

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH, KATHLEEN  
KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA—PETITION FOR  
DECLARATORY ORDER

Digest:<sup>1</sup> This decision grants a request by the Grafton & Upton Railroad Company to redesignate its unredacted Lease Agreement as “highly confidential.”

Decided: February 27, 2013

By decision of the Director of the Office of Proceedings, served on January 24, 2013, the Board granted a motion for protective order filed by the Grafton & Upton Railroad Company (G&U) in response to a petition for declaratory order filed on August 1, 2012, by Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wilklund, and Richard Kosiba (Petitioners), seven residents in the town of Upton, Mass. G&U sought a protective order pursuant to 49 C.F.R. § 1104.14(b) to protect the confidential and commercially sensitive information contained in an unredacted Terminal Transloading Agreement between G&U and Grafton Upton Railcare, LLC, and an unredacted Lease Agreement between G&U and Upton Development Group, LLC (UDG) (the Agreements), submitted under seal in this proceeding.

Along with its motion, G&U submitted “highly confidential” versions of the Agreements, but failed to simultaneously submit redacted versions of the documents, as required by the Board. As such, G&U was directed in the January 24, 2013 decision to submit public versions of the Agreements by January 31, 2013. Further, because G&U provided no support for designating the Agreements as “highly confidential,” the Board determined that the Agreements would be designated as “confidential,” subject to G&U providing additional information to justify the “highly confidential” designation.

By filing dated January 31, 2013, G&U complied with the Board’s directive and submitted redacted versions of the Agreements. In that filing, G&U adds that it has no objection to classification of the Terminal Transloading Agreement as “confidential.” G&U, however, states that the Lease Agreement should be classified as “highly confidential.” According to G&U, two of the three owners of UDG who are Upton residents not affiliated with G&U, have

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

expressed concern that Petitioners otherwise would have access to the highly confidential compensation and financial terms contained in the Lease Agreement. G&U states that the “highly confidential” classification would not prejudice Petitioners because Petitioners’ outside counsel would have access to the Lease Agreement, and may use any information contained therein for purposes of this proceeding, thereby fully protecting the interests of Petitioners, while, at the same time, avoiding the disclosure of sensitive and confidential financial information concerning the terms of that agreement.

The protective order imposed in this proceeding defines “highly confidential” information to include, among other things, “compensation levels, confidential cost or financial information,” or other “competitively sensitive or proprietary information.” Having reviewed the specific information that G&U has redacted from its Lease Agreement, and for which it seeks a “highly confidential” designation, we determine that such material is the type of sensitive compensation and financial information that falls within the definition of the term “highly confidential.” Accordingly, G&U’s request to have its unredacted Lease Agreement redesignated as “highly confidential” will be granted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. G&U’s request to redesignate its Lease Agreement as “highly confidential” is granted.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.