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December 12, 2016

Via E-Filing

242235

Rachel D. Campbell
Director, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
December 12, 2016
Part of
Public Record

Re: Docket No. 36078, James Riffin -- Petition for Declaratory Order

Dear Ms. Campbell:

In the four weeks since James Riffin filed a Petition for Declaratory Order in the above-referenced docket,¹ he has submitted four separate “supplements” to that Petition; a pleading stating his opinions on other party’s deadlines for responding to those “supplements”; and a “rebuttal” to the replies to the Petition.² And he has announced that he “is likely to file additional supplements/amendments to his Petition.” Riffin’s Position on When Replies are Due at 2. All of these pleadings have been submitted without leave from the Board and in open defiance of the Board’s rules. The Board should refuse to consider any of them, and it should put an end to his abusive litigation tactics by promptly denying his meritless Petition.

Mr. Riffin has not once asked for leave to file a supplement to his Petition or explained why good cause exists for the Board to accept his additional pleadings.³

¹ See *James Riffin –Petition for Declaratory Order*, STB Docket No. 36078 (filed Nov. 16, 2016) (hereafter “Petition”).

² See Supplement to Petition, STB Docket No. 36078 (filed Dec. 1, 2016); Second Supplement to Petition (filed Dec. 2, 2016); Third Supplement to Petition (filed Dec. 5, 2016); Fourth Supplement to Petition (filed Dec. 8, 2016); Riffin’s Position on When Replies are Due (filed Dec. 8, 2016); Riffin’s Rebuttal to Respondents’ Opposition (filed Dec. 12, 2016).

³ Mr. Riffin asserts that his rebuttal is authorized under 49 C.F.R. § 1112.2, but those modified procedures only apply if the Board so orders, which it has not done. See 49 C.F.R. § 1112.1. In the alternative Mr. Riffin asks for leave to file a rebuttal

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This alone compels rejection of these pleadings.⁴ Moreover, Mr. Riffin's recent "supplements" are not supplements at all, but rather responses to other parties' replies that are prohibited by 49 C.F.R. § 1104.13(c). For example, Mr. Riffin's "Fourth Supplement" filed December 8 is plainly a response to the replies filed December 6, and his Third Supplement similarly is a response to the reply filed on December 2 by certain interested LLCs. The Board's rules do not allow these surreplies, and they all should be stricken.

Mr. Riffin's improper filings are particularly abusive in the context of this litigation, which was instituted by Mr. Riffin as an attempted end-run around his dismissal from the Harsimus Cove Abandonment proceeding (and Judge Dring's order barring him from further filings in that docket).⁵ And they are particularly abusive because they are part of a self-confessed plan to interfere with a redevelopment project with broad public support in the hopes of a "settlement" that would compensate Mr. Riffin in exchange for allowing construction to go forward.⁶

Mr. Riffin's unauthorized supplemental filings are precisely the type of "inappropriate and vexatious filings" that the Board has found "burden . . . the Board's resources and the resources of the parties that come before the Board."⁷ The Board should not permit this abuse of its process and should reject all of Mr. Riffin's supplemental pleadings. Indeed, Mr. Riffin's continued violations of the Board's rules (and his promise of future violations through filing even more "supplements") are further reason for the Board to deny his meritless Petition expeditiously.

to create "a more complete record," but he does not explain why his rebuttal is a necessary filing to complete the record and not simply another impermissible surreply that he filed in a desire to have the last word. Rebuttal at 1.

⁴ See, e.g., *AEP Texas North Co. v. BNSF Ry. Co.*, STB Docket No. 41191 (Sub-No. 1) at 2 n. 3 (served Nov. 22, 2006) ("As the complainants did not seek leave to file a supplemental pleading, the letter will not be considered.").

⁵ See Order, *Consol. Rail Corp. – Abandonment Exemption – In Hudson Cty., NJ*, STB Docket AB-167 (Sub-No. 1189X) (served Oct. 24, 2016).

⁶ See Reply of Forest City & G&S Investors, *James Riffin – Petition for Declaratory Order*, STB Docket No. 36078 at 8-11 (filed December 6, 2016).

⁷ *Offers of Financial Assistance*, at 9, STB Ex Parte 729 (Sept. 28, 2016).

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Forest City and G&S Investors do not intend to respond further to any of Mr. Riffin's recent unauthorized pleadings or to any unauthorized pleadings he files in the future. For the reasons stated in their December 6, 2016 Reply, Forest City and G&S Investors urge the Board to put an end to Mr. Riffin's abuses in this proceeding by denying his Petition.

Very truly yours,



Matthew J. Warren

*Counsel to Forest City Ratner Companies
and G&S Investors*

MJW:aat

cc: Parties of Record