



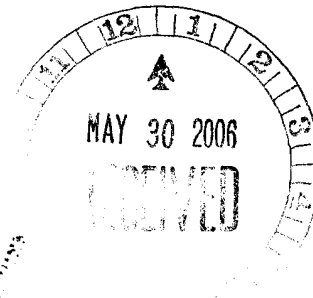
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May 22, 2006

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Room 711
Washington, DC 20423-0001

216640



Re: Ex Parte No. 575, Review of Rail Access and
Competition Issues – Renewed Petition of the
Western Coal Traffic League

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MAY 30 2006
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Public Record

Dear Secretary Williams:

Entergy Services, Inc. and its affiliate, Entergy Arkansas, Inc. (collectively, "Entergy"), together with Arkansas Electric Cooperative Corporation ("AECC"), respectfully request leave to submit this joint response in order to correct to certain misleading assertions contained in the reply comments of Union Pacific Railroad Company ("UP").

As Entergy and AECC noted in their Initial Comments, they are joint owners of the Independence coal-fired electric generating station in northeastern Arkansas, which is located on the lines of the Missouri & Northern Arkansas Railroad (the "MNA"). The MNA operates the line in question under a long-term lease agreement with a predecessor of UP; Entergy's Initial Comments included a copy of that lease. As both Entergy and AECC pointed out, the MNA lease contains several provisions that have the clear purpose and effect of preventing the MNA from delivering non-UP coal to Independence, and both parties described at some length the adverse effects those paper barriers had had on their ability to obtain adequate coal deliveries to Independence during UP's service problems in 1997-78 and 2005.

UP's witness Gough repeats the assertion UP made in a letter to the Board dated May 5, 2005, that Entergy's inability to obtain delivery of BNSF-originated coal to Independence in 1997-98 "had nothing to do with the MNA lease" but instead resulted from BNSF's apparent unwillingness to provide such coal deliveries. It is Entergy's understanding that UP would only allow BNSF to move such emergency tons under no certainty of tons, duration or requirement.

As Entergy noted in its May 16 responsive letter, however, UP surely knew that such an offer would be a "non-starter" for BNSF, given the cost of operating on such an uncertain basis and the fact that under the terms of UP's offer BNSF would have had to use UP locomotives and crews for the operation over the MNA – resources that were in such critically short supply that UP had parked some of Entergy's trainsets.

Witness Gough also responds to Entergy's testimony regarding the adverse effect of the MNA paper barriers on Entergy's ability to obtain delivery of imported coal from Gulf Coast ports during UP's service problems in 2005. Mr. Gough asserts that

UP ... cooperated with Entergy's efforts to move import coal from the Gulf Coast to Independence by offering to establish a rate and an interchange point for coal that would have moved from a Gulf Coast facility located on the Canadian National.

Gough VS at 3. In fact, however, **Entergy has no record of any such offer**. To the contrary, on or about July 18, 2005 UP offered a joint CN-UP rate on coal from the Gulf Coast to Entergy's White Bluff plant, valid for 30 days only. But even that offer was withdrawn (or more precisely, UP refused to extend its one-month expiration date) before Entergy could complete the complex arrangements involving vendors, ocean vessel operators, and port transfer terminal authorities that are needed for the importation of coal. Mr. Gough further claims

The Gulf Coast movement never occurred, but I believe it was because Entergy chose to use coal from Colorado instead.

This is in contradiction to the e-mail Mr. Gough sent to Entergy in mid August expressing that "...the carriers will get back to you once they have had an opportunity to update their earlier evaluations. We recognize your interest in this alternative coal source and will reply as soon as possible." Entergy's continued desire for Gulf Coast movement was brought to Mr. Gough's attention as late as in mid January, 2006 in a meeting in their offices, when UP claimed that such a move was not feasible during the first half of 2006.

We should add that UP also mischaracterizes Section 3.04 of the MNA Lease when it asserts that the provision simply "protects Entergy by allowing UP to resume service to the Independence plant without substantial delay if MNA service fell to unacceptable levels" (*UP Reply Comments* at 5). UP's assertion would be correct if the provision simply allowed UP to institute direct

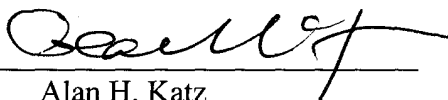
operations to Independence. In fact, however, as Entergy had previously pointed out, the provision also gives UP the right to "close" the plant to MNA, precluding any MNA deliveries of coal to the plant – even if the coal in question were from mines served by MNA directly and thus outside the scope of the other paper barrier provisions of the lease. Closing the plant to MNA would not be necessary to enable UP to begin service itself; it is only necessary where the goal is to prevent MNA from delivering coal that is not originated by UP.

Finally, we note that neither UP nor the Association of American Railroads ("AAR"), in reply comments to which UP subscribed, has responded to Entergy's observation that the paper barriers in the MNA Lease, and perhaps those in other short line leases as well, constitute "pooling" agreements which under 49 U.S.C. § 11322 require the prior approval of the Board before they may lawfully be enforced. The AAR asserts in a footnote (at 30 n. 24) that Section 11322 is simply not "relevant to whether the Board has the statutory authority to retroactively eliminate paper barriers," but in fact Section 11322 gives the Board precisely such retroactive authority with respect to pooling agreements, as demonstrated by *Chicago & N. W. Ry. Co. v. Peoria & P. U. Ry. Co.*, 319 F.2d 117 (7th Cir. 1963), *cert. den.* 375 U.S. 969 (1964), cited by Entergy in its Initial Comments. Accordingly, the conclusion that the paper barriers in the MNA lease constitute a pooling arrangement necessarily means that UP's (and MNA's) failure to seek and obtain approval of those paper barriers under Section 11322 makes the provisions unenforceable, unless and until such STB approval is belatedly sought and obtained.

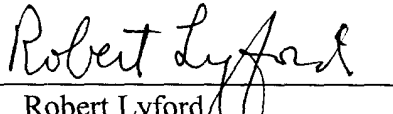
For the foregoing reasons, as well as those set forth in Entergy's and AECC's Initial Comments, Entergy and AECC respectfully urge the Board to act promptly on WCTL's Renewed Petition by initiating the proposed rulemaking.

Sincerely,

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ENTERGY ARKANSAS, INC.

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