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SEC

SERVICE DATE – APRIL 12, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34845

INDIANA BOXCAR CORPORATION–ACQUISITION OF CONTROL EXEMPTION–
TISHOMINGO RAILROAD COMPANY, INCORPORATED

MOTION FOR PROTECTIVE ORDER

Decided: April 11, 2006

By motion filed on March 22, 2006, Indiana Boxcar Corporation (INBC), seeks a protective order under 49 CFR 1104.14 to allow INBC to submit to the Board under seal certain confidential documents and information in connection with a verified notice of exemption INBC concurrently filed under 49 CFR 1180.2(d)(2) for the acquisition of control of Tishomingo Railroad Company, Incorporated. Such confidential documents may include, among other things, the purchase price and terms of the transaction as well as other confidential commercial information. INBC states that disclosure of the confidential documents and information would be harmful to the parties.

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, subject to the Protective Order and Undertaking contained in the Appendix to this decision.¹ Issuance of the protective order will ensure that the confidential information will be used solely for this proceeding and not for other purposes.

It is ordered:

1. INBC's motion for protective order is granted, and the Protective Order and Undertaking contained in the Appendix to this decision are adopted.
2. INBC's confidential information 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 are followed, or unless otherwise ordered by the Board.

¹ A proposed Protective Order and Undertaking were included with the motion.

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 purposes of this Protective Order, “confidential information” means the executed purchase and sale agreement and all supporting documents furnished by Indiana Boxcar Corporation (INBC) in connection with its notice of exemption in STB Finance Docket No. 34845.

2. 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 INBC of the attached Undertaking. Confidential information shall be used solely 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. Confidential information shall not be disclosed in any way or to any person without the written consent of INBC 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 confidential information must be destroyed, and notice of such destruction must be served on INBC at the completion of this and any related Board proceedings, or any judicial review proceeding 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 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. 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 Indiana Boxcar Corporation (INBC) in STB Finance Docket No. 34845, 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. 34845 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 Protective 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 INBC 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: _____