

EASTMAN & SMITH LTD.

ATTORNEYS AT LAW

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FILE

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RECEIVED-DOCKETING DIV
2011 OCT -7 PM 3:07
PUCO
One SeaGate, 24th Floor
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Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Facsimile: 419-247-1777

October 6, 2011

Via Overnight Mail

Docketing Clerk
c/o Public Utilities Commission of Ohio
Attention: Docketing Division, 13th Floor
180 East Broad Street
Columbus, OH 43215-3793

**Re: In the Matter of the Complaint of Ohio State Legislative Board and United Transportation Union vs. Norfolk Southern Railway Co. and CSX Transportation for the Alleged Excessive Growth of Weeds and Vegetation at Mansfield Rd. MP Q1 122.55 at the Location of 1221 Westward Facing Signal in the Vicinity of Mt. Victory – Hardin County.
PUCO Case No. 11-5238-RR-CSS
Our File No. N1432/176349**

Dear Docketing Clerk:

Enclosed for filing are an original and seven (7) copies of Respondent Norfolk Southern Railway Company's:

1. Motion to Dismiss; and
2. Answer

Pursuant to Rule 4901-5-05(B)(3) of the Ohio Administrative Code, please file the Motion to Dismiss first, and then the Answer; also, please return a file-stamped copy of each pleading to me via the enclosed, stamped envelope.

Please call me – at 419-241-6000 – if you have any questions or concerns.

Thank you.

Very truly yours,

EASTMAN & SMITH LTD.

D. Casey Talbott

DCT/kml

Enclosures

cc: Leah Thomas-Dalton (w/enc.)
Luther G. Newsom (w/enc.)
Rusty Orben (w/enc.)
Thomas C. Wood (w/enc.)

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician TD Date Processed 10-07-11

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PUCO

2. Any further allegations are denied for want of knowledge and information or otherwise.

FIRST AFFIRMATIVE DEFENSE

3. The UTU's Complaint fails in whole or in part to state a claim against Norfolk Southern upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

4. The UTU's Complaint is deficient on its face, both procedurally and substantively, and should be dismissed.

THIRD AFFIRMATIVE DEFENSE

5. The Commission lacks subject matter jurisdiction over the allegations contained in the UTU's Complaint.

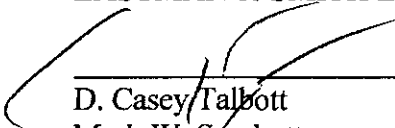
FOURTH AFFIRMATIVE DEFENSE

6. The allegations in the UTU's Complaint are preempted, in whole or in part, by federal law.

WHEREFORE, Norfolk Southern respectfully requests that the Commission dismiss the UTU's Complaint at least as against Norfolk Southern.

Respectfully submitted,

EASTMAN & SMITH LTD.

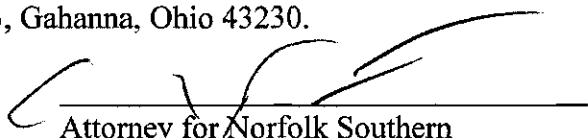


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Attorneys for Norfolk Southern
Railway Company

PROOF OF SERVICE

A copy of the foregoing *Respondent Norfolk Southern Railway Company's Answer* was mailed this 6th day of October, 2011, to: **Leah Thomas-Dalton**, Chief, PUCO Rail Division, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215; **Luther G. Newsom**, Chairman & State Legislation Director, Ohio State Legislative Board, 2021 East Dublin-Granville Road, Suite 245, Columbus, Ohio 43229-3522; **Rusty Orben**, Designated Agent, CSX Transportation, 137 E. State Street, Columbus, Ohio 43215; and **Thomas C. Wood**, UTU Legal Counsel, 501 Morrison Road, Suite 203, Gahanna, Ohio 43230.



Attorney for Norfolk Southern
Railway Company