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SERVICE DATE LATE RELEASE - OCTOBER 8, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33759

PRAIRIE CREEK AND CONNECTING RAILWAY, INC.--  
CONSTRUCTION AND OPERATION EXEMPTION--IN CEDAR RAPIDS, IA

MOTION FOR PROTECTIVE ORDER

Decided: October 8, 1999

On September 21, 1999, Prairie Creek and Connecting Railway, Inc. (PCCR), filed a petition for exemption under 49 U.S.C. 10502 from the requirements of 49 U.S.C. 10901 to construct a line of railroad, approximately one mile in length, from an interchange with the Union Pacific Railroad Company to the facilities of Archer-Daniels-Midland Company in Cedar Rapids, IA.<sup>1</sup> On September 29, 1999, Cedar Rapids and Iowa City Railway Company (CRANDIC)<sup>2</sup> filed under seal a motion to deny the petition or, in the alternative, to extend the time for filing a response.<sup>3</sup> Along with a redacted copy of its motion, CRANDIC filed a motion for a protective order under 49 CFR 1104.14, which it served on PCCR.<sup>4</sup>

In a request filed on October 5, 1999, PCCR sought an extension of time to reply to CRANDIC's motion to deny the petition. In a decision served on October 7, 1999, the due date for PCCR's reply was extended to November 9, 1999.

Good cause exists to grant the motion for protective order. According to CRANDIC, its motion to deny the petition contains proprietary information such as traffic base distribution, carloadings, and revenue shares, which is commercially sensitive information, that if disclosed, could be competitively damaging.

The motion for protective order 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

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<sup>1</sup> PCCR also proposes serving other industries on the line to be constructed.

<sup>2</sup> The proposed line would cross CRANDIC's line.

<sup>3</sup> Under 49 CFR 1104.13(a), CRANDIC and other interested parties would have 20 days to respond to the petition for exemption. CRANDIC seeks an extended discovery and comment period.

<sup>4</sup> A proposed protective order and undertaking were included with the motion. A modified version of the protective order was filed on October 4, 1999, by PCCR, reflecting an agreement between the parties.

Board. Accordingly, the motion for protective order will be granted, subject to the Protective Order and Undertaking contained in the Appendix.

It is ordered:

1. CRANDIC's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The confidential information of the Motion to Deny the Petition, or, in the Alternative to Extend the Time for Filing a Response submitted in STB Finance Docket No. 33759 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.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, protected “confidential information” means the traffic base distribution, carloadings, and revenue share provisions of the Verified Motion of the Cedar Rapids and Iowa City Railway Company to Deny the Petition, or, in the Alternative, to Extend the Time for Filing a Response, filed September 29, 1999, in STB Finance Docket No. 33759, as well as any other commercially sensitive, proprietary information designated in this proceeding as confidential information by the party filing, producing, or otherwise disclosing the information (the “Discloser”). Confidential information disclosed by the Discloser shall be protected and treated in confidence by the party or parties to whom the information is disclosed (the “Disclosee(s)”) unless the information: (i) was already known to the Disclosee(s) prior to disclosure hereunder, was not designated as confidential information by the Discloser in the course of disclosing it to the Disclosee(s), and is not subject to any existing contractual, statutory, regulatory or other legal confidentiality obligation; (ii) was in the public domain as evidenced by printed publications of a date earlier than the date of disclosure; (iii) becomes part of the public domain other than through disclosure by the Disclosee(s) or its (their) representatives in violation hereof; (iv) is hereafter obtained in good faith by the Disclosee(s) from a third party having bona fide rights to furnish such information without a binder of secrecy; or (v) is developed independently by the Disclosee(s) without reliance on proprietary information and the Disclosee(s) can demonstrate such development.

2. Protected 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. Protected confidential information shall not be disclosed in any way or to any person without the written consent of the Discloser 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 any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such 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.

4. Any documents containing the protected confidential information must be destroyed, and notice 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.

5. If the Board retains the protected confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use the protected 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 in accordance with this Protective Order.

7. 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, production, and disclosure of protected “confidential information” by the parties in STB Finance Docket No. 33759 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 Finance Docket No. 33759 or related Board proceedings or any judicial review proceeding arising therefrom. 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 not 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 a party 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:

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Name:

Position/Affiliation: