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SERVICE DATE – LATE RELEASE DECEMBER 21, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1189X)

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

Docket No. AB 55 (Sub-No. 686X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
HUDSON COUNTY, NJ

Docket No. AB 290 (Sub-No. 306X)

NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Decided: December 21, 2016

These three cases (collectively, the Harsimus Abandonment Proceeding) involve a request to abandon an approximately 1.36-mile portion of a line of railroad, known as the Harsimus Branch, located in the City of Jersey City, N.J. On July 5, 2016, the Board, through the Director of the Office of Proceedings, referred all pending and future discovery disputes in the Harsimus Abandonment Proceeding to a Federal Energy Regulatory Commission Administrative Law Judge (ALJ). By decision served on October 26, 2016 (October 2016 Decision), the ALJ, among other things, dismissed James Riffin from the Harsimus Abandonment Proceeding, struck his filings, prohibited him from making further filings, and directed him to pay certain attorneys fees.

On October 31, 2016, Riffin filed a “Petition(s) for Other Relief” with the Board. Riffin states that he intends to appeal the ALJ’s decision to the Board and seeks guidance from the Board regarding the appropriate regulation under which his administrative appeal of the ALJ’s October 2016 Decision should be filed—the appellate procedures at 49 C.F.R. Part 1115 or 49 C.F.R. § 1152.25, which applies to decisions in abandonment and discontinuance proceedings. Riffin indicates that he will file for judicial review if the Board does not act within 60 days of the October 2016 Decision.

Riffin’s petition raises the question of the appropriate standard for administrative appeals of ALJ discovery decisions generally, and also ALJ discovery decisions in abandonment cases in particular. Specifically, he asks whether the appropriate avenue to challenge the ALJ’s decision is under Part 1115 or § 1152.25. Currently, under any of the referenced regulations, if no valid

appeal has been filed, the ALJ's decision would be considered administratively final. See 49 C.F.R. § 1115.1 (10-day appeal deadline), § 1115.2 (20-day appeal deadline), § 1115.9 (seven-day appeal deadline), & § 1152.25 (decision administratively final when served).

The Board recognizes Riffin's attempt to follow the Board's regulations, as evidenced by his petition, which was filed within five days of the October 2016 Decision. In the absence of a Board ruling, and notwithstanding his pending petition for clarification, Riffin also filed an appeal of the October 2016 Decision under § 1115.2, and the LLC Intervenors¹ and the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition filed replies to that appeal. The Board will tentatively accept Riffin's appeal while it addresses Riffin's pending petition. The Board expects to issue a decision in response to Riffin's petition, which will provide guidance on these issues and further address the appropriateness of Riffin's appeal, as necessary. Accordingly, to allow the Board to resolve these questions and provide Riffin the requested guidance, the Board will tentatively accept Riffin's appeal, thereby suspending the relevant regulations that would otherwise make the ALJ's decision administratively final, pending further order of the Board.

It is ordered:

1. As described above, Riffin's appeal is tentatively accepted, thereby suspending the relevant regulations that would otherwise make the ALJ's decision administratively final, pending further order of the Board.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ The LLC Intervenors are 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.