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SERVICE DATE – DECEMBER 4, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35320

KOCH INDUSTRIES, INC.—CONTINUANCE IN CONTROL
EXEMPTION—KM RAILWAYS, LLC

MOTION FOR PROTECTIVE ORDER

Decided: December 4, 2009

By motion filed on November 18, 2009, Koch Industries, Inc. (Koch) seeks a protective order under 49 CFR 1104.14(b) to submit under seal the Asset Purchase and Sale Agreement (the Agreement) dated November 18, 2009, between Koch and Old Augusta Railroad, LLC (OAR).¹ Koch states that, as described in the related filings in STB Finance Docket Nos. 35319, 35320, and 35321, the Agreement provides for purchase of the assets of OAR by a subsidiary of Koch. A “confidential” copy of the Agreement was submitted under seal, attached to the motion for protective order.

Good cause exists to grant the motion for protective order. Koch states that the Agreement contains proprietary commercial information that could be competitively damaging if disclosed. Issuance of the protective order ensures that the parties’ confidential information will be used solely for this proceeding and the related proceedings, and not for other purposes.

The motion conforms with the Board’s rules at 49 CFR 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 unredacted Agreement shall be subject to the Protective Order and Undertaking as contained in the Appendix to this decision.²

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹ Notices of exemption were simultaneously filed: (1) in STB Finance Docket No. 35321, KM Railways, LLC—Acquisition Exemption—Old Augusta Railroad, LLC, in which KM Railways, LLC (KMR) seeks to acquire certain of the assets of OAR pursuant to consummation of the Agreement; (2) in STB Finance Docket No. 35319, Old Augusta Railroad, LLC—Lease and Operation Exemption—KM Railways, LLC, in which OAR seeks to lease back, and to operate over, the rail line that KMR acquires from OAR; and (3) in this docket, in which Koch seeks to continue in control of KMR upon KMR becoming a Class III rail carrier.

² A proposed protective order and undertaking were included with the motion.

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. The unredacted Agreement submitted in this docket will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director of Proceedings.

APPENDIX
PROTECTIVE ORDER

1. For the purposes of this Protective Order, “confidential information” means the provisions of the Asset Purchase and Sale Agreement dated November 18, 2009, among Old Augusta Railroad, LLC and KM Railways, LLC, filed in STB Finance Docket No. 35320.

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, whichever comes first.

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 December 4, 2009, governing the production and use of confidential information in STB Finance Docket No. 35320, 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 techniques disclosed 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. 35320, 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 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 Applicant 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: _____