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September 30, 2004

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

No. 42087

**RE: Groome & Associates, Inc. and Lee K. Groome, Complainants, v. Greenville
County Economic Development Corporation, Defendant**

Dear Secretary Williams:

Enclosed please find an original and eleven copies of Greenville County Economic Development Corporation's Reply to Groome & Associates, Inc.'s and Lee K. Groome's "Motion To Supplement Previously Filed Motion To Waive Procedures Governing The Filing Of Fees, Request For Immediate Institution Of A Complaint Proceeding And Establishment Of A Procedural Schedule" ("Supplemental Motion"). The Supplemental Motion was filed September 27, 2004.

Please acknowledge receipt of this filing by date stamping the eleventh copy of the filing and returning it to the individual making this filing to return to me. A copy of this filing has been served today on all known parties to this matter by hand delivery or other expedited delivery.

Please feel free to contact me if you have any questions.

Sincerely yours,

William A. Mullins

Enclosures

cc: All known parties

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Groome & Associates, Inc. and
Lee K. Groome,

Complainants

v.

No. _____

Greenville County Economic Development
Corporation

Defendant

**DEFENDANT'S REPLY TO COMPLAINANTS' "MOTION TO SUPPLEMENT
PREVIOUSLY FILED MOTION TO WAIVE PROCEDURES GOVERNING THE FILING
OF FEES, REQUEST FOR IMMEDIATE INSTITUTION OF A COMPLAINT
PROCEEDING AND ESTABLISHMENT OF A PROCEDURAL SCHEDULE"**

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September 30, 2004

**Attorneys for Greenville County Economic
Development Corporation**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Groome & Associates, Inc. and
Lee K. Groome,

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v.

Greenville County Economic Development
Corporation

Defendant

No. _____

**DEFENDANT'S REPLY TO COMPLAINANTS' "MOTION TO SUPPLEMENT
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By motion filed August 23, 2004, Complainants, Groome & Associates, Inc. and Lee K. Groome, requested the Surface Transportation Board ("STB" or "Board") to exercise its discretion by waiving the requirement that a filing fee accompany a formal complaint and to institute a procedural schedule. Complainants' request related to the alleged tender to the Board, without a filing fee, of a formal complaint on or about May 23, 2001, which Complainants desire to revive effective as of that date. Defendant, Greenville County Economic Development Corporation ("GCEDC" or "Defendant"), replied to that motion on September 29, 2004. On that same date, Counsel for Defendant received a copy of another motion, allegedly filed by Complainant on September 27, 2004, which seeks to supplement Complainants' August 23, 2004 motion ("Supplemental Motion"). Defendant hereby replies to the Supplemental Motion.

By its Supplemental Motion, Complainants seek to submit a partial transcript of Judge John C. Few's bench ruling regarding Complainants' state court complaint against Defendant. In that

state court proceeding, Complainants alleged that Defendant had violated its common carrier obligation under both state and federal law and sought damages for the alleged violation.¹ Defendant does not object to the submission of the partial transcript.

Defendant notes, however, that, consistent with its Reply of September 29, 2004, Defendants do not believe there is an active docket for which the submission can apply. Complainants' "Formal Complaint," allegedly filed on May or about May 23, 2004, was technically deficient, was untimely, and was not accompanied by a filing fee. Accordingly, the Board never docketed the filing as a Formal Complaint and started a proceeding. There simply is no valid formal complaint on file that Complainants' August 23 Motion and the Supplemental Motion are applicable to. If the Board holds otherwise, Defendant does not object to the submission of the partial transcript,² but continues to believe the Formal Complaint should be dismissed as filed after the statutory deadline for filing complaints and because the commodity shipped by Complainant is an exempt commodity not subject to regulation until the exemption is first revoked, which it has not been.

As for the substance of Complainants' claims in the Supplemental Motion, Defendant notes that the position now advocated by Complainants' STB counsel is precisely opposite of the position which it advocated in the state court proceeding. It was Complainants who initiated the state court proceeding and who, until now, consistently advocated that the state court had jurisdiction to both interpret and apply state and federal law governing the common carrier obligation and the lawfulness of the embargo. Having lost in the state court proceeding, Complainants now wish to

¹ The complaint filed in state court was not simply a recitation of the May 23, 2001 STB filing, but rather included significant claims of a violation of state, as well as federal, statutes. Thus, the state court was not simply adjudicating the issues raised in the STB filing.

² A partial transcript of Judge Few's order need not be filed with the Board as the actual written order was filed with Defendant's September 29, 2004 Reply as Exhibit B.

revive an invalidly filed complaint and get another bite at the apple. Such forum shopping should be rejected.

In fact, it was Complainants' continued insistence that the state court had jurisdiction that led this agency to begin a declaratory order proceeding to consider the issue of whether or not a state court has jurisdiction to review claims of an alleged violation of the common carrier obligation. *See Greenville County Economic Development Corporation – Petition for Declaratory Order*, STB Finance Docket No. 34487 (STB served March 22, 2004). The issues raised in the Supplemental Motion are best raised in the context of that proceeding. They should not and cannot be raised in the context of an invalidly filed Formal Complaint from May 23, 2001.

Respectfully submitted,



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September 30, 2004

Attorneys for Greenville County Economic
Development Corporation

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Reply to Groome & Associates, Inc.'s and Lee K. Groomes's "Motion To Supplement Previously Filed Motion To Waive Procedures Governing The Filing Of Fees, Request For Immediate Institution Of A Complaint Proceeding And Establishment Of A Procedural Schedule" upon all known parties to this matter by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid or by other expeditious means.

Dated: September 30, 2004


William A. Mullins
Attorney for Greenville County Economic
Development Corporation