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SERVICE DATE - LATE RELEASE JANUARY 29, 2004

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Docket No. AB-490X

#### GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION—DISCONTINUANCE OF SERVICE EXEMPTION— IN GREENVILLE COUNTY, SC

Decided: January 29, 2004

On June 30, 2003, Greenville County Economic Development Corporation (GCEDC) filed a verified notice of exemption under the class exemption for out-of-service rail lines at 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service to discontinue service over 11.8 miles of railroad, known as the Greenville and Northern Railroad Line, extending from milepost 0.0, in Greenville, to milepost 11.8, at the northern limits of Traveler's Rest, in Greenville County, SC (line). A notice of exemption was served and published in the Federal Register on July 18, 2003, at 68 FR 42801-02, and the exemption was scheduled to become effective on August 17, 2003.

On August 14, 2003, Lee Groome and Groome & Associates, Inc. (collectively, Groome), filed a letter challenging GCEDC's notice of exemption. In that letter, Groome claimed that GCEDC submitted false and misleading information and requested that the exemption be declared void ab initio or, in the alternative, that the effective date of the exemption be stayed pending consideration of the issues raised in Groome's letter. A "housekeeping" stay was issued in a decision served on August 15, 2003, to permit orderly consideration of the issues raised.

In view of the issues that have been raised, the Board finds that use of the expedited class exemption procedures for discontinuance authority would not be appropriate here. Accordingly, the Board will dismiss GCEDC's notice of exemption.

### BACKGROUND

GCEDC purchased the line from South Carolina Central Railroad Company, Inc., Carolina Piedmont Division, in 1999. See Greenville County Economic Development Corporation—Acquisition Exemption—South Carolina Central Railroad Company, Inc., Carolina Piedmont Division, STB Finance Docket No. 33752 (STB served June 3, 1999). GCEDC asserts that no traffic has moved over the line since 1993, because the line is in poor condition and needs approximately \$8 million in repairs. Groome owns and operates a facility that is adjacent to the line. According to Groome, GCEDC made assurances that service would be provided to that facility; however, when service was not provided,

Groome filed an action in South Carolina state court, in the Greenville County Court of Common Pleas, seeking rail service and damages. Groome & Associates, Inc., and Lee Groome v. Greenville County Economic Development Corporation, Civil Case No. 01-CP-23-2351 (filed Apr. 17, 2001). This action is still pending.

Groome alleges that GCEDC's notice of exemption is false and misleading because:

(1) GCEDC certified that no complaint had been filed by a user of rail service, when an action is currently pending between the parties in South Carolina state court; (2) GCEDC failed to notify Groome and the Board's Director of Compliance and Enforcement of the filing of the notice of exemption; (3) GCEDC filed for discontinuance of service when service had never been initiated; and (4) GCEDC certified that there had been no traffic on the line for 2 years, when it knew that no traffic had moved over the line due to its own failure to provide service under its common carrier obligation.

#### DISCUSSION AND CONCLUSIONS

Groome has raised sufficient concerns to make it inappropriate to use the expedited class exemption procedures under the circumstances of this case. In creating the class exemption for lines that have been out-of-service for at least 2 years, the agency observed that those abandonments in almost all instances would be noncontroversial and unopposed. Exemption of Out of Service Rail Lines, 366 I.C.C. 885, 889 (1983). Given the nature of the concerns expressed by Groome, which go to the core requirements of the class exemption, the Board finds that use of the expedited class exemption procedures for discontinuance of service authority would not be appropriate under the particular circumstances presented here. See Union Pacific Railroad Company—Exemption from 49 U.S.C. 10904 and 49 U.S.C. 10905, STB Finance Docket No. 33376 (STB served May 16, 1997).

Accordingly, the Board will dismiss GCEDC's notice of exemption. If GCEDC decides to renew its request for discontinuance of service authority, it must file either a petition for an individual exemption under 49 U.S.C. 10502 or a full application under 49 U.S.C. 10903. Under either of these procedures, the issues surrounding its request and the opposition to that request can be examined more fully on a more thoroughly developed record. Requirements for filing a petition for discontinuance of service under 49 U.S.C. 10502 may be found at 49 CFR 1152.60.

It is ordered:

1. GCEDC's notice of exemption is dismissed.

2. This decision is effective on the date of service.

By the Board, Chairman Nober.

Vernon A. Williams  
Secretary