

BEFORE THE  
SURFACE TRANSPORTATION BOARD

|                                                                                                      |                                                  |
|------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| <br><b>GRANTED</b> | DECISION ID NO.: <u>46017</u>                    |
|                                                                                                      | DECIDED DATE: <u>9/1/17</u>                      |
|                                                                                                      | SERVICE DATE: <u>9/1/2017</u>                    |
|                                                                                                      | APPROVED: <u>Rachelle D Campbell</u><br>Director |
| Office of<br>Proceedings                                                                             | <input type="checkbox"/> Docket No. EP 742       |

PUBLIC LISTENING SESSION REGARDING  
CSX TRANSPORTATION, INC.'S RAIL SERVICE ISSUES

**MURRAY ENERGY CORPORATION'S MOTION FOR PROTECTIVE ORDER**

Pursuant to the Surface Transportation Board's ("Board") August 28, 2017 Decision, Murray Energy Corporation, by counsel, respectfully moves the Board to enter a protective order and in support thereof states as follows:

As the Board has previously noted, Murray Energy Corporation ("MEC") submitted a letter dated August 17, 2017 to the members of the Board, which letter (excluding attachments) has been posted to the Board's website as a filing in this docket.

The August 17 letter included attachments consisting of correspondence from MEC to the Board of Directors of CSX Corporation, Inc. ("CSX"). These attachments to the August 17 letter contain confidential, competitively sensitive information that should be withheld from public disclosure, such as the volume of coal that has been ordered by, and shipped by rail to, customers of MEC over the course of a particular time period. This is information that is not publicly available in the industry and should be maintained as confidential, competitively sensitive information.<sup>1</sup>

MEC has redacted the confidential information from the attachments of the August 17 letter, and hereby files a redacted public version of those attachments with this Motion.

MEC respectfully requests, pursuant to 49 CFR §1104.14(b), for the issuance of a protective order to maintain the confidentiality of certain confidential information that has

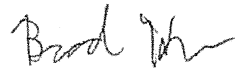
<sup>1</sup> By providing this information to CSX in the first place, MEC was not "disclosing" anything that CSX was not already aware of. That is, CSX already had full knowledge of the volume of coal ordered by, and shipped by rail to, customers of MEC because all of that information was previously provided to CSX through its train reservation system.

been or may be submitted by parties to this proceeding. Issuance of a protective order at the outset of this proceeding, as the Board has done in prior cases, will establish appropriate procedures for the submission of evidence containing proprietary and commercially sensitive information, while protecting such information from unnecessary public disclosure.

Accordingly, MEC hereby asks this Board to issue a protective order in accordance with 49 CFR §1104.14(b) in the proposed form attached hereto as Appendix 1.

In addition, MEC also asks the Board to treat the unredacted copy of the attachments to the August 17 letter as having been designated "CONFIDENTIAL" and submitted under seal according to the terms of the proposed protective order attached hereto.

Respectfully submitted,



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Attorney for Murray Energy Corporation

Dated: August 30, 2017

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 30, 2017, a copy of the foregoing was sent to the following by overnight express courier:

Ellen M. Fitzsimmons  
Executive Vice President of Law and Public Affairs, General Counsel and Corporate Secretary  
CSX Corporate Headquarters  
500 Water Street, 15th Floor  
Jacksonville, FL 32202

  
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## APPENDIX 1

### 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 confidential financial and cost data, including without limitation income, expense, and pricing of commodities and services; the identification of customers of the party originating the information; the confidential terms of contracts entered into by the party originating the information; and other confidential or proprietary business or personal information, including the information of non-parties to this proceeding which fall within the scope of this definition.
  - (c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” in accordance with paragraph 2 of this Protective Order, and any Confidential Information contained in such materials.
  - (d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the Public Listening Session Regarding CSX Transportation, Inc.’s Rail Service Issues, Docket No. EP 742, and any judicial review proceedings arising from Docket No. EP 742.
2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, 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.
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 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 Order.
4. Any party to these Proceedings may challenge the designation by any 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 challenge(s).
5. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in Docket No. EP 742, and/or any judicial review proceedings in connection with Docket No. EP 742.
6. Any party who receives Designated Material in the course of these Proceedings 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.

7. 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." See 49 C.F.R. § 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 authority lawfully delegated by the Board.

8. 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.

9. 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, or to an administrative law judge or other 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.

10. 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 under the terms of this Protective Order.

11. 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 terms of 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 these Proceedings and will not be deemed a violation of 49 U.S.C. § 11904 or of any other relevant provision of the ICC Termination Act of 1995.

12. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential Version may be served on other parties in electronic format only.

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 or non-party.

Exhibit A

UNDERTAKING – CONFIDENTIAL  
MATERIAL

I, \_\_\_\_\_ have read the Protective Order served on \_\_\_\_\_, 2017, governing the production and use of Confidential Information and Confidential Documents in Docket No. EP 742 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 Docket No. EP 742, and/or any judicial review proceedings in connection with Docket No. EP 742. 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. 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 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.

Name: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Dated: \_\_\_\_\_