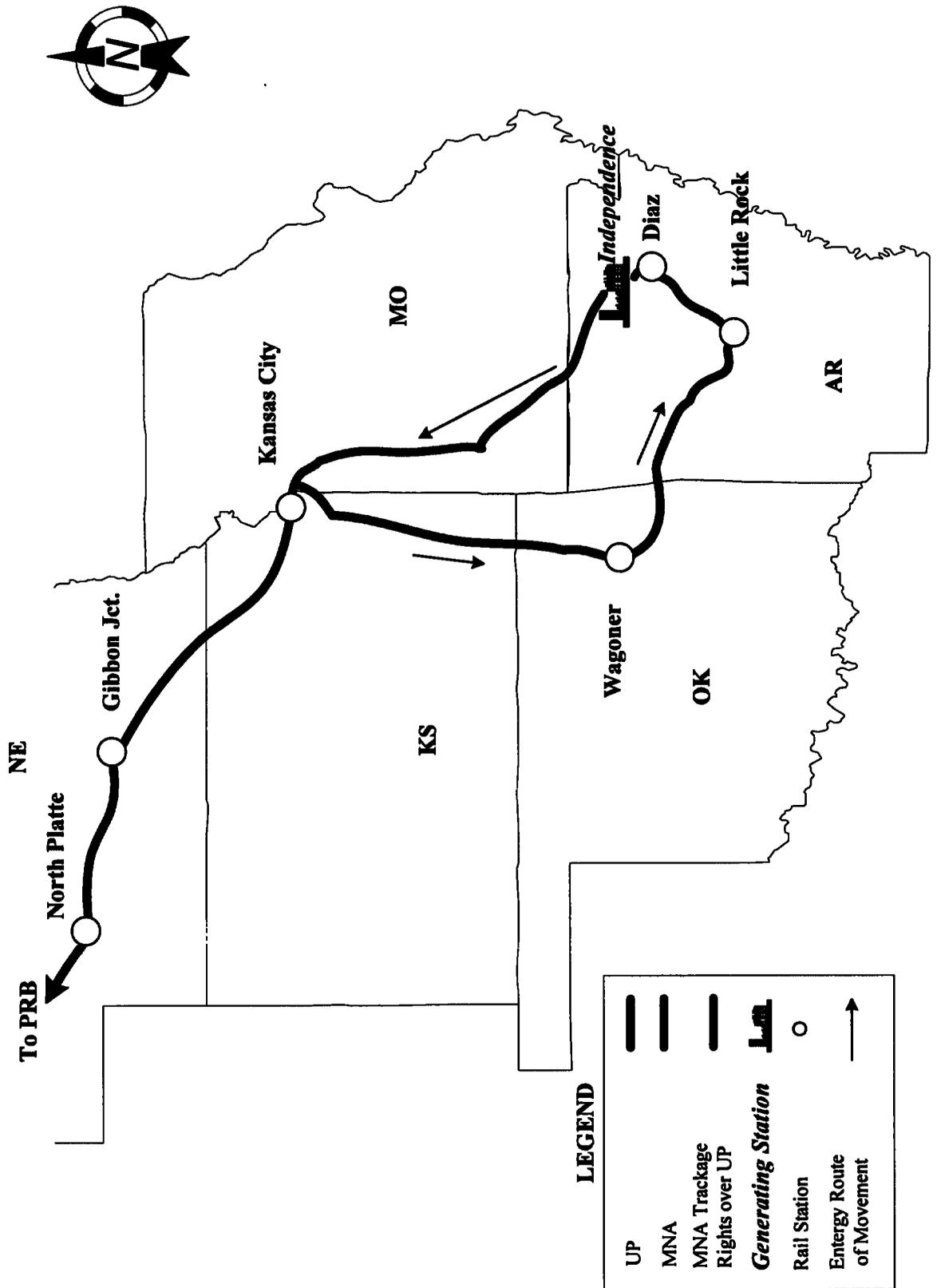
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Schematic of M&NA

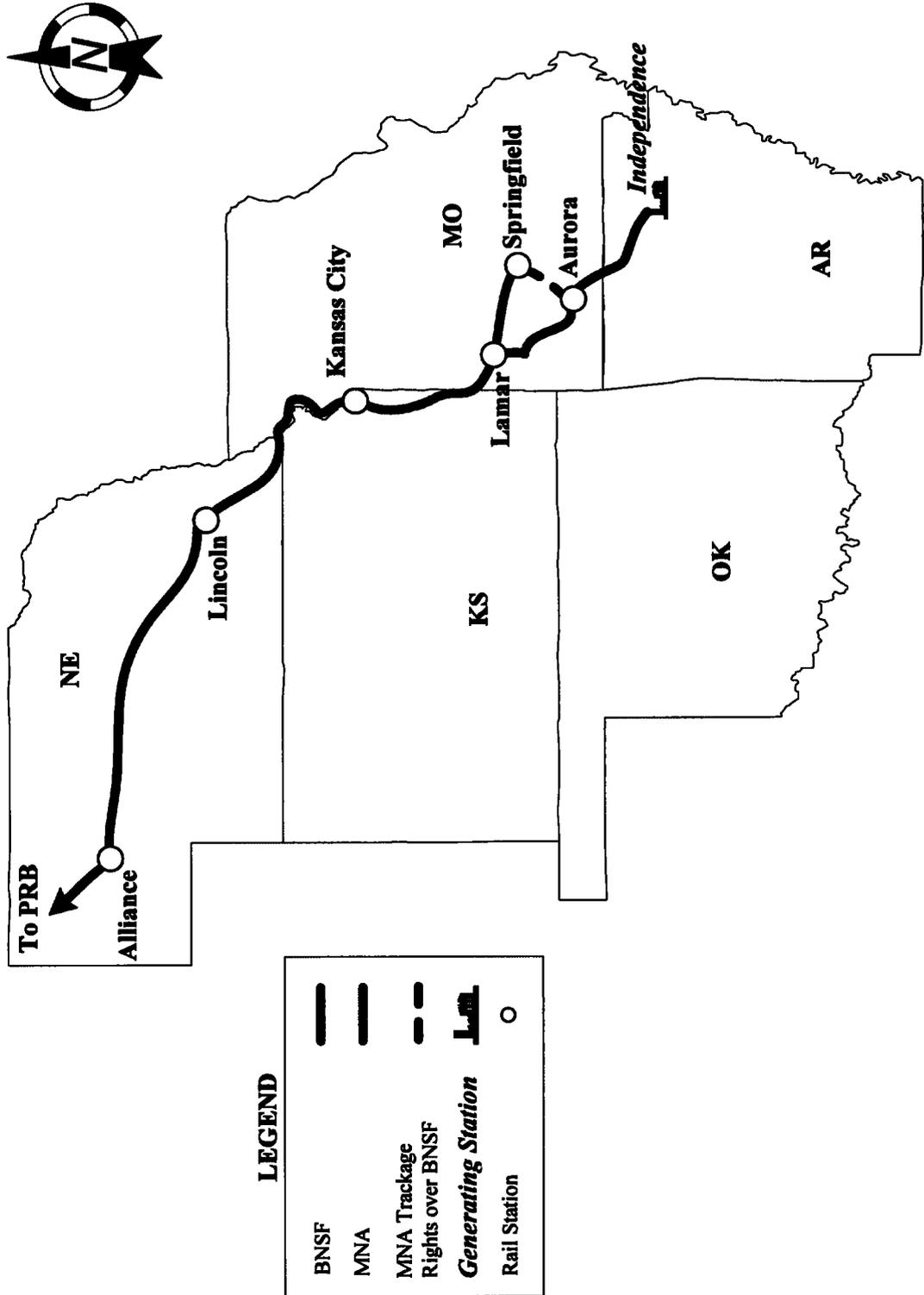


3

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



Schematic Of BNSF's Route From PRB To Entergy's Independence Generating Station



4

REDACTED

5

6

Entergy v UP and M&NA
URCS Phase III Movement Parameters and Cost per Ton to Newark, AR

| Item
(1) | PRB to Newark, AR - BNSF - Lamar | | PRB to Newark, AR - BNSF - Aurora | | PRB to Newark, AR - UP Route | | | | |
|-----------------------------------|----------------------------------|------------|-----------------------------------|-------------|------------------------------|--------------|------------|------------|--------------|
| | BNSF
(2) | MNA
(3) | Total
(4) | BNSF
(2) | MNA
(3) | Total
(4) | UP
(5) | MNA
(6) | Total
(7) |
| A. Movement Parameters | | | | | | | | | |
| 1. Railroad | BNSF | WEST | --- | BNSF | WEST | --- | UP | WEST | --- |
| 2. Miles | 955.7 | 280.6 | 1,236.3 | 1,042.2 | 219.1 | 1,261.3 | 1,344.6 | 13.3 | 1,357.9 |
| 3. Shipment Type | OD | RT | --- | OD | RT | --- | OD | RT | --- |
| 4. Cars per Train | 135 | 135 | --- | 135 | 135 | --- | 135 | 135 | --- |
| 5. Car Type | Gondola | Gondola | --- | Gondola | Gondola | --- | Gondola | Gondola | --- |
| 6. Car Ownership | Private | Private | --- | Private | Private | --- | Private | Private | --- |
| 7. Tons per Car | 120 | 120 | --- | 120 | 120 | --- | 120 | 120 | --- |
| 8. Commodity | Coal | Coal | --- | Coal | Coal | --- | Coal | Coal | --- |
| 9. Movement Type | Unit Train | Unit Train | --- | Unit Train | Unit Train | --- | Unit Train | Unit Train | --- |
| B. Variable Cost | | | | | | | | | |
| 10. Phase III Cost Base Year 2008 | \$11.44 | \$3.66 | \$15.10 | \$12.44 | \$2.97 | \$15.41 | \$14.94 | \$0.65 | \$15.60 |
| 11. Index to 1Q10 | 0.94109 | 0.94830 | | 0.94109 | 0.94830 | | 0.95408 | 0.94830 | |
| 12. Phase III Cost 1Q10 | \$10.77 | \$3.47 | \$14.24 | \$11.71 | \$2.81 | \$14.52 | \$14.26 | \$0.62 | \$14.88 |

7

**Entergr v UP and M&NA
Comparison of Total Cost from PRB to Newark, AR via BNSF and UP Routes**

| Year
(1) | Cost per Ton 1/
BNSF/MNA | | | Total Cost | | | Difference | | Present Value 2/
Aurore | | |
|------------------------|-----------------------------|--------------|---------------|---------------|----------------------|----------------------|----------------------|---------------------|----------------------------|---------------------|--------------------|
| | Volume
(2) | Lamar
(3) | Aurore
(4) | UP/MNA
(5) | Lamar
(6) | Aurore
(7) | UP/MNA
(8) | Lamar
(9) | Aurore
(10) | Lamar
(11) | Aurore
(12) |
| 2011 | 1,950,000 | \$15.42 | \$15.72 | \$16.11 | \$30,069,000 | \$30,654,000 | \$31,414,500 | \$1,345,500 | \$760,500 | \$1,204,021 | \$680,533 |
| 2012 | 1,225,000 | \$16.02 | \$16.34 | \$16.74 | \$19,624,500 | \$20,016,500 | \$20,506,500 | \$882,000 | \$490,000 | \$706,270 | \$392,372 |
| 2013 | 500,000 | \$16.70 | \$17.02 | \$17.45 | \$8,350,000 | \$8,510,000 | \$8,725,000 | \$375,000 | \$215,000 | \$268,714 | \$154,063 |
| 2014 | 500,000 | \$17.31 | \$17.65 | \$18.09 | \$8,655,000 | \$8,825,000 | \$9,045,000 | \$390,000 | \$220,000 | \$250,076 | \$141,068 |
| 2015 | 3,500,000 | \$17.83 | \$18.18 | \$18.64 | \$62,405,000 | \$63,630,000 | \$65,240,000 | \$2,835,000 | \$1,610,000 | \$1,626,723 | \$923,818 |
| 2016 | 6,500,000 | \$18.26 | \$18.62 | \$19.08 | \$118,690,000 | \$121,030,000 | \$124,020,000 | \$5,330,000 | \$2,990,000 | \$2,736,795 | \$1,535,275 |
| 2017 | 6,500,000 | \$18.63 | \$19.00 | \$19.47 | \$121,095,000 | \$123,500,000 | \$126,555,000 | \$5,460,000 | \$3,055,000 | \$2,508,761 | \$1,403,711 |
| 2018 | 6,500,000 | \$19.04 | \$19.42 | \$19.90 | \$123,760,000 | \$126,230,000 | \$129,350,000 | \$5,590,000 | \$3,120,000 | \$2,298,440 | \$1,282,850 |
| 2019 | 6,500,000 | \$19.36 | \$19.74 | \$20.23 | \$125,840,000 | \$128,310,000 | \$131,495,000 | \$5,655,000 | \$3,185,000 | \$2,080,701 | \$1,171,889 |
| 2020 | 6,500,000 | \$19.69 | \$20.07 | \$20.57 | \$127,985,000 | \$130,455,000 | \$133,705,000 | \$5,720,000 | \$3,250,000 | \$1,883,310 | \$1,070,063 |
| Total 2011-2020 | | | | | \$746,473,500 | \$761,160,500 | \$780,056,000 | \$33,582,500 | \$18,895,500 | \$15,563,810 | \$8,755,643 |

1/ URCS Phase III Cost adjusted based on Global Insight forecast of RCAF-U

2/ Discount factor equals 2008 rail after tax cost of capital of 11.75%

Crouch

**VERIFIED STATEMENT
OF
HARVEY A. CROUCH, P.E.**

My name is Harvey A. Crouch, P.E. I am President and CEO of Crouch Engineering, P.C., a consulting firm that provides high quality railway engineering and planning services to railroads, governmental agencies and private industry. Our business offices are located at 428 Wilson Pike Circle, Brentwood, TN 37027.

I. PURPOSE OF THIS STATEMENT

This Verified Statement is submitted in support of the Opening Evidence and Argument of Entergy Arkansas, Inc., and Entergy Services, Inc. (collectively “Entergy”). Specifically, Crouch Engineering was retained by Entergy to analyze the feasibility of operating loaded unit coal trains on the Missouri & Northern Arkansas Railroad (“M&NA”) between potential interchange locations with the BNSF Railway Company (“BNSF”) including Lamar and Aurora, Missouri and Entergy’s Independence Electric Steam Station (“Independence”), located near Newark, Arkansas at M&NA milepost 267.7. The results of my analyses are set forth below.

II. STATEMENT OF QUALIFICATIONS AND BACKGROUND¹

I have been involved in the railroad industry for approximately 32 years. I have served as a Track Supervisor and Project Engineer in the Maintenance of Way & Structures (MW&S) Department of Norfolk Southern Railway (NS), and worked for NS’s predecessor Southern Railway Company as an Industrial Development Engineer. I founded Crouch Engineering in 1991 and since that time have provided railway engineering services to numerous short line railroads and government agencies. I have been responsible for numerous track and bridge

¹ A copy of my credentials is included as Exhibit No. HAC-1 to this Verified Statement. Exhibit No. HAC-2 to this Verified Statement identifies the principal Crouch Engineering engineer that assisted me with my analyses (Kevin N. Lindsey, P.E.) and provides a summary of his qualifications and background.

rehabilitation projects in Central and Southern Appalachian regions and elsewhere. I have been responsible for numerous track and bridge inspection, rehabilitation and new construction projects across the United States. My clients have included NS, short line railroad holding companies including Rail America (who I understand is the current owner of the M&NA), Genesee & Wyoming, Gulf & Ohio Railways, and over 120 other short line railroads. I have conducted on-site evaluations of railroad facilities to identify needed repairs or improvements; conducted engineering surveys and prepared plans, specifications and cost estimates for railroad repairs and capital improvements; provided construction management and inspection services, including preparation and analysis of bid documents; and evaluated routes for proposed line changes.

From 1977 to 1980, I worked for Southern Railway Company in the Industrial Development Department of the Maintenance of Way and Structures Department. My duties included meeting with customers to understand their service needs, performing topographic surveys necessary for track design, and completing preliminary and final designs for new track and roadbed, track modifications, drainage structures, and related appurtenances in ten States (midwest and southeast). From 1982 to 1987, I worked for NS in its MW&S Department. I began with NS as a Management Trainee, and in 1983, was appointed Project Engineer in which position I was responsible for project management of railroad construction projects in Alabama, South Carolina, Indiana, Kentucky and on NS's Appalachian Division which included mountainous areas in western Virginia and Tennessee. I was responsible for construction management for a variety of projects including tunnel bypasses, construction of new connecting tracks, sidings, yards, etc.

From 1986 to 1987, I was a Track Supervisor and was responsible for the inspection and maintenance of the NS main line track between Danville and Richmond, VA, including day-to-day supervision of work gangs, safety program, ordering material, budgeting, planning, and construction management for rehabilitation and maintenance of track and bridges. While with NS, I was an FRA-qualified track inspector.

From 1988 to 1991, I worked as a Graduate Research Assistant for Tennessee Tech, an Environmental Engineer for the Tennessee Valley Authority, and Project Manager for McCoy Associates, Inc., an engineering firm involved in bridge inspection, design, planning and project management and new railroad facility design. In 1991, I left McCoy Associates to found Crouch Engineering.

I received a Bachelor of Science in Civil Engineering from Tennessee Technological University in 1982 and a Master of Science in Civil Engineering from Tennessee Tech in 1989. I am a registered Professional Engineer in 36 states, including Kansas, Arkansas and Missouri. I am a member of the American Railway Engineering and Maintenance of Way Association (AREMA), the American Short Line and Regional Railroad Association, the Tennessee Short Line Association, American Society of Civil Engineers, and the National Society of Professional Engineers.

III.SUMMARY OF FINDINGS

Based upon our review, Crouch Engineering has concluded that the M&NA line between Lamar and Aurora, Missouri, and the Independence Station would be capable of handling loaded unit coal trains moving via a BNSF/M&NA through route interchanging at either Lamar or Aurora, Missouri, with minor modifications. This conclusion is based on Crouch Engineering's review of the documents and interrogatory responses provided in discovery in this proceeding by

M&NA, Union Pacific Railroad Company (“UP”) and BNSF; review of information available to us through public sources, including map resources (Google Earth Maps, USGS Topographic Maps, Aerial Photos from Google Earth and Bing); and performance of a three day hy-rail inspection of the line in November, 2009 to make observations regarding current infrastructure conditions.²

IV. FINDINGS

In performing our analyses of the feasibility of operating loaded unit coal trains on the M&NA between potential interchange locations with BNSF at Lamar and Aurora, Missouri and the Independence Station located at M&NA milepost 267.7, we considered that the following items could be relevant to the feasibility of operating the additional loaded unit coal train traffic:

- A. Gross Car Weight
- B. Locomotive Type and Axle Configuration
- C. Length and Number of Trains
- D. Track Geometry - Grade and Curvature
- E. Track Structure - Track Components
- F. Bridge Structures - Design Load Rating
- G. Capacity to Handle Additional Traffic
- H. Operational Considerations - Passing Sidings
- I. Feasibility of Potential Interchange Locations

² The inspection was attended by myself, as well as Kevin N. Lindsey of Crouch Engineering, Tommy Gibson, Kess Creech, Daryl Gabriel and Scott Williams of RailAmerica/M&NA; Frank J. Pergolizzi of Slover & Loftus LLP; and Jerry Heavins and David Brookings, experts for AECC. The inspection began at M&NA milepost 265.6 on the main line, Cotter Subdivision, near Independence, Arkansas, and continued north to Nevada, Missouri. The branch line from Nevada, Missouri to Ft. Scott, Kansas was also inspected.

A. Gross Car Weight

The proposed gross car weight for individual cars in a unit coal train is 286,000 lb. The 286,000 lb. gross weight car is standard for modern car loads, and is often referred to as “286” or “286k” cars. The 286k car replaced the 263,000 lb. car (100 ton net load) as the industry standard in the early 1990’s. Many railroads shipped 286k cars in the 1980’s as well. It is our understanding that the aluminum car train sets that Entergy owns and would utilize for loaded unit coal train service via a BNSF/M&NA through route consist of 286k cars.

We further understand, based on our discussions with M&NA Maintenance-of-Way employee Kess Creech, that {

} In fact, during the inspection, numerous grain cars were observed that were labeled for 286,000 lb. gross weight.

The Railroad currently hauls loaded 286k cars; therefore, it may be concluded that the line is capable of handling additional loaded 286k cars. Additional 286k loads may accelerate the maintenance cycles that could be expected for items like ties in curves, ballast and track surfacing. As the tonnage levels increase, one could expect that more frequent program maintenance would be required. My experience is that these types of items are typically dealt with through rate considerations, and that as the tonnage levels increase, the revenue stream should be set at levels that would allow the railroads to cover the increased maintenance expenditures.

B. Locomotive Type and Axle Configuration

The locomotives used for pulling loaded 135 car unit coal trains are typically 6-axle locomotives. It is our understanding that the unit coal trains currently serving Independence Station use three (3) locomotive units, with distributed power. Thus, 6-axle locomotives are

currently in use on the M&NA, specifically on the empty unit coal trains that use the line between Independence and Lamar, Missouri; therefore, it may be concluded that the line is capable of accommodating 6-axle locomotives.

We have also assumed that the locomotives operating over the through-route movement would be run-through power, and that there would be no need for facilities to switch or store locomotive units.

C. Length and Number of Trains

The length of trains was considered in determining the feasibility of handling loaded unit coal trains on the M&NA. We assumed that trains moving via the studied BNSF/M&NA through route(s) would have the same configuration as current unit coal trains serving Independence. These trains typically consist of 135 cars, 53 feet in length, 286,000 lb. gross weight per car, with three (3) 6-axle locomotives (distributed power). In my opinion, the infrastructure is capable of accommodating loaded unit coal trains of this length. Passing loaded and empty unit coal trains are a function of train length and siding length, as discussed below.

It is our understanding, based on discussions with Entergy personnel, that Entergy would have the ability to move as much as {

} tons of coal per year. Beginning { }, Entergy would no longer be restricted by its contractual arrangements with UP, and could conceivably ship up to 6.5 million tons per year to Independence via the through route(s).

In order to move { } tons of coal per year, we assumed that the M&NA line would need to be able to accommodate approximately ten (10) loaded unit coal trains per month

for the period between { },³ and only three (3) trains per month for the period from { } tons of coal per year will be available. To ship 6.5 million tons of coal annually in the { } timeframe via the through route(s), the M&NA would need to accommodate 33 trains per month.

In addition, it is our understanding that the addition of loaded unit coal trains via the BNSF/M&NA through route(s) would not add any additional empties to the M&NA line. UP currently routes loaded unit coal trains to Independence Station via an interchange with M&NA at Diaz Jct., Arkansas – a point that is located south of the Independence Station. Empty unit coal trains are then routed northbound from Independence on the M&NA to Kansas City, via Carthage, Aurora, and Nevada, Missouri. The empty trains are then interchanged with UP at Kansas City for their return trip to the Powder River Basin. We have assumed that UP would continue to route all empty coal trains via this same route and that any BNSF trains would be empty trainsets that are diverted from UP. Thus, there would be no additional empty unit coal trains moving over the M&NA, even if additional loaded unit coal trains are moved via the BNSF/M&NA over the northern part of M&NA’s lines via the BNSF/M&NA through route through either Lamar or Aurora.

D. Track Geometry - Grade and Curvature

M&NA has suggested in its discovery responses that “[t]he track structure of the southernmost 200 miles of the MNA presents maintenance and engineering challenges associated with multiple high degree curves.” M&NA Response to Complainants’ First Set of Interrogatories and Requests for Production of Documents, Response to Interrogatory No. 4.

³ Assumes that each railcar holds 120 tons of coal, and that each 135 car trainset transports 16,200 tons of coal per train.

M&NA further stated: “As a result of these physical characteristics and less than optimal conditions, the addition of *one or two loaded unit coal trains per day* would demand significant investments in rail and ties.” *Id.* (emphasis added).

Based on my analyses, I believe that the track structure of the southernmost 200 miles of the M&NA is compatible with the movement of loaded unit coal trains. In addition to my recent inspection of the line, it bears noting that in July 2003 Crouch Engineering prepared the most recent track charts for the M&NA lines for RailAmerica, and thus is very familiar with the terrain through which this line travels, as well as the grade and curvature data for the line. Also, as noted above, I have significant experience with engineering and operational issues relating to the movement of loaded coal trains in the eastern United States through terrain that is similar, or more severe, than the terrain through which the M&NA line travels. I address my specific conclusions concerning grades and curvature in this section. Rail, crossties, ballast and surfacing are addressed in Section E, below.

1. Grades

Based on my review of the M&NA grades, I believe that the grades on the M&NA line are compatible with the movement of loaded unit coal trains. Almost all sections of the main line have grades less than { }. There is a predominance of more downhill grade sections, close to { }, going southbound, which is the direction that loaded coal trains would travel. In other words, it is a fuel efficient move to haul loaded trains in a southbound direction on the M&NA. There are very few sections with over a { } ascending grade. Please refer to the electronic workpaper “M&NA Grades.xls” for actual grades along the entire main line. Main line track grades were taken from the M&NA Track Charts, provided in discovery.

For example, from MP 416 to MP 267, there are only two sections of track that have an ascending grade of over { }, and these sections are very short. The ascending grade in the vicinity of MP 278 is { } and extends approximately 1.4 miles (MP 278.45 to MP 279.85). By contrast, most of the track in the section from MP 416 to Independence, at MP 267, is downgrade or flat. At MP 416, Bergman, there is an ascending grade of { } for a short distance of 0.35 miles. This is the maximum grade on the M&NA for southbound moves. From Lamar, south, there are very few sections where the main line grade is over { }, and those few sections vary from { } ascending grade.

In sum, these limited examples of ascending grades in excess of { } should not be insurmountable obstacles to the movement of loaded unit coal trains. I have observed much more severe grades on the eastern coal routes. For example, grades on branch lines feeding the CSXT and Norfolk Southern railroads in Kentucky, Tennessee, Virginia, and Pennsylvania, and on the main line of the CSXT and Norfolk Southern Railroads in the same region are undulating, and range from 1.0 up to 2.5% and greater ascending grades.

2. Curvature

Similarly, the curvature that I have observed on the M&NA lines is conducive to the movement of loaded unit coal trains. Again, my inspection of the line and review of the track charts that Crouch Engineering prepared reflects curvature that is less severe than the curvature of eastern railroad lines on which much higher volumes of unit coal trains currently move.

For example, curves on the Cotter Subdivision (MP 267 to MP 381) are generally light, and range from { } degrees. There are only 2 curves approaching { } degrees, and one curve in Batesville (MP 286.2, about 0.2 miles in length) over { } degrees. Between Cotter and Carthage (MP 381 to MP 527), curves vary between { }, with only one curve at

{ } degrees. In Carthage, there is also an { } degree curve at MP 527.6. Between Carthage and Lamar (MP527 to MP 549), curves are much lighter, and generally vary between { } degrees, with a few curves approaching { } degrees.

Empty unit coal trains currently operate over the main line track between Independence and Lamar. It is my opinion that the existing main line curvature can accommodate the operation of between 3 and 33 loaded unit coal trains per month in its current state. In my experience as an employee of Southern Railway and Norfolk Southern, and my experience working on CSXT territories in Appalachia, loaded unit coal trains routinely operate on Norfolk Southern and CSXT in the Appalachian Mountains where curves often exceed 8 degrees.

E. Track Structure - Track Components

During the hy-rail inspection, we observed the track components to be in very good condition. There were ongoing timber and surfacing projects underway at the time of the inspection, and there is a significant joint UP/M&NA track rehabilitation program underway. It is my understanding that these projects will be continuing and are not being performed to accommodate loaded unit coal trains, but rather are being performed based on current traffic and operating conditions.

1. Rail

During the hy-rail inspection, the existing main line was observed to be 112 RE , 115 RE, and 133 UP continuous welded rail (CWR), with some small sections of 119 RE, 131 RE, 132 RE, and 136 RE rail. The 133 UP rail comprised roughly 49% of the main line rail, with 51% 112 RE and 115 RE. In general, most rail was in good condition. In my opinion, minimum 112 RE CWR is adequate for the operation of loaded unit coal trains. Currently, 286k cars are operating over this rail.

The rail sections listed above are also listed in the Track Charts provided by the M&NA in discovery.

2. Crossties

Crossties (ties) were sampled during the inspection at random intervals. Samples of 100 ties at each sample location were checked for defects. Refer to e-workpaper “M&NA Defective Tie Counts.xls” for sample data. The average number of defects varied between 23 and 26 defects per 100 ties, by division. The maximum defective tie count in a given sample was 45. One sample had 37, and the remaining samples were at 33 or less. Defects included broken ties, hollow ties, ties with no spike holding ability in the tie plate section, ties with excessive plate cutting, and ties observed to have excessive plate movement.

Based on the average tie counts, there are 17 good ties per 39’ rail length, which is well in excess of minimum Federal Railroad Administration (FRA) Track Safety Standards. Therefore, tie condition will support loaded unit coal train operation at the FRA Class 3 level.

3. Ballast Section and Roadbed

The ballast section was observed to have more than sufficient shoulders for CWR, and is therefore adequate for loaded unit coal train operation. The roadbed is generally well drained. Ditches also appeared to be well maintained.

4. Surface and Line

The track surface and line was observed to be in excellent condition, and is adequate for the operation of loaded unit coal trains. It was apparent from the inspection that the railroad performs routine surfacing and lining programs, resulting in very good track line and surface (observed during the inspection trip).

5. Ongoing Maintenance Responsibility

It should be noted that the sale/lease agreement requires that M&NA maintain the track at the same level that UP was maintaining it at the time the sale/lease agreement was executed. It appears that the M&NA has maintained the track to Class 3 minimum track safety standards over time, and is in the process of completing timber and surfacing projects to guarantee that they will be able to continue operating at this level.

F. Bridge Structures - Design Load Rating

Bridges can be analyzed to determine, or calculate, a design load rating based on the materials used, dimensions of the materials, span lengths, bridge height, the condition of bridge members, and other related data. Bridges that meet the desired design load rating will have a longer operating life than bridges that do not meet the desired design load rating. It is important to note that bridges are overdesigned based on accepted material characteristics and factors of safety. Accordingly, a bridge that does not meet the desired load rating can still carry the desired load; however, the bridge members will deteriorate at an accelerated pace, and the maintenance cycle for the bridge will be more frequent.

There are approximately 239 bridges between Independence, AR and Lamar, MO. In order to determine the feasibility of the line to accommodate additional loaded unit coal trains, one factor to consider is whether the bridges currently have a design load rating sufficient for 286,000 lb. freight car loads. Existing bridge design, inspection, condition, and load rating data were requested in discovery; however, the only bridge information provided in discovery was the "Re-Evaluation Bridge Inspection Report – 2009 – Missouri & Northern Arkansas Railroad, Cotter Subdivision (Diaz Junction, AR to Cotter, AR)," prepared by Osmose Railroad Services, Inc. ("Osmose") which was provided by the M&NA. (A copy of this Report is included in the

electronic workpapers to my statement). Neither UP nor M&NA provided enough detailed information that would enable Crouch Engineering to perform a load rating analysis for all railroad bridges on the main line of the M&NA. While Crouch Engineering was allowed to inspect the line during a three-day hy-rail inspection trip, three days was not an adequate time for us to fully rate all the bridges on the route traversed. I estimate that it would have required an additional eight to ten days to perform the field inspection and measurement work necessary to fully rate all of these bridges.

Given the lack of bridge information that was provided by M&NA and UP, Crouch Engineering selected bridges to field check in order to verify the contents of the Osmose reports, as well as the thoroughness of the inspections, and accuracy of measurements listed in the Osmose reports. A complete listing of all of the bridges inspected on the hy-rail trip is included as "Bridges Inspected.xls" in the electronic workpapers submitted in support of this Verified Statement. During the field inspection and review by Crouch Engineering, we stopped to inspect bridges approximately every 15 miles. While at each bridge, the inspectors checked the accuracy of the Osmose findings and verified the measurements of the structural members recorded by Osmose. All types of bridges were inspected during this inspection including timber pile and post trestles, steel deck plate girder spans, concrete beam spans, steel through plate girder spans and steel through truss bridges. It was determined through our professional observations, that the Osmose report was an accurate and useful tool in determining some timber trestle load ratings and for determining cost to upgrade some of the timber bridges to 286,000 lbs.

During the inspection, it was observed that the railroad had already {

}.⁴ {

}. Kess Creech of the M&NA reported

that {

}

From the Osmose reports, we obtained {

} 55 timber pile trestles. These bridges represent about 44% of the timber trestles on the M&NA main line. Based on the information provided, we load rated 44% of timber bridges, or 23% of all bridges. Of these 55 timber structures, 35 rated for 286k cars with no need for any modification to the existing bridge structures. The timber trestles for which we had complete information have been rated using Cooper's E – Loading as our standard. This is an acceptable method used by all railroads and is applicable for comparison to other railroad structures. The method used to rate the timber trestles followed Chapter 7, Section 2.10 Rules for Rating Existing Wood Bridges and Trestles found in the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering.

A design load rating, which assumes all structural timber members are in good condition with no section loss, was determined for each timber trestle that had sufficient data provided in the bridge inspection report. As mentioned above, the data used for ratings calculated in this report were dimensions and measurements provided in the {

⁴ {

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}

} . The timber members were assumed to be Southern Pine No. 1, Dense Structural and the allowable stresses used in the rating process were the allowed stresses as found in Chapter 7 of the AREMA Manual.

Of the 19 timber structures that did not rate for the proposed 286k loading, in most cases, the repairs needed to upgrade the design load rating on these bridges are minor, such as adding stringers in longer spans. Refer to electronic workpaper “Master – MNA Load Ratings.xls” for a summary identifying the bridges that did, or did not have a design rating for 286k cars. Refer to electronic workpaper “UP-MNA09Bridgework.xls” for pricing information. Our estimated cost for stringer replacement is based on the pricing that is current as per information from the M&NA. The data were used in our preliminary estimate of probable construction cost for upgrading all timber structures to a 286k design load rating.

Bridge load ratings were not provided by either UP or M&NA for steel bridges or precast concrete bridges. The steel and concrete bridges observed on the line during the inspection appeared to be in good condition, and appear to be holding up well under the existing 286,000 lb. car loads. The steel bridges observed have little or no corrosion, and show no signs of failure. The pre-cast concrete bridges appeared to have been UP’s standard design (circa 1982 – 1988), which should rate for 286k carloads.

Many bridge decks have recently been replaced using new bridge deck ties. {

}

Since the Railroad is currently, { } hauling 286k cars over the entire line, and is operating empty unit coal trains over the bridges, it can be concluded that the

bridges on the line are adequate for carrying the additional 286,000 lb. car loads. Timber bridges had many new deck ties, and we observed that caps, posts and stringers have been replaced as needed, and are in general well maintained over time. The bridges are inspected annually, and maintenance repair programs are developed and executed annually. Repairs were underway, at the time of our site visit, and are routinely required as a part of annual bridge maintenance.

Based on our observations from the hy-rail inspection, there is no reason to expect the magnitude of bridge conditions to vary disproportionately over the line. We would not expect the results on the other bridges to be significantly different from the bridges we rated. There was a significant bridge rehabilitation project underway at the time of the inspection, and the Railroad routinely inspects and repairs its bridges. {

} Part of the evaluation included a cursory bridge inspection of the bridges on the mainline of the M&NA that would see the proposed unit coal trains. The bridge inspections were not in-depth inspections, and cannot find all defective or hidden conditions. We did not conduct any destructive testing of members, underwater inspections, nor subsurface exploration, nor did we move any bridge members to determine conditions. Subsequent to making the field inspection, it was found that some {

} Sufficient data needed to complete all of the bridge load rating analyses were not provided in discovery. It is my opinion, however, based on the data that was provided and the inspections that we were able to perform during the 3-day inspection trip, that the bridges currently accommodate additional 286k cars, and can

accommodate the additional loaded unit coal trains contemplated for the BNSF/M&NA through route(s).

G. Capacity to Handle Additional Traffic

In my opinion, based on the condition of the track structure, roadbed, and bridges, the current M&NA infrastructure could handle the additional 3 to 33 loaded coal trains per month without the need for significant upgrades. In considering handling additional traffic, it is necessary to evaluate the capacity of the main line and passing sidings for passing loaded and empty coal trains. This is also dependent on the number of train sets likely to be on the property at one time. There also is a need for the construction of new interchange tracks at either Lamar, MO or Aurora, MO. Both of these concerns are addressed and discussed in following sections herein.

H. Operational Considerations - Passing Sidings

I have also considered whether there would be a need to construct additional rail sidings, or extend existing rail sidings, in order to accommodate the addition of loaded coal trains.

First, I identified the location of all existing sidings on the M&NA line between Lamar and Independence Station. These sidings are listed in electronic workpaper “M&NA Sidings Lengths.xlsx,” under the “Sidings” worksheet tab. The spreadsheet provides milepost, station names, and siding length data.

Second, there are currently { } that could be used to pass unit coal trains, without having to construct any additional track. Refer to the electronic workpaper referenced above. Based on the number of viable existing passing sidings, there is already room to pass multiple unit coal trains in the event that 3 to 33 trains per month are added. In addition,

both loaded and empty unit coal trains can hold the main line track while smaller local trains take sidings to allow for passing of locals meeting unit coal trains.

I. Feasibility of Potential Interchange Locations

With the benefit of the inspection trip and the discovery materials provided by UP and M&NA, we concluded that the most feasible choices for a BNSF/M&NA interchange would be Lamar, MO and Aurora, MO. Each location was studied by performing an advance planning report. The advance planning reports included preparation of concept designs and preliminary plans in order to determine whether the proposed track layouts necessary for a workable interchange were feasible. Various electronic maps were used including maps and aerial photographs from Google Earth, digital USGS topographic Maps, and other data.

Curves for the proposed connection tracks were limited to 7.5 degrees. Proposed horizontal alignments were designed, and vertical track profiles were developed. A typical roadbed section was developed for the proposed interchange tracks. After a digital terrain model was developed for each location using the electronic map data, the proposed track data were applied in order to cut cross-sections, and generate cut and fill earthwork quantities. The preliminary plans were also used to generate preliminary quantities which were used in preparing a preliminary opinion of probable construction cost for each of the proposed interchanges.

As explained below, based on these studies, we have concluded that it is feasible to modify the interchange facilities at Lamar and Aurora to accommodate loaded unit coal trains, and that such modifications can be implemented at a relatively minor cost.

1. Lamar, MO

At Lamar, MO, the BNSF runs roughly perpendicular to the M&NA main line in the vicinity of the existing interchange track. The existing interchange track could be used for the

proposed interchange, but would require making reverse moves on the BNSF and M&NA main line tracks. The proposed connection track at Lamar, as shown on Exhibit HAC-3, seeks to avoid such reverse moves. The proposed connection could be constructed primarily on existing BNSF and M&NA right-of-way, and would have enough track between clear points off the M&NA and BNSF to hold a loaded or empty unit coal train. The proposed alignments would parallel the existing main line tracks, and would utilize existing roadbeds and upgrade track running parallel to the BNSF, south of its main line track.

The proposed connection track is in the southwest quadrant of the at-grade railroad crossing of the BNSF and M&NA in Lamar, MO. As shown in the site photos taken during the hy-rail inspection in November, 2009 (refer to electronic workpaper "Lamar Photos.pdf"), there is an existing abandoned industrial facility in the same quadrant at Lamar. Construction of the proposed tracks would be relatively simple, and could be accomplished without affecting the viability of the industrial site, and without limiting the land use at the site.

It is possible and feasible to construct a connection track at Lamar as shown on the plans (refer to electronic "Lamar Interchange.pdf"). The track would have a clear length sufficient to hold a loaded unit coal train, and because of the geometry of the proposed track, the locomotive configuration would not be changed at the new interchange. If there is an empty loaded unit coal train that requires passing the inbound loaded unit coal train, the trains can meet and pass at Pearl (MP 525.8), with a minor extension (187 TF), or Stotts City (MP 506.8). A very small area of new right-of-way (0.7 AC) would have to be purchased in order to complete the proposed interchange; however, most of the proposed track would be located on the BNSF and M&NA rights-of-way.

A preliminary opinion of probable construction cost has been prepared in order to determine a relative order of magnitude for the cost of the proposed interchange track. The estimated cost to construct the proposed interchange track at Lamar, MO is \$2.45 million, including engineering (10% of construction cost), mobilization (1.5% of construction cost), construction, and contingency (10% of construction cost). Refer to electronic workpaper “Interchange Preliminary Cost.xls.”

2. Aurora, MO

At Aurora, MO, the BNSF runs roughly parallel to the M&NA main line in the vicinity of the existing interchange track. There is not currently sufficient passing track length at Aurora to pass or hold an entire loaded unit coal train. It is not feasible to extend the existing siding to the north due to the proximity of the at grade railroad crossing north of the siding. Due to the proximity of the existing interchange tracks, extending the siding to the south would be difficult, and would require blocking the M&NA main line.

It is possible, however, to construct a connection track at Aurora that would allow for an interchange without blocking either BNSF’s or M&NA’s main line. The configuration of the proposed Aurora interchange is set forth at Exhibit HAC-4 and electronic workpaper “Aurora Interchange.pdf.” The track would have a clear length sufficient to hold a loaded unit coal train, and because of the geometry of the proposed track, the locomotive configuration would not be changed at the new interchange. If there is an empty loaded unit coal train that requires passing the inbound loaded unit coal train, the trains can meet and pass at Crane (MP 478.2). The proposed interchange tracks would be located south of Aurora, and west of the BNSF line that runs to Springfield, MO.

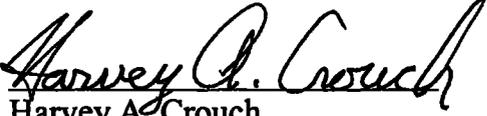
Some new right-of-way would have to be purchased in order to complete the proposed interchange; however, most of the proposed track would be located on the BNSF and M&NA right-of-way. A preliminary opinion of probable construction cost has been prepared in order to determine a relative order of magnitude for the cost of the proposed interchange track. The estimated cost to construct the proposed interchange track at Aurora, MO is \$2.86 million, including engineering (10% of construction cost), mobilization (1.5% of construction cost), construction, and contingency (10% of construction cost). Refer to electronic workpaper "Interchange Preliminary Cost.xls."

V. CONCLUSION

Based on the information available to me to date, it is my opinion that current track and bridge conditions, with minor modification, could accommodate the addition of 3 to 10 loaded unit coal trains per month in the near term on the M&NA line between Lamar, Missouri and the Independence Station in Arkansas. While some additional bridgework may be appropriate to accommodate the higher volumes that become available after { } (i.e., 33 trains per month), these additional modifications are relatively modest given the tonnages involved. In addition, my review of potential locations for a BNSF/M&NA interchange of loaded coal trains has confirmed that an interchange would be feasible at either Lamar or Aurora, Missouri with minor construction of additional facilities. I also believe that there are sufficient existing sidings that have the capacity to allow efficient passing of 3 to 10 trains per month. There are also existing sidings that can be extended to have the capacity to accommodate additional loaded coal train traffic of up to 33 loaded unit coal trains per month and such modifications are feasible.

VERIFICATION

I, Harvey A. Crouch, P.E., verify under penalty of perjury that I have read the foregoing Verified Statement and know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Harvey A. Crouch

Executed on: April 5, 2010

1

EDUCATION

Tennessee Technological University - MSCE – 1989
(Environmental Engineering)
Tennessee Technological University - BSCE - 1982
(Transportation Engineering)

CURRENT POSITION

President and Chief Executive Officer

PROFESSIONAL REGISTRATION

Professional Engineer (Civil and Structural) - AL, AZ, AR, CO, CT, FL, GA, HI, IL, IN, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NC, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, WA, WV

PROFESSIONAL MEMBERSHIP

- American Railway Engineering and Maintenance-of-way Association
- American Short Line and Regional Railroad Association
- Tennessee Short Line Railroad Association
- American Society of Civil Engineers
- National Society of Professional Engineers
- Georgia Railroad Association
- Alabama Railroad Association
- Florida Railroad Association

EMPLOYMENT HISTORY**1991 - Present, President, Crouch Engineering, P.C.**

Mr. Crouch has over 30 years of experience in railway engineering, maintenance, and operations, including: railway route planning and design; railway route feasibility studies; construction cost estimating; track and bridge design, track inspection and rehabilitation program design, planning, construction management; bridge inspection and rehabilitation program design; industrial development for local governments and private industry; railroad topographic surveys; new railroad track and bridge facility design; planning for local governments includes benefit cost analyses and grant applications, hydrologic and hydraulic analyses for bridge and culvert replacements; preparation of valuation maps and location maps; preparation of plans, specifications, bid documents and contract documents; conducting bid processes; grade separation project design and management; grade crossing project design and management; etc.

Job duties include the project management of assigned projects, preparation of plans, environmental assessments and permitting, writing general conditions and specifications for construction project documents, preparation of bidding documents (tender documents), and review of all engineering work, as engineer in responsible charge of the office.

Current and recent projects include 286k studies for rail lines in Louisiana, Tennessee, Montana, Vermont, New Hampshire, Connecticut, Massachusetts, South Carolina, North Carolina, and many other states, as well as track in Ghana, West Africa; route planning studies for proposed rail lines varying in length from 2,000 feet to 53 miles in length; design of main line double track capacity projects; design of new siding capacity projects; the design of new industry lead tracks varying from 3 to 18 miles in length; and, design of large scale industrial development projects.

1990 - 1991 Project Manager - McCoy Associates, Inc.

Mr. Crouch was the engineer in responsible charge of the office, with experience in bridge inspection, bridge design, planning and construction management; industrial development for local governments and private industry including industrial site design and railway design; railroad topographic surveys; new railroad facility design; track design; planning for local governments including benefit cost analyses for Federal Railroad Administration Grants, construction cost

estimates, planning for industrial parks, and hydrologic and hydraulic analyses for bridge and culvert replacements; preparation of location maps; preparation of plans, specifications, bid documents, contract documents; conducting bid processes; and grade separation projects.

Job duties included project management of assigned projects, preparation of plans, specifications, and contract documents, and review of all engineering work, as engineer in responsible charge of the office.

1989 - 1990 Environmental Engineer, Tennessee Valley Authority

Mr. Crouch has a broad range of civil engineering project experience in environmental engineering. In the area of reservoir water quality and limnology, he has been responsible for projects in computer water quality modeling and model evaluation, reservoir water quality assessment and management, reservoir issues analyses, environmental impact statements, permitting processes, and public relations.

Mr. Crouch has extensive experience in water quality modeling of temperature, dissolved oxygen, sediment and suspended solids, biochemical oxygen demand, pH and alkalinity, nitrogen, phosphorus, algae, age, and dye trace. He has performed water quality modeling, and reservoir water quality analyses for both the Corps of Engineers and the Tennessee Valley Authority. Mr. Crouch worked with a research team at Tennessee Tech to develop a two-dimensional reservoir model for Cheatham Lake based on TVA's BETTER model (for the Nashville District Army Corps of Engineers). He was project leader for TVA's conversion of the BETTER model from mainframe to a generic PC version. As a contractor for the Tennessee Valley Authority, Mr. Crouch converted six of TVA's mainframe BETTER models to level one of the generic PC version.

Project management duties included hydrologic and hydraulic analyses; environmental assessments; environmental impact statements; bacteriological assessments; watershed analyses for major urban drinking water sources in Virginia and Tennessee; topographic and boundary surveys; preliminary engineering, design, and construction management for highways, railroads, and industrial sites; 404, 26a, ARAP and other permit applications; scheduling, bid process; field engineering; quality control and material testing; material management; slope and soil stabilization; erosion control; revegetation; cost accounting and public relations.

1988 - 1989 Graduate Research Assistant - Tennessee Tech

Mr. Crouch worked on a research team at Tennessee Tech to collect meteorological and water quality data, and developed a two-dimensional reservoir water quality model for Cheatham Lake based on TVA's BETTER model for the Nashville District Army Corps of Engineers.

1986 - 1987 Track Supervisor MW&S - Norfolk Southern Corporation

Mr. Crouch has experience in many areas of Railway Engineering, Inspection, and Track Maintenance including main line track inspection as an FRA qualified track inspector, track rehabilitation and maintenance program design and daily construction management, bridge inspection, planning and construction management, inspection of industrial spurs, new railroad facility design, management of traveling gangs including timber and surfacing, bolt tightening, rail gangs, brush cutting, Jordan Spreader, ballast cleaner, track undercutter, etc.

Job responsibilities included responsibility for the inspection and maintenance of the Norfolk Southern Main Line Track from Danville, VA to Burkeville, VA, including day to day supervision of work gangs, safety program, ordering materials, budgeting, planning, and construction management for rehabilitation and maintenance of bridges and track.

1983 - 1986 Project Engineer MW&S - Norfolk Southern Corporation

Mr. Crouch's experience included project management of railroad construction projects including tunnel bypasses, new connection tracks, sidings, yards, etc. Mr. Crouch was in charge of the following projects:

Wateree, SC - Construction of 2 Mile Lead to the Union Camp Mill, Eastover, SC
Riverside, AL - New Siding Construction, 1.5 Miles
Sunny South, AL - New Siding Construction, 1.5 Miles
Frisco, TN - Construction of Connection track (Norfolk Southern & CSX)
Church Hill, TN - Construction of Railroad Freight Car Storage Yard
Daniel Boone, VA - Construction of Access Road and New Siding, 2 Miles
Tito, VA - Construction of Access Road and Retaining Wall, Extension of Existing Siding, and Environmental Compliance
Newport, TN - Construction of Retaining Wall at the Galloping Sluice

Bulls Gap, TN to Big Stone Gap, VA - Conversion of Main Line Track from Dark Territory to Signaled (Traffic Control) Territory

Mr. Crouch's duties included plan review and corrections, budget control, surveying, field engineering and construction staking, purchasing, ordering materials, public relations, bid process, construction management, coordination with transportation, signal, maintenance, and other departments and local officials, and daily site safety and construction inspection.

1982 - 1983 Management Trainee MW&S - Norfolk Southern Corporation

Mr. Crouch has had experience in many areas of Railway Engineering and Track Maintenance including main line track inspection as an FRA qualified track inspector, track rehabilitation and maintenance program design and daily construction management, bridge inspection, planning and construction management, inspection of industrial spurs, new railroad facility design, management of traveling gangs including timber and surfacing, bolt tightening, rail gangs, brush cutting, Jordan Spreader, ballast cleaner, track undercutter, etc.

Job responsibilities included responsibility for the inspection and maintenance of the Norfolk Southern Main Track from Asheville, NC to Murphy, NC, Asheville, to Statesville, NC, and Asheville to Greenville, SC, including day to day supervision of work gangs, safety program, rail laying, ordering materials, budgeting, planning and construction management for rehabilitation and maintenance of bridges and track.

1980 - 1982 Cartographer (Mapper) - Gulf - Mineral Resources Division

Mr. Crouch's experience included making maps related to geologic and mineral exploration in Middle Tennessee. Mr. Crouch's duties included research, logging data, representation of geological data in map form, creation of maps and charts for presentations.

1980 - 1982 Undergraduate Instructor - Tennessee Technological University - Civil Engineering Department

Mr. Crouch's experience included teaching surveying labs and physics labs as an undergraduate student. Mr. Crouch's duties included preparation of laboratory assignments, preparation of tests, and grading written tests and lab performances.

1977 - 1980 Co-op Engineer Industrial Development - Southern Railway Company

Mr. Crouch's experience included client meetings to determine scope of work and rail service needs, survey, design, cost estimates and staking for proposed industrial development projects on the Southern Railway System. Projects were located in Indiana, Kentucky, Virginia, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana.

Mr. Crouch's duties included surveying, mapping, layout design, track design, preparation of plans, cost estimates, hydrologic and hydraulic studies, construction staking, and coordination with private industry, transportation, signal, maintenance, and other railroad departments, and local officials.

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EDUCATION Tennessee Technological University - BSCE 2000

CURRENT POSITION Project Engineer

PROFESSIONAL REGISTRATION

Professional Engineer – Licensed in Alabama, Illinois, Louisiana, Mississippi, Montana, New Mexico, Ohio, South Carolina, Tennessee

PROFESSIONAL MEMBERSHIP

- Tennessee Structural Engineering Association
- Alabama Short Line Association
- American Short Line Rail Road Association
- American Railway Engineering and Maintenance-of-Way Association

EMPLOYMENT HISTORY

1997 - Present, Project Engineer - Structures, Crouch Engineering, P. C.

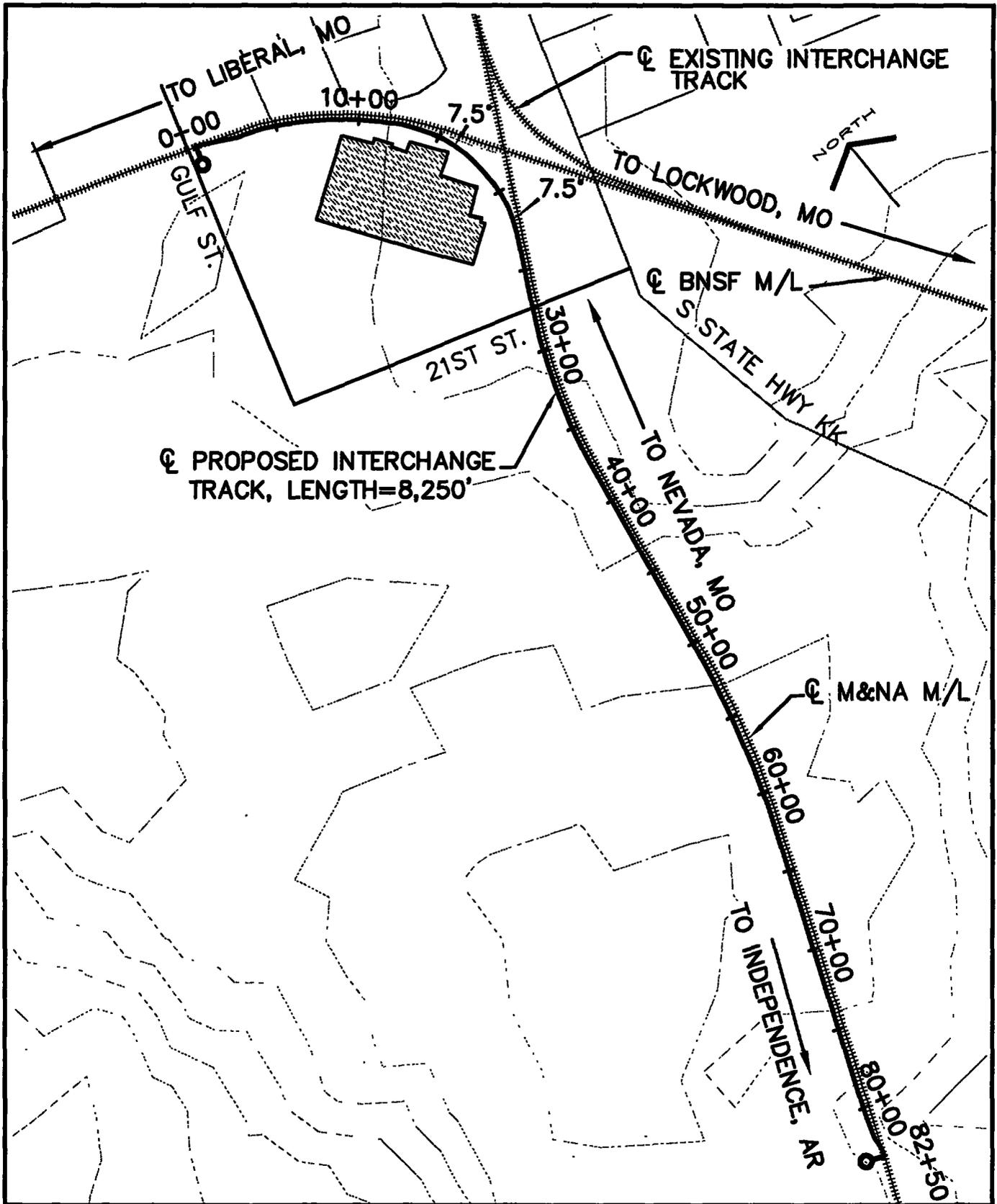
Mr. Lindsey is responsible for the bridge program at Crouch Engineering. He has extensive experience in railway bridge inspection, load rating, design, and construction project management, having designed, inspected and load rated hundreds of railroad bridges. He is also experienced in topographic surveys, site design, drafting and design using Auto CAD, writing of project specifications, database management, and TrackChart updates, and has written program for handheld PC's that are used for load rating calculations in the field.

He conducts annual bridge inspections, develops load ratings, bridge reports and plans and executes railroad bridge rehabilitation and replacement programs for many railroads and Railroad Authorities. He was the Project Manager for inspecting and load rating over 300 bridges on the New England Central Railroad, and is the Project Manager for annual bridge inspection and rehabilitation programs for nine Railroad Authorities in Tennessee.

Mr. Lindsey has conducted many emergency bridge inspections that required quick response time, evaluation, and rapid turnaround on design and construction. He has designed numerous reinforced concrete, pre-stressed concrete, and steel bridges, including deck girder and through plate girder bridges, and has worked on design and rehabilitation for hundreds of timber, steel and concrete bridges, predominantly in the eastern United States, but also in western states.

He has recently designed a steel through plate girder on NS in Bucyrus, OH, bridge widening projects on NS at Mableton, GA, a steel pile deck girder bridge replacement for a 77 span bridge in the Obion River floodplain on the TennKen RR; an emergency bridge replacement on the Huntsville-Madison County Railroad Authority; a pre-stressed concrete bridge replacement on the Tennessee Southern Railroad; and emergency replacement of a failed pinned through truss in southern Indiana.

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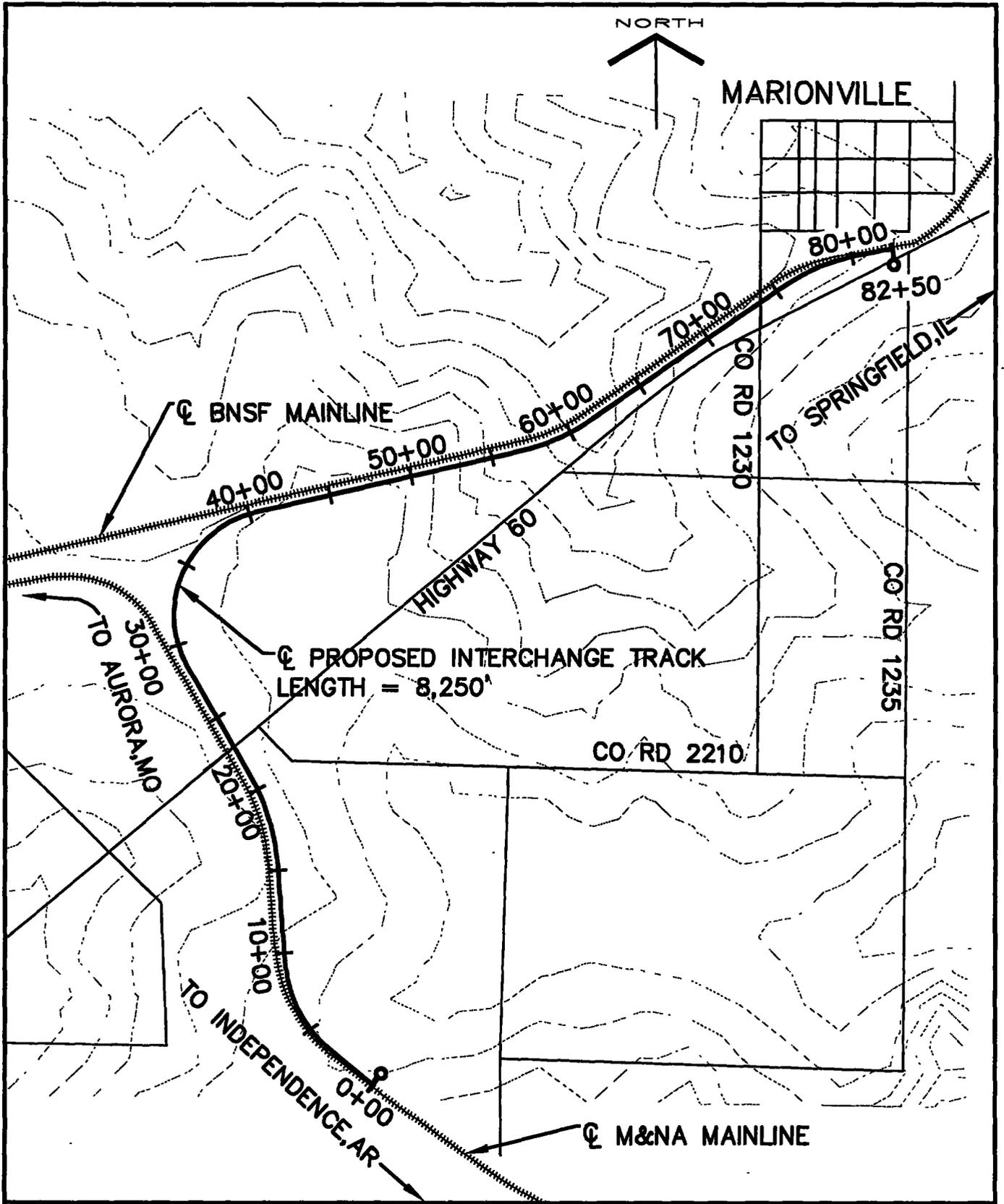
LAMAR, MO INTERCHANGE

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| EXHIBIT NO. | HAC-3 |
| CEPC PROJECT NO. | 9109 |

DOCKET NO. 42104

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AURORA, MO INTERCHANGE

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EXHIBIT NO.

HAC-4

CEPC PROJECT NO.

9019