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WESTERN CAROLINA RAILWAY SERVICE

C O R P O R A T I O N

Post Office Box 16614, Greenville, South Carolina 29606 - 7614

August 24, 2005

ORIGINAL

Mr. Vernon A. Williams,
Secretary
Surface Transportation Board
1925 K Street, NW, Suite 700
Washington, DC 20423-0001



Re: STB Docket No. AB-490-1-X
Greenville County Economic Development Corporation
Petition for Exemption for Partial Discontinuance and Partial Abandonment
In Greenville County, SC

Secretary Williams:

Please find enclosed for filing in STB Docket No. AB-490-1-X, *Greenville County Economic Development Corporation Petition for Exemption for Partial Discontinuance and Partial Abandonment in Greenville County, SC*, one original and ten copies of four enclosures to be made a part of the record due to their pertinence to this docket:

- Enclosure 1 Copy of an August 23, 2005 letter from Steven C. Hawkins to Christy A. Hall, Program Manager for SCDOT, expressing concern toward SCDOT's proposed intention to remove a portion of the subject docket's mainline.
- Enclosure 2 Excerpts from the US Code, provided as an enclosure for that letter which constitutes Enclosure 1 of this filing.
- Enclosure 3 Copy of an August 12, 2005 e-mail from Christy A. Hall to Steven C. Hawkins, noting that SCDOT was issuing a "stop work order" on that portion of the subject docket's mainline that lies within SCDOT's LP Hollis Roadway Project. The e-mail further notes SCDOT's intent to salvage the rails from this location, as well as its lack of intention to spend any more of the allocated funds on this project.
- Enclosure 4 Copy of an August 12, 2005 letter from Christy A. Hall to Andy White, Attorney for Greenville County Economic Development Corporation, noting the same information that is conveyed in Enclosure 3 of this filing. However, it further expresses SCDOT's belief that it has the right to permanently remove the main track at a location in which the owner still has a common carrier obligation and that has not yet been approved for abandonment by the STB.

It is difficult, at best, for my company to attempt to determine the line's NLV for its' planned OFA when the line appears to be in an ongoing state of flux. I appeal to the Board to advise the South Carolina Department of Transportation of the current status of this line as well as to remind it of the Board's singular authority in determining the final outcome of this docket.

ENTERED
Office of Proceedings

AUG 25 2005

Part of
Public Record

August 24, 2005
Mr. Vernon A. Williams
Surface Transportation Board
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Should you have questions or concerns regarding this letter or the enclosed filing, please do not hesitate to contact me.

Thank you for your time and consideration.

Sincerest regards,

A handwritten signature in black ink, appearing to read "Steven C. Hawkins". The signature is written in a cursive style with a long horizontal flourish at the end.

Steven C. Hawkins,
President

Enclosures

WESTERN CAROLINA RAILWAY SERVICE

C O R P O R A T I O N

Post Office Box 16614, Greenville, South Carolina 29606 - 7614

August 23, 2005

COPY

Ms. Christy A. Hall, PE,
Program Manager
South Carolina Department of Transportation
252 South Pleasantburg Drive
Greenville, SC 29607

Re: Your August 12, 2005 letter to Andy White, attorney for Greenville County Economic Development Corporation

Ms. Hall:

I am writing you today to 1) acknowledge my receipt of the above referenced letter, and 2) to offer some information for your consideration. I do appreciate your having included me on the distribution of your letter, even though I am well aware that I have no legal bearing on the outcome of your decisions with regard to your proposed removal of the rail that has been installed to replace the original rail and grade crossing signal equipment removed by SCDOT at and near Cedar Lane Road as part of the LP Hollis Roadway Project.

The information I wish to share is excerpted from the United States Code (see Enclosure). As you can see in Title 49, Subtitle IV, Part A, Chapter 109, Section 10903; a carrier (in this case, GCEDC) may abandon a railroad line only if the Surface Transportation Board of the US Department of Transportation approves it. If the Board finds that an abandonment is in the interest of public convenience and necessity, it will approve a petition for exemption for abandonment or a full application to abandon a given segment.

In such a case, as indicated in Section 10904 of the same title (see Enclosure), the carrier's obligation to provide transportation on that line is extinguished... in which case the carrier can remove from its premises the very infrastructure that constitutes its rail line. The Board may, conversely, deny the application. In either event, as long as the matter is pending and a carrier has this obligation to provide service, it is difficult to justify the removal of a line's infrastructure to the STB.

Optionally, as part of the due process that is set forth in both the US Code and the Code of Federal Regulations (see 49 CFR 1152.27), if the STB determines that there is a viable Offer of Financial Assistance being made to restore service to the line in question, the line can be conveyed to the offeror. The offeror will subsequently assume the common carrier obligation, which necessitates that there be an infrastructure in place on which to operate.

It is my understanding that when SCDOT removes the infrastructure of another roadway (in this case a railroad) as part of a construction project, it is obligated to restore the altered subject roadway to a condition equal to or greater than the condition it existed in prior to the project's undertaking. The only exception to this "rule" being if an agreement is in place before the project starts that does not require such restoration, thus exempting SCDOT of this obligation.

August 23, 2005
Ms. Christy A. Hall, PE
South Carolina Department of Transportation
Page 2

In the case of the LP Hollis Roadway Project, the only entity that can legally authorize the railroad's removal at this location is the STB, as the current owner (GCEDC) still has a common carrier obligation until the pending petition for exemption for abandonment is approved by the STB.


As I mentioned in my opening paragraph, there was track and an active warning device in place at this location before the LP Hollis project began. If, in the final outcome of STB Docket No. AB-490-1-X, GCEDC is required to sell its line to another operator, the common carrier obligation will be conveyed and the line will continue to be an active rail line in the STB's eyes.

Given that possible outcome, I wish to suggest that it might be prudent to defer any decision SCDOT makes with regard to removing track at this location until after the docket has been decided by the Board. Any track that is removed before a final decision is made by the STB, not to mention SCDOT's intention to not replace the active warning device it removed, could result in an even greater final cost to SCDOT than the original projections (in your LP Hollis GCEDC Rail Crossing Construction Items spreadsheet) indicate.

The scheduled decision date is currently October 12, 2005.

I do hope you find this information useful and wish you the very best – whatever SCDOT's final decision in this matter. Do not hesitate to contact me if I can be of any further assistance to you.

Sincerest regards,



Steven C. Hawkins,
President

Enclosure

Cc: Robert Pratt, Director, SCDOT
Roy Tolson, Program Manager Director, SCDOT

Enclosure

United States Code

**Title 49, Subtitle IV, Part A, Chapter 109, Section 10903 -
Filing and procedure for application to abandon or discontinue**

(d) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may -

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

(e) Subject to this section and sections **10904** and **10905** of this title, if the Board -

(1) finds public convenience and necessity, it shall -

(A) approve the application as filed; or

(B) approve the application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity; or

(2) fails to find public convenience and necessity, it shall deny the application.

**Title 49, Subtitle IV, Part A, Chapter 109, Section 10904 -
Offers of financial assistance to avoid abandonment and discontinuance**

(f) Upon abandonment of a railroad line under this chapter, the obligation of the rail carrier abandoning the line to provide transportation on that line, as required by section 11101(a), is extinguished.

Hawkins, Steven C.

Tue, Aug 23, 2005 4:05 PM

Subject: RE: Cedar Lane Road Funding Allocations
Date: Friday, August 12, 2005 3:21 PM
From: Hall, Christy A <HallCA@dot.state.sc.us>
To: "Steven C. Hawkins" <steven.hawkins@wcrscorp.com>

COPY

Mr. Hawkins,

I am attaching to this email a letter I have sent GCEDC regarding SCDOT's decision to stop all work on the GCEDC rail line crossing on the LP Hollis roadway project.

Bottom line is that we have spent just over \$ 500,000 to date (out of the \$809,413) on the crossing. I am trying to salvage some of the materials (mainly the rails) in order to recoup some of this cost.

The balance of the funding previously allocated to these construction items will go back into the project to pay for other project overruns. No other money or funds will be set aside by SCDOT for any future work at this crossing.

Please let me know if you have any other questions or concerns.

Christy A. Hall
SCDOT Program Manager

-----Original Message-----

From: Hall, Christy A
Sent: Monday, July 25, 2005 1:38 PM
To: 'Steven C. Hawkins'
Subject: RE: Cedar Lane Road Funding Allocations

Mr. Hawkins,

SCDOT has paid (or has contractual arrangements in place with) our contractor directly for all of this rail crossing work. GCEDC has not contracted with any one to my knowledge to do any work along this section of the rail. SCDOT has treated the rail crossing upgrade as a part of our roadway construction work for the LP Hollis project.

The \$809,413.11 is our contractual amount with the roadway contractor for him to complete the installation of the items listed on the attached quantity list. No other or additional money is set aside for us to do any other work on this crossing.

Thanks,



South Carolina
Department of Transportation

August 12, 2005

COPY

Mr. Andy White
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place, 11th Floor
PO Box 2048
Greenville, SC 29602-2048

Re: Greenville County Economic Development Corporation (GCEDC) Rail line crossing on the LP Hollis Roadway Project – Greenville County

Dear Mr. White:

This letter is a follow up to a series of recent emails between GCEDC and SCDOT regarding the GCEDC at-grade railroad crossing on the LP Hollis roadway project. As you know, the SCDOT had planned to construct a proper at-grade railroad crossing (including the installation of some new ballast, ties and rails) for the GCEDC rail line as part of the LP Hollis Roadway project. This rail work was planned and agreed upon based on discussions years ago between various people representing this rail line and SCDOT. Since this original agreement was made, several changes have been made to the proposed use of the rail line now owned by GCEDC. The most recent change has been GCEDC's June 2005 filing with the Surface Transportation Board to abandon this particular section of rail and convert it to a possible rails to trails use.

Based on this revised proposed use of the GCEDC rail line or right of way, we have issued a stop work order to our roadway contractor with regards to the remaining rail and crossing installation work on the LP Hollis GCEDC crossing. SCDOT has incurred just over \$500,000 in costs to construct the GCEDC rail line crossing at this location and we are evaluating our options in an effort to recoup some of our costs. It appears that we will likely utilize some of the new rail that we had previously installed on this particular line at another location on the project or we may elect to salvage it in order to defray some of the costs we have incurred upgrading this crossing. Since this new rail line was installed at our expense, we believe that we should have the ability to remove it and reuse it in accordance with our needs in order to limit and/or reduce our costs.

Even though we may elect to remove some of the new rail, we believe that it is in the motoring public's interest and our interest to try to maintain a smooth crossing at this location on the new LP Hollis roadway project. Therefore, we do not plan to affect the portion of the rail line crossing that we have already installed within the pavement structure of the LP Hollis project. By leaving the new crossing within the roadway pavement structure in place, it will not only maintain a smooth ride for the motorists, it will enable GCEDC to easily tie to the crossing in the future if / when the line re-enters service.

We look forward to continuing to working with GCEDC on this project and other roadway projects in Greenville. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Christy A. Hall, P.E.
Program Manager

File:PC/CH

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of August 2005, a copy of the foregoing documents were served by:

United States Postal Service First Class Mail, postage fully pre-paid, upon:

William A. Mullins,
Baker & Miller, PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037-1725

David C. Reeves,
Baker & Miller, PLLC
2401 Pennsylvania Avenue, NW
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Catherine N. Hicks,
Cross Roads Sales
131 Pinsley Circle
Greenville, SC 29617-3045

Richard W. Hills, Jr.,
Bleachery Road Warehouse, LLC
210 Old Bleachery Road
Greenville, SC 29609-4135

Randolph R. Mathena,
Paper Cutters, Inc.
840 North Hwy 25 By Pass
Greenville, SC 29617-6246

Larry E. Seay,
IMP Incorporated
P.O. Box 578
Lyman, SC 29365-0578

Brad Wyche,
Upstate Forever
P.O. Box 2308
Greenville, SC 29602-2308



Steven C. Hawkins,
President
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