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April 26, 2010

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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 – 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 to James Riffin's Petition for Stay in the above-referenced proceeding.

Thank you.

Sincerely,

Charles A. Spitulnik

Enclosure

cc: All Parties of Record

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

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

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

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION TO
JAMES RIFFIN'S
PETITION FOR STAY**

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Dated: April 26, 2010

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

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JAMES RIFFIN'S
PETITION FOR STAY**

Pursuant to 49 C.F.R. § 1152.25(e)(7)(3), the Maryland Transit Administration (“MTA”) hereby submits this Reply to the Petition for Stay filed in this proceeding by James Riffin (“Riffin”) on April 20, 2010 (“Riffin Petition”), to stay the effectiveness of the Board’s Decision issued on April 5, 2010. Riffin has not satisfied the well-established requirements for a stay, and no public purpose will be served by granting it. Accordingly, the Riffin Petition should be denied.

There is no basis for issuing a stay of this proceeding. Riffin’s speculative hypothesizing that shippers might someday materialize along this corridor provides no basis to continue to impose uncertainties on the significant public use already in place. On the other hand, MTA has made a significant investment in the development of light rail passenger transportation in the greater Baltimore region, including on the Cockeysville Industrial Track (“CIT” or “Line”), the subject of NSR’s Petition for Abandonment in this proceeding, and the Line is a key element of

that public transportation infrastructure. Accordingly, Riffin has failed to establish any basis upon which this Board could grant a stay and his request for a stay should be denied.

ARGUMENT

I. Riffin cannot satisfy the criteria necessary to grant a Stay.

Riffin has not demonstrated that (1) he is likely to prevail on the merits; (2) he will be irreparably harmed in the absence of a stay; (3) the issuance of a stay would not substantially harm other parties; and (4) issuance of a stay would be in the public interest. F.D. 33877, *Illinois Central R. Co. – Construction and Operation Exemption – In East Baton Rouge Parish, LA*, slip op. (Service Date February 20, 2002), citing *Washington Metro. Area Transit Comm'n. v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Assoc. v. FPC*, 259 F.2d 921 (D.C. Cir. 1958). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. *Canal Authority of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). Absent such a showing, the Board must deny the Riffin Petition.

A. Riffin is unlikely to prevail on the merits.

The fundamental question in this abandonment proceeding is whether the public interest is served by preserving currently non-existent freight service on the CIT. Riffin is unlikely to prevail on the merits; indeed, Riffin fails to address the merits of this case in his Petition. The Board has carefully examined all of the evidence before it and determined that NSR's requested abandonment and exemption from offer of financial assistance ("OFA") requirements is justified. Where, as here, a railroad wishes to abandon a right-of-way on which a compelling public use has been established or is reasonably contemplated, and no demonstrable demand for freight service exists, there is no basis to hold the implementation of the abandonment in abeyance. Riffin has presented no evidence or argument relevant to this point. Instead, Riffin alleges incorrectly that the abandonment will create a stranded segment, that prospective shippers may

be harmed by the abandonment, and that the Board relied on insufficient evidence in making its determination.

1. The abandonment will not result in a stranded segment.

Riffin alleges that NSR's proposed abandonment will create a stranded segment of rail line between MP 15.44 and MP 15.96. Riffin is simply wrong.

As a matter of law, the segment between MP 15.4 and MP 15.96 has not been part of the nation's freight rail network since Conrail acquired the CIT in 1976. In response to the bankruptcy of the Penn Central Transportation Company and other major railroads in the Northeast and Midwest in the early 1970s, Congress enacted the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (codified as amended at 45 U.S.C. § 701 et seq.) ("3R Act"), which created Conrail and transferred to it those lines deemed profitable for continued freight operation. The 3R Act also codified a redesigned rail network in those regions in the Final System Plan ("FSP"), which transferred lines to Conrail for continued operation or deemed the lines abandoned. Pursuant to the designation of lines to Conrail under the FSP, the CIT, designated as Line Code 1224 from MP 0.0 at Calvert Station in the City of Baltimore to MP 15.4 at Cockeysville, was transferred to Conrail. FSP, Vol. I at 269, attached hereto as **Exhibit A**. The segment from MP 15.4 to Hyde, PA, at MP 54.6 was designated an out-of-service or intermittently served line and was not transferred to Conrail. FSP, Vol. II at 505, attached hereto as **Exhibit B**.

Accordingly, the common carrier rights on the CIT extend only as far as MP 15.4, as NSR also demonstrated in detail in its Petition for Abandonment ("NSR Petition") in this proceeding. NSR Petition at 10-12, n. 11. Any guesses Riffin might make as to the intent of the Deed by which MTA acquired the CIT from Conrail in 1990 are contradicted by the law

governing the disposition of assets under the 3R Act and, in any event, are not supported by the plain language of the Deed itself. Neither that deed nor any other evidence offered by Riffin specifies that “Bridge No. 16” means “the bridge at MP 15.96”. The line that is subject to this Board’s jurisdiction is the line that was described in the NSR Petition.

Riffin’s ruminations are contradicted by the facts arising from the disposition of rail assets pursuant to the FSP and his argument that the abandonment will create a stranded segment is unavailing. He is not likely to prevail on the merits of this matter.

2. Riffin has failed to demonstrate that there is any possibility of freight traffic on the Line.

Riffin argues, but fails to demonstrate, that there is any potential to develop freight traffic on the Line. Rather than provide credible evidence of the possibility of freight traffic on the CIT, Riffin resorts to repeating unsubstantiated assertions that have failed to sway this Board on multiple occasions in past proceedings. In a vain attempt to create the illusion of shipper demand where there was none and is none, Riffin posits himself as a shipper, a claim which even he concedes is not credible. Since Riffin did not own property adjacent to the CIT while the Board was considering MTA’s Declaratory Order proceeding in Finance Docket No. 34975 in 2007, Riffin allows that “the Board’s September, 2008 conclusion that Riffin was not a shipper on the CIT in 2007, had some basis . . .” Riffin Petition at 5. Riffin asserts that when he acquired the right to occupy property that once provided a spur connection to the CIT, he “became a *bona fide* shipper on the Line,” (*Id.*), but fails to demonstrate that the property in question even connects to the right-of-way or that he is in fact able to ship anything from his property.

By Riffin’s own admission, the letters he submitted under seal in this proceeding merely indicate that shippers would consider using rail service “*if only*” it were available. Riffin Petition

at 6. The Board has repeatedly rejected such evanescent expressions of commercial musings as insufficient evidence of shipper demand. Riffin's assertion that such letters should be accorded some enhanced weight because he happens to have included them in a verified statement falls far short of the credible, demonstrable, and quantifiable evidence necessary to make a showing that there is any reasonable prospect of demand for service on the Line.

3. Riffin can not demonstrate that the Board failed to take into account relevant evidence or relied on insufficient evidence in rendering its Decision.

Riffin appears to argue that the Board inappropriately relied on statements contained in the Reply of Maryland Transit Administration in Support of Petition for Exemption, STB Docket No. AB-290 (Sub-No. 311X) (Filed Jan. 25, 2010) ("MTA Reply") because MTA's pleading contained statements by counsel and were not verified by an MTA staff member.

The Board's rules specifically permit it to rely on pleadings signed by counsel. 49 C.F.R. § 1104.4(a). Riffin has simply failed to demonstrate, by adducing evidence of his own, that the Board's Decision was not based on sufficient evidence. The record in this proceeding is fully developed. Although NSR could have submitted its request for abandonment authority in the form of a Notice rather than a Petition, it elected to submit a Petition in order to be able to develop a more detailed record than a Notice proceeding would permit. NSR Petition at 12-13. Riffin concedes that the Board is entitled to rely on one party's evidence in the absence of contrary evidence by citing *Steadman v. SEC*, 450 U.S. 91, 101 (1981) ("[w]here there is evidence pro and con the agency must weigh it and decide in accordance with the preponderance.") Here, Riffin fails to present *any* evidence to refute MTA's statements regarding the necessity of the abandonment to ensure the future safety and success of MTA's operations on the Line. Accordingly, Riffin's questionable characterization of information

contained in the MTA Reply as “hearsay”, coupled with his failure to refute such information with credible evidence, will not undercut the Board’s discretion to rely on such information to the extent it deems necessary. His assertion forms an insufficient basis to conclude that the Board failed to take into account relevant facts, especially in light of the entire record in this proceeding, in rendering its Decision in this matter.

Riffin has failed to carry his burden on all of the issues he raises to assert his likelihood of success on the merits of this proceeding. Accordingly, the Board should deny his requested Stay.

B. Riffin will not be irreparably harmed if the stay is denied.

Riffin will not be irreparably harmed if the stay is denied. Simply stated, he has failed to, and most likely cannot, demonstrate an interest that will be harmed by the abandonment and the accompanying exemption from OFA conditions. Riffin has failed to show that any prospective shippers would be harmed if the Line is abandoned. He appears to argue that MTA would not be liable for money damages if any damages were to accrue, so the Line must therefore remain active. However, Riffin’s argument presumes that some entity has suffered or may suffer harm as the result of actions NSR or MTA may permissibly take once the abandonment is effected. Riffin has failed to demonstrate that he has suffered or will suffer any harm or that any prospective shipper has suffered any harm. Indeed, there have been no shipper complaints on this Line at any time and two former shippers, BGE and Fleischmann’s Vinegar, have provided letters in this proceeding affirmatively supporting the abandonment. *See* MTA Reply at Exhibits 1 and 2. Because there is no credible evidence to support it, Riffin’s assertion that he will be irreparably harmed if a stay is not granted must fail.

C. Issuance of a stay will substantially harm other parties.

Issuance of a stay will substantially harm the public and NSR. MTA's latitude to plan and implement improvements to the CIT has been constrained by the ongoing existence of NSR's common carrier obligation on the Line. Once the Line is turned over entirely to passenger rail use, MTA will be able to expand light rail passenger service and make improvements to the Line in an efficient manner appropriate to passenger-only operations. The removal of the uncertainty occasioned by the presence of a freight obligation on the line (however tenuous the actual possibility of freight operations might have been), will permit MTA to accurately plan and budget for its activities in the corridor without having to address freight-related contingencies. Similarly, NSR will be relieved of the administrative expense and burden of maintaining an unprofitable interest in the Line.

The Board has denied requests for stays in abandonment proceedings where development intended to benefit the public would be delayed. *See CSX Transportation, Inc. – Abandonment Exemption – In Rocky Mount, Nash County, NC*, STB Docket No. AB-55 (Sub-No. 562X) (Service Date December 30, 1999), slip op. at *3. Because the imposition of a stay would cause further delays to MTA's ability to plan and budget for its light rail facilities, the Board should conform to its precedent and deny the stay Riffin requests.

D. Issuance of a stay will be contrary to the public interest.

The imposition of a stay would not be in the public interest. Riffin has presented highly speculative assertions that an incinerator *may* be constructed on the Aberdeen Proving Ground, that rail service *may* be an option for transporting waste and that various public officials or candidates for public office *may* be aware that solid waste can be transported by a variety of means. Compare this speculation to the existing, real need to operate dependable, timely light

rail passenger service on the CIT. The public's interest in MTA's existing passenger operations is present, ongoing and compelling. On the other hand, Riffin has failed to demonstrate that planning, let alone implementation, of the prospective incinerator project is imminent, or that a site has even been selected for the facility.

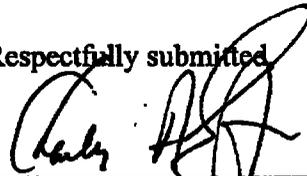
A stay would be contrary to the public interest because it would prolong uncertainty concerning MTA's ability to plan for existing light rail service and related improvements along the CIT and should therefore be denied.

CONCLUSION

WHEREFORE, in light of the foregoing, MTA respectfully requests that the Board deny the Riffin Petition.

Dated: April 26, 2010

Respectfully submitted



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Exhibit A

Final System Plan Designation of CIT, MP 0.0 to MP 15.4, to Conrail

[attached hereto]

VOLUME I (Parts I and II)

United States Railway Association

FINAL SYSTEM PLAN

for restructuring

Railroads in the Northeast and Midwest Region

pursuant to the

REGIONAL RAIL REORGANIZATION ACT OF 1973

JULY 26, 1975

Exhibit B

**Final System Plan Designation of MP 15.4 at Cockeyville, MD, to MP 54.6 at Hyde, PA, as
Out of Service**

[attached hereto]

VOLUME II (Part III)

**United States Railway Association
FINAL SYSTEM PLAN
for restructuring
Railroads in the Northeast and Midwest Region
pursuant to the
REGIONAL RAIL REORGANIZATION ACT OF 1973**

JULY 26, 1975

2. The Following Out of Service and Intermittently Served Lines Are Not Designated for Transfer to Consolidated Rail Corp.—Continued

Line No.	Terminal	Date Last Used	Reason Out of Service and Comments
INTERSTATE LINES			
142.....	Wawa, Pa. (Milepost 18.0) to Colora, Md. (Milepost 59.7)	Sept. 9, 1971.....	Track washouts.
145.....	Hyde, Pa. (Milepost 54.6) to Cockeyville, Md. (Milepost 15.4).	June 23, 1972.....	Damaged by "Agnes." The Cockeyville Industrial Park lies south of Milepost 15.4 and will continue to receive service. The only connection to the Stewartstown RR is at New Freedom, Pa. on this line. There has been no freight interchange on the line since June 1972. Analysis of data submitted to the ICC and to USRA indicates that ConRail service to the New Freedom interchange would not be economically feasible.
217.....	Bedford, Pa. (Milepost 46.5) to Cumberland, Md. (Milepost 82.8).	June 23, 1972.....	Flood damage caused by "Agnes." This line has been intermittently out of service since June 23, 1972. A Westinghouse plant, located at Milepost 50.7, now generates approximately 1 carload per month. A proposed industrial park and a historic village are under construction between Milepost 46.5 and Milepost 50.7. The Western Maryland Ry. owns the portion of the line from the Pennsylvania/Maryland state line to Cumberland, Md. over which PC has trackage rights. PC is not using these trackage rights and has not done so since "Agnes."
230.....	Southport, N.Y. (Milepost 74.0) to Hepburnville, Pa. (Milepost 5.5).	June 23, 1972.....	Damage caused by "Agnes." Pennsylvania Office of State Planning and Development reports considerable coal reserves along this line. The coal is now moving by truck. Negotiations are reportedly underway for extensive development of these reserves. Recommended for consideration for inclusion in a fossil-fuel land bank.
406.....	Whiting, Ill. (Milepost 505.7) to Calumet River, Ill. (Milepost 509.5).	June 1960.....	PC merger. This line is the last remaining New York Central track. Formerly, there was duplicative service: 4 tracks operated by the PRR and by the NYC.
1253.....	Limestone, N.Y. (Milepost 6.2) to Bradford, Pa. (Milepost 9.9).	Jan. 30, 1975.....	Lack of demand for service from Milepost 6.2 to Milepost 8.0; highway construction from Milepost 8.0 to Milepost 9.9.

FSP, VI. II

Certificate of Service

I hereby certify that I have this 26th day of April, 2010, caused to be served a copy of the foregoing Reply of the Maryland Transit Administration upon the following parties of record:

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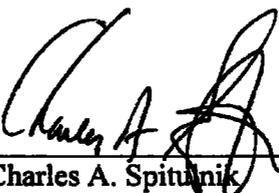
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