

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

Docket No. AB-409 (Sub-No. 5X)

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
– ABANDONMENT EXEMPTION –
IN LOS ANGELES COUNTY, CA
(SANTA MONICA INDUSTRIAL LEAD)**

**REPLY OF
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
TO
COMMENTS OF JAMES RIFFIN**

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Dated: July 3, 2008

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On June 26, 2008, James Riffin (“**Riffin**”) filed Comments (“**Riffin Comments**”) on the Notice of Exemption filed in this proceeding on May 29, 2008, by Los Angeles County Metropolitan Transportation Authority (“**LACMTA**”), a public entity.¹ The Notice of Exemption addresses LACMTA’s abandonment of a 0.31 mile segment of the Santa Monica Industrial Lead between Mileposts 485.69 and 486.00 in Los Angeles County, California (the “**LACMTA Segment**”). The Board published the Notice in this proceeding on June 16, 2008. LACMTA files this Reply in order to respond to various inaccuracies and misrepresentations in the Riffin Comments. Riffin’s comments provide no basis for any action by this Board, other than to permit the Notice of Exemption to become effective in accordance with the applicable regulations.

¹ Riffin also filed a Motion for a Protective Order to which LACMTA has already provided, as well as a Notice of Intent to File an Offer of Financial Assistance and a Petition to Toll the Date for Filing an Offer of Financial Assistance, to which LACMTA will reply separately.

A. Riffin is not a Class III Carrier.

In Paragraph 4A of the Riffin Comments, Riffin describes himself as a Class III carrier. He offers no evidence to support that declaration. In particular he offers no evidence that he currently has any carrier status with respect to the property at issue in this proceeding, or for that matter with respect to any other property or rail activities in the Los Angeles area or the State of California.

The Board's decision in *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 34997 (Service Date May 2, 2008) does not support his claim that he is a Class III carrier. In that case, the Board simply assumed for the purposes of that proceeding that Riffin might be able to become a Class III carrier in Allegany County, MD, and it concluded that he is not a rail carrier in Baltimore County, MD. Moreover, the Board did not reach a conclusion whether he is or is not such a carrier anywhere else in the country. LACMTA disputes Riffin's self-proclaimed status as a Class III carrier. Given Riffin's well-documented and repeated misrepresentations, exaggerations and abuse of the Board's processes (*see, e.g., Norfolk Southern Ry. Co. – 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), LACMTA specifically asks this Board not to state or imply in any decision in this proceeding that Riffin is a Class III carrier based on any of his activities anywhere in the country, and particularly to state that he has no carrier status with respect to any of the property that is involved in this proceeding.

B. The Board's grant of authority to LACMTA to abandon the LACMTA Segment does not create a "stranded" segment.

In Paragraphs 5 and 17 of the Riffin Comments, Riffin incorrectly asserts that the abandonment authority LACMTA seeks in this proceeding will create a "stranded" segment of rail line between Milepost 486.00 and Milepost 487.72 (the "**1.72 Mile Segment**"). The

common carrier obligation over the 1.72 Mile Segment has been discontinued since 1993.

Furthermore, pursuant to special procedures established by the Board, LACMTA retained no obligation to provide freight common carrier service on that line after the freight carrier with that obligation extinguished it.

LACMTA's predecessor agency, the Los Angeles County Transportation Commission ("LACTC"), acquired the LACMTA Segment and the 1.72 Mile Segment, along with several other lines, from Southern Pacific Transportation Company ("**Southern Pacific**") in 1990. As a result of this transfer, LACTC acquired the real property associated with the LACMTA Segment and 1.72 Mile Segment, and Southern Pacific retained all operating rights and the primary common carrier obligation. *So. Pac. Transp. Co. – Abandonment Exemption – In Los Angeles Co., CA*, 8 I.C.C.2d 495, 508, n. 13 (1992), *aff'd*, *So. Pac. Transp. Co. – Abandonment Exemption – In Los Angeles Co., CA*, 9 I.C.C.2d 385 (1993). LACTC acquired a residual common carrier obligation as the owner of the LACMTA Segment and 1.72 Mile Segment, over which service was being provided by Southern Pacific. *Id.*

In a later decision involving lines LACTC acquired for commuter rail and transit purposes, the STB explained the very limited scope of the obligations LACTC had acquired. *Los Angeles Co. Transp. Comm'n – Acquisition Exemption – A. T. and S. F. Ry. Co.*, STB Finance Docket No. 32172, *et al.*, *slip op.* (Service Date March 12, 1997) (the "*1997 Decision*"). In the *1997 Decision*, the Board explicitly relieved LACMTA of any obligation to provide service once the holder of the primary common carrier obligation had extinguished its operating right over the LACMTA Segment, the 1.72 Mile Segment and several other lines of railroad addressed in the proceedings encompassed in the *1997 Decision*:

When the ICC designated [LACMTA] to be [a "rail carrier"] . . . its only reason for doing so was to assure that [LACMTA] did not unduly interfere with

the provision of common carrier freight service by carriers . . . that were selling their underlying rights-of-way without eliminating their common carrier obligation to provide service over them. The ICC never intended that [LACMTA] be subjected to the full panoply of carrier obligations under the Interstate Commerce Act (Act). Because [LACMTA is] not going to be operating as [a] rail freight common [carrier] and do[es] not hold [itself] out to provide service over [the LACMTA Segment and 1.72 Mile Segment], it makes no sense to subject [LACMTA] to the various requirements of the Act relating to freight service. . . Indeed, [LACMTA is] providing no “service” that we regulate; [and has] merely been given the obligation not to interfere unduly with the provision of rail freight service by the carrier that retains the obligation to do so.

1997 Decision at 4.

In 1993, Southern Pacific obtained authority to discontinue its common carrier obligation over the 1.72 Mile Segment in ICC Docket No. AB-12 (Sub-No. 154X), *Southern Pacific Trans. Co. – Discontinuance of Service Exemption – In Los Angeles, CA, slip op.* (Service Date September 28, 1993). Pursuant to special procedures established by the Board in the *1997 Decision*, LACMTA, as the owner of the 1.72 Mile Segment, did not acquire the obligation to provide freight service when the operating railroad discontinued its common carrier obligation over the line. *1997 Decision* at 4. As the successor in interest to LACTC, LACMTA now owns the physical assets of the LACMTA Segment and the limited residual common carrier obligation.

Accordingly, no common carrier obligation remains on the 1.72 Mile Segment and the segment cannot be “stranded” as the result of any action affecting the LACMTA Segment because the 1.72 Mile Segment is no longer part of the national freight rail system. Riffin’s assertion that the abandonment authority LACMTA seeks in this proceeding would “strand” the 1.72 Mile Segment is therefore incorrect.

C. No obligation to provide service exists on the LACMTA Segment or the 1.72 Mile Segment.

In Paragraphs 7, 12.D and 18 of the Riffin Comments, Riffin fails to acknowledge the limited nature of the Board’s jurisdiction over LACMTA with respect to the LACMTA Segment

and 1.72 Mile Segment, and that LACMTA retains no obligation to provide service over these segments. In Paragraphs 8 through 12 of the Riffin Comments, Riffin recites some of the facts contained in 8 I.C.C.2d. 495, *supra*, but fails to discuss these facts in the context of the *1997 Decision*. Riffin's assertions to the contrary notwithstanding, LACMTA has no obligation to provide freight service on the LACMTA Segment or the 1.72 Mile Segment.

The LACMTA Segment comprises a portion of the longer line that is the subject of a Notice of Abandonment and Discontinuance of Trackage Rights filed by Union Pacific Railroad Company ("UP") on March 19, 2008, in AB-33 (Sub-No. 265X) (the "UP NOE"). *Union Pac. R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Los Angeles Co., CA*, AB-33 (Sub-No. 265X) (Service Date May 7, 2008) ("UP Abandonment"). UP is discontinuing its common carrier obligations over the LACMTA Segment and abandoning a 0.08 mile segment of line that UP owns (the "UP Segment"). The exemption in the UP NOE became effective on May 8, 2008, subject to historic preservation conditions to allow the Board to complete its required historic preservation review pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. §470f. *UP Abandonment* at 2-3. The Board also allowed the UP NOE to become effective without subjecting the UP Segment to OFA or public use conditions. *Union Pac. R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Los Angeles Co., CA – In the Matter of An Offer of Financial Assistance, slip op.*, STB Docket No. AB-33 (Sub-No. 265X) (Service Date May 7, 2008) ("UP Abandonment II").

Pursuant to the special procedures set forth in the *1997 Decision*, UP's discontinuance of its operating interest over the LACMTA Segment extinguishes the primary common carrier obligation on that line. The Board explained that its jurisdiction over LACTC, and now

LACMTA, was for the limited purpose of ensuring that the owner of the line did not interfere with freight operations on it. As a result, LACMTA will retain no obligation to provide service over the LACMTA Segment. *1997 Decision* at 4. Accordingly, now that the Board has allowed UP to discontinue freight service over the LACMTA Segment, no common carrier obligation remains. Riffin's assertion that LACMTA would be required to provide service over the LACMTA Segment if a shipper were somehow to emerge is therefore incorrect.

D. Riffin Cannot Rely on Unverifiable Visual Information to Establish the Regulatory Status of the LACMTA Segment.

In Paragraphs 13 through 15 of the Riffin Comments, Riffin attempts to rely on aerial images obtained from the Internet and of unknown date and provenance. Nothing in his conclusory remarks about those photographs establishes their accuracy, their source, or the extent to which on-the-ground inspection of the property would support his allegations.

E. Riffin's Allegations that LACMTA "Failed" to Disclose Relevant Information are Patently False.

In Paragraphs 5, 16 and 19 of the Riffin Comments, Riffin incorrectly implies that LACMTA was obligated to disclose information about the 1.72 Mile Segment. The status of the nearby 1.72 Mile Segment is not pertinent. The status of that 1.72 Mile Segment is a matter of public record, as are ICC and STB decisions determining that no common carrier obligation remains on that line. Riffin's intimations that LACMTA is somehow remiss for not having discussed publicly available information about the regulatory status of another line segment in its Notice of Exemption, are misleading and irrelevant.

F. Riffin's References to Irrelevant Authority Clutter the Record and Create Confusion.

Riffin's insistence on referring to irrelevant and inapposite material clutters the record and interferes with the Board's efforts to conduct a coherent, systematic analysis in this

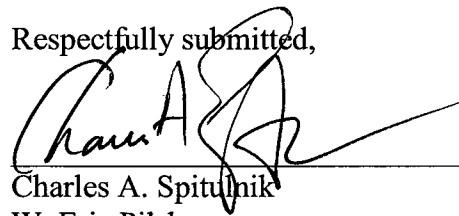
proceeding. In Paragraph 20, Riffin offers a quote from a recent policy statement by the Board addressing historic preservation requirements in connection with abandonments.² The cited text has no bearing here, where the Board has already determined that it need not impose environmental or historic preservation conditions in this proceeding. *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 5X) Environmental Assessment, Service Date June 23, 2008), *slip op.* at 3.

CONCLUSION

The Riffin Comments introduce no relevant issues that are not already addressed in this record or in the public record of prior proceedings. LACMTA respectfully submits that those Comments provide nothing more than yet another unsubstantiated effort by Mr. Riffin to disrupt the orderly processes of this Board. Because Riffin provides no basis for a different result, the Notice of Exemption should be allowed to become effective in accordance with the Board's governing statute and regulations.

² The proceeding to which Riffin refers is STB Docket Ex Parte No. 678, *Consummation of Rail Line Abandonments that are Subject to Historic Preservation and Other Environmental Concerns* (Service Date April 23, 2008).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik", written over a horizontal line.

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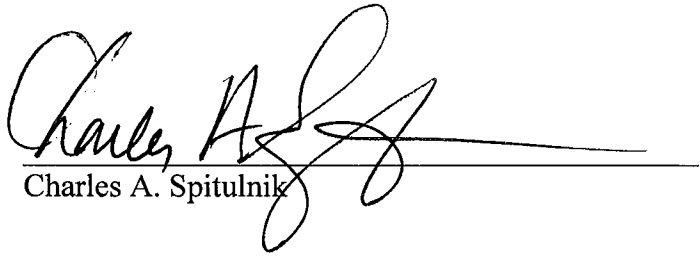
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Certificate of Service

I hereby certify that on this 3rd day of July, 2008, I caused to be served a copy of the foregoing Reply of Los Angeles County Metropolitan Transportation Authority to Comments of James Riffin to be served by first class mail, postage prepaid, upon:

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Charles A. Spitulnik