

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

218073

STB Docket No. AB-290 (Sub-No. ²⁸⁶~~275~~)

NORFOLK SOUTHERN RAILWAY COMPANY
-ADVERSE ABANDONMENT-
ST. JOSEPH COUNTY, IN



THE CHICAGO, LAKE SHORE & SOUTH BEND RAILWAY COMPANY
PETITION TO REJECT NOTICE OF ADVERSE ABANDONMENT

ENTERED
Office of Proceedings

NOV 13 2006

Part of
Public Record

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800,
Washington, D.C. 20036
(202) 263-4180

Dated: November 13, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Docket No. AB-290 (Sub-No. ²⁸⁶~~275~~)

NORFOLK SOUTHERN RAILWAY COMPANY
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PETITION TO REJECT NOTICE OF ADVERSE ABANDONMENT

INTRODUCTION

On October 30, 2006, the City of South Bend, the Brothers of Holy Cross, Inc., and the Sisters of Holy Cross, Inc. (hereafter "Applicants") jointly served on counsel for The Chicago, Lake Shore & South Bend Railway Company ("CLSSB") a document purporting to be the Notice of Intent ("the Notice") required under 49 CFR 1152.20 in connection with the filing of a formal abandonment application. The Notice should be rejected for failure to comply with the Board's rules.

ARGUMENT

The Board's regulations in connection with abandonment applications require the applicant to give its Notice of Intent as follows:

- (1) *Filing.* Applicant must serve its Notice of Intent on the Board, by certified letter, in the format prescribed by sec. 1152.21.
- (2) *Service.* Applicant must serve, by first class mail (unless otherwise specified), the Notice upon significant users of the line, the Governor (by certified mail) of each affected State, the Public Service Commission or equivalent agency of the State(s), other specified federal or state agencies, and certain rail labor organizations.
- (3) *Posting.* Applicant must post a copy as per the regulations.
- (4) *Newspaper publication.* Applicant must publish the Notice at least once during each of three consecutive weeks in a newspaper of general circulation in each county in which any part of the involved line is located.

See, 49 CFR 1152.20.

On September 13, 2006, the Applicants petitioned the Board for a series of waivers and exemptions in connection with an adverse abandonment application they would file in the above-captioned proceeding. By decision served October 26, 2006, the Board granted in part and denied in part Applicants' request. As relevant here, the Board waived

those provisions insofar as they involved service on significant users, posting at any agency station and terminal, and service on rail labor organizations. The Board denied the request insofar as it involved newspaper publication. Applicants did not seek and the Board did not waive any requirement that the Notice be submitted to the Board and sent by certified mail.

Applicants' Notice must be rejected for the following reasons. First, it does not appear to have been sent to the Board, by certified mail or any form of mail at all, as the regulations require. CLSSB's counsel has diligently checked the Board's website every day since October 30 for a copy of the Notice and cannot find any listing of a filing. Moreover, 49 CFR 1152.20(b)(3) requires that the Notice must be filed with the Board concurrently with service on the parties. Second, the Notice does not contain any sort of certificate of service showing that Applicants have submitted their Notice to the Governor, the appropriate state agency, and any other parties still required to receive a copy. Third, Applicants have not advised the public to date that they have arranged for

publication of the Notice in a newspaper of general circulation.¹

Additionally, the Board's regulations state clearly that the Notice must be served at least 15, but not more than 30 days, prior to the filing of the application. 49 CFR 1152.20(b)(2). The Notice states at page 1 that "Applicants] give notice that on or about *October 24, 2006*, they intend to file with the ...Board...an application..." On page 2, Applicants then indicate that the application will be filed on or after September 1, 2006.² Assuming that the Notice had been properly served and published, which CLSSB asserts it has not been, the earliest date that the Application could be filed would be November 14, 2006. The Notice should be rejected for failure to comply with the regulations and Applicants required to refile their Notice properly.

¹ Presumably Applicants will provide proof of publication in their Application, once submitted.

² Pages one and two are attached to this filing as Exhibit A.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", with a long horizontal flourish extending to the right.

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800,
Washington, D.C. 20036
(202) 263-4180

Dated: November 13, 2006

CERTIFICATE OF SERVICE

I, John D. Heffner, certify that a copy of the Chicago, Lake Shore & South Bend Railway Company Petition to Reject Notice of Adverse Abandonment was served on November 13, 2006 by first-class mail to the following:

James R. Paschall
Senior General Attorney
Norfolk Southern Corp.
Law Department
Three Commercial Place
Norfolk, VA 23510-9241

Mr. Jeffrey M. Jankowski
Deputy City Attorney
227 West Jefferson Boulevard
South Bend, IN 46601

Ms. Sandra M. Seanor
Executive Director
Michiana Council of Governments
227 West Jefferson Boulevard
South Bend, IN 46601

Sister Joy O'Grady, President
Sister of Holy Cross
501 Bertrand Hall - St Mary's
Notre Dame, IN 46556-5000

Mr. Richard H. Streeter
Barnes and Thornburg, LLP
750 17th Street, NW - Suite 900
Washington, DC 20006-4675

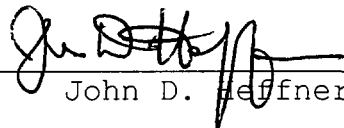

John D. Heffner

EXHIBIT A

1400 COUNTY-CITY BUILDING
227 W. JEFFERSON BOULEVARD
SOUTH BEND, INDIANA 46601-1830



PHONE 574/ 235-9241
FAX 574/ 235-9892
TDD 574/ 235-5567

CITY OF SOUTH BEND STEPHEN J. LUECKE, MAYOR

DEPARTMENT OF LAW

CHARLES S. LEONE
CITY ATTORNEY

ALADEAN M. DEROSE
CHIEF ASSISTANT CITY ATTORNEY

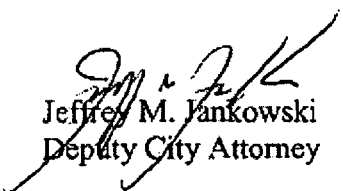
October 30, 2006

Mr. John D. Heffner
1920 N. Street, N.W. Suite 800
Washington, DC 10036

RE: Notice of Adverse Abandonment of the City of South Bend, the Brothers
of Holy Cross, Inc. and the Sisters of Holy Cross, Inc.
STB Docket No. AB 290 (Sub-No. 286)
Norfolk Southern Railway Company

Enclosed please find the revised Notice of Adverse Abandonment in the above
referenced matter.

Sincerely yours,


Jeffrey M. Jankowski
Deputy City Attorney

JMJ/sra

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

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

NORFOLK SOUTHERN RAILWAY COMPANY
ADVERSE ABANDONMENT
ST. JOSEPH COUNTY, IN

NOTICE OF ADVERSE ABANDONMENT
OF
THE CITY OF SOUTH BEND, THE BROTHERS OF HOLY CROSS, INC. AND THE
SISTERS OF THE HOLY CROSS, INC.

The City of South Bend, the Brothers of Holy Cross, Inc. and the Sisters of the Holy Cross, Inc. (hereinafter "Applicants") give notice that on or about October 24, 2006, they intend to file with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 3.2 route miles of railroad between MP UV0.0 and MP UV2.8 and between MP Z09.6 and MP Z010.5, including an industrial spur line that extends from MP Z09.6 in an easterly direction, all of which is located in St. Joseph County, IN. The affected railroad lines are situated in U.S. Postal Service Zip Codes 46601, 46616, 46617, 46628, 46629 and 46556; they traverse no other U.S. Postal Zip Codes. Although the lines include no active stations, there is a dormant station located at Notre Dame, IN.

The reasons for the proposed abandonment include the absence of rail service over the lines for over ten (10) years and the lack of any foreseeable future need for rail service.

The City intends to acquire or condemn the right-of-way that lies within the City for public use. The line between MP UV0.0 and MP UV2.8 crosses 17 streets in the city of South Bend, including Lincoln Way West, which carries over 23,000 vehicles per day, and Indiana 933, which carries over 28,000 vehicles per day. A portion of that line and the line between MP Z09.6 and MP Z010.5 traverse the properties and campuses of the Sisters of the Holy Cross, Inc. ("Sisters") and the Brothers of the Holy Cross, Inc. ("BOHC"). The lines that traverse their campuses have been dormant for over a decade. Because of the lines' dormant status, the Sisters and Brothers assert a claim under Indiana law to a reversionary interest to portions of the right-of-way.

Based on information in the possession of the Applicants, the lines do not contain federally granted rights-of-way. Any documentation relating to this abandonment in the Applicants' possession will be made available promptly to those requesting it.

The public record of the Board contains a system diagram map for Norfolk Southern Railway Company. However, the lines do not appear on that system diagram map as being potentially subject to abandonment.

The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Applicants' counsel, whose name and address appear below. The application will include Applicants' entire case for abandonment.

Any interested person, after the application is filed on or about September 1, 2006, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days from the date of filing of the application. All interested persons should be aware that following any abandonment of rail service and salvage of the line, portions of the line may be suitable for interim trail use. Any request for a trail use condition under 16 U.S.C. 1247(d) (§ 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 1925 K Street, N.W., Washington, D.C. 20423-001, together with a certificate of service attesting that copies of the comments or protests have been served on Applicants' counsel in this matter, Jeffrey M. Jankowski, Deputy City Attorney, 1400 County-City Building, 227 W. Jefferson Boulevard, South Bend, IN, 46601-1830 and Richard H. Streeter, Barnes & Thornburg LLP, Suite 900, 750 17th Street, N.W., Washington, D.C. 20006. Except as otherwise set forth in 49 C.F.R. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 565-1592 or refer to the text of the abandonment regulations at 49 C.F.R. 1152.1, *et seq.*, which can be viewed at www.gpo.gov/nara.cfr.

If an environmental assessment (EA) (or environmental impact statement (EIS), if necessary) is prepared by the Section of Environmental Analysis, it 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 the Section of Environmental Analysis. EAs in these abandonment 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.