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March 4, 2005

**BY HAND DELIVERY**

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

ENTERED  
Office of Proceedings

MAR 4 2005

Part of  
Public Record

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

Dear Secretary Williams:

Enclosed please find an original and eleven copies of Greenville County Economic Development Corporation's Verified Clarification of the Record. This filing is submitted to correct two, discrete factual misrepresentations contained in the Complainants' rebuttal filing.

Please acknowledge receipt of this filing by date stamping the eleventh copy of the filing and returning it to the individual making this filing to return to me. A copy of this filing is being served today on counsel for Complainants, the only other parties of record to this matter, by hand delivery.

Sincerely yours,

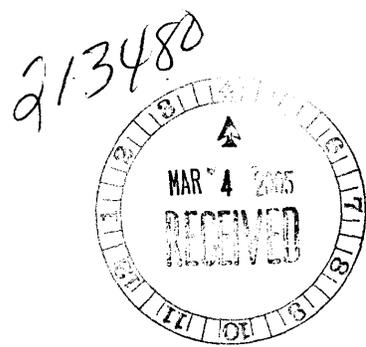
William A. Mullins

Enclosures

cc: Richard H. Streeter, Esq.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB Docket No. 42087**



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

**GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION'S  
VERIFIED CLARIFICATION OF THE RECORD**

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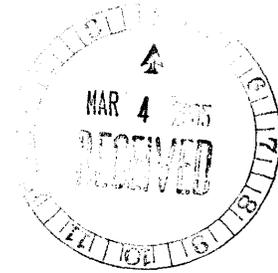
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**Attorneys for Greenville County  
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Corporation**

March 4, 2005

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Docket No. 42087



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

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION'S  
VERIFIED CLARIFICATION OF THE RECORD

Greenville County Economic Development Corporation ("GCEDC"), defendant in this matter, submits this Clarification of the Record to correct two new and factually incorrect assertions contained in the rebuttal filing of complainants Groome & Associates, Inc. ("G&A") and Lee K. Groome ("Mr. Groome") (collectively, "Complainants" or "Groome"). GCEDC here seeks to clarify the record with respect to Complainants' new allegations that \$1.3 million was held in trust and was available to GCEDC to repair the line serving Groome, and the assertion that GCEDC recently replaced 2000 feet of track, rather than restoring service to Groome. Neither of these assertions is correct, and for the Board to base its decision on them would be error.

**REQUEST FOR LEAVE TO FILE**

Mindful of the Board's rules against filing a reply to a reply, GCEDC hereby requests, if necessary, leave to file this clarification of the record. As indicated by the Board's decision in *Keokuk Junction Railway Company-Feeder Line Acquisition-Line of Toledo, Peoria and Western Railway Corporation Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335 (served Feb. 7, 2005), if a party believes that improper new evidence has been presented on rebuttal, it

should promptly respond to that evidence. *See also Arizona Public Service Co. & PacifiCorp v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42077 (served Oct. 14, 2003), slip op. at 4, n. 7, and *Otter Tail Power Company v. The Burlington Northern and Santa Fe Railway Company*, STB Docket No. 42071 (served Nov. 15, 2002), slip op. at 10, n. 17 (complaint proceedings in which the Board accepted replies to replies that did not unduly delay the proceeding and that the opposing party had the opportunity to answer).

By submitting this clarification, GCEDC does not endorse other factual claims repeated from Complainants' Opening Statement, such as the claim that a \$500,000 Greenville County surplus several years ago was money that GCEDC could have spent without the County Council's approval of the transfer of the funds to GCEDC, a transfer that never occurred. Rather, GCEDC seeks leave to clarify the record here only with respect to two new and important factual misstatements in Complainants' Rebuttal.

#### CLARIFICATIONS

Complainants' Rebuttal contains two new and important misstatements of fact concerning GCEDC's ability to fund reconstruction of the rail line at issue.<sup>1</sup> Those statements require correction.

First, Complainants' Rebuttal states that a \$1.3 million trust fund was available to GCEDC which could have been used to repair the line serving Complainants. That is not true.

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<sup>1</sup> The line, extending 11.8 miles northwest from downtown Greenville, SC, to Travelers Rest, SC, was operated until early 1997 by Pinsky Railroad Company's Greenville & Northern Railway Company. The line was sold to RailTex's South Carolina Central Railroad, Carolina Piedmont Division, in late April or early May 1997, *see South Carolina Central Railroad Inc., Carolina Piedmont Division--Acquisition Exemption--Greenville & Northern Railway*, STB Finance Docket No. 33391 (served May 1, 1997), and embargoed on December 4, 1997. The line was sold to GCEDC in June 1999, along with another 3.2-mile segment of line that lies southeast of Greenville and southeast of the line at issue in this case.

Specifically, Complainants' Rebuttal states that the "Greenville-Pickens Area Transportation Study ('GPATS'), passed a resolution whereby it agreed to hold \$1.324 million in trust for GCEDC to be used to upgrade its rail line." Complainants' Rebuttal at 35 [footnotes omitted]. In support of this contention, Complainants include as Exhibit V printouts of e-mails between a person with a South Carolina Department of Transportation ("SCDOT") e-mail address and a person with a Federal Highway Administration ("FHWA") e-mail address. The "Subject" line of those e-mails references "Woodruff Rd. Rail corridor."

The \$1.3 million +/- reserve fund spoken of in the e-mails could only be used to rebuild a rail trestle over the widened Woodruff Road. They could not be used to rehabilitate the line that serves Groome. Indeed, neither Woodruff Road nor the trestle are located on the 11.8-mile rail line identified in footnote 1 that serves Groome. Rather, they are located on another, 3.2-mile rail line which GCEDC acquired as part of the same transaction where it acquired the line that serves Groome. *See Greenville County Economic Development Corporation—Acquisition Exemption—South Carolina Central Railroad Company, Inc., Carolina Piedmont Division*, STB Finance Docket No. 33752 (served June 3, 1999) (describing the two separate segments acquired by GCEDC), and Verified Statement of Andrew J. White, Jr., Exhibit 6 to GCEDC's Reply to Complainants' Opening Statement (filed Jan. 24, 2005) at pages 3-4, ¶¶5(e & f) (describing the location of the two separate segments of line purchased by GCEDC).

The e-mails in Complainants' Exhibit V address removal of the rail trestle in order to widen Woodruff Road. They state that the original plan for widening the road only called for constructing abutments suitable for the later construction of a rail trestle, without funding the actual replacement of the trestle itself. However, as the e-mails state, GPATS had previously committed to fund replacement of the trestle itself. As a result, some form of agreement

involving SCDOT and GCEDC is needed to provide funding for replacement of the trestle due to the widening of Woodruff Road. That agreement has not yet been finalized.

Furthermore, there currently is no reserve fund for replacement of the trestle, although GCEDC and SCDOT have agreed on the terms of an agreement that would provide GCEDC with the funds to replace the trestle. However, SCDOT has required in that agreement that the funds to be reserved can only be used to replace the trestle over the widened Woodruff Road. The funds are not, as Complainants' Rebuttal implies, currently available to GCEDC, nor were those funds available at any time in the past to be used for rehabilitating the 11.8-mile Greenville-Travelers Rest rail line. Those funds, assuming they become available at all, can only be used to replace the rail trestle when and if Woodruff Road is widened. GCEDC's use of the funds for any other purpose (such as those suggested by Complainants) would violate the conditions and stipulations placed on the funds by SCDOT.

A second serious factual misrepresentation in Complainants' Rebuttal is the assertion that GCEDC recently reconstructed 2000 feet of rail rather than reconstructing facilities needed to access Complainants' facility. This also is untrue. Specifically, Complainants' Rebuttal states, "[T]he following photograph and the photographs attached to Groome's Rebuttal Verified Statement show that GCEDC has recently rebuilt a substantial portion of the track. The ability to construct over 2,000 feet of new track conclusively demonstrates that the line could have been rehabilitated . . ." Complainants' Rebuttal at 36. Similarly, the referenced portion of Mr. Groome's Rebuttal Verified Statement says, "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. . . . 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.” Groome Rebuttal Verified Statement, ¶8.

Complainants are wrong – the reconstructed track at issue was built by SCDOT, at SCDOT’s cost, in connection with a road project. GCEDC did not have the money to fund, and did not fund, that construction. Neither did GCEDC have any say in how the money was spent. Rather, the approximately 2000 linear feet of track replaced near Cedar Lane was part of SCDOT’s Western Corridor Improvement Project. This was a SCDOT project only and did not involve GCEDC. As a result of the vertical alignment improvements that were recommended for Cedar Lane (this roadway was raised due to the Reedy River road bridge crossing), the GCEDC rail line needed to be raised. SCDOT’s project included the reconstruction of approximately 2000 linear feet of the rail line. As of today, this rail work has not been fully completed by SCDOT. There is still ballast and alignment work required south of the Cedar Lane crossing.

#### CONCLUSION

Complainants’ new assertions in rebuttal that (a) \$1.3 million +/- is being held in trust that could be used by GCEDC to restore service to Complainants’ location, and (b) that GCEDC recently rebuilt approximately 2000 feet of track on the line at issue are both untrue. GCEDC requests that the Board accept this clarification of the record so that the Board’s decision is not based on these erroneous factual assertions by Complainants.



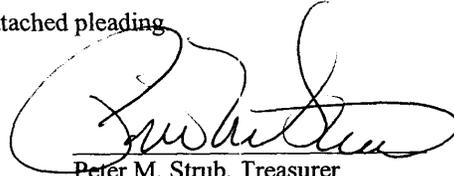
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Counsel for Greenville County  
Economic Development Corporation

VERIFICATION

I, Peter M. Strub, Treasurer of the Greenville County Economic Development Corporation, hereby verify under penalty of perjury that I have reviewed the Greenville County Economic Development Corporation's Verified Clarification of the Record, know the facts asserted therein, and that the same are true and correct. Further, I certify that I am qualified and authorized to make and file this Verification of the attached pleading.

3-3-05

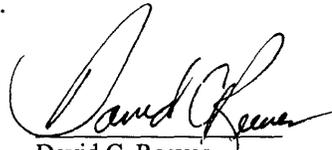
Date



Peter M. Strub, Treasurer  
Greenville County Economic  
Development Corporation

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on this 4<sup>th</sup> day of March, 2005, a copy of the foregoing Greenville County Economic Development Corporation's Verified Clarification of the Record was served by courier on Complainants' counsel.

  
David C. Reeves