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September 14, 2015

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Norfolk Southern Railway Company – Acquisition and Operation -
Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.,
FD 35873

Dear Ms. Brown:

Norfolk Southern Railway Company (“NS”) is writing in response to three filings made by James Riffin on September 4, 2015¹ (collectively referred to as the “Sept. 4th Filings”), which Mr. Riffin purports are intended to supplement the record in the above captioned proceeding. NS objects to the inclusion of the Sept. 4th Filings in the record because the record closed on June 24, 2015, the date on which replies to the petitions for reconsideration filed by Samuel J. Nasca, for and on behalf of SMART/Transportation Division, New York Legislative Board, PPL EnergyPlus, LLC, and CNJ Rail Corp. and Eric S. Strohmeyer in this proceeding were due. If Mr. Riffin had something to say with respect to those petitions for reconsideration and as party to

¹ James Riffin’s three filings to supplement the record include (1) filings and decisions from Canadian Pacific Limited, et. al. – Purchase and Related Trackage Rights – Delaware and Hudson Railway Company, FD 31700 (filing # 239134); (2) a copy of Samuel J. Nasca’s Petition to Revoke filed in Delaware and Hudson Railway Company – Discontinuance of Trackage Rights Exemption in NY, PA, NJ, MD, DC and VA, AB-156 (Sub-No. 27X) (filing #239135)(“D&H Discontinuance”); and (3) an Amended Service List for an August 17, 2015 filing by Riffin enclosing a copy of the file in Canadian Pacific Limited, et. al. – Purchase and Related Trackage Rights – Delaware and Hudson Railway Company, FD 31700 (filing #239137).

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this proceeding, he should have said it within the governing deadline. There are no regulatory or procedural provisions for “supplementing” the record past the due date for such replies. As such, Mr. Riffin’s Sept. 4th Filings should be rejected outright or treated as improper rebuttal. See, e.g., R.J. Corman Railroad Company/Allentown Lines, Inc. -- Abandonment Exemption – In Lehigh County, PA, AB 550 (Sub-No. 3X) (STB served Aug. 20, 2015) (“R.J. Corman Abandonment”) (rejecting R.J. Corman’s request to supplement the record); South Carolina Central Railroad Company, Inc. – Purchase and Lease – CSX Transportation, Inc., Lines in Georgia and Alabama, FD 31360 (ICC served Apr. 28, 1989) (rejecting a set of supplementary comments as “late-filed,” because the evidentiary record had closed consistent with the statutory deadline).

Because Mr. Riffin’s Sept. 4 Filings are improper, NS does not believe it necessary to address the merits of those filings. However, it should be noted that NS currently does not believe it owns the “stranded segment” discussed by Mr. Riffin and others in the D&H Discontinuance proceeding and in the R.J. Corman Abandonment proceeding. Even if NS did own the “stranded segment,” it would be NS’s sole decision as to whether or not, or when, to seek abandonment authority. Such a decision in no way would have been contemplated as part of the transaction that was approved in this proceeding and certainly would not have been an anticipated abandonment that should have been concurrently filed with NS’s application in this proceeding.

Thus, Mr. Riffin’s Sept. 4 Filings are procedurally improper and substantively without merit. As such, the Sept. 4 Filings should not be made a part of the record in this proceeding.

Respectfully submitted,



William A. Mullins
Attorney for Norfolk Southern Railway Company

cc: Parties of Record