

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
February 24, 2016
Part of
Public Record

DOCKET NO. FD 35961

CHICAGO CENTRAL & PACIFIC RAILROAD COMPANY,
GRAND TRUNK WESTERN RAILROAD COMPANY,
ILLINOIS CENTRAL RAILROAD COMPANY, AND
WISCONSIN CENTRAL LTD.
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY

**MOTION FOR PROTECTIVE ORDER OF CHICAGO
CENTRAL & PACIFIC RAILROAD COMPANY, GRAND
TRUNK WESTERN RAILROAD COMPANY, ILLINOIS
CENTRAL RAILROAD COMPANY, AND
WISCONSIN CENTRAL LTD.**

Robert A Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR CHICAGO CENTRAL & PACIFIC
RAILROAD COMPANY, GRAND TRUNK
WESTERN RAILROAD COMPANY, ILLINOIS
CENTRAL RAILROAD COMPANY, AND
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Dated: February 24, 2016

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Pursuant to 49 C.F.R. § 1104.14(b), Chicago Central & Pacific Railroad Company; Grand Trunk Western Railroad Company; Illinois Central Railroad Company; and Wisconsin Central Ltd. (collectively, the “CN Roads”) hereby request that the Board issue a protective order allowing the CN Roads to file under seal an unredacted document entitled “Trackage Rights . . . Relating to User’s Limited Trackage Rights on Owners Portion of the CREATE Western Avenue Corridor” (the “Trackage Rights Agreement”) dated as of February 11, 2016, which is intended to govern the trackage rights transaction that is the subject of this proceeding.

The CN Roads are filing concurrently herewith a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) for the CN Roads to acquire overhead trackage rights over a line of railroad owned by Norfolk Southern Railway Company (“NSR”) located in Chicago, Cook County, Illinois, consisting of NSR’s portion of a rail route known as the CREATE Western

Avenue Corridor extending between milepost UW 0.0 (CP 518) and milepost UW 5.3 (Ogden Junction), a distance of approximately 5.3 miles, and over that portion of NSR's CREATE project WA7 track, when built, extending between Brighton Park and 21st Street, including that portion connecting to BNSF's Chillicothe Subdivision.

The CN Roads have attached a redacted version of the aforementioned Trackage Rights Agreement as Exhibit B to their notice of exemption pursuant to 49 C.F.R.

§ 1180.6(a)(7)(ii) and have filed unredacted copies of that document under seal, subject to this request for a protective order. The Trackage Rights Agreement contains commercially sensitive and confidential information the public release of which could cause competitive or other injury to the CN Roads and NSR. Public disclosure of the unredacted agreement is not necessary for the consideration or disposition of the CN Roads' trackage rights notice of exemption.

The CN Roads thus request that the Board accept the unredacted Trackage Rights Agreement for filing under seal and adopt the proposed protective order contained in the appendix hereto to govern access to the unredacted agreement. This approach is consistent with that taken by the Board in prior similar circumstances. See, e.g., Chicago, Central & Pacific Railroad Company -- Trackage Rights Exemption -- Cedar River Railroad Company, Finance Docket No. 35563 (STB served December 30, 2011); The Kansas City Southern Railway Company -- Trackage Rights Exemption -- Illinois Central Railroad Company, Finance Docket No. 34309 (STB served February 4, 2003).

WHEREFORE, the CN Roads respectfully request that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,

By: R. A. Wimbish

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEY FOR CHICAGO CENTRAL & PACIFIC
RAILROAD COMPANY, GRAND TRUNK
WESTERN RAILROAD COMPANY, ILLINOIS
CENTRAL RAILROAD COMPANY, AND
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Dated: February 24, 2016

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the unredacted “Trackage Rights . . . Relating to User’s Limited Trackage Rights on Owners Portion of the CREATE Western Avenue Corridor” dated February 11, 2016, filed under seal on February 24, 2016 in STB Docket No. FD 35961.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to Chicago Central & Pacific Railroad Company; Grand Trunk Western Railroad Company; Illinois Central Railroad Company; and Wisconsin Central Ltd. (collectively, the “CN Roads”) 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 the CN Roads or an order of the Board, and then 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 the CN Roads, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

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 CFR 1104.14.

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or 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 any 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 the Protective Order.

7. All parties must file simultaneously a public version of any confidential submission filed with the Board. The confidential version may be served on other parties in electronic format only.

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

I, _____, have read the Protective Order governing the filing of Confidential Information by Chicago Central & Pacific Railroad Company; Grand Trunk Western Railroad Company; Illinois Central Railroad Company; and Wisconsin Central Ltd. (collectively, the "CN Roads") in STB Docket No. FD 35961, 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 presentation of evidence and argument in STB Docket No. FD 35961 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. 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 Confidential Information, other than file copies, kept by outside 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 the CN Roads 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.

Dated: _____

Signature: _____

Position: _____

Affiliation: _____