

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

243328

ENTERED  
Office of Proceedings  
May 22, 2017  
Part of  
Public Record

GREAT LAKES BASIN )  
TRANSPORTATION, INC – )  
APPLICATION TO CONSTRUCT AND )  
OPERATE A RAILROAD LINE )  
IN WISCONSIN, ILLINOIS AND INDIANA )

FINANCE DOCUMENT  
NO. 35952

**REPLY OF THE ENVIRONMENTAL LAW & POLICY CENTER  
IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER**

Howard A. Learner  
Rachel L. Granneman  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, Illinois 60601  
(312) 673-6500  
HLearner@elpc.org  
RGranneman@elpc.org

DATED: May 22, 2017

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

|                                    |   |                  |
|------------------------------------|---|------------------|
| GREAT LAKES BASIN                  | ) |                  |
| TRANSPORTATION, INC –              | ) | FINANCE DOCUMENT |
| APPLICATION TO CONSTRUCT AND       | ) | NO. 35952        |
| OPERATE A RAILROAD LINE            | ) |                  |
| IN WISCONSIN, ILLINOIS AND INDIANA | ) |                  |

---

**REPLY OF THE ENVIRONMENTAL LAW & POLICY CENTER  
IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER**

The Environmental Law & Policy Center (ELPC) opposes the Great Lakes Basin Transportation, Inc.’s (“GLBT”) Motion for Protective Order. GLBT does not provide sufficient justification to withhold the identity and holdings of its ten principal shareholders—information that must be included in its application according to 49 C.F.R. § 1150.3. This information should not be treated as “highly confidential” by the Surface Transportation Board (“STB”), and such treatment would be improper and inappropriate. In addition, the identity of specific customers or potential customers should not be considered “confidential”—the existence and identity of potential customers is necessary information for analyzing whether or not there is an actual need for the proposed rail line. Finally, the prohibition on disclosure of “highly confidential” information to in-house counsel, consultants, and employees is inappropriate for parties such as ELPC, which is a public interest non-commercial party that is represented by in-house legal counsel.

**I. IDENTITY AND HOLDINGS OF GLBT’S TEN PRINCIPAL SHAREHOLDERS SHOULD BE PUBLICLY DISCLOSED.**

GLBT is a commercial enterprise seeking authority from the STB to condemn privately owned land to build a privately-owned 261-mile railroad line with a 200-foot easement, along

with the world's largest railport. Application at 6, 49. This proposed railroad line would cross numerous public roads at grade, and would be designed to accommodate trains up to 15,000 feet long. Application at 49-50. That could have serious impacts on local traffic and emergency response.

GLBT requests a protective order to avoid disclosing the identities and holdings of its ten principal shareholders, as required by 49 C.F.R. § 1150.3, which states that corporate applicants under 49 USC 10901 must submit “[a] list of . . . 10 principal stockholders of the corporation and their respective holdings.” GLBT requests that this information be treated as “highly confidential” so that parties to the case would not have access to the information. The parties in this public proceeding and members of the public, generally, have a right to know who owns and controls the company that is asking for permission to use eminent domain to take land from private owners.

Basic information about a corporate applicant applying for authority to construct a railroad, such as who is financially backing the company, is important to evaluate the legitimacy and viability of a proposal. There is significant public interest in this proposal: according to a *Chicago Tribune* article, an STB official called the vast number of public comments on the environmental review for the project an “unprecedented response.”<sup>1</sup> GLBT's request to strictly limit disclosure of basic information is unreasonable and unjustified. This application for a huge new railroad with significant public impacts<sup>2</sup> should be adjudicated with as much transparency and public and stakeholder involvement as possible.

---

<sup>1</sup> Amy Lavalley, *Comments on Proposed Rail Line Continue*, *Chicago Tribune* (Oct, 28, 2016), <http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-rail-line-letters-st-1031-20161028-story.html>.

<sup>2</sup> GLBT has announced that the proposed 261-mile railroad is only one facet of its grand scheme that now includes the South Suburban Airport and a privately funded tollway. See <http://www.greatlakesbasin.net/>.

GLBT has provided no justification for why this information should be treated as “confidential,” let alone “highly confidential.” GLBT’s motion simply argues that the list of ten principal stockholders and their holdings “contains proprietary and commercially sensitive information and confidential personal information, the disclosure of which could have an adverse impact on GLBT and/or its principals.” Motion at 2. GLBT does not explain how and why this information is sensitive, or what confidential personal information would be included, nor does GLBT explain how public disclosure of this information could negatively impact GLBT or its principals. Nor does GLBT cite any precedence for treating the identity and holdings of an applicants’ ten principal stockholders as “highly confidential.” A protective order should not be granted under these circumstances. *See Stagecoach Group PLC and Coach USA, INC. et al. – Acquisition of Control – Twin America, LLC*, STB Docket No. MC-F-21035, \*14 (“To obtain confidential status . . . a party must do more than simply assert a desire to keep a document confidential.”); *Santa Fe Southern Pacific Corporation – Control – Southern Pacific Transportation Company*, ICC Docket No. FD-30400, \*202, FN 98 (July 24, 1986) (noting that just because a company “would want” information brought forth during a proceeding to “remain secret,” this does not mean that such information “may be legitimately withheld from public scrutiny”).

STB should deny GLBT’s request that the identity and holdings of its ten principal stockholders be treated as “highly confidential,” and this information, which was redacted in its public filing, should be published immediately.

## **II. THE IDENTITY OF SPECIFIC CUSTOMERS AND POTENTIAL CUSTOMERS SHOULD NOT BE CONFIDENTIAL.**

GLBT’s proposed Protective Order would define “confidential information” to include “the identification of specific customers or potential customers.” Proposed Protective Order at 1.

This definition is not appropriate. The identity of which specific rail carriers would actually use the proposed railroad is not sensitive or proprietary information, and it is essential information for determining whether or not the proposed line serves the public convenience and necessity. GLBT admits in its application that it does not currently have any agreements with any rail carriers that would use the line. Application at 12. Two Class 1 railroads (or more) have already stated that they would not use the proposed rail line.<sup>3</sup>

All of GLBT's touted benefits, including public benefits, of the rail line are dependent on rail carriers actually using the new railroad line. The proposed railroad could not reduce train congestion, increase reliability, increase public safety, and decrease air pollution if no company used the railroad. Even though parties to the case would be able to access "confidential" information, the identity of specific and potential customers whose use of the proposed new 261-mile railroad would justify its construction and operation should be public information. *See* Decision (May 9, 2017) (noting the importance of "encouraging public participation by all interested persons in this proceeding"). Indeed, which, if any, railroads use GLBT's rail line virtually dictates the scope of the project's traffic, operations, community impact, and viability. As explained above, this railroad would have significant adverse impacts and there is great public interest in this case. Information as basic as who would use the railroad should not be treated as confidential.

GLBT asserts that its proposed Protective Order is "similar to those issued by the Board in other recent proceedings." Motion at 3. However, neither of the cited Protective Orders classifies the identity of customers as confidential.

---

<sup>3</sup> Amy Lavalley, *Railroad Support for GLBT Project Unclear*, Chicago Tribune (June 3, 2016), <http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-rail-line-support-st-0605-20160603-story.html>.

In *Ohio River Partners, LLC – Acquisition and Operation Exemption – Hannibal Development, LLC*, the protective order’s definition of confidential information included “the identification of shippers and receivers in conjunction with shipper-specific or other traffic data.” STB Docket No. FD-35984 (Jan. 13, 2016) (emphasis added). The same language appears in the protective order in *Tongue River Railroad Company, Inc. – Rail Construction and Operation – In Custer, Powder River and Rosebud Counties, Mont.*, STB Docket No. FD-30186 (Aug. 27, 2013). Neither protective order treated the identity alone of companies that would use a railroad as confidential. If the STB does not deny the Protective Order entirely, the definition of “confidential information” here should exclude the identity of specific or potential customers.

**III. PROHIBITION ON ACCESS TO “HIGHLY CONFIDENTIAL” INFORMATION BY IN-HOUSE STAFF IS INAPPROPRIATE FOR NON-COMMERCIAL ORGANIZATIONS NOT USING OUTSIDE COUNSEL.**

GLBT’s proposed Protective Order would prohibit the disclosure of “highly confidential” information and documents to any “person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant.” Proposed Protective Order at 2. ELPC is a public interest not-for-profit organization with no commercial interest in the information that will be filed, submitted, or otherwise disclosed during this proceeding. ELPC’s experienced in-house attorneys are representing the organization with the assistance of in-house experts and legal assistants. Accordingly, if a Protective Order is granted, any “highly confidential” information and documents should be disclosable to ELPC in-house counsel and employees.

There is precedent for this approach in past STB decisions. In *Burlington Northern Inc. and Burlington Northern Railroad Company – Control and Merger – Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company*, the Board modified a

protective order “to allow an in-house counsel for a . . . non-commercial party that is not represented by outside counsel to review ‘HIGHLY CONFIDENTIAL’ material.” STB docket No. FD-32549, \*2 (Mar. 13, 1995).

Likewise, in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases / Agreements*, the STB twice modified the protective order to allow in-house counsel of two unions to review “highly confidential” information that would otherwise only be disclosable to outside counsel and consultants, and their employees. STB Docket No. 33388 (Aug. 1, 1997) and (Aug. 21, 1997). If a protective order is granted in any form, any “highly confidential” information and documents should be disclosable to ELPC in-house counsel and employees.

#### IV. CONCLUSION

GLBT’s proposed Protective Order is unjustified and inappropriate. The identity and holdings of GLBT’s ten principal shareholders are not sensitive confidential information and should be publicly disclosed. Likewise, the identity of specific or potential customers should be accessible to the public. Finally, if a protective order were granted, “highly confidential” information should be accessible to ELPC’s in-house counsel and employees.

Respectfully Submitted,



Howard A. Learner  
Rachel L. Granneman  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, Illinois 60601  
(312) 673-6500  
HLearner@elpc.org  
RGranneman@elpc.org

May 22, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that I have served all parties of record in this proceeding the foregoing Reply of the Environmental Law & Policy Center in Opposition to Motion for Protective Order by United States mail this 22nd of May, 2017.

A handwritten signature in cursive script, reading "Rachel Granneman", followed by a long horizontal line extending to the right.

Rachel L. Granneman  
Environmental Law & Policy Center  
35 East Wacker Drive, Suite 1600  
Chicago, Illinois 60601