

Before the Surface Transportation Board

240292

Offers of Financial Assistance –)
) Ex Parte 729
Advance Notice of Proposed Rulemaking)

ENTERED
Office of Proceedings
March 14, 2016
Part of
Public Record

Motion to Strike and Contingent Objections

City of Jersey City hereby moves to strike any filing of information by James Riffin (Riffin) in EP 729¹ which is subject to the protective order served September 24, 2014 in Consolidated Rail Corporation - Abandonment Exemption - in Hudson County, NJ, AB 167-1189X. Riffin appears to have tendered such information to this Board subject to a motion for a protective order he filed with this Board in EP 729 after the due date for comments in EP 729.²

Argument

The protective order in AB 167-1189X served September 24, 2014, specifically prohibits use of protected information in all

¹ EP 729 is an outgrowth of a petition filed by Norfolk Southern (EP 727) seeking additional regulation of OFA's to prevent alleged abuse of the OFA process by Mr. Riffin. City of Jersey City has also objected to abuse of the OFA process by Mr. Riffin in AB 167-1189X.

² The City is unaware of any instance in which STB has entered a protective order in an Advance Notice of Proposed Rulemaking proceeding. The City questions whether rulemakings at STB should be based on "secret" information not available to the public, especially concerning public remedies to preserve railroad corridors, like the "OFA" remedy.

other proceedings, other than judicial review of AB 167-1189X, not only in its first ordering paragraph but in the "undertakings" that any individual receiving that information must supply. Riffin cannot lawfully file or rely upon the AB 167-1189X protected information in this or any other proceeding until and unless he moves in AB 167-1189X, with service on all the parties, for a modification of the September 24, 2014 protective order. Mr. Riffin has not sought an amendment of the protective order in AB 167-1189X, nor has he served any parties to that proceeding with his surreptitious effort to use information protected under that order in EP 729.

It follows that any filing relying upon or including information covered by the AB 167-1189X protective order must be stricken.

If this Board's protective order served March 9, 2016 in EP 729 at the behest of Riffin is treated as a modification of the protective order served September 24, 2014, then it is ultra vires as an amendment of the September 24, 2014 protective order without notice or opportunity to comment on behalf of parties in a formal STB adjudicatory proceeding. EP 729 is an informal proceeding. A motion by Riffin filed in such a proceeding in no way constitutes notice and opportunity for comment in an on-going formal adjudicatory proceeding elsewhere at the agency. If this agency intends the protective order served March 9 in EP

729 to modify the protective order entered in AB 167-1189X, then this agency erred and immediately should revoke the protective order entered March 9 in EP 729.

There is an additional problem with the protective order that this Board entered in EP 729. It purports to restrict use of highly confidential information from AB 167-1189X to use only in EP 729. The information is obviously already in use in AB 167-1189X. The Board cannot restrict parties in AB 167-1189X to using the information only in EP 729. That would be a denial of due process to the parties in AB 167-1189X. Alternatively, it prejudicially deprives parties in AB 167-1189X from their right to comment on Riffin's secret filings in EP 729.

The City accordingly conditionally objects to the protective order in EP 729 if it is intended as a modification of the protective order in AB 167-1189X without formal adjudicatory notice and opportunity for comment in 1189X, and also as a denial of due process insofar as it limits use of the confidential information filed in AB 167-1189X to use solely in EP 729 as to any party to AB 167-1189X that signs the EP 729 protective order undertakings for purposes of viewing what Riffin is secretly claiming to the Board.

Finally, this motion to strike and objections are all timely as they are filed on the due date of reply comments, in

accordance with the schedule established by this Board at the inception of EP 729.

Conclusion

The motion to strike must be granted and any unlawful features of the EP 729 protective order addressed.

Respectfully submitted,

S/

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