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SEC

SERVICE DATE - JUNE 21, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33751

GRAND TRUNK WESTERN RAILROAD INCORPORATED
AND THE BALTIMORE AND OHIO CHICAGO TERMINAL
RAILROAD COMPANY--JOINT RELOCATION PROJECT
EXEMPTION--HARVEY, ILLINOIS

MOTION FOR PROTECTIVE ORDER

Decided: June 18, 1999

By motion filed June 11, 1999, Grand Trunk Western Railroad Incorporated (GTW), and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT), seek a protective order under 49 CFR 1104.14 for a Trackage Rights Agreement and a Supplement to Interlocking Agreement between GTW and B&OCT. The carriers concurrently filed a notice of exemption for the joint relocation project described in these agreements.¹

Good cause exists to grant the motion for protective order. Railroads filing a notice for exemption for a joint relocation are required under 49 CFR 1180.4(g)(1) to submit certain information, including a description of the transaction, the significant terms and conditions, as well as the consideration to be paid. See 49 CFR 1180.6(a)(7)(i). GTW and B&OCT submitted the trackage rights agreement and the supplement to interlocking agreement under seal stating that they contain proprietary commercial information that if disclosed could be competitively damaging. The carriers also assert that public disclosure of the sensitive provisions is not necessary for the disposition of the notice of exemption.

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 will be granted, subject to the Protective Order and Undertakings contained in the Appendix. Issuance of a protective order will ensure that the railroads' confidential information will be used solely for this proceeding and not for other purposes.

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

It is ordered:

1. The motion of GTW and B&OTC for a protective order is granted. The trackage rights agreement submitted in STB Finance Docket No. 33751 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 the 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 compensation and liability provisions of the Trackage Rights Agreement and Supplement to Interlocking Agreement between Grand Trunk Western Railroad Incorporated (GTW) and The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT), filed June 11, 1999, in STB Finance Docket No. 33751.

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 GTW and B&OCT 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 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 GTW and B&OCT in STB Finance Docket No. 33751 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. 33751 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 GTW and B&OCT 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:

Name:

Position/Affiliation: