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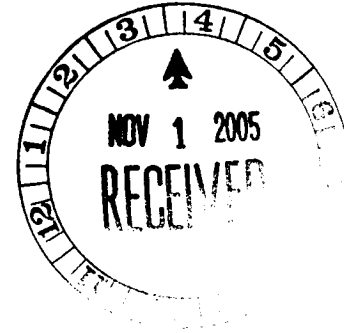
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November 1, 2005

HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, D.C. 20423-0001



Re: ~~Finance Docket~~ No. 42095, Kansas City Power &
Light Company v. Union Pacific Railroad Company

Dear Mr. Williams:

Enclosed for filing in the referenced docket please find an original and ten copies of Union Pacific's Answer. Also enclosed is a diskette containing a copy of the Answer.

An additional copy of the Answer is also enclosed. Please return a date-stamped copy to our messenger.

Thank you for your attention to this matter.

Sincerely

Michael L. Rosenthal

Enclosure

cc: Kelvin J. Dowd, Esq. (by hand)
Louise A. Rinn, Esq. (by Fedex)

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Office of Proceedings

2005

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



KANSAS CITY POWER & LIGHT COMPANY,

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42095

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UNION PACIFIC'S ANSWER

Defendant Union Pacific Railroad Company ("UP") hereby answers the Complaint filed by Kansas City Power & Light Company ("KCPL") in this proceeding. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. UP admits that KCPL is engaged in the generation, distribution, and sale of electric power. UP denies the remaining allegations in Paragraph 1 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

2. UP admits that KCPL operates a coal-fired electric generating facility near Ladue, Missouri, known as the Montrose Generating Station ("Montrose Station"), and that KCPL has recently shipped between 1.63 and 1.94 million tons of South Powder River Basin ("SPRB") coal annually to that facility via UP. UP denies the remaining allegations in Paragraph 2 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

3. UP admits the allegations in the first two sentences in Paragraph 3 of the Complaint, except that 49 U.S.C. §§ 10101, et seq., is properly referred to as the Interstate

Commerce Act, and the scope of the Board's jurisdiction is a question of law as to which no response is required. UP denies the third sentence in Paragraph 3 of the Complaint. UP avers by way of further response to this Paragraph that its flexibility in establishing rates is constrained by many factors.

4. UP admits that the Montrose Station receives coal from mines located in the SPRB that are approximately 900 miles from Ladue. UP denies the remaining allegations in Paragraph 4 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

5. UP admits that KCPL procures coal for the Montrose Station from mines in the SPRB that are served by both UP and the BNSF Railway Company ("BNSF"), that BNSF has railroad lines in Kansas City, Missouri, and that Kansas City is approximately 140 rail miles northwest of the Montrose Station. UP denies the remaining allegations in Paragraph 5 of the Complaint.

6. UP admits that it has transported coal from the SPRB to the Montrose Station under contracts entered into pursuant to 49 U.S.C. § 10709 and its predecessor statute (the former 49 U.S.C. § 10713), and that it has participated in coal shipments from the SPRB to the Montrose Station since it acquired the Missouri-Kansas-Texas Railroad in 1988. UP denies the remaining allegations in Paragraph 6 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

7. UP admits that Missouri & Northern Arkansas Railroad ("MNA") leases UP lines between Pleasant Hill, Missouri, and Ladue, Missouri, among other lines, pursuant to a lease agreement dated December 11, 1992, and that MNA has handled SPRB coal that originated on UP to the Montrose Station. UP denies the remaining allegations in this Paragraph. UP avers

by way of further response to this Paragraph that MNA has trackage rights over UP between Kansas City and Pleasant Hill, and that UP's lease agreement with MNA speaks for itself.

8. UP denies the allegations in Paragraph 8 of the Complaint. UP avers by way of further response to this Paragraph that UP's lease agreement with MNA speaks for itself and that its flexibility in establishing rates is constrained by many factors.

9. UP admits that it currently provides coal transportation service to the Montrose Station from the SPRB pursuant to a contract that KCPL negotiated with UP, which is denominated as Contract No. ICC-UP-C-30239 and which expires on December 31, 2005. UP denies the remaining allegations in Paragraph 9 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

10. UP admits that UP Circular 111, denominated "Unit Train Coal Common Carrier Circular Applying On: Unit Coal Trains From The Powder River Basin Of Wyoming," became effective on March 31, 2004. UP further admits that the second sentence of Paragraph 10 appears to contain an accurate quotation from UP's 2004 Annual Report. UP further admits that Exhibit A to the Complaint is a copy of UP Circular 111, issued August 18, 2005. UP denies the remaining allegations in Paragraph 10 of the Complaint.

11. UP admits the allegations in the first sentence of Paragraph 11 of the Complaint. UP denies the remaining allegations in this Paragraph, except that UP admits that Circular 111 presents shippers with two rate and service options, one that UP can change subject to notice and requires no volume commitment, and another that establishes reciprocal rate, volume, and service commitments for a specified period. UP avers by way of further response to this Paragraph that Circular 111 speaks for itself.

12. UP admits that a shipper intending to ship coal under Option 2 rates is required to execute a "Volume Commitment Certificate," that the form of the certificate appears as General Rule Item 300 of Circular 111, and that the third sentence of this Paragraph appears to contain an accurate quote from UP's "Volume Commitment Certificate." UP further admits that it has represented that Option 2 rates are common carrier rates, and that it has represented that a shipper's execution of a "Volume Commitment Certificate" does not create a contract under 49 U.S.C. § 10709. UP denies the remaining allegations in Paragraph 12 of the Complaint.

13. UP denies the allegations contained in Paragraph 13 of the Complaint, except that UP admits that Exhibit B to the Complaint is a copy of Item 4140-C. UP avers by way of further response to this Paragraph that it has cancelled Item 4140-C of Circular 111; that it has issued Item 4140-D of Circular 111, which establishes common carrier rates that will apply to UP coal transportation service from the SPRB to the Montrose Station effective January 1, 2006, upon the expiration of Contract No. ICC-UP-C-30239; that Item 4140-D holds constant the terms and conditions applicable under Option 2 of Item 4140-D, including the terms and conditions regarding fuel surcharges; and that Item 4140-D does not contain an Option 1 common carrier rate for service to the Montrose Station.

14. UP admits the allegations contained in Paragraph 14 of the Complaint, except that UP denies that there is an applicable Option 1 common carrier rate for service to the Montrose Station.

15. UP admits that Contract No. ICC-UP-C-30239 will expire on December 31, 2005. UP denies the remaining allegations in Paragraph 15 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

16. UP admits that KCPL expressed a desire to negotiate an extension of Contract No. ICC-UP-C-30239 or a new contract to govern the movement of coal to the Montrose Station, and that UP responded with a proposal to transport SPRB coal to the Montrose Station after December 31, 2005, under rates and terms set forth in Circular 111, including Item 4140 and other incorporated circulars. UP denies the remaining allegations in Paragraph 16 of the Complaint.

17. UP admits that KCPL transmitted a “Circular 111 Option 2 Volume Commitment Certificate” to UP, notifying UP that KCPL would ship coal under the Option 2 rates established in Item 4140-C of Circular 111, and that KCPL’s transmittal letter speaks for itself. UP denies the remaining allegations in Paragraph 17 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

18. UP denies the allegations contained in Paragraph 18 of the Complaint.

19. UP admits that KCPL has recently shipped between 1.63 and 1.94 million tons of SPRB coal annually to the Montrose Station via UP, and that the Montrose Station is located approximately 900 miles from coal mines in the SPRB. UP denies the remaining allegations in Paragraph 19 of the Complaint because it lacks knowledge or information sufficient to form a belief as to their truth.

20. UP admits that it is the only railroad that holds out to provide coal delivery service to the Montrose Station, that BNSF also serves mines in the SPRB, that BNSF’s lines in Kansas City, Missouri, are approximately 140 rail miles away from the Montrose Station, and that BNSF has rail lines that connect to UP trackage leased by MNA at Fort Scott, Kansas. UP denies the remaining allegations in Paragraph 20 of the Complaint. UP avers by way of further response to this Paragraph that its lease agreement with MNA speaks for itself.

21. UP denies the allegations in Paragraph 21 of the Complaint. UP avers by way of further response to this Paragraph that it would deny the allegations as they relate to Item 4140-D of UP Circular 111.

22. UP denies the allegations in Paragraph 22 of the Complaint. UP avers by way of further response to this Paragraph that it would deny the allegations as they might relate to Item 4140-D of UP Circular 111.

23. UP denies the allegations in Paragraph 23 of the Complaint. UP avers by way of further response to this Paragraph that it would deny the allegations as they might relate to Item 4140-D of UP Circular 111, which does not contain an Option 1 common carrier rate.

24. UP denies the allegations in Paragraph 24 of the Complaint. UP avers by way of further response to this Paragraph that it would deny the allegations as they might relate to Item 4140-D of UP Circular 111.

25. UP admits the allegations in the first sentence of Paragraph 25 of the Complaint. UP denies the remaining allegations in this Paragraph. UP avers by way of further response to this Paragraph that it would admit the allegations in the first sentence as they might relate to Item 4140-D of UP Circular 111.

26. UP denies that the rates and charges referenced in Paragraph 23 of the Complaint are at issue in this proceeding. UP denies the remaining allegations in this Paragraph, except that UP admits that if this case is not dismissed on the basis of lack of market dominance or on other grounds, the reasonableness of the rates should be examined using the constrained market pricing principles adopted in Coal Rate Guidelines – Nationwide, 1 I.C.C.2d 520 (1985), and further refined and applied in subsequent decisions by the ICC and the Board in various

cases, to the extent that such decisions are correctly decided and not inconsistent with statutory or other law.

27. UP admits that Circular 111 includes service terms applicable to coal transportation to the Montrose Station that differ than those contained in Contract No. ICC-UP-C-30239. UP denies the remaining allegations in Paragraph 27 of the Complaint.

28. Paragraph 28 of the Complaint states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

29. Paragraph 29 of the Complaint states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in this Paragraph.

DEFENSES

1. The Board lacks jurisdiction to consider the Complaint because UP lacks market dominance with respect to the traffic at issue.

2. The Board lacks jurisdiction to consider all or part of the claims in the Complaint because the revenue-to-variable cost ratio of the traffic at issue is less than 1.8.

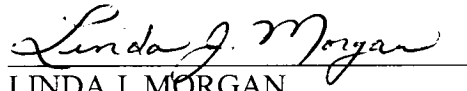
3. The level of the challenged rate is reasonable.

4. UP has not violated its common carrier obligations.

5. The Board lacks authority and/or any reasonable grounds to order UP to reimburse KCPL the filing fee for the Complaint.

WHEREFORE, UP requests that the Complaint be dismissed with prejudice and that no relief of any kind be awarded to KCPL, that UP be awarded its costs, and that the Board grant UP such other and further relief as may be appropriate.

Respectfully submitted,

A handwritten signature in cursive script, reading "Linda J. Morgan", is written over a horizontal line.

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Attorneys for Union Pacific Railroad Company

November 1, 2005

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 1st day of November, 2005, I caused a copy of Union Pacific's Answer to be served by hand on Kelvin J. Dowd of Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, D.C. 20036.



Michael L. Rosenthal