

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35221

JAMES RIFFIN—ACQUISITION AND OPERATION EXEMPTION—VENEER SPUR—IN  
BALTIMORE COUNTY, MD

Decided: March 5, 2009

On February 20, 2009, James Riffin (Riffin) filed an amended verified notice of exemption<sup>1</sup> pursuant to 49 CFR 1150.41 et seq. to acquire and operate approximately 400 feet of track, formerly known as the Veneer Mfg. Co. Spur (Veneer Spur), in Baltimore County, MD. He requests that the Board find that the Veneer Spur is a line of railroad and permit the notice of exemption to become effective, or in the alternative, institute an individual exemption proceeding.

The notice of exemption will be rejected. Riffin has failed to submit sufficient information for the Board to determine whether the proposed transaction qualifies for the class exemption at 49 CFR 1150.41, et seq.

To qualify for an exemption from 49 U.S.C.10902 for the acquisition and/or operation of an extended or additional rail line, 49 CFR 1150.42(a) requires that a Class III rail carrier-applicant file a verified notice providing details about the transaction as set out in 49 CFR 1150.43 and a brief caption summary conforming to the format of 49 CFR 1150.44. Under Section 1150.43(e), the notice of exemption must contain “A brief summary of the proposed transaction including: (1) The name and address of the railroad transferring the subject property to the Class III rail carrier applicant . . . .” Under section 1150.44, both the caption and the summary of the notice of exemption must specify the name of the transferor.

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<sup>1</sup> On February 19, 2009, Riffin filed a verified notice of exemption which included reference to the proposed construction of approximately 600 feet of “[section] 10906 excepted dead-end Sidetrack” to connect the Veneer Spur with Riffin’s maintenance-of-way/rail car repair facility located approximately 200 feet west of the western end of the Veneer Spur and to create a transload facility that would be available to the general public. Riffin simultaneously filed a motion for a protective order, to which the Maryland Transit Administration (MTA) replied on March 4, 2009. In the amended verified notice of exemption, Riffin removed all references to the proposed construction and moved that the Board substitute the amended verified notice of exemption. In view of the action being taken here, there is no need to rule on either of these motions.

Riffin has failed to establish that he is a Class III rail carrier. His only support for this assertion is a reference, without further explanation, to the Board’s decision in CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, MD, STB Docket No. AB-55 (Sub-No. 659X) (STB served Aug. 18, 2006). Riffin does not indicate that he has ever held out to provide for-hire rail service or otherwise possesses any of the indicia of a common carrier by railroad. Nor has he established that he is acquiring “rail property,” as required by 49 CFR 1150.41(a). He characterizes the facility he acquired on February 16, 2009 as a “privately owned spur.” He does not provide “the name and address of the railroad transferring the subject property to the Class III railroad applicant” as required by 49 CFR 1150.43(e) (1). Because of the failure to identify the transferor of the Spur, Riffin’s caption summary does not conform to the format of 49 CFR 1150.44

This rejection is without prejudice to Riffin refiling a new notice of exemption or some other request for authority. In the event that Riffin files a new notice or submits any other filing in this docket he must serve a copy on the MTA, the Maryland Department of Transportation (MDOT), and the Norfolk Southern Railway Company (NSR).<sup>2</sup> The Board will not use the material Riffin has provided to attempt to fashion a petition for exemption. That responsibility lies with the moving party.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The notice of exemption is rejected without prejudice to refiling consistent with this decision.
2. A copy of this decision will be served on the Maryland Transit Administration, the Maryland Department of Transportation, and Norfolk Southern Railway Company.
3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director.

Anne K. Quinlan  
Acting Secretary

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<sup>2</sup> The Veneer Spur connects with the Cockeysville Industrial Track (CIT) at milepost 15.16 in Baltimore County. The CIT is a 14.22-mile line of railroad extending between milepost 0.00 in the City of Baltimore and milepost 15.40 in Cockeysville, Baltimore County. The MTA, which is part of MDOT, acquired the CIT from Consolidated Rail Corporation in 1990 in order to construct and operate a light rail transit system. Conrail reserved a perpetual freight operating easement over the CIT. NSR subsequently acquired Conrail’s interest in the CIT.