

SERVICE DATE - FEBRUARY 4, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-864X

HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY—ABANDONMENT
EXEMPTION—IN McLEOD, CARVER AND HENNEPIN COUNTIES, MN

MOTION FOR PROTECTIVE ORDER

Decided: February 3, 2004

By motion filed January 9, 2004, Hennepin County Regional Railroad Authority (HCRRA) seeks a protective order under 49 CFR 1104.14 with respect to a document titled Analysis of the Dakota Rail Line-Feasibility Study of Resuming Operations on the Wayzata-Hutchinson Branch (Feasibility Study), dated November 12, 2002, prepared by Mark Amfah for HCRRA and submitted as part of its environmental documentation in this abandonment class exemption proceeding.¹ HCRRA states that the Feasibility Study contains commercially sensitive shipper information that, if made public, could be competitively damaging.

Good cause exists to grant the motion for protective order. The unrestricted disclosure of confidential, proprietary, or commercially sensitive material could cause serious competitive injury. Issuance of the requested protective order will ensure that the confidential information in the Feasibility Study will be used only in connection with this proceeding and not for any other business or commercial purpose.

Parties are reminded, however, that the Board clarified the requirements of 49 CFR 1104.14(a) and 1104.3(b)(4) in a recent decision.² There, the Board stated that, when filing a Highly Confidential Version (material restricted to review by outside counsel or consultants only, as HCRRA proposes for the Feasibility Study here, although HCRRA refers to it only as “confidential information”), the filing party does not need also to file a Confidential Version with the Board, but must make available (simultaneously with the party’s submission to the Board of its Highly Confidential Version) a Confidential Version³ reviewable by any other party’s in-

¹ A proposed protective order and undertaking were included with the motion.

² Procedures to Expedite Resolution of Rate Challenges to Be Considered under the Stand-alone Cost Methodology, STB Ex Parte No. 638 (STB served Apr. 3, 2003), reconsideration denied (STB served July 31, 2003).

³ This Confidential Version may be served on other parties in electronic format only.

house counsel or a list of all “highly confidential” information that must be redacted from its Highly Confidential Version prior to review by in-house counsel. Also, a party must file a public version of its submission with any Highly Confidential or Confidential Version it chooses to file. The protective order proposed by HCRRA has been modified to conform with these requirements regarding review by in-house counsel.

With the modifications to the proposed protective order discussed above, the motion conforms with the Board’s rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials submitted to the Board. Accordingly, the motion for protective order, as modified, will be granted.

It is ordered:

1. HCRRA’s motion for a protective order, as modified, is granted. The Feasibility Study submitted in STB Docket No. AB-864X 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, as modified, are followed, or unless otherwise ordered by the Board.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

Protective Order

1. For purposes of this Protective Order, “confidential information” means the Analysis of the Dakota Rail Line-Feasibility Study of Resuming Operations on the Wayzata-Hutchinson Branch dated November 12, 2002, prepared by Mark Amfahr for HCRRA, and filed on January 9, 2004, in STB Docket No. AB-864X.

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 HCRRA 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 outside 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. HCRRA must make available a confidential version reviewable by any other party’s in-house counsel or a list of all information for a party’s outside counsel that must be redacted prior to review by that party’s in-house counsel.

5. 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.

6. 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 CFR 1104.14.

7. 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 in accordance with this Protective Order.

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 production of confidential information by HCRRA in STB Docket No. AB-864X, 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 purposes other than the preparation and preservation of evidence and argument in STB Docket No. AB-864X 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 HCRRA 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