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Before the
Surface Transportation Board

JR - 34

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**

**RIFFIN’S REPLY TO
CITY ET AL.’S FEBRUARY 17, 2017 “COMMENT”**

1. Comes now James Riffin (“**Riffin**”), who herewith responds to City et al.’s February 17, 2017 “Comment.”

2. Per 49 CFR 1104.13(c), a reply to a reply is not permitted without permission from the STB. Consequently, if City et al.’s February 17, 2017 “Comment” is a “Reply,” it must be stricken, for City et al. neither asked for permission to file a reply to a reply, nor did it receive permission to file a reply to a reply.

3. If, on the other hand, the “Comment” is construed to be a ‘Motion to Strike,’ (In actuality two motions to strike), then such a pleading would be permitted (as would this reply).

4. Since it appears to be two motions to strike, Riffin will reply.

5. City et al. complain that they did not receive the paper copy of Riffin’s January 31, 2017 appeal of ALJ Dring’s October 26, 2016 Served decision. Comment at 2.

FALSE STATEMENTS MADE BY CHARLES MONTANGE

6. City et al. **falsely stated**, Comment at 3:

A. “City et al on February 14 requested Riffin by email **to provide** some kind of evidence or proof of service by US Mail or equivalent,

B. and Riffin **has failed to respond.**” Bold added.

7. The email City et al. sent to Riffin was reproduced in Comment Footnote 2. [And is appended hereto as Riffin’s Exhibit 3. (Riffin’s Exhibits 1 {copy of postal receipts} and 2 {copy of face of envelope used to mail pleading to Charles Montange, counsel for City et al.}, were appended to the Supplemental Certificate of Service Riffin filed on February 23, 2017.) Mr. Montange’s e-mail said:

“Do you have any kind of proof or evidence that you served City et al USPS first class or by express delivery with your 31 Jan pleading (interlocutory appeal)?” Bold added.

8. It should be noted: Mr. Montange’s e-mail asked if Riffin **had any proof** that Riffin served City et al. with a paper copy of Riffin’s appeal. The e-mail **did not** ask Riffin **“to provide”** Mr. Montange with a copy of the proof. Nor did the e- mail indicate **why** Mr. Montange was asking the question. (Such as by stating: “I have not received the paper copy of your appeal.”)

9. Mr. Montange then made an even more egregious lie: He **blatantly lied** that Riffin “failed to respond.”

10. Riffin’s Exhibit three shows that Riffin responded not just once, (on February 15, 2017 at 8:27 pm), **but twice**, (again on February 15, 2017 at 8:31 pm), to Mr. Montange’s inquiry. Both times responding: “Yes” To Mr. Montange’s question: “Do you have any proof or evidence that you served City et al.”

11. It should be noted that Riffin’s reply was sent on February 15, 2017, which is **two days before** Mr. Montange filed his February 17, 2017 “Comment.” So Mr. Montange cannot (truthfully) argue that Riffin’s response was received after Mr. Montange filed his February 17, 2017 “Comment.”

DATE ACTUALLY SERVED

12. Mr. Montange attempted to support his Motion to Strike Riffin’s appeal by arguing that while Riffin electronically filed his appeal on January 31, 2017, Riffin’s Certificate of Service stated that Riffin served all parties “on or before the 1st day of February, 2017.” (Arguing that Riffin had failed to serve all parties **before** Riffin electronically filed his Appeal.)

13. The Certificate of Service clearly says: “on **or before**.”

14. Riffin’s postal receipt clearly indicates that he mailed a paper copy of the Appeal to Mr. Montange **on January 31, 2017, at 2:52 pm**. (Which is the same day that Riffin electronically filed his Appeal.) January 31, 2017 is “**before**” February 1, 2017.

NO NAMES OF PERSONS IN CERTIFICATE OF SERVICE

15. Mr. Montange further complains, Comment at 5, that Riffin’s Certificate of Service does not list the names of all parties served. **Response:** 49 CFR 1104.12, *Service of pleadings and*

papers, in subparagraph (c) provides a *Sample Certificate of Service*. Riffin’s Certificate of Service is nearly identical to the Sample in 49 CFR 1104.12(c). The Sample does not list the names of the parties, nor does the Sample indicate that the names of the parties must be listed in the Certificate of Service.

APPENDIX TO APPEAL

16. And Mr. Montange complained, Comment at 3, Footnote 1, that Riffin did not serve Mr. Montange with a **second copy** of Volumes One to Four, of Riffin’s Appendix to Riffin’s Appeal.

17. Riffin’s Certificate of Service clearly says that “on **or before** the 1st day of February, 2017, a copy of ... the Appendix thereto, was served on all of the parties.”

18. Riffin served a paper copy of Volumes One to Four of Riffin’s Appeal Appendix upon City et al. on **November 14, 2016**, which is decidedly “before” February 1, 2017. In a note accompanying the electronic copy of Riffin’s Appeal sent to Mr. Montange, Riffin reminded Mr. Montange that he had served Mr. Montange with a copy of Volumes One to Four of Riffin’s Appeal Appendix on November 14, 2016, and that no changes had been made to Appendix Volumes One to Four.

19. 49 CFR 1104.12 does not require multiple copies of pleadings be served on any party.

RIFFIN’S REBUTTAL

20. Mr. Montange also complained, Comment at 1, that Riffin’s Rebuttal was an impermissible reply to a reply.

21. In the opening paragraphs of Riffin’s Rebuttal, Riffin noted that the regulations are silent on Rebuttals in Appeals. Riffin further noted that his Rebuttal could be construed to be a reply to

a reply, and if not permitted by right, Riffin sought permission to file his Rebuttal, in order to provide the STB, and any court reviewing the STB's decision regarding Riffin's appeal, with a "more complete record."

RIFFIN'S 'COMMENTS'

22. Riffin argues that Mr. Montange's February 17, 2017 pleading should never have been filed. The appropriate way to have handled the situation would have been to telephone Riffin, inform Riffin that the paper copy of Riffin's Appeal had not arrived, then ask Riffin to send a second paper copy of his Appeal to Mr. Montange. Which Riffin would have done. (And which Riffin in fact did, even though Mr. Montange never asked for a second copy.)

23. Had this been in a U.S. District Court, there is a high probability that Mr. Montange's total waste of the STB's time, and limited resources, would have resulted in a strong rebuke from the Court.

Respectfully,

James Riffin
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on or before the 8th Day of March, 2017, a copy of the foregoing James Riffin's Reply to City et al.'s "Comments," was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.

James Riffin