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April 29, 2008

## VIA E-FILING

The Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

222218

**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:

On April 25, 2008, The Kansas City Southern Railway Company's ("KCSR") filed a "Motion to Strike April 22 Comments of Raymond B. English and James Riffin" ("Motion"). On April 28, 2008, Raymond B. English and James Riffin ("E&R") filed a reply ("Reply") to the Motion. In the Reply, E&R not only respond to the Motion, but as usual, E&R take further opportunity to bolster their position and argument as originally put forth in their April 22 Comments (which E&R admit was a reply to a reply not permitted under 49 CFR 1104.13(c)). KCSR will not respond to the merits of E&R's arguments as set forth in their Reply, but it notes that most of the Reply itself should be rejected as an inappropriate attempt to reargue the merits of an issue related to the pending offer of financial assistance ("OFA") in this proceeding.

However, there is one factual clarification that needs to be addressed. Mr. Riffin's implication in Paragraph 17 that KCSR was not timely in responding to discovery has no basis in fact. While it may be that Mr. Riffin did not personally receive KCSR's discovery responses until March 25, the day after the E&R's filing deadline, that is not the fault of KCSR. KCSR sent its discovery responses to Mr. Riffin by overnight delivery on March 21, three days before the deadline. On that day, KCSR placed the responses in a FedEx overnight package for Saturday morning delivery. As the attached delivery confirmation information shows, FedEx could not deliver the package on Saturday morning (March 22) as directed, because either Mr. Riffin was not present at his stated delivery address or the office itself was closed. FedEx successfully delivered the package for Mr. Riffin on Monday morning, March 24, and it did so at the stated business address as consistently presented by Mr. Riffin, including the March 24

filing. It may be that Mr. Riffin did not retrieve or review the contents of KCSR's response to his discovery until the following day, and thus Mr. Riffin did not personally "receive" the response until March 25, but it is misleading for Mr. Riffin to imply, as he does, that his failure to "receive" KCSR's response prior to March 25 was the fault of KCSR. If Mr. Riffin did not come into the office on March 24 or did not pick up the responses until the next day, that is his failure, not KCSR's.

Furthermore, to the extent Mr. Riffin complains about the short time frame for reviewing KCSR's discovery responses, this is again a direct result of Mr. Riffin's actions, not KCSR's. Notwithstanding the fact that Mr. Riffin has known since February 22 that he would have an evidentiary filing due on March 24, he waited until 8 p.m. on Friday night, March 7, two weeks after the Board's order, to email discovery requests to counsel for KCSR. As the Board knows, absent the consent of a party, e-mail is not an acceptable form of service (49 CFR 1104.12), and, in fact, Mr. Riffin has advised that he would prefer not to have documents emailed to him. Indeed, it wasn't until approximately March 11<sup>th</sup> or 12<sup>th</sup> that this office received the mailed copy of the Riffin discovery. As such, under the Board's rules, that was the date of service and KCSR actually had until March 26<sup>th</sup> or 27<sup>th</sup> to serve its responses. Nevertheless, as a courtesy to Mr. Riffin and out of regard for the March 24 deadline for Mr. Riffin's evidentiary submission, KCSR treated the e-mail service on March 7 as the date of service and KCSR responded before the 15 day deadline as measured from that date.

The simple fact is that if Mr. Riffin would have filed discovery sooner, he would have had his answers sooner. Likewise, although KCSR was legally entitled to respond later than it did, KCSR served its discovery responses sooner than is required under the Board's regulations. Again, Mr. Riffin's failure to pick up KCSR's discovery responses on either March 22 or 24 is the fault of Mr. Riffin, not KCSR.

Finally, in Paragraph 27 of the Reply, Mr. Riffin cites to the duties of an STB practitioner as set forth at 49 CFR 1103.21 to justify his constant failures to make procedurally proper and timely filings. If by citation to this regulation, Mr. Riffin claims to be a "practitioner" representing his client (presumably Mr. English), then Mr. Riffin cannot make such a claim. Mr. Riffin is neither a licensed attorney nor a STB practitioner. If Mr. Riffin has in fact been acting as either counsel to, or an STB licensed practitioner acting on behalf of, Mr. English, or if he is representing himself as such to others, then Mr. Riffin has been violating several provisions of state law and the STB code of ethics regarding unlicensed and unsanctioned practice before this agency..

Respectfully submitted,



William A. Mullins

cc. Parties of Record

Track Shipments/FedEx Kinko's Orders  
Detailed Results

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**Signed for by** K KEPNER  
**Ship date** Mar 21, 2008  
**Delivery date** Mar 24, 2008 9:07 AM

**Reference** 800/KCS  
**Destination** TIMONIUM, MD  
**Delivered to** Receptionist/Front Desk  
**Service type** Pronty Envelope  
**Weight** 1 0 lbs

**Status** Delivered

**Signature Image available** [Yes](#)

Date/Time	Activity	Location	Details
Mar 24, 2008	9 07 AM Delivered	TIMONIUM, MD	
	7 22 AM On FedEx vehicle for delivery	BALTIMORE, MD	
Mar 22, 2008	11 31 AM At local FedEx facility	BALTIMORE, MD	
	9 04 AM Delivery exception	BALTIMORE, MD	Customer not available or business closed
	8 09 AM On FedEx vehicle for delivery	BALTIMORE, MD	
	7 27 AM At local FedEx facility	BALTIMORE, MD	
	7 02 AM At dest sort facility	BALTIMORE, MD	
	4 44 AM Departed FedEx location	MEMPHIS, TN	
Mar 21, 2008	11:53 PM Arrived at FedEx location	MEMPHIS, TN	
	9 15 PM Left origin	WASHINGTON, DC	
	6 44 PM Picked up	WASHINGTON, DC	
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<input type="text"/>	English	<input type="checkbox"/>	<input type="checkbox"/>
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Memphis, TN 38118

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Memphis, TN 38194-4843  
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April 29, 2008

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**Delivery Information:**

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<b>Status:</b>	Delivered	<b>Delivery location:</b>	TIMONIUM, MD
<b>Signed for by:</b>	K KEPNER	<b>Delivery date:</b>	Mar 24, 2008 09 07
<b>Service type:</b>	Priority Envelope		



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**Shipping Information:**

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<b>Tracking number:</b>	799823715960	<b>Ship date:</b>	Mar 21, 2008
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**Recipient:**  
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