

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

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October 18, 2007



220473

VIA FEDERAL EXPRESS

Mr Vernon A Williams
Secretary
Surface Transportation Board
395 E Street, S.W
Washington, DC 20423-001

Re **Finance Docket No. 35085**
Kansas City Transportation Company LLC—Lease and Operation
Exemption—Kansas City Terminal Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Kansas City Transportation Company LLC pursuant to 49 C.F.R. § 1150.41**, dated October 18, 2007. A check in the amount of \$1,600, representing the appropriate fee for this filing, and a computer diskette containing the text of the Notice and the *Federal Register* caption summary in MS Word 2000 format are attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

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

Respectfully submitted,


Michael J. Barron, Jr.
Attorney for Kansas City
Transportation Company LLC

Enclosures

cc Mr. William Somervell
Ms Allison Bergman
Mr. Jake DeBoever
Mr. Karl Morell

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO.35085

KANSAS CITY TRANSPORTATION COMPANY LLC
-- LEASE AND OPERATION EXEMPTION --
KANSAS CITY TERMINAL RAILWAY COMPANY

220473

ENTERED
Office of Proceedings

OCT 19 2007

Part of
Public Record

FILED

OCT 19 2007

SURFACE
TRANSPORTATION BOARD

VERIFIED NOTICE OF EXEMPTION
OF

KANSAS CITY TRANSPORTATION COMPANY LLC
PURSUANT TO 49 C.F.R. § 1150.41

FEE RECEIVED

OCT 19 2007

SURFACE
TRANSPORTATION BOARD

Ronald A. Lane
Michael J. Barron, Jr
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

ATTORNEYS FOR
KANSAS CITY TRANSPORTATION
COMPANY LLC

Dated: October 18, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35085

KANSAS CITY TRANSPORTATION COMPANY LLC
-- LEASE AND OPERATION EXEMPTION --
KANSAS CITY TERMINAL RAILWAY COMPANY

**VERIFIED NOTICE OF EXEMPTION
OF
KANSAS CITY TRANSPORTATION COMPANY LLC
PURSUANT TO 49 C.F.R. § 1150.41**

Pursuant to 49 C F R § 1150 41, et seq., Kansas City Transportation Company LLC ("KCTL"), a Class III carrier, hereby files this Verified Notice of Exemption to lease approximately 5.5 miles of track in Jackson County, Missouri, all as shown on Exhibit A, attached hereto. Based on projected revenues for the KCTL, it expects to remain a Class III rail carrier after consummation of the transaction proposed herein.

This Notice is related to Finance Docket No. 35084, Kansas City Terminal Railway Company—Purchase Exemption—BNSF Railway Company, in which Kansas City Terminal Railway Company ("KCT"), the owner of KCTL, is concurrently filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41 et seq. to purchase from BNSF Railway Company ("BNSF") the line that it will lease to KCTL pursuant to this Notice of Exemption.

In accordance with the requirements of 49 C.F.R. § 1150.43, KCTL submits the following information:

Name and Address of Applicant: 49 C.F.R. § 1150.43(a)

The full name and address of the rail carrier applicant herein is as follows.

Kansas City Transportation Company LLC
4501 Kansas Avenue
Kansas City, Kansas 66106

Applicant's Representative: 49 C.F.R. § 1150.43(b)

KCTL's representative to whom correspondence regarding this transaction should be sent is as follows

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)

Upon KCT's purchase of the BNSF tracks (the "Tracks") as contemplated in Finance Docket No. 35084, KCT has agreed with KCTL to lease the Tracks to KCTL, and KCTL will provide common carrier service on the Tracks.

Operation of the Property: 49 C.F.R. § 1150.43(d)

KCTL will operate, maintain and provide all rail common carrier service on the Tracks pursuant to the transaction proposed herein. KCTL may enter into agreements with third parties to perform particular functions, but such third parties will perform under the direction and control of KCTL and only in the name of KCTL, and they will operate on the Tracks solely in support of KCTL's common carrier services. Any such third parties will have no independent operating authority. A Supplemental Statement addressing this issue is attached and incorporated herein as Exhibit B.

Summary of the Transaction: 49 C.F.R. § 1150.43(e)

BNSF currently owns the Tracks and provides rail service on them. As described in Finance Docket No. 35084, KCT will purchase the Tracks from BNSF pursuant to 49 C.F.R. §

1150.41 et seq. KCT will then immediately lease the Tracks to KCTL, and KCTL will provide all common carrier services on the Tracks. The Tracks extend from BNSF milepost 5 78 near Sheffield Junction, Missouri to the end of track at milepost 11 23 near Blue Valley, Missouri, as depicted in Exhibit A, and consist of approximately 5.5 route miles.

KCTL intends to consummate the lease from KCT and commence operations on the Tracks any time on or after November 20, 2007.

KCT's address is

Kansas City Terminal Railway Company
4501 Kansas Avenue
Kansas City, Kansas 66106

Map: 49 C.F.R. § 1150.43(f)

A map showing the Tracks and the surrounding area is attached as Exhibit A to this notice

Certificate of Compliance: 49 C.F.R. § 1150.43(g)

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.43(g) is attached as Exhibit C to this notice.

Advance Notice: 49 C.F.R. § 1150.42(e)

A 60-day notice of this transaction was posted at the workplace of current employees working on the Track on September 20, 2007, and a copy of the notice was served on the national office of the labor unions for those employees on September 21, 2007, in compliance with 49 C.F.R. § 1150.42(e). A Certificate of Compliance with these requirements was filed on September 21, 2007 and a copy is attached as Exhibit D to this notice.

Environmental and Historic Preservation Data: 49 C.F.R. § 1105

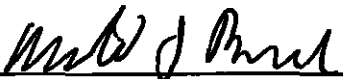
Under 49 C.F.R. § 1105 6(c)(2), KCTL's proposed lease and operation of the Tracks is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C F R. § 1105.7(e)(4) or (5).

Under 49 C F.R. § 1105.8(b)(1), KCTL's lease and operation of the Tracks also is exempt from historic preservation reporting requirements. The proposed lease is for the purpose of continued rail operations. Further, Surface Transportation Board approval is required to discontinue or abandon any service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

Caption Summary: 49 C.F.R. § 1150.44

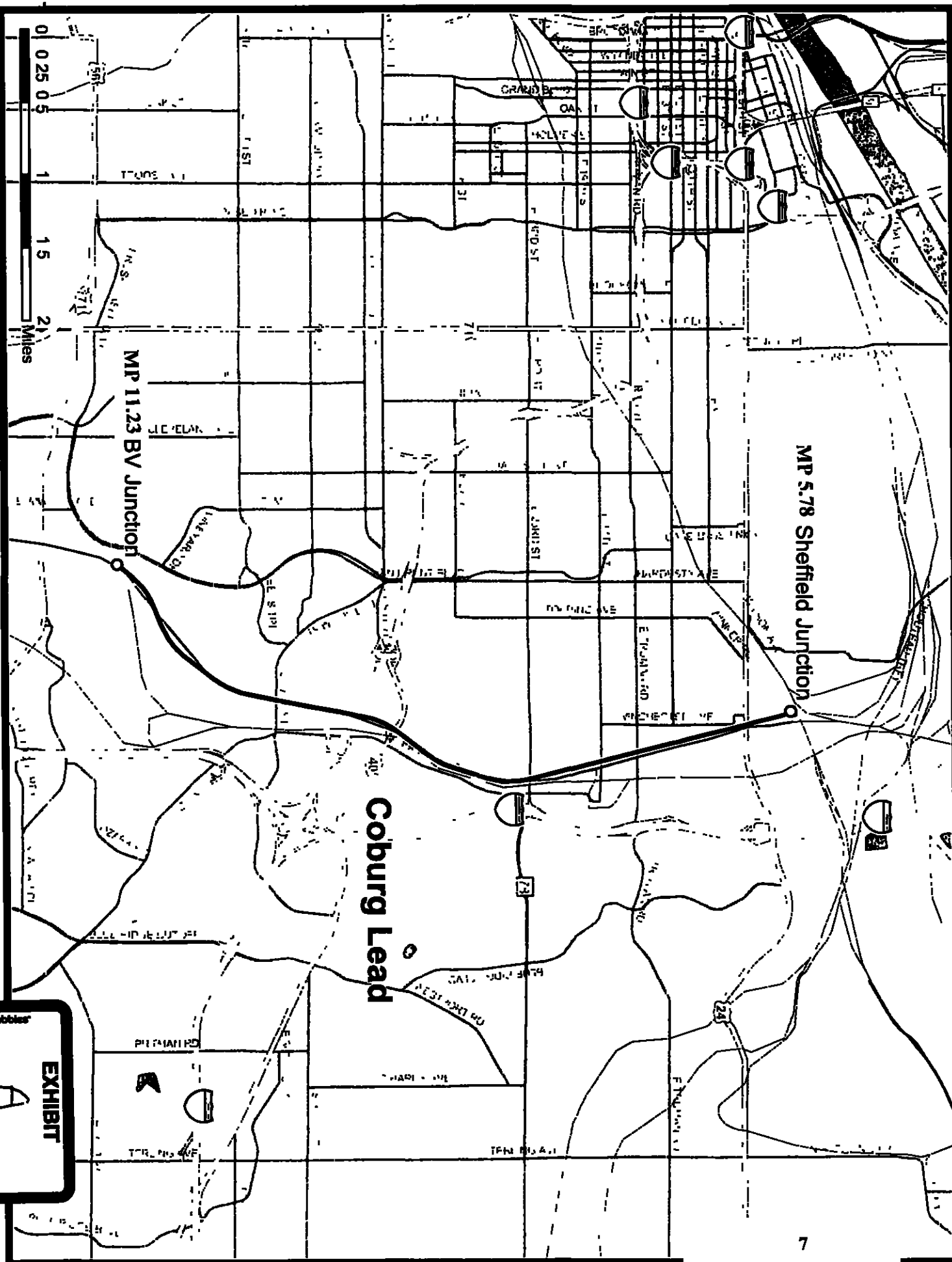
A caption summary in appropriate form is attached as Exhibit E to this notice.

Respectfully submitted,

By: 
Ronald A. Lane
Michael J. Barron, Jr
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR KANSAS CITY
TRANSPORTATION COMPANY LLC**

Dated: October 18, 2007



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EXHIBIT

A

Supplemental Statement

EXHIBIT B

FLETCHER & SIPPEL LLC

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October 18, 2007

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-001

Re: **Finance Docket No. 35084**
Kansas City Terminal Railroad Company—Purchase Exemption—
BNSF Railway Company

Finance Docket No. 35085
Kansas City Transportation Company LLC—Lease and Operation
Exemption—Kansas City Terminal Railway Company

Supplemental Statement

Dear Secretary Williams:

Kansas City Transportation Company, LLC ("KCTL") submits this Supplemental Statement in connection with the above-referenced Notices of Exemption. Upon authorization of these transactions, KCTL plans to enter into a Service Agreement with Kaw River Railroad, Inc. ("Kaw River") under which Kaw River will perform certain railroad operating services on the line to be acquired from BNSF Railway Company. However, Kaw River is not seeking separate authority to operate as a common carrier on the line. In view of the Board's decision in Kansas City Transportation Company LLC—Lease and Assignment of Lease Exemption—Kansas City Terminal Railway Company and Kaw River Railroad, Inc., STB Finance Docket No. 34830 (STB served May 23, 2007), KCTL submits this Supplemental Statement to explain its position.

Background

Kansas City Terminal Railroad Company ("KCT") is jointly owned by four Class I and one Class II railroads. Originally formed in 1906, KCT was designed to provide an independent operator for the terminal district for each of the many line haul railroads then serving Kansas City. KCT owned and operated Kansas City Union Station and hauled rail traffic through the terminal on an even-handed basis for all the railroads. Over the years, bankruptcies and mergers have reduced the number of owners to 5: Union Pacific Railroad Company, BNSF Railway Company, Kansas City Southern Railway Company ("KCS"), Norfolk Southern Railway Company and Iowa, Chicago and Eastern Railway Company. Under the 1909 Operating Agreement, no railroad is permitted to operate over the KCT tracks except an owner.

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After decades of changes in transportation practices and rail traffic patterns in and through Kansas City, the owners of KCT instituted a major reorganization of the Terminal in 1994. Under that arrangement, KCT ceased performing the physical movement of rail cars itself, but continued its critical role of providing neutral, independent dispatching of trains throughout the terminal. KCT trackage was divided into the "Joint Tracks" and the "Switch Tracks." The Joint Tracks are the "main line" tracks used by the line haul railroads to run through the terminal and to interchange with other line haul railroads. The Switch Tracks are the industrial leads and yards that serve local industries. In 1994, KCT leased the Joint Tracks to (then) Atchison Topeka and Santa Fe Railway Co. for maintenance and signal work, and leased the Joint Tracks to (then) Gateway Western Railway Company to provide local switching. The ICC approved this reorganization in *The Atchison, T & S F Ry Co and Gateway Western Ry Co—Lease Exemption—Kansas City Terminal Ry Co*, F.D. 32238 (served Feb. 24, 1994). Except for the dispatchers, virtually all KCT employees became employees of AISI or Gateway Western. Subsequently, KCS acquired Gateway Western, and in 2004 KCS subleased the KCT Switch Tracks, and also leased some of its own switching tracks to Kaw River Railroad. That lease and sublease was exempted in *Kaw River Railroad, Inc—Lease Exemption—The Kansas City Southern Railway Co.*, F.D. 34509 (served June 24, 2004). Today, over 300 trains per day operate on and through the terminal.

The lease to KCS proved to be unacceptable to the owners. Consequently, in 2006, KCT terminated the lease and entered into a lease with Kansas City Transportation Company ("KCTL"), a new, wholly-owned subsidiary of KCT. This arrangement preserved the independence and neutrality of KCT vis-à-vis all of its owners. In turn, KCTL entered into a contract with Kaw River to perform certain services as a contract agent for KCTL. Because Kaw had already been operating on the Switch Tracks as a sub-tenant of KCS, the transition away from KCS had no effect on service, on shippers or on employees. In allowing the exemption to become effective, however, the Board determined that Kaw River was "more than an agent of KCTL" and therefore required Kaw River to obtain its own authority to operate as a common carrier. *Kansas City Transp Co LLC—Lease and Assignment of Lease Exemption—Kansas City Terminal Railway Co and Kaw River RR, Inc*, F.D. 34830 (served May 23, 2007). slip op p 3

Recently, BNSF concluded that KCTL can more effectively serve one of its switching lines in Kansas City than BNSF itself. BNSF has agreed to sell its Coburg Lead to KCT to be served by KCTL in conjunction with KCTL's service on the KCT Switch Tracks and the KCS track. It is this sale of the Coburg Lead to KCT and KCT's lease of the line to KCTL that is the subject of these Notices of Exemption. The parties anticipate that Kaw River, already providing certain services to KCTL, will also provide services (detailed below) with respect to this line.

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The several owners of the Terminal are unwilling to allow a non-owner to provide independent common carrier service on the terminal tracks. To our knowledge it would be unprecedented to have two railroad common carriers actively providing identical common carrier service on the identical line of railroad (discussed fully below). The terminal trackage is vital to a huge volume of transcontinental traffic on several major lines, and it is too sensitive a facility to risk the possibility of confusion or delay in the event of future controversies. Accordingly KCT, KCTL and Kaw River specifically intend and have tried to ensure that Kaw River functions merely as an agent for KCTL, and not as an independent common carrier by railroad. For that reason, Kaw River is not applying for its own, separate common carrier authority.

Status of Kaw River Railroad as Agent

Because of this Board's concerns with Kaw River's operation on the KCT Switch Tracks and KCS line, discussed in its decision in F D. 34830, KCTL and Kaw River will terminate their prior agreement and will enter into a substantially different arrangement. A redacted copy of the new Service Agreement between KCTL and Kaw is attached and is submitted as part of the record in F D 35085.¹

Under the Service Agreement, KCTL expressly retains full common carrier rights and obligations on the line. KCTL appoints Kaw River to be its agent for providing certain services for KCTL in the name of KCTL and for the benefit of KCTL in discharging KCTL's obligations as a common carrier. Kaw River is contractually forbidden from offering, holding itself out as offering, or providing any railroad services in its own name or for its own account.

KCTL expressly retains responsibility for providing railroad services under the ICCTA. More concretely, KCTL is responsible for quoting rates, negotiating transportation and related contracts, providing sales and marketing functions, conducting commercial activities and relationships with shippers, and for interchanging with connecting railroads. KCTL provides operating directions and specifications for local switching service and interchange service. KCTL dispatches the line and is responsible for the safe and orderly authorization of all 240 train movements each day. KCTL is responsible to all third parties for its service, from freight loss and damage to the adequacy of service. KCTL retains the obligation to supply cars, pay car hire and collect demurrage. With the exception of any car repair that Kaw River may perform under AAR rules, all revenue from shippers or line haul carriers belongs to KCTL, and Kaw River receives from KCTL simply a per car fee for its services.

Kaw River is responsible for providing engines – displaying the KCTL logo and paint schemes- and crews to move trains as directed and controlled by KCTL.

¹ KCTL has simultaneously filed a motion for protective order and an unredacted version for the Board's inspection pursuant to 49 C F R. §1104.14

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Under this arrangement, KCTL is the one and only common carrier by rail on the line. There is no question here about whether any activity, service or facility falls outside the jurisdiction of the Board or beyond the coverage of railroad statutes.² The only issue concerning Kaw River is whether the Board needs to approve duplicate authority for a second entity to provide the exact same service to the shipping public that KCTL is (or will be) already authorized to provide, when KCTL holds itself out to provide that service, and Kaw River explicitly does not. Kaw River is contractually barred from holding itself out to the public to provide any service independent of KCTL. In fact, such duplicate authority would be unprecedented. While there frequently may be two common carriers with respect to the same line, one common carrier generally has the active common carrier obligation, and the other has a residual obligation. Here, KCTL has the active obligation, KCT has the residual obligation and there is no place for duplicative obligation and responsibility.

In its prior decision, the Board held that Kaw River was more than a mere agent because the liability assumed by Kaw River demonstrated that it was an entity operating in its own right. The prior agreement will be terminated and replaced with a new agreement between the parties. Under the new provision, KCTL will remain liable to third parties – be they shippers, employees, neighbors or any one else – on exactly the same basis as it would in the absence of Kaw River. The liability provision only affects the liability of KCTL and Kaw River to each other. That liability provision simply provides that each party is responsible for its own wrongful actions. Each party agrees to pay any losses that result from its own breach of the agreement or its own negligence (or willful misconduct). Thus there is no attempt by KCTL to shift any of its liability to Kaw River except for any liability that results from Kaw River's own misconduct. Nothing in the Service Agreement diminishes KCTL's responsibilities as a railroad common carrier to third parties. As the Restatement, Third of Agency explains,

A principal required by contract or otherwise by law to protect another cannot avoid liability by delegating performance of the duty, whether or not the delegate is an agent.

American Law Institute, *Restatement of the Law, Agency, Third* (2005), § 7.06, vol. 2, p. 195. In other words, the mere fact that Kaw River may be an agent does not allow KCTL to avoid liability for its common carrier obligations. See, *New Jersey Steamboat Co v Brockett*, 121 U.S. 637, 645 (1887); *New Orleans & NE RR Co v Jopes*, 142 U.S. 18, 26 (1891).

² *Assn P&C Dock Longshoremen v Pittsburgh & C Dock Co*, 8 I.C.C.2d 280 (1992) and similar cases deal with facilities or services that claim to be outside the jurisdiction of the ICC/STB. Here the service provided by Kaw River is admittedly within the jurisdiction of the STB, and the Board has the full ability to regulate that service by regulating the authorized common carrier, without also regulating its agent.

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Moreover the fact that Kaw River, as agent, indemnifies KCTL, as principal, against losses from Kaw River's own negligence is fully consistent with basic agency law

Subject to any agreement with the principal, an agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents in similar circumstances. Special skills or knowledge possessed by an agent are circumstances to be taken into account in determining whether the agent acted with due care and diligence.

Id., § 8 08 Comment b to that section makes it clear that even in the absence of a contractual provision, Kaw River, as agent, is obligated as a matter of tort law to indemnify KCTL, as principal, for any harm caused by Kaw River's breach of its duties toward its principal.

In particular, an agent is subject to liability to the principal for all harm, whether past, present, or prospective, caused the principal by the agent's breach of the duties stated in this section. The agent's liability includes an obligation to indemnify the principal when a wrongful act by the agent subjects the principal to vicarious liability to a third person.

Id., p.344 (emphasis added) See, *Oxford Shipping Co v New Hampshire Trading Corp.*, 697 F 2d 1, 6 (1st Cir. 1982)(agent liable to principal for principal's damages stemming from seizure of vessel caused by agent's breach of duties to principal).

The indemnification provision of the new Services Agreement does not make Kaw River anything more than a mere agent of KCTL.

Kaw River's Activities Do Not Require Independent Board Authority

This is not the kind of situation that the ICC confronted in *Assn P & C Dock Longshoremens v Pittsburgh & C Dock Co*, 8 I.C.C.2d 280 (1992) ("*P & C Docks*") where the issue was whether the dock facility was outside the jurisdiction of the ICC. The Commission properly found that the loading activity was an integral part of railroad transportation, and it could not be segmented away from the Commission's reach by contracting with an affiliate. Here Kaw River's activities are without dispute those of a common carrier by rail – KCTL's. Likewise, the cases cited in *P & C Docks* dealt with claims under other statutes, generally FELA, that ancillary services contracted to third parties were sufficiently controlled by a railroad as to extend FELA coverage to the contractors' employees. Here there is no question that the activities of Kaw River, are part of railroad transportation.

FLETCHER & SIPPEL LLC

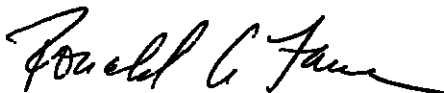
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Prior to this Board's decision in Finance Docket 34830, to the knowledge of counsel, neither the Board nor the ICC had ever suggested that an agent of a railroad common carrier needed its own independent authority to discharge portions of the railroad's common carrier obligations. To the contrary, the Board has been well aware that authorized common carriers have hired contract agents to operate rail lines without any hint that such agents required separate authority. See, e.g., *Saginaw Bay Southern Ry Co -- Acquisition & Operation Exemption—Line of CSX Transportation, Inc.*, F.D. 34729 (served Sept. 27, 2005); *Bulkmatic RR Corp Acquisition & Operation Exemption—Bulkmatic Transport Co*, F.D. 34179 (served Nov. 19, 2002); *SF&L Railway, Inc—Acquisition & Operation Exemption—Toledo, P & W Ry Corp*, F.D. 33995 (served Feb. 7, 2001); *Morris Leasing Co., Ltd—Acquisition & Operation Exemption—Lines of Consolidated Rail Corporation*, F.D. 32428 (served January 19, 1994); *Tulare Valley RR Co—Acquisition & Operation Exemption—The Atchison, T & S F Ry Co*, F.D. 32215 (served July 2, 1993). Requiring such authority from Kaw River in this situation would create regulatory uncertainty in hundreds of other, similar situations where contractors physically provide various levels and extents of the service required of authorized common carriers throughout the railroad industry.

Moreover, there is no interest that the Board needs to protect by requiring duplicate authority in this case. Any regulatory action this Board needs to take concerning service or operations on the line can be effected by KCTL. Because only Class III railroads are involved, there is no labor protection issue. In fact, Kaw River already pays Railroad Retirement, and is already covered by the Federal Employers Liability Act by virtue of other common carrier operations it conducts at other locations.

Kaw River has performed as a capable and cost-effective agent for KCTL and for the line haul carriers that own Kansas City Terminal Railway Company. This arrangement has been carefully structured to satisfy the requirements of the 1909 Operating Agreement and the peculiar conditions of the terminal facility. For that reason, Kaw River is not seeking its own authority in connection with these dockets. If I can provide further information or otherwise assist the Board, please let me know.

Respectfully submitted,



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

RAL:dg

SERVICE AGREEMENT

This Service Agreement ("Agreement") is entered into this ___ day of October, 2007 (the "Effective Date") by and between Kansas City Transportation Services, LLC ("KCTL") and Kaw River Railroad, Inc. ("Kaw River").

WHEREAS, KCTL is a common carrier by railroad duly authorized by the U.S. Surface Transportation Board to provide railroad service to the public on and over certain railroad tracks located in Kansas City, Kansas and Kansas City, Missouri and identified on Attachment A hereto in red ("the Line"); and

WHEREAS, KCTL and Kaw River are parties to a certain "SWITCHING AND MAINTENANCE SERVICES AGREEMENT" effective March 1, 2006 ("Pre-Existing Agreement") and they desire to terminate that Agreement and enter into a new agreement for Kaw River to provide certain services to KCTL; and

WHEREAS, the parties intend that KCTL will retain full common carrier rights and obligations on the Line with respect to the shipping public; and

WHEREAS, the parties intend that Kaw River shall perform limited services on behalf of KCTL as agent for KCTL and shall not become a common carrier by rail as a result of this Agreement;

NOW THEREFORE, in consideration of the mutual promises set forth below and intending to be bound, the parties agree as follows:

1. **Appointment of Agent.**

KCTL hereby appoints Kaw River as its agent to provide railroad-related services in support of KCTL's common carrier responsibilities, where KCTL appears in the routing on waybills, bills of lading and the accounts maintained under the rules of the American Association of Railroads. Kaw River shall perform such services in the name of and for the benefit of KCTL, and shall not offer, hold itself out as offering or provide any services in its own name or for its own account.

2. **KCTL Responsibilities.**

A. KCTL retains and shall be responsible to the shipping public for providing railroad services on and over the Line in accordance with the provisions of the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. §§10101 et seq.

B. KCTL shall quote all rates, negotiate all transportation and related contracts, provide and perform all sales and marketing functions, and conduct all other commercial activities and relationships with shippers on the Line and with interchanging and connecting railroads.

C KCTL shall develop and maintain a service and operating plan and compliance specifications to provide local switching service to all shippers who request rail transportation service on and over the Line, and shall provide interchange service with all railroad common carriers connecting to the Line.

D KCTL, or its affiliate, shall provide dispatching services over the Line and shall be responsible for the orderly and safe authorization of all train movements over the Line.

E KCTL shall be responsible for the investigation, settlement and payment of all freight loss or damage claims and claims concerning the adequacy of rail transportation service on the Line.

F KCTL shall maintain, repair and rehabilitate the track, roadbed and signals on the Line to the level and condition on the effective date of this Agreement, provided however, that KCTL may elect to subcontract some or all of such work;

G KCTL shall be responsible for supplying railcars for Shippers on the Line, and KCTL shall be responsible for payment of all car hire and mileage charges applicable to such cars.

H KCTL shall provide direction and control of all Kaw River activities on and about the Line at all times.

3. Kaw River Responsibilities.

A Kaw River shall supply locomotives and crews to execute KCTL's service and operating plan as it may be determined by KCTL from time to time. Locomotives shall display the KCTL logo and shall be painted according to KCTL paint schemes.

B Kaw River shall report the pick-up and delivery of cars into the railroad industry car movement system on behalf of KCTL. All cars will be reported as being in the account of KCTL, and KCTL will be responsible for payment of car hire and mileage for cars while on the Line.

C Kaw River shall perform rail car switching on behalf of and in the name of KCTL, under the direction and control of KCTL's General Manager and KCTL's dispatchers, and in accordance with the GCOR rules, AAR Interchange Rules, applicable government regulations and industry practices. Except as otherwise provided in Paragraph 5, all revenues collected for all transportation, accessorial and incidental services including demurrage charges shall be retained by KCTL.

4. Use of Facilities. The parties recognize and agree that Kaw River's work under this Agreement is for the benefit of KCTL and in furtherance of KCTL's common carrier rights and obligations. Nothing in this Agreement is intended to grant Kaw River any rights or obligations to provide rail service to the shipping public except as agent for and on behalf of KCTL. Kaw

River shall take no action that would unreasonably interfere with the use of the Line by KCTL, Kansas City Terminal Railroad Company or the Terminal's owners, or create any lien or other interest in the Line

5. Compensation.

A. Kaw River's sole compensation for performing services under this Agreement shall be:

1. [REDACTED] per loaded car, which shall include, industry switching, transfer work, blocking and any other services provided for in this Agreement; and
2. [REDACTED] per car for each car that is delivered to KCTL empty and is subsequently interchanged to another railroad without having been loaded; and
3. Kaw River shall retain all AAR car repair revenue.

B. Kaw River shall invoice KCTL monthly for sums due under this Agreement for the previous month. KCTL shall pay amounts due within twenty (20) days of receipt of such invoices.

6. Inspection of Records. Kaw River shall keep complete and accurate records of all services provided under this Agreement. So much of the books, accounts and records of Kaw River as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection and audit by proper officers and agents of KCTL Kansas City Terminal Railroad Company and its owner(s).

7. Insurance. Kaw River shall at all times covered by this Agreement maintain at its sole cost and expense insurance in at least the kinds and amounts set forth on the Exhibit __ attached hereto and incorporated by reference herein. KCTL shall be named as an additional insured and a certificate of insurance reflecting such coverages shall be provided to KCTL prior to commencing work under this Agreement, and shall be satisfactory to KCTL with respect to coverage, amount, and character of insurance companies. The insurance certificate shall contain a clause that provides: "In the event any of the above policies are materially altered, changed or canceled, KCTL will be furnished 30 days advance notice in writing."

8. Liability. Each party shall be responsible for its own failure to perform this Agreement and for the negligence or intentional misconduct of its own employees, agents and representatives. Each party shall indemnify, hold harmless and defend the other party from any claims or losses for which the first party is responsible under this Agreement.

9. Arbitration.

A. In the event any disagreement shall arise between the Parties hereto as to the interpretation or the application of the provisions of the Agreement, then, upon the written request of either Party, in which request the issue in dispute is set forth, the dispute shall be finally resolved by binding arbitration administered by the American Arbitration Association ("AAA") under the AAA Commercial Arbitration Rules (the "Rules") then in force, to the extent such Rules are not inconsistent with the provisions of this Agreement.

B. If the Parties involved in such dispute are able to agree upon a single arbitrator experienced in matters of the character in dispute within (30) days after the Party requesting arbitration shall notify in writing the other Party of such dispute, the dispute shall be submitted to such single arbitrator.

C. If a single arbitrator cannot be agreed upon before the expiration of such period of thirty (30) days, the dispute shall be submitted to three arbitrators experienced in matters of the character in dispute to be appointed as follows: The party requesting arbitration shall select an arbitrator and give written notice thereof to the other Party. Such other Party shall select an arbitrator within thirty (30) days after receipt of such notice and give written notice thereof to the Party requesting arbitration. If within the time specified a Party fails to nominate its party-appointed arbitrator or the two party-appointed arbitrators fail to nominate the third arbitrator, either party may request the AAA to make the appointment according to the Rules. If any nominated arbitrator is not appointed, declines, resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, the Party or arbitrators entitled to appoint that arbitrator shall promptly nominate a successor. If the arbitrators are unable to agree on a replacement third arbitrator, then the AAA shall make the appointment according to the Rules.

D. The arbitrator or arbitrators, having taken and subscribed an oath before a person authorized by law to administer oaths to the effect that he or they will try to impartially and justly decide the matter or controversy according to the best of his or their ability, which oath ~~shall be filed to his or their decision, shall, as soon as practicable after his or their decision,~~ shall, as soon as practicable after his or their selection, hear the dispute or disputes submitted and shall give to each of the Parties reasonable notice of the time and place of such hearing. The hearing shall be conducted at the time and place designated as aforesaid, and, after hearing both Parties and taking such testimony or making such investigation as he or they may deem necessary. The arbitration award shall be in writing, shall give reasons for the decisions reached and shall be signed and dated by the arbitrator(s), and a copy of the award shall be delivered to each of the Parties. The Party against which an award assesses a monetary obligation or enters an injunctive or mandatory order shall pay that obligation or comply with that order on or before the 30th calendar day following the receipt of the award or by such other date as the award may provide. The award shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the Parties.

E. Upon the presentation of such decision, each Party shall immediately make such changes in the conduct of its business or such payments or restitution, as the case may be, as by such decision is required of it.

F. Each Party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsels. The compensation, cost and expense of the single arbitrator or the third arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.

G. Until a decision is made upon any dispute submitted to arbitration, the business, settlements and payments to be transacted and made under this Agreement shall continue to be transacted and made in the manner and form existing prior to the rise of such dispute.

H. The parties hereto acknowledge and agree that the foregoing arbitration provisions shall not in any way effect, supersede or diminish the rights of KCTL or Kaw River to exercise their rights or remedies, including the right to terminate this Agreement, in accordance with the provisions of Paragraphs 11 or 12 below, as applicable.

10. Confidentiality. Kaw River understands that by virtue of its performance under this Agreement, it will receive proprietary and confidential business information. Kaw River will keep all confidential and proprietary information confidential and will not disclose any such information to any third party with the prior consent of KCTL. If Kaw River is or may be ordered by valid court or administrative order to divulge confidential information, Kaw River will notify KCTL prior to disclosure to allow KCTL to protect its own interests.

11. Default.

A. If KCTL shall fail to pay any sum payable by it hereunder on the date when same shall be due or shall fail to perform or comply with any other covenant or condition by it to be performed or complied with under this Agreement and such default shall continue for a period of sixty (60) days after written demand for the cure of such non-payment, non-performance or non-compliance shall have been made upon KCTL by Kaw River, then Kaw River may, at its election, terminate this Agreement upon giving notice in writing of such election to KCTL. Upon KCTL's receipt of such notice of termination, this Agreement shall terminate and all rights and obligations of KCTL under the Agreement shall cease. Any such termination shall not relieve KCTL from any liability which may have occurred prior to or at the date of such termination or deprive Kaw River of its rights to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement for KCTL to indemnify Kaw River or hold it harmless. A waiver by Kaw River of the breach by KCTL of any payment, covenant or condition of the Agreement shall not impair the right of Kaw River to avail itself of any subsequent breach thereof.

B.If Kaw River shall fail to timely and properly perform its duties and obligations under this Agreement or fails to perform such duties and obligations in accordance with such performance standards as may be required by KCTL pursuant to this Agreement or KCTL's operating plan (as it is in effect from time to time) and such failure or breach continues for a

period of thirty (30) days or if Kaw River fails to perform or comply with any other covenants or conditions of this Agreement, or should Kaw River otherwise breach any of terms or conditions of this Agreement after written demand for the cure of such failure or breach, then, in either such event, KCTL may, at its election, terminate this Agreement upon giving notice in writing of such election to Kaw River. Upon Kaw River's receipt of such notice of termination, this Agreement shall terminate and all rights and obligations of Kaw River hereunder shall cease. Any such termination shall not relieve Kaw River from any liability which may have occurred prior to or at the date of such termination or any liability resulting from or in connection with said breach or failure of Kaw River to perform this Agreement for the entire term of the Agreement or deprive KCTL or others of the right to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement on the part of Kaw River to indemnify and/or hold harmless KCTL or others. A waiver by KCTL of the breach by Kaw River of any covenant or condition of the Agreement shall not impair the right of KCTL to avail itself of any subsequent breach thereof.

C. If Kaw River shall fail to timely and properly perform its duties and obligations under this Agreement or fails to perform such rail car switching duties and obligations in accordance with KCTL's operating plan (as it is in effect from time to time) and such failure or breach should cause an interruption of Kaw River's railcar switching services and such failure continues for a period of five (5) days after written demand for the cure of such non-performance or non-compliance, KCTL shall have the right, at its sole discretion, exercisable at KCTL's option, in any order, and following twenty-four (24) hours' advance written notice to Kaw River describing Kaw River's failure or breach, to:

(i) allow Kaw River to continue performing the railcar switching services under this Agreement, but upon delivery of the default notice to Kaw River, enforce against and collect from Kaw River liquidated damages in the amount of \$1,000.00 per day until such time as Kaw River's failure or breach is cured in KCTL's reasonable opinion or until such time as Kaw River provides KCTL with such evidence, sufficient in KCTL's reasonable opinion, that Kaw River is ready to timely and properly perform the switching services without any further failures or breaches; or,

(ii) immediately take over the performance of (or hire a replacement agent to take over the performance of) any portion of or all of the railcar switching duties until such time as Kaw River's failure or breach is cured in KCTL's reasonable opinion or until such time as Kaw River provides KCTL with such evidence, sufficient in KCTL's reasonable opinion, that Kaw River is ready to resume the timely and proper performance of the railcar switching services without any further failures or breaches. In the event that KCTL exercises its right to take over the railcar switching activities under this section, then Kaw River shall make available to KCTL (or its replacement agent) and allow KCTL (or its designated agent) to use, at no cost or expense to KCTL or its designated replacement agent, any or all of the equipment (including locomotives and switch engines), materials and supplies that Kaw River uses, has supplied or has in its possession for use in connection with its performance of the railcar switching activities. Any cost incurred by KCT to perform or cause the performance of such railcar switching services shall be at the cost of Kaw River and shall be reimbursed by Kaw River to KCTL timely upon demand.

D. In addition to the remedies set forth in subsection (i) and (ii) above, in the event Kaw River's failure or breach continue for a period of thirty (30) days after written demand for performance or compliance, then KCTL may terminate this Agreement upon giving notice in writing of such election to Kaw River, which notice may be sent electronically or by express mail to Kaw River. Upon receipt of the notice, this Agreement shall be terminated and all rights and obligations of Kaw River shall cease twenty-four (24) hours after notice of termination is sent by KCTL. Any such termination shall not relieve Kaw River from any liability which may have occurred prior to or at the date of such termination, shall not relive Kaw River for any liability resulting from or in connection with said breach or failure of Kaw River to perform this Agreement for the entire term of the Agreement or deprive KCTL or others of the right to enforce any such liability, or of the benefits of any covenants or obligations in this Agreement on the part of Kaw River to indemnify and/or hold harmless KCTL or others.

E. A "Force Majeure Event" shall mean any or all of the following events or occurrences and the effects thereof: acts of God or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, rail embargo, rail tariff or interruption of Class I rail service, lightning, fire, explosion, epidemic, war, embargoes, riot or civil disturbances, strikes or other labor disputes, sabotage, expropriation, confiscation or requisitioning of facilities, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction and any other matter or event which is beyond the control of KCTL or Kaw River and which the relevant party could not take reasonable measures to prevent.

Where either KCTL or Kaw River is unable, wholly or in part, by reason of a Force Majeure Event to carry out any obligation under this agreement and gives the other party immediate notice of the Force Majeure Event; and uses all reasonable diligence to remove the Force Majeure Event as quickly as possible, then that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance. Notwithstanding the foregoing, Kaw River shall provide the services required of it hereunder during any labor dispute involving Kaw River employees.

12. Effective Date, Term and Termination.

A. The Pre-Existing Agreement shall be deemed terminated and this Agreement shall be effective as of the Effective Date, provided however that any claims or rights that accrued to either party under the Pre-Existing Agreement prior to the Effective Date shall not be affected by termination of such agreement. The term of this Agreement shall be three (3) years from the Effective Date, at which time it shall terminate. Provided however, the parties shall negotiate in good faith for an extension of this Agreement or a new agreement after termination, but nothing herein requires either party to agree to any extension or new agreement.

B. Notwithstanding the foregoing, KCTL shall have the right to terminate this Agreement at any time if, in its sole discretion it reasonably determines that the service provided by Kaw River is inadequate and does not meet the requirements of this Agreement and Kaw River fails to cure or has failed to take substantial steps to cure the failure in service after the applicable cure periods set forth in paragraph 11.

C. Should the lease to KCTL from the Kansas City Southern Railway Company of trackage in Kansas City Kansas and Kansas City, Missouri, shown in blue on Exhibit A to the Pre-Existing Agreement, (the "KCS Lease") expire or be terminated for any reason, Kaw River's rights and obligations concerning activities on the portion of the Lines covered by that lease shall also terminate. Should the KCS Lease expire or terminate for reasons other than Kaw River's failure to perform its services or any other default under this Agreement, the parties shall negotiate in good faith to modify the compensation or other terms of this Agreement to reflect any changed economics resulting from such expiration or termination. If the parties are unable to renegotiate terms within 60 days from the effective date of such expiration or termination, then either party may terminate this Agreement by providing the other party hereto 60 days advance written notice of termination.

D. Any partial or complete termination or expiration of this Agreement shall not, however, relieve Kaw River from any liability which may have attached or accrued prior to the effective time of such expiration or termination or any liability resulting from or in connection with any breach or failure of Kaw River to perform this Agreement for the entire term of the Agreement or deprive KCTL of the right to enforce any accrued liability or obligations of Kaw River under this Agreement.

13. Independent Contractor. Kaw River is an independent contractor, providing its own tools, equipment and employees to perform services under this Agreement. Kaw River's employees shall not be considered to be the employees of KCTL for any purpose whatsoever. Kaw River shall be solely responsible for all wages, benefits, employment taxes, workplace injuries and other incidents of employment due or claimed to be due to Kaw River's employees with respect to services provided under this Agreement.

14. Service of Notices. Any notice herein provided for shall be in writing and deemed to be properly served if deposited in the United States mail, postage prepaid, addressed to the party as follows, unless notice of change of address has been previously given in writing.

If to KCTL:

Kansas City Transportation Company LLC
c/o Kansas City Terminal Railway company
4501 Kansas Avenue
Kansas City, KS 66106
Attention: President

If to Kaw River:

Pat Ceden
COO Central Region
Watco Transportation Services, Inc.
315 W. 3rd Street
Pittsburg, KS 66762

15. Agreement To Be Construed Liberally Not For Benefit Of Third Parties This agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement and each and every provision

hereof is for the exclusive benefit of the parties hereto and, except for KCT and the members of KCT's Owner's, not for the benefit of any other third party.

16. Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors, lessees and assigns of the parties hereto, provided however, Kaw River may not assign this Agreement to a third party without the written consent of KCT. Such consent shall not be unreasonably withheld if Kaw River assigns this Agreement to a responsible third party in connection with the merger of Kaw River into, or the sale of all or substantially all of its assets to, the assignee, but no assignment by Kaw River of this Agreement shall release Kaw River from its obligations hereunder.

17. Section Headings. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18. General Provisions.

A. This Agreement shall be governed by and interpreted in accordance with the laws of Missouri.

B. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

C. Unless specifically stated to the contrary therein, indemnities against, releases from and limitations on liability expressed in this Agreement shall extend to the officers, directors, employees, agents, licensors and related entities of such party.

D. In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall affect the intent of the parties as set forth in this Agreement.

E. The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of the Agreement, including, but not limited to, any indemnifications or expressed limitations of or releases from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

F. No failure by either party to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Agreement, and no waive of any breach shall constitute a waiver of any other or subsequent term, condition, instruction, breach, right or privilege.

G. The parties acknowledge and agree that the terms and conditions of this Agreement, including but not limited to those relating to allocations and assumptions of, releases from, exclusions against and limitations of liability, have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement they have relied solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statements made by any

other party or its counsel. No provision in this Agreement is to be interpreted for or against any party because that party or its counsel drafted such provision.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the any and year first above written.

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

**KANSAS CITY TRANSPORTATION
COMPANY LLC**

By: _____

Printed Name: _____

Title: _____

KAW RIVER RAILROAD, INC.

By: _____

Printed Name: _____

Title: _____

EXHIBIT
-Insurance Requirements-

Contractor shall provide the following insurance coverages and shall otherwise comply with the following insurance provisions throughout the term of the Agreement:

1 Railroad General Liability insurance containing broad form contractual liability with a single limit of at least [REDACTED] per occurrence or claim and an aggregate limit of at least [REDACTED]. Coverage must be purchased to include but not be limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Products and completed operations

2. Automobile Liability with the following limits:

- a. Primary Bodily Injury with limits of [REDACTED] per occurrence; and
- b. Primary Property Damage Liability limits of [REDACTED] per occurrence; or
- c. Combined single limits of liability for Primary Bodily and Primary Property Damage of [REDACTED] per occurrence.

3. Worker's Compensation Insurance with the limits established and required by the State of Missouri and the State of Kansas, if applicable.

4. Employer's Liability with limits of [REDACTED] per occurrence, if applicable.

The Insurance required under 1 and 2 above shall cover the Contractor's contractual obligations (including, but not limited to, its indemnification obligations) under the foregoing Agreement

All Insurance required hereunder shall provide as follows:

Additionally Insured:

Kansas City Terminal Railway Company (KCT)
Kansas City Transportation Company LLC

Prior to commencement of any work under the Agreement, CONTRACTOR shall furnish to KCTL a certificate of insurance showing that the required insurance coverage's are in place for CONTRACTOR and further providing that:

-
- a. KCTL and KCT are named an additional insured on the Railroad General Liability and the Automobile Liability insurance with respect to performance hereunder; and
 - b. The coverage shall be primary and noncontributory as to any other insurance with respect to liability hereunder.
 - c. Thirty (30) days prior written notice of cancellation or of material change in coverage be given to KCTL by endorsement.
 - d. "Occurrence," as used herein, means any event or related exposure to conditions which result in bodily injury or property damage.
 - e. Any deductibles or self-insured retentions must be declared to and approved by KCTL.

CERTIFICATION

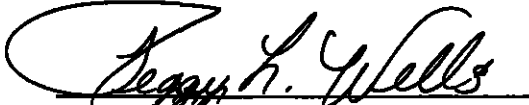
State of Missouri)
)
County of Jackson) ss'

Charles E Mader, being duly sworn, hereby certifies that the projected annual rail revenue of Kansas City Transportation Company LLC will not result in the creation of a Class II or Class I carrier under the provisions of 49 C F R § 1201(1-1)



Charles E Mader
Manager
Kansas City Transportation Company LLC

SUBSCRIBED AND SWORN TO
before me this 17th day
of October, 2007


Notary Public

My Commission expires _____

**Peggy L. Wells
Commission# 05498897
Notary Public - Notary Seal
STATE OF MISSOURI - Jackson County
My Commission Expires 05/20/09**

[Employee Notice and Certification]

FLETCHER & SIPPET LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

Phone (312) 252-1500
Fax (312) 252-2400
www.fletcher-sippel.com

RONALD A. LANE
(312) 252 1503
rlane@fletcher-sippel.com

September 21, 2007

Via Electronic Filing

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 35084
Kansas City Terminal Railway Company—Purchase
Exemption—BNSF Railway Company

Finance Docket No. 35085
Kansas City Transportation Company LLC—Lease and Operation
Exemption—Kansas City Terminal Railway Company

Dear Secretary Williams:

Pursuant to 49 C.F.R. § 1150.42(e), Kansas City Terminal Railway Company ("KCT") and Kansas City Transportation Company, LLC ("KCTL") hereby certify that on September 20, 2007, the attached Notice was posted at the workplace of the employees on the rail lines that KCT proposes to acquire and KCTL proposes to lease in the above-captioned proceedings, and that on September 21, 2007 a copy of the Notice was served on the national offices of the labor unions with employees on those rail lines.

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 Terminal
Railway Company and Kansas City
Transportation Company, LLC

RAL:dg
Attachment

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35084

**KANSAS CITY TERMINAL RAILWAY COMPANY-- PURCHASE EXEMPTION --BNSF
RAILWAY COMPANY**

FINANCE DOCKET NO.35085

**KANSAS CITY TRANSPORTATION COMPANY LLC-- LEASE AND OPERATION
EXEMPTION --KANSAS CITY TERMINAL RAILWAY COMPANY**

NOTICE TO BNSF EMPLOYEES

Pursuant to Surface Transportation Board regulations, 49 C.F.R. §§ 1150.42(e), Kansas City Terminal Railway Company ("KCT"), Kansas City Terminal Transportation Company, LLC ("KCTL") and Kaw River Railroad, LLC ("Kaw River") hereby provide notice to the employees of BNSF Railway Co. that KCT has agreed to purchase approximately 5.5 miles of local BNSF switching track in the Kansas City Terminal District (MP 5.78 near Sheffield Junction, MO to end of track at MP 11.23 near Blue Valley, MO) commonly referred to as "the Coburg Lead," effective on or before December 1, 2007. KCTL has agreed to lease the Coburg Lead from KCT, and Kaw River is expected to perform certain operating functions under KCTL's direction and control.

KCT, KCTL and Kaw River do not anticipate hiring any additional employees as a result of these transactions. However, any BNSF employee interested in seeking employment with KCT or KCTL should contact those companies at 4501 Kansas Avenue, Kansas City, Kansas 66106 or (913) 915-5539. *BNSF employees interested in seeking employment with Kaw River* should contact its General Manager at 1128 S Mill Street, Kansas City, Kansas 66105 or (816) 983-1910.

**Kansas City Terminal Railway Company
Kansas City Terminal Transportation Company, LLC
Kaw River Railroad, LLC**

September 17, 2007

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO 35085

**KANSAS CITY TRANSPORTATION COMPANY LLC
-- LEASE AND OPERATION EXEMPTION --
KANSAS CITY TERMINAL RAILWAY COMPANY**

KANSAS CITY TRANSPORTATION COMPANY LLC ("KCTL") a Class III common carrier by rail, has filed a Verified Notice of Exemption to lease certain tracks ("Tracks") of the Kansas City Terminal Railway Company ("KCT") once KCT purchases the Tracks from BNSF Railway Company ("BNSF") in order to provide common carrier service on the Tracks, which are described as follows:

The Tracks extend from BNSF milepost 5.78 near Sheffield Junction, Missouri to the end of track at BNSF milepost 11.23 near Blue Valley, Missouri, all in Jackson County, Missouri. The total length of the Tracks is 5.5 route miles.

This Notice of Exemption is related to Finance Docket No. 35084, KANSAS CITY TERMINAL RAILWAY COMPANY – PURCHASE EXEMPTION – BNSF RAILWAY COMPANY, in which KCT is concurrently filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41 et seq. for an exemption to purchase from BNSF the Tracks that KCT will then immediately lease to KCTL to operate.

KCTL expects to consummate the lease and commence service on the Tracks any time on or after November 20, 2007.

Comments must be filed with the Board and served on:

Michael J. Barron, Jr.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

This Notice is filed under 49 C.F.R. § 1150.41. If this Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated _____, 2007

By the Board

Vernon A. Williams
Secretary

VERIFICATION

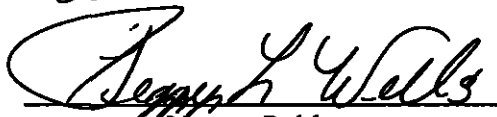
State of Missouri)
)
County of Jackson) ss'

Charles E Mader, being duly sworn, deposes and says that he is the Manager
Kansas City Transportation Company LLC, that he has read the foregoing Notice of Exemption
and knows the facts asserted therein, and that the same are true as stated



Charles E. Mader

SUBSCRIBED AND SWORN TO
before me this 17th day
of October, 2007



Notary Public

My Commission expires

**Peggy L. Wells
Commission# 05498897
Notary Public - Notary Seal
STATE OF MISSOURI - Jackson County
My Commission Expires 05/20/09**