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SERVICE DATE - JULY 19, 2004

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

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

Seminole Gulf Railway, L.P. – Adverse Abandonment – in Lee County, FL

BACKGROUND

This proceeding involves an application for adverse abandonment¹ filed by Lee County, Florida (Lee County or applicant) under 49 U.S.C. 10903 requesting that the Board authorize the abandonment by Seminole Gulf Railway, L.P. (SGLR) of a portion of the Baker Spur rail line in Lee County, Florida. The line extends from engineering station 36+35 +/-, which is approximately 100 feet to the southwest of where the line crosses Alico Road, directly west of Alico Center Road, approximately 1 mile east of U.S. Highway 41, and parallel to Alico Road station 79+00, continuing across Alico Road and then running parallel to and north of Alico Road for approximately 4,260 feet to the eastern terminus of the line at engineering station 79+95.²

Lee County states that it is in the process of widening Alico Road from two lanes to six lanes. Alico Road connects Interstate 75 and U.S. Highway 41 and is heavily utilized by industrial, commercial and residential traffic. According to Lee County, the two lane road currently handles about 20,000 vehicles per day. Lee County states that the road widening project would enable the road to handle over 65,000 vehicles per day. The expansion project would require a new grade crossing where the line crosses Alico Road. According to Lee County, the cost of installing the grade crossing would exceed \$1 million and the cost of removing the grade crossing if the line were later abandoned would be approximately \$300,000. Lee County seeks to avoid the expenditure of public funds to construct and remove this crossing by gaining approval of its application for adverse abandonment.

¹ An adverse abandonment is a proceeding where a party other than one who is the owner or operator of the line comes before the Surface Transportation Board (Board) to request that the Board withdraw its jurisdiction over the line and require or permit abandonment of the line.

² Originally the proposed abandonment began approximately 300 feet to the west of Alico Road station 79+00 at Alico Road Station 76+00, but to accommodate nearby shipper Florida Power and Light's (FP&L) use of the Baker Spur, Lee County has moved the western terminus of the abandonment to Alico Road Station 79+00.

Lee County states that CSX Transportation, Inc. (CSX) has an easement over the right-of-way of the line with a reversionary interest to the adjoining property owners upon cessation of rail operations. SGLR leases the easement from CSX and owns the tracks and other rail facilities. A map depicting the rail line in relationship to the area served is appended to this report.³ If the Board approves the application for adverse abandonment, SGLR would be able to salvage track, ties and other railroad appurtenances, CSX's easement would terminate, and the right-of-way would revert to the appropriate property owners.⁴

DESCRIPTION OF THE LINE

Lee County states that J.J. Taylor Distributors Fort Myers, Inc. (J.J. Taylor), a distributor of beer, is the only shipper on the line. According to Lee County, J.J. Taylor is in the process of relocating to a different facility because the lease on its current facility ends on January 5, 2005, and it will no longer need rail service on the line after it relocates. Lee County requests that the abandonment authority become effective one day after J.J. Taylor has either departed its current facility or converted its operations so as not to require rail service. FP&L uses an adjacent portion of the line, but Lee County states that SGLR would be able to transload the goods shipped by FP&L (generators and other heavy equipment) to a paved section of the service road south of the line.

The right-of-way is approximately 50 feet wide and 4,600 feet long, and crosses three roads: Alico Road; Gator Road; and Haitian Drive. The area surrounding the line is a developing industrial area.

ENVIRONMENTAL REVIEW

Lee County submitted an environmental report⁵ that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. Lee County served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Board's environmental rules [49 CFR 1105.7(b)]. These agencies include: the

³ The map was submitted by Lee County. According to Lee County, the exact location of the eastern terminus of the line is disputed.

⁴ SGLR submitted a filing in this proceeding on May 13, 2004 stating that the adjacent landowners may not be the reversionary property owners; this issue may be part of a pending lawsuit in Florida state court.

⁵ SGLR submitted a letter dated May 20, 2004 requesting that the combined historical and environmental report submitted by Lee County be rejected. The Board's Section of Environmental Analysis has examined the report and finds that it complies with the Board's environmental rules at 49 CFR Part 1105.

Florida State Clearinghouse; the Florida Department of Environmental Protection; the Florida Coastal Management Program; the Lee County Planning Commission; U.S. Environmental Protection Agency, Region 4; the U.S. Fish and Wildlife Service, Region 4; the U.S. Army Corps of Engineers; the National Park Service; the National Geodetic Survey; and the Natural Resources Conservation Service. We have reviewed and investigated the record in this proceeding.

The U.S. Fish and Wildlife Service has submitted comments stating that the proposed abandonment would have no significant impact on fish and wildlife resources.

HISTORIC REVIEW

Lee County submitted an historic report as required by the Surface Transportation Board's environmental rules [49 CFR 1105.8(a)] and served the report on the Florida Division of Historical Resources (State Historic Preservation Office or SHPO), pursuant to 49 CFR 1105.8(c). Lee County states that it believes that the line was constructed in the early 1970s to service the Florida Rock quarry and there are no railroad structures 50 years old or older on the line.

We have reviewed the report and, based on the information in the report, we find that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected by the proposed abandonment.

Pursuant to the Advisory Council on Historic Preservation's regulations for implementing the Section 106 process of the National Historic Preservation Act at 36 CFR 800.4(d)(1) and 36 CFR 800.8, we have determined that the proposed abandonment will not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 CFR 800.11(d), consists of the applicant's historic report, all relevant correspondence, and this environmental assessment, which have been provided to the SHPO and made available to the public.

CONDITIONS

We recommend that no environmental conditions be placed on any decision granting abandonment authority.

CONCLUSIONS

Based on the information provided from all sources to date, we conclude that, as currently proposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed adverse abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and may include

continued operation by another operator.⁶ In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Lee County states that the line has no value for any public use other than the Alico Road widening project. Lee County has requested that the Board grant an exemption from the public use provisions at 49 U.S.C. 10905 and a waiver from the public use provision at 49 CFR 1152.28. In its June 9, 2004 decision, the Board stated that this issue can be addressed, if necessary, in the final decision on the merits of the application. If the Board approves the adverse abandonment application and determines that the right-of-way may be suitable for other public use, parties interested in alternative public use of the line must file a request with the Board containing the requisite four-part showing for imposition of a public use condition pursuant to the provisions of 49 CFR 1152.28.

TRAILS USE

Lee County states that the line is not suitable for any recreational trail purposes, because it is under a mile long, crosses three roads and is adjacent to an industrial area. Lee County has requested that the Board grant a waiver from the trail use provision at 49 CFR 1152.29. In its June 9, 2004 decision, the Board stated that this issue can be addressed, if necessary, in the final decision on the merits of the application. If the Board approves the adverse abandonment application and does not grant the waiver, parties interested in trail use must file a request for a certificate of interim trail use (CITU) with the Board in compliance with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact the Office of Public Services directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, you should send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Rini Ghosh, who prepared this environmental assessment.

⁶ Lee County has requested an exemption/waiver from the offer of financial assistance (OFA) requirements at 49 U.S.C. 10904 and 49 CFR 1152.27. The Board stated in the decision in this proceeding served June 9, 2004 that issues regarding OFA requirements can be addressed, if relevant, in the final decision on the merits of the abandonment application.

Environmental comments may also be filed electronically on the Board's web site, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-400 (Sub-No. 4) in all correspondence, including e-filings addressed to the Board.** If you have questions regarding this environmental assessment, you should contact Rini Ghosh, the environmental contact for this case by phone at (202) 565-1539, fax at (202) 565-9000, or e-mail at ghoshr@stb.dot.gov.

Date made available to the public: **July 19, 2004**

Comment due date: August 17, 2004.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment

