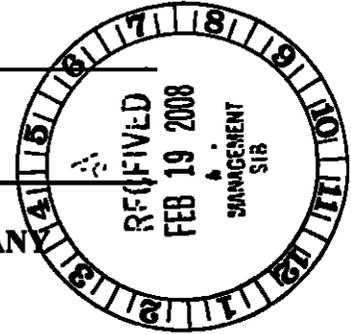


**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-103 (Sub- No. 21X)

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



221644

**RESPONSE TO KCSR'S
FEBRUARY 13 AND 14, 2008 FILINGS**

1. Now comes Raymond B. English and James Riffin ("E&R"), who herewith file this Response to KCSR's February 13 and 14, 2008 Filings

2. In Kansas City Southern Railway Company's ("KCSR") February 14, 2008 Reply ("February 14"), KCSR asked the Board to sanction E&R if they sent another filing to the Board, arguing "additional filings dealing with the value of the Line are untimely " Had KCSR's Vicksburg representative not given Warren County permission to remove the Glass Road railroad bridge ("Bridge"), and had Warren County not removed the majority of the Bridge pursuant to KCSR's permission, the series of filings by E&R and KCSR since KCSR's January 30, 2008 Reply to E&R's January 25, 2008 Request to Set Terms and Conditions would not have occurred.

3. Normally, a reply to a reply and rebuttal evidence to a Reply to Set Terms and Conditions, are not permitted. However, on occasion, the Board has permitted a reply to a reply, and rebuttal evidence to a Reply to Set Terms and Conditions, particularly when events occur after a filing deadline, in order to provide the Board with a more complete record. E&R would ask that the Board permit this Response to KCSR's February 13 and 14, 2008 Filings, in order to provide the Board with a more complete record, and to narrow the issues that need to be addressed by the Board. Narrowing the issues would conserve the Board's limited resources.

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FEB 20 2008

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Public Record**

POINTS OF AGREEMENT

4 E&R would proffer, that in addition to the Points of Agreement contained in E&R's January 25, 2008 Request to Set Terms and Conditions, E&R and KCSR appear to agree on the following additional points:

5 E&R agree with KCSR that the immediate issue before the Board, concerns the value of the Line, and further agree with KCSR that the issue of whether Hancor's request for service was sufficiently detailed to trigger KCSR's common carrier obligation to provide service to Hancor, and the issue of whether KCSR's Vicksburg representative did, or did not, qualify his statement to Warren County with the phrase, "so long as proper approvals were obtained," should be addressed in a separate proceeding. E&R would note KCSR did not provide the Board with the name of, nor a Verified Statement from, this KCSR Vicksburg representative. Nor have E&R had sufficient time to acquire a copy of Warren County's file via the Freedom of Information Act, to ascertain the content of the correspondence between Warren County and KCSR's Vicksburg representative.

6. **The Bridge.** Warren County did remove portions of the Bridge. The *Vicksburg Post's* February 7, 2008 photograph of the Bridge, does accurately represent what is left of the Bridge.

7. E&R would agree with the following KCSR statements.

- A "The seller is obligated to transfer the property that was part of that price and generally in the condition on which the price is based." February 14 at p. 6.
- B "Under these principles and assuming the Board's decision setting the terms and conditions included a positive net liquidation value for the steel and other components of the bridge, and those components had been removed prior to the Board's setting the terms and conditions (or even after a decision setting the terms and conditions), then petitioners may, under certain circumstances, be entitled to compensation *Railroad Ventures ...* (circumstances where the rail carrier seeking abandonment authority had sold parts of the rail property essential for operation thereof)" February 14 at p. 6.
- C "Indeed, awarding compensation to Riffin would be inherently saying that the bridge (or its component parts) has value, and if the bridge (or its parts) has value, then

KCSR should be compensated for that value when that asset is taken from it in the OFA process.” February 14 at p. 7.

- D. “... there is nothing in the OFA statute or STB precedent that requires a seller, whose property is being taken, to pay for the cost to **rehabilitate** tracks, switches, or other track material, including bridges.” (Emphasis added.)

POINTS OF DISAGREEMENT

8. Hancor, Inc. Request for Service. KCSR argued no shipper on the Remainder portion of the Line had requested service. KCSR further argued this lack of a demand for service should be considered when determining the value of the Remainder portion of the Line. If the Board finds that Hancor’s request for service is relevant to the issue of determining the value of the Remainder portion of the Line, then E&R would argue it would be appropriate to consider E&R’s evidence that Hancor did make a demand for service.

9 LeTourneau. If the Board finds that a demand for service by shippers located at the end of the Line, is relevant to the issue of determining the value of the Remainder portion of the Line, then E&R would argue it would be appropriate to consider E&R’s representations that there are shippers at the end of the Line that have expressed an interest in receiving rail service

10. E&R are not asking KCSR to rehabilitate any portion of the Line February 14 at p 6
E&R are asking the Board to order KCSR to sell to E&R the Line in essentially the same condition that it was in on the Effective Date of the Purchase and Sale Agreement (“PSA”) between KCSR and the City of Vicksburg (“City”)

11. E&R do not seek “more than compensation for the removed portions” of the Bridge
February 14 at p 6

12. E&R have not requested that the Board require “KCSR to restore the bridge to fully operable condition.” February 14 at p 6 E&R’s position is that they have the same rights the City would have pursuant to the PSA, specifically: To acquire the Line in substantially the same condition it was in at the time the PSA was executed, including all appurtenances thereto,

and all improvements located thereon, excluding the rails, ties, or other track material

13. E&R disagree with KCSR's statement that E&R "did not place any value on the Glass Road Bridge and were not paying for it." February 14 at p. 7. E&R have agreed the value of the realty, including "any and all appurtenances thereto, any and all improvements located thereon, ... with the exception of any rail, ties, or other track material," PSA ¶ 1, "in substantially the same condition that it is in upon the Effective Date hereof" [April 5, 2007], PSA ¶18, is to be **\$4,500.00 per acre**. E&R have argued the Bridge, by law, is a part of the realty, and that the structural components of the Bridge do not constitute "track material." E&R have further argued that the value of the realty should be reduced by the cost to restore the bridge to the condition it was in prior to its demolition. E&R have presented expert evidence that it would cost approximately \$1.5 million to replace the bridge. To date, KCSR has not presented any evidence which would suggest the cost to restore the bridge would be substantially less than \$1.5 million. **KCSR has stated that "KCSR stands willing and able to provide common carrier service over the bridge, ... even if that means restoring tracks or replacing parts of the bridge."** Based on this admission by KCSR, E&R would argue either KCSR should be ordered to restore the demolished portions of the Bridge, or the value of the realty should be reduced by the cost to restore the demolished portions of the Bridge. E&R would further argue that unless and until KCSR submits a quote from a professional engineer which indicates the cost to restore / replace the Bridge would be less than \$1.5 million, the best evidence of the cost to restore / replace the Bridge would be the \$1.5 million quote from Carpenter Engineering, Inc. [E&R state "restore / replace," since the Bridge in its present condition, may not be restorable. A structural engineer may deem the Bridge to be structurally unsound, and may recommend the Bridge be removed. If the remains of the existing Bridge must be removed, then there will be nothing left to "restore." The Bridge would have to be "replaced."]

14. KCSR has argued the net salvage value of the Bridge should be zero, since (a) Warren County has agreed to remove the Bridge at Warren County's expense, (b) KCSR has not agreed to remove the Bridge, and (c) KCSR has not been ordered to remove the remains of the Bridge. Had the PSA with the City had a term or condition that stated the Bridge would remain an asset of KCSR, KCSR's argument may have some merit.

15 E&R would agree with KCSR that the cost to **remove** the Bridge is not relevant to this proceeding. The cost to **restore** the Bridge to substantially the same condition it was in as of the Effective Date of the PSA, on the other hand, is **highly relevant**. The PSA specifically stated, the price the City offered included the right to acquire “any and all appurtenances thereto, any and all improvements located thereon, . with the exception of any rail, ties, or other track material,” “in substantially the same condition that it is in upon the Effective Date hereof.” The Bridge is an improvement. Title to this Bridge was to be transferred to the City. The PSA gave the City a right of specific performance, and required KCSR to “maintain the Railway Property in substantially the same condition that it is in upon the Effective Date” of the PSA. The City has the right to compel KCSR to restore the Bridge. E&R have “a statutory right to acquire all of the assets that are on this line.” *1411 Corporation*, Served October 18, 2001. And as the Board stated in *1411 Corporation*

“ . the parties will be directed to proceed with the sale of the line under terms and conditions comparable to those terms and conditions stipulated in the Shawnee / Colonial Purchase Contract, except where a provision in the Shawnee / Colonial Purchase contract plainly is inapplicable.” *1411 Corporation*, Served April 12, 2002.

ENGLISH & RIFFIN'S OFFER

16 **Segment.** Previously, E&R have indicated they are making two separate offers. One is for the Segment portion of the Line, or between MP 225.6 and MP 227.5. For this portion of the Line, E&R have calculated the Net Liquidation Value to be **negative \$175,555**, after the Environmental Compliance Costs have been factored in. By looking at the individual components of KCSR's valuation of the Segment portion of the Line, one can ascertain that KCSR believes the value of the Segment portion of the Line to be **\$376,320, before one factors in any Environmental Compliance costs.** These number are detailed in the NET LIQUIDATION VALUE TABLE which follows.

17. **Entire Line.** E&R have calculated the Net Liquidation Value (“NLV”) of the Entire Line to be **negative \$47,260, after one factors in the Environmental Compliance costs, but before one factors in a sum to restore the Glass Road Bridge.** KCSR has proffered the NLV of

the Entire Line to be \$504,615, before one factors in any Environmental Compliance costs and before one factors in a sum to restore the Glass Road Bridge. If one factors in the Environmental Compliance costs [\$307,800], KCSR's NLV becomes \$196,815. Factoring in the cost to restore the Glass Road Bridge, will reduce KCSR's NLV to an even lower number.

18. If the Board finds that the cost to restore the Glass Road Bridge should be included in computing the NLV of the entire Line, then E&R would suggest the Board adopt the following procedure

- A. Find the NLV of the Entire Line is to include the estimated cost to restore the Glass Road Bridge.**
- B. Determine the NLV of the Line sans the Glass Road Bridge restoration costs.**
- C. Order the parties to hire a consulting engineer, to ascertain the approximate cost to restore the Glass Road Bridge. If the two engineers do not agree on the approximate cost to restore the Glass Road Bridge, then order the parties to take an average of the two estimates.**
- D. Find the NLV of the Entire Line to be. The NLV of the Line sans the Glass Road Bridge restoration costs, less the estimated cost to restore the Glass Road Bridge**

19. Adopting this procedure, would enable the Board to render its NLV decision by the statutorily imposed deadline, would afford the parties sufficient time to ascertain the cost to restore the Glass Road Bridge, and would leave nothing but the ministerial task of subtracting the cost to restore the Bridge from the NLV determined by the Board, to be completed

NET LIQUIDATION VALUE TABLE

SEGMENT (MP 225.6 to 227.5 = 1.9 miles)	VALUE PER	
	E&R	KCSR
Realty (23 acres at \$4,500 / acre)	\$ 103,500	\$ 103,500
Track material:		
Turnouts (3):	8,500	8,500
Cross ties:	38,400	38,400
Rail anchors	3,200	3,200
Joint bars	1,600	1,600
Metal:		
8 tons 115# relay #2	960	6,600
2 tons 115# relay #3	240	1,600
6 tons 115# reroll	720	2,600
4 tons 115# scrap	480	1,300
142 tons 112# relay #2	17,040	112,200
35 tons 112# relay #3	4,200	27,300
106 tons 112# reroll	12,720	45,400
71 tons 112# scrap	8,520	22,700
3 tons bolts & washers	360	800
8 tons spikes	960	3,000
68 tons / 12,038 pcs tie plates at \$120/ton; \$7 ea	8,160	81,700
TOTAL POTENTIAL SALVAGE REVENUE:	\$ 106,060	\$ 356,900
Segment removal costs:		
Remove 5,016 track feet (0.95 mi) Relay at \$4 55/ft; \$14,000 / mi:	\$ 22,820	\$ 13,300
Remove 5,016 track feet (0.95 mi) scrap at \$4.55/ft; \$12,000 / mi:	22,820	11,400
Turnout removal (E&R cost included in removal costs).		1,300
Restore 2 public crossings (at \$3,000 / \$1,500 ea):	6,000	3,000
Restore 3 private crossing (at \$3,000 / \$250 ea).	9,000	800
Administrative & Marketing Expense:		
Relay materials - 15 percent:	--	35,300
Scrap materials - 5 percent:	--	4,200
Transportation expense:		
Relay steel - Dallas, TX	--	3,500
Scrap steel - Vicksburg, MS (455 tons at \$5/t) / Chicago, IL	2,275	9,700
Dispose of scrap ties	14,400	1,580
Environmental compliance costs [\$307,800]:		
Mississippi Hazardous Waste Generation fee:	1,500	--
Storm Water Pollution Prevention Plan:	10,000	--
Install 20,064 lf silt fence at \$4.30/lf.	86,300	--
Install 1,200 lf reinforced silt fence at \$8.25/lf.	10,000	--
Install then remove 10 Construction Entrances / Exits at \$7,000 ea:	70,000	--
Remove 20,000 lf silt fencing at \$1 / lf:	20,000	--
Stabilize site with seed & mulch (200,000 SF at \$0.55 / SF):	110,000	--
TOTAL SEGMENT REMOVAL COSTS:	\$ 385,115	\$ 84,080
NET LIQUIDATION VALUE:	\$ (175,555)	\$ 376,320

ENTIRE LINE (MP 225 6 to 229 85 = 4 25 miles)

	<u>VALUE PER</u>	
	<u>E&R</u>	<u>KCSR</u>
Realty (51.51 acres at \$4.500 / acre)	\$ 231,795	\$ 231,795
Total Potential Salvage Revenue.	<u>106,060</u>	<u>356,900</u>
TOTAL POTENTIAL REVENUE:	\$ 337,855	\$ 588,695
LESS SEGMENT REMOVAL COSTS:	(385,115)	(84,080)
LESS COST TO RESTORE GLASS ROAD BRIDGE:	[To be determined later]	
NET LIQUIDATION VALUE:	[To be determined after cost to restore Glass Road bridge has been ascertained.]	

Respectfully submitted,


Raymond B. English


James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February, 2008, a copy of the foregoing Response to KCSR's February 13 and 14, 2008 Filings, was e-mailed and was mailed, postage prepaid, to **William A. Mullins, Baker & Miller PLLC, Ste 300, 2401 Pennsylvania Ave, N.W., Washington, DC 20037**, attorney for Kansas City Southern Railway Company, and was mailed via first class mail, postage prepaid, to **Craig Richey, 315 W. 3rd Street, Pittsburg, KS 66762**, attorney for Vicksburg Southern Railroad, Inc.

