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14 September 2015

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
September 14, 2015
Part of
Public Record

Re: Conrail - Abandonment Exemption - in Hudson County, N.J., AB 167 (Sub-no. 1189X) and related proceedings AB 55-686X and AB 290-306X

James Riffin's September 4 Pleadings Must Be Stricken & Errata (footnote 6)

Dear Ms. Brown:

The Riffin replies filed September 4, 2015, in this and all related dockets, must be stricken as replies to replies, as out of time, and as unresponsive to the reply to which they purport to reply.

I. Background

On June 25, 2015, City of Jersey City, Rails to Trails Conservancy ("RTC"), and PRR Harsimus Stem Embankment Preservation Coalition (collectively City et al) filed a Reply to the late-filed (by over six years[1]) "notice of intent to OFA" tendered by James Riffin on June 8, 2015. In a June 25 reply noting that the Riffin notice of intent be stricken, City et al noted that the Riffin attempt to invoke STB procedures must be dismissed as out of time. Accord, Idaho-Northern & Pac. RR Co. - Abandonment Exemption - in Wallowa and Union Counties, PA, AB 433X, served Dec. 13, 2001; General Railway Corp. - Ab. Ex. - in Osceola and Dickinson Counties, IA, AB 1067-2X, served Oct. 24,

[1] Notices of intent to OFA were due March 30, 2009, pursuant to this Board's order and 49 C.F.R. 1152.27(b)(2).

2008, slip at 2, citing Aban. & Disc. of Rail Lines, 1 STB 894, 909-10 (1996).

Mr. Riffin evidently circulated papers replying to City et al's June 25 reply but without compliance with this Board's service requirement set forth at 49 C.F.R. 1104.12. City et al understand that as many as three such documents may have been circulated, two bearing dates of July 15, and one (an "errata") bearing a date of July 22. This Board declined to accept any of these papers for filing.

This Board subsequently issued two decisions admonishing Mr. Riffin to comply with this Board's service requirements. Decision in AB 167-1189X served July 24, 2015, and Decision in AB 167-1189X, served August 25, 2015. Based on the appearance of a "Redacted Version" of "James Riffin's Reply to Jersey City's, et.al.'s Motion to Strike," as well as a "Reply," on this Board's website under "filings" for September 4, 2015, this Board has finally accepted Riffin's papers for filing as of that date.

II. Comment on Riffin Service Issues

The September 4 filings appear associated with an "amended" certificate of service dated September 4, 2014. That certificate attests email service on certain individuals or entities, including the undersigned's clients (City et al), and USPS service on certain other individuals or entities.

Although the Riffin filings at issue have been accepted by the Board, the certificate and the service remain deficient. Under 49 C.F.R. 1104.12, service by email is acceptable only if by consent of the party receiving the email. City et al have never consented to email service on City et al by Riffin or any other party to this proceeding.[2] To the contrary, City et al

[2] City et al also note that Riffin evidently has attempted to contact directly PRR Embankment Preservation Coalition, which is a represented party. In general, represented parties should be contacted through their representative, or at least be provided with contemporaneous notice of the attempted contact. The Coalition wishes to state on the record that it wishes adverse parties to contact it only through its legal counsel, and that it desires service by USPS or express services.

have requested service of paper copies.[3] City et al have not consented service solely by email by Riffin or by any other entity or individual.

An important purpose of certifications of service, and service generally, is to inform all parties with an interest in the proceedings concerning positions taken by litigants in the proceeding. This is very important in the case at bar, for service of papers helps to inform the local and regional historic preservation and greenway communities, as well as local neighborhood associations, concerning the proceeding.[4] The following entities are long-time parties to this proceeding: Harsimus Cove Association, Preservation NJ, and East Coast Greenway Alliance. These entities not only represent important local and regional groups interested in preserving the Harsimus Branch, but also in the past have long supported the efforts of City et al to preserve the Harsimus Branch for public purposes consistent with historic preservation and so forth. Evidently two of these entities (Preservation NJ and East Coast Greenway Alliance) have been deleted from the Board's service list in this proceeding, apparently because this Board's communications sent them have been returned undelivered. City et al understand that the addressee on behalf of the Harsimus Cove Association is a former officer of the Association, and not the current person to whom service should be directed. City et al requests Riffin (as well as Conrail and the LLCs) to serve all three of these parties at their correct addresses as reflected in the certificate of service attached hereto.[5]

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[3] Consistent therewith, City et al accordingly serves other parties with paper copies by USPS, with email notification as a courtesy to Conrail, the LLCS, and now Riffin and CNJ.

[4] Such service also belies claims previously made by the LLCs in certain Jersey City forums that local groups do not know what is going on.

[5] City et al further notes that the Board's official service list contains "Mike Greely, State Capitol, Helena, Montana." So far as City et al can tell, Mr. Greely was the attorney general for the State of Montana during the period 1977-89, but does not appear to have been at the service list address since that time. We are unaware of any interest of the State of Montana or Mr. Greely in this proceeding, and have been unable to ascertain a

III. Riffin Papers Must Be Stricken

Whether or not properly served, all Mr. Riffin's papers accepted for filing on September 4, 2015, are replies to a reply. Under this Board's regulations, replies to replies are not allowed. 49 C.F.R. 1104.13(c). The Riffin filings must be stricken from the record. Consolidated Rail Corp. - Abandonment - in Hudson County, AB 167-1189X, served May 22, 2015, slip at p. 7.

In any event, STB's website indicates that the Riffin papers were accepted for filing no earlier than September 4, 2015. To be timely, the Riffin replies should have been filed no later than 20 days from June 25, 2015. 49 C.F.R. 1104.13(a). They are now filed some 71 days from June 25, 2015. They clearly must be stricken as tardy replies in connection with a tardy filing of a notice of intent to OFA, which under this Board's precedent itself must be dismissed as over six years out of time.

Riffin is a frequent and experienced participant in STB proceedings, whom Norfolk Southern complains is an abuser of this Board's OFA processes. See Petition of Norfolk Southern, AB 727, filed May 26, 2015.[6] In this proceeding, Riffin not only is attempting to insert himself into OFA proceedings six years out of time, but also, by his own admission, has a questionable motivation: he says he wishes to assist a real estate developer seeking non-rail use of the property.[7] He compounds his tardiness and dubious purpose with failure, until well after the due date for any responsive pleading (assuming arguendo a responsive pleading is allowed), to comply with service

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correct address for Mr. Greeley. We question whether his inclusion in the service list as a "party" is inadvertent or in any event appropriate. There may be additional inadvertencies in the service list.

[6] Ex Parte 727 was incorrectly cited as EP 277 at p. 8 of City et al's June 25 Reply. We hereby correct the citation to that above.

[7] Riffin "response" filed June 11, at pp. 9-10, para 40 E. He also indicates his motivation is to thwart any OFA by the City.

requirements laid out in 49 C.F.R. 1104.13(a). And his current certificate of service is not consistent with compliance.

Riffin should be held to the deadlines not only for notices of intent to OFA, but also for replies. He should not be allowed to divert and to delay a proceeding already much delayed by the numerous jurisdictional challenges by the LLCs and Conrail to this Board's authority over the past ten years.

Further delay for Riffin is prejudicial to City et al and to the public generally. Any delay at this point prejudices City et al for it prolongs the "war of attrition" being waged by the LLCs against City et al in the plethora of state judicial and administrative proceedings they have brought against the City, its officers, and in some cases against Rails to Trails Conservancy, the PRR Harsimus Stem Embankment Preservation Coalition, and their attorneys in connection with the illegal de facto abandonment of the Harsimus Branch by Conrail. Conrail illegally sold eight blocks of the Branch to the developer in 2005 without required prior STB abandonment authorization. Delay attributable to Riffin simply further burdens City et al with legal fees and distractions, not only in these federal proceedings but also from the multiple lawsuits brought by and due to the developer (i.e., the LLCs) to thwart the efforts of City et al to obtain federal remedies, and/or to enjoy federally mediated state law remedies like N.J.S.A. 48:12-125.1. In addition, the delay continues indefinitely to frustrate, among other things, efforts to preserve this corridor via the City's timely notice of intent to OFA. This harms both the public and shippers. Furthermore, delay continues to frustrate meaningful application of sections 106 and 110(k) of the National Historic Preservation Act. It is in the public interest to avoid further delay of efforts to conserve the City's last remaining underutilized transportation corridor into downtown Jersey City.

IV. Riffin's Extraneous Claims

This Board has admonished the parties to avoid unnecessary pleadings. Conrail, May 22, 2015, slip at 8. Mr. Riffin's replies (including the "confidential" version not available on the STB website) to City et al's June 25 reply raise all manner of allegations and claims totally unrelated to City et al's June 25 reply. Failure to respond to Riffin's allegations, which appear extraneous to City's Reply to which they purport to reply, should not be construed as conceding any that detract

from City et al's positions.[8] Instead, the unresponsiveness of Riffin's replies to the City's reply amounts to an abuse which itself justifies striking the tardy Riffin pleadings. Accord, City of Jersey City v. Consolidated Rail Corp., DDC 2009-1900, Sept. 30, 2013 (rejecting LLCs' attempt to argue extraneous claims). Moreover, allowing Riffin's replies to replies is neither necessary nor helpful to complete any "record" for purposes of pending decisions.

In the event this Board does not reject the Riffin pleadings filed September 4, 2014, City et al requests this Board to establish a schedule for further proceedings that permits the City to respond to Riffin's claims in a context in which they are germane, for they have nothing to do with the City's June 25 pleading.

V. Conclusion

For ten years City et al have sought relief from an illegal de facto abandonment in which Conrail and the LLCs have effectively accused each other of knowingly engaging. The LLCs, for whom Riffin asserts he sympathizes and claims to work, have renounced Mr. Riffin's assistance in further frustrating City et al.[9] Mr. Riffin's declared interest is therefore as an officious intermeddler, engaged in a form of champerty and maintenance on behalf of entities (the LLCs) that (at least in public) disavow him. Mr. Riffin, like Falstaff in Shakespeare's Henry IV, makes

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[8] Mr. Riffin (who as already noted has indicated he wishes to file an OFA to assist the developer and also simply to thwart the City's OFA) insinuates in his replies to City et al's reply that City intends to misuse the OFA process. To the contrary, the City adopted an ordinance obligating the City to comply with OFA requirements. On September 3, 2015, in an oral opinion, this ordinance was upheld against numerous attacks by the LLCs in 212 Marin Boulevard, et al v. City of Jersey City, Hudson County (NJ) Superior Court No. HUD-L-2196-11. Riffin also at one point seems to claim that the City's OFA (which Riffin has not seen) somehow relies on Riffin. Counsel for City et al wishes to make clear that City is not relying on any information supplied by either Riffin or his associates at CNJ Railroad for purposes of its planned OFA. City's OFA is, and will be, totally independent of Riffin or CNJ.

[9] Letter, Mr. Horgan (LLCs) to Ms. Brown, dated June 10, 2015 and filed June 11, 2015 in AB 167-1189X.

many claims that are wrong, but unlike Falstaff, Riffin is not speaking a part for comic relief. He is speaking in an actual legal proceeding. Riffin's officious involvement is not simply funny a la Falstaff, but instead is an unwarranted, disruptive, and ultimately unfair distraction for City et al and detrimental to the public interest.

Respectfully,

Charles H. Montange
for City of Jersey City, Rails to Trails Conservancy and PRR Harsimus Stem Embankment Preservation Coalition

cc. Parties per certificate of service

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, this 14th day of September 2015 addressed to Daniel Horgan, counsel for the LLCs, Waters, McPherson, McNeill, P.C., 300 Lighting Way, P.O. Box 1560, Secaucus, NJ 07096; and Robert M. Jenkins III, counsel for Conrail, Mayer Brown LLP, 1999 K Street, N.W., Washington, D.C. 20006-1101 and the other parties on the attached service list. The undersigned also provided email copies to Messrs. Jenkins, Horgan, Strohmeyer and Riffin.

Service List
Revised July 23, 2015

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

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

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

Justin Frohwith, President
Jersey City Landmarks Conservancy
54 Duncan Avenue
Jersey City, NJ 07303

Jeremy Jacobson, President
Harsimus Cove Association
20 Erie Street, Apt. #2
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Hamilton Park Neighborhood Association
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344 Grove Street
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