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SERVICE DATE – DECEMBER 8, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35314

MASSACHUSETTS COASTAL RAILROAD, LLC—ACQUISITION—
CSX TRANSPORTATION, INC.

STB Finance Docket No. 35314 (Sub-No. 1X)

MASSACHUSETTS COASTAL RAILROAD, LLC—TRACKAGE RIGHTS EXEMPTION—
CSX TRANSPORTATION, INC.

MOTION FOR PROTECTIVE ORDER

Decided: December 7, 2009

By motion filed on November 24, 2009, Massachusetts Coastal Railroad, LLC (Mass Coastal) and CSX Transportation, Inc. (CSXT) seek a protective order under 49 CFR 1104.14(b) to submit under seal the Purchase and Sale Agreement of Permanent Freight Easement and Trackage Rights Agreement (collectively, the Agreements) between Mass Coastal and CSXT. Concurrently, Mass Coastal and CSXT filed an application in STB Finance Docket No. 35314, Massachusetts Coastal Railroad, LLC—Acquisition—CSX Transportation, Inc., for Mass Coastal to acquire a 32.68 mile permanent freight easement from CSXT over the following lines in Massachusetts: (1) between milepost QN 13.4 at Cotley Jct. and milepost QN 31.8 at New Bedford; (2) between milepost QNF 0.0 at Myricks and milepost 14.2 at Fall River; and (3) the North Dartmouth Industrial Track between milepost QND 0.00 and milepost QND 0.08. Mass Coastal and CSXT also concurrently filed a notice of exemption under 49 CFR 1180.2(d)(2) in STB Finance Docket No. 35314 (Sub-No. 1), Massachusetts Coastal Railroad, LLC—Trackage Rights Exemption—CSX Transportation, Inc., to obtain overhead trackage rights over CSXT's Middleboro Subdivision: (1) between Mass Coastal's interchange tracks at Taunton, MA, at approximately milepost QN 11.6, and milepost 13.4, a distance of approximately 1.8 miles; and (2) between milepost QNB 13.3 and Mass Coastal's interchange tracks at Middleboro, MA, at approximately milepost QNB 20.4, a distance of approximately 7.1 miles, for a total distance of approximately 8.9 miles. "Confidential" copies of the Agreements were submitted under seal, attached to the notice of trackage rights exemption.

Good cause exists to grant the motion for protective order. Mass Coastal and CSXT submit that a protective order is necessary because the Agreements contain commercially sensitive and confidential information that could cause competitive or other harm to Mass Coastal and CSXT if they were made public.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that confidential information will be used solely for these proceedings and not for other purposes. Accordingly, the motion for protective order will be granted, and the Agreements shall be subject to the Protective Order and Undertaking as modified in the Appendix to this decision.¹

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

It is ordered:

1. The motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The unredacted Agreements submitted in STB Finance Docket Nos. 35314 and 35314 (Sub-No. 1X) will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

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

¹ A proposed protective order and undertaking were included with the motion.

APPENDIX A

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the unredacted Purchase and Sale Agreement of Permanent Freight Easement and Trackage Rights Agreement submitted by Massachusetts Coastal Railroad, LLC (“Mass Coastal”) and CSX Transportation, Inc. (“CSXT”) in STB Finance Docket Nos. 35314 and 35314 Sub-No. (1X).
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to Mass Coastal and CSXT 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 competitive purpose.
3. Confidential Information shall not be disclosed in any way or to any person without the written consent of Mass Coastal and CSXT 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 Mass Coastal and CSXT 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 in 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 file simultaneously a public version of any confidential submission it files with the Board.

8. 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.

EXHIBIT A

UNDERTAKING

CONFIDENTIAL INFORMATION

I, _____, have read the Protective Order served on December 8, 2009, governing the production and use of Confidential Information by Massachusetts Coastal Railroad, LLC (“Mass Coastal”) and CSX Transportation, Inc. (“CSXT”) in STB Finance Docket Nos. 35314 and 35314 (Sub-No. 1X), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information obtained pursuant to this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such Confidential Information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 35314 and 35314 (Sub-No. 1X), in any related STB proceedings, or any judicial review proceedings arising therefrom. 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 the Protective Order and who has not 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 Mass Coastal and CSXT shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. 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: _____