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SERVICE DATE – NOVEMBER 6, 2007

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 5, 2007

On November 20, 2006, The Chicago, Lake Shore and South Bend Railway Company (CLS&SB) filed a verified notice pursuant to 49 CFR 1150.31 *et seq.* invoking a class exemption to acquire from Norfolk Southern Railway Company (NSR) and operate two rail lines (Lines) measuring approximately 3.2 miles in length in St. Joseph County, IN.

On November 22, 2006, the City of South Bend, IN (the City), and two religious orders (the Orders) (collectively, petitioners) jointly petitioned the Board to stay and reject or revoke CLS&SB's notice of exemption in this proceeding, asserting that it contained false and misleading information.¹ The Board stayed the effectiveness of CLS&SB's exemption in a decision served on November 22, 2006. CLS&SB's notice was served and published at 71 FR 76426 on December 20, 2006, but the stay has remained in effect.

CLS&SB filed a reply to the petition to reject or revoke in this proceeding on December 5, 2006.

On September 14, 2007, CLS&SB filed a motion for leave to supplement its December 5, 2006 reply. CLS&SB seeks to include into evidence a letter dated September 22, 2005, from NSR to CLS&SB. The City and the Orders filed a joint reply

¹ Earlier, on June 14, 2006, CLS&SB had filed a verified notice of exemption to acquire from NSR and operate the same 3.2 miles of the Lines at issue here. See The Chicago, Lake Shore and South Bend Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company, STB Finance Docket No. 34893 (STB served July 6, 2006) (71 FR 38447). Petitioners objected, asking the Board to revoke the class exemption and suggesting that the exemption be dismissed. After NSR announced that it would not sell the Lines to CLS&SB, CLS&SB asked to withdraw its notice of exemption without prejudice. That request was granted in a decision served on September 11, 2006.

in opposition to the CLS&SB motion on October 2, 2007. NSR filed a reply on October 4, 2007, stating that it does not oppose CLS&SB's motion. NSR requests, however, that if CLS&SB's motion for leave to supplement is granted, NSR's reply to the motion be accepted. Attached to NSR's reply is a verified statement by an NSR executive.

In his verified statement, the NSR executive testifies that part of the track that is the subject of this proceeding had been abandoned by NSR's predecessor, Conrail, and has been removed. According to NSR, CLS&SB has stated that, without this piece of track, the service it proposes to provide pursuant to this acquisition and operation exemption would not be viable.

The Board's rules at 49 CFR 1104.13(c) preclude a party from filing a reply to a reply, so CLS&SB would not, in the normal course, be permitted to respond, and has not responded, to NSR's allegations. But it would be helpful to the Board to have the benefit of a reply by CLS&SB to NSR's assertions. CLS&SB will therefore be directed to reply to NSR's October 4, 2007 filing within 10 days of the date of service of this decision.

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

It is ordered:

1. CLS&SB is directed to file a response to the October 4, 2007 filing by NSR on or before November 16, 2007.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary