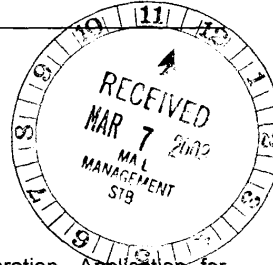


Horst E. Kunig, Ph. D., 325 Kunig Road, P. O. Box 192, Saltsburg, PA 15681, USA
Tel 724-639-3657, Fax 724-639-9681, e-mail kunig@kiski.net

March 3, 2003

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

207360



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 document, entitled Petition and Motion for Sanctions and Request for Relief.

One original and ten copies of the document, a certificate of mailing, and a service list are enclosed.

Please contact me if you have further questions.

Sincerely,

Horst E. Kunig

President
Kunig, Inc.

enclosures

Cc Constance A. Sadler
Counsel for Norfolk Southern Corporation
And Norfolk Southern Railway Company
Sidley and Austin
1501 K Street, N. W.
Washington, DC 20005

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Public Record

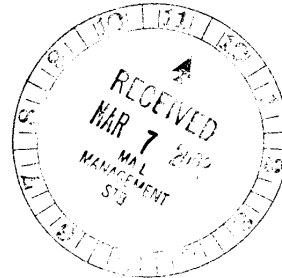
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SURFACE TRANSPORTATION BOARD

WASHINGTON, D.C.

Finance Docket No 33928

Norfolk Southern Corporation and
Norfolk Southern Railway Company



PETITION AND MOTION DISMISS APPLICATION AT FD 33928

PETITION AND MOTION TO DISMISS ENVIRONMENTAL ASSESSMENT

PETITION TO REOPEN SCOPING PROCESS

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Public Record

Background

Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) was granted a protective order under 49 CFR 1104.14 on February 2, 2001. Subsequently on December 27, 2001 NS filed an application with the Surface Transportation Board (STB) for issue of a certificate of public convenience and necessity authorizing construction and operation of a rail line in Indiana County, PA, pursuant to 49 U.S.C. 19901. Thereafter STB's Section on Environmental Analysis (SEA) issued an Environmental Analysis (EA).

Throughout its application for issuance of a certificate of public convenience and necessity NS claims that the proposed new rail construction (Southern Route) will have greater capacity than an existing route (Northern Route). The Southern Route would permit transportation of coal more efficiently, effectively and, therefore, NS concludes the Southern Route to be "an environmentally

superior alternative" to the Northern Route. For all these reasons, NS urges the Board to issue a certificate of public convenience and necessity.

49 U.S.C.19901 (c) is the applicable rule for issuance of a certificate of public convenience and necessity. Under the standards set forth in 49 U.S.C.19901 (c), "The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with public convenience and necessity". This motion provides compelling evidence that the activities NS proposes are indeed inconsistent with public interest, convenience, and necessity and, therefore, issuance of said certificate should be denied.

Presentation of General Arguments

1. Authority of SEA to grant EA

Under 49 CFR1105.6:

(a) "Environmental Impact Statements (EIS) will normally be prepared for rail construction proposals other than those described in paragraph (b) (1) of this section.

(b) Environmental Assessment will normally be prepared for the following proposed actions:

(1) Construction of connecting track within existing rail rights-of-way, or on land owned by the connecting railroads."

In its application for certificate of public convenience and necessity on page 2, NS states that "by the time this proceeding has been completed, NS anticipates that "it will have acquired through options to purchase, purchase, or otherwise, all of the property required to construct the

Saltsburg connection". As NS did not (emphasis added) own the land between the connecting railroads at the time of filing the application of certificate of public convenience and necessity an EIS is mandatory. SEA, thus, exceeded authority by granting NS an EA in contravention of 49 CFR 1105.6 (b) (1) to escape an EIS.

It is noted here, that NS initiated all land acquisition through eminent domain procedures by filing a Notice of Taking. As argued by Kunig in his Petition to STB, dated March 23, 2001 under 15 Pa. C.S.A. § 1511 (a) and (c) NS is not entitled to exercise the power of eminent domain prior to issuance of certificate of public convenience and necessity by STB. (emphasis added). NS's premature actions suggest a pre-emptive maneuver to circumvent an EIS, as required under 49 CFR 1105.6 (b) (1).

NS claims exemption from eminent domain requirements, as subsection (c) does not mention railroads. NS misreads the law, as subsection (a) does mention railroads. Lawlessness would ensue if NS's interpretation of the law would be correct. If STB denies certificate of public convenience and necessity, as it should under this motion, then NS would have acquired property for no cause. Implicitly using its deep pockets, counsel for NS stated in a Township meeting that: "ultimately a judge would have to determine the issue". State Representative Jeff Coleman organized the meeting at the Conemaugh Township at the outrage of his constituents on the NS project. It did not come about, as NS claims, at NS's kindness to educate the public. In the first meeting NS usurped the agenda with propaganda. So outraged was the public that Representative Coleman commenced a second meeting. At this Petitioner's request Representative Coleman set an agenda, where the public would ask questions and NS would reply. Again, the public learnt nothing in the second meeting, as NS refused to answer all substantive questions, citing the protective order. Subsequently, NS's failure to respond lead to the Petition with 179 signatures in opposition to the project. Similarly, the deep pockets in the legal prosecution of eminent domain matters was obvious, when landowners eventually transferred ownership to NS.

Additionally, 49 CFR 1105.6 (d) provides discretion to the Board to modify requirement for preparation of EA or EIS. SEA does not have this power of discretion. Absent a Board decision, NS cannot invoke 49 CFR 1105.6 (d) and must therefore prepare an EIS under 49 CFR 1105.6 (b) (1).

In view of the foregoing SEA's EA is inappropriate and should be replaced by an EIS, which in particular should address the expected pollution in the city of Clarksburg, where the Southern Route divides the city into two halves and the business relationships between NS and the coal supplier, between the Keystone Plant and the coal supplier, to exclude conflict of interest..

2. protective order

NS requested in its application for protective order

"that the Board maintain as confidential commercially sensitive materials pertaining to the construction and operation of the rail line. NS asserts that some of the information that must be included in the application is highly confidential, proprietary, or commercially sensitive information developed and protected against public disclosure, including shipper-specific material, such as traffic data, contract rates, and volume".

Relying on protective order, NS's application for certificate of public convenience and necessity, filed on December 27, 2001, comprises two versions; a highly confidential version and a public version. In the public version NS failed to identify the volume of coal it presently ships and the volume of coal shipped by truck.

However, the SEA prepared EA discloses at 3.6.2 page 3-20, that NS presently transports 2.3 million tons per year while 2.2 million tons per year are shipped by truck to satisfy the total

Keystone Power Plant requirements of 4.5 million tons per year. This admission not only is a breach of the protective order but also constitutes an *ex-parte* communication.

3. *ex-parte* communication:

Under 49 CFR 1104.14 NS is required to submit Designated Material in a package clearly marked on the outside "Confidential Materials Subject to Protective Order" whereupon such Designated Material shall be kept confidential by the Board and not be placed in public document. The appearance of confidential information in SEA's EA report is a clear indication that NS has failed to adhere to the conditions imposed by the protective order. The non-confidential transmittal of said information to SEA is a breach of the protective order and constitutes an *ex-parte* communication of exceptional clarity, which is prohibited under 49 CFR 1102.2(c)(1) and (2):

(c) Prohibitions

- (1) No counsel, party, agent of party, person who intercedes in any on-the-record proceeding shall engage in any *ex-parte* communication concerning the merits of the proceeding with any Board Member, hearing officer, joint board member, employee board member or employee of the Board who participates, or may reasonably be expected to participate, in the decision in the proceeding.
- (2) No Board Member, hearing officer, joint board member, employee board member, or employee of the Board, who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any *ex-parte* communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent or any party or person reasonably expected to transmit the communication to a party or party's agent.

SEA cannot serve as conduit to the Board to transmit information, which NS is required to reveal in order to satisfy the requirements of the protective order. The *ex-parte* communication, regarding the volume of coal shipment, clearly reveals an infringement on the quality of the human environment or the conservation of energy resources. This reason alone should invalidate the EA. It should have compelled SEA to revoke the EA and re-institute an EIS under 49 CFR 1105.6 (d): "For actions generally requiring an EA, The Board may prepare a full EIS where the probability of significant impacts from the particular proposal is high enough to warrant an EIS".

While information provided in NS's application for certificate of public convenience and necessity prevented this Petitioner and the general public from meaningful examination of NS claims in support of its application, the additional revelations of the EA now permit thorough scrutiny and, as a result, the conclusion that NS application is indeed inconsistent with public convenience and necessity.

Demonstration of Inconsistency

The Board usually employs a three-part test to determine public convenience and necessity (see Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000). Here the Board stated: "In reviewing construction proposals, we examine whether: (1) the applicant is financially fit to undertake the construction and provide service; (2) there is a public demand or need for the proposed service; and (3) the construction project is in the public interest and will not unduly harm existing services." Id. at 15-16; Tongue River Railroad Co.--Const. & Oper. STB 809,826 (1996).

1. financial viability:

In support of the financial viability on page 12 of the application for certificate of public convenience and necessity, NS recites the Board's decision (see Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served

December 15, 2000). Accordingly, The Board notes on page 5, paragraph 3: "the purpose of STB's test of financial viability is not to protect the carrier. Rather it is to protect existing shippers".

To prove financial fitness, NS states on page 13: "NS will finance the construction of the project out of its current capital budget, and shall recover the costs of the construction through revenues received pursuant to an existing contract covering deliveries to the only current customer on the proposed line" (emphasis added). The status of being the only current customer is wholly irrelevant in the determination of financial viability. If NS were the only shipper, then NS would pass the financial viability test, as shown in Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000. Here the Board stated on page 5, paragraph 3: "Because a new railroad is without existing shippers, the financial fitness test has little, if any bearing on the construction". But NS is not without existing shippers who are indeed adversely affected. Substituting customer for shipper is misleading in the extreme in view of NS's recitations above.

Financial viability must take into account existing shippers. NS's project should be judged in light of the following evidence. Prior to 1995 the Keystone Power Plant received all 4.5 million tons of its annual coal requirements by truck shipment. NS began shipping coal by 1995. The SEA prepared EA discloses *ex-parte* at 3.6.2 page 3-20, that presently NS transports 2.3 million tons per year while 2.2 million tons per year are still shipped by truck to satisfy the total Keystone Power Plant requirements of 4.5 million tons per year. Only after issuance of SEA's EA is it possible to determine that NS actually had acquired 51 % of the shipping rights (2.3 million tons over 4.5 million tons) at the expense of diminished coal shipments by trucks from 100 % to 49 %. As a result, existing shippers, transporting coal by truck, were adversely impacted in the extreme. Many coal mines did shut down between 1995 and 2000, leaving shippers stranded.

It now appears, that NS is using its power of the 51 % majority shipping rights to further raise its stake in the transportation of coal. If allowed to raise NS's shipments by an additional 1 million

ton, for which it is seeking approval from STB, it then would control 73 % (3.3 million tons over 4.5 million tons) of all coal shipment. As the New Southern Route can actually accommodate more than additional 1 million tons coal shipment, it is transparent, that NS would want to usurp the entire coal shipments to the power plant. On page 14 of the application for public convenience and necessity NS states: "With current access limited to the Northern Route, NS does not--and cannot--provide the Keystone Plant with its total coal supply needs, and so the remainder is sourced from mines via trucks". However, with the construction of the Southern Route, NS can indeed supply all power plant needs and, if it does, existing shippers would have no recourse and be irreparably harmed. Thus, NS does not pass the financial fitness test, as it is harming existing services. NS's activities are inconsistent with public convenience and necessity. Its application for certificate of public convenience should be rejected.

Further, NS in a foot note on its application for certificate of public convenience and necessity on page 13 reveals that: "NS is seeking partial public funding through federal funds allocated by Congress for this project. (The amount allocated is \$ 10 million). The federal funds for the Keystone Project have been ear-marked under the Congestion Mitigation Air Quality improvement program (CMAQ)". Under EPA420-F-99-003 of February 1999 strategies to reduce vehicle miles traveled (VMT) and reduce congestion in order to make travel less polluting are eligible for CMAQ funding. As shown in the discussion of the other two criteria, public demand or need for proposed service, and public interest below, NS is not entitled to CMAQ funds, which may significantly affect financial fitness.

2. Public Demand or Need for Service:

In the application for certificate of public convenience and necessity NS claims on page 13 a clear public demand and need for service. In support NS cites track and yard expansion improvements, public and environmental benefits because of the movement of 30 % more coal per trip over a significantly shorter distance, and diversion of truck-to-rail transport of coal.

In examining these claims we look for guidance from the Board in Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000. Here the Board had to evaluate Great Salt Lake and Southern Railroad's contention that, "based on the nuclear power industry claims, there is an urgent need to build and operate its own transportation and storage facility for interim storage of spent nuclear fuel, because it is unlikely that Department of Transportation would develop a permanent repository in the near future". The Board concurred. In contrast, the Keystone Power Plant has been served adequately in the past, is still being adequately served at present by other shippers, and, in fact, can be adequately served by existing shippers without participation by NS. There is no urgent need for a new rail line. Thus NS's project is inconsistent with public demand or need of service.

Track and yard expansion is a capital investment, designed to improve economy of an operation. With regard to the economics of a business the Board stated in Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000: "The purpose of the test of financial ability of the applicant to construct the proposed rail line is not to protect the carrier or its investors. Rather it is to protect existing shippers from a carrier's proposed action without detriment to either service or rates" and "we leave it to the financial market itself to ultimately determine if the project is economically viable". Therefore track and yard expansions, being economic issues, are irrelevant in the proof of public demand or need of service.

We now turn our attention to NS's claim of environmental benefits by rail shipments in general and by diversion of truck-to-rail shipments in particular. According to SEA's EA on appendix D: NS claims fuel savings on account of a greater fuel mileage (7,140 gallons per mile and ton for truck delivery versus 1,425 gallons per mile and ton per rail car) - emphasis added. NS goes on to purport that theses savings would result in environmental benefits and make the new Southern Route the environmentally superior route. NS confuses fuel mileage with fuel consumption. Coal is not transported by fuel mileage. Instead it is moved by the fuel consumed and burnt to provide

the necessary thermal energy to move a load (characterized by its weight) over a distance. In the case of rail delivery that distance is 8.6 times longer than the distance by truck delivery while fuel mileage by truck is only 5 times that of rail. Any benefits, derived from a larger fuel mileage by rail is completely negated by the longer distance rail cars must travel.

More specifically, fuel consumption can be determined by multiplying the fuel mileage from above by the amount of coal to be shipped and the distance the coal must be shipped. We now determine fuel consumption of 2.3 million tons of coal for truck delivery over 51.58 miles (41.26 miles from base to power plant plus 10.32 miles from home to base, see application for certificate of public convenience and necessity on page 23), for rail delivery over the Northern Route of 443 miles, the Southern Route of 341 miles, and a hypothetical rail route of 258 miles. Fuel consumption is 0.847,046 million gallons for truck delivery, 1,451,933 million gallons for rail delivery over the Northern Route, 1,117,628 million gallons over the Southern Route, and 0.845,595 million gallons over the hypothetical route.

Fuel consumption for delivery over the Northern Route is 1.71 times larger than by truck, for delivery over the new Southern Route is 1.32 times larger than by truck. Rail delivery simply cannot compete with truck delivery. Truck delivery is the environmentally superior route. A new rail line, the hypothetical line, would have to be shortened to at least 258 miles to be competitive with truck delivery. Only then would rail delivery become competitive with truck delivery and, as a consequence, be environmentally superior.

As rail delivery is environmentally far inferior to truck delivery in the instant case, Truck-to-rail diversion would provide no benefits. In fact, a diversion of 1 million tons of coal from 2.3 million tons to 3.3 million tons shipped over the proposed Southern Route would cause a net increase in fuel consumption by 117,593 gallons. Truck-to-rail diversion does not provide benefits to the public in principal.

Claiming fuel efficiency as the criterion for energy saving in truck-to-rail diversion is fatally flawed, as it is a flagrant violation of the physics law of conservation of energy. Said law is not subject to legal interpretation. The Board would invite significant legal challenge, supported by the engineering profession as a matter of principle, if it would allow NS's misleading actions to become the norm. Certificate of public convenience and necessity should be denied.

Following is an investigation of the requirements for being eligible to receive CMAQ funds under the Congestion Mitigation Air Quality improvement program. The criteria used to determine eligibility is vehicle miles traveled (VMT). VMT can be calculated by the formula volume coal shipped, divided by 108 tons/rail car and multiplied by the distance traveled. If NS fails these criteria, then it is not entitled to receive funds. By default it would confirm that NS's Keystone project is environmentally unsound. We now determine VMT for shipment of 2.3 million tons of coal per truck, over the Northern Route, over the Southern Route, and a hypothetical route of 242 miles. VMT is 5,158,000 for truck delivery, 9,434,259 miles for rail delivery over the Northern Route, 7,262,037 miles over the Southern Route and 5,153,703 miles over the hypothetical route.

VMT for delivery over the Northern Route is 1.83 times larger than by truck, for delivery over the new Southern Route is 1.4 times larger than by truck. Rail delivery simply cannot compete with truck delivery. Truck delivery is the environmentally superior route. A new rail, the hypothetical one, line would have to be shortened to at least 242 miles to be competitive with truck delivery and, as a consequence to be environmentally superior. VMT considerations also confirm that NS's Keystone project is environmentally unsound and inconsistent with public convenience and necessity.

NS's activities to construct the Southern Route fails all three tests, financial fitness, public demand or need, and public interest, the Board employs to determine public convenience and necessity. NS application should be denied

Comparison of the Northern Route with the Proposed New Southern Route

In its application for certificate of public convenience and necessity NS relies heavily on the comparison of the characteristics of the Northern Route with the proposed Southern Route instead of providing evidence genuine to the Southern Route as required under the three point test.

We demonstrated already that there is no need and, as a consequence, no demand for NS's service, because the power plant can be adequately served even without NS shipping any coal. Additionally, the Keystone Plant may be at the end of the expected lifetime, which would favor the flexibility accorded by truck delivery.

We also demonstrated that there is no public interest, because the construction project would unduly harm existing shippers, particularly in a truck-to-coal diversion.

Therefore, we are left to discuss the benefits, if any, by shipping the same amount of coal over the proposed new Southern Route, as is presently shipped over the Northern Route. NS infers environmental benefits, based on reduced fuel consumption on account of a shorter length of the Southern Route versus the Northern Route. NS's argument is flawed in the instant case, where truck delivery must be taken into account.

Given the irrevocable and unchangeable fact in the instant case, that rail shipments occur over a much larger distance (341 miles) than truck shipments (51.58 miles) , true benefits to the public would accrue only if coal shipment by rail is abandon entirely. Thus, any reduction of fuel consumption over the shortened new Southern Route does not benefit the public. To the contrary, NS is the only beneficiary.

We now derive at objective criteria to quantitatively ascertain when benefits accrue to the public in a new rail line construction in face of competition from other shippers. We already determined that NS would have to reduce track mileage to at least 258 miles in order to stay competitive with truck delivery. Conversely, trucks would lose their competitive edge, when coal must be hauled from distances greater than 72.6 miles. The criteria to determine benefits of a proposed new operation versus an existing operation should read:

"Benefits accrue to the public, if fuel efficiency multiplied by volume of transported goods multiplied by distance traveled for a new operation is less than fuel efficiency multiplied by volume of transported goods multiplied by distance travel for an existing operation".

This Petitioner urges the Board not only to apply this criterion to the instant case but also to apply it nationwide, because it would contribute to best use of existing resources in a particular area. For example, the resources of Central Pennsylvania would be used in the aging Keystone Plant. West Virginia coal should be used at a power plant to be constructed near the source of coal. Therefore, this Petitioner also suggests to the Board to incorporate a feasibility study of this kind into an Environmental Analysis Study, which could conceivably convince NS to invest into the construction of a new power plant rather than into the Southern Route, where the return on investment would be limited on account of the old age of the Keystone Plant.

On page 4 of appendix L of the application for certificate of public convenience and necessity NS states: "We calculate this (coal-to-truck) diversion will generate \$[] in additional cash flow. The economics of additional cash flow seems to be the real motivation for the project, particular with the possibility of using \$ 10 million CMAQ grant funds for the construction of the new rail line. Absent public benefits the grant would amount to a federal subsidy in order for NS to better compete with truck delivery. Clearly, NS is not entitled to CMAQ funds under these circumstances

We now arrive at a situation where NS has garnered 51 % of a the transportation business within 5 years, at the detriment of the local economy in general and destruction of truck shippers business and local coal mine business in particular. Not satisfied with the financial gain from 51 % of that business, NS now proposes to acquire and additional 22 % of the business and, in doing so, inflicts further harm. To add insult to injury NS asks the public to underwrite these damages with a \$ 10 million grant. Moreover, the public would suffer from the destruction of 5.26 miles of pristine country site along the Black Leg River, destruction of wetlands, watercourses, surface drainage, historic archaeological and historic properties. This land would forever be lost for more suitable purposes such as residential inhabitation, recreational activities, or light service industries. The misappropriation of land by NS would significantly impact the future growth and tax base of rural Conemaugh Township.

The public would also suffer irreparable harm as a result of denial of due process, the performance of an EA instead of an EIS, abuse of the protective order, the *ex-parte* communication, and factual misrepresentations of alleged benefits arising from truck-to-coal diversion. The exceptional brazen actions must not become the accepted procedural rule. For that matter neither can SEA's exceeding its authority and lack of critical review of submitted information be accepted, for the general public would loose confidence in its government. Significant opposition to NS's project assist in form of a Petition with 179 signatures. Letters from Congressman John Murtha, Congressman Mike Doyle, State Senator White, Pa House Representative Sam Smith, Majority Whip, PA House Representative Rick Geist, Chairman, Transportation, Commerce and Development, and PA House Representative Jeff Coleman are on file.

In regard to the discovery of significant new circumstances, the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) at 40 CFR 1501.7 (c) specifically mandates reopening the scoping period given the substantial nature of petitioners desired changes:

An agency shall revise the determination made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts. -- 40 CFR 1501.7 "Scope" subsection (c).

Also *Sierra vs Froehle* 816 F. 2 d 205,210 (5th Circ.1987) reflects quite clearly on the need to supplement the record, when a "new circumstance" arises presenting a "seriously different picture of the environmental impact of the proposed project from what was previously envisioned". Here the new circumstance is the increased VMT.

Motion to Dismiss Application for Certificate of Public Convenience and Necessity

This Petitioner moves that the Board deny certificate for public convenience and necessity on record at FD No. 33928 for reasons of demonstrating inconsistency with public convenience and necessity under 49 U.S.C. 19901, in particular for failing the three point test, the Board employs under Great Salt Lake and Southern Railroad, L.L.C. - Construction and Operation, STB Finance Document No. 33824, served December 15, 2000, for ex-parte communication, prohibited under 49 CFR 1102.2(c)(1) and (2), for abusing EIS requirements under CFR 1105.6 (b) (1), failing observe requirements of protective order and abusing protective order, resulting in *ex-parte* communications, abuse of the power of eminent domain under 15 Pa. C.S.A. § 1511 (a) and (c) eminent domain, as NS's actions clearly harm the public.

Motion to Dismiss the Environmental Assessment prepared by SEA

This Petitioner moves the Board to dismiss the environmental assessment report and re-institute an environmental impact study as required under 49 CFR 1105.6 (b)(1) and for being completely inadequate. The Petitioner further moves to require NS to conduct a feasibility study under an EIS to determine alternate modes of transportation and modes of power generation at locations more

beneficial to the public and utility of local resources prior to issuance of certificate of public convenience and necessity. The Petitioner also moves to require NS to warrant in an EIS that pollution does not occur in the city of Clarksburg.

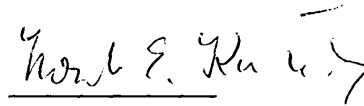
Motion to Admit Petition into Public Records and Reopening Scoping Process under NEPA

The environmental assessment report indicates, on its face, significant new information, which will dramatically alter the outcome of the environmental evaluation. Under Council on Environmental Quality regulations at 40 CFR 1501.7 (c) reopening of the scoping process is mandatory. Applicable precedent in the federal judicial circuit, regarding the requested action - *Sierra Club vs Froehlke*, 816 F. 2 d 205,210 (5th Circ. 1987) upholds Council on Environmental regulations, finding for reopening or supplementing of stages of the National Environmental Policy Act review, where "new conditions present a seriously different environmental picture".

The Petitioner moves to reopen the scoping process to ascertain that no conflict of interest exists between coal producers, shippers, and recipients of coal.

The Petitioner hereby also moves to allow this petition to be entered into public record under 40 CFR 1501.7 (c)

Respectfully submitted by

A handwritten signature in cursive script, reading "Horst E. Kunig". The signature is written in dark ink and is positioned above a horizontal line.

Horst E. Kunig, Ph. D.

P. O. Box 192

Saltsburg, PA 15681-019

Certificate of Service

The undersigned hereby certifies to have caused to send the original and 10 copies of this Petition to The Honorable Vernon A. Williams, Secretary of the Surface Transportation, one copy to Norfolk Southern Railroad Company, Attention Constance Sadler, Esquire on March 3, 2003 by First Class Mail, and additional copies to the following persons:

List of Distribution

The Honorable Ed Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 15120

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

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

Secretary Department of Transportation
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Conemaugh Township Supervisors
RD # 1 Box 206
Saltsburg, PA 15681

Young Township Supervisors
1412 Park Drive
Clarksburg, PA 15725

The Honorable Samuel H. Smith
House Box 202020
Harrisburg, PA 117120-2020

The Honorable Jeff Coleman
House Box 202020
Harrisburg, PA 117120-2020

The Honorable Richard A. Geist
House Box 202020
Harrisburg, PA 117120-2020

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

Supervisors Young Township
1412 Pak Drive
Clarksburg, PA 15725

Indiana County Commissioners
Court House, Attn. Bernie Smith
Indiana, PA 15701

Bret Baronak, Chief Planner
Indiana County Office of Planning
And Development
Court House Annex
810 Water Street
Indiana, PA 15701

Ken Fleck
Southwest Pennsylvania Commission
Regional Enterprise Tower
425 6th Ave., Suite 2500
Pittsburgh, PA 15219-1819

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

The Honorable Mike Doyle
US House of Representatives
133 Cannon House Office Building
Washington, D. C. 20515

The Honorable Arlen Specter
711 Hart Building
Washington, D. C. 20510

The Honorable Rick Santorum
120 Russell Building
Washington, D. C. 20510

Richard C. Wilson, Esquire
127 Lexington Ave., Suite 100
Altoona, PA 16601

The Honorable Dave Reed
550 Philadelphia Street
Indiana, PA 15701