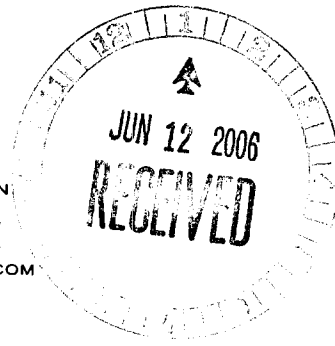


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June 12, 2006

216742

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

Re: Ex Parte 575, Review of Rail Access and
Competition Issues – Renewed Petition of
Western Coal Traffic League

ENTERED
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Public Record

Dear Secretary Williams:

Union Pacific Railroad Company ("UP") is filing this letter in response to the letter filed May 30, 2006, by Entergy Services, Inc., Entergy Arkansas, Inc., and Arkansas Electric Cooperative Corporation (collectively, "Entergy").¹

Entergy's latest filing comes more than two months after UP filed the comments that Entergy purports to address, but even with all that time to develop its response, Entergy is unable to refute UP's showing that Entergy has not suffered any anticompetitive effects at its Independence plant as a result of the transaction that created the Missouri & Northern Arkansas Railroad ("MNA").

1. The MNA transaction has not reduced Entergy's competitive options.

UP's filings in this proceeding demonstrated beyond any possible doubt that the MNA transaction, including the interchange commitments between UP and MNA, did not reduce or eliminate any competitive options available to Entergy or any other shipper served by MNA.²

¹ Entergy's letter is dated May 22, 2006, but it was not entered as part of the record in this proceeding until May 30, 2006. Entergy never served the letter on UP.

² Entergy's letter repeats the false claim that the MNA lease allows UP to block Entergy's efforts to source coal from mines served directly by MNA. UP has explained that the lease does not restrict MNA's ability to handle local traffic. (UP Reply Comments at 5.)

As UP explained, MNA leased its line from Missouri Pacific, a railroad that UP had acquired almost a decade before the MNA transaction. Thus, if the MNA transaction had never occurred, Entergy's Independence plant would still be served exclusively by UP. In other words, the MNA transaction did not eliminate any alternative competitive routes, and Entergy is in the same position it would have been in if the transaction had never occurred.

In fact, UP's filings demonstrated that Entergy and other shippers served by MNA are better off as a result of the transaction. As UP explained, if it had been unable to enter into the MNA transaction, it probably would have retained the line segments on the east and west ends of the line – one serves Entergy's Independence plant and the other serves Kansas City Power & Light's Montrose plant – and abandoned the middle portion. That would have left shippers on the abandoned portion of the line without rail service. It also would have left UP unable to improve service at Entergy's Independence plant by routing empty coal trains over MNA – a routing option we developed during UP's service problems in 1997-98.

Entergy's recent letter does not contest UP's showing that the MNA transaction did not eliminate any competitive options that were previously available to Entergy and in fact likely benefited Entergy. As far as this proceeding goes, the matter should end here.

2. The MNA transaction has not harmed efforts to move coal to Entergy's Independence plant.

Entergy's only apparent purpose in filing its letter is to advance claims that UP did not do enough to move coal to the Independence plant when UP had service problems in 1997-98 and again in 2005. But those claims also have nothing to do with the MNA transaction. As UP has explained, Entergy would have been in the exact same position if UP had never leased its lines to MNA. If the MNA transaction had never occurred, Entergy's Independence plant would have been served solely by UP. In that situation, Entergy would have had no greater opportunities to source coal from other carriers than are available under the MNA lease.

Moreover, Entergy now acknowledges that UP was willing to waive the MNA interchange commitments to allow BNSF to handle Entergy trains via an interchange with MNA on a temporary detour basis during its service problems in 1997-98.³ Entergy now says that UP should have made a more generous offer in order to entice BNSF to take the business. But UP has already explained that it was not willing to relinquish its rights under its long-term contract with Entergy. In any event, Entergy never explains how the outcome would have been any different if UP had never leased its line to MNA.

³ Entergy had previously, and incorrectly, claimed that UP "categorically" refused to waive the interchange commitments between UP and MNA. (Entergy Comments, Herndon V.S. at 8.)

In addition, Entergy does not dispute UP's testimony that Entergy never even asked UP to permit a BNSF-MNA routing for PRB coal that UP was unable to deliver in 2005. This is not surprising, because Entergy has admitted that BNSF PRB coal was not a viable option – via MNA or otherwise.⁴ In fact, Entergy's only "correction" to UP's testimony – that Entergy sought imported coal for its White Bluff plant, not its Independence plant – simply emphasizes that BNSF was suffering from coal delivery problems and that Entergy's issues have nothing to do with the MNA transaction, because BNSF serves the White Bluff plant, and MNA does not.

Entergy also does not dispute UP's testimony that UP cooperated with Entergy's efforts to obtain substitute coal for the Independence plant in 2005 by moving Colorado coal to that plant. In fact, it does not identify a single situation in which UP refused to cooperate with efforts to obtain substitute coal for its Independence plant during UP's service problems in 2005.

3. Interchange commitments cannot legally be removed from consummated transactions.

Entergy does not dispute any of the legal arguments made by the Association of American Railroads ("AAR") or UP that the Board could not remove interchange commitments to consummated transactions. Entergy asserts, however, that neither the AAR nor UP addressed Entergy's claim that interchange commitments constitute unlawful pooling agreements. In fact, the AAR correctly observed in its reply comments that the pooling statute was not relevant to the issue.⁵ UP did not undertake to respond to all of the flawed arguments that were offered for voiding interchange commitments because the AAR was preparing a detailed response to the legal issues. In particular, we saw no need to reinforce the AAR's point that pooling involves agreements among competitors, and that UP and MNA are not competitors with respect to traffic handled under their interchange commitments.⁶

* * *

⁴ Entergy had explained that BNSF PRB coal was not a viable option because "BNSF was also having difficulty meeting its commitments." (Entergy Comments, Herndon V.S. at 8.)

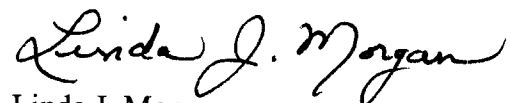
⁵ AAR Reply Comments at 30 n.4.

⁶ *Union Pac. R.R. & Mo. Pac. R.R. – Trackage Rights Over Lines of Chi. & N.W. Transp. Co. Between Fremont, NE/Council Bluffs, IA, & Chi., IL*, 7 I.C.C.2d 177, 184 (1990) ("For an agreement to be considered pooling, two elements must exist. First, the arrangement must be between competitors and, second, the arrangement must involve some restraint or potential restraint on competition.").

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UP does not object if the Board wishes to consider Entergy's latest filing in its proceeding, even though it was filed far outside the time established by the procedural schedule, as long as the Board also considers this response. UP has shown that the MNA transaction did not reduce Entergy's competitive options or reduce Entergy's options for responding to service problems that have arisen. Entergy's latest filing serves only to reinforce those points.

Sincerely,


Linda J. Morgan

cc: Alan H. Katz, Esq.
Robert Lyford, Esq.