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SEC

SERVICE DATE - JULY 21, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33775

DELAWARE AND HUDSON RAILWAY COMPANY, INC.--TRACKAGE RIGHTS
EXEMPTION--METRO-NORTH COMMUTER RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: July 16, 1999

By motion filed July 1, 1999, Delaware and Hudson Railway Company, Inc. (D&H), seeks a protective order under 49 CFR 1104.14 for a Trackage Rights Agreement, submitted under seal, between D&H and Metro-North Commuter Railroad Company (Metro-North).¹ On June 29, 1999, D&H had filed a notice of exemption under 49 CFR 1180 for its acquisition from Metro-North of the trackage rights described in the agreement, and attached to the notice a redacted copy of the agreement.

Good cause exists to grant the motion for protective order. According to D&H, the confidential unredacted version of the agreement contains proprietary commercial information. D&H asserts that public disclosure of these provisions of the agreement is not required for the 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. D&H's motion for a protective order is granted. The trackage rights agreement submitted in STB Finance Docket No. 33775 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.

¹ A proposed undertaking was included with the motion.

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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 Delaware and Hudson Railway Company, Inc. (D&H), and Metro-North Commuter Railroad Company (Metro-North), dated July 1, 1999, and filed in STB Finance Docket No. 33775.
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 D&H and Metro-North or an order of the Board, except to a person who 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. 33775.”
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 information, 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 — HIGHLY CONFIDENTIAL MATERIAL

I, _____, am outside [counsel] [consultant] for _____ [party to this action], for whom I am acting in this proceeding. I have read the Protective Order served on July 21, 1999, governing the unredacted Trackage Rights Agreement between Delaware and Hudson Railway Company, Inc. (D&H) and Metro-North Commuter Railroad Company (Trackage Rights Agreement) in STB Finance Docket No. 33775, 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 obtained from the Trackage Rights Agreement, or to use or to permit the use of any information learned as a result of receiving that document, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 33775, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with STB Finance Docket No. 33775 and/or with any related proceedings. I further agree not to disclose any Confidential Information obtained from the Trackage Rights Agreement except to persons who are also bound by the terms of the Protective Order and who have executed Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of the Trackage Rights Agreement, which is designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to assure that the Trackage Rights Agreement and its contents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any copies of the Trackage Rights Agreement or documents containing or reflecting information therefrom other than file copies, kept by outside counsel, or 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 D&H 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____