

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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GREAT LAKES BASIN)	
TRANSPORTATION, INC –)	FINANCE DOCUMENT
APPLICATION TO CONSTRUCT AND)	NO. 35952
OPERATE A RAILROAD LINE)	
IN WISCONSIN, ILLINOIS AND INDIANA)	

PETITION TO REJECT APPLICATION

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DATED: August 25, 2017

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The Environmental Law & Policy Center (“ELPC”) respectfully petitions the Surface Transportation Board (“Board”) to reject the Great Lakes Basin Transportation, Inc.’s (“GLBT”) application to construct and operate a new 261-mile railroad line from Milton, Wisconsin to Pinola, Indiana. The Board requires an applicant to be financially fit and to have a feasible financing plan. 49 C.F.R. § 1150.6. Based on submissions by GLBT: (1) GLBT is not financially fit and has no capital, and (2) GLBT has not provided a realistic plan to obtain the estimated \$2.8 billion needed to construct the massive new rail line. GLBT has not made even a basic showing of financial fitness, and GLBT failed to provide the financing details in its application required under the Board’s regulations. GLBT’s application also fails to comply with additional requirements, such as submission of an Environmental Report, information about interchanges with existing railroads, and information about industries in the area. Accordingly, GLBT does not meet the threshold for consideration by the Board at this time.

The Board has already provided GLBT with multiple opportunities to submit a legally compliant and financially adequate proposal. GLBT should not be permitted to continue to waste the time of the parties and the Board on this application.

BACKGROUND

GLBT seeks authority to construct and operate a huge new railroad line that would circumnavigate Chicago, Illinois and would run 261 miles, mostly with double tracks and a 200-foot easement, from Milton, Wisconsin to Pinola, Indiana. The proposed line would accommodate up to 110 trains per day, each up to 15,000 feet in length. The railroad line would also include the largest railport in the United States, to be located in Manteno, Illinois.

GLBT recently revealed that the rail line is only one component in an even larger transportation infrastructure scheme, which would also include a 125-mile tollway and the construction of the conceptual South Suburban Airport near Peotone, Illinois. (GLBT did not mention either of these pertinent facts to the Office of Environmental Analysis (“OEA”), which is charged with ensuring that the project’s impacts are documented and fully and fairly evaluated in an Environmental Impact Statement.) GLBT estimates that its proposed rail line would cost \$2.8 billion to construct as a “base case,” but provides no information in its application on anything other than the base case. However, GLBT founder and managing partner Frank Patton has publicly stated that the company planned on \$1 billion in contingencies between the rail line and the planned tollway. Amy Lavalley, *Founder of GLBT Freight Line Adds New Toll Road to Plan*, Post-Tribune (May 1, 2017), available at <http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-glbt-road-plan-st-0502-20170501-story.html>.

OEA initiated an environmental review process under the National Environmental Policy Act (“NEPA”) in March 2016. After having to supplement its initial filing three times because it did not provide adequate information, GLBT requested on December 1, 2016, that the Board halt the environmental review process, claiming that this would allow GLBT to finish its application for authority to construct the rail line, and that the application would “provide the OEA with a

more complete overview of the project’s business and operating impacts.” GLBT Letter to OEA (Dec 1, 2106), available at http://greatlakesbasinraileis.com/documents/GLBT_submittal_to_OEA_Dec-1-2016.pdf.

Two months later, on February 28, 2016, GLBT asked for more time to file its application with the Board because it was “holding discussions with potential customers, shippers, and other parties who may file statements in support of the application.” GLBT Letter to OEA (Feb. 28, 2016), available at <http://greatlakesbasinraileis.com/documents/EI-25772.pdf>. In its response letter, the Board noted that it was “mindful” of “the project’s potential impact on affected communities” and warned GLBT that if it was unable to file its application on or before May 1, 2017, OEA would “cease all work on the environmental review of GLBT’s proposal, including taking down the project website.” OEA Letter to GLBT (Mar 3, 2017), available at <http://greatlakesbasinraileis.com/documents/EO-2887.pdf>.

On May 1, 2017, GLBT filed an application with no letters of support at all. GLBT also redacted the required list of top ten shareholders’ names and holdings. GLBT’s operations information is based on rough calculations from unsupported assumptions, and the financial information is inadequate. The Board found several deficiencies in the application, including GLBT’s failure to provide a recent balance sheet and an income statement for the latest available calendar year as required under 49 C.F.R. § 1150.6(b). Board Order at 4 (June 2, 2017). The Board ordered GLBT to file an unredacted list of its top ten shareholders and allowed GLBT to make a supplemental filing to remedy the deficiencies identified by the Board.

On June 9 and June 22, 2017, GLBT filed supplemental documents in response to the Board’s June 2, 2017 Order. The filings reveal that GLBT was worth a total of \$151 as of December 31, 2016. GLBT Supp. Filing at 4 (June 22, 2017). They also show that there has not

been significant investment in the company from outside sources—Frank Patton, GLBT founder and chairman, personally owns over 87% of the company’s stock, while vice chairman James Wilson owns another 5%, and several other board members are also within the top ten stockholders.

On July 10, 2017, six opponent groups (“Opponents”) filed a petition requesting that the Board reject GLBT’s application, and on July 14, 2017, Save Our Farmland, LLC also filed a petition for rejection of the application. GLBT filed a reply to both petitions on July 31, 2017. The reply fails to successfully rebut the arguments made in the petitions for rejection of GLBT’s fundamentally flawed application.

ARGUMENT

The Board must not approve an application for authority when the rail line would be “inconsistent with the public convenience and necessity.” 49 U.S.C. § 10901(c). One of the primary factors in determining whether a proposal is inconsistent with the public convenience and necessity is the fitness of the applicant, financially and otherwise.¹ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1092-93 (9th Cir. 2011). The “financial condition of the applicant and the financial feasibility of the project” is an important factor because the Board seeks to protect:

- (1) existing shippers from financial decisions that could jeopardize the carrier's ability to carry out its common carrier obligation to serve them, and
- (2) the affected communities from needless disruptions and environmental impacts if the applicant were to start construction but not be able to complete the project and provide the proposed service.

¹ Although not addressed in this filing, ELPC also contends that GLBT has not demonstrated that there is a need for the project, GLBT has not demonstrated that this proposed rail line is not inconsistent with the public convenience, and that GLBT has not demonstrated that this proposed rail line would not harm the public interest.

Tongue River Railroad Company, Inc. – Construction and Operation – Western Alignment, STB No. FD-30186-3, 2007 STB LEXIS 584, *25-26 (Oct. 5, 2007).

The impacts of a failed railroad line would affect individuals and businesses whose land would be taken through eminent domain and who would be impacted by the harmful environmental effects of the line, as well as affect carriers that made decisions in reliance on being able to use this rail line. Indeed, one potential adverse outcome would be for the approval and subsequent failure of this project to lead to dis-investment in the Chicago Region Environmental and Transportation Efficiency Program (“CREATE”), a series of projects designed to alleviate rail congestion in Chicago. Moreover, as noted by Save Our Farmland, LLC’s petition for rejection, even just the threat of this huge new rail line has significant impacts on communities in the proposed rail line’s path. Save Our Farmland’s Petition for Rejection at 2-3 (June 13, 2017).

GLBT has not made even a threshold showing that it is financially fit or has a feasible financing plan. GLBT’s supplemental filing on June 22, 2017, revealed that the company is worth a total of only \$151—presumably regulations require the submission of an applicant’s balance sheet because the worth of the company has some bearing on the Board’s assessment of the application. GLBT has failed to demonstrate that it has a realistic plan to raise the \$2.8 billion that it estimates is necessary to construct the proposed new railroad line.

The Board’s regulations require applications to include the following financial information:

The manner in which applicant proposes to finance construction or acquisition, the kind and amount of securities to be issued, the approximate terms of their sale and total fixed charges, the extent to which funds for financing are now available, and whether any of the securities issued would be underwritten by industries to be served by the proposed line. Explain how the fixed charges will be met.

49 CFR § 1150.6(a). GLBT’s application states that the company is still in the process of determining how to finance the project and that “[i]t is anticipated that such financing would be accomplished through sales of equity interest in the company, or combinations of equity and debt, as may be negotiated between GLBT and each investor. Financing for the construction phase would be accomplished primarily through the issuance of debt securities.” Application at 14. These two sentences constitute the entirety of their financing plan, and certainly do not provide the level of detail required by the Board’s regulations. 49 C.F.R. § 1150.6. GLBT saying that the funds will be raised “through equity and debt” – the two means by which every company raises investment funds – says nothing at all.

I. GLBT’S REFERENCE TO THE DM&E CASE DOES NOT SUPPORT APPROVAL OF ITS APPLICATION.

GLBT’s reply to the petitions for rejection of its application fails to demonstrate adequacy. GLBT compares its application to the Dakota, Minnesota, and Eastern Railroad’s (“DM&E”) application for its proposed expansion into the Powder River Basin, claiming that since that application was granted, GLBT’s should also be approved. In fact, however, DM&E’s approximately 587-page application was far more comprehensive than GLBT’s approximately 77-page application and provided much more evidence that: (1) entities would actually invest in the project, and (2) the line would actually be utilized and therefore be a financially viable enterprise. *See Dakota, Minnesota, & Eastern Railroad Corporation – Construction into the Powder River Basin*, Application, STB No. FD-33407 (Feb. 20, 1998) (hereinafter “DM&E Application”). Further, the DM&E decision is almost twenty years old, and did not include the considerations required under the precedent set by *Tongue River Railroad Company, Inc.*, 2007 STB LEXIS 584, *25-26, as noted by the petition filed by Opponents on July 10. Opponents’ Petition at 8 (July 10, 2017).

In *Tongue River*, the Board explained that financial fitness and feasibility is required not only to protect existing shippers, but also “to protect . . . the affected communities from needless disruptions and environmental impacts if the applicant were to start construction but not be able to complete the project and provide the proposed service.” *Id.* at 26. The Board’s March 3, 2017 letter to GLBT recognized the importance of this consideration, noting concerns about “the project’s potential impact on affected communities.” OEA Letter to GLBT (Mar 3, 2017), available at <http://greatlakesbasinraileis.com/documents/EO-2887.pdf>. Notably, DM&E’s proposed expansion into the Powder River Basin was never even built. GLBT Reply, Verified Statement of James Wilson at ¶ 3 (July 31, 2017).

GLBT claims that it has a “more compelling case for financial viability than did *DM&E*.” GLBT Reply at 6 (July 31, 2017). However, DM&E clearly was much more financially fit and had a more realistic financing plan. DM&E stated in its application that it had multiple financing options and that its own “institutional shareholders . . . are themselves financially capable of developing this project to completion.” DM&E Application at 76. DM&E also explained that it planned to work with an investor, and DM&E included “evidence and testimony from several sources” about the attractiveness of the project as an investment opportunity, including documents from “Morgan Stanley (an investment firm), Schroder & Co. (an investment advisory company), and Lombard Investments (an institutional investment manager).” *Dakota, Minnesota, & Eastern Railroad Corporation – Construction into the Powder River Basin*, STB No. FD-33407, 1998 STB LEXIS 968, *95 (Dec. 9, 1998).

On the other hand, GLBT admits that it does not have the capital to even fund the preliminary stages of the project, let alone the entire project to completion. *See* GLBT Reply, Verified Statement of James Wilson at ¶ 7 (July 31, 2017) (explaining that GLBT is

“continu[ing] to work constantly to secure the patient investment needed to complete the preliminary phase of the GLBT project”). GLBT has submitted no supporting testimony or filings from outside investment firms or other financing experts. Rather, GLBT’s Vice Chairman James Wilson claims that the company has had conversations with many interested investors, yet he has not provided names of any of these investors. GLBT Reply, Verified Statement of James Wilson (July 31, 2017).

DM&E also had significant support for its project, including from customers. In the DM&E case, the Board found that “90% of DM&E’s current shippers have indicated their support for this project while none has voiced any objections.” *Dakota, Minnesota, & Eastern Railroad Corporation*, 1998 STB LEXIS 968 at *100. The application included supporting statements from over two dozen elected officials; a number of local governments, chambers of commerce, and other local groups; and dozens of shippers. DM&E Application at Vol. II, App. 7. Comments in support of the application were also filed by several utility companies, a handful of chambers of commerce, and many other entities. *Id.* at *115-16. In this GLBT case, two of the six Class I railroads that service the Chicago area have already publicly stated that they would not use the GLBT railroad line, and none have publicly supported the line. Only United Parcel Service (“UPS”) filed comments in support of GLBT’s application, and UPS does not even control which rail lines are used to ship its packages. As UPS states in its comment letter, it is a customer of the Class I railroads. UPS Comment Letter at 1 (May 10, 2017). On the other hand, individuals, stakeholder groups, elected officials, and other entities have filed hundreds of comments in opposition to GLBT’s proposal.

GLBT’s statements about its financial feasibility are also based on its unsupported assumptions about how much its line would actually be used. DM&E developed five different

sets of “revenue and profit projections” based on varying financial scenarios, as well as a study by Schroder & Co. showing financial viability. *Dakota, Minnesota, & Eastern Railroad Corporation*, 1998 STB LEXIS 968 at *42 and *42 n.30. DM&E’s models were detailed enough to consider tonnage estimates for various markets and freight deliveries to specific coal plants and how its rates and trip times would compare to those of the existing railroads. *See, e.g., id.* at 47-82. In contrast, GLBT’s projections of the use of its proposed rail line appear to boil down to an assertion that about half the trains that travel through Chicago are through traffic, and about half those trains could use the GLBT, so we’ll assume that 25% of the total freight train traffic in Chicago will use the GLBT. Moreover, GLBT did not even include a discussion of the rates it would charge for use of its railroad line. No commercial lender would take these estimates seriously as the basis to finance this project, putting even further doubt on the project’s financial viability.

Despite GLBT’s claims, the Board’s approval of DM&E’s application almost 20 years ago does not provide support for GLBT’s application. Not only was DM&E’s application judged with fewer considerations than are applicable today, but DM&E’s application made a much more compelling case of financial fitness, including support by actual customers. Finally, even with significantly more support and more thorough planning than GLBT’s proposal, DM&E’s proposed expansion was never built.

II. GLBT’S APPLICATION FAILS TO MEET ADDITIONAL REQUIREMENTS.

GLBT also failed to meet additional basic application requirements. Under 49 C.F.R. § 1105.7, an applicant seeking authority to construct a railroad “must submit to the Board (with or prior to its application . . .) an Environmental Report.” Section 1105.7(e) sets out what information must be included in the Environmental Report, including proposed alternatives;

effects on regional or local transportation systems and patterns; impacts on land use, energy use, and air quality; noise impacts; safety; impacts on biological resources and water quality; proposed mitigation, and more. 49 C.F.R. § 1105.7(e). While GLBT touched upon some of these topics in a cursory manner in its earlier submissions to OEA, GLBT has not come close to fully meeting these requirements.

GLBT also has not met the legal requirements for the application itself. Section 1150.4(e) requires the applicant to provide information about interchanges with existing railroads, including “the volume of traffic estimated to be interchanged; and a description of the principal terms of agreements with carriers covering operation, interchange of traffic, [and] division of rates or trackage rights.” GLBT admits that it does not yet have any agreements with other railroads and has not yet figured out this information. Application at 12.

Section 1150.4(g)(2) requires the applicant to identify “[t]he nature or type of existing and prospective industries (e.g., agriculture, manufacturing, mining, warehousing, forestry) in the area, with general information about the age, size, growth potential and projected rail use of these industries.” GLBT attempts to dodge this question by stating that the “area traversed . . . is primarily rural and agricultural . . . [and] generally not adjacent to any existing industry.” Application at 13. GLBT ignores that “agriculture” is specifically mentioned as a type of industry by the regulation. GLBT therefore improperly avoids stating the “age, size, growth potential and projected rail use” of the farms it would cut through. GLBT doesn’t explain that many of the farms are likely over a hundred years old, and that the farms it would so significantly impact would not use or receive much benefit at all from the rail line. GLBT’s statement that the line is “generally” not adjacent to other industries also suggests that GLBT did not actually carefully investigate the existence of other industries along the route.

Under 49 C.F.R. § 1150.7, the application must also include “information and data prepared under 49 CFR Part 1105.” This includes the Environmental Report which, as mentioned above, has not been submitted to the Board as required. GLBT’s application states that “the scoping process is underway” for its proposed line. This is inaccurate: GLBT requested in late 2016 that OEA halt the environmental review process. GLBT Letter to OEA (Dec. 1, 2106), available at http://greatlakesbasinraileis.com/documents/GLBT_submittal_to_OEA_Dec-1-2016.pdf.

Each of these deficiencies² provides sufficient grounds for the Board to reject GLBT’s application. Collectively, they so greatly ignore the Board’s applicable regulations that the Board must reject the application and no longer waste its and the public’s time and resources.

CONCLUSION

GLBT has failed to make even a basic threshold showing of financial fitness or of having a realistic financing plan. GLBT has already wasted significant time and resources of the Board between the environmental proceeding with the OEA and the Board’s review of its current inadequate application to construct and operate a proposed new railroad line. GLBT’s failure to provide adequate information on its proposal has already led to multiple supplemental filings with the OEA and two filings supplementing its construction application. Permitting GLBT to continue with the application process when it has failed to make even a basic showing of financial fitness would lead to wasting thousands of hours of the Board’s time, in addition to significant time and resources wasted by individual citizens and organizations.

² 49 C.F.R. § 1150.4(d) also requires the application to include “a map which clearly delineates the area to be served including origins, termini and stations, and cities, counties and States. The map should also delineate principal highways, rail routes and any possible interchange points with other railroads.” Although GLBT provides a detailed map on its website, <http://www.greatlakesbasin.net/>, the details of the map submitted by GLBT in its actual application are completely illegible. *See* Application at 23.

This proposed rail line is the subject of intense public interest and scrutiny, as can be seen by both the sheer volume of comments filed in the docket and the range of commenters opposing the project (from concerned individuals to multiple public officials to state agencies to not-for-profit corporations). These stakeholders should not be forced to continue to expend significant time and resources to oppose GLBT's unsupported "concept" that falls far short of an actual proposal. Moreover, keeping the project "in limbo" has continuing negative impacts on the communities through which the line would run.

The Board should not continue to entertain GLBT's ill-considered application for this project, which even the company's own vice chairman describes as "audacious." Application at 53. ELPC respectfully requests that the Board summarily reject GLBT's application to construct and operate this proposed new rail line at this time.

Respectfully submitted,

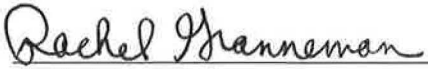


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August 25, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have served the applicant in this proceeding the foregoing Petition to Reject Application by U.S. mail this 25th day of August, 2017.



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