

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 21X)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—ABANDONMENT  
EXEMPTION—LINE IN WARREN COUNTY, MS

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: December 27, 2007

By joint petition filed on August 24, 2007, The Kansas City Southern Railway Company (KCSR), a Class I rail carrier, and Vicksburg Southern Railroad, Inc. (VSOR), a Class III rail carrier, sought exemptions under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 for KCSR to abandon and for VSOR to discontinue service over approximately 4.25 miles of rail line (the Line) in Vicksburg, Warren County, MS. The Line extends from milepost 225.6 (south of the Line's crossing of Warrenton Road and the intersection with Kemp Bottom Road) to milepost 229.85 (approximately 0.05 miles south of the Line's crossing of Glass Road, just beyond the Vicksburg city limits). The Board served and published a notice in the Federal Register on September 13, 2007 (72 FR 52430) instituting an exemption proceeding.

By decision served December 12, 2007, the Board granted the abandonment and discontinuance exemptions, subject to conditions, and denied petitioners' request for exemptions from the financial assistance (49 U.S.C. 10904) and public use (49 U.S.C. 10905) provisions. The decision noted that a notice of intent to file an offer of financial assistance (OFA) under 49 CFR 1152.27 (c)(1) to allow rail service to continue was filed by Raymond B. English, the president of Foam Packaging, Inc. (Foam Packaging), the only active shipper on the Line, and the request for a notice of interim trail use under the National Trails System Act, 16 U.S.C. 1247(d), and 49 CFR 1152.29, filed by the City of Vicksburg was held in abeyance pending completion of the OFA process. The abandonment and discontinuance exemptions were scheduled to become effective on January 11, 2008, unless stayed by the Board or an OFA was filed by December 21, 2007.

On December 20, 2007, Mr. English timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase approximately 1.9 miles of the Line extending from milepost 225.6 to milepost 227.5, which is the segment of the Line that extends a few hundred feet past a spur track used by Foam Packaging to offload inbound rail cars (the Segment).<sup>1</sup> On

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<sup>1</sup> On December 20, 2007, Mr. English also filed a motion for extension of time to file an OFA. Because Mr. English filed an OFA later that same day, his motion is moot and we will not rule on it.

December 21, 2007, Mr. English timely filed a supplement to his December 20 OFA, adding James Riffin, 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 milepost 227.5 to milepost 229.85 (the Remainder). Mr. English and Mr. Riffin have offered \$51,000 for the Segment. The offerors have additionally offered approximately \$45,000 for the Remainder, consisting solely of real estate, as Mr. English and Mr. Riffin assert that there are no rail assets located on that portion of the Line.

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments under NERSA, 354 I.C.C. 472 (1981). Both Mr. English and Mr. Riffin have provided evidence consisting of personal financial statements and personal balance sheets, which shows that they have the financial resources to acquire and operate the Line. Accordingly, Mr. English and Mr. Riffin are found to be financially responsible.

KCSR's estimated net liquidation value of the Line is \$472,150, which reflects a \$301,000 valuation of the track and track materials for the Segment,<sup>2</sup> a \$231,795 valuation of the right-of-way for the Line,<sup>3</sup> and the cost of removal and salvage activities, which KCSR estimates at \$2.50 per tie and \$4.55 per track foot. The offerors' value of the track and materials is substantially less than that calculated by KCSR. However, to substantiate their calculations the offerors have attached to the December 20 OFA price quotes they received from two local entities for receiving the track and track materials.<sup>4</sup> The offerors used the higher quote in their calculations. Additionally, the offerors valued the real estate of the Remainder at a lower value than KCSR has because that portion of the Line contains no track material, is extensively overgrown with vegetation, and would not be available to be utilized for freight service until the offerors rehabilitated the bridges and removed the vegetation.<sup>5</sup> The offerors also suggest the value of the real estate for the Remainder should be given a lower value than that assigned by KCSR because the City of Vicksburg has indicated to Mr. Riffin that it would not be interested in purchasing the Remainder without simultaneously purchasing the Segment. The offerors have provided their explanation for the disparity between their estimate for the value of the Line and KCSR's estimated value for the Line as required by 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C).

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<sup>2</sup> \$70,000 represents the value of the switches existing on the Line, plus \$231,000, which represents 385 tons of track and other track materials at \$600 per ton.

<sup>3</sup> This valuation represents 4.25 miles of right-of-way, which translates to 51.1 acres at \$4,500 per acre.

<sup>4</sup> One entity quotes Mr. English \$90 per ton for the material to be picked up and \$95 per ton for the material to be delivered. The other entity offers \$120 per net ton for the material to be delivered.

<sup>5</sup> The offerors have valued the real estate on the Remainder at \$3,000 per fee simple acre, with a cap of \$45,000. Both the offerors and KCSR have valued the real estate of the Segment at \$4,500 per acre, the value assigned to the real estate in a purchase and sale agreement between KCSR and the City for the Line, dated April 5, 2007.

Because Mr. English and Mr. Riffin are financially responsible, and have offered assistance, the effective date of the exemption authorizing abandonment will be postponed.

The Board's regulations contemplate that the carrier and a financially responsible person will reach an agreement setting the terms and conditions of the purchase. If they do not, either party may request the Board to do so. 49 CFR 1152.27(g). Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$19,300. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption is postponed to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.

2. If Mr. English, Mr. Riffin and KCSR cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase price on or before January 18, 2008. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allow the abandonment exemption to become effective.

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director.

Vernon A. Williams  
Secretary