

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

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 Motion to Strike Reply of Conrail Filed in Support
of City et al.’s Motion for Sanctions**

The LLC Intervenors (“LLCs”)¹ respectfully file this reply to the motion, filed on September 23, 2016 and “clarified” on September 27th, by James Riffin (“Riffin”). Riffin’s motion to strike is directed to the reply brief of Consolidated Rail Corporation (“Conrail”). That Conrail reply brief supports a prior motion filed by the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (collectively, the “City et al.”) to sanction Riffin for failing to respond to discovery. But, the City et al. had also interjected unsupported conspiracy theories into their arguments to sanction Riffin, and Conrail essentially joins in those unsupported arguments along the way.

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.

This present LLC reply to Riffin's motion to strike only addresses one aspect of a limited argument raised by Riffin, and by Conrail, relating to the scope of sanctions for discovery abuse as that issue may impact the LLCs' pending request for sanctions against City, et al. The LLCs' concern is that any sanction issued or recommended against Riffin not be based upon material outside of the discovery process that has no factual support in the record i.e., arguments of counsel based on rumor, supposition and rank speculation.

On July 5, 2016, the Director of Proceedings issued an order providing, "This proceeding is assigned to Administrative Law Judge John P. Dring for handling of all discovery matters and initial resolution of all discovery disputes." Arising in the context of the pending motions on discovery matters, City et al. seek to sanction Riffin for failing to comply with the August 25, 2016 order, which states, "Mr. Riffin will provide the City, et al. and the Consolidated Rail Corporation with all e-mail communications between him and the LLCs that Mr. Riffin retains in his possession. Mr. Riffin will also supply the City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016."

The LLCs have taken no position on whether Riffin complied with the August 25, 2016 order. Whether Riffin can or should be sanctioned pursuant to 49 C.F.R. 1114.31(b) for failing to comply with the August 25, 2016 Order is clearly a matter before the Administrative Law Judge ("ALJ") assigned pursuant to the July 5, 2016 Order. Whether the ALJ can directly impose sanctions, if

warranted, or can recommend to the Board imposition of sanctions, is a procedural matter to which the LLCs also take no position at this time.

Whether Conrail's supporting reply brief on the City et al.'s motion for sanctions against Riffin should be stricken for reiterating City, et als.' views on Riffin's alleged abuse of OFAs outside of the discovery process raises a different matter in which the LLCs do have an interest. The LLCs reject the arguments of Conrail raised in reply to Riffin's motion to strike that the ALJ has authority to impose sanctions for alleged non-discovery related violations, because the basis for those statements by Conrail is the same unsupported allegations by the City, et al. to which the LLCs have strenuously objected.² Although the LLCs have rejected Riffin's (and the City's) proposals to restore freight rail service to Jersey City, Conrail has argued in its reply brief, which is the subject of Riffin's motion to strike, that Riffin's bad conduct, in alleged concert with the LLCs, justifies sanctions. Conrail reiterates the view that Riffin's non-discovery related conduct is properly a matter before the ALJ pursuant to the July 5, 2016 Order. Sanctioning Riffin based on accusations of bad conduct not related to discovery is a matter that probably should be before the Board, but at this stage, that is not the LLCs' concern. Since there is no conspiracy between the LLCs and Riffin, and Conrail's reply brief, asking that Riffin be

² The LLCs have filed a cross-motion for sanctions under 49 C.F.R. 1114.21(c) to protect them for "embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding" based on the City et al.'s repeated filings of discovery demands delving into irrelevant matters. That request for relief by the LLCs is directly related to a discovery issue, which does belong before the ALJ, and over which the ALJ clearly has full authority.

sanctioned for non-discovery related offenses that Conrail accuses the LLCs of being a party to, is a subtle attempt to tar the LLCs with the same brush that the City, et als. would use on Riffin. Discovery sanctions should be based on conduct related to discovery, and on that basis, Conrail's reply should be stricken for raising irrelevant and wholly unsupported issues and allegations before the ALJ.

Respectfully submitted,

S/ Daniel E. Horgan

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DATED: October 13, 2016

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 October 13, 2016.

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