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BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE (202) 863-7820
FACSIMILE (202) 863-7849

William A. Mullins

Direct Dial (202) 863-7823

E-Mail wmullins@bakerandmiller.com

January 16, 2008

VIA ELECTRONIC FILING

The Honorable Anne K. Quinlan
Acting 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)***

Dear Acting Secretary Quinlan:

In a decision in the above-referenced proceeding served on December 12, 2007 ("December 12 Decision"), the Board granted The Kansas City Southern Railway Company's ("KCSR") petition for exemption to abandon a 4.25-mile rail line (the "Line") in Vicksburg, MS, but denied KCSR's petition for an exemption from the offer of financial assistance ("OFA") provisions at 49 U.S.C. 10904.¹ On December 20, 2007 (as supplemented on December 21, 2007), Raymond B. English ("English") and James Riffin ("Riffin")² jointly filed an OFA to acquire the entire Line. On December 27, 2007, the Board found the Offerors to be financially responsible, and directed that negotiations between KCSR and Offerors for the transfer of the Line could continue until January 18, 2008, by which time, if the parties could not reach agreement, either party could request the Board to set terms and conditions to govern the sale of the Line.

KCSR and Offerors have been involved in negotiations, but have not yet reached an agreement regarding acceptable terms or conditions for sale of the Line. The Offerors have expressed a desire to continue negotiations under the OFA process beyond the current January 18 deadline, and KCSR is amenable to such an extension. Accordingly, KCSR is writing to advise

¹ In the companion proceeding, Docket No. AB-1016X, the Board also granted an exemption to Vicksburg Southern Railroad, Inc. to discontinue service on the Line.

² Collectively, English and Riffin will be referred to as the "Offerors."

BAKER & MILLER PLLC

The Honorable Anne K. Quinlan
January 16, 2008
Page 2 of 3

the Board that – (1) Offerors have requested that KCSR ask the Board to extend the OFA negotiating period until January 25, 2008, at which time, if no agreement has been reached, either party may request the Board to set terms and conditions; and (2) KCSR has agreed to Offerors' request and hereby asks the Board for such an extension.

The requested extension would permit discussions to continue, and would allow the parties to more fully develop an accurate assessment of the Line's value in the furtherance of informed negotiations. KCSR is undertaking a more complete examination of the Line and related salvage costs, especially in light of the net liquidation value ("NLV") and net salvage value ("NSV") estimates contained in the Offerors' OFA and in the Offerors' subsequent proposals. The Offerors also desire additional time in hopes of persuading KCSR of the accuracy of their valuation estimates. For these reasons, an extension until January 25 will aid in clarifying and narrowing the issues in establishing an appropriate sale price for the Line, and will afford the parties an additional business week to see if an agreement can be reached.

It is not clear whether extending the OFA negotiating period (and, by extension, the deadline for filing a request for the Board to prescribe conditions and compensation) can be accomplished unless the Board, pursuant to 49 U.S.C. 10502, grants a limited exemption from the statutory timeframes of 49 U.S.C. 10904(e). Subsection 10904(e) provides that a request to set "conditions and amount of compensation" is due "within 30 days after the offer is made," which in this proceeding is January 18. Thus, the statute would indicate that the Board cannot extend the OFA negotiation period as requested herein (or extend the Board's own decisional deadline) without granting a limited exemption from that statutory timeframe. This was the view taken in certain older cases which suggested that an extension may only be granted pursuant to an individual exemption from section 10904(e).³ On the other hand, recent cases indicate that such an exemption is unnecessary, because the Board may grant an extension of the OFA negotiating period without resorting to the individual exemption processes of 49 U.S.C. 10502.⁴

³ See, e.g., Norfolk Southern Railway Company – Abandonment Exemption – In Fayette County, AL, STB Docket No. AB-290 (Sub-No. 190X) ("NS-Fayette County") (STB served Feb. 12, 1998), 1998 STB LEXIS 41, *3 ("The Board cannot grant an extension to the 30-day OFA negotiating period, as it is subject to a statutory deadline," but it can grant an individual exemption for this purpose); Conrail Abandonment in Chicago, IL – In the Matter of an Offer of Financial Assistance, Docket No. AB-167 (Sub-No. 970N) (ICC decided May 1, 1987), 1987 ICC LEXIS 321, *14 (the agency has no discretion to extend the statutory deadlines under what is now section 10904).

⁴ See Delaware and Hudson Railway Company, Inc. d/b/a Canadian Pacific Railway Company – Abandonment Exemption – In Albany County, NY, STB Docket No. AB-156 (Sub-No. 26X) (STB served Dec. 28, 2007); Tennessee Railway Company – Abandonment Exemption – In Anderson and Campbell Counties, TN, et al., STB Docket No. AB-290 (Sub-Nos. 259X and 260X) (STB served July 14 and Sept. 30, 2005) (involving separate extensions of the OFA negotiation period).

BAKER & MILLER PLLC

The Honorable Anne K. Quinlan
January 16, 2008
Page 3 of 3

If, the more recent precedent is incorrect, then KCSR respectfully requests that – (1) the Board clarify its position, and (2) grant the extension on the Board's own motion by finding that continued regulation is not necessary to carry out the rail transportation policy ("RTP") of 49 U.S.C. 10101, and that either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.⁵

Regardless of the legal means by which the Board can lawfully grant an extension of the statutory deadline for filing a request to set terms and conditions, such an extension is warranted and KCSR, at the suggestion and with the concurrence of Offerors, hereby requests an extension of the OFA negotiating period from January 18, 2008, to January 25, 2008, at which time, if the parties are still unable to reach an agreement, either party may request the Board to set terms and conditions consistent with the process set forth at 49 U.S.C. 10904 and applicable regulations.

If there are any questions about this matter, please contact me directly, either by telephone. (202) 663-7823 or by email: wmullins@bakerandmiller.com.

Respectfully submitted,



William A. Mullins

cc: Parties of Record

⁵ See NS-Fayette County and Paducah & Louisville Railway, Inc. – Control Exemption – Paducah & Illinois Railroad Company, STB Finance Docket No. 33362 (STB served Aug. 25, 1997) (where, in a non-abandonment proceeding, the Board granted an individual exemption on its own motion to facilitate a transaction and remove any uncertainty regarding whether or not the subject petition was procedurally deficient)