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September 5, 2007

via DHL Express

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: STB Docket No. AB-290 (Sub-No. 293X), Norfolk Southern Railway Company - Abandonment - Petition for Exemption
Norfolk and Virginia Beach, Virginia - Motion to Strike, Motion to Add OFA Exemption Request to Petition; Motion for Sanctions; Request for Leave to File Included Brief Reply to Comment

Dear Mr. Williams:

Enclosed for filing with the Board in the subject docket is an original and ten copies of Norfolk Southern Railway Company's (NSR) combined Motion to Strike the Comment and Notice of Intent of James Riffin; Motion for Sanctions; Motion to Add an OFA Exemption Request to NSR's Petition for Exemption to abandon the subject railroad line filed July 19, 2007 in this Docket and a Request for Leave to File a Brief Reply to Riffin's Comment. The reply, which is hardly necessary in view of the obvious lack of merit to Riffin's Comment, is included in the filing. Also, enclosed are three diskettes in a format that is compatible with the Board's word processing programs.

Yours very truly,

James R. Paschall

Enclosures

cc: Mr. James Riffin
1941 Greenspring Drive
Timonium, MD 21093

Operating Subsidiary: Norfolk Southern Railway Company

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-290 (SUB-NO. 293X)

NORFOLK SOUTHERN RAILWAY COMPANY

- ABANDONMENT EXEMPTION -

NORFOLK AND VIRGINIA BEACH, VIRGINIA

MOTION TO STRIKE COMMENTS AND NOTICE OF INTENT
MOTION FOR SANCTIONS
MOTION TO ADD OFA EXEMPTION REQUEST TO PETITION
REQUEST FOR LEAVE TO FILE BRIEF REPLY TO COMMENTS

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Attorney for
Norfolk Southern Railway Company

Dated: September 5, 2007

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Before the

Surface Transportation Board

Docket No. AB-290 (Sub-No. 293X)

Norfolk Southern Railway Company

- Abandonment Exemption -

Norfolk and Virginia Beach, Virginia

Motion to Strike Comment and Notice of Intent
Motion for Sanctions
Motion to Add OFA Exemption Request to Petition
Request for Leave to File Brief Reply to Comments

RELIEF REQUESTED

Norfolk Southern Railway Company (NSR), petitioner in the subject docket, moves (1) to strike Mr. James Riffin's Comment in this proceeding; (2) to strike Riffin's[1] Notice of Intent to File an Offer of Financial Assistance (OFA) to acquire the Line that is the subject of NSR's petition for exemption in this proceeding; (3) to bar Riffin from further participation in this proceeding; (4) to impose sanctions on Riffin including (a) requiring Riffin to pay the NSR's costs in responding to his filings in this proceeding and (b) barring Riffin from appearing in any STB proceeding in which NSR is a party or has an interest or at least from appearing *pro se* and without leave of the Board after the Board pre-screens his filings to see if they merit summary rejection or dismissal;[2] if

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[1]We omit "Mr." in most references to Riffin. Riffin refers to himself as such in his filings.

[2]We include more detailed remarks about curbing or eliminating Riffin's abuses in footnote 20, the final footnote of this motion.

necessary, if the Board considers Riffin's Comment, (5)(a) to grant NSR leave to file the brief included reply to Riffin's Comment and (b) to deny the relief requested by Riffin on the merits; and (6)(a) for leave to amend NSR's petition filed July 19, 2007 to include a request for an exemption from the Offer of Financial Assistance (OFA) provisions of 49 U.S.C. § 10904 and the Board's regulations at 49 C.F.R. § 1052.27 with respect to the abandonment of the subject Line and (b) to grant NSR the requested exemption from the OFA provisions in this proceeding or (c) in the alternative, for the Board to grant the OFA exemption on its own motion, without resulting delay of or effect on the processing of NSR's petition.[3]

BACKGROUND

In a petition for exemption filed July 19, 2007 in this docket, pursuant to the provisions of 49 U.S.C. 10502, as amended, NSR requested an exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon 15.34 miles of railroad line

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[3] Under the circumstances of this case, especially the discontinued status of the Line and the disclosure in the petition that NSR and the City of Norfolk have agreed on the sale of the Norfolk Segment to the City, the Board could issue an exemption from the OFA requirements on its own motion as was done in *Central Michigan Railway Company - Abandonment Exemption - in Saginaw County, MI*, STB Docket No. AB-308 (Sub-No. 3X) (STB served October 31, 2003). That case was unusual only because there was an active shipper on the Line which had protested the abandonment because it had made a recent investment in rail facilities. A limited subsidy of alternative transportation was granted to compensate the shipper for this investment. The Board granted the abandonment exemption, and, on its own motion, an exemption from the OFA provisions of 49 U.S.C. 10904 so that the important public purpose of highway improvement could proceed without further undue delay. Similarly, the Board issued exemptions from the OFA provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905 on its own motion to avoid delay in the transfer to the State of West Virginia for public purposes of a line approved for abandonment in *CSX Transportation, Inc. - Abandonment - in Barbour, Randolph, Pocahontas, and Webster Counties, WV*, STB Docket No. AB-55 (Sub-No. 500)(STB served January 9, 1997).

between Mileposts VB-0.12 in Norfolk and VB-15.46 in Virginia Beach, VA (the "Line"). The subject Line has been out of service for about five years, except for the movement of about one car per month on the segment of the Line between Milepost VB-0.12 and Milepost VB-1.75 until August, 2006.[4] Under a Purchase and Sale Agreement with the City of Norfolk, VA, NSR has agreed to sell the right-of-way, track and materials located within the City between the Line's western terminus at Milepost-VB 0.12 and Milepost VB-4.8 (the "Norfolk Segment") to the City for use as a public transit corridor after NSR consummates abandonment of the Norfolk Segment of the Line.[5] The City plans to use the corridor for a light rail commuter passenger service operation. The scope of the project and its importance to the City is described in Exhibit 2, the Verified Statement of Stanley A. Stein, Assistant City Manager for the City of Norfolk, VA.

NSR's petition noted: "There is no traffic on the Line to support its acquisition under the Offer of Financial Assistance procedures, which also would impede or interfere with the proposed acquisition of the Line or portions of the Line for public

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[4]NSR discontinued freight service on the portion of the Line between Milepost VB-1.75 and Milepost VB-15.46, effective December 30, 2004, pursuant to a notice of exemption in *Norfolk Southern Railway Company - Discontinuance of Service Exemption - In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 258X) (STB served November 30, 2004). NSR discontinued freight service on the remaining portion of the Line between Milepost VB-0.12 and Milepost VB-1.75, effective August 6, 2006, pursuant to the STB decision in *Norfolk Southern Railway Company - Discontinuance of Rail Service - Petition for Exemption - In Norfolk and Virginia Beach, VA,* STB Docket No. AB-290 (Sub-No. 269X) (STB served July 7, 2006).

[5]Since the City plans to acquire the Norfolk Segment with track, bridges and other improvements intact, NSR will conduct no salvage operations on the Norfolk Segment. NSR may defer immediate salvage of the track and materials on the remainder of the Line between Milepost VB-4.8 and its eastern terminus at Milepost VB-15.46 until it further explores its options and has more definite plans for future use and disposition of that segment of the Line.

purposes," but NSR made no formal request for an exemption from the OFA provisions of 49 U.S.C. § 10904 and the Board's regulations at 49 C.F.R. § 1052.27, which NSR considered unnecessary and for reasons further explained below.

RIFFIN'S FRIVOLOUS AND IMPROPER COMMENTS AND SHAM NOTICE OF INTENT

In an astonishing, but perhaps not surprising, display of misinterpretation, misrepresentation and illogic, Riffin, has filed a frivolous Comment and sham Notice of Intent to File an OFA in this proceeding. Riffin, who describes himself in his Comment and Notice of Intent as a Class III railroad, which perhaps is what he thinks he is,[6] again abuses the Board's processes and harasses parties who appear before the Board for legitimate purposes. Riffin has filed his Comment and Notice of Intent for the evident purpose of harassing NSR and continuing an increasing improper campaign of pressure

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[6]Under the OFA process in *CSX Transportation, Inc. - Abandonment Exemption - in Allegany County, MD* (STB Docket No. AB-55 (Sub-No. 659X)) (STB served December 14, 2005, August 18, 2006 and other dates), Riffin acquired an 8.54-mile line of railroad between mileposts near Morrison, MD and Carlos, MD, in Allegany County, MD. We omit here a description of some complications about corporate organization of the entity originally and then later authorized to acquire that line, and note that Riffin ultimately was substituted as purchaser instead of a shell corporation in which he held a 98% interest. This does not make him a bona fide or experienced railroad operator or make any of his activities at locations not on that line railroad operations or transportation. As near as we could determine as of a few weeks ago, Riffin had conducted little or no maintenance on and no operations over this out of service Line.

James Riffin d/b/a The Raritan Valley Connecting Railroad also filed an amended notice of exemption to acquire and operate an approximately 1.25-mile segment of a rail line known as the *Raritan Valley Connecting Track in Somerset County, NJ in James Riffin d/b/a The Raritan Valley Connecting Railroad - Acquisition and Operation Exemption - On Raritan Valley Connecting Track*, STB Finance Docket No. 34963 (STB served December 20, 2006). The Board's notice said that Mr. Riffin had stated that he had no agreement with the owner of the line, but proposed to acquire it (along with its operating rights) from its owner. However, Riffin admittedly was not certain of the identity of the owner at the time he filed the exemption notice with the Board.

to coerce NSR to convey to him NSR's freight operating rights over the rail line between Baltimore, MD and Cockeysville, MD ("Cockeysville Line")[7] through misuse and abuse of the Board's processes. Incredibly, he has also sought compensation from the City of Norfolk to withdraw his sham filings in this proceeding.

In NSR's *petition for exemption*, NSR made routine statements providing the information specified in the Board's abandonment application regulations or giving reasons for omitting the information as inapplicable to or unnecessary in the petition. NSR stated in its *petition*: "System Diagram Map. This Line has not been included as a rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map because it was not expected to be the subject of an *abandonment application*." Quite obviously, NSR did not file an *abandonment application* in this docket. NSR's statement neither says nor implies that NSR had the petition under consideration or its preparation in process for any specific period of time.

Riffin contrasts NSR's statement about the reason for the inapplicability of a system diagram map listing requirement for the Line in the petition, which says or implies nothing about consideration of preparation of the petition, with a statement in the environmental report concerning the circulation of a previous, but very similar, environmental report in anticipation of a filing for authority or exemption to abandon the Line last year. The filing obviously was postponed. Riffin, making an illogical and irrelevant reference to the four-month minimum system diagram map listing period for

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[7]That line is owned by the Maryland Transit Administration (MTA), which conducts light rail commuter passenger service over the line. MTA purchased the Line in 1990 from Conrail and for approximately fifteen years, Conrail and NSR provided freight service over the Line

railroad lines that are the subject of *abandonment applications*, then draws the preposterous conclusions that some sort of inconsistency exists in the two statements and that this inconsistency results in the petition containing a false and misleading statement about the time period over which NSR considered filing and prepared the petition. He makes the unsupportable assertion that this supposed inconsistency should be "corrected" and that the proceeding should be delayed so that the correction and some sort of notice about the correction can be made. Riffin's illogical assertions and requests for extra work and unnecessary delays in this proceeding are contrived and solely intended to advance his improper purposes. As he has done so many times in the past few years, Riffin again blatantly and willfully abuses the Board's processes.

While we think the Board should strike Riffin's Comment under the circumstances and we are confident that the Board would deny the relief requested in Riffin's Comment on the merits without any reply from NSR, NSR nonetheless asks leave to make the included brief reply to the Comment in addition to NSR's other motions and requests. Riffin will not be prejudiced because his Comment is frivolous and has been filed for improper purposes. No other party will be prejudiced because no party could benefit from Riffin's erroneous and absurd filing and request for relief. Consideration of this brief reply for the record should not impede or delay the Board's handling of the petition and will complete the record on this point.

NSR accurately stated that the Line was not listed on NSR's system diagram map because NSR had not contemplated filing an *abandonment application* with

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under retained freight operating rights.

respect to the Line. In fact, NSR filed a *petition for exemption* to abandon the Line, not an *application*, a distinction which is a matter of routine knowledge to persons familiar with Board proceedings as well as being set forth in the Board's regulations. The system diagram map listing requirement only applies to lines that are the subject of abandonment applications.[8]

NSR neither said nor implied anything about the length of time that NSR had considered filing or spent preparing the subject petition for exemption in its statement concerning the inapplicability of the system diagram map listing requirement to this petition and the reason for that statement. Moreover, a statement concerning the consideration and preparation time for filings is not required by the Board in any filing with the Board. Even in abandonment application cases where the four-month minimum listing period requirement applies, the listing has no relationship or other bearing on the other notices or procedures for a case and carries no implications about consideration or preparation time for the application. Most importantly, neither the four-month system diagram map listing, if complied with when necessary, nor the actual consideration or preparation time of the application have any relevance to a decision on the merits of an application or any other type of filing. Inconsistent statements in a filing with the Board about the length of time the filing was under consideration or in

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[8]A line of railroad must be listed on a railroad's system diagram map for at least four months before it can be the subject of an *application* to the Board for authority to abandon the Line. The system diagram map listing requirement applies only to lines that are the subject of abandonment *applications*, not to those that are the subject of *petitions* for exemption or *notices* of exemption to abandon a rail line. *See Rail System Diagram Maps*, Ex Parte No. 494 (ICC served Aug. 21, 1991).

preparation would be immaterial and irrelevant to a decision on the merits of the filing even if the inconsistent statements had been made.

Riffin's unwarranted assumptions and contrived argument do not show that the NSR statements that he refers to are inconsistent, much less false and misleading. The assertion and argument are so transparently absurd that they betray Riffin's improper purpose in making them. Riffin's suggestion or request for relief that would require further work to "correct" the petition and to give further notices that would delay processing the petition is frivolous, has been submitted for improper purposes and should be denied.

RIFFIN HAS ADMITTED THE IMPROPER PURPOSES OF HIS FILINGS IN THIS PROCEEDING

In a surprisingly candid, and astonishing, voice mail message to the undersigned, Riffin admitted that his purpose for his planned appearance in this case was to further his campaign of harassment to pressuring NSR to convey the freight operating rights to the Cockeysville Line to him. He concluded his message by stating that if NSR would just sell him the Cockeysville Line rights, he "would get off your back."[9] A full, complete and accurate transcript of this remarkable message is attached to this motion as Exhibit 1. The recording itself remains available.

Clearly, the Board can take actions to protect the integrity of its processes from such abuses without Riffin's improper actions being a crime. After his admission in the

[9]We will draw no conclusion about whether Riffin's actions constitute criminal law violations here but we are considering tendering information to the appropriate law enforcement authorities for their review.

voice mail message shown in Exhibit 1, Riffin. After his admission in Exhibit 1, Riffin can not reasonably and truthfully claim that his Notice of Intent has the purpose of acquiring the subject Line.[10] The facts and circumstances clearly support the Board's grant of the relief requested by NSR in this motion to end Riffin's abuses in this and future cases.

As the attached verified statement in Exhibit 2 attests, Stanley A. Stein, Assistant City Manager for the City of Norfolk, Virginia, received a telephone call from Mr. Riffin during which Riffin asserted that he could thwart the City's planned acquisition of the Line and light rail project by filing an OFA in this case and acquiring the Line himself. However, Riffin said he was a "reasonable man," and was willing to discuss compensation for withdrawing from the case.[11] Mr. Stein describes the scope and importance of the City's Light Rail Transit project, the improper actions of Riffin and the harm to the public interest that could result from any delay caused by Riffin in the processing and completion of this proceeding or in the sale of the Norfolk Segment to the City so that construction of the LRT System can be commenced.

RIFFIN HAS HARASSED NSR PERSONNEL AND REPRESENTATIVES

On or about June 29, 2007, Riffin showed up unannounced at NSR operations

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[10]Despite his acquisition of the Morrison-Carlos, MD line noted in footnote 6, Riffin, has no apparent organization, no experience in running a railroad and no locomotive power as best as we can determine. He clearly has neither the intention nor the ability to "continue" to operate, or to reopen, a Line that has a high net liquidation value evidenced by a signed contract, has had no traffic moving over it for a over a year and then was used to transport only about one carload per month for several previous years, is in discontinued status and would require significant rehabilitation expenditures to support renewed freight service.

offices in Baltimore, MD to demand that certain of his derelict railway cars, including passenger cars, be moved to non-existent sidings or sidetracks on the Cockeysville Line. Riffin was unusually candid in admitting that he was trying to provide the basis for an argument that MTA would not allow and could not provide freight service on the Cockeysville Line but he also insisted on delivery of the cars to the Line. When NSR Trainmaster Drew Spencer, who for a considerable period of time patiently listened to and tried to explain the circumstances concerning the Cockeysville Line to Riffin and offered to work with Riffin on the problems with his request and on alternate delivery plans, Riffin became impatient. Riffin threatened Mr. Spencer with some sort of vague adverse consequences related to his job that might occur if he did not comply with Mr. Riffin's demands.

Riffin recently showed up unannounced in reported unbusinesslike appearance at the offices of an NSR outside counsel demanding to discuss legal differences he had with NSR. In addition, in late December 2006, Riffin called another NSR outside counsel and stated that, "before going to war with NS," he wanted to see whether there might be any basis for settlement between NSR and himself. Although he was reportedly quite vague about what might be settled and what he was proposing, he appeared most interested in the Cockeysville Line. Riffin also made vague references to various "skeletons" that NSR might wish to avoid becoming public. One thing is clear. Riffin has been attempting to misuse the Board's processes as a weapon against NSR and other parties with which he can not or does not agree in cases in which he has

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[11]We expect the City to consider contributing this information to further investigations.

no interest or prospect of success in order to harass and coerce NSR and others to grant him concessions. He has not been attempting to use those processes legitimately to seek favorable outcomes and decisions on the merits in the particular cases.

Riffin also has made several calls to other NSR offices with vague or impossible requests in obviously sham efforts to set up various arguments with respect to his ultimate position in any future Board proceeding concerning the Cockeysville Line.

REQUEST FOR EXEMPTION FROM THE OFA PROVISIONS

NSR, perhaps mistakenly, did not ask for an exemption from the OFA provisions of 49 U.S.C. § 10904 and waiver of the Board's regulations at 49 C.F.R. § 1052.27 in the petition for exemption. NSR thought that even Riffin would not attempt to make even a pretense of an effort to file an OFA to acquire the subject Line in view of the discontinued status of and lack of traffic on the Line, the petition's disclosure of the Agreement to sell the Norfolk Segment to the City for public purposes and the high net liquidation value of the Line that obviously would be set by the Agreement.[12] In view of Riffin's continuing efforts apparently aimed at enhancing positions he intends to take in later proceedings concerning the Cockeysville line and his continuing increasingly

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[12]The STB and ICC have said "a signed contract is often the best evidence of the value of property." See *1411 Corporation - Abandonment Exemption - In Lancaster County, PA*, STB Docket No. AB-581X (STB served October 18, 2001), embracing Middletown & Hummelstown Railroad Company - Abandonment Exemption - in Lancaster County, PA, STB Docket No. AB-529X, In the Matter of a Request to Set Terms and Conditions; *Railroad Ventures, Inc. - Abandonment Exemption - Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Docket No. AB-556 (Sub-No. 2X) et al. (STB served Oct. 4, 2000), slip op. at 16; *Portland Traction Company - Abandonment Exemption - in Multnomah and Clackamas Counties, OR*, Docket No. AB-225 (Sub-No. 2X) (ICC served Jan. 10, 1990), slip op. at 5.

improper efforts to acquire the freight rights over the Line, NSR must admit that we took into consideration[13] that Riffin might find an OFA exemption request in favor of a transit project reason to make bogus filings to delay or attempt to thwart the transaction.[14]

In any event, Riffin's growing impatience and desperation to forward his Cockeysville Line acquisition scheme appears to be pushing him to take more extreme actions than we anticipated. And he has decided to use his filing in this case to try to get something from the City of Norfolk as well. He should not be allowed any success in this improper effort through delay in the handling of the proceeding either because of the inclusion of an OFA exemption request in the relief requested in the petition or

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[13]We now intend to handle the possibility of Riffin's appearances, before the Board or otherwise with less serious consideration on our filings, and to handle any response we might make to them if we can not avoid them, more summarily.

[14]Riffin's voice mail admission that he has been "on our back" as part of his campaign to acquire the Cockeysville line rights is further indication that his filing of a Protest and Opposition to a Petition for Exemption to abandon an out of service line and his filing of a Notice of Intent to file an OFA to acquire the Line in STB Docket No. AB-290 (Sub-No. 283X), *Norfolk Southern Railway Company - Abandonment Exemption - In Orange County, NY*, was part of this pattern of abuses. While we had originally intended to describe this case at even greater length, suffice it to say that Riffin could have had no interest in continuing rail service on this line (and in fact orally admitted that he did not). NSR's request for an OFA exemption in order to retain and reclassify part of the line as industrial track in order to preserve access to the only industrial site on the line, which had been closed down, while clearing out less than a mile of "ghost mileage" from its system, was closer to the type of situation where OFA exemptions have been granted for legitimate and definite purposes than other types of cases where OFA exemptions might not have been fully supported or justified by anything other than a desire to quickly salvage the track and materials and dispose of the right-of-way. NSR should have better made the argument for the OFA exemption in the case in advance of Riffin's filing but did not anticipate it. Even though we believe the request was justifiable, NSR did not clearly make the argument and the necessary distinctions and Riffin's unanswered spurious reply arguments had some superficial appeal. The main point here, however, is not to retry that case in this docket, but to cite the case to point out that it was part of Riffin's pattern of abuse of the Board's processes. Riffin could not have been concerned with (and was not concerned with) the continuation of non-existent rail service to non-existent customers by acquiring a short track that NSR intended to retain for industrial development purposes in that case in any event.

through the implementation of the OFA procedures in this case.

No one will be prejudiced by the Board's permission to NSR to add the OFA exemption request to the petition or by the Board's grant of the OFA exemption itself. Service over the Line has been formally discontinued pursuant to exemptions granted by the Board. The Line requires substantial rehabilitation to be put back into service. The Agreement with the City establishes such a high net liquidation value for the Line that no one could reasonably expect to recover an investment in the Line from speculative future freight operations or even its later salvage value. As noted above, NSR disclosed in the petition the existence of the Agreement with the City and the unlikelihood that any legitimate, viable OFA for the Line could be tendered under the circumstances. Furthermore, an OFA in this case would conflict with and possibly delay the conveyance of the property to the City for public purposes. See Exhibit 2, the Verified Statement of Stanley A. Stein, Assistant City Manager of the City of Norfolk, VA. Under circumstances no more compelling than those present in this case, the Board has even granted such exemptions from the OFA provisions of 49 U.S.C. § 10904 on its own motion, as noted in footnote 3.

Even if Riffin's Notice of Intent is rejected and he is not permitted to use (actually to misuse) the OFA process or submit an OFA in this case, NSR must ask the Board to grant to NSR an exemption from the OFA provisions of 49 U.S.C. § 10904 and waiver of the Board's regulations at 49 C.F.R. § 1052.27 with respect to the abandonment of the subject Line without delay or effect on the handling of NSR's petition. NSR asks that the exemption be granted either after permitted amendment of NSR's petition to include

an OFA exemption request or upon the Board's own motion in the best way to prevent delay in processing of the petition for exemption. Riffin could withdraw or be barred from the proceeding but could direct or instigate a straw man or ally to file another Notice of Intent to further his purposes, which must be taken into account as well. Consideration of such a Notice of Intent or allowance of the OFA process to take place in this proceeding will serve no legitimate interest, will waste the time and resources of the Board and will delay the legitimate public purposes for which the Norfolk Segment will be conveyed to the City, as further detailed in Exhibit 2. The Board can grant the exemption without prejudice to any person or party with a legitimate interest and without delaying the processing of the petition either by granting the requested exemption from the OFA provisions or by granting an exemption from the OFA provisions on the Board's own motion.

CONSIDERATION SHOULD BE GIVEN TO RIFFIN'S LONG HISTORY OF REPETITIVE MERITLESS *PRO SE* FILINGS BEFORE THE BOARD AND COURTS

In the spring of 1998, Riffin petitioned the Baltimore County Zoning Commissioner for a Special Hearing, for a Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium, MD, the same location which he more recently claimed to be a "railroad facility."[15] Riffin intended to create a commercial/recreation

[15]In a "Memorandum of Law" filed with the Board on September 14, 2004 In Finance Docket No. 34522, Riffin stated: "In 1999, Riffin acquired title to a parcel of land commonly known as 1941 Greenspring Drive, Timonium, MD...," which does not appear to be consistent with his 1998 actions with respect to that property in the "bungee jumping" case or at least to completely disclose the length of time he had an interest in the property, and the various

facility that would accommodate bungee jumping. Bungee jumping operations are illegal in Maryland. On June 1, 1998, the Zoning Commissioner granted four of the requested nine variances for existing non-conforming setbacks but denied all of the other requests. Riffin appealed that decision to the Baltimore County Board of Appeals and a three day public hearing began on November 25, 1998. In the course of that hearing, the Appeals Board heard extensive testimony from Riffin. The Appeals Board also heard testimony from adjacent property owners, from the Office of the People's Counsel, and from a representative from the Greater Timonium Community Council, all of whom testified in opposition to Riffin's petitions. On December 31, 1998, the Appeals Board issued an extensive written Opinion denying Riffin's appeal. Riffin then appealed to the Circuit Court for Baltimore County. On October 7, Judge Bollinger affirmed the Appeals Board's decision, finding that it was supported by substantial evidence and was not premised on any error of law. Riffin then appealed unsuccessfully to the Court of Special Appeals of Maryland and then unsuccessfully filed for a writ of certiorari to the Court of Appeals of Maryland. A published opinion is available in *Riffin* v. *People's Counsel for Baltimore County, Maryland*, 137 Md. App. 90 (2001); 767 A.2d 922 (Md. App. 2001); 2001 Md. App. LEXIS 31, cert. denied *Riffin* v. *People's Counsel*, 363 Md.

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descriptions he has given with respect to it. Riffin claimed to use the building for railroad purposes because he stored equipment "used in his railroad operations" at the site, notwithstanding he had no legal interest in any railroad or railroad operation. This building is the same building in which Riffin has rented space to an office support company, a sign-making company and a document preparation service and as to which Riffin has resisted efforts by the Maryland Department of the Environment to test the air quality on the basis that he was entitled to assert ICCTA pre-emption to prevent the testing. Riffin disingenuously referred to these tenants in his September 14, 2004 Memorandum as "independent contractors" who had office equipment "all of which relate to the movement of passengers or property by rail" and may be used to "create and/or print" various signs, forms or other documents, notwithstanding the lack

660 (2001); 770 A.2d 168 (Md. 2001); 2001 Md. LEXIS 174. In all these proceedings, the futile and frivolous nature of which should have become well apparent before the court appeals were made, Riffin represented himself *pro se*.

The Court of Special Appeals noted that Riffin raised five issues with approximately twenty subcontentions but that they had condensed those into two subcontentions. Riffin argued that the trial court erred in denying his petition for a Special Exception to conduct a "bungee jumping operation," which is prohibited under Maryland law, because he was seeking a "recreational use" of the property, which is permissible. Riffin also focused on a semantical distinction between "operation" and "activity." The Court was not persuaded. Also, the Court noted that even assuming arguendo that the Appeals Board had erred in finding Riffin's proposed use was an illegal "bungee jumping operation," the Court would still hold that the Appeals Board did not err in denying Riffin's petition for a Special Exception after the Appeals Board's careful examination of the criteria for granting a request for a Special Exception and its finding that Riffin failed to satisfy those criteria. We present this information to show that Riffin will persist in representing himself and in taking plainly wrong positions, supported by semantical and sophistic arguments, in support of questionable and even illegal activities if he is not prevented from doing so.

After giving up on an apparently brief effort to get the assistance of the Kent County, MD Board of County Commissioners in concocting a barge transportation scheme, Riffin turned to railroading. See Kent County Board of County Commissioners

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of evidence that they actually did so for any actual railroad transportation or operation.

minutes for August 22, 2000 available on the internet.

RIFFIN HAS VIOLATED ENVIRONMENTAL LAWS, TRESPASSED ON PUBLIC PROPERTY AND ENDANGERED PUBLIC HEALTH AND SAFETY

Without proper permits or other legal permission and without a cognizable legal claim, Riffin has violated the environmental laws and performed construction, grading and bulldozing work willfully, recklessly and despite warnings endangering the safety of the water supply of Baltimore City by stripping, filling and grading his own and Baltimore County property and discharging soil and sediment into Beaver Dam Run which eventually feeds into Loch Raven Reservoir, the main water source for metropolitan Baltimore. See October 15, 2004 letter of Dawn S. Lettman, Assistant City Solicitor to Vernon A. Williams in Finance Docket No. 34501, *James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation Exemption - In York County, PA.*

Riffin has attempted to hide behind bogus and frivolous assertions concerning his ability to claim ICCTA pre-emption for his environmental depredations as being undertaken for (non-existent) railroad purposes. In a filing made September 14, 2004, Riffin misleadingly stated to the Board that he had performed this work on his own property when he had already been cited for his work on Baltimore City property on September 10, 2004. In furtherance of his illegal misuse of public property, and in blatant abuse of the Board's processes, Riffin filed an unnecessary and incoherent petition for declaratory order in STB Finance Docket No. 34552, *James Riffin d/b/a The Northern Central Railroad - Petition for Declaratory Order.*

Riffin also attempted to claim that he is entitled to use ICCTA pre-emption

arguments to prevent investigation by the Maryland Department of the Environment of indoor air quality at a building owned by Riffin by claiming to be a railroad entitled to be free of State law processes under ICCTA solely due to the Board's publication of one his exemption notices, which was subsequently revoked in a decision served April 20, 2004 in *James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation Exemption in York County, PA and Baltimore County, MD*, STB Finance Docket No. 34484. See also footnote 15. On April 26, 2004, the Circuit Court for Baltimore County in Case No. 03-C-03-013144 ruled that even if Riffin were a railroad, the Board's jurisdiction would not preempt the MDE efforts at conducting indoor air quality sampling as this building because such regulation would not affect any railroad operations. Riffin proceeded with frivolous appeals and meritless attempts to remove the case to federal court in an effort to avoid the court's judgment and order.

GOVERNMENTAL AUTHORITIES HAVE SUED RIFFIN TO PREVENT HIS VIOLATIONS OF ENVIRONMENTAL LAWS AND REGULATIONS; RIFFIN HAS PURSUED MERITLESS APPEALS AND PROCEDURES TO AVOID COMPLIANCE.

The Maryland Transit Administration and the Maryland Department of the Environment already have advised the Board in a filing on March 5, 2007, in STB Finance Docket No. 34997, *James Riffin - Petition for Declaratory Order* about court actions aimed at preventing Riffin's continuing violation of environmental laws and regulations. Riffin continues to improperly claim the right to use ICCTA pre-emption in justification for these actions and, as noted above, has even attempted removal of State actions to Federal courts on this basis and as a pretense to avoid prosecution and penalties under Maryland State laws and regulations. In the new but repetitive petition

for declaratory order in Finance Docket No. 34997, Riffin seeks some sort of Board declarations that he can use in furtherance of his continuing efforts to frustrate State court enforcement of Maryland's environmental laws. Incredibly, according to the MTA and MDE filing, Riffin continues to violate several State and local regulations through further activities in and about his Cockeysville property, in open contempt of court orders and the State laws and regulations.

In *Riffin* v. *Snyder*, Civil No. RDB 04-2964, United States District Court for the District of Maryland, Northern Division, 2004 U.S. Dist. LEXIS 29394, decided September 16, 2004, aff'd per curiam 120 Fed. Appx. 514 (4th Cir. 2005); 2005 U.S. App. LEXIS 2482, the U. S. District Court rejected Riffin's specious claim that he could justify his immunity from environmental law and regulations based on ICCTA pre-emption for (his non-existent) railroad transportation purposes. The Federal courts also rejected another attempt by Riffin to remove a State court action against him as untimely in *State of Maryland, Department of the Environment* v. *Riffin*, 221 Fed. Appx. 230, 2007 U.S. App. LEXIS 6584 (4th Cir. decided March 21, 2007).

After the Federal court's remand of the wrongly removed actions to the State court, the Circuit Court for Baltimore County enjoined Riffin's actions in the case cited above. Riffin appealed to the Maryland Court of Special Appeals. The Special Appeals Court found that Riffin had no authority either to operate a railroad or to invoke the STB's exclusive jurisdiction with respect to his illegal environmental activities. *Riffin* v. *Md. Dept. Of the Environment*, Docket No. 1593 and 1802 (Md. Ct. Spec. App. Feb. 3, 2006). The Maryland Court of Appeals (393 Md. 246 (2006), 900 A.2d 752 (Md. 2006))

and Supreme Court of the United States (___ U.S. ____, 127 S.Ct. 967, 166 L. Ed. 2d 708 (2007)) both denied writs of certiorari.

The MTA and MDE also stated that Riffin even filed federal lawsuits against the Maryland Assistant Attorney General and Baltimore County Assistant County Attorney prosecuting the State court actions. The federal lawsuits were dismissed *sua sponte.*

RIFFIN HAS FILED FALSE, MISLEADING, UNAUTHORIZED, REPETITIVE, FRIVOLOUS AND BOGUS FILINGS AND STATEMENTS AND MISUSED AND ABUSED THE BOARD'S PROCESSES IN AN INCREASING NUMBER OF STB PROCEEDINGS

Riffin was forced to withdraw his first filing with the Board, which was an exemption notice for the construction and operation of 20.9 miles of "industrial track" and 5 spurs and to acquire trackage rights over a small segment of the Cockeysville Line for which NSR has the freight operating rights after NSR and other parties objected that Riffin had no agreements or rights to use the subject abandoned right-of-way, which is a public trail, and no trackage rights agreement with NSR. Riffin apparently thought he could bootstrap himself into some interest in or right to use the property and obtain trackage rights from NSR through his filing and his fatuous reference to the proposed track to be constructed as "industrial track" obviously was made to set up future arguments that his activities were outside the jurisdiction of the Board when that would suit his purposes. In his initial letter to the Board, Riffin acknowledged his main plan, which he has never really abandoned, was to run a dinner train. *James Riffin, d/b/a NCRR L.L.C. - Construction, Operation and Trackage Rights Exemptions - In*

Baltimore County, MD, STB Finance Docket No. 34375 (STB served July 16, 2003).[16]

As noted above, Riffin's next attempt to bootstrap his legal position and to obtain an exemption from the Board for property that he did not have any right or agreement to use was thwarted by revocation of a notice of exemption in *James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation Exemption in York County, PA and Baltimore County, MD*, STB Finance Docket No. 34484. Riffin went on to file a similar notice of exemption to acquire and operate a line totally located in Pennsylvania in *James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation Exemption*, STB Docket No. 34501. Riffin misrepresented to the Board that he had under consideration a lease proposal from York County, PA when he had only an example lease and advice that he should submit a detailed proposal and business plan for his use of the County-owned right-of-way. Despite specific advice from the Board, Riffin submitted far less information than required to support his proposed transaction in that docket. This exemption in STB Finance Docket No. 34484 also was revoked by the Board in a decision served February 23, 2005.

In *Norfolk Southern Railway Company - Abandonment Exemption - In Baltimore County, MD*, STB Docket No. AB-290 (Sub-No. 237X) (STB served April 3, 2006), the Board dismissed NSR's petition 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, in Baltimore County, MD because of several

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[16]Unlike the unclear status of Riffin's right to use The Northern Central Railroad name, Riffin did incorporate and have the right to use the NCRR LLC name, at least until he forfeited it by action of the Maryland Department of Assessments and Taxation on October 7, 2005.

ambiguities in the filing. Of course, these are the operating rights that Riffin is so desperate to acquire. The Board uncharacteristically gave weight to unanswered assertions and questions raised by Riffin concerning additional stations on the Line and zip codes applicable to the line for which he provided no additional support. Riffin would have been right about the stations, in about 1954, although Ashland, and perhaps others, may not have been within the limits of the subject segment of the Cockeysville Line even when the stations were open. Many of the stations listed by Riffin had been discontinued as active freight stations even before the Cockeysville Line was acquired by the Penn Central Transportation Company. The remaining stations listed by Riffin but not by NSR were discontinued with the formation of Conrail or soon thereafter.[17] The zip codes NSR cited are the ones applicable to the post offices for the station locations. Admittedly, the Board had other reasons for the decision. We merely wish to point out that no credit can be given to any statement by Riffin unless it is independently verified.

Riffin continued his campaign of bogus filings and harassment by attempting to get the Board to require NSR and CSXT to make unnecessary filings to discontinue operating rights in a Conrail Shared Assets area that neither railroad had activated or used in *Consolidated Rail Corporation - Abandonment Exemption - in Mercer County,*

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[17]Riffin also would have been correct if the listing of old station names as location names on Conrail track charts actually meant those stations were still open. The geographical list of NSR stations in the Official Railroad Station List, issued January 1, 2005, OPSL 6000-Z, page 748 shows NSR stations after the Baltimore Flexi-Flo station which is at the end of, but not on, the Cockeysville Line segment that was the subject of the proceeding as Lutherville, Timonium, Texas and Cockeysville. Padonia had been a station in this vicinity but is no longer listed as such. All of the other stations listed by Riffin also are not found in the List, as further checked

NJ, STB Docket No. AB-167 (Sub-No. 1185X) (STB served January 26, 2007), and embraced cases. The Board short-circuited his effort, however, by granting the obviously incontestable exemptions to NSR and CSX on the Board's own motion.

Riffin filed another acquisition and operation notice for a line as to which he has no rights, but which fact was disclosed in an amended notice in *James Riffin d/b/a The Raritan Valley Connecting Railroad - Acquisition and Operation Exemption - On Raritan Valley Connecting Track*, STB Finance Docket No. 34963 (STB served December 20, 2006). In yet another baseless filing with the Board concerning property in which he has no cognizable interest, and as to which he admittedly does not even know identity of the owner (possibly the Baltimore Streetcar Museum in whole or in part), Riffin filed a notice of exemption to acquire and operate 2.2 miles of track that was abandoned in 1958 in *James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation Exemption - in Baltimore City, MD*, STB Finance Docket No. 34982 (STB served January 26, 2007). Petitions to revoke that exemption, which is opposed by the State of Maryland, the Baltimore Streetcar Museum and CSX Transportation are pending before the Board.

Incredibly, the Board now has to process and the State of Maryland has been required to participate in yet another vague, virtually incoherent and completely bogus declaratory order proceeding filed by Riffin in furtherance of schemes to evade enforcement of environmental laws against him and for other improper purposes in *James Riffin, Petition for Declaratory Order*, STB Finance Docket No. 34997. He

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by a review of the alphabetical list of stations by state for Maryland, starting on page 213.

repeats and seeks support for various declarations of law, virtually in a vacuum and unsupported by material facts. He has unsuccessfully presented these contentions to the Board before in slightly different guise. Most if not all of the legal principles for which he wishes an explanation or statement that is more to his liking, of course, have been explained in the context of other legitimate cases with actual factual presentations made to the Board. Riffin just does not like the explanations.

While we could give even more examples of Riffin's misuse of the Board's and the courts' processes, we think this is enough to show that Riffin will continue to blatantly and willfully abuse the Board's processes and waste the time and resources of the Board and legitimate businesses for as long as the Board permits him to do so. The Board should draw the line and grant the fully justified relief requested by NSR.

RIFFIN SHOULD BE BARRED OR SIGNIFICANTLY RESTRAINED FROM MAKING FILINGS WITH THE BOARD TO HARASS NSR AND FOR OTHER IMPROPER PURPOSES

Riffin's ability to finance the acquisition of a non-operating railroad track does not give him any protected interest requiring his appearance in proceedings involving NSR. His appearances are increasingly improper and not in furtherance of any legitimate property or business interest or protected right he may have. His voice mail message shown in Exhibit 1 is an admission of his improper purposes. He should not be allowed to continue to make baseless, sham, frivolous and abusive filings with the Board for the purpose of harassment or otherwise in furtherance of improper purposes.

Riffin is apparently growing impatient in his efforts to secure NSR's right to operate freight service over MTA's Cockeysville Line by any possible means and to

await the conclusion of a pending Board proceeding filed by MTA when NSR is expected to file another petition for exemption to discontinue freight service over the Cockeysville Line. He is taking increasingly abusive and legally questionable actions[18] in a campaign of harassment, and more, aimed now not only at NSR but also at the City of Norfolk, VA. His actions are intended to interfere with important business and public purposes for improper reasons of his own.

THE BOARD CAN PROTECT THE INTEGRITY OF ITS PROCESSES; THE BOARD SHOULD NOT ALLOW RIFFIN TO ACHIEVE EVEN LIMITED SUCCESS FOR HIS MERITLESS AND IMPROPER FILINGS

Baseless litigation and sham petitions are not protected by the First Amendment or by any other legal right. As the United States Court of Appeals for the Eleventh Circuit observed in *Riccard* v. *Prudential Insurance Company*, 307 F.3d 1277 (11th Cir. 2002):

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[18]Riffin himself is mainly responsible for precipitating and delaying the MTA proceeding. He apparently has failed to realize his inconsistent filings and actions in the previous Cockeysville line discontinuance proceeding and in the MTA proceeding have actually worked at cross purposes to his stated objective and have delayed the conclusion of proceedings and institution of a new proceeding that is most likely to determine the disposition of the Cockeysville

> A vexatious litigant does not have a First Amendment right to abuse official processes with baseless filings in order to harass someone to the point of distraction or capitulation. *See Filipas* v. *Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987) (requiring vexatious litigants to obtain leave of court before filing any further complaints does not violate the First Amendment).

Riffin can not oppose the imposition of sanctions and restraints against his vexatious filings with the Board on substantive due process grounds because he could not satisfy any test required to find a violation of substantive due process, such as an action that "shocks the conscience" or deprives a person of a "fundamental right" or a "fundamental interest." See *County of Sacramento* v. *Lewis*, 523 U.S. 833, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998) and *Washington* v. *Glucksberg*, 521 U.S. 702, 138 L. Ed. 2d 772, 117 S. Ct. 2258 (1997). Moreover, Riffin can not show that he will be a person aggrieved by suffering an adverse effect or injury in fact if his vexatious and improper filings with the Board are prohibited because he has no inherent right to make such filings.

Line freight operating rights.

The Board has the authority to protect the integrity of its processes. *ICC* v. *American Trucking Ass'ns*, 467 U.S. 354, 364-65 (1984); *Railroad Ventures, Inc.* v. *Surface Transportation Board*, 299 F.3d 523 (6th Cir. 2002)(any government agency has inherent authority to act to ensure "the fairness, efficiency, and integrity of its processes and the appropriateness of the conduct of the parties appearing before it"); *James Riffin d/b/a The Northern Central Railroad - Acquisition and Operation Exemption - In York County, PA*, STB Finance Docket No. 34501 (STB served February 23, 2005); *The Land Conservancy of Seattle and King County - Acquisition and Operation Exemption - The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33389 (STB served Sept. 26, 1997). The Board's protection of the integrity of its processes and the performance of its statutory duties under the Interstate Commerce Commission Termination Act, 49 U.S.C. §§ 10101 *et seq.* is reasonably related to the provisions and purposes of that Act and thus is within the parameters of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.* and §§ 701 *et seq.*[19] The only way that the Board can safely protect the integrity of its processes and the rights of parties under its jurisdiction from Riffin's continuing abuses is to strike Riffin's improperly submitted Comment and

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[19]Moreover, the Board's powers under 49 U.S.C. § 721 do not exclude any power not enumerated that the Board may have to carry out "this chapter" or "subtitle IV." They include the power to make regulations to carry out "this chapter" or "subtitle IV." Under 49 U.S.C. § 721 (b)(4), they include the authority "when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5." Even though standing before agencies under the Administrative Procedure Act has been broadly construed, there are obvious limits to the right of parties to appear: "so far as the orderly conduct of public business permits." Furthermore, the Board may control practice before it under 49 U.S.C. § 703(e) which provides: "Subject to section 500 of title 5 [concerning admission of attorneys to practice before agencies and accountants to practice before the IRS, among other provisions], the Board may regulate the admission of individuals to practice before it and may impose a reasonable

Notice of Intent and bar his participation in this proceeding, to sanction Riffin and to bar or severely limit his future appearances before the Board, at least in cases in which NSR is a party, and to grant an exemption from the OFA provisions in this proceeding.

NSR's requests are not drastic actions for the Board to take with respect to Riffin because of his conduct in and related to Board proceedings is becoming increasingly egregious. His filings have been for improper or unreasonable purposes. In total, they amount to a pattern of blatant and willful abuse of and repeated disregard for the Board's processes. Several of Riffin's filings have aimed to delay or thwart the legitimate public interests of governmental bodies for the apparent purpose of advancing his speculative and unrealistic private business plans in which he has no right or legitimate interests. His misuse of the Board's processes in this case, where his arguments and filings clearly are objectively baseless, his filings are obvious shams and his subjective intent clearly is to abuse the Board's processes for improper purposes, is obvious from his voice mail, his actions and the nature and content of his filings under the circumstances of this proceeding.

CONCLUSION

As part of his repeated pattern of abuse of the Board's processes, Riffin has filed a frivolous Comment and a sham Notice of Intent in this proceeding in order to coerce the parties to grant him concessions with respect to a different matter, freight operating rights on the Cockeysville Line, and to compensate him for ceasing his misuse of Board

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admission fee."

processes in this proceeding. Riffin has made repeated filings with the Board that are replete with false, misleading, incomplete and unsupported assertions of fact and illogical, repetitive and meritless arguments. Riffin has made baseless filings with the Board with respect to transactions that he had not even attempted to initiate in order to evade the application of environmental laws and regulations to his property and actions and apparently also in order to set up bogus arguments about his right to use or acquire the property or rights of third parties. Riffin has made meritless filings with the Board, including repetitive filings seeking relief or declarations that were previously denied to him without presenting any changed facts or circumstances, or any supported material facts at all, or any material error in past Board decisions. Riffin has misused the Board's processes and harassed NSR in an effort to coerce NSR to convey to him the freight operating rights on the Cockeysville Line without legitimate business reasons for NSR and in derogation of the interests and, given Riffin's actions with respect to the environmental laws, probably of the safety of the public and MTA. Riffin has made sham filings with the Board. Even if he has occasionally cited a valid principle, he has intended to misuse the Board's processes for improper purposes and has not made his notice of exemption filings, OFAs or filings in opposition to the petitions or notices of other parties in order to obtain a legitimate outcome from the processes, except perhaps with respect to the Allegany County, MD line where he stepped into the shoes of a previous party at a late stage in the proceeding, probably for the main purpose of being able to assert his status as a railroad. Despite some apparent resources, Riffin has no organization or apparent ability to provide necessary rail services to the public. There is no reason to

believe customers could reasonably rely on him to provide rail services as he has continued to admit that his main goal is to run a dinner train. He has acted with repeated, blatant and willful disregard of the integrity of the Board's processes.

Riffin's appearances in Board proceedings continue to waste the time and resources of the Board, of NSR and of other interested parties. His continuing campaign against NSR in furtherance of his Cockeysville Line freight operation acquisition scheme has gone to extremes in this case. The Board already has cautioned Riffin: "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 Railroad - Acquisition and Operation Exemption - In York County, PA*, STB Finance Docket No. 34501 (STB served February 23, 2005). Yet, Riffin's abuses continue and are getting worse. His filings derogate the integrity of the Board's processes. They are contrary to important public purposes and the public interest as detailed with respect to this case in Exhibit 2. This is where the Board should draw the line.

Therefore, Norfolk Southern Railway Company, respectfully moves that the Board (1) strike James Riffin's Comment in this proceeding; (2) strike Riffin's Notice of Intent to File an Offer of Financial Assistance to acquire the Line that is the subject of NSR's petition for exemption in this proceeding; (3) bar Riffin from further participation in this proceeding; (4) impose sanctions on Riffin including (a) requiring Riffin to pay the NSR's costs in response to his filings in this proceeding and (b) barring Riffin from appearing in any STB proceeding in which NSR is a party or has an interest or at least from appearing

pro se and without leave of the Board after the Board pre-screens his filings to see if they merit summary rejection or dismissal;[20] if necessary, if Riffin's Comment is not stricken, (5)(a) grant NSR leave to file the brief included reply to Riffin's Comment and (b) deny the relief requested by Riffin on the merits, and (6)(a) grant NSR leave to amend its petition filed July 19, 2007 to include a request for an exemption from the Offer of Financial Assistance (OFA) provisions of 49 U.S.C. § 10904 and the Board's regulations at 49 C.F.R. § 1052.27 with respect to the abandonment of the subject Line and (b) grant NSR the requested exemption from the OFA provisions in this proceeding or (c) in the alternative, for the Board to grant the OFA exemption on its own motion, without delay or effect on the handling of NSR's petition.

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[20]If Riffin is not barred from Board proceedings entirely, at the very least he should be barred from appearing before the Board pro se and without prior leave and pre-screening by the Board. He also should be barred from appearing through a straw man, confederate, alias or false or hidden identity, corporate or otherwise, at least in any proceeding in which NSR is a party or has an interest. This bar also should apply to any persons or entities acting at his behest, at his direction or instigation, or in concert with him. If Riffin is a railroad, he can afford to hire an attorney, who would need to comply with the Board's ethical and other requirements for the submission of pleadings. If he cannot afford to hire an attorney to make necessary filings with the Board for legitimate business purposes, he does not have enough resources to acquire, rehabilitate and operate rail lines. Moreover, it is clear Riffin has no legitimate interest in appearing in this and most, if not all, other STB proceedings in which he has appeared or might appear. His machinations have not provided and are not likely to result in providing any necessary rail service to any railroad customer. His filings also do not otherwise serve the public interest.

Respectfully submitted
NORFOLK SOUTHERN RAILWAY COMPANY

BY _____

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Attorney for
Norfolk Southern Railway Company

Dated: September 5, 2007

CERTIFICATE OF SERVICE

I certify that the foregoing motion in STB Docket No. AB-290 (Sub-No. 293X) has been served on James Riffin, 1941 Greenspring Drive, Timonium, MD 21093, on September 5, 2007, by DHL Express, postage prepaid.

James R. Paschall

Dated: September 5, 2007

Exhibit 1

Voicemail from Jim Riffin sent to James Paschall - July 23, 2007 at 11:16 a.m. :

"G'Morning Mr. Paschall...Jim Riffin...Baltimore...443-413-6210...(I) had a thought...and have a comment...uh ...thought...if I were to...if you were to abandon the Cockeysville Industrial Track Line, and I were to acquire it, I wouldn't have time or motivation to look at all your other filings. I don't know if that's a good or a bad but...it is a thought...uh...which leads us to the next one...

I looked at one of your filings...uh...it's 290-293X...looks like you filed it on the 19th of July...it would appear that you've got a misleading statement - false or misleading statement in your document...uhm...my position would be if you correct it, I don't have to talk about it...uh...if you read Page Five of your NOE and Subparagraph Five, it talks about the System Diagram Map and in your document you state that you didn't put this little line of railroad...I think it's in Norfolk...uh...on the System Diagram Map as being subject to abandon...uh...because you didn't know you were going to abandon it...uhm...If you look on Page 24 of your Environmental Statement, it says that in the First Quarter of 2006...it's the 1,2,3..third paragraph down...uh...it says in the First Quarter of 2006 anticipating an abandonment filing covering the subject line you served the Environmental (unintelligible word) and Historic Reports. Uh...they seem to be directly contradictory uh...if the First Quarter of 2006 you were anticipating an abandonment filing, then you did that long before July of 2007, so you need to correct one of 'em...

Hey, why,...uh...I'd rather not comment on it to the Board, because if I do, then I have to file a petition to revoke, then you gotta start over again, then you gotta pay another fee, and that's just kind of a pain in the ass...

My bigger interest is Cockeysville...you really ought to seriously consider it...filing an abandonment for that, let me acquire it, and I'll get off your back. Talk to you later. Bye."

Transcription checked against recording by James R. Paschall

EXHIBIT 2

STB Docket No. AB-290 (Sub-No. 293X), Norfolk Southern Railway Company - Abandonment - Petition for Exemption - Norfolk and Virginia Beach, Virginia

VERIFIED STATEMENT OF STANLEY A. STEIN

My name is Stanley A. Stein. I am Assistant City Manager for the City of Norfolk Virginia, 1101 City Hall Bldg, 810 Union Street, Norfolk, VA 23510. I have from time to time served as Acting City Manager in the absence of the City Manager. I am the City's Sponsoring Department contact for the planned Light Rail Transit System (LRT) for the City of Norfolk. That LRT System will be built in part on the right-of-way to be abandoned by Norfolk Southern Railway Company (NSR) pursuant to an exemption expected to be granted by the Surface Transportation Board in the subject proceeding.

Much of the Norfolk LRT alignment would run along existing NSR rail corridor, resulting in little change to the communities surrounding the rail line. The City will work in an oversight/review manner on the light rail construction program that will be managed by Hampton Roads Transit.

On September 13, 2006, Hampton Roads Transit received approval from the Federal Transit Administration to enter into Final Design, allowing the Norfolk Light Rail Project to complete design and engineering plans and to proceed with the application for a full funding grant agreement. The last federal administrative hurdle to the funding for the project has been cleared and the proposed $232 million project is before Congress for the required 60-day committee review. No further legislative action is required following the Congressional committee review period for the project funding to be

approved. We expect the project funding to be available upon the imminent completion of the Congressional review period and we expect to be able to sign a contract accepting the $128 million in federal aid for the project in the near future. An additional $38 million for the project will come from the City of Norfolk; $29 million will come from the Commonwealth of Virginia; and, $37 million will come from other federal sources. Obviously, considerable public funds are committed for investment in this important public project. Any undue delay in starting construction of the project could lead to unanticipated increased costs and deferral of the public benefits of the project.

Unless the project is unexpectedly delayed, such as through administrative delays initiated by Mr. James Riffin in this proceeding, construction could commence soon after STB approval of the abandonment of the NSR rail line segment within the City of Norfolk that is the subject of this proceeding. The entire 7.4-mile system could be running by late 2009 or early 2010. We expect ridership to start at 6,000 to 12,000 riders per day, which will produce an immediate, noticeable reduction in automobile traffic on City streets. The LRT will enhance the continued redevelopment of Norfolk, improve local transportation systems, protect and preserve the environment and create a transit corridor linking residential, educational, medical services and employment areas of the City that will result in reduced automobile use within the City.

The City of Norfolk and Norfolk Southern Railway Company have executed a Purchase and Sale Agreement under which the City will acquire the right-of-way, track and materials located within the City between the Line's western terminus at Milepost-VB 0.12 and Milepost VB-4.8 (the "Norfolk Segment") for use as part of the right-of-way for

the LRT System upon NSR's consummation of the abandonment of the Norfolk Segment of the Line.

We are aware that NSR discontinued freight service on the portion of the Line within the City between Milepost VB-1.75 and Milepost VB-4.8, effective December 30, 2004, pursuant to a notice of exemption in *Norfolk Southern Railway Company - Discontinuance of Service Exemption - In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 258X) (STB served November 30, 2004) and that no freight rail service had been operated over this segment for at least the two years preceding the filing of the notice. We are aware that for several years only about one carload of freight per month moved over the remaining short segment of the Line between Milepost VB-0.12 and Milepost VB-1.75 until August, 2006 when service on that segment was formally discontinued. Most of the right-of-way of this section of the Line is located between Norfolk State University and residential neighborhoods on one side and Interstate 264 on the other side. Freight service on this portion of the right of way was formally discontinued effective August 6, 2006 under the STB's decision that granted NSR an exemption for the discontinuance in *Norfolk Southern Railway Company - Discontinuance of Rail Service - Petition for Exemption - In Norfolk and Virginia Beach*, VA, STB Docket No. AB-290 (Sub-No. 269X) (STB served July 7, 2006).

Inasmuch as NSR has formally discontinued freight rail service over the Line pursuant to previous STB exemptions, there has been little or no rail service over any part of the Line for several years, only one small business that used rail service to a minimal extent is located on the Norfolk Segment of the Line and most of the rest of the

Norfolk Segment is not located in an industrial area, I was surprised to receive a telephone call from Mr. James Riffin on August 16, 2007 stating that he intended to file an Offer of Financial Assistance (OFA) to acquire the Line. Mr. Riffin stated that his offer to acquire the Line had higher standing than the City's offer. I understand from reliable and experienced legal sources that Mr. Riffin's representation was in no way accurate or applicable to the factual circumstances in this case in accordance with STB and ICC precedents in cases with similar facts. I was astonished to hear Mr. Riffin state that he was a reasonable man and would consider a settlement to withdraw his participation and not cause delay and legal costs in the case. I considered this suggestion to be highly improper to say the least and not a proposition that the City could take seriously.

I was even further surprised to learn that Mr. Riffin had admitted that his efforts to impede or delay the processing of the NSR abandonment of the Norfolk Segment and in turn to impede or delay the completion of the sale transaction between the City and NSR and thus the commencement of construction of the LRT System construction, a very important public project for the City of Norfolk with significant public benefits, actually had more to do with a campaign of pressure he has been undertaking against NSR than the merits of this case or any legitimate outcome that Mr. Riffin could reasonably expect to achieve in this case through his filings with the Board. I understand and can see from Exhibit 1 in this motion that Mr. Riffin has undertaken his actions in this case as part of his effort to force NSR to convey to him NSR's freight operating rights over a line owned by the Maryland Transit Authority in Baltimore and Cockeysville, Maryland. I believe this abuse of the STB's processes and procedures can not be tolerated and must be

summarily rejected in view of the obvious harm to the public interest that Mr. Riffin's actions might cause.

The City urges that the Board grant NSR's requests for relief in their motion to strike Mr. Riffin's improper filings in this case and grant an exemption from the Offer of Financial Assistance provisions of 49 U.S.C. § 10904 and waiver of the Board's regulations at 49 C.F.R. § 1052.27 with respect to the abandonment of the subject Line either pursuant to NSR's motion for leave to amend its petition for exemption to abandon the Line to include a request for an exemption from the OFA provisions or upon the Board's own motion without requiring any further formalities, notices or procedures that might delay the handling of the petition. No legitimate interest or purpose could be served by permitting the filing or processing of an OFA under the circumstances of this case. No legitimate interest would be served by delaying the grant of the exemption to abandon the Line with the earliest possible effective date in this proceeding. Any delay in the completion of this proceeding would impede and delay the important public purpose of commencing and completing construction of the Norfolk LRT system and possibly increase its cost with no chance of any corresponding public or private benefit.

VERIFICATION

Commonwealth of Virginia)
) ss
City of Norfolk)

Stanley A. Stein makes oath and says that he is Assistant City Manager for the City of Norfolk, Virginia, that he is qualified and authorized to file the foregoing verified statement in STB Docket No. AB-290, Sub-No. 293X, that he has knowledge of the facts and matters stated in the foregoing verified statement, and that all statements and representations set forth therein as to those matters are true and correct to the best of his knowledge, information, and belief.

Stanley A. Stein

Subscribed and sworn to before me, a notary public in and for the State and City above named, this 5th day of September 2007. Shelley Harris Baker

My commission expires: 6/30/11

SHELLEY HARRIS BAKER
COMMONWEALTH OF VIRGINIA
7112688
NOTARY PUBLIC