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April 3, 2006

BY HAND

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

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Public Record

216159



Re: Norfolk Southern Railway Company – Control and Consolidation
Exemption – Algiers, Winslow and Western Railway Company,
STB Finance Docket No. 34839.

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of a Motion Of Norfolk Southern Corporation And Norfolk Southern Railway Company For Protective Order.

Please date stamp and return with our messenger the additional copy of the enclosed motion.

Sincerely,

Richard A. Allen

Encl.

cc: (w/encl.) All parties of record

216159

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO 34839

**NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
- CONTROL AND CONSOLIDATION EXEMPTION -
ALGERS, WINSLOW AND WESTERN RAILWAY COMPANY**

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Office of Proceedings

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**MOTION OF NORFOLK SOUTHERN CORPORATION AND NORFOLK
SOUTHERN RAILWAY COMPANY FOR PROTECTIVE ORDER**

Norfolk Southern Corporation (“NSC”) and Norfolk Southern Railway Company (“NSR”) (collectively “NS”) hereby move the Surface Transportation Board (“STB” or “Board”) to enter a protective order in the above-referenced proceeding, in the form set forth in Appendix A hereto. The order is required to permit NS to exchange certain traffic information with the Algiers, Winslow and Western Railway (“AWW”) and to submit certain information and documents to the Board for use by outside counsel and consultants to interested parties, solely for use in this proceeding, that may constitute or contain information subject to 49 U.S.C. § 11904 or other confidential information.

On February 14, 2006 NSR submitted a verified Petition for Exemption pursuant to 49 U.S.C. § 10502 and 49 C.F.R. sections 1121 and 1180, to permit NSR to acquire from American Metals and Coal International, Inc. (“AMCI”) a 50 percent interest in AWW. The Petition further requests that the Board exempt from the prior approval requirements of 49 U.S.C. § 11323 any consolidation of AWW into NSR following the acquisition of the 50 percent interest from AMCI. NSR currently owns 50 percent of the stock in AWW as the

result of a transaction approved by the Interstate Commerce Commission in 1972. By acquiring the 50 percent interest from AMCI in a cash for stock transaction, NSR will become the sole owner of AWW. These transactions are collectively referred to herein as the "Transaction."

On March 27, 2006, NS filed a motion to amend the petition to add NSC and to exempt NSC from the prior approval requirements of 49 U.S.C. § 11323 to control AWW. In that motion NS also provided notice of its intention (or, if necessary requested leave) to file on or before April 11, 2006 a reply to filings by Indiana Southern Railroad, Inc. ("ISRR"), PSI Energy, Inc. ("Cinergy/PSI"), "Indianapolis Power and Light Company ("IPL") and Solar Sources Underground, LLC ("Solar") (collectively, "Respondents") opposing and requesting the imposition of conditions upon the petition for exemption.

The filings by Respondents make various assertions about the likely effect of the Transaction on rail movements of coal following the Transaction. NS believes that these assertions not only are contrary to the Board's precedents but also are refuted by the facts regarding rail movements in the past by NS and AWW in the region. NS wishes to ascertain the relevant information and bring it to the Board's attention in its reply. NS is concerned, however, that some of the information may be subject to 49 U.S.C. § 11904 or may otherwise constitute confidential information. NS therefore requests the Board to issue the protective order attached as Appendix A in order to permit NS and AWW to exchange traffic data and other information defined in the proposed order as Confidential and to permit NS to submit such information and other information designated Confidential and Highly Confidential to the Board and to outside counsel and consultants of other interested parties under the terms of the order solely for use in this proceeding.

The proposed protective order is modeled substantially on several others that the Board has recently entered. *See Dakota, Minnesota & Eastern R.R. Corp. and Cedar American Rail Holdings, Inc. - Control - Iowa, Chicago & Eastern R.R. Corp.*, STB Finance Docket 34178, decision served August 14, 2002; *Kansas City Southern - Control - The Kansas City Southern Railway Co., Gateway Eastern Railway Co., and the Texas Mexican Railway Co.*, STB Finance Docket 34342, decision served May 13, 2003

Accordingly, NS requests that a protective order be entered in the form provided in Appendix A hereto, including the forms of confidentiality undertakings that accompany it. AWW has authorized NS to advise the Board that AWW joins in this request.

Respectfully submitted



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William A. Galanko
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*Attorneys for
Norfolk Southern Corporation and
Norfolk Southern Railway Company*

Dated: April 3, 2006

Enclosures

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, or carriers, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) "Proceedings" means those before the Surface Transportation Board ("Board") concerning the Petition for Exemption filed by Norfolk Southern Railway Company ("NSR") in Finance Docket No. 34839 for exemption from the requirements of 49 U.S.C. § 11323 to permit it to acquire the remaining 50 percent of the capital stock of Algiers, Winslow and Western Railway ("AWW") not currently owned by NSR and subsequently to consolidate AWW into NSR, and any related proceedings before the Board, and any judicial review proceedings arising from Finance Docket No. 34839 or from any related proceedings before the Board.

2. Personnel of NSR, AWW and Norfolk Southern Corporation ("NSC") and their affiliates, including outside consultants and attorneys for any of them (representatives) may exchange Confidential Information for the purposes of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, unless and until the petition for exemption in Finance Docket No. 34839 is granted.

3. To the extent that any meetings, conferences, exchanges of data or other cooperative efforts between representatives of NSR, AWW or NSC of their affiliates are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904 or any other relevant provision of the ICC Termination Act of 1995.

4. If the petition for exemption in Finance Docket No. 34839 is denied, then all Confidential Documents (other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings) that are exchanged between NSR, NSC and AWW but which are not otherwise available to them as a result of their existing affiliation and pursuant to their reporting responsibilities for securities, tax and other purposes, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents. With respect to parties other than NSR, NSC and AWW, if the petition for exemption is denied by the Board, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents.

5. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

6. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

7. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

8. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Order.

9. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

10. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in Finance Docket No. 34839, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No. 34839 and/or with any related proceedings.

11. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

12. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

13. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance

with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

14. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

15. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as required by the provisions of this Protective Order.

16. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2 or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

17. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

18. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____ have read the Protective Order served _____, 2006, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34839, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents 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 Finance Docket No. 34839, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No. 34839 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, 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 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 parties producing confidential information or confidential documents 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.

Dated:

Exhibit B

UNDERTAKING --HIGHLY CONFIDENTIAL MATERIAL

I, _____ am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2006, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34839, 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 or Confidential Documents 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 Finance Docket No. 34839, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Finance Docket No. 34839 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, 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.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counselor outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, 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 information or documents designated or stamped as "HIGHLY 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 other parties producing confidential information or confidential documents 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated:

CERTIFICATE OF SERVICE

I certify that on April 3, 2006, a true copy of the foregoing " Motion of Norfolk Southern Corporation and Norfolk Southern Railway Company For Protective Order was served by hand or first class mail, postage prepaid upon:

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