

30362
SEC

SERVICE DATE - JULY 7, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33773

CONSOLIDATED RAIL CORPORATION
--TRackage RIGHTS EXEMPTION--
GRAND TRUNK WESTERN RAILROAD INCORPORATED

MOTION FOR PROTECTIVE ORDER

Decided: July 2, 1999

By motion filed June 24, 1999, Consolidated Rail Corporation (Conrail),¹ seeks a protective order under 49 CFR 1104.14 for a Trackage Rights Agreement, submitted under seal, between Conrail and Grand Trunk Western Railroad Incorporated (GTW).² Conrail concurrently filed a notice of exemption under 49 CFR 1180 for its acquisition from GTW of the trackage rights described in the agreement and attached to the notice a redacted copy of the agreement.³

Good cause exists to grant the motion for protective order. According to Conrail, the confidential unredacted version of the draft agreement contains proprietary commercial information. Conrail asserts that public disclosure of these provisions of the agreement is not required for the

¹ By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of assets of Conrail was effected by CSX and NS on June 1, 1999. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999). Conrail continues to operate rail properties in Michigan, New Jersey, and Pennsylvania.

² A proposed protective order and undertaking were included with the motion.

³ GTW is also granting identical trackage rights to CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR) in separate notices of exemption in STB Finance Docket Nos. 33767 and 33770, respectively.

disposition of the verified notice of exemption and that such disclosure could cause serious competitive injury. Issuance of the protective order is requested to ensure that the protected material will be used only in connection with this proceeding and not for any other business or commercial purpose.

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

It is ordered:

1. Conrail's motion for a protective order is granted. The trackage rights agreement submitted in STB Finance Docket No. 33773 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 the redacted portions of the Trackage Rights Agreement between Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and Grand Trunk Western Railroad Incorporated (GTW), dated June 14, 1999, and filed in STB Finance Docket No. 33773.

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 Conrail, GTW, CSXT, and NSR or an order of the Board, except to outside counsel or consultants of parties to this and any related Board proceedings, or any judicial review proceeding arising therefrom, solely for use in such proceeding, provided that such outside counsel or consultant has executed and agrees to be bound by the terms of the attached Undertaking prior to receiving access to the confidential information.

4. Any pleading or other document submitted to the Board which contains confidential information must be submitted in accordance with 49 CFR 1104.14, with the notation, “contains confidential information subject to Protective Order, STB Finance Docket No. 33773.”

5. 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, to the parties entitled to view such information in accordance with this Protective Order.

6. 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.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board or an appropriate reviewing court, is shown by any party to warrant suspension of any of the provisions hereof.

UNDERTAKING

I, _____, have read the Protective Order governing the filing of confidential information by Conrail, GTW, CSXT, and NSR in STB Finance Docket No. 33773 and understand the same, and agree to be bound by its terms. I certify that I am a person entitled to receive disclosure of confidential information in accordance with the terms of the Protective Order. I agree not to use or permit the use of any confidential 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 confidential information, for any purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 33773 or any judicial review or related 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 Conrail, GTW, CSXT, and NSR 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: