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SERVICE DATE – LATE RELEASE NOVEMBER 22, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34960

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

Decided: November 22, 2006

On November 20, 2006, The Chicago, Lake Shore and South Bend Railway Company (CLS&SB) filed a verified notice of exemption pursuant to 49 CFR 1150.31 et seq. to purchase from Norfolk Southern Railway Company (NSR) and to operate approximately 3.2 miles of rail line (Line) between milepost UV 0.0 and milepost UV 2.8 and between milepost ZO 9.48 and milepost ZO 9.9, including any ownership interest in the spur leading to the University of Notre Dame, in the City of South Bend, IN (City). The exemption is scheduled to become effective on November 27, 2006. City, Sisters of the Holy Cross, Inc. (Sisters), and Brothers of Holy Cross, Inc. (Brothers), on November 22, 2006, filed a petition to revoke, and a request for a housekeeping stay of the effective date of, the exemption.

CLS&SB had previously filed a verified notice of exemption to acquire and operate this same Line in The Chicago, Lake Shore and South Bend Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company, STB Finance Docket No. 34893 (STB served and published at 71 FR 38447 on July 6, 2006). Petitions to revoke were filed by City, Sisters, and Brothers. After NSR informed the Board that it would not sell the Line and suggested that the exemption be dismissed, CLS&SB requested leave to withdraw the notice of exemption without prejudice. That request was granted in a decision served on September 11, 2006.

On September 13, 2006, City, Sisters, and Brothers jointly sought exemptions and waivers in connection with a proposed third party or adverse abandonment application related to this matter. The Board subsequently granted those requests in part and denied them in part. See Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN, STB Docket No. AB-290 (Sub-No. 286) (STB served Oct. 26, 2006). The adverse abandonment application was filed on November 21, 2006.¹

¹ CLS&SB filed a petition to reject the notice of intent to file the adverse abandonment application in STB Docket No. AB-290 (Sub-No. 286) on November 13, 2006. City, Sisters, and Brothers filed a reply on November 16, 2006. A ruling on the petition to reject will be addressed in a future decision.

Notwithstanding that NSR previously withdrew its offer to sell to CLS&SB the Line at issue here, CLS&SB states in the latest notice filing, without more, that it anticipates reaching an agreement with NSR on the proposed sale. Because the adverse abandonment application in STB Docket No. AB-290 (Sub-No. 286) includes the entire Line at issue in CLS&SB's notice of exemption in this proceeding, the effective date of CLS&SB's notice of exemption will be stayed to give interested persons an opportunity to submit additional information clarifying the matters at issue here.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the notice of exemption in this proceeding is stayed pending further order of the Board.
2. This decision is effective on the date of service.
3. A copy of this decision will be served on Norfolk Southern Railway Company.

By the Board, Charles D. Nottingham, Chairman.

Vernon A. Williams
Secretary