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July 25, 2023

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: STB Docket No. FD 36406, Port Authority of Kansas City, Missouri
– Construction and Operation Exemption–In Jackson and Clay Counties, MO

Reply to the Comments of the Kansas City Southern Railway Company

Dear Ms. Brown:

On July 5, 2023, The Kansas City Southern Railway ("KCSR") filed comments with the Board expressing opposition to a theoretical Port Authority of Kansas City, Missouri ("Port KC") crossing petition under 49 U.S.C. § 10901(d). In its comment, KCSR states that it does not oppose Port KC's construction and operation exemption petition and states that Port KC's project may be in the public interest. KCSR's comment seeks no specific remedy from the Board. To the extent that KCSR is seeking any relief from the Board, KCSR passively suggests that the Board could ask Port KC to provide additional information about a hypothetical crossing petition.

Port KC acknowledges KCSR's potential opposition to a crossing if one were requested and appreciates its stated willingness to continue discussions with Port KC as Port KC develops the Missouri River Terminal ("MRT") Project. Port KC will most certainly continue discussions in good faith with KCSR. However, Port KC does not believe that the relief KCSR may be seeking is necessary at this time because Port KC has not filed a petition for crossing authority.

Brief Summary of Port KC's Petition

On September 7, 2022, Port KC submitted a Petition for Exemption proposing to construct approximately 3.0 miles of new common carrier railroad line in Kansas City, Missouri as part of is Missouri River Terminal Project ("MRT").¹ MRT is a former steel facility that Port KC acquired to rehabilitate into a multimodal inland port with access to the interstate rail network, marine transportation via barge, and the interstate highway system via motor carriage.² The former steel

¹ Port KC Petition for Exemption at 2.

² *Id.* at 3,8.

facility previously connected to Kansas City Terminal Railroad ("KCTL") through a tunnel that extended beneath the UPRR rail line – this tunnel is incapable of accommodating double stack intermodal containers and as stated in the Port KC Petition, modifying it or constructing a new tunnel is likely cost prohibitive.³

Therefore, Port KC's preferred option to access KCTL and thus all the Class I railroads that interchange with it (including KCSR) is for the Proposed Line to connect eastbound to KCTL crossing a line owned by Union Pacific Railroad Company ("UPRR") and utilizing existing industrial sidetrack.⁴ Moving westbound, Port KC's preferred option is to connect to KCTL either over or across UPRR and KCSR lines.

As part of its Petition, Port KC seeks a certificate of public convenience and necessity to the extent necessary to enable Port KC to pursue a crossing petition if it cannot reach a commercial agreement with UPRR and KCSR. Port KC incorporated this request to reserve its rights if it later determined that a petition under section 10901(d) is necessary.

Additional Information is not Necessary for the Board to Consider Port KC's Petition

In the KCSR comments, KCSR states that it would oppose a Port KC crossing. In a footnote, KCSR states that the Board "could" require Port KC to provide additional information (without specifying what that information would be) about a hypothetical crossing petition.⁵ In support of its vague request for information, KCSR cites *HolRail LLC – Construction and Operation Exemption – in Orangeburg and Dorchester Counties, SC*, STB Finance Docket No. 34421 (served Feb. 9, 2007) ("*HolRail*"). KCSR relies on *HolRail* summarizing that case by stating, "[b]ecause the construction petition was 'inextricably bound up with the crossing issue' the Board required *HolRail* to file detailed information about its crossing petition so that 'all components of *HolRail*'s proposal, including the anticipated crossing petition, [we]re before [the Board]" when the Board ruled."⁶

Port KC takes no position on the applicability of *HolRail* to a hypothetical crossing petition. However, Port KC does not believe that KCSR's selected excerpts from *HolRail* or the procedural facts of that case support KCSR's vague request for information, particularly upon review of the Board's earlier *HolRail* decision served October 20, 2004.

In *HolRail*, the petitioner, unhappy with rail service it was receiving from the incumbent carrier, sought to buildout to an alternative carrier by seeking preliminary construction authority subject to later environmental review. The incumbent carrier filed a motion to dismiss. *HolRail* had not yet provided the Board with details of its construction plan or proposed alignment.⁷ And *HolRail* resisted providing information sought by the incumbent rail carrier in a motion to compel.⁸

Here, unlike in *HolRail*, Port KC is not seeking preliminary construction authority subject to later environmental review. The Office of Environmental Analysis is currently reviewing the Port KC project and has visited the MRT site. Also, unlike in *HolRail*, Port KC has provided the Board with

³ *Id.* at 12-13.

⁴ *Id.* at 8.

⁵ KCSR Comment at 6 n.2.

⁶ KCSR Comment at 6.

⁷ *Holrail*, slip op. at 2 (STB served Oct. 20, 2004).

⁸ *Id.* at 2-3.

information of its project plans. In *HolRail*, the Board wasn't just seeking information about a potential crossing petition, the Board was seeking details of HolRail's construction plan and proposed alignment.

In addition, the incumbent carrier was opposed to both the petition for construction authority and a crossing petition. Here, KCSR does not oppose the Port KC construction petition and even states that the project "could be good for the Kansas City economy and the region."⁹ And KCSR is not seeking additional information with respect to requested construction authority, but only information about a theoretical subsequent crossing petition that may not ever be filed. Further, KCSR does not seek a specific remedy from the Board. In totality, the facts of the *HolRail* case, do not support KCSR's vague request to the Board.

Considering that KCSR is not seeking any specific relief and the lone case it cites for authority does not support its position, Port KC respectfully requests that the Board disregard the KCSR abstract request.

Despite this position, Port KC believes it understands the spirit in which KCSR submitted its comments and will work to engage with KCSR to address its concerns in a manner that will accomplish Port KC's goal of constructing its proposed rail line at MRT to facilitate the flow of goods through Kansas City.

Sincerely,



Justin J. Marks
Counsel to Port KC

cc: Parties of Record

⁹ KCSR Comment at 9.