

CHARLES H. MONTANGE
ATTORNEY AT LAW
426 NW 162ND STREET
SEATTLE, WASHINGTON 98177

(206) 546-1936
FAX: (206) 546-3739

7 June 2016

240869
240870
240871

ENTERED
Office of Proceedings
June 7, 2016
Part of
Public Record

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

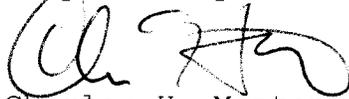
Re: Conrail - Abandonment Exemption - in Hudson
County, N.J., AB 167 (Sub-no. 1189X)
and related proceedings AB 55-686X
and AB 290-306X

Withdrawal of Motion to Compel as Moot

Dear Ms. Brown:

Enclosed is the reply by City of Jersey City, et al., to Riffin's motion to strike filed May 3 as supplemented on May 12, 19 and 20. Riffin's motion to strike was directed at a motion to compel discovery, which he responded to, mooting the motion to compel. Since we are responding within twenty days of the culmination (May 20) of Riffin's serial pleadings (whatever he denominates them), this reply (withdrawal) is timely. (If an extension of time or leave to file were necessary, it has already been sought.) While City, et al. are withdrawing the instant motion to compel as moot, we expect to file another motion to compel for the reasons stated in our pleading attached.

Respectfully,



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

Att.

cc. Parties per certificate of service

Before the Surface Transportation Board

Conrail -- Abandonment)
) AB 167 (Sub-no. 1189X)
--in Hudson County, NJ.)

and

CSX Transp. - Discon. of)
Service - same) AB 55 (Sub-no. 686X)

and

Norfolk Southern -)
Discon. of Service - same) AB 290 (Sub-no. 306X)

Withdrawal of Motion

on behalf of City of Jersey City et al

to Compel James Riffin

to Respond to Discovery (Document) Requests

and for Sanctions as Moot

Pursuant to this agency's regulations, City of Jersey City, Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition, and Rails to Trails Conservancy ("City et al") properly served document requests upon James Riffin, a party to this proceeding, seeking inter alia any writings received from or sent to developer 212 Marin Boulevard LLC, et al ("the LLCs") or Consolidated Rail Corporation ("Conrail"). Mr. Riffin has represented to the United States Supreme Court that he aspires to obtain financing to OFA the Harsimus Branch from the LLCs,

presumably for development rather than rail purposes.¹ In addition, CNJ Railroad (another party in this proceeding) informs City et al that Riffin and the LLCs are exchanging a plethora of emails and attached documents that contain, or encompass, plans on the part of the LLCs and Riffin to thwart this Board's jurisdiction and/or to subvert the OFA process. Obviously such documents are relevant to issues in this proceeding.² Riffin repeatedly failed to respond.³ City et al filed a motion to compel.

As of Friday, June 3, Riffin has replied to the motion to compel with a series of pleadings commencing with a motion to strike filed May 3, which he proceeded to supplement with

¹ See Motion to Compel, Exhibit D.

² CNJ filed (May 2) a reply to City's motion to compel supporting the motion to compel.

³ As Riffin acknowledges (Riffin May 3 filing at p.3), Riffin failed to respond at the time set by City et al for response to the document request (i.e., April 19). Although Riffin had assured City et al he would comply on that date, Riffin in his May 3 pleading says he forgot. He explains that he is suffering from some sort of diminished capacity. Moreover, when twice reminded by counsel, Riffin said he would email a response on Friday, April 29. Motion to Compel, Ex. C. He again failed. He claims he instead mailed his response on April 29. This claim is dubious in that the postmark on the envelope was May 2. But whether mailed (served) on April 29 or May 2, the effect of Mr. Riffin's delays and misrepresentations was to force City et al to prepare, file and serve a motion to compel to get any response at all. Riffin's antics also denied any response to the document requests until counsel for City et al returned to the country on May 27. Mr. Riffin says he views discovery as a "fight." In general, applicable legal ethics rules throughout the U.S. admonish reasonable cooperation in discovery.

additional filings on May 12, 19, and 20. City et al will therefore treat Riffin's motion to strike as final as of May 20.⁴

In his May 3 and May 12 pleadings, he says he has now served City et al with a response to City et al's document requests, and indicates that this renders the motion to compel moot. City et al agree. City et al therefore withdraws the pending motion to compel.

Riffin's response to the document request is a brief set of spurious objections. Riffin's pleadings suggest the City must file a new motion to compel addressing his actual response. City et al agree. City et al will file a motion to compel Riffin to furnish the documents in his possession relevant to the document request.

Supplemental Information

Nothing herein (including failure to reply) should be construed as an admission of any factual or legal argument or statement made by Riffin (or 212 Marin Boulevard LLC et al, which apparently weighed in with - as of June 3 - two pleadings in support of Riffin) in Riffin's May 3, 12, 19, or 20

⁴ This reply is timely as it is clearly within 20 days of Riffin's motion and its supplements.

pleadings, or in response to RTC's or CNJ's Motions for Extension of Time to respond to the motion to strike.⁵

The Focus of This Case

City et al's dispute is with Conrail over its attempted unlawful de facto abandonment of the Harsimus Branch and its unlawful sale of that rail line to its chosen developer (the LLCs). City et al have sought relief before this Board from the unlawful actions of Conrail and its chosen developer (the LLCs) since January 2006, including timely invocation of the offer of financial assistance ("OFA") remedy set forth in 49 U.S.C. 10904. The unlawful actions by Conrail and the LLCs are all part of an ill-conceived but continuing effort to thwart this agency's jurisdiction, to prevent meaningful comment by City et al and the public generally, to forestall meaningful application of the Nation's environmental and historic preservation laws applicable to rail line licensing actions, to ensure the demolition of a National Historic Preservation Act Section 106-protected asset (the Harsimus Embankment) in violation of law, to prevent preservation of the Harsimus Branch pursuant to 49 U.S.C. 10904 ("OFA"), and to circumvent a New Jersey statute that not only requires this line to be offered to Jersey City

⁵ City et al does not believe an extension of time is necessary to respond to Riffin, because Riffin filed a serial motion which ended only on May 20.

before it is sold to a developer but also provides that the very deeds Conrail used to convey the property to its chosen developer are void (48 N.J.S.A. 43:12-125.1).⁶

Riffin by his own admissions here and in other proceedings (including filings with the U.S. Supreme Court) seeks by his participation in this proceeding to assist the LLCs and Conrail in accomplishing all of these misbegotten ends. Riffin untimely (by roughly six years) invoked OFA himself to this end, over the objection of both City et al and Conrail. We regret the distraction which Mr. Riffin has brought to this proceeding, as now exemplified by his failure to respond timely to discovery requests, despite assurances he would, resulting in all those pages of replies and motions and supplements he suddenly found time to prepare and to file. City looks forward to an opportunity to pursue its OFA remedy; indeed, City et al look forward to an opportunity to pursue all other available remedies before this Board. City et al are hopeful that effective Board

⁶ Since long before the unlawful transfer of the Harsimus Branch to the LLCs, STB has warned that parties like Conrail and the LLCs engaging in unlawful transfers of a rail line without abandonment authority for the purpose of degrading and destroying the line are engaged in an "abuse" from which they must not "be allowed to profit." SF&L Railway, Inc. - Acquisition and Operation Exemption - Toledo, Peoria and Western Railway, F.D. 33995, served Oct. 17, 2002, slip at 19 & n.35.

remedies against illegal abandonments will be sufficient to obviate the need for continued state court litigation.

Protective Order

Some of Riffin's lengthy pleadings involve his breach of the protective order entered in this proceeding at the behest of CNJ Rail. CNJ designated a shipper statement (on which City has already relied) for protection under that order. Because the record in this proceeding already clearly establishes that Conrail's chosen developer (212 Marin Boulevard, et al) has threatened to bankrupt perceived opponents,⁷ has filed innumerable lawsuits against the City,⁸ and in fact has engaged

⁷ The LLCs' strategy, as their manager Mr. Hyman has stated on the record, is to use legal proceedings for the improper motive of bankrupting the LLCs' opponents:

-- "I'm going to sue anybody in Jersey City that says the word 'embankment' because my rights and my wife's rights have been abused." Transcript at p. 134, March 30, 2011, In the Matter of Case Z09-010; "A" Appeal 212 Marin Boulevard, LLC, et al, Zoning Board of Adjustment, City of Jersey City, County of Hudson.

-- "Where I am right now is that we're going to devastate the City unless you back off and the City agrees to let it happen." See id. transcript p. 140, April 5, 2011.

-- "What I said to [Stephen Gucciardo, Maureen Crowley and Jenny Meyer, three members of the Coalition's board of directors] is when this is over, I'm going to bankrupt you all personally. And then I turned to the [attorney for the Coalition, Janine Bauer] and I said, 'you, too.'" Id. 146.

⁸ Compare HUD-L-4908-05 (Complaint alleging that, inter alia, pursuit of remedies at STB violates civil rights of LLCs and is a tort) with 212 Marin Boulevard ret al v. Montange, et al, HUD-L-2196-11, the LLCs' SLAPP suit alleging inter alia some sort of malpractice if an attorney assists City of Jersey City in seeking compliance with federal abandonment law rather than in acting illegally under state law and facilitating evasions of federal rail abandonment law.

in SLAPP⁹-type litigation (against Embankment Preservation Coalition, RTC's general counsel, and the undersigned counsel for City et al, see note 8), City et al are concerned that the identity of shippers supporting City's effort to invoke the OFA remedy be protected from disclosure to the developer's principals. City et al is concerned that individuals or entities supporting preservation of the Harsimus Branch for rail purposes, or for any other public purposes, not be further retaliated against by Conrail's chosen developer.

In the course of addressing City et al's discovery requests, Mr. Riffin disclosed that he had breached the protective order by revealing the identity of the shipper in public filings in the United States Court of Appeals for the Third Circuit and in the U.S. Supreme Court. Nothing Riffin now says justifies that breach, especially at the time it occurred. This matter is, however, extraneous to the instant motion to compel.

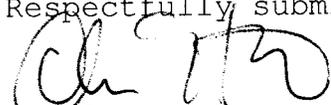
Conclusion

In response to City et al's May 2 motion to compel, Riffin has served a response to City et al's document requests. This, as Riffin admits, moots the City's motion to compel. City et al

⁹ SLAPP stands for Strategic Lawsuit Against Public Participation. SLAPP suits are filed to burden perceived opponents of (usually) developers.

accordingly withdraw the motion to compel as moot, but reserve the right to file another motion to compel, since the response belatedly served by Riffin on May 2 is merely another set of spurious objections. The mootness of the extant motion to compel renders Riffin's serial motion to strike and supplementary pleadings extraneous, irrelevant, and/or moot. It also renders extraneous, irrelevant and moot any filings by the LLCs to date in connection with the document request.

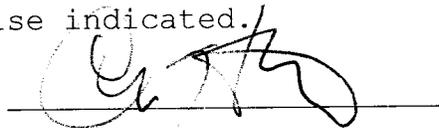
Respectfully submitted,



Charles H. Montange
426 NW 162d St.
Seattle, WA 98177
(206) 546-1936
Fax: -3739
Counsel for City et al

Certificate of Service

The undersigned hereby certifies service by posting the foregoing in the US Mail, postage pre-paid, first class or priority mail, on or before the 7th day of June 2016 addressed to the parties or their representatives per the service list below, unless otherwise indicated.



Service List

Daniel Horgan,
Waters, McPherson, McNeill, P.C.
300 Lighting Way
P.O. Box 1560
Secaucus, NJ 07096 (LLCs)

Robert M. Jenkins III
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006-1101 (Conrail)

Daniel D. Saunders
Att: Acting Director Katherine Marcopul & Andrea Tingey
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
Jersey City, NJ 07302

President
Hamilton Park Neighborhood Association
PMB 166
344 Grove Street
Jersey City, NJ 07302

Jill Edelman, President
Powerhouse Arts District Nbd Ass'n
140 Bay Street, Unit 6J
Jersey City, NJ 07302

President
The Village Nbd Ass'n
365 Second Street
Jersey City, NJ 07302

President
Van Vorst Park Association
91 Bright Street
Jersey City, NJ 07302

President
Historic Paulus Hook Ass'n
192 Washington Street
Jersey City, NJ 07302

Dennis Markatos-Soriano
Exec. Director
East Coast Greenway Alliance
5315 Highgate Drive, Suite 105
Durham, NC 27713

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 Ave., Apt. 3L
Jersey City, NJ 07302

Aaron Morrill
Civic JC
64 Wayne St.
Jersey City, NJ 07302

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

James Riffin
PO Box 4044
Timonium, MD 21094

Supplemental Service List

Per a prior request of the Board, service is also made on the following addressees, although none is believed to continue to represent a party in the proceeding and/or is otherwise superceded.

Stephen Marks
Hudson County
583 Newark Avenue
Jersey City, NJ 07306

Gretchen Scheiman
Historic Paulus Hook Association
121 Grand Street
Jersey City, NJ 07302

Michael Selender
Jersey City Landmarks Conservancy
P.O. Box 68
Jersey City, NJ 07303-0068

Brian P. Stack
411 Palisade Avenue
Jersey City, NJ 07307

Dan Weber
Van Vorst Park Association
2989 Varick Street
Jersey City, NJ 07302