

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36472 (Sub-No. 6)

VILLAGE OF VOORHEESVILLE

v.

NORFOLK SOUTHERN RAILWAY COMPANY

**NORFOLK SOUTHERN RAILWAY COMPANY'S
MOTION TO DISMISS THE COMPLAINT
AND REPLY TO MOTION TO REOPEN**

Norfolk Southern Railway Company (“Norfolk Southern”) respectfully submits this combined motion to dismiss the Village of Voorheesville’s complaint and reply to Voorheesville’s motion to reopen and reconsider the final decision in Docket No. FD 36472.

INTRODUCTION

The Village of Voorheesville (“Village”) has filed a document—ostensibly a complaint seeking investigation, a motion to reconsider or reopen, or both—accusing Norfolk Southern of violating its obligations under the Board’s April 2022 decision approving the CSX–Pan Am acquisition, which incorporates a settlement agreement among CSX, Norfolk Southern, and Voorheesville. Voorheesville claims that Norfolk Southern is breaching the settlement by stopping trains on the edge of the Village to change crews.

The Village, however, raised these exact claims against Norfolk Southern in federal court just a few months ago, and the court squarely rejected them.

Voorheesville is not entitled to a second bite at the apple. In any event, the Court was correct. Norfolk Southern is complying with its settlement obligations by minimizing impacts on the Village: It located its crew-change point specifically to avoid stopping trains across Village roads. Changing crews even farther outside the Village is not feasible. And, contrary to the Village’s suggestions, Norfolk Southern never promised that trains would only pass through the Village without slowing or stopping. The Board should dismiss or deny the Village’s complaint/motion.

BACKGROUND

A. The Board’s prior decision.

In April 2022, the Board granted approval for CSX to acquire Pan Am Systems, Inc.¹ As part of this transaction, Norfolk Southern obtained overhead trackage rights on four different segments of track, including “approximately 161.5 miles of overhead trackage rights on CSX’s mainline” between Voorheesville and Worcester, Massachusetts.² These trackage rights created “a new route that would allow [Norfolk Southern] to move intermodal and automobile trains from Voorheesville in eastern New York State to Ayer [in Massachusetts],” called “the Southern Route.”³ This route would allow Norfolk Southern “to provide double-stack intermodal service” between New York and Massachusetts.⁴

¹ See *CSX Corp. & CSX Transp.—Control & Merger—Pan Am Sys. et al.*, No. FD 36472, 2022 WL 1125011 (STB served Apr. 14, 2022).

² *Id.* at *4.

³ *Id.* at *5.

⁴ See *id.*

As the Board explained, Voorheesville “is located where [Norfolk Southern’s] system connects with CSX’s Southern Route and will be the point at which [Norfolk Southern’s] intermodal/automotive trains enter onto the CSX system under [the] new trackage rights agreements.”⁵ The Norfolk Southern line connecting with CSX’s tracks in Voorheesville had been unused for some time before the transaction.⁶

“Voorheesville initially expressed concern about the impact that rehabilitation of [Norfolk Southern’s] track connecting to CSX’s Southern Route would have on the village[.]”⁷ To address those concerns, CSX, Norfolk Southern, and Voorheesville entered into a settlement agreement.⁸ As relevant, the parties agreed to “work together in the design and construction of any necessary improvements ... to minimize any potential impact on the Village,” and Norfolk Southern agreed “to stage its trains and to operate through the [existing grade crossing at South Main Street] in such a manner to minimize potential impacts on the Village.”⁹

B. Norfolk Southern’s new crew-change facility.

Operating the Southern Route to Ayer requires a crew-change facility in Voorheesville. As explained in the attached declaration of Scott D. Plum, Director Strategic Planning of Norfolk Southern Corporation (originally filed in the prior federal litigation), because the trackage rights are overhead only, Norfolk Southern cannot

⁵ *Id.* at *65.

⁶ *Id.* at *5 n.13.

⁷ *Id.* at *65.

⁸ *See id.*

⁹ Letter Agreement 3, *CSX Corp. et al.—Control & Merger—Pan Am Systems, Inc., et al.*, No. FD 36472 (filed Dec. 23, 2021) (attached as Exhibit A).

have a scheduled crew change while its trains are operating in CSX territory.¹⁰ It thus needs a location, as close as possible to the connection with CSX, where fresh crews can take over the trains headed onto or leaving CSX's lines. Locating the crew-change point as close as possible to the connection minimizes the likelihood that a crew will hit its hours-of-service limit while on CSX territory.¹¹

Norfolk Southern identified a suitable site for a new crew-change facility at 1 Countryside Lane in Voorheesville, next to the Norfolk Southern rail line entering the Village, which it purchased. As Mr. Plum explained to Village representatives in a September 2025 Zoom meeting, (a) eastbound trains would stop at the facility to the west of the nearby School Road crossing, and (b) westbound trains would stop at a concrete or rail cross tie pad (a "landing pad") located near Hennessey Road approximately 7,900 feet west of the facility. Thus, eastbound trains will not block any Village roads while stopped, no matter how long they are. And as long as westbound trains are shorter than 7,900 feet (roughly 1.5 miles long), they can change crews at Hennessey Road without blocking School Road while stopped.¹²

The Hennessey Road landing pad is, and was presented to the Village as, an adjunct to the Voorheesville crew-change facility for the purpose of facilitating the westbound crew changes as described above. The landing pad has never been, and was not presented as, an "alternative" location for the crew-change facility.¹³

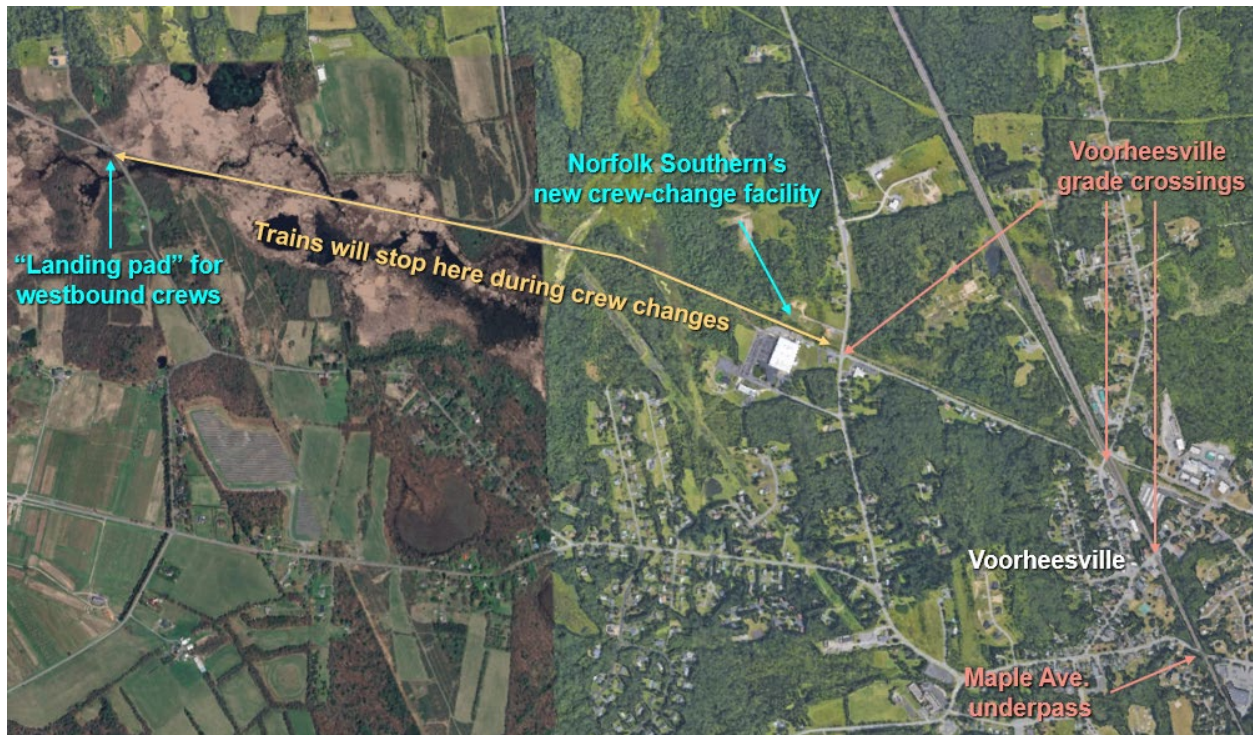
¹⁰ Second Decl. of Scott D. Plum ¶ 3, *Norfolk S. Ry. v. Vill. of Voorheesville*, No. 1:25-cv-1413 (N.D.N.Y. filed Nov. 14, 2025) (attached as Exhibit B) ("2d Plum Decl.").

¹¹ *Id.*

¹² *Id.* ¶¶ 5–6.

¹³ *Id.* ¶ 7.

The map below illustrates the location of the crew-change facility and the “landing pad” in relation to the Village and its three grade crossings. In addition to the grade crossings, Voorheesville also has an underpass at Maple Avenue, allowing local traffic to cross under the CSX line even if the other nearby crossings are temporarily blocked¹⁴:



By contract, the maximum permissible Norfolk Southern train length on CSX's lines is 9,000 feet. But while Norfolk Southern aspires to develop sufficient business to require trains of this length, train lengths at the outset of service on the Southern Route and for the foreseeable future are expected to be between 3,000 and 4,000 feet.¹⁵

¹⁴ See also Google Maps, <https://shorturl.at/qxZj3>, showing the Village's boundaries and the layout of the nearby roads and rail lines.

¹⁵ 2d Plum Decl. ¶ 4.

Even assuming a train length of 9,000 feet, eastbound trains stopping at the crew-change facility will block only the crossing at Hennessey Road (outside the Village). Westbound 9,000-foot trains stopping at the landing pad will block only the crossing at School Road. Westbound trains shorter than 7,900 feet will not block any Village roads while stopped. There is no scenario in which a stopped train up to 9,000 feet in length will stop across even two crossings in the Village, let alone all three. Stopped trains 3,000 to 4,000 feet in length will not block any crossings at all.¹⁶

Assuming a train length of 9,000 feet and an average speed of 10 mph during acceleration or deceleration, it would take a train approximately 10 minutes to clear a crossing. Assuming a train length of 4,000 feet and an average speed of 10 mph during acceleration or deceleration, it would take a train approximately 5 minutes to clear a crossing.¹⁷

Norfolk Southern's schedule contemplates just two trains passing through Voorheesville each day: One eastbound around 1:45 a.m., and one westbound around 9:30 a.m.¹⁸

C. The federal litigation.

In August 2025, Norfolk Southern's contractor began preparing the crew-change facility site for construction and requested a water-line connection from the Village.

¹⁶ *Id.* ¶¶ 9–12.

¹⁷ *Id.* ¶ 13.

¹⁸ Mem. Dec. & Order 6. n.7, *Norfolk S. Ry. v. Vill. of Voorheesville*, No. 1:25-cv-1413 (N.D.N.Y. Dec. 3, 2025) (attached as Exhibit C) (“Dec. & Order”).

In mid-September 2025, Voorheesville’s Code Enforcement Officer issued a stop-work order for the property, asserting local zoning violations. Two weeks later, the Village’s attorney sent a letter explaining the reasons for the stop-work order. As relevant, he asserted that “Norfolk Southern’s rumored, intended use of the proposed ‘crew training building’” is “inconsistent with Norfolk Southern’s prior commitments to the Village” and the Board.¹⁹ He pointed to the settlement agreement, contending that it barred Norfolk Southern from “us[ing] its proposed ‘crew training building’ as a location where Norfolk Southern’s trains will be brought to a complete stop—and crews swapped out—within the Village.”²⁰

Further discussions with the Village, including detailed explanations of Norfolk Southern’s planned operations, were not fruitful. Thus, in early October, Norfolk Southern sued the Village in federal district court, seeking a preliminary injunction and a declaratory judgment holding the stop-work order invalid and preempted by the ICC Termination Act.

In opposing the injunction, the Village asserted (among other things) that Norfolk Southern’s “construction and intended use of the proposed crew-change facility are a direct violation of its obligations under [the settlement] agreement and the authority granted to it by the [Board],” which “alone requires a finding that preemption under [ICCTA] does not apply.”²¹ Voorheesville also filed counterclaims against

¹⁹ Ltr. from R. Reilly to M. McClellan 2, Sept. 23, 2025 (attached as Exhibit D).

²⁰ *Id.* at 3.

²¹ Defs.’ Mem. of Law in Opp. to Pl.’s Mot. for Prelim. Inj. 1, *Norfolk S. Ry. v. Vill. of Voorheesville*, No. 1:25-cv-01413 (N.D.N.Y. filed Nov. 12, 2025) (attached as Exhibit E).

Norfolk Southern, including for allegedly breaching the settlement. The Village similarly alleged that “Norfolk Southern’s proposed, extended blockages of surface crossings within the Village is completely inconsistent with Norfolk Southern’s obligations under the Settlement Agreement to ‘minimize potential impacts on the Village.’”²²

In December 2025, the district court preliminarily enjoined enforcement of the stop-work order on ICCTA preemption grounds. The court considered and rejected Voorheesville’s argument that preemption did not apply because Norfolk Southern is “bound by [and allegedly breached] the terms of the settlement agreement.”²³ The court held that it “cannot conclude that Norfolk Southern breached the terms of the settlement agreement.”²⁴

The settlement, the court explained, “only required Norfolk Southern to (1) stage its trains and operate in such a manner to minimize potential impacts on the Village, and (2) meet with local public safety personnel to discuss how best to address and accommodate any public safety challenges.”²⁵ As the court found: “Norfolk Southern has met with Village officials and taken steps to minimize its trains’ impact on the Village by planning to construct the landing pad for westbound trains; limiting the amount of trains which will run through the Village to two per day (one

²² Ans. & Countercl. ¶ 84, *Norfolk S. Ry. v. Vill. of Voorheesville*, 1:25-cv-1413 (N.D.N.Y. filed Nov. 3, 2025) (attached as Exhibit F); *id.* ¶¶ 164–165.

²³ Dec. & Order 20.

²⁴ *Id.* at 20–21.

²⁵ *Id.* at 21 (cleaned up).

in the early morning); and exploring alternate locations for crew changes outside the Village, even though those locations were ultimately inadequate.”²⁶

After the district court’s ruling, Voorheesville voluntarily dismissed its counterclaims against Norfolk Southern, including those alleging settlement violations.²⁷ The parties then stipulated that (i) the court’s preliminary injunction would become permanent, (ii) Voorheesville’s stop-work order was rescinded, (iii) Voorheesville would treat Norfolk Southern’s project like “any other commercial enterprise,” (iv) the district court would retain jurisdiction “regarding further disputes involving the contents of this Stipulation and Order or the allegations made within Norfolk Southern’s Complaint as filed in this action,” and (v) Norfolk Southern would dismiss its remaining claims.²⁸ The district judge signed and entered the stipulation on January 30, 2026, closing the case.²⁹

D. Southern Route operations.

Norfolk Southern trains began operating on the Southern Route—and thus passing through Voorheesville and changing crews there—in mid-January 2026. Since then, Voorheesville has not raised any concerns with Norfolk Southern about blocked crossings.

²⁶ *Id.*

²⁷ Notice of Voluntary Dismissal, *Norfolk S. Ry. v. Vill. of Voorheesville*, 1:25-cv-1413 (N.D.N.Y. filed Dec. 30, 2025) (attached as Exhibit G).

²⁸ Stipulation and Order, *Norfolk S. Ry. v. Vill. of Voorheesville*, 1:25-cv-1413 (N.D.N.Y. filed Jan. 30, 2026) (attached as Exhibit H).

²⁹ *Id.*

E. This proceeding.

Voorheesville filed its present complaint/motion with the Board on May 7, 2026. Just as it unsuccessfully did in court, Voorheesville again alleges that “Norfolk Southern’s use of the rail lines within the Village is contrary to the terms the Village and Norfolk Southern agreed to in their settlement agreement.”³⁰ The Village’s filing discusses the federal litigation and the court’s preliminary-injunction order, but it does not acknowledge that the court rejected the same claims and held that Norfolk Southern is complying with the settlement.³¹

Across the litigation and this proceeding, Voorheesville’s allegations have evolved—or failed to evolve—in notable ways.

On one hand, the Village has massaged certain allegations. Its counterclaims in the litigation, filed in late 2025, alleged that Norfolk Southern “consistently represented ... that the trains would simply be traveling through the Village at speeds of *up to 25 miles per hour*.”³² Indeed, the Village’s preliminary-injunction papers included a 2023 letter from Norfolk Southern referring to “train operation ... at speeds *up to 25 mph*.”³³ Now, however, Voorheesville tells the Board that “Norfolk Southern consistently represented ... that trains would simply be traveling through the

³⁰ Compl. 1.

³¹ *Id.* ¶¶ 34–41.

³² Ans. & Countercl. ¶ 81 (emphasis added).

³³ Letter from D. Becker to R. Straut 3, Aug. 17, 2023 (attached as Exhibit I) (emphasis added).

Village ... at speeds of *approximately* 25 mph.”³⁴ Although Voorheesville claims this promise was made “in writing,” it provides no documentary support.³⁵

On the other hand, the Village has failed to update other allegations to reflect the actual facts. For example, the Village’s counterclaims mistakenly suggested that west-bound trains “will block all three surface crossings” in the Village while stopped.³⁶ And even after Norfolk Southern explained that it structured operations to avoid trains stopping across Village crossings—and after months of actual operations—the Village’s filing before the Board repeats the same allegation almost verbatim, again asserting that west-bound trains “*will* block all three surface crossings.”³⁷ The Village does not explain why this allegation is phrased in the future tense now that trains have been running for months. Nor does it allege that a train has ever *actually* stopped across multiple Village crossings, instead asserting—on “information and belief”—that “the stopping and starting of Norfolk Southern’s trains at the crew-change facility is *likely* to cause surface crossings in the Village to be blocked.”³⁸

The Village also repeats its prior allegations that crossing blockages present “an obvious threat to public health, safety and welfare of the Village,” but it does not allege that any such threat has actually materialized in the six months since

³⁴ Compl. ¶ 44 (emphasis altered).

³⁵ *Id.*

³⁶ Ans. & Countercl. ¶ 72.

³⁷ Compl. ¶ 47 (emphasis added).

³⁸ *See id.* ¶ 54.

operations began.³⁹ And it acknowledges that the Maple Avenue underpass provides “[an]other means of traversing the rail lines within the Village” if other crossings are temporarily blocked.⁴⁰

ARGUMENT

The Board should dismiss Voorheesville’s filing (to the extent it is a complaint) or deny it (to the extent it is a motion to reopen or reconsider) because Norfolk Southern is complying with its settlement obligations—and a court has already so held.

I. Voorheesville’s claims are precluded by the federal litigation.

Voorheesville cannot now relitigate the same claims it raised unsuccessfully in the federal litigation. That is so for two overlapping reasons.

First, Voorheesville’s claims are precluded by the district court’s preliminary-injunction decision. The court considered and rejected the Village’s precise argument here—that Norfolk Southern’s operations violate its promise in the settlement agreement to “minimize” local impacts. And “findings made in granting or denying preliminary injunctions can have preclusive effect if the circumstances make it likely that the findings are ‘sufficiently firm’ to persuade the court that there is no compelling reason for permitting them to be litigated again.”⁴¹ “Whether the resolution in the first proceeding is sufficiently firm to merit preclusive effect turns on a variety of factors, including ‘whether the parties were fully heard, whether the court filed a

³⁹ *Id.* ¶ 59.

⁴⁰ *Id.* ¶ 60.

⁴¹ *Hawksbill Sea Turtle v. FEMA*, 126 F.3d 461, 474 n.11 (3d Cir. 1997) (citing cases).

reasoned opinion, and whether that decision could have been, or actually was appealed.”⁴²

All those criteria are satisfied here. The parties were fully heard: Voorheesville filed a 30-page opposition to the preliminary-injunction motion, supported by three declarations and five exhibits, after which the court held a hearing on the motion.⁴³ The court then filed a reasoned opinion: Across 24 pages, it addressed all of the Village’s arguments, including about the settlement.⁴⁴ And that decision could have been appealed: District-court orders “granting ... injunctions” are appealable as of right.⁴⁵ While Voorheesville chose not to exercise that right, “voluntary relinquishment of one’s right to appeal, where one stands as overall loser,” does not avoid preclusion.⁴⁶

Thus, if Voorheesville believed the district court had erred, it could have appealed immediately, pursued its arguments on the merits, or both. Even now, Voorheesville does not contend that the district court overlooked, misunderstood, or lacked access to any material facts. Nor does it assert that any new facts have developed since the court ruled. And it nowhere disputes the court’s legal analysis. It just wants a do-over in a different forum. In this situation, “relitigating [the court’s decision]

⁴² *Id.* (citation omitted).

⁴³ See Defs.’ Mem. of Law (Exhibit E).

⁴⁴ See Dec. & Order.

⁴⁵ 28 U.S.C. § 1292(a)(1).

⁴⁶ *Hartley v. Mentor Corp.*, 869 F.2d 1469, 1472 (Fed. Cir. 1989).

would create the kind of ‘needless duplication of effort and expense’ that collateral estoppel seeks to prevent.”⁴⁷

Second, Voorheesville did not just lose on this issue at the preliminary-injunction stage—it stipulated to make the injunction permanent, which the court did.⁴⁸ So the injunction remains in effect. A key premise of that still-operative injunction is that Norfolk Southern is *not* violating the settlement agreement. As a leading treatise explains: “It is clear that full defense- and claim-preclusion effects should result from judgments that rest partly on admissions or stipulations and partly on judicial resolution of disputed matters.”⁴⁹ So even if some doubt remained about whether to treat the preliminary-injunction decision itself as preclusive, the injunction’s continuing force should resolve it.⁵⁰

And beyond the injunction, Voorheesville also stipulated to dismiss its identical counterclaims and to accept the court’s “jurisdiction ... regarding further disputes involving ... the allegations made within Norfolk Southern’s Complaint.”⁵¹ Norfolk Southern’s allegations included that “the Village’s arguments about the STB settlement agreement are ... mistaken” because “operations at the planned crew change

⁴⁷ *In re Nangle*, 274 F.3d 481, 485 (8th Cir. 2001); *see also* *McTernan v. City of York*, 577 F.3d 521, 531 (3d Cir. 2009) (affirming application of preclusion to preliminary-injunction findings where the merits question was “exactly the same” as a “central issue” the court had already resolved, and the opposing parties “had a full opportunity to present their arguments”).

⁴⁸ *See* Stipulation & Order (Exhibit H).

⁴⁹ 18A Wright & Miller, Fed. Prac. & Proc. Juris. § 4443 (3d ed.).

⁵⁰ *See Hartley*, 869 F.2d at 1472–73 (giving preclusive effect to interlocutory rulings in a case later resolved by a stipulated judgment).

⁵¹ *See* Stipulation & Order (Exhibit H).

location will not require any trains to stop across any road crossings in Voorheesville,” and “the settlement requires only that Norfolk Southern ‘minimize’ local impacts, not that it avoid them entirely.”⁵²

This all reflects the parties’ intention to mutually abandon litigation of the issues raised before the district court, except in proceedings to enforce the injunction or the stipulation. Indeed, had Voorheesville given any indication that it might try to relitigate the question of settlement compliance in a different forum, Norfolk Southern would not have stipulated to dismiss its own claims, instead pressing for a final merits determination in the district court. The Village should not now be allowed to avoid the effect of its loss and its voluntary stipulation.

II. Voorheesville’s claims are meritless.

In any event, for the reasons the court explained, Voorheesville is simply wrong: Norfolk Southern is complying with the settlement agreement. The railroad’s key duty is to “minimize” potential impacts on the Village. Norfolk Southern has done just that: Trains traveling in either direction will stop between School Road (next to the crew facility) and Hennessey Road (the next nearest crossing to the west, outside the Village).⁵³ Those two roads are around 7,900 feet apart, so a train up to 1.5 miles long can change crews between them without stopping across *any* roads.

Trains may need to stop across a single Village road in just one situation. The maximum length for trains on this route is 9,000 feet.⁵⁴ If a westbound train between

⁵² Doc. 1 ¶ 6.

⁵³ 2d Plum Decl. ¶ 5.

⁵⁴ 2d Plum Decl. ¶ 4.

7,900 and 9,000 feet in length needed to change crews, the tail of the train would block School Road while stopped.⁵⁵ But this applies only to westbound trains, only if they approach the maximum possible length, and only at School Road. And for now, this is a hypothetical: While Norfolk Southern hopes to develop enough business to require 9,000-foot trains, train lengths for the foreseeable future are expected to be between 3,000 and 4,000 feet.⁵⁶ Such trains will never stop across any Village roads while changing crews.⁵⁷

To be sure, moving trains will still block crossings as they pass—but only for five or ten minutes and only twice a day.⁵⁸ The Village cannot point to anything out of the ordinary here. And Norfolk Southern adopted this operational plan, after exploring alternative options, to minimize impacts on the Village as much as possible.⁵⁹

Thus, as the district court explained, Norfolk Southern is doing what it promised: The settlement “only required Norfolk Southern to (1) stage its trains and operate in such a manner to minimize potential impacts on the Village, and (2) meet with local public safety personnel to discuss how best to address and accommodate any public safety challenges.”⁶⁰ As the court found: “Norfolk Southern has met with Village officials and taken steps to minimize its trains’ impact on the Village by planning to construct the landing pad for westbound trains; limiting the amount of trains

⁵⁵ *Id.* ¶ 6.

⁵⁶ *Id.* ¶ 4.

⁵⁷ *Id.* ¶¶ 6, 12.

⁵⁸ *Id.* ¶ 13.

⁵⁹ *See id.* ¶¶ 7–8.

⁶⁰ Dec. & Order 21 (cleaned up).

which will run through the Village to two per day (one in the early morning); and exploring alternate locations for crew changes outside the Village, even though those locations were ultimately inadequate.”⁶¹ No more was required.

CONCLUSION

The Board should dismiss Voorheesville’s filing (to the extent it is a complaint) or deny it (to the extent it is a motion to reopen or reconsider).

Respectfully submitted,

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June 16, 2026

⁶¹ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that on this June 16, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding.

/s/ Stephen S. Laudone
Stephen S. Laudone