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ENTERED
Office of Proceedings
October 25, 2016
Part of
Public Record

Before the Surface Transportation Board

Conrail -- Abandonment --in Hudson County, NJ.	AB 167 (Sub-no. 1189X)
	and
CSX Transp. - Discon. of Service - same	AB 55 (Sub-no. 686X)
	and
Norfolk Southern - Discon. of Service - same	AB 290 (Sub-no. 306X)

Certification of Costs
And Comment on Further Pleadings by Mr. Riffin
on Behalf of City of Jersey City et al
To LLCs' Motion for Sanctions against
City of Jersey City et al

I. Certification of Costs

Pursuant to Administrative Law Judge Dring's direction at the hearing held October 24, 2016, in the above captioned matter, City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("City et al") submit their counsel's Revised Certification of Hours and Costs associated with City et al's efforts to obtain discovery (document responses) from Mr. James Riffin (Exhibit A). The Revised Certification explains that the total billable time and costs incurred by City et al exclusively due to Mr. Riffin's failure to make reasonable discovery response is, as of October 24, 2016, no less than $24,488.45.

City et al seek reimbursement for time and costs incurred to respond to additional Riffin pleadings in this matter subsequent to October 24, 2016.

II. Comment

During the hearing on October 24, 2016, Judge Dring indicated that he intended to issue an order, inter alia, striking all the pleadings filed by Mr. Riffin in the above captioned dockets. The STB e-library indicates that Mr. Riffin has filed two new pleadings, evidently shortly after the October 24 hearing. The first, which the STB e-library indicates was filed on October 24, 2016, is entitled "Argument." The second paper, which is entitled "Motion to Stay," is represented as filed on October 25, 2016. The first Riffin document ("Argument") clearly falls within the ambit of pleadings that Judge Dring indicated will be stricken. City et al will comment no further on this document unless Judge Dring indicates further response is appropriate.

The second Riffin document ("motion to stay") asks Judge Dring to stay issuance of a decision he stated from the bench on October 24 that he intended to issue. STB follows standard federal practice [Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)] in addressing motions to stay. That standard treatment requires the party seeking a stay to show (1) a likelihood that

it will prevail on the merits of any challenge to the action sought to be stayed; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed by a stay; and (4) the public interest supports the granting of the stay. Eighteen Thirty Group, LLC—Acquis. Exemption—In Allegany County, Md., FD 35438 et al., slip op. at 2 (STB served Nov. 17, 2010). Riffin does not purport to make any of these showings, nor can he. Riffin predicates his motion for an apparently indefinite stay on his desire for delay while he attempts to assemble more evidence which, even if assembled, does not address the multiple grounds Judge Dring articulated to dismiss Riffin from the proceeding. If the decision were stayed, then the entire hearing must be redone, for City et al's motion to compel discovery against the LLCs would no longer be moot should Riffin continue in the proceeding. This in turn would prejudice Judge Dring's objective to conclude discovery by the end of December.

An additional ground to give short shrift to Riffin's latest pleadings is that, whatever he calls them, they are replies to replies, which are not permitted under the Board's rules. 49 C.F.R. 1104.13(c).

City et al wishes to bring this burdensome process of seeking discovery against Riffin to a close. Riffin has already had ample time to make his discovery response. Instead, he has

time and again pursued outright avoidance by untruthful responses (he claimed he had retained no emails, and then, when challenged by a motion to compel supported by a verified statement that he did, he produced over 100 emails), slick readings to limit the scope of response, claims that devoting two hours to responding was enough, and repeated and costly delays (City et al has expended at least $24,488 to date).

In the circumstances, Riffin's unprecedented motion to stay a written decision arising from a hearing from which he deduces he has "lost" should be among the Riffin pleadings stricken from the proceeding. If Riffin wants yet another bite at the apple, he should await Judge Dring's order, and then follow the Board's procedures for reconsideration or appeal, to the extent available to him. Incidentally, Riffin makes no effort to meet the Board's requirements for reconsideration/appeal.[1] City et al reserve the right to respond further should Judge Dring indicate that further response is appropriate.

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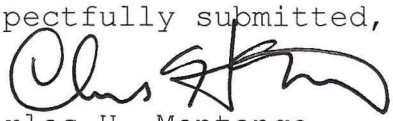
[1] Assuming any further review of a discovery matter is available to Riffin, the Board's basic framework for appellate relief is in 49 CFR Part 1115 (appeals or petitions for reconsideration). Reconsideration requires Riffin to produce new evidence, show substantially changed circumstances, or exhibit material error. E.g., Norfolk Southern Rwy - Op and Acq. Ex. - Delaware & Hudson, F.D. 35873, served May 15, 2015, slip op. at 5. He does none of that. As to an appeal, he makes no reference to, let alone showing under, the criteria in Part 1115.

City et al request their costs, including reasonable attorneys fees, in responding to Riffin's "motion to stay." City et al will supply a separate certification of those costs upon request or order from Judge Dring.

Respectfully submitted,



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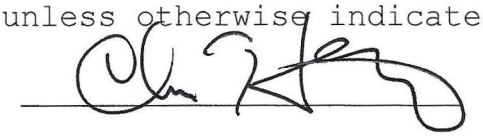
Fax: -3739
Counsel for City et al

Attachments: Exhibit A (Revised Certification)

Certificate of Service

The undersigned hereby certifies service by depositing the foregoing for express delivery (next business day) upon Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426 (courtesy email to Judge Dring's law clerk) and by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 25th day of October 2016 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



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(current as of Oct. 2016)

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Supplemental Service List

Per a prior request of the Board, service is also made on the following addressees, although none is believed to continue to represent a party in the proceeding and/or is otherwise superceded.

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Exhibit A

Revised Certification

Revised Certification of Hours and Costs

Associated with Two Motions to Compel and

Motion for Sanctions through Oct. 24, 2016

In re: City et al Discovery Against Riffin

In AB 167-1189X

I, Charles H. Montange, counsel for Jersey City et al in STB dkt AB 169-1189X, hereby certify under penalties for perjury that I spent at least 102.3.5 hours preparing, serving and filing (1) a first motion to compel when Mr. Riffin defaulted on promised response (5.5 hours, May 1 and 2), (2) a withdrawal of the first motion as moot when Riffin filed tardy objections (9.25 hrs, June 1,3,5,6,7, includes analysis of Riffin's late-filed and spurious objections), (3) comments on Riffin's spurious motion to strike (5.0, June 27), (4) a second motion to compel (8 hrs, July 1,2, plus 2 additional hours July 11 to comply with STB order assigning discovery matters to Judge Dring), (4) preparation for, travel to and from, and attendance at a hearing on the second motion before Judge Dring on motion to compel Riffin (31.5 hrs, Aug 22, 23, 24), (5) review of documents produced by Riffin in response to the hearing and the discovery tendered (7.5 hrs, August 25, 26), (6) preparation, service and filing of motion for sanctions against Riffin (22.5 hrs, Aug 30, 31, Sept. 1, 8, 9, 12, 14 and 15) a motion for sanctions against Riffin, and (7) preparation for, travel to and from, and attendance at a hearing on the motion for sanctions (16.5 hrs, Oct. 22, 23, 24). My time sheets indicate time for Riffin discovery separately from time devoted to LLC/Horgan discovery, with the exception of the hearing on October 24, which although devoted almost exclusively to the motion for sanctions against Riffin was nominally also related to a motion to compel discovery against the LLCs. The motion to compel against the LLCs was necessary largely if not exclusively due to Riffin's failure to cooperate in discovery, and was largely mooted by the relief granted against Riffin. While counsel believes the entire time and costs for the hearing should properly be awarded against Riffin, counsel is prepared to

accept compensation for 80% of the time (80% of 16.5 equals approximately 13.25 hours). 5.5 + 9.25 + 5.0 + 8 + 31.5 + 7.5 + 22.5 + 13.25 equals 102.5 hours.

Mr. Riffin was concerned that he not be held accountable for any time I devoted to Mr. Horgan's efforts to shield him from discovery, or presumably to shield the LLCs from discovery. I have carefully avoided including any such time in the above tabulation.

I further certify that I charge the City a discounted rate of $200 per hour in light of the fact that two non-profit preservational organizations are co-clients (Rails to Trails Conservancy and Embankment Preservation Coalition). Normal commercial rates are substantially higher ($350 to $400 or more per hour). The total fee charged City et al is thus not less than $20,500 for the time (no less than 102.5 billable hours) directly attributable to Mr. Riffin's failure to make proper and timely discovery response. The total value of my time is roughly double that amount.

On behalf of City et al, I incurred travel expenses of $1416.50 for the hearing before Judge Dring held August 24, 2016, which hearing was devoted entirely to the second motion to compel against Riffin. Similarly, I incurred travel expenses of $1712.62 for the hearing before Judge Dring held October 24, 2016 concerning the motion for sanctions against Mr. Riffin.[1] On behalf of City et al, I incurred an additional $445.79 to make copies and serve the two motions to compel against Riffin, the comment on his request for sanctions against City et al in relation to the foregoing, and a reply to Riffin's motion to strike relating to our motions to compel. Similarly, I incurred an additional $413.54 to make and serve copies of the motion for sanctions against Riffin. These expenses do not include the costs associated with preparing, serving and filing this certification, or any papers in response to filings by Riffin on or after October 24, 2016. The total for costs through October 24 is thus $1416.50 plus 1712.62 plus 445.79 plus 413.54 which totals to $3988.45. The total for fees for time attributable solely to Riffin is thus no less than 102.5 hours multiplied by

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[1] Counsel believes that all costs associated with travel to the hearing on October 24 should be awarded against Riffin for his repeated failure to make discovery was the root cause for the hearing.

$200, or $20,500, through close of business Oct. 24, 2016. The total for expenses directly attributable to Riffin's failure to make discovery is $3988.45 through October 24, 2016.

The total sum for fees and expenses is thus not less than $20,500 plus $3988.45, for a total amount of not less than $24,488.45, through October 24, 2016.

Consistent with my original certification (Exhibit F to motion for sanctions), these fees and expenses exclude all amounts attributable to extensive but unsuccessful efforts to arrive at stipulations with counsel for the LLCs (Mr. Horgan) to abate the need for further discovery against Riffin. In addition, they omit any amounts attributable to seeking discovery responses from the LLCs (Mr. Horgan) due to Mr. Riffin's failure to cooperate in reasonable discovery.

By:

October 25, 2016