

STB Issues Interim Decision in Entergy Case

The Surface Transportation Board issued a decision today providing Entergy Arkansas, Inc. and Entergy Services, Inc. (Entergy) an opportunity to amend its complaint challenging an interchange commitment contained in a lease between Union Pacific Railroad Company (UP) and the Missouri & Northern Arkansas Railroad Company, Inc. (MNA). The Board said that Entergy may pursue its interests using the section of the Interstate Commerce Act that deals with the rights and obligations of rail carriers to interchange with one another.

The Board indicated that it would defer ruling on Entergy's request that the Board revoke the prior approval of the lease agreement. The Board said that if Entergy does not obtain relief under section 10705 -- or Entergy declines to pursue that course -- the Board will then decide whether approval of the lease between UP and MNA should be revoked, modified or left in place.

In a complaint filed on February 19, 2008, *Entergy Arkansas, Inc. and Entergy Services, Inc. v. Union Pacific Railroad Company and Missouri & Northern Arkansas Railroad Company, Inc.*, Docket No. 42104, Entergy asked the Board to revoke its approval of a 1992 lease between UP and MNA, in which UP leases 300 miles of track to MNA for free if it feeds 95 percent or more of its freight traffic to UP. The utility's Newark, Ark., power plant is served only by MNA. Entergy claims that MNA's lease with UP effectively rules out using another carrier to transport coal from Wyoming's Powder River Basin to an interchange with MNA's tracks and that enforcement of the interchange commitment is an unreasonable practice.

The Board's decision said that Entergy can request that the Board use its authority under section 10705 to order MNA to interchange with a long-haul carrier other than UP. The Board stated that it can require a carrier to establish a new through-route with another carrier under Section 10705 when such a route is needed "to provide adequate, and more efficient or economic transportation" and invited Entergy to submit argument and evidence on these issues. The Board indicated that resolution of the case under section 10705 could "directly address and remedy the precise problem about which Entergy complains." The Board also explained that the revocation of lease approval that Entergy seeks in its complaint "would be far broader in scope and effect" and could affect other entities. The Board also determined that relief was not available under the unreasonable practices and pooling provisions cited by Entergy in its complaint.

The Board's [decision in Docket No. 42104 was issued today, June 26, 2009](#). That decision is available for viewing and downloading via the Board's Web site, at <http://www.stb.dot.gov>, under "E-LIBRARY," then under "Decisions & Notices," beneath the date "06/26/09."