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Before the Surface Transportation Board

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May 31, 2016
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STB DOCKET NO. AB-167 (Sub-No. 1189X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NJ

STB Docket No. AB-290 (Sub-No.306X)
NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE
EXEMPTION – IN HUDSON COUNTY, NJ

**Supplemental Reply to Motion For An Enlargement of Time
to Respond to Motion to Strike filed by James Riffin**

The LLC Intervenors respectfully ask the Board to accept this supplement to their May 24, 2016 reply to a motion filed by Rails To Trails Conservancy seeking an extension of time, because that request has now been modified by CNJ Rail to extend the time for Charles Montagne to file a reply to the underlying motion of James Riffin. Ms. Ferster originally sought an extended filing date June 3, and now Mr. Strohmeyer seeks to extend that to June 16, all for the benefit of Charles Montagne.

This is the second request filed by another party on behalf of Mr. Montagne, raising the obvious question whether he even wants to reply to Mr. Riffin, or needs additional time to do so. Presumably, they have coordinated with him on their requests, but he has neither joined in either of them nor declined the relief sought. For the reasons expressed in our May 24, 2016 reply, the Board should put a stop to the efforts by all of these parties to create confusion, distractions, issues for potential appeal, and further unwarranted delay.

Not only does Mr. Strohmeyer ask for more time, he now threatens to divert the proceedings to a Federal District Court¹ so that the unmentionable name,² of a non-rail shipper, that the City says has become a moot issue, can be litigated against Mr. Riffin (who is not a rail carrier), and against three actual rail carriers who have had absolutely nothing to do with any alleged violation of a Board issued protective order, which order remains subject to a still unresolved motion by the LLC Intervenor.³ Mr. Montagne's recent, and unsuccessful, foray to the Court of Appeals, and Mr. Strohmeyer's present pleadings, and threat to bring these matters to a Federal District Court where he says he will pursue "many additional remedies which are not available before the agency"⁴, both concern the filing of Offers of Financial Assistance in these proceedings. The Board can, and respectfully should, recognize that there has been no shipper demand for rail freight service on the Harsimus Branch for over two decades, and specifically none in these proceedings, which have dragged on for over one decade already. The alleged shipper is in

¹ See: CNJ Rail motion, Page 9, footnotes 2, 3 and 4.

² The Board's Order in this matter, Served November 2, 2015, *inter alia* addresses the confidentiality of the name of the shipper, leaving little doubt that the name is not at all confidential. The Board specifically said: "However, certain information in the shipper statement could be considered proprietary and confidential. Specifically, the City arguably could treat as confidential the information in the shipper statement regarding the financial backing of the shipper, the shipper's projected production output, the identities of the shipper's suppliers and customers, carload projections, and origin and destination pairs. However, this is the only information in the shipper statement that could potentially qualify as confidential under the Protective Order, based on the information currently before the Board."

³ See the numerous pleadings filed concerning the Board's November 2, 2015 Order, beginning with the City's motion of the following day, November 3, 2015, in which the City sought to avoid filing an only partially redacted public version, on the spurious argument that the shipper, previously relied upon by the City, had been procured, not by the City, but by CNJ Rail. The LLCs' motions to resolve which portions of the shipper's statement should be public, filed on November 17, and December 22, 2015 have yet to produce a decision and order consistent with the Board's prior Order. CNJ Rail has simply filed a "public version" of the shipper's statement that is so highly redacted as to be contemptuous of the Board's initial order and it now relies upon that action to further frustrate public disclosure.

⁴ CNJ Rail filing May 27, 2016, Page 9, footnote 4, last line.

business in Jersey City, but not on the Harsimus Branch, or anywhere near to it. An internet search for the shipper's name will disclose its website and its locations, none of which are served by rail. If, as seems to be the case, the Board wishes to move this matter along, it should take appropriate steps to stop the abuse of its jurisdiction through the filing of doubtful and unnecessary pleadings, which are obviously made for the improper purposes of avoidance, diversion and delay.

Respectfully submitted,



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DATED: May 31, 2016

CERTIFICATION OF SERVICE

I, Daniel E. Horgan, hereby certify that I have caused a copy of the foregoing to be served by First Class Mail upon those on the attached Service List by having same deposited with the U.S. Postal Service on May 31, 2016 and on Charles H. Montange, Esq., counsel for the City of Jersey City, the Coalition and RTC, Robert M. Jenkins, Esq., counsel for Conrail, and Andrea Ferster, Esq., counsel for Rails to Trails Conservancy.



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