

28865
SEC

SERVICE DATE - FEBRUARY 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-459 (Sub-No. 2X)

CENTRAL RAILROAD COMPANY OF INDIANA--ABANDONMENT EXEMPTION--
IN DEARBORN, DECATUR, FRANKLIN, RIPLEY, AND SHELBY COUNTIES, IN

MOTION FOR PROTECTIVE ORDER

Decided: January 30, 1998

On January 14, 1998, Central Railroad Company of Indiana (CIND) filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Shelbyville Line, extending from approximately milepost 23.0, near Thatcher station and the town of Greendale, to approximately milepost 81.0, near Shelbyville, a distance of approximately 58 miles in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN.

Concurrently with its petition, CIND filed a motion for protective order. CIND requests that the Board maintain as confidential certain information submitted in connection with its petition for exemption, including, for example, annual summaries of CIND's financial results. CIND believes that unrestricted disclosure of commercially sensitive information, such as details regarding its present and previous financial results, could be competitively damaging to it. The railroad asserts that the sensitive information at issue need not be made public for proper disposition of the proceeding.

On January 22, 1998, certain entities who ship goods over the line or who otherwise have an interest in the proceeding, and who intend to oppose the petition (hereafter "protestants"), filed a reply in opposition to the motion.¹ Protestants complain that CIND seeks an overly broad license to keep secret from public scrutiny a wide range of unspecified data. They argue that the financial data that CIND seeks to keep confidential is relevant to the issues presented and should be made available to protestants. They also contend that provisions of the railroad's proposed protective order are unduly burdensome or overly stringent, as they would force some protestants to retain outside professionals to review protected data, and these professionals would be barred from discussing the data with them.

The motion for protective order will be granted in part. Protestants are correct that the request lacks specificity. Nevertheless, the only matter that CIND has segregated as confidential is

¹ These entities are the complainants in a pending related proceeding in STB Finance Docket No. 33386, Decatur County Commissioners, et al. v. Central Railroad Company of Indiana (the complaint proceeding).

its Exhibit H, containing annual summaries of financial results (consolidated balance sheets), and section F of Part I of its petition, which discusses that exhibit. As such, the coverage of the protective order can be limited accordingly. Protestants are incorrect regarding the relevance of this matter to the issues presented. While the railroad's overall financial condition might be relevant to issues presented in the related complaint proceeding, it does not appear relevant here. In an abandonment proceeding, the Board's focus is on costs and revenues associated with the operation of the subject line. As a railroad is not required to cross-subsidize an unprofitable line, the railroad's overall financial condition is not an issue.

There is, however, merit in protestants' arguments that the proposed protective order contains some provisions that appear overly stringent. Accordingly, the Board will substitute for CIND's proposed order an order of the type it customarily issues.

It is ordered:

1. The motion for a protective order is granted in part. CIND's balance sheets shall be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public or any participants in this proceeding, unless otherwise ordered by the Board. The parties to this proceeding must comply with the protective order set forth in the attached appendix.

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 information contained in the consolidated balance sheets (and references to that information) submitted by Central Railroad Company of Indiana (CIND) in its abandonment exemption petition filed January 14, 1998.

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 other competitive purpose.

3. The confidential information shall not be disclosed in any way or to any person without the written consent of CIND or without 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 and agrees to be bound by its terms by signing the attached Undertaking 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 confidential information is retained by the Board, it shall, in order to be kept confidential, be treated in accordance with the procedure set forth at 49 CFR 1104.14. See 48 FR 44826-27 (1983).

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 this 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 CIND in STB Docket No. AB-459 (Sub-No. 2X) 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

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the preparation and preservation of evidence and argument in STB Docket No. AB-459 (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 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 CIND 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.

(Signature)

Dated: _____

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(Signature)

Dated: _____