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November 29, 2007

Via Electronic Filing

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: STB Docket No. AB-290 (Sub-No. 293X), *Norfolk Southern Railway
Company – Abandonment Exemption – in Norfolk and Virginia Beach, VA*

Dear Secretary Williams:

Please accept this Response of Norfolk Southern Railway Company to and
concerning Riffin Supplement to Petition for Stay and to Reopen and/or to Reconsider Decision
served on November 6, 2007.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Edwards', written over the printed name 'John V. Edwards'.

John V. Edwards

For Norfolk Southern Railway Company

Cc: All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-290 (Sub-No. 293X)

**NORFOLK SOUTHERN RAILWAY COMPANY – ABANDONMENT EXEMPTION –
IN NORFOLK AND VIRGINIA BEACH, VA**

**RESPONSE OF
NORFOLK SOUTHERN RAILWAY COMPANY
TO AND CONCERNING RIFFIN SUPPLEMENT
TO PETITION TO STAY AND TO REOPEN
AND/OR TO RECONSIDER DECISION
SERVED ON NOVEMBER 6, 2007**

**JOHN V. EDWARDS
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Counsel to Norfolk Southern Railway Co.

Dated: November 29, 2007

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Introduction and Summary

The submissions in this docket could go on being submitted on a daily basis until the Surface Transportation Board (“STB” or “Board”) rules. Most of what is being filed by James Riffin (“Riffin”) is blather, but the fact that it is being filed, and the fact that it needs to be responded to, has very real impacts on some very real parties – on the City of Norfolk, and the people who live and work there. Right now the Norfolk light rail project, and the Federal, state and local funding for that project, are subject to Riffin’s stated threats of prolonged litigation limbo. To allow this to proceed unchecked would not be in the public interest.

For all of the reasons set forth herein, and in previous submissions, Norfolk Southern Railway Company (“Norfolk Southern”) urges the Board to

expeditiously deny the Riffin Petition for Stay, deny the Riffin Petition to Supplement, and deny the Riffin Petition to Reopen.

DISCUSSION

I. The Petition for Stay is Ripe for Decision.

As far as Norfolk Southern can tell, Riffin has failed to try to supplement the Petition for Stay. Norfolk Southern does not ask to supplement its response to that Petition for Stay. That is ripe for decision and should be decided – expeditiously.

II. The Board should Deny the Riffin Motion for Leave to Supplement.

Riffin has supplemented his petition to reopen once, by his submission on November 26, 2007. Riffin now seeks to supplement his Petition to Reopen yet again. Norfolk Southern objects. “Leave to amend any documentation is a matter of the Board’s discretion.” 49 C.F.R. Section 1104.11. The Board should exercise its discretion to deny leave to amend.

A. Supplementing the Petition is not Consistent with the Strict Time Lines of Section 1152.25.

The Board’s regulations regarding when a pleading must be filed under 49 C.F.R. Section 1152.25 are clear. These time lines are stricter than under almost any other proceeding. See, e.g., 49 C.F.R. Section 1152.25(d)(4) (offers of financial assistance are due on the date due “regardless of whether that date is a Saturday, Sunday, or a legal holiday in the District of Columbia”). See also, 49 C.F.R. Section

1152.25(d)(5) (“The Board will reject any pleading filed after its due date unless good cause is shown why the pleading is filed late.”) (emphasis added).

Riffin’s petition to reopen was due on November 21, 2007. 49 C.F.R. Section 1152.25(e)(2)(i). Riffin already submitted one supplement to his petition to reopen. Supplementing his petition to reopen yet again without good cause would be inconsistent with the strict time lines set forth in 49 C.F.R. Section 1152.25. Riffin presents nothing close to good cause. The Board should exercise its discretion with the strict filing deadlines of 49 C.F.R. Section 1152.25 in mind.

B. Riffin Fails to meet even the Low Standard he Propounds.

In a variety of proceedings, the Board has exercised its discretion to grant leave to permit the record to be supplemented, as Riffin notes “in order to narrow the issues the parties are asking the Board to resolve, which would conserve the Board’s resources, and to ensure the Board has a complete record before it.” Under even that relaxed standard, the Board should deny Riffin’s request to supplement his Petition to Reopen further.¹

1. The Two New Paragraphs.

Riffin seeks to add two new paragraphs to his petition to reopen. The first is a new claim that Norfolk Southern proceeded under the wrong statutory section. The second is a paragraph that quotes, without commentary or indication of relevance, a

¹ On November 27, 2007, Norfolk Southern noted that it did not object to the addition of the first request to add a new paragraph to the petition to reopen. Norfolk Southern objects to the second request to add new paragraphs, and for the record objects to any further attempt to add new paragraphs to the petition to reopen.

couple of cases, one of which was published after Riffin filed his original petition to reopen.²

The claim Riffin seeks to add could have been included in the original petition to reopen. It does not serve to “narrow the issues the parties are asking the Board to resolve” to permit addition of claims that could have been raised in the original petition to reopen. Riffin supplemented his petition to reopen once, on November 26, 2007, and this claim could have been added at that time. It does not serve to “conserve the Board’s resources” to permit the submission of a claim that could have been raised in the original filing and in the first motion to supplement.³

In any event, the two cases cited by Riffin in the second paragraph he seeks to add have no bearing whatsoever on the issues at hand. The first case, Rail Abandonments – Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986), adopts final rules to implement section 208 of the National Trails System Act Amendments of 1983. The second, STB Docket No. AB-33 (Sub-No. 256X), Union Pacific Railroad Co. – Abandonment Exemption – In Dallas County, TX, served November 23, 2007 (cited by Riffin as STB Docket No. AB-585 (Sub-No. 2X), Dallas, Garland & Northeastern Railroad Co. – Discontinuance of Service Exemption – In Dallas County, TX, served November 23, 2007) also deals with trails use. As such, the paragraph citing these two

² The fact that a petitioner is able to cite cases that were served after the submission of his petition does not mean that the petition can continue to supplement an original petition, particularly if the premise for which the cases are cited does not reflect a change in the law.

³ At times the Board will admit additional evidence in the face of objections, observing that the objections go to the weight of the evidence not the admissibility of that evidence. See, e.g., STB Docket No. AB-878, City of Peoria – Adverse Discontinuance – Pioneer Industrial Railway Co., served November 19, 2007, slip op. at 5, note 13. That is not the case here, with the desire to add claims.

cases are immaterial to the decision to exempt Norfolk Southern from the OFA process in this proceeding. “The Board may order that any ... irrelevant [and] immaterial... matter be stricken from any document.” 49 C.F.R. Section 1104.8. Further, dealing with trail use cases in a proceeding that has nothing to do with trail use does not serve to “narrow the issues,” nor does it serve to “conserve the Board’s resources.”

2. The Threatening Letter.

Riffin seeks to submit as additional evidence a letter he sent to the City of Norfolk on November 23, 2007, well after the date that a petition to reopen was due.⁴ That letter forms the basis for additional argument by Riffin in support of his Petition to Reopen. This after-manufactured evidence does not form the basis for a determination that the Board’s decision to grant Norfolk Southern’s request for an exemption from the Offer of Financial Assistance (“OFA”) process involved material error. This letter does not constitute evidence that was in existence at the time but unavailable to the parties. This letter does not constitute substantially changed circumstances. 49 C.F.R. Section 1152.25(e)(2)(ii).

Riffin submitted a petition to supplement his petition to reopen on November 26, 2007, after he sent the letter he now seeks to enter into evidence, and

⁴ Although shown as a copy on the letter, Riffin does not claim he sent the letter to Norfolk Southern. The undersigned has not received a copy sent by Riffin. This is not surprising, for Norfolk Southern received today its service copy of both Riffin filings from November 23, 2007 and November 26, 2007, in the same envelope, postmarked November 27, 2007, despite Riffin’s attestation on each that they were served the day that they were filed. Of course, evidence of credibility (attestation) and character (letter to the City of Norfolk) do go to the issue of how much weight should be given to other evidence.

failed to submit it at that time. He waived all rights to supplement his petition to reopen by failing to submit with evidence then in his possession.

Moreover, the letter is the epitome of impertinent and scandalous matter. That letter begins by claiming that the Assistant City Manager “poured hot tar all over” Riffin. Riffin makes an unsubstantiated claim that he holds “an equitable interest in the Line” and threatens the City of Norfolk with continuous litigation which would act “to delay your light rail project” if the City fails to capitulate to Riffin’s demands. Those demands are that the City of Norfolk must enter into negotiations with Riffin as to the conditions pursuant to which the City would be able to proceed with its light rail project. See 49 C.F.R. Section 1104.8 (“The Board may order that any ... impertinent, or scandalous matter be stricken from any document.”).

3. **The Argument that granting a Stay will not result in a Stay.**

Riffin argues, at page 4, that “A Stay would NOT delay the light rail project.” (Emphasis in the original.) That somewhat ridiculous statement directly contradicts a later claim, appearing further down on page 4, that Riffin needs the stay precisely to prevent the light rail project from commencing. But more to the point, even if (a) the Board admitted the Riffin letter into evidence, which it should not, and (b) one were to give Riffin’s letter a single ounce of credence, which it does not deserve, the assumptions and speculations are so bizarrely incredible as to make the argument, and the letter that purportedly supports it, meaningless and immaterial.⁵ Real world experience

⁵ The statement and others in Riffin’s pleading stands as its own evidence on Riffin’s ability to provide rail service. The letter stands as its own evidence on Riffin’s intention to provide rail service.

and common knowledge demonstrates that OFAs are not quickly resolved, that parties do not begin construction of multi-million dollar public infrastructure projects with the significant levels of risk and uncertainty that would be present, and that Federal, state and local funding in the face of such delay and risk is fleeting at best. Riffin's assertions on this score are simply nonsensical. "The Board may order that any ... immaterial ... matter be stricken from any document." 49 C.F.R. Section 1104.8.

4. **The New Argument Extolling the Compatibility of Light Rail and Freight Service Coexisting on the Same Track.**

Riffin also argues, at page 4, that "Light rail and freight rail service ARE COMPATIBLE." (Emphasis in the original.) A fine statement if relevant,⁶ but Riffin makes the argument in support of a claim that Norfolk Southern failed to provide Riffin information about shippers that do not ship and that the Board erred in granting Norfolk Southern an exemption from the OFA process. But the issue of whether light rail and freight rail service could be compatible was not raised in the case at all, and did not form the basis for the decision that Riffin seeks to reverse:

The OFA provisions are intended to permit a party genuinely interested in providing continued rail service on a line that would otherwise be abandoned to acquire that line for continued rail service. Exemptions from 49 U.S.C. 10904 have been granted, however, when the record shows that a right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.

⁶ The assertion is blithely simplistic, having no thought to the complexities involved in accommodating both freight and passenger rail on the same track, and it further undermines any credibility that might be bestowed upon Riffin's argument that Riffin's consent to the City of Norfolk to initiate a multimillion dollar construction project would be sufficient to allow both the Federal, state and local funding sources to continue to fund, and the City to actual initiate, the construction.

Here, no shipper has expressed interest in continued common carrier service. Indeed, no shipper has used the line segment between milepost VB-1.75 and milepost VB-15.46 for approximately 5 years. Moreover, the record shows that the City intends to acquire line segment between milepost VB-0.12 and milepost VB-4.8 to create a light rail commuter passenger line.

The City states that its light rail line will enhance the continued redevelopment of the City, improve local transportation systems, protect and preserve the environment, and create a transit corridor linking residential, educational, medical services, and employment areas of the City. As a result, automobile use within the City will be reduced.

On the other hand, Mr. Riffin has provided no evidence to show a public need for continued freight rail service on this line. While Mr. Riffin notes that he is aware of a shipper “who has a desire to utilize the line for freight rail services,” he does not provides any details. Indeed, Mr. Riffin does not name the shipper or state whether the shipper is located on the line in question.

In these circumstances, the evidence of record supports NSR’s request for an exemption from 49 U.S.C. 10904. Allowing the OFA provisions to be applied in this instance is not necessary to carry out the rail transportation policy because there is nothing in the record to show any potential for continued rail service on this line. Allowing the abandonment exemption to become effective expeditiously, without first being subject to the OFA provisions, will minimize the need for Federal regulatory control over the rail transportation system, reduce unnecessary delay, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. There are currently no shippers using rail service, nor have any potential shippers objected to the exemption from the OFA process.

Therefore, NSR’s request for exemption from the OFA requirements will be granted. As a result, Mr. Riffin’s notice of intent to file an OFA is moot.

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Abandonment Exemption – in Norfolk and Virginia Beach, VA, served November 6, 2007, slip op. at 6-7 (footnote omitted). Because the issue did not form a basis for the portion of the Board’s decision that is the subject of the petition to reopen, it simply is not relevant. See, e.g., “Petition to Stay and to Reopen and/or to Reconsider Decision Served on November 6, 2007”, submitted November 23, 2007 at 3-4 (“[I]n the instant case, Riffin is not appealing the Board’s decision to grant NS authority to abandon the subject

Line. Riffin is appealing the Board's decision to grant NS' request to be exempt from the OFA procedures."). "The Board may order that any ... irrelevant ... matter be stricken from any document." 49 C.F.R. Section 1104.8.

Further, had Riffin wanted to make that argument in support of his petition to reopen, he had that argument available to him at the time that he filed his original petition. It does not serve to "narrow the issues the parties are asking the Board to resolve" to permit addition of claims that could have been raised in the original petition to reopen. Moreover, he had that argument available to him again at the time of the filing of his first request to supplement. It does not "conserve the Board's resources" to continually supplement petitions and motions with arguments that have long been in hand.

III. Norfolk Southern makes no further Response to Riffin's Arguments in Support of Riffin's Petition for a Stay.

In his November 28 pleading, Riffin makes a variety of arguments in response to Norfolk Southern's submission of November 21, 2007. In that submission, Norfolk Southern demonstrated that Riffin had failed to carry his burden under the Holiday Tours test to justify the extraordinary remedy of a stay. Norfolk Southern does not make any reply to those arguments, and stands on the record.

IV. Norfolk Southern makes no further Response to Riffin's Arguments in Support of Riffin's Petition to Reopen.

As noted in its November 21, 2007 pleading, in order to justify reopening the grant of Norfolk Southern's requested exemption from the OFA process, Riffin must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances. Further, Riffin must demonstrate that the action (the Board granting Norfolk Southern an exemption from the OFA process) would have been materially affected by the material error, the new evidence, or the changed circumstances. 49 C.F.R. Section 1152.25(e)(2)(ii). Riffin has not made, and is not capable of making, such a demonstration.

As further noted in November 21, 2007 pleading, Norfolk Southern did not fail to identify shippers on the line. There was a formal discontinuance that existed on the entirety of the line. There was one shipper that had moved any traffic within the last five years and that shipper was fully disclosed in the discontinuance action. Each of the potential shippers identified by Riffin had actual or constructive notice of the discontinuances and the abandonment proceedings. Although Riffin attests to great interest in having a rail option available, a simple desire to have that rail option available is not sufficient to obligate a rail carrier to reinstitute service over a line formally discontinued. In any event, the attestation is of hearsay evidence, worthy of little credibility. No party served with the November 6, 2007 abandonment decision has chosen to participate in any of the proceedings. Riffin does not show that the Board would have denied Norfolk Southern's grant of an exemption from the OFA process under the set of circumstances he posits as fact.

Riffin has failed to respond credibly to the arguments made in Norfolk Southern's November 21, 2007 pleading. For the reasons stated in that pleading, as well as the other pleadings that Norfolk Southern – and Riffin – have submitted subsequent to the November 6, 2007 abandonment decision, the Board should deny Riffin's petition to reopen. Norfolk Southern does not make any further reply, and stands on the record.

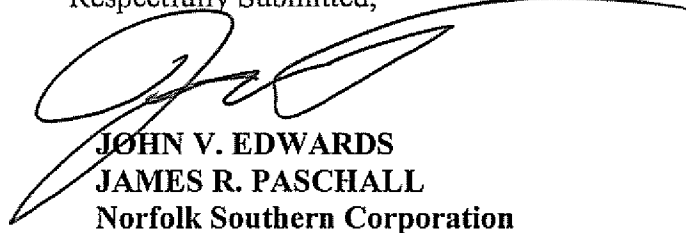
CONCLUSION

As previously demonstrated, the petition for stay is seriously lacking in merit, and should be denied – expeditiously. Riffin has not, and cannot, meet his burden in justifying a stay, and the pendency of the stay request creates an uncertainty and delay that is inimical to the public interest as it relates to the Norfolk light rail project and the project's significant Federal, state and local funding.

Riffin's petition to supplement his petition to reopen should be denied as well. It contains a variety of arguments that could have been raised in the original petition, but were not, arguments that are completely immaterial and nonsensical, and documents that are shocking in so far as they contain such thinly disguised threats. The continuous flow of immaterial, irrelevant and scandalous materials from Riffin constitutes an abuse of the Board's processes. While Norfolk Southern will continue to respond when necessary and appropriate, we urge the Board to expeditiously act in this matter to put this Riffin proceeding to rest.

Finally, Riffin's petition to reopen should be denied.

Respectfully Submitted,



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Counsel to Norfolk Southern Railway Co.

Dated: November 29, 2007

CERTIFICATE OF SERVICE

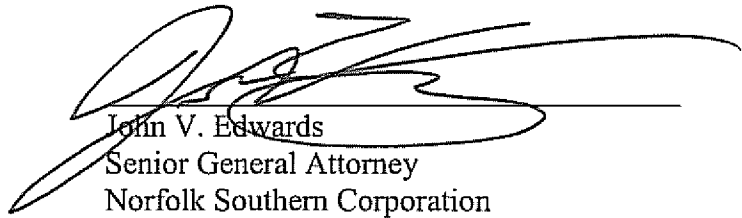
I certify that on this 29th day of November, 2007, I have caused to be served by first class mail, postage prepaid, the foregoing Response of Norfolk Southern Railway Company to and concerning Riffin Supplement to Petition to Stay and to Reopen and/or to Reconsider Decision served on November 6, 2007 on the following persons:

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Executed November 29, 2007



John V. Edwards
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Norfolk Southern Corporation