

Before the Surface Transportation Board

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

**Reply to James Riffin’s Motion to Strike Reply of Conrail Filed in Support
of City et al.’s Motion for Sanctions**

The LLC Intervenors (“LLCs”)¹ respectfully file this reply to the motion filed by James Riffin (“Riffin”) to strike the reply brief on behalf of Consolidated Rail Corporation (“Conrail”), which supports the motion filed by the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, the “City et al.”) to sanction Riffin for failing to respond to discovery.

The LLCs reply to this motion to strike to address some confusion raised in the filings of Riffin and Conrail relating to the basis to strike Conrail’s reply brief. On July 5, 2016, the Director of Proceedings issued an order providing, “This proceeding is assigned to Administrative Law Judge John P. Dring for

¹ The LLC Intervenors are 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, and 446 Newark Avenue, LLC.

handling of all discovery matters and initial resolution of all discovery disputes.” It is understood that the City et al. seek to sanction Riffin for failing to comply with the August 25, 2016 order, which states, “Mr. Riffin will provide the City, et al. and the Consolidated Rail Corporation with all e-mail communications between him and the LLCs that Mr. Riffin retains in his possession. Mr. Riffin will also supply the City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016.”

The LLCs have taken no position on whether Riffin complied with the August 25, 2016 order. Whether Riffin can or should be sanctioned pursuant to 49 C.F.R. 1114.31(b) for failing to comply with the August 25, 2016 Order is clearly a matter before the Administrative Law Judge (“ALJ”) assigned pursuant to the July 5, 2016 Order. Whether the ALJ can directly impose sanctions, if warranted, or can recommend to the Board imposition of sanctions, is a procedural matter to which the LLCs take no position at this time.

Whether Conrail’s supporting reply brief on the City et al.’s motion for sanctions against Riffin should be stricken for reiterating Conrail’s views on OFAs, raises a different matter. The LLCs reject the arguments of Conrail raised in reply to the motion to strike that the ALJ has authority to impose sanctions for alleged non-discovery related violations.² Although the LLCs have

² The LLCs have filed a cross-motion for sanctions under 49 C.F.R. 1114.21(c) to protect them for “embarrassment, oppression, or undue burden or expense, or to prevent the raising of uses untimely or inappropriate to the proceeding” based on the City et al.’s repeated filings of discovery demands delving into

rejected Riffin's (and the City's) proposals to restore freight rail service to Jersey City, Conrail has argued in the reply brief that is the subject of the motion to strike that Riffin's bad conduct, in alleged concert with the LLC, justifies sanctions. Conrail reiterates the view that Riffin's non-discovery related conduct is properly a matter before the ALJ pursuant to the July 5, 2016 Order. Sanctioning Riffin based on accusations of bad conduct not related to discovery is a matter that should be before the Board. There is no conspiracy between the LLCs and Riffin, and Conrail's reply brief asking that Riffin be sanctioned for non-discovery related offenses that Conrail accuses the LLCs of being a party to should, on that basis, be stricken for raising irrelevant issues before the ALJ.

Respectfully submitted,

S/ Daniel E. Horgan

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DATED: October 13, 2016

irrelevant matters. That request is clearly a discovery issue, which belongs before the ALJ.

CERTIFICATION OF SERVICE

I, Daniel E. Horgan, hereby certify that I have caused a copy of the foregoing to be served by First Class Mail upon those on the attached Service List by having same deposited with the U.S. Postal Service on October 13, 2016.

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