

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN

REPLY TO PETITION OF
THE CHICAGO, LAKE SHORE & SOUTH BEND RAILWAY COMPANY
FOR LEAVE TO SUBMIT SUPPLEMENTAL ENVIRONMENTAL COMMENTS

Come now the City of South Bend, the Brothers of Holy Cross, Inc. and the Sisters of the Holy Cross, Inc. (hereinafter collectively referred to as “Applicants”), by and through counsel of record, and file their Reply to the most recent Petition to Supplement filed by the Chicago, Lake Shore & South Bend Railway Company (“CLS&SB). As the Board is aware, CLS&SB recently filed a similar Motion for Leave to Supplement in FD No. 34960, *The Chicago, Lake Shore and South Bend Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company*.¹ As was the case in that proceeding, where the Motion to Supplement was used to reintroduce a letter that was already of record, the instant filing merely regurgitates a slight variation of non-probative information already of record and serves no legitimate purpose.² Simply stated, even if the Board were to accept this latest supplemental submission, there is nothing of substance in the tendered material that has any impact on the outcome of this

¹ Both proceedings involve an unused, dormant line of railroad owned by the Norfolk Southern Railroad (“NSR”) that is located in the City of South Bend and the campuses of the Brothers and Sisters. The line, which extends approximately 3.2 miles between milepost UV 0.0 at the former point of interchange with NSR and milepost UV 2.8 and between milepost ZO 9.48 and milepost ZO 9.9, has not been operated for over 12 years.

² See, Comments of The Chicago, Lake Shore & South Bend Railway Company by its President, Robert S. Harris, in response to the Environmental Report prepared by the Section of Environmental Analysis, dated January 22, 2007.

proceeding. Most importantly, the supplemental submission does not overcome the indisputable evidence of record that not one shipper has used this particular line for over a decade and that there are no shippers who support or need renewed rail service over the line. Simply put, enough is enough!

The Board should recognize CLS&SB's illegitimate tactic for what it is, namely an abuse of process that serves only to cause unnecessary delay and needlessly increase the cost of litigation. Plainly, CLS&SB is well aware that the matter it now seeks to introduce is untimely and should be rejected by the Board. *See*, 49 C.F.R. § 1103.28. In order to halt this abusive tactic, the Board is urged to summarily deny the instant petition. Furthermore, the Board is respectfully urged to issue a final decision in the instant proceeding so as to preclude the further misuse of its procedures.

Respectfully submitted,

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Dated: December 26, 2007

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Petition was served this 26th day of December, 2007, by first-class mail, postage prepaid, and by e-mail as designated, on the following named individuals:

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