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Office of Proceedings
September 26, 2016
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Before the
Surface Transportation Board

JR - 19

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

JAMES RIFFIN'S MOTION TO STRIKE CONRAIL'S SEPTEMBER 23, 2016 REPLY IN PARTIAL SUPPORT OF CITY ET AL.'S MOTION FOR SANCTIONS

1. Comes now James Riffin, ("**Riffin**") who herewith files his Motion to Strike Conrail's September 23, 2016 Reply in Partial Support of City's, et al.'s[1] ("**Montange**") September 15, 2016 Motion for Sanctions ("**Motion**"), ["**Conrail's Reply**"] and in support hereof states:

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[1] Jersey City, Rails to Trails Conservancy, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

2. On **September 23, 2016**, Conrail filed a pleading **mis-titled:** "Reply of Consolidated Rail Corporation in Partial Support of 'Motion on Behalf of City of Jersey City, et al. For Sanctions Against James Riffin for Failure to Respond to Discovery (Document) Requests"

3. 49 CFR 1104.8 provides:

> "The Board may order that any **redundant, irrelevant, immaterial**, impertinent, or scandalous matter be stricken from any document." Bold added.

4. Conrail, in its footnote 1, states:

> "Conrail, which did not propound the discovery at issue in City et al.'s motion, **takes no position** on whether Mr. Riffin's discovery-related conduct supports the imposition of sanctions." Conrail Reply at 2.

5. Conrail, by the clear, express language in its footnote 1, declares that its 'Reply' has **nothing to do** with the 'discovery issues' presented and argued in City et al.'s Motion for Sanctions. Consequently, Conrail's 'Reply' is clearly 'irrelevant' and 'immaterial' to the discovery issues raised, and argued, in City et al.'s Motion for Sanctions, and thus is subject to be stricken.

6. Conrail "has explained its position on OFAs in this proceeding" footnote 2, Conrail Reply at 2, by Conrail's own count, at least **six times**. Repeating, for a **seventh time**, Conrail's 'position on OFAs in this proceeding,' is decidedly 'redundant,' and is subject to be stricken.

7. Montange's Motion for Sanctions for Failure to Respond to Discovery (Document) Requests, is about Montange's (unsupported) allegation that Riffin somehow failed to comply with ALJ Dring's August 25, 2016 Order. **It is NOT about "OFAs in this proceeding."**

8. It is inappropriate for Conrail to use this Discovery proceeding, to mount its pulpit, then deliver a speech, for the seventh time, about "OFAs in this proceeding."

9. Whether "OFAs in this proceeding" are appropriate, was decided by the STB some years ago, when the STB permitted the OFA process to begin, and more recently (May 22, 2015), when the STB ordered Conrail to provide Valuation Information.

10. Whether the STB will permit the OFA process to continue to move forward, will be determined by the STB **some time in the future**, when the STB evaluates whatever OFAs are filed. And per the STB's November 2, 2016 Decision, the STB declines, at the moment, to set a date by which OFAs must be filed.[2]

11. This **Discovery Issue proceeding** is **neither the time, nor the place**, for Conrail to voice its objections, for the seventh time, about "OFAs in this proceeding."

12. WHEREFORE, for the foregoing reasons, Riffin would pray that the STB **strike** all portions of Conrail's Reply, other than its short comment in its footnote 1, indicating that Conrail **takes no position** on City et al.'s Motion for Sanctions For Failure to Respond to Discovery (Document) Requests., and for such other and further relief as would be appropriate.

Respectfully,

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[2] The STB must complete the more in-depth Historic and Environmental Review that **City et al. demanded**, then "issue a separate decision making a Finding of No Significant Impact ("FONSI") to show that it has formally considered the environmental record," 49 CFR 1105.11(g), **before** the STB can set a date by which OFAs must be filed. "The Board **will** withhold a decision, **stay the effective date of an exemption**, or impose appropriate conditions upon any authority granted, **when an environmental or historic preservation issue has not yet been resolved.**" 49 CFR 1105.11(f). Bold added.

CERTIFICATE OF SERVICE

I hereby certify that on or before the __26th__ Day of September, 2016, a copy of the foregoing Reply to Conrail's Reply in Partial Support of City et al.'s Motion for Sanctions against Riffin, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin