

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

November 5, 2007

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
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)***

***Vicksburg Southern Railroad, Inc. – Discontinuance of Service Petition for
Exemption – Line in Warren County, MS,
Docket No. AB-1016X***

Dear Secretary Williams:

Enclosed please find the Response To The October 16 Filings of Raymond B. English, submitted on behalf of The Kansas City Southern Railway Company ("KCSR") in the above-captioned matters.

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**

STB DOCKET NO. AB-1016X

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

RESPONSE TO OCTOBER 16 FILINGS OF RAYMOND B. ENGLISH

**W. James Wochner
David C. Reeves
THE KANSAS CITY SOUTHERN
RAILWAY COMPANY
427 West 12th Street
P.O. Box 219335
Kansas City, MO 64121-9335**

**William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Tel. (202) 663-7823
Fax (202) 663-7849**

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

November 5, 2007

**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**

STB DOCKET NO. AB-1016X

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

RESPONSE TO OCTOBER 16 FILINGS OF RAYMOND B. ENGLISH

On October 16, 2007, Raymond B. English (“Mr. English”), an individual and party of record in the above-referenced proceedings as of October 2, 2007,¹ filed the following three pleadings:²

1. “Motion to Strike KCSR’s October 2, 2007 Reply to Reply and Retort to KCSR’s Response” (“Motion to Strike”);
2. “Supplemental Comments of Raymond B. English” (“Supplemental Comments”); and
3. “Raymond B. English’s Response to KCSR’s Letter Threatening Sanctions” (“English Response”).

Taken together, the October 16 Filings are a hodge-podge of contradictory statements, irrelevant information, and misapplications and misinterpretations of the Board’s procedures.

¹ Comments of Raymond B. English Notice (“English Comments”) filed on October 2, 2007.

² Collectively, these three filings from English will be referred to as the “October 16 Filings.”

These filings are also purposely misleading and appear designed to confuse the Board and other participants and supporters in the subject abandonment and discontinuance proceedings. The Kansas City Southern Railway Company (“KCSR”) hereby replies to Mr. English’s Motion to Strike, and responds to his Supplemental Comments and English Response.

ARGUMENT

Mr. English’s October 16 Filings are a collection of contradictory, irrelevant, and frequently unsupported claims and statements. Taken together, Mr. English’s filings – (1) provide no basis for striking KCSR’s October 2, 2007, Response to the Comments of Foam Packaging, Inc. (“October 2 Response”); (2) do not support denial of the subject abandonment and discontinuance of service; (3) do not support a denial of KCSR’s request for an exemption from the OFA provisions; and (4) appear to be directed at confusing and misleading the Board.

I. THERE IS NO BASIS TO STRIKE KCSR’S OCTOBER 2 RESPONSE

Mr. English’s Motion to Strike is predicated upon a basic misunderstanding of KCSR’s October 2 Response to Foam Packaging’s Comments and the procedures at 49 CFR Part 1121.³ Foam Packaging’s letter filing of September 12 (the “September 12 Comments”) addresses the merits of the subject petitions for exemption in a manner entirely in keeping with comments filed under section 1121.4(a). In fact, Mr. English nowhere disputes that Foam Packaging’s letter filing was intended as a comment responsive to the subject petitions for exemption. KCSR, of

³ Specifically, 49 CFR 1121.4(a) provides, in relevant part, that:

Exemption proceedings are informal, and public comments are generally not sought during consideration of exemption petition proposals... However, the Board may consider during its deliberation any public comments filed in response to a petition for exemption.

course, is entitled to respond to formal comments,⁴ and such is the ordinary process in abandonment proceedings filed under the individual exemption procedures.

Although Mr. English claims that KCSR's Response was an invalid reply to the September 12 Comments, the September 12 Comments were not a reply and can be nothing but a "comment" because the Board's regulations at Part 1121 do not provide for "replies" to individual petitions for exemption, but it does provide for the filing of comments. If Foam Packaging had intended its September 12 Comments to constitute a reply under section 1104.13(a), as opposed to a comment under section 1121.4(a), then Foam Packaging should have so distinguished or entitled its filing. But Foam Packaging did not do so and clearly entitled its September 12 letter as a "Comment," to which, as precedent shows, KCSR is entitled to respond.⁵ Because Foam Packaging's September 12 Comments were just that – comments pursuant to 49 CFR 1121.4(a) – KCSR was entitled to reply and the prohibition against replies to replies at section 1104.13(c) is not applicable here.

⁴ See Lake State Railway Company – Abandonment Exemption – Rail Line in Otsego County, MI, (STB Docket No. AB-534 (Sub-No. 3X) (STB served July 16, 2007) (rail carrier petitioning for abandonment permitted to file response to comments in opposition to abandonment); Sierra Pacific Industries – Abandonment Exemption – In Amador County, CA, STB Docket No. AB-512X, et al. (STB served Feb. 25, 2005) (responses to comments permitted when filed in time to allow adequate Board review under the Board's statutory deadlines for acting on abandonment petitions for exemption); San Joaquin Valley Railroad Company – Abandonment Exemption – In Kings and Fresno Counties, CA, STB Docket No. 398 (Sub-No. 4X) (STB served Mar. 5, 1999) (noting that the Board's rules provide for the filing of protests or comments in rail abandonment petition for exemption; opportunity to respond to such comments or protests not foreclosed under the rules).

⁵ In fact, Foam Packaging itself has not come forward to move that KCSR'S October 2 Response be stricken, but rather that request has been made by English in his individual capacity. English does not have standing to move to strike a reply addressing a pleading that he did not file.

II. MR. ENGLISH'S SUPPLEMENTAL COMMENTS PROVIDE NO BASIS TO DENY KCSR'S AND VSOR'S ABANDONMENT AND DISCONTINUANCE REQUESTS

The October 16 filings do not provide a basis for the Board to deny the abandonment or discontinuance. In fact, Mr. English strenuously maintains that he “does not oppose KCSR’s desire to abandon the Line [or] VSOR’s desire to discontinue service over the Line” provided Mr. English has access here to the OFA process. English Motion to Strike at 3, par. 10. And Mr. English acknowledges that, in granting KCSR’s and VSOR’s respective petitions, “KCSR would no longer have the expense of maintaining the Line, VSOR no longer would be providing freight service at a financial loss.” Id. Since Mr. English’s concern seems to be in processing an OFA and not in opposing the abandonment, it would seem in Mr. English’s best interests to have the Board clear the way for Mr. English’s anticipated OFA filing by swiftly granting KCSR’s and VSOR’s petitions. But Mr. English, apparently unaware of the possible consequences, actually makes arguments in his Supplemental Comments that are most logically construed as arguments for a *denial* of the subject abandonment and discontinuance petitions, which if that were to occur, would prevent the filing of his OFA.

A. KCSR Did Not Misconstrue The Scope Of The Line

Mr. English implies that KCSR has misled the Board with respect to the scope of the abandonment and the physical condition of the line. For example, Mr. English states that, of the 4.25 miles of rail line that are the subject of these proceedings, only the northernmost 1.9 miles of track are extant. He contends that KCSR removed the rails south of milepost 227.5 (south of where Foam Packaging’s truck transfer siding is located), pointing to photographs of the very end of the Line at milepost 229.85 as evidence. In light of these alleged facts, Mr. English argues that “one would reasonably conclude that there were in fact 4.25 miles of rail on the

ground, and that [p]etitioners had the present capability of providing service over the entire 4.25 miles of rail Line, particularly since no previous discontinuance-of-service or abandonment requests had been filed with the Board.” Supplemental Comments at 2, par. 4.

As best KCSR can tell, a good portion of the track structure on the portion of the Line south of milepost 227.5 is missing, although not all track is missing. Information available to KCSR indicates that the track between mileposts 227.5 and 229.85 was removed while the track was owned by MidSouth Rail Corporation (“MidSouth”) in the early 1990’s, before KCSR acquired the MidSouth properties.⁶ Neither KCSR nor VSOR removed any of the track structure itself, contrary to Mr. English’s claims. Regardless, removal of the track had no impact on shippers as KCSR understands that at the time the track was removed, there was no rail shipping activity on the line south of Foam Packaging’s location. and had not been for some time.

Given the fact that most of the track had been removed before KCSR even acquired the line and right-of-way, it was not even clear that KCSR was required to seek abandonment authority for that portion of the right-of-way. It did so nonetheless at this time in order to remove any uncertainty regarding the track and in an effort to ensure that the Board’s processes were (or had been) fully complied with. The fact that KCSR has been conscientious about including that portion of the right-of-way in this proceeding should not be a point for which KCSR should be criticized.

Regardless, the issue of the extent to which the track continues to exist on the right-of-way south of the connection to the track used by Foam Packaging is irrelevant to the ultimate merits of the joint abandonment and discontinuance request. As the petition for exemption filed

⁶ Kansas City Southern Industries, Inc., The Kansas City Southern Railway Company and K&M Newco, Inc. Inc. – Control – Midsouth Corporation, Midsouth Rail Corporation, Midlouisiana Rail Corporation, Southrail Corporation and Tennrail Corporation, Finance Docket No. 32167 (ICC served June 4, 1993).

on August 24, 2007, makes clear, Foam Packaging is the only shipper located on the Line, and KCSR's records indicate that there had been no service south of Foam Packaging for some time or any demands for service. Furthermore, given the economics of operating such a light density line, it is no surprise that the "out-of-service" section of the Line south of Foam Packaging would be in poor shape. KCSR never implied that the track south of milepost 227.5 was in operating condition or that it was being maintained accordingly. In fact, the Environmental and Historic Report accompanying the joint petition contains photographs of bridges on the southern segment of the Line (all of these bridges appear to still have rail on them), and those photographs show the decrepit condition of the rail property. See Exhibit 4 to KCSR's Environmental and Historic Report.

B. KCSR's Assessment Of Traffic Prospects Is Accurate

It is of particular note that neither Foam Packaging nor Mr. English takes issue with the economic justification for discontinuing service and abandoning the Line. Indeed, they as much as admit that the Line cannot be operated profitably by either KCSR or VSOR.⁷ Mr. English's Supplemental Comments do contain a vague reference to an unidentified shipper "at the end of the Line," who had at some unspecified point in the past "expressed an interest in receiving freight rail service," but presents no evidence on this point.⁸ Supplemental Comments at 4, par. 8. Mr. English claims that this unidentified shipper was told by "KCSR" that they would not provide service because the Line already had been abandoned.

⁷ English's agreement with the fact that KCSR and VSOR have made an economic case justifying the abandonment and discontinuance was made clear in his October 16, 2007 "Raymond B. English's Response To KCSR's Letter Threatening Sanctions" where he states at pg. 3 that "the evidence and argument that KCSR has offered in support of its petition to abandon the Line, would have sufficient probable value to permit the Board to grant KCSR's request to abandon the Line."

⁸ English fails even to indicate what commodity or commodities this alleged would-be shipper would be seeking to transport.

KCSR has consulted its records has no documentation of a shipper inquiry that would support Mr. English's story⁹ And even if such an inquiry had actually taken place, as unlikely as that is, there is no indication that such a shipper was declined service. It is unclear why Mr. English has been so deliberately mysterious in his vague allegations about this purported shipper, but even if such a "potential" shipper ever existed, that does not justify continuing rail service over a line that even Foam Packaging admits it is uneconomical for KCSR or VSOR to operate.¹⁰

III. MR. ENGLISH HAS FAILED TO PROVIDE A SUFFICIENT BASIS FOR DENYING KCSR'S AND VSOR'S REQUEST TO BE EXEMPT FROM THE OFA PROCESS

Not having presented any evidence of record to demonstrate that continued operation of the line by VSOR or KCSR is in the public interest, and given that Mr. English is the President of Foam Packaging, the Board should acknowledge what Mr. English implicitly acknowledges: the abandonment and discontinuance should be granted. The fight, to the extent that one should exist, should be over whether the OFA process should apply in this proceeding. The City and Lakes believe an OFA should not be allowed, and for good reason. As such, the Board should grant petitioners' request to be exempt from the OFA process.

Mr. English would have the Board believe that exemptions from the OFA provisions are "extraordinary" or "rare" and used sparingly. To the contrary, however, such exemptions are not

⁹ KCSR did cooperate with the City of Vicksburg during the 2002-2004 time period on trying to bring another shipper to the line south of Foam Packaging's plant, but those efforts failed, apparently due to the low projected shipping volumes.

¹⁰ English's allegation is similar to that in a recent case in which an opponent to an abandonment proceeding tried unsuccessfully to use similar such unsupported allegations to discredit railroads seeking to abandon and discontinue service over a line in Oklahoma. See BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK, et al., STB Docket No. AB-6 (Sub-No. 430X) (STB served Jan. 26, 2007). In that case, the Board effectively disregarded the abandonment opponent's vague, unsupported, and ultimately withdrawn claims, as to which the railroads were given insufficient detail to be able to respond. The Board should do the same here.

new nor are they rare. A review of the twenty or so ICC or STB cases where OFA exemptions were requested shows that the Board denied the OFA exemption requests in only about six of them; granting all others. It is simply not true that such exemptions are “rarely granted” as claimed by Mr. English. In fact, it is the denial of the exemption requests that is the rare event. The Board has granted many more exemptions than it has denied.

There is good reason for this. Parties generally do not seek OFA exemptions willy-nilly, but instead only when there is a public need for the right-of-way post-abandonment. Indeed, under Board precedent, the Board will grant an exemption from the OFA provisions when the right-of-way is (1) needed for a valid public purpose; and (2) there is no overriding public need for continued rail service over the right-of-way.¹¹ Thus, where there is a public use for a right-of-way, the Board will grant the OFA exemption request unless the objecting party can show that the need for continued rail service overrides the proposed public use of the right-of-way. Few parties have been able to establish that the need for continued rail service overrode the public interest so as to justify the denial of the OFA exemption request, and neither has Mr. English made a showing sufficient to override the public interest as expressed by the City of Vicksburg.

KCSR’s request for an OFA exemption clearly meets the applicable legal standard for granting such a request. As most recently confirmed by the October 31st filing from Lakes Entertainment (“Lakes”) and the November 2 filing by the City of Vicksburg (“City”), the public need for granting the abandonment is not driven solely by the desire to use the right-of-way

¹¹ Southern Pacific Transportation Company – Discontinuance of Service Exemption – In Los Angeles County, CA, Docket No. AB-12 (Sub-No. 172X) (ICC decided Dec. 1, 1994); Norfolk and Western Railway Company--Abandonment Exemption--In Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X) (STB served May 13, 1998); and 1411 Corporation – Abandonment Exemption – In Lancaster County, PA, STB Docket No. AB-581X, and Middletown & Hummelstown Railroad Company – Abandonment Exemption – In Lancaster County, PA, STB Docket No. AB-529X (STB served Sept. 6, 2001)(“1411 Corporation”).

(“right-of-way”) for a trail. Mr. English is correct in one sense and that is that the casino project – buildings, parking lot, other commercial space – will not be built directly on the right-of-way, but he is wrong with respect to the impact that an active rail line would have on the proposed casino and related projects. Mr. English conveniently leaves out the fact that the casino is only part of the development. In addition to the casino, there are plans to build a golf course, public park facilities, and the proposed walking and bike trail where the right-of-way lies. Leaving the right-of-way intact as an active line of railroad would make such recreational development difficult, if not impossible, to undertake.

Furthermore, the only feasible means by which the employees and customers of the casino and recreational development could access the development from any of the major roads, which all lie east of the proposed project, would be to cross over the tracks that serve Foam Packaging. Due to the projected size and scope of the development project, and assuming the project would go forward if rail service continued, maintaining a safe crossing of the tracks in that case could require building grade-separated road crossings at several locations.¹² Such crossings could cost upwards of a million dollars to build and maintain, a substantial sum of money, especially when balanced against the fact that Foam receives less than 60 carloads a year and has shipping alternatives - if it were willing to explore them¹³ - that would not involve the prospective public safety risks of maintaining multiple at-grade crossings on a line operated by a new, potentially inexperienced, rail operator.

¹² The exact size, scope, and type of crossing that Lakes Entertainment would have to put in place in order to construct the various roads to/from its casino project would be governed by the Mississippi Department of Transportation and the Federal Railroad Administration. As the October 31st filing indicates, Lakes Entertainment is unlikely to proceed with the redevelopment project if rail service continues, regardless of whether it would be required to put in at-grade or grade-separated crossings of the rail line.

¹³ KCSR has no record of any effort whatsoever by Foam Packaging to discuss alternative transload locations with KCSR at any time since this proceeding began.

As set forth in the various filings by Lakes and the City, the proposed commercial development would bring to Vicksburg numerous new jobs and commercial activity and would result in increased City revenues. Conversion of the line's right-of-way to a trail would result in a new recreational feature for Vicksburg residents, along with the possibility of a new golf course, homes, and public park facilities. In addition, removal of the line would eliminate five at-grade crossings so that traffic flow and public safety would be improved, and there are no significant environmental impacts associated with abandoning the line and salvaging the tracks. The bottom line is that the casino and recreational development may not occur at all if KCSR is forced to sell the line under the OFA process because of the substantial costs and potential safety issues associated with maintaining rail service right through the middle of a recreational and casino development project.¹⁴ Clearly the right-of-way is needed for a valid public benefit, which is the first part of the test used in determining whether to grant an exemption from the OFA statute.

As to the second part of the test applicable to whether to grant an exemption from the OFA statute, Mr. English has not shown that the need for continued rail service to Foam Packaging over the right-of-way overrides the City's need for the right-of-way for public purposes. Mr. English claims to want to maintain rail service over the right-of-way. Yet, considering that the line is already operated by an economical short line operator – VSOR – and still loses money, it is hard to believe that Mr. English could continue to operate the line at a profit. Moreover, given Foam Packaging's complaints about the potential costs of hiring a truck

¹⁴ As stated by Lakes, "[t]he proposed Casino will bring to the City numerous new jobs and commercial activity and would result in increased City revenues. Due to the aforementioned issues, development of the Casino will most likely not occur if KCSR is forced to sell the line under the OFA process for continued rail service." Lakes' October 31 "Reply To The Supplemental Comments Of Raymond B. English" at 7.

driver or purchasing a new truck, there is no reason to believe that Foam Packaging would be willing to expend the hundreds of thousands of dollars required to compensate KCSR for the purchase of the tracks and right-of-way and then turn around and pay a rail operator to operate the line.

Finally, Mr. English cannot show that the need for rail service over the right-of-way overrides the public need for the right-of-way because Foam Packaging would not lose rail service if the redevelopment plans were to go forward. Foam Packaging operates a transload operation. By definition, this means that Foam Packaging's products are capable of using trucks and are not rail dependent. Indeed, KCSR believes that Foam Packaging receives a volume of material that is not moved on the subject line at all. Thus, moving Foam Packaging's transload location from the existing right-of-way to another nearby location is a relatively minimal burden on Foam Packaging, and certainly less of a public burden than the OFA proposal that Mr. English purports to want. While relocating the point at which it transloads commodities may cause Foam Packaging to spend slightly more in trucking costs, when compared to the significant costs and harm caused by continued rail service over the right-of-way, these costs pale by comparison. Likewise, such increased costs cannot be the sole basis for denying abandonment when there are other factors favoring the abandonment. Union Pacific Railroad Company – Abandonment Exemption – in Lancaster County, NE, STB Docket No. AB-33 (Sub-No. 112X) (STB served Sept. 24, 1997); Paducah & Louisville Railway, Inc. – Abandonment Exemption – In McCracken County, KY, STB Docket No. AB-468 (Sub-No. 5X)(STB served June 18, 2003). Because Foam Packaging can transload its product at another location at minimal increased costs, Foam Packaging would not lose rail service if the line were abandoned

and converted into a trail. Yet, there would be significant private and public harms if the line were to continue in rail service.

In the end, Mr. English has not given any reason why he or another entity should be permitted to invoke the OFA provisions to delay or thwart a significant local redevelopment project that is clearly in the greater public interest. The City and Lakes have shown that the right-of-way has a valid public purpose for more than just a trail.¹⁵ Mr. English has not shown that the need for continued rail service over the right-of-way overrides this public purpose, especially given that Foam Packaging can continue to receive rail service for its transload operation at another location. As such, KCSR's request to be exempted from the OFA process is more than justified under the two-part test applied in determining whether to grant an exemption from the OFA process. Denying the exemption request would be inconsistent with precedent and would result in the loss of significant public benefits. Accordingly, Mr. English's request for a denial of petitioners' request for an exemption from the OFA provisions should be rejected.

IV. MR. ENGLISH'S FILINGS ARE MISLEADING, CONTRADICTIONARY, AND DO NOT ACCURATELY REFLECT THE REAL PARTIES IN INTEREST.

A. The Filings Are Confusing And Misleading

When reviewing the comments by Mr. English, it is difficult to determine whether Mr. English is speaking for himself, for Foam Packaging or for Foam Packaging's Treasurer Mr. Davenport. This causes considerable confusion, and in some respects is very misleading. As a result, the Board should give little weight to those comments. While Mr. English is one of three individuals who signed the comments that Foam Packaging filed with the Board on September

¹⁵ While it is true that some case law indicates that an OFA request should take precedence over a trail use proposal, 1411 Corporation, KCSR, the City, and Lakes Entertainment are not seeking an exemption from the OFA process simply to institute a trail. Instead, the proposed trail use is the by-product of a broader public purpose. It is not the reason for the request to be exempted from the OFA process.

12, 2007, Mr. English's October comments claim to come from himself as an individual separate and apart from Foam Packaging. However, if one were to read Mr. English's October comments, one would not know whether Foam Packaging is speaking or Mr. English.

For example, by filing a separate notice of intent to participate in these proceedings, Mr. English seems implicitly to grasp the distinction between Foam Packaging and Mr. English, but such distinction very quickly breaks down when Mr. English claims to be a shipper¹⁶ and suggests that Foam Packaging is his corporate affiliate.¹⁷ The following selected passages from Mr. English's October 16 Filings illustrates Mr. English's confusing comments:

- "What English strongly opposes is the loss of freight rail service to English's (Foam Packaging's) facility." Motion to Strike at 3.
- "On September 11, 2007, English sent a letter to the Board..." English Response at 2, par. 3. [English's first formal comments were filed on October 2, 2007, as English elsewhere acknowledges. See English Supplement at 1, par. 3. The letter to which English refers is the letter comment of Foam Packaging, which was filed on September 12.]
- "On October 4, 2007, KCSR's counsel, William Mullins, sent a letter to English, threatening to ask the Board to impose sanctions upon English..." English Response at 2, par. 5. [The letter in question was not addressed to English, but rather to Mr. J.B. Davenport ("Mr. Davenport") in connection with statements attributed to Mr. Davenport in Foam Packaging's September 12 Comments.]

These and other examples of Mr. English's shifting sense of identity appear designed to confuse the Board and other parties to this proceeding, perhaps to obscure the fact that by filing nominally on his own behalf, Mr. English, as president of Foam Packaging, is skirting the 'no reply to a reply' rule that he elsewhere allegedly seeks to enforce. Accordingly, KCSR believes that the Board should approach Mr. English's filings with a heightened sense of caution and skepticism.

¹⁶ English Notice at 2, par. 4A.

¹⁷ English Notice of Intent to File an OFA (October 2, 2007) at 2, par. 3.

B. The Filings Do Not Represent The Actual Parties In This Proceeding

Perhaps the reason for the seeming inconsistent identity underlying Mr. English's filings is the fact that neither Mr. English nor Foam Packaging is the real party in interest behind the October filings by Mr. English. Instead, the real parties are Messrs. James Riffin ("Riffin") and Eric Strohmeyer ("Strohmeyer"), both of whom are well known to the Board in connection with their efforts in unrelated proceedings now and previously before this agency. Both before and after Mr. English filed his notice of intent to file an OFA in these proceedings, Riffin and Strohmeyer contacted counsel for KCSR to inquire about details of the subject proceedings, and they have advised that they are behind Mr. English's purported interest in filing an OFA. Since then, Riffin and Strohmeyer also have advised counsel for the City that they are the principal actors behind the preparation of an OFA by Mr. English.

C. Mr. English's Comments On Matters Involving J.B. Davenport

Mr. English also purports to represent the interests of Foam Packaging's Treasurer, J.B. Davenport ("Mr. Davenport"), with respect to a letter from KCSR to Mr. Davenport challenging statements attributed to Mr. Davenport in Foam Packaging's September 12 Comments. Specifically, the KCSR letter questioned the veracity of certain assertions in the September 12 Comments in which Mr. Davenport was said to have discussed the future disposition of the Line with KCSR's Chairman and CEO, Michael Haverty, on multiple occasions.

KCSR's letter to Mr. Davenport has resulted in considerable backpedaling by Mr. English. Now, instead of claiming that there were "several" conversations between Mr. Davenport and Mr. Haverty, as Foam Packaging claimed in the September 12 letter, Mr. English,

apparently on behalf of Mr. Davenport,¹⁸ now maintains “for the record” that Mr. Davenport had “a [single] conversation while at a restaurant” with Mr. Haverty. English Response at 2, par. 6. No details or records regarding the date or time or nature of the visit or meeting is given to corroborate this new and significantly scaled-down contention. Moreover, Mr. English asserts that the whole matter is now irrelevant anyway, “[s]ince the only issue before the Board is the OFA exemption request.” Id. at 3, par. 7. Mr. English’s sudden and stark departure from a version of the facts under which Mr. Davenport had several contacts with Mr. Haverty, to a new but equally vague and unsupported version of matters under which the two men allegedly met once “at a restaurant,” demonstrates once again that the Board should given little weight to the Mr. English’s comments.

CONCLUSION

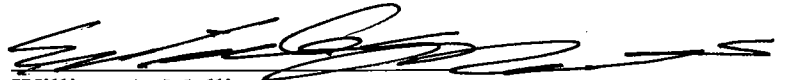
Mr. English’s October 16 Filings make numerous confusing and conflicting assertions. Yet, as has been shown, the filings lack any merit whatsoever. In short, they do not: (1) provide a basis for striking KCSR’s October 2, 2007, Response to the Comments of Foam Packaging, Inc. (“October 2 Response”); (2) support denial of the subject abandonment and discontinuance of service petitions for exemption; or (3) support a denial of KCSR’s request for an exemption

¹⁸ There is no apparent connection between the subject of the English Response and English’s interests in this proceeding. On the other hand, it is evident that English intends to serve as an advocate for Foam Packaging and for Davenport in the English Response. There is no indication that Foam Packaging and/or Davenport have authorized English to act on their behalf. But even if English were so authorized, his representation of others is prohibited under 49 CFR Part 1103.

from the OFA provisions (or Mr. English's use of those provisions). In the end, the comments are entitled to no weight, and the Board should reject the relief that sought therein.

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



William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave, N.W.
Suite 300
Washington, DC 20037
Tel.: (202) 663-7823
Fax: (202) 663-7849

Attorneys for The Kansas City Southern
Railway Company

Dated: November 5, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Response to October 16 Filings of Raymond B. English by mailing copies of the same via prepaid first class mail to all parties of record in these proceedings.

Dated at Washington, D.C. this 5th day of November, 2007.



William A. Mullins