

June 9, 2004

HAND DELIVERED

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)
Notice and Request for Waiver of Lee County, Florida regarding
Seminole Gulf Railway, L.P. Adverse Abandonment
in Lee County, Florida

Dear Secretary Williams:

Please find the attached Notice of Intent for the above referenced proceeding. It has become necessary for Lee County, Florida ("Lee County") to re-notify all parties listed in 49 C.F.R. §1152.20(a)(2) and all parties to the proceeding because yesterday Lee County discovered that the newspaper notice required under §1152.20(a)(4) had not been published in accordance with its instructions.

Lee County had instructed *The Fort Myer News-Press* ("*The News-Press*") to publish the notice provided to them for three consecutive weeks, beginning May 19th. *The News-Press* gave no indication that it would be unable to fulfill this request. However, when Lee County inquired yesterday as to why the certificate of publication had not yet been mailed to it, *The News-Press* informed the County that there had been a backlog of requests and the Notice was not published until May 31, 2004. This means that our plan to file the County's Application on June 10, 2004, would not be permitted under §1152.20(a)(4) since the Notice would have only been published for two consecutive weeks. Therefore, the earliest that Lee County could file its Application and be in compliance with the newspaper notice requirements would be June 15, 2004.

Under these circumstances, Lee County respectfully requests a waiver from the requirement in §1152.20(b)(1) that an Application be filed no earlier than 15 days after the service of a Notice. Delaying the filing beyond June 15 serves no useful purpose given the continuing notice that potentially interested parties have had of Lee County's intention to file this application. Moreover, no party can claim prejudice by the grant of such waiver. On the other hand, if Lee County were

The Honorable Vernon A. Williams

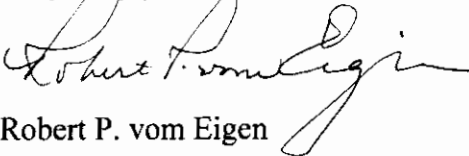
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forced to comply with this provision, Lee County would be unable to file its Application until June 24, over a week after the newspaper notice requirements dictate, thereby imposing unnecessary delay in the resolution of this matter. Since this notice will be the third Notice of Intent served by Lee County in a six week time period, all parties with an interest in this line segment are well aware of this proceeding and will have ample time to intervene, submit comments, or prepare to respond to Lee County's application. Therefore, strict adherence to 1152.20(b)(1) is unnecessary and Lee County would like to request that it be allowed to file its Application for Adverse Abandonment on or after June 15, 2004.

We have included an original and ten (10) copies of the Notice and a copy of the Notice has been served on all parties designated in 49 C.F.R. 1152.20, as evidenced by the attached Certificate of Service. Additionally, please time stamp the extra copy of this letter and the Notice to indicate receipt, and return it to me via courier or in the stamped, self-addressed envelope provided for your convenience.

Very truly yours,



Robert P. vom Eigen

cc: Joe Dettmar, Office of Proceedings
Enclosures: Notice of Intent, diskette

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

NOTICE OF ADVERSE ABANDONMENT
OF
LEE COUNTY, FLORIDA

Lee County, Florida ("Lee County") gives notice that on or about June 15, 2004¹, it intends to file with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 4,600 ft. of Seminole Gulf Railway L.P.'s (hereinafter "Seminole Gulf") Baker Spur line in an unincorporated area of Lee County, Florida. The applicable line of railroad to be abandoned begins at engineering station 33+35+/-, which is which is approximately 400 feet to the west and south of where the line crosses Alico Road, approximately .9 of a mile east of U.S. 41, and parallel to Alico Road station 76+00, continuing across Alico Road and then running parallel to and north of Alico Road for approximately 4,260 ft. to the eastern terminus of the line at engineering station 79+95, which is

¹ In the letter accompanying this Notice, Lee County has requested that the Board waive the requirement in 1152.20(b)(1) that an Application not be filed until at least 15 days after the Notice of Intent is served and that Lee County be allowed to file its Application on June 15, 2004, when the newspaper notice requirements will have been fulfilled. Should this request not be granted, Lee County will have to file its Application on or about June 24, 2004.

parallel to Alico Road station 122+60. The affected railroad line is situated in U.S. Postal Service Zip Codes 33912 and 33913, it traverses no other U.S. Postal Zip Codes and the line includes no stations. The public record of the Board does not contain a system diagram map for Seminole Gulf, and therefore it is not possible for Lee County to determine whether this line of railroad appears on a system diagram map. Based on information in the possession of the County, the line does not contain federally granted rights-of-way. Any documentation relating to this abandonment in the County's possession will be made available promptly to those requesting it.

Alico Road is a heavily traveled thoroughfare between Interstate 75 and U.S. 41 that services industrial, commercial, and residential traffic. It is presently a congested two-lane road and Lee County is in the process of widening Alico Road to six lanes. The cost of installing the required grade crossing equipment as part of widening Alico Road will cost approximately \$1 million dollars. The only shipper on the applicable portion of this line is J.J. Taylor Distributors Ft. Myers/Naples, Inc. ("J.J. Taylor"). J.J. Taylor's lease on its facility ends January 5, 2005. It is in the process of relocating to a different facility, and no longer will be in need of rail service on this line. The owner of the leased property supports the abandonment of this line, and no longer wishes to have rail service to its property. This abandonment is necessary to save the County the \$1 million in costs to build the grade crossing. Additionally, should this abandonment not be granted, since the only shipper on the applicable line is relocating, service on this line will cease and eventually the line will be abandoned, forcing the County to spend an additional \$500,000 to remove the grade crossing.

The interests of Seminole Gulf Railway's employees will be protected in accordance with the conditions of Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Lee County's counsel, whose name and address appear below. The application will include Lee County's entire case for abandonment.

Any interested person, after the application is filed on or about June 1, 2004, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 1925 K Street, N.W.,

Washington, D.C. 20423-0001, together with a certificate of service attesting that copies of the comments or protests have been served on Lee County's counsel in this matter, Robert P. vom Eigen, Foley & Lardner, LLP, Suite 500, 3000 K Street, N.W., Washington, D.C. 20007. Except as otherwise set forth in 49 C.F.R. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. 1152.25.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Service at (202) 565-1592 or refer to the text of the abandonment regulations at 49 C.F.R. 1152.1, *et seq.*, which can be viewed at www.gpo.gov/nara.cfr.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of

record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

CERTIFICATE OF SERVICE
OF THE
NOTICE OF LEE COUNTY, FLORIDA

The undersigned hereby certifies that a copy of the NOTICE OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served via first class, pre-paid mail on the 9th day of June 2004, on the following:

Lee County Cooperative Extension Service
3406 Palm Beach Blvd.
Fort Myers, FL 33913-3719

Executive Office of the Governor
400 S. Monroe Street
The Capital
Tallahassee, FL 32399-0001
(sent Certified Mail, Return Receipt Requested)

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

National Park Service
National Center For Recreation and Conservation
M.S. 3622
1849 C Street, N.W.
Washington, DC 20240-0001

National Park Services
Land Resources Division
M.S. 3622
1849 C Street, N.W.
Washington, D.C. 20240-0001

USDA Natural Resources Conservation Services
P. O. Box 14510
Gainesville FL 32614

Federal Railroad Administration
1120 Vermont Avenue, N.W.
Washington, D.C. 20590

United States Department of Defense
Transportation Engineering Agency/
Military Traffic Management Command
Railroad For Nation Defense Program
720 Thimble Shoals Blvd., Ste. 130
Newport News, VA 23606-4537

U. S. Railroad Retirement Board
R.L. Timberlake Federal Building
500 E. Zack Street, Suite 300
Tampa, FL 33602

Office of Chief of Forest Service
U.S. Department of Agriculture
Auditor's Building
201 14th Street, S.W., and Independence Ave., S.W.
Washington, DC 20250

Ed Lee
Department of Rail
Florida Department of Transportation
605 Swannee Street
Tallahassee FL 32399-0450

J. J. Taylor Distributors Fort Myers/Naples, Inc.
16911 Gator Road
Fort Myers, FL 33912

Mr. Dennis Merchant
Florida Power & Light
700 Universe Blvd.
Juno Beach, FL 33408

Joseph C. Fuller
Attorney for Seminole Gulf Railway, L.P.
PO Box 61407
Fort Myers, FL 33906

The undersigned hereby certifies that a copy of the NOTICE OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was, according to the mutual agreement of the parties, served electronically and via first class, pre-paid mail on the 9th day of June 2004, on the following:

Peter Shudtz
Vice President - Federal Regulation
CSX Corporation
Suite 560
National Place
1331 Pennsylvania Avenue, N.W.
Washington, D, C. 20004

The undersigned hereby certifies that a copy of the NOTICE OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was, according to the mutual agreement of the parties, served electronically and via overnight courier on the 9th day of June 2004, on the following:

Eric M. Hocky
Attorney for Seminole Gulf Railway, L.P.
Gollatz, Griffin & Ewing, P.C.
Four Penn Center, Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808



Melissa Burt