

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35320

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

MOTION FOR A PROTECTIVE ORDER



**ENTERED
Office of Proceedings**

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**Part of
Public Record**

David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
dcoburn@step toe.com
202-429-8063

Attorney for Koch Industries, Inc. and KM
Railways, LLC

Dated: November 18, 2009

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Koch Industries, Inc. (“Koch Industries”) hereby moves the Board for a protective order pursuant to 49 C.F.R. § 1104.14(b) in order to file under seal the Asset Purchase Agreement dated November 18, 2009 between Old Augusta Railroad, LLC and KM Railways, LLC (“Agreement”). A draft protective order and undertaking are attached as an Appendix to this Motion. As described in the Notice of Exemption in this Docket and in Finance Dockets 35319, 35320, and 35321, the Agreement provides for the purchase of certain of the assets of the Old Augusta Railroad, LLC by a Koch Industries affiliate, KM Railways, LLC.

The Agreement contains proprietary commercial information that could be competitively damaging if disclosed. The Board has approved the filing of purchase agreements under seal in control exemption proceedings in the past. *See Koch Indus., Inc.—Continuance in Control Exemption—Moscow Camden & San Augustine R.R., LLC*, STB Finance Docket No. 34991, slip op. at 2 (served Feb. 12, 2007); *RailAmerica, Inc. & W. Tex. & Lubbock R.R. Co.—Control Exemption—New Statesrail Holdings, Inc. & Ala. & Gulf Coast Ry., LLC*, STB Finance Docket

No. 34128, slip op. at 2 (served Dec. 5, 2001); *RailAmerica, Inc. & W. Tex. & Lubbock R.R. Co.—Control Exemption—Kiamichi Holdings, Inc. & Kiamichi R.R. LLC*, STB Finance Docket No. 34130, slip op. at 2 (served Dec. 5, 2001).

For the reasons stated above, Koch Industries respectfully requests that the Board issue a protective order in the form that is attached to this Motion and allow the Agreement to be filed under seal. As stated in the protective order, Koch Industries has also included for filing a redacted public version of the Agreement.

Respectfully submitted,

David Coburn (K6)

David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
dcoburn@steptoe.com
202-429-8063

Attorney for Koch Industries, Inc. and KM
Railways, LLC

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APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "confidential information" means the provisions of the Asset Purchase 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 _____, 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: _____