

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
December 4, 2017
Part of
Public Record

DOCKET NO. FD 35187 (Sub-No. 1)

GRAND ELK RAILROAD, INC.
– ACQUISITION OF INCIDENTAL TRACKAGE RIGHTS EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

**JOINT MOTION FOR PROTECTIVE ORDER OF
GRAND ELK RAILROAD, INC. AND CSX TRANSPORTATION INC.**

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR GRAND ELK
RAILROAD, INC.**

Louis E. Gitomer
Law Offices of Lou Gitomer
600 Baltimore Ave.
Towson, MD
(202) 466-6532

**ATTORNEY FOR CSX
TRANSPORTATION, INC.**

Dated: December 4, 2017

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Pursuant to 49 C.F.R. § 1104.14(b), Grand Elk Railroad, Inc. (“Grand Elk”) and CSX Transportation, Inc. (“CSX”) (collectively, “the Parties”) hereby request that the Board issue a protective order allowing the Parties to file under seal the executed, un-redacted Settlement Agreement dated as of December 1, 2017 between Grand Elk and CSX Transportation, Inc. (“CSXT”) pertaining to the subject of the captioned proceedings.

GDLK and CSXT have entered into a Settlement and Release Agreement effective as of December 1, 2017 (the “Settlement and Release Agreement”), pursuant to which GDLK’s trackage rights operations over certain railroad lines of CSXT will be restored. The Settlement and Release Agreement modifies, as appropriate, and otherwise provides for the assignment of two trackage rights agreements – one dated as of February 6, 1980 (as supplemented as of July 6, 1993), and the other dated as of January 24, 1984 – from Norfolk Southern Railway Company (“NSR”) to GDLK as incidental to a lease transaction authorized by the Board in Docket No. FD 35187. The parties seek to add the subject trackage rights agreements and the related Settlement and Release Agreement to the record in this proceeding,

and, to that end, offer an un-redacted version of the Settlement and Agreement under seal subject to this request for a protective order.

The Settlement and Release Agreement contains commercially sensitive and confidential information, the public release of which could cause competitive or other injury to GDLK and CSXT. Accordingly, GDLK and CSXT request that the Board accept the un-redacted Settlement and Release Agreement for filing under seal, and issue the proposed Protective Order appended hereto (See Appendix). The issuance of the requested protected order is consistent with agency precedent. See, e.g., Chicago, Central & Pacific Railroad Company -- Trackage Rights Exemption -- Cedar River Railroad Company, Docket No. FD 35563 (STB served Dec. 30, 2011); The Kansas City Southern Railway Company -- Trackage Rights Exemption -- Illinois Central Railroad Company, Docket No. FD 34309 (STB served Feb. 4, 2003).

WHEREFORE, GDLK and CSXT respectfully request that the Board to adopt the Protective Order appended hereto.

Respectfully submitted,

By: R.A. Wimbish

Robert A. Wimbish
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR GRAND ELK
RAILROAD, INC.**

By: Louis E. Gitomer / *Rax*

Louis E. Gitomer
Law Offices of Lou Gitomer
600 Baltimore Ave.
Towson, MD
(202) 466-6532

ATTORNEY FOR CSX TRANSPORTATION, INC.

Dated: December 4, 2017

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the un-redacted Settlement and Release Agreement between Grand Elk Railroad, Inc. ("Grand Elk") and CSX Transportation, Inc.. ("CSXT") filed under seal on December 4, 2017, under Docket No. FD 35187 (Sub-No. 1).

2. Confidential Information shall be provided to any party (defined as the identified parties, including Norfolk Southern Railway Company; and any persons assisting a party in its business or legal affairs with a reasonable need-to-know) only pursuant to this Protective Order and only upon execution and delivery to Grand Elk and CSXT of the attached Undertaking by the recipient party. 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 non-party without the written consent of Grand Elk and CSXT 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 Grand Elk and CSXT, 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 CFR § 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. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential version may be served on other parties in electronic format only.

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 filing of Confidential Information by Grand Elk Railroad, Inc. ("Grand Elk") and CSX Transportation, Inc. ("CSXT") in STB Docket No. FD 35187 (Sub-No. 1), and I 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 STB Docket No. FD 35187 (Sub-No. 1) 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 Grand Elk or CSXT 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: _____

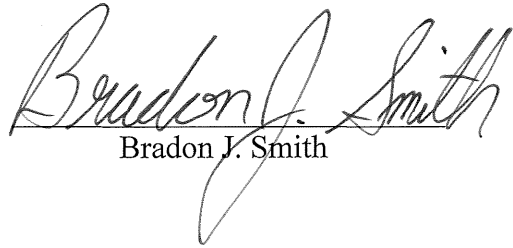
Signature: _____

Position: _____

Affiliation: _____

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of December, 2017, a copy of the foregoing **Joint Motion for Protective Order of Grand Elk Railroad, Inc. and CSX Transportation, Inc.** was served by U.S. Mail, first class postage prepaid, or by more expeditious means of delivery, upon all parties of record.



Bradon J. Smith