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December 20, 2024

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VIA E-FILING

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

ENTERED
Office of Proceedings
December 23, 2024
Part of
Public Record

Re: Norfolk Southern Railway Company – Abandonment Exemption – In The City of
Baltimore, Maryland AB-290 (Sub-No. 412X)

Dear Ms. Brown:

Norfolk Southern Railway Company (“NSR”) is submitting this reply to (1) update the Surface Transportation Board (the “Board”) on Developments Related to AB-290 (Sub-No. 412X) and (2) briefly address a pleading made by James Riffin (“Riffin”) entitled “Notice of Intent to Seek Judicial Review of the December 9, 2024 Served Decision Granting NSR Authority to Withdraw Its Abandonment Exemption, and Petition to Stay that Decision” (“JR-8”). With respect to JR-8, as explained herein, the Acting Director of the Office Proceedings was delegated authority to grant decisions on routine matters such as a NSR’s Motion to Dismiss, which was submitted by NSR on December 6, 2024 (“Motion to Dismiss”). The Acting Director correctly granted the Motion to Dismiss on December 9, 2024 pursuant to this delegated authority. Both Riffin and NSR have acknowledged in this proceeding, that NSR’s Notice of Exemption (“Notice”), which was submitted on October 31, 2024¹ included certain inaccurate statements regarding real estate and other issues, which NSR has determined it needs time to resolve before refiling.² Moreover, as NSR explained in its Motion to Dismiss, there are multiple other problems with Riffin’s Offer of Financial Assistance (“OFA”) that by virtue of dismissal become moot. See Motion to Dismiss, at FN 3. Because the Acting Director of the Office Proceedings had the authority to dismiss the proceeding, and because the dismissal the Acting Director granted was appropriate, NSR only intends to briefly address issues raised by Riffin to date and will likewise only briefly respond to Riffin’s arguments in JR-8. Before briefly discussing Riffin’s prior filings and JR-8 and in the interest of a complete record, however, NSR provides the Board with additional information concerning Riffin’s recent interactions with counsel for NSR and his participation to date in this proceeding.

¹ NSR submitted a Notice to abandon its freight rail easement over an approximately 1.00-mile-long rail line, extending from Milepost +/- UU0.00 to Milepost +/- UU1.00 in the City of Baltimore, Maryland (the “Line”). See Notice at 1, FN 1.

² In the next section, NSR discusses certain communications from December 2, 2024 to December 11, 2024 in which Riffin time and again asks NSR to file a corrected Notice of Exemption.

Developments Related to AB-290 (Sub-No. 412X)

In response to NSR's Notice,³ Riffin submitted a plethora of pleadings, the first two of which alleged that the Notice included three textual passages that Riffin claimed were "False or Misleading Statements."⁴ Riffin submitted five additional pleadings including: (1) JR-3 entitled "James Riffin's Request for Information," in which he seeks certain information associated with his purported acquisition; (2) JR-4 entitled "Motion for a Protective Order;"⁵ (3) JR-5 entitled "Limited Financial information;" (4) JR-6 entitled "James Riffin's Additional Request for Information," through which Riffin added to his list of requested information and supplemented the JR-3 document he filed the previous day; and (5) JR-7 entitled "James Riffin's Comments Draft Environmental Assessment."⁶ In addition to the multitude of pleadings before the Board, Riffin sent numerous emails and letters to counsel for NSR (and MTA) ("Communications").⁷ To characterize these communications favorably to Riffin, he appears to be trying to play "Let's Make a Deal Railroad Edition." However, collectively the plain language of the Communications suggest they are really an attempt to coerce NSR or MTA into accommodating his desire to "obtain a mile or so of [rail] line," so that he can "provide rail service to the [purported] shipper" he identified as needing a United States-based service beginning in the first quarter of 2025, preferably within the Baltimore area. Riffin wanted to provide rail service to this purported shipper somewhere within the Baltimore area, as opposed to his other optional location (York, PA), in order to avoid "**expos[ing] NSR to issues [Riffin] would think NSR would prefer to avoid.**"⁸ On December 9, 2024, Riffin sent an analogous email to counsel for MTA, which forwarded a

³ Shortly after NSR filed its Notice of Exemption, on November 20, 2024, the Maryland Transit Administration ("MTA"), an owner of the real estate underlying the Line, subsequently filed a notice of intent to participate, to protect its interests.

⁴ On November 25, 2024, and November 26, 2024, Riffin filed a document, designated JR-1 entitled "James Riffin's Notice of Intent to Participate – with Verified Comments". In JR-1, Riffin pointed to three textual passages that he claims were "False or Misleading Statements," one of which was a drafting error that was later corrected. The drafting error in the Notice occurred when NSR explained in detail how MTA acquired the CIT from Conrail in 1990, but on that same page and elsewhere, NSR erroneously mentioned the sale as being from NSR, rather than Conrail. As to the other two "False or Misleading Statements," NSR originally made those statements in good faith based on NSR's belief and upon extensive consultation with MTA concerning the matters mentioned. In JR-1, Riffin erroneously asserts he called Ms. Zorbaugh and then talked about the three misleading statements on November 5, 2024. Mr. Riffin first left Ms. Zorbaugh a message on November 6, 2024. See Exhibit 1 – OOMA phone dictation of message left by Riffin. Contrary to Riffin's claims, he and Ms. Zorbaugh did not end up connecting until several days later, on November 12, 2024. During the November 12, 2024 discussion, Riffin identified three statements he believed to be false and requested certain information. During the discussion, Mr. Riffin acknowledged that no shippers currently utilized or needed the Line for continued rail service, but he was a user of the MTA and he believed that the MTA needed continued freight service over the Line, he could provide it if he acquired the Line, and he was considering filing an OFA for that purpose. Riffin also expressed concerns about potential impacts on MTA's service arising from the ongoing Howard Street Tunnel project in Baltimore.

⁵ See Norfolk Southern Railway Company – Abandonment Exemption – In The City of Baltimore, Maryland, AB-290 (Sub-No. 412X) (STB served December 2, 2024).

⁶ In JR-7 filed on December 2, 2024, Riffin further demonstrates the lack of a bona fide reason for the acquisition of the rail easement, essentially arguing that MTA, in its maintenance operations for an extraordinarily short segment of its track, should want to reconsider its maintenance of way processes for the delivery of ballast, rail, and ties via rail so that, when MTA next performs a significant track rehabilitation, and even assuming that it is logistically possible, delivers such materials by rail for transloading to truck for delivery to the maintenance site.

⁷ Riffin sent seven (7) Communications between December 2, 2024 and December 11, 2024.

⁸ See Exhibit 2 – Riffin December 8, 2024 Communications at Riffin-3. Emphasis supplied.

previous email to Ms. Zorbaugh, counsel for NSR. Also, on December 9, 2024, Riffin sent Ms. Zorbaugh a second correspondence entitled “No XMAS present”, which reiterated that, unless NSR gives him what he wanted, Riffin planned to file an appeal and pursue his purported “‘second win’ against the STB.”⁹ On December 11, 2024, Riffin’s last communication prior to filing JR-8, Riffin, in addition to stating that he was moving up his intended date to seek judicial review, also claimed for the first time that a shipper can file a request for rail service at the Flexi Flo Facility (also referred to herein as former “NSR TBT Facility”) and, should service is not provided, said theoretical shipper could file a “complaint for denial of rail service” against NSR.¹⁰ Mr. Riffin in closing that communication offered an ominous message - NSR and MTA “presently still have the ability to control what lies ahead.” To be clear, this is not Riffin’s first foray into harassing and abusing the Board’s processes.¹¹

While it is clear from the Communications and pleadings submitted by Riffin before the Board that Riffin has an intense desire to obtain a mile or so of line for some purpose, that does not mean the Board’s decision dismissing the proceeding was improper.

Dismissal was Appropriate Based on Precedent

The Acting Director of the Office Proceedings had the authority to dismiss the proceeding, and the dismissal was appropriate. Under 49 C.F.R. § 1011.6(c)(3), the Chairman has delegated to the Director of the Office of Proceedings the authority to dispose of routine procedural matters. Appeals of those decisions are decided by the Board. 49 C.F.R. §§ 1011.6(b), 1115.1(c). “Such appeals ‘are not favored’ and ‘will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.’ 49 C.F.R. §§ 1011.6(b), 1115.1(c).” See Central Texas & Colorado River Railway, LLC – Abandonment Exemption – In McCulloch, San Saba, Mills, and Lampasas Counties,

⁹ See Exhibit 2 – Riffin December 9, 2024 Communications at Riffin-4.

¹⁰ See Exhibit 2 – Riffin December 11, 2024 Communications at Riffin-6.

¹¹ See James Riffin – Petition for Declaratory Order, FD 36078 (STB served April 27, 2017). In striking a petition for a declaratory order filed by James Riffin and terminating the proceeding, the Board found that the petition was filed for the improper purpose of harassing parties and causing a delay in another Board proceeding and that Riffin’s conduct did not conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States. Moreover, it was noted that “[t]he Board has previously discussed this standard as it applies to Riffin and has admonished him ‘that abuse of the Board’s processes will not be tolerated.’ Norfolk S. Ry.--Aban. Exemption--in Norfolk & Va. Beach, Va., AB 290 (293X), slip op at 8 (STB served Nov. 6, 2007), appeal dismissed sub nom. Riffin v. STB, 331 Fed. Appx. 751 (D.C. Cir. 2009). Further, the Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document. 49 C.F.R. § 1104.8. The Board has found that this sanction, too, has been violated by Riffin in past cases. See Norfolk S. Ry. Co. – Acquis. & Operation – Certain Rail Lines of the Del. & Hudson Ry. (Delaware & Hudson), FD 35873, slip op. at 5-6 (STB served Oct. 18, 2016) (striking two of Riffin’s pleadings as irrelevant or immaterial); id., FD 35873, slip op. at 1-2 (STB served Mar. 24, 2016) (striking four of Riffin’s pleadings as irrelevant, immaterial, and ‘wholly inconsistent’ with professional standards, and directing him to ‘refrain from future submission of unprofessional material’); R.J. Corman R.R./Allentown Lines, Inc. – Aban. Exemption – in Lehigh Cty., Pa., AB 550 (Sub-No. 3X), (STB served Nov. 25, 2015) (striking Riffin’s motion to supplement as irrelevant and immaterial); Norfolk S. Ry. – Aban. Exemption – in Norfolk & Va. Beach, Va., AB 290 (Sub.-No. 93X), slip op. at 3 (STB served Nov. 6, 2007) (noting a verified statement claiming that Riffin admitted that he sought to impede the proceeding and indicated that ‘he would consider a settlement to withdraw his participation and not cause delay . . .’).”).

TEX, AB 1272X, slip op. at 3 (STB served July 9, 2020).¹² Accordingly, in this proceeding, the Director acted appropriately in dismissing a notice of exemption that contained statements and issues that could not be resolved in the statutory period afforded to notices of exemptions, and the Director's dismissal was fully consistent with prior precedent.¹³ The Board did not commit material error as Riffin claims.¹⁴

There were likewise no changed circumstances. Riffin claims the Board was unreasonably ambiguous in previously answering the question as to when a carrier's right to withdraw an abandonment exemption terminate, and that ambiguity itself is a changed circumstance. It is not. See Florida Dept. of Transportation – Acquisition Exemption – Certain Assets of CSX Transportation, Inc., FD 35110, slip op. at 4 (STB served June 22, 2011) (finding that to “warrant reopening for changed circumstances, there must be a changed circumstance that could materially affect the prior decision.”).¹⁵ The Board clarifying the timeline to withdraw is merely procedural and in no way constitutes the kind of circumstance “that would mandate a different result.” See Montezuma Grain Co., LLP v. STB, 339 F.3d 535, 542 (7th Cir. 2003) (“To reopen an administratively final action, petitioners had to show that the alleged new circumstances warranted a different result.”).

The Board's dismissal of NSR's Notice under these circumstances also does not constitute manifest injustice, and Riffin has not demonstrated otherwise. The Board dismissed this proceeding without prejudice, meaning that NSR will have the opportunity to refile for abandonment authority at a later date. Thus, Riffin will also have the opportunity to refile his OFA. Given that Riffin will be afforded another opportunity to refile in response to the corrected information, Riffin's argument fails to meet the strict standards in establishing manifest injustice. See Union Pacific Corp., Union Pacific Railroad Co., and Missouri Pacific Railroad Co. – Control and Merger – Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Railway Co., SPCSL Corp., and the Denver and Rio Grande Western Railroad Co., FD 32760, at 3 (STB served May 31, 1996) (noting that “the standard set out in section 1115.1 is a strict one”).

As NSR explained in its Motion to Dismiss, NSR declined to address other deficiencies in Riffin's submissions numbered JR-1 to J-7 because such issues became moot by virtue of the proceeding being dismissed. To quickly summarize a few of those reasons are as follows:

¹² See also Tongue River Railroad Co., Inc. – Rail Construction and Operation – In Custer, Powder River and Rosebud Counties, Mont., FD 30186, slip op. at 3 (STB served Aug. 19, 2015); Eastern Alabama Railway LLC – Petition for Declaratory Order, FD 35583, slip op. at 2 (STB served Feb. 22, 2012) (reiterating that appeals under 49 C.F.R. § 1011.6(b) are unfavorable and require a showing of a “clear error of judgment or to prevent manifest injustice”).

¹³ See Motion to Dismiss, at 1-2.

¹⁴ The Board, through its Acting Director, did not commit material error in granting dismissal in the proceeding. Riffin in his previous submissions submitted evidence that the Notice contained three textual passages containing “False or Misleading Statements.” The Board has sole discretion to decide to reject, dismiss, or allow parties to correct such evidence.

¹⁵ See, e.g., Pioneer Indus. Ry. – Alternative Rail Serv. – Cent. Ill. R.R., FD 34917, slip op. at 8 (STB served Jan. 12, 2007) (reopening granted after the only shipper on a rail line changed its position and opposed the discontinuance of rail service, which could materially affect the Board's analysis); DesertXpress Enters. – Pet. for Dec. Order, FD 34914, slip op. at 6 (STB served May 7, 2010) (reopening denied where petitioner argued that provision of congressional funding for an altogether separate passenger service project using the same corridor affected the Board's decision).

- An OFA is not appropriate for an abandonment undertaken solely to terminate operating rights over a short rail line that has not served any rail shippers in over five years.¹⁶
- In JR-2, Riffin also purports to demonstrate that he is a financially responsible person by submitting a calculation of the minimum amount that would be required to acquire and maintain the portion of the Line he seeks to acquire, as well as evidence that he has the financial wherewithal to cover those costs outlined in his pleading. The evidence submitted by Riffin, however, does not address either the costs for rehabilitating and maintaining the track infrastructure or operating the line for continued rail service. Riffin likewise does not provide that he has the equipment (a locomotive) or personnel or is even capable of providing service.¹⁷
- While Riffin has purportedly offered a proposed shipper a contract to provide service at a specified cost based on his financial information (filed under seal), Riffin provides no indication that he planned to issue a tariff or hold himself out as a common carrier to provide freight service.

In the next two paragraphs, NSR responds to some additional misplaced arguments in JR-8 based on the record before the Board. As stated previously, Riffin has failed to demonstrate material error or changed circumstances. Likewise, Riffin's claims that his right to file an OFA vested are equally misplaced. Moreover, NSR had no obligation to provide the financial information sought by Riffin in JR-6, to the extent it applied to financial information concerning underlying real estate owned by MTA or another party.¹⁸

¹⁶ See Union Pacific Railroad Company – Abandonment and Discontinuance of Trackage Rights Exemption – In Los Angeles County, CA, AB-33 (Sub-No. 265X) (STB served May 7, 2008) (holding an OFA for discontinuance of trackage rights over real estate owned by a commuter rail was limited to a subsidy to provide continued rail service and rejecting an OFA for a small related segment where no business located on the rail line had expressed an interest in using rail service). NSR terminating rail operations over this short track is more akin to a discontinuance for which the Board need not consider offers of financial assistance to acquire the line for continued rail service). While Riffin argues that the ownership of the underlying real estate is not material as to whether the Board permits an OFA to acquire the common carrier obligation, the Board will not force a public entity performing public passenger rail service to host, as a tenant, a new freight rail carrier, particularly when that new freight rail carrier has not been determined to have the financial wherewithal or capabilities to coexist with public passenger operations. See Delaware and Hudson Railway Company, Inc. – Discontinuance of Trackage Rights Exemption – In Susquehanna County, PA and Broom, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY, AB-156 (Sub-No. 25X), slip op. at 2 (STB served March 29, 2005) (explaining it would go beyond the scope of the OFA forced sale provisions to force a new tenant onto the line of an owner that does not want that tenant there). In situations such as here, where a line is owned by a commuter rail entity, the Board has similarly granted exemptions from the OFA process.

¹⁷ A party seeking to submit an OFA to purchase the common carrier obligation of a line sought to be abandoned “must demonstrate that they are financially responsible ... for the calculated preliminary financial responsibility amount of the rail line they seek to subsidize or purchase.” 49 C.F.R. 1152(c)(ii). Further, the offeror must be able to demonstrate that “it has or within a reasonable time will have the financial resources to fulfill contractual obligations.” 49 C.F.R. 1152(c)(iv).

¹⁸ This includes financial information regarding the former Conrail Flexi-Flo facility, which became the NSR TBT Facility. The tracks were stub ended 10906 industry track. NSR entered on the western track and shoved in. There were no through tracks through the NS TBT Facility. The entity that now owns the NSR TBT Facility acquired it in 2019 from NSR and appears from Google Maps to predominantly use it as a stockpiling location for various Baltimore City projects. In the past five years, there has never been a single request for rail service to the NSR TBT Facility. Only shippers located on a rail line have standing to bring a service complaint as threatened in the Correspondence. In this instance the only entity that could bring such a service complaint would be the current owner of the NS TBT Facility. Under 49 U.S.C § 10906 “[t]he STB does not have authority . . . over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or sidetracks.” Such track is often referred to as excepted track or ancillary track.

Riffin's grounds for a stay (because he "asked for a stay" and because he believes the Board committed material error) are unpersuasive. While Riffin suggests that there are adverse consequences of the Board not issuing a stay and that the Board could avoid such consequences by issuing a stay, none of these arguments satisfies the standard for such extraordinary relief. Under 49 U.S.C. § 1321(b)(4), the Board may issue an appropriate order, such as a preliminary injunction (to prevent future action), when necessary to prevent irreparable harm. A party seeking a preliminary injunction must generally establish that: (1) a likelihood that it will prevail on the merits of any challenge to the action sought to be enjoined, (2) the individual will suffer irreparable harm in the absence of a preliminary injunction, (3) other interested parties will not be substantially harmed by a preliminary injunction, and (4) the public interest supports the Board granting of the preliminary injunction. See, e.g., Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n, 259 F.2d 921, 925 (D.C. Cir. 1958); N. Coast R.R. Auth. & Nw. Pac. R.R. v. Sonoma-Marin Area Rail Transit Dist., NOR 42148, slip op. at 3 (STB served Oct. 21, 2016); Cent. Valley Ag Grinding, Inc. v. Modesto & Empire Traction Co., NOR 42159, slip op. at 4 (STB served June 12, 2018). Even viewed collectively, none of Riffin's submissions satisfy that standard.

CONCLUSION

Because the Acting Director of the Office Proceedings had the authority to dismiss the proceeding, and the dismissal the Acting Director granted was appropriate, the relief sought in JR-8 must fail. The Board has sole discretion to decide whether to reject, dismiss, or allow parties to correct such evidence, and has consistently rejected notices of exemptions when controversial. See, e.g., Spectrum RR Holdings, LLC – Operation Exemption – Railroad Line in the Town of Brookhaven, N.Y., FD 36376 (STB served June 16, 2020) (rejecting the Notice of Exemptions filed therein). Appeals of such administrative decisions "are not favored" and "will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." 49 C.F.R. § 1011.6(b). Riffin has not met his burden under either standard and has not met the requirements for a stay of a procedural decision, such as granting a railroad's request to dismiss and refile. If there are any questions about this matter, please contact me directly, either by telephone: at 202-663-7831 or by e-mail: at czorbaugh@mullinslawgroup.net. If I am unavailable, you may contact William A. Mullins, who can be reached at (202) 663-7823 or by e-mail at wmullins@mullinslawgroup.net.

Sincerely,

/s/ Crystal M. Zorbaugh

Counsel for Norfolk Southern Railway Company

cc: Parties of Record

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

AB-290 (Sub-No. 412X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF BALTIMORE, MARYLAND**

EXHIBIT 1

OOMA Phone Dictation of Message Left by Riffin

From: no_reply@ooma.com <no_reply@ooma.com>
Sent: Wednesday, November 6, 2024 11:04 AM
To: Crystal Zorbaugh <czorbaugh@mullinslawgroup.net>
Subject: New voicemail from WIRELESS CALLER (00:00:56)

Account: Mullins Law Group PLLC

New Voicemail Received

You have a new voicemail for (202) 663-7831.

Caller Name	WIRELESS CALLER
Caller Number	(443) 414-6210
Duration	00:00:56

Voicemail Preview:

Ms. Zorbaugh, I'm James Riffin. I've read your Cockeysville Industrial Track notice of the exemption. I have some comments. If you have an interest in knowing what my comments are likely to be before I actually file them, call me back and I'll talk to you about it. But today I am putting shingles on a roof, and I need to be done before the sun goes down the night, because it's going to rain tomorrow. So if you call me back today, you'd leave me a message. I'm not going to answer the phone, but if you leave me a message, that'll tell me I should call you back tomorrow, because tomorrow I'll have time to actually chat with you for a few minutes if you so desire.

To listen to this voicemail, click on the attachment in this email.

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

AB-290 (Sub-No. 412X)

**NORFOLK SOUTHERN RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN THE CITY OF BALTIMORE, MARYLAND**

EXHIBIT 2

**Riffin Communications - December 8, 2024, December 9, 2024,
and December 11, 2024**

FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 (443) 414-6210
jimriffin@yahoo.com

TO: Crystal Zorbaugh Mullins Law Group czorbaugh@MULLINSLAWGROUP.net

DATE: December 10, 2024

RE: Thoughts

Dear Ms. Zorbaugh:

I read your 12-8-2024 request to withdraw NSR's NOE. Below are my thoughts.

My desire: To obtain a mile or so of line, so that I can provide rail service to the shipper I identified. Beginning in the first quarter of 2025. Preferably within the Baltimore area. (My other option is in York, PA. But that cannot be made to happen by Quarter One, 2025.)

On Friday, someone made a suggestion to me: Ask you to ask NSR if NSR has a mile or so of line somewhere in the Baltimore area, that NSR would be willing to convey to me. I thought about the suggestion. Seemed like a good suggestion. So I just asked you.

On Saturday, I was made aware of two possibilities. I looked at them. They could be made to work. One is line. Which no longer has any rail. The other is an abandoned spur, which has jointed rail still on it. (Hodge podge: Rolled 1920, 1941, 1959.) Move the spur rail to the lack-of-rail line, and the line becomes feasible. Both were Conrail served. The line is no longer connected to Amtrak's track. (Turnout was removed many years ago.) At this stage, probably not economical to install a turnout. On the other end, the line connected to a CSX track. The CSX track is still there. Has not been used in years. But it is still there, and appears to be useable.

The spur: Former Crane coal-fired power plant. Plant no longer exists. Demolished. Real property is set to be developed for residential housing, plus a park. In Chase, MD.

The line: Claremont Track. Line Code: 1258. Was used to access a former 'stock yard.' In Baltimore City, near Desoto road. (SW quadrant of Baltimore City.) Reconnect to CSX. Deliver any traffic destined for NSR, to CSX, with instructions to deliver to NSR at Bayview. Avoid using Amtrak's track in Baltimore.

The Withdrawal

In my mind, there are only two things that matter: The Map, as drawn, depicts Line where there is no Line. The MTA does NOT 'operate passenger transit service' over any portion of the Line. Who owns the underlying real property is irrelevant.

Your initial 'errata' approach, worked. If used again, it likely would work again.

My suggestion: Withdraw your ‘withdrawal request.’ If that is done, I have no reason to file an Opposition pleading. Instead: Ask for additional time to provide me with the information I requested. 1152.27 gives you the right to ask for up to 60 days additional time to respond to information requests. Use that additional time to resolve your ‘real estate and other issues.’

What NSR and the MTA did (sell the Flexi-flo yard, remove the yard and ‘crossings track’ and diamonds) is very similar to what Conrail did with the Harsimus Branch in Jersey City. After the fact, Conrail filed an NOE to abandon what was left. AB 167 Sub. No. 1189X. 15 years later, the litigation continues. Conrail has spent multiple millions of Dollars in litigation expenses. The ‘money bleed’ continues. The Section 106 procedure has been changed. Post-abandonment activities now must be considered. The Harsimus has now been declared to be ‘historic eligible.’

The CIT was the Northern Central. It is just as ‘historic’ as the Harsimus. The CIT has a ‘stone embankment,’ just as the Harsimus does. (CIT embankment is not as extensive, noticeable.) There are ‘historic eligible structures’ **on** the CIT (the stone embankment), and adjacent to the CIT. (Sumwalt Run and the Ma & Pa round house are directly across the Jones Falls from the Line at about UU 0.50. The Mill is adjacent to the CIT at UU 1.0.) If I did a bit more research, I probably could list many more within ½ mile of the Line. (The criteria used for the Harsimus.)

I read your ‘withdrawal’ cases. They were served **before** the Harsimus litigation, **before** 1152.27 was changed. Only one ‘opposition’ was filed. And it was a weak one. If I file an Opposition, I will argue:

- A. My OFA rights **vested** on 12-5-2024, the day I was presumed to be ‘preliminarily financially responsible.’ (Ten days after I filed my Notice of Intent to file an OFA, with financial statements.) Before the new 1152.27 regulations were adopted, filing an intent to file an OFA did NOT vest any rights with the offeror.
- B. If withdrawal is authorized, I will ask that the withdrawal be conditioned: NSR should be ordered to restore the portions of the Line that were demolished prior to filing the NOE. NSR should, if it files a new NOE, be subject to the same Section 106 requirements Conrail has been made subject to.
- C. My shipper should be permitted to make a demand for service at the Flexi- flo facility site. If the demand for service is denied, my shipper should be permitted to file a formal Complaint.

Loper Bright v. Raimondo, 144 S. Ct. 2244, changed the rules of the game. Courts no longer can defer to the Board’s interpretation of a statute or regulation. End result: The Board’s prior ‘withdrawal’ decisions, may not withstand D.C. C.A. scrutiny.

Had NSR permitted you to correct the false statements I made you aware of, much of what NSR and the MTA did pre-NOE, would not have been made known to the Board. I made a point of limiting my OFA to the portion of the Line that was NOT ‘abandoned without

authority.' Withdrawing the NOE, appears to me, to expose NSR to issues I would think NSR would prefer to avoid.

FROM: James Riffin P.O. Box 4044 Timonium, MD 21094 (443) 414-6210
jimriffin@yahoo.com

TO: Crystal Zorbaugh Mullins Law Group czorbaugh@MULLINSLAWGROUP.net
Charles Spitulnik cspitulnik@kaplankirsch.com

DATE: December 9, 2024

RE: No XMAS present

It appears that NSR and the MTA were 'naughty' this past year. Neither are going to get the Xmas present that they had hoped to get: Abandonment authority for the CIT.

That was a really quick Board decision. That eliminated the Board's need to address any of my issues. At least for now.

The decision was a bit too fast. Besides disregarding my right to file a reply, it also eliminated the possibility of getting CIT abandonment authority by Xmas 2024.

I have 60 days to file my court appeal. I only have 15 days to file a petition to reopen, if I want to stay the decision.

Whether I file a petition to reopen, will be determined by the two of you.

If you want to reach a settlement, the withdrawal request needs to be rescinded / the NOE reinstated. If the NOE is reinstated, and I 'bow out,' NSR gets CIT abandonment authority fairly soon. If you have no interest in reaching a settlement, you need do nothing. Fifteen days will elapse. I will file my Court Petition. The Court will set the withdrawal aside, due to a failure to provide me with 'Due Process.' The NOE will be reinstated, a year or so from now. I will have my 'second win' against the STB. Which will put me in a rather unique 'club.' (The only person I know that has ever reversed the Board twice in their lifetime, is Charles Montange.) I never thought I would get another chance at reversing the Board twice.

If I file a Petition to open, and if NSR were to rescind their withdrawal request, the NOE would be reinstated. If NSR agrees to convey to me a different line, I would bow out. The NOE would be effective shortly thereafter. Your clients get their Xmas present. A bit late, but not too late.

If I do not hear from you, have a merry Xmas and New Year. And thank you for the Xmas present you will have given me.

FROM: James Riffin jimriffin@yahoo.com

TO: Crystal Zorbaugh Mullins Law Group czorbaugh@MULLINSLAWGROUP.net
Charles Spitulnik csputulnik@kaplankirsch.com

DATE: December 11, 2024

RE: Notice: Change of plans

Litigation is NOT my preferred path. Thus this missive.

Previously, I indicated that I would begin the Judicial Review process 15 days or so after the 'withdrawal granted' served date. I am moving the start date up. I will file my Petition for Review Monday or Tuesday, December 16 or 17. I also plan to file a Petition to Stay the effective date of the 'withdrawal granted' decision.

Reason: 1152.25(e) is the 'exclusive' appellate procedure rule for abandonment procedures. However, nothing in that rule covers 'granting withdrawal requests by the Director of Proceedings.' Therefore, it could be argued that the general appeal rules in 1115 are applicable. 1152.25(e) says Petitions to Stay must be filed within 15 days. 1115 says Petitions to Stay must be filed 'as soon as practical' after the decision being challenged, but no later than 10 days after the decision. And Stay Petitions under 1115 must be filed before filing for judicial review. While I could file the Petition for Stay, then a few minutes later, file the Petition for Review, and technically be in conformity with the 'file stay before file judicial review petition,' that does not strike me as being in conformity with the 'spirit' of the rule. So I likely will file the stay petition, then wait a day to file the judicial review petition.

End result: What I do will happen next week, probably beginning on Monday. As I previously said, if I do not hear back from you, I will begin the above process.

While I have mentioned some of the potential ramifications of the 'withdrawal granted' decision, additional ramifications have come to mind. Below, I list the potential ramifications that I have thought of, in case they did not occur to you.

File for judicial review. Withdraw request **not** stayed:

- A. NSR is re-vested with **all** of its common carrier obligations. Including providing rates, service terms, and rail service at the Flexi Flo facility.
 - a. A shipper can ask for a rate, and service term, for a non-exempt commodity / type of rail car. If the **rate** is not provided within 10 business days:
 - i. The shipper can file a complaint. Which the Board **must** act on.
 - ii. The filing of a complaint **prevents** the use of an 'exemption' abandonment procedure. Basically, NSR would have to file a 'full blown' Application.

- b. A shipper can ask for **rail service** at the Flexi flo facility. If rail service is denied, the shipper can file a complaint for denial of rail service.
1. Such a complaint limits NSR's option to filing a 'full-blown' Application.
 2. The complaint can ask the Board to compel NSR to restore the Flexi flo facility.
 - (A) Which would require NSR to void its deed to the contractor presently using the site.
 - (B) Which would require NSR to put the track back;
 - (C) Which would require NSR to put the 'crossing track' back in place.
 3. NSR could be required to pay to an OFA offeror, the cost of restoring the Flexi flo facility. (The more likely remedy.)

File for Judicial Reivew, 'withdrawal request' **stayed**: I am of the opinion, that once an abandonment request has been filed, NO complaint will be 'effective.' Thus, NONE of the adverse ramifications noted above, could result. [If the abandonment NOE remains effective.]

File for Judicial Review:

If the appellate court vacates the withdrawal request, the original NOE is reinstated. Which means the status quo of the Line, as of October 31, 2024, **must be maintained**. Which means I have the right to acquire, via the OFA process, whatever existed on October 31, 2024.

- A. My Notice of Intent to file an OFA included what I desired to acquire. Of particular note: All loose rail 'adjacent to' the Line. Which, I would argue, includes the loose rail that **was** adjacent to the Line, on the real property owned by **Amtrak**. Which loose rail was removed by **MTA** personnel a week or so ago.
- B. If you have not read the Board's 'Glass Road Bridge' decision in AB 103 (Sub. No. 21X), [*Line in Warren County, MS*], served February 22, 2008, I would suggest you read it. Essentially: An OFA was filed. While the OFA was pending, local officials removed the Glass Road Bridge, without the carrier's knowledge or consent. Even though the bridge had no 'value,' the Board held the carrier had to deduct from the Net Liquidated Value the cost of replacing the bridge.

Only I can file a 'stay' request. Doing so, limits what can be done. However, my goal is to acquire a line I can provide rail service on. Not to make things 'difficult' for NSR. IF the stay is granted, I will have limited what can be done. If the stay request is not granted, 'what will be, will be.' You presently still have the ability to control what lies ahead. On Tuesday, that ability will be substantially constrained. (Your only option will be to not oppose the stay request.) Once the Board rules on the stay request, you will no longer have the ability to control what lies ahead.