

Two Liberty Place
50 South 16th Street, Suite 3200
Philadelphia, PA 19102-2555

Joseph P. Sirbak
(215) 665-5307
Joseph.Sirbak@bipc.com

T 215.665.8700
F 215.665.8760
www.bipc.com

February 1, 2011

VIA HAND DELIVERY

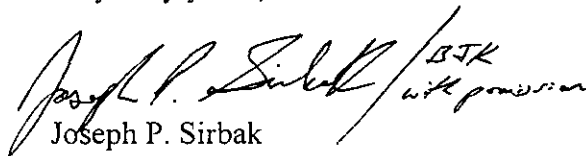
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

Re: *Petition of Norfolk Southern Railway Company for Rescission or Amendment of the Pennsylvania Public Utility Commission's Order Entered on June 12, 1975 Regarding the Prevention of Run Outs in the 400 and 500 Classification Yards of Conway Yard in Beaver County, Pennsylvania, Docket No. C-00019560*

Dear Secretary Chiavetta:

Enclosed for filing are the original and three (3) copies of an *Initial Prehearing Conference Memorandum of Norfolk Southern Railway Company*. Copies of these documents have been served in accordance with the attached Certificate of Service.

Very truly yours,

/BSK
with permission

Joseph P. Sirbak

For BUCHANAN INGERSOLL & ROONEY, P.C.

Enclosures

cc: The Honorable David A. Salapa (via e-mail and hand delivery, w/encls.)
Brian J. Knipe, Esq.
Certificate of Service

RECEIVED
2011 FEB - 1 PM 3: 14
PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED

2011 FEB -1 PM 3:14

Petition of Norfolk Southern Railway :
Company for rescission or amendment :
of the Pennsylvania Public Utility :
Commission's Order entered on :
June 12, 1975 regarding the prevention :
of run outs in the 400 and 500 Classification :
Yards of Conway Yard in Beaver County, :
Pennsylvania :

PA PUC
SECRETARY'S BUREAU

Docket No. C-00019560

**INITIAL PREHEARING CONFERENCE MEMORANDUM OF
NORFOLK SOUTHERN RAILWAY COMPANY**

TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

Norfolk Southern Railway Company (Norfolk Southern) hereby submits this Initial Prehearing Conference Memorandum in compliance with the Prehearing Conference Order issued by Administrative Law Judge David A. Salapa on May 20, 2010, as modified by the Order Continuing Prehearing Conference, issued on December 7, 2010.

I. BACKGROUND

On November 13, 2009, Norfolk Southern filed a Petition for Rescission seeking rescission or amendment of the Commission's Order entered on June 12, 1975 (the "1975 Order"), which requires Norfolk Southern to assign two brakemen or other train service employees to the specific assignment of preventing run-outs in the classification yards of Conway Yard. The Petition was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge David A. Salapa for investigation and hearing. An initial prehearing conference originally was scheduled for June 18, 2010, but following a Motion for Continuance by the Pennsylvania State Legislative Board of the United Transportation Union (the "UTU"), was rescheduled to July 29, 2010.

Based on pertinent ongoing developments at Conway Yard, namely the installation of new “hydraulic skates,” Norfolk Southern filed a Motion for Leave to Amend and Motion for Continuance on July 21, 2010. By Order dated July 22, 2010, Norfolk Southern’s Motions were granted and, on September 1, 2010, Norfolk Southern filed its Amended Petition for Rescission seeking rescission or amendment of the 1975 Order. The July 22, 2010 Order further continued the initial prehearing conference until December 10, 2010. Notice of the Amended Petition was published in the *Pennsylvania Bulletin* on December 18, 2010, scheduling January 7, 2011 as the deadline for comments on the Amended Petition. 40 Pa.B. 7311. By Order dated December 7, 2010, the prehearing conference was continued until February 3, 2011 with Initial Prehearing Conference Memoranda due on or before February 1, 2011. The UTU submitted its comments to Norfolk Southern’s Amended Petition for Rescission on or about January 7, 2011. Norfolk Southern submits this Prehearing Memorandum in anticipation of the scheduled February 3, 2011 conference.

II. COUNSEL

Norfolk Southern requests that for purposes of the service list in this proceeding, communications to Norfolk Southern's attorneys be addressed as follows:

Joseph P. Sirbak, ID No. 94273
Buchanan Ingersoll & Rooney, P.C.
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102
Telephone: (215) 665-8700
Facsimile: (215) 665-8760
joseph.sirbak@bipc.com

Norfolk Southern respectfully requests that all communications to Norfolk Southern concerning this proceeding, including any communications intended for any of the witnesses identified in

Section VI of this Prehearing Conference Memorandum, all of whom are Norfolk Southern employees, be directed to Norfolk Southern's attorneys.

III. POSSIBILITY OF SETTLEMENT

The parties have begun exploring the possibility of settlement, and Norfolk Southern is fully willing to engage in settlement discussions.

IV. PROCEDURAL SCHEDULE AND DISCOVERY

Norfolk Southern proposes no modifications from the Commission's rules regarding discovery. Norfolk Southern and the UTU have conferred and propose the following procedural schedule for Your Honor's consideration:

Norfolk Southern direct written testimony: March 25, 2011

UTU direct written testimony: April 29, 2011

Norfolk Southern rebuttal written testimony: May 27, 2011

UTU rebuttal written testimony: June 24, 2011

Deadline to serve discovery: July 1, 2011

Hearings: August 2, 2011 and August 3, 2011, or at such other time as necessary to

accommodate the Administrative Law Judge's calendar

Petitioner's Initial Brief: September 9, 2011

Respondent's Response Brief: September 23, 2011

Petitioner's Reply Brief: October 7, 2011

V. WITNESSES

At this time, Norfolk Southern expects to present written testimony by the following witnesses in this proceeding:

1. Darnell W. Wood, Sr.: Norfolk Southern Terminal Superintendent, Conway Terminal, Rte. 65, Conway Yard, Conway, Pennsylvania 15027, (412) 893-5166. Mr. Wood will present testimony and documentary evidence concerning the operations at Conway Yard, including how operations have changed since the time of the 1975 Order; the ongoing installation of hydraulic skates at Conway Yard; and the risks of continuing to require “skatemen” under the 1975 Order.
2. James Alexander: Norfolk Southern Chief Engineer, Communications and Signals, Northern Region, 1200 Peachtree Street NE, Mailbox 123, Atlanta, Georgia 30309, (404) 529-1093. Mr. Alexander will present testimony and documentary evidence concerning the design, use and operation of various means of slowing and stopping rail cars (including inert retarders, portable skates, the Hump Process Control system, and hydraulic skates) at rail classification yards (including Conway Yard).
3. James Young: Former Norfolk Southern Assistant Division Superintendent – Pittsburgh Division. Foster Plaza Building 2, 425 Holiday Drive, Pittsburgh, Pennsylvania 15220. (412) 893-7074. Mr. Young will present testimony and documentary evidence concerning operational and safety changes at Conway Yard since the time of the 1975 Order and operations at comparable rail yards.

Norfolk Southern’s witnesses will present testimony in written form and will also attach various exhibits, documents, and explanatory information that will assist in the presentation of Norfolk Southern’s case. Norfolk Southern reserves the right to substitute witnesses and add witnesses, as appropriate, depending upon the issues raised and witnesses presented by other parties to this proceeding. As soon as Norfolk Southern determines whether an additional witness or witnesses will be necessary for any portion of its case, Norfolk Southern will notify Administrative Law Judge Salapa and all parties of record.

VI. ISSUES, SUB-ISSUES, AND ANTICIPATED EVIDENCE

Norfolk Southern has identified the following issues raised by its Petition for Rescission:

- Change in Circumstances since 1975. Numerous engineering, maintenance, and safety changes since 1975, including installation of the Hump Process Control System and hydraulic skates, have significantly reduced the likelihood of run-outs and have rendered portable skates superfluous. The extraordinary measures required by the 1975 Order no longer enhance safety at the classification yard. Evidence that Norfolk Southern currently anticipates introducing relevant to this issue includes testimony and exhibits concerning:

- History of Conway Yard through the present, including conditions at the time of the 1975 Order;
- Current general operations of Conway Yard, including the function of inert retarders and portable skates;
- The design and operation of the Hump Control Process system;
- The design and operation of hydraulic skates used at Conway Yard;
- The methods for slowing and stopping cars, including the use of hydraulic skates, at other classification yards; and
- The incidence of run-outs at Conway Yard.

- Safety Risks of Continuing the Extraordinary Measures Required by the 1975 Order. As the ongoing installation of hydraulic skates is completed, crossing the tracks of the classification yard to place and remove portable skates will be unnecessary and in fact present a safety hazard. Portable skates will no longer be used at Conway Yard. The “skatemen,” who already perform very little of the actual skate placement and removal, will be left with no runout-prevention-related work to perform and safety will be enhanced if the employees currently performing “skatemen” duties are transferred to productive assignments. Evidence that Norfolk

Southern currently anticipates introducing relevant to this issue includes testimony and exhibits concerning:

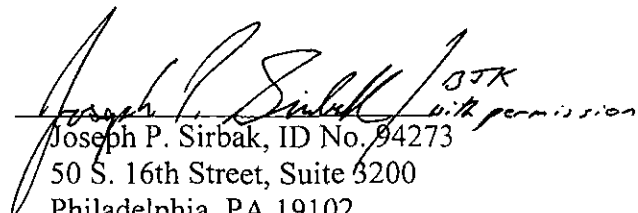
- The activities currently performed by “skatemen;”
- The risk of injury to “skatemen” if the 1975 Order is not rescinded or amended;
- Ability of “skatemen” to prevent run-outs; and
- Safety practices that mitigate the risk of run-outs.

It is possible that other issues and sub-issues, and the need for additional evidence, may arise as discovery is pursued and the parties’ commence the submission of written testimony.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, P.C.

By:

 *with permission*
Joseph P. Sirbak, ID No. 94273

50 S. 16th Street, Suite 3200
Philadelphia, PA 19102
Telephone: (215) 665-8700
Facsimile: (215) 665-8760
joseph.sirbak@bipc.com

Brian J. Knipe, ID No. 82854
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503
Telephone: (717) 237-4800
Facsimile: (717) 233-0852
brian.knipe@bipc.com

RECEIVED
2011 FEB -1 PM 3:14
PA PUC
SECRETARY'S BUREAU

Dated: February 1, 2011

Attorneys for
Norfolk Southern Railway Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Norfolk Southern Railway Company :
for rescission or amendment of the Pennsylvania :
Public Utility Commission's Order entered on June :
12, 1975 regarding the prevention of run outs in : Docket No. C-00019560
the 400 and 500 Classification Yards of Conway :
Yard in Beaver County, Pennsylvania :
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST-CLASS U.S. MAIL

Irwin Popowsky, Esquire
Office of Consumer Advocate
5th Floor - Forum Place
555 Walnut Street
Harrisburg PA 17101-1923

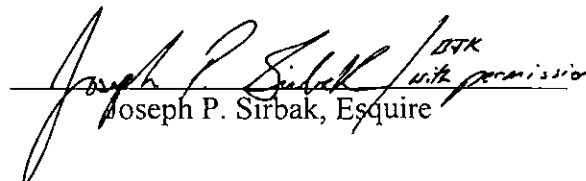
William R. Lloyd, Jr., Esquire
Office of Small Business Advocate
1102 Commerce Building
300 North 2nd Street
Harrisburg PA 17101

Johnnie E. Simms, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg PA 17105-3265

Irwin W. Aronson, Esquire
Willig Williams & Davidson
Suite 504
212 South Locust Street
Harrisburg PA 17101

RECEIVED
2011 FEB - 1 PM 3:14
PA PUC
SECRETARY'S BUREAU

Date: February 1, 2011


Joseph P. Sirbak, Esquire *with permission*