

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36468

AMERICAN ROCKY MOUNTAINEER, LLC

**PETITION FOR EXEMPTION FROM
49 U.S.C. SUBTITLE IV**

MOTION FOR PROTECTIVE ORDER

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February 3, 2021
Part of
Public Record

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Counsel for American Rocky Mountaineer, LLC

Dated: February 3, 2021

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Pursuant to 49 C.F.R. § 1104.14(b), American Rocky Mountaineer, LLC (“American Rocky Mountaineer”) hereby requests that the Surface Transportation Board (“STB” or “Board”) issue a protective order allowing American Rocky Mountaineer to file under seal the Memorandum of Understanding for Rocky Mountaineer Excursion Passenger Rail Operations (“MOU”) by and between American Rocky Mountaineer and Union Pacific Railroad Company (“UPRR”).

American Rocky Mountaineer is filing concurrently herewith a Petition for Exemption from all of the provisions of Subtitle IV of Title 49 U.S.C. for its planned luxury rail tourism service. American Rocky Mountaineer will operate between Denver, Colorado and Moab, Utah beginning in summer 2021. American Rocky Mountaineer and UPRR intend to enter into an agreement to facilitate the service. The agreement has not been finalized. However, the parties have entered into a Memorandum of Understanding (“MOU”) outlining the terms of the planned agreement. UPRR will provide track access, dispatch the American Rocky Mountaineer trains, and provide other services and facilities to American Rocky Mountaineer. American Rocky Mountaineer has included the public, redacted version of the MOU as Exhibit A to its Petition for Exemption.

The MOU contains commercially sensitive and confidential terms and information the public release of which could cause competitive or other injury to American Rocky Mountaineer

and UPRR. Public disclosure of the MOU is not necessary for the consideration or disposition of the Petition for Exemption. American Rocky Mountaineer requests that the Board treat the terms of the MOU as confidential.

American Rocky Mountaineer thus requests that the Board accept the unredacted MOU for filing under seal, designated as noted above, and that it adopt the proposed protective order contained in the appendix hereto to govern access to the MOU. This approach is consistent with that previously taken by the Board in similar circumstances. See, e.g., Boston Surface Railroad Company, Inc.—Petition for Partial Exemption from 49 U.S.C. Subtitle IV, STB Docket No. FD 36043 (STB served Jul. 5, 2016).

Respectfully submitted,



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Counsel for American Rocky Mountaineer, LLC

Dated: February 3, 2021

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, "Confidential Information" means the Memorandum of Understanding for Rocky Mountaineer Excursion Passenger Rail Operations submitted by American Rocky Mountaineer, LLC ("American Rocky Mountaineer") in STB Finance Docket No. 36468.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to American Rocky Mountaineer of the attached Undertaking for Confidential Material. 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 American Rocky Mountaineer or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person 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 information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on American Rocky Mountaineer, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

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 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 the Protective Order.

7. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.

8. 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.

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of the Memorandum of Understanding for Rocky Mountaineer Excursion Passenger Rail Operations submitted by American Rocky Mountaineer, LLC (“American Rocky Mountaineer”) in STB Docket No. FD 36468, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any 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 Docket No. FD 36468 or any judicial review proceeding taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has not executed an Undertaking in the form hereof.

Signed: _____

Position: _____

Affiliation: _____

Dated: _____