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SEC

SERVICE DATE – LATE RELEASE JULY 26, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-70 (Sub-No. 5X)

FLORIDA EAST COAST RAILWAY, L.L.C.—ABANDONMENT EXEMPTION—
IN BREVARD COUNTY, FL

MOTION FOR PROTECTIVE ORDER

Decided: July 26, 2005

Florida East Coast Railway, L.L.C. (FEC) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 9.8-mile line of railroad known as the Titusville Branch, extending from milepost TB 0.0 in Titusville to milepost TB 9.8 in Aurantia, Brevard County, FL. Notice of the exemption was served and published in the Federal Register on June 16, 2005 (70 FR 35155). The notice provided that the exemption would become effective on July 16, 2005, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c) was filed by June 27, 2005.

On June 27, 2005, Hust Brothers, Inc. (Hust), timely filed a formal expression of intent to file an OFA to purchase the entire line. As a result of the filing, the effective date of the exemption was automatically stayed until July 26, 2005. Hust simultaneously asked that FEC provide it with the financial data and information prescribed in 49 CFR 1152.27(a). By pleading filed on July 14, 2005, FEC submitted its reply pursuant to the Board's regulations at 49 CFR 1152.27(a) and its response to Hust's request.

By decision served on July 21, 2005, the proceeding was reopened at the request of the Board's Section of Environmental Analysis (SEA), and the exemption was made subject to the condition that FEC notify the National Geodetic Survey (NGS) at least 90 days prior to the onset of salvage activities to provide time for NGS to plan for the possible relocation of 9 geodetic station markers. The decision also tolled the time period for Hust to file its OFA until August 10, 2005, and postponed the effective date of the exemption until August 20, 2005.

By motion filed on July 20, 2005,¹ Hust seeks a protective order allowing FEC and it to make available to one another and to file under seal certain confidential documents and information in connection with Hust's forthcoming OFA. Hust states that such confidential documents may include the parties' respective estimates of the net

¹ A proposed protective order and undertaking were included with the motion.

liquidation value of the real estate comprising the right-of-way of the line along with supporting data reflecting available real estate appraisals, deeds, and other relevant evidence of title. Issuance of the requested protective order will ensure that the confidential information will be used only in connection with this proceeding and not for any other business or commercial purpose. Hust also states that FEC concurs in this motion.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials submitted to the Board. Accordingly, the motion for protective will be granted.

It is ordered:

1. The motion for protective order is granted.
2. The parties are directed to comply with the protective order in the appendix to this decision.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

Protective Order

1. For the purpose of this Protective Order, “confidential information” means the real estate appraisal and all supporting documents furnished in connection with the abandonment exemption sought by Florida East Coast Railway, L.L.C. in the above-captioned matter along with any filings and evidence submitted by Hust Brothers, Inc. in connection with an offer of financial assistance made in this proceeding.

2. The confidential information shall be provided to any employee, agent, counsel, or consultant of Hust Brothers, Inc. only pursuant to this Protective Order and only upon execution and delivery to Florida East Coast Railway, L.L.C. of the attached Undertaking. The confidential information shall be used solely for the purpose of this and any related Board proceedings or judicial review proceeding arising therefrom, and not for any other business, commercial or competitive purpose.

3. The confidential information shall not be disclosed in any way or to any person without the written consent of Florida East Coast Railway, L.L.C. or an order of the Board, except to an employee, agent, counsel, or consultant of a party to this proceeding, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notice of such destruction must be served on Florida East Coast Railway, L.L.C. at the completion of this and any related Board proceedings, or any judicial review proceedings arising therefrom, whichever comes later.

5. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedures set forth at 49 CFR 1104.14.

6. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceedings arising therefrom, the party shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

Undertaking

Confidential Material

I, _____, have read the Protective Order governing the filing of confidential information by Florida East Coast Railway, L.L.C. in STB Docket No. AB-70 (Sub-No. 5X) and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Docket No. AB-70 (Sub-No. 5X) or any judicial review proceeding taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that Florida East Coast Railway, L.L.C. shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Name
Position/Affiliation