

28340  
SEC

SERVICE DATE - SEPTEMBER 19, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-497 (Sub-No. 2X)

MINNESOTA NORTHERN RAILROAD, INC.--ABANDONMENT EXEMPTION--  
BETWEEN REDLAND JUNCTION AND FERTILE, IN POLK COUNTY, MN

PETITION FOR PROTECTIVE ORDER

Decided: September 18, 1997

On July 29, 1997, Minnesota Northern Railroad, Inc., (MNN) filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 20.6-mile line of railroad known as the Redland Junction-Fertile line, extending from milepost 65.7 near Redland Junction to milepost 45.1 near Fertile, in Polk County, MN. A notice instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b) was served and published in the Federal Register on August 18, 1997 [62 FR 44031]. The Minnesota Department of Transportation has filed a public use request under 49 U.S.C. 10905.

By joint petition filed on September 15, 1997, MNN, Fertile Grain, Inc. (Fertile Grain) and Farmers Co-op Company (Farmers Co-op) request that a protective order be entered to protect confidential and propriety information in materials sought by discovery, including commercially sensitive and shipper-specific traffic data. After discovery is completed, the parties have agreed that Fertile Grain and Farmers Co-op will file their comments by September 25, 1997, and MNN will reply by October 10, 1997.

The request for a protective order will be granted. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause injury to the parties. Issuance of the requested protective order ensures that such information will be used solely for purposes of this proceeding and not for any other use. Because these parties have agreed to a schedule for filing pleadings and the schedule appears to provide sufficient time for issuance of the Board's decision by November 14, 1997, the parties' proposed schedule is adopted and their pleadings are due on the agreed upon dates.

It is ordered:

1. The request for a protective order is granted, and the parties to this proceeding must comply with the protective order in the Appendix.
2. The proposed procedural schedule is granted. Comments are due September 25, 1997, and MNN's reply is due October 10, 1997.
3. This decision is effective on the service date.

STB Docket No. AB-497 (Sub-No. 2X)

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

APPENDIX

**PROTECTIVE ORDER**

1. To the extent that material reflecting shipper-specific traffic data, other traffic data, or other confidential or proprietary information are produced pursuant to a request for discovery by any party to this proceeding, or are submitted in pleadings, such materials must be treated as confidential. Such materials, any copies, and any data derived therefrom:

(a) Shall be designated and stamped as “CONFIDENTIAL” and shall be used solely for the purpose of this proceeding, and any judicial review proceeding arising therefrom, and not for any other business, commercial or competitive purpose.

(b) Shall not be disclosed in any way or to any person without the written consent of the party producing the materials or an order of the Board, except to employees, counsel or agents of the party requesting such materials, solely for use in connection with this proceeding, and any judicial review proceeding arising therefrom, provided that such employee, counsel or agent has been given and has read a copy of this Protective Order and agrees to be bound by its terms prior to receiving access to such materials.

(c) If produced through discovery, must be destroyed by the requesting party, its employees, counsel and agents, and notice of such destruction served on the Board and the party producing the materials, at the completion of this proceeding and any judicial review proceeding arising therefrom. However, outside counsel for a party are permitted to retain file copies of all pleadings filed with the Board.

(d) If contained in any pleading filed with the Board shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside “Confidential Materials Subject to Protective Order.” See 49 CFR 1104.14.

2. Any party producing material in discovery to another party to this proceeding, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data or other competitively sensitive information, as “HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY.” If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board. Material that is so designated shall not be disclosed except to outside counsel or outside consultants of the party requesting such materials, solely for use on connection with this proceeding, and any judicial review proceeding arising therefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order and agree to be bound by its terms prior to receiving access to such materials. Material designated as “HIGHLY

CONFIDENTIAL” and produced in discovery under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph 1.

3. If any party intends to use “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL” material at hearings in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits, or other documents setting forth or revealing such “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL” material to the Board or the reviewing court, with a written request to the Board or the court to restrict access to the portion of the record of briefs reflecting discussion of such “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL” material in accordance with this Protective Order.

4. To the extent that materials reflecting shipper-specific traffic data, other traffic data or other confidential or proprietary information are produced by a party in this or any related proceedings and held and used by the receiving person in compliance with paragraph 1 or 2 above, such production, disclosure and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of U.S.C. 11904.

5. 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 served on September 19, 1997, governing the production of confidential documents in STB Docket No. AB-497 (Sub-No. 2X), 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 purposes other than the preparation and presentation of evidence and argument in STB Docket No. AB-497 (Sub-No. 2X) 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 the Order and has not 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 parties producing confidential documents 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: \_\_\_\_\_

UNDERTAKING  
HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for \_\_\_\_\_, for whom I am acting in this proceeding, I have read the Protective Order served on September 19, 1997, governing the production of confidential documents in STB Docket No. AB-497 (Sub-No. 2X), understand the same, and agree to be bound by its terms. I also understand and agree that, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY," I will limit my use of those documents and the information they contain to this proceeding and any judicial review thereof, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, that at the conclusion of this proceeding, I will promptly return or destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me to counsel for the originating party, provided, however that outside counsel may retain file copies of pleadings filed with the Board. I further understand that I must destroy all other notes or other documents containing such highly confidential information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents 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.

\_\_\_\_\_  
OUTSIDE [COUNSEL] [CONSULTANT]

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