

255185



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35684

**IOWA PACIFIC HOLDINGS, LLC
AND PERMIAN BASIN RAILWAYS
-- CONTROL EXEMPTION --
CAPE RAIL, INC. AND
MASSACHUSETTS COASTAL RAILROAD, LLC
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

ENTERED
Office of Proceedings

OCT 12 2012

Part of
Public Record

MOTION FOR PROTECTIVE ORDER

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1700 K Street, N.W.
Suite 640
Washington, D.C. 20006
(202) 742-8607

Counsel for Petitioner

ORIGINAL

Dated: October 12, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FD 35684

**IOWA PACIFIC HOLDINGS, LLC
AND PERMIAN BASIN RAILWAYS
-- CONTROL EXEMPTION --
CAPE RAIL, INC. AND
MASSACHUSETTS COASTAL RAILROAD, LLC
VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d) (2)**

**MOTION OF PERMIAN BASIN RAILWAYS, INC.
FOR A PROTECTIVE ORDER PURSUANT TO 49 CFR 1104.14**

COMES NOW, Iowa Pacific Holdings, LLC and Permian Basin Railways (“collectively IPH”) for acquisition of control of Cape Rail, Inc. (“Cape”). Such confidential documents may include, among other things, the purchase price and terms of the transaction as well as other confidential commercial information the disclosure of which would be harmful to the parties.

Public disclosure of this information is not necessary for consideration or disposition of IPH’s notice. Accordingly, IPH requests that the Board adopt the protective order contained in the appendix hereto.

Submitted By:



John D. Heffner

Strasburger & Price, LLP

1700 K Street, N.W.

Suite 640

Washington, D.C. 20006

(202) 742-8607

Counsel for Petitioner

Dated: October 12, 2012

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Confidential Information” means the executed purchase and sale agreement and all supporting documents furnished by Iowa Pacific Holdings, Inc. and Permian Basin Railways, Inc., (collectively “IPH”) in connection with IPH’s notice of exemption in the above-captioned matter.

2. Confidential Information shall be provided to any employee, agent, counsel, or consultant of any party to this proceeding only pursuant to this Protective Order and only upon execution and delivery to IPH of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of IPH or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on IPH at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of Confidential Information by Iowa Pacific Holdings, LLC, and Permian Basin Railways, Inc. (collectively “IPH”) in FD 35684, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in FD 35684 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that IPH shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Position: _____

Affiliation: _____

Dated: _____