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May 27, 2009

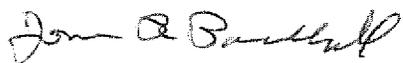
E-Filing
Hon. Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 35245, James Riffin - Petition for Declaratory Order
STB Finance Docket No. 35246, James Riffin - § 10902 Acquisition and Operation Application Veneer Spur - In Baltimore County, MD
Norfolk Southern Railway Company Reply to Motions for Protective Orders and to Suggested Protective Order of Maryland Transit Administration

Dear Ms. Quinlan:

I attach for electronic filing the Reply of Norfolk Southern Railway Company Reply to Motions for Protective Orders and to Suggested Protective Order of Maryland Transit Administration.

Very truly yours,



James R. Paschall

Attachment

cc: via e-mail jimriffin@yahoo.com
James Riffin
1941 Greenspring Drive
Timonium, MD 21093

via e-mail cspitulnik@kaplankirsch.com
Charles A. Spitulnik
Attorney for Maryland Transit Administration

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35245

JAMES RIFFIN - PETITION FOR DECLARATORY ORDER

STB FINANCE DOCKET NO. 35246

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

NORFOLK SOUTHERN RAILWAY COMPANY'S
REPLY TO MOTIONS FOR PROTECTIVE ORDERS AND TO
SUGGESTED PROTECTIVE ORDER OF MARYLAND TRANSIT ADMINISTRATION

James R. Paschall
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Dated: May 27, 2009

Before the
Surface Transportation Board

STB Finance Docket No. 35245

James Riffin - Petition for Declaratory Order

STB Finance Docket No. 35246

James Riffin - § 10902 Acquisition and Operation Application -
Veneer Spur - In Baltimore County, MD

Norfolk Southern Railway Company's
Reply to Motions for Protective Orders and to
Suggested Protective Order of Maryland Transit Administration

Norfolk Southern Railway Company ("NSR") hereby responds to the May 6, 2009 Motion of James Riffin for a Protective Order pursuant to 49 C.F.R. § 1104.14(b) (the "Riffin Motion") in the subject proceedings and to the May 26, 2009 Maryland Transit Administration ("MTA") response thereto. While NSR is in general accord with MTA's response and revised draft protective order, NSR objects to the requirement in the draft protective order in the Riffin Motion and retained in the MTA revised draft that NSR must hire outside counsel to have access to the "confidential information" submitted by Riffin in the above proceedings.

In Norfolk Southern Railway Company - Discontinuance of Service Exemption - In Stanly County, NC, STB Docket No. AB-290 (Sub-No. 254X) (STB served September 1, 2006), the Board recognized that NSR should not be put to the expense of hiring outside counsel to review materials and to respond to arguments concerning

supposed confidential information that is presumably a key element of the case if NSR's in-house attorney [the undersigned], NSR's legal representative in the proceeding, executed the undertaking or undertakings under the protective order. I executed that undertaking, received the information and treated it with the appropriate confidentiality. I attach hereto a revised protective order and revised Exhibits A and B following closely the MTA draft but including language in line with that approved by the Board in the decision in *Norfolk Southern Railway Company - Discontinuance of Service Exemption - In Stanly County, NC*, STB Docket No. AB-290 (Sub-No. 254X) (STB served September 1, 2006).

Mr. Riffin has no compunction at wasting the resources of others, including the Board, in his campaign of frivolous litigation. Especially at this time of economic downturn and scarce resources, NSR should not be required to hire outside counsel to review and comment on documents, especially when they are likely to be immaterial, irrelevant, unverified, indefinite, conditional and unpersuasive, as further noted in footnote 1. The Board has recognized in the past, as in the proceeding cited above, that in-house counsel can treat genuinely confidential information appropriately.

Not only would confining NSR's access to Riffin's supposed confidential information to outside counsel be wasteful, there are there no valid commercial reasons to keep the information confidential from anyone at NSR, much less from its counsel who would use the information only for purposes of these proceedings. Riffin would presumably expect that if his declaratory order petition and application were granted (which they should not be), NSR would reconnect the derelict side track known as the Veneer Spur track to the Cockeyville Industrial Track. Even leaving aside NSR's soon

to be filed notice or petition for exemption to abandon its freight operating rights on the Cockeyville Industrial Track, NSR could not be expected to take on faith that Riffin has secured sufficient guaranteed business (or any business at all) to justify the expense of restoring the connection. Moreover, the information Riffin seeks to keep secret from MTA and to make difficult for NSR to review is required as a fundamental part of making his case for the grant of a declaratory order and the approval of his application.

If a Protective Order is required in this proceeding at all, the form of the Order proposed by Mr. Riffin is overbroad but the revised Order submitted by MTA does not protect NSR's interest in not being required to hire outside counsel to review Riffin's supposed confidential information.¹ NSR submits that if a Protective Order is appropriate in this proceeding at all, which the MTA points out and NSR agrees is dubious at best, the Board should enter the attached revised draft Order.

As MTA further notes, on its face, the Riffin Motion clearly indicates that Mr. Riffin has no present commercial relationships that would benefit from the issuance of a

¹While we fully expect MTA to receive the Riffin information and to adequately analyze and comment on it and further fully expect that the Board will carefully scrutinize any information submitted by Riffin to determine whether it is material, relevant, verified, definite and genuinely supports his claims, NSR still should not be required to either hire outside counsel or be foreclosed from an opportunity to comment on the material. Riffin's statement that "[t]he relationship between Riffin and [prospective shippers] is tenuous, and will remain tenuous until such time that Riffin demonstrates that he can in fact provide freight rail service in Cockeyville" shows that his information is of questionable value, does not contain commitments for using Riffin's proposed service and therefore undermines one of the very points he needs to support and prove. Of course, part of the reason he is so persistently pursuing this matter under 49 U.S.C. 10902 obviously is that he cannot support a public convenience and necessity finding needed for the Board to approve his proposed acquisition and operation under 49 U.S.C. 10901, as this admission indicates.

Protective Order. Mr. Riffin forthrightly states, "[t]he relationship between Riffin and [prospective shippers] is tenuous, and will remain tenuous until such time that Riffin demonstrates that he can in fact provide freight rail service in Cockeysville." Riffin Motion at ¶ 3. Given issues that have arisen with Mr. Riffin's prior submissions to the Board,² NSR concurs with MTA's further proposal that Mr. Riffin be required to submit a certification regarding the confidential or highly confidential nature of all information for which he seeks to claim Confidential or Highly Confidential status.

Riffin is hardly a competitor of NSR and revealing the confidential information is not likely to reveal pent-up demand for rail service from Riffin over the 400-foot side track at the end of the Cockeysville Industrial Track, past where the bridge and track over York Road has been removed. It is difficult to believe that any current or former railroad customer on or in the vicinity of the Cockeysville Industrial Track would not

²See, e.g., *James Riffin d/b/a the Northern Central Railroad - Acquisition and Operation Exemption - In York Co., PA*, STB Finance Docket No. 34501 (STB served February 23, 2005), *slip op.* at 5 (in revoking exemption, the Board held that, "Here, it appears that [Riffin d/b/a] NCR is attempting to use the cover of Board authority allowing rail operations in Pennsylvania to shield seemingly independent operations and construction in Maryland from legitimate processes of state law... The Board has a responsibility to protect the integrity of its processes, and the Board is concerned that Riffin may be using the licensing process in improper ways."); *James Riffin d/b/a The Northern Central R. Acquisition and Operation Exemption In York Co., PA, and Baltimore Co., MD*, STB Finance Docket No. 34484 (STB Served April 20, 2004), *slip op.* at 2 (revoking Riffin's purported notice of exemption as insufficient to justify the use of the streamlined exemption procedures due to the multiplicity of factual and legal issues Riffin failed to adequately address). 'Additionally, Mr. Riffin includes unverified allegations at ¶ 4 of the Riffin Motion that are irrelevant to the Board's consideration of his request for a Protective Order. Riffin fails to note that this Board gave no credence whatsoever to these allegations in its Decision in STB Docket No. AB-290 (Sub-No. 237X), *slip op.* (served March 31, 2006). Furthermore, MTA has addressed in detail, and the Board has considered and rejected these allegations, in *Maryland Transit Administration - Petition for Declaratory Order*, STB Finance Docket No. 34975 (served October 9, 2007), *slip op.* at 7-8. Accordingly, MTA requests that the Board strike 14 of

contact NSR for rail service or at least for information on the terms of rail service, or that NSR would not already be soliciting their business, but would be waiting for Riffin's joint-line service before contemplating using rail transportation service.³

As MTA points out, Riffin provides no verified proof of the putative market for rail freight services he claims he wishes to serve on the Veneer Spur. This is a fundamental part of his petition and his application and he should be required to present it, if not publicly, at least to the parties without causing further expense. There are no objective, commercially reasonable and cognizable indicia of a competitive environment in this case, not only between MTA and Riffin, but between NSR and Riffin. Because NSR, MTA, MDOT and the MDOT modal administrations do not compete with Mr. Riffin's putative operation, a typical protective order is not required.

The revised proposed Protective Order and exhibits closely follows the draft submitted by MTA which is consistent with Protective Orders adopted by the Board where public entities are participating in a proceeding to protect the interests of the citizens and residents of their jurisdictions but have no competitive, commercial interest in the transaction at issue. It also incorporates the provisions in line with those permitted by the Board in *Norfolk Southern Railway Company - Discontinuance of Service Exemption - In Stanly County, NC*, STB Docket No. AB-290 (Sub-No. 254X) (STB served September 1, 2006).

³Riffin admits that NSR could charge its rate for the entire haul over its line to or from Cocksylville, so Riffin would seem to gain no advantage by keeping information about his business plan and potential traffic secret and not trying to work on an arrangement that would benefit the railroad customers as well as NSR and Riffin.

For the reasons stated above, NSR respectfully requests that if the Board believes it necessary to issue a protective order at all in this proceeding, the Board issue a Protective Order in the form that is attached as Appendix A and accompanying Exhibits A and B.

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

By: *James R. Paschall*

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

(757) 629-2759
Fax (757) 533-4872

Dated: May 27, 2009

APPENDIX A
PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2, 3, 4 or 5 of this Protective Order, and any Confidential Information contained in such materials.

(d) "MDOT" means the Maryland Department of Transportation. (e) "MTA" means the Maryland Transit Administration.

(f) "NSR" means Norfolk Southern Railway Company.

(g) "Proceedings" means those before the Surface Transportation Board ("the Board") concerning any directly related proceedings covered by STB Finance Docket No. 35245 [35246], and any related proceedings before the Board, and any judicial

review proceedings arising from the same or from any related proceedings before the Board.

(h) "STB" means the U.S. Surface Transportation Board.

2. If NSR or the MTA, MDOT or any of MDOT's modal administrations as a party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents so designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If James Riffin as a party to these Proceedings determines that any part of a document he submits, discovery request he propounds, discovery response he produces, transcript of a deposition or hearing in which he participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then Mr. Riffin may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Mr. Riffin shall include with his information or documents a public certification to the Board describing the confidential nature of the information or documents so designated. Unless NSR, MTA, MDOT or the Board objects to such certification, any information or documents so designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

4. If NSR, MTA, MDOT or any of MDOT's modal administrations as a party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper specific rate or cost data, trackage rights compensation levels, or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped as "HIGHLY CONFIDENTIAL" shall be handled as provided hereinafter.

5. If Mr. Riffin as a party to these Proceedings determines that any part of a document he submits, discovery request he propounds, discovery response he produces, transcript of a deposition or hearing in which he participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels, or other competitively sensitive or proprietary information, then he may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Mr. Riffin shall include with his information or documents a public certification to the Board describing the highly confidential nature of the information or documents so designated. Unless NSR or the MTA, MDOT or the Board objects to such certification, any information or documents so designated or stamped as "HIGHLY CONFIDENTIAL" shall be handled as provided hereinafter.

6. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an

employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

7. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any person or entity except to the senior general attorney of Norfolk Southern Railway Company (or successor NSR in-house attorney who shall be bound by this Protective Order and Undertakings), an employee of NSR, MTA, MDOT or one of the modal administrations of MDOT or to an outside counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.

8. In the event that a party determines that additional individuals need access to "Highly Confidential" documents, the party must notify the opposing party: (1) identifying the individual or individuals to whom the party would like to disclose "Highly Confidential" documents, and (2) identifying the "Highly Confidential" documents to be disclosed, after which the opposing party has 24 hours either to consent or to object to the additional disclosure. If the opposing party objects to the additional disclosure, the "Highly Confidential" documents will not be disclosed until the objection is resolved either by agreement of the parties or by the STB.

9. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the STB to adjudicate such challenges.

10. Designated Material must be kept either in the office of the senior general attorney of Norfolk Southern Railway Company (or successor NSR in-house attorney who shall be bound by this Protective Order and Undertakings) or its outside counsel or in the outside counsel of or in the office of the Counsel of MTA, may not be copied, and may not be used for any purposes, including without limitation any business, commercial, or competitive purposes, other than the preparation and presentation of evidence and argument in the Proceedings, and/or any judicial review proceedings in connection with the Proceedings and/or with any related proceedings.

11. Any party who receives Designated Material in discovery shall return or destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the STB and retained by the senior general attorney of Norfolk Southern Railway Company (or successor NSR in-house attorney who shall be bound by this Protective Order and Undertakings) or the outside counsel for a party to these Proceedings) at the earlier of (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

12. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the STB unless the pleading or other document is submitted under seal pursuant to the rules of this Board.

13. No party may present or otherwise use any Designated Material at a hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the STB to whom relevant authority has been lawfully delegated by the STB, and has accompanied such submission with a written request that the STB: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

14. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in this Protective Order.

15. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, or-3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

16. All parties must comply with all of the provisions of this Protective Order unless the

STB determines that good cause has been shown warranting suspension of any of the provisions herein.

17. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

18. Any party filing with the Board a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pleading in these Proceedings shall simultaneously file a public version of the pleading.

EXHIBIT A

UNDERTAKING -- CONFIDENTIAL INFORMATION

I _____, have read the Protective Order served on _____ 2009, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35245 [35246], understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35245 [35246], before the Surface Transportation Board ("Board"), and/or any judicial review proceedings in connection with STB Finance Docket No. 35245 [35246]. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this Proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel or the senior general attorney of Norfolk Southern Railway Company (or successor NSR in-house attorney who shall be bound by this Undertaking), of pleadings and other documents filed with the Board. I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Print: _____

Title: _____

Affiliation: _____

Date: _____

Exhibit B

UNDERTAKING -- HIGHLY CONFIDENTIAL MATERIAL

I, _____, as [senior general attorney for Norfolk Southern Railway Company or outside [counsel] [consultant] [other] for [Party to Proceeding]], for whom I am acting in this Proceeding, have read the Protective Order served on _____, 2009, governing the production and use of Confidential Information, Highly Confidential Information and Confidential Documents in STB Finance Docket Nos. 35245 and 35246, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information, Highly Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 35245 and 35246, any related proceedings before the Surface Transportation Board ("Board"), or any judicial review proceedings in connection with STB Finance Docket Nos. 35245 and 35246, or with any related proceedings. I further agree not to disclose any Confidential Information, Highly Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," other than file copies that may only be kept by and accessible to the senior general attorney of Norfolk Southern Railway Company (or successor NSR in-house attorney who shall be bound by this Undertaking), or to outside counsel of any party, of pleadings and other documents filed with the Board.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons in the employ of Norfolk Southern Railway Company or its subsidiaries, affiliates, or owner that are engaged in, or have responsibility for, establishing shipping rates, or to the Maryland Transit Administration the Maryland Department of Transportation or any of its modal administrations, or to other persons or entities for which I am not acting in this proceeding. I will promptly destroy all notes or documents containing such Highly Confidential Information. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, and

hat under no circumstances will I permit access to said materials or information by employees of my client through any outside counsel or outside consultant.

I understand and agree that monetary damages would not be a sufficient remedy for breach of this Undertaking and that parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Print: _____

Title: _____

Affiliation: _____

Date: _____

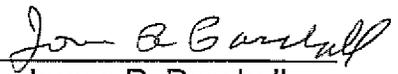
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document on:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093
jimriffin@yahoo.com

Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, DC 20036
cspitulnik@kaplankirsch.com

via e-mail on this 27th day of May, 2009.



James R. Paschall