

MULLINS LAW GROUP PLLC*Transportation Solutions for the 21st Century*

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VIA E-FILING

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Port Authority Of Kansas City, Missouri – Construction And Operation Of A Line
Of Railroad – In Jackson And Clay Counties, MO
STB Docket No. FD 36406

Dear Ms. Brown:

On November 20, 2023, the Surface Transportation Board (“Board” or “STB”) issued a decision directing the Port Authority of Kansas City, Missouri (“Port KC”) to file a verified supplement clarifying its plans to access other entities’ rail lines and tracks as part of its proposed rail line construction. On December 11, 2023, Port KC filed its Verified Supplement as requested by the Board. On January 2, 2023, Union Pacific Railroad Company (“UP”) and The Kansas City Southern Railway Company (“KCS”) each filed reply comments.

On January 22, 2024, Port KC replied to the UP and KCS replies (“Reply”). Cognizant of the rule prohibiting replies to a reply, 49 CFR 1104.13(c), Port KC also moved for permission to file its reply to the replies. KCS hereby responds to Port KC’s motion.

KCS does not object to accepting Port KC’s reply to the replies in the record if the Board also accepts this letter into the record. KCS submits that all of Port KC’s filings since November 20 continue to show that Port KC’s plans for connecting its river terminal to the national rail network are still undetermined. Until those plans are clear and are presented to the Board, the Board will not be able to assess either the operational or environmental impact of Port KC’s planned rail operations.

Port KC’s Reply simply confirms, yet again, why the Board should not proceed with processing the underlying construction petition at this time. As previously noted in KCS’s January 2 comments in reply to Port KC’s December 11, 2023 filing, Port KC failed, in its December 11, 2023 Verified Supplement, to fully address the questions set forth in the Board’s

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November 20, 2023 decision. That failure is justification alone for the Board to continue to postpone ruling on the construction petition until such time as Port KC provides further detail regarding its construction proposal.

Port KC's Reply does nothing to provide additional information. Indeed, the Reply continues to use the word "cross" UP and KCS. Yet, the record is clear, both from Port KC's previous filings and from KCS's July 5, 2023 comments that "cross" really means "use." The Reply does nothing to clarify how Port KC proposes to connect with the rail network. Instead, the Reply continues to confuse the public record by repeating, again, that it will either "cross" ("use") UP's and KCS's tracks, or it will simply connect with UP. Which is it? And depending upon which approach is taken, does that change the construction petition and alignments that the Board is being asked to approve?

There are many other questions as well. Will connecting with UP directly instead of working with KCS and UP to access the Kansas City Terminal Railway ("KCT") take away from the competitive benefits of the overall project? Is the better, more pro-competitive, and less operationally disruptive approach to use the tunnel (assuming sufficient public funds can be found to expand it to accommodate double-stack containers)? Which construction alignment and operating plan will be used? Will the different approaches impact the Board's environmental analysis under NEPA? We do not know the answers to these questions because Port KC has failed to provide them for the record.

Port KC has asked the Board to exempt its proposal from detailed regulatory scrutiny. But without answers to these and other questions, the Board cannot make the requisite finding under 49 U.S.C. 10502(a) that the filing of an application is "not necessary to carry out the transportation policy of section 10101."¹

Contrary to Port KC's argument, KCS is not seeking veto authority over the project. KCS believes that the overall objective of the project will, if done right, be good for Kansas City's economic growth, and in turn for the railroads and shippers of Kansas City. But it must be done right. KCS is simply requesting that Port KC engage in a meaningful dialogue regarding all of Port KC's plans and that the Board allow time for that dialogue to occur, and the fruits of it to be placed in the record of this proceeding, before ruling on the underlying petition for exemption. Indeed, Port KC and KCS had such a meeting last week that KCS saw as a

¹ Notwithstanding these underlying issues and questions, if the Board nonetheless does move forward with the petition for exemption and grants it, there should be no consideration of any crossing or use issues until such time as a proper crossing petition under 49 U.S.C. §10901(d) has been filed and a full record developed.

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productive step in the process. KCS looks forward to additional meetings and additional details. Upon a resolution of further details and agreement, Port KC can present those to the Board, and hopefully, with KCS's full endorsement.

Sincerely,

/s/ William A. Mullins

William A. Mullins
Counsel for The Kansas City
Southern Railway Company

cc: Parties of Record