

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33381

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORP. UNDER
49 U.S.C. 24308(a)--SPRINGFIELD TERMINAL RAILWAY COMPANY, BOSTON AND
MAINE CORPORATION, AND PORTLAND TERMINAL COMPANY

Decided: June 25, 1997

This proceeding involves an application by National Railroad Passenger Corporation (Amtrak), under 49 U.S.C. 24308(a), to: (1) require Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company, railroads under common control of Guilford Rail System (B&M), to make available to Amtrak the railroads' rail line between the Massachusetts/New Hampshire State line and Portland, ME; and (2) determine reasonable terms and compensation for Amtrak's use of the rail line. In a decision served May 6, 1997, the Board granted the request by Northern New England Passenger Rail Authority (NNEPRA)¹ to intervene in this proceeding. By motion filed June 6, 1997, NNEPRA asks the Board to grant its proposed protective order to safeguard the confidentiality of information that may be produced during the course of this proceeding. B&M opposes NNEPRA's request.

The requested protective order will be granted. The protective order is substantially similar to those the Board has entered in proceedings involving, as here, the submission of cost and valuation evidence. Issuance of the protective order ensures that confidential, proprietary or commercially sensitive information will be used solely for the purposes of this proceeding and not for other business or competitive use.

It is ordered:

1. The motion is granted. The parties to this proceeding must comply with the protective order in the Appendix.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

¹ NNEPRA was created by the State of Maine in June 1995 as the successor in interest to the Maine Department of Transportation (MDOT) in implementing Amtrak's extension of passenger service between Boston and Portland.

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Confidential Documents” are defined as documents, or parts thereof, that are produced or furnished by Northern New England Passenger Rail Authority (“NNEPRA”) (through discovery or otherwise) and are confidential pursuant to the last sentence of 23 M.R.S.A. § 8115.

(b) “Receiving Parties” means the Party or Parties that are provided the Confidential Document.

2. All Confidential Documents provided by NNEPRA to a Party to this proceeding, or anyone acting on its behalf, and all notes and other documents relating in any way to any of these Confidential Documents that are developed by any individual having access to such Confidential Documents (the “Notes”), shall be used solely for purposes of this proceeding or any appeals therefrom (the “Proceedings”), and shall not be used for any other purpose. Deposition testimony and answers to interrogatories also may be designated by NNEPRA as “CONFIDENTIAL” and treated as a Confidential Document under this Order. Any Confidential Documents (including parts of documents) provided hereunder and stamped “CONFIDENTIAL,” and any data contained therein, shall not be disclosed in any way to any person not authorized under paragraph 5 hereof to receive access to such Confidential Documents, unless such disclosure is preceded by the prior written consent of NNEPRA or an order of the Board or its designated officer allowing for such disclosure.

3. Unless NNEPRA agrees otherwise, all Confidential Documents provided hereunder, and all Notes, shall be destroyed within thirty (30) days of the completion with finality of the Proceedings, and written notice of such destruction shall be provided to counsel for NNEPRA, with the exception that outside counsel for each Party and in-house counsel of the National Railroad Passenger Corporation may retain file copies of any un-redacted pleadings and materials filed with the Board.

4. (a) With respect to written submissions to the Board, a Party shall be deemed to have complied with paragraph 2 if the relevant portion of all such submissions containing information from any Confidential Documents are stamped “CONFIDENTIAL” and are filed under seal, and all publicly available filings (and any copies provided to persons who have not signed an Undertaking) have had all such information redacted.

(b) All Confidential Documents which are stamped “CONFIDENTIAL” may be disclosed to any court reporter or notary public with official responsibilities related to this proceeding, on the understanding that these persons will honor the limitations on disclosure of Confidential Documents set forth herein.

(c) If any Party intends to use any Confidential Documents in the course of any deposition in this proceeding, that Party shall so advise counsel for NNEPRA, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Confidential Document is used or discussed shall be restricted to persons who may review the material under the terms of this Protective Order.

5. All Confidential Documents which are stamped “CONFIDENTIAL,” and any data contained therein, shall be restricted to access by only the individuals who have signed the Undertaking attached as Attachment A to this Order. Except with respect to National Railroad Passenger Corporation personnel, who are eligible to sign the Undertaking and have access to Confidential Documents, only outside (i) attorneys, (ii) expert witnesses, (iii) consultants, and (iv) analysts are eligible to sign the Undertaking and have access to Confidential Documents. Persons who have signed the Undertaking shall be responsible for compliance with this Order by their respective clerical and support staffs. This Undertaking shall be delivered to counsel of record for

NNEPRA prior to receipt of access to the Confidential Documents by the individual named in the Undertaking.

6. If NNEPRA inadvertently fails to designate one or more Confidential Documents as “CONFIDENTIAL” in a timely fashion as provided herein, it may make such a designation subsequently by notifying the Receiving Parties in writing. After receipt of such notification, such Confidential Documents thereafter shall be treated as if they had been designated in a timely fashion and the Receiving Parties thereafter will promptly cause such documents to be properly marked as provided herein and certify to NNEPRA that such marking has occurred.

7. Nothing contained herein shall preclude any Party from seeking an order of the Board or its designated officer in this proceeding that documents, deposition testimony, or answers to interrogatories designated by NNEPRA as “CONFIDENTIAL” should not be treated as such. Nor does anything contained herein prohibit disclosure by a Receiving Party of Confidential Documents to (i) any person involved in the proceeding, or matters directly related thereto, *and* (ii) either employed or retained by NNEPRA, including without limitation fact and expert witnesses, consultants, analysts and attorneys.

ATTACHMENT A

UNDERTAKING

I, _____, have read the Order Regarding Production of Confidential Documents entered in STB Finance Docket No. 33381, understand the same, and agree to be bound by its terms. I agree not to use any Confidential Documents as defined in the Order and stamped “CONFIDENTIAL,” or any data or information derived therefrom, for any purpose not permitted under the Order. I understand that I am only being given access to Confidential Documents because of the commitments that I make in this Undertaking. I further understand that my use of Confidential Documents, and data or information derived therefrom, for any purpose not permitted under the Order could cause damage to NNEPRA or third parties.

Dated: _____