

29835  
SEC

SERVICE DATE - DECEMBER 14, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 14)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—  
ADVERSE DISCONTINUANCE APPLICATION—A LINE OF  
ARKANSAS AND MISSOURI RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: December 11, 1998

On November 30, 1998, Arkansas and Missouri Railroad Company (AMR) filed an application under 49 U.S.C. 10903 requesting that the Board find that the public convenience and necessity require and permit the discontinuance of trackage rights held by The Kansas City Southern Railroad Company (KCS) over an approximately 5.5-mile segment of rail line owned by AMR in Sebastian County, AR, and LeFlore County, OK.

On November 25, 1998, AMR filed a motion for a protective order to safeguard the confidentiality of certain information, including specified traffic data and information involving contractual terms between private parties, that was submitted in connection with the application. AMR asserts that the information is commercially sensitive and that its disclosure to the public could be competitively damaging. ARM has filed both a confidential version of its entire application under seal and a redacted version for public inspection. It also has submitted a draft protective order and undertaking with its motion.

AMR's motion conforms with the requirements of the Board's rule at 49 CFR 1104.14 governing requests for protective orders. Accordingly, the request for a protective order will be granted.

It is ordered:

1. The motion for a protective order is granted, and the protective order and confidentially undertaking in the Appendix are adopted. The specified traffic data and commercial information will be kept under seal and not placed in the public docket or otherwise disclosed to the public.

STB Docket No. AB-103 (Sub-No. 14)

2. 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, “person” or “people” includes any person or entity, including such people and entities which are not formal parties to this proceeding.

2. For purposes of this Protective Order, information designated as “Confidential,” as used herein, includes all such designated material, and all information contained in such material.

3. This Order shall apply to all information designated as “Confidential” (i) filed with the Board or any other administrative, legislative or judicial body in connection with this proceeding; or (ii) obtained by any person pursuant to discovery requests made in connection with this proceeding.

4. Any person filing documents with the Board or any other administrative, legislative or judicial body in connection with this proceeding or filing material responding to a discovery request in connection with this proceeding may designate as “Confidential” any information or portion thereof that it in good faith contends contains confidential, proprietary, or highly sensitive information.

5. If a person inadvertently fails to designate documents or other material as “Confidential,” it may make such a designation subsequently by notifying the appropriate people in writing. After receipt of such notification, such materials and information shall be treated as if they initially had been designated as “Confidential.”

6. A person at any time may request by letter that a producing person cancel the “Confidential” designation of any document (or portion thereof) or discovery response (or portion thereof). Such request should identify with particularity the designated documents (or portions thereof) or discovery responses (or portions thereof) it contends should not be treated as “Confidential,” provide the reasons therefore, and explicitly state that it is made pursuant to this paragraph. If such request is denied in whole or in part, the requesting person may file a motion with the Board to have the “Confidential” designation removed as to the information listed in the request. The documents (or portions thereof) or discovery responses (or portions thereof) shall be treated as designated, pending a ruling on such motion. The burden of establishing that such information should not be afforded the protections of this Order shall be on the person filing the motion.

7. Information designated as “Confidential” may be disclosed only to “Authorized Persons.” An “Authorized Person” is a person who has signed an undertaking, in the form set forth as Attachment 1 hereto, stating his or her identity, title, and employer, and that he or she has read this Order and agrees to abide by it, and who is:

- (a) an attorney actively involved in this proceeding on behalf of a person, or a legal assistant or a clerical employee under such attorney's supervision; or
- (b) a non-permanent employee who has been employed by any person to provide advice, expertise or assistance in connection with this proceeding, or an assistant or clerical

employee under such a non-permanent employee's supervision.

8. Storage, transmission, or communication of information designated as "Confidential" must be such as to reasonably ensure that "Confidential" information will not be disclosed, accidentally or otherwise, to non-authorized persons.

9. Information designated as "Confidential" may not be used for any purpose whatsoever other than the disposition of this proceeding.

10. All "Confidential" information filed with the Board, and any material filed with the Board that discloses "Confidential" information, shall be filed under seal and kept under seal until further order of the Board.

11. All "Confidential" information and materials containing such "Confidential" information shall, at the request of the person filing or producing such documents, be returned to such person at the termination of this proceeding, including all appeals; otherwise, after a reasonable amount of time has passed, all such documents shall be destroyed, except that a copy of such "Confidential" information and materials may be retained by an "Authorized Person" for his or her files.

12. The provisions of this Order that restrict the handling, communication and use of "Confidential" information shall continue to be binding after the termination of this proceeding, unless the Board or the person filing or producing such designated materials authorizes in writing alternative handling, communication or use of the information.

13. This Order shall not bar or otherwise restrict:

- (a) a person from opposing production of information under the Board's Rules of Practice;
- (b) an "Authorized Person" from making copies, abstracts, digests and analyses of "Confidential" information for use in connection with this proceeding, subject to the requirement that all such copies, abstracts, digests and analyses be treated as "Confidential" information and clearly marked as such;
- (c) an "Authorized Person" from rendering advice or opinions in connection with this proceeding to his or her client or employer based upon his or her examination of "Confidential" information, provided such person does not disclose the "Confidential" information itself to any non-Authorized Person;
- (d) a person from using any "Confidential information during hearings in this proceeding, subject to any further order of the Board; and
- (e) a person from applying to the Board at any time for additional protection.

14. If "Confidential" information in the possession of any person is subpoenaed by any administrative, legislative or judicial body, or any other person purporting to have authority to subpoena such information, the person to whom the subpoena is directed will not produce such information without first giving written notice (including the delivery of a copy of the subpoena) to

the person who has filed or produced such information, or the attorneys for such person. If a subpoena purports to require production of such “Confidential” information on less than four (4) business days’ notice, the person to whom the subpoena is directed shall give immediate notice by telephone of the receipt of such subpoena to the person who has filed or produced such information, or the attorneys for such person.

**ATTACHMENT 1**

**UNDERTAKING**

I hereby attest to my understanding that information or documents designated “Confidential,” including the information contained in documents so designated, are provided to me pursuant to the terms, conditions and restrictions of the attached Protective Order entered in STB Docket No. AB-103 (Sub-No. 14), The Kansas City Southern Railway Company—Adverse Discontinuance Application—A Line of Arkansas and Missouri Railroad Company; that I have been given a copy of and have read the aforementioned Protective Order and, if I am not an attorney, have had its meaning and effect explained to me by an attorney in this case; and that I hereby agree to be bound by it and its terms. I recognize that I may be held personally liable for any damages that the person furnishing information may suffer as a result of my disclosure or use of any Confidential information protected by this Order.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

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

Title: \_\_\_\_\_

Employer: \_\_\_\_\_