

33900
SEC

SERVICE DATE - LATE RELEASE AUGUST 14, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34388

UNION PACIFIC RAILROAD COMPANY—TRACKAGE RIGHTS EXEMPTION—OMAHA
PUBLIC POWER DISTRICT

MOTION FOR PROTECTIVE ORDER

Decided: August 14, 2003

By motion filed on August 4, 2003, Union Pacific Railroad Company (UP) seeks a protective order under 49 CFR 1104.14 for the compensation terms of the unredacted trackage rights agreement submitted under seal between UP and Omaha Public Power District (OPPD).¹ Also, on August 4, 2003, UP filed a notice of exemption under 49 CFR 1180.2(d)(7) for UP's acquisition from OPPD of the trackage rights described in the agreement and attached to the notice a redacted copy of the agreement.

Good cause exists to grant the motion for protective order. UP submits that the trackage rights agreement contains commercially sensitive compensation terms that could harm UP if they were made public.

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, and the unredacted trackage rights agreement shall be subject to the Protective Order and Undertaking contained in the Appendix to this decision. Issuance of the protective order ensures that the railroad's confidential information will be used solely for this proceeding and not for other purposes.

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.

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

2. The unredacted trackage rights agreement submitted in STB Finance Docket No. 34388 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 the purposes of this Protective Order, “confidential information” means the compensation provisions of the trackage rights agreement of Union Pacific Railroad Company (UP) and Omaha Public Power District (OPPD) dated July 25, 2003.

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 UP and OPPD 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 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.

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 Union Pacific Railroad Company (UP) and Omaha Public Power District (OPPD) in STB Finance Docket No. 34388 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. 34388 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. At the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy any copies of such designated documents obtained or made by me.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that UP and OPPD 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: _____

Signature