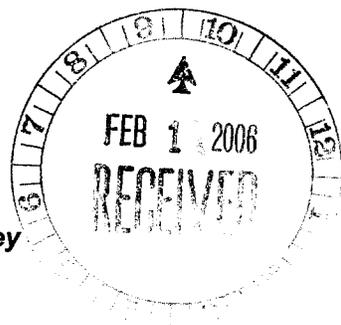




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Honorable Vernon A. Williams, Secretary
 Surface Transportation Board
 1925 K Street, N.W.
 Washington, DC 20006.

Re: STB Docket No. AB-290 (Sub-No. 237X), Norfolk Southern Railway Company - Abandonment Exemption - in Baltimore County, MD

Dear Mr. Williams:

Norfolk Southern Railway Company ("NSR") requests the Board to accept this letter in response to the untimely second or "supplemental" protest to NSR's petition for exemption in the subject proceeding filed January 27, 2006 by James Riffin ("Riffin").

On January 3, 2006, the Board served notice in the subject proceeding that on December 14, 2005, NSR filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903-05 to abandon its freight operating rights and rail freight service over 12.8 miles of a line of railroad between milepost UU-1.0 at Baltimore, MD, and milepost UU-13.8 at Cockeysville, MD (the "Line"). NSR sought exemption from the provisions of 49 U.S.C. 10904 [offer of financial assistance ("OFA") procedures] and 49 U.S.C. 10905 [public use conditions] because the Line's right-of-way is owned by the Maryland Department of Transportation ("MDOT"), which will continue to use the Line for the public purpose of providing light rail commuter passenger service through the Maryland Transit Administration ("MTA"). Replies to NSR's petition were due on or before January 23, 2006. The Board stated that a final decision in this proceeding will be issued by April 3, 2006.

Mr. Riffin filed with the Board a timely protest or opposition to NSR's petition for exemption, dated January 13, 2006. NSR received a copy of the filing on January 17, 2006. In a letter dated January 27, 2006, NSR asked the Board to consider NSR's

response to Mr. Riffin's protest. NSR faxed that letter to the Board just after business hours, about 5:10 p.m., on January 27 and sent an original and 10 copies to the Board via DHL Express for delivery yesterday. NSR pointed out that Riffin had made various erroneous, misleading or immaterial statements in his protest that were prejudicial to NSR if left uncorrected. NSR gave reasons and cited authority for this request. Riffin has now filed an additional lengthy "supplement" to his protest and opposition statement. Only a small part of the filing can be justified as a correction of errors and none of it can be considered responsive to NSR's January 27, 2006 letter. Therefore, most of the filing is both untimely and unjustified despite the short length of time that has passed since the due date for protests. The same rationale presented in NSR's earlier letter supports the Board's acceptance of this letter into the record.

As pointed out in our previous letter in response to Mr. Riffin's first filing, Mr. Riffin is not a railroad customer and can not be considered a shipper on the Line.

Mr. Riffin takes a few poorly chosen words in the historic report describing the holder of the "title" to the Line rather than the holder of the freight easement and freight operating rights in recent years out of context and constructs a clearly erroneous argument for dismissal or denial of the petition on them. Riffin argues that NSR may not have sufficient interest in the Line to warrant the grant of exemption for an abandonment because of two mis-statements about Conrail and NSR's "title" to the Line, whereas they only continued to hold a freight operating easement and exclusive freight rights after MDOT acquired the physical assets of the Line in 1997. The accurate information on the passage of title but retention of the freight easement and freight operating rights is stated in the petition and is evident in the entire context of the petition, including the appended report where the possibly confusing words were used.

Inconsistently, in the same sections of his filing, Riffin also argues that the earlier transactions between MDOT and Conrail may have placed a common carrier obligation or residual common carrier obligation on MDOT or MTA, especially because the transaction was not submitted to the Board for approval or dismissal after review of the retained operating rights and the operating agreement for the Line. Obviously, Conrail and NSR could not have both retained title to the Line and passed a common carrier obligation to MDOT or MTA. The facts are clearly stated in the body of the petition. The out of context statements, errors and inconsistencies in Mr. Riffin's argument are apparent. While NSR assumes the facts are stated clearly enough in the petition and the error in Mr. Riffin's untimely additional argument is apparent, NSR nonetheless would be prejudiced if these out of context statements were allowed into the record without this correction or clarification.

This letter is still timely and will not delay or hinder the processing of this case because it is submitted only eight days after the due date for protests, and only four days after Mr. Riffin's untimely filing. Mr. Riffin should not be permitted to submit meritless filings or new arguments into the record after the due date for protests without correction or clarification. He certainly must not be granted any relief by the Board on

such basis.

As far as we can determine, Mr. Riffin correctly asserts that Conrail (or more accurately MDOT) did not file a notice or petition for exemption from the prior approval requirements of the Act to the ICC or the Board for the sale of the Line to MDOT. However, this does not necessarily mean the transaction did not meet the *State of Maine* case criteria for transfer of the physical assets of the Line outside the Board's jurisdiction. It does not mean that MDOT or MTA, which have never provided or held themselves out to provide freight service over the Line, acquired a common carrier obligation to provide that service simply because MDOT acquired the physical assets of the Line. Indeed, Conrail's reservation of an exclusive freight easement and exclusive freight operating rights over the Line also shows that neither of these State agencies acquired a freight service obligation with respect to the Line.

More importantly, Conrail's apparent failure to have the transaction submitted for ICC or STB review has no bearing on the merits of the abandonment petition at this much later date. Since the petition meets the criteria for exemption for the abandonment of the freight operating easement and freight operating rights, it should be approved without MDOT or MTA having to submit the prior transaction with Conrail for purchase of the physical assets of the Line for review or to be found to have a residual common carrier obligation for freight transportation over the Line.

Conrail, and later NSR, operated over the Line and served their customers on the Line for about eight years after MDOT bought the Line and MTA subsequently instituted its light rail passenger service over it. If either Conrail or NSR had not met its common carrier obligation to provide service over the Line, it is safe to assume one of the shippers would have complained to the Board or even to a court. Since Conrail and NSR provided freight service to shippers on the Line without material interference by MDOT or MTA or formal complaint by the shippers for that lengthy period of time, Riffin's argument merely amounts to speculation about what could have occurred if the *State of Maine* criteria showing the Board had no jurisdiction over the transfer of the Line's assets had not been met. In fact, freight operations over the Line continued until early last year when MDOT arranged for alternate service for the remaining shippers on the Line so that the Line could be closed for construction of the second track. Thus, Riffin can not show that the *State of Maine* criteria were not met by the operating agreement between Conrail, and later NSR, and MDOT, or that MDOT or MTA should be viewed as taking on a common carrier obligation to provide freight service over the Line. NSR has petitioned for exemption to abandon the entire freight common carrier obligation because it is Conrail's (and PRR's) successor to that entire obligation.

The history of the ownership and operation of the Line is easily summarized. MDOT and Conrail entered into a purchase and sale agreement for the Line in 1990, but did not close the transaction until 1997. While NSR's historic report states that Conrail "held title" to the Line until NSR acquired it 1999, the words must be taken in context and clarified by the statement of facts in the petition to indicate that Conrail held

“title” to the reserved freight operating easement and exclusive freight operating rights until NSR acquired them through its lease and operation of Conrail’s newly-formed subsidiary, Pennsylvania Lines LLC (PRR). Clearly, MDOT acquired the physical assets of the Line in 1997 but Conrail retained a freight operating easement and freight operating rights, the most important interests in the Line insofar as Board jurisdiction is concerned. Conrail assigned that freight easement and the freight rights to PRR for lease and operation by NSR in 1999. NSR acquired the rights directly when it merged PRR into NSR in 2003. While neither Conrail nor NSR “held title” to the Line itself, as contrasted with the freight operating easement, after 1997, there is no inconsistency in MTA having acquired the physical property and assets (right-of-way and improvements) while Conrail and NSR continued to hold title to a reserved freight easement and to the freight operating rights. Nor does this mean that MDOT acquired any sort of residual common carrier obligation by acquiring the physical assets, especially when neither MDOT nor MTA materially interfered with freight operations on the Line.

NSR specifically stated in the petition that this petition for exemption was filed for the “abandonment” of the Line, even though NSR did not acquire the physical assets comprising the Line from Conrail, because NSR will be abandoning the freight operating easement and freight rights, which it did acquire, as well as the entire common carrier obligation to provide freight service over the Line. If MDOT or MTA had acquired a common carrier obligation to provide freight service over the Line in 1997, which as we note above they did not, NSR could not file for an exemption for the complete abandonment of that obligation as it now does.

Riffin’s argument is based on both a misinterpretation and a distortion of the language in NSR’s filing. Riffin cites several cases that are not on point and distinguishes cases that neither NSR nor MDOT cited in support of their positions. Riffin’s argument on this point provides no basis for dismissing or denying the petition for exemption and should be rejected.

Most of Riffin’s filing consists of citations and arguments that Mr. Riffin believes support his opposition to NSR’s request for exemption from the application of the Offer of Financial Assistance (“OFA”) provisions of 49 U.S.C. 10904 to the abandonment of the subject Line. His argument is unsupported by material facts and is based on such constructs or hypothetical examples such as his interpretation of the carloads that would have moved over the Line in 2005 if the shipments received by the customers on the Line, as he says they told it to him, had been able to move over the Line. As Mr. Riffin vigorously pointed out in his first filing, the Line was closed for much of 2005 because MTA was putting a second track on the right-of-way so the carloadings he cite could not have actually moved over the Line.

Mr. Riffin misinterprets the authority that he cites and thus deduces requirements for the Board’s exercise of authority to exempt abandonments from the provisions of 49 U.S.C. 10904 that do not exist. Moreover, he is wrong that the Board only has granted exemptions from the provisions of 49 U.S.C. 10904 in unopposed cases. See e.g.

Norfolk and Western Railway Company – Abandonment Exemption – In Cincinnati, Hamilton County, OH, STB Docket No. AB-290 (Sub-No. 184X)(STB served May 13, 1998).

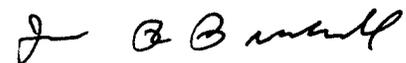
The three remaining customers on the Line have diverted their railroad traffic to alternative modes of transportation. Much of the freight still has a long haul via railroad and is delivered by truck after transloading in the Baltimore area. Fewer than one car per day on average would move over the Line even under Mr. Riffin's scheme that would involve the customers on the Line apparently violating their agreements with MDOT and using his proposed freight service if he were able to offer such freight rail service over the Line. Under these circumstances, MDOT should not be required to configure, maintain and operate the Line in order for Mr. Riffin's speculative and unneeded freight service to co-exist with its light rail passenger service.

Except to the minor extent that Mr. Riffin makes a few corrections to his previous statement, which NSR does not view as improper so soon after the filing deadline date, Mr. Riffin's second protest is untimely, mostly irrelevant and contains certain errors that would be prejudicial to NSR if allowed into the record without correction or clarification. NSR should not be required to watch Mr. Riffin's endless stream of filings without being able to correct or clarify those few points that might support a plausible argument by Mr. Riffin if they were only correct or complete. NSR's petition also should not be deemed insufficient merely because Riffin, a person of doubtful standing or interest with respect to the Line, and certainly not a legitimate shipper or receiver of freight, continues to file pleadings that are untimely. If the Board accepts Mr. Riffin's additional and untimely statement, in turn, NSR submits that neither Mr. Riffin nor any party will be prejudiced by the Board's further acceptance of this letter into the record nor will the Board's handling of this matter be delayed or hindered in view of the April 3, 2006 decision date deadline.

While Mr. Riffin's further statement should not be accepted into the record, if it is accepted, it should only be accepted subject to the correction or clarification provided in this letter. He has presented no basis upon which the Board should deny or dismiss the petition. He should not be allowed to use the Board's processes to undermine NSR's petition, mainly to further his impractical short line railroad and dinner or excursion train scheme.

We appreciate your handling and consideration of this matter.

Yours very truly,



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