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SERVICE DATE – OCTOBER 26, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35684

IOWA PACIFIC HOLDINGS, LLC AND PERMIAN BASIN RAILWAYS—CONTROL
EXEMPTION—CAPE RAIL, INC. AND MASSACHUSETTS COASTAL RAILROAD, LLC

MOTION FOR PROTECTIVE ORDER

Decided: October 25, 2012

On October 12, 2012, Iowa Pacific Holdings, LLC (Iowa Pacific) and Permian Basin Railways (Permian), jointly referred to as Applicants, filed a motion for protective order¹ under 49 C.F.R. § 1104.14 to protect material containing proprietary and commercially sensitive information that has been filed during this proceeding. Concurrently, Applicants, with Cape Rail, Inc. (Cape), P. Christopher Podgurski, Andrew Reardon, and Massachusetts Coastal Railroad, LLC (Mass Coastal), have filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) for Iowa Pacific and Permian to acquire indirect control of Mass Coastal through the purchase of an 80% stock interest in Mass Coastal's parent company, Cape.

Good cause exists to grant the motion for protective order, which conforms to the Board's rules at 49 C.F.R. § 1104.14, governing protective orders to maintain the confidentiality of materials submitted to the Board. Unrestricted disclosure of confidential, proprietary, or commercially sensitive information and data could cause serious competitive injury to the parties. 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 a protective order will be granted, and the Protective Order and Undertaking contained in the Appendix to this decision, as modified, will be adopted.

This action 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.

¹ A proposed Protective Order and Undertaking were included with the motion.

2. This decision is effective on the service date.

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

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Confidential Information” means the executed purchase and sale agreement and all supporting documents furnished by Iowa Pacific Holdings, Inc. and Permian Basin Railways, Inc., (collectively, IPH) in connection with IPH’s notice of exemption in the above-captioned matter.
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 delivery to IPH 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 IPH 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 IPH 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 C.F.R. § 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. Any party filing with the Board a Confidential pleading in this proceeding should simultaneously file a public version of the pleading.
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 MATERIAL

I, _____, have read the Protective Order governing the filing of Confidential Information by Iowa Pacific Holdings, LLC, and Permian Basin Railways, Inc. (collectively, IPH) in FD 35684, 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 FD 35684 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 IPH 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: _____