

FOUR PENN CENTER
SUITE 200
1600 JOHN F. KENNEDY BLVD.
PHILADELPHIA, PA 19103-2808
TELEPHONE 215.563.9400
FACSIMILE 215.665.9988
WWW.GGELAW.COM

GC&E GOLLATZ
GRIFFIN
& EWING
ATTORNEYS - AT - LAW

ERIC M. HOCKY
DIRECT DIAL 215.320.3720
emhocky@ggelaw.com

May 24, 2004
VIA: electronic filing

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

Re: STB Docket No. AB-400 (Sub-No. 4)
Petition of Lee County, Florida for Waiver
Regarding Seminole Gulf Railway, L.P. Adverse
Abandonment in Lee County, Florida

Dear Secretary Williams:

Enclosed for filing in the above referenced proceeding is the Reply of Seminole Gulf Railway to Petition for Waiver and Exemption and to Rebuttal. This filing is being made in accordance with the Board's rules for electronic filing. Please let me know if there are any problems with this filing.

Respectfully,


ERIC M. HOCKY

cc: Robert P. vom Eigen (by email and overnight courier)

Before the
SURFACE TRANSPORTATION BOARD

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

SEMINOLE GULF RAILWAY, L.P.
- ADVERSE ABANDONMENT -
IN LEE COUNTY, FLORIDA

**REPLY OF SEMINOLE GULF RAILWAY
TO PETITION FOR WAIVER AND TO REBUTTAL
OF LEE COUNTY, FLORIDA**

Eric M. Hocky
Gollatz, Griffin & Ewing, P.C.
Four Penn Center
Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
(215) 563-9400
emhocky@ggelaw.com

Attorneys for Seminole Gulf
Railway, L.P.

Dated: May 24, 2004

Before the
SURFACE TRANSPORTATION BOARD

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

SEMINOLE GULF RAILWAY, L.P.
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**REPLY OF SEMINOLE GULF RAILWAY
TO PETITION FOR WAIVER AND TO REBUTTAL
OF LEE COUNTY, FLORIDA**

On May 19, 2003, Lee County, Florida ("Lee County") filed a petition seeking waiver from the Board's regulations prohibiting the filing of a reply to a reply, and a proposed Rebuttal that it asked the Board to consider. Seminole Gulf Railway, L.P. ("SGLR") does not believe that a waiver is necessary for the Board to fairly consider Lee County's original waiver requests ("Waiver Petition"). However, if the Board grants this waiver and accepts the Rebuttal, then SGLR requests that the Board also consider this Reply.

Reply to Rebuttal

As noted by Lee County, this is not the time to dispute the factual issues that the Board will need to ultimately consider when evaluating the application for adverse abandonment that Lee County plans to file. However, there are several points in the Rebuttal to which SGLR believes a response is necessary.

1. In its Rebuttal, p. 4, Lee County asserts that service on the office of the Governor is sufficient and that service on the Florida Department of Transportation ("FDOT") or equivalent agency is not required by the Board's regulations. However, Section

1152.20(a)(2)(iii) specifically requires service on “The Public Service Commission (or equivalent agency) in [each state directly affected by the abandonment].” SGLR’s Reply to Waiver Petition suggested that FDOT was the proper state agency since it has jurisdiction over both railroads and crossings. Reply to Waiver Petition at 6.

2. Lee County claims that its abandonment application can be timely filed in early June because it is in the process of publishing its notice. Rebuttal at 4-5. However, this presumes that the notice that Lee County published in a form that is approved by the Board. SGLR’s argument was that Lee County has asked for waivers to use the proposed notice, but those waivers have not been granted by the Board. If the Board agrees with SGLR’s Reply to Waiver Petition, the notice will need to be revised and republished. Further, SGLR does not believe that Lee County can file its adverse abandonment application until at least 20 days after a proper environmental and historic report is filed. See Section 3 below.

3. Lee County indicates that the Board no longer needs to grant it a waiver from the environmental and historic report requirements because it has filed such a report. Rebuttal at 5. However, the Board should note that SGLR does not believe that the report that Lee County filed satisfies the Board’s requirements and has requested, by letter filed with the Board on May 20, 2004, that the report be rejected.

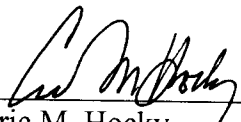
4. Lee County complains that SGLR gives no justification for requiring Lee County to adhere as closely as possible to the Board’s prescribed text for notices. Rebuttal at 4-5. However, as SGLR noted in its Reply to Waiver Petition, it is the Board that has previously determined that strictly following the form is the best way to insure that proper notice is given. See East St. Louis Junction Railroad Company - Adverse Abandonment - In St. Clair County,

IL, STB Docket No. AB-838 (served June 30, 2003) (cited in Reply to Waiver Petition at 9).

Conclusion

For the foregoing reasons and the reasons set forth in the Reply to Waiver Petition, SGLR requests that the Board enter an order limiting the waivers originally requested by Lee County. Further, notwithstanding any waivers that are granted the Board should make clear in its order that Lee County still has the burden of supporting its case demonstrating that the public convenience and necessity require this abandonment with sufficient relevant evidence.

Respectfully submitted,



Eric M. Hocky
Gollatz, Griffin & Ewing, P.C.
Four Penn Center
Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
(215) 563-9400
emhocky@ggelaw.com

Attorneys for Seminole Gulf
Railway, L.P.

Dated: May 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served on the following person by electronic delivery and by overnight delivery:

Robert P. vom Eigen
Melissa A. Burt
Foley & Lardner, LLP
Suite 500
3000 K Street, NW
Washington, DC 2008
RvomEigen@foley.com



Eric M. Hocky

Dated: May 24, 2004