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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34309

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
--TRACKAGE RIGHTS EXEMPTION--
ILLINOIS CENTRAL RAILROAD COMPANY

FILED

JAN 21 2003

SURFACE
TRANSPORTATION BOARD

MOTION FOR PROTECTIVE ORDER
IN CONNECTION WITH VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. §1180.2 (d)(7)

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JAN 21 2002

SURFACE
TRANSPORTATION BOARD

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Part of
Public Record

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Attorneys for The Kansas City Southern Railway
Company

Dated: January 21, 2003



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SURFACE TRANSPORTATION BOARD**

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**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
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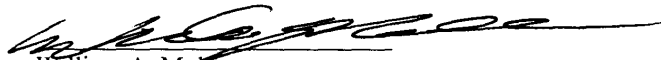
The Kansas City Southern Railway Company ("KCS") hereby submits this Motion for Protective Order ("Motion") pursuant to the requirements of 49 C.F.R. § 1104.14. KCS hereby moves the Surface Transportation Board ("STB" or "Board") to issue a protective order in the form attached hereto as Exhibit A in order to maintain the confidentiality of certain financial terms of the trackage rights agreement between KCS and Canadian National Railway Company ("CN") that is the subject of the notice of exemption being filed simultaneously with this motion in the above-captioned proceeding.

The trackage rights agreement which is the subject of this proceeding was privately negotiated and contains confidential and commercially sensitive information.¹ The public disclosure of these provisions is not required for the disposition of the verified notice of exemption. Furthermore, such disclosure could cause serious competitive injury to KCS, the Port of Gulfport, MS, or the CN. Filing a signed trackage rights agreement under seal and having the Board grant a Protective Order substantially in the form attached as Exhibit 1 to this motion is entirely consistent with precedent. See *CSX Transportation, Inc.-Trackage Rights Exemption-Norfolk Southern Railway Company*, Finance Docket No. 34254 (STB served

¹ The trackage rights agreement containing the commercially-sensitive information is being filed with the Board under seal, marked "Confidential materials subject to a request for a protective order."

Oct. 24, 2002); *Dallas, Garland & Northeastern Railroad, Inc.--Trackage Rights Exemption--*
Dallas Area Rapid Transit, Finance Docket No. 34248 (STB served Sept. 5, 2002); *Central*
Michigan Railway Company--Trackage Rights Exemption--CSX Transportation, Inc., Finance
Docket No. 34241 (STB served Aug. 22, 2002). Accordingly, KCS requests that the Board issue
a protective order to ensure that the protected material will be used only in connection with this
proceeding and not for any other business or commercial purpose.

Respectfully submitted,



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Attorney for The Kansas City Southern Railway
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Dated: January 21, 2003

EXHIBIT A
PROTECTIVE ORDER

On the motion of The Kansas City Southern Railway Company and for the purpose of protection against improper use or disclosure of confidential information obtained or to be obtained by any person through documents filed with the Surface Transportation Board (the "Board"), or produced in connection with this proceeding:

IT IS ORDERED THAT:

1. For purposes of this Protective Order (Order), the term "person" or "people" includes any person or entity, including such people and entities that are not formal parties to this proceeding.
2. For purposes of this Order, information designated as "Confidential," as used herein, includes all such designated material, and all information contained in such designated material.
3. This Order shall apply to all information designated as "Confidential" (i) filed with the Board or any other administrative, legislative or judicial body in connection with this proceeding; or (ii) obtained by any person pursuant to discovery requests made in connection with this proceeding.
4. Any person filing documents with the Board or any other administrative, legislative or judicial body in connection with this proceeding or filing material responding to a discovery request in connection with this proceeding may designate as "Confidential" any information or portion thereof that it in good faith contends contains confidential, proprietary, or highly sensitive information by clearly writing "Confidential" on each page of material so designated.
5. If a person inadvertently fails to designate documents or other material as "Confidential," it may make such a designation subsequently by notifying the appropriate people in writing and sending revised pages properly marked in accordance with paragraph 4 of this Order. After receipt of such notification, such materials and information shall be substituted and treated as if they initially had been designated as Confidential.
6. A person at any time may request by letter that a producing person cancel the "Confidential" designation of any document (or portion thereof) or discovery response (or portion thereof). Such request should identify with particularity the designated documents (or portions thereof) or discovery responses (or portions thereof) it contends should not be treated as Confidential, provide the reasons therefor, and explicitly state that it is made pursuant to this paragraph. If such request is denied in whole or in part, the requesting person may file a motion with the Board to have the "Confidential" designation removed as to the information listed in the request. The documents (or portions thereof) or discovery responses (or portions thereof) shall be treated as designated, pending a ruling on such motion. The burden of establishing that such information should not be afforded the protections of this Order shall be on the person filing the motion.

7. Information designated as "Confidential" may be disclosed only to "Authorized Persons." An "Authorized Person" is a person who has signed an undertaking, in the form set forth in the attachment to this appendix, stating his or her identity, title, and employer, and that he or she has read this Order and agrees to abide by it, and who is:

- (a) an attorney actively involved in this proceeding on behalf of a person, or a legal assistant or a clerical employee under such attorney's supervision; or
- (b) a non-permanent employee who has been employed by any person to provide advice, expertise or assistance in connection with this proceeding, or an assistant or clerical employee under such a non-permanent employee's supervision.

8. Storage, transmission, or communication of information designated as "Confidential" must be such as to reasonably ensure that Confidential information will not be disclosed, accidentally or otherwise, to non-Authorized Persons.

9. Information designated as "Confidential" may not be used for any purpose whatsoever other than the disposition of this proceeding.

10. All Confidential information filed with the Board, and any material filed with the Board that discloses Confidential information, shall be filed under seal and kept under seal until further order of the Board.

11. All Confidential information, and materials containing such Confidential information, at the request of the person designating such information as Confidential, shall be returned to such person at the termination of this proceeding, including all appeals; otherwise, after a reasonable amount of time has passed, all such documents shall be destroyed, except that a copy of such Confidential information, and materials containing such Confidential information, may be retained by an Authorized Person for his or her files.

12. The provisions of this Order that restrict the handling, communication and use of Confidential information shall continue to be binding after the termination of this proceeding, unless the Board or the person designating such information as Confidential authorizes in writing alternative handling, communication or use of the information.

13. This Order shall not bar or otherwise restrict:

- (a) a person from opposing production of information under the Board's Rules of Practice;
- (b) an Authorized Person from making copies, abstracts, digests and analyses of Confidential information for use in connection with this proceeding, subject to the requirement that all such copies, abstracts, digests and analyses be treated as Confidential information and clearly marked as such;

- (c) an Authorized Person from rendering advice or opinions in connection with this proceeding to his or her client or employer based upon his or her examination of Confidential information, provided such person does not disclose the Confidential information itself to any non-Authorized Person
- (d) a person from using any Confidential information during hearings in this proceeding, subject to any further order of the Board; and
- (e) a person from applying to the Board at any time for additional protection.

14. If Confidential information in the possession of any person is subpoenaed by any administrative, legislative or judicial body, or any other person purporting to have authority to subpoena such information, the person to whom the subpoena is directed will not produce such information until a reasonable amount of time has passed after giving written notice (including the delivery of a copy of the subpoena) to the person who has designated such information as "Confidential," or the attorneys for such person. If a subpoena purports to require production of such Confidential information on less than five (5) business days' notice, the person to whom the subpoena is directed shall give immediate notice by telephone of the receipt of such subpoena to the person who designated such information as "Confidential," or the attorneys for such person.

ATTACHMENT 1

UNDERTAKING

I hereby attest that (i) I understand that the information or documents designated "Confidential," including the information contained in documents so designated, are provided to me pursuant to the terms, conditions and restrictions of the attached Protective Order entered in STB Finance Docket No. 34309, The Kansas City Southern Railway Company--Trackage Rights Exemption--Illinois Central Railroad, (ii) I have been given a copy of and have read the aforementioned Protective Order, (iii) if I am not an attorney, I have had the meaning and effect of the Protective Order explained to me by an attorney in this case, (iv) I hereby agree to be bound by the Protective Order and its terms, and (v) I will provide a copy of this executed undertaking to counsel for each party which has designated information I receive as "Confidential." I recognize that I may be held personally liable for any damages that the person or entity furnishing Confidential information may suffer as a result of my disclosure or use of any such information protected by this Protective Order.

Dated: _____

Signed: _____

Name: _____

Title: _____