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SERVICE DATE – OCTOBER 23, 2015

SURFACE TRANSPORTATION BOARD

Docket No. FD 35966

MARTIN MARIETTA MATERIALS, INC.—ACQUISITION OF CONTROL EXEMPTION—
ROCK & RAIL, INC.

MOTION FOR PROTECTIVE ORDER

Decided: October 23, 2015

On October 9, 2015, Martin Marietta Materials, Inc. (MMM), filed a motion for protective order under 49 C.F.R. § 1104.14 to protect the confidential and commercially sensitive information contained in the Letter of Intent (LOI) between MMM and Rock & Rail, Inc. (RRI), which MMM filed under seal in this proceeding. Included with the motion are a proposed protective order and undertaking. MMM argues that a protective order is necessary because the LOI contains information that could cause competitive injury to MMM if the terms were made public.

Good cause exists to grant the motion, which conforms to the Board's rules at 49 C.F.R. § 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 LOI shall be subject to the Protective Order and Undertaking, as modified in the Appendix to this decision.

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.
2. Materials designated as confidential will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached undertakings are executed and the terms of the protective order are followed, or unless otherwise ordered by the Board.

3. This decision is effective on the service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “Confidential Information” means the unredacted Letter of Intent (LOI) between Martin Marietta Materials, Inc. (MMM) and Rock & Rail, Inc.’s (RRI) parent company filed under seal on October 9, 2015, in Docket No. FD 35966.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to MMM 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 competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of MMM 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 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 executing the attached Undertaking prior to receiving access to this Confidential Information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on MMM 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 C.F.R. § 1104.14.

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or 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 any 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. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential Version may be served on other parties in electronic format only.

8. 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.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on [_____], 2015, governing the production and use of Confidential Information and Confidential Documents concerning Docket No. FD 35966, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or obtained pursuant to that Protective Order, or to use or to permit the use of any information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. FD 35966, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with Docket No. FD 35966 and/or with any related proceedings. I further agree not to disclose any Confidential Information obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings 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 outside 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 MMM 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.

Signed: _____

Affiliation: _____

Dated: _____