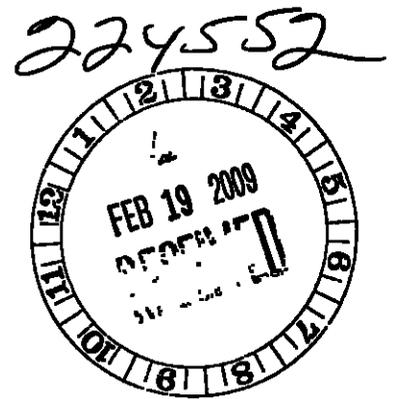


BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



Finance Docket No. 35221

JAMES RIFFIN – ACQUISITION AND OPERATION EXEMPTION –
VENEER MFG CO. SPUR – A DISTANCE OF APPROXIMATELY 400 FEET –
LOCATED IN BALTIMORE COUNTY, MD

VERIFIED NOTICE OF EXEMPTION

FEE RECEIVED

FEB 18 2009

**SURFACE
TRANSPORTATION BOARD**

James Riffin (Applicant), a Carrier, provides the following as his verified exemption notice to acquire and operate exemptions of approximately 400 feet of line within Baltimore County, MD, pursuant to 49 U.S.C. §10902. This action comes within the class of transactions which are exempt from regulations under 49 U.S.C. §10902.

1. The following 49 CFR §1150.43 details are provided:

(a) and (b): **APPLICANT** and representative to whom correspondences should be sent:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093
Phone: (443) 414 - 6210

FILED
FEB 18 2009
**SURFACE
TRANSPORTATION BOARD**

(c): An agreement has been reached.

(d): James Riffin will be the operator of the property.

ENTERED
Office of Proceedings
FEB 19 2009
Part of
Public Record

(e): The following is a brief summary of the proposed activity:

The Applicant proposes to acquire and operate approximately 400 feet of Line, formerly known as the Veneer Mfg. Co. Spur ("Veneer Spur"), located at MP 15.16 on the Cockeysville Industrial Track ("CIT"), in Baltimore County, MD. Applicant proposes to construct a 600' +/- §10906 excepted dead-end Sidetrack, which Sidetrack would connect to the west end of the Line. Applicant proposes to interchange with Norfolk Southern Railroad at the western end of the Veneer Spur. Applicant proposes to use the eastern end of the Veneer Spur to provide transload rail service to a number of local shippers. Applicant proposes to use the proposed Sidetrack to directly serve the Applicant's maintenance-of-way / rail car repair facility, which is less than 200 feet west of the west end of the line. Commodities that may be shipped on the Veneer Spur include, but are not limited to, clay, coal tar, cement, natural stone, railroad ties, rails, steel, chemicals, salt, wood products and rail cars. Estimated number of cars to be shipped per year: 200 - 600. Highly confidential marketing information is contained in a Protective Order filed simultaneously herewith. Applicant acquired the underlying real estate and track material on February 16, 2009. Applicant proposes to have the line rehabilitated and ready for service within 60 days. A Memorandum of Law is appended hereto.

(f): A map is attached hereto.

(g): The Petitioner certifies that the projected annual revenues of the carrier associated with this transaction, will not exceed the Class III carrier threshold, nor are they expected to exceed \$5,000,000.00.

2. Caption Summary required by 49 CFR §1150.44 is attached.

3. Environmental and Historical Impact:

Petitioner certifies that these activities will not exceed the thresholds established in 49 CFR §§1105.7 (e) (4) or (5), that per 49 CFR §1105.6 (c) (2) no environmental documentation need be

prepared, and that the proposed activities will not affect any historic structures.

Respectfully submitted,



James Riffin

Date: February 18, 2009

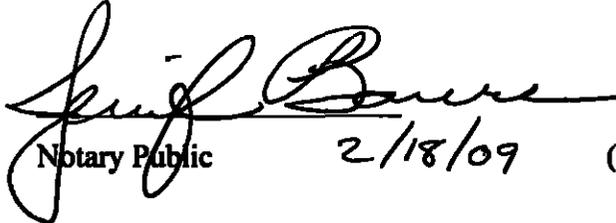
VERIFICATION

I, James Riffin, having been duly sworn, state that I have read the foregoing Notice of Exemption, and that its contents are true and correct to the best of my knowledge and belief.



James Riffin

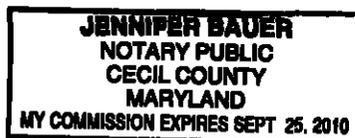
Subscribed and sworn to before me this 18th day of February, 2009.

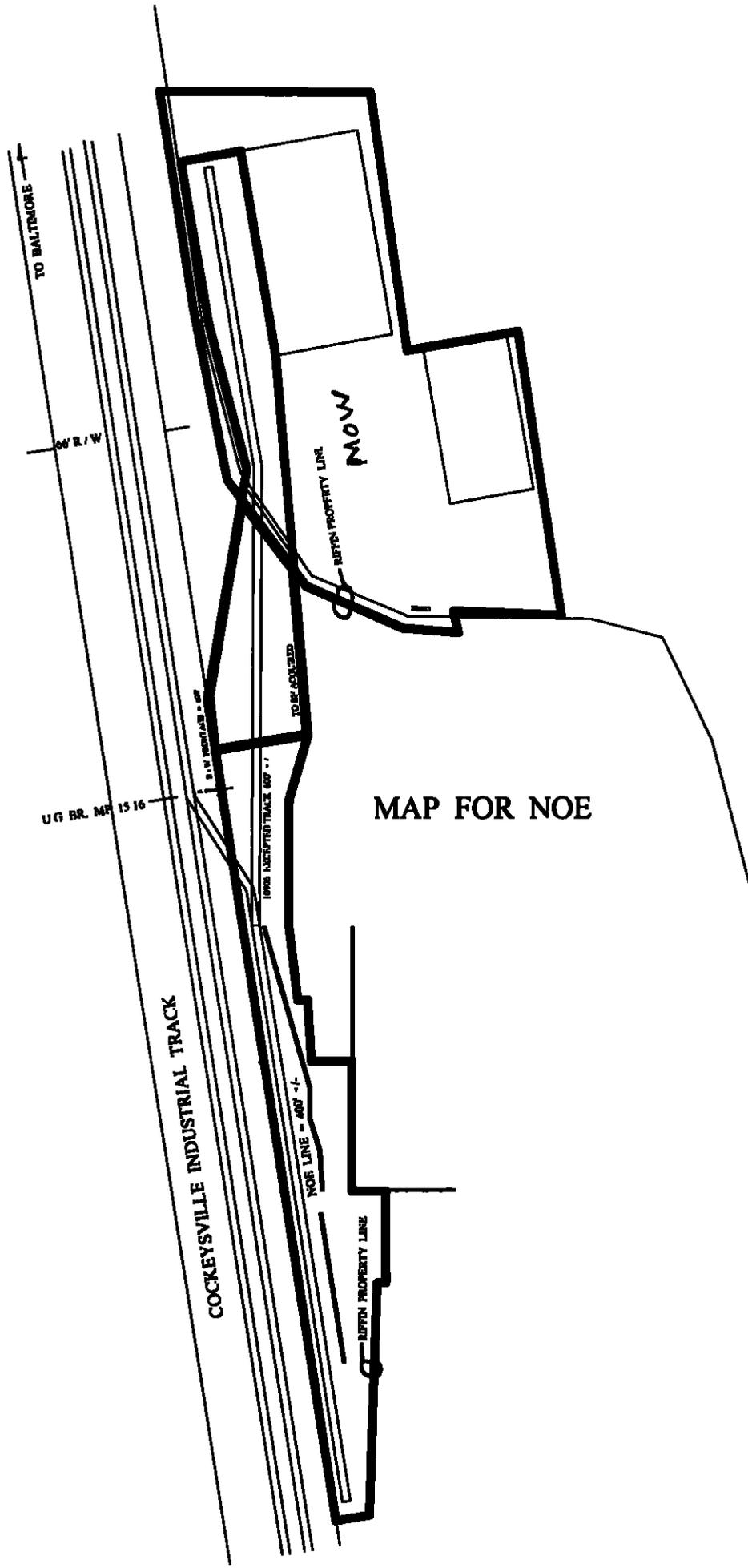


Notary Public

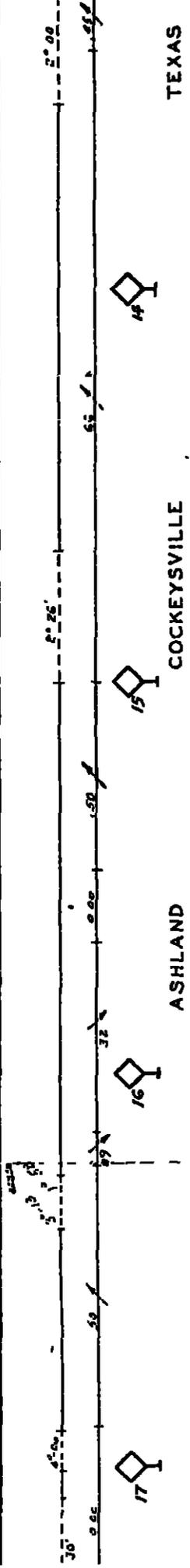
2/18/09

(SEAL)





MAP FOR NOE

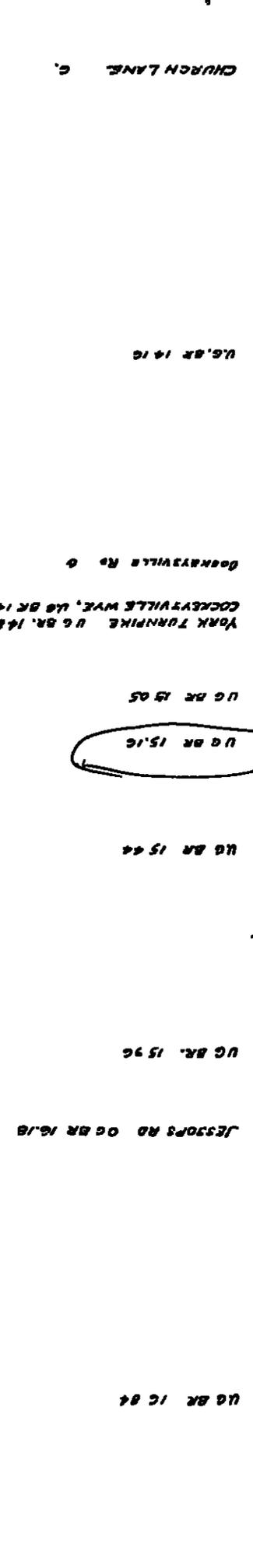
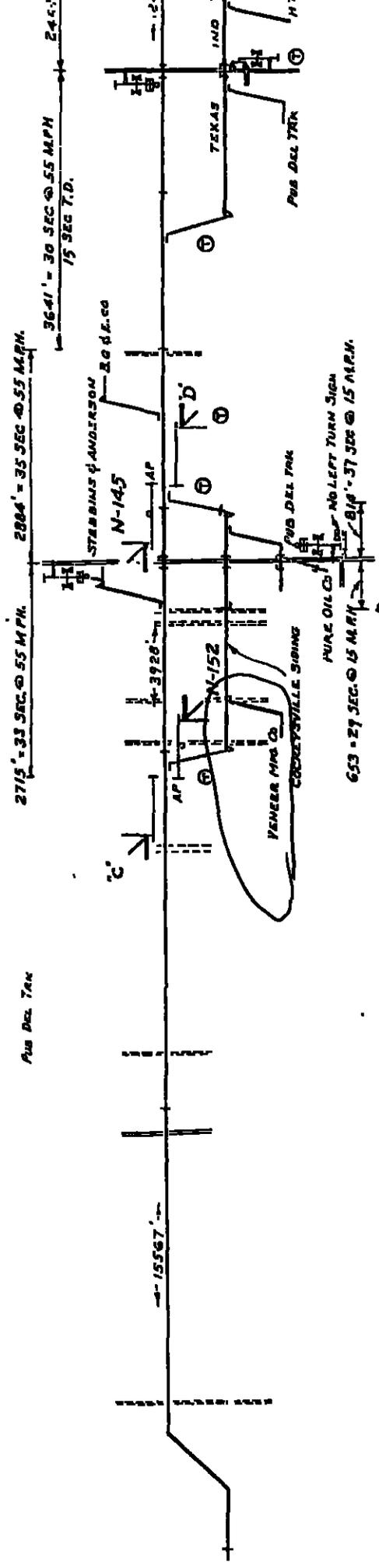


TEXAS

COCKEYSVILLE

ASHLAND

1-50
M.P.H.

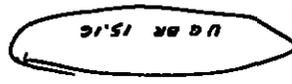


CHURCH LANE

U.G. BR. 14 16

DOCKEYSVILLE RD. 6
 COCKEYSVILLE WYE, U.G. BR. 14 83
 YORK TURNPIKE, U.G. BR. 14 85

U.G. BR. 15 05



U.G. BR. 15 44

U.G. BR. 15 96

JESSOP'S RD. O.G. BR. 16.18

U.G. BR. 16 84

MEMORANDUM OF LAW

BACKGROUND INFORMATION

1. On February 16, 2009, James Riffin (“**Riffin**”) acquired the underlying real estate, track and track material associated with a privately owned 400' +/- spur known as the Veneer Mfg. Co. spur (“**Veneer Spur**”), which spur connects to the Cockeysville Industrial Track (“**CIT**”) at MP 15.16. See the appended copy of page C-5 of Williams V.S. (See ¶ 2.)

2. The CIT is a 14.96-mile stub-ended line of railroad that begins in Baltimore City on the west side of Amtrak’s Baltimore Pennsylvania Station, near North Avenue (MP 1.30), then continues northward to Ashland, MD, at MP 15.96. See April 11, 2007 Verified Statement of Robert L. Williams, contained in Exhibit D of Response of the Maryland Transit Administration, dated April 20, 2007, filed in *Maryland Transit Administration – Petition for Declaratory Order*, Finance Docket No. 34975 (“**Williams V.S.**”). The CIT was the beginning portion of the Northern Central Railroad’s line of railroad (USRA Line 145) between Baltimore and Lake Erie, New York. The line begins near Orleans Street (MP 0.0), crosses at grade, Amtrak’s Northeast Corridor, in the vicinity of Baltimore’s Pennsylvania Station, then leaves Amtrak’s Northeast Corridor near MP 1.30 (North Avenue). In 1911, the Pennsylvania Railroad (“**PRR**”) leased the Northern Central Line for 999 years.

3. Conrail acquired the assets of the PRR, including USRA Line 145. On May 1, 1990, Conrail deeded the underlying real estate and the tracks, of that portion of USRA Line 145 that lies between MP 1.0 and MP 15.96, to the Maryland Transit Administration. This portion of USRA Line 145 is known as the CIT. Conrail retained a perpetual freight operating easement over the CIT. Conrail continued to provide freight rail on the CIT until Norfolk Southern Railway (“**NSR**”) acquired the PRR’s portion of Conrail’s assets. Norfolk Southern continued to provide freight rail service until December 14, 2005, when NSR filed a Petition for Exemption to abandon the CIT. See *Norfolk Southern Railway Company – Petition for Exemption –*

Abandonment of Freight Operating Rights and of Rail Freight Service – Between Baltimore, MD and Cockeyville, MD in Baltimore County, MD, AB 290 (Sub No. 237X), filed December 14, 2005 (“NSR Abandonment Exemption”). The Board denied NSR’s abandonment petition on April 3, 2006.

4. In 1972, after Hurricane Agnes destroyed portions of USRA Line 145, the PRR filed an abandonment application with the Interstate Commerce Commission (“ICC”) to abandon that portion of the line that lies between Ashland, MD, at MP 15.96, and the Maryland / Pennsylvania border, at MP 35.6. The ICC never ruled on the abandonment application. In a January 27, 2006 letter addressed to the Board, in NSR Abandonment Exemption, NSR admitted Conrail’s operating rights did extend to Ashland, MD at MP 15.96, and admitted NSR could find no record indicating the Board or the Interstate Commerce Commission had ever approved abandonment of the Line.

5. Riffin is a rail carrier. See *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 18, 2006).

6. Riffin proposes to construct a 600’ +/- Sidetrack which will connect the Veneer Spur with Riffin’s maintenance-of-way / rail car maintenance and repair facility (“MOW”), which MOW facility is located approximately 200 feet west of the western end of the Veneer Spur.

7. Riffin intends to use the Veneer Spur for transload purposes: Local shippers will consign rail cars to the eastern end of Riffin’s Veneer Spur. Riffin will move the loaded consigned rail cars from the point of interchange with NSR (on the western end of the Veneer Spur), to the transload area at the eastern end of the Veneer Spur. After the rail cars have been unloaded, Riffin will move the railcars back to the NSR interchange area. Riffin’s transload track will be available to the general public. Shippers utilizing Riffin’s transload track, will pay Riffin’s applicable tariff.

ISSUE

8. Should the Veneer Spur be classified as Line or §10906 Excepted Track?

APPLICABLE LAW

9. In *Texas & Pacific Ry. Co. v. Gulf, Colorado, & Santa Fe Ry Co*, 270 U.S. 266, 278, 46 S.Ct. 263, 266, 70 L.Ed. 578 (1926)), the Supreme Court stated:

“But where the proposed trackage extends into territory not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern. ... If the purpose and effect of the new trackage is to extend substantially the line of a carrier into new territory, the proposed trackage constitutes an extension of the railroad, within the meaning of paragraph 18, although the line be short, and although the character of the service contemplated be that commonly rendered to industries by means of spurs or industrial tracks.”

10. In *Nicholson v. Interstate Commerce Comm'n*, 711 F.2d 364, 367 (D.C. Cir. 1983), the D.C. Circuit stated:

“It is well established that the determination of whether a particular track segment is a ‘railroad line,’ requiring Commission authorization pursuant to section 10901(a), or a ‘spur, industrial, team, switching, or side’ track, exempt from Commission jurisdiction pursuant to section 10907(b), turns on the intended use of the track segment, not on the label or cost of the segment.”

“Thus it can be seen that track segments which are intended to be used to carry through trains between points of shipment and delivery, particularly those segments which extend a railroad’s service into new territory, must be approved by the Commission pursuant to section 10901(a). On the other hand, track segments which are merely incidental to, and not required for, a railroad’s service between points of shipment and delivery are exempted from the requirements of section 10901(a) by section 10907(b).” *Id* at 368.

11. In *United Transp. Union-Illinois v Surface Transp.*, 169 F.3d 474 (7th Cir. 1999) (“*Chicago Rail Link*”), quoting from *Class Exemption – Aqu. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 n.1 (1985), the 7th Circuit stated:

“The terms ‘acquire’ and ‘operate’ include interests in railroad lines of a lesser extent than fee simple ownership, such as a lease or a right to operate.”

12. In *Lone Star Steel Company v. McGee*, 380 F.2d 640 (5th Cir. 1967), the 5th Circuit quoted the following from *United States v Louisiana & P R.Co* , 234 U.S.1, 34 S.Ct.741,746 (1913):

“But this conclusion [that one is not a common carrier if only a small part of the traffic carried is the property of others] loses sight of the principle that the extent to which a railroad is in fact used does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road’s facilities and to demand service of it, rather than the extent of its business, which is the real criterion determinative of its character.”

13. In *United Transp. Union v. Surface Transp. BD.*, 183 F.3d 606, 613 (7th Cir. 1999), (“*Effingham*”) the 7th Circuit quoted the following from *Brotherhood of Locomotive Engineers v. U.S.*, 101 F.3d 718, 727 (D.C. Cir. 1996):

“If the track is or has been used or owned by more than one carrier, what controls classification of the track as spur or railroad line is the tenant railroad’s use.”

“although the ICC may focus on the tenant railroads’ use of the tracks solely for switching operations as the controlling factor in determining the tracks’ character, if those switching operations have the effect of substantially extending the tenant railroads’ lines into new territory, then the Commission may not decline jurisdiction” *Id.* at 728.

VENEER MFG. CO. SPUR

14. When Conrail / NSR operated on the Veneer Mfg.Co. Spur, only one shipper was served: Veneer Mfg. Co. The spur was not available for general public use.

15. Since Riffin’s line of railroad is in Allegany County, MD, “the purpose and effect of the new trackage [Riffin’s acquisition of the Veneer Spur] is to extend substantially the line of a carrier into new territory, [consequently] the proposed trackage constitutes an extension of the railroad, within the meaning of paragraph 18, although the line be short, and although the character of the service contemplated be that commonly rendered to industries by means of spurs or industrial tracks.” *Texas and Pacific. op. cit.*, 270 U.S. 278.

16. The Veneer Spur is connected to the national rail system on its western end. There is insufficient room to engage in transload activities on the western end of the Veneer Spur. The ultimate destination of the railcars, is the eastern end of the Veneer Spur, where transload activities are to occur. Consequently, Riffin must move the rail cars from the western end of the Veneer Spur to the eastern end of the Veneer Spur. While only a short distance, this movement is a part of the 'line haul,' for which Riffin will collect a fee.

17. Since Riffin's use of the Veneer Spur will permit Riffin to serve new customers which Riffin cannot currently serve via Riffin's Allegheny Line, since the shippers Riffin would serve via the Veneer Spur could currently be served by another carrier, NSR, since the eastern end of the Veneer Spur would be available for general public use [more than one shipper], and since the movement of railcars from the western end of the Veneer Spur to the eastern end of the Veneer Spur would be a part of the 'line haul,' that is from the point of shipment to the point of delivery [at the eastern end of the Veneer Spur], Riffin would argue the intended use of the Veneer Spur was as a line of railroad, rather than a spur track. As a point of reference, in *Effingham*, the Board held that 206 feet of track was sufficient to be a line of railroad for Effingham.

600' SIDETRACK

18. In addition to acquiring the Veneer Spur, Riffin proposes to construct a 600' Sidetrack, which would connect his MOW facility to the Veneer Spur. This Sidetrack would not permit Riffin to serve a shipper that currently could be served by another carrier. [Riffin's MOW facility does not have frontage on the CIT. (It is several hundred feet north of the CIT, is separated from the CIT by a substantial creek, and is some 40 feet lower in elevation than the CIT.) This 600' Sidetrack is similar to the 400-foot 'warehouse track' in *Effingham*, which the Board held was §10906 Excepted track.

CRITERIA FOR EXEMPTION FROM REGULATION

19. 49 U.S.C. 10502, states in pertinent part:

“(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part –

“(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either –

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

20. Permitting Riffin’s Notice of Exemption (“NOE”) to acquire and operate the Vencer Spur to become effective, would be in conformity with the following Rail Transportation Policies:

“(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;” [Creating a rail-served transload facility in Cockeyville would foster competition between motor and rail carriers, and would increase the demand for rail services.]

“(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;” [Permitting Riffin’s Notice of Exemption to become effective would ‘minimize the need for Federal regulatory control over the rail transportation system and [would result in] expeditious regulatory decisions.’]

“(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense.” [Creating a rail-served transload facility in Cockeyville would foster competition between motor and rail carriers, and would help meet the needs of the public in the Cockeyville area.]

“(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;” [Creating a rail-served transload facility in Cockeyville would foster competition between motor and rail carriers.]

“(7) to reduce regulatory barriers to entry into and exit from the industry;” [Permitting Riffin’s NOE to become effective would “reduce regulatory barriers to entry into ... the industry.”

“(8) to operate transportation facilities and equipment without detriment to the public health and safety;” [Permitting Riffin’s NOE to become effective would not have any adverse detriment to the public health and safety. The Veneer Spur is an existing spur, located in an industrially zoned area, and is not in a floodplain.]

“(14) to encourage and promote energy conservation;” [Creation of a transload facility in Cocksylville would make it possible for local shippers to ship their products via rail, rather than via motor carrier. Shipping goods via rail requires far less energy than shipping goods via motor carrier.]

“(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.” [Permitting Riffin’s NOE to become effective would permit Riffin to expeditiously begin providing rail transload services to local shippers, before the local shipper’s busy summer season.]

21. Permitting Riffin’s NOE to become effective would not adversely affect any Rail Transportation Policy.

22. The transaction is of limited scope: The Veneer Spur is only 400 feet long. Placing it back into service would certainly be ‘limited in scope.’

23. “The application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.” None of the local shippers are captive rail customers. Providing local shippers with alternative rail service would relieve them of motor carrier’s ‘abuse of market power,’ by making an alternative mode of transportation available.

24. Permitting Riffin’s NOE to become effective would be in conformity with 8 of the 15 Rail Transportation Policies, and would not adversely affect any of the 15 Rail Transportation Policies. The transaction is of very limited scope, and would not result in any abuse of market power. Consequently the Board ‘shall exempt a person [Riffin], or a transaction or service [Riffin’s NOE].’

CONCLUSION

25. Riffin's acquisition and operation of the Veneer Spur would constitute the acquisition and operation of a line of railroad, since it will permit Riffin to provide rail service in a territory Riffin currently does not serve, and to provide rail service in a territory currently served by another carrier. Riffin's construction of his 600' Sidetrack would constitute construction of §10906 Excepted track, since the track would not permit Riffin to serve a territory currently served by another rail carrier, and would be in conformity with the Board's *Effingham* precedent.

26. WHEREFORE, Riffin would ask that the Board:

- A. Find that the Veneer Spur is a line of railroad;
- B. Find that the 600' Sidetrack is §10906 Excepted track;
- C. Permit Riffin's NOE to become effective, or in the alternative, to institute an Individual Exemption Proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Riffin', written over a horizontal line.

James Riffin, Applicant

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

Finance Docket No. 35221

CAPTION SUMMARY

**JAMES RIFFIN – ACQUISITION AND OPERATION EXEMPTION –
VENEER MFG CO. SPUR – A DISTANCE OF APPROXIMATELY 400 FEET –
LOCATED IN BALTIMORE COUNTY, MD**

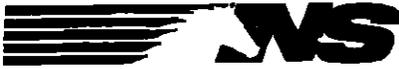
James Riffin, a Carrier, has filed a Notice of Exemption under 49 U.S.C. §10902 to acquire and operate approximately 400 feet of additional line in Baltimore County, MD. This action comes within the class of transactions which are exempt from regulation under 49 U.S.C. §10902.

Comments must be filed with the Surface Transportation Board and served on James Riffin, 1941 Greenspring Drive, Timonium, MD 21093, telephone (443) 414-6210.

This Notice conforms to the format in 49 CFR §1150.44. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemptions under 49 U.S.C. §10505 (d) may be filed at any time. Filing petitions to revoke will not automatically stay the transaction.

Dated:

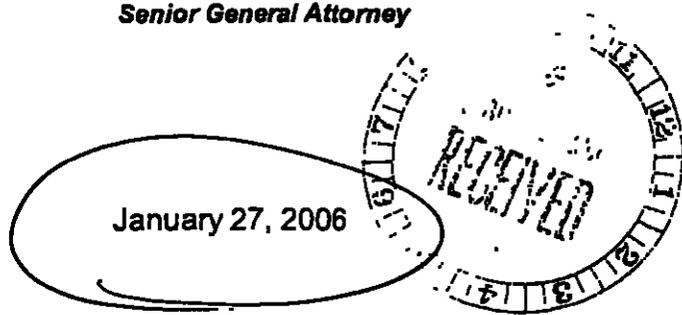
By the Board: Anne Quinlan
Secretary



Norfolk Southern Corporation
 Law Department
 Three Commercial Place
 Norfolk, Virginia 23510-9241

James R. Paschall
 Senior General Attorney

Writer's Direct Dial Number
 (757) 629-2759
 fax (757) 533-4872



via fax (202) 565-9004
 and original and 10 copies via DHL Express

Honorable Vernon A. Williams, Secretary
 Surface Transportation Board
 1925 K Street, N.W.
 Washington, DC 20006.

Re: STB Docket No. AB-290 (Sub-No. 237X), Norfolk Southern Railway Company - Abandonment Exemption - in Baltimore County, MD

Dear Mr. Williams:

On January 3, 2006, the Board served notice in the subject proceeding that on December 14, 2005, Norfolk Southern Railway Company ("NSR") filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903-05 to abandon its freight operating rights and rail freight service over 12.8 miles of a line of railroad between milepost UU-1.0 at Baltimore, MD, and milepost UU-13.8 at Cockeysville, MD (the "Line"). NSR also seeks exemption from 49 U.S.C. 10904 [offer of financial assistance ("OFA") procedures] and 49 U.S.C. 10905 [public use conditions] because the Line's right-of-way is owned by the Maryland Department of Transportation ("MDOT"), which will continue to use the Line for the public purpose of providing light rail commuter passenger service through the Maryland Transit Administration ("MTA"). Replies to NSR's petition were due on or before January 23, 2006. The Board stated that a final decision in this proceeding will be issued by April 3, 2006.

James Riffin ("Riffin") filed a protest or opposition to the petition for exemption with the Board before the January 23, 2006 due date. Riffin's filing is dated January 13, 2006. NSR received a copy of the filing on January 17, 2006. The Board's regulations require that a petitioner's entire case be filed with the petition. In some cases and under certain circumstances, the Board has permitted petitioners to reply to protests, opposition statements or replies. This case presents circumstances in which an NSR response to Mr. Riffin's statement is necessary for the Board to decide this matter on a

the return of the cars to origin without charge (if necessary) and waiver of any accrued charges for storage of the cars should more than make up for any mistake NSR may have made with respect to the handling of the cars.

It is unfortunate that NSR did not handle the disposition of Mr. Riffin's cars more promptly. We believe our current and proposed further handling of the matter will appropriately correct any mishandling of the matter and will do so without attempting to place any expense on Mr. Riffin.

Mr. Riffin has not shown that his attempt to have these empty cars delivered to him at Cockskeyville make him a customer on the Line or that he has any railroad freight traffic for NSR at all. He has presented no basis for the Board to conclude that he is an objecting shipper or on which the Board should deny or dismiss the petition.

Typographical Error In Milepost Number. It is plainly absurd for Mr. Riffin to suggest that a single and obvious typographical error with respect to the milepost at one end of the Line justifies dismissal of the petition. The milepost is stated correctly on the map and in numerous other places in the petition.

Abandonment of Additional Former Conrail Operating Rights. Mr. Riffin has raised one legitimate question that requires explanation to the Board and further action by NSR. It does not require either dismissal or denial of the subject petition, however.

In the subject petition, NSR has filed for an exemption from the prior approval requirements of the Act in order to abandon the remaining active right-of-way of the Cockskeyville Branch that was acquired by NSR from Conrail in 1999 and on which all active shippers on the Line are located. Mr. Riffin questions whether the Line for some distance beyond Milepost UU-13.8 ever was formally abandoned. Upon further investigation, we have determined that Conrail's operating rights did extend at least a short distance beyond Milepost UU-13.8 and we can not find any record of the formal abandonment of this additional segment of right-of-way. There is no track on most or all of this segment but the right-of-way is intact and some track and material is still next to or along it even though it is not on the right-of-way in usable condition.

NSR proposes to rectify this situation by filing as promptly as possible a notice of exemption to abandon this long inactive railroad line segment along which no current or recent customers are or have been located and of which few people were even aware. No current shipper or other party will be injured or prejudiced by NSR filing this separate notice of exemption in the near future. Indeed, if anything, there will be a benefit to cleaning up the status of the short segment of former line that was not previously formally abandoned. While NSR can not state that the notice of exemption can be filed and made effective coincident with the effective date of the petition, we will do our best to move this along quickly. Under the circumstances, we will embargo the entire line, as indicated above, and file the notice of exemption as soon as possible. We regret not being able to include this short segment in this petition, the need for a further filing and