

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

246768

FD 36250

ENTERED
Office of Proceedings
November 9, 2018
Part of
Public Record

**R. J. CORMAN RAILROAD GROUP, LLC AND R. J. CORMAN RAILROAD
COMPANY, LLC – ACQUISITION OF CONTROL EXEMPTION –
NASHVILLE AND WESTERN RAILROAD CORP.
AND NASHVILLE & EASTERN RAILROAD CORP.**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 CFR § 1180.2(d)(2)**

MOTION FOR A PROTECTIVE ORDER

F I L E D

Respectfully submitted,

**November 9, 2018
SURFACE
TRANSPORTATION BOARD**

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Dated: November 8, 2018

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SURFACE TRANSPORTATION BOARD**

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**R. J. CORMAN RAILROAD GROUP, LLC AND R. J. CORMAN RAILROAD
COMPANY, LLC – ACQUISITION OF CONTROL EXEMPTION –
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Pursuant to 49 C.F.R. § 1104.16(b), R. J. Corman Railroad Group, LLC and R. J. Corman Railroad Company, LLC (“Applicants”) hereby request that the Board issue a protective order allowing them to file under seal an unredacted Agreement and Plan of Merger and Sale and Purchase of Equity Interests (“Agreement”) which will govern the transaction that is the subject of the above-docketed proceeding. Applicants are filing concurrently herewith a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) for Applicants’ acquisition of control of two Class III common carrier short lines presently owned and under common control by William J. Drunsic. Applicants propose to acquire Nashville & Eastern Railroad Corp. and Nashville and Western Railroad Corp. (“Acquired Railroads”) through the purchase of stock.

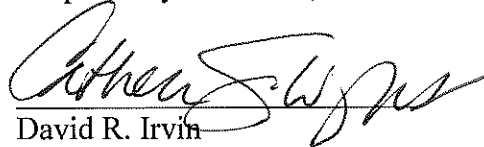
Applicants have submitted under seal a confidential version of the Agreement with Mr. Drunsic for the purchase and sale of Acquired Railroads in an envelope marked “Confidential subject to this request for a protective order”. The Agreement reflects extensive private negotiations’ and contains commercially sensitive and confidential terms and information. The

public release of the documents could cause competitive or other injury to both Applicants and Mr. Drunsic. Public disclosure of these documents also is not necessary for consideration of the subject acquisition of control notice of exemption.

Applicants thus request that the Board accept the Agreement, submitted under seal, and that it adopt the proposed protective order contained in the appendix hereto to govern access to the Agreement. This approach is consistent with that previously taken by the Board in similar circumstances. *See e.g., Regional Rail Holdings, LLC – Acquisition of Control Exemption – Regional Rail, LLC*, FD 35945 (STB served Aug. 7, 2015); *Iowa Pacific Holdings, LLC and Permian Basin Railways – Control Exemption – Cape Rail, Inc. and Massachusetts Coastal Railroad, LLC*, FD 35684 (STB served Oct. 26, 2014); *Michael Williams – Control Exemption – St. Maries River Railroad*, FD 35365 (STB served April 28, 2010); and *Genesee & Wyoming, Inc. – Control Exemption – Columbus and Greenville Railway Company, et al*, FD 35139 (STB served May 13, 2008).

WHEREFORE, Applicants respectfully request that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,



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APPENDIX

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.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order governing the filing of Confidential or Highly Confidential Information by R. J. Corman Railroad Group, LLC and R. J. Corman Railroad Company, LLC (collectively, “R. J. Corman”) in FD 36250, 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 preservation of evidence and argument in FD 36250 or for 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.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that R. J. Corman 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 of 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: _____

Position: _____

Affiliation: _____

Dated: _____