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January 28, 2019

247018

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
January 28, 2019
Part of
Public Record

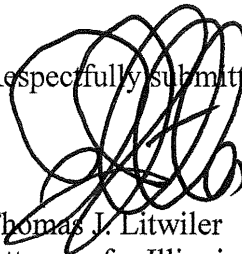
Re: **Docket No. NOR 42161**
Ameropan Oil Corporation v.
Canadian National Railway Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Motion for Protective Order of Illinois Central Railroad Company**, dated January 28, 2019. A separate file containing the text of the proposed protective order in Word 2010 format is attached as well.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Illinois Central Railroad Company

TJL:tl

Attachments

cc: Thomas F. McFarland, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42161

AMEROPAN OIL CORPORATION

v.

CANADIAN NATIONAL RAILWAY COMPANY

**MOTION FOR PROTECTIVE ORDER OF
ILLINOIS CENTRAL RAILROAD COMPANY**

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**ATTORNEYS FOR ILLINOIS CENTRAL
RAILROAD COMPANY**

Dated: January 28, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42161

AMEROPAN OIL CORPORATION
v.
CANADIAN NATIONAL RAILWAY COMPANY

**MOTION FOR PROTECTIVE ORDER OF
ILLINOIS CENTRAL RAILROAD COMPANY**

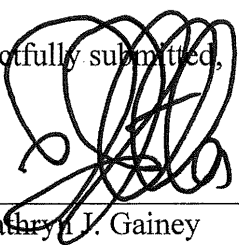
Pursuant to 49 C.F.R. § 1104.14(b), Illinois Central Railroad Company ("IC") hereby requests that the Board issue a protective order allowing IC and complainant Ameropan Oil Corporation ("Ameropan") to file certain confidential material (the "Confidential Information") under seal in this proceeding, including that certain Confidential Transportation Master Agreement No. 543274-AA 0000 effective as of March 1, 2017 between Ameropan and certain affiliates and defendant IC and certain affiliates (the "Contract").

Concurrently with this motion, IC is filing a motion to dismiss Ameropan's Complaint against IC in this proceeding for lack of jurisdiction, given that the alleged matters arise out of and are governed by a rail transportation contract between the parties entered into pursuant to 49 U.S.C. § 10709. The Contract is the relevant agreement by which IC undertook the transportation described in Complaint and is the basis of the motion to dismiss. The Contract contains commercially sensitive and confidential information the public release of which could cause competitive or other injury to Ameropan or IC.¹ IC's motion to dismiss similarly contains references to Ameropan traffic data that IC believes should not be publicly disclosed.

¹ The Contract is attached as Exhibit A to IC's concurrently-filed motion to dismiss.

IC thus requests that the Board designate the unredacted version of IC's motion to dismiss, including the Contract, as Confidential Information and file those materials under seal. IC further requests that the Board adopt the proposed protective order contained in the appendix hereto to govern access to this and other Confidential Information that may be submitted in the course of this proceeding. This approach is consistent with that taken by the Board in prior similar circumstances. *See, e.g., PSI Energy, Inc. v. CSX Transportation, Inc.*, Docket No. NOR 42034 (STB served Aug. 17, 1998), slip op. at 1 ("In other cases, the Board and its predecessor agency have recognized the confidential nature of rail transportation contract information by entering protective orders authorizing the submission of such material under seal and directing that it be excluded from the public docket.")

Respectfully submitted,

By: 

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**ATTORNEYS FOR ILLINOIS CENTRAL
RAILROAD COMPANY**

Dated: January 28, 2019

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the confidential version of the Motion to Dismiss of Illinois Central Railroad Company and Canadian National Railway Company, including Confidential Transportation Master Agreement No. 543274-AA 0000 effective as of March 1, 2017 between Ameropan Oil Corporation ("Ameropan") and certain affiliates and Illinois Central Railroad Company ("IC") and certain affiliates attached as Exhibit A to that motion, filed under seal on January 28, 2019 in STB Docket No. NOR 42161, and any other information of a commercial sensitive nature that may be designated as "Confidential" and filed under seal by IC or Ameropan in STB Docket No. NOR 42161.

2. Confidential Information shall be provided to any party other than IC or Ameropan pursuant only to this Protective Order and only upon execution and delivery to IC and/or Ameropan 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 IC and/or Ameropan 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 IC and/or Ameropan, 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 designated as "Confidential," 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 that party 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 Illinois Central Railroad Company ("IC") and/or Ameropan Oil Corporation ("Ameropan") in STB Docket No. NOR 42161, 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. NOR 42161 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 IC and/or Ameropan 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: _____

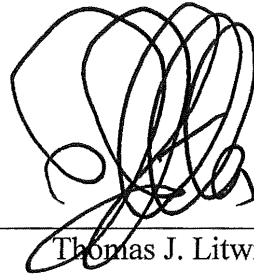
Position: _____

Affiliation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of January, 2019, a copy of the foregoing **Motion for Protective Order of Illinois Central Railroad Company** was served by electronic delivery and U.S. first class mail, postage prepaid, upon:

Thomas F. McFarland, Esq.
Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1666
Chicago, Illinois 60604-1228
mcfarland@aol.com

A handwritten signature in black ink, appearing to read 'Thomas J. Litwiler', is written over a horizontal line.

Thomas J. Litwiler