

**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

**Objections to Verified Reply Filed By The
Chicago, Lake Shore and South Bend Railway Company In Response
To Board Order Served November 6, 2007**

In order not to waive the evidentiary objections set forth herein and to preserve them in the event that judicial review is required, the City of South Bend, Indiana ("City"), Brothers of Holy Cross, Inc. ("Brothers") and the Sisters of the Holy Cross, Inc. ("Sisters") (collectively "Petitioners"), by and through the undersigned counsel, object to the following aspects of the Verified Reply filed on behalf of The Chicago, Lake Shore and South Bend Railway Company ("CLS&SB") on November 16, 2007.

By way of background, on December 5, 2006, CLS&SB filed a Reply to Petition to Revoke and Stay Exemption that was filed by Petitioners on November 22, 2006. As herein relevant, the CLS&SB's filing included a letter, dated September 22, 2005, from Paul L. Greene, Manager of Strategic Planning, Norfolk Southern Railway, addressed to Robert Harris, President, CLS&SB. See CLS&SB Reply at Exhibit A. (The September 22, 2005 letter was filed pursuant to a Protective Order)

On September 14, 2007, CLS&SB filed a Motion for Leave to Supplement Reply Of The Chicago, Lake Shore and South Bend Railway Company. According to CLS&SB, supplementation was necessary because "CLSSB has located a long misplaced

letter from NS management dated September 22, 2005, copy attached, that states clearly the existence of an agreement to sell to CLSSB the line that is the subject of this proceeding, the Niles Industrial track.” Motion at 3.

As a review of CLS&SB’s December 5, 2006 Reply proves, the allegedly “long missing” letter that CLS&SB now seeks to introduce as supplementary evidence is the identical letter that CLS&SB filed a year ago in this proceeding. Because the “long misplaced” letter has been part of the record in this proceeding for nearly a full year, Petitioners object to the latest filing by CLS&SB and to the Board’s Order that allowed CLS&SB to file a reply-to-a-reply.¹

Petitioners’ specific objections are as follows:

First, Mr. Harris’s statement that he “discovered” the NSR letter in August 2007 is false. As noted above, the letter was already of record in this proceeding as early as November 2006. *See Exhibit A to CLS&SB’s Reply filed December 5, 2006.* Given the fact that the September 22, 2005 letter has been of record since December 5, 2006, there is no legitimate basis to consider CLS&SB’s latest filing.

Second, the Verified Reply and the Attached Verified Statement of John Hankey are filled with unsubstantiated, hearsay evidence regarding alleged conversations with third parties, including the University of Notre Dame and its coal supplier. Neither of those entities has supported CLS&SB in any of the proceedings involving the line. Moreover, the published, public statements made by Notre Dame that have been previously filed with the Board flatly contradict CLS&SB’s arguments.

¹ Because CLS&SB did not seek to claim that the September 22, 2005 letter from Mr. Greene to Mr. Harris continues to be proprietary and confidential when it filed in Motion to Supplement on September 14, 2007, it is assumed that the letter is no longer subject to the Protective Order entered by the Board on December 14, 2006.

Third, the comment at p. 4 of the Verified Reply regarding alleged "intense political pressure" is wholly unsubstantiated, repetitive and is not responsive to the Board's November 6, 2007 Order. Hence, it should be disregarded.

Fourth, while the Verified Reply refers to various e-mails, the full text of the relevant e-mails has not been placed on record. As the Board will discover, the sole e-mail attached as Exhibit A to the Verified Reply is not germane or responsive to the Board's November 6, 2007 Order. It too should be disregarded.

Last, the Verified Reply sets forth no grounds that would allow an objective trier of fact to conclude that Norfolk Southern ever reached a final agreement with CLS&SB or that CLS&SB had any basis for representing that it "anticipates reaching an agreement" with Norfolk Southern Railroad to acquire the lines in question. In any event, as CLS&SB correctly notes, the issue of whether Norfolk Southern and CLS&SB reached a binding contractual agreement is a matter outside the Board's jurisdiction.

Conclusion

Because those portions of the Verified Reply discussed heretofore are not responsive to the Board's Order, and because they lack any verifiable basis, it would be inappropriate for the Board to consider them in this proceeding.

Respectfully submitted,

Jeffrey M. Jankowski /s/

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Dated: November 26, 2007

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Petition was served this 26th day of November, 2007, by first-class mail, postage prepaid, and by e-mail as designated, on the following named individuals:

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

Richard H. Streeter