

SERVICE DATE – DECEMBER 6, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36406

PORT AUTHORITY OF KANSAS CITY, MO.—CONSTRUCTION AND OPERATION
EXEMPTION—IN JACKSON AND CLAY COUNTIES, MO.

Decided: December 6, 2022

On September 7, 2022, the Port Authority of Kansas City, Missouri (Port KC), a political subdivision of the State of Missouri, filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10901 for Port KC to construct and operate approximately 3.0 miles of new rail line located on the east side of Kansas City, Mo., and operating authority to operate across approximately 0.3 miles of existing non-common carrier industrial track (together, the Line).

Port KC explains that it is developing an inland port known as the Missouri River Terminal (MRT), (Pet. 2), and that it will be constructing the Line to serve customers shipping through the MRT, (*id.* at 10). Port KC states that the MRT will accommodate an intermodal container transfer facility for interchanging double-stacked container well cars, thereby facilitating expanded freight transportation capacity through Kansas City in anticipation of projected freight growth. (*Id.* at 2.) According to Port KC, it also envisions rail operations at the MRT to include switching, rail storage, containerized cargo and/or truck transload transfer services. (*Id.* at 9.) It states that, once complete, the MRT will have access to the rail network, marine transportation via barge, and the interstate highway system via motor carriage. (*Id.* at 2.) Port KC has been awarded federal funding of \$9.88 million through the U.S. Department of Transportation's Port Infrastructure Development Program, as well as state funding, and is dedicating portions of Port KC future revenue derived from industrial and incentive projects for predevelopment activities. (Pet. 7 & Joint V.S. Stephens & Grenville 9.)¹

According to its petition, Port KC intends to develop the MRT as a public private partnership. (Pet. 7.) Specifically, it envisions creating a 50-year agreement that includes the comprehensive design/construction, financing, operations, and maintenance of the MRT. (Pet., Joint V.S. Stephens & Grenville 9.) Although Port KC is seeking authority from the Board, it intends its partnership to include an agreement with a Class III rail carrier for rail operations of the MRT, leaving Port KC with only a residual common carrier obligation. (*Id.* at 10.)

¹ A letter was also filed separately by U.S. Senator Roy Blunt on September 28, 2022, expressing support for Port KC's petition for exemption. A letter from Chairman Martin J. Oberman in response to Senator Blunt's letter was entered into the record on October 7, 2022.

Port KC explains that the Line will run from its connection point with Kansas City Terminal Railroad (KCTL) across lines owned by Union Pacific Railroad Company (UP) for traffic moving eastbound, and across lines owned by UP and Kansas City Southern Railroad (KCS) for traffic moving westbound. (Id. at 5.) Once on the MRT property, the Line will follow the southern border of the property heading in an eastward direction before turning northwest, where it will meet the Missouri River. (Id.)²

Port KC argues that regulation of the construction and operation of the Line meets the statutory requirements for exemption under 49 U.S.C. § 10502. (Pet. 9-13.) Specifically, it claims that regulation under 49 U.S.C. § 10901 is not needed to carry out the rail transportation policy (RTP) at 49 U.S.C. § 10101, and that the project would promote several provisions of the RTP. (Id. at 10-11.) Port KC further states that the transaction is of limited scope or, alternatively, that regulation under 49 U.S.C. § 10901 is not needed to protect shippers from an abuse of market power. (Id. at 11-12.)

Port KC states that it has approached UP and is working to engage KCS to enter into an agreement to access KCTL. (Id. at 13.) However, Port KC requests that, if the Board grants its petition for exemption, it revoke the exemption in order to issue a certificate of public convenience and necessity to the extent necessary to enable Port KC to file a crossing petition under 49 U.S.C. § 10901(d), in the event it is unable to negotiate crossing agreements with UP and KCS. (Id. at 12-13.)

By this decision, the Board is instituting a proceeding under 49 U.S.C. § 10502(b). The issues presented by the petition will be addressed in a subsequent decision.

It is ordered:

1. Under 49 U.S.C. § 10502(b), a proceeding is instituted.
2. This decision is effective on its date of service.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

² See Pet., Ex. A (map of the Proposed Line).