

SURFACE TRANSPORTATION BOARD

DECISION

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

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

Decided: October 20, 2005

By decision served on October 12, 2005, the Board granted a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for Greenville County Economic Development Corporation (GCEDC) to abandon approximately 11.8 miles of line in Greenville County, SC.<sup>1</sup>

By decision served on October 7, 2005, a protective order was issued upon a motion filed by Western Carolina Railway Service Corporation (WCRSC) in connection with WCRSC's offer of financial assistance (OFA). On October 11, 2005, The Athens Line LLC (TAL)<sup>2</sup> filed a pleading seeking a Board determination on whether certain information provided to WCRSC by GCEDC should be treated as confidential under the protective order. In a letter filed on October 11, 2005 (October 11 letter), WCRSC states that the information in question, described as "all encroachments and their related fee schedules," is Exhibit J of WCRSC's OFA. On October 12, 2005, TAL filed a response to WCRSC's letter, asserting again that Exhibit J should not be considered confidential. It also asserts that, if it signed the undertaking included in the protective order issued by the Board in this proceeding, TAL's counsel should be entitled to view WCRSC's financial information, which is confidential. On October 17, 2005, WCRSC filed both Exhibit J and its financial information, Exhibit K, under seal.

WCRSC states that the information in Exhibit J should be considered confidential to protect the parties listed in the document. However, WCRSC recognizes GCEDC's right, as owner of the document, to disclose it. GCEDC has provided counsel for TAL with a list of encroachments and the related fee schedules, pursuant to the Board's regulations at 49 CFR 1152.27(a), without asserting confidentiality and without a confidentiality agreement. Board staff has reviewed the list included in TAL's submission and finds that, with two exceptions, it is identical to the list included in WCRSC's Exhibit J. The additional information found in WCRSC's Exhibit J can be found in other public documents. Accordingly, because GCEDC has

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<sup>1</sup> In addition, GCEDC was granted authority to discontinue service over approximately 3.29 miles of another line.

<sup>2</sup> TAL indicates that it also intends to file an OFA in this proceeding.

provided the information without the requirement of a confidentiality agreement and the information added by WCRSC can be found in the public record, there is no reason WCRSC should require the execution of a confidentiality undertaking under the protective order for the same material or for the parties and the Board to treat the material as confidential.

As a point of clarification, WCRSC, in its October 11 letter, asserts that it is not necessary to reveal its financial support to GCEDC because its financial ability should be determined solely by the Board, and turning over its financial information may create prejudice towards WCRSC and its backer. GCEDC has not yet challenged that argument, but it should be noted that once the Board determines that an offeror is financially responsible, the carrier must deal with the offeror and should have access to all relevant information. Indeed, WCRSC's October 17 filing appears to show that WCRSC has provided counsel for GCEDC with its Exhibit K financial information. In any event, WCRSC has not justified its request that its evidence of financial responsibility should be withheld from a party to the proceeding that signs the undertaking included in the protective order issued by the Board in this proceeding. Thus, although WCRSC's financial information cannot be restricted as WCRSC seeks, the information is sufficiently safeguarded under the protective order.

Finally, in a letter filed on October 7, 2005, WCRSC opposes TAL's October 4, 2005, notice of intent to file an OFA, asserting that it was late filed under 49 CFR 1152.27(c)(2)(i). In its October 11, 2005 pleading, TAL states that its OFA is not late filed. In this proceeding, GCEDC filed a petition for exemption, and deadlines for OFAs in these types of proceedings are governed by 49 CFR 1152.27(b)(2), which states "[o]ffers of financial assistance will be due 120 days after the filing of the petition for exemption or 10 days after service of a Board decision granting the exemption, whichever occurs sooner." The Board's decision granting the exemption was served on October 12, 2005. That decision states that all OFAs are due by October 24, 2005.

It is ordered:

1. Exhibit J, "all encroachments and their related fee schedules," is not confidential and, therefore, not subject to the protective order.
2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary