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February 28, 2006

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

ENTERED
Office of Proceedings

FEB 28 2006

Part of
Public Record

Re: **Finance Docket No. 34830**
Kansas City Transportation Company LLC – Lease and Assignment of
Lease Exemption – Kansas City Terminal Railway Company and Kaw River
Railroad, Inc.

Finance Docket No. 34831
Kansas City Terminal Railway Company--Intra-Corporate Exemption--
Kansas City Transportation Company LLC

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding is the **Response of Kansas City Transportation Company LLC and Kansas City Terminal Railway Company to Petition for Stay**, dated February 28, 2006.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,



Ronald A. Lane
Attorney for Kansas City Transportation Company
LLC and Kansas City Terminal Railway Company

cc: Gordon P. MacDougall, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

215-880

FINANCE DOCKET NO. 34830
KANSAS CITY TRANSPORTATION COMPANY LLC
-- LEASE AND ASSIGNMENT OF LEASE EXEMPTION --
KANSAS CITY TERMINAL RAILWAY COMPANY AND KAW RIVER RAILROAD, INC.

215881

FINANCE DOCKET NO. 34831
KANSAS CITY TERMINAL RAILWAY COMPANY
-- INTRA-CORPORATE EXEMPTION --
KANSAS CITY TRANSPORTATION COMPANY LLC

ENTERED
Office of Proceedings

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Part of
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**RESPONSE OF KANSAS CITY TRANSPORTATION COMPANY LLC
AND KANSAS CITY TERMINAL RAILWAY COMPANY
TO PETITION FOR STAY**

Ronald A. Lane
Michael J. Barron, Jr.
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**ATTORNEYS FOR KANSAS CITY
TRANSPORTATION COMPANY LLC AND
KANSAS CITY TERMINAL RAILWAY
COMPANY**

Dated: February 28, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34830
KANSAS CITY TRANSPORTATION COMPANY LLC
-- LEASE AND ASSIGNMENT OF LEASE EXEMPTION --
KANSAS CITY TERMINAL RAILWAY COMPANY AND KAW RIVER RAILROAD, INC.

FINANCE DOCKET NO. 34831
KANSAS CITY TERMINAL RAILWAY COMPANY
-- INTRA-CORPORATE EXEMPTION --
KANSAS CITY TRANSPORTATION COMPANY LLC

**RESPONSE OF KANSAS CITY TRANSPORTATION COMPANY LLC
AND KANSAS CITY TERMINAL RAILWAY COMPANY
TO PETITION FOR STAY**

The Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference - International Brotherhood of Teamsters (hereafter referred to as "BLET") has filed a petition to stay the effectiveness of the Notices of Exemption filed in these dockets by Kansas City Terminal Railway Company ("KCT") and its subsidiary, Kansas City Transportation Company, LLC ("KCTL"). To obtain a stay, BLET must show that (1) it is likely to prevail on the merits; (2) it will be irreparably harmed in the absence of a stay; (3) issuance of a stay would not substantially harm other parties; and (4) issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir 1977). On a request for a stay, "it is the movant's obligation to justify the ... exercise of such an extraordinary remedy." Cuomo v. Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Auth. of Florida v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). It has failed to meet that burden.

**I. THE PENDING TRANSACTION DOES NOT THREATEN
IRREPARABLE HARM**

BLET correctly anticipates that the initial contract operator for KCTL will be the Kaw River Railroad Company ("Kaw River"). After the existing 12- year old lease of KCT's local switching operation to Kansas City Southern Railway ("KCS") expires tonight, Kaw River will continue to provide the same service on the Line (and on an incidental segment of KCS's tracks). The same Kaw River employees will continue to perform the work and will discharge KCTL's new, and KCT's residual, local common carrier obligations. As Mr. McDougal himself states,

"In essence, the only change in the present situation from that referenced in Finance Docket No. 34509, would be to change the name of the so-called "carrier" from RR to KCTL, and to place within the KCTL operation, certain additional KCS trackage The employees would be the same KRR employees, except that certain additional KCS work would be transferred to KRR employees"

Petition, p.3. Mr. Martin, in his Verified Statement, says that "there will be no material change in the employees actually doing the work." Martin V.S., par.1.

The impact on KCS employees of KCS' sublease to Kaw River already occurred two years ago. This Board already approved that transaction, and if the Board erred in doing so, the D.C. Circuit Court of Appeals will say so. Meanwhile there is no reason to interfere with a subsequent transfer of common carrier responsibility from Kaw River to KCTL by the extraordinary means of issuing a stay. This transaction is between Kaw River and KCTL, not KCS. Further, this transaction is between and among Class III railroads and the Board could not impose labor protection in any event. There is simply no threat of irreparable harm to any one if this transaction is consummated tomorrow.

**II. THE BOARD WILL REVIEW BLET's CONTENTIONS IN A
PETITION TO REVOKE**

BLET indicates in the first paragraph of its petition that a petition to reject the notices of

exemption, or to revoke the exemptions is forthcoming. Petition, p.1. A petition to revoke is the procedure that has been established by this Board for review of an exempt transaction, and that is an adequate remedy for BLET. Such a petition has the advantage providing BLET sufficient time to prepare an understandable explanation of its arguments.

Issuance of a stay in this circumstance is contrary to the public interest because it would undermine the procedures established by this Board for thoughtful and accurate consideration of the issues. Further, it is in the public interest for parties to be able to rely on past STB decisions and to be able to close transactions once they have complied with the exemption requirements found at 49 C.F.R. 1150.31 *et seq.*

III. THE CHANGEOVER IS YET TO OCCUR TONIGHT

KCTL has already put in place the tariffs, car marks, and car reporting and car hire systems to become the carrier on this line. A stay of the effectiveness of these transactions would cause harm to KCTL and the carriers and shippers in the Kansas City area by causing last-minute confusion and delay. Granting the stay would cause some harm to Petitioners and others.

IV. BLET SEEKS TO RELITIGATE THE KAW RIVER TRANSACTION

BLET is not likely to prevail on the merits of its claim because its claim, as nearly as may be comprehended, is that the Board lacks jurisdiction over the tracks at issue. That issue was resolved explicitly in Kaw River Railroad, Inc.—Acquisition and Operation—The Kansas City Southern Railway Company, F.D. 34509 (served May 3, 2005), and implicitly in The Atchison, Topeka and Santa Fe Railway Co.—Lease Exemption — Kansas City Terminal Railway Company, F.D. No. 32238 (ICC served Feb.24, 1994), when the ICC approved the first lease of these tracks to KCS. BLET's frequent reference to the proceedings in the appellate court review of the Board's decision in Kaw River Railroad, Inc., *supra*, betray its real purpose for filing this

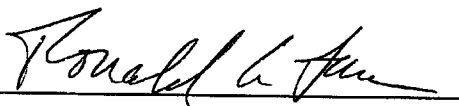
request: It still does not agree with this Board's disposition of that matter, and it seeks to relitigate the same issues here. The Board has decided that the Kaw River lease was lawful and consistent with the public interest, and the fact that BLET has appealed that decision does not affect the force and validity of the Board's prior order. If BLET thought the effectiveness of the order should be stayed, and either this Board or the Appellate Court agreed, the Board or the D.C. Court of Appeals could have issued a stay in ~~that~~ proceeding, but it would be inappropriate to litigate the same issues again in these dockets.

For the reasons set forth by this Board in Kaw River Railroad, Inc., *supra*, BLET is not likely to succeed on the merits of its claim in this proceeding.

CONCLUSION

For the reasons set forth above, BLET has not satisfied its burden as set forth in Washington Metropolitan Area Transit Comm.v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir 1977), and followed by this Board on innumerable occasions. BLET's petition should be denied promptly.

Respectfully submitted,

By: 

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**ATTORNEYS FOR KANSAS CITY
TRANSPORTATION COMPANY LLC AND
KANSAS CITY TERMINAL RAILWAY
COMPANY**

Date: February 28, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon counsel for Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference-International Brotherhood of Teamsters, by overnight express service (and by facsimile), to: Gordon P. MacDougall, 1025 Connecticut Ave., N.W., Washington, DC 2006.

A handwritten signature in cursive script, appearing to read "Ronald A. Lane", is written over a horizontal line.

Ronald A. Lane