

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

2206/0

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
-- ABANDONMENT PETITION FOR EXEMPTION --
LINE IN WARREN COUNTY, MS**

STB DOCKET NO. AB-1016X

220611

**VICKSBURG SOUTHERN RAILROAD, INC.
-- DISCONTINUANCE OF SERVICE PETITION FOR EXEMPTION --
LINE IN WARREN COUNTY, MS**

REPLY TO THE SUPPLEMENTAL COMMENTS OF RAYMOND B. ENGLISH

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October 31, 2007

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By petition filed on August 24, 2007, The Kansas City Southern Railway Company ("KCS") and Vicksburg Southern Railroad, Inc. ("VSOR") sought authority to abandon, and discontinue operations over, approximately 4.25 miles of rail line in Warren County, MS. In its petition, KCS requested that it be exempt from the provisions of 49 U.S.C. §10904 regarding the filing of offers of financial assistance ("OFA") in abandonment proceedings. On October 2, 2007, Mr. Raymond B. English ("English") filed a "Reply to Petitioner's Request to be Exempt From 49 U.S.C. §10904" whereby English requested that the Surface Transportation Board ("STB") deny KCS's request to be exempt from the OFA process.¹ Mr. English supplemented his comments in an October 16, 2007

¹ While Mr. English is nominally the party of record, the real parties in interest are Mr. James Riffin and Mr. Eric Strohmeyer. Counsel for the City of Vicksburg has specifically been called by both of these individuals, who disclosed their backing of Mr. English

filing Lakes Entertainment, Inc. ("Lakes") hereby files in support of KCS's request to be exempt from the OFA process and in opposition to the comments of English.

Before addressing the substance of English's comments and Lakes's concerns thereto, Lakes takes note that it has discussed its concerns regarding continued rail service with counsel for the City of Vicksburg ("City") and counsel for KCS. Lakes's discussions have focused on whether a solution could be proposed whereby rail service to Foam Packaging could be preserved as requested by Mr. English but still have the development occur. Lakes submits that if rail service were to continue as proposed by Mr. English, it is unlikely that the proposed casino development would move forward and this could have detrimental impacts on the City's economic and recreational development plans. As such, it is not in the public interest for rail service to continue.

1. Summary of Proposed Casino Development

Several years ago, Lakes identified a potential gaming site consisting of approximately 160 acres located on Magnolia Road, three miles south of downtown, in Vicksburg, Mississippi (the "Site"). A significant drawback of the Site, however, was that a rail line crossed the eastern portion of the Site, making the Site inaccessible except upon crossing the rail line. Because the rail line posed significant issues related to the economic viability of the Casino project, the City agreed to purchase the property on which the rail line was located and turn it into a bike and pedestrian trail. Satisfied with such resolution, Lakes moved forward with the Casino development and began purchasing the property constituting the Site. In February 2005, the Mississippi Gaming Commission granted Lakes's request for gaming site approval of the Site. In July 2005, Lakes received approval from the Mississippi Gaming Commission of its development plan for an approximately \$232 million gaming project to be built on the Site, which consists of a 60,000 square foot casino floor which includes multiple bars, live entertainment, various restaurants, 1,200 to 1,500 slot machines, 40 to 50 table games, poker room, valet parking and hotel rooms ("Casino").

This plan allows for expanded gaming, additional hotel rooms, a Kid's Quest child care facility, a nightclub, cigar lounge, banquet rooms, and an event center. Other market-driven future amenities could include a golf course, multi-family housing, and retail center. Lakes is currently working with the applicable regulatory agencies to obtain the necessary permits required to build the Casino.

The Casino development was premised on the fact that the rail line would be removed. Leaving the rail line will have such significant impacts as to make that Casino development uneconomic thereby making forward progress unlikely. These impacts include the following:

2. Impacts on Casino Development

(a) **Safety; Increased Liability Exposure.** An active rail line that intersects the Site increases Lakes's liability exposure immeasurably. The obvious increased exposure is at the rail line crossings (note: there would be two crossings: one at the main entrance to the Casino and one secondary, non-customer crossing). There could be over 20,000 vehicle crossings per day or over 7 million annually. The sheer number of crossings makes it reasonable to assume that there will be vehicle-train accidents, and Lakes will invariably be named in any claim for damages (both property and personal) arising therefrom. Moreover, an active rail line also an attractive nuisance for both children and adults and it's not unreasonable to foresee pedestrian-vehicle accidents as well. Both of these reduce the safeness of the crossing and increase Lakes's liability exposure for personal injury and property damage beyond what was contemplated in the initial development plans

(b) **Traffic and Infrastructure Studies.** A traffic study will likely be required to assess the safety and infrastructure needs as they relate to the rail line crossings. An additional economic impact study may also be required to account for the lost revenue resulting from delays at the crossing, the decision by potential customers not to stop if they observe a back-up of vehicles at the entrance, or from a catastrophic accident or derailment that prevents customers from entering

the Casino. The cost of these studies, and the delays that the studies may cause in the development timeline, are not insignificant

(c) Increased Costs to Lakes. In addition to the cost of the aforementioned studies, an active rail line will likely substantially increase the cost of development and operations. Additional infrastructure costs could be staggering. If the traffic study recommends an above-grade crossing at one or both crossings, the costs would likely make the project uneconomic and thereby prevent the development from moving forward. Even if no such crossing would be required, Lakes would be required to install and maintain the rail line crossing devices thereby increasing the cost of development and maintenance from what is contemplated. Additionally, Lakes would likely be required to alter its current roadways to account for the stacking of vehicles at the rail line crossing during the period of time that a rail car is utilizing the rail line. Moreover, Lakes currently contemplates an overflow and shuttle parking lot adjacent to the rail line that would have to be redesigned and relocated, resulting in increased architect and design costs. Further, additional landscaping would be required to mitigate the negative aesthetic impact of the rail line crossings (and, perhaps, changes in road). Finally, the cost of liability and business interruption insurance would dramatically increase as a result of the rail line crossing. All these costs would likely make it uneconomic for Lakes to pursue the Casino development

(d) Lost Revenue. The rail line would likely cause Lakes to lose revenue. Casino profits are based, in large part, upon the amount of time that each customer is at the casino. The amount of time in the Casino will necessarily decrease if a customer waits for a rail car to pass. That directly and negatively impacts the Casino's revenue. Further, there is also a likelihood that the Casino would lose potential customers that observe a vehicle back-up at the entrance of the property (perhaps assuming that the traffic backed up from the Casino) and decide against visiting the Casino. Additionally, in the event that a catastrophic accident or derailment closes the rail line

crossing, there is no alternative means to allow customers to access the Casino property, thereby resulting in a substantial loss of revenues totaling in the millions of dollars. Finally, if such an event occurred, it would likely cause the Casino a significant amount of money from a public relations standpoint and by accommodating the customers who cannot leave the Casino (by providing complimentary hotel rooms, meal vouchers, or making alternative travel arrangements)

(e) Noise and Vibration Impact. Current development plans include administrative buildings located adjacent to the rail line. The noise and vibration from passing rail cars, and whistle noise at the crossing, will be a significant distraction to the work force. Additionally, there have been no studies on how the vibration may degrade the improvements (including the building) in that area. Such a study would need to be commissioned and it may reveal that additional -- costly -- changes may be required to mitigate the noise and vibration from the rail cars.

(f) Aesthetic Impact. Lakes has invested a significant amount of money assuring that the aesthetics of the property, including the entrance road, will be pleasing and consistent with the high quality casino projects for which Lakes is known. The rail line crossing equipment, and any other additional infrastructure changes necessitated by the rail line, would surely detract from the aesthetic beauty of the property.

(g) Impact on Future Amenities. An operating rail line would detrimentally impact possible future amenities such as a golf course and housing development. A noisy rail car (and train whistle) would detract from the golfing experience and would adversely impact the sale or rental of housing units that may be developed close to the rail line.

(h) Possible Increase in Future Rail Line Use. There is no assurance that the rail line use will remain at the present levels. In fact, it would be surprising if English's desire was not to increase his sales, requiring additional rail car traffic, although he has not specifically so stated.

Additionally, it is not unforeseeable that other businesses may want to use the rail line as well, although none have come forward as of yet. If either, or both, were to happen, the aforementioned impacts and concerns would be significantly magnified. Regardless, even under the existing usage levels, Lakes would likely not undertake the development if rail service were to continue.

3. Conclusion

The proposed Casino will bring to the City numerous new jobs and commercial activity and would result in increased City revenues. Due to the aforementioned issues, development of the Casino will most likely not occur if KCS is forced to sell the line under the OFA process for continued rail service. Accordingly, English's request for a denial of petitioners' request for an exemption from the OFA should be rejected.

Respectfully submitted,



Damon E. Schramm
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Minnetonka, Minnesota 55305

Attorney for Lakes Entertainment, Inc.

Dated: October ~~21~~ 21, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply to the Supplemental Comments of Raymond B. English by mailing copies of the same via prepaid first class mail to all parties of record in these proceedings.

Dated at Minnetonka, Minnesota, this 31 day of October, 2007.

A handwritten signature in black ink, appearing to read 'Damon E. Schramm', written over a horizontal line.

Damon E. Schramm