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October 3, 2002

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

OCT 3 2002

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 Motion to Strike Petition by Sandra M. Becker, William R. Becker and Horst E. Kunig to Summarily Dismiss Norfolk Southern Corporation's Application for Construction Permit or, in the Alternative to Reopen the Public Comment Period". 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

206319

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33928

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



**ENTERED
Office of Proceedings**

OCT 3 2002

**Part of
Public Record**

**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY MOTION TO STRIKE PETITION BY SANDRA M. BECKER, WILLIAM
R. BECKER AND HORST E. KUNIG TO SUMMARILY DISMISS NORFOLK
SOUTHERN CORPORATION'S APPLICATION FOR CONSTRUCTION PERMIT OR,
IN THE ALTERNATIVE TO REOPEN THE PUBLIC COMMENT PERIOD**

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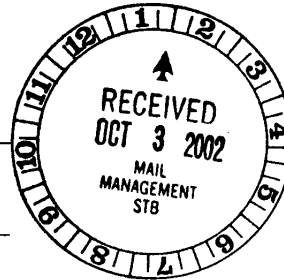
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***Attorneys for Norfolk Southern Corporation and
Norfolk Southern Railway Company***

October 3, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33928



**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY
COMPANY MOTION TO STRIKE PETITION BY SANDRA M. BECKER, WILLIAM
R. BECKER AND HORST E. KUNIG TO SUMMARILY DISMISS NORFOLK
SOUTHERN CORPORATION'S APPLICATION FOR CONSTRUCTION PERMIT OR,
IN THE ALTERNATIVE TO REOPEN THE PUBLIC COMMENT PERIOD**

INTRODUCTION

Norfolk Southern hereby moves the Surface Transportation Board ("Board") to strike, pursuant to 49 C.F.R. § 1104.8, the "Petition to Summarily Dismiss Norfolk Southern Corporation's Application for Construction Permit or, in the Alternative to Reopen the Comment Period" ("Third Petition to Dismiss"), dated September 5, 2002,¹ and submitted by Horst Kunig and Mr. and Mrs. Becker. The Third Petition to Dismiss is devoid of legal and factual merit or support. Further, the document has several troubling elements that raise questions about its validity. The Board should act expeditiously in striking the Third Petition to Dismiss.

¹ The Third Petition to Dismiss bears the date of September 5, 2002, but was apparently not filed until a week or more thereafter. The Board's date stamp shows that the Petition was not received until September 17, 2002. The service copy provided to counsel for Norfolk Southern was postmarked September 14, 2002 and received on September 19, 2002.

ARGUMENT

The Third Petition to Dismiss boldly claims that it “describes in detail the public outcry against what is believed to be deprivation and misrepresentation of information, manipulation by abuse of protective order, granted by the Surface Transportation Board, deceit, and possible unauthorized condemnation of private property under eminent domain.” It does not. It contains no facts whatsoever. Indeed, the Third Petition to Dismiss contains not a single example of such alleged wrong-doing.

The document alludes to “[s]ignificant information ... developed by the public after NS’s released confidential information and only after closure of the public comment period [that], not being disclosed to the Surface Transportation Board, may alter the outcome of the approval process” as the basis for reopening the public comment period on the Application. Again, it contains no such “significant information.” It contains only a bundle of signature pages.

The fact that the Third Petition makes several allegations of wrong-doing without a shred of evidence or substance to support those allegations is reason enough to deny the petition to “summarily dismiss” the application or to “reopen the public comment period.” Norfolk Southern acknowledges the Board’s general practice, however, to admit to the record pleadings that otherwise would not be due to a procedural flaw, and to consider, grant or deny relief as appropriate upon giving interested parties an opportunity to respond. We submit, however, that the Board should not accord the Third Petition to Dismiss even that level of deferential treatment.

As is evident from a review of the record in this proceeding,² this Third Petition to Dismiss is another in a series of filings setting forth baseless arguments and almost without exception submitted in blatant disregard for the Board's established procedures. Unlike the previous submissions, however, in this case, there is literally nothing for Norfolk Southern even to rebut. But that is not all. In looking at the signature pages submitted with the Third Petition to Dismiss, it is readily apparent that many of the signatures are duplicated (see, for example, the duplication of the signatures of Nick David, Nicole Sisco, Joe Franklin and others appearing first on the bottom half of the third page of signatures and again the same signatures copied on the top of the tenth signature page). Further, the signatures of several persons appear twice (see, for example, the signatures of James Aiken, Kathryn Aiken, Rosemary Vogel and Laura Churchill which appear first on page 14, which names appear again on page 15).

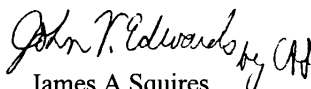
Quite simply, the Third Petition to Dismiss consists of extreme allegations presented without providing any factual basis that would permit a rebuttal. Further, it argues for a reopening of a comment period closed for months, not only for no cognizable basis, but for no

² This is the third petition filed by Horst Kunig, this time joined by Mr. and Mrs. Becker, seeking dismissal of the NS Application. Each such petition (the first dated February 12, 2002 but received by the Board on March 4, 2002, and the second dated March 23, 2002) has been without merit and filed well out of time. Further, Mr. Kunig has filed several other documents in this proceeding, including two motions to rescind the protective order that governs this proceeding. Responding to the various filings by Mr. Kunig has placed a substantial burden on Norfolk Southern, generally without purpose. See, Norfolk Southern letter to the Honorable Vernon A. Williams, dated March 15, 2001; Norfolk Southern Response to Kunig, Inc.'s Motion to Rescind, dated May 22, 2001; Norfolk Southern Opposition to Motion of Horst E. Kunig for an Extension of Time, Motion to Strike, or, in the Alternative, Petition to Reply and Norfolk Southern Corporation and Norfolk Southern Railway Company Reply to the Comments of Horst E. Kunig, dated February 25, 2002; and Norfolk Southern Corporation and Norfolk Southern Railway Company Motion to Strike Amended Petition by Horst E. Kunig to Summarily Dismiss Norfolk Southern Corporation's Application for Construction Permit, dated April 4, 2002.

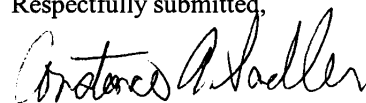
basis whatsoever that would permit a rebuttal. Finally, the legitimacy of the petition itself is belied by the duplicated and duplicate signatures that it contains.

CONCLUSION

Norfolk Southern submits that the Third Petition constitutes a clear abuse of the Board's regulatory process and does not deserve any deference or leniency by the Board. Fairness and efficiency require that the Board issue an order striking the Third Petition to Dismiss and putting all interested parties on notice that the Board will not countenance the submission of documents evidencing such a total disregard for the Board's procedures and the regulatory process. The Board should not allow the record in this docket to be further muddled through the continuing efforts by these petitioners.


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Respectfully submitted,


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Dated: October 3, 2002

Service and Copy List

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2002, I have caused to be served a true and correct copy of the foregoing "Motion to Strike Petition by Sandra M. Becker, William R. Becker and Horst E. Kunig to Summarily Dismiss Norfolk Southern Corporations's Application for Construction Permit or, in the Alternative to Reopen the Public Comment Period", 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.

A handwritten signature in black ink, appearing to read "Constance A. Sadler", written over a horizontal line.

Constance A. Sadler

Dated: October 3, 2002