

BEFORE THE SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
October 24, 2023
Part of
Public Record

Docket No. FD 35141

U S RAIL CORPORATION—CONSTRUCTION AND OPERATION EXEMPTION—BROOKHAVEN
RAIL TERMINAL

Docket No. FD 35819

BROOKHAVEN RAIL TERMINAL AND BROOKHAVEN RAIL, LLC—PETITION FOR
DECLARATORY ORDER

Docket No. FD 36376

SPECTRUM RR HOLDINGS, LLC—OPERATION EXEMPTION—RAILROAD LINE IN THE
TOWN OF BROOKHAVEN, N.Y.

Docket No. FD 36384

SILLS ROAD REALTY LLC—ACQUISITION EXEMPTION—RAILROAD LINE IN THE TOWN OF
BROOKHAVEN, N.Y.

Docket No. FD 36385

SPECTRUM RR HOLDINGS, LLC—ACQUISITION & OPERATION EXEMPTION—LINE OF
SILLS ROAD REALTY LLC, IN THE TOWN OF BROOKHAVEN, N.Y.

Docket No. FD 36398

BROOKHAVEN RAIL LLC—CONSTRUCTION AND OPERATION EXEMPTION—IN SUFFOLK
COUNTY, N.Y.

Docket No. FD 36399

BROOKHAVEN RAIL LLC—PETITION FOR EXEMPTION FROM REQUIREMENTS OF 49 U.S.C.
§ 10909

**Motion for Protective Order
by Brookhaven Logistics Center LLC**

 GRANTED Office of Proceedings	DECISION ID NO.: 51938
	DECIDED DATE: 11/1/2023
	SERVED DATE: 11/1/2023
	APPROVED: <i>maodair</i> Director
	☐

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Counsel for Brookhaven Logistics Center LLC

Date: October 24, 2023

Pursuant to 49 C.F.R. § 1104.14(b), Brookhaven Logistics Center LLC (BLC) respectfully request that the Surface Transportation Board issue for the above-captioned proceedings the proposed protective order attached as Appendix 1. The conditions of the proposed protective order are consistent with those that the Board has recently issued in other proceedings.

BLC seeks a protective order to preserve the confidentiality of certain records and information that it is submitting to the Board in connection with a simultaneously filed response to a request for information in the Board's decision served on September 27, 2023 in these proceedings. These records involve confidential commercial agreements that contain competitively sensitive information.

For these reasons, BLC respectfully requests that the Board issue the attached protective order.

Respectfully submitted,

/s/ Jason D. Tutrone
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October 24, 2023

APPENDIX 1

Protective Order

1. For purposes of this Protective Order:
 - (a) “Confidential Material” means information, data, documents, or other material (collectively, “Material”) that are subject to a confidentiality agreement or contain proprietary or confidential information.
 - (b) “Designated Material” means Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” under paragraphs 2 or 3 of this Protective Order and any Confidential Material in or derived from such Materials.
 - (c) “Proceeding” means the proceeding before the Surface Transportation Board (“Board”) under STB Docket Nos. FD 35141, FD 35819, FD 36376, FD 36384, FD 36385, FD 36398, FD 36399, and any related proceedings before the Board, and any judicial review proceedings arising from these proceedings.
2. If a party determines in good faith that Material it submits in filings in this Proceeding or produces in discovery in this Proceeding is Confidential Material, it may designate and stamp such Confidential Material as “CONFIDENTIAL.”
3. If a party determines in good faith that Material it submits in filings in this Proceeding or produces in discovery in this Proceeding is Confidential Material that contains compensation levels or other competitively sensitive information, is subject to a confidentiality agreement prohibiting disclosure to any person other than outside counsel or consultants that have a need to access the material, or contains content that is subject a confidentiality agreement prohibiting disclosure of the content to any person other than outside counsel or consultants that have a need to know the content, the party may designate and stamp such Confidential Material as “HIGHLY CONFIDENTIAL.”
4. A person or entity that receives Material designated or stamped as “CONFIDENTIAL” shall not disclose the Material in any way, directly or indirectly, to any person or entity except an employee, counsel, or agent of a party to this Proceeding, or an employee of such counsel, consultant, or agent, who has a need to know, handle, or review the Material for purposes of this Proceeding and, before receiving access to the Material, has been given and has read a copy of this Protective Order and has agreed to be bound by its provisions by signing the confidentiality undertaking set forth at Exhibit A to this Protective Order.
5. A person or entity that receives Material designated or stamped as “HIGHLY CONFIDENTIAL” shall not disclose the Material in any way, directly or indirectly,

to any employee of a party to this Proceeding, or to any other person or entity except an outside counsel or outside consultant of a party to this Proceeding, or to an employee of such outside counsel or outside consultant, who has a need to know, handle, or review the Material for purposes of this Proceeding and, before receiving access to the Material, has been given and has read a copy of this Protective Order and has agreed to be bound by its provisions by signing the confidentiality undertaking 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.

7. No person or entity receiving Designated Material may use it for any purpose, including any business, commercial, or competitive purpose, other than this Proceeding.

8. Any party who receives Designated Material, and its employees, counsel, and agents, shall destroy such Designated Material and any notes or documents reflecting it (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 Designated Material 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 C.F.R. § 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 this Protective Order, 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. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

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

15. 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.

16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Material originated by that party, if such Confidential Material does not contain or reflect any Confidential Material originated by any other party.

EXHIBIT A

Undertaking—Confidential Material

I, _____, have read the Protective Order served on _____, 2023, governing the production and use of Confidential Material in STB Docket Nos. FD 35141, FD 35819, FD 36376, FD 36384, FD 36385, FD 36398, FD 36399, and related proceedings before the Surface Transportation Board (the Proceedings), understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Material 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, documents, or information, for any purpose other than the preparation and presentation of evidence and argument in the Proceedings and/or any judicial review proceedings in connection with the Proceedings. I further agree not to disclose any Confidential Material, 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 these Proceedings (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 Material 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.

Signed: _____

Affiliation: _____

Dated: _____

EXHIBIT B
Undertaking—Highly Confidential Material

I, _____ am outside [counsel][consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2023, governing the production and use of Highly Confidential Material in STB Docket Nos. FD 35141, FD 35819, FD 36376, FD 36384, FD 36385, FD 36398, FD 36399 and related Surface Transportation Board proceedings (the Proceedings), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Highly Confidential Material 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 documents, data, or information, for any purpose other than the preparation and presentation of evidence and argument in the Proceedings or any judicial review proceedings in connection with the Proceedings. I further agree not to disclose any Highly Confidential Material, 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 ensure 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 the Proceedings (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 parties producing Highly Confidential Material 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.

Signed: _____

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

Certificate of Service

I certify that I have this October 24, 2023, served copies of the foregoing Motion for Protective Order upon all parties of record in Docket Nos. FD 35141, FD 35819, FD 36376, FD 36384, FD 36385, FD 36398, and FD 36399 by email or first-class mail.

/s/ Jason D. Tutrone

Jason Tutrone