

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

206461



Re: STB Finance Document, NO. 33928, Norfolk Southern Corporation, Application for Construction and Operation of new Rail Line in Indiana County, Pennsylvania

Dear Secretary Williams:

Enclosed is a true and correct copy of a Petition to dismiss Norfolk Southern Railroad Corporation's application of a construction permit or at least reopen the public comment period. The signatures of 179 persons to this Petition were previously submitted to the Surface Transportation Board on September 5, 2002.

One original and ten copies of the Petition are enclosed.

Please contact us if you have further questions.

Sincerely,

Sandra M. Becker

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enclosures

dated: October 12, 2002

Cc Constance A. Sadler
Counsel for Norfolk Southern Corporation
And Norfolk Southern Railway Company
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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

Finance Docket No 33928

Norfolk Southern Corporation and
Norfolk Southern Railway Company



PUBLIC'S PETITION TO SUMMARILY DISMISS NORFOLK SOUTHERN CORPORATION'S
APPLICATION FOR CONSTRUCTION PERMIT OR, IN THE ALTERNATIVE TO REOPEN THE
PUBLIC COMMENT PERIOD

Attached is a true and correct copy of a Petition in opposition to the construction of a new rail line in Indiana County, Pennsylvania. This Petition was signed by 179 persons. Their signatures were previously submitted to the Surface Transportation Board on September 5, 2002. The Petition sets forth in detail the basis for the requested action.

WHEREFORE, the Petitioners petition the Surface Transportation Board to dismiss Norfolk Southern Railroad Corporation's application for a construction permit or, in the alternative, to reopen the public comment period.

Dated: October 12, 2002

Respectfully submitted,

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FILED
OCT 21 2002
STB

PETITION IN OPPOSITION TO RAILROAD CONSTRUCTION

Summary of Requested Actions:

Norfolk Southern Railway Company (NS) intends to construct a new rail line in Indiana County, Pennsylvania. This construction is opposed for it is possibly based upon violation of law. As a consequence, the undersigned petition the Surface Transportation Board (STB) to dismiss NS's application for a construction permit or, alternatively, reopen the public comment period.

Presently pending before the Southwestern Pennsylvania Commission (SPC) is an application by NS for a grant of \$ 10 Million of taxpayers' money to finance the construction of the new rail line. Public funds cannot and should not be granted until all legal requirements are resolved.

Further, the undersigned respectfully request all authorities involved in this project, such as Pennsylvania Department of Transportation, the Pennsylvania Public Utility Commission, Conemaugh Township Supervisors, environmental agencies, etc. to terminate all services effectively immediately, cease expenditure of public funds, tally the expenses incurred so far and request reimbursement from NS, pending satisfactory demonstration of all legal issues by NS and presentation of a construction permit. If the construction permit is denied, then all expenses incurred by the authorities would be for unproductive labor.

It should be in NS's best interest to address these issues to assure expedited approval or denial of this project to further conserve its own funds, as well as public funds. In general, no permits can be and should be granted as long as there is a shadow of impropriety. The arguments provided below may also be viewed as sufficient grounds for legal appeals.

Background:

In the pursuit of its objectives, NS has engaged in the following activities listed in chronological order:

1. obtained a protective order from the Surface Transportation Board (STB), allowing NS to shield from the public proprietary information, said proprietary information exclusively determined by NS and not subject to public scrutiny,
2. exercised the power of eminent domain and condemned private land for the construction of the new rail line,
3. filed two versions of an application for a construction permit with STB on December 27, 2001; a confidential version with proprietary information, and a public version without proprietary information
4. proposed a public comment period to this project not to exceed one month,
5. informed the public of its December 27, 2001 application to STB by advertisement in the Indiana Evening Gazette on January 10, 2002, thus limiting the public to comment to a period of only 2.5 weeks in contravention to STB's order and NS's own proposal of one month,
6. released some of the proprietary information to the public in a handout to the Conemaugh Township Supervisors in March 2002 after the public comment period was closed.
7. Has applied for public funding to the Southwestern Pennsylvania Commission (SPC)

These actions raise serious legal questions as described in the following:

Legal Issues:

1. condemnation of private property by eminent domain

Under Pennsylvania law (exhibit 1) application to and approval by the Pennsylvania Public Utility Commission (PUC) is a prerequisite to the condemnation of private property. As of to date NS has not even made an application to PUC, let alone obtained approval. The condemnation of private property, thus, appears to be illegal. Civility would dictate not to confiscate other people's property without permit, for such taking would constitute lawlessness and result in anarchy.

2. failure to satisfy Federal Law

Under Federal Law NS must demonstrate public convenience and necessity to obtain a construction permit. In the public version of its application for a construction permit on page 11 NS blanked out information as to the total additional coal to be shipped via the new rail line. Yet in a handout to the Conemaugh Township Supervisor in March 2002 NS revealed that it intends to ship 3.3 Million tons of coal per year over the new line versus 2.3 Millions tons presently shipped over the existing line. Thus, NS violated its self-imposed confidentiality.

Present shipment of coal is accomplished by running one train consecutively on 97 days of the year and one train every other day for the remainder of the year. The proposed new shipment of 3.3 Million tons per year could therefore be accomplished by running one train consecutively on 231 days of the year and one train every other day for the remainder of the year. NS must show concrete, measurable evidence, that one train a day shipment or even two trains per day and year-long is not feasible. Merely alleging it is insufficient.

By the handout to the Conemaugh Township Supervisors NS appears to have proven, albeit unintentionally, that necessity for construction of a new line does not exist. More efficient use of existing capital equipment (trains) would satisfy the power plant's coal requirement and, therefore, benefit public convenience. NS's allegation, that the new line is needed to provide more efficient service, therefore, appears to be false.

3. possible deceit of public

On December 27, 2001, the day of NS's application to STB, NS considered the amount of coal to be shipped over the new line confidential. Yet in March 2002 NS released this information to the public in a handout to the Conemaugh Township Supervisors. Said information now enables the public to determine, that NS's claim of necessity to construct a new line appears to be non-existent, all based on NS's own, new disclosures. However, the public is now deprived to challenge NS's claim of necessity, as the public comment period has already expired on January 27, 2002. This deprivation permits the conclusion, that NS abused STB's protective order to keep certain information confidential. NS's actions seem to satisfy Webster's (Ninth Collegiate Dictionary) definition of deceit, that is "to cause or accept as true or valid what is false or invalid" or "implying imposition of a false idea or belief that causes ignorance, bewilderment, or helplessness".

August 14, 2002

Exhibit 1:

15 Pa. C.S.A. § 1511 (a), entitled Additional powers of certain public utility corporation - General rule states:

"A public utility corporation shall, in addition to any other power of eminent domain conferred by any other statute have the right to take, occupy and condemn property for one or more of the following principle purposes or ancillary purposes reasonable necessary or appropriate for the accomplishment of the principal purpose;

- (1) the transportation of passengers or property or both as common carrier by means of elevated street way, ferry, inclined plane railway, railroad, street railway, or underground street railway, track-less trolley omnibus or by any combination of such means". (emphasis added).

15 Pa. C.S.A. § 1511 (c), entitled Additional powers of certain public utility corporation - Public Utility Commission approval states:

"The powers conferred under subsection (a) may be exercised to condemn property outside the limits of any street, highway, water or other public way or place for the purpose of erecting poles or running wires or other aerial electric, intrastate aerial telephone or aerial telegraph facilities only after the Pennsylvania Public Utility Commission, upon application of the public utility corporation, has found and determined, after notice and opportunity of hearing, that the service to be furnished by the corporation through the exercise of those powers is necessary or proper for the service, accommodation, convenience or safety of the public" (emphasis added).

Subjection (a) grants NS the right of condemnation of property by eminent domain proceedings. However, subsection (c) does not permit the exercise of the power of eminent domain until the Public Utility Commission has determined that the service is necessary. In practice, the Pennsylvania Public Utility Commission defers this decision to STB and concurs with STB's findings.

List of Distribution

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