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May 29, 2020

Ms. Victoria Rutson
Director, Office of Environmental Assessment
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: STB Docket No. FD 36406, Port Authority of Kansas City – Construction and Operation Exemption–In Jackson and Clay Counties MO; Waiver Approval of Six-Month Prefiling Notice Requirement

Dear Ms. Rutson:

Pursuant to 49 CFR §1105.10(c)(2), the Port Authority of Kansas City (“Port KC”) respectfully requests a waiver of the six-month pre-filing notice required by the Board’s regulations at 49 CFR §1105.10(a)(1). Port KC intends to petition the Board for an exemption under 49 U.S.C. §10901 to permit it to construct and operate approximately 1.7 miles of new common carrier railroad line (the “Proposed Line”) on 415-acres on the east side of Kansas City.

Background

Port KC is a political subdivision of the State of Missouri with a mission to grow the economy of Kansas City through transportation, logistics, and revitalization. Port KC currently operates the Woodswether Terminal, a 9-acre multi-modal facility incorporating barge, rail, and motor carrier transportation. Further, Port KC also operates an industrial park utilizing a former military facility offering an intermodal connection to a neighboring Kansas City Southern intermodal facility.

In 2015, Port KC – with the assistance of the Federal Economic Development Agency – commissioned a freight study that determined that Kansas City’s overall projected growth in the freight market would double by the year 2040.

In order to meet this growth, Port KC initiated the Missouri River Terminal Project (“MRT Project”) to develop a multimodal freight center that will expand the region’s capacity for efficient management of intermodal containers into and out of the local area and regional freight market. The terminal will increase the efficiency of moving freight utilizing rail, barge,

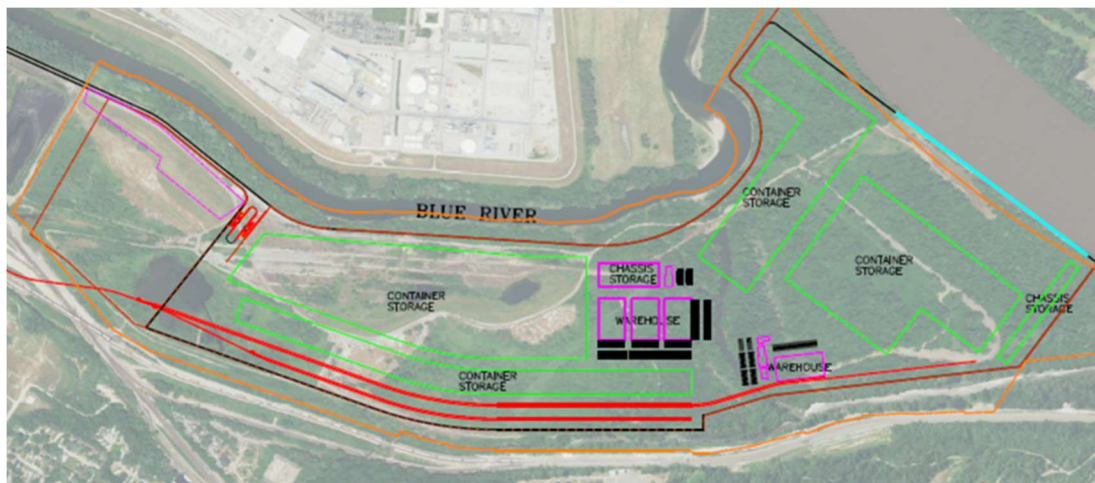
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and motor carriage transportation through Kansas City to and from West, Gulf and East coast ports. It will also offer trans-loading of grains and oil seeds to the regional market. Once the Proposed Line is complete, Port KC anticipates operating 3 trains per week.

Port KC's Proposed Line will extend from the Missouri River to its interchange point with the Kansas City Terminal Railway Company ("KCT"). KCT is a Class III railroad that serves as a terminal railroad for its five Class I owners: Union Pacific Railroad Company, BNSF Railway Inc., Kansas City Southern Railway, Norfolk Southern Railway, and Canadian Pacific Railway.

Port KC has engaged TranSystems – a transportation engineering firm – and together Port KC and TranSystems have developed a proposed operational layout for the MRT that in addition to the Proposed Line will include spur and side tracks regulated under 49 U.S.C. §10906. See the below graphic:



Port KC will finance, design, build and operate the facility through a "Public/Private Partnership" by issuing a request for proposal to interested firms. Port KC intends to utilize a contract rail operator. But, Port KC will seek operating and construction authority from the Board and will retain a "residual" common carrier obligation over the Proposed Line once that authority is consummated.

Request for a Waiver from the Six-Month Notice Requirement

Under 49 C.F.R. §1105.10(c)(2), a petitioner "must describe as completely as possible the anticipated environmental effects of the proposed action, and the timing of the proposed action, and show that all or part of the six-month lead period is not appropriate."

Port KC seeks to file with the STB its Petition for Exemption in the late summer/early fall 2020. The six-month lead time is not appropriate because Port KC owns the project site and as such understands the environmental challenges that redeveloping a former steel mill entails.

Port KC has identified the following existing environmental issues that it will address through the development of the MRT:

- Existing landfills from the steel mill's operations containing stack residues from steel production comprising arsenic and heavy metals.
- Lead contamination from an area of the project site that contained a "gun club" and as a result of that activity contains lead contamination.
- Contamination as a result of oil tanks cleaning.

Although, Port KC recognizes environmental challenges exist on the MRT Project site, in Port KC's redevelopment experience, these environmental conditions can be reasonably mitigated. Port KC's environmental engineer has advised Port KC that the landfills are currently capped with active monitoring wells. Port KC envisions that the areas of the MRT Project site that contain lead contamination and contamination from cleaning oil tanks can be capped or remediated.

Despite the complexity of redeveloping a former industrial site, the MRT Project covers only 415-acres and as such the environmental effects of the project will be limited. Further, as a result of this project, Port KC will remediate current environmental issues on the site. Accordingly, Port KC respectfully requests OEA waive the six-month lead time required under 49 CFR §1105.10(a)(1).

Port KC's Proposal is Not Likely to Have a Significant Impact on the Environment

Under 49 C.F.R. §1105.6(a), an EIS "will normally be prepared for rail construction proposals." However, section 1105.6(d) provides that an applicant can request that the Board instead evaluate a project through an EA, rather than an EIS, if the applicant demonstrates that a proposal is not likely to have a significant environmental impact. Further, under section 1105.6(d), "[a]ny request for reclassification must be in writing and, in a rail construction, should be presented with the prefiling notice required by §1105.10(a)(1) (or a request to waive that prefiling notice period).¹

The Proposed Line – as part of the MRT Project – is utilizing a former steel mill that contains known contamination on the project site. The U.S. Environmental Protection Agency in conjunction with the Missouri Department of Natural Resources are currently monitoring the site. As such, the site has been subject to environmental documentation consistent with projects to redevelop industrial facilities. This extensive existing environmental documentation will support a determination by OEA that an EA is appropriate for reviewing the environmental impact of this project.

¹ According to *A Guide to the Surface Transportation Board's Environmental Review Process for Rail Line Construction and Operation Cases*, a petitioner seeking authority under 49 U.S.C. §10901 to construct and operate a common carrier rail line may seek a determination from OEA allowing for an Environmental Assessment in lieu of an Environmental Impact Statement separately from its request for a six-month waiver and following a site visit from OEA. Therefore, Port KC understands that OEA may hold this determination until later in the environmental review process upon specific request from Port KC.

The Proposed Line and the MRT Project are intended to improve the Kansas City transportation system allowing freight to move through Kansas City via the Proposed Line connecting to existing common rail carriers and barge via the Missouri River. Because the Proposed Line will be constructed within the confines of the MRT Project site, it will not cross any public or private roads resulting in no safety impacts due to rail crossings.

As stated, the MRT Project site is a former steel mill. Port KC's proposed project is consistent with historic land use of the property. The Proposed Line will result in new rail and barge traffic, creating a modest net increase in energy use for train and barge operations.

Port KC anticipates traffic to be limited to three times per week once the Proposed Line is operational and therefore, does not expect that the traffic to be handled over the Proposed Line will exceed the threshold of 8 trips per day for an attainment area as per 49 CFR §1105.7(e)(ii)(C).

Anticipated traffic volume can be expected to lead to a corresponding increase in noise levels. However, the MRT Project site is situated amongst multiple common carrier rail lines and an interstate highway and as such it is not anticipated that the Proposed Line will impact sensitive noise receptors.

Port KC does not believe that the MRT Project is likely to adversely affect endangered or threatened species or areas designated as a critical habitat.

Port KC understands that a portion of the property is in a floodway and that wetlands exist in proximity to the proposed project. Port KC is prepared to mitigate or design the project to address any concerns related to the existence of the floodway and potential wetlands.

Port KC knows of no historic resources that may be impacted by the Proposed Line but will work with OEA and the Missouri state historic preservation office to identify any potential impacts.

Port KC does not believe that an environmental impact statement will be necessary because the environmental conditions of this property are known and the impacts of the Proposed Line and the MRT Project are negligible. Accordingly, Port KC respectfully requests OEA waive the six-month lead time required under 49 CFR §1105.10(a)(1).

Sincerely,



Justin J. Marks
Counsel for Port KC