



Amy Loudenbeck

REPRESENTING WISCONSIN'S 31ST ASSEMBLY DISTRICT

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ENTERED
Office of Proceedings
May 19, 2017
Part of
Public Record

May 19, 2017

Surface Transportation Board
Attn: Docket No. FD 35952
395 E Street, S.W.
Washington, DC 20423-0001

Re: Docket No. FD 35952 Great Lakes Basin Transportation, Inc.

Dear Office of Rail Customer and Public Assistance:

On May 1, 2017, Great Lakes Basin Transportation, Inc. (GLBT) filed a formal application with the Surface Transportation Board (STB) for authority to construct and operate a 261-mile rail line through portions of Wisconsin, Illinois, and Indiana. **This letter is in response to the STB's request for public comments on the completeness of the application submittal.** While the issues related to GLBT's proposal are numerous, the comments provided in this letter are focused on three major decision items for the STB: completeness of the GLBT's application; confidentiality of GLBT's shareholders and their interest; and consideration of the entire project as one "connected action."

Decision Item – Completeness

When a company applies for a permit from the STB, they must provide an explanation of the purposes of the proposal and an explanation of why the proposal is not inconsistent with the "public convenience and necessity". The most fundamental issue that must be addressed by the STB's review of the GLBT's permit application is the necessity of the proposed project. Based on the information provided it is clear that the GLBT permit application falls woefully short of illustrating the necessity of this project.

GLBT's permit application contained one page of information addressing the necessity of this project. Their cursory response to this fundamental question did not even acknowledge the CREATE project in Chicago within this section of their application, which has the exact same purpose as the proposed GLBT rail line. CREATE has already invested billions of dollars to achieve significant reductions in the average time it takes a freight train to get through Chicago. Perhaps, GLBT chose to ignore this competing project in this section of their application because it exposes the redundancy of the GLBT's own rail line. Further, two of the nation's largest rail companies have taken public positions in opposition to the GLBT rail line because of their commitment to and investment in CREATE. The opposition of two major rail companies (Union Pacific and Norfolk Southern), and the fact that none of the other major rail companies have publicly endorsed the project, leaves the very real possibility that GLBT is applying to build a



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261-mile rail line that will be under-utilized from its inception, and thus illustrates the fact that there is no necessity.

The Applicant's information addressing the "public convenience and necessity" provides very little tangible information related to the proposed project. It does, however, contain a massive over-simplification on their burden to illustrate the benefits of their proposal. The Applicant references 49 USC 10901 (c) and a ten-word excerpt from *Mid States Coal Progress V. Surface Transportation Board* to make the assertion that there is a "statutory presumption that rail construction is to be approved." *Mid States Coal Progress V. Surface Transportation Board* involved the upgrade of 600 miles of existing rail in addition to the construction of 280 miles of new rail to reach coal mines in Wyoming's Power River Basin by a company that was already operating as a rail corporation, (Dakota, Minnesota, & Eastern Railroad Corporation).

The GLBT's proposal would be the single largest rail project in more than 100 years. Their claims that the Interstate Commerce Commission Termination Act of 1995 (ICCTA) and the 8th Circuit's decision in *Mid States Coal Progress V. Surface Transportation Board* has created: "a statutory presumption that rail construction is to be approved" is not only a massive over-simplification of the burdens borne by both the Applicant and the opponents in a proceeding of this scope and magnitude, it completely obliterates the role of the STB in the review of applications. Additionally, GLBT has not sought a specific exemption for their application, and the STB has not granted an exemption that would cover an application of this scope under 49 USC 10502, 49 CFR Parts 1039, 1121 and 1050.31.

Additionally, for an application to be deemed complete the Applicant must include a balance sheet and income statement. GLBT's formal application to the STB contains neither a current balance sheet nor income statement, which is justified by the Applicant; "as there are no revenue or operations." While the rail line does not exist and there are no revenues generated from the operation, the STB has most certainly raised working capital and expended significant revenue on legal bills, engineering services, and environmental consultants working on the Environmental Impact Statement. This financial information is far more pertinent to an application that can be deemed complete than the extremely dubious pro forma income statement included as Exhibit G. The STB must require the GLBT to submit current financial information including balance statements and income statements before considering their application as complete.

For all of these reasons, the STB must deem that the application submitted by the GLBT is not complete, and therefore the application cannot be approved.

Decision Item - Confidentiality of Shareholders and Their Interest

On May 1st, in conjunction with the application submittal, GLBT also filed an order of protection with the STB requesting confidentiality of the ten primary shareholders to



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ensure, “that proprietary and commercially sensitive information in the List of Stockholders and in other documents will be protected from unnecessary public disclosure and will be used only in connection with this proceeding and not for any other business or commercial use.” While a filing of this type is not unprecedented; it surely is not in the public interest, particularly for a project of this size and scope. The residents of Wisconsin, Illinois, and Indiana whose lives will be greatly impacted by this proposal should have a right to review this information. Many proposed projects never actually reach the application stage of the process, so there may be justifiable reasons for maintaining confidentiality. However, the GLBT has now submitted an application indicating their desire to move forward with the review process, so there is no possible justification for shielding this information from public disclosure.

The request for an order of protection to maintain the confidentiality of the GLBT’s shareholders in this project has proven to be a very controversial issue. In a recent editorial, the *Beloit Daily News* opined that this request, “...raises red flags and casts even more doubt over the entire project. If the GLBTs plan is so solid and beneficial, why would those behind it want to stay hidden? And if their plan would intrude on the properties and privacy for hundreds of home- and land-owners along the route, why should anyone accept claims of privacy rights for those responsible for the rail plan?”¹ I wholeheartedly concur with their concerns, and I am forced to wonder what surprises may be contained with this information. In this instance, the public’s right to know who is funding a project that could potentially impact their lives, livelihood, and property greatly outweighs the Applicant’s desire to maintain confidentiality.

The STB must respect the necessity of the public disclosure of information provision, and not issue a protective order granting confidentiality to GLBT in relation to their shareholders and their interest held in the company.

Decision Item – “Connected Action”

While GLBT has certainly not met their responsibilities under 49 USC 109 to receive authority from the STB to construct and operate a rail line, the company announced on May 1st that the rail line is only one component of their overall proposal. Stakeholders, regulators, and the general public were blindsided by the company’s announcement that their proposal has always included the construction of the “Daniel Burnham Highway” within a 2,000-foot-wide “transportation corridor”. This announcement by GLBT should necessarily require the Surface Transportation Board, in conjunction with other state and federal regulatory agencies, to consider the rail line and the highway as one “connected action” for all regulatory and environmental approvals.

Under the current proposal, the State of Wisconsin and my constituents in Rock County will not be directly impacted by the “Daniel Burnham Highway” portion of their

¹ <http://www.beloitdailynews.com/article/20170505/ARTICLE/170509843>



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proposal; however, it now appears that the highway is the most significant and costly component of the proposed "Daniel Burnham Transportation Corridor." It could be argued that the GLBT is using the rail line as a Trojan horse to gain access to land through eminent domain to ease the approval process for the "Daniel Burnham Highway" toll-road. If this is the case, residents of the 31st Assembly District will experience adverse impacts on agriculture, land use, property values, and public safety, so that the GLBT can potentially build a toll-road in northeast Illinois and northwest Indiana.

From outward appearance, the proposed "Daniel Burnham Highway" is simply a replacement for the highly controversial and subsequently abandoned Illiana Expressway toll-road (a.k.a. Illiana Corridor). The Illiana Expressway was the subject of a federal lawsuit that alleged federal agencies approved an environmental impact study that failed to establish the need for the project.² The Illiana Expressway was definitely in the front of GLBT Chairman Frank Patton's mind when planning of his transportation corridor began. Media reports have stated, "Frank Patton had his light bulb moment sitting around Briar Ridge Country Club seven years ago discussing a 50-mile truck bypass for Chicago called the Illiana Expressway. If state transportation planners thought a 50-mile toll road was the solution to Chicago truck congestion, why couldn't the same be done for railroads?"³

The proposed construction of a rail line and a toll-road within the same 2,000-foot right-of-way, certainly fits within the definition of a "connected action" under the National Environmental Policy Act. At 125 miles, the length of the proposed toll-road is nearly 48-percent of the length of the proposed rail line. Even Mr. Patton believes that the rail line and highway toll-road are a "connected action" as quoted in the Chicago Tribune on May 1, "I think the combination of the highway and the railroad would be an economic powerhouse that could compete with any other place in the country." The article further elaborated that, "Patton has said the rail line would be \$8 billion, he said on Monday that figure is actually for both the rail line and the toll road, which together would form the "Daniel Burnham Transportation Corridor."⁴

Mr. Patton has very publicly acknowledged that the rail line and highway are one combined project, and as such it is incumbent upon the regulatory agencies to take him at his word and review the totality of his "Daniel Burnham Transportation Corridor" as one "connected action." As such, regulatory agencies must closely review the "public convenience and necessity" of the "Daniel Burnham Highway" toll-road, which will have a significant burden illustrating the proposed highway's necessity. According to the transportation manager of the Northwestern Indiana Regional Planning Commission (NIRPC), "There isn't a great need for the toll-road east of I-65."⁵ The NIRPC is

² <https://www.wbez.org/shows/wbez-news/lawsuit-targets-planned-illiana-tollway/1405901d-8f43-483e-a512-198f28aad40>

³ http://www.nwintimes.com/business/local/frank-patton-not-your-average-rail-baron/article_2696e3d9-f353-5cd1-8665-1699a3771b3e.html

⁴ <http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-glb-road-plan-st-0502-20170501-story.html>

⁵ <http://www.chicagotribune.com/suburbs/post-tribune/news/>



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responsible for coordinating planning and development for economic development, environmental management, and transportation in Northwest Indiana. The transportation manager continued, "When it comes to the toll-road, I have two words, good luck."⁶

For all of these reasons, the STB must consider, as a "connected action," the entire scope of the GLBT's proposed project when reviewing their application.

Conclusion

The Surface Transportation Board has a number of decisions to make in relation to the application submitted by the GLBT on May 1st. First, the GLBT application is woefully inadequate in addressing the "public convenience and necessity" of this project, so the STB must find that the application submitted is not complete, and cannot be approved. Second, the STB should deny the request for a protective order granting confidentiality to GLBT in relation to their shareholders because it is not in the public interest. Finally, the developers of this proposal had previously claimed that the rail line portion of this project would cost in excess of \$8 billion on planning, development, land acquisition, and construction. On May 1st, GLBT announced that the \$8 billion project was not just a rail line but also a major highway toll-road. This illustrates that the developers have been planning one project that encompasses the rail line and the highway toll-road. The STB must consider the entire scope of the GLBT's proposed project as one "connected action" when reviewing their application.

Thank you in advance for your consideration of my comments and concerns. Please feel free to contact my office if you have any questions or require additional information.

Respectfully,

Representative Amy Loudenbeck
31st District
Wisconsin State Assembly

⁶ <http://www.chicagotribune.com/suburbs/post-tribune/news/>