

204962
204963

HARKINS CUNNINGHAM

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ENTERED
Office of the Secretary

MAR 14 2002

Part of
Public Record

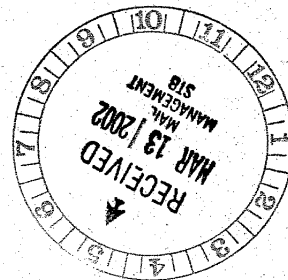
10 ROCKEFELLER PLAZA
SUITE 1250
NEW YORK, NY 10020-1903
212 218-1990
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EXPEDITED CONSIDERATION REQUESTED

March 13, 2002

BY HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, N.W.
Washington, D.C. 20423-0001



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

Dear Secretary Williams:

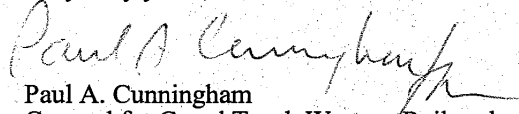
Enclosed for filing in the above-captioned docket are an original and ten (10) copies each of the Joint Request by the County of Wayne and Grand Trunk Western, Incorporated for Removal of Designation of Documents as "Highly Confidential" and Supplement to Their Reply in Opposition to Riverview Trenton Railroad Company's Motion for Protective Order, and the Motion of County of Wayne and Grand Trunk Western Railroad Incorporated for Extension of Time for Replies to Supplemental Information of Riverview Trenton Railroad Company. **Please note that the movants request expedited consideration of these Motions.**

HARKINS CUNNINGHAM

Mr. Vernon A. Williams, Secretary
March 13, 2002
Page 2

Also enclosed is a diskette containing the text of these filings in WordPerfect 6/7/8/9 format.

Very truly yours,


Paul A. Cunningham
Counsel for Grand Trunk Western Railroad
Incorporated

Enclosures

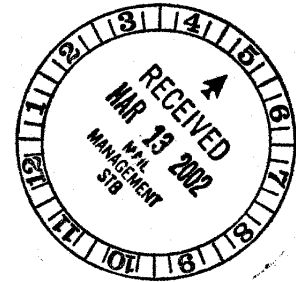
cc: All Parties of Record

204963

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34040



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

**MOTION OF COUNTY OF WAYNE AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED
FOR EXTENSION OF TIME
FOR REPLIES TO SUPPLEMENTAL INFORMATION OF
RIVERVIEW TRENTON RAILROAD COMPANY**

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Counsel for County of Wayne

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Counsel for Grand Trunk Western
Railroad Incorporated

March 13, 2002

ENTERED
Office of the Secretary

MAR 14 2002

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EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

**MOTION OF COUNTY OF WAYNE AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED
FOR EXTENSION OF TIME
FOR REPLIES TO SUPPLEMENTAL INFORMATION OF
RIVERVIEW TRENTON RAILROAD COMPANY**

In order that their right of reply to Riverview Trenton Railroad Company's ("RTR") supplemental evidence submitted on March 7, 2002 ("RTR Supplement"),¹ not be prejudiced, the County of Wayne, Michigan (the "County"), and Grand Trunk Western Railroad Incorporated ("GTW") (together, "WC/GTW") respectfully request an extension of time for the due date of their reply (currently March 18, 2002) to 11 days after the Board determines which of the materials, if any, withheld by RTR from the RTR Supplement are entitled to "Confidential" or

¹Response of Riverview Trenton Railroad Company to February 15 Request to Supplement Record (filed Mar. 7, 2002) ("RTR Supplement"). The supplemental evidence was submitted in response to the Board's decision served in this proceeding (and in Finance Docket No. 33980) on February 15, 2002. *Riverview Trenton R.R. – Acquisition & Operation Exemption – Crown Enterprises, Inc.*, STB Finance Docket No. 33980 (STB served Feb. 15, 2002) ("February 15 Decision").

“Highly Confidential” treatment under any protective order that might be issued.² In order to expedite this proceeding, RTR is simultaneously filing in its “Supplement to the Reply in Opposition to RTR’s Motion For Protective Order” its reply to RTR’s claim that the materials it has withheld are entitled to “Highly Confidential” treatment.

DISCUSSION

In its February 15 Decision, the Board called for the parties to file supplemental information by March 7, 2002, addressing matters specified in that Order, and to file replies by March 18, 2002. In particular, the Board stated (February 15 Decision at 10) that the supplemental information to be submitted by petitioner Riverview Trenton Railroad Company (“RTR”) should include “evidence from those who would benefit from the interchange service” that RTR proposes to establish on the former McLouth Steel property and for which RTR seeks authority to operate as a rail common carrier.

RTR filed its supplemental evidence on March 7, but failed to serve other parties with the “evidence from those who would benefit from the interchange service.” Verified Statement of Arnold M. Mistura at 1-2 (attachment to RTR Supplement)). This evidence, which should be the heart of RTR’s filing, included what RTR described as “over forty-five” “[l]etters of support

²This request is pursuant to 49 C.F.R. § 1104.7(b). Under that provision, requests for extension must ordinarily be filed 10 days before the due date to be extended. In this case, given that only 11 days were provided for a reply, that would have required a filing on the day after RTR filed its reply (March 8, 2002). Because the need for and propriety of an extension was not apparent until yesterday evening, once RTR finally agreed to provide the exhibit to GTW’s outside counsel under a confidentiality agreement and outside counsel had an opportunity to review it, RTR could not reasonably comply with the 10-day requirement. Should that requirement be deemed nonetheless to apply under these circumstances, WC/GTW respectfully request its waiver. *See* 49 C.F.R. § 1100.3 (STB rules to be “construed liberally to secure just, speedy and inexpensive determination of the issues presented”).

from some prospective users and beneficiaries of the RTRR line and intermodal terminal,” which were attached as Exhibit 1 to the verified statement of RTR President Arnold Mistura (*id.* at 2). Those letters were filed with the Board under seal, subject to RTR’s motion for a protective order.³ RTR’s excuse for withholding these critical materials was its claim that even the identity of “potential shippers and other beneficiaries” of RTR’s project is too “commercially sensitive” to be disclosed to anyone other than outside counsel and consultants (Motion for Protective Order at 2).

In addition to withholding this information at the time of its filing, RTR failed to make any reasonable provision for even outside counsel to receive those documents until yesterday afternoon. Its failure to do so was particularly inappropriate and prejudicial because, as RTR well knew, its opponents had only 11 days to prepare and file their replies.

First, RTR knew, before it filed its Supplement, that it would be filing under seal those portions of that submission most responsive to the February 15 Decision. Nevertheless, RTR never approached those parties to negotiate an agreement regarding the disclosure of the identity of witnesses and other purportedly confidential information, so that opponents could begin to prepare their replies to the RTR Supplement immediately upon its filing.

Second, RTR could have proposed a neutral protective order as has been entered in many other Board proceedings that would have allowed opposing counsel expeditiously to receive access to the documents withheld by RTR. Instead, RTR proposed a protective order that, had counsel for opponents signed it, would have prejudiced the rights of opponents to challenge RTR’s sweeping designation of supporting statements as highly confidential. Under the terms of

³See Motion for Protective Order (filed Mar. 7, 2002).

RTR's proposed protective order all "shipper statements attached to pleadings" would by definition constitute "HIGHLY CONFIDENTIAL" information, to be made available only to outside counsel and consultants, with no provision for challenging the designation of such statements on the ground that nothing in them merited such restrictive treatment.⁴ Counsel for WC/GTW could not reasonably be expected to agree to those terms, which would have required that they prejudice their ability to challenge as inappropriate RTR's designation of the shipper statements as "HIGHLY CONFIDENTIAL."

Faced with this course of action by RTR, which virtually guaranteed that opponents would be prejudiced in their efforts to reply to RTR's supplemental evidence, WC/GTW have done everything reasonably possible to minimize resulting delays. At mid-day Friday, March 8, the day after the RTR Supplement was filed, the undersigned counsel for GTW contacted RTR's counsel to explain why GTW could not accept the terms of RTR's draft protective order, and to suggest an alternative agreement that would have preserved GTW's right to challenge the appropriateness of any designation of a document as "HIGHLY CONFIDENTIAL." GTW counsel faxed its alternative proposal to RTR's counsel later that afternoon (but before the close of business), and emphasized that the short reply period provided by the February 15 Decision made it necessary for GTW to receive the withheld documents that day, rather than after the weekend (*see* Exhibit 1). Moreover, GTW's counsel left two phone numbers where they could

⁴The final paragraph of RTR's proposed protective order permitted a party to successfully challenge the designation of materials as "Highly Confidential" only if the party seeking to preserve confidentiality fails "to demonstrate that the material is properly deemed 'HIGHLY CONFIDENTIAL' as defined herein." (emphasis added) Since the shipper statements RTR had attached to its pleading were by definition categorized by the protective order as highly confidential, this provision would effectively preclude parties from successfully challenging RTR's categorization of those documents.

be reached at any time over the weekend.

GTW's counsel received no reply to its proposal until late morning, Monday, March 11, at which time counsel for RTR reported, without any explanation as to why any changes to GTW's proposed order were necessary, that RTR wished to make a counter proposal. That counter-proposal, which GTW's counsel received shortly after noon, was plainly inadequate and unacceptable. Despite the specific protections provided in the new proposed protective order itself, which both parties agreed upon, counsel for GTW added a requirement that a signatory to the proposed order must agree to comply with the terms of RTR's original proposed protective order, which, of course, contained the objectionable terms requiring a waiver of any challenge to RTR's designation of shipper statements as "Highly Confidential" (*see* Exhibit 2).

GTW's counsel pointed out this fatal flaw in RTR's counter proposal, and suggested that the way to break the apparent impasse between the parties over the terms of a protective order was instead to enter into a confidentiality agreement between them, providing for access to the subject documents for GTW's outside counsel pending resolution of the protective order and "Highly Confidential" designation issues. Counsel for GTW faxed and e-mailed that afternoon to RTR's counsel a proposed confidentiality agreement and undertaking (*see* Exhibit 3). RTR's counsel stated by telephone that the agreement appeared to be adequate, but that he was concerned about the position of other potential RTR opponents. Counsel for GTW noted that he could not speak for other opponents and that GTW was prepared to and anxious to move forward. Counsel for RTR then said he would have to consult with his client to determine if GTW's proposal would be acceptable. Later that evening, after a followup call by counsel for GTW, RTR's counsel called to say his client had left for the evening and he would get back to counsel for GTW first thing on the morning of Tuesday, March 12. Counsel for RTR did not

call, however, until after noon on March 12, at which time he informed counsel for GTW that RTR agreed to the confidentiality agreement that had been tendered by GTW the prior day. That agreement was executed by both parties, and the withheld documents, which are essential for GTW's preparation of its reply, were received by GTW's counsel yesterday afternoon (March 12), or nearly five days after RTR's initial filing, and just three business days before the current due date for WC/GTW's reply.

GTW that same day (March 12) filed its reply in opposition to RTR's motion for protective order pointing out that it unfairly categorizes as "Highly Confidential," by definition, all of the materials withheld by RTR, and fails to provide for a "Confidential" category of materials that are protected from public disclosure, but made available to in-house personnel with a need to use those materials in connection with the Board proceeding. WC/GTW stated that they would not object to the entry of a neutral protective order such as has been entered by the Board in numerous other proceedings, and attached a draft of such an order.

Even without the benefit of reviewing the documents withheld by RTR that only arrived late that afternoon, WC/GTW was able to show that the cases cited by RTR in motion for protective order did not support that proposed protective order or RTR's effort to withhold the statements from potential beneficiaries from everyone but outside counsel and outside experts. WC/GTW indicated in its opposition to RTR's protective order that it would file its opposition to the categorization after reviewing the documents themselves, and after the Board adopted some form of protective order. After now reviewing the documents initially withheld even from counsel, WC/GTW has concluded that RTR's argument that all of the documents it has withheld are "Highly Confidential" is close to frivolous, and in order to expedite the Board's process of

considering this issue it is filing simultaneously herewith in its Supplement to RTR's proffer of these documents as "Highly Confidential."

Although WC/GTW have done and continue to do everything they reasonably can to expedite resolution of the issue of whether RTR is justified in withholding the statements by potential supporters from all persons other than outside counsel and outside consultants, it is clear that as a result of RTR's actions, WC/GTW and other opponents have been handicapped and continue to be handicapped in their efforts to reply to the RTR Supplement. For the reasons discussed above, counsel for opponents have been denied access to the central evidence of the RTR Supplement for a period of at least five days (in GTW's case) and potentially longer for other opponents.

Moreover, it is now evident to WC/GTW, and we believe it will be evident to the Board, that these materials have been wrongfully withheld from the in-house personnel of WC and GTW and other opponents, substantially hampering their efforts to prepare a reply. Far from dealing with irrelevant matters, the statements withheld by RTR should be its central evidence in response to the Board's February 15 Decision. So long as the materials withheld by RTR are not available to in-house personnel, outside counsel cannot adequately strategize with their clients or provide draft materials for review. Further, given the large number of statements, and the local nature of many of the enterprises, outside counsel cannot hope fully to assess and understand the issues surrounding the individual businesses involved without the assistance of in-house personnel familiar with those businesses and local issues. It is also fundamentally unfair for RTR to have contacted its supposed supporters through its in-house personnel in an effort to persuade them to file support letters, but to deny that same right to opponents. There is no

indication in any of the letters withheld by RTR that disclosure of shipper names was a concern, and certainly no basis for any such concern may be found in the content of those letters.

Accordingly, in order that their right to reply to the RTR Supplement not be prejudiced, WC/GTW respectfully request an extension of time for the due date for their reply (currently Monday, March 18, 2002), so that the 11-day reply period runs from the date that the Board determines which, if any, of the statements withheld by RTR (or portions thereof) are entitled to "Confidential" or "Highly Confidential" treatment under protective order. To do anything less, would be to allow RTR to profit from its failure to take any reasonable measures to minimize the delays in providing essential documents to opposing counsel, and from its sweeping and unjustified categorization of materials as "Highly Confidential" in the first place. The effect of the requested extension would be to restore the time that was lost as a result of RTR's delay and obstruction, and to give WC/GTW the full 11 day reply period that the Board contemplated in its February 15 Decision.⁵

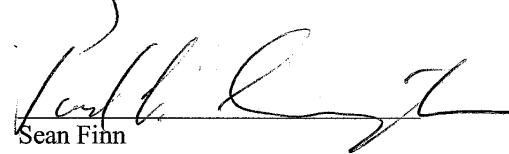
CONCLUSION

For the reasons set forth above, WC/GTW respectfully request the Board to extend the time for the due date of their reply to the RTR Supplement to 11 days after the Board determines

⁵Because the sole purpose of WC/GTW's extension request is to restore the time that was lost to them by RTR's conduct, it does not require a similar extension of the due date for RTR's reply to the supplemental information filed by WC/GTW on March 7. Further, a similar extension for RTR would be inequitable since it would have had opponent's complete filing during that entire response period, as opposed to opponents, who have not had a core element of the RTR Supplement.

which, if any, of the materials withheld by RTR from its supplemental evidence are entitled to
"Confidential" or "Highly Confidential" treatment under protective order.

Respectfully submitted,



Sean Finn

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Counsel for County of Wayne

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David A. Hirsh
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801 Pennsylvania Avenue, Suite 600
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(202) 973-7600

Counsel for Grand Trunk Western
Railroad Incorporated

March 13, 2002

CERTIFICATE OF SERVICE

I certify that I have this 13th day of March, 2002, served copies of the foregoing Motion of Wayne County and Grand Trunk Western Railroad Incorporated for Extension of Time to File Supplemental Reply Comments 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:

J. William Koegel, Jr.
David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

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

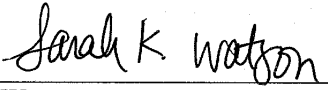
The Honorable Carl M. Levin
United States Senate
Washington, DC 20510

The Honorable John D. Dingell
House of Representatives
Washington, DC 20515

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Sarah Watson

EXHIBIT A

HARKINS CUNNINGHAM

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WRITER'S DIRECT DIAL

(202) 973-7606

March 8, 2002

BY TELECOPY

J. William Koegel, Esquire
David H. Coburn, Esquire
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

**Re: Riverview Trenton Railroad Company – Petition for Exemption from
49 USC 10901 to Acquire and Operate a Rail Line in Wayne County,
MI (STB Finance Docket No. 34040)**

Gentlemen:

Attached, as I discussed earlier this afternoon with David Coburn, is our proposed alternative to the protective order that you proposed in your Motion for Protective Order, filed with the STB yesterday in this proceeding.

Our proposal would preserve the confidentiality of the shipper statements you have designated as "HIGHLY CONFIDENTIAL," by requiring other parties, including Grand Trunk Western, to abide by that designation, pending a challenge to that designation or modification of the protective order.

Also attached is a redline showing our proposed changes (including corrections to typographical errors that we discovered).

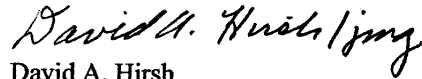
If you agree with our proposed changes, please let us know as soon as possible. (Should I be unavailable, please notify Jim Guinivan at 202-973-7608.) We will then fax you our signed agreement and confidentiality undertakings. In light of the short reply period provided by the Board's February 15, 2002, decision, it is essential that we be able to review these materials as soon as possible, and not be required to wait until after the weekend.

HARKINS CUNNINGHAM

J. William Koegel, Jr., Esquire
David H. Coburn, Esquire
March 8, 2002
Page 2

Thank you for your assistance in resolving this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David A. Hirsh".

David A. Hirsh
Counsel for Grand Trunk Western Railroad
Incorporated

Attachments

PROPOSED PROTECTIVE ORDER

1. For the purpose of this Protective Order, "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 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.

(c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding 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 Protective Order." 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 Protective Order.

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 Protective Order, 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 soonest, to permit the producing party to contest the release.

5. All parties must comply with all of the provisions stated in this Protective Order 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 characterized as confidential or proprietary information.

The undersigned agrees to abide by the draft protective order set forth above. It is understood that any party executing this protective order or related confidentiality undertaking is free to oppose Riverview Trenton Railroad Company's Motion for Protective Order or to request the Surface Transportation Board to remove the designation of any materials as confidential or proprietary.

David A. Hirsh
For Grand Trunk Western Railroad Incorporated

PROPOSED PROTECTIVE ORDER

1. For the purpose of this Protective Order, "HIGHLY CONFIDENTIAL" information refers to ~~{shipper statements attached to pleadings or other}~~ 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 ~~{either a shipper statement, or}~~ proprietary or confidential information, may designate and stamp such material as "~~{HIGHLY}~~ **[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 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.

(c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding 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 Protective Order." 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 Protective Order.

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 Protective Order, 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 soonest, to permit the producing party to contest the release.

{3} [5]. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board[,], warrants suspension of any of the provisions herein.

{4} [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 ~~{deemed "HIGHLY CONFIDENTIAL" as defined herein.}~~ [characterized as confidential or proprietary information.

The undersigned agrees to abide by the draft protective order set forth above. It is understood that any party executing this protective order or related confidentiality undertaking is free to oppose Riverview Trenton Railroad Company's Motion for Protective Order or to request the Surface Transportation Board to remove the designation of any materials as confidential or proprietary.

Incorporated]

David A. Hirsh
For Grand Trunk Western Railroad

STEPTOE & JOHNSON LLP

EXHIBIT B

ATTORNEYS AT LAW

PHOENIX, ARIZONA
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VERIFICATION: 602.257.5287

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VERIFICATION: 011.322.639.4630

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FROM

Name: David H. Coburn

Request Made On

Date: 3/11/02

Time:

11:35 AM

DELIVER TO

Name: David A. Hirsh, Jim Guinivan

Telecopy Phone Number: 202.973.7610

Company: Harkins Cunningham

Verification Number: 202.973.7600

Comments:

Total Pages: 8

Client/Case Number: 12094.0012

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
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www.step toe.com

DAVID H. COBURN
(202) 429-8063
dcoburn@step toe.com

March 11, 2002

VIA FACSIMILE

David A. Hirsh
Harkins Cunningham
801 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20004-2615

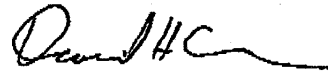
**Re: Riverview Trenton Railroad Company – Petition for Exemption from
49 USC 10901 to Acquire and Operate a Rail Line in Wayne County,
MI, STB Finance Docket No. 34040**

Dear David:

I have enclosed a modestly revised version of the Protective Order incorporating most of your proposed changes and some suggested edits to those changes. A redline reflecting the changes that I propose to make as against the Protective Order that was filed on March 7 is also enclosed.

Assuming your assent to these proposed changes, I will promptly deliver to you the highly confidential exhibit upon receipt of the signed Protective Order and undertaking.

Sincerely,



David H. Coburn

DHC:dj
Enclosure

cc: Jim Guinivan

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

PROPOSED PROTECTIVE ORDER

1. For the purpose of this Protective Order, "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 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 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.

(c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding 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 Protective Order." 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 Protective Order.

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 Protective Order, 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 soonest, to permit the producing party to contest the release.

5. All parties must comply with all of the provisions stated in this Protective Order 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.

The undersigned agrees to abide by the protective order proposed by Riverview Trenton Railroad Company (RTRR) in this proceeding and the related undertaking with respect to documents designated Highly Confidential unless or until the Board denies the March 7, 2002 RTRR Motion for 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. It is understood that any party executing this protective order or related confidentiality undertaking is free to oppose RTRR's Motion for Protective Order or to request the Surface Transportation Board to remove the designation of any materials as confidential or proprietary.

David A. Hirsh
For Grand Trunk Western Railroad

**UNDERTAKING HIGHLY
CONFIDENTIAL MATERIAL**

I, _____, have read the Protective Order served on _____, 2001, governing the production of highly confidential documents in STB 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 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 purposes other than the preparation and presentation of evidence and argument in STB Docket No. 34040 or any judicial review proceeding arising therefrom. I further agree not to disclose any data or information obtained under the Protective Order to any person who is not 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 pleadings 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 highly confidential documents 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

PROPOSED PROTECTIVE ORDER

1. For the purpose of this Protective Order, "HIGHLY CONFIDENTIAL" information refers to ~~shipper statements attached to pleadings or other 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 believes in good faith reflect ~~either a shipper statement or 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 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.

(c) Must be destroyed by the requesting party, its employees, counsel, and agents, at the completion of this proceeding and any judicial review proceeding 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 Protective Order." 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 Protective Order.

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 Protective Order, 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 soonest, to permit the producing party to contest the release.

5. All parties must comply with all of the provisions stated in this Protective Order 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 deemed "HIGHLY CONFIDENTIAL" as defined herein designated as confidential or proprietary.

The undersigned agrees to abide by the protective order proposed by Riverview Trenton Railroad Company (RTRR) in this proceeding and the related undertaking with respect to documents designated Highly Confidential unless or until the Board denies the March 7, 2002 RTRR Motion for 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. It is understood that any party executing this protective order or related confidentiality undertaking is free to oppose RTRR's Motion for Protective Order or to request the Surface Transportation Board to remove the designation of any materials as confidential or proprietary.

David A. Hirsh
For Grand Trunk Western Railroad

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2001, governing the production of highly confidential documents in STB 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 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 purposes other than the preparation and presentation of evidence and argument in STB Docket No. 34040 or any judicial review proceeding arising therefrom. I further agree not to disclose any data or information obtained under the Protective Order to any person who is not 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 pleadings 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 highly confidential documents 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

EXHIBIT C

David A. Hirsh

To: dcoburn@step10e.com

03/11/2002 04:23 PM

cc:

Subject: Confidentiality Agreement

Attached are drafts of a confidentiality agreement and undertaking, with redlines showing changes to your

last drafts. GTW 3-11 Proposed Confidentiality Agreement GTW Proposed Undertaking 3-11.w

PROTECTIVEORDER-RED.wt UNDERTAKING-RED.WPI

Needless to say we need want to wrap this up and get the documents tonight.

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 soonest, 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 propriety 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. Coburn
Steptoe & Johnson LLP
Counsel for Riverview Trenton Railroad
Company

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

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, have read the foregoing Confidentiality Agreement ("Agreement") concerning the production of documents designated by a party as highly confidential in STB 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 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 STB Finance Docket No. 34040 or any judicial review proceeding arising therefrom. I further agree not to disclose any data or information obtained under the Confidentiality Agreement to any person who is not bound by the terms of the Confidentiality Agreement or a protective order issued in STB Finance Docket No. 34040 and who has not executed an Undertaking substantially 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 pleadings 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 highly confidential documents 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____

PROPOSED PROTECTIVE ORDER CONFIDENTIALITY AGREEMENT

1. For the purpose of this ~~Protective Order 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:

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(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 ~~Protective Order 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.

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(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 ~~Protective Order 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 ~~Protective Order 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 ~~Protective Order~~ **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 soonest, to permit the producing party to contest the release.

5. All parties must comply with all of the provisions stated in this ~~Protective Order~~ **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. ~~The undersigned agrees to abide by the protective order proposed by Riverview Trenton Railroad Company (RTRR) in this proceeding and the related undertaking with respect to documents designated Highly Confidential unless or until the Board denies the March 7, 2002 RTRR Motion for Protective Order 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. It~~ **Notwithstanding the foregoing, it is understood that any party executing this protective order or related confidentiality undertaking 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. Coburn
Steptoe & Johnson LLP
Counsel for Riverview Trenton Railroad
Company

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

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2001, governing foregoing Confidentiality Agreement ("Agreement") concerning the production of documents designated by a party as highly confidential documents in STB 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 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 STB Finance Docket No. 34040 or any judicial review proceeding arising therefrom. I further agree not to disclose any data or information obtained under the Protective Order Confidentiality Agreement to any person who is not bound by the terms of the Order and Confidentiality Agreement or a protective order issued in STB Finance Docket No. 34040 and who has not executed an Undertaking substantially 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 pleadings 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 highly confidential documents 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.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____