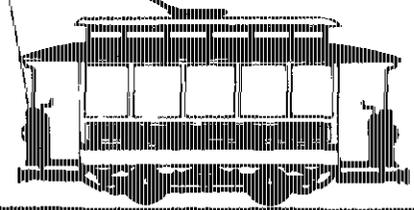


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BALTIMORE STREETCAR MUSEUM, INC.

Founded 1966

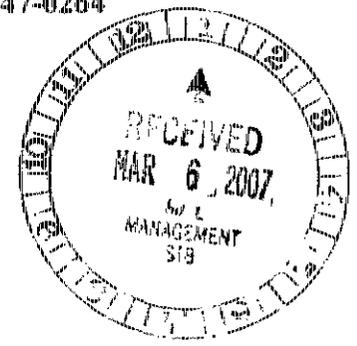


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March 6, 2007

Via First-Class Mail
Department of Transportation
Surface Transportation Board ("STB")
395 E. Street S.W.
Washington, D.C. 20423-0001
Attn: The Honorable Vernon A. Williams, Secretary

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**Re: STB Finance Docket No. 34982
Petition to Revoke Exemption Under 49 U.S.C. 10502(d) filed by the Baltimore Streetcar Museum in protest of the Verified Notice of Exemption Under 49 CFR 1150.41 filed by James Riffin d/b/a The Northern Central Railroad ("NCR") – Additional Comments by BSM**

Dear Mr. Williams:

I am writing to supplement the filing by the Baltimore Streetcar Museum (BSM), dated February 19, 2007, to further protest the Verified Notice of Exemption filed by the Northern Central Railroad (NCR), and in response to NCR's Motion for Determination dated February 20, 2007.

The BSM contends that Mr. Riffin's comments to the subject docket contain numerous additional false and misleading statements. Further, BSM renews its request, as set forth in detail in its February 2, 2006 Petition to Revoke Exemption, that this matter be dismissed in its entirety with prejudice. In further support thereto, BSM states as follows:

- BSM Disputes that Applicant James Riffin d/b/a The Northern Central Railroad is a Class III Rail Carrier: NCR alleges that it is a Class III carrier based on the findings of STB Docket No. AB-55 (Sub-NO 659X) and STB Finance Docket NO. 34963. NCR has provided no evidence whatsoever that any rail properties in which Mr. Riffin or NCR has an actual or apparent interest in are in any way connected with the national railroad system, which is a requirement to be an operating Class III railroad. Otherwise, Mr. Riffin would be at best the operator of an insular railroad(s). In addition, Mr. Riffin has not provided any evidence of the commercial viability of these railroads (most of which are apparently small spurs that are currently inactive). BSM continues to maintain that James Riffin d/b/a The Northern Central Railroad is not a Class III rail carrier.

- BSM Disputes that the PRR Acquired the Entire Portion of the Line that is the Subject of this Proceeding: NCR has falsely alleged in Paragraph 4 of its February 20, 2007 Motion for Determination that the PRR acquired the portion of the line which is the subject of this proceeding. This is entirely untrue – NCR’s original petition in this matter concerns a rail spur that runs the length of Falls Road from approximately North Avenue to 29th Street. Based on its research, BSM does not dispute that the Pennsylvania Railroad (PRR)/Penn Central (PC) continued to operate an industrial siding to the Morgan Millworks.

At the time they received carload freight Morgan was located just south of the North Avenue Bridge. However, they closed that facility and moved away from the Jones Falls Valley many years ago. Ironically, the last customer to receive rail freight service on this industrial siding was actually the Baltimore Streetcar Museum itself! BSM received railroad ties delivered on flatcars in the 1970’s for the construction/expansion of our present demonstration trolley track. This railroad siding was deemed unnecessary after the Morgan Millwork closed and BSM had no further need for rail service upon completion of the track project.

PC/Conrail/Amtrak removed the switch that connected the siding with the general railroad system, and most of the rail and other track materials were removed for the construction of an office building/warehouse for Amtrak (which was built over the right-of-way) and the Jones Falls Valley bike trail. The former Morgan Millworks Building is now used as a rehearsal studio for rock and roll bands and other commercial offices.

In summary, the portion of the former Maryland and Pennsylvania track on the west side of Falls Road did not extend significantly beyond the B&O Bridge, as it was only a switching lead to allow a locomotive and several cars to reverse direction and enter the Morgan building. It certainly did not extend as far north as 29th Street, or include the switch back to the CSXT (B&O) Railroad. There is no evidence that the Pennsylvania Railroad ever gained rights to the right-of-way in dispute in this case, the right to cross over BSM’s track, or establish an interchange with CSXT (B&O) at this location. Therefore, the portion of the line in the Jones Falls Valley that was abandoned by the Ma & Pa and thereafter acquired by the City of Baltimore, and leased by BSM, is truly an abandoned railroad. The few lengths of jointed rail and fragments of a switch located adjacent to the pavement of Falls Road described by Mr. Riffin’s filing remain because the value in scrap would most likely not cover the cost of their removal and remediation of the street.

Mr. Riffin has, therefore, incorrectly filed his original petition under 49 U.S.C. 10902, which is the provision applicable only to existing lines of railroad, not abandoned railroad right-of-way that have come under new ownership. Mr. Riffin’s entire filing is therefore false and misleading in that regard. In addition, Mr. Riffin goes to great lengths to argue that because neither the Pennsylvania Railroad nor Penn Central formally petitioned the ICC for abandonment that somehow the industrial siding that serviced the Morgan Millworks was never abandoned. NCR fails to note, however, that the ICC did not cover this type of small industrial siding in their order for abandonment. Either way, the

presence of continued rail service on this small industrial siding still does not change the fact that the Ma & Pa Railroad Abandoned the Maryland Portion in 1958, and sold its property to the City of Baltimore. For the record, the Baltimore Streetcar Museum has no interest in restoring rail service to our facility, or receive track materials by rail.

- Until Recently, An Interchange Between the NCR and CSXT (B&O) Existed On The West Side Of The Jones Falls River: Based upon the examination of old aerial photographs of the area, and NCR's Exhibit 3, attached to the February 20, 2007, filing, it verifies that an interchange between B&O and the Northern Central Railroad once existed on the west side of the Jones Falls River at a point near the old B&O North Avenue Tower. Attached hereto as Exhibit(s) 1 and 2 are old aerial photographs showing the crossing (diamond and interchange switch) between the B&O and Northern Central Railroads (Source: United States Library of Congress). It is clear from CSXT's filing that restoration of a connection in this area is strongly opposed by CSXT, and we join in that opposition; however, to the extent the STB is contemplating providing any exemptions or rights to NCR with regard to an interchange between Norfolk Southern and CSXT, we would respectfully argue that the location near the site of the former North Avenue Tower would be a more appropriate connection point.
- NCR Proposes to Build New Railroad Right of Way that Did Not Exist in 1958: Mr. Riffin's original Acquisition and Operation Exemption was filed under the erroneous presumption that the proposed right-of-way was an existing railroad. Even if we assume that the original Ma & Pa was an existing right-of-way, Mr. Riffin's hand sketches indicate a substantially different track alignment configuration from what existed. A close examination of Mr. Riffin's diagram in his February 20, 2007 filing (attached hereto as Exhibit 3) indicates that the proposed interchange between the Ma&Pa and B&O right-of-ways would cross Falls Road (and BSM's streetcar tracks), which was substantially different from the original configuration of the Ma & Pa Railroad. The original interchange (on a steep grade or ramp) between the Ma&Pa and B&O actually originated on the east side of Falls Road (where BSM's demonstration track is located), not the west side of Falls Road, as NCR proposes. As such, his proposed interchange track would, in part, be an entirely new railroad line; as such, the exemption which is based exclusively on 49 U.S.C. 10902 (applies only to existing railroads) must be denied.
- Adverse Impact on BSM: Mr. Riffin states in Paragraph 12 of his letter dated February 20, 2007, that "the Applicant does not believe this crossing would significantly impact the BSM's use of its trolley tracks," as "BSM uses its trolley tracks for excursion purposes on Sunday afternoons." Mr. Riffin's dismissive comments ignore the fact that BSM is open on Saturdays and Sundays from Memorial Day weekend through the end of October from 12-5. In addition, BSM has become a popular venue for wedding receptions and birthday parties, most of which are scheduled outside of regular visiting hours (some wedding receptions, parties and special events are held late at night, others in the morning). In addition, BSM hosts bus tours and school field trips on Wednesdays. On most Wednesdays during the summer month there are scheduled streetcar operations. In addition, maintenance work on the track and streetcars are performed on an as-needed basis on other days of the week.

BSM Opposes Any Shared Use Of the Property It Leases From The City Of Baltimore With A Railroad: Currently, The Baltimore Streetcar Museum is insular and not part of the general railroad system entity. Therefore, BSM is exempt from regulation by the Federal Railroad Administration (FRA). If the subject petition were granted, the BSM would lose its status of being insular because there would be one or more crossings at grade with the NCR. BSM anticipates that this would have a devastating impact on the museum. A similar situation would exist as the Maryland MTA Light Rail Line and Norfolk Southern Railway in Baltimore. The joint policy between the Federal Transit Administration (FTA) and FRA prohibits unlimited joint use of tracks between conventional railroads and light rail vehicles (including trolleys). Once construction of the NCR's line begins, BSM would be forced to shut down all operations until the FRA's Railroad Safety Board grants a petition for waiver of compliance. From filing of a petition to a decision by the Safety Board can take up to six months.

In addition, the BSM's trolley line would be taken out of service, possibly for months, to construct the NCR's interchange. Thus, causing the museum to cease operating for an additional indeterminate period of time. In addition, the BSM's insurance premiums (which are reasonably low because the track is located on private right-of-way) would most likely suffer a substantial increase as a consequence of the safety risk posed by a crossing at grade. This certainly is not in the best interest of railroad safety.

In summary, it is an entirely false statement for NCR to claim that its petition would have only a minimal impact on BSM; quite the opposite, we strongly believe that the building of a railroad interchange at or near the City of Baltimore's Department of Public Works facility (former Ma & Pa roundhouse) would cause irreparable harm to the museum and may cause it to cease operating entirely.

- Serious Engineering Flaws: In reviewing Mr. Riffin's proposed sketches and diagrams, it is apparent that several engineering flaws exist in his proposal that should cause serious concern to STB regarding the feasibility of this project. It is noted that there are significant changes in the sketches provided to the docket by Mr. Riffin between the initial filing, and his response to the comments by the BSM. One significant change is the addition of a new railroad bridge across the Jones Falls River. Some of the engineering concerns are:
 - **28th Street Bridge Pillar:** Assuming that NCR's proposed drawing is the basis for his request for exemption, it is clear that any track built on the west side of Falls Road, in order to have sufficient clearance to connect with the former B&O, would be blocked by a large concrete pier that supports the 28th Street bridge. This column did not exist at the time of the Maryland and Pennsylvania Railroad's abandonment. In addition, Potts and Callahan (a construction company) own a significant portion of the remaining property in the valley that would also likely be substantially affected. There are buildings and equipment maintenance facilities in the way of an alternate right-of-way to avoid the 28th

Street Bridge column.

- **Diamond Crossing over BSM Tracks:** BSM's tracks are Baltimore Broad Gage (5 feet, 4½ - inch gage vs. 4 feet, 8 ½ inch) an entirely different type of rail frog (flange bearing vs. tread bearing). A diamond crossing would have to be custom designed and fabricated. Also, it is highly doubtful that, based on the low angle of the crossing at grade between the two lines, a custom diamond crossing could even be fabricated, and would be a high maintenance piece of special track work. Installation of a section of gauntlet track with dual gage frogs is also infeasible. In addition, realignment of either the BSM's or NCR's track to make the angle of the crossing more feasible from an engineering perspective would cause an extreme hardship to the Baltimore City Highway Department Yard, as it would be located directly in front of the entrance to the facility and loading area for the salt dome.
- **North Avenue Bridge Clearance:** At the time of the abandonment of the Maryland and Pennsylvania Railroad the common dimension of a freight car was an AAR Plate "B". It does not appear that there would be proper clearance under the arch of Falls Road to clear a currently common AAR Plates "F" or "H" freight car using the proposed alignment. Moving the centerline of the track to gain overhead clearance under the bridge arch would put the railroad line nearly in the center of the northbound lane of Falls Road. With the curve required to enter Amtrak's property and connect with the NS (Amtrak's Northeast Corridor) a long grade crossing would be constructed that would resemble "street running".
- **Interference with Sewer Project:** In 2005 the City of Baltimore installed a new 48-inch diameter plastic high-pressure sewer main that runs under Falls Road all the way up the valley. This new sewer main is buried very shallow under falls road, and was not designed to support the weight of a locomotive or freight car. Therefore, any proposed alignment of railroad track that crosses or runs over the top of the sewer main would require removal of the new pavement and excavation of the pipe to install substantial reinforcement to preclude rupture of the pipe.
- **Floodway/Floodplain Issues:** Most of the right of way is located in an existing 100-year floodplain (see Ziger/Snead Study attached to BSM's initial petition to revoke exemption). Several storm and hurricane floods (including Hurricanes Agnes and David, which caused substantial flooding in the Jones Falls Valley) undermined a significant portion of the original Ma & Pa right-of-way near the North Avenue Bridge. The remaining segments of jointed rail and switch parts identified by Mr. Riffin are at a location that was scoured by the river to the point where substantial fill material is required to prevent a car or locomotive from overturning into the river. Again, realignment of the track away from the river would put the railroad in the center of the northbound lane of Falls Road (MD State Route 25).
- **Serious Environmental Concerns:** If track were built along the west side of Falls Road it would abut almost directly with the retaining wall for the Jones Falls River. In the

event of a derailment or collapse of the retaining wall there is a significant risk of the car or locomotive overturning into the Jones Falls River. Any release of diesel fuel, engine lubricating oil, chemicals or other hazardous materials directly into the Jones Falls River (which flows directly into the Inner Harbor and downtown Baltimore) could have a devastating impact on the Chesapeake Bay watershed. In addition, if an empty freight car derailed and overturned into the Jones Falls, there are several pipe culverts that carry the water under Amtrak's Northeast Corridor adjacent to the proposed track alignment. If the freight car blocks the water flow it may cause substantial flooding of the NEC, the Amtrak tunnel, and Penn Station. "Debris Catchers" were installed upstream of the BSM to preclude trees and other floating items from blocking these culverts. However, no protection exists against a derailed freight car blocking the water flow.

For all of the reasons set forth herein, BSM concludes that NCR's filing was improperly based on the assumption that there was an existing railroad on the property. In fact, the property at issue has been owned by the City of Baltimore for many years. It is leased in part to the Baltimore Streetcar Museum and also partly used as a bicycle/walking trail.

There are no customers in the Jones Falls Valley that would benefit from rail service. BSM protests the use of a "Secret List" of potential freight customers if used in making this decision. The names and addresses of all potential customers should be placed into the docket as a matter of public record. How could a Certificate of Convenience and Public Necessity be crafted if there are no verified freight customers? In addition, since there are no businesses in the Jones Falls Valley that could use railroad freight service, the only alternative is the construction of a rail-to-truck transloading facility. Mr. Riffin never discussed this type of facility in any of his filing, nor identified a potential location for one. There are only three possible locations, on land currently utilized by the BSM, The City of Baltimore Department of Public Works, or Potts and Callahan.

The engineering challenges presented are substantial and have not been addressed by NCR. None of the sketches or diagrams were to scale, and there is no evidence that Mr. Riffin even reviewed the maps (topographical, tax, or city planning) of the property that are readily available. NCR proposes to install a new rail configuration to access the interchange (ramp) with the former B&O line, but filed under the wrong statute. BSM contends that NCR has by-passed all normal procedures for acquiring and operating a viable railroad, and that NCR has attempted to improperly use the exemption process to attempt to gain rights to the long-defunct Ma&Pa yard, and could cause great harm to the City of Baltimore and BSM if so granted.

BSM concludes its remarks with the following – NCR filed the original petition without providing notice to any interested parties whatsoever. NCR has refused to provide verification of the commercial viability of this project, will not on the basis of it being proprietary. BSM contends that as a matter of fairness and public policy NCR's exemption must be denied. Such information must be provided to the docket, as if exemption is granted to NCR it could be the basis for significant harm to BSM, the City of Baltimore, CSXT and Norfolk Southern Railway. BSM also renews its prior arguments raised in the filing of February 2, 2007, and January 31, 2007, and hereby incorporates the arguments of

Baltimore Streetcar Museum, Inc.

By: 
Christopher M. McNally, Esq.

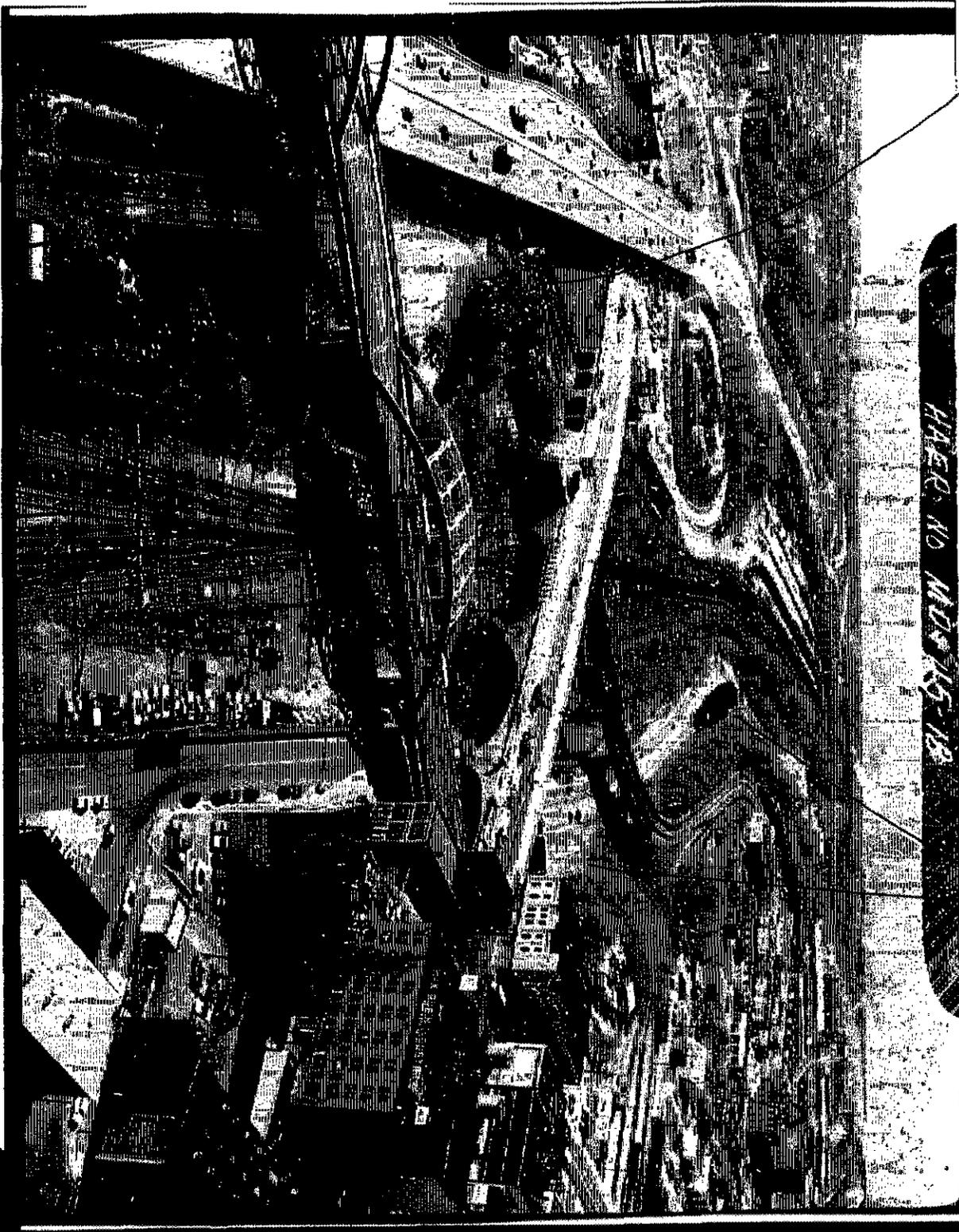
cc: James Riffin d/b/a The Northern Central Railroad (Via Certified Mail)
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Board of Trustees (Via E-Mail)



Near 1850 Interchange

HAERS RD

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tabbler
EXHIBIT
1



Form 18:0/NER Interchange

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EXHIBIT
2

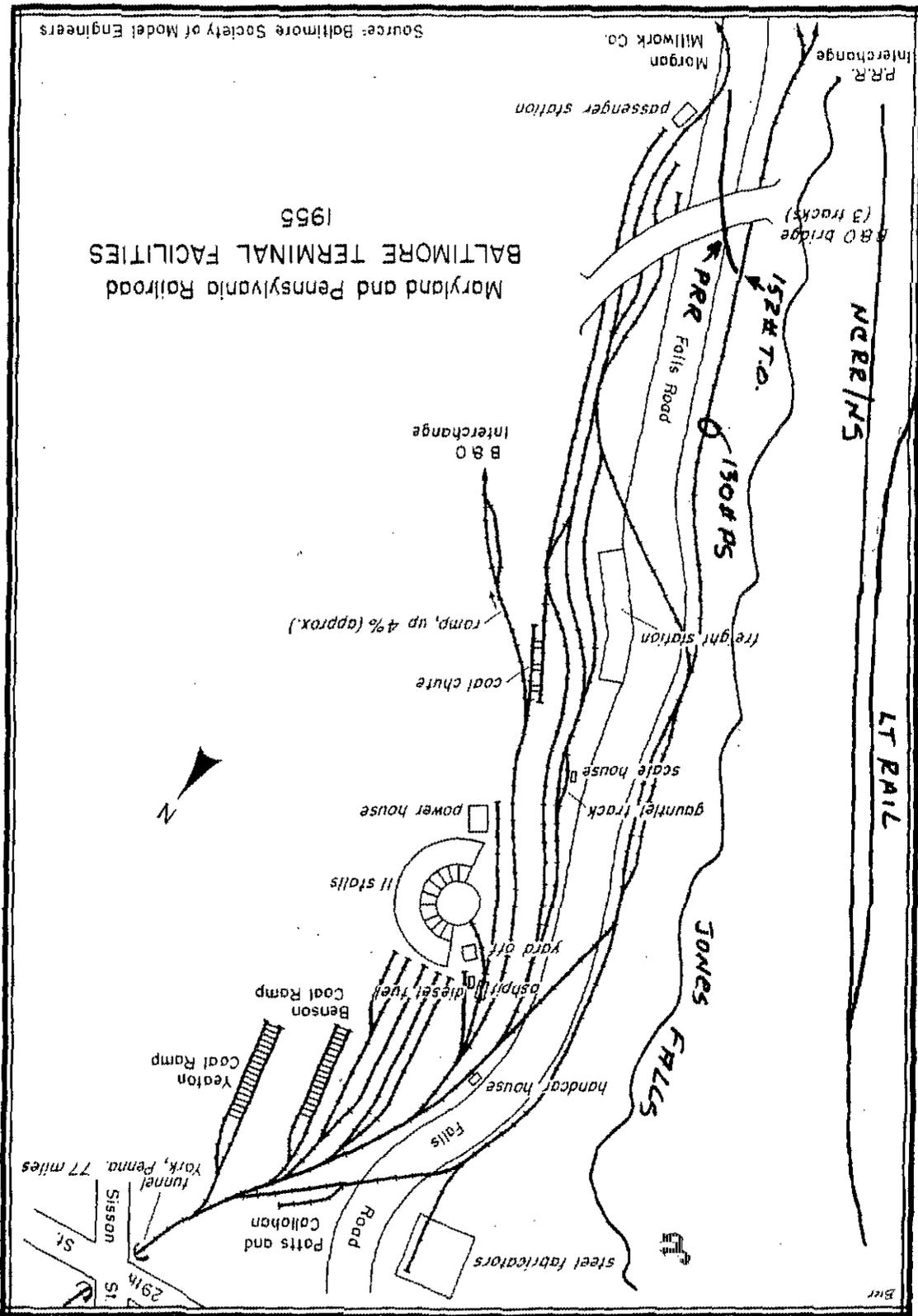


EXHIBIT 2