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SERVICE DATE - OCTOBER 28, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33782

ENTERGY ARKANSAS AND ENTERGY RAIL—CONSTRUCTION AND
OPERATION EXEMPTION—WHITE BLUFF TO PINE BLUFF, AR

Decided: October 27, 1999

By petition filed July 30, 1999, Entergy Arkansas and Entergy Rail¹ seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for Entergy Rail to construct and operate a rail line approximately 8.6 miles in length between Entergy Arkansas' White Bluff, AR electric generating plant and a line of railroad near Pine Bluff, AR, formerly owned by the Southern Pacific Transportation Company (SP). According to Entergy, its right to receive rail service from a second railroad, specifically The Burlington Northern and Santa Fe Railway Company (BNSF), if it were to build out from White Bluff to SP's rail line near Pine Bluff was ensured by the Board in the decision approving the acquisition and merger of SP by Union Pacific Corporation and its subsidiary, Union Pacific Railroad Company (UP).² Entergy requests that the exemption be conditionally granted, subject to the Board's review of the anticipated environmental impacts of its proposal.

By reply filed August 31, 1999, UP opposes Entergy's exemption request. UP maintains that Entergy has no right to obtain alternative rail service from BNSF because the proposed build-out was not sanctioned by the Board. UP contends that the Board in UP/SP, Decision No. 44, preserved for Entergy a specific 21-mile build-out from its White Bluff plant to a former SP main line between Pine Bluff and West Memphis, AR. UP states that, under the terms of the Chemical Manufacturers Association (CMA) agreement, as modified and imposed as a condition by the Board in UP/SP, Decision No. 44, Entergy's right to receive service from BNSF in conjunction with any other build-out, such as the one at issue here, turns on whether SP could have provided service via the proposed build-out prior to the merger. UP maintains that the proposed build-out fails this test

¹ Petitioners will be referred to collectively as Entergy.

² In 1996, the Board approved the acquisition of SP by Union Pacific Corporation. See Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Rail Corporation—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (UP/SP), Decision No. 44 (STB served Aug. 12, 1996).

and that the Board should deny Entergy's petition because the construction of a rail line that could not be used would violate the rail transportation policy.³

On September 21, 1999, Entergy Arkansas and its affiliate, Entergy Service, Inc., filed a petition in Finance Docket No. 32760 for enforcement of the CMA merger condition. Entergy asks the Board to modify the trackage rights BNSF received in the merger proceeding to enable BNSF to provide service over the new line construction. Entergy also asks the Board to require UP to cooperate with Entergy in the connection of the new line to UP's main line between Pine Bluff and Little Rock.

On October 12, 1999, UP replied in opposition to Entergy's petition for enforcement. BNSF replied in support of Entergy's petition on October 12, 1999. On October 15, 1999, UP filed a motion for leave to file a reply to BNSF's reply, tendering also its reply to BNSF's reply. On October 22, 1999, Entergy filed a motion for leave to file a reply to the UP reply filings of October 12, 1999, and October 15, 1999, and tendered that reply. Also on October 22, 1999, BNSF filed a reply to UP's motion for leave to file a reply.

Entergy's construction exemption request is related to its enforcement petition in Finance Docket No. 32760. Although these two proceedings are not consolidated, the pleadings raise issues that require the Board's further consideration. Accordingly, by this decision, the Board is instituting a proceeding to determine the merits of Entergy's construction exemption request. See 49 U.S.C. 10502(b). Should the Board determine it to be necessary, the Board will solicit further submissions by the parties to this proceeding and Finance Docket No. 32760.

It is ordered:

1. Under 49 U.S.C. 10502(b), a proceeding to consider Entergy's exemption petition is instituted.

³ In a response filed September 20, 1999, Entergy contends that UP's alleged legal impediments to the proposed construction are beyond the scope of the exemption proceeding and can only be resolved in another proceeding or forum.

STB Finance Docket No. 33782

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary