

Voting Conference, July 27, 2005

Statement of Melanie Yasbin
Staff Attorney, STB Office of Proceedings

Groome & Associates, Inc. and Lee K. Groome

v.

Greenville County Economic Development Corporation
STB Docket No. 42087

Greenville County Economic Development Corporation – Petition for Declaratory Order
STB Finance Docket No. 34487

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

This matter concerns a damaged 11.8 mile long rail line in South Carolina, which the Greenville County Economic Development Corporation (Greenville County) received authority from the Board to acquire in 1999. In STB Finance Docket No. 34487, the Board instituted a declaratory order proceeding at Greenville County's request, in response to a state court's decision that it has jurisdiction to determine whether Greenville County has violated its federal common carrier obligation by failing to provide service to Groome & Associates. The draft decision before you finds that 49 U.S.C. 10501(b)(2) preempts state laws and remedies with regard to a railroad's alleged failure to carry out its common carrier obligation. Citing an appellate court ruling in another case, the draft points out that, while federal district courts and the Board have concurrent jurisdiction under the statute to address common carrier obligation issues, state courts do not have such authority.

I will now turn to STB Docket No. 42087. In a complaint filed on August 23, 2004, Groome & Associates, and its principal, Lee K. Groome (Complainants) alleged that Greenville County

violated its common carrier obligation by failing to provide service upon reasonable request over the damaged line. Complainants seek damages, including increased storage, handling and shipping costs, additional mitigation expenses and reimbursement of personal funds contributed by Mr. Groome.

The draft decision denies Greenville County's motion to dismiss on the ground that the commodities involved are not exempt and it also finds that the complaint is not barred by the statute of limitations. However, the draft decision holds that, because the complaint was not filed until August 2004, Complainants can recover damages only as far back as August 2002.

Greenville County also claimed that it should not be found to have acquired a common carrier obligation because it is a public body that did not intend to operate the line itself. Rather, its intent was always to hire an operator that would obtain the obligation to serve, but it states that it was unable to find an operator because the line required too much work before it could be made operational. The draft decision finds that, even though Greenville County did not intend to operate the line itself, by acquiring a license to take over the line it also acquired the common carrier obligation to provide service over the line. The draft decision also finds that Complainants made a reasonable request for service, thereby triggering Greenville County's common carrier obligation.

The common carrier obligation is not absolute, but a carrier may not continue to refuse service indefinitely. If it is not going to restore service at all, then it must take steps to be relieved of its obligation through abandonment or discontinuance authorization. Here, the draft decision

reviews all of the evidence to determine whether Greenville County's failure to serve was reasonable, as well as whether the length of its failure to serve was reasonable under the circumstances, by balancing the cost of repairs necessary to restore service, the amount of traffic on the line, the carrier's intent, the length of the service cessation, and the financial condition of the carrier.

Applying the balancing test, the draft decision finds that Greenville County did not initially violate its common carrier obligation given the costs of the necessary repairs and the low level of traffic available for movement. The draft finds that Greenville County made reasonable efforts to obtain funding and to find an operator for the first 2 years after it bought the line. By that time, however, Complainants had already initiated state court proceedings and it was, or should have been, apparent to Greenville County that plans for funding and operating the line would not succeed. The draft decision finds that, at that point, Greenville County should have known that it was time to seek to end its obligation to provide service and that it was unreasonable for it not to begin the abandonment or discontinuance process. The draft finds that Greenville County's failure to resolve the situation constituted a violation of the common carrier obligation.

The draft decision grants Complainants damages for costs associated with the increased storage, handling and shipping resulting from the lack of rail service from August 2002 until Complainants went out of business. However, the draft decision denies all remaining claims for damages as too remote and speculative in nature.

We would be happy to address any questions you might have.