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SEC

SERVICE DATE – OCTOBER 1, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34797

NEW ENGLAND TRANSRAIL, LLC, d/b/a
WILMINGTON & WOBURN TERMINAL RAILWAY
—CONSTRUCTION, ACQUISITION AND OPERATION EXEMPTION—
IN WILMINGTON AND WOBURN, MA

MOTION FOR PROTECTIVE ORDER

Decided: September 28, 2007

By motion filed on August 9, 2007, New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway (NET), seeks a protective order under 49 CFR 1104.14 to protect the confidential information in the verified statements of two of NET's principals and shareholders, Jack Lyon and Carl Jones, which were submitted under seal in this proceeding. The verified statements were submitted as Exhibits J and K of the supplemental information filed by NET at the direction of the Board in its July 10, 2007 decision in this proceeding.¹

Good cause exists to grant the motion for protective order. NET submits that a protective order is necessary to protect the personal and business financial information of Mr. Lyon and Mr. Jones contained in their respective verified statements. However, NET's request that the confidential information be accessible only by the Board will be denied. NET has referenced no precedent where the Board has completely sealed material from other parties of record under comparable circumstances. Additionally, NET has failed to provide any reasonable justification for doing so. The confidential material will be available to the appropriate parties should the attached Undertaking be properly executed.

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 this proceeding and not for other purposes. Accordingly, the motion for protective order will be granted, and the verified statements of Mr. Lyon and Mr. Jones shall be subject to the Protective Order and Undertaking contained in the Appendix to this decision.

¹ See New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway—Construction, Acquisition and Operation Exemption—in Wilmington and Woburn, MA, STB Finance Docket No. 34797 (STB served July 10, 2007).

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 verified statements of Jack Lyon and Carl Jones submitted in STB Finance Docket No. 34797 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public unless the 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, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purpose of this Protective Order, “confidential information” means the financial information of Jack Lyon and Carl Jones furnished to the Board in Exhibits J and K of the supplemental filing submitted by New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway (NET) on August 9, 2007, in STB Financial Docket No. 34797.
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 prior delivery to NET 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 any other purpose. Confidential information shall not be provided or disclosed to any person or entity who is not an employee, agent, counsel or consultant of any party to this proceeding.
3. Any documents containing the confidential information must be destroyed, and notice of such destruction must be served on NET at the completion of this and any related Board proceedings, or any judicial review proceedings arising therefrom, whichever comes later.
4. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedures set forth at 49 CFR 1104.14.
5. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceedings 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 this Protective Order.
6. A party must file simultaneously a public version of any confidential submission it files with the Board.
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 New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Railway (NET) in STB Financial Docket No. 34797 and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any information obtained under this Undertaking, or to use or permit the use of any information learned as a result of receiving such information, for any purpose other than the preparation and preservation of evidence and argument in STB Financial Docket No. 34797 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any information obtained under this Protective Order to any person who is not also bound by the terms of this Protective 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 NET 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: _____

Address: _____

Position: _____

Affiliation: _____

Telephone: _____

Dated: _____