

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35247 (Sub-No. 1)

GRENADA RAILWAY, LLC—RAIL LINE IN GRENADA, MONTGOMERY, CARROLL,
HOLMES, YAZOO AND MADISON COUNTIES, MISS.

Decided: September 20, 2013

By decision served on September 10, 2013, the Board directed Grenada Railway, LLC (GRYR) to file certain information related to an embargo it imposed on a portion of its rail line in Mississippi (the Line). On September 11, 2013, GRYR submitted a letter asserting that some of the information sought in the Board's decision cannot be filed even under seal, subject to a protective order, without the risk of prosecution pursuant to 49 U.S.C. § 11904.¹ For example, GRYR refers to the Board's request for the number of carloads originating and terminating on a portion of the Line and the names of all customers served with such traffic. GRYR states that the shippers may not want their competitors or customers to know the volume of business they have been doing and whether it is increasing or declining. GRYR also refers to the Board's request for the name of the consignee/consignor of each car originated on or delivered to certain listed stations, and asserts that such information may be highly confidential and proprietary information the disclosure of which is prohibited by the statute.² GRYR asks the Board for guidance as to how GRYR can make that information available to the Board without risking prosecution by making it available to others.

GRYR can disclose the requested information to the Board without risking prosecution under 49 U.S.C. § 11904 because the statute expressly provides that it does not prevent disclosure "to an officer, employee, or agent of the United States Government." 49 U.S.C. § 11904(c). Thus, GRYR must comply with the Board's direction and submit the requested

¹ 49 U.S.C. § 11904 prohibits rail carriers from disclosing, without consent of the shipper or consignee, "information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation . . . or information about the contents of a contract . . . that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee."

² GRYR's letter mistakenly describes the time period subject to this request as "between June 2011 and the present." In fact, the Board's request covers the time period before the embargo took effect (from the commencement of GRYR operations until July 28, 2011).

information to the Board. To the extent necessary, GRYR may file the requested information under seal along with a motion for an appropriate protective order. See 49 C.F.R. § 1104.14.

As for disclosure to others, a standard provision in the Board’s protective orders—including the order served recently, on GRYR’s motion, in the related proceeding in Docket No. FD 35247—states:

To the extent that “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material is produced by a party in this or any related proceedings, and is held and used by the receiving person in compliance with the terms of this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

Grenada Ry.—Acquis. & Operation Exemption—Ill. Cent. R.R., FD 35247 (STB served Aug. 29, 2013) (App. ¶ 7). GRYR may file a motion for a protective order with the same provision in this proceeding. Protective orders with a “highly confidential” designation are routinely used to prevent disclosure of sensitive business information to competitors. In particular, to protect such information from disclosure to competitors, materials designated “highly confidential” under a typical protective order may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of the proceeding. See, e.g., id., App. ¶ 2. Moreover, if the Board issues a new protective order and GRYR receives a particular request for disclosure that causes concern related to 49 U.S.C. § 11904, GRYR may seek further guidance from the Board.

On September 18, 2013, GRYR submitted a request for a 15-day extension of the date by which it must respond to the Board’s information requests, from September 30, 2013, to October 15, 2013. GRYR states that, among other things, its responses will require an examination of four years’ bills of lading in the files of GRYR or its customers. For good cause shown, GRYR’s request for an extension of time will be granted. See 49 C.F.R. § 1104.7(b). The deadline for responses by interested persons will also be extended by 15 days, to November 5, 2013.

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

It is ordered:

1. GRYR is directed to comply with the Board’s decision served on September 10, 2013, in this proceeding.
2. GRYR’s request for an extension of time is granted, and the due date for GRYR’s responses to the Board’s information requests is extended to October 15, 2013.

3. The due date for interested persons' replies to GRYR's responses is extended to November 5, 2013.

4. GRYR is directed to serve a copy of this decision on Burrows Paper Corp. and Tri-County Cooperative and certify to the Board that it has done so by September 25, 2013.

5. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.