BEFORE THE
SURFACE TRANSPORTATION BOARD

228350

DEC 1 2010
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FINANCE DOCKET NO. 35438

EIGHTEEN THIRTY GROUP, LLC – ACQUISITION EXEMPTION – LINE OF RAILROAD IN ALLEGANY COUNTY, MD

VERIFIED NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35437 228352

GEORGES CREEK RAILWAY, LLC – OPERATION EXEMPTION – LINE OF RAILROAD IN ALLEGANY COUNTY, MD

VERIFIED NOTICE OF EXEMPTION

FINANCE DOCKET NO. 35436 228354

DUNCAN SMITH AND GERALD ALTIZER CONTINUANCE-IN-CONTROL EIGHTEEN THIRTY GROUP, LLC AND GEORGES CREEK RAILWAY, LLC

ENTERED
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DEC 1 - 2010
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Public Record

VERIFIED NOTICE OF EXEMPTION

DOCKET NO. AB-55 (Sub-No. 659X) 228356

CSX TRANSPORTATION, INC. – ABANDONMENT EXEMPTION – IN ALLEGANY COUNTY, MD

EIGHTEEN THIRTY GROUP, LLC – PETITION FOR EXEMPTION FROM THE PROVISIONS OF 49 U.S.C. §10904(f)(4)(A)

REPLY TO COMMENTS OF DUNCAN SMITH, GERALD ALTIZER, GEORGES CREEK RAILWAY LLC AND EIGHTEEN THIRTY GROUP LLC

1. Now comes James Riffin ("**Riffin**"), protestant in the above proceedings, who herewith replies to the November 17, 2010 Comments of Duncan Smith, Gerald Altizer, Georges Creek Railway LLC and Eighteen Thirty Group LLC ("**Comments**").

2. On p.16 of the Comments, Mr. Heffner, counsel for Duncan Smith, Gerald Altizer, Georges Creek Railway LLC and the Eighteen Thirty Group LLC, argued that:

A. He has represented Gerald Altizer since 2005, and that he "continued to represent Mr. Altizer and Western Maryland Services in negotiations with CSX and before the Board during this period."

Reply: Mr. Heffner has never filed a pleading with the Board on behalf of Mr. Altizer. All of Mr. Heffner's pleadings associated with AB-55 (Sub No. 659X) were filed on behalf of Western Maryland Services LLC, an entity that Riffin acquired control of (98% interest in) on March 1, 2006. Riffin, not Altizer, paid Mr. Heffner's retainer fee ($2,500.00) to file Western Maryland Services' Offer of Financial Assistance. Riffin, not Altizer, controlled Western Maryland Services beginning March 1, 2006. Riffin objects to Mr. Heffner representing anyone other than Western Maryland Services LLC or Riffin in any matter that relates to the AB-55 (Sub No. 659X) proceeding.

3. On p.17 Mr. Heffner argued that Riffin "appears to be engaged in the unauthorized practice of law before the Board." In support of this argument Mr. Heffner noted that Ms. Lowe's filing before the Board were "more or less identical to those submitted by Mr. Riffin," and that copies of Ms. Lowe's and Riffin's pleadings were sent to Mr. Heffner in the same envelope.

Reply: Riffin thought this issue was resolved in AB-290 (Sub No. 311X). In that proceeding the Board objected to Ms. Lowe, Zandra Rudo and Carl Delmont merely adopting by reference whatever Riffin pleaded. Instead, the Board mandated that these individuals prepare separate full-length pleadings, signed by each individual, which they did. These individuals have made it clear that they will be filing separate, but virtually identical pleadings with the Board, signed by each individual individually. Riffin has given Ms. Lowe, Ms. Rudo, Mr. Strohmeyer

and Mr. Delmont permission to not only adopt verbatim whatever Riffin writes, but also to plagiarize whatever Riffin writes. Adopting whatever another individual writes, with the writer's permission, is not unlawful. Riffin does not advise these individuals what to write. He merely gives them an advance copy of what he has written. If they repeat verbatim what Riffin has written, that has saved them the time and effort of 'reinventing the wheel.' An analogy: When a Court signs an order prepared by counsel, the order becomes the order of the Court, even though it was prepared by counsel.

4. The Board has consistently rejected **all** of Riffin's Notices of Exemption whenever the matter has become controversial. A mere objection has been sufficient to justify rejecting Riffin's Notices of Exemption as being 'controversial.' If the Board does not reject the Notices of Exemption in these proceedings due to the highly controversial nature of the proceedings, (does Riffin have the common carrier rights and obligations associated with the Allegany Rail Line / is it a conflict of interest for Mr. Heffner to represent the entities in these proceedings), then the Board would have disregarded its prior precedents and would have afforded these entities unequal treatment of the law, which is prohibited by the U.S. Constitution.

5. The Board, in its denial of Riffin's request for a stay of these proceedings, stated that the underlying title issues are matters that must be resolved in a State court. Title to the real estate and track infrastructure are matters more appropriately resolved by a State court. The issue of whether Riffin has the common carrier rights and obligations associated with the Allegany Rail Line, however, the Board is uniquely qualified to address. And **it is the transfer of those common carrier rights and obligations that is the subject of FD 35438.** The Board has **exclusive** jurisdiction and regulatory authority over the transfer of common carrier by rail rights and obligations. The Board has consistently held that the transfer of real estate and track infrastructure sans the transfer of the common carrier rights and obligations, does not require Board authorization. See *State of Maine* and its progeny.

6. Mr. Heffner stated that a Notice of Exemption can only be rejected if the underlying matter invokes a 'transportation' policy. In this case, FD 35438 does invoke several 'transportation' policies, to wit: 49 U.S.C. 10101 (2) [to require fair decisions]; (7) [regulatory barriers to enter / exit industry]; (15) [expeditious handling and resolution of all proceedings

required or permitted to be brought under this part].

7. Misrepresentations of facts: Mr. Heffner represented that Riffin has the common carrier rights and obligations associated with the Allegany Rail Line. The Board has determined otherwise. The Board's determination governs, until the Board's determination is overruled. Consequently it was a material misrepresentation of facts for Mr. Heffner to represent to the Board that Riffin was the railroad that would be transferring the common carrier rights and obligations to the 1830 Group, without noting that the Board had previously held that Riffin did not possess those common carrier rights and obligations. [While Riffin agrees with Mr. Heffner's argument, it was a material misrepresentation for Mr. Heffner to not note the Board's position. In additional, whether Riffin has the common carrier rights and obligations is highly controversial.]

8. WMS LLC did not record the deed because WMS LLC never received authority to acquire or to operate the Allegany Rail Line. Riffin believes recording the deed may be an unlawful act. [Although it could be argued that the deed only conveyed the underlying real estate and track infrastructure, (which does not require Board authority) and did not convey CSX's common carrier rights and obligations, which were conveyed by the Board's *Substitution Decision.*] Rather than risk subjecting WMS LLC or Riffin to suit for violation of 49 U.S.C. 10901, Riffin has elected to avoid this potential litigation by not recording the deed. Since Riffin no longer controls WMS LLC or Western Maryland Services LLC, the present owners of those two entities may have a different view.

9. The Board in *Verified Petition of the Maryland Transit Administration for Declaratory Order*, STB FD No. 34975, made it clear that prior Board approval was not required when only the real estate and track infrastructure were being transferred. [In the FD 34975 proceeding, Conrail had transferred the real estate and track infrastructure associated with two lines of railroad to the Maryland Transit Administration ("MTA"), and the MTA had thereafter transferred to Railroad Ventures LLC, a portion of the real estate and track infrastructure that Conrail had previously transferred to the MTA. The MTA also granted permission to Baltimore County to remove several at-grade crossings, and granted permission to several adjacent land owners to remove the rails and to use the right-of-way for parking lots. None of these MTA

actions were deemed unlawful by the Board.]

10. WHEREFORE, Riffin moves the Board to permit this Reply to the Comments of Mr. Smith, etc., to provide the Board with a more complete record,

11. And for such other relief as would be appropriate.

Respectfully,

James Riffin
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 30th Day of November, 2010, a copy of the foregoing Reply to Comments of Duncan, etc. was mailed via first class mail, postage prepaid, to: John Heffner, Ste 200, 1750 K Street NW, Washington, DC 20006 (202) 296-3333; and was hand delivered or mailed to the U.S. Trustee, 2nd Floor, 101 W. Lombard St., Baltimore, MD 21201; to Duncan Smith, 10706 Beaver Dam Road, Cockeysville, MD 21030; to Mark Friedman, DLA Piper, 6225 Smith Ave, Baltimore, MD 21209, and to Charles Spitulnik, Kaplan Kirsch, STE 800, 1001 Connecticut Avenue, NW, Washington, DC 20036, counsel, counsel for the MTA.

James Riffin