



KAPLAN KIRSCH ROCKWELL

January 7, 2008

E-Filing

Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *Petition of James Riffin for Declaratory Order*
Finance Docket No. 34997

Dear Sir:

I am enclosing for filing the Reply of the Maryland Transit Administration, the Maryland Department of the Environment and County of Allegany, Maryland to Petition for Stay in the above referenced proceeding. This is an electronic filing in accordance with the Board's rules.

Sincerely,



Charles A. Spitulnik

Enclosure

cc: James Riffin

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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

Finance Docket No. 34997

**PETITION OF JAMES RIFFIN
FOR DECLARATORY ORDER**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION,
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND
COUNTY OF ALLEGANY, MARYLAND
TO PETITION FOR STAY**

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Dated: January 7, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

Finance Docket No. 34997

**PETITION OF JAMES RIFFIN
FOR DECLARATORY ORDER**

**REPLY OF THE MARYLAND TRANSIT ADMINISTRATION,
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND
COUNTY OF ALLEGANY, MARYLAND
TO PETITION FOR STAY**

The Maryland Transit Administration (“MTA”), the Maryland Department of the Environment (“MDE”) and the County of Allegany, Maryland (“County”)¹ (collectively, the “MD Parties”) hereby submit their reply to the Petition of James Riffin for a Stay, filed in this proceeding on December 17, 2007 (the “Petition for Stay”). For all of the reasons stated herein, the request for a Stay must be denied.

James Riffin (“Mr. Riffin”) asks this Board to perform a task that it has no authority to undertake. In the Petition for Stay, Mr. Riffin asks the Board, a federal administrative agency, to stay an action of the Circuit Court for Baltimore County (the “Baltimore County Civil Contempt Action”), a court created by and wholly within the jurisdiction of the State of Maryland. Petition for Stay at ¶¶ 1-3.² This Board does not have the statutory or constitutional authority to stay an

¹ The County previously requested leave to intervene in this proceeding in the Reply of MTA, MDE and the County filed on December 18, 2007 (the “December 18 Reply”). The County joins in this Reply as well in anticipation of a favorable ruling on that request.

² Since the Petition for Stay contains factual errors regarding the characterization of the Court’s ruling in the Baltimore County Civil Contempt Action, in order to ensure that the record in this proceeding is correct, a copy of the Order issued by the Baltimore County Circuit Court on December 17, 2007, is attached hereto at **Tab A**. The

... Footnote continued on next page.

action of a state court. As discussed below, although various legal doctrines apply to the relationship between federal and state courts, no legal or policy bridge exists to permit a federal regulatory agency, which is endowed by Congress with specific duties and powers, to assert jurisdiction over a trial court in the State of Maryland.

Although Mr. Riffin asserts that he is a Class III rail carrier, Petition for Stay at n.1, he cannot rely on either of the STB proceedings he cites in support of this assertion and therefore cannot claim to be a Class III railroad. As he openly discloses in the Petition for Stay, Mr. Riffin obtained the Board's acceptance of an offer of financial assistance ("OFA") in *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659-X) (Service Date August 18, 2006), through intentionally false pretenses. Petition for Stay at ¶ 9. Moreover, and for reasons already discussed by the MD Parties in this proceeding, Mr. Riffin has never taken all steps required to acquire the property that will actually vest him with the property interests to operate a railroad even if he had legitimate authorization from the Board to do so. Additionally, in *James Riffin d/b/a The Raritan Valley Connecting Railroad – Acquisition and Operation Exemption – On Raritan Valley Connecting Track*, STB Finance Docket No. 34963 (Service Date December 20, 2006), although the exemption apparently became effective on January 5, 2007, facts and allegations submitted in that proceeding suggest that the likelihood of Mr. Riffin actually acquiring and commencing operations on this line is slim at best. See Letter to the Board from New Jersey Transit Corporation ("NJ Transit"), dated December 22, 2006, in Finance Docket No. 34963 describing NJ Transit's existing easement and its plans to investigate the reinstatement of commuter service

MD Parties note that Mr. Riffin attached a *draft* of the Order to the Petition for Stay and erroneously stated that the order was issued on December 14, 2007. Petition for Stay at ¶¶ 1, 2. Circuit Court Judge Judith Ensor announced her ruling from the bench on December 14, 2007, but did not issue the Order, with her handwritten revisions, as attached hereto at **Tab A**, until December 17, 2007.

over the line, and Mr. Riffin's own Notice of Exemption in that proceeding, in which he makes clear that he does not know from whom he proposes to acquire the line.

In sum, there is no evidence that Mr. Riffin has taken the actions necessary to actually operate a railroad even if he were authorized by this Board to become a Class III rail carrier. The December 18 Reply reviews the nature and boundaries of the Board's permissive authority in exemption and OFA proceedings, by which the Board removes regulatory hurdles to an entity's or individual's acquisition or operation of a railroad, but does not mandate that the entity or individual carry out such actions. The MD Parties refer the Board to the December 18 Reply at footnote 3 and pp. 7-8, and will not burden the record of this proceeding with further argument on that subject.

The Petition for Stay consists largely of repetitive argument and allegations to which the MD Parties have previously responded, individually or collectively. Accordingly, the MD Parties will respond in this Reply only to new allegations by Mr. Riffin that are relevant to the instant proceeding. The following list briefly summarizes the issues that are *not* relevant to Mr. Riffin's request for a Stay and to which the MD Parties have already responded:

- The MD Parties have addressed the arguments contained in ¶¶ 4-6 in the Reply of MTA and MDE filed on March 5, 2007 (the "March 5 Reply") and the December 18 Reply.
- The STB actions Mr. Riffin describes in ¶¶ 7-10 of the Petition for Stay are irrelevant to this proceeding. Mr. Riffin freely admits that he intentionally misled the Board in filing his OFA in Docket No. AB-55 (Sub-No. 659-X) by concealing

the “true identity” of the offeror and filing the OFA under a “pseudonym.”

Petition for Stay at ¶ 9.³

- The facts and circumstances alleged in ¶¶ 11-23 of the Petition for Stay are irrelevant to this proceeding, as they are the subject of the Baltimore County Civil Contempt Action.
- The facts and circumstances alleged in ¶¶ 24 and 25 of the Petition for Stay are irrelevant to this proceeding, since they are the subject of a separate civil action pending in Allegany County Circuit Court. Mr. Riffin filed a petition for temporary injunctive relief in that matter which the Court denied.⁴
- The arguments Mr. Riffin repeats yet again in ¶¶ 26, 27 and 31-34 of the Petition for Stay are refuted in detail in the March 5 Reply and December 18 Reply.

Mr. Riffin has now attempted to expand the scope of the relief requested in this proceeding by asking this Board to take an action it has no authority to undertake. The Board must deny Mr. Riffin’s request to issue a Stay of the Baltimore County Circuit Court proceedings.

ARGUMENT

THE BOARD SHOULD DENY THE PETITION FOR STAY.

Mr. Riffin’s request for a Stay has two fatal flaws. First, the Board cannot act in areas where it has no jurisdiction. Second, Mr. Riffin confuses (or, perhaps, attempts to conflate) the Board’s agency jurisdiction and authority with a court’s subject matter jurisdiction. If the Board

³ The MD Parties emphasize the blatant dishonesty of Mr. Riffin’s approach here in order to underscore the extent to which Mr. Riffin shows his disregard for the law and for the integrity of the Board’s processes.

⁴ See *Riffin v. Board of County Commissioners of Allegany County, Maryland*, Civil Action No. C-07-29061 (Allegany County Cir. Ct. Nov. 16, 2007) (memorandum and order denying petition for injunctive relief). A copy of the Allegany County Circuit Court’s memorandum and order is attached at Tab B to the December 18 Reply.

were to issue the stay that Mr. Riffin requests, the stay would have no binding effect. “It goes without saying that a decision of any court or other agency on a matter concerning which it has no jurisdiction has no binding effect whatsoever.” *Utah Const. & Min. Co. v. U. S.*, 339 F.2d 606, 609 (Ct. Cl. 1964) (citing *National Steamship Co. v. Tugman*, 106 U.S. 118, 122 (1882) and *Coyle v. Skirvin*, 124 F.2d 934, 937 (10th Cir. 1942)). Moreover, no action by the agency, the courts or individual parties can confer jurisdiction where none exists. *Plaquemines Port, Harbor and Terminal Dist. v. Federal Maritime Comm’n*, 838 F.2d 536, 542 (D.C. Cir. 1988) (“Agency jurisdiction, like subject matter in the federal courts, cannot be achieved by consent of the parties”).

A. Even if the Board could exercise jurisdiction over the state court, established fundamental principles of law would prohibit the issuance of a stay of the Baltimore County Civil Contempt Action.

Nothing in the Board’s jurisdictional statute confers upon it the authority to grant the relief Mr. Riffin requests. As an independent federal regulatory agency, the Board’s jurisdiction is strictly limited by the enabling statute enacted by Congress. Although the Board’s jurisdiction within its areas of expertise may be exclusive, as delineated by statute, such jurisdiction extends to the regulation of activities including “transportation by rail carrier” that are enumerated in 49 USC 10501(b), but not beyond. Congress did not grant the STB jurisdiction over any court, or the authority to stay judicial proceedings in order to assert jurisdiction over matters before the court.

Even *if* the STB’s jurisdiction were somehow equivalent to that of a federal court, which Mr. Riffin assumes but the MD Parties do not concede, the basic principle of federal abstention from interference in pending state court actions would prevent the STB from granting the relief requested here. In *Younger v. Harris*, the U.S. Supreme Court emphasized that “[s]ince the

beginning of this country's history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger v. Harris*, 401 U.S. 37, 43 (1971). The Court held in *Younger* that where there is a pending state law enforcement proceeding, the federal court does not intervene by injunctive or declaratory relief in the absence of the narrow exceptions set forth in 28 U.S.C. 2283 to permit such intervention. *Id.* at 54. As the Court explained, the fundamental doctrine of comity between the federal government and that of each of the States is expressed through a "proper respect for state functions," which includes "a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Id.* at 44.

In this proceeding, the separate functions of the federal and state government are neatly divided between the Board, which has regulatory jurisdiction over "transportation by rail" pursuant to 49 U.S.C. 10501, and the State of Maryland, which is endowed with general police powers to enforce its own generally applicable health and safety regulations. The courts of the State of Maryland have jurisdiction over matters of state law, and Mr. Riffin may seek review of the State's actions by a federal court *only* after the State has rendered a final judicial determination and *only* if factors supporting federal jurisdiction then apply.

Although *Younger* involved a challenge to a state criminal proceeding, the Supreme Court has extended the *Younger* abstention doctrine to apply to civil enforcement proceedings, as well. *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 367-68 (1989) ("*NOPSI*"). The Court in *NOPSI* declared that a State's substantial interest in enforcing its own laws would outweigh a claim that such state action might be preempted by federal law in

evaluating whether or not the federal court should abstain from interfering in pending state proceedings. *Id.* at 365 (holding abstention appropriate).

Additionally, the Court has specifically addressed the application of *Younger* abstention in the context of a state civil contempt proceeding and announced:

“[t]he principles of federalism and comity enunciated in *Younger* and *Huffman* apply to a case in which the State's contempt process is involved. Whether disobedience of a court-sanctioned subpoena, and the resulting process leading to a finding of contempt of court, is labeled civil, quasi-criminal, or criminal, the salient fact is that federal-court interference with the State's contempt process is ‘an offense to the State's interest . . . likely to be every bit as great as it would be were this a criminal proceeding,’ *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975). Moreover, such interference with the contempt process not only ‘unduly interfere(s) with the (State's) legitimate activities,’ *Younger, supra*, 401 U.S. at 44, but also ‘can readily be interpreted ‘as reflecting negatively upon the state court's ability to enforce constitutional principles.’ *Huffman, supra*, 420 U.S. at 604.”

Juidice v. Vail, 430 U.S. 327, 327-28 (1977).

Accordingly, even if the Board possessed the scope of jurisdiction of a federal court, fundamental principles of comity and federal abstention from interference in the workings of state enforcement and contempt proceedings would bar the issuance of the Stay Mr. Riffin requests.

B. The Petition for Stay falls short in other substantial respects.

In addition to the fundamental and fatal jurisdictional flaw, Mr. Riffin's Petition for Stay suffers from other defects that, even without the absence of authority to grant this stay, would defeat the Petition. Even if this Board had the authority to grant the requested Stay, Mr. Riffin has clearly not satisfied the well-established requirements for the grant of such relief.

To secure a stay a party must demonstrate that it is likely to succeed on the merits of the underlying claim, that it will be irreparably harmed if the stay does not issue that no other parties

will be harmed, and that the public interest justifies the requested relief. *See Washington Metro Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977), citing *Virginia Petroleum Jobbers Assoc. v. FPC*, 259 F.2d 921 (D.C. Cir. 1958). Mr. Riffin's request does not come close.

- Although Mr. Riffin asserts that there can be “no doubt” that he is a Class III railroad (Petition for Stay at ¶ 28.A), there is considerable doubt as to his status. The MD Parties have previously explained why he has no likelihood of success on the merits of his underlying request for Declaratory Order.
- Mr. Riffin's unauthorized activities at Cockeysville and in Allegany County do not establish that he is providing “transportation by rail carrier.” Although Mr. Riffin represents that he has dumped various materials and equipment that might be necessary to the maintenance of a railroad in various locations in Cockeysville and Allegany County (Petition for Stay at ¶¶ 28.B, 29 and 30), he offers no facts to connect these activities to any legitimate rail operations. The MD Parties have refuted in detail Mr. Riffin's claims that he is engaging in legitimate rail transportation activities in the March 5 Reply and December 18 Reply. Mr. Riffin's assertion that “more photographs . . . would show even more rail carrier [maintenance of way] equipment and material” (Petition for Stay at ¶ 2) may be true. However, evidence that he has strewn such equipment and material throughout the State of Maryland is not evidence of legitimate activity, nor does it provide any evidence of irreparable harm in the event the Board denies the requested Stay. Rather, it may well be the case that Mr. Riffin is simply exacerbating previously-identified violations. Indeed, had Mr. Riffin obeyed the

2004 order upon which the pending Baltimore County Civil Contempt Action rests, there would be NO materials or equipment at the Baltimore County location Mr. Riffin describes.

- The Petition for Stay is simply one more attempt by Mr. Riffin to evade the responsibility to comply with applicable state and federal environmental and other regulation necessary to the health and safety of the public. As the MD Parties have argued in detail in the March 5 Reply and December 18 Reply, the circumstances Mr. Riffin alleges in the Petition for Stay at ¶¶ 31, 32 and 33 have nothing to do with whether he is providing transportation by rail carrier and everything to do with his intention to continue his unauthorized activities, unhindered by any hint of compliance with validly applicable health and safety laws. The application of those regulations to Mr. Riffin's activities is effected by a State court injunction that Mr. Riffin has already appealed up through the Maryland judiciary to the U.S. Supreme Court, which denied certiorari. He has also appeared before the U.S. District Court for the District of Baltimore on several occasions and pressed and lost the same arguments he makes here. Mr. Riffin, thus, has already had his day(s) in federal court on the issues he re-argues in the Petition for Stay. There is no public interest justification for allowing Mr. Riffin to abuse the Board's processes by attempting to enlist the Board in his campaign to flout the federal and State courts that have already held that Mr. Riffin is not above the law and have now held him in contempt. As is abundantly clear in the case of the Cockeysville site, where the Board has already revoked a

Notice of Exemption filed by Mr. Riffin,⁵ Mr. Riffin has no intention of complying with the legal requirements of State of Maryland authorities or this Board. Mr. Riffin's refusal to comply with the orders of the federal and state courts and agencies of the State of Maryland confirms his intent to pursue his activities, whether legitimate or not, despite patent violations of laws that would remain applicable even if he were, as he claims, a Class III carrier.

CONCLUSION

Having twice petitioned this Board to expedite its decision in this matter, Mr. Riffin now seeks to use this proceeding as a clearinghouse for his discontent with anything having to do with Maryland, whether or not the inspiration for his complaints has any connection to matters within the Board's jurisdiction. He asks the Board to sit as a super-appellate court and second-guess the numerous decisions of the federal and State courts that have rejected his extremist arguments – including the U.S. Supreme Court's decision to let stand the injunction that is to be enforced through the Baltimore County Circuit Court's recent contempt order. Such frivolous actions by Mr. Riffin waste the Board's administrative resources and are an abuse of the Board's processes. The Maryland Parties note that, in response to an ongoing pattern of abusive and obstructionist filings by Mr. Riffin, the Board has vowed to closely scrutinize *any* filings Mr. Riffin may attempt to submit in *any* proceeding.⁶ The Petition for Stay here is yet another in the rapidly growing list of frivolous, repetitive, and baseless submissions that Mr. Riffin has made to this Board in this and other proceedings.

⁵ *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), *slip op.* at 4.

⁶ *Norfolk Southern Railway Company – Abandonment Exemption – In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X) (Service Date November 6, 2007), *slip op.* at 8 (in detailing its “serious concern” that several of Mr. Riffin's actions in that proceeding were for an “improper purpose,” the Board announced, “we strongly admonish Mr. Riffin that abuse of the Board's processes will not be tolerated”). *Id.* See also the December 18 Reply at n. 2.

As discussed above, the Board should deny Mr. Riffin's Petition for Stay. The issuance of such a stay would have no legal effect because such an order is well beyond the scope of the authority granted to this Board by Congress. Moreover, Mr. Riffin has failed to demonstrate his request for a stay satisfies long-established standards for such relief. As a result, this Board should deny the Petition for Stay and expedite the conclusion of this proceeding by issuing a decision denying the Petition for Declaratory Order.

WHEREFORE, and in view of the foregoing, MTA, MDE and the County respectfully request this Board to expeditiously deny the Petition for Stay.

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Respectfully submitted,

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County of Allegany, Maryland

Dated: January 7, 2008

Certificate of Service

I hereby certify that I have this 7th day of January, 2008, caused to be served a copy of the foregoing Reply of the Maryland Transit Administration, the Maryland Department of the Environment and the County of Allegany, Maryland, to Petition for Expedited Declaratory Order, upon the following parties of record:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093



Charles A. Spitulnik

157228v3

TAB A

MARYLAND DEPARTMENT OF
THE ENVIRONMENT, *et al.*

v.

JAMES RIFFIN

IN THE

CIRCUIT COURT FOR

BALTIMORE COUNTY

Case No. 03-C-04-008920 OC

ORDER

Before the Court is the Petition for Constructive Civil Contempt filed by the Plaintiffs, State of Maryland, Department of the Environment, and Baltimore County, Maryland. The Court has read and considered said Petition together with ^{the} ~~any~~ Exhibits attached thereto and has heard and considered the arguments advanced in open court by all parties thereto.

NOW, THEREFORE, in consideration of the above, the Court finds that Defendant James Riffin ^{intentionally} has not complied with the terms of the permanent injunction issued by this Court on November 19, 2004, and is hereby found to be in CONSTRUCTIVE CIVIL CONTEMPT of Court.

WHEREFORE, it is this 17th day of December 2007, by the Circuit Court for Baltimore County,

ORDERED, that, having found the Defendant James Riffin to be in CONSTRUCTIVE CIVIL CONTEMPT, Defendant James Riffin shall be allowed to purge this Contempt as follows:

(1) By February 15, 2007, Mr. Riffin must permanently remove or cause to be removed all construction and railroad vehicles and equipment from the property located and known as 10919 York Road and 13 Beaver Run Lane, in Cockeysville, Baltimore County, Maryland ("the site"). Mr. Riffin must permanently move all items either to a location offsite and outside the restricted flood plain encompassing his property, or inside his whiskey barrel warehouse or other existing, permanent structure on the site. If the entrance to the existing warehouse needs to be enlarged ^{↓LE} ~~X~~ in order to move equipment into the warehouse, the Baltimore County Office of Law and Maryland Department of the Environment (MDE) will assist Mr. Riffin in obtaining the required permits, providing that the necessary permits can be lawfully issued.

(2) By the close of business on December 19, 2007, the Baltimore County Office of Law shall provide a list of potential civil engineering firms to Mr. Riffin.

(3) By January 11, 2008, Mr. Riffin must retain one of these firms and provide the firm's name to the Baltimore County Office of Law. Before retaining one of these engineering firms, Mr. Riffin must ensure that the firm is able to meet with the appropriate State and County officials on or before January 25, 2008, in order to discuss the scope and parameters of a restoration plan for the site, the purpose of which is to restore the site to its condition in 2004, prior to Mr. Riffin's deforestation, excavation, and construction activities.

see and after meeting with the appropriate state and County officials,
(4) By February 15, 2008, the civil engineering firm that Mr. Riffin hires shall submit a formal mitigation/restoration plan for the site, professionally sealed by the aforesaid civil engineering firm, to DEPRM and MDE for review, comment and approval, which approval shall not unreasonably be withheld. see

(5) By February 15, 2008, Mr. Riffin shall post cash security or a letter of credit in the amount of two hundred and fifty thousand dollars (\$250,000.00) with the Baltimore County Office of Budget and Finance in order to secure performance of the restoration plan.

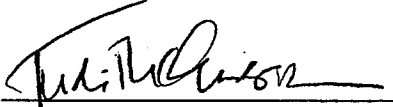
IT IS FURTHER ORDERED, that once DEPRM and MDE approve the plan submitted by Mr. Riffin's engineers, Mr. Riffin must fully and completely abide by and conform to the plan and all directives and deadlines contained in the plan and/or issued by DEPRM and MDE officials in the course of the plan's implementation.

see **IT IS FURTHER ORDERED**, that if Defendant James Riffin fails to purge the contempt by following through
h. comply with any of the aforementioned directives, he will be fined one thousand dollars (\$1,000.00) per day and/or imprisoned until he does comply.

IT IS FURTHER ORDERED, that if Mr. Riffin fails to comply with any of the aforesaid conditions and directives, upon application of the County or State, Mr. Riffin will be Ordered to appear before this Judge on a date certain to Show Cause why the aforesaid security should not be forfeited, and why the proper State

and County officials, and/or their agents should not be permitted to enter upon the property for the purpose of completing the restoration plan. Further, should the reasonable costs of completing the restoration plan exceed the posted security then the amount of the overage will be assessed as a lien against the personal and real property of Mr. Riffin.

This Order is hereby issued this 17th day of December, 2007.



Judge Judith C. Ensor