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ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 35412

MIDDLETOWN & NEW JERSEY RAILROAD, LLC
-LEASE AND OPERATION EXEMPTION-
NORFOLK SOUTHERN RAILWAY COMPANY

MOTION FOR ACCESS TO CONFIDENTIAL DOCUMENTS

ENTERED
Office of Proceedings

SEP 10 2010

Part of
Public Record

Samuel J. Nasca, ^{1/} for and on behalf of United Transportation Union (UTU-NY), submits this Motion for Access to Confidential Documents (Motion) in the above captioned proceeding, pursuant to the provisions of 49 CFR 1150.43(h)(2), 1114.30(d).

UTU-NY seeks copies of the entire agreements mentioned at page 3, paragraph (c), of the Notice of Exemption, filed August 31, 2010, in this proceeding.

This basis for this motion is as follows:

1. UTU-NY needs further information for the proposed 40.51-mile transactions, so as to enable UTU-NY to properly understand the transactions, in order that UTU-NY may determine whether to seek a timely stay and/or petition to revoke. 49 CFR 1150.42. The proposed transactions embrace four separate line segments; and three separate trackage rights, sublease of connect-

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany NY 12205.

ing track, and assignments. In addition, the transactions involve at least four operating rail carriers. The interest of UTU-NY extends to persons employed in railroad operations in the involved territory; United Transportation Union is the collective-bargaining representative for many such persons under the Railway Labor Act. UTU-NY frequently participates in proceedings before the Surface Transportation Board in line transfer, lease, trackage rights, acquisition, operation, and consolidation proceedings.

2. An appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential, is attached hereto. The attachment is patterned upon those in F.D. No. 35063-35064-35065, served July 27, 2007. These are deemed appropriate inasmuch as those proceedings involved multiple carriers, employee organizations, and other interests. It is anticipated that access will be sought here only by the undersigned as outside counsel.

Conclusion

The Motion should be granted, with the attached protective order and confidentiality undertaking(s).

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036
(202) 223-9738

Attorney for Samuel J. Nasca

September 10, 1020

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
Karl Morell, counsel for applicant, Middletown & New Jersey
Railroad, LLC, by personal service at his office in Washington DC,

Dated at
Washington, DC
September 10, 2010


Gordon P. MacDougall

DRAFT PROTECTIVE ORDER AND CONFIDENTIALITY UNDERTAKING

38212-
SEC--

SERVICE DATE - LATE RELEASE JULY 27, 2007 -

SURFACE TRANSPORTATION BOARD

DECISION

35412

STB Finance Docket No. 35065-

MIDDLETOWN & NEW JERSEY RAILROAD, LLC-LEASE AND
OPERATION EXEMPTION-NORFOLK SOUTHERN RAILWAY COMPANY
ACCESS TO CONFIDENTIAL DOCUMENTS
MOTION FOR PROTECTIVE ORDER-

Decided: July 27, 2007-

By motion filed on September 10, 2010, Samuel J. Nasca, New York Legislative Director for United Transportation Union (UTU-NY), seeks access to confidential documents under 49 CFR 1150.43(h)(2), 1114.30(d), to protect the confidential and commercially sensitive terms of the unredacted agreements between Norfolk Southern Railway Company (NSR) and Middletown & New Jersey Railroad, LLC (M&NJ), submitted under seal in this proceeding. Currently, M&NJ filed a notice of exemption under 49 CFR 1150.41 for M&NJ's lease and operation of certain rail lines from NSR, and sublease of connecting track owned by New York, Susquehanna & Western Railway (NYS&W) and incidental overhead trackage rights, described in the agreement.

Good cause exists to grant the motion for access to confidential documents.

The motion conforms with the Board's rules at 49 CFR 1150.43(h)(2), 1114.30(d), governing protective orders to maintain the confidentiality of materials submitted to the Board. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Accordingly, the motion for access to confidential documents will be granted, and the agreements shall be subject to the Protective Order and Undertakings contained in the Appendix to this decision. (1)

¹ A motion for protective order also was filed in STB Finance Docket No. 35063, -- Michigan Central Railway, LLC - Acquisition and Operation Exemption - Filing of Norfolk Southern Railway Company, wherein an unredacted copy of the executed Transaction --- Agreement by and among Norfolk Southern Railway Company, Michigan Central Railway, LLC, Watco Companies, Inc., and Watco Transportation Services, Inc., was filed under seal.

(1) A proposed protective order and undertakings were included with the motion.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

access to confidential documents

1. The motion for ~~a protective order~~ is granted, and the Protective Order and Undertakings in the Appendix to this decision are adopted.

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2. The unredacted ~~Agreement~~ ^{agreements} submitted in STB Finance Docket No. 35065 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the appropriate, attached Undertakings are executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.

3. This decision is effective on its service date.

By the Board, ~~Vernon A. Williams, Secretary.~~

Vernon A. Williams
Secretary -

APPENDIX
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; divisions of rates, trackage rights compensation levels and other compensation between carriers; 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.

35412 (d) "Proceedings" means those before the Surface Transportation Board (Board)
concerning the transaction in STB Finance Docket No. ~~35065~~, and any related proceedings
before the Board, and any judicial review proceedings arising from STB Finance Docket
35412 No. ~~35065~~ or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or 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.

3. 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 pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; 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.

4. 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 Protective Order.

5. 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 Protective Order.

6. 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.

35412 7. Designated Material may not be used for any purposes, including without limitation
35412 any business, commercial or competitive purposes, other than the preparation and presentation of
evidence and argument in STB Finance Docket No. ~~35065~~, any related proceedings before the
Board, and/or any judicial review proceedings in connection with STB Finance Docket
No. ~~35065~~ and/or with any related proceedings.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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 provided in paragraph 9 of this Protective Order.

13. 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. §§ ~~11323~~ or 11904, or of any other relevant provision of the ICC Termination Act of 1995.

14. 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.

15. 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.

16. When a Confidential Document or Confidential Information is filed with the Board, the filing party must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

EXHIBIT A**UNDERTAKING—CONFIDENTIAL MATERIAL**

35412 I, _____, have read the Protective Order governing the
 production and use of Confidential Information and Confidential Documents in STB Finance
 Docket No. ~~35065~~, 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 STB Finance Docket
 35412 No. ~~35065~~, any related proceedings before the Surface Transportation Board, and/or any judicial
 35412 review proceedings in connection with STB Finance Docket No. ~~35065~~ 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**

35412 I, _____, am outside [counsel] [consultant] for _____, for
 whom I am acting in this proceeding. I have read the Protective Order governing the production
 and use of Confidential Information and Confidential Documents in STB Finance Docket
 35412 No. ~~35065~~, 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
 35412 than the preparation and presentation of evidence and argument in STB Finance Docket
 No. ~~35065~~, any related proceedings before the Surface Transportation Board, or any judicial
 review proceedings in connection with STB Finance Docket No. ~~35065~~ and/or with any related
 35412 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 counsel or 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: _____