

25402
SEC

SERVICE DATE - APRIL 3, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-441 (Sub-No. 2X)

SWKR OPERATING CO.--ABANDONMENT EXEMPTION--
IN COCHISE COUNTY, AZ

MOTION FOR PROTECTIVE ORDER

Decided: April 2, 1997

By motion filed March 31, 1997, Chemical Lime Company (CLC), requests that the Board enter a protective order in this proceeding.¹ CLC requests that the Board maintain as confidential financial information a financial statement prepared by Dun & Bradstreet (D&B Report) that CLC submitted in support of its OFA filing.

CLC states that it believes that, if the D&B Report were made public, its competitors would be benefitted and it would be harmed in developing future business. Also, CLC states that the information contained in the D&B Report could harm it in its negotiations with existing and prospective customers.

The motion conforms with the Board's rule at 49 CFR 1104.14 governing requests for protective orders. Accordingly, the motion for a protective order will be granted.

It is ordered:

1. The motion for a protective order is granted. CLC's D&B Report 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

¹ The motion for a protective order was simultaneously filed with a formal offer of financial assistance (OFA) to subsidize continued rail service over approximately 41.5 miles of rail line in Cochise County.

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "confidential information" means information contained in a financial statement prepared by Dun & Bradstreet (D&B Report), on behalf of Chemical Lime Company.

2. This proceeding consists of STB Docket No. AB-441 (Sub-No. 2X), and any judicial review proceedings arising from STB Docket No. AB-441 (Sub-No. 2X).

3. The D&B Report 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.

4. The D&B Report shall not be disclosed in any way or to any person without the written consent of Chemical Lime Company or an order of the Board, except: to outside counsel or consultants of parties to this proceeding, 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.

5. Any documents containing the D&B Report 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.

6. If the D&B Report 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).

7. If any party intends to use the D&B Report 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.

8. 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 Chemical Lime Company in STB Docket No. AB-441 (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 the preparation and preservation of evidence and argument in STB Docket No. AB-441 (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, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "confidential," other than file copies, kept by counsel, of pleadings and other documents filed with the Board.

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