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September 10, 2010

E-Filing

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

Re: STB Finance Docket No. 35246, James Riffin – § 10902 Acquisition and Operation Application – Veneer Spur – In Baltimore County, Maryland

Dear Ms. Brown:

I attach for electronic filing Norfolk Southern Railway Company's Motion to Dismiss in the subject proceeding, in response to James Riffin's Notice of Appeal, filed September 8, 2010.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Daniel G. Kruger'. The signature is fluid and cursive, written over the typed name below.

Daniel G. Kruger

Attachment

cc: Service List

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35246

JAMES RIFFIN – § 10902 ACQUISITION AND OPERATION APPLICATION –
VENEER SPUR – IN BALTIMORE COUNTY, MARYLAND

MOTION TO DISMISS OF NORFOLK SOUTHERN RAILWAY COMPANY
IN RESPONSE TO
JAMES RIFFIN'S NOTICE OF APPEAL FILED SEPTEMBER 8, 2010

Daniel G. Kruger, Attorney
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Attorney for
Norfolk Southern Railway Company

Dated: September 10, 2010

Before the
Surface Transportation Board

STB Finance Docket No. 35246

James Riffin – § 10902 Acquisition and Operation Application –
Veneer Spur – In Baltimore County, Maryland

MOTION TO DISMISS OF NORFOLK SOUTHERN RAILWAY COMPANY
IN RESPONSE TO
JAMES RIFFIN’S NOTICE OF APPEAL FILED SEPTEMBER 8, 2010

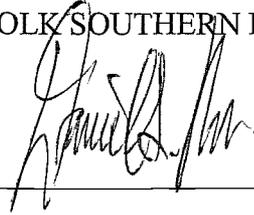
Norfolk Southern Railway Company (“NSR”) is in receipt of James Riffin’s Notice of Appeal, filed at the Surface Transportation Board (“STB”) on September 8, 2010 in the named proceeding. Mr. Riffin’s Notice of Appeal purports to appeal the August 18, 2010 Decision of the Director of the Office of Proceedings in this action, which was served on August 19, 2010. To the extent that the Director of the Office of Proceedings issued the August 18 Decision pursuant to her delegated authority in 49 C.F.R. § 1011.7(b), Mr. Riffin’s Notice of Appeal is untimely. Although 49 C.F.R. § 1011.2(a)(7) reserves for the full Board “[a]ll appeals of initial decisions issued by the Director of the Office of Proceedings under the authority delegated by § 1011.7(b),” that provision goes on to note that “[a]ppeals *must be filed within 10 days after service of the Director decision or publication of the notice...*” (Emphasis added.) Mr. Riffin’s Notice of Appeal was filed more than ten days after the service of the Decision of the Director of the Office of Proceedings.

NSR therefore moves that the STB dismiss Mr. Riffin’s Notice of Appeal as untimely.

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____



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Dated: September 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2010, I caused to be served a copy of the foregoing document via first class mail or e-mail on:

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Daniel G. Kruger