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SEC

SERVICE DATE - AUGUST 30, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33913

MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY—TRACKAGE RIGHTS
EXEMPTION—THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY, AND
SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY

MOTION FOR PROTECTIVE ORDER

Decided: August 29, 2000

By motion filed August 18, 2000, Minnesota, Dakota & Western Railway Company (MDW) seeks a protective order under 49 CFR 1104.14 for Trackage Rights Agreements (agreements) submitted under seal (unredacted version)¹ in connection with its verified notice of exemption filed under 49 CFR 1180.2(d)(7) (notice) in this proceeding.² MDW's notice arises out of the assignment by The Burlington Northern and Santa Fe Railway Company (BNSF) to MDW of overhead trackage rights granted to BNSF by the Duluth, Winnipeg and Pacific Railway. Additionally, the notice covers the granting of trackage rights by Duluth, Missabe and Iron Range Railway Company to MDW, and the granting of trackage rights by Soo Line Railroad Company d/b/a Canadian Pacific Railway to MDW. The notice also included redacted versions of the agreements.

Good cause exists to grant the motion. According to MDW, the confidential unredacted versions of the agreements contain proprietary commercial information relating to fees and charges.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, subject to the protective order and undertaking contained in the Appendix to this decision. Issuance of the protective order ensures

¹ A proposed protective order and undertaking was included with the motion.

² Although MDW's motion indicates that the notice was submitted contemporaneously with its motion, the official filing date for the notice was not until August 21, 2000, when MDW corrected its initially deficient filing.

that the railroads' confidential information will be used solely for this proceeding and not for other purposes.

It is ordered:

1. MDW's motion for a protective order is granted. The unredacted confidential versions of the agreements submitted in STB Finance Docket No. 33913 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.

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 the purposes of this Protective Order, “confidential information” means Section 4.3 to the Agreement for Assignment of Certain Trackage Rights between The Burlington Northern and Santa Fe Railway Company and Minnesota, Dakota & Western Railway Company (MDW), Section 5.A of the Trackage Rights Agreement between the Duluth, Missabe and Iron Range Railway Company and MDW, and Section 3.1 of the Trackage Rights Agreement between Soo Line Railroad Company and MDW, all filed August 21, 2000, in STB Finance Docket No. 33913.

2. The confidential information shall be used 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 competitive purpose.

3. The confidential information shall not be disclosed in any way or to any person without the written consent of MDW or an order of the Board, except: to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order, agrees to be bound by its terms by signing the following undertaking and submits a copy of same to counsel for MDW, named in the Notice of Exemption filed in STB Finance Docket No. 33913 prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board 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 CFR 1104.14.

6. If any party intends to use the 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 this Protective Order.

7. 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

I, _____, have read the Protective Order governing the filing of confidential information by MDW in STB Finance Docket No. 33913 and 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 STB Finance Docket No. 33913 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 MDW and the other party to said Agreement(s) 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:

Signed

Name

Position/Affiliation: