

217081

RICHARD R. WILSON, P.C.

Attorney at Law

A Professional Corporation

127 Lexington Avenue, Suite 100
Altoona, PA 16601(814) 944-5302
(888) 454-3817 (Toll Free)
(814) 944-6978 FAX
rrwilson@atlanticbbn.netOf Counsel to:
Vuono & Gray LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800
(412) 471-4477 FAX851 Twelfth Street
Oakmont, PA 15139

July 18, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001**SENT VIA FACSIMILE**
EXPEDITED CONSIDERATION
REQUESTEDRe: Petition for Declaratory Order of Honey Creek Railroad, Inc. – Expedited Motion for Protective Order; STB Finance Docket No. 34869

Dear Sir:

Transmitted herewith for filing with the Board is the Expedited Motion for Protective Order sought by Honey Creek Railroad in response to Notices of Deposition filed by Respondent, Gary L. Roberts which seek to depose various parties including Petitioner's President William E. Smith over the course of July 26, 27, 28, and August 11, 2006 in Muncie, Indiana. Petitioner requests expedited consideration of its Motion for Protective Order because both undersigned counsel and Petitioner's local counsel already have preexisting commitments, court appearances and vacation plans which preclude attendance at the proposed deposition dates.

Very truly yours,

RICHARD R. WILSON, P.C.



Richard R. Wilson, Esq.

Attorney for Honey Creek Railroad Company

ENTERED
Office of Proceedings

JUL 18 2006

Part of
Public Record

RRW/bab

xc: William Keaton, Esq. – Via Facsimile without Exhibit A
Kathleen C. Kaufman, Esq. – Via Facsimile without Exhibit A

217081

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC. -.
PETITION FOR DECLARATORY ORDER



EXPEDITED MOTION FOR PROTECTIVE ORDER

ENTERED
Office of Proceedings

JUL 18 2006

Part of
Public Record

RICHARD R. WILSON, ESQ.
Attorney for Honey Creek Railroad, Inc.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601
(814) 944-5302
(814) 944-6978 fax

Dated: July 18, 2006

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER



EXPEDITED MOTION FOR PROTECTIVE ORDER

On July 7, 2006, the Board issued an Order granting Respondent Roberts an additional 45 days in which to conduct discovery in connection with the above captioned petition for declaratory order filed by Honey Creek Railroad, Inc. Ten days later, on July 17, 2006 local counsel William Keaton received the Notices of Deposition enclosed at Exhibit A without prior communication or coordination from opposing counsel. The undersigned received his copy of the Deposition Notices on July 18, 2006. No telephonic request was received by Attorney Keaton or the undersigned for coordination of the scheduling of these depositions and accordingly, given the fact that these depositions are designated for next week, Attorney Keaton and the undersigned already have conflicting commitments and court appearances which preclude either of our attendance at the depositions.

Moreover, these depositions are all scheduled on separate days in Muncie, Indiana over 60 miles away from Attorney Keaton's office. Under 49 C.F.R. §1114.43 in the absence of stipulation between the parties, depositions must be taken only in the city or municipality where the deponent is located and Mr. William Smith does not reside or have offices in Muncie, Indiana.

It should also be noted that Respondent's discovery request to the Board did not make reference to the taking of depositions and in light of the time frame afforded by the Board in response to Respondent's dilatory request for discovery, the failure on the part of opposing counsel to contact Mr. Keaton or the undersigned to coordinate the deposition schedule is improper, unreasonable, and an abuse of the Board's discovery procedures.

Finally, Petitioners renew their objections to the discovery sought by Respondent because as indicated in the attached deposition notices, the information sought has no relevance to the issue referred to the Board by the Henry County Court. Petitioner also incorporates herein by reference its objection and arguments filed with the Board in response to Respondents' prior discovery pleadings.

Accordingly, Petitioner respectfully requests the Board issue a Protective Order squashing the notices of deposition scheduled for next week. If the Board determines to permit the discovery sought by Respondent, Petitioners request that the Board require Respondents to telephonically coordinate deposition dates with Mr. Keaton and the undersigned and assess Petitioner's costs and attorney's fees for these depositions to Respondent.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By:



Richard R. Wilson, Esq.

Attorney for Honey Creek Railroad, Inc.

RICHARD R. WILSON, P.C.
127 Lexington Avenue, Suite 100
Altoona, PA 16601
(814) 944-5302

CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of July, 2006 served a copy of the Petition of Honey Creek Railroad, Inc. for Declaratory Order – Motion for Protective Order upon the following via facsimile transmission:

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

John H. Brooke, Esq.
Brooke-Mawhorr Attorneys at Law
P.O. Box 1071
112 E. Gilbert Street
Muncie, Indiana 47308-1071

Kathleen Clubb Kauffman, Esq.
Ackerson Kaufmann Fex, PC
1250 H Street, NW
Ste. 850
Washington, DC 20005


Richard R. Wilson, Esq.
Attorney for Honey Creek Railroad, Inc.



ACKERSON KAUFFMAN FEX

ATTORNEYS, PC

WASHINGTON, DC - PALO ALTO, CA

Eric Bolton
Case Manager
ebolton@ackersonlaw.com

July 14, 2006

Via Federal Express for Monday, July 17th Delivery

Richard R. Wilson, Esq.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

Re: Honey Creek Railroad - Petition for Declaratory Order
STB Finance Docket No. 34869
Our File No. 09044

Gentlemen:

On behalf of Kathleen Kauffman, co-counsel for Gary L. Roberts, Roberts Pipeline Construction Company, Inc. and Roberts Construction, Inc., enclosed please find Robert's Notice of Deposition of William E. Smith, President of Honey Creek Railroad, Inc. Also enclosed are copies of notices to depose Norfolk Southern Railway Company, Indiana Department of Transportation and Henry County (Indiana) Highway Department.

Sincerely,

Eric Bolton

Enclosures

cc: John Brooke and Rebecca Hartley of BROOKE MAWHORR

Exhibit A

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARARY ORDER

**ROBERTS' NOTICE OF DEPOSITION AND PRODUCTION OF RECORDS TO
NON-PARTY HENRY COUNTY (INDIANA) HIGHWAY DEPARTMENT**

Kathleen C. Kauffman (DC Bar # 323212)
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005
Tel: (202) 833-8833
Fax: (202) 833-8831
kauffman@ackersonlaw.com

*Attorney for Gary L. Roberts,
Roberts Pipeline Construction Company, Inc.,
and Roberts Construction, Inc.*

Dated: July 14, 2006

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**ROBERTS' NOTICE OF DEPOSITION AND PRODUCTION OF RECORDS TO
NON-PARTY HENRY COUNTY (INDIANA) HIGHWAY DEPARTMENT**

**SERVE: Henry County (Indiana) Highway Department
c/o: Ken Hartman, Superintendent
202 W County Rd 50 N
New Castle, IN 47362**

PLEASE TAKE NOTICE that pursuant to 49 U.S.C. § 721(d)(1) and 49 C.F.R. 1114.22, Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts"), by counsel, will take the deposition upon oral examination of Non-Party, Henry County Highway Department at 9:00 a.m. on July 26, 2006 at the law office of BROOKE MAWHORR, 112 E. Gilbert Street, Muncie, IN 47308 (or such other date, time and/or place as the parties may agree), before a notary public or other person authorized by law to administer oaths. The Henry County Highway Department shall designate one or more officers, directors, managing agents or other persons who consent to testify on their behalf with respect to each of the matters set forth in the attached Exhibit A. Prior to the deposition, the Henry County Highway Department shall make available the records set forth in Exhibit B to permit the inspection and copying of the records. The deposition will continue from day to day if not completed.

Dated: July 14, 2006

Respectfully submitted,



Kathleen C. Kauffman (DC Bar # 523212)

ACKERSON KAUFFMAN FEX, PC

1666 K Street, N.W., Suite 1010

Washington, D.C. 20006

(202) 833-8833

(202) 833-8831 (facsimile)

kkauffman@ackersonlaw.com

Counsel for Gary L. Roberts,

Roberts Pipeline Construction Company, Inc.,

and Roberts Construction, Inc.

EXHIBIT A

Subject Matter of Deposition

1. Information concerning the Honey Creek Railroad line ("HCR line" as defined in Exhibit B) including, without limitation:

- a. The rail traffic from the HCR line that continued on to the Norfolk Southern line;
- b. The condition of the HCR line;
- c. Any derailments on the HCR line or the immediately adjacent Norfolk Southern line;
- d. The removal of the tracks connecting the HCR line and the Norfolk Southern track;
- e. The abandonment of the HCR line.

EXHIBIT B**Documents to be Produced**

1. All documents relating to paving, maintenance and/or repairs of railroad crossings which are part of the HCR line.

Instructions and Definitions

1. Excluded from the request are all documents covered by attorney-client privilege.

2. "HCR line" means the 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, Indiana, which transverses United States Postal Service Zip Code 47362. Until 1993, the HCR line was owned by Consolidated Rail Corporation and was identified as the line between milepost 104.1 and milepost 110.5. The HCR line is the subject of Surface Transportation Board ("STB") Docket No. AB-865 (Sub. No. 0 (or 1) X) and the subject of STB Finance Docket No. 34869.

3. "Document" shall be afforded the broadest meaning possible under the applicable rules and law. It shall include, without limitation, each original and each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) of all forms of retained information. "Document" also includes, without limitation, all data, documents or information stored on computer or other device for the storage of electronic information; all electronic communications or messages, such as e-mail, including without limitation e-mail messages which have been printed out, e-mail messages which are stored on computers of the sender or recipient, and e-mail messages which have been "deleted" by the sender or recipient but which may be "recovered" from any source (including personal or network computers, mainframe computers, or computer back-up media).

4. "Concern", "concerning", "refers", "referring", "relates", "relating to" or "regarding" shall mean mentioning, reflecting, pertaining to, making reference to, evidencing, describing, discussing, analyzing, or commenting on a matter, directly or indirectly, in whole or in part.

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of July, 2006 served a copy of the Roberts' Notice of Deposition of Non-Party Henry County (Indiana) Highway Department upon the following via Federal Express (for Monday, July 17, 2006 delivery):

Richard R. Wilson, Esq.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

John H. Brooke, Esq.
BROOKE-MAWHORR ATTORNEYS AT LAW
112 E. Gilbert Street
Muncie, IN 47308-1071

Kathleen C. Kauffman
Attorney for Gary L. Roberts, et al.

Before the
SURFACE TRANSPORTATION BOARD.

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARARY ORDER

**ROBERTS' NOTICE OF DEPOSITION OF WILLIAM E. SMITH,
PRESIDENT OF PARTY HONEY CREEK RAILROAD, INC.**

Kathleen C. Kauffman (DC Bar # 323212)
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005
Tel: (202) 833-8833
Fax: (202) 833-8831
kauffman@ackersonlaw.com

*Attorney for Gary L. Roberts,
Roberts Pipeline Construction Company, Inc.,
and Roberts Construction, Inc.*

Dated: July 14, 2006

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**ROBERTS' NOTICE OF DEPOSITION OF WILLIAM E. SMITH,
PRESIDENT OF PARTY HONEY CREEK RAILROAD, INC.**

**Serve: William E. Smith, President
Honey Creek Railroad, Inc.
649 W Foster Heights Rd.
Rushville, IN 46173**

PLEASE TAKE NOTICE that pursuant to 49 U.S.C. § 721(d)(1) and 49 CFR § 1114.22, Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts"), by counsel, will take the deposition upon oral examination of William E. Smith, President of Party, Honey Creek Railroad, Inc ("HCR"), at 9 o'clock a.m. on August 11, 2006 at the law office of BROOKE MAWHORR, 112 E. Gilbert Street, Muncie, IN 47308 (or such other date, time and/or place as the parties may agree), before a notary public or other person authorized by law to administer oaths. The deposition will be taken to discover information relevant to Roberts' response to HCR's request for declaratory order in this proceeding. The deposition will continue from day to day if not completed.

Dated: July 14, 2006

Respectfully submitted,



Kathleen C. Kauffman (DC Bar #323212)

ACKERSON KAUFFMAN FEX, PC

1666 K Street, N.W., Suite 1010

Washington, D.C. 20006

(202) 833-8833

(202) 833-8831 (facsimile)

kkuffman@ackersonlaw.com

Counsel for Gary L. Roberts,

Roberts Pipeline Construction Company,

Inc., and Roberts Construction, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of July, 2006 served a copy of the Roberts' Notice of Deposition of William E. Smith, President of Party Honey Creek Railroad, Inc. upon the following via Federal Express (for Monday, July 17, 2006 delivery):

Richard R. Wilson, Esq.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

John H. Brooke, Esq.
BROOKE-MAWHORR ATTORNEYS AT LAW
P.O. Box
112 E. Gilbert Street
Muncie, IN 47308-1071


Kathleen C. Kauffman
Attorney for Gary L. Roberts, et al.

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARARY ORDER

**ROBERTS' NOTICE OF DEPOSITION AND PRODUCTION OF RECORDS TO
NON-PARTY INDIANA DEPARTMENT OF TRANSPORTATION**

Kathleen C. Kauffman (DC Bar # 323212)
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005
Tel: (202) 833-8833
Fax: (202) 833-8831
kauffman@ackersonlaw.com

*Attorney for Gary L. Roberts,
Roberts Pipeline Construction Company, Inc.,
and Roberts Construction, Inc.*

Dated: July 14, 2006

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**ROBERTS' NOTICE OF DEPOSITION AND PRODUCTION OF RECORDS TO
NON-PARTY INDIANA DEPARTMENT OF TRANSPORTATION**

**SERVE: Mark Ahearn
Deputy Commissioner- Chief Legal Counsel
Indiana Department of Transportation
100 North Senate Avenue
Indianapolis, IN 46204**

-AND-

**William Rinard
Deputy Commissioner
Indiana Department of Transportation
Greenfield District
32 South Broadway
Greenfield, IN 46140**

-AND-

**Thomas Beck
Railroad Section Manager
Indiana Department of Transportation
100 North Senate Avenue
IGC-N Room N901
Indianapolis, IN 46204**

PLEASE TAKE NOTICE that pursuant to 49 U.S.C. § 721(d)(1) and 49 C.F.R. § 1114.22, Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts"), by counsel, will take the deposition upon oral examination of the

Non-Party, Indiana Department of Transportation at 9:00 a.m. on July 27, 2006 at the law office of BROOKE MAWHORR, 112 E. Gilbert Street, Muncie, IN 47308 (or such other date, time and/or place as the parties may agree), before a notary public or other person authorized by law to administer oaths. Indiana Department of Transportation shall designate one or more officers, directors, managing agents or other persons who consent to testify on their behalf with respect to each of the matters set forth in the attached Exhibit A. Prior to the deposition, the Indiana Department of Transportation shall make available the records set forth in Exhibit B to permit the inspection and copying of the records. The deposition will continue from day to day if not completed.

Dated: July 14, 2006

Respectfully submitted,



Kathleen C. Kauffman (DC Bar # 323212)

ACKERSON KAUFFMAN FEX, PC

1666 K Street, N.W., Suite 1010

Washington, D.C. 20006

(202) 833-8833

(202) 833-8831 (facsimile)

kkauffman@ackersonlaw.com

Counsel for Gary L. Roberts,

Roberts Pipeline Construction Company, Inc.,

and Roberts Construction, Inc.

EXHIBIT A

Subject Matter of Deposition

1. Information concerning the Honey Creek Railroad line ("HCR line" as defined in Exhibit B) including, without limitation:

- a. The rail traffic from the HCR line that continued on to the Norfolk Southern line;
- b. The condition of the HCR line;
- c. Any derailments on the HCR line or the immediately adjacent Norfolk Southern line;
- d. The removal of the tracks connecting the HCR line and the Norfolk Southern track; and,
- e. The abandonment of the HCR line.

EXHIBIT B**Documents to be Produced**

1. All copies of documents, from 1998 to the present, concerning or relating to Honey Creek Railroad line ("HCR line") that connected to the Norfolk Southern line near New Castle, Indiana in Henry County, including, without limitation, documents related to rail traffic from the HCR line that continued on to the Norfolk Southern line, the condition of the HCR line, any derailments on the HCR line or the immediately adjacent Norfolk Southern line, the removal of the tracks connecting the HCR line and the Norfolk Southern track and/or the abandonment of the HCR line.

2. All documents relating to loans provided by the Indiana Department of Transportation ("INDOT") to Honey Creek Railroad, Inc.;

3. All Annual Reports under Ind. Code 8-3-1-1(i) filed with INDOT by the Honey Creek Railroad, Inc., from its conception through the reporting year 2005;

4. All Honey Creek Railroad's submissions of operating rule books, and any amendments, to INDOT, pursuant to 105 IAC 5-9-1;

5. All Honey Creek Railroad's submissions of operating timetables, and any amendments, to INDOT, pursuant to 105 IAC 5-9-2;

6. All Honey Creek Railroad's submissions of bulletin orders and notices to INDOT, pursuant to 105 IAC 5-9-3;

7. Any or All Verified Petitions to Remove Automatic Train-Activated Warning Signals From Rail-Highway Grade Crossings regarding Honey Creek Railroad, Inc. pursuant to 105 IAC 5-7-2;

8. All decisions of INDOT regarding the removal of automatic train-activated warning signals relating to Honey Creek Railroad, Inc.;

9. Documents relating to the INDOT decision and subsequent action of paving over tracks on the Honey Creek line at State Road 36 in Henry County, Indiana;
10. Documents regarding the Consolidated Rail Corporation ("Conrail") - Honey Creek Secondary Line Abandonment, Docket # AB-167(1122X) of 10.6 miles of track in 1993; and,
11. All communications/correspondence, including but not limited to letters, electronic mail, and telephone call notations, both inner-office and out-of-office, relating to Honey Creek Railroad, Inc. and/or the HCR line, from 1998 to the present.

Instructions and Definitions

1. Excluded from the request are all documents covered by attorney-client privilege.
2. "HCR line" means the 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, Indiana, which transverses United States Postal Service Zip Code 47362. Until 1993, the HCR line was owned by Consolidated Rail Corporation and was identified as the line between milepost 104.1 and milepost 110.5. The HCR line is the subject of Surface Transportation Board ("STB") Docket No. AB-865 (Sub. No. 0 (or 1) X) and the subject of STB Finance Docket No. 34869.
3. "Document" shall be afforded the broadest meaning possible under the applicable rules and law. It shall include, without limitation, each original and each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) of all forms of retained information. "Document" also includes, without limitation, all data, documents or information stored on computer or other device for the storage of electronic information; all electronic communications or messages, such as e-

mail, including without limitation e-mail messages which have been printed out, e-mail messages which are stored on computers of the sender or recipient, and e-mail messages which have been "deleted" by the sender or recipient but which may be "recovered" from any source (including personal or network computers, mainframe computers, or computer back-up media).

4. "Concern", "concerning", "refers", "referring", "relates", "relating to" or "regarding" shall mean mentioning, reflecting, pertaining to, making reference to, evidencing, describing, discussing, analyzing, or commenting on a matter, directly or indirectly, in whole or in part.

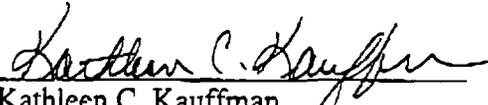
CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of July, 2006 served a copy of the Roberts' Notice of Deposition of Non-Party Indiana Department of Transportation upon the following via Federal Express (for Monday, July 17, 2006 delivery):

Richard R. Wilson, Esq.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

John H. Brooke, Esq.
BROOKE-MAWHORR ATTORNEYS AT LAW
112 E. Gilbert Street
Muncie, IN 47308-1071


Kathleen C. Kauffman
Attorney for Gary L. Roberts, et al.

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**ROBERTS' NOTICE OF DEPOSITION AND PRODUCTION OF RECORDS TO NON-
PARTY NORFOLK SOUTHERN RAILWAY COMPANY
(A Virginia Corporation – IRS Employer Id. No. 53-6002016)**

Kathleen C. Kauffman (DC Bar # 323212)
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005
Tel: (202) 833-8833
Fax: (202) 833-8831
kauffman@ackersonlaw.com

*Attorney for Gary L. Roberts,
Roberts Pipeline Construction Company, Inc.,
and Roberts Construction, Inc.*

Dated: July 14, 2006

Before the
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.
PETITION FOR DECLARATORY ORDER

**ROBERTS' NOTICE OF DEPOSITION AND PRODUCTION OF RECORDS TO
NON-PARTY NORFOLK SOUTHERN RAILWAY COMPANY
(A Virginia Corporation – IRS Employer Id. No. 53-6002016)**

**SERVE: Norfolk Southern Railway Company
c/o: ROGER A. PETERSEN, Registered Agent
Three Commercial Place
Norfolk, VA 23510-2191**

-AND-

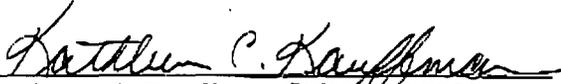
**Norfolk Southern Railway Company
c/o: PAUL GILLEY
Resident Vice President – Government Relations
101 W. Ohio St.
Suite 2000
Indianapolis, IN 46204-1790**

PLEASE TAKE NOTICE that pursuant to 49 U.S.C. § 721(d)(1) and 49 C.F.R. § 1114.22, Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts"), by counsel, will take the deposition upon oral examination of Non-Party, Norfolk Southern Railway Company ("Norfolk Southern") at 9:00 a.m. on July 28, 2006 at the law office of BROOKE MAWHORR, 112 E. Gilbert Street, Muncie, IN 47308 (or such other date, time and/or place as the parties may agree), before a notary public or other person authorized by law to administer oaths. Norfolk Southern shall designate one or more officers,

directors, managing agents or other persons who consent to testify on their behalf with respect to each of the matters set forth in the attached Exhibit A. Prior to the deposition, Norfolk Southern shall make available the records set forth in Exhibit B to permit the inspection and copying of the records. The deposition will continue from day to day if not completed.

Dated: July 14, 2006

Respectfully submitted,


Kathleen C. Kauffman (DC Bar # 323212)
ACKERSON KAUFFMAN FEX, PC
1666 K Street, N.W., Suite 1010
Washington, D.C. 20006
(202) 833-8833
(202) 833-8831 (facsimile)
kkauffman@ackersonlaw.com

*Counsel for Gary L. Roberts,
Roberts Pipeline Construction Company, Inc.,
and Roberts Construction, Inc.*

EXHIBIT A**Subject Matter of Deposition**

1. Information concerning the Honey Creek Railroad line ("HCR line" as defined in Exhibit B) including, without limitation:
 - a. The rail traffic from the HCR line that continued on to the Norfolk Southern line;
 - b. The condition of the HCR line;
 - c. Any derailments on the HCR line or the immediately adjacent Norfolk Southern line;
 - d. The removal of the tracks connecting the HCR line and the Norfolk Southern track;
 - e. The abandonment of the HCR line.

EXHIBIT B

Documents to be Produced

1. All copies of documents concerning or relating to the Honey Creek Railroad line ("HCR line") that connected to the Norfolk Southern line near New Castle, Indiana in Henry County, including, without limitation, documents related to rail traffic from the HCR line that continued on to the Norfolk Southern line, the condition of the HCR line, any derailments on the HCR line or the immediately adjacent Norfolk Southern line, the removal of the tracks connecting the HCR line and the Norfolk Southern track and/or the abandonment of the HCR line.

Instructions and Definitions

1. The time period covered by this request is 1998 to the present.
2. Excluded from the request are all documents covered by attorney-client privilege.
3. "HCR line" means the 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, Indiana, which transverses United States Postal Service Zip Code 47362. Until 1993, the HCR line was owned by Consolidated Rail Corporation and was identified as the line between milepost 104.1 and milepost 110.5. The HCR line is the subject of Surface Transportation Board ("STB") Docket No. AB-865 (Sub. No. 0 (or 1) X) and the subject of STB Finance Docket No. 34869.
4. "Document" shall be afforded the broadest meaning possible under the applicable rules and law. It shall include, without limitation, each original and each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) of all forms of retained information. "Document" also includes, without limitation, all data, documents or information stored on computer or other device for the storage of electronic information; all electronic communications or messages, such as e-

mail, including without limitation e-mail messages which have been printed out, e-mail messages which are stored on computers of the sender or recipient, and e-mail messages which have been "deleted" by the sender or recipient but which may be "recovered" from any source (including personal or network computers, mainframe computers, or computer back-up media).

5. "Concern", "concerning", "refers", "referring", "relates", "relating to" or "regarding" shall mean mentioning, reflecting, pertaining to, making reference to, evidencing, describing, discussing, analyzing, or commenting on a matter, directly or indirectly, in whole or in part.

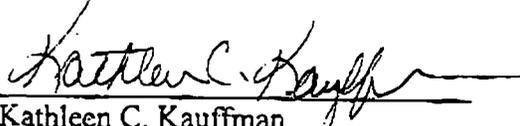
CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of July, 2006 served a copy of the Roberts' Notice of Deposition of Non-Party Norfolk Southern Railway Company upon the following via Federal Express (for Monday, July 17, 2006 delivery):

Richard R. Wilson, Esq.
Pa. I.D. #25661
127 Lexington Avenue, Suite 100
Altoona, PA 16601

William B. Keaton, Esq.
KEATON AND KEATON, P.C.
126 West Second Street
Rushville, IN 46173

John H. Brooke, Esq.
BROOKE-MAWHORR ATTORNEYS AT LAW
P.O. Box
112 E. Gilbert Street
Muncie, IN 47308-1071


Kathleen C. Kauffman
Attorney for Gary L. Roberts, et al.