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SEC

SERVICE DATE – NOVEMBER 13, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35085

KANSAS CITY TRANSPORTATION COMPANY LLC—LEASE AND OPERATION
EXEMPTION—KANSAS CITY TERMINAL RAILWAY COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: November 9, 2007

By motion filed on October 19, 2007, Kansas City Transportation Company LLC (KCTL) seeks a protective order under 49 CFR 1104.14(b) to protect the confidential and commercially sensitive terms and conditions of the unredacted Service Agreement (the Agreement) between KCTL and Kaw River Railroad, Inc. (Kaw River), submitted under seal in this proceeding. Concurrently, KCTL filed a notice of exemption under 49 CFR 1150.41 to lease from Kansas City Terminal Railway Company and to operate over approximately 5.5 miles of rail line, and attached to the notice a redacted version of the Agreement.¹

Good cause exists to grant the motion for protective order. KCTL submits that a protective order is necessary because the Agreement contains commercially sensitive and confidential information that could cause competitive or other harm to KCTL and Kaw River 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 Agreement shall be subject to the Protective Order and Undertaking as modified in the Appendix to this decision.²

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

It is ordered:

¹ This proceeding is related to STB Finance Docket No. 35084, Kansas City Terminal Railway Company—Acquisition Exemption—BNSF Railway Company, in which Kansas City Terminal Railway Company, the owner of KCTL, seeks to acquire by purchase from BNSF Railway Company the line at issue here.

² A proposed protective order and undertaking were included with the motion.

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 STB Finance Docket No. 35085 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, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Confidential Information” means the Agreement between Kansas City Transportation Company LLC (KCTL) and Kaw River Railroad, Inc. (Kaw River), and the term “person” includes any person or entity, including persons or entities that are not formal parties to this proceeding. “Proceeding” as used herein means that proceeding concerning the transaction in STB Finance Docket No. 35085.

2. Confidential Information shall be provided to any person only pursuant to this Protective Order and only upon execution and delivery to KCTL 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 purposes.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of KCTL or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, unless 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 KCTL at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes later.

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 CFR 1104.14.

6. If any person 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 person 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 persons must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any person 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 Kansas City Transportation Company LLC (KCTL or User) in STB Finance Docket No. 35085, 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. 35085, 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 Protective 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 User 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.

Dated: _____

Signature: _____

Position: _____

Affiliation: _____