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SEC

SERVICE DATE – OCTOBER 26, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 659X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN ALLEGANY  
COUNTY, MD

MOTION FOR PROTECTIVE ORDER

Decided: October 25, 2005

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an 8.54-mile line of railroad on its Southern Region, Huntington Division East, Georges Creek Subdivision, between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, MD. Notice of the exemption was served and published in the Federal Register on August 25, 2005 (70 FR 49974). The exemption was scheduled to become effective on September 24, 2005, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by September 2, 2005.

On September 8, 2005, counsel for WMS, LLC (WMS), late-filed a formal expression of intent for WMS to file an OFA to purchase the entire line and requested that the time period for WMS to submit its OFA be tolled for 30 days. By decision served on September 23, 2005, WMS's late-filed notice of intent to file an OFA was accepted,<sup>1</sup> the time period for WMS to file an OFA was tolled until October 21, 2005, and the effective date of the exemption was further postponed until October 31, 2005. On October 21, 2005, WMS filed an OFA with the Board.

By motion filed on October 21, 2005, WMS seeks a protective order allowing it to make available to the Board and to file under seal certain confidential documents and information in connection with its OFA.<sup>2</sup> WMS states that the confidential documents include information relating to the identity of an investor who wishes to remain anonymous for the purpose of the public docket.

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 will be granted.

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<sup>1</sup> This filing had the effect of automatically staying the effective date of the exemption for 10 days, until October 4, 2005. See 49 CFR 1152.27(c)(2)(i).

<sup>2</sup> A proposed protective order and undertaking were included with the motion.

It is ordered:

1. The motion for protective order is granted.
2. The parties are directed to comply with the protective order in the appendix to this decision.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purpose of this Protective Order, “confidential information” means the data and documents furnished by WMS, LLC (WMS) in connection with an offer of financial assistance made in this proceeding.
2. The confidential information shall be provided to any employee, agent, counsel, or consultant of any party to this proceeding only pursuant to this Protective Order and only upon execution and delivery to WMS of the attached Undertaking. The confidential information shall be used solely for the purpose of this and any related Board proceedings or judicial review proceeding arising therefrom, and not for any other business, commercial or competitive purpose.
3. The confidential information shall not be disclosed in any way or to any person without the written consent of WMS or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.
4. Any documents containing the confidential information must be destroyed, and notice of such destruction must be served on WMS at the completion of this and any related Board proceedings, or any judicial review proceedings arising therefrom, whichever comes later.
5. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedures set forth at 49 CFR 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 proceedings 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. A party must file simultaneously a public version of any confidential submission it files with the Board.

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

CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, have read the Protective Order governing the filing of confidential information by WMS, LLC (WMS) in STB Docket No. AB-55 (Sub-No. 659X) 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 Docket No. AB-55 (Sub-No. 659X) 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 WMS 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: \_\_\_\_\_

Position: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Dated: \_\_\_\_\_