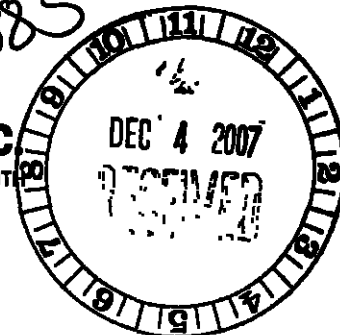




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FOAM PACKAGING, INC.

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December 3, 2007

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E. Street S. W.
Washington, DC 20423 - 0001

Re: *The Kansas City Southern Railway Company - Abandonment Petition
For Exemption Line in Warren County, MS; Docket No. AB-103 (Sub- No.21X)*

*Vicksburg Southern Railroad, Inc. - Discontinuance of Service Petition
For Exemption Line in Warren County, MS Docket No. AB-1016X*

Dear Secretary Williams:

Enclosed, please find an original and eleven copies **RAYMOND B. ENGLISH'S REPLY TO:**

**KCSR'S RESPONSE TO OCTOBER 16 FILINGS OF RAYMOND ENGLISH
LAKE'S REPLY TO SUPPLEMENTAL COMMENTS OF ENGLISH
VICKSBURG COMMENTS IN SUPPORT OF EXEMPTION REQUEST.**

Respectfully Submitted,

Raymond B. English

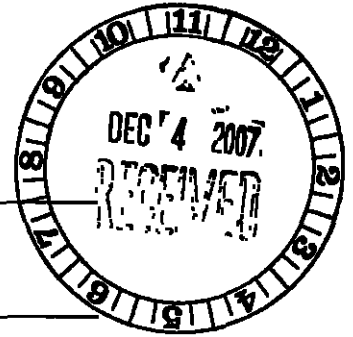
Raymond B. English

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Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB DOCKET NO. AB-103 (Sub- No. 21X)

**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

STB DOCKET NO. AB-1016 (Sub- No. 0 X)

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

**RAYMOND B. ENGLISH'S REPLY TO
KCSR'S RESPONSE TO OCTOBER 16 FILINGS OF RAYMOND ENGLISH
LAKES REPLY TO SUPPLEMENTAL COMMENTS OF ENGLISH
VICKSBURG COMMENTS IN SUPPORT OF EXEMPTION REQUEST**

1 Raymond B. English ("English") herewith files his Reply ("Reply") to KCSR's Response to October 16 Filings of Raymond English ("KCSR's Reply"); Lakes Entertainment ("Lakes") Reply to Supplemental Comments of Raymond English ("Lakes Reply"); and the City of Vicksburg's Comments in Support of Exemption Request ("Vicksburg's Reply").

2 This Reply may be construed to be a reply to a reply, and thus would not be allowed without leave from the Board. KCSR, Lakes and the City of Vicksburg raised some issues which English has not addressed. In the interest of presenting to the Board as complete a record as possible, and in the interest of clarifying certain issues raised by KCSR, English would ask leave from the Board to file this Reply.

BACKGROUND INFORMATION

3. On August 24, 2007, The Kansas City Southern Railway Company ("KCSR"), filed an Abandonment Petition for Exemption ("Petition"), to abandon that portion of the Vicksburg Industrial Lead, a.k.a. Redwood Branch, extending from milepost 225.6 to milepost 229.85, a distance of 4.25 miles, all in Warren County, Mississippi ("Line"), and the Vicksburg Southern Railroad, Inc. ("VSOR") simultaneously filed a Discontinuance of Service Petition for Exemption over the Line.

4. On September 12, 2007, Foam Packaging, Inc. filed a letter protesting KCSR's Petition for Exemption to abandon, and VSOR's Petition for Discontinuance of Service, over the subject Line.

5. On October 2, 2007, English filed his initial Comments; Notice of Intent to File an Offer of Financial Assistance; and Reply to Petitioner's Request to be Exempt from the Offer of Financial Assistance procedures.

6. On October 16, 2007, English filed Supplemental Comments, a Motion to Strike and a Response to KCSR's Letter Threatening Sanctions.

7. On October 31, 2007, Lakes Entertainment, Inc. ("Lakes") filed a Reply to the Supplemental Comments of Raymond B. English.

8. On November 2, 2007, the City of Vicksburg filed Comments in Support of a Exemption Request

9. On November 5, 2007, KCSR filed its Response to the October 16 Filings of Raymond B. English

ENGLISH'S RESPONSE TO KCSR'S, LAKES,' AND VICKSBURG'S COMMENTS

10. In Lakes Reply, it raised the following issues: One must cross the right-of-way to gain access to the proposed casino site; There may be 20,000 vehicle crossings per day; Vehicle-train accidents are likely to occur; If vehicles must wait while a train goes by, this could have a

negative economic impact on the casino; Lakes would have an additional expense of installing and maintaining railroad-crossing devices; The noise and vibration from a train would be a significant distraction to the work force; The railroad is aesthetically unpleasing, and may negatively impact the sale or rental of housing units developed close to the rail line; A passing train may distract a golfer at a proposed golf course.

11. Some of Lakes' comments were previously addressed by English. English's response to Lakes issues are as follows:

VSOR presently delivers three rail cars to Foam Packaging once every ten days. Any negative impact caused by one train with 3 rail cars, would be minuscule at best. While beauty is in the eyes of the beholder, a large number of people find railroad tracks, passing freight trains, and the sound of a train whistle, to be aesthetically quite pleasing. Lakes has offered the City of Vicksburg \$700,000.00 to purchase, on Lakes behalf, a 100-acre parcel of land located in a floodplain adjacent to the right-of-way. Lakes has offered \$1 million Dollars to the City of Vicksburg, if the City would purchase the right-of-way, then convert it into a trail. Lakes proposes to spend \$232 million Dollars building its casino project. English would argue, whatever it would cost Lakes to install and maintain a railroad crossing over the right-of-way is minuscule at best, when compared to the funds Lakes proposes to spend on its casino project.

12. In the City of Vicksburg's Comments, the City mentioned the following: The right-of-way is needed for a valid public purpose which is greater than the public need for continued rail service. The casino would create approximately 1,900 full and part-time jobs, and would contribute \$2 million in annual property taxes to the City; The right-of-way could be used as a recreational trail; Abandoning the Line would eliminate 5 at-grade crossings.

13. English's response to the City's comments are as follows:

The casino is not a public project. It is a privately-funded commercial project whose main purpose is to generate profits for a non-public, for-profit, commercial corporation. While 1,900 jobs may be created, many of those jobs will be part-time, and most will be low-pay service-related jobs, rather than higher-paying manufacturing jobs, such as the 120 higher-paying manufacturing jobs that presently exist at Foam Packaging. Any increase in transportation costs for Foam Packaging would adversely affect its ability to continue to provide higher-paying jobs

for its workers While increasing the City's tax revenue by \$2 million per year would help the City, acquiring this additional revenue by promoting gambling by its citizens, is morally reprehensible for a large number of local residents. With only one 3-car train every ten days, the likely increase in public safety by eliminating 5 at-grade crossings that are rarely used, would be minuscule at best. English has already indicated to the City that he would not be opposed to letting the City use a portion of the right-of-way for trail purposes.

14. KCSR made the following comments in its reply: *KCSR is entitled to respond to formal comments: English does not oppose KCSR's abandonment, and VSOR's discontinuance of service over the Line; The Board should grant KCSR's and VSOR's Petitions so that the OFA process may begin as soon as possible.* **Response:** English agrees with these three comments.

15. *KCSR did not misconstrue the scope of the Line* **Response:** English pointed out that some time prior to the filing of KCSR's Petition, 2 35 miles of rail, between MP 227.5 and MP 229 85, or more than 55% of the Line, were removed without authority. KCSR tried to justify this unauthorized removal of rail, by saying the rails were removed prior to KCSR's acquisition of the Line in 1993. While English cannot at this time prove precisely when the rails were removed, the evidence he has collected so far indicates the rails were in place a few years ago. However, while the unauthorized removal of a line-of-railroad's main rails, is a matter of concern, at this stage of this proceeding, it is not relevant, since the only issue that needs to be addressed at this time is whether this proceeding should be exempted from the OFA procedures. If English is permitted to make an OFA, then the quantity of rails still on the ground would become relevant in determining the Net Liquidation Value of the Line. Had KCSR not included this portion of the Line in its abandonment filing, then that would have left a stranded segment.

16 *English referred to an unidentified shipper at the end of the Line* **Response:** The unidentified shipper is Hancor. Some years ago Hancor desired to construct a siding to its facility near the end of the Line. The City of Vicksburg obtained more than \$800,000 in grant money from the State of Mississippi to construct this siding, did the design work, obtained permits from the FAA (due to the close proximity to the near-by airport), then asked KCSR for permission to connect the proposed siding to KCSR's Line. KCSR refused to permit the connection of this siding to its Line, arguing that it would cost too much to put the Line back into service. The City of Vicksburg then used the grant money on another project. All of this information was obtained from a City of Vicksburg file, which is available upon request.

17. *Exemptions from the OFA procedures are neither rare, extraordinary nor used sparingly.* **Response:** The Interstate Commerce Commission used that phrasology in a number of its decisions, which were cited in previous English filings. KCSR stated the Board has granted more OFA exemptions than it has denied, but did not cite the cases it consulted. While the Board has granted OFA exemptions far more often than the Commission ever did, and while the Board appears to have relaxed the standards for granting an OFA exemption by a considerable amount, **that should not mean exemptions from the OFA process should be handed out like Halloween candy to anyone who knocks on the Board's door.** Exemption from the OFA process **should be** an extraordinary remedy, rarely granted, and then only if and when there is no expressed desire for continued rail service. Congress, when it deregulated the abandonment process, created the OFA process to help offset the detrimental aspects of permitting abandonments when the carrier deemed the line to be uneconomical. Congress determined that while the carrier should not be required to provide rail service at a financial loss, any shippers on the affected line should be given every opportunity and accommodation if the shipper, or any other interested party, expressed a desire and willingness to assume responsibility for maintaining rail service on the line, **even if providing that service was not profitable.** (Shippers were given the option of either subsidizing the carrier's operation of the line, or of acquiring the line. And if the shipper was willing to subsidize the cost incurred by the carrier, a shipper should be permitted to subsidize the cost of operating a line that the shipper elects to purchase. If a shipper purchases a line, any improvements made by the shipper, enure to the benefit of the shipper, rather than to the former carrier, which provides some justification for purchasing the line. In addition, if the shipper purchases the line, the shipper gains control over how the line is operated. This control over one's destiny provides the shipper with some certainty and security, the value of which can, and should, only be determined by the purchaser.)

18. *When a request for exemption from the OFA procedures has been made, the burden shifts to the OFA offeror to demonstrate the need for continued rail service overrides the proposed public use of the right-of-way* **Response:** The burden of proof has always been on the movant. Merely stating one desires to be exempt, does not constitute proof. KCSR has cited no authority for its position that once a request for exemption from the OFA procedures has been made, the burden then shifts to an OFA offeror to demonstrate there is a need for continued rail service. The phrasology used by Congress in 49 USC 10904(f)(2) and (3) **is mandatory,** indicating that if an OFA is made, and the amount offered is at least equal to the Net Liquidation

Value of the line, then the sale of the line to the offeror is **mandatory**. [(f) (2): "The decision of the Board (regarding the value of the line) **shall** be binding on both parties." (f)(3): "... a rail carrier ... **shall** ... complete the ... sale agreement"] 49 USC 10905 on the other hand, is **permissive**, and is stated in the negative: "If . . the rail properties ... are ... not required for continued rail operations, the rail properties **may** be sold" Since the burden of proof is on the movant [KCSR] to demonstrate that the rail properties are not required for continued rail operations, English would argue KCSR has failed to meet its burden of proof. Had there been no expression of interest in receiving rail service, then one would be permitted to presume that the rail properties were no longer required for continued rail operations. However, in the instant case, Foam Packaging has indicated that it wants to continue receiving rail service. And the rail properties **are required** for continued rail operations. Thus, while KCSR may not be required to provide rail service on this line, due to economic reasons, KCSR's **RAIL PROPERTIES are required** for continued rail operations by English. And if those rail properties are required for continued rail operations, and if English is willing to pay the Net Liquidation Value for those rail properties, then KCSR is **compelled** to sell those rail properties to English.

19. *Grade-separated crossings may be required at several locations.* **Response:** Lakes' site plan shows two crossings, one of which the site plan says will be barricaded, except in an emergency. While the amount of anticipated vehicular traffic may be high, one 3-car train going 10-20 mph, twice every 10 days, would hardly justify the cost of a grade-separated crossing.

20. *The right-of-way is needed for a valid public benefit.* **Response:** As discussed in ¶ 13, *supra*, the Casino project is a for-profit commercial project, and by no stretch of the imagination, could the Casino project be considered a public-use project. The only benefit to the public would be increased tax revenues due to this commercial project. Under KCSR's argument, any commercial development could be construed to be a public use, since all developed properties will likely generate increased property tax revenues, and will likely create additional jobs.

21. *English has not demonstrated English could operate the Line at a profit.* **Response:** The OFA procedures do not require the offeror prove the line could be operated profitably. The OFA procedures require the offeror to be financially responsible, which has been construed to mean the offeror has sufficient financial resources to both purchase the line, and to cover the cost of maintaining the line for at least two years.

22. *English's increased transportation costs pale by comparison to the costs caused by continued rail service.* **Response:** Since to date English has not indicated what his increased transportation costs would be without his present rail service, KCSR has no basis for making this bald statement. But for the record, Foam Packaging has estimated its increased transportation costs would be in excess of \$70,000.00 per year, or about \$580.00 for each of its employees. And since Foam Packaging's employees have profit sharing, this extra transportation cost would reduce each employee's potential profit-sharing by over \$580 per employee. KCSR should try unilaterally telling its employees that due to increased fuel costs, KCSR will reduce each employee's yearly salary by \$580. I dare say, such an announcement would likely precipitate a strike by all of its employees within 24 hours

23. *KCSR has difficulty comprehending who English represents.* **Response:** English first and foremost represents himself. In addition, since English is the President, and is a substantial owner, of Foam Packaging, he also represents Foam Packaging, and has a vested interest in preserving his investment in Foam Packaging.

24. *It was inappropriate for English to respond to KCSR's letter threatening Foam Packaging's Treasurer, J.B. Davenport, with sanctions.* **Response:** Mr. Davenport is a substantial owner of Foam Packaging, is a close friend of long-standing, and is considered "family." Whenever any member of English's 'family' is attacked, English will not hesitate to come to that family member's defense, particularly when that family member's good name and reputation have been sullied, and is out-of-town and cannot voice his / her own strong objections within the time constraints dictated by the Board's rules. Such was the case when KCSR vilified Mr. Davenport's honor and veracity. However, since Mr. Davenport has returned, he now can voice his own displeasure with KCSR's libelous remarks, which he did in no uncertain terms when he filed his Verified Statement with the Board on November 8, 2007. **For the record:** Mr. English represents himself, and is the prospective purchaser of the Line. Foam Packaging is a shipper on the Line. Mr. Davenport will henceforth respond on his own behalf.

25. *The actual parties in this proceeding are James Riffin and Eric Strohmeyer, not Raymond English.* **Response:** The Board's rules are quite precise: To be a party, one must make a filing stating one desires to become a party. To English's knowledge, neither Mr. Riffin nor Mr. Strohmeyer have filed a notice stating either intends to become a party in this proceeding. While English has had a number of informative conversations with Mr. Riffin and

Mr. Strohmeyer, the only real parties in interest are KCSR, VSOR and English.

Respectfully submitted,


Raymond B. English

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December 2007, a copy of the foregoing Reply to KCSR's Response to October 16 Filings of Raymond English; Lakes Entertainment Reply to Supplemental Comments of Raymond English; and the City of Vicksburg's Comments in Support of Exemption Request, was served by first class mail, postage prepaid, upon **William A. Mullins**, Baker & Miller PLLC, Ste 300, 2401 Pennsylvania Ave, N.W., Washington, DC 20037, attorney for Kansas City Southern Railway Company, and upon **Craig Richey**, 315 W. 3rd Street, Pittsburg, KS 66762, attorney for Vicksburg Southern Railroad, Inc.


Raymond B. English