



Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

Writer's Direct Dial Number
(757) 629-2759
fax (757) 533-4872

217543

James R. Paschall
Senior General Attorney



September 8, 2006

via fax 202 565-9004
and original and 10 copies via mail

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Office of Proceedings

SEP 15 2006

Part of
Public Record

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: This letter relates, to the docket as currently submitted that is captioned:
STB Docket No AB-290 (Sub-No. 275), Norfolk Southern Railway
Company - Adverse Abandonment - St. Joseph County, IN
Reply to Petition for Waiver and Notice of Conflicting Submission
STB Docket No AB-290 (Sub-No. 275), Norfolk Southern Railway
Company - Abandonment - Gaston County, North Carolina

Re-docketed
AB-290
(Sub-No. 286)

Dear Mr. Williams:

We have received from counsel for the City of South Bend, IN a Petition for Waiver in an adverse abandonment proceeding that the City captioned as STB Docket No AB-290 (Sub-No 275), Norfolk Southern Railway Company - Adverse Abandonment - In St. Joseph County, IN, date stamped as submitted to the Board on September 6, 2006 but not yet shown as filed on the Board web site as of this afternoon. The City assigned this docket number to the proposed adverse abandonment filing without consultation with NSR. We assume the City is unaware that railroads assign their own STB abandonment docket numbers and, moreover, assign them well before applications, notices or petitions are filed with the Board. In part this is because of advanced environmental and historic report preparation required to be completed before the formal filing of the proceeding with the Board.

NSR had previously assigned this number to STB Docket No AB-290 (Sub-No. 275), Norfolk Southern Railway Company - Abandonment - Gaston County, North Carolina. The work necessary for filing this notice of exemption in fact was completed when the City made its filing. In fact, NSR filed its Notice of Exemption in this docket yesterday, September 7, 2006, having sent it via DHL Express on September 6, 2006.

Mr Vernon A Williams
September 8, 2006
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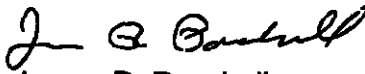
Under these circumstances, NSR requests that the City be required to assign a different and non-conflicting docket number to its proposed adverse abandonment application. We have advised the City's outside counsel, who has filed the Petition for Waiver also on behalf of the Brothers of the Holy Cross, Inc and the Sisters of the Holy Cross, Inc., via e-mail of the NSR contact person's e-mail address and phone number,

NSR does not oppose the City's request for waiver to the extent it is consistent with Board decisions granting waiver requests in previous adverse abandonment proceedings. NSR does not assent to any waiver request that is not consistent with Board precedent and procedure. NSR requests that the Board evaluate whether to grant any such request based on precedent and the Board's requirements for filings in this type of case.

NSR does not waive any requirement for the City or any other party to show that they have standing to file the application and to pursue relief with respect to all or part of the subject line of railroad or otherwise to prove their interests in this matter. Thus, NSR does not waive any objection it may have to a party's standing to bring the proposed application or to pursue relief in this matter in whole or in part should it appear that any applicant lacks standing to file an application or to pursue requested relief in this case in whole or in part.

In stating its lack of opposition to the petition for waiver to the extent it is consistent with past precedent, NSR does not acquiesce in or waive its right to object to or reply to any factual or legal assertion made in the petition for waiver in submissions on the merits of the application. Without limitation on its right to make any other argument, NSR denies that, as a legal matter, there is a concept of "de facto abandonment." The City and other applicants should be required to fully support their position, factually and legally, in their application. Applicants should be required to prove their case in conformity with applicable legal precedent such as *Modern Handcraft, Inc. - Aband.*, 363 I C C. 969 (1981) and later ICC, STB and court decisions.

Respectfully submitted,


James R. Paschall

cc via e-mail attachment:

Mr Richard H. Streeter

Mr. John D. Heffner