

SERVICE DATE - FEBRUARY 19, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33326¹

I&M RAIL LINK, LLC--ACQUISITION AND OPERATION EXEMPTION--
CERTAIN LINES OF SOO LINE RAILROAD COMPANY
D/B/A CANADIAN PACIFIC RAILWAY

STB Finance Docket No. 33327

DENNIS WASHINGTON, ET AL.--CONTINUANCE IN CONTROL
EXEMPTION--I&M RAIL LINK, LLC

Decided: February 12, 1997

On February 5, 1997, I&M Rail Link, LLC and Dennis Washington, et al. (petitioners) asked the Board to grant a protective order to preserve the confidentiality of certain information that may be submitted in their respective exemption proceedings.² Petitioners state that unrestricted disclosure could be competitively damaging to the parties and is not necessary for the Board to reach a decision on the merits of the proceedings.

The request will be granted.³ A similar protective order has been granted in petitioners' related proceeding in Montana Rail Link, Inc.--Acquisition of Control Exemption--I&M Rail Link, LLC, STB Finance Docket No. 33328 (STB served Feb. 6, 1997). Issuance of the protective order ensures that petitioners' confidential, proprietary or commercially sensitive information will be used solely for these proceedings and not for other purposes.

It is ordered:

1. Petitioners' motion is granted. The parties to this proceeding must comply with the protective order in the Appendix.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² Pursuant to petitions to stay and revoke the exemptions by the United Transportation Union and the City of Ottumwa, IA, the effective date of the exemption in STB Finance Docket No. 33326 has been stayed until March 6, 1997. The requests to revoke the exemptions are pending before the Board.

³ Issuance of this protective order moots Ottumwa's motion to compel discovery filed February 7, 1997, in STB Finance Docket No. 33326.

STB Finance Docket No. 33326, et al.

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order "Confidential Information" as used herein includes all such designated documentary or other material, and all information contained in such documentary or other material.

2. This Order shall apply to all Confidential Information filed with the Surface Transportation Board (Board) or any other administrative, legislative or judicial body in these proceedings or obtained by any party to these proceedings pursuant to discovery requests made, whether directed to another party or to a person not a party to these proceedings.

3. Any party or person filing material responding to a discovery request may designate as "Confidential Information" any portion thereof that it in good faith contends contains confidential, proprietary, or highly sensitive information.

4. Responses to discovery requests may be designated as "Confidential Information" as follows:

(a) Responses or portions of responses to interrogatories and requests to admit may be designated by stamping or printing "Confidential" or "Confidential Information Subject to Protective Order" on the front thereof and, if only portions of the responses are to be so designated, clearly marking the confidential portions.

(b) Prior to the production of copies to the requesting party, documents may be designated by stamping or printing "Confidential Document Subject to Protective Order" on each page of the confidential document.

5. If a party or person inadvertently fails to designate discovery or other material as "Confidential Information" in a timely fashion as provided herein, it may make such a designation subsequently by notifying the parties in writing. After receipt of such notification, such materials and information shall be treated as if they had been designated in a timely fashion.

6. A party at any time may request by letter that a producing party or person cancel the "Confidential Information" designation of any document or discovery response or portion thereof. Such request should identify with particularity the designated documents or responses it contends should not be treated as Confidential Information, provide the reasons therefore, and explicitly state that it is made pursuant to this paragraph. Such request shall be deemed granted ten (10) days after receipt of the request, unless the producing party or person, prior to the end of the ten (10) day period, sends a written denial of the request. If such request is denied in whole or in part, the requesting party may file a motion with the Board to have the Confidential Information designation removed as to the discovery responses listed in the request. The discovery responses or documents shall be treated as designated pending a ruling on such motion. The burden of establishing that the

responses should not be afforded the protections of this order shall be on the moving party.

7. Confidential Information may be disclosed only to "Authorized Persons." An "Authorized Person" is a person who has signed an undertaking, in the form set forth as Attachment 1 hereto, stating his or her identity, title, and employer, and that he or she has read the Order and agrees to abide by it, an

(a) an attorney actively involved in these proceedings on behalf of a party or a legal assistant or a clerical employee under such attorney's supervision; or

(b) a person who is not a permanent employee of a party who has been employed by any of the parties to provide advice, expertise or assistance in these proceedings, or an assistant or clerical employee under such person's supervision.

8. Storage, transmission, or communication of Confidential Information must be such as to reasonably ensure that the Confidential Information will not be disclosed, accidentally or otherwise, to non-authorized persons.

9. Confidential Information may not be used for any purpose whatsoever other than the litigation of this proceeding.

10. All Confidential Information filed with the Board, and any pleading, motion, or other paper filed with the Board that discloses Confidential Information shall be filed under seal and kept under seal until further order of this Board.

11. All documents containing Confidential Information shall, at the option of the party/person filing or producing such documents, be destroyed or returned to such party/person at the termination of these proceedings, including all appeals.

12. The provisions of this Order that restrict the handling, communication and use of Confidential Information shall continue to be binding after the termination of these proceedings unless the Board or the party/person filing or producing such designated documents authorizes in writing alternative handling, communication or use of the information.

13. This Order shall not bar or otherwise restrict:

(a) a party from opposing production of information under the Board's Rules of Practice;

(b) an Authorized Person from making copies, abstracts, digests and analyses of Confidential Information for use in connection with these proceedings, subject to the requirement that all such copies, abstracts, digests and analyses be treated as Confidential Information and clearly marked as such;

(c) an Authorized Person from rendering advice or opinions with respect to these proceedings to his or her client or employer based upon his or her examination of Confidential Information as long as such person does not disclose the Confidential Information itself to a person not authorized

by this Order to have access to the Confidential Information;

(d) a party from using any Confidential Information during hearings in these proceedings, subject to any further order of the Board; and

(e) a party or person from applying to the Board at any time for additional protection.

14. If Confidential Information in the possession of any party is subpoenaed by any administrative, legislative or judicial body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed will not produce such information without first giving written notice (including the delivery of a copy thereof) to the party/person who has filed or produced such information, or the attorneys for such party/person. If a subpoena purports to require production of such Confidential Information on less than four (4) business days' notice, the party to whom the subpoena is directed shall give immediate notice by telephone of the receipt of such subpoena.

ATTACHMENT 1

UNDERTAKING

I hereby attest to my understanding that information or documents designated "Confidential Information," including the information contained in documents so designated, are provided to me pursuant to the terms, conditions and restrictions of the Protective Order entered in STB Finance Docket No. 33326, I&M Rail Link, LLC--Acquisition and Operation Exemption--Certain Lines of Soo Line Railroad Co. d/b/a/ Canadian Pacific Ry., and STB Finance Docket No. 33327, Dennis Washington, et al.--Continuance in Control Exemption--I&M Rail Link, LLC; that I have been given a copy of and have read the aforementioned Protective Order and have had its meaning and effect explained to me by the attorneys in this case; and that I hereby agree to be bound by it and its terms. I recognize that I may be personally liable for any damages that the party furnishing information may suffer as a result of my disclosure or use of any Confidential Information protected by the Order.

Dated: _____

Signed: _____

Name: _____

Title: _____

Employer: _____