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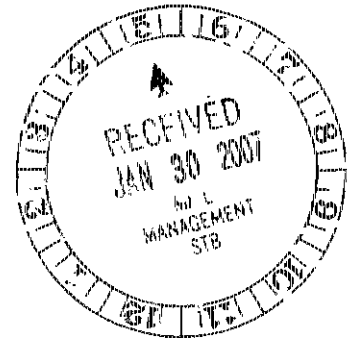
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SIDNEY L. STRICKLAND, JR.
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January 30, 2007

Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001



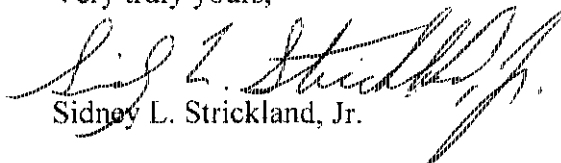
**Re: Surface Transportation Board Finance Docket No. 34979,
BNSF Railway Company - Trackage Rights Exemption -
Grand Trunk Western Railroad Incorporated**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the Motion for Protective Order (the "Motion") of BNSF Railway Company ("BNSF") regarding the trackage rights agreement ("the Agreement") between BNSF and Grand Trunk Western Railroad Incorporated d/b/a Canadian National Railway Company ("CN"). Concurrent with this filing, BNSF has filed with the Surface Transportation Board the Agreement, "under seal," subject to this Motion.

Please acknowledge receipt of this filing by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Very truly yours,


Sidney L. Strickland, Jr.

Enclosures

ENTERED
Office of Proceedings

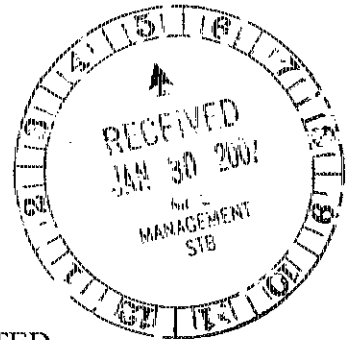
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Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34979

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
GRAND TRUNK WESTERN RAILROAD INCORPORATED



MOTION FOR PROTECTIVE ORDER

BNSF Railway Company ("BNSF") hereby submits this Motion for Protective Order ("Motion") pursuant to 49 C.F.R. § 1104.14. BNSF requests that the Surface Transportation Board (the "Board") grant this Motion in order to maintain as confidential and to segregate from the public record certain provisions of the trackage rights agreement between BNSF and Grand Trunk Western Railroad Incorporated d/b/a Canadian National Railway Company ("CN") dated December 18, 2006 (the "Agreement"). BNSF is filing the Agreement with the Board in connection with its filing of a Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), in this proceeding.

A public version of the Agreement is appended to BNSF's Verified Notice of Exemption as Exhibit No. 2. The non-public version of the Agreement is being filed with the Board under separate cover marked "Confidential Materials Subject to a Request for a Protective Order."

Discussion

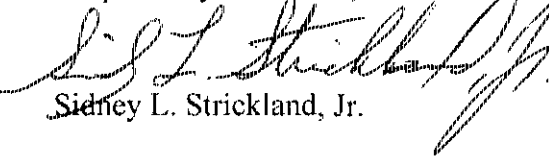
This Agreement was privately negotiated and contains certain confidential, proprietary and/or commercially sensitive information. The unrestricted disclosure of such information could be competitively damaging to BNSF. In addition, the confidential

information at issue in the Agreement need not be made public for the proper disposition of this proceeding. The Board previously has granted motions for protective orders under similar circumstances. See Finance Docket No. 34788, *Mitchell-Rapid City Regional Railroad Authority and Dakota Southern Railway Company – Trackage Rights Exemption – BNSF Railway Company*, served December 6, 2005; Finance Docket No. 34489, *Stillwater Central Railroad, Inc. – Trackage Rights Exemption – The Burlington Northern and Santa Fe Railway Company*, served April 14, 2004; Finance Docket No 34309, *The Kansas City Southern Railway Company – Trackage Rights Exemption – Illinois Central Railroad Company*, served February 4, 2003; STB Finance Docket No. 33750, *Wisconsin Central Ltd - - Trackage Rights Exemption -- Grand Trunk Western Railroad Incorporated*, served June 4, 1999.

Conclusion

For the reasons set forth above, BNSF requests that the Board grant this Motion for Protective Order and impose a protective order in the form attached hereto as Exhibit A.

Respectfully submitted,


Sidney L. Strickland, Jr.

Dated: January 30, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34979

BNSF RAILWAY COMPANY
—TRACKAGE RIGHTS EXEMPTION—
GRAND TRUNK WESTERN RAILROAD INCORPORATED

EXHIBIT A

PROTECTIVE ORDER

PROTECTIVE ORDER

On motion of BNSF Railway Company ("BNSF"), and for the purpose of protecting against improper use or disclosure of confidential information obtained or to be obtained by any person through documents submitted to the Surface Transportation Board (the "Board"), or produced in connection with this proceeding, STB Finance Docket No. 34979:

IT IS ORDERED THAT:

1. For purposes of this Protective Order (the "Order"), the term "person" or "people" includes any person or entity.

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) submitted to 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, discovery responses or deposition or hearing transcripts, which are made in connection with this proceeding,

4. Any person submitting documents to the Board or any other administrative, legislative or judicial body in connection with this proceeding or submitting material requesting or responding to discovery in connection with this proceeding may designate as "Confidential" any information or portion thereof that it in good faith contends contains confidential, proprietary, or commercially sensitive information by clearly writing "Confidential" on each page of material so designated.

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), including without limitation any discovery response or request (or portion thereof). Such request should identify with particularity the designated documents (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) 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 at Attachment 1 hereto, 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 who is a party to this proceeding, 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 who is a party to this proceeding 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 preparation and presentation of evidence and argument in this proceeding and in any judicial review of the Board's decision in this proceeding.

10. All Confidential information submitted to the Board, and any material submitted to the Board that contains Confidential information, shall be filed under seal and shall comply with all applicable Board rules and regulations necessary to effect the exclusion of the submitted Confidential information from the public docket.

11. Any person who has received Confidential information and/or materials containing such Confidential information (a "Recipient") shall destroy all copies of such information and materials and shall provide written notice of such destruction to the person that designated such information or materials as Confidential, at the earlier of (i) such time as the Recipient withdraws from this Proceeding, or (2) the termination of this proceeding, including all appeals; provided, that, an Authorized Person who is outside counsel to a Recipient may retain one copy of such Confidential information and materials 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. Nothing in this Order shall restrict the right of any person who has designated information as Confidential to disclose voluntarily such information, so long as such information does not contain or reflect any information designated by another person as Confidential.

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; and
- (d) 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.

15. No person may present or otherwise use any Confidential information at a Board hearing in this proceeding, unless that person has previously submitted, under seal, all proposed documents containing or reflecting such Confidential information to the Board, and has submitted to the Board a written request that the Board (a) restrict attendance at the hearing during any discussion of such Confidential information, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Confidential information, in accordance with this Order.

16. If a person intends to use any Confidential information in the course of any deposition in this Proceeding (a "User"), the User shall provide prior notice to the person who has designated the information as Confidential, and the User shall be responsible for limiting attendance at any portion of the deposition at which any Confidential information is used or discussed to persons who are Authorized Persons.

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 Surface Transportation Board Finance Docket No. 34979, *BNSF Railway Company – Trackage Rights Exemption — Grand Trunk Western Railroad Incorporated* (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: _____
Employer: _____