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SERVICE DATE - JULY 6, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-400 (Sub-No. 4)]

Seminole Gulf Railway, L.P.—Adverse Abandonment—In Lee County, FL

On June 16, 2004, Lee County, FL (Lee County or applicant) filed an adverse application under 49 U.S.C. 10903 requesting that the Surface Transportation Board authorize the abandonment by Seminole Gulf Railway, L.P. (SGLR) of a portion of the Baker Spur, which consists of a rail line beginning at engineering station 36+35+-, which is approximately 100 feet southwest of where the line crosses Alico Road, directly west of Alico Center Road, approximately 1 mile east of U.S. Hwy. 41, and parallel to Alico Road station 79+00, continuing across Alico Road and then running parallel to and north of Alico Road for approximately 4,260 feet to the eastern terminus of the line at engineering station 79+95.¹ The line traverses United States Postal Service ZIP Codes 33912 and 33913 and includes no stations.

Lee County states that it is in the process of widening Alico Road, a heavily traveled thoroughfare between Interstate Hwy. 75 and U.S. Hwy. 41. This expansion project will require a new grade crossing where the Baker Spur crosses Alico Road.

¹ Originally the proposed abandonment began approximately 300 feet to the west of Alico Road station 79+00 at Alico Road Station 76+00, but to accommodate nearby shipper Florida Power and Light's (FP&L) use of the Baker Spur, Lee County has moved the western terminus of the abandonment to Alico Road Station 79+00.

Applicant indicates that the cost of installing the required grade crossing would exceed \$1 million, and that the cost of removing the grade crossing if the line were later abandoned would be approximately \$300,000. Applicant seeks to avoid the expenditure of public funds to construct and remove this crossing. According to Lee County, the sole shipper on the line, J.J. Taylor Distributors Ft. Myers/Naples, Inc. (J.J. Taylor), is in the process of relocating its operations, at which point there will be no shippers requiring rail service on this line. Lee County requests that the abandonment authority become effective one day after J.J. Taylor has either departed its Alico Road facility or converted its operations so as not to require rail service. Applicant asserts that the abandonment will not adversely impact SGLR as it will be able to realize the net salvage value of the line and save on any maintenance costs. Lee County adds that FP&L, which uses an adjacent portion of the Baker Spur, will also not be harmed as SGLR will be able to transload shipper's equipment to a paved section of the service road to the south of the Baker Spur.² In support of the proposal, applicant attaches to its application statements

² In its application, Lee County again requests that the Board grant an exemption from the public use provisions at 49 U.S.C. 10905 and a waiver from the public use and trail use provisions at 49 CFR 1152.28-.29. However, as stated in the June 9, 2004, decision in this proceeding, such requests need not be addressed at this time and can be addressed, if necessary, in the final decision on the merits of this application. Also applicant apparently believes that the Board granted it an exemption/waiver from the offer of financial assistance (OFA) requirements at 49 U.S.C. 10904 and 49 CFR 1152.27. Application, p.5, n.5. Applicant is incorrect. As with the public use and trail use requests, the Board also reserved judgment on the OFA request at that time and will continue to do so.

from shipper J.J. Taylor, nearby shippers FP&L and Airport Industrial Holdings, LLC, and applicant's landlord, Alico Industries, Inc.

In decisions served in this proceeding on June 9, 2004, and June 15, 2004, Lee County was granted exemptions and waivers from various statutory provisions governing rail line abandonments and several of the Board's related regulations that were not relevant to its adverse abandonment application or that sought from applicant information not available to it. Specifically, Lee County was granted waivers from the notice of intent requirements at 49 CFR 1152.20(a)(2)(xii), (a)(3), and (b)(1), and 1152.21, and was granted exemptions and waivers from the application requirements at 49 U.S.C. 10903(a)(3)(B) and (c), and 49 CFR 1152.22(a)(4), (b)-(d) and (i) and 1105.7(b).³

Lee County states that, based on the information it possesses, the line does not contain federally granted rights-of-way. Any documentation in Lee County's possession will be made available promptly to those requesting it. Applicant's entire case-in-chief for abandonment was filed with the application.

The interests of affected railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including protestant's entire opposition case) by August 2, 2004.

³ Because Lee County had already satisfied a number of provisions for which it had requested a waiver, some of its waiver requests were denied as unnecessary. A fee waiver request had been granted earlier by the Board's Secretary.

Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Parties seeking information concerning the filing of protests should refer to section 1152.25.

All filings in response to this notice must refer to STB Docket No. AB-400 (Sub-No. 4) and must be sent to: (1) Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001; and (2) Robert P. vom Eigen, Foley & Lardner, 3000 K Street, N.W., Suite 500, Washington, D.C. 20008. Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's "www.stb.dot.gov" website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in section 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The waiver decision noted that Lee County had sought a waiver from the environmental requirements at 49 CFR 1152.22(f), arguing that the proposed adverse abandonment would not cause a departure from the volume of railroad traffic when it becomes effective. However, the Board denied this request. It noted that, because Lee

County had already submitted the required environmental documentation to the Board's Section of Environmental Analysis (SEA), a waiver was not needed.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565-1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to SEA at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

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Decided: June 28, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary