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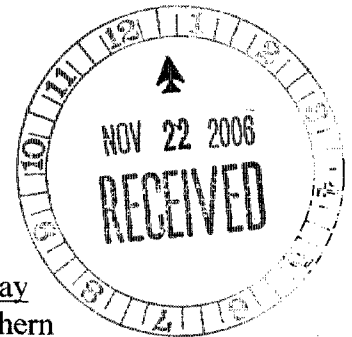
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Expedited Consideration Is Requested

November 22, 2006

Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D.C. 20423



RE: FD No. 34960, The Chicago, Lake Shore and South Bend Railway Company--Acquisition and Operation Exemption--Norfolk Southern Railway Company

Dear Secretary Williams:

Enclosed herewith for filing are an original and ten copies of a Petition to Revoke and Stay Exemption filed on behalf of the City of South Bend, Indiana, which has been joined by the Brothers of Holy Cross, Inc. and The Sisters of the Holy Cross, Inc. in the above-referenced matter. Please take a copy to David Konschnik upon receipt.

This letter also seeks confirmation that the City of South Bend, which is a local government entity, is entitled to a waiver of filing fees, if any are due, pursuant to the provisions of 49 CFR § 1002.2(e). Given the need for expedited handling, your immediate attention to this matter is respectfully requested.

An additional copy is enclosed with the request that it be date-stamped and returned to me. If you have any questions, please give me a call at 202-408-6933. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. H. Streeter'.

Richard H. Streeter

FILING FEE WAIVED

RHS:rs
Enclosure

ENTERED
Office of Proceedings

NOV 22 2006

Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423



_____)
The Chicago, Lake Shore and South Bend Railway)
Company--Acquisition and Operation Exemption--)
Norfolk Southern Railway Company)
_____)

F.D. Docket No. 34960

Petition to Revoke and Stay Exemption

The City of South Bend, Indiana ("City"), Brothers of Holy Cross, Inc. ("Brothers") and the Sisters of the Holy Cross, Inc. ("Sisters"), pursuant to the provisions of 49 U.S.C. § 10502(d) and 49 CFR § 1150.35(f), by and through the undersigned counsel, petition the Board to revoke and stay the exemption invoked by The Chicago, Lake Shore and South Bend Railway Company (CLS&SB) to purchase and operate lines of railroad owned by Norfolk Southern Railway Company ("NSR"). As shall be demonstrated, the Verified Notice filed by CLS&SB on November 20, 2006 contains false and misleading information. Therefore, pursuant to 49 CFR § 1150.35(f), the Notice is void *ab initio*.

Equally important, the Notice is designed and intended to interfere with the Board's procedures governing the orderly processing of a pending adverse abandonment application involving the same lines of railroad that has been docketed as AB 290 (Sub-No. 286), *Norfolk Southern Railway Company--Adverse Abandonment in St. Joseph County, IN*. In particular, because the Notice is nothing more than an ill-disguised means to circumvent the Board's decision not to allow the filing of an Offer of Financial Assistance in the pending adverse abandonment proceeding, the instant notice should be viewed as an abuse of process. CLS&SB

should not be allowed to circumvent the Board's prior determination and further interfere with the Board's processing of the pending adverse abandonment application by filing a baseless Notice of Exemption that contains false and misleading information. Under these circumstances, entry of a housekeeping stay of the effective date of the exemption would be appropriate to provide the Board sufficient time to consider the full implications of the latest Verified Notice of Exemption.

Background

As the Board's records reflect, on June 14, 2006, in FD No. 34893, *The Chicago, Lake Shore and South Bend Railway Company--Acquisition and Operation Exemption--Norfolk Southern Railway Company*, CLS&SB filed a virtually identical notice of exemption in which it falsely claimed that it:

has reached an agreement with Norfolk Southern Railway Company ("NSR"), owner of the subject railroad, for CLS&SB to purchase and operate about 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.48 and MP Z09.9 including any ownership interest in the spur leading to Nortre Dame University in the City of South Bend, IN.

Following receipt of multiple objections from the City, Brothers, Sisters and others, NSR advised the Board that "no agreement has been or will be executed between the Chicago, Lake Shore and South Bend Railway Company with respect to the transaction that is the subject of this proceeding." See, Letter addressed to Vernon A. Williams from James R. Paschall, dated August 15, 2006. Thereafter, CLS&SB requested permission to withdraw the notice of exemption. On September 11, 2006, the Board vacated the exemption.

In the interim, on September 6, 2006, City, along with Brothers and Sisters, filed a Petition for Waiver and Exemption in Docket AB 290 (Sub-No. 286), *Norfolk Southern Railway*

Company--Adverse Abandonment--St. Joseph County, IN, in which they gave notice of their intent to file an adverse abandonment application seeking a finding that the public convenience and necessity require or permit the abandonment of approximately 3.7 miles of railroad located in St. Joseph County, Indiana. Specifically, they announced that they would seek approval from the Board for the adverse abandonment of the same two lines of railroad owned by NSR that are the subjects of both of CLS&SB's exemptions ("the Lines").¹

On October 3, 2006, even though it has no ownership interest in the Lines and is not a shipper or connecting carrier, CLS&SB filed a Reply stating that it "is unalterably opposed to any attempt to seek a waiver from the OFA provisions of 49 U.S.C. 10904(d) - (f)."² By its Decision served October 26, 2006, the Board overruled CLS&SB's objections regarding the OFA procedures with the following statement (slip op. at 6):

The petition for exemption from 49 U.S.C. 10904 and waiver of the related regulations at 49 CFR 1152.27 will be granted. In a third party abandonment proceeding, the Board withdraws its primary jurisdiction to permit state, local or other federal law to apply where there is no overriding federal interest in interstate commerce. See Kansas City Pub. Ser. Frgt. Operations--Exempt--Aban., 7 I.C.C.2d 216, 225 (1990); Modern Handcraft, Inc.--Abandonment, 363 I.C.C. 969, 972 (1981). Absent an exemption, section 10904 could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate. If the Board ultimately finds that the public convenience and necessity require or permit withdrawal of its regulatory authority in this adverse abandonment proceeding, it would be fundamentally inconsistent to provide for further Board regulation under section 10904, and thereby negate the Board's decision.

¹ The slight difference in the track designations is caused by the fact that CLS&SB is somehow seeking to acquire a small segment of track between mileposts Z09.48 and Z09.6 that was previously abandoned pursuant to authority granted by the Interstate Commerce Commission in Conrail Abandonment in Berrien County, MI and St. Joseph County, IN, Docket No. AB-167 (Sub-No. 672N) (ICC served Aug. 31, 1984).

² CLS&SB Reply at pp. 7-8. It is respectfully submitted that CLS&SB lacked and continues to lack standing in the adverse abandonment proceeding.

On November 17, 2006, City, joined by Brothers and Sisters, filed their adverse abandonment application. Three days later, in a flagrant attempt to circumvent the Board's Decision that the use of OFA procedures was not appropriate and would not be allowed, CLS&SB filed the Notice that is the subject of this petition to revoke and stay.

After conferring with counsel for NSR on November 21, 2006, the undersigned are authorized to state that NSR adheres to its prior representation that no agreement has been executed between NSR and CLS&SB. The undersigned are further authorized to state that counsel for CLS&SB was advised within the past week that NSR continues to adhere to that position. The undersigned are also authorized to state that counsel for CLS&SB was specifically advised several months ago by NSR that unless CSL&SB could reach an agreement with City, Brothers and Sisters, NSR would not sell the Lines to CLS&SB.

By way of further background, on October 18, 2006, John Heffner, counsel for CLS&SB, and Robert S. Harris, an officer of CLS&SB, met with representatives of City, Brothers and Sisters in South Bend, Indiana to discuss the possibility of reaching an agreement that would allow CLS&SB to acquire the Lines. At the conclusion of that meeting, Messrs. Heffner and Harris were informed by the undersigned that no agreement would be reached and that City, Brothers and Sisters would be filing an adverse abandonment application immediately following receipt of the Board's decision regarding the previously filed Petition for Waiver and Exemption. Nothing has changed since October 18, 2006.

Given NSR's admonition that it would not sell the Lines to CLS&SB in the absence of an agreement with City, Brothers and Sisters, it is disingenuous and highly misleading for CLS&SB and its counsel to state, under oath, that the CLS&SB "anticipates reaching an agreement with

Norfolk Southern Railway Company.” Verified Notice of Exemption at p. 3. Given the consistent opposition voiced by City, Brothers and Sisters to the reinstatement of rail service through the City and their campuses, coupled with the specific advice provided to CLS&SB and its counsel at the conclusion of the October 18, 2006 meeting, it is respectfully submitted that there is no “good ground for the document” as required by the Board’s regulations governing the filing of a verified pleading. *See* 49 C.F.R. § 1104.4(a)(3). In addition, it appears that the only purpose in filing the instant Verified Notice of Exemption is to delay and interfere with the orderly determination of the adverse abandonment application filed in Docket AB-290 (Sub-No. 286).³ This is a violation of 49 C.F.R. § 1104.4(a)(4), which states that the signature of an attorney constitutes a certification that the representative “has not interposed the document for delay.”

In addition, it is respectfully submitted that the instant Verified Notice of Exemption violates the Board’s Canons of Ethics in several respects. As stated at 49 C.F.R. § 1103.10, lawyers are “bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer.” Moreover, all persons appearing in proceedings before the Board are directed “to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States.” Such standards include the requirement that a pleading not be “presented for any improper purpose, such as to harass or to cause unnecessary delay or increase the cost of litigation” and that “factual contentions have evidentiary support.” Fed. R. Civ. P. 11(b)(1) and (3). Furthermore, counsel “bears the responsibility for ... bringing

³ As of this date, CLS&SB holds no ownership interest in the Lines, nor is it a shipper or potential shipper. At best, it is a mere officious intermeddler. Hence, the latest Verified Notice of Exemption must be viewed as a last gasp effort to establish standing to oppose the adverse abandonment application.

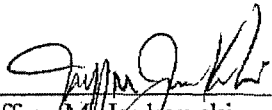
questionable proceedings." 49 C.F.R. § 11023.31.

Given the apparent violations of its Code of Ethics and the regulations governing verification of pleadings, the Petitioners herein respectfully request the Board to award attorney fees for time spent in responding to the latest untruthful Verified Notice of Exemption filed on behalf of CLS&SB. The Board should not tolerate the abuse of process that is demonstrated by the filing of CLS&SB's misleading and untruthful Verified Notices of Exemption.

Conclusion

For all the above-stated reasons, the Board should summarily reject and revoke the Verified Notice of Exemption on the grounds that it contains false and misleading information and is void *ab initio*. In addition, the Board is urged to enter a housekeeping stay of the exemption in order that it may fully consider all issues related to the Lines, including the adverse abandonment application that is currently pending before the Board.

Respectfully submitted,



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Dated: November 22, 2006

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Petition was served this 22nd day of November, 2006, by first-class mail, postage prepaid, and by e-mail as designated, on the following named individuals:

John D. Heffner, PLLC (j.heffner@verizon.net)
1920 N Street, N.W.
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Washington, D.C. 20036

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Greg E. Summy (greg.summy@nscorp.com)
General Solicitor
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

A handwritten signature in black ink, appearing to read "R.H. Streeter", is written over a horizontal line.

Richard H. Streeter