

241563

241568

241569

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings
September 23, 2016
Part of
Public Record**

STB NO. AB 167 (SUB-NO. 1189X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NEW JERSEY**

STB NO. AB 55 (SUB-NO. 686X)

**CSX TRANSPORTATION, INC. – DISCONTINUANCE EXEMPTION –
IN HUDSON COUNTY, NEW JERSEY**

STB NO. AB 290 (SUB-NO. 306X)

**NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE
EXEMPTION – IN HUDSON COUNTY, NEW JERSEY**

**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”**

Consolidated Rail Corporation (“Conrail”) submits this reply in partial support of the motion of the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (“City et al.”) for sanctions against James Riffin.

Conrail agrees that the facts and documents presented by City et al. in support of their motion for sanctions provide indisputable evidence of Mr. Riffin’s abuse of, and intent to abuse, Surface Transportation Board (“STB”) jurisdiction, STB processes, and STB remedies—in particular the Offer of Financial Assistance (“OFA”) process. *See, e.g.*, City et al. Motion at 8, 12-13, 14-15, Exhibit G, Exhibit I.

Regardless of the merits of City et al.'s claims concerning Mr. Riffin's alleged discovery abuses, the facts and documents presented by City et al. provide compelling support for the imposition of severe sanctions against Mr. Riffin.¹ These abuses of Board jurisdiction, processes, and remedies cannot be viewed as isolated or unintentional bad acts. They do not reflect ignorance, an excess of enthusiasm, or a misunderstanding of Board processes and remedies on Mr. Riffin's part. To the contrary, as the City et al.'s motion (*see, e.g.*, City et al. Motion at 9-11) and Conrail's own experience make abundantly clear, they are part of a pattern and practice of abusive filings and litigation by Mr. Riffin. They are, in short, merely extreme examples of Mr. Riffin's repeated abuses of Board and other legal proceedings.

For these reasons, Conrail supports City et al.'s request that Mr. Riffin be severely sanctioned. Specifically, Conrail agrees that Mr. Riffin should be either barred from the proceeding entirely or, at a minimum, barred from filing an OFA.

As Conrail has stated in a number of previous submissions, there is no basis for *any* OFAs in this matter, and, therefore, the Board should thoroughly scrutinize the bona fides of any OFAs that are ultimately put forward.² But regardless of the Board's views about Conrail's

¹ 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. Rather, Conrail's reply concerns the clear evidence that City et al. have proffered concerning Mr. Riffin's abuse of Board jurisdiction, processes, and remedies.

² Conrail has explained its position on OFAs in this proceeding in a number of submissions, including the Response of Consolidated Rail Corporation to Order to Produce Valuation Information, at 5 (filed June 1, 2015); Reply of Consolidated Rail Corporation to "Motion to Compel Consolidated Rail Corporation Immediately to Supply Valuation Information Required Pursuant to 49 C.F.R. 1152.27(a)," at 2-3 (filed Jan. 12, 2015); Reply of Consolidated Rail Corporation to "Statement of City of Jersey City in Response to Tolling of OFA Time Period and Protective Appeal," at 7-9, 10 (filed July 6, 2009); Motion to Strike or, in the Alternative, for Acceptance of Reply to Reply, at 3-13 (filed May 5, 2009); Reply in Opposition to the City of Jersey City's "Motion to Toll Time Period for Submitting OFA and Motion for 7-Day Extension of Time to Reply to Conrail Motion to Reject," at 2-5 (filed Apr. 9, 2009); Reply to Notices of Intent to File an Offer of Financial Assistance, *passim* (filed Apr. 1, 2009).

position on OFAs in this matter generally, it is manifestly clear that, in light of his cavalier and cynical abuses of the OFA process here, Mr. Riffin should, at a minimum, not be permitted to file an OFA in this proceeding.

CONCLUSION

For the foregoing reasons, Conrail supports City et al.'s request that Mr. Riffin be either barred from this proceeding or, at a minimum, barred from filing an OFA.

Respectfully submitted,

Jonathan M. Broder
CONSOLIDATED RAIL CORPORATION
1717 Arch Street, Suite 1310
Philadelphia, PA 19103
(215) 209-5020

Robert M. Jenkins III
Robert M. Jenkins III
Adam C. Sloane
MAYER BROWN LLP
1999 K Street NW
Washington DC 20006
(202) 263-3261

Attorneys for Consolidated Rail Corporation

September 23, 2016

CERTIFICATE OF SERVICE

I, Adam C. Sloane, hereby certify that on this 23rd day of September, 2016, I caused a copy of the foregoing to be served by express delivery (next business day) upon Administrative Law Judge John P. Dring, at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426, and upon the following by First Class Mail, postage prepaid:

Charles H. Montange
426 NW 162nd Street
Seattle, WA 98177

Andrea Ferster
General Counsel, Rails to Trails Conservancy
2121 Ward Court NW, 5th Floor
Washington, DC 20037

Daniel Horgan
Waters, McPherson, McNeill PC
300 Lighting Way
Secaucus, NJ 07096

Fritz R. Kahn, P.C.
1919 M Street NW
7th Floor
Washington, DC 20036

Aaron Morrill
Civic JC
64 Wayne Street
Jersey City, NJ 07302

President
Van Vorst Park Association
91 Bright Street
Jersey City, NJ 07302

Jeremy Jacobsen, President
Harsimus Cove Association
20 Erie Street, Apt. #2
Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB # 166
344 Grove Street
Jersey City, NJ 07302

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

Dennis Markatos-Soriano, Exec. Dir.
East Coast Greenway Alliance
5826 Fayetteville Rd, Suite 210
Durham, NC 27713

Jill Edelman, President
Powerhouse Arts District Neighborhood Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Neighborhood Association
365 Second Street
Jersey City, NJ 07302

Robert Crowell
Monroe County Planning Department
Room 306 Courthouse
Bloomington, IN 47404

Justin Frohwirth, President
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Joseph A. Simonetta, CAE
Executive Director
Preservation New Jersey Incorporated
414 River View Plaza
Trenton, NJ 08611

Sam Pesin
President
Friends of Liberty State Park
580 Jersey Avenue
Apt. 3L
Jersey City, NJ 07302

Massiel Ferrara, PP, AICP, Dir.
Hudson County Division of Planning
Bldg 1, Floor 2
Meadowview Complex
595 County Avenue
Secaucus, NJ 07094

Eric S. Strohmeyer
Vice President COO
CNJ Rail Corporation
81 Century Lane
Watchung, NJ 07069

Embankment Preservation Coalition
495 Monmouth Street
Jersey City, NJ 07302

Gregory A. Remaud
Conservation Director
NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

Jersey City Economic Development Corp.
30 Montgomery Street, Suite 1400
Jersey City, NJ 07302

Daniel D. Saunders
Deputy State Historic Preservation Officer
Mail Code 501-04B
Department of Environmental Protection
Historic Preservation Office
P.O. Box 420
Trenton, NJ 08625-0420

Maureen Crowley, Coordinator
Embankment Preservation Coalition
263 Fifth St
Jersey City, NJ 07302

James Riffin
PO Box 4044
Timonium, MD 21094



Adam C. Sloane