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SERVICE DATE – DECEMBER 11, 2006

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-290 (Sub-No. 286)]

Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph County, IN

On November 21, 2006, the City of South Bend, IN (the City), the Brothers of Holy Cross, Inc. (the Brothers), and the Sisters of the Holy Cross, Inc. (the Sisters) (collectively, applicants), filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board authorize the third-party or adverse abandonment of approximately 3.7 miles of railroad lines (the Lines) owned by Norfolk Southern Railway Company (NSR).<sup>1</sup> The Lines are located between milepost UV 0.0 and milepost UV 2.8 and between milepost Z0 9.6 and milepost Z0 10.5, and include an industrial spur that extends from milepost Z0 9.6 to the University of Notre Dame (the University), all in St. Joseph County, IN. The Lines traverse United States Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629, and 46556 and include no stations.

According to applicants, the Lines traverse properties owned by the Brothers and the Sisters. The Brothers' property is the site of Holy Cross College, Holy Cross Village

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<sup>1</sup> The Chicago, Lake Shore and South Bend Railway Company (CLS&SB) filed a petition to reject applicants' notice of intent to file this adverse abandonment application on November 13, 2006, and applicants filed a reply on November 16, 2006. Applicants filed this adverse abandonment application on November 21, 2006, and CLS&SB filed a petition to reject the application on December 4, 2006. A ruling on the petitions to reject will be made in a separate decision.

(a retirement community), and other improvements and uses furthering the Brothers' charitable mission. The Sisters' property is the site of a motherhouse, the international headquarters of the Congregation of the Sisters of the Holy Cross, and the Inn at St. Mary's, and it is adjacent to St. Mary's College, which the Sisters sponsor.

Applicants state that there has been no rail service or requests for service on the Lines for at least 10 years and claim that there is no foreseeable need for rail service. Additionally, applicants claim that sections of the Lines have been paved over and removed at numerous locations and that the Lines are physically severed from the national rail system as a result of previous abandonments.<sup>2</sup>

Applicants state that the line between milepost UV 0.0 and milepost UV 2.8 crosses 17 streets in the City, two of which carry significant vehicular traffic, creating a public nuisance and significant safety and environmental concerns. They add that the City plans to acquire or condemn the portion of the right-of-way within its jurisdiction for public use in the form of a sewer system and a trail. Additionally, applicants claim that a portion of that line and of the line between milepost Z0 9.6 and milepost Z0 10.5 are adversely affecting the Brothers' ability to plan for the future because they run through the heart of its property. The Brothers and the Sisters also assert a claim under Indiana law to a reversionary interest in this section of the right-of-way.

In a decision served in this proceeding on October 26, 2006, applicants were granted waivers from some of the requirements of the Board's regulations at 49 CFR 1152 that were not relevant to their adverse abandonment application or that sought

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<sup>2</sup> See Conrail Abandonment in South Bend Between Milepost 10.5 and Milepost 11.8, St. Joseph County, IN, Docket No. AB-167 (Sub-No. 407N) (ICC served Apr. 22, 1982) and Conrail Abandonment in Berrien County, MI and St. Joseph County, IN, Docket No. AB-167 (Sub-No. 672N) (ICC served Aug. 31, 1984).

information not available to them. Specifically, applicants were granted a fee waiver; waivers from the notice requirements at 49 CFR 1152.20(a)(2)(i) and (2)(xii), 49 CFR 1152.20(a)(3), and 49 CFR 1152.21; waivers from the application requirements at 49 CFR 1152.10-14, 49 CFR 1152.22(a)(5), (b)-(d), and (i), and 49 CFR 1152.24(e)(1); and waivers from the offer of financial assistance (OFA) and public use procedures at 49 CFR 1152.27-28.

Based on the information in their possession, applicants state that the Lines do not contain any federally granted rights-of-way. Any documentation in applicants' possession will be made available promptly to those requesting it. Applicants state that they filed their entire case for abandonment with their application.

NSR has no employees on the Lines. Accordingly, there are no railroad employee interests that require labor protection.

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case) by January 5, 2007. Applicants' reply is due on January 22, 2007. Because this is an adverse abandonment proceeding, OFA's and public use requests are not appropriate and will not be entertained.

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by January 5, 2007, and should address that issue. Each trail use request must be accompanied by a \$200 filing fee. See 49 CFR 1002.2(f)(27).

Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-290 (Sub-No. 286) and must be sent to: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) Richard H. Streeter, Barnes & Thornburg LLP, 750 17th Street N.W., Suite 900, Washington, DC 20006-4657. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by Board's Section of Environmental Analysis (SEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for

submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment/discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to SEA at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

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Decided: December 5, 2006.

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

Vernon A. Williams

Secretary