

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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 OPPOSITION TO
“JAMES RIFFIN’S MOTION TO STRIKE
CONRAIL’S SEPTEMBER 23, 2016 REPLY IN PARTIAL SUPPORT OF
CITY ET AL.’S MOTION FOR SANCTIONS”**

Consolidated Rail Corporation (“Conrail”) submits this reply in opposition to “James Riffin’s Motion to Strike Conrail’s September 23, 2016 Reply in Partial Support of City et al.’s Motion for Sanctions” (“Riffin Mot. to Strike”), filed September 26, 2016.

ARGUMENT

On September 23, 2016, Conrail filed a reply in partial support of a motion submitted on behalf 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 (hereinafter, “Conrail Reply”). Mr. Riffin has moved to strike the Conrail Reply.

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Mr. Riffin predicates his motion upon two grounds. First, he claims that the Conrail Reply “is clearly ‘irrelevant’ and ‘immaterial’” because footnote 1 of the Conrail Reply states that Conrail is not taking a position on whether Mr. Riffin’s discovery-related conduct, as detailed by City et al., supports the imposition of sanctions. According to Mr. Riffin, this statement renders the Conrail Reply “irrelevant” and “immaterial” within the meaning of 49 C.F.R. § 1104.8. Riffin Mot. to Strike at 2.

This argument is meritless because, as Conrail noted, City et al. presented facts and documents that, quite apart from the allegations of discovery abuse, “provide compelling support for the imposition of severe sanctions against Mr. Riffin.” Conrail Reply at 2. Conrail understood City et al.’s motion for sanctions to be predicated on *multiple* grounds, including Mr. Riffin’s alleged discovery abuses *and* the facts and evidence presented by City et al. concerning “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.” Conrail Reply at 1 (citing City et al. Motion at 8, 12-13, 14-15 and Exhibits G and I).

As City et al. stated in discussing why Mr. Riffin should be precluded from further pursuit of an OFA, “[a]ll the same reasons for the sanction of dismissal apply for the sanction of barring him from filing an OFA. *But there are additional grounds . . .* Moreover, Riffin has indicated that his OFA is for the illegitimate purpose of supporting the Hyman real estate (all non-rail) interests, and/or for the equally illegitimate and even more convoluted purpose of avoiding Baltimore County land use regulation on Riffin’s property in Maryland. These purposes are not consistent with this agency’s prior formulations concerning the purpose of an OFA. City et al.’s discovery is germane to Riffin’s true purposes.” City et al. Motion for Sanctions at 18-19 (emphasis added).

The Conrail Reply was predicated on the facts and evidence presented by City et al. concerning Mr. Riffin's alleged "true purposes," not the alleged discovery abuses per se. That is one of the reasons why the Conrail Reply is a reply in "partial support" of the sanctions motion. Consequently, Mr. Riffin's first argument is simply wrong: The Conrail Reply is *not* rendered "'irrelevant' and 'immaterial'" (Riffin Mot. to Strike at 2) by Conrail's declining to take a position on whether Mr. Riffin should be sanctioned for his *discovery-related* conduct.

Mr. Riffin's second ground for striking the Conrail Reply is that Conrail has previously stated its position on OFAs in this proceeding, thus, according to Mr. Riffin, rendering the Conrail Reply "'redundant'" under 49 C.F.R. § 1104.8. *See* Riffin Mot. to Strike at 2-3.

This ground for striking the Conrail Reply is meritless because, as the Conrail Reply stated, whatever the Board may think of Conrail's oft-stated "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." Conrail Reply at 3 (emphasis added). Thus, far from merely repeating its previously-stated views on OFAs—views that were equally applicable to OFAs filed by *anyone* in this matter—Conrail clearly was focusing on *Mr. Riffin's abuses* and on one of City et al.'s proposed *sanctions* against Mr. Riffin. Mr. Riffin's self-serving claim of redundancy is inconsistent with what the Conrail Reply actually said.

CONCLUSION

For the foregoing reasons, Mr. Riffin's motion to strike the Conrail Reply should be denied.

Respectfully submitted,

Robert M. Jenkins III

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

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 26, 2016

CERTIFICATE OF SERVICE

I, Adam C. Sloane, hereby certify that on this 26th 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

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

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

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

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

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

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

Embankment Preservation Coalition
495 Monmouth Street
Jersey City, NJ 07302

James Riffin
PO Box 4044
Timonium, MD 21094



Adam C. Sloane