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SEC

SERVICE DATE – LATE RELEASE AUGUST 24, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34893

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

Decided: August 23, 2006

On June 14, 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 acquire from Norfolk Southern Railway Company (NSR) and to operate approximately 3.2 miles of rail line in the vicinity of South Bend, IN. The exemption took effect on June 21, 2006. Notice of the transaction was served and published on July 6, 2006.

On June 26, 2006, the City of South Bend, IN (City) filed a petition to revoke CLS&SB's exemption. On July 11, 2006, and August 3, 2006, respectively, the Sisters of the Holy Cross, Inc. (Sisters) and the Brothers of Holy Cross, Inc. (Brothers) each filed additional petitions to revoke the exemption.

CLS&SB replied to the City's petition on June 26, 2006, and to the Sisters' request on August 2, 2006. CLS&SB has not yet replied to the Brothers' petition.

In a letter dated August 15, 2006, NSR informed the Board that it will not execute an agreement with CLS&SB to sell the line, and suggested that CLS&SB's exemption may be "dismissed." In light of the information contained in NSR's letter, the Brothers and Sisters submitted a joint letter on August 17, 2006, requesting that the proceeding be dismissed as moot. The City made a similar request on August 18, 2006.¹

In response to the requests to dismiss, CLS&SB has asked that the proceeding be held in abeyance to allow the parties to resolve their differences. CLS&SB states that it still wishes to undertake the proposed transaction, but desires to pursue the line sale in a "more favorable political climate." CLS&SB also states that holding the proceeding in

¹ The motions to dismiss filed by the Brothers/Sisters and by the City incorrectly characterize NSR's August 15 letter as a request to dismiss the proceeding. NSR merely suggested that the Board "may" take such action. In light of its context, NSR's filing will not be treated as a separate motion to dismiss.

abeyance would obviate the need for CLS&SB to return to the Board under a new class exemption docket and submit a new filing fee.

On August 21, 2006, CLS&SB requested an extension of the due date for filing its response to the Brothers' revocation petition until September 6, 2006. CLS&SB states that the additional time is needed because of the lack of notice it received from NSR concerning that railroad's decision not to go forward with the line sale, and because counsel for CLS&SB will be on vacation in the interim. CLS&SB indicates that counsel for the Brothers does not object to the extension request. Similarly, the American Short Line and Regional Railroad Association (ASLRRA) has requested an extension of time until September 6, 2006, to submit its comments.²

CLS&SB's request to hold the proceeding in abeyance will be denied. Given the public interest generated by the proposed transaction, the Board will move forward on the issues raised in the revocation requests. CLS&SB's abeyance request does not offer a clear time frame to resume further review of the outstanding petitions to revoke, but indicates only that CLS&SB would prefer that the proceeding be stayed until "a more favorable political climate" exists to allow the parties to resolve their differences. This request lacks merit and, in any event, would leave the status of CLS&SB's exemption uncertain for an indefinite period of time in the face of considerable public opposition to the transaction.

The Brothers'/Sisters' and the City's requests to dismiss the proceeding will not be granted at this time. By virtue of the class exemption it has invoked, CLS&SB already possesses an exemption to engage in the proposed line acquisition. CLS&SB's exemption authority, however, is permissive. CLS&SB may not act upon the exemption until it has reached the requisite arrangements with NSR. Dismissing the proceeding at this time would leave CLS&SB with an exemption that it cannot act upon now, but CLS&SB's exemption would neither be revoked nor "dismissed." Rather, termination of the proceeding would result in dismissal of the pending petitions to revoke. Because that would be a result that the Brothers, the Sisters, and the City presumably do not intend, the Board will not grant the dismissal requests.

The CLS&SB and ASLRRA requests for an extension of time to respond to the Brothers' petition for revocation are reasonable and will be granted. Accordingly, replies to the Brothers' petition will be due on September 6, 2006.

It is ordered:

1. CLS&SB's motion to hold the proceeding in abeyance is denied.

² At this stage, comments may be filed in reply to the Brothers' petition to revoke. ASLRRA's extension request suggests that it plans to file such a reply in support of CLS&SB. By letter filed on August 22, 2006, the Brothers/Sisters oppose ASLRRA's participation and ask that its extension request be denied.

2. The Brothers'/Sisters' joint request and the City's request to dismiss the proceeding are denied.
3. The CLS&SB and ASLRRRA requests for an extension of time to file replies to the Brothers' petition for revocation are granted. Replies will be due on September 6, 2006.
4. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary