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SERVICE DATE – AUGUST 18, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35537

GENESEE & WYOMING INC.—ACQUISITION OF CONTROL EXEMPTION—ARIZONA
EASTERN RAILWAY COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: August 17, 2011

By motion filed on August 2, 2011, Genesee & Wyoming Inc. (GWI), seeks a protective order under 49 C.F.R. § 1104.14(b) to protect the confidential and commercially sensitive terms and conditions of the unredacted Stock Purchase Agreement (Agreement) between GWI and Arizona Eastern Railway Company (AZER), Permian Basin Railways, Inc. (Permian Basin), and Iowa Pacific Holdings, LLC submitted under seal in this proceeding.¹ Included with the motion are a proposed protective order and undertaking.

GWI submits that a protective order is necessary because the Agreement contains commercially sensitive and confidential information that could cause harm to the parties if those terms were made public.

Good cause exists to grant the motion for protective order. The motion conforms with the Board's rules at 49 C.F.R. § 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. 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 protective order will be granted, and the Agreement shall be subject to the Protective Order and Undertaking, as modified in the Appendix to this decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ Concurrently, GWI filed a notice of exemption under 49 C.F.R. § 1180.2(d)(2) to obtain control of AZER through the purchase of all of AZER's stock from Permian Basin and attached to the notice a redacted version of the Agreement.

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.
2. The unredacted Agreement submitted in Docket No. FD 35537 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.
3. This decision is effective on its 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 unredacted Stock Purchase Agreement between Genesee & Wyoming Inc. (“GWI”) Arizona Eastern Railway Company, Permian Basin Railways, Inc. and Iowa Pacific Holdings, LLC filed under seal on August 2, 2011, in Docket No. FD 35537.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to GWI 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 (together, “Proceedings”), and not for any other business, commercial, or competitive purpose.

3. Confidential Information may not be disclosed in any way, directly or indirectly, to any person or entity except an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at the end of this Protective Order.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on GWI at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes last.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedures 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. A person must file simultaneously a public version of any confidential submission it files with the Board.

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.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of Confidential Information by Genesee & Wyoming Inc. (“GWI”), in Docket No. FD 35537, 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 presentation of evidence and argument in Docket No. FD 35537, any related Board proceedings, or any judicial review proceeding 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 Protective 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 GWI 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.

Signed: _____

Position: _____

Affiliation: _____

Dated: _____