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SEC

SERVICE DATE - JUNE 4, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 33750

WISCONSIN CENTRAL LTD.  
-- TRACKAGE RIGHTS EXEMPTION --  
GRAND TRUNK WESTERN RAILROAD INCORPORATED

MOTION FOR PROTECTIVE ORDER

Decided: June 1, 1999

As reflected by a verified notice of exemption filed May 21, 1999, Grand Trunk Western Railroad Incorporated (GTW) has agreed to grant limited, non-exclusive overhead trackage rights to Wisconsin Central Ltd. (WC), over a segment of GTW's South Bend Division between GTW's connection to the Belt Railway of Chicago at GTW milepost 12.8 at Hayford, IL, and GTW milepost 25.1 at Harvey, IL, including the connections to the Illinois Central Railroad Company at Harvey, a total distance of approximately 12.3 miles. Included with the filing is a redacted version of a draft trackage rights agreement between WC and GTW. Concurrently, GTW, on behalf of WC, filed, under seal, a confidential version of the draft agreement and a motion for a protective order.<sup>1</sup>

Good cause exists to grant the motion for a protective order. According to the parties, the confidential version of the draft agreement contains proprietary commercial information such as compensation rates and liability provisions. They assert that public disclosure of these provisions of the agreement is not required for the disposition of the verified notice of exemption and that such disclosure could cause serious competitive injury. Issuance of the protective order is requested to ensure that the protected material will be used only in connection with this proceeding and not for any other business or commercial purpose. The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials submitted to the Board. Accordingly, the motion for a protective order will be granted.

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<sup>1</sup> A proposed protective order and undertaking were included with the motion.

It is ordered:

1. GTW's motion on behalf of WC for a protective order is granted, and the protective order and undertaking in the appendix to this decision are adopted.
2. The parties are directed to comply with the protective order and the confidential version of the draft trackage rights agreement will be kept under seal and not placed in the public docket or otherwise disclosed to the public.
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 purposes of this Protective Order, “confidential information” means compensation and liability provisions of the draft Trackage Rights Agreement between Wisconsin Central Ltd. (WC) and Grand Trunk Western Railroad Incorporated (GTW), filed May 21, 1999, in STB Finance Docket No. 33750.

2. The confidential information shall be used 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. The confidential information shall not be disclosed in any way or to any person without the written consent of WC and GTW or an order of the Board, except: to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order and agrees to be bound by its terms by signing the attached Undertaking prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

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 the 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 this 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

I, \_\_\_\_\_, have read the Protective Order governing the filing of confidential information by WC and GTW in STB Finance Docket No. 33750 and 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 STB Finance Docket No. 33750 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 by virtue of having 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 WC and GTW shall be entitled to specific performance and injunctive 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.

Dated:

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\_\_\_\_\_  
Name:

Position/Affiliation: