

SERVICE DATE – OCTOBER 22, 2007

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION– CONTROL– EJ&E WEST COMPANY

MOTION FOR PROTECTIVE ORDER

Decision No. 1

Decided: October 19, 2007

On October 3, 2007, Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Elgin, Joliet and Eastern Railway Company (EJ&E), collectively referred to as Applicants, filed a joint petition for protective order¹ under 49 CFR 1104.14 to protect material containing proprietary and commercially sensitive information that may be filed during this proceeding.

Applicants plan to file an application pursuant to 49 U.S.C. 11323-11325, seeking the Board's approval for control of EJ&E West Company (EJ&EW), a wholly owned subsidiary of EJ&E, a rail common carrier. Applicants submit that a protective order is necessary because the Applicants and other interested parties may engage in discovery or file evidence that includes proprietary and commercially sensitive information, including shipper-specific traffic data that is protected against public disclosure pursuant to 49 U.S.C. 11904, proprietary financial data, or other confidential information the disclosure of which would have an adverse competitive impact on Applicants or other interested parties.

The request is similar to those for protective orders recently issued by the Board.² Good cause exists to grant the motion, which conforms to the Board's rules at 49 CFR 1104.14, governing protective orders to maintain the confidentiality of materials submitted to the Board. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive injury to the parties. Issuance of the Protective Order will facilitate the discovery process and establish appropriate procedures for the submission of

¹ A proposed Protective Order and Undertakings were included with the motion.

² See, e.g., Canadian Pacific Railway Company, et al. – Control – Dakota, Minnesota & Eastern Railroad Corp., et al., STB Finance Docket No. 35081 (STB served Sept. 21, 2007); Fortress Investment Group LLC, et al. – Acquisition – Florida East Coast Railway, LLC, STB Finance Docket No. 35031 (STB served June 6, 2007); The Indiana Rail Road Company – Acquisition – Soo Line Railroad Company, STB Finance Docket No. 34783 (STB served Dec. 22, 2005).

evidence containing proprietary information. Accordingly, the motion for a protective order will be granted, and the Protective Order and Undertakings contained in the Appendix to this decision will be adopted.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion for a Protective Order is granted, and the parties to this proceeding must comply with the Protective Order in the Appendix.
2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX
PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) “Application” means an application filed, or intended to be filed, in this docket seeking authorization for Canadian National Railway Company (“CNR”) and Grand Trunk Corporation (“GTC”) to acquire control of EJ&E West Company (“EJ&EW”), pursuant to the Stock Purchase Agreement dated September 25, 2007, by and between GTC and Elgin, Joliet and Eastern Railway Company, a wholly owned subsidiary of Transtar, Inc. (“Transtar”), and indirect subsidiary of United States Steel Corporation (“U.S. Steel”).

(b) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(c) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business information.

(d) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 5 or 6 of this Protective Order, and any Confidential Information contained in such materials.

(e) “Proceedings” means those proceedings before the Surface Transportation Board (“Board”) concerning the application in STB Finance Docket No. 35087, regulatory authority for the creation of the EJ&EW, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 35087 or from any related proceedings before the Board.

2. Personnel of CNR and its affiliates (collectively, CN), and of Elgin, Joliet and Eastern Railway Company, Transtar, U.S. Steel, and their affiliates (collectively, EJ&E), and their affiliates, including outside consultants and attorneys for CN or EJ&E (representatives), may exchange Confidential Information for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, unless and until the application in the Proceedings is approved, except to the extent they would have been properly able to exchange such information apart from this order.

3. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of CN and EJ&E, or their affiliates are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and

will not be deemed a violation of 49 U.S.C. 11323 or 11904, or any other relevant provision of the ICC Termination Act of 1995.

4. If the application is disapproved by the Board, or if the application is approved but control is not effected, or if no application is filed, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these Proceedings and except as provided elsewhere in this Order, must, upon the request of the party originating the Confidential Information contained or reflected in such Confidential Documents, be destroyed or returned to the requesting party.

5. If any party to these Proceedings determines that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

6. Any party producing material in discovery to another party to these Proceedings, or submitting material in pleadings or other documents filed or served, may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

7. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

8. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other 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, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

9. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing

a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

10. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

11. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings; or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

12. No party may include Designated Material in any pleading, brief, or other document submitted physically to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. No party may include Designated Material in any pleading, brief, or other document submitted to the Board electronically, under the e-filing option provided in 49 CFR 1104.1(e), unless the filing party submits the pleading or other document as "Confidential" under such options as are provided on the Board's Web site for electronic filing of documents. All pleadings and other documents submitted pursuant to the terms of this paragraph and containing information designated as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" shall bear a prominent designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," as appropriate, on their first pages. All such pleadings and documents shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

13. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

14. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any

discussion of such Designated Material; and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

15. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 12 of this Protective Order.

16. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with the paragraphs above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11323 or 11904, or of any other relevant provision of the ICC Termination Act of 1995.

17. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

18. Simultaneously with the submission of any document to the Board that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the submitting party must also submit a public version of that document, from which all Confidential Information has been redacted. Any party submitting a document to the Board that it designates as “HIGHLY CONFIDENTIAL” shall make available to in-house counsel for all other parties who have signed an undertaking substantially in the form set forth in Exhibit A to this Order a version of that document containing all information reviewable by such in-house counsel under the terms of this Order (“Confidential Version”). If the Confidential Version is provided to counsel for other parties in electronic form, the submitting party shall not also be required to provide a paper copy. In lieu of providing a Confidential Version, the submitting party may, simultaneously with its submission of the document to the Board, make available to outside counsel for all other parties a list of all portions of that document that must be redacted therefrom to produce a Confidential Version, and such outside counsel may then prepare Confidential Versions, from which those listed portions have been redacted, which such outside counsel may provide to in-house counsel who have signed confidentiality undertakings substantially in the form set forth at Exhibit B of this Order.

19. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party, unless that party has consented in writing to the disclosure.

Exhibit A**UNDERTAKING – CONFIDENTIAL MATERIAL**

I, _____, have read the Protective Order served on October 22, 2007, governing the production and use of Confidential Information and Confidential Documents concerning STB Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or 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 Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with any of those proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that 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 materials designated or stamped as “CONFIDENTIAL,” 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 Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/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.

Signed: _____

Affiliation: _____

Dated: _____

Exhibit B**UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL**

I, _____, am outside [counsel][consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on October 22, 2007, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or 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 Finance Docket No. 35087, in the proceedings for regulatory authority for the creation of EJ&EW, and in related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with any of those proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that, 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 information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” 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 Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/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.

Signed: _____
OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____