

**Before the  
Surface Transportation Board**

**STB DOCKET NO. AB-156 (Sub-No. 27X)**

---

**DELAWARE AND HUDSON RAILWAY COMPANY, INC. –  
DISCONTINUANCE OF TRackage RIGHTS EXEMPTION –  
IN NY, PA, NJ, MD, VA AND DC**

---

**JR - 19**

**239007  
ENTERED**

**Office of Proceedings  
August 10, 2015  
Part of Public Record**

**JAMES RIFFIN'S**

**PETITION TO TOLL TIME TO FILE AN OFA**

Filed August 10, 2015 by:

James Riffin  
P. O. Box 4044  
Timonium, MD 21094  
(443) 414-6210

1. James Riffin (“Riffin”), pursuant to 49 CFR 1152.27(c)(1)(i)(C), petitions the Surface Transportation Board (“STB” or “Board”) to Toll the time period within which Riffin (and no other entity) must file his Offer of Financial Assistance (“OFA”) in the above entitled proceeding, and in support thereof states:

2. Riffin is a financially responsible person. Riffin has, or within a reasonable time will have, the financial resources to fulfill all of his proposed contractual obligations.

3. On **July 13, 2015**, Riffin filed a new Notice of Intent (“**Notice**”) to File an Offer of Financial Assistance (“OFA”). See JR-15. In that Notice, Riffin demanded that the D&H provide Riffin with the following 49 CFR 1152.27 (a) information:

“A. An estimate of the annual subsidy to provide the service identified in paragraph 34 above.

B. The minimum purchase price for the track segments identified in paragraphs 5 through 32 above.”

### **SUBSIDY INFORMATION**

4. On **July 22, 2015** the Delaware and Hudson Railway Company provided Riffin with the following **subsidy** information, which Riffin argues is totally deficient, and is not in conformity with the requirements of 49 CFR 1152.27(a):

5. “D&H provides the following responses to the information requested by the NOI:

A. An estimate of the annual subsidy to provide the service identified in paragraph 34 above.

**Answer: D&H is unable to estimate the annual subsidy to provide the services identified in the NOI because the traffic identified in paragraph 34 does not currently exist, because D&H would not have the ability to handle the traffic identified in paragraph 34(A) if it did exist; and because D&H does not have the right to provide the services identified in paragraphs 34 (B) - (D) under the terms of any agreement.”**

6. Riffin argues:

A. Whether the traffic ‘currently exists’ is irrelevant. The question presented was:

“What would it cost to subsidize the movement of the traffic noted, if that traffic were offered to the D&H?”

7. Riffin further argues: The MSW traffic does in fact currently exist, and is currently moving by motor carrier. The silica traffic will materialize in October, 2015, and will move by motor carrier unless and until a rail tariff rate is quoted. The container traffic will materialize in 2016, whenever super-sized container ships are permitted to traverse the newly-enlarged Panama Canal.

8. The D&H’s admission that the “**D&H would not have the ability to handle the traffic identified in paragraph 34(A) if it did exist,**” greatly concerns Riffin, for it appears to be an admission that the D&H is in violation of its 49 U.S.C. 11101 obligations to provide “transportation or service on reasonable request,” and to “provide to any person, on request, the carrier’s rates and other service terms.”

9. The D&H provided no rationale for its statement: “**D&H does not have the right to provide the services identified in paragraphs 34 (B) - (D) under the terms of any agreement.**”

10. As the STB is fully aware, the D&H provided common carrier rail service for MSW from the D&H’s Oak Island, NJ rail terminal, to Ohio, up until 2012, as a part of the D&H’s *Hi-Tech* operations.

11. In addition, the D&H’s April 25, 1979 **Operating** Agreement provides as follows:

Section 2.01 of the Operating Rights Agreement states:

“D&H shall have the right to **operate such rail service** over the Joint Lines **as it may deem necessary or advisable to provide efficient and economical transportation** consistent with the Interstate Commerce Act and with its operating authority under the

Rail Act including, **without limiting the foregoing**, set-out of bad order cars, necessary repair and servicing of equipment, and **the operation of trains**, cars or vehicles for inspection and management purposes.” Bold added.

The Operating Rights Agreement states, on pp. 4-5, that the D&H:

“[I]s entitled, as an incident to the grant of its operating rights over the Joint Lines, **to switch and classify its cars at intermediate points on the Joint Lines and to interchange cars with other carriers or operate onto or off other carriers at intermediate points on the Joint Lines** other than those specified in this Section.”

12. The Operating Rights Agreement clearly gives the D&H the right “to switch ... its cars at **intermediate points on the Joint Lines and to interchange cars with other carriers or operate onto or off other carriers at intermediate points on the Joint Lines.**”

13. The Operating Rights Agreement clearly gives the D&H the right “**to operate such rail service** over the Joint Lines **as it may deem necessary or advisable to provide efficient and economical transportation** consistent with the Interstate Commerce Act and with its operating authority under the Rail Act including, **without limiting the foregoing**, ... **the operation of trains.**”

14. **Nothing** in the foregoing sections of the Operating Agreement **limits, in any way**, the D&H’s **right and common carrier obligation**, “to provide ... **transportation** consistent with the Interstate Commerce Act.”

#### **MINIMUM PURCHASE PRICE INFORMATION**

15. On **July 22, 2015** the Delaware and Hudson Railway Company provided Riffin with the following **minimum purchase price** information, which Riffin argues is totally deficient, and is not in conformity with the requirements of 49 CFR 1152.27(a):

16. “D&H provides the following responses to the information requested by the NOI:

B. The minimum purchase price for the track segments identified in paragraphs 5 through 32 above.

**Answer: D&H is unable to provide the minimum purchase price because it does not own the track segments identified in paragraphs 5 through 32 of the NOI.”**

17. Perhaps Riffin should have been more explicit:

“The minimum purchase price for **all of the D&H’s legal interests** in the track segments identified in paragraphs 5 through 32 above.”

18. The only thing that Riffin has the right to acquire via the OFA process, is whatever the carrier is seeking to abandon. Riffin thought he made it clear: The D&H only has trackage / operating rights. The only thing the D&H is attempting to rid itself of, is its trackage / operating rights. Therefore, the only thing that Riffin is seeking to acquire, are whatever “operating rights the D&H has in the segments identified in paragraphs 5 through 32” of Riffin’s Notice.”

19. In effect, what Riffin is seeking to acquire, is the **easement** that the D&H has over the identified track segments.

20. While Riffin is fully aware that the Net Liquidation Value for a rail easement, is Zero Dollars, and that the Minimum Purchase Price for a rail easement, is Zero Dollars, **the D&H is obligated**, per 49 CFR 1152.27(a), to expressly state that the minimum purchase price for its rail easements, is Zero Dollars.

21. WHEREFORE, for the foregoing reasons, Riffin would pray that the STB **toll the time for filing an Offer of Financial Assistance until 10 days after the D&H provides Riffin with (A) the cost to subsidize the rail traffic Riffin previously identified, and (B) the minimum purchase price for whatever operating rights the D&H has in the four line segments identified in Riffin’s Notice, and (C) for such other and further relief as would be appropriate.**

Respectfully,

James Riffin  
P.O. Box 4044  
Timonium, MD 21094  
(443) 414-6210

### CERTIFICATE OF SERVICE

I hereby certify that on the 9<sup>th</sup> day of August, 2015, a copy of the foregoing Petition to Toll Time to File an OFA, was served on the parties noted below, by E-mail.

James Riffin

E-mail:

Brotherhood of MOW Employees:	Richard Edelman:	<a href="mailto:REdelman@odsalaw.com">REdelman@odsalaw.com</a>
Brotherhood of Locomotive Engineers & Trainmen:	Kevin Moore:	<a href="mailto:bletdiv191@hotmail.com">bletdiv191@hotmail.com</a>
CNJ / Alma / Pace Glass:	Thomas McFarland:	<a href="mailto:mcfarland@aol.com">mcfarland@aol.com</a>
D&H Railways:	Karl Hansen:	<a href="mailto:karl.hansen@stinsonleonard.com">karl.hansen@stinsonleonard.com</a>
D&H Railways:	David Rifkin:	<a href="mailto:david.rifkin@stinsonleonard.com">david.rifkin@stinsonleonard.com</a>
IAM District Lodge 19:	Jeffrey A. Bartos:	<a href="mailto:Jbartos@geclaw.com">Jbartos@geclaw.com</a>
	Kyle A. DeCant:	<a href="mailto:Kdecant@geclaw.com">Kdecant@geclaw.com</a>
Genesee & Wyoming, Inc.:	Eric Hocky:	<a href="mailto:ehocky@clarkhill.com">ehocky@clarkhill.com</a>
	Allison M. Fergus:	<a href="mailto:afergus@gwrr.com">afergus@gwrr.com</a>
Maryland DOT:	Charles Spitulnik:	<a href="mailto:cspitulnik@kaplankirsch.com">cspitulnik@kaplankirsch.com</a>
NY DOT:	Keith Martin:	<a href="mailto:keith.martin@dot.ny.gov">keith.martin@dot.ny.gov</a>
National Grain & Feed Assoc:	Randall C. Gordon:	<a href="mailto:ngfa@ngfa.org">ngfa@ngfa.org</a>
National Grain & Feed Assoc:	Thomas Wilcox:	<a href="mailto:twilcox@gkglaw.com">twilcox@gkglaw.com</a>
Norfolk Southern:	Williams Mullins:	<a href="mailto:wmullins@bakerandmiller.com">wmullins@bakerandmiller.com</a>
PPL Energy:	Kelvin Dowd:	<a href="mailto:kjd@sloverandloftus.com">kjd@sloverandloftus.com</a>
PA NE Regional RR Auth:	Lawrence Malski:	<a href="mailto:lmalski@pnrra.org">lmalski@pnrra.org</a>
Saratoga & N. Creek Ry:	John D. Heffner:	<a href="mailto:John.Heffner@strasburger.com">John.Heffner@strasburger.com</a>
Seda-Cog Railroads:	Jeffery K. Stover:	<a href="mailto:jra@seda-cog.org">jra@seda-cog.org</a>
U.S. Clay Producers Assoc:	Vincent P. Szeligo:	<a href="mailto:vszeligo@wsmoslaw.com">vszeligo@wsmoslaw.com</a>
Samuel J. Nasca (SMART):	Gordon P. MacDougall:	<a href="mailto:gpmacdo@mindspring.com">gpmacdo@mindspring.com</a>
R.J. Corman	Audrey L. Brodrick:	<a href="mailto:abrodrick@fletcher-sippel.com">abrodrick@fletcher-sippel.com</a>
R.J. Corman	Robert A. Wimbish:	<a href="mailto:rwimbish@fletcher-sippel.com">rwimbish@fletcher-sippel.com</a>
Eric Strohmeier		<a href="mailto:esstrohmeier@yahoo.com">esstrohmeier@yahoo.com</a>