

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB NO. AB 167 (SUB-NO. 1189X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NEW JERSEY**

STB NO. AB 55 (SUB-NO. 686X)

**CSX TRANSPORTATION, INC. – DISCONTINUANCE EXEMPTION –
IN HUDSON COUNTY, NEW JERSEY**

STB NO. AB 290 (SUB-NO. 306X)

**NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE
EXEMPTION – IN HUDSON COUNTY, NEW JERSEY**

**REPLY OF CONSOLIDATED RAIL CORPORATION
IN OPPOSITION TO
“JAMES RIFFIN’S MOTION TO STRIKE
CONRAIL’S SEPTEMBER 23, 2016 REPLY IN PARTIAL SUPPORT OF
CITY ET AL.’S MOTION FOR SANCTIONS”**

Consolidated Rail Corporation (“Conrail”) submits this reply in opposition to “James Riffin’s Motion to Strike Conrail’s September 23, 2016 Reply in Partial Support of City et al.’s Motion for Sanctions” (“Riffin Mot. to Strike”), filed September 26, 2016.

ARGUMENT

On September 23, 2016, Conrail filed a reply in partial support of a motion submitted on behalf of the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (“City et al.”) for sanctions against James Riffin (hereinafter, “Conrail Reply”). Mr. Riffin has moved to strike the Conrail Reply.

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Mr. Riffin predicates his motion upon two grounds. First, he claims that the Conrail Reply “is clearly ‘irrelevant’ and ‘immaterial’” because footnote 1 of the Conrail Reply states that Conrail is not taking a position on whether Mr. Riffin’s discovery-related conduct, as detailed by City et al., supports the imposition of sanctions. According to Mr. Riffin, this statement renders the Conrail Reply “irrelevant” and “immaterial” within the meaning of 49 C.F.R. § 1104.8. Riffin Mot. to Strike at 2.

This argument is meritless because, as Conrail noted, City et al. presented facts and documents that, quite apart from the allegations of discovery abuse, “provide compelling support for the imposition of severe sanctions against Mr. Riffin.” Conrail Reply at 2. Conrail understood City et al.’s motion for sanctions to be predicated on *multiple* grounds, including Mr. Riffin’s alleged discovery abuses *and* the facts and evidence presented by City et al. concerning “Mr. Riffin’s abuse of, and intent to abuse, Surface Transportation Board (‘STB’) jurisdiction, STB processes, and STB remedies—in particular the Offer of Financial Assistance (‘OFA’) process.” Conrail Reply at 1 (citing City et al. Motion at 8, 12-13, 14-15 and Exhibits G and I).

As City et al. stated in discussing why Mr. Riffin should be precluded from further pursuit of an OFA, “[a]ll the same reasons for the sanction of dismissal apply for the sanction of barring him from filing an OFA. *But there are additional grounds . . .* Moreover, Riffin has indicated that his OFA is for the illegitimate purpose of supporting the Hyman real estate (all non-rail) interests, and/or for the equally illegitimate and even more convoluted purpose of avoiding Baltimore County land use regulation on Riffin’s property in Maryland. These purposes are not consistent with this agency’s prior formulations concerning the purpose of an OFA. City et al.’s discovery is germane to Riffin’s true purposes.” City et al. Motion for Sanctions at 18-19 (emphasis added).

The Conrail Reply was predicated on the facts and evidence presented by City et al. concerning Mr. Riffin's alleged "true purposes," not the alleged discovery abuses per se. That is one of the reasons why the Conrail Reply is a reply in "partial support" of the sanctions motion. Consequently, Mr. Riffin's first argument is simply wrong: The Conrail Reply is *not* rendered "'irrelevant' and 'immaterial'" (Riffin Mot. to Strike at 2) by Conrail's declining to take a position on whether Mr. Riffin should be sanctioned for his *discovery-related* conduct.

Mr. Riffin's second ground for striking the Conrail Reply is that Conrail has previously stated its position on OFAs in this proceeding, thus, according to Mr. Riffin, rendering the Conrail Reply "'redundant'" under 49 C.F.R. § 1104.8. *See* Riffin Mot. to Strike at 2-3.

This ground for striking the Conrail Reply is meritless because, as the Conrail Reply stated, whatever the Board may think of Conrail's oft-stated "position on OFAs in this matter *generally*, it is manifestly clear that, in light of his cavalier and cynical abuses of the OFA process here, *Mr. Riffin* should, at a minimum, not be permitted to file an OFA in this proceeding." Conrail Reply at 3 (emphasis added). Thus, far from merely repeating its previously-stated views on OFAs—views that were equally applicable to OFAs filed by *anyone* in this matter—Conrail clearly was focusing on *Mr. Riffin's abuses* and on one of City et al.'s proposed *sanctions* against Mr. Riffin. Mr. Riffin's self-serving claim of redundancy is inconsistent with what the Conrail Reply actually said.

CONCLUSION

For the foregoing reasons, Mr. Riffin's motion to strike the Conrail Reply should be denied.

Respectfully submitted,

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September 26, 2016

CERTIFICATE OF SERVICE

I, Adam C. Sloane, hereby certify that on this 26th day of September, 2016, I caused a copy of the foregoing to be served by express delivery (next business day) upon Administrative Law Judge John P. Dring, at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426, and upon the following by First Class Mail, postage prepaid:

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