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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35236

JAMES RIFFIN—ACQUISITION AND OPERATION EXEMPTION—VENEER SPUR—IN BALTIMORE COUNTY, MD

Decided: April 28, 2009

On March 30, 2009, James Riffin (Riffin) filed a verified notice of exemption pursuant to 49 CFR 1150.41 et seq. to acquire from Mark Downs, Inc., a non-carrier, and to operate approximately 400 feet of track, formerly known as the Veneer Mfg. Co. Spur (Veneer Spur), in Baltimore County, MD.[1] Contending that he is a rail carrier and that the Veneer Spur is a line of railroad, Riffin requests that the Board permit the notice of exemption to become effective or, in the alternative, institute an individual exemption proceeding. The notice of exemption will be rejected, and the Board will not treat the notice as a petition for exemption.

Riffin contends he is a rail carrier because in CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, MD, STB Docket No. AB-55 (Sub-No. 659X) (STB served Aug. 18, 2006), the Board allowed him to substitute for Western Maryland Services, LLC (WMS) in its successful offer of financial assistance to acquire an out-of-service 8.54-mile line in Alleghany County, MD. Riffin claims that "the Veneer Spur is connected to the national rail system" and will provide rail access to a proposed public transload facility. Riffin argues that the movement of freight cars between the point of interchange with NSR at the western end of the Veneer Spur and his proposed transload facility at the eastern end demonstrates that the Veneer Spur will be a line of railroad. Riffin also asks the Board to find that: (1) Riffin is a common carrier by rail and (2) the Veneer Spur is a line of railroad.

On April 20, 2009, MTA on behalf of MDOT filed a motion to reject Riffin's notice of exemption and request for declaratory relief. MTA incorporated the arguments it made in opposition to Riffin's previous attempt to use the class exemption procedure to acquire and operate the Veneer Spur. See James Riffin—Acquisition and Operation Exemption—Veneer

[1] Riffin asserts that the Veneer Spur connects at milepost 15.16 with the Cockeysville Industrial Track (CIT), a 14.22-mile line of railroad extending between milepost 0.00 in the City of Baltimore and milepost 15.40 in Cockeysville, Baltimore County. The Maryland Transit Administration (MTA), part of the Maryland Department of Transportation (MDOT), acquired the CIT from Consolidated Rail Corporation (Conrail) in 1990 and uses it to operate a light rail transit system. Conrail reserved a perpetual freight operating easement over the CIT which Norfolk Southern Railway Company (NSR) subsequently acquired.

Spur—in Baltimore County, MD, STB Finance Docket No. 35221 (STB served Apr. 3, 2009) (rejecting Riffin's second amended verified notice of exemption). MTA argues that Riffin may have been granted the right to substitute for WMS but that he never became a rail carrier. MTA also argues that the Veneer Spur was connected to the now demolished Cockeysville Siding, and not to the Cockeysville Industrial Track (CIT), and that there are physical constraints, including the need to traverse property that Riffin does not control, that would preclude any connection between the Veneer Spur and the CIT.

The accelerated time period specified in the Board's regulations for processing notices invoking class exemptions makes such procedures appropriate only when the notices do not raise a substantial controversy or substantial factual and legal issues. Northeast Interchange Railway, LLC—Lease and Operation Exemption—Line in Croton-on-Hudson, NY, STB Finance Docket No. 34734 et seq. (STB served Nov. 18, 2005) (Northeast Interchange). The class exemption procedure is suited for routine cases. See, e.g., The Burlington Northern and Santa Fe Railway Company—Acquisition and Operation Exemption—State of South Dakota, STB Finance Docket No. 34645, slip op. at 2-3 (STB served Jan. 14, 2005), citing Riverview Trenton Railroad Company—Acquisition and Operation Exemption—Crown Enterprises, Inc., STB Finance Docket No. 33980, slip op. at 6-10 (STB served Feb. 15, 2002).

Given the issues raised by MTA, this case is not routine. The 30-day period between the filing and the effective date of the notice of exemption is thus insufficient to adequately address the issues the notice presents. Because this notice of exemption is controversial and raises important issues that require more scrutiny and the development of a more complete record, it will be rejected.[2] See, e.g., Northeast Interchange, slip op. at 4.

This rejection is without prejudice to Riffin filing an individual petition for exemption or some other request, such as a formal application or a petition for declaratory order. In the event Riffin files an individual petition for exemption or some other request for authority, or a declaratory order, he must serve a copy on MTA, MDOT, and NSR. The Board will not use the material Riffin has provided to fashion a petition for exemption. As was stated in STB Finance Docket No. 35221 (STB served Mar. 5, 2009), "[t]hat responsibility lies with the moving party."

Riffin's request that the Board make specific findings that he is a rail carrier and that the Veneer Spur is a line of railroad exceed the relief afforded by the class exemption process.

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

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[2] Riffin filed a motion for a protective order along with his notice of exemption, and MTA filed a reply. In view of the action being taken here, there is no need to rule on that motion.

It is ordered:

1. The notice of exemption is rejected without prejudice to a subsequent filing consistent with this decision.

2. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary