

BEFORE THE
SURFACE TRANSPORTATION BOARD

243047

GREAT LAKES BASIN)
TRANSPORTATION, INC. --) FINANCE DOCKET
APPLICATION TO CONSTRUCT AND) NO. 35952
OPERATE A RAIL LINE IN)
WISCONSIN, ILLINOIS AND INDIANA)

ENTERED
Office of Proceedings
May 10, 2017
Part of
Public Record

REPLY IN OPPOSITION TO MOTION
FOR PROTECTIVE ORDER

BLOCK GLB RAILROAD,
LASALLE COUNTY, IL
P.O. Box 538
Earlville, IL 60518

ROCK AGAINST THE RAIL, LLC (Rock County, WI)
8608 East Rye Drive
Clinton, WI 53525

KANKAKEE COUNTY, IL BLOCK GLB
3156 North 9000 West Road
Bonfield, IL 60913

RAILED, LaPorte, Porter & Lake Counties, IN
112 West 450 South
Kouts, IN 46347

CITIZENS AGAINST THE GLB
RAILROAD, BOONE COUNTY, IL
9498 Edson Road
Capron, IL 61012

WINNEBAGO COUNTY AGAINST THE GLB RAILROAD
7889 Cemetery Road
Winnebago, IL 61088-8860

Protestants

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DATE FILED: May 10, 2017

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**REPLY IN OPPOSITION TO MOTION
FOR PROTECTIVE ORDER**

Pursuant to 49 C.F.R. § 1104.13(a), the Opposition Groups identified on the cover page hereby reply in opposition to a Motion for Protective Order (Motion) filed by Great Lakes Basin Transportation, LLC (GLBT) on May 1, 2017. The Opposition Groups seek denial of the Motion or, at a minimum, reclassification of the protected matter from Highly Confidential to Confidential.

THE PURPORTED BASIS FOR THE MOTION

It is provided in 49 C.F.R. § 1150.3(f)(1) that a corporate applicant for track construction authority must identify its 10 principal stockholders and their respective holdings. In requesting Highly Confidential treatment, GLBT contends that such information is “proprietary, commercially sensitive, and personal” (Motion at 1). GLBT has not attempted to explain in the Motion why it alleges that to be the case.

DECISIONAL STANDARDS

When considering a request to make public certain confidential information filed under seal, the Board focuses on whether a lower level of classification of material as confidential is needed to allow a party to make its case. *Dakota, MN & Eastern RR - Construction - Powder*

River Basin, 3 S.T.B. 847, 860 (1998) (*Dakota*). See, also, *Central Oregon & Pacific, Inc. -- Abandonment and Discontinuance of Service in Coos, Douglas, and Lane Counties, OR*, 2008 WL 3639449 (Docket No. AB-515 [Sub-No. 2], decision served August 15, 2008) (“*Central Oregon*”), where the Board said at *2:

... (W)e find that classifying the appraised land values as ‘Highly Confidential’ is unnecessarily restrictive . . . (W)e see no reason why the parcel information should be restricted only to outside counsel or consultants. Reclassifying this information as ‘Confidential’ will enable the parties themselves, as well as their agents, employees, in-house counsel, and consultants to view it while still maintaining an adequate level of protection . . .

**APPLICATION OF DECISIONAL STANDARDS
TO MATTER SOUGHT TO BE PROTECTED**

Highly Confidential treatment of the identity of the ten principal stockholders of GLBT is unnecessarily restrictive. The only reference to those stockholders in the Application is that they are 10 of 24 GLBT stockholders who contributed funds, services or both during the project’s startup phase. (Application at 14, Response to 49 C.F.R. § 1150.6[a]). It does not appear from the Application whether those 10 stockholders, and/or any of the other 14 GLBT stockholders, are among the unidentified “private investors” with whom GLBT continues to discuss financing options for the permitting, land acquisition, and construction stages of the project. (*Id.*).

GLBT has not identified any good reason why the identity of the ten principal stockholders should be restricted only to outside counsel and consultants. Certainly, the relatively minor role that those stockholders appear to have played in start-up financing does not justify severely restricting their identity. Providing for public access to their identity, or, at a minimum, reclassifying their identity as Confidential would allow the Opposition Groups and

their agents, employees, in-house counsel, and consultants to learn of their identity while still maintaining an adequate level of protection. *Central Oregon*.

Less restrictive treatment of the identity of the 10 principal stockholders is necessary for the Opposition Groups to make their case. The Opposition Groups consist of numerous private citizens who are members of ad hoc organizations formed to oppose the proposed track construction. Those citizens are wary of secretive treatment of evidence that would require them to sign complex undertakings with which they are not familiar, and which they do not understand. In order for the Opposition Groups to make their case they must be able to freely circulate evidence to determine whether they may have information in rebuttal. Highly Confidential treatment of the identity of GLBT's principal stockholders would impede that ability. Consequently, the identity of the major stockholders should be made public or, at a minimum, that information should be reclassified from Highly Confidential to Confidential. (*Dakota*).

Lastly, GLBT's inconsistent actions and misleading statements during the proceedings to date have generated a level of distrust on the part of the Opposition Groups that would be significantly heightened if GLBT were to be permitted to restrict public access to information solely on GLBT's unilateral allegation that such information is confidential.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should deny the Motion or, at a minimum, the Board should reclassify the Highly Confidential status of the protected information to Confidential.

Respectfully submitted,



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DATE FILED: May 10, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2017, I served the foregoing document, Reply In

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