



KAPLAN KIRSCH ROCKWELL

July 3, 2008

E-Filing

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

Re: *Los Angeles County Metropolitan Transportation Authority – Abandonment
Exemption – In Los Angeles County, CA (Santa Monica Industrial Lead)*, Docket
No. AB-409 (Sub-No. 5X)

Dear Ms. Quinlan:

I am enclosing the Reply of Los Angeles County Metropolitan Transportation Authority to Comments of James Riffin; and the Reply of Los Angeles County Metropolitan Transportation Authority to James Riffin's (1) Notice of Intent to File an Offer of Financial Assistance and (2) Petition to Toll Date an Offer of Financial Assistance Must be Filed by in the above referenced proceeding.

Sincerely,

Charles A. Spitulnik

Enclosure

cc: Parties of Record

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**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
JAMES RIFFIN'S
(1) NOTICE OF INTENT TO FILE AN OFFER OF FINANCIAL ASSISTANCE
AND
(2) PETITION TO TOLL DATE AN OFFER OF FINANCIAL ASSISTANCE MUST BE
FILED BY**

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Dated: July 3, 2008

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On June 26, 2008, James Riffin (“**Riffin**”) filed a Notice of Intent to File an Offer of Financial Assistance in this proceeding (the “**Riffin Notice**”) and a Petition to Toll Date an Offer of Financial Assistance Must be Filed By (the “**Riffin Tolling Petition**”). Los Angeles County Metropolitan Transportation Authority (“**LACMTA**”) hereby submits its Reply, and requests that this Board reject the Riffin Notice, deny the Riffin Tolling Petition, and grant LACMTA’s previously filed Petition for Exemption from Conditions Governing Offers of Financial Assistance and Public Use in this proceeding (“**LACMTA Exemption Petition**”).

LACMTA filed a Notice of Exemption in this proceeding on May 29, 2008 (“**LACMTA NOE**”), to abandon a 0.31 mile segment of track (the “**LACMTA Segment**”) comprising a portion of the Santa Monica Industrial Lead in Los Angeles County, CA. LACMTA

simultaneously filed the LACMTA Exemption Petition. The Board published the Notice of Exemption in this proceeding on June 16, 2008.

The Board has already granted authority to Union Pacific Railroad Company (“UP”), the railroad that held the primary common carrier obligation over the LACMTA Segment, to discontinue its common carrier obligations over the LACMTA Segment and to abandon a 0.08 mile segment of railroad contiguous with the LACMTA Segment (the “UP Segment”). *Union Pac. R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Los Angeles Co., CA*, AB-33 (Sub-No. 265X) (Service Date April 8, 2008), *slip op.* (“UP Discontinuance”). There was no service on the LACMTA Segment or the UP Segment when UP filed its Notice of Exemption, and there had been no service or request for service for over two years previous. *Id.* at 1. Significantly, 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).

As a preliminary matter, LACMTA notes that by filing this Reply, it does not waive the position set forth in the LACMTA Exemption Petition. LACMTA continues to assert, as set forth in that Petition, that this proceeding should be exempt from requirements relating to offers of financial assistance (each an “OFA”) and public use conditions. Once the Board grants that Petition, the Board can dismiss the Riffin Notice and Riffin Tolling Petition.

A. The Riffin Notice is not a *Bona Fide* Request.

An OFA is not applicable to this proceeding. Furthermore, even if the OFA process were applicable, Riffin fails to demonstrate that the Riffin Notice satisfies the basic requirements of a *bona fide* request for information pursuant to 49 C.F.R. §1152.27(a).

First, Riffin claims to be a financially responsible person, but has produced no support of that assertion. In another proceeding, the Board recently determined that Riffin is not a financially responsible person.¹ He has not produced any evidence to the contrary in this proceeding. The Board should therefore reject Riffin's assertion that he is or may become a financially responsible person.

Second, Riffin seeks to submit an OFA for a line over which there has been no service nor any request for service for over two years. Pursuant to 49 C.F.R. §1152.27(a)(1)(ii), LACMTA would be required to provide certain information to "a party considering an offer of financial assistance *to continue existing rail service*" (emphasis added). Both UP and LACMTA have demonstrated in their respective proceedings relating to the LACMTA Segment that there is no existing traffic on the line. *UP Discontinuance* at 1; *Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – In Los Angeles County, CA*, STB Docket No. AB-409 (Sub-No. 5X) (Service Date June 16, 2008), *slip op.* at 1. As a result, Riffin's purported OFA presents a proposal to start new service, not to preserve existing service.

Third, because the Riffin Notice does not constitute a *bona fide* request for information, Riffin is not entitled to request physical condition reports or valuation information (if any such existed) pursuant to 49 C.F.R. §§1152.27(a)(1)(ii)(2) and (3) ("**OFA Data**"), and LACMTA is not obligated to provide them.

¹ *The Kansas City Southern Ry. Co. – Abandonment Exemption – Line in Warren County, MS*, STB Docket No. AB-103 (Sub-No. 21X) (Service Date June 16, 2008), *slip op.* at 3.

Fourth, apart from any OFA Data, if the Riffin Notice were offered in a proceeding in which an OFA were applicable, Riffin is not entitled under any of the Board's regulations to request any of the other information he lists. The Board should accordingly dismiss the Riffin Notice because the Notice does not constitute a *bona fide* request meeting the requirements of 49 C.F.R. §§1152.27.

B. The Board Should Dismiss the Riffin Tolling Petition.

The Board should dismiss the Riffin Tolling Petition along with the Riffin Notice because the OFA process is not applicable to this proceeding. However, if the Board does not dismiss the Riffin Notice, the Board should nevertheless deny the Riffin Tolling Petition. Even if Riffin could file an OFA in this proceeding, he is not entitled to the great bulk of information he requests in the Riffin Notice and would therefore not require additional time to review the information to which he would be entitled. In a valid OFA proceeding, Riffin would be entitled to receive extant OFA Data. Because LACMTA is not a commercial freight operation that is obligated to provide common carrier service over the LACMTA Segment,² LACMTA does not maintain the kind of information a commercial freight operator would. Accordingly, even if LACMTA were able to produce any OFA Data, such information would not be voluminous and would not require significant time for review. Notwithstanding the inapplicability of an OFA, and therefore the need for any OFA Data, in this matter, even if LACMTA were required to produce this information, no additional time would be necessary to permit review. Since Riffin would not be entitled to any information beyond the OFA Data if an OFA were even applicable,

² Pursuant to special procedures set forth by the Board in *Los Angeles Co. Transp. Comm'n – Acquisition Exemption – A. T. and S. F. Ry. Co.*, STB Finance Docket No. 32172, *et al.* (Service Date March 12, 1997) *slip op.* at 4, LACMTA has acquired no obligation to provide freight service over the LACMTA Segment now that UP has obtained discontinuance authority.

Riffin's request for additional time is unwarranted. The Board should therefore dismiss or, in the alternative, deny the Riffin Tolling Petition.

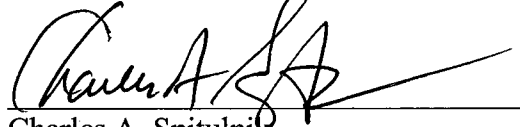
CONCLUSION

LACMTA has previously demonstrated that the Board should exempt the abandonment of the LACMTA Segment from OFA and public use conditions. LACMTA's proposed public use of the LACMTA Segment, the lack of any service on the LACMTA Segment, the short length of the line, and the nature of the surrounding area confirm that such an exemption is appropriate.

The relief Riffin requests in his Tolling Petition is inconsistent with the public interest because it would delay LACMTA's ability to put the LACMTA Segment to use as part of its rail passenger transit operations. The Board should therefore dismiss the Riffin Tolling Petition and grant LACMTA's Exemption Petition.

WHEREFORE, LACMTA respectfully requests that the Board grant the LACMTA Exemption Petition and dismiss the Riffin Notice, thus allowing the LACMTA NOE to become effective as scheduled on July 18, 2008. In the alternative, if the Board does not dismiss the Riffin Notice, the Board should deny the Riffin Tolling Petition for the reasons set forth above.

Respectfully submitted,

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

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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 James Riffin's Notice of Intent to File an Offer of Financial Assistance and Petition to Toll Date an Offer of Financial Assistance Must be Filed By to be served by first class mail, postage prepaid, upon:

James Riffin
1941 Greenspring Drive
Timonium, MD 21093



Charles A. Spitulnik