

33603
EB

SERVICE DATE - MAY 16, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33928

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

Decided: May 15, 2003

On December 27, 2001, Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR) (collectively, NS) filed an application under 49 U.S.C. 10901 for authority for NSC, NSR, or one of their subsidiaries, to construct, and for NSR to operate, a 5.26-mile rail line between Saltsburg, PA, and Clarksburg, PA, in Indiana County, PA (the Saltsburg Connection). This construction would allow NS to haul coal to the Reliant Energy Keystone Generating Plant (the Keystone Plant) in Shelocta, PA, over a 66-mile route in lieu of an existing haul of 117 miles over steep grades.

BACKGROUND

According to NS, the Keystone Plant at Shelocta receives 4.5 to 5 million tons of coal annually from coal producers located in southwestern Pennsylvania and northern West Virginia. The Keystone Plant receives coal from these mines by either rail or truck.¹ Only NSR presently delivers coal by rail to the plant.² Currently, NSR hauls coal from its Shire Oaks Yard on its Monongahela Line (Mon

¹ Before 1995, all coal delivered to the Keystone Plant moved by truck or mine mouth conveyor belt. In 1995, rail transportation of the coal began over the current route (the Northern Route). In 1999, delivery by conveyor belt was discontinued.

² A small quantity of coal originating with the Buffalo & Pittsburgh Railroad, Inc. (B&P) is moved to the Keystone Plant by NSR under an interchange agreement between B&P and NSR that expires in June 2003.

Line)³ to the Keystone Plant over the circuitous and mountainous Northern Route. After unloading the coal at the Keystone Plant, the empty trains travel back to the Shire Oaks Yard over the same route.

As an alternative to the Northern Route, NS wants to establish a Southern Route from Saltsburg, a point on NS's Conemaugh Line, to the Keystone Plant. The new route will be much shorter than the Northern Route. NS plans to build a 5.26-mile connection between Saltsburg and Clarksburg (herein, the Saltsburg Connection) through Indiana County from the Conemaugh Line to an NS line at Clarksburg.⁴ This is the proposed action before us. In addition, to complete the new Southern route, NS plans to rehabilitate 10.89 miles of the unused (but not abandoned) rail line from a point north of Clarksburg to a point just south of Shelocta.⁵ Finally, NS will modify the existing connection to the Keystone Plant by adding 1,450 feet of rail to link the rehabilitated Clarksburg Segment to the plant.⁶

NS argues that the Southern Route will significantly increase the efficiency and effectiveness of transporting coal to the Keystone Plant. The relative smoothness of the terrain of the Southern Route compared to the Northern Route will increase the allowable train length from 100 cars to 130 cars, each loaded with approximately 108 tons of coal.⁷ The Southern Route will decrease the distance from Etna, a point north of Shore Oaks Yard, to the Keystone Plant from 117 miles to 66 miles and will decrease the required time each way from 10 hours to between 3 and 7 hours. The Southern Route

³ Coal trains travel to NS's Shire Oaks Yard in Elrama, PA, from one of the six Pittsburgh Seam coal mines along the Mon Line. The Pittsburgh Seam is a coal deposit. Coal mined from this source is called Pittsburgh Seam coal.

⁴ According to NS, it has purchased, obtained options to purchase, or otherwise plans to obtain all the property underlying the proposed 5.26 miles of new construction.

⁵ The segment to be rehabilitated is generally intact, with roadbeds in stable condition. Rehabilitation will require clearing of brush, replacement of rails, ties and ballast, refurbishment of existing drainage facilities, in-kind rehabilitation and replacement of portions of four bridge structures, and the development of the improved connection.

⁶ Our approval of the rehabilitation of the Clarksburg Segment and modification of the 1450-foot connection is not required, because carriers have the right to improve or upgrade an existing line.

⁷ In anticipation of greater rail delivery capacity via the new Southern Route, the Keystone Plant is willing to modify its existing facilities to handle two 130-car trains at a time, allowing a loaded coal train to arrive at the Keystone Plant before an empty train departs.

will decrease the locomotive power and the number of crew members required for the trip.⁸ Finally, the Southern Route will make it economically feasible for NS to deliver coal obtained via barge and coal from more distant locations, including Central Appalachia and Wyoming's Powder River Basin.

Coal is transported by truck to the Keystone Plant from several mines located at distances ranging from 15 miles to 74 miles from the plant. According to NS, even after completion of the Southern Route, truck transportation of coal to the plant will continue, though at a reduced level. NS asserts that approximately 43,480 annual truck trips would be eliminated by the movement of an additional one million tons of coal via the proposed route.

NS argues that the Southern Route will also result in significant public benefits. The carrier says the greater efficiency of the Southern Route will enable NS to expend more funds to upgrade its track in other parts of the country. The railroad says the Southern Route will have the environmental benefit of permitting NS to reduce the number of coal-carrying trucks on the roads of Indiana County. The route will make it economically feasible for NS to provide the Keystone Plant with more of the environmentally-preferable Pittsburgh Seam coal,⁹ which, NS notes, is too far from the Keystone Plant to be economically delivered by truck. Finally, NS says the Southern Route will increase safety by reducing the number of public and private at-grade crossings for the trip to the Keystone Plant from 108 to 34.

By notice served on January 22, 2002, and published in the Federal Register on the same date (67 FR 2954), we announced the filing of NS's application, and we set January 31, 2002, as the deadline for the public to submit comments. Francis L. Olliver, a landowner, submitted an opposing

⁸ The locomotive requirement for the trip will decrease from four special steerable truck 6-axle locomotives to only three conventional 6-axle locomotives.

⁹ Pittsburgh Seam coal produces less air pollution than the coal that is trucked to the Keystone Plant. According to NS, Pittsburgh Seam coal is more efficient and costs less to mine.

comment.¹⁰ Additionally, Horst Kunig, Ph.D,¹¹ Sandra Becker, and William Becker, alone or together, submitted pleadings in opposition to the proposal.¹²

Mr. Olliver argues that the proposal would benefit only the operations of NS. He expresses concern that with the new line, “[r]educed truck traffic can be translated to yet another detrimental blow to our already floundering community.” He also objects to the use of eminent domain for private rather than public projects. In the alternative, he asserts that, if this project is a public project, upgrading the Northern Route would serve the same purposes without disrupting the community affected by the Southern Route.

In reply, NS argues that upgrading the Northern Route would not be feasible because the railroad operates over trackage rights for a portion of the Northern route and does not own much of the track comprising the Northern Route, so that it could not control the improvements. Furthermore, the Northern Route allegedly cannot be expanded to accommodate the anticipated increase in rail traffic required to supply the Keystone Plant with an adequate coal supply in the future. NS disputes that it is the only beneficiary of the line, citing several public benefits of the proposed route. These include expanded capacity, increased truck/rail competition, reduced truck traffic, more efficient rail operations, fewer trains, less locomotive power, reduced trip length, lower grades, and fewer at-grade crossings. Finally, NS argues that the eminent domain issue raised by Mr. Olliver is not before the Board as: (1) it is a matter of Pennsylvania state law, not Federal law, and (2) Mr. Olliver has since negotiated a sales

¹⁰ The comment of Mr. Olliver arrived after the January 31, 2002 deadline for submitting comments in this case. Despite this late filing, in the interests of compiling a complete record, we have accepted Mr. Olliver’s comments. NS will not be prejudiced by our consideration of it because we have also accepted its reply.

¹¹ The comments of Dr. Kunig and all of his subsequent filings arrived after the January 31, 2002 deadline for submitting comments on the proposed construction. On February 25, 2002, NS filed a petition opposing the late filing and making a motion to strike, or in the alternative, to reply. In the interests of compiling a complete record, we will accept and consider Dr. Kunig’s comment and all of his subsequent filings, as well as NS’s replies.

¹² During the course of this proceeding, these three individuals, alone or together, filed numerous procedural motions and petitions for relief. Various described as motions to deny, petitions to deny, petitions to rescind, petitions to dismiss, motions to strike and petitions to discontinue the proceeding, these pleadings did not afford any basis for procedural relief but rather represent arguments on the merits of the case made in a piecemeal fashion. We will consider the arguments in the record, but we will deny all the requests for relief.

price with NS and executed a deed to sell his property so that his land has not, in fact, been acquired by eminent domain.

Dr. Kunig challenges the validity of the application due to the fact that some of its contents are designated “highly confidential” and, therefore, are unavailable to the general public. He asserts that NS has not shown, as allegedly required by 49 U.S.C. 10901(c), that the proposed construction serves the public interest. Therefore, he says, it should be denied. Dr. Kunig argues that the proposal is entirely unnecessary, as the current route can meet NS’s needs and provide the Keystone Plant with its entire coal requirements. He fears that the creation of the Southern Route would give NS a monopoly to transport coal at increased prices to the Keystone Plant. He claims that NS has acquired all property for the proposal through the exercise of eminent domain. He argues that this acquisition was improper, because the Board and the Pennsylvania Public Utility Commission should have first concluded that the proposal is necessary and issued construction permits. Finally, Dr. Kunig argues that NS’s existing shippers will be harmed by this proposal.¹³

In response, NS asserts that the “highly confidential” contents of the application are available to anyone who agrees to abide by the protective order previously issued in this proceeding. NS states that a correct reading of 49 U.S.C. 10901(c) indicates that NS does not have a burden to show that the construction is in the public interest; rather, the Board must find that the construction is inconsistent with the public interest or it must issue a certificate. NS reasserts that the Southern Route is necessary to increase the efficiency of coal transportation to the Keystone Plant because the Northern Route is simply unable to accommodate the Keystone Plant’s entire coal requirement. NS argues that the Southern Route will not create a monopoly because NS is not abandoning any current line to the Keystone Plant, and it is terminating its own operating rights over the Northern Route, not the rights of others. Finally, NS asserts that the eminent domain provision cited by Dr. Kunig applies only to certain utility companies and is not applicable to this proceeding. The railroad adds that most of the property needed for the project has been acquired through voluntary negotiation with the owners.

DISCUSSION AND CONCLUSIONS

Transportation-Related Issues

This construction and operation application is governed by 49 U.S.C. 10901(c), which specifies that:

¹³ Similar arguments are made by the Beckers.

(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 the public convenience and necessity

As we noted in Dakota, Minnesota & Eastern R.R. Construction into the Powder River Basin, 3 S.T.B. 847, 863 (1998) (DM&E), in enacting the ICC Termination Act of 1995, Pub. L. No. 104-99, 109 Stat. 803 (1995) (ICCTA), Congress intended to facilitate rail construction. Congress did so by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds that the project is inconsistent with the PC&N.

Although the statute does not define the term “public convenience and necessity,” a three-part test has been used to evaluate construction proposals: (1) whether the applicant is financially fit to undertake the construction and provide service; (2) whether there is a public demand or need for the proposed service; and (3) whether the construction project is in the public interest and will not unduly harm existing carrier services. Id.; Tongue River RR Co.–Const. & Oper.–Ashland–Decker, MT, 1 S.T.B. 809, 826 (1996) (Tongue River). The interests of shippers are accorded substantial importance in assessing public convenience and necessity in railroad construction applications. DM&E, 3 S.T.B. at 863. The public convenience and necessity standard has become less restrictive over the years as a result of the pro-competitive policies reflected in the line construction provisions in the Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980), and ICCTA.

Financial Fitness. In assessing the financial viability of the proposal to construct and operate a rail line, we consider both the resources that would be required to build the line and those needed to then maintain and operate the line. The purpose of the test of the financial ability of an applicant to construct and operate a new line is not to protect the carrier or its investors. Rather, it is to “protect existing shippers from a carrier’s proposed actions that could have an adverse impact on the carrier’s ability to continue to serve those shippers without detriment to either service or rates.” DM&E, 3 S.T.B. at 863. Accord Tongue River, 1 S.T.B. at 829.

In this case, Dr. Kunig has challenged NS’s financial fitness. But in support of his argument that existing shippers will be hurt by the proposal, he discusses only how trucks will be harmed. We find no merit to Dr. Kunig’s arguments. Dr. Kunig fails to show that shippers will be harmed. To the contrary, the record shows that the Keystone Plant will benefit from faster, more efficient service over the Southern Route and greater access to environmentally preferable coal.

NS has submitted the cost and financial information required by our rules to demonstrate its financial fitness to construct and maintain and operate the line once it is built. We further note NS’s statements that it will finance construction of the project out of its current capital budget, that it will

recover the costs of the construction through revenues received pursuant to an existing 10-year contract covering deliveries to the only current customer on the proposed line, that the rates charged to that customer are protected during the term of the contract, and that the Southern Route will substantially decrease the locomotives and other equipment required to serve the Keystone Plant, thereby increasing the ability of NS to efficiently serve its shippers and operate and maintain its track. On the record before us, we find that NS has satisfied the financial fitness aspect of the public convenience and necessity requirement to construct and operate the Southern Route.

Public Demand or Need. Under the current law, rail construction is presumed to be in the public interest. As such, the burden is on opponents to establish that a proposal is inconsistent with the public interest because there is no public demand or need for the construction, thus shifting the burden back to proponents. Here opponents have failed to meet their burden.

Dr. Kunig has challenged the public demand for the Southern Route, claiming that it is not necessary to supply the Keystone Plant with its entire coal requirements. Further, Mr. Olliver has suggested that NS instead upgrade the existing route. But NS has shown that the Northern Route is simply unable to transport all the coal required for the Keystone Plant. The railroad has also explained that it would not be feasible to upgrade the Northern Route because, as it operates over trackage rights and does not own much of the Northern Route, it could not control the improvements.

We find that the record before us demonstrates that there is a demand for NS's proposal because it will benefit the existing shipper and the general public.¹⁴ The record indicates that the physical capacity of the Southern Route will be greater than that of the Northern Route. This expanded capacity will enhance the efficiency of transporting coal to the Keystone Plant. The Southern Route will reduce the plant's need for truck transportation, thereby reducing traffic congestion, fuel use, and wear and tear on area roads. It will permit the Keystone Plant to obtain coal from current sources in greater quantities, such as Pittsburgh Seam coal, which is available along the Mon Line by rail, but is too far from the Keystone Plant to be economically feasible to be delivered by truck.

The Southern Route will also make it economically feasible for the Keystone Plant to obtain coal from more distant locations such as Central Appalachia and Wyoming's Powder River Basin and to obtain coal delivered via barge – a situation currently precluded by the physical limitations of the Northern Route. Furthermore, trains traveling over the Southern Route will handle 30 additional cars each and will require less power and smaller crews. Finally, we note that all of these potential benefits have engendered strong support from the Keystone Plant, which is willing to modify its existing facilities in preparation for the new Southern Route.

¹⁴ NS states that it will hold itself out to serve other shippers on the Saltsburg Connection, should additional rail traffic develop in the future.

Competition with Existing Carriers. The proposed line would not harm existing rail services. NS is the only rail carrier serving the Keystone Plant and that would not change as a result of this proposal. Dr. Kunig has asserted that the construction of the proposed line will give NS a monopoly on the transportation of coal to the Keystone Plant. But this proposal will merely allow NS to provide more efficient service to the same shipper over a different route.

Environmental Issues

Through SEA, we conducted a detailed environmental review to ensure that the proposed action complies with the statutory requirements under the National Environmental Policy Act of 1969, as amended (NEPA), and the requirements of our environmental regulations at 49 CFR Part 1105.¹⁵ SEA prepared an Environmental Assessment (EA) based on its independent analysis of the proposed construction and operation.¹⁶ The EA presents a detailed analysis of the environmental impacts of the construction and operation of the proposed 5.26-mile Saltsburg Connection and related operations that would result. In studying the impacts of this proposal, the EA looks at three alternatives in addition to

¹⁵ NEPA requires Federal agencies “to the fullest extent possible” to consider the environmental consequences “in every recommendation or report on major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C). The President’s Council on Environmental Quality (CEQ) has defined “major federal actions” to include projects regulated or approved by Federal agencies. 40 CFR 1508.18. Under NEPA and related environmental laws, we must consider significant potential beneficial and adverse environmental impacts in deciding whether to approve a railroad construction as proposed, deny the proposal, or grant it with conditions (including environmental mitigation conditions). The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed action before it is implemented, in order to minimize or avoid potential negative environmental impacts. Marsh v. Oregon Natural Resource Council, 490 U.S. 360, 371 (1989).

¹⁶ In performing its environmental analysis, SEA considered the potential regional and local environmental impacts of the proposed construction and operation. SEA evaluated potential environmental impacts in the following areas: safety, transportation systems, energy, air quality, noise, cultural and historic resources, hazardous materials, natural resources, land use, socioeconomic effects directly related to physical changes in the environment, and environmental justice. SEA also analyzed cumulative environmental effects of the proposed construction and operation and related projects. SEA also consulted with other government agencies, reviewed agency and public comments, undertook field reconnaissance activities, and developed mitigation measures to avoid or reduce anticipated adverse impacts on the environment. In addition, SEA visited the proposed rail line construction site to document the existing conditions and assess the potential effects of the proposed project on the environment.

NS's proposed route, the Saltsburg Connection: (1) constructing the "Avonmore Route," a 14- to 16-mile route that would require the construction of a new rail line between the Keystone Plant and NS's Conemaugh Line; (2) the Blairsville Route, which would be established by restoring and rehabilitating more than 30 miles of inactive rail line and would run through the center of the campus of Indiana University of Pennsylvania and the City of Indiana, PA; and (3) the no-build alternative.

The EA concludes that constructing and operating the Saltsburg Connection would be the environmentally preferred alternative. The EA explains that construction and operation of the Saltsburg Connection would be preferable to the Avonmore or Blairsville Routes.¹⁷ Specifically, construction of the Saltsburg Connection would reduce truck traffic to the Keystone Plant and allow the plant to use more environmentally preferable Pittsburgh Seam coal. The EA further finds that the no-build alternative would not be preferable as it would require continued use of NS's Northern Route, which is hilly and circuitous. Moreover, if the Northern Route, parts of which are already substandard, were to deteriorate, the Keystone Plant would be forced to rely increasingly on delivery of coal by truck, thereby increasing traffic on local roads and increasing air pollution. Therefore, the EA explains that, under the no-build alternative, the benefits of the shorter and more efficient Southern Route would not be realized.

The EA concludes that the proposed construction and operation of the Saltsburg Connection would have no significant environmental impacts if certain mitigation measures were imposed. The EA recommends 19 conditions (including some voluntary mitigation developed by NS) to mitigate the environmental impacts of the proposed construction and operation.

SEA sent the EA to 50 agencies and interested persons, including all parties to the proceeding, potentially affected communities, appropriate Federal, state, and local agencies, and any person requesting a copy. In addition, SEA published a notice of availability of the EA in the Federal Register, requesting comments on all aspects of the EA.

SEA received written comments on the EA from the United States Department of the Interior, Fish and Wildlife Service, the U.S. Army Corps of Engineers – Pittsburgh District (Corps), the Pennsylvania Department of Environmental Protection (PADEP), Conemaugh Township, Dr. Kunig, and Mr. Olliver. SEA then prepared a Post Environmental Assessment (Post EA) dated

¹⁷ As the EA states, for the Avonmore Route, a line three times longer than the Saltsburg Connection would have to be built and the environmental impacts and costs would be much greater. Because the route would upgrade the Keystone Plant from the east rather than the west, the rail infrastructure of the plant also would have to be modified. The Blairsville Route also has greater costs and greater potential environmental impacts than the Saltsburg Connection.

April 28, 2003. The Post EA considers all of the comments received on the EA, reflects SEA's further independent environmental analysis and additional consultations with appropriate agencies, makes minor corrections to the EA, and sets forth SEA's final recommended environmental mitigation (20 conditions in all).

We have thoroughly reviewed the EA and Post EA, and we adopt all of SEA's analysis and recommendations, including those not specifically discussed here. We are satisfied that the EA took the requisite "hard look" at potential environmental effects associated with this project, and that the Saltsburg Connection is the preferred routing alternative. As the environmental analysis in the EA demonstrates, construction and operation of the proposed Saltsburg Connection will have no significant environmental impacts with the environmental mitigation recommended by SEA, all of which we will impose. A list of all our conditions is attached in the Appendix to this decision.

Turning briefly to other issues discussed in the EA,¹⁸ we concur with SEA's determination that construction activities that would fill or disturb wetlands or other water bodies would require authorization under section 404 of the Clean Water Act and that a wetlands survey should be performed for the construction of the Saltsburg Connection. According to SEA, on December 12, 2002, NS submitted to PADEP an application for a joint section 404 permit and appropriate state permits. One of our conditions requires NS to comply with all mitigation requirements contained in an approved joint permit.

In his comments on the EA, Dr. Kunig claimed that SEA should have prepared a full Environmental Impact Statement (EIS) rather than the more limited EA. However, as discussed in the EA and Post EA, SEA properly determined that any adverse environmental impacts associated with this project were unlikely to be significant with the imposition of appropriate mitigation measures. Therefore, SEA reasonably concluded that an EA, rather than an EIS, was adequate in this case.¹⁹

Dr. Kunig also alleged that NS's communications with SEA in the preparation of the EA constitute prohibited ex parte communications under 49 CFR 1102.2(c)(1) and (2). We find that neither SEA nor NS has engaged in any inappropriate communications. As discussed in the Post EA, under NEPA the environmental review process is necessarily informal and all-inclusive and depends on cooperative consultations with the applicant as well as other agencies and other interested parties with expertise, so that all possible environmental information, issues, and points of view will come before the agency. See City of Auburn v. United States, 154 F.3d 1025, 1033 (9th Cir. 1998), cert. denied, 527

¹⁸ Rather than discuss each of the environmental issues and SEA's assessment here, we will instead rely on the EA itself, and we are adopting the analysis contained in it as our own.

¹⁹ SEA frequently prepares EAs in rail construction cases.

U.S. 1022 (1999) (opportunity for public participation provides necessary checks and balances). The CEQ regulations implementing NEPA specifically anticipate the continuing involvement and participation of the applicant throughout the process, so long as the agency independently evaluates the information submitted and is responsible for its accuracy. *See, e.g.*, 40 CFR 1506.5(a)-(c). Our environmental rules also provide that the railroad may “participate in the preparation of environmental documents.” 49 CFR 1105.4(j).

Conemaugh Township commented that the transportation and safety mitigation measures proposed in the EA would override the Pennsylvania Public Utility Commission’s (PUC) authority regarding the extent and nature of crossing protections to be provided by NS at Bell Road. But, as SEA noted in its Post EA, the PUC expressed no concern about the adequacy of the mitigation proposed in the EA for Bell Road, which was developed by NS after consulting with the PUC, to ensure that local concerns regarding safety at Bell Road are addressed.²⁰

Mr. Olliver and Dr. Kunig commented that the construction and operation of the Saltsburg Connection would not result in fuel savings vis-a-vis truck service, and that the projected fuel consumption figures in the EA are incorrect. SEA acknowledged in its Post EA that the figures in the EA prepared by NS and verified by SEA representing the combined truck and train diesel fuel savings were slightly overstated due to a mathematical error. NS recalculated the projected fuel savings and the Post EA presents the corrected figures, which indicate that the combined truck and train diesel fuel savings would total approximately 271,850 gallons per year.²¹

Finally, we note that the Post EA sets forth the extensive work done by NS, in consultation with the Pennsylvania Historical and Museum Commission (PHMC), to mitigate impacts to four sites identified by the PHMC as potentially eligible for listing on the National Register of Historic Places and also addresses comments raising issues related to land use, prime farmland, and economic impacts associated with the rail line construction. In short, based on the results of the environmental review conducted by SEA, we conclude that the construction and operation of the proposed Saltsburg Connection, as conditioned, will have no significant environmental impacts.

²⁰ The condition states that the Pennsylvania Department of Transportation and the PUC will determine the final design for the Bell Road crossing and associated facilities.

²¹ The EA had estimated the savings as 300,000 gallons per year. The detailed analysis of the recalculated fuel saving is provided in the Post EA, Appendix B.

CONCLUSION

We find, after weighing the various transportation and environmental concerns and considering the entire record, that the public convenience and necessity test is met here and the construction and operation of the Saltsburg Connection will be approved, subject to the environmental mitigation set forth in the Appendix.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. We adopt the environmental mitigation measures set forth in the Appendix to this decision, and we impose them as a condition to the authority granted in this proceeding.
2. The application submitted under 49 U.S.C. 10901 for the construction and operation of the above-described line is granted, subject to the condition that NS comply with the mitigation measures adopted in this decision.
3. This decision is effective 30 days from the date of service.
4. Petitions to reopen must be filed by June 5, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary

APPENDIX

ENVIRONMENTAL MITIGATION MEASURES

Transportation and Safety

1. Norfolk Southern shall coordinate at-grade crossing construction with the Pennsylvania Department of Transportation and Indiana County in order to minimize traffic delay during crossing construction. Norfolk Southern shall use appropriate signs and barricades to control traffic during construction.
2. Norfolk Southern shall develop internal emergency response plans for construction to allow for agencies and individuals to be notified in case of an emergency. Norfolk Southern shall provide the emergency response plans to appropriate state and local entities.
3. As agreed to by Norfolk Southern, it shall install, at its sole cost, active rail/highway grade warning devices consisting of pole and cantilever mast mounted flashing lights and gates, and roadway modifications to improve the geometric conditions of Bell Road to enhance vehicular sight distance, subject to the approval of the Pennsylvania Public Utility Commission.
4. As agreed to by Norfolk Southern, it shall improve, at its sole cost, the intersection of Bell and Rose Roads to enhance the level of safety at the existing intersection in consultation with the Pennsylvania Department of Transportation and the Pennsylvania Public Utility Commission.
5. Norfolk Southern shall obtain permission for and scheduling of lane restrictions or road closures, as well as detour approvals, in coordination with the appropriate public transportation agency. Norfolk Southern shall be responsible for the cost of all permits, detours, coordination with local officials and agencies, and public notifications related to temporary lane restrictions or road closures.
6. Norfolk Southern shall consider maintenance of emergency response capabilities and school bus schedules in planning and executing the necessary road work.
7. Norfolk Southern shall implement an inspection and maintenance program to minimize the potential for derailments and shall implement a spill prevention and emergency response plan in the event of a coal spill or derailment.

Land Use

8. Norfolk Southern shall ensure that all areas disturbed by project-related construction activities that are not located on the railroad's property (such as access roads, haul roads, crane pad and borrow pits) are promptly restored as closely to their original condition as is practical, following conclusion of project-related construction activities at that site.
9. As agreed to by Norfolk Southern, it shall ensure that all controlled blasting work required during excavation of roadbed cut shall be conducted by contractors in strict compliance with applicable regulations. In addition, all controlled blasting work shall be performed utilizing best management practices which include:
 - A. Establishment and implementation of appropriate safety measures and procedures before, during and following all blasting activity for the protection of the public and employees;
 - B. Performance of pre-blast surveys of adjacent properties and structures; and
 - C. Performance of seismic monitoring during the blasting process.
10. If Federal funding is used by Norfolk Southern for this project, it will comply with the regulations of the Farmland Protection Policy Act of 1981.

Water Resources

11. Norfolk Southern shall obtain all necessary Federal, state, and local permits if construction activities require the alteration of wetland or other water bodies, or if these activities would cause soil or other material to wash into these water resources. Norfolk Southern shall use appropriate techniques to minimize construction-related impacts to wetlands and water bodies.
12. During rail line construction, Norfolk Southern shall disturb the smallest area practicable around any waterway.
13. In instances in which Norfolk Southern uses contractors to apply herbicide, for right-of-way maintenance, Norfolk Southern shall use only contractors trained in herbicide application and shall require those contractors to follow label directions in applying herbicides and limit the amount potentially entering waterways. Norfolk Southern shall require contractors to use only herbicides regulated for such uses with the Environmental Protection Agency and follow all state regulations that require their use.

14. As agreed to by Norfolk Southern, it shall comply with mitigation requirements contained in the joint permit to be reviewed by the U.S. Army Corps of Engineers and issued by the Pennsylvania Department of Environmental Protection, including the creation of new wetlands acreage to replace altered wetlands in such replacement ratio as the joint permit shall specify.

Biological Resources

15. Norfolk Southern shall use Best Management Practices to control erosion, runoff, and surface instability during construction, including seeding fiber mats, straw mulch, plastic lined slope drains, and other erosion control devices. Once the track is constructed, Norfolk Southern shall establish vegetation in the embankment slope to provide permanent cover and prevent erosion. If erosion develops, Norfolk Southern shall take steps to develop other appropriate erosion control procedures.

Air Quality

16. Norfolk Southern shall comply with all applicable federal, state, and local regulations regarding the control of fugitive dust. Fugitive dust emissions created during construction shall be minimized by using such control methods as water spraying, installation of wind barriers, and chemical treatment.

Noise

17. Norfolk Southern shall control temporary noise from construction equipment through the use and maintenance of muffler systems on machinery.
18. Norfolk Southern shall comply with the Federal Rail Administration regulations (49 CFR Part 210) establishing decibel limits for train operations.

Cultural Resources

19. If Norfolk Southern identifies any undiscovered archaeological remains or other cultural resources during construction activities, Norfolk Southern shall immediately cease work and contact the Pennsylvania State Historic Preservation Officer regarding appropriate measures to protect the resource.
20. As agreed to by Norfolk Southern, it shall complete a Phase III archaeological investigation of the four sites identified by the Pennsylvania Historic Museum Commission (PHMC) as potentially eligible for listing on the *National Register of Historic Places*. Norfolk Southern

shall prepare a report on the Phase III archaeological investigation for review by the PHMC. Pending completion of the section 106 process, Norfolk Southern shall ensure that the four archaeological sites – the Reed Site (Cribb Site) (36IN424), the Olliver I site portion of (36IN157) in the proposed right-of-way, the Olliver III site portion of (36IN160) in the proposed right-of-way, and the Olliver IV site (36IN428) are not adversely impacted.