



KAPLAN KIRSCH ROCKWELL

226353

ENTERED
Office of Proceedings

JAN 25 2010

Part of
Public Record

January 25, 2010

E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Norfolk Southern Railway Company – Petition for Exemption – Abandonment of Rail Freight Service Operations – In the City of Baltimore, MD and Baltimore County, MD*; STB Docket No. AB-290 (Sub-No. 311X)

Dear Ms. Brown:

I am enclosing the Reply of the Maryland Transit Administration in Support of Petition for Exemption in the above-referenced proceeding.

Thank you.

Sincerely,

W. Eric Pilsk

Enclosure

cc: All Parties of Record

264457

Attorneys at Law
Denver • New York • Washington, DC

Kaplan Kirsch & Rockwell LLP
1001 Connecticut Ave., N.W.
Washington, DC 20036

tel: (202) 955-5600
fax: (202) 955-5616
www.kaplankirsch.com

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

STB Docket No. AB-290 (Sub-No. 311X)

**NORFOLK SOUTHERN RAILWAY COMPANY –
ABANDONMENT OF RAIL FREIGHT SERVICE OPERATION
IN THE CITY OF BALTIMORE, MD, AND BALTIMORE COUNTY, MD**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION
IN SUPPORT OF PETITION FOR EXEMPTION**

Communications with respect to this document should be addressed to:

Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, D.C. 20036
(202) 955-5600
Email: csputulnik@kaplankirsch.com
Email: epilsk@kaplankirsch.com
Email: afultz@kaplankirsch.com

Counsel for the Maryland Transit
Administration

Dated: January 25, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

STB Docket No. AB-290 (Sub-No. 311X)

**NORFOLK SOUTHERN RAILWAY COMPANY –
ABANDONMENT OF RAIL FREIGHT SERVICE OPERATION
IN THE CITY OF BALTIMORE, MD, AND BALTIMORE COUNTY, MD**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION
IN SUPPORT OF PETITION FOR EXEMPTION**

The Maryland Transit Administration (“MTA”) hereby submits its reply in support of the Petition of Norfolk Southern Railway Company (“NSR”) for exemption with respect to the proposed abandonment of its freight service operation and the associated common carrier obligation on a 13.26-mile long segment of a line of railroad in the City of Baltimore, MD, and Baltimore County, MD, known in recent years as the Cockeysville Industrial Track (“CIT”) and ancillary and excepted trackage connected thereto (the “Line”), and for exemption from the provisions of 49 U.S.C. § 10904 and § 10905 concerning offers of financial assistance (each an “OFA”) and public use conditions with respect to the abandonment of the freight service rights and operations over the Line (the “Petition”).¹ MTA further joins in NSR’s Motion to Strike, filed on January 14, 2010, in which NSR seeks to strike the (1) Notice of Intent to Participate as a Party of Record; (2) Notice of Intent to File an Offer of Financial Assistance; (3) Motion for a

¹ On January 5, 2010, the Board set the schedule for submissions in this proceeding allowing replies to be submitted no later than January 25, 2010. Mr. James Riffin filed a number of pleadings in this matter prior to that date. Accordingly, MTA is responding to the various submissions that appear in the record to which MTA has not already responded. If the Board determines MTA would be required to seek leave to submit a reply to Mr. Riffin’s reply (styled “Comments”), MTA hereby moves the Board for leave to submit the portions of this document that constitute a reply to Mr. Riffin’s comments.

Protective Order Pursuant to 49 C.F.R. § 1104.14 (“Riffin Motion”); and (4) Comments and Opposition to Request for Exemption from the Offer of Financial Assistance Procedures (“Riffin Comments”), all filed by James Riffin in this matter.

MTA owns the track and underlying fee simple interest in the property underlying the Line; NSR retains only the common carrier obligations on the Line, which it exercises pursuant to a freight railroad easement. NSR’s requested abandonment, and the associated exemptions, are critical to ensure the future safety and success of the light rail transit system MTA operates over the Line. There has been no freight traffic on the Line, or any reasonable request for such service, since April 2005, and there is no credible or reasonable prospect of future demand for such service. The three former shippers still extant have all located permanent alternatives to shipping by rail and, as detailed below, fully support NSR’s Petition. Because all of the relief that NSR seeks is consistent with the Board’s regulations, the Line is currently used for an important public purpose and there is no overriding demand for rail service on the Line, the Petition should be granted in its entirety expeditiously.

BACKGROUND

The Line is a 13.26-mile long dead-end segment of railroad in Baltimore County, Maryland. In 1990, MTA acquired the real estate, including all tracks and related structures and facilities, underlying the Line from the Consolidated Rail Corporation (“Conrail”).² In that transaction, Conrail specifically retained the sole, exclusive and perpetual right to provide freight service over the Line. NSR acquired the freight operating rights and common carrier obligation

² Mr. Riffin erroneously states that “MTA only has a reversionary interest in the Line, since the entire Line, from Baltimore to the Maryland/Pennsylvania border, was acquired by the Baltimore and Susquehanna Railroad via condemnation in 1832.” Riffin Comments, STB Docket No. AB-290 (Sub-No. 311X) (Filed Jan. 5, 2010) (“Riffin Comments”) at 6, ¶ 15. As the Board as found, however, MTA owns the fee simple interest in the real estate under the Line, not merely a reversionary interest. *Maryland Transit Administration – Petition for Declaratory Order*, STB Finance Docket No. 34975 (Service Date Oct. 9, 2007), slip op. at 2. In any event, this incorrect statement is irrelevant to this proceeding, which is about NSR’s abandonment of its common carrier obligations on the Line.

over the Line from Conrail as part of the transactions approved by this Board in STB Finance Docket No. 33388, *et al.*, *CSX Corporation, et al. – Control and Operating Leases/Agreements – Conrail, Inc., et al.*, Decision No. 89, 3 S.T.B. 196 (1998).

MTA acquired its interest in the Line for the purpose of constructing and operating a light rail passenger line in the corridor between North Avenue in Baltimore and Cockeyville, Maryland. In *Maryland Transit Administration – Petition for Declaratory Order*, STB Finance Docket No. 34975 (Service Dates Oct. 9, 2007 and Sept. 19, 2008) (“MTA 1” and “MTA 2,” respectively), this Board determined that MTA’s acquisition of the property under the Line had not required Board authorization because Conrail (and later NSR) retained the entire common carrier obligation, and MTA acquired only the real estate associated with the Line. An Operating Agreement between NSR and MTA allocates access to the track between freight and rail transit operations. Accordingly, NSR is properly before this Board to request abandonment as the only entity holding a common carrier obligation over the Line.

MTA commenced light rail operations in 1993. By 2005, demand for freight service over the Line dwindled to the point of marginal or non-profitability, prompting NSR to seek to abandon the Line. *Norfolk Southern Railway Co. – Abandonment Exemption – In Baltimore County, MD*, STB Docket No. AB-290 (Sub-No. 237X) (Service Date Mar. 31, 2006), slip op. at 3. NSR’s 2006 Petition was denied without prejudice due to procedural deficiencies in its Petition. *Id.*

By the early 2000s, even as demand for freight service was decreasing, increased demand for light rail service compelled MTA to take steps to (1) increase capacity on the Line for light rail traffic and (2) reduce actual and potential temporal conflicts between freight traffic and light rail traffic. Accordingly, MTA double-tracked the entire segment of the Line from North

Avenue to just north of Warren Road in Baltimore County, where the light rail line leaves the subject right-of-way, to allow for simultaneous two-way traffic over the Line. Scheduled light rail service operates between 6:00 am and 11:00 pm Monday-Saturday, and between 11:00 am and 7:00 pm on Sundays;³ light rail trains also need access to the track during non-service hours for staging and other purposes. In 2008, the latest year for which data are publicly available, light rail weekday boardings averaged 25,754 passengers for regularly scheduled service,⁴ and the light rail carried over a quarter-million passengers to special events.⁵

By 2004, only three shippers availed themselves of freight service over the Line: Baltimore Gas & Electric (“BGE”), Fleischmann’s Vinegar Company, Inc. (“Fleischmann’s”) and North American Performance Minerals and Ceramics at E.C.C.A. Calcium Products, Inc., d/b/a IMERYYS Pigments and Additives Group (“IMERYYS”). In order to facilitate the construction of improvements to the light rail line, MTA entered into agreements with each of those three shippers to assist them to secure alternative transportation arrangements. All three have now made other transportation arrangements. Those agreements were completed in early 2005. The Board has previously found that those agreements were proper. *MTA 2*, slip op. at 6-7.

Because the only three prior shippers have made permanent alternative shipping arrangements, and due to the absence of other demand, there has been no freight rail traffic on the Line since April 2005, and no reasonable requests for freight service over that time period.⁶

³ MTA, Light rail schedule information, available at <http://www.mtmaryland.com/services/lightrail/schedule/>.

⁴ MTA, 2008 Annual Report at 2, available at <http://www.mtmaryland.com/resources/>.

⁵ *Id.* at 9.

⁶ The only apparent request for freight service was from Mr. Riffin, for the transportation of certain rail cars to property he owns on York Road in Cockeysville, Maryland. As the Board has already determined, however, there has not been a rail connection from the Line or CIT to Mr. Riffin’s Cockeysville property for many years. *MTA 2*, slip op. at n. 2 & n. 19. Accordingly, the requested service would have been impossible to provide, *Id.*, and there has been no bone fide demand for freight rail service over the Line since April 2005.

Fleischman's, IMERYS and BGE all supported NSR's 2006 abandonment petition.⁷ Letters of support for the currently proposed abandonment from Fleischmann's and BGE are attached hereto as Exhibits 1 and 2, respectively.

As described in detail in the Petition, NSR will retain its freight operating easement over the first mile of the Line in the City of Baltimore so that it can continue to serve its Thoroughbred Bulk Transfer Terminal, formerly the CSX Flexi-Flo Bulk Terminal Facility. Petition at 14-15.

ARGUMENT

MTA fully supports NSR's Petition, and further joins with NSR in moving to strike Mr. Riffin's filings in this matter. Because NSR has ably and thoroughly set forth the bases for its Petition and Motion, MTA will not repeat those arguments here. Furthermore, NSR has fully demonstrated that it is entitled to both abandon the Line pursuant to 49 U.S.C. § 10903 and that it is entitled to an exemption from the procedures of Sections 10903, 10904 and 10905 pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1152.50(b). Furthermore, Mr. Riffin does not oppose the abandonment or abandonment exemption request. Riffin Comments at 3. Accordingly, MTA will limit its comments to a direct response to Mr. Riffin's Comments and to make the Board aware of certain additional information relevant to its consideration of these matters.

A. The Board Should Grant NSR's Petition for Exemption from The Requirements of 49 U.S.C. § 10904 and 49 U.S.C. § 10905 because The Line Is Already in Use for A Valid and Compelling Public Purpose and There Is No Overriding Public Need for Continued Rail Service

Where a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service, the Board has granted exemptions from the requirements

⁷ *Norfolk Southern Railway Co. – Abandonment Exemption – In Baltimore County, MD*, STB Docket No. AB-290 (Sub-No. 237X), Comments of MTA in Support of Abandonment at Exhibits A, B and C (Filed Jan. 23, 2006).

of 49 U.S.C. §§ 10904 and 10905. *See, e.g., K & E R. Co. – Abandonment Exemption – In Alfalfa, Garfield, and Grant Cos., OK, and Barber Co., KS*, STB Docket No. AB-480X (Service Date Dec. 31, 1996), slip op. at 4-5. Particularly, the Board has previously granted exemptions from the requirements of 49 U.S.C. §§ 10904 and 10905 where, as here, the line was owned and used by a public agency conducting passenger operations and there was no overriding public need for continued freight rail service. *So. Pac. Trans. Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA*, STB Docket No. AB-12 (Sub-No. 169X) and *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 2X), consolidated proceedings (Service Date May 24, 1994), (“LACMTA 2X”), slip op. at 2.⁸ Furthermore, in granting prior exemptions from OFA procedures in abandonment proceedings involving public transit uses, the Board has recognized that permitting the OFA to proceed would preclude use by the light rail agency as planned, thus frustrating “the very purpose of the abandonment.” *LACMTA 2X*, slip op. at 2; *LACMTA 3X*, slip op. at 2; *LACMTA 4X*, slip op. at 2. A sufficiently compelling public purpose may even defeat the objections of prospective shippers. In *Norfolk and Western Railway Company – Abandonment Exemption – In Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X) (Service Date May 13, 1998), the Board granted a petition for exemption from the OFA because it found the City of Cincinnati’s proposed use of the abandoned right-of-way as part a coordinated improvement strategy for the city’s downtown,

⁸ *See also So. Pac. Trans. Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA*, STB Docket No. AB-12 (Sub-No. 171X) and *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 3X), consolidated proceedings (Service Date January 9, 1995) (“LACMTA 3X”), slip op. at 2; *So. Pac. Trans. Co. – Discontinuance of Service Exemption – In Los Angeles Co., CA*, STB Docket No. AB-12 (Sub-No. 172X) and *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 4X), consolidated proceedings (Service Date December 23, 1994) (“LACMTA 4X”), slip op. at 2; *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 5X) (Service Date July 17, 2008), slip op. at 5-6 (“LACMTA 5X”).

including development of a new professional football stadium, to be a valid public purpose. Two potential shippers objected to the abandonment, arguing that there was an overriding public need for transportation service, but the Board found the shippers' arguments unpersuasive when weighed against the reality that no traffic had moved on the line for the prior 11 years, and that the shippers had viable transportation alternatives available. *Id.* at 8-9.

The same principles that guided the Board in those decisions control here. There is no question the Line is needed, and indeed already dedicated, for public passenger rail use. MTA has operated light-rail light rail service on the Line since 1993 and has invested substantial sums to improve and expand the Line to allow increased light rail service. Since 2005, public light rail service has been the only traffic on the Line. An important purpose of the abandonment is to remove any potential for conflicts between that growing public light rail service and any potential freight traffic. Petition at 13-14. Allowing an OFA process to proceed in this case would undermine that purpose by inviting the very kind of traffic the abandonment seeks to end.

In addition, no *bona fide* purpose would be served here in inviting OFAs. The Board has repeatedly noted that “the OFA provisions are intended to permit a party *genuinely interested* in providing *continued* rail service on a line that would otherwise be abandoned to acquire that line *for continued rail service.*” *LACMTA 5X*, slip op. at 5 (internal citations omitted) (emphasis added). No freight traffic has moved over the Line in almost five years. According to NSR, no reasonable requests for service have been received in that time. Petition at 13. Accordingly, there is no service to be continued and a prospective offeror would presumptively be unable to demonstrate that *continued* rail service would be feasible or economically viable.

Moreover, as set forth in greater detail below, Mr. Riffin has made no showing that he has any *genuine* interest in providing continued rail service. He has not provided any evidence

of any actual demand for rail service or that he has the equipment and facilities to provide freight service on the Line.⁹ He admits he has only a “tenuous” relationship with potential shippers. Therefore, the prerequisites for application of the OFA provisions have not been and can not be satisfied, and the Board should grant NSR’s requested exemption from 49 U.S.C. § 10904.

B. Response to Mr. Riffin’s Comments and Opposition to Request for Exemption from The Offer of Financial Assistance Procedures

In the Riffin Comments, Mr. Riffin tries avoid this clear precedent and make the case that the OFA process is justified here. As demonstrated below, his arguments are utterly unsupported by the facts and the Board precedent.

1. MTA’s Light Rail Service Is an Established, Important Public Use of The Line and Future Freight Use of The Line Is Not Compatible With The Light Rail Line

Mr. Riffin does not, nor can he, argue that MTA’s light rail service is not an important public use of the Line. Nor can he dispute that MTA’s light rail service is a current, and indeed long established, public use of the Line. These implicit concessions are critical because, as the decisions cited above indicate, the Board will not hesitate to grant an exemption from the OFA procedures when a line is dedicated to a valid public use. In contrast, the decisions Mr. Riffin cites denied the exemption where there was no public use or the public use was not established and was poorly defined. *Norfolk Southern Railway Co. – Abandonment Exemption – In Orange County, NY*, STB Docket No. AB-290 (Sub-No. 283X) (Service Date May 2, 2007), slip op. at 3 (“Here, the petition for abandonment is not tied to a public project . . .”); *BNSF Railway Co. – Abandonment Exemption – In Kootenai County, ID*, STB Docket No. AB-6 (Sub-No. 468X) (Service Date Nov. 27, 2009), slip op. at 4 (amount of line needed for proposed “educational

⁹ As noted above, the Board has already determined that Mr. Riffin’s Cockeyville property, while not far from the Line as the crow flies, lacks a rail connection to the Line. *MTA 2*, slip op. at n. 2 & n. 19. Accordingly, he cannot use that property as a base or to support directly any proposed rail service on the Line.

corridor” was not defined).¹⁰ Unlike those conjectural public uses, MTA’s use of the Line is concrete, well established and critically important.

Mr. Riffin attempts to evade those facts by arguing that freight service could be compatible with MTA’s light rail service because MTA would have to share “only” the segment of the Line from UU 1.0 to UU 13.0 and that there had been no reported interference while the Line was single-tracked. Riffin Comments at ¶¶ 21 & 22. This is patently misleading because that 13 mile segment of the Line comprises virtually *all* of MTA’s light rail corridor along the Line and the vast majority of the Line NSR seeks to abandon. This is not a case, as Mr. Riffin suggests, where there is only a small area where freight and passenger service would overlap.

Moreover, Mr. Riffin’s argument about the absence of prior complaints of conflicts simply ignores the fact that by the mid 2000s, demand for light rail service had increased to such an extent that MTA added double tracking to support increased light rail demand and has supported NSR’s efforts to abandon the freight service obligation (including working with the three remaining shippers on the Line to secure alternative means of shipping). The fact is that increased demand for light rail service has made dual use of the Line impracticable. Any freight service at all would unduly interfere with MTA’s light rail service. Mr. Riffin fails to make any representations as to how any future operation would be consistent with the light rail service for the obvious reason that he cannot.

¹⁰ Mr. Riffin also cites *Norfolk Southern Railway Co. – Adverse Abandonment – St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286) (Service Date Feb. 14, 2008), slip op. at 6. This decision is simply inapplicable. It is an adverse abandonment proceeding, and did not involve an exemption from the OFA procedures. In any event, the Board denied the request because, *inter alia*, the potential public uses could proceed without abandoning the rail line.

2. Mr. Riffin Cannot Establish Any Overriding Public Need for Continued Rail Service on The Line

Unable to undermine the important public use of the Line, or the fact that the abandonment and OFA exemption will promote that public use, Mr. Riffin attempts to show that there is an “overriding public need for continued rail service.” In making this argument, Mr. Riffin faces a particularly heavy burden because there has been no traffic (local or overhead) over Line for more than two years and no formal complaints regarding service of filed during that time or pending now. The Board recognizes that absence of demonstrable demand for service within a two year period justifies an exemption from the formal abandonment procedures of 49 U.S.C. § 10903. 49 C.F.R. § 1152.50(b). The Board should also recognize that when a line is eligible for an abandonment exemption, a potential OFA offeror must make a particularly strong showing of demand for rail service in order to demonstrate that there is an “overriding public need for continued rail service.” Simply put, the extended absence of demand for rail service is powerful evidence that there is *no* “overriding public need for continued rail service” that must be overcome with specific, credible evidence of actual demand.

Regardless of the specific burden he must bear, however, it is clear that Mr. Riffin has not, and can not, establish an “overriding public need for continued rail service” necessary to invoke the OFA procedures here. There is no dispute that (1) freight demand in 2003 and 2004 was marginally profitable or non-profitable, (2) there has been no freight traffic whatsoever over the line since April 2005, (3) there have been no reasonable requests for freight service over the Line in that time and (4) there have been no formal complaints about the absence or quality of rail service. Moreover, the only three prior shippers on the Line supported NSR’s previous abandonment request in 2006, have located alternative means of meeting their shipping needs

and two of them have already indicated they fully support the abandonment and OFA exemptions NSR has requested in this proceeding.

In the face of these facts, Mr. Riffin fails completely to present *any* evidence whatsoever that could support even an inference that there is *any* demand for rail service on the Line. He has presented no letters, declarations or testimony from any potential shipper expressing any interest in shipping any goods on the Line. At most he suggests that *he* has requested freight service, but the Board has already determined that his request was not genuine because he sought to ship rail cars to a location that lacked a rail connection to the interstate rail network.¹¹

Instead, he offers recycled arguments about alleged misconduct to artificially reduce traffic that have been previously reject by the Board. *MTA 2*, slip op. at 7. First, he suggests that there is something improper about the agreements between MTA and Fleischman's, IMERYS and BGE in which MTA offered assistance to those shippers to make alternative shipping arrangements. Riffin Comments at 3-4, 6. Similarly, and in particular in his Motion for Protective Order, he argues that MTA made physical changes to track on the Line that have impaired freight service. These are not new assertions, and the Board has already considered and rejected them. *MTA 2*, slip op. at 7

Second, Mr. Riffin misrepresents the effect of those agreements in order to create the impression that there may be demand for future service. Mr. Riffin argues that the agreements will expire later this year, leaving those shippers free to resume shipping on the Line. That is not correct. MTA's agreements with those shippers were intended to assist the shippers in finding a *permanent* alternative to shipping over the Line. And they have, as the attached letters in support

¹¹ *MTA 2*, slip op. at n. 19. Moreover, an OFA proceeding is not the appropriate venue for Mr. Riffin to reargue his alleged grievances regarding the shipment of his rail cars.

of the Petition indicate. Contrary to Mr. Riffin's assertions, those shippers will not be seeking to resume freight service on the Line.

Finally, Mr. Riffin alleges that the timing and circumstances of MTA's termination of its lease with Packard Fence for a building near the Line are somehow suspicious. Riffin Motion at ¶ 4.A. Mr. Riffin's unsupported speculations as to the parties' motives in a transaction in which he had no involvement are irrelevant to this proceeding. Furthermore, Mr. Riffin's accusations are either entirely unfounded or patently inaccurate. For instance, although Mr. Riffin alleges that MTA "voided" the lease and gave Packard Fence only 30 days to vacate the premises (Riffin Motion at ¶ 4.A), MTA terminated the lease in accordance with its terms afforded Packard Fence nearly six months to move out. These inaccuracies in Riffin's speculative musings call into question any statement Mr. Riffin may make as to the particulars of MTA's or NSR's business relationships. MTA is entitled to deploy its assets, including real estate, in accordance with its business purposes as subject to applicable state and federal law,¹² and elected to terminate its lease with Packard Fence pursuant to the letter attached hereto as Exhibit 3.

Mr. Riffin's attempts to present "evidence" to the contrary is typical of the misleading form of argument Mr. Riffin employs. In Paragraph 9 of his Comments he indicates that he has spoken to the plant managers at IMERYYS and Fleischman's who he claims have indicated that there have been discussions about how they intend to meet their shipping needs after April 2010. But he does not provide any declarations or first-hand statements of those conversations so there is no way to know what was actually said. Moreover, Mr. Riffin does not indicate that those plant managers are considering requesting rail service. Nor can he. As the attached letters from

¹² For instance, Mr. Riffin provides no support for his accusation that the Verified Statement of Robert L. Williams (Exhibit 1 to Response of MTA, *MTA – Petition for Declaratory Order, STB Finance Docket No. 34975* (Filed Apr. 20, 2007) at ¶ 10) "falsely" stated that MTA's lease termination was required to satisfy federal homeland security requirements. Riffin Motion at ¶ 4.A.

Fleischman's and BGE indicate, those firms have each made other shipping arrangements, no longer desire rail freight service on the Line and support NSR's Petition. Thus, the only direct statements from prior shippers affirmatively undermine Mr. Riffin's assertions, and he cannot rely on unsubstantiated hearsay to overcome those clear disavowals of any desire for future freight rail service. Indeed, as NSR points out, the Board has repeatedly *rejected* Riffin's prior attempts to rely on those kinds of unsubstantiated, hearsay statements regarding the intentions of third parties. Reply of NSR to Riffin Motion for Protective Order at n. 8, citing *LACMTA 5X*.

Finally, Mr. Riffin makes vague references to potential future demand for freight service. Riffin Comments at ¶ 25. In typical fashion, however, Mr. Riffin never presents any specific information as to the volume of demand, the nature of the goods to be shipped, the times in which freight services would occur, the identity of any potential shipper or any other information that would in anyway support a finding that there is any demand for freight service or an overriding need for continued freight service. Indeed, Mr. Riffin acknowledges that his relationship with potential shippers is "tenuous" and that he cannot discuss with them even the possibility of providing rail service until he has obtained the right to provide service. Riffin Motion for Protective Order at 2.

At most, his representations are similar to the kinds of representations by Mr. Riffin that the Board has previously rejected in connection with this Line to the effect that if freight rail service were available and were cost effective, shippers may utilize such service. In *MTA 2*, slip op. at n. 13, the Board rejected such representations, stating that "These letters, which are filtered to us through Riffin, are too vague and indefinite to be given any weight." *Id.* at n. 13. The Board went on to find specifically that such vague statements of interest in rail service were insufficient to demonstrate a request for service. *Id.* Here, Mr. Riffin has not even presented any

letters or other indications, however vague, of any actual demand for freight service. At most he has promised to present his own analysis of future demand. But an unsubstantiated promise to deliver a self-serving marketing report is hardly sufficient to establish an “overriding need for continued rail service.”

3. An Exemption from The OFA Procedures Is Warranted to Avoid Frustrating MTA’s Important Public Use of The Line and to Avoid Entangling MTA, NSR and the Board in Another Vexatious Proceeding Initiated by Mr. Riffin

Mr. Riffin’s history of vexatious filings before the Board and in the courts underscores further why it is so important for the Board to grant NSR’s request for an exemption from the OFA procedures. As explained above, an exemption is appropriate to allow the prompt abandonment of property in order to allow the efficient implementation of important public uses. Allowing Mr. Riffin to submit an OFA would, almost certainly, undermine this objective.

As the Board is aware, and has determined on numerous occasions, Mr. Riffin has frequently abused the Board’s procedures by instituting frivolous proceedings and making needless filings. For instance, in a previous attempt to obtain a transfer of NSR’s rights in the CIT to him, Mr. Riffin filed a spurious offer of financial assistance in a separate NSR abandonment proceeding and then offered to withdraw it if NSR were to sell him its rights in the CIT. Mr. Riffin’s outrageous conduct caused the Board to avow that it would “closely scrutinize any future filings by Mr. Riffin in this or any other proceeding before the Board,” and that the Board “strongly admonish[es] Mr. Riffin that abuse of the Board’s processes will not be tolerated.” *Norfolk Southern Railway Company – Abandonment Exemption – In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X) (Service Date Nov. 6, 2007), slip op. at 2-6, petition for review dismissed, *sub nom., Riffin v. STB*, No. 07-1483 (D.C. Cir. Apr. 22, 2009).

Despite his intense activity in submitting, or promising to submit, OFAs, to the best of MTA's knowledge, he has yet to successfully (1) consummate a single OFA transaction, (2) operate a railroad or (3) transport any freight or passenger for hire over any line of railroad. *See, e.g., Riffin v. STB*, Judgment, No. 08-1208 at 2 (D.C. Cir. Jan. 22, 2010) (affirming the Board's determination in STB Docket No. AB-55 (Sub-No. 659X)), *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, that it had no jurisdiction to compel CSX to issue a deed to Mr. Riffin in his name, and that the consummation of any acquisition authorized in an OFA proceeding was the responsibility of the parties pursuant to state law). Indeed, the Board has previously recognized that Mr. Riffin has abused the Board's OFA and exemption procedures for improper purposes. *See, e.g., James Riffin d/b/a the Northern Central Railroad – Acquisition and Operation Exemption – In Baltimore City, MD*, STB Finance Docket No. 34982 (Service Date Oct. 9, 2007), slip op. at 2-3 (rejecting Riffin's exemption request to acquire a segment of track as incomplete because "NCR . . . fails to provide sufficient information to meet the Board's requirements. . . . [T]he Board needs enough information to support the conclusion that some understanding exists between the parties, particularly . . . where the parties who might be . . . impacted by the transaction have raised strong concerns about the accuracy of NCR's assertions."); *James Riffin D/B/A The Northern Central Railroad–Acquisition and Operation Exemption–In York Co., PA*, STB Finance Docket No. 34501 (Service Date Feb. 23, 2005), slip op. at 5 (in revoking exemption, the Board held that, "Here, it appears that [Riffin d/b/a] NCR is attempting to use the cover of Board authority allowing rail operations in Pennsylvania to shield seemingly independent operations and construction in Maryland from legitimate processes of state law. . . The Board has a responsibility to protect the integrity of its processes, and the Board is concerned that Riffin may be using the licensing process in improper ways."); *James*

Riffin D/B/A The Northern Central R.–Acquisition and Operation Exemption–In York Co., PA, and Baltimore Co., MD, STB Finance Docket No. 34484 (Service Date Apr. 20, 2004), slip op. at 2-3 (revoking Riffin’s purported notice of exemption as insufficient to justify the use of the streamlined exemption procedures due to the multiplicity of factual and legal issues Riffin failed to adequately address: “Given that there are substantial factual and legal issues raised and that the Board has a responsibility to protect the integrity of its processes . . . the Board will revoke the notice of exemption.”).

Instead of making proper use of the OFA procedures to provide continued rail service, Mr. Riffin’s abuse of those procedures has spawned countless proceedings before the Board and in courts across the country that have done nothing other than consume the time and resources of railroads, public agencies, and the staffs of the Board and courts without promoting in any way the goal of preserving rail service. This outcome, repeated time and again, is the precise opposite of the intended result of the OFA process: excessive litigation and process with no renewed rail service.

Based on the fundamentally misleading and vague nature of Mr. Riffin’s submissions in this matter, there is every indication that some version of that wasteful process will unfold here. He has admitted that he has no proof of any actual demand for rail service, that his relationship with potential shippers is “tenuous” and that none of them will really talk to him until he secures NSR’s freight rights. He has in effect admitted he has no evidence of actual demand for freight service and no actual plan to provide such service. His plan appears to be to leverage the OFA process into the entrée he needs to begin to approach potential shippers, assess potential demand, develop an actual business plan and make a concrete proposal. If the past is prologue, this process will likely involve requests for additional time, requests for additional information from

both NSR and MTA and the initiation of ancillary proceedings to address the various side-bar issues that Mr. Riffin will deem necessary to raise. Furthermore, he seems intent on injecting into these proceedings every minor complaint, slight and perceived plot against him, notwithstanding the Board's prior consideration and rejection of those assertions.

The result of allowing Mr. Riffin to invoke the OFA procedures, as it has been in virtually every other OFA matter initiated by Mr. Riffin, will be to mire MTA, NSR and the Line in senseless litigation over extraneous issues, diverting limited public resources from the critical task of providing necessary mass light rail services to the unproductive task of fending off more legalistic maneuvering by Mr. Riffin. NSR will be forced to retain control of the Line, and the residual liabilities and obligations that go with it. Because an important purpose of granting exemptions to the OFA procedures is to avoid just such barriers to allowing railroads to abandon unneeded lines (*see* 49 U.S.C. §10101(7)) and to implementing important non-rail public purposes, when there is no overriding need to continue rail service, an exemption from the OFA procedures is fully warranted here.

CONCLUSION

The Board should grant NSR's request for exemption from the requirements of 49 U.S.C. §§ 10903, 10904 and 10905 because the Line is needed for a valid public purpose and there is no overriding public need for continued rail service. Here, the public purpose, light rail passenger transportation, is established and has been ongoing for some 19 years. The Line is already owned by MTA, which has improved and maintained the facility in furtherance of the use for which it was acquired. The Board should accordingly grant the requested exemption from public use requirements because, as it has found in previous cases, "the right-of-way is already owned

by a public entity and will continue to be used for an important public purpose". *LACMTA 2X*, slip op. at 2; *LACMTA 3X*, slip op. at 2; *LACMTA 4X*, slip op. at 2.

WHEREFORE, and in view of the foregoing, MTA respectfully requests this Board to approve the Petition for Exemption filed by NSR for abandonment of freight service and the common carrier obligation on this Line, including NSR's request for exemption from the requirements of 49 U.S.C. §§ 10904 and 10905.

Respectfully submitted,



Charles A. Spitulnik
W. Eric Pilsk
Allison I. Fultz
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, NW
Suite 800
Washington, D.C. 20036
(202) 955-5600
Email: csputulnik@kaplankirsch.com
Email: epilsk@kaplankirsch.com
Email: afultz@kaplankirsch.com

Counsel for the Maryland Transit
Administration

Dated: January 25, 2010

Exhibit 1

Letter in Support of Abandonment Petition – Fleischmann's Vinegar

[attached hereto]

Fleischmann's Vinegar

Fleischmann's Vinegar Company, Inc.
12604 Hiddencreek Way, Suite A
Cerritos, CA 90703-5306
OFFICE: (562) 483-4600
FAX: (562) 404-0738
www.FleischmannsVinegar.com

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

December 1, 2009

Re: Docket No. AB-290 (Sub-No. 311X)
*Norfolk Southern Railway Company Abandonment – In Baltimore City
and Baltimore County, MD*

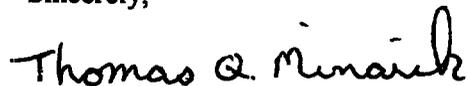
Dear Sir or Madam:

I am Interim Vice President - Operation at Fleischmann's Vinegar Company, Inc. ("Fleischmann's Vinegar"). I am writing to indicate Fleischmann's Vinegar support for the application of Norfolk Southern Railway Company to abandon and discontinue all rail freight services on the NS line between North Avenue and Cockeysville in Baltimore, Maryland. This track is known as the "Cockeysville Industrial Track" or the "Light Rail North" line.

Fleischmann's Vinegar has a facility located at 1900 Brand Avenue in Baltimore, Maryland that is located on the Cockeysville Industrial Track. At that facility, we manufacture white distilled vinegar. While Fleischmann's Vinegar has in the past relied on rail service at this location, we have made other rail arrangements for our transportation needs. As a result, we support the NS application to abandon this line and cease providing rail service to our facility.

If you have any questions about this matter, please do not hesitate to call on me.

Sincerely,



Thomas Q. Minarik
Interim Vice President – Operations
12604 Hiddencreek Way - Suite A
Cerritos, Ca 90703
Phone: 562-483-4642

cc: James R. Paschall, Esquire, Norfolk Southern Railway Company
Charles A. Spitulnik, Esquire, Counsel for Maryland DOT

Exhibit 2

Letter in Support of Abandonment Petition – BGE

[attached hereto]

Jo Ann Lingner
Vice President
Supply Chain Management

2900 Lord Baltimore Drive
Baltimore, Maryland 21244
410.470.7701
443.213.3609 Fax
joann.lingner@constellation.com



January 4, 2010

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Docket No. AB-290 (Sub-No. 311X)
*Norfolk Southern Railway Company Abandonment – In Baltimore City
and Baltimore County, MD*

Dear Sir or Madam:

On behalf of Baltimore Gas and Electric Company ("BGE"), I am writing to indicate BGE's support for the application of Norfolk Southern Railway Company ("NS") to abandon and discontinue all rail freight services on the NS line between North Avenue and Cockeyville in Baltimore, Maryland. This track is known as the "Cockeyville Industrial Track" or the "Light Rail North" line.

The BGE facility at 10500 York Road, Cockeyville, MD 21030 is located on the Cockeyville Industrial Track. At that facility, we store utility poles and other equipment needed in the day-to-day management and operation of our business. While BGE has in the past relied on rail service at this location, we have made other arrangements for our transportation needs. As a result, we support the NS application to abandon this line because our facility no longer relies on rail service.

If you have any questions about this matter, please do not hesitate to call on me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jo Ann Lingner", written in a cursive style.

Jo Ann Lingner
Vice President-BGE Supply Chain

cc: James R. Paschall, Esquire, Norfolk Southern Railway Company
Charles A. Spitulnik, Esquire, Counsel for Maryland DOT

Exhibit 3

Letter of Lease Termination, February 17, 2006 – Packard Fence

[attached hereto]

File Copy



MARYLAND TRANSIT ADMINISTRATION

MARYLAND DEPARTMENT OF TRANSPORTATION

Robert L. Ehrlich, Jr., Governor • Michael S. Steele, Lt. Governor • Robert L. Flanagan, Secretary • Lisa L. Dickerson, Administrator

February 17, 2006

Sent via Certified Mail

Mr. John W. Stackus
Packard Fence Company
10901 Railroad Avenue
Cockeysville, MD 21030

Subject: Termination Letter
License Agreement
10901 Railroad Avenue
Cockeysville, Baltimore County, MD
Tenancy #76

Dear Mr. Stackus:

In compliance with paragraph 3(b) Term of the Lease dated March 6, 1995 between the Mass Transit Administration, now known as the Maryland Transit Administration (MTA) and John W. Stackus, trading as Packard Fence Company ("Tenant"). Please accept this letter, as written notice of MTA's intent to terminate the Lease for the MTA owned land and improvements located at 10901 Railroad Avenue, Cockeysville, Baltimore County, Maryland.

MTA will permit Packard Fence to operate at the premises until July 1, 2006, and on that date the following should occur:

- All business materials, equipment, personal property and trash shall be removed from the premises.
- Under paragraph 5 Utilities of the Lease, Tenant was responsible for arranging for the service connection of all utilities necessary to operate the premises at the commencement of the Lease. Please notify all utility companies to shut off service and pay all outstanding invoices.
- Under paragraph 21 (a) Surrender of Premises; Holding Over of the Lease, upon the expiration or termination of this Lease, Tenant shall peaceably surrender the Premises in a clean condition and good order and repair, and otherwise in the same condition as the Premises were upon the commencement of this Lease, ordinary wear and tear excepted.

Mr. John W. Stackus
February 17, 2006
Page Two of Two

When you relocate from the premises, MTA will conduct a final inspection of the premises to determine that all business materials, equipment and personal property have been removed and the improvements are in "broom clean" condition. Following a satisfactory final inspection, MTA will forward a check via certified mail for the prorated portion of the remaining 2006 lease year. The check will be sent to 11013 York Road, Cockeysville, MD 21030.

Thank you for your partnership with MTA. Should you wish to discuss this matter, please contact George Fabula, of my office, either by e-mail at gfabula@mtamarvland.com or by phone at (4100 767-3698).

Sincerely,



Charles L. Landes
Manager, Office of Real Estate

cc: George Fabula, MTA, Office of Real Estate ✓
Fletcher Hamilton, MTA, Light Rail Operations
Farid Keshavarz, MTA, Office of Finance
Stephen Silva, MTA, Office of Engineering
Jack Sturgill, Special Assistant to the Attorney General

Certificate of Service

I hereby certify that I have this 25th day of January, 2010, caused to be served a copy of the foregoing Reply of the Maryland Transit Administration upon the following parties of record:

John V. Edwards
James R. Paschall
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

Cheryl Kerr
Maryland Department Of The Environment
1800 Washington Boulevard
Baltimore, MD 21230

James Riffin, Zandra Rudo, Carl Delmont,
Lois Lowe and Eric Strohmeyer
1941 Greenspring Drive
Timonium, MD 21093

Jo Ann Linger
Baltimore Gas And Electric Company
2900 Lord Baltimore Drive
Baltimore, MD 21244



W. Eric Pilsk