

August 30, 2004

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

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

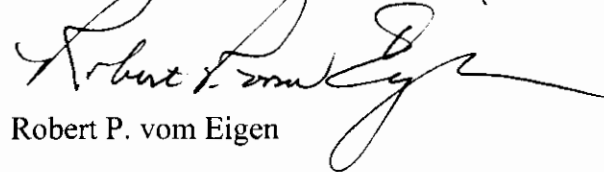
Dear Secretary Williams:

We are requesting leave to electronically file our Reply to Protest and Comments out of time. Attached are a public version and a highly confidential version of our Reply.

We intended and were prepared to file our Reply electronically to the Board by 5:00 p.m. today, August 30, 2004. Unfortunately, a representative of our client believed he had sent us a signed copy of his verified statement before leaving the office when in fact it had not been sent. We were unable to contact him, and were unable to arrange an alternate delivery until just after 5 p.m.

This minor delay will not prejudice anyone because all of the parties will still be served today, August 30, 2004 via email and overnight delivery or U.S. mail.

Respectively submitted,



Robert P. vom Eigen

Enclosures

cc: All persons shown on the Certificate of Service

PUBLIC VERSION

Lee-12

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

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

**SEMINOLE GULF RAILWAY, L.P.
ADVERSE ABANDONMENT
IN LEE COUNTY, FL**

**REPLY BY
LEE COUNTY, FLORIDA,
TO PROTEST AND COMMENTS**

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Dated: August 30, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

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

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

REPLY BY
LEE COUNTY, FLORIDA,
TO PROTEST AND COMMENTS

On June, 16, 2004, Lee County, Florida ("Lee County") filed an application for adverse abandonment seeking the abandonment of a portion of Seminole Gulf Railway's, L.P. ("SGLR's") the Baker Spur line. The western terminus of the portion of line in question (the "Subject Line") begins at railroad engineering station 36+35 +/-, which is approximately 100 feet to the west and south of where the line crosses Alico Road, approximately one mile east of U.S. 41, and parallel to Alico Road station 79+00. The Subject Line continues across Alico Road and then runs parallel to and north of Alico Road for approximately 4,260 feet to the eastern terminus of the line at railroad engineering station 79+95.¹

¹ SGLR has introduced a new survey that appears to establish that existing railroad markings along the Baker Spur depicting the location of various engineering stations are inaccurate. Cooner V.S. at A-20-21. The County is seeking abandonment of the Subject Line to the point of the prior abandonment to the east of the Subject Line. Lee County does not believe that the Board is the proper forum to determine the location of the previous abandonment. If need be, this issue should be addressed by state courts after this proceeding has concluded.

On August 9, 2004, SGLR filed its written protest and supporting verified statements.

The following reply and supporting verified statements show that:

1. No existing SGLR shipper opposes Lee County's application;
2. The Subject Line, upon the impending departure of its only shipper (J.J. Taylor), will have no reasonable prospect for future shippers locating there and no prospective shipper will be dependent on SGLR service from that location;
3. The only shipper that uses the adjoining portion of the Baker Spur (Florida Power & Light or "FP&L") continues to support abandonment because the alleged service difficulties cited by SGLR do not in fact exist;
4. The alleged prospects identified for future transloading or storage activities on the Subject Line are highly implausible given the history of the Baker Spur and SGLR's stewardship of it, and even were there any life to these prospects they could be performed elsewhere on SGLR's railroad;
5. SGLR will not incur significant costs as a result of the abandonment;
6. Lee County will save in excess of \$1 million in public funds; and therefore
7. The balancing of the public interest, even under the authority cited by SGLR, weighs heavily in favor of granting Lee County's application for abandonment.

A. Background information

The Baker Spur line runs east from a point on SGLR's main line approximately 10 miles south of Fort Myers, Florida. The Baker Spur was built in 1973 to service a limestone quarry (called Florida Rock) located 5.30 miles from the main line. SGLR purchased the Baker Spur (among other rail lines) in 1987. Traffic to the quarry ceased in 1992. During the next two years no shippers located along the line or utilized the line for transloading or other purposes, and in 1994 SGLR filed a notice exemption to abandon the eastern 3.55 miles of the Baker Spur. *See, Seminole Gulf Railway, Inc. – Abandonment Exemption*, Docket No. AB-400 (Sub-No. 2X) served December 22, 1994 for an account of this history. The western terminus of this previous

abandonment was 79+95 +/-, which is the eastern terminus of the Subject Line in this abandonment action.²

The Baker Spur is currently about 1.75 miles long. Since 1992, the only regular and active shipper on the Subject Line has been J.J. Taylor's beer distribution facility. FP&L has a facility located along the Subject Line, and on occasion uses a transloading area on the adjacent segment of the Baker Spur that will remain in service following abandonment of the Subject Line for movement of electrical transformers to its facilities in southwest Florida, including its facility adjacent to the Subject Line. Service to the FP&L transloading location can be performed without serious difficulty after the abandonment of the Subject Line. (T. Corson, V.S. at 2, D. DeBerry R.V.S. at 2-4; Davis/Schuchmann R.V.S. at 11-14.)

In the seventeen years that SGLR has owned the Baker Spur, its two principal on line shippers have departed or will depart. No new shipper has located along the Baker Spur, nor is it likely that any shippers will locate on the Subject Line in the foreseeable future (D. DeBerry, R.V.S. at 4-5). In 1997, it became apparent that Alico Road, an important connection between I-75 and highway 41, would eventually become overcrowded as the surrounding area developed. For years the Alico Road widening project was delayed due to environmental and permitting concerns. (Lee County's Response to Interrogatory No. 6, SGLR's Protest, Appendix C-6.) Eventually, all permits for the road widening project were granted and in 2003 Lee County entered into a construction contract with Phoenix Construction Services. (*Id.*) At that time, J.J.

² In striking contrast with its current posture, it is apparent from this Decision that SGLR attempted to defeat Florida Rock's effort to keep that line in operation under the offer of financial assistance procedures. Apparently, SGLR did not at that time see for this eastern segment of the Baker Spur the tremendous opportunities it now sees for the Subject Line. SGLR's President now claims he was "forced" to seek abandonment of that portion of the Baker Spur (G.Fay V.S. at A-4), but there is no evidence of that in the Interstate Commerce Commission's decision in that proceeding.

Taylor was an active shipper on the Subject Line, and the County discussed with SGLR the new grade crossings necessitated by the road widening project. SGLR submitted its proposal for the grade crossing work in December 2003. (See D. DeBerry V.S., tab 1) SGLR's proposal stated that it would cost \$1,105,484.00 to relocate the existing signals to the Alico Center Road crossing, install the necessary signals at the Alico Road crossing, and make necessary upgrades to the grade crossings at Alico Road, Alico Center Road, and FP&L's access road.

Lee County first received word that J.J. Taylor was relocating from its facility in February 2004, and at that time the County began to reconsider the possibility that the expense of the grade crossing could be avoided if the Subject Line were abandoned. (Lee County's Response to Interrogatory No. 6, SGLR's Protest, Appendix C-6.) When J.J. Taylor's relocation was confirmed in March 2004, Lee County was also informed that the new owners, Alico Industries LLC, would not be utilizing rail service and would support an abandonment. (*Id.*, and see D. Swanson V.S. on behalf of Alico Industries, LLC.) Lee County sought to negotiate a voluntary resolution with SGLR in April as a means of avoiding this adverse abandonment proceeding. (J. Turner R.V.S. at 1-2) However, SGLR sought an exorbitant amount to abandon the Subject Line voluntarily, and its President stated that it would take two years to obtain an abandonment without its support, thereby delaying the Alico Road project. (*Id.*) Therefore, on May 3, 2004, Lee County filed with the Board its notice of intent to file an adverse abandonment application. On June 16, 2004, Lee County filed its formal application for adverse abandonment (Lee-10) with supporting statements from D. DeBerry, a professional licensed engineer for Lee County's Department of Transportation, Tim Corson on behalf of FP&L, Jose Rivera on behalf

of J.J. Taylor, Ovane Swanson on behalf of Alico Industries, LLC, and Franz J. Rosinus on behalf of Airport Holdings.³

B. Discussion

1. Applicable Legal Standards Support Abandonment of the Subject Line.

The statutory standard governing an abandonment is whether the present or future public convenience and necessity require or permit abandonment. 49 U.S.C. § 10903(a). In an adverse abandonment proceeding, the noncarrier third-party applicant has the burden of showing that the public convenience and necessity require or permit the abandonment. See, *Chelsea Property Owners - Abandonment. -- The Consol. R. Corp.*, 8 I.C.C.2d 773, 778 (1992) (“*Chelsea*”). In making this determination in an adverse abandonment, the Board must balance the benefits and burdens of abandonment on all interested parties, including the railroad, the shippers who have used the line, the community involved, and interstate commerce generally. *New York Economic Development Corporation - Adverse Abandonment - New York Cross Harbor Railroad in Brooklyn, NY.*, 374 F3d 1177, 2004 U.S. App. LEXIS 14304, pgs. 5-6 (D.C. Cir. July 13, 2004) (“*New York Cross Harbor*”) (citing *City of Cherokee v. ICC*, 727 F.2d 748 (8th Cir. 1984)).

The Court in *New York Cross Harbor* states that the Board should consider a public entity’s interests, the burdens placed on any shippers, and the history of a rail line’s use and its future prospects for continued service. *Id.* at 12-13, citing *Norfolk & Western Railway Company- Abandonment Exemption*, 3 S.T.B. 110, 1998 STB Lexis 126, at *21-22 (May 12, 1998) (holding that the public interest in developing Cincinnati’s central business district,

³ Subsequently, on June 23, 2003 Lee County filed additional verified statements in support of the Application (Lee-11) from Dan Miller on behalf of DTB Properties, LLC, Mitchell Bruce Nicholas on behalf of Joe & Bruce, LLC and West Coast Roofing & Waterproofing, Inc.

outweighed the need for maintaining the tracks even in the face of testimony by prospective shippers opposing the abandonment). Of course, in *New York Cross Harbor*, the Court remanded the case in view of testimony by active, existing shippers in opposition to the abandonment. *New York Cross Harbor* at 12.

The opposite is true here. No current shipper objects to the abandonment. Upon the departure of J.J. Taylor, there will be no active shippers on the Subject Line. Lee County has clearly specified why the land is needed (to save over \$1 million on an unnecessary grade crossing). Finally, the history of decreasing use of the Baker Spur, and the hostility between SGLR and the landowners along the Subject Line, is evidence that there is no reasonable expectation of future business that is dependent upon the Subject Line. Therefore, the abandonment of the Subject Line should be granted.

As the Board has frequently stated, the function of its exclusive and plenary jurisdiction over abandonments is to provide the public with a degree of protection against the unnecessary discontinuance, cessation, interruption, or obstruction of available rail service. *See, Modern Handcraft, Inc. Abandonment*, 363 I.C.C. 969, 972 (1981) (“*Modern Handcraft*”). The Board has a statutory duty to preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic. *See, Chelsea*, 8 I.C.C.2d at 779. On the other hand, the Board will not allow its jurisdiction to be used to shield a carrier from the legitimate processes of State law where no overriding Federal interest exists. *See, CSX Corporation and CSX Transportation, Inc.-Adverse Abandonment Application-Canadian National Railway Company and Grand Trunk Western Railroad, Inc.*, 2002 STB LEXIS 81 (served February 1, 2002). When the Board permits abandonment, the line

is removed from the Board's jurisdiction and the parties can undertake other legal remedies. *See, Modern Handcraft* at *7-8.

Here, Lee County has satisfied its burden of proving that the public interest does not require that rail service continue over the tracks and facilities at issue. Because no existing shippers will be affected,⁴ and because the business prospects SGLR describes are not dependent upon the Subject line,⁵ no shippers will be affected by this abandonment, the Subject Line should be abandoned, allowing the County to save taxpayer dollars and allowing the underlying right of way to be put to more efficient use.

SGLR relies on principally three cases to support its proposition that Lee County has not met its burden of proving that the public convenience and necessity permit abandonment. SGLR's reliance on these cases is misplaced.

The first case, *Wisconsin Department of Transportation- Adverse Abandonment*, 1988 ICC 359 (served November 23, 1988) ("*Wisconsin DOT*") is clearly distinguishable. *Wisconsin DOT* stands for the proposition that a public agency applicant cannot simply count up the dollars it will save, and compare these dollars against the costs to existing shippers on the line, the carrier and adjoining land owners and expect to prevail on an adverse abandonment. (*Id.* at *13.) However, the facts in *Wisconsin DOT* bear no resemblance to those in this particular case. There, the Board denied the abandonment citing the opposition of the current shippers on the line, an adjacent landowner, a prospective shipper, and the town within which the line was located. *Id.* *10-11, and *15. Additionally, in *Wisconsin DOT*, the line was active, and

⁴ See *T. Corson V.S.* at 2, *J. Rivera V.S.*

⁵ See *DeBerry, R.V.S.* at 6, 8-10 and *Davis/Schuhman R.V.S.* at 8-12.

shipments by rail had been increasing from the current shipper on the line, so there was reason to believe that future rail service was likely. *Id.*

There are no such factors weighing against abandonment in this case. Unlike in *Wisconsin DOT*, there will be no active shippers on the Subject Line at the effective date of the abandonment, and no present SGLR shippers or adjacent property owners oppose the abandonment. Indeed, the current shippers, FP&L and J.J. Taylor, and, to the best of the County's knowledge, all adjoining land owners, support Lee County's abandonment application.

SGLR also relies on *Salt Lake City*, but that case is also distinguishable. In *Salt Lake City*, the City did not argue that the line should be abandoned because the City needed the line for any particular purpose, but rather argued that it should be abandoned since it had not been used by UP for two years, conflicted with the City's plans for the area and presented safety, traffic, and quality of life issues. The Board found that little weight should be given to the railroad's previous non-use of the line, since it was caused by the Utah department of transportation's construction project. As soon as that project was completed, UP resumed use of the line, and showed a steady increase in traffic, leading the Board to conclude that future prospects for service on the line were good. *Id.* *4-5. Additionally, since the line presented no unusual safety, traffic, or quality of life issues other than those that would normally exist when a rail line is in an urban area, the city was found not to have satisfied its burden of proof that the public convenience and necessity permitted abandonment. *Id.* *20-21.

Again, the facts of *Salt Lake City* bear no resemblance to this case. Here, as we will discuss below, the history of declining growth on the Baker Spur is not to due to any third party's action, there is simply no demand for rail service on the Subject Line. Therefore, there is

no reason to expect a growth in demand for service on the Subject Line, and SGLR's fanciful forecasts for the line are not credible. See, Section B.4 infra. Additionally, Lee County has satisfied its burden of showing that the public convenience and necessity, would be promoted by the abandonment by saving taxpayers over \$1 million.

The Board's precedent makes it clear in adverse abandonment cases that if a railroad's expectations of future service are not reasonable, the abandonment application will not be defeated based solely on those expectations. The Board, like the ICC before it, should be especially wary when predictions of future growth deviate from a line's history of usage, particularly when they are manufactured only after adverse proceedings have begun. For example, in *Chelsea*, a case relied upon by SGLR, Conrail, the owners of an inactive line of rail, opposed the Chelsea Property Owner's ("CPO's") application for adverse abandonment and claimed there was opportunity for future growth because the line could be used to haul solid waste out of Manhattan. *Id.* at *3-4. CPO contended that since this 'opportunity' arose shortly after the application for abandonment was filed, that it was just a sham by Conrail to avoid the costs the owners would incur should an abandonment be granted. *Id.* at *5. The Commission in *Chelsea* determined that:

"CPO has met its burden of proof. It has demonstrated that Conrail's proposed waste hauling operation is neither operationally nor economically feasible. It has also shown the absence of future traffic prospects to offset the public interest concerns raised by New York. COP has supported a finding that the public convenience and necessity permit the abandonment...no commercial entity is interested in pursuing the project and...local and government interests are uniformly opposed [to the waste hauling project]...the trash haulage proposal appears to be nothing more than an effort by Contrail to avoid an obligation to dismantle the [line]."

Id. at *37-38.

Similarly, in this case, SGLR is now claiming numerous future rail prospects that run counter to the 17 year history of SGLR's ownership of the Subject Line.⁶ Here, as shown *infra*, the future expectation of growth is unreasonable, and runs counter to the line's last 17 years of service. Therefore, the Board should give minimal weight, if any, to SGLR's claims future growth on the Subject Line.⁷

SGLR, in its Protest and supporting statements, has attempted to make much of the fact that there have been on-going disputes involving the rail line and adjacent land owners whom it labels "land speculators." (Protest at 7, and G. Fay V.S. at A-3-6) Lee County is acting "solely" to protect and advance its own interest of saving public funds through proceeding. (DeBerry R.V.S. at 2). SGLR's effort to introduce these side disputes within this proceeding, is an attempt to distract the Board from the merits of this case. The Board has stated that state actions are irrelevant to whether or not an abandonment should be granted. *See, Wisconsin DOT* at *16 Therefore, the Board should not give weight to SGLR's insinuations regarding state court cases nor should the Board concern itself with state law issues that may arise if an abandonment is granted.

2. No Shippers Will be Harmed by this Abandonment.

J.J. Taylor has been the only shipper on the Subject Line for many years. There is no dispute that J.J. Taylor is relocating its facility at the end of the year and will no longer need or

⁶ However, unlike Conrail in the *Chelsea* case, the abandonment sought here will impose no significant costs upon SGLR. *See, D. DeBerry R.V.S.* at 12-13 and *Davis/Schuchman R.V.S.* at 2-7 and Appendix 3.

⁷ SGLR finds comfort in the Commission's statement that it has "a statutory duty to protect and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic". Protest at 9. However, the Commission in *Chelsea* makes very clear that if future prospects are implausible, they alone will not defeat an adverse abandonment application.

desire rail service on the Baker Spur. (J. Rivera V.S.) SGLR does not contest this fact, but states that the Subject Line should not be abandoned because it is useful in performing services for the FP&L at the transloading area on a segment of the Baker Spur which will remain in service after the abandonment. Protest at 11-16.⁸

3. Service to Florida Power & Light Will Remain Unaffected.

Experts retained by Lee County confirm that SGLR will have several options for safely and efficiently serving the transloading needs of FP&L. (Davis/Schuchmann R.V.S. at 11-14.) SGLR claims that FP&L's service will be affected by the abandonment proceeding, but this contention runs counter to FP&L's verified statement in support of the abandonment. FP&L feels confident that its ability to use the western portion of the Baker Spur will remain unaffected by the abandonment, and since FP&L is in the best position to judge its own shipping needs, the Board should defer to FP&L's decision to support the abandonment.

Service to FP&L will be unaffected by the abandonment. SGLR communicated the same concerns expressed in its testimony here directly in a letter to FP&L as a means to encourage FP&L to change its position in this case. (DeBerry R.V.S. at 2-3 and Tab 1) In fact, experts retained by Lee County confirm that SGLR will have several options for safely and efficiently serving the transloading needs on FP&L on the adjoining segment of the Baker Spur after the abandonment. (Davis/Schuchmann R.V.S. at 11-14) Messrs. Davis and Schuchmann show the following options will be available to SGLR:

- SGLR could use an existing spur (the Schwab spur) to achieve the same operation that SGLR's witness Haberle describes as SGLR's usual practice (*Id.* at 12-13);

⁸ SGLR's witness, Haberle, does not claim that the Subject Line is essential to service at this location, but that is "usually" or "often" used. (J. Haberle V.S. at B-34.)

- SGLR could uncouple the lead locomotive, leave it on the main line and shove the train to the unloading location, a routine practice in the rail industry (*Id.* at 13-14);
- SGLR could leave the lead locomotive (“a 1950’s – vintage GP-9”) attached to the train with a “modest” opportunity cost (*Id.* at 14);
- SGLR could shove onto the Baker Spur using a caboose on the east end of the movement (*Id.*); or
- SGLR could build a spur as it claims it would do on the Subject Line in the event the J.J. Taylor (or “Miller”) spur were removed. (*Id.* and G. Fay V.S. at A-9.)

Upon review of the options, FP&L has decided not to change its position in this case. (DeBerry R.V.S. at 3).

In addition to the alleged operating problems at the FP&L transloading location, SGLR claims that FP&L may have difficulty accessing its transformer facility located to the north of Alico Road (G. Fay V.S. at A-8). Mr. DeBerry shows that this is not accurate and that FP&L has its own easement across the property adjacent to the Subject Line (DeBerry at R.V.S. at 3-4 and Table 2.)

4. SGLR’s Fanciful Projections of Future Business are not Credible.

The 17 year history of no traffic growth on the Baker Spur belies SGLR’s protection that the line is on the eve of a grand renaissance. Additionally, the adjoining property owners support the abandonment, and do not plan uses that would benefit from rail service. (D. DeBerry R.V.S. at 4-5.) The uses contemplated by SGLR for the Subject Line could be replicated at other locations on SGLR, including the adjacent segment of the Baker Spur, and are not dependent upon this particular segment of track. (*Id.* at 6 and Davis/Schuchmann R.V.S. at 8-12.)

There are no potential shippers who offer any commitment to bring business to the Subject Line. The Ringling Bros. and Barnum & Bailey Circus does come forward to suggest

that it “would consider” making an annual stop in Ft. Myers (Misiura V.S. at B-39-40), but as Mr. DeBerry and Messrs. Davis and Schuchmann show:

- The Baker Spur does not conform to the “general criteria” mentioned by Mr. Misiura, such as distance to the arena is six not 3 miles, there is no availability of services within walking distance of the track (D. DeBerry R.V.S. at 8; and Davis/Schuchmann R.V.S. at 14);
- The Circus made a stop at the Estero/Germain Center in 2000 and found a place on the SGLR other than the Subject Line (D. DeBerry R.V.S. at 8; and Davis Schuchmann R.V.S. at 14);
- The Subject Line is not suitable for the circus because there is no service road parallel to the track that would permit egress/ingress for performers; it is adjacent to what will become a six-lane highway that would be dangerous for occupants attempting to leave the railroad’s right-of-way (...); (D.DeBerry R.V.S. at 9); and
- The current designation of the SGLR’s main line to the north of the Baker Spur contains large segments of excepted track, thereby precluding movement of an occupied passenger train across those segments (Davis/Schuchmann R.V.S. at 14).

SGLR claims that certain multi-car and unit train business is possible on the Subject Line, but a review of the underlying correspondence and workpapers provided by SGLR indicated that the only such movement reflected in those documents clearly was not one that involved the Baker Spur and that it does not appear to be alive in any event. (Davis/Schuchmann R.V.S. at 17.) Mr. DeBerry did speak to a representative of the Port Authority which operates the Southwest Florida International Airport, and that individual confirmed that Messrs. Fay and Curley attempted to solicit the airport’s support for its position in opposition to the abandonment. However, the Authority apparently has no interest in the delivery of fuel via a rail transload operation from the Baker Spur, and the Authority has not opposed Lee County’s application. (D. DeBerry R.V.S. at 10.)

The next alleged group of prospects arises from SGLR’s plan to create a public delivery or team track on the Subject Line. (G. Fay at A-10.) However, Florida DOT is already prepared

to construct for SGLR such a facility at a location near an existing public delivery facility closer to Ft. Myer, and there is no evidence that that facility is operating at capacity. (D. DeBerry R.V.S. at 10.) Indeed, if an additional facility of this nature is needed, the remaining portion of the Baker Spur is suitable for such a use. (Davis/Schuchmann R.V.S. at 8.)

In a supplemental verified statement filed by SGLR's President in the wake of Hurricane Charley, it was claimed that SGLR would immediately convert the Subject Line to unload ballast and building materials to address urgent needs in Southwest Florida caused by the hurricane. Lee County has been monitoring the Subject Track since the hurricane, and as of noon on the date of this filing, no activity or preparations of that nature is occurring on the Subject Line. (D. DeBerry R.V.S. at 7.) Apparently, this demand for service is being addressed in other means.

5. The Prior Conviction of SGLR for Grand Theft in Lee County Impeaches the Credibility of its Representations in this Proceeding.

The projections of future growth, as well as SGLR's now changed estimate of the real cost of the grade crossing improvements on Alico Road discussed below, raise an issue of the credibility of the company and the individuals which present them to the Board.

Various individuals have submitted verified statements in this proceeding on behalf of SGLR, which puts the credibility of these individuals and SGLR squarely in issue. In April 2000, SGLR and other individuals were the subjects of a criminal information in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida for, *inter alia*, grand theft – a second degree felony in Florida punishable by imprisonment for as many as 15 years. The Information is attached at Tab 1 to the J. Turner R.V.S. Eventually, SGLR pleaded guilty to one count of grand theft, and agreed to pay \$111,861.68 to the Florida Department of Transportation, in addition to \$239,771 that it had already returned to FDOT. (J. Turner R.V.S. at ¶ 4 and

attached plea agreement at Tab 2) The Board should consider this evidence of criminal conduct in evaluating the veracity of representations made by SGLR in this proceeding.

At the time of the acts giving rise to the criminal charges set forth in the Information, Gordon Fay was the president and principal owner of SGLR. As such, SGLR's felony conviction is admissible to impeach his testimony in this proceeding because "it may be fairly inferred that he shared responsibility for the criminal act, or have actually participated in the criminal act."⁹ *GCM Contractors, Inc. v. Contractors Environmental Services, Inc.*, 181 W.Va. 679, 383 S.E.2d 861, 866 (1989); *accord Walden v. Georgia-Pacific Corp.*, 126 F.3d 506, 524 n.16 (3d Cir. 1997) (quoting *CGM Contractors, supra* but finding no evidence that the witnesses whose testimony was sought to be impeached had been involved in Georgia-Pacific's prior criminal conduct). In addition, SGLR's felony conviction is also relevant to impeach the credibility of all witnesses who have made representations to the Board on SGLR's behalf in this proceeding. *See Stone v. C.R. Bard, Inc.*, 2003 WL 22902564, *1-3 (S.D.N.Y. 2003) (corporation's vicarious representations through a representative may be impeached by evidence of prior corporate felony conviction); *Hickson Corp. v. Norfolk Southern Railway Co.*, 227 F.Supp.2d 903, 907 (E.D. Tenn. 2002) (Federal Rule of Evidence 609 allows the use of a corporation's felony conviction to impeach the corporation's vicarious testimony).

This authority is particularly relevant in the context of projections about future business, where personal credibility of the witnesses is important. Moreover, claims about suddenly reduced costs of grade crossing costs, discussed *infra* in section B. 6 of this Reply, since such costs were at the core of the criminal information to which the guilty plea was entered.

⁹ Indeed, although the copy of the Information that we were able to obtain has the name of "Defendant A" redacted, Gordon Fay is in fact "Defendant A" named in the Information.

6. The Abandonment of the Subject Line Will Impose No Significant Costs on SGLR

Lee County's consultant, Mr. Gene Davis, performed a net liquidation value analysis of the Subject Line, and concludes that it has a net liquidation value of \$11,300.

(Davis/Schuchmann R.V.S. at 2-4 and Appendix 3.) Mr. Davis concludes that the net liquidation value computations offered by SGLR witness Bruce Fay, showing nearly \$66,000 in out of pocket cost in salvaging the rail and materials from the right of way, understates the value of the rail and other track materials and overstates the costs of salvage. (*Id.* at 5-7.) Reducing the costs of removal even further, Lee County has offered to remove the track and grade crossing equipment and materials from the Alico Road right of way, and to return to SGLR any rail and track materials recovered in the process.¹⁰ (D. DeBerry R.V.S. at 12.)

The only other adverse consequences of the abandonment cited by SGLR are the loss of billboard revenues and the loss of profits from the maintenance of the Alico Road grade crossing that would be removed. (G. Fay at A-10.) Lee County granted the permits for the two billboards to SGLR, and it is not clear as a matter of state law that the railroad would be deprived of the right to net revenues from such billboards once the Subject Line is abandoned. (D. DeBerry R.V.S. at 11.) The magnitude of the profits projected by SGLR are not significant even if they were lost to SGLR, increasing only to \$11,600 in the forecast year based upon a several fold increase in the projected revenues from the billboards.¹¹ Even if Lee County were to accept

¹⁰ In assessing the credibility of the two NLV estimates, the Board should also note that Mr. Bruce Fay does not claim that he has a degree in engineering or that he is a professional engineer. Mr. Davis is a professional engineer who worked in the engineering department of the Norfolk Southern for 18 years. (*Compare* B. Fay V.S. at B-1 with Appendix 1 to Davis/Schuchmann R.V.S.)

¹¹ Lee County's experts after reviewing the Highly Confidential version of the testimony conclude that costs of maintaining the Subject Line during the forecast year will exceed the revenues received from Lee County under the grade crossing agreement.

SGLR's projections, these revenues should not weigh heavily in the balancing of the public benefits of the proposed abandonment. These are not benefits or interests recognized by Congress in the rail transportation policy contained in the ICC Termination Act. 49 U.S.C. §10101.

If the billboard revenues increase by any amount, they do so only because Lee County is expanding Alico Road to six lanes (thereby increasing the number of people exposed to the advertisements), and the best thing for that project is to eliminate the need for a crossing that serves no shipper. If the maintenance agreement for the existing grade crossing over-compensates SGLR for its expenses incurred in that maintenance, the highway project is causing a public benefit in saving expenditure of public funds for reimbursement of non-existent maintenance costs. Considering the source and magnitude of these projected revenues, it is difficult to attribute much weight to them in the analysis by this Board. Contrast these impacts with those cited in *Wisconsin DOT, supra*, where a shipper with growing business would lose service, and adjoining land owners would lose a transportation option that they wanted to preserve. None of that is present in this case.

7. The County Will Save in Excess of \$1 million in the Event of the Abandonment

SGLR claims that the County has overstated the costs that it will save as a result of the proposed abandonment. As explained by Lee County's Don DeBerry, the alleged overstatements of avoided costs fall in three principal categories:

(1) the \$1,100,000 price tag assigned by SGLR to the project in the bid it submitted to County unnecessarily overstated costs of construction and that only had the County just asked SGLR, the railroad would have explained to the County that it had lower cost options;

(2) the County will begin incurring penalties under the Alico Road construction contract at the rate of \$1500 per day on November 19, 2004; and

(3) the County will never have to pull up the new grade crossing because the Subject Line will generate so much business that the railroad will never need to abandon it, and at least in the Protest there is a commitment not to do so for 10 years.

(D. DeBerry R.V.S. at 13) Mr. DeBerry proceeds to analyze each of these claims, and concludes that the County will still save in excess of \$1 million. First, it is very unlikely that the County would accept a lower cost option if the consequence of installing “a less heavy duty alternative” would simply have been to increase its maintenance costs under the grade crossing agreement with SGLR. (*Id.* at 15) SGLR claims that the County could have sought FDOT funds for the grade crossing. However, State funds are still public funds, which in the words of Mr. DeBerry “...are otherwise provided to construct grade crossings that save lives.” *Id.* To divert those funds for use on a grade crossing that will not save lives and otherwise does to need to be built would be contrary to the public interest.

The exposure of the County to contract damages under the construction contract for the expansion of Alico Road does not begin accruing on November 19, 2004, as SGLR assumes. (*Id.* at 16) Rather, as Mr. DeBerry explains, the November 19 date is the date provided to the County by the contractor as the deadline for when the County must decide whether or not it is proceeding with the grade crossing construction or removal. If the decision is reached by that date, the County will not incur delay damages from the contractor. *Id.* Given the existing schedule for the Board’s decision, the County should be able to make its decision by November 19, and any suggestion that it will need to delay its decision at this point is purely speculation.

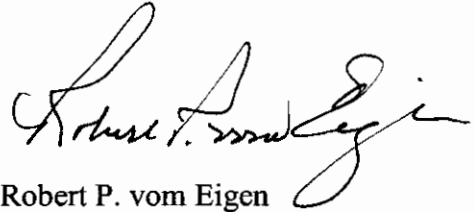
The assertion that the County will never incur the cost of removing the grade crossing, which it estimates to be \$300,000, is premised upon unrealistic projections of future business on the Subject Line. As shown above, those projections are not reliable, and even assuming the

undertaking not to abandon the Subject Line for ten years is binding on SGLR, that only puts off the day that these real costs must be borne by the County to eliminate this unnecessary crossing

C. Conclusion

For all the preceding reasons, applicant Lee County respectfully requests that the Board find that the public interest is served by the substantial savings of public funds cited by Lee County and that those savings outweigh any harm cited by SGLR to itself or to other parties that have not offered testimony to support SGLR's protest of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert P. vom Eigen". The signature is fluid and cursive, with a large initial 'R' and 'E'.

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Dated: August 30, 2004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the REPLY BY LEE COUNTY TO SGLR'S PROTEST AND COMMENTS was served electronically and by overnight courier on the 30th day of August 2004, on the following:

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The undersigned hereby certifies that a copy of the REPLY BY LEE COUNTY TO SGLR'S PROTEST AND COMMENTS was served by U.S. mail on the 30th day of August 2004, on the following:

Joseph C. Fuller
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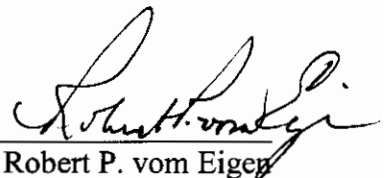

Robert P. vom Eigen

EXHIBIT A
REPLY VERIFIED STATEMENT OF DONALD DEBERRY

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

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

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

APPLICATION FOR ADVERSE ABANDONMENT
OF LEE COUNTY, FLORIDA

REPLY VERIFIED STATEMENT
OF
DONALD DEBERRY

1. My name is Donald DeBerry. I am a professional engineer licensed in the state of Florida, employed by the Department of Transportation for Lee County, Florida ("Lee County"). I have previously submitted a verified statement in these proceedings in support of Lee County's Application for Abandonment (Lee-10) of a portion of SGLR's Baker Spur, designated in the Application as the Subject Line.
2. The purpose of this reply statement is to respond in part to allegations made by SGLR in the protest and supporting verified statements. I say "in part" not only because my statement is to be read in conjunction with other statements being presented in conjunction with Lee County's reply, but also because a detailed response to every misstatement, distortion or exaggeration of fact contained in the protest filed on behalf of SGLR would in my judgment distract the Board from the key issues relevant to its evaluation of the merits of this adverse abandonment

application. However, my failure to respond specifically to each and every assertion made in SGLR's pleadings is not an admission or concession that they are accurate. I believe the Board should keep its eye on the ball, and hope to show with the help of others that the abandonment of the Subject Line:

- will not adversely affect service to Florida Power & Light ("FP&L") or any other shipper;
- will neither deprive SGLR of significant revenues, nor impose upon it additional costs;
- will save Lee County in excess of \$ 1 million in public funds; and therefore
- will serve the public interest.

Extraneous issues concerning disputes between SGLR and the private land owners located along the Subject Line, which preoccupy SGLR's President in his statement, should not concern this Board, except to the extent that they to some degree have sealed the fate of this rail line. Lee County is before this Board *solely* to protect its own interest in eliminating the need to commit public funds to the construction of an expensive and unneeded grade crossing protection system for a rail line that goes nowhere and has no realistic future in promoting interstate commerce. SGLR's President concedes the "critical nature" of the Alico Road expansion project (G. Fay V.S. at 3) and I believe that elimination of an unnecessary grade crossing will make it a safer road. The unanimous support from existing shippers and adjoining landowners for this application, in my judgment, should be viewed by the Board as a positive factor in its analysis of the interests it must balance in evaluating this application.

Service to FP&L will remain unaffected by the abandonment.

3. SGLR's claims concerning the problems created for FP&L by the proposed abandonment were presented to FP&L in a letter dated July 27, 2004 from Michael Curley to Dennis Merchant, who works for Mr. Tim Corson at FP&L. A copy of the letter is attached to this

statement at Tab 1. Those claims largely parallel the claims repeated in the testimony of Messrs. Gordon Fay and Jerry Haberle. (G. Fay VS at A-7,8 and J. Haberle V.S. at B-35-36.) Mr. Corson transmitted the letter to us through counsel, because even though after reading the letter and discussing the matter with Mr. Curley and Mr. Merchant he still believed FP&L should support the abandonment, he thought that we should have the opportunity to respond to the claims. We analyzed the claims and told Mr. Corson that we believed the railroad still be able to provide safe and efficient service to FP&L after the abandonment of the Subject Line. We communicated these conclusions and described the railroad's options in a telephone conference with Mr. Corson. The verified statement of Messrs. Davis and Schuchmann from R. L. Banks & Associates describes the options we discussed with Mr. Corson in greater detail. This conversation confirmed FP&L's belief that its use of the rail line could continue even after the abandonment is granted.

4. There are several responses that I can provide to other aspects of SGLR's claims. FP&L is an occasional user of the Baker Spur for the purpose of transloading transformers that are moved via truck to other locations within Southwest Florida.¹ FP&L has explained to me that because the transformer station located on property it owns to the north of Alico Road is relatively new, the vast majority of transformers unloaded at the location to the south of Alico Road go elsewhere. My discussions with FP&L indicate that they are not concerned with the location the new median location on the expanded Alico Road for purposes of gaining access to its property to the north of Alico Road. However, we have assured FP&L that if it wants a special cut in the median for making that movement, the County will provide it. Concerning

access to the FP&L property along Alico Road, Mr. Fay suggests that the only access to the property is via an easement granted by SGLR, which would be terminated upon the abandonment. (G. Fay V.S. at A-8). This is not accurate. FP&L has acquired an independent easement from the owner of the adjacent property for access, a copy of which is attached at Tab 2.

5. The new loading pad currently proposed by SGLR to the north of the Alico Road, which neither I nor FP&L had heard about prior to this proceeding, is unnecessary for FP&L's needs, and it raises its own safety issues for the County. SGLR would have to construct its own access road, and apply to the County for an access permit to Alico Road, which we would almost certainly not grant due to safety concerns with the proposed operation of trucks in the limited space between the railroad right of way and Alico Road. The existing unloading location to the south of Alico Road is far superior because it has an existing access road parallel to Alico Road where the trucks could be loaded, and then proceed safely to gain access to Alico Road via Alico Center Road. SGLR wrongly suggests that the new sidewalk being constructed along the south edge of the expanded Alico Road project will restrict the area for transloading. (Protest at 14). That suggests that the transloading occurs directly on to Alico Road, which is not the case now and certainly would not be permitted after the road is expanded to six lanes.

SGLR's Fanciful Projections of Future Business are not Credible.

6. After owning the Baker Spur for about 17 years, SGLR's record is pretty clear. The major rock quarry for which the line was originally constructed apparently ceased using SGLR's rail service, and 3.55 miles of the line was abandoned in 1995 upon the exemption petition filed

¹ As is clear from Mr. Gordon Fay's supplemental verified statement filed on August 18, 2004, FP&L apparently off-loads transformers at other locations on the SGLR. (G. Fay, Supp.

by SGLR.² The largest remaining shipper, J.J. Taylor, is now in the process of departing, and does not oppose this application. The only remaining shipper, FP&L, which is an occasional user of the Spur, supports the abandonment in the face of efforts by SGLR to persuade it to change its position. None of the glowing descriptions by Messrs. Fay and Curley of robust traffic growth on other railroads in different parts of the country (G. Fay V.S. at A-1 and M. Curley V.S. at A-39-40), and indeed Mr. Fay's unsupported claim as that the SGLR has "been able to stabilize the business, and in the last several years, the base traffic has increased by five to eight percent per year" (G. Fay V.S. at p. A-2) has nothing to do with the events on the Baker Spur. It appears that the only achievement by the railroad during its tenure on the Spur has been to so alienate the adjoining property owners as to cause them to take steps to advance the departure of the railroad and to promote non-rail dependent industrial development.³

7. Implausible as they seem against this historic backdrop, SGLR's claims of booming commercial opportunities for the Subject line (Mr. Fay calls it a "rare opportunity" at A-10) are not really a surprise to the County. They are in fact predictable given the behavior of this railroad. However, these claims are not credible, and credibility is at the core of evaluating forecasts of future traffic growth. I direct the Board's attention to the verified statement of Lee

V.S. at 2).

² Mr. Gordon Fay claims that it was "forced" to abandon the 3.55 mile eastern segment of the Baker Spur (G. Fay V.S. at A-4), but the Interstate Commerce Commission's decision issued at the time reflects nothing of the kind. See ICC Decision in AB-400 (Sub-No, 2X) served December 22, 1994.

³ The effort by Mr. Fay to discredit the motives of the land owners by calling them "speculators" is both unpersuasive and irrelevant. Their motives and the nature of their disputes with the railroad are irrelevant to this case. However, if they were truly just speculators, they would be driven solely by financial factors, and naturally would promote the highest and best use for the property they own. Apparently, these owners have concluded that that use in this case is not dependent upon, and in fact is inconsistent with, continued rail use.

County Attorney John Turner, who describes events which draw into question the credibility of the railroad and its witnesses.

8. Messrs. Gene Davis and Walter Schuchmann discuss in their joint verified statement the projected future uses identified by Messrs. Fay and Curley. Clearly, many of the supposed opportunities no longer are alive, and those that are can be accommodated at other locations along the railroad. SGLR has identified no shipper that would be dependent upon service on the Subject Line, including the circus, as I and Messrs. Davis and Schuchmann will show.

9. There is some suggestion in Mr. Fay's testimony that the property along the Subject Line is among the few parcels along the SGLR that is available to be zoned and suitable for industrial development, and that Subject Line should be permitted to remain in active service until SGLR waits until the current "speculators" sell the property for industrial users who will eventually see the light and welcome his railroad's service. (G. Fay V.S. at A-6-7, 9) Mr. Fay is wrong on both scores. First, there is substantial acreage available in Lee County that can be zoned industrial. For instance, land is available for industrial zoning north of the Caloosahatchee river along the railroad line, south of the Caloosahatchee river and north of Colonial Boulevard, between Colonial Boulevard and Cypress Lake Drive, along the main line north of Alico Road, and in the city of Bonita Springs. There are clearly plenty of opportunities for industries interested in rail service to find locations within Lee County. I am unable to accurately describe which of these and other available properties would be suitable for a prospective buyers' particular use since the types of businesses these companies are involved in is considered highly confidential information that I am not allowed to access. Second, one of the major property owners along the Subject Line, Harvey Youngquist, has a parcel under contract. Verified statements from this future owner clearly confirm that it has no interest in seeing rail service continue on the Subject

Line, and both the current owner and the future owner support Lee County's application. (T. McCullers V.S., William Van Meter and Phillip Graffy V.S.)

10. Mr. Fay in his supplemental statement claims that the Baker Spur will serve as a key strategic facility for transloading building materials and ballast in response to Hurricane Charley. Our contractors have been monitoring activities on the line daily during this post hurricane period have witnessed virtually no activity on the Spur, aside from the delivery of a few boxcars of beer to the J.J. Taylor facility. My most recent report on the status on the Spur was at noon on Monday, August 30, 2004. The longer term prospects are not likely to be much better, and to the degree there is any life in them they can be accomplished on the remaining portion of the Baker Spur or elsewhere on SGLR, as shown by Messrs. Davis and Schuchmann.

11. In his original statement, Mr. Fay outlines a number of potential revenue generating ideas that the railroad has developed on the Subject Line for the period subsequent to the departure of J. J. Taylor which he claims will "substantially exceed costs." (G. Fay V.S. at A-8-10) First, he plans to use the Subject Line to serve FP&L. I have already commented upon the infeasibility and the absence of a need for the new loading pad in this area, but there are several other points to be made. This loading pad, which FP&L does not need, will only yield revenues in excess of costs only to the extent FP&L is prepared to pay for it. In the letter Mr. Curley sent to FP&L (perhaps in an effort to persuade FP&L to change its position) SGLR promised to provide the pad at no cost to FP&L. See Tab 2 at 2. Mr. Fay describes the use of the Miller (or J.J. Taylor) siding for run around purposes, but there is no certainty that that spur will remain in place after the departure of J.J. Taylor. Therefore, Mr. Fay's back up plan is to construct a run-around track on his own right of way. (*Id.* at A-9) However, that use of the right of way is inconsistent with other plans he describes for the Subject Line that would require an access road in the right of

way, and certainly it will not generate additional revenues unless FP&L has agreed to pay for it, and there is no evidence that it will do so. FP&L service can be provided safely and efficiently on the remaining segment of the Baker Spur, and denial of this abandonment application will not contribute net revenues from that customer.

12. Next, Mr. Fay cites the circus, and unlike the other claims for new business, SGLR has produced a statement from Mr. Misiura of the Ringling Bros. and Barnum & Bailey circus, who claims they “would consider” making an annual stop there including wintering one of their shows on the Subject Line. (Misiura V.S. at B-39-40) However, in my judgment the Subject Line is not suitable for such use. The Subject Line does not appear to conform to Ringling Bros.’ “general criteria” as described by Mr. Misiura, and the circus train can be accommodated at other locations on SGLR. Messrs. Fay, Haberle and Misiura each state that this circus has used SGLR tracks in the past for storage during the two or three week winter quartering of the train or for show dates, but not since 2000. (G. Fay V.S. at A-9; J. Haberle at B-36 and Misiura V.S. at B-39) First, there is no evidence that SGLR ever stored the circus train cars on the Baker Spur, and none of SGLR witnesses say that they have. The circus has appeared at the Estero arena (actually called the Germain Center) once in the past, and apparently found another location on SGLR to store the train. Messrs. Davis and Schuchmann have identified areas where the train could be stored, including the remaining portion of the Baker Spur, and confirm, based upon Mr. Davis’ experience in storing the same circus train while he worked for Norfolk Southern Corporation, that it can be stored in segments. (Davis/Schuchmann V.S. at 10, 15-16). Although Mr. Haberle refers vaguely to “new customers, track changes and other operation

considerations”,⁴ there is no documentation of why the train cannot be stored where it was in the past.

13. The Subject Line is not suitable for the circus for a number of reasons. First, it is not located within three miles of the Estero/Germain Center, as Mr. Misiura assumes in his statement. The distance is six miles. The Subject Line has no parallel access road to permit unloading of equipment, animals or egress/ingress for performers, and it will be adjacent to a six lane highway that will be dangerous and noisy for the occupants. There are no local retail or restaurant options, which Mr. Misuira claims are “important” and must be “nearby ‘walking distance’” for the performers and crews. Also, it is not clear that Mr. Misiura was told that large segments of the SGLR’s main line track to gain access to the Baker Spur is classified by SGLR as “excepted track”, as reported in Messrs. Davis/Schuchmann’s V.S. at 15. The significance of this designation, as they explain, is that the circus train will not be able to gain access to the Ft. Myers area with passengers on board. Finally, the prospect of the circus conducting a parade of its animals and performers for six miles to the Estero/Germain Center down a high-speed, six lane connector road linking major highways, which is far distant from commercial or residential areas, raises questions of safety and strains credulity. The circus would need to obtain a special event permit from the County for such a parade. While we would seek to accommodate the circus when and if it were to come to town, we would permit it to use the route they have used in the past, from a grade crossing on SGLR at Corkscrew Road to the Arena (2 miles) as opposed to Alico Road to the arena (6 miles). In conclusion, the prospects for the circus coming to SGLR

⁴ Sources at the Florida Department of Transportation tell us that although the State does not have access to SGLR’s traffic records, the amount of freight interchange traffic on the Arcadia to North Naples segment is handled three times a week on Monday, Wednesday and

are very uncertain, but if it were to return, there are other locations on SGLR where it can be accommodated.

14. Next on Mr. Fay's list of prospects involves certain multi-car and unit train volumes which involve access to correspondence and work papers which SGLR designated as "highly confidential", to which I do not have access. However, that prospect is analyzed by Messrs. Davis/Schuchmann in their statement, and they conclude it was never intended for the Baker Spur, and apparently is no longer a viable option. However, I can speak to the reference in Mr. Curley's verified statement concerning inbound unit train movements of fuel oils and the so-called "target market" at the newly expanded Southwest Florida International Airport. (Curley V.S. at A-40-41.) I spoke with Debra Lemke with the Port Authority staff which operates the Airport, and she related a meeting held with Mr. G. Fay and Mr. Curley, where Mr. Fay attempted to elicit Port Authority support against the abandonment. The Port Authority told Mr. Fay at that meeting they had no interest in delivery of fuel via a rail transload operation from the Baker Spur on Alico Road, and also that the Port Authority would not oppose the abandonment. In addition, there is no safe location along the Baker Spur to transload fuel, and no discussions have taken place with county officials concerning construction of a necessary access road to serve such a facility. Finally, the new airport access road is five miles from the end of the Subject Line, not two miles as Mr. Curley suggests.

15. The next proposed use for the Subject Line is as a public delivery team track. SGLR already has at least one such facility and there is no showing by SGLR that is operating anywhere near capacity. (G. Fay at A-10) Moreover, FDOT has committed as a part of its

Friday. SGLR does not appear to be a busy freight railroad, and SGLR has not offered evidence that it is.

Metro Highway project north of the Route 41 intersection with Alico Road to relocate this old facility, and to construct a new public delivery facility for SGLR at an alternative location near the existing facility. There is no need for such a facility along the Subject Track, although there is no reason SGLR could not construct such a facility on the remaining portion of the Baker Spur. At least at that location there is a parallel access road where trucks could be loaded or unloaded. Again, such a road cannot be safely constructed along the right of way of the Subject line north of Alico Road. Lee County would not issue an access permit for SGLR to connect to Alico Road because the separation of the access road from the pavement at Alico Road would not meet minimum safety standards set by the County.

16. Two existing billboards are the next revenue generators cited by Mr. Fay.⁵ (G. Fay V.S. at A-10) He is correct that Lee County granted the permits to construct these billboards to SGLR, and for that reason I am not certain that SGLR would lose these revenues once the Subject Line is abandoned. The railroad holds the permits, and it is not clear to me or our local counsel that upon the abandonment those rights would convey automatically to the residual property owners when the railroad's easement expires. Certainly, the railroad would have leverage with the property owners to preserve all or a portion of the revenues earned by those billboards.

17. Finally, Mr. Fay claims that SGLR will lose the income it generates under the 1988 easement agreement with Lee County for maintenance of the existing right of way. (G. Fay at A-10) As will become more apparent from the discussion of the now revised estimate of the cost

⁵ In my initial Verified Statement and the Adverse Abandonment Application, I referred to a billboard that extends across the skeletal tracks set down by SGLR, but I failed to recall that there is a second billboard located along the Subject Line that apparently is also located in the right of way.

of the new expanded grade crossing for Alico Road (not to mention the incident leading to the consent decree discussion in Mr. Turner's verified statement) it is apparent that SGLR views grade crossings as a profit center. I am told that the 1988 easement agreement with SGLR is extraordinary in the railroad business. Here is a case where the railroad line was constructed after Alico Road, and the railroad needed access across county property. The county agreed to pay the cost of installation of the grade crossing safety devices, and 100% of the cost of maintenance, subject to an annual inflationary adjustment. Now we learn that not only are we paying for the cost of maintenance, we are also generating income for SGLR which they now attempt to use as a reason for opposing the abandonment now that the grade crossing is no longer necessary. That's chutzpah! Any income realized by SGLR from the maintenance of the grade crossing should be disregarded in the public interest assessment of this application, and I suggest that it should be returned to the County.

The Abandonment of the Subject will impose no significant costs upon SGLR.

18. Mr. Bruce Fay testifies that in the event the Lee County application were granted to abandon the Subject Line, SGLR would incur net out of pocket cost of nearly \$66,000. Lee County retained the firm of R.L. Banks & Associates to perform an analysis of the net liquidation value of the Subject Line, and Mr. Davis performed such study, the results of which are attached to the Davis/Schuchmann verified statement. Mr. Davis concludes that the removal to the rail, ties and other track material will yield a positive return of more than \$11,000, and addresses the differences in estimates in the joint verified statement. I rely upon his opinion in concluding that SGLR will not incur significant costs as a result of the abandonment. However, in view of SGLR's position in the matter, the County's will agree to remove the track and grade crossing equipment and materials from Alico Road and the adjacent locations required for

construction of the expanded Alico Road project, and return to SGLR any rail and track materials recovered in the process (thereby saving it the cost of removal). Mr. Bruce Fay erroneously suggests that my \$300,000 estimate of the cost of removing the grade crossing over the expanded, six lane Alico Road *after* the County has constructed the road would apply equally to the situation where it was removing the existing crossing from Alico *during* the construction phase of the new expanded road project. (B. Fay at B-2) This is patently ridiculous. In fact, the cost of removing the grade crossing in the context of an on-going construction program, where the entire road is being resurfaced in the course of the project, will be negligible for the County. The \$300,000 estimate is based upon a separate solicitation of bids that would be required to remove the expanded grade crossing material and equipment from the upgraded highway, plus the cost of resurfacing that highway around the location of the grade crossing.⁶

The County Will Save in Excess of \$1 million in the Event of the Abandonment of the Line.

19. SGLR witnesses claim that the County has overstated the costs which will be avoided as a result of the abandonment principally because of three factors: (1) the \$1,100,000 price tag assigned by SGLR to the project in the bid it submitted to the County unnecessarily overstated costs of construction and that only had the County just asked SGLR, the railroad would have explained to the County that it had lower cost options; (2) the County will begin incurring penalties under the Alico Road construction contract at the rate of \$1500 per day on November

⁶ Mr. Fay also incorrectly cites my answer to Interrogatory No. 8 where I responded that the SGLR question as to cost of removing the existing crossings over a number of the private road crossings adjacent to Alico Road. Our answer did not concede that those crossings would need to be removed by the County as a result of the abandonment, but we stated that if the County removed them it would cost it "less than \$50,000" to do so for all the crossings (not for each crossing as Mr. Fay infers.) Of course, the net liquidation value computed by Mr. Davis for SGLR as owner of the track structures would cover those removal costs in the event the abandonment caused SGLR to remove the track from the right of way of the Subject Line.

19, 2004; and (3) the County will never have to pull up the new grade crossing because the Subject Line will generate so much business that the railroad will never need to abandonment it, and at least in the Protest there is a commitment no to do so for 10 years. (B. Fay V.S. 1-3; Protest at 21.⁷

20. The Application and my original verified statement estimated the savings resulting from the abandonment to be “in excess of \$1 million” with an additional savings of \$300,000 that would otherwise be incurred from removal of the new grade crossing across Alico upon the inevitable abandonment of the Subject Line. The County has not overstated the savings it will incur as a result of the proposed abandonment.⁸ See Application (Lee-10) at 3,4 and DeBerry V.S. at 2. There is only one caveat to the estimate that is necessary. SGLR’s bid for installation of the new crossing was in excess of \$1.1 million, but it included \$108,000 for construction of a new culvert under the Miller Spur which accesses the J.J. Taylor facility. It is unclear whether the spur would be removed or not upon the departure of J.J. Taylor from the property. But, if it were removed, the County would not need to construct the new culvert. However, there would still incur some cost in making modifications to the existing drainage ditch thereby saving some, but not all, of the cost attributed to the culvert in the SGLR bid. Mr. Bruce Fay’s suggestion that the existing drainage ditch is adequate for construction of the expanded Alico Road is flat wrong. (B. Fay V.S. at B-3) Mr. Fay does not appear to be registered as a professional engineer in

⁷ No SGLR witness confirms the ten year commitment, but even if this were a binding commitment, thereafter the work would still need to be done. SGLR also claims that the County will lose unitary ad valorem tax revenue paid by SGLR; sales tax because the circus wont be able to come to Ft. Myers and additional costs for public utility service by FP&L. The circus can still come to Ft. Myers, and these other impacts are truly of *de minimus* economic consequence to the County.

⁸ The Protest incorrectly characterizes Lee County’s representations to the Board in its Application of the savings to be realized as \$1.5 million. See Protest at 24.

Florida, and I see no reference to an engineering degree in his verified statement. He is not qualified to offer an opinion on that subject. Therefore, even if the Miller spur is removed prior to the construction of the new grade crossing, the County would incur costs in excess of \$1 million under SGLR's bid.

21. The County and this Board are now told by SGLR that that bid was overstated. We are told that "less heavy duty alternatives" and "new products" would reduce the grade crossing portion of the project from \$796,000 to \$405,000 (B. Fay V.S. at B-1,2) and that the \$201,000 bid price for signal work could be reduced to \$128,500 "if the County would like us to revisit the signal estimate". (H. Neeves V.S. at B-9-10). It is very likely that the County would never have heard of these possible cost reductions if it had not have filed its Application, and the cost it would have incurred in construction of this crossing would have been in excess of \$1 million. I base that in part on SGLR's history with grade crossing work in Lee County, as outlined by Mr. Turner's statement. I base it also on the fact that given the traffic on the expanded Alico Road and the County's obligation to pay for the full cost of maintenance of the crossing it would not have elected "a less heavy duty alternative." The Davis/Schuchmann statement confirms that the so-called "new product" by Performance Polymers has been on the market for several years, and if there are savings for equivalent crossing performance, I do not believe SGLR would have shared them with the County. As for "revisiting" the signal expenses, that offer would not have been made but for this application.

22. SGLR claims the County could save money by applying for FDOT grade crossing funds. In effect, SGLR is suggesting that Lee County use State funds that are otherwise provided to construct grade crossings that save lives, and divert those funds for use on a grade crossing that

will not and does not need to be built. It is public money either way, and it is not in the public interest to waste the expenditure of it.

23. The County can be liable to the contractor for delay damages under the construction contract for expansion of Alico Road, but those damages would not begin accruing for the County on November 19, 2004 as SGLR suggests. The County used the stipulated \$1,500 per day charge applicable to the contractor for delay penalties as a surrogate for the damages and other losses that the County would incur if it delays construction while it determines whether or not it must proceed with the grade crossing construction at Alico Road. We need to know, and under the Board's schedule we will know, its ruling on the adverse abandonment by November 19, 2004. This date was established by the contractor as the date by which it would need to know whether or not we were proceeding with the grade crossing installation without delaying the contract beyond the February 2005 completion date.⁹ However, by that date we will know the Board's decision which is anticipated on or before October 4. Mr. Bruce Fay suggests that there may be an appeal of the Board's decision. (B. Fay V.S. at B-2) In the event the abandonment application were approved by the Board, we will know whether SGLR has been successful in obtaining a stay of the Board's decision, which I am advised would be resolved within 30 days of the Board's decision. If the SGLR stay request were denied, the County will have to evaluate the risk of proceeding with the expansion project and removing the rail crossing over Alico Road pending appeal against the certain costs that would be incurred if we delay the contractor beyond the February 2005 completion. I think it is likely that the Board of County Commissioners would direct that we proceed with the project and remove the crossing under

those circumstances, thereby not incurring delay costs but assuming the risk of damages, if any, resulting from a reversal of the Board's affirmative decision on appeal. Given the uncertainties that any delay costs would be incurred by the County, it is not appropriate to assume, as SGLR does, that the County will incur these delay costs. Therefore, the savings of not constructing the grade crossing should not be decreased.

24. The third major claim by SGLR is that the County would never incur the cost of removing the grade crossing once it was constructed across the expanded Alico Road because of the many uses it has projected for the Subject Line. The County believes those prospects are highly speculative or non-existent and that they are not dependent upon the Subject Line. Sooner or later, we believe that SGLR would abandon the Subject Line.

⁹ The precise completion date of date of the contract is not now known. The construction contract contains a provision requiring completion within 660 days of April 21, 2003, but that schedule is tolled by force majeure events, such as the recent hurricane.

VERIFICATION

State of Florida

Lee County

I, Don DeBerry, the Design Program Manager at Lee County Department of Transportation; declare that: (a) I have been authorized by Lee County to verify and file with the Surface Transportation Board the foregoing statement in STB AB-400 (Sub-No. 4); (b) I have carefully examined the foregoing Reply Verified Statement; (c) I have knowledge of the facts and matters relied upon in the statement; and (d) All representations set forth herein are true and correct to the best of my knowledge, information, and belief.

Executed in Lee County this 30th day of August, 2004.



Karleen A. Behrens
My Commission DD181883
Expires April 18, 2007

8/30/04

TAB 1
LETTER DATED JULY 27, 2004
TO FP&L FROM SGL

JUL-28-2004(WED) 15:53

P.002/004

July 27, 2004

To: Mr. Dennis Merchant
Florida Power & Light

From: Michael Curley
Vice President Sales
Seminole Gulf Railway

Re: Adverse Abandonment of a Portion of Baker Spur-Impact on FPL

Dear Dennis:

As you know Lee County filed an adverse abandonment action against Seminole Gulf Railway ("SGLR") with the Surface Transportation Board ("STB"). Lee County is requesting the STB to order the abandonment of about 4,200 feet of SGLR's Baker Spur along Alico Road in South Fort Myers in Lee County, Florida. This abandonment includes all SGLR track and facilities east and north of a point near Alico Center Road, including the private crossing entrance road into FPL's facility on the north side of Alico Road.

Since the filing SGLR has been working hard to retain the Baker Spur in its entirety. While our largest customer now on the line is moving to a new location at the end of 2004, we have every intention to keep the entire line in place. The County wants a portion of the Baker Spur removed to avoid the cost of reconstructing the existing railroad crossing of Alico Road to the new roadway width. As you are aware, J. Timothy Corson of FPL gave a statement in support of the County adverse abandonment plans based on his understanding that service to FPL would not be affected by the abandonment. However, SGLR does not believe proper consideration was given as to whether SGLR could safely, properly and cost effectively continue to serve FPL after the abandonment, or whether FPL would retain its private roadway access to its facility. We appreciate your taking time to consider the impacts that SGLR believes the County's action will have on FPL.

SGLR is currently able to place your transformer loads on the south side of Alico Road for handling by your riggers using the full width of our forty foot right of way and a private paved road which currently dead-ends near the spot making this area traffic free. The car spotting is usually accomplished by pulling your car to the "Miller" siding on the north side of Alico Road, running the lead engine into that siding, pushing the car with a second engine and then pulling your transformer car back to the unloading spot on the

south side of Alico Road. This method releases both engines to return to Fort Myers for other assignments that day. Your rigger then unloads the car, moves the transformer across the existing undivided two lane road to your private road which crosses over Seminole Gulf's property into your facility.

The new expanded six lane divided highway under construction and Lee County's adverse abandonment action completely changes the situation. The County without any contact with the railroad has simplistically assumed that FPL can be accommodated by designating an end of track near the paved private road area. There are several serious flaws with this assumption. First, the County's plan allows no method for releasing the now trapped lead locomotive. Second, the County assumes in the length it provided you that a car will fit with the added length of the trapped locomotive. Third, the County may not have informed you of its desire to take the private road, close Alico Center Road, and construct a new railroad crossing to the west making the use of the area as an unloading area impractical. Forth, the County may not have shared with you the already designed side walk which will narrow our current forty foot right of way in the area. Fifth, the current road design as submitted to SGLR has no median cuts planned to allow safe (or any) movement of your transformers from the south side of the road to your private road on the north. (We note in the emails between Lee County and FPL furnished to us by the County in discovery, that the County may, if necessary, redesign the new road median cuts for your needs. It is not clear at what cost, who will pay for the changes or what the impact these cuts will have on other interested parties seeking compensation for similar considerations.)

Included in SGLR's proposal of December 2003 to the County related to the widening of the Alico railroad crossing was a widening and complete rebuild of your existing private road crossing into your facility and the construction next to that crossing of a pad for unloading your transformers next to your facility. Our right of way is fifty foot wide at that point as compared to less than forty feet on the south side of the road. Unloading at this point will eliminate the need for you to cross the busy new six-lane Alico Road and possibility reduce your rigging costs.

While I know the unloading pad idea maybe new to you, we had planned to work out the details with you when we knew the County's construction timetable. This plan would have been without cost to FPL, and will still be without cost to FPL, if we can defeat Lee County's adverse abandonment request to the STB. (Note, we understand that no adverse abandonment has ever been granted where one or more rail users join with the railroad in protest.) Much of the grading for the pad is now in place and the balance of the fill and work can be completed quickly by Seminole Gulf.

We are optimistic that additional rail customers will locate on the north side of Alico Road contrary to the negative view being promulgated by the County and certain land speculators and their attorneys. Additionally we plan to develop rail transloading business on the line utilizing the track space on our property on the north side of Alico. We also have sufficient other non-rail revenues on the north side of Alico to continue the entire line in operation over the next several years. Should Lee County force the abandonment

JUL-28-2004(WED) 15:53

P. 004/004

of the line we will lose all of that revenue, making the balance of the line remaining on the south side just serving FPL a loser. We may need to seek abandonment of the balance of the Baker Spur or turn it over to FPL as a long 4,000 foot side track for FPL's maintenance and operation. Moreover, in any event we will need to recover our added "trapped" locomotive costs from you when cars are spotted using only the south side location.

Also, FPL should consider its access to its transformer facility off Alico Road. Today FPL enjoys free access across Seminole Gulf's railroad easement as a private crossing. Because of a reversionary clause in our (and CSXT's) easement, the land will revert after abandonment to the underlying owner, which we do not believe is FPL. If this is true FPL may have to pay to keep its access.

As you may know there are new planned overhead highway bridges at each end of Alico Road near your facility. Less than a mile to the west is a new Alico-Metro Parkway-US 41 interchange complex which will require Alico Road traffic to pass under an interchange bridge. To the east, the State is redesigning the I-75 interchange. As the railroad once passed under the existing bridge, highway clearances are now ample. We understand the new design may not be as generous. SGLR is concerned that these further restrictions will affect FPL's ability to use alternative routes to move high and wide loads in conjunction with your Alico and other area facilities.

We ask your consideration of supporting Seminole Gulf in the retention of the Baker Spur. If you are open to such consideration, we can discuss the preparation of a superseding statement for submission to the STB. Our case will contain much of the material in this letter. Our opposition case is currently due August 2, although we have asked for an extension to August 9. I will be contacting you soon to discuss this further, answer your questions, and meet with you if you desire.

SGLR appreciates FPL as a customer and values your business. Your thoughtful consideration of our position is requested now that you have "the rest of the story".

Sincerely,



Michael Curley
Vice President Sales

TAB 2

FP&L RIGHT-OF-WAY AGREEMENT

733,007

RIGHT-OF-WAY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that ALICO LAND DEVELOPMENT COMPANY, of the County of Hendry and State of Florida, in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, does hereby grant to the FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, whose address is P. O. Box 3100, (4200 West Flagler Street) Miami, Florida, and to its successors and assigns, an easement forever for a road right-of-way for ingress and egress from the existing road known as "Alico Road" to Florida Power & Light Company sub-station site, also to be used for the construction, operation and maintenance of one or more electric distribution lines, including wires, poles, anchors, guys, telephone and telegraph lines, and appurtenant equipment, in, over, and across the following described land of the Grantor, situated in the County of Lee and State of Florida, and more particularly described as follows:

The East 100 feet of the North 100 feet of the South 150 feet of said West half (W $\frac{1}{2}$) of the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 5, Township 46 South, Range 25 East, in Lee County, Florida.

The Grantee, FLORIDA POWER & LIGHT COMPANY, is hereby authorized to construct a private road over and across the above described property, which said private road is to be constructed, maintained and used by the Grantee, FLORIDA POWER & LIGHT COMPANY, according to the following covenants, conditions and limitations, to-wit:

- (a) It is understood and agreed that Grantee will bear all cost of construction and maintenance of road constructed under this agreement.
- (b) Said road is to be constructed in such a manner as to cause no damage to existing fences, or any improvements of Grantor of any kind.
- (c) Sufficient culverts or other type drainage structures shall be installed to permit drainage of abutting lands to satisfaction of Grantor.

This Instrument Was Prepared By
JAMES R. DOZIER
Attorney at Law
P. O. Box 273, Tallahassee, Florida

- (d) The road right-of-way shall be fenced to the satisfaction of Grantor with a gate satisfactory to Grantor placed on the end of said road adjacent to County road right-of-way and said gate shall be kept locked at all times to prevent unauthorized entry upon lands of Grantor.
- (e) It is understood and agreed that said road will not be a public road and its use shall be restricted to Grantee, its assigns, and to the agents, contractors and/or representatives of the Grantor and its successors and assigns.
- (f) This easement shall be subject to a right reserved by ALICO LAND DEVELOPMENT COMPANY to hereafter grant a railroad right-of-way, 75 feet in width, to be located on the North side and adjacent to the County road, commonly known as "Alico Road", to SHANDS AND BAKER, INC., or FORT MYERS SOUTHERN RAILROAD COMPANY or any other person, partnership or corporation.

In consideration for the permission herein granted the Grantee hereby accepts the lands covered herein in the condition which it finds the same, it being agreed that they are acceptable and safe for the purpose to which the same shall be devoted under the terms and provisions of this agreement. The Grantee further agrees to indemnify and hold harmless the Grantor from and against any and all claims and demands which may arise as result of the Grantee's performance under this agreement, including but not limited to all claims and demands for personal injury, death or damage to property sustained by any person, firm or corporation, including the employees of the Grantee together with all costs and a reasonable attorney's fee for defending the same.

IN WITNESS WHEREOF, the Grantor has caused these presents to be signed, in its name, by its duly authorized officer, attested by its Secretary, and its corporate seal to be hereto affixed, this 14th day of June, A. D. 1973.

ALICO LAND DEVELOPMENT COMPANY

By: [Signature]
Vice President

ATTEST:

[Signature]
Secretary

Signed, Sealed and Delivered in the Presence of:

[Signature]
[Signature]

STATE OF FLORIDA)
COUNTY OF HENDRY)

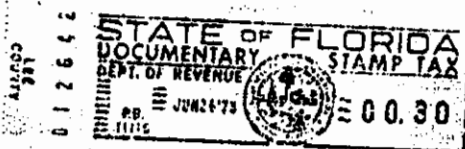
I HEREBY CERTIFY that before me personally appeared R. E. BYRD and GLORIA B. ALLEN, respectively Vice President and Secretary of ALICO LAND DEVELOPMENT COMPANY, a corporation organized under the laws of the State of Florida, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged the execution thereof to be their free act and deed as such officer, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation and that said instrument is the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at La Belle, in the County of Hendry and State of Florida, this 14th day of June A. D. 1973.

Beatrice W. Boyle
Notary Public

My Commission Expires:

10/22/75



RECEIVED BY OFFICIAL
H. GORDON
STATE OF FLORIDA
JUN 26 10 05 AM '73
CLERK OF CIRCUIT COURT
SARASOTA
6192 Highway 301, Suite 100, Sarasota, FL 34231

Department of Public Works
Division of County Lands

Page 1 of 1

Updated In House Title Search

Search No. 21392/A

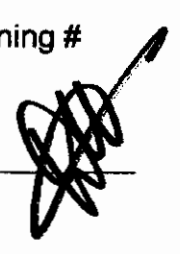
Date: February 3, 2000

Parcel: 110

Project: Alico Road Widening #
4034

To: Robert G. Clemens
Acquisition Program Manager

From: David M. White, C.L.S.
Real Estate Title Examiner



STRAP: 05-46-25-00-00005.0020

An update has been requested of In House Title Search No. 21392/A which covers the period beginning January 1, 1940, at 8:00 a.m. and is now complete through January 19, 2000, at 5:00 p.m.

Subject Property: The South 200 feet of the West Half (W ½) of the Northwest Quarter (NW ¼) of the Southeast Quarter (SE ¼) AND the West Half (W ½) of the Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼), excepting the South 150 feet thereof, all being in Section 5, Township 46 South, Range 25 East, Lee County, Florida.

Title to the subject property is vested in the following:

Florida Power and Light Company, a Florida Corporation

By that certain instrument dated November 21, 1972, recorded November 27, 1972, in Official Record Book 876, Page 609, Public Records of Lee County, Florida.

Subject to:

1. Title to oil, gas and mineral rights and leases on subject property is specifically omitted from this report.
2. Notice under Marketable Record Title Act, Florida Statutes Chapter 712, dated November 23, 1973, recorded December 20, 1973 in Official Record Book 1011, Page 1939, Public Records of Lee County, Florida.
3. Notice of Development Order, recorded December 4, 1990 in Official Record Book 2190, Page 1283, Public Records of Lee County, Florida.

Note: There is a Right-of-Way Agreement between Alico Land Development Company and Florida Power and Light Company (FP&L), dated June 14, 1973, recorded June 26, 1973, in Official Record Book 960, Page 839, Public Records of Lee County, Florida, that gives FP&L an easement forever over the 150 foot strip of land between the North right-of-way line of Alico Road and subject property.

Tax Status: 1999 Ad Valorem Taxes are PAID IN FULL.

(The end user of this report is responsible for verifying tax and/or assessment information.)

The Division of County Lands has made a diligent search of the Public Record. However, this report contains no guarantees nor warranty as to its accuracy.

EXHIBIT B
REPLY VERIFIED STATEMENT OF JOHN S. TURNER

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

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

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

APPLICATION FOR ADVERSE ABANDONMENT
OF LEE COUNTY, FLORIDA

REPLY VERIFIED STATEMENT
OF
JOHN S. TURNER

1. My name is John S. Turner, and I am Assistant County Attorney for Lee County, Florida. I have worked for the County Attorney's office for 13 years, and during that time, I have advised the Department of Transportation for Lee County on legal issues involving the Department, including eminent domain actions in connection with various highway improvement projects. In connection with that work for the Department, I have been responsible for the issue of the SGLR grade crossing that is the core of the dispute involving the Subject Line in this proceeding.
2. I have read the protest and verified statements offered in these proceedings on behalf of SGLR, and have personal knowledge about certain matters leading to the County's decision to file its Application for Abandonment in this docket. Moreover, I have obtained certified copies of certain public court documents relating to SGLR and its management that I believe to be relevant to the matters before the Board in this proceeding.
3. I have read the verified statement of SGLR's Gordon Fay, who describes himself as the President and "a founding principal owner of Seminole Gulf Railway Inc." and the "controlling General Partner of Seminole Gulf Railway LP ('SGLR')." (G. Fay V.S. at A-1) Mr. Fay

describes a meeting which he says was called by a County attorney on April 13, 2004. (*Id.* at A-5) I was the attorney who called the meeting. The meeting was called to inform Mr. Fay and the principal land owners along the Subject Line of the County's reaction to the news, only recently learned by the County, of the departure of J.J. Taylor, the only remaining shipper on the portion of the Baker Spur north and east of the grade crossing at Alico Road (designated by SGLR as Alico #3). The County decided it made no sense for it to pay in excess of \$1 million for a grade crossing for a line with no shippers and no prospects for new ones given the position of the adjacent land owners. I called the meeting to see whether an agreement could be reached with the railroad to avoid this proceeding before the Board. I asked Mr. Fay whether he had a price for agreeing to voluntarily seek an abandonment of the Subject Line. He initially declined to provide a number, but demanded the County make the first offer. I offered the approximate amount of what the abandonment action would cost-\$100,000. Mr. Fay reacted with a laugh, and said that he was in the process of acquiring a line of railroad in another location for \$1.5 million per mile. The clear implication was it would cost the County \$1.5 million to obtain the Subject Line. He made no mention at that time of any new traffic opportunities, that he has now stated in his verified statement in this proceeding he foresees for the Subject Line, to justify this price. Mr. Fay stated it would take the County two years to obtain an abandonment which would delay completion of the Alico Road project. Mr. Fay characterizes this conversation with me as an "ultimatum to abandon or remove the Baker Spur." In truth, our conversation was nothing of the kind.

4. Attached to this statement at Tab 2 are certified copies of two orders and a plea agreement entered into by the SGLR in a criminal action filed in Lee County Circuit Court in April and May, 2001, wherein SGLR pleaded guilty to one count of grand theft, a second degree

felony with a maximum penalty of fifteen years. In the plea agreement, SGLR agreed to pay \$111,861.68 to the Florida Department of Transportation (“FDOT”) for interest and an overhead reimbursement, plus a previously returned amount of \$239,771.86 owed to FDOT, and plus certain costs of investigation and prosecution of the case. Moreover, attached to the plea agreement is a set of rules governing future work that may be performed by SGLR for FDOT, including the rule that “all work” performed by SGLR for FDOT shall be performed by qualified railroad contractors, after competitive bidding, and not by SGLR. In the Stipulated Order, Mr. Harry Neeves was designated as the SGLR representative for probation purposes.

5. These orders and the plea agreement were entered as a result of an information filed by the Statewide Prosecutor, attached at Tab 1 to this statement, alleging theft and racketeering in connection with certain FDOT funded grade crossing projects, including projects in Lee County.

VERIFICATION

State of Florida

Lee County

I, John S. Turner, Assistant County Attorney for Lee County, Florida; declare that: (a) I have been authorized by Lee County to verify and file with the Surface Transportation Board the foregoing statement in STB AB-400 (Sub-No. 4); (b) I have carefully examined the foregoing Reply Verified Statement; (c) I have knowledge of the facts and matters relied upon in the statement; and (d) All representations set forth herein are true and correct to the best of my knowledge, information, and belief.

Executed in Lee County this 30th day of August, 2004.

A handwritten signature in cursive script, appearing to read "John S. Turner", is written over a horizontal line.

TAB 1
INFORMATION

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,
Plaintiff,

vs.

_____, and
✓ SEMINOLE GULF RAILWAY, L. P. (B)
Defendants.

CASE NO: 00-1251CF-13
ASSIGNED TO "D" DIVISION JUDGE

OSWP CASE NO: 97-393-NFF

INFORMATION FOR:

COUNT 1: Racketeering (Conduct-
Participation) F.S. 895.03 (3);
777.011 (F1) (A and B)

COUNT 2: Racketeering (Investing
Proceeds) F.S. 895.03 (1);
777.011 (F1) (A and B)

COUNTS 4 and 7: Grand Theft
(\$100,000.00 or More)
F.S. 812.014 (2) (a) (1);
777.011 (F1) (A and B)

COUNTS 5, 6, 9, 10: Grand Theft
(\$20,000.00 or More)
F.S. 812.014 (2) (b);
777.011 (F2) (A and B)

COUNTS 3, 8, 11: Grand Theft
(\$300.00 or More)
F.S. 812.014 (2) (c);
777.011 (F3) (A and B)

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

MELANIE ANN HINES, Statewide Prosecutor for the State of Florida, by and through the
undersigned Assistant Statewide Prosecutor, under oath, CHARGES that:

FILED LEE CO. FLORIDA
CLERK OF COURTS

200 APR -4 PM 3:34

1126 2763

COUNT ONE

On or about June 8, 1994 through September 18, 1996, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth, Twelfth and Twentieth Judicial Circuits of Florida, that is, Charlotte, Lee, Leon, Manatee, Polk and Sarasota Counties [REDACTED] and **SEMINOLE GULF RAILWAY, L. P.** did while employed by, or associated with an enterprise, as defined in Fla. Stat. § 895.02(3), to wit: **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** employing or consisting of Susan Jane Fay, Bruce Fay, Eddy W. Martin, Harry Neeves and Marjorie Walker and/or others known and unknown, conduct or participate, directly or indirectly, in such enterprise through a continuous pattern of racketeering activity, by engaging in at least two incidents of racketeering conduct which had similar intents, results, accomplices, victims, or methods of commission, or were otherwise related by distinguishing characteristics and were not isolated incidents, including at least two incidents from Predicate Incidents 1-11 in violation of Fla. Stat. § 895.03 (3):

PREDICATE 1

(A) On or about June 8, 1994 through July 13, 1994, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$20,000.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT OF TRANSPORTATION (Palm Shores Project)**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

(B) On or about June 8, 1994 through July 13, 1994, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Palm Shores Project)**, or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the **FLORIDA DEPARTMENT of TRANSPORTATION** with the intent to obtain property, to wit: United States currency or funds with a value of \$20, 000.00 or more, but less than \$50,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 2

(A) On or about December 13, 1994 through January 9, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or

1126 2764

endeavor to obtain or use United States currency or funds with a value of \$ 300.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Palm Shores Project)**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (c).

(B) On or about December 13, 1994 through January 9, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Palm Shores Project)**, or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the **FLORIDA DEPARTMENT of TRANSPORTATION**, with the intent to obtain property, to wit: United States currency or funds with a value of \$300.00 or more, but less than \$20,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 3

(A) On or about March 8, 1995 through April 7, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 300.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Palm Shores Project)**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (c).

(B) On or about March 8, 1995 through April 7, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Palm Shores Project)**, or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the **FLORIDA DEPARTMENT of TRANSPORTATION** with the intent to obtain property, to wit: United States currency or funds with a value of \$300.00 or more, but less than \$20,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 4

(A) On or about May 15, 1995 through June 5, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 100,000.00 or more, the property of

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another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Clark Road Project)**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (a) (1).

(B) On or about May 15, 1995 through June 5, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Clark Road Project)**, or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the **FLORIDA DEPARTMENT of TRANSPORTATION** with the intent to obtain property, to wit: United States currency or funds with a value of \$50,000.00 or more, in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 5

(A) On or about July 25, 1995 through August 9, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$20,000.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Martin Luther King Way (east))**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

(B) On or about July 25, 1995 through August 9, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Martin Luther King Way (east))**, or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the **FLORIDA DEPARTMENT of TRANSPORTATION** with the intent to obtain property, to wit: United States currency or funds with a value of \$20,000.00 or more, but less than \$50,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 6

(A) On or about July 25, 1995 through August 11, 1995, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$20,000.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Martin Luther King**

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Way (west)), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

(B) On or about July 25, 1995 through August 11, 1995, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Martin Luther King Way (west)), or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the FLORIDA DEPARTMENT of TRANSPORTATION with the intent to obtain property, to wit: United States currency or funds with a value of \$20,000.00 or more, but less than \$50,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 7

(A) On or about July 25, 1995 through August 9, 1995, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 100,000.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (State Road 70 Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (a) (1).

(B) On or about July 25, 1995 through August 9, 1995, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (State Road 70 Project), or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the FLORIDA DEPARTMENT of TRANSPORTATION with the intent to obtain property, to wit: United States currency or funds with a value of \$50,000.00 or more in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 8

(A) On or about August 27, 1996 through September 18, 1996, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 300.00 or more but less than \$ 20,000.00, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (State Road 70 Project), with the intent to temporarily or permanently

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deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (c) (3).

(B) On or about August 27, 1996 through September 18, 1996, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (State Road 70 Project), or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the FLORIDA DEPARTMENT of TRANSPORTATION with the intent to obtain property, to wit: United States currency or funds with a value of \$300.00 or more, but less than \$20,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 9

(A) On or about August 10, 1995 through August 31, 1995, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 20,000.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (South Street Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

(B) On or about August 10, 1995 through August 31, 1995, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (South Street Project), or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the FLORIDA DEPARTMENT of TRANSPORTATION with the intent to obtain property, to wit: United States currency or funds with a value of \$20, 000.00 or more, but less than \$50,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 10

(A) On or about March 8, 1996 through March 27, 1996, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 20,000.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Kentucky Street Project), with the intent to temporarily or permanently deprive said party of a right to the property,

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or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

(B) On or about March 8, 1996 through March 27, 1996, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Kentucky Street Project), or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the FLORIDA DEPARTMENT of TRANSPORTATION with the intent to obtain property, to wit: United States currency or funds with a value of \$20,000.00 or more, but less than \$50,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

PREDICATE 11

(A) On or about May 17, 1996 through June 10, 1996, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 300.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Kentucky Street Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (c) (1).

(B) On or about May 17, 1996 through June 10, 1996, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did engage in a scheme to defraud, to wit: a systematic, ongoing course of conduct, with intent to defraud one or more persons, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Kentucky Street Project), or with intent to obtain property from one or more of these same persons by false or fraudulent pretenses, representations or promises, or willful misrepresentations of a future act, and in furtherance thereof, communicated by means of United States mail and/or facsimile with representatives of the FLORIDA DEPARTMENT of TRANSPORTATION with the intent to obtain property, to wit: United States currency or funds with a value of \$300.00 or more, but less than \$20,000.00 in violation of Fla. Stat. § 817.034 (4) (b).

COUNT TWO

On or about June 8, 1994 through September 18, 1996, as part of related transactions occurring in two or more judicial circuits, to wit: the Second, Tenth, Twelfth, and Twentieth Judicial Circuits of Florida, that is, Charlotte, Lee, Leon, Manatee, Polk and Sarasota Counties, [REDACTED] and SEMINOLE GULF RAILWAY, L. P. did with criminal intent, receive proceeds derived, directly or indirectly, from a continuous pattern of racketeering activity, as defined in Fla. Stat. § 895.02 (4), or from the collection of an unlawful debt, and did use or invest, directly or indirectly,

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any part of said proceeds in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of an enterprise, to wit: Seminole Gulf Railway, Limited Partnership and/or Seminole Gulf Railway, Inc. and/or GFA Rail Services, Inc. and/or Gordon Fay Associates, Inc. and/or Florida Freezer, Inc., by engaging in at least two incidents of racketeering conduct which had similar intents, results, accomplices, victims, or methods of commission, or are otherwise related by distinguishing characteristics and were not isolated incidents including, but not limited to, the predicate incidents 1 through 11 as set forth above, in violation of Fla. Stat. § 895.03 (1).

COUNT THREE

On or about March 8, 1995 through April 7, 1995, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth and Twentieth Judicial Circuits of Florida, that is, Charlotte, Lee, Leon and Polk Counties [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 300.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Palm Shores Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (c).

COUNT FOUR

On or about May 15, 1995 through June 5, 1995, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth, Twelfth, and Twentieth Judicial Circuits of Florida, that is, Lee, Leon, Polk and Sarasota Counties [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 100,000.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Clark Road Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (a) (1).

COUNT FIVE

On or about July 25, 1995 through August 9, 1995, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth, Twelfth, and Twentieth Judicial Circuits of Florida, that is, Lee, Leon, Polk and Sarasota Counties [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 20,000.00 or more, the property of another, to

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wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Martin Luther King Way (east))**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

COUNT SIX

On or about July 25, 1995 through August 11, 1995, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth, Twelfth, and Twentieth Judicial Circuits of Florida, that is, Lee, Leon, Polk and Sarasota Counties, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 20,000.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (Martin Luther King Way (west))**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

COUNT SEVEN

On or about July 25, 1995 through August 9, 1995, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth, Twelfth, and Twentieth Judicial Circuits of Florida, that is, Lee, Leon, Manatee and Polk Counties, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 100,000.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (State Road 70 Project)**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (a) (1).

COUNT EIGHT

On or about August 27, 1996 through September 18, 1996, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth, Twelfth, and Twentieth Judicial Circuits of Florida, that is, Lee, Leon, Manatee and Polk Counties, [REDACTED] and **SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP** did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 300.00 or more, the property of another, to wit: the **FLORIDA DEPARTMENT of TRANSPORTATION (State Road 70 Project)**, with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (c) (3).

COUNT NINE

On or about August 10, 1995 through August 31, 1995, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth and Twentieth Judicial Circuits of Florida, that is, Lee, Leon and Polk Counties, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 20,000.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (South Street Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

COUNT TEN

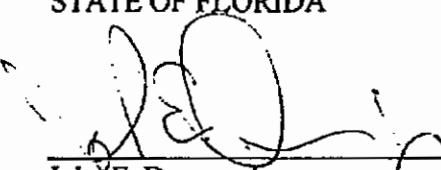
On or about March 8, 1996 through March 27, 1996, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth and Twentieth Judicial Circuits of Florida, that is, Lee, Leon and Polk Counties, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 20,000.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Kentucky Street Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (b).

COUNT ELEVEN

On or about May 17, 1996 through June 10, 1996, as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, to wit: the Second, Tenth and Twentieth Judicial Circuits of Florida, that is, Lee, Leon and Polk Counties, [REDACTED] and SEMINOLE GULF RAILWAY, LIMITED PARTNERSHIP did knowingly obtain or use, or endeavor to obtain or use United States currency or funds with a value of \$ 300.00 or more, the property of another, to wit: the FLORIDA DEPARTMENT of TRANSPORTATION (Kentucky Street Project), with the intent to temporarily or permanently deprive said party of a right to the property, or a benefit therefrom, or to appropriate the property to the defendant's own use or the use of any person not entitled thereto, in violation of Fla. Stat. § 812.014 (2) (c) (1).

AND all of said offenses being against the peace and dignity of the State of Florida.

MELANIE ANN HINES
STATEWIDE PROSECUTOR
STATE OF FLORIDA


John E. Duryea, Jr.
ASSISTANT STATEWIDE PROSECUTOR
2075 West First Street, Suite 202
Fort Myers, Florida 33901
(941) 338-2440
Florida Bar Number 0093726

STATE OF FLORIDA
COUNTY OF LEE

Personally appeared before me, John E. Duryea, Jr., Assistant Statewide Prosecutor for the State of Florida, who, being first duly sworn, says that he has received testimony under oath from the material witnesses which, if true, would constitute the offenses herein charged, and that this prosecution is instituted in good faith.

Sworn to and subscribed before me
this 4th day of April, 2000.


NOTARY PUBLIC-Signature



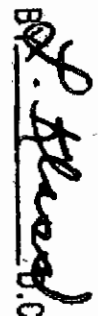
Elaine Baers
Commission # CC 789134
Expires DEC. 16, 2002
BONDED THRU
ATLANTIC BONDING CO., INC.

ELAINE BAERS
NOTARY PUBLIC-Printed Name

Personally Known to me.

Defendant's Biographical Data:

A. Gordon H. Fay
White Male
DOB: 08/17/39
Height: 5'11"
SSN: 017-32-3451
L/K/A: 16904 Timberlakes Drive Fort Myers, FL. 33908

FILED LEE CO. FLORIDA
CLERK OF COURTS
200 APR - 4 PM 3:41


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TAB 2

ORDER OF PROBATION
STIPULATED ORDER NAMING COMPANY REPRESENTATIVE FOR PROBATION
PLEA AGREEMENT

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant, Seminole Gulf Railway LP, being now present before me, and you having entered a plea of guilty to Count V: Second Degree Grand Theft.

Judgment of Guilt

The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on probation for a period of three (3) years under the supervision of the Department of Corrections, subject to Florida law.

It is further ordered that you shall comply with the following conditions of probation supervision.

- (1) Not later than the fifth day of each month, unless otherwise directed you will make a full and truthful report to your Officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of \$25.00 per month plus a 4% surcharge towards the cost of your supervision, unless otherwise waived in compliance with F.S. 948.09.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
- (5) You will live without violating the law. A conviction in a court of law shall not be necessary for such violation to constitute a violation of probation.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
- (9) You will promptly and truthfully answer all inquiries directed to you by the Court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will pay all court ordered monetary obligations through the Probation Office with money orders made payable to "**The Department of Corrections**". A 4% surcharge will be assessed. The Department of Corrections shall disburse monies as follows:

AMOUNT	DISBURSE TO
\$306.00	Lee County Clerk of Court (Court Costs)
\$3500.00	Office of Statewide Prosecutor
\$46,743.52	Cost of Investigation - Dept of Transportation

I certify this document to be a true and correct copy of the original on file in my office.
Charlie Green, Clerk Circuit Court, Lee County, Florida
Dated: 2001 May 24

By

Deputy Clerk

DEPUTY CLERK C Rackey
LEE COUNTY
CHARLIE GREEN CLERK OF COURT
RECORDED 06/01/01 10:08 AM
OR BK 03423 PG 2484
INSTR # 5149878

0975 0114

Probation Order – Adjudicated
Name: Seminole Gulf Railway LP
Case No. 00-1251CFB
DC# Y17095

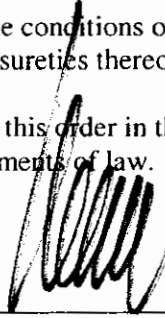
- (11) Per F.S. 960.20, you shall pay a mandatory fee of \$50.00 to the State of Florida Crimes compensation Trust Fund; (in accordance with Twentieth Judicial Circuit Administrative Order 3.1; this fee is to be paid through the Clerk of the Court and is part of your court ordered costs.)
- (12) You will report in person within 72 hours of your release from confinement to the probation office in Lee County, Florida, unless otherwise instructed by your officer.
- (13) You will submit to urinalysis, Breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.
- (14) You will enter and successfully complete the following program(s): N/A.
- (15) You will perform 0 hours of Community Service Work
- (16)
- (17)
- (18)

You are hereby placed on notice that the Court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation; you may be arrested and the Court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

It is further ordered that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability.

It is further ordered that the Clerk of the Court of this court file this order in the Clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, this the 11th day of April, 2001.



Judge William J. Nelson

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

Date: _____

Probationer _____

Instructed by _____

Original: Clerk of court
Certified Copies: Probationer
Florida Department of Corrections, Probation and Parole Services

J.Marcinkowski/rmt

0975 0115

DR BK 03423 PG 2485

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR LEE COUNTY
CRIMINAL DIVISION

STATE OF FLORIDA,

VS.

SEMINOLE GULF RAILWAY L.P.,

Defendant.

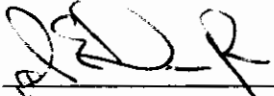
Case No.: 00-1251CFB

OSWP Case No.: 97-393-NFB

Florida Bar No. 312487

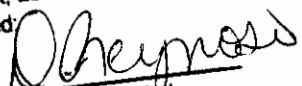
STIPULATED ORDER NAMING COMPANY
REPRESENTATIVE FOR PROBATION

COME NOW, Plaintiff, **STATE OF FLORIDA**, and Defendant, **SEMINOLE GULF RAILWAY L.P.**, and hereby submit this Stipulation for the Court's acceptance and approval naming Mr. Harry Neeves as the representative of **SEMINOLE GULF RAILWAY L.P.** for probation purposes. Mr. Neeves can be contacted at 4110 Centerpointe Drive, Suite 207, Ft. Myers, Florida 33916 (941-275-6060).


JOHN E. DURYEA, JR.
Assistant Statewide Prosecutor
2075 West First Street
Sullivan Centre, Suite 202
Ft. Myers, Florida 33901
(941) 338-2440 / (941) 338-2304 (fax)
Florida Bar No. 0093726


DAVID T. WEISBROD, ESQ.
412 East Madison Street, Suite 1111
Tampa, Florida 33602
(813) 223-2792 / (813) 223-3124 (fax)
Attorney for Defendant
Florida Bar No. 312487

I certify this document to be
a true and correct copy of the
original on file in my office,
Charlie Green, Clerk Circuit
Court, Lee County, Florida
Dated: _____

By 
Deputy Clerk

0969 3358

ORDER ACCEPTING AND APPROVING STIPULATED STIPULATION

THIS CAUSE came on to be heard before the Court upon the filing of a Stipulated Order Naming Company Representative for Probation submitted by counsel for the Plaintiff and the Defendant and the Court having reviewed the file and being otherwise fully advised in the premises, it is therefore, .

ORDERED AND ADJUDGED:

1. The Stipulated Order Naming Company Representative for Probation is hereby accepted and approved by the Court. Mr. Harry Neeves is hereby designated as the representative of the Defendant, **SEMINOLE GULF RAILWAY L.P.**, for purposes of its probation.

DONE AND ORDERED in chambers at Ft. Myers, Lee County, Florida, this 4 day of May, 2001.



CIRCUIT JUDGE

Copies furnished to:

David T. Weisbrod, Esq.

John E. Duryea, Jr., Assistant Statewide Prosecutor

FILED LEE CO. FLORIDA
CLERK OF COURTS
2001 MAY -7 AM 11:05
BY Donna Duryea
D.C.

0969 3359

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CRIMINAL ACTION

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 00-1251-CFB

vs.

OSWP CASE NO. : 97-393-NFB

Seminole Gulf Railway, L.P.,

Defendant.

FILED IN CO. FLORIDA
CLERK OF COURTS
2001 APR 11 AM 11:09
BY Charlie Green D.C.

PLEA AGREEMENT

1. The Limited Partnership's name is **Seminole Gulf Railway, L.P.** (Hereinafter "Seminole") On behalf of Seminole Gulf railway, L.P., I, David T. Weisbrod, Esq., acknowledge that I am the counsel of record for Seminole, and am authorized to act on behalf of the limited partnership in the above-styled criminal case.

2. Seminole Gulf Railway is represented by an attorney: Mr. David T. Weisbrod, Esq. 412 East Madison Street, Suite 1111 Tampa, FL 33602.

3. On behalf of Seminole Gulf Railway, L.P., I wish to withdraw its plea of not guilty and plead **Guilty** in its best interest to count: 5 - Grand Theft (\$20,000.00 or more), F.S. § 812.014 (2)(b) a Second Degree Felony with a maximum penalty of fifteen years.

4. Seminole understands that count 5 is a second degree felony punishable by up to fifteen (15) years with the Department of Corrections and a \$10,000 dollar fine.

5. Seminole has knowledge of all the facts and circumstances about the charges against Seminole and is fully informed on all such matters. Seminole was counseled and advised on the nature of the charges, as well as any and all lesser included charges, all possible defenses that Seminole might have in this cause, and all the penalties that might be imposed if convicted.

6. Seminole understands that it may plead not guilty to any offense charged. If Seminole chooses to plead not guilty the Constitution guarantees the right to maintain that plea

I certify this document to be
a true and correct copy of the
original on file in my office.
Charlie Green, Clerk Circuit
Court, Lee County, Florida
Dated: 04/11/01
By D. Reynolds
Deputy Clerk

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and (a) the right to a speedy and public trial by jury; (b) the right to see, hear and face in open Court all witnesses called to testify against Seminole Gulf Railway, L.P. and to cross-examine said witnesses; (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in its favor; (d) the right to have the assistance of a lawyer at all stages of the proceedings and to have one appointed for Seminole if necessary.

7. Seminole understands that it is waiving all of the rights referred to in the above paragraph and the Court may impose the same punishment as if Seminole had plead not guilty, stood trial and been convicted. Seminole further understands that if it pleads guilty there will be no further trial of any kind, which means that by pleading guilty Seminole waives its right to a trial.

8. Seminole understands the allegations in the information may have occurred in whole or in part in Florida counties other than Lee. However, Seminole wishes to resolve, in Lee County, all the charges filed against Seminole Gulf Railway, L.P. in case number 00-1251CFB and affirmatively waives any right to venue in other counties where the alleged offenses may have occurred.

9. Seminole Gulf Railway, L.P. has never been convicted of a crime.

10. No one has made any promise, assurance or guarantee to me on behalf of Seminole Gulf Railway, L.P. that it would receive any consideration in exchange for pleading guilty other than as set forth in this plea agreement.

11. I declare that no one has subjected me or anyone one else on behalf of Seminole to any force, duress, threats, intimidation or pressure to compel or induce me to enter a plea of guilty for Seminole.

12. SEMINOLE IS SATISFIED WITH THE ADVICE AND ASSISTANCE OF COUNSEL THAT HAS BEEN RENDERED IN CONNECTION WITH THESE PROCEEDINGS.

13. Seminole understands that if there are any unpaid fines or costs, there will be a lien placed against Seminole.

14. Seminole further understands that any fines and costs imposed are not subject to discharge in any bankruptcy proceeding. Seminole understands that should it fail to pay the entire amount of any fines, restitution and costs by the conclusion of probation, a judgment in the remaining amount will be entered against it.

15. Seminole understands it is waiving its right to appeal any ruling of the Court made previously in this case except as specifically stated herein.

16. Seminole understands it has the right to appeal the judgment and sentence of the Court within thirty (30) days from the date of sentence. and that any appeal must be in writing.

17. I request the Court accept Seminole's plea, knowing that upon it being accepted by the Court that nothing will remain to be done except for the Court to enter its judgment and sentence.

18. I offer Seminole's plea freely and voluntarily and of my own accord and with full understanding of all the matters set forth in the Information and in this Petition, the Certificate of Seminole Gulf Railway's lawyer and the Plea Agreement which are contained herein.

19. I certify that the statements and representations herein above made are my own on behalf of Seminole and that the decision for Seminole to plead guilty was made by the appropriate representatives of Seminole and through proper institutional channels. I further represent that Seminole has been advised of considerations bearing on the choice of which plea to enter and the advantages and disadvantages of such plea, the likely results thereof as well as any possible alternatives which may be open to Seminole. I represent to the Court that the plea agreement attached hereto was negotiated by Seminole and its attorney and that the decision to plead guilty was made by an appropriate representative of the limited partnership.

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counselor for the Defendant, hereby certifies as follows:

1. To the best of my knowledge and belief the statements, representations and declarations made on behalf of Seminole in this petition are voluntary and in all respects accurate and true.

2. I have read and fully explained to Seminole's representative the allegations

contained in the Information as well as the maximum and minimum penalties.

3. I have conducted a complete and adequate investigation of the facts of this case and have researched the legal issues presented in this case.

4. Having discussed this matter fully with Seminole's representatives, it is my opinion that they are mentally and physically competent and possesses no mental or physical condition which would affect their understanding of these proceedings.

AGREED UPON SENTENCE

The Defendant, and the State, pursuant to the provisions of Fla. R. Crim.P. 3.171, agree and stipulate to the following guide line sentence in the above-styled case:

1. Defendant agrees to plead **GUILTY** in its best interest to Count 5 - Grand Theft (\$20,000.00 or more); F.S. § 812.014 (2) (b). The defendant also agrees to satisfy, by stipulation, all interest and agreed upon overhead reimbursements (in the nature of restitution) as to the remaining counts in the information.

2. Defendant shall be sentenced to 3 years probation.

3. The special conditions of probation include:

a Seminole shall be liable for all investigative costs, court costs, interest, agreed upon overhead and cost of prosecution as set forth below;

b Defendant shall pay costs of prosecution in the amount of **\$3,500.00** payable to The Office of Statewide Prosecution, Attention: Executive Assistant, PL-01 The Capitol, Tallahassee, FL 32399-1050, Re: OSWP Case Number 99-295-SWB.

c. Defendant shall pay circuit court costs in the amount of **\$306.00**;

d. Defendant shall pay **\$46,743.52** costs of investigation to the Florida Department of Transportation, Office of Inspector General, 605 Suwannee Street (MS44) Tallahassee, FL 32399-0450, Attn: Robert Clift, Director of Investigations;

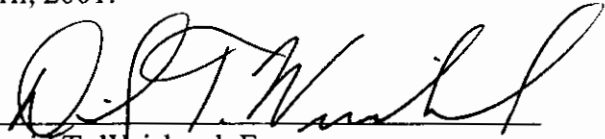
e. Defendant shall pay **\$21,259.97** cost of investigation to the Florida Department of Law Enforcement.

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- f. Defendant shall pay interest and agreed upon overhead reimbursement in the amount of **\$111,861.68** to the Florida Department of Transportation, District One, P.O. Box 1249 801 North Broadway Bartow, FL 33831-1249 Attn: Tommy Brooks, Railroad Programs Manager.
 - g. The **\$239,771.86** previously returned in 1998 to the Florida Department of Transportation by Seminole Gulf Railway, L.P. which is held in escrow shall be disbursed to the Florida Department of Transportation, District One upon entry of the Court's judgment and sentence.
 - h. During the period of probation, Seminole Gulf Railway, L.P. shall abide with the nine terms attached and incorporated hereto as special conditions of probation.
- 4. The Court will adjudicate the defendant guilty.
 - 5. The Office of Statewide Prosecution will enter a nolle prosequi as to the remaining counts in the information.
 - 6. The State and the Defendant agree that this Court will retain jurisdiction to amend the conditions of probation upon further review and only upon the agreement of this Court and all of the following parties: the Office of Statewide Prosecution, the Department of Corrections and the Defendant.

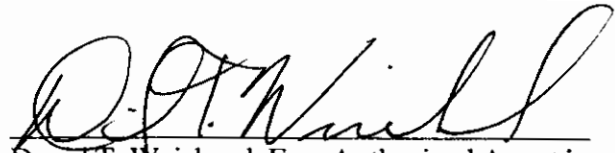
VERIFICATION

Signed by me after a full discussion of the contents of this petition with representatives of Seminole Gulf Railway, L.P., this 11th day of April, 2001.

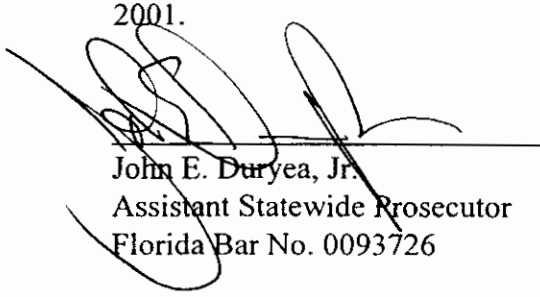


David T. Weisbrod, Esq.,
Attorney for Defendant
Florida Bar No. 312487

Signed this 11th day of April,
2001.


David T. Weisbrod, Esq. Authorized Agent in
Fact For Seminole Gulf Railway, L.P.
Defendant

Signed by me this 11th day of April,
2001.


John E. Duryea, Jr.
Assistant Statewide Prosecutor
Florida Bar No. 0093726

ORDER ACCEPTING PLEA

Based upon the sworn testimony of the Defendant representative the court finds that the above plea was freely, knowingly and voluntarily entered for the Defendant by its representative and that there is a sufficient factual basis to support the plea. It is, therefore,

ORDERED and ADJUDGED that the Defendant's Plea is accepted and the Defendant shall be sentenced in accordance with the Plea Agreement.

DONE and ORDERED at Fort Myers, Lee County, Florida, this ____ day of April, 2001.

William J. Nelson
Circuit Court Judge

cc: John E. Duryea, Jr., Asst. Statewide Prosecutor
David T. Weisbrod, Esq., Counsel for Defendant

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1. All work to be performed by SGRR for FDOT shall be performed by qualified railroad contractors, instead of SGRR, unless mutually agreed by both parties that work should be performed by SGRR. SGRR shall provide the FDOT a minimum of three (3) competitive bids from qualified contractors. The railroad contractor shall be approved by FDOT. Said contract shall be approved by FDOT.
2. SGRR shall provide five (5) days written notice prior to commencement of work on FDOT projects.
3. SGRR shall provide seventy-two (72) hours notice to FDOT for work schedule changes to any rail project that affects the state highway system, and/or other projects initiated by FDOT.
4. SGRR shall be responsible for payment of any reasonable claims against FDOT based upon SGRR's failure to comply with contractual obligations with FDOT.
5. SGRR shall accommodate, and take the necessary actions to allow employees of FDOT to perform routine roadway maintenance, within railroad right of way.
6. Estimates for all railroad relocation work and other fees shall be identified by SGRR as actual project costs, to be incurred by the company. Actual costs shall be adjusted for any labor or material that would constitute a betterment for SGRR, other than improvements required by the FDOT project.
7. Progressive bills shall cover costs incurred by SGRR for preliminary engineering, flagging, and subcontractor billings only. However, in the event SGRR performs the work, SGRR may progressively invoice for materials and engineering. For said preliminary engineering and materials, SGRR shall provide a detailed statement with each progressive bill along with supporting documentation. Such documentation and receipts will be subject to the review and approval of the FDOT before payment is rendered.
8. The final and complete billing for equipment, labor and all other costs, attributable to any project shall be provided with supporting documentation. This documentation shall show only the actual costs incurred by SGRR, as provided for in the FDOT's standard cost reimbursement agreement. Actual costs shall be adjusted for any labor or material that would constitute a betterment for SGRR. The said documentation shall be submitted within the time constraints provided for in FDOT's standard cost reimbursement agreement.
9. SGRR shall perform maintenance at all railroad crossings within thirty (30) calendar days as required by State Statute 335.141, or, in accordance with any railroad grade crossing agreement.

Current as of March 8,2001

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EXHIBIT C

Before The Surface Transportation Board
STB Docket No. AB-4004 (Sub-No. 4)
Lee County, FL - Petition For An Adverse Abandonment

Rebuttal Verified Statement
of
Gene A. Davis, P.E. and Walter H. Schuchmann

Before The Surface Transportation Board
STB Docket No. AB-4004 (Sub-No. 4)
Lee County, FL - Petition For An Adverse Abandonment

Rebuttal Verified Statement
of
Gene A. Davis, P.E. and Walter H. Schuchmann

Qualifications

We are Gene A. Davis, P.E. and Walter H. Schuchmann, both consultants with the firm of R.L. Banks & Associates, Inc. (RLBA), railroad transportation consultants, engineers, economists and planners, located at 1717 K Street, NW, Washington, DC 20036. Gene A. Davis, P.E. is Director, Transportation Engineering and Walter H. Schuchmann is Director, Rail Operations. Our respective qualifications are detailed in Appendix A and B. We appear in this proceeding on behalf of Lee County, Florida.

The Issue

Seminole Gulf Railway, L.P. (SGLR) owns a rail line known as the Baker Spur, a portion of which is the subject of this proceeding, south of Fort Myers, FL, running adjacent to and crossing Alico Road between United States Route 41 (US 41) and Interstate 75 (I-75). (See map presented as Exhibit A in Lee County Request for Abandonment dated June 16, 2004.) Lee County, FL (Lee County) seeks to have SGLR abandon its rail line between its current eastern terminus at approximately STA. 79+95 and an area approximately 100 feet west of Alico Center Road, to facilitate the construction of an expanded six-lane, divided highway in place of the current two-lane Alico Road between US 41 and I-75. Those projects are more fully described in the Verified Statement of Mr. Don DeBerry.

Our Investigation

We have reviewed available maps of the subject area, along with associated photos, drawings and documents. We have read the Public Version of Verified Statements contained within Appendix A of the Protest of Seminole Gulf Railway, L.P. by Mr. Gordon H. Fay (dated August 6, 2004) and by Mr. Michael E. Curley (dated August 8, 2004). We have further read the Verified Statements contained in Appendix B of the Protest of Seminole Gulf Railway, L.P. by Mr. G. Bruce Fay (dated August 6, 2004), Mr. Harry E. Neeves (dated August 6, 2004), Mr. Jerry D. Haberle (dated August 5, 2004) and by Mr. J. William Misiura (dated August 4, 2004). We also have reviewed page A-11 of the Highly Confidential Version of Mr. Gordon H. Fay's August 8, 2004 Verified Statement. In addition, we reviewed documents provided in response to Lee County's request for the production of documents relating to communications between SGLR and prospective shippers concerning business prospects on the Baker Spur. Lastly, we have read the Supplemental Verified Statement of Mr. Gordon H. Fay (dated August 18, 2004).

On May 5, 2004, Gene Davis visited the subject line at the request of Lee County to determine the value of the proposed abandonment area as set out in Appendix C. During that visit, the remainder of the Baker Spur and its surrounding area was visited by Mr. Davis who took photographs of existing track, switch and road crossing conditions (contained within Appendix C). The Net Liquidated Value (NLV) of the proposed abandonment area was then calculated utilizing then current (May 2004) market relay and scrap prices of rail, timber and other track materials (OTM).

Existing Track Conditions

Gene Davis visited the Baker Spur area to view the track structure that would be the basis of the NLV in connection with the current STB proceeding. It was a clear, sunny day approximately 85 degrees F. He walked from the east end of Haitian Road toward the west between Alico Road construction and the SGLR Baker Spur Track,

inventorying the track structure and taking some photographs. Where Haitian Road would normally cross the Baker Spur, the road crossing had been removed and skeleton track had been placed (Photo # 4 in Appendix C). The rail used in that location appears to have been marked as being defective by a rail testing service exhibited by the "VSH" marking on the rail. Proceeding west about 39 feet, as seen in the same photo, a cantilever billboard was over the track prohibiting access to the eastern end of the track with the possible exception being flat cars or Maintenance of Way (MOW) machinery.

A stop board was placed on the west end of the billboard to restrict access to/under the billboard, seen in Photo # 3 of Appendix C. The track structure appeared, to be comprised of 85 pound (per yard) rail, four-hole joint bars, standard eight foot, six inch ties with seven inch by nine inch single-shoulder plates, knock-on anchors and two spikes per tie. Proceeding west about 890 feet, Mr. Davis arrived at J.J. Distributing (Miller Beer) Switch, providing access to an approximately 950 foot stub-end track on the north side of the Baker Spur with a stop block on the west end. On May 5, 2004, only one boxcar was located on the spur. No derail existed on the J.J. Distributing track to keep cars from rolling onto the Baker Spur. The switch was comprised of 100 pound (per yard) rail, a #10 rail-bound manganese (RBM) frog, sixteen foot, six inch plane switch points, a manual switch stand and exhibited worn rail along with poor tie conditions.

Continuing west about 960 feet toward Gator Road, the track structure remained similar to what has been described previously. Gator Road had 115 pound (per yard) rail through the road crossing with one single 33 foot, 100 pound (per yard) transition rail on each side of the crossing. The actual crossing surface was comprised in length of five Parkco Road Crossing Panel Pads (an example of which can be seen in Photo # 7 of Appendix C). Gator Road was protected by crossbucks only and although no DOT number was posted, it was determined to be DOT # 626492.

Proceeding west about 860 feet and consisting of similar track structure construction as previously described, the Florida Power and Light (FPL) access road was next encountered. That road featured a timber and asphalt crossing surface approximately eighteen feet wide, was protected by crossbucks only, had a posted DOT # 621416E and contained 85 pound (per yard) rail.

Similar track structure existed between FPL Access Road and Alico Road # 3 crossing (DOT # 621411.V posted) which was approximately 500 feet west and was protected by crossing signals and gates, as illustrated in Photo # 2 of Appendix C. Alico Road crossing also contained 115 pound (per yard) rail with a single 100 pound (per yard) transition rail on each side. This slightly skewed crossing also utilized Parkco Road Crossing Panel Pads (24 pads long with each pad being about six foot long). As can be seen in Photo # 2, another billboard existed on the north side of track, and while close, Mr. Gene Davis was not able to determine if it posed a clearance restriction.

Again, similar track structure continued for about 140 feet west to Alico Center Road, which was a timber and asphalt crossing about 18 feet wide, protected by crossbucks. No DOT number was posted but it was determined to be DOT # 626432. Alico Center Road also contained 85 pound (per yard) rail and was the first road crossing where the Baker Spur ran south of Alico Road.

Approximately 100 feet west of Alico Center Road was where Mr. Gene Davis understands the proposed abandonment was to end and was so reflected in Appendix C. The track structure was similar to that previously described and a typical view can be seen in Photo # 6 of Appendix C.

Net Liquidated Value

Mr. Gene Davis calculated an NLV of \$11,300 for the subject area utilizing May 5, 2004 relay and scrap railroad material prices as illustrated in the attached Appendix C. A short summary of the major components are:

Gross Liquidation Value	\$26,000
Liquidation Expenses	(12,400)
Track Salvage Value	\$13,600
Administrative/Marketing/Transportation	<u>(2,300)</u>
Net Liquidation Value	\$11,300

For a complete breakdown of NLV computation criteria, methods and values, reference is made to Appendix C. Note that the scrap steel market has changed very little since May, 2004 to the present date, indicating that the NLV performed on May 5, 2004 is still valid.

It should be noted that the NLV computed by Mr. Davis reflects the actual amount of rail that is in the field, which is about 0.79 miles (4,171 feet) and the footage measurements of others may reflect different distances. This issue is addressed in that the "End of Track" sign is actually about 210 feet east of the end of the physical track structure. Between the "End of Track" sign and the end of the track is open former roadbed.

In the verified statement of G. Bruce Fay dated August 6, 2004, Mr. Fay indicated a net negative impact of the proposed abandonment associated with the removal of the track totaling (\$65,918), which Mr. Gene Davis believes is in error. First, Mr. Fay assumed all rail is scrap. Some of the rail contained within the proposed abandonment area is of 100 and 115 pound (per yard) rail and could be used in other locations on the SGLR or sold on the relay rail market. While the volume of relay materials is small, to dismiss the value that could be gained from a viable market would not be in the best interest of the seller.

Second, Mr. Fay received local scrap steel prices from Fort Myers at \$50 per ton which contrasts with the two quotes Mr. Gene Davis received from Tampa-based scrap steel dealers (Steelport of Florida and Export Materials) at around \$80 - \$85 per ton and one quote from a Fort Myers-based scrap dealer, Garden Street Iron and Metal, at \$65 per ton (delivered). Even taking into account the additional distance to travel to achieve the higher prices quoted, shipping the scrap steel to Tampa yields a higher NLV.

Third, Mr. Fay assumed that all ties would be scrapped. While there were only a limited number of relay quality ties contained within the subject area, Mr. Davis estimated about six percent, those relay quality ties could be used on other portions of the SGLR or sold to other rail-served industries and, therefore, add value to the NLV. There is a sizeable quantity of ties that could be placed in the landscape market and sold in bulk to positively influence the NLV, not a negative effect as indicated by Mr. Fay. Mr. Davis' estimation was that about 72 percent or about 1,700 could be sold for landscape use. The devastation that was wrought by Hurricane Charley only would enhance the local landscape timber market to assist in reconstruction of hard hit areas in Florida. The NLV calculated by Mr. Gene Davis did properly reflect the disposal cost associated with about 23 percent of the ties within the boundaries of the proposed abandonment. Given the small size of this proposed abandonment, Mr. Fay's assumptions that all ties would be scrap is not accurate.

Fourth, track removal costs seem very high at \$33,490 for only about 4,400 feet (equating to about \$40,200 per mile) when most railroad track removal firms estimate between \$8,000 and \$12,000 per mile for track removal, depending on the track layout, geographic area and local access. In this case, access to the track is very easy and local markets in Fort Myers and Tampa are readily available. Mr. Fay's estimate includes the removal of one crossing that is already removed (Haitian) along with three less traveled roads (Gator, FPL Access Road and Alico Center) and a larger crossing (Alico Road # 3). To say that it will take three men, two weeks (80 hours) utilizing all the equipment listed to remove about eight-tenths of a mile of track, four crossings listed as

being still in place and one switch is an overstatement of expected costs in our opinion by an order of magnitude of about two to three.

Fifth, Mr. Fay and Mr. Davis do agree somewhat on the reuse of existing signal systems, though they vary on the order of magnitude. Both recognize that there is a limited market for used crossing signal materials and that the expenses often approach or exceed any gains achieved by their sale. Mr. Davis cannot agree with Mr. Fay that it would take a crew of two men over a week to remove the crossing signal equipment associated with only one highway crossing. To further say that a crane would be required for two days to make three or four lifts (two crossing arm apparatuses and one or two signal cases) is a stretch, given that Photo # 2 shows that all are in close proximity and the signal case(s) are small. If crossing signal equipment removal was done in conjunction with track removal, the trackhoe utilized easily could lift the crossing signal gates and signal cases, thereby eliminating the crane rental. Given the appearance of over estimation in connection with grade crossing signal equipment removal, Mr. Davis believes that his assumption that crossing signal equipment removal will generate neither proceeds nor negative net gains, is a more accurate measure of change in the NLV, which is no change at all.

Last, with respect to the NLV, while small, there exists a positive value that can be achieved by liquidation of the track assets contained within the proposed abandonment area.

The Highly Confidential Verified Statement of Mr. Gordon H. Fay dated August 6, 2004 on page A-11 of Appendix A indicates that with respect to the non-billboard receipts less expenditures related to the Baker Spur segment to be abandoned, SGLR would be better off financially were the abandonment granted. Mr. Fay provides the following railroad-related projections for Pro Forma Year 2005: revenue from Lee County of [] and Track & Property Maintenance and Signal Maintenance Expenses that total []. Thus, according to Mr. Fay's figures, SGLR expects a [] loss related to

non-billboard items next year, a loss that would be avoided were the abandonment to occur.

Transloading Pad

Another point of contention with Mr. Gordon H. Fay in his original Verified Statement dated August 6, 2004 and his Supplemental Verified Statement dated August 18, 2004 is that the SGLR could (and now) intend(s) to install a “transloading” pad on the Baker Spur to load/unload rock and other inbound material to help rebuild the area destroyed by Hurricane Charley as well as take advantage of other business opportunities. Mr. Fay proposes to build the pad near the FPL Access Road on SGLR right-of-way (ROW) to eliminate the transformers needing to cross Alico Road. In conjunction with the pad construction, SGLR states that it will have the flexibility to construct a run-around track on its fifty foot ROW. But on page A-9 of Mr. Gordon Fay's Verified Statement, it states “should the adverse abandonment be ordered, the remaining forty foot right-of-way and road crossing layout makes similar use difficult, if not impossible.” On page A-9 of Mr. Gordon H. Fay's Verified Statement, he states that SGLR could use said pad to load between 100 and 300 carloads annually, which translates to between two and six cars per week.

During Mr. Davis' years with NS, he supervised, on occasion, creation of rock loading/unloading pads to facilitate storm repairs and for general access to railcar use. This easily can be accomplished by unloading rock beside the track and utilizing an excavator (trackhoe), making a mound for the excavator to walk up onto to be able to reach into a hopper car. Based on his extensive engineering experience working over 18 years for a Class I railroad, Mr. Davis believes this procedure easily can be accomplished within a forty foot ROW with the track either centered or off to the north side of centerline. This type of operation could be accomplished at any number of locations south of Alico Road if the adverse abandonment is granted. A prime example would be if SGLR were to build a pad as described to load/unload rock just east of the Schwab Redi-Mix Concrete Plant switch (Photo # 5 of Appendix C):

- trucks delivering rock would have easy access on/off Alico Road;
- trucks could drop load and turn around on the less traveled Redi-Mix access road;
- SGLR would have about 450 feet (over eight hopper lengths) to the proposed end of track on the Baker Spur and additional room if industry track was used and
- SGLR could bring one or two locomotives (depending on operating practices) along with eight or sixteen cars and after getting all locomotives on the west end of cars, begin to load cars while shoving east toward the proposed end of track. If over eight carloads were necessary at any one time, the side track could be used to switch around loads and empties to load another eight cars. If over sixteen cars were to be loaded during the same day, SGLR could return to the main track and swap out loaded with empty cars that were left on either the main track or the nearest siding, which is believed to be less than 0.5 miles away.

This above-described pad and loading practices easily would be built and/or removed at SGLR's discretion. Given the open area surrounding the Schwab Redi-Mix Plant switch, this would also be an ideal location to bring in a rental crane, if an excavator could not handle the load, to off load any incoming material to assist in the rebuilding of Florida from hurricane damage or possibly develop a more permanent public delivery area. As illustrated above, the proposed abandonment of portions of the Baker Spur does not limit the SGLR from taking advantage of any business opportunities that may present themselves due to track configuration.

Similar moves could be accomplished to unload the transformers that Mr. Fay mentions in his August 6, 2004 Verified Statement and we will further demonstrate that the proposed abandonment will not affect the SGLR adversely with respect to unloading transformers and possibly storage of the Ringling Brothers and Barnum & Bailey circus cars.

With respect to the circus train, while working for NS in the Norfolk, VA area, Mr. Davis had the duty to assist in placement of the cars for unloading and storage in connection with a local show. After helping to spot the cars on various tracks in the same yard, the circus employees set up ramps connecting the cars, which allowed them

to unload the trucks by driving said trucks off the end of the last car onto a nearby road. The occupied passenger cars were spotted next to a track that had an access road nearby and steps and other car access points were attached to the passenger cars once the track was properly protected under FRA guidelines.

The Baker Spur, if the proposed abandonment is allowed, would still allow for approximately one half of the train consist to be spotted on the track. The track remaining would be ideal for off loading trucks, however, we would personally be reluctant to spot occupied passenger cars next to a major six lane road, as we feel most safety conscious railroad people would be.

Old right-of-way and track maps show a 2,978 foot long siding less than one-half mile away from the Baker Spur main track switch, as shown in Appendix D which, if still in place, could hold the remainder of the circus train. We have not physically seen the siding and cannot testify that it is present and in the same configuration as that which is on the map. However, we have been informed by Lee County employees that the siding, while present, has been substantially reduced in length. If the abandonment were granted and the circus wanted to store over the winter months on the SGLR, the rail removed from the abandonment could be used to rebuild the siding to sufficient length to handle the remainder of the circus train not stored on the Baker Spur west of Alico Center Road.

One last item to address with respect to track issues is the statement by Mr. G. Bruce Fay on page B-2 of Appendix B in SGLR's Protest states that a new product by Performance Polymers, Inc. called "Advantage Railseal could be used to greatly reduce the initial construction costs of Alico Road #3 road crossing. While this product may be new to the particular vendor mentioned, this type product has been on the market for numerous years and it is not "new".

Florida Power and Light Shipments - SGLR witnesses focus significant attention upon the impact abandonment will have upon inbound transformer shipments

destined to FPL facilities in Southwest Florida. Notwithstanding all of the SGLR concerns expressed, there is no operational reason that FPL shipments cannot continue to be accommodated efficiently upon the remaining portion of the Baker Spur post-abandonment. **It is important to recognize that shipments currently are unloaded west of the trackage to be abandoned and that unloading could continue in that exact location post-abandonment.**

It also is important to recognize that the FPL shipments are infrequent, at most. SGLR says that such shipments occur “several times a year” (Protest, page 13) but does not provide any data to support that generalization.

Recognizing that the infrequent shipments could still be unloaded in the same location, we turn to the operational details surrounding placement of inbound FPL cars. SGLR emphasizes operating issues, claiming that such shipments would be less efficient and less safe were the abandonment granted than at present. Those bogus claims invite the following rebuttal.

SGLR describes one chosen method of delivering transformers to FPL. Other approaches are available. SGLR’s Protest (page 13) describes a process in which the SGLR crew:

- pulls onto the Baker Spur with a locomotive at each end of the car;
- proceeds to the Miller siding;
- drops the east locomotive on the siding;
- shoves the car east of the Miller switch;
- moves the formerly-leading locomotive off of the siding;
- pulls the car west to the unloading location west of the Alico Road crossing and
- places the car for unloading west of Alico Center Road.

Witness Haberle states that “...a second engine is often picked up by the special train in Fort Myers” (emphasis added). Thus the method described in SGLR’s protest and summarized above apparently is only one of the ways that SGLR has used to deliver FPL cars but it is the only way that SGLR has chosen to discuss in its protest. []

In fact, there are several other operational options available to SGLR post abandonment. The first is to replicate the process described above, using the Schwab Spur instead of the Miller Spur. Specifically, the SGLR crew would:

- pull onto the Baker Spur with a locomotive at each end;
- proceed to the Schwab Spur;
- drop the east locomotive on the Schwab Spur;
- shove the car east of the Schwab Spur switch;
- move the formerly-leading locomotive off of the siding and onto the west end of the car and
- place the car(s) for unloading at the same location west of Alico Center Road.

This process is more efficient than that described by Mr. Haberle in that the approximately 1.3 mile round trip movement to and from the Miller Spur is eliminated.

Gene Davis has observed the Schwab Spur and reports that it could be used for the limited purpose of switching a locomotive with little or no work involved.

RLBA has not seen any side track agreement governing use of the Schwab Spur, but believes that SGLR likely has the right to use the Spur for operating purposes. According to Mr. Gordon Fay at page A-6, a "...rather typical "Agreement for Industry Track" private side track agreement..." governing the Miller siding provides that "...SGLR can use the track for other railroad uses including service to other customers, so long as service to Miller Brands is not affected." Assuming that similar arrangements govern the Schwab Spur, SGLR would be free to use it for the limited purpose of repositioning the east locomotive.

Another operational option would be to use a locomotive at each end of the train as described by SGLR, uncoupling and leaving the lead unit on the main line just south of the Baker Spur switch and using the rear locomotive to shove the train to the unloading location. Shoving movements are part of every day railroading, especially in placing cars for loading and unloading. This shoving movement would cross only one

grade crossing, that of reconstructed Alico Road and the SGLR main line just north of the Baker Spur switch. We are informed that following the reconstruction of this grade crossing, the six-lane crossing will be protected by flashing lights and gates. While requiring caution, the shoving movement under the protection of the flashers and gates is not unusually hazardous and is a routine railroad procedure performed daily in many locations. (But here only on the rare occasions of an inbound FPL shipment.) SGLR could direct an operating supervisor or other employee to assist with the movement if desired. SGLR apparently does not consider the west Alico Road crossing near the Baker Spur switch a major obstacle when it lists the many new business opportunities that it believes the Spur could attract. []

Another simple option is to use a locomotive at each end of the train as described by SGLR and simply leave the east locomotive with the flatcar when the crew departs with the other locomotive until the shipment is unloaded. While this would preclude other use of the locomotive while the shipment is unloaded, the opportunity cost associated with a few hours of a 1950s-vintage GP-9 locomotive described on the SGLR web site is modest. A variant of the approach would be for the crew to stay with the train while the FPL transformer is unloaded. This would permit the locomotives and car(s) to be put to other uses as quickly as possible.

Another option would be to shove onto the Baker Spur using a caboose on the east end to protect the movement. Trains have moved in reverse in this manner for over a century and still do so. The caboose could be switched out using the Schwab Spur or left with the cars until the unloading is complete. The SGLR web site identifies one caboose as being in service on the Fort Myers line and another awaiting reconditioning. Finally, SGLR could construct a runaround, spur or other trackage to support the movement.

Ringling Brothers Barnum & Bailey Circus Train Use - SGLR suggests that the Baker Spur would be the appropriate location to house the Ringling Brothers and Barnum & Bailey (RBB&B) circus train during appearances at the Germain Arena in

Estero. The volume of testimony devoted to the circus train calls for application of some perspective.

First, we are informed by Mr. Al Macdowell, Staff Director of the Track Division of the Office of Safety at FRA that portions of the SGLR main line between the CSX interchange at Arcadia and Naples are designated by the track owner (SGLR) as excepted track. Specifically, track from Arcadia (MP SVC883) to Punta Gorda (MP AX937) is classified as excepted track (MP equation SVC886 = AX913), Punta Gorda (MP AX937) to Fort Myers (MP AX964) is classified as Class 1 track and Fort Myers (MP AX964) to Naples (approximate MP AX989) is classified as excepted track. According to 49CFR213.4 (e)(2), no occupied passenger train shall be operated on excepted track. This makes any location on or south of the excepted track very undesirable for circus train use since all circus personnel would have to be unloaded from the train before it traversed the excepted track and would have to proceed by alternate transportation. Such a process would be time-consuming and expensive.

The RBB&B circus has performed at Estero once (Misiura V.S.). The Germain Arena, formerly known as the TECO Arena, opened in November 1998, so RBB&B has appeared there once in almost six years of arena operation. No upcoming Florida appearances were listed on the RBB&B website as of August 25, 2004.

The sole Estero appearance was in 2000. SGLR was able to accommodate the RBB&B train at that time and no evidence is presented that Baker Spur was used or necessary. Indeed, local shippers indicate that the Spur was not used by the circus train at any time during the previous ten years. Mr. Haberle states at page B-36 that "...operational considerations at the time resulted in the unloading and "live" storage of the 5,000 foot train at several locations over a twenty mile area." Given that ability, the east portion of Baker Spur can hardly be considered necessary.

Indeed, the east portion of Baker Spur is not well suited for circus train occupancy given its proximity to a soon-to-be six-lane road. The notion of storing the

entire train on the Baker Spur is further discouraged by the lack of restaurant and retail establishments within walking distance as called for by Mr. Misiura in his statement. Contrary to assertions advanced by SGLR, Gene Davis observed no restaurants or retail services within walking distance.

Another indication that the circus train figures more prominently in SGLR's testimony than in its business planning is that any or all of the prospective customers or business prospects that it adverts to would prevent use the Baker Spur for circus train storage. The presence on the Baker Spur of customers requiring rail service, wherever located, would mean that that the running portion of the Spur could not be used for circus train storage but would have to be kept clear to enable regular freight switching movements to reach customer sidings.

An even more fundamental conflict arises from proposals to use the Spur's "main track" as a loading track. Obviously, the circus train cannot be shoved onto the Spur if freight cars are spotted for loading or unloading on the very same segment of track. Even the occasional FPL shipment could conflict with circus train use.

Unsuccessful Attempts to Attract Business Prospects to the Baker Spur -

We have examined the materials provided by SGLR concerning business opportunities on the Baker Spur in response to discovery requests. There is no evidence that any of the prospects are even under consideration at this time, much less in any tangible state of development.

[]

In summary, SGLR has tried to develop business on its line, in some instances along the Baker Spur, and has not been successful. The identified prospects have all run their course. SGLR's past failure, despite trying, to locate business on this line is

another strong indication that the proposed abandonment will not affect SGLR's business prospects.

Further, we note that SGLR has not filed any evidence that any of the railroad business prospects advanced by Mr. Brennan remain viable prospects today or, indeed, what the names of those prospects were. Likewise, SGLR has filed nothing evidencing that Mr. Curley has followed up with or even met with any of the prospects which may have been brought to his attention by Mr. Brennan.

Conclusion

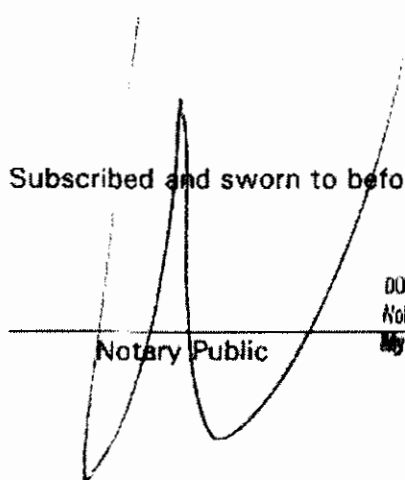
If the proposed abandonment is granted, only minor changes, if any, will affect SGLR operations and SGLR will not experience any long lasting negative effects.

Verification

I, Gene A. Davis, P.E., verify under penalty of perjury that I am the same Gene A. Davis, P.E. whose statement of Qualifications appears in Appendix A of Lee County's Rebuttal Statement in this proceeding; that I am responsible, along with Mr. Schuchmann, for the portion of Lee County's Rebuttal Evidence in this proceeding related to the track assets and train operations of the Seminole Gulf Railway, L.P. contained in Lee County, in particular portions of the Baker Spur; that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.


Gene A. Davis, P.E.

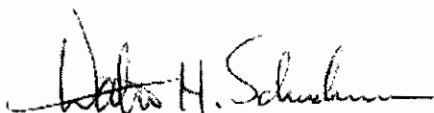
Subscribed and sworn to before this 30 day of August, 2004.


Notary Public

DONALD W. HENSHAW
Notary Public District Of Columbia
My Commission Expires August 14, 2007

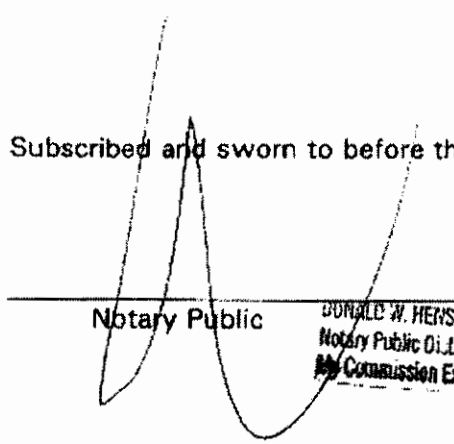
Verification

I, Walter H. Schuchmann, verify under penalty of perjury that I am the same Walter S. Schuchmann whose statement of Qualifications appears in Appendix B of Lee County's Rebuttal Statement in this proceeding; that I am responsible, along with Mr. Davis, for the portion of Lee County's Rebuttal Evidence in this proceeding related to the train operations of the Seminole Gulf Railway, L.P. contained in Lee County, in particular portions of the Baker Spur; that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



Walter H. Schuchmann

Subscribed and sworn to before this 30th day of August, 2004.



Notary Public

DONALD W. HENSHAW
Notary Public District Of Columbia
My Commission Expires August 14, 2007

Appendix A

Gene A. Davis, P.E.
Director, Transportation Engineering

Education

MBA, Georgia Southern University, 1997

BS, Civil Engineering, Tennessee Technological University, 1983

Professional Registrations and Affiliations

Registered Professional Civil Engineer

American Railway Engineering and Maintenance-of-Way Association, member since 1996

AREMA Member of Technical Committee 12 (Rail Transit) and 18 (Light Density & Short Line Railways)

Years of Transportation Experience

20

Qualifications

Mr. Davis joined RLBA after 18 years of experience with Norfolk Southern Corporation during which he held positions with increasing responsibility within the Engineering Department spanning management and engineering of railroad track structure, bridge and building inspection, condition assessment, maintenance, rehabilitation, design and construction as well as railroad operations.

Relevant Project Experience

- ***The City of West Sacramento Redevelopment Agency*** Inventoried, physically inspected, assessed condition and estimated the net liquidation value of the track structure in a segment of Yolo Shortline Railroad Company railroad right-of-way between West Sacramento and Clarksburg, CA.
- ***The Transportation Agency of Monterey County*** Inventoried, physically inspected, assessed condition and valued Union Pacific Railroad Monterey Branch Line between Castroville and Pacific Grove, CA. Net liquidation values were placed on the physical assets of six separate sub-segments as well as the entire branch.
- ***Philadelphia, Bethlehem and New England Railroad*** Performed an NLV and replacement cost estimate utilizing all new materials via a physical track inspection of approximately 42 miles of this switching carrier.
- ***State of Washington Department of Transportation*** Inventoried, physically inspected, assessed condition and valued portions of the Palouse River and Coulee City Railroad between Cheney, WA and Coulee City, WA and between Marshall, WA and Hooper Junction, WA as well as all diverging routes in Idaho and Washington, totaling 347 miles and provided a point-by-point rebuttal to comments made by a review appraiser. Net liquidation values were placed on the physical assets of six, separate sub-segments as well as the whole.
- ***Iowa Northern Railway Company*** Inventoried, physically inspected, assessed condition and valued railroad right-of-way between Cedar Rapids and Waterloo, IA and between Cedar Falls and Manly, IA. Net liquidation values were placed on the physical assets of both segments before and after track rehabilitation which were utilized in a FRA RRIF application.
- ***SF&L Railroad*** Inventoried, physically inspected, assessed condition and valued railroad right-of-way between Peoria and La Harpe, IL. A net liquidation value was placed on the track structure.

Public Version

- ***At-Grade Rail-Highway Crossing Dispute - Expert Witness*** Provided point by point rebuttal information pertaining to an ongoing legal proceeding concerning grade crossing upgrades and construction effects on a short line railroad's viability. Provided grade crossing construction costs and projected future maintenance cost to current dollars.
- ***Morehead City Terminal/Carolina Rail Services*** Performed a physical inspection and evaluated track condition of seaport terminal operation in Morehead City, North Carolina and determined cost to upgrade and maintain track structure to support handling of 286,000 pound rail cars.
- ***WATCO Companies*** Inventoried, assessed condition and estimated the desktop net liquidation value of the owned (and leased on select properties) track structure of properties including the Kansas and Oklahoma Railroad, South Kansas & Oklahoma Railroad, Eastern Idaho Railroad and the Timber Rock Railroad totalling about 1,573 miles in the states of Colorado, Idaho, Kansas, Louisiana, Oklahoma and Texas.
- ***Los Angeles Department of Water and Power*** Inventoried, assessed condition and estimated the desktop net liquidation value of the track structure contained within the boundaries of Cobre and McGill Junction, NV railroad right-of-way re the Nevada Northern Railway totally about 133 miles.
- ***Diesel Light Rail - Program Management Services - Las Vegas*** Provide review services of infrastructure capital cost requirements for potential rail service in the Las Vegas area. Determined areas of concern where cost-estimates were skewed or inaccurate affecting per mile cost estimate for passenger rail infrastructure requirements. (LAVC-2)
- ***Windsor & Hantsport Railway (WHRC)*** Participated in desktop engineering assessment as part of a going concern valuation of this Canadian shortline railroad. Examined engineering data and estimated cost to address both ongoing maintenance requirements.

Areas of Expertise

- ***Track and Structure Planning, Rehabilitation, Engineering and Maintenance*** Planned, scheduled and supervised numerous, large track projects such as tie renewals, rail installation, track resurfacing, shoulder cleaning and undercutting operations, structure upgrading and grade/sub-grade stabilization. Supervised numerous bridge and culvert rehabilitation projects including complete renewals, extensive tunnel repairs and tunnel portal reconfigurations. Was responsible for creating capital and operating budgets and working within them. Managed tasks at all levels of engineering responsibility including third party contract work on many projects. Has extensive experience in emergency response and repair.
- ***Design*** Participated in the redesign of the track layout in Sandusky, Ohio yard to streamline operations and the redesign of existing physical plant trackage owned by railroad customers. Responsible for the concept and design of the "Infopage" computerized asset utilization system implemented on Norfolk Southern to better utilize track and bridge components on-hand or inventoried.
- ***Operations*** Experience with switching and yard operations, train performance, customer service, FRA rules, regulations and labor agreements.

Public Version

- ***Grade Crossings and Other Safety Issues*** Grade crossing committee member on the divisions while serving as a Track Supervisor. The committees sought to eliminate redundant grade crossings, reducing exposure to collisions. Helped facilitate a training conference for 250 Norfolk Southern Eastern Region engineering supervisors addressing the effect on bridge rail alignments of excessive heat and drastic temperature changes that traditionally occur in the Summer. Presentations then were made to front-line maintenance staff.

Norfolk Southern Corporation Work Experience

- ***Track Supervisor (Lake and Pocahontas Divisions)*** Lake Division territory encompassed trackage in Columbus, Delaware, Bucyrus, Bellevue and Sandusky, OH. Pocahontas Division territory included Welch, WV and Richlands, VA. Performed FRA inspections and accomplished remedial repairs to track structure via routine maintenance and rail, tie/surfacing and surfacing gang work. Coordinated contract services including rail grinding and undercutting. On the Lake Division, responsible for over 110 miles including Sandusky Yard and two smaller yards. Pocahontas Division responsibilities included over 36 miles of double and triple track mainline and 44 miles of single track mainline including Auville Yard.
- ***Assistant Division Engineer-Bridges (Pocahontas Division)*** Territory spanned trackage in Charleston and Bluefield, West Virginia, Norton, Virginia and Columbus and Portsmouth, Ohio. Coordinated and facilitated new construction, inspection, and maintenance of drainage structures including bridges and culverts. Coordinated remedial repairs to tunnel structures including portal upgrades. Solicited bids for repairs by contractors and performed repairs to roadway buildings, using company forces. The 1,300 miles of his territory included over 24 miles of various bridge types, 8,000 culverts of varying construction types, 20 miles of tunnels and 16 miles of slide fences.
- ***Bridge and Building Supervisor (Georgia Division)*** Territorial responsibility covered 500 miles including Savannah, Augusta and Macon, Georgia. Performed inspections, supervised maintenance repairs and new construction by company forces of drainage structures including bridges and culverts.
- ***Assistant Track Supervisor (Pocahontas and Virginia Divisions)*** Territory on the Pocahontas Division encompassed trackage in Bluefield and Welch, West Virginia. Virginia Division responsibilities included trackage in Norfolk, Virginia. Performed FRA inspections and remedial repairs to track structures. Assisted in coordinating program maintenance work and contract service work on the track structure. Mr. Davis was responsible for 34 miles of double and triple track on the mainline as well as Bluefield Yard on the Pocahontas Division. Virginia Division responsibilities included 7 miles of double track mainline and also the company's key export coal terminal at Lamberts Point Yard and Portlock Yard in Norfolk Terminal.
- ***Management Trainee (Virginia Division)*** Territory encompassed trackage in Roanoke and Norfolk, Virginia and Bristol, Tennessee. Learned all aspects of track maintenance across the entire Virginia Division through hands-on experience while receiving basic exposure to the supervision of inspection and repair to the track structure.

Turner Engineering

- ***Resident Engineer*** Mr. Davis was the on-site resident engineer of a railroad bridge reconstruction near Cordova, Alabama. He ensured the plans and specifications of Turner Engineering were adhered to during field operations of the bridge reconstruction. Mr. Davis acted as a liaison between the railroad and the contractor who performed the bridge reconstruction.

Appendix B

Walter H. Schuchmann
Director, Rail Operations
R.L. Banks & Associates, Inc.

Education

MBA, Beta Gamma Sigma business honorary society, Indiana University, 1979

BS Industrial Management, Beta Gamma Sigma business honorary society, Purdue University, 1972

Professional Certifications and Affiliations

Certified Member, American Society of Transportation and Logistics; American Association of Railroad Superintendents; National Defense Transportation Association

Years of Transportation Experience

26

Relevant Project Experience

- **Indiana & Ohio Railway** Submitted testimony to the Interstate Commerce Commission concerning the potential safety impacts of reconstructing several miles of track to link two non-contiguous railway branches. In preparation, existing facilities and operations were inspected and existing practices in other locations were investigated and documented.
- **Private Client** Advised counsel and prepared testimony in legal proceedings in which railroad safety procedures and violations were at issue.
- **Private Client** Advised legal counsel of a private institution, which owns railroad station grounds and structure in preparation of its defense in a lawsuit involving a fatality at the station. Specific topics addressed included roles and responsibilities among railroad companies and property owners in general and analysis of instant contractual and other specific relationships, and prevailing industry safety practices.
- **Private Client** Participated in an evaluation of the need for measures to protect property adjacent to rail lines from the effects of railway accidents. Accident data, existing barriers and regulations in the U.S. and Canada were examined.
- **Federal Transit Administration** Took part in the firm's management review as a subcontractor in part of the UMTA (FTA) Safety Investigation of the New York MTA, pertaining to the Long Island and Metro North commuter railroads. Railroad personnel from CEO to labor union officials were interviewed in order to assess safety concerns of the management structure and safety issues in the areas of personnel, training, non-operating employees and emergency planning and simulations.
- **Private Client** Developed construction phase operating procedures to provide contractors and rail switching crews safe access to a line undergoing conversion to shared light rail and freight status.
- **Northeast Indiana Regional Planning Commission** Managed an examination of re-routing Norfolk Southern trains onto other rail corridors through congested Northwest Indiana to reduce grade crossing accidents and vehicular conflicts. Necessary rail and highway infrastructure improvements were identified and alternatives evaluated in terms of benefit-cost performance.

Public Version

- **Babcock & Wilcox** Investigated the derailment and rollover of a Schnabel car carrying a nuclear steam generator valued at \$23 million. Used physical evidence to repudiate prevailing incorrect theory concerning derailment cause.
- **Waste Management of Kentucky (WMI)** Participated in the firm's review of expense claims totaling \$6.6 million submitted to it by CSX Transportation (CSX) in conjunction with a derailment attributed to a WMI truck striking a CSX bridge abutment. He focused on train re-routes, increased car hire expense and work train and other transportation charges. When RLBA found that the claim was overstated by an amount between \$1.4 and 2.4 million, WMI settled for approximately 75 percent of the amount sought.
- **New Jersey Transit (NJT)** Develop a freight operating plan and outline facilities required for joint freight and light rail operations the Bordentown Secondary trackage owned by Conrail (now part of the NS-CSX Shared Assets Area), which NJT purchased for transit service development. Plans were developed for both concurrent freight and passenger use and for temporally separated use, which ultimately was selected. Construction is underway, with a new yard facility proposed by RLBA among the first elements scheduled for completion.
- **Private Client** On behalf of the owners of an electric generating plant, analyzed the feasibility and impacts of potential unit train coal delivery over a seldom-used branch line and the main line of a regional railroad. Operations, equipment, grade crossing and safety impacts and necessary improvements were covered in the project report.

As Superintendent Safety, Bluefield, WV, Norfolk Southern Corporation, 1985-1987, field representative of Safety Department, worked with Transportation, Mechanical, Engineering and other department heads to develop and administer effective programs to reduce employee injuries. Planned and supervised numerous training and public relations events for 2,000 employees, their families and the general public. Trained field supervisors and employees in safe work practices and corporate and federal reporting requirements.

- Responded to major accidents, derailments and injuries and participated in cause determination and subsequent review of procedures as warranted.
- Supervised first response to hazardous material and environmentally damaging incidents. Monitored employee and public safety at major derailments and unusual incidents.
- Developed and monitored emergency response plans for yards and terminals, including establishing or ensuring liaison with local emergency service officials.
- Responsible for field inspections, correction of employee practices and unsafe conditions, investigation of serious injuries and oversight of nine management-employee safety committees. Initiated peer-oriented safety contact program in each territory.
- Devised methods of using personal computers to develop injury statistics for use by division management and supervisors.

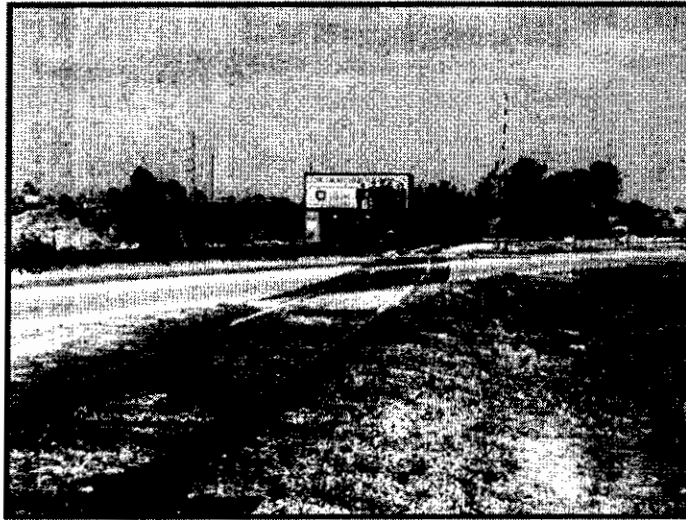
Public Version

As an Assistant Trainmaster, Chicago, IL, Norfolk Southern Corporation, 1981-1985, supervised operations at a major rail terminal including a classification yard, truck/rail intermodal facility, interchange with numerous other railroads, four daily commuter trains, and service to an automobile assembly plant, a multilevel loading/unloading ramp and other industrial customers. Frequently was the responsible officer on duty. Developed operating plan and recommended track and signal modifications for main line trackage leased from the Chicago and Western Indiana Railroad. Recommended and participated in changes in traffic blocking, crew and track utilization, clerical assignments and other operational matters.

As an Assistant Trainmaster, Chicago, IL and Fort Wayne, IN, Norfolk Southern Corporation, 1980-1985, investigated derailments, injuries and incidents and conducted formal investigations.

Appendix C

**Valuation
of
Certain Seminole Gulf Railway, L.P. Track Assets
Near
Fort Myers, Florida**



Submitted To

Lee County, Florida

Submitted By

R.L. Banks & Associates, Inc.

Transportation Economists and Engineers

1717 K Street, NW

Washington, DC 20036



August 24, 2004

Valuation of Certain Seminole Gulf Railway, L.P. Track Assets Near Fort Myers, Florida

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- Two Net Liquidation Value of Track Assets
- Three Gross Liquidation Value of Track Assets
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Valuation of Certain Seminole Gulf Railway, L.P. Track Assets Near Fort Myers, Florida

Introduction

Lee County, Florida (LC) engaged Foley & Lardner (F&L) to assist it in connection with determining the value of certain track assets of the Seminole Gulf Railway, L.P. (SGLR) near Fort Myers, Florida. F&L then engaged R.L. Banks & Associates, Inc. (RLBA) to assess about 0.79 miles of track assets owned by SGLR in the specified evaluation area. RLBA understands that this valuation may be utilized in a Surface Transportation Board (STB) proceeding.

The objective of RLBA's effort is to determine the Net Liquidation Value (NLV) of the subject track assets (excluding land and rolling stock) as of May 5, 2004. This report presents findings of the research and discusses the factors which influence the value of railroad rail, other track material (OTM), ties and ballast.

Description of the Railroad

The section of the SGLR valued herein near Fort Myers, Florida crosses and parallels Alico Road between the end of track (east of Haitian Road) and approximately 100 feet west of Alico Center Road, constituting approximately 0.79 miles of track.

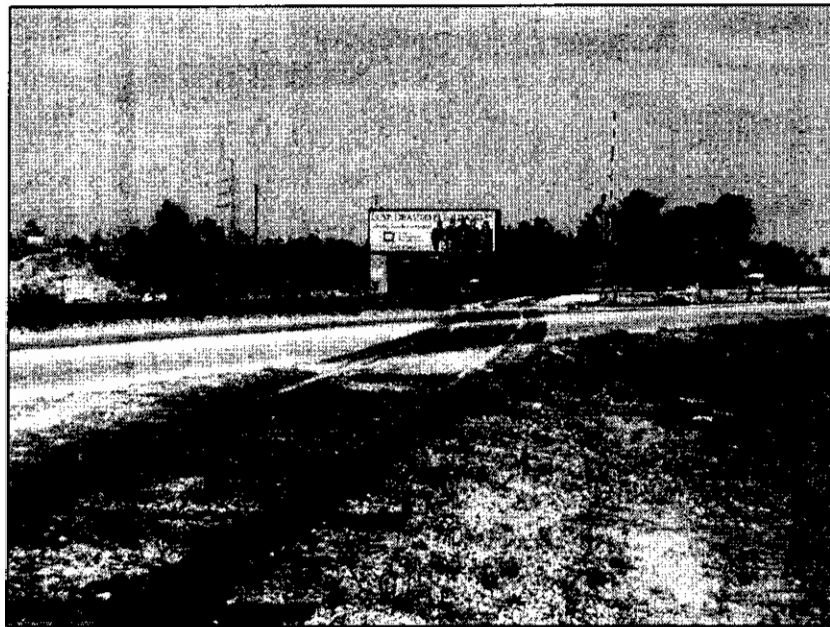
The subject track features two curves and one turnout in the evaluation area. The lone turnout (Photo #1) provides access to a Miller Beer Distributing facility which is said to be closing later in 2004. There are four at-grade highway rail crossings in this segment, the most heavily traveled of which is Alico Road (Photo #2). Photo #3 illustrates a billboard just west of Haitian Road which acts as a barrier to the movement of most rail cars (with the possible exception flat cars), resulting in a clearance of only about seven feet between the bottom of the billboard and ground level. Photo #4 provides another view of the same billboard from the opposite direction and two rail lengths of skeleton track (track not supported by ballast) where Haitian Road would cross the SGLR track.

Photo #1



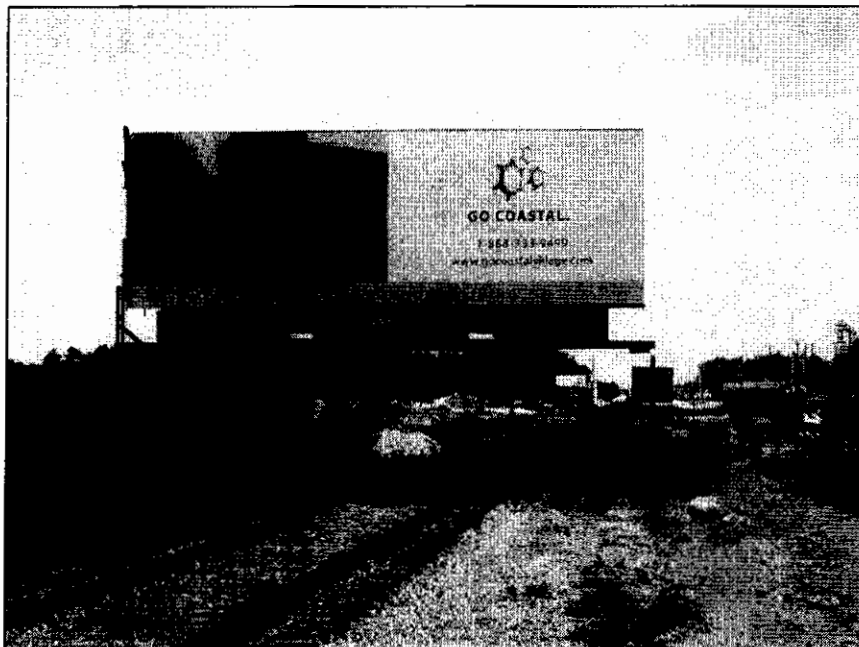
Miller Beer Distributing Switch (Looking West)

Photo #2



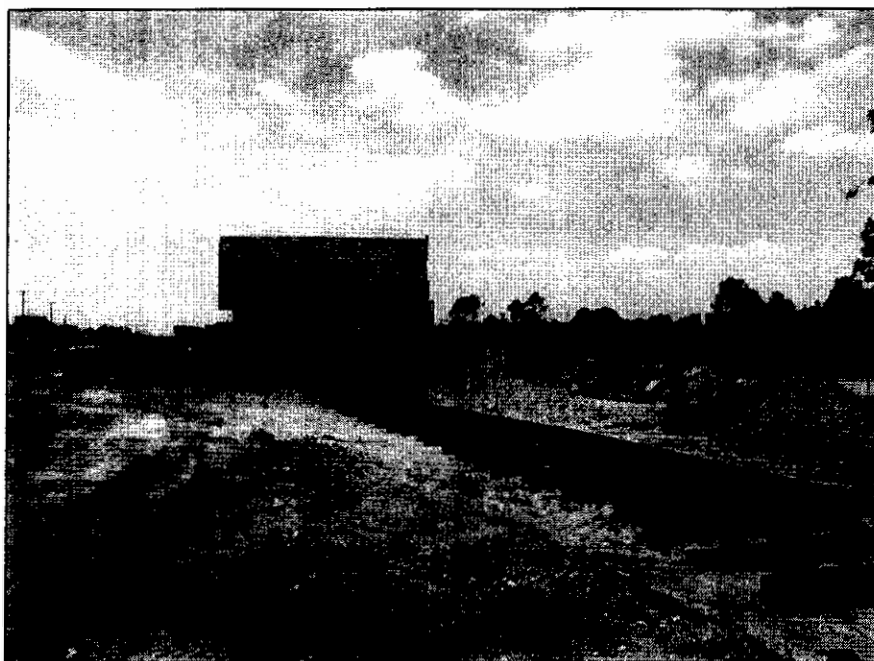
Alico Road Crossing (Looking East)

Photo #3



Billboard and Stop Sign (Looking East)

Photo #4



Skeleton Track and Billboard (Looking West)

Photo #5 provides a view of the Schwab Redi-Mix Concrete plant switch (looking east) which is an alternative location at which to accomplish a runaround move in connection with Florida Power and Light shipments, although not within the limits of the property valued. Photo #6 provides an example of poor tie condition in a typical joint area. Some road crossings feature "Parkco" road crossing panels (including Alico Road) as illustrated in Photo #7, which show signs of heavy wear and deterioration.

The 0.79 miles of main track are comprised of three different rail sections containing 85, 100 and 115 pound (per yard) rail, respectively. A summary of the rail evaluated appears in Appendix One which identifies rail assets by location. This evaluation covers rail, ties, ballast, switches, and other track material (OTM) including joint bars, anchors, tie plates and spikes.

Net Liquidation Value

The aggregate NLV of the 0.79 mile subject SGLR line near Fort Myers, Florida is \$11,300 as of May 5, 2004. That figure was determined based in part on information obtained through a physical walking inspection of the property on May 5, 2004 by Gene Davis, RLBA's Director of Transportation Engineering. Supplementary valuation information came from application of market prices and typical removal costs.

The 0.79 mile main line is comprised of medium to light weight jointed rail, specifically: 1) 0.09 miles of 115 pound (per yard) rail; 2) 0.04 miles of 100 pound (per yard) rail and 3) 0.66 miles of 85 pound (per yard) rail. All jointed rail shows signs of extensive wear and virtually all is suitable only for scrap or reroller rail. Approximately 0.01 mile of rail is suitable for relay application.

Determination of Net Liquidation Value

The estimated NLV of SGLR's segment track assets (excluding land and rolling stock), \$11,300 was based on May 5, 2004 salvage, relay and scrap prices and is summarized in Table 1 on the third following page. It was arrived at in four principal steps: first, computation of gross liquidation value (GLV), the market value of salvageable assets (primary components with a value greater than related salvage expenses); second, calculation of various liquidation expenses; third, track salvage value, that value remaining after deductions of liquidation expenses due to removal and restoration as

Photo #5



Schwab Redi-Mix Concrete Plant Switch (Looking East)

Photo #6



Typical Joint Area Exhibiting Poor Tie Conditions

Photo #7



Typical Parkco Road Crossing Panel Pads

necessary to render assets saleable and preparation of the corridor for non-rail use and fourth, NLV, that value remaining after deductions of administration/marketing expense and conduct of the sales process.

The primary NLV amount was that associated with the rail; however, ties also possessed noteworthy value. Market prices utilized in the calculation of NLV were believed appropriate to the observed condition of the ties and steel materials in place and were obtained from suppliers and RLBA's databanks as required.

Table 1
NLV of Certain Track Assets
of the Seminole Gulf Railway, L.P.
Near Fort Myers, Florida

Gross Liquidation Value – In Situ Materials		\$26,000
Less Liquidation Expenses:		
Track Removal	\$8,400	
Highway Crossing Restoration	4,000	
Track Salvage Value		13,600
Administration, Marketing and Transportation	2,300	
Net Liquidation Value		\$11,300

Source: Appendix Two.

Methodology To Compute NLV

NLV was determined through application of a multiple step process, the building blocks of which were:

1. Gross Liquidation Value
 - (a) Fixed Asset Ownership
 - (b) Fixed Asset Inventory
 - (c) Inventory Adjustment to Reflect Wear and Recovery
 - (d) Application of Market Value Unit Prices
2. Liquidation Expenses
 - (a) Removal Expenses
 - (b) Restoration Expenses
3. Track Salvage Value [(1) - (2)]
4. Marketing Expenses
5. Net Liquidation Value [(3) - (4)]

Appendices One, Two and Three to this report provide detailed computational data, including inventory and unit costs by type of asset valued.

Gross Liquidation Value

GLV in the context of this analysis was defined as current retail market value (with the exception of ties, which would be wholesaled) of all fixed assets as if they were available for immediate sale. The gross liquidation values of bridges, highway crossing devices, ballast and culverts were not determined because, as will be explained later, they have no positive NLV value due to high removal costs.

Fixed Asset Ownership

In performing this NLV evaluation, RLBA assumed that SGLR owns all the rail assets in fee simple, not including the industry tracks.

Fixed Asset Inventory

To assess the physical condition of the track assets, Mr. Gene A. Davis, an experienced railway engineer and former Assistant Division Engineer of Norfolk Southern, conducted an inspection of the subject rail near Fort Myers on May 5, 2004. Data concerning track condition and inventory obtained during that field inspection was used as a basis of this NLV report.

Steel. The most significant marketable materials reflected in this valuation were steel track components, assumed to be sold for railroad reuse or as steel mill scrap, depending upon condition. Generally, rail in the main track designated as "fit" or "relay" can be reused in other railroad applications, if it weighs at least 90 pounds (per yard). Rail may have a functional use and life with wear up to and exceeding 1/2 inch vertical or horizontal head wear, but is not generally considered worth installing as relay if it exhibits more than 1/4 inch wear. At the time of this valuation, it was found that rail met three categories suitable for relay: Fit #1, which includes all rail with less than 1/8 of an inch head wear; Fit #2, all rail with less than 3/16 of an inch head wear and Fit #3, rail of less than 1/4 inch headwear. The retail price of Fit #1 is set at a premium, lower for Fit #2 and #3, respectively. If not suitable for rail relay, the next most valuable application is as reroll, where rail is rolled into new, non-rail products. Rail not suitable for reroll because of excessive side head wear, excessive metal flow, holes mid-rail, short length or attached to asphalt or concrete is suitable only as scrap. Reroller rail brings higher dealer prices than scrap. Scrap is divided into two categories: rail and other track material (OTM) such as joint bars, tie plates, rail anchors, nuts, bolts, washers and spikes. OTM commands a higher price than rail because of the extra effort required by mills to cut rail into sections suitable for melting. Refer to Appendix Three to see the values assigned to each reusable, scrap and reroll classification.

All 0.79 miles of main track rail was of 115, 100 or 85 pound (per yard) weight of American Railway Engineering Association (A[R]E[A] and American Society of Civil Engineers (ASCE) specifications (Refer to Appendix One to see the manufacture dates and locations of each rail type.) The following grading was based upon information gathered from the field inspection performed by Mr. Davis and RLBA estimates. One hundred-fifteen pound rail sells at a premium price in today's relay market because it is widely used in transit and sidetrack applications. The 0.09 miles of 115 pound rail was classified as 0.009 miles of Fit #2, 0.023 miles of reroller and 0.06 miles of scrap, respectively. There are 0.04 miles of 100 pound rail of which 0.004 miles were designated as Fit #2, 0.009 miles as reroller and 0.024 miles as scrap. The 0.66 miles of 85 pound rail merits only scrap and reroll value and was classified as 0.265 miles of reroller and 0.398 miles of scrap rail.

RLBA determined that the sole turnout in the section valued should be classified as scrap since it was of 100 pound (per yard) or less rail and beyond useful life. All double shoulder 7 1/2 X 12 inch main track tie plates used on 115 pound rail were classified as relay, even if the rail they supported was scrapped, because they would be paired with other relay rail featuring less desirable tie plates. All other single shoulder tie plates were scrapped due to low market demand. Where rail reused as relay, joint bars and rail anchors were reused whereas where rail scrapped or rerolled, the joint bars and rail anchors were assumed to be scrapped. All other track material (OTM) such as nuts, bolts, washers and spikes were valued as scrap.

Ties. Because tie installation costs often approach tie material costs, only recently installed ties are suitable for rail reuse. The cost to sort, handle, transport and inventory ties is high, and in comparison with the wholesale prices they command, generally yield only a low net salvage value. RLBA sampled representative blocks of 100 ties at two locations (tangent and curved track) which contained ties exhibiting signs of severe weathering and/or deterioration. While those ties appeared to be somewhat solid, both their age and the surrounding climate suggest they most likely would be suitable only for landscape applications. The vast majority of the ties most likely could not be sold for reuse in railroad applications. Six percent of the ties surveyed were categorized as of relay quality. The remaining ties were classified as landscape or scrap, 72 percent and 23 percent of all ties, respectively (Appendix Five). Overall tie condition is poor.

Ballast. No value, net of the cost of sale, was assumed re the ballast. Some sales to townships or private individuals for roadway or farm road gravel may be possible but were assumed to be of limited magnitude.

Other Track Assets. No net salvage value was assigned to signals and communications facilities, highway crossing signals, highway crossing panels, or culverts on the line in the calculation of the NLV by RLBA. Highway crossing signals generally have little or no alternative use value. Use by even a short-line railroad to replace a damaged signal is unlikely; typically, no inventory is kept on-hand and new replacements are ordered from standard suppliers for immediate installation. Marketing costs to inform railroads of second-hand availability and handling costs likely would exceed an amount that could be recovered through sale. Signal materials scrap value would not exceed salvage costs. Likewise, there is no ready market in which to sell used highway crossing panels and they are not included in NLV calculations.

Inventory Adjustment to Reflect Wear and Recovery

Due to material age, condition and the economics of expedited removal procedures, it was determined that not all railroad assets in the existing right-of-way would be recovered. Instead, liquidation of the property was assumed to yield the following recovery rates, based on the theoretical weight of new rail:

- 97 percent of fit rail, remaining three percent as scrap;
- 97 percent of scrap and reroll rail;
- 97 percent of tie plates on fit rail;
- 97 percent of tie plates on scrapped rail;
- 97 percent of joint bars on fit rail;
- 95 percent of joint bars on scrapped rail;
- 97 percent of scrap turnout material;
- 50 percent of fit rail anchors and
- 80 percent of rail anchors, bolts, spikes, washers and other scrap materials.

The recovery rate assumption as to scrap and reroll rail reflects a three percent reduction applied to gross rail weight as an adjustment reflecting average rail wear. Fit tie plates and joint bars were assumed sold by unit; therefore no weight reduction was assumed. However, three percent of OTM gross weight was judged likely to be lost as a result of the removal process. Joint bars were assumed to have a recovery rate of 97 percent on fit rail and 95 percent from scrapped rail. Rail anchors salvaged from fit rail were assumed to be 50 percent acceptable as relay. Finally, 20 percent of anchors, bolts, spikes, washers and

other materials were estimated as rusted or lost during salvage operations, leaving only 80 percent to be salvaged as scrap.

Application of Market Value Unit Prices

The GLV and NLV estimates were based on the application of actual unit market prices on at May 5, 2004, as supplied by specifically identified market participants and displayed in Table 2 below.

Table 2
Unit Market Prices
May 5, 2004

Track Asset	Unit Price	
	Per Component	Per Net Ton
Rail 115 pound (per yard) Jointed #2 RE		\$ 420
Rail 100 pound (per yard) Jointed #2 RA		300
Fit Tie Plates Double Shoulder (7 1/2 x 12)	\$ 3.00	
Fit Joint Bars 115 pound (per yard)	20.00	
Fit Joint Bars 100 pound (per yard)	13.00	
Rail Anchors	0.60	
Steel:		
Reroll		130
Scrap		80
OTM, Scrap		85
Ties:		
Relay 8'6"	15.00	
Landscape	3.50	
Scrap	(1.25)	

Source: A&K Materials, The Tie Yard of Omaha, Steelport of Florida, Export Materials and RLBA estimates.

It was assumed that the seller would use its own personnel and/or contract out efforts to remove, organize and sell released materials as opposed to a single bulk transaction to a rail or scrap broker at an in-place price that would yield lower proceeds to the seller. However, in concert with common practice, used crossties were assumed sold in bulk to a broker at a net wholesale price reflecting removal by the broker. Comments on a few key prices follow.

Due to the small volume of scrap steel, RLBA checked with local dealers in Tampa to determine applicable scrap steel prices. RLBA received quotes from two scrap dealers (Steelport of Florida and Export Materials) and found that railroad scrap would command \$85 per net ton of miscellaneous OTM (other track materials including joint bars, tie plates,

spikes and bolts) and \$80 per net ton of railroad rail in 33 or 39 foot sections. Changes in the scrap steel market would affect the value of those materials directly.

RLBA also found that the net wholesale value would be \$15.00 per eight foot, six inch relay tie and \$3.50 per landscape tie. Remaining ties were classified as scrap, with a deduction of \$1.25 each, reflecting the cost of proper disposal.

Liquidation Expenses

Two fundamental assumptions were employed in development of expenses to be netted against gross liquidation values:

1. costs associated with removal, sorting and transporting railroad materials were assumed to reflect a deliberate and efficient liquidation and
2. restoration expenses were assumed to be required in connection with highways, including coordination with local governments.

Removal Expense

The cost of taking up track, including disassembly, sorting, stacking, and loading of materials to ship and dispose of ties was estimated at \$10,000 per mile. Turnout removal was estimated at \$500 each.

Restoration Expense

As a condition of service termination and non-rail reuse of the real property, governments frequently require correction of existing conditions that might cause the public sector to incur future expense. Such regulations affect the subject NLV determination in three principal asset categories: 1) bridges and culverts; 2) highway crossings and 3) structures.

Since no bridges are contained within the limits of this valuation, RLBA did not include any cost of their removal or that of any culverts that may have existed on the line. Any sub-structures are assumed to be allowed to remain in place, thereby generating neither proceeds nor expenses.

All tracks in roadways and crossing protection devices must be removed and pavement restored as a condition of service termination. The removal of track materials from pavement and restoration of pavement was estimated at \$1,000 in connection with each of the four at-grade highway rail crossings. Removal of crossing protection devices was estimated to equate to salvage value.

Track Salvage Value

Track salvage value is equal to gross liquidation value less liquidation expense.

Marketing, Administrative and Transportation Expense

The cost to administer liquidation and market steel assets so as to achieve retail prices was estimated at fifteen percent of retail GLV (including transportation) for relay steel materials and eight percent of GLV re scrap, reroller and non-steel materials.

Net Liquidation Value

NLV was the remainder after liquidation expenses were deducted from GLV. This is a reasonable expectation of what a seller could expect to receive were the line liquidated in May 2004. No deductions were made from market value to reflect the possibility that any liquidated materials could exceed market demand and depress prices below those used in this report since the released quantities were not consequential enough to affect market values.

Railroad Rail Market

The predominant component of railroad track value is the rail itself. The rail market consists of four primary products: new rail and the three previously described grades of used rail, relay, reroller and scrap. Since the SGLR section is entirely comprised of second-hand rail, the discussion which follows is limited to the used rail markets. The NLV will depend not only on the experienced wear of the rail but also on the current situation in those markets.

Relay Rail

Rail replaced because of wear or defects on a busy or fast main track is eminently suitable to install on slower speed or lighter traffic lines. At the slow speeds operated in yards, few broken rails result in derailments. In turn, welded replacement rail installed on secondary lines is superior to rail manufactured at the turn of the century which is still in use in some yards. Relay rail tonnages installed consistently exceed new rail tonnages because rail removed from a main line and installed on a branch line frequently exceeds the weight of rail cascaded to secondary and yard tracks. At each step, however, a portion of the rail is scrapped, usually short lengths of rail (from cuts made at road crossings and switches) or rail experiencing excessive curve wear.

Through a cascading process, relay rail is generated by installation of new rail (or other relay rail). In addition, some abandonments generate relay rail, though abandonment rail is frequently light, worn sections which are scrapped. While most relay material generated by a railroad is used on its own lines, there is a very active commercial relay market; several brokers supply material to regional and short line railroads and shipper-owned spurs, which neither require nor can justify the cost of new rail.

At lower levels of remaining useful life, rail becomes unattractive to sell in the relay market because the expenses of marketing, transportation and installation on a regional or short line railroad would constitute an excessive share of total value.

Most rail relay programs include welding the rail before installation. About half of all railroad tracks in the United States are now welded. Welding significantly reduces maintenance expenses incurred in the joint area associated with surfacing and bolt tightening. In addition, by removing the location of greatest rail wear, rail life is extended and equipment (wheel) maintenance is reduced.

Reroller and Scrap Rail

Rail is a premium scrap grade because it is hard steel with known chemistry. While the scrap steel market includes many grades, used rail enters the scrap market as reroller and as charging material (heavy melting scrap) in furnaces. Reroller is the designation attached to clean lengths of rail that can be rerolled into new products (construction rebars, fence posts, etc.). Scrap material is required in charging both integrated mills and in mini-mill electric furnaces. The mini-mill demand for scrap is expected to increase. While most mills will accommodate rails up to five feet in length, some buyers prefer shorter lengths of two or three feet.

User Categories

The primary categories of rail users are Class I (large), regional, short line railroads and industrial plants. Class I railroads primarily purchase new rail and generate relay rail internally with light weight rail sold as scrap; a practice which may be changing, as indicated in recent years by the Canadian National-Illinois Central and Burlington Northern Santa Fe railroads selling light weight rail in the relay market.

The extent to which rail weight determines the use of relay rail varies by specific railroad practice but, in general, on Class I railroads, 112 pounds (per yard) and heavier will be reinstalled on secondary lines if within wear limits, otherwise it will be installed in yard

trackage, where good relay rail is required to support yard turnouts. Rail between 100 and 112 pounds (per yard) is suitable to support yard trackage, though if generated in abundance in any one year it may be sold into the second-hand market. Rail sections less than 100 pounds (per yard) are generally scrapped by Class I railroads.

Regional railroads, a relatively new category created in the recent past through secondary line sales of major carriers, are a second hand rail market and, in combination with demand for repair rail, has propelled second-hand prices on medium and heavy rail to a high value proportionate to prices of new rail with respect to remaining life, as indicated by rail wear. This anomaly results because at typical regional railroad annual traffic levels of three to five million gross tons (MGT), half worn rail may last another 50 - 80 years and so is a relative bargain at \$300 - 450 per ton compared with new rail at \$550 - 600 per ton.

From the distinct economic perspective of regional railroads, by contrast with Class I railroads, paying one-half to three-quarters the price of new rail to obtain partially-worn rail can be the correct financial decision to make because replacement expenditures are years away. Rail weighing 115 pounds (per yard) is preferred for replacement but 132RE (RE designation representing rail that adheres to AREA specifications) rail weighing 132 pounds (per yard) would be considered if the costs, including shipping and other track materials, were the same or less than a 115RE section. Similar economics drive the decision of Class I railroads to cascade worn rail, with little in-place economic life to another line on the system with lower traffic density rather than continue wearing the rail down to scrap condition at its original location.

Short line railroads use any rail from new 136RE to second hand 85 pound (per yard) rail depending on traffic volume and financial strength. Generally, 100 pounds (per yard) or heavier is preferred, but some lines still install less than 100 pound rail (to replace even lighter weights). If traffic predominantly is carried in 100-ton cars, 100 pounds (per yard) rail is a minimum standard although some western railroads in dryer climates, and hence better subgrade conditions, use a 90 pound (per yard) section. Only a few short lines, generally those owned by the primary industry they serve, can finance new rail purchases.

Industrial users can use any weight rail, but prefer 100 pound (per yard) or heavier section. A nearly universal specification by civil engineering firms of 115RE rail (instead of 115RE or heavier) on new sidetrack construction has driven the relay price per ton of that section higher than any other section. The high volume of 115RE rail installed in mainline tracks during the 1950's and 1960's followed by a shift to heavier 119, 132 and 136RE rail also

has lead to a scarcity of available 115RE repair rail. During the last few years, the relative bargain of 119 and 132RE rail has been recognized and those prices also have risen to match that of 115RE, at least on a lineal foot basis. Some of the rail in this valuation is that of the widely used 115RE sections, which can be found on every major railroad in the country. The four most desired relay rail sections by short line railroads are 112RE, 115RE, 119RE and 132RE, respectively.

Qualifications to the Evaluation

The findings of this appraisal are subject to several qualifications and limiting conditions which are stated as follows:

it is assumed that the rail was manufactured according to AREA and ASCE recommended practices and that the rail assets are in full compliance with all FRA standards;

further, RLBA assumes full compliance with all applicable Federal, state and local regulations and laws;

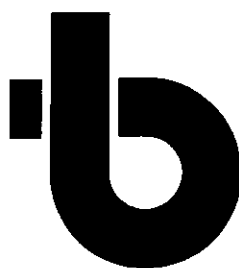
RLBA takes no responsibility for changes in market conditions which may occur after the date of valuation or for the inability of a rail owner to identify a qualified purchaser;

RLBA has not conducted any title search or verification of legal ownership, and assumes no responsibility for legal descriptions or titles. RLBA has conducted this appraisal under the assumption that all the rail described here in is owned free and clear of all liens and encumbrances;

no employee or representative of RLBA will be required to give testimony or attend court or appear at any governmental hearing with reference to the subject rail material, unless prior arrangements have been made directly with RLBA;

RLBA takes no responsibility for changes in track structure under portions of the railroad that were covered by material obstructing physical inspection and

RLBA also requests that this valuation report not be reproduced in whole or in part by any party without its written consent and that it not be distributed to parties other than those representing the organizations which are directly involved in the subject proceeding.



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Appendix One

Summary of Rail Evaluated Certain Seminole Gulf Railway L.P. Track Assets Near Fort Myers, Florida As of May 5, 2005

Milepost		Rail			Control	Miles
East	West	Section	Rolled	Type	Cooled	
0.0	0.79*	115	1966	Jointed	Yes	0.09
0.0	0.79*	100	1926	Jointed	No	0.04
0.0	0.79*	85	1924	Jointed	No	<u>0.66</u>
Total Miles						0.79

* Different rail weights are scattered throughout the entire valued area.

Source: RLBA

Appendix Two

Net Liquidation Value Of Track Assets Certain Seminole Gulf Railway L.P. Track Assets Near Fort Myers, Florida As of May 5, 2004

	Unit	Unit Cost	Total	Grand Total
Track Nominal Value:				
Relay Railroad Materials			\$ 2,600	
Scrap and Reroll Materials (net of transportation)			16,100	
Ties and Non-steel Materials			7,300	
Gross Liquidation Value				\$ 26,000
Preparation Cost Adjustments:				
Rail & OTM Removal (miles)	0.79	\$10,000	(7,900)	
Turnout Removal (each)	1	500	(500)	
Total Adjustments				(8,400)
Restoration Cost Adjustments:				
Highway Crossing (each)	4	1,000	(4,000)	
Total Adjustments				(4,000)
Track Salvage Value				<u>\$ 13,600</u>
Administrative, Marketing and Transportation Expense				
Relay Steel Materials - 15 percent			(400)	
Scrap, Reroll and Non-steel Materials - 8 percent			(1,900)	
Total Estimated Expense				(2,300)
Net Liquidated Value				<u>\$ 11,300</u>

Source: Appendix Three and RLBA estimates.

Appendix Three

Gross Liquidation Value of Track Assets
Certain Seminole Gulf Railway L.P. Track Assets
Near Fort Myers, Florida
As of May 5, 2004

Miles		Description	Condition	Quantity per mile	Reusable			Scrap and Reroll							
Fit	Scrap				Total	Percent	Unit	Value (a)	Percent	Unit	Value (b)	Grand Total (a+b)			
RAIL:															
0.009	0.023	115 RE	Fit #2	202.4	Ton	2	97	%	\$ 800	2.9	%	80	800		
	0.060	115 RE	Reroll	202.4	Ton	5				97		130	600		
		115 RE	Scrap	202.4	Ton	12				97		80	900		
0.004		100 RA	Fit #2	176.0	Ton	1	97		200	2.9		80	200		
	0.009	100 RA	Reroll	176.0	Ton	2				97		130	200		
	0.024	100 RA	Scrap	176.0	Ton	4				97		80	300		
	0.265	85 Assorted	Reroll	149.6	Ton	40				97		130	5,000		
	0.398	85 Assorted	Scrap	149.6	Ton	59				97		80	4,600		
0.013	0.779	TOTAL RAIL				124			\$1,000			\$11,600	\$12,600		
OTHER TRACK MATERIAL:															
0.013	0.779	Ties	Relay	Each	Each	2,390	6	%	\$15.00				\$2,000		
0.013	0.779	Ties	Landscape	Each	Each	2,390				72	%	\$3.50	\$6,000		
0.013	0.779	Ties	Scrap	Each	Each	2,390				23		1.25	(700)		
0.092		Tie Plates 7 1/2 -12 DS	Relay	Each	Each	555	97		1,600				1,600		
	0.038	Tie Plates 7 1/2 -11 SS	Scrap	Each	Each	2				97		85	200		
	0.663	Tie Plates 85# SS	Scrap	Each	Each	34				97		85	2,800		
0.009		Jt Bars 115#	Relay	Pair	Pair	2	97		20.00	0			0		
0.004		Jt Bars 100#	Relay	Pair	Pair	1	97		13.00	0			0		
	0.083	Jt Bars 115#	Scrap	Ton	Ton	1				95		85	100		
	0.034	Jt Bars 100#	Scrap	Ton	Ton	0				95		85	0		
	0.663	Jt Bars 85#	Scrap	Ton	Ton	5				95		85	400		
0.013		Rail Anchors	Relay	Each	Each	39	50		0.60	0			0		
	0.779	Rail Anchors	Scrap	Ton	Ton	3				80		85	200		
0.013	0.779	Spikes	Scrap	Ton	Ton	4				80		85	300		
0.013	0.779	Bolts & Washers	Scrap	Ton	Ton	1				80		85	100		
		TOTAL OTHER TRACK MATERIAL							\$3,600			\$9,400	\$13,000		
TURNOUTS:															
Turnouts	Fit	Scrap	Description	Condition	Quantity	Unit	Re-Useable			Value	Scrap			Total Value	
							Total	Percent	Unit		Percent	Unit	Value		
			Fit Turnouts	Fit	1	Each	0	100	%	\$2,500				\$0	
	1		Scrap Turnouts	Scrap	5	Ton	5			\$0	97	%	\$85	\$400	
0	1		TOTAL TURNOUTS							\$0			\$400	\$400	
GRAND TOTAL													\$5,000	\$21,000	\$26,000

Notes: Dollar amounts are rounded to the nearest hundred; tons to the nearest tenth; units to the nearest integer.
Source: Unit values obtained from vendors and RLBA estimates.

Appendix Four

Summary of Turnouts Certain Seminole Gulf Railway L.P. Track Assets Near Fort Myers, Florida As of May 5, 2004

<u>Condition</u> <u>Relay Scrap</u>	<u>Rail</u> <u>Weight</u>	<u>Frog</u>		<u>Switch Points</u>		<u>Switch Stand</u>		<u>Comments</u>
		<u>Type</u>	<u>Size (#)</u>	<u>Plane</u>	<u>Sampson Lead</u>	<u>Manual</u>	<u>Power</u>	
X	100	RBM	10	100	X	16' 6"	X	Miller Beer Distributing (Ties-poor)

Source: RLBA.

Appendix Five

Summary of Tie Condition
Certain Seminole Gulf Railway, L. P. Track Assets
Near Fort Myers, Florida
As of May 5, 2004
(Sample Blocks of 100)

<u>Location</u>	<u>Relay</u>	<u>Landscape</u>	<u>Scrap</u>
Tangent	2	70	28
Curve	<u>9</u>	<u>73</u>	<u>18</u>
Average Totals (%)	6	72	23

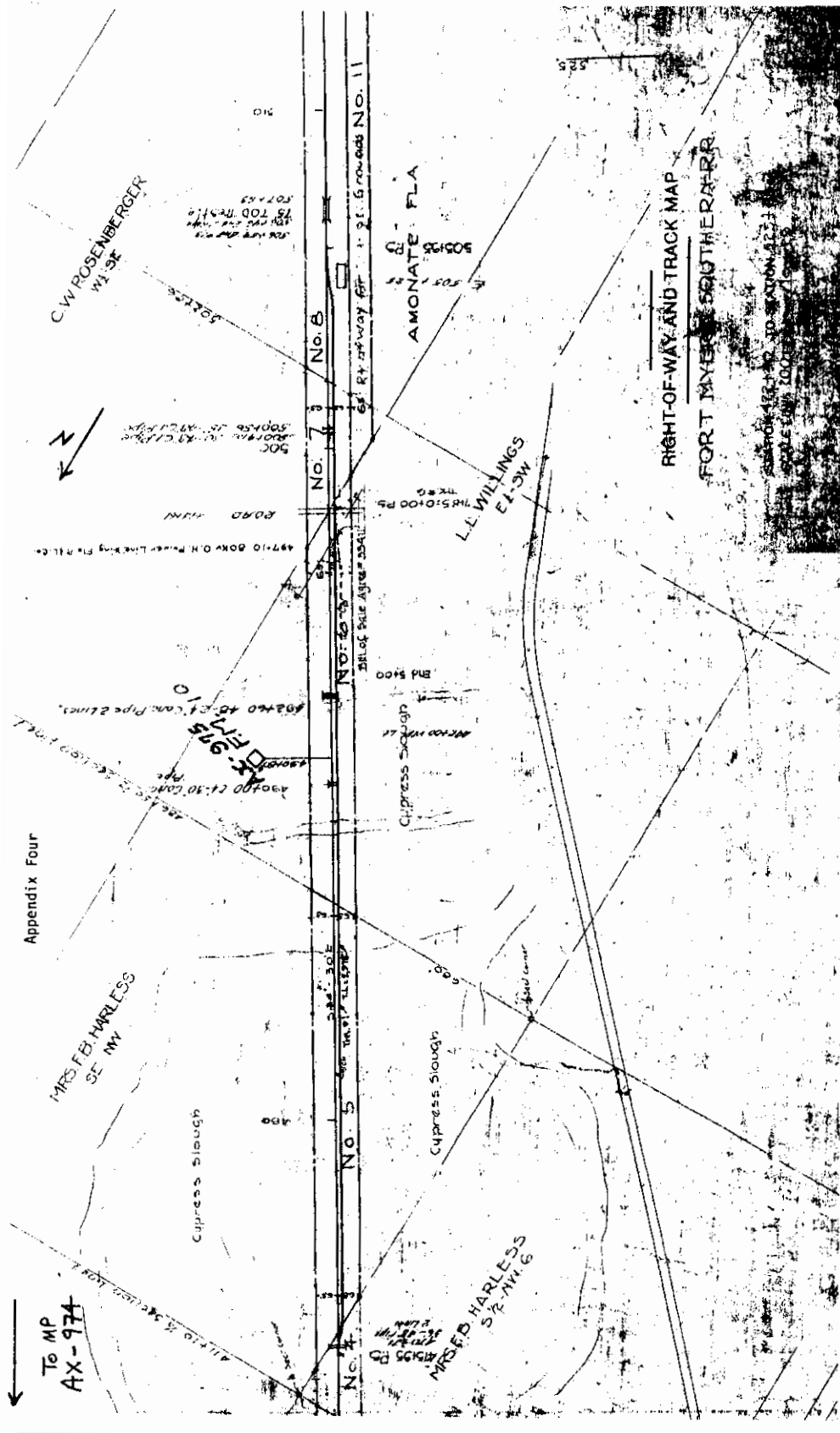
With tie spacing of 21 inches on center equates to 3,017 ties per mile

Expect average of
166 Relay ties per mile
2,157 Landscape ties per mile
694 Scrap ties per mile

Source: RLBA

Appendix D

Appendix D



Appendix E

Appendix E Public Version

(Material is Highly Confidential)

Appendix F

Appendix F Public Version

(Material is Highly Confidential)

EXHIBIT D
VERIFIED STATEMENT OF TIMOTHY McCULLERS
IN SUPPORT OF APPLICATION FOR
ADVERSE ABANDONMENT
BY LEE COUNTY, FLORIDA

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

STB DOCKET NO. AB-400 (SUB-NO. 4)

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

**VERIFIED STATEMENT
OF
TIMOTHY McCULLERS**

**IN SUPPORT OF APPLICATION
FOR ADVERSE ABANDONMENT
BY LEE COUNTY, FLORIDA**

1. My name is Timothy McCullers, and I am a Managing Member of Paddlewheel, LLC, a Florida limited liability company located at 12670 New Brittany Boulevard, Suite 201, Fort Myers, Florida 33907. In the absence of the Manager of Alico Lakeside, my current responsibilities include all management duties of the limited liability company. As a

Member, I am qualified to testify on behalf of Alico Lakeside, LLC, a Florida limited liability company.

2. Our Company owns property located at Fort Myers, FL 33912 (Strap #05-46-25-00-01000.5000 and #04-46-25-00-00001.0000), the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way comprising 331 acres, more or less. The property is currently used for development purposes.

3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately roadway engineering posts 33 + 35 and 79 + 95 ("Subject Rail Line"). We are not now customers of SGR, and we plan no use of our property that would benefit from continued rail service. Our Company supports Lee County's application for abandonment of the Subject Rail Line.

VERIFICATION

I, Timothy McCullers, declare under perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Alico Lakeside, LLC, a Florida limited liability company. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000.00 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000.00 or imprisonment up to five years for each offense.

Dated this 26 day of August, 2004.

A handwritten signature in black ink, appearing to read 'Timothy McCullers', is written over a horizontal line.

Timothy McCullers, Acting
Managing Member
Alico Lakeside, LLC, a Florida
limited liability company

EXHIBIT E

VERIFIED STATEMENT OF WILLIAM VAN METER AND
PHILLIP GRAFF
IN SUPPORT OF APPLICATION FOR
ADVERSE ABANDONMENT BY
LEE COUNTY, FLORIDA

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

STB DOCKET NO. AB-400 (SUB-NO. 4)

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

**VERIFIED STATEMENT
OF
WILLIAM VAN METER AND
PHILLIP GRAFFY**

**IN SUPPORT OF APPLICATION
FOR ADVERSE ABANDONMENT
BY LEE COUNTY, FLORIDA**

1. Our names are William Van Meter and Phillip Graffy, and we are contract vendees. Our address is 3400 Fort Charles Drive, Naples, Florida 34102.

2. We are under contract to purchase property owned by Airport Industrial Holdings, LLC, located at Fort Myers, FL 33912 (Strap #04-46-

25-00-00000.0090), the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used for agriculture and is presently being rezoned for light industrial and comprises 127.29 acres, more or less.

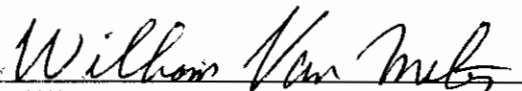
3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately roadway engineering posts 33 + 35 and 79 + 95 ("Subject Rail Line"). We are not now customers of SGR, and we plan no use of our property that would benefit from continued rail service. We support Lee County's application for abandonment of the Subject Rail Line.

VERIFICATION

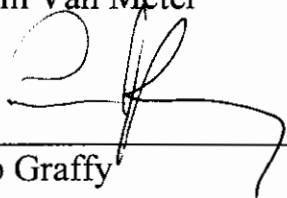
We, William Van Meter and Phillip Graffy, declare under perjury, under the laws of the United States of America, that we have read the foregoing Verified Statement and that its assertions are true and correct to the best of our knowledge, information and belief. We further declare that we are qualified and authorized to submit this verification as contract vendees. We know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000.00 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C.

1621, which provides for fines up to \$20,000.00 or imprisonment up to five years for each offense.

Dated this 27 day of August, 2004.



William Van Meter



Phillip Graffy