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June 9, 2015

VIA STB ELECTRONIC DOCKET

Rachel Campbell
Director, Office of Proceedings
Surface Transportation Board
395 E Street, SW, Room #100
Washington, DC 20423

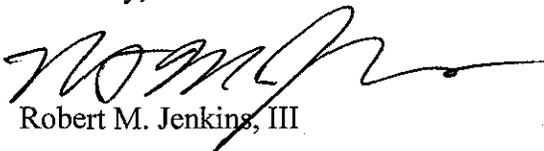
Robert M. Jenkins, III
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Re: STB Docket No. 167 (Sub-No. 1189X) and related
dockets

Dear Ms. Campbell:

The attached letter serves as our response to James Riffin's First Request for Documents, which Mr. Riffin filed in STB Docket No. AB 167 (Sub-No. 1189X) and related dockets.

Sincerely,



Robert M. Jenkins, III

Enclosure

cc: James Riffin
Charles Montange
Daniel E. Horgan
Eric Strohmeyer

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June 9, 2015

VIA EMAIL AND U.S. MAIL

James Riffin
P.O. Box 4044
Timonium, MD 21094

Re: STB Docket No. AB 167 (Sub-No. 1189X) and related dockets: James Riffin's First Request for Documents

Dear Mr. Riffin:

Consolidated Rail Corporation (“Conrail”) hereby responds to your First Request for Documents, dated June 8, 2015. In the request, you seek an appraisal report produced by Conrail to Charles H. Montange on or about June 1, 2015, pursuant to the May 21, 2015, Decision of the Surface Transportation Board (“Board” or “STB”) directing Conrail to provide Mr. Montange’s client, the City of Jersey City (“City”), with certain valuation information related to the City’s notice of intent to file an offer of financial assistance (“OFA”), as set forth in the Board’s May 21 decision. *See* May 21, 2015 STB Decision, slip op. at 6. You also state that you have appended an executed copy of an undertaking to your request for documents, although, in fact, no such executed undertaking appears either in the pdf of your request that you emailed to us or in the postings of your request on the STB website.

Before turning to the substance of Conrail’s response to your request, it must be noted that your decision to file a discovery request as a formal STB pleading appears to violate the Board’s regulations at 49 C.F.R. § 1114.21(f), which state that “[u]nless otherwise ordered by the Board . . . requests for documents . . . shall not be filed with the Board.” We are not aware of any Board order directing parties to file discovery requests with the Board in this proceeding. Because, however, you have chosen to propound your discovery request in a formal Board filing, we also will file our response with the Board.

Turning to the substance of our response, we hereby refuse to produce the requested appraisal to you unless the Board orders us to do so. The appraisal is relevant only to an OFA in this proceeding, as you yourself indicate on page 2 of your request, where you refer to your willingness to accept the appraisal “in lieu of the 49 CFR 1152.27(a)(1)(ii) information.” You, however, do not have a valid notice of intent to file an OFA pending before the Board at this time, and, therefore, you have no cognizable interest in obtaining information related to the preparation of an OFA for the property at issue in this proceeding.

We acknowledge that on June 8, 2015—the same day you propounded your request for documents—you filed a notice of intent to participate in the proceeding and a document styled a

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“Notice of Intent to File an Offer of Financial Assistance.” But the notice of intent to file an OFA is clearly untimely.

Such notices were due in late March 2009. Two parties—specifically, CNJ Rail Corporation and the City—filed such notices on March 27, 2009, close on the heels of the Board’s March 18, 2009 Federal Register notice of the filing of the verified notice of exemption in this case. *See* 74 Fed. Reg. 11,631 (Mar. 18, 2009) (notice of the filing of verified notice of exemption in AB 167 (Sub-No. 1189X) and related dockets).

Under Board regulations, parties must file notices of intent to file OFAs no later than ten *days* after the Federal Register publication of the notice of exemption (which, as noted, occurred on March 18, 2009). *See* 49 C.F.R. § 1152.27(c)(2); *see also* *BNSF Ry. Co.—Abandonment Exemption—Oklahoma County, OK*, STB Docket No. AB-6 (Sub-No. 430X), slip op. at 4 (served Feb. 27, 2007) (rejecting requests for an extension of time to file an OFA and for tolling the OFA due date because the time for notices of intent had expired approximately fifteen months previously). You filed your notice of intent to file an OFA more than six *years* after the publication of the Federal Register notice, and you have not even tried to explain or justify your failure to meet the timely-filing requirements that other parties were able to satisfy.

Throughout these proceedings, the Board has repeatedly referred to the notices filed by CNJ Rail Corporation and the City, and has never, to our knowledge, contemplated that other parties might file notices of intent. *See* the Board’s Apr. 6, 2009 Decision at 1 n.2; Apr. 16, 2009 Decision at 1 n.2; May 26, 2009 Decision at 1. Although the Board has stated that it will decide in the future when an actual OFA is due to be filed (*see* May 22, 2015 Decision at 6), the Board has never in this proceeding stayed or lifted the due date for the filing of a *notice of intent* to file an OFA, and, as noted, that due date came and passed more than six years ago. Thus, you do not have valid notice of intent to file an OFA pending in this proceeding, and Conrail is under no obligation to provide the appraisal that you seek for OFA purposes.

Moreover, under the Protective Order entered by the Board in this proceeding, you would not be entitled to the appraisal even if your notice of intent were timely. The appraisal is a highly confidential document. Under the Protective Order, highly confidential material “may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding” *See* Protective Order at para. 2 (issued Sept. 24, 2014). You have requested this material on your own behalf and have not designated an “outside counsel or outside consultants” to receive it. Thus, you are not entitled to receive the appraisal that you seek. (That your status would preclude you from executing a highly confidential undertaking may explain why you apparently have not attached an undertaking to your request for documents, despite your assertion that you did so.)

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In addition, as the Protective Order states, even outside counsel and outside consultants are entitled to receive highly confidential materials only to the extent that they "have a need to know, handle, or review the materials for purposes of this proceeding." Your invalid notice of intent to file an OFA does not establish any such "need to know, handle, or review the materials for purposes of this proceeding."

For the foregoing reasons, Conrail declines your request to produce the appraisal to you.

Sincerely,



Robert M. Jenkins, III

cc: Rachel Campbell
Charles Montange
Daniel E. Horgan
Eric Strohmeyer