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December 3, 2014

237228

ENTERED
Office of Proceedings
December 15, 2014
Part of
Public RecordCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: **Norfolk Southern Railway Company – Discontinuance of Service in
Lake County, Indiana, and Cook County, Illinois, STB Docket No. AB-290
(Sub-No. 336X)**

Dear Ms. Brown:

This comment is filed on behalf of the Town of Dyer regarding the matter of Norfolk Southern Railway's (NSR) proposed Discontinuance of Service on property traversing our jurisdiction. The Town recognizes the importance of the NSR corridor as a potential off-road trail through our community, and for the purposes of commerce said facility would generate for our residents and businesses alike. The corridor connects to a major regional trail corridor to our east called the Pennsy Greenway, and would provide a vital non-motorized link to both our Central Park and downtown district. To this end, the Town previously requested an Interim Trail Use Condition through a petition filed by Openlands in September, 2012, which was subsequently refused by NSR.

At that time, the Surface Transportation Board (STB) did issue NSR a Public Use Condition in order to preserve structural elements and commence negotiations along the proposed route for abandonment. However, NSR were not willing to negotiate with Openlands nor any jurisdiction along the route, and instead proceeded to file an extension for their requested abandonment of the corridor for one year in September of 2013. Based on this action, including their original petition to abandon the corridor in August of 2012, it is clear that NSR's original intention was to abandon this corridor from the outset.

In September of 2014, NSR requested an additional one-year extension of its abandonment authority. In their request, NSR claims that due to the Public Use Condition granted by the STB in 2012, they were "significantly delayed" in consummating the abandonment. However, NSR also claims that during this delay they were approached by a petroleum pipeline operator regarding the installation of a pipeline within their corridor, and thus

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instead of abandonment, Norfolk is considering a request for discontinuance. On September 22, 2014, the STB did grant NSR a one-year extension.

The recent action of NSR to request for a discontinuance so as to allow for the installation of a pipeline does, on its very surface, we believe, violates the spirit of the law. Thus, the Town of Dyer has significant concerns with NSR's request, and asks the STB to suspend their previous granting of a one-year extension until clarifying the following:

(From Baker & Miller PLLC to STB September 5, 2014, on behalf of NSR)

"Over the past year, NSR began making preparations to consummate its abandonment authority in this proceeding. During the course of those preparations, NSR was approached by a petroleum pipeline operator regarding the possibility of installing a pipeline along the Hartsdale right-of-way for appropriate remuneration. Negotiations are ongoing, and real estate title investigations are being performed in connection with this potential transaction. If these negotiations are being performed in connection with this potential transaction. If these negotiations prove fruitful, NSR plans to exercise discontinuance authority rather than abandonment authority. Further NSR would also exercise its contractual right to activate trackage rights over the parallel CN line and would seek appropriate authority at that time."

1. NSR has had eighteen months to consult with the Illinois Environmental Protection Agency (IEPA) and the National Geodetic Survey (NGS) since the original order and subsequent one year extension. What methods or procedures have NSR completed that substantiates their claim they have over the past year been in preparation to consummate the abandonment?
2. NSR claims that a pipeline operator approached them to potentially locate a pipeline along the NSR right-of-way. How is a pipeline construed to be railroad purposes? What authority does the STB have over pipelines?
3. NSR is predicating their request for extension based upon being approached for pipeline purposes. The pipeline could only be located on lands owned by NSR. However, NSR intends to utilize the federal designation as an active railroad to avoid reversionary title interests by other in order to allow said pipeline. What precedent exists to allow NSR this authority?
4. The STB in a previous order agreed with NSR to abandon a segment of the right-of-way to allow for an overpass of IL Route 30. This effectively cuts the right-of-way in half and diminishes future usefulness of the corridor for rail purposes. How does this support NSRA's intent for locating a pipeline on the right of way?
5. Should the STB grant NSR discontinuance, will the proposed pipeline be subject to local zoning controls and/or land use?

Dec. 10. 2014 4:57PM

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(If the STB deems it has authority over a pipeline, this negates the Town of Dyer's ability to protect the health and welfare of our residents. Furthermore, discontinuance may negatively impact our ability to adaptively re-use an abandoned Norfolk Southern right-of-way for pipeline or other purposes.)

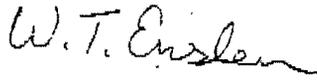
The Town of Dyer has reached out to NSR through other avenues (Openlands, Northwestern Indiana Regional Planning Commission, Congressman Peter J. Visclosky) in order to negotiate in good faith with the development of an off-road trail. NSR has time and again refused to meet with us on the matter. Now, they are attempting to blatantly misuse the railroad corridor, using Federal law in the process, to preempt local zoning controls for financial benefit.

The Town of Dyer respectfully requests formal responses to our questions; denial of discontinuance and for NSR to proceed with consummation of the abandonment as original requested.

Very truly yours,

ENSLEN, ENSLEN & MATTHEWS

BY:


WILLIAM T. ENSLEN
Dyer Town Attorney

WTE/ljl

CC: Rick Eberly (via electronic mail)
Mitch Barloga (via electronic mail)

Subject: Norfolk Southern Railway Docket # AB_290_336_X

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Cc: wte142law@aol.com;

Date: Wednesday, December 10, 2014 4:42 PM

Please see attached correspondence sent to Cynthia Brown at the Surface Transportation Board.

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