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SERVICE DATE – MARCH 23, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35605

RAILAMERICA, INC., PALM BEACH RAIL HOLDING, INC., RAILAMERICA
TRANSPORTATION CORP., RAILTEX, INC., FORTRESS INVESTMENT GROUP, LLC,
AND RR ACQUISITION HOLDING, LLC—CONTROL EXEMPTION—
WELLSBORO & CORNING RAILROAD, LLC

MOTION FOR PROTECTIVE ORDER

Decided: March 20, 2012

By motion filed on March 8, 2012, RailAmerica, Inc., Palm Beach Rail Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC, and RR Acquisition Holding, LLC (collectively, RailAmerica et al.) seek a protective order pursuant to 49 C.F.R. § 1104.14(b) to protect the confidential and commercially sensitive information contained in the unredacted Unit Purchase Agreement dated January 31, 2012 (Agreement) among RailTex, Inc., TransRail Holdings, LLC, Industrial Waste Group, LLC, Wellsboro & Corning Railroad Co., A. Thomas Myles III, A. Thomas Myles IV, and William Myles. Included with the motion are a proposed protective order and undertaking. Concurrently, RailAmerica et al. filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire indirect control of the Wellsboro & Corning Railroad, LLC, as described in the Agreement, a redacted version of which was included with the notice.

Good cause exists to grant the motion for protective order. RailAmerica et al. submit that a protective order would facilitate the potential exchange and use of commercially sensitive information that, if publicly disclosed, could cause commercial or other harm to the disclosing party.

The motion conforms to the Board's rules governing protective orders to maintain the confidentiality of materials submitted to the Board. See 49 C.F.R. § 1104.14. 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 a protective order will be granted. The Agreement shall be subject to the Protective Order and Undertaking, as modified, in the Appendix to this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion for protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.

2. The unredacted Agreement submitted in this proceeding will be kept under seal by the Board and will not be 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.

3. This decision is effective on its service date.

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

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the unredacted Unit Purchase Agreement among RailTex, Inc. (RailTex), TransRail Holdings, LLC, Industrial Waste Group, LLC, Wellsboro & Corning Railroad Co., A. Thomas Myles III, A. Thomas Myles IV, and William Myles, filed under seal on March 8, 2012, in Docket No. FD 35605.

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

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of RailTex or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person 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 information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on RailTex, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

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.

UNDERTAKING

I, _____, have read the Protective Order governing the filing of Confidential Information by RailTex, Inc. (RailTex) in Docket No. FD 35605 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 presentation of evidence and argument in Docket No. FD 35605 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. 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 Confidential Information, 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 RailTex 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: _____

Signature: _____

Position: _____

Affiliation: _____