

219771

BALL JANIK LLP

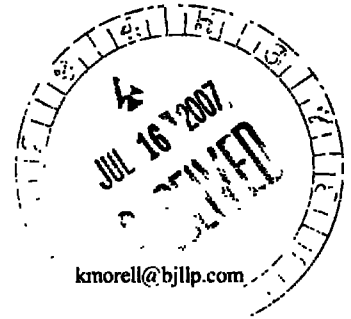
A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

KARL MORELL
Of Counsel



July 16, 2007

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

ENTERED
Office of Proceedings

JUL 16 2007

Part of
Public Record

**RE: Finance Docket No. 35068, Soo Line Railroad Company d/b/a
Canadian Pacific Railway – Acquisition and Operation
Exemption – BNSF Railway Company**

Dear Secretary Williams:

Attached for filing are the original and ten copies of the Motion for Protective Order. Ten copies of the unredacted Purchase and Sale Agreement are submitted under seal in the separate package marked "Confidential Materials Subject To A Request For Protective Order."

Also enclosed is a 3.5-inch diskette containing the Motion.

Please time and date stamp the extra copy of the Motion and return it with our messenger.

If you have any questions, please contact me.

Sincerely yours,

Karl Morell
Counsel for BNSF Railroad Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35068

SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
--ACQUISITION AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY

MOTION FOR PROTECTIVE ORDER



ENTERED
Office of Proceedings

JUL 16 2007

Part of
Public Record

Richard E. Weicher
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
Fort Worth, TX 76131-2828
(817) 352-2368

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Counsel for BNSF RAILWAY COMPANY

W. Karl Hansen
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
(612) 335-1500

Counsel for SOO LINE RAILROAD
COMPANY D/B/A CANADIAN PACIFIC
RAILWAY

Dated: July 16, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35068

SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILWAY
--ACQUISITION AND OPERATION EXEMPTION--
BNSF RAILWAY COMPANY

MOTION FOR PROTECTIVE ORDER

Pursuant to 49 C.F.R. § 1104.14(b), Soo Line Railroad Company d/b/a Canadian Pacific Railway (“CPR”) and BNSF Railway Company (“BNSF”) hereby move the Surface Transportation Board (“Board”) for a protective order (in the form set forth in Appendix A hereto) in the above-captioned proceeding. The protective order is necessary to allow CPR and BNSF to submit certain documents containing highly sensitive commercial terms to the Board.

Concurrent with this Motion, CPR and BNSF are submitting for filing in the above docket a Joint Petition for Exemption pursuant to 49 U.S.C. § 10502 with a redacted version of the executed Purchase and Sale Agreement (“Agreement”) attached as Exhibit 2. The information redacted from the public version of the Agreement is highly confidential, commercially sensitive information. Pursuant to 49 C.F.R. § 1180.6(a)(7)(ii), CPR and BNSF hereby submit to the Board with this motion ten copies under seal of the unredacted executed Agreement, each of which have been stamped “Highly Confidential” and placed in the accompanying envelope marked “Confidential Material Subject to a Request for Protective Order” pursuant to 49 C.F.R. § 1104.14(a).

Accordingly, CPR and BNSF request that a Protective Order be entered that will apply to the executed Agreement. in the form set forth in Appendix A to this Motion, including the forms of confidentiality undertakings that accompany it.

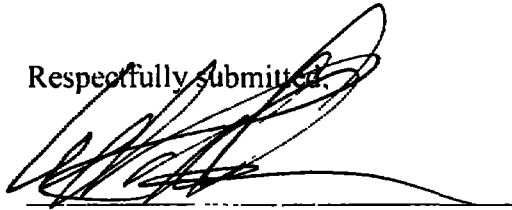


Richard E. Weicher
BNSF RAILWAY COMPANY
2500 Lou Menk Drive
Fort Worth, TX 76131-2828
(817) 352-2354

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Counsel for BNSF RAILWAY COMPANY

Respectfully submitted,



W. Karl Hansen
LEONARD, STREET AND DEINARD
PROFESSIONAL ASSOCIATION
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
(612) 335-1500

Counsel for SOO LINE RAILROAD
COMPANY D/B/A CANADIAN PACIFIC
RAILWAY

Dated: July 16, 2007

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 workpapers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, 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 paragraphs 3 or 4 of this Protective Order, and any Confidential Information contained in such materials.

(d) These "Proceedings" consist of STB Docket No. 35068, any related proceedings before the Surface Transportation Board and any judicial review, proceedings arising from STB Docket No. 35068 or from any related proceedings before the Board.

2. Personnel of Soo Line Railroad Company d/b/a Canadian Pacific Railway ("CPR") and BNSF Railway Company ("BNSF") and their affiliates, collectively petitioners, the parties involved in this matter and their affiliates (collectively the parties), including outside consultants and attorneys for Petitioners or parties (representatives), may exchange Confidential Information for the purpose of participating in the Proceeding, but not for any other business, commercial, or other competitive purpose.

3. If any party to these Proceeding determines that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceeding 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, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

4. Any party producing material in discovery to another party to these Proceeding, or submitted material in pleadings or other documents filed or served, may in good faith designate and stamp particular Confidential Information, such as material containing shipper-specific rate or cost data or other competitively sensitive or proprietary information, as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

5. 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 Exhibit A to this Order.

6. 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 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 Exhibit B to this Order.

7. 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 challenge(s).

8. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

9. Any party who received 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 petitioners for reconsideration, appeals, or remands.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other documents submitted to the Board, unless the pleadings 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.

11. 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.

12. No party may present or otherwise use any Designated Material at a Board hearing 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, 3, or 4 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.

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.

EXHIBIT A

UNDERTAKING CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, governing the production of confidential documents in STB Finance Docket No. 35068, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any confidential data or information obtained pursuant to this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35068 or any judicial review proceeding arising therefrom. I further agree not to disclose any confidential data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel (but not outside consultants) may retain file copies of its work product and of pleadings and evidence filed with the Board, and in-house counsel may retain file copies of all pleadings and evidence containing confidential material it received during the course of this proceeding. I further understand that a party may retain its own confidential material.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive 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.

Dated: _____

EXHIBIT B

UNDERTAKING HIGHLY CONFIDENTIAL MATERIAL

As outside [counsel] [consultant] for _____, for which I am acting in this proceeding, I have read the Protective Order served on _____, governing the production of confidential documents in STB Finance Docket No. 35068, understand the same, and agree to be bound by its terms. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL," that I will limit my use of those documents and the information they contain to the preparation and presentation of evidence and argument in STB Finance Docket No. 35068 and any judicial review proceeding arising therefrom, that I will take all necessary steps to ensure that said documents and information will 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 documents or information by personnel of my client, its subsidiaries, affiliates, or owners, except as otherwise provided in the Protective Order, and that at the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel (but not outside consultants) may retain file copies of its work and of any pleadings and evidence filed with the Board. I further understand that I must destroy all notes or other documents containing such highly confidential information received from the other party in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the highly confidential interest shall be entitled to specific performance and injunctive 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.

OUTSIDE [COUNSEL][CONSULTANT]

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion (without the unredacted executed Agreement) has been served on the following entities by first class mail this 16th day of July, 2007:

The Honorable John Hoeven
Governor
State Capitol
600 Boulevard Avenue
Department 101
Bismarck, ND 58505-0001

North Dakota Transportation Department
608 East Boulevard Avenue
Bismarck, ND 58505-0700

North Dakota Public Service Commission
State Capitol
600 East Boulevard Avenue
Department 408
Bismarck, ND 58505-0480

Mr. Dan Mack
Vice President – Transportation
CHS, Inc.
5500 Cenex Drive
Inver Grove Heights, MN 55077

Mr. Chip Duval
President
Lodgepole Energy Marketing, LLC
216 Sixteenth Street
Suite 1000
Denver, CO 80202-5115

Mr. Richard Larsen
General Manager
New Century Ag
100 North Main
P.O. Box 125
Fortuna, North Dakota 58844-0125

Mr. Les Knudson
Superior Grains Inc.
P.O. Box 109
Crosby, ND 58730-0109

Mr. Jeff Wood
Executive Vice President
Dakota, Missouri Valley & Western Railroad
3501 E. Rosser Avenue
Bismarck, North Dakota 58501



Karl Morell