

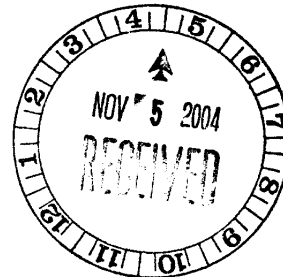


BRUSSELS CINCINNATI CLEVELAND COLUMBUS DAYTON NEW YORK WASHINGTON, D.C.

November 5, 2004

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. St. N.W.
Washington, D.C. 20423



RE: STB Finance Docket No. 34421, *HolRail LLC—Construction and Operation Exemption in Orangeburg and Dorchester Counties, SC*, and STB Finance Docket No. 34421 (Sub-No. 1), *HolRail LLC—Petition for Crossing Authority under 49 U.S.C. § 10901(d)* - 212458

Dear Secretary Williams:

Enclosed please find the original and ten (10) copies of the Joint Motion for Protective Order of HolRail LLC and CSX Transportation Inc., for filing in the above-referenced docket. An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

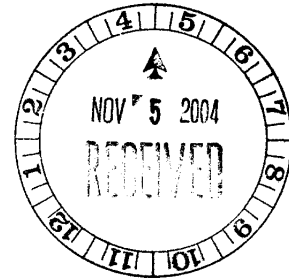
Michael H. Higgins

Jeffrey O. Moreno
Michael H. Higgins
Counsel for HolRail LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34421

212458



**HOLRAIL LLC—CONSTRUCTION AND OPERATION EXEMPTION—IN
ORANGEBURG AND DORCHESTER COUNTIES, SC**

STB FINANCE DOCKET NO. 34421 (SUB-NO. 1)

212459

**HOLRAIL LLC—
PETITION FOR CROSSING AUTHORITY UNDER 49 U.S.C. § 10901(d)**

JOINT MOTION FOR PROTECTIVE ORDER

HolRail LLC (“HolRail”) and CSX Transportation, Inc. (“CSXT”), hereby jointly request that the Surface Transportation Board (the “Board”) enter a protective order in these proceedings, in the form provided in the Appendix to this Motion. The proposed order will facilitate discovery in these proceedings by protecting the confidentiality of financial, commercial, operational, and/or other sensitive, private, or proprietary information, in the event that such information is exchanged and used by the parties. The proposed order follows the format of protective orders that the Board has approved in recent proceedings and is consistent with the Board’s recent clarification of the requirements for filings containing confidential information. *See* STB Docket No. 34495, *Buckingham Branch Railway Company—Lease—CSX Transportation, Inc.*, (Served June 4, 2004); STB Ex Parte No. 638, *Procedures to Expedite*

Resolution of Rate Challenges to be Considered Under the Stand-alone Cost Methodology,
(Served Apr. 3, 2003), *reconsideration denied* (Served July 31, 2003).

On October 25, 2004, counsel for the parties conferred by telephone to discuss discovery in these proceedings. During that phone conference, the parties discussed the issue of a protective order and undertakings. After review and subsequent discussion, HolRail and CSXT have agreed to the proposed protective order and undertakings, which are attached, hereto, as the Appendix.

For the foregoing reasons, good cause exists for the Board to issue a protective order. Accordingly, the parties jointly request that the Board enter the protective order in this proceeding in the form provided in the Appendix, hereto, including the forms of undertaking that accompany it. The parties request that the Board enter the proposed order on an expedited basis to facilitate discovery.

Respectfully submitted,

Louis E. Gitomer/mhh
Louis E. Gitomer, Esq.
BALL JANIK LLP
1455 F Street, N.W.
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Attorney for CSX Transportation, Inc.

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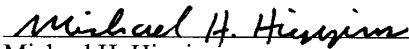
Attorneys for HolRail LLC

November 5, 2004

CERTIFICATE OF SERVICE

I hereby certify that this 5th day of November, 2004, I served a copy of the foregoing Joint Motion for Protective Order by hand delivery upon counsel for CSX Transportation, Inc., at the following address:

Louis E. Gitomer, Esq.
BALL JANIK LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005


Michael H. Higgins

APPENDIX
PROTECTIVE ORDER

STB FINANCE DOCKET NOS. 34421 AND 34421 (SUB-NO. 1)

1. For purposes of this Protective Order:

(a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.

(b) “Confidential Information” means (i) traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); (ii) the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; (iii) the confidential terms of contracts with shippers or carriers; (iv) confidential financial and cost data; (v) divisions of rates, trackage rights compensation levels, and other compensation between carriers; and, (vi) other confidential, commercial, financial, operational, proprietary, or personal information.

(c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.

(d) “Party” means HolRail LLC or CSX Transportation, Inc., individually, as the case may be.

(e) “Parties” means HolRail LLC and CSX Transportation, Inc., collectively, as the case may be.

(f) “Proceedings” means (i) those proceedings before the Surface Transportation Board (the “Board”) in STB Finance Docket Nos. 34421 and 34421 (Sub-No. 1), (ii) any proceedings before the Board related to (i), and, (iii) any judicial review proceedings arising from (i) and/or (ii).

2. If any Party to the Proceedings determines that any part of (a) a document it submits, (b) a discovery request it propounds, (c) a discovery response it produces, (d) a transcript of a deposition or a hearing in which it participates, or (e) a pleading or other paper to

be submitted, filed, or served in the Proceedings contains Confidential Information or consists of Confidential Documents, then that Party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If any Party to the Proceedings determines that any part of (a) a document it submits, (b) a discovery request it propounds, (c) a discovery response it produces, (d) a transcript of a deposition or a hearing in which it participates, or (e) a pleading or other paper to be submitted, filed, or served in the Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, or other compensation between carriers; or other competitively sensitive or proprietary information, then that Party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a Party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has received and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking in the form set forth at Exhibit 1 to this Protective Order, and has delivered a copy to counsel for the other Party.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a Party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant of a Party, who, before receiving access to such information or documents, has received and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking in the form set forth at Exhibit 2 to this Protective Order, and has delivered a copy to counsel for the other party.

6. The Parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board, whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing Party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the Party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by the other Party's in-house counsel. The Confidential Version may be served on the other Party in electronic format only. In lieu of preparing a Confidential Version, the filing Party may (simultaneously with the Party's submission to the Board of its Highly Confidential Version) make available to outside counsel for the other Party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for the other Party must then redact that material from the Highly Confidential Version before permitting any in-house personnel to review the submission.

7. Any Party to these Proceedings may challenge the designation by the other Party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

8. Designated Material may not be used for any purposes other than the preparation and presentation of evidence and argument in these Proceedings, as defined herein. Such proscribed purposes include without limitation, business, commercial, operational, other litigation, and/or competitive purposes.

9. Any Party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials, other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a Party to these Proceedings, at the earlier of: (a) such time as the Party receiving the materials withdraws from these Proceedings; or (b) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

10. No Party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings, except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No Party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any tribunal other than the Board in these Proceedings, unless: (a) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (b) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that, if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing Party.

12. No Party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that Party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge, or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge, or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material; and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any Party intends to use any Designated Material in the course of any deposition in these Proceedings, that Party shall so advise counsel for the Party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order.

14. To the extent that materials reflecting Confidential Information are produced by a Party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §§ 10901 or 11904, or any other relevant provision of the ICC Termination Act of 1995.

15. All Parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any Party to disclose voluntarily any Confidential Information originated by that Party, or to disclose voluntarily any Confidential Documents originated by that Party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other Party.

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____ [printed name], have read the Protective Order served on _____ [date], governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket Nos. 34421 and 34421 (Sub-No. 1), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 34421 and 34421 (Sub-No. 1), any related proceedings before the Surface Transportation Board ("Board"), and/or any judicial review proceedings in connection with STB Finance Docket Nos. 34421 and 34421 (Sub-No. 1) and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the Parties or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. 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.

Signed: _____

Date: _____

UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____ [printed name], am outside [counsel] [consultant] for _____ [Party to Proceeding], for whom I am acting in this Proceeding. I have read the Protective Order served on _____ [date], governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket Nos. 34421 and 34421 (Sub-No.1), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket Nos. 34421 and 34421 (Sub-No. 1), any related proceedings before the Surface Transportation Board ("Board"), or any judicial review proceedings in connection with STB Finance Docket Nos. 34421 and 34421 (Sub-No. 1) and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents 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 materials or information by employees of my client or its subsidiaries, affiliates, or owners. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I agree to promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that the Parties or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. 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.

Signed: _____

Dated: _____