

Conrail -- Abandonment	)	
	)	AB 167 (Sub-no. 1189X)
--in Hudson County, NJ.	)	242657
		242658
		242659

and
CSX Transp. - Discon. of)
Service - same) AB 55 (Sub-no. 686X)
and
Norfolk Southern -)
Discon. of Service - same) AB 290 (Sub-no. 306X)

ENTERED
Office of Proceedings
February 17, 2017
Part of
Public Record

I.

City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy ("City et al") note that the Board did not provide for Riffin to file a "rebuttal," that nothing in 49 C.F.R. Part 1115 provides for parties filing appeals to file a "rebuttal," and that 49 C.F.R. 1104.13(c), which governs pleadings generally, forbids replies to replies (which is what a rebuttal" is). The "rebuttal" filed by Riffin on February 10, 2017, is a reply to a reply and must be removed from the record of this proceeding. City et al is prejudiced by Riffin's continued efforts to pad the record or obtain some last word.

Failure to comment further on Riffin's latest extraneous pleading should not be construed as agreement to any arguments

or allegations contained therein, except insofar as the document demonstrates the propriety of the sanctions against Mr. Riffin set forth in ALJ Dring's Order of October 26, 2016.

II.

This Board has twice admonished Mr. Riffin to serve his papers in accordance with the Board's rules and in particular 49 C.F.R. 1104.12. Decision in AB 167-1189X served July 24, 2015 at p. 2; Decision in AB 167-1189X served August 25, 2015 at p.2. In both Decisions, the Board reminded Riffin that service by email "is only available if the party being served consents to service by email." Decision, supra, August 25, at p. 1; accord, Decision, supra, July 24, at p. 1.

City et al have never consented to email service. As of 17 February 2017, City et al have not yet received USPS First Class or Express Delivery of Mr. Riffin's interlocutory Appeal filed on 31 January 2017. USPS First Class mail should be delivered from the East Coast (Riffin lives in the Baltimore area) to the West Coast (City et al's counsel is in the Seattle area) within that period. This suggests that Riffin simply failed properly to serve City et al.

Riffin's "Certificate of Service" for his 31 January interlocutory appeal reads as follows:

“CERTIFICATE OF SERVICE

“I hereby certify that on or before the 1st Day of February, 2017, a copy of the foregoing James Riffin’s Notice of Appeal, and the Appendix thereto, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

“James Riffin”

The Certificate is deficient on its terms, because it does not attest either directly or indirectly to lawful service, and in particular does not affirm USPS First Class or Express service upon City et al. Moreover, as noted, City et al have not received any hard copy of the appeal from Riffin.¹ In addition, City et al on February 14 requested Riffin by email to provide some kind of evidence or proof of service by US Mail or equivalent,² and Riffin has failed to respond.

¹ City et al acknowledges receipt of email service of what purports to be Riffin’s 31 January appeal, but Riffin’s email indicated that he was not furnishing the appendices, instead relying on those as filed with an earlier appeal dismissed by this Board. Riffin’s emails provide his more lengthy pleadings in a fashion requiring assembly by the recipient, and that is sometimes confusing. Parties are left to examine the STB website to determine what Riffin intends to file or did file. City et al seek to rely on hard copy from the parties to avoid confusion and to ensure no prejudice. Presumably that is why email service is not sufficient to comply with 49 C.F.R. 1104.12 absent party consent.

²Email was as follows: “ Subject: AB 167-1189X

From: C. Montange ...

To: jimriffin@yahoo.com ...

Date: Tuesday, February 14, 2017 6:12 PM

Do you have any kind of proof or evidence that you served City et al USPS first class or by express delivery with your 31 Jan pleading (interlocutory appeal)?”

Riffin's underlying appeal involves a discovery dispute. In the discovery dispute, Mr. Riffin initially failed timely to respond although he had pledged to do so. When City et al filed a motion to compel, Riffin claimed he had no responsive documents. When City et al filed a second motion with a verified statement indicating Riffin had lied, Riffin responded that his documents were indecipherable. When City et al arranged for a party to refute this at a hearing before ALJ Dring, Riffin finally admitted he had intelligible responsive documents and agreed to produce them. ALJ Dring so ordered. But then Riffin arbitrarily stopped after spending -- by his admission -- only two hours on the matter. Instead, he now contests discovery basically on the ground he should not have to do anything at all. In short, Mr. Riffin has a long history of dilatory, untruthful, and misleading responses; unreliability; and a mindset incompatible with making responsive discovery. In confirmation, ALJ Dring made a demeanor finding against him:

"... Mr. Riffin is not a reliable witness as to the truth of the matter to which he asserts. His deportment suggests evasiveness, deliberate obtuseness, faulty memory, and mental reservation." Decision in AB 167-1189X, served Oct. 26, 2016, p. 2.

Consistent with that history, City et al has still not received service of Riffin's January 31 appeal per section 1104.12 as required by this Board, nor has Riffin yet responded to an inquiry asking for evidence of service. Riffin's "certificate

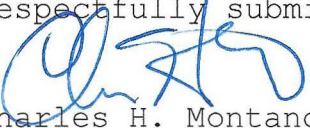
of service" does not show or attest to service in compliance with 1104.12 as to City et al, or for that matter as to any party in this proceeding.

This Board stated in its August 25 Decision, supra, that "[d]ocuments filed in the future without a sufficient certificate of service are subject to being rejected without further Board action." The Riffin appeal filed January 31, 2017, appears to lack a sufficient certificate of service (it utterly fails to identify upon whom Riffin served his pleading, nor does it state the modality employed for each party, nor otherwise demonstrate compliance with section 1104.12 as to any party), and City et al have yet to receive by First Class or Express Service a copy of the January 31 appeal as required for compliance with section 1104.12.³ Should the Board reject

³In addition, City et al notes that to e-file a pleading (such as an appeal), the Board requires a party to certify that all other parties have already been served. See screen shot of "Formal Filing" page attached as Exhibit A (infra p. 8). In particular, for every "Formal Filing," a party must answer the question "[d]id you serve all parties of record on the service list". If the party answers this question "no," the party is immediately directed to "other submissions" which is an STB electronic depository for non-pleadings. In order to file his appeal as a pleading on January 31, 2017, Riffin accordingly had to represent that he had served all parties of record on the service list on 31 January 2017. But his certificate indicates that if there was service, it may have been after that date. City et al therefore question whether the January 31 appeal was based on an electronic misrepresentation by Riffin in response to the quoted "Formal Filing" question whether he had served all parties of record prior to filing.

Riffin's January 31, 2017 appeal per the Board's August 25, 2015 Decision, and in light of Riffin's apparent failure to serve City et al, then any additional appeal by Riffin is simply out of time and must be rejected as well. The Board should consider applying its August 25, 2015 Decision.

Respectfully submitted,


Charles H. Montange
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Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 17th day of February 2017 addressed to the parties or their representatives per the service list below, unless otherwise indicated. The undersigned also certifies the deposit of the foregoing for express delivery (next business day) upon Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426 (courtesy email to Judge Dring's law clerk).



Service List (current as of Nov. 2016)

Daniel Horgan
Waters, McPherson, McNeill, P.C.
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P.O. Box 1560
Secaucus, NJ 07096

(LLCs) [also by email]

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Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101 (Conrail) [also by email]

Katherine Marcopul
State Historic Preservation Office
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NJ Dept. Environmental Protection
P.O. Box 420
Trenton, NJ 08625-0420

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Executive Director
Preservation New Jersey
414 River View Plaza
Trenton, NJ 08611

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Jersey City Landmarks Conservancy
54 Duncan Avenue
Jersey City, NJ 07303

Jeremy Jacobson, President
Harsimus Cove Association
20 Erie Street, Apt. #2
Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

President
Van Vorst Park Association
The Barrow Mansion
83 Wayne Street
Jersey City, NJ 07302

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

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Exec. Director
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580 Jersey Ave., Apt. 3L
Jersey City, NJ 07302

Aaron Morrill
Civic JC
64 Wayne St.
Jersey City, NJ 07302

Eric S. Strohmeier
Vice President, COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069 [also by email]

James Riffin
PO Box 4044
Timonium, MD 21094 [also by email]

Supplemental Service List

Per a prior request of the Board, service is also made on the following addressees, although none is believed to continue to represent a party in the proceeding and/or is otherwise superceded.

Stephen Marks
Hudson County
583 Newark Avenue
Jersey City, NJ 07306

Gretchen Scheiman
Historic Paulus Hook Association
121 Grand Street
Jersey City, NJ 07302

Michael Selender
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Brian P. Stack
411 Palisade Avenue
Jersey City, NJ 07307

The post office is returning mail addressed to Mr. Dan Weber.



Surface Transportation Board

Formal Filing

E-filing is a file attachment process. Prepare your submission in the same manner as you would if filing by paper. All documents in a formal filing must include the docket number(s) applicable to the submission, as well as the name and address of the person responsible for the filing. In addition, formal filings must be submitted as a PDF document and, if available, in the [original electronic document format](#). E-filing may **not** be used to file:

- initial filings in a proceeding;
- filings requiring a fee (with the exception of recordations, which may be e-filed); or
- large evidentiary filings (over 10MB).

Documents received after 5pm EST will not be processed until the next business day.

If, after reviewing the instructions here, you have questions regarding the e-filing process, please contact legal.support.services@stb.dot.gov.

Did you serve all parties of record on the [service list](#)?

Service must be made in accordance with
49 C.F.R. §1104.12, as amended.

☐ Yes

☐ No