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February 22, 2005

**BY HAND DELIVERY**

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

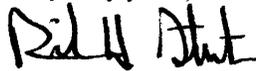
Re: *Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic  
Development Corporation -- STB Docket No. 42087*

Dear Secretary Williams:

Enclosed for filing are an original and 10 copies of the "Rebuttal Statement of Groome & Associates and Lee K. Groome" in the above-referenced case. Also enclosed herewith is a complete list of all exhibits which have been submitted on behalf of Groome & Associates in the Opening Statement, which was filed on December 22, 2004, as well as the Rebuttal Statement. Copies have been served as stated in the Certificate of Service. A DVD, identified as "Exhibit AA" is also enclosed.

Two copies of the above-mentioned document are enclosed, which we request be date stamped and returned to the undersigned. Thank you for your assistance in this matter.

Very truly yours,



Richard H. Streeter

Enclosures

Office of Proceedings  
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Elkhart

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Washington, D.C.

213372

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Docket No. 42087

GROOME & ASSOCIATES, INC. AND LEE K. GROOME  
v.  
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

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**REBUTTAL STATEMENT OF  
GROOME & ASSOCIATES AND LEE K. GROOME**

Come now Groome & Associates (“G&A”) and Lee K. Groome (“Groome”) (hereinafter collectively referred to as “Groome” and/or “Complainants”), by and through their attorneys of record, and file this Rebuttal Statement in response to “Greenville County Economic Development Corporation’s Reply to Complainants’ Opening Statement” (“GCEDC Statement”). The issue to be resolved is whether GCEDC should be held liable for damages incurred by Complainants because GCEDC violated its common carrier obligation by failing to provide rail service to Complainants after it acquired an active line of railroad in June 1999.

**Summary of Argument**

In its Opening Statement, GCEDC, although readily admitting that it never provided any rail service after it acquired the line in June 1999, seeks to avoid liability by employing alternative arguments. It first argues that the complaint should be dismissed as barred by the statute of limitations and because the involved commodities were exempt from regulation. Because the Complaint was filed within two years after the cause of action would have first accrued against GCEDC, it was timely filed. Furthermore, because the paper commodities received by Groome fit within regulated STTCs, the Board has jurisdiction over the complaint.

GCEDC next insists that it never assumed the common carrier obligation. As demonstrated herein, that argument must be rejected in light of well settled precedents of the Board and the former Interstate Commerce Commission (“ICC”). *See, e.g., State of Maine, DOT--Acquisition and Operation Exemption--Maine Central Railroad Company*, 8 I.C.C.2d 835 (1991) (“*State of Maine*”); *Southern Pacific Transportation Company--Abandonment Exemption--Los Angeles County, CA.*, 8 I.C.C.2d 495 (1991) (“*SP/LA County*”); F.D. No. 30861(A), *City of Austin, TX--Acquisition--Southern Pacific Transportation Company (City of Austin)*(not printed), served November 4, 1986.

In the alternative, GCEDC claims the protection of an embargo. GCEDC argues that, even if it did not publish or file a formal embargo notice, the Complainants “knew that that the line was out of service and could not operate without substantial repair costs.”<sup>1</sup> GCEDC necessarily concedes that its alleged embargo was not temporary, but was of indefinite duration and would remain in effect until GCEDC either contracted with a third-party operator or received funding from other sources “to do the repairs to meet the minimum viability requirements.”<sup>2</sup> Similar “indefinite” embargoes have been condemned by multiple Federal Courts as being unauthorized and illegal de facto embargos. *See, e.g., Meyers v. Jay Street Connecting Railroad*, 259 F.2d 532, 535 (2nd Cir. 1958); *ICC v. Baltimore and Annapolis Railroad Company*, 398 F. Supp. 454, 462 (D.Md. 1975); *ICC v. Maine Central Railroad Company*, 505 F.2d 590, 593 (2nd Cir. 1974). As demonstrated by a November 1, 2004 publication entitled “*Abandoned Rail Corridor*,” any pretense of providing rail service has now been discarded as the line is now being

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<sup>1</sup> GCEDC Statement at 21.

<sup>2</sup> Gerald Seals, Deposition at p. 75 (Complainants’ Exhibit P).

treated as having been abandoned, even though the Board has never authorized the abandonment.<sup>3</sup>

There is no evidence of record of any physical impediments that would have prevented GCEDC from restoring rail service. GCEDC has posited that the cost of replacing bridges was too expensive and that there would have been insufficient traffic to warrant the rehabilitation of the line to FRA Class 1 status. Those are issues that, while appropriate for an abandonment proceeding, are beyond the scope of the instant proceeding. Because an embargo will not be valid beyond a reasonable time necessary to restore service, the cost of rehabilitation to Class 1 status is irrelevant, especially when there is no intent to seek authority from the Board to abandon the line.

The focus must be narrowly drawn on the estimated cost of repairs that would have allowed service to be restored at preexisting levels. In this case, the line had at all times been designated and operated as “excepted” track as defined by FRA. Hence, as explained in *GS Roofing Products Co. v. STB*, 143 F.3d 387, 393 (8th Cir. 1998) (“*GS Roofing*”), the “proper standard for assessing the cost of repair should focus on the cost of resuming services at pre-embargoed levels.”

There is no evidence whatsoever to show that the line could not have been safely operated on an FRA-excepted track basis had minimal repairs been made. Although the previous owner cited safety concerns when it placed an embargo on the line in December 1997, it then proceeded to operate safely over the line for over two months before it discontinued operations. Given the ability to operate safely after placing the embargo, it appears that the embargo was, as

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<sup>3</sup> Pat Haskell Robinson, “Abandoned Rail Corridor,” Appendix E, *Greenville, South Carolina, Vision 2021*, published November 1, 2004). See Attachment \_ to Rebuttal V.S. Groome; alternatively, see <http://greenvilleonline.com/news/2004/11/01/Vision2025.pdf>.

characterized in a letter addressed to the other shippers on the line, an attempt to “hold us up” by forcing the shippers on the line to assume responsibility for payment of certain repairs.<sup>4</sup> A further indication that it was possible to operate safely on an FRA-excepted track basis is reflected by a letter, dated December 29, 1997, in which the former owner admitted that it could safely operate over the bridges it had cited as being unsafe by “using idler cars placed between each loaded car to minimize weight on the bridges.”<sup>5</sup> Plainly, the alleged safety issue was, at least in part, a subterfuge to obtain leverage against the shippers in order to exact additional revenues. In any event, the safety issue does not justify GCEDC’s inaction.

Although GCEDC now claims that it was “broke” and could not afford the needed repairs after it acquired the line, there is uncontroverted evidence that GCEDC had access to funds from Greenville County, which had advanced the funds to acquire the line and which admittedly had more funds available. As a matter of policy, however, no effort was ever made to budget those funds. At the same time, funds related to the line that were received from the South Carolina Department of Transportation (“SCDOT”) were diverted to the county, rather than being used for repairs. Moreover, other funds in excess of \$1 million that could have been used to make repairs are being held in trust for GCEDC. Last, although Complainant offered other funds to be used to make repairs, the offer was declined.

In summary, there is nothing to show that GCEDC could not have restored service. As a result, under well-settled precedents, there was an unlawful abandonment from the moment that GCEDC could have restored service but failed to do. *See, ICC v. Chicago, Rock Island & Pac. R.R.*, 501 F.2d 908, 911 (8<sup>th</sup> Cir. 1974), *cert. denied*, 420 U.S. 972, 95 S.Ct. 1393, 43 L.Ed. 2d 652 (1975) (“*Rock Island*”).

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<sup>4</sup> Letter from Lee K. Groome, dated December 10, 1997.

<sup>5</sup> Attachment 3 to V.S. Groome, Letter to Randy Mathena from Forrest R. Van Schwartz.

*At a bare minimum*, Complainants, during the period subsequent to June 1999, sustained damages of \$285,243 for “increased storage, handling and shipping costs directly resulting from its lack of rail service.”<sup>6</sup> In addition, Complainants sustained lost profits of \$696,670 attributable to the alleged embargo that was indefinitely imposed by GCEDC after it acquired the line in June 1999. Complainants are also entitled to recover \$506,651.74 of mitigation expenses associated with the refinancing of the mortgage on the G&A facility. As the record demonstrates, because GCEDC did not disclose its intent to de facto abandon the line, Groome relied to his detriment on assurances given him by GCEDC officials that rail service would be restored and that GCEDC would honor its common carrier obligation. Had those officials honestly revealed GCEDC’s true intent from the beginning, rather than waiting until November 2004 to declare the line was abandoned, Groome would have avoided the subsequent losses that were incurred when he decided to refinance rather than sell the property and move to a different location.

**I. BECAUSE THE BOARD PROPERLY EXERCISED ITS DISCRETION IN ACCEPTING THE COMPLAINT, IT MAY NOT BE DISMISSED.**

In its Reply to Complainants’ Opening Statement (“GCEDC’s Statement”), GCEDC argues that the Complaint (1) was untimely and violates the statute of limitations; and (2) that it pertains to shipments of an exempt commodity. These objections lack merit.

**A. The Complaint Was Timely Filed.**

GCEDC first argues that the Complaint was untimely because “service on the line ceased February 8, 1998.”<sup>7</sup> The date that the former owner ceased service is wholly irrelevant with

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<sup>6</sup> Order and Judgment, *Groome & Associates, Inc. v. Greenville County Economic Development Corporation*, C.A. No. 2001-CP-23-2351, slip op. at 17 (Court of Common Pleas, Greenville County, SC) Sept. 21, 2004, reproduced as Attachment 2 to V.S. White. Although the Board is the proper forum to hear this case, Complainants agree with GCEDC that “Judge Few’s conclusion with respect to the “increased storage, handling and shipping costs” that directly resulted from the lack of rail service “is unassailable.” GCEDC Statement at p. 51; *see also*, Complainants’ Exhibit Q, Schedule 5.

<sup>7</sup> GCEDC Statement at 9.

respect to the issue of whether GCEDC violated its common carrier obligation by imposing an indefinite embargo that would be “transmuted into an unlawful abandonment” -- an issue that “revolves largely around the length of the cessation and intent of the railroad.” *ICC v. Baltimore and Annapolis Railroad, supra*, 398 F. Supp. at 462.

In terms of the statute of limitations, the “real” issue is when GCEDC’s liability would have first accrued. The answer is simple. At the earliest, GCEDC’s liability could only accrue from the date that it acquired the line. GCEDC could not be held accountable for any damages that would have accrued prior to the date that it acquired the line from Carolina Piedmont Division of the South Carolina Central Railroad Company, Inc. (“SCCR”).<sup>8</sup>

When GCEDC purchased the line in question from SCCR on June 14, 1999, it simultaneously acquired the common carrier obligation under 49 U.S.C. 11101(a). Only then could a cause of action accrue against GCEDC for failing to comply with 49 U.S.C. §11101.

The bottom line is that even if a formal complaint could have been filed against SCCR covering the period after its embargo expired, namely between December 4, 1998 and June 14, 1999,<sup>9</sup> a distinct claim accrued against GCEDC when it assumed ownership of the line and failed to take any remedial efforts to restore service. Because GCEDC could not have violated the common carrier obligation before the date it acquired the Line, the statute of limitations would

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<sup>8</sup> See F.D. 33752, *Greenville County Economic Development Corporation--Acquisition Exemption--South Carolina Central Railroad Company, Inc., Carolina Piedmont Division*, served June 3, 1999.

<sup>9</sup> As the record demonstrates, the embargo issued by SCCR was not extended as required by governing AAR rules (Circular TD-1) Complainants’ Ex. R, Revised Business Services Division Circular TD-1, Association of American Railroads, Effective October 15, 1997. As a result, the embargo expired on December 4, 1998. Therefore, the line was not embargoed when GCEDC acquired it in June 1999. These facts, which are uncontradicted, are set out in a letter to Mr. Jason Elliott from Melvin P. Clemens, Director, Office of Compliance and Enforcement, Surface Transportation Board, dated February 24, 2004. Complainants’ Exhibit S.

not begin to run until June 14, 1999 at the earliest. Hence, when the Complaint was filed on May 23, 2001, it was timely and the statute of limitations would not require its dismissal.

Furthermore, GCEDC either fraudulently concealed its motives or was guilty of negligent misrepresentation. The steps that GCEDC took to cover up its real intent were not merely passive in nature. Instead of revealing that it had no intent to restore rail service, GCEDC publicly gave notice in its "Rail Corridor Preservation Policy" that "[w]here an operator has not been engaged, GCEDC shall develop a rail corridor maintenance and management plan" and that "[i]f an operator has not been engaged to operate a designated section of the corridor, the responsibility for the maintenance of the corridor shall remain with GCEDC."<sup>10</sup> In addition, as Gerald Seals admitted during the course of his deposition, although he advised Complainants that "the county had money to do the repairs to meet the minimum viability requirements," he did not bother to budget the repairs.<sup>11</sup> As a result of these and similar misleading statements, the Complainants were not able to discover GCEDC's true intent until a considerable amount of time had passed, a factor that would have tolled the statute of limitations in any event.

Finally, it must be observed that the Board's decision to allow the formal Complaint to proceed is wholly consistent with the reasoning of the Supreme Court in *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 533, 539, 90 S. C. 1285, 1292 (1970). As the Court therein reiterated, "{i}t is always within the discretion of a court or administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it." *Id.*

The Board's discretion would include its determination to waive the filing fee and accept the formal complaint that was timely filed by Groome's previous counsel. Because GCEDC

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<sup>10</sup> See Complainants' Exhibit T.

<sup>11</sup> Mr. Seals is the former Greenville County Administrator and head of GCEDC.

cannot demonstrate any real prejudice, the Board's properly exercised its discretion in this case.<sup>12</sup>

**B. The Particular Commodity That Groome Received By Rail Was Not An Exempt Commodity.**

GCEDC also seeks to avoid liability by claiming that the complaint involves shipments of paper and scrap paper, which it claims are exempt from regulation. Groome is not seeking any damages associated with any shipments of "scrap" or "waste" paper as that term is used in the Board's regulations at 49 C.F.R. § 1039.11(a). The complaint involves only inbound shipments of printing paper, coated or uncoated (STTC 26213) and wrapping paper, wrappers or coarse paper (STTC 26214), all of are regulated commodities. *See* 49 C.F.R. § 1039.11(a).

Complainants admit that their own manufacturing processes resulted in the production of scrap paper. However, they did not ship the scrap paper by rail. Instead scrap paper was shipped from Groome's facility by truck and would not be covered by the instant proceeding. There is no suggestion or evidence that the Complainants received "scrap paper" within the definition of § 1039.11(a). In order to demonstrate G&A's operations, a DVD is being submitted herewith as Complainants Exhibit AA. As shown thereby, the paper that would have been received by Complainants -- *had rail service been provided* -- was **not** "scrap paper." Nor would it be considered recycled paper, which underlies the exemption provided to "scrap paper." *See, Exempt from Regulation The Rail Transportation of Scrap Paper*, 9 I.C.C.2d 957 (1993).

As Mr. Groome has explained, his inbound shipments by rail consisted of rolls of paper that, after being slit and converted, could be used as packaging in the food and pharmaceutical industries. The rolls consisted of virgin fiber paper that is otherwise described as solid, bleached

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<sup>12</sup> Given the fact that Groome mistakenly pursued relief in state court, GCEDC was not lulled into a false sense of security. Instead, it was at all time alerted to Groome's claims and evidence. Hence, GCEDC cannot demonstrate any prejudice to itself.

sulphate paper of folding carton grade. The paper was coated on at least one side and suitable for printing. By definition, this type of paper fits within STTC 26213, which applies to printing paper, coated or uncoated, and STTC 26214, which applies to wrapping paper, wrappers or coarse paper, all of which continue to be regulated commodities.<sup>13</sup>

Based on his review of a few bills of lading, which are themselves silent concerning the STTC of the products being transported, and certain tariff pages available to him, William G. Stewart, GCEDC's witness, has speculated that "I believe that the five-digit STCC codes applicable to most or all of these materials would be 26311 or 40241." V.S. Stewart at 10. Groome agrees that bales of waste paper, which are not at issue herein, fit within the 40241 classification, which applies to paper waste or scrap. However, there is no support for Stewart's speculative comment that the printing and wrapping paper Groome has dealt with for over 35 years would be classified as other than printing or wrapping paper.<sup>14</sup> Given the uses to which the paper was put after Groome performed its slitting process, coupled with the fact that the paper consisted of virgin fiber, 26213 and 26214 are the two classifications that define the product that is at issue herein. Because there is nothing to show that Stewart inspected the paper that is at issue herein, or considered its end use when he arbitrarily speculated that it would fit within STTC 26311, his "belief" is not convincing. The Board should find that his speculative comment is not entitled to the same weight that is given to the testimony of Lee Groome and should hold that the rolls of paper received by Groome were subject to regulation.

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<sup>13</sup> See Complainants' Exhibit A at ¶6.

<sup>14</sup> Although copyright laws preclude its reproduction and introduction as evidence, it is noted that Groome's Dun & Bradstreet report contains the statement that Groome was engaged in the "wrapping paper" industry.

**II. WHEN IT ACQUIRED THE LINE IN QUESTION, GCEDC  
ASSUMED THE COMMON CARRIER OBLIGATION AS A  
MATTER OF LAW.**

When GCEDC acquired the line, it was an active line as a matter of law.<sup>15</sup> Thereafter, GCEDC never gave any notice, formal or informal, that it had embargoed the line and did not intend to provide rail service. Not only did GCEDC *not* issue an embargo or file it with the AAR, but it failed to seek authority to abandon the line. Instead, as the evidence of record conclusively demonstrates, and as GCEDC has admitted, GCEDC unilaterally implemented what the federal courts have termed an “indefinite embargo” that has lasted for at least five and a half years.

“Indefinite embargoes” have been consistently condemned by the courts as constituting illegal de facto abandonments. *See, e.g., Meyers v. Jay Street Connecting Railroad, supra*, 259 F.2d at 535; *ICC v. Baltimore and Annapolis Railroad Company, supra*, 398 F. Supp. at 462; *ICC v. Maine Central Railroad Company, supra*, 505 F.2d at 593. Because it never took steps to terminate the embargo (assuming *arguendo* that it actually imposed one), but instead continued it indefinitely, GCEDC is not entitled to claim the protection that it would perhaps be afforded by a valid embargo, which is merely a temporary measure and not a permanent excuse for the failure to provide rail service.

**A. Multiple Governing Precedents Require The Board To Reject  
GCEDC’s Contention That It Had No Service Obligation Because It  
Was Only Authorized To Acquire And Not Operate The Line.**

GCEDC’s contention that it had no service obligation because it “never proposed to, nor was it authorized to, operate the Line”<sup>16</sup> must be summarily rejected in light of well settled

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<sup>15</sup> As the Board’s records will confirm, the line was not subject to a pending abandonment proceeding or to a petition to discontinue operations. Hence, it must be deemed an active line of railroad.

<sup>16</sup> GCEDC Statement at p. 14.

precedent. See *State of Maine, supra*, 8 I.C.C.2d at 837; *SP/LA County, supra*, 8 I.C.C.2d at 503 (1991) (“*SP/LA County*”); F.D. No. 30861(A), *City of Austin, TX--Acquisition--Southern Pacific Transportation Company (City of Austin)*(not printed), served November 4, 1986.

In *City of Austin*, the City argued, as herein relevant, that:

- (1) it is not a carrier subject to the jurisdiction of this Commission;
- (2) it does not intend to operate the rail line being acquired from SPT or to hold itself out to the public to perform any Commission-regulated activities; [and] (3) it would not attain common carrier status through the acquisition.

Those arguments, *which are identical to GCEDC's argument*, were summarily rejected by the ICC. The ICC specifically held that “the City assumed a common carrier obligation, even though it did not intend to operate the line itself, because by acquiring full ownership of the line it necessarily assumed responsibility for contracting with, and ensuring continued service by, a rail operator.” *Id.*, slip op. at 1-2. See also, *State of Maine* (8 I.C.C.2d at 837) and *SP/LA County* (8 I.C.C.2d at 504-505) wherein the ICC explained in detail its prior holding in *City of Austin*. In *SP/LA County*, the ICC also relied on its earlier decision in F.D. No 30317, *New York, Susquehann & W.Ry. Col, et al., Exemption* (not printed), served June 17, 1985, that “[w]hen a noncarrier acquires an operating rail line, it assumes the common carrier obligation to ensure service over the line and retains that obligation whether it physically operates the line or leases the line to another for operations.”<sup>17</sup>

GCEDC also argues (Statement at 17) that GCEDC’s Rail Corridor Preservation Policy prevents it from acquiring the common carrier obligation by providing that “GCEDC must not become active in the operation of the railroad itself.”<sup>18</sup> GCEDC’s Rail Corridor Preservation Policy does not trump the provisions of applicable Federal law. In *State of Maine*, the ICC

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<sup>17</sup> *SP/LA, supra*, 8 I.C.C.2d at 505,

<sup>18</sup> See Complainants’ Exhibit T at GCEDC 0062.

rejected the very argument that GCEDC is now making with the comment (8 I.C.C.2d at 837, n.5) that:

MDOT's argument that the assets it is acquiring cannot be deemed a rail line because MDOT is prohibited by state law from operating a rail line is unpersuasive. State law cannot transform what is a rail line under Federal law into something else; it merely means that MDOT violates the state law if it owns or operates a rail line (unless or until the state law is changed).

If state law is incapable of transforming "a rail line under Federal law into something else," it necessarily follows that GCEDC's Rail Corridor Preservation Policy is also incapable of accomplishing that same objective.

GCEDC also suggests that "the common carrier obligation remained with the seller, SCCR, and until such time that a new operator obtains operating authority over the Line, GCEDC does not have a common carrier obligation over the line."<sup>19</sup> That argument is baseless. As was made clear in the Verified Notice of Exemption, filed May 21, 1999, in F.D. 33752, *Greenville County Economic Development Corporation--Acquisition Exemption--South Carolina Central Railroad Company, Inc., Carolina Piedmont Division*, at p. 2 (Exhibit E, Complainants' Opening Statement):

CPDR will retain an easement for continued rail freight service over the 3.29-mile rail line located between milepost AJK 585.34, in East Greenville, and milepost AJK 588.63, in Greenville, South Carolina ("Southern Line"). Consequently, CPDR will continue to be the operator of the Southern Line. Greenville County is currently seeking an operator for the 11.8-mile section of rail line located between milepost 0.0, in Greenville, and milepost 11.8, in Traveler's Rest, South Carolina ("Northern Line"). As soon as Greenville County reaches an agreement with the operator of the Northern Line, the operator will file a notice of exemption to operate the Northern Line.

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<sup>19</sup> GCEDC Statement at p. 15.

Because the seller did not retain an easement for continued rail freight service over the line in question, GCEDC, as did the City of Austin, “assumed a common carrier obligation (even though it did not intend to operate the line itself) because by acquiring full ownership of the line it necessarily assumed responsibility for contracting with, and ensuring continued service by, a rail operator.” *State of Maine*, 8 I.C.C.2d at 837, n.6. Because GCEDC acquired full ownership of the line, the situation cannot be distinguished from the facts involved in *City of Austin* and GCEDC’s “conduit” argument must be rejected.

**B. Groome Made Repeated Requests For Rail Service That Placed GCEDC On Notice That Rail Service Was Required.**

According to GCEDC, it should be excused from its service obligations because Groome, in order to meet the statutory requirement of a “reasonable request for service,” had to have “specifically request[ed] transportation of a particular type and quantity of goods between a specific origin and destination.”<sup>20</sup> GCEDC has cited no precedent that actually supports its statutory interpretation, especially in a situation such as this where all concerned knew it would have been useless to demand service for particular loads.

The record demonstrates that Groome provided unequivocal notice to various members of GCEDC, both before and after it acquired the line, that G&A needed rail service. Even though he repeatedly asked GCEDC to repair the line so that G&A could receive service by rail, Groome was turned down by GCEDC, which refused to repair the line so as to be able to provide rail service. That is all that is required. As the Board has recently explained, the holding in *GS*

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<sup>20</sup> GCEDC Statement at pp. 17-18.

*Roofing* that there was an illegal embargo was based, in part, on the fact that “the shipper clearly wanted to ship, asked to ship, and was turned down by the carrier.”<sup>21</sup>

GCEDC also claims that Complainants cannot point to “a single instance of having asked GCEDC to quote a price for a specific movement of goods.” GCEDC Statement at 20. As GCEDC is well aware, such a request would have been futile. GCEDC published no rates, it had no operating equipment, no operating employees and no employee who would have been able to respond to such an inquiry. Not only do these factors distinguish the instant situation from the precedents upon which GCEDC relies, they are clear indications that GCEDC failed to assume any responsibility for ensuring continued service. *See State of Maine*, 8 I.C.C.2d at 837, n.6.

Even if Groome did not notify the individual Board members that it had an inbound rail car arriving on a particular day of a given week that would move from the point of interchange with CSXT or NS to Groome’s facility, such specificity is not required in order to satisfy the statutory requirements of reasonable notice. Given the circumstances surrounding Groome’s repeated requests, which occurred both before and after GCEDC acquired the line, GCEDC cannot seriously contend that Groome did not make a reasonable request for rail service. *See V.S. Groome* at ¶48; Complainants’ Exhibit H, Answer No. 2 to GCEDC’s Response to Complainants’ First, Second and Third Sets of Discovery Requests at p. 3. Because Groome repeatedly requested GCEDC members to restore service over the line, it is specious for GCEDC to now contend that Groome failed to make a reasonable request for rail service following GCEDC’s acquisition of the line.

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<sup>21</sup> *CSX Transportation, Inc.--Abandonment Exemption--In Summit County, OH, AB-55* (Sub-No. 631X), embracing *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, STB Docket No. 42086, served May 10, 2004 (slip op. at 5). Having served as counsel to the shippers in the *GS Roofing* cases, the undersigned counsel notes that the requests for restoration of service in that earlier litigation are of the same basic variety as the repeated requests for restoration of service made by Groome in the instant case.

**C. GCEDC Did Not Place A Valid Embargo On The Line.**

GCEDC insists (Statement at 21) that all of the shippers, including Groome, “knew that the Line had been embargoed by the previous owner and that GCEDC intended to continue that embargo until the Line could be repaired and an operator obtained.”<sup>22</sup> In other words, GCEDC has conceded that its unpublished embargo was of indefinite duration until it could either locate an operator or find additional funds to make the repairs. As multiple Federal Courts have recognized, an embargo of indefinite duration is the equivalent of an unauthorized abandonment. In finding an “indefinite embargo” to be unlawful, the Second Circuit in *Meyers v. Jay Street Connecting Railroad*, *supra*, 259 F.2d at 535, reasoned that there is “no distinction between discontinuing service permanently and suspending it indefinitely.” *See, also, ICC v. Baltimore and Annapolis Railroad Company*, *supra*, 398 F. Supp. at 462 (“Here the cessation has continued for nearly three years, certainly long enough to be an ‘abandonment’ within the meaning of the Act....The question is therefore whether B & A has an intent to cease service permanently or indefinitely.” As the court held, whether permanently or indefinitely, the failure to provide service would be unlawful in the absence of Commission or now Board authorization.); *ICC v. Maine Central Railroad Company*, *supra*, 505 F.2d at 593 (“Maine Central cannot be permitted to take the law in its own hands and it may not utilize the extraordinary remedy of an embargo, which should be a temporary measure ... to accomplish its purpose”). As these cases make clear, GCEDC’s indefinite cessation of service while it allegedly looked for additional funding constituted an unlawful de facto abandonment.

The line in question was an active line when it was purchased by GCEDC. It had not been abandoned, nor had service been discontinued with the Board’s approval. As Mel Clemens,

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<sup>22</sup> That statement, which is not supported by any probative evidence, is denied by Groome and Mathena. *See* Rebuttal V.S. Groome at ¶6; Rebuttal V.S. Mathena at ¶2 (Complainants’ Exhibit Y).

the Board's Director of its Office of Compliance and Enforcement, observed in his April 3, 2003 letter to Peter M. Strub, a Member of GCEDC's Board:

While I appreciate GCEDC's dilemma with respect to the difficulty it faces in finding funding sources for the various rail service improvements it plans, I also have a dilemma. As I have pointed out in previous correspondence on this subject, the line described above that was purchased by GCEDC from the South Carolina Central Railroad Company (SCCRC) in 1999 (Finance Docket No. 33752) had not been abandoned, making the purchaser a railroad under Federal Law with all the attendant common carrier obligations of a rail carrier. And the fact that GCEDC has been unsuccessful in acquiring funding to upgrade its purchase does not serve to extinguish that obligation.

Furthermore, because SCCR's embargo had expired as a matter of law the previous December, the line was not even subject to an existing embargo. Hence, the real issue herein is whether GCEDC unilaterally effectuated an unauthorized indefinite or de facto abandonment that unlawfully lasted for at least five and a half years. There is no difficult question of fact as to whether a de facto abandonment occurred. The total lack of any service speaks for itself.

Despite its concession that the line was *not* subject to an embargo when it was acquired,<sup>23</sup> GCEDC not only argues that it "instituted its own embargo,"<sup>24</sup> but that it "likely was not entitled to publish an embargo notice through AAR even if had wanted to."<sup>25</sup> GCEDC's position boils down to the unfounded and unacceptable premise that it was not required to comply with the rules that apply to every other railroad that is subject to the Board's jurisdiction. That GCEDC lacked adequate information concerning the statutory and regulatory requirements involved with owning and operating a line of railroad does not excuse GCEDC's inaction.

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<sup>23</sup> GCEDC Statement at 21

<sup>24</sup> GCEDC Statement at 21.

<sup>25</sup> GCEDC Statement at 22.

GCEDC's arguments ignore the incontestable fact that when it consummated its acquisition of the line, it became a rail common carrier subject to the Board's jurisdiction. *See City of Austin*, slip op. at 2. Because it never contracted with an operator, GCEDC itself had to comply with all of the requirements that are imposed on all other railroads. Otherwise it could not possibly ensure service over the line. Because it did not ensure service, it must be found liable for the damages that Groome suffered. As explained in *General Foods Corp. v. Baker*, 451 F. Supp. 873, 875 (D.Md. 1978):

Discontinuance of rail service can cause great harm, and railroads are held to a higher standard of responsibility than most private enterprises. They may not, on their own authority, refuse to maintain service when it becomes inconvenient to do so or because profits are declining. *United States v. Trans-Missouri Freight Association*, 166 U.S. 290, 17 S.Ct. 540, 41 L.Ed. 1007 (1897); *Ethan Allen, Inc. v. Maine Central Railroad Co.*, 431 F.Supp. 740 (D.Vt. 1977).

It must be acknowledged that GCEDC did not provide any service. It must also be acknowledged that GCEDC made a conscious decision not to spend the money to repair the line after it acquired it. This, of course, serves to distinguish the instant case from those precedents where the railroad is overcome by unforeseen disasters and circumstances that are beyond the control of the railroad.

**D. Application Of The Balancing Test, Assuming That It Is Applicable Herein, Compels The Conclusion That GCEDC Must Be Held Accountable For The Damages Incurred By Groome Following GCEDC's Acquisition Of The Line.**

Assuming that the Board would apply its traditional balancing test, even in the absence of a published embargo and the presence of an admitted indefinite, or de facto abandonment, there are several overarching distinctions that must be drawn between this case and the precedents primarily relied upon by GCEDC, namely, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*, STB F.D. 34236 (served May 15, 2003) ("BBB"), and *Decatur County*

*Commissioners v. The Central Railroad Company of Indiana*, STB FD 33386 (STB served Sept. 29, 2000) (“*Decatur County*”).

In *BBB*, the Board stated (slip op. at 6) that it will “accord some deference to expert representatives of the operating carrier that would be held responsible in the event of a catastrophic accident” and that it was “not persuaded that the minor repairs that *BBB* identifies would be adequate to assure the *immediate safety of operations over the bridge*.” (Emphasis added). In most instances, such deference would be appropriate. That is not the case herein.

As Complainants have demonstrated, there is compelling, substantial evidence that casts doubts on the validity of *SCCR*’s claim that it was unsafe to operate over Bridge 1.1. Although *SCCR* cited the condition of that bridge to justify its embargo, it is uncontested that *SCCR* then proceeded to operate safely over that bridge for two full months after it embargoed the line. Plainly, had the bridge been unsafe, continued operations would have constituted gross negligence.<sup>26</sup> By using idler cars between each loaded car, *SCCR* demonstrated that it was not unsafe to operate over Bridge 1.1. Indeed, it was only after the shippers instituted negotiations regarding *SCCR*’s effort to force them to assume responsibility for paying for the repairs that rail service was actually discontinued.

Because *GCEDC* never operated the line or hired an operator to do so, it lacks any first-hand knowledge regarding whether it was safe to operate over the bridges. Hence, there is no probative evidence of record to contradict the testimony of B. R. Anderson, an experienced shortline operator who examined the line both before and after *GCEDC* acquired it. It is

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<sup>26</sup> See, Complainants’ Exhibit C, V.S. Anderson at ¶¶ 7 - 8. *GCEDC* is guilty of distorting Mr. Anderson’s testimony when, at p. 28 of its Statement, it claims that “even Mr. Anderson recognizes such risks when, in paragraph 8 of his statement, he discusses the uninsurable liability that *SCCR* would have incurred had it continued to operate over the embargoed bridges.” The following paragraph of his statement makes it clear that Anderson’s testimony was intended to expose the sham claim that the bridges were unsafe when originally embargoed. As noted therein, “[t]he fact that the operator was able to operate safely for over two months after placing the embargo speaks for itself.”

Anderson's testimony that "all that was necessary in order to operate safely was to take certain precautions, such as placing idler cars between each loaded car to minimize weight on the bridges." *Id.* at ¶ 9. As noted above, this was the very method SCCR employed after it placed the embargo.

**1. GCEDC's evidence concerning the current condition of the track and the current cost of rehabilitating the line to Class 1 standards is irrelevant and immaterial.**

In its response, GCEDC has presented evidence concerning the *current* condition of the line and bridge as of January 2005 and the *current* cost of replacing a damaged bridge and upgrading the line to FRA Class 1 standards. That evidence has no bearing on the issues of the safety of the bridge or the cost of repairs to meet the minimum viability requirements that would have allowed operations on a FRA-accepted basis in 1999, when GCEDC apparently made the decision not to restore rail operations over the line.

There is no probative evidence that, *as of June 14, 1999*, the portion of the line used to provide service to Groome was unsafe to operate. In his initial Verified Statement, Anderson explained that while the line was in need of repair, *it was possible to provide safe operations to and from Groome to the points of interchange with NS and CSX when the line was acquired by GCEDC*. In reaching that conclusion, Anderson also relied on the track profile prepared in November 1999 by TransSystem which indicates that the track was in "good" condition between the point of interchange with CSX and Groome's facility. *See* Complainants' Exhibit C at ¶¶ 2-12.

In an attempt to discredit Anderson's testimony, GCEDC has submitted affidavits from David Pettry and David Hoff.<sup>27</sup> Their testimony purports to describe "the work needed to restore

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<sup>27</sup> See GCEDC Exhibit Nos. 9 and 10, V.S. Pettry and V.S. Hoff.

to a safe and serviceable condition the section of rail line connecting the Groome & Associates' facility in Greenville, SC, with the main line of CSX in downtown Greenville."<sup>28</sup> Their testimony, which is based on an inspection of the line conducted in January 2005 (a full five and a half years after GCEDC acquired the line), **has no ascertainable bearing on either the condition of the track in June 1999, or the cost of restoring "excepted track" service in June 1999.** Hence, the Board should reject the testimony presented by David Pettry and David Hoff on behalf of GCEDC as being untimely, immaterial and irrelevant.

Even if their testimony could be viewed as accurately portraying the *current* condition of the line and the estimated cost of rehabilitation, their testimony has no bearing on the condition of the line in 1999. Nor does that testimony address what would have been the cost of repairs needed to conduct operations on an FRA excepted-track basis. Their testimony would perhaps be relevant in the context of an abandonment proceeding in which "[p]rofitability of a railroad operation is a proper consideration in determining whether public necessity and convenience permit the granting of approval to abandon."<sup>29</sup> However, this case, as was the situation in *GS Roofing*, does not involve a railroad seeking authority to abandon a line. Instead, the question before the Board is whether GCEDC's admitted indefinite embargo was unlawfully allowed to continue for over five years.

The untimely nature of Messrs. Pettry and Hoff's testimony cannot be denied. Without question, GCEDC's continuing five-year failure to cut weeds and perform routine maintenance has adversely impacted the line. However, even though the current condition of the line reflects GCEDC's failure to take any steps to make and keep the line operational during its ownership of

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<sup>28</sup> GCEDC Exhibit 9, V.S. Pettry at 1.

<sup>29</sup> *GS Roofing Products Company v. STB*, 143 F.3d 387, 394 (8th Cir. 1998).

the line, it is not germane to the issue of whether GCEDC violated the common carrier obligation when it adopted a policy of refusing to repair the line.<sup>30</sup>

Had GCEDC instituted a proper maintenance program in 1999 consistent with its published policy, there is no question that the line would not have deteriorated to the point that it has now reached. Because neither Pettry nor Hoff are competent or qualified to measure the extent of the deterioration caused by GCEDC's policy of not expending funds to make the line operational, their testimony is entitled to little or no weight. Of course, where damage is attributed to deferred maintenance, the "cessation of service cannot be deemed beyond" the carrier's control. *ICC v. Baltimore and Annapolis Railroad Company, supra*, 398 F. Supp. at 463.

Although Pettry hypothesizes that the line was in "poor" condition when it was acquired by GCEDC, there is conflicting, competent evidence of record to the contrary. The track profile prepared in November 1999 by TransSystems, which employs Mr. Hoff, contradicts Pettry's speculative comments.<sup>31</sup> Although the alignment was admittedly "poor," as Anderson originally testified on behalf of Groome, "the drawings prepared for GCEDC by TranSystems Corporation in November 1999 show that the rail condition was 'good' for all but .2 of a mile at a location well beyond the G&A facility."<sup>32</sup> The Board should also note that SCCR, which operated the line as excepted track, did not cite overall track conditions as requiring cessation of rail service when it placed its embargo on the line in December 1997.

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<sup>30</sup> Complainants' Ex. Q, Deposition Testimony of Gerald Seals at p. 75.

<sup>31</sup> Although he is employed by TransSystems, Mr. Hoff did not mention the earlier study that was conducted by his company in 1999 that was cited by Mr. Anderson and relied upon by Complainants.

<sup>32</sup> V.S. Anderson at ¶ 6. Attachment 1, (GCEDC 0104-0119 and 0351-0354), is the TransSystem track profile that was obtained from GCEDC. Apparently, that attachment was inadvertently omitted from Groome's original submission.

Petry also claims that one of the bridges was likely to have been damaged by Hurricane Floyd in 1999.<sup>33</sup> That suggestion is little more than rank speculation. Had the bridge suffered extensive storm damage in mid-September 1999, it likely would have been noted on the TransSystem track profile that was prepared a couple of months later. Moreover, the cost of repairs would have been reflected in the August 2000 estimate prepared by the Great Walton Railroad.<sup>34</sup> It was not. A more plausible explanation is that the bridge has continued to deteriorate in the intervening years due to the policy, admitted by Mr. Seals, that no funds would be budgeted to make needed repairs.

Petry is guilty of deliberately attempting to mislead the Board when he testifies that “FRA’s excepted track standards essentially require only that the track be maintained at Class 1 standards on bridges and for 100 feet on either side of a bridge and at grade crossings.”<sup>35</sup> That is not an accurate statement. The applicable FRA standard for Excepted Track is found at 49 C.F.R. § 213.4(d) and, as applicable to bridges, states as follows (emphasis added):

A track owner may designate a segment of track as excepted track provided that--

(d) The identified segment of track is not located on a bridge including the track approaching the bridge for 100 feet on either side, or located on a public street or highway, *if railroad cars containing commodities required to be placarded by the Hazardous Materials Regulations (49 CFR part 172) are moved over the track.*

The cars that would have been moved to Groome had service been restored would not have contained hazardous materials. Hence, Mr. Petry is guilty of overstating his case by failing to refer to the entirety of the FRA regulations pertaining to excepted track.

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<sup>33</sup> V.S. Petry at p. 3.

<sup>34</sup> See Complainants’ Exhibit A, V.S. Groome, Attachment 24.

<sup>35</sup> V.S. Petry at p. 6. See also at p. 7.

GCEDC also ignores the obvious distinction between the estimated cost in 1999 of “*repairing*” bridges and the much higher cost of “*replacing*” bridges in 2005, after they had been allowed to deteriorate to the point of no return. As the Board will note, even the “April 1999 Estimate of Bridge Repair Cost” that GCEDC introduced (GCEDC Exhibit 12) is mislabeled. That estimate does not involve repairing bridges, but instead involves the estimated cost of replacing them. Also, the estimated replacement cost in 1999 for Bridge 1.1 was \$137,024.61. According to Hoff, the estimated cost in 2005 of replacing that same bridge, depending on the method of construction, is either \$745,553.85 or \$1,176,000. Such inflation is not to be believed.

Moreover, GCEDC did not present testimony from the parties who prepared the original estimates of the cost of **replacing** the two bridges, one of which is to the north of G&A and would not be used to provide service to it. Instead, GCEDC presented testimony of individuals who are not qualified to present competent testimony concerning the line’s condition in 1999.<sup>36</sup>

Anderson’s testimony is the only competent testimony of record relating to the 1999 timeframe *and* to the estimated cost of *repairing* the bridges at that time. He has testified that in 1999, it was not then necessary to replace the bridges. He also has testified that because his original estimate involved upgrading the line to Class I standards so that passengers could be transported, it overstated the cost of needed repairs to operate as excepted track.

GCEDC’s attempt to discredit Anderson’s testimony is both careless and baseless. In the first place, GCEDC overlooks the fact that the original estimate of the cost of bridge repairs included a major bridge that is north of Groome’s facility. Hence, GCEDC would not have

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<sup>36</sup> As David Pettry has candidly admitted at p. 1 of his Verified Statement, “[t]he purpose of this statement is to discuss the work needed to restore to a safe and serviceable condition the section of rail line connecting Groome & Associates’ facility in Greenville, SC, with the main line of CSX in downtown Greenville.... This statement is based on my personal, on-the-ground inspection of the Line on January 13 and 14, 2005.” His inspection is over 5 years too late to be of any meaningful value in this proceeding.

needed to repair it in order to restore rail service to Groome. Second, Anderson's original \$1.3 million of estimated track work involved a total of 9.8 miles. As such, that estimate included 7.55 miles of track that would not be needed to provide rail service to Groome.

Even if GCEDC relied on the April 1999 estimate prepared by Railtex when it decided not to restore service, it nonetheless begs the issue of why GCEDC later decided to purchase the line in June of that year. From the outset of their negotiations, Railtex made it crystal clear that GCEDC would be required to "assume all railroad common carrier shipping obligations, along with the estimated \$300,000 of expenditures to repair the G&N bridges."<sup>37</sup> However, despite being put on notice of its obligation, both prior to and after it acquired the line, GCEDC failed to take reasonable steps to ascertain and honor its statutory duty and its legal obligations with respect to the common-carrier obligation. At a bare minimum, GCEDC should have known if it was not ready, willing and able to assume the responsibility of restoring service and the "maintenance of the corridor" in the event it was unable to engage an operator.<sup>38</sup> GCEDC's obvious failure in this regard is nothing short of gross negligence.

Last, this case involves multiple factors that distinguish it from precedents such as *BBB* where an experienced operator was involved and repair expenses were considered in the context of "the pendency of . . . regulatory proceedings to resolve the future status of the line." *Id.* at \_\_. Here, not only did GCEDC lack any plans to resume operations, but it had no thought of seeking authority to abandon the line. It simply took the law into its own hands and abandoned it.

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<sup>37</sup> Attachment 16, V.S. Groome. The \$300,000 figure vastly overstated the cost of restoring rail service to G&A. Not only did that figure include the cost of replacing a bridge that would not be used to provide service to G&A, but it included the cost of replacing a bridge that could have been safely operated with far less expensive repairs.

<sup>38</sup> GCEDC Rail Corridor Preservation Policy, at ¶ IX. Complainants Exhibit T.

**2. GCEDC had no intent to repair the line and provide service.**

As Gerald Seals has confirmed, the decision to not repair the line was a deliberate, conscious “policy issue.”<sup>39</sup> As Seals also admitted during his deposition:

the county had the money in an absolute sense, but it had to be budgeted for that specific purpose....my intentions were to put it in the budget for that purpose so that the bridges would be repaired.<sup>40</sup>

For whatever reason, the funds were never budgeted even though all concerned were aware that rail service would not be resumed until the funds were appropriated. Given Seals admission that all that was necessary to obtain funds needed to make the repairs was to budget them, the instant proceeding reflects, as Seals candidly admitted, a conscious policy of refusing to take steps that were under GCEDC’s control.

The deliberate policy of refusing to restore service under any circumstances distinguishes the instant situation from that in *Decatur County*. As the Board observed in *Decatur County*, there was no credible evidence in that case that The Central Railroad Company of Indiana (“CIND”) was actively discouraging traffic.<sup>41</sup> Instead, CIND “took various actions to increase traffic on the Line but ... its efforts were unsuccessful.”<sup>42</sup> In this case, GCEDC actively discouraged service by refusing to make the needed repairs.

In addition, CIND not only quoted rates, but it entered into minimum commitment contracts with shippers.<sup>43</sup> Most importantly, unlike the situation herein, because there was no local traffic on the segment of the line that was embargoed, “alternative railroad transportation

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<sup>39</sup> Complainants’ Ex. Q, Deposition Testimony of Gerald Seals at p. 75.

<sup>40</sup> *Id.* at p. 76.

<sup>41</sup> *Decatur County*, slip op. at 10.

<sup>42</sup> *Id.* at p. 12. In this case, GCEDC did not offer rates or undertake any marketing efforts to stimulate traffic.

<sup>43</sup> *Id.*

was available for the entire time in which CIND stopped operating over the embargoed segment.”<sup>44</sup> As the Board ultimately summarized the record, “it is clear from the record here that CIND took actions to protect shippers while the embargo was in effect.”<sup>45</sup>

GCEDC did nothing that was remotely similar to the actions taken by CIND. As a result, the situation herein is identical to that in *GS Roofing* where the unlawful embargo eliminated the ability of the shippers to receive rail service at their facilities and forced them to ship by truck and utilize more expensive transload operations.<sup>46</sup>

Last, in *Decatur County*, the Board found that “the record shows that CIND made a serious, long-term commitment, financially and otherwise, to operate the Line until 1996, when a variety of circumstances led it to investigate other options.”<sup>47</sup> In stark contrast, there is no evidence whatsoever in this case that GCEDC, after acquiring the line, made any serious, long-term commitment, financially or otherwise, to operate the line. Instead, GCEDC repeatedly disavowed any such commitment. Plainly, GCEDC’s reliance on *Decatur County* is misplaced.

As the Courts have long recognized, such deliberate inaction subjects a rail carrier to liability. *See, e.g., Johnson v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 400 F.2d 968 (9th Cir. 1968); *General Foods Corp. v. Baker, supra*, 451 F. Supp. at 877.

Given the foregoing, the Board is urged to avoid establishing a precedent that the purchaser of a line of railroad, by simply refusing to tap available funds from a related entity and by playing dumb and professing ignorance of the need to provide rail service, may unilaterally renounce the common carrier obligation. If it were to do so, GCEDC and other similarly situated

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<sup>44</sup> *Id.* at p. 7, n.16.

<sup>45</sup> *Id.* at p. 20.

<sup>46</sup> *See generally, id.*

<sup>47</sup> *Id.* at 19.

entities would be able to avoid the responsibilities that attend the acquisition of lines of railroad and thereby separate the two elements of common carriage -- the willingness and the ability to provide service -- without Board authority.

As the ICC earlier explained in *SP/LA County*, 8 I.C.C.2d at 506:

In *City of Austin*, we refused to accept the argument of the purchasers that they could unilaterally renounce any common carrier obligation. We made it plain that the City was obligated to provide service if, for any reason, the operator ceased operating. Purchasers acquiring active rail lines acquire the common carrier obligation to assure that service continues to be provided. The underlying rationale is that a carrier's obligation to serve can only be extinguished by Commission authority to sell or abandon. The two elements of common carriage, the willingness and the ability to provide service, may not be separated without our authority.

GCEDC never obtained authority to cease operations from the Board. Instead, from the date it acquired the line in June 1999 with full knowledge of the estimated cost of needed repairs and of its common carrier obligation, GCEDC allowed the line to continue to deteriorate. That process is antithetical to its obligation to ensure continuing service over the line.

Furthermore, although it was aware of Groome's stated need for rail service, GCEDC deliberately failed to disclose to Groome that it had tacitly adopted a policy of non-repair. Instead of revealing that it had no intent to restore rail service, GCEDC published its misleading "Rail Corridor Preservation Policy" in which it proclaimed that "[w]here an operator has not been engaged, GCEDC shall develop a rail corridor maintenance and management plan" and that "[i]f an operator has not been engaged to operate a designated section of the corridor, the responsibility for the maintenance of the corridor shall remain with GCEDC."<sup>48</sup> Despite this acknowledgment of its responsibility, GCEDC obviously violated its own policy when it failed to provide for the maintenance of the corridor.

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<sup>48</sup> Complainants' Exhibit T.

GCEDC also claims that it made multiple efforts to obtain an operator, but “was not able to obtain an operator on affordable terms.”<sup>49</sup> Although GCEDC has deliberately avoided addressing the issue, the Board should note the uncontroverted testimony that GCEDC wanted the operator to run passenger service. As Anderson has testified:

because GCEDC wanted to run passenger trains, our estimate reflects the cost of rehabilitating the Line to Class I standards and greatly exceeds the estimated cost of the minimal repairs needed to provide service over excepted track, which is how the track was rated by its previous operators.<sup>50</sup>

Due to the fact that it is illegal to perform passenger service on excepted track, the potential operators had no choice but to submit proposals that involved rehabilitating the track to FRA Class 1 standards.<sup>51</sup>

Because the rehabilitation of the track to Class 1 status was not required in order to provide rail service to G&A, bid proposals that included the estimated cost of repairs to attain Class 1 status are irrelevant and immaterial as a matter of law in determining the reasonableness of an embargo. As recognized in *GS Roofing*, 143 F.3d at 394:

Because an embargo is a temporary measure that is justified only if the condition warranting the embargo cannot reasonably be rectified, the continuing reasonableness of an embargo should be determined by analyzing the cost of resuming service at pre-embargo levels.

Even if it were to be assumed *arguendo* that GCEDC actually had a lawful embargo in place in the first instance, because the track was operated as excepted track prior to the time it was embargoed, bids that reflected rehabilitation to FRA Class 1 standards are not determinative of the reasonableness of the embargo. Hence, GCEDC is simply in error when it claims that

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<sup>49</sup> GCEDC Statement at 34.

<sup>50</sup> Complainants Exhibit C, V.S. Anderson at ¶ 11.

<sup>51</sup> See 49 C.F.R. §213.4(e)(2), which provides that “no occupied passenger train” shall be operated over excepted track.

Anderson's initial testimony "contradicts his own company's written advice to GCEDC four years earlier."<sup>52</sup> Instead of contradicting the previous written advice, Anderson's testimony clarifies the situation by highlighting the fact that because the original estimate included the cost of repairs to allow transportation of passengers, the estimate contemplated rehabilitation to FRA Class 1 standards.

Anderson has further clarified the situation in his Rebuttal Verified Statement (Complainants Ex. Y). As he has now explained:

the phrase "operational status conducive to regular operations on the line" for the customers involved means simply "FRA Class I" status. This reflects the likelihood that full rehabilitation to Class 1 status would improve the reliability of operations by lessening the possibility of minor derailments. However, because of the short distance involved, rehabilitation to Class 1 status would not gain that much in terms of the overall speed of operations that would accompany operations on an FRA-accepted track basis.

Even if operations over accepted track were not optimal, by designating track as "accepted," we would have been able to satisfy the common carrier obligations without fear of penalties being imposed by FRA for failing to comply with FRA regulations governing roadbed, track geometry, track structure, and track appliances and track-related devices. See 49 C.F.R. § 213.5.<sup>53</sup>

As Anderson has also testified:

By designating segments of track as "accepted," we would have provided service until GCEDC could have obtained funding to make the repairs that are necessary to get the track to Class 1 status, or taken steps to obtain authority to abandon the line or discontinue rail operations.<sup>54</sup>

Had GCEDC designated the track as accepted track, it too could have bought time to raise the funds that were needed to rehabilitate the line to Class 1 status. As the record demonstrates, it did not do so, but instead chose to refuse service while it allegedly looked for

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<sup>52</sup> GCEDC Statement at p. 31.

<sup>53</sup> Rebuttal V.S. Anderson at ¶¶ 5-6.

<sup>54</sup> *Id.* at ¶ 7.

funding to repair the track. By exercising that option, GCEDC placed itself in the position where it became liable for the damages that G&A incurred.

### 3. Volume of traffic on the line.

Based on the testimony of Joseph J. Plaistow, GCEDC claims that it would not have been profitable for GCEDC to provide service to Groome. GCEDC also speculates that its rates would have been so high that Groome would not have used rail service, even if it had been available.<sup>55</sup> There is no evidence whatsoever that Groome would not have agreed to a reasonable surcharge or higher rates if GCEDC had provided service. To the contrary, in his Rebuttal Verified Statement, Anderson has also testified that both Groome and Mathena agreed to a surcharge if he could obtain ownership of the line.<sup>56</sup> With the surcharge in place, which would have helped to defray the cost of any repairs that would have been required to permit his railroad to operate the line safely on an FRA-excepted basis, the total rate would not have exceeded \$400 per car and likely would have been in the \$325 range.<sup>57</sup> In addition, had service to Groome been restored, both Paper Cutters and the Carolinas Recycling Group, which was located adjacent to Groome's facility, would have tendered additional traffic.<sup>58</sup>

There is no evidence of record that GCEDC ever provided any proposed rates to Groome. Hence, comments concerning the hypothetical level of rates that GCEDC *might* have charged, as well as whether Groome would have accepted them, are speculative and prove nothing.

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<sup>55</sup> V.S. White at p. 5; Plaistow at p. 2.

<sup>56</sup> Rebuttal V.S. Anderson at ¶ 9.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* See also, Complainants' Exhibit U, letter dated May 15, 2001 to Alan Groome from Thomas E. Davis.

Plaistow's calculations must be rejected based on the fact that they admittedly rely on the estimated cost of replacing the bridges and rehabilitating the line to Class 1 standards. Plaistow candidly testified (V.S. Plaistow at 2):

In developing my conclusion, I have relied upon data developed by the following Greenville County Economic Development Corporation ("GCEDC") witnesses:

1. David B. Hoff, P.E., a bridge expert and a registered professional engineer who estimated the cost of replacing the three bridges on this 2.6 mile section of track to be \$1,384,600; and
2. David Pettry, an experienced railroad engineer with over 35 years of service with CSX and its predecessor railroads, who, following his personal, on-the-ground inspection of the Line on January 13 and 14, 2005, concluded that in addition to the bridge work it would cost \$1,608,675 to make other required and necessary improvements to the Line.

Because the Hoff and Pettry data involve the estimated cost of rehabilitating the tracks to FRA Class 1 status, they do not reflect the much lower cost of restoring service over excepted tracks. Hence, they are irrelevant and immaterial with respect to the narrow issue of whether the embargo was reasonable. Because their estimates are irrelevant and immaterial, it necessarily follows that the same is true of the Plaistow study, which admittedly is *not* based on the estimated cost of the repairs to meet the minimum viability requirements to restore rail service over excepted tracks, but rather is directed to the long-term profitability of the line. As also recognized in *GS Roofing*, such "preoccupation with the long-term profitability of the [line] is misplaced, however, for notions of long-term feasibility have no place in a proceeding to determine the reasonableness of an embargo."<sup>59</sup>

Equally important, because GCEDC never made any study reflecting the range of rates that would be required to operate the line or established any rates, the cost and rate issues that

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<sup>59</sup> 143 F.3d at 393-94.

GCEDC now seeks to use to cover up its unlawful “inactivity” are mostly besides the point.<sup>60</sup>

***GCEDC should have considered the financial factors that it now raises before it acquired the line.*** No one forced GCEDC to acquire the line and assume the common carrier obligation.

Indeed, it was aware of an alternative that would have promoted rail service at no cost to the county. In his March 1, 1999 memorandum to the members of the County Council Committee on Finance, Rob Svets specifically advised the members that:

Randy Mathena, president of Paper Cutter’s, Inc., has recently indicated the willingness of the companies located above the Northern Segment to negotiate financing for the upper 9.8 mile portion of the Northern Line. Mr. Mathena expressed his belief that these companies could arrange for the purchase, repair and operation of the 9.8 mile portion of the Northern Line without the County’s assistance.<sup>61</sup>

By choosing to acquire an active line of railroad, rather than allowing the shippers to acquire it, GCEDC placed itself in the position in which it now finds itself.

Because GCEDC never intended to provide rail service, it should have waited for the line to be abandoned and then asked that the rail corridor be rail banked or made the subject of a trail use condition. It did neither even though it was aware of these options.<sup>62</sup> Of course, had it allowed the shippers to acquire the line, the corridor would have been preserved without the County having to invest a single dollar.

GCEDC also states that by the time it acquired the line, only two shippers remained. It is assumed that the two shippers were Groome and Paper Cutters. However, as previously noted, Duke Power, which also incurred substantially higher transportation charges when rail service

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<sup>60</sup> In response to discovery requests, GCEDC identified the March 31, 1999 memoranda from Rob Svets to Jay Tathacher (reproduced as Attachment 18 to V.S. Groome) as being the only document which projected revenues. A careful review of that document shows that potential revenues were not considered therein.

<sup>61</sup> See Attachment 18 to V.S. Groome.

<sup>62</sup> *Id.*

was not available, was willing to share the cost of needed repairs along with Groome.<sup>63</sup> In addition, had rail service been restored as required by GCEDC's common carrier obligation, other shippers who had been forced to turn to truck when rail service was unlawfully terminated would have returned to rail. As explained in a letter dated May 15, 2001, from Thomas E. Davis, VP Operations, Environmental and Safety, CRG, to Alan Groome (Complainants' Exhibit U):

I wanted to drop you a quick not (sic) to confirm our conversation of the other day concerning the railroad that serves both our plants. Or should I say no longer serves. In our discussion you asked if we would use the railroad if it were to return to service. The answer is, yes we would. We still ship steel turnings from that location and it has to be moved by truck now. The railroad would be the best way to move this material and we would utilize the service if it were to return.

Because it did not intend to operate the line, GCEDC made no attempt to market the line to these or other prospective rail shippers. Not only does this factor differentiate this case from *Decatur County*, but it highlights GCEDC's total disregard for the shippers and its common carrier obligation.

Even if it were to be assumed *arguendo* that the provision of service to Groome *might* have been unprofitable based on the cost of repairs to meet the minimum viability requirements, ***which GCEDC has not proved***, that would not in an of itself excuse GCEDC from liability. Even if GCEDC could somehow demonstrate that it might have suffered an actual loss, **which it has not done**, "[a]n embargo may not be justified 'solely on the grounds that to continue to provide service would be inconvenient or less profitable.'" *GS Roofing*, F.3d at 394, quoting, *Ethan Allen*, 431 F.Supp. at 743.<sup>64</sup>

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<sup>63</sup> Complainants' Exhibit O.

<sup>64</sup> Here, of course, because GCEDC never performed any service, there is no issue of the cost of continuing to provide service.

**4. GCEDC's alleged financial condition does not excuse its unlawful behavior.**

GCEDC was aware of the condition of the line before acquiring it, but nevertheless bought it knowing that it would be dependent upon Greenville County for funds "to do the repairs to meet the minimum viability requirements."<sup>65</sup> It is disingenuous for GCEDC to claim that it was "'broke' at the end of 2002"<sup>66</sup> and that it should not be held accountable because "[i]t is clear that GCEDC has never had sufficient funds to accomplish the type of restoration necessary to operate the Line."<sup>67</sup> If GCEDC never had sufficient funds to repair the track so that rail operations could not have been conducted on an excepted basis, it had no business purchasing the line. This was a matter that should have been considered well before GCEDC acquired the line and preempted the shippers from acquiring it for its NLV.

There is evidence that GCEDC was able, had it so desired, to obtain funding from Greenville County, which admittedly had funds available "to do the repairs to meet the minimum viability requirements."<sup>68</sup> Its failure to do so is inexcusable. Since June 2000, SCDOT grants *related to the line* totaling at least \$150,000 were paid to Greenville County, rather than GCEDC. See Attachment 4 to Mr. White's Verified Statement.<sup>69</sup> In addition, Greenville County has provided \$43,977 in accommodations tax grants to GCEDC. *Id.* And, although never mentioned by GCEDC or Mr. White, on May 15, 2000, the Greenville Area Transportation Study

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<sup>65</sup> Complainants' Ex. Q, Deposition Testimony of Gerald Seals at p. 75.

<sup>66</sup> GCEDC Statement at p. 38.

<sup>67</sup> GCEDC Statement at p. 30. *See also, id.* at 33.

<sup>68</sup> Complainants' Ex. Q, Deposition Testimony of Gerald Seals at p. 75

<sup>69</sup> As explained therein, "To comply with SCDOT's requirements, this application was submitted through Greenville County to SCDOT. The Greenville County Economic Development Corporation did not receive monies directly."

("GRATS"), n/k/a Greenville-Pickens Area Transportation Study ("GPATS"),<sup>70</sup> passed a resolution whereby it agreed to hold \$1.324 million in trust for GCEDC to be used to upgrade its rail line.<sup>71</sup> Although those funds are being held in trust for GCEDC, no mention has been made thereof in GCEDC's Statement. Finally, it was recently reported that "[o]f about \$700,000 spent on railroad crossings [by the City of Greenville] \$150,000 for right of way went to a Greenville County-controlled corporation that owns tracks at the site."<sup>72</sup> Plainly, GCEDC was not nearly as destitute as it represents in its Statement.

Additional uncontroverted evidence is found in the deposition testimony of Gerald Seals that a conscious policy existed that no funds would be expended to restore service, even though funds were available that could have been appropriated for that purpose. During a post-acquisition meeting with Lee Groome and Randy Mathena, Seals advised them that:

I may have said that the county had the money to do the repairs to meet the minimum viability requirements. Yes, the county had the money in an absolute sense, but it had to be budgeted for that specific purpose."<sup>73</sup>

While Mr. Seals was rather equivocal about precise amounts, both Groome and Mathena have testified that Seals, while head of GCEDC, also told them that "GCEDC had \$500,000 in the bank" and that other companies, including "Duke Power Co. and Bell South, Inc., had offered additional assistance." V.S. Mathena at ¶ 10; V.S. Groome at ¶ 54. In addition, they have testified that Groome offered \$30,000 to assist GCEDC at that same meeting. *Id.* Although

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<sup>70</sup> GRATS was created in 1964 under the joint auspices of county, city and state governments in South Carolina. In April 2004, the Policy Committee changed the name to GPATS. The Greenville County Planning Commission is the lead staff agency for GPATS.

<sup>71</sup> See Complainants' Ex. V, May 15, 2000 Minutes of the GRATS POLICY COORDINATING COMMITTEE.

<sup>72</sup> Rudolph Bell, *ICAR needs more cash for roads*, The Greenville Times, February 9, 2005, at A1. Complainants' Exhibit W.

<sup>73</sup> *Id.* at 75.

both Mathena and Groome have testified that the statements were made at a meeting that was also attended by Pat Haskell-Robinson, another member of the GCEDC Board, Ms. Haskell-Robinson has not contested their testimony.

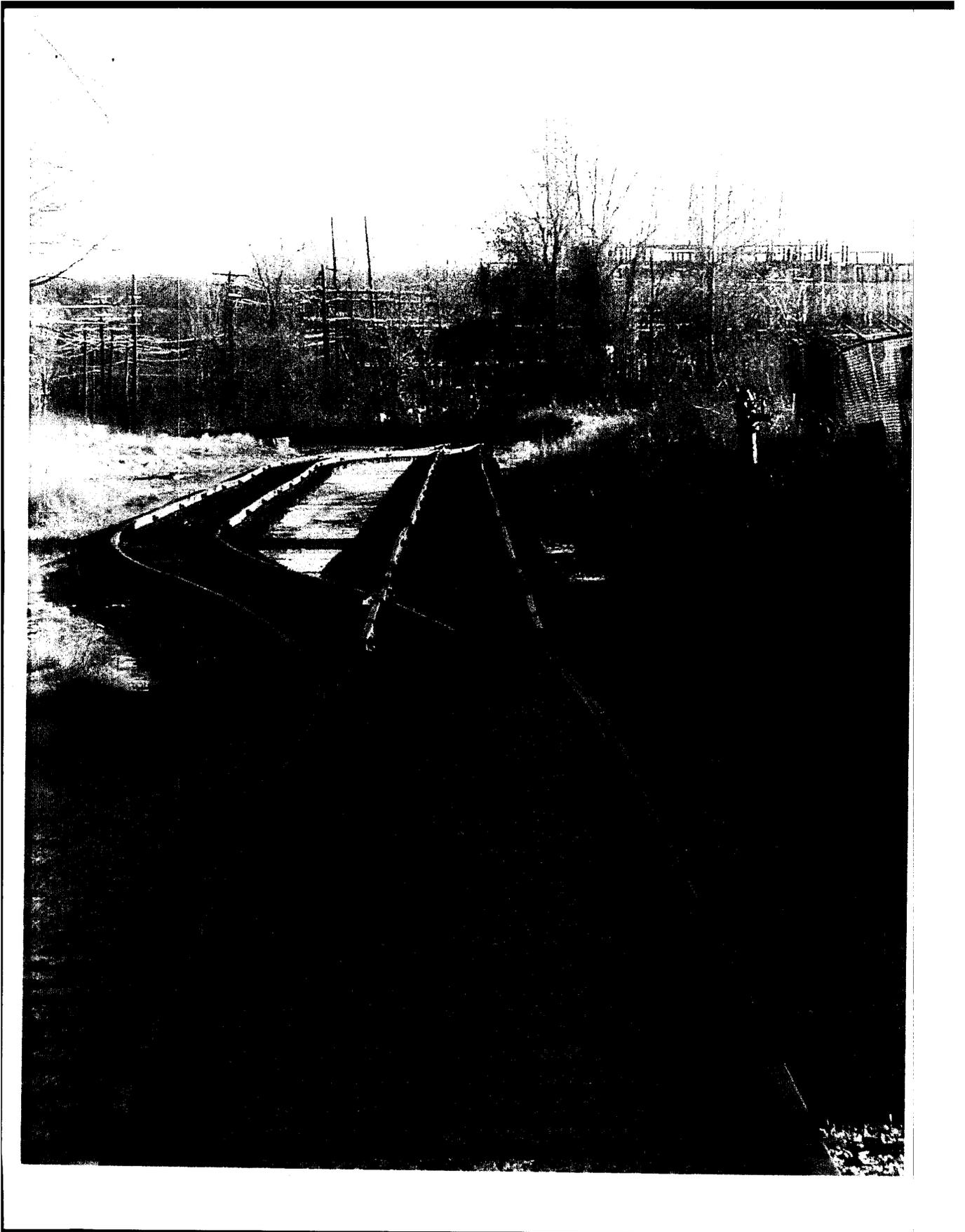
The funds received from SCDOT and from Greenville County, when coupled with the funds that are being held in trust for GCEDC and the funds that Groome and other industries offered, would have provided sufficient cash to repair the line. Therefore, it is disingenuous for GCEDC to claim that it “did not have the funds to restore service to the line.”<sup>74</sup> As confirmed by Seals’ testimony, funds were available and could have been expended for the repairs to meet the minimum viability requirements to allow service over excepted track.

By designating segments of track as “excepted” and making the minimum amount of repairs necessary to permit operations on an FRA-excepted track basis, service should have been provided until GCEDC could have obtained funding to make the repairs that are necessary to get the track to Class 1 status, or taken steps to obtain authority to abandon the line or discontinue rail operations. Although it refused service for over five years, the following photograph and the photographs attached to Groome’s Rebuttal Verified Statement show that GCEDC has recently rebuilt a substantial portion of the track.<sup>75</sup> The ability to construct over 2,000 feet of new track conclusively demonstrates that the line could have been rehabilitated over time while operations continued.

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<sup>74</sup> GCEDC Statement at 33.

<sup>75</sup> For additional photographs of this newly laid track, *see* Attachment 4 to Rebuttal V.S. Groome.



**5. The duration of the indefinite cessation of service is unlawful.**

An embargo by its very nature is a temporary, emergency measure. As explained in *GS Roofing Products Company v. STB*, 143 F.3d 387, 392 (8th Cir. 1998):

An embargo ... is an emergency measure that is justified where physical conditions prevent a carrier from providing service. See *Chicago, Rock Island & Pacific*, 501 F.2d at 911. If such conditions can be easily rectified, the embargo will not be valid beyond a reasonable time necessary to restore service.

A similar line of reasoning was expressed in *ICC v. Baltimore and Annapolis Railroad Company, supra*, 398 F. Supp. at 462-63. Moreover, in *Decatur County*, the Board stated that “[u]nder its common carrier obligation, the embargoing railroad must restore safe and adequate service within a reasonable period of time to any line as to which it has not applied for abandonment authority.”<sup>76</sup>

In this case, GCEDC can point to no emergency that would have validated an indefinite embargo that would last more than 5 full years, during which time it made no effort to restore operations. Indeed, GCEDC cannot support a claim that it would have taken more than a matter of days to make the repairs that were needed to meet the minimum viability requirements to provide service over excepted track. Hence, the failure to restore service for more than five years must be viewed as nothing more than an unlawful indefinite, de facto abandonment.

GCEDC’s argument that it could indefinitely embargo the line until such time as it located funds with which to resume operations were somehow found has been consistently rejected by the courts.<sup>77</sup> See *Meyers v. Jay Street Connecting Railroad, supra*, 259 F.2d at 535; *ICC v. Rock Island, supra*, 501 F.2d at 915.<sup>78</sup> As those courts have recognized, to allow the

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<sup>76</sup> *Decatur County*, slip op. at p. 6.

<sup>77</sup> GCEDC Statement at p. 34-5.

<sup>78</sup> GCEDC’s inaction effectuated what has been termed an “abandonment by neglect.” In *ICC v. Rock Island*, 501 F.2d at 915, the Eight Circuit agreed with the Commission’s argument that “no case has

imposition of an indefinite embargo would fundamentally cripple shippers who would not be able to make any business plans. That certainly is the case herein.

As the record demonstrates, it was only after it learned the Board's Office of Compliance and Enforcement intended to recommend that the Board undertake enforcement action that GCEDC in July 2003 finally came clean and filed a petition seeking authority to discontinue service. By that time, the damage had been done.

Once again the facts of this case are in stark contrast to those in *Decatur County*. In that case, the Board found (slip op. at 20) that:

The record demonstrates that CIND did not sit idle until it filed the abandonment exemption petition in January 1998, and that CIND did not plan to leave the Line segment in an embargoed status indefinitely. Rather, the record shows that CIND was the victim of circumstances beyond its control, *i.e.*, dim prospects for obtaining new traffic, and its facing financial difficulties, so that there was little justification for expending the resources needed to make the necessary repairs.

In this case, GCEDC purchased the line with full awareness that it would inherit the common carrier obligation and that it would have to repair bridges in order to provide service. It also had knowledge that some amount of additional track work might have to be undertaken. In addition, it was well aware of the shippers on the line, as well as the need to obtain funding from the County Council. Given these factors, GCEDC was *not* the victim of circumstances beyond its control.

Faced with the realization that the duration of the embargo was excessive, GCEDC attempts to place the blame to Groome by arguing that it and other shippers had several potential remedies available that would have addressed the service issue including an OFA and a feeder

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allowed "abandonment by neglect," *i.e.*, permitting a railway by a deliberate neglect of essential maintenance which allows tracks to deteriorate to a "deplorable condition" to then successfully argue that restoration of service would be inequitably expensive."

line application. This line of argument is specious, particularly when GCEDC prevented the shippers from acquiring the line in the first instance. Plainly, Groome acted reasonably when he assumed that GCEDC would activate the line. *Accord, Louisiana Railcar, Inc. v. Missouri Pacific Railroad Company*, 7 I.C.C.2d 30, 37 (1990) (shipper could not be faulted for failing to immediately shut down its operation because it did not become clear to the shipper that railroad was not likely to restore service until the railroad filed a notice of intent to abandon the line).

GCEDC also seeks to denigrate Groome because he “was adamant that the county was responsible to fund the rehabilitation of the line and serve G&A.”<sup>79</sup> Groome’s position reflected a correct interpretation of the law. As the ICC also stated in *Louisiana Railcar, Inc. v. Missouri Pacific Railroad Company, supra*, 7 I.C.C.2d at 38:

We must also reject the contention that LRC [the shipper] should have funded the track repairs. Although LRC could have done this, it was not obligated to do so, for MP had the statutory duty to provide transportation upon reasonable request. As stated in *I.C.C. v. Baltimore and Annapolis Railroad Company*, 398 F.Supp. 454, 465 (D.Md. 1975):

B&A cannot equitably be heard to complain that its customer refused to advance the funds necessary to aid in doing that which B&A was otherwise legally bound to do, *i.e.*, cease its unlawful abandonment.

GCEDC’s argument ignores the fact that Groome and other shippers, including Duke Power and Bell South, volunteered to help defray the cost of repairs. GCEDC also ignores the documented fact that the shippers made it clear that they were willing to purchase the line directly from SCCR and likely would have done so had GCEDC not acquired the line. Had GCEDC allowed the shippers to acquire the line, and had they failed, then GCEDC could still have saved the corridor for whatever purpose it deemed essential. In any event, it cannot be

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<sup>79</sup> GCEDC Statement at 36.

seriously contended that GCEDC's indefinite embargo (assuming that one was actually placed by GCEDC) did not exceed a reasonable length of time.

**6. GCEDC has not demonstrated that it would have incurred any loss had it served G&A on an FRA-excepted track basis.**

GCEDC's arguments that serving G&A would "have resulted in less money being available to serve the entire Line" and that "serving G&A would have been a money-losing proposition" are not substantiated by credible evidence that is based on the cost of making the minimal repairs needed to restore service over excepted track.<sup>80</sup> As previously noted, the Plaistow study is based on the estimated cost of rehabilitating the track to FRA Class 1 status. Even if such costs might have caused GCEDC to sustain a loss from operations in the long term, the estimated expenditures upon which Plaistow relied would not have been needed to restore service to its pre-embargo status. As concluded in *GS Roofing, supra*, 143 F.3d at 394:

If service can be resumed at safe levels without substantial expenditures of time or money, a railroad should not be permitted to refuse to resume service simply because extensive improvements might be necessary for the long-term success of the line.

Because his testimony is focused on the long-term prospects, Plaistow's conclusions related thereto are not relevant to the issue involved herein and must be disregarded.

**III. DAMAGES SOUGHT BY COMPLAINANTS ARE ATTRIBUTABLE TO THE LACK OF RAIL SERVICE.**

This case involves multiple types of damages that are attributable to the lack of rail service. In addition to increased storage, handling and shipping costs, about which there is little debate, Complainants are also entitled to lost profits and other mitigation expenses, as well as interest, which the Board has discretion to award. *Louisiana Railcar, Inc. v. Missouri Pacific Railroad Company, supra*, 7 I.C.C.2d at 44.

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<sup>80</sup> GCEDC Statement at 41.

**A. The Board Should Find That Complainants Sustained Damages In The Amount Of \$285,243 For Increased Storage, Handling And Shipping Costs Directly Resulting From The Lack Of Rail Service.**

In his September 21, 2004 Decision, Judge Few found, based on the same evidence as is now before the Board, that Complainants, during the period subsequent to June 1999, sustained damages of \$285,243 for “increased storage, handling and shipping costs directly resulting from its lack of rail service.”<sup>81</sup> According to GCEDC, that finding “is unassailable.”<sup>82</sup> Groome agrees with GCEDC’s conclusion with regard to that finding and requests the Board to adopt the finding that G&A incurred damages totaling \$285,243 for “increased storage, handling and shipping costs.”<sup>83</sup>

The “increased storage, handling and shipping costs” were incurred by Complainants when mitigating their damages. As the Board found in *Caddo Antoine and Little Missouri Railroad Company--Feeder Line Acquisition--Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR.*, STB Finance Docket No. 32479, slip op. at 22, (STB served May 5, 2000), embracing STB Docket No. 41230, *GS Roofing Products Company, Inc., et al. v. Arkansas Midland Railroad Company, et al*, *aff’d in part and reversed and remanded in part sub nom GS Roofing Products Company, Inc. v. STB*, 262 F.3d 767 (8th Cir. 2001), an award for damages for additional costs associated with transloading facilities and freight

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<sup>81</sup> Order and Judgment, *Groome & Associates, Inc. v. Greenville County Economic Development Corporation*, C.A. No. 2001-CP-23-2351, slip op. at 17 (Court of Common Pleas, Greenville County, SC) Sept. 21, 2004, reproduced as Attachment 2 to V.S. White.

<sup>82</sup> GCEDC Statement at p. 51; *see also*, Complainants’ Exhibit Q, Schedule 5.

<sup>83</sup> Complainants emphasize that they do not agree with Judge Few’s clearly erroneous findings with respect to jurisdiction and embargoes, especially his failure to distinguish between rehabilitation to FRA Class 1 track standards and the minor repairs needed to allow safe operations on an FRA-excepted track basis. In addition, he erred when he failed to apply applicable Board precedents such as *State of Maine and City of Austin*. Had he properly applied either of those precedents, he would have been compelled to award Groome damages.

differentials is proper.<sup>84</sup> The same is true in this case where Complainants, by incurring these additional handling and shipping costs, mitigated their damages. Plainly, G&A would have gone out of business shortly after rail service was discontinued had it not made alternative transportation arrangements.<sup>85</sup> Hence, such costs are fully recoverable as mitigation costs.

**B. Complainants Transportation Problems Were Not Self-Inflicted.**

GCEDC, while admitting that Complainants incurred the additional costs discussed above, nevertheless contends that “Groome also failed to mitigate his transportation problems and thus his transportation problems were largely self-inflicted.”<sup>86</sup> In considering the mitigation issue, Complainants reiterate their earlier argument that “[t]he longstanding general rule in contract law is that the burden of proof is on the defaulting party to show that the plaintiff did not mitigate damages.”<sup>87</sup>

GCEDC has failed to carry its burden of proof. GCEDC’s argument is premised on a series of baseless assumptions as well as a fundamental misunderstanding of the evidence. GCEDC first argues that Complainants “would not agree to a freight surcharge in 1998 that would have funded repair of the Line and replacement of the bridges, choosing instead to transload their freight.”<sup>88</sup> Complainants did not decline to agree to a freight charge. Instead, they immediately commenced negotiations with SCCR. By letter dated June 6, 1998, the shippers on the line agreed to help fund the rebuilding of the line, subject to some assurances

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<sup>84</sup> The Court reversed the Board’s rejection of GS Roofing’s claim for lost profits.

<sup>85</sup> Unfortunately, because Groome did not file a formal complaint against SCCR, it cannot collect the remaining \$171,757 of additional storage, handling and shipping costs that were incurred prior to GCEDC’s acquisition of the line.

<sup>86</sup> GCEDC Statement at pp. 47-50.

<sup>87</sup> *Louisiana Railcar, Inc. v. Missouri Pacific Railroad Co.*, 7 I.C.C. 2d 30, 35 (1990).

<sup>88</sup> GCEDC Statement at 48.

being given them in return by SCCR.<sup>89</sup> As Mathena explained in his Verified Statement, SCCR “never responded to our offer.”<sup>90</sup> Surely, Complainants cannot be faulted for SCCR’s refusal to negotiate in good faith.

GCEDC also suggests that Complainants made the statement that “We will simply use trucks and research other alternatives for rail service.”<sup>91</sup> This statement, which is taken out of context, was not made by Complainants. Instead, it was made by Mathena in his June 5, 1998 letter addressed to Forest Van Swartz (sic), General Manger of the Carolina Piedmont Railroad, and represented an alternative arrangement in the event SCCR would not agree to the shippers’ proposal to help fund the rebuilding of the line.<sup>92</sup> The full text of the sentence reads as follows: “If our proposal is not acceptable, we will simply use trucks and research other alternatives for rail service.”<sup>93</sup> Given the fact that SCCR had embargoed rail service as of February 1998, the shippers had no other choice but to continue arranging alternative transportation, especially when they could not get SCCR to negotiate. In any event, Mathena’s letter, which SCCR never answered, has no bearing on the Complainants’ mitigation efforts.

Furthermore, GCEDC significantly distorts the evidence when it seeks to leave the false impression that the shippers anticipated that acquisition of the line by Greenville County “would not come with inherent responsibility to spend one dime of government money.”<sup>94</sup> When placed

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<sup>89</sup> See Exhibit 2 to Attachment No. 8 to Complainants’ Exhibit B, V.S. Mathena, Letter to Forest Van Swartz (sic) from Randy Mathena dated June 5, 1998.

<sup>90</sup> Complainants’ Exhibit B, V.S. Mathena at ¶ 3.

<sup>91</sup> GCEDC Statement at p. 49.

<sup>92</sup> Apparently, that letter was reprinted, but not signed, at a later date, thereby causing GCEDC to erroneously cite an October date.

<sup>93</sup> See Exhibit 2 to Attachment No. 8 to Complainants’ Exhibit B, V.S. Mathena, Letter to Forest Van Swartz (sic) from Randy Mathena, dated June 5, 1998.

<sup>94</sup> GCEDC Statement at 49, citing Attachment 11 to V.S. Mathena, Letter to Pat Haskell Robinson, et al., from Randy Mathena, dated November 13, 1998.

in proper context, it is readily apparent that Mathena's comment assumed that the purchase and operation of the line would be "financed by private funds."<sup>95</sup>

The Board should also ignore the mischaracterization that Groome "blames GCEDC (and, effectively, Greenville County) for acquiring the Line and not being able to put in hundreds of thousands of dollars of repairs which Mr. Groome's own witnesses, Mr. Anderson and Mr. Mathena, told the County would be needed to operate the Line."<sup>96</sup> Groome is not blaming GCEDC for acquiring the line. Groome's argument is simply that having acquired the line, GCEDC should have honored its common carrier obligation. Furthermore, given the fact that GCEDC and Greenville County were aware of the potential cost of long-term repairs, as well as those needed to resume rail service, they should have made adequate provision for those costs. As is obvious from the positions that GCEDC has taken in this case, they utterly failed to do so. Therefore, they have only themselves to blame for the predicament in which they now find themselves.

If they didn't want to cover the estimated long-term costs of operating the line, GCEDC and Greenville County should have stayed out of the railroad business. Having voluntarily placed themselves in the position of having to respond to the needs of the shippers by voluntarily acquiring the line and the accompanying common-carrier obligation, neither GCEDC nor Greenville County can be allowed to avoid their responsibility to restore rail service.

By purchasing the line in 1999 with full awareness that the shippers were anticipating renewed rail service, Greenville County and GCEDC gave Groome reason to believe that rail service would be restored to his facility. Because that purchase carried with it the presumption that the line would be restored to service consistent with the common carrier obligation of which

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<sup>95</sup> Id.

<sup>96</sup> GCEDC Statement at 49.

GCEDC was expressly advised by SCCR, it matters not that no one at GCEDC specified a date on which the repairs would be finalized and service restored. As argued above, it was incumbent on GCEDC to make the repairs as soon as possible or seek authority to abandon the line. When it failed to file for abandonment, GCEDC merely perpetuated the presumption that rail service would be resumed and left Groome with the reasonable expectation that service was likely to be restored. *Accord, Louisiana Railcar, Inc. v. Missouri Pacific Railroad Company, supra*, 7 I.C.C.2d at 37

**C. Groome Is Entitled To Other Mitigation Expenses.**

Groome cannot be faulted for not shutting down his operation and immediately moving to a different location simply because GCEDC did not move to repair the line. Even before it acquired the line, Greenville County, on September 29, 1998, passed a resolution wherein it agreed to preserve the rail corridor. And after acquiring the line, GCEDC published its Rail Corridor Preservation Policy in which it announced that:

GCEDC is charged with preserving transportation corridors. Preservation of railroad corridors for future freight and passenger transportation requires that the integrity of the rights of way be maintained.

Although it proclaimed that it “must not become active in the operation of the railroad itself,” GCEDC also held out that it would engage an operator that would be responsible for “developing a rail corridor maintenance and management plan.” If not, GCEDC openly assumed that responsibility. Groome was entitled to rely on these public pronouncements.

In particular, because GCEDC concealed its intent not to restore the line, Groome, in September 2002, decided to refinance the mortgage on the G&A facility, thereby incurring \$506,651.74 of additional debt.<sup>97</sup> Groome has testified that “[i]f GCEDC had leveled with me, I

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<sup>97</sup> Rebuttal V.S. Groome at ¶ 28.

would not have refinanced but would have sold the property, even at a price below its appraised value, and invested in another facility that was located on another active line of railroad.”<sup>98</sup>

The decision to refinance was reasonable. Not only had GCEDC recently met with Anderson to discuss the restoration of rail service, but GCEDC had never signaled an intent to abandon the line or seek authority to discontinue operations. Groome was not aware of the unpublished, indefinite embargo that GCEDC belatedly invoked in this proceeding. In addition, the temporary cessation of rail service had already caused the value of the property to decline below its appraised value of \$1,300,000, a value that reflected the direct rail access.<sup>99</sup> Because GCEDC thereafter did not restore service, the refinancing was for naught and the \$506,651.74 of funds that were used to maintain operations while waiting for GCEDC to restore rail service were wasted. Because those funds constituted mitigation expenses, they too are recoverable by G&A.<sup>100</sup>

Given the peculiar nature of the railroad industry, and the need to obtain authority to abandon operations, GCEDC is responsible for lost profits. The methodology used by Thombley to determine lost profits has been consistently applied by the courts and the ICC. *See, e.g., Louisiana Rail Car, supra*, 5 I.C.C.2d at 549 (use of four-year average of profits reasonably reflects the business that can be expected in the future if a common carrier had met its obligations) and the cases cited therein, *Johnson v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co. supra*, 400 F.2d at 975 (production of records showing profits for previous years and loss of profits, decrease of business, deficits and a net loss for the years in which damage

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<sup>98</sup> Rebuttal V.S. Groome at ¶ 29.

<sup>99</sup> *Id.*

<sup>100</sup> The lack of rail service also prevented Groome from being able either to enter into a joint venture with Fort Howard Paper or to sell the business to them. Because such damages are speculative, no attempt is being made to recover them.

was claimed is the appropriate means of establishing lost profits); and *Carnes v. A.T. & S.F. Ry. Co.*, 129 I.C.C. 341, 348 (1927).

In his study, Thombly first determined the 5-year average of past profits prior to the date that rail service ceased. That figure was \$62,007 per annum. He then computed the income, or lack thereof, for the following years to conclude that the net loss profits was \$1,419,358. Because that figure included the period prior to June 1999 when GCEDC acquired the line, his study was adjusted in Complainants' Exhibit Q to cover only the period from June 1999 through the end of November 2004. Based on the adjusted calculations, G&A suffered lost profits of \$779,342 (\$696,670 + \$82,672). When the additional freight charges of \$285,243 are deducted, the lost profits total \$494,099.

In its Opening Statement, GCEDC has sought to claim that G&A's lost profits are not attributable to the unlawful cessation of rail services. As Groome has demonstrated in his Rebuttal Verified Statement (Complainants Exhibit X), the loss of rail service was the proximate cause of the collapse of his business. Had it not been for the loss of rail service, which had an immediate adverse impact on G&A's ability to meet the needs of its customers, the other factors upon which GCEDC has seized would not have had a material impact on G&A's business. In particular, if direct rail service had been available at all times, G&A would not have had to shift its inventory practices as the mills would have continued to provide consistent and timely deliveries of paper stock. As Groome has explained:

some of G&A's suppliers, for reasons that had nothing to do with G&A, were reluctant to ship to a third-party facility. Therefore, as a result of not being able to receive rail shipments directly at its facility, G&A missed orders due to slower inbound delivery. As a result, I was forced to increase G&A's inventory to offset the longer delivery times. In other words, the inventory addition was necessitated by loss of rail, not risk to cost. Rather ironically, the reluctance of some of the big suppliers to sell directly to G&A

actually allowed G&A to lower its average cost of raw materials. This was accomplished through acquiring greater volume from Continental Paper which, by purchasing paper directly from the mills at a price that was lower than what was offered to G&A, could make a profit and still sell to G&A at a price that was lower than it would have paid the mill. The major drawbacks to this arrangement were the additional delivery time associated with indirect rail service and the need to acquire additional inventory in order not to miss orders.

It has been recognized that where a party, without full knowledge of the true intent of a second party, makes a reasonable business decision in justifiable reliance on the actions of the second party, it is entitled to recover for its entire damages. *See, e.g., Sedco International, S.A. v. Cory*, 522 F. Supp. 254, 326-27 (S.D.Ia. 1981), *aff'd*, 683 F.2d 1201 (8th Cir. 1982). Of course, because GCEDC concealed its true intent, by fraudulent concealment or negligent misrepresentations, it is a matter of common sense that Groome would not have had an obligation to mitigate his damages until such time as he became aware of GCEDC's actual intent. In this case, the secret intent to embargo the line indefinitely served to prevent awareness that the line would never be reopened. As a result, as the sole shareholder of G&A, Groome is entitled to recover the full measure of the funds that he invested in an attempt to weather what he perceived to be the temporary loss of rail service. This would include \$781,301 of funds prematurely withdrawn from his profit sharing plan, penalties that were paid for early withdrawal, as well as sums borrowed against a whole life policy.<sup>101</sup> Given the relationship between Groome and G&A, and the fact that the above amounts were used to capitalize continued operations in lieu of self-generated income, such sums would constitute corporate expenses incurred in the course of business and should be recoverable as such.

In summary, GCEDC's secret policy of refusing to repair the line was the crucial element in the collapse of G&A's business. Had GCEDC provided for directed rail service as required

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<sup>101</sup> Rebuttal V.S. Groome at ¶129.

by its common carrier obligation, or had it revealed its intent from the outset, Groome and G&A would not have been forced to take the steps that were taken in an effort to survive while waiting for rail service to be resumed consistent with GCEDC's common carrier obligation.

**D. GCEDC's Remaining Efforts To Deflect Liability Are Misplaced.**

In its Opening Response, GCEDC and its hired witnesses argue that Groome's troubles were attributable to Groome's business practices and changes in the paper industry and not to the lack of rail service. In particular, they have focused on the bankruptcy of one of G&A's customers and on an alleged change in credit terms by one of G&A's suppliers. As Groome has explained in his Rebuttal Verified Statement, GCEDC and its witnesses have seriously misrepresented a number of crucial matters in an attempt to shore up their positions.

**1. GCEDC errs when it claims that ConPac was a major customer of G&A.**

In attempting to discredit G&A's testimony, GCEDC has repeatedly claimed in its Opening Statement and in the Verified Statements of William G. Stewart and Andrew J. White, Jr. that because ConPac allegedly accounted for 20% of G&A's sales, the ConPac bankruptcy had eliminated a major customer of the company. In particular, White made the wholly erroneous statement that:

According to BB&T's July, 2000, audit (a portion of which is attached as Attachment 17 hereto) CONPAC's account represented a total of 20.5% of Groome Associates' *entire* accounts receivable. Groome Associates thus not only lost \$264,679 when CONPAC declared bankruptcy, but also Groome Associates lost a customer that had accounted for *one-fifth of its total* customer base. This loss of a huge account payable, when combined with the loss of 20% of future sales, had to be devastating to Groome Associates.<sup>102</sup>

<sup>102</sup> V.S. White at ¶25. The contention is once again repeated in GCEDC's Opening Statement where, at page 45, the statement is made that: "One of G&A's major customers, CONPAC, filed for bankruptcy, leaving G&A with unpaid accounts receivable of \$264,697 and costing G&A a customer that accounted for approximately 20% of G&A's sales. *See also* V.S. Stewart at page 5.

These representations must be rejected as being insupportable. As Groome has explained in his Rebuttal Verified Statement:

Contrary to the erroneous claims advanced by GCEDC and its witnesses, G&A, during the past ten years, never had a single customer that accounted for more than 6% of its sales. As reflected by a study that was made in 1998, its top nine customers accounted for 30.2% of G&A's sales. See Attachment 5. Sales to the ninth largest customer totaled only \$200,000, which was 1.7% of sales. Sales to the sixth, seventh and eighth largest customers totaled 2.6% apiece. Hence, sales to ConPac could not have accounted for more than approximately 2% of sales. During the fiscal year ending July 31, 2001, when ConPac sought the protection of the bankruptcy laws, Groome had gross sales of \$5,359,606.75. Even if it were to be assumed that all of the sales to ConPac were made during that fiscal year, which was not the case, the entire bad debt of \$264,697 amounted to less than 5% of Groome's total sales during that fiscal year.<sup>103</sup>

And as Groome also explained, *id.* at ¶13:

It is true that ConPac entered bankruptcy owing G&A \$264,697, however, ConPac's bankruptcy did not have a devastating impact. Furthermore, its bankruptcy did *not* cost G&A a customer that accounted for 20% of its past or potential future sales. At most, ConPac would have accounted for less than five percent of G&A's sales. This was a matter of choice as I never wanted to be in a position where a single customer dominated G&A. Last, had rail service been restored at some point in 1999 or 2000, any impact that was felt from the ConPac bankruptcy would have been lessened to the point that G&A, as it had done before, would have weathered the storm.

To confirm his conclusions, Groome has also explained that:

The foregoing comment is supported by the financial results that are set out in the BB&T report of November 2002. As stated therein:

Groome's sales were down again for the FYE 7/31/02 but gross margins were almost 3x the level of the prior year. Sales appear to be improving as well; for the first 2 months of this fiscal year, Groome's sales are up 54% on an annualized basis.

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<sup>103</sup> Rebuttal V.S. Groome at ¶10.

Obviously, the loss of ConPac was not as devastating as Mr. White has suggested. The only thing that was devastating was the continued inability to receive product directly by rail at G&A's facility. That situation continued even after the general economy and market turned around, making it impossible for me to be able to respond to the marketplace.

The patent inaccuracies in GCEDC's hired witnesses testimony must be rejected. In addition, when viewing the credibility of White's testimony, the Board should constantly be aware that as the attorney for GCEDC in the case in South Carolina, Mr. White should be regarded as an extremely biased witness who has his own ax to grind in this case.

**2. GCEDC's testimony regarding Continental Papers is erroneous and highly misleading.**

Allegedly relying on comments in the Verified Statement of Andrew White, which are themselves inaccurate and misleading, Stewart has testified (V.S. Stewart at p. 7) that:

one of Groome's major paper suppliers (broker), Continental Papers, decided to no longer provide financing for Groome's purchases, requiring upfront cash payment. This would have created major problems for Groome on the supply side. As if to add insult to injury, at approximately the same time period, Groome lost one of its major buyers, Conpac. This would have created major problems for Groome on the demand side.

Stewart's testimony suffers from two fatal errors. As Groome has explained at ¶16 of his

**Rebuttal Verified Statement**

Once again, Stewart is dead wrong about ConPac being one of G&A's "major buyers." It was not. In addition, the ConPac bankruptcy occurred prior to July 31, 2001. The situation with Continental, which Stewart has erroneously characterized, did not occur until approximately two years later. Hence, there is no basis for the inaccurate and unfounded suggestion that the ConPac bankruptcy occurred "at approximately the same time period" that the much later situation with Continental. I must ask the Board to ignore entirely Stewart's plainly erroneous misinformation and speculative comments.

In responding to White's fallacious testimony regarding G&A's arrangements with Continental Paper, Groome has testified as follows:

I want to clarify that Continental did not require “Groome to pay completely current before shipping any more product” as Judge Few has erroneously reported and as White has repeated. *Id.* at p. 19, ¶ 15. Furthermore, the arrangement with Continental was not a “disaster,” nor did it devastate G&A and cause its shut down as White has claimed. *Id.* at 18.

The change in payment dates had very little to do with G&A. In 2003, Continental was experiencing cash flow problems of its own, which were caused by a customer declaring bankruptcy. As a result, its management made the decision to return the payment due date to 45 days (which had been the traditional time allowed us for payment) from an 80-day period (a period which had been agreed to because of slow rail deliveries). G&A was current with respect to what it owed Continental when Continental decided to alter the timeframe to increase its own cash flow. At no time did Continental change the credit terms, they simply asked us to “catch up” to 45 days, which we did.

The Board is also asked to note that after we lost direct rail service, we did not often have the product on hand when the original 45-day period ended, which is why the payment period was extended to 80 days. As a result, the loss of direct rail service was ultimately responsible for G&A not being able timely to factor this late-received inventory with the bank, which admittedly was a related problem.<sup>104</sup>

Plainly, had rail service been restored to G&A’s facility, the uncertainties associated with the lack of timely deliveries that propelled G&A to Continental in the first instance would have been avoided. Hence, the Board should reject GCEDC’s contrived attempt to avoid its liability by trying to place the blame on G&A and Groome.

**3. GCEDC has misconstrued Groome’s testimony regarding the recession resistant nature of G&A’s business.**

GCEDC and its witnesses have also grossly distorted Goome’s initial testimony regarding the recession resistant nature of G&S’s business. In the first place, Groome’s testimony will be searched in vain for any indication that the paper industry as a whole was not subject to extreme economic fluctuations. There is none. Indeed, Groome readily admits that

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<sup>104</sup> Rebuttal V.S. Groome at ¶¶17-19.

the paper industry is subject to economic fluctuations. As he has pointed out, “[e]ven if the refusal to provide rail service may not be the ‘sole’ reason for the inability to survive, the fact remains that G&A was able to survive numerous previous market upheavals. The only significant thing that is really different was the loss of rail service.”<sup>105</sup> Groome also explains that the loss of rail service “made it impracticable for me to make an informed business decision and ultimately exposed G&A to other problems that it would have otherwise weathered had it been aware from the outset that, over five years later, GCEDC would not yet have restored rail service.”<sup>106</sup>

In particular, Stewart’s testimony regarding the pharmaceutical and record industries is irrelevant and immaterial. Also, while he is correct that the paper industry went through a series of mergers during the late 1990’s, the fall out from those consolidations were not responsible for the collapse of G&A’s business. As Groome has explained:

In its Opening Statement, GCEDC and its witnesses have attacked the statement in my initial Verified Statement that “[b]ecause G&A catered to companies that were manufacturing and selling to companies that were using consumable food grade products, its market was for all intents and purposes recession resistant.” Although that statement, which applies to G&A’s customer base, has been greatly distorted by GCEDC and its witnesses, it remains true. G&A’s problem was never on the demand side as its customer’s average consumption remained constant to usage. Because of the nature of most of G&A’s customers, it was not dealing with large entities that would have been supplying the pharmaceutical industry. Nor would it have been supplying the record industry. As a result, Stewart’s testimony at page 3 of his Verified Statement is largely beside the point and not responsive to the niche industry in which G&A existed. Although the type of paper that G&A processed is used in the pharmaceutical industry, Groome did not court customers who were *major* suppliers of the pharmaceutical industry. Instead, G&A primarily focused on customers who would not have been hard hit by a recession, such

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<sup>105</sup> Rebuttal V.S. Groome at ¶4.

<sup>106</sup> *Id.*

as companies that were manufacturing and selling to companies that were using consumable food grade products in the fast food industry. Customers who relied on G&A included companies who used the paper they purchased from G&A to make greeting cards, French fry boxes, poster board for school children, Easter egg boxes, party hats, novelties, matchbook covers and the like, not the packagers of VIOXX and Claritin. By way of summary, 98% of G&A's customers were not involved with cosmetics or pharmaceutical packaging. Hence, while some of G&A's competitors who were involved in such industries may have been driven out of business because of their dependence on such industry giants, G&A's customer base was stable.

G&A's problems were on the supply side--a matter that is related to the inability to receive direct shipments by rail from its suppliers. In the first place, some of G&A's suppliers, for reasons that had nothing to do with G&A, were reluctant to ship to a third-party facility. Therefore, as a result of not being able to receive rail shipments directly at its facility, G&A missed orders due to slower inbound delivery. As a result, I was forced to increase G&A's inventory to offset the longer delivery times. In other words, the inventory addition was necessitated by loss of rail, not risk to cost. Rather ironically, the reluctance of some of the big suppliers to sell directly to G&A actually allowed G&A to lower its average cost of raw materials. This was accomplished through acquiring greater volume from Continental Paper which, by purchasing paper directly from the mills at a price that was lower than what was offered to G&A, could make a profit and still sell to G&A at a price that was lower than it would have paid the mill. The major drawbacks to this arrangement were the additional delivery time associated with indirect rail service and the need to acquire additional inventory in order not to miss orders.<sup>107</sup>

In summary, there is no evidence of record to indicate that the economic downturn in the economy would have caused G&A to suffer the financial hemorrhaging that commenced immediately after direct rail service to its facility ceased. Indeed, given G&A's past ability to weather economic downturns while continuing to expand its sales is a solid indication that the dramatic turn in G&A's financial situation must be attributed to the loss of direct rail service for which GCEDC must be held accountable.

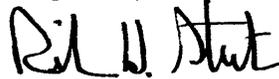
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<sup>107</sup> *Id.* at ¶¶21-22.

### Conclusion

For all of the above-stated reasons, the Board should hold that (i) GCEDC violated its statutory common-carrier obligations; (ii) GCEDC is liable for damages suffered by G&A from June 4, 1999 through the present date in the bare minimum amount of (a) \$285,243 for increased storage, handling and shipping costs directly resulting from its lack of rail service; (b) \$506,651.74 of additional mitigation expenses; (c) \$494,099 of lost profits; (d) \$781,301 of interim investments and (e) interest; (iii) GCEDC should be required to pay Complainants' attorney fees; and (iv) GCEDC should be required to forfeit its ownership of the Line in favor of G&A.

Respectfully submitted,



Richard H. Streeter  
John Will Ongman  
BARNES & THORNBURG LLP  
Attorneys for Complainants  
Lee K. Groome and  
Groome & Associates, Inc.

Dated: February 22, 2005

## LIST OF EXHIBITS

EXHIBIT TAB	DESCRIPTION
A	Verified Statement of Lee Groome
B	Verified Statement of Randy Mathena
C	Verified Statement of Bennie Ray Anderson
D	Resolution dated June 1, 1999
E	GCEDC's Verified Notice of Exemption
F	Deposition of Dozier Brooks dated November 19, 2003
G	GCEDC 0080, Bridge Replacement
H	GCEDC Answer to Interrogatory 2
I	Deposition of Scott Case dated October 28, 2003
J	Deposition of Joe Dill dated November 19, 2003
K	Deposition of Patricia Haskell-Robinson dated October 28, 2003
L	GCEDC 0044, GCEDC Board Meeting Minutes dated September 20, 2000
M	GCEDC 0001-0066, GCEDC Board Meeting Minutes dated July 21, 1999
N	Deposition of Peter Strub dated October 28, 2003
O	Letter to Lee Groome from P.C.J. Peter, Jr. dated March 22, 2001
P	Deposition of Gerald Seals dated December 22, 2003
Q	Complainant's Losses Incurred
R	Association of American Railroads Revised Business Services Division Circular TD-1 dated October 15, 1997
S	Surface Transportation Board Letter to Jason Elliot dated February 24, 2004
T	GCEDC 0061-0066, Board Meeting Minutes dated July 21, 1999
U	Letter to Alan Groome from Thomas E. Davis dated May 15, 2001

- V Email from Christy Hall to Daniel Hinton regarding Woodruff Rd Rail Corridor dated June 3, 2004
- W GreenvilleOnline.com Article dated February 9, 2005
- X Rebuttal Verified Statement of Lee K. Groome
- Y Rebuttal Verified Statement of Randy Mathena
- Z Rebuttal Verified Statement of Bennie Ray Anderson, Sr.
- AA DVD reflecting G&A operations

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ASSOCIATION  
OF AMERICAN  
RAILROADS

John J. Carroll  
Sr. Ass. Vice President-Business Services

REVISED BUSINESS SERVICES DIVISION CIRCULAR TD-1

ASSOCIATION OF AMERICAN RAILROADS  
Business Services Division  
Effective October 15, 1997

TO: TRANSPORTATION OFFICERS, ALL RAILROADS

The following instructions shall govern the placing and handling of embargoes:

I. DEFINITIONS

- A. An embargo is a method of controlling traffic movements when in the judgement of the serving railroad accumulations, threatened congestion or other interferences with operation, of a temporary nature, warrant restrictions against such movements.
- B. For the purpose of this Circular, "traffic" is defined as loaded and empty freight cars, trailers and/or containers. This shall include carrier and privately owned or leased freight cars, trailers and/or containers. This shall not include empty cars, trailers and containers returning home or to their assigned loading point in accordance with Car Service or Trailer and Container Service Rules, empty private cars returning to their previous loading point, or any empty movements directed by specific orders of the Business Services Division.

\*II. PROHIBITIONS

- A. It is prohibited to issue embargoes:
  - 1. As a permanent measure to control traffic.
  - 2. At the request of a consignee.
  - 3. To control the routing of traffic to or via any particular gateway or railroad.

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4. Against acceptance of traffic on specified days.
  5. Limiting the amount of traffic to be accepted daily or periodically.
  6. Against traffic consigned to the United States Government, its authorized agents or officers, except when physical disability prevents movement of such traffic.
  7. Against a consignor or consignee for failure to pay freight charges and/or demurrage.
- B. It shall not be permissible to maintain an embargo against:
1. Traffic for railroads or parts thereof, or stations, which have been authorized to be abandoned, except as a temporary measure, to be kept in effect only until tariff revision can be accomplished.
  2. Movements of traffic because of weather conditions except to cover a period not practicable to include in tariffs.
  3. Acceptance of traffic by reason of weight or clearance limitations, except as a temporary measure, pending publication of restrictions in the Railway Line Clearances.

### III. PROCEDURE

When necessary to restrict traffic movements, for periods in excess of 24 hours, an embargo must be used. It will be the responsibility of a railroad to place its own embargo rather than wait for such action by its connections, when such connections are offering traffic in excess of ability of the receiving railroad to accept. An embargo placed against an individual consignee is applicable to traffic consigned, reconsigned or intended, as well as traffic billed "shippers order," for that consignee.

- A. Carriers placing, amending or canceling an embargo must notify the Business Services Division of the AAR by electronic message, FAX or telephone. Telephone notifications must be confirmed by letter FAX or electronic message. The Business Services Division will transmit via electronic message, FAX or TRAIN II message notices of embargoes placed, amended or canceled, to each AAR full members railroad's designated embargo officer named in the Official Railway Equipment Register, to the Surface Transportation Board and the American Short Line Railroad Association. The AAR will provide an electronic subscription service for daily embargoes to other interested parties upon request. Parties may also obtain daily embargo information through Western Union's FYI service.

- B. Each railroad shall designate an officer to issue and receive embargoes, whose name, title and address must be published in The Official Railway Equipment Register. Each railroad shall maintain a file of applicable embargoes for the information of the public.
- \*C. Embargoes against a consignee shall be placed by the railroad performing the switching service or by a connecting roadhaul carrier for traffic it delivers to the switching carrier for that consignee. If served by more than one road, a consignee may be embargoed by each such road or, upon request of railroads involved, a Business Services Division embargo will be issued by the Business Services Division.
- \*D. If in the judgement of the Business Services Division an emergency exists, it may issue an embargo without a prior request by the serving or switching carrier(s) involved.
- \*E. The Business Services Division will issue a Business Services Division embargo (a) at the request of the Surface Transportation Board, or (b) for the same situation, upon request of two or more railroads, to apply to traffic for movement over the requesting railroads.
- F. Each railroad will number embargoes it originates, consecutively, beginning with number "1" on January 1 of each year. The originating road's file numbers or prefixes will be omitted.

Consecutive embargo numbers shall be followed by the last two digits of the year in which issued, thus the first embargo for 1995 would be numbered 1-95, the second 2-95, etc. Following is an example of recommended form for use in placing embargoes or supplements thereto:

Embargoed Road Number and Effective Date	Commodity	Destination or Territory	Consignee	Exception	Cause
East & West Rwy. Embargo No. 5-95 October 15, 1995	Carload Freight	Chicago, Illinois	North & South Mfg. Company	None	Accu- mula- tion

- G. Embargoes will remain in effect until canceled but, unless canceled, will automatically expire one year after effective date of issuance. No expiration date shall be stated in the embargo. (See VIII. Reissuance)
- H. An embargo shall list in alphabetical order the stations not able to handle the traffic.

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IV. EFFECTIVE DATE

The body of the embargo shall state specific date, not earlier than date wired or telephoned to the Business Services Division, on which the embargo is to become effective. All embargoes become effective at 11:59 PM of the date specified and no traffic will be accepted for movement except as specified in Paragraph IV-A.

- A. An origin road will accept loaded cars, trailers and/or containers for movement to embargoed destinations not to exceed 48 hours after the effective date of the embargo and then only for traffic loaded or in the process of loading prior to the effective date of the embargo. Empty cars, trailers and/or containers enroute to shippers' loading facilities do not qualify as being in the process of loading.
- B. The embargoing road will accept traffic from connections which was originated in accordance with the provisions of Paragraph IV-A.
- C. An embargo may include a cut-off date, as a guide to origin roads and shippers, which is the anticipated time traffic can no longer be accepted by the embargoing road. The effective date referred to in Paragraph IV-A is the governing date and should be adjusted by the issuing carrier to meet its required cut-off date.

V. AMENDMENTS AND CANCELLATIONS

Amendments or parts thereof reducing restriction and embargo cancellations become effective immediately on submission to the Business Services Division, unless otherwise specified therein. Amendments or parts thereof increasing restrictions will have an effective date and will be subject to Section IV-A of this Circular.

- A. When an embargo is amended, the portions of the original restrictions remaining in effect shall be considered continuous in application. Amendments shall be consecutively numbered and in each case shall state the reason for the change.
- B. Railroads will cancel embargoes immediately upon removal of cause for which embargo was issued.

VI. PERMITS

An embargo may contain provision for a permit system to provide controlled movement of traffic. Where a permit system is used, the embargo will contain the name and address of the person responsible for the issuance of permits. A permit system shall be established in such a way as to protect the shipping public against unjust discrimination and undue prejudice, and should be limited to:

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- A. The acceptance of traffic for export or water movement to meet a definite vessel commitment.
- B. Such other emergency situations where there is public necessity for special transportation relief.

NOTE: Each road must maintain a record of all permits issued and upon request of the Business Services Division, copies shall be sent promptly with information indicating reasons for the issuance of such permits.

VII. WATER CARRIERS

Water carriers listed in Appendix "A" of Business Services Division Circular TD-1 printed in the current issue of The Official Railway Equipment Register, have agreed to transmit embargoes, amendments or cancellations thereof, issued by them to the Business Services Division and to connecting rail carriers. In turn, the Business Services Division shall transmit embargo notices to the water carriers. Water carrier embargo notices transmitted to the Business Services Division shall be issued in the name of the originating water carrier. Embargoes issued by such water carriers will be observed by the railroads in the same manner as those issued by railroads. In the event of failure of the water carrier to receive traffic currently, and to issue formal embargo notice, it shall be incumbent on connecting rail carriers to issue individual embargoes covering the traffic involved, in the same manner as against individual receivers.

VIII. REISSUANCE

Each embargo will automatically expire one year after the effective date of issuance unless request is made to the Business Services Division for reissuance. Reissuance request must include a new number in accordance with Paragraph III-F, and a statement that it does not violate the provisions of Section II.

Yours very truly,



J. J. Carroll  
Sr. Asst. Vice President-Business Services

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NOTE:

1. Changes in Appendix "A" listing water carriers, are made regularly and may be found in current issues of The Official Railway Equipment Register.
2. *Whenever possible embargoes should be received by 3:30 P.M. (Eastern Time) to assure issuance by AAR that business day. During weekends or holidays, railroads can issue an embargo using the process outlined in Circular OT-10 SPECIAL REPORTING PROCEDURES for Circulars TD-1 and TD-2.*

\* The provisions of this circular marked with an asterisk (\*) do not apply to trailers and/or containers.

*(Bold Italic)* denotes additions





**Surface Transportation Board**  
**Washington, D.C. 20423-0001**

February 24, 2004

*Office of Compliance and Enforcement*

1925 K Street, N.W., Suite 780  
Washington, DC 20423-0001

Mr. Jason Elliott  
Law Offices of John S. Simmons, L.L.C.  
1711 Pickens Street  
Post Office Box Five  
Columbia, South Carolina 29202

Re: Areas of inquiry involving: (1) the effectiveness of railroad embargoes with respect to the issuing entity and any notice requirements, and the duration of such embargoes. (2) the status of Greenville County Economic Development Corporation's obligation as a rail common carrier, and future enforcement actions by this office based on the Board's recent dismissal of Greenville County's petition to discontinue service on its rail line.

Dear Mr. Elliott:

This responds to your February 9<sup>th</sup> letter to me seeking guidance on the above questions involving the Greenville County Economic Development Corporation (GCEDC).

First, regarding railroad embargoes, let me try and explain the embargo process in terms of their placement and effective period, and whether a particular embargo (e.g. embargo CPDR 1-97 effective December 4, 1997 involving the rail line serving Travelers Rest) which was placed by the Carolina Piedmont Division of the South Carolina Central Railroad Company, the carrier from whom the GCEDC purchased the unabandoned rail line serving Travelers Rest (see STB Finance Docket No. 33752 served June 3, 1999), remains in effect today. Embargoes are issued by railroads through the Association of American Railroads (AAR), which are signatories to the AAR's Car Service and Car Hire Agreement (Agreement). Once a railroad notifies the AAR of an embargo, the AAR circularizes the embargo to all signatories of the Agreement, giving the rail industry effective notice of the out-of-service condition. In addition, while the AAR gives notice to the STB of embargoes issued on behalf of the rail industry, STB approval of the issuance of embargoes is not required. Under the terms of the AAR's rules (Circular TD-1), an embargo can remain in effect for 1-year unless, upon expiration, the embargo is extended by the issuing railroad for an additional 1-year period. The embargo noted above (CPDR 1-97 issued 12/4/97 copy enclosed) expired on 12/4/98 and was not extended by the issuing railroad. Therefore, the embargo was no longer in effect when GCEDC purchased the CPDR line in June of 1999, and could not have been extended by GCEDC because they never became a railroad or a signatory to the requisite Agreement, and thus lacked a basis upon which to issue any railroad embargo. With respect to GCEDC's claimed embargo, their actions could be the subject of a formal complaint to the Board challenging the reasonableness of those actions as an unlawful abandonment and possibly seeking damages.

Letter to Jason Elliott, Page 2.

Second, you have asked about this office's position with respect to GCEDC's continuing common carrier obligation under 49 U.S.C. 11101. As I expressed to GCEDC in previous correspondence regarding their failure to initiate service on the unabandoned rail line they purchased, with that purchase they acquired a common carrier obligation to operate the line and have been in violation of that obligation since the acquisition. Based on my earlier actions, GCEDC sought to extinguish their obligation through a notice of exemption to the Board seeking to discontinue the service obligation which they never initiated (see STB Docket No. AB 490X). The Board's decisions in that proceeding stayed the effectiveness of the notice and subsequently dismissed their notice on complaint. Therefore, it is my position that it is incumbent upon this office to continue to seek compliance by GCEDC with their common carrier obligation, which remains in place, and I intend to do that.

I appreciate the opportunity to be of assistance and I hope this information is helpful.

Sincerely,



Melvin F. Clemens, Jr.  
Director

Enclosure

To: Connie F. Greer at UP  
 To: Dick A. Hillestad at UP  
 To: Rob Laseter at UP  
 To: Charles T. Schramm at UP

ASSOCIATION OF AMERICAN RAILROADS  
 EMBARGO NOTICES FOR December 4, 1997  
 CONSECUTIVE SHEET 243

Number & Issuing Agency	Commodity	Destination Gateway or Territory	Consigned or Reconsigned To or Intended For
CPDR Carolina Piedmont Division, South Carolina Central RR Emb. No.1-97 EFFECTIVE 12-4-97	All traffic	To, from or via the following stations located on the GRN Sub- division (former Greenville & Northern Railway) located in the state of South Carolina:	Berea Fentress Montague North Greenville Travelers Rest

CAUSE: Damage to bridges.

EXCEPTION: None.

BNSF Burlington Northern Santa Fe Rwy. Co. Emb. No.25-97 CANCELLED 12-4-97	All traffic	CANCELLATION Destined Brownsville, TX.	NOTE: Original Emb. on Consecutive Sheet #222, 10-29-97.
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BNSF Burlington Northern Santa Fe Rwy. Co. Emb. No.26-97 CANCELLED 12-4-97	All traffic	CANCELLATION Routed from BNSF to TM at Corpus Christi, TX and Flatonia, TX destined to Laredo, TX.	NOTE: Last shown on Consecutive Sheet #230, 11-13-97
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J. J. Carroll

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**Greenville County Economic Development Corporation (GCEDC)**  
**Board of Directors Meeting**  
**Minutes**  
**July 21, 1999 - 3:00 p.m.**

Board of Directors Present: Peter Strub  
Patricia Haskell-Robinson  
Dozier Brooks  
Stephen Selby

Board of Directors Absent: Paul B. Wickensimer

President: Gerald Seals

Legal Counsel: Wesley Crum

- Board of Directors reviewed the draft encroachment application. Final application document will be submitted at a later date for approval.
- Board of Directors reviewed and approved the GCEDC Rail Corridor Preservation Policy with corrections suggested.

7/15/91

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**  
**Rail Corridor Preservation Policy**

The preservation of rail corridors through the acquisition of strategic corridors by Greenville County Economic Development Corporation ("GCEDC") is in the public interest for the people of Greenville County and is an integral and necessary part of a balanced transportation system.

**I. Background**

GCEDC is charged with preserving transportation corridors. Preservation of railroad corridors for future freight and passenger transportation requires that the integrity of the rights of way be maintained. Therefore, GCEDC must develop a systematic approach to supervise and manage the public's interest in maintaining the corridor as suitable for the purpose of active rail or cooperative transportation.

**II. Corporate Statement**

GCEDC shall have the responsibility to the public to maintain rights of way in the rail corridor in such a manner as to allow for transportation use. GCEDC shall own the land encompassing the rail corridor. GCEDC must not become active in the operation of the railroad itself.

If an operator is under contract to operate a designated segment of the corridor, such operator shall be solely responsible for developing a rail corridor maintenance and management plan.

Where an operator has not been engaged, GCEDC shall develop a rail corridor maintenance and management plan. This plan shall include and address, but is not limited to, the following areas: interim rail line uses and changes (if applicable); annual budget for maintenance, enhancements, signs, etc.; land development and/ or revitalization along the line, potentially including commercial, industrial, and residential development; buffers between the right of ways and residential, commercial, and industrial areas; public safety, whether by foot, bicycle, motoring, etc.; encroachment and utility matters; hazardous materials disposal, dumping, and litter control along the corridor lines.

**III. Encroachments**

***Removal***

In instances of an unauthorized encroachment where an agreement cannot be reached with a property owner, GCEDC shall initiate any and all steps necessary to remove the encroachment. GCEDC may assist in the removal if necessary and appropriate. Any expense incurred by GCEDC throughout the removal process shall be the sole

responsibility of the party encroaching on the right of way. GCEDC may take legal action for the purpose of recovering appropriate removal costs and expenses.

At such time as the rail corridor may be returned to active transportation use, any existing encroachments interfering with the intended use of the rail corridor shall be removed, relocated, or adjusted. GCEDC shall require the removal or adjustment of any interfering encroachment upon GCEDC giving written notice for a minimum term of not less than one-hundred twenty (120) business days.

#### *Reimbursable Costs*

The encroachment agreement applicant shall be exclusively responsible to GCEDC for any unusual costs or expenses incurred by GCEDC in reaching an encroachment agreement. Such expenses and costs may include, but are not limited to, expenses and costs associated with a survey, rent study, appraisal actual costs, and all administrative costs.

Performance and indemnity bonds may be required from the applicant of an encroachment agreement or the applicant's contractor before construction may begin on the railroad corridor right of way. When requiring a performance and indemnity bond, GCEDC shall at all times follow the existing bond requirement guidelines maintained by the South Carolina Department of Highways and Public Transportation ("SCDOT") in SCDOT's Access and Roadside Management Standards.

#### **IV. Uses of the Rail Corridor**

##### *Private Use*

Upon entering into a suitable agreement with GCEDC, a property owner adjacent to the preserved rail corridor shall be permitted to use and maintain the corridor to the centerline of the right of way for private, non-commercial use until such time as GCEDC notifies such property owner that the corridor shall be returned to cooperative transportation use. Other than the standard application amount and amounts necessary to restore the right of way or rail line to its initial condition, reimbursement costs shall not be required. If the track remains in place, the adjacent property owner may use and maintain GCEDC's right of way up to a point not to exceed fifteen (15) feet from the centerline of the track until such time as the rail corridor is returned to active rail or cooperative transportation use.

##### *Existing Nonconforming Use*

###### **a. Assignments**

Historically, the railroads have allowed the use of the railroads' property for private and commercial use. Commercial use of the rail corridor property shall be handled by GCEDC in a professional and business like manner using appropriate rental or lease

agreements. No use will be permitted which interferes with the use of any portion of the corridor as an active railroad within the meaning of the Federal Surface Transportation Board.

**b. Agreements**

The general policy of GCEDC shall be that real property owned by GCEDC, as with any other County agency, may not be sold, leased, or otherwise rented at a rate less than the fair market value to any private entity that operates, or is established to operate, for profit. Therefore, if GCEDC's property is used for commercial ventures of any kind, an agreement based on current fair market value must be executed. Provided, a minimum yearly rate of \$100.00 shall be charged for any commercial encroachment. Rates shall be based on comparable industry standards and land values in the areas adjoining the rail corridors. Any and all funds collected by GCEDC shall be earmarked for corridor management and maintenance. All agreements shall be cancelable if the use becomes incompatible with the use of the rail line for railroad purposes.

GCEDC shall periodically review and assess its existing commercial agreements. As a result of such review, GCEDC may accordingly adjust the rates and terms of the commercial agreements based on a full consideration of fair market value.

**V. Other Uses**

As the owner of the property encompassing the railroad corridor, GCEDC shall attempt to accommodate the recreational use of its property in addition to the railroad corridor's primary use for transportation purposes. To foster the potential recreational uses of the railroad corridor, GCEDC shall explore the possibility of installing a multi-purpose trail in conjunction with the rail corridors. Any and all uses of the railroad corridor must be safe to all users. GCEDC shall make reasonable attempts to utilize vacant space alongside the railroad. Such vacant spaces shall be separated by either significant and substantial grading, fencing, or pr vegetative screening. GCEDC shall fully explore the possible dual use of the rail corridor through the assistance and participation of the citizens of Greenville County.

**VI. Adjacent Property Development**

GCEDC will coordinate with local planning agencies to encourage land development which shall be harmonious with the development of the preserved rail corridors and future transit options. Provided the requests of the adjoining land owners shall not interfere with the development of the transit options.

**VII. Crossings**

The safety of the traveling public, whether by foot, bike, motor vehicle, or transit use, is of the utmost importance. If an operator is under contract to operate a designated segment of the corridor, such operator shall be solely responsible for making any and all decisions regarding crossings.

Where an operator has not been engaged, GCEDC shall make relevant decisions regarding crossings. GCEDC shall make every reasonable effort not to land lock property owners. GCEDC shall not be responsible for the safety or design of requested crossings or travelways. GCEDC shall discourage new at-grade street and driveway crossings for rail corridors owned by GCEDC. GCEDC shall request that local government entities along these rail corridors discourage new crossings in adopted plans, zoning changes, site plan approvals, and building construction approvals. GCEDC shall encourage the consolidation and closure of crossings where practicable.

GCEDC shall employ the expertise of County Engineer to be responsible for limited at-grade crossings when issuing driveway permits and installing driveway pipes and related fixtures that access property along preserved rail corridors. Driveways along preserved rail corridors shall not be installed or initiated without the prior written approval of GCEDC and County Engineer.

#### **VIII. Federal Enhancement Corridors**

Rail corridors that are purchased with Federal funds must follow Federal guidelines for right of way disposition. Applicants for agreements shall be exclusively responsible for any and all administrative, appraisal, and any Federal enhancement fees associated with the review of potential new at-grade crossings, leases, licenses, or utility encroachments of rail corridors owned by GCEDC. GCEDC shall establish appropriate requirements and procedures for the review and recommendation of new crossing applications.

#### **IX. Clearing the Railroad Right of Way....**

Unauthorized use, littering, clearing or cleaning of the rail corridor right of way shall be strictly prohibited.

If an operator is under contract to operate a designated section of the corridor, such operator shall be solely responsible for clearing and maintaining the railroad right of way.

If an operator has not been engaged to operate a designated section of the corridor, the responsibility for the maintenance of the corridor shall remain with GCEDC.

#### **X. Removal of Materials**

Removal of railroad ballast or other track materials shall not be permitted without written authorization from GCEDC. Theft of railroad materials shall be prosecuted to the fullest extent of the law. All material removed from the corridor without written authorization shall be either replaced promptly or compensation paid based on the current market value of the material.

**XI. Hazardous Material**

If an operator is under contract to operate a designated section of the corridor, such operator shall be solely responsible for any and all hazardous materials stored or transported on the corridor.

If an operator has not been engaged to operate a designated section of the corridor, GCEDC shall adopt appropriate policies relating to hazardous materials. Disposal of hazardous material on the corridor is strictly prohibited. The storing or transportation of hazardous material on a right of way shall be permitted only in such instances as are in compliance with the permits, rules, and regulations of the South Carolina Department of Health and Environmental Control ("SCDHEC") and the South Carolina Department of Transportation..

Should a spill occur, the applicant shall be responsible for the cleanup of any hazardous material to the satisfaction of SCDHEC or the Federal Surface Transportation Board. The responsible party shall hold GCEDC, SCDHEC and the Federal Surface Transportation Board harmless from all costs, fees, fines, or assessments incurred or imposed as a result of the spill.

**XII Dumping**

Dumping shall be strictly prohibited on the rail corridor. Any individuals or other parties discovered dumping on the right of way shall be prosecuted to the fullest extent of the law. The party responsible for unauthorized dumping of materials shall be fully liable for the resulting cleanup. Any and all costs associated with the cleanup shall be the exclusive responsibility of the responsible party.

Adopted, this 21<sup>st</sup> day of July, 1999.

  
Patricia Haskell-Robinson - Secretary

ATTEST:

\_\_\_\_\_  
Gerald Seals, President  
Greenville County Economic Development Corporation



TJR



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May 15, 2001

Alan Groome  
Groome And Associates  
PO Box 729  
Travelers Rest, SC 29690

Dear Alan:

I wanted to drop you a quick note to confirm our conversation of the other day concerning the railroad that serves both our plants. Or should I say no longer serves. In our discussion you asked if we would use the railroad if it were to return to service. The answer is, yes we would. We still ship steel turnings from that location and it has to be moved by truck now. The railroad would be the best way to move this material and we would utilize the service if it were to return.

Please feel free to call me if you have any other questions.

Sincerely,

Thomas E. Davis  
VP Operations, Environmental and Safety

003562



**Hall, Christy A**

**From:** Hall, Christy A  
**Sent:** Thursday, June 03, 2004 3:21 PM  
**To:** Hinton, Daniel - FHWA  
**Subject:** RE: Woodruff Rd Rail corridor - GPATS

Thanks Dan. I'm going to float the idea by our management and see what happens.

Christy

-----Original Message-----

**From:** Hinton, Daniel [mailto:Daniel.Hinton@fhwa.dot.gov]  
**Sent:** Thursday, June 03, 2004 1:47 PM  
**To:** Hall, Christy A  
**Subject:** RE: Woodruff Rd Rail corridor - GPATS

I don't see a problem with an agreement. I agree that we shouldn't just cut a check to the county, they would get the money whenever they have a project. I think the 5 year limit is okay, however the county could still come back to GPATS at a later date and request funding.

-----Original Message-----

**From:** Hall, Christy A [mailto:HallCA@dot.state.sc.us]  
**Sent:** Thursday, June 03, 2004 12:52 PM  
**To:** Hinton, Daniel  
**Subject:** Woodruff Rd Rail corridor - GPATS

Dan,

On the upcoming Woodruff Rd project, there is an old rail line that has been bought by the County. The County claims that they may put the line or use the line for some other reason in the future, but for now, the line is inactive. As part of our Woodruff rd widening project, we were planning to construct some new abutments as part of the road widening project suitable for the county to just set their rail on top of when and if they choose to put the rail back in service. That was all that we were planning to do for the old rail line.

Recently, the County complained that GRATS had made a commitment towards funding the rail replacement. After some digging, I found some old GRATS meeting minutes from the year 2000 where the GRATS approved holding in "reserve" \$ 1.3 +/- Million to pay for the rail replacement when the County needed it.

I am trying to work thru the issue and was wondering what FHWA's take is on this scenario: SCDOT, GPATS and the County enter into a three party agreement whereas GPATS agrees to contribute \$ 1.3 M towards the rail replacement when the County actually moves forward with placing the rail back in service. This agreement should stipulate that the offer sunsets after a few years (say 5). I don't think we should just cut a check to the county for \$1.3 Million, because I am not sure they will ever place the line back in service. If they do put the rail back in service over the next 5 years, then the Woodruff Rd project would have a \$ 1.3 Million hit to it's budget. Do you think this idea of a three party agreement is feasible?

Thanks,

Christy A. Hall, P.E.  
Program Manager  
Upstate Metropolitan Areas

Summary By R. GREEN

### Railroad Crossing Over SC146 (Woodruff Road)

Greenville County Economic Development Corporation is the owner of the track.

May 5, 2000: A meeting is held with SCDOT Program Management to determine disposition of the bridge during the widening of SC146. GCEDC does not have a firm plan for the future use and presently has no funds to upgrade the bridge. The decision was made to construct abutments (end bents, pile caps, MSE walls) only as part of the road widening project.

Partial list of attendees; Dozier Brooks, Steve Selby, Peter Strub, Dan Chism, Kevin Ulmer, Randy Green, Joan Peters

- \* May 15, 2000: GRATS Policy Coordinating Committee discusses disposition of railroad crossing. GCEDC (as represented by D. Brooks) asked that only the abutments be constructed as part of the road widening project and that \$1,324,340 be put aside in GRATS trust until at such future time a decision be made regarding the future use of the rail line. GRATS passes a motion to do so.

General:

SCDOT inspects bridge every two years to verify horizontal and vertical clearances. A search is currently being conducted to determine if there are any outstanding agreements with GCEDC. An inquiry has been made to District 3 to determine if any inspections have been made. That information will be forwarded when it becomes available.

1 of 2

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ICAR needs more cash for roads

Posted Wednesday, February 9, 2005 - 7:56 pm

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By Rudolph Bell
BUSINESS WRITER
dbell@greenvillenews.com

The city of Greenville wants the federal government to pay for more roads at the International Center for Automotive Research now that it has almost depleted \$12 million it got from the state government for that purpose.

City officials originally planned to build three roads at ICAR with the \$12 million, but now say that unexpected costs forced them to use almost all of the money on the first two roads.

They have asked U.S. Rep. Bob Inglis of Greenville to try and secure \$8 million in federal money to build more roads at ICAR, a research park that Clemson University is developing along Interstate 85 in Greenville near the intersection with Laurens Road.

The city would also use the money to improve nearby Fairforest Way, where developers plan a global trade center. The city promises to chip in \$2 million of its own if Inglis can secure the federal funding.

Thousands of people could eventually work at ICAR, but initial employment is expected to be in the hundreds. The first jobs will come from a Clemson graduate school of automotive engineering and a BMW information technology research center. State officials have allocated money for both of those buildings, and the BMW research center is already under construction.

Inglis said the city's request for road money is part of a wish list of road improvements he's collected from around his 4th District, which includes Greenville, Spartanburg and Union counties and the northern tip of Laurens County.

Many of the items won't get funded, but the ICAR project is an "easier sell to Congress" because the world-class research planned there aligns "the local interest with the national

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interest," Inglis said.

Inglis, on his second go-around as 4th District congressman, has been criticized in the past for not supporting federal funding for local projects. More recently, he's promised to bring home money from Washington if it's "consonant with the national interest."

Inglis said Congress may have more interest in funding roads at ICAR because of the research park's proximity to I-85, a federal highway.

The Greenville Republican also said his new job as chairman of the Research Subcommittee of the Science Committee puts him in a good position to help ICAR. From that position, he said, "We will be able to oversee national research policy and help authorize funding for those areas critical to Upstate development."

Clemson's long-term plans for ICAR include a wind tunnel and laboratories to study electronics systems, safety/crashworthiness, fuel economy and alternative fuels. The university hopes the research will attract more corporate facilities as has happened at university research parks in other states.

City officials said ICAR needs new roads to connect to two main thoroughfares already built in the research park: the four-lane, tree-lined Millennium Boulevard and the two-lane Innovation Drive. The city oversaw their construction.

"The ICAR project is probably the single most important economic development effort that we have going," said Jim Bourey, city manager.

"It could result in 20,000 jobs for the entire region, and we think it's critical that the city and other entities do their part to support it. In order for that to go forward, we're going to need significant infrastructure, especially roads."

Bob Geolas, ICAR director, said Millennium Boulevard and Innovation Drive provide access to the graduate school and the research center, but that Clemson will need other roads to develop more of its 250-acre research campus.

"What we need to start thinking about is the other sites and how we make them available," Geolas said. He said Clemson does not have money to build roads at ICAR. The research park will also need parking garages, Geolas said.

ICAR is not the only development that could benefit from the road building. It could also help Millenium Campus, a private development on five properties that nearly surround the ICAR site.

One of the Millennium properties, a 150-acre office park contiguous to the 250-acre ICAR campus, has recruited a corporate tenant, Hubbell Lighting. Hubbell, a manufacturer of lighting equipment, plans to put its corporate headquarters in the office park.

The Millennium Campus is being developed by Rosen Associates Development Inc. That company said in a statement that it didn't participate in the city's request for federal road money but supports it.

Phil Lindsay, city engineer, said the city spent more than originally planned on the first two roads in ICAR partly because it didn't anticipate having to pay for right of way and signaling equipment to build two railroad crossings.

Of about \$700,000 spent on the railroad crossings, \$150,000 for right of way went to a Greenville County-controlled corporation that owns tracks at the site, he said.

The city also decided to build four bridges, instead of pipe culverts, so as not to disturb wetlands and trigger a cumbersome federal regulatory process, Lindsay said. He said the city should have about \$500,000 of the original \$12 million in state road money left when finishing touches to Millennium Boulevard and Innovation Drive are complete.

Max Metcalf of Greenville, a member of the board of the State Infrastructure Bank, which allocated the \$12 million in 2002, said costs for road and bridge projects the bank funds sometimes rise over original estimates.

"Over time, we recognize the cost of the project can go up due to various factors," Metcalf said.

The \$8 million sought from the federal government and the \$2 million match from the city would also be used to improve Fairforest Way, whose intersection with Laurens Road is directly across from ICAR's main entrance.

The city, in an application for road money sent to Inglis, said it wants to "dramatically upgrade the appearance and function of Fairforest Way, effectively creating a new business park to complement the ICAR development."

The city said Fairforest Way has "great potential for growth" since it provides access to "hundreds of acres of well-located, developable land."

Among the facilities already located on Fairforest Way are a Duke Power operations center, the Bayne Machine Works factory and a U.S. Post Office. Coming soon is a global trade center designed to help Chinese companies penetrate the U.S. market.

Greenville developers Vivian Wong and Peter Kwan are planning the trade center in the former Carolina Circuits factory. Their Pacific Gateway Capital Group is investing \$6 million in the project. In addition, they are working with officials in Tianjin, China, who have agreed to invest another \$2 million.

Wong said Fairforest Way is an "awful, awful road" that needs improvement. "I think I can get the whole community, this Fairforest Way community, to support that," she said.

The city said in its application that it has spent more than \$100,000 to maintain Fairforest Way over the past five years.



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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Docket No. 42087

GROOME & ASSOCIATES, INC. AND LEE K. GROOME  
v.  
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

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**REBUTTAL VERIFIED STATEMENT OF LEE K. GROOME**

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1. My name is Lee K. Groome. I am the President, founder and majority shareholder of Groome & Associates, Inc. ("G&A"). I previously provided a Verified Statement and hereby confirm my earlier testimony. The purpose of this Rebuttal Statement is to clarify comments in my initial Verified Statement and to respond to certain allegations raised by GCEDC in response to my earlier statement.

2. As I previously testified, beginning immediately after rail service was discontinued to its facility in Greenville, South Carolina, G&A began to incur substantial losses that ultimately caused it to discontinue operations on July 2003. Although I could not have anticipated the totality of the adverse financial impact that the loss of rail would have on G&A, the loss of rail service unquestionably was the primary factor that caused the ultimate demise of G&A in July 2003. I agree that the paper industry is not a business for the faint of heart. Based on my own 35 years of experience in the paper industry, I am well aware of the volatility of that industry and made my business decisions through the years with full awareness of that volatility. However, had it not been for the loss of rail service, G&A would not have failed.

3. By 1997, G&A was an established business with a solid record of financial success. At no time in its history did G&A fail to realize a gross profit from its sales transactions. Most

importantly, we were able to maintain sales and profits during previous down cycles in the paper industry. As reflected by its financial history, G&A's sales had steadily grown to over \$11.5 million of gross sales shortly before rail service was lost. In addition, it had a five-year average profit of \$62,007 per annum for the five fiscal years ending July 31, 1997. During that time, my compensation averaged over \$200,000 per year.

4. What I did not anticipate when GCEDC acquired the line in 1999 and failed to restore rail service was the tremendous, lingering impact that its failure to restore rail service would have on G&A. The immediate and continuing impact of the loss of rail service is reflected in Table 1 to this statement. In the first full fiscal year following SCCR's embargo and eventual cessation of rail service in February 1998, G&A's sales fell 42.5% and never recovered. The financial loss was not limited to the additional costs associated with increased storage, handling and shipping costs, which amounted to \$285,243 for the period subsequent to GCEDC's acquisition of the line.<sup>1</sup> In addition, G&A suffered continuing lost profits that are attributed to the fact that the large paper mills are reluctant to sell to companies such as G&A that lack direct rail service and cannot guarantee that paper will not be diverted and sold in competition with the supplier's paper. Once word in the industry spread that G&A no longer had direct rail service, we were "out of play" for some previous suppliers. Because I had to transload shipments after February 1998, several suppliers stated they were not comfortable with drop shipments on a different rail line and a location than where G&A was located. As a result, whereas we had previously been able to purchase product from these suppliers, they suddenly were not willing to deal with G&A, even though G&A was in good shape financially at the time. It was this factor, and not the consolidation of the industry, that adversely impacted G&A's sales. Simply stated, the market

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<sup>1</sup> The actual losses associated with the effort to mitigate losses by transloading at other facilities totaled at least \$457,000.

was there for our services and products. However, because I could not obtain needed inventory due to the inability to receive rail shipments at G&A's facility, our sales suffered.

5. As of late December 1998, both I and G&A were financially sound enough that G&A could have survived had GCEDC taken reasonable steps to restore service following its acquisition of the line in June 1999. As acknowledged in the December 11, 1998 memorandum prepared by Edward P. West Jr., of BB&T, "Lee has little or no debt and about \$700 thousand in liquidity." Attachment 1 hereto. That situation changed over the next five years because GCEDC refused to make the minimal repairs needed to restore rail service. As a result of believing that GCEDC would honor the common carrier obligation by restoring service within a reasonable period, I did not realize that, in order to survive, it would be necessary to sell the facility and move to another location where G&A would receive direct rail service. I do not think that it is reasonable for me to have to sell my facility because GCEDC was violating its obligation to provide service. I must also note that the loss of rail service significantly impacted the value of the property. As BB&T recognized with respect to the value of the G&A facility, "[g]iven its location in a relatively stagnant part of town, no easy interstate access, and no rail service, it is the writer's opinion that selling the property for the listed price of \$1.5MM will be difficult." BB&T Internal Memo dated November 5, 2002 (Attachment 2 hereto).

6. I adamantly disagree with the contention at page 21 of GCEDC's Opening Statement that I and the other shippers knew that GCEDC intended to continue indefinitely the embargo that the previous owners had imposed. We knew from talking to STB personnel that the earlier embargo had expired as a matter of law. As a result, we had no inkling that GCEDC could somehow continue an expired embargo. If GCEDC had published an explicit embargo from the outset, or signaled its intent not to restore the line, I and the other shippers on the line would have sought to

acquire the line as we had originally planned and hired our own operator. As an alternative, I would have taken immediate steps to sell G&A's facility, even if I had to take a loss because the property was not worth as much without rail service as it was with rail service. Because GCEDC deliberately concealed its intent, I acted rationally when I decided to work with GCEDC by, among other things, offering \$30,000 to help pay for repairs and helping to locate a potential operator. Had GCEDC requested additional funds at that time to restore rail service, I had funds available and would have contributed more.

7. The situation herein is distinct from that in which a railroad announces its intent to embargo and subsequently abandons a line of railroad. Here there was never a stated intent to abandon the line (a publicly stated position that the Board must examine in light of a recent article authored by Pat Haskell Robinson entitled "Abandoned Rail Corridor" that is published at Appendix E in the *Greenville, South Carolina, Vision 2025*, published November 1, 2004).<sup>2</sup> Instead, GCEDC instituted an unpublished embargo of indefinite duration. This process made it impracticable for me to make an informed business decision and ultimately exposed G&A to other problems that it would have otherwise weathered had it been aware from the outset that, over five years later, GCEDC would not yet have restored rail service. Even if the refusal to provide rail service may not be the "sole" reason for the inability to survive, the fact remains that G&A was able to survive numerous previous market upheavals. The only significant thing that is really different was the loss of rail service.

8. I will ask the Board to note that GCEDC has recently rebuilt an estimated 2000 foot segment of the line that is located just north of the bridge that was used as an excuse to embargo the line in 1997. No explanation has been given as to why the new line has been laid before the

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<sup>2</sup> A copy of the article, which was published November 1, 2004, is reproduced as Attachment 3 hereto. *Vision 2025* can be viewed at <http://greenvilleonline.com/news/2004/11/01/Vision2025.pdf>, page 105 of 132.

bridge was repaired. I must suggest that this new construction reflects the fact that money is available to restore rail service and that GCEDC is delaying restoration as part of a concerted litigation tactic. Photographs of this new track are appended hereto as Attachment 4.

9. GCEDC errs when it claims that the violation of its common carrier obligation did not cause G&A to incur extensive damages, including lost profits, increased storage, handling and shipping costs directly resulting from its lack of rail service, and other categories of damages that the Board and the ICC have found to be recoverable. In addition, GCEDC errs when it claims that G&A did not mitigate its damages in an attempt to remain in business until GCEDC would honor its common carrier obligation and restore rail service.

10. Before addressing evidence that supports G&A's request for damages, I will first address the false statements and inferences that are sought to be drawn from the bankruptcy of ConPac, which was one of G&A's customers. Contrary to the erroneous claims advanced by GCEDC and its witnesses, G&A, during the past ten years, never had a single customer that accounted for more than 6% of its sales. As reflected by a study that was made in 1998, its top nine customers accounted for 30.2% of G&A's sales. *See* Attachment 5. Sales to the ninth largest customer totaled only \$200,000, which was 1.7% of sales. Sales to the sixth, seventh and eighth largest customers totaled 2.6% apiece. Hence, sales to ConPac could not have accounted for more than approximately 2% of sales. During the fiscal year ending July 31, 2001, when ConPac sought the protection of the bankruptcy laws, Groome had gross sales of \$5,359,606.75. Even if it were to be assumed that all of the sales to ConPac were made during that fiscal year, which was not the case, the entire bad debt of \$264,697 amounted to less than 5% of Groome's total sales during that fiscal year.<sup>3</sup>

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<sup>3</sup> *See* Table 1, Groome Financial Analysis, Attachment 6 hereto.

11. Nevertheless, in attempting to discredit G&A's testimony, GCEDC has repeatedly claimed in its Opening Statement and in the Verified Statements of William G. Stewart and Andrew J. White, Jr. that ConPac accounted for 20% of G&A's sales. Those statements, which are reproduced in the following paragraph, paint a false and distorted picture with regard to the impact of ConPac's bankruptcy on Groome.

12. The following statement is made at page 5 of Stewart's Verified Statement:

Conpac was a major purchaser of Groome's products, reportedly accounting for more than twenty percent (20%) of all of Groome's sales. Sometime in the 1999 to 2002 period, the period in which Groome claims his damages were related to the lack of rail service, Conpac ceased doing business....Of course the loss of Conpac as a major customer not only cost Groome some \$265,000 in bad debt, but it eliminated a previously reliable and recurring outlet for Groome's products.

Stewart cites no authority for this claim. A similar contention is voiced by White (V.S. White at

¶ 25)(emphasis in original):

The CONPAC Chapter 11 accounts payable loss mentioned by the bank several times above also was a huge blow to Groome Associates. Not only did the bad debt from the CONPAC bankruptcy result in a monetary loss of \$264,697 to Groome Associates (and caused it to sustain an annual loss for 2000), but also the bankruptcy eliminated a major customer of the company. According to BB&T's July, 2000, audit (a portion of which is attached as Attachment 17 hereto) CONPAC's account represented a total of 20.5% of Groome Associates' *entire* accounts receivable. Groome Associates thus not only lost \$264,679 when CONPAC declared bankruptcy, but also Groome Associates lost a customer that had accounted for *one-fifth of its total* customer base. This loss of a huge account payable, when combined with the loss of 20% of future sales, had to be devastating to Groome Associates.<sup>4</sup>

The contention is once again repeated in GCEDC's Opening Statement where, at page 45, the statement is made that: "One of G&A's major customers, CONPAC, filed for bankruptcy,

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<sup>4</sup> As the Board will discover, White, who is not an accountant, has misinterpreted an ABL Field Auditor's Internal Comments following a one-day snapshot of the three largest accounts receivable on that day. That, however, does not support the unsupportable conclusion drawn by White and repeated by Stewart and GCEDC.

leaving G&A with unpaid accounts receivable of \$264,697 and costing G&A a customer that accounted for approximately 20% of G&A's sales.

13. The foregoing comments are not correct. It is true that ConPac entered bankruptcy owning G&A \$264,697, however, ConPac's bankruptcy did not have a devastating impact. Furthermore, its bankruptcy did *not* cost G&A a customer that accounted for 20% of its past or potential future sales. At most, ConPac would have accounted for less than five percent of G&A's sales. This was a matter of choice as I never wanted to be in a position where a single customer dominated G&A. Last, had rail service been restored at some point in 1999 or 2000, any impact that was felt from the ConPac bankruptcy would have been lessened to the point that G&A, as it had done before, would have weathered the storm.

14. The foregoing comment is supported by the financial results that are set out in the BB&T report of November 2002. As stated therein:

Groome's sales were down again for the FYE 7/31/02 but gross margins were almost 3x the level of the prior year. Sales appear to be improving as well; for the first 2 months of this fiscal year, Groome's sales are up 54% on an annualized basis.

Obviously, the loss of ConPac was not as devastating as Mr. White has suggested. The only thing that was devastating was the continued inability to receive product directly by rail at G&A's facility. That situation continued even after the general economy and market turned around, making it impossible for me to be able to respond to the marketplace.

15. I must also address GCEDC's multiple misstatements regarding the situation with Continental Paper. Allegedly relying on comments in the Verified Statement of Andrew White, which are themselves inaccurate and misleading, Stewart has testified (V.S. Stewart at p. 7) that:

one of Groome's major paper suppliers (broker), Continental Papers, decided to no longer provide financing for Groome's purchases, requiring upfront cash payment. This would have created major problems for Groome on the supply side. As if to

add insult to injury, at approximately the same time period, Groome lost one of its major buyers, Conpac. This would have created major problems for Groome on the demand side.

16. Once again, Stewart is dead wrong about ConPac being one of G&A's "major buyers." It was not. In addition, the ConPac bankruptcy occurred prior to July 31, 2001. The situation with Continental, which Stewart has erroneously characterized, did not occur until approximately two years later. Hence, there is no basis for the inaccurate and unfounded suggestion that the ConPac bankruptcy occurred "at approximately the same time period" that the much later situation with Continental. I must ask the Board to ignore entirely Stewart's plainly erroneous misinformation and speculative comments.

17. I must also make the same request with regard to White's comments about Continental, which appear to be based on Judge Few's incorrect analysis. *See, generally*, V.S. White at pp. 16-19. I want to clarify that Continental did not require "Groome to pay completely current before shipping any more product" as Judge Few has erroneously reported and as White has repeated. *Id.* at p. 19, ¶ 15. Furthermore, the arrangement with Continental was not a "disaster," nor did it devastate G&A and cause its shut down as White has claimed. *Id.* at 18.

18. The change in payment dates had very little to do with G&A. In 2003, Continental was experiencing cash flow problems of its own, which were caused by a customer declaring bankruptcy. As a result, its management made the decision to return the payment due date to 45 days (which had been the traditional time allowed us for payment) from an 80-day period (a period which had been agreed to because of slow rail deliveries). G&A was current with respect to what it owed Continental when Continental decided to alter the timeframe to increase its own cash flow. At no time did Continental change the credit terms, they simply asked us to "catch up" to 45 days, which we did.

19. The Board is also asked to note that after we lost direct rail service, we did not often have the product on hand when the original 45-day period ended, which is why the payment period was extended to 80 days. As a result, the loss of direct rail service was ultimately responsible for G&A not being able timely to factor this late-received inventory with the bank, which admittedly was a related problem.

20. White, at page 19 of his statement, reproduces excerpts from a December 1998 memorandum that purports to describe the “impressions” of one of the attendees at a meeting between me and some BB&T bankers. Included in the excerpts are comments related to estimated losses associated with the purchase of 10 carloads of paper that should never have been accepted because it was not coated. Because of the lack of rail service at G&A’s facility, the uncoated paper was unloaded at the third-party warehouse. According to the “impressions” I allegedly stated that I estimated my loss at about \$300,000. As it actually turned out, I successfully sold that paper at a loss of approximately \$70,000. Although the mix-up occurred prior to the date of GCEDC’s purchase, it vividly illustrates the difficulties that G&A faced due to the loss of rail service.

21. In its Opening Statement, GCEDC and its witnesses have attacked the statement in my initial Verified Statement that “[b]ecause G&A catered to companies that were manufacturing and selling to companies that were using consumable food grade products, its market was for all intents and purposes recession resistant.” Although that statement, which applies to G&A’s customer base, has been greatly distorted by GCEDC and its witnesses, it remains true. G&A’s problem was never on the demand side as its customer’s average consumption remained constant to usage. Because of the nature of most of G&A’s customers, it was not dealing with large entities that would have been supplying the pharmaceutical industry. Nor would it have been

... .

supplying the record industry. As a result, Stewart's testimony at page 3 of his Verified Statement is largely beside the point and not responsive to the niche industry in which G&A existed. Although the type of paper that G&A processed is used in the pharmaceutical industry, Groome did not court customers who were *major* suppliers of the pharmaceutical industry. Instead, G&A primarily focused on customers who would not have been hard hit by a recession, such as companies that were manufacturing and selling to companies that were using consumable food grade products in the fast food industry. Customers who relied on G&A included companies who used the paper they purchased from G&A to make greeting cards, French fry boxes, poster board for school children, Easter egg boxes, party hats, novelties, matchbook covers and the like, not the packagers of VIOXX and Claritin. By way of summary, 98% of G&A's customers were not involved with cosmetics or pharmaceutical packaging. Hence, while some of G&A's competitors who were involved in such industries may have been driven out of business because of their dependence on such industry giants, G&A's customer base was stable.

22. As noted above, G&A's problems were on the supply side--a matter that is related to the inability to receive direct shipments by rail from its suppliers. In the first place, some of G&A's suppliers, for reasons that had nothing to do with G&A, were reluctant to ship to a third-party facility. Therefore, as a result of not being able to receive rail shipments directly at its facility, G&A missed orders due to slower inbound delivery. As a result, I was forced to increase G&A's inventory to offset the longer delivery times. In other words, the inventory addition was necessitated by loss of rail, not risk to cost. Rather ironically, the reluctance of some of the big suppliers to sell directly to G&A actually allowed G&A to lower its average cost of raw materials. This was accomplished through acquiring greater volume from Continental Paper

which, by purchasing paper directly from the mills at a price that was lower than what was offered to G&A, could make a profit and still sell to G&A at a price that was lower than it would have paid the mill. The major drawbacks to this arrangement were the additional delivery time associated with indirect rail service and the need to acquire additional inventory in order not to miss orders.

23. Stewart also suggests (V.S. at page 3) that the “industrial consolidation in the pulp and paper industry was analogous to the retail pressures brought on by Home Depot and Lowe’s moving in on smaller local and regional hardware operations.” Such thinking, which is reflective of what is termed “mill mentality,” ignores the basic fact that the industry giants did not get involved in the niche markets in which G&A operated. Nor did they engage in the slitting operations that were the heart of G&A’s operations. Hence, Stewart’s analogy is meaningless.

24. I must also contest the speculative inference that White seeks to draw from the BB&T notes. At page 24, he states that “[o]nly then, in 2002 and after filing the lawsuit, did Lee Groome’s rail service issue appear in the Bank’s memoranda of contacts with Groome.” He then suggests that “any such rail problems were minor in comparison” with other market, management and profitability problems. In the first place, I had no control over what comments would be recorded by the bankers. I do note that from the beginning of my relationship with BB&T, I made no secret of the fact that the lack of rail service was killing me. Second, my lack of rail service did not fit within their lending formula. Hence, the bankers would have had little interest in recording a fact that was *well known* in the Greenville area and which they could not use to their own advantage.

25. GCEDC’s contention that G&A did not mitigate its damages is wrong. In the first place, why should a company be compelled to file a feeder line application in order to obtain rail

service? At the time it acquired the line, it was not subject to an embargo or to a pending abandonment proceeding. Nor was it the subject of a consummated abandonment. Instead, it was my understanding that the line was an active line of railroad and that the owner of the line had a common carrier obligation to repair it and provide rail service upon reasonable demand. Plainly, as a shipper on the line, G&A had no responsibility to take over rail operations.

26. GCEDC also faults G&A and the other shippers for allegedly refusing to agree to fund repairs. That too misrepresents the actual chain of events. After SCCR sent the letter setting forth the terms under which it would make repairs and restore service, which included a requirement that the shippers assume responsibility for the major portion of the cost of the repairs, the shippers, which included G&A, made a counter proposal in which we agreed to help with the cost of repairs. As Mr. Mathena has testified (V.S. Mathena at ¶3), we never received a response from the railroad!

27. In addition to securing alternative means of transportation while we waited for GCEDC to repair the line or obtain an operator who would repair the line for GCEDC, I did what I could to reduce the cost of retaining the business at its present location, including terminating employees, which significantly reduced operating expenses. In my capacity as the sole shareholder in G&A, I not only waived payment of the full amount of rent that was owed to me as the owner of the facility, but I received no compensation from the company. In addition, I plowed personal funds back into the business. These expenditures and personal expenses would not have been incurred had GCEDC been forthright and told me from the outset that it had no intent to repair the line. Instead, as I have learned from this litigation, GCEDC somehow silently imposed an embargo of an indeterminate and indefinite duration and left me swinging in the air with no ability to make reasoned business decisions. Having taken these steps to mitigate

damages, I believe that it is appropriate for the Board, at a minimum, to award damages for lost profits based on the calculations prepared by Thombley & Simmons, as well as the additional freight and handling costs of \$285,243. As adjusted to reflect the period from June 1999 through July 31, 2003, lost profits, without consideration of my personal financial losses, totaled \$696,670. *See* Exhibit Q to G&A's Opening Statement.

28. Because GCEDC fraudulently concealed its true intentions, it should also be held accountable for the \$506,651.74 of additional debt that was incurred when the G&A facility was refinanced in September 2000. If GCEDC had leveled with me, I would not have refinanced but would have sold the property, even at a price below its appraised value, and invested in another facility that was located on another active line of railroad. Also, by violating its common carrier obligation by effectuating an unpublished indefinite embargo, GCEDC has caused the value of the property to decline below its appraised value of \$1,300,000, a value that reflected the direct rail access. Furthermore, the lack of rail service caused me not to be able either to enter into a joint venture with Fort Howard Paper or to sell the business to them.

29. To sustain the business through further investments while I waited for rail service to be resumed by GCEDC, I prematurely withdrew over \$497,004.00 from my profit sharing plan, which resulted in \$140,271 of penalties. Moreover, I borrowed \$144,026.03 from New York Life Insurance Company. Had GCEDC not concealed its true intent, I would not have withdrawn those funds or borrowed against my life insurance policy to sustain G&A.

30. Given the five and a half years of inaction, the Board should revoke the acquisition authority granted in Finance Docket No. 33752 and require GCEDC to transfer title to G&A so as to avoid unjust enrichment.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Lee K. Groome, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on February 20, 2005.

  
\_\_\_\_\_  
Lee K. Groome

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. 42087**

**GROOME & ASSOCIATES, INC. AND LEE K. GROOME  
V.  
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

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**REBUTTAL VERIFIED STATEMENT OF LEE K. GROOME**

**ATTACHMENT 1**

**BB&T Internal Memorandum Regarding Groome & Associates  
(December 11, 1998)**

# BB&T

Branch Banking and Trust Company  
INTER-BRANCH CORRESPONDENCE

December 11, 1998

From: Edward P. (Ted) West, Jr.  
Senior Vice President  
ABL/Commercial Finance  
Winston-Salem  
(336) 733-1421  
001-16-06-30

To: ABL Credit File

Re: Groome & Associates, Inc.

Charlie Arndt asked that I join him in Greenville on December 9, 1998 to meet with Lee Groome, owner of the above company. Per Charlie's request, the following were my impressions, suggestions, etc. based on that meeting:

- Lee was clearly nervous that I was there. He knows that his company's performance has been sub par and I think he may have thought that BB&T was going to pull out on him. Very much to his credit, Lee was very up front on all the problems that his company was having and answered every question that I asked fully and easily.
- Lee said that their problems were indicative of an over supply of paperboard in the market place. This is a problem for them because he was convinced that the market had turned around about 6 months ago (I'm not sure about exact time) and he purchased inventory that he cannot now move without taking a substantial loss.
- His current average cost/T is \$424, but the value of about 40% of the inventory is about \$210-230/T. He believes that this will turn around within 6-12 months since many paperboard mills have been brought down for "maintenance" recently. This should tighten up the market, he believes.
- Lee estimated his loss in a "better market" at about \$100-150M. In the current market, he estimated his loss at about \$300M.
- He has made a number of adjustments to his overhead to cut costs, most of which Charlie has already documented.
- He is in good shape with the trade, usually paying in 30-35 days from receipt of invoice and still taking discounts (10 days) when he can.
- He has a line of credit from Bank of Travelers Rest against the equity which could provide him with an additional \$200-300M, if needed.
- He has been approached about selling out to Fort Howard Paper next summer, which he is seriously considering.
- I discovered an industry web site at [www.paperexchange.com](http://www.paperexchange.com). Info on this (an industry newsletter) confirmed the softness in the market.
- Lee said that their part of the industry followed the linerboard side, both down and up. I think he feels linerboard is almost ready to "come back", therefore paperboard will be next.
- Groome sells much of their paper after they have a poly extrusion coating applied in AL. This allows their board to be converted to shrimp trays, ices cream boxes, chicken boxes, etc. for freezing and similar uses.

We discussed the nature of ABL/CF and what things might be tightened up, etc. We discussed our role as collateral lender and the importance of collateral valuations. He understands the

groome.doc

December 11, 1998  
Page 2

problems with our advance rate against his inventory market value. We also discussed pricing, and I told him that a true CF arrangement would be more expensive based on the additional work needed. I think he is more interested in whether we will stick with him or not at this point.

I have not fully reviewed the company FS nor have I seen Lee's. Charlie reports that Lee has little or no debt and about \$700M in liquidity. Based on this admittedly limited information, I recommend the following:

1. Immediately reduce the advance rate on inventory to 25%. I further recommend that we keep the advance at this rate even after things improve. The nature of their inventory may look like a commodity, but it really isn't. I wouldn't get above 40% in the future under good conditions. This reduction in advance rate should require Lee to borrow against the equity in the building from B of TR or put in his own cash in lieu of that. An alternative would be for him to put up a CD or stock, etc. which we could lend against to meet any short fall. An incentive for him would be to offer the Prime rate on any borrowings secured by liquid collateral.
2. Increase the interest rate to Prime + 1.0 % to reflect the increased risk. If shifted to a Standard ABL or CF line, pricing (primarily fees) should be even higher to reflect increased servicing. Lee will not be surprised to hear his price is going up and I don't think he will care that much, as long as we reconfirm the line for another year.
3. Review the Risk Grade and move to a six if the inventory advance is not cut to 25%.
4. Confirm Lee's personal liquidity.
5. Reconfirm the line for another year, but adopt ABL attorney prepared documentation to tighten our position in the event of default and give us a "sixty day out" no matter what happens. We should not get locked into another year without an easy out.

I liked Lee and think his honesty was deserving of our confidence. If he is as strong personally as Charlie thinks he is, we should be OK for another year or so (after making the above changes). I would not, however, miss this opportunity to strengthen our position now, just counting on him to do the "right thing" in the future.

Edward P. West, Jr.

Cc: Charles Arndt  
Jeff Heath

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. 42087**

**GROOME & ASSOCIATES, INC. AND LEE K. GROOME  
V.  
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

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**REBUTTAL VERIFIED STATEMENT OF LEE K. GROOME**

**ATTACHMENT 2**

**BB&T Internal Memorandum Regarding Groome & Associates  
(November 5, 2002)**

# BB&T

## COMMERCIAL BANKING CLIENT PROFILE

Date Prepared/Updated: 11/05/2002

Client Name: GROOME & ASSOCIATES INC Acct #: 7510063672 Exposure Strategy: Out  
 DBA: \_\_\_\_\_ Federal Tax ID #: 58-1810366  
 Address: PO BOX 729 City: TRAVELERS REST State: SC Zip: 296900729  
 Business Phone #: (864) 294-8001 ext. Fax #: \_\_\_\_\_  
 Account Officer: WEAVER, DAVID M Brooks Carter Region: Upstate  
 Risk Rater: \_\_\_\_\_ City Office: Greenville  
 Proposed Risk Grade: 08 Current Risk Grade: 08 Relationship ROA: N/A (RG8)  
 Risk Grade Source: Account Officer Relationship ROE: N/A (RG8)  
 Industry SIC Code: 5110; Paper and Paper Products  
 Sales/Service Segment: None Mkt. Segment: Commercial

**Related Borrowing Entities:**

**Contacts:**

Name	Title	Type	Authority	Phone (H)	Phone (W)
GROOME, LEE	President	Primary	Decision Maker	( ) - ext.	(864) 294-8001 ext. 22

**Advisors:**

**Current Credit Relationship (attach Customer Loan Review or Relationship Summary):**

Total Credit Exposure: Committed: \$1,226,202.94 Outstanding: \$1,226,202.94

**Current Non-Credit Relationship:**

Current Non-Credit Relationship: \_\_\_\_\_ Last Changed: 11/05/2002  
 Business DDA; 12-Month ACB: \$58,440 (As of 11/02)

**Business Overview/Organizational Structure**

Year Started: 1988

Client Since: 1994

Number of Employees: 10

**Primary Line of Business:**

Paperboard broker until 1993 then expanding into conversion (slice & rewind) process. Groome buys 2nd quality paperboard, cuts out the defects, slices it into narrower widths, and rewinds. Last Changed: 11/01/2002

**Primary Products/Services:**

Various grades of solid bleach sulfate (SBS) paper used in the boxing of bakery, cold storage, fast foods, and microwavable food products. Last Changed: 11/04/2002

**Seasonal or Cyclical Patterns:**

Industry is subject to domestic and international shifts in demand and supply of paper. Other factors include the potential over production by the paper mills. Last Changed: 11/01/2002

**Owner(s) and Percentage of Ownership:**

Lee K. Groome - 100% Last Changed: 11/01/2002

**Major Customers (include percentage of sales and terms granted):**

Numerous buyers of lower quality paperboard: Single largest customer is Toccoa Packaging, which represents approximately 50% of A/R at 9/30/02. Other larger clients include: Boelter Industries, Old Dominion Box Company, Rock Team, Sterling Paper Corp. Last Changed: 11/01/2002

**Major Suppliers (include percentage of product purchased and terms granted):**

International Paper, Gulf States, Continental Paper, Georgia-Pacific, and various other broker Last Changed: 11/01/2002

**Major Competitors:**

Piper Board Co., Inc., AL; Paccoss Converting, WA. Last Changed: 11/01/2002

## Business Overview/Organizational Structure

### Individual Overview:

Last Changed: 11/04/2002

Lee started the Company nearly 13 years ago, having spent most of his professional life learning the industry from his father.

#### 4/02 Update

Lee's personal financial condition has been significantly negatively impacted by the financial deterioration of Groome and Associates over the past several years as he has liquidated personal assets and borrowed against equity in real estate to continue living in the fashion to which he had become accustomed. While Groome's 4/17/02 personal financial statement shows a \$1,889M net worth, he shows limited liquidity (\$18M) and his real estate assets are leveraged. Of his total net worth, \$500M is the value assigned to his stock in Groome and Associates, \$350M is a minority interest (16%) in an LLC that is developing a residential subdivision (Hunter's Ridge), and \$268M is his profit sharing account with Groome and Associates. At this point, Lee Groome adds little financial strength to this credit beyond his willingness to further dip into his profit sharing account.

### Goals of the Business:

Last Changed: 11/04/2002

Lee has restructured the company over the last 12 months, having removed several family members, which contributed to the decline in production. The Company has reduced its operating expense nearly 40% in lieu of the market downturn, which occurred during FYE98 and FYE99.

#### 4/02 Update

Groome is simply attempting to keep the company afloat long enough to reach the point where the market rebounds and sales (and margins) return to an acceptable level. According to Groome, a combination of several factors have caused his company's troubles over the past 4 years:

1. Groome admits that he delegated far too much responsibility several years back when he was experiencing a "burn-out" period. This resulted in poor management, lost sales, and poor expense control.
2. Groome had three clients file bankruptcy since 1999 costing the company \$348M in bad debt.
3. Groome lost its rail service (through no fault of Groome) about 2 years ago. This has added approximately \$9M per month to shipping and handling costs as Groome now contracts with a third party to offload rail cars, inspect the product and truck the rolls of paperboard to Groome. Groome also claims that he was unable to reject \$250M of "junk" product that he could not return after it was taken off of the rail car off site. Had the company still been doing its own inspection of product, this shipment would have been refused. Groome was unable to resell this shipment.
4. The paperboard industry has been in a slump for 3 years. Groome states that this slump was initiated by gross over-production by the paper companies which drove down prices and margins and has been extended by the general downturn in the economy over the past 12-18 months.

In an attempt to both generate cash and cut expenses, Groome has recently listed his building for sale as he could easily get by with less space. Groome's existing facility consists of a 55,000 sf warehouse and 8,000 sf of office space. The asking price is \$1.5MM (it was appraised for \$1.3MM 2 years ago) and the first mortgage balance is approximately \$1,056M. (Note: Property is listed with Ted Lecroy).

#### 11/02 Update

It appears as though Groome has stopped the bleeding as the company was slightly profitable for the FYE 7/31/02. While sales were down again, gross margins almost tripled to their highest level of the past 4 years. Groome states that, industry wide, both margins and demand has improved due in part to the shakeout in the industry that has occurred over the past several years. For the first 2 months of this fiscal year, margins appear to be holding up and sales are up over 50% on an annualized basis from the prior year.

Groome is continuing with his lawsuit against Greenville County over loss of rail service but he is unsure when a decision will be rendered. Groome remains optimistic that a significant 6 figure settlement will be forthcoming.

Groome has had no offers to date for the purchase of his building. Given its location in a relatively stagnant part of town, no easy interstate access, and no rail service, it is the writer's opinion that selling the property for the listed price of \$1.5MM will be difficult and that there is little, if any equity, in the property.

**RISK ANALYSIS**

**Industry and Economic Risks:**

Last Changed: 11/04/2002

The paperboard market has since recovered nicely since a downturn in production in 1998. Paper mills (Westvaco, IP, GP, Gulf States) have rebounded and reported strong performance during 1999-2000.

**Industry Risk**

In early 1Q 1998, Groome took a calculated risk purchasing extra tonnage prior to an expected April price increase in paperboard. This caused his inventory to swell from historical levels of 1500 tons to nearly 2500 tons. Unfortunately, the following 2nd through 4Q has seen a sharp decline. Groome had purchased inventory at 500+ a ton, which is now on the market for 350+. This has eroded any potential profit during this period. Groome has slowly sold off his high priced inventory, working deals wherever possible. Presently, prices have climbed and Groome's average cost of inventory has been reduced to under \$400 per ton.

At the current levels, Groome has an approximate \$375 per ton in SBS. The conversion market price is holding at roughly \$575.

**4/02 Update**

Groome states that his industry is just beginning to come out of a 3 year slump. Groome does not expect to see a significant uptick in his company's sales until late in 2002. According to Groome, many of his competitors have been driven out of business during the past 3 years. Margins have improved but sales are still quite slow.

**11/30/02 Update**

Based on improvements at Groome, there is some evidence that the industry is rebounding from the 3 year slump discussed above. Groome's sales were down again for the FYE 7/31/02 but gross margins were almost 3x the level of the prior year. Sales appear to be improving as well; for the first 2 months of this fiscal year, Groome's sales are up 54% on an annualized basis. As discussed earlier, it is Lee Groome's opinion that the industry reached a bottom earlier this year and is slowly beginning to improve.

Financial Risks and Analysis (including profitability and leverage):

Last Changed: 11/05/2002

At FYE98, the company showed a loss of \$391m on revenues of \$9,939mm. This can be attributed to several significant factors both internally and externally. As previously mentioned, Lee made a difficult decision to layoff his brother and nephew (8/98) who assumed the roles of purchasing and sales respectively. During FYE98, the Company uncharacteristically took on \$355m in returns or credits whereby the customer was shipped product, which was unsatisfactory. This was due to product which was incorrectly accepted during receiving (Lee's brothers responsibility) and sales where (nephew) misrepresented certain grades of paperboard. This was further compounded by a significant decline in raw material prices, which left, Groome with a limited gross profit margin. The trend has been difficult to turn as the paper market has been slow to correct itself as a function of overproduction in 1998.

At FYE99, the company reports a loss of (\$218m). However the last several months the trend has improved greatly with profits reported of \$5m, \$44m, \$25m and \$24m, respectively. The Company has reduced operating expenses from \$1,162m at FYE98 to \$674m at FYE99. Based on a percentage of sales, expenses remain at 12%. Groome has taken an aggressive stance to regain profitability and has injected \$170m as sub-debt to support operations. His objective is to revive revenues back to historical monthly levels of \$750m without adding additional staff. While the Company has suffered significant problems, Groome has been direct in problem resolution and changed course for the future. Since FYE98 leverage has dropped from 7.22 to 5.46 at FYE99.

At FYE00 (7-31-00), Groome has regained profitability reporting NI of \$153m on \$7.5mm in sales. Total operating expense has been trimmed to 9.8% of sales compared to a historical trend of over 12%. Gross margin has improved from 8.5% to 14% from FYE99 to FYE00, simply from market adjustments. A/R days are 43, A/P days are 31, inventory days are 76, all of which compare favorably to the previous year end. D/NW continues to decline from 12% to 7% for the period. Subordinated debt was retired of \$170m. Through August, trends continue reporting a profit of \$11m on \$706m.

For the FYE 7/31/01, Groome and Associates reported a net loss of \$373M on gross sales of \$5,420M. Sales were down \$2,050M (27%) from the prior year and gross margins dropped to 6.7% - their lowest point of the past 5 years. Included in this loss is bad debt expense of \$268M of which \$265M is attributable to one client (Compac as mentioned in the next section) that filed Chapter 11. Further, this bad debt was incurred in the prior fiscal year and should have been charged against operations for the FYE 7/31/00. This would have reduced that year's net profit of \$153M to a net loss of \$112M. Groome's only bank debt is BB&T's line which had a balance of \$1,253M at 7/31/01. However, the company must also service the \$1,050M loan that Lee Groome has on the building which he leases back to the company. Debt service on this loan is approximately \$108M annually. Lease expense paid to Lee Groome for the year was \$170M. The company's net worth was (\$417M) as of 7/31/01.

4/02 Update

For the seven months ending 2/28/02, sales are down another \$1,230M (22.6%) on an annualized basis. Net income is positive at \$44M however, Groome has expensed only \$15M in rent for the entire year. EBIDA plus rent paid to Groome is \$151M. Debt service for the period (inclusive of the building debt) was \$118M. However, Lee Groome has taken no salary and has relied on distributions from his profit sharing and additional personal borrowing (HEL on personal residence owned by wife) to support his personal and living expenses. The company's net worth improved slightly to (\$373M) at 2/28/02.

11/02 Update

As of 11/02, results for the FYE's 7/31/01, 7/31/02, and 2 months ending 9/30/02 are presented below:

	7/21/01	7/31/02	9/30/02
Sales	\$5,420M	\$4,229M	\$1,087M
Gross Profit	4,999M	3,435	886
Operating Profit	<617>	147	102
Net Income	<737>	67	89
EBIDA	<503>	206	108
Rent to L. Groome	170	15	0
Adjusted Cash Flow	<333>	221	108
Building Payment	108	108	18
Interest Expense	153	80	13
Debt Service	261	188	31
DSC	N/A	1.18	3.48
Excess	N/A	33	77

It should be noted that the company would have shown a loss for the FYE 7/31/02 had rent been paid to Lee Groome for use of the building. Additionally, took no salary during the year. In the absence of rent and officer's salary, the company has been repaying a stockholder note to Lee which has been reduced to from \$140M at 7/31/01 to \$57M at 9/30/02. Personally, Lee's debt service and living expenses are being covered by the repayment of this stockholder note and draws on an equity line secured by his residence which is owned by Mrs. Groome. The business remains heavily leveraged and reports a net worth of <\$350M> and <\$261M> at 7/31/02 and 9/30/02, respectively.

Cash Flow Coverage Analysis:

Last Changed: 11/01/2002

At FYE00, the Company had no term debt to amortize and had an interest coverage of 2.88x. Cash flow included NI of \$153m plus depreciation \$94m, plus interest expense \$131m divided by interest expense resulting in excess cash flow of \$247m. The Company is carrying an account for Compac \$260m, which has declared protection under Chapter 11 bankruptcy. Management has maintained over a 30 year personal/business relationship with the owners and firmly believe a collection will be forthcoming.

See Financial Risks section above.

**Major Policy Issues:**

Last Changed: 11/05/2002

Advance rates are 85% against eligible A/R and 50% against eligible inventory and \$500m for equipment (AV: \$700m 12/97). To date, the company has remained within its borrowing base limits, in excess of \$100m. The credit relationship was reduced from \$2.5mm to \$2.0mm last review 7/99. All audits to date have been satisfactory.

**4/02 Update**

While the audits continue to be satisfactory and weekly loan base reports are received on a timely basis, BB&T is presently over-advanced by approximately \$275M due to deterioration in the value of the equipment which additionally secures this line. To date, BB&T has allowed a plug figure of \$500M for the equipment pledged against this line. While we do, in fact, have an outside appraisal as discussed above, Groome tells us that this equipment is now worth approximately \$200M. This significant depreciation in value is due to age (the appraisal is now 4+ years old) and the fact that there is a significant amount of this type of equipment on the market due to shakeout that has occurred in the industry. The \$200M value stated above is the opinion of Groome's brother who, in addition to working for Groome and Associates, is also in the used paper equipment business.

**11/02 Update**

Groome has cured the above referenced over-advance and would have \$50M of availability (as of 10/21/02 Loan Base Report) if BB&T's loan was still a revolving line. BB&T had the equipment re-appraised in July '02 and the liquidation value was determined to be \$214M. Accordingly, we are now using a "plug" figure of \$160,250 for equipment value in the Loan Base Report. Weekly Loan Base Reports continue to be received in a timely manner.

**Management Risks and Analysis:**

Last Changed: 11/01/2002

Lee retains an active role in management and has, as a result of current market conditions, become more involved in sales. This will be key in the turnaround of the Company, as his contacts within the industry should accelerate the effort.

**Strengths and Weaknesses of the Client:**

Last Changed: 11/01/2002

**Strengths:**

- Lee Groome's many years of experience make him quite knowledgeable of the industry and of his business.

**Weaknesses:**

- The company's losses have left it heavily leveraged with very limited options for outside sources of financing.

- Lee Groome has exhausted the majority of his personal liquidity and disposable assets in order to keep the company afloat. Further, he has leveraged his residence (via equity line) in order to fund a large portion of his living expenses over the past several years. Neither the company nor Lee Groome personally can afford another downturn in the business.

**Bank and Client Satisfaction with Relationship:**

**Bank and Client Satisfaction with Relationship:**

Last Changed: 11/05/2002

**4/02 Update**

Neither BB&T nor the client is particularly satisfied with this relationship at the present time. BB&T is pursuing an "out" strategy as Groome has lost money for 4 consecutive years (assuming 2000 results are re-stated for the bad debt that should have been charged-off), the company's capital base has been depleted, we are over-advanced, and Groome does not have the ability to correct the collateral shortfall by pledging additional assets or paying down the loan balance. Beyond that, Groome's frequent hot-tempered reactions to BB&T's concerns over these issues indicates that this company is not a good fit for BB&T.

Having said that, Groome has made attempts to move this credit and thus far has been unsuccessful. Based on the financial condition of the company and the fact that we are over-advanced by approximately \$275M, the likelihood of Groome being able to refinance this credit in the near term is not good. It appears that we will have to continue working with Groome and work towards narrowing the gap in the collateral shortfall. Assuming that Groome is able to keep the company afloat, this could be accomplished by putting Groome on lockbox with standard ABL servicing and setting target dates by which the shortfall must be reduced. Once the company is back within loan base, the possibility of refinance by another lender will be improved.

**11/02 Update**

While Groome's business is beginning to show signs of improvement, BB&T still maintains an "Out" strategy with this client. With the 90 day renewal granted in late October, I informed Lee that BB&T would not "pull the rug out from under him" as long as the company continued to show improvement. Having said that, I strongly recommended that he seek another financing source during this 90 day period as any further renewals would only be considered in conjunction with the line going to ABL Standard and lockbox. It is my belief that Groome has a reasonably good chance of being able to move the line at this point given the improvement his company has shown.

**Future Plans And Needs:**

**Future Plans And Needs:**

Future sales opportunities - comment on any aspect of the FICR/IAPE

Financing (Commercial, Retail, Business Cards, etc.):

Cash Management:

Last Changed: 11/01/2002

If the company is unable to move the loan, we will require lockbox service and ABL Standard monitoring.

Investment:

Retirement Plans:

Insurance and Risk Management:

Taxes:

Advice:

Personal/Private Banking:

Employee Services:

Related Borrowing Entities:

*Cannon*

*Green*

REVIEW

Reviewed By: RLC 11-13-02 BLC \_\_\_\_\_ LPC \_\_\_\_\_ Next Review Date: 11-03  
Risk Grade Assigned: RLC 6 BLC \_\_\_\_\_ LPC \_\_\_\_\_

Loan Committee Comments/Recommendation:

*Outstanding*

**Client Contact Log**

Date	Subject	Creator	Contact
11/01/2002	Line Renewal	MARVIN CANNON	LEE GROOME
	Lee called and requested that I put into writing what we discussed in our meeting of Oct 24 regarding any further line renewals so that he can present at next board meeting.		

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET NO. 42087**

**GROOME & ASSOCIATES, INC. AND LEE K. GROOME  
V.  
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

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**REBUTTAL VERIFIED STATEMENT OF LEE K. GROOME**

**ATTACHMENT 3**

**Pat Haskell Robinson, Abandoned Rail Corridor, Appendix E to Greenville, South  
Carolina, Vision 2025, November 1, 2004**

## ABANDONED RAIL CORRIDOR

*By Pat Haskell Robinson*

On September 29, 1998, Greenville County Council passed a resolution wherein Greenville County agreed to preserve rail line corridors and to assist in establishing a comprehensive plan for rail preservation. On June 1, 1999, The County Council approved the creation of the Greenville County Economic Development Corporation (GDEDC), which purchased approximately 15 miles of rail corridor with the County of Greenville and provided funding for the purchase. The mission statement of the GDEDC is as follows:

*To facilitate through rail line ownership and/or rail corridor preservation inter-modal business, commuter, shipping, and leisure travel access to greater Greenville and its gateways. Our highest priorities in carrying out this mission are safety, citizenship, responsibility, and cost effectiveness.*

The Greenville and Northern Railroad Line (G&N), originally known as the "Swamp Rabbit Railroad" begins north of Travelers Rest, comes through Travelers Rest, crosses behind Furman University near the site of Furman's proposed retirement community, and follows the Reedy River into Greenville to Linky Stone Park behind the Peace Center for the Performing Arts. The G&N rail line joins the existing CSX and Norfolk and southern lines just north of the railroad station connecting to a national and statewide rail system. The Norfolk and Southern is proposed to be upgraded to accommodate the 150 mph trains on the Southeast Fast Rail Corridor which will provide relief to an already overused road system. Development of this rail line is critical to a multi modal transportation plan, an integral part of Designing our Destiny goals, adopted by Greenville County Council in May 1999 and for a successful implementation of the proposed Reedy River Corridor plan.

The southern segment runs southeast between the City of Greenville and just north of the GE plant near Mauldin. It intersects the Hollingsworth property located on Highway 276 (Laurens Road) and I-85 and continues to Columbia and the Port of Charleston. This Property is the site of the proposed International Centre for Automotive Research (ICAR). Once the ICAR project is complete, this southern segment will provide commuter rail and freight service to the City of Greenville and the lower part of the state.

### Summary:

- This rail corridor will connect Travelers Rest with the City of Greenville and the municipalities of Mauldin, Simpsonville and Fountain Inn.
- This rail corridor will connect with transportation to other points of interest within Greenville County
- Properties will have been acquired to connect the G&N, ending behind Linky Stone Park, with the southern segment beginning behind the Highway Department and connecting with the line to Columbia near the GE plant.
- This corridor will be an integral part of an Upstate transportation system, the Reedy River Greenway and the Southeast Fast Rail Corridor.

**BEFORE THE  
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**REBUTTAL VERIFIED STATEMENT OF LEE K. GROOME**

**ATTACHMENT 4**

**Photographs Taken January 2005 Reflecting New Construction**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**REBUTTAL VERIFIED STATEMENT OF LEE K. GROOME**

**ATTACHMENT 5**

**Page 3 of Fax Dated June 19, 1998**

## GROOME &amp; ASSOCIATES, INC.

Company's Competitive Edge:

The Company possesses several attributes which give it a competitive edge in the marketplace:

- Extremely fast turnaround: Groome is able to provide in days, what takes several weeks for the paper mills to supply. This fits the profile of many JIT type operations.
- Multiplex business: Groome converts and rewinds for mills, customers, mill customers, and other converters.
- Opportunism: While 30% of the company's sales is for converted materials, 70% is for brokerage alone, requiring minimal value-added cost.
- Focus: The company focuses on knowing and supplying the SBS market.

Competition:

The Company's chief competitors are all larger established operations with approximately \$100,000,000 in sales each. The competitors are as follows:

- Joe Piper
- G.B. Goldman
- Southeastern Paperboard
- Laboiteaux
- Damsky Paper

TOP CUSTOMERS - 1997/98 (000's OMITTED)

<u>Rank</u>	<u>Customer</u>	<u>\$ Volume</u>	<u>% of Sales</u>
1	A.	\$685,000	5.9%
2	B.	\$500,000	4.3%
3	C.	\$450,000	3.9%
4	D.	\$420,000	3.6%
5	E.	\$350,000	3.0%
6	F.	\$300,000	2.6%
7	G.	\$300,000	2.6%
8	H.	\$300,000	2.6%
9	I.	\$200,000	1.7%
<u>Total:</u>		<u>\$3,360,000</u>	<u>30.2%</u>

Note: Customer names can be released later in the acquisition process.

This information is intended only for the use of the recipient as delivered by Groome & Associates, Inc. and is privileged, confidential, and exempt from disclosure to others under applicable law.

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION**

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**REBUTTAL VERIFIED STATEMENT OF LEE K. GROOME**

**ATTACHMENT 6**

**Table 1  
Groome Financial Analysis**

TABLE 1

Groome Financial Analysis

Fiscal Year Ending	Gross Sales	Cost of Goods	Gross Profits	Ratio of Gross Profits to Gross Sales	Loss/Net Income and Operating Losses
07/31/94	\$ 9,704,869.66	\$ 8,225,947.32	\$ 1,478,922.34	0.1524	\$ 117,194.00
07/31/95	\$ 11,530,701.33	\$ 10,136,732.78	\$ 1,893,968.55	0.1643	\$ 68,579.00
07/31/96	\$ 8,731,341.89	\$ 7,731,866.67	\$ 999,475.22	0.1145	\$ (9,354.00)
07/31/97	\$ 9,521,916.19	\$ 8,029,578.13	\$ 1,492,338.06	0.1567	\$ 58,827.00
07/31/98	\$ 9,583,790.61	\$ 8,743,766.63	\$ 840,023.98	0.0877	\$ (391,069.88)
07/31/99	\$ 5,515,793.93	\$ 5,009,607.29	\$ 506,186.64	0.0918	\$ (218,761.07)
07/31/00	\$ 7,408,743.00	\$ 6,329,050.48	\$ 1,079,692.52	0.1457	\$ 153,008.31
07/31/01	\$ 5,359,606.75	\$ 4,957,766.04	\$ 401,840.71	0.0750	\$ (737,401.70)
07/31/02	\$ 4,229,289.02	\$ 3,439,481.33	\$ 789,807.69	0.1867	\$ 67,117.12
07/31/03	\$ 4,987,149.21	\$ 4,167,056.87	\$ 820,092.34	0.1644	\$ 78,969.81

Mitigation Efforts In Addition To Transporation Alternatives

Fiscal Year Ending	Compensation Officers	Employee Salaries	Rent
07/31/94	\$ 260,000.00	\$ 393,738.98	\$ 146,577.50
07/31/95	\$ 200,000.00	\$ 363,729.83	\$ 196,680.00
07/31/96	\$ 80,000.00	\$ 304,816.25	\$ 165,000.00
07/31/97	\$ 330,000.00	\$ 258,639.98	\$ 180,000.00
07/31/98	\$ 120,000.00	\$ 319,090.67	\$ 159,000.00
07/31/99	-	\$ 209,945.88	\$ 53,000.00
07/31/00	-	\$ 211,811.49	\$ 180,000.00
07/31/01	-	\$ 235,296.67	\$ 170,000.00
07/31/02	-	\$ 236,629.90	\$ 15,000.00
07/31/03	\$ 3,423.93	\$ 254,354.04	\$ 53,000.00



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Docket No. 42087

GROOME & ASSOCIATES, INC. AND LEE K. GROOME  
v.  
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

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**REBUTTAL VERIFIED STATEMENT OF  
RANDY MATHENA**

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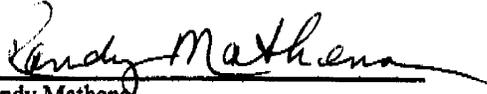
1. My name is Randy Mathena. I am the President and majority shareholder of Paper Cutters, Inc. ("Paper Cutters") My business address is 840 North Highway 25 By Pass, Greenville, SC 29617. I have personal knowledge of the facts that are set forth hereinafter and am duly authorized to present this Verified Statement. The purpose of this Rebuttal Statement is to respond to certain allegations raised by GCEDC in its Opening Statement.

2. At page 22 of its Statement, GCEDC has alleged that all of the shippers "knew that the Line had been embargoed by the previous owner and that GCEDC intended to continue that embargo until the Line could be repaired and an operator obtained." I deny that I had any knowledge of GCEDC's intent to impose its own embargo. Although I knew that the previous owner had embargoed the line, based on conversations with Mel Clemens at the Surface Transportation Board, I was aware that the embargo expired on December 4, 1998. At no time did anyone associated with GCEDC ever tell me that GCEDC intended to continue the embargo or to impose its own embargo. I am aware, however, that GCEDC has never restored service over the line.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Randy Mathena, hereby declare under penalty of perjury that the foregoing is true and correct. Executed on February 22, 2005.

  
Randy Mathena



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Docket No. 42087

GROOME & ASSOCIATES, INC. AND LEE K. GROOME  
v.  
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION

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**REBUTTAL VERIFIED STATEMENT OF  
BENNIE RAY ANDERSON, SR.**

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1. My name is Bennie Ray Anderson, Sr. I am the President of The Great Walton Railroad Company, Inc. ("GWR") and the Hartwell Railroad Company ("Hartwell"), both of which are located in Georgia. My business address is 1081 North Cherokee Road, Social Circle, Georgia 30025. I have personal knowledge of the facts that are set forth hereinafter and am duly authorized to present this Verified Statement on behalf of Groome & Associates ("G&A"). I previously provided a Verified Statement and hereby confirm my earlier testimony. The purpose of this Rebuttal Statement is to clarify comments in my initial Verified Statement and to respond to certain allegations raised by GCEDC in response to my earlier statement.

2. I strongly disagree with the comment at page 31 of GCEDC's Opening Statement that:

Mr. Anderson's recent testimony even contradicts his own company's written advice to GCEDC four years earlier which stated that restoring the Line to service would have required bridge repairs of \$199,982.90 and track work of approximately \$1.3 million. See V.S. Groome, Attachment 24: "The infrastructure improvements listed are those that would have to be undertaken to attain an operational status conducive to regular operations on the line for the customers involved."

My testimony in this case in no way contradicts the written advice given to GCEDC in August 2000.

3. Although the quotation from the August 9, 2000 letter to GCEDC may be accurate, the inference that GCEDC has drawn is erroneous. In responding to GCEDC, we were asked to provide an estimate of the cost of repairs that would have brought the track to FRA Class 1 status. As I previously testified, because GCEDC wanted the letter to reflect the estimated cost of repairs needed to perform passenger operations, the minimum repairs needed to perform operations on an FRA-excepted track basis was not an option.

4. It would not have been necessary to bring the track to Class 1 status in order to operate safely. As a result, the estimated cost of the minimum repairs needed to permit safe rail operations on an FRA-excepted track basis over the 2.25-mile segment of track in order to service Groome, Paper Cutters and Carolinas Recycling Group would have been far less than the estimated cost reflected in the August 9, 2000 letter.

5. As used in the letter, the phrase "operational status conducive to regular operations on the line" for the customers involved" means simply "FRA Class I" status. This reflects the likelihood that full rehabilitation to Class 1 status would improve the reliability of operations by lessening the possibility of minor derailments. However, because of the short distance involved, rehabilitation to Class 1 status would not gain that much in terms of the overall speed of operations that would accompany operations on an FRA-excepted track basis.

6. Even if operations over excepted track were not optimal, by designating track as "excepted," we would have been able to satisfy the common carrier obligations without fear of penalties being imposed by FRA for failing to comply with FRA regulations governing roadbed, track geometry, track structure, and track appliances and track-related devices. *See* 49 C.F.R. § 213.5.

7. By designating segments of track as "excepted," we would have provided service until GCEDC could have obtained funding to make the repairs that are necessary to get the track to Class 1 status, or taken steps to obtain authority to abandon the line or discontinue rail operations.

8. Because, it was not necessary to complete the rehabilitation work before commencing service, had the shippers been able to purchase the line in 1999 and hired us to be their operator, we would have immediately designated the track as "excepted track" and begun rail operations as soon as we could place equipment on the line. The same would have been true in August 2000 when we responded to GCEDC. In either event, the excepted track operations would have bought time to accumulate the additional funds needed to rehabilitate the line or to make a decision that the line should be abandoned. At the same time, such operations would have satisfied the common carrier obligation owed to the shippers on the line who needed rail service.

9. I am also aware that Joseph J. Plaistow has testified that the variable costs associated with moving rolls of paper over the segment of track between the point of interchange with CSX and Groome's facility would have exceeded \$1,430.17 per car. That number, which is based on the *current* estimated cost of rehabilitating the line to Class 1 standards, does not accurately reflect the cost of the minimum repairs that would have been needed in 1999 to permit our railroad to perform safe rail operations on a FRA-excepted track basis.

10. Had we been hired as the operator, we could have provided safe service for far less than the \$1,430.17 figure that Plaistow has calculated. Furthermore, both Groome and Mathena agreed to a surcharge to help defray the cost of any repairs that would have been required to permit us to operate the line safely on an FRA-excepted track basis. To the best of my recollection, the total proposed rate, including a \$100 to \$125 per car surcharge, would not have

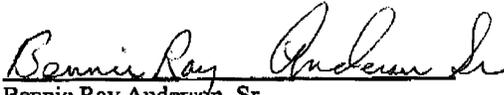
exceeded \$400 per car and likely would have been in the \$325 range. In addition, had service to Groome been restored, both Paper Cutters and the Carolinas Recycling Group, which was located immediately adjacent to Groome's facility and shipped steel turnings by rail before service ceased, would have tendered additional traffic.

11. Based on historic shipping volumes, the \$325 per car figure would have allowed us to amortize the anticipated cost of the minimal repairs needed to operate the line safely on an FRA-excepted track basis in two years.

FURTHER SAYETH THE AFFIANT NOT.

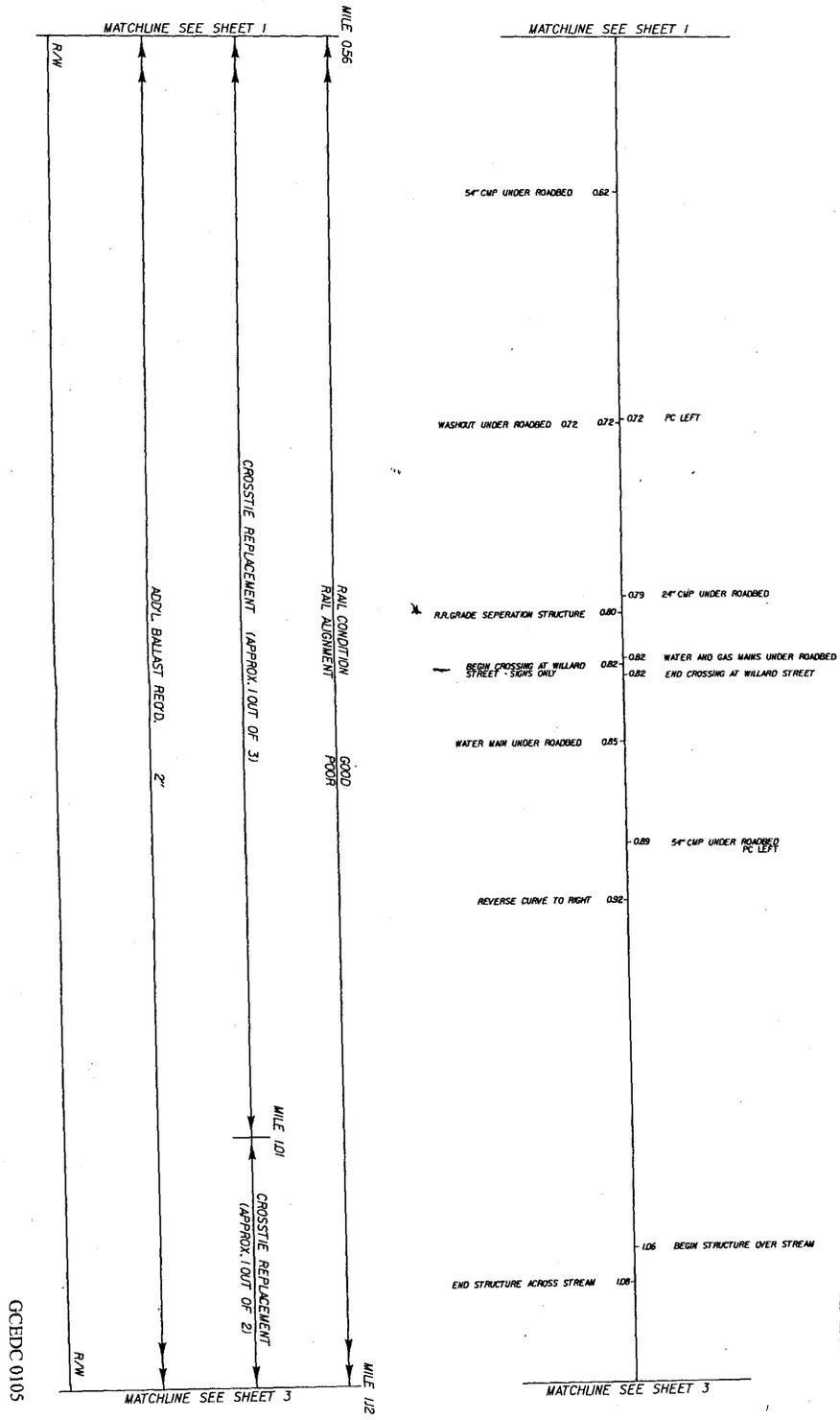
VERIFICATION

I, Bennie Ray Anderson, Sr., hereby declare under penalty of perjury that the foregoing is true and correct. Executed on February 22, 2005.

  
Bennie Ray Anderson, Sr.



SHEET NO. 0105  
 PROJECT NO. 0105  
 DATE 11/19/91

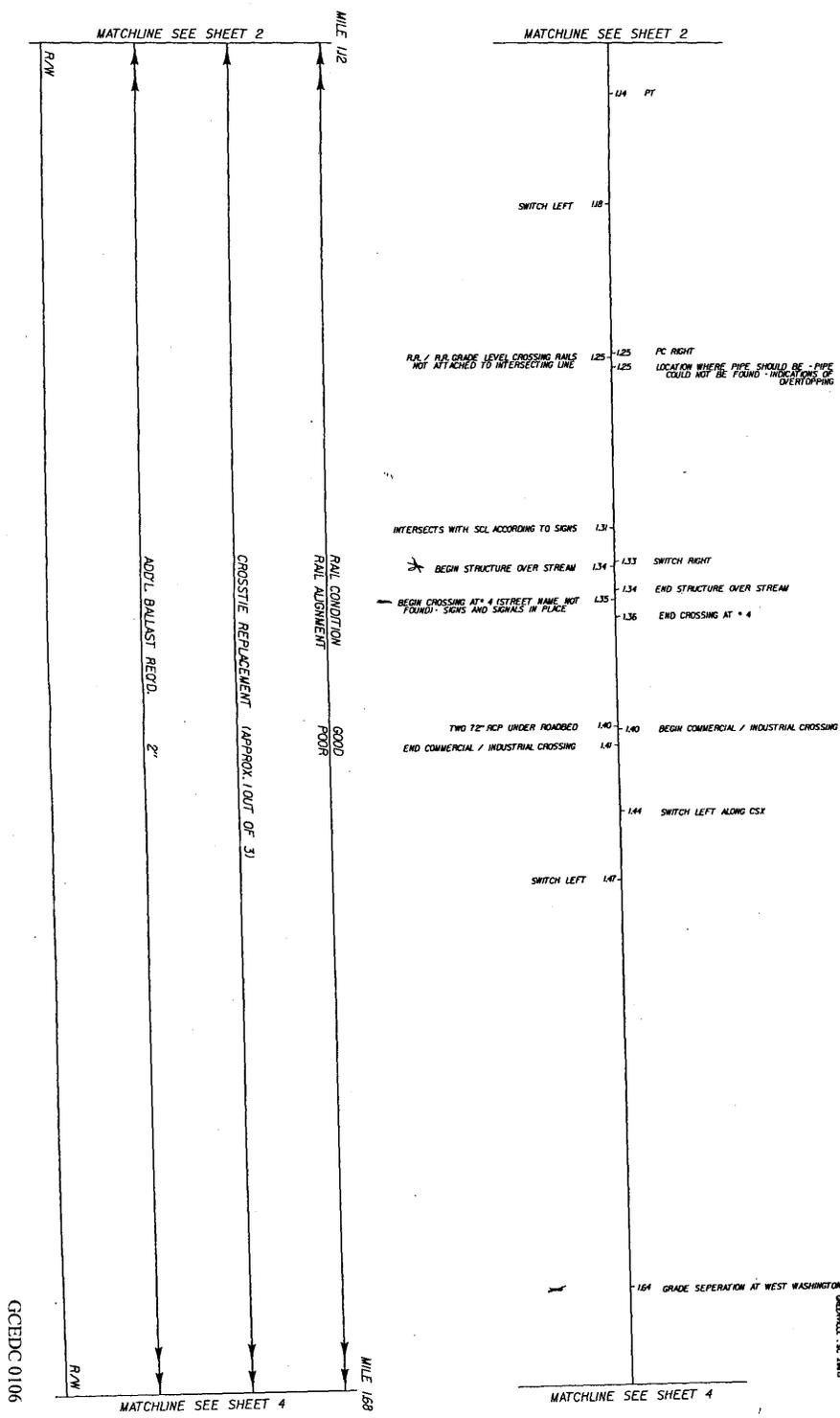


GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL
S.C.	GREENVILLE			2	20

**TRANS SYSTEMS CORPORATION**  
 505 EXECUTIVE CENTER DRIVE, SUITE 210  
 GREENVILLE, SC 29603

GCEEDC 0105



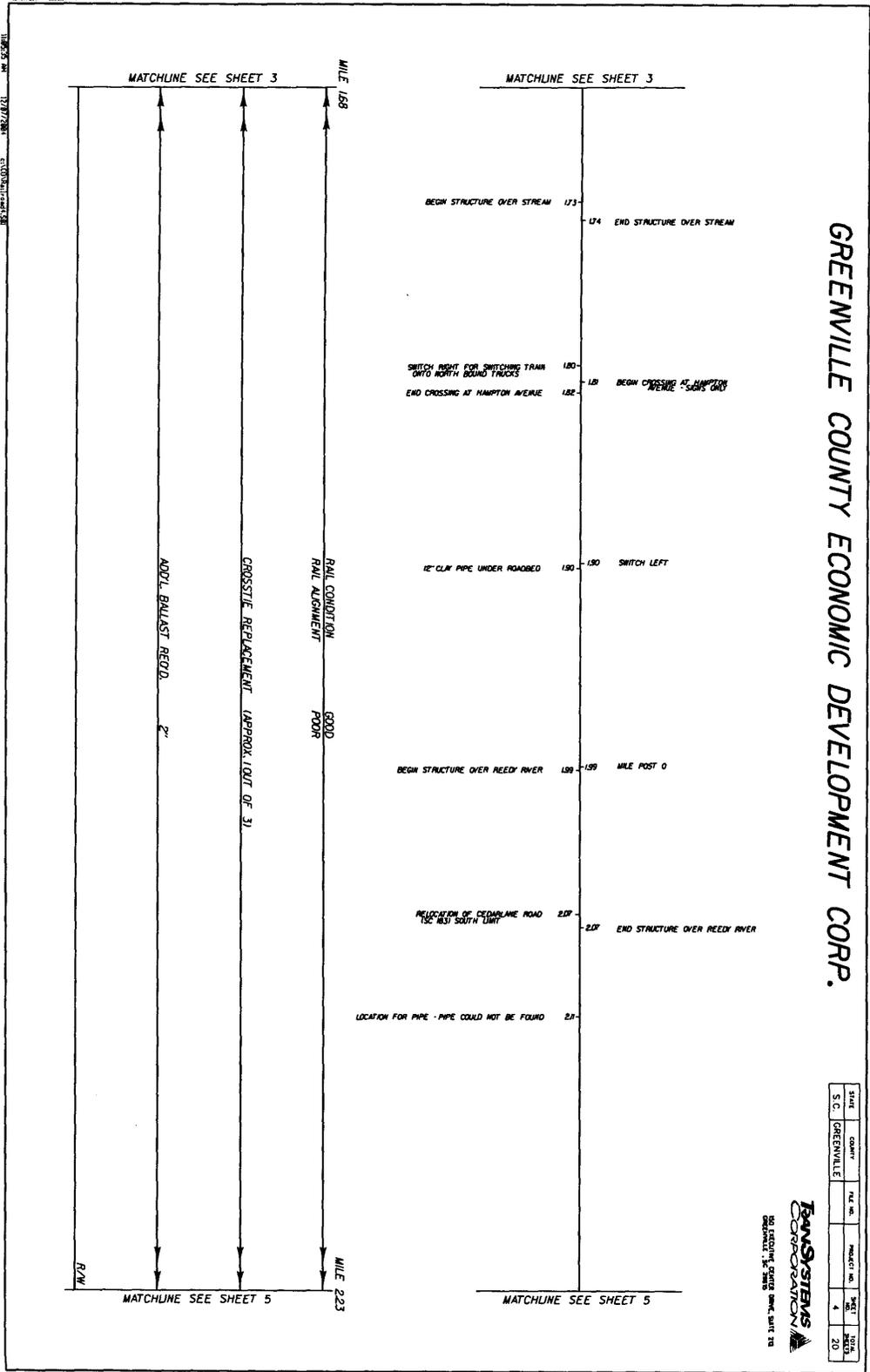
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FAL NO.	PROJECT NO.	SHEET NO.	TOTAL SHEETS
S.C.	GREENVILLE			3	20

**TRANS SYSTEMS CORPORATION**  
 200 EAST WASHINGTON STREET, SUITE 210  
 GREENVILLE, SOUTH CAROLINA 29601

GOEDC 0106

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GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

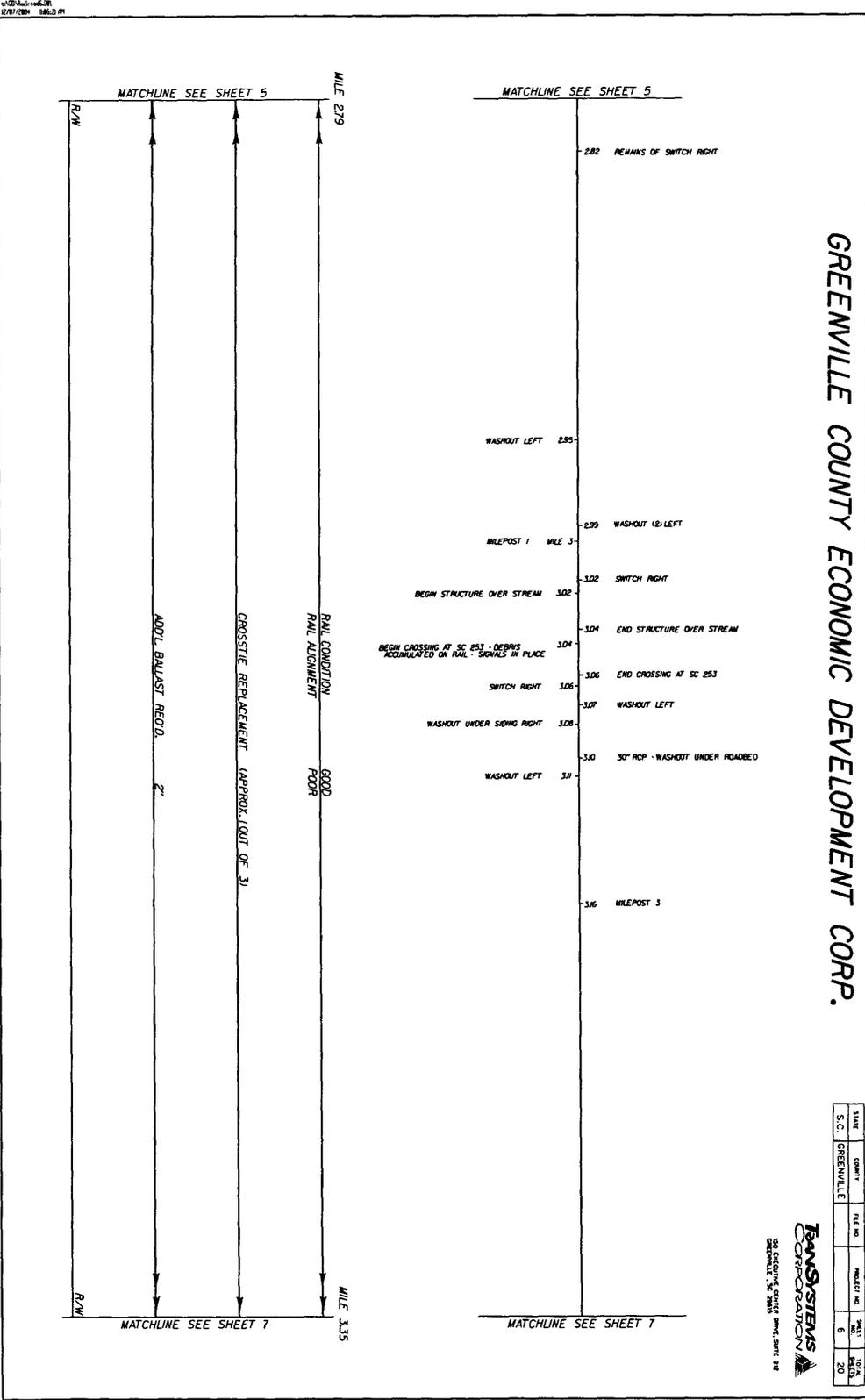
STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL SHEETS
S. C.	GREENVILLE			1	20



GCDEC 0351



# GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

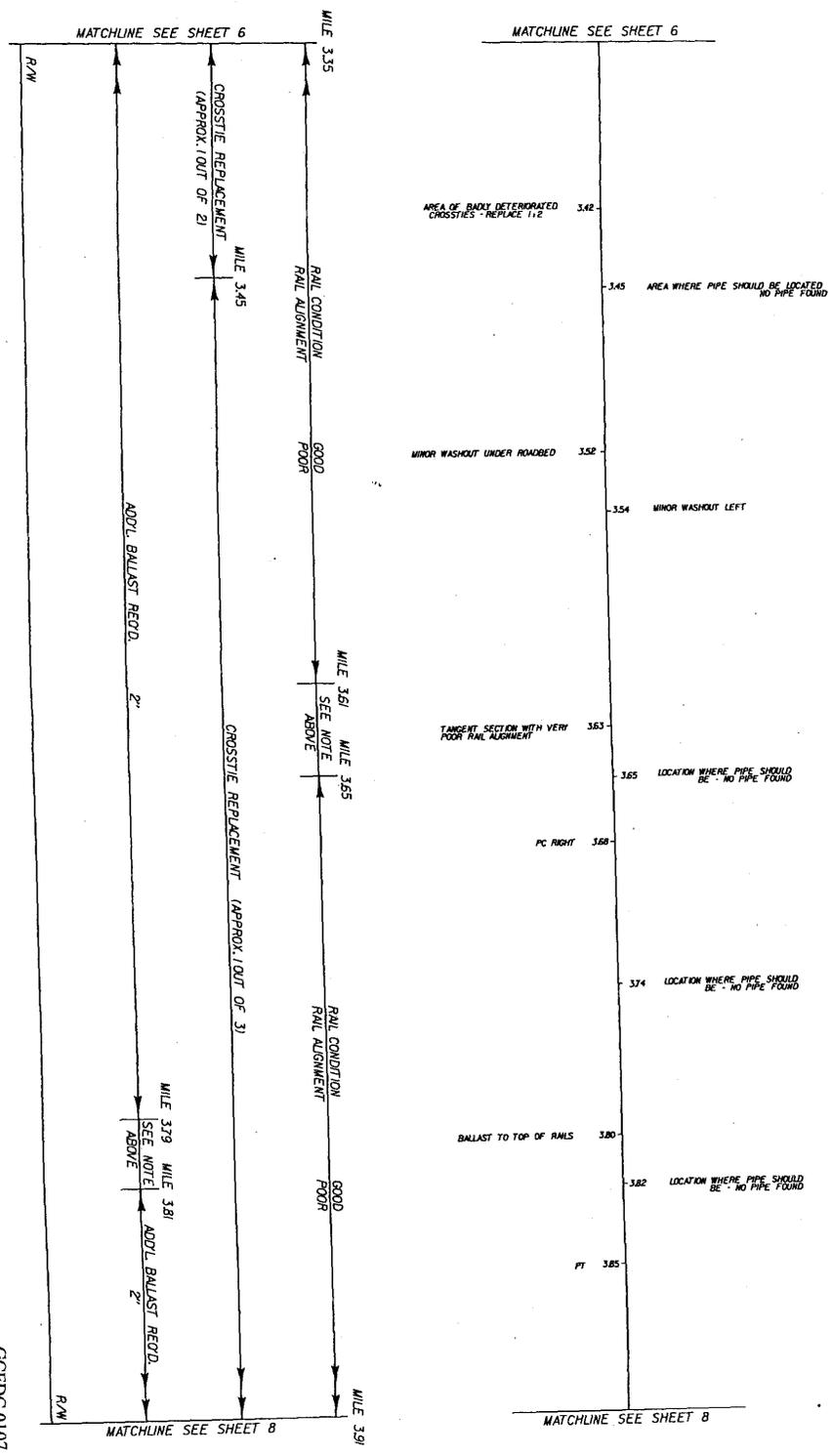


STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL SHEETS
S.C.	GREENVILLE		6	5	20

**TRANSYSTEMS CORPORATION**  
 200 EAST WASHINGTON STREET, SUITE 202  
 GREENVILLE, S.C. 29601

GCDEC 0353

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

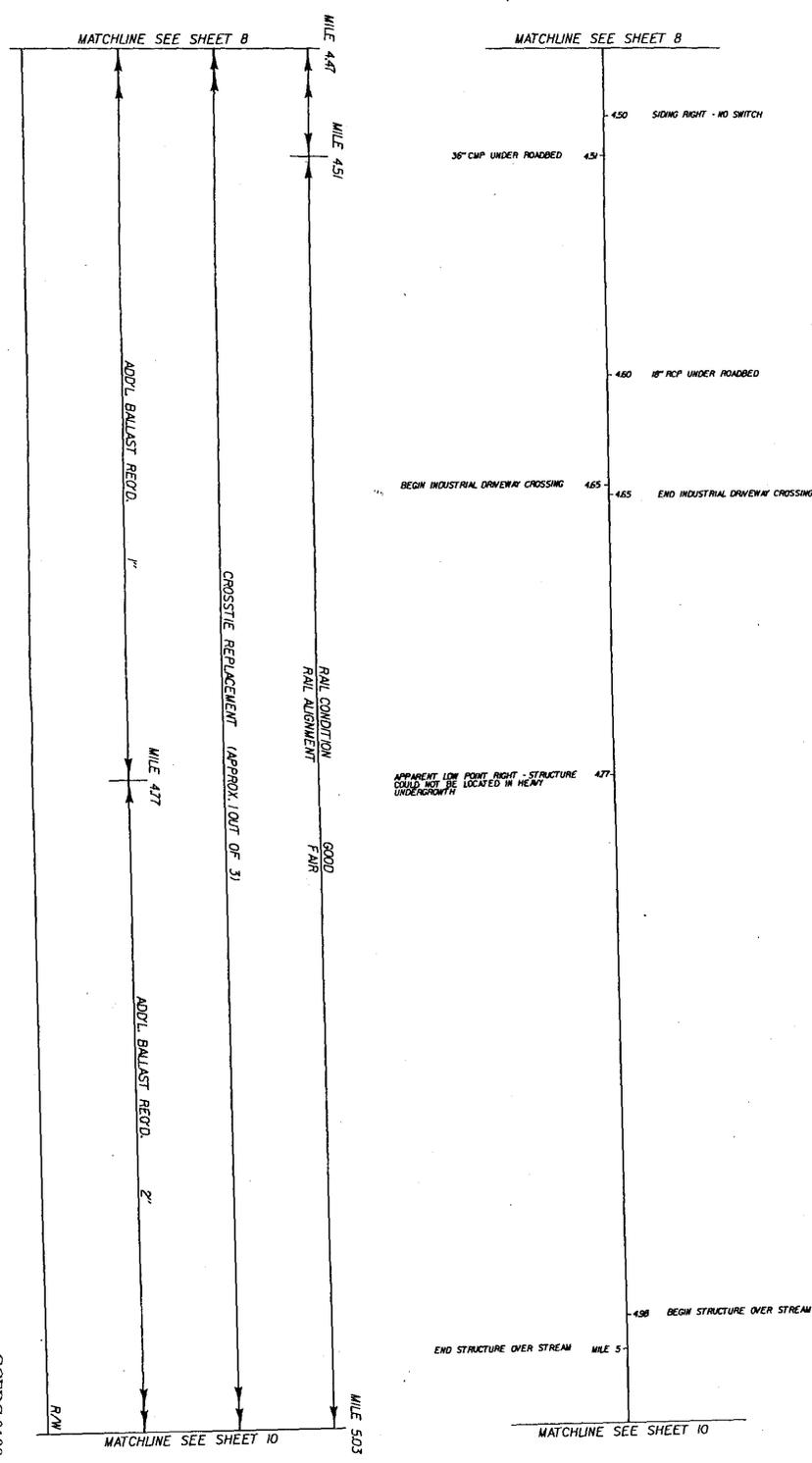


STATE	COUNTY	TAL. NO.	PROJECT NO.	SHEET NO.
S.C.	GREENVILLE		7	20

TRANS SYSTEMS CORPORATION  
 286 LEXINGTON SQUARE, SUITE 210  
 GREENVILLE, SOUTH CAROLINA 29615

GOEDC 0107





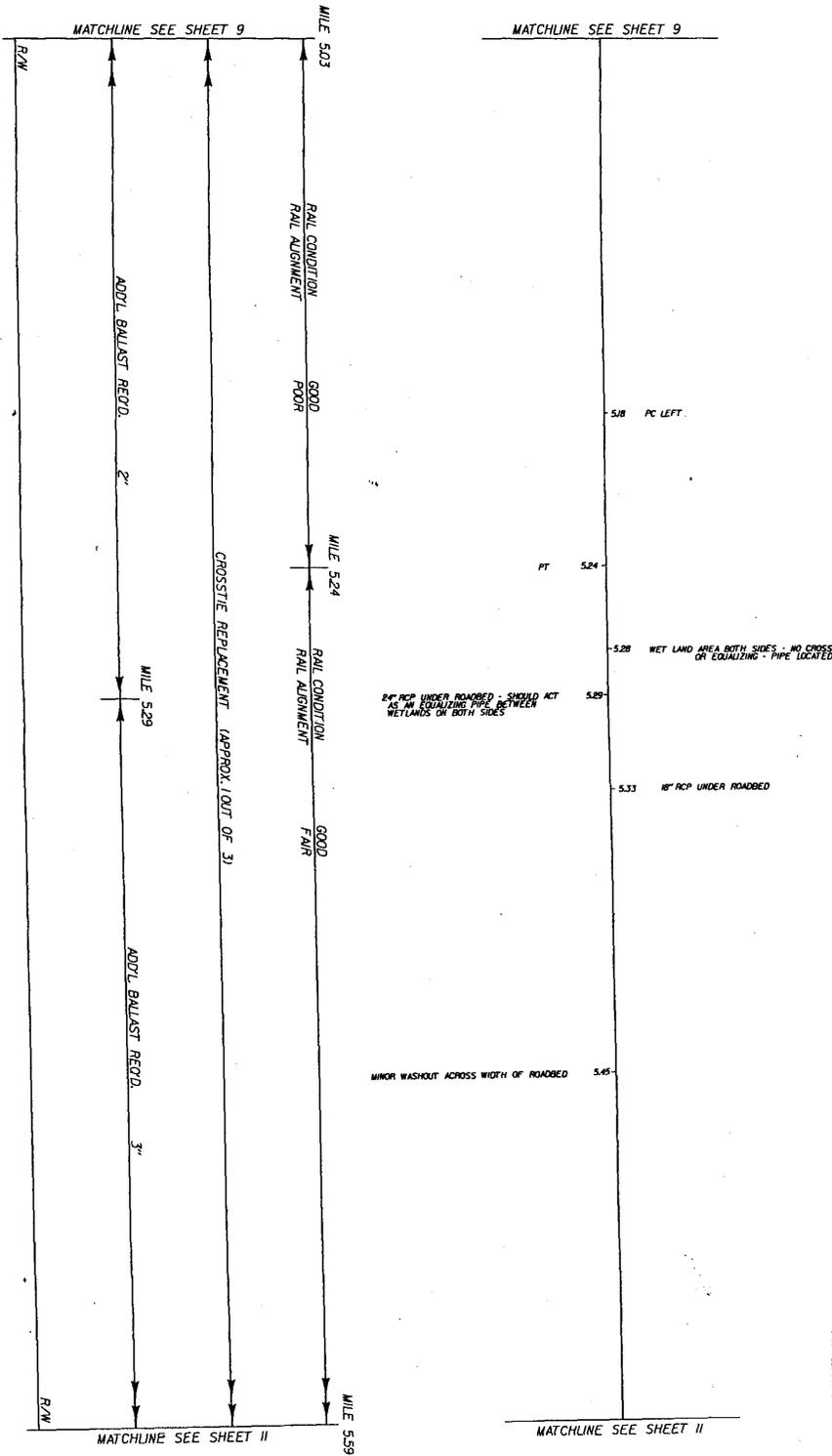
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET NO.	TOTAL SHEETS
S.C.	GREENVILLE		9	20	

**TRANS SYSTEMS CORPORATION**  
 200 EXECUTIVE CENTER DRIVE, SUITE 212  
 GREENVILLE, SC 29603

GCEDDC 0108

# GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

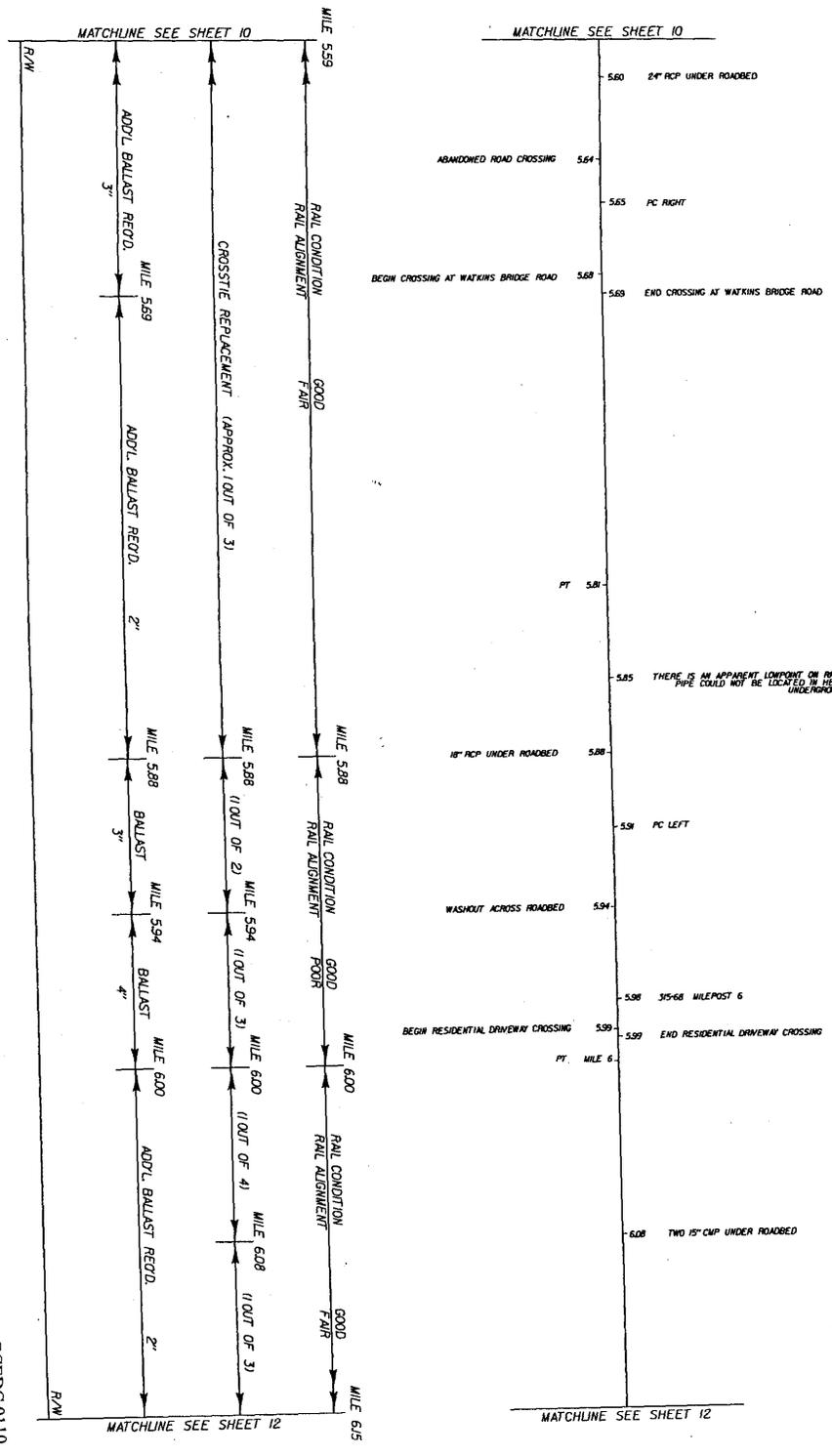


STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL SHEETS
S.C.	GREENVILLE			10	20

**TRANS SYSTEMS**  
 CORPORATION  
 500 EASTING, CENTER DRIVE, SUITE 212  
 GREENVILLE, SC 29603

GCEDDC 0109

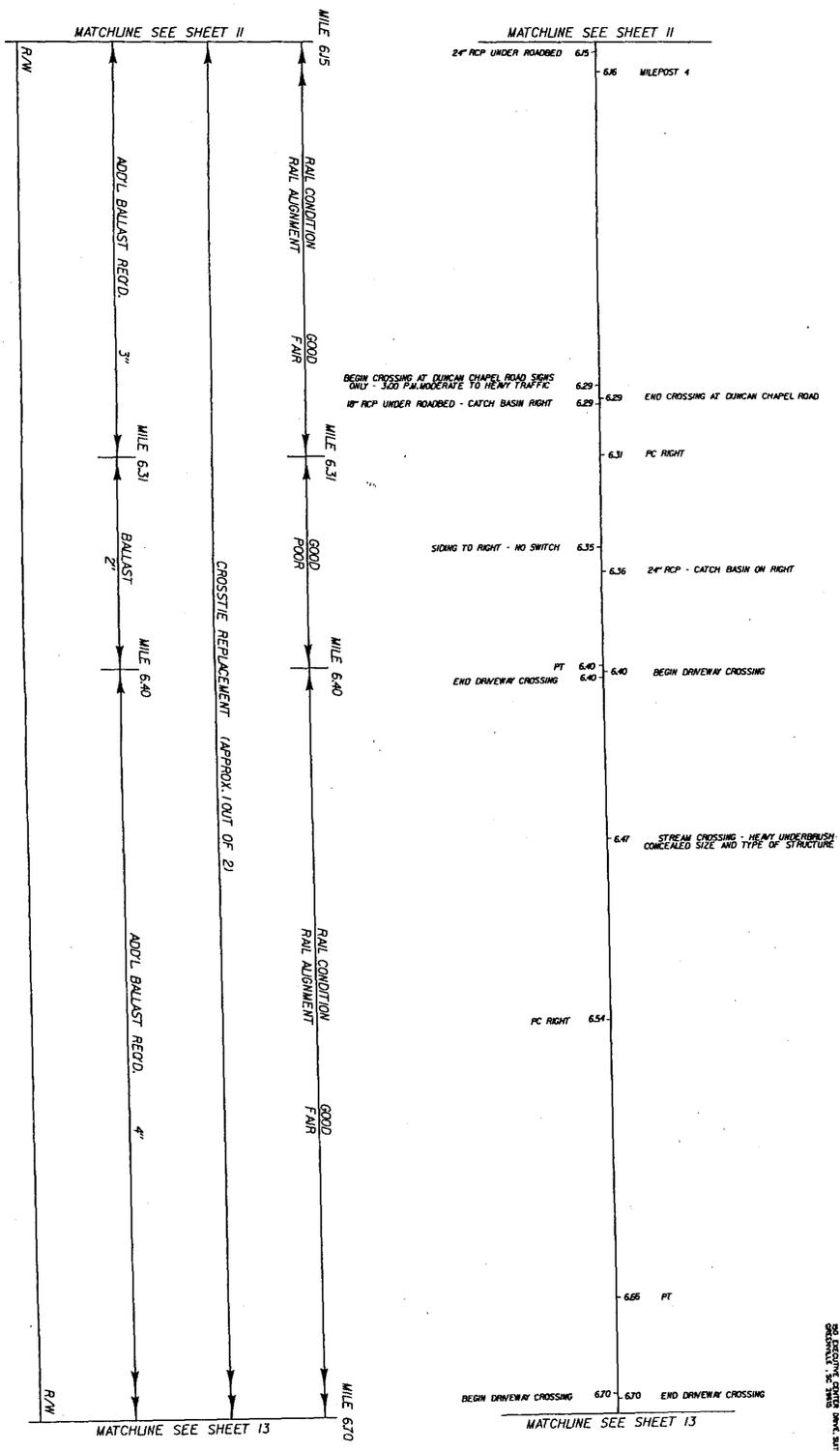
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.



STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL SHEETS
S.C.	GREENVILLE			11	20

**TRANS SYSTEMS CORPORATION**  
 20 EXECUTIVE CENTER DRIVE, SUITE 212  
 GREENVILLE, S.C. 29605

GCEDDC 0110



GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL SHEETS
S.C.	GREENVILLE			12	20

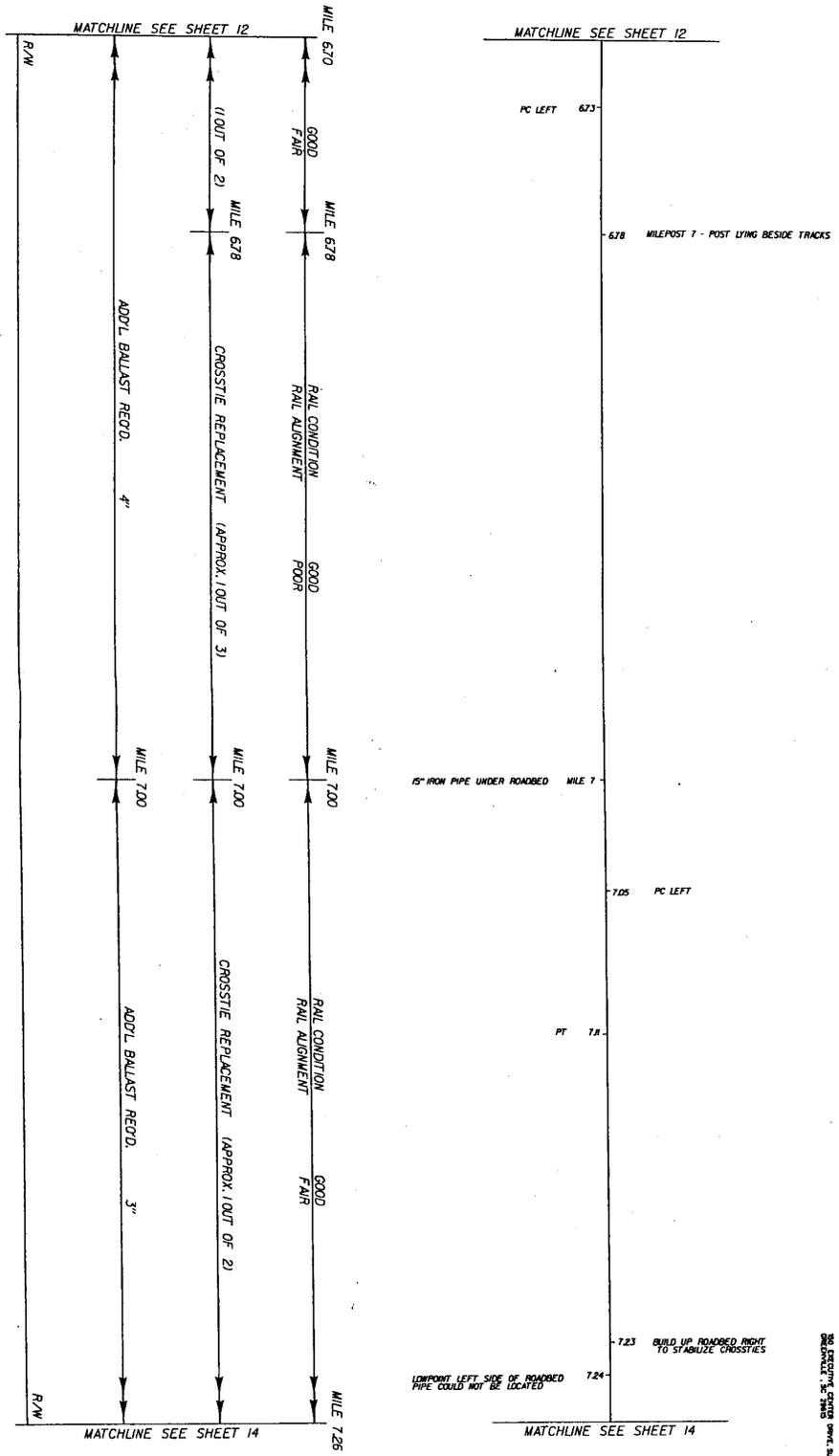
**TRANS SYSTEMS CORPORATION**  
 200 LOGGERS CREEK DRIVE, SUITE 202  
 GREENVILLE, SC 29606

GCEDC 0111

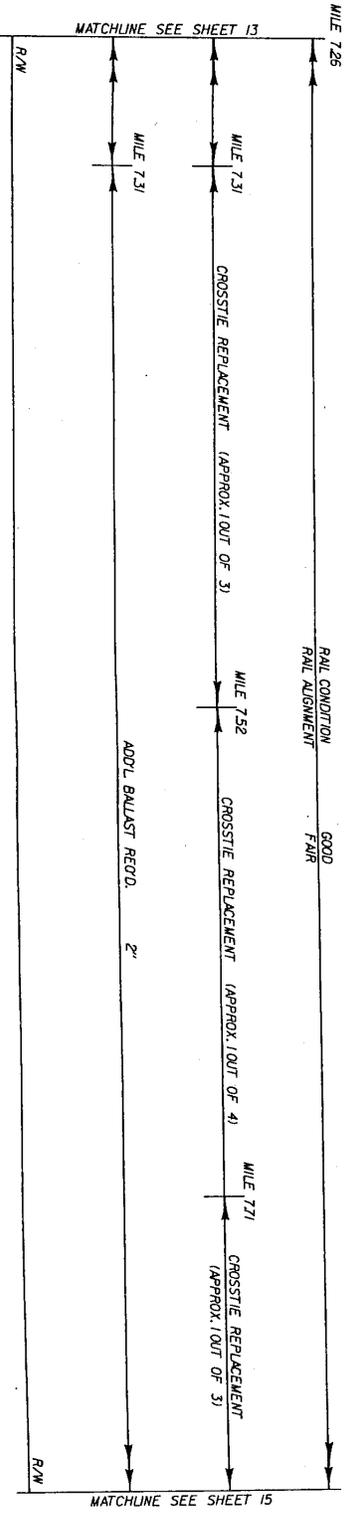
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET NO.	TOTAL SHEETS
S.C.	GREENVILLE			13	20

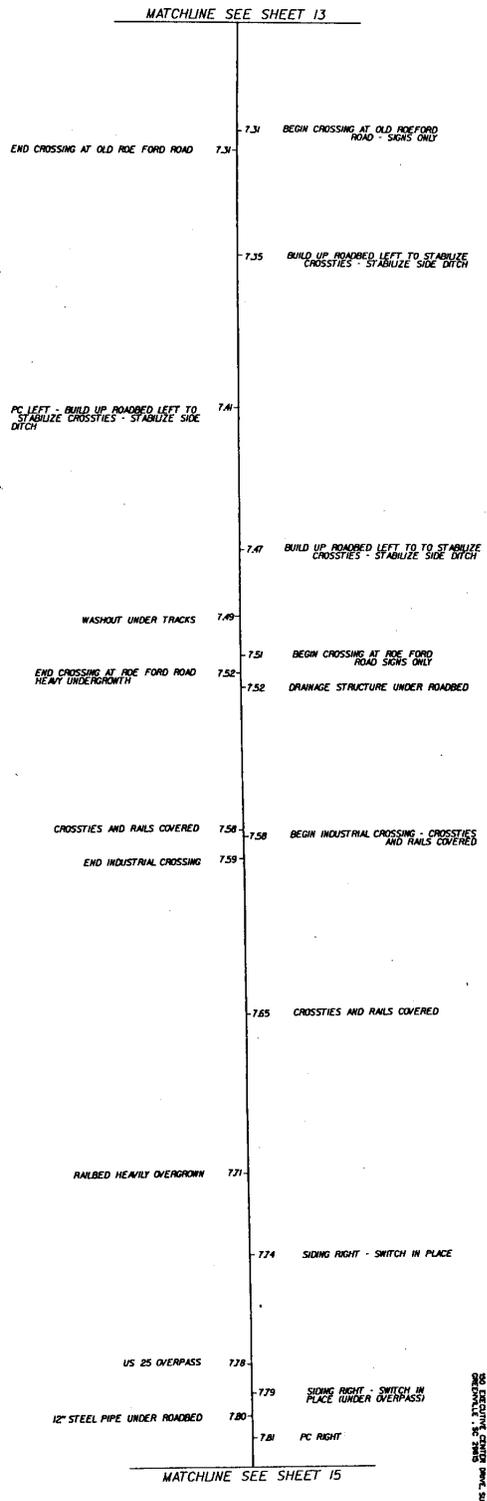
**TAN SYSTEMS CORPORATION**  
 2000 W. GREENVILLE AVENUE, SUITE 210  
 GREENVILLE, SOUTH CAROLINA 29604  
 TEL: 803.782.1111 FAX: 803.782.1112



GCEDDC 0112



GOEDC 0113



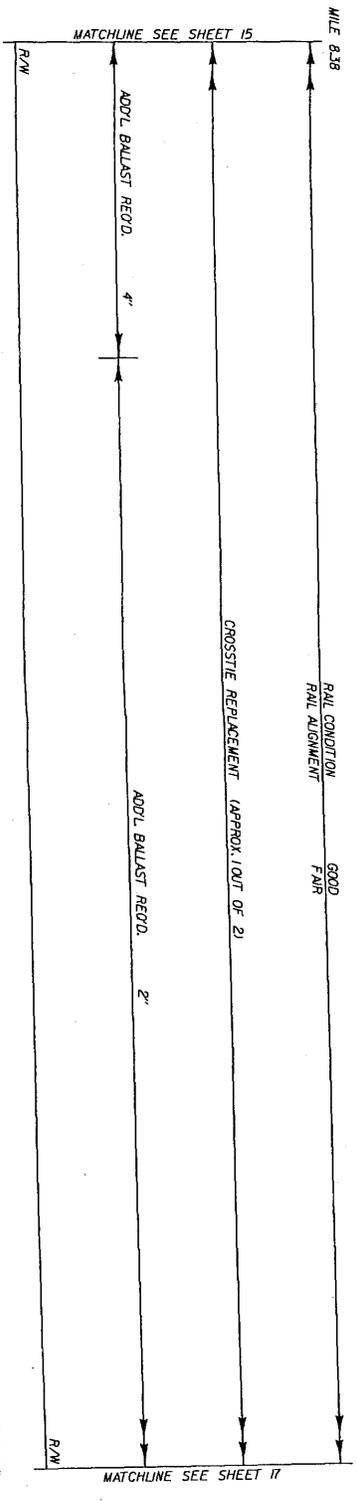
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET NO.	TOTAL SHEETS
S.C.	GREENVILLE			14	20

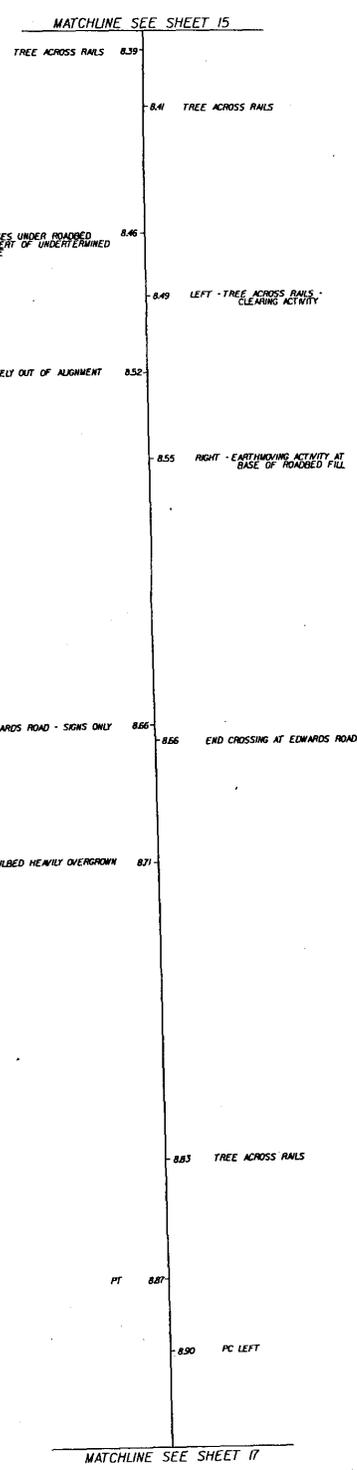




PROJECT NO. 00-100-0000-0000-0000  
 DATE: 05/19/1998 BY: JKL



GCEDC 0115

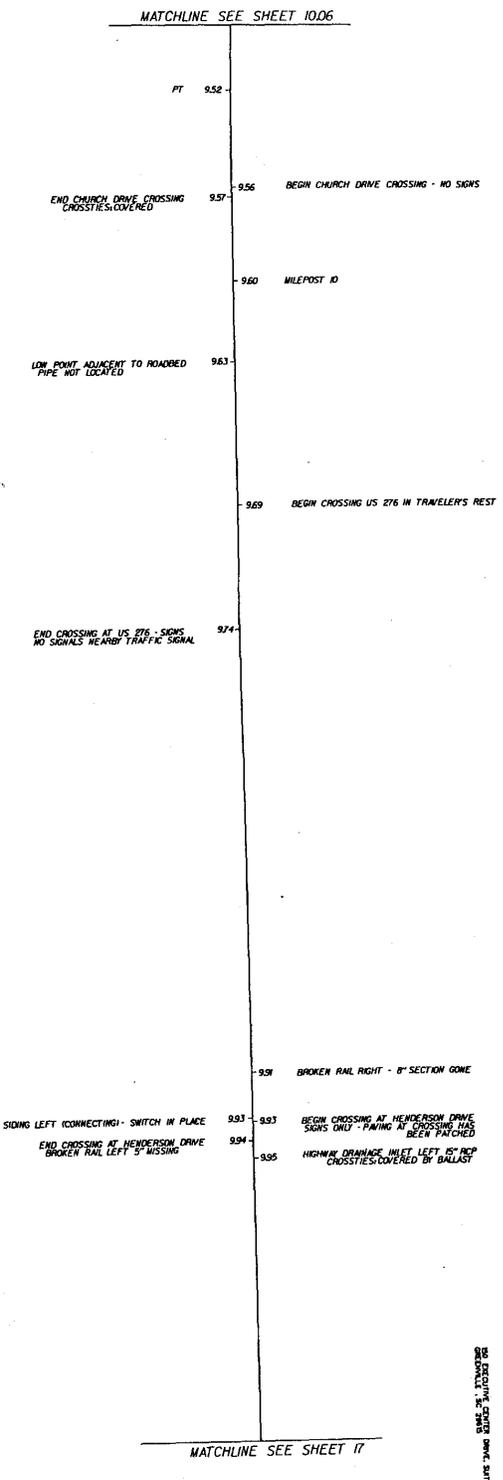
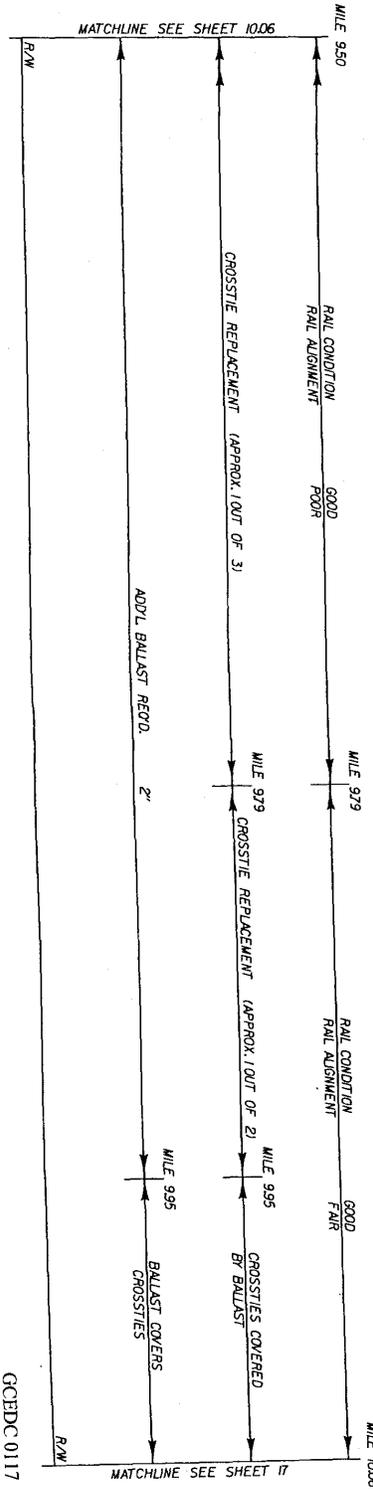


GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET NO.	TOTAL SHEETS
S.C.	GREENVILLE			16	20

**TRANSYSTEMS CORPORATION**  
 200 LANTANA DRIVE, SUITE 202  
 GREENVILLE, SOUTH CAROLINA 29615





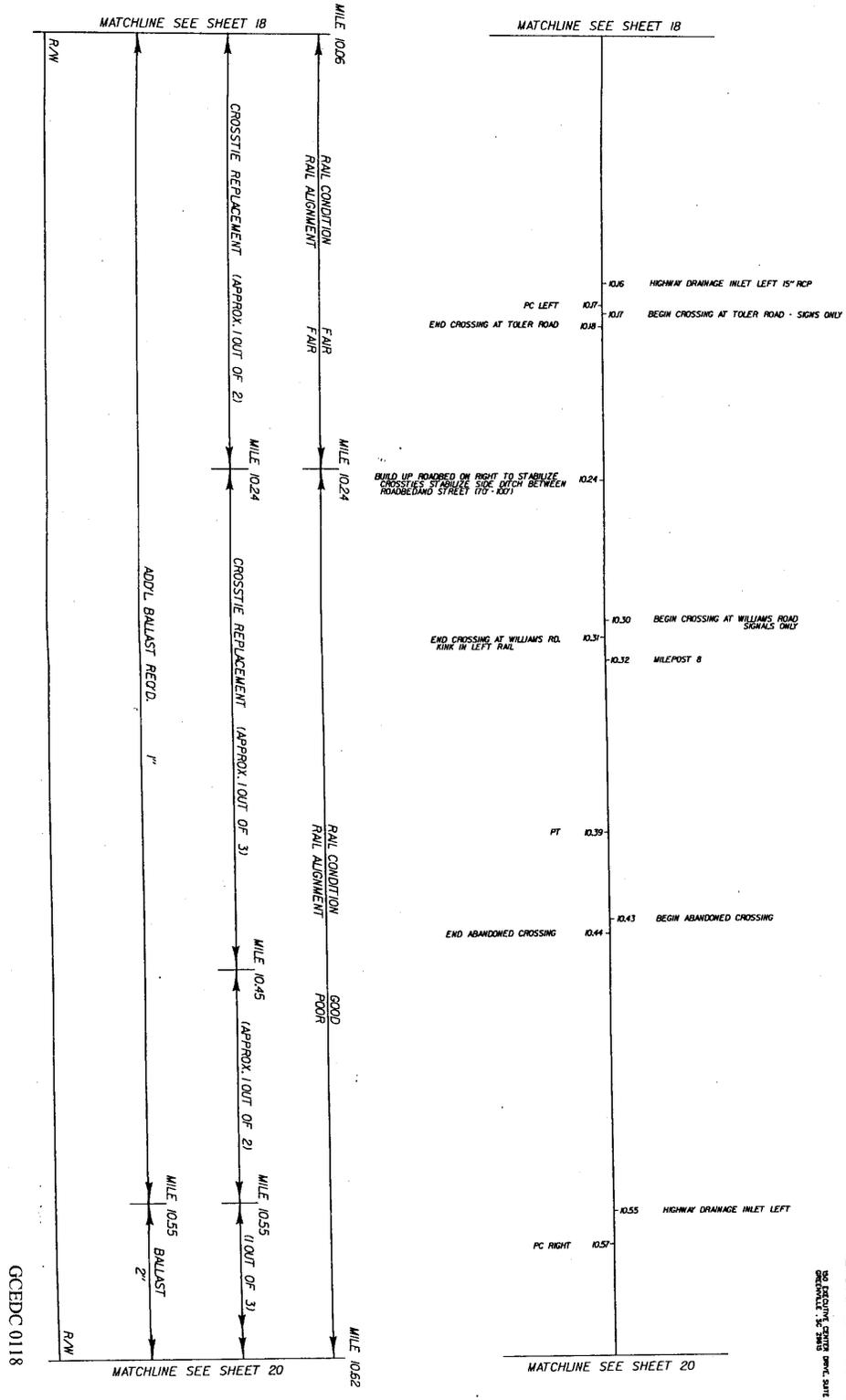
GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET NO.	TOTAL SHEETS
S. C.	GREENVILLE			18	20



GCEDDC 0117

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

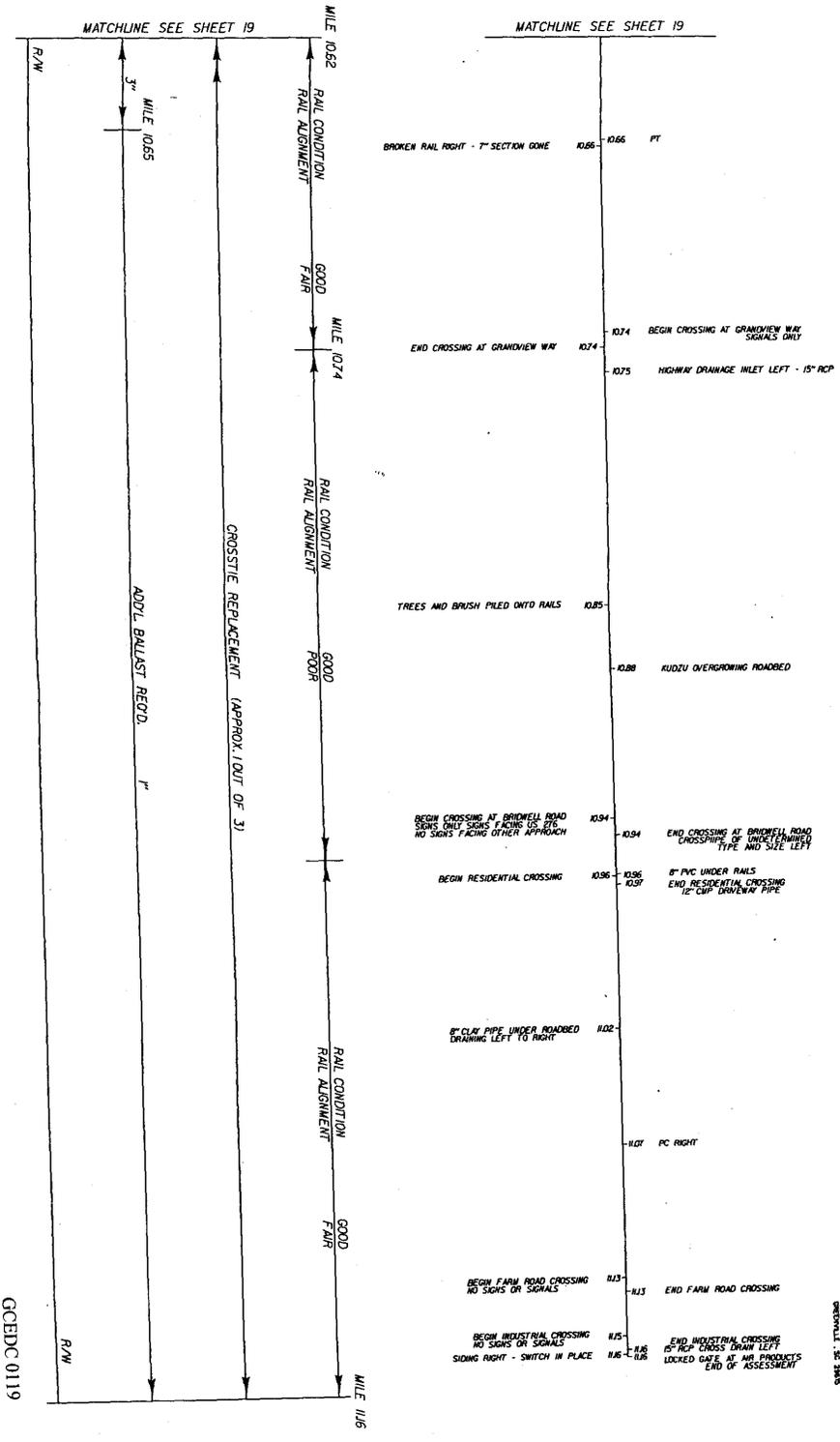


GCEDC 0118



STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL SHEETS
S.C.	GREENVILLE			19	20

NO PARTIAL CROSSING PERMITS PERMITTED IN S.C.



GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORP.

STATE	COUNTY	FILE NO.	PROJECT NO.	SHEET	TOTAL SHEETS
S.C.	GREENVILLE			20	20



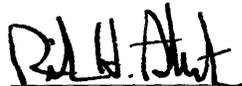
GCEIDC 0119

AA

**CERTIFICATE OF SERVICE**

I, Richard H. Streeter, hereby certify that on February 22, 2005, the foregoing "Rebuttal Statement of Groome & Associates and Lee K. Groome," was hand-delivered upon the following:

William A. Mullins  
David C. Reeves  
Baker & Miller PLLC  
2401 Pennsylvania Avenue, N.W.  
Suite 300  
Washington, D.C. 20037



Richard H. Streeter