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June 2, 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 Statement of The Kansas City Southern Railway Company Pursuant to Stay Order Served May 21, 2008 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 STATEMENT OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY
PURSUANT TO STAY ORDER SERVED MAY 21, 2008**

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

June 2, 2008

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

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

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
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**REPLY STATEMENT OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY
PURSUANT TO STAY ORDER SERVED MAY 21, 2008**

On May 20, Raymond B. English faxed to the Surface Transportation Board ("STB" or "Board") a pleading entitled "Raymond B. English Withdrawal of Offer to Purchase" ("English Withdrawal"). The pleading states that it withdraws Mr. English's "offer" to purchase for \$376,320 MP 225.6 to MP 227.5 (labeled by Messrs. English and Riffin as the "Segment") of the line that The Kansas City Southern Railway Company ("KCSR") was seeking an exemption in this proceeding to abandon.

Characterizing the English Withdrawal as a "motion to withdraw," Chairman Nottingham issued an indefinite "housekeeping stay" of the May 22 closing date previously ordered by the Board, and offered parties the opportunity to submit initial and reply filings on May 28 and June 2 addressing the effect of the English Withdrawal. Both KCSR and Riffin filed initial comments in response in response to the Chairman's order served May 21 ("May 21 Order"). This pleading constitutes KCSR's reply submission.

SUMMARY

KCSR has agreed with the City of Vicksburg, MS, to a short-term extension of the City's obligation to purchase the right-of-way at issue in this case. If allowed to proceed, that sale would reduce some of the damage caused by Mr. English's and Mr. Riffin's breach of their obligations to

purchase the 4.25-mile line at issue. The current stay of the closing deadline in this matter should be lifted immediately, with direction that the parties close no later than June 13.¹ If the offerors do not close by that deadline, KCSR should be free to return to the Board for immediate reinstatement of its abandonment exemption, consistent with 49 U.S.C. §10904, and issuance of a notice of interim trail use ("NITU") before the end of June as previously sought by KCSR with the support of the City of Vicksburg.

DISCUSSION

On Friday, May 30, KCSR and the City of Vicksburg agreed to a short-term extension of the City's obligation under its contract with KCSR to purchase the right of way at issue and to railbank it if KCSR obtained authority in this proceeding to abandon the line. That agreement will, assuming the closing does not occur, allow KCSR to reduce some of the damage caused by the repudiation of Mr. English's and Mr. Riffin's joint obligation to purchase the Segment, without which purchase Mr. Riffin cannot purchase the "Remainder."² In any event, the Board needs to lift the housekeeping stay immediately in order to allow the closing to occur or to allow KCSR the opportunity to transfer the line to the City in order to mitigate the damage caused by the actions of Messrs. Riffin and English.

Given the short extension agreed to with the City, the Board needs to act quickly in lifting the stay and in the event closing does not occur, in authorizing abandonment and issuance of an

¹ This deadline is also necessary in part because if KCSR is to supply timbers for repair of the trestle over Glass Road, it needs to move those timbers from the Victoria-Rosenberg project by the end of June.

² KCSR entirely rejects Mr. Riffin's claim in his May 28 filing that he can prevent KCSR's abandonment of the Segment by purchasing the Remainder as a "stranded segment." Mr. Riffin, with Mr. English, has the right – indeed the obligation – to purchase the Segment, which would keep the "stranding" from occurring. Moreover, preventing abuse of the OFA process by this "stranded segment" argument was the Board's clear intent in providing that Mr. Riffin could not purchase the Remainder unless he and Mr. English purchased the Segment. Were Mr. Riffin's "stranded segment" theory valid, parties opposing an abandonment might merely pursue an OFA for the last 100 feet of track at issue in an abandonment to prevent abandonment of an entire line.

NITU. KCSR will need to negotiate a railbanking agreement with the City and possibly to get it approved by the City governing body. These actions may need to be done before closing, but accomplishing this within the short-term extension agreed to between KCSR and the City will require diligence on both parties' part. Any further delay in getting started on that process will jeopardize its prospect of success, and threaten increased damages to KCSR. If KCSR does not receive abandonment authority before the end of June, KCSR will again be at risk of losing its deal with the City.

Little needs be said about Mr. Riffin's May 28 filing in this matter. Essentially, it says that Mr. Riffin would like to walk away from this matter, but that if KCSR does not agree to hold him harmless for his and Mr. English's breach of their obligation, he will pursue appeals of the Board's decisions in this matter to gain leverage to obtain such a release.

Unless Messrs. English and Riffin close on their proposed purchase, further pursuit of appeals by either of them would merely increase the damages that KCSR has suffered by Messrs. English's and Riffin's breach of their obligations, increasing the likelihood that KCSR will sue Mr. English and Mr. Riffin for those damages.³ Moreover, Mr. Riffin's future actions in this matter, considering his apparent intent to breach his freely-undertaken obligation to purchase the line for the price set by the Board, should be considered by the Board in assessing Mr. Riffin's good faith when the Board is faced with other requests for relief by Mr. Riffin.

Finally, should Mr. Riffin not dismiss by June 16 all pending petitions for review of the Board's orders in this matter (assuming he does not close by June 13 with Mr. English on purchase of the Segment, and on his purchase of the Remainder), he should expect that KCSR will ask the D.C. Circuit to order him to obtain counsel in that appeal. In light of his statements in his May 28

³ The Board is requested to ensure that nothing in its orders purports to resolve the issue of whether KCSR may recover damages in the event the closing does not occur by June 13.

filing, his pattern of ignoring the Board's procedural rules in this case, and a Maryland court's order restraining him from further filings in that court without the court's approval, KCSR believes that the D.C. Circuit would be well justified in protecting the integrity of its processes by requiring that a member of the bar be responsible for any further pursuit of Mr. Riffin's appeals.

CONCLUSION

Mr. English's May 20 filing with the Board is not a motion to withdraw an offer but is, rather, a breach of an agreement and a statutory obligation to purchase the Segment for \$376,320. KCSR has been substantially damaged by the offerors' repudiation of that obligation. There is an opportunity to mitigate that damage, allowing the City of Vicksburg and KCSR to complete their original transaction for the public good if the Board promptly terminates the so-called housekeeping stay, orders the offerors to close on the purchase no later than June 13 and, if the offerors do not close by that date, grants KCSR immediate reinstatement of its abandonment authority and a NITU before the end of June. The Board needs to act promptly to allow this opportunity to avoid much of the damage caused by offerors.

Respectfully submitted,

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Dated: June 2, 2008,

Attorneys for The Kansas City Southern
Railway Company

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Reply Statement of The Kansas City Southern Railway Company Pursuant to Stay Order Served May 21, 2008 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 2nd day of June, 2008.


William A. Mullins