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Before the
Surface Transportation Board

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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-55 (Sub-No. 686X)

CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE 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

JAMES RIFFIN'S REPLY TO JERSEY CITY'S, ET. AL.'S

MOTION TO STRIKE RIFFIN'S

NOTICE OF INTENT TO FILE AN OFA

1. James Riffin ("**Riffin**") herewith replies to Jersey City's Motion to Strike Riffin's Notice of Intent to File an OFA.

PURPOSES AND EFFECTS OF FILING A NOTICE OF INTENT TO FILE AN OFA

2. A Notice of Intent to File an Offer of Financial Assistance ("**Notice**") serves the following purposes in **all** (application / individual exemption / class exemption) abandonment proceedings:

A. It puts the rail carrier, the Surface Transportation Board ("**STB**"), and others, on notice that someone is considering filing an Offer of Financial Assistance ("**OFA**").

B. It "engages" (starts) the Offer of Financial Assistance ("**OFA**") process.

C. It 'triggers' the rail carrier's obligation to provide 49 CFR 1152.27(a) information to "a party considering an offer of financial assistance to continue existing rail service."

D. It 'triggers' an OFA offeror's 49 CFR 1152.27(c)(1)(i)(C)) and 49 CFR 1152.27(c)(2)((ii)(C) right to file a petition to toll the due date for an OFA, if the rail carrier does not timely provide the 49 CFR 1152.27(a) information.

3. The Notice **requirements** in an Application / Individual abandonment proceeding are slightly different from the Notice requirements in a Class Exemption abandonment proceeding:

A. In an Application / Individual abandonment proceeding, the Notice need only be a **'request'** for 49 CFR 1152.27(a) information. There are no deadlines by which the 'request' must be submitted to the carrier. There is no requirement that the 'request' be simultaneously filed with the STB.

B. In a Class Exemption abandonment proceeding, the Notice must be a 'formal' Notice, and must be labeled a 'Notice of Intent to File an Offer of Financial Assistance.' The Notice must be filed with the STB, within 10 days after publication of the Exemption Notice in the *Federal Register.*

4. The **effect** of filing a Notice in an Application / Individual abandonment proceedings vs. filing a Notice in a Class Exemption abandonment proceeding, is different:

A. In an Application / Individual abandonment proceeding, upon the filing of the Notice, the carrier is obligated to provide the prospective OFA offeror **both**:

"[A]n estimate of the annual subsidy **and** minimum purchase price required to keep the line or a portion of the line in operation." Bold added.

B. In a Class Exemption abandonment proceeding, upon the filing of the Notice, the carrier is obligated to provide the prospective OFA offeror:

"**[E]ither** an estimate of the annual subsidy **or** the minimum purchase price, depending upon the type of financial assistance indicated in the potential offeror's formal expression of intent submitted under paragraph (c)(2)(i) of this section;" Bold added.

5. If a Notice is filed in a Class Exemption proceeding, the notice **automatically stays** the effective date of the exemption notice.

6. The Notice in an Application / Individual Exemption abandonment proceeding, **does not** automatically stay the effective date of abandonment authority, for **there is no automatic effective date** in an Application / Individual Exemption abandonment proceeding.

HISTORY OF THE RULE

7. In STB *Ex Parte* No. 537, *Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903,* 1 STB 894, Decided December 9, 1996, Effective January 23, 1997, the STB, at 894, stated:

"The ICC Termination Act of 1995, revised the law governing applications by rail carriers to abandon or discontinue service over lines of railroad and related offers of financial assistance that would continue rail service after approval of abandonment or discontinuance by the Surface Transportation Board. (Board). The Board now revises part 1152 to implement the changes and update the pertinent regulations, and to streamline the abandonment and discontinuance processes consistent with the new law."

8. At p. 900 of the *Ex Parte* No. 537 decision, the STB stated:

"Finally, the comments received regarding changes to our **rules for abandonments covered by the class exemption embraced in subpart F** raise issues that are inappropriate for resolution on the current record. Accordingly, **we will not attempt to change or modify our regulations concerning the class exemption** at this time but reserve the right to address these issues further in a separate proceeding at a later date." Bold added.

9. It should be noted, that:

A. Subpart F is the part relied upon by Conrail in this proceeding;

B. The regulations in Subpart F **have not been changed or modified** to bring Subpart F into conformity with the letter and spirit of the ICCTA.

C. Therefore, Jersey City's and Conrail's arguments, based upon the language found in Subpart F, particularly their arguments that the filing of a Notice is a precondition to the filing of an OFA, are on questionable legal grounds, particularly in light of the clear Congressional intent found in the ICCTA, strongly favoring OFAs.

10. At p. 895 - 896 of the *Ex Parte* No. 537 decision, the STB stated:

"We continue to view the ICCTA as reform legislation and thus our effort has been to reform and streamline the existing rules and process. As we stated in the NPR, our goal has been to revise part 1152 to meet the letter and spirit of the ICCTA, and to update the regulations to improve notice to the public and ensure ample opportunity for full public participation early in our proceedings. We continue to believe that this will result in a timely, expeditious resolution of abandonment cases and allow all interested parties to participate fully. We emphasize, however, that the purpose of this rulemaking proceeding is to implement the changes mandated by the ICCTA along with conforming amendments;"

11. At p. 896 of the *Ex Parte* No. 537 decision, the STB stated:

1. *Uniform schedule.* In the NPR, we proposed a new time schedule for processing abandonment applications:

Day 0	Application filed, including applicant's case in chief.
Day 10	Due date for oral hearing requests.
Day 15	Due date for Board decision on oral hearing requests.
Day 20	Due date for Notice of Application to be published in the *Federal Register*.
Day 45	Due date for protests and comments, including opposition case in chief, and **for public use and trail use requests.**
Day 60	Due date for applicant's reply to opposition case and for applicant's response to trail use requests.
Day 110	Due date for service of decision on the merits.
Day 120	**Due date for offers of financial assistance**, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance **shall be due 10 days after service of the decision** granting the application. " Bold added.

12. It should be noted that while public and trail use requests must be filed by Day 45, **there is NO requirement that a Notice of Intent to File an OFA be filed**, or that a Request for 49 CFR 1152.27(a) information be filed.

13. It should be further noted that **OFAs are due 10 days after service of the decision** granting abandonment authority, regardless of how many days have lapsed between the filing of an abandonment petition and the date abandonment authority is granted.

14. And it should be further noted that **there is no requirement to file a notice of intent to file an OFA** in 49 U.S.C. 10904(c), which states:

> "(c) Within 4 months after an application is filed under section 10903, **any person may offer to subsidize or purchase the railroad line that is the subject of such application.** Such offer shall be filed concurrently with the Board. If the offer to subsidize or purchase is less than the carrier's estimate stated pursuant to subsection (b)(1), the offer shall explain the basis of the disparity, and the manner in which the offer is calculated." Bold added.

15. Of particular note, is the following comment on p. 903 of the *Ex Parte* No. 537 decision:

> "In short, our purpose in proposing to modify these due dates was to find a way to complete **a full record** as early as practicable to expedite and streamline **the abandonment process.**" Bold added.

16. In the *Offers of financial assistance* section of the *Ex Parte* No. 537 decision, at pp. 909 - 911, the STB stated:

> "10. *Offers of financial assistance.* As discussed in the NPR, in addition to the time limits explained above, new 49 U.S.C. 10904 contains other changes in the way OFAs are handled. Initially, the Board need only find that the offeror is a financially responsible person before the negotiating process can begin. ... As before, we proposed that our new rules would automatically stay the effective date of (or revoke as necessary for a class exemption) **the underlying abandonment decision.** We will adopt these changes in our final rules."
>
> "We have considered the concern of some commenters regarding the shortening of the 120-day statutory period for submission of OFAs when an abandonment is granted by decision issued sooner than 110 days after the application is filed. (Our uniform schedule provides that in such cases the OFA will be due 10 days after service of the decision granting the application, which could be sooner than 4 months after the application is filed.) However, given our goal of expediting the process where possible, we have decided not to change our proposed Uniform Schedule. We recognize that 49 U.S.C. 10904(c) sets 4 months as the outer limit for filing of OFAs. At the same time, we believe that the expanded notice that will be provided at the outset of abandonment proceedings under our new rules typically will allow adequate time for parties to consider filing an OFA, **and marshal the funds necessary to do so,** within the Uniform Time Frames, even if in some cases this results in something less than the full 120-day period to file an OFA. Accordingly, we do not read the statute to require that we delay in all cases abandonment proceedings that can be decided in less time than the full 110 days. **However, in light of the time frames in 49 U.S.C. 10904(c), parties that can show that they would be materially prejudiced by having less than the full 4 months may petition the Board for the full time provided by the statute for application proceedings."** Bold added.

17. In a Class Exemption proceeding, the time period to file an OFA is reduced considerably, from the statutorily prescribed 4-months, to 50 days after the Exemption Notice is filed. Due to this very abbreviated time schedule, special provisions were added to the OFA regulations, to give a potential OFA offeror more time to file an OFA: The filing of a Notice would automatically add 10 days to the due date for filing an OFA. If after the filing of a Notice, the carrier failed to timely provide the 49 CFR 1152.27(a) information, the OFA offeror could petition the STB to toll the due date for filing an OFA.

18. The goal, as expressed in the ICCTA and in the *Ex Parte* No. 537 proceeding, was to streamline the abandonment process**,** while still providing a potential OFA offeror, sufficient time to file an OFA. The ultimate end-goal, was to **not delay** a carrier's ability to either abandon a rail line, or to rid itself of an unwanted rail line.

CASES CITED BY JERSEY CITY

19. In its Motion to Strike, Jersey City cited four STB cases to support its argument that the filing of a Notice was a pre-condition to the filing of an OFA in a Class Exemption proceeding. Below Riffin addresses each of those four STB cases.

20. *Idaho Northern & Pacific Railroad Company – Abandonment Exemption – In Wallowa and Union Counties, OR,* AB-433X, Served December 13, 2001: In this proceeding, **four years after the decision granting abandonment authority** had been rendered, the Oregon Department of Transportation petitioned the STB to **reopen** the proceeding, then permit the OFA process to be used to acquire the line that was abandoned. In denying the petition to reopen, the STB held that the Oregon DOT had failed to provide sufficient grounds to justify reopening the proceeding. The STB held that **OFAs were due 10 days after abandonment authority is granted**. Entertaining an OFA 4 years after its due date, "would be inconsistent with Congressional intent." **There was no issue of a lack of a Notice of Intent to File an OFA**.

21. *General Railway Corp. d/b/a Iowa Northwestern Railroad – Abandonment Exemption – In Osceola and Dickinson Counties, IA*, AB 1067 (Sub. No. 2x), Served October 24, 2008: In this proceeding, the OFA offeror filed a Notice of Intent to File an OFA 19 days after the *Federal Register* notice, which was **9 days late.** Importantly, the OFA offeror, rather than timely filing an OFA, **also asked the STB to toll for 30 days the due date for filing an OFA**. In denying the OFA offeror's request to late-file its Notice / late-file its OFA, the STB stated:

> "Allowing the late filing of an **OFA** [as opposed to a Notice of Intent to File an OFA] over the owning rail carrier's objection would be contrary to Congress's direction to streamline the abandonment and OFA process."

22. *Consolidated Rail Corp. – Abandonment Exemption – In Philadelphia, PA,* AB 167 (Sub-No. 1191X), Served October 26, 2012: In this proceeding, a Notice was timely filed. An OFA was timely filed, but the OFA did not include any information regarding the offeror's 'financial responsibility.' The STB held that the OFA was 'incomplete,' since it did not contain any information regarding the 'financial responsibility' of the offeror. Even though financial information was filed four days **after the OFA due date**, the STB held that **the OFA** was effectively **filed 4-days late**, since it was incomplete when actually filed. The STB further held that **late-filed OFAs would not be accepted**, without the carrier's consent.

23. *Illinois Central Railroad Company – Abandonment Exemption – In Champaign County, Ill.*, AB 43 (Sub-No. 189X), Served May 11, 2015: In this proceeding, like in the *General Railway* proceeding discussed above, the potential OFA offeror filed its Notice of Intent to File an OFA **10 days late AND asked the STB to toll the OFA due date by 30 days.** Again, the potential OFA offeror **failed to file a timely OFA**. In its ruling, the STB stated that "Under 49 CFR 1142.27(c)(2), to engage the OFA process, formal expressions of intent to file an OFA must be filed within 10 days of the publication of a notice of exemption to abandon a rail line." There was only one potential offeror in this proceeding, so the OFA process was never timely 'engaged' by anyone. Most importantly, the potential offeror **failed to timely file an OFA**, which is a fatal mistake.

THIS PROCEEDING

24. In this proceeding, two entities (Jersey City and CNJ Rail), timely filed Notices of Intent to File an OFA, thereby 'engaging' the OFA process.

25. Riffin argues, that like Protective Orders, once the OFA process is 'engaged,' (once a Protective Order has been issued), subsequent filers need not file separate pleadings to 'engage' the OFA process for subsequent potential OFA offerors [subsequent filers need not file (actually are not permitted to file) subsequent motions for protective orders].

26. Jersey City argued at pp. 4-5 of its Motion to Strike:

> "Mr. Riffin of course neither sought nor obtained any tolling of the OFA due date. He cannot rely on the extension obtained by City and CNJ, which was for themselves alone."

27. Riffin argues that once the OFA due date has been stayed, subsequent potential OFA offerors not only can 'rely on the extension obtained by City and CNJ,' but are subject to that stay. It would be an interesting situation if one OFA offeror sought and obtained a tolling of the Due Date for an OFA, while a subsequent OFA offeror did not seek, nor obtain, a separate tolling of the OFA due date. The second, non-tolled OFA offeror then could file its OFA, then ask the STB to Set Terms and Conditions, then force the carrier to sell the line to the non-tolled OFA offeror, while the potential offeror who obtained the tolled due date, sat idle, prohibited from filing an OFA while the OFA due date for that OFA offeror was held in abeyance.

28. In Class Exemption proceedings, OFAs are normally due within 50 days after the notice of exemption has been filed. Due to the three stays imposed by the STB in this proceeding, those 50 days have yet to run. (The clock is stopped during stays. This proceeding is still subject to one of those three stays.)

29. Riffin **does not** propose to toll whatever OFA due date the STB ultimately sets. Riffin will file his OFA by the due date set by the STB.

30. Riffin filed his Notice for the sole purpose of letting the STB, and the other parties in this proceeding, know that when the time comes, Riffin intends to file a competing OFA.

31. Since Riffin **is not** seeking to stay the effective date of Conrail's Exemption Notice, and since Riffin **is not** seeking to toll the date OFAs are due, there **is no substantive basis for Jersey's City's Motion to Strike**. (There also is no substantive basis for Jersey City's Motion to Strike, since Conrail is the more appropriate party to file an objection.)

32. So striking, or not striking, Riffin's Notice of Intent to File an OFA, will have no impact on this proceeding. The parties are on notice. That was all Riffin was attempting to do. Striking Riffin's notice will not purge this information from the minds of the parties.

33. Since 49 U.S.C. 10904 **does not** require the filing of a Notice, as a pre-condition to the filing of an OFA, and since a regulation must be in conformity with its associated statute,[1] Riffin's failure to timely file a Notice does not adversely impact his right to file an OFA. (It does adversely impact Riffin's right to toll the date an OFA is due. But Riffin does not desire to toll the due date for an OFA.) So striking Riffin's notice would be an exercise in futility.

OTHER ISSUES – PREJUDICE TO CITY

34. On p. 5 of its Motion to Stike, Jersey City alleged that Riffin's participation in this proceeding would be prejudicial to Jersey City, for the following reasons:

> "Further delay to accommodate late-filed OFAs unreasonably increases City's litigation burdens, unnecessarily complicates the proceeding, and is contrary to shipper interests because, inter alia, it postpones resolution of the rail future of the Harsimus Branch."

35. **Riffin's reply:** Riffin has no intention of late-filing his OFA. Riffin's OFA would not 'unnecessarily complicate the proceeding." It is a competing OFA. When more than one OFA is filed, the carrier picks the OFA offeror it chooses to negotiate with. Riffin's OFA would not "postpone resolution of the rail future of the Harsimus Branch."

OTHER ISSUES – NO JUSTIFICATION FOR TARDINESS

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[1] See *Railroad Ventures v. STB*, 299 F. 3d 523, 548 (6th Cir. 2002), where the court said: "However, a regulation from the agency charged with implementing the statute cannot stand if it is "arbitrary, capricious, or **manifestly contrary to the statute**." *Ragsdale v. Welverine World Wide, Inc.,* 535 U.S. 81, 122 S.Ct. 1155, 1160 (2002) (quoting *Chevron,* 467 U.S. at 844, 104 S.Ct. 2778)." Bold added.

36. The City stated that Riffin "provides no traditional justification for his delay ... and ... has filed no motion for leave to file or to extend his time, and therefore eschews any conscious excuse for his tardiness."

37. **Riffin's reply:** First and foremost: Riffin argues that he is not required to file a Notice as a pre-condition to filing an OFA. Until fairly recently, Riffin had no interest in filing an OFA. Riffin believed that the best approach would be for the parties to reach a settlement. The parties are unwilling to settle. Riffin believes that the LLCs should have filed a Petition to Acquire and Operate, as the statute requires. This the LLCs adamantly oppose.[2] Riffin has some other concerns, which are addressed in a separate pleading filed under seal. The purpose of Riffin's notice was to put the STB, and the other parties, on notice that Riffin expects to file a competing OFA. That he has done. As stated above, striking Riffin's Notice Riffin believes is an exercise in futility: Riffin has no interest in the 'traditional' reason for filing a Notice. (Tolling the due date for OFAs.) Riffin has made his 'request' for 49 CFR 1152.27(a) information. Everyone is on notice. Filing a Notice is not a pre-condition to filing an OFA. Subpart F was never amended to bring it into full conformity with the ICCTA. (Until this proceeding, the issue of whether a Notice was required to be filed as a pre-condition to filing an OFA, has not been raised.) Riffin's Notice, even though 'late-filed,' inflicts no legally cognizable 'prejudice' on the parties. (Other than the City's OFA may have to compete with another OFA, thereby giving Conrail another alternative.)

OTHER ISSUES – WILL CONRAIL SELECT RIFFIN'S OFA?

38. Jersey City argued that

> "Since one of Conrail's parents recently filed a petition for a rulemaking at STB in essence accusing Riffin of abusing the OFA process, it takes considerable chutzpah for Mr. Riffin to posit that Conrail (a Norfolk Southern 50% subsidiary) would voluntarily select him to deal with on OFA, given Norfolk Southern's catalog of issues with Mr. Riffin set forth in *Petition of Norfolk Southern Railway,* Ex Parte No. 277, [sic] filed

[2] In a separate pleading, filed under seal, Riffin elaborates on this issue.

May 26, 2014 (seeking new rules to impede OFA's by parties who file repeated OFA's and lack financial responsibility)." Motion at 8.

39. **Riffin's reply:** Riffin wishes to thank Mr. Montange for the compliment. No one has ever said that Riffin suffered from a lack of "chutzpah." Perhaps that is why Norfolk Southern filed its *Ex Parte* petition. Riffin acknowledges that he can be a real 'thorn in one's side.' But that is what the American adversary system of jurisprudence fosters. Besides, it should never be a 'cake walk' when controversial issues are being resolved. Someone needs to ensure that the STB has before it a 'full record,' when the STB is being asked to render a decision in a highly controversial proceeding, such as this proceeding. Riffin acknowledges that Conrail is in a very bad position: Conrail can select the City's OFA, and incur the wrath of Daniel Horgan, or Conrail can select Riffin, and incur the wrath of Daniel Horgan. If Conrail elects to negotiate with Riffin, at least there is a possibility that an amicable resolution of the underlying issues can be obtained. If Conrail elects to negotiate with Jersey City, Jersey City has made it abundantly clear that Jersey City 'wants it all.'

OTHER ISSUES – MISUSE OF THE OFA PROCESS

40. Jersey City argued that "The problems include misuse of the OFA process to assist a developer in breaking up a rail corridor." Motion at 9.

41. **Riffin's reply:** It is not a 'misuse of the OFA process,' to submit a competing OFA, particularly when Riffin has a very high desire to provide rail service for the multiple Jersey City shippers who have expressed a desire for rail service in Jersey City. Riffin argues that his desire to provide freight rail service is much greater than Jersey City's desire to provide freight rail service. Riffin has no desire, nor any intention, of 'breaking up a rail corridor.' He fully and completely believes that the Harsimus Branch should be preserved as a rail corridor.

42. Riffin acknowledges that Conrail and the LLCs have "repeatedly attacked the City's efforts to employ the OFA statute." Motion at 9.

43. In the late 1990's [East of Marin Blvd. Property], and again in 2005 [Embankment properties], Conrail did what Conrail does, and has repeatedly done: It sold some of its railroad real estate without first obtaining abandonment authority. On the one-hand, Riffin notes that Conrail was given the unwanted task of salvaging the bankrupt railroads in the Northeast. Riffin lauds Conrail for being extremely successful in preserving those bankrupt railroads. In the beginning, Conrail was granted nearly *carte blanc* to preserve those bankrupt railroads. Once *carte blanc* was no longer needed, Conrail frequently continued to exercise *carte blanc* authority. It failed to realize that as the situation improved, it needed to comply with the basic rules and regulations, which were set aside only for a limited period of time. Riffin further notes that Jersey City was given ample opportunity to acquire the Embankment portion of the Harsimus. It was only **after** the LLCs acquired the Embankment, that Jersey City 'suddenly' wanted the Embankment. (It was 'sudden,' primarily because a new mayor and new council persons were elected. The previous Jersey City administration had no interest in the Embankment as a rail corridor, or for any other purpose.) So while on the one hand, Conrail failed to formally 'abandon' the Harsimus Branch prior to selling two portions of the Harsimus Branch to real estate developers, at the time of the sell, **no one was complaining!** (While Riffin was around, Riffin was unaware of this particular land sale, and so could not voice his objection to Conrail's failure to 'follow the rules.' Instead, Riffin was busy fighting Conrail's successor, Norfolk Southern, who was trying to abandon the Cockeysville Branch.)

44. In private conversations, Riffin has encouraged the LLCs and Conrail to vigorously oppose not only Jersey City's OFA, but Riffin's OFA. That will keep the process 'honest.' But if Jersey City and / or Riffin are able to establish that the Harsimus is truly needed for continued rail service, and that rail service is feasible,[3] then Riffin has also told them that the OFA process

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[3] Riffin has advocated for nearly a year, that the Harsimus is really needed for 'continued rail service," (there is real shipper interest in rail service), and that it is feasible to provide rail service on the Harsimus. Riffin has argued that he believes the criteria for filing an

should be permitted to move forward. If the LLCs lose possession of their property, that will be an issue that needs to be resolved in a State Court proceeding.

OTHER ISSUES – STAYS / SUPPLEMENTAL HISTORIC REPORT

45. The Motion to Strike raised a number of other issues, which are addressed below.

46. This proceeding has been the subject of three independent stays:

A. **April 16, 2009**: Stayed the effective date of the exemption until the environmental review process has been completed.

B. **May 26, 2009**: Tolled the OFA due date until 10 days after Conrail provides 49 CFR 1152.27(a) information.

C. **April 20, 2010**: Stayed the entire proceeding, including environmental review, pending resolution of the Special Court issue (was the line conveyed to Conrail as a line of railroad).

47. On **August 11, 2014**, the STB **vacated** the **April 20, 2010** Special Court stay. The STB ordered Conrail to file supplemental environmental and historic reports, which Conrail did on **August 21, 2014**.

48. Of particular note, the August 11, 2014 Decision **kept the April 16, 2009 environmental / historic process stay in effect, and did not vacate the May 26, 2009 tolling of the due date for OFAs.**

OFA, can be met. And that if Conrail or the LLCs do not want the OFA process to move forward, then the LLCs need to comply with the law: Either return the property to Conrail, or file a Petition to Acquire and Operate. This the LLCs have elected not to do.

49. On **May 22, 2015**, the STB:

A. Ordered Conrail to provide 49 CFR 1152.27(a) information to the STB, and to Jersey City and CNJ, by **June 1, 2015.** Slip op. at 6.

B. Stated that the effective date of Conrail's exemption will be determined in a later decision. Slip op. at 7.

C. Stated that the OFA due date will be set in a later decision. Slip op. at 7.

50. On **June 1, 2015,** Conrail provided 49 CFR 1152.27(a) information to the STB, and to Jersey City and CNJ.

THINGS THAT STILL MUST BE COMPLETED BEFORE AN OFA CAN BE FILED

51. **Service of a Supplemental Environmental Assessment.** Since abandonment authority may not be granted until the Environmental Review process has been completed, and since the Environmental Review process has not been completed, the parties are presently waiting for the STB's Office of Environmental Analysis to issue a Supplemental Environmental Assessment. [It should be noted that in the STB's **August 11, 2014** Decision vacating the Special Court stay, the STB stated, slip op. at 5, that it had received **2,000 Environmental Comments**, all of which the STB stated that it had to consider and address. Given the quantity of comments, it is understandable that it will take the Office of Environmental Analysis ("**OEA**") a considerable amount of time to consider, and to address, that multitude of comments.]

52. **Public Comment period.** After the OEA serves its Supplemental Environmental Assessment, the public will have 15 days within which to file comments on the Supplemental Environmental Assessment.

53. **Abandonment authority.** After the 15-days public comment period, the OEA will prepare a Final Environmental Assessment. Once the Final Environmental Assessment has been prepared, the STB then can grant abandonment authority. (Typically, abandonment authority is granted the same day that the Final Environmental Assessment is served.)

54. **OFA due date.** The STB then will set the OFA due date, which typically is set for 10 days after abandonment authority is granted.

55. **Possible OFA due date:** Since counsel for Jersey City, et. al., left for his vacation on June 27, 2015, and is not due back until July 14, 2015, Riffin would not expect the STB to serve the Supplemental Environmental Assessment until, at the earliest, July 15, 2015, the day after Mr. Montange returns from his vacation. That means public comments would be due by July 30, 2015. If only a hundred or so comments are received, then a Final Environmental Assessment might be served by August 15, 2015 or so. **That would make the due date for OFAs about August 25, 2015.** If, on the other hand, another 2,000 comments are received, it likely would take the OEA considerably more time to review all those comments.

Respectfully,

James Riffin
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(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2015, a copy of the foregoing Riffin's Reply to Jersey City's Motion to Strike Riffin's Notice of Intent to File an OFA, was served on the parties noted below, by E-mail.

James Riffin

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[4] The LLCs: 212 Marin Boulevard, LLC; 247 Manila Avenue, LLC; 280 Erie Street, LLC; 317 Jersey Avenue, LLC; 354 Cole Street, LLC; 389 Monmouth Street, LLC; 415 Brunswick Street, LLC; 446 Newark Avenue, LLC; NZ Funding, LLC. All limited liability companies of New Jersey.

[5] Counsel for City of Jersey City; Rails to Trails Conservancy; PRR Harsimus Stem Embankment Preservation Coalition.