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February 27, 2008

VIA E-FILING

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**RE: *The Kansas City Southern Railway Company – Abandonment Petition for
Exemption – Line in Warren County, MS
Docket No. AB-103 (Sub-No. 21X)***

Dear Acting Secretary Quinlan:

Enclosed please find the Reply In Opposition To The Motion For Stay submitted on behalf of The Kansas City Southern Railway Company ("KCSR") in the above-captioned proceeding. 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

**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 IN OPPOSITION TO MOTION FOR STAY

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

February 27, 2008

**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 IN OPPOSITION TO MOTION FOR STAY

On February 26, 2008, Raymond B. English and James Riffin (collectively, "Riffin" or "Offerors") filed a Motion To Stay the Board's February 22, 2008 decision issued in this proceeding. Riffin asks that the date by which the Offerors are required to accept or reject the terms and conditions for the purchase of the Line be stayed until ten days after such time as KCSR provides Riffin with information regarding the pre-existing condition of the Glass Road Bridge and grants Riffin the right to take discovery. The Board should deny the motion.

Riffin has made no attempt to meet the test set out in Holiday Tours,¹ which Riffin is required to do in order to justify a stay of a Board decision, nor could he. As Offerors will, if they accept the terms and conditions, have a full opportunity to present evidence on the pre-existing condition of the Glass Road Bridge, Offerors cannot argue that they will be irreparably harmed in the absence of a stay. In contrast, grant of stay would further delay KCSR's efforts to discontinue its common carrier obligation over the Line and obtain the salvage value of the tracks, ties, switches, and other track materials. A stay would also deny the City's efforts to redevelop the

¹ Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977), Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958).

property and the County's desire to dismantle the Glass Road Bridge, which it views as a safety hazard. In fact, the open-ended extension of the deadline as requested would be directly contrary to the intent of the Staggers Act revisions of the Interstate Commerce Act, as carried forward into the ICC Termination Act of 1995. The Staggers Act revisions of the abandonment provisions of the statute were specifically intended to prevent carriers from having to maintain lines, such as the Redwood Branch, for an indefinite period. Riffin's open-ended extension request runs directly against that statutory purpose.

Riffin's request also seeks to extend a deadline that is contained in the statute, 49 USC 10904(f)(2), without making the requisite showing required to avoid this deadline. Section 10904(f)(2) specifies that "The decision of the Board shall be binding on both parties, except that the person who has offered to subsidize or purchase the line may withdraw his offer within 10 days of the Board's decision." The Board's February 22 order specifies that Riffin's failure to accept in writing by March 3 the terms and conditions set by the Board constitutes withdrawal of the offer. In order to avoid this statutory deadline, the Board would have to exempt this case from that statutory requirement pursuant to 49 U.S.C. 10502. Riffin has made no showing that meets or even attempts to meet the statutory requirements of Section 10502.

Riffin's request is simply an attempt to cause open-ended delay so that Riffin can engage in egregiously burdensome discovery. That desire is inimical to the intent and design of the OFA process. The OFA procedure is designed to be an expedited process in which each party develops its own evidence and submits that to the Board for a final decision. Discovery is not available in the OFA process. Here, however, Riffin seeks to avoid the responsibility to develop their own evidence by asking that KCSR be ordered to turn over any information that KCSR has and to make an unknown number of persons available for deposition by Mr. Riffin. There is no reason that Riffin cannot develop their own evidence for the limited extension of this OFA matter ordered by the

Board. The Board ordered each side to submit evidence concerning the supposed cost differential between restoring the line to service from the current state of the bridge over Glass Road as contrasted with restoration costs based on the condition of that bridge last Fall. That process should play out.²

In short, Offerors have not justified – legally or factually – the requirements for issuance of stay or the requirements for waiver of the statutory deadline at 49 U.S.C. 10904(f)(2). Therefore, the Board should deny the requests for relief.

Respectfully submitted,

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Attorneys for The Kansas City Southern
Railway Company

Dated: February 27, 2008

² KCSR has learned from Riffin that they have employed experts to review the bridge and its condition, have spoken with several former and current KCSR employees in an attempt to get information, and have sought out any FRA or other public records regarding the bridge. Likewise, earlier in this proceeding, Eric Strohmeyer, who is working with Mr. Riffin, took it upon himself to enter KCSR's property without the benefit of the right of entry agreement that he was told he would need to execute in order to examine the property. Much of the information offered in the OFA and request to set terms was, KCSR believes, provided to Mr. Riffin by Mr. Strohmeyer. That being the case, Riffin also has information from Mr. Strohmeyer on the condition of the bridge over Glass Road prior to Warren County's actions to partially dismantle it. Clearly Riffin can obtain evidence regarding the Bridge without the need for a stay.

CERTIFICATE OF SERVICE

**I hereby certify that I have this day served a copy of the foregoing Reply In Opposition To
The Motion For Stay 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 27th day of February, 2008.


William A. Mullins