

206917

**Before the
Surface Transportation Board**

STB Finance Docket No: 33928 (Environmental Assessment)
Norfolk Southern Corporation and Norfolk Southern Railway Company -
Constructions and Operation - In Indiana County, Pennsylvania

**COMMENTS AND MOTION TO STRIKE BY
CONEMAUGH TOWNSHIP**



Submitted by:

Richard R. Wilson, Esq.
Pa. I.D. #25661
RICHARD R. WILSON, P.C.
127 Lexington Avenue, Suite 100
Altoona, PA 16601
(814) 944-5302
(814) 944-6978 fax

DATED: December 20, 2002

ENTERED
Office of Proceedings

DEC 23 2002

**Part of
Public Record**

**Before the
Surface Transportation Board**

STB Finance Docket No: 33928 (Environmental Assessment)
Norfolk Southern Corporation and Norfolk Southern Railway Company -
Constructions and Operation - In Indiana County, Pennsylvania

**COMMENTS AND MOTION TO STRIKE BY
CONEMAUGH TOWNSHIP**

I. INTRODUCTION

On January 22, 2002, Norfolk Southern Corporation ("NSC") and Norfolk Southern Railway Company ("NSRC") filed an application under 49 U.S.C. §10901(a) for authority to construct and operate a 5.26 mile line of railroad in Indiana County, PA. The new line is part of a larger project creating a new route from the south for NSRC to serve the Reliant Energy Keystone Generating Plant ("Keystone Plant") at Sherlocta, PA.

On November 17, 2000, SEA granted NSRC's request for a waiver of the six month pre-filing notice generally required for construction projects under 49 C.F.R. §1105.10(a). NSRC filed a request for waiver of the Environmental Impact Statement under 49 C.F.R. 1105.6 on January 16, 2001 which was granted by SEA in a letter dated January 24, 2001. Because a third party consultant has been retained to prepare the necessary environmental documentation under the Board's direction and supervision, the Board's environmental reporting requirements are not applicable to this application. See 49 C.F.R. §1105.10(d).

In an order issued November 20, 2002, the Board concluded that based on the information provided from all sources to date and its independent analysis, SEA preliminarily

concluded that construction and operation of the proposed rail line would have no significant environmental impacts if the Board imposed and Norfolk Southern implemented recommended mitigation measures. Consequently, the Environmental Impact Statement process was unnecessary in this proceeding. By a companion order issued November 20, 2002 the Board gave notice of the availability of the Environmental Assessment and requested comments. In that order the Board states:

Accordingly, SEA recommends and if the Board approves this project, Norfolk Southern be required to implement the mitigation set forth in the EA.

The parties were invited to provide written comments to the Board no later than December 19, 2002.

II. CONEMAUGH TOWNSHIP'S COMMENTS AND MOTION TO STRIKE

Conemaugh Township is a small rural township in southwestern Indiana County, Pennsylvania through which the proposed Saltsburg Connection is to be constructed. Conemaugh Township officials have communicated with the Board in connection with the NS application and have submitted information to SEA in connection with environmental impacts related to NS proposed construction of this line. Of principle concern to Conemaugh Township is the refusal of NS to construct a grade separated crossing where the proposed line crosses Bell Road. The discussion of this crossing in the Environmental Assessment document fails to adequately address the pertinent safety issues at this location. The NS crossing proposal presupposes local speed limits of 25-30 mph and the grade crossing and related road modifications are predicated on that speed limit. However, it is highly unlikely that this local speed restriction will be uniformly observed and the crossing design does not adequately address dangerous seasonal conditions at this crossing, i.e., snow, ice and fog which are not reflected in

the stopping distances and line of sight distances which NS has proposed for this crossing. Simply put, the NS at grade crossing design is predicated on normative conditions at this crossing rather than on recurring seasonal hazardous conditions so that NS can avoid the cost of a grade separated crossing for Bell Road.

Most problematic is SEA's preliminary recommendation that the Board impose the following NS crossing design as a mitigation measure in its decision approving the construction and operation of the Saltsburg Connection:

3. As agreed to by NS, it shall install, at its sole cost, active rail/highway grade warning devices consisting of pole and cantilever mast mounted flashing lights and gates and roadway modifications to improve the geometric conditions of Bell Road to enhance the sight distance, subject to the approval of the Pennsylvania Public Utility Commission.

4. As agreed to by NS, it shall improve, at its sole cost, the intersection of Bell and Rose Roads to enhance the level of safety at the existing intersection in consultation with the Department of Transportation and the Pennsylvania Public Utility Commission.

These recommended mitigation measures would be imposed by the Board as a condition for approving the proposed rail line construction and operation application. However, NS efforts to have the Board adopt these mitigation measures as conditions to its application approval is nothing less than an attempt by the applicant to preempt the jurisdiction of the Pennsylvania Public Utility Commission to determine the extent and nature of crossing protections to be imposed on NS at Bell Road pursuant to the provisions of 66 Pa. C.S.A. §§2702 and 2704.

There is no need for the STB to exercise its preemptive jurisdiction in this proceeding with respect to rail highway crossing matters. NS has already filed a crossing application with the PaPUC and submitted itself to the jurisdiction of that agency. The PaPUC has already commenced a proceeding to address the appropriate level of crossing protection at Bell Road and other crossings on this proposed line. Accordingly, the crossing mitigation measures

recommended by SEA are unnecessary because the PaPUC will address those crossing issues in a state administrative proceeding. In this proceeding, NS has made no demonstration that Pennsylvania's crossing regulations are preempted by ICC Termination Act of 1995. C.f. American Trucking Assn v. ICC, 242 F.Supp. 597 (D.C. Dist 1965) aff'd 382 U.S. 372 (1966).

Accordingly, Conemaugh Township moves to strike Paragraph 1 - 6 and particularly Paragraphs 3 and 4 of the proposed mitigation measures set forth under the heading Transportation and Safety as contained on pages ES 10 and ES 11 and 5-3 and 5-4 of the preliminary Environmental Assessment Report, service date November 20, 2002.

Respectfully submitted,

RICHARD R. WILSON, P.C.

by: 

Richard R. Wilson
Attorney for Conemaugh Township

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments and Motion to Strike by Conemaugh Township has been served upon the following persons by U.S. First Class mail, postage prepaid, on this ~~20~~th day of December, 2002, as follows:

Horst E. Kunig, President
Kunig Inc.
P.O. Box 192
Saltsburg, PA 15681-0192

The Honorable John P. Murtha
U.S. House of Representatives
Washington, DC 20510

The Honorable Mark Schweiker
Governor of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Pennsylvania Attorney General Mike Fisher
16th Floor, Strawberry Square
Harrisburg, PA 17120

The Honorable Samuel H. Smith
House box 202020
Harrisburg, PA 17120-2020

The Honorable Jeff Coleman
House Box 202020
Harrisburg, PA 17120-2020

The Honorable Richard A. Geist
House Box 202020
Harrisburg, PA 17120-2020

The Honorable Donald C. White
618 Philadelphia Street
Indiana, PA 15701

Supervisor Thomas Kier
Conemaugh Township Supervisor's Office
RD 1, Box 206
Saltsburg, PA 15681

Supervisor James Pierce
Conemaugh Township Supervisor's Office
RD 1 Box 206
Saltsburg, PA 15681

Supervisor John Weimer
Conemaugh Township Supervisor's Office
RD 1 Box 206
Saltsburg, PA 15681

Robin Cribbs, Secretary
Conemaugh Township Supervisor's Office
RD 1 Box 206
Saltsburg, PA 15681

The Honorable Bradley L. Mallory
Secretary, Department of Transportation
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The Honorable Glen R. Thomas
Chairman, Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Francis L. Olliver
95 Rose Road
Saltsburg, PA 15681

Constance A. Sadler, Esq.
Sidley, Austin, Brown & Wood
1501 K Street, N.W.
Washington, DC 20005

Joseph C. Dimino
John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191



Richard R. Wilson, Esq.
Attorney for Conemaugh Township

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

127 Lexington Avenue, Suite 100

Altoona, PA 16601

(814) 944-5302

888-454-3817 (Toll Free)

(814) 944-6978 FAX

rrwilson@chartcrpa.com

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building

Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

December 20, 2002

Corrected Copy

Vernon A. Williams, Secretary

Surface Transportation Board

1925 K Street

Washington, DC 20423-0001

Re: STB Finance Docket No: 33928 (Environmental Assessment) Norfolk
Southern Corporation and Norfolk Southern Railway Company - Construction
and Operation - In Indiana County, Pennsylvania

Dear Secretary Nober:

Enclosed for filing please find the original and ten copies of the Comments and Motion to Strike by Conemaugh Township with respect to the Environmental Assessment in connection with the above captioned matter.

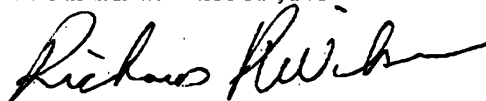
Conemaugh Township respectfully requests permission to late file this pleading by one day in that no prejudice would result to any party with respect to the matters addressed therein inasmuch as the Pennsylvania Public Utility Commission will be addressing all rail crossing safety matters with respect to the Norfolk Southern Line Construction Application.

Copies have been served on all parties of record. Please date stamp and return to the undersigned the additional copy of this transmittal letter in the self addressed, stamped envelope provided for that purpose.

Thank you for your attention to this matter.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson

ENTERED
Office of Proceedings

DEC 26 2002

Part of
Public Record

RRW/klh

Enclosures

xc: Conemaugh Township
All Parties of Record