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SEC

SERVICE DATE - MARCH 21, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33347

UNION PACIFIC RAILROAD COMPANY--TRackage RIGHTS EXEMPTION--
ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

MOTION FOR PROTECTIVE ORDER

Decided: March 12, 1997

On January 24, 1997, Union Pacific Railroad Company (Union Pacific) filed a notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over 11 miles of rail line owned by Elgin, Joliet and Eastern Railway Company (EJ&E), between milepost 25.2 near Chicago Heights, IL, and milepost 36.2 near Griffith, IN. The trackage rights became effective on January 31, 1997, and the transaction was expected to be consummated on, or as soon as possible after, that date. The notice of exemption was served and published on February 18, 1997.

In a decision served February 20, 1997, the Board denied a petition by Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board (UTU) seeking rejection of the notice of exemption. The decision also dismissed a concurrent request by UTU for stay of the effectiveness of the exemption as moot. The Board was not persuaded by UTU's arguments that the railroads' submission of a redacted trackage rights agreement for the public docket was impermissible. The Board reminded the railroads, however, that parties to proceedings under 49 CFR 1180.2(d)(7) should always file an unredacted version of their trackage rights agreement under seal, accompanied by a request for a protective order, whenever they submit a redacted version for the public file. The Board ordered the railroads to submit a complete, confidential copy of their agreement, accompanied by a motion for a protective order, by March 2, 1997.

On February 28, 1997, Union Pacific and EJ&E jointly filed the required agreement and motion for protective order. In support of their motion, the railroads indicate that the unredacted agreement contains compensation, insurance, and liability provisions that are proprietary and commercially sensitive, and maintain that the railroads would suffer competitive and commercial harm if the unredacted agreement were made public.

On March 4, 1997, UTU replied in opposition to the motion. UTU argues that the Board's decision served February 20 improperly prevents public scrutiny of trackage rights agreements. It suggests that the railroads' agreement here may not be a legitimate trackage rights agreement.

The motion for protective order conforms with the Board's governing rules at 49 CFR 1104.14 and will be granted. The unrestricted disclosure of confidential, proprietary, or commercially sensitive material could cause serious competitive injury. UTU's arguments regarding secrecy are not well taken. By executing the protective order, which the union has not shown

to be unreasonable and burdensome in any way, UTU may gain access to the confidential information for the purpose of this and related Board proceedings. Issuance of the order will ensure that the railroads' confidential, proprietary, or commercially sensitive information will be used solely for the purposes of this proceeding and not for other business or competitive use. That restriction serves a useful public purpose in protecting commercially sensitive information.

It is ordered:

1. The motion of Union Pacific and EJ&E for a protective order is granted. The parties to this proceeding must comply with the protective order set forth in the appendix.

2. The 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, "confidential information" means compensation, liability, and insurance provisions of the trackage rights agreement of Union Pacific Railroad Company (UP) and Elgin, Joliet and Eastern Railway Company (EJ&E) filed February 28, 1997.

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 UP and EJ&E 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, whichever comes first.

5. If the confidential information is retained by the Board, it shall, in order to be kept confidential, be treated in accordance with the procedure set forth at 49 CFR 1104.14. See 48 FR 44826-27 (1983).

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 this 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 of confidential information by UP and EJ&E in STB Finance Docket No. 33347 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. 33347 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 this order and has 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 UP and EJ&E 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.

(Signature)

Dated: _____