

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB 1320X

**GROWTH RESOURCES OF WELLSBORO FOUNDATION
– ABANDONMENT EXEMPTION –
IN TIOGA COUNTY, PENNSYLVANIA**

STB Docket No. AB 1325X

**WELLSBORO & CORNING RAILROAD, LLC
– DISCONTINUANCE OF LEASE AND OPERATION AUTHORITY –
IN TIOGA COUNTY, PENNSYLVANIA**

JOINTLY FILED MOTION FOR PROTECTIVE ORDER

Brian S. Duff, Esquire
Owlett & Lewis, P.C.
One Charles Street
P.O. Box 878
Wellsboro, PA 16901
Phone: (570) 723-1451
BSD@owlett-lewis.com

Attorney for Growth Resources
of Wellsboro Foundation

Dated: August 19, 2022

Eric M. Hocky
Clark Hill PLC
2001 Market Street
Suite 2620
Philadelphia, PA 19103
Phone: 215-640-8523
ehocky@clarkhill.com

Attorney for Wellsboro & Corning
Railroad, LLC

 GRANTED	DECISION ID NO.: 51393
	DECIDED DATE: 8/22/2022
	SERVED DATE: 8/23/2022
	APPROVED: <i>M. Hocky</i>
	Director
Office of Proceedings	☐

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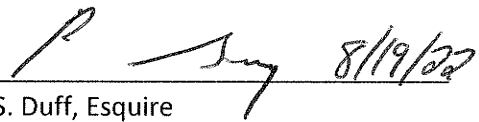
JOINTLY FILED MOTION FOR PROTECTIVE ORDER

On June 24, 2022, the Board granted a motion by Growth Resources of Wellsboro Foundation (“GROW”) for a protective order in Docket No. AB 1320X in connection with an abandonment Notice of Exemption filed on May 9, 2022. Based on comments by the Board, on July 28, 2022, GROW filed an amended Notice of Exemption to replace the original Notice. The amended Notice was filed jointly with a discontinuance Notice of Exemption of Wellsboro & Corning Railroad, LLC (“WCOR”) in Docket No. AB1325X (together, the “Joint Notice”). GROW and WCOR are referred to herein collectively as “Applicants.”

The Joint Notice includes exhibits that have been redacted to protect confidential information. To clarify that the confidential information is protected in connection with both GROW’s and WCOR’s respective Notices, pursuant to 49 CFR §1104.14(b), Applicants respectfully request that the Board enter a new replacement Protective Order to govern the handling of CONFIDENTIAL AND HIGHLY CONFIDENTIAL materials in both of the related proceedings. Issuance of the protective order will allow the Board to review these materials, unredacted, ensuring that confidential information will be protected from unnecessary public disclosure in both dockets. The proposed protective order attached

as Appendix A follows the format of the original protective order granted by the Board in Docket No. AB 1320X, and generally follows the format of protective orders the Board has entered in other recent cases.

Respectfully submitted,



Brian S. Duff, Esquire
Owlett & Lewis, P.C.
One Charles Street
P.O. Box 878
Wellsboro, PA 16901
Phone: (570) 723-1451

**ATTORNEY FOR GROWTH RESOURCES OF
WELLSBORO FOUNDATION**

/s/ Eric M. Hocky

Eric M. Hocky
Clark Hill PLC
2001 Market Street
Suite 2620
Philadelphia, PA 19103
Phone: (215) 640-8523

**ATTORNEY FOR WELLSBORO & CORNING
RAILROAD, LLC**

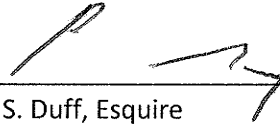
Dated: August 19, 2022

Certificate of Service

I hereby certify that copies of the foregoing Motion for Protective Order were served by email
on all parties of record as follows:

Richard Walsh
National Association of Reversionary property Owners
Dick@Halcyon.com

Erick J. Coolidge
Roger Bunn
Mark L. Hamilton
Tioga County Board of Commissioners
mrice@tiogacountypa.us



Brian S. Duff, Esquire

Dated: August 19, 2022

APPENDIX A
PROTECTIVE ORDER

1. Any party producing information, data, documents, or other material (hereinafter collectively referred to as “material”) in discovery to another party to these proceedings (Docket No. AB 1320X and Docket No. AB 1325 X) (the “Proceedings”), or submitting material in pleadings, that 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, and any data or notes derived therefrom:
 - a. Shall be used solely for the purpose of these Proceedings and any judicial review proceeding arising here from, 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 these Proceedings and any judicial review proceeding arising here from, 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 these Proceedings and any judicial review proceeding arising here from. However, counsel and consultants for a party are permitted to retain file

copies of all pleadings which 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." See 49 C.F.R. § 1104.14.

- 2. Any party producing material in discovery to another party to these Proceedings, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data, or other 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 these Proceedings and any judicial review proceeding arising here from, 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 execute the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as "HIGHLY CONFIDENTIAL" and produced in discovery under this provision shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph 1.
- 3. In the event that a party produces material which 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 these Proceedings, or in any judicial review proceeding arising here from, 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 these Proceedings, 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 these Proceedings, 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 these Proceedings 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 these Proceedings.
9. Each party has a right to view its own data, information and documentation (i.e., information originally generated or compiled by or for that party), even if that data,

information and documentation 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 a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” pleading in these Proceedings should simultaneously file a public version of the pleading.

UNDERTAKING
CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2022, governing the production of confidential documents in STB Docket No. AB 1320 X and STB Docket No. AB 1325 X (the "Proceedings"), 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 purposes other than the preparation and presentation of evidence and argument in the Proceedings or any judicial review proceeding arising here from. 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 these Proceedings and any judicial review proceeding arising here from, 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.

Dated: _____

UNDERTAKING
HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for , for which I am acting in these Proceedings, I have read the Protective Order served on _____, 2022, governing the production of confidential documents in STB Docket No. AB 1320 X and STB Docket No. 1325 X (the "Proceedings"), understand the same, and agree to be bound by its terms. I further agree not to disclose any data, information or 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 documents designated "HIGHLY CONFIDENTIAL," that I will limit my use of those documents and the information they contain to these Proceedings and any judicial review proceeding arising here from, that I will take all necessary steps to assure that said documents and information 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 documents or information by personnel of my client, its subsidiaries, affiliates, or owners, and that at the conclusion of these Proceedings and any judicial review proceeding arising here from, 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 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 information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons or entities for which I am not acting in these Proceedings.

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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____