

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 712X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—WHITE COUNTY, IN

MOTION FOR PROTECTIVE ORDER
EXPEDITED HANDLING REQUESTED

 GRANTED Office of Proceedings	DECISION ID NO.: <u>43819</u>
	DECIDED DATE: <u>5/23/14</u>
	SERVICE DATE: <u>5/23/14</u>
	APPROVED: <u>Rachel D Campbell</u> Director
	☐

Steven Armbrust, Esq.
CSX Transportation, Inc.
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Attorneys for: CSX Transportation, Inc.

Dated: May 22, 2014

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SURFACE TRANSPORTATION BOARD

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CSX Transportation, Inc. (“CSXT”), pursuant to 49 C.F.R. § 1104.14(b), files this Motion for Protective Order (the “Motion”) in this proceeding in the form provided in the Appendix to this motion. CSXT filed on February 4, 2012, a Petition for Exemption pursuant to 49 U.S.C. §10502 for CSXT to abandon an approximately 9.67-mile rail line on its Monticello Industrial Track, Monon Subdivision, between Monon, milepost 0QA 88.33, and Monticello, milepost 0QA 98.00, in White County, Indiana (the “Line”). CSXT has received informal inquiries purporting to seek information in order to allow a party to determine whether it wants to file an offer of financial assistance (“OFA”).

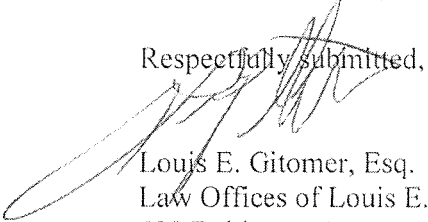
As required by 49 CFR 1152.27(a), CSXT will provide available information to the party. This information contains commercially sensitive and confidential information solely for use in potentially negotiating the sale of the Line through the OFA process or a private sale. Making this information public could harm the parties. Moreover, public disclosure of the valuation of the Line is not necessary for the potential offeror to evaluate the cost of the Line and whether to file an OFA. If the potential offeror files an OFA and because the parties cannot come to an agreement the potential offeror seeks to have the Board resolve valuation issues, CSXT will

seriously consider reclassifying the material produced to the potential offeror upon a request from the potential offeror.

CSXT prays that the Board grant its Motion for a Protective Order.

Respectfully submitted,

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APPENDIX
PROTECTIVE ORDER

1. For purposes of this Protective Order:

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

(b) “Confidential Information” means the information provided pursuant to 49 CFR 1152.27(a) and other confidential, commercial, financial, operational, proprietary, or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) “Party” means CSX Transportation, Inc. (“CSXT”) and any person seeking information from CSXT pursuant to 49 CFR 1152.27(a), individually, as the case may be.

(e) “Parties” means CSXT and any person seeking information from CSXT pursuant to 49 CFR 1152.27(a), collectively, as the case may be.

(f) The “Line” means an approximately 9.67-mile rail line on its Monticello Industrial Track, Monon Subdivision, between Monon, milepost 0QA 88.33, and Monticello, milepost 0QA 98.00, in White County, Indiana.

(g) “Proceeding” means (i) the proceeding before the Surface Transportation Board (“STB” or “Board”) in STB Docket No. AB-55 (Sub-No. 712X), and (ii) any judicial review proceedings arising from (i).

2. If any Party to the Proceeding determines that any part of (i) a document it submits, (ii) a discovery request it propounds, (iii) a discovery response it produces, (iv) a transcript of a deposition or a hearing in which it participates, or (v) a pleading or other paper to be submitted, filed, or served in the Proceeding 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.

3. 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 this Proceeding, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has received and has read a copy of this Protective Order and has agreed to be bound by its terms

by signing a confidentiality undertaking in the form set forth in the Undertaking for Confidential Material, which shall be provided to the other Party.

4. The Parties must file simultaneously a public version of any Confidential submission filed with the Board.

5. Any Party to this Proceeding may challenge the designation by the other Party of information or documents as "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. Any Party may voluntarily agree to reclassify material.

6. Designated Material may not be used for any purposes other than the negotiation of the sale of the Line and preparation and presentation of evidence and argument in this Proceeding, as defined herein. Such proscribed purposes include without limitation, business, commercial, operational, and/or competitive purposes.

7. 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 this Proceeding, at the earlier of: (1) such time as the Party receiving the materials withdraws from this Proceeding; or (2) the completion of this Proceeding, including any petitions for reconsideration, appeals, or remands.

8. No Party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted 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." 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in this Proceeding, 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.

9. No Party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any tribunal other than the Board in this Proceeding, 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.

10. No Party may present or otherwise use any Designated Material at a Board hearing in this Proceeding, 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.

11. If any Party intends to use any Designated Material in the course of any deposition in this Proceeding, 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 10 of this Protective Order.

12. To the extent that materials reflecting Confidential Information are produced by a Party in this Proceeding, and are held and/or used by the receiving person in compliance with this Protective Order, 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 Proceeding and will not be deemed a violation of 49 U.S.C. §11904, or any other relevant provision of the ICC Termination Act of 1995.

13. 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.

14. 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.

UNDERTAKING

CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on April __, 2014, governing the production and use of Confidential Information and Confidential Documents in STB Docket No. AB-55 (Sub-No. 712X), 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 Docket No. AB-55 (Sub-No. 712X), before the Surface Transportation Board ("Board"), and/or any judicial review proceedings in connection with STB Docket No. AB-55 (Sub-No. 712X). 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 the Parties 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. 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: _____

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Motion for Protective Order in Docket No. AB-55
(Sub-No. 712X), *CSX Transportation, Inc.—Abandonment Exemption—in White County, IN*,
was served via pre-paid first class postage on May 22, 2014, to the following parties of record:

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Burnettsville, IN 47926

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Monticello, IN 47960

Donald D. Hanni
Hatter-Hanni Insurance and Financial Services
P. O. Box 922
Monticello, IN 47960

James Hunt
Monticello Farm Service Inc.
8199 E. Us Highway 24
Monticello, IN 47960-7490

Jay Wilson Industrial Sales Co. Inc.
P. O. Box 297
Rensselaer, IN 47978

Bruce P. Lyons
Monticello Parks & Recreation
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Monticello, IN 47960

Julie C. McCall
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Monticello, IN 47960

Randy Mitchell
White County Economic Development
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Monticello, IN 47960

Douglas E. Raderstorf
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Brian Townsend
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Mr. Thom Timmons
Monticello Farm Service, Inc.
1415 N 6Th Street
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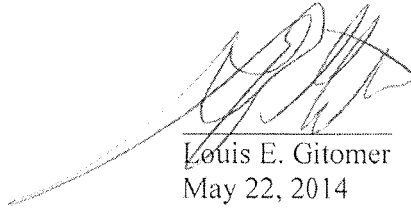
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Louis E. Gitomer
May 22, 2014