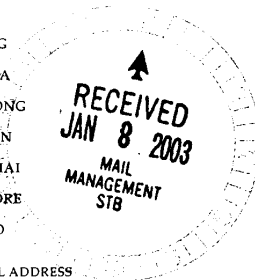


SIDLEY AUSTIN BROWN & WOOD LLP

207017
CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
GENEVA
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO



WRITER'S DIRECT LINE
(202) 736-8071

January 8, 2003

WRITER'S E-MAIL ADDRESS
csadler@sidley.com

By Hand Delivery – Original and 10 Copies

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 700
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

JAN 08 2003

Part of
Public Record

Re: STB Finance Docket No. 33928: **Norfolk Southern Corporation
and Norfolk Southern Railway Company – Construction and
Operation - In Indiana County, PA**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are the original and 10 copies of the "Norfolk Southern Corporation and Norfolk Southern Railway Company's Opposition to the Comments and Motion to Strike by Conemaugh Township." Also enclosed is a computer diskette containing the text of the filing in WordPerfect 6.0 format.

Please contact me should you have any questions on this matter.

Respectfully submitted,

Constance A. Sadler

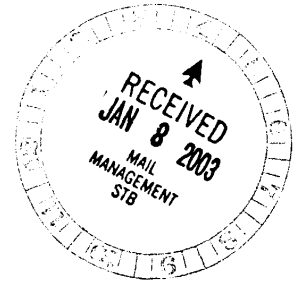
Enclosure

cc: Joseph Detmar
Victoria J. Rutson, Chief, SEA
Phillis Johnson-Ball, SEA

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33928

**NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONSTRUCTION AND OPERATION --
IN INDIANA COUNTY, PA**



**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY'S OPPOSITION TO THE COMMENTS
AND MOTION TO STRIKE BY CONEMAUGH TOWNSHIP**

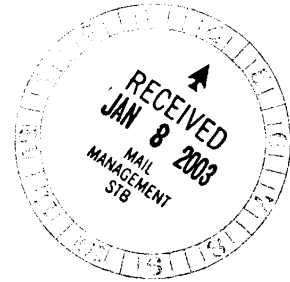
**James A. Squires
John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838
(757) 533-4872 (fax)**

**Constance A. Sadler
Sidley Austin Brown & Wood, LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8071
(202) 736-8711 (fax)**

***Attorneys for Norfolk Southern Corporation and
Norfolk Southern Railway Company***

January 8, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Finance Docket No. 33928

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY'S OPPOSITION TO THE COMMENTS
AND MOTION TO STRIKE BY CONEMAUGH TOWNSHIP**

INTRODUCTION

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") hereby oppose the motion to strike by Conemaugh Township dated December 20, 2002 and filed with the Surface Transportation Board ("Board" or "STB") on December 23, 2002 ("Comments and Motion to Strike"). Good cause does not exist to grant the motion to strike.

ARGUMENT

On December 27, 2001, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") filed an application in the above-captioned proceeding seeking the approval of the Surface Transportation Board ("STB" or "Board") to construct and operate in Indiana County, Pennsylvania a new 5.26-mile rail line to be known as the Saltsburg Connection. On November 20, 2002, the Section of Environmental Analysis ("SEA"), pursuant to the specific delegation of the Board's authority contained in Section 1105.2 of title 49 of the Code of Federal Regulations, published for public comment an environmental assessment ("EA") in the above-captioned proceeding. That EA explored the potential environmental impacts of the proposed

construction and operation of the Saltsburg Connection. SEA proposed in the EA that any approval by the Board of the proposed application be conditioned upon NS compliance with certain specified environmental mitigation measures. SEA's actions are in furtherance of requirements set forth in the Rail Transportation Policy, 49 U.S.C. Section 10101 ("RTP"), the National Environmental Policy Act, 42 U.S.C. 4332 ("NEPA"), as well as other federal law.

In its Comments and Motion to Strike, Conemaugh Township proposes to strike Paragraphs 1 through 6 (inclusive) of the proposed mitigation measures included by SEA in the EA under the heading "Transportation and Safety" ("proposed transportation and safety mitigation measures")¹, assuredly because those paragraphs encroach on matters Conemaugh Township alleges to be exclusively within the jurisdiction of the Pennsylvania Public Utility Commission ("PennPUC"). Conemaugh Township does not object to the creation of the Saltsburg Connection or the existence of a grade crossing at Bell Road, but it does object, in pending PennPUC proceedings, to the nature of the grade crossing that will be constructed at Bell Road. PennPUC did not file any objection to the proposed mitigation measures.

Of primary concern to Conemaugh Township are Paragraphs 3 and 4 of the proposed transportation and safety mitigation measures, which it claims are "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

¹ Although Conemaugh Township in the transmittal letter accompanying its filing seeks permission to late file after the December 19, 2002 deadline established by SEA for submittal of public comments on the EA, the Township's pleading was directed instead to the Secretary of the Board and includes a motion to strike. For this reason, NS is compelled to file the present responsive pleading with the Secretary.

pursuant to the provisions of 66 Pa. C.S.A. §§2702 and 2704.” The specific mitigation measures in question are as follows:

3. As agreed to by Norfolk Southern, 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 vehicular sight distance, subject to the approval of the Pennsylvania Public Utility Commission.

4. As agreed to by Norfolk Southern, 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 Pennsylvania Department of Transportation and the Pennsylvania Public Utility Commission.

EA at Executive Summary, ES-10 - ES-11 and Chapter 5, 5-3 - 5-4.

Conemaugh Township has read too much into the mitigation measures proposed by the SEA in the EA. Paragraphs 3 and 4 of the proposed transportation and safety mitigation measures would require NS to improve the Bell Road grade crossing and associated facilities in a manner consistent with that determined appropriate by the PennPUC and, in the case of the intersection of Bell and Rose Roads, with the Pennsylvania Department of Transportation (“PennDOT”). In formulating its recommendation in this manner, SEA proposes that the Board condition its approval of a transaction subject to its jurisdiction (i.e., the construction and operation of a new line of railroad which includes a grade crossing at Bell Road) so that the transaction would not be inconsistent with the public convenience and necessity, and in a manner that fulfills the Board’s statutory obligations under the RTP (including number (8) thereof (“to operate transportation facilities and equipment without detriment to the public health and

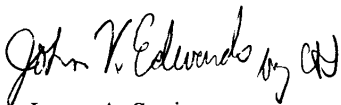
safety’’)), NEPA and other applicable Federal statutes, while recognizing the important role that PennPUC and PennDOT share in that process. The EA makes it clear that there will be a grade crossing at Bell Road, but under the proposed mitigation measures the nature of the grade crossing (at grade or otherwise, the nature of the crossing warning devices and the configuration of the grade crossing) is subject to the approval of the PennPUC. The SEA proposal with regard to Paragraph 3 and Paragraph 4 is entirely consistent with the existing Federal-State regulatory framework.

The same is applicable to the other proposed transportation and safety mitigation measures in the EA that Conemaugh Township moves to strike. Conemaugh Township offers no argument or rationale in support of its motion to strike Paragraphs 1, 2, 5 and 6 of the proposed transportation and safety mitigation measures. Paragraph 1 of the proposed transportation and safety mitigation measures requires NS to coordinate any construction of any at-grade crossings with PennDOT and Indiana County to minimize vehicular traffic delay, and to use appropriate traffic control while performing such construction. Paragraph 2 requires NS to develop an internal emergency response plan for construction and to provide these plans to appropriate state and local agencies. Paragraph 5 requires NS to work with the appropriate public transportation agencies (Federal or State) with regard to any lane restrictions or road closures during construction. Paragraph 6 requires NS to “consider maintenance of emergency response capabilities and school bus schedules in planning and executing the necessary road work.” EA at ES-10 and ES-11. Those provisions are, quite simply, typical transportation and safety measures

included by the STB as conditions to approval of rail construction projects. Each such measure obviously enhances public safety and convenience and cannot reasonably be challenged.

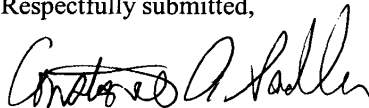
CONCLUSION

For the reasons stated above, Norfolk Southern respectfully submits that the Comments and Motion to Strike by Conemaugh Township be denied by the Board.



James A. Squires
John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838
(757) 533-4872 (fax)

Respectfully submitted,



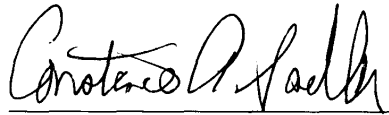
Constance A. Sadler
Sidley Austin Brown & Wood, LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8071
(202) 736-8711 (fax)

Attorneys for Norfolk Southern Corporation and
Norfolk Southern Railway Company

Dated: January 8, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2003, I have caused to be served a true and correct copy of the foregoing "Opposition to the Comments and Motion to Strike by Conemaugh Township", filed by Norfolk Southern Corporation and Norfolk Southern Railway Company in Finance Docket No. 33928, to the persons on the attached list by first-class mail or more expedient service.


Constance A. Sadler

Dated: January 8, 2003

Service and Copy List

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, D.C. 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 Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

Supervisor James Pierce
Conemaugh Township Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

Supervisor John Weimer
Conemaugh Township Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

Robin Cribbs
Secretary
Conemaugh Township Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

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

William and Sandra Becker
25 Bedick Road
Saltsburg, PA 15681

Richard R. Wilson, Esq.
127 Lexington Avenue, Suite 100
Altoona, PA 16601