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October 10, 2006

217772

VIA HAND DELIVERY

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 711
Washington, DC 20423

ENTERED
Office of Proceedings
OCT 10 2006
Part of
Public Record

Re: Docket No. 42095, Kansas City Power & Light
Company v. Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed for filing in the referenced docket please find an original and ten copies of the Reply Brief of Kansas City Power & Light Company.

An additional copy of the Brief also is enclosed. Kindly indicate receipt and filing of the Brief by time-stamping this extra copy and returning it the bearer of this letter.

Thank you for your attention to this matter.

Sincerely,

Kelvin J. Dowd
An Attorney for
Kansas City Power & Light Company

KJD:jml
Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD



KANSAS CITY POWER & LIGHT
COMPANY

Complainant,

v.

UNION PACIFIC RAILROAD COMPANY

Defendant.

Docket No. 42095

217772

REPLY BRIEF OF
KANSAS CITY POWER & LIGHT COMPANY

ENTERED
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Dated: October 10, 2006

Attorneys & Practitioners

	)	
KANSAS CITY POWER & LIGHT	)	
COMPANY	)	
	)	
Complainant,	)	
	)	Docket No. 42095
v.	)	
	)	
UNION PACIFIC RAILROAD COMPANY	)	
	)	
Defendant.	)	
	)	

Kansas City Power & Light Company (“KCPL”), the Complainant in this proceeding, submits this its Reply Brief in compliance with the Decision and Order served by the Board on July 27, 2006 (“*Decision*”).

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KCPL also demonstrated that even if it was assumed that the Board had the authority to decide the issue, the undisputed facts of record conclusively established that neither KCPL nor UP intended to make a contract; that in fact, each clearly manifested an intent *not* to contract; and that under the law, this lack of mutual intent was outcome determinative on the question at hand. *Id.* at 14-21. Finally, KCPL showed that the “characteristics of a rail transportation contract” that the Board stated it found in UP’s Unit Train Coal Common Carrier Circular 111¹ are typical of common carrier coal transportation arrangements, particularly those applicable to high volume utility coal movements such as KCPL’s. *Id.* at 22-26.

In its own Brief also filed on September 25, UP did not discuss the matter of the Board’s jurisdiction to address contract issues when those issues had not been raised by either party to the proceeding. However, UP did argue forcefully that it had no intent to enter into a contract with KCPL or any other shipper that transported coal under Circular 111, and that no contract was formed in this case.² Likewise UP showed that the “characteristics” of Circular 111 highlighted by the Board are typical elements of common carrier arrangements. UP Br. at 6-8.

The parties’ Briefs confirm what the undisputed facts already establish: KCPL and UP did not intend to enter into a lawful, binding contract for coal

¹ *Decision* at 4.

² UP Br. at 2-5.

transportation to Montrose, and therefore, as a matter of law, they did not do so. It would be both beyond the scope of the agency's jurisdiction and an abuse of discretion for the Board to reach any other conclusion.

The Board should vacate the *Decision*, discontinue any further proceedings pursuant thereto, and move immediately to re-establish a procedural schedule for consideration of the merits of this case.

Respectfully submitted,

KANSAS CITY POWER & LIGHT COMPANY

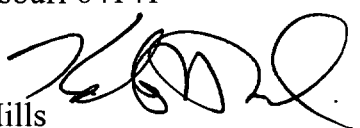
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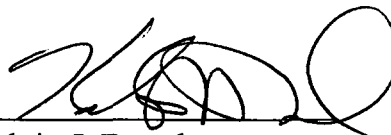
CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October 2006, I served copies of the foregoing Reply Brief of Kansas City Power & Light Company upon counsel for Defendant by hand, as follows:

Linda J. Morgan
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and by Federal Express, as follows:

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Kelvin J. Dowd