

SIDNEY STRICKLAND AND ASSOCIATES, PLLC

3050 K ST. N.W., SUITE 101
WASHINGTON, DC 20007-5108
TELEPHONE: 202-338-1325
FAX: 202-672-5399

SIDNEY L. STRICKLAND, JR.
SIDNEY.STRICKLAND@STRICKLANDPLLC.COM

June 29, 2006

Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

**Re: Surface Transportation Board Finance Docket No. 34882, Longview
Switching Company—Trackage Rights Exemption—BNSF Railway
Company**

Dear Secretary Williams,

Enclosed for electronic filing in the above referenced docket is a copy of a Reply to
Petition for Stay.

Sincerely,

A handwritten signature in black ink, reading "Sidney L. Strickland, Jr." with a stylized flourish at the end.

Sidney L. Strickland, Jr.

SLS/eww
Encs.

cc: Mr. John Sims
Mr. Robert T. Opal
Mr. Karl Morell

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34882

LONGVIEW SWITCHING COMPANY—TRACKAGE RIGHTS EXEMPTION—
BNSF RAILWAY COMPANY

REPLY TO PETITION FOR STAY

Karl Morell
Of Counsel
Ball Janik, LLP
1455 F Street, N.W.
Suite 225
Washington DC 20005
(202) 638-3307
(202) 783-6947 FAX

Sidney L. Strickland, Jr.
Elizabeth E. Waite
Sidney Strickland and Associates, PLLC
3050 K Street N.W.
Suite 101
Washington DC 20007
(202) 338-1325
(202) 672-5399 FAX

ATTORNEYS FOR LONGVIEW
SWITCHING COMPANY

Dated: June 29, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34882

LONGVIEW SWITCHING COMPANY—TRACKAGE RIGHTS EXEMPTION—
BNSF RAILWAY COMPANY

REPLY TO PETITION FOR STAY

Longview Switching Company ("LSC") hereby replies in opposition to the Petition For Stay ("Petition") filed by John D. Fitzgerald, for and on behalf of United Transportation Union-General Committee of Adjustment ("UTU/GO-386") on June 29, 2006.

BACKGROUND

On June 6, 2006, LSC filed its Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), to permit LSC to acquire overhead trackage rights over an 8-mile rail line owned by BNSF Railway Company ("BNSF") between south of Longview Junction at milepost 104.0, and north of Kelso at milepost 96.0 on BNSF's Seattle Subdivision ("Joint Track"). The exemption became effective on June 13, 2006. In the Notice of Exemption, LSC explained that it will be utilizing the joint track for overhead movements of cars of BNSF and Union Pacific Railroad Company ("UP") in conjunction with its existing switching operations at Longview Junction.

REPLY

Irrespective of the criteria for granting a stay, the Petition here should be rejected because it is untimely. Petition is untimely because the Notice of Exemption became effective on June 13, 2006, and should, therefore, be rejected. Moreover, the 20-day Norfolk & Western condition has also expired in as much as the Norfolk & Western notice was given on May 31, 2006, and, thus, became effective on June 20, 2006.

The standards governing disposition of a petition for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“*Petroleum Jobbers*”). It is the movant’s obligation to justify the exercise of such an extraordinary remedy, *Cuomo v. United States Nuclear Regulatory Comm.*, 772 F.2d 972, 978 (D.C. Cir. 1985), and the movant carries the burden of persuasion on each of the four elements required for the extraordinary relief. *Canal Authority of Fla. V. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). As is demonstrated below, UTU/GO-386 has failed to meet its burden under each of the four criteria.

UTU/GO-386 Is Not Likely To Prevail On The Merits

UTU/GO-386 argues that the STB does not have jurisdiction over the joint ownership or joint use of switching tracks pursuant to 49 U.S.C. § 10906. The Joint

Track, however, is not switching track for either BNSF or LSC. For BNSF it is main line track.

Denial Of The Stay Will Not Cause UTU/GO-386 Irreparable Harm

An administrative decision is not ordinarily stayed without an appropriate showing of irreparable harm. *Permian Basin Area Rate Case*, 390 U.S. 747, 777 (1968). UTU/GO-386 has failed to demonstrate that any employee of BNSF will suffer irreparable harm in the absence of a stay.

UTU/GO-386 alleges that BNSF employees will lose their jobs as a result of this proposed transaction. UTU/GO-386, however, fails to identify a single individual that will be adversely affected by the transaction. In any event, the allegation, even if accurate, does not rise to the level of sustaining a finding of irreparable harm. The showing of “mere injuries, however substantial, in terms of money...expended in the absence of a stay” do not constitute irreparable injury because adequate compensatory relief can be had at a later date. *Petroleum Jobbers*, at 925. Neither the Board nor the courts have found economic injuries of this nature to be irreparable because they are compensable through reparations. See Finance Docket No. 30965 (Sub-No. 1), *Delaware and Hudson Railway Co. – Lease and Trackage Rights Exemption – Springfield Terminal Railway Company* (not printed), served July 15, 1988. Indeed, the claimed loss of 72 employees was deemed inadequate by the Board to support a showing of irreparable harm. See STB Finance Docket No. 33326, *I&M Rail Link, LLC – Acquisition and Operation Exemption – Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway* (not printed), served April 4, 1997.

A Stay Would Harm Shippers And LSC

LSC, as a small railroad operator, intends to improve operations in the area of the Joint Track. The improved operations will ultimately redound to the benefit of the shipping public. Thus, delaying the implementation of the involved transaction will have a material, adverse effect on the shipping public by delaying the benefits they will realize once LSC commences operations on the Joint Track.

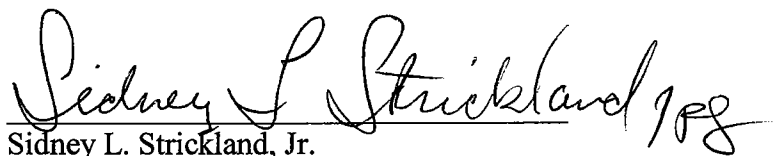
A Stay Is Not In The Public Interest

UTU/GO-386 has failed to demonstrate how issuance of a stay would further the public interest. On the other hand, the proposed change in operations is intended to increase the efficiency of rail operations in the area and improve service to the shipping public. Consequently, granting the stay is contrary to the public interest.

CONCLUSION

LSC respectfully urges the Board to reject or deny UTU/GO-386's Petition. The Petition is untimely and should be rejected. Alternatively, the Petition falls woefully short of meeting the criteria for a stay.

Respectfully submitted,



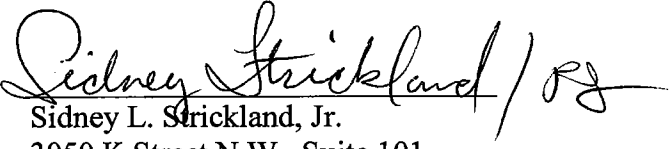
Sidney L. Strickland, Jr.
Elizabeth E. Waite
Sidney Strickland and Associates, PLLC
3050 K Street N.W.
Suite 101
Washington DC 20007
(202) 338-1325
(202) 672-5399 FAX

Karl Morell
Of Counsel
Ball Janik, LLP
1455 F Street, N.W.
Suite 225
Washington DC 20005
(202) 638-3307
(202) 783-6947 FAX

ATTORNEYS FOR LONGVIEW
SWITCHING COMPANY

CERTIFICATE OF SERVICE

Longview Switching Company ("LSC") by and through its authorized representative, certifies that on June 29, 2006, LSC sent copies of the foregoing Reply to Petition for Stay, by facsimile transmission and by mailing copies thereof by first-class-mail to: Gordon P. MacDougall, 1025 Connecticut Ave., N.W., Washington, D.C. 20036.


Sidney L. Strickland, Jr.
3050 K Street N.W., Suite 101
Washington, D.C. 20007
(202) 338-1325

Attorney for Longview Switching Company