

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 “Petition(s) for Other Relief” Pursuant to
49 C.F.R. 1115.5 and 1117.1**

The LLC Intervenors 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 (the “LLCs”) respectfully file this reply to the petition filed by James Riffin (“Riffin”) within the present dockets pursuant to 49 C.F.R. 1115.5 and 1117.1 seeking “other relief.” The procedural relief specifically requested by Riffin consists of four parts:

(1) A ruling, in effect an advisory opinion, as to whether Riffin must follow 49 C.F.R. 1115 or 49 C.F.R. 1152.25 to appeal an October 26, 2016 order (the “Dismissal Order”) entered by the Honorable John P. Dring, A.L.J., striking Riffin’s filings—including his notice of intent to file an offer of financial assistance—and dismissing Riffin from these

proceedings as a sanction for violating Judge Dring's August 24, 2016 order on discovery;

(2) A determination as to whether the Dismissal Order was "administratively final" under 49 C.F.R. 1152.25(e)(5);

(3) If an appeal by Riffin is governed by 49 C.F.R. 1115, a modification of the date the Dismissal Order takes effect, an extended period for filing an appeal, and a modification of the number of pages permitted; and

(4), If Riffin proceeds under 49 C.F.R. 1152.25(e), a stay of the Dismissal Order pending resolution of judicial review.

The City of Jersey City, Rails-to-Trails Conservancy, and the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, the "City et al.") have filed opposition to Riffin's petition.

Since that time, Riffin has filed an appeal from the Dismissal Order pursuant to 49 C.F.R. 1115.2. Riffin has therefore apparently worked out his procedural question on his own, without the requested assistance from the Board.

In light of Riffin's filing of a separate appeal, his petition is largely moot, and otherwise in violation of Judge Dring's orders. It should be struck from the record pursuant to 49 C.F.R. 1104.8.

Point I

Riffin's Petition Violates the Order Prohibiting Him From Making Further Filings in this Matter

Judge Dring ruled from the bench on October 24, 2016 that Riffin's pleadings, including his notice of intent to file an OFA, would be struck, and that he was dismissed from these proceedings. The next day (October 25, 2016), Riffin filed a motion for a stay with Judge Dring.

The Dismissal Order was entered and served on October 26, 2016. That order provides:

1. Mr. Riffin is prohibited from introducing anything further into evidence in the above-referenced dockets.
2. Mr. Riffin's pleadings are stricken from the proceedings in all three dockets. [FN 2: This includes Mr. Riffin's notice of intent to file an Offer of Financial Assistance.
3. Mr. Riffin is dismissed from the proceedings in all three dockets, and prohibited from further participation in them.
4. Mr. Riffin is directed to pay City et al.'s counsel fees. [FN 3 intentionally omitted.]
5. The discovery proceedings in these three dockets will terminate no later than December 30, 2016. Accordingly, all discovery requests must be submitted no later than December 15, 2016.
6. This decision is effective on the date of service.

Judge Dring then issued a second order on the same day addressing Riffin's motion for a stay. The ALJ found that Riffin had not met the standards

warranting a stay. Further, Judge Dring concluded that Riffin's filing of a motion for a stay violated the ruling that Riffin could not further participate:

Additionally, Mr. Riffin's Motion to Stay violates the bench ruling made at the October 24, 2016 oral arguments, which explicitly prohibited Mr. Riffin from submitting any further pleading into evidence.

The bench ruling remains unaffected. Accordingly, Mr. Riffin is reminded that his remaining alternative to continue in these proceedings is to seek reconsideration from the Board as noted by City et al.

Judge Dring then struck Riffin's motion for a stay from the proceedings.

Riffin's petition again violates Judge Dring's order. The October 24, 2016 bench decision and subsequent October 26, 2016 Dismissal Order confirm that Riffin was dismissed from the case, and his only recourse would be to "seek reconsideration from the Board...." Riffin's petition for a declaratory ruling on which appeal procedure to use, and other relief sought therein, was not an appeal to the Board. Thus, after Judge Dring dismissed Riffin from the case, he has filed not one, but two further motions and petitions that are not appeals to the Board. The first offensive submission was correctly struck by Judge Dring, a result Riffin expressly has not included in his appeal to the Board. The second filing, this current petition, should likewise be struck as being made in clear violation of Judge Dring's October 24, 2016 decision and the October 26, 2016 Dismissal Order.

Point II

Riffin's Petition Should be Struck under 49 C.F.R. 1104.8 because it has been Rendered Moot by Riffin's own Actions, it is Replete with Irrelevant Statements, and Should be Rejected

Pursuant to 49 C.F.R. 1104.8, "The Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document." The Board has invoked this rule against Riffin on multiple occasions in the past.¹ Riffin's dismissal from the pending case and striking of his post-dismissal motion for a stay by Judge Dring on October 26, 2016 adds to the list of his violations.

On November 14, 2016, Riffin filed an appeal from the Dismissal Order under 49 C.F.R. 1115.2. Riffin's pending pre-appeal petition, to which the LLCs now respond, has sought various forms of relief, including a determination of whether Riffin should proceed under 49 C.F.R. 1115.1 et seq. or 49 C.F.R. 1152.25, a stay if the matter proceeded under Section 1152.25, and an extension of time to file. All of that relief sought by Riffin has been rendered moot by when he filed an appeal. Issues of whether Riffin proceeded correctly or on time are matters that can and should be addressed only within that appeal. This Board does not need to issue what would amount to an advisory opinion on whether Riffin's selected procedural course was correct or

¹ See, e.g., Norfolk Southern Railway Co.—Acquisition and Operation—Certain Rail Lines of the Delaware and Hudson Railway Co., Inc., STB Docket No. FD 35873, Service Date October 18, 2016; Norfolk Southern Railway Co.—Acquisition and Operation—Certain Rail Lines of the Delaware and Hudson Railway Co., Inc., STB Docket FD 35873, Service Date March 24, 2016 (striking four filings); and J. Corman RR. Co./Allentown Lines, Inc.—Abandonment Exemption—in Lehigh County, PA, STB Docket No. AB 550 (Sub-No. 3X), Service Date November 25, 2015.

incorrect, or otherwise complied with the regulations. Riffin has thus rendered most of his petition as irrelevant, immaterial, and redundant, and it should be dismissed under 49 C.F.R. 1104.8.

The LLCs further note that Riffin's petition contains numerous instances of irrelevant, immaterial, and redundant facts and statements that have nothing to do with his motion, but have either no bearing on the petition at all, or relate solely to his now-pending appeal, and provide an independent basis to strike portions of his petition. For example, paragraphs 24 through 39 appear to be nothing more than Riffin's own observations about the status of the abandonment as a whole, including his District Court lawsuit against Forest City. That discussion has nothing to do with Riffin's petition.

Paragraphs 64 through 75(J) is a recitation of facts relating to Riffin's request for a stay, which is now moot because of his having filed his appeal under Section 1115.2.

Large sections of Riffin's motion deal with the underlining merits of his appeal, and not the procedural relief he seeks in his petition. For example, in Paragraphs 76-85, Riffin argues that the City et al.'s discovery demands are fatally defective. Paragraphs 86-90 address two other irrelevant issues, specifically, that the Dismissal Order is fatally defective and the City et al. waived objections by failing to inspect. Paragraphs 94 and 95(A) through 95(M) include detailed arguments for why Judge Dring was wrong to enter the Dismissal Order. All of those issues are addressed by Riffin in his appeal, and should be stricken from the record on this petition. 49 C.F.R. 1104.8.

Point III

The LLCs Reserve All of their Rights, Arguments, and Positions

Dismissing Riffin's petition should also result in striking the City et al.'s reply, as it concerns itself with Riffin's irrelevant matter and veers off course to discuss issues otherwise rendered moot by the dismissal of Riffin from the proceedings. The LLCs should not have to address any of these irrelevant issues, whether within the context of Riffin's petition, or otherwise, but will discuss the substantive issues relating to Riffin's dismissal in the context of his appeal. The LLCs' decision to not respond at this time should not be construed as agreement with any statement or argument by Riffin, or a waiver of any argument in reply to the appeal.

Respectfully submitted,

S/ Daniel E. Horgan

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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 November 21, 2016.

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