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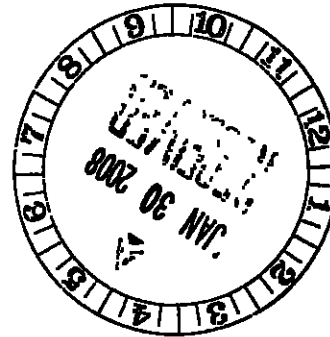
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January 30, 2008

BY HAND DELIVERY

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.

Enclosed please find an original and eleven copies of the Reply To Request To Establish Conditions And Compensation For Financial Assistance submitted on behalf of The Kansas City Southern Railway Company ("KCSR") in the above-captioned proceeding.

Please acknowledge the receipt and filing of the enclosed notice of exemption by time stamping the eleventh copy and returning it to the courier for delivery to me. 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

Enclosures

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Office of Proceedings

JAN 30 2008

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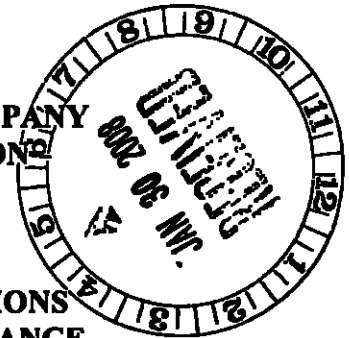
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**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

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

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

**REPLY TO REQUEST TO ESTABLISH CONDITIONS
AND COMPENSATION FOR FINANCIAL ASSISTANCE**



**ENTERED
Office of Proceedings**

JAN 30 2008

**Part of
Public Record**

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**Attorneys for The Kansas City
Southern Railway Company**

January 30, 2008

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
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**STB DOCKET NO. AB-103
(SUB-NO. 21X)**

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

**REPLY TO REQUEST TO ESTABLISH CONDITIONS
AND COMPENSATION FOR FINANCIAL ASSISTANCE**

On January 25, 2008, Raymond B English (“Mr. English”) and James Riffin (“Mr Riffin”),¹ individuals and parties of record in the above-referenced proceeding, requested the Board to establish conditions and compensation for their proposed acquisition of a rail line owned by The Kansas City Southern Railway Company (“KCSR”) pursuant to the offer of financial assistance (“OFA”) provisions of 49 CFR 1152.27(g)-(h).² In their Joint Request, Petitioners urge the Board to prescribe a maximum purchase price of \$0 for the entire KCSR line that is the subject of the above-captioned abandonment proceeding, extending from milepost 225.6 to milepost 229.85 in Vicksburg, Warren County, MS (the “Line”), and to penalize KCSR for the fact that its predecessor removed part of the track by directing KCSR to expend an unknown amount to relay that track on a portion of the line where there have been no shippers or

¹ Messrs. English and Riffin will be referred to as “Petitioners ”

² Petitioners’ request to establish conditions and compensation filed in this proceeding on January 25, 2008, will be referred to as the “Joint Request ”

requests for common carrier service for almost two decades and then convey that newly laid track to Petitioners for free also ³

As set forth in detail below and as proven in the valuation evidence accompanying this filing, Petitioners have grossly undervalued the rail line that they seek to acquire through the OFA process by urging that it has no, or a negative, value. As KCSR shows in this filing, the property in question possesses a minimum constitutional value of \$504,615. Accordingly, on the basis of the evidence of record and in keeping with Board precedent and the Board's statutory mandate at 49 U.S.C. 10904, the Board should establish the sale price for the Line at \$504,615. Valuing the line for less than that amount would result in an unlawful taking in violation of the Fifth Amendment of the U.S. Constitution, including being inconsistent with the principles of Kirby Forest Industries, Inc. v. United States, 467 U.S. 1 (1984) (holding that the value of property for purposes of a Fifth Amendment taking should be determined at the time the property is actually taken) ("Kirby") Accordingly, on the basis of the evidence of record and in keeping with Board precedent and the Board's statutory mandate at 49 U.S.C. 10904, the Board should establish the sale price for the Line at \$504,615.

BACKGROUND

On August 24, 2007, KCSR and Vicksburg Southern Railroad, Inc. ("VSOR") jointly filed petitions for exemption for KCSR to abandon and for VSOR to discontinue common carrier

³ Petitioners' Joint Request to value the entire Line claims that the value of the northern 1.9 miles of the Line is negative \$174,980, and that the southern 2.35 miles is worth either up to \$45,000 or, alternatively \$128,000 (assuming KCSR expends untold amounts in restoring track that had been removed prior to KCSR's ownership of the Line and right-of-way). Because the combined values of the first and second parts of the Line, under Petitioners' presentation, amount to a negative value, it appears, although it is not entirely clear, that Petitioners either expect for the Board to ascribe the Line a \$0 value or to direct KCSR to restore the track and pay Petitioners some amount for their willingness to take the Line off of KCSR's hands. Petitioners provide no case support or statutory justification for such an unprecedented result.

rail service⁴ over approximately 4.25 miles of rail line (the "Line") in Vicksburg, MS ⁵ As part of that abandonment filing, KCSR requested exemptions from the OFA provisions at 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905 in order to be able to convey the right of way to the City of Vicksburg for use as a trail in conjunction with a new casino development adjacent to the Line. Foam Packaging, Inc. ("Foam"), a shipper that transloads approximately 60 carloads of plastic per year from a spur adjacent to the end of the Line, objected to the proposed abandonment and discontinuance of service, and to KCSR's request for an exemption from section 10904. Thereafter, Mr. English, Foam's president, stated his support for the proposed abandonment, subject to the Board's denial of KCSR's section 10904 exemption request, and gave notice of his intent to file an OFA. Other filings now in the record followed.

In a decision served on December 12, 2007 ("December 12 Decision"), the Board granted KCSR's and VSOR's respective petitions to abandon the Line and to discontinue service over it, but denied KCSR's request for an exemption from the section 10904 OFA provisions. The December 12 Decision accepted the findings and conclusions of the Board's Section of Environmental Analysis ("SEA"), which were contained in an Environmental Assessment ("EA") issued by SEA on October 23, 2007 ("October 23 EA") and which were not objected to or commented upon by Petitioners. Accordingly, the Board granted the abandonment subject only to the condition that KCSR notify and consult with the National Geodetic Survey ("NGS") at least 90 days before beginning salvage activities that would disturb or destroy any geodetic

⁴ VSOR's discontinuance of service petition was captioned as Vicksburg Southern Railroad, Inc. – Discontinuance of Service Exemption – Line in Warren County, MS, STB Docket No. AB-1016X.

⁵ As the record reflects, the parties agree that the track south of milepost 227.5 was removed prior to KCSR's acquisition of the line from MidSouth Rail Corporation ("MidSouth") in 1993. See KCSR Response to October 16 Filings of Raymond B. English (filed on November 5, 2007) at 6, and Joint Request at 4, par. 7.B.

station markers that might be located along the line. The Board imposed no other environmental conditions or requirements.

On December 20 and 21, 2007, Petitioners filed their OFA,⁶ which was submitted contemporaneously with a request for an extension of the OFA filing period.⁷ Until the filing of Petitioners' supplemental OFA on December 21, it appeared that Mr. English alone would be seeking to acquire only the northern 1.9 miles of the Line in his individual capacity. However, in their December 20 and 21 filings, Petitioners joined forces to submit a single offer to acquire the entire KCSR line from Milepost 225.6 to 229.85. In their unified OFA, Petitioners offered to acquire the entire 4.25-mile rail property, claiming that the rail line should be valued at \$96,000, well below KCSR's initial valuation of \$472,150 for the entire Line.

In a decision served on December 27, 2007, the Board's Director of Proceedings accepted Petitioners' OFA and provided that negotiations for the transfer of the line could continue until January 18, 2008, by which deadline, if the parties were unable to reach a negotiated arrangement, either party could file a request for the Board to set terms and conditions to govern the sale. At Petitioners' suggestion, with KCSR's concurrence, the OFA negotiation period, and the related deadline for filing a request to set terms and conditions, was extended until January 25, 2008 by decision served on January 17, 2008.

⁶ Originally, the subject OFA was filed on December 20, 2007, on behalf of Mr. English, an individual associated with the only shipper on the Line. However, on the following day, Messrs. Riffin and English supplemented the OFA to reflect that Mr. Riffin had become a party to the offer, advising that their OFA would be a joint effort between the two individuals. While Mr. Riffin provided a blanket statement of what Mr. Riffin claims as his financial worth, such a statement was not supported by any evidence, bank statements, or independent verification. It was thus error for the Board in its December 27 decision to find both Mr. Riffin and Mr. English financially responsible parties.

⁷ This extension request was rendered moot by the nearly simultaneous filing of Petitioners' OFA.

Upon acceptance of the OFA, Petitioners and KCSR commenced a dialogue concerning the possible sale of the line.⁸ Petitioners were supplied with a copy of a Purchase and Sale Agreement dated April 5, 2007 ("PSA" or "KCSR-City PSA") between KCSR and the City of Vicksburg ("City"), which confirms that, but for Petitioners' OFA, the City would purchase all of the subject right-of-way for \$231,795 under the Board's interim trail use procedures, regardless of whether KCSR salvaged all or any portion of the track on the northern 1.9 miles of the Line. The parties thereafter agreed that the substance of their discussions would remain confidential. KCSR also advised Petitioners that KCSR had retained an independent valuation expert⁹ and informed them of that expert's opinion of the net salvage value ("NSV") of the track materials (rails, tie plates, spikes, ties, etc.) located on the line. Ultimately, however, Petitioners were unwilling to accept KCSR's valuation, and now insist, quite incorrectly, that the Line has a net negative value.¹⁰

⁸ As the Board's December 12 Decision indicates, the Line is a 4.25-mile portion of a 6.85-mile stub-ended branch. The northernmost section of this branch (which is approximately 2.6 miles long) was not included in the subject abandonment and discontinuance proceedings. VSOR continues to operate over that portion of branch line and will continue to do so regardless of the outcome of this proceeding.

⁹ KCSR's track materials expert, Mr. Gene A. Davis, P.E., Director, Transportation Engineering, with R. L. Banks & Associates, Inc. ("RLBA") has produced a verified statement (attached hereto as Exhibit No. 1) explaining in detail his valuation methodology and the basis for his conclusions regarding the net salvage value of the Line's track materials based on his own on-site inspection of the Line.

¹⁰ As an initial matter, whatever portion of the Joint Request is considered evidence should be rejected because it has not been properly verified. 49 CFR 1104.4(b) provides that submissions by individuals not authorized to represent others before the Board must be properly verified if they contain allegations of fact. The Joint Request has been filed on behalf of Mr. Riffin and Mr. English, but has been signed (not verified) only by Mr. Riffin. Neither Mr. Riffin nor Mr. English have included with the Joint Request an appropriate verification of the allegations of fact (for example, their evidence of the Line's NSV) made therein. It is also deficient because Mr. Riffin is not authorized to represent Mr. English, although that is what he purports to do in the Joint Request. Mr. Riffin has attempted to file the Joint Request pursuant to the Board's rules at 49 CFR 1104.4(a), which pertain to attorneys and practitioners. Mr. Riffin is neither of these,

ARGUMENT

The Board has been very clear and consistent in its approach to setting terms and conditions in OFA proceedings when the parties are unable to reach a negotiated sales price. Proceedings to set conditions and compensation are governed by the provisions of 49 U.S.C. 10904(d)-(f). Board OFA precedent¹¹ shows that the Board may not set a price for the Line that is below the Line's constitutional fair market value. Where, as here, the parties agree that the Line lacks a going-concern value for continued rail use, the proper valuation standard for an offer to purchase under section 10904 is the Line's NLV for the highest and best nonrail use. Chicago and North Western Transp. Co. — Abandonment, 363 I.C.C. 956, 958 (1981) ("Lake Geneva Line"), aff'd sub nom. Chicago and North Western Transp. Co. v. United States, 678 F.2d 665 (7th Cir. 1982). NLV includes the value of the underlying real estate plus the NSV of track and track material.

In OFA terms and conditions proceedings such as this one, the Board employs a burden of proof analysis. The burden of proof here is on Petitioners. See Lake Geneva Line, 363 I.C.C. at 961. Placing the burden of proof on Petitioners is particularly appropriate in forced sale proceedings under 49 U.S.C. 10904, because the Petitioners may withdraw their offer at any time prior to accepting Board-prescribed terms and conditions. KCSR, on the other hand, would be

even though he purports in this proceeding simultaneously to represent his interests and those of Mr. English.

¹¹ See, e.g., McCloud Railway Company — Abandonment and Discontinuance of Service Exemption — In Siskiyou, Shasta, and Modoc Counties, CA, In the Matter of a Request to Set Terms and Conditions, STB Docket No. AB-914X (STB served Aug. 25, 2006), San Pedro Railroad Operating Company, LLC — Abandonment Exemption — In Cochise County, AZ, In the Matter of a Request to Set Terms and Conditions, STB Docket No. AB-1081X (STB served Apr. 13, 2006), Greenville County Economic Development Corporation — Abandonment and Discontinuance Exemption — In Greenville County, SC; In the Matter of a Request to Set Terms and Conditions, STB Docket No. AB-490 (Sub-No. 1X) (STB served Mar. 16, 2006).

required to sell the Line to the offeror at the price the Board sets, even if KCSR views the price as too low

Because of Petitioners' burden of proof, KCSR's valuation is to be accepted absent a probative showing supporting Petitioners' estimates. In areas where Petitioners' and KCSR's valuations disagree, Petitioners must present more specific evidence or analysis or provide more reliable and verifiable documentation than that which is submitted by KCSR. If Petitioners do not present such evidence and/or documentation, then the Board must accept KCSR's estimates. See Burlington Northern Railroad Company — Abandonment Exemption — In Sedgwick, Harvey and Reno Counties, KS, Docket No. AB-6 (Sub-No. 358X) (ICC served June 30, 1994) ("BN-Sedgwick"), and cases cited therein. These principles have governed determination of conditions and compensation in OFA proceedings for more than two decades.

Petitioners have not met their burden of proof. The evidence presented by Petitioners is nothing more than a series of non-expert opinions,¹² unsupported suppositions, and conflicting

¹² The Joint Request gives no information about the qualifications, or lack thereof, of Mr. Riffin to render the opinions and conclusions that he offers. Mr. Riffin has been relatively active of late in proceedings before the Board. See, e.g., CSX Transportation, Inc. — Abandonment Exemption — In Allegany County, MD, STB Docket No. AB-55 (Sub-No. 659X) (motion to compel filed on Jan. 14, 2007) (in which Mr. Riffin effectively acknowledges that he has not been able to consummate acquisition of a rail line in western Maryland, even though his purported ownership of this line, according to Mr. Riffin, affords him the status of a rail carrier subject to Board jurisdiction); Maryland Transit Administration — Petition for Declaratory Order, STB Finance Docket No. 34975 (STB served Oct. 9, 2007) (in which Mr. Riffin unsuccessfully claimed to own a portion of a rail line in Maryland known as the Cockeysville Industrial Track), Norfolk Southern Railway Company — Abandonment Exemption — In Norfolk and Virginia Beach, VA, STB Docket No. AB-290 (Sub-No. 293X) (STB served Nov. 6, 2007) (in which the Board questions Mr. Riffin's motives in choosing to participate in that proceeding), petition for reconsideration denied, judicial review pending sub nom., Riffin v. Surface Transportation Board, D.C. Cir. No. 07-143. His pursuit of the subject rail line through the OFA process appears to be consistent with his tactics in other cases before the Board in which he seeks to be recognized by the STB as an STB licensed common carrier. A principal, if not the sole, purpose of his seeking common carrier status appears to be Mr. Riffin's desire to assert preemption against the attempted application by Maryland authorities of local and state laws and regulations

assumptions, copies of bits and pieces of filings in other unrelated proceedings, various internet pages with no qualified analysis as to their applicability, and various bid quotes for salvage or environmental jobs that are neither defined nor specifically applicable to this Line. Based upon this patchwork of assertions assembled by Mr Riffin, Petitioners claim that the portion of the Line from milepost 225.6 to milepost 227.5, which has tracks on it, should be ascribed an NLV of -\$174,980 Joint Request at 17, par. 41. As for the balance of the Line, from milepost 227.5 to milepost 229.85, Petitioners insist that the most it is worth (or more accurately, what Petitioners would be willing to pay for it in its current state) is \$45,000.¹³ Id. at 18, par. 43. Taken together, Petitioners' combined valuation for the Line would be at most -\$102,980. By advancing such a wildly inaccurate and unrealistic NLV figure for the Line, the Joint Request impugns the credibility of all of Petitioner's valuation evidence.

In contrast, KCSR retained the services of R.L. Banks & Associates ("RLBA"), one of the most respected transportation valuation and consulting firms in the industry, and, in particular, the services of Mr. Gene Davis, a licensed Professional Engineer with over thirty years of railroad engineering experience with the rail industry. As Mr. Davis carefully and specifically sets out in his verified statement, and as supplemented by the verified statement of KCSR's own witness, Mr. Chester A. Culley, the Line has a net salvage value of the track and track material of at least \$272,820. Adding this to the market value of KCSR's real estate interest in the underlying right-of-way established in the PSA between the City and KCSR at \$231,795, gives a minimum constitutional value of \$504,615. Because Petitioners not only have not presented more specific evidence or more credible valuation evidence than KCSR but indeed

¹³ Because the Board cannot set a value at an approximate amount, as apparently requested by Petitioners, see Joint Request at 18, par. 43, KCSR interprets the Joint Request as offering \$45,000 for the southern 2.35 miles of the Line.

have presented far less expert, reliable or verifiable documentation, the Board must accept KCSR's value

I. THE CONSTITUTIONAL MINIMUM VALUE FOR KCSR'S REAL PROPERTY INTEREST IN THE UNDERLYING RIGHT-OF-WAY IS \$231,795

NLV is determined by examining the highest and best nonrail use for the right-of-way, tracks, and other track material. In this case, in the event the Line is not acquired through the OFA process, KCSR will sell all of the underlying right-of-way (consisting of approximately 51 51 acres of land) to the City pursuant to the aforementioned, duly executed PSA for a price of \$231,795.¹⁴ Petitioners do not dispute the presence here of an executed and bona fide agreement to acquire the land for that amount, and, in fact, Petitioners at times accept and rely upon this land valuation in their Joint Request. See, e.g., Joint Petition at 2, par 6-B, 4, par 8-B; 21, par. 56.

Petitioners attempt, inappropriately, an end-run around the land valuation evidence by – (1) accepting without qualification KCSR's land valuation for one segment of the property (the northern portion of the Line from milepost 225.6 to milepost 227.5 – the "Northern Segment"), and (2) applying a different, and lower, land valuation for the southern portion of the Line from

¹⁴ Under the PSA, KCSR is not required to remove any of the track, ballast, ties, turnouts, or other track material. KCSR has the option, but not the obligation, to remove these materials. If KCSR does not remove track and track materials from the line within 90 days of the closing date, such track and track material become the property of the City at no extra cost to KCSR or the City. Accordingly, under the terms of the PSA, KCSR could, if it so chose to do so, simply convey the property to the City in exchange for \$231,795 and without undertaking any salvage activities. Thus, if the salvage activities would produce a negative value for KCSR, as Petitioners claim, KCSR would simply refuse to undertake them, convey the Line to the City, as is, for \$231,795. Thus, even assuming arguendo that all of Petitioners' claims regarding the salvage value of the rail and other track material ("OTM") were correct, \$231,795 would represent the absolute minimum that KCSR would obtain but for Petitioners' OFA. Thus, \$231,795 is the absolute worst case constitutional minimum value for the Line, even if all of Petitioners' unsubstantiated claims about materials values and salvage costs were accepted. Any lesser amount would be an obviously unconstitutional taking.

Milepost 227.5 to milepost 229.85 (the “Southern Segment”) Petitioners’ attempt to ‘divide and conquer’ on land value must be rejected. First, Petitioners have submitted a single offer to purchase the entire Line. There is no precedent supporting the Board dividing the real estate into two parcels based on whether there is track in place on part of the Line but not on another part. The OFA is for the entire Line, and the real estate value underlying that entire Line is clearly established in the PSA. Second, if the Board does accept such an approach, the Fifth Amendment would still require KCSR to be compensated for the entire value of its PSA contract.¹⁵ Finally, Petitioners’ lower valuation for the Southern Segment is based on an effort to value the property for continued rail use, contrary to longstanding NLV principles.¹⁶ Accordingly, there is no basis for the Board to accept the ‘divide and conquer’ strategy and depart from the entire corridor valuation established by long standing STB precedent and set the value for less than that set forth in the KCSR-City PSA.

Petitioners also propose an alternative valuation for the acquisition of the land on the Southern Segment, suggesting, in effect, that they might be willing to purchase the entire corridor if KCSR were first required to reinstall at its own expense roughly 2.3 miles of track

¹⁵ This is because the PSA obligates the City to purchase all of the right of way and the City has informed KCSR and Riffin that it will not go forth with only a partial purchase if service remains on part of the line. In that case, KCSR will have lost the entire value of its contract if the Board accepts a bi-furcated OFA. As such, the Fifth Amendment would require KCSR to be compensated for the entire lost value.

¹⁶ Petitioners’ argument assumes that because the Southern Segment has been out of service for many years that Petitioners may deduct from the land value the cost to remove vegetation to prepare the segment for a future restoration of rail service. On this premise, Petitioners deduct from the KCSR-City PSA price the cost of brush clearing, and thereby arrive at their \$45,000 cap proposal for the land along the southern segment. See Joint Request at 18-20, paragraphs 43-50. One obvious problem with this analysis is that the PSA between KCSR and the City contains no such discount provision, that is, the City is offering \$231,795 for all of the right-of-way at issue here as is. That offer by the City is consistent with the Lake Geneva Line precedent and reflects the valuation of the land in question at its “highest and best nonrail use.” Since Petitioners’ valuation presumes the cost of clearing the property for *rail* use, it is inconsistent with the fundamental valuation principles of Lake Geneva.

south of MP 227.5 that was removed some time over 14 years ago. Petitioners cite to Busboom Grain Co., Inc. v. I.C.C., 830 F.2d 74 (7th Cir. 1987) (“Busboom”) as standing for the proposition that KCSR must restore the track. Yet, Busboom says no such thing. That case merely stands for the proposition that a rail carrier that abandons track during the pendency of an appeal from the decision authorizing that abandonment runs the risk of having to restore that track if the abandonment is reversed, and even then, the carrier “could” be required to restore the track not that it “must” restore the track. As such, Busboom does not stand for the proposition that a railroad must restore track simply because it has been removed.

Here, KCSR acquired the Line at issue from MidSouth, the prior owner of the Line, in 1993. At the time of that acquisition, the track on what Petitioners call the Southern Segment had already been removed. If, in the past 15 years there had been shippers needing service along the Southern Segment and KCSR had refused service, they could have come to the Board to claim that KCSR was violating its common carrier obligation. That did not occur. Indeed, during KCSR’s ownership of the Line, no shipper has ever located on that segment, requested service over the segment, or come to the Board to claim that KCSR was violating its common carrier obligation over any portion of the Line that lacked track. As such, Busboom is simply inapplicable to this situation. Furthermore, now that KCSR has remedied the matter by seeking authority to abandon the Line, there is no basis for the Board to order the reinstallation of track where – (1) there has been no demand for service for at least 15 years, and (2) the Board recently has determined that abandonment of the Line is warranted.

In contrast to Petitioners’ piecemeal and unprecedented approach, KCSR’s land valuation evidence is based upon an existing contract which represents the existing market value of the corridor without any need to conduct salvage. That valuation is consistent with Board precedent

and should be accepted as the appropriate valuation for the entire real estate corridor that comprises the subject right-of-way. "Agency precedent provides that a contract for the purchase of rail assets negotiated at arm's length, as here, constitutes strong evidence of the value of those assets." Central Michigan Railway Company – Abandonment Exemption – In Saginaw County, MI, STB Docket No AB-308 (Sub-No. 3X) (STB served Oct 31, 2003) slip op. at 5-6, n. 8 (citing 1411 Corporation–Abandonment Exemption–In Lancaster County, PA, STB Docket No. AB-581X, et al (STB served Oct. 18, 2001), slip op at 4, aff'd sub nom Borough of Columbia v. STB, 342 F 3d 222(3d Cir 2003), Railroad Ventures, Inc –Abandonment Exemption–Between Youngstown, OH and Darlington, PA, STB Docket No 556 (Sub-No 2X) et al (STB served Oct. 4, 2000), slip op at 16, and Portland Traction Company–Abandonment Exemption–In Multnomah and Clackamas Counties, OR, Docket No AB-225 (Sub-No 2X) (ICC served Jan. 19, 1990), slip op at 5) Indeed, even Petitioners accept and rely on per acre values derived from the KCSR–City PSA The PSA is inarguably the best evidence of the market value of the right of way

In sum, because Petitioners seek here to acquire the entire Line, the Board should focus upon the land valuation for the entire assembled corridor based on the best available evidence of the value of the highest and best non-rail use of the entire corridor. As set forth above, KCSR will sell all of the land underlying the Line to the City in the event that abandonment authority becomes effective. The City will pay KCSR \$231,795 for the corridor, as is, with no discount or requirement that KCSR undertake any salvage or environmental remediation Were the Board to set the land value at a figure below \$231,795, it would deprive KCSR of the full value and benefit of its previously negotiated sale price and would result in an unconstitutional taking of KCSR property without just compensation, in violation of the Fifth Amendment

II. THE CONSTITUTIONAL MINIMUM VALUE FOR THE TRACK AND OTHER TRACK MATERIAL ON THE LINE IS \$272,820

According to the independent assessment by KCSR's expert witness, Mr. Gene Davis, the Line's track and track material net salvage value ("NSV") is \$270,100. Mr. Davis has based his estimate on an on-site inspection of the Line on January 15, 2008, at which time Mr. Davis viewed the northern 1.9-mile section of the Line from MP 225.6 and 227.5 (the Northern Segment) by walking the entire distance of that track segment and by viewing the same by hi-rail vehicle with personnel from VSOR, the operator of the Line. As reflected in Mr. Davis' verified statement ("V.S. Davis" and attached as Exhibit 1), the NSV of the northern 1.9-mile segment, is worth far more than Petitioners claim.¹⁷

KCSR's evidence on the NSV of track and track materials fully accounts for the correct gross value of all track and track material on the Line, and the costs associated with removing such materials and retiring two public and three private road crossings. In fact, KCSR's track valuation evidence is the only such expert evidence in the record. Neither Mr. English nor Mr. Riffin purport in the Joint Request to be experienced in the area of track salvage valuation. Indeed, the Joint Request's track and track material NSV estimate is largely based on quantities of materials agreed on with KCSR, and then parrots and extrapolates from information culled from other filings and decisions in other Board proceedings that involve completely different factual situations, market conditions, and issues not even relevant or pertinent to this proceeding. Thus, Petitioners' unsupported "evidence" regarding gross salvage value and final NSV is a poor

¹⁷ As Mr. Davis notes, his valuation focuses on the northern 1.9-mile segment, where track remains. He assigns no NSV to the southern 2.35-mile segment.

substitute for the expert opinion of Mr. Davis, an engineer with 30 years' experience in the rail industry. As such, Petitioners have not met their burden of proof and the Board is required to accept KCSR's evidence Lake Geneva Line and BN-Sedgwick.

A. Gross Value Of Track And Track Material Included In KCSR's Estimated NSV

The V.S. Davis, Appendix C, Exhibit Three, sets forth a comprehensive list of the track and track materials that are included in KCSR's salvage value for the northern 1.9-mile segment of the Line. KCSR's evidence shows that the track and track material along the Line possess a gross salvage value of \$355,320. Petitioners, on the other hand, contend that the track and track material have a gross value of only \$106,320 (presuming, among other things, that all of the rail, spikes, tie plates, and switches have value only as scrap steel).¹⁸ See Joint Request at 17, par 41.

Petitioners' argument that KCSR could not salvage the track within the time allowed by the PSA is mistaken. Petitioners note that the KCSR-City PSA provides that all track and track material not removed within 90 days after the closing date of the proposed transaction would

¹⁸ In addition to other valuation disagreements, KCSR and Petitioners do not agree on the appropriate per ton value of scrap steel. Petitioners appear to maintain that all scrap steel should be valued at \$120 per ton, which figure may account for per ton truck transportation costs. See Joint Request at 5, par. 9-B, and 6, par 9-C. But Petitioner's insistence on the use of \$120 per ton for scrap steel is incorrect and should be rejected because, in addition to other reasons, it is contradicted by other statements in the Joint Request. Specifically, noting that AMM Scrap Iron & Steel prices are higher than the local bids Petitioners have obtained, Petitioners state that scrap steel would net at least \$135 per ton, but then reason that a \$120 per ton gross value for scrap is "close" enough. See Joint Request at 6, par. D. In fact, Petitioners acknowledge in passing that AMM scrap steel prices would be more accurate data on which to base the metal's gross value, but they then rely on an outdated AMM price sheet from November of last year. If the Board were to accept this valuation, clearly the principle of Kirby would be violated.

KCSR's expert witness, Mr. Davis, on the other hand, explains that KCSR can and would obtain \$330 per ton for scrap rail and \$385 per ton for loose scrap items such as spikes, joint bars, and rail anchors. See V.S. Davis at 10 and at App. C at 7-8. Mr. Davis' thorough explanation of his scrap steel unit values is far more reliable and accurate than Petitioners' competing evidence, and is based on AMM scrap steel prices as of January 15, 2008, not from November of last year. Mr. Davis' evidence should therefore be accepted in setting terms and conditions for the sale of the subject property.

become the property of the City. In light of this provision, Petitioners question whether KCSR would be able to remove valuable track and track material in 90 days so as to maximize the value of KCSR's deal with the City.¹⁹ First, the 90-day period begins at closing, but closing itself is not a fixed date. Second, the significant NSV of the track would incent KCSR to promptly remove valuable track and track material. Moreover, 90 days would be more than adequate time for KCSR (or contractors so designated by KCSR) to remove the mere 1.9 miles of track and track material at issue. Indeed, KCSR estimates that salvage activity could be completed in about 7-14 days. See V.S. Davis at 11. KCSR is already preparing for the possible removal of the Line's track and track material and, given the location of the track (proximate to a significant KCSR yard facility at Vicksburg and in a southern climate), there would be little hindrance to salvage activity. Given the value of the track materials, KCSR would be able to act quickly to maximize the proceeds of this deal with the City.

Rail

As noted in the V.S. Davis, the rail located along the Line consists of a combination of 112lbs/yard and 115lbs/yard continuous welded rail ("CWR"). See V.S. Davis, App. C, Exh. One. Petitioners and KCSR agree as to the quantities and weights of the rail on the Line (as set forth in V.S. Davis, App. C, Exh. 1), but they disagree about the value of this rail. KCSR maintains that the rail is of mixed qualities (i.e., some is relay, some reroll, and some scrap) and has a gross salvage value of \$219,700, while Petitioners argue that the rail is all scrap and worth only \$67,920.

¹⁹ Petitioner's reliance on BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK, STB Docket No. AB-6 (Sub-No. 430X) (STB served Jan. 25, 2008) does not prove anything about KCSR's ability or motivation to remove 1.9 miles of track promptly. The cited case merely reflects that BNSF, for whatever reason, has not chosen to act expeditiously in consummating its abandonment of that line.

Petitioners claim that all of the rail, regardless of weight and condition, should be valued as scrap only, and they have thus applied a \$120 per ton scrap value for all of the rail based upon mutually agreed-upon quantities and weights. Petitioners allege that it is difficult and costly to remove relay rail, although they cite to no expert opinions on the subject and do not demonstrate that they have personal knowledge or experience in removing such rail. In addition, Petitioner argue that relay rail should be assigned scrap value by asking, rhetorically, whether there is a market for 112 lbs/yard relay rail. See Joint Request at 7-8, par 9-F.²⁰ Asking rhetorical questions is not sufficient to carry Petitioners' burden of proof.

KCSR's witness, Mr. Davis, on the other hand, provides a thorough, sophisticated, and detailed breakdown of the condition of the rail, the amount of each kind of rail – some of which is, in his expert opinion, reusable and saleable (and therefore “relay” rail of considerably higher than scrap value), some of which can easily be recycled by reforming into other steel products without extensive processing (“reroll”), and the rest of which likely would be sold and processed as scrap. According to Mr. Davis' calculations, there are approximately – (1) 8 tons of 115 lbs/yard relay rail in Fit #2 (“Fit” means of relay quality) condition, possessing a total value of \$6,600,²¹ (2) 2 tons of 115 lbs/yard relay rail in Fit #3 condition, possessing a total value of

²⁰ By Petitioners' own calculations, relay rail would command “about \$540 / ton.” As feeble support for Board acceptance of a \$120 per ton gross value for rail, Petitioners remark that “[w]hile \$540 / ton is more than \$120 / ton, there is no guarantee one would actually get \$800 / ton. How much demand is there for 112# relay rail?” *Id.* (Actually, Mr. Davis has explained that there is a robust market for such rail. See V.S. Davis at 10 and at App. C at 11-13.) What is more, Petitioners have engaged in double-counting expenses in trying to justify the Line's NLV in this regard. Specifically, as support for their \$120 per ton value for relay rail, Petitioners point to the added removal costs of relay rail as justification for the low value, see Joint Request at 7-8, par 9-F, but then later, Petitioners adjust the gross rail values by factoring in removal costs – the very same costs which allegedly justified the low per ton value in the first instance. See Joint Request at 16, par 37. In short, for relay rail, Petitioners have double counted removal costs.

²¹ Mr. Davis explains that his relay rail estimates assume that 97 percent of the track is actually of relay quality and that 2.9 percent will be found to be (or will become as a result of removal

\$1,600, (3) 6 tons of 115 lbs/yard rail in reroll condition, possessing a total value of \$2,600, (4) 4 tons of 115 lbs/yard rail in scrap condition, possessing a total gross value of \$1,300; (5) 142 tons of 112 lbs/yard relay rail in Fit #2 condition, possessing a total value of \$112,200, (6) 35 tons of 112 lbs/yard relay rail in Fit #3 condition, possessing a total value of \$27,300; (7) 106 tons of 112 lbs/yard rail in reroll condition, possessing a total value of \$45,400, and (8) 71 tons of 112 lbs/yard rail in scrap condition, possessing a total gross value of \$22,700. In sum, as Mr. Davis' testimony and calculations fully demonstrate, the rail located on the Line possesses a total value of \$219,700.

Joint Bars and Rail Anchors

The parties agree as to the amount, condition, and value of the joint bars and rail anchors. Accordingly, the Board should set the value of these items at \$4,800 – \$1,600 for joint bars and \$3,200 for rail anchors. See V.S. Davis, App. C, Exh. 3.²²

Bolts and Washers

KCSR and Petitioners agree that the Line contains approximately 3 tons of bolts and washers, which are to be valued as scrap. But, as noted above, the parties disagree as to the appropriate per ton value of such scrap. KCSR's witness Davis adheres to a \$385 per ton value (for a total rounded value of \$800), while Petitioners insist upon a \$120 per ton value (for a total of \$360). KCSR has already shown that Petitioners' per ton scrap value assumption is incorrect.

activity) scrap, and that 0.1 percent of the rail weight will have been lost to usual wear. See V.S. Davis at App. C at 7, and App. C, Exh. Three. Mr. Davis also explains that relay rail is categorized according to its overall condition, and, pursuant to the applicable grading scheme, relay rail in Fit #2 condition is in better shape and is generally more valuable than Fit #3 relay rail. See V.S. Davis at App. C at 5. In his Appendix C, Mr. Davis uses the "CWR" designation for continuously welded rail only on that portion of the rail which he values as relay rail.

²² Mr. Davis' estimates reflect that rail anchors should be valued at \$3,700 (V.S. Davis at App. C, Exh. Three). KCSR has, however, already agreed with Petitioners to accept a total valuation for rail anchors of \$3,200, as Petitioners have represented in their Joint Request. Accordingly, KCSR will accept a total valuation of joint bars and rail anchors of \$4,800.

Tie Plates

The parties agree that the Line contains 12,038 tie plates, but otherwise disagree as to the value of this track material. KCSR's witness, Mr Davis, has determined that the tie plates are of marketable relay quality and possess a per tie plate value of \$7.00 – producing a rounded total tie plate estimate of \$81,700²³ Petitioners again insist that the tie plates have scrap value only (although they never explain why this is so),²⁴ and, based on their own per ton scrap value of \$120, estimate that the tie plates are worth only \$8,160

Spikes

The parties agree that the Line contains roughly 10 tons of spikes, and further agree that such spikes possess scrap value only, but the parties once again disagree on the appropriate per ton unit value of scrap steel KCSR's witness estimates, conservatively, that 80% (8 tons) of the spikes will be collected and scrapped for a total value of \$3,000 Petitioners, on the other hand, rely again on their inaccurate and unsupported \$120 per ton scrap valuation, resulting in an estimate of \$1,200.

Turnouts

The parties agree that the Line contains three turnouts – one fit (reusable) turnout and two scrap turnouts The parties further agree as to the salvage value of all three – \$5,000 for the reusable turnout and \$3,500 total for the scrap turnouts Accordingly, the Board should set the value of the turnouts at a combined total of \$8,500.

²³ Mr Davis estimates that roughly 97% of the tie plates are, or will be, reusable, and has further rounded down his adjusted figures to the nearest hundred dollars See id

²⁴ Mr Davis notes that Petitioners' classification of the tie plates as scrap and their per tie plate unit weight assumption are both predicated upon Petitioners' misunderstanding that the tie plates along the Line are single shoulder type Mr. Davis points out that his inspection of the Line revealed the tie plates to all be of a double shoulder type and thus of relay quality. See V S Davis at 8-9

Relay and Landscape Quality Crossties

The parties agree that roughly 21 percent of the approximately 6,019 crossties on the Line are of relay quality, and possess a per tie value of \$18.00. The parties further agree that about 44 percent of the ties on the Line are of landscape quality and possess a per tie value of \$6.00. Finally, the parties further agree that the combined total value of the relay and landscape quality ties on the Line should be valued at \$38,400.²⁵

Scrap Crossties

KCSR acknowledges that scrap crossties possess a negative salvage value, due to the disposal costs associated with such items, but disagree with Petitioners as to those costs. According to Mr. Davis, in removing and disposing of scrap crossties (which the parties concur represents roughly 35 percent of the roughly 6,019 crossties on the Line), the per tie cost would be \$2.50 – for a total negative scrap crosstie value of \$5,200. See V.S. Davis at 12, and App. C, Exh. 3.

Mr. Davis' estimate did not account for the true costs to KCSR, because Mr. Davis did not have firsthand knowledge of a contract between KCSR and M&M Sales and Service ("M&M"), under which M&M will arrange for the disposal of KCSR scrap ties under a separate agreement between M&M and International Paper ("IP") involving the latter company's acceptance and consumption of scrap ties. As discussed in the attached Verified Statement of Mr. Chester A. Culley ("V.S. Culley"), KCSR's actual cost for tie disposal under the KCSR-M&M agreement is substantially less than Mr. Davis' \$2.50 per tie estimate, and is certainly less than approximately \$7.50 (\$15,900 / 2106) per tie estimate put forth by Petitioners.

²⁵ By Mr. Davis' estimates, relay and landscape crossties on the Line possess a total gross value of \$38,800 (V.S. Davis at App. C, Exh. Three), but KCSR has agreed to accept the lower figure of \$38,400 pursuant to previous consultations with Petitioners, even though KCSR has now determined that this lower figure is based upon an earlier (and erroneous) value estimate.

Mr. Culley explains that, under KCSR's contract with M&M, KCSR supplies scrap crossties to M&M, which, in turn, conveys the crossties to IP for beneficial reuse as fuel for IP's paper mill at Texarkana, TX. See V S Culley at 4. If KCSR removes the ties, loads them, and transports them to IP's Texarkana facility, which is located on KCSR's system, IP will accept the ties at no cost to KCSR. If KCSR uses its own crews, engines, and cars to remove and transport such ties, there is no cost to KCSR. See id. at 5. Likewise, if KCSR removes the ties and stacks them at a central location, M&M has the option of using its own crews to load the ties onto cars supplied by M&M. KCSR would then transport such cars in regular service to IP at Texarkana. In such a scenario, KCSR would pay M&M \$.75 per tie. See id. In this case, with about 2,106 ties of scrap value, it would cost KCSR about \$1,580 to send the ties to the IP facility – again transportation is absorbed by KCSR. As such, at most, the removal costs for the scrap ties is significantly less than the extreme salvage costs put forth by Petitioners. Based on the evidence summarized above, KCSR attributes a negative gross value of –\$1,580 to scrap crossties.

Total Gross Value of Track and Track Materials

Based upon Mr. Davis' expert evaluation and accounting for KCSR's tie contract with IP, the total gross value of the track and track materials on the Line is as follows.

Rail	\$219,700
Joint Bars	\$1,600
Rail Anchors	\$3,200
Bolts and Washers	\$800
Tie Plates	\$81,700
Spikes	\$3,000
Turnouts	\$8,500
Scrap crossties	(\$1,580)
Relay and Landscape	
<u>Crossties</u>	<u>\$38,400</u>
TOTAL	\$355,320

B. Track and Track Material Removal and Environmental Mitigation Costs

Salvage Costs

KCSR's estimated salvage costs are discussed in Appendix C of Mr. Davis' verified statement, and are listed categorically in Exhibit Two to that Appendix. Mr. Davis estimates that the total cost to remove the rails, crossties, and other track material ("OTM") will be \$26,000, and he correctly states that KCSR will leave the ballast and ground beneath the ballast intact. The total cost to restore the two public highway crossings and the three private crossings will be \$3,800. He also calculates that KCSR will incur administrative and marketing expenses in connection with the sale of relay rail and scrap metal at a total cost of \$39,500. Finally, Mr. Davis estimates that total transportation costs to move relay steel to Dallas, TX (the most advantageous market for this commodity) and all other metals to Chicago, IL (which Mr. Davis considers the most advantageous market for scrap steel) to be a combined total of \$13,200.²⁶ Taken together, Mr. Davis' estimated track salvage costs come to \$82,500. See V S Davis App C, Exh Two.

Instead of providing an independent expert's opinion of removal costs, Petitioners suggest that the Board, in effect, take "judicial notice" of the per-track-foot removal cost estimates provided by an OFA offeror in an entirely unrelated OFA proceeding involving completely different market conditions and facts – 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) ("D&H Albany"). Petitioners use these costs even though such costs were only for initial OFA valuation purposes, and have not been adopted by

²⁶ Petitioners consistently presume that track and track materials would be transported by truck, at a higher overall transportation cost, of course. Mr. Davis rightly assumes that KCSR would supply rail equipment and rail transportation for all salvaged track and track material, thus lowering considerably, and controlling, total transportation costs.

the Board in that proceeding²⁷ (In addition, as noted above, some of Petitioners' gross value estimates appear already to account for the cost of removal of such items as relay rail, so that the use of D&H Albany figures without proper adjustment would, at the very least, constitute double counting on removal expenses.) Petitioners have not taken an reasonable effort to validate the per foot track estimates that they have merely borrowed from another proceeding to ensure that they are accurate with respect to the type of track, topography, and removal costs that would be encountered on the Line

In sum, Petitioners have not provided the type of specific and verifiable evidence regarding salvage costs which is their burden to so provide. Presentation of quotes from other proceedings, estimates provided by Petitioners themselves, outdated information regarding scrap values, and inaccurate assessments of the quality of the rail at issue does not constitute the type of probative evidence that precedent requires an OFA offeror to provide to support a request to set terms and conditions. As such, the track removal estimates provided by Petitioners cannot be accepted and do not possibly refute the location-specific and fact-specific expert evidence of Mr Davis

Environmental Mitigation

In granting KCSR's abandonment petition for exemption, the Board imposed only one environmental mitigation condition – KCSR must consult with the National Geodetic Survey ("NGS") 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers. December 12 Decision at 5. This condition, and the Board's October 23 EA in general, reflect due consultation with the usual federal, state and local agencies to assure that any

²⁷ Mr. Davis further explains in his verified statement why differences between the rail line in D&H-Albany (which involved the more costly removal of jointed rail) and the one at issue here would result in different track removal estimates and why, under the circumstances, Mr Davis' track removal estimates are more accurate. See V.S. Davis at 11

and all environmental and historical impacts of abandonment and rail salvage activity are assessed, accounted for, and, where appropriate, mitigated. The costs of compliance with this lone condition would be negligible at most.²⁸

Despite the clear instructions contained in the December 12 Decision, which includes feedback from the Mississippi Department of Environmental Quality (“MDEQ”), Petitioners insist that KCSR will be obligated to comply with environmental mitigation steps not specifically provided for in that decision or in the Board’s October 23 EA. Specifically, Petitioners insist that, despite the absence of any such condition in the December 12 Decision, KCSR must comply with certain mitigation measures set forth in section 402 of the Clean Water Act (33 U.S.C. 1344) in undertaking track and track material salvage along the Line. Petitioners maintain that KCSR would also be obligated here to prepare and file with the State of Mississippi an “NPDES²⁹ general permit,” construct silt fencing along the Line, prepare a stormwater pollution prevention plan, and undertake site stabilization – steps that Petitioners estimate will cost KCSR approximately \$307,800. See Joint Request at 17, par. 40. Petitioners provide no verified statements, expert opinion, or letters from such environmental agencies claiming that KCSR would require such permits in this proceeding. Instead, they submit copies of the certain regulations and assume their applicability to KCSR if KCSR undertook to salvage the track and OTM.

Petitioners are mistaken in their assumptions. As noted in Mr. Culley’s verified statement, KCSR will not need to obtain an NPDES or any other environmental permit in order

²⁸ KCSR does not believe that its salvage activities would disturb any such markers, and that consultation with NGS would not delay planned salvage activities

²⁹ National Pollutant Discharge Elimination System (“NPDES”)

to salvage the track, ties, and OTM.³⁰ Mr. Culley explains that MDEQ regulations do not require water quality mitigation and permits under NPDES unless there is over one acre of land disturbance. See V.S. Culley at 6-7. While Petitioners may understand this requirement, what they don't understand is how the regulations have been interpreted to define what is meant by "land disturbance" so as to require obtaining such a permit. Mr. Culley explains that KCSR would remove track, track material, and ties, but would leave all ballast, ground surface, and topsoil intact. Mr. Culley states that MDEQ does not interpret the removal of track, OTM, and ties, while leaving the ballast and ground surface and topsoil intact, as qualifying as "land disturbance" so as to trigger the NPDES thresholds or require other water quality-related permits. See *id.* at 7. In short, Petitioners' extensive supposition about NPDES permits, water quality mitigation, and the costs related thereto is wasted time based upon a fundamental misunderstanding of how the environmental laws are interpreted and how the STB environmental process works in the context of this proceeding.³¹

Petitioners' claim that NPDES permits and mitigation would be required here incorrectly assumes that, because such water quality mitigation measures could be imposed in some

³⁰ Mr. Culley, KCSR's Director in relation to environmental issues, is familiar with Mississippi environmental regulations and is thoroughly qualified to opine about such matters here. Petitioners, on the other hand, do not appear to have any such expertise to offer beyond having read and misinterpreted a handful of recent Board abandonment decisions. Petitioners give no evidence of having conferred with MDEQ to ascertain the agency's position on this subject.

³¹ If MDEQ had felt that KCSR's salvage activities might have required a NPDES permit, MDEQ could have requested SEA to impose a condition requiring KCSR to consult with MDEQ before undertaking any such salvage activities. Even such a "consultation" requirement does not mean that a NPDES permit would have been required. In this case, MDEQ and all other relevant environmental agencies were provided a copy of KCSR's environmental report, which fully explained the scope of KCSR's salvage activities, and were given an opportunity to comment on that report. The fact that no environmental permitting agency requested such consultation requirements is strong evidence that KCSR's activities do not require the types of permits that Petitioners simply assume will be required.

abandonment cases,³² such mitigation costs can and should be imposed upon KCSR in this case (and in every other abandonment proceeding before the Board), despite the absence of any such mitigation conditions in the December 12 Decision, in the October 23 EA or in any communication from MDEQ. In fact, Board-imposed environmental mitigation is imposed on a case-by-case basis, based on the specific facts of each case as the Board deems proper following the appropriate level of environmental review and consultation with state and federal environmental agencies. As noted, MDEQ was consulted in connection with the proposed abandonment of the Line, and, unlike in the cases cited by Petitioners, evidently determined that the salvage activities contemplated here would not require NPDES mitigation.

The Board does not automatically impose water quality mitigation in connection with approving rail line abandonments, and it has never enunciated such a universal policy.³³ Rather, such mitigation is required only when – (1) the contemplated salvage activities would trigger the applicable NPDES thresholds, and (2) the involved state agency advises that, in light of the proposed salvage activities, water quality mitigation is necessary. The abandonment proceedings upon which Petitioners rely do not stand for the proposition that NPDES mitigation is mandatory in all rail line abandonments, rather, those cases merely stand for the proposition that water

³² Bessemer & Lake Erie Railroad Company – Abandonment Exemption – In Butler County, PA, STB Docket No. AB-88 (Sub-No. 12X) (“Bessemer-Butler”) (STB served Jan. 7, 2008), Georgia Southwestern Railroad, Inc. – Abandonment and Discontinuance of Service Exemption – In Harris and Meriwether Counties, GA, STB Docket No. AB-1000 (Sub-No. 1X) (“GSW-Harris”) (STB served Dec. 10, 2007); CSX Transportation, Inc. – Abandonment Exemption – In Niagara County, NY, STB Docket No. AB-55 (Sub-No. 649X) (“CSX-Niagara”) (STB served Jan. 4, 2008).

³³ Such a declaration of policy in connection with rail line abandonments would have far-reaching effects, of course. If the Board has, in fact, adopted an across-the-board assumption that all rail line abandonments necessarily trigger the applicable state water quality permit and mitigation processes, it certainly has not articulated such a policy or grounds therefor.

quality mitigation may be necessary if salvage activities would trigger NPDES thresholds based on state agency evaluation of the facts.

The cases upon which Petitioners rely for support of their arguments are not applicable to this proceeding. In CSX-Niagara, the New York State Department of Environmental Conservation, Division of Environmental Permits ("NYSDEC/DEP") advised the Board that it was not sure whether or not the abandoning carrier in that proceeding would need to obtain a general permit for storm water discharge or any additional permits pursuant to section 402 of the Clean Water Act. Accordingly, the Board directed that the abandoning carrier to confer with NYSDEC/DEP to determine if such permits were necessary given the scope of anticipated salvage activity, and that, if such permits were required, to comply with whatever reasonable requirements were contained in such a permit(s). By comparison, the MDEQ did not express uncertainty about its water quality permitting processes, nor did it come forward to insist upon any such permits.

In the same way, Bessemer-Butler merely speaks for the proposition that a carrier seeking to salvage track in the Commonwealth of Pennsylvania would have to consult with the appropriate state and/or county agencies to determine whether contemplated salvage activities would require an erosion and sedimentation control plan and related permits. That decision does not establish that NPDES or other water quality permit and mitigation requirements are or should be customarily imposed on all abandonments. Rather, Bessemer-Butler only further reinforces principle that the possible environmental impact of a given rail line abandonment and the appropriate mitigation to be imposed are evaluated on a case-by-case basis, pursuant to the guidance and input of the usual state and federal agencies, just as has already been done here.

In GSW-Harris, the Board did impose NPDES mitigation conditions based upon the specific findings and conclusions of the Georgia Department of Natural Resources' Environmental Protection Division ("Georgia EPD") that the salvage activities contemplated in that abandonment would trigger the applicable state permit and water quality mitigation. But the GSX-Harris decision does not universally mandate NPDES mitigation measures in every abandonment throughout the country. Rather, it only speaks to the findings and conditions of the State of Georgia as applicable to the facts of that specific abandonment. Moreover, GSW-Harris is particularly inapposite here, where KCSR's PSA would allow KCSR to leave the ties undisturbed if it chose to do so. Petitioners state that it is removal of the ties that triggers the supposed environmental permitting and mitigation requirements. Under KCSR's contract with the City, KCSR can remove so much of the track as it wishes and leave the remainder, including leaving the ties in place. That fact is significantly different than the facts in GSW-Harris.

In comparison to these fact-specific cases, other recent Board decisions fully support Mr. Culley's conclusions and experience that the sort of salvage activities contemplated here – removal of track, OTM, and ties (but no removal of ballast and no topsoil disturbance) – do not require permits or water quality mitigation. See, e.g., BNSF Railway Company – Abandonment Exemption – In Clay County, MO, STB Docket No. AB-6 (Sub-No. 450X) slip op. at 1 ("BNSF-Clay") (STB served Sept. 13, 2007) (the Missouri Department of Natural Resources advised the Board that, while water protection permits under NPDES would be required in the event of land disturbance, including the removal of topsoil, of more than one acre, no such permits or mitigation would be required "if the action were limited to the removal of track and ties"); Grand Trunk Western Railroad Incorporated – Abandonment Exemption – In Oakland County, MI, STB Docket No. AB-31 (Sub-No. 41X) ("GTW-Oakland"), Environmental Assessment slip op.

at 3 (STB served May 25, 2007) (“According to [the Michigan Department of Environmental Quality (“MIDEQ”)], wetlands exist along the southeast perimeter of the proposed abandonment. However, providing salvage is limited to removal of track and ties as the railroad has indicated, and not grading or filling, then MIDEQ states that the proposed abandonment would not have a negative impact on water quality. Accordingly, the permit requirements of Section 402 (National Pollutant Discharge Elimination System) and Section 404 (wetlands) of the Clean Water Act would not apply”); and Consolidated Rail Corporation – Abandonment Exemption – in Middlesex County, NJ, STB Docket No. AB-167 (Sub-No. 1184X) (“Conrail-Middlesex”), Environmental Assessment slip op. at 1-2 (STB served Jan. 9, 2004) (“The New Jersey Department of Environmental Protection (“DEP”) submitted comments stating that there are no coastal zone areas in the area of the proposed abandonment. DEP also stated that because the proposed abandonment would be limited to the removal of rail and crossties, it would not require freshwater wetland permits pursuant to the New Jersey Freshwater Wetlands Protection Act”)).

Petitioners have devoted such energy to this ultimately baseless environmental argument because they hope to acquire the Line for free – implicitly suggesting that KCSR would be well-advised simply to turn over the property for nothing or actually pay Petitioners to take the Line simply so KCSR could avoid what Petitioners claim are monstrous salvage costs. KCSR has now established quite clearly that Petitioners’ assumptions about the universal and automatic application of Clean Water Act permitting and mitigation measures are entirely incorrect. In fact, KCSR has shown that such permits and mitigation do not apply here. Accordingly, Petitioners’ environmental mitigation costs related to track material salvage should be rejected.

Finally, even assuming that all of the environmental permits, and the corresponding mitigation costs, were applicable to this abandonment so that the net salvage value would be a

negative number, KCSR notes that it would then choose not to undertake such salvage activities. As previously noted, the PSA between the City and KCSR provides that KCSR has the option to convey the line to the City “as is” without undertaking any salvage activities. Under that scenario, KCSR’s net gain, absent the OFA, would be no less than \$231,795. Thus, even if the Board accepts all of Petitioners’ values and arguments, which it could not do without simply ignoring its own precedent, the absolute minimum constitutional value for the Line is \$231,795.

C. Total Net Salvage Value

The NSV for track and track materials on the Line is the product of Gross Salvage Value, as discussed and set forth in section II-A, less removal costs and environmental mitigation costs, both of which are discussed and set forth in section II-B. Total NSV for the Line is as follows:

Gross Value of Track/Track Materials	\$355,320
Track/Track Material Removal	(\$82,500)
<u>Environmental Mitigation</u>	<u>\$0</u>
Net Salvage Value	\$272,820

III. THE CONSTITUTIONAL MINIMUM VALUE FOR THE LINE IS \$504,615

The Line’s NLV is the sum of NSV and total land value. As set forth in great detail above, KCSR submits that the Line’s NSV is \$272,820 and that the land value for the entire corridor, as established pursuant to a duly executed PSA with the City of Vicksburg, is \$231,795.

Taken together, the Line’s NLV is as follows:

Net Salvage Value	\$272,820
<u>Land Value (Corridor)</u>	<u>\$231,795</u>
Net Liquidation Value	\$504,615

As the Line’s NLV, \$504,615 is also the minimum constitutional value for the subject property and the minimum price at which the Board should permit a forced sale of the line to Petitioners. Setting the price at any lower amount would likely represent a taking in violation of

the Fifth Amendment Furthermore, the Board needs to set the price of the steel and OTM using the most current market price Otherwise, the Board could be in violation of Kirby

IV GENERAL CONDITIONS

Petitioners are not specific as to general terms and conditions upon which a sale, if it occurs, should be ordered However, KCSR suggests that the Board should impose standard terms and conditions, including at least (1) conveyance of the property by quitclaim deed, (2) conveyance to occur within 90 days of the Board's order unless otherwise agreed by the parties; and (3) payment of the price set by the Board in cash, by certified or cashiers' check, or by electronic funds transfer to an account designated by KCSR.

CONCLUSION

Pursuant to Board precedent, an offeror requesting the prescription of conditions and compensation to acquire a rail line pursuant to the OFA process has the burden of proving to the Board that its rail line valuation evidence is superior to the valuation evidence of the abandoning rail carrier Here, Petitioners have consistently failed to carry that burden of proof. Their Joint Request is a mishmash of inexact assumptions and gimmicks designed in a blatant attempt to wrest valuable property from KCSR for absolutely nothing. Petitioners' questionable motivation for undertaking an OFA here is highlighted by the fact that Petitioners have, throughout this proceeding, approached this process on an entirely seat-of-the-pants basis Petitioners never obtained the advice of experienced counsel to guide them through the OFA process, chose not to confer with experts in the field of track valuation and track salvage, and have put themselves out as environmental experts without adequate knowledge of the process or of the law.

In contrast, KCSR has fully demonstrated that its valuation evidence for the Line is categorically superior to that of Petitioners KCSR's land valuation reflects the existence of an

executed agreement to acquire the entire assembled corridor for \$231,795 – a figure that
Petitioners try mightily to avoid via an inappropriate bifurcation of its OFA for the Line. In
addition, KCSR has supplied expert witnesses to testify in great detail regarding the NSV of the
Line's track and track material and to disprove Petitioners' claim that salvage activities would
necessitate expensive environmental mitigation. KCSR has provided a detailed, step-by-step
presentation to show that the Line's minimum constitutional value is \$504,615.

Respectfully submitted,

W James Wochner
David C Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
Cathedral Square
427 West 12th Street
Kansas City, MO 64121-9335



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BAKER & MILLER PLLC
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Suite 300
Washington, DC 20037
Tel (202) 663-7823
Fax: (202) 663-7849

Attorneys for The Kansas City Southern
Railway Company

Dated January 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply To Request To Establish Conditions And Compensation For Financial Assistance by mailing copies of the same via prepaid first class mail to all parties of record in these proceedings or by more expeditious means of delivery.

Dated at Washington, D C this 30th day of December, 2008.



Robert A. Wimbish

EXHIBIT 1

**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**

**VERIFIED STATEMENT
OF
GENE A. DAVIS, P.E.**

**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**

Qualifications

I am Gene A. Davis, P.E , Director, Transportation Engineering, a consultant with the firm of R L Banks & Associates, Inc. (RLBA), railroad transportation consultants, engineers, economists and planners, located at 2107 Wilson Boulevard, Suite 750, Alexandria, VA 22201. My qualifications are detailed in Appendix A. I appear in this proceeding on behalf of The Kansas City Southern Railway Company.

The Issue

The Kansas City Southern Railway (KCSR) owns a rail line known as the Redwood Branch, a portion of which is the subject of this proceeding. This line is south of Vicksburg, Mississippi (MS) between Milepost (MP) 225.6 and MP 229.85 running basically parallel to State Route 61 in Warren County, MS MP 225.6 is located south of the line's crossing of Warrenton Road and the intersection with Kemp Bottom Road at the Entergy Baxter Wilson Plant switch (which switch is included in the abandonment) while MP 229.85 is approximately 0.05 miles south of the line's crossing of Glass Road, just beyond the Vicksburg city limits By decision served December 12, 2007, the Surface Transportation Board (STB) granted KCSR authority to abandon its rail line between the two MP limits subject to the Offer of Financial Assistance (OFA) process under 49 U.S.C. 10904 and 49

CFR 1152 27(c). On December 20, 2007, Mr. English, President of Foam Packaging, the sole shipper on the line, timely filed an OFA to purchase approximately 19 miles of the Line extending from MP 225.6 to MP 227.5. On December 21, 2007, Mr. English filed a supplement to his December 20 OFA, adding James Riffin, who claims to be an existing Class III rail carrier, as a joint offeror, and expanding the scope of the offer to include the remaining 2.35 miles of the Line from MP 227.5 to MP 229.85.

In a decision served on December 27, 2007, Messrs. English and Riffin were found to be financially responsible and the effective date of the exemption authorizing the abandonment was postponed to permit the OFA process to proceed. In the same decision, the Board made any request to establish the terms and conditions of the purchase due on or before January 18, 2008. By STB decision served January 17, 2008, the deadline for requesting terms and conditions was extended to January 25, 2008. KCSR and Messrs. English and Riffin were not able to agree to a negotiated purchase and accordingly, Messrs. English and Riffin have asked the STB to set the terms and conditions of governing any OFA purchase.

In anticipation of Messrs. English's and Riffin's request to set the terms and conditions of a forced sale under the OFA process, KCSR requested that I review the record, inspect the line, and conduct an analysis of the net salvage value of the physical infrastructure and property on the line. I was not asked to address the real estate value. I should note that the rail and other track material between MP 227.5 and MP 229.85 has previously been removed and accordingly that portion of the line has a net salvage value of zero. My analysis therefore focuses on the approximately 1.90 main track miles of rail infrastructure that remain between MP 225.6 and 227.5.

My Investigation

I have conducted physical, h/rail, and walking inspections of the line as well as reviewed available maps of the subject area, along with associated photos, drawings and documents. I have read the STB decision, dated December 27, 2007, in the matter of the subject OFA. I have read the letter of Mr. William A. Mullins to Mr. Raymond B. English dated October 18, 2007, reviewed the calculations to support their OFA advanced by Messrs. English and Riffin in a letter dated January 4, 2008 addressed to Mrs. Crystal Zorbaugh, read the January

25 request by Messrs. Riffin and English to set the terms and conditions for the forced sale of the line under the OFA procedures, and reviewed a track chart illustrating characteristics of the line supplied by KCSR, and reproduced in Appendix B. Lastly, I have reviewed valuation (val) maps furnished by KCSR, which provided additional information regarding line characteristics.

On January 15, 2008, I visited the subject line at the request of KCSR to determine independently the net salvage value (NSV) of the rail and other track materials (OTM) included in the proposed abandonment area and as set forth in Appendix C. I was accompanied on the hyrail inspection by Vicksburg Southern Railroad, Inc. (VSOR) representatives, Messer. Pat Foster (General Manager) and George McMahon (Roadmaster). VSOR provides exclusive freight service over the subject portion through a commercial arrangement with KCSR but has been granted authority to discontinue those services if the abandonment is approved or the line is sold under the OFA process. After completion of the hyrail portion of the inspection, I performed a walking inventory and inspection of the 1.90 miles that was valued. During that visit, photographs of existing track, switch, and road crossing conditions were taken by me. The NSV of the proposed abandonment area was then calculated, utilizing current (January 2008) market relay and scrap prices of rail, timber and OTM.

Existing Track Conditions

I visited the Redwood Branch area to view the track structure that would be the basis of the NSV in connection with the current STB proceeding. It was a clear, sunny day approximately 55 degrees Fahrenheit. After performing a joint hyrail inspection with VSOR representatives, I walked the entire 1.90 miles of main track from the north toward the south, inventorying the track structure and taking photographs. The northern end of the valuation portion began at the Entergy Baxter Wilson Plant switch (MP 225.6), which is a left hand (LH) turnout constructed of 115 pounds per yard rail with 16 foot-six inch leads (16'-6"),

Sampson switch points and a manual switch stand, along with a #10 rail bound manganese (RBM) frog. This turnout (seen in Appendix D – Photo Number 1) should be classified as relay as it appeared to have good switch timbers and steel components. I understand from conversations with VSOR employees that Entergy does not receive rail cars at this time.

Continuous welded rail (CWR) contained within the subject line weighed 112 or 115 pounds per yard with only two locations where plug rail had been cut in. The rail appeared to have been transposed from a main track when initially installed on the Redwood Branch; however it showed signs of little wear and had good ball characteristics. For the purposes of my NSV calculations, I classified about half of the rail as relay quality Fit #2 rail, a classification agreed to by VSOR representative, Mr. McMahon. The subject rail is supported by seven and three quarter inches by thirteen inches (7-3/4" x 13"), double shoulder (D/S) tie plates and usually had two cut spikes per rail per tie (a total of four per tie). The few joint bars seen during the inspection featured six holes, appropriately sized to fit the rail. Rail anchors were knock-on type. Tie conditions on the specified portion were what one would expect given that the subject track currently operates under Federal Railroad Administration (FRA) conditions classified as Excepted. Tie conditions in the field warranted classifications of relay, landscape, and scrap. After sampling three different areas along the line, about twenty four percent of the ties were deemed to be of relay quality. Further tie classifications of landscape and scrap were inventoried at about 44 and 35 percent, respectively. See Appendix C for additional information regarding tie conditions contained within the corridor.

Continuing further south on the line one encounters a ballast deck, timber trestle with sixteen spans (Appendix D – Photo Number 2). I did not perform an in-depth inspection of the only bridge contained within this portion as typically, bridges and culverts are left in place in abandonment proceedings (as is the case

between MP 227.5 and MP 229.85) in case a trail were to be formed at a later time. I did note that the bridge was about 183 feet long and was constructed with six piles per bent (Appendix D – Photo Number 3) and ten stringers per span. All components were timber with the exception of two concrete caps. It should be noted that there are eight culverts of various sizes, constructed of either concrete, cast iron or vitrified materials, scattered throughout the line. Again, I did not perform an in-depth inspection of the culverts as I assumed that they would be left in place for potential use as a trail at a later time.

At-grade, highway-rail crossings contained within the subject area include two public crossings with passive protection, one which was only asphalt filled and the other having timber headers and asphalt filled (Appendix D – Photo Number 4). There are three private at-grade, highway-rail crossings with no protection noted. Two of those private crossings are rock filled only and one has a moss surface (constructed entirely of timber).

Another turnout on the line is the out of service switch to U.S. Rubber Reclaiming, Inc. This LH turnout is constructed of 112 pounds per yard rail with sixteen foot-six inch (16'-6") leads, plane switch points and a manual switch stand. Switch timbers are in poor condition with a #8 RBM frog. The turnout I classified as scrap. The last turnout on the line provides access to Cooper Lighting and is utilized by Foam Packaging, Inc. (Foam Packaging) to transload materials used at its nearby plant. This switch is constructed of 112 pounds per yard rail with twenty two foot-zero inch (22'-0") leads, plane switch points and a manual switch stand. A #10 RBM frog is utilized in this turnout and the switch timbers are in poor condition. I classified this switch as scrap for the purposes of my valuation.

As there is no further track or OTM between MP 227.5 and 229.85, I did not include in my calculations in Appendix C and seen in Appendix D – Picture Number 5 any NSV for this portion of the line, although I understand that the

right-of-way is included in the abandonment and the real estate is part of the agreement between KCSR and the City of Vicksburg regarding the City's plan to purchase the entire right-of-way between MP 225.6 and MP 229.85 for implementation of a trail if the line is ultimately approved for abandonment.

Net Salvage Value

For purposes of this Verified Statement (VS), I only deal with track infrastructure (no real estate) including rail, ties, and OTM, i.e. the actual physical assets. Based upon my inspection, review, and analysis I calculate that the NSV of such physical infrastructure is \$270,100 for the subject area, utilizing January 15, 2008 relay and scrap railroad material prices, as illustrated in the attached Appendix C. A short summary of the major components are:

Gross Salvage Value	\$352,600
Salvage Expenses	<u>(29,800)</u>
Preliminary Salvage Value	\$322,800
Additional Salvage Expenses	
(Administrative/Marketing/Transportation)	<u>(52,700)</u>
Final Net Salvage Value (NSV)	\$270,100

For a complete breakdown of NSV computation criteria, methods and values please refer to Appendix C. Note that the scrap steel market is extremely volatile and has changed significantly in the last couple of years. It should be noted that the NSV I computed reflects the actual amount and condition of rail, ties, and OTM that is in the field, which is about 1.90 miles (all main track).

Rebuttal to Net Salvage Value (Riffin)

In Mr. Riffin's January 4, 2008 letter to Ms. Zorbaugh and the January 25 request to set terms and conditions filed, some NSV calculation assumptions in support of the OFA by Messrs. English and Riffin utilize assumptions which are flawed in my opinion. The overarching assumption that all in-place track

materials should be classified as scrap is the most significant, which view was changed in the January 25th filing after apparently reviewing my initial assessment of field conditions; however many other underlying assumptions were flawed as well. This discussion only involves track structure assets as I was not asked to address real estate values and I further understand that Mr. Chet Culley is dealing with any potential environmental issues that may be encountered were the line to be physically abandoned.

First, in the OFA calculations set forth by Messrs. English and Riffin, they initially assumed that there is a mix of 112 and 115 pounds per yard rail and they take the average when calculating the weight of the rails¹. While this turns out to be overly conservative, it is inaccurate. The rail in-place is almost all CWR weighing 112 pounds per yard, with the exception of two short locations totaling one tenth (0.1) of a mile and the Entergy Baxter Wilson Plant switch, which contained rail weighing 115 pounds per yard, to which Mr. Riffin later acknowledged agreement in his January 25, 2008 filing.²

Second, the OFA is based on the assumption that all supporting tie plates were of the single shoulder type³, which is frequently scrapped in line abandonment. This is inaccurate as all viewed tie plates were double shoulder, 7-3/4" by 13" of relay quality. While there were some portions of the track structure covered by either mud or ballast, there was no reason to believe that the track structure was anything but homogeneous throughout the corridor. In the January

¹ Raymond B English and James Riffin Offer of Financial Assistance, January 4, 2008, p 3, section 8

² James Riffin Request to Establish Conditions and Compensation for Financial Assistance, January 25, 2008, p 3, section 6E

³ Raymond B English and James Riffin Offer of Financial Assistance, January 4, 2008, p 3, section 9

25th filing, Mr. Riffin again utilizes the weight of single shoulder tie plates (all tie plates valued as scrap) which is not what is actually in the field.⁴

Third, the initial OFA calculations by Mr. Riffin reflect no joint (splice) bars or bolts⁵. While this assumption is mostly accurate, there are joint bars in two locations where plug rail had been cut in as well as in the three turnout areas. While this initial omission is not significant, it is inaccurate and Mr. Riffin later accepted my field inventory in the January 25th filing.⁶

Fourth, the initial OFA calculations reflect classification of all turnouts as scrap⁷, which I consider inaccurate. The Entergy Baxter Wilson Plant switch appears to have been installed relatively recently and is constructed of 115 pounds per yard rail, Sampson switch points, good switch timber, and a #10 RBM frog exhibiting little signs of wear. During the hyrail inspection, my opinion was further validated in that Mr. McMahon agreed with my conclusion that the Entergy switch should be classified as relay. I agree with Messrs English and Riffin that the other two turnouts should be classified as scrap but disagree on the unit weight of a scrap switch. While the OFA reflects two tons per switch, my expert experience reflects that it is more accurate to use five tons of scrap per switch. In the January 25, 2008 filing by Mr. Riffin, he agrees with my assessment of all the turnouts as well as revenue generated from their assets.⁸

⁴ James Riffin Request to Establish Conditions and Compensation for Financial Assistance, p 5, section 9B.

⁵ Raymond B English and James Riffin Offer of Financial Assistance, January 4, 2008, p 3, section 11

⁶ James Riffin Request to Establish Conditions and Compensation for Financial Assistance, January 25, 2008, p 3, paragraph 6E

⁷ Raymond B English and James Riffin Offer of Financial Assistance, January 4, 2008, p 4, section 12

⁸ James Riffin Request to Establish Conditions and Compensation for Financial Assistance, January 25, 2008, p 2, section 6C

Fifth, while the math of Messrs. English and Riffin may be correct, their underlying assumptions are inaccurate, as illustrated in classifying all steel materials as scrap⁹. To expand on their error, they only received local scrap prices from two vendors¹⁰. If the line in fact were to be abandoned, KCSR would expect to maximize its positive income by shipping (via rail car) to any destination likely to achieve the maximum per ton scrap material value, net of transportation charges. Were scrap materials to be shipped to as far away as Chicago, as suggested in my NSV calculations, KCSR could achieve \$440 per ton for reroller rail, \$330 per ton for scrap rail and \$385 per ton for scrap OTM as illustrated in Appendix C (all prices exclude shipping costs). It must be noted that Mr Riffin references the American Metal Market service in his calculations, his Exhibit B-5; however, after agreeing to the rail quantities and classifications of reroller, scrap rail and scrap OTM earlier in his statement, he utilizes a different price associated with No.1 RR Heavy Melt and the price quotes for reroller, scrap rail and scrap OTM immediately below that listing. As is readily apparent, there is a significant difference between the over \$300 per ton that I utilized versus the \$120 per ton used in the OFA. It should be noted that I utilized scrap prices as of January 15, 2008 from the American Metal Market service, which has been used in previous STB proceedings. Additionally, Mr. Riffin suggests that there may not exist much desire for 112 pounds per yard CWR in the current relay rail market. That could not be farther from the truth as illustrated by my checking with relay rail vendor L.B. Foster to obtain relay material prices. He further suggests that the relay rail would be cut into 50 foot pieces and transported via truck to scrap dealers in Houston. Again, this could not be farther from the truth than what actually occurs when CWR is abandoned. CWR is removed from the ties by various methods including sledding and/or using a backhoe or speedswing to quickly, safely and carefully remove the rail from all ties in the track structure. Depending on the final location of sale, the CWR would be loaded on a ribbon rail train or if sold to

⁹ Raymond B. English and James Riffin Offer of Financial Assistance, January 4, 2008, p. 4, section 13

VSOR, cut into 1,440 foot pieces and dragged to the location (by a locomotive engine or rail crane) where installation was to take place. To physically remove 1.90 miles of welded rail, OTM along with sorting and separating the ties could easily be accomplished in one to two weeks with a minimal amount of equipment and labor. Appendix C of this VS reflects transportation of relay and scrap materials, via rail car, to markets utilizing actual quotes for rail haul obtained from KCSR with connecting carriers as necessary to locations such as Chicago. Mr. Riffin's use of trucks to haul scrap to local dealers only illustrates his desire to create inefficient expenses thereby minimizing the NSV; where if KCSR should be forced to sell to Mr. Riffin, KCSR should be able to not accept the bare minimum but achieve a fair market value for its assets.

Sixth, the OFA reflects the assumption that it would take \$45,646 (or just over \$24,000 per mile) to remove the track¹¹. Since track removal cost is a function of how complex the track structure is and taking into account surrounding conditions, I believe that my per mile track removal costs of \$14,000 (when rail was classified as relay) and \$12,000 (when classified as scrap) better reflect local conditions. The base assumptions underlying Mr. Riffin's calculations of track removal were from a short abandonment in New York (NY) consisting of 90 pounds per yard jointed rail (Exhibit B-2) which is significantly different than what is in place in Vicksburg, MS. Additionally, to assume that it would require \$3,000 each to remove the dirt or asphalt filled public and/or private at-grade, highway-rail crossings is unrealistic. Again, Mr. Riffin is basing his calculations on information relating to NY, of which we know nothing about the crossings other than that they exist. Based upon my over eighteen years of field experience and inquiry, a single backhoe with a small group of two or three employees could easily remove all five crossings in a single day and return the surrounding area to

¹⁰ Ibid, p 4, section 13

¹¹ Ibid, p 4, section 14

normal condition at a total cost of about \$3,800 (Appendix C), as reflected in my NSV calculations versus the \$15,000¹² suggested in the OFA.

Seventh, Messrs. English and Riffin initially assumed that all ties would be scrapped¹³. While there were only a limited number of relay quality ties contained within the subject area, I estimated about twenty one percent qualify as relay. Those relay quality ties could be used on other portions of the KCSR or sold to a shortline railroad or other rail-served industries and, therefore, add value to the NSV. There is a sizeable quantity of ties that could be placed in the landscape market and sold in bulk to positively influence the NSV, not a negative effect as argued in the OFA. My estimation was that about 44 percent, or about 2,543, could be sold for landscape use. After making a deduction for properly disposing of about 35 percent of those ties that were either not suitable for relay or landscape use, a positive NSV (relating to crossties) resulted, contrary to that suggested by the initial OFA calculations¹⁴. In the January 25, 2008 filing, Mr. Riffin accepted my tie assessment quantities and prices of relay and landscape grade ties.¹⁵ Appendix C of this VS reflects a negative unit cost of \$2 50 to properly dispose of scrap ties in an environmentally safe manner, which I understand from discussions with KCSR that it can actually dispose of scrap ties at an even better price (dealt with by Mr. Chet Culley's VS), but to be conservative, I utilized the greater negative number to be on the safe side. Indeed, in a worse case scenario, the NSV for the ties should be set at zero as I have been informed that KCSR is not required under its contract with the City to remove the ties. KCSR has the option to remove the ties and will only do so if there is a positive effect on KCSR's revenues.

¹² Ibid, p 4, section 14

¹³ Ibid, p 4, section 15

¹⁴ Ibid, p 5, section 15

¹⁵ James Riffin Request to Establish Conditions and Compensation for Financial Assistance, January 25, 2008, p 2, section 6D

Eighth, with respect to the NSV, Messrs. English and Riffin set forth numerous environmental salvage costs that they argue should be deducted from the salvage value of the track and OTM. It is my understanding that these issues are being addressed by Mr. Chet Culley, General Director Environmental Quality, at KCSR. I would note that Messrs. English and Riffin propose that the ballast be removed which, in my considerable experience out in the field, is often contrary to what actually occurs. In many cases, since sales of used ballast rarely occur, ballast is left in place therefore requires no remediation or salvage costs. Likewise, I have been informed that the contract between KCSR and the City give KCSR the option of leaving the ballast and ties in place if that is what KCSR desires. Thus, KCSR would not remove the ties or ballast if there are negative remediation costs. Thus, the net salvage costs for removal of the ballast should be zero.

Conclusion

If the proposed OFA is accepted, it should include \$270,100 for track structure components including rail, ties, and OTM, as suggested in the NSV text and calculations set forth in Appendix C.

Verification

I, Gene A. Davis, P E., verify under penalty of perjury that I am the same Gene A Davis, P E whose statement of Qualifications appears in Appendix A of this verified statement and that I, being duly sworn, deposes and says that I have read the contents of this foregoing statement and know the contents and facts asserted therein are true and correct as stated Further, I certify that I am qualified and authorized to file this statement


Gene A Davis, P E

Subscribed and sworn to before this 25th day of January, 2008


Notary Public



APPENDICES

Appendix A

.

Gene A. Davis, P.E.

Director, Transportation Engineering

Education

MBA, Georgia Southern University, 1997

BS, Civil Engineering, Tennessee Technological University, 1983

Professional Registrations and Affiliations

Registered Professional Civil Engineer

American Railway Engineering and Maintenance-of-Way Association, member since 1996

AREMA Member of Technical Committee 12 (Rail Transit) and 18 (Light Density & Short Line Railways)

Years of Transportation Experience

23

Qualifications

Mr. Davis joined RLBA after 18 years of experience with Norfolk Southern Corporation during which he held positions with increasing responsibility within the Engineering Department spanning management and engineering of railroad track structure, bridge and building inspection, condition assessment, maintenance, rehabilitation, design and construction as well as railroad operations

Relevant Project Experience

- **WATCO Companies** Inventoried, assessed condition and estimated the desktop net liquidation value of owned and leased track structure of properties including the Kansas and Oklahoma Railroad, South Kansas & Oklahoma Railroad, Eastern Idaho Railroad and the Timber Rock Railroad totalling about 1,573-miles in the states of Colorado, Idaho, Kansas, Louisiana, Oklahoma and Texas.
- **SF&L Railroad** Inventoried, physically inspected, assessed condition and valued railroad right-of-way between Peoria and La Harpe, IL. A net liquidation value was placed on the track structure.
- **Iowa Northern Railway Company** Inventoried, physically inspected, assessed condition and valued railroad right-of-way between Cedar Rapids and Waterloo, IA and between Cedar Falls and Manly, IA. Net liquidation values were placed on the physical assets of both segments before and after track rehabilitation which were utilized in a FRA RRIF application
- **Philadelphia, Bethlehem and New England Railroad** Performed an NLV and replacement cost estimate utilizing all new materials via a physical track inspection of approximately 42 miles of this switching carner.
- **Rocky Mount and Western Railroad Company, Inc.** Inventoried and estimated the desktop net liquidation value of existing Rocky Mount and Western Railroad Co., Inc. track structure, bounded by Momeyer and Spring Hope, totaling over five miles, assumed to be in scrap condition, to be utilized in an Offer of Financial Assistance by the State of North Carolina.
- **State of Washington Department of Transportation** Inventoried, physically inspected, assessed condition and valued portions of the Palouse River and Coulee City Railroad between Cheney, WA and Coulee City, WA and between Marshall, WA and Hooper Junction, WA as well as all diverging routes in Idaho and Washington, totaling 347-miles and provided a point-by-point rebuttal to comments made by a review appraiser. Net liquidation values were placed on the physical assets of six, separate sub-segments as well as the whole.

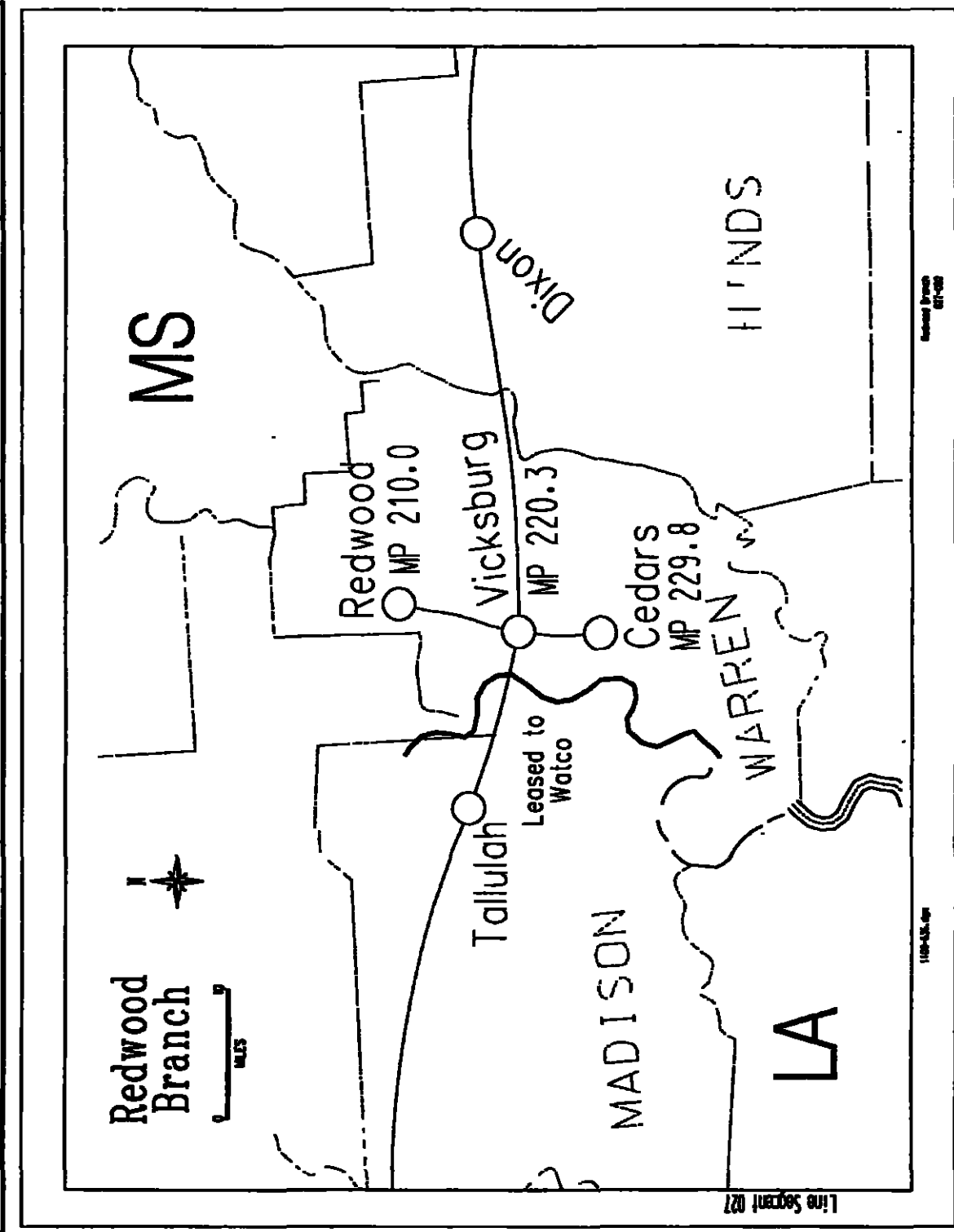
Gene A. Davis, P.E.

- **Florida Department of Transportation** Assisted a FDOT in its negotiation with CSX to institute new commuter rail service by valuing approximately 70 miles of the freight railroad's main line infrastructure
- **North Carolina Department of Transportation** Inventoried, assessed condition and estimated the desktop net liquidation value of three segments of CSX railroad right-of-way, bounded by Ridgeway and Hamlet, NC including the diverging line segment between Apex and Durham, NC totally 192 miles.
- **Los Angeles Department of Water and Power** Inventoried, assessed condition and estimated the desktop net liquidation value of the track structure contained within the boundaries of Cobre and McGill Junction, NV railroad right-of-way re the Nevada Northern Railway totally about 133 miles
- **The City of West Sacramento Redevelopment Agency** Inventoried, physically inspected, assessed condition and estimated the net liquidation value of the track structure in a segment of Yolo Shortline Railroad Company railroad right-of-way between West Sacramento and Clarksburg, CA
- **The Transportation Agency of Monterey County** Inventoried, physically inspected, assessed condition and valued Union Pacific Railroad Monterey Branch Line between Castroville and Pacific Grove, CA. Net liquidation values were placed on the physical assets of six separate sub-segments as well as the entire branch.
- **Lee County, FL** In the first of two assignments, inventoried, physically inspected, assessed condition and estimated the net liquidation value of the track structure in a segment of Seminole Gulf Railway L.P. railroad right-of-way near Fort Myers, FL totaling about 1.4 miles. Then utilizing the previously generated net liquidation value report of the track structure, along with a review of other pertinent documents, provided a point-by-point rebuttal via a Verified Statement submitted to the Surface Transportation Board in support of an adverse abandonment of the subject line.

Norfolk Southern Corporation Work Experience

- **Assistant Division Engineer-Bridges (Pocahontas Division)** Territorial responsibility covered trackage in Charleston and Bluefield, West Virginia, Norton, Virginia and Columbus and Portsmouth, Ohio. Coordinated and facilitated new construction, inspection, and maintenance of drainage structures including bridges and culverts. Coordinated remedial repairs to tunnel structures including portal upgrades. Solicited bids for repairs by contractors and performed repairs to roadway buildings, using company forces. The 1,300 miles of his territory included over 24 miles of various bridge types, 8,000 culverts of varying construction types, 20 miles of tunnels and 16 miles of slide fences
- **Bridge and Building Supervisor (Georgia Division)** Territory spanned 500 miles including Savannah, Augusta and Macon, Georgia. Performed inspections, supervised maintenance repairs and new construction by company forces of drainage structures including bridges and culverts.
- **Track Supervisor (Lake and Pocahontas Divisions)** Lake Division territory encompassed trackage in Columbus, Delaware, Bucyrus, Bellevue and Sandusky, OH. Pocahontas Division territory included Welch, WV and Richlands, VA. Performed FRA inspections and accomplished remedial repairs to track structure via routine maintenance and rail, tie/surfacing and surfacing work. Coordinated contract services including rail grinding and undercutting. On the Lake Division, responsible for over 110 miles including Sandusky Yard and two smaller yards. Pocahontas Division responsibilities included over 36 miles of double and triple track mainline and 44 miles of single track mainline including Auville Yard.

Appendix B

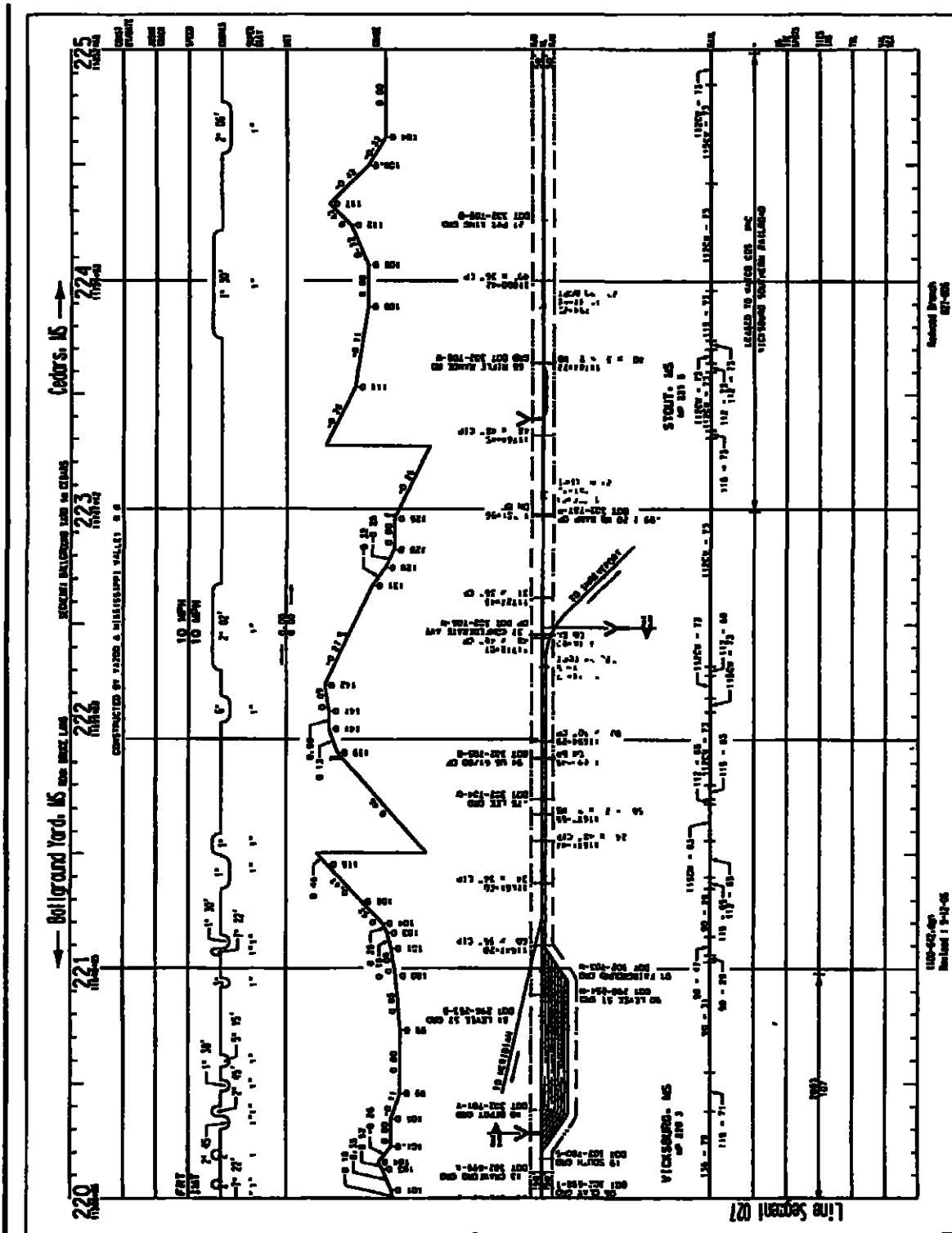


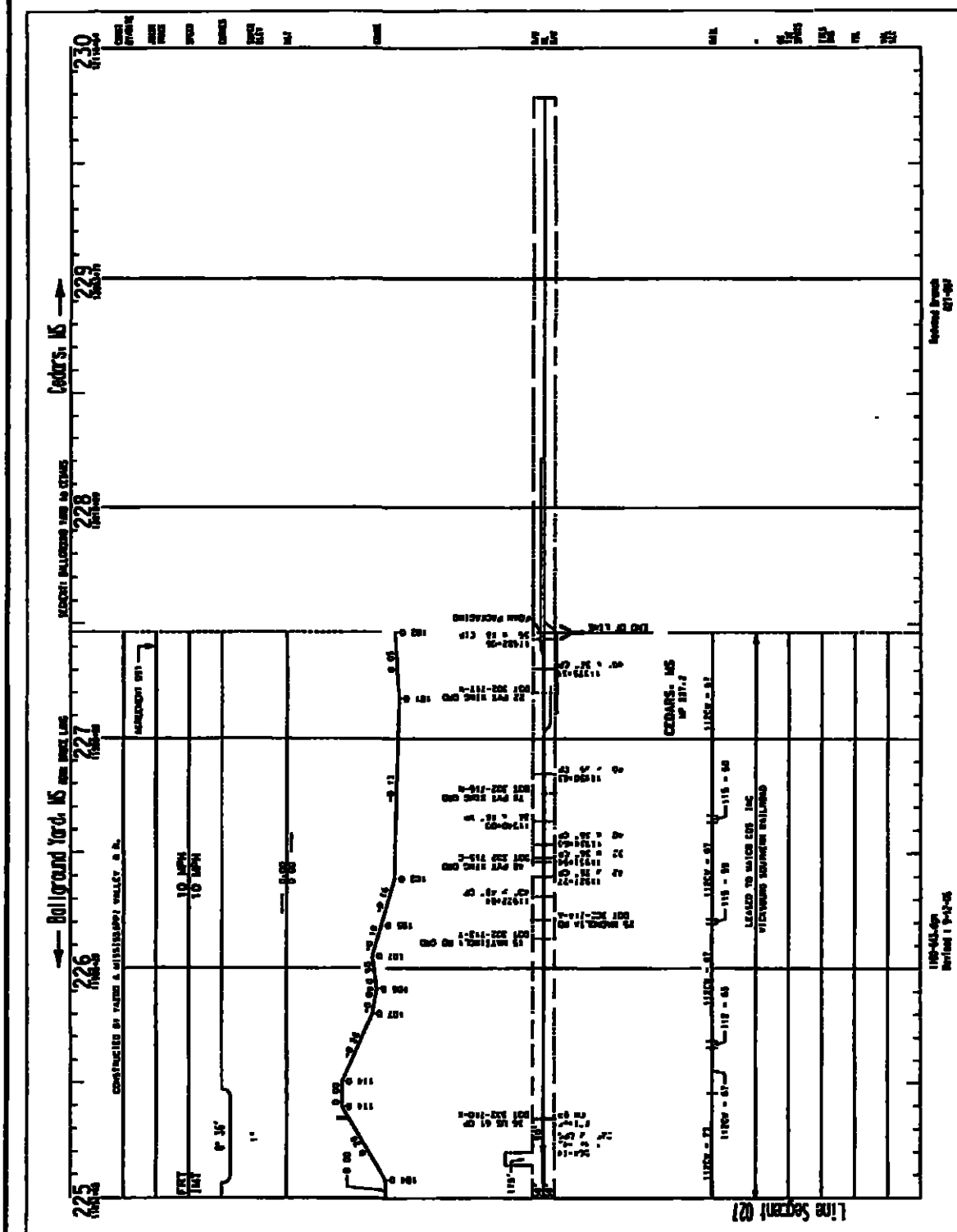
BRIDGES & CULVERTS

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ROOM TELEPHONE
OFFICE FOR COMMUNICATION
ELECTRIC CONVERTER
COAL CHUTE
EXPRESS BUILDING
FUEL
INTERLOCKING TOWER
LAVATORY
MILITARY
OIL TANK
PROMENADE
RADIO COMMUNICATION
STOCK YARD
TURNTABLE
TREATMENT PLANT
WATER COLUMN
WATER TOWER
WYE

AUTOMATIC BLOCK SIGNAL SYSTEM
AUTOMATIC PERMISSIVE BLOCK
AUTOMATIC TRAIN STOP
AUTOMATIC GATE
BLOCKED MAIL
BLOCKS
BLOCKS LINE TERRITORY
BOMBING SIGNAL
BRIDGE SIGNAL
BLOCK REQUISITOR TERRITORY
CART-CONTROLLED SWITCH/CROSSINGS
CONTROL SIGNAL
CANALIZING SIGNAL
CAPACITY
CENTRALIZED TRAFFIC CONTROL
CHAS. CONTROL SWITCH
COAST GUARD VESSEL DETECTOR,
ELECTRICALLY SENSITIVE
FIRELIGHT ALARM





Appendix C

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

VERIFIED STATEMENT
OF
GENE A. DAVIS, P.E.

APPENDIX C

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**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**

Introduction

The Kansas City Southern Railway Company (KCSR) engaged R.L. Banks & Associates, Inc. (RLBA) to evaluate the net salvage value of the track assets owned by KCSR over which rail service is provided by the Vicksburg Southern Railroad, Inc. (VSOR) near Vicksburg, Mississippi. The subject rail line is between milepost (MP) 225.6 and 229.85 of which about 1.9 miles (between 225.6 and 227.5) has existing track, ties, ballast, switches, and other track materials (OTM).

On behalf of RLBA, I was asked to determine the Net Salvage Value (NSV) of the subject track assets (excluding land and rolling stock) as of January 15, 2008. My conclusions are set forth in my Verified Statement which is attached to KCSR's reply being filed in this proceeding. This Appendix C to my Verified Statement presents the underlying assumptions, factual calculations, and other calculations underlying my conclusions and those of RLBA.

Description of the Railroad

KCSR-owned properties near Vicksburg, Mississippi that are the subject of this report are portions of the former Yazoo & Mississippi Valley Railroad. The subject line is sometimes referred to as part of the Redwood Branch and is described in more detail in my verified statement.

The subject line consists of a single main track which currently hosts minimal annual, rail traffic volume. The only active customer on the line is Foam Packaging, which utilizes the Cooper Lighting Track to transload materials from rail cars to its nearby plant. During the hyrail portion of the January 15, 2008 inspection, VSOR representatives Pat Foster (General Manager) and George McMahon (Roadmaster) informed me that Foam Packaging only receives rail service on-demand. Track contained within the subject line between MP 225.6 and MP 227.5 totals 1.90 miles, all main track. Mainline track in this segment is maintained to FRA Excepted standards, capable of supporting freight train speeds only of less than ten miles per hour (MPH).

The portion of the line containing the track and other track material (OTM) contains no curves, three turnouts, one bridge (timber ballast deck) and eight culverts in the evaluation area. There are two public road crossings in the subject area (featuring passive protection) and three additional private road crossings (with no protective devices). Maximum gradient on the line is 0.5 percent.

The 1.90 miles of mainline track was predominately comprised of two rail sections (112 and 115 pounds per yard) of continuously welded rail (CWR) rolled in the mid 1960's. This valuation reflects the information gained through the physical inspection and information provided through printed and verbal sources. A summary of the rail evaluated appears in Exhibit One, which identifies rail assets by location. The evaluation covers rail, ties, ballast, turnouts, and OTM including joint bars, anchors, tie plates and spikes.

Net Salvage Value

As summarized in Table 1 below and detailed in Exhibit One of this Appendix, the aggregate NSV of all selected KCSR-owned property, (1.90 miles of railroad main track) was \$271,100 as of January 15, 2008. That figure was determined through my physical, hyrail and walking inspection of the property on January 15, 2008 where I was accompanied by VSOR representatives Pat Foster and George McMahon, as well as additional information obtained from KCSR, VSOR, and rail assets suppliers. Supplementary information was obtained from track charts and other descriptive documentation supplied by KCSR and VSOR as well as application of market prices and typical removal costs.

The main line was comprised of 1 90 track miles of medium weight (112 and 115 pounds per yard) CWR No yard, spur and side tracks were included in the valuation. A detailed breakdown of total mileage by rail weight is shown in Exhibit One

Determination of Net Liquidation Value

The total estimated NSV of all KCSR track assets in the evaluated area (excluding land and rolling stock) is \$270,100 and is based on January 15, 2008 salvage, relay and scrap prices as summarized in Table 1 below.

Table 1

**NSV of Selected Track Assets
KCSR-Owned Rail Lines
(dollars in thousands)**

Gross Salvage Value – In Situ Materials		\$352.6
Less Salvage Expenses:		
Track Removal	\$26.0	
Highway Crossing Restoration	3.8	
Preliminary Track Salvage Value		\$322.8
Administration, Marketing and Transportation Expense	\$52.7	
Net Salvage Value		\$270.1

Source: Exhibit Two

It was arrived at in four principal steps: first, computation of Gross Salvage Value (GSV), the market value of salvageable assets (primary components with a value greater than related salvage expenses); second, calculation of various salvage expenses; third, Preliminary Track Salvage Value, that value remaining after deductions of salvage expenses due to removal and restoration as necessary to render assets saleable and preparation of the corridor for non-rail use; and fourth, Net Salvage Value (NSV), that value remaining after deductions of administration/marketing expense and conduct of the sales process such as transportation of materials.

Rail was the asset type constituting by far the largest proportion of NSV, however, ties also possess noteworthy value. Market prices utilized in the calculation of NSV were believed appropriate to the observed condition of the ties and steel materials in place and were obtained from L.B. Foster, American Metal Market and RLBA's databanks.

Methodology To Compute NSV

NSV was determined through application of a multiple step process, the building blocks of which were

- 1 Gross Salvage Value
 - a) Fixed Asset Ownership
 - b) Fixed Asset Inventory
 - c) Inventory Adjustment for Wear and Recovery Reductions
 - d) Application of Market Value Unit Prices
- 2 Salvage Expenses
 - a) Removal Expenses
 - b) Restoration Expenses
- 3 Preliminary Track Salvage Value [(1) - (2)]
4. Administrative, Marketing and Transportation Expenses and
- 5 Net Salvage Value [(3) - (4)]

Exhibits One, Two and Three to this report provide detailed computational data, including inventory and unit costs by type of asset valued

Gross Salvage Value

GSV in the context of this analysis was defined as current retail market value (with the exception of ties, which would be wholesaled) of all fixed assets as if they were available for immediate sale. Bridges, highway crossing devices, ballast and culverts, as will be explained later, yield no positive NSV value in most cases because of high removal costs.

Fixed Asset Ownership

In performing this track-related NSV evaluation, RLBA assumed that KCSR owns all the rail assets (all main track) in fee simple, which KCSR has informed is in fact the case.

Fixed Asset Inventory

To assess the physical condition of the track assets, Mr. Gene A. Davis, P.E., an experienced railway engineer and former Assistant Division Engineer of Norfolk Southern,

conducted a thorough, one-day inspection of the selected area on January 15, 2008. Data concerning track condition and inventory obtained during that field inspection was used in developing this NSV report in addition to materials provided by KCSR and VSOR.

Steel. The most significant marketable materials reflected in this valuation were steel track components, assumed to be sold for railroad reuse or as steel mill scrap, depending upon condition. Generally, rail in the main track designated as "fit" or "relay" can be reused in other railroad applications if it weighs at least 90 pounds per yard or greater. Rail may have a functional use and life with wear up to and exceeding ½ inch vertical or horizontal head wear but is not generally considered worth installing again into a relay, cascading position if it exhibits more than 1/4 inch wear. At the time of this valuation it was found that KCSR rail met two of three suitable, relay categories: Fit #1, which includes all rail with less than 1/8 of an inch head wear, Fit #2, all rail with 1/8 of an inch head wear or more but less than 3/16 of an inch head wear and Fit #3, rail of 3/16 of an inch head wear or more but less than ¼ inch headwear. The retail price of Fit #1 is set at a premium, lower for Fit #2 and #3, respectively. If not suitable for rail relay, the next highest value application is as reroll, where rail is rolled into new non-rail products. Rail not suitable for reroll because of excessive side head wear, excessive metal flow, holes mid-rail, short length or attached asphalt or concrete is suitable only as scrap. Reroller rail brings higher dealer prices than scrap. Scrap is divided into two categories: rail and other track material (OTM) such as joint bars, tie plates, rail anchors, nuts, bolts, washers, and spikes. OTM commands a higher price than rail because it avoids the extra effort required by mills to cut rail into sections suitable for melting. Exhibit Three displays the values assigned to each rail and OTM classification.

All 190 miles of main track rail was of 112 or 115 pounds per yard weight of American Railway Engineering Association (AREA) and American Society of Civil Engineers (ASCE) specifications. (See Exhibit One for manufacture dates and locations of each rail type.) The following grading was based upon information gathered by Mr. Davis during his field inspection and RLBA estimates. Certain rail sections contained within the subject area will bring a premium price on the open market, such as the 112 and 115 pound CWR. Rail classifications are detailed in Exhibit Three.

I determined that one of the three main track turnouts on the subject KCSR-owned lines warranted classification as relay since it was of 115 pounds per yard rail. The relay switch was a #10 turnout with a rail-bound manganese (RBM) frog and having switch timbers in good condition. All double shoulder 7-3/4 x 13 inch main track tie plates used

on 112 and 115 pound rail (5-1/2 inch base) were classified as relay, even if the rail they supported was classified as scrap because they would be matched featuring other relay rail with less desirable tie plates. If rail reuse as relay was warranted, joint bars and rail anchors were assumed reused whereas if rail were assumed scrapped or rerolled, the joint bars and rail anchors were assumed to be scrapped. CWR was assumed to contain about five percent of the number of joint bars as regular jointed rail when turnouts are present as is the case in this valuation. All other track material (OTM) such as nuts, bolts, washers, and spikes were valued as scrap.

Ties. Because tie installation costs often approach tie material costs, only recently installed ties are suitable for rail reuse. The cost to sort, handle, transport, and inventory ties is high, and in comparison with the wholesale prices they command, generally yield only a low net salvage value. RLBA sampled blocks of 100 ties at three locations. Each location contained ties exhibiting signs of severe weathering and/or deterioration. While those ties appeared to be somewhat solid, both the age and the climate suggest they most likely would be suitable for landscape only. The vast majority of the ties most likely could not be sold for reuse in railroad applications. Twenty one percent of the ties surveyed were categorized as of relay quality. The remaining ties were classified as landscape or scrap, 44 percent and 35 percent of all ties, respectively (Exhibit Six). Overall tie condition would be considered to be fair to poor.

Ballast No value, net of the cost of sale, was attributed to the ballast. Some sales to townships or private individuals for roadway or farm road gravel would be possible but those were assumed to be of limited magnitude and approximate removal costs. I understand that KCSR will leave ballast in place if it is permitted to abandon the line.

Other Track Assets Traditionally, no net salvage value is assigned to signals and communications facilities, highway crossing signals, highway crossing panels, bridges, or culverts on the line in the calculation of the NSV by RLBA and its experts. Highway crossing signals generally have little or no alternative use value. Use by even a short-line railroad to replace a damaged signal is unlikely, typically, no inventory is kept on-hand and new replacements are ordered from standard suppliers for immediate installation. Marketing costs to inform railroads of second-hand availability and handling costs likely would exceed an amount that could be recovered through sale. Signal materials scrap value likely would approach salvage costs, resulting in no net impact on the NSV determination. Likewise, there is no ready market in which to sell used highway crossing

panels so they are not included in NSV calculations. Bridge and culvert removal costs and proceeds traditionally approximate each other, therefore have no net effect on the NSV and so are typically omitted from the NSV calculations.

Inventory Adjustment Reflection of Wear and Recovery Reductions

Due to material age, condition and the economics of expedited removal procedures, it was determined that not all railroad assets in the existing right-of-way would be recovered. Instead, liquidation of the property was assumed to yield the following recovery rates, based on the theoretical weight of new rail:

- 97 percent of fit rail, remaining three percent as scrap,
- 97 percent of scrap and reroll rail,
- 97 percent of tie plates on fit and scrap rail,
- 97 percent of joint bars on fit rail;
- 95 percent of joint bars on scrapped rail,
- 97 percent of scrap turnout material,
- 50 percent of fit rail anchors and
- 80 percent of rail anchors, bolts, spikes, washers and other scrap materials

The recovery rate assumption as to scrap and reroll rail reflects a three percent reduction applied to gross rail weight as an adjustment recognizing average rail wear. Fit tie plates and joint bars were assumed sold by unit, therefore no weight reduction was assumed. However, five percent of OTM gross weight (with regards to joint bars) was judged likely to be lost as a result of the removal process. Rail anchors salvaged from fit rail were assumed to be 50 percent acceptable as relay. Finally, 20 percent of anchors, bolts, spikes, washers and other materials were estimated as rusted or lost during salvage operations, leaving only 80 percent to be salvaged as scrap.

Application of Market Value Unit Prices

The GSV and NSV estimates were based on the application of actual unit market prices as at January 15, 2008, as supplied by specifically identified market participants and displayed in Table 2 on the next page.

It was assumed that the seller would use its own personnel and/or contract out efforts to remove, organize and sell released materials as opposed to a single bulk transaction to a

rail or scrap broker at an in-place price. However, used crossties were assumed sold in bulk to a broker at a net wholesale price reflecting removal by the broker.

Table 2

**Unit Market Prices
January 15, 2008**

Track Asset	Unit Price	
	Per Component	Per Net Ton
Rail 115 pounds per yard CWR #2 RE		\$825
Rail 115 pounds per yard CWR #3 RE		815
Rail 112 pounds per yard CWR #2 RE		805
Rail 112 pounds per yard CWR #3 RE		785
Fit Tie Plates Double Shoulder (7-3/4 x 13)	\$7.00	
Fit Joint Bars 112/115 pounds per yard	55.00	
Rail Anchors	1.50	
Steel		
Reroll		440
Scrap		330
OTM, Scrap		385
Ties		
Relay	18.00	
Landscape	6.00	
Scrap	(2.50)	

Sources: American Metal Market, L. B. Foster and RLBA estimates

Comments on a few key prices follow.

RLBA and I determined that reroller rail and railroad scrap loaded in railcars in the Vicksburg, MS area and delivered to Chicago scrap rail and OTM user mills would command \$440 per net ton for reroller rail, \$385 per net ton for miscellaneous OTM (other track materials including joint bars, tie plates, spikes and bolts) and \$330 per net ton for railroad rail in 33 or 39 foot sections. Changes in the scrap steel market (which is notoriously volatile) would directly affect the value of these materials.

RLBA and I also found that the net wholesale value would be \$18.00 per relay tie and \$6.00 per landscape tie. Remaining ties were classified as scrap, with a deduction of \$2.50 each, reflecting the cost of proper disposal.

Salvage Expenses

Two fundamental assumptions were employed in development of expenses to be netted against gross salvage values:

- 1) costs associated with removal, sorting and transporting railroad materials were assumed to reflect a deliberate and efficient liquidation, and
- 2) restoration expenses were assumed to be required for highways, including coordination with local governments

Removal Expenses

Based upon RLBA's extensive experience, the cost of taking up track, including disassembly, sorting, stacking and loading of materials for shipment and disposing of ties was estimated at \$14,000 per mile where rail was classified as relay and \$12,000 per mile where classified as scrap. Turnout removal was estimated at \$500 for fit turnouts and \$400 for scrap turnouts.

Restoration Expenses

As a condition of service termination and non-rail reuse of the real property, governments frequently require correction of some existing conditions that might cause the public sector to incur future expense. Such regulations affect the subject NSV determination in three principal asset categories: 1) bridges and culverts, 2) highway crossings and 3) structures.

RLBA assumed that the cost to remove bridge superstructures would approximate salvage proceeds, resulting in no impact on NSV. While removal expense likely could exceed salvage proceeds, because some trestles are constructed of timber and may be in environmentally sensitive areas, it is not unusual for bridges and culverts to be left in place in the event the line is abandoned or converted to a trail. Indeed, RLBA has been informed that the contract between KCSR and the City of Vicksburg for the sale of the entire right-of-way allows such bridges and culverts to remain in place at KCSR's option. Accordingly, such a disposition would yield the same NSV as that assumed in the estimate – zero. Likewise, supporting and sub-structures can remain in place as well, thereby generating neither proceeds nor expenses.

In the normal case of an abandonment, all tracks in roadways and crossing protection devices must be removed and pavement restored as a condition of service termination. The removal of track materials from pavement and restoration of pavement was estimated at \$1,500 per public crossing and \$250 per private crossing. Removal of crossing protection devices was estimated to equate to salvage value.

No minor structures (buildings) were noted during the hybrid or walking inspection of the KCSR-owned line.

Track Salvage Value

Track salvage value was equal to gross salvage value less salvage expense.

Marketing, Administrative and Transportation Expenses

Based upon RLBA's experience, RLBA has determined that the cost to administer the salvage of the tracks and OTM and to market the assets so as to achieve retail prices usually is approximately fifteen percent of retail GSV (excluding transportation) regarding relay steel materials and five percent of GSV re scrap, reroller and non-steel materials. Transportation of reroller and scrap steel materials was assumed to be shipped by rail to Chicago to maximize income net of carload transportation costs. Relay materials were estimated to be shipped by rail to achieve market prices as far away as Dallas, Texas.

To achieve the highest GSV, relay and scrap materials were estimated to be shipped (via rail) to markets that would achieve the maximum amounts possible. While the resulting GSV is greater by shipping those potentially longer distances, greater transportation expenses must also be accounted for. Relay quality rail and OTM was estimated to be shipped as far away as Dallas, TX and in the case of relay CWR, KCSR would likely use its ribbon rail train to transport to market. Of course, if the relay CWR were to be sold to the VSOR, no rail train might be necessary if used on the Redwood Branch. In the case of scrap materials (reroller, scrap rail and OTM), my estimates reflect transportation to Chicago to achieve the maximum possible. In the attempt to achieve maximum GSV, additional transportation expenses must be and are accounted for in my calculations.

Railroad Rail Market

The predominant component of railroad track asset value is the rail itself. The rail market consists of four primary products: new rail and the three previously described grades of used rail: relay, reroller, and scrap. Since the KCSR-owned track was entirely comprised of second-hand rail, the discussion which follows is limited to the used rail markets. The NSV will depend not only on the experienced wear of the rail but also on the situation in those markets.

Relay Rail

Rail replaced because of wear or defects on a busy or fast main track is eminently suitable for installation on slower speed or lighter traffic lines. At the slow speeds operated in yards, few broken rails result in derailments. In turn, welded replacement rail installed on secondary lines is superior to the turn of the century rail still in use in some yards. The weight (tonnage) of relay rail installed consistently exceeds the weight of new rail installed because rail removed from a main line and installed on a branch line frequently generates an additional rail cascade to yard tracks. At each step, however, a portion of the rail is scrapped, usually resulting in short lengths of rail (from cuts made at road crossings and switches) or rail with excessive curve wear.

Through the cascading process, relay rail is generated by installation of new rail (or other relay rail). In addition, some abandonments generate relay rail and worn sections are usually scrapped. While most relay material generated by a railroad is used on its own lines, there is a very active commercial relay market; several brokers supply material to regional and short line railroads and shipper-owned spurs, which neither require nor can justify the cost of new rail.

At lower levels of remaining useful life, rail becomes unattractive for sale in the relay market because the expenses of marketing, transportation, and installation on a regional or short line railroad would constitute an excessive share of total value.

Most rail relay programs include welding the rail before installation. Welding significantly reduces maintenance expenses incurred in the joint area associated with surfacing and bolt tightening. In addition, by removing the location of greatest rail wear, rail life is extended.

Reroller and Scrap Rail

Rail is a premium scrap grade because it is hard steel with known chemistry. While the scrap steel market includes many grades, used rail enters the scrap market as reroller and as charging material (heavy melting scrap) for furnaces. Reroller is the designation attached to clean lengths of rail that can be rerolled into new products (construction rebars, fence posts, etc.) Scrap material is required in charging both integrated mills and in mini-mill electric furnaces. The mini-mill demand for scrap is expected to remain strong. While most mills will accommodate rails up to five feet in length, some buyers prefer shorter lengths of two or three feet.

User Categories

The primary categories of rail users are Class I (large), regional, short-line railroads and industrial plants. Class I railroads primarily purchase new rail and generate relay rail internally with light weight rail sold as scrap.

Use of relay rail by weight depends on specific railroad practice but, in general, on Class I railroads, 112 pounds per yard and heavier will be reinstalled on secondary lines if within wear limits, otherwise it will be installed in yard trackage. Good relay rail is required in yard turnouts. Rail between 100 and 112 pounds per yard is suitable in yard and industry trackage, though if generated in abundance in any one year it may be sold to the second-hand market. Rail sections less than 100 pounds per yard are generally scrapped when taken up by Class I railroads.

Regional railroads are a market for second-hand rail and demand for repair rail has propelled second-hand prices on medium and heavy rail to a high value proportionate to prices of new rail with respect to remaining life as indicated by rail wear. This anomaly results because at typical regional railroad annual traffic levels of three to five million gross tons (MGT), half-worn rail may last another 50 - 80 years and so is a relative bargain at \$700-\$800 per ton compared with new rail at over \$1,000 per ton.

From the distinct economic perspective of regional railroads, by contrast with Class I railroads, paying one-half to three-quarters the price of new rail for half-worn rail can provide savings because replacement expenditures are years away. Rail weighing 115 pounds per yard or greater is preferred for replacement. Rail designated 132RE or greater (RE designation representing rail that adheres to AREA specifications) would be

considered if the costs, including shipping and other track materials, were the same or less than a 115RE section. Similar economics drive the decision of Class I railroads to cascade worn rail, with little in-place economic life to another line on the system with lower traffic density rather than continue wearing the rail down to scrap condition at its original location.

Short-line railroads use any rail from new 136RE to second-hand 85 pounds per yard rail, depending on traffic volume and financial strength. Generally, 100 pounds per yard or heavier is preferred but some lines still install less than 100-pound rail (to replace even lighter weights). If predominant traffic is carried in 100 ton cars, 100 pounds per yard is a minimum standard although some western railroads in dryer climates, and hence better subgrade conditions, use a 90 pounds per yard section. (The markets for relay quality 90 and 100 pounds per yard rail are still available but appear to be more regionalized, resulting in decreasing value due to the shift of the railroad industry toward being able to handle even greater axle loads.) Only a few short lines, generally those owned by the primary company they serve, can finance new rail purchases.

Industrial users can use any weight rail but prefer 100 pounds per yard or heavier section. A nearly universal specification by civil engineering firms of 115RE rail (instead of 115RE or heavier) on new sidetrack construction has driven the relay price per ton of that section higher than most other sections. The high volume of 115RE rail installed in mainline tracks during the 1950's and 1960's followed by a shift to heavier 119, 132 and 136RE rail has led to a scarcity of available 115RE repair rail. During the last few years, the relative bargain of 119 and 132RE rail has been recognized and those prices also have risen to match that of 115RE at least on a lineal foot basis. Some of the rail in this valuation was of widely used sections (112 and 115RE) which can be found on every major railroad in the country and is in great demand as relay rail on short-line railroads.

QUALIFICATIONS TO ESTIMATE

The findings of this cost estimate are subject to several qualifications and limiting conditions which are stated as follows.

It was assumed that all rail valued was manufactured according to AREA and ASCE recommended practices and that the rail assets are in full compliance with all FRA standards.

Further, RLBA assumes full compliance with all applicable Federal, state and local regulations and laws

RLBA takes no responsibility for changes in market conditions which may occur after the date of valuation or for the inability of the rail owner to identify a qualified purchaser

With regards to the rail valuation, RLBA has not conducted any title search or verification of legal ownership and assumes no responsibility for legal descriptions or titles. RLBA has conducted this valuation under the assumption that the rail described herein was owned by KCSR free and clear of any liens and encumbrances.

RLBA takes no responsibility for changes in track structure under portions of the railroad that were covered by material obstructing physical inspection or areas not inspected due to physical barriers such as fences

RLBA was not asked to and did not conduct any environmental analysis as part of its assignment and expresses no opinion with respect to any environmental regulation or requirement.

CERTIFICATION

I, Gene A Davis, P E of R L Banks & Associates, Inc , do hereby certify that to the best of my knowledge and belief:

The statements of fact contained in this report are true and correct

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, unbiased, professional analyses, opinions and conclusions.

I have no specified or unspecified present or prospective interest in the properties that are the subject of this report and I have no personal interest or bias with respect to the parties involved

My compensation was not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event

I have made a personal inspection of the property or reviewed the data that was the subject of this report

No one, other than staff under my supervision, provided significant professional assistance to the person signing this report.

Submitted,

A handwritten signature in black ink that reads "Gene A. Davis, P.E." The signature is written in a cursive, flowing style.

Gene A Davis, P.E.

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APPENDIX C

EXHIBIT 1

Exhibit One
KCSR Ownership Near Vicksburg, Mississippi
Summary of Rail Evaluated

Milepost		Rail			Control	Miles
North	South	Section	Rolled	Type	Cooled	
Main						
225.60	225 70	112	1967	CWR	Yes	0 10
225.70	225 75	112	1965	CWR	Yes	0 05
225 75	226.20	112	1967	CWR	Yes	0 45
226 20	226 25	115	1959	CWR	Yes	0 05
226 25	226 65	112	1967	CWR	Yes	0 40
226 65	226 70	115	1960	CWR	Yes	0 05
226 70	227.50	112	1967	CWR	Yes	<u>0 80</u>
Main Track Subtotal						1.90

Yard Tracks and Sidings:

No yard, side or industry tracks are included in the valuation

Total Miles 1.90

Source: RLBA

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APPENDIX C

EXHIBIT 2

Exhibit Two
Net Salvage Value of Track Assets
Owned by KCSR
Near Vicksburg, Mississippi
As of January 15, 2008

	Unit	Unit Cost	Total	Grand Total
Track Nominal Value				
Relay Railroad Materials			\$235,500	
Scrap and Reroll Materials			83,500	
Ties and Non-steel Materials			<u>33,600</u>	
Gross Salvage Value				\$352,600
Preparation Cost Adjustments				
Rail & OTM Removal - Fit (miles)	0 95	\$14,000	(13,300)	
Rail & OTM Removal - Scrap (miles)	0 95	12,000	(11,400)	
Turnout Removal - Fit (each)	1	500	(500)	
Turnout Removal - Scrap (each)	2	400	<u>(800)</u>	
Total Adjustments				(26,000)
Restoration Cost Adjustments				
Highway Crossing - Public (each)	2	1,500	(3,000)	
Highway Crossing - Private (each)	3	250	<u>(800)</u>	
Total Adjustments				(3,800)
Preliminary Track Salvage Value				\$322,800
Administrative and Marketing Expense				
Relay Materials - 15 percent			(35,300)	
Scrap Materials - 5 percent			(4,200)	
Transportation Expense				
Relay Steel Materials - Dallas, TX			(3,500)	
Scrap Steel Materials - Chicago, IL			<u>(9,700)</u>	
Total Estimated Expense				(52,700)
Net Salvage Value				\$270,100

(nominal value decrease)

Source Exhibit Three, RLBA estimate

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APPENDIX C

EXHIBIT 3

Exhibit Three
Gross Salvage Value of
Track Assets of The KCSR
Near Vicksburg, Mississippi
As of January 15, 2008

Miles		Description	Condition	Quantity per mile	Re-Useable			Scrap and Reroll				
Fit	Scrap				Total	Percent	Unit	Value	Value	Unit	Total	Grand Total (a+b)
RAIL												
0 04		115 RE CWR	Fit #2	202 4	Ton	8	97 %	\$825	2 9 %	\$330	\$100	\$6,600
0 01		115 RE CWR	Fit #3	202 4	Ton	2	97	815	2 9	330	0	1,600
	0 03	115 RE CWR	Reroll	202 4	Ton	6			97	440	2,600	2,600
	0 02	115 RE CWR	Scrap	202 4	Ton	4			97	330	1,300	1,300
0 72		112 RE CWR	Fit #2	197 1	Ton	142	97	805	2 9	330	1,400	112,200
0 18		112 RE CWR	Fit #3	197 1	Ton	35	97	785	2 9	330	300	27,300
	0 54	112 RE CWR	Reroll	197 1	Ton	106			97	440	45,400	45,400
	0 36	112 RE CWR	Scrap	197 1	Ton	71			97	330	22,700	22,700
0 95	0 95	TOTAL RAIL						\$145,900			\$73,800	\$219,700
OTHER TRACK MATERIAL.												
0 95	0 95	Ties Relay		Each	Each	3,168	21 %	\$18 00	44 %	\$6 00	\$16,000	\$22,800
0 95	0 95	Ties Landscape		Each	Each	6,019			35	(2 50)	(5,200)	16,000
0 95	0 95	Ties Scrap		Each	Each	6,019						(5,200)
0 95	0 95	Tie Plates 7 3/4 -13 DS	Relay	Each	Each	12,038	97	7 00				81,700
0 00		Jt Bars 115#	Relay	Pair	Pair	1	97	55 00				100
0 05		Jt Bars 112#	Relay	Pair	Pair	12	97	55 00				700
	0 00	Jt Bars 115#	Scrap	Ton	Ton	1			95	385	400	700
	0 05	Jt Bars 112#	Scrap	Ton	Ton	1			95	385	400	400
0 95		Rail Anchors	Relay	Each	Each	2,830	50	1 50				2,100
	1 43	Rail Anchors	Scrap	Ton	Ton	5			80	385	1,600	1,600
0 95	0 95	Spikes	Scrap	Ton	Ton	10			80	385	3,000	3,000
0 95	0 95	Bolts & Washers	Scrap	Ton	Ton	3			80	385	800	800
		TOTAL OTHER TRACK MATERIAL						\$107,400			\$17,000	\$124,400
TURNOUTS.												
Turnouts		Description	Condition	Quantity	Re-Useable			Scrap			Total	
Fit	Scrap				Unit	Total	Percent	Value	Unit	Value	Value	Value
1		Fit Turnouts	Fit	1	Each	1	100 %	\$5,000			\$5,000	\$5,000
	2	Scrap Turnouts	Scrap	5	Ton	10			97 %	\$358	\$3,500	3,500
1	2	TOTAL TURNOUTS						\$5,000			\$3,500	\$8,500
GRAND TOTAL								\$258,300			\$94,300	\$352,600

Notes Dollar amounts are rounded to the nearest hundred, tons to the nearest tenth, units to the nearest integer

Source Vendors, and RLBA estimates

**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**

**VERIFIED STATEMENT
OF
GENE A. DAVIS, P.E.**

APPENDIX C

EXHIBIT 4

Exhibit Four
KCSR Ownership Near Vicksburg, Mississippi
Yard Tracks and Sidings Summary

Mileage (by Rail Weight)

No side, yard or industry track was included in the valuation.

Source RLBA

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APPENDIX C

EXHIBIT 5

Exhibit Five
KCSR Ownership Near Vicksburg, Mississippi
Summary of Turnouts

Location		Condition Relay Scrap	Rail Weight	Frog		Switch Points		Switch Stand		Comments	
Pre	MP			Suf	Type	Size (#)	Weight	Plane	Sampson		Lead
225	6	X	115	RBM	10	115		X	16' 6"	X	Entergy Baxter Wilson Plant switch
226	8	X	112	RBM	8	112	X		16' 6"	X	U S Rubber Reclaiming, Inc switch
227	4	X	112	RBM	10	112	X	X	22' 0"	X	Cooper Lighting switch

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APPENDIX C

EXHIBIT 6

Exhibit Six
KCSR
Summary of Tie Condition
(Sample Blocks of 100)

<u>Location</u>	<u>Relay</u>	<u>Landscape</u>	<u>Scrap</u>
MP 225 7	20	52	28
226 0	21	48	31
227 1	<u>22</u>	<u>33</u>	<u>45</u>
Average % Totals	21	44	35
With tie spacing of	21	inches on center equates to	3,017 ties per mile
Expect average of	634	Relay ties per mile	
	1,338	Landscape ties per mile	
	1,046	Scrap ties per mile	

Source RLBA

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GENE A. DAVIS, P.E.**

APPENDIX C

EXHIBIT 7

Exhibit Seven
KCSR
Summary of At-Grade, Highway-Rail Crossings
As of January 15, 2008

Location	Milepost	Number	Public		Private		Crossing Type		
			B/F/G	B/F XB	w / Sign	w/o Sign	Filled	T&A	Moss Rubber Concrete
1	226 15	302-713T		X			X		
2	226 25	302-714A		X				X	
3	226 48	302-715G				X			X
4	226 78	302-716H				X	X		
5	227 22	302-717V				X	X		

Notes B/F/G = Bells/Flashers/Gates, B/F = Bells/Flashers, XB = Crossbuck Only
 T&A = Timber and Asphalt, Moss = Full Depth Wood

Source. KCSR track chart and RLBA

Appendix D

Photo Number 1



Entergy Baxter Wilson Plant Switch
(looking North)

Photo Number 2



Ballast Deck Bridge
(looking South)

Photo Number 3



Typical Six Pile Bent

Photo Number 4



Public At-Grade, Highway-Rail Crossing
(looking South)

Photo Number 5



Cooper Lighting Switch (Foam Packaging Transload Area)
(looking South)

**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**

**REPLY TO REQUEST TO ESTABLISH CONDITIONS
AND COMPENSATION FOR FINANCIAL ASSISTANCE**

EXHIBIT 2

**VERIFIED STATEMENT OF
CHESTER A. CULLEY**

**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**

**REPLY TO REQUEST TO ESTABLISH CONDITIONS
AND COMPENSATION FOR FINANCIAL ASSISTANCE**

My name is Chester A. ("Chet") Culley. I am the General Director of the Environmental & Hazardous Materials Department for The Kansas City Southern Railway Company ("KCSR"). My business address is 427 West 12th Street, P.O. Box 219335, Kansas City, MO 64121-9335.

Purpose of Statement

The purpose of my statement is to describe (1) the contract between KCSR and M & M Sales and Service (M&M) regarding M&M's agreement with International Paper (IP) to utilize KCSR scrap ties as fuel for operating IP's mill at Texarkana, Texas and the costs that KCSR would incur in salvaging ties on the KCSR rail line that extends from milepost 225.6 to milepost 229.85 in Vicksburg, Warren County, MS (the "Line"), and (2) explain why KCSR would not need to obtain a National Pollutant Discharge Elimination System ("NPDES") permit or any other type of environmental permit for KCSR to remove the track, switches, ties, and other track material ("OTM") on the Line. In discussing these two points, I will briefly address and refute certain assertions contained in the Request to Establish Conditions and Compensation for

Financial Assistance ("Joint Request") filed in this proceeding by Mr James Riffin and Mr Raymond B. English (collectively, "Petitioners")

Witness' Background

As noted above, I am the General Director of KCSR's Environmental & Hazardous Materials Department. I received a bachelor's degree in biology from the California State University at Los Angeles, and have since received other degrees and/or training from the following institutions: California State University at Sacramento, School of Engineering, Water and Wastewater Technical School in Neosho, MO; University of Texas A&M (Hazardous Materials Spill Control), and Colorado State University (courses in fire command, hazardous waste management, and transportation of hazardous materials). A more detailed list of my education and training are set forth in my resume, which is attached to my verified statement.

In my capacity as General Director of the Environmental & Hazardous Materials Department of KCSR, I direct the management of all of KCSR's environmental operations, hazardous materials incident remediation, emergency response, and am responsible for the oversight of engineering audits and safety, and all hazardous materials programs, among other responsibilities. Prior to my current position, I served as the president of Transportation and Industrial Services, Inc., where, among other things, I directed hazardous materials emergency response, site remediation. Previous to that I served as General Manager for Boots and Coots Company for emergency response services. Prior to that, I also served as the Director of Environmental Operations for Southern Pacific Railroad, and before that, I was the Director of Environmental Field Operations with the Burlington Northern Railroad. Other details relating to my professional background and experience are included in my resume (attached).

As is also set forth in my resume, I am a Certified Environmental Professional, and I possess a master's level certification as a Hazardous Materials Manager. In addition, I am certified in OSHA Hazardous Waste Operations & Emergency Response, and as a Class 4 Wastewater Treatment Plant Operator.

Railroad Tie Disposal

In connection with the possible salvage of the track and track material along the Line, KCSR contemplates that it would remove the rails, other track material (such as rail anchors, joint bars, and spikes), and the railroad crossties. I understand that KCSR is not obligated to remove the crossties under its agreement to sell the Line to the City of Vicksburg, but that KCSR nevertheless contemplates that it would do so if it is permitted to abandon the Line. KCSR has retained an independent track expert, Mr. Gene A. Davis, P.E., Director, Transportation Engineering with the firm of R.L. Banks & Associates, Inc. ("RLBA") to provide a verified statement regarding the net salvage value ("NSV") of the Line. Mr. Davis has estimated that roughly 35 percent of the crossties along the Line would be designated as scrap, an estimate that Petitioners evidently have accepted. Based upon that analysis, that would equate to approximately 2,106 of scrap ties that KCSR would plan to remove and put to beneficial re-use.

I use the term "beneficial re-use" because KCSR does not dispose of its scrap ties by sending them to approved disposal sites, which is the normal course of action and is rather costly. Rather, to minimize KCSR's tie removal costs, KCSR has entered into a contractual relationship with M&M regarding IP's facility in Texarkana, TX. This facility will receive KCSR's scrap ties for beneficial re-use by chipping and burning such ties as fuel in its paper mill operations. This IP facility in Texarkana is located on, and served by, KCSR.

Pursuant to this agreement with M&M, KCSR can, using its own crews, remove and segregate scrap ties removed from the Line, load them into company-owned gondola cars, and transport them by rail to IP's Texarkana plant. Under such an arrangement, IP will unload the ties, stack them, and use them as fuel at no cost to KCSR. As KCSR uses its own crews, cars, and transportation,¹ there would be no added costs to KCSR for removing the scrap ties on the Line and transporting them to IP's facility.

Under the arrangement with M&M, KCSR also has the option of removing the ties from the Line using KCSR's own crews and then stacking them at a central location. Under this arrangement, M&M will send its own cars and personnel to load the ties into the gondola cars. KCSR will then transport the gondola cars to the Texarkana facility at KCSR's expense as part of KCSR's regular train service to the IP facility, and then IP will unload the ties for their beneficial re-use as fuel. Under this process, KCSR will pay M&M \$0.75 per tie. Again, because KCSR uses its own crews and trains, the only expense to KCSR is the 75 cents per tie, which in this case equates to approximately \$1,580 (2106 x \$ 0.75).

I understand that Petitioners argue that KCSR would incur a cost of about \$7.50 per tie for removing and disposing the ties. Petitioners' \$7.50 per tie disposal cost is badly inflated. It appears to be based upon the assumption that KCSR would need to dispose of any scrap ties as a hazardous waste and at hazardous waste disposal sites. Railroad ties do not meet the U.S. Environmental Protection Agency (EPA) criteria to be classified as hazardous waste and Mr. Riffin's comment that scrap ties "would have to be disposed of in a hazardous waste landfill site" is incorrect. Additionally, as I have noted above, KCSR does not need to even dispose of its ties

¹ KCSR transports the scrap ties in gondola cars which, in this case, would be delivered to IP as part of KCSR's normal train service to the IP facility.

in landfills because of the arrangement with M&M. As such, at most, KCSR would incur a cost of 75 cents a tie

Likewise, Mr. Davis (on behalf of KCSR) estimates a total per tie disposal cost of \$2.50. I also believe that Mr. Davis' \$2.50 per tie disposal costs may be too high, although his estimate is understandably conservative and is closer to the actual disposal costs in this case. His analysis was also provided without the benefit of knowledge of the KCSR/M&M arrangement and appears to be based upon the assumption that KCSR would need to dispose of the scrap ties at an approved waste disposal site. Given that KCSR is going to use its own crews and trains to transport the ties, and possibly use its own cars, I do not count such activities as a "cost" to KCSR. However, if such costs were accounted for, the total costs for the tie removal and transportation to IP for IP's beneficial re-use would likely approximate the \$2.50 figure provided by Mr. Davis.

Environmental Mitigation Costs

Petitioners insist that KCSR will be obligated to comply with numerous environmental mitigation steps not specifically provided for in Board's October 23 Environmental Assessment or imposed as a condition in the December 12 Decision. According to Petitioners, KCSR would need to obtain a NPDES² permit as part of the NPDES Storm Water General Permit Program as adopted and implemented by the Mississippi Department of Environmental Quality ("MDEQ"), and as part of this process, Petitioners also claim that KCSR would need to construct silt fencing along the Line, prepare a storm water pollution prevention plan, and undertake site stabilization – steps that Petitioners estimate will cost KCSR approximately \$307,800.

² National Pollutant Discharge Elimination System ("NPDES")

Petitioners are mistaken in their assumptions. KCSR will not need to obtain any NPDES, Clean Water Act, or other environmental permits in order to salvage the track, ties, and OTM. MDEQ regulations do not require water quality mitigation and permits under NPDES unless there is over one acre of land disturbance. KCSR understands this requirement and I do not dispute that such a NPDES permit would be required if KCSR were disturbing land as part of any proposed salvage activities. However, what Petitioners do not understand is how the regulations have been interpreted to define what is meant by "land disturbance" so as to require compliance with the various environmental mitigation requirements applicable to soil disturbance.

While KCSR would remove the track, ties, and OTM as part of any salvage activity, KCSR would leave all of the ballast, ground surface, and topsoil intact. Based upon my professional background, knowledge, and review of the Mississippi regulations implementing the Clean Water Act, MDEQ does not appear to interpret the removal of track, OTM, and ties, while leaving the ballast and ground surface and topsoil intact (as KCSR plans to do) as qualifying as "land disturbance" so as to trigger the NPDES thresholds or other water quality-related permits. As such, it is my professional opinion that KCSR would not require a NPDES permit or any other permit applicable to soil disturbance for its proposed salvage activities on the Line. Petitioners' extensive discussion of NPDES permits, water quality mitigation, and the costs related thereto is wasted time based upon a fundamental misunderstanding of how the environmental laws are interpreted or have been applied.

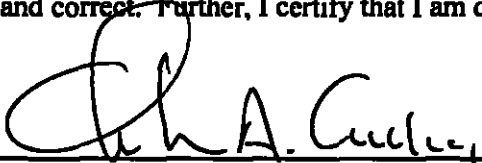
Indeed, KCSR consulted with MDEQ as part of the environmental assessment process. MDEQ was provided a full opportunity to comment on the proposed KCSR abandonment and the proposed salvage activities. MDEQ evidently determined that the salvage activities

contemplated here would not require NPDES mitigation or any other environmental permit or else it would have so informed the Board and requested implementation of an appropriate environmental mitigation condition. The fact that MDEQ did not request imposition of such an environmental condition is to me strong evidence that MDEQ agrees with my opinion that no such permits would be required

In conclusion, based upon my professional experience and over thirty years of dealing with environmental issues, I can state that Petitioners are incorrect about the need for, and level of, NPDES mitigation that would be required of KCSR if it were permitted to remove the track and track materials from the Line in connection with the proposed abandonment. Specifically, because KCSR would remove the rail, ties, and OTM, but leave in place the ballast and would not engage in any grading or other activities to disturb the ground surface, KCSR would not be required to seek any NPDES related permits or engage in any of the costly mitigation measures that Petitioners claim would be the case

VERIFICATION

I, Chester A Culley, verify under penalty of perjury that I have read the foregoing statement and that it is true and correct. Further, I certify that I am qualified and authorized to file this verified statement

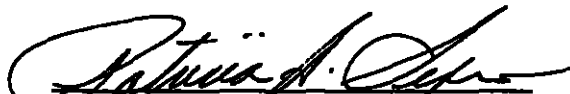


Chester A Culley

Executed on _____ of January 29, 2008

STATE OF MISSOURI)
)
COUNTY OF JACKSON) ss.

Subscribed and sworn to before me
on this _____ day of January 29, 2008



Notary Public of the State of Missouri

My commission expires.

