

Before the Surface Transportation Board

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

**Reply to City et al.'s Motion for Sanctions Against James Riffin for Failure
to Respond to Discovery (Document) Requests**

The LLC Intervenors (“LLCs”)¹ respectfully file this reply to the City of Jersey City (“City”), Rails to Trails Conservancy (“RTC”), and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition’s (“Coalition”) (collectively, the “City et al.”) “Motion on Behalf of City of Jersey City et al for Sanctions Against James Riffin for Failure to Respond to Discovery (Document) Requests” filed on or about September 15, 2016. On July 25, 2016, the LLCs opposed a prior motion filed by the City et al. to compel discovery from James Riffin (“Riffin”) relating to communications among Riffin and the LLCs and their agents (including the LLCs’ former manager, Steven Hyman), as well as other reasons unrelated to discovery. The LLCs argued that the City et al.’s

¹ The LLC Intervenors are 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, and 446 Newark Avenue, LLC.

document demands were overly broad and irrelevant, citing a decision dated May 22, 2015 by the Board ruling on then pending discovery demands. The LLCs have argued that discovery into alleged conspiracies the City et al. believe exist between Riffin and the LLCs (and others) to deprive the Board of jurisdiction are irrelevant. The Board has already denied the City et al. discovery into similar allegations against the LLCs and Conrail. The LLCs therefore reply to this motion to reassert their objections to discovery—which objection was voiced during the August 24, 2016 appearance but not reached.

At the August 24, 2016 hearing, the City et al. and Riffin announced a proposed resolution to the City et al.'s document demands. By order dated August 25, 2016, the Honorable John P. Dring, A.L.J., ordered Riffin to comply with that agreement. Specifically, the August 25, 2016 order provides, "Mr. Riffin will provide the City, et al. and the Consolidated Rail Corporation with all e-mail communications between him and the LLCs that Mr. Riffin retains in his possession. Mr. Riffin will also supply the City, et al. the docket numbers for three (3) bankruptcy proceedings involving Mr. Riffin. Mr. Riffin shall comply with this order by close of business on Friday, August 26, 2016."

Although the LLCs take no position on whether Riffin complied with that order, or should be sanctioned, the LLCs are compelled to respond to the arguments in the motion to sanction Riffin that are based on an alleged, unproven, irrelevant conspiracy theory the City et al. has advanced involving Riffin's improper conduct involving the LLCs. In addition to violating the order, the City et al. ask that Riffin be sanctioned because he has schemed with the

LLCs to abuse the Board's jurisdiction, its processes, and potential remedies. (Motion Brief at 12). The City et al. accuse Riffin and the LLCs' former manager, Steven Hyman, of working to use the OFA process to secure development rights for the Embankment and other property. (Conrail has joined in the City et al.'s motion, and while taking no position on Riffin's compliance with discovery requirements, exclusively asks that he be sanctioned based on the same non-discovery related actions involving the LLCs. Conrail has offered no evidence of misconduct involving Riffin and the LLCs either.)

Such allegations—conveniently made without any support in the record and attributed to unnamed sources—are outrageous and false. Despite the LLCs stating in filings with the Board on multiple occasions that the LLCs are not conspiring with Riffin, and that the LLCs are opposed to any and all OFAs, the City et al. continue to claim the opposite is true—without a shred of evidence to buttress the allegations. The LLCs are the fee owners of the Embankment, and have no interest in any other property, certainly not the “Forest City” property located across the street from the LLCs' Embankment parcels, as the City et al. contend. The LLCs are on record that there is no need for freight rail service in downtown Jersey City, and that all OFAs should be rejected.

Thus, the City et al.'s citation to public statements by Riffin concerning his goals, motivations, or ends is not made on or at the behest of the LLCs. The LLCs cannot stop Riffin from taking actions or claiming that he is working

to benefit the LLCs or the Hymans. Nevertheless, that has not stopped the City et al. from outright accusing the LLCs and Hyman of being involved in the Forest City litigation pending in the District Court for the District of New Jersey. (Motion Brief at 15, where the City says Riffin and Hyman “are” involved in the litigation).

Whether Riffin should be sanctioned should depend on his conduct in responding to discovery and complying with the August 25, 2016 order, in accordance with relevant Board regulations and precedent. However, the City et al.’s wild claims of conspiracies to misuse Board proceedings—claims deemed irrelevant by the Board itself in a prior motion—should not be a basis to sanction Riffin in this motion concerning discovery. If Riffin is sanctioned based on unsubstantiated claims involving the LLCs, the City et al. (and now Conrail) will in all likelihood use sanctions against Riffin to further accuse the LLCs of improper conduct, in effect, to validate their conspiracy theories.

The LLCs’ response to the companion motion to compel discovery from them addresses these issues in greater detail, and the LLCs respectfully refer to that submission, dated on even date herewith.

Other than to reiterate their objections to the City et al.’s discovery seeking evidence of conspiracies, and to deny the unsubstantiated, irrelevant conspiracy theories advanced by the City et al. as an excuse for sanctioning Riffin, the LLCs take no position on whether Riffin complied with the order to produce all e-mails that he “retains in his possession,” or whether he should be sanctioned for any non-compliance.

Respectfully submitted,

S/ Daniel E. Horgan

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DATED: October 5, 2016

CERTIFICATION OF SERVICE

I, Daniel E. Horgan, hereby certify that I have caused a copy of the foregoing to be served by First Class Mail upon those on the attached Service List by having same deposited with the U.S. Postal Service on October 5, 2016.

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