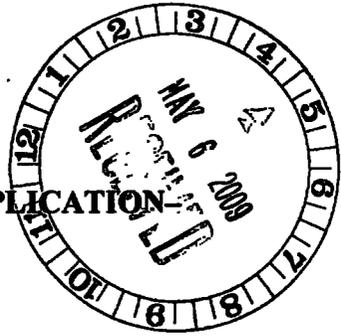


225061

Before the
Surface Transportation Board
Finance Docket No. 35246



FILED JAMES RIFFIN - §10902 ACQUISITION AND OPERATION APPLICATION
VENEER SPUR - IN BALTIMORE COUNTY, MD

MAY 6 - 2009

SURFACE TRANSPORTATION BOARD EXPEDITED HANDLING REQUESTED

1. James Riffin, Applicant ("**Riffin**"), herewith, pursuant to 49 U.S.C. §10902, files this §10902 Application to Acquire and Operate the Veneer Spur as an Additional Line of Railroad all in Baltimore County, Maryland, and in support thereof states:

RECEIVED
Office of Proceedings
MAY 6 - 2009
Part of
Public Record

PROLOGUE

2. 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 ("**Veneer Spur**" or "**Spur**" or "**Line**").¹ In a decision served on April 28, 2009, the Surface Transportation Board ("**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.

¹ James Riffin - Acquisition and Operation Exemption - Veneer Spur - In Baltimore County, MD, FD No. 35236.

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MAY 6 - 2009
SURFACE
TRANSPORTATION BOARD

3. In a separate filing, *James Riffin – Petition for Declaratory Order*, FD No. 35245, filed on May 5, 2009, Riffin petitioned the Board to institute a declaratory order proceeding for the purpose of determining whether Riffin is a common carrier by rail, and whether Riffin’s intended use of the Veneer Spur would cause the Veneer Spur to be classified as a line of railroad. Riffin believes that he is a common carrier by rail, and believes that his use of the Veneer Spur would constitute operation of a line of railroad. If Riffin’s assumptions are correct, then Riffin needs authority to acquire and operate the Veneer Spur.

4. The purpose of this Application is to seek authority to acquire and operate the Veneer Spur as an additional line of railroad. Since the Board has not promulgated regulations governing Applications pursuant to 49 U.S.C. 10902, this Application will use as a guideline, pertinent sections of the Board’s regulations governing applications under 49 U.S.C. 10901 (49 CFR 1150.1 to 1150.10).

APPLICATION

5. James Riffin (Applicant), a Carrier, pursuant to 49 U.S.C. §10902, provides the following information in support of his Application to acquire from Mark Downs, Inc., a non-carrier, approximately 400 feet of privately-owned spur track, and to operate the spur track as an additional line, which spur track is located in Cockeysville, Baltimore County, MD.

6. Overview (§1150.2): SUMMARY OF PROPOSAL:

The Applicant, a carrier, on February 16, 2009, 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. Pursuant to 49 U.S.C. §10902, Applicant 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 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. Applicant proposes to interchange with Norfolk Southern Railroad (“NSR”) 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. 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+. Highly confidential marketing information is contained in a Protective Order filed on May 5, 2009. 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. Applicant proposes to have the line rehabilitated and ready for service within 60 days.

7. Information about the Applicant [1150.2(b) and 1150.3]:

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

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

(b) Facts showing Applicant is a common carrier. In a separate filing, *James Riffin – Petition for Declaratory Order*, FD No. 35245, filed on May 5, 2009, Riffin petitioned the Board to institute a declaratory order proceeding for the purpose of determining whether Riffin is a common carrier by rail, and whether Riffin’s intended use of the Veneer Spur would cause the Veneer Spur to be classified as a line of railroad. This separate filing is incorporated by reference herein, as if fully reproduced herein.

(c) Operator: The Operator of the Line will be the Applicant.

(d) Affiliation with any industry to be served by Line: The Applicant owns and operates a rail carrier maintenance-of-way facility / rail car maintenance and repair shop, which is adjacent to, and will be served by, the Line.

(e) Date and place of organization: The Applicant, James Riffin, is an individual. He intends to acquire and operate the Line in his individual capacity, as a sole proprietorship. The

Applicant presently owns and operates a line of railroad in Allegany County, MD.² Applicant's objective is to provide common carriage by rail and transload³ services to local shippers.

(f) Corporations: The Applicant is not a corporation.

(g) Individuals: The Applicant is an individual who does own and control another line of railroad (see footnote 2), but does not own or control any other carrier.

(h) (other types of entities) and (i) (trustees): Not applicable.

(j) Existing carrier: The Applicant is an existing carrier. See footnote 2.

8. Information about the proposal (1150.4):

(a) Description of proposal: See ¶ 6, Summary of Proposal. A copy of the Applicant's lease of the Veneer Spur is included in a Protective Order filed on May 5, 2009.

(b) Amount of traffic and commodities to be handled: Amount of traffic: 200 + rail cars / year. Specific details about potential shippers and the amount of traffic these potential shippers generate per year, is included in a Protective Order filed on May 5, 2009. See ¶6, Summary of Proposal, for a list of commodities that may be handled on the Line.

(c) Purpose of proposal / public convenience and necessity: 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

² See *CSX Transportation, Inc. – Abandonment Exemption – in Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served Aug. 18, 2006).

³ A transload facility is where freight is transloaded from rail cars to trucks and vice versa.

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.

Riffin has attempted for several years to obtain rail service from Norfolk Southern, the operator of the adjacent Cockeyville Industrial Track, to no avail. Since Norfolk Southern refuses to provide local rail service to Cockeyville, Riffin proposes to provide the rail service Norfolk Southern refuses to provide. There is significant demand for rail service in the Cockeyville vicinity. The public convenience and necessity requires or permits that this demand for rail service be provided. Since Norfolk Southern refuses to provide any rail service to Cockeyville, and since Norfolk Southern does not have any transload facility in or near Cockeyville, the public convenience and necessity requires or permits the demand for rail service be provided by someone. Since Norfolk Southern refuses to provide for the public convenience or necessity, the Applicant proposes to provide for the public convenience and necessity by offering to local shippers the use of the Veneer Spur for transload purposes.

(d) Map. A map is attached hereto.

(e) Counties and cities to be served, etc.: The Veneer Spur will provide service to shippers in Cockeyville, Hunt Valley, Loveton, Timonium and the surrounding area, all within Baltimore County, MD. While Norfolk Southern is the operator of the Cockeyville Industrial Track ("CIT"), which also serves these cities, Norfolk Southern has refused, since December, 2005, to provide any rail service on the CIT. [The Applicant consigned a number of rail cars to Cockeyville in 2005, and prepaid the appropriate freight charges to deliver those rail cars to Cockeyville. To this date, Norfolk Southern continues to refuse to deliver Applicant's rail cars to the Applicant in Cockeyville.]

According to the Page C-5 Valuation Map (see ¶6), dated circa 1988, the Veneer Spur connected to the Cockeyville Siding Track at MP 15.05 on the CIT. [More precisely, the Veneer Spur connected to the former south bound track of the CIT when the CIT was double tracked. When portions of the south bound main line were removed circa 1972, thereby single-tracking the line, the south bound main line segment in the vicinity of the Cockeyville station,

was retained, and was renamed the Cockeyville Siding Track. The Cockeyville segment of the south bound main line track that was retained, was connected via a turnout, to the north bound main line track near MP 15.20 and near MP 14.25, thereby creating a passing track.] The CIT is operated by Norfolk Southern. The connecting point / place of interchange, would be at MP 15.05 on the CIT. The volume of traffic estimated to be interchanged would be 200 + rail cars per year. No agreement has been reached with Norfolk Southern regarding interchange of traffic, division of rates or trackage rights. [No division of rates or trackage rights would be involved. The Applicant does not propose to operate on Norfolk Southern's tracks, nor does the Applicant seek any portion of whatever freight rate Norfolk Southern charges to bring rail cars to the Veneer Spur. Norfolk Southern has a policy of not negotiating interchange agreements until after the putative new carrier obtains authority to operate on a line that connects with a NSR line.]

(f) Time schedule: Applicant expects to have the Line functional within 60 days after the Board grants authority to operate the Line. [The tracks are in place right up to the right-of-way of the CIT. The vegetation adjacent to the tracks needs to be removed. Some of the cross ties need to be replaced. Norfolk Southern needs to replace the turnout which connected the CIT with the Veneer Spur, and needs to put back in place the rails which it authorized be removed. The rails are presently in a pile on the CIT near MP 14.92.]

(g) New line: No new line is proposed for construction.

9. Operational data (1150.5): Traffic is projected to be 200+ rail cars per year. A copy of the Applicant's traffic projection study is included in a Protective Order filed on May 5, 2009. Crews will consist of a locomotive engineer and a conductor, to be obtained locally on an as-needed, on-call basis. Applicant presently owns his own prime movers and has some rolling stock. It is expected shippers will utilize rolling stock available in the national rolling stock inventory. The Applicant is an operating railroad. The only significant change in patterns of service, will be the Applicant will begin to provide rail service in Cockeyville, in addition to offering rail service in Georges Creek, Allegany County, Maryland. There are no associated discontinuances or abandonments. No operating economies are expected.

10. Financial information (1150.6): (a): The Applicant will use his own existing funds to finance the acquisition and rehabilitation of the Veneer Spur. No securities will be issued.

(b) Financial statements: A copy of the Applicant's personal financial statement is included in the Protective Order filed on May 5, 2009.

(c) Full costs of proposal: The full cost to acquire and rehabilitate the Veneer Spur will be less than \$10,000, excluding any costs associated with reinstalling the turnout that previously connected the Spur to the CIT.

(d) Projected net income: A statement showing projected net income is included in the Protective Order filed on May 5, 2009.

11. Environmental and energy data (1150.7): 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.

12. Additional support (1150.8): Additional confidential information is included in the Protective Order filed on May 5, 2009.

13. Notice (1150.9): A Caption Summary is appended hereto.

14. Procedures (1150.10): (a) Waivers: No waivers are needed at this time, since there are no specific requirements / regulations relating to Applications pursuant to 49 U.S.C. 10902.

(b) Filing: An original and 10 copies of the Application, are being filed with the Board.

(c) Signature: Applicant has signed the Application original, under oath.

(d) Related applications: The Applicant's Motion for Protective Order and associated filings (Applicant's Petition for Declaratory Order, FD No. 35345), are being filed concurrently.

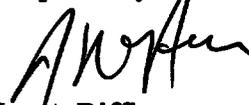
(e) Service: On May 5, 2009, a copy of the Application was served, via first class mail, postage prepaid, on the Governor of Maryland, on Maryland's Public Service Commission, on counsel for the Maryland Department of Transportation and Maryland Transit Administration, and on counsel for Norfolk Southern.

(f) Publication: A summary of the proposal was published in two papers of general circulation in Baltimore County, Maryland, to wit: It was published on May 5, 2009, in the Jeffersonian, and was published in the Towson Times on May 7, 2009. A copy of the notice, along with a certification of publication, will be forwarded to the Board as soon as the Applicant receives them from the publisher. The notice stated that comments must be received by the Board no later than Tuesday, June, 9, 2009, which is 35 days from May 5, 2009, the date the Application was filed.

15. The Applicant 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.

16. A Caption Summary is attached.

Respectfully submitted,



James Riffin

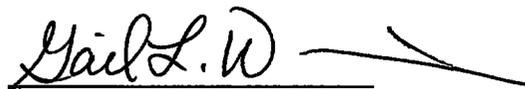
Date: May 4, 2009

VERIFICATION

I, James Riffin, having been duly sworn, state under the penalties of perjury, that I have read the foregoing §10902 Application, 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 4th day of May, 2009.



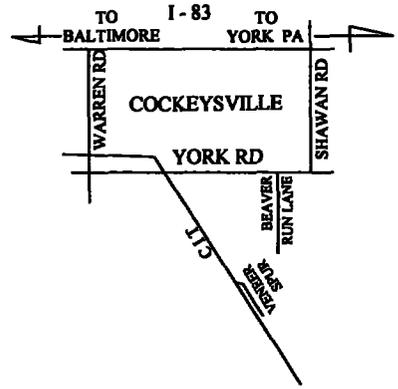
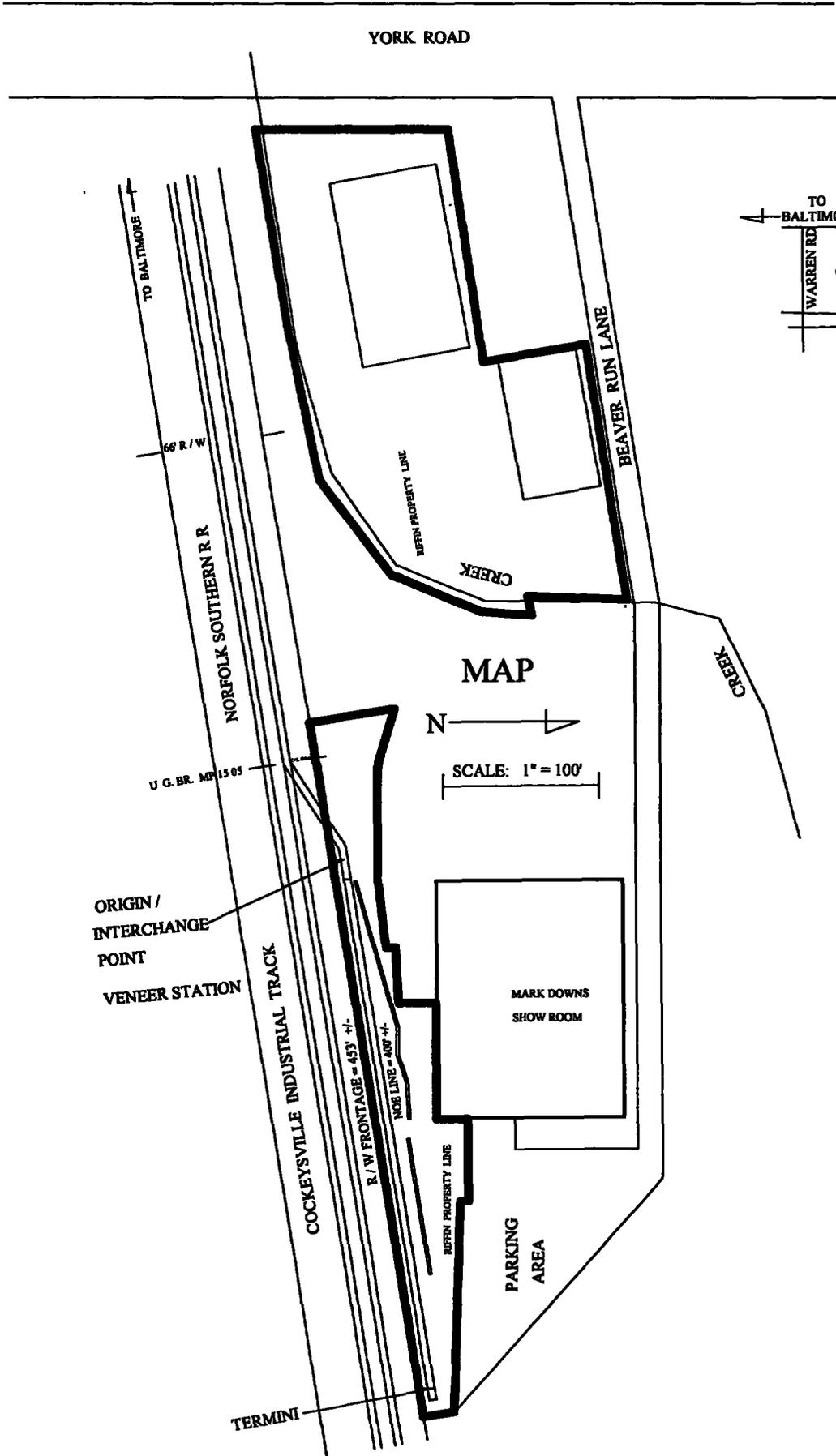
Notary Public

(SEAL)

My Commission expires: 12/1/09



Ex 1-A



VACINITY MAP
NOT TO SCALE

COCKEYSVILLE
BALTIMORE COUNTY
MARYLAND

MAP

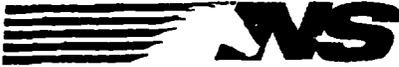


SCALE: 1" = 100'

ORIGIN /
INTERCHANGE
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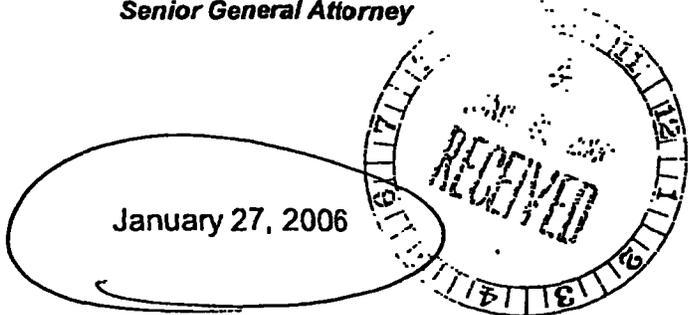
EX-2A



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 Cocksylville 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 Cocksylville 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

LIBER 8506 PAGE 307

E-3-A

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

RECORDED
BY THE CLERK
MAY 14 1990
66.00
66.00
R02 TOP: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
TRANSPORTATION 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, Mellins, Ruxton, Ridewood, Lutherville,
Timonium, Pardonsa, Texas and Cockeysville and continuing to
the ENDING at the southerly line of Bridge No. 16 at Railroad
Station No. 16, which is further identified in the
Baltimore County Recorder's office in Liber 6231 at page 110
and indited 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.
NC-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 REQUIRED
Director of Finance
BALTIMORE COUNTY, MARYLAND
Audited and Reported
Date 5/22/90

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

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

Et. 3-B

in Liber 6211 at page 0934c, 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 Cockeyville Industrial Park Track, situate on the westerly side of the Cockeyville Industrial Track in the vicinity of Railroad Station 750000, and indicated on Grantor's Plan R.M.B-4373, in Cockeyville, 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 Cockeysville Industrial Park (four shippers were formerly in the Cockeysville Industrial Park, including Noxell); the railroad bridge that carried the CIT over York Road; the track material that carried the CIT from Cockeysville to Ashland, MD; the Cockeysville 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 Cockeysville 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 Cockeysville, MD. The rail cars were tendered to, and were accepted by, Norfolk Southern, for delivery to Cockeysville. When the rail cars arrived in Baltimore, Maryland, Norfolk Southern refused to complete delivery of the rail cars to Cockeysville. 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

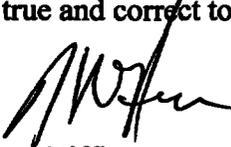
portion of the track material remains at MP 14.92.

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 Cockeyville 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 Cockeyville. There also is a transload facility in south Baltimore, near Locust Point, which is approximately 35 miles from Cockeyville.

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

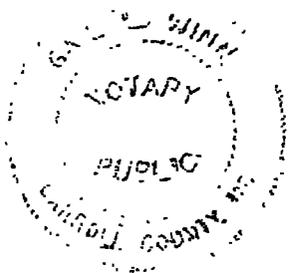
STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

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



SURFACE TRANSPORTATION BOARD

§10902 APPLICATION

Finance Docket No. 35246

CAPTION SUMMARY

**JAMES RIFFIN – §10902 ACQUISITION AND OPERATION APPLICATION –
VENEER SPUR – IN BALTIMORE COUNTY, MD**

James Riffin, a Carrier, has filed an Application pursuant to 49 U.S.C. §10902 to acquire from Mark Downs, Inc., a non-carrier, approximately 400 feet of privately-owned spur track, and to operate the spur track as an additional line. The spur track is located at 15 Beaver Run Lane in Cockeyville, Baltimore County, MD, and is connected to the Cockeyville Industrial Track at MP 15.05.

Comments must be filed with the Surface Transportation Board by June 9, 2009, and must be served on James Riffin, 1941 Greenspring Drive, Timonium, MD 21093, telephone (443) 414-6210.

Dated:

By the Board: Anne Quinlan
Secretary