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January 28, 2005

The Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

213/15



Re: STB Finance Docket No. 34657, BNSF Railway Company – Temporary Trackage Rights
Exemption – Union Pacific Railroad Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten (10) copies of Motion for Protective Order ("Motion"). Also enclosed, in a sealed envelope, are ten (10) unredacted copies of a Memorandum of Agreement for access to certain Bayport, Texas facilities, dated November 15, 2004 (the "Agreement"). As discussed more fully in BNSF's Motion, the unredacted Agreement contains highly confidential and commercially sensitive information that requires the Board's issuance of a Protective Order. A public version of the Agreement, from which the highly confidential and commercially sensitive terms have been redacted, was filed as Exhibit 2 to the Notice of Exemption filed on January 25, 2005 by BNSF in this proceeding.

A diskette containing an electronic version of the Motion is also enclosed.

Please acknowledge receipt of the Motion for filing by date-stamping the enclosed extra copies of the Motion and returning them via our messenger. If you have any questions, please contact the undersigned counsel.

Sincerely,

Sarah W. Bailiff/als

Sarah W. Bailiff

SWB:gea

Enclosures

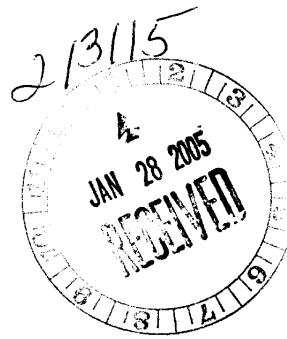
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ENTERED
Office of Proceedings

JAN 28 2005

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34657

BNSF RAILWAY COMPANY--TEMPORARY TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

ENTERED
Office of Proceedings

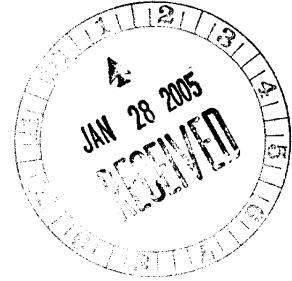
JAN 28 2005

Part of
Public Record

Sarah W. Bailiff
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2500 Lou Menk Drive
P. O. Box 961039
Fort Worth, TX 76161-0039
(817) 352-2354

Dated: January 28, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34657

BNSF RAILWAY COMPANY--TEMPORARY TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

MOTION FOR PROTECTIVE ORDER

Pursuant to 49 C.F.R. § 1104.14(b), BNSF Railway Company ("BNSF") hereby moves the Surface Transportation Board ("Board") to enter a Protective Order (in the form set forth in Appendix A hereto) in the above-captioned proceeding. The order is required to permit BNSF to submit to the Board certain documents that contain highly sensitive commercial terms, and to make such documents available to outside counsel for interested parties solely for use in this proceeding.

On January 25, 2005, BNSF filed a Verified Notice of Exemption pursuant to 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), regarding BNSF's acquisition of overhead trackage rights on approximately 15.6 miles of rail line owned, in part, and operated by Union Pacific Railroad ("UP") in the vicinity of Houston, Texas. The trackage rights are based upon a written agreement between BNSF and UP (the "Agreement") and are not filed or sought in a responsive application to a rail consolidation proceeding. Accordingly, pursuant to 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), those trackage rights are exempt from the prior approval requirements of 49 U.S.C. § 11323, *et seq.*

BNSF is submitting (under seal) with this Motion a complete and unredacted copy of the Agreement. A public version of the Agreement (from which the confidential material has been redacted) is attached as Exhibit 2 to BNSF's Verified Notice of Exemption.

The information redacted from the public version of the Agreement is highly confidential, commercially sensitive information relating to the compensation payable by BNSF for its exercise of the subject trackage rights and other matters. The proposed Protective Order is necessary to protect this highly confidential information from public disclosure. The requested Protective Order will enable BNSF to present the Agreement to the Board (and, upon request, to outside counsel for interested parties), while at the same time preserving the confidentiality of that sensitive information.

The proposed Protective Order is modeled substantially on similar orders that the Board has entered in other recent proceedings. However, BNSF contemplates that only a Highly Confidential and a Public version of the Agreement will be produced.

Accordingly, BNSF requests that a Protective Order be entered, in the form set forth in Appendix A to this Motion, including the forms of confidentiality undertakings that accompany it.

Respectfully submitted,

Sarah W. Bailiff/als

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Fort Worth, TX 76161-0039
(817) 352-2354

Counsel for BNSF Railway Company

APPENDIX A

PROTECTIVE ORDER

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 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), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, or carriers, confidential financial and cost data, and other confidential or proprietary business 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) "Proceedings" means those before the Surface Transportation Board ("Board") concerning the Notice of Exemption filed in Finance Docket No. 34657 and any related proceedings before the Board, and any judicial review proceedings arising from Finance Docket No. 34657 from any related proceedings before the Board.
2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these 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 these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights, compensation levels 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 anyway, 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 been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.
5. Information and documents 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 who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.
6. Any party to these Proceedings may challenge the designation by any 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.
7. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in Finance Docket No. 34657, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No. 34657 and/or with any related proceedings.
8. 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: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.
9. 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 C.F.R. § 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 or other officer in the exercise of authority lawfully delegated by the Board.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) 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 (2) 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 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.
11. 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.
12. 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 9 of this Protective Order.
13. 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. 11904 or any other relevant provision of the ICC Termination Act of 1995.
14. 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.

15. 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.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____ have read the Protective Order served _____, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34657 understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information the use of any methodologies or techniques disclosed or information learned as a result of presentation of evidence and argument in Finance Docket No. 34657, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No. 34657 and/or with any judicial review proceedings 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 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, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated:

Exhibit B

UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____ am outside [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 34657 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 Finance Docket No. 34657, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Finance Docket 34657 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.

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 counselor 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, 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 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 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, 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:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Protective Order was served on the following persons via UPS Overnight Mail on January 28, 2005:

Bob Opal
Union Pacific Railroad Company
1416 Dodge Street
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Howard A. Feld