

**SURFACE TRANSPORTATION BOARD**

239321

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**FINANCE DOCKET NO. 35950**

**ENTERED**  
Office of Proceedings  
October 6, 2015  
Part of  
Public Record

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**SUPPLEMENT TO  
PETITION OF NORFOLK SOUTHERN RAILWAY COMPANY  
FOR DECLARATORY ORDER**

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The Petition filed by Norfolk Southern Railway Company (“NSR”) requests that the Surface Transportation Board (“Board”) issue a declaratory order that the action initiated in the Circuit Court for the Tenth Judicial District of Tennessee at McMinn County, Tennessee (“Court”) by James LaMar Dugan, Dugan Professional Building and Rental, LLC, Doctors Dugan and Dugan, LLC, and James L. Dugan, II (collectively, “Plaintiffs”) to recover from NSR damages allegedly stemming from NSR’s vegetation control along and NSR’s drainage culvert embedded directly beneath NSR’s active mainline track in Athens, Tennessee is preempted by the Interstate Commerce Commission Termination Act of 1995, 49 U.S.C. § 10501(b).

As of the date of this filing, the Court has not assumed consideration of Plaintiffs’ claims against NSR.

NSR files this Supplement to notify the Board that on October 2, 2015, NSR filed a Motion to Stay (“Motion”) with the Court. The Motion informs the Court that NSR is seeking a declaratory order from the Board on this preemption issue and requests that the Court stay Plaintiffs’ prosecution of their claims against NSR pending a decision from the Board.

The Court has not yet ruled on the Motion. As of the date of this filing, a Court hearing on the Motion is scheduled to take place on October 29, 2015. NSR will notify the Board immediately of the Court's decision on the Motion.

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Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of this Supplement in STB Finance Docket No. 35950 by first class mail, properly addressed with postage prepaid, or via more expeditious means of delivery upon all known parties of record.



Aarthy S. Thamodaran  
Counsel for Norfolk Southern Railway Co.

October 6, 2015