

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB Ex Parte No. 677  
COMMON CARRIER OBLIGATION OF RAILROADS

---

WRITTEN COMMENTS OF  
CNJ RAIL CORPORATION

---

**Background Information**

Pursuant to the Notice of the Surface Transportation Board, served February 22, 2008, the Surface Transportation Board (the Board) stated it would hold a public hearing beginning at 9:00 a.m. on Thursday, April 24, 2008, at its headquarters in Washington, DC. The Board stated that the purpose of the public hearing was to examine issues related to the common carrier obligation of railroads. Persons wishing to speak at the hearing were required to notify the Board in writing by March 25, 2008.

The Board's notice went on to state:

“The common carrier obligation refers to the statutory duty of railroads to provide

“transportation or service on reasonable request.” 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable. *G.S. Roofing Prods. Co. v. Surface Transp. Bd.*, 143 F.3d 387, 391 (8th Cir. 1998). The common carrier obligation, however, is not absolute, *id.*, and service requests must be reasonable. See 49 U.S.C. 11101(a). In recent years, the Board has seen an increasing number of questions arising, both formally and informally, regarding the extent of a railroad’s common carrier obligation. As a result, this hearing seeks to highlight the importance of the common carrier obligation, to provide a better understanding of it, and to assist the Board in its monitoring and compliance work.

The hearing will focus on various topics related to the extent of the common carrier obligation, including, but not limited to: (1) service limitation resulting from a capacity constrained environment; (2) cost and safety issues related to the transportation of hazardous materials, especially toxic inhalation hazards; (3) *carrier-imposed requirements for infrastructure investments by shippers*; (4) the impact of volume requirements or incentives; (5) *economically motivated service reductions and metering of the demand for service*; (6) *the proper use of rail embargoes*; (7) *when it becomes necessary to obtain abandonment authorization*; and (8) *to whom does the common carrier obligation apply*. The hearing will also address the role of the Board’s Office of Compliance and Consumer Assistance in ensuring that carriers meet their common carrier obligation.”(emphasis added)

On March 24, 2008, CNJ Rail Corporation (“CNJ”) timely filed its notice of its intent to participate in the Board’s public hearing regarding issues related to the common carrier obligations of railroads. CNJ stated it would provide a speaker at the hearing scheduled for April 24, 2008 and submit written testimony in advance thereof.

Pursuant to the Board’s decision, CNJ herein submits its written comments. CNJ has been allotted 10 minutes to speak at the hearing on Friday April 25, 2008. Speaking on behalf of CNJ will be Mr. Eric S. Strohmeyer, Vice President and Chief Operating Officer, whose contact information is CNJ Rail Corporation, 833 Carnoustie Drive, Bridgewater, NJ 08807, Tel. (908) 361 - 2435.

### **Comments of CNJ Rail Corporation**

CNJ is grateful for the opportunity to address these issues of a common carrier’s obligations with the Board.

There are three issues that CNJ would like to present testimony on. CNJ believes its testimony will add to the Board’s discussions and conclusions regarding the obligations of common carrier railroads to provide service on reasonable demand.

#### **Issue # 1: *What constitutes a refusal of service ?***

The first issue CNJ would like to discuss with the Board is; *What constitutes a refusal of service ?*

The question is very relevant to the Board's inquiry. CNJ is involved in no less than a half dozen cases formerly, currently, or soon to be before the Board. CNJ is working actively with shippers in Maryland, Mississippi, and New Jersey all of whom have experienced a **Class 1 railroad's** refusal to provide service to their respective facilities. In examining this issue of a carrier's obligation, CNJ would like to present this testimony to help the Board better understand and define what constitutes a refusal of service.

In our testimony today, we would like to highlight the plight of one customer in particular. They are a manufacturing facility located in Vicksburg, MS. The Board was recently made aware of their previous efforts to obtain rail service. Today, CNJ would like to continue their story.

### **Hancor**

Hancor is a leading manufacture in the United States of specialty piping material used in irrigation and other drainage systems. One of their manufacturing facilities is located in Vicksburg, Mississippi. It is adjacent to the line of railroad owned by Kansas City Southern Railway, which is currently the subject of a proceeding before the Board (See AB 103 21 X). In that proceeding, the Board had been presented with indisputable evidence that this company to sought to obtain rail service for its facility in 2000 and 2001. Yet, as the recent abandonment case highlighted, there was only one active shipper on the line, and it was not Hancor.

While the reasons for Hancor not being a shipper on the line were not relevant in the abandonment proceeding, they are relevant to this one. CNJ would like to take this opportunity to tell the Board about Hancor, and the difficulties it encountered while trying to obtain rail service from KCS. We feel that this case highlights many issues highlighted in the Board's February 22 Decision. We also noted that the Board's decision to hold this hearing came out on the same day as another decision in the abandonment case cited herein.

In 2000, the management of Hancor sought to receive inbound raw material destined to their manufacturing facility located in Vicksburg by rail. To achieve that objective, Hancor undertook the following steps:

1. Committed \$500,000.00 of its own money to the construction of a new rail spur from their facility to the KCS line.
2. Sought, and obtained, in conjunction with the City of Vicksburg, over \$750,000.00 in additional state block grants to finance said construction. (Yes, the grants were awarded!)
3. Sought and obtained the requisite easements across adjacent and City owned land for the new spur right of way.

4. Sought and received, in conjunction with the City, a Federal Aviation Administration waiver for the construction of the new spur. (The spur crossed near the end of an active runway.)
5. Sought and obtained grant money engineer and design said spur.
6. Retained a well respected engineering firm.
7. Had that well respected firm actually design the rail spur. (Yes, the engineering for the entire project was completed!).
8. Sought and formally requested rail service from the Railroad, including submitting the required engineering information to the railroad for approval.
9. Had numerous telephone conversations and many email correspondences with various departments in KCS.

CNJ asks this Board to ask just one question to KCS in this hearing:

**“Why did you, KCS, refuse to provide service to Hancor?”**

*For the purposes of this testimony and CNJ’s desire to allow the rest of the participants at today’s hearing to be aware the events surrounding the Vicksburg case, CNJ herein reproduces a portion of a filing made February 10, 2008 by Messrs, Raymond English and James Riffin in the above mentioned abandonment case. The portions relevant to this proceeding are provide herein below verbatim.*

Messrs English and Riffin argued:

#### **KCSR’S UNTRUTHFUL REPRESENTATIONS TO THE BOARD**

16. On pages 1-2 of KCSR’s opening remarks of its January 30, 2008 Reply to E&R’s Request to Set Terms and Conditions, KCSR made the following untruthful representations to the Board:

“Petitioners urge the Board ... to penalize KCSR for the fact that its predecessor removed part of the track by directing KCSR to expend an unknown amount to relay that track on a portion of the line where **there have been no shippers or requests for common carrier service for almost two decades ...**” (Emphasis added.)

17. On p.12 of KCSR’s January 30, 2008 Reply to E&R’s Request to Set Terms and

Conditions, KCSR reiterated its untruthful representation to the Board:

**“...no shipper has ever located on that segment, requested service over the segment ... .”**

18. On p.12 of KCSR’s January 30, 2008 Reply to E&R’s Request to Set Terms and Conditions, KCSR stated:

“Furthermore, now that KCSR has remedied the matter by seeking authority to abandon the Line, there is no basis for the Board to order the reinstallation of track where – (1) **there has been no demand for service for at least 15 years**, and (2) the Board recently has determined that abandonment of the Line is warranted.”

19. KCSR appears to be arguing that if a rail carrier violates 49 U.S.C. §10903 by removing track material, or by authorizing a local government to remove a railroad bridge, the appropriate remedy for this egregious disregard for the Board’s regulatory processes, is simply to file an abandonment exemption. That would be analogous to a bank robber saying he should not be prosecuted or incarcerated for bank robbery if he returns the money he took.

20. KCSR attempts to rationalize its unlawful behavior, by untruthfully stating that no shipper along the portion of the Line from which the track material was unauthorizedly removed, has made a demand for service for the past 15 years.

21. In ¶16 of English’s 11/20/07 Reply to KCSR’s Response to October 16, 2007 Filing of English, English stated in 2001 Hancor, Inc. obtained more than \$800,000 [a \$650,000 Mississippi Community Development Block Grant, plus an additional grant in the amount of \$267,306 from the City of Vicksburg], to construct a rail siding at its plant, which is located near MP 229. English has further stated that in 2001 Hancor requested service from KCSR, and requested permission to connect their proposed rail siding to KCSR’s main line near MP 229.

22. Some time ago, English filed a Freedom Of Information Act request with the City of Vicksburg, requesting a copy of the City’s Hancor Grant file. On February 5, 2008, the City finally provided English with a copy of the Hancor Grant file. Attached

are copies of the grant Hancor received, which grant was to be used to construct a rail siding from the Line to Hancor's plant, which is located near MP 229. In the City's Hancor Grant file, were references to Allen and Hoshall ("A&H"), the engineering company in Jackson, MS, that did the engineering and design work for the Hancor siding. On February 6, 2008, Riffin spoke with Mr. Jim Nelson, the A&H engineer who actually designed the Hancor siding. Mr. Nelson informed Riffin that he had corresponded extensively with KCSR's chief engineer regarding the Hancor siding. He further indicated that he had kept a log of all correspondence with KCSR, and that A&H still had the Hancor-siding file in its archives. He agreed to retrieve the Hancor siding file, then provide E&R with a copy of the file. Mr. Nelson did recall the following salient details:

- A. KCSR made it very clear: Unless Hancor was willing to pay the full cost of replacing the track material that had been unlawfully removed by KCSR's predecessor in title, KCSR would not provide Hancor with rail service.
- B. Hancor was willing to expend \$500,000 of its own money to construct a rail siding to its plant. The State of Mississippi and the City of Vicksburg, were willing to provide an additional \$917,306 in funds, to facilitate construction of Hancor's rail siding.
- C. Hancor, Mississippi and the City of Vicksburg were unwilling to expend untold additional huge sums of money to pay for the cost of replacing the track material that KCSR's predecessor in title had unlawfully removed. [Track material that KCSR had a legal obligation to restore due to its common carrier obligation to maintain its way.]

23. The veracity and credibility of Baker & Miller, and that of KCSR, have been brought into question. A pattern of misrepresentations and deceit in KCSR's filings in this proceeding is beginning to emerge. First, KCSR alleged the Line bisected Lakes Entertainment casino property. E&R offered proof that Lakes Entertainment casino property was situated entirely west of the Line. KCSR then tried to argue that a 4-car train that traversed the Line once a week, would have an adverse impact on Lakes Entertainment's proposed casino project, would constitute a public safety hazard, would be unsightly, and would unduly vibrate adjacent properties. The Board found these representations to be "uncredible." KCSR stated its CEO, Mike Haverty, never had a

personal conversation with J.B. Davenport, the founding partner of Foam Packaging, Inc., regarding the Vicksburg Industrial Lead. Mr. Davenport provided the Board with a Verified Statement in which he gave specific details as to where and when he had spoken with Mr. Haverty. KCSR then represented that no shipper on that portion of the Line from which the track material had been unlawfully removed, had ever requested service during KCSR's ownership of the Line. E&R have documented that as recently as 2001, Hancor did demand service, which KCSR refused to provide. Now we learn that one of KCSR's local representatives gave Warren County permission to remove the Glass Road railroad bridge [providing Warren County did so at its own expense]. And on February 8, 2008, KCSR stated its only obligation under the PSA, was to transfer to the City whatever it possessed **today, rather than on April 5, 2007**, the effective date of the PSA, and further stated that the Glass Road bridge had no value.

24. Over the years, a number of Class I carriers have removed track material without Board or Commission authority.<sup>1</sup> To date, neither the Commission nor this Board has held any of these carriers accountable for their unauthorized activities. When these unlawful activities have come to light, the Commission and this Board have tacitly condoned these egregious violations of the Board's regulations and applicable federal statutes, by retroactively granting the offending carrier exemption from the Board's regulations. With no penalty being assessed for willfully violating the Board's regulations and statutes, this misconduct continues unabated. Riffin would argue, the Class I carriers are not above reproach, and should be chastised when they disregard the Board's regulations and abuse the Board's processes. Riffin would further argue, if the Board were to order KCSR to restore the track material and Glass Road bridge that had been unauthorizedly removed, that would send a message to all other carriers: If a carrier removes portions of a line of railroad without authority, the carrier **will** have to restore the line. And once this message had been sent, unauthorized removal of track material would no longer occur.

---

<sup>1</sup> *Southern Pacific Transportation Company – Abandonment Exemption – Los Angeles County, CA*, 8 I.C.C. 2d 495 (1992), Petition to Reconsider, denied, 9 I.C.C.2d 385 (1993); *Orange County Transp. - Exempt - Atchison, T. & SF. Ry. Co.*, 10 I.C.C. 2d 78 (1994); *Norfolk Southern Railway Company – Abandonment Exemption – In Harriman, Orange County, New York*, STB Docket No. 290 (Sub No. 283X) (2006); *City of Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and New Jersey Assemblyman Louis M. Manzo - Petition for Declaratory Order*, FD 34818 (Served August 9, 2007).

*(CNJ encourages parties to this proceeding to view the exhibits attached to this filing on the Boards website, which clearly confirm many of the statements contained herein)*

***In our testimony to the Board today, CNJ states it concurs with many of the arguments made by Messrs. English and Riffin herein reproduced above.***

CNJ, and the undersigned in particular, was heavily involved in procuring much of the information pertaining to Hancor used in this testimony and in previous filings. The amount of documentation that still exists nearly 8 years later is astounding. What CNJ finds more disturbing, is KCS's response when confronted with this evidence.

***Indeed, when this little detail of the service request was brought to the Board's attention, KCS had the gall to make the outlandishly incredible statement that Hancor's genuine request for service did not trigger KCS's common carrier obligation to provide service!***

That statement just does not conform with the facts. How can one believe that Hancor's (who undertook all the efforts stated above to obtain a rail spur) request did not trigger KCS's common carrier obligations to provide service!!!

CNJ believes that the Hancor matter should be used by the Board when it draws its conclusions in this proceeding. Some of the issues raised by Messrs. English and Riffin above leads CNJ to its next point of discussion.

### ***Issue # 2: Is a carrier obligated to follow the STB's rules?***

At first glance, this question would appear to reach beyond the scope of the STB's inquiry in this proceeding. CNJ would argue to the contrary. It is absolutely relevant to this proceeding. Indeed, the Board specifically stated that it would address issues pertaining to the Board's procedures in items 6, 7, and 8 (highlighted above) in its notice of February 22.

It appears to CNJ that not following the rules has now become common place, especially amongst Class I railroads. What CNJ finds more disturbing is that the current Board appears to go out of its way to **not** hold Class I's accountable for failing to follow the relatively few rules that this

Board is charged by Congress with enforcing.

As the board is aware, CNJ participated actively in *AB 156 - 25 X – Delaware and Hudson – Discontinuance of Track Rights*. In that proceeding, then commissioner Mulvey felt compelled to personally comment on his perception of that proceeding. CNJ Rail believes the tone of that comment is appropriate here and reproduces those comments herein:

Commissioner Mulvey, commenting:

“While I vote to approve the draft decision before us today, **I am concerned about the procedures used by the railroads to obtain authorization for their operating arrangements**, especially the trackage rights transactions here. I find that these dealings, when viewed collectively, constitute a significant engagement among the carriers that will undeniably affect a number of their employees and possibly the rail competitive landscape of southern New York State. I am concerned that the interrelated nature of and the significance of these transactions—**though complying with the letter of law—might violate the spirit** of the class exemption for trackage rights agreements. Because the parties to the MOU clearly regarded the transactions as related and, to some degree, interdependent, I call into question the argument that the discontinuance is limited in scope. It would have been preferable if the railroads had filed formal applications for approval of these transactions, and if the Board had held a hearing in these proceedings.”(emphasis added)

CNJ Rail believes the highlighted comments herein clearly show that at least one member of this board was concerned over how a transaction was presented to the Board by the Class I railroads in that transaction.

CNJ is well aware of the problems associated with small, unknown entities attempting to abuse and misuse the Board’s procedures, especially regarding acquisition and operation exemptions. As such, the scrutiny of such filings is certainly warranted.

CNJ Rail would argue **totally ignoring** the Board’s abandonment / discontinuance of service / acquisition-of-rail-property procedures by *existing carriers* is even more egregious than misusing the Board’s procedures by new entrants.

What CNJ finds even more disturbing is that this Board will tolerate such blatant disregard for its procedures when the party engaged in the unlawful conduct is a Class 1, all the while it will chastize and punish any Class III carrier that doesn't cross all the "T's" and dot all the "I's".

CNJ has just one question it would like to pose to the Board:

***What excuse does a Class 1 railroad have for NOT following the rules?***

The follow up question we would like to pose is:

***Why does the Board appear to excuse these transgressions from Class 1's without any repercussions?***

CNJ grows more concerned when it reviews the large number of illegal transactions which occurred over the past 10 - 15 years. Many of these illegal transactions can be traced to one former Class 1 carrier. Indeed, the number of bad transactions are disturbing. Some are herein discussed briefly below:

### **The Seven Wonders of Conrail**

The vast majority of cases in which CNJ expects to participate actively in are what we refer to as the "Seven Wonders of Conrail". Indeed, CNJ "wonders" what in the world Conrail was thinking when it conducted no less than seven improper transactions.

The Board is currently aware of at least four of the illegal transactions. Cases in Jersey City, NJ; Bridgewater, NJ; and Cockeysville, MD. While issues have been brought to the forefront in those cases, because they involve the serious transgressions of a Class 1, they have not been dealt with appropriately by this Board.. Indeed, in three of the four, this Board failed to address any of the serious issues at all, or relied on blatantly false statements to reach conclusions not supported by the facts.

Three other transgressions occurred in NJ and Michigan and remain uncorrected to this day. An eighth transgression was corrected , only after it was brought to the Board's attention by Mr. Riffin, and after the Director of Proceedings had erred in

excepting Conrail's lame explanation for the transgression, and then not by a motion or other action of the offending carrier, but rather by the Board's own motion in the Robbinsville case.!!! Given Conrail is wholly owned by two Class 1's, the Board's actions did not surprise CNJ.

CNJ puts forth today its belief that this Board, without question, maintains a double standard; one for Class 1 carriers, and another for everyone else. We also state for the record our belief this Board makes no effort to hide the fact it has double standards! We believe this policy MUST COME TO END NOW!!!

### **Coos Bay**

As further example of this Class 1 bias, CNJ is deeply concerned over the actions that the Board has taken on its own motion in the Coos Bay case in Oregon. We note the slightly chastising tenor in the Board's decision, and note for the record that the carrier in question is a Class 2, not a Class 1. CNJ finds it ironic that the Board is concerned over the fact that an embargo has been in place for a while now, shippers are upset that the matter is not be resolved, and that the Board is now taking steps to correct this situation on its own motion.

We can't help but notice that this same Board is aware that shippers in Cockeysville, Maryland (and one highly vocal party in particular) have been requesting service now for 3 years. Norfolk Southern Corp.(NS) didn't even bother to embargo the line, rather, they have already stated to this Board in other proceedings directly, "We are refusing to serve that party, as well as any other party that requests service on the line". Yet CNJ can't help but notice that the Board appears to be saying to shippers in Cockeysville, "File a formal complaint only, and then maybe we will listen to you." However, in Oregon, with a Class 2 carrier (as opposed to a Class 1) to bully, the Board will convene a proceeding on their own motion. For some reason, CNJ finds it difficult to believe that a Class 1 carrier like NS is looking at the case in Oregon with any hesitation, or trepidation what so ever. They know with this Board, the same rules don't apply to them. They, like KCS, and BNSF, have been given permanent "Get of Jail - Free" cards by this Board.

CNJ is most deeply disturb by the events transpiring in Oklahoma City. To that

end, CNJ would like to very briefly discuss this most troubling case.

### **Oklahoma City, Where lying to and misleading the Board is OK**

(if you are a Class I railroad, it is gladly accepted)

Once again, CNJ has been asked to participate in a behind the scenes role in another controversy currently before the Board. At first, CNJ was very reluctant to get involved in the controversy surrounding BNSF's abandonment in Oklahoma City, OK. But after reviewing the volumes of pleadings in the proceeding, it became obvious to CNJ that the notices in question contained significant flaws and major misrepresentations.

CNJ simply asks the Board to apply a little common sense to the facts presented in that case so far and draw its own conclusions. We suspect, however, that the Board has a particular Class 1 friendly decision it will likely hope makes it past judicial review. For the sake of all, we ask the Board "do the right thing", even if it means dealing with the unpleasanties head on instead of trying to avoid them. For the people of Oklahoma, this Board needs to get that decision right.

### **Conclusions**

In closing, CNJ hopes the Board addresses and finds the following conclusions at the end of its review of the Common Carrier Obligations of Railroads:

1. The Board recognizes that a Class 1 railroad will never admit to refusing service in writing.
2. Shippers simply seeking service should never be forced to go through the formal complaint process to simply get service to their facility.
3. All railroads, and in particular, Class 1's, when appropriate, should be held accountable for violations of 49 CFR 10903.

4. The Board needs to realize that within the next 12-18 months, a “put it back” case may very well land itself before this Board and the Board needs be prepared to order a carrier to restore unlawfully removed track from a right of way in order to restore service to a shipper deprived of such service by a carriers violations of 49 CFR 10903.

5. We ask the Board to finally demonstrate to the Public that its bias in favor of Class 1 carriers is not real. We ask the Board to make this request its top priority.

With that, CNJ would like to thank the Board for the opportunity to speak with you today.

On Behalf of CNJ Rail Corporation,

Respectfully Submitted

*Eric S. Strohmeier* /s/

Eric S Strohmeier  
Vice President, COO  
CNJ Rail Corporation

Dated: March 24, 2008

April 22, 2008

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423-000 1

Re: STB Ex Parte No. 677 - Common Carrier Obligation of Railroads

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-captioned matter, please find CNJ Rail Corporation's Motion for Leave to Late File Comments and CNJ's Written Comments for the public hearing scheduled for April 24, 2008.

Thank you for your assistance.

Sincerely,

*Eric S. Strohmeyer /s/*

Eric S. Strohmeyer  
Vice President, COO  
CNJ Rail Corporation

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB Ex Parte No. 677  
COMMON CARRIER OBLIGATION OF RAILROADS

---

CNJ RAIL CORPORATION  
MOTION FOR LEAVE TO LATE FILE COMMENTS

Pursuant to the Notice of the Surface Transportation Board, served February 22, 2008, written testimony of parties interested in participating in the above captioned proceeding was due April 17, 2008. CNJ Rail Corporation (“CNJ”) hereby files motion for leave to late file its written comments in this proceeding.

On Thursday April 17, 2008 CNJ requested an extension of time to file comments due to circumstances beyond its control as outlined in its request until Tuesday, April 22, 2008. Requests for extensions of time have been granted by the Board, from time to time, when and if there is good cause shown. For the reasons outlined herein below, CNJ respectfully requested an extension of time to file its comments because of a significant event beyond its control.

On Friday, April 18, the undersigned spoke with a member of the Board’s staff that indicated the Board would like the comments filed by close of business on Monday, April 21, if at all possible. CNJ attempted to comply with the request, but advised the staff member by telephone on the 21st that we could not complete our comments in total until Tuesday, April 22. She advised that the decision to accept or reject the comments after Monday will be the at the soul discretion of the Board.. As such, and in accordance with the Boards wishes, CNJ hereby formally requests leave with the Board to late file its comments.

Our requested for an extension of time stated:

As the Board may (or may not be) aware, CNJ Rail Corporation has been heavily involved “behind the scenes” with regards to a matter currently before the Board (see AB 103 21 X - Kansas City Southern Railway - Abandonment Exemption - Warren County MS.) There is a significant high water event currently occurring in Mississippi that is directly threatening the right of way in the above captioned proceeding. In addition, material moved by CNJ Rail to Mississippi last year in advance of our corporate affiliate becoming the designated operator of the above captioned line at the conclusion of the OFA process currently underway has required us to divert our attention and resources this week to the moving material out of harms way.

In addition, CNJ has been working with our customer in Mississippi, Foam Packaging, to secure its building from the rising flood waters of the Mississippi River.

### **Significant Mississippi River Flooding**

Currently, Vicksburg and the surrounding area is experiencing the worst flooding since 1973. Currently, the river depth is over 50 feet, nearly 8 feet over flood stage. The River is expected to crest on Saturday, April 19. It is forecasted to reach a depth of 51 feet.

The City of Vicksburg this past week has closed and sealed the flood walls surrounding the lower portions of the city. Many locals residents have been displaced by flooding. LeTourneau Industries has laid off 1,300 workers this week. Their facility, located near the end of the line mentioned above, is closed until further notice.

Raymond English, President of Foam Packaging (and one of the Offeror's in the above mentioned proceeding), telephoned the undersigned last week that the river was expected to crest over 49 feet, and that should the river reach that level, water would easily reach the right of way. In addition, the building housing Foam Packaging's mechanical department and additional inventory storage building would be in danger of flooding. That building also was acting as a temporary storage facility for CNJ Rail's material.

There are numerous culverts and bridges along the line would allow river water to pass through the right of way, negatively impacting properties on both sides of the line. A large storm water culvert is located at MP 227. Its sole purpose is to allow water to drain from the Foam Packaging plant site. Conversely, it would easily allow flood water to enter the lower portion of Foam's property.

Flood prevention efforts diverted away resources need to timely complete the filing in this proceeding. In addition, given the now controversial nature of the fore mentioned abandonment proceeding, CNJ wanted to be able to put resources into place that would monitor how the right of way faired, given the controversies surrounding this property. Given all that has gone on with this line, who would have thought it was possible for a significant high water event to also have occurred during this OFA process!

In addition, CNJ has also come to learn that International Paper has recently moved to withdraw from the hearing on April 24. While we do not know the reasons for their decision to withdraw, we do know that their manufacturing facility in Redwood, MS., just north of Vicksburg, sits close to the flood plane of the Yazoo River and Diversion Canal and that rail service to their facility may be temporarily disrupted because the City of Vicksburg has had to close and seal the flood gates protecting the city. The VSOR/KCS rail line to their facility passes through the now sealed passages.

Should the Board like to see, or learn more about this ongoing event, The Vicksburg Post has placed a photo slide show on there website that graphically demonstrates the extensive nature of this event. The web address for the Vicksburg Post is [www.vicksburgpost.com](http://www.vicksburgpost.com) .

The photo slide show can be viewed at:

[http://www.vicksburgpost.com/content/current/special\\_sections/floodpics.html](http://www.vicksburgpost.com/content/current/special_sections/floodpics.html)

In closing, CNJ would like the opportunity to talk to the Board about Hancor, the principle issue of our filing.8 year ago, KCS denied them service. This year KCS denied

anyone ever asked for service. Hancor, and the issues surrounding that request for service, deserves the opportunity to finally be heard..

For the above stated reasons, CNJ respectfully requests that it be granted its motion for leave to late file its written comments and prays that Board finds its request reasonable in light of the circumstances outlined herein.. We apologize for not getting our comments filed sooner.

On Behalf of CNJ Rail Corporation,

Respectfully Submitted ,

Eric S. Strohmeyer /s/

---

Eric S Strohmeyer  
Vice President, COO  
CNJ Rail Corporation  
(908) 361 - 2435  
Dated: April 17, 2008