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November 29, 2016
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Public Record

Before the
Surface Transportation Board

~~FD-36081~~: JR - 3

STB DOCKET NO. AB-167 (Sub-No. 1189X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-55 (Sub-No. 686X)

**CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-290 (Sub-No. 306X)

**NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE
EXEMPTION – IN HUDSON COUNTY, NJ**

49 CFR 1115.5 and 1117.1

PETITION(S) FOR OTHER RELIEF

~~FD-36081~~

RIFFIN'S REPLY TO THE LLCs' NOVEMBER 21, 2016 MOTION TO STRIKE

1. Comes now James Riffin, (“**Riffin**”) who herewith respectfully replies to the LLCs’¹ November 21, 2016 **mistitled** “Reply.” (Which in reality is a “Motion to Strike” Riffin’s Petition for Other Relief and City et al.’s Reply, and which will be called such hereafter.)

2. On November 21, 2016, the LLCs’ filed a “Motion to Strike:” (A) Riffin’s **October 31, 2016** filed **Petition for Other Relief**; and City et al.’s **November 4, 2016** filed **Reply** to Riffin’s Petition for Other Relief.

3. While the LLCs titled their Motion to Strike as a “Reply,” it is in fact **solely** a Motion to Strike, for it contains **no reply** to any of the issues raised by Riffin in his Petition for Other Relief. Furthermore, the LLCs expressly stated:

“The LLCs’ decision **to not respond** at this time should not be construed an agreement with any statement or argument by Riffin” Mot to Strike at 7.

4. Being a Motion to Strike, Riffin has the right to file a reply. [Riffin would not have a right to reply to a reply to his Petition for Other Relief. See 49 CFR 1104.13(c)].

THE LLCs’ POINTS OF CONTENTION

5. The LLCs argue that all / portions of Riffin’s Petition for Other Relief (“**Petition**”) should be struck for the following reasons:

A. The entire Petition should be struck, for it violates ALJ Dring’s October 26, 2016 Served decision barring Riffin from filing any more pleadings in the AB 167 (Sub. No. 1189X), et al., (“**1189X**”) proceeding. **RESPONSE:** Riffin’s Petition, while associated with the 1189X proceeding, is a **totally independent proceeding**. Consequently, ALJ Dring’s order has no applicability in Riffin’s Petition proceeding.

¹ 212 Marin Blvd LLC; 247 Manila Ave LLC; 280 Erie St LLC; 317 Jersey Ave LLC; 354 Coles St LLC; 389 Monmouth St LLC; 415 Brunswick St LLC; 446 Newark Ave LLC.

(See Riffin's ~~FD 36081~~ JR-2 Clarification and Supplement pleading.)

- B. The entire Petition should be struck, for it has been rendered moot due to the Notice of Appeal Riffin filed on November 14, 2016, pursuant to 49 CFR 1115.2.

RESPONSE: Riffin's November 14, 2016 §1115.2 Appeal was filed to maintain Riffin's **right** to file a §1115.2 appeal. Had Riffin waited to file a §1115.2 appeal until the STB ruled that the proper appellate procedure was pursuant to §1115.2, Riffin would have been barred from filing an appeal, since per §1115.2(e), §1115.2 appeals must be filed within 20 days of the decision being appealed. In the event that the STB either (A) rules that §1115.2 is **not** the appropriate appellate procedure, or (B) fails to render a decision within 60 days of October 26, 2016 (In reality by **December 22, 2016**), then Riffin will file a Petition for Review. (Again, to preserve his right to seek judicial review.) At some point in time, it will be determined which appeal process is the appropriate one. At which time Riffin will withdraw the inappropriate appeal. In the meantime, the STB still needs to address the issues:

- a. "Which appeal process is the appropriate appeal process?"
- b. "A modification of the §1115.2(d) limit of 30 pages, including appendices."
- c. There no longer is a need to modify the effective date of ALJ Dring's Order, or to change the date by which Riffin's case-in-chief must be filed, since Riffin's case-in-chief has already been filed.
- d. If a stay is needed pending judicial review, another request for a stay will be filed.

- C. Select portions of Riffin's Petition should be struck, for being "irrelevant, immaterial, **and** redundant." Motion to Strike at 6. [The LLCs argue that the material objected to is "irrelevant, immaterial, **and** redundant." The LLCs use the conjunctive 'and.' multiple times.

- a. Petition ¶¶24-39 "appear to be nothing more than Riffin's own observations about the status of the abandonment as a whole" **RESPONSE:** These

paragraphs contain Riffin’s “Comments.” In his Comments, Riffin notes the disconnect between City et al.’s position with regard to the Embankment portion of the Harsimus, and City et al.’s position with regard to the Metro Plaza portion of the Harsimus. (Opposed to acquisition by / development by, the LLCs for the Embankment portion / Strongly in favor of acquisition by / development by, G&S Investors, Forest City Rather Companies, for the Metro Plaza portion.) These comments bear directly on the position advocated by City et al. before ALJ Dring. (The **primary** impetus for City et al.’s Motion to Compel / Motion for Sanctions, was to deprive Riffin of his OFA rights, thereby undermining Riffin’s ‘standing’ in Riffin’s District Court Complaint against the Metro Plaza owners / developers. Riffin’s argument is: Treat everyone equally.)

- b. Petition ¶¶ 64-75(J) “is a recitation of facts relating to Riffin’s request for a stay, which is now moot because of his having filed his appeal under Section 1115.2.”

RESPONSE: Until the STB determines the proper appellate procedures to be followed, these ‘facts’ are still highly relevant, and have decidedly **NOT** been rendered moot. **Only if** the STB rules that 1115.2 is the appropriate appellate procedure to be used, would these paragraphs become moot.

- c. “Large sections of Riffin’s motion deal with the underlining merits of his appeal, and not the procedural relief he seeks in his petition.” In Petition ¶¶ 76-85 “Riffin argues that the City et al.’s discovery demands are fatally defective.” “Paragraphs 86-90 address two other irrelevant issues, specifically, that the Dismissal Order is fatally defective and the City et al. waived objections by failing to inspect. Paragraphs 94 and 95(A) through 95(M) included detailed arguments for why Judge Dring was wrong to enter the Dismissal Order. All of those issues are addressed by Riffin in his appeal, and should be stricken from the record on this petition.” **RESPONSE:** Riffin’s Petition addresses **both** procedural issues **and** the criteria for staying ALJ Dring’s Order. The paragraphs objected to by the LLCs, are germane to the issue of whether to issue a stay. And while

Riffin's appeal repeats what was said in the noted paragraphs, Riffin's appeal and Riffin's Petition, are two separate proceedings. And the noted paragraphs are applicable to both proceedings, and need to be a part of the record in both proceedings.

LACK OF PREJUDICE

6. To justify striking pleadings / portions of pleadings, there generally needs to be a showing of some prejudice to the opposing party, if the objectionable material remains in the record.

7. The LLCs make no argument whatsoever that any of the portions of Riffin's Petition the LLCs object to, prejudice the LLCs.

8. What the LLCs appear to object to, is the Reply filed by City et al. For the LLCs conclude by saying: "Dismissing Riffin's petition should also result in striking the City et al.'s reply, as it concerns itself with Riffin's irrelevant matter and veers off course to discuss issues otherwise rendered moot by the dismissal of Riffin from the proceedings."

9. So either the LLCs object to not being permitted to file a reply to the City et al.'s reply, and / or, the LLCs object to feeling a need "to discuss issues otherwise rendered moot by the dismissal of Riffin from the proceedings."

10. Dismissing Riffin from the 1189X proceeding did provide the LLCs with a benefit: So long as Riffin stays dismissed, City et al. has agreed **not** to press its discovery requests served on the LLCs. But the LLCs objection to City et al.'s discovery requests, should not be the basis for striking any of Riffin's pleadings.

11. City et al. thought that striking Riffin from the 1189X proceeding would make the issue of the re-development of the Metro Plaza parcel go away. It did not make that issue go away. Instead, it broadened the inquiry. And places that inquiry in the lap of the agency City et al. is

seeking similar relief from. Which will force City et al. to address the totally inconsistent positions City et al. has been advocating for multiple years now.

CONCLUSION

12. Riffin's Petition is a separate proceeding, which is not subject to ALJ Dring's October 26, 2016 Served decision. Consequently, ALJ Dring's Order does not provide a proper basis to strike Riffin's Petition.

13. **None** of the paragraphs objected to by the LLCs are "irrelevant, immaterial, **and** redundant" **in the Petition for Other Relief Proceeding.**

14. The LLCs objection to City et al.'s discovery requests, does not provide a proper basis to strike Riffin's Petition.

Respectfully,

James Riffin
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 28th Day of November, 2016, a copy of the foregoing Riffin's Reply to the LLCs' Motion to Strike, was served on Charles Montange, and on Daniel Horgan, both of whom have filed pleadings related to Riffin's Petition(s) for Other Relief. (The time for intervening in Riffin's Petition(s) for Other Relief proceeding, has lapsed.) A courtesy copy was also e-mailed to Jonathan Broder, Adam Sloane, Robert Jenkins, Eric Strohmeyer and Andrea Ferster.

James Riffin

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SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that on the 29th Day of November, 2016, the following pleadings were served on all of the parties in the AB 167 (Sub. No. 1189X), et al., proceeding, either by e-mail or by the U.S. Postal Service.

~~FD 36081~~: JR-2 With 1189X and FD 36081 docket entries on first page.

~~FD 36081~~: JR-2 With FD 36081 docket entry on first page, and no 1189X docket entries.

~~FD 36081~~: JR-3 With 1189X and FD 36081 docket entries on first page.

~~FD 36081~~: JR-3 With FD 36081 docket entry on first page, and no 1189X docket entries.

~~FD 36081~~: JR-1 With FD 36081 docket entry on first page, and no 1189X docket entries.

Note: ~~FD 36081~~: JR-1 With 1189X docket entries on first page, was served on all of the 1189X parties on or before October 31, 2016.

James Riffin
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(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 29th Day of November, 2016, a copy of the foregoing Supplemental Certificate of Service, was served on all of the parties in the AB 167 (Sub. No. 1189X), et al., proceeding, either by e-mail or by the U.S. Postal Service.

James Riffin