

SIDLEY AUSTIN BROWN & WOOD LLP

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO
SEATTLE

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

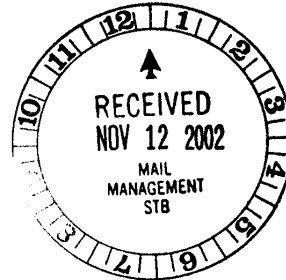
WRITER'S DIRECT NUMBER
(202) 736-8071

WRITER'S E-MAIL ADDRESS
csadler@sidley.com

November 12, 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



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's Response to the Supplemental 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 disk containing the text of the filings in WordPerfect 8.0 format.

Please contact me should you have any questions on this matter.

ENTERED
Office of Proceedings

NOV 12 2002

Part of
Public Record

Respectfully submitted,

Handwritten signature of Constance A. Sadler.

Constance A. Sadler

Enclosure

cc: Joseph Dettmar, Office of Proceedings
Victoria Rutson, Chief, SEA
Phillis Johnson-Ball, SEA

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33928

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



**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY'S RESPONSE TO THE SUPPLEMENTAL
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**

**James A. Squires
John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838
(757) 533-4872 (fax)**

**Constance A. Sadler
Sidley Austin Brown & Wood, LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8071
(202) 736-8711 (fax)**

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

November 12, 2002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 33928



**NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY'S RESPONSE TO THE SUPPLEMENTAL
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**

Pending before the Surface Transportation Board ("STB" or "Board") since late December, 2001 is an Application by Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern") for Board approval for Norfolk Southern to construct and operate a rail line in Indiana County, Pennsylvania.

Several times since the comment period closed in late January 2002, Horst Kunig, Sandra Becker and William Becker ("Petitioners"), alone or together, have submitted petitions or documents to the Board and to state and local agencies with jurisdiction over various aspects of the proposed project.¹ Of particular interest now is a petition, dated October 12, 2002, which Petitioners submitted to the Board and which Norfolk Southern now recognizes as one originally submitted to the Southwestern Pennsylvania Commission ("SPC") on August 21, 2002 ("First Kunig/Becker Petition") opposing a Norfolk Southern application for partial public funding of the proposed project under the Congestion Mitigation and Air Quality Improvement Program

¹These agencies include the Pennsylvania Public Utility Commission ("PUC") (grade crossings), Pennsylvania Department of Transportation ("PennDOT") (any and all applicable regulatory oversight) and the Southwestern Pennsylvania Commission (application by Norfolk Southern for partial public funding of the project).

("CMAQ")² .

The document Petitioners submitted to the SPC was dated August 14, 2002 and styled "Petition in Opposition to Railroad Construction." That petition purported to include the signatures of 125 persons. Now the August 14, 2002 petition has been submitted to the Board by the Petitioners, nearly two months later, to "supplement" the pages of signatures with no other text that was submitted as a "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", dated September 5, 2002.³

Setting aside all questions of timeliness, validity and the propriety of submitting a document in pieces, one part submitted weeks after another, it is apparent that Petitioners have no new arguments to make in this STB construction application proceeding and that, indeed, the totality of this latest petition and Mr. Kunig's previous filings with the Board amount to little but exaggerated claims with no basis in fact or law.

Norfolk Southern respectfully directs the Board's attention to the attached Exhibit A, a letter, dated September 3, 2002, which Norfolk Southern submitted to the SPC in response to the August 14, 2002 petition and other comments that were submitted to the SPC in the context of the CMAQ proceeding. The Norfolk Southern letter directly addresses various misstatements of fact and misinterpretations of law made in the August 14, 2002 petition, several of which

²The CMAQ program is administered at the state and local level by PennDOT and the SPC, respectively.

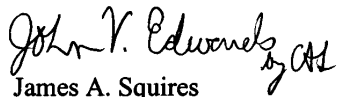
³Although Petitioners continue to claim 179 signatures to this petition, the duplicated signatures and the duplicated signature pages demonstrate that the claim of the number of signatures is not reliable.

Petitioners have previously made to the Board and Norfolk Southern has in turn refuted in responsive filings.

The Board is not the proper forum to address a number of the issues argued by Petitioners in the August 14, 2002 petition, but those issues also are, without exception, meritless. The September 3, 2002 letter by Norfolk Southern addresses the broad array of claims made by Petitioners. Further, the Norfolk Southern letter describes the conscientious community outreach efforts made by Norfolk Southern throughout the duration of this project.

No further arguments of law or corrections of fact need now be made by Norfolk Southern with respect to Petitioner's latest submission. The Board has already received from Norfolk Southern more than sufficient information upon which to base a decision to disregard the various submittals by Mr. Kunig and the Beckers. Norfolk Southern urges the Board to enter a decision on the various motions and pleadings before it and to order closure of the record in this proceeding with regard to matters not covered by the environmental review.

Respectfully submitted,

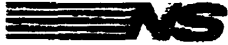

James A. Squires
John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2838
(757) 533-4872 (fax)


Constance A. Sadler
Sidley Austin Brown & Wood, LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8071
(202) 736-8711 (fax)

Attorneys for Norfolk Southern Corporation and
Norfolk Southern Railway Company

Dated: November 12, 2002

Exhibit A



**NORFOLK
SOUTHERN**

Norfolk Southern Corporation
1500 K Street, N.W. - Suite 375
Washington, D. C. 20005
202/383-4123
Fax: 202/383-4018

Darrell L. Wilson
Director
Public Affairs

September 3, 2002

Mr. Ken Flack
Senior Transportation Planner
Southwestern Pennsylvania Commission
425 Sixth Avenue, Suite 2500
Pittsburgh, PA 15219-1819

Re: Norfolk Southern Rail Construction Project in
Indiana County, Pennsylvania

Dear Mr. Flack:

On behalf of Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern"), I address below various topics raised in letter comments and a petition received by the Southwestern Pennsylvania Commission ("SPC") in connection with its notice of a proposed amendment to the 2001-2004 and 2003-2006 TIP. The proposed TIP Amendment would incorporate Norfolk Southern's proposed construction of 5.26 miles of new track from Saltsburg to Clarksburg in Indiana County (the "Project") as a project eligible to receive CMAQ funds, which are devoted to promoting projects that will result in substantial air quality and safety benefits. An application for authority to construct and operate the new track was filed by Norfolk Southern on December 27, 2001 with, and is currently pending before, the Surface Transportation Board (the "Application").

The primary purpose of the Project is to complete a new rail route to allow coal to be delivered by rail to the Reliant Energy Keystone Generating Facility ("Keystone Plant") in Shelocta, Pennsylvania. The existing route is fragile, circuitous and mountainous. For all practical purposes, it is used to capacity. The new route is substantially shorter, less mountainous, and capable of handling a great deal more coal volume more efficiently than the existing route. A secondary purpose is to open up to rail transportation any shippers that may in the future wish to use the line. As will be presented below, the Project will have a significant beneficial effect on air quality and safety in the Commonwealth.

The arguments made in the public comments submitted to the SPC on this matter are notably consistent, both in thrust and in language. Rather than try to respond separately to each individual submittal, I will address the general themes that run through the comments.

1. Public Benefits Associated with the Rail Construction Project

One such theme is the apparent perception that there will be no public benefits arising from the Project. As we have explained in several community meetings, however, the Project will, in fact, create substantial public benefits due to the environmental and safety superiority of the new route in comparison with the existing route. These important public benefits range from air quality and energy conservation benefits from the reduction in diesel fuel consumption by both trains and trucks, to safety benefits from a reduction by more than 2/3 in the total number of at-grade crossings encountered per train trip, to improvement in local traffic conditions due to the elimination of 600 round-trip truck movements per additional trainload of coal in excess of current rail deliveries, to the additional air quality benefits of lower sulfur and NOx emissions from increased utilization by the Keystone Plant of Pittsburgh Seam coal. Moreover, creating an efficient and reliable means for rail transport of coal to fuel Keystone Plant operations helps to ensure economic security. These significant public benefits will be experienced at local, county and regional levels. I enclose a white paper that summarizes many of these benefits.

2. Capacity of the Existing Rail Route

Another theme raised in some of the comments is that the existing rail route allegedly is capable of handling more coal traffic bound for the Keystone Plant than is currently handled, and that Norfolk Southern has thus failed to satisfy a Federal requirement of proof of "public convenience and necessity". Neither the facts nor the law support this contention.

Currently the Keystone Plant burns approximately 4.5 million tons of coal each year. Rail deliveries now account for about one-half of this tonnage, while truck deliveries make up the balance.

Suggestions that Norfolk Southern could, if it so chose, increase the amount of coal delivered to Keystone Plant by simply increasing the frequency of its train operations over the existing route fail to comprehend the practical limitations of rail movements over the existing route. Norfolk Southern has already maximized the capacity of the existing route. The existing rail line is very fragile and circuitous and cannot reliably and efficiently accommodate more rail traffic than is currently handled. Portions of the route are extremely steep, requiring additional locomotive power to haul the loaded coal cars, and the total tonnage that can reliably move over the route is severely limited. Norfolk Southern does not own much of the existing track, and thus cannot control rail maintenance, track improvements or other operational matters over the entire route. Norfolk Southern has already provided funds to the Buffalo & Pittsburgh Railroad (which owns approximately 36 miles of the current route) and the Pittsburgh & Shawmut Railroad (which owns approximately 18.2 miles of the current route) so that deteriorated track conditions could be improved to the extent practicable.

With the construction of the proposed new rail line from Saltsburg to Clarksburg, Norfolk Southern will be able to increase the quantity of coal hauled to the Keystone Plant by each train by 30% - and yet use less locomotive power to do so. The number of trains Norfolk Southern must move over the new route to deliver the same quantity of coal to the Keystone Plant that currently moves to the plant today over the existing route will be decreased by nearly

25%. With the greater capacity of the new rail route, as much as 1 million tons of coal in excess of current rail deliveries can be provided annually to the Keystone Plant by employing only about 10% more trains than present levels. Certainly the customer determines whether to move via rail or truck, but an annual increase of 1 million tons of coal deliverable by rail over the new route represents approximately 43,000 annual truck trips to the Keystone Plant that can be removed from the mostly two-lane local roads in Indiana County. With that critical change in rail operations, the public benefits summarized above will accrue.

The comments seem to be premised, in part, on the misperception that Norfolk Southern must demonstrate to the STB that the Project promotes the public convenience and necessity in order for it to be approved by the STB. Although we believe that we have demonstrated that the Project does promote the public convenience and necessity, the premise spelled out above is simply incorrect. The relevant legal standard is stated within 49 U.S.C. Section 10901(c):

The [STB] shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) [such as the construction of a rail line] unless the [STB] finds that such activities are inconsistent with the public convenience and necessity.

The STB reviews rail construction applications under a three-part test of financial viability, public demand and public interest. A thorough discussion of each prong of that test and demonstration of the Project's satisfaction of each prong begins at page 12 of the public version of the Application, and I would refer you to that discussion for explanation of the relevant legal standard applicable to – and fully satisfied by – the Norfolk Southern Project.

In any event, the STB has conducted a public proceeding with regard to whether the Project is authorized under Federal law, and it is that forum that should make the determination. That Federal regulatory process began at the beginning of 2001, and several of the persons submitting comments to you have been involved in that process ever since. It is to comments on process that I now turn.

3. The STB Process

On January 11, 2001, Norfolk Southern submitted a request to the STB seeking the imposition of a protective order to control the dissemination of commercially-sensitive and proprietary information contained in the Application. This is a common procedure for applicants appearing in commercial proceedings before the STB where information that the railroads are statutorily required to protect, as well as other confidential information, must be disclosed to the STB and to the interested public. The purpose is to permit the interested public to participate fully in the regulatory proceeding (with access to all submitted material), while at the same time protecting the unnecessary dissemination of protected information to competitors.

The STB issued the protective order on February 8, 2001. The comments submitted to the SPC fail to point out that the protective order sets forth fairly simple procedures to be followed in order for the public to obtain access to highly confidential materials and to use those materials in preparation of comments to the STB. Although it may be regrettable that a

protective order has to be in place, there is information proprietary to others that Norfolk Southern both had to submit with the Application and that Norfolk Southern is statutorily required to protect, as well as commercially sensitive information that need not be shared with our competitors. Further, issues regarding the protective order have been litigated before the STB – the proper forum for such disputes. On May 7, 2001, Mr. Kunig submitted a motion to the STB seeking to have the protective order rescinded. The STB has not granted his motion.

Subsequent to the issuance of the protective order, Norfolk Southern continued to prepare the Application. On December 27, 2001, Norfolk Southern submitted to the STB both a public version and a highly confidential version of the Application. We served the public version of the Application by overnight courier to state and local governmental representatives and members of the public, including persons who have submitted comments to you. Notice of the filing was published in the Indiana County Gazette on January 10, 2002 and in the Federal Register on January 22, 2002.

On January 22, 2002, the STB issued an order governing the review process before the STB. Contrary to the implication of some of the comments submitted to the SPC, the STB rejected Norfolk Southern's proposed procedural schedule and instead imposed a procedural schedule that was in accordance with the STB's regulations governing public participation in the review of construction applications.

Parties submitting comments to the SPC also participated in the STB proceeding. Mr. Olliver submitted comments much along the lines set forth to the SPC, and Mr. Kunig filed two sets of comments opposing the Application (and again objected to the STB protective order).

4. At-grade Crossing Impacts

Some of the comments claim that the Project will result in multiple new at-grade crossings, and express concern about the same. There will be only one new at-grade crossing that will be created as a result of the Project, which will be constructed at Bell Road (T-304) in Conemaugh Township. That road is a low-traffic road, and the required design and safety mechanism needs for this grade crossing will be determined by the Pennsylvania Public Utility Commission ("PUC"), not Norfolk Southern, based on standard measurements of vehicular and rail traffic, line-of-sight assessments and other objective criteria. There is an on-going public proceeding before the Pennsylvania PUC reviewing this matter, and several of the commentors to the SPC have been active in this public process.

We are aware that the Conemaugh Township Board of Supervisors has demanded that Norfolk Southern to fund and construct a million dollar overpass bridge at this location, but the low volume of traffic and other relevant site-specific conditions do not warrant installation of a grade-separated crossing. Although we note that one of the comments suggests that a field count of traffic over Bell Road, which was conducted in accordance with standard traffic assessment criteria, was faulty, an allegation which is simply not true, we believe that the traffic counts would have to be on the magnitude of nearly a hundred times greater than they are to warrant a requirement to construct a bridge at this location. Nevertheless, Norfolk Southern has, in an effort to resolve the concerns of the Township, offered to install additional safety mechanisms

and to re-align and improve portions of the road – beyond the grade crossing features that would be warranted by Pennsylvania PUC requirements at this particular location.

5. Acquisition of Property

Certain of the comments contend that Norfolk Southern has not fairly compensated property owners for real estate required to construct the new rail or has illegally exercised the power of eminent domain. This simply is not the case.

The new line's route will cross over portions of 21 privately-owned parcels. Norfolk Southern has been out in the community for nearly two years negotiating the purchase of the necessary properties. The owners of all but two of the affected parcels entered into freely-negotiated purchase agreements, generally receiving from Norfolk Southern compensation significantly in excess of the market value of the property sold. In most cases, at the request of the landowner, Norfolk Southern purchased much more property than was required by the proposed construction. Only one family, which own two parcels, declined to sell. These two parcels were acquired by eminent domain and the determination of just compensation to be paid will be resolved in the Indiana County Court of Common Pleas, the proper forum for litigating issues related to that matter. We note that only one out of the 19 settling property owners has chosen to submit a letter comment objecting to the proposed TIP Amendment, and the comment did not relate either to fair compensation for the property he sold or of the use of eminent domain. (Another letter commentor is the son of property owners who entered into a purchase agreement with Norfolk Southern. It is worth noting that the parents did not file comments objecting to the TIP Amendment or complaining about their compensation by Norfolk Southern.)

Some of the comments include allegations that Norfolk Southern has condemned private property in contravention of Pennsylvania law governing eminent domain. These statements are based on a mistaken belief that the power of eminent domain, as exercised by Norfolk Southern pursuant to the laws of the Commonwealth of Pennsylvania, required an application to be approved first by the PUC and further required a finding of public convenience and necessity. This is not the law.

The statutory provision being misinterpreted, 15 Pa. C.S.A. Section 1511(c), was quoted to the SPC in some of the comments. By its very terms, that provision pertains *only* to applications to the PUC by public utilities to erect aerial wires or poles for electric, telephone and telegraph facilities. It simply does not apply to railroads for the construction of new rail line.

This misinterpretation and other allegations of impropriety regarding property acquisition have been submitted to the STB and in other public forums, including the Commonwealth's courts. In each case, Norfolk Southern has corrected the record, but nevertheless the commentors have repeated their arguments yet again, this time to the SPC.

6. Archeological Study of Project Construction Area

One comment opined that impacts of the Project upon Native American artifacts have not been adequately examined. Before the Application for construction of a new rail line can be

decided by the STB, the STB must satisfy the environmental and historic resource impact assessment requirements of the National Environmental Protection Act ("NEPA") and the National Historic Preservation Act ("NHPA"). The STB's Section of Environmental Analysis ("SEA") is currently preparing an Environmental Assessment to evaluate the potential environmental and historic resource impacts of the Project, in accordance with NEPA and NHPA. To date, Norfolk Southern's consultants have completed Phase I and Phase II archeological studies of the areas where the new rail line is to be constructed and have provided copies of those archeological studies to SEA and to the Pennsylvania State Historic Preservation Officer. Moreover, Norfolk Southern is currently conferring with SEA and with the Pennsylvania State Historic Preservation Officer to assess any additional archeological survey needs along the right-of-way for the new track. The archeological investigation undertaken in connection with the proposed construction of the Project is thus not yet concluded, but Norfolk Southern will complete the archeological field studies prior to the commencement of construction. Matters arising out of the environmental analysis will be considered by the STB, following a period of public participation.

7. Public Participation

In most cases, issues raised by commentators have been raised before in other forums charged by the Federal or State government with review of the Project – the STB, the Pennsylvania PUC and the courts of the Commonwealth. In addition, Norfolk Southern has initiated and participated in three public meetings convened in Conemaugh Township to inform interested persons about the Project and to respond to questions from the public. In these meetings, Norfolk Southern provided maps and other information to the public and news media. One of these meetings took place at the proposed Bell Road crossing site. Representatives of Conemaugh Township, the Pennsylvania PUC and township residents participated. There has been considerable opportunity for the public to be informed about the Project and to provide comments to the STB, the Pennsylvania PUC and, when necessary, to the courts. An additional public comment period will be provided for interested persons to submit comments on the topics that are to be addressed in an Environmental Assessment of the Project to be issued by the STB. Public notice of the availability of the Environmental Assessment and a request for comments will be issued by the STB.

Lastly, Norfolk Southern denies any impropriety relative to its discussions concerning the future use of a section of its Blairsville Secondary Line as a bicycle and pedestrian trail. Norfolk Southern has been a long-time supporter of the Rails to Trails program and its willingness to consider such a beneficial public use of this section of track is well known.

The SPC should note that approval of the abandonment of this section of track was sought from the Surface Transportation Board by then-owner Conrail in 1998. At that time, the Cambria and Indiana Trail Council expressed interest in a Rails to Trails project, and the STB imposed a deadline for reaching agreement on the proposed conveyance. At the request of the parties, the STB has extended the deadline for negotiations six times since 1998, and discussions in furtherance of this interest have continued, first with Conrail and then with Norfolk Southern after it acquired control of the line in mid-1999. One of the issues which prevented a final decision from being made on the Rails to Trails request was the Route 119 at-

grade crossing of this line near Blacklick, Pennsylvania. Because no decision had been reached by the Commonwealth with respect to the funding or priority of the Route 119 improvement project, it was unclear to Norfolk Southern what its obligations would be relative to that crossing. Now that the Route 119 improvement project has been funded and construction underway, discussions concerning the Rails to Trails project can move forward, and Norfolk Southern is hopeful that negotiations concerning the Blairsville Secondary Line will soon be completed. Thus the facts show that discussions concerning Rails to Trails use of the track begin prior to Norfolk Southern's control of the line and years before it made a decision to build the Keystone Project; clearly there was no connection between the two.

I hope that this information will assist you in your review of comments on the Project received by the SPC. Should additional information or explanation be needed, please do not hesitate to ask.

With kind regards,

A handwritten signature in dark ink, appearing to read "Darrell L. Wilson", written in a cursive style.

Darrell L. Wilson

General Description – Keystone Project (Shelocta)
August 23, 2002

General Overview

The Keystone Buildout Project is the planned creation of a direct, fully NS-owned route to efficiently furnish the Reliant Energy Keystone Generating Station located in Shelocta, PA, with unit trains of Mon Line coal. The Project includes a proposed new single track line of 5.26 miles connecting the NS Conemaugh line at Saltsburg, PA with an out-of-service NS rail line, at Clarksburg, PA. NS will rehabilitate 10.89 miles of currently out-of-service track between Clarksburg and Shelocta and modify an existing connection to the Shelocta Industrial Running Track, the power plant lead at Shelocta, PA.

Construction and Rehabilitation

The route of the new construction will follow the east side of the Blacklegs Creek valley. The track will cross both Blacklegs Creek and SR-286 by way of a new bridge located at the northern boundary of Clarksburg, PA. The proposed alignment will provide prevailing grades not exceeding 1.00% and have maximum curvatures of 7°30', permitting a maximum of 25 mph operation. The project will require two multiple span bridges and several large box culverts. One (1) new at-grade crossing will be created at Bell Road.

The existing line will require track rehabilitation, reconstruction of four (4) bridges to safely handle proposed loads, culvert replacements, and possible grade-crossing improvements at six (6) locations. No new at-grade crossings will be constructed along the rehabilitated line.

Purpose and Benefits

The current route to the Shelocta plant is circuitous, mountainous and fragile. The operational constraints severely limit the amount of traffic NS is able to move over the route (both in length of trains and number of trains) to that which NS currently moves. Only about one-half of all of the coal delivery requirements of the Keystone plant are delivered by rail – the remainder moves by heavy truck on congested local streets and highways.

The new route is significantly shorter than the existing one – 341 miles instead of 443 miles. This means each roundtrip trainload of coal to the Keystone Plant will be shortened by approximately 102 miles. A shorter route means better air quality and fuel savings.

Due to the elimination of steep grades and other critical structural differences, each train operating over the new route will be able to haul 30% more coal per trip, using 3 rather than 4 locomotives, than is feasible over the existing route. Fewer trains are required to

move the same amount of coal to the Keystone plant – 164 trains instead of 213 trains a year, resulting in a reduction of approximately 39,000 train miles per year. This results in significant locomotive power and fuel consumption savings over the new route per ton delivered, which in turn results in a significant reduction in diesel fuel emissions.

The existing route is at capacity – no more coal can be delivered by rail to the Keystone plant than is delivered today. Trucks moving over the congested two-lane highways deliver half of the coal used by the Keystone plant. Due to the structural advantages of the new route, the Keystone Plant will be able to obtain a significantly greater percentage of its coal supply by rail, with correspondingly less reliance upon truck deliveries. Of course, any determination to divert traffic from truck to rail would be at the discretion of the customer, but that option is not available to the customer today.

Each new train operated over the new route would eliminate 600 truck roundtrips over local roads. This would result in a significant increase in safety, reduction in diesel fuel emissions, decreased congestion and wear on the state's highways that is not possible using the current route.

Delivery of an additional 1 million tons of coal annually to Keystone Plant would eliminate 43,000 truck roundtrips per year over local roads, or over 1.8 million vehicle miles traveled. This reduction in vehicle miles traveled would provide three distinct advantages to the SPC region, significant improvement in safety for the traveling public due to the reduction in large truck traffic on two lane roads, substantial health benefits from reductions in air emissions and lower maintenance costs from reduced wear on local and state roads. Even with expanded deliveries rail traffic on the route would be very light, averaging 1 train roundtrip per day.

Additional safety benefits come from reduced exposure to at-grade crossings. The new route will cross a total of only 34 public and private at-grade crossings, compared with 108 public and private at-grade crossings on the existing route. This means that each train delivering coal to the plant will cross 148 fewer at-grade crossings per round trip – a significant safety benefit. With the expanded rail capacity of the new route, more coal can be delivered to the plant by rail, yet with a substantial decrease in at-grade crossing movements.

The safety benefits are even more dramatic when looking only at public at-grade crossings. The new route will cross only 14 public at-grade crossings, compared with 64 public at-grade crossings on the existing route. Only 1 new at-grade crossing will be required for the new route, and that will be located on a low-traffic road and will be signalized in accordance with regulatory requirements.

The new route will permit the Keystone Plant to use more efficient and environmentally preferable Pittsburgh Seam coal and opens the possibility of other coal sources in the future. Truck deliveries of coal to the Keystone Plant are limited to nearby Central Pennsylvania coal, which has lower BTU values and higher Nox and sulfur emissions levels than the Pittsburgh Seam coal delivered by rail.

Service and Copy List

Horst E. Kunig
President
Kunig, Inc.
P.O. Box 192
Saltsburg, PA 15681-0192

The Honorable John P. Murtha
U.S. House of Representatives
Washington, D.C. 20510

The Honorable Mark Schweiker
Governor of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Pennsylvania Attorney General Mike Fisher
16th Floor, Strawberry Square
Harrisburg, PA 17120

The Honorable Samuel H. Smith
House Box 202020
Harrisburg, PA 17120-2020

The Honorable Jeff Coleman
House Box 202020
Harrisburg, PA 17120-2020

The Honorable Richard A. Geist
House Box 202020
Harrisburg, PA 17120-2020

The Honorable Donald C. White
618 Philadelphia Street
Indiana, PA 15701

Supervisor Thomas Kier
Conemaugh Township Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

Supervisor James Pierce
Conemaugh Township Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

Supervisor John Weimer
Conemaugh Township Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

Robin Cribbs
Secretary
Conemaugh Township Supervisors' Office
16980 Rt. 286 Highway West
Saltsburg, PA 15681-8023

The Honorable Bradley L. Mallory
Secretary, Department of Transportation
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

The Honorable Glen R. Thomas
Chairman, Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Francis L. Olliver
95 Rose Road
Saltsburg, PA 15681

William and Sandra Becker
25 Bedick Road
Saltsburg, PA 15681

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2002, I have caused to be served a true and correct copy of the foregoing "Response to the Supplemental 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", 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: November 12, 2002