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SEC

SERVICE DATE - JULY 15, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33778

LOUISVILLE & INDIANA RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NEW YORK CENTRAL LINES LLC AND CSX TRANSPORTATION, INC.¹

MOTION FOR PROTECTIVE ORDER

Decided: July 12, 1999

By a motion filed on July 1, 1999, the Louisville & Indiana Railroad Company (L&I) seeks a protective order under 49 CFR 1104.14 for a Trackage Rights Agreement, submitted under seal, among New York Central Lines, LLC (NYC), CSX Transportation, Inc. (CSXT), and L&I.² At the same time, L&I filed a notice of exemption under 49 CFR 1180.2(d)(7) to acquire from NYC and CSXT the trackage rights described in the Agreement. A redacted copy of the Agreement was made available to the public with the filing of the notice of exemption.

Good cause exists to grant the motion for a protective order. According to L&I, the confidential unredacted version of the draft agreement contains proprietary commercial information. L&I asserts that public disclosure of these provisions of the agreement is not required for the disposition of the verified notice of exemption and that such disclosure could cause serious competitive injury. Issuance of the protective order is requested to ensure that the protected material will be used only in connection with this proceeding and not for any other business or commercial purpose.

¹ By decision served July 23, 1998, the Board approved, subject to certain conditions, the acquisition of control of Conrail, and the division of the assets thereof, by CSX Corporation and CSX Transportation, Inc. (referred to collectively as CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (referred to collectively as NS). See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998). Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998. The division of the assets of Conrail was effected by CSX and NS on June 1, 1999. See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Leases/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, Decision No. 127 (STB served May 20, 1999).

² A proposed protective order and undertaking were included with the motion.

The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain confidentiality of materials submitted to the Board. Accordingly, the motion for a protective order will be granted, subject to the Protective Order and Undertaking contained in the Appendix.

It is ordered:

1. L&I's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The confidential version of the Trackage Rights Agreement will be kept under seal and not placed in the public docket or otherwise disclosed to the public. Parties to this proceeding must comply with the Protective Order.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order, “person” or “people” includes any person or entity, including such people and entities that are not formal parties to this proceeding.

2. For purposes of this Protective Order, information designated as “Confidential, ” as used herein, includes all such designated material, and all information contained in such material.

3. This Order shall apply to all information designated as “Confidential” (i) filed with the Board or any other administrative, legislative or judicial body in connection with this proceeding; or (ii) obtained by any person pursuant to discovery requests made in connection with this proceeding.

4. Any person filing documents with the Board or any other administrative, legislative or judicial body in connection with this proceeding or filing material responding to a discovery request in connection with this proceeding may designate as “Confidential” any information or portion thereof that it in good faith contends contains confidential, proprietary, or highly sensitive information by clearly writing “Confidential” on each page of material so designated.

5. If a person inadvertently fails to designate documents or other material as “Confidential,” it may make such a designation subsequently by notifying the appropriate people in writing and sending revised pages properly marked in accordance with paragraph 4 of this Protective Order. After receipt of such notification, such materials and information shall be substituted as if they initially had been designated as Confidential.

6. A person at any time may request by letter that a producing person cancel the “Confidential” designation of any document (or portion thereof) or discovery response (or portion thereof). Such request should identify with particularity the designated documents (or portions thereof) or discovery responses (or portions thereof) it contends should not be treated as Confidential, provide the reasons therefore, and explicitly state that it is made pursuant to this paragraph. If such request is denied in whole or in part, the requesting person may file a motion with the Board to have the “Confidential” designation removed as to the information listed in the request. The documents (or portions thereof) or discovery responses (or portions thereof) shall be treated as designated, pending a ruling on such motion. The burden of establishing that such information should not be afforded the protections of this Order shall be on the person filing the motion.

7. Information designated as “Confidential” may be disclosed only to “Authorized Persons.” An “Authorized Person” is a person who has signed an undertaking, in the form set forth as

Attachment 1 hereto, stating his or her identity, title, and employer, and that he or she has read this Order and agrees to abide by it, and who is:

(a) an attorney actively involved in this proceeding on behalf of a person, or a legal assistant or a clerical employee under such attorney's supervision; or

(b) a non-permanent employee who has been employed by any person to provide advice, expertise or assistance in connection with this proceeding, or an assistant or clerical employee under such a non-permanent employee's supervision.

8. Storage, transmission, or communication of information designated as "Confidential" must be such as to reasonably ensure that Confidential information will not be disclosed, accidentally or otherwise, to non-Authorized Persons.

9. Information designated as "Confidential" may not be used for any purpose whatsoever other than the disposition of this proceeding.

10. All Confidential information filed with the Board, and any material filed with the Board that discloses Confidential information, shall be filed under seal and kept under seal until further order of the Board.

11. All Confidential information and materials containing such Confidential information shall, at the request of the person filing or producing such documents, be returned to such person at the termination of this proceeding, including all appeals; otherwise, after a reasonable amount of time has passed, all such documents shall be destroyed, except that a copy of such Confidential information and materials may be retained by an Authorized Person for his or her files.

12. The provisions of this Order that restrict the handling, communication and use of Confidential information shall continue to be binding after the termination of this proceeding, unless the Board or the person filing or producing such designated materials authorizes in writing alternative handling, communication or use of the information.

13. This Order shall not bar or otherwise restrict:

(a) a person from opposing production of information under the Board's Rules of Practice;

(b) an Authorized Person from making copies, abstracts, digests and analyses of Confidential information for use in connection with this proceeding, subject to the requirement that all such copies, abstracts, digests and analyses be treated as Confidential information and clearly marked as such;

(c) an Authorized Person from rendering advice or opinions in connection with this proceeding to his or her client or employer based upon his or her examination of Confidential information, provided such person does not disclose the Confidential information itself to any non-Authorized Person;

(d) a person from using any Confidential information during hearings in this proceeding, subject to any further order of the Board; and

(e) a person from applying to the Board at any time for additional protection.

14. If Confidential information in the possession of any person is subpoenaed by any administrative, legislative or judicial body, or any other person purporting to have authority to subpoena such information, the person to whom the subpoena is directed will not produce such information without first giving written notice (including the delivery of a copy of the subpoena) to the person who has designated such information as "Confidential," or the attorneys for such person. If a subpoena purports to require production of such Confidential information on less than four (4) business days' notice, the person to whom the subpoena is directed shall give immediate notice by telephone of the receipt of such subpoena to the person who has filed or produced such information, or the attorneys for such person.

UNDERTAKING

I hereby attest to my understanding that information or documents designated “Confidential,” including the information contained in documents so designated, are provided to me pursuant to the terms, conditions and restrictions of the attached Protective Order entered in Surface Transportation Board Finance Docket No. 33778, Louisville & Indiana Railroad Company -- Trackage Rights Exemption -- New York Central Lines, LLC and CSX Transportation, Inc., that I have been given a copy of and have read the aforementioned Protective Order and, that if I am not an attorney, have had its meaning and effect explained to me by an attorney in this case; that I hereby agree to be bound by it and its terms and that I will provide a copy of this executed undertaking to counsel for each party who has designated information I receive as Confidential. I recognize that I may be held personally liable for any damages that the person furnishing information may suffer as a result of my disclosure or use of any Confidential information protected by this Order.

Dated:_____

Signed:_____

Name:_____

Title:_____

Employer:_____