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Before the
Surface Transportation Board
Washington, D.C. 20423

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



GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION
PETITION FOR EXEMPTION
FOR PARTIAL DISCONTINUANCE AND PARTIAL ABANDONMENT
IN GREENVILLE COUNTY

REPLY OF THE ATHENS LINE LLC TO REQUEST FOR MODIFICATION
OF PROTECTIVE ORDER

Comes now The Athens Line LLC ("TAL"), by and through counsel of record, and files this Reply to the letter/petition filed October 11, 2005 by the Western Carolina Railway Service Corporation ("WCRS"). By its petition, WCRS seeks, in effect, to have the Board reconsider and modify the Protective Order entered by the Board on October 7, 2005. In particular, WCRS would have the Board determine that a 13 page study, which appears to have been prepared by and for the Greenville County Economic Development Corporation ("GCEDC") and which has been freely disseminated by GCEDC without any claim of confidentiality, is confidential. Because GCEDC has not designated or stamped the document as "CONFIDENTIAL" -- as would be necessary under the terms and conditions of the Board's Protective Order -- WCRS's request for reconsideration should be denied.

1. The information prepared by GCEDC and distributed on a non-confidential basis to WCRS and others, which WCRS intends to submit as its Exhibit J, is not confidential and has not been designated as such by GCEDC.

In its letter/petition, WCRS states that its "Exhibit J is, in its entirety, nothing more than the same 13-page document provided by GCEDC to WCRS in July 2005."¹ Plainly, there is no basis whatsoever to justify treating the document as confidential. As TAL has explained in its Motion Seeking Determination of Lack of Confidentiality, which was also filed on October 11, 2005, that same study was released to the undersigned counsel in October 2005 without being designated or stamped "CONFIDENTIAL." Given the fact of the release and publication by GCEDC, which is the only party that would have been entitled to assert a claim of confidentiality, WCRS's request is moot.

As the Board has recognized in its Decision, served October 7, 2005, WCRS's proposed Protective Order filed October 5, 2005 was overly broad. Therefore, when the Board granted the motion for protective order, it imposed a requirement that a party wishing to have information treated as confidential would be required to designate or stamp such material "CONFIDENTIAL."

Second, as previously noted in TAL's earlier Motion, in the absence of any showing that GCEDC intended the list of encroachments to remain confidential and took steps to protect it from public disclosure, WCRS lacks standing to insist that the study is confidential. There is no legal basis for WCRS to demand that the Board and other parties belatedly treat the information as confidential. *See, e.g., Monolith Portland Midwest Co. v. Kaiser Aluminum & Chemical Corp.*, 267 F. Supp. 726, 732 (S.D. Calif. 1966), *aff'd* 407 F.2d 288 (9th Cir. 1969) ("one may not impose upon another, by a gratuitous and unilateral act a confidential relationship").

¹ Letter to Vernon A. Williams, dated October 8, 2005, at p. 1.

Third, the 13-page list is merely a compilation of summaries of various documents, many of which are public documents, reflecting encroachments on the right-of-way created by laying and maintaining water and sewer pipes and related matters, some of which date as far back as 1927. There is nothing whatsoever that is commercially sensitive about the information that GCEDC has disseminated without designating or stamping it "CONFIDENTIAL." Nor is there anything about the information that "could be harmful to the parties listed in the document" as WCRS insists.²

For all the above-stated reasons, the Board should refuse to modify the Protective Order as requested by WCRS and should otherwise decline WCRS's invitation to allow it to submit its Exhibit J "solely to the Board or to the Board and GCEDC only." Because Exhibit J is "nothing more than the same 13-page document provided by GCEDC to WCRS in July 2005" and to TAL in October 2005, that document is **not confidential by any stretch of the imagination.**

2. Upon the filing of the Undertaking issued by the Board on October 7, 2005, the undersigned is entitled to receive the information that will be submitted as Exhibit K.

As the Board is well aware, the history of this line of railroad is tortured. By its Decision in Docket No. 42087, *Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation*, served July 27, 2005, the Board awarded damages upon finding that GCEDC had violated its common carrier obligation. Given the apparent need for reliable rail service, it is essential that WCRS fully disclose its financial capability to the Board, GCEDC and to counsel for TAL, which opposes WCRS's OFA.

Simply stated, there is nothing of record to show that WCRS, which does not appear to be an operating railroad, has the financial capability to make the repairs that are needed to resume rail operations. Indeed, given the content of the canned letters of support, it appears that the

² *Id.* at p. 2.

financial commitment may be a work in progress. It is self-evident that if WCRS had the necessary financial backing and the operational ability to acquire the line and make the repairs, it should not take 18 months to restore rail service over the line. This case involves less than 12 miles of track, with most of the shippers being located on the southern end of the line.

Should the Board determine that counsel for TAL is not entitled to the evidence that allegedly is to be placed in WCRS's Exhibit K, the Board is urged to exercise extreme care in reviewing that data in order to assure the shippers on the line that WCRS is a legitimate buyer and that it is financially fit to acquire, repair and operate the line. As of this moment, the record is barren of any probative data to support such a determination.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. H. Streeter", written in a cursive style.

Richard H. Streeter
Counsel for The Athens Line LLC

Dated: October 12, 2005

CERTIFICATE OF SERVICE

I, Richard H. Streeter, hereby certify that on this 12th day of October 2005, a true copy of the foregoing Reply has been served by first class mail, postage prepaid, upon the following parties. In addition, a .pdf copy hereof has also been e-mailed on this date to WCRS's president at steven.hawkins@wcrscorp.com

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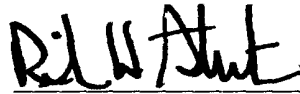
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A handwritten signature in black ink, appearing to read "R. H. Streeter", written over a horizontal line.

Richard H. Streeter