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October 5, 2005

BY ELECTRONIC FILING

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

Re: STB Docket No. AB-490 (Sub-No. 1X)
*Greenville County Economic Development Corporation - Petition For
Exemption For Partial Discontinuance And Partial Abandonment - In
Greenville County, SC*
Reply In Opposition to Motion for Protective Order

Dear Secretary Williams:

Enclosed are an original and 11 copies of the reply of Greenville County Economic Development Corporation ("GCEDC"), opposing the motion for protective order filed October 3, 2005 in the captioned matter by Western Carolina Railway Service Corporation ("WCRS"). Inasmuch as WCRS has requested expedited handling of its motion, GCEDC requests similar treatment of this reply.

As can be seen from the certificate of service attached, copies of this reply are being mailed today to all parties of record, with an additional copy e-mailed to WCRS. Please acknowledge receipt and filing of the enclosed reply by date-stamping the extra copy enclosed for that purpose and returning it to the person making this filing for return to me. If there are any questions concerning this filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: Chairman, GCEDC
Andrew J. White, Jr., Esq.
Peter M. Strub
All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-490
(SUB-NO. 1X)**

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION
- PETITION FOR EXEMPTION FOR PARTIAL DISCONTINUANCE
AND PARTIAL ABANDONMENT - IN GREENVILLE COUNTY, SC**

**REPLY OF GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION
IN OPPOSITION TO
MOTION OF WESTERN CAROLINA RAILWAY SERVICE
CORPORATION FOR PROTECTIVE ORDER**

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October 5, 2005

**Attorneys for Greenville County
Economic Development Corporation**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

**STB DOCKET NO. AB-490
(SUB-NO. 1X)**

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION
- PETITION FOR EXEMPTION FOR PARTIAL DISCONTINUANCE
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IN OPPOSITION TO
MOTION OF WESTERN CAROLINA RAILWAY SERVICE
CORPORATION FOR PROTECTIVE ORDER**

Greenville County Economic Development Corporation (“GCEDC”) hereby replies to the motion of Western Carolina Railway Service Corporation (“WCRS”) for issuance of a protective order in this proceeding. While GCEDC does not oppose WCRS’s preference for keeping its non-public financial information off the public record, GCEDC believes that the proposed protective order is too broad, would prejudice GCEDC’s ability to protect its interests in this proceeding, and would hamper or prevent the Board from performing its statutory duties with respect to OFA’s in this case. Accordingly, GCEDC submits an alternative form of protective order herewith which adheres more closely to standard Surface Transportation Board (“STB” or “Board”) practice than does WCRS’s proposed order.

WCRS’s Proposed Order is Too Restrictive. WCRS’s proposed protective order would unduly inhibit the parties, and perhaps even the Board, in performing their respective functions during the compressed time frames of the offer of financial assistance (“OFA”) phase of this case. Indeed, WCRS’s proposed order would effectively turn over control of access to some

confidential information from the Board to WCRS. WCRS's proposed order is too restrictive in at least the following ways:

- Information in Exhibit J to WCRS's OFA assertedly is information that GCEDC provided WCRS under 49 C.F.R. §1152.27(a).¹ Nevertheless, paragraph 2 of WCRS's proposed order says that information "shall not . . . be provided to any other parties, excepting the Board." Such a restriction would prevent GCEDC from complying with its responsibilities under Section 1152.27(a) to other potential offerors, and would inhibit GCEDC's other use of its own information. It would also inhibit the ability of other parties to challenge WCRS's OFA, should such a challenge appear appropriate.
- Paragraph 3 of WCRS's proposed order states that evidence concerning WCRS's financial responsibility shall be available only to "any employee, agent, or counsel of WCRS," even with execution of a protective order. This restriction would prevent GCEDC from contesting WCRS's allegations of its financial responsibility. It would also inhibit GCEDC's evaluation of whether to negotiate with WCRS, as GCEDC must do under 49 C.F.R. §1152.27(l), in the event of a competing OFA by The Athens Line LLC, which has filed a notice of intent to file an OFA.

Potentially, paragraph 3 of WCRS's proposed order would even prevent the Board from evaluating WCRS's financial responsibility. That paragraph does not provide for use of the information by the Board, in contrast to paragraph 2 which explicitly allows the Board to use material in Exhibit J to WCRS's offer. Moreover, the copies of WCRS's purported OFA received by counsel for GCEDC yesterday indicate that they were filed with the Board, but contain no evidence of WCRS's financial

¹ The copy of the offer received by GCEDC's counsel yesterday does not contain any information in Exhibit J, so GCEDC is unable to confirm what information may actually be intended to be in that exhibit.

responsibility. Thus, WCRS either served the Board with copies of materials that it did not serve on the parties (making the filing improper), or it did not submit evidence supporting its assertions of financial responsibility (in which case the Board would have no choice but to find WCRS not to be financially responsible).

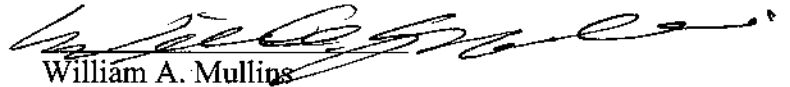
- Paragraph 5 of the proposed order inappropriately cedes control of the use of information to WCRS. Paragraph 5 of the proposed order says in pertinent part “Confidential Information shall not be disclosed . . . to any person without the written consent of both WCRS and those parties providing those documents,” absent a contrary order of the Board. This provision could either require repetitive orders from the Board or would allow WCRS to control access to important information in the OFA portion of this case.

In these respects and others, WCRS’s proposed protective order is inappropriate and would unduly impede the orderly conduct of the OFA phase of this proceeding. Accordingly, GCEDC herewith submits a proposed alternative form of protective order.

Attached Alternative Form Follows Board Policy. Attached as an appendix hereto is a proposed form of protective order based upon the protective order issued by the Board in *CSX Transportation, Inc.–Abandonment Exemption–In Laporte, Porter And Starke Counties, In*, STB Docket No. AB-55 (Sub-No. 643X) (served April 28, 2004). GCEDC submits that the appended form of protective order is more suitable for the conduct of this proceeding and will allow both GCEDC and the Board to perform their functions in the OFA phase of this proceeding without the undue restrictions and procedural hurdles that would be imposed by WCRS’s proposed form of protective order.

WHEREFORE, GCEDC requests that the Board reject WCRS's proposed form of protective order and instead issue a protective order in the form attached hereto.

Respectfully submitted,



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Attorneys for Greenville County
Economic Development Corporation

APPENDIX

Protective Order

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost workpapers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers, or carriers; confidential financial and cost data; and other confidential or proprietary business or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” in accordance with paragraph 2 of this Protective Order and any Confidential Information contained in such materials.

(d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning any offer of financial assistance filed in STB Docket No. AB-490 (Sub-No. 1X), and any related proceedings before the Board, and any judicial review proceedings arising from STB Docket No. AB-490 (Sub-No. 1X) or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided for hereinafter.

3. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

4. All parties must file simultaneously a public version of any Confidential submission filed with the Board.

5. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” by filing a motion with the Board or with an

administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

6. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Docket No. AB-490 (Sub-No. 1X), any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Docket No. AB-490 (Sub-No. 1X) and/or with any related proceedings.

7. Any party who receives Designated Material shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

8. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 C.F.R. §1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

10. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

11. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related

proceedings and will not be deemed a violation of 49 U.S.C. §11904 or of any other relevant provision of the ICC Termination Act of 1995.

12. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

13. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Exhibit A

UNDERTAKING—CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on October __, 2005, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB-490 (Sub-No. 1X), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. AB-490 (Sub-No. 1X), any related proceedings before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Docket No. AB-490 (Sub-No. 1X) and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 5th day of October, 2005, copies of the foregoing reply have been served by first class mail, postage prepaid, upon all parties of record. A .pdf copy hereof has also been e-mailed today to WCRS's president at steven.hawkins@wcrscorp.com.

A handwritten signature in black ink, appearing to read "David C. Reeves", written over a horizontal line.

David C. Reeves
Attorney for Greenville County Economic
Development Corporation