

Before the Surface Transportation Board

242399
242401
242402

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

ENTERED
Office of Proceedings
January 9, 2017
Part of
Public Record

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

and

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

City of Jersey City, et al's Statement
and Protective Appeal/
Protective Petition to Reopen
Discovery Order of 4 January 2017
In the Event Surface Transportation Board
Grants Further Relief to James Riffin

City of Jersey City, Rails to Trails Conservancy, and
Pennsylvania Railroad Harsimus Stem Embankment Preservation
Coalition ("City et al") make the following statement and
protective appeal/petition to reopen:

At the hearing before ALJ Dring on October 24, 2016, City
et al stated it would not pursue discovery in the event that Mr.
Riffin were excluded from AB 167-1189X, viewing most discovery
issues as moot if Riffin were in fact dismissed from the
proceeding. When ALJ Dring orally ordered Mr. Riffin's
dismissal from the proceeding on that date, City et al
accordingly did not pursue its motion to compel discovery from
212 Marin Boulevard LLC, et al. ("the Hyman interests"). See

Transcript of Oct. 24, 2016 hearing at, e.g., pp. 36 & 81. ALJ Dring subsequently served a written Decision on October 26 inter alia dismissing Riffin from the case and also imposing a prospective discovery cut-off. On January 4, 2017, Judge Dring issued an Order actually terminating discovery in this case based on his statements at the October 24 hearing.

Commencing on October 25, Riffin began filing a series of motions and petitions directed at obtaining appellate relief. City et al opposed all such relief to Riffin. One of his many filings was a "petition," which this Board subsequently treated as some kind of quasi-rulemaking petition to clarify how he should seek appellate relief. In particular, this Board by Decision served December 21, 2016, indicated it was considering Riffin's October 31 "petition" to "clarify" the regulation under which Riffin should seek appellate relief. The Board further stated that it "tentatively accepts" Riffin's appeal while it considers his October 31 "petition." The Board thus indicated it was suspending regulations otherwise rendering ALJ Dring's order final pending further order of the Board. Dec. in AB 167-1189X, served December 21, 2016.

Should this Board grant relief to Mr. Riffin allowing him continued participation in this proceeding, then City et al wish to obtain additional discovery against him (including, but not necessarily limited to, additional documentary discovery as well

as a deposition), and further wish to pursue their motion to compel discovery against the Hyman interests, including potentially additional discovery against them.¹ Discovery may be necessary against other parties as well. It would be highly prejudicial to permit Riffin's continued participation in this proceeding without allowing City et al to pursue discovery, since City et al's agreement not to pursue discovery was in good faith reliance on Riffin's exclusion from the proceeding, as indicated in the relevant transcript.

Accordingly, without waiver of any of City et al's arguments that Riffin is not entitled to any appellate relief, City et al make this protective appeal/petition to reopen ALJ Dring's Order served January 4, 2017 terminating discovery. As an "appeal," it is timely (within 5 days of the January 4 order) per the Board's analysis of Riffin's actions (Decision served Dec. 21, 2016, *supra*, p. 2). As a petition to reopen, it is justified on the basis of material error, changed circumstances and new evidence: namely, it is a denial of due process to allow a party back into the proceeding who was excluded due to failure to make adequate discovery, and then deny discovery against that

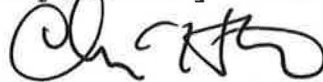
¹ City et al have been advised that there have been multiple meetings and other contacts between Mr. Riffin and Mr. Hyman since Mr. Hyman's exclusion from the proceedings on October 24, 2016, including meetings with Mr. Horgan and 212 Marin Boulevard LLC, et al.

party, his counterparties, and other parties with whom he is or may be in collusion. Riffin and the LLCs should not be immunized from discovery by procedural ploys. Moreover, any relief this Board grants to Riffin constitutes a changed circumstance, as well as new evidence, justifying relief to City et al from the discovery cut-off.

Insofar as the Order served January 4, 2017 is foreshadowed by earlier orders of ALJ Dring commencing on October 24, 2016, City et al also seek reopening of all such orders on the same basis.

This appeal/petition for reopening is protective only. If the Board upholds the relief against Mr. Riffin ordered by ALJ Dring, then City et al withdraw their appeal/petition to reopen.

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 9th day of January 2017 addressed to the parties or their representatives per the same service list attached to City et al's "Reply to Riffin's 'Motion to Dismiss'" served and filed contemporaneously herewith in AB 167-1189X. The undersigned also certifies the deposit of the foregoing for express delivery (next business day) upon Judge Dring at the Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Washington, DC 20426 (courtesy email to Judge Dring's law clerk).