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March 12, 2002



The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W. Room 711
Washington, D.C. 20423-0001

**Re: Finance Docket No. 34040, Riverview Trenton Railroad Company--
Acquisition and Operation in Wayne County, Michigan**

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are an original and ten (10) copies of the Reply of the County of Wayne and Grand Trunk Western Railroad, Incorporated in Opposition to Riverview Trenton Railroad Company's Motion for Protective Order. Also enclosed is a diskette containing the text of this filing in WordPerfect 6/7/8/9 format.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul A. Cunningham".

Paul A. Cunningham

ENTERED
Office of the Secretary

MAR 13 2002

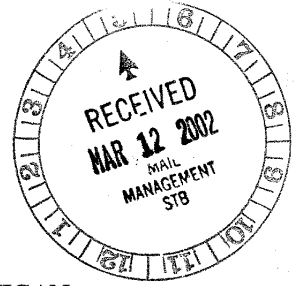
Part of
Public Record

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34040

RIVERVIEW TRENTON RAILROAD COMPANY –
ACQUISITION AND OPERATION IN WAYNE COUNTY, MICHIGAN



**JOINT REPLY OF THE COUNTY OF WAYNE AND
GRAND TRUNK WESTERN RAILROAD, INCORPORATED
IN OPPOSITION TO RIVERVIEW TRENTON RAILROAD COMPANY'S
MOTION FOR PROTECTIVE ORDER**

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March 12, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34040

RIVERVIEW TRENTON RAILROAD COMPANY –
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**JOINT REPLY OF THE COUNTY OF WAYNE AND
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IN OPPOSITION TO RIVERVIEW TRENTON RAILROAD COMPANY'S
MOTION FOR PROTECTIVE ORDER**

The County of Wayne ("County") and Grand Trunk Western Railroad ("GTW") (together, "WC/GTW") hereby submit this opposition to Riverview Trenton Railroad Company's ("RTR") Motion for Protective Order ("Motion") served with RTR's supplemental evidence and argument pursuant to the Board's decision served on February 15, 2002 in the above-captioned proceeding ("February 15 Decision").

Factual Statement

In its February 15 Decision, the Board revoked the exemption that was the subject of the notice filed by RTR in STB Finance Docket No. 33980, and sought additional evidence and argument concerning issues raised by the petition for exemption pending in Finance Docket No. 34040. February 15 Decision at 6. The Board stated that it would consider the arguments submitted in Finance Docket No. 33980 (to the extent not addressed in its decision) along with RTR's petition for exemption, and that it would use the additional evidence and argument to

assist in its further ruling. The Board also stated that it would consider the environmental record as part of a subsequent decision.

In order to assist it in reaching a final determination in this proceeding, the Board in its February 15 Decision requested additional evidence and argument in two general areas. For purposes of RTR's Motion, only the first of these issues is relevant. Regarding RTR's claims that its proposed "container interchange service" will benefit shippers and the public, the Board asked RTR to "support those arguments with evidence from those who would benefit from the interchange service." February 15 Decision at 10. The other issue related to land use and condemnation issues.

The Board ordered that the parties submit their additional evidence and argument on these questions by March 7, 2002. The Board also ordered that the parties submit responses to the additional evidence and argument by March 18, 2002. RTR submitted its additional evidence and argument on March 7, 2002, but submitted certain critical evidence under seal and simultaneously filed its motion for protective order.¹ The documents submitted under seal were not provided to counsel for WC/GTW. They are described by RTR as statements of potential beneficiaries in support of RTR's proposal.

Moreover, despite knowing in advance that it would file supporting statements under seal, RTR did not contact counsel for GTW or the County in advance of its filing to offer to enter into an agreed upon protective order to allow even outside counsel to review those documents. Nor did it tender a neutral protective order for that purpose. Instead, as part of its motion for protective order, it tendered a proposed order that would by definition categorize the statements

¹These statements were submitted under seal as Exhibit 1 to the Verified Statement of Arnold M. Mistura, RTR's President.

it filed under seal as "Highly Confidential" and available only to outside counsel and outside consultants. By doing so, RTR provided no advance means by which even outside counsel for its opponents could obtain these documents without prejudicing their right to contest RTR's proposed protective order and RTR's sweeping and unjustified categorization of all of its support statements as Highly Confidential. This course of action virtually guaranteed that RTR's opponents would be denied access to the critical documents filed under seal for some period after RTR's filing.

In fact, despite diligent efforts by GTW beginning Friday, March 8, 2002, to obtain the documents from RTR under an agreement that would not be prejudicial, RTR only agreed this afternoon to produce the documents for review by outside counsel for GTW pursuant to a confidentiality agreement. A copy of that confidentiality agreement and related undertaking are attached as Exhibit A. The documents themselves were received too late this afternoon for counsel to review them in advance of this reply. (Counsel for the County intends to proffer a similar confidentiality agreement to RTR, but has not yet received any of the documents filed under seal.) Once counsel have reviewed the documents filed under seal, they will consider whether to challenge RTR's designation of these documents as Highly Confidential, and, if necessary, file an appropriate motion seeking an extension of time.

ARGUMENT: RTR IS NOT ENTITLED TO THE PROTECTIVE ORDER IT SEEKS.

RTR is not entitled to the protective order protection it has sought for the supporting statements. As described by RTR, the information sought does not appear to be of a “highly confidential” nature nor even a “confidential” nature. WC/GTW will be harmed in their ability to respond to RTR’s March 7, 2002 submission without the ability to review the information free from the proposed limitations.

In its motion, RTR alleges that the “statements reveal both the identity of potential shippers and other beneficiaries on RTRR’s lines and identify, to some extent, the nature of the cargo they contemplate would be tendered to RTRR.” Motion at 2. RTR then asserts – without support – that all this information is “commercially sensitive information.” *Id.*

RTR first argues that “public disclosure” of this “commercially sensitive information” would cause three potential “harms”:

1. Harm to the shippers’ relationships with other carriers;
2. Harm to RTR’s negotiations with potential shippers; and
3. Harm to the shippers’ “business interests” because of the “politically charged atmosphere” and scrutiny of this proceeding.

Id. RTR has done nothing but make bald assertions without any support for its propositions.

RTR does not explain the basis for its assumption that all or indeed any of the information is “commercially sensitive.” The identity of potential shippers is not necessarily confidential commercial information. The information in the statements by the potential shippers apparently is information in support of this project. RTR does not demonstrate that a statement of support is “confidential.” Such statements in Board proceedings are customarily non-confidential.

The allegations of harm made by RTR's lawyers in the motion are offered without any support. There is no evidence of any kind that disclosure of the information would or even might hurt the potential shippers' relationships with other carriers, and no evidence of the extent and significance of the alleged harm. That a particular potential shipper might support this project does not lead to the inevitable conclusion that such information would interfere with any current relationships of the shippers. There is no evidence that these potential shippers would likely use the project to replace current relationships or that any relationship with RTR would likely be consummated. RTR has not provided any evidence from the shippers themselves to support the allegations of harm to them.

Similarly, RTR's motion baldly asserts that its negotiations with potential shippers would be harmed by disclosure. RTR provides no explanation how revelation of the mere identity of the shippers would hurt its negotiations. There simply is no evidence presented that RTR is actually in negotiations with the potential shippers referred to or that those potential shippers are concerned about disclosure.

RTR's vague assertion of harm to the third party potential shippers' "business interests" is insufficient to justify a protective order. RTR does not explain how the "politically charged atmosphere" and scrutiny surrounding this project are different from other highly visible, controversial matters that have come before the Board. RTR's allegations are nothing but unfounded speculation.

RTR next asserts that a protective order would provide "its supporters" with anonymity and thus insulate them from "pressure" or "discrimination." Besides being unsupported with any evidence that this has occurred or been threatened, this argument is contrary to basic principles of open government and public debate. RTR seeks to prevent opponents of the project from

trying to persuade supporters that the project should not be pursued. This Board should not sanction RTR's attempts to control the free flow of information and the public debate over this controversial project. The purpose of protective orders is not to protect individuals or companies from efforts at persuasion.

Indeed, it is highly questionable whether a governmental agency should undertake to protect persons who voluntarily support a party seeking favorable action from the agency from communications by others interested in the issue. In general, our Constitutional scheme seeks to encourage such political communication, not thwart it. This is no less so where the proceeding involves "intense political and media scrutiny" as RTR alleges here (Motion at 4).²

RTR has not cited any decision supporting its broad request for a broad protective order. In *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, Finance Docket No. 33407 (served Aug. 5, 1998 ("DM&E")), an administrative law judge entered a stipulated protective order on a joint petition. The agreed protective order in that proceeding defined "confidential information" to include "traffic data" and "the identification of shippers and receivers in conjunction with shipper-specific or other traffic data." It also defined "highly confidential" information as including "shipper-specific rate or cost data or other comparably sensitive or proprietary information." There was no broad protection of *all* shipper identification.

²RTR's broad claims that its supporters are concerned about their identities being known to anyone but the Board itself and outside counsel for other parties is belied by the very fact that they provided such statements to RTR, and allowed them to be filed, without any assurance that the Board would agree to their request for almost total anonymity. Had they been truly concerned one would have expected them to have a protective order in place before they submitted their statements. Such a course would have lessened the potential need to revise the schedule.

Both *Duke Energy Corp. v. Norfolk Southern Railway Co.*, Docket No. 42069 (served Feb. 5, 2002), and *Arizona Electric Power Coop., Inc. v. The Burlington Northern and Santa Fe Railway Co. and Union Pacific Railroad Co.*, Docket No. 42058 (served Feb. 16, 2001), also involved joint motions for entry of an agreed protective order, entered by the Secretary. Both orders defined “highly confidential” information as a subset of “confidential information,” and indicated that it included contract terms and shipper-specific traffic data. They also provided that disclosure and receipt of such information in compliance with the order would not constitute a violation of 49 U.S.C. § 11904. The orders and the decisions do not specify the mere identity of shippers as confidential information warranting any level of limited access or disclosure.

Here, RTR does not assert that the shippers’ statements contain traffic data, confidential contract terms, or shipper-specific information related to traffic data. Rather, RTR only asserts that the statements contain the identity of potential shippers (and “other beneficiaries”) and some information of a general nature regarding potential cargo.³ This information is not the kind that the Board generally afforded such protection in the past.

In seeking to justify the protective order, RTR cites decisions it claims “recognized the need to protect confidential shipper-specific information and prevent prejudice to parties in business negotiations.” Motion at 3. These decisions do not support RTR’s request. In *Norfolk Southern Railway Corporation and Norfolk Southern Railway Company – Construction and Operation – in Indiana County, Pa.*, Finance Docket No. 33928 (served Feb. 8, 2001), the Secretary entered a proposed protective order that was not opposed. It contained language identical to that in *DM&E*. The decision does not stand for the proposition that there should be

³RTR also does not describe the business of the “other beneficiaries” that provided statements.

broad protections for all or even most information related to shippers. And, it does not say anything about negotiations.

In *SWKR Operating Co. – Abandonment Exemption – In Cochise County, Az.*, Docket No. AB-441 (Sub-No. 2X) (served Sept. 15, 1997), a company sought protection of its non-public consolidated balance sheets. The company asserted that its competitors would benefit by seeing the balance sheets and the information in them could hurt it in its negotiations with customers. Evidently there was no opposition, and the Secretary granted the motion. Here, in contrast, the information that RTR seeks to protect is not of a similar nature. There is no assertion that the statement of any supporters contains financial information that could be used against the supporter by competitors or customers (or anyone else).⁴

RTR suggests that a protective order may issue where counsel has access and public disclosure is not necessary for a party to prove its case. RTR's reliance upon *The Central Illinois Railroad Co. – Lease and Operation Exemption – Lines of the Burlington Northern and Sante Fe Railway Company at Chicago, Cook County, IL*, Finance Docket No. 33960 (served March 2, 2001), is misplaced. In that proceeding, the Board found that public disclosure of information regarding "full charges" under a lease and operation agreement was not necessary for a union to prove its case for revocation of an exemption. Here, the statements of support are central to the issues in this matter and are the precise information that the Board requested in the

⁴RTR also cites to *Rio Grande Industries, Inc., SPTC Holding, Inc., and the Denver and Rio Grande Western Railroad Co. – Control – Southern Pacific Transportation Co.*, Finance Docket No. 32000 (served June 6, 2001), and claims that the Board may grant protection "even without specific findings that proprietary information was involved." In that proceeding, however, the motion was unopposed. One party alleged that prior testimony and exhibits were admitted at a hearing in violation of the attorney-client privilege. The other party disagreed that privileged information involved, but as a courtesy agreed to submit its brief as "confidential" and thus did not oppose the motion.

February 15 Decision, where the Board has called upon WC/GTW to respond to this information. WC/GTW's ability to do so has been directly constrained by limits on the ability to investigate these statements effectively.

WC/GTW suggest that, in lieu of the protective order requested by RTR – which includes only a Highly Confidential designation and which by definition treats the statements submitted under seal by RTR as correctly categorized as Highly Confidential – the Board instead adopt a more common form of order based on those issued in the cases RTR cites, such as *Duke Energy*. A proposed order in that basic format is attached.

In effect, RTR provided an incomplete submission on March 7th. RTR knew that it would provide the shippers' statements under seal with its March 7th submission, yet did not even attempt to negotiate or seek a protective order ahead of time. Instead, RTR unilaterally withheld the statements on the assumption that it would prevail on its motion and tendered a protective order that opposing parties could not sign without prejudice. As a result of RTR's tactics, WC/GTW have been in the position of having to prepare a response to the March 7th submission without the basic necessary information. They and their counsel need to have the information and prepare appropriate responses to be able to share it with their employees in order to investigate the veracity of the statements. Once we have had an opportunity to review the documents we may need to ask the Board to extend the time for WC/GTW's response.

Because of the untenable conditions on which RTR originally tendered copies of the statements to counsel for the parties, not until RTR finally agreed today to acceptable interim terms were WC/GTW in a position to receive copies. However, as of 3:00 p.m. today we had not received copies. Hence, WC/GTW are not yet in a position to address whether particular statements or portions thereof should receive protection. Once the Board has issued a protective

order we will promptly review the statements and, within two business days, challenge any designations that we do not believe meet the standards of the Board's order.

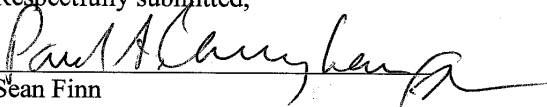
Conclusion

For the foregoing reasons, WC/GTW respectfully request that the Board deny RTR's motion for protective order. They do not oppose entry of the alternative form of protective order attached hereto.

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Counsel for County of Wayne

Respectfully submitted,


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Counsel for Grand Trunk Western
Railroad Incorporated

March 12, 2002

CERTIFICATE OF SERVICE

I certify that I have this 12th day of March, 2002, served copies of the foregoing Joint Reply of the County of Wayne and Grand Trunk Western Railroad, Incorporated in Opposition to Riverview Trenton Railroad Company's Motion for Protective Order on all parties to these proceedings, by causing a copy to be delivered to each of the following by first-class mail or by a more expeditious manner of delivery:

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Washington, DC 20036

Richard S. Edelman
O'DONNELL, SCHWARTZ & ANDERSON, P.C.
1900 L Street, N.W., Suite 707
Washington, DC 20036

The Honorable Carl M. Levin
United States Senate
Washington, DC 20510

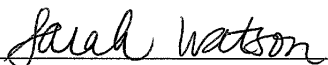
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Sarah K. Watson

EXHIBIT A

CONFIDENTIALITY AGREEMENT

1. For the purpose of this Confidentiality Agreement, "HIGHLY CONFIDENTIAL" information refers to confidential or proprietary information submitted in STB Finance Docket No. 34040 and so designated by the party submitting that information.

2. Any party submitting material in pleadings in STB Finance Docket No. 34040 that the party believes in good faith reflects proprietary or confidential information, may designate and stamp such material as "HIGHLY CONFIDENTIAL," and such material must be treated as confidential. Such material, any copies, and any data or notes derived therefrom:

(a) Shall be used solely for the purpose of this proceeding and any judicial review proceeding arising therefrom, and not for any other business, commercial, or competitive purpose.

(b) May be disclosed only to the outside counsel or outside consultants of the party requesting such material, including employees of such counsel or consultants, who have a need to know, handle, or review the material for purposes of this proceeding and any judicial review proceeding arising therefrom, and only where such counsel or consultant has been given and has read a copy of this Confidentiality Agreement, agrees to be bound by its terms, and executes the attached Undertaking for Highly Confidential Material ("Undertaking") prior to receiving access to such materials.

(c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and all judicial review proceedings arising therefrom. However, outside counsel (but not outside consultants) for a party are permitted to retain file copies of all pleadings and evidence filed with the Board as well as work product.

(d) If contained in any pleadings filed with the Board, shall, in order to be kept confidential, be filed only in pleadings submitted in a package clearly marked on the outside "Highly Confidential Materials Subject to Confidentiality Agreement." See 49 C.F.R. § 1104.14.

3. If any party intends to use highly confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such highly 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 court to (i) restrict attendance at the hearing during discussion of such highly confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such highly confidential information in accordance with this Confidentiality Agreement.

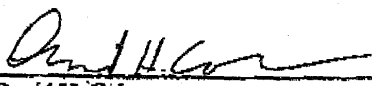
4. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release designated "HIGHLY CONFIDENTIAL"

material produced by the other party, or copies or notes thereof, as to which it obtained access pursuant to this Confidentiality Agreement, the party so required shall notify the producing party in writing within 3 working days of receipt of actual notice of the release order or within 3 working days of the determination that the "HIGHLY CONFIDENTIAL" material or copies or notes are to be released or within 3 working days prior to such release, whichever is sooner, to permit the producing party to contest the release.

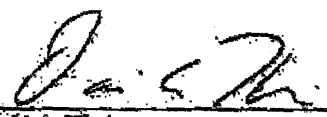
5. All parties must comply with all of the provisions stated in this Confidentiality Agreement unless good cause, as determined by the Board warrants suspension of any of the provisions herein.

6. A "HIGHLY CONFIDENTIAL" designation may be removed by agreement of the parties, or, absent such agreement, by appropriate Board order, upon application of a party seeking to remove such designation, where there is a failure by the party seeking to preserve confidentiality to demonstrate that the material is properly designated as confidential or proprietary such that access should be allowed only to outside counsel or outside consultants.

The undersigned agree to abide by the foregoing provisions and the attached Undertaking with respect to documents designated Highly Confidential unless or until the Board adopts a Protective Order in STB Finance Docket No. 34040 (in which case materials designated by a party to be Highly Confidential for purposes of this Confidentiality Agreement shall be deemed to be so designated by that party for purposes of such Protective Order) or, as to any particular document or documents, the Board orders the removal of the designation of such material as confidential or proprietary pursuant to an application made under paragraph 6 hereof or *sua sponte*. Notwithstanding the foregoing, it is understood that any party executing this Confidentiality Agreement or attached Undertaking is free to oppose RTRR's Motion for Protective Order or to request the Surface Transportation Board to modify that order or to remove the designation of any materials as confidential or proprietary for purposes of this Confidentiality Agreement or any Protective Order.


David H. Cohen
Stephens & Johnson LLP
Counsel for Riverview-Trennon Railroad
Company

3/12/02
Date


David A. Hirsch
Harkins Cunningham
Counsel for Grand Trunk Western Railway

3/12/02
Date

EXHIBIT B

PROTECTIVE ORDER

1. Any party producing material in discovery to another party to this proceeding, or submitting material in pleadings or evidence, that the party believes in good faith reveals proprietary or confidential information, may designate and stamp such material as "CONFIDENTIAL," and such material must be treated as confidential. Such material, any copies thereof, and any data or notes derived therefrom may be disclosed only to employees, counsel, or agents of the party receiving such material who have a need to know, handle, or review the material for purposes of this proceeding and any judicial review proceeding arising therefrom, and only where such employee, counsel, or agent has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.
2. Any party producing material in discovery to another party to this proceeding, or submitting material in pleadings or evidence, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data or other competitively sensitive information, as "HIGHLY CONFIDENTIAL." Material that is so designated may be disclosed only to another party's outside counsel of record in this proceeding, and to those individuals working with or assisting such counsel who are not regular employees of the party and have a need to know, review, or handle the Highly Confidential material for purposes of the proceeding, including testifying and consulting experts, provided each such person has been given and has read a copy of this Protective Order, agrees to be bound by its terms, and executes the attached Undertaking for Highly Confidential Material prior to receiving access to such materials.
3. Confidential and Highly Confidential material shall be used by a receiving party solely for the purpose of this proceeding and any judicial review proceeding arising therefrom, and not for any other business, commercial, or competitive purpose.
4. Confidential and Highly Confidential material that is not the receiving party's own data, information, or documents must be destroyed by the receiving party, its employees, counsel, and agents at the completion of this proceeding and any judicial review proceeding arising therefrom, except that: (1) outside counsel (but not outside consultants) for each party are permitted to retain file copies of all pleadings and evidence filed with the Board and file copies of all work product; and (2) in-house counsel for each party are permitted to retain file copies of all pleadings and evidence which they received during the course of this proceeding.
5. Confidential and Highly Confidential material, if contained in any pleading or evidence filed with the Board, shall, in order to be kept confidential, be filed only in pleadings or evidence submitted in a package clearly marked on the outside "Confidential Materials

Subject to Protective Order” or “Highly Confidential Materials Subject to Protective Order.” See 49 CFR 1104.14.

6. In the event that a party produces material which should have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and inadvertently fails to stamp the material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the producing party may notify the other parties in writing within 10 days of discovery of its inadvertent failure to make the confidentiality designation. The parties who received the material without the confidentiality designation will return the non-designated portion or destroy it, as directed by the producing party, or take such other steps as the parties agree to in writing. The producing party will promptly furnish the receiving parties with properly designated material.
7. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the inadvertent disclosure that the other parties return the inadvertently produced privileged document. The parties who received the inadvertently produced document will either return the document to the producing party or destroy the document immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.
8. If any party intends to use Confidential and/or Highly Confidential material at hearings in this proceeding, or in any judicial review proceeding arising therefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such Confidential and/or Highly Confidential material to any Administrative Law Judge, the Board, or the court, with a written request that the Administrative Law Judge, the Board, or the court: (a) restrict attendance at the hearings during discussion of such Confidential and/or Highly Confidential material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such Confidential and/or Highly Confidential material in accordance with the terms of this Protective Order.
9. If any party intends to use Confidential and/or Highly Confidential material in the course of any deposition in this proceeding, the party so intending shall so advise counsel for the party producing the materials, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any such Confidential and/or Highly Confidential material is used shall be restricted to persons who may review the material under this Protective Order. All portions of deposition transcripts and/or exhibits that consist of or disclose Confidential and/or Highly Confidential material shall be 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 material reflecting the terms of contracts, shipper-specific traffic data, other traffic data, or other proprietary information is produced or otherwise disclosed by a party in this or any related proceedings and is held and used by the receiving person in compliance with this Protective Order, such production, disclosure, and use of the material and of the data that the material contains will be deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904.
11. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release Confidential or Highly Confidential material produced by the other party or copies or notes thereof as to which it obtained access pursuant to this Protective Order, the party so required shall notify the producing party in writing within 3 working days of the determination that the Confidential material, Highly Confidential material, or copies or notes are to be released or within 3 working days prior to such release, whichever is soonest, to permit the producing party to contest the release.
12. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, or by an Administrative Law Judge in a decision from which no appeal is taken, warrants suspension of any of the provisions herein.
13. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in this proceeding.
14. A "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation may be removed by consent of a party who asserts the confidential, proprietary, or commercially sensitive interest, or, absent such consent, by appropriate decision of the Board, or of an Administrative Law Judge from which no appeal is taken, upon application of a party seeking to remove such designation.
15. Each party has a right to view its own data, information, and documentation, even if that data, information, and documentation has been designated as "HIGHLY CONFIDENTIAL" by a producing party, without securing prior permission from the producing party.

**UNDERTAKING
CONFIDENTIAL MATERIAL**

I, _____, have read the Protective Order served on March __, 2002, governing the production of confidential documents in STB Finance Docket No. 34040, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any confidential data or information obtained pursuant to 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 purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. 34040 or any judicial review proceeding arising therefrom. I further agree not to disclose any confidential data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel (but not outside consultants) may retain file copies of its work product and of pleadings and evidence filed with the Board, and in-house counsel may retain file copies of all pleadings and evidence containing confidential material it received during the course of this proceeding. I further understand that a party may retain its own confidential material.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive 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.

Dated: _____

**UNDERTAKING
HIGHLY CONFIDENTIAL MATERIAL**

As outside [counsel] [consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on March __, 2002, governing the production of confidential documents in STB Finance Docket No. 34040, understand the same, and agree to be bound by its terms. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL," that I will limit my use of those documents and the information they contain to the preparation and presentation of evidence and argument in STB Finance Docket No. 34040 and any judicial review proceeding arising therefrom, that I will take all necessary steps to ensure 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, except as otherwise provided in the Protective Order, and that at the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel (but not outside consultants) may retain file copies of its work product and of any pleadings and evidence filed with the Board. I further understand that I must destroy all notes or other documents containing such highly confidential information received from the other party in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the highly confidential interest shall be entitled to specific performance and injunctive 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.

OUTSIDE [COUNSEL][CONSULTANT]

Dated: _____