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BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
March 28, 2023
Part of
Public Record

DOCKET NO. FD 36688

GREEN MOUNTAIN RAILROAD CORPORATION
—TRACKAGE RIGHTS EXEMPTION—
NEW ENGLAND CENTRAL RAILROAD, INC.

**MOTION FOR PROTECTIVE ORDER OF
GREEN MOUNTAIN RAILROAD CORPORATION**

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**ATTORNEYS FOR GREEN MOUNTAIN
RAILROAD CORPORATION**

Dated: March 28, 2023

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Pursuant to 49 C.F.R. § 1104.14(b), Green Mountain Railroad Corporation (“GMRC”) hereby moves the Board to issue a Protective Order allowing GMRC to file, under seal, an un-redacted copy of a document titled “Trackage Rights Agreement between New England Central Railroad, Inc. and Green Mountain Railroad Corporation” (“Agreement”) which would govern the trackage rights transaction which is the subject of this proceeding.

Pursuant to 49 C.F.R. § 1180.2(d)(7), GMRC is filing herewith a Notice of Exemption (the “Notice”) to acquire overhead trackage rights over approximately 61.4 miles of railroad line owned by New England Central Railroad, Inc. (“NECR”), between mile post 99.0 at Millers Falls, Massachusetts, and mile post 14.46 at White River Junction, Vermont.

Pursuant to 49 C.F.R. § 1180.6(a)(7)(ii), GMRC has attached a redacted (public) version of the Agreement as Exhibit B of the Notice, and has filed an unredacted version of the same Agreement under seal, subject to this Motion for Protective Order. The Agreement contains confidential and commercially sensitive information which could cause competitive and other harms to GMRC and NECR if it were to be released publicly. Public disclosure of the Agreement is not necessary for either the consideration or disposition of GMRC’s Notice.

GMRC therefore moves the Board to accept the un-redacted Agreement for filing under seal, and to adopt the proposed Protective Order attached hereto to govern access to the un-redacted Agreement, an approach consistent with that which the Board has taken in similar circumstances.¹

Wherefore Green Mountain Railroad Corporation respectfully moves the Board to adopt and issue the Protective Order attached hereto.

Respectfully submitted,



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¹ See, e.g., *Chicago, Cent. & Pac. R.R. Co. – Trackage Rights Exemption – Cedar River R.R. Co.*, FD 35563 (STB served Dec. 30, 2011); *Kan. City S. Ry. Co. – Trackage Rights Exemption—Ill. Cent. R.R. Co.*, FD 34309 (STB served Feb. 4, 2003).

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Highly Confidential Information” means the un-redacted version of the Trackage Rights Agreement between New England Central Railroad, Inc. and Green Mountain Railroad Corporation, dated March 28, 2023 (“TRA”), and submitted under seal on March 28, 2023, in STB Docket No. FD 36688, and any other materials that any interested party may hereafter so designate in this Proceeding.

2. For purposes of this Protective Order, “Proceeding” means the class exemption proceeding pending before the Surface Transportation Board (“Board”) in STB Docket No. FD 36688, any judicial review arising from said Proceeding, and from any related proceedings before the Board.

3. All parties to this Proceeding agree that the TRA is Highly Confidential Information, and that the TRA, any copies of the TRA, and any documents incorporating information copied or derived from the TRA, shall be designated and stamped as “HIGHLY CONFIDENTIAL,” and shall be handled as provided in this Protective Order.

4. The Highly Confidential Information shall be provided only pursuant to this Protective Order, and only upon execution and delivery to Green Mountain Railroad Corporation (“GMRC”) and New England Central Railroad, Inc. (“NECR”) of the attached Highly Confidential Undertaking. Highly 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 other competitive purpose.

5. The Highly Confidential Information shall not be disclosed in any way or to any person without the written consent of GMRC and NECR 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 Highly Confidential Undertaking prior to receiving access to Highly Confidential Information.

6. The Highly Confidential Information shall not be disclosed in any way, directly or indirectly, to an employee of a party to these Proceedings, or to any other person or entity except to outside legal counsel, or retained outside consultant, who, before receiving any access to the Highly Confidential Information, has been given and has read a copy of this Protective Order, and has agreed to be bound by its terms by signing the Highly Confidential Undertaking in the form set forth hereafter.

7. Any copies of or notes or documents incorporating the Highly Confidential Information (other than file copies retained by outside counsel for a party to these Proceedings)

must be destroyed, and notice of such destruction must be served on GMRC and NECR, at the earlier occurrence of (a) such time as the party receiving the Highly Confidential Information withdraws from these Proceedings or (b) the completion of this Proceeding and any related Board proceedings, or any proceeding or judicial review arising therefrom.

8. If any party intends to use the Highly Confidential Information at hearings or otherwise in this proceeding, or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Highly 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 (a) restrict attendance at any hearing during discussion of such Highly Confidential Information, and (b) restrict access to the portion of the record or briefs reflecting discussion of such Highly Confidential Information in accordance with the Protective Order.

9. No party may include the Highly Confidential Information 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 "Highly Confidential Materials Subject to Protective Order." 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.

10. No party may include the Highly Confidential Information in any pleading, brief, discovery request or response, or other document submitted to any forum other than the Board in these Proceedings unless (a) the pleading or other document is submitted under seal in accordance with this Protective Order, which requires the pleading or other document to be kept confidential by the other forum and not to be placed in the public docket in the Proceeding, or (b) the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Highly Confidential Materials Subject to Protective Order," and accompanied by a motion to the other forum requesting a protective order requiring that the pleading or other document be kept confidential and not to be placed in the public docket in that forum's proceedings, and requesting that if the motion is not granted by that forum, that the pleading or other document be returned to the filing party.

11. No party may present or otherwise use the Highly Confidential Information at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed materials or exhibits containing or reflecting the Highly Confidential Information to the Board, and has accompanied such submission with a written request that the Board (a) restrict attendance at the hearing during any discussion of the Highly Confidential Information and (b) restrict access to any portion of the record, pleadings, or other briefs reflecting discussion of the Highly Confidential Information in accordance with this Protective Order.

12. No party may present or otherwise use the Highly Confidential Information at any deposition held in connection with these Proceedings without advising counsel for the party

producing the Highly Confidential Information, counsel for the deponent, and all other counsel at the deposition. Attendance at any portion of the deposition at which the Highly Confidential Information is used or discussed shall be restricted to persons who may review it under the terms of this Protective Order. All portions of transcripts or exhibits which incorporate, refer to, or otherwise disclose the Highly Confidential Information shall be filed under seal and be otherwise handled as provided in this Protective Order.

13. To the extent that any materials reflecting the Highly Confidential Information are produced by a party to these Proceedings, and are held and/or used by the receiving person in compliance with this Protective Order, such production, disclosure, holding, and/or use of the Highly Confidential Information are deemed essential for the disposition of these and any related proceedings, and will not be deemed a violation of 49 U.S.C. § 11904 or any other relevant provision of the Interstate Commerce Commission Termination Act of 1995.

14. Nothing in this Protective Order shall restrict the right of any party to these Proceedings to disclose voluntarily any Highly Confidential Information originated by that party, if such Highly Confidential Information does not incorporate or otherwise reflect any Highly Confidential Information originated by any other party to these Proceedings.

15. If the Board retains the Highly Confidential Information, it shall treat the information in accordance with the procedures set forth at 49 C.F.R. § 1104.14.

16. All parties must file simultaneously a public version of any highly confidential submission filed with the Board. The highly confidential version may be served on other parties in electronic format only.

17. All parties must comply with 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.

HIGHLY CONFIDENTIAL UNDERTAKING

I, _____, am outside [counsel] [consultant] for _____, for whom I am acting in this Proceeding. I certify that I have read the Protective Order governing the filing of Highly Confidential Information prepared by Green Mountain Railroad Corporation (“GMRC”) filed on March 28, 2023, in STB Docket No. FD 36688, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any information obtained under this Highly Confidential Undertaking, or to use or permit the use of any 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 36688, or any administrative or judicial review proceedings taken or filed in connection therewith.

I further understand and agree not to disclose any information obtained under this Protective Order to any person who is not also bound by the terms of this Protective Order and has executed a Highly Confidential Undertaking in the form hereof. 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 the Highly Confidential Information, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I further understand and agree, as a condition precedent to receiving, viewing, or using copies of any information in this Proceeding, that I will take all necessary steps to ensure that the Highly Confidential Information will be kept on a highly confidential basis by any outside counsel or consultants working with me; that under no circumstances will I permit access to the Highly Confidential Information by any employees, my client, or its subsidiaries, affiliates, or owners; and that at the conclusion of this Proceeding (including any administrative or judicial review or remand), I will destroy all documents containing or reflecting the Highly Confidential Information (excluding 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 Highly Confidential Undertaking, and that GMRC and NECR 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 Highly Confidential Undertaking, but shall be in addition to all remedies available at law or equity.

Signature: _____
Outside [Counsel] [Consultant]

Dated: _____