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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**

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

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

SUPPLEMENTAL COMMENTS OF RAYMOND B. ENGLISH

1. Raymond B. English ("English") herewith files his Supplemental Comments of Raymond B English.

1. BACKGROUND INFORMATION

2. 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.

3. On October 2, 2007, English filed his initial Comments. At the time English filed his initial comments, he did not have the photographs attached hereto as his Exhibit A. Since the photographs depict portions of the Line as it presently exists, and since the photographs directly

address material issues which will have an impact on the Board's decision in this proceeding, English would request leave from the Board to file these Supplemental Comments, in order to provide the Board with a more complete record

4. In their Petitions, KCSR and VSOR (collectively, "Petitioners"), indicated that they desired to abandon, and to discontinue service over, 4.25 miles of the Vicksburg Industrial Lead, between mileposts 225.6 and 229.85. From this statement, one would reasonably conclude that there were in fact 4.25 miles of rail on the ground, and that the Petitioners had the present capability of providing service over the entire 4.25 miles of Line, particularly since no previous discontinuance-of-service or abandonment requests had been filed with the Board. Unfortunately, this conclusion would be erroneous, for sometime prior to the present filing, the Petitioners removed the rails between mileposts 227.5 (where Foam Packaging, the only shipper on the Line, transloads polystyrene pellets from rail cars to its truck), and milepost 229.85, the endpoint of the Line referenced in Petitioners' filings. Presently, there are only 1.9 miles of rails left on the right-of-way, which rails are between mileposts 225.6 and 227.5. See English's Exhibit A, which are photographs depicting where the rails end at milepost 227.5, and the photographs which depict the absence of rails at milepost 229.85.

5 In their Petitions, the Petitioners indicated that the Line bisects property Lakes Entertainment, Inc. ("Lakes") owns, and upon which Lakes proposes to build a casino. The Petitioners further represented that the construction of this casino would be thwarted if the Line was not abandoned. English's Exhibit B is a copy of the casino's proposed site plan. As this exhibit clearly indicates, the casino's property lies to the west of the Line. The only portion of the casino's property that crosses the Line, is that portion the casino proposes to use as a road access from the nearby highway 61, to the casino complex. And as the Board stated in *BNSF Railway Company - Abandonment Exemption - In Oklahoma County, OK*, Docket No. AB 6 (Sub No. 430X), Served November 10, 2005:

"However, SEA notes that the Oklahoma Corporation Commission and the Federal Railroad Administration have specific safety regulations in place for at-grade crossings that would mitigate the potential safety impacts of such diversion of traffic. Accordingly, SEA does not recommend that the Board impose any conditions in this area and none will be imposed."

6. In its Petition, KCSR indicated that it would be receptive to deeding the right-of-way to

the City of Vicksburg, pursuant to the Board's Notice of Interim Trail Use ("NITU") provisions [See: 49 CFR 1152.29 and 16 USC 1247(d)]. The NITU provisions specifically state any taking of the right-of-way under the NITU provisions would be subject to possible future reconstruction and reactivation of the right-of-way for rail service. KCSR's statement that if KCSR is barred from removing the rails, the casino project would be thwarted, does not comport with the NITU provisions, which specifically state that at some future time, the line could be reconstructed and reactivated. So, if the right-of-way were to be converted into a trail per the NITU provisions, the casino would still be ill-advised to put any type of permanent structure on the right-of-way, for at some later time, the casino could be ordered to remove the structure from the right-of-way, so that the Line could be reactivated.

7. KCSR has indicated that if the Line were to be subject to the OFA procedures, the cost to acquire the Line would be prohibitive, and would be beyond English's means. This statement on behalf of KCSR, is not supported by the facts before the Board. English and Foam Packaging have not indicated what their financial resources might be. Since Foam Packaging employs 130 individuals, and has been in business for nearly 30 years, one could reasonably assume that Foam Packaging and / or English, would have sufficient assets to acquire the Line. KCSR failed to indicate the nature of its title in the Line (fee simple or reversionary). If KCSR's title in the Line was reversionary, then the real estate would have no value. Since there are only 1.9 miles of rail left on the Line, the Net Liquidation Value of this small amount of metal would be rather nominal. [With 90-pound rail, 1.9 miles of line would weigh approximately 269 long tons. Adding 10 % for spikes, tie plates and splice bars, would bring the net weight to about 296 long tons. Deducting 50% to compensate for the cost of removing the metal and ties, for disposing of the worthless ties, and for transporting the metal to a scrap dealer, would leave approximately 148 long tons at \$175 per long ton, or about \$26,000.00.] So, if KCSR's title were reversionary, the Net Liquidation Value of the Line may be in the order of \$26,000.00, or the price of a modest automobile. If KCSR's title was in fee simple, the Line may contain approximately 51.5 acres [A 100' wide right-of-way 4.25 miles long would contain 51.5 acres.] Some of this acreage would traverse wetlands, and so would have no fair market economic value. The vast majority of the Line traverses agriculturally zoned land, and so would have a modest economic value, perhaps \$3,000 per acre. If the land had an average value of \$5,000 an acre, 51 acres would fetch about \$250,000. But since the Line is a long, skinny piece of dirt, which few purchasers have an interest in acquiring, it likely would have a fair market value significantly less than \$250,000. Were KCSR to disclose how much Lakes offered to purchase the adjacent 240 acres, that would

provide a basis for determining the value of a piece of real estate whose dimensions made it easily usable.

8. The Petitioners failed to disclose in their Petitions that at the end of the Line, there is a shipper who has expressed an interest in receiving freight rail service. When this shipper asked for freight rail service, the Petitioners told this shipper that the Line had been abandoned, there no longer were any rails on the Line, and consequently, they would not be willing to provide this shipper with freight rail service. English would argue, the fact that this shipper requested rail service, would suggest Petitioners' statement that there was little or no potential for additional traffic, was misleading at best

9 English would further argue that Petitioners' statement that there would be significant public benefits if the Line were to be abandoned, is pretty far fetched at best, and may be construed to be misleading or false, specifically:

A. The Petitioners have stated that unless the Line is abandoned and the rails are removed, the Lakes' "casino project may not move forward " Petition at 13. As discussed in ¶5, *supra*. Exhibit B, a copy of the casino's proposed site plan, clearly indicates Lakes proposes to build the casino's complex some distance to the west of the right-of-way.

B While removal of the right-of-way "would eliminate five at-grade crossings," (Petition at 13), English would argue the elimination of those five grade crossings would have no significant impact on traffic flow or on public safety (Petition at 13), since the amount of rail traffic is so minimal (one train per week; one rail car per train). To argue that one train per week, consisting of one locomotive and one rail car, would have any impact on traffic flow or on public safety, is rather ludicrous. In addition, as the Board stated in the *BNSF* case cited in ¶5, *supra*, "the Federal Railroad Administration [has] specific safety regulations in place for at-grade crossings that would mitigate the potential safety impacts "

C. The Petitioners have presented no evidence that would even remotely suggest that failure to abandon the Line would result in any harm to the community. No one would lose their job if the Line was not abandoned Traffic flow and public safety are not likely to be better if the Line is not abandoned Lakes' decision to build, or to not build its proposed casino, will not be based on the existence, or non-existence, of the Line. And the City of Vicksburg's desire to use

the right-of-way as a recreational trail, must give way to efforts to preserve rail service, for as the Board stated in the *1411 Corporation* case cited by the Petitioners (Petition at 13):

"But it is well settled that an OFA should take priority over a trail use proposal because of the strong Congressional intent to preserve rail service wherever possible.

With regard to using the Linc for public use purposes, the Interstate Commerce Commission stated in *Rail Abandonments - Use of Rights-of-Way As Trails*, 2 I.C.C. 2d 591, 608 (1986):

"Offers of financial assistance to acquire rail lines or subsidize rail operations under section 10905 [now 10904] take priority over both interim trail use and public use conditions because retention of existing rail service is mandatory under section 10905"

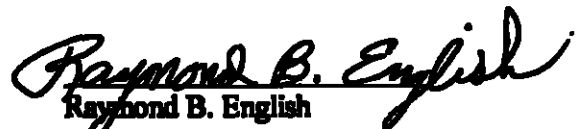
WHEREFORE, English would request leave from the Board to file these Supplemental Comments

Respectfully submitted.


Raymond B English

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2007, a copy of the foregoing Supplemental Comments of Raymond B. English, 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