

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33960

THE CENTRAL ILLINOIS RAILROAD COMPANY—LEASE AND OPERATION  
EXEMPTION—LINES OF THE BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY AT CHICAGO, COOK COUNTY, IL

Decided: March 1, 2001

By decision served January 30, 2001, the Secretary of the Surface Transportation Board granted a motion for protective order filed jointly by The Central Illinois Railroad Company (CIRR) and The Burlington Northern and Santa Fe Railway Company (BNSF). The protective order relates to a lease and operation agreement between CIRR and BNSF.<sup>1</sup> By appeal filed February 1, 2001, UTU-IL contends that the Secretary's decision should be reversed and that the motion for protective order should be denied in part. On February 12, 2001, CIRR and BNSF filed a joint reply in opposition to UTU-IL's appeal.

UTU-IL argues that the Secretary's decision materially erred by failing to consider UTU-IL's reply, filed December 26, 2000, in opposition to the motion for protective order. According to UTU-IL, the basic rental charges to be paid by CIRR under the agreement are "bogus" and unrealistic. UTU-IL says that public disclosure of the full charges is necessary to assist it in establishing its case for revocation of CIRR's exemption. In its December 26 reply, UTU-IL indicates that, although it does not believe that additional discovery will be necessary, unforeseen events may require it to pursue discovery.

The Secretary's failure to consider UTU-IL's reply was inadvertent. UTU-IL is entitled to have its objections to the protective order considered and we are doing so here. In previous cases, when considering opposition to a protective order or requests to make public information filed under seal, we have focused on whether the sought declassification would assist a party in making its case. We resolve any doubts as to the need for confidentiality in favor of protecting the asserted confidentiality unless the opposing party can show that the removal of the

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<sup>1</sup> On November 16, 2000, CIRR filed a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 5.9 miles of BNSF main line track and 12.47 miles of sidetrack in the vicinity of BNSF's Western Avenue Yard in Chicago, Cook County, IL. By decision served November 22, 2000, the Chairman of the Surface Transportation Board denied a petition to stay the transaction filed by Joseph C. Szabo on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL). By decision served November 30, 2000, the Board denied UTU-IL's petition to reconsider the Chairman's decision.

designation is necessary for it to make its case, to argue an appeal adequately, or to satisfy a statutory goal.<sup>2</sup>

Here, UTU-IL contends that public disclosure of CIRR's full rental charges is necessary to assist it in establishing a case for revoking the exemption. However, by merely signing the protective order's undertaking, counsel has access to the information under seal and may refer to it (directly in confidential pleadings or indirectly in public pleadings) in any request to revoke CIRR's exemption. The information already is in the record and we can consider it as we deem fit. Appellant does not show that public disclosure is necessary nor that it would suffer any injury by our maintaining confidentiality. Accordingly, the request for public disclosure will be denied.

It is ordered:

1. UTU-IL's appeal of the decision by the Secretary is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary

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<sup>2</sup> See Arizona Public Service Company and Pacificorp. v. The Atchison, Topeka and Santa Fe Railway Company, No. 41185 (STB served July 29, 1997), slip op. at 4-5 (counsel does not need to share confidential information with carrier's management to make its case); Lower Colorado River Authority and City of Austin, TX v. Missouri Kansas Texas Railroad Company, No. 40155 (ICC served May 24, 1988), slip op. at 1 (movant failed to demonstrate why it is essential for employees to review the confidential documents in the preparation of reply).