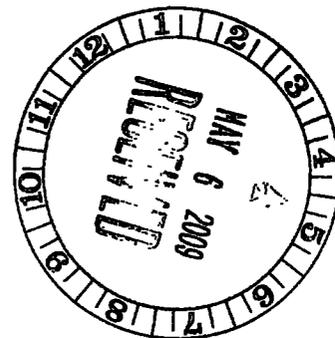


225059

Before the
Surface Transportation Board
Finance Docket No. 35245



FEE RECEIVED

MAY 6 - 2009

PETITION FOR DECLARATORY ORDER

**SURFACE
TRANSPORTATION BOARD**

EXPEDITED HANDLING REQUESTED

1. James Riffin, Petitioner (“**Riffin**”), herewith petitions the Surface Transportation Board (“**Board**”), pursuant to 5 U.S.C. 554(d) and 49 U.S.C. 721, for a Declaratory Order, to terminate a controversy and / or to remove uncertainty, and in support thereof states:

ENTERED
Office of Proceedings

MAY 6 - 2009

Part of
Public Record

I. THE CONTROVERSY

2. Did James Riffin become a common carrier by rail on August 18, 2006?

3. Would Riffin’s operation on the Veneer Mfg. Spur (“**Veneer Spur**”) constitute operating an additional line of railroad?

II. THE PARTIES

4. James Riffin is a Class III carrier, having become a carrier when he was granted authority, on August 18, 2006, to operate, in his individual capacity, a line of railroad in Allegany County, Maryland¹ (“**Allegany County Line**” or “**Line**”).

5. Norfolk Southern Railway Company (“**Norfolk Southern**” or “**NSR**”) is a Class I carrier. It has authority to operate on a freight easement associated with the Cockeyville Industrial Track (“**CIT**”). The Veneer Spur is connected to the CIT at MP 15.05 in Cockeyville, MD.

6. The Maryland Transit Administration (“**MTA**”) is a part of the Maryland Department of Transportation (“**MDOT**”). The MTA operates a light rail transit system over a portion of the

¹ See *CSX Transportation, Inc. – Abandonment Exemption – in Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served Aug. 18, 2006).

FILED

MAY 6 - 2009

**SURFACE
TRANSPORTATION BOARD**

CIT. The Maryland Department of the Environment (“MDE”) is responsible for enforcing Maryland’s Environmental laws. Counsel for all of these State agencies is Charles Spitulnik.

7. The Board of County Commissioners of Allegany County (“Allegany County”) is a political subdivision of the State of Maryland, and has responsibility for the affairs of Allegany County, Maryland. Charles Spitulnik is also counsel for the Board of County Commissioners of Allegany County.

III. POSITION OF THE PARTIES

8. James Riffin asserts that pursuant to the Board’s precedent,² he became a common carrier by rail when he was granted authority, on August 18, 2006, in his individual capacity, to operate his Allegany County Line of railroad, and further asserts that he became, on August 18, 2006, a common carrier at law when he began, on August 18, 2006, to offer to “serve the public indiscriminately and not ‘make individualized decisions, in particular cases, whether and on what terms to deal’ ”³ and when, on August 18, 2006, he granted “the right of the public to use the road’s facilities and to demand service of it.”⁴

9. Riffin also asserts that his operation of the Veneer Spur would constitute operation of an additional line of railroad, since Riffin’s operation of the Veneer Spur would permit Riffin to serve numerous shippers in a market Riffin does not currently serve, and since those shippers currently could be served by Norfolk Southern.

10. To date, Norfolk Southern has taken no position.

11. The MTA, MDOT, MDE and Allegany County have taken the position that Riffin is not a common carrier by rail, due to the fact that Riffin has failed to record in the Land Records of Allegany County, MD, a copy of his deed to the Allegany County Line, and due to the fact that Riffin has not transported a railcar to / from a shipper on his Allegany County Line.

² See *General Railway Corp., d/b/a Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – In Osceola and Dickinson Counties, IA*, FD No. 34867, Served June 15, 2007.

³ *American Orient Exp. Ry. v. Surface Transp. Bd.*, 484 F.3d 554, 557 (D.C. Cir. 2007).

⁴ *U.S. v. Louisiana & P.R.Co.*, 234 U.S. 1, 34 S.Ct. 741, 746 (1913).

12. The MTA has taken the position that since Riffin has failed to establish that he is a Class III carrier, his operation of the Veneer Spur would not constitute operation of an additional line of railroad.⁵ To date, the MTA, MDOT, MDE and Allegany County have taken no position regarding whether Riffin's operation of the Veneer Spur would constitute operation of a line of railroad.

IV. STATEMENT OF FACTS

13. On March 30, 2009, Riffin filed a verified notice of exemption ("NOE") 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, in Cockeysville, Baltimore County, MD. See footnote 5. In a decision served on April 28, 2009, the Board rejected Riffin's NOE, stating:

"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. ... Given the issues raised by MTA, this case is not routine. ... 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. ..."

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." Op. at 2.

14. In a decision served on August 18, 2006, the Board granted Riffin, in his individual capacity, authority to acquire and operate an 8.54-mile line in Allegany County, MD. See footnote 1.

15. Prior to August 18, 2006, Riffin communicated with a number of shippers located near his Allegany Line, advising the shippers that Riffin was planning to acquire and operate the

⁵ See p. 2 of Maryland Transit Administration's (1) Motion to Reject James Riffin's Notice of Exemption and Request for Declaratory Relief and (2) Reply to Motion for Protective Order, Filed April 20, 2009 in *James Riffin - Acquisition and Operation Exemption - Veneer Spur - In Baltimore County, MD*, FD No. 35236.

Allegany Line, and advising the shippers that as soon as Riffin received authority to acquire and operate the Line, he would offer to ship freight on his Line.

16. Prior to, and following Riffin's purchase of his Allegany Line, Riffin purchased more than a dozen rail cars, which he has made available to potential shippers. He has also purchased three prime movers. Prior to August 18, 2006, Riffin negotiated to lease a locomotive, to be used on his Line until such time that Riffin acquired his own prime movers.

17. Prior to August 18, 2006, Riffin interviewed a number of individuals that would be needed to perform various railroad-related jobs, including the positions of locomotive engineer, conductor, superintendant, maintenance-of-way and sales. Agreements were negotiated which provided that as soon as Riffin received authority to acquire and operate the Line, these individuals would be available to provide, on an on-call basis, whatever services were needed.

18. Riffin prepared tariffs for the rail services he proposed to offer.

19. Riffin negotiated with local suppliers for materials that would be needed to repair three washouts on his Line. Riffin negotiated with contractors regarding providing labor to repair the three washouts on his Line. Riffin negotiated with a railroad maintenance-of-way contractor to provide temporary run-around tracks to circumvent the three washouts, and to provide whatever maintenance-of-way service that was needed to place the Line into immediate service.

20. Riffin contacted Allegany County Permitting Individuals, to ascertain whether the permitting authorities were in agreement that the maintenance and repair of his Line would be exempted from local permitting requirements, due to the preemptive reach of 49 U.S.C. 10501(b). The local permitting individuals informed Riffin that only governments were exempted from local permitting requirements. Riffin instituted suit in the Allegany County Circuit Court, asking the court to make a determination that the repair of Riffin's Line would not be subject to local permitting requirements due to the preemptive reach of 49 U.S.C. 10501(b). The court declined to render a judgment holding that 49 U.S.C. 10501(b) preempted Allegany County regulations that would be applicable. Rather than subject himself to fines and other penalties, Riffin elected to postpone repair of the washouts on his Line until after a court declared the repair of his Line would not be subject to local regulation. In a decision served on May 6, 2008, the Board intimated (but did not unequivocally declare) that repair of Riffin's Line would

not be subject to local regulation. The issue of the preemptive reach of the Board's jurisdiction is presently before the U.S. Court of Appeals, District of Columbia Circuit. See Case No. 08-1190.

21. In its Opening Brief of Petitioner Board of County Commissioners of Allegany County, Maryland, filed on November 3, 2008 in Case No. 08-1217, before the U.S. Court of Appeals, District of Columbia Circuit, Allegany County challenged Riffin's status as a rail carrier. On p. 17 of the Board's Brief in Case No. 08-1217, the Board stated that Allegany County could challenge Riffin's status as a rail carrier in a local court proceeding, if it so desired. Since local courts are not conversant with railroad or common carrier law, and since Congress has given the Board plenary authority over regulation of rail carriers, Riffin has instituted this Declaratory Order proceeding to resolve the controversy: Is Riffin a rail carrier?

22. Riffin offered to provide rail service to a number of shippers located in the vicinity of his Allegany Line: (A) Several coal mining companies mining coal in Georges Creek, which coal is transported by truck to (a) coal-fired power plants in Cumberland, MD (Warrior Run), and Williamsport, MD; (b) cement manufacturing plants in Union Bridge, MD and Martinsburg, W. VA; (B) A pallet manufacturing plant in Frostburg, MD receiving lumber via truck from Canada; (C) Several refractory-brick manufacturing companies located in Frostburg, MD, which receive their raw materials via truck from Pittsburg, PA; (D) Several road salt suppliers, which ship road salt to Garrett and Allegany Counties in trucks from Pittsburg, PA.; (E) A manufacturing plant in Garrett County which trucks its products to rail transload facilities in Baltimore, MD and Harrisburg, PA. The shippers Riffin spoke with stated they had entered into long-term contracts with motor carriers. They indicated when those contracts expired, they would consider using rail service.

23. **Allegany County.** Georges Creek, which flows adjacent to Riffin's Allegany County Line, has seriously eroded three sections of the Line. While the Line could be made operational by relocating the tracks farther away from the bank of the creek (a few days work), doing so would not prevent further erosion of the trackbed. To properly repair the washouts, and to prevent further erosion of the trackbed, the eroded bank needs to be rebuilt using fill material, then protected with large (2 - 20 ton) boulders. Rebuilding the eroded trackbed would require placement of fill material and boulders in the portion of the creek bed that was washed out by the creek. Maryland's Department of the Environment ("MDE") and Allegany County have argued

that Riffin would need approval and permits from MDE and Allegany County prior to starting repair of these washouts. The issue of whether Riffin needs to obtain permits from MDE and / or Allegany County prior to repairing the washouts on his Allegany Line, is presently before the Court of Appeals for the District of Columbia Circuit. See Case No. 08-1190. Once that court resolves this permit issue, Riffin will proceed to permanently repair the washouts on his Allegany Line. If a local shipper's motor carrier contract expires prior to the Court of Appeals' decision, and if a local shipper requests rail service, Riffin will relocate his tracks farther away from the creek bank, and will provide the requested service within a few days after a request for service has been received.

24. Riffin has spoken with numerous shippers regarding using his Allegany Line rail service. See ¶22. Riffin has been holding out to the public since August 18, 2006, the availability of his Allegany rail line, and has been offering to provide transportation-by-rail-carrier services to the public.

25. **Veneer Spur.** On February 16, 2009, Riffin acquired from Mark Downs, Inc., a non-carrier, a long-term leasehold interest in the track material and underlying real estate associated with a 400-foot +/- privately-owned spur, and in the land adjacent to the spur track. Riffin has a right of ingress and egress across Mark Downs' adjacent property. Pursuant to 49 U.S.C. §10902, Riffin proposes to operate the spur track as an additional line. Mark Downs, Inc. and the spur track are located at 15 Beaver Run Lane, Cockeysville, Baltimore County, MD. The Veneer Spur can be accessed via Beaver Run Lane, which connects to York Road, a major arterial. The spur track is designated the Veneer Mfg. Co. Spur ("Veneer Spur"), on a valuation map appended to the Verified Statement of Robert L. Williams, which valuation map is identified as Page C-5 of Exhibit C, in the April 20, 2007 Response of the Maryland Transit Administration in STB Finance Docket No. 34975, *Maryland Transit Administration – Petition for Declaratory Order*. ("Page C-5 Valuation Map"). The Page C-5 Valuation Map indicates the Veneer Spur is located at MP 15.05 on the Cockeysville Industrial Track ("CIT"), in Baltimore County, MD. Riffin proposes to interchange with Norfolk Southern Railroad at the western end of the Veneer Spur. Riffin proposes to use the eastern end of the Veneer Spur to provide transload rail service to a number of local shippers. 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+. A copy of Riffin's lease with Mark Downs, and marketing information is

contained in a Protective Order filed on May 5, 2009: This information Riffin has designated as being Highly Confidential. Mark Downs, Inc. has a long-term leasehold interest in the subject and adjacent property, which it acquired from the Stenersen Mahogany Company, the fee simple owner of the underlying real estate and improvements. Stenersen Mahogany Company acquired title to the property when it acquired the Veneer Mfg. Company many decades ago. Riffin proposes to have the line rehabilitated and ready for service within 60 days. Riffin's status as a carrier, and the appropriate classification of the spur track, given Riffin's intended use of the spur track, are discussed at length below.

V. RIFFIN'S STATUS AS A RAIL CARRIER

5 A. APPLICABLE STATUTES

26. 49 U.S.C. 10501(b) states in pertinent part:

“(b) The jurisdiction of the Board over –

- (1) transportation by rail carriers, and the remedies provided in this part with respect to ... practices, routes, **services, and facilities** of such carriers; and
- (2) the construction, acquisition, **operation**, abandonment, or discontinuance of **spur, industrial, team, switching, or side tracks, or facilities**, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to **regulation of rail transportation are exclusive** and preempt the remedies provided under Federal or State law.

27. 49 U.S.C. §10102. **Definitions**

In this part –

(5) “rail carrier” means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;

(6) “railroad” includes –

- (A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;

- (B) the road used by a rail carrier and owned by it or operated under an agreement; and
- (C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;

(9) “transportation” includes –

- (A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and
- (B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property;”

**5B. STB PRECEDENT HOLDS ONE BECOMES A RAIL CARRIER
WHEN THE STB GIVES ONE AUTHORITY TO OPERATE
A LINE OF RAILROAD**

28. In *General Railway Corp., d/b/a Iowa Northwestern Railroad – Exemption for Acquisition of Railroad Line – In Osceola and Dickinson Counties, IA*, FD No. 34867, Served June 15, 2007, the STB stated:

“In addition, the Chairman directed GRC to file an amended notice of exemption under 49 CFR 1150.41 [for existing carriers] instead of 49 CFR 1150.31 [for non-carriers], because GRC had become a rail carrier after having obtained authority to operate the Line in 2001. Note 6: See FD No. 34867, Served May 25, 2006.” [GRC was seeking authority to acquire the line it previously had been given authority to operate.]

29. In *City of Creede, Co – Petition for Declaratory Order*, FD No. 34376, Served May 3, 2005, the STB stated:

“Once rail operations have been authorized by the Board, the track remains a line of railroad subject to full agency regulation until the agency authorizes its abandonment.” Op. at 8.

“We are mindful that, at the present time, D&RGHF is not using any of the ROW [right of way] for rail service, as it is still in the process of rehabilitating the line.

However, as the June 2004 Decision explains, the legal status of the Creede Branch under the statute is that of an active rail line with all the rights and obligations attendant to that designation. Op. 7.

30. In Case No. 08-1217 in the DC Court of Appeals, Allegany County attempted to make much of the fact that the deed to Riffin's Allegany County Line has not been recorded. On p. 19 of its Brief, Allegany County **misquoted** what the Maryland Court of Appeals stated in *Childs v. Ragonese*, 460 A.2d 1031, 1036, note 8. The Court of Appeals stated:

"It is well settled that in a sale of real estate, legal title does not pass until a deed is properly executed and **delivered**. *Kingsley v. Makay*, 253 Md. 24, 251 A.2d 585 (1969)." In its Brief, Allegany County changed the word 'delivered,' to 'recorded.'

31. Whether legal title has passed or not, is irrelevant. Riffin was given authority to operate his Allegany County Line on August 18, 2006. At that time, pursuant to ICC and STB precedent, and pursuant to the STB's interpretation of the statutes it administers (49 U.S.C. 10901 and 10902), Riffin became a rail carrier. Keep in mind, the General Railway Corp. became a common carrier when it received authority to operate on a line it did not own. See ¶28, *supra*, and see ¶33, *infra*, wherein the Court held that American Orient Express was a common carrier even though it did not own the tracks it operated on, and did not own or operate the locomotives pulling its rail cars.

32. Allegany County, in the Brief it filed in Case No. 08-1217 ("**Allegany County's Brief**"), attempted to make much of prior STB decisions which have held that authority to acquire and operate a line is permissive and is not dispositive of ownership of the Line. For acquisitions pursuant to 49 U.S.C. 10901 or 10902, or NOE's from those statutes, authority to acquire is permissive, and the selling carrier cannot be compelled to deliver title to the line to the buyer. See *General Railway* at 4, Served June 15, 2007. However, under 49 U.S.C. 10904, Offers of Financial Assistance, if a prospective buyer offers the fair market value, then the seller can, and will be compelled to transfer title to the buyer. Riffin's purchase of his Allegany County Line was pursuant to the STB's Offer of Financial Assistance procedures. In Case No.

08-1208, before the DC Court of Appeals, Riffin has argued that he has the right to compel CSX to transfer title to the Allegany Line to him.

33. In *American Orient Exp. Ry. v. Surface Transp.*, 484 F.3d 554, (D.C. Cir. 2007), the Court held:

“A ‘rail carrier’ may own tracks and transport passengers along its tracks, but that is not the only way to provide ‘railroad transportation.’ A rail carrier may instead use tracks owned by another entity and ‘operated under an agreement.’ ” *Id.* at 556.

“To be a common carrier, a company need only, in practice, serve the public indiscriminately and not ‘make individualized decisions, in particular cases, whether and on what terms to deal.’ ” *Id.* At 557.

34. In *U.S. v. Louisiana & P.R.Co.*, 234 U.S.1, 34 S.Ct. 741, 746 (1913), the Supreme Court held: “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.”

35. In Allegany County’s Brief, it attempted to make much of the ICC’s statement in *Alabama Southern Railroad Company, and the Alabama Great Southern Railroad Co. – Acquisitions, Operations and Trackage Rights – Exemption*, FD 30505, Decided August 24, 1984, wherein the Commission stated: “Since ASR presently provides no rail transportation services, it is not a carrier.” That case had to do with mergers under 49 U.S.C. 11343. The ICC actually held that the ICC’s authority to impose labor protective conditions would be invoked only if the acquiring party was providing rail services at the time of the acquisition. If the acquiring entity was not providing rail services at the time of the acquisition, then the acquisition would not result in the merger of two ‘carriers.’

36. In Allegany County’s Brief, it referenced *S.D. Warren Co. d/b/a Sappi Fine Paper N. America – Acquisition and Operation Exemption – Maine Central R. Co. and the Springfield Terminal Ry. Co.*, STB FD No. 34133, Service Date Sept. 30, 2002). In that case, the petitioner was held to be a private carrier, since the petitioner only moved its own rail cars, and

did not offer to move rail cars being utilized by other shippers on the line.

37. In Allegany County's Brief, it referenced *Lone Star Steel Company v. McGee*, 380 F.2d 640 (1967). In that case, the Lone Star Steel Company had a network of private tracks at its steel manufacturing plant. Lone Star used its locomotives and crews to move not only its railcars on its plant tracks, but also the railcars of other shippers whose facilities were on Lone Star property, and were adjacent to Lone Star's private tracks. Even though Lone Star did not charge the shippers whenever Lone Star moved their railcars on Lone Star's private tracks, the Court held that Lone Star was a common carrier, since it moved rail cars belonging to other shippers. As for payment, the court held that the charge for moving the shipper's rail cars was included in their long-haul freight bills. [A short line railroad owned by Lone Star brought the rail cars to Lone Star's plant. The court held that Lone Star received 'payment' for its in-plant rail movements via dividends from the short line railroad that it owned.]

38. In Allegany County's Brief, it referenced *Simmons v. ICC*, 871 F.2d 702 (7th Cir. 1989). In this case, like the *Alabama Southern* case in ¶35, the issue was whether the protective labor provisions of 49 U.S.C. 11343 were applicable. The court held that it was not the merger of two 'carriers,' since operations had not commenced. (The court reasoned that if operations had not commenced, then there were no railway employees which would be affected by the merger, and thus the labor protective provisions of 11343 would not be applicable.)

39. In Allegany County's Brief, it referenced *The Chicago, Lake Shore and South Bend Ry. Co. – Acquisition and Operation Exemption – Norfolk S. Ry. Co.*, STB FD No. 34960, Service Date February 14, 2008, at slip op. 3-4. In its Brief Allegany County indicated that the STB's decision held:

“(person may obtain permissive authority from the Board to acquire a line of railroad, but cannot exercise that authority and become a carrier until it actually acquires the line and commences operation);” AC Brief at 15.

40. The portion of Allegany County's statement in bold, **does not appear** in the STB's decision. The actual statement by the STB follows:

"Moreover, an executed agreement is not a prerequisite for a noncarrier seeking to invoke the class exemption to acquire and operate a rail line. Board authorization is permissive and may not be exercised unless an agreement is ultimately reached by the parties to the transaction. Note 3. Thus, if NSR eventually enters into an agreement with CLS&SB, then CLS&SB would be able to acquire and operate the Line pursuant to this exemption. On the other hand, if NSR declines to execute an agreement, CLS&SB would not be able to exercise this authority."

41. 49 CFR 1152.27(f)(2) states:

"Board approval is not required under 49 U.S.C. 10901, 10902, or 11323 for the parties to consummate the transaction or for the purchaser to institute service and operate as a railroad subject to 49 U.S.C. 10501(b)."

42. 49 CFR 1152.27(k) states:

(k) Default on agreement. If any party defaults on its obligations under a financial assistance agreement, any other party to the agreement may promptly inform the Board of that default. Upon notification, the Board will take appropriate action."

43. Riffin received authority to operate his Allegany Line on August 18, 2006. Riffin has spoken with numerous shippers regarding using his Allegany Line rail service. See ¶22. Riffin has been holding out to the public since August 18, 2006; the availability of his Allegany rail line, and has been offering to provide transportation-by-rail-carrier services to the public. For these reasons, Riffin is a common carrier by rail by Board precedent, and at law.

VI. THE VENEER SPUR SHOULD BE CLASSIFIED AS LINE NOT AS §10906 EXCEPTED TRACK

6 A. VENEER SPUR BACKGROUND INFORMATION

44. 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 (Line Code 1224) 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.

45. Conrail acquired the assets of the PRR, including Line Code 1224. On May 1, 1990, Conrail deeded the underlying real estate and the tracks, of that portion of Line Code 1224 that lies between MP 1.0 and MP 15.96 [south side of Bridge 16 south of Ashland Station], to the Maryland Transit Administration. This portion of Line Code 1224 is known as the CIT. Conrail retained a perpetual freight operating easement over the CIT. See attached copy of deed. Conrail continued to provide freight rail service 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 Cockeysville, 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.

46. In 1972, after Hurricane Agnes destroyed portions of Line Code 1224, 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. See attached copy of NSR’s January 27, 2006 letter.

47. 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. (The western end of the Veneer Spur is not accessible by truck. The eastern end of the Veneer Spur is readily accessible by truck.) 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. The shippers Riffin intends to offer rail service to, typically would be any shipper who desires to utilize Riffin's rail-served transload facility. The nearest transload facility is some 15 miles south of Cockeyville, near MP 2.0 on the CIT. This transload facility is small, appears to be at capacity, and appears to be used only by tanker railcars. The next nearest transload facility, is some 30 + miles from Cockeyville.

6 B. APPLICABLE LAW

48. 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.”

49. 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.

50. 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.”

51. 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.”

52. 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.

6 C. VENEER MFG. CO. SPUR

53. 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. Since the spur served only one shipper, was not available to the general public, and served a shipper long served by the operator of the CIT (Pennsylvania RR, followed by Conrail, followed by Norfolk Southern Railway Co.), the spur would have met the criteria for §10906 excepted track.

54. 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 [Riffin] 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.

55. 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.

56. Since Riffin's use of the Veneer Spur will permit Riffin to serve new customers which Riffin cannot currently serve via Riffin's Allegany 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 that the intended use of the Veneer

Spur is as a line of railroad, rather than as 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.

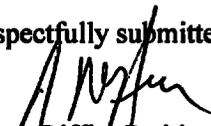
CONCLUSION

57. Riffin is a rail carrier. Pursuant to the Board's Precedent in *General Railway Corp.*, ¶28, Riffin became a rail carrier when the Board, on August 18, 2006, in AB 55-659X, granted Riffin authority to operate his Allegany County Line.

58. Pursuant to the court holdings in the cases discussed *supra*, ¶33 *American Orient*, ¶34 *U.S. Louisiana & P.R. Co.*, and ¶37 *Lone Star*, Riffin became a common carrier by rail on August 18, 2006 when, following the grant of authority to operate his Allegany Line, he began to hold himself out as a common carrier by rail, began to offer rail service to the public, and made it known to the public / shippers near his Allegany Line, that he would provide rail service on his Allegany Line upon a reasonable demand for service.

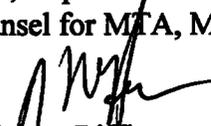
59. Riffin's operation of the Veneer Spur would constitute the operation of a line of railroad, since the Spur would serve more than one shipper, since railcars would have to be moved from the western end of the Spur to the eastern end of the Spur, before a shipper could access its railcar, and since Riffin's use of the Spur would permit Riffin to provide rail service in a territory Riffin currently does not serve, and would make it possible for Riffin to provide rail service in a territory currently served by another carrier.

Respectfully submitted,

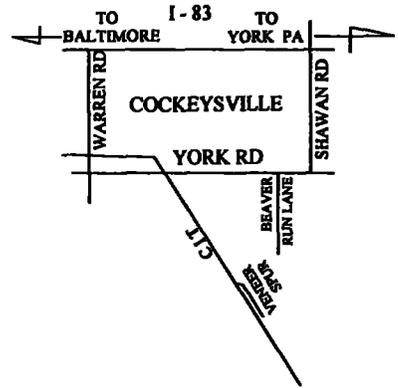
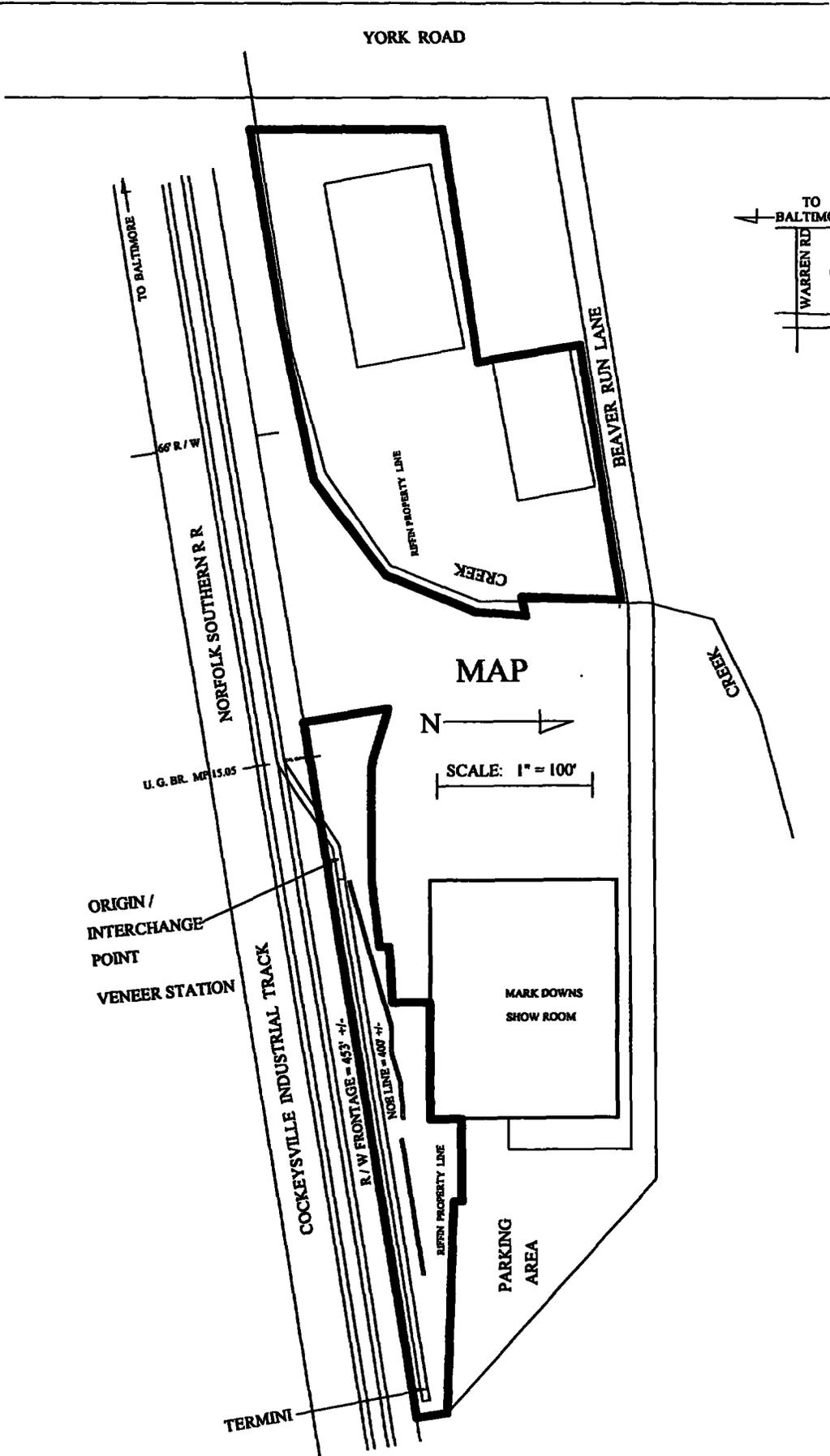

James Riffin, Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2009, a copy of the foregoing Petition for Declaratory Order, was served by first class mail, postage prepaid, upon James R. Paschall, Senior General Attorney, Norfolk Southern Railway Company, Law Department, Three Commercial Place, Norfolk, VA 23510; and upon Charles Spitulnik, Kaplan Kirsch Rockwell, Ste 905, 1001 Connecticut Ave, N.W., Washington, DC 20036, counsel for MTA, MDOT, MDE and Allegany County.

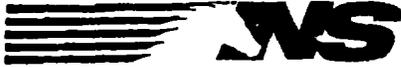

James Riffin

Ex 2-A



VACINITY MAP
NOT TO SCALE

COCKEYSVILLE
BALTIMORE COUNTY
MARYLAND



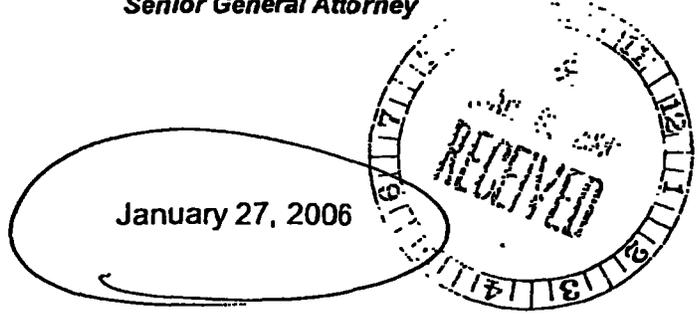
EY-2A

2006

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

Ex 2-B

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 Cockeysville 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 Cockeysville 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 clearing 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

EX-3-A

THIS DEED made this 1st day of May in the year One
Thousand Nine Hundred and Ninety (1990),

RECEIVED
CLERK
NOTARY
66.00
66.08
NOTARY COOL ROZ TOB=41
06/14/90

BY AND BETWEEN CONSOLIDATED RAIL CORPORATION,
Corporation of the Commonwealth of Pennsylvania, having an
office at Six Penn Center Plaza, Philadelphia, Pennsylvania,
19103, hereinafter referred to as the Grantor, and
TRANSIT ADMINISTRATION, an agency of the State of Maryland,
having a mailing address of 300 West Lexington Street,
Baltimore, Maryland 21201-3415, hereinafter referred to as
the Grantee;

WITNESSETH, that in consideration of the sum of ONE
DOLLAR (\$1.00) and other good and valuable consideration, the
said Grantor does remise, release and forever quitclaim unto
the said Grantee, the successors and assigns of the said
Grantee, all right, title and interest of the said Grantor
of, in and to,

ALL THAT CERTAIN property of Grantor, together with all
the improvements thereon, being a portion of Grantor's
Cockeysville Branch identified as Line Code 1224 in its
corporate records and also being a part or portion of the
former Northern Central Railway Company's line of railroad
known as Penn Central Northern Central Branch and further
identified as Line Code 1224 in the Recorder's Office of the
City of Baltimore, Maryland in Liber 6231, at page 098, and
which property is generally indicated on Grantor's Case Plan
No. 69458-A, Valuation Map Nos. V-1/7 through V-1/16, which
are attached hereto and made a part hereof as Attachment "A",
and generally described as follows:

SITUATE in the County of Baltimore, Maryland, and
BEGINNING at the Boundary Line between the City of Baltimore,
Maryland and the County of Baltimore, Maryland at the James
Falls Expressway City Line Bridge which is north of Mount
Washington; and thence extending from said Boundary Line and
continuing in a general northerly direction and passing
through Bare Hills, Rollins, Buxton, Ridewood, Lutherville,
Timonium, Pardonsa, Texas and Cockeysville and continuing to
the ENDING at the southerly line of Bridge No. 16 at Railroad
No. 816486, which is further identified in the
Baltimore County Recorder's Office in Liber 6231 at page 116
and indicated on pages 116 and 117, which is south of the
Ashland Section in Baltimore County, Maryland.

TOGETHER WITH, all tracks, materials, trestles, bridges,
buildings and all other improvements and all the
appurtenances belonging thereto.

BEING a part or portion of the same premises which
Fairfax Leary, as Trustee of the Property of The Northern
Central Railway Company, Debtor, by Conveyance Document No.
MC-CRC-RP-1 dated March 31, 1976 and recorded on November 19,
1980, in the Recorder's Office of Baltimore County, Maryland,

TRANSFER TAX NOT RECEIVED
Director of Finance
BALTIMORE COUNTY, MARYLAND
Notary Public
Baltimore, Maryland

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
Baltimore County
JR 5-22-90

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE JR DATE 5-22-90

In Liber 6251 page 0936, granted and conveyed unto Consolidated Rail Corporation.

EXCEPTING and RESERVING, therout and therefrom and unto the said Grantor, permanent, exclusive and assignable freight operating easements over the premises hereinbefore described for the purpose of providing rail freight service to present and future customers and otherwise fulfilling its common carrier obligations, said easement is subject to, governed by and exercised solely in accordance with the specific term and condition of the Operating Agreement between Grantor and Grantee.

EXCEPTING and RESERVING, therout and therefrom and unto the said Grantor, all right, title and interest in and to the land, track, track material and their appurtenances, being the Cookesville Industrial Park Track, situate on the westerly side of the Cookesville Industrial Trak in the vicinity of Railroad Station 75000, and indicated on Grantor's Plan R.M.B-4173, in Cookesville, Baltimore County, Maryland.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the premises herein described, (2) any streams, rivers, creeks and water ways passing under, across or through the premises herein described, and (3) any easements or agreements of record or otherwise affecting the land hereby conveyed, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the premises herein described, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantor hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of Maryland now or hereafter in force with respect to the covenants set forth below.

(1) Grantor shall not be liable or obligated to provide for or supply any type of utility service to Grantee.

(2) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on the line of railroad herein to be conveyed to the said Grantee, except as provided in the Operating Agreement between Grantor and Grantee.

TOGETHER with all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in any wise appertaining, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

TO HAVE AND TO HOLD the premises above described and mentioned and hereby intended to be quitclaimed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Grantee, the heirs or successors and assigns of the Grantee, EXCEPTING and RESERVING and UNDER and SUBJECT and provided as aforesaid.

VERIFIED STATEMENT OF JAMES RIFFIN

1. My name is James Riffin. I am over the age of 18 and am qualified and authorized to make this Verified Statement.

2. Prior to, and following my purchase of my Allegany Line (see AB-55, Sub No. 659X, Served August 18, 2006) I purchased more than a dozen rail cars, which I have made available to potential shippers. I have also purchased three prime movers. I have offered to provide rail service to a number of shippers located in the vicinity of my Allegany Line: (A) Several coal mining companies mining coal in Georges Creek, which coal is transported by truck to (a) coal-fired power plants in Cumberland, MD (Warrior Run), and Williamsport, MD; (b) cement manufacturing plants in Union Bridge, MD and Martinsburg, W. VA; (B) A pallet manufacturing plant in Frostburg, MD receiving lumber via truck from Canada; (C) Several refractory-brick manufacturing companies located in Frostburg, MD, which receive their raw materials via truck from Pittsburg, PA; (D) Several road salt suppliers, which ship road salt to Garrett and Allegany Counties in trucks from Pittsburg, PA.; (E) A manufacturing plant in Garrett County which trucks its products to rail transload facilities in Baltimore, MD and Harrisburg, PA. The shippers I spoke with stated they had entered into long-term contracts with motor carriers. They indicated that when those contracts expired, they would consider using rail service.

3. Prior to, and following my purchase of my Allegany Line (see AB-55, Sub No. 659X, Served August 18, 2006) I interviewed a number of individuals that would be needed to perform various railroad-related jobs, including the positions of locomotive engineer, conductor, superintendant, maintenance-of-way and sales. Agreements were negotiated which provided that as soon as I received authority to acquire and operate the Line, these individuals would be available to provide, on an on-call basis, whatever services were needed.

4. I prepared tariffs for the rail services I proposed to offer.

5. I negotiated with local suppliers for materials that would be needed to repair three washouts on my Line. I negotiated with contractors regarding providing labor to repair the three washouts on my Line. I negotiated with a railroad maintenance-of-way contractor to provide temporary run-around tracks to circumvent the three washouts, and to provide whatever maintenance-of-way service that was needed to place the Line into immediate service.

6. I contacted Allegany County Permitting Individuals, to ascertain whether the permitting authorities were in agreement that the maintenance and repair of my Line would be exempted from local permitting requirements, due to the preemptive reach of 49 U.S.C. 10501(b). The local permitting individuals informed me that only governments were exempted from local permitting requirements. I instituted suit in the Allegany County Circuit Court, asking the court to make a determination that the repair of my Line would not be subject to local permitting requirements due to the preemptive reach of 49 U.S.C. 10501(b). The court declined to render a

judgment holding that 49 U.S.C. 10501(b) preempted Allegany County regulations that would be applicable. Rather than subject myself to fines and other penalties, I elected to postpone repair of the washouts on my Line until after a court declared the repair of my Line would not be subject to local regulation. In a decision served on May 6, 2008, the Board intimated (but did not unequivocally declare) that repair of my Line would not be subject to local regulation. The issue of the preemptive reach of the Board's jurisdiction is presently before the U.S. Court of Appeals, District of Columbia Circuit. See Case No. 08-1190.

7. Georges Creek, which flows adjacent to my Allegany County Line, has seriously eroded three sections of the Line. While the Line could be made operational by relocating the tracks farther away from the bank of the creek (a few days work), doing so would not prevent further erosion of the trackbed. To properly repair the washouts, and to prevent further erosion of the trackbed, the eroded bank needs to be rebuilt using fill material, then protected with large (2 - 20 ton) boulders. Rebuilding the eroded trackbed would require placement of fill material and boulders in the portion of the creek bed that was washed out by the creek. Maryland's Department of the Environment ("MDE") and Allegany County have argued that I would need approval and permits from MDE and Allegany County prior to starting repair of these washouts. The issue of whether I need to obtain permits from MDE and/or Allegany County prior to repairing the washouts on my Allegany Line, is presently before the Court of Appeals for the District of Columbia Circuit. See Case No. 08-1190. Once that court resolves this permit issue, I will proceed to permanently repair the washouts on my Allegany Line. If a local shipper's motor carrier contract expires prior to the Court of Appeals' decision, and if a local shipper requests rail service, I will relocate my tracks farther away from the creek bank, and will provide the requested service within a few days after a request for service has been received.

8. I have spoken with numerous shippers regarding using my Allegany Line rail service. I have been holding out to the public since August 18, 2006, the availability of my Allegany rail line, and have been offering to provide transportation-by-rail-carrier services to the public.

9. Norfolk Southern and the Maryland Transit Administration ("MTA") have demonstrated a commitment to preventing freight rail service from every being provided in Cockeyville again:

A. In *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*, STB Docket No. AB-290 (Sub - No. 237X) ("NS Abandonment," or "Cockeyville Industrial Track," or "CIT"), I provided the Board with statements from a number of Cockeyville shippers, which statements indicated that the shippers had a desire for freight rail service. One of those shippers was Packard Fence Company, which leased the Cockeyville Freight Station from the MTA. Three weeks after I filed the letter of support from Packard Fence, MTA officials informed Packard Fence that the MTA was voiding its lease, and ordered Packard Fence to vacate the premises within 30 days. The 'reason' given by the MTA for canceling Packard Fence's lease, was that the MTA wanted to use the building 'for office purposes.' That was three years ago. The MTA never used the building for 'office

purposes,' nor for any other purpose. The building and property have sat vacant for the past three years. Packard Fence was forced to relocate its business to another location, which replacement location was in a corner of a nearby industrial park, with no visibility whatsoever.

B. On April 20, 2007, the Maryland Transit Administration ("MTA") filed its Response in the NS Abandonment Proceeding ("Response"). Appended to that Response was Exhibit 1, the Verified Statement of Robert L. Williams. Portions of this Response were referred to in the MTA's March 26, 2009 Motion to Dismiss and Reply to Replacement Motion for a Protective Order in my Second Amended Notice of Exemption, FD 35221 ("MTA Reply"). In the MTA Reply, the MTA misquoted / misrepresented the following:

- a. In ¶5(d) of Mr. Williams Verified Statement, he made the following false statement: "The tracks that have been removed at the Cockeyville station were taken, without permission from the MTA, by Mr. James Riffin." In that proceeding I made it clear, and now repeat what I stated in that proceeding, that **(1) I did not REMOVE the tracks at the Cockeyville Station [the side track rails were 'removed' (spikes removed, rails lifted from the cross ties, than placed adjacent and parallel to the cross ties) by the MTA]. I did not TAKE the rails. I did reposition the rails from the spot where the MTA placed them, to another spot 200 feet north of, parallel to, and adjacent to the side track cross ties. Mr reason for relocating the rails was because the tires on the truck I was attempting to position adjacent to the main line rails [which were, and still are, in place], kept being deflected by the rails. The truck was being positioned next to the main line rails so that a number of pieces of my maintenance-of-way equipment, could be lifted from the rails, then placed onto the adjacent truck semi-trailer, to be trucked to my nearby maintenance-of-way facility.**
- b. In ¶10 of Mr. Williams Verified Statement, he made the following false statement: "Packard Fencing, a lessee of MTA at Cockeyville, was required to vacate its premises in order for the MTA to comply with federal homeland security requirements and not for any other reason." Mr. Stackus, the owner of Packard Fencing, directly refutes this statement. Mr. Stackus expressly told me that the MTA had told him it needed his building for 'offices.' Mr. Williams statement lacks credibility since the MTA did not terminate its lease with the cabinet maker who leases the adjacent building from the MTA. In addition, this portion of the CIT is not used for light-rail purposes, is a half-mile away from the nearest light-rail track, and pursuant to the agreement between Norfolk Southern and the MTA, is used and maintained exclusively by Norfolk Southern.

C. In conversations with officials at Imerys, Fleischmann's Vinegar and BGE, the following was related to me: In 2005, MTA officials visited the three shippers who were actively using the CIT [Imerys, Fleischmann's Vinegar, and BGE]. The MTA officials gave the three shippers an ultimatum: That commencing in December, 2005, all freight rail service on

the CIT was going to cease, and that commencing on December 1, 2005, the shippers would have to utilize motor carriers for their shipping needs. The shippers objected strenuously. After many acrimonious confrontations, the MTA agreed to subsidize the shipper's extra shipping costs, providing the shippers agreed to write letters to the Board saying that they did not object to NS abandoning the CIT. Each of the shippers was offered subsidies of \$750,000 +/-, which subsidy contract can be revoked by the MTA at any time at the MTA's sole discretion. This is why the Board has not received any objections from the three former active shippers on the CIT. [I was provided with a copy of a subsidy contract, but the shipper and I are fearful that if I provide a copy to the Board, the MTA will retaliate against the shipper by canceling the shipper's subsidy contract.]

D. As I demonstrated in the NS Abandonment proceeding, the MTA has removed much of the track infrastructure on the CIT: The sidings that formerly served Imerys and the Texas quarry; the branch line and sidings that formerly served the Cockeyville Industrial Park (four shippers were formerly in the Cockeyville Industrial Park, including Noxell); the railroad bridge that carried the CIT over York Road; the track material that carried the CIT from Cockeyville to Ashland, MD; the Cockeyville Road grade crossing; and the branch line that formerly served the Veneer Industrial Park.

10. **The MTA is a competitor.** The MTA has demonstrated that it strongly prefers Cockeyville shippers utilize motor carriers. The MTA has used its position as a State agency to intimidate and coerce potential rail shippers into using motor carriers rather than rail. [I was told by officials at the Wagner Corporation, which is adjacent to the CIT, that its request for rail service was unequivocally denied by the MTA in harsh blunt terms.] If the MTA were to learn who my potential shippers are, within days after obtaining that information, MTA officials or their agents, would visit those shippers and would intimidate / coerce those potential shippers into withdrawing their expressed desire to utilize freight rail service. Since the MTA is not subject to the Board's jurisdiction, the Board would be powerless to enjoin such actions.

11. I view the MTA as a competitor: The MTA is willing to offer, and has offered, "the most favorable [transportation] terms," "in the same market," that I propose to serve. The MTA offered, and continues to pay, a substantial subsidy [in excess of \$100,000 per year], to the three former shippers on the line [Imerys, Fleischmann's Vinegar, BGE], so long as these shippers utilize motor carriers, rather than the adjacent rail carrier, for their shipping needs. By offering shippers subsidies to utilize trucks, rather than the adjacent rail service, to ship their goods, the MTA is "selling services in the same market as another." [The MTA is 'selling' trucking services, by subsidizing the extra costs associated with using trucks to move goods, rather than utilizing the rail service that is available.]

12. In 2005, I prepaid Norfolk Southern the freight cost to deliver 11 rail cars to me in Cockeyville, MD. The rail cars were tendered to, and were accepted by, Norfolk Southern, for delivery to Cockeyville. When the rail cars arrived in Baltimore, Maryland, Norfolk Southern refused to complete delivery of the rail cars to Cockeyville. Nine of those rail cars are still in

Norfolk Southern's possession, still awaiting the day when Norfolk Southern will deliver the rail cars to Cockeyville. Two of the rail cars are in the possession of CSX Transportation. Norfolk Southern has repeatedly refused to accept these two rail cars at the CSX / Norfolk Southern interchange in Baltimore, Maryland, for further delivery by Norfolk Southern to Cockeyville. I lodged a complaint with the Board's Compliance Section. The Board's Compliance Section has taken the position that it has no authority to order Norfolk Southern to deliver the rail cars to me.

13. On February 16, 2009, I acquired the Veneer Spur via a lease from Mark Downs, Inc. The Spur and Mark Downs are located at 15 Beaver Run Lane, Cockeyville, Maryland. I have the right to lease the Veneer Spur for 12 years. I have a right of ingress and egress across adjacent Mark Downs' property, for the purpose of accessing Beaver Run Lane, which connects to York Road, a major arterial. I propose to use the Veneer Spur for transload purposes. I propose to interchange with Norfolk Southern on the western end of the Spur. Due to insufficient space, transload activities cannot occur on the western end of the Spur. I propose to move rail cars from the western end of the Spur to the eastern end of the Spur, a distance of approximately 400 feet. There is sufficient room on the eastern end of the Spur to transload freight from / to rail cars to / from trucks. I propose to receive / ship rail cars personally, and propose to offer to the public common carriage by rail services. Specifically, I propose to move rail cars from the western end of the Spur to the eastern end of the Spur, where rail cars can be transloaded, then move rail cars from the eastern end of the Spur to the western end of the Spur, where the rail cars can be interchanged with Norfolk Southern. All interchange activities will occur on the Spur.

14. I do not propose to operate on the Cockeyville Industrial Track, nor do I propose to request a division of freight revenue with Norfolk Southern. I will levy and collect a tariff for the use of the Spur directly from whatever shippers use the Spur for transload purposes. I propose to use locally-based crews on an as-needed, on-call basis.

15. The Spur track material is in place. The only rehabilitation work that is needed, is the replacement of some of the cross ties, abatement of vegetation, and replacement of ballast material. I estimate the cost of this rehabilitation work to be \$10,000 or less, and estimate the work can be completed in 60 days or less.

16. The Spur tracks stop at the edge of the Cockeyville Industrial Track right-of-way. The Spur formerly was connected to the 130# / yard south bound main line of the Cockeyville Industrial Track (when the line was double-tracked). Circa 1972, portions of the south bound main line were removed, when the line was single-tracked. However, the southbound segment between MP 15.20 and MP 14.25 was retained, and was connected to the northbound main line via turnouts near MP 15.20 and MP 14.25. When the southbound segment track material between MP 15.20 and MP 14.83 (south side of York Road), and the Veneer Spur turnout, were removed circa 1990 by the Maryland Transit Administration, the track material was stored in a pile near MP 14.92 (north side of York Road). A portion of this track material was given by the MTA to the Walkersville Railroad, which is located just north of Frederick, Maryland. A small

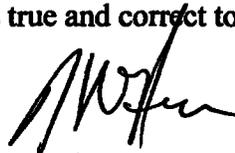
portion of the track material remains at MP 14.92.

17. I have spoken with a number of local shippers who have expressed a strong interest in utilizing my proposed transload facility. I conservatively estimate the number of rail cars that would be handled, to be 200 + per year. The commodities that may be shipped are clay, coal tar, cement, natural stone, railroad ties, rails, steel, chemicals, salt, wood products and rail cars.

18. The nearest transload facility is on the Cockeysville Industrial Track at North Avenue, or near MP 1.0. My personal observations of that transload facility are that the facility is at or near capacity, and handles only tanker cars. The next nearest transload facility would be in east Baltimore, or approximately 30 miles from Cockeysville. There also is a transload facility in south Baltimore, near Locust Point, which is approximately 35 miles from Cockeysville.

19. I affirm under the penalties of perjury that the above is true and correct to the best of my knowledge and belief.

Executed on May 4, 2009.


James Riffin

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY, that on this 4th Day of May, 2009, before me, a Notary Public of said State, personally appeared James Riffin, known to me or satisfactorily proven to be the person whose name is subscribed to the within Verified Statement, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.


Notary Public

My commission expires: 12/1/09

