

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-490 (Sub-No. 1X)

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION –
ABANDONMENT AND DISCONTINUANCE EXEMPTION – IN GREENVILLE
COUNTY, SC

Decided: October 12, 2005

By petition filed on June 24, 2005, Greenville County Economic Development Corporation (GCEDC) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 11.8 miles of rail line, extending from milepost 0.0 in Greenville, SC, to milepost 11.8 in Travelers Rest, SC (Northern Segment), and to discontinue service over 3.29 miles of rail line, extending from milepost AJK 585.34 in East Greenville, SC, to milepost AJK 588.63 in Greenville (Southern Segment), Greenville County, SC.¹ Notice of the filing was served and published in the Federal Register on July 14, 2005 (70 FR 40782) (July 14, 2005 notice). On July 27, 2005, as amended on August 25, 2005, and September 28, 2005, Upstate Forever filed a request for issuance of a notice of interim trail use (NITU) and for imposition of a public use condition for the Northern Segment. On August 8, 2005, Cross Road Sales, Incorporated (Cross Road), Paper Cutters, Inc. (Paper Cutters), Bleachery Road Warehouse, LLC (BRW), and Industrial Metal Processing, Inc. (IMP) (jointly, shippers), filed in opposition to GCEDC's petition. In addition, the Board received correspondence from several county residents opposing the requested abandonment. The petition for exemption will be granted, subject to environmental, public use, and trail use conditions.

BACKGROUND

GCEDC acquired the Northern and Southern Segments from South Carolina Central Railroad Company, Inc. (SCCR), in 1999.² The Northern Segment was subject to an embargo instituted by SCCR in December 1997. According to GCEDC, the embargo remains in effect due to the condition of the bridges and track. Prior to GCEDC's purchase, SCCR had obtained authority to abandon the southernmost 2 miles of the Northern Segment and the entire Southern

¹ The Northern and Southern Segments do not connect.

² See Greenville County Economic Development Corporation – Acquisition Exemption – South Carolina Central Railroad Company, Inc., Carolina Piedmont Division, STB Finance Docket No. 33752 (STB served June 3, 1999).

Segment, which at the time had one shipper.³ SCCR never exercised the abandonment authority, and instead sold the lines to GCEDC.

Upon purchasing the lines, GCEDC contracted with SCCR to operate the Southern Segment; SCCR declined to operate the Northern Segment. GCEDC asserts that it looked for an operator that would be willing to operate the Northern Segment without a substantial capital expenditure by GCEDC to repair the track but could not find one.⁴ As a result, no traffic has moved over the Northern Segment since February 1998.

GCEDC estimates that it would cost approximately \$3 million to repair a 2.6-mile section of the Northern Segment to Federal Railroad Administration Class 1 track safety standards, which it asserts could never be recouped based on the limited to non-existent traffic base for the lines.⁵ GCEDC states that, while the Southern Segment does not require as extensive rehabilitation as the Northern Segment, it does require some track work.

In April 2001, Groome & Associates, Inc., the second largest shipper on the Northern Segment until going out of business, and Lee K. Groome (jointly, Groome) filed suit against GCEDC in South Carolina state court for alleged violation of GCEDC's common carrier obligation over the Northern Segment. The state court denied Groome's claims. Then, on June 30, 2003, GCEDC filed a notice of exemption invoking the Board's summary procedures for discontinuing service on the Northern Segment. Groome, however, filed a letter challenging GCEDC's use of those procedures, and in Greenville County Economic Development Corporation—Discontinuance of Service Exemption—in Greenville County, SC, STB Docket No. AB-490X (STB served Jan. 29, 2004), the Board dismissed GCEDC's notice of exemption, finding that the use of the expedited procedures for discontinuance authority was inappropriate because the matter was too controversial, and that GCEDC would have to proceed by filing a petition for an individual exemption (under 49 U.S.C. 10502) or a full application (under 49 U.S.C. 10903).

In August 2004, Groome filed a formal complaint with the Board, asserting that GCEDC violated its common carrier obligation and asking for damages. In Groome & Associates, Inc.

³ See South Carolina Central Railroad Company, Inc., d/b/a Carolina Piedmont Division – Abandonment Exemption – In Greenville County, SC, STB Docket No. AB-312 (Sub-No. 2X) (STB served Apr. 1, 1998).

⁴ GCEDC contends that the capital expenditures required by potential operators simply exceeded the funds available to GCEDC.

⁵ According to GCEDC, it would have to charge rates of over \$1,400 per car, which is significantly higher than the approximately \$400 per car that shippers were paying prior to the embargo.

and Lee K. Groome v. Greenville County Economic Development Corporation, STB Docket No. 42087 (STB served July 27, 2005) (July 2005 decision), we found that GCEDC had not violated its common carrier obligation by failing to make repairs and provide service as soon as it took over the line, but that, after a reasonable period, GCEDC was required either to put the line back into service or to take steps to obtain abandonment or discontinuance authority. We thus awarded damages to Groome for the increased storage, handling, and shipping costs resulting from the lack of rail service from August 2002 (2 years before the filing of the complaint) until the time Groome went out of business.

According to GCEDC, there are no active rail shippers on either segment and any shipper that had previously used the Northern Segment has either gone out of business, relocated, or is now using truck transportation. Historic traffic statistics for the Northern Segment show 1,642 carloads in 1994, 1,497 carloads in 1995, and 1,066 carloads in 1996.⁶ GCEDC states that, to its knowledge, no traffic has moved over the Southern Segment for 2 years.

On August 29, 2005, the City of Travelers Rest, SC (the City), filed a letter stating that a recreational trail on the Northern Segment is a critical part of its redevelopment plan for its downtown area. Additionally, the City states that volunteer groups have spent hours clearing and grubbing the line from Travelers Rest to Greenville, and since the initial clearing, many people have been enjoying the route for recreational use even though it is not an official trail.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service over it discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

In this case, detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. Although shippers express opposition to the abandonment and discontinuance, they offer no concrete evidence in support of their position. Cross Road asserts that it would be forced to relocate if it does not get direct railroad access and that the costs associated with moving its equipment are high. However, according to GCEDC, Cross Road began business in January 2004 and the Northern Segment has been out of service since Cross Road was formed. Cross Road has never had rail service at its location.

Moreover, while citing increased transportation costs because of a lack of rail service, shippers have not disputed GCEDC's estimated repair costs and have not committed to ship any traffic with GCEDC. Accordingly, requiring GCEDC to expend significant funds to repair and

⁶ These statistics came from Pinsky Railroad Company, the owner of the lines before SCCR.

provide service on the line when there is only the potential for traffic would be an unreasonable burden on GCEDC. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving GCEDC of the expense of rehabilitating and maintaining lines that are no longer used [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. While there are shippers on the Northern Segment that oppose the abandonment, some have never used rail service, and others have used no rail service since prior to GCEDC's purchase of the line. There are currently no active shippers on either the Northern or Southern Segments. Nevertheless, to ensure that the businesses on both segments are informed of our action, we will require GCEDC to serve a copy of this decision on them within 5 days of the service date of this decision and notice and certify to the Board that it has done so. Given our market power finding, we need not determine whether the proposed abandonment and discontinuance are limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. However, GCEDC's proposal to abandon and discontinue service over the Northern and Southern Segments constitutes its entire operations. When authorizing abandonment of railroad lines that constitute the carrier's entire system, we do not impose labor protection, with some exceptions not present here. See Northampton and Bath R. Co. – Abandonment, 354 I.C.C. 784, 785-86 (1978) (Northampton). Therefore, in the absence of a showing that one or more of the exceptions articulated in Northampton are present, no labor protective conditions will be imposed.

GCEDC has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impact of the proposed action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 23, 2005. Comments to the EA were requested by September 22, 2005.

In the EA, SEA notes that the U.S. Department of Commerce, National Geodetic Survey (NGS), had not yet responded to contacts by GCEDC regarding the impacts to geodetic station markers. Therefore, SEA recommends that GCEDC notify NGS at least 90 days prior to conducting any salvage activities that may disturb or destroy any geodetic markers and report the results of its notification in writing to SEA prior to beginning salvage operations.

SEA also notes in the EA that the U.S. Fish and Wildlife Service (FWS) has confirmed the presence of two federally listed plant species, the Dwarf-flowered Heathleaf (*Hexastylis naniflora*) and the Bunched Arrowhead (*Sagittaria fasciculata*), in wetland and spring habitats

near the right-of-way in Travelers Rest. Based on a field survey, populations of Bunched Arrowhead were found in two areas along the west side of the right-of-way, south of Watkins Bridge Road. The FWS recommends that all rail line improvements be contained to the current railroad bed, that herbicide use be restricted within 50 feet of all Bunched Arrowhead populations, and that herbicide application instructions be followed and retained onsite. Therefore, SEA recommends that, during salvage operations, GCEDC's herbicide use be restricted within 50 feet of the federally listed and field surveyed Bunched Arrowhead and that any herbicide application be in accordance with the manufacturer's instructions.

SEA further notes in the EA that the South Carolina Department of Health and Environmental Control (SCDHEC) raised concerns regarding impacts to state waters in accordance with sections 401, 402, and 404 of the Clean Water Act. Therefore, SEA recommends that prior to the commencement of any salvage activities, GCEDC be required to consult with SCDHEC to ensure that any concerns regarding potential contamination of the right-of-way and the need for a section 402 stormwater construction permit are addressed, and report the results of its consultation to SEA in writing prior to beginning any salvage operations.

SEA received 7 comments and/ or clarifications from various agencies and individuals in response to the EA. Based on the comments received, SEA would remove one condition and add one condition. SEA states that the NGS has determined that there are no geodetic station markers within the proposed abandonment and, therefore, SEA no longer recommends that a condition to notify NGS be imposed.

SEA states that the EA erroneously reported that there were no known hazardous waste sites or hazardous materials spills on either rail segment. However, information submitted by Mr. Hawkins, President of the Western Carolina Railway Service Corporation (WCRSC), from the U.S. Environmental Protection Agency (EPA) Superfund Information Systems (CERCLIS) database indicates that there are three confirmed Superfund sites located adjacent to the Northern Segment: U.S. Finishing Fire in Greenville; Kerr Waste Treatment Plant in Travelers Rest; and Travelers Rest Granite Quarry in Travelers Rest. According to Mr. Hawkins, both U.S. Finishing Fire and Kerr Waste Treatment Plant are rail-served, with sidings in place, while Travelers Rest Granite Quarry was formerly rail-served but no longer has tracks in place. SEA has learned from Mr. Chris Bartley of the Federal and State Site Assessment Section, Bureau of Land and Waste Management, SCDHEC, that hazardous waste from the U.S. Finishing Fire has been confirmed in surface water and groundwater immediately adjacent to the rail right-of-way. Mr. Bartley agreed that salvage activities could discharge pollutants into the air, soil, and water, if contaminants from the CERCLIS sites were also present in the rail right-of-way. Accordingly, in light of the concerns raised regarding three confirmed CERCLIS Superfund sites, SEA recommends that, prior to salvage of any track materials adjacent to the portions of the identified sites of contamination, GCEDC consult with the appropriate parties and take measures recommended by SCDHEC, Bureau of Land and Waste Management, and the Region 4, EPA, and report the results of the consultation in writing to the Board.

The environmental conditions recommended by SEA in the EA, as supplemented and modified based on comments received, will be imposed. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, Upstate Forever has filed a request for the issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for imposition of a public use condition under 49 U.S.C. 10905 for the Northern Segment. Upstate Forever has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service, as required under 49 CFR 1152.29. By letter filed on August 3, 2005, GCEDC states that it is willing to negotiate with Upstate Forever for interim trail use. Because Upstate Forever's request complies with the requirements of 49 CFR 1152.29, and GCEDC is willing to enter into interim trail use negotiations, we will issue a NITU authorizing the parties to negotiate an agreement for interim trail use/rail banking during the 180-day period prescribed below. If the parties reach an agreement, no further Board action is necessary. If no agreement is reached within 180 days, GCEDC may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

BRW objects to the abandonment because it does not want the portion of the Northern Segment that runs through its property turned into a trail. BRW states that reinstatement of rail service would be of greatest benefit to it and to the community, but if active rail service is not reinstated, the right-of-way should no longer be part of the national rail system and the full and exclusive use of the land should be returned to adjacent landowners. BRW asserts that opening up its property to the general public in the form of a trail would expose the community and the nation to unnecessary risk. Our role, however, under the Trails Act is limited and ministerial. See *Goos v. ICC*, 911 F.2d 1283 (8th Cir. 1990). Our only responsibility when a request for a NITU is filed is to confirm that the trail user agrees to assume full liability for the property during the interim trail use period and to keep the property available for reactivation of rail service. 16 U.S.C. 1247(d); 49 CFR 1152.29(a)(3). We do not decide whether interim trail use is desirable for a particular line and do not analyze, approve, set the terms of—or even require that parties submit to the Board—their trail use agreements.

SEA indicated in its EA that, following abandonment and salvage of the line, the right-of-way may be suitable for other public uses. Upstate Forever requests imposition of a 180-day public use condition. Upstate Forever states that the Northern Segment follows the Reedy River for most of its length, which is where the City of Greenville has just expanded Falls Park and the privately funded Riverplace project is under construction. According to Upstate Forever, the corridor would extend from Linky Stone Park, a small public park where the Northern Segment begins to communities and public parks upstream and then on to Furman University and the City of Travelers Rest. It also states that Furman University and the City strongly support this

corridor. Upstate Forever explains that the length of the requested condition, 180 days, would allow it to negotiate a mutually acceptable agreement.

Persons who request a Trails Act condition may also request a public use condition under 49 U.S.C. 10905. See Rails Abandonment – Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When both conditions are appropriate, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. Upstate Forever has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition, commencing from the effective date of this decision and notice, will be imposed on the Northern Segment to enable any state or local government agency or other interested person to negotiate the acquisition of the Northern Segment for public use. If a trail use agreement is reached on a portion of the Northern Segment, GCEDC must keep the remaining right-of-way on the Northern Segment intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to negotiate to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, GCEDC is not required to deal exclusively with Upstate Forever, but may engage in negotiations with other interested persons.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904.⁷ As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations takes priority over interim trail use/rail banking. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2) and (f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and interim trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, the interim trail use process may proceed.

On July 15, 2005, as supplemented on August 11, 2005, WCRSC filed a notice of intent to file an OFA. In its filing, WCRSC requests that GCEDC provide information pursuant to 49 CFR 1152.27(a), as well as the release of liability documents required by GCEDC to allow WCRSC to walk the lines to inspect the track and other on-line structures. WCRSC maintains that to make an accurate determination of the net liquidation value, a walking inspection, which will take multiple days to complete, is required and that it cannot gain access to the property without having first executed a release of liability. WCRSC requests that the Board toll the period for submitting OFAs for an additional 30 days, to provide WCRSC with adequate time to review and analyze the materials.

⁷ An OFA could be filed to acquire the Northern Segment for the purpose of continuing rail service or to subsidize operations over the Southern Segment (over which service is proposed to be discontinued but not abandoned).

In a letter dated August 31, 2005, GCEDC states that it does not believe a 30-day extension for filing an OFA is necessary. GCEDC states that it has reached an agreement with WCRSC concerning the liability release and that WCRSC will have more than enough time to inspect the line, review and analyze the materials, and submit an OFA. Because WCRSC now appears to have access to the line, at this time it is not necessary to extend the deadline for filing an OFA. If, however, prior to the expiration of the OFA deadline, WCRSC finds it necessary, it can file an extension request at that time.

This action as conditioned will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the Northern Segment and discontinuance of the Southern Segment by GCEDC of the above-described line, subject to the conditions that GCEDC shall: (1) comply with the terms and conditions for implementing interim trail use/rail banking, as set forth below; (2) leave intact all of the right-of-way, including bridges, trestles, culverts and tunnels (except track, ties, and signal equipment) for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use; (3) during salvage operations, restrict herbicide use within 50 feet of the federally listed and field surveyed Bunched Arrowhead and any herbicide application must be in accordance with the manufacturer's instructions; (4) prior to beginning any salvage operations, consult with SCDHEC to ensure that any concerns regarding potential contamination of the right-of-way and the need for a section 402 stormwater construction permit are addressed, and report the results of its consultation to SEA in writing; and (5) prior to beginning any salvage operations, consult with the appropriate parties and take measures recommended by SCDHEC, Bureau of Land and Waste Management, and the Region 4, EPA, and report the results of the consultation in writing to the Board prior to beginning any salvage operations.

2. GCEDC must serve a copy of this decision on all businesses on the Northern and Southern Segments within 5 days after the service date of this decision and certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement for the Northern Segment is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, GCEDC may fully abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by October 24, 2005. The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,200. See 49 CFR 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **"Office of Proceedings, AB-OFA."**

9. If no OFA is received, the exemption will become effective on November 11, 2005. Petitions to stay must be filed by October 27, 2005, and petition to reopen must be filed by November 7, 2005.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), GCEDC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Northern Segment of the line. If consummation has not been effected by GCEDC's filing of a notice of consummation by October 12, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary