

239345

ENTERED
Office of Proceedings
October 09, 2015
Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35966

**MARTIN MARIETTA MATERIALS, INC.
— CONTINUANCE IN CONTROL EXEMPTION —
ROCK & RAIL, INC.**



MOTION FOR PROTECTIVE ORDER

William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Facsimile: (202) 663-7849

**Attorneys for Martin Marietta Materials,
Inc.**

October 9, 2015

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 35966

**MARTIN MARIETTA MATERIALS, INC.
— CONTINUANCE IN CONTROL EXEMPTION —
ROCK & RAIL, INC.**

MOTION FOR PROTECTIVE ORDER

Pursuant to 49 C.F.R. § 1104.14(b), Martin Marietta Materials, Inc. (“MMM”) requests that the Board issue a protective order to allow MMM to file under seal the unredacted Letter of Intent (“LOI”), which represents the parties’ agreement for MMM to acquire indirect ownership of Rock & Rail, Inc. (“RRI”) (the “Transaction”) and which Transaction is the subject of this proceeding.

MMM is concurrently filing a Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(2) (the “Notice”) for MMM to acquire indirect control of RRI pursuant to the Transaction. However, the LOI contains proprietary commercial information that if disclosed could be competitively damaging. Specifically, the LOI has been the subject of extensive private negotiations between the parties, and contains commercially sensitive and confidential information which, if publicly released, could cause competitive injury to MMM. Moreover, public disclosure of the commercially sensitive provisions of the Agreement is not necessary for disposition of the Notice.

Therefore, MMM requests that the Board accept the unredacted agreement for filing under seal and adopt a protective order substantially in the form shown 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 Regional Rail Holdings, LLC – Acquisition of Control Exemption – Regional Rail, LLC, FD 35945 (STB served Aug. 7, 2015); Michael Williams – Control Exemption – St. Maries River Railroad, Inc., FD 35365 (STB served April 28, 2010); Pinsky Railroad Company – Control Exemption – The Prescott and Northwestern Railroad Company, FD 35292 (served Oct. 6, 2009); Cedar River Railroad Company - Trackage Rights Exemptions - Chicago, Central & Pacific Railroad Company, FD 35593 (served February 24, 2012).

For the reasons stated, MMM moves that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,



William A. Mullins
Crystal M. Zorbaugh
Baker & Miller PLLC
2401 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Facsimile: (202) 663-7849

Attorneys for Martin Marietta Materials, Inc.

October 9, 2015

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the unredacted Letter of Intent ("LOI") between Martin Marietta Materials, Inc. ("MMM") and Rock & Rail, Inc.'s ("RRI") parent company filed under seal on or about October 9, 2015 in STB Finance Docket No. 35966.
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to MMM 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 competitive purpose.
3. Confidential Information shall not be disclosed in any way or to any person without the written consent of MMM 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 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 executing the attached Undertaking prior to receiving access to this Confidential Information.
4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on MMM 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 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 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) request 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 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.

Exhibit A

UNDERTAKING—CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on October _____, 2015, governing the filing of Confidential Information in STB Finance Docket No. 35966, 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 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. 35966, any related proceedings before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Finance Docket No. 35966 and/or with any related proceedings. I further agree not to disclose any Confidential Information 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 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 MMM 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: _____

Affiliation: _____

Dated: _____