

215559

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**JAN 13 2006  
RECEIVED**

---

**STB DOCKET NO. AB-290 (Sub- No. 237X)**

---

**NORFOLK SOUTHERN RAILWAY COMPANY  
PETITION FOR EXEMPTION  
ABANDONMENT OF FREIGHT OPERATING RIGHTS AND  
OF RAIL FREIGHT SERVICE  
BETWEEN BALTIMORE, MD AND COCKEYSVILLE, MD  
IN BALTIMORE COUNTY, MARYLAND**

---

**PROTEST / OPPOSITION OF JAMES RIFFIN  
TO PETITION FOR EXEMPTION AND  
TO ABANDONMENT OF RAIL FREIGHT SERVICE**

---

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

Dated: January 13, 2006

ENTERED  
Office of the Clerk  
Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

JAN 13 2006

RECEIVED

---

STB DOCKET NO. AB-290 (Sub- No. 237X)

---

NORFOLK SOUTHERN RAILWAY COMPANY  
PETITION FOR EXEMPTION  
ABANDONMENT OF FREIGHT OPERATING RIGHTS AND  
OF RAIL FREIGHT SERVICE  
BETWEEN BALTIMORE, MD AND COCKEYSVILLE, MD  
IN BALTIMORE COUNTY, MARYLAND

---

PROTEST / OPPOSITION OF JAMES RIFFIN  
TO PETITION FOR EXEMPTION AND  
TO ABANDONMENT OF RAIL FREIGHT SERVICE

---

1. James Riffin ("Riffin"), pursuant to the applicable regulations of the Surface Transportation Board ("STB" or "Board") hereby files his Protest / Opposition to Norfolk Southern Railway Company's Petition for Exemption - Abandonment of Freight Operating Rights and of Rail Freight Service - Between Baltimore, Md and Cockeysville, Md, in Baltimore County, Maryland ("Petition"), filed on December 14, 2005, and

2. Riffin further PROTESTS / OPPOSES the Petitioner's request for an exemption from the Offer of Financial Assistance provisions of 49 U.S.C. §10904.

3. **Riffin desires to be made a party to the proceedings** and to be served with all documents, filings or decisions pertaining to the Petition.

4. The Petition was filed on December 14, 2004. The Petition was published in the Federal Register at 70 FR 76105 on December 22, 2005, with an effective date of January 3, 2006.

5. Protestant's name, address and business: James Riffin  
1941 Greenspring Drive

Timonium, MD 21093  
(443) 414-6210

Protestant's Business: Riffin owns commercial properties adjacent to the Line which is the subject of the Petition for Exemption. Riffin proposes to make an Offer of Financial Assistance to acquire the freight operating rights Norfolk Southern desires to abandon, then to provide freight rail service to the shippers along the Line, including rail service to Riffin's properties. Riffin desires to utilize rail service at his Cockeysville property, and to bring rail cars and locomotives to that site. Abandonment of the line would make it nearly impossible to bring rail cars and locomotives to that site. (Transporting rail cars and locomotives via a highway is nearly impossible.) Riffin further proposes to utilize the line to ship, via rail, alternative fuels processed at his Cockeysville site. Riffin further proposes to reinstitute rail service over that portion of the Line which was abandoned in 1972, thereby reconnecting via rail, Cockeysville, Maryland and York, Pennsylvania, and to ship aggregates and other commodities over that reconnected rail line.

6. Riffin's interest in the proceeding:

A. Riffin consigned and pre-paid the freight charges to deliver two rails cars to Cockeysville in 2004. Riffin consigned and pre-paid the freight charges to deliver eleven rail cars to Cockeysville in 2005. Norfolk Southern refused to complete shipment of the rail cars to Cockeysville. The cars presently are languishing in Norfolk Southern's Baltimore Bayview rail yard.

B. Riffin does not represent any group or other public interest.

C. The portion of the line Riffin has an interest in retaining rail service on, is near or beyond Milepost UU-13.8, located in Cockeysville, Maryland.

7. Riffin respectfully requests the Board DENY Norfolk Southern's Petition for the following reasons:

**I. The Petition has inconsistencies that need to be addressed.**

8. On page 5 of the Petition, the Petition states Norfolk Southern desires to abandon rail freight service over 12.8 miles of railroad line between Milepost UU-1.0 and Milepost UU-12.8. It would appear, the end point should have been at Milepost UU-13.8, rather than Milepost UU-12.8. The map appended to the Petition shows the end point to be Milepost UU-13.8.

9. The Cockeysville Line is just a portion of the original line, which went from Baltimore to Lake Ontario. In 1919, the line was leased by the Pennsylvania Railroad ("PRR") for a period of 999 years. In 1972, after hurricane Agnes had washed out much of the line, the PRR filed a Petition with the Interstate Commerce Commission ("ICC") to abandon the portion of the line

from Baltimore to the Maryland / Pennsylvania line. A search of ICC archives did not find a decision granting the PRR Petition for Abandonment. From 1972 until circa 1990, the PRR, and its successor, Conrail, continued to provide service from Baltimore to Beaver Dam Run, located in Cockeysville, Maryland. On April 25, 1997, pursuant to an agreement dated May 1, 1990, the Maryland Department of Transportation ("MDOT") purchased that portion of the line between Baltimore and Western Run. Western Run is about ½ mile north of Beaver Dam Run, which in turn is about ¾ mile north of where Milepost UU-13.8 appears to be. (The map appended to the Petition does not provide any reference marks to indicate where Milepost UU-13.8 is located.) When MDOT purchased its portion of the line, Conrail retained freight operating rights. The Petition does not disclose the extent of those freight operating rights. Presumably, the freight operating rights would have granted Conrail the right to operate on the entire portion of the line that had been conveyed to MDOT, and may have also included the right to operate on the portion of the line that went all the way to the Maryland / Pennsylvania border.

10. Since the Board and its ICC predecessor has never approved abandonment of any portion of the line between Baltimore and the Maryland / Pennsylvania border, Riffin would ask that Norfolk Southern clarify what portion of the line it desires to abandon: Is it Norfolk Southern's intent to abandon all of its freight operating rights, from Baltimore to wherever those operating rights end? Or is it Norfolk Southern's intent to only abandon that portion of its operating rights which lie between Baltimore and Milepost UU-13.8, thereby retaining those operating rights which lie between Milepost UU-13.8 and the end of those operating rights? If Norfolk Southern desires to abandon all of its freight operating rights, what is the extent of those operating rights? Since the Board and its predecessor ICC has never granted permission to abandon any portion of the line between Baltimore and the Maryland / Pennsylvania line, if Norfolk Southern desires to abandon all of its freight operating rights, does Norfolk Southern desire to amend its Petition, stating it desires is to abandon all of its operating rights, from Baltimore to the Maryland / Pennsylvania line, or to wherever its operating rights stop?

## **II. The Petition does not comply with the environmental reporting requirements of 49 CFR part 1105.**

11. 49 CFR §1121.3 (b) states "A petition for exemption must comply with environmental or historic reporting and notice requirements of 49 CFR part 1105, if applicable."
12. 49 CFR §1105.6 states:
- (b) "Environmental Assessments will normally be prepared for the following proposed actions:
    - (2) Abandonment of a rail line ... ;
    - (3) Discontinuance of ... freight service (except for discontinuances of freight service under modified certificates issued under 49 CFR 1150.21 and discontinuances of trackage rights where the affected line will continue to be operated);
  - (c) No environmental documentation will normally be prepared ... for the following

actions:

- (2) Any action that does not result in significant changes in carrier operations (*i.e.*, changes that do not exceed the thresholds established in section 1105.7(e) (4) or (5)), ...
- (6) Discontinuance of trackage rights where the affected line will continue to be operated;

13. 49 CFR §1105.7 (e) states:

(4) *Energy.*

- (i) Describe the effect of the proposed action on transportation of energy resources.
- (iv) If the proposed action will cause diversions from rail to motor carriage of more than:
  - (B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

(6) *Air.*

- (i) If the proposed action will result in either:
  - (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.
- (ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either:
  - (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan.

(7) *Safety.*

- (i) Describe any effect of the proposed action on public health and safety.
- (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

14. Petitioner proposes to abandon its trackage rights on the Cockeysville line. If the Petition is granted, the affected line will **not** continue to be operated. (Rail freight service will no longer be offered by any rail carrier. The line will be used for commuter passenger rail service only.)

15. One shipper on the line, Fleischmann's Vinegar, receives approximately 2 million gallons of ethanol [a highly flammable hazardous material] a year (71 rail cars / year at 28,000 gallons per rail car). This ethanol had been shipped directly to Fleischmann's's Vinegar from Houston, Texas via rail. If the Petition is granted and rail service to this shipper is abandoned, this ethanol will be shipped to the Canton area of Baltimore, loaded onto tanker trucks, then transported via tanker truck 8 miles through the city of Baltimore to Fleischmann's's facility. Each tanker truck holds 7,000 gallons of ethanol. At 7,000 gallons per tanker truck, it would take **286 tanker trucks** to transport Fleischmann's 2,000,000 gallons of ethanol from Canton to Fleischmann's facility. Abandonment of rail service to Fleischmann's's facility will **significantly adversely affect** the quality of the human environment in the following ways:

A. *Energy.* Abandonment of rail service to this shipper will cause diversions from rail to motor carriage of 71 rail cars per year, or approximately 286 truck loads per year. These 71 rail cars per year exceed the threshold of 50 rail carloads per year for any part of the affected line, as specified in 49 CFR 1105.7 (e) (4) (iv) (B). Therefore, the Petitioner is required by regulation to prepare an Environmental Assessment and is required to "quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given."

B. *Air.* 49 CFR 1105.7 (e) (5) (i) (C) requires the Petitioner to quantify the anticipated effect on air emissions when the average increase in truck traffic on any affected road segment increases truck traffic by more than 10 percent of the average daily traffic. As noted *supra*, abandonment of rail service to Fleischmann's will increase truck traffic by 286 truck loads per year. Norfolk Southern failed to offer any evidence that increasing truck traffic by 286 loads per year *would not* increase truck traffic by more than 10 percent of the average daily traffic on any road segment.

C. *Safety.* 49 CFR 1105.7 (e) (7) requires the Petitioner to describe any effect of the proposed action on public health and safety. When hazardous materials are involved, the Petitioner is required to identify the materials (which Petitioner did). Petitioner failed to indicate the quantity, frequency of service, the safety record of the party who will be transporting the hazardous material, contingency plans to deal with accidental spills, and the likelihood of an accidental release of hazardous materials. Common sense would suggest shipping 71 rail cars of ethanol would be far less hazardous than shipping 286 truck loads of ethanol through downtown Baltimore.

16. Petitioner has failed to comply with these regulations. Therefore the Petition for Exemption should be DENIED.

17. Another shipper on the line, Imerys, ships approximately 200 rail cars a year of calcium carbonate slurry. These rail cars had been shipped directly from Imerys' facility in Cockeysville to its customers. If the Petition is granted and rail service to this shipper is abandoned, this product will be trucked to the Canton area of Baltimore, loaded onto rail cars, then transported via rail car to Imerys' customers. Abandonment of rail service to the Imerys' facility will

**significantly adversely affect** the quality of the human environment in the following ways:

A. *Energy.* Abandonment of rail service to Imerys' facility will cause diversions from rail to motor carriage of 200 rail cars per year, or approximately **1,000 truck loads** per year. These 200 rail cars per year exceed the threshold of 50 rail carloads per year for any part of the affected line, as specified in 49 CFR 1105.7 (e) (4) (iv) (B). Therefore, the Petitioner is required by regulation to prepare an Environmental Assessment and is required to "quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given."

B. *Air.* 49 CFR 1105.7 (e) (5) (I)(C) requires the Petitioner to quantify the anticipated effect on air emissions when the average increase in truck traffic on any affected road segment increases truck traffic by more than 10 percent of the average daily traffic. As noted *supra*, abandonment of rail service to Imerys will increase truck traffic by **1,000 truck loads** per year. Norfolk Southern failed to offer any evidence that increasing truck traffic by 1,000 loads per year *would not* increase truck traffic by more than 10 percent of the average daily traffic on any road segment.

Petitioner has failed to comply with these regulations. Therefore the Petition for Exemption should be DENIED.

18. A third shipper on the line, Baltimore Gas and Electric Company, received an unknown number of rail cars of utility poles. Without rail service, these utility poles will have to be trucked to its Cockeysville pole yard, rather than delivered via rail.

**III. The present or future public convenience and necessity  
DO NOT REQUIRE NOR PERMIT  
the abandonment or discontinuance of the Cockeysville line.**

19. Petitioner has not made a showing that the present or future public convenience or necessity requires, nor even permits, the abandonment or discontinuance of freight rail service on the Cockeysville line. Discontinuance of freight rail service on this line will significantly adversely affect the human environment: Discontinuance of freight rail service on this line will increase the amount of truck traffic in the Baltimore area by more than 1,286 truck loads. Diverting this much rail traffic to motor carriage will increase the consumption of fossil fuels by a very significant amount, which in turn will increase the amount of air pollutants released into the air. Since Baltimore is in a class I or nonattainment area as defined in the Clean Air Act, *FORZONE*, permitting this unwarranted increase in air pollutants would be contrary to the national public policy of preferring goods be shipped via rail whenever possible, rather than via motor carriage. Furthermore, there is a far greater risk of a catastrophic accident if the 2 million gallons of ethanol shipped to Fleischmann's's Vinegar is delivered to that facility via trucks traveling on busy Baltimore streets, rather than being delivered to that facility via rail in the middle of the night. (There is only one grade crossing between the Petitioner's rail yard and Fleischmann's's

facility. That grade crossing is protected by crossing gates and has virtually no vehicular traffic in the middle of the night, when rail deliveries to Fleischmann's occur.) And finally, putting an additional 1,286 trucks on Baltimore's busy streets definitely does **not** increase the motoring public's convenience.

#### **IV. The Petition does not comply with the requirements of Part 1152.**

20. The legal notice Petitioner ran in the Baltimore Sun did not comply with the *Newspaper publication* requirements specified in 49 CFR §1152.20(a) (4), to wit: The regulation requires the Notice of Intent to be published at least once during each of 3 consecutive weeks in a newspaper of general circulation. The Notice of Intent was only published once.

21. The legal notice Petitioner ran in the Baltimore Sun did not comply with the Form of Notice requirements specified in 49 CFR §1152.21, to wit: The legal notice did not state the reason(s) for the proposed abandonment or discontinuance; the date the line appeared on the petitioner's system diagram map; how the interests of railroad employees will be protected; what protests must contain; where a copy of the Petition would be available for inspection.

22. Petitioner failed to serve a copy of its Petition on all Significant users of the line, to wit: Petitioner failed to serve a copy of its Petition on Riffin. 49 CFR §1152.2 (l) (1) defines a Significant user as:

(l) *Significant user* means:

(1) Each of the 10 rail patrons which originated and/or received the largest number of carloads (or each patron if there are less than 10);

23. The Petition stated there were only three shippers on the line: Fleischmann's Vinegar, Imerys and Baltimore Gas and Electric. It did serve a copy of its Petition on each of these shippers. The Petition failed to state in 2004, Riffin consigned two rail cars, and in 2005, consigned eleven rail cars, to be delivered to Riffin in Cockeysville. Petitioner could argue that if the definition of a Significant user is strictly construed, then Riffin does not fit the definition of a Significant user, for Riffin has not in fact *received* any of his rail cars in Cockeysville. The Petitioner has steadfastly refused to deliver the cars to Riffin in Cockeysville. The cars presently are languishing in Petitioner's Baltimore rail yard. Riffin obtained a copy of the Petition off of the Board's web site.

#### **V. BACKGROUND INFORMATION**

24. The Petition gives an excellent history of the line. Unfortunately, it did not fully inform the Board concerning what has transpired on the line over the last two years. The Petitioner stated the line was purchased by Maryland's Department of Transportation ("MDOT") from Conrail on April 25, 1997, pursuant to an agreement dated May 1, 1990. MDOT refurbished a portion of the line, then began using that portion for commuter passenger rail service. Much of

the refurbished line was single track. Conrail retained freight operating rights, which gave Conrail the right to run freight trains on the line when the line was not being used by MDOT's light rail system. (Conrail could use the line between midnight and 5 a.m.) When Norfolk Southern purchased a portion of Conrail's assets, it acquired Conrail's freight operating rights over the line.

25. In its Petition, Norfolk Southern stated Conrail's intention was to abandon its freight operating rights *only if* the shippers on the line were able to obtain alternate transportation arrangements *and if* abandonment of freight service over the line would be *unopposed*. The Petitioner further stated the three shippers on the Line it identified, Imerys, Fleischmann's Vinegar and Baltimore Gas and Electric ("BGE"), had shifted their traffic to rail-truck transload service earlier in 2004, and that these three shippers would not oppose Norfolk Southern's Petition for Abandonment. Unfortunately, the Petitioner failed to disclose *why* these three shippers stopped using the Cockeysville Line rail service, and *why* these three shippers would not oppose Norfolk Southern's Petition for Abandonment.

26. Circa 2003, MDOT decided to double track the line. MDOT also decided the most efficient way to double track the line, was to take the line completely out of service, which it did in January, 2004. MDOT knew the shippers along the line would not be able to have their rail service while the line was out of service. MDOT also made it known that it did not want any type of freight service on the line after the line had been double-tracked, and repeatedly stated it was going to remove all of the spur-track switches. MDOT communicated with Fleischmann's Vinegar, Imerys, and BGE. MDOT informed these shippers the line would be out of service for approximately one year while the line was double-tracked. MDOT offered to subsidize the extra costs these shippers would incur due to the lack of rail service, *providing* the shippers would agree to write a letter to the Board stating they would not object to Norfolk Southern's desire to abandon rail service on the line. The shippers were in a no-win situation: They were going to lose their rail service for at least a year. They were told MDOT was going to remove all of the switches on the line which served their sidings, thereby permanently eliminating rail service. The extra cost to ship their products via truck was substantial (Fleischmann's = \$ 150,000 / year. Imerys = \$ 240,000 / year.) MDOT offered to subsidize these extra costs for 5 years, *providing* the shippers would not object to Norfolk Southern's petition to abandon freight service on the line. With no viable alternative, the shippers agreed to MDOT's demands.

27. Fleischmann's began using a siding in Canton, Baltimore City, to transload its ethanol onto tanker trucks. The tanker trucks drive 8 miles through Baltimore City to Fleischmann's facility. In 2003, Fleischmann's was shipping about 1.6 million gallons per year of ethanol to its facility. Due to increased demand for its product, today it ships approximately 2 million gallons of ethanol per year to its facility. In less than four years, its subsidy will cease. It then will either have to absorb the extra trucking costs associated with its loss of rail service, or it will close its Baltimore facility. If it closes its Baltimore facility, sixteen people will lose their jobs. Baltimore City will lose the property and income taxes its presently receives. The loss of this business would definitely **not** be convenient for Baltimore City, nor would Baltimore City find

this loss to be a necessity. In addition, shipping 2 million gallons per year of highly flammable ethanol via tanker truck through the center of Baltimore is far more dangerous than shipping this product via rail car. In a telephone conversation with Riffin, Tom Minarik, manager of the Fleischmann's Vinegar plant, indicated he is **very** unhappy with his present situation. Riffin asked if Riffin were to offer him rail service, would Minarik utilize it. Minarik unequivocally said "Yes." Fleischmann's agreement with MDOT may prohibit Fleischmann's from telling the Board that Fleischmann's really does not want to lose their rail service.

28. Imerys also began using a siding in Canton, Baltimore City, to transload its calcium carbonate slurry from tanker trucks onto rail cars. The tanker trucks are loaded at Imerys Cockeyville facility, then driven 20 miles or so to Canton, where their cargo is pumped into rail cars. The loss of its rail service has increased Imerys transportation costs by about \$240,000 per year. It too was told by MDOT that the switch for its siding would be permanently removed during the double-tracking process, and that its rail service would be permanently removed. With no viable alternative, Imerys also signed an agreement with MDOT, which compelled Imerys to write a letter to the Board saying it would not object to Norfolk Southern's abandonment petition. The loss of its rail service created another problem for Imerys: Previously, it could do a 'run' of 400-500 tons of its product, then put the product directly into rail cars as the product was produced. Today, the 'runs' cannot exceed 100 tons or so, which is the amount of product it can put directly into tanker trucks on any one day. These smaller runs are much less efficient, and further increase Imerys' cost to produce the product. When Riffin asked Tony Zivkovich, Imerys' plant manager, if Imerys would like its rail service back, his response was an enthusiastic 'yes!' Imerys, like Fleischmann's, may be prohibited by their agreement with MDOT, from telling the Board it does not want to lose its rail service.

29. Riffin proposes to file an Offer of Financial Assistance to purchase Norfolk Southern's freight operating rights. If the Board grants Riffin's request to purchase these freight operating rights, Riffin will reinstate rail freight service to Fleischmann's, Imerys, and any other shipper along the line that wants rail service, including service to Riffin's facility in Cockeyville.<sup>1</sup> The more precise position of Fleischmann's and Imerys would be: They do not object to Norfolk Southern's abandonment of its freight operating rights on the Cockeyville line, *so long as* someone else begins providing them with rail service.

30. In its Petition, Norfolk Southern stated it was filing its Petition in accordance with the previous understanding of Conrail and MDOT and in accordance with MDOT's agreements with

---

<sup>1</sup> Riffin plans to build an alternative fuels facility on property he owns adjacent to the Cockeyville line. Rail service would enable him to ship and receive his products via rail, which would be far more environmentally friendly than using trucks. If Riffin is granted permission to operate on the line, he will use vegetable oil to power his locomotives, rather than diesel. He presently uses vegetable oil to heat his home and commercial properties, to run generators (he produces his own electricity) and to run his heavy construction equipment. Using vegetable oil does not increase greenhouse gas emissions, like using fossil fuels does. (When soybean oil is burned, it releases carbon dioxide into the air. As soybeans grow, they remove carbon dioxide from the air, then convert it into soybean oil. There is no net increase in carbon dioxide emissions when soybean oil is used as a fuel.)

Imerys, Fleischmann's and BGE. This statement, at a minimum, is highly misleading. These three shippers have found alternate means of transportation, but at a very high price, and not by choice. These three shippers were coerced into giving up their rail service (the line was put out of service for a year), were coerced into signing an agreement that required them not to oppose Norfolk Southern's Petition for Abandonment, and were misled into believing the switches to their sidings were going to be removed during the double-tracking process. The Line was put back into revenue service by MDOT on December 4, 2005. All of the double-track work was completed by the middle of November, 2005. The Line south of Timonium was put back into revenue service by MDOT on December 4, 2005. **None of the spur-track switches were removed.** Thus, there is no physical reason why these three shippers could not be provided with rail service once again. What they need, is a rail carrier that is willing to provide them with rail service.

31. Furthermore, not *all* of the shippers along the Line do not oppose Norfolk Southern's Petition for Abandonment. Riffin is a shipper on this Line. He **strongly** opposes abandonment of freight rail service on this Line. His opposition to the abandonment of freight rail service on this Line is so strong, he is willing to make an Offer of Financial Assistance to acquire the freight operating rights Norfolk Southern wishes to abandon, and then to provide the freight rail service that Norfolk Southern no longer wishes to provide.

32. In its Petition, Norfolk Southern stated it had a transload facility on its main line about one mile from the end point of the subject Line. It implied the three shippers on the Line could utilize that transload facility. This implication is misleading. Fleischmann's Vinegar attempted to use this facility to transload its ethanol onto tanker trucks. Fleischmann's learned hazardous materials may not be transported on the road segment which connects this transload facility with a nearby Interstate highway. BGE's attempts to obtain a transload site for its utility poles did not meet with success, which is why it now transports its utility poles via truck the entire distance from where the poles are produced to its pole yard in Cockeysville. Likewise, Imerys was unable to utilize the transload facility mentioned in Norfolk Southern's Petition. Riffin also would not be able to utilize Norfolk Southern's transload facility.

33. One of the statutory criteria for granting an exemption is that an abuse of market power does not occur. While Norfolk Southern may not have abused its market power, MDOT certainly has. When MDOT decided to put the Line out of service for a year (without first obtaining permission from the Board), that one-sided decision certainly could be construed as an abuse of its market power. Telling the shippers on the Line that their siding switches were going to be removed, thereby denying them access to the Line (without obtaining permission from the Board), and telling the shippers that they had no recourse regarding this decision, certainly would constitute an abuse of market power. Telling the shippers if they wanted MDOT to subsidize their increased transportation costs while the Line was out of service, they *had* to sign an agreement agreeing not to oppose Norfolk Southern's Petition for Abandonment, also would constitute an abuse of market power. Especially if that agreement prohibited the shippers from revealing to the Board *why* they were agreeing not to oppose the Petition for Abandonment, and

further prohibiting them from making an Offer of Financial Assistance or prohibiting them from supporting an Offer of Financial Assistance made by someone else, such as Riffin. The agreement these three shippers entered into may actually be void, for the shippers were coerced into signing the agreements, and the agreements may be contrary to public policy. (It is federal public policy to permit shippers or other interested parties to make Offers of Financial Assistance when a rail carrier proposes to abandon rail service. Agreements that contravene public policy are void *ab initio*.)

WHEREFORE, for the foregoing reasons, Riffin OPPOSES Norfolk Southern Railway's Petition for Exemption, and its request for an exemption from the Offer of Financial Assistance provisions of 49 U.S.C. §10904, and would pray that the Board DENY the Petition for Exemption, and DENY the request for an exemption from the Offer of Financial Assistance provisions of 49 U.S.C. §10904;

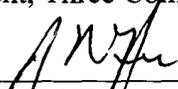
OR IN THE ALTERNATIVE, that the Board grant the Petition for Exemption *providing* the Board simultaneously approve transfer of Petitioner's freight operating rights to another rail carrier, thereby ensuring freight rail service on the Cockeyville line is not terminated.

Respectfully submitted,

  
James Riffin

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of January, 2006, a copy of the foregoing Protest / Opposition of James Riffin to Petition for Exemption and to Abandonment of Rail Freight Service was served by first class mail, postage prepaid, upon James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Law Department, Three Commercial Place, Norfolk, VA 23510-9241.

  
James Riffin

## AFFIDAVIT OF JAMES RIFFIN

1. I am over the age of eighteen and am competent to testify to the matters stated in this Affidavit.

2. I spoke with Tom Minarak, the plant manager of Fleischmann's Vinegar, located on the Cockeyville Line in Baltimore, Maryland, a number of times during December, 2005 and January, 2006. During these conversations, Mr. Minarak stated his plant uses about 2 million gallons of ethanol per year, which is more than the quantity he used in 2004. He stated his plant has 16 employees. He stated that when the Maryland Department of Transportation ("MDOT") put the Cockeyville Line out of service in January, 2005, he began utilizing a siding in Canton to transload his ethanol from rail cars into tanker trucks. The rail cars he uses hold 28,000 gallons of ethanol. The tanker truck he uses holds 7,000 gallons. The trucks are driven 8 miles through Baltimore City to his facility on Cold Spring Lane in Baltimore City. He said it costs approximately \$150,000 per year extra to truck the ethanol from Canton to his facility. He said he had entered into an agreement with MDOT which mandated that he file a letter with the Surface Transportation Board ("Board") saying he would not object to Norfolk Southern's Petition to Abandon rail service on the Cockeyville Line. The agreement with MDOT stipulates MDOT will subsidize a portion of his extra trucking costs for approximately 5 years. (The subsidy is for a fixed number of gallons of ethanol.) Prior to signing the agreement with MDOT, Mr. Minarak had been told the switch for his siding track was going to be removed when MDOT double-tracked the Cockeyville Line, that MDOT was going to put the Cockeyville Line out of service while the line was double-tracked, and that beginning in January, 2005, he no longer would have rail service. The loss of his rail service was to be permanent. He further stated that he could not use Norfolk Southern's North Avenue transload facility (located a few miles south of his facility), due to a restriction which does not permit trucking hazardous materials on the road which provides access to the transload facility. He stated he does not want to lose his rail service, and that if Riffin were to offer him rail service, he would utilize it.

3. I spoke with Tony Zivkovich, the plant manager of Imerys, located on the Cockeyville Line in Cockeyville (Texas), Baltimore County, Maryland, a number of times during December, 2005 and January, 2006. During these conversations, Mr. Zivkovich stated his plant produces about 200 rail-car loads of calcium carbonate slurry per year. He stated that when the Maryland Department of Transportation ("MDOT") put the Cockeyville Line out of service in January, 2005, he began utilizing a siding in Canton to transload his slurry from tanker trucks into rail cars. Each tanker truck holds 20-22 tons of slurry. The trucks are driven 20 miles from his facility in Cockeyville to the transload facility in Canton, Baltimore City, Maryland. He said it costs approximately \$240,000 per year extra to truck the slurry from his

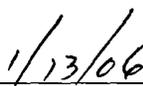
Cockeysville facility to the Canton transload facility. He said he had entered into an agreement with MDOT which mandated that he file a letter with the Board saying he would not object to Norfolk Southern's Petition to Abandon rail service on the Cockeysville Line. The agreement with MDOT stipulates MDOT will subsidize a portion of his extra trucking costs for approximately 5 years. Prior to signing the agreement with MDOT, Mr. Zivkovich had been told the switch for his siding track was going to be removed when MDOT double-tracked the Cockeysville Line, that MDOT was going to put the Cockeysville Line out of service while the line was double-tracked, and that beginning in January, 2005, he no longer would have rail service. The loss of his rail service was to be permanent. He further stated that he could not use Norfolk Southern's North Avenue transload facility (located a few miles south of his facility). He stated he does not want to lose his rail service, and that if Riffin were to offer him rail service, he would utilize it.

4. In 2004, I prepaid the freight to have two rail cars shipped from Vancouver, B.C. Canada to Cockeysville, Maryland. Canadian Pacific shipped the cars from Vancouver to Chicago. Norfolk Southern was paid to ship the cars from Chicago to Cockeysville. When the cars arrived in Baltimore, Norfolk Southern refused to ship the cars from its Bayview yard to Cockeysville. In 2005, I prepaid the freight to have 3 flat cars shipped from Vancouver, B.C. Canada to Cockeysville, Maryland. BNSF shipped the cars from Vancouver to Chicago. Norfolk Southern was paid to ship the cars from Chicago to Cockeysville. When the cars arrived in Baltimore, Norfolk Southern refused to ship the cars from its Bayview yard to Cockeysville. In 2005, I prepaid the freight to have 6 tank cars shipped via Norfolk Southern from York, Pennsylvania to Cockeysville, Maryland. When the cars arrived in Baltimore, Norfolk Southern refused to ship the cars from its Bayview yard to Cockeysville. The flat cars and tank cars are still sitting in Norfolk Southern's Bayview yard. Norfolk Southern still refuses to ship the cars to Cockeysville.

5. I own a commercial property in Timonium, adjacent to the Cockeysville Line, and several commercial properties in Cockeysville, adjacent to the Cockeysville Line. I desire to have rail service, to receive and ship commodities via rail. I also desire to receive rail cars and locomotives at my Cockeysville site. Trucking rail cars and locomotives from Norfolk Southern's Bayview Yard or North Avenue transload facility to Cockeysville would be nearly impossible. I plan to use my Cockeysville facility to produce alternative fuels (vegetable oil). I presently use vegetable oil to heat my house and Cockeysville facility, and to run the diesel engines in my Bobcat, hydraulic excavator, and electric generator.

I SOLEMNLY AFFIRM under the penalties of perjury and upon personal knowledge that the contents of the foregoing Affidavit are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
James Riffin

  
\_\_\_\_\_  
Date

STATE OF MARYLAND, <sup>HARFORD</sup>~~BALTIMORE~~ COUNTY, to wit:

I HEREBY CERTIFY, that on this 13<sup>th</sup> day of January, 2006, 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 Affidavit, and who acknowledged that he executed the same, for the purposes therein contained.

AS WITNESS my hand and notarial seal.

My commission expires: 6-1-2009

*Kathleen C. Etzel*

Notary Public

KATHLEEN C. ETZEL  
Notary Public, State of Maryland  
My Commission Expires: June 1, 2009

