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August 17, 2009

BY HAND

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-00001

ENTERED
Office of Proceedings
AUG 17 2009
Part of
Public Record



Re: Docket No. 42104, *Entergy Arkansas, Inc. and Entergy Services, Inc.*
v. Union Pacific Railroad Company and Missouri & Northern Arkansas
Railroad Company, Inc.
Finance Docket No. 32187, *Missouri & Northern Arkansas Railroad*
Company, Inc. – Lease, Acquisition and Operation Exemption – Missouri
Pacific Railroad Company and Burlington Northern Railroad Company

Dear Secretary Quinlan:

Enclosed for filing in the above-referenced pleading, please find:

1. An original and ten copies of Union Pacific Railroad Company's Answer to Intervenor Arkansas Electric Cooperative Corporation's Joinder in and Supplement to the Amended Complaint of Entergy Arkansas, Inc. and Entergy Services, Inc.
2. An original and ten copies of a **Public** version of Union Pacific Railroad Company's Answer to the Amended Complaint of Entergy Arkansas, Inc. and Entergy Services, Inc.
3. An original and ten copies of a **Highly Confidential** version of Union Pacific Railroad Company's Answer to the Amended Complaint of Entergy Arkansas, Inc. and Entergy Services, Inc. **to be filed under seal.**

Additional paper copies of these filings are enclosed. Please return date-stamped copies to our messenger.

COVINGTON & BURLING LLP
Honorable Anne K. Quinlan
August 17, 2009
Page 2

Thank you for your attention to this matter.

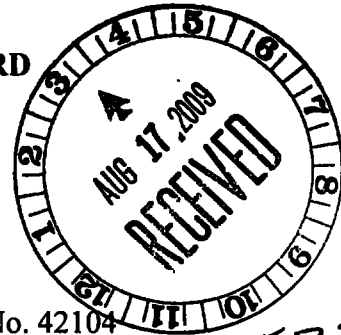
Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Rosenthal", written in a cursive style.

Michael L. Rosenthal

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



ENTERGY ARKANSAS, INC. and
ENTERGY SERVICES, INC., Complainants,

v.

UNION PACIFIC RAILROAD COMPANY and
MISSOURI & NORTHERN ARKANSAS
RAILROAD COMPANY, INC., Defendants.

MISSOURI & NORTHERN ARKANSAS R.R. –
LEASE, ACQUISITION AND OPERATION
EXEMPTION – MISSOURI PACIFIC R.R.
and BURLINGTON NORTHERN R.R.

Docket No. 42104

225537

Finance Docket No. 32187

225538

**UNION PACIFIC RAILROAD COMPANY'S ANSWER TO
INTERVENOR ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S
JOINDER IN AND SUPPLEMENT TO THE AMENDED COMPLAINT OF
ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.**

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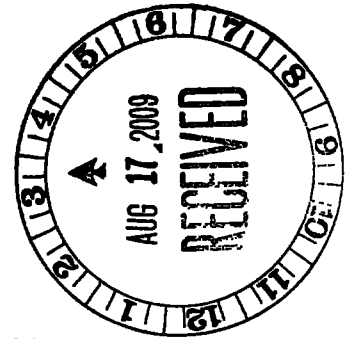
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Attorneys for Union Pacific Railroad Company

August 17, 2009

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



ENTERGY ARKANSAS, INC. and
ENTERGY SERVICES, INC., Complainants,

v.

UNION PACIFIC RAILROAD COMPANY and
MISSOURI & NORTHERN ARKANSAS
RAILROAD COMPANY, INC., Defendants.

MISSOURI & NORTHERN ARKANSAS R.R. –
LEASE, ACQUISITION AND OPERATION
EXEMPTION – MISSOURI PACIFIC R.R.
and BURLINGTON NORTHERN R.R.

Docket No. 42104

Finance Docket No. 32187

**UNION PACIFIC RAILROAD COMPANY'S ANSWER TO
INTERVENOR ARKANSAS ELECTRIC COOPERATIVE CORPORATION'S
JOINDER IN AND SUPPLEMENT TO THE AMENDED COMPLAINT OF
ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.**

Defendant Union Pacific Railroad Company ("UP") hereby answers the "Joinder in and Supplement to Amended Complaint filed by Entergy" (hereafter "Supplemental Amended Complaint"), filed by Intervenor Arkansas Electric Cooperative Corporation ("AECC") in this proceeding.

UP responds to the allegations in each separately numbered paragraph of the Supplemental Amended Complaint as follows:

1. UP admits the allegations in the first sentence of Paragraph 1. UP denies the remaining allegations in Paragraph 1 because it lacks knowledge or information sufficient to form a belief as to their truth.

2. UP incorporates herein its responses to the allegations in the numbered paragraphs of the Amended Complaint, filed by Entergy Arkansas, Inc. (“EAI”) and Entergy Services, Inc. (“ESI”) (collectively, “Entergy”) on July 27, 2009, which are set forth in UP’s Answer to the Amended Complaint, filed on August 17, 2009.

3. UP denies the allegations in Paragraph 3. UP avers by way of further response that UP and Missouri & Northern Arkansas Railroad Company (“M&NA”) are not competitors for traffic that originates or terminates on lines served by M&NA and that UP and M&NA structured their lease agreement, including the interchange commitment (the “UP/M&NA Lease”) so that no shipper lost a competitive option.

4. Paragraph 4 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.

5. UP admits that there have been periods during which it has had difficulties providing service to the Independence plant, but denies that those service difficulties were caused by or exacerbated by the UP/M&NA Lease. UP denies the remaining allegations in Paragraph 5.

6. UP denies the allegations in Paragraph 6. UP avers by way of further response that coal traffic to the Independence Plant had been shifted away from the Carthage Subdivision prior to the creation of the M&NA.

7. UP denies the allegations in Paragraph 7. UP avers by way of further response that coal traffic to the Independence Plant had been shifted away from the Carthage Subdivision prior to the creation of the M&NA.

8. UP denies the allegations in Paragraph 8 because it lacks knowledge or information sufficient to form a belief as to their truth.

9. UP denies the allegations in Paragraph 9 because it lacks knowledge or information sufficient to form a belief as to their truth.

10. UP admits the allegations in Paragraph 10.

11. UP denies the allegations in Paragraph 11.

12. UP denies the allegations in Paragraph 12.

13. UP denies the allegations in Paragraph 13. UP avers by way of further response to this Paragraph that Section 15.01 of the UP/M&NA Lease allows UP to terminate the lease if, among other possible reasons, a court or other body determines that all or any of the provisions of Section IV are unlawful or otherwise unenforceable.

14. UP admits the allegations in Paragraph 14.

15. UP admits that the line between Lamar and the Independence plant that is now operated by M&NA is a former Class I mainline in that it was previously operated by Missouri Pacific Railroad Company. UP denies the remaining allegations in Paragraph 15.

16. UP admits the allegations in Paragraph 16, except that UP denies AECC's characterization of the movement of coal to the Independence plant as the "primary" rail traffic on the line between Diaz Junction and the Independence plant.

17. UP admits the allegations in Paragraph 17. UP avers by way of further response that BNSF's trackage rights contain certain restrictions as a result of an agreement between the parties and orders of the Board.

18. UP denies the allegations in Paragraph 18.

DEFENSES

1. The Supplemental Amended Complaint fails to state a claim for a prescribed through route to Independence Station involving a long-haul carrier other than UP, pursuant to 49 U.S.C. § 10705.

2. The Supplemental Amended Complaint fails to state a claim under 49 U.S.C. § 11102(a).

3. The Supplemental Amended Complaint fails to establish a basis for revoking the exemption in Finance Docket No. 32187.

4. Entergy and AECC admittedly have been on notice of the terms of the UP/M&NA Lease about which it complains since at least 1994 and are thus precluded from petitioning to revoke the exemption in Finance Docket No. 32187 by the doctrine of laches.

5. The Board lacks jurisdiction to preclude the enforcement of individual contractual terms of the UP/M&NA Lease.

6. The remedies sought by AECC would result in an unconstitutional taking of UP's property.

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

Respectfully submitted,



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Attorneys for Union Pacific Railroad Company

August 17, 2009

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 17th day of August, 2009, I copies of Union Pacific Railroad Company's Intervenor Arkansas Electric Cooperative Corporation's Joinder in and Supplement to the Amended Complaint of Entergy Arkansas, Inc. and Entergy Services, Inc. to be served on counsel as follows:

By email and hand delivery:

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