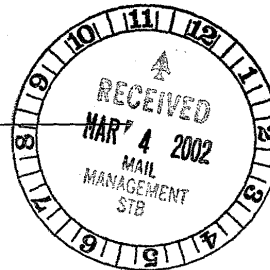


FD 33928 204887

**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](mailto:kunig@kiski.net)

March 2, 2002



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

Re: STB Finance Document, Norfolk Southern Corporation, Application for Construction and Operation of new Rail Line in Indiana County, Pennsylvania

Dear Secretary Williams:

On February 13, 2002 I submitted ten copies and an original of a "Petition" to the Surface Transportation Board and one copy to Miss Constance Sadler, Counsel for Norfolk Southern Corporation to deny the construction permit for the above cited application. Evidence of this mailing is provided in the attached copy of a US Postal Service Delivery Confirmation Receipt.

On February 26, 2001 Mr. Patrick Crawford of the Surface Transportation Board called to advise that the Surface Transportation Board had not received my Petition, but did receive a reply by Norfolk Southern Corporation to the said Petition. He further requested to submit a second set of one original and ten copies to the Surface Transportation Board and one copy to him. The second set is enclosed herein and mailed by Express Mail No. EF262270428US on March 2, 2002. The additional copy, directed to Mr. Crawford, is mailed by first class mail on March 2, 2002.

Please do not hesitate to contact me, if you have further questions.

Sincerely,

*H. Kunig*

ENTERED  
Office of the Secretary  
MAR 05 2002  
Part of  
Public Record

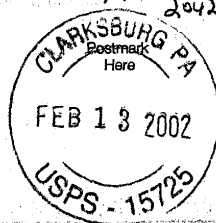
# U.S. Postal Service Delivery Confirmation Receipt

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

Hon. Vernon A. Williams  
Secy SURE TRANSP. BOARD  
1925 K ST NW WP DC

DELIVERY CONFIRMATION NUMBER: 8987 5546 0002 6967 0000 0000 0000 0000



## POSTAL CUSTOMER:

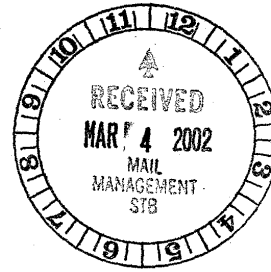
Keep this receipt. For inquiries: Access internet web site at [www.usps.com](http://www.usps.com) or call 1-800-222-1811

## CHECK ONE (POSTAL USE ONLY)

- ☒ Priority Mail  
☐ Standard Mail (B)

PS Form 152, March 1999

(See Reverse)



**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](mailto:kunig@kiski.net)

February 12, 2002



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

Re: STB Finance Document, Norfolk Southern Corporation, Application for Construction and Operation of new Rail Line in Indiana County, Pennsylvania

Dear Secretary Williams:

Enclosed is a Petition to deny the above-cited application or in the alternative issue an Order requiring Norfolk Southern Corporation to provide sufficient evidence for necessity and public convenience of the proposed rail construction. The Petition also includes a request to extend the time for public comments. The undersigned would appreciate being notified about the disposition of the Petition.

Sincerely,

A handwritten signature in cursive script, appearing to read "H. Kunig".

President  
Kunig, Inc.

ENTERED  
Office of the Secretary  
MAR 05 2002  
Part of  
Public Record

Before The  
SURFACE TRANSPORTATION BOARD  
Washington, D.C.

---

Finance Docket No 33928

---

Norfolk Southern Corporation and  
Norfolk Southern Railway Company

PETITION

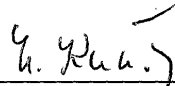
This Petition is made by the undersigned, according to Notice to Participate, dated March 21, 2001.

The undersigned petitions the Surface Transportation Board to deny construction permit and to discontinue further actions on this application pending resolution of matters associated with satisfactory compliance, with 49 U.S.C. Section 10901 (a) and eminent domain procedures, as further described below.

Ten copies of this Petition, a Certificate of Service, and a service list are attached.

Dated: February 12, 2001

Respectfully submitted,

  
\_\_\_\_\_  
Horst E. Kunig, Ph. D. President  
KUNIG, INC.  
P. O. Box 192  
Saltsburg, PA 15681-0192

Cc Constance A. Sadler  
Counsel for Norfolk Southern Corporation  
And Norfolk Southern Railway Company  
Sidley and Austin  
1722 Eye Street, N. W.  
Washington, DC 20006

ENTERED  
Office of the Secretary  
MAR 05 2002  
Part of  
Public Record

### Support for Petition

Norfolk Southern Corporation (NS) has filed an application with the Surface Transportation Board (STB) for a permit to construct and operate a railroad, called "Southern Route" in Indiana County, Pennsylvania pursuant to 49 U.S.C. Section 10901 (a). Prior to this application, NS has obtained a Protective Order to keep commercially sensitive information, submitted to STB, from reaching its competitors. Thus, the application to construct and operate the Southern Route consists of a "highly confidential" version and a "public" version. The "highly confidential" version is made available only to those persons, who agree to keep the information confidential. Thus, NS effectively prevents challenging the validity of its application by the public.

Under 49 U.S.C. Section 10901 (b) NS is required to document that the activities for which, NS has applied for a construction permit, are "necessary and in the public interest". In deviation to this requirement, NS states in its application (Exhibit I, entitled Summary Notice) :

"The purpose of the construction and rehabilitation is to provide "more efficient and effective service" to the Reliant Energy Keystone Generating Plant at Shelocta, Pennsylvania".

Accordingly, NS believes that demonstration of "more efficient and effective service" satisfies the legal requirement to prove that the "service is necessary and, additionally, in the public interest". NS's approach is inherently flawed, for the demonstration of "more efficient and effective service" does not equate with the demonstration of "necessity for such service in the public interest". As a consequence, all representations made by NS in its application are irrelevant. Therefore, NS's application should be denied under 49 U.S.C. Section 10901 (c).

Additionally, NS's representations made in the "public" version, are sufficient to unambiguously prove that the proposed service is entirely unnecessary, as is demonstrated below.

The Keystone Generating Plant receives 4.5 to 5 million tons of coal per year (NS Application, page 32). The coal is transported by rail and by truck over an existing Northern Route. Presently, NS contributes to the Keystone coal requirements by transporting 10800 tons of coal per train per day (NS Application page 29). Assuming the worst case scenario, that NS would transport the entire coal requirements of 5 million tons coal to the Keystone Generating Plant, NS would have to run no more than 1.6 to 1.8 trains per day to satisfy the entire need of the Generating Plant.

In its application NS fails to identify any limitations of the Northern Route which would prohibit running more than one train per day. Unless such limitations are documented and validated by competent personnel, necessity for construction of a new rail line does not exist. The burden of proof rests with NS. Prior to embarking on a new venture, NS should explore a more efficient use of its existing capital equipment. That includes improving the usage of tracks by running trains more frequently, proper and more efficient use of specialty locomotives on only the portions with defining grades and maximizing plant delivery operations. Data, supporting any limitations, must be provided by NS in a "public" version for validation by the public. These data do not qualify to be treated confidential under the Protective Order, as they can be derived by anyone, skilled in the art, upon due diligence and, thus, do not advance competitors.

(NS may take advice from the airlines, which use planes efficiently by keeping them flying most of the day instead grounding them for extended periods. Similarly, the proposed Southern Route would see equally inefficient use as the Northern Route because of the limitation to run one train per day). The equally inefficient usage of the Southern Route contradicts the purpose stated above by NS (Exhibit 1, entitled Summary Notice).

Approval of NS's application would create, what may be considered a monopoly for NS to transport coal. This raises significant questions under antitrust laws. NS has already given notice (NS Application page 33) that it will seek to terminate existing agreements with other carriers.

Nothing could prevent NS then from using its monopoly power, as the closing of the Altoona facility suggests, to raise shipping prices, if STB should grant approval. Contrary to NS's contention (NS Application page 2), here the public interest is definitively not served.

NS states (NS application page 7)

"NS anticipates that it will have acquired through options to purchase, purchase, or otherwise all of the property required to construct the Saltsburg connection".

In fact, as of this date NS has acquired all property through the exercise of the power of eminent domain, when it initiated legal proceedings against property owners. The exercise of the power of eminent domain appears to be in contravention to law 15 Pa. C.S.A. § 1511 (c), which 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).

Thus, a determination by the Pennsylvania Public Utility Commission (PUC) is required that the service proposed by NS is necessary. STB's has the sole responsibility to make the initial necessity determination. As STB has not made such a determination, prerequisites for the exercise of the power of eminent domain were not satisfied. Lacking prerequisites for initiation of eminent domain proceeding raises the question whether STB's position was adequately and correctly reflected, and not compromised. As a consequence, condemned property should be returned without precondition.

Taking other people's property without authorization is theft. Tolerance to theft sets a civilized society apart from an uncivilized one. It is therefore highly expedient to resolve this issue. NS was made aware of unauthorized condemnation of property at Township meetings held under the auspices of the PA State Representative Coleman but failed to respond. This raises the question, whether the Verifications provided by NS in its application are indeed correct.

NS's attempt to obtain construction and operating approval through demonstration of "more efficient and effective service" instead of demonstration of "necessity and public interest" disguises corollary benefits NS may derive. "More efficient and effective service" means reduced expenditure and increased profits. It is not the function of the Government or, for that matter the obligation of private property owners, to support profitability of private enterprise for the benefit of a few stockholders. Permits and financial assistance from the Commonwealth of Pennsylvania should not be granted, when the public's interests are not being served. For all these reasons, NS's application should be denied.

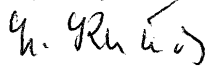
This Petitioner further contents, that the time frame of one month proposed by NS for comments is unreasonable, as it does not permit due diligence analyzing this complicated subject matter in greater detail. For all the significant and serious objections raised to this project, this Petitioner respectfully requests that this Petition be considered timely furnished, further supported by Petitioner's previous Motion to Rescind Protective Order.

WHEREFORE, this Petitioner respectfully petitions STB to

1. deny the application for failure to demonstrate necessity,
2. issue an Order to NS for Production of Documents proving necessity and public convenience,
3. issue an Order to NS requesting proof that eminent domain proceeding did not compromise

STB's authority,  
4. issue an Order extend the time for public comments under 49 U.S.C. Section 10901 (b)

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "H. E. Kunig", written in a cursive style.

Horst E. Kunig, Ph. D.  
President  
Kunig, Inc.

Certificate of Service

The undersigned hereby certifies to have caused to send 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, and additional copies to whom it may concern.

W. R. King