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SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36043

**BOSTON SURFACE RAILROAD COMPANY, INC.
PETITION FOR PARTIAL EXEMPTION FROM 49 U.S.C. SUBTITLE IV**

MOTION FOR PROTECTIVE ORDER

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Railroad Company, Inc.

Dated: June 17, 2016

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PETITION FOR PARTIAL EXEMPTION FROM 49 U.S.C. SUBTITLE IV**

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Pursuant to 49 C.F.R. § 1104.14(b), Boston Surface Rail Company, Inc. (“BSRC”) hereby moves the Surface Transportation Board (the “Board”) to enter a Protective Order (in the form set forth in Exhibit 1 hereto) in the above-captioned proceeding (the “Proceeding”).

The requested Protective Order is required to permit BSRC to submit to the Board: (a) an Executive Overview of its personnel and business plan describing the phases of the implementation of the proposed service, the markets targeted and enhancements to be made to the proposed route’s infrastructure (the “Executive Overview”), (b) agreement between Providence and Worcester Railroad Company and BSRC, and (c) a memorandum of understanding between BSRC and National Railroad Passenger Corporation (each an “Agreement” and collectively the “Agreements”), which contain highly sensitive and confidential commercial terms, and (d) to make the Executive Overview and Agreements available to counsel for interested parties, if necessary, solely for use in this Proceeding.

Pursuant to 49 U.S.C. § 10502, BSRC filed this Petition for Exemption seeking an exemption from certain provisions of Subtitle IV of Title 49 of the United States Code (the “Petition”). The Petition seeks authorization to commence operation of a passenger rail service

on an existing interstate/intercity route between Worcester, Massachusetts and Providence, Rhode Island. BSRC anticipates that PWRR will operate BSRC's trains on the 44-mile route. The Agreement between BSRC and PWRR sets forth the terms of that service and operation agreement between PWRR and BSRC.

BSRC hereby submits (under seal) with its Motion for Protective Order a complete and un-redacted copy of the Confidential Executive Overview (Exhibit 2) and Agreements (Exhibits 3A and 3B). The information set forth in the Agreements is highly confidential and commercially sensitive as it relates to BSRC's proposed services, particularly, because the parties to the Agreements have not yet finalized the terms of their business relationships. It is imperative that the information contained in the Agreements be protected from public disclosure. The requested Protective Order will enable BSRC to present the Executive Overview and Agreements to the Board (and, if necessary, to outside counsel for interested parties) in this Proceeding, while simultaneously preserving the confidentiality of the sensitive information contained therein.

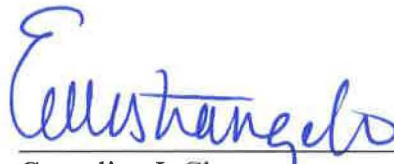
The proposed Protective Order is modeled substantially on similar orders that the Board has entered in recent prior proceedings.

Accordingly, BSRC requests that the Board accept the tendered Agreements for filing under seal, and that it adopt the proposed Protective Order, attached hereto as Exhibit 1, to govern access and use of any confidential information submitted in this Proceeding. This approach is consistent with that recently of the Board under similar circumstances. *See e.g. 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).

WHEREFORE, BSRC respectfully requests that the Board adopt the proposed Protective Order, attached hereto as Exhibit 1, and accept the filing of the Executive Summary and un-redacted Agreements under seal.

Respectfully submitted,

BOSTON SURFACE RAILROAD COMPANY, INC.,
By its attorneys,



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Dated: June 17, 2016

Exhibit 1 – Proposed Protective Order with Exhibit A

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the Agreement between Providence and Worcester Railroad Company and Boston Surface Railroad Company, Inc. ("Boston Surface") dated May 26, 2016, and the Memorandum of Understanding between Boston Surface and the National Railroad Passenger Corporation (hereafter "Amtrak") dated January 23, 2015.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to Petitioners 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 Petitioners 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 an Undertaking in the form of Exhibit A 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 Petitioners, 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.

**EXHIBIT A
FORM OF UNDERTAKING**

UNDERTAKING

I, _____, have read the Protective Order governing the production and use of Confidential Information of Boston Surface Railroad Company, Inc. in FD _____, 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 _____ 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 Petitioners 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: _____

Affiliation: _____