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SEC

SERVICE DATE – MAY 30, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB 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.

Decided: May 26, 2006

By verified notice of exemption filed on February 22, 2006, and served and published in the Federal Register at 71 FR 14576 on March 22, 2006, Kansas City Transportation Company LLC (KCTL), a wholly owned noncarrier subsidiary of Kansas City Terminal Railway Company (KCT), invoked the class exemption at 49 CFR 1150.31 to acquire by lease from KCT approximately 25.73 miles of rail line in the Kansas City Terminal District in Jackson County, MO and Wyandotte County, KS. In the same notice, KCTL also invoked the class exemption to acquire, by assignment from Kaw River Railroad, Inc. (KRR), the operating and lease rights over all of the track in the Kansas City Terminal District that is either owned by KCT and subleased to KRR or owned by The Kansas City Southern Railway Company (KCS) and leased to KRR.

In its February 22, 2006 filing, KCTL stated,

KCTL will provide all rail common carrier service on the KCT Tracks (including the KCT Subleased Tracks) and the KCS Tracks pursuant to the transactions proposed herein. KCTL expects to enter into one or more agreements with contract operators, but KCTL will retain the common carrier rights and obligations on this track.

In response to this statement, the Board, in the Federal Register notice published on March 22, 2006, inserted a footnote, footnote 1, which stated, “Under 49 U.S.C. 10902 and the Board’s rules at 49 CFR 1150.31, if KCTL elects to enter into agreements with contract operators, the operators must file [requests] with the Board for authority prior to commencing operations.”¹

By letter filed on April 25, 2006, KCTL requests clarification and deletion of footnote 1. KCTL states that operations over the lines it acquired were contracted out to

¹ With respect to potential operators, footnote 1 should have referenced 49 U.S.C. 10901 and 49 CFR 1150.31 for noncarriers and 49 U.S.C. 10902 and 49 CFR 1150.41 for Class III rail carriers.

KRR. According to KCTL, these contract operations are not subject to the Board's licensing authority and, as a result, KRR is not obligated to seek Board authority. KCTL states that KRR provides service only in KCTL's name and that all of the operations and services KRR is conducting are pursuant to KCTL's rules and tariffs. KCTL emphasizes that it has retained the common carrier obligation and insists that KRR is a contract operator functioning solely as KCTL's agent with no independent operating authority or common carrier status. Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters, filed a reply in opposition.

In its April 25, 2006 letter, KCTL asserts that KRR is acting as KCTL's agent but provides no support for that claim. If KCTL wishes to pursue this matter, it must submit a copy of its operating agreement with KRR and all other documents that govern the relationship between KCTL and KRR concerning the proposed service. KCTL should also submit a detailed statement of the rights and responsibilities of each entity involved in providing the service, including issuance of bills of lading, maintenance, dispatching, provision of equipment, assumption of liabilities, and any other activities relevant to the proposed service. In addition, KCTL should cite the agency and court precedent upon which it relies in claiming that KRR requires no authority from the Board to carry out its obligations under the agreement with KCTL. See Assoc. of P&C Longshoremen v. The Pitts. & Conneaut, 8 I.C.C.2d 280 (1992), and the cases cited therein. Replies may be filed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. KCTL is directed to file the information requested in this decision by June 29, 2006.
2. Replies may be filed by July 19, 2006.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary