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ENTERED
Office of Proceedings
June 19, 2015
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Public Record

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June 19, 2015

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. AB-314 (Sub-No. 7X)**
Chicago Central & Pacific Railroad Company -- Abandonment
Exemption – Pottawattamie County, Iowa, and Douglas County, Neb.

Dear Ms. Brown:

Attached for filing in the above-captioned proceedings is a **Motion for Protective Order**. The subject Motion for Protective Order is attached in both .pdf and MS Word file formats.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Robert A. Wimbish
Attorney for Chicago Central & Pacific
Railroad Company

RAW/ekf
Attachments

cc: Parties on Certificate of Service

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-314 (SUB-NO. 7X)

CHICAGO, CENTRAL & PACIFIC RAILROAD COMPANY
-- ABANDONMENT EXEMPTION --
IN POTTAWATTAMIE COUNTY, IOWA
AND DOUGLAS COUNTY, NEBRASKA

MOTION FOR A PROTECTIVE ORDER PURSUANT TO 49 C.F.R. § 1104.14

Chicago, Central & Pacific Railroad Company (“CC&P”), pursuant to 49 C.F.R. § 1104.14(b) hereby moves this Board to issue a protective order in substantially the form attached hereto. Such a protective order will allow CC&P to make available to Omaha Bridge and Terminal Railway, LLC (“OBTR”), and, by extension, to the Board under seal certain confidential or highly confidential documents and information that CC&P has committed to supply to OBTR (and that OBTR or CC&P may include in filings to the Board) in connection with the merits of OBTR’s invocation of the Board’s offer of financial assistance (“OFA”) provisions in the above-captioned proceeding.¹ Such confidential and highly confidential documents that CC&P may supply to OBTR and that CC&P may submit to the Board during the course of this proceeding include information that CC&P regards as commercially or competitively sensitive.

¹ CC&P does not currently anticipate producing “highly confidential” materials in the course of this proceeding, but cannot now eliminate the possibility that such materials could be produced to OBTR or filed with the Board during the course of this proceeding. For this reason, CC&P respectfully requests, out of an abundance of caution, that the Board grant its protective order motion as governing both “confidential” and “highly confidential” materials.

Granting the subject protective order motion, as the Board routinely has done in other abandonment proceedings in which an interested party has invoked the OFA process, will ensure that the Board will receive full disclosure of all relevant facts while it will also ensure that proprietary and commercially sensitive information will be protected from unnecessary public disclosure and will be used only in connection with this proceeding and not for any other business or commercial use. In the absence of the requested protective order, release of the information that CC&P seeks to protect from public disclosure could do harm to CC&P. Moreover, public disclosure of the information that CC&P intends to disclose to OBTR is not necessary for OBTR to be able to undertake its OFA-related due diligence.

Accordingly, CC&P requests that the Board adopt the protective order contained in the appendix hereto.

Dated: June 19, 2015



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Attorney for Chicago, Central & Pacific
Railroad Company

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order:

(a) “CC&P” refers to Chicago Central & Pacific Railroad Company, which has received notice of intent to file an offer of financial assistance (OFA) from Omaha Bridge and Terminal Railway, LLC (OBTR), which intended OFA effort purportedly would focus upon selected portions of the rail properties that are the subject of the recently-granted abandonment petition for exemption in *Chicago Central & Pacific Railroad Company – Abandonment Exemption – In Pottawattamie County, Iowa, and Douglas County, Nebraska*, STB Docket No. AB-314 (Sub-No. 7X).

(b) “Confidential Information” means data and documents to be furnished to OBTR and (potentially) to the Board by CC&P in connection with the OFA proceedings in STB Docket No. AB-314 (Sub-No. 7X) and designated as “Confidential Information” on the face of such documents.

(c) “Highly Confidential Information” means data and documents to be furnished by CC&P, and designated as “Highly Confidential” by CC&P in good faith, that include competitively or commercially sensitive information such as shipper-specific rate or cost data or information regarding the identity or business enterprises of investors in CC&P.

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, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and execute the attached Undertaking for Confidential Material prior to receiving access to such materials. Confidential Information shall be used solely for the purpose of this and any related Board proceeding, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. Any party producing information in discovery or in pleadings in this proceeding may in good faith designate and label such information Highly Confidential Information. If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board or any Administrative Law Judge presiding over this proceeding. Material that is so designated may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding and any judicial review proceeding arising herefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and execute the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as “Highly

Confidential” and produced in discovery or as part of pleadings in this proceeding shall be subject to all other provisions of this Protective Order.

4. Confidential Information or Highly Confidential Information shall not be disclosed in any way or to any person without the written consent of CC&P, or an order of the Board, solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom.

5. Any party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall agree that all communications, including comments, concerns, negotiations, and/or other discussions with CC&P or its affiliates, relating to the Confidential or Highly Confidential Information and/or the OFA will be handled solely by counsel for CC&P. Each party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall expressly agree that any of its officers, agents, principals, and assigns shall not contact any officers, agents, principals, investors, and assigns of CC&P to discuss the Confidential or Highly Confidential Information or the OFA except through counsel for CC&P as stated above.

6. Any documents containing Confidential or Highly Confidential Information must be destroyed, and notice of such destruction must be served on CC&P at the completion of this and any related Board proceedings, or any judicial review proceedings arising therefrom, whichever comes later.

7. If the Board retains the Confidential or Highly 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.

8. If any party intends to use Confidential or Highly 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 or Highly Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential or Highly Confidential Information in accordance with this Protective Order.

9. A party must file simultaneously a public version of any confidential submission it files with the Board.

10. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the inadvertent disclosure that the other party return the inadvertently produced privileged document.

The party who received the inadvertently produced document will either return the document and any copies thereof to the producing party or destroy the document and any copies thereof immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

11. All parties must comply with all provisions stated in this Protective Order unless good cause, as determined by an Administrative Law Judge decision from which no appeal is taken or by the Board, warrants suspension of any of the provisions herein.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of Confidential Information by CC&P in STB Docket No. AB-314 (Sub-No. 7X), 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-314 (Sub-No. 7X) 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 further agree to be bound by all the terms of the Protective Order even if not specifically enumerated in the foregoing sentences. I understand further that the Protective Order states that any party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall agree that all communications, including comments, concerns, negotiations, and/or other discussions with CC&P relating to the Confidential or Highly Confidential Information and/or the OFA will be handled solely by counsel for CC&P. I understand as well that each party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall expressly agree that any of its officers, agents, principals, and assigns shall not contact any officers, agents, principals, investors, and assigns of CC&P or its affiliates to discuss the Confidential or Highly Confidential Information or the OFA except through counsel as agreed to above. I hereby specifically agree to the obligations set forth in the two preceding sentences.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that CC&P 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: _____

Position: _____

Affiliation: _____

Address: _____

Telephone: _____

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, am [outside counsel] [consultant] for _____, for which I am acting in this proceeding, I certify that I have read the Protective Order governing the filing of Highly Confidential Information in STB Docket No. AB-314 (Sub-No. 7X), understand the same, and agree to be bound by its terms. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "Highly Confidential", that I will limit my use of those documents and the information they contain to this proceeding, and any judicial review proceedings arising herefrom, that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding and any judicial review proceedings arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or documents containing such highly confidential information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "Highly Confidential" by, or disclose any information contained therein, to any persons or entities for which I am not acting in this proceeding. I understand further that the Protective Order states that any party, including but not limited to person who receive Confidential or Highly Confidential Information, shall agree that all communications, including comments, concerns, negotiations, and/or other discussions with CC&P relating to the Confidential or Highly Confidential Information and/or the OFA will be handled solely by counsel for CC&P. I understand as well that each party, including but not limited to persons who receive Confidential or Highly Confidential Information, shall expressly agree that any of its officers, agents, principals, and assigns shall not contact any officers, agents, principals, investors, and assigns of CC&P or its affiliates to discuss the Confidential or Highly Confidential Information or the OFA except through counsel as agreed to above. I hereby specifically agree to the obligations set forth in the two preceding sentences.

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Signed: _____

Dated: _____

Position: _____

Affiliation: _____

Address: _____

Telephone: _____

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Motion for Protective Order in Docket No. AB-314 (Sub-No. 7X), to be served via pre-paid first class postage (or via more expeditious means of delivery) on June 19, 2015, to the following party of record:

Christopher T. Chappellear
President, Omaha Bridge & Terminal Railway, LLC
Post Office Box 3592
Omaha, NE 68103


Robert A. Wimbish