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SERVICE DATE – JANUARY 11, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35708

KOCH INDUSTRIES, INC.—ACQUISITION OF CONTROL EXEMPTION—TEXAS
SOUTH-EASTERN RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: January 8, 2013

By motion filed on December 27, 2012, Koch Industries, Inc., seeks a protective order under 49 C.F.R. § 1104.14(b) to protect the highly confidential and commercially sensitive terms contained in the unredacted copy of a draft Purchase Agreement submitted under seal in this proceeding. Included with the motion are a proposed protective order and undertaking.

Koch submits that a protective order is necessary because the Purchase Agreement contains proprietary commercial information, the public disclosure of which could be competitively damaging.

Good cause exists to grant the motion for protective order. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Further, the motion conforms with the Board's rules at 49 C.F.R. § 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, and the Purchase 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 a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. 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 Purchase Agreement dated December 12, 2012 among International Paper Company, Georgia-Pacific Building Products LLC, and Georgia-Pacific LLC, filed in STB Finance Docket No. 35708.

2. The confidential information shall be used for the purposes 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 Koch Industries, Inc. 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. 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.

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 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.

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.

8. All parties must file simultaneously a public version of any confidential submission with the Board.

UNDERTAKING—CONFIDENTIAL INFORMATION

I, _____, have read the Protective Order served on January 11, 2013, governing the production and use of confidential information in STB Finance Docket No. 35708, 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 pursuant to that Protective Order, or to use or to permit the use of any methodologies 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 STB Finance Docket No. 35708, and any related proceedings. I further agree not to disclose any confidential information, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that 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 materials designated or stamped as “CONFIDENTIAL,” 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 Applicants or other parties producing confidential information 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.

Signed: _____

Dated: _____