

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34789

DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION
– TRACKAGE RIGHTS EXEMPTION –
BNSF RAILWAY COMPANY

Decided: December 6, 2005

By motion filed November 29, 2005, Dakota, Minnesota & Eastern Railroad Corporation (User) seeks a protective order under 49 CFR 1104.14 to protect the confidential and commercially sensitive terms of the unredacted “Supplement to Aberdeen, South Dakota Interchange and Trackage Rights Agreement” (Supplement) that User submitted under seal on November 29, 2005. User concurrently filed a notice of exemption under 49 CFR 1180.2(d)(7) for User’s acquisition of the trackage rights described in the notice of exemption, and User attached to the notice of exemption a redacted copy of the Supplement.

Good cause exists to grant the motion for protective order. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Accordingly, the motion for protective order will be granted, and the unredacted Supplement shall be subject to the Protective Order and Undertaking contained in the Appendix to this decision.¹

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

It is ordered:

1. User’s motion for a protective order is granted. The unredacted version of the “Supplement to Aberdeen, South Dakota Interchange and Trackage Rights Agreement” submitted in STB Finance Docket No. 34789 will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless otherwise ordered by the Board.
2. The Protective Order and Undertaking contained in the Appendix to this decision is adopted.

¹ A proposed protective order and undertaking were included with the motion.

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 the purposes of this Protective Order, “Confidential Information” means the “Supplement to Aberdeen, South Dakota Interchange and Trackage Rights Agreement” (Supplement) that was entered into on November 22, 2005, by and between BNSF Railway Company (BNSF) and Dakota, Minnesota & Eastern Railroad Corporation (User). The Supplement was filed in STB Finance Docket No. 34789 on November 29, 2005.
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to User 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 written consent of User or an order of the Board, except that Confidential Information shall be disclosed to a person, but 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 User at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.
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 CFR 1104.14.
6. If any party intends to use Confidential Information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceedings arising therefrom, the party shall submit any documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court (i) to restrict attendance at the hearing during discussion of such Confidential Information, and (ii) to restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.
7. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.
8. All parties must comply with all 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 User in STB Finance Docket No. 34789 and 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 preservation of evidence and argument in STB Finance Docket No. 34789 or any Board proceedings related thereto 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.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that User 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: _____