



ATTORNEYS AT LAW
THE FOUNDRY BUILDING ♦ 1055 THOMAS JEFFERSON STREET, NW ♦ SUITE 500 ♦ WASHINGTON, D.C. 20007
TELEPHONE: 202-342-5200 ♦ FACSIMILE: 202-342-5299

ENTERED
Office of Proceedings
June 29, 2018
Part of
Public Record

RICHARD BAR
BRENDAN COLLINS
STEVEN JOHN FELLMAN
EDWARD D. GREENBERG
MATTHEW T. JOURNY
KATHARINE FOSTER MEYER
DAVID K. MONROE
TROY A. ROLF
DAVID P. STREET
KEITH G. SWIRSKY
THOMAS W. WILCOX
CHRISTOPHER B. YOUNGER

OLIVER M. KRISCHIK
KRISTINE O. LITTLE

MINNESOTA OFFICE:
114 FIRST STREET SOUTH
BUFFALO, MN 55313
(T) 763-682-6620 (F) 763-682-6261

WRITER'S DIRECT E-MAIL ADDRESS
EGREENBERG@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-342-52778

June 29, 2018

VIA E-FILING

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Docket No. FD 36178, *Metropolitan Council - Petition for Declaratory Order*

Dear Ms. Brown:

Attached please find a Motion for Protective Order, along with a draft of a proposed order, for filing in this docket. As indicated in the Motion, we have been authorized to state that counsel for the Twin Cities & Western Railroad Company agrees with the entry of the proposed order.

If you have any questions, please contact me.

Sincerely,

Edward D. Greenberg
Attorney for Metropolitan Council

cc: Parties of Record



An International Association of Independent Law Firms in Major World Centers

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36178

METROPOLITAN COUNCIL – PETITION FOR DECLARATORY ORDER

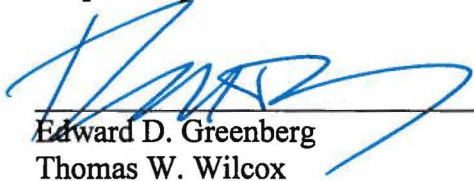
MOTION FOR PROTECTIVE ORDER

Metropolitan Council files this Motion for Protective Order (“Motion”), pursuant to 49 C.F.R. §1104.14(b), requesting that the Board issue an order adopting the proposed Protective Order attached to this Motion as Exhibit A in order to protect against the public disclosure of confidential and highly confidential materials that may be included in pleadings, discovery responses, depositions, or other documents in this proceeding. The undersigned counsel for Applicants has conferred with counsel for the Twin Cities & Western Railroad Company (“TCW”), and the undersigned is authorized to state that the TCW agrees with the entry of the proposed protective order.

The attached draft Protective Order is modeled after and similar to other Protective Orders adopted and issued by the Board. Granting this Motion and issuing the Protective Order will facilitate the exchange and use of confidential, proprietary, or commercially sensitive material, including financial information, in the event that such materials are produced by parties in this case in discovery or included in their filings. These materials, if produced, could cause commercial or other harm to the disclosing party. Accordingly, Applicant requests that the Board expeditiously grant this Motion.

WHEREFORE, for the reasons set forth above, Metropolitan Council requests that the Board expeditiously issue an order granting this Motion and adopting the Protective Order attached hereto.

Respectfully submitted,



Edward D. Greenberg
Thomas W. Wilcox
GKG Law, P.C.
1055 Thomas Jefferson Street N.W.
Suite 500
Washington, D.C. 20007
Telephone: 202-342-5277
Facsimile: 202-342-5299

Attorneys for Metropolitan Council

June 29, 2018

CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of June, 2018, I have served a copy of the foregoing Motion for Protective Order electronically on William Mullins counsel for TWC and by first class mail on each of the other parties of record:

Aasness, Perry
400 Robert St North
St. Paul, MN 55101

Maluchnik, Randy
Office Of County Commissioner Carver County
Government Center Human Services Building
602 East Fourth Street
Chaska, MN 55318-1202

Abbe, Bruce
Midwest Shippers Association
10800 Lyndale Avenue South, Suite 159
Bloomington, MN 55420

Meyer, Perry
25 Indian Point Dr
New Ulm, MN 56073

Anderson, Gary
Heartland Corn Producers
P.O. Box A
Winthrop, MN 55396

Midwest Agri-Commodities Company
999 Fifth Avenue, Suite 500
San Rafael, CA 94901

Antony, Ron
Yellow Medicine County Commissioner
180 8Th Avenue
Granite Falls, MN 56241

Nagel, Joe
County Of McLeod
830 11Th Street East
Glenco, MN 55336

Baukol, Eric
P.O. BOX 216
Granite Falls, MN 56241-0216

Neltzel, Mike
2500 Shadywood Road Suite 300
Excelsior, MN 55331

Benz, David
Thompson Hine LLP
1919 M Street, NW, Suite 700
Washington, DC 20036

Nielsen, Jeff J.
P.O. Box 461
Winthrop, MN 55396

Brooks, Shaun
Po Box 30
Saint Albans Bay, VT 05481

Pederson, Wendy
P.O. Box 326
Franklin, MN 55333-0326

Brooks, Shaun
F.W. Cobs Company
720 Hall St
Stewart, MN 55385-55385

Peirce, Jason
City Of Stewart
PO Box 195
Stewart, MN 55385

Christensen, Steve
P.O. BOX 216
Granite Falls, MN 56241-0216

Peters, David
Central Region Cooperative
P.O. Box E
Fairfax, MN 55332

Christoffersen, Jeff
The Mosaic Company
13830 Circa Crossing Drive
Lithia, FL 33547

Peters, David M.
P.O. BOX 99
Buffalo Lake, MN 55314

Clothier, David A.
5508 Lonas Dr.
Knoxville, TN 37909

Cummings, Molly
1010 First Street South
Hopkins, MN 55343-7573

Domn, Steven
83550 Cty Rd 21
Renville, MN 56284-56284

Doyscher, William
Farmers Co-Operative Elevator Co .
1972 510Th Street
Hanley Falls, MN 56245

Dubbelde, Scott
1972 510Th Street
Hanley Falls, MN 56245

Flereck, Joseph
Ceres Global Ag Corp.
1660 S Hwy 100, Suite 350
St Louis Park, MN 55416

Ford, Andy
999 Fifth Ave. Suite 500
San Rafael, CA 94901

Fox, Bob
Minnesota Valley Regional Rail Authority
PO Box 481 200 S Mill Street
Redwood Falls, MN 56283-56283

Fragodt, Jerome
Farmers Union Oil Co.
124 W. Nichols Ave
Montevideo, MN 56265

Franta, Jeff
PO Box A
Winthrop, MN 55396

Haugeberg, Jarvis
Form A Feed Inc
740 Bowman St
Stewart, MN 55385

Hebrink, Craig
Farmward Cooperative
PO Box 604
Renville, MN 56284

Hilgert, Suzanne.
1009 W. Lincoln Ave.
Olivia, MN 56277

Punke, Douglas E.
Renewable Products Marketing Group, Llc
1157 Valley Park Drive, Suite 100
Shakopee, MN 55379

Reiners, Matt
Poet Reiners
4506 N Lewis Ave
Sioux Falls, SD 57104

Schwarz, Greg
30012 Lexington Road
Le Sueur, MN 56058

Settje, Jerry
Corona Grain & Feed
P.O. Box 107
Corona, SD 57227

Sherman, Todd
PO Box 326
Franklin, MN 55333-0326

Sjostrom, Steve
Heartford Corn Products
PO Box A
Winthrop, MN 55396

Smith, Dan
Cooperative Network
145 University Avenue West, Suite 450
St. Paul, MN 55103

Smith, Michael V.
Finger Lakes Railway Corp.
68 Border City Road
Geneva, NY 14456

Spano, Jake
St. Louis Park, Minnesota
5005 Minnetonka Blvd
St. Louis, MN 55416

Spitulnik, Charles A
Kaplan Kirsch & Rockwell Llp
1001 Connecticut Avenue, N.W. Suite 800
Washington, DC 20036

Steffl, Charles J.
120 2Nd St W
Morton, MN 56270

Thalmann, Brian
Heartland Corn Products
PO Box A
Winthrop, MN 55396

Threlkeld, Charles
Consolidated Train And Barge Co
P.O. Box 249
Mandeville, LA 70470-0249

Huls, Ronda
P.O. Box 195
Stewart, MN 55385

Isaacson, Dean
Western Consolidated Cooperative
520 County Road 9
Holloway, MN 56249

Jenkins, Brad
5508 Lonas Dr
Knoxville, TN 37909

Jones, Nathan
81591 400 St.
Bird Island, MN 55310-55310

Jones, Steven C.
The City Of Montevideo
P.O. Box 517
Montevideo, MN 56265

Kossuth, Stephen
Amerigas Propane
11450 Compaq Center West Dr., Suite 400
Houston, TX 77070

Kramer, Randy
Renville County Board Of Commissioners
105 South 5Th Street, Suite 315
Olivia, MN 56277-1484

Ludowese, Joe
63901 190 St
Stewart, MN 55385

Lunde, Honorable Jeffrey
Mayor Of The City Of Brooklyn Park, Mn
5200 85Th Ave. N.
Brooklyn Park, MN 55443

Lundy, Jeffrey
Lukehart & Lundy
P. O. Box 74
Punxsutawney, PA 15767-0074

Mack, Dan
Chs Inc.
5500 Cenex Drive, Ms 320
Inver Grove Heights, MN 55077

Traen, Thomas
Glacial Plains Cooperative
543 Van Norman Ave.
Murdo Ck, MN 56271

Traxler, Roxy
Sibley County
PO Box 256 400 Court Ave.
Gaylord, MN 55334

Trosen, Mike
Meadowland Framers Coop
P.O. BOX 338
Lamberton, MN 56152

Tyra - Lukens, Nancy
Eden Prairie
8080 Mitchell Rd
Eden Prairie, MN 55344-4485

Webb, Gregory
77 W. Wacker Drive, Suite 4600
Chicago, IL 60601

Wertish, Janette
221 North Main Street
Renville, MN 56284

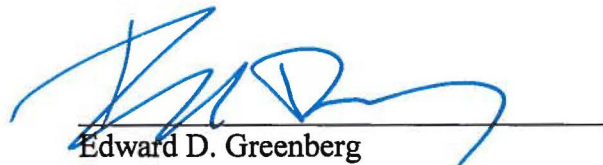
Wohlman, Shane
City Of Renville
221 Noth Main Street
Renville, MN 56284

Zelenka, Bob
Minnesota Grain & Feed Association
3470 Washington Drive, Suite 200
Eagan, MN 55122

Ellison, Honorable Keith
2263 Rayburn House Office Building
Washington, DC 20515

Lewis, Honorable Jason
2805 Cliff Road
Burnsville, MN 55337

Peterson, Honorable Collin C.
Congress Of The United States House Of Representatives
2204 Rayburn House Office Building
Washington, DC 20515



Edward D. Greenberg

PROTECTIVE ORDER

1. Any party producing information, data, documents or other material (hereinafter collectively referred to as "material") in discovery to another party to this proceeding, 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 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, outside counsel and consultants for a party are permitted to retain file copies of all pleadings filed with the Board.
 - (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 this proceeding, 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 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 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" and/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" and/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" and/or "HIGHLY CONFIDENTIAL" material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.
6. If any party intends to use "CONFIDENTIAL" and/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" and/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" and/or "HIGHLY CONFIDENTIAL" material shall be kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective Order.

7. Each party is ordered to produce to the other party documents or information which, because of confidentiality provisions, cannot be produced without a Board order directing their production to the extent that (1) the other party has requested that the documents be produced in discovery, and (2) the parties agree that the requested documents would be properly discoverable in this proceeding but for the confidentiality provision(s). Such documents shall be required to be produced only after the other party(ies) who are entitled to prior notice have been provided written notice and a reasonable opportunity to object to that production and obtain a ruling from the Board on that objection. Any documents produced pursuant to this Section 7 shall be treated as "HIGHLY CONFIDENTIAL" and shall otherwise be subject to the terms of this Protective Order. To the extent that material reflecting the terms of contracts, shipper-specific data, traffic data, or other proprietary information is produced by a party in this or any related proceedings and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. § 11904.
8. 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 working days of the determination that the "CONFIDENTIAL" material, "HIGHLY CONFIDENTIAL" material, or copies or notes are to be released, or within 3 working days prior to such release, whichever is soonest, to permit the producing party the opportunity contest the release.
9. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it 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.
10. 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 filing party's Highly Confidential material, the filing party shall also prepare and serve contemporaneously upon the reviewing party a Confidential Version of the pleading or evidence from which the filing party's Highly Confidential material has been redacted. The Confidential Version may be provided in hardcopy or electronic format at the option of the filing party, and may be disclosed to those personnel employed by the reviewing party who have read a copy of this Protective Order and executed the attached Undertaking for Confidential Material ("In-house Personnel"). In lieu of preparing a "CONFIDENTIAL" version, the filing party may (simultaneously with the party's submission to the Board of its "HIGHLY CONFIDENTIAL" version) make available to outside counsel for any other party a list

of all "HIGHLY CONFIDENTIAL" information that must be redacted from its "HIGHLY CONFIDENTIAL" version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the "HIGHLY CONFIDENTIAL" version before permitting any clients to review the submission.

11. Any party filing with the Board a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pleading in this proceeding should simultaneously file a public version of the pleading.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____ 2018, governing the production of confidential documents in STB Docket FD 36178, 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 STB Docket FD 35981 or any judicial review proceeding arising herefrom. 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 outside counsel may retain file copies of pleadings 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 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 this proceeding, I have read the Protective Order served on _____, 2018, governing the production of confidential documents in STB Docket FD 36178, 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 this proceeding and any judicial review proceeding arising herefrom, 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 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 outside counsel 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 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 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: