

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36187

ENTERED
Office of Proceedings
May 10, 2018
Part of
Public Record

**PASSAIC STREET PROPERTIES, LLC
ACQUISITION OF NEW YORK & GREENWOOD LAKE RAILWAY, INC.**

OPERATION EXEMPTION

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 CFR §1150.31**

**PETITION TO REJECT
OF
NEW YORK & GREENWOOD LAKE RAILWAY, INC.**

MOTION FOR A PROTECTIVE ORDER

Respectfully submitted,

John D. Heffner
ClarkHillStrasburger
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(202) 742-8607

Counsel for Petitioner

Dated: May 10, 2018

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Pursuant to 49 C.F.R. § 1104.14(b), New York & Greenwood Lake Railway, Inc. (“NYGL”) hereby requests that the Board issue a protective order allowing it to file certain confidential traffic information in the form of bills of lading and emails regarding traffic flows and rate requests. This information documents the fact that the Line is currently handling revenue freight. These documents contain commercially sensitive information the public release of which could cause competitive or other injury to NYGL, its customers, and other railroads. Public disclosure is not necessary for the consideration or disposition of the subject petition to reject.

NYGL thus requests that the Board accept these documents for filing under seal, and that it adopt the proposed protective order contained in the appendix hereto to govern access to these documents. This approach is consistent with that previously taken by the Board in similar circumstances. *See Dyna Nobel, Inc. and Dyna Nobel Louisiana Ammonia, LLC v. Nustar Pipeline Operating Partnership, L.P.*, Docket NOR 42147 (STB served April 26, 2017).

WHEREFORE, NYGL respectfully requests that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,



John D. Heffner
ClarkHillStrasburger
1025 Connecticut Ave., N.W.
Suite 717
Washington, DC 20036
(202) 742-8607

Dated: May 10, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have served on this 10th day of May 2018 a copy of the foregoing Motion for a Protective Order on counsel for Passaic Street Properties, LLC, by first class US Mail and email upon:

John K. Fiorilla, Esq.
Capehart & Scatchard, P.A.
8000 Midlantic Drive,
Suite 300S
Mount Laurel, NJ 08054-5016



John D. Heffner

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the traffic information filed under seal on May 10, 2018 in FD 36187.
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to The Parties of the attached Undertaking. 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.
3. Confidential Information shall not be disclosed in any way or to any person without the written consent of The Parties 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 The Parties, 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 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 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 any 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

I, _____, have read the Protective Order governing the production and use of Confidential Information of in FD 36187, 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 FD 36187 or any judicial review proceedings 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 order and has executed an 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 Confidential Information, 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 The Parties 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: _____

Signature: _____

Position: _____