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September 26, 2006

Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

RE: Docket No. AB-290 (Sub-No. 286), Norfolk Southern Railway
Company--Adverse Abandonment--St. Joseph County, IN

Dear Secretary Williams:

This letter responds to the letter, dated September 20, 2006, addressed to you from James R. Paschall, Senior General Attorney, Norfolk Southern Corporation. In order to address the various concerns raised by NSR, the City of South Bend, IN, the Brothers of Holy Cross, Inc. and The Sisters of the Holy Cross, Inc. (hereinafter "Applicants") are agreeable to certain modifications in their draft notice of intent and to their previously filed petition for a waiver of various regulations governing the abandonment of a line of railroad.

First, although the Interstate Commerce Commission ("ICC") seemingly recognized the concept of a *de facto* abandonment in *Modern Handcraft, Inc.--Abandonment in Jackson County, MO*, 363 I.C.C. 969, 971 (1981), the Applicants have agreed to amend the stated reasons for the abandonment in their draft notice so as to read as follows: "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."

Second, as reflected by the amended notice, the assertions about the maintenance and safety of the line have been deleted. A copy of the amended notice is attached hereto.

Third, in his letter, Mr. Paschall states that "NSR would not object to the retention of the sentences in the notices stating that the lines traverse the properties of the Sisters of the Holy Cross, Inc. and the Brothers of the Holy Cross, Inc. and that the Sisters and Brothers assert a claim under Indiana law to a reversionary interest in the railroad right-of-way." Those changes have been made in the draft notice.

Fourth, Applicants agree that the line between Milepost ZO 9.6 and ZO 10.5 has not been abandoned. It is respectfully submitted that any misunderstanding may be attributed to the wording used in the Petition for Waiver.

By its Certificate and Decision in AB 167 (Sub-No. 672N), *Conrail Abandonment in Berrien County, MI and St. Joseph County, IN*, served August 31, 1984, the ICC authorized

Conrail to abandon that portion of the line north of Milepost ZO 9.6 between Milepost 3.1 and 9.6. Furthermore, the line south of Milepost ZO 10.5, between Milepost 10.5 and Milepost 11.8 was previously authorized to be abandoned in AB 167 (Sub-No. 407N). The ICC's Certificate and Decision authorizing this abandonment was served April 15, 1982.

Given those decisions, Applicants question the need to seek authority to abandon the segment between MP ZO 9.3 and 9.6, as has been requested. However, they have no issue with the need to seek authority to abandon the segment of the line between Milepost AO 9.6 and ZO 10.5, as is explicitly stated in the draft Notice.

Fifth, NSR has also stated that it has no objection to a waiver if the requested waiver is consistent with Board decisions granting waiver requests. Nevertheless, at page 3 of the September 20 letter, NSR states that it "believes the Board should not waive the requirement for newspaper publication of the abandonment notice." Applicant notes that in its Decision, served March 30, 2001 in AB-582, *Napa Valley Wine Train, Inc.--Adverse Abandonment--In Napa Valley, CA*, the STB granted a waiver of the "publishing and posting notice requirements of 1152.20(a)(3) and (a)(4)." Hence, there is Board precedent authorizing the waiver of the newspaper publication of the Notice of Intent. Because no rail operations have been performed for at least 10 years, and because Applicants have agreed to comply with the service requirements of 49 C.F.R. § 1152.20(a), as well as serve NSR and Notre Dame, Applicants submit there is little likelihood that anyone would be prejudiced if the notice is not published in the local newspaper. Last, Applicants have already agreed to serve the Chicago, Lake Shore & South Bend Railway Company, which is the only known entity that has expressed any interest in the line.

Sixth, in contending that the Board has not waived the requirements for environmental and historic reports in adverse abandonment application cases, NSR fails to discuss the literal wording of the Board's governing regulations. As stated at 49 C.F.R. § 1105.6(c):

"No environmental documentation will normally be prepared (although a Historic Report may be required under section 1105.8) for the following actions: ... (2) Any action that does not result in significant changes in carrier operations...."

In addition, 49 C.F.R. § 1105.7(6) states that:

The Board may waive or modify, in whole or in part, the provisions of this section where a railroad applicant shows that the information requested is not necessary for the Board to evaluate the environmental impacts of the proposed action.

Although the Applicants are not railroads, the policy underlying the foregoing applies with equal force to them. Because no rail operations have been conducted over the lines that are the subject of this proceeding for over 10 years, the abandonment of the lines will not result in any changes in carrier operations. The abandonment will have no impact on local transportation

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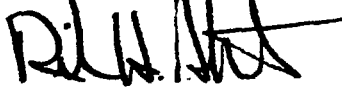
systems and patterns. Because the line is located in an urban area, the abandonment will not impact any prime agricultural land. Following abandonment, the City of South Bend may install a new sewer line under the right-of-way and construct a recreational trail.

The abandonment will not have any effect on the transportation of any commodities, nor will it impact air emissions or increase noise. Because the line has been dormant for over a decade, the abandonment will have no impact on safety. Applicants are not aware of any hazardous waste sites or sites on the right-of-way where hazardous materials were spilled.

While the remaining track and track materials along the right-of-way will be salvaged, there is no intent to remove the bridge over the St. Joseph River. If the abandonment is approved, the bridge will be converted to a footbridge for pedestrians. Hence, abandonment will not affect any biological resources or local water quality standards. Given the foregoing, waiver of an environmental report is supported by the Board's regulations.

Applicants have no issue with NSR regarding the contents of their application. They fully intend to support their position, both factually and legally. If you have any questions, please call me at 202-408-6933.

Very truly yours,



Richard H. Streeter

RHS:rs

cc: James R. Paschall
Jeff Jankowski

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 20, 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 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. 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.