

Before the
Surface Transportation Board

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

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

ENTERED

Office of Proceedings
October 5, 2015
Part of
Public Record

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

JAMES RIFFIN’S REPLY TO

CITY’S, et. al. SEPTEMBER 14, 2015 MOTION TO STRIKE

1. Comes now James Riffin, who herewith replies to the City’s, et. al’s September 14, 2015 Motion to Strike Riffin’s pleadings that were placed on the Surface Transportation Board’s (“STB”) web site on September 4, 2015 (collectively, “**September 4, 2015 pleadings**”).
2. Many of Riffin’s September 4, 2015 pleadings were amended certificates of service.
3. While the City was not very specific in its Motion to Strike (it appears that the City moved the STB to strike all of Riffin’s September 4, 2015 pleadings), Riffin argues that none of the pleadings having to do with certificates of service should be stricken, since they all were in response to orders from the STB.

4. One of Riffin's pleadings was a reply to the City's June 25, 2015 Motion to Strike. Replies to a Motion, are permitted. Consequently, there is no basis to strike Riffin's Reply to the City's June 25, 2015 Motion to Strike. (Just as there is no basis to strike this reply to the City's September 14, 2015 Motion to Strike.)

5. With regards to Riffin's service of his pleadings on Charles Montange, counsel for the City, et. al.: Some months ago, Riffin sent some correspondence to Mr. Montange via the U.S. Postal Service. The envelope was returned to Riffin unopened, and was marked, "Refused."

6. Since then, Riffin has sent copies of his correspondence to Mr. Montange via e-mail. That way, it cannot be 'returned.' (It can remain 'unopened,' and thus 'unread.')

7. There is some ambiguity in the STB's regulations. 49 CFR 1104.12(a) says:

"Service on the parties **should be by the SAME METHOD** and class of service **used in serving the BOARD ...**."

8. FRCP Rule 5 (b)(2)(D) states:

"Delivering a copy by any other means, including electronic means, consented to in writing by the person served."

9. Today, all attorneys **must** file their pleadings electronically. Normally, if one files electronically, the act of electronic filing constitutes consent to receive service electronically.

10. Electronic service permits receipt the same day a pleading is filed.

11. Service via the U.S. Postal Service generally means receipt three to seven to ten days after a pleading has been filed. (The Postal Service has made a policy decision to deliver mail less timely, in order to reduce its delivery costs.)

12. Riffin (and most other parties) prefer electronic service, since they prefer to receive a copy of a pleading as soon as the pleading has been filed. (So they have more time to respond.)

13. In Mr. Montange's case, he received a copy of what Riffin filed the same day Riffin made his filing. Had Mr. Montange waited until Riffin's pleadings appeared on the STB's web site, he would have had a long wait. And had he waited for the U.S. Postal Service to receive a 'flat' Riffin mailed to him, he would have waited at least 10 days. (Mr. Montange's office is on the West Coast. It takes about 10 days for the U. S. Postal Service to deliver a 'flat' (large envelope) from the East Coast, to the West Coast.)

14. All this appears to Riffin to be 'much ado about nothing.'

15. Mr. Montange properly noted that the reason for service, is to keep other parties informed. In a timely manner. Mr. Montange was timely informed.

16. If Mr. Montange desires to receive service from Riffin exclusively via the U.S. Postal Service, then Riffin will provide that type of service.

17. All of this discussion about 'service,' will make an interesting argument before whatever Court of Appeals hears the Petitions for Review that are likely to be filed at the conclusion of this proceeding.

18. Which brings Riffin to the 'meat' of Mr. Montange's argument: 'Delay.'

19. The City objects to the present delay. The City argues that further delay prejudices the City. That may be so. **However**, the reason for the present delay is **SOLELY to accommodate the City's request for "meaningful application of sections 106 and 110(k) of the National Historic Preservation Act."**

20. All of the parties are waiting for the STB's Environment / Historic Section to serve its amended Environmental / Historic decision. Once that Amended decision is served, then all interested persons will have the opportunity (and right) to file their comments, following which, a 'final' report will be issued. And then, and only then, will the Offer of Financial Assistance ("OFA") procedure commence. (Presumably, it is the OFA procedure that the City most desires to have commence.)

21. Which reminds Riffin of an old adage: "Be careful what you wish for. You may get it."

22. The City asked for a more detailed Historic report. The STB granted the City its wish. Now the City can wait (like everyone else), while the STB provides a more detailed Historic report.

23. An aside: The more detailed Historic report is likely to impose additional, **new** historic preservation conditions. Those new conditions will impact **all** historic structures. Which means the abandonment rules for **all** rail lines with historic structures on them, will change. Not necessarily for the better. The potential for new, more restrictive rules, greatly concerns Riffin. Which is one more reason why he continues to advocate that the parties reach a settlement, **before** the STB renders these new, presently unknown, rules. (To no avail, so far.) Reaching a settlement would also eliminate any further delay in resolution of this controversy.

24. Riffin learned a new word: "Champerty." Sharing in the proceeds of litigation.

25. Riffin is not quite sure that it was applicable. If by 'sharing' the City means that Riffin plans to file an OFA (whenever the STB permits an OFA to be filed), that is true. Riffin will 'share' in the abandonment litigation, by exercising his right to file an OFA.

26. Will Riffin's OFA 'thwart' the City's OFA? Perhaps. If Riffin's OFA is accepted by Conrail. Riffin prefers to view his OFA as offering Conrail more than a choice of one.

27. Is Riffin's participation in this proceeding, 'officious?' Probably, at least from the LLCs' and the City's perspective, since the word 'officious' means "unrequested, unwanted."

28. But then all participation by opposing parties is 'unrequested,' and 'unwanted,' So all participation by all opposing parties would be 'officious,' at least in the view of the party opposing the participation.

29. Needless to say, because one's participation is 'officious,' is not (or should not) be grounds to strike one's pleading.

30. Better to stick to the criteria expressed in 49 CFR 1104.8: "Redundant, irrelevant, immaterial, impertinent, or scandalous."

31. Riffin will point out to the STB that the City failed to even mention any of the relevant criteria to support its Motion to Strike, well alone, actually argue that any of Riffin's pleadings met those criteria.

32. It has been many slow weeks, pleading wise, in this proceeding. Which may explain why Riffin took five pages to say he objects to the City's Motion to Strike. (A bit of levity is occasionally needed.)

33. Sort of like the calm before the storm.

Respectfully,

James Riffin
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CERTIFICATE OF SERVICE

I hereby certify that on the 5th Day of October, 2015, a copy of the foregoing Reply to the City's Motion to Strike was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin