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August 2, 2006

BY HAND

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 34893, The Chicago,
Lake Shore And South Bend Railway Company
- Acquisition And Operation Exemption -
Norfolk Southern Railway Company

Dear Mr. Williams:

I am writing on behalf of the Chicago, Lake Shore And South Bend Railway Company ("CLS&SB") to respond to the letter filed in the above-captioned proceeding by the Sisters of the Holy Cross ("the Sisters"). The Sisters' request that the Board revoke CLS&SB's exemption is both unsupported and unjustified in both fact and law.

Briefly, the Sisters allege that the subject railroad runs through land they own that is adjacent to the Saint Mary's College campus and the Inn at Saint Mary's, that operation of the Railroad presents serious safety issues affecting the College campus in terms of road blockage and emergency vehicle access, and train-associated noise and air pollution. The Sisters contend that the segment of railroad between MP 9.48 and MP 9.6 was abandoned and they admit that they removed the tracks on this segment approximately four years ago. Finally, citing to public safety concerns submitted to the Board by the City and the Michigan Area Council of Governments (copies of which were never provided to the undersigned counsel who learned about such submissions just today), the Sisters urge the Board to revoke CLS&SB's exemption.

Generally, the Board and the former Interstate Commerce Commission have consistently held that an exemption may be revoked "when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary to carry out the transportation policy of sec. 10101a of this title. Thus, the standard for revoking an exemption is whether regulation is needed to carry out the rail transportation policy. The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted. Minnesota Comm. Ry., Inc. - Trackage Exempt. - BN RR. CO., 8 I.C.C.2d 31, 35 (1991) and cases cited therein. Typically, the Board revokes (or rejects) an exemption where the notice contains materially false or misleading information, the applicant has utilized the wrong regulatory procedure, the applicant is misusing Board procedures for a sham transaction, the transaction is very controversial requiring a more detailed record, or there is a demonstrated need for regulation. Id. at 37; The Land Conservancy of Seattle & King County -- Acquisition & Operation Exemption -- The Burlington Northern & Santa Fe Ry. Co., STB Finance Docket No. 33388 (STB served Sept. 26, 1997) (Board will revoke an exemption "[t]o protect the integrity of our processes"); Riverview Trenton Railroad Company - Acquisition and Operation Exemption - Crown Enterprises, Inc., STB Finance Docket No. 33980 (STB served Feb. 15, 2002) (controversial proceeding not suitable for class exemption); SF&L Railway, Inc.-Acquisition And Operation Exemption-Toledo, Peoria And Western Railway Corporation, et al, STB Finance Docket No. 33995 (STB served October 17, 2002) (abuse of class exemption process); and Finance Docket No. 32407 (ICC served April 22, 1994) (material misstatements of fact and controversial proceeding).

Here the Sisters neither assert nor prove any of these established bases for challenging an exemption. They have failed in their burden of proof. While the Sisters premise their revocation request on alleged safety impacts and their impression that the subject rail line has been abandoned between MP 9.48 and MP 9.6, they have their facts wrong. In that connection, CLS&SB submits an affidavit from Gary Landrio, its transportation consultant on this project. As relevant here, Mr. Landrio's testimony establishes that:

- The Sisters' concerns about the impact of train operations are greatly exaggerated. Back in the 1970's and 1980's, this line was a through route between South Bend and Niles, MI, handling substantial volumes of freight. Today it is a stub-ended branch. Based upon the initial projected traffic level of 850 carloads per year, it would take 60.3 seconds for the one 15-car train to cross a highway moving at a speed of 10 mph. Concerns and impacts based upon the amount of traffic the subject line handled some 30 years ago are in no way relevant to what this line will handle today.
- Although Consolidated Rail Corporation (Conrail) received ICC authority to abandon the track between MP 9.48 and MP 9.6 as part of a larger request that encompasses the line up to MP 6.0 (north of CLS&SB's proposed acquisition and not encompassed by CLS&SB's request for authority), it never exercised that authority as to this 0.12-mile segment. In fact, Mr. Landrio's statement attaches a Conrail internal memorandum indicating its intent to retain this trackage to serve the school power plant. It was the Sisters, and not Conrail or Norfolk Southern that removed track on this segment.

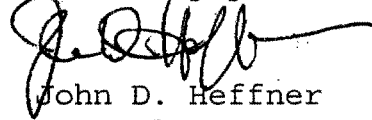
The Sisters' petition, along with a similar request by the City of South Bend, presents a very basic issue that has been litigated and resolved in the past in favor of rail service, namely the ability of local groups to prevent the reactivation of railroad lines. In that respect, this case is very similar to cases such as Morristown & Erie Railway, Inc. Modified Rail Certificate, STB Finance Docket No. 34054, served June 22, 2005, aff'd sub. nom. City of Springfield v. Surface Transportation Board, ___ F.3d ___ (No. 04-1280a, D.C. Cir. 2005) (where the Board refused to prevent the reactivation of a long abandoned rail line where the protesting communities did not demonstrate that the level of service to be rendered met the Board's environmental thresholds for imposing relief).

Unlike the protesting communities in Morristown & Erie, the Sisters haven't even attempted to present any evidence justifying revocation or environmental mitigation. CLS&SB urges the Board to recognize that railroads and communities have coexisted since the beginning of rail service in 1830. The Board need look no further south than

Ashland, VA, where CSX Transportation's main north-south line that carries heavy freight and Amtrak passenger service bisects the campus of Randolph Macon University. As global warming and energy concerns make this country rethink its transportation policies, it will become more important for railroads and their neighbors to learn to coexist. To the extent the Sisters have legitimate concerns with the resumption of railroad service, CLS&SB is both willing and anxious to meet and work with them. CLS&SB would welcome a constructive dialogue. The Board should urge the Sisters to meet with railroad officials rather than revoke this exemption.

Please date stamp and return one copy of this letter.

Sincerely yours,



John D. Heffner
Counsel

Attachment

cc: Sister Joy O'Grady
All parties
Mr. Robert Harris
Mr. Gary Landrio
David Konschnik, Esq.

Gary E. Landrio states as follows:

The Niles Industrial Track used to connect Niles, Michigan with South Bend, Indiana. Niles was a gathering location for rail carload movements. These movements were then sent south to South Bend on Conrail train WMNI-60 daily except Sunday. These carloads were transferred to train WCEL-11/12 daily except Sunday for movement to the major classification yard at Elkhart. This arrangement resulted in trains of up to 30 cars a day, running a total of 600 times per year.

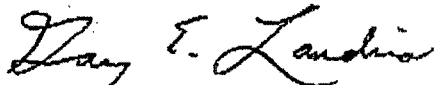
Adding to the congestion on the St. Mary's College campus was the fact that the trains with their Niles traffic then had to stop and switch the coal traffic into and out of both St. Mary's and the Notre Dame coal power plants. These operations would have resulted in multiple movements across both of St. Mary's access roads.

The time that trains would block the crossings to the St. Mary's property are minimal. A 15 car train with locomotive would take 60.3 seconds to cross a crossing at ten miles per hour. Based on 850 carloads of coal projected per year being moved in 15 car blocks there would only be a total of 57 round trips or a total of 114 movements per year. These 114 movements therefore equals only 114 minutes per year of highway crossing occupation. This is a mere 0.02% of the total time.

The Conrail system by the 1980's no longer required a link between Niles, Michigan and South Bend, Indiana. Conrail applied for and receive authority to abandon between milepost 3.1 and 9.6. The issues as I know them are:

1. The Michigan Central Railroad originally acquired the corridor in 1885.
2. Conrail applied for authority to abandon under AB-167(672N) in 1984 the section from South Bend - Niles (3.1) to Notre Dame (9.6)
3. Conrail removed the track from Niles to mp 9.48 in 1990. This being the point of the St. Mary's siding to their power house leaving the west property line.
4. St. Mary's about three years ago hired a contractor to remove the track from their power house all the way back past mp 9.48 to mp 9.65, this point being the frog of the switch leading to Notre Dame.

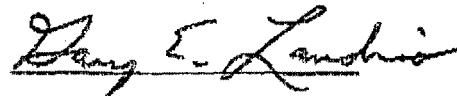
Attached is a map from the original Conrail Side Track Agreement which states the limits of ownership. Conrail owns the main track plus the siding which on the Conrail property between points A and B. Also attached is the internal Conrail memos dated fall of 1990, clarifying that the Sisters of the Holy Cross still wanted Conrail to service the track between milepost 9.6 and 9.48 to deliver coal to the power plant of their facilities. This was a full six years after the abandonment authority was given. Conrail continued to serve this trackage as a common carrier for years after the rest of the trackage between milepost 3.1 and 9.48 was removed.



Gary E. Landrio, August 2, 2006

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: August 2, 2006.

A handwritten signature in cursive script, appearing to read "Gary E. Landrum", written over a horizontal line.

[signature]

CONSOLIDATED RAIL CORPORATION

FREIGHT SCHEDULES

Scheduled times at points in the STATE OF INDIANA, SOUTH OF MARION AND LOGANS-PORT will be one hour earlier than shown herein.

VICE PRESIDENT TRANSPORTATION

PHILADELPHIA, PA.

**Latest Supplement
Issued JULY 1, 1980**

MICHIGAN DIVISION

4-1-80

<u>ORIGIN</u>	<u>TRAIN</u>	<u>LEAVE</u>	<u>FREQUENCY</u>	<u>TO</u>	<u>ARR.</u>	<u>NOTE</u>
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<u>GRAND RAPIDS</u>	WMGH-1	0700	DE SUN	PLAINWELL & RETURN		
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JACKSON

WMJA-4	1230	AS NEEDED	WAYNE & RETURN		
WMJA-5		AS NEEDED	DETROIT JCT. YARD		B
WMJA-1		AS NEEDED	CENTERVILLE & RETURN		
WMJA-2		AS NEEDED	EATON RAPIDS & RETURN		
WMJA-3		AS NEEDED	ANN ARBOR & RETURN		

B - MAKEUP: 1. YPSILANTI 2. WILLOW RUN 3. WAYNE
 4. DETROIT JCT. YARD 5. WINDSOR INCLUDING CAN. DIV.
 LOCALS, NIAGARA AND SELKIRK
 PICKUP ENROUTE PER MAKEUP.
 ON DAYS NOT REPRESENTED, TRAFFIC WILL MOVE ON IHON OR ELON.

KALAMAZOO

WMKA-1	0800	TUE/THU/SUN	NILES/DOWAGIAC & RETURN		
WMKA-2	0800	MON/WED/FRI	JACKSON & RETURN		
WMKA-3	1015	DE SUN	CONSTANTINE & RETURN VIA WASEPI/ THREE RIVERS/SCHOOLCRAFT		

NILES

WMNI-60	1515	DE SUN	SOUTH BEND & RETURN		A
WMNI-61	2300	DE SAT/SUN	MICHIGAN CITY & RETURN		
WMNI-62		AS NEEDED	BENTON HARBOR & RETURN		

A - MAKEUP: 1. LOCALS 2. ELKHART (TO SOUTH BEND FOR WCEL-11/12)

STURGIS

WMST-1/2	1100	DE SUN	QUINCY/WHITE PIGEON & RETURN		
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CHICAGO DIVISION

7-1-80

<u>ORIGIN</u>	<u>TRAIN</u>	<u>LEAVE</u>	<u>FREQUENCY</u>	<u>TO</u>	<u>ARR.</u>	<u>NOTE</u>
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CHICAGO

<u>BLUE ISLAND</u>	WCBI-1/2	0800	DE MON	CHICAGO HEIGHTS & RETURN		
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ELKHART

WCEL-42/43	0759	DE SUN	STURGIS & RETURN		
WCEL-11/12	0829	DE SUN	PORTER & RETURN		A
WCEL-13/14	0829	MON/WED/FRI	MISHAWAKA VIA ESW & RETURN		
WCEL-20/21	0859	MON/WED/FRI	GOSHEN & RETURN		
		TUE/THU/SAT	LIGONIER & RETURN		
WCEL-31	2000	DAILY	MARION		B

A - MAKEUP: 1. LOCALS 2. NILES (SET OFF AT S. BEND FOR SBN-2)
 PICKUP ELKHART TRAFFIC AT LAPORTE & SOUTH BEND.

B - MAKEUP: 1. WABASH 2. MARION
 SET OFF BLOCK 1 AT WABASH

GIBSON

WCGI-1/2	0900	DE SUN	PORTER & RETURN		
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HARISDALE

WCHA-2/1	1400	DE SAT/SUN	CROWN POINT & RETURN		
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KANKAKEE

WCKA-3/4	0500	DE SUN	HENNEPIN & RETURN		
WCKA-1/2	1000	DE SUN	STREATOR & RETURN		
WCKA-22/23		AS NEEDED	GIBSON & RETURN		

CONRAIL**154 202**
MEMORANDUM

6-40 Nov 12-82

Date November 7, 1990

TO: G.N. Corcoran

LOCATION: Dearborn, Mi.

FROM: ~~M.H. VanCampen~~
M.H. VanCampen

LOCATION: Dearborn, Mi.

SUBJECT: Proposed removal of the switch to St. Marys Academy
at So. Bend, In. M.P. 8.52 L.C. 3252 File 349.000

I talked with M.C. Murphy and John Hollenkamp of The Sisters of The Holy Cross in South Bend, In. this afternoon and there has been a misunderstanding on both their part and Conrails! in regards as to what the "removal" of the switch involves. They still wish to keep their switch as they receive 7000 tons of coal a year. They have no objection to our straight railing the switch as long as we can continue to service their facilities. We are presently expecting bids on the removal of the track north of the St. Marys switch. We now need to verify whether Operations will need to retain tail track to serve St. Marys. If we need to keep this track north of their switch we will need to notify our forces promptly so we can avoid any further confusion in this area. Please advise as to whether or not proceed with the sale as planned or revise the sales specs before the contract is awarded.

cc: J.J. Childs
V.K. Dailide
J.J. Kasprzycki
~~Do not~~ Do not cancel sidetrack agreement

RECEIVED

NOV 15 1990

KUBARKS ADMINISTRATIVE

154 202

CONRAIL



October 31, 1990

FILE: 340.000

cc: 342.520

Mr. Michael C. Murphy
Kramer, Butler, Simeri,
Konopa & Laderer
Attorneys At Law
One Michiana Square
100 East Wayne Street
South Bend, IN 46601

RE: Sisters of the Holy Cross - Notre Dame, IN.

Dear Mr. Murphy:

Please refer to your letter of October 16, 1990, on behalf of the Sisters of the Holy Cross, Notre Dame, IN, relative to the removal of their sidetrack connection.

We are agreeable to the removal of this switch connection, which will also include 179 feet of track to their property.

We are considering your letter as written notification to terminate the sidetrack agreement between Penn Central Transportation Company and The Sisters of the Holy Cross, Inc., dated September 1, 1969, Register No. 154202 and will cancel the agreement 30 days from date of your letter, per the provisions of the agreement.

Very truly yours,


G. N. Corcoran
Division General Manager

17301 Michigan Avenue
Dearborn, MI 48126

CONSOLIDATED RAIL CORPORATION