

SERVICE DATE – APRIL 7, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1296X

R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT EXEMPTION—  
IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENN.

MOTION FOR PROTECTIVE ORDER

Decided: April 7, 2020

On February 18, 2020, R. J. Corman Railroad Property, LLC (RJC Railroad Property), filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon a railroad line extending from milepost 0.95 at or near Oneida, Tenn., to the end of the line at milepost 42.0 at or near Devonia, Tenn., a distance of approximately 41.05 miles in Scott, Campbell, and Anderson Counties, Tenn. (the Line).<sup>1</sup> On March 9, 2020, notice of the exemption was served and published in the Federal Register (85 Fed. Reg. 13,696).

On March 24, 2020, AOK filed a motion for protective order to prevent the unnecessary disclosure of commercially and competitively sensitive information in this proceeding. AOK included with the motion a proposed protective order and undertaking.

The motion conforms with the Board's rules at 49 C.F.R. § 1104.14 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 protective order will be granted, and the protective order and undertakings as modified in the Appendix to this decision are adopted.

It is ordered:

1. The motion for a protective order is granted, and the modified protective order and undertakings in the Appendix to this decision are adopted.
2. The parties are directed to comply with the protective order set forth in the Appendix to this decision.

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<sup>1</sup> The verified notice also embraced Docket No. AB 875 (Sub-No. 1X), R. J. Corman Railroad Company/Bardstown Line—Discontinuance Exemption—in Scott, Campbell, and Anderson Counties, Tenn., in which R. J. Corman Railroad Company/Bardstown Line sought an exemption to discontinue service over the Line.

3. Materials designated as “confidential” or “highly confidential” will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached undertakings are executed and the terms of the protective order are followed, or unless otherwise ordered by the Board.

4. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

## APPENDIX

### PROTECTIVE ORDER

1. Any party submitting information, data, documents, or other material (hereinafter collectively referred to as “material”) in pleadings or producing material in discovery to another party to this proceeding, which the party in good faith believes reflects proprietary or confidential information, may designate and stamp such material as “CONFIDENTIAL,” and such material must be treated as confidential. Such material, any copies thereof, and any data or notes derived therefrom:

a. Shall be used solely for the purpose of this proceeding and any judicial review proceeding arising herefrom, and not for any other business, commercial, or competitive purpose.

b. May be disclosed only to employees, counsel, or agents of the party requesting such material who have a need to know, handle, or review the material for purposes of this proceeding and any judicial review proceeding arising herefrom, and only where such employee, counsel, or agent has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.

c. Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding arising herefrom. However, counsel and consultants for a party are permitted to retain file copies of all pleadings that they were authorized to review under this Protective Order, including Paragraph 10.

d. If contained in any pleading filed with the Board, shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside “Confidential Materials Subject to Protective Order” or, if submitted electronically, be designated as confidential in the Board’s electronic filing system. See 49 C.F.R. § 1104.14.

2. Any party submitting material in pleadings or producing material in discovery to another party to this proceeding, may in good faith designate and stamp particular material, such as material containing competitively sensitive information, as “HIGHLY CONFIDENTIAL.” If any party wishes to challenge such designation, the party may bring such matter to the attention of the Board. Material that is so designated may be disclosed only to outside counsel or outside consultants of the party requesting such materials who have a need to know, handle, or review the materials for purposes of this proceeding and any judicial review proceeding arising herefrom, provided that such outside counsel or outside consultants have been given and have read a copy of this Protective Order, agree to be bound by its terms, and have executed the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as “HIGHLY CONFIDENTIAL” under this provision shall be subject to all the other provisions of this Protective Order, including without limitation Paragraph 1.

3. In the event that a party produces material that should have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and inadvertently fails to designate the material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the producing party may notify the other party in writing within 5 days of discovery of its inadvertent failure to make the confidentiality designation. The party who received the material without the confidentiality designation will return the non-designated portion (including any and all copies) or destroy it, as directed by the producing party, or take such other steps as the parties agree to in writing. The producing party will promptly furnish the receiving party with properly designated material.

4. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the inadvertent disclosure that the other party return the inadvertently produced privileged document. The party who received the inadvertently produced document will either return the document to the producing party or destroy the document immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

5. If any party intends to use “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material at hearings in this proceeding, or in any judicial review proceeding arising herefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material to the Board, or the court, as appropriate, with a written request that the Board or the court: (a) restrict attendance at the hearings during discussion of such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material in accordance with the terms of this Protective Order.

6. If any party intends to use “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent, and all other counsel attending the deposition, and all portions of the deposition at which any such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material is used shall be restricted to persons who may review the material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material shall be kept under seal and treated as such material in accordance with the terms of this Protective Order.

7. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material produced by the other party or copies or notes thereof as to which it obtained access pursuant to this Protective Order, the party so required shall notify the producing party in writing within 3 business days of the determination that such material is to be released,

or within 3 business days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.

8. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it publicly shall not be subject to this Protective Order even if the same information is produced and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in this proceeding.

9. Each party has a right to view its own material (i.e., material information originally generated or compiled by or for that party), even if that material has been designated as “HIGHLY CONFIDENTIAL” by a producing party, without securing prior permission from the producing party. If a party (the “filing party”) files and serves upon the other party (the “reviewing party”) a pleading or evidence containing the “HIGHLY CONFIDENTIAL” material of the filing party, the filing party shall also contemporaneously provide to outside counsel for the reviewing party a “CONFIDENTIAL” version of such filing that redacts any “HIGHLY CONFIDENTIAL” information of the filing party that cannot be viewed by the in-house personnel of the reviewing party. Such Confidential Version may be provided in a pdf or other electronic format.

10. Any party filing with the Board in this proceeding a pleading containing “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” material shall simultaneously file a public, redacted version of the pleading.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, have read the Protective Order served on April 7, 2020, governing the production of confidential material in Docket No. AB 1296X, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any material obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such material, for any purposes other than the preparation and presentation of evidence and argument in Docket No. AB 1296X or any judicial review proceeding arising therefrom. I further agree not to disclose any data or information obtained under this Protective Order to any person who has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that counsel and consultants may retain copies of pleadings which they were authorized to review under the Protective Order.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents 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.

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

## UNDERTAKING

## HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for \_\_\_\_\_, for which I am acting in this proceeding, I have read the Protective Order served on April 7, 2020, governing the production of confidential material in Docket No. AB 1296X, understand the same, and agree to be bound by its terms. I further agree not to disclose any material designated “HIGHLY CONFIDENTIAL” to any person or entity who: (i) is not eligible for access to “HIGHLY CONFIDENTIAL” material under the terms of the Protective Order, or (ii) has not executed a “HIGHLY CONFIDENTIAL” undertaking in the form hereof. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any material designated “HIGHLY CONFIDENTIAL,” that I will limit my use of such material to the preparation and presentation of evidence in Docket No. AB 1296X and any judicial review proceeding arising therefrom, that I will take all necessary steps to assure that said material will 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 material by personnel of my client, its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding and any judicial review proceeding arising herefrom, I will promptly destroy any copies of such material obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel and consultants may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or other documents containing such highly confidential material in compliance with the terms of the Protective Order. Under no circumstances will I permit access to material designated “HIGHLY CONFIDENTIAL” by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential material 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.

Name: \_\_\_\_\_

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: \_\_\_\_\_