

REDACTED – TO BE FILED IN THE PUBLIC RECORD

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



225539

Finance Docket No. 32187

225540

**UNION PACIFIC RAILROAD COMPANY'S ANSWER TO THE AMENDED
COMPLAINT OF ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.**

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

Docket No. 42184

Finance Docket No. 32187



**UNION PACIFIC RAILROAD COMPANY'S ANSWER TO THE AMENDED
COMPLAINT OF ENTERGY ARKANSAS, INC. AND ENTERGY SERVICES, INC.**

Defendant Union Pacific Railroad Company ("UP") hereby answers the
"Amended Complaint" filed by Entergy Arkansas, Inc. ("EAI") and Entergy Services, Inc.
("ESI") (collectively, "Entergy") in this proceeding.

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

1. UP admits that Entergy filed a Complaint in this proceeding on February 19, 2008, which sought relief, *inter alia*, on the basis of Entergy's claim that continued enforcement of certain provisions of UP's 1992 lease agreement with Missouri & Northern Arkansas Railroad Company, Inc. (the "UP/M&NA Lease") constituted an unreasonable practice in violation of 49 U.S.C. § 10702. UP denies the remaining allegations of Paragraph 1, including the allegations

that Entergy's Complaint "confirmed" anything and that certain provisions in the UP/M&NA Lease operate as a "paper barrier."

2. UP admits that Entergy has accurately quoted from a portion of the Board's Decision served June 26, 2009 and states that the Decision speaks for itself.

3. UP admits that Entergy has accurately quoted from a portion of the Board's Decision served June 26, 2009 and states that the Decision speaks for itself. UP denies the allegation that the UP/M&NA Lease is a "paper barrier." UP also denies the remaining allegations in Paragraph 3 because it lacks knowledge or information sufficient to form a belief as to their truth.

4. UP admits the allegations in the first sentence of Paragraph 4 and that EAI distributes and sells electric power. UP denies the remaining allegations in Paragraph 4 because it lacks knowledge or information sufficient to form a belief as to their truth.

5. UP admits the allegations in the first sentence of Paragraph 5. UP denies the remaining allegations in Paragraph 5 because it lacks knowledge or information sufficient to form a belief as to their truth.

6. UP admits the allegations in the first three sentences of Paragraph 6. UP denies the remaining allegations in Paragraph 6 because it lacks knowledge or information sufficient to form a belief as to their truth.

7. UP admits the allegations in Paragraph 7.

8. UP admits the allegation in the third sentences of Paragraph 8. UP denies the remaining allegations in Paragraph 8 because it lacks knowledge or information sufficient to form a belief as to their truth.

9. UP admits the allegations in Paragraph 9.

10. UP admits the allegations in the first sentence of Paragraph 10, except that UP denies that the exemption in Finance Docket No. 32187 involved the acquisition of 492.27 miles of railroad lines. UP avers by way of further response that the Verified Notice of Exemption stated that the transaction involved the acquisition of 491.27 miles of railroad lines. UP denies the remaining allegations in Paragraph 10.

11. UP admits the allegations in Paragraph 11.

12. UP admits the allegations in Paragraph 12, and admits that Exhibit No. 2 appears to be an accurate copy of the UP/M&NA Lease as executed on December 11, 1992, except that it omits the exhibits to the UP/M&NA Lease. UP further admits that the quotation in Paragraph 12 is an accurate quotation from the UP/M&NA Lease, but it avers by way of further response that the use of an isolated quotation is potentially misleading because other portions of the UP/M&NA Lease make clear that UP retained certain rights to operate over the leased premises. UP also avers by way of further response to this Paragraph that the UP/M&NA Lease has been amended several times since December 11, 1992, and that the lease speaks for itself.

13. UP admits the allegations in Paragraph 13. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself.

14. UP admits the allegations in Paragraph 14, and admits that Exhibit No. 3 appears to be an accurate copy of a confidential rail transportation contract between UP and Entergy. UP avers by way of further response to this Paragraph that the contract speaks for itself.

15. UP admits the allegations in Paragraph 15. UP further admits that Exhibit No. 4 appears to be an accurate copy of a confidential rail transportation contract between UP

and Entergy and that Exhibit No. 5 appears to be an accurate copy of an amendment to that contract.

16. UP admits that UP and Missouri Northern Arkansas Railroad Company (“M&NA”) currently transport Powder River Basin (“PRB”) coal to Entergy’s Independence Steam Electric Station (the “Independence plant”) via a routing that involves UP moving loaded coal trains from the PRB to Diaz Junction, Arkansas, via Parsons, Kansas, and Little Rock, Arkansas, and that M&NA moves the loaded trains between Diaz Junction and the plant. UP further admits that M&NA delivers empty coal trains to UP at Kansas City, Missouri. UP denies the remaining allegations in Paragraph 16.

17. UP admits the allegations in the first two sentences of Paragraph 17. UP denies the remaining allegations in Paragraph 17, except that it admits that the Missouri Pacific Railroad Company (“MP”) used a portion of the Carthage Subdivision line currently operated by M&NA as part of its route for transporting coal to the Independence plant. UP also avers by way of further explanation that UP acquired control of MP in December 1982, long before the UP/M&NA Lease, and even before Entergy had begun commercial operations at the Independence plant.

18. UP admits the allegations in Paragraph 18.

19. UP admits the allegations of Paragraph 19.

20. UP admits the allegations of Paragraph 20, except that in situations in which the M&NA routing for empty trains has been unavailable, empty coal trains have been routed back over the loaded route.

21. UP denies the allegations of Paragraph 21.

22. UP admits that it has had difficulties delivering coal to the Independence plant following record Midwest flooding in 1993-1994, following its merger with Southern Pacific in 1997-1998, and as a result of issues on the PRB Joint Line in 2005-2006. UP denies the remaining allegations in Paragraph 22. UP avers by way of further explanation that none of the service difficulties were caused by or exacerbated by the UP/M&NA Lease.

23. UP denies the allegations in Paragraph 23.

24. UP denies the allegations in Paragraph 24 because it lacks knowledge or information sufficient to form a belief as to their truth.

25. UP denies the allegations in Paragraph 25 because it lacks knowledge or information sufficient to form a belief as to their truth, except that UP denies the allegation in footnote 9 that contractual restrictions in the UP/M&NA Lease presently prevent M&NA from using trackage rights that M&NA holds over UP's line from Pleasant Hill, Missouri, to Kansas City to interchange with BNSF Railway Company ("BNSF") at Kansas City.

26. UP admits the allegation in Paragraph 26 that the handling of loaded coal trains over the M&NA line as part of a through movement with BNSF would require track upgrades. {

} . UP denies the remaining allegations in Paragraph 26 because it lacks knowledge or information sufficient to form a belief as to their truth.

27. UP denies the allegation in Paragraph 27 that Section 4.01 of the UP/M&NA Lease establishes a "paper barrier." UP admits that the annual rent due under the

lease is determined by reference to the percentage of traffic originating or terminating on the leased premises that is interchanged with UP, with certain exceptions. UP further admits that the quotation in Paragraph 27 appears to be an accurate quotation from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that UP and M&NA amended sections 4.01 and 4.03 of the lease in 2005 to modify the interchange commitment and rent provisions for the year 2005 and that the UP/M&NA Lease speaks for itself.

28. UP admits the allegations in the first two sentences of Paragraph 28 and in the first sentence of footnote 10. UP denies the remaining allegations in Paragraph 28.

29. UP denies the allegation in Paragraph 29 that the UP/M&NA Lease contains “paper barriers.” UP admits that the lease contains several provisions designed to insure that UP is appropriately compensated by M&NA for M&NA’s use of UP’s property. UP avers by way of further response that it provided exclusive service to the Independence plant before entering into the UP/M&NA Lease and that it never would have entered into the lease without ensuring that it could preserve its existing stream of revenue from that traffic and that it could resume direct service itself to the Independence plant. UP also avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. UP denies the remaining allegations of Paragraph 29.

30. UP admits that Sections 3.01 and 3.04 of the UP/M&NA Lease allow UP to acquire the exclusive right to serve the Independence plant using trackage rights between Diaz Junction and Independence, Arkansas, after giving seven days’ written notice to M&NA and that UP would pay M&NA \$60,000 per year for these rights if they are obtained. UP further admits that the quotations in Paragraph 30 are accurate quotations from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. UP

denies the remaining allegations in Paragraph 30, including the allegations in footnote 11. UP avers by way of further explanation that the comparison in footnote 11 between the rent M&NA would have to pay UP if it interchanged traffic from the leased line with a carrier other than UP, which was intended to compensate UP for the loss of the traffic, and the trackage rights payment that UP would have to make if it elected to serve the Independence plant directly, which was intended to reflect UP's share of maintenance costs to operate over one short segment of the leased line, is invalid.

31. UP admits that Section 5.05 of the UP/M&NA Lease states that the parties shall execute agreements granting M&NA trackage rights over UP's lines between Pleasant Hill and the Neff Yard in Kansas City, Missouri, and between Diaz Junction and Newport, Arkansas, solely for the purpose of interchange with UP. UP further admits that the quotation in Paragraph 31 is an accurate quotation from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. UP denies the remaining allegations in Paragraph 31.

32. UP admits 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. UP further admits that the quotation in Paragraph 32 is an accurate quotation from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. UP denies the remaining allegations in Paragraph 32.

33. UP repeats its responses to the allegations in Paragraphs 1 through 32.

34. UP admits that the quotations in Paragraph 34 are accurate quotations from the Decision. UP denies the remaining allegations in Paragraph 34 because it lacks knowledge or information sufficient to form a belief as to their truth.

35. Paragraph 35 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.

36. The first sentence in Paragraph 36 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 the first sentence of this Paragraph. UP denies the remaining allegations in Paragraph 36.

37. UP denies the allegations in Paragraph 37.

38. Paragraph 38 states legal conclusions to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in Paragraph 38.

39. UP admits that the quotation in Paragraph 39 is an accurate quotation from the UP/M&NA Lease. UP avers by way of further response to this Paragraph that the UP/M&NA Lease speaks for itself. The remainder of Paragraph 39 states legal conclusions or requests for relief to which no response is required; to the extent that a response is deemed to be required, UP denies these allegations.

40. Paragraph 40 states a request for relief to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations of this Paragraph.

DEFENSES

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

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

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

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

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

WHEREFORE, UP requests that the Amended Complaint be dismissed with prejudice and that the Petition to Revoke be denied, that no relief of any kind be awarded to Entergy, 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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August 17, 2009

CERTIFICATE OF SERVICE

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

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