



KAPLAN KIRSCH ROCKWELL

May 26, 2009

E-Filing

Hon. Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *James Riffin – Petition for Declaratory Order*; Finance Docket No. 35245

Dear Ms. Quinlan:

I am enclosing the Reply of Maryland Transit Administration and Allegany County, Maryland, to Petition for Declaratory Order in the above-referenced proceeding.

Thank you for your attention to this matter.

Sincerely,



Charles A. Spittunik

Enclosure

232730

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35245

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER

**REPLY OF MARYLAND TRANSIT ADMINISTRATION AND ALLEGANY COUNTY,
MARYLAND, TO PETITION FOR DECLARATORY ORDER**

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Dated: May 26, 2009

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 35245

JAMES RIFFIN – PETITION FOR DECLARATORY ORDER

**RESPONSE OF MARYLAND TRANSIT ADMINISTRATION AND ALLEGANY
COUNTY, MARYLAND, TO PETITION FOR DECLARATORY ORDER**

For almost three years James Riffin (“Mr. Riffin”) has hounded the Board, the Maryland Transit Administration (“MTA”), Allegany County, Maryland, and others with numerous filings, proceedings and appeals all premised on the notion that Mr. Riffin became a rail carrier on August 18, 2006.¹ By his Petition for a Declaratory Order, Mr. Riffin asks this Board to confirm that his mirage is real. The Board cannot reach that conclusion and the Petition should be denied.

The basis for Mr. Riffin’s claims is the Board’s decision giving him permission to substitute himself for WMS, LLC as the purchaser from CSX Transportation of a line of railroad in Allegany County, Maryland, known as the Georges Creek Subdivision, which Mr. Riffin refers to as the “Allegany County Line.” *Aug. 18, 2006, Allegany County Decision*. Most

¹ CSX Trans., Inc. – Abandonment Exemption – In Allegany County, MD – In the Matter of an Offer of Financial Assistance, STB Docket No. AB-55 (Sub-No. 659X) (Substantive Decisions Served Dec. 14, 2005 (“*Dec. 14, 2005, Allegany County Decision*”), Aug. 18, 2006 (“*Aug. 18, 2006, Allegany County Decision*”) and Apr. 24, 2008 (“*Apr. 24, 2008, Allegany County Decision*”). Other proceedings in which Mr. Riffin has asserted that he is a rail carrier in Allegany County as the basis of relief include *James Riffin – Petition for Declaratory Order*, STB Finance Docket 34997 (Service Date May 2, 2008); *James Riffin v. Board of County Commissioners of Allegany County, Maryland*, Allegany County Circuit Court No. C-07-29061 (July 10, 2008 Memorandum and Order); *James Riffin v. Surface Transportation Board*, United States Court of Appeals for the District of Columbia Circuit Case No. 08-1190 (currently pending); *James Riffin v. Surface Transportation Board and United States of America*, United States Court of Appeals for the District of Columbia Circuit Case No. 08-1208 (currently pending).

recently, Mr. Riffin has attempted to leverage his claimed status as a rail carrier in Allegany County to assert authority as a rail carrier over an approximately 400-foot length of long-unused private industrial spur track in Baltimore County, Maryland, some 150 miles distant from the Allegany County Line, making the claim that he intended to commence a rail carrier operation exclusively on that length of track, which lacks a connection to the interstate rail system. On March 5, 2009, the Board rejected that contention and instructed Mr. Riffin that in order to be a rail carrier Mr. Riffin would have to in fact provide the services of a rail carrier by holding himself out as a rail carrier on the Allegany County Line. *James Riffin – Acquisition and Operation Exemption – Veneer Spur – In Baltimore County, MD*, STB Finance Docket No. 35221 (Service Date March 5, 2009) (“*March 5, 2009, Decision*”).

Mr. Riffin has therefore commenced this proceeding seeking such a declaration. *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 35245 (Filed May 6, 2009) (“*Riffin Petition*”). Given the Board’s admonition, it is striking that Mr. Riffin offers virtually no facts to support his claim to be a rail carrier. He continues to rely primarily on the *Aug. 18, 2006, Allegany County Decision*. He attempts to bolster that rejected legal argument with unsubstantiated testimony that he has acquired rail cars and prime movers, and had conversations with potential shippers, equipment and supplier vendors and potential employees.

The ICCTA requires much more from non-carriers before they can be considered a rail carrier. At a minimum, the ICCTA requires a person claiming rail carrier status to be in a position to actually provide rail transportation services. Mr. Riffin fails to meet this elemental threshold. He does not own the Allegany County Line nor does he have the right to use the Allegany County Line. The line itself is in disrepair and is incapable of accommodating freight operations. As Mr. Riffin admits, his efforts to acquire and operate the Allegany County Line

are at present blocked by a series of self-created legal obstacles, not the least of which is his own failure to acquire the Allegany County Line itself from CSXT or WMS. Although Mr. Riffin states that he has had conversations with potential shippers, workers and suppliers, those conversations amount to little more than talk, because Mr. Riffin could not provide rail transportation services even if one of the shippers in fact wanted to use such services. In short, Mr. Riffin may hope to one day be able to provide rail service on the Allegany County Line, but he cannot today offer to provide such service. Based on the facts Mr. Riffin has presented, he is not a rail carrier, and his Petition should be denied.

His claims regarding the Veneer Spur are similarly speculative and contingent. Most of his factual assertions are both incorrect and immaterial, and will be addressed in detail in a separate pleading responding to the application filed in *James Riffin – § 10902 Acquisition and Operation Application – Veneer Spur – In Baltimore County, MD*, Docket No. 35246 (Filed May 6, 2009) (“Application”). For purposes of the Riffin Petition it is sufficient to state that the Veneer Spur, which is located approximately 150 miles from the Allegany County Line, cannot be considered an extension of Mr. Riffin’s Allegany County Line operations because, as detailed above, Mr. Riffin is not a rail carrier and there are no Allegany County Line operations. Second, the Veneer Spur lacks any connection to the interstate rail network and Mr. Riffin does not own any rights to use the track between the Allegany County Line and the Veneer Spur. Sections of excepted track that formerly connected the Veneer Spur to tracks that, as of this moment, remain part of the interstate rail network were legally removed decades ago, and neither MTA nor Norfolk Southern, which holds an operating easement over the line to which Mr. Riffin seeks to connect, have any legal obligation to restore the connection. Once again, Mr. Riffin’s grandiose

description of his Veneer Spur rail operation is little more than speculative, wishful thinking on his part. Accordingly, the Board should deny the Riffin Petition.

FACTUAL BACKGROUND

A. Mr. Riffin's Offer of Financial Assistance

On August 5, 2005, CSX Transportation, Inc. ("CSX") sought authorization from the STB to abandon the Allegany County Line. *Dec. 14, 2005, Allegany County Decision* at 1. On September 21, 2005, an entity called WMS, LLC ("WMS")² late-filed an offer of financial assistance ("OFA"), by which it sought to acquire the Line. *Id.* The Board authorized WMS to acquire the Allegany County Line under a provision allowing the forced sale of a line for continued rail service. *Id.* at 2.³ On June 14, 2006, WMS submitted a request to the Board for approval to substitute Mr. Riffin in his individual capacity as the purchaser of the line and represented that Mr. Riffin owned a 98% interest in WMS. *Aug. 18, 2006, Allegany County Decision* at 2. As the STB noted later in the CSX proceedings, on July 10, 2006, CSX informed the STB that it had consummated the transfer of the Allegany County Line and issued a deed to WMS. *Apr. 24, 2008, Allegany County Decision* at 2. Nonetheless, on August 18, 2006, the Board issued a Decision authorizing Mr. Riffin, as a corporate affiliate of WMS, to be substituted for WMS as the purchaser of the Allegany County Line.⁴

² The entity's name appears variously in the record as "WMS, LLC" and "WMS, L.L.C."

³ When a carrier seeks authority to abandon a rail line pursuant to 49 U.S.C. § 10903, any person may file an "offer of financial assistance" ("OFA") to obtain the Board's authority to purchase and then operate the line under 49 U.S.C. § 10904. Once an offeror has received authority from the Board to acquire a line of railroad, the offeror may substitute a corporate affiliate as the purchaser if it provides certain documentation as set forth in the Board's regulations. *See* 49 C.F.R. 1152.27(i).

⁴ *Aug. 18, 2006, Allegany County Decision* at 2. Mr. Riffin subsequently filed a "Motion to Compel" in that matter on January 14, 2008, and requested that the Board compel CSX to reissue the deed to the Allegany County Line in his name. The Board denied Mr. Riffin's Motion in the *Apr. 24, 2008, Allegany County Decision*. Mr. Riffin has appealed that decision to the Court of Appeals and the case is still pending. *James Riffin v. Surface Transportation Board and United States*, United States Court of Appeals for the District of Columbia Circuit, No. 08-1208

B. Mr. Riffin's Failure to Acquire the Allegany County Line

Despite having obtained the authority to acquire the Allegany County Line in August, 2006, Mr. Riffin has failed to consummate that transaction and has otherwise failed to become a rail carrier with respect to the Allegany County Line. *See*, Reply of the Maryland Transit Administration, the Maryland Department of the Environment and County of Allegany, Maryland to Petition of James Riffin for Declaratory Order, STB Finance Docket No. 34997 (Filed December 18, 2007) ("December 18, 2007, Reply") at 8.

Mr. Riffin has not obtained a deed, or otherwise taken title to, the Allegany County Line. December 18, 2007, Reply at 8-9. The deed CSX issued to WMS has not been recorded in the Allegany County land records. *Id.* Moreover, Mr. Riffin has not begun to operate a railroad on the Allegany County Line, nor has he made a bona fide effort to restore the line to a condition that would permit him to commence such operations. *Id.* at 2-3.

The entire basis of Mr. Riffin's claim to acquire the Allegany County Line is dubious. Mr. Riffin's claim is based on the prior authorization for WMS to acquire the Line. As Mr. Riffin later disclosed, however, there in fact had been no legal entity called WMS in connection with Mr. Riffin's proposed Allegany County operations existing in Maryland at the time of the Board's *December 14, 2005, Allegany County Decision* granting "WMS LLC" authority to proceed with its OFA. *Apr. 24, 2008, Allegany County Decision* at n.2. Instead, Mr. Riffin claimed that the offeror should have been identified as an entity formed in West Virginia called "Western Maryland Services L.L.C." *Id.* Mr. Riffin further admits that he did not charter the legal entity "WMS L.L.C." in Maryland until several months after the STB granted WMS

authority to acquire the Line, and that he was the sole owner of WMS L.L.C. *Id.* Currently, WMS is currently listed as having forfeited its organizational status, and is legally defunct.⁵

In earlier proceedings before the Board, Mr. Riffin admitted that he filed the initial OFA “in the name of a limited liability company” (the legally nonexistent WMS) under false pretenses in order to deflect the scrutiny he anticipated would result if he filed the OFA in his own name. Petition of James Riffin for Expedited Declaratory Order, STB Finance Docket No. 34997 (Filed February 9, 2007), at ¶ 10. He has admitted that he has not obtained title to the Allegany County Line, entered into a lease or other arrangement with WMS to operate the Line, or begun to operate a railroad on the Allegany County Line. Reply of the Maryland Transit Administration, the Maryland Department of the Environment and County of Allegany, Maryland, to Petition for Stay of James Riffin, STB Finance Docket No. 34997 (Filed January 7, 2008), at 2-3.

C. Mr. Riffin’s Activities in Cockeyville

Mr. Riffin claims to own a parcel of property near the Veneer Spur in Cockeyville, MD (the “Cockeyville Property”). Since July 2003, Mr. Riffin has attempted to acquire and operate portions of the Cockeyville Industrial Track (“CIT”), without success.⁶ The Cockeyville Property is located adjacent to Beaver Dam Run, a high-quality freshwater stream that flows into the Loch Raven drinking water reservoir. Mr. Riffin has a long history of circumventing or simply ignoring applicable state and local regulations at the Cockeyville Property, even to the point of repeated sanctions, including incarceration.⁷ Mr. Riffin has carried out a number of

⁵ http://sdatcert3.resiusa.org/UCC-Charter/searchByName_a.aspx?mode=name (last viewed May 26, 2009). A copy of the SDAT data sheet is attached hereto as **Exhibit A**.

⁶ See *James Riffin d/b/a NCCR L.L.C.—Construction, Operation and Trackage Rights Exemptions—in Baltimore County, MD*, STB Finance Docket No. 34375 (Service Date July 16, 2003); *James Riffin d/b/a The Northern Central Railroad—Acquisition and Operation Exemption—in York County, PA, and Baltimore County, MD*, STB Finance Docket No. 34484 (Service Date Apr. 20, 2004); *James Riffin d/b/a The Northern Central Railroad—Acquisition and Operation Exemption—in York County, PA*, STB Finance Docket No. 34501 (Service Date Feb. 23, 2005).

⁷ See *Baltimore County v. James Riffin*, Case 1:07-cv-02361-RDB (D.Md. Oct. 10, 2007) (Memorandum Opinion and Order) (“Federal District Court Memorandum and Order”); *Maryland Department of the Environment v. James*

construction activities at the site, which involved removing trees, building a stone-block retaining wall alongside the stream, and dumping soil within the floodplain of the stream and immediately up-slope from its channel – all without obtaining any of the required permits under applicable federal, state and local law. *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 34997 (Service Date May 2, 2008), slip op. at 2; Baltimore County Memorandum and Order.

Prior to filing the instant Petition, Mr. Riffin filed two Notices of Exemption addressing his claimed acquisition of an interest in the Veneer Spur, both of which this Board rejected as facially insufficient and lacking the evidentiary reliability sufficient to support the use of the class exemption Mr. Riffin claimed. *James Riffin – Acquisition and Operation Exemption – Veneer Spur – In Baltimore County, MD*, Finance Docket 35221 (Service Date March 5, 2009) and (Service Date April 3, 2009); *James Riffin – Acquisition and Operation Exemption – Veneer Spur – In Baltimore County, MD*, STB Finance Docket No. 35236 (Service Date April 28, 2009).

ARGUMENT

I. MR. RIFFIN HAS THE BURDEN OF PROOF THAT HE IS ENTITLED TO THE DECLARATORY ORDERS HE SEEKS

As the party seeking an order from the Board, Mr. Riffin bears the burden of proof. *Michael H. Meyer, Trustee in Bankruptcy for California Western R., Inc. v. North Coast R. Authority, d/b/a Northwestern Pacific R.*, STB Finance Docket No. 34337 (Service Date Jan. 31, 2007), slip op. at 4, n.5 (citing 5 U.S.C. § 556(d)). As the Board made clear in *Meyer*, sufficient proof must be more than “recollections of conversations;” the moving party must present contemporaneous proof of the facts asserted. *Id.* at 4-5. Here, Mr. Riffin relies on his unsubstantiated recollections of hearsay statements by third parties to support his assertions, and

Riffin, Case No. 03-C-04-008920 OC (Circuit Court for Baltimore County Dec. 17, 2007) (Memorandum and Order) (Baltimore County Memorandum and Order”).

offers no concrete facts. As detailed below, Mr. Riffin has failed to carry his burden of proof, and the Board should accordingly deny his Petition.

II. HAVING NEVER ACQUIRED, OWNED OR OPERATED THE ALLEGANY COUNTY LINE, MR. RIFFIN IS NOT A RAIL CARRIER

The Board has previously rejected Mr. Riffin's assertion that he became a rail carrier on August 18, 2006, the day the Board granted his Motion to substitute himself for WMS as the acquirer from CSX of the Allegany County Line:

Riffin has failed to establish that he is a Class III rail carrier. His only support for this assertion is a reference, without further explanation, to the Board's decision in *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served Aug. 18, 2006). Riffin does not indicate that he has ever held out to provide for-hire rail service or otherwise possesses any of the indicia of a common carrier by railroad.

March 5, 2009, Decision at 2. The Board indicated that its decision was “without prejudice to Riffin filing a new notice of exemption or some other request for authority.” *Id.*

Mr. Riffin now attempts to overcome the Board's earlier finding by filing this Petition for Declaratory Order. Despite the Board's earlier decision rejecting his reliance on the *Aug. 18, 2006, Allegany County Decision*, Mr. Riffin continues to make that decision the cornerstone of his argument. In an effort to meet the Board's finding that he must make an affirmative showing that he has held himself out as a rail carrier, Mr. Riffin now asserts that conversations with potential shippers, employees and suppliers regarding possible future operations on the Line and the Board's *Aug. 18, 2006, Allegany County Decision* are sufficient to make him a rail carrier.

These facts are simply insufficient to make Mr. Riffin a rail carrier. Despite his conversations with potential shippers, employees and suppliers, Mr. Riffin offers no evidence that he (1) has acquired the Line, (2) has any lease or other right to use the Line, (3) is able to provide rail transportation on the Line, (4) is actively working to put the line into service, (5) has contracted with anyone to provide rail transportation services on the Line, or (6) actually

conducts rail operations on the Line. In short, Mr. Riffin offers no evidence that he has become a rail carrier.

A. Mr. Riffin Continues To Rely On Meritless Legal Theories, Rather Than Facts, To Support His Claim To Be A Rail Carrier

1. The Fact That Acquisition Of The Allegany County Line Was Under 49 U.S.C. § 10904 And Not 49 U.S.C. § 10901 Is Immaterial

Mr. Riffin attempts to distinguish the Board’s well-established body of law that obtaining permission to acquire a line is not the same as becoming a rail carrier, as detailed below, by arguing that his attempt to acquire the Allegany County Line was pursuant to an offer of financial assistance governed by 49 U.S.C. § 10904, rather than a notice of exemption pursuant to 49 U.S.C. §§ 10901 or 10902. Riffin Petition at 9-10. Mr. Riffin argues that the Board’s authorization to acquire a line under the OFA process is more than merely permissive as in the NOE process, because “the seller can, and will be compelled to transfer title to the buyer.” *Id.* This argument is both incorrect on the facts of this case and irrelevant.

First, Section 10904 does not authorize the Board to compel a seller to transfer title to a rail line when, as here, the parties reached agreement on the terms of the sale. The statute envisions compelling transfer only when the parties can not reach agreement and the Board is asked to set the conditions, terms and price of the transaction pursuant to Section 10904(f). Here, however, WMS and CSX reached agreement on the terms of the sale of the Allegany County Line, CSX was paid the promised price and delivered a deed in the name of WMS. *Apr. 24, 2008, Allegany County Decision* at 2. The transaction was completed pursuant to its terms, and no further Board jurisdiction or authority over the transaction remained. Any failure of Mr. Riffin to obtain a deed or take title to the Allegany County Line is a matter of contract law between himself, CSX and/or WMS. As the Board has already held in denying Mr. Riffin’s motion to compel production of the deed in his name, the Board lacks the authority to compel

consummation of an agreed-upon and completed sale under Section 10904(d)(2). Since none of WMS, Mr. Riffin or CSX invoked the Board's power under Section 10904(f), there is no basis or authority for the Board to compel a party to consummate a private contract.

Second, Mr. Riffin cannot avoid the fundamental fact that Congress has defined "rail carrier" as a "person providing common carrier railroad transportation for compensation." Nowhere does Congress, or the Board, indicate that seeking to acquire a line of railroad is in any way the same as "providing common carrier railroad transportation for compensation." Indeed, such a construction is a logical impossibility because one cannot sell rail transportation services when one does not have the legal right to sell them. Through Section 10904 (and 10901(c)) Congress provided mechanisms to allow non-carriers to become rail carriers. But there is nothing in the language or manifest intent of those statutes to suggest that Congress intended those entry mechanisms to allow new entrants to skip over the necessary steps of actually acquiring the legal right to sell rail transportation services and being able to actually provide such services on demand. As the cases cited in the following discussion make clear, completing the regulatory process of obtaining Board authority to acquire a line is only one early step in the lengthier process of becoming a rail carrier. At bottom, Mr. Riffin cannot legitimately hold himself out as providing rail transportation for compensation when he lacks the legal authority and physical ability to provide such services.

2. Under The ICCTA, One Becomes A Rail Carrier Only If One Is Able To Provide Rail Transportation Services For Compensation Upon Request

A rail carrier is a "person providing common carrier railroad transportation for compensation." 49 U.S.C. § 10102(5). A common carrier must hold itself out to the public as able to provide service upon request. *See, e.g., Lone Star Steel Co. v. McGee*, 380 F.2d 640, 648 (5th Cir. 1967). Consistent with that statutory command for actual railroad transportation, the

courts have rejected relying on corporate form or statements of purpose to determine rail carrier status: “Whether a transportation agency is a common carrier depends not upon its corporate character or declared purposes, but upon what it does.” *Id.* at 648 (internal quotations omitted) (quoting *United States v. State of California*, 56 S.Ct. 421, 422 (1936)). Mere acquisition of a line of railroad or of the right to acquire a line of railroad does not make one a rail carrier. *Simmons v. Interstate Commerce Comm’n*, 871 F.2d 702, 711-712 (7th Cir. 1989) (a non-carrier acquiring an active line “*but which has not yet commenced operations*” is not a rail carrier) (internal quotations omitted; emphasis in original). Thus, the critical feature of a rail carrier is its present ability to be able to provide rail service if requested. Because Mr. Riffin lacks that elemental capability, his Petition must be denied.

3. Board Precedent Makes Clear That Its Authorization To Acquire A Line Of Railroad Does Not Itself Make One A Rail Carrier

The Board’s authorization to acquire a line is permissive and has the effect of “only removing a regulatory impediment” to the commencement of operations. *In re Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 882 F.2d 1188, 1191 (7th Cir. 1989) (internal quotations omitted) (quoting *Northeast Wisconsin Railroad Transportation Comm’n*, STB Finance Docket No. 30760 (Jan. 7, 1986), slip op. at 2). But the removal of a regulatory impediment to becoming a rail carrier is not the same as actually becoming a rail carrier by being able to offer rail transportation services for compensation.

This understanding is made clear in the Board’s recent decision in *The Chicago, Lake Shore and South Bend Ry. Co. – Acquisition and Operation Exemption – Norfolk S. Ry. Co.*, STB Finance Docket No. 34960, slip op. (Service Date Feb. 14, 2008). There, the Chicago, Lake Shore and South Bend Railway Company (“CLS&SB”), a non-carrier, filed a Notice of Exemption under 49 U.S.C. § 10901 to acquire a line of railroad owned by Norfolk Southern. *Id.*

at 3-4. The Notice was challenged by community organizations on the ground, *inter alia*, that Norfolk Southern did not desire to sell the line to CLS&SB. *Id.* at 4. In rejecting that challenge to the Notice, the Board explained the limited significance of being granted the authority to acquire a line of railroad:

Board authorization is permissive and may not be exercised unless an agreement is ultimately reached by the parties to the transaction. Thus, if [Norfolk Southern] 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 [Norfolk Southern] declines to execute the agreement, CLS&SB would not be able to exercise this authority.

Id. See also *BNSF Ry. Co. – Acquisition and Operation – State of South Dakota*, STB Finance Docket No. 34667 (Service Date Mar. 3, 2005), slip op. at 4. n.5 (because Board authority to acquire a line “is only permissive,” Board authorization would not allow acquisition of a rail line if state court determined that the acquirer lacked the authority to acquire the line under state law); *Gen. Ry. Corp., d/b/a Iowa Northwestern R.R. – Exemption for Acquisition of Railroad Line – in Osceola and Dickinson Counties, IA*, STB Finance Docket No. 34867 (Service Date Jun. 15, 2007), slip op. at 4 (“[T]he authority [to acquire a line] granted by the Board is permissive, not mandatory, and is not dispositive of ownership of the line. . . [Such authority] gives the petitioner permission to acquire the line, but does not mandate the acquisition.”).

Accordingly, the *Aug. 18, 2006, Allegany County Decision* simply removed any regulatory barriers to Mr. Riffin’s ability to negotiate with CSX (or WMS). But that decision did not itself make Mr. Riffin a rail carrier or confer any other status on Mr. Riffin. Beginning on August 18, 2006, the burden was solely on Mr. Riffin to complete the process of becoming a rail carrier by consummating the acquisition of the Line and otherwise putting himself in a position to offer rail transportation for compensation on the Line. Because he has failed to do so, his Petition must be rejected.

4. The Authority Mr. Riffin Cites Further Demonstrates That His Petition Must Be Denied

The authority Mr. Riffin cites in support of his Petition further demonstrates that the Board's grant of authority to acquire the Allegany County Line did not make him a rail carrier. Even a cursory review of the cases he cites demonstrates that his Petition must be denied.

Mr. Riffin relies primarily on *General Railway*, STB Finance Docket No. 34867, slip op., by arguing that a factual statement by the Board that the non-carrier "had become a carrier after having obtained authority to operate the line in 2001" means that the granting of authority to operate *by itself* confers rail carrier status. Riffin Petition at 8-9. But the facts of that case demonstrate that, in addition to obtaining Board authority, the non-carrier *exercised* that authority by, among other things, receiving and recording a deed in its name *after* the grant of Board authority, and otherwise consummating the transaction such that the non-carrier ultimately acquired the line. *General Railway* at 1. Indeed, the Board again underscored the limited significance of being granted the authority to acquire a line of railroad, stating that "[i]t is well settled that the Board's issuance of a notice of exemption authorizing the acquisition of a line gives the petitioner permission to acquire the line, but does not mandate the acquisition." *Id.* at 4. Thus, *General Railway* undercuts Mr. Riffin's position by emphasizing that more than Board authority is necessary to become a carrier.

Mr. Riffin also relies on *City of Creed, CO – Petition for Declaratory Order*, STB Finance Docket No. 34376, slip op. (Service Date May 3, 2005), which involved a dispute about the extent to which local land use laws were preempted as applied to a rail line and associated right of way. That case involved an existing rail line owned by an established rail carrier who indicated an intent to resume rail operations on its property. The Board held simply that it retained jurisdiction over the rail property to the extent it was used for rail activities. Nothing in

the substance of the Board’s decision supports Mr. Riffin’s sweeping inference that he is a rail carrier because he has been authorized to acquire the Allegany County Line, even though he has not acquired the Line or otherwise put himself in a position to provide rail transportation on that Line.

The other cases cited by Mr. Riffin are all also factually distinguishable from his claims and support a denial of the Riffin Petition. *U.S. v. Louisiana & Pac. Ry. Co.*, 234 U.S. 1 (1913), *Lone Star Steel Co.* and *American Orient Express Ry. Co. v. STB*, 484 F.3d 554 (D.C. Cir. 2007), all addressed whether established operations constituted interstate rail transportation – industrial freight hauling in the case of *Louisiana & Pac. Ry. Co.* and *Lone Star Steel Co.* and luxury passenger service in *American Orient Express Ry. Co.* None of these cases addressed the threshold question of when a prospective new operator changes from a potential railroad into an actual rail carrier. Certainly, none of these cases supports the proposition that one can be a rail carrier without having first secured the necessary rights and capacity to offer service.

B. The Limited Facts Mr. Riffin Presents Fail To Establish That He Has Become A Rail Carrier

Unable to mount a credible legal argument that he is a rail carrier, Mr. Riffin proffers only a handful of facts to support his claim to be a carrier on the Allegany County Line. The facts Mr. Riffin does supply are simply insufficient. Fundamentally, Mr. Riffin cannot overcome the fact that he does not own or lease the Line and has never reached agreement with its owners to use the Line. Unable to contradict that fact, he attempts to dismiss it as “irrelevant.” Petition at 9. But that fact is fundamental and completely undercuts any claim Mr. Riffin might make to be a rail carrier. In the most basic sense, Mr. Riffin cannot sell services without the legal authority to provide those services. Lacking ownership or other rights to use the Allegany County Line, he is incapable of providing service on the line.

At most Mr. Riffin holds an unrecorded deed from CSX to WMS. *Apr. 24, 2008, Allegany County Decision* at 1-2. Of course, a deed to WMS does not confer any title on Mr. Riffin. Mr. Riffin, as the controlling member of the limited liability company, would not be presumed to own the property in his personal capacity. In Maryland, an owner of an interest in a business entity is not presumed to have an ownership interest in assets owned by that entity. *Superior Outdoor Signs, Inc. v. Eller Media Co.*, 822 A.2d 478, 490 (Md. App. 2003) (“A corporation's shareholders do not hold title to its real property, and therefore do not own it”). Moreover, an unrecorded deed does not vest title at all under Maryland law. In order for title to real property to vest, Maryland law requires that a deed concerning real property be recorded in the land records of the county where the property is located. MD. CODE ANN., REAL PROP. 3-101(a), 3-103 (2007). *See also Childs v. Ragonese*, 460 A.2d 1031, 1036 n. 8 (Md. 1983) (title to land does not pass until deed is properly executed and recorded) (internal citations omitted). December 18, 2007, Reply at 9.

Mr. Riffin’s own repeated failure to even complete the transactions between CSX, WMS (which he owns and controls) and himself completely undercut any claim he makes to be a rail carrier. Indeed, his credibility is further undermined by his own admission that the very basis of his claim to be a rail carrier on the Allegany County Line – the authority to substitute himself for WMS – rests on a bed of admitted misrepresentations. Mr. Riffin has admitted that WMS did not exist at the time it obtained the authority to acquire the line from CSX. *Apr. 24, 2008, Allegany County Decision* at n.2. And he has further admitted that he misrepresented the facts regarding WMS in order to obscure his role in the transaction.⁸

⁸ Indeed, the Board has had extensive experience with Mr. Riffin’s multiple spurious claims in support of his petitions for Board authority. As a result, the Board emphatically declared in 2007 that it would “*closely scrutinize any future filings by Mr. Riffin in this or any other proceeding before the Board*” (*Norfolk Southern Ry. Co.*, STB Docket No. AB-290 (Sub-No. 293X), slip op. at 8 (Service Date Nov. 6, 2007) (emphasis added)). As one basis for

Mr. Riffin attempts to avoid the importance of his lack of ownership or control of the Allegany County Line by stating that he has “spoken with” potential shippers and “held himself out” as providing railroad transportation. Riffin Petition at 5, ¶ 22. But he offers no evidence to demonstrate that any shipper has agreed to ship anything by rail on any line of railroad owned, controlled or operated by Mr. Riffin, that he has the physical or legal capacity to perform such services or that he has even attempted to provide such services. Indeed, Mr. Riffin provides no evidence that he in fact offered to transport goods by rail at any specific time. At most, these conversations amount to commercial due diligence to assess whether a market for rail services exists; but they fall short of the kind of “holding out” that is characteristic of a rail carrier. Similarly, Mr. Riffin’s discussions with potential employees and suppliers do not establish that he has become a rail carrier. At most such discussions show that Mr. Riffin *would like to become* a rail carrier. But discussions about contingent, possible future employment and contracts are not themselves rail transportation and do not themselves allow Mr. Riffin to provide such services. The bottom line is that Mr. Riffin could not provide rail transportation services on the Allegany County Line if a shipper demanded such service. Accordingly, Mr. Riffin is not a rail carrier, and until he is actually in a position to provide rail transportation services at and after a specific time, his conversations with potential shippers and others is just talk.

III. MR. RIFFIN’S PROJECTED TRANSLOADING OPERATION ON THE VENEER SPUR WOULD NOT CONSTITUTE AN ADDITIONAL LINE OF RAILROAD

Mr. Riffin also asks the Board to declare that his “operation on the [Veneer Spur] constitute[s] operating an additional line of railroad.” Riffin Petition at 1, ¶ 9. As the Board

that extraordinary Order, the Board noted specifically Mr. Riffin’s repeated attempts to invoke Board authority based on unsubstantiated claims that he is a Class III rail carrier in Allegany County and elsewhere. *Id.* at 8, n.5.

knows, this is not the first time Mr. Riffin has attempted to institute proceedings regarding his projected operations on the Veneer Spur.⁹ Although those operations remain wholly speculative and conjectural on his part, Mr. Riffin's request must be denied based on three issues that have nothing whatsoever to do with the details of Mr. Riffin's speculative venture.¹⁰

Mr. Riffin seeks a declaration that his projected operation on the Veneer Spur would constitute a line of railroad in addition to the Allegany County Line. Although it is unclear what purpose would be served by issuing such an order, the fundamental fact is that Mr. Riffin has not and cannot justify that such a declaration is justified. Accordingly, his Petition should be denied.

The Veneer Spur is a private industrial spur that has not been used for many years. Mr. Riffin's theory appears to be that his projected Veneer Spur operations constitute an extension of his claimed Allegany County Line operations because he intends to conduct what he calls freight operations on the spur – consisting only of moving loaded cars 400 feet from one end of the spur to the other – the Veneer Spur would change its character from an excepted spur track to non-excepted track. To support this theory, Mr. Riffin refers, without elaboration, to *Effingham Railroad Company – Petition for Declaratory Order – Construction at Effingham, IL*, STB Finance Docket No. 41986 (Service Date Sept. 12, 1997), to assert that relatively short lengths of track can be considered non-excepted railroad track under certain circumstances. Riffin Petition at ¶ 56. Although the theory is of dubious validity, the decisive fact here is that Mr. Riffin cannot prove the critical elements of his theory even under its own terms.

⁹ *James Riffin – Acquisition and Operation Exemption – Veneer Spur – In Baltimore County, MD*, STB Finance Docket No. 35221 (Filed Feb. 20, 2009); *James Riffin – Acquisition and Operation Exemption – Veneer Spur – In Baltimore County, MD*, STB Finance Docket No. 35236 (Filed Mar. 30, 2009); *James Riffin – § 10902 Acquisition and Operation Application – Veneer Spur – In Baltimore County, MD*, Docket No. 225061 (Filed May 6, 2009).

¹⁰ As is readily apparent from the face of Mr. Riffin's description of his plans, his proposed Veneer Spur operation makes little or no sense on multiple levels. Because it is not necessary to address all of those points in this proceeding, MTA and Allegany County will address those points, to the extent necessary, in responding to Mr. Riffin's Section 10902 Acquisition and Operation Application, filed on May 6, 2009, simultaneously with the Riffin Petition.

First, in order to establish that he is “extending” his operations onto the Veneer Spur he must first establish that he is a rail carrier on the Allegany County Line. For the reasons detailed above, Mr. Riffin is not a rail carrier on the Allegany County Line and there are no rail operations on the Allegany County Line. Obviously there can be no extension of something that does not exist.

Second, even assuming that there are some rail operations on the Allegany County Line, Mr. Riffin must show that his projected Veneer Spur operations are “connected to” his claimed Allegany County Line operation in order to be considered an additional line of railroad. As the Board stated:

Although it is a licensed rail carrier elsewhere, US Rail cannot operate as a rail carrier at the Brookhaven Rail Terminal because [] there is no evidence that this facility is in any way connected to the carrier’s existing operations in Ohio. The proposed construction and operations in Brookhaven are located hundreds of miles from US Rail’s operations in Ohio, and there is no evidence that US Rail presently has authority to operate of the track of NYAR in the vicinity of the Brookhaven Rail Terminal.

Suffolk & Southern Rail Road LLC – Lease and Operation Exemption – Sills Road

Realty, LLC, STB Finance Docket No. 35036 (Service Date August 27, 2008), slip op. at 3.

Even assuming that either operation on the Allegany County Line or Veneer Spur actually exists (although neither does), Mr. Riffin cannot show that the two projected operations would be connected in any way. The two sites are over 150 miles apart and Mr. Riffin does not have the rights to use track connecting the two sites. Mr. Riffin admits that he will not seek to operate over the CIT or other tracks beyond the Veneer Spur. Verified Statement of James Riffin at ¶ 14.

Moreover, his description of his projected Veneer Spur operation makes it clear that he would simply be moving freight along the length of the Veneer Spur and

delivering cars to, or receiving cars from, Norfolk Southern for further shipment.

Verified Statement of James Riffin at ¶¶ 13-14. In short, Mr. Riffin (or his customers) would be acting as shippers when the freight is not on the Veneer Spur. Mr. Riffin makes no allegation that any future customers on either line would be shipping to the other line. The two purported operations are projected to be entirely separate and disconnected. Thus there is no connection between the two lines, and the Veneer Spur is not an “additional line of railroad” to the Allegany County Line. Similarly, Mr. Riffin cannot demonstrate that any operations on the Veneer Spur would constitute an expansion into new territory.

Mr. Riffin relies on *Effingham* to claim that even a short line of track may constitute a line of railroad. Mr. Riffin implies that the Veneer Spur will become a line of railroad simply because the Board found the operator in *Effingham* to have become a railroad even though the line it proposed to use in the first phase of its operations was short. Mr. Riffin mischaracterizes the Board’s findings in *Effingham* by asserting that some 200 feet of existing track acquired by the Effingham Railroad Company (“ERRC”) constituted ERRC’s line of railroad. But that argument ignores the detailed and fact-specific analysis necessary to evaluating whether a track is a spur or an extension of a line of railroad. A careful reading of the Board’s decision in that case reveals that the Board’s analysis encompassed the totality of the evidence presented, including the fact that ERRC planned to construct an additional 9,835 feet of track to connect ERRC’s track to two Class I lines in the vicinity and had executed interchange agreements with carriers on those lines. *Effingham*, slip op. at 3. *Effingham* does not support the notion that a 400-foot spur alone would constitute a line of railroad.

Moreover, neither length nor any other single characteristic will be determinative of a track's excepted status. *Pennsylvania Railroad Co. v. Reading Co.*, 132 F.Supp. 616, 621-622 (D. Pa. 1955). Factors necessary to such an analysis include, among other things, (a) length of the track; (b) whether it is stub ended; and (c) whether it was built to invade the territory of another railroad. *Chicago and Northwestern Transportation Company – Abandonment Exemption – In McHenry County, IL*, 3 I.C.C.2d 366, 367-368 (January 6, 1987); *rev'd on other grounds sub nom. Illinois Commerce Comm'n v. ICC*, 879 F.2d 917 (D.C. Cir. 1989); *see also Valley Feed Company v. Greater Shenandoah Valley Development Company*, STB Docket No. 41068 (Service Date December 11, 1998). Configuration of the line to include a stub ended termination will tend to support classification as a spur. *Battaglia Distributing Co., Inc. v. Burlington Northern R.R. Co.*, STB Finance Docket No. 32058 at *3 (Service Date June 18, 1997) (citing *Chicago and Northwestern Abandonment Exemption*, 3 I.C.C.2d). Mr. Riffin's description of proposed point-to-point movements over 400 feet of spur track with no connection to the national rail network fails to support the conclusion that such activities would make a line of railroad of the Veneer Spur.

Finally, the Veneer Spur is not connected to the interstate rail network. It is an historically private spur that has long been out of use, together with many of the sidings and spurs in the area of the former Cockeysville Station. Although Mr. Riffin makes the unsupported assertion that the western end of the Veneer Spur is connected to the CIT (Petition at ¶ 55), he proves himself wrong by acknowledging in his Section 10902 Application that no connection exists and that the connection would have to be reestablished. Application at ¶ 8(f), p. 6. Indeed, Mr. Riffin provides a detailed

explanation of how the Veneer Spur used to connect to the CIT, but it is all written in the past tense as it must be because that connection no longer exists. *Id.* at ¶ 8(e), pp. 5-6.¹¹

The Board has already addressed the history of tracks in the vicinity of the Veneer Spur in the context of earlier proceedings also involving a claim by Mr. Riffin that he could access the CIT from property he claims to own near the Veneer Spur. In those proceedings, after examining detailed accounts of the history of tracks in that area, the Board concluded that the south-bound track of the CIT and a number of other sidings and spurs were legally and properly removed over many decades. *Maryland Transit Administration – Petition for Declaratory Order*, STB Finance Docket No. 34975 (Service Date Oct. 9, 2007); *Id.* (Service Date Sept. 17, 2008).

The Board further found that the connection between that property Mr. Riffin owns and the CIT was removed in the 1940s. *Id.* at 2, n.2. Accordingly, neither Norfolk Southern nor MTA have any legal obligation or duty to restore the connection. Moreover, Mr. Riffin does not own or control the land between the Veneer Spur and the CIT, and therefore lacks the ability to make the connection himself. *See also Maryland Transit Administration – Petition for Declaratory Order*, STB Finance Docket No. 34975, Response of the Maryland Transit Administration, Exh. 1, ¶ 7 (Verified statement of Robert L. Williams) and Exs. C-5 and D-29-30 thereto (Filed Apr. 20, 2007).

Thus, even assuming that Mr. Riffin’s use of the Veneer Spur would convert excepted track into non-excepted track, and even assuming that his projected Veneer Spur operation were an extension of his notional Allegany County Line operation, the operation could not be considered a non-excepted railroad operation because the tracks

¹¹ MTA and Allegany County note that Mr. Riffin’s description of the history of the tracks near the Veneer Spur in his Application has numerous factual errors, which will be addressed to the extent necessary in the context of his Application to Acquire.

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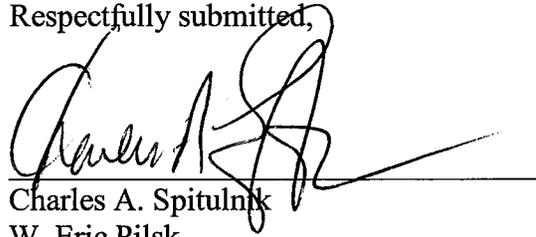
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¹¹ MTA and Allegany County note that Mr. Riffin’s description of the history of the tracks near the Veneer Spur in his Application has numerous factual errors, which will be addressed to the extent necessary in the context of his Application to Acquire.

Accordingly, the Board should deny the Petition, and declare that Mr. Riffin is not a rail carrier on the Allegany County Line and that the Veneer Spur operation is not an additional line of railroad and finally put an end to this senseless and costly legal maneuvering.

Respectfully submitted,



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Counsel for Maryland Transit

Administration and Allegany County, MD

EXHIBIT A

SDAT Data Sheet for WMS L.L.C.

[attached hereto]


Maryland Department of Assessments and Taxation
Taxpayer Services Division

301 West Preston Street W Baltimore, MD 21201 (2007 vw4.3)

[Main Menu](#) | [Security Interest Filings \(UCC\)](#) | [Business Entity Information](#)
[\(Charter/Personal Property\) New Search](#) | [Rate Stabilization Notices](#) | [Get Forms](#) | [Certificate of Status](#) | [SDAT Home](#)

Taxpayer Services Division
Entity Name: WMS L.L.C.
Dept ID #: W11312634

General Information	Amendments	Personal Property	Certificate of Status
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Principal Office (Current): 1941 GREENSPRING DRIVE
 TIMONIUM, MD 21093

Resident Agent (Current): JAMES RIFFIN
 1941 GREENSPRING DRIVE
 TIMONIUM, MD 21093

Status: FORFEITED

Good Standing: No

Business Code: Other

Date of Formation or Registration: 05/26/2006

State of Formation: MD

Stock/Nonstock: N/A

Close/Not Close: Unknown

Link Definition

General Information	General information about this entity
Amendments	Original and subsequent documents filed
Personal Property	Personal Property Return Filing Information and Property Assessments
Certificate of Status	Get a Certificate of Good Standing for this entity

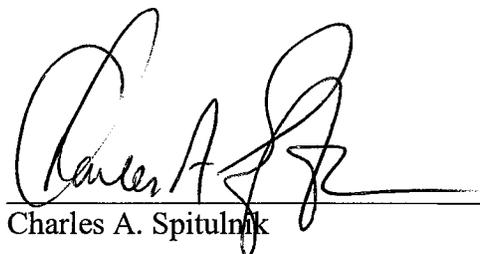
CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of May, 2009, caused to be served a copy of the foregoing Reply of Maryland Transit Administration and Allegany County, Maryland to Petition for Declaratory Order upon the following parties of record by first class mail, with postage prepaid:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093

And upon the following by first class mail, with postage prepaid:

James R. Paschall
Senior General Attorney
Norfolk Southern Railway Company – Law Department
Three Commercial Place
Norfolk, VA 23510


Charles A. Spitulnik