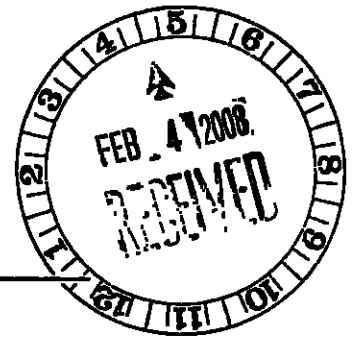


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BEFORE THE
SURFACE TRANSPORTATION BOARD



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

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

SUPPLEMENT TO
REQUEST TO ESTABLISH CONDITIONS AND COMPENSATION
FOR FINANCIAL ASSISTANCE

1. On January 25, 2008, Raymond B. English and James Riffin ("E&R"), filed a Request to Establish Conditions and Compensation for Financial Assistance ("Request"). The purpose for filing this Supplement to Request to Establish Conditions and Compensation for Financial Assistance ("Supplement"), is to inform the Board that on **January 30, 2008 individuals employed in the Warren County Road Department unlawfully removed the railroad bridge that had carried the Line over Glass Road at MP 229.80.** See the attached *Vicksburg Post* January 31, 2008 article.

2. E&R have filed a Request with the Board to set the terms and conditions for their purchase of the Line which is the subject of this proceeding. The parties have indicated the purchase of this Line should be under the same terms and conditions found in the Purchase and Sale Agreement ("PSA") between the Kansas City Southern Railway Company ("KCSR") and the City of Vicksburg ("City"). A copy of this PSA was provided to the Board by E&R.

3. ¶1 of the PSA states:

"1. Purchase and Sale. Subject and pursuant to the terms and provisions of this Agreement, Seller agrees to sell the Entire Property to Buyer, and Buyer agrees to purchase the Entire Property from Seller. The conveyance of the Entire Property from Seller to Buyer shall include any and all appurtenances thereto, any and all improvements located thereon, and any and all easements, right-of-ways and rights of ingress and egress related thereto, with

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the exception of any rail, ties, or other track material ("Rail Materials") located (i) anywhere on the Fee Simple Property on the Fee Simple Property Closing Date or (ii) anywhere on the Railway Property on the Railway Property Closing Date. Seller shall have ninety (90) days after the Fee Simple Property Closing Date to remove the Rail Materials, if any, from the Fee Simple Property, and Seller shall have ninety (90) days after the Railway Property closing Date to remove the Rail Materials from the Railway Property. Any Rail Materials or any other matter remaining on the Fee Simple Property more than ninety (90) days after the Fee Simple Property Closing Date shall be the sole and exclusive property of Buyer, and any Rail Materials or any other matter remaining on the Railway Property more than ninety (90) days after the Railway Property Closing Date shall be the sole and exclusive property of Buyer. Buyer and Seller shall use their best efforts to consummate the transactions contemplated by this Agreement as soon as reasonably possible.

4. ¶ 18 of the PSA states:

"18. Condition and Status of Property. From the Effective Date hereof until the consummation and completion of the Fee Simple Property Closing, Seller (i) shall maintain the Fee Simple Property in substantially the same condition that it is in upon the Effective Date hereof, (ii) shall prevent any lien or other encumbrance on the Fee Simple Property, and (iii) shall not sell, lease or otherwise encumber the Fee Simple Property in any way. Likewise, from the Effective Date hereof until the consummation and completion of the Railway Property Closing, Seller (i) shall maintain the Railway Property in substantially the same condition that it is in upon the Effective Date hereof, (ii) shall prevent any lien or other encumbrance on the Railway Property, and (iii) shall not sell, lease or otherwise encumber the Railway property in any way." (Emphasis added.)

5. ¶20 of the PSA states:

"20. Seller's Default. Except as otherwise provide herein, if Seller defaults with respect to its obligations under this Agreement for any reason other than Buyer's default, Buyer may, at its option, either (i) waive the default, (ii) **obtain specific performance**, or (iii) receive a full refund of the Deposit and payment of the amount provided in Section 4 herein, which amounts shall be in full settlement of any damages and claims of any sort related hereto. These shall be the sole remedies of Buyer in the event of Seller's default with respect to this Agreement, except that this limitation on Buyer's remedies shall not limit Buyer's rights under any indemnification of buyer contained herein.

6. On February 1, 2008, Riffin spoke with Richard George, the Warren County Board of Supervisor for the 5th district. (Bill Lauderdale is the Board of Supervisor for the 4th district, which district encompasses Glass Road and the Glass Road railroad bridge.) During that telephone conversation, Riffin asked Mr. George if KCSR had granted Warren County

permission to remove the railroad bridge. Mr. George responded that Warren County had had a number of conversations with a KCSR representative regarding removal of the bridge. Mr. George further stated that he believed Warren County had received permission from a KCSR representative granting Warren County permission to remove the bridge. Mr. George indicated that he had not participated in the conversations with KCSR, so he did not know with whom Warren County had been discussing removal of the bridge. When Riffin ascertains which KCSR individual had been having discussions with Warren County regarding removal of the Glass Road railroad bridge, he will inform the Board.

7. Paragraph 1 of the PSA states the City has the right to buy all improvements located on the Line. Paragraph 18 of the PSA states KCSR has the obligation to maintain the Railway Property in substantially the same condition that it was in on the Effective Date of the PSA, which is April 5, 2007. Paragraph 18 further states that KCSR “shall prevent any lien or other encumbrance on the Railway Property, and (iii) shall not sell, lease or otherwise encumber the Railway property in any way.” Paragraph 20 of the PSA states that if KCSR defaults on any of its obligations, then the City may obtain specific performance of all terms and conditions of the PSA.

8. Riffin would argue KCSR’s conversations with Warren County regarding removal of the Glass Road railroad bridge, resulted in an encumbrance being placed on the Railway Property, specifically, KCSR granted to Warren County the right to remove the Glass Road railroad bridge. Riffin would further argue KCSR’s failure to prevent Warren County from removing the Glass Road railroad bridge violated its duty to “maintain the Railway Property in substantially the same condition that it was in” on April 5, 2007, the Effective Date of the PSA. Riffin would also argue the City would have the legal right to sue KCSR for specific performance, demanding KCSR replace the Glass Road railroad bridge, so that the City can get the full benefit of all improvements that were located on the Line as of April 5, 2007, including the Glass Road railroad bridge.

9. In this proceeding, the parties have agreed E&R’s purchase of the Line will be in substantial conformity with the terms and conditions of the PSA. This is in conformity with the

Board's precedent, as recently reiterated in *1411 Corporation – Abandonment Exemption – In Lancaster County, PA*, STB FD No. AB 581 (Sub-No. X), Served April 12, 2002, wherein the Board stated, on p. 4:

“... the parties will be directed to proceed with the sale of the line under terms and conditions comparable to those terms and conditions stipulated in the Shawnee / Colonial Purchase Contract, except where a provision in the Shawnee / Colonial Purchase Contract plainly is inapplicable.”

10. Since the City has the right to demand KCSR replace the Glass Road railroad bridge, E&R would argue they also have the right to demand that KCSR replace the Glass Road railroad bridge. In the alternative, E&R would argue the price to be paid for the Line, should be reduced by the cost to replace the Glass Road railroad bridge.

11. The PSA stated the City had the right to purchase the realty, and all improvements thereon, except the Rail Materials. Realty is defined as earth, plus everything firmly affixed thereto. The Glass Road railroad bridge would constitute realty, since it was firmly affixed to the earth beneath it. The PSA stated the City had the right to purchase the realty, plus all improvements thereon, for \$4,500.00 per acre. E&R would argue the value of the realty was diminished by the replacement cost of the Glass Road railroad bridge, and would further argue they should have the right to purchase the realty for \$4,500 per acre, less the cost to replace the unlawfully removed bridge.

12. Within a few days, E&R will have several quotes indicating what it will cost to replace the unlawfully removed bridge. When this information becomes available, E&R will forward a copy to the Board.

13. WHEREFORE, for the reasons stated above, E&R would ask that the Board:

- A. Find that the value of the realty is \$4,500 per acre;
- B. Find that the value of the realty must be reduced by the replacement value of the unlawfully removed Glass Road railroad bridge;

C. And for such other and further relief that would be appropriate and just.

Respectfully submitted,



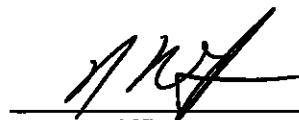
Raymond B. English



James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2008, a copy of the foregoing Supplement to Request to Establish Conditions and Compensation for Financial Assistance, was e-mailed and was mailed, postage prepaid, to **William A. Mullins, Baker & Miller PLLC**, Ste 300, 2401 Pennsylvania Ave, N.W., Washington, DC 20037, attorney for Kansas City Southern Railway Company, and was mailed via first class mail, postage prepaid, to **Craig Richey**, 315 W. 3rd Street, Pittsburg, KS 66762, attorney for Vicksburg Southern Railroad, Inc.



James Riffin

VERIFIED STATEMENT OF JAMES RIFFIN

1. I am over the age of eighteen and am competent to testify to the matters stated in this Verified Statement.

2. On Friday, February 1, 2008, I spoke with Richard George, the Warren County Board of Supervisor for the 5th district. During my conversation with Mr. George, Mr. George informed me that Bill Lauderdale is the Board of Supervisor for the 4th district, which district encompasses Glass Road and the Glass Road railroad bridge. During my telephone conversation with Mr. George, I asked Mr. George if the Kansas City Southern Railway Company ("KCSR") had granted Warren County permission to remove the railroad bridge over Glass Road. Mr. George responded that Warren County had had a number of conversations with a KCSR representative regarding removal of the bridge. Mr. George further stated that he believed Warren County had received permission from a KCSR representative granting Warren County permission to remove the bridge. Mr. George indicated that he had not participated in the conversations with KCSR, so he did not know with whom Warren County had been discussing removal of the bridge.

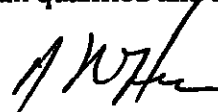
3. During the summer of 2007, I personally, using my own hands, tools, rail saw, torches, hydraulic excavator, Bob Cat, 80-ton All Terrain Krupp crane, semi-trailers and truck tractor, carefully removed, then transported to my Cockeysville, Maryland MOW facility, more than 6,000 feet of track and three turnouts, some of which was welded rail, and some of which was jointed rail.

Respectfully submitted,


James Riffin

VERIFICATION

I, James Riffin, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.



Executed on February 4, 2008.

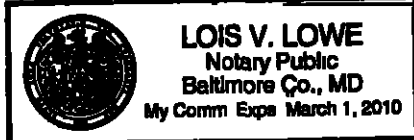
James Riffin

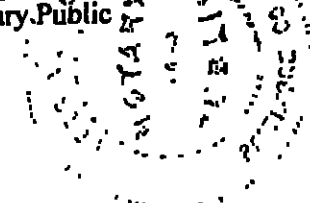
STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, that on this 4th Day of February, 2008, before me, a Notary Public of said State, personally appeared James Riffin, known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires: _____




Notary Public


TO: Melvin Clemens, Director
Office of Compliance & Consumer Asst.
Surface Transportation Board, Ste 1180
395 E Street, S.W.
Washington, DC 20423-0001
(202) 245-0279

FROM: James Riffin
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210
February 4, 2008

RE: Unlawful removal of a railroad bridge in Warren County, Mississippi.

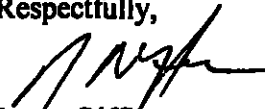
Dear Mr. Clemens:

Attached is a copy of an article that appeared in the January 31, 2008 edition of the *Vicksburg, Mississippi Post*. The Glass Road railroad bridge that was removed is located at MP 229.80 on the Vicksburg Industrial Lead. This line of railroad is the subject of: *Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS*, STB Docket No. AB 103 (Sub-No.21X). The Glass Road railroad bridge is depicted in photograph 16 of Kansas City Southern's August 24, 2007 Abandonment Exemption, which is about 10 pages from the end of the filing. On January 25, 2008, I asked the Board to set the terms and conditions for my proposed purchase of the Line.

In the *Sills Realty* case, FD 35036, on October 12, 2007, the Board issued a Cease and Desist Order directing Sills Realty, a non-carrier, to cease and desist activities that appeared to be under the regulatory authority of the Board. The removal of a railroad bridge located on an active line of railroad, without prior Board authority, appears to be a clear violation of 49 U.S.C. 10903. The unauthorized removal of this railroad bridge is particularly egregious, since that very bridge is the subject of an OFA proceeding currently before the Board.

With the above in mind, I would ask that your office institute an investigation to ascertain who gave Warren County authority to remove the bridge, and I would ask that your office issue a Cease and Desist Order directing Warren County to cease and desist from any further unauthorized activities with regard to this line of railroad.

Respectfully,



James Riffin

The Vicksburg Post.

SINCE 1863 - EVERYTHING A HOMETOWN NEWSPAPER SHOULD BE

Print Page

FRIDAY FEBRUARY 1, 2008 Last modified Thursday, January 31, 2008 11 55 AM CST



Warren County Road Department employee Danny Cogan cuts a piece of old railroad track as a crew dismantles the railroad trestle over Glass Road Wednesday (Joshua Corban * The Vicksburg Post)

County shatters Glass traffic barrier

By Danny Barrett Jr.

County shatters Glass traffic barrier

By Danny Barrett Jr

[01/31/08] An impediment for motorists and emergency vehicles for years, a rail trestle over Glass Road in south Warren County is being removed in a project expected to take the remainder of the week

Lanes in both directions along a 600-foot stretch of roadway will be closed at least through today to enable work crews to take down the long-abandoned overpass, Warren County Road Department Manager Richard Winans said

Pilings supporting the overpass in the middle of the east and westbound lanes near private Thomas Drive and two other wooden piers on county right-of-way will be taken out and cut back to ground level, Winans said. If weather conditions allow, the asphalt below will be resurfaced this week.

Once part of Kansas City Southern Railway's southbound track through Vicksburg and Warren County, the line has not been active for years. Grass and weeds have overgrown the remains of the rail bed, scattered with aging spikes and rotted crossties.

Efforts to have the low-set structure removed for easier access by larger trucks and ambulances have been ongoing for at least eight years, Winans said.

Posted clearance of the trestle was just 9 feet, 5 inches. KCS still owns the structure itself, but talks to take down parts physically on county property picked up pace in recent months.

"I'm very happy," District 4 Supervisor Bill Lauderdale said. "It's been a big problem for a lot of people for a long time."

A clue as to how long the trestle has been in place could be seen on a long piece of rail tracking taken down from its side.

"It was stamped on there that it was made in Tennessee in 1946," Winans said.