

LAW OFFICE

MCLEOD, WATKINSON & MILLER

MICHAEL R. MCLEOD
WAYNE R. WATKINSON
MARC E. MILLER
RICHARD T. ROSSIER
CHARLES A. SPITULNIK
RICHARD PASCO
ALEX MENENDEZ
ELIZABETH A. HAWS
AMY B. JONES

ONE MASSACHUSETTS AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20001-1401
(202) 842-2345
TELECOPY (202) 408-7763

KATHRYN A. KLEIMAN*
OF COUNSEL
(*Admitted in Virginia only)

ROBERT RANDALL GREEN
LAURA L. PHELPS
GOVERNMENT RELATIONS

212144

October 4, 2004

OCT 4 2004
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Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: *James Riffin, d/b/a The Northern Central Railroad – Acquisition and
Operation Exemption, Finance Docket No. 34501*

Dear Sir:

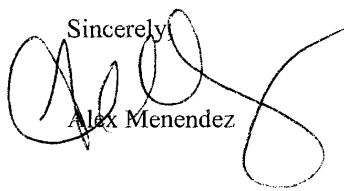
I am enclosing an original and ten (10) copies each of:

- 1) Motion of the State of Maryland for Leave to File a Reply to the Answer to Petition of the State of Maryland to Revoke Verified Notice of Exemption;
- 2) Reply of the State of Maryland to Answer of James Riffin d/b/a The Northern Central Railroad to Petition to Revoke Verified Notice of Exemption; and
- 3) Motion of the State of Maryland to Strike the Notice of Intent to Construct, Operate and Maintain a Railroad Facility

212144

in the above referenced proceeding. Please date stamp the extra copies of these documents and return to our messenger. In addition, we are enclosing a 3.5" diskette with this document.

Thank you for your assistance.

Sincerely,

Alex Menendez

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Office of Proceedings
OCT 4 2004
Part of
Public Record

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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FINANCE DOCKET NO. 34501

**JAMES RIFFIN, d/b/a THE NORTHERN CENTRAL RAILROAD – ACQUISITION
AND OPERATION EXEMPTION – IN YORK COUNTY, PA.**

**MOTION OF THE STATE OF MARYLAND
TO STRIKE THE NOTICE OF INTENT TO CONSTRUCT, OPERATE AND
MAINTAIN A RAILROAD FACILITY**

2/2/44

Communications with respect to this
document should be addressed to:

CHARLES A. SPITULNIK
ALEX MENENDEZ
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001
(202) 842-2345

Counsel for the State of Maryland

Dated: October 4, 2004

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Office of Proceedings

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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

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OCT 4 2004

FINANCE DOCKET NO. 34501

JAMES RIFFIN, d/b/a THE NORTHERN CENTRAL RAILROAD – ACQUISITION
AND OPERATION EXEMPTION – IN YORK COUNTY, PA.

**MOTION OF THE STATE OF MARYLAND
TO STRIKE THE NOTICE OF INTENT TO CONSTRUCT, OPERATE AND
MAINTAIN A RAILROAD FACILITY**

The State of Maryland (“Maryland”) hereby moves to strike the Notice of Intent to Construct, Operate and Maintain a Railroad Facility (“Notice of Intent”) filed by James Riffin (“Mr. Riffin”) d/b/a The Northern Central Railroad in this proceeding. In support thereof Maryland states as follows:

I. Background Facts

In the Notice of Intent Mr. Riffin states his intention to “to construct, operate and maintain a railroad facility” in Maryland. Specifically, this alleged “railroad facility” relates to the following property:

Tax Map 42, Parcel 193 (10919 York Road, Cockeysville, Maryland); Parcel 192 (13 Beaver Run Lane, Cockeysville, Maryland); Parcel 194 (15 Beaver Run Lane); Parcel 452 (10 Beaver Run Lane); **and on a portion of property belonging to the Mayor and City Council.**

See Notice of Intent at p. 1 (emphasis added).

II. Argument

A. The Notice of Intent Raises Issues That Are Outside the Scope of this Proceeding.

This proceeding involves Mr. Riffin's attempt to use the Board's expedited class exemption procedures to acquire and operate a rail line that is entirely located in Pennsylvania. The Notice of Exemption in this proceeding did not identify, detail or otherwise involve any construction activity in Maryland or Pennsylvania. Nonetheless, Mr. Riffin is attempting, via this Notice of Intent, to introduce an array of issues relating to construction activities in Maryland in a proceeding that relates to Pennsylvania. If Mr. Riffin wants to seek authority to construct a line of railroad in Maryland, that is a subject for another proceeding, not this one.

B. The Notice of Intent Should Be Stricken Because Mr. Riffin Does Not Own The Property Upon Which He Proposes To Construct His "Railroad Facility."

Just as in the prior proceeding involving Mr. Riffin and property in the State of Maryland¹, Mr. Riffin has not demonstrated that he has a sufficient interest in any of the properties described in his Notice to permit construction of the facilities he proposes. For example, the Mayor and City Council of Baltimore are identified as owners of one of the affected parcels upon which he proposes to construct his "railroad facility." Mr. Riffin has not proven that he has had any negotiations with the City of Baltimore about the sale of the property,

¹ *James Riffin d/b/a The Northern Central Railroad -- Acquisition and Operation Exemption -- In York County, Pa., and Baltimore County, Md.*, STB Finance Docket No. 34484 (Service Date April 20, 2004)(revoking Notice of Exemption, in part because Mr. Riffin could not demonstrate ownership in the property that was the subject of the Notice); *see also* Letter from G. Paul Moates to Vernon A. Williams, *James Riffin, d/b/a NCCR L.L.C. -- Construction, Operation and Trackage Rights Exemptions--in Baltimore County, Md.*, Finance Docket No. 34375 (July 11, 2003) (Norfolk Southern noting that it owns the track Mr. Riffin proposes to acquire and operate).

and has introduced no proof that the City has any intent, plan or desire to convey, sell or otherwise grant title or access to Mr. Riffin with respect to any property.

C. There is No Basis or Authority in the Board's Regulations for the Notice of Intent.

The request for authority "to construct, operate and maintain a railroad facility" is governed by specific Board regulations. Mr. Riffin must follow the requirements set forth in those regulations, which include the filing of specific information and the adherence to specific procedures. The regulations require the following: 1) certain information about the applicant (49 C.F.R. § 1150.3); 2) certain information about the proposal (49 C.F.R. § 1150.4); 3) certain operational data (49 C.F.R. § 1150.5); 4) certain financial information about the applicant (49 C.F.R. § 1150.6); 5) certain environmental and energy data (49 C.F.R. § 1150.7); 6) any additional facts or reasons to show that the public convenience and necessity require permit approval of the application (49 C.F.R. § 1150.8); 7) adherence to certain notice requirements (49 C.F.R. § 1150.9); and 8) compliance with specific procedures (49 C.F.R. § 1150.10).² The Notice of Intent bears no relation whatsoever to any of the regulatory requirements that are pertinent to rail line construction. It is an improper pleading that has no home in the Board's regulations, and should be stricken.

III. Conclusion

The Notice of Intent filed by Mr. Riffin should be stricken because: 1) the Notice of Intent attempts to introduce issues relating to construction activities in Maryland in a proceeding that relates to Pennsylvania; 2) it relates to property, at least in part, that Mr. Riffin does not own

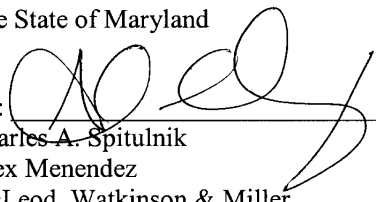
² Although the regulations include a list of exempt transactions, the construction project Mr. Riffin describes is not on that list. *See* 49 C.F.R. §§ 1150.31 – 1150.36.

and on which, he has not proven that he has the authority to “construct, operate and maintain a railroad facility”; and 3) there is no statutory or regulatory basis or authority for the Notice of Intent.

WHEREFORE, Maryland respectfully requests the Board to strike the Notice of Intent of James Riffin d/b/a The Northern Central Railroad to Construct, Operate and Maintain a Railroad Facility.

Respectfully submitted,

The State of Maryland

By: 

Charles A. Spitulnik

Alex Menendez

McLeod, Watkinson & Miller

One Massachusetts Avenue, N.W.

Suite 800

Washington, D.C. 20001

Tel. (202) 842-2345

Fax. (202) 408-7763

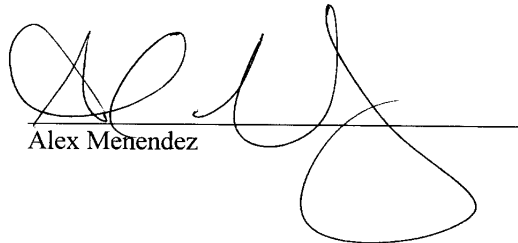
Email. cspitulnik@mwmlaw.com

Dated: October 4, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2004, a copy of the foregoing Motion of the State Of Maryland To Strike James Riffin d/b/a The Northern Central Railroad's Notice Of Intent To Construct, Operate And Maintain A Railroad Facility was served by first class mail, postage prepaid, upon:

James Riffin d/b/a The Northern Central Railroad
1941 Greenspring Drive
Timonium, MD 21093


Alex Menendez