

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34703

ILLINOIS CENTRAL RAILROAD COMPANY — TRACKAGE RIGHTS
EXEMPTION — UNION PACIFIC RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: June 1, 2005

By motion filed May 19, 2005, Illinois Central Railroad Company (IC) seeks a protective order under 49 CFR 1104.14 to protect the confidential and commercially sensitive terms of the unredacted trackage rights agreement submitted under seal between IC and Union Pacific Railroad Company (UP). IC concurrently filed a notice of exemption under 49 CFR 1180.2(d)(7) for IC's acquisition from UP of the trackage rights described in the agreement and attached to the notice a redacted copy of the agreement.

Good cause exists to grant the motion for protective order. Issuance of the protective order is requested by IC to protect the commercially sensitive information contained in the trackage rights agreement.

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. Accordingly, the motion for protective order will be granted, and the unredacted trackage rights agreement shall be subject to the Protective Order and Undertaking contained in the Appendix to this decision.¹ Issuance of the protective order ensures that the railroads' confidential information will be used solely for this proceeding and not for other purposes.

It is ordered:

1. IC's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The unredacted trackage rights agreement submitted in STB Finance Docket No. 34703 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.

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

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 purposes of this Protective Order, “Confidential Information” means the Trackage Rights Agreement between Illinois Central Railroad Company (IC) and Union Pacific Railroad Company (UP) enclosed herein.
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to IC 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 IC 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 IC 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 Illinois Central Railroad Company (IC) in STB Finance Docket No. 34703, 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. 34703 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 IC 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: _____