

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

OCT 31 2014

Part of
Public Record

FD 35851

**GREAT CANADIAN RAILTOUR COMPANY LIMITED
d/b/a ROCKY MOUNTAINEER
PETITION FOR EXEMPTION FROM
49 U.S.C. SUBTITLE IV**

MOTION FOR A PROTECTIVE ORDER

 GRANTED Office of Proceedings	DECISION ID NO.: <u>44220</u>
	DECIDED DATE: <u>1/9/15</u>
	SERVICE DATE: <u>1/12/15</u>
	APPROVED: <u>Lee D. Campbell</u> Director
	☐

John D. Heffner
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Dated: October 31, 2014

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Pursuant to 49 C.F.R. § 1104.14(b), Great Canadian Railtour Company Limited d/b/a Rocky Mountaineer (“Petitioner” or “Rocky Mountaineer”) hereby requests that the Board issue a protective order allowing it to file under seal a copy of its Charter Train Contract with the National Railroad Passenger Corporation (hereafter “Amtrak”) as well as ridership and revenue information for the years 2013-2015 inclusive.

Petitioner is submitting this information in support of a Petition for Exemption it is filing concurrently seeking an exemption from all of the provisions of Subtitle IV of the I.C.C. Termination Act (“ICCTA”) in connection with passenger service it is providing between Vancouver, BC, and Seattle, WA. The Charter Train Contract between Rocky Mountaineer and Amtrak has been the subject of extensive private negotiations and contain commercially sensitive and confidential terms and information the public release of which could cause competitive or other injury to Petitioner. Similarly, the ridership and revenue

information submitted with the Petition could also harm Petitioner if available to the public. Moreover, public disclosure of these documents is not necessary for the Board's consideration or disposition of Rocky Mountaineer's Petition.

Accordingly, Petitioner requests that the Board accept the tendered documents for filing under seal, and that it adopt the proposed protective order contained in the appendix hereto to govern access to the documents. This approach is consistent with that previously taken by the Board in similar circumstances. *See, e.g., Iowa Pacific Holdings, LLC and Permian Basin Railways – Control Exemption – Cape Rail, Inc. and Massachusetts Coastal Railroad, LLC*, FD 35684 (STB served Oct. 26, 2014); *Michael Williams – Control Exemption – St. Maries River Railroad, Inc.*, FD 35365 (STB served Apr. 28, 2010); and *Genesee & Wyoming, Inc. – Control Exemption – Columbus and Greenville Railway Company, et al.*, FD 35139 (STB served May 13, 2008).

WHEREFORE, Rocky Mountaineer respectfully requests that the Board adopt the protective order contained in the appendix hereto.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John D. Heffner", written in a cursive style.

John D. Heffner
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APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “Confidential Information” means the Charter Train Contract between Great Canadian Railtour Company and the National Railroad Passenger Corporation (hereafter “Amtrak”) as well as ridership and revenue information for the years 2013-2015 inclusive.
2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to Petitioners 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 the written consent of the Petitioners or an order of the Board, and then 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 Petitioners, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.
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 C.F.R. § 1104.14.
6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or 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 to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) 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 of the 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 production and use of Confidential Information of Great Canadian Railtour Company d/b/a Rocky Mountaineer in FD 35851, 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 presentation of evidence and argument in FD 35851 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. 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 Confidential Information, 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 Petitioners 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: _____