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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34960

**THE CHICAGO, LAKE SHORE AND SOUTH BEND
RAILWAY COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

**MOTION TO STRIKE OF
THE CHICAGO, LAKE SHORE AND SOUTH BEND RAILWAY COMPANY
TO THE "OBJECTIONS" FILED BY THE CITY OF
SOUTH BEND, IN, BROTHERS OF THE HOLY CROSS, INC., AND
THE SISTERS OF THE HOLY CROSS, INC.**

Respectfully submitted

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Counsel for The Chicago, Lake Shore
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Dated: December 4, 2007

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INTRODUCTION

On November 6, 2007, the Board served a decision directing The Chicago, Lake Shore & South Bend Railway Company ("CLSSB") to respond to certain assertions made by Norfolk Southern Railway Company ("NS"). NS had filed its pleading in reply to certain supplemental information submitted on September 14, 2007. Believing that CLSSB's input would be helpful to a resolution of these proceedings, the Board sought CLSSB's reply despite the prohibition in the Board's rules against filing a reply to a reply.

On November 16, 2007, CLSSB submitted its reply

addressing the following three points raised: 1) whether the parties had reached an understanding in principle, if not an enforceable agreement, for CLSSB to purchase the subject rail line,¹ 2) whether CLSSB's exemption filing in this proceeding accurately depicted the existence of such an understanding or agreement, and 3) whether an abandoned segment of track was necessary for the purchase to be operationally feasible.

ARGUMENT

The Board should strike the "Objections" filed on November 26, 2007, by the City of South Bend, IN, Brothers of Holy Cross, Inc., and the Sisters of the Holy Cross, Inc. (collectively "the Petitioners"), as an impermissible reply to a reply under 49 CFR 1104.13(c).

In directing CLSSB to file a reply, the Board reasoned that "because its rules preclude a party from filing a reply to a reply, CLS&SB would not, in the normal course, be permitted to respond to [NS's] allegations. But it would be helpful to the Board to have the benefit of a reply by CLS&SB to [NS's] assertions." At no point did the Board invite either Petitioners or the public generally to

¹ Commonly known as the Niles Secondary Track or the Niles Industrial Track

submit any sort of reply to CLSSB's filing or any sort of general comments.

Petitioner's objections are tantamount to making a mountain out of the proverbial molehill. But that is nothing new for Petitioners.

First, Petitioners note that the letter tendered back in September 2007 has originally been submitted back on December 5, 2006. Petitioners are correct on this. When CLSSB advised the undersigned counsel that he had retrieved the letter upon his return to Indiana on August 1, 2007, a decision was made to submit this letter to the Board. Neither CLSSB nor its counsel, nor for that matter counsel for NS or even the Board remembered that this document had already been submitted on December 5, 2006. CLSSB apologizes to the Board for this oversight; however, its resubmission does not in any way change this proceeding or affect the rights of the parties.

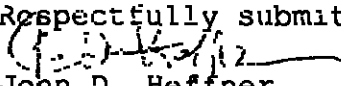
Second and third, Petitioners accuse CLSSB of submitting "unsubstantiated, hearsay evidence" regarding conversations with third parties and submitting comments that it claims are "wholly unsubstantiated, repetitive, and not responsive" and requests that they be disregarded. Petitioners then complain about certain e-mails attached as Exhibit A to the Verified Reply as not being germane or

responsive and request that they be disregarded. Finally, in its customary pattern of "beating a dead horse," Petitioners once again complain that the Verified Reply sets forth no grounds that would allow an objective trier of fact to conclude that NS ever reached a final agreement with CLSSB or that CLSSB has any basis for its representation that it anticipates reaching an agreement with NS.

The Board should disregard Petitioners' contentions. Petitioners were not invited to submit comments at this late stage of the proceedings. Moreover, CLSSB submitted this letter merely to show a basis for its contention that it has a purchase agreement with NS and that its assertion in the second exemption proceeding that it anticipates reaching an agreement with NS was reasonable. Whether or not CLSSB and NS have an enforceable agreement is not before the Board which has no jurisdiction over such matters.

The Board should strike Petitioner's Objections without further ado.

Respectfully submitted


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Counsel for The Chicago, Lake Shore
& South Bend Railway Company

Dated: December 4, 2007

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Motion to Strike of The Chicago, Lake Shore and South Bend Railway Company to the "Objections" filed by the City of South Bend, in Brothers of the Holy Cross, Inc., and the Sisters of the Holy Cross, Inc. was served on December 4, 2007 to the following:

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Executive Director
Michiana Council of Governments
227 West Jefferson Boulevard
South Bend, IN 46601

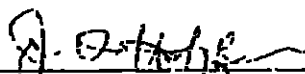
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