

SERVICE DATE - JANUARY 30, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33960

THE CENTRAL ILLINOIS RAILROAD COMPANY—LEASE AND OPERATION
EXEMPTION—LINES OF THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY AT CHICAGO, COOK COUNTY, IL

MOTION FOR PROTECTIVE ORDER

Decided: January 29, 2001

By motion filed December 4, 2000, The Central Illinois Railroad Company (CIRR) and The Burlington Northern and Santa Fe Railway Company (BNSF), pursuant to 49 CFR 1104.14(b), request that the Board enter a protective order. Movants explain that the protective order relates to a lease agreement between them that they have voluntarily provided to Joseph C. Szabo, who, on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), is preparing a petition to revoke CIRR's notice of exemption¹ which is based on the agreement.

Movants state that a protective order is necessary to protect commercially sensitive terms in the lease agreement that should not be disclosed to third parties. Good cause exists to grant the motion. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause competitive injury to the parties. Issuance of the protective order ensures that such information and data will be used solely for purposes of this proceeding and not for any other business or commercial use.

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 a protective order is granted.

¹ On November 16, 2000, CIRR filed a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 5.9 miles of BNSF main line track and 12.47 miles of sidetrack in the vicinity of BNSF's Western Avenue Yard in Chicago, Cook County, IL. By decision served November 22, 2000, the Board's Chairman denied UTU-IL's petition to stay the transaction. By decision served November 30, 2000, the Board denied UTU-IL's petition to reconsider the Chairman's decision.

2. All confidential material submitted in STB Finance Docket No. 33960 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. To the extent that materials relating to rental terms and provisions for divisions of revenue in an Agreement for the Lease of a Portion of the Illinois Northern Line and the Lumber District of The Burlington Northern and Santa Fe Railway Company to The Central Illinois Railroad Company (Lease Agreement) considered by The Burlington Northern and Santa Fe Railway Company (BNSF) and The Central Illinois Railroad Company (CIRR) to be confidential or proprietary information, are produced pursuant to voluntary discovery or are submitted in pleadings, such materials must be treated as confidential. Such materials, any copies, and any data derived therefrom:

(a) Shall be designated and stamped as "CONFIDENTIAL" and shall be used solely for the purpose of this proceeding, and any judicial review proceeding arising therefrom, and not for any other business, commercial, or competitive purpose.

(b) Shall not be disclosed in any way or to any person without the written consent of BNSF and CIRR or an order of the Board, except to the employees, counsel, agents, or contractors of the party requesting such materials, solely for use in connection with this proceeding and any judicial review proceeding arising therefrom, provided that such employee, counsel, agent, or contractor has been given and has read a copy of this Protective Order and agrees to be bound by its terms prior to receiving access to such materials.

(c) If produced through discovery, must be destroyed by the requesting party, its employees, counsel, agents, and contractors and notice of such destruction served on the Board, BNSF and CIRR at the completion of this proceeding and any judicial review proceeding arising therefrom.

(d) If contained in any pleading filed with the Board, shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14.

2. BNSF or CIRR may in good faith designate and stamp particular material as "CONFIDENTIAL." If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board. Material that is so designated shall not be disclosed except to employees, counsel, agents, or contractors of the party requesting such material, solely for use in connection with this proceeding, and any judicial review proceeding arising therefrom, provided that such persons have been given and have read a copy of this Protective Order and agree to be bound by its terms prior to receiving access to such materials.

3. If any party intends to use confidential material at hearings in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such confidential material to the Board, or the reviewing court, with a written request to the Board, or the court to (a) restrict attendance at the hearing during discussion of such confidential material, and (b) restrict access to the portion of the record or briefs reflecting discussion of such confidential material in accordance with the terms of this Protective Order.

4. If any party intends to use confidential material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent, and all other counsel attending the deposition, and all portions of the deposition at which any such confidential material is used shall be restricted to persons who may review that material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose confidential materials shall be kept under seal and treated as confidential material in accordance with the terms of this Protective Order.

5. To the extent that confidential materials are produced by any party in this or any related proceedings and held and used by the receiving person in compliance with paragraph 1 or 2 above, such production, disclosure, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904.

6. Any party obtaining confidential material under the provisions stated in this Protective Order shall not contact the parties to such agreements or appraisals without the prior written consent of BNSF and CIRR, unless the party first receives an order from the Board for such contact. The Board will issue such an order only for good cause, as determined by the Board, shown by any party requesting such contacts.

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

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on January 30, 2001, governing the production confidential matter in STB Finance Docket No. 33960, 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 to permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. 33960, 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 the 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 parties producing confidential information or confidential documents 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: _____