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Service Date- December 9, 1996

SEC

SURFACE TRANSPORTATION BOARD

DECISION

S.B. Finance Docket No. 33311

KANSAS CITY SOUTHERN INDUSTRIES, INC. AND
THE KANSAS CITY SOUTHERN RAILWAY COMPANY--CONTROL--
GATEWAY WESTERN RAILWAY COMPANY AND
GATEWAY EASTERN RAILWAY COMPANY
PETITION FOR PROTECTIVE ORDER

Decided: December 5, 1996

By petition filed December 2, 1996, Kansas City Southern Industries, Inc. (KCSI), The Kansas City Southern Railway Company (KCSR), Gateway Western Railway Company (GWWR), and Gateway Eastern Railway Company (GWER), (collectively applicants), seek approval of a protective order to protect confidential and propriety information, including shipper-specific traffic data and other traffic data to be submitted in connection with an application under 49 U.S.C. 11323-25 seeking approval for KCSI to acquire control of GWWR and GWER. The parties intend to file their application before December 31, 1996.

The proposed protective order corresponds to those entered by the Board and the ICC in recent control proceedings.² Applicants have included a provision in the protective order governing the production of material designated as highly confidential. See Appendix, paragraph 6.

Good cause exists to grant the petition. Unrestricted disclosure of confidential, proprietary or commercially sensitive information and data could cause serious competitive injury to the parties. Issuance of the requested protective order ensures that such information and data produced by any party in response to a discovery request or otherwise will be used solely for purposes of this proceeding and not for any other business or commercial use. The requested protective order will facilitate the prompt and efficient resolution of this proceeding.

It is ordered

1.The petition for a protective order **is** granted and the parties to this proceeding must comply with the protective order in the Appendix.

I The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board). This decision relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323-25.

2 See Burlington Northern Santa Fe Corporation, BNSF Acquisition Corp. and Burlington Northern Railroad Company--Control-- Washington Central Railroad Company, Inc., S.B. Finance Docket No. 32974 (S.B. served June 3, 1996); Illinois Central Corporation. et al.--Control--CCP Holdings, Inc., et al., S.B. Finance Docket No. 32858 (S.B. served Jan. 24, 1996); Union Pacific Corporation et al.-- Control & Merger--Southern Pacific Corporation, et al., Finance Docket 32760 (ICC served Sept. 1, 1995); Burlington Northern Inc. & Burlington Northern Railroad Company--Control & Merger--Santa Fe Pacific Corporation and The Atchison, Topeka & Santa Fe Ry. Finance Docket No. 32549 (ICC served July 15, 1994).

STB Finance Docket No. 33311

2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary

.Vernon A. Williams

Secretary

S.B. Finance Docket No. 33311

APPENDIX PROTECTIVE ORDER

1.For purposes of this Protective Order:

(a) "Confidential Information " means traffic data (including but not limited to waybills abstracts, study movement sheets, and any documents or commuter tapes containing data derived from waybills, abstracts, study movement sheets, or other databases, and cost work papers), 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.

(b)"Confidential Documents" means documents and other tangible material containing or reflecting Confidential Information.

(c)Highly Confidential Information" means material containing shipper-specific rate or cost data or other competitively sensitive information, the disclosure of which could result in competitive harm to the party asserting the protection of the information. "

(d)"Highly Confidential Documents" means documents and other tangible material containing or reflecting Highly Confidential Information.

(e)Designated Material" means any documents designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 5 or 6 of the Protective Order, and any Confidential or Highly Confidential Information contained in such materials.

(f)"This proceeding" or "These proceedings" means the Application for control in S.B. Finance Docket No. 33311 to be filed by Kansas City Southern Industries, The Kansas City Southern Railway Company, Gateway Western Railway Company and Gateway Eastern Railway Company together with any related proceedings before the Surface Transportation Board, and any judicial review proceedings arising therefrom and from any related proceedings before the Board.

2. Personnel of Kansas City Southern Industries, Inc. ("KCSI"), The Kansas City Southern Railway Company ("KCSI"), and their affiliates, collectively, "KCS," and of Gateway Western Railway Company (GWWR), Gateway Eastern Railway Company (GWER), and their affiliates, collectively, "GWWR," including outside consultants and attorneys, may exchange Designated Material and data for the purpose of participating in these proceedings, but not for any other business, commercial or other competitive purpose, unless and until the Control Application in this proceeding is approved.

3.To the extent that any meetings, conferences, exchanges of data or other cooperative efforts between representatives of KCS and GWWR 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 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 Interstate Commerce Act, as amended by the ICC Termination Act of 1995.

S.B. Finance Docket No. 33311

4. If the Control Application is disapproved by the Board, or if the Application is approved but is not effected, or if no Application is filed, then all Designated Material exchanged by KCS with GWWR, or by their representative, in these proceedings must be destroyed or returned to the party originating the Designated Material. However, outside counsel for a party are permitted to retain file copies of all pleadings and other documents filed with the Board or served in these proceedings.

5. To the extent that Confidential Documents or materials containing Confidential Information are produced pursuant to a request for discovery by any party to these proceedings, or are submitted in pleadings, briefs, or any other document filed or served in these proceedings, such materials must be treated as confidential. Such materials, any copies, and any data derived therefrom:

(a) shall be designated and stamped as "CONFIDENTIAL and shall be used solely for the purpose of these proceedings, and not for any other business, commercial or competitive purpose;

(b) shall not be disclosed in any **way**, directly or indirectly, or to any person or entity without the written consent of the party producing the materials or an order of the Board or the Administrative Law Judge presiding in these proceedings, except: (I) to employees, counsel or agents of a party to these proceedings, or an employee of such counsel, consultant, or agent, or to other participants in this proceeding solely for use in connection with these proceedings, provided that such person, prior to receiving access to such materials, 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.

(c) if produced through discovery, must be destroyed, and notice of such destruction served on the Board and the presiding Administrative Law Judge and the party producing the materials, at such time as the party receiving the materials withdraws from these proceedings, or at the completion of these proceedings, whichever comes first. However, outside counsel for a party are permitted to retain file copies of all pleadings and other documents filed with the Board or served in these proceedings.

6. Any party producing in discovery to another party to these proceedings, or submitting in pleadings, briefs, or any other document filed or served in these proceedings, Highly Confidential Documents or materials containing Highly Confidential Information may petition the Administrative Law Judge, the Board, or the reviewing court, as appropriate, to designate certain materials as "HIGHLY CONFIDENTIAL."

(a)Such petition must be brought by the party seeking the "HIGHLY CONFIDENTIAL designation sufficiently in advance of any relevant production, response, service' or filing time limitation to allow the reviewing authority to make an appropriate ruling without delaying the time for production, response, service or filing;

(b)Any party wishing to challenge such petition must bring such matter to the attention of the reviewing authority in a timely manner;

S.B. Finance Docket No. 33311

(c)Because of the severe limitations on a party's access to and use of materials designated as "HIGHLY CONFIDENTIAL " and the sufficiency of the protections otherwise afforded by the "CONFIDENTIAL" designation (which provides protections in a less restrictive manner), the "HIGHLY CONFIDENTIAL" designation shall be granted sparingly and only for unusually sensitive corporation information. Upon a showing of good cause by the party seeking .the "HIGHLY CONFIDENTIAL" designation to the effect that such designation is necessary and the only means to protect the confidential and proprietary nature of the materials at issue, such materials, and any copies, and any data derived therefrom shall be designated and stamped as, "HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL / OUTSIDE CONSULTANTS ONLY" and shall be used solely for the purpose of these proceedings, and not for any other business, commercial or competitive purpose;

(d)"HIGHLY CONFIDENTIAL" materials shall not be disclosed in any way, directly or indirectly, or to any person or entity without the written consent of the party producing the materials or an order of the Board or the Administrative Law Judge presiding in these proceedings, except to outside counsel or outside consultants of the party requesting such materials, provided that such outside counsel or outside consultant, prior to receiving access to such materials, 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 Order;

(e)"HIGHLY CONFIDENTIAL" materials, if produced through discovery, must be destroyed, and notice of such destruction served on the Board and the presiding Administrative Law Judge and the party producing the materials, at such time as the party receiving the materials withdraws from these proceedings, or at the completion of these proceedings, whichever comes first. However, outside counsel for a party are permitted to retain file copies of all pleadings and other documents filed with the Board or served in these proceedings.

(f)HIGHLY CONFIDENTIAL " materials shall be subject to all of the other provisions of this Protective Order, including without limitation paragraph 5. However, this paragraph shall not apply to exchanges of information pursuant to paragraph 2 of this Protective Order. "

(g)This paragraph shall not apply to 100% waybill data, which shall be presumed "HIGHLY CONFIDENTIAL" and treated in accordance with the terms of this Protective Order.

7.If any party intends to use Designated Material in any pleading, brief, discovery request or response, or any other document filed or served in these proceedings, the party so intending shall file or serve such pleading, discovery request or response, or other document under seal, in a package clearly marked on the outside "Confidential [or Highly Confidential] Materials Subject to Protective Order." See 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 these proceedings except by order of the Board or of an Administrative Law Judge or other officer in the exercise of lawful authority. A "public" version of such pleading with the Confidential or Highly Confidential information redacted shall also be filed with the Board and served upon parties who have not signed the undertaking.

8.If any party intends to use Designated Material at hearings in these proceedings, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such Designated Material to the Administrative Law Judge, the Board, or the reviewing court, as appropriate, under seal, and shall accompany such submission with a written request to the Administrative Law Judge, the Board, or the court to (a) restrict attendance at the hearings during discussion of such Designated Material, and (b) restrict access to the portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective order.

S.B. Finance Docket No. 33311

. 9. If any party intends to use Designated Material in the course of any deposition in these proceedings, the party so intending shall advise counsel for the party producing the Designated Material, counsel for the deponent, all other counsel attending the deposition. Attendance at the portion of any deposition during which any such Designated Material is used referred to,

disclosed or discussed shall be restricted to persons who may review that material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed and kept under seal and treated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" material in accordance with the terms of this Protective order.

10.To the extent that Designated Materials are produced by a party in these proceedings, and are held and/or used by the receiving person in compliance with the above paragraphs, such production, disclosure, holding, and/or use of the Designated Materials and of the data that the materials contain are deemed essential for the disposition of these proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904 or of any other relevant provision of the Interstate Commerce Act, as amended by the ICC Termination Act of 1995.

11..The provisions of this Protective Order shall apply to all persons and entities unless the Board or an Administrative Law Judge or other officer exercising lawful authority determines that good cause has been shown warranting suspension of any of the provisions herein.

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

13.Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential or Highly Confidential Information originated by that party, or to disclose voluntarily any Confidential or Highly Confidential Documents originated by that party, if such Confidential or Highly Confidential information or Confidential or Highly Confidential Documents do not contain or reflect Confidential or Highly Confidential Information originated by any other person or entity.

UNDERTAKING

[CONFIDENTIAL MATERIAL]

I _____, have read the Protective Order served on _____, 1996 governing the production of confidential documents in S.B. Finance Docket No. 33311, 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 information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in S.B. Finance Docket No. 33311 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 the order and has executed an Undertaking in the form hereof.

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 materials 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.

(signature)

(print name)

Dated: _____

UNDERTAKING

[HIGHLY CONFIDENTIAL MATERIAL]

As outside [counsel] [consultant] for _____,by whom I have been retained in this proceeding, I have read the Protective order served on _____ 1996 governing the production of Confidential material in STE Finance Docket No. 33311, understand the same, and agree to be bound by its terms. I also understand and agree that, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL--- OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY," I will limit my use of those documents and the information they contain to this proceeding and any judicial review thereof, that I will take all necessary steps to assure that said documents and information will 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 documents or information by personnel of my client, its subsidiaries, affiliates, or owners; and that at the conclusion of this proceeding, I will promptly return or destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me to counsel for the originating party, provided however, that outside counsel may retain file copies of pleadings and other documents filed with the Board. I further understand that I must destroy all other notes or other documents containing, reflecting or referring to such highly confidential information in compliance with the terms of the Protective order. Under no circumstances will I permit access to documents designated "CONFIDENTIAL " or "HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL/OUTSIDE CONSULTANTS ONLY" by, or disclose any information contained therein to, any persons who have not executed the Undertaking applicable to such designation.

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 and Highly Confidential material 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.

_____(signature)

[CONSULTANT]

_____(print name)

Dated: _____

OUTSIDE [COUNSEL]
