

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35115

ARIZONA EASTERN RAILWAY, INC.—TRACKAGE RIGHTS EXEMPTION—
UNION PACIFIC RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: January 23, 2008

By motion filed on January 11, 2008, Arizona Eastern Railway, Inc. (AZER) seeks a protective order under 49 CFR 1104.14(b) to protect confidential and commercially sensitive terms and conditions of an unredacted trackage rights agreement (the Agreement) between AZER and Union Pacific Railroad Company (UP) and all supporting documents submitted under seal in this proceeding. Concurrently, AZER filed a notice of exemption under 49 CFR 1180.2(d)(7) for AZER's acquisition from UP of the trackage rights described in the Agreement, and attached to the notice redacted and unredacted versions of the Agreement.

Good cause exists to grant the motion for protective order. AZER submits that a protective order is necessary because the Agreement contains highly sensitive and confidential information that could harm AZER if those terms were made public.

The motion conforms with the Board's rules at 49 CFR 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 unredacted Agreement shall be subject to the Protective Order and Undertaking contained in the Appendix to this decision.¹

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

It is ordered:

1. AZER's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.

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

2. The unredacted Agreement submitted in STB Finance Docket No. 35115 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate 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, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Confidential Information” means the trackage rights agreement and all supporting documents furnished by Arizona Eastern Railway, Inc., (AZER) in connection with AZER’s notice of exemption in the above-captioned matter.

2. Confidential Information shall be provided to any employee, agent, counsel, or consultant of any party to this proceeding only pursuant to this Protective Order and only upon execution and delivery to AZER 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, and not for any other business, commercial, or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of AZER or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on AZER 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 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. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.

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 Arizona Eastern Railway, Inc. (AZER) in STB Finance Docket No. 35115, 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. 35115 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 AZER shall be entitled to specific performance and injunctive and/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: _____