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E-Filing

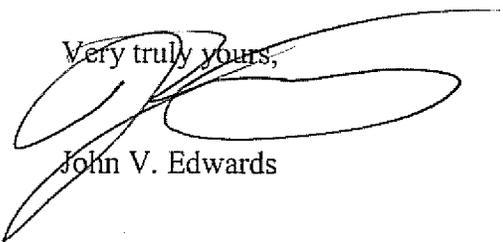
Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW,
Washington, DC 20423-0001

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

Dear Ms. Brown:

I attach for electronic filing the Response of Norfolk Southern Railway Company to
Riffin Petition for Stay of April 5, 2010 Decision, in the subject proceeding.

Very truly yours,


John V. Edwards

Attachment

cc: Service List

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-290 (SUB-NO. 311X)

NORFOLK SOUTHERN RAILWAY COMPANY –
- PETITION FOR EXEMPTION –
ABANDONMENT OF RAIL FREIGHT SERVICE OPERATION –
IN THE CITY OF BALTIMORE, MD AND BALTIMORE COUNTY, MD

RESPONSE OF NORFOLK SOUTHERN RAILWAY COMPANY TO
RIFFIN PETITION FOR STAY OF APRIL 5, 2010 DECISION

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Dated: April 23, 2010

Before the
Surface Transportation Board

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

Norfolk Southern Railway Company
– Petition for Exemption –
Abandonment of Rail Freight Service Operation –
In the City of Baltimore, MD and Baltimore County, MD

RESPONSE OF NORFOLK SOUTHERN RAILWAY COMPANY TO
RIFFIN PETITION FOR STAY OF APRIL 5, 2010 DECISION

On December 16, 2009, Norfolk Southern Railway Company (“NSR”) submitted a Petition for Exemption to abandon its common carrier obligation over a section of track in Maryland, over which Maryland Transit Administration (“MTA”) operates. On April 5, 2010, the Surface Transportation Board (“STB” or “Board”) granted that petition, which such grant included an exemption from the provisions concerning offers of financial assistance (“OFA”). On April 20, 2010, James Riffin (“Riffin”) filed a petition for stay (“Stay Petition”). In the Stay Petition, Riffin informs the Board that he will file a Petition to Reopen. Riffin asserts that in his Petition to Reopen he will argue that: (1) he has developed and continues to try to develop new evidence of shipper interest; (2) the Board’s decision regarding the OFA exemption was not supported by substantial evidence and is contrary to law; and (3) that the abandonment will leave a stranded segment of mainline subject to the Board’s jurisdiction. Riffin seeks a stay pending judicial review. Stay Petition at 9.

The Board must deny Riffin’s request for a Stay. “A strong presumption of

regularity supports any order of an administrative agency; a stay pending judicial review is a rare event and depends on a demonstration that the administrative process has misfired.” *Busboom Grain Co. v. ICC*, 830 F.2d 74, 75 (7th Cir. 1987) (“*Busboom*”) (denying a petition for stay pending judicial review of an Interstate Commerce Commission grant of abandonment authority even though movant argued that the railroad would lose the easement over which the abandoned line would run). Riffin has not demonstrated that, in this case, the administrative process has misfired.

The burden is on Riffin regarding each of the elements for a stay, it is a heavy burden, and he fails to bear that burden. Shipper interest has not been shown, and a stay is not justified on evidence that does not exist at the time of the request for a stay. Contrary to Riffin’s arguments, the Board’s conclusions are supported by substantial evidence. Finally, there is no “stranded segment” of concern. For all of these reasons, and further as set forth herein, the Riffin Stay Petition must be denied.

ARGUMENT

A. RIFFIN MUST SATISFY EACH OF THE “HOLIDAY TOURS” ELEMENTS IN ORDER TO JUSTIFY THE GRANT OF A STAY.

The Board will grant a stay only if a petition meets each of the traditional so-called “Holiday Tours” criteria, specifically:

- (1) the moving party must demonstrate a strong likelihood of prevailing on the merits of the challenge to the action sought to be stayed;
- (2) the moving party must demonstrate that it will suffer irreparable harm in the absence of a stay;

- (3) the moving party must demonstrate that other interested parties will not be substantially harmed by the grant of the stay; and
- (4) the moving party must demonstrate that the public interest supports the granting of the stay.

See, STB Finance Docket No. 35064, *Watco Cos., Inc. – Continuance in Control Exemption – Michigan Central Railway, LLC* (served August 8, 2007), *slip op.* at 2 (“*Watco*”); see also, *Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

A petition for stay is never granted lightly, for it truly is extraordinary relief. “On a motion for stay, ‘it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.’ The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief.” *Watco*, *slip op.* at 2-3 (citing *Cuomo v. United States Nuclear Regulatory Comm’n*, 772 F.2d 972, 978 (D.C. Cir. 1985). *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)).

B. RIFFIN CANNOT BASE HIS PETITION FOR STAY ON EVIDENCE YET TO BE PRODUCED.

Riffin attempts to end-run the Board’s procedures regarding the submission of petitions for stay. As Riffin notes, Stay Petition at 1, the Board’s April 5, 2010 decision in this proceeding was clear – petitions for stay must be filed by April 20, 2010.

Notwithstanding this definitive deadline, Riffin states:

8. The likelihood Riffin will prevail on the merits will be briefly noted.

Riffin's Petition to Reopen will delve extensively into the likelihood Riffin will prevail on the merits. Riffin's Petition to Reopen is incorporated herein, as if fully reproduced herein.

Stay Petition at 3. Clearly Riffin is stating that he has determined to file part of his petition for stay on April 20, 2010, and part of his petition for stay at some later date. This he cannot do. As described above, the Board has imposed a high burden on those seeking a stay of a Board decision, and has required the movant to bear that burden as to each of the elements. At the same time, the Board has imposed a very tight timeline for response to a petition for stay, in order for the Board to quickly decide the matter. *See, e.g.,* 49 C.F.R. Section 1152.25(e)(7) (cited in Riffin's Stay Petition).

In essence, Riffin has implicitly requested an extension of time to file his petition for stay, without demonstrating need. Further, he has done so in a manner that, if permitted, would be to the prejudice of NSR. NSR must file its response now to what Riffin claims is a document to be supplemented by his Petition to Reopen. He does so, intending later to reply to this Response of NSR, claiming today an intention to later submit more evidence or argument that NSR then would be precluded from addressing. In any event, Riffin's blithely off-the-cuff reference to incorporation of a document that has not been submitted, concerning evidence that he has yet to create, is intended to set up yet another series of back and forth pleadings going on *ad nauseum*.

The Board's regulations and the April 5, 2010 decision are clear. Petitions for Stay are due on April 20, 2010. Riffin filed a petition for stay on April 20, 2010. He failed to ask for any extension of time. He should be bound by the pleading he chose to file at that time.

C. RIFFIN HAS FAILED TO DEMONSTRATE A STRONG LIKELIHOOD OF PREVAILING ON THE MERITS.

In order to obtain a stay, Riffin must demonstrate a strong likelihood that he will prevail on any of the three challenges to the issuance of the April 5, 2010 decision either with reference to the grant of the abandonment or the associated grant of the exemption from the OFA procedures. Riffin has utterly failed to do so.

1. Riffin's "New Evidence" is meaningless.

Riffin attaches "new evidence" and claims that his petition to reopen the April 5, 2010 decision on the basis of that new evidence will be successful. The entirety of his presentation on this matter is as follows:

7. In Riffin's Petition to Reopen, he will present new evidence of "shipper interest" in the form of letters from Baltimore County Councilperson Bryan McIntire, from Kenneth Holt, candidate for Baltimore County Executive, and from other interested parties if received prior to April 30, 2010.

His "new evidence" is meaningless, and certainly does not support a finding that he has a strong likelihood of prevailing on the merits of his request to reopen.

The communication from Baltimore County Councilman Bryan McIntire is not a letter supporting the requested stay, expressing concern about the proposed abandonment, or anything else. By its own terms it is merely an inter-office correspondence from a councilman to the Baltimore County Attorney to review an unidentified complaint made by a constituent. Riffin's characterization of the inter-office correspondence as "a letter to the Baltimore County Attorney, asking for more information about the Incinerator project", Stay Petition at 9, is simply wrong.

The letter from Ken Holt is a letter from a candidate for Baltimore County

Executive, expressing concern about a story concocted and related to him by Riffin. With all due respect to Mr. Holt, he is not an elected official and has no power to speak for Baltimore County at this time.

Riffin claims that he spoke to David Craig, whom Riffin misidentifies as the Howard County Executive. (David Craig is, in fact, the Harford County Executive.) According to Riffin, the Harford County Executive related a conversation that he (Craig) had had with the Garrison Commander from the Aberdeen Proving Grounds (“APG”). As purportedly related by Craig to Riffin and, in turn, by Riffin to the Board, the Garrison Commander, though, has not committed to doing anything involving the movement of traffic by rail, but instead merely wants to keep “all options” open. Riffin does not even claim to have discussed the matter with the Garrison Commander himself. Finally, Riffin claims that the Garrison Commander “is prohibited from communicating with any Federal agency without approval from his superiors,” Stay Petition at 9, although he (the Garrison Commander) seemingly is not under the same prohibition as to communication with the Howard County Executive. In any event, Riffin admits that the Garrison Commander of the Aberdeen Proving Grounds does not present any evidence to the Board with regard to any potential shipper interest.

The sum and substance of all of this is that Riffin simply has failed to present any evidence of actual “shipper interest” regarding the movement of municipal solid waste. First, the article submitted by Riffin¹ throws substantial doubt regarding the claimed “Harford County

¹ The article, characterized by Riffin as “Confidential Marketing Information”, was submitted following the Board’s decision on January 29, 2010 imposing a protective order in this proceeding. Although in that decision the Board found a similar article to constitute “public information,” *slip op.* at 3, n.4, the Board has not had a reason to opine on whether the article attached to the Riffin February 24, 2010 submission similarly is considered “public information.”

Incinerator project” discussed in Riffin’s Stay Petition. Further, Riffin fails to show that the Baltimore County Council, or the Baltimore County Executive, or the Harford County Executive, and not the Administrative Division of the Bureau of Solid Waste Management of the Department of Public Works for Baltimore County, is the public body that determines how and to where it will move municipal solid waste.

Nor does Riffin submit any evidence evidencing actual “shipper interest” as to the movement of any other traffic. His statement that he will provide evidence with regard to “shipper interest” sometime in the future, if he is able to develop it, is not sufficient to support a petition for stay filed today.

Yet again “Mr. Riffin has provided no evidence to show a public need for continued freight rail service on this line.” STB Docket No. AB-290 (Sub-No. 293X), *Norfolk Southern Railway Co. – Abandonment Exemption – in Norfolk and Virginia Beach, VA* (served November 6, 2007), *slip op.* at 6.

2. Contrary to Riffin’s claims, the challenged Board’s Decision elements were supported by substantial evidence on the record.

Riffin challenges the following statements as not supported by substantial evidence on the record: (1) Riffin is not a shipper; (2) Riffin’s forecasts for potential freight rail are too speculative to be given any significant weight; and (3) abandonment of freight rail service is critical to ensuring the future safety and success of the light rail transit system operated over the line. Riffin simply is wrong, and he has thus further failed to bear his heavy burden to justify the imposition of a stay of the Board’s April 5, 2010 decision. Each of the

In any event, and so as to not compound any issues in this proceeding, NSR refers the Board to that article, submitted by Riffin, regarding any detailed analysis on this matter.

aforementioned determinations *are* supported by substantial evidence on the record. Riffin may disagree with them, but that is not sufficient in order to prevail on his motion for a stay.

a. *Riffin is Not a Shipper.*

The Board found that Riffin was not a shipper. Riffin disputes that, arguing that the determination by the Board was not made based on substantial evidence.² That simply is incorrect. Riffin submitted *no* evidence that he was a shipper other than evidence submitted and rejected years ago. On the other hand, all of the evidence in this proceeding supports the Board's determination in this regard.

Over a two year period in 2007 and 2008, in STB Docket No. 34975, *Maryland Transit Administration – Petition for Declaratory Order*, Riffin took the opportunity to submit extensive evidence and argument regarding certain traffic related requests previously made to NSR.³ In late 2008, the Board determined that the alleged traffic request did not make Riffin a shipper. According to Riffin himself, the only thing that has changed between the 2008 decision and today is that he has acquired a piece of property. Riffin has not submitted any evidence

² Riffin takes issue with the following: “The Board previously has assessed Riffin’s claim that NSR failed to serve him and has determined that Riffin is not a shipper on the CIT. Maryland Transit Administration – Petition for Declaratory Order, STB Docket No. 34975 (STB served Sept. 19, 2008). Riffin’s restatement of the same allegations here does not warrant revisiting that determination.” April 5, 2010 Decision, *slip op.* at 4, n.3.

³ The STB Docket No. 34975 proceeding involved the request of the Maryland Transit Administration (“MTA”) for a declaratory order confirming that MTA did not require authorization from the Board’s predecessor, the Interstate Commerce Commission, when MTA acquired the line. Riffin participated and produced reams of evidence and argument in that proceeding. On October 9, 2007, the Board made a determination with regard to that MTA request. Riffin filed a request to reconsider that October 9, 2007 determination. After submission of extensive additional evidence and argument, the STB made the determinations noted above, namely that Riffin is not a shipper on the CIT. The decision in that proceeding is a final decision on the merits, though appealed by Riffin through a petition for review filed November 12, 2009.

detailing any addition traffic requests since he acquired that property. Therefore, there is no evidence in this proceeding that would support the Board's re-evaluation of its earlier decision, nor would support a determination that Riffin became a shipper subsequent to that decision.

The totality of the evidence that Riffin submitted in this proceeding regarding a reasonable request for traffic was contained in a single paragraph and concerned precisely the same matters adjudicated in STB Docket No. 34975:

NSR ... tries to minimize Riffin's repeated efforts to obtain rail service in Cockeyville. Riffin paid NSR the freight costs to transport 11 rail cars to Cockeyville. NSR summarily refused to ship the rail cars to Cockeyville, NSR characterized the rail cars as "derelict." When Riffin's two passenger cars first arrived in NSR's Baltimore Bayview Yard, they were in mint condition. After sitting in NSR's Bayview yard for more than a year, NSR shipped the two cars to York, PA, where they were heavily vandalized. Today, Riffin has no idea where these two rail cars are at. Riffin also had six tank cars, which were certified until 2009, and three flat cars, all of which had more than 20 years of useful life when NSR took possession of them. These cars were also in mint condition, Riffin has no idea what NSR has done with these rail cars, Riffin's demand that NSR transport these rail cars to Cockeyville was "reasonable," Riffin paid NSR the full freight cost to transport these rail cars to Cockeyville, NSR took possession of the rail cars, then refused to deliver them to their intended destination. NSR's refusal to complete deliver of these rail cars to their destination, constitutes a violation of NSR's common carrier obligations. See *Montgomery Ward & Co. v. Northern Pacific Term. Co.*, 128 F.Supp. 475 (D.Or. 1953). Unfortunately, the Board refused to compel NSR to complete delivery of these rail cars to Cockeyville. Riffin's many complaints to the Board were summarily ignored by the Board.

James Riffin, "Comments and Opposition to Request for Exemption from the Offer of Financial Assistance Procedures," STB Docket No. AB-290 (Sub-No. 311X), January 5, 2010 ("Riffin Comments"), at pages 4-5. The matters discussed in this paragraph, however, were fully adjudicated in the STB decisions in STB Finance Docket No. 35245.

But there is nothing more. Riffin, in this proceeding, makes *no* allegation that he has made any requests with regard to traffic other than that at issue in the September 19, 2008

final decision. Instead, as to being a shipper, he merely argues that he has acquired property.⁴ The acquisition of property, even if it were able to be served by the line in question (which NSR does not concede is the case) is not sufficient to make a determination of whether a party is a shipper or has made a reasonable request for service, without more. In fact, the only evidence on the record is evidence that Riffin, in fact, has made no request for service. NSR Petition for Exemption at 24-25.

The Board, in its April 5, 2010 decision, merely states that Riffin submitted no evidence in this case that would lead it to reconsider the decision it made in 2008 that Riffin was not a shipper. In this proceeding Riffin presented no evidence (and continues to present no evidence) that it made any requests for service following 2008. The only evidence on the record is evidence that Riffin is, in fact, not a shipper. Therefore, Riffin cannot now claim that the Board lacked substantial evidence on the record to determine that Riffin was not a shipper.

b. *Riffin's forecasts for potential freight rail are too speculative to be given any significant weight.*

Riffin alleges that the Board did not have substantial evidence on the record to determine that: (1) "Riffin's forecasts for potential freight rail traffic are too speculative to be given any significant weight" and (2) "[Riffin] failed to submit any verified statements or other evidence from shippers requesting freight rail service." Stay Petition at 6 (quoting from the

⁴ Riffin states that "on February 16, 2009 Riffin acquired the Veneer Spur, and on May 6, 2009 filed a [Section] 10902 *Acquisition and Operation Application*, wherein he gave sworn testimony that Riffin wanted rail service in Cockeyville, and sworn testimony that a number of other businesses in Cockeyville wanted rail service, and would utilize Riffin's Veneer Spur to transload goods to / from railcars." Stay Petition at 5. Evidence that others wanted rail service is not relevant to whether Riffin is a shipper. Riffin mischaracterizes the Section 10902

April 5, 2010 decision, *slip op.* at 4). To support his petition for stay, Riffin argues that alleged evidence he submitted last year, in another proceeding, somehow is relevant to whether the Board, in this proceeding, made a decision based on substantial evidence on the record.

Riffin claims that he submitted evidence of potential freight rail traffic on May 6, 2009 in STB Finance Docket No. 35246. Stay Petition at 6. A review of the record in this proceeding, though, supports the Board's finding that any evidence submitted was speculative.

In a submission made on January 5, 2010, Riffin stated:

25. Shortly, a Motion for a Protective Order will be filed with the Board. The Motion will detail the traffic potential for the Line. The Board is already aware of some of the potential shippers: See the Protective Order in James Riffin - §10902 Acquisition and Operation Application - Veneer Spur - In Baltimore County, MD, STB Finance Docket No. 35246. The Motion for Protective Order will provide additional shipper information, which will definitively establish that there is a substantial demand for freight rail service on the Line, which freight rail service NSR has adamantly refused to provide.

"Riffin Comments," STB Docket No. AB-290 (Sub-No. 311X), January 5, 2010, at page 10.

Riffin submitted, with his Motion for a Protective Order, material other than verified statements or other evidence from shippers requesting freight rail service. And Riffin fail to submit in this docket any of the promised STB Finance Docket No. 35246 evidence.

The evidence submitted in STB Finance Docket No. 35246 apparently consisted of Riffin's verified statement describing purported discussions he had with various possible shippers. Further, the evidence apparently included some letters from shippers. It is impossible to tell on this record, as Riffin submitted the letters and other material in that docket pursuant to a protective order that prohibits their use in any proceeding other than STB Finance Docket No.

application, wherein he seeks to become a rail carrier, not a shipper.

35246.

In any event, material that was submitted in STB Finance Docket No. 35246 likely was that considered and dismissed by the Board in STB Finance Docket No. 34975, *Maryland Transit Administration – Petition for Declaratory Order*, (served Sept. 19, 2008), wherein the Board stated, at *slip op.* 6-7 note 13:

In one of his several “supplemental” filings, Riffin attached letters that he procured from four putative shippers, apparently to show that MTA removed active portions of the CIT or that MTA has interfered with NSR’s ability to provide common carrier rail service. They contain equivocations such as: “If shipping our raw ingredients to us by rail was less expensive than shipping it via truck, we would consider using rail service.” These letters, which are filtered to us through Riffin, are too vague and indefinite to be given any weight. Generally, a reasonable request for service is one that is specific as to volume, commodity and time of shipment. *CSX Transportation, Inc. - Abandonment Exemption – In Parke and Vermillion Counties, IN.*, STB Docket No. AB-55 (Sub-No. 579X) (STB served Sept. 13, 2002), *affd. Montezuma Grain Co. v. STB*, 339 F.3d 535 (7th Cir. 2003). A shipper may not “lie low” and then claim that a request for service has not been honored. See *Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation*, STB Finance Docket No. 42087, *slip op.* at 11 (STB served July 27, 2005).

This is not the first time that Riffin has submitted purported evidence regarding potential shippers. In STB Finance Docket No. 34975, the Board found it useful to reference yet another case where Riffin stretched the evidence to the point of being way too speculative to be credible:

Finally, we note that Riffin does not purport to represent any shipper here, and that he has not submitted verified statements from any shippers regarding problems with NSRs service or the adequacy of alternative arrangements negotiated between the shippers and MTA or NSR. Under these circumstances, Riffin's bare allegations - presented in his unsworn filings and his own accounts of purported statements by other (sometimes unnamed) individuals - are not sufficient to convince us that discovery was necessary in this case. [20]

n. 20. See *Norfolk Southern Railway Company – Abandonment Exemption - Norfolk and Virginia Beach. VA*, STB Docket No. AB-290 (Sub-No. 293X), *slip op.* at 6 (STB served Nov. 6, 2007) (finding unpersuasive Riffin’s self serving characterization of the needs or desires of others).

Id., slip op. at 9, n.20.

The *only* evidence on record with regard to future rail service is submitted by Riffin consists of business plans that he has devised. He submits no substantive evidence from any shipper with regard to a reasonable request for service. He has failed to bear his substantial burden in this regard.

c. *Abandonment of Freight Rail Service is Critical to Future Safety and Success of the Light Rail System.*

Riffin claims that there was not substantial evidence to support a statement that MTA believes the abandonment of freight rail service is critical to ensuring the future safety and success of the light rail transit system operated over the line. Riffin rests his claim on the allegation that the pleading in which the statement appeared is not verified by any employee of MTA. Riffin, however, has failed to bear his substantial burden justifying a stay based upon this claim.

The *only* evidence on the record regarding safety is that which is supplied by MTA. Riffin argues about the weight to give that evidence, and the meaning and interpretation of that evidence, but submits none of his own demonstrating the safety of combined light rail and heavy freight operations. Further, his arguments with regard to the safety of combined light rail and heavy freight operations fly in the face of common sense.

More fundamental, perhaps, to the matter at hand, is whether the Board's decision would be vulnerable even if the challenged statement were not present. The issue being discussed by the Board in the paragraph in which the MTA statement appears concerns the exemption from the OFA provisions. It concludes that "Because the Line is currently used for a

valid public purpose, and there is no indication of an overriding public need for continued [freight] rail service, we will exempt the proposed abandonment from the OFA requirements of 49 U.S.C. 10904.” April 5, 2010 Decision, *slip op.* at 6. Nothing in the Board’s decision rests of the allegedly offensive statement, and therefore Riffin’s claim for a stay based upon that statement is groundless.

D. RIFFIN WILL SUFFER NO IRREPAIRABLE INJURY IF A STAY IS DENIED.

Riffin will suffer no irreparable injury if a stay is denied and in the unlikely event that he is eventually allowed to pursue an OFA. It is well settled that the agency has the authority to require abandonment applicants to restore the *status quo ante* if it is determined that abandonment authority was improperly granted and there is no other way to protect a party’s rights. For that reason, in *Busboom*, the court held that a party seeking review of an abandonment decision would not suffer irreparable injury if consummation of the abandonment was not stayed. Furthermore, in this case, even if the Board ultimately was to decide that the abandonment was improperly granted, or that the exemption from the OFA procedures was improvidently granted, the vast majority of the tracks would remain. There is nothing to indicate that Riffin would suffer irreparable injury if stay is denied.

E. RIFFIN FAILS TO BEAR HIS BURDEN ON DEMONSTRATING THE FAILURE OF HARM TO OTHERS IF A STAY IS GRANTED.

Riffin has failed to even address this element of the *Holiday Tours* test, but he could not satisfy it even had he tried. He claims that he will be irreparably harmed in the absence of a stay. That is not true, but it is also not relevant to this element of the test. Instead,

this element of the test focuses on others. In this case, the legal status of this line has been in legal limbo for years due to the numerous vexatious and unfounded challenges Riffin has imposed on NSR, MTA and the Board. An extraordinary amount of time and money has been spent at the hands of this particular litigant. The harm to others that would be imposed by the grant of a stay would be the continuation of litigation that has eaten up way too much time and energy. In any event, because Riffin has failed to even address this element of the *Holiday Tours* test, he has failed to carry his burden with regard to that element, and to the right to a stay altogether.

F. RIFFIN HAS FAILED TO DEMONSTRATE THAT GRANTING A STAY IS IN THE PUBLIC INTEREST.

Riffin argues that public officials have not yet had sufficient time to explore the effect of the proposed abandonment on a proposed waste-to-energy incinerator. The letter from candidate Ken Holt refers to the project as only being in the planning stage. The newspaper article submitted by Riffin on February 24, 2010 clearly indicates that at that time there was no certainty with regard to the size of the proposed expanded incinerator, its location or the date it would come onto line. Certainly, such a speculative activity cannot form the basis of the public interest to hold up the abandonment.

But in a much more fundamental manner, Riffin fails to bear his burden with regard to justifying a stay based upon the public interest. In no uncertain terms, Riffin claims that, because notice of the proposed abandonment was provided to Baltimore in May of 2009, but the “New Incinerator Project” did not become publicly known until it is described in a newspaper on November 18, 2009, “neither the public nor relevant government officials have

had an opportunity to investigate the impact abandonment of the CIT will have on Baltimore County's ability to transport MSW from Cockeysville" to the Aberdeen Proving Grounds where the proposed incinerator apparently would be located. Riffin's argument rests first on the ridiculous assumption that Baltimore County officials were ignorant of the project prior to November 18, 2009, even though (according to the article evidence submitted by Riffin) Baltimore County currently moves municipal solid waste to the current incinerator, and even though (according to the article evidence submitted by Riffin) public officials and the general public throughout the area were already galvanized and fully engaged. Riffin's argument rests second on the ridiculous fact that, in the five months since, those same Baltimore County officials have yet to realize that the public interest demands a review of the project sufficient for them to ask for it (note again, and with continued all due respect to Mr. Holt, he is not a Baltimore County official at this time). Riffin's argument rests finally on the ridiculous fact that the only public official who has realized this is one who is precluded by "Military regulations" from voicing his concerns to Federal officials, but who is free under those same "Military regulations" to discuss his concerns with county officials.

Also relevant to whether the public interest requires the imposition of a stay are the considerations described above in Section E, with regard to the continuation of litigation that has taken its toll over the years.

G. THERE IS NO "STRANDED SEGMENT".

Riffin claims that "As Riffin was writing this Petition for Stay, he realized for the first time that the Line actually ends at Milepost 15.96 (south of Western Run), not at Milepost 15.44

(Beaver Dam Run). The Board has authorized abandonment only to Milepost 15.44.” Riffin claims that the abandonment leaves a so-called “stranded segment” consisting of 0.52 miles, requiring the rejection of the application as a whole. This is not a new issue, as the facts that Riffin relies upon are not newly discovered, but in any event Riffin is incorrect.

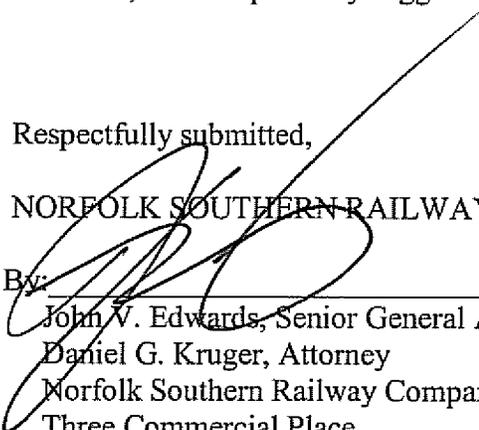
First, the Petition for Exemption went to great lengths to explain the varying mileposts, the inaccuracies and the changes that occasioned this line over time. See Petition for Exemption pages 7-11. Particular reference is made to Footnote 11, beginning on page 11, describing what had been conveyed to Conrail pursuant to the Final System Plan and, more significantly, the characterization of that which was not conveyed to Conrail as a line of railroad therein (and as relevant here, the mileage between Milepost 15.44 and Milepost 15.96) as being abandoned. Because the trackage between Milepost 15.44 and Milepost 15.96 had not been conveyed to Conrail as a line of railroad, it was not subsequently conveyed to MTA by Conrail. Today it does not stand in the way of the abandonment as granted.

CONCLUSION

For all of the reasons set forth above, NSR respectfully suggests that the Board deny the Riffin Petition for Stay.

Respectfully submitted,

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Dated: April 23, 2010

VERIFICATION

I, Marcellus C. Kirchner, declare under the penalty of perjury that the information contained in the foregoing Response of Norfolk Southern Railway Company to Riffin Petition for Stay of April 5, 2010 Decision is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Information.

Executed on this 23th day of April, 2010.



Marcellus C. Kirchner

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2010, I caused to be served a copy of the foregoing document via first class mail or e-mail on:

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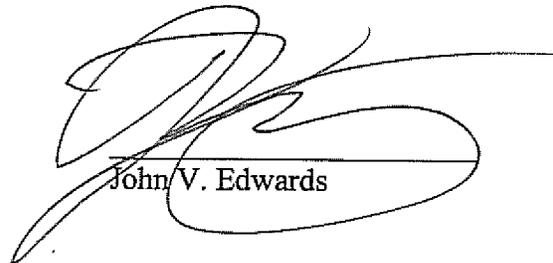
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