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July 17, 2007

**Via Hand Delivery**

Honorable Vernon A Williams  
Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings  
JUL 17 2007  
Part of  
Public Record

**RE: Finance Docket No. 35019  
Western New York & Pennsylvania Railroad, LLC  
-- Lease and Operation Exemption --  
Certain Assets of Norfolk Southern Railway Company and  
Chautauqua, Cattaraugus, Allegany and Steuben Southern  
Tier Extension Railroad Authority**

Dear Secretary Williams

On behalf of Western New York & Pennsylvania Railroad, enclosed for filing in the above-referenced docket are an original and ten copies of a Motion for Protective Order, and a Certificate of Service

Please acknowledge receipt of this filing by file-stamping the attached extra copy of this letter and filing and return to me

Respectfully submitted,

  
Janie Sheng  
Attorney for Western New York &  
Pennsylvania Railroad, LLC

Cc Gordon McDougall (via hand delivery)

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35019

WESTERN NEW YORK & PENNSYLVANIA RAILROAD, LLC  
-- LEASE AND OPERATION EXEMPTION --  
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY AND  
CHAUTAUQUA, CATTARAUGUS, ALLEGANY AND STEUBEN SOUTHERN TIER  
EXTENSION RAILROAD AUTHORITY

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**MOTION FOR PROTECTIVE ORDER**

ENTERED  
Office of Proceedings

JUL 17 2007

Part of  
Public Record

Kevin M. Sheys  
Janie Sheng  
Kirkpatrick & Lockhart Preston  
Gates Ellis LLP  
1601 K Street, NW  
Washington, DC 20006  
(202) 778-9000

**ATTORNEYS FOR WESTERN NEW YORK  
& PENNSYLVANIA RAILROAD, LLC**

Dated: July 17, 2007

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35019  
WESTERN NEW YORK & PENNSYLVANIA RAILROAD, LLC  
-- LEASE AND OPERATION EXEMPTION --  
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY AND  
CHAUTAUQUA, CATTARAUGUS, ALLEGANY AND STEUBEN SOUTHERN TIER  
EXTENSION RAILROAD AUTHORITY

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**MOTION FOR PROTECTIVE ORDER**

On May 17, 2007 WNYP filed a Verified Notice of Exemption pursuant to 49 C F R §1150.41 to exempt from regulation its lease and operation of a line of railroad extending between Machias Junction, NY and Driftwood, PA. On June 19, 2007, counsel for Western New York & Pennsylvania Railroad, LLC ("WNYP") received a letter from counsel for United Transportation Union - New York State Legislative Board ("UTU-NY") requesting a copy of the lease between WNYP and Norfolk Southern Railway Company underlying this transaction. In a telephone message and a letter of June 22, 2007, WNYP offered to stipulate to a Protective Order and produce a copy of the lease agreement as a "Highly Confidential" document. UTU-NY did not accept this offer and instead filed a Motion to Compel on June 26, 2007.

In a decision served July 16, 2007 the Board granted UTU-NY's Motion to Compel, subject to a protective order agreed to by the parties or imposed by the Board at the request of one or both parties.<sup>1</sup>

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<sup>1</sup> See Western New York & Pennsylvania Railroad, LLC – Lease and Operation Exemption – Certain Assets of Norfolk Southern Railway Company and Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority, STB Fin. Docket No. 35019 (STB served July 16, 2007)

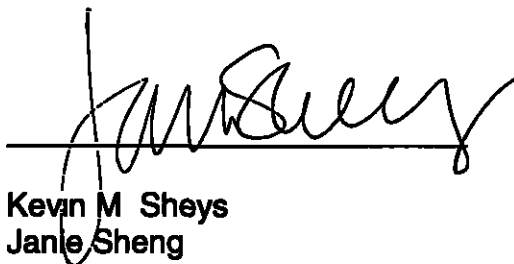
The Board's regulations for class exemptions under 49 C F R §1150.41 do not require that a copy of the lease agreement be made part of the public record. Public disclosure of the commercially sensitive information contained in the lease agreement could be competitively damaging. Accordingly, WNYP respectfully requests that the Board enter a protective order in accordance with 49 C F.R. §1114.21(c). Because of the sensitive nature of the commercial terms, and the confidentiality provisions of the lease agreement, the Board should treat the lease agreement as a "Highly Confidential" document and require that only outside counsel and outside consultants representing UTU-NY have access to it after executing the appropriate undertaking. A form of protective order, including undertakings, consistent with protective orders previously approved by the Board is attached hereto as **Exhibit A.**<sup>2</sup>

For the foregoing reasons, the Board should enter a protective order and require qualified interested persons to execute a highly confidential undertaking in the form attached to this Motion

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<sup>2</sup> See Buffalo & Pittsburgh Railroad, Inc. – Lease and Operation Exemption – Norfolk Southern Railway Company, STB Fin. Docket No 35044 (STB served July 16, 2007)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin M. Sheys", is written over a horizontal line.

Kevin M. Sheys  
Janie Sheng  
Kirkpatrick & Lockhart Preston  
Gates Ellis LLP  
1601 K Street, NW  
Washington, DC 20006  
(202) 778-9000

**ATTORNEYS FOR WESTERN NEW YORK  
& PENNSYLVANIA RAILROAD, LLC**

Dated July 17, 2007

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Protective Order, and Exhibit, was served by hand delivery upon Gordon P. MacDougall, 1025 Connecticut Avenue, N W., Washington, D.C. 20036.



Janie Sheng

Dated. July 17, 2007

## **Exhibit 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 movements sheets, or other, 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, divisions of rates, trackage rights compensation levels and other compensation between carriers, 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 transaction in Finance Docket No. 35019, and any related proceedings before the Board, and any judicial review proceedings arising from Finance Docket No. 35019 or 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, division of rates, trackage rights compensation levels, 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 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 Appendix I to this Order**
- 5 Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to a party or to any employee of, or represented by, a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such 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 Appendix II 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 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 35019, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No 35019 and/or with any related proceedings**
- 8 Any party who receives Designated Material in discovery shall destroy, and certify to the producing party that it has done so, 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 judge or other officer in the exercise of authority lawfully delegated by the Board.**

- 10 No party may include Designated Material in any pleadings, 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 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**
- 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 of 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**

## **Appendix I**

### **UNDERTAKING – CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, have read the Protective Order served \_\_\_\_\_, 2007, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No 35019, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or the 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. 35019, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with Finance Docket No. 35019 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 Applicants 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, 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: \_\_\_\_\_

## **Appendix II**

### **UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, am outside [counsel][consultant] for \_\_\_\_\_, for whom I am acting in this proceeding. I have read the Protective Order served on \_\_\_\_\_, 2007, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35019, 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. 35019, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with Finance Docket No. 35019 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 my client or employees of, or represented by, 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), that 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 Applicants 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, 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. \_\_\_\_\_

Outside [Counsel][Consultant]