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May 5, 2005

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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Re: Ex Parte 575 – In the Matter of Rail Access and Competition Issues

Dear Secretary Williams:

Union Pacific Railroad Company (“UP”) has subscribed to the Reply submitted by the Association of American Railroads to Western Coal Traffic League’s Renewed Petition. However, because Entergy Services, Inc. (“Entergy”) (in its Reply dated April 29) and Arkansas Electric Cooperative Corporation and Entergy Arkansas, Inc. (collectively, “AECC”) (in their May 2 Reply) have made specific assertions regarding UP’s lease agreement with the Missouri and Northern Arkansas Railroad Company (“MNA”),¹ UP is writing to correct certain mischaracterizations so that the Board has an accurate record upon which to act.²

First, Entergy and AECC assert that the UP-MNA lease extinguished a competitive option that benefited Entergy’s plant at Independence, Arkansas – namely, the option of having a neutral carrier quote a rate between Independence and an interchange with BNSF. See Entergy Reply at 7; AECC Reply at 5. This statement is not accurate.

¹ The WCTL Petition attached excerpts from the UP-MNA lease as a purported example of “paper barrier variants.” WCTL Petition at 7 n.7.

² If the Board were to commence a rulemaking concerning “paper barriers,” UP would provide a fuller explanation of the reasons why arrangements of the sort to which it is a party are not “anticompetitive” and why the Board should not tamper with the terms of extant arms-length commercial relationships between UP and the smaller railroads that operate former UP lines.

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Entergy's Independence plant is located on a former Missouri Pacific Railroad Company ("MP") line that runs between western Missouri and northeastern Arkansas. MNA's lease of this line merely replaced one carrier with another as the only railroad serving the Independence plant. Moreover, contrary to Entergy's and AECC's implications, MP was not a neutral connection with UP and BNSF prior to the MNA lease. UP acquired control of MP in December 1982, long before the lease agreement with MNA in 1992, and indeed even before the Independence plant began commercial operations.³ The lease thus did not extinguish a competitive option available at the Independence plant.

Second, Entergy and AECC imply that provisions of the MNA lease were designed to "favor UP's private interests" by "saddling" MNA with "paper barriers" so as to "neuter its competitive influences." Entergy Reply at 6, 8; AECC Reply at 4, 6. This is an inaccurate characterization. MNA's purchase and lease of former MP lines in Arkansas and Missouri generated public benefits by facilitating the efficient operation and maintenance of these light-density lines at lower cost, thereby protecting their viability as transportation options for on-line shippers and the general public. MNA's ability to carry out its acquisition was made possible by the structure that Entergy criticizes, which has allowed MNA to use 389 miles of UP trackage since 1992 without having to make any out-of-pocket rent payments. UP was willing to enter an arrangement that was so favorable to MNA only because MNA provides compensation to UP in another form – by interchanging the vast majority of its on-line traffic with UP rather than other carriers.

Importantly, MNA is free to (and does) interchange traffic with BNSF and other carriers. It connects with BNSF at Ft. Scott, Kansas, and various points in Missouri. However, significant diversions of MNA traffic to BNSF and other carriers would undermine the consideration that UP receives for MNA's ongoing lease of its lines. Accordingly, if MNA chose to participate with BNSF in a joint-line route for Entergy coal traffic – which the lease does not prohibit – UP would rightfully be entitled to have MNA make the cash lease payments for which the parties bargained in 1992.

Third, Entergy's suggestion that the UP-MNA Lease prevented MNA from providing a solution for UP's 1997-1998 service problems is also incorrect. *See* Entergy Reply at 7-8. Entergy suggests that UP should have allowed BNSF to deliver trains to MNA for forwarding to the Independence plant during UP's service problems. However, the fact

³ Entergy acknowledges that UP acquired control of MP while the Independence plant was under construction. *See* Entergy Reply at 7 n.16. Entergy notes that the first coal shipments to the plant originated on Burlington Northern, but that was only because it was the only carrier serving the PRB until 1984. Ever since WRPI/UP entered the PRB in August 1984, coal for the Independence plant has moved under a series of contracts with UP and its predecessors, WRPI and MP.

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that BNSF did not handle Entergy trains had nothing to do with the UP-MNA lease. Rather, as UP informed Entergy in 1997, it was prepared to have BNSF handle Entergy trains via interchange with MNA on a temporary, detour basis, but it was not willing to relinquish its rights under its long-term transportation contract with Entergy to participate in the revenues from coal shipments to the Independence plant.

The MNA lease arrangement is a beneficial one that has preserved service on hundreds of miles of light-density lines and expanded the transportation service options available to on-line shippers. This type of arrangement should be encouraged, and illustrates why AAR is correct in urging the Board not to expend its resources considering efforts to disrupt arms-length contractual arrangements that have fostered the beneficial redeployment of rail lines to smaller railroads. If the Board does choose to examine arrangements of this kind, however, it should do so on the basis of an accurate factual record rather than mischaracterizations such as those offered by Entergy and AECC.

Sincerely,


Linda J. Morgan

cc: All Parties of Record
J. Michael Hemmer, Esq.
Louise A. Rinn, Esq.