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February 8, 2008

VIA E-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:

On February 4, 2008, Mr. James Riffin filed a letter with Director Clemens in reference to the alleged removal of a railroad bridge in Warren County, Mississippi that is owned by The Kansas City Southern Railway Company ("KCSR") and is part of the line that is the subject of the above referenced proceeding. Mr. Riffin's letter attached a January 31, 2008 article from *The Vicksburg Post* that described the efforts of Warren County to remove KCSR's railroad trestle that crosses over Glass Road in Vicksburg, MS. Mr. Riffin's letter requested that Mr. Clemens' office "institute an investigation to ascertain who gave Warren County authority to remove the bridge" and requested the Office of Compliance and Consumer Assistance ("OCCA") to "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." On February 5, 2008 and on behalf of KCSR, I responded to Mr. Riffin's letter and explained the circumstances underlying Warren County's unilateral actions. I also set forth the reasons why OCCA did not need to issue a "Cease and Desist Order." I attach a copy of that letter for entry into the official record of this proceeding.

Not content with the letter sent to Director Clemens, on February 4, Mr. Riffin also filed numerous pleadings in this proceeding including a "Supplement to Request to Establish Conditions and Compensation for Financial Assistance" ("Supplement") which complained about the "removal" of the bridge. KCSR was in the process of drafting a response to the Supplement and the numerous other pleadings filed by Mr. Riffin when the Surface Transportation Board ("STB" or "Board") issued its February 6 decision. That decision mooted the need for KCSR to respond to most of Mr. Riffin's procedurally improper filings. However, the Board did accept the Supplement

and directed KCSR to respond to the allegations concerning the removal of the bridge. Apparently the Board was unaware of KCSR's February 5 letter to Director Clemens when it issued its February 6 decision and directive.

Hopefully KCSR's February 5 letter responds to the Board's February 6 directive. Nonetheless, to ensure that the record reflects all of the information, attached is a statement by Mr. David Reeves, KCSR's Associate General Counsel, regarding his conversation with the President of the Warren County Board of Supervisors. As noted in the February 5 letter and Mr. Reeves' statement, there is no basis for an investigation, cease and desist order, or any other action by the Board as Warren County has assured KCSR that it will take no further action to remove any part of the bridge until this proceeding before the Board is resolved.

Finally, Mr. Riffin has made statements to the effect that KCSR should compensate him for the fact that Warren County has removed some parts of the bridge and that the price of the line should be reduced by the cost "to replace the Glass Road railroad bridge." His requests should be rejected. Neither Mr. Riffin's request to set terms and conditions nor KCSR's evidence in reply placed any positive value on the bridge or its component parts. If Mr. Riffin were to acquire the bridge pursuant to his offer of financial assistance, his payment would not include any value for the bridge.¹ He would get what KCSR has today; a bridge with missing parts – nothing less and nothing more - and he wouldn't have paid anything for it. If Mr. Riffin acquires the corridor and line and believes he is entitled to compensation for the removal of steel from the bridge, then would be the appropriate time for consideration of what remedies may exist. Currently he has no ownership interest in the property which would entitle him to any remedy.

Respectfully submitted,



William A. Mullins

cc: Parties of Record

¹ In fact, consistent with STB precedent, the net liquidation value of a bridge and its component parts is normally zero regardless of its condition. See Union Pacific Railroad Company – Abandonment -- Between Tekoa And Fairfield In Whitman And Spokane Counties, WA; Union Pacific Railroad Company – Abandonment – Between Colfax And Tekoa And Thornton And Seltice, In Whitman County, WA In The Matter Of A Request To Set Terms And Conditions, Docket No. AB-33 (Sub-Nos. 62 & 63), 1991 ICC LEXIS 30 (ICC served Jan. 30, 1991). Mr. Riffin should not be entitled to compensation for something that has a zero value.

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

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

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

**STATEMENT OF
DAVID C. REEVES**

My name is David C. Reeves. I am an Associate General Counsel for The Kansas City Southern Railway Company ("KCSR"). My business address is 427 West 12th Street, Kansas City, MO 64105. The purpose of this statement is to discuss KCSR's response to a phone call from James Riffin to me on Friday, February 1, concerning actions by Warren County, MS with respect to the Glass Road bridge which lies at the very south end of the line at issue in this case.

I received a phone call from Mr. Riffin on February 1. I believe the call occurred between 1:00 and 1:30 Central Standard Time. He stated that an article by the Vicksburg Post stated that Warren County was removing the rail bridge over Glass Road and that KCSR had given Warren County permission to do so. He told me that this did not look good for KCSR and that he had not yet decided exactly what he would do about it, but that he would probably make filings at the Board on the following Monday, unless that became unnecessary because KCSR chose to reconsider its previous rejection of his offer for the line.

I told him that I was not aware of any such article or activity and that I had no knowledge of KCSR authorizing any such activity. He said he would get the article sent to me. I received a

link to the article from Eric Strohmeyer of CNJ Rail Corporation (who is also involved in Mr. Riffin's plans regarding this line) at about 1:34 CST. I read the article and noted that it did not state, as Mr. Riffin had said, that KCSR had authorized removal of the bridge.

Over about the next hour, I did several things in connection with this issue:

- I called directory assistance and obtained a phone number of the Warren County Road Department, which was mentioned in the article Mr. Strohmeyer forwarded. I phoned there and found only an answering machine. I left a message on the answering machine that Warren County was not authorized to remove the bridge over Glass Road and that they should immediately cease any such activity. I also left my contact information in case they had questions. No one employed by the road department has called me since.
- I spoke with a senior person in our engineering department to whom any request to remove a bridge on KCSR property should be referred. He told me that he had not authorized removal of the bridge over Glass Road, and that no one who reports to him would be authorized to give such permission without his approval, which he had not given.
- I obtained from Nancy Thomas, City Attorney for Vicksburg, the name and phone number of Richard George, head of the Warren County Board of Supervisors. I called that number and spoke with Mr. George. I told him the status of this proceeding and that while KCSR had sought permission to abandon the line, that such permission was still pending and that the bridge could not be removed unless and until abandonment authorization became final or the line became a rail-banked trail and the City okayed removal of the bridge. He expressed the county's interest in having the bridge removed because its low clearance prevents

movement of large vehicles such as ambulances, but said that he understood the posture of this matter before the Board and that he would tell the Road Department to cease removal of the bridge unless and until it was properly authorized.

I sent Mr. Riffin a brief e-mail before I went home that evening generally advising him of these matters.

In addition, on Tuesday, February 5, I spoke with William A. Mullins, KCSR's attorney in Washington, DC handling this matter. Mr. Mullins informed me of a conversation that he had with Mr. George on February 4 in which Mr. George confirmed to Mr. Mullins that Warren County had indeed stopped work on dismantling the bridge after Mr. George spoke with me. I am not aware of any further work by Warren County work crews since that time to further dismantle the bridge.

Indeed, this morning, I received the attached text of another article from the Vicksburg Post (Exhibit A) relating to the current status of the bridge which appears to confirm Mr. George's statements to Mr. Mullins and me. While there are some inaccuracies in the article (e.g., the statement that "A Dec. 12 ruling by the U.S. Surface Transportation Board, an administrative arm of the U.S. Department of Transportation, cleared the way for the plastics and foam container company and a Maryland-based man, James Riffin, to purchase the entire section of rail"), the article indicates to me that Mr. George did indeed do what I requested, which was to stop county forces from removing the bridge at least until regulatory issues are settled.

Respectfully submitted,



David C. Reeves
Associate General Counsel
The Kansas City Southern Railway Company

Exhibit A

FRIDAY FEBRUARY 8, 2008 Last modified: Thursday, February 7, 2008 12:32 PM CST

Work on Glass Road trestle stopped

By Danny Barrett Jr.

[02/07/08] Brakes have been put on removal of a low rail trestle over Glass Road at the request of Kansas City Southern Railway based on belief the Warren County project might violate federal law.

Overtaken long ago by grass and vegetation, the trestle has not been used by trains in years. District 4 Supervisor Bill Lauderdale, who took office in January, called the overpass a hazard to traffic and ordered it torn down. Preliminaries started last week.

"I thought that since it was on our right of way, we could remove it," Lauderdale said. "Unfortunately, I was wrong."

On paper, KCS still owns the spur that extends south from its main east-west line and likely has the final say on when and whom can remove it.

According to federal regulators, the trestle is five one-hundredths of a mile inside a 4.25-mile area slated for abandonment by the railroad.

The larger situation includes attempts of an area industry, Foam Packaging Inc., to continue rail service to its plant on U.S. 61 South.

A Dec. 12 ruling by the U.S. Surface Transportation Board, an administrative arm of the U.S. Department of Transportation, cleared the way for the plastics and foam container company and a Maryland-based man, James Riffin, to purchase the entire section of rail. That ruling also put the brakes on a deal involving the City of Vicksburg to be the funding conduit that would lead to Lakes Entertainment owning some of the right-of-way or its eventual use as a public area.

Filings in recent weeks with the transportation board show the agency has given Foam Packaging president Raymond B. English and businessman and rail carrier Riffin more time to come up with agreeable dollar figures.

The county's action on Glass Road would not block service to Foam Packaging, which is north of the trestle, but who has rights to do what along the spur.

"Foam Packaging has the absolute right to purchase (the line)," Riffin said, adding Warren County "doesn't have a right" to take down the Glass Road trestle.

In a supplement filed with STB Tuesday and signed by English and Riffin, the two men, in a joint offer, asked the railroad authority to value the rail property at \$4,500 per acre minus the replacement value of the "unlawfully removed Glass Road railroad bridge," plus other unspecified methods of relief termed "other and further relief that would be appropriate and just."

Also contained in the filing is a request to STB to order an investigation as to how Warren County assumed authority to remove the trestle, an act Riffin said violates federal law governing active railroad lines.

In a phone conversation with District 5 Supervisor Richard George, board president, relayed by Riffin to federal officials, numerous conversations were held between the county and KCS over removing the treste and eliminating the 9.5-foot clearance, which even small vehicles pass through with great care.

Wednesday, George and Lauderdale recalled talks with KCS, with Lauderdale saying talks go back a long way. While heeding the call from railroad legal counsel, he said the roadway needs to be cleared for increasing industrial use. LeTourneau is nearby and the area is near the Mississippi entry point for the Southeast Supply Header natural gas transmission line, which will extend under the Mississippi River.

"Already, I've heard people can't get through there," Lauderdale said.

English was not available this week, but in the past has said his firm would face substantially higher costs if it had to truck in raw materials and if periodic rail service was not available. Federal rules place strong emphasis on keeping service to industries that use rails, even if rail companies want to abandon the lines as unprofitable.

The Lakes Entertainment deal, requiring legislative approval, was sought to give the proposed hotel and casino project clear access from U.S. 61 and was considered a done deal by the parties, despite the adverse impact on Foam Packaging. But a New Jersey-based firm, CNJ Rail Corp., provided counsel to Foam Packaging in its efforts to head off the plans of the city and casino company and won its case before the regulatory agency.

Published reports in 2007 showed CNJ active in similar cases nationwide, including a 2.2-mile section of track near Baltimore.

Riffin qualified as a Class III, or short-line, railroad in 2006 after acquiring a spur line from CSX in western Maryland to continue rail service to property he owns. Riffin told the Baltimore City Paper he wants to buy the line to help move Maryland's shipping emphasis off trucks and onto rail. CNJ was a confirmed interest in running the line as a third party.

The transportation board ruled against Riffin in the matter, which has not been appealed to date. STB officials said Wednesday a decision on terms involving the section of track in Warren County is expected in 30 days.

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February 5, 2008

VIA E-MAIL AND HAND DELIVERY

Mr. Melvin Clemens
Director
Office of Compliance & Consumer Assistance
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 Director Clemens:

On February 4, 2008, you received a letter from Mr. James Riffin in reference to the alleged unlawful removal of a railroad bridge in Warren County, Mississippi. Mr. Riffin's letter requested that "your office institute an investigation to ascertain who gave Warren County authority to remove the bridge" and requested your office to "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." On behalf of The Kansas City Southern Railway Company ("KCSR"), I write to inform you that no investigation is required nor does your office need to issue a "Cease and Desist Order."

Mr. Riffin's letter attached a January 31, 2008 article from *The Vicksburg Post* that describes the efforts of Warren County to remove a railroad trestle that crosses over Glass Road in Vicksburg, MS. The article and Mr. Riffin's letter are accurate in that the trestle is owned by KCSR. Mr. Riffin is also accurate in noting that the bridge/trestle is subject to the above-captioned proceeding. Indeed, the right-of-way, bridge, and track upon it all remain an active line of railroad subject to the STB's jurisdiction.

At this time, however, your office does not need to institute an investigation or issue a cease and desist order. KCSR can state for the record that it did not give Warren County permission to remove any part of the bridge or the track upon it. Indeed, upon learning from Mr. Riffin that Warren County was removing portions of KCSR's property, Mr. David Reeves,

Associate General Counsel for KCSR, immediately called the President of the Board of Supervisors, Mr. Richard George, and informed him that Warren County had no permission to remove any portion of the bridge. Mr. George apologized for the misunderstanding and informed Mr. Reeves that he would order the work crews to immediately stop the work. Yesterday, I personally called and spoke with Mr. George. He confirmed that the work did in fact cease shortly after he received Mr. Reeves' phone call and that very few parts of the bridge were removed. You can confirm these facts yourself by calling Mr. George at (601) 634-8073.

The misunderstanding arose due to several conversations between Warren County and a local representative of the KCSR, whose name Mr. George could not recall. These conversations were "more than several years ago" according to Mr. George. At the time, the KCSR local representative apparently told Warren County that it could take down the bridge if it did so at its own expense and the proper approvals were obtained. Nothing was done for years, and since that time, the bridge has become more and more of a concern to Warren County as according to Mr. George, it hinders emergency response teams. Due to a recent emergency response event and the availability of both the time and money for the Warren County work crews, the county decided to finally take the bridge down at its own expense. Mr. George freely admits that they began this work based solely on the prior understanding from "more than several years ago" and without recontacting KCSR personnel. They also were not aware that the bridge had never received STB abandonment authority. Given that we now know why Warren County work crews did what they did and that the work did in fact cease taking down the bridge, there is no need to institute an investigation or to issue a cease and desist order.

It is unfortunate that Mr. Riffin's letter, while accurate in some aspects, completely misrepresents the story on other aspects. Indeed, his statement that the "unauthorized removal of this railroad bridge is particularly egregious" appears to have been made to deliberately mislead you into believing that the bridge had in fact been removed when such was not the case. KCSR can assure you that until such time as it receives full abandonment authorization to remove the bridge, it will not do so, nor will Warren County. Likewise, KCSR stands willing and able to provide common carrier service over the bridge in accordance with STB precedent, even if that means restoring tracks or replacing parts of the bridge.

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: Mr. James Riffin
Mr. David Reeves
Mr. Richard George (via facsimile)